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I N D E X

WITNESS

RENA AMRO, M.D.

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E X H I B I T S

Marked

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8-12-04

1 THEREUPON,

2 RENA AMRO, M.D.,

3 called as a witness on behalf of the Defendant,

4 having been first duly sworn, was examined and

5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PEDUZZI:

8 Q. Ma'am, my name is Joe Peduzzi and I'm with  
9 the law firm of George and Peduzzi. I'm here to take  
10 your deposition today pursuant to a subpoena for  
11 deposition duces tecum. And this is in the case of  
12 Robert D. Simon, M.D., P.A., vs. Progressive Express  
13 Insurance Company.

14 Let me begin by asking you, have you ever had  
15 your deposition taken before?

16 A. Yes.

17 Q. Then you will understand I'm going to ask  
18 you some questions here today. The testimony that  
19 you give today will be taken under oath and will be  
20 recorded by the court reporter sitting here. We just  
21 ask that you try to answer all questions verbally.  
22 The court reporter will have difficulty taking down  
23 nods of the head and the like. If at any time you  
24 don't understand a question that I ask you, just feel  
25 free to ask me to repeat or rephrase the question and

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1 I will be happy to do so. If you do answer a  
2 question, I'll assume that you understood the  
3 question; is that fair?

4 A. Yes.

5 Q. And if we could begin by having you tell  
6 us your full name and spell your last name for the  
7 record?

8 A. Rena R. Amro, A-m-r-o, M.D.

9 Q. And, ma'am, what is your professional  
10 address?

11 A. 1501 Forest Hill Boulevard, West Palm  
12 Beach.

13 Q. And your date of birth?

14 A. 11/16/63.

15 Q. And your Social Security number?

16 A. 164-66-7106.

17 Q. And what is your profession?

18 A. Orthopedic surgeon, physician.

19 Q. And I understand that you were hired to  
20 give your opinions in this case?

21 A. Yes.

22 Q. When did you first get involved in this  
23 case?

24 A. About a week ago.

25 (Telephone rings.)

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5

1 Q. So you were just telling us you got

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2 involved in this case about a week ago?

3 A. Yes.

4 Q. How specifically did you get involved in  
5 this case?

6 A. I just met with Mr. Vastola and he  
7 proposed what he needed in terms of having a witness  
8 and I agreed to fulfill that obligation.

9 Q. So is Mr. Vastola who first contacted you?

10 A. Correct.

11 Q. Do you know why specifically you were  
12 contacted as opposed to someone else?

13 A. No.

14 Q. How about your relationship with Dr. Simon  
15 or Dr. Vastola, did you have a pre-existing  
16 relationship with either one of them?

17 A. Dr. Simon I've never met personally.

18 MR. VASTOLA: Could I get a clarification?

19 You said Dr. Vastola. Did you mean to say that?

20 MR. PEDUZZI: Did I say Dr. Vastola? I

21 apologize. Mr. Vastola and Dr. Simon. And Dr.

22 Vastola, I know, is Mr. Vastola's father but I don't

23 know why I said that.

24 THE WITNESS: Never met Dr. Vastola.

25 BY MR. PEDUZZI:

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6

1 Q. So Dr. Simon or Mr. Vastola?

2 A. Dr. Simon, I've never met him.

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3 Q. How about Mr. Vastola?

4 A. Mr. Vastola I have met probably a total of  
5 two or three occasions.

6 Q. Under what circumstances?

7 A. I think lunch one time, and the meeting  
8 last week one time, and maybe one in between, I'm not  
9 sure.

10 Q. What was the nature of your previous  
11 relationship with Mr. Vastola?

12 A. None.

13 Q. Have you worked with Mr. Vastola's office  
14 in the past?

15 A. No.

16 Q. Do you know if the plaintiff in this case  
17 or if Mr. Vastola contacted anyone else to  
18 potentially serve as an expert witness in this case?

19 A. I understood there was another expert  
20 witness but they could not fulfill the obligations at  
21 the last minute.

22 Q. Do you know who those people were?

23 A. I believe it was Dr. Whitfield.

24 Q. Anyone else?

25 A. No.

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1 Q. Do you know why Dr. Whitfield wasn't able  
2 to fulfill that obligation?

3 A. No.

4 Q. Have you spoken to Dr. Whitfield in  
5 preparation for this depo or your opinions in this  
6 case?

7 A. No.

8 Q. Do you know who Dr. Stone is?

9 A. He is an orthopedic surgeon.

10 Q. Do you know if he has ever been involved  
11 in this case?

12 A. I'm not sure. I don't know.

13 Q. Before I actually get in the substantive  
14 issues, why don't you go over a little bit of your  
15 background, although, I'm not going to get too in  
16 depth into it.

17 A. Sure.

18 Q. I previously had the opportunity to take a  
19 look at your curriculum vitae, and I'm actually going  
20 to have the court reporter mark it, if I could find  
21 it. And I believe it was, I believe it was attached  
22 to the plaintiff's expert witness list. At the top  
23 it says, Rena R. Amro, M.D., and then it goes on to  
24 personal information and education, licensure and the  
25 like.

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8

1 We'll go off the record for a second.

2 (A discussion was had off the record.)

3 (Deposition Exhibit No. One was marked for  
4 identification by the Reporter.)

5 MR. PEDUZZI: We'll go back on the record.

6 BY MR. PEDUZZI:

7 Q. I just asked the court reporter to mark  
8 this as Defendant's Exhibit One, which is the  
9 curriculum vitae of Dr. Amro.

10 Doctor, I'm going to show you this, that was  
11 provided to us. It was attached to the plaintiff's  
12 expert witness list. And I will show it to  
13 Mr. vastola first.

14 Do you recognize that, doctor?

15 A. Yes.

16 Q. And is that your current curriculum vitae  
17 or resume?

18 A. Yes, that is a recent one.

19 Q. And I'm not going to, as I said before, go  
20 over everything that is contained in the CV, but  
21 specifically, I wanted to ask you with regard to your  
22 memberships and professional organizations?

23 A. Sure.

24 Q. I understand that you are a fellow in the  
25 American Academy of Orthopedic Surgery?

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1 A. Correct.

2 Q. How long have you been a fellow of the  
3 Academy?

4 A. Since 1997.

5 Q. I also see that in your resume, you're

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6 listed as the chief of surgery at Glades General  
7 Hospital?

8 A. Correct.

9 Q. Are you currently in that position?

10 A. I resigned that position, I believe, a  
11 couple of weeks. No, actually August 5 is when I  
12 resigned that.

13 Q. So you resigned that position about a week  
14 ago?

15 A. Yes, my privileges ran up at that hospital  
16 and I did not renew my privileges.

17 Q. Is there any reason for that?

18 A. I don't practice there anymore.

19 Q. Do you have privileges at any other  
20 hospitals?

21 A. Yes.

22 Q. What hospitals?

23 A. Wellington Regional Medical Center and  
24 Palms West Hospital.

25 Q. Also included on your resume, it states

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1 that you are a member of the faculty, I believe, at  
2 the Hospital of the University of Pennsylvania?

3 A. Correct.

4 Q. And are you still in that position?

5 A. Yes.

6 Q. How long have you been affiliated or on

7 the faculty of the Hospital of the University of  
8 Pennsylvania?

9 A. Since 2002.

10 Q. And otherwise the information contained in  
11 your CV, is it accurate and correct?

12 A. Yes.

13 Q. If we could go ahead and turn to your  
14 actual employment in this case or your involvement in  
15 this case.

16 what specifically were you asked to do in  
17 this case?

18 A. To review the billing statements for the  
19 certain CPT codes in Patansher Khan's care under Dr.  
20 Simon.

21 Q. And have you reviewed any records or any  
22 materials in order to formulate your opinions?

23 A. I have.

24 Q. And what specifically have you reviewed?

25 A. I have a copy of the chart for this

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1 patient for the four dates listed, four dates of  
2 service, as well as the EOBs for these dates of  
3 service.

4 Q. Specifically, what is contained in that  
5 chart?

6 A. His progress notes, demographic  
7 information.

8 Q. So progress notes, demographic  
9 information, I think you said you reviewed some EOBs?

10 A. Correct.

11 Q. Specifically, any other documents such as  
12 HICFAS, anything like that?

13 A. No HICFAS, no, that is about it.

14 I have demand letters in here as well, that  
15 is it.

16 Q. Are you familiar with the American Medical  
17 Association Procedural Terminologies CPT 2004  
18 Handbook?

19 MR. VASTOLA: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. PEDUZZI:

22 Q. Have you reviewed that book or any parts  
23 of that book in preparation for your opinions in this  
24 case?

25 MR. VASTOLA: Objection to form.

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1 THE WITNESS: No.

2 BY MR. PEDUZZI:

3 Q. Is there any reason why not?

4 A. My understanding is that I was to attest  
5 to the amounts billed, not to the level of service or  
6 CPT coding.

7 Q. Do you have any opinion then with regard  
8 to the CPT codes that were used in this case and

- 9 whether they were proper or correct?
- 10 A. I haven't reviewed the record in that  
11 respect.
- 12 Q. So if I understand you correctly, at this  
13 time you don't have any opinion with regard to  
14 whether or not the CPT codes that were utilized by  
15 Dr. Simon were appropriate, accurate or correct?
- 16 A. Correct.
- 17 Q. Now you mentioned that you read the  
18 patient's or looked at the patient's chart, the EOBs,  
19 the progress notes, demographic information.  
20 where did you obtain these items.
- 21 A. These were sent to me by Mr. Vastola.
- 22 Q. Do you have all of the records that you  
23 reviewed in order to formulate your opinion with you  
24 here today?
- 25 A. Correct.

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1 MR. PEDUZZI: As long as there is no  
2 privilege documents contained in there, I will ask  
3 the court reporter to mark those as Composite Number  
4 Two.

5 (Deposition Exhibit No. Two was marked  
6 for identification by the Reporter.)

7 BY MR. PEDUZZI:

8 Q. How much time did you spend reviewing the  
9 things that you said you have come here with?

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- 10 A. About half an hour, 45 minutes.
- 11 Q. And when did you review these items?
- 12 A. Yesterday.
- 13 Q. So in total how much time have you spent
- 14 on this case?
- 15 A. Up to this point?
- 16 Q. Yes.
- 17 A. Maybe an hour, hour and a half.
- 18 Q. And do you feel that you require any
- 19 additional information, documentation or materials in
- 20 order for you to formulate your opinions in this
- 21 case?
- 22 A. If my understanding is correct that I'm to
- 23 testify to the amounts billed for these particular
- 24 procedure codes, then no.
- 25 Q. Is that the only thing that you are

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- 1 prepared to testify here today with regard to?
- 2 A. Yes.
- 3 Q. Do you anticipate reviewing any other
- 4 information or documentation prior to the trial of
- 5 this matter other than what you already told me you
- 6 reviewed?
- 7 A. I don't know. Not that I know of.
- 8 Q. Have you spoken with anyone to assist you
- 9 in formulating your opinions in this case other than
- 10 Mr. Vastola?

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- 11 A. No, just Mr. Vastola.  
12 Q. Have you served as an expert witness  
13 before?  
14 A. Yes.  
15 Q. Have you testified at trial before?  
16 A. Yes.  
17 Q. How many times?  
18 A. Once.  
19 Q. How long ago was that?  
20 A. Back in 2002, I believe.  
21 Q. Was it here in Palm Beach County?  
22 A. No.  
23 Q. Where was it?  
24 A. Pennsylvania.  
25 Q. What kind of case was that?

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- 1 A. Medical liability case.  
2 Q. Do you know the name of that case?  
3 A. I believe it was Berman v. CHOP.  
4 Q. Berman v.?  
5 A. CHOP, Children's Hospital of Philadelphia.  
6 Q. In preparation for the formulation of your  
7 opinions in this case, have you conducted any testing  
8 or analytical analysis?  
9 A. No.  
10 Can you clarify that? What do you mean  
11 exactly?

12 Q. You've previously told me that you were  
13 prepared to testify as to the reasonableness of the  
14 charges in this case. Let me just ask you this then.  
15 How did you, how were you able to testify as to the  
16 reasonableness of the charges in this case?

17 A. Compared them to my own fee schedule and  
18 also in the past I have reviewed articles, not  
19 necessarily pertinent to this case, but to the  
20 billing practices of orthopedic surgeons nationwide.

21 Q. What articles were those?

22 A. Like I said, they weren't specific for  
23 this case, just in my continued education learnings.

24 Q. So if I understand you correctly, you will  
25 be basing your opinions on the reasonableness of

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1 charges on your own billing; is that correct?

2 A. Correct.

3 Q. And based upon your review of some  
4 articles in the past?

5 A. Correct.

6 Q. Is there anything else which you will be  
7 utilizing in order to base your opinions in this  
8 case?

9 A. I guess my own knowledge of working in  
10 this specialty and observing what other orthopedic  
11 surgeons have billed informally, not in a formal  
12 review, of their billing schedule.

13 Q. When you say that you have observed what  
14 other orthopedic surgeons have billed, what other  
15 orthopedic surgeons have you had the opportunity to  
16 observe?

17 A. I'm talking just informally at  
18 conferences, having discussions at cocktail hour,  
19 things like that.

20 Q. Have you specifically discussed individual  
21 CPT codes and the amounts billed with the doctors?

22 A. Sure.

23 Q. What CPT codes specifically have you  
24 discussed with other doctors?

25 A. Our most common, you know, for example,

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1 our consultation codes, our new patient visit codes,  
2 x-ray codes.

3 Q. So I understand you do have some opinions  
4 in this case to tell us here today?

5 A. Yes, based on the information that I have.

6 Q. How many opinions do you have?

7 MR. VASTOLA: Object to the form.

8 THE WITNESS: Can you clarify?

9 MR. VASTOLA: Did you say how many?

10 MR. PEDUZZI: Yes.

11 MR. VASTOLA: Objection to form.

12 THE WITNESS: Can you clarify that?

13 BY MR. PEDUZZI:

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14 Q. Let me ask you this. What are your  
15 opinions?

16 A. Can you be more specific? About what,  
17 exactly?

18 Q. I understand that you have been asked to  
19 review this file by Mr. Vastola?

20 A. Correct.

21 Q. And he has asked you to serve as an expert  
22 witness in this case, correct?

23 A. Yes.

24 Q. What I need to know, just so I'm not  
25 surprised at trial by what your testimony is going to

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1 be, is what your expert opinions are.

2 A. Would you like to do it more specifically,  
3 or you just want me to give you general opinions?

4 Q. You could go through it and tell me what  
5 your opinions are going to be.

6 A. Okay. In terms of the dates of services  
7 that I reviewed in this case, which include April  
8 9th, April 25, May 9th, and July 2nd of '03, in  
9 reviewing the 99214 CPT code and the charges by Dr.  
10 Simon, his charges, I believe, are within the  
11 reasonable range. And in comparison to mine, there  
12 would have been a \$15 difference between the charges.

13 Q. When you say they are within a \$15  
14 difference, are Dr. Simon's charges \$15 higher than

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15 yours or \$15 lower than yours?

16 A. \$15 higher.

17 Q. Do you have any other opinions?

18 A. Are there any other codes in question that  
19 you'd like me to give an opinion on?

20 Q. well, did Mr. Vastola ask you to give an  
21 opinion with regard to any other codes? Really what  
22 I need to know is what you intend on testifying to at  
23 trial.

24 A. The only other consultation code on here  
25 is the 99245, and that was on April 9th. And in

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1 comparison to my, my fee schedule is higher than what  
2 was billed there by Dr. Simon.

3 Q. what did Dr. Simon bill?

4 A. He billed \$500.

5 Q. what do you ordinarily bill for 99245?

6 A. \$680.

7 Q. So if I understand you correctly with  
8 regard to CPT code 99214 on all the occasions that  
9 that specific code was billed, Dr. Simon billed \$15  
10 more than you bill?

11 A. Correct.

12 Q. And with regard to the 99245, which I  
13 believe was only billed on one date, Dr. Simon billed  
14 about \$180 less than you bill?

15 A. Correct.

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16 Q. And do you have an opinion with regard to  
17 the appropriateness of Dr. Simon's billing for the  
18 99245 or just with regard to the amount that was  
19 billed?

20 A. Just regard to the amount that was billed.

21 Q. So you are not going to express any  
22 opinion with regard to the appropriateness of 99245;  
23 is that correct?

24 A. I haven't reviewed the chart in that  
25 respect.

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1 Q. So you do not have an opinion either way  
2 with regard to the appropriateness of 99245?

3 A. Correct.

4 MR. VASTOLA: Can we go off the record?

5 (A discussion was had off the record.)

6 MR. PEDUZZI: Back on the record.

7 BY MR. PEDUZZI:

8 Q. How about with regard to 99214, do you  
9 have an opinion with regard to the appropriateness of  
10 Dr. Simon billing that particular code?

11 A. No, I have not reviewed the chart in that  
12 respect.

13 Q. Do you believe there may have been some  
14 other CPT codes that were actually billed and either  
15 reduced by Progressive or denied by Progressive. Are  
16 you at all aware of those other codes that were

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17 reduce or denied by Progressive?

18 A. I have a list of five other codes for the  
19 May 9, 2003 date. That is all I'm aware of.

20 Q. And do you have any opinions whatsoever  
21 with regard to those five other codes for the May 9,  
22 2003 date?

23 A. Can you be more specific?

24 Q. As it regards to the appropriateness of  
25 those codes billed.

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1 A. Well, I have reviewed the chart and I  
2 don't see any documentation of those services.

3 Q. Of which services?

4 A. Those codes I was talking to you about on  
5 4/9/03.

6 Q. So you are talking about the five other  
7 codes other than 99245?

8 A. Correct.

9 Q. Now when you say you don't see any  
10 documentation of those services, what do you mean?

11 A. On review of that day's progress notes, I  
12 don't see any documentation of those services within  
13 the note.

14 Q. Is that significant?

15 A. I'm sorry?

16 MR. VASTOLA: Objection to form.

17 BY MR. PEDUZZI:

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18 Q. Does it have any significance whatsoever?

19 MR. VASTOLA: Objection to form.

20 BY MR. PEDUZZI:

21 Q. That there is no documentation?

22 MR. VASTOLA: Objection to form.

23 THE WITNESS: Can you rephrase that? I don't  
24 quite understand. Any pertinence to the patient's  
25 care or?

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1 BY MR. PEDUZZI:

2 Q. You just testified, and correct me if I'm  
3 wrong, that there is no documentation of the five  
4 other CPT codes in the patient's medical notes other  
5 than the 90245, I would guess.

6 A. Correct.

7 Q. Is there any significance as to there not  
8 being any documentation as to those other codes?

9 MR. VASTOLA: Objection to form.

10 THE WITNESS: well, in terms of the records  
11 that I have to review, I don't know. I could only  
12 review what I have and there is no documentation of  
13 the codes. So I don't know if they were done or not.

14 BY MR. PEDUZZI:

15 Q. Let me ask you this. would it be  
16 appropriate or proper for a physician to bill for CPT  
17 codes that are not documented in medical notes?

18 MR. VASTOLA: Objection to form.

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19 THE WITNESS: No, it's not appropriate.

20 BY MR. PEDUZZI:

21 Q. Other than the CPT codes that we talked  
22 about, and I think you mentioned five other CPT codes  
23 on 04/09 of 2003, 99245, were there any other CPT  
24 codes that you have had an opportunity to formulate  
25 an opinion regarding?

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23

1 A. No, other than the dates that I outlined  
2 before.

3 Q. Do you know if any other CPT codes were  
4 billed by Dr. Simon?

5 A. I don't know.

6 Q. If I understand you correctly then, you  
7 have an opinion with regard to the reasonableness of  
8 the amount billed for each CPT code, but you don't  
9 have an opinion with regard to the appropriateness of  
10 the individual CPT codes, correct?

11 A. I do have an opinion towards the billing.  
12 In terms of the level of CPT coding, I don't have an  
13 opinion on that.

14 Q. What other opinions do you have, if any?

15 A. The medical necessity of these charges.

16 Q. What are your opinions concerning the  
17 medical necessity of the charges?

18 A. In reviewing these four dates of service,  
19 I think that the treatments were appropriate and

20 within generally accepted guidelines for this  
21 patient's diagnoses and medical problems.

22 Q. How about with regard to the five other  
23 CPT codes that were billed for the 4/9/03 date of  
24 service, do you also have an opinion with regard to  
25 the medical necessity of those charges?

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1 MR. VASTOLA: Objection to form.

2 THE WITNESS: I believe they were necessary,  
3 yes, but I have no documentation whether or not they  
4 were done.

5 BY MR. PEDUZZI:

6 Q. Do you have any other opinions here today?

7 A. No.

8 Q. Do you know if Dr. Simon himself saw the  
9 patient in this case, Patansher Khan?

10 MR. VASTOLA: Object to the form.

11 THE WITNESS: I do not know. I was not  
12 present at the time.

13 BY MR. PEDUZZI:

14 Q. Do you know if a physician's assistant saw  
15 the patient in this case, Patansher Khan?

16 MR. VASTOLA: Objection to form.

17 THE WITNESS: I don't know.

18 BY MR. PEDUZZI:

19 Q. Is there any documentation within the  
20 record which would tell you who actually saw the

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21 patient?

22 MR. VASTOLA: Object to the form.

23 THE WITNESS: None that I reviewed.

24 BY MR. PEDUZZI:

25 Q. Since you are not sure who actually saw

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25

1 the patient, let me ask you this hypothetical  
2 question. would it be appropriate for a physician's  
3 assistant to bill for a 99245?

4 MR. VASTOLA: Objection to form, move to  
5 strike.

6 THE WITNESS: Well, if a physician's  
7 assistant is treating a patient and billing that  
8 level of service, then I would imagine in my opinion  
9 it would be under the supervision of the physician.  
10 But can a physician's assistant bill that level of  
11 service, sure.

12 BY MR. PEDUZZI:

13 Q. Do you have a physician's assistant in  
14 your practice?

15 A. No.

16 Q. would you permit a physician's assistant  
17 to bill a 99245?

18 MR. VASTOLA: Objection to form.

19 THE WITNESS: I can't answer that. I have  
20 never had a physician's assistant.

21 BY MR. PEDUZZI:

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22 Q. Have you expressed all your opinions here  
23 today that you intend on expressing at trial?

24 A. Yes, I believe so.

25 Q. Are you going to have any other opinions

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1 at trial that you have not expressed here today?

2 A. Not at this time, no.

3 Q. What is the factual or evidentiary basis  
4 that you base these opinions on?

5 A. I'm sorry. Didn't I answer this question  
6 already? Did I answer this already?

7 Q. You have answered some other questions.  
8 I'm not sure if you answered this direct question.

9 A. Could you clarify that for me? What are  
10 you asking me exactly?

11 Q. Do you have a factual or other basis in  
12 which you base your opinions on?

13 A. As I stated earlier, I base it on in terms  
14 of the billing for these levels of services on my own  
15 billing, my prior readings and my prior interactions  
16 informally with other orthopedic surgeons throughout  
17 the country.

18 Q. Have you made any assumptions in the  
19 formulation of your opinions here today?

20 A. Can you rephrase that?

21 Q. Have there been any facts or anything like  
22 that that you have had to assume that you don't know

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23 for sure?

24 A. No, I based everything on only what I  
25 have, on the document that I have.

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1 Q. Have you excluded any information, any  
2 documentation in the formulation of your opinions?

3 A. No. I have reviewed everything I have  
4 been given.

5 Q. And have you utilized all the information  
6 you have been given in the formulation of your  
7 opinions?

8 A. Yes.

9 Q. Do you require any additional information,  
10 documentation or materials in order for you to make  
11 an opinion in this case?

12 A. I have made an opinion on the  
13 documentation that I have as I was asked to do.

14 Q. Is there anything else that you would  
15 require or that you would find helpful in formulation  
16 of your opinions in this case?

17 A. Probably not.

18 Q. You are not a certified professional  
19 coder, are you?

20 A. God, no.

21 Q. With regard to meeting the specific  
22 requirements of individual CPT codes, would you agree  
23 that a certified professional coder would be more

24 qualified to render an opinion regarding those  
25 issues.

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1 MR. VASTOLA: Object to the form.

2 THE WITNESS: No.

3 BY MR. PEDUZZI:

4 Q. Why not?

5 A. I have been asked to give an opinion on  
6 the amounts billed for each service. A coder would  
7 only be able to tell you about the level of services.  
8 So in this case, no.

9 Q. And that is because you have told us your  
10 opinions are limited at this point?

11 A. To the amount billed, correct. A coder  
12 would not have the experience or a practice to base  
13 that opinion of the amount billed for these levels of  
14 services.

15 Q. How about someone who has training,  
16 education and experience as an actuary who deals with  
17 numbers all the time, would they potentially be in a  
18 better position to render an opinion with regard to  
19 the reasonableness of charges than you?

20 MR. VASTOLA: Objection to form.

21 THE WITNESS: No.

22 BY MR. PEDUZZI:

23 Q. Why is that?

24 A. An actuary could not have any concept of

25 what an orthopedic surgeon's time is worth and the

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1 risk involved and the treatments involved.

2 Q. How about with regard to the amount of  
3 money billed, would an actuary be capable of doing  
4 surveys and looking at data as to the median charge  
5 or the average charge for a particular CPT code in a  
6 given geographic region?

7 MR. VASTOLA: Objection to form.

8 THE WITNESS: Yes, analyzing data, sure.

9 BY MR. PEDUZZI:

10 Q. would someone like an actuary be in a  
11 better position to do that than someone with your  
12 training and qualifications and experience?

13 A. To do what, exactly? Analyze data?

14 Q. Analyze data with regard to the  
15 reasonableness of charges in a geographic region for  
16 specific CPT codes?

17 A. No, in this particular case since I  
18 practice in the geographic area in almost the exact  
19 specialty, I could probably assess the billing  
20 amounts better. However, the actuary would be able  
21 to give medians and analyze data better.

22 Q. would medians be important for determining  
23 the reasonableness of the charges that have been  
24 billed by Dr. Simon?

25 A. I think they could probably be used as a

1 guide, but I don't think they can assess what Dr.  
2 Simon believes his time and expertise and his skills  
3 are worth for these different levels of services.

4 Q. You mentioned what Dr. Simon believes his  
5 experience and skills, et cetera. Are you familiar  
6 with those things yourself with regard to Dr. Simon?

7 A. I'm familiar based on the case that I see  
8 here.

9 Q. But you don't know Dr. Simon?

10 A. I have never met Dr. Simon.

11 Q. Are you familiar with his training,  
12 education or experience?

13 A. No. I know that he has been in this area  
14 for many years practicing. I'm not familiar with his  
15 exact where he did his training and medical school.

16 Q. Do you know if Dr. Simon ever utilized a  
17 physician's assistant in his practice?

18 MR. VASTOLA: Objection to form.

19 THE WITNESS: I don't know.

20 BY MR. PEDUZZI:

21 Q. When was the last time that you billed for  
22 a 99245, how long ago?

23 A. I can't recall.

24 Q. I'm sorry?

25 A. I don't do my own coding all the time.

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1 Q. Who does your coding?  
2 A. I have staff.  
3 Q. To your knowledge have you billed for  
4 99245 within the last three months?  
5 A. I don't know.  
6 Q. Could you tell me a little bit about the  
7 make-up of your practice, what kind of patients you  
8 see, what you do here?  
9 A. I'm a general orthopedic surgeon. I see  
10 patients of all ages. I do a little bit of  
11 everything under the general orthopedic bracket.  
12 Q. Do you see automobile patients here in  
13 your practice -- automobile accident patients?  
14 A. Some.  
15 Q. Can you assign a percentage of the amount  
16 of your practice that is devoted to automobile  
17 accident patients as opposed to all other patients?  
18 A. Probably 10 percent, 15 percent.  
19 Q. Do you know what Dr. Simon's percentage of  
20 his practice is comprised of automobile accident  
21 patients?  
22 A. No.  
23 Q. Are you board certified?  
24 A. I took my second part of the boards in  
25 July, so I will know in a month.

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1 Q. So right now you are not board certified?

2 A. I am board certified in terms of the first  
3 part, correct. In terms of the recertification, I  
4 just took it in July.

5 Q. So if I understand you correctly,  
6 currently as we sit here today, you are board  
7 certified?

8 A. Correct, I have passed part one of the  
9 boards in 2002. I'm waiting for recertification,  
10 which I just took in July, waiting for those results.

11 Q. Do you have to be part two certified in  
12 order to be board certified or just part one?

13 A. It depends who you ask. Most people just  
14 accept part one. Some people accept part one and  
15 part two. You have to recertify every ten years, so.

16 Q. But your testimony here today is that you  
17 are board certified?

18 A. I have passed part one, correct.

19 Q. How much are you charging for this depo  
20 here today?

21 A. I'm charging \$550.

22 Q. Assuming that I keep it under an hour. I  
23 think we have done a good job keeping it under an  
24 hour so far.

25 what are you being paid, if anything, by the

1 plaintiff or the plaintiff's attorney to provide your  
2 opinions in this case?

3 A. Zero.

4 Q. And why is that?

5 A. I haven't charged.

6 Q. Do you intend on charging for your  
7 opinions in this case?

8 A. For my opinions?

9 Q. Do you plan on charging the plaintiff  
10 anything in order to serve as an expert witness in  
11 this case?

12 A. No, I'm just charging my hourly rate in  
13 case I have to go to trial, or, obviously, for  
14 today's deposition, but outside that, no.

15 Q. Are you planning on charging the plaintiff  
16 for, let's say, review of your file in preparation  
17 for your expert opinion in this case?

18 A. No.

19 Q. Are you going to charge the plaintiff for  
20 trial testimony in this case?

21 A. If it goes to trial, I will probably  
22 charge a per hourly rate, just like I have done for  
23 the deposition today.

24 Q. And will Dr. Simon have to pay you if he  
25 does not prevail in this case?

1           A.     Does he have to -- I'm sorry.  
2           Q.     Will Dr. Simon have to pay you regardless  
3 of whether he prevails or loses in this case?  
4           A.     Correct.  
5           Q.     If I understand you correctly, you haven't  
6 been paid anything so far?  
7           A.     Well, you gave me a check in the beginning  
8 of this case, and Mr. Vastola vouched for you and  
9 gave me a check on your behalf. So I will be  
10 refunding Mr. Vastola.  
11           MR. PEDUZZI: Thank you for vouching for me.  
12                    Just give me a couple of minutes, I think we  
13 have a couple of minutes left, so if I could just  
14 have a couple of minutes to just take a two-minute  
15 break.  
16           MR. VASTOLA: That is fine. Let me ask you  
17 before you go off, are there dates of service other  
18 than these four that I'm not aware of?  
19           MR. GEORGE: No, that is it.  
20           MR. VASTOLA: One of your questions made me  
21 think maybe there was another date.  
22                    (A break was had.)  
23           MR. PEDUZZI: If we could go back on the  
24 record.  
25 BY MR. PEDUZZI:

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1 Q. Just to clarify something, how can you  
2 testify as to the reasonableness, necessity and  
3 relatedness when you don't have an opinion as to the  
4 appropriateness of the codes that were actually  
5 billed?

6 MR. VASTOLA: Object to the form.

7 THE WITNESS: I can just basically attest to  
8 the diagnoses of what the patient was seen for, the  
9 number of visits, and whether the treatments were  
10 appropriate. As to the level of service, I didn't  
11 review it in that respect.

12 BY MR. PEDUZZI:

13 Q. What do you mean by level of service?

14 A. I mean the codes, the CPT codes coded.

15 Q. Hypothetically, would your opinions with  
16 regard to the reasonableness and the medical  
17 necessity, relatedness change if this patient was  
18 only seen by a physician's assistant as opposed to  
19 Dr. Simon?

20 MR. VASTOLA: Objection to form.

21 THE WITNESS: No, because I understand since  
22 Dr. Simon is the physician in the facility, that he  
23 did the supervising of the physician's assistant if  
24 there were any questions or problems.

25 BY MR. PEDUZZI:

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1 Q. You would agree that a 99245 is considered  
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2 a high level of service?

3 MR. VASTOLA: Objection to form.

4 THE WITNESS: Yes, it's a high level of  
5 service.

6 BY MR. PEDUZZI:

7 Q. Is there any higher level of service than  
8 99245 for a consultation?

9 MR. VASTOLA: Objection to form.

10 THE WITNESS: Not that I'm aware of.

11 BY MR. PEDUZZI:

12 Q. If this patient was in need of such a high  
13 level of service, why would it be appropriate for a  
14 physician's assistant to see the patient as opposed  
15 to the physician?

16 MR. VASTOLA: Objection to form.

17 THE WITNESS: I can't answer that. Only Dr.  
18 Simon could answer that.

19 BY MR. PEDUZZI:

20 Q. Shouldn't someone who is in need of such a  
21 high level of service be seen by a physician as  
22 opposed to a physician's assistant?

23 MR. VASTOLA: Objection to form.

24 THE WITNESS: Not necessarily. An emergency  
25 room has nurse practitioners see patients on their

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1 own. Physician's assistants see patients on their  
2 own, and that is a high acuity.

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3 BY MR. PEDUZZI:

4 Q. Do you know what the requirements are, the  
5 specific CPT coding requirements are for the 99245?

6 MR. VASTOLA: Objection to form.

7 THE WITNESS: No.

8 BY MR. PEDUZZI:

9 Q. Do you personally know Dr. whitfield or  
10 professionally know Dr. whitfield.

11 A. Yes, I know Dr. whitfield.

12 Q. How long have you known him?

13 A. A few months.

14 Q. And do you have a professional  
15 relationship with him, personal relationship with  
16 him?

17 A. Professional.

18 Q. Have you worked with him before?

19 A. No, I haven't worked with him on patients,  
20 no. Just from purely a colleague standpoint.

21 Q. How about the insured in this case,  
22 Patansher Khan, do you know him?

23 A. No.

24 Q. Do you know what the requirements are in  
25 order to bill a CPT code of 99244?

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1 MR. VASTOLA: Objection to form.

2 THE WITNESS: No.

3 BY MR. PEDUZZI:

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4 Q. How about the requirements with regard to  
5 99214?

6 MR. VASTOLA: Objection to form.

7 THE WITNESS: No, I don't know the specific  
8 requirements.

9 BY MR. PEDUZZI:

10 Q. Do you know if Dr. Simon shares office  
11 space with Dr. Whitfield?

12 A. Yes, there is a sign on Congress Avenue  
13 with both their names on it.

14 Q. I think you said you never actually met  
15 Dr. Simon?

16 A. No, never met him. Never even spoken to  
17 him.

18 MR. PEDUZZI: Okay. Thank you. That's all  
19 the questions I have. Mr. Vastola may have some  
20 follow-up questions for you.

21 THE WITNESS: Okay.

22 CROSS-EXAMINATION

23 BY MR. VASTOLA:

24 Q. Dr. Amro, how do you set the rates that  
25 you charge your patients for services rendered?

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1 A. I charge them at a percentage of the  
2 Medicare fee schedule allowed amounts for these  
3 particular codes.

4 Q. Is that standard in the industry for  
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5 setting rates of orthopedic surgeons?

6 A. In most specialties, yes. But as far as I  
7 understand, every physician is free to bill for  
8 whatever amount they think is reasonable for their  
9 services.

10 Q. And what specifically, what percentage of  
11 Medicare is it that you charge or how can you  
12 quantify how you come up with your rates?

13 A. I charge between 300 and 400 percent of  
14 Medicare.

15 Q. Is that within the realm of  
16 reasonableness?

17 A. Yes, I believe that is the national  
18 standard for orthopedic surgery.

19 Q. What are the minimum and maximum? I think  
20 at one point you mentioned to me that you were  
21 somewhere in the middle?

22 A. Like I said, I think the average for  
23 orthopedic surgeons is between 300 and 400 percent of  
24 Medicare. I've talked to orthopedic surgeons who  
25 billed as low as 100 to 200 percent of Medicare and I

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1 have talked to orthopedic surgeons who bill much  
2 higher than that. Probably the highest I have ever  
3 heard is 500 percent of Medicare.

4 Q. And just so we're clear, you were retained  
5 to testify regarding the reasonableness of the

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6 charges --

7 A. Correct.

8 Q. -- charged by the plaintiff, as well as  
9 the medical necessity of the treatment rendered,  
10 correct?

11 A. Correct.

12 Q. You provided those opinions today?

13 A. Yes.

14 MR. VASTOLA: I have no further questions.

15 MR. PEDUZZI: Just a couple of follow-up.

16 REDIRECT EXAMINATION

17 BY MR. PEDUZZI:

18 Q. Do you know what the percentage of  
19 Medicare is that Dr. Simon bills?

20 A. I don't know how he bases his fee  
21 schedule.

22 Q. And wi