

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

RECEIVED

SEP 20 2017

S.C. SUPREME COURT

Op. No. 2017-UP-279 (S.C.Ct.App. filed July 5, 2017)

Jose Juan Jimenez, Employee,.....Petitioner,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

APPENDIX

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VOLUME I

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(Submitted May 1, 2017 – Filed July 5, 2017)	

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Jose Juan Jimenez, Employee, Appellant,

v.

Kohler Company, Self-Insured Employer, Respondent.

Appellate Case No. 2015-001336

Appeal From the Workers' Compensation Commission

Unpublished Opinion No. 2017-UP-279
Submitted May 1, 2017 – Filed July 5, 2017

AFFIRMED

Alton Lamar Martin, Jr., of Martin & Martin, PA, of
Greenville, for Appellant.

Grady Larry Beard, Nicolas Lee Haigler, and Robert E.
Horner, all of Sowell Gray Robinson Stepp & Laffitte,
LLC, of Columbia, for Respondent.

PER CURIAM: Jose Juan Jimenez appeals an order of the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) affirming the order of the single commissioner, which found Jimenez did not sustain an "injury by accident." On appeal, Jimenez argues the Appellate Panel erred in affirming the order of the single commissioner because (1) Jimenez met his burden of proving a compensable

injury and (2) the Appellate Panel's conclusory findings of fact and conclusions of law lacked sufficient specificity for appellate review. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the Appellate Panel erred in finding Jimenez did not meet his burden of proving a compensable injury: *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 85, 681 S.E.2d 595, 599 (Ct. App. 2009) ("The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record."); *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012) ("Under this standard, [an appellate court] can reverse or modify the decision only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."); *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached."); *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 22, 716 S.E.2d 123, 126 (Ct. App. 2011) ("In workers' compensation cases, the Appellate Panel is the ultimate fact finder."); *Langdale v. Carpets*, 395 S.C. 194, 200, 717 S.E.2d 80, 83 (Ct. App. 2011) ("Where the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive."); *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998) ("The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture[,] or speculation.").

2. As to whether the Appellate Panel erred in providing conclusory findings of fact and conclusions of law: *Canteen v. McLeod Reg'l Med. Ctr.*, 400 S.C. 551, 558-59, 735 S.E.2d 246, 250 (Ct. App. 2012) ("The findings of fact made by the Appellate Panel must be sufficiently detailed to enable the reviewing court to determine whether the evidence supports the findings."); *id.* at 559, 735 S.E.2d at 250 (finding the Appellate Panel failed to detail any evidence supporting its decision and remanding to the Appellate Panel to make specific findings).

AFFIRMED.

LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee,.....Appellant,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

PETITION FOR REHEARING

RECEIVED
JUL 21 2017
SC Court of Appeals

The Appellant, by and through his undersigned attorney, hereby files this Petition for Rehearing. On July 5, 2017, this Court issued an opinion affirming the Decision and Order of the South Carolina Workers' Compensation Commission. Jimenez v. Kohler Company, Op. No. 2017-UP-279 (S.C. Ct. App. Filed July 5, 2017).

As grounds for granting his Petition, Appellant would respectfully show the Court may have overlooked or misapprehended the issues of (1) the Commission erred in finding the injuries Mr. Jimenez reported at work did not establish an "injury by accident."; (2) The Commission failed to provide sufficient Findings of Fact and Conclusions of Law to allow Appellate Review.

ARGUMENT

1. The Commission erred when it failed to find Mr. Jimenez suffered an "injury by accident, per §42-1-160.

The question of whether a Claimant asserts an "injury by accident" within the meaning of the South Carolina Workers' Compensation Act is a question of law. Creech v. Ducane Co., 320 S.C. 559, 467 SW 2d 114 (Ct. App. 1995).

It is undisputed that Appellant reported two different on-the-job accidents to his supervisor on two separate occasions. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-10; p. 476; p. 677, lines 11-15; p. 402, lines 18-25; p. 403, lines 1-10; p. 475) His supervisor documented those accidents and referred Appellant to the plant nurse. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-10; p. 476; p. 402, lines 18-25; p. 403, lines 1-10; p. 475; p. 679, lines 17-19) The plant nurse provided medical treatment for his work-related injuries from each accident and documented same in her medical notes. (R. p. 174; p. 485, lines 11-24; p. 512, lines 4-11; p. 532; p. 173; p. 488, lines 17-25; p. 489, lines 1-2; p. 512, lines 12-21, p. 533). There was no suggestion that Appellant feigned an accident or falsely reported an injury.

In accordance with S.C. Code Ann. §42-1-160, these facts established an "injury by accident." However, the Commission was operating under a misunderstanding of the definition of an "injury by accident". The Commission's ruling was that despite the above-noted facts, Appellant did not establish an "injury by accident". The basis for the Commission's ruling was that after the work accident and initial medical treatment, Appellant delayed in pursuing additional treatment. Assuming arguendo that Appellant delayed in pursuing treatment, which Appellant expressly denies, this would not affect

his having suffered an "injury by accident", per 42-1-160. Once an "injury by accident" occurred, it could not be retracted by a delay in seeking treatment.

The Court addressed the issues by referencing a body of case law regarding the substantial evidence standard of review, Appellant believes the Court overlooked his argument that the Commission committed legal error in its defining an "injury by accident."

The Court's citation of substantial evidence cases reflects a review of Appellant's arguments related to questions of fact. However, the Court did not include any citations related to the definition of an "injury by accident" or S.C. Code Ann. §42-1-160. Appellant respectfully submits the Court did not specifically address his argument concerning an "injury by accident" being a question of law.

Appellant respectfully requests that the Court reconsider its decision; reverse the Commission's error; rule that an "injury by accident" was established per 42-1-160; and, award Appellant workers' compensation benefits.

2. The Commission erred in provided conclusory Findings of Fact and Conclusions of Law.

The Full Commission issued an Order amending Findings contained in the Single Commission Hearing Order. The Full Commission's Order failed to provide any reasons for the amendments to the Hearing Order. The Full Commission's Order did not indicate it was adopting the recitation of facts given in the Hearing Order. The Full Commission's Order did not state which current or revised findings of fact support its amendment.

In amending an Order, the Commission must show good grounds for making any changes to the Findings and Conclusions of the Single Commissioner. S.C. Code Ann.

§42-17-50. Nothing in the Full Commission's Order reflects the basis for its amending the Single Commissioner's Order.

Respectfully, the Court cannot know from the Full Commission's Order what the basis was for its amendment to the Single Commissioner's Hearing Order. The Court cannot know which facts the Full Commission chose to interpret differently from the Single Commissioner, in its decision to amend the Findings from the Hearing Order. Without knowing the Full Commission's reasoning or final interpretation of the facts, the Court cannot determine whether the amended Findings are adequately supported by those unknown facts.

Appellant respectfully requests the Court reconsider its decision, and rule that the conclusory Findings and Conclusions of the Commission lack sufficient specificity for appellate review.

CONCLUSION

Based on the foregoing arguments, the Commission's Order finding no "injury by accident" should be reversed. Alternatively, the Court should hold the conclusory findings and conclusions of the Commission are insufficient for appellate review.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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JUL 28 2017

Appellate Case No.: 2015-001336
Unpublished Opinion No. 2016-UP-127

SC Court of Appeals

Jose Juan Jimenez, Employee, ... Appellant,

v.

Kohler Company, Self-Insured Employer, ... Respondent.

RETURN TO PETITION FOR REHEARING

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Attorneys for Respondent

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Kohler Company (Respondent) submits this Return to Appellant's Petition for Rehearing. For the reasons set forth herein, Appellant's Petition for Rehearing should be denied.

This Court affirmed the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission (Appellate Panel) that the claimant failed to establish that his current injuries to his low back/left leg are causally related to injuries by accident *arising* out of and in the course of employment on July 14, 2011, or March 13, 2012, pursuant to South Carolina Code section 42-1-160. This Court also affirmed that the Appellate Panel's Decision and Order stated sufficient Findings of Fact and Conclusions of Law to afford the claimant judicial review.

The claimant now advances two arguments in support of his Petition that were allegedly *overlooked* or misapprehended by the Court. First, the claimant contends the Commission erred when it failed to find he suffered an "injury by accident" under section 42-1-160 of the South Carolina Code. (Pet. for Reh'g 2). The claimant asserts the basis for the Appellate Panel's ruling was that after the accident and initial medical treatment, the claimant delayed in pursuing additional medical treatment. According to the claimant, such a delay would not affect his accident falling under the definition of "injury by accident" under section 42-1-160 of the South Carolina Code. (Pet. for Reh'g 2). This is a misunderstanding of the Respondent's argument and this Court's ruling. It is undisputed that the claimant twice reported that he had back tightness or soreness on two different days at work, separated by approximately eight months of time. Each incident resulted only in a visit to the on-site nurse and the creation of an incident report. The Respondent never argued they did not have notice of incidents on the two days in question. Instead, the Respondent contends the body parts for which the claimant sought compensation –

the back and leg(s)—were not causally related to any injury by accident under South Carolina Code section 42-1-160. Throughout the hearing and this appeal, the Respondent has maintained there was no credible evidence establishing that the claimant's two complaints of minor soreness for which he did report were causally related to the claimant's herniated disc/degenerative disc disease for which he seeks workers' compensation benefits. The Court considered this argument and cited to the appropriate standard of review and quoted language from *Clade v. Champion Labs*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998) holding the burden was on the claimant to prove facts that make the injury compensable and that "such award must not be based on surmise, conjecture[,] or speculation." The Court did not overlook or misapprehend the claimant's argument – it simply concluded the claimant did not meet his burden of proof that he suffered compensable events from his two minor complaints and affirmed the decision of the Commission.

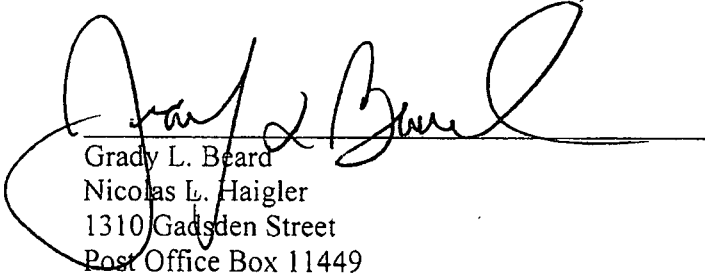
Second, the claimant contends the Commission erred in providing conclusory Findings of Fact and Conclusions of Law. (Pet. for Reh'g 3). According to the claimant, because the Appellate Panel's Order did not provide reasons for the amendments to the Hearing Order, the Court cannot determine whether the amended Findings are adequately supported by the facts. (Pet. for Reh'g 4). The claimant cites to section 42-17-50 of the South Carolina Code for the proposition that the Appellate Panel was required to articulate the basis for its amendments of the Single Commissioner's Order. (Pet. for Reh'g 4). However, nothing in section 42-17-50 requires that of the Appellate Panel. Section 42-17-50 states "the commission shall review the award and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." That language does not require that the Appellate Panel list in its order the grounds for making any amendments to the Single Commissioner's Order. Furthermore, the Appellate Panel properly affirmed and adopted the

Hearing Commissioner's recitation of the facts, and then identified its own Findings of Fact and Conclusions of Law which addressed the issues necessary for this Court to conduct an appellate review. Its citation to *Canteen v. McLeod Reg'l Med. Ctr.*, 400 S.C.551, 558-59, 735 S.E.2d 246, 250 (Ct. App. 2012) indicates that it did sufficiently consider this issue and did not misapprehend or overlook the claimant's argument.

This Court did not overlook or misapprehend the law or facts in this case as alleged by the claimant. Rather, this Court applied the facts to the well-established law and properly affirmed the Decision and Order of the Appellate Panel. The claimant's Petition for Rehearing is therefore without merit and should be denied.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



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Attorneys for Respondent

Columbia, South Carolina

July 28, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2015-001336
Unpublished Opinion No. 2016-UP-127

RECEIVED
JUL 28 2017
SC Court of Appeals

Jose Juan Jimenez, Employee, ... Appellant,

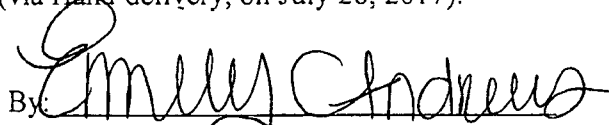
v.

Kohler Company, Self-Insured Employer, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Return to Petition for Rehearing, by depositing a copy in the United States Mail, postage prepaid, on July 28, 2017, addressed to all counsel of record, Alton L. Martin, Esquire, Post Office Box 8220, Greenville, SC 29604 and Honorable Jenny Abbott Kitchings, Judicial Director, South Carolina Court of Appeals, 1015 Sumter Street, Columbia, SC 29201 (via Hand-delivery, on July 28, 2017).

By:



Emily S. Andrews
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The South Carolina Court of Appeals

Jose Juan Jimenez, Employee, Appellant,

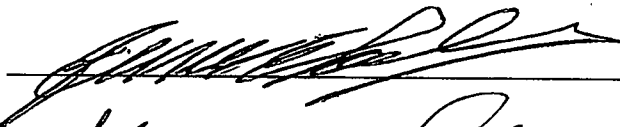
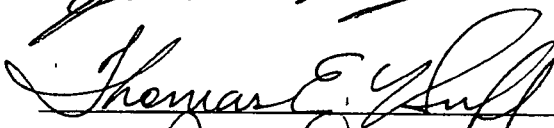
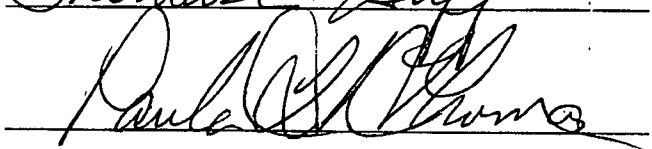
v.

Kohler Company, Self-Insured Employer, Respondent.

Appellate Case No. 2015-001336

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


C.J.

J.

J.

Columbia, South Carolina

cc:

Alton Lamar Martin, Jr., Esquire
Grady Larry Beard, Esquire
Nicolas Lee Haigler, Esquire
Robert E. Horner, Esquire
Amy Bracy

FILED

August 18, 2017

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee,.....Appellant,

v.

Kohler Company, Self-Insured Employer,.....Respondent.

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

ATTORNEY FOR REPSONDENTS

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1122474 & 1219561

Jose Juan Jiminez,

Employee,

Claimant,

v.

Kohler Company,

Self-Insured Employer,

Defendant.

DECISION AND ORDER

HEARING:

Hearing held in Columbia, South Carolina, on May 23, 2014, in Greenville, South Carolina, on June 3, 2014, and in Columbia, South Carolina, on June 4, 2014

APPEARANCES:

Claimant represented by Martin & Martin, P.A., with Alton L. Martin, Jr., Esquire, appearing

Defendants represented by Sowell Gray Stepp & Laffitte, L.L.C., with Grady L. Beard, Esquire, appearing

PURPOSE OF HEARING:

To determine issues as raised on Forms 50 and 51

DECISION AND ORDER:

By Honorable T. Scott Beck, Commissioner

FILED:

October 24, 2014

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the claimant submitted records, reports, and correspondence from the following into evidence:

	Physician	Practice	Dates of Service	Page Numbers
1.		Orthopedic Specialties of Spartanburg	01/04/13 – 11/20/13	Pages 1 – 46
2.		Piedmont Imaging	07/20/13	Pages 47 – 49
3.		Family Medical Center	10/15/12 – 02/07/13	Pages 50 – 78
4.		Mary Black Health System	10/15/12 – 01/23/13	Pages 79 – 83
5.		Mary Black Health System – PT	10/23/12 – 11/12/12	84 – 99
6.		Kohler Medical Department	03/11/10 – 11/01/12	100 – 102
		Doctor's Care	04/30/12	103 – 106

Exhibits	Date of Reports	Page Numbers
A. Incident Report	03/13/12	1 Page
B. Incident Report	07/15/11	1 Page
C. Return to Work Note	04/30/12	1 Page
D. Hearing Transcript from <i>Yuri Valderamma v. Kohler</i>		

Pursuant to the Administrative Procedures Act, the defendant submitted records, reports, and correspondence from the following into evidence:

	Physician	Practice	Dates of Service	Page Numbers
1.	Marco Rodriguez, M.D.		08/02/13	Deposition
2.	Erica Savage-Jeter, M.D.		08/05/13	Deposition

Exhibits	Date of Reports	Page Numbers

A. SC Department of Employment and Workforce		1 – 2
B. Casting Process or Plate # Change Questionnaire	11/28/12	3
C. Portions of claimant's personnel file (previously provided to opposing counsel in response to a subpoena)		
D. Deposition of Claimant		
E. Deposition of Pat Zimmerman	05/30/14	
F. Hearing Order of <i>Yuri Valderamma v. Kohler</i>		
G. Deposition of Jesus Lugo	10/30/07	

STIPULATIONS

At the call of the claim, the parties stipulated to the following issues:

1. The South Carolina Workers' Compensation Commission has jurisdiction over these claims;
2. Venue in the County of Spartanburg is proper for these claims; however, the parties agreed to hold the Hearing in both Columbia and Greenville;
3. The claimant's average weekly wage and compensation rate is \$760.83 and \$507.24 for W.C.C. #1122474 and \$851.61 and \$567.77 for W.C.C. #1219561, respectively;
4. Both claims were consolidated for Hearing; and
5. With the exception of any self-serving statements or unstipulated medical reports, the Commission files were made part of the record.

STATEMENT OF THE CASE

The undersigned held a Hearing in these matters on the dates and locations referenced above. All parties of interest were timely and properly notified of the Hearing, and the parties and/or their representatives appeared at the Hearing. The claimant appeared and was represented by Alton L. Martin, Jr., Esquire. The defendant was represented by Grady L. Beard, Esquire. Mr. Wilmer Aviles was approved as an interpreter.

It is the position of the claimant that he suffered compensable accidents on July 14, 2011, and on March 13, 2012, resulting in injuries to his back and left leg. The claimant is requesting a finding of

compensability as to both claims, authorized causally-related medical treatment for his alleged injuries, reimbursement for out of pocket medical expenses for the causally-related medical treatment obtained to date, and temporary total disability benefits from January 30, 2013, and continuing until such time as the claimant reaches maximum medical improvement.

To the contrary, the defendant has denied each of these claims in their entirety, but specifically based upon the claimant's failure to meet his burden of proving the alleged injuries arose out of and in the course of his employment with the defendant, and based upon the claimant's failure to timely report the claims as work-related pursuant to Section 42-15-20. The defendant also specifically requests a determination as to the credibility of the claimant. Finally, the defendant contends that if either claim is compensable, the claimant sustained a subsequent intervening accident which is the true cause of his current alleged problems.

Accordingly, the primary issues for determination are: (1) whether the claimant sustained compensable injuries by accident on July 14, 2011 and/or March 13, 2012; (2) if so, the extent of the alleged injuries; (3) whether the claimant provided timely notice of the his alleged accidents pursuant to Section 42-15-20; (4) whether the claimant is entitled to the authorization of causally-related medical treatment; (5) whether the claimant is entitled to reimbursement for out of pocket medical expenses for the causally-related medical treatment obtained to date; (6) whether claimant is entitled to temporary total disability benefits from January 30, 2013, and continuing; (7) the credibility of the claimant; and (8) if either claim is compensable, whether claimant sustained an intervening trauma.

EVIDENCE OF THE CASE

The undersigned has carefully considered all of the evidence presented by the parties in this claim, including the Hearing and deposition testimony of the claimant, the Hearing testimony of Mike Tolleson,

Sam Barnwell, Joe Brown, Sid DeVaul, Jesus Lugo, and Yuri Valderama, the deposition testimony of Nurse Pat Zimmerman, Erica Savage-Jeter, M.D., and Marco Rodriguez, M.D., and the medical records and exhibits submitted through the APA. It is noted that defendants objected to Jesus Lugo being allowed to testify at the Hearing due to a previous agreement between he and defendant; however, after review of the agreement Mr. Lugo was allowed to testify as a fact witness. Additionally, defendant objected to the Questionnaire of Dr. Tarzella at Page 7 of claimant's APA's. The objection was overruled. From this evidence, the following is specifically noted:

A. TESTIMONY:

1. Claimant's Hearing Testimony

The claimant is from Mexico and speaks Spanish and "some English." See H.T., Vol. II, p. 139. The claimant testified he is 35 years old, 6 feet and 235 pounds. See H.T., Vol. II, p. 140. He worked for Kohler initially from 2001 through January 2004, and then from February 2004 until his termination in February 2013. See H.T., Vol. II, p. 141.

Regarding his alleged accident on July 14, 2011, the claimant testified he felt pain down his leg while lifting a pan. See H.T., Vol. II, p. 143. The claimant testified he finished the day, but really felt pain the following day. The claimant testified he presented to Nurse Zimmerman for treatment and was advised by her to report to Sam Barnwell. See H.T., Vol. II, p. 145. The claimant then testified regarding his alleged accident in March 2012, stating he injured his back "rolling over wares." See H.T., Vol. II, p. 145. The claimant testified he was again sent to Nurse Zimmerman. See H.T., Vol. II, p. 146.

The claimant then testified regarding a meeting in Nurse Zimmerman's office on November 1, 2012. He testified that Joe Brown, Mike Tolleson, Sam Barnwell, and Sid DeVaul were present at the meeting, although Mr. DeVaul did not participate. See H.T., Vol. II, p. 147. The claimant testified that during this meeting he asked Mr. Barnwell to be referred to a doctor by Nurse Zimmerman, and also testified he had asked Mr. Barnwell to go to the Nurse before. See H.T., Vol. II, p. 147. The claimant

testified he told everyone in attendance that he injured his low back at work, and also requested light-duty. See H.T., Vol. II, p. 148. The claimant testified Mr. Tolleson told him "the doors are open" if he could not perform his regular duty job. See H.T., Vol. II, p. 148. The claimant also testified he told his supervisor that he was continuing to treat after the meeting and had been recommended for an MRI. See H.T., Vol. II, p. 149. The claimant alleged he then asked the Nurse and Mr. Barnwell for a form to provide to his doctor regarding possible light duty, as he was instructed to do by Dr. Jeter. See H.T., Vol. II, p. 150. When Mr. Brown offered the claimant a lighter-duty job, the claimant testified Mr. Tolleson denied him the job and told him he would have to leave if he could not perform regular duty. See H.T., Vol. II, p. 154.

The claimant testified he began seeing Dr. Rodriguez, an orthopedic surgeon, in February 2013, and desired to have the surgery recommended by Dr. Rodriguez. See H.T., Vol. II, p. 152. The claimant testified he told Dr. Rodriguez how he injured his back. See H.T., Vol. II, p. 157.

Under cross-examination, the claimant initially denied knowing he made more money during every quarter after his alleged accident in July 2011. See H.T., Vol. II, p. 158. However, after continued questioning on the issue, he finally acknowledged this fact. See H.T., Vol. II, p. 160. The claimant's testimony continued as follows:

Q: Is that the date that you signed the document, November 28th of 2012?

A: Yes, sir.

Q: And that's the date you changed plate number from 4380 to 4387, correct?

A: Who wouldn't like to have a lighter job, of course.

Q: Let me ask the question again. Is that the date you changed from plate number 4380 to 4387? That was my question. That's a really easy answer, yes or no.

A: Yes, that's what it says.

Q: Well, then I'm confused, Mr. Jiminez, because you just testified that Mike Tolleson told you, there's the door, on November 1st, 2012, and four weeks later you had a new, lighter duty job, that doesn't make sense.

A: If you have medical knowledge you'll know that not every day is the same. I have a degeneration, the pain isn't the same every day. And I'm not a doctor. All I wanted to do was to work, not nothing else.

Q: Again, you've avoiding answering my questions, Mr. Jiminez.

See H.T., Vol. II, pp. 160-61. The claimant then testified he speaks Spanish, but learned English "on the street." See H.T., Vol. II, p. 161. However, when questioned about the questionnaire he was provided in October 2012 at Mary Black Hospital, the claimant admitted he asked for the questionnaire in English as opposed to Spanish. See H.T., Vol. III, pp. 5-6.

Additionally, the claimant testified he continued to work full-duty with no restrictions from any physician from July 14, 2011, until January 2013, or approximately 18 months. See H.T., Vol. II, p. 164. The claimant then admitted he had medical insurance throughout the period, but waited until October 2012 to see a doctor. See H.T., Vol. II, p. 165. He further admitted that when he first presented to a doctor, he did not tell the doctor his problems were work-related. See H.T., Vol. II, p. 169. The claimant then admitted he was illegally in the United States, although he had denied being illegally in the country during his deposition from April 2013. See H.T., Vol. II, p. 172 (see also Deposition of Claimant, p. 7). He further admitted he drives an automobile with a driver's license and, in fact, drove to the Hearing. See H.T., Vol. II, p. 174.

The claimant then testified regarding his visit to Doctor's Care on April 30, 2012, and admitted telling the attending physician he had been experiencing back pain for "several days." See H.T., Vol. II, p. 178. When asked what caused him to go to Doctor's Care, he testified "I really don't remember, I think it was just during my regular, normal daily routine." See H.T., Vol. II, p. 179.

The claimant admitted that during his treatment with Dr. Jeter, she never gave him any restrictions. See H.T., Vol. II, p. 185. As such, he never provided any of his supervisors with a light-duty note. See H.T., Vol. II, p. 185. He also admitted that, while undergoing physical therapy for his shoulder in October 2012, he never had restrictions regarding his abilities at work. See H.T., Vol. II, p. 185. The claimant then

testified regarding a report from physical therapy at Mary Black Hospital dated November 1, 2012, the same day as the aforementioned meeting at Kohler, when he reported "I heard a big, pop, sound on my back, my leg's still tingling." When asked whether he injured his back on November 1, 2012, the claimant testified, "I don't want to lie, because I don't remember. I just don't. I don't remember." See H.T., Vol. III, p. 13. When further reminded the report stated he felt the pain while trying to stretch his body before the start of work, the claimant testified "Yes, I think I did mention that to my bossman." See H.T., Vol. III, p. 14. The claimant testified he also reported to the physical therapist on November 9, 2012, that he felt a big pop in the left side of his back early in the week. See H.T., Vol. III, p. 14. The claimant admitted he did not pursue workers' compensation claims for these apparent incidents. See H.T., Vol. III, p. 16.

The claimant also admitted that when he initially presented to Dr. Rodriguez for treatment, he told Dr. Rodriguez he could not remember any distinct injury to his back. See H.T., Vol. III, p. 17. The claimant then testified that he was unaware Dr. Rodriguez reported that it was difficult to determine causality because the claimant could not identify a distinct injury to his back. See H.T., Vol. III, p. 19. He also admitted he did not know Dr. Rodriguez reported his prior coccyx injury could have been the beginning of the claimant's problems. See H.T., Vol. III, p. 19.

Additionally, the claimant admitted that when Joe Brown followed-up with him after his incidents in July 2011 and March 2012, the claimant told him he was "doing all right." See H.T., Vol. III, p. 26. The claimant testified these conversations occurred two or three times. See H.T., Vol. III, p. 26. The claimant testified it was difficult to remember whether he ever told Dr. Jeter about any injuries on the job at Kohler, then testified he may have told her about a "slip and fall." See H.T., Vol. III, pp. 34-35. The claimant confirmed the slip and fall has nothing to do with the claims he is now pursuing. See H.T., Vol. III, p. 35.

The claimant then testified he did not work with Mr. Lugo during the time of these alleged accidents, and has not discussed these claims with Mr. Lugo. See H.T., Vol. III, p. 38. The claimant did

not recall whether Mr. Valderamma worked at Kohler with him, but denied ever speaking to him about these claims. See H.T., Vol. III, p. 39.

2. Hearing Testimony of Mike Tolleson

Mr. Mike Tolleson is employed as the Safety Specialist at Kohler, and has been with the company for 18 years. See H.T., Vol. I, p. 11. Mr. Tolleson testified he is the person at the Spartanburg Kohler plant who initially handles workers' compensation claims. See H.T., Vol. I, p. 12. Regarding the initial handling of workers' compensation claims at Kohler, Mr. Tolleson testified "any time that anything happens in our facility, it doesn't matter if it's property damage, it doesn't matter if it's a refuse to work, it doesn't matter if it's first aid, it doesn't matter if it's a near miss, all those things are investigated and documented." See H.T., Vol. I, p. 13.

Mr. Tolleson testified that during his meeting on November 1, 2012, with the claimant, Joe Brown, Sam Barnwell, and Nurse Zimmerman, the claimant never mentioned his problems as being work-related, never asked to go to the company doctor, and said he could perform his normal job. See H.T., Vol. I, pp. 17, 43. He also testified that he is not involved in the decision of whether the claimant is referred to the company doctor. See H.T., Vol. I, pp. 46-47.

Regarding the incident which occurred on March 13, 2012, Mr. Tolleson described it as an "occurrence" instead of an accident; the occurrence is added to the near miss property damage policy. See H.T., Vol. I, p. 29. Mr. Tolleson then read aloud the Incident Report completed by Sam Barnwell, the claimant's supervisor. In summary, the Report indicated the claimant complained of back soreness on March 13, 2012, and requested pain pills. He worked for the remainder of the day with no more complaints, then made additional complaints the following morning. He nonetheless stated he could continue to work with no problems. See H.T., Vol. I, pp. 30-32. Mr. Tolleson also confirmed the claimant did not return to Nurse Zimmerman on March 15, 2012, as instructed. See H.T., Vol. I, p. 51. He also confirmed the claimant reported to Sam Barnwell on March 19, 2012, that he was fine and performing regular duty. See H.T., Vol. I, p. 53. Mr. Tolleson testified nothing further was reported by the claimant until November 1, 2012. See H.T., Vol. I, p. 56.

Regarding the incident which occurred on July 14, 2011, Mr. Tolleson read aloud the Incident Report completed by Mr. Barnwell. In summary, the claimant reported to Mr. Barnwell on July 15, 2011, stating that while emptying drain pan on July 14, 2011, he felt tightness, not pain, in his lower back. The claimant reported he could continue to work for the remainder of the day. See H.T., Vol. I, p. 36. Mr. Tolleson confirmed that at no point between July 15, 2011, and March 12, 2012, did the claimant ever request to see or have an appointment with a doctor. See H.T., Vol. I, p. 50.

Mr. Tolleson then testified regarding the claimant's ability to communicate in English. The testimony proceeded as follows:

Q: Did Mr. Jiminez bring an interpreter with him to work?

A: He did not.

Q: Did Mr. Jiminez have to communicate with employees, and supervisors, and management at work?

A: He did.

Q: Did he communicate in Spanish?

A: No.

Q: Has Mr. Jiminez, to your knowledge, ever needed an interpreter other than when he started fighting this workers' comp claim?

A: No.

See H.T., Vol. I, p. 51, ll. 11-22.

Mr. Tolleson further testified regarding the claimant's visit with Dr. Jeter. Specifically, he confirmed the claimant never advised anyone at Kohler he was going to this appointment. See H.T., Vol. I, p. 62. Mr. Tolleson testified that the claimant called and stated that light duty was requested by Dr. Jeter, but the claimant never produced a light duty form. See H.T., Vol. I, p. 62.

3. Hearing Testimony of Sam Barnwell

Mr. Barnwell is retired from his employment as the foreman of the casting department. See H.T., Vol. I, p. 79. He was the claimant's foreman for approximately 4 years. See H.T., Vol. I, p. 93. He testified he spoke to the claimant in English as the claimant had no problems communicating in English. See H.T., Vol. I, pp. 93-94. He testified he completed an Incident Report after the claimant's incident on July 14, 2011. See H.T., Vol. I, p. 80. Mr. Barnwell testified the claimant apparently felt tightness in his back while emptying a drain pan. See H.T., Vol. I, p. 80. Regarding the procedure from there, Mr. Barnwell testified as follows:

Q: And you sent him to the nurse for this incident?

A: That's correct, medical treatment was to the nurse.

Q: Okay. And was there anything else he would have needed to do under Kohler policy to establish that he'd gotten hurt at work besides telling you, having you fill out an incident report, and then going and seeing the nurse and having her treat it?

A: That's standard. That's the standard procedure. Then, you know, the nurse would recommend -- and when he would come back to me whether he could work or not work. And, naturally, I would -- you know, me and him would verbally talk about the injury, also.

See H.T., Vol. I, p. 81, ll. 8-21. Mr. Barnwell testified the claimant never made any subsequent complaints related to this incident until March 2012, never presented to a doctor, and never presented him with a doctor's note. See H.T., Vol. I, p. 99. He also never asked to see a doctor after the July 2011 incident. See H.T., Vol. I, p. 101.

Mr. Barnwell then confirmed he also completed an incident report in March 2012. See H.T., Vol. I, p. 84. He testified the claimant was then to report to the nurse every morning until he was released, and the claimant would receive a verbal or written warning for not doing so. See H.T., Vol. I, pp. 84-85. Mr. Barnwell denied the claimant making any subsequent reports of back pain, and did not recall the claimant presenting a light-duty note in May 2012. See H.T., Vol. I, p. 86.

Mr. Barnwell then testified regarding the meeting on November 1, 2012, in Nurse Zimmerman's office. Mr. Barnwell testified the claimant requested the meeting; however, Mr. Barnwell did not recall the exact nature of the conversation. See H.T., Vol. I, pp. 88-89. He also did not recall the claimant requesting a light-duty job during the meeting. See H.T., Vol. I, p. 90. Mr. Barnwell testified the claimant's last day of work was January 30, 2013; however, he did not know why the claimant never returned. See H.T., Vol. I, p. 92.

In addition, Mr. Barnwell testified about the Casting Process or Plate # Change Questionnaire completed by the claimant on November 28, 2012. See H.T., Vol. I, p. 95; Defendant's Exhibit B, p. 3. Mr.

Barnwell testified that the claimant denied having any physical limitations that prevented him from casting, and admitted he was able to perform the job without further assistance. See H.T., Vol. I, p. 95. Mr. Barnwell also confirmed the claimant did not mention any work-related problems while completing this document. See H.T., Vol. I, p. 97.

4. Hearing Testimony of Joe Brown

Mr. Brown testified he is the supervisor over the casting department of the Kohler plant in Spartanburg. He testified standard procedure when dealing with employee issues is for the issue to be reported to the foreman and, if necessary, to him. See H.T., Vol. I, p. 108. Mr. Brown then testified regarding the conversation in Nurse Zimmerman's office on November 1, 2012. Specifically, he testified he did not recall the claimant asking for a light-duty job and, moreover, did not recall Mr. Tolleson denying the claimant a light-duty job after Mr. Brown allegedly offered one. See H.T., Vol. I, p. 110. Mr. Brown then testified that the claimant and Mr. Tolleson continued discussing the cause of the claimant's back problems, and Mr. Tolleson advised the claimant he had not made any complaints at all since the March 2012 incident. See H.T., Vol. I, p. 112. Mr. Brown testified the claimant was not sent by Mr. Tolleson to see the company doctor. See H.T., Vol. I, p. 112.

Mr. Brown then testified the claimant returned to Kohler in January 2013 indicating he needed a light duty job. See H.T., Vol. I, p. 113. Mr. Brown testified "we told Jose that he would need to get a clearance from his own personal doctor, where he went to, to bring back to us a clearance that he's restriction free, that he could go back into casting before we would allow him to come back to work." See H.T., Vol. I, p. 114. Mr. Brown then testified he reported the claimant to HR on February 5, 2013, and Sid DeVaul in HR terminated the claimant. See H.T., Vol. I, p. 117. Mr. Brown testified the claimant had a history in 2009 and 2010 of receiving a final warning for absenteeism. See H.T., Vol. I, p. 118.

Mr. Brown then clarified the difference between a near miss incident and an injury, stating a near miss is an incident that took place that was anything less than seeing a doctor, i.e. "first aid and below."

See H.T., Vol. I, p. 119. In other words, if he was not referred to the company doctor, it is documented as a near miss. See H.T., Vol. I, p. 120.

Mr. Brown then testified regarding the claimant's visit to Doctor's Care on April 30, 2012, which Mr. Brown confirmed was paid for by Kohler's group insurance carrier. See H.T., Vol. I, p. 128. Mr. Brown confirmed the claimant did not report an injury on April 25, 2012, as the report indicates. See H.T., Vol. I, p. 128. Mr. Brown testified the claimant never requested medical treatment between July of 2011 and March 2012, and was voluntarily working full-time during this period. See H.T., Vol. I, p. 130. Mr. Brown also noted the claimant did not come to anyone at Kohler for medical treatment from March 2012 until November 1, 2012, and was working full-duty during this entire period. See H.T., Vol. I, pp. 132-133.

Mr. Brown then testified regarding the conversation on November 1, 2012, stating the claimant was questioning why he could not file for workers' compensation for his right shoulder and low back. See H.T., Vol. I, p. 132. Mr. Brown denied knowing whether the claimant asked anyone at the meeting for a light-duty form. See H.T., Vol. II, p. 8. Mr. Brown also confirmed that Mr. Tolleson and the claimant did most of the talking during the meeting. See H.T., Vol. II, p. 13. Mr. Brown testified about the Casting Process or Plate # Change Questionnaire completed by the claimant on November 28, 2012. See H.T., Vol. I, p. 137; Defendant's Exhibit B, p. 3. Mr. Brown testified that the claimant denied having any physical limitations that prevented him from casting, and admitted he was able to perform the job without further assistance. See H.T., Vol. I, p. 137. The claimant switched to another casting job as a result of this application. See H.T., Vol. II, p. 15. Finally, Mr. Brown testified that despite attending monthly safety meetings with Mr. Brown and Mr. Barnwell, the claimant never asked to see a doctor or complained of being injured on the job. See H.T., Vol. I, pp. 140-141.

5. Hearing Testimony of Sid DeVaul

Mr. DeVaul has been the Human Resources Manager at Kohler for 18 years. See H.T., Vol. II, p. 35. He testified he did not attend the meeting on November 1, 2012, or was not close enough to hear

anything being said. See H.T., Vol. II, p. 35. Mr. DeVaul testified he had a discussion with the claimant on or about February 5, 2013, regarding his W2. See H.T., Vol. II, p. 37. He denied knowing whether Kohler possessed any forms for employees to take to a doctor after sustaining an injury on the job. See H.T., Vol. II, p. 37. He further testified the claimant was terminated for absenteeism. See H.T., Vol. II, p. 38.

In addition, Mr. DeVaul testified the claimant reported to work and requested light duty work shortly before he stopped reporting to work altogether. See H.T., Vol. II, p. 41. He also recalled there being a conversation between Joe Brown and the claimant regarding the claimant's need to provide a full-duty release before returning to work. See H.T., Vol. II, p. 41. However, Mr. DeVaul testified that would not change the requirement for him to call him each day he was absent. See H.T., Vol. II, p. 41.

Mr. DeVaul then testified the claimant completed the Casting Process or Plate # Change Questionnaire on November 28, 2012, and denied having any physical limitations to prevent him from casting. See H.T., Vol. II, p. 51.

6. Hearing Testimony of Jesus Lugo

Mr. Lugo was employed with Kohler from 2001 through 2007, and sustained work accidents in 2005 and 2006. See H.T., Vol. II, p. 52. Mr. Lugo testified he reported his injury in 2005 to his foreman. See H.T., Vol. II, p. 56. He also testified he had three conversations with the nurse about seeing the company doctor. See H.T., Vol. II, p. 59. During the first conversation, Nurse Zimmerman told him he could not see the company doctor. See H.T., Vol. II, p. 59. During the second conversation, he testified Nurse Zimmerman told him he could not see the company doctor because December vacation was coming up, and that he would need to seek treatment on his own. See H.T., Vol. II, p. 60. During the third conversation, Mr. Lugo testified Nurse Zimmerman told him Kohler would not help him. See H.T., Vol. II, p. 60. Mr. Lugo then testified that after his 2006 back injury, he had surgery in October 2007 and November 2008. See H.T., Vol. II, p. 62. Mr. Lugo testified he provided a light-duty note to Mr. DeVaul, who recommended he ask his supervisor for light-duty work. See H.T., Vol. II, p. 64. Mr. Lugo testified that after his 2005 accident he never notified anyone in management at Kohler and, moreover, was never restricted from work by either Dr. Cole or Dr. Nowatka. See H.T., Vol. II, p. 75. In fact, Mr. Lugo testified he never notified Sid DeVaul of any potential workers' compensation claim until after his termination in May of 2007. See H.T., Vol. II, p. 84.

Finally, Mr. Lugo testified regarding his knowledge of the claimant's alleged work accident(s) in 2011 and 2012. Specifically, Mr. Lugo testified he was not even working at Kohler at the time of the accident, and has no knowledge of whether either accident occurred. See H.T., Vol. II, p. 82. Mr. Lugo also testified he has illegally been living in the United States of America for 20 years. See H.T., Vol. II, p. 87. He testified he has been using a fake Social Security card to create an identity for himself. See H.T., Vol. II, p. 88. Mr. Lugo then initially testified he did not have a driver's license with him at the Hearing and,

when further questioned, admitted he did. See H.T., Vol. II, p. 92. Mr. Lugo concluded his testimony by admitting to the undersigned that he provided inconsistent testimony.

7. Hearing Testimony of Yuri Valderamma

Mr. Valderrama was employed by Kohler as a caster, rover and foreman from approximately 1996 through September 20, 2011. See H.T., Vol. II, p. 96. He testified he was injured on June 24, 2008, while working as a rover. See H.T., Vol. II, p. 97. He immediately reported the injury to his supervisor and proceeded to Nurse Zimmerman for evaluation. See H.T., Vol. II, p. 97. Mr. Valderamma testified he was then referred to the company doctor and eventually had surgery on his left knee. See H.T., Vol. II, p. 98. He testified he subsequently developed problems with his right knee. See H.T., Vol. II, p. 98. Mr. Valderamma testified there was a two year delay between when he started having right knee pain and when he received treatment. See H.T., Vol. II, p. 101. He then testified that in September 2011 he had a meeting with Mr. DeVaul and Mr. Brown about changing jobs, specifically moving Mr. Valderamma to a job that required more standing. See H.T., Vol. II, p. 108. Mr. Valderamma testified that when he informed Mr. DeVaul and Mr. Brown that the new job violated his restrictions, they advised him no other job was available. See H.T., Vol. II, p. 113. Mr. Valderamma testified he was terminated after he refused the job. See H.T., Vol. II, p. 115.

Mr. Valderamma testified he has illegally been in the United States of America for 20 years. See H.T., Vol. II, p. 116. He then testified he has a valid Social Security card and provided his number for identification purposes. See H.T., Vol. II, p. 119. However, he admitted he did not have his card on his person, and admitted the card was only for the purposes of being enrolled in school. See H.T., Vol. II, p. 120. In fact, Mr. Valderamma then testified he no longer has any documentation to present himself as legally being inside the United States. See H.T., Vol. II, p. 121.

8. Testimony of Nurse Pat Zimmerman – May 30, 2014

Nurse Zimmerman was the Occupational Health Nurse at Kohler Company for forty-six years until her retirement on February 1, 2014. See Deposition of Nurse Pat Zimmerman, pp. 4-5. Nurse Zimmerman recalled the claimant to be a caster at Kohler Company. See Deposition of Nurse Zimmerman, p. 6. She further testified the claimant spoke English and had no problems communicating with her. See Deposition of Nurse Zimmerman, pp. 6-7.

Nurse Zimmerman testified the claimant reported to her office on July 15, 2011, and reported he "was draining molds, picked up a slip pan and felt low back pull." See Deposition of Nurse Zimmerman, p. 8; see also Claimant's APA #6, p. 102. She testified she advised him to follow-up Monday, but the claimant never returned. See Deposition of Nurse Zimmerman, p. 9. The claimant did not return to her office until September 8, 2011. See Deposition of Nurse Zimmerman, p. 9. Nurse Zimmerman testified the claimant never asked to see a doctor regarding his back pain between these two visits, and only complained of shoulder pain on September 8, 2011. See Deposition of Nurse Zimmerman, p. 10. She testified she saw him again for a flu shot in October 2011, and then again on March 14, 2012. See Deposition of Nurse Zimmerman, p. 11. Nurse Zimmerman testified the claimant reported back pain after "rolling ware" on March 13, 2012. See Deposition of Nurse Zimmerman, p. 11. She testified the claimant did not return to her office again until June 28, 2012, when he presented with a headache. See Deposition of Nurse Zimmerman, p. 12. Nurse Zimmerman testified she checked with the claimant's foreman, Sam Barnwell, on March 19, 2012, and was advised claimant was "fine and doing his regular job." See Deposition of Nurse Zimmerman, p. 12.

Nurse Zimmerman testified the claimant was present for a meeting with her, Joe Brown, Mike Tolleson and Sam Barnwell, during which time the claimant advised everyone he had seen Dr. Jeter for his right shoulder and back. See Deposition of Nurse Zimmerman, p. 14. Nurse Zimmerman testified she documented the meeting. She denied any memory of Mr. Tolleson telling the claimant he could not report

an injury by accident because of too long of a gap in time. See Deposition of Nurse Zimmerman, p. 23. The claimant never returned to her office after the meeting. See Deposition of Nurse Zimmerman, p. 15.

In addition, Nurse Zimmerman testified that if an employee reports a work-related accident, they are sent to Dr. Jeter for an initial evaluation. See Deposition of Nurse Zimmerman, p. 17. She testified she does not always immediately send an employee to a doctor, but sometimes will ask them to follow-up the following day for further evaluation. See Deposition of Nurse Zimmerman, pp. 23-24. She denied having any input as to whether a claim is denied. See Deposition of Nurse Zimmerman, p. 18. She also denied having any conversations with anyone from Kohler in preparation for the deposition. See Deposition of Nurse Zimmerman, p. 26. Nurse Zimmerman testified she documents any conversation or meeting with an employee regarding a medical issue. See Deposition of Nurse Zimmerman, p. 29.

Nurse Zimmerman then testified regarding the procedure that occurs when an employee presents with a light duty note from a physician. She testified the note is presented to the employee's supervisor and then to human resources. See Deposition of Nurse Zimmerman, p. 32. However, she noted that for the note to be honored the note must come from a physician the employee was referred to by Kohler. See Deposition of Nurse Zimmerman, p. 32. Regarding reporting a potential work-related injury, Nurse Zimmerman testified the initial report is to the supervisor, who then sends the employee to her for evaluation. See Deposition of Nurse Zimmerman, p. 35.

Finally, Nurse Zimmerman testified employees are provided a light-duty form to take to Dr. Jeter's office for completion. See Deposition of Nurse Zimmerman, p. 38. This only occurs if the referral is for a work-related issue. See Deposition of Nurse Zimmerman, p. 39. As such, Nurse Zimmerman testified the claimant was not and would not have been provided a form to provide to Dr. Jeter regarding his back problems, because they were not deemed work-related. See Deposition of Nurse Zimmerman, p. 40-41. However, she also noted the claimant never requested such a form. See Deposition of Nurse Zimmerman, p. 46.

B. APA SUBMISSIONS:

1. Medical Evidence

On July 15, 2011, the claimant presented to the on-site Nurse at Kohler with complaints of low back soreness after an incident on July 14, 2011. See Claimant's APA #6, p. 102. On September 8, 2011, the claimant returned to the Nurse with complaints of right shoulder pain and a protrusion of the bone at the top of his shoulder. See Claimant's APA #6, p. 102. The Nurse further reported "he can move his arm and shoulder without any pain." See Claimant's APA #6, p. 101. On March 14, 2012, the claimant reported to the Nurse that he has left low back pain after rolling an object over at work. He was provided Bio-freeze. See Claimant's APA #6, p. 101. On March 19, 2012, the Nurse reported that Sam Barnwell indicated the claimant told him he is fine. See Claimant's APA #6, p. 101. On April 30, 2012, the claimant presented to Doctor's Care with back and shoulder pain. The claimant reported the back pain was aggravated by lifting. See Claimant's APA #7, p. 103. He further reported he had weakness in his left leg and a pain score of 5/10. He was placed on light-duty for three days and prescribed Ibuprofen. See Claimant's APA #7, p. 103. On June 28, 2012, the claimant returned to the Nurse with complaints of a "pulse is getting in top of head towards forehead. Has been doing this several days." See Claimant's APA #6, p. 101.

On October 15, 2012, the claimant presented to Dr. Savage-Jeter with pain in his shoulders and back. See Claimant's APA #3, p. 67. An x-ray of her shoulder was unremarkable, while an x-ray of his back revealed an old coccyx fracture, but nothing acute. See Claimant's APA #3, p. 69. The claimant was referred for physical therapy.

October 23, 2012, the claimant complained of pain in his right shoulder which started 6 months prior. See Claimant's APA #5, p. 96. The claimant reported he was unable to relate the pain to any "fall" at work. See Claimant's APA #5, p. 96. The physical therapist noted the claimant had pain during the exercises and was very guarded. See Claimant's APA #5, p. 97. In a separate note on the same date, the claimant presented for an evaluation of his low back pain. See Claimant's APA #5, p. 93. On October 25,

2012, the claimant complained of low back pain ongoing for one year. The claimant also noted he had several "falls" at work. See Claimant's APA #5, p. 91. The therapist noted the claimant had difficulty standing for prolonged periods of time, walking and bending.

On November 1, 2012, the Nurse at Kohler documented a meeting between the claimant, Joe Brown, Sam Barnwell and Mike Tolleson. The claimant apparently reported that he had seen Dr. Savage-Jeter for right shoulder pain and alleged an accident on September 8, 2011, and has also seen a doctor for his low back pain. See Claimant's APA #6, p. 100. The Nurse noted the claimant complained of low back pain on March 14, 2012, and was scheduled to follow-up on March 15, 2012, but did not return. See Claimant's APA #6, p. 100.

On November 9, 2012, the claimant reported to physical therapy with continued complaints of back pain with new left leg pain after feeling a "big pop on my left side of my back." See Claimant's APA #5, p. 85. On November 12, 2012, the claimant complained of right sided back and right lower extremity pain which "started Wednesday." See Claimant's APA #5, p. 84. The therapist noted that he did not complain of any right shoulder pain until after the appointment. The therapist also noted that "all details of injury/symptoms continue to be unclear. Very little progress at this time." See Claimant's APA #5, p. 84.

On November 28, 2012, the claimant presented to Dr. Savage-Jeter with pain radiating to the bilateral buttocks and left leg; the pain was worse with bending. See Claimant's APA #3, p. 66. On January 16, 2013, the claimant presented to Dr. Savage-Jeter with complaints of back and shoulder pain. See Claimant's APA #3, p. 55. An MRI of his lumbar spine was ordered. On January 29, 2013, the claimant presented to Dr. Savage-Jeter with complaints of shoulder and lower back pain with pain radiating into his right leg. See Claimant's APA #3, p. 55. Apparently the claimant presented to discuss the results from an MRI of his lumbar spine, which revealed "very severe canal stenosis at L4-5." See Claimant's APA

#4, p. 80. The claimant was subsequently referred for an orthopedic evaluation and physical therapy. See Claimant's APA #3, pp. 57-58.

On February 25, 2013, the claimant presented to Marco Rodriguez, M.D., of Orthopedic Specialists of Spartanburg, with complaints of back and left leg pain. See Claimant's APA #1, p. 35. The claimant reported the pain had been ongoing for one year. According to Dr. Rodriguez, "[the claimant] cannot remember a distinct injury at work, but believes it happened with lifting continuously." See Claimant's APA #1, p. 35. Dr. Rodriguez diagnosed him with L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. See Claimant's APA #1, p. 37. He was referred to Dr. Matthew Terzella for an epidural steroid injection. Regarding causation, Dr. Rodriguez reported, "given the fact he does not have a specific injury causing these symptoms, it is more difficult to make this relationship." See Claimant's APA #1, p. 37. He continues that "given the type of work he does, this could be associated with it. He also has had a coccyx injury with a fall at work years ago that could have got things going." See Claimant's APA #1, p. 37.

On April 23, 2013, the claimant presented to Dr. Terzella with low back and left leg pain. The claimant also acknowledged having a prior coccyx injury which continues to cause pain in his buttock. See Claimant's APA #1, p. 30. Dr. Terzella provided the claimant with a trigger point injection into his paraspinal muscle. See Claimant's APA #1, p. 32. On May 14, 2013, the claimant underwent an epidural steroid injection at L5-S1. See Claimant's APA #1, p. 28. On June 18, 2013, the claimant returned to Dr. Terzella and reported the steroid injection did not help. The claimant also complained of pain in his neck radiating into his right shoulder. Dr. Terzella reported a recent MRI of the lumbar spine revealed L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. See Claimant's APA #1, p. 25. The claimant was referred to physical therapy. See Claimant's APA #1, p. 26.

On July 23, 2013, the claimant reported he was "having difficulty doing his job" and had also developed new right-sided buttock pain. See Claimant's APA #1, p. 17. On July 31, 2013, the claimant returned to Dr. Rodriguez and for the first time reported a back injury on July 14, 2011. See Claimant's APA #1, p. 14. Dr. Rodriguez recommended an L5-S1 laminectomy and discectomy and possible fusion, and commented that "as far as causation, I think it is pretty clear at this point." See Claimant's APA #1, p. 16. Dr. Rodriguez also reviewed an MRI of the claimant's neck, which did not reveal any nerve root compromise sufficient to explain his right shoulder symptoms. See Claimant's APA #1, p. 16; Claimant's APA #2, p. 47. On August 20, 2013, the claimant returned to Dr. Terzella with complaints of neck pain and underwent an epidural steroid injection at C7-T1. See Claimant's APA #1, p. 9. On August 27, 2013, Dr. Terzella completed a medical questionnaire wherein he stated that the claimant's low back pain was causally-related to an injury on July 14, 2011. See Claimant's APA #1, p. 7. On October 14, 2013, the claimant reported the neck injection only helped for two weeks. The claimant was diagnosed with cervicgia and referred for physical therapy. See Claimant's APA #1, p. 6. On November 20, 2013, the claimant was released from further neck treatment and provided home exercises. No further medications were provided. See Claimant's APA #1, p. 3.

2. Testimony of Marco Rodriguez, M.D. – August 2, 2013

Dr. Marco Rodriguez is an orthopedic spine surgeon. See Deposition of Marco Rodriguez, M.D., p.

5. Dr. Rodriguez testified the claimant's lumbar spine MRI revealed spinal stenosis and herniation at L4-5 and L5-S1, which he noted can be acute pathology as well as degenerative. See Deposition of Dr. Rodriguez, pp. 8-9. Dr. Rodriguez then testified as follows:

Q: Did he give you any ideas as to what caused that back pain as of this (02/25/13) visit?

A: Yeah, you know, I usually try to specifically ask about work injuries. And he says that - - he couldn't remember a distinct injury at that time, but he said that he constantly lifting at work and felt that that was causing his pain."

Q: Did he tell you about a specific work accident that had occurred?

A: Not at that time. But actually, when I saw him on Wednesday, I again questioned him about it and I wanted more detail. And he did say that he did remember an episode that he reported in July 2011 where he felt a pop in the back, increase in pain, and that's when he started getting care. So he said that there were times that it waxed and waned, and he thinks it was because of the pain medicine they prescribed.

See Deposition of Dr. Rodriguez, p. 10, ll. 4-21. Dr. Rodriguez confirmed the claimant spoke English and could discuss his medical history with him in English and without the use of an interpreter. See Deposition of Dr. Rodriguez, p. 11. Dr. Rodriguez then testified the claimant could not remember a work injury when being questioned by the intake nurse. See Deposition of Dr. Rodriguez, p. 13.

Dr. Rodriguez was then asked to explain how, if the claimant had already filed a workers' compensation claim prior to the visit on February 25, 2013, he could not identify a specific injury to him.

The testimony proceeded as follows:

Q: But it looks like he was asked and he said, "No, I don't have" - - there was no distinct recollection of a work injury?

A: Right.

Q: So it looks like the question was asked and he denied it?

A: Definitely, yes.

Q: At least denied a specific work injury?

A: Correct.

See Deposition of Dr. Rodriguez, p. 15, l. 21-p. 16, l. 4. Dr. Rodriguez also confirmed that as of the February 25, 2013, visit, he had difficulty determining the cause of claimant's back problems. See Deposition of Dr. Rodriguez, p. 17. He further confirmed that he had no evidence other than the claimant's subsequent statement to causally relate his back problems to an accident on July 14, 2011. See Deposition of Dr. Rodriguez, p. 24. Dr. Rodriguez then testified that he felt that while the claimant did not necessarily fabricate his story, he was coached into clarifying the cause of his problems in the July 2013 visit. See Deposition of Dr. Rodriguez, p. 27. In fact, Dr. Rodriguez later testified that "[i]t seems that someone clarified the story with him and he was more clear about his story, but in no way did he ask me to change the records." See Deposition of Dr. Rodriguez, p. 34.

3. Testimony of Erica Savage-Jeter, M.D. – August 5, 2013

Dr. Jeter is a family medicine physician who treated the claimant from October 15, 2012, through January 29, 2013. See Deposition of Erica Savage-Jeter, M.D., p. 5. Dr. Jeter testified the claimant presented on October 15, 2012, with complaints of back pain. She further noted the claimant was able to speak English. See Deposition of Dr. Jeter, p. 11. She also noted that though she wasn't sure if the claimant always understood what she was trying to tell him, Dr. Jeter always understood what he was saying. See Deposition of Dr. Jeter, p. 11.

Dr. Jeter then testified that on his initial visit the claimant did not mention anything about an acute injury, but just referenced having back pain which began after he did lifting at work. See Deposition of Dr. Jeter, p. 12. She further denied the claimant ever mentioning a work accident in July of 2011 or March of 2012. See Deposition of Dr. Jeter, p. 12. Dr. Jeter testified she would have included such statements by the claimant in her report had they been made. See Deposition of Dr. Jeter, p. 13.

Dr. Jeter testified that initial x-rays were normal with regard to the lumbar spine. See Deposition of Dr. Jeter, p. 16. The claimant was subsequently referred for conservative treatment. After physical therapy and medication management failed, Dr. Jeter testified she referred the claimant for an MRI and then to Dr. Rodriguez for an orthopedic evaluation. See Deposition of Dr. Jeter, pp. 20-22. In January 2013, Dr. Jeter testified she asked the claimant to obtain his job duties from his employer so she could consider work restrictions. See Deposition of Dr. Jeter, p. 23. Dr. Jeter testified the claimant never returned to her office. See Deposition of Dr. Jeter, p. 23. Finally, Dr. Jeter testified she cannot give an opinion to a reasonable degree of medical certainty that the claimant sustained work-related back injuries in July 2011 or March 2012. See Deposition of Dr. Jeter, p. 24.

C. EXHIBITS

1. Defendant's Exhibit B

On November 28, 2012, the claimant completed and signed a Casting Process or Plate # Change Questionnaire. See Defendant's Exhibit B, p. 3. The claimant denied having any physical limitations that prevented him from casting, and admitted he was able to perform the job without further assistance. See Defendant's Exhibit B, p. 3.

FINDINGS OF FACT

After careful review of the evidence presented by the parties including the Hearing and deposition testimony of the claimant, the Hearing testimony of Mike Tolleson, Sam Barnwell, Joe Brown, Sid DeVaul, Jesus Lugo, and Yuri Valderama, the deposition testimony of Nurse Pat Zimmerman, Erica Savage-Jeter, M.D., and Marco Rodriguez, M.D., the medical records and exhibits submitted through the APA, and my personal observations of the claimant and all witnesses who testified live at the Hearing, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jose Juan Jiminez as employee and Kohler Company as self-insured employer.
2. The defendant's objection to page seven of claimant's APAs is hereby overruled.
3. I find the Claimant seeks a determination of compensability with regard to his back and left leg injuries alleged on July 14, 2011, and March 13, 2012, as well as causally related medical care, payment of out of pocket expenses and temporary total disability benefits from January 30, 2013, to the present and continuing.
4. The parties stipulate that the Claimant is responsible for payment of witness fees for four defense employees.
5. I find the testimony of Jesus Lugo and Yuri Valderamma, witnesses for the Claimant, is not dispositive on the issue of establishing a pattern of denying claims. Further, I find their testimony is neither relevant nor credible. This Finding is based upon the Hearing testimony of Mr. Lugo and Mr. Valderamma, and my observation of each at the Hearing.
6. I find the testimony of Nurse Pat Zimmerman to be very credible.
7. I find the testimony of Claimant is not credible. Specifically, I found him to be evasive, elusive and generally unreliable. I specifically noted claimant's inability to look at anyone during his testimony and his repeated attempts to banter with defense counsel on questions that required little contemplation.

8. I further find that claimant possesses better than average academic skills. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the Hearing testimony of the Claimant, and the testimony of Dr. Jeter and Dr. Rodriguez.
9. I find that claimant reported "incidents" following each alleged date of injury, however, I find these do not rise to the level of defining an injury to the employer. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.
10. The deposition of Dr. Savage-Jeter is not dispositive on the issue of compensability.
11. Neither is the deposition of Dr. Rodriguez compelling to me on the issue of compensability. His opinion tends to vacillate and when specifically addressing the issue of compensability admits his opinion is based on the claimant's subjective statements. I also note Dr. Rodriguez's opinion that he believed the claimant had been coached on the visit in which the claimant defined a specific event causing the injury that he was previously unable to identify. See Deposition of Dr. Rodriguez, pp. 10, 15-16, 27, 34.
12. I find the defendant's argument of an intervening accident is not dispositive.
13. I find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This Finding is based upon the greater weight of the evidence in the record.
14. I find the Claimant's request for benefits is denied.
15. The undersigned's prior representation by Mr. Beard in a prior employment matter in 1996 was disclosed prior to commencement of this proceeding and the issue of recusal was waived by counsel for the claimant.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Commissioner that:

1. Pursuant to § 42-1-130, claimant was a covered employee at the time in question.
2. Pursuant to § 42-1-140, self-insured employer was a covered employer under the Act.
3. Pursuant to § 42-1-160, claimant did not sustain a compensable injury by accident to low back and/or left leg on July 14, 2011, or March 13, 2012. The claimant is therefore not entitled to any benefits under the Act.

ORDER

IT IS THEREFORE ORDERED that claimant did not sustain a compensable injury by accident involving his low back and/or left leg on July 14, 2011, or March 13, 2012. As such, his claims for benefits are denied.

BOTH CLAIMS DENIED.

IT IS SO ORDERED.

COMMISSION SOUTH CAROLINA WORKERS' COMPENSATION


T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

October 24, 2014

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NOS.: 1122474 & 1219561

JOSE JUAN JIMENEZ, EMPLOYEE..... CLAIMANT/APPELLANT

VS.

KOHLER COMPANY, SELF-INSURED EMPLOYER..... DEFENDANT/RESPONDENT.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on March 16, 2015, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, May 22, 2015

APPEARANCES:

CLAIMANT/APPELLANT represented by Alton L. Martin, Jr., Esquire, of Greenville,
South Carolina; and

DEFENDANT/RESPONDENT represented by Grady L. Beard, Esquire, of Columbia,
South Carolina.

STATEMENT OF THE CASE

This is an appeal by Jose Juan Jimenez ("Appellant" or "Claimant") from the Decision and Order of Commissioner T. Scott Beck filed on October 24, 2014.

These claims were before the South Carolina Workers' Compensation Commission pursuant to Forms 50 filed by the claimant on February 1, 2013. It is the position of the claimant that he suffered compensable accidents on July 14, 2011, and on March 13, 2012, resulting in injuries to his back and left leg. The claimant is requesting a finding of compensability as to both claims, authorized causally-related medical treatment for his alleged injuries, reimbursement for out of pocket medical expenses for the causally-related medical treatment obtained to date, and temporary total disability benefits from January 30, 2013, and continuing until such time as the claimant reaches maximum medical improvement.

To the contrary, the defendant has denied each of these claims in their entirety, but specifically based upon the claimant's failure to meet his burden of proving the alleged injuries arose out of and in the course of his employment with the defendant pursuant to Section 42-1-160, or that the claimant's alleged problems were in fact causally related to the alleged injuries; and based upon the claimant's failure to timely report the claims as work-related pursuant to Section 42-15-20, or claimant's failure to ever even pursue medical treatment after either alleged incident. The defendant also specifically requested a determination as to the credibility or lack thereof of the claimant. Finally, the defendant contends that if either claim is compensable, the claimant sustained a subsequent intervening accident which is the true cause of his current alleged problems.

The Hearing in this matter was held before Commissioner T. Scott Beck ("Hearing Commissioner") in Columbia, South Carolina, on May 23, 2014, and June 4, 2014, and in Greenville, South Carolina, on June 3, 2014. By way of Decision and Order filed on October 24, 2014, the Hearing Commissioner made the following findings of fact:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jose Juan Jimenez as employee and Kohler Company as self-insured employer.

2. The defendant's objection to page seven of claimant's APAs is hereby overruled.
3. I find the Claimant seeks a determination of compensability with regard to his back and left leg injuries alleged on July 14, 2011, and March 13, 2012, as well as causally related medical care, payment of out of pocket expenses and temporary total disability benefits from January 30, 2013, to the present and continuing.
4. The parties stipulate that the Claimant is responsible for payment of witness fees for four defense employees.
5. I find the testimony of Jesus Lugo and Yuri Valderamma, witnesses for the Claimant, is not dispositive on the issue of establishing a pattern of denying claims. Further, I find their testimony is neither relevant nor credible. This Finding is based upon the Hearing testimony of Mr. Lugo and Mr. Valderamma, and my observation of each at the Hearing.
6. I find the testimony of Nurse Pat Zimmerman to be very credible.
7. I find the testimony of Claimant is not credible. Specifically, I found him to be evasive, elusive and generally unreliable. I specifically noted claimant's inability to look at anyone during his testimony and his repeated attempts to banter with defense counsel on questions that required little contemplation.

8. I further find that claimant possesses better than average academic skills. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the Hearing testimony of the Claimant, and the testimony of Dr. Jeter and Dr. Rodriguez.
9. I find that claimant reported "incidents" following each alleged date of injury, however, I find these do not rise to the level of defining an injury to the employer. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.
10. The deposition of Dr. Savage-Jeter is not dispositive on the issue of compensability.
11. Neither is the deposition of Dr. Rodriguez compelling to me on the issue of compensability. His opinion tends to vacillate and when specifically addressing the issue of compensability admits his opinion is based on the claimant's subjective statements. I also note Dr. Rodriguez's opinion that he believed the claimant had been coached on the visit in which the claimant defined a specific event causing the injury that he was previously unable to identify. See Deposition of Dr. Rodriguez, pp. 10, 15-16, 27, 34.
12. I find the defendant's argument of an intervening accident is not dispositive.
13. I find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This Finding is based upon the greater weight of the evidence in the record.
14. I find the Claimant's request for benefits is denied.
15. The undersigned's prior representation by Mr. Beard in a prior employment matter in 1996 was disclosed prior to commencement of this proceeding and the issue of recusal was waived by counsel for the claimant.

In addition, the Hearing Commissioner made the following conclusions of law:

1. Pursuant to § 42-1-130, claimant was a covered employee at the time in question.
2. Pursuant to § 42-1-140, self-insured employer was a covered employer under the Act.
3. Pursuant to § 42-1-160, claimant did not sustain a compensable injury by accident to low back and/or left leg on July 14, 2011, or March 13, 2012. The claimant is therefore not entitled to any benefits under the Act.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Full Commission Appellate Panel ("Appellate Panel") on March 16, 2015. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has since been under study and consideration. Specifically, the claimant respectfully requests the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner in its entirety based upon the following grounds:

1. Did the Commissioner err in finding the injuries at work reported by claimant to his supervisor and the company nurse immediately following the dates of accident did not satisfy the requirement of reporting an injury to the employer?
2. Did the Commissioner err in finding the Claimant failed to carry his burden of proof, in light of the nurse's notes related to claimant and Jesus Lugo, the testimony, and the medical evidence?
3. Did the Commissioner err in finding the testimony of Nurse Zimmerman "very credible" and Jesus Lugo not credible to establish a pattern, when the nurse's notes directly conflicted with her testimony and confirmed Mr. Lugo's testimony?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9.

FINDINGS OF FACT

After careful review of the evidence presented by the parties including the Hearing and deposition testimony of the claimant, the Hearing testimony of Mike Tolleson, Sam Bamwell, Joe Brown, Sid DeVaul, Jesus Lugo, and Yuri Valderama, the deposition testimony of Nurse Pat Zimmerman, Erica Savage-Jeter, M.D., and Marco Rodriguez, M.D., and the medical records and exhibits submitted through the APA, WE FIND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Jose Juan Jimenez as employee and Kohler Company as self-insured employer.
2. The defendant's objection to page seven of claimant's APAs is hereby overruled.
3. We find the Claimant seeks a determination of compensability with regard to his back and left leg injuries alleged on July 14, 2011, and March 13, 2012, as well as causally related medical care, payment of out of pocket expenses and temporary total disability benefits from January 30, 2013, to the present and continuing.
4. The parties stipulate that the Claimant is responsible for payment of witness fees for four defense employees.
5. We find the testimony of Jesus Lugo and Yuri Valderamma, witnesses for the Claimant, is not dispositive on the issue of establishing a pattern of denying claims. Further, we find their testimony is neither relevant nor credible, as was also found by the Hearing Commissioner. This Finding is based upon the Hearing testimony of Mr. Lugo and Mr. Valderamma.
6. We find the testimony of Nurse Pat Zimmerman to be very credible, as was also found by the Hearing Commissioner.
7. We find the testimony of Claimant is not credible, as was also found by the Hearing Commissioner. Specifically, we find him to be evasive, elusive and generally unreliable. We specifically note the claimant's inability to look at anyone during his testimony and his repeated attempts to banter with defense counsel on

- questions that required little contemplation as pointed out by the Hearing Commissioner.
8. We further find that claimant possesses better than average academic skills. This Finding is based upon the greater weight of the evidence in the record, including but not limited to the Hearing testimony of the Claimant, and the testimony of Dr. Jeter and Dr. Rodriguez.
 9. We find that claimant reported "incidents" following each alleged date of injury, however, we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents". This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.
 10. The deposition of Dr. Savage-Jeter is not dispositive on the issue of compensability.
 11. Neither is the deposition of Dr. Rodriguez compelling to us on the issue of compensability. His opinion tends to vacillate and when specifically addressing the issue of compensability admits his opinion is based on the claimant's subjective statements. We also note Dr. Rodriguez's opinion that he believed the claimant had been coached on the visit in which the claimant defined a specific event causing the injury that he was previously unable to identify. See Deposition of Dr. Rodriguez, pp. 10, 15-16, 27, 34.
 12. We find the defendant's argument of an intervening accident is not dispositive.
 13. We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This Finding is based upon the greater weight of the evidence in the record and, moreover, Finding of Fact #9 above.
 14. We find the Claimant's request for benefits is denied for all reasons referenced above.
 15. The Hearing Commissioner's prior representation by Mr. Beard in a prior employment matter in 1996 was disclosed prior to commencement of this proceeding and the issue of recusal was voluntarily waived by counsel for the claimant.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Appellate Panel that:

1. Pursuant to § 42-1-130, claimant was a covered employee at the time in question.

2. Pursuant to § 42-1-140, self-insured employer was a covered employer under the Act.
3. Pursuant to § 42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, for the reasons specifically stated in Finding of Fact #9, and based upon the greater weight of evidence in the record. The claimant is therefore not entitled to any benefits under the Act.

ORDER

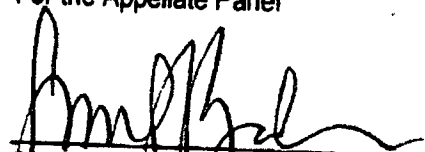
IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matters on October 24, 2014, is hereby UNANIMOUSLY AFFIRMED WITH AN AMENDMENT, specifically the clarification of Finding of Fact Number 9.

AND IT IS SO ORDERED.

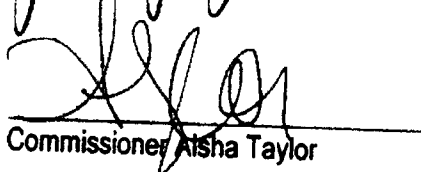
SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



Commissioner Gene McCaskill
For the Appellate Panel



Commissioner Susan S. Barden



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on May 22, 2015

**MARTIN Attorneys
& MARTIN, P.A.**

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

February 1, 2013

Ms. Virginia Crocker
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715

RE: José Juan Jiménez vs. Kohler Co.
WCC: None Unassigned
Date of Loss: on or about: 07/14/2011

Dear Ms. Crocker,

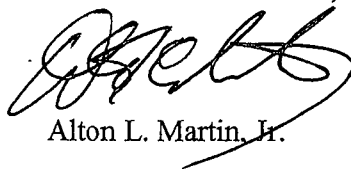
Please find enclosed our Form 50, Request for Hearing that we are filing on behalf of the Claimant regarding the above-referenced matter, along with our Certificate of Service. By copy, we have served the Workers' Compensation Insurance Carrier. I have also enclosed our firm's check in the amount of \$25.00 for the filing fee. - - - - -

Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, PA



Alton L. Martin, Jr.

ALMjr/sdj
Enclosure

cc: Kohler Co. Broadspire Claims Department

1415 Augusta Street • Greenville, SC 29605
Post Office Box 8220 • Greenville, SC 29604

P38



Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jose J. Jimenez SSN: _____ Employer's Name: Kohler Company
Address: 520 Raleigh Court Address: 4000 South Pine Street
City: Spartanburg State: SC Zip: 29301 City: Spartanburg State: SC Zip: 29302
Home Phone: (864) 357-6636 Work Phone: (864) Insurance Carrier: American Zurich Insurance.
Preparer's Name: Alton L. Martin, Jr. Law Firm: Martin & Martin, P.A. Preparer's Phone #: (864) 271 - 1822

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness: on or about on or about July 14, 2011**

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back (Part(s) of Body Injured) on or about 07/14/2011 (Month/Day/Year) in Spartanburg county, state of SC.
1b. Body part(s) affected are: back, and legs.

Briefly describe how the accident occurred. Claimant injured his back while emptying drain pans.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury. Yes

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on 07/15/2011 (Month/Day/Year) in the following manner:
Claimant informed his supervisor.

- ☒ 6. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: difficulty sleeping, anxiety, bladder

☒ (b) additional medical examination and treatment for: back, legs.

- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

- ☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____

- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ Form 20 Requested, and demands accounting of days worked and wages earned as provided by law.

- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Kohler Company, 4000 South Pine Street Spartanburg, SC 29302

- 11a. Further grounds or unusual aspects of claim:

Claimant speaks Spanish and an interpreter will be required.

- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Doctor's Care, 218 East Blackstock Rd, Spartanburg, SC 29301, Family Medical Center, 130 Dillon Dr, Spartanburg, SC 29307, Mary Black Health System, 1700 Skylyn Drive, Spartanburg, SC 29607.

- 11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

- ☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1 hour.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: _____ Claimant's Attorney: al@martinslawfirm.com February 1, 2013
Title: _____ Email: _____ Date: _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50

50

Employee's Notice of Claim and/or
Request for Hearing

Revised 9/07

P39

STATE OF SOUTH CAROLINA

) BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION
) COMMISSION

Jose Juan Jimenez,

)
)
) Claimant,

)
) v.

) W.C.C. FILE NO: Unassigned
)
)

) Kohler Company,

)
) Employer,

) and

) **CERTIFICATE OF SERVICE BY MAIL**
)
)

) Self Insured,

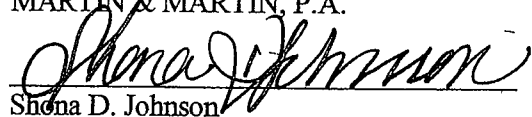
) Carrier.
)

This is to certify that the undersigned did cause the Form 50 to be served upon Virginia Crocker, Judicial Director of the South Carolina Workers' Compensation Commission and Kohler Company, Self Insured, Broadspire Claims Department, insurance carrier, by mailing a copy of same in an envelope addressed as shown below and depositing same in the United States mail, proper postage affixed thereto on this the 1st day of February, 2013.

Virginia Crocker
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Kohler Company
Broadspire Claims Department
4 Coliseum Centre
2730 W Tyvola Rd Ste 350
Charlotte, NC 28217

MARTIN & MARTIN, P.A.


Shona D. Johnson
Legal Assistant

Greenville, South Carolina

1-2175 61

MARTIN Attorneys
& MARTIN, P.A.

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

February 1, 2013

Ms. Virginia Crocker
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715

RE: José Juan Jiménez vs. Kohler Co.
WCC: None Unassigned
Date of Loss: on or about: March 13, 2012

Dear Ms. Crocker,

Please find enclosed our Form 50, Request for Hearing that we are filing on behalf of the Claimant regarding the above-referenced matter, along with our Certificate of Service. By copy, we have served the Workers' Compensation Insurance Carrier. I have also enclosed our firm's check in the amount of \$25.00 for the filing fee.

Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, PA



Alton L. Martin, Jr.

ALMjr/sdj
Enclosure

cc: Kohler Co. Broadspire Claims Department

1415 Augusta Street • Greenville, SC 29605
Post Office Box 8220 • Greenville, SC 29604

041



Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jose J. Jimenez SSN: _____ Employer's Name: Kohler Company
Address: 520 Raleigh Court Address: 4000 South Pine Street
City: Spartanburg State: SC Zip: 29301 City: Spartanburg State: SC Zip: 29302
Home Phone: (864) 357-6636 Work Phone: (864) Insurance Carrier: American Zurich Insurance.
Preparer's Name: Alton L. Martin, Jr. Law Firm: Martin & Martin, P.A. Preparer's Phone #: (864) 271 - 1822

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: March 13, 2012

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back (Part(s) of Body Injured) on 03/13/2012 (Month/Day/Year) in Spartanburg county, state of SC.
1b. Body part(s) affected are: back, and legs.

Briefly describe how the accident occurred. Claimant injured his back and leg while picking up molds from the floor.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 03/14/2012 (Month/Day/Year) in the following manner:
Claimant informed his supervisor.

- ☒ 6. Due to injury, the claimant is in need of (check one):

- ☒ (a) medical examination and treatment for: difficulty sleeping, anxiety, bladder
☒ (b) additional medical examination and treatment for: back, legs.

- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

- ☐ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

- ☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss ☐ Partial ☐ Partial

- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

- 10a. At the time of the injury, the Claimant was paid weekly wages of \$ Form 20 Requested, and demands accounting of days worked and wages earned as provided by law.

- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Kohler Company, 4000 South Pine Street Spartanburg, SC 29302

- 11a. Further grounds or unusual aspects of claim:
Claimant speaks Spanish and an interpreter will be required.

- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Doctor's Care, 218 East Blackstock Rd, Spartanburg, SC 29301, Family Medical Center, 130 Dillon Dr, Spartanburg, SC 29307, Mary Black Health System, 1700 Skylyn Drive, Spartanburg, SC 29607.

- 11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

- ☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1 hour.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Claimant's Attorney: al@martinslawfirm.com February 1, 2013
Title: _____ Email: _____ Date: _____

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

**Employee's Notice of Claim and/or
Request for Hearing**

P42

STATE OF SOUTH CAROLINA

) BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION
) COMMISSION

Jose Juan Jimenez,

)
)
) Claimant,

)
) v.

) W.C.C. FILE NO: Unassigned
)

) Kohler Company,

)
) Employer,

) and

) **CERTIFICATE OF SERVICE BY MAIL**
)

) Self Insured,

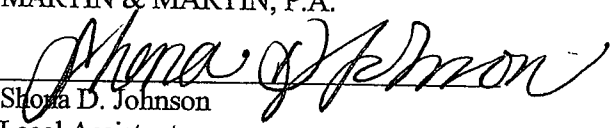
)
) Carrier.
)

This is to certify that the undersigned did cause the Form 50 to be served upon Virginia Crocker, Judicial Director of the South Carolina Workers' Compensation Commission and Kohler Company, Self Insured, Broadspire Claims Department, insurance carrier, by mailing a copy of same in an envelope addressed as shown below and depositing same in the United States mail, proper postage affixed thereto on this the 1st day of February, 2013

Virginia Crocker
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Kohler Company
Broadspire Claims Department
4 Coliseum Centre
2730 W Tyvola Rd Ste 350
Charlotte, NC 28217

MARTIN & MARTIN, P.A.


Shonda D. Johnson
Legal Assistant

Greenville, South Carolina

p43

March 14, 2013

VIA HAND DELIVERY

Ms. Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

RE: Jose J. Jimenez v. Kohler Company
WCC File No.: 1122474
Date of Accident: 07/14/11
Claim No.: 186482859-001
Our File No.: 6457/8005

Dear Ms. Crocker:

Enclosed are an original and one (1) copy of a Form 51 which we are submitting on behalf of the employer/carrier in the above-referenced matter. We are filing the original and retaining a clocked-in copy via our courier.

With a courtesy copy of this letter, we are hereby serving a copy of the Form 51 upon counsel for the claimant.

With kindest personal regards, I remain

Very truly yours,



Grady L. Beard

GLB:amh

Enclosure

cc: Alton L. Martin, Jr., Esquire (w/enclosure)
Ms. Jennifer Buffett (w/enclosure)
Mr. Mike Tolleson (w/enclosure) (via e-mail only)
Mr. Dean Yagodinski (w/enclosure) (via e-mail only)
Mr. Sid DeVaul (w/enclosure) (via e-mail only)
Ms. Dawn Moore (w/enclosure) (via e-mail only)



Jose Jimenez
Claimant's Name
520 Raleigh Court, Spartanburg, SC 29301
Address City State Zip
(864) 357-6636
Home Phone Work Phone

Kohler Company
Employer's Name
4000 South Pine Street, Spartanburg, SC 29302
Address City State Zip
Broadspire, a Crawford Company
Insurance Carrier

Preparer's Name: Grady L. Beard, Esquire Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

Date of Injury or Illness: 07/14/11 (alleged)

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: **Claim under investigation. See No. 11.**
2. It is **denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: **See No. 1 and No. 11.**
3. It is **denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: **See No. 1 and No. 11.**
4. It is **denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: **See No. 1 and No. 11.**
5. It is **denied** notice of injury was given to the employer. The reasons for denial are: **See No. 1 and No. 11.**
6. It is **denied** the employee **needs / is entitled to additional** medical care as a result of injury or illness. The reasons for denial are: **See No. 1 and No. 11.**
7. It is **denied** the employee is entitled to temporary total disability for the period(s) of: **See No. 1 and No. 11.**
8. It is **denied** the employee is permanently disabled. The reasons for denial are: **See No. 1 and No. 11.**
9. It is **denied** the employee has a serious disfigurement.
10. It is contented that an average weekly wage of \$ **Form 20** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: **See attached.**
12. Estimated time needed for Hearing: **2 hours as claim denied and combined with SCWCC #1219561 for a Hearing on 05/08/13 at 11:00 a.m.**

I certify I have served this document pursuant to R. 67-212 by delivering a copy to: **Ms. Virginia L. Crocker, Judicial Director, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 and Alton L. Martin, Jr., Esquire, Martin & Martin, P.A., 1415 Augusta Street (29605), Post Office Box 8220, Greenville, SC 29604**

on the **14th** day of **March**, **2013** by ☒ first class mail, ☐ certified mail, ☐ personal service.

verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for Kohler Company
Title

gbeard@sowellgray.com
Email

March 14, 2013
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-06, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Jose J. Jimenez v. Kohler Company
WCC File No.: 1122474
Date of Accident: 07/14/11
Claim No.: 186482859-001
Our File No.: 6457/8005

(Continuation from Form 51)

11. Further contentions or grounds of defense are: All affirmative and specific defenses (see Reg. 67-603), including but not limited to § 42-15-20; pre-existing disability to allegedly injured members; doctrine of laches; no compensable injury by accident under § 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work-related; defendants reserve the right to amend this Answer and plead additional defenses.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 
Grady L. Beard
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Kohler Company

Columbia, South Carolina

March 14, 2013

CERTIFICATE OF SERVICE

I, the undersigned, legal assistant of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendants, do hereby certify that I have served the following parties with the foregoing document(s) by mailing a copy of the same via United States Mail, postage prepaid, and/or hand delivering to the following address(es):

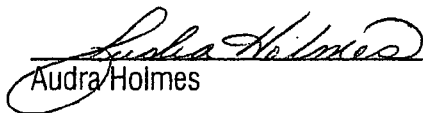
Pleading(s): **FORM 51**

Parties Served:

VIA HAND DELIVERY

Ms. Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

Alton L. Martin, Jr., Esquire
Martin & Martin, P.A.
1415 Augusta Street (29605)
Post Office Box 8220
Greenville, SC 29604


Audra Holmes

Columbia, South Carolina

March 14, 2013

March 14, 2013

VIA HAND DELIVERY

Ms. Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

RE: Jose J. Jimenez v. Kohler Company
WCC File No.: 1219561
Date of Accident: 03/13/12
Claim No.: Unknown
Our File No.: 6457/8006

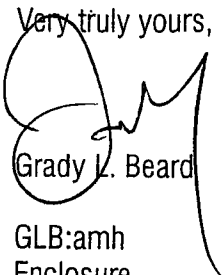
Dear Ms. Crocker:

Enclosed are an original and one (1) copy of a Form 51 which we are submitting on behalf of the employer/carrier in the above-referenced matter. We are filing the original and retaining a clocked-in copy via our courier.

With a courtesy copy of this letter, we are hereby serving a copy of the Form 51 upon counsel for the claimant.

With kindest personal regards, I remain

Very truly yours,


Grady L. Beard

GLB:amh
Enclosure

cc: Alton L. Martin, Jr., Esquire (w/enclosure)
Ms. Jennifer Buffett (w/enclosure)
Mr. Mike Tolleson (w/enclosure) (via e-mail only)
Mr. Dean Yagodinski (w/enclosure) (via e-mail only)
Mr. Sid DeVaul (w/enclosure) (via e-mail only)
Ms. Dawn Moore (w/enclosure) (via e-mail only)



Jose Jimenez
Claimant's Name SSN _____
520 Raleigh Court, Spartanburg, SC 29301
Address City State Zip
(864) 357-6636
Home Phone Work Phone

Kohler Company
Employer's Name
4000 South Pine Street, Spartanburg, SC 29302
Address City State Zip
Broadspire, a Crawford Company
Insurance Carrier

Preparer's Name: Grady L. Beard, Esquire Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

Date of Injury or Illness: 03/13/12 (alleged)

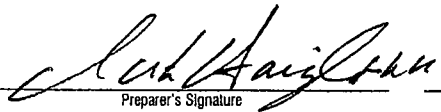
Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: **Claim under investigation. See No. 11.**
2. It is **denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: **See No. 1 and No. 11.**
3. It is **denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: **See No. 1 and No. 11.**
4. It is **denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: **See No. 1 and No. 11.**
5. It is **denied** notice of injury was given to the employer. The reasons for denial are: **See No. 1 and No. 11.**
6. It is **denied** the employee **needs / is entitled to additional** medical care as a result of injury or illness. The reasons for denial are: **See No. 1 and No. 11.**
7. It is **denied** the employee is entitled to temporary total disability for the period(s) of: **See No. 1 and No. 11.**
8. It is **denied** the employee is permanently disabled. The reasons for denial are: **See No. 1 and No. 11.**
9. It is **denied** the employee has a serious disfigurement.
10. It is contented that an average weekly wage of \$ _____ Form 20 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: **See attached.**
12. Estimated time needed for Hearing: **2 hours as claim denied and combined with SCWCC #1122474 for a Hearing on 05/08/13 at 11:00 a.m.**

I certify I have served this document pursuant to R. 67-212 by delivering a copy to: **Ms. Virginia L. Crocker, Judicial Director, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 and Alton L. Martin, Jr., Esquire, Martin & Martin, P.A., 1415 Augusta Street (29605), Post Office Box 8220, Greenville, SC 29604**

on the 14th day of March, 2013 by ☒ first class mail, ☐ certified mail, ☐ personal service.

verify the contents of this form are accurate and true to the best of my knowledge.

 Attorney for Kohler Company
Preparer's Signature Title Email Date
gbeard@sowellgray.com March 14, 2013

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-06, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

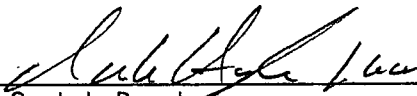
Jose J. Jimenez v. Kohler Company
WCC File No.: 1219561
Date of Accident: 03/13/12
Claim No.: Unknown
Our File No.: 6457/8006

(Continuation from Form 51)

11. Further contentions or grounds of defense are: All affirmative and specific defenses (see Reg. 67-603), including but not limited to § 42-15-20; pre-existing disability to allegedly injured members; doctrine of laches; no compensable injury by accident under § 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work-related; defendants reserve the right to amend this Answer and plead additional defenses.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____


Grady L. Beard
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Kohler Company

Columbia, South Carolina

March 14, 2013

CERTIFICATE OF SERVICE

I, the undersigned, legal assistant of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendants, do hereby certify that I have served the following parties with the foregoing document(s) by mailing a copy of the same via United States Mail, postage prepaid, and/or hand delivering to the following address(es):

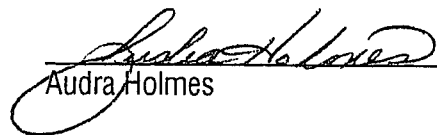
Pleading(s): **FORM 51**

Parties Served:

VIA HAND DELIVERY

Ms. Virginia L. Crocker
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

Alton L. Martin, Jr., Esquire
Martin & Martin, P.A.
1415 Augusta Street (29605)
Post Office Box 8220
Greenville, SC 29604


Audra Holmes

Columbia, South Carolina

March 14, 2013

051

**MARTIN Attorneys
& MARTIN, P.A.**

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

August 27, 2013

Ms. Virginia Crocker
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715

RE: José Juan Jiménez vs. Kohler Co.
WCC: 1219561
Date of Accident: March 13, 2012

Dear Ms. Crocker:

Please find enclosed a Motion to Exclude Evidence Hold Kohler in Contempt, and for the Commission to Issue an Order and Rule To Show Cause To Revoke Kohler's Self-Insured Status that we are filing on behalf of the Claimant in the above-referenced matters, along with a Certificate of Service. By copy, we have served the attorney for Defendants. I have enclosed our firm's check in the amount of \$25.00 for the filing fee.

Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, PA



Alton L. Martin, Jr.

ALMjr/kew

Enclosure

cc: Grady Beard, Esquire
Nick Haigler, Esquire

1415 Augusta Street • Greenville, SC 29605
Post Office Box 8220 • Greenville, SC 29604

P52

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
	)	COMMISSION
Jose J. Jimenez,	)	
	)	
Claimant,	)	
	)	
v.	)	W.C.C. FILE NO:1219561
	)	
Kohler Company,	)	
	)	
Employer,	)	MOTION TO EXCLUDE EVIDENCE,
	)	HOLD KOHLER IN CONTEMPT, AND
and	)	FOR THE COMMISSION TO ISSUE AN
	)	ORDER AND RULE TO SHOW CAUSE TO
	)	REVOKE KOHLER'S SELF-INSURED
Kohler Company/Broadspire,	)	STATUS
Carrier,	)	

COMES NOW the Claimant, by and through his undersigned counsel, and per 67-215 and 67-1513 moves to exclude the surveillance report and video improperly obtained by Kohler; for the imposition of sanctions against Kohler for its intentional and deliberate effort to violate the Claimant's right to privacy and breach the attorney-client relationship; and for the Commission to issue an Order and Rule to Show Cause for revocation of Kohler's Self-Insured status. This Motion is based on the following:

1. Claimant suffered injuries at work documented by Kohler's plant nurse in his personnel file. Claimant was evaluated by Kohler's authorized company doctor. Kohler disputes that Claimant's visit with its company doctor was authorized.
2. Claimant was provided work restrictions by Kohler's company doctor for his work-related injuries. Kohler terminated Claimant for absences while out of work for his injuries.
3. A Form 50 was filed requesting a hearing in this matter. Kohler retained counsel and deposed Claimant. Thereafter, Kohler obtained surveillance video and images of the Claimant on April 22, 2013.

5. Although Kohler knew Claimant had legal representation, its agent, the private investigating agency sent investigators to Claimant's home posing as contractors for Duke Power. Kohler's investigators entered onto Claimant's property under false pretenses; communicated directly with the Claimant without the consent of his attorney; asked him questions related to his ability to work; and, feigned weakness and the need for physical assistance in an effort to obtain video showing Claimant assisting the investigator, all in an attempt to harm Claimant's case.

6. While the video does not contradict Claimant's testimony nor reflect he is capable of performing any duties exceeding his restrictions, it was obtained in an improper and unethical manner that violated his right to privacy and breached his attorney-client relationship.

7. Defendants subsequently deposed its authorized company doctor and the Orthopaedic surgeon to whom Claimant was referred by the company doctor. Both doctors testimony supported Claimant's injuries are causally-related to his work accident. According to the surgeon, Claimant is in need of immediate surgery to his cervical spine.

8. Kohler has demonstrated a pattern of unfair and deceptive claims practices in these and other claims.

CONCLUSION

Claimant seeks the imposition of sanctions against Kohler for its 1) deliberate efforts to mislead the Claimant in order to come onto his property and speak with him, 2) intentionally communicating with Claimant outside the presence of his legal counsel and without consent; and, 3) seeking to entrap Claimant into performing activities that would appear harmful to his claim.

Claimant also seeks an Order excluding the surveillance report and video due to its being obtained in an improper and unethical manner. Although the video and surveillance report failed to meet Kohler's expectations of harming Claimant's case, absent an Order directing it to the contrary,

Kohler will likely attempt to engage in similar improper and unethical behavior again.

Claimant moves the Commission to institute revocation proceedings of Kohler's self-insured status by Order and Rule To Show Cause, based on its continuing pattern of unfair and deceptive claims practices.

Claimant seeks his attorney's fees and costs related to this Motion.

Respectfully submitted,



Alton L. Martin, Jr.
MARTIN & MARTIN, PA
PO Box 8220
Greenville, SC 29604
(864) 271-1822 telephone
(864) 271-1814 telephone
Attorney for Claimant

August 27, 2013

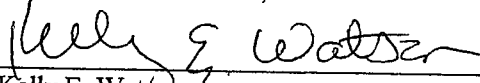
STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
	)	COMMISSION
Jose Juan Jimenez,	)	
	)	
Claimant,	)	
	)	
v.	)	W.C.C. FILE NO: 1219561
	)	
Kohler Company,	)	
	)	
Employer,	)	
	)	
and	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Self Insured,	)	
	)	
Carrier.	)	

This is to certify that the undersigned did cause the Motion to Exclude Evidence Hold Kohler in Contempt, and for the Commission to Issue an Order and Rule To Show Cause To Revoke Kohler's Self-Insured Status to be served upon Virginia Crocker, Judicial Director of the South Carolina Workers' Compensation Commission and Grady Beard, attorney for Defendants, by mailing a copy of same in an envelope addressed as shown below and depositing same in the United States mail, proper postage affixed thereto on this the 27th day of August, 2013

Virginia Crocker
Judicial Director on
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Grady Beard, Esquire
Sowell Gray
PO Box 11449
Columbia, SC 29211

MARTIN & MARTIN, P.A.


Kelly E. Watson
Legal Assistant

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
	)	COMMISSION
Jose J. Jimenez,	)	
	)	
Claimant,	)	
	)	
v.	)	W.C.C. FILE NO: 1122474 and 1219561
	)	AFFIDAVIT OF JOSE J. JIMENEZ
Kohler Company,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Kohler Company/Broadspire,	)	
	)	
Carrier,	)	

I, Jose J. Jimenez, having been duly sworn do hereby depose and say:

1. On April 22, 2013, two men came to my home claiming to be contractors for AT&T. They were wearing hard hats and orange vests carrying little flags and a measuring stick like a surveying crew carries. They had a car with commercial license plates.
2. About two days earlier my neighbor told me AT&T had called her offering internet, cable TV and phone. She said they would be coming out to take measurements and move the lines so I believed they were legitimate.
3. One of the men told me they needed to take measurements to move the underground cable. He pointed to a green box standing about 3 feet high and asked me where the other one was located.
4. I pointed to the other green box and he began sticking little metal flags in the ground in a line between the boxes.
5. One of the workers continued to talk with me and ask me questions while the other held what looked like a surveyor stick and pretended to take measurements.
6. They said "nice advertisement" but I did not understand what they were talking about.
7. They pointed to my brother's truck that has his gutter business and services listed on the side.

8. They asked me where I work and I told them I used to work for Kohler but I am not physically able to anymore, then they interrupted me. They said you dedicate your time to this?, referring to my brother's business.
9. I told them "No I don't work that is my brothers truck"
10. They asked me what I live off of.
11. They asked me how many children I have.
12. They asked me who I had my children with.
13. They kept asking me about what "we" do and where "we" work referring to my brother's truck. I told them about my brother's business, but said that I don't work with him. They kept asking questions as if did.
14. They asked me to move a recliner in the yard because they needed to measure there. I told them we would move it later. They said when. I said "when my brother gets home" because I knew he would have a worker do it.
15. They said they couldn't wait and the chair had to be moved now. I said I can't move it. Then one worker told the other older worker to move it and he pretended he couldn't do it by himself. I came over and helped him drag it a few feet because I felt bad for him.
16. There was a pile of gravel that they said was in the way. I told them the maintenance man had it dumped there. I called the maintenance man, Danny Sellars. He came over and talked to them.
17. They pointed to my brother's truck with the sign and asked Danny Sellars "How do they measure up?" He told the AT&T man they do good work, hard workers, they give a good price.
18. They asked him if I worked with them too and he said "No, he doesn't work"
19. They told the maintenance man they needed the gravel moved so they could measure but he told them he could do it later. They told him they would be back later and tried to pressure him to move it.
20. They asked me about a cable on the ground. They asked me if it broke and asked me to pick it up so they could take a picture and show it to the boss and ask him about getting it fixed.
21. There is a yellow car in the video. They asked me to move it. I told them the battery was dead. They offered jumper cables. I told them I had also misplaced the key. They wanted me to find the key so the car could be moved because they

needed to measure there, but I told them I didn't know where it was and would have to get a replacement key.

22. They wanted me to open the door to my brother's truck so they could see the machine inside. I told them my brother had the key.
23. They spoke with Danny Sellars and Gabriel Villagran and asked both of them questions about me and if I worked.
24. I thought these men worked for AT&T. I would have not allowed them in my yard or spoken with them if I had known their true identity.
25. They lied to me and tried to put words in my mouth. They tricked me into helping lift the chair after I told them "no" several times, by having the old man pretend he was too weak.

Jose J. Jimenez 9/03/2013
Jose J. Jimenez

SWORN to before me this 3rd

day of September, 2013.

Mona Williams
Notary Public for South Carolina

My Commission Expires: January 4, 2023

Yo, José J. Jiménez, debidamente juro por este medio de este deponer y decir:

El 22 de abril de 2013, dos hombres vinieron a mi casa diciendo ser contratistas de AT&T. Llevaban cascos y chalecos de color naranja con pequeñas banderas y una vara de medir, como un equipo de topografía lleva. Tenían un auto con placas comerciales.

Unos dos días antes, mi vecino me dijo que AT&T había llamado con una oferta de Internet, televisión por cable y teléfono. Ella dijo que iban a venir a tomar medidas y mover las líneas; por eso yo les creí que eran legítimos.

Uno de los hombres me dijo que tenían que tomar medidas para mover el cable subterráneo. El se refirió a una caja verde que colocada cerca de 3 metros de altura y me preguntó dónde estaba la otra.

Señalé a la otra caja verde y comenzó pegando banderas metálicas pequeñas en el suelo en una línea entre las cajas.

Uno de los trabajadores continuó hablando conmigo y hacerme preguntas mientras el otro sostenía lo que parecía un palo topógrafo y fingió tomar medidas.

Ellos dijeron "buen anuncio" pero yo no entendía de lo que estaban hablando.

Señalaron a la camioneta de mi hermano que tiene su negocio y servicios que figuran en la parte de su camioneta.

Me preguntaron dónde trabajo y yo les dije que solía trabajar para Kohler, pero no estoy en condiciones físicas para trabajar ahí. Ellos me interrumpieron. Ellos me preguntaron si yo dedicaba mi tiempo a esto. En referencia a la empresa de mi hermano.

Les dije No, yo no trabajo que esa era la camioneta de mi hermano.

Me preguntaron de que me mantengo

Me preguntó cuántos hijos tengo.

Me preguntaron con que mujer tuve a mis hijos.

Ellos me preguntaban acerca de lo que "nosotros" hacemos y donde " nosotros" trabajamos en referencia a la camioneta de mi hermano. Les dije acerca del negocio de mi hermano pero que yo no trabajo con él. Siguieron haciendo preguntas como si trabajara con el.

Me pidieron que mover un sillón reclinable en el patio porque necesitaban medir allí. Les dije que eso se tendría que mover mas tarde. Ellos preguntaron cuando. Le dije: " cuando mi hermano llegue del trabajo, el pide a un trabajador que lo haga"

Dijeron que no podían esperar y que el sillón tenía que ser trasladado ahora. Le dije que yo no podía moverlo. Entonces, un trabajador le dijo al otro trabajador mayor que lo moviera y fingió moverlo por sí mismo. Yo vine y le ayudé a arrastrarlo unos cuantos pies porque me sentía mal por él.

Había un montón de grava que dijeron que estaba en el camino. Les dije que el hombre de mantenimiento lo puso allí. Llamé al hombre de mantenimiento, Danny Sellars. El vino y habló con ellos .

Señalaron que la camioneta de mi hermano con el signo y le preguntaron a Danny Sellars "¿Qué tal

son estos muchachos para trabajar?" Danny Sellars le dijo al hombre AT & T que hacen un buen trabajo, éramos buenos trabajadores y dábamos un buen precio.

Le preguntaron si trabajaba yo con ellos también y dijo " No, el no trabaja"

Ellos le dijeron al hombre de mantenimiento que necesitaban la grava fuera trasladada para poder medir, pero él les dijo que podría hacerlo más adelante. Le dijeron que iban volver más tarde y trataron de ejercer presión sobre él para moverlo.

Me preguntaron acerca de un cable en el suelo. Me preguntaron si se rompió y me pidió que recogerlo para que pudieran tomar una foto y mostrarla al jefe y le preguntará acerca de cómo repararlo.

Hay un coche amarillo en el video. Me pidieron que lo moviera. Les dije que la batería estaba muerta. Ofrecieron cables para resucitar la batería Les dije que yo también había perdido la llave. Ellos querían que yo buscara la clave para que yo moviera el coche porque necesitaban medir allí, pero les dije que no sabía dónde estaba y tendría que conseguir una llave de repuesto.

Ellos querían que yo abriera la puerta a la camioneta de mi hermano para que pudieran ver el interior de la máquina. Les dije que mi hermano tenía la llave.

Hablaron con Danny Sellars y Gabriel Villagran y preguntaron a ambos preguntas sobre mí y si yo trabajaba.

Pensé que estos hombres trabajaban para AT&T. Yo no les hubiera permitido en mi propiedad o hubiera hablado con ellos si hubiera sabido su verdadera identidad.

Me mintieron y trataron de poner palabras en mi boca. Me engañaron para levantar la silla después de que les dije "no" varias veces haciendo que el señor mayor fingiera que era demasiado débil.

José J. Jiménez

JURADO ante mí este _____

día de _____ de 2013.

Notario de Carolina del Sur

Mi comisión expira: _____

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
	)	COMMISSION
Jose J. Jimenez,	)	
	)	
Claimant,	)	
	)	
v.	)	W.C.C. FILE NO: 1122474 and 1219561
	)	AFFIDAVIT OF DANNY R. SELLARS
Kohler Company,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
Kohler Company/Broadspire,	)	
	)	
<u>Carrier,</u>	)	

I, Danny R. Sellars, having been duly sworn do depose and say:

1. I am the maintenance man at Tall Tree Mobile Home Park and live at 4053 Copper Line, Spartanburg, SC. Jose J. Jimenez lives behind me.
2. On April 22, 2013 some men came into the privately owned park. They were taking measurements in the street and across Jose's lot. They were wearing hard-hats and orange vests.
3. Jose called me because they were asking him about moving a pile of gravel. I came over and they identified themselves to me as contractors for AT&T.
4. They asked me where Jose works. I told them he doesn't work
5. They asked me about Jose's brother's gutter business. They asked me if Jose works with him and I said no.
6. They wanted the pile of gravel moved. They told me it needed to be moved right away. I moved the gravel that afternoon because they said they were coming back in a day or so to move the lines.

7. I thought these men worked for AT&T. They did not have permission to be in the park. If I had known they did not work for AT&T, I would have run them off.

FURTHER AFFLIANT SAYETH NOT

Danny R. Sellars
Danny R. Sellars

Date: 9/19/2013

SWORN to before me this 19

day of September, 2013.

Dolores P. Sellars
Notary Public for South Carolina

My Commission Expires: March 8, 2020

My name is Danny R. Sellers
4053 copper line,
Juan lives behind me, They were
Some men out here, saying they
work For At&t, this is a
privet owned park, they were
trying to saw Juan works,
all he Does is takes care
of his Kids, He Does not work,
I will go to Court and
state to this,

Danny R. Sellers

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Claimant,

V.

Employer,

and

Carrier,

W.C.C. FILE NO: 1122474 and 1219561
AFFIDAVIT OF GABRIEL VILLAGRAN

1. On April 22, 2013 I came to Jose J. Jimenez's house.
2. Two men were there wearing hard hats and orange vests and taking measurements.
3. The men said they worked for the telephone company.
4. They asked me a lot of questions about Jose.
5. They asked me if Jose worked and I told them No.

FURTHER AFFLANT SAYETH NOT

Juan Gabriel Villagran G.
Gabriel Villagran

Date: 9-21-2013

SWORN to before me this 21th

Notary Public for South Carolina
 My Commission Expires: 02-06-2014

A65

mi Nombre es Gabriel Villagran.
Y soy Vecino de Jose Juan Jimenez
Ago Constar que 2 hombres llegaron a propiedad
Privada diciendo que eran trabajadores de una
Compania de telefonos. Haciendo Preguntas Sobre
Jose Juan. que donde trabaja de que vive. y
Yo les dije que no trabajaba. AAT.

A.A.T. Gabriel Villagran.

MARTIN Attorneys
& MARTIN, P.A.

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

May 8, 2014

The Honorable T. Scott Beck
Commissioner
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715

RE: José Juan Jiménez vs. Kohler Co.
WCC: 1122474 and 1219561

Dear Commissioner Beck:

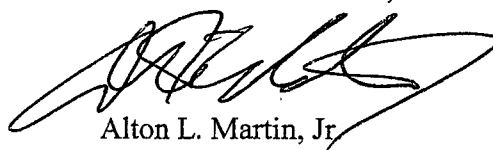
Please find enclosed our Form 58 and APA Submissions that we are filing on behalf of the Claimant in the above-referenced matter, along with our Certificate of Service. By copy, we have served the attorney for defendants.

Should you have questions or need any additional information, please do not hesitate to call me. Thank you for your consideration.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, P.A.



Alton L. Martin, Jr.

ALMjr/sdj
Enclosures

cc: Grady L. Beard, Esquire (w/enclosures)

1415 Augusta Street • Greenville, SC 29605
Post Office Box 8220 • Greenville, SC 29604

P67

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739
www.wcc.sc.gov

**WCC File No: 1122474**

Claimant's Name: Jose J. Jimenez Employer's Name: Kohler Company
Address: 520 Raleigh Court Address: 4000 South Pine St.
City: Spartanburg State: SC Zip: 29301 City: Spartanburg State: SC Zip: 29301
Home Phone: (864) 357-6636 Work Phone: () - Carrier: Kohler Company/Broadspire
Preparer's Name: Alton L. Martin, Jr. Preparer's Phone #: (864) 271-1822

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$507.24 2. AWW: \$760.82 Date of Injury: 07/14/2011
3. Type of injury and body part(s): Back and right shoulder
4. Facts in controversy: Claimant reported problems with his back while draining pans at work. He reported to the company nurse. He has continued to have problems with his back and right shoulder and he since re-aggravated his back at work.
5. Legal issues involved: Compensability, payment of temporary benefits, authorized medical treatment.
6. Unusual aspects: Claimant speaks Spanish and an interpreter will be required.
7. Witnesses (designate if expert):* Claimant, Jesus Lugo, Yuri Valderamma, Mike Tolleson, Sam Barnwel, Sid DeVaal, Joe Brown
8. Exhibits: Claimant's personnel file, Claimant's deposition transcript, deposition transcript of Mike Tolleson, correspondence with company off and TPA, deposition of Dr. Rodriguez, deposition transcript of Dr. Savage, Affidavits of Danny Sellars and Gabriel Villagran.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Doctors Care, 218 East Blackstock Rd., Spartanburg, SC 29301; Family Medical Center, 130 Dillon Dr., Spartanburg, SC 29307; Dr. Marco Rodriguez, Orthopaedic Specialties, 303 E. Wood St., Spartanburg, SC 29303
11. Impairment rating(s); body part(s); physician and date of opinion: Premature
12. I am amending my Form 50/51 in the following manner: N/A.

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]Email: al@martinslawfirm.comDate of hearing: May 23, 2018Time needed for hearing: 1 hourOn behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.



Claimant's Name: Jose J. Jimenez Employer's Name: Kohler Company
Address: 520 Raleigh Court Address: 4000 South Pine St.
City: Spartanburg State: SC Zip: 29301 City: Spartanburg State: SC Zip:
Home Phone: (864) 357-6636 Work Phone: () - Carrier: Kohler Company/Broadspire
Preparer's Name: Alton L. Martin, Jr. Preparer's Phone #: (864) 271-1822

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$567.77 2. AWW: \$851.61 Date of Injury: 3/13/12
3. Type of injury and body part(s): Back and legs
4. Facts in controversy: Claimant reported problems with his back and left leg from rolling over molds at work. He reported to the nurse. He has continued to have problems with his back and both legs. He is seeking authorized medical treatment for his back and pa of TTD.
5. Legal issues involved: Compensability, payment of temporary benefits, authorized medical treatment.
6. Unusual aspects: Claimant speaks Spanish and an interpreter will be required.
7. Witnesses (designate if expert):* Claimant, Jesus Lugo, Yuri Valderamma, Mike Tolleson, Sam Barnwel, Sid DeVaal, Joe Brown
8. Exhibits: Claimant's personnel file, Claimant's deposition transcript, deposition transcript of Mike Tolleson, correspondence with com and TPA, deposition of Dr. Rodriguez, deposition transcript of Dr. Savage, Affidavits of Danny Sellars and Gabriel Villagran.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Doctors Care, 218 East Blackstock Rd., Spartanburg, SC 2931 Medical Center, 130 Dillon Dr., Spartanburg, SC 29307; Dr. Marco Rodriguez, Orthopaedic Specialties, 303 E. Wood St., Spartanburg, S
11. Impairment rating(s); body part(s); physician and date of opinion: Premature
12. I am amending my Form 50/51 in the following manner: N/A.

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: [Signature]

Email: al@martinslawfirm.com

Date of hearing: May 23, 2012

Time needed for hearing: 1 hour

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION)

Jose Jimenez,)

Claimant,)

v.)

Kohler Co.,)

Employer,)

and)

Kohler Company/Broadspire,)

Carrier,)

W.C.C. FILE NO: 1122474 & 1219625
HEARING DATE: May 23, 2014NOTICE OF WITNESSES AND WRITTEN
MEDICAL R/REPORTS TO BE INTRODUCED
AS DIRECT EVIDENCE ON BEHALF
OF CLAIMANTTO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND GRADY L.
BEARD, ATTORNEY FOR DEFENDANTS.

YOU ARE HEREBY NOTIFIED THAT THE Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended) herewith submits the following medical reports and documents as direct evidence on behalf of the Claimant to wit:

	Medical Provider	Dates	Page
APA # 1	Orthopaedic Specialties of Spartanburg	1/4/13 - 11/20/13	1 – 46
APA #2	Piedmont Imaging	7/20/13	47 – 49
APA #3	Family Medical Center	10/15/12 – 2/7/13	50 – 78
APA #4	Mary Black Health System	10/15/12 – 1/23/13	79 - 83
APA #5	Mary Black Health System – PT	10/23/12 – 11/12/12	84 – 99
APA #6	Kohler Medical Department	3/11/10 – 11/1/12	100 – 102
APA #7	Doctors Care	4/30/12	103 - 106

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

Claimant
Jesus Lugo
Yuri Valderamma
Mike Tolleson
Sam Barnwell
Sid DeVaal
Joe Brown
Any witnesses identified by Defendants

Claimant reserves the right to amend.



Alton L. Martin, Jr., Esquire
MARTIN & MARTIN, P.A.
Post Office Box 8220
Greenville, SC 29604
(864) 271-1822 telephone
(864) 271-1814
Attorney for Claimant

Greenville, South Carolina
May 8, 2014

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Jose Juan Jimenez,

Claimant,

v.

W.C.C. FILE NO: 1122474 and 1219561

Kohler Company,

Employer,

and

CERTIFICATE OF SERVICE BY MAIL

Self Insured,

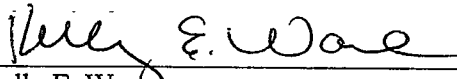
Carrier.

This is to certify that the undersigned did cause the Form 58 and APA Submissions to be served upon the Honorable T. Scott Beck, Commissioner of the South Carolina Workers' Compensation Commission and attorney for Defendants, Grady Beard, Esquire, by mailing a copy of same in an envelope addressed as shown below and depositing same in the United States mail, proper postage affixed thereto on the 8th day of May, 2014.

The Honorable T. Scott Beck
Commissioner
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715

Grady Beard, Esquire
Sowell Gray
PO Box 11449
Columbia, SC 29211

MARTIN & MARTIN, P.A.


Kelly E. Ware

Greenville, South Carolina

Orthopedic Specialties of Spartanburg

303 E. Wood Street, Spartanburg, S.C. 29303, Phone: 864-208-8800, Fax: 864-208-8857

Mark D. Visk, M.D. LLC, John E. Keith Jr., M.D. LLC, Anthony A. Sanchez, M.D., LLC, Stephen M. Kana, M.D. LLC
Thomas A. Leong, M.D. LLC, Marco A. Rodriguez, M.D. LLC, Matthew Terzella, M.D.
Karen L. Babish, PA-C, Casey S. Judy, PA-C, Jack B. Sizemore, PA-C,
Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
11/20/2013 10:10 AM

Patient #: 98044

DOB: 08/05/1978

Gender: Male

REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 35 year old male presenting for a follow up visit. Mr. Jimenez is here in follow-up of multiple MSK issues. He recently had a thoracic spine MRI and is here to review it. He had been referred back to Dr. Rodriguez for his lumbar issues. He is s/p left L5-S1 TF ESI on 5/14/13. Again, he stated that he had 3-4 days of relief. He has since seen Dr. Rodriguez and is scheduled for lumbar surgery. Dr. Rodriguez will be following his low back for the time being.

He is now s/p C7-T1 IL ESI on 8/20/13. He states that the shot helped him only for 2 weeks. At his last visit, he stated he had a coughing fit and since then the pain has returned. There is some slight numbness into his bilateral lower neck and into the shoulder blades and now with increasing pain into his right arm; he had been sent to PT but he could not afford it because he is self-pay. He continues to have pain into his neck as well. He continues to have pain in his neck with radiation into his right shoulder. He continues to have some popping sensation in his neck with rotation. He continues to feel pressure and throbbing in his central lower neck as well. He is s/p trigger point injections to the thoracic spine which did not help. He also had a shoulder injection which did not help his symptoms in the past. He has had an x-ray of his spine. He has done 6 weeks of PT at Mary Black but it is unclear as to what they focused on. He has had an MRI of the C-Spine. He denies any frank arm weakness.

Review of Systems (MATTHEW TERZELLA, MD; 11/20/2013 10:14 AM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Thursday, May 1, 2014

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC : L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

SHOULDER IMPINGEMENT

DDD (DEGENERATIVE DISC DISEASE), CERVICAL

CERVICALGIA

CERVICAL RADICULAR PAIN

LUMBAR RADICULOPATHY

PAIN IN THORACIC SPINE

MYOFASCIAL PAIN

Other Problems

No pertinent past medical history

Drug Dependence: 02/25/2013: no

Past Surgical

No pertinent past surgical history:

Social

Illicit drug use: 02/25/2013: no

Race: 02/25/2013: other

Alcohol use: 02/25/2013: none

Who is your primary care physician?: Erica Savage-Jeter, MD MB

Ethnicity: 02/25/2013: Hispanic/Latino

Current work status: 02/25/2013: unable to work

What is your ability to enjoy life?: 02/25/2013: poor

Highest Education Level Attained: 02/25/2013: high school

Marital status: 02/25/2013: married

Who is your referring physician?: Erica Savage-Jeter, MD MB

Tobacco use: 02/25/2013: Never smoker

Medications

No Current Medications.

Family

No pertinent family history::

Physical Exam (MATTHEW TERZELLA, MD; 11/20/2013 12:50 PM)

The physical exam findings are as follows:

Musculoskeletal

X-RAY/IMAGING: Note: X-Ray of L-spine reviewed: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact. MRI from Mary Black 1/23/13 reviewed. L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. This is at L5 transitional S1 (2 nd most distal segment). MRI of T-Spine w/o contrast 6/26/13, Piedmont, report and images reviewed: There is no reported spinal or foraminal stenosis. There is some mild degenerative disc changes from T6-7 through T9-10. There is no significant loss of disc height. MRI of the L-Spine w/o contrast, Piedmont, reviewed. 7/20/13. There is some bulging disc at C3-4, C5-6, C6-7 with some noted central narrowing without nerve or cord compromise. There may be some mild foraminal narrowing at these levels but there does not appear to be any overt compression. There is some uncovertebral joint hypertrophy noted at C3-4.

LUMBAR: Deferred today. **CERVICAL:** Full ROM in all planes with some discomfort/pain. Popping noted again. Pain elicited in bilateral neck musculature with flexion, mild. Some tenderness to palpation along paraspinals and over the interspinous ligament at C6-7, C7-T1. Pressure elicits some radiation into the top of his shoulder. No spinous process tenderness. Tender to palpation over the pillars bilaterally. Spurling's maneuver positive for arm symptoms on the right today; it did elicit some neck pain bilaterally. **THORACIC:** Upper thoracic spine with tenderness in the periscapular muscles on the right lateral to the thoracic spine at T1, T2, T3, T4. No change. Some tenderness in the lower cervical paraspinals as well. No change. **SHOULDER:** still + Neers, + Hawkins on the right, very mild. TTP over the AC joint. Some pain on Empty Can with some weakness on the right. There is some loss of ROM on the right with forward flexion and on internal rotation. **GAIT:** normal gait; no lateralizing gait pattern noted. Motor - 5/5 in key muscle groups in the bilateral upper and lower extremities, appropriate for age. DTRs: 2/4 in the biceps, triceps, brachioradialis bilaterally; 2/4 in the bilateral knees and Achilles. Sensation grossly intact to light touch in the bilateral upper extremities and bilateral lower extremities with the exception of the left lateral lower leg. Babinski downgoing bilaterally. No clonus at the ankles. Hoffman's negative. No change from prior.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Thursday, May 1, 2014

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DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

Current Plans:

CERVICALGIA (723.1)

Current Plans:

CERVICAL RADICULAR PAIN (723.4)

Current Plans:

- C7/T1 IL ESI ROML
- T- Discharge Instructions

PLAN: The above diagnoses and their prognoses and treatment options were discussed with the patient. The low back pain and radiculopathy are from the disc herniation at L5-S1 (2nd most distal segment). This did not have any significant relief with an epidural with the exception 3-4 days and he is set for surgery and is seeing Dr. Rodriguez. As for his neck, he has some shoulder impingement with lower cervical pain; this did not respond to a SA injection, again making neck etiology more likely. Given his essentially negative thoracic MRI, cervical source more likely. His cervical MRI did show some mild narrowing at C3-4, 5-6, and 6-7 but nothing really overt. There may still be a myofascial component to this. However, the increase in radicular symptoms and the fact that a C7-T1 IL ESI did give some relief for 2 weeks, makes cervical source the most likely. It is reasonable that these issues have been exacerbated given the physical nature of his job. After this discussion the following treatment plan was agreed upon:

- * Medications: No new medications. Patient may continue NSAIDs as needed.
- * Therapy: Continue home exercise program as tolerated. He has done PT in the past but targeted PT to the scapular stabilizers and cervical spine would be recommended; however, the cost is prohibitive to him. Handouts given.
- * Injections: Recommend a second C7-T1 IL ESI for radiculitis and stenosis. The procedure and its benefits and risks were discussed including but not limited to pain, pain at the injection site, bleeding, infection, stroke, paralysis, and death. After our discussion, the patient wishes to proceed with the injection. In my opinion, the patient is medically stable to have the procedure done at the office.
- * Imaging: X-rays and MRI reviewed as above including T-Spine MRI. C-Spine MRI reviewed as above.
- * Electrodiagnostics: Defer at this time. Would consider EMG/NCS of right upper extremity in the future.
- * Counseling: The importance of weight control was discussed with the patient.
- * Follow-up: 2-4 weeks post injection..

Electronically signed by MATTHEW TERZELLA, MD

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Thursday, May 1, 2014

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Orthopedic Specialties of Spartanburg

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Karen L. Babish, PA-C, Casey S. Judy, PA-C, Jack B. Sizemore, PA-C,
Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
10/14/2013 09:11 AM

Patient #: 98044

DOB: 08/05/1978

Gender: Male

REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 35 year old male presenting for a follow up visit. Mr. Jimenez is here in follow-up if multiple MSK issues. He recently had a thoracic spine MRI and is here to review it. He had been referred back to Dr. Rodriguez for his lumbar issues. He is s/p left L5-S1 TFESI on 5/14/13. Again, he stated that he had 3-4 days of relief. He has since seen Dr. Rodriguez and is scheduled for lumbar surgery. Dr. Rodriguez will be following his low back for the time being.

He is now s/p C7-T1 IL ESI on 8/20/13. He states that the shot helped him only for 2 weeks. He states he had coughing fit and since then the pain has returned. There is some slight numbness into his bilateral lower neck and into the shoulder blades; he states the symptoms are a bit better but still troublesome at times. He continues to have pain in his neck with radiation into his right shoulder. No radiation into the arms today. He states he has some popping sensation in his neck with rotation. He continues to feel pressure and throbbing in his central lower neck. It located about between the shoulder blades now more towards the top of the scapular area. He is s/p trigger point injections to the thoracic spine which did not help. He also had a shoulder injection which did not help his symptoms in the past. He has had an x-ray of his spine. He has done 6 weeks of PT at Mary Black but it is unclear as to what they focused on. He has had an MRI of the L-Spine. He denies any arm weakness.

Review of Systems (MATTHEW TERZELLA, MD; 10/14/2013 09:36 AM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Thursday, May 1, 2014

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC : L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

SHOULDER IMPINGEMENT

DDD (DEGENERATIVE DISC DISEASE), CERVICAL

CERVICALGIA

CERVICAL RADICULAR PAIN

LUMBAR RADICULOPATHY

PAIN IN THORACIC SPINE

MYOFASCIAL PAIN

Other Problems

No pertinent past medical history

Drug Dependence: 02/25/2013: no

Past Surgical

No pertinent past surgical history:

Social

Illicit drug use: 02/25/2013: no

Race: 02/25/2013: other

Alcohol use: 02/25/2013: none

Who is your primary care physician?: Erica Savage-Jeter, MD MB

Ethnicity: 02/25/2013: Hispanic/Latino

Current work status: 02/25/2013: unable to work

What is your ability to enjoy life?: 02/25/2013: poor

Highest Education Level Attained: 02/25/2013: high school

Marital status: 02/25/2013: married

Who is your referring physician?: Erica Savage-Jeter, MD MB

Tobacco use: 02/25/2013: Never smoker

Medications

No Current Medications.

Family

No pertinent family history:;

Physical Exam (MATTHEW TERZELLA, MD; 10/14/2013 09:39 AM)

The physical exam findings are as follows:

Musculoskeletal

X-RAY/IMAGING: Note: X-Ray of L-spine reviewed: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact. MRI from Mary Black 1/23/13 reviewed. L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. This is at L5 transitional S1 (2 nd most distal segment). MRI of T-Spine w/o contrast 6/26/13, Piedmont, report and images reviewed: There is no reported spinal or foraminal stenosis. There is some mild degenerative disc changes from T6-7 through T9-10. There is no significant loss of disc height. MRI of the L-Spine w/o contrast, Piedmont, reviewed. 7/20/13. There is some bulging disc at C3-4, C5-6, C6-7 with some noted central narrowing without nerve or cord compromise. There may be some mild foraminal narrowing at these levels but there does not appear to be any overt compression. There is some uncovertebral joint hypertrophy noted at C3-4.

LUMBAR: ROM limited on flexion - hands to shins with some pain; ROM limited on extension to 10 degrees with some mild pain. ROM limited on lateral side bending. Mild pain elicited in all planes of motion including with posterior quadrant loading.

Tender to palpation in left lumbar paraspinals from L3-S1; No significant bony tenderness noted. No sacral tenderness noted. Straight leg raise positive for low back/leg pain in the seated and supine positions on the left. SLR negative on the right. No change. **CERVICAL:** Full ROM in all planes with some discomfort/pain. Popping noted again. Pain elicited in bilateral neck musculature with flexion, mild. Some tenderness to palpation along paraspinals and over the interspinous ligament at C6-7, C7-T1. Pressure elicits some radiation into the top of his shoulder. No spinous process tenderness.

Tender to palpation over the pillars bilaterally. Spurling's maneuver negative for arm symptoms bilaterally but it did elicit some neck pain bilaterally. **THORACIC:** Upper thoracic spine with tenderness in the periscapular muscles on the right lateral to the thoracic spine at T1, T2, T3, T4. No change. Some tenderness in the lower cervical paraspinals as well. **SHOULDER:** still + Neers, + Hawkins on the right, very mild. TTP over the AC joint. Some pain on Empty Can with some weakness on the right. There is some loss of ROM on the right with forward flexion and on internal rotation. **GAIT:** normal gait; no lateralizing gait pattern noted. Motor - 5/5 in key muscle groups in the bilateral upper and lower extremities, appropriate for age. DTRs: 2/4 in the biceps, triceps, brachioradialis bilaterally; 2/4 in the bilateral knees and Achilles. Sensation grossly intact to light touch in the bilateral upper extremities and bilateral lower extremities with the exception of the left lateral

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Thursday, May 1, 2014

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lower leg. Babinski downgoing bilaterally. No clonus at the ankles. Hoffman's negative. No change from prior.

Assessment & Plan (Lisa Fowler; 10/14/2013 9:47 AM)

CERVICALGIA (723.1)

Current Plans:

DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

Current Plans:

MYOFASCIAL PAIN (729.1)

Current Plans:

PAIN IN THORACIC SPINE (724.1)

Current Plans:

- Started TraMADol HCI 50MG, 1 Tablet PO Q 6-8 H PRN PAIN, Mail Order #60, 15 days starting 10/14/2013, No Refill.
- Referral to Physical Therapy
- Instructed to keep follow-up appointment as scheduled

PLAN: The above diagnoses and their prognoses and treatment options were discussed with the patient. The low back pain and radiculopathy are from the disc herniation at L5-S1 (2nd most distal segment). This did not have any significant relief with an epidural with the exception 3-4 days and he is set for surgery. As for his neck, he has some shoulder impingement with lower cervical pain; this did not respond to a SA injection, again making neck etiology more likely. Given his essentially negative thoracic MRI, cervical source more likely. His cervical MRI did show some mild narrowing at C3-4, 5-6, and 6-7 but nothing really major. My thought at this point is that there is a myofascial component to this. A C7-T1 IL ESI did give some relief for 2 weeks. It is reasonable that these issues have been exacerbated given the physical nature of his job. After this discussion the following treatment plan was agreed upon:

- * Medications: No new medications. Patient may continue NSAIDs as needed.
- * Therapy: Continue home exercise program as tolerated. He has done PT in the past but targeted PT to the scapular stabilizers and cervical spine would be recommended. Rx given for this.
- * Injections: Consider a second C7-T1 IL ESI pending response to more PT. The procedure and its benefits and risks were discussed including but not limited to pain, pain at the injection site, bleeding, infection, stroke, paralysis, and death. After our discussion, the patient wishes to proceed with the injection. In my opinion, the patient is medically stable to have the procedure done at the office.
If no relief from PT, would start to focus on either the facets (MBBs, RFA) or shoulder again.
- * Imaging: X-rays and MRI reviewed as above including T-Spine MRI. C-Spine MRI reviewed as above.
- * Electrodiagnostics: Defer at this time. Would consider EMG/NCS of right upper extremity in the future.
- * Counseling: The importance of weight control was discussed with the patient.
- * Follow-up: In 4-6 weeks after PT.

Electronically signed by MATTHEW TERZELLA, MD

98044-56

Jose J. Jimenez
DOB: 08/05/1978

1. Was Mr. Jimenez referred to you by Dr. Rodriguez for his work-related low back injury?

☒ YES ☐ NO

2. Are his low back problems most probably causally-related to his work accident while emptying drain pans on or about July 14, 2011?

☒ YES ☐ NO

3. Does Mr. Jimenez most probably need more medical treatment for his low back?

☒ YES ☐ NO If YES, please describe: likely a
surgical candidate pain

These answers represent my opinion to a reasonable degree of medical certainty.

Date: 8/27/13

Matthew Terzella
Dr. Matthew Terzella, MD

Orthopedic Specialties of Spartanburg

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Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
08/20/2013 12:31 PM

Patient #: 98044
DOB: 08/05/1978
Gender: Male
REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 35 year old male who presents with a complaint of neck pain.

History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION
DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC : L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.
SHOULDER IMPINGEMENT
DDD (DEGENERATIVE DISC DISEASE), CERVICAL
CERVICALGIA
CERVICAL RADICULAR PAIN
LUMBAR RADICULOPATHY
PAIN IN THORACIC SPINE
MYOFASCIAL PAIN

Other Problems

No pertinent past medical history
Drug Dependence: 02/25/2013: no

Past Surgical

No pertinent past surgical history:

Social

Illicit drug use: 02/25/2013: no
Race: 02/25/2013: other
Alcohol use: 02/25/2013: none
Who is your primary care physician?: Erica Savage-Jeter, MD MB
Ethnicity: 02/25/2013: Hispanic/Latino
Current work status: 02/25/2013: unable to work
What is your ability to enjoy life?: 02/25/2013: poor
Highest Education Level Attained: 02/25/2013: high school
Marital status: 02/25/2013: married
Who is your referring physician?: Erica Savage-Jeter, MD MB
Tobacco use: 02/25/2013: Never smoker

Medications

No Current Medications.

Family

No pertinent family history;;

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Thursday, May 1, 2014

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Assessment & Plan (MATTHEW TERZELLA, MD; 08/20/2013 02:29 PM)
DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)
Current Plans:

CERVICAL RADICULAR PAIN (723.4)
Current Plans:

CERVICALGIA (723.1)
Current Plans:

PROCEDURE NOTE

PREOPERATIVE DIAGNOSIS:

- 1) Cervical DDD
- 2) Cervical radiculopathy
- 3) Cervicalgia

POSTOPERATIVE DIAGNOSIS: Same

PROCEDURE PERFORMED: C7-T1 Interlaminar epidural injection, right of midline

TOTAL FLUOROSCOPIC EXPOSURE TIME: 45 s

PROCEDURE: The patient was brought into the fluoroscopy room and placed in a prone position. The patient was sterilely prepped and draped in the usual routine fashion. The patient's blood pressure and heart rate were monitored by the physician and the medical assistant.

Using fluoroscopy, the cervical vertebral bodies were identified counting from C1. A marker was placed over the intervertebral disc space just to the right of midline, at the level specified above. The superficial tissue was then anesthetized with 1 cc of 1% preservative free lidocaine using a 27-gauge 1.5-inch needle. A 22-gauge 3.5-inch Tuohy needle was then passed through the previously anesthetized tissue. The needle was advanced under fluoroscopic guidance down to the lamina using AP visualization. Using lateral visualization and the loss-of-resistance technique, the needle was then advanced into the ligamentum flavum and the epidural space was easily located. After checking for negative withdrawal of blood or CSF through the needle, proper placement was verified using approximately 0.5-1 cc of contrast injected under live fluoroscopy in both AP and lateral planes individually, producing an epidurogram/epineurogram. No vascular flow was seen. A spot film was taken. A solution containing 1.5 cc of Celestone (6 mg/mL) and 1.5 cc of sterile preservative-free normal saline was then slowly administered through the needle using high-caliber, short extension tubing. The needle was then removed.

The patient tolerated the procedure well. He demonstrated good strength in his bilateral upper extremities. There were no complications. Vital signs remained stable prior to, during and after the procedure. The patient was taken to the recovery room in good condition.

Electronically signed by MATTHEW TERZELLA, MD



Orthopedic Specialties

MRI - MB.

Periodic Outcomes Evaluation

Follow Up Assessment

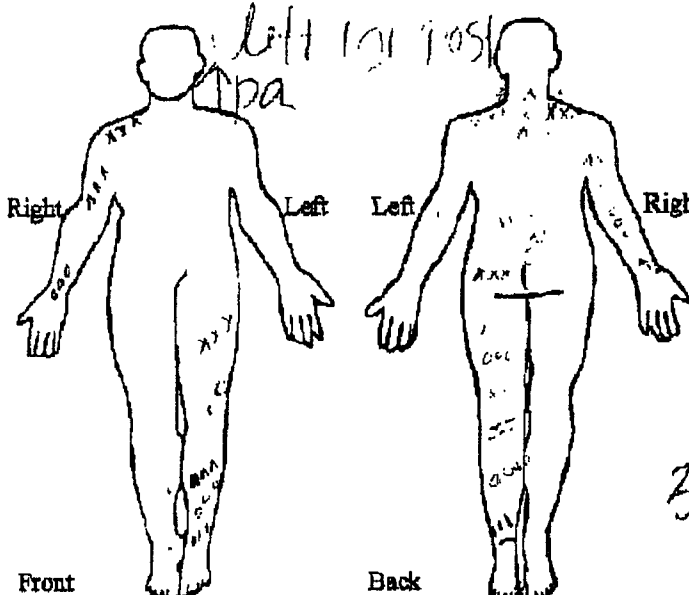
PAIN DIAGRAM

Name Jose J. Jimenez Age 34 Gender M Date _____Height 5'11 Weight 222 Pulse _____ BP _____ Temp _____

Notes: _____

Please mark the areas where you experience the following sensations:

Ache AAA Numbness OOO Pins & Needles == Burning XXX Stabbing ///



Medications: (circle ones to be refilled)

To be completed by Medical Asst.:

Allergies:

CSA Reviewed/Updated & Signed:

Front

Back

Since your last office visit are you: better worse the same? Please circle your answer

How bad is your pain? Place an "X" () on each of the lines below to indicate your current pain.

How bad is your low back pain?

No pain _____ Worst possible

How bad is your leg pain?

No pain _____ Worst possible

How bad is your middle back pain?

(No pain) _____ Worst possible

How bad is your neck pain?

No pain _____ Worst possible

How bad is your arm pain?

Worst possible

3-4 d. relief (L)

12/1/11 RF-est.

trigger pt inj. thru arm
Sharp

PATIENT QUESTIONNAIRE

Instructions: This survey asks for your views about your health. The information will help keep track of how well you are able to do your usual activities.

Please answer each question by marking one box. If you are unsure about how to answer please give the best answer you can.

☒ I have headaches almost all the time.

☐ I cannot do any recreational activities at all.

In general would you say
your health is

☐ Excellent ☐ Very good ☐ Good ☐ Fair ☒ Poor

The following items are about activities that you might do during a typical day. Does your health now limit you in these activities? If so, how much?

(Fill in one circle on each line)

Moderate activities, such as moving a table, pushing a vacuum cleaner, bowling, or playing golf?
Climbing several flights of stairs?

Yes limited a lot	Yes limited a little	Not limited at all
☒	☐	☐
☒	☐	☐

During the past 4 weeks, have you had any of the following problems with your work or other (regular daily activities as a result of your physical health?

Accomplished less than you would like.

☒ Yes ☐ No

Were limited in the kind of work or other activities.

☒ Yes ☐ No

During the past 4 weeks, have you had any of the following problems with your work or other regular daily activities as a result of any emotional problems (such as feeling depressed or anxious)?

Accomplished less than you would like.

☒ Yes ☐ No

Didn't do work or other activities as carefully as usual.

☒ Yes ☐ No

During the past 4 weeks how much did pain interfere with your normal work (including work outside the home and housework)?

☐ Not at all ☐ A little bit ☐ Moderately ☐ Quite a bit ☒ Extremely

These questions are about how you feel and how things have been with you during the past 4 weeks. For each question please give the one answer that comes closest to the way you have been feeling. How much of the time during the past 4 weeks:

	Not at all	A little bit	Moderately	Quite a bit	Extremely
Have you felt calm and peaceful?	☒	☐	☐	☐	☐
Did you have a lot of energy?	☐	☒	☐	☐	☐
Have you felt downhearted and blue?	☐	☐	☐	☒	☐

During the past 4 weeks, how much of the time has your physical health or emotional problems interfered with your social activities (like visiting with friends, relatives, etc.)?

☒ All of the time ☐ Most of the time ☐ Some of the time ☐ A little of the time ☐ None of the time

NECK PAIN QUESTIONNAIRE

➔ **If you have NECK pain complete this page,**
if you have only low back pain, skip this page. ➔

Please read: This questionnaire has been designed to enable us to understand how much your neck pain has affected your ability to manage your everyday activities. Please answer each section by circling the ONE CHOICE that most applies to you. We realize you may consider that two of the statements in any one section relate to you, but PLEASE, JUST MARK THE ONE CHOICE WHICH MOST CLOSELY DESCRIBES YOUR PROBLEM RIGHT NOW.

Section 1 - Pain Intensity

- ☐ I have no pain at the moment.
- ☐ The pain is very mild at the moment.
- ☐ The pain is moderate at the moment.
- ☐ The pain is fairly severe at the moment.
- ☒ The pain is very severe at the moment.
- ☐ The pain is the worst imaginable at the moment.

Section 2 - Personal Care (Washing, Dressing, etc.)

- ☐ I can look after myself normally without causing extra pain.
- ☐ I can look after myself normally, but it causes extra pain.
- ☒ It is painful to look after myself and I am slow and careful.
- ☐ I need some help, but manage most of my personal care.
- ☐ I need help everyday in most aspects of self care.
- ☐ I do not get dressed, wash with difficulty and stay in bed.

Section 3 - Lifting

- ☐ I can lift heavy weights without extra pain.
- ☐ I can lift heavy weights, but it gives extra pain.
- ☐ Pain prevents me from lifting heavy weights off the floor, but I can manage if they are conveniently positioned, for example, on a table.
- ☐ Pain prevents me from lifting heavy weights but I can manage light to medium weights if they are conveniently positioned.
- ☒ I can lift very light weights.
- ☐ I cannot lift or carry anything at all.

Section 4 - Reading

- ☐ I can read as much as I want to with no pain in my neck.
- ☐ I can read as much as I want to with slight pain in my neck.
- ☐ I can read as much as I want with moderate pain in my neck.
- ☒ I cannot read as much as I want because of moderate pain in my neck.
- ☐ I cannot read as much as I want because of severe pain in my neck.
- ☐ I cannot read at all.

Section 5 - Headaches

- ☐ I have no headache at all.
- ☐ I have slight headaches which come infrequently.
- ☐ I have moderate headaches which come infrequently.
- ☐ I have moderate headaches which come frequently.
- ☒ I have severe headaches which come frequently.

Section 6 - Concentration

- ☐ I can concentrate fully when I want to with no difficulty.
- ☐ I can concentrate fully when I want to with slight difficulty.
- ☒ I have a fair degree of difficulty in concentrating when I want to.
- ☐ I have a lot of difficulty in concentrating when I want to.
- ☐ I have a great deal of difficulty in concentrating when I want to.
- ☐ I cannot concentrate at all.

Section 7 - Work

- ☐ I can do as much work as I want to.
- ☐ I can only do my usual work, but no more.
- ☐ I can do most of my usual work, but no more.
- ☐ I cannot do my usual work.
- ☒ I can hardly do any work at all.
- ☐ I cannot do any work at all.

Section 8 - Driving

- ☐ I can drive my car without any neck pain.
- ☐ I can drive my car as long as I want with slight pain in my neck.
- ☐ I can drive my car as long as I want with moderate pain in my neck.
- ☒ I cannot drive my car as long as I want because of moderate pain in my neck.
- ☐ I can hardly drive at all because of severe pain in my neck.
- ☐ I cannot drive my car at all.

Section 9 - Sleeping

- ☐ I have no trouble sleeping.
- ☐ My sleep is slightly disturbed (less than 1 hour sleepless).
- ☐ My sleep is mildly disturbed (1-2 hours sleepless).
- ☐ My sleep is moderately disturbed (2-3 hours sleepless).
- ☒ My sleep is greatly disturbed (3-5 hours sleepless).
- ☐ My sleep is completely disturbed (5-7 hours sleepless).

Section 10 - Recreation

- ☐ I am able to engage in all of my recreational activities with no neck pain at all.
- ☐ I am able to engage in all of my recreational activities with some pain in my neck.
- ☐ I am able to engage in most, but not all of my usual recreational activities because of pain in my neck.
- ☐ I am able to engage in a few of my usual recreational activities because of pain in my neck.
- ☐ I can hardly do any recreational activities because of pain in my neck.

BACK PAIN QUESTIONNAIRE

If you have LOW BACK pain complete this page.
If you have only neck pain, skip this page.

Please read: Could you please complete this questionnaire. It is designed to give us information on how your back (or leg) trouble has affected your ability to manage in everyday life. Please answer every section. Mark one box only in each section that most closely describes you today.

Section 1 - Pain Intensity

- ☐ I have no pain at the moment.
- ☐ The pain is very mild at the moment.
- ☐ The pain is moderate at the moment.
- ☐ The pain is fairly severe at the moment.
- ☒ The pain is very severe at the moment.
- ☐ The pain is the worst imaginable at the moment.

Section 2 - Personal Care (Washing, Dressing, etc.)

- ☐ I can look after myself normally without causing extra pain.
- ☐ I can look after myself normally but it is very painful.
- ☒ It is painful to look after myself and I am slow and careful.
- ☐ I need some help but manage most of my personal care.
- ☐ I need help everyday in most aspects of self care.
- ☐ I do not get dressed, wash with difficulty and stay in bed.

Section 3 - Lifting

- ☐ I can lift heavy weights without extra pain.
- ☐ I can lift heavy weights but it gives extra pain.
- ☐ Pain prevents me from lifting heavy weights off the floor, but I can manage if they are conveniently positioned, e.g. on a table.
- ☐ Pain prevents me from lifting heavy weights but I can manage light to medium weights if they are conveniently positioned.
- ☐ I can lift only very light weights.
- ☒ I cannot lift or carry anything at all.

Section 4 - Walking

- ☐ Pain does not prevent me from walking any distance.
- ☐ Pain prevents me walking more than 1 mile.
- ☐ Pain prevents me walking more than 1/2 mile.
- ☒ Pain prevents me walking more than 100 yards.
- ☐ I can only walking using a stick or crutches.
- ☐ I am in bed most of the time and have to crawl to the toilet.

Section 5 - Sitting

- ☐ I can sit still in any chair as long as I like.
- ☐ I can sit in my favorite chair as long as I like.
- ☐ Pain prevents me sitting more than 1 hour.
- ☒ Pain prevents me sitting more than 1/2 hour.
- ☐ Pain prevents me sitting more than 10 mins.
- ☐ Pain prevents me from sitting at all.

Section 6 - Standing

- ☐ I can stand as long as I want without extra pain.
- ☐ I can stand as long as I want but it gives me extra pain.
- ☐ Pain prevents me from standing for more than 1 hour.
- ☐ Pain prevents me from standing more than 1/2 an hour.
- ☐ Pain prevents me from standing for more than 10 mins.
- ☐ Pain prevents me from standing at all.

Section 7 - Sleeping

- ☐ My sleep is never disturbed by pain.
- ☐ My sleep is occasionally disturbed by pain.
- ☐ Because of pain I have less than 6 hours sleep.
- ☐ Because of pain I have less than 4 hours sleep.
- ☐ Because of pain I have less than 2 hours sleep.
- ☐ Pain prevents me from sleeping at all.

Section 8 - Sex Life (if applicable)

- ☐ My sex life is normal and causes no extra pain.
- ☐ My sex life is normal but causes some extra pain.
- ☐ My sex life is nearly normal but is very painful.
- ☐ My sex life is severely restricted by pain.
- ☐ My sex life is nearly absent because of pain.
- ☐ Pain prevents any sex life at all.

Section 9 - Social Life

- ☐ My social life is normal and causes me no extra pain.
- ☐ My social life is normal but increases the degree of pain.
- ☐ Pain has no significant effect on my social life apart from limiting my more energetic interests, e.g. sport, etc.
- ☐ Pain has restricted my social life and I do not go out as often.
- ☒ Pain has restricted my social life to my home.
- ☐ I have no social life because of pain.

Section 10 - Traveling

- ☐ I can travel anywhere without extra pain.
- ☐ I can travel anywhere but it gives me extra pain.
- ☐ Pain is bad but I can manage journeys over two hours.
- ☐ Pain restricts me to journeys of less than one hour.
- ☒ Pain restricts me to short necessary journeys under 30 mins.
- ☐ Pain prevents me from traveling except to receive treatment.

Orthopedic Specialties of Spartanburg

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Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
07/31/2013 10:23 AM

Patient #: 98044

DOB: 08/05/1978

Gender: Male

REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male presenting for a follow up visit. He has seen Dr. Terzella and had a left L5-S1 transforaminal epidural on 05/14/2013. He got about 3 days relief. He continues with left L5-S1 pain. He continues with neck pain into the right arm and left shoulder pain that continues to bother him as well. He had a thoracic MRI that was essentially negative. He has done 6 weeks of physical therapy at Mary Black. He had a trigger point injection in the thoracic spine that did not give him much relief. He has had a MRI scan of the lumbar spine. The pain has been going on for over a year. It is very hard for him to do his job. He is dropping things with the right hand.

He states he reported the back injury was 07/14/2011. He described the injury a little better now, saying the day before he reported it he was lifting toilets like he normally does and they weigh between 50 and 70 pounds. He states that he had an episode where he felt a pop in the back and an increase in pain. He tried to come into work the next day and eventually had to report the pain. He had been on medications and therefore the pain seemed to come and go because the medications were controlling the pain. Eventually the pain slowly worsened to the point where the medications no longer controlled it. He got in with Dr. Savage-Jeter who put him in physical therapy and got a MRI scan. Eventually I saw him. At that time I was unsure of the cause. He describes the injury a little bit better now. It seems this started the whole process of his pain. He has reached the point now where he cannot deal with this pain. The epidural gave him some relief of the back pain, but it did not really control the leg pain. He has had thoracic and right shoulder injection with Dr. Terzella which has not really helped the shoulder and neck pain either.

He complains of headaches as well. A lot of occipital, but sometimes in the front of the head with some blurred spots in his vision. I told him he needs to discuss this with Dr. Savage-Jeter, as it could be more than just referred from the neck.

Review of Systems (CASEY JUDY PAC; 07/31/2013 04:06 PM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Friday, August 2, 2013

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10): L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

CERVICALGIA (723.1)

DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

CERVICAL RADICULAR PAIN (723.4)

MYOFASCIAL PAIN (729.1)

PAIN IN THORACIC SPINE (724.1)

LUMBAR RADICULOPATHY (724.4)

SHOULDER IMPINGEMENT (726.2)

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION (724.03)

Other Problems

Drug Dependence: 02/25/2013: no

No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Tobacco use: 02/25/2013: Never smoker

Current work status: 02/25/2013: unable to work

Marital status: 02/25/2013: married

Race: 02/25/2013: other

Alcohol use: 02/25/2013: none

Illicit drug use: 02/25/2013: no

Who is your referring physician?: Erica Savage-Jeter, MD MB

Who is your primary care physician?: Erica Savage-Jeter, MD MB

Ethnicity: 02/25/2013: Hispanic/Latino

What is your ability to enjoy life?: 02/25/2013: poor

Highest Education Level Attained: 02/25/2013: high school

Medications

No Current Medications.

Family

No pertinent family history::

Physical Exam (CASEY JUDY PAC; 08/01/2013 02:09 PM)

The physical exam findings are as follows:

Musculoskeletal

Strength is 5/5 in the quadriceps, hamstrings, hip flexors, tib/ant, gastroc soleus and EHL bilaterally. Calves soft, nontender. Grip strength is 5/5 in bilateral upper extremities. Hoffman's is negative.

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION (724.03)

Current Plans:

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

Today's Impression: L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

Current Plans:

- At this point for his lumbar spine, I recommend a L5-S1 laminectomy and discectomy with foraminal stenosis at L5 transitional S1 on the left side. This could also lead to the necessity for a fusion. This would be an intraoperative decision. The plan for him would be L5 transitional S1 laminectomy and discectomy with possible fusion if necessary. He needs to talk to his lawyer about this and decide if this is something that he wants to go forward with. I think that is the only thing that is going to help his radiculopathy at this point. As far as causation, I think it is pretty clear causation at this point. Hopefully they can settle something soon and help this gentleman get the care for his back and leg pain. As far as his neck, I think we will continue to follow this. I think a cervical MRI scan would be necessary to assess this further. I did look at the MRI scan of the cervical spine as well and there are signs of multilevel disc disease. I do not see significant nerve root compromise to explain his shoulder pain. This may be referred facetogenic pain. It could also be discogenic pain, but I do not think this is neurogenic pain at this point, from what I see on MRI scan. I will his treatment with Dr. Terzella at this point on the neck. The patient was advised there is no need for bed rest at this time.
cc: Erica L. Savage-Jeter, M.D.

Electronically signed by MARCO A RODRIGUEZ MD,

Orthopedic Specialties of Spartanburg

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Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
07/23/2013 02:38 PM

Patient #: 98044

DOB: 08/05/1978

Gender: Male

REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male presenting for a follow up visit. Mr. Jimenez is here in follow-up if multiple MSK issues. He has had an MRI of the C-Spine for which he is coming to review. He recently had a thoracic spine MRI. He had been referred back to Dr. Rodriguez for his lumbar issues. He is s/p left L5-S1 TF ESI on 5/14/13. Again, he stated that he had 3-4 days of relief. The pain then came back; he states he has continued leg pain, numbness, tingling, cramps with radiation into the big toe. He states like it is throbbing. He has some weakness in his leg. He states it will be wobbly at times. He denies any loss of bladder or bowel control. He states it will be difficult to get up from a seated position. He is also getting occasional pain into his right sided buttock which is new for him. His pain is 6/10 in severity. He has low back pain associated with this. He will have pain with bending and twisting. He is taking Advil and tylenol for pain. It is making it difficult to do his job.

He continues to have pain in his neck with radiation into his right shoulder with radiation into his right arm; He states he has some popping sensation in his neck with rotation. He also has continued thoracic pain. The thoracic pain has not changed at all. He continues to feel pressure and throbbing in his central upper back. It located about between the shoulder blades now more towards the top of the scapular area. He is s/p trigger point injections to the thoracic spine which did not help. He also had a shoulder injection which did not help his symptoms. He has had an x-ray of his spine. He has done 6 weeks of PT at Mary Black. He has had an MRI of the L-Spine. He denies any arm weakness

Review of Systems (MATTHEW TERZELLA, MD; 07/23/2013 02:43 PM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Tuesday, August 13, 2013

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10): L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

CERVICALGIA (723.1)

DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

CERVICAL RADICULAR PAIN (723.4)

MYOFASCIAL PAIN (729.1)

PAIN IN THORACIC SPINE (724.1)

LUMBAR RADICULOPATHY (724.4)

SHOULDER IMPINGEMENT (726.2)

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION (724.03)

Other Problems

Drug Dependence: 02/25/2013: no

No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Tobacco use: 02/25/2013: Never smoker

Current work status: 02/25/2013: unable to work

Marital status: 02/25/2013: married

Race: 02/25/2013: other

Alcohol use: 02/25/2013: none

Illicit drug use: 02/25/2013: no

Who is your referring physician?: Erica Savage-Jeter, MD MB

Who is your primary care physician?: Erica Savage-Jeter, MD MB

Ethnicity: 02/25/2013: Hispanic/Latino

What is your ability to enjoy life?: 02/25/2013: poor

Highest Education Level Attained: 02/25/2013: high school

Medications

No Current Medications.

Family

No pertinent family history:;

Physical Exam (MATTHEW TERZELLA, MD; 07/23/2013 02:59 PM)

The physical exam findings are as follows:

Musculoskeletal

X-RAY/IMAGING: Note: X-Ray of L-spine reviewed: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact. MRI from Mary Black 1/23/13 reviewed. L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. This is at L5 transitional S1 (2nd most distal segment). MRI of T-Spine w/o contrast 6/26/13, Piedmont, report and images reviewed: There is no reported spinal or foraminal stenosis. There is some mild degenerative disc changes from T6-7 through T9-10. There is no significant loss of disc height. MRI of the L-Spine w/o contrast, Piedmont, reviewed. 7/20/13. There is some bulging disc at C3-4, C5-6, C6-7 with some noted central narrowing without nerve or cord compromise. There may be some mild foraminal narrowing at these levels but there does not appear to be any overt compression. There is some uncovertebral joint hypertrophy noted at C3-4.

LUMBAR: ROM limited on flexion - hands to shins with some pain; ROM limited on extension to 10 degrees with some mild pain. ROM limited on lateral side bending. Mild pain elicited in all planes of motion including with posterior quadrant loading.

Tender to palpation in left lumbar paraspinals from L3-S1; No significant bony tenderness noted. No sacral tenderness noted. Straight leg raise positive for low back/leg pain in the seated and supine positions on the left. SLR negative on the right. **CERVICAL:** Full ROM in all planes with some discomfort/pain. Popping noted again. Pain elicited in bilateral neck musculature with flexion, mild. Some tenderness to palpation along paraspinals. No spinous process tenderness. Tender to palpation over the pillars bilaterally. Spurling's maneuver negative for arm symptoms bilaterally but it did elicit some neck pain bilaterally. **THORACIC:** Upper thoracic spine with tenderness in the periscapular muscles on the right lateral to the thoracic spine at T1, T2, T3, T4. Some tenderness in the lower cervical paraspinals as well. **SHOULDER:** still + Neers, + Hawkins on the right, mild. TTP over the AC joint. Some pain on Empty Can with some weakness on the right. There is some loss of ROM on the right with forward flexion and on internal rotation. **GAIT:** normal gait; no lateralizing gait pattern noted. Motor - 5/5 in key muscle groups in the bilateral upper and lower extremities, appropriate for age. DTRs: 2/4 in the biceps, triceps, brachioradialis bilaterally; 2/4 in the bilateral knees and Achilles. Sensation grossly intact to light touch in the bilateral upper extremities and bilateral lower extremities with the exception of the left lateral lower leg. Babinski downgoing bilaterally. No clonus at the ankles. Hoffman's negative. No change from prior.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Tuesday, August 13, 2013

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DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

Current Plans:

DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

Current Plans:

CERVICAL RADICULAR PAIN (723.4)

Current Plans:

SHOULDER IMPINGEMENT (726.2)

Current Plans:

- C7/T1 IL ESI ROML
- T- Discharge Instructions

PLAN: The above diagnoses and their prognoses and treatment options were discussed with the patient. The low back pain and radiculopathy are from the disc herniation at L5-S1 (2nd most distal segment). This did not have any significant relief with an epidural with the exception 3-4 days. He also has some shoulder impingement with upper thoracic/cervical pain; this did not respond to a SA injection, making neck etiology more likely. Given his essentially negative thoracic MRI, cervical source more likely. His cervical MRI did show some mild narrowing at C3-4, 5-6, and 6-7. It is reasonable that these issues have been exacerbated given the physical nature of his job. After this discussion the following treatment plan was agreed upon:

- * *Medications: No new medications. Patient may continue NSAIDs as needed.*
- * *Therapy: Continue home exercise program as tolerated. He has done PT in the past.*
- * *Injections: Recommend C7-T1 IL ESI. The procedure and its benefits and risks were discussed including but not limited to pain, pain at the injection site, bleeding, infection, stroke, paralysis, and death. After our discussion, the patient wishes to proceed with the injection. In my opinion, the patient is medically stable to have the procedure done at the office. If no relief, would start to focus on either the facets (MBBs, RFA) or shoulder again.*
- * *Imaging: X-rays and MRI reviewed as above including T-Spine MRI C-Spine MRI reviewed as above.*
- * *Electrodiagnostics: Defer at this time. Would consider EMG/NCS of right upper extremity if no response to the epidural injection.*
- * *Counseling: The importance of weight control was discussed with the patient.*
- * *Follow-up: after 2-4 weeks after cervical epidural.*

Electronically signed by MATTHEW TERZELLA, MD

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JOSE J JIMENEZ
07/16/2013 10:18 AM

Patient #: 98044

DOB: 08/05/1978

Gender: Male

REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male presenting for a follow up visit. Mr. Jimenez is here in follow-up of multiple MSK issues. He recently had a thoracic spine MRI and is here to review it. He had been referred back to Dr. Rodriguez for his lumbar issues. He is s/p left L5-S1 TFEESI on 5/14/13. Again, he stated that he had 3-4 days of relief. The pain then came back; he states he has continued leg pain, numbness, tingling, cramps with radiation into the big toe. He states like it is throbbing. He has some weakness in his leg. He states it will be wobbly at times. He denies any loss of bladder or bowel control. He states it will be difficult to get up from a seated position. He is also getting occasional pain into his right sided buttock which is new for him. His pain is 6/10 in severity. He has low back pain associated with this. He will have pain with bending and twisting. He is taking Advil and Tylenol for pain. It is making it difficult to do his job.

He continues to have pain in his neck with radiation into his right shoulder with radiation into his right arm; He states he has some popping sensation in his neck with rotation. He also has continued thoracic pain. The thoracic pain has not changed at all. He continues to feel pressure and throbbing in his central upper back. It located about between the shoulder blades now more towards the top of the scapular area. He is s/p trigger point injections to the thoracic spine which did not help. He also had a shoulder injection which did not help his symptoms. He has had an x-ray of his spine. He has done 6 weeks of PT at Mary Black. He has had an MRI of the L-Spine. He denies any arm weakness.

Review of Systems (MATTHEW TERZELLA, MD; 07/16/2013 10:22 AM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Tuesday, August 13, 2013

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10): L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

CERVICALGIA (723.1)

DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

CERVICAL RADICULAR PAIN (723.4)

MYOFASCIAL PAIN (729.1)

PAIN IN THORACIC SPINE (724.1)

LUMBAR RADICULOPATHY (724.4)

SHOULDER IMPINGEMENT (726.2)

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION (724.03)

Other Problems

Drug Dependence: 02/25/2013: no

No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Tobacco use: 02/25/2013: Never smoker

Current work status: 02/25/2013: unable to work

Marital status: 02/25/2013: married

Race: 02/25/2013: other

Alcohol use: 02/25/2013: none

Illicit drug use: 02/25/2013: no

Who is your referring physician?: Erica Savage-Jeter, MD MB

Who is your primary care physician?: Erica Savage-Jeter, MD MB

Ethnicity: 02/25/2013: Hispanic/Latino

What is your ability to enjoy life?: 02/25/2013: poor

Highest Education Level Attained: 02/25/2013: high school

Medications

No Current Medications.

Family

No pertinent family history::

Physical Exam (MATTHEW TERZELLA, MD; 07/16/2013 10:49 AM)

The physical exam findings are as follows:

Musculoskeletal

X-RAY/IMAGING: Note: X-Ray of L-spine reviewed: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact. MRI from Mary Black 1/23/13 reviewed. L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. This is at L5 transitional S1 (2 nd most distal segment). MRI of T-Spine w/o contrast 6/26/13, Piedmont, report and images reviewed: There is no reported spinal or foraminal stenosis. There is some mild degenerative disc changes from T6-7 through T9-10. There is no significant loss of disc height.

LUMBAR: ROM limited on flexion - hands to shins with some pain; ROM limited on extension to 10 degrees with some mild pain. ROM limited on lateral side bending. Mild pain elicited in all planes of motion including with posterior quadrant loading. Tender to palpation in left lumbar paraspinals from L3-S1; No significant bony tenderness noted. No sacral tenderness noted. Straight leg raise positive for low back/leg pain in the seated and supine positions on the left. SLR negative on the right. **CERVICAL:** Full ROM in all planes with some discomfort/pain. Popping noted on movement today. Pain elicited in bilateral neck musculature with flexion, mild. Some tenderness to palpation along paraspinals. No spinous process tenderness. Tender to palpation over the pillars bilaterally. Spurling's maneuver negative for arm symptoms bilaterally but it did elicit some neck pain bilaterally. **THORACIC:** Upper thoracic spine with tenderness in the periscapular muscles on the right lateral to the thoracic spine at T1, T2, T3, T4. Some tenderness in the lower cervical paraspinals as well. **SHOULDER:** + Neers, + Hawkins on the right, mild. TTP over the AC joint. Some pain on Empty Can with some weakness on the right. No change. **GAIT:** normal gait; no lateralizing gait pattern noted. Motor - 5/5 in key muscle groups in the bilateral upper and lower extremities, appropriate for age. DTRs: 2/4 in the biceps, triceps, brachioradialis bilaterally; 2/4 in the bilateral knees and Achilles. Sensation grossly intact to light touch in the bilateral upper extremities and bilateral lower extremities with the exception of the left lateral lower leg. Babinski downgoing bilaterally. No clonus at the ankles. Hoffman's negative. No change from prior.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Tuesday, August 13, 2013

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PAIN IN THORACIC SPINE (724.1)

Current Plans:

CERVICALGIA (723.1)

Current Plans:

LUMBAR RADICULOPATHY (724.4)

Current Plans:

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

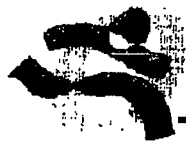
Current Plans:

- The patient will return following a MRI
- Instructed to keep follow-up appointment as scheduled

PLAN: The above diagnoses and their prognoses and treatment options were discussed with the patient. The low back pain and radiculopathy are from the disc herniation at L5-S1 (2nd most distal segment). This did not have any significant relief with an epidural with the exception 3-4 days. He also has some shoulder impingement with upper thoracic/cervical pain; this did not respond to a SA injection, making neck or thoracic etiology more likely. Given his essentially negative thoracic MRI, cervical source more likely. He did not have any appreciable response to trigger point injections in the thoracic spine. It is reasonable that these issues have been exacerbated given the physical nature of his job. After this discussion the following treatment plan was agreed upon:

- * *Medications: No new medications. Patient may continue NSAIDs as needed.*
 - * *Therapy: Continue home exercise program as tolerated. He has done PT in the past.*
 - * *Injections: Defer at this time. Referral back to ortho spine at last visit, Dr. Rodriguez for his lumbar spine issues to explore surgical options.*
- Consider further cervical workup, C7-T1 ESI in the future if arm pain persists and pending MRI. May consider MBBs, facet injections in the future as well.*
- * *Imaging: X-rays and MRI reviewed as above including T-Spine MRI. Recommend C-Spine MRI to evaluate soft tissues.*
 - * *Electrodiagnostics: Defer at this time.*
 - * *Counseling: The importance of weight control was discussed with the patient.*
 - * *Follow-up: after the C-Spine MRI. Discussed loss of bladder and bowel control as emergent as Dr. Rodriguez had discussed previously.*

Electronically signed by MATTHEW TERZELLA, MD



Orthopedic Specialties, LLC

98044-56 H: _____
W: _____
BP: _____
P: _____

NAME: Jose J. Jimenez

DATE: 07/16/2013

Describe any symptom changes since your last visit:

What makes your symptoms:
Worse: _____

Better: _____

Since your last visit, are you:
Better by _____ %
Same Worse by _____ %
Same

Circle the number that best describes your current pain with "10" being the most severe.

NECK/ARM: 0 1 2 3 4 5 6 7 8 9 10
BACK/LEG: 0 1 2 3 4 5 6 7 8 9 10

How long/far can you
Sit 2 hrs Stand 30 min Walk 1 hr

If you are taking medications, please list (include dosage):

tylenol, adult 600 m.

Have you had any medical testing since your last visit?
☒ No ☐ Yes (Please list)

Have you seen any other physicians since your last visit?
☒ No ☐ Yes

(If yes, who and for what reason?)

Are you currently working ☒ No ☐ Yes

Any work restrictions? _____

If you have had an injection since your last visit, how would you rate your satisfaction (circle one)?

1. Not at all satisfied
2. Not very satisfied
3. Neither satisfied nor dissatisfied
4. Mostly satisfied
5. Very satisfied

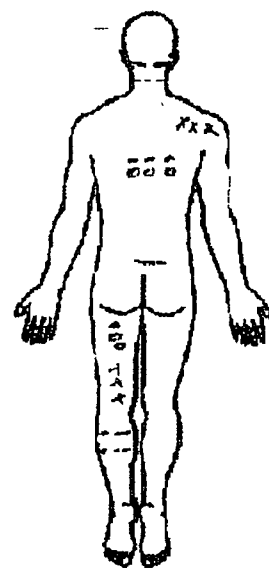
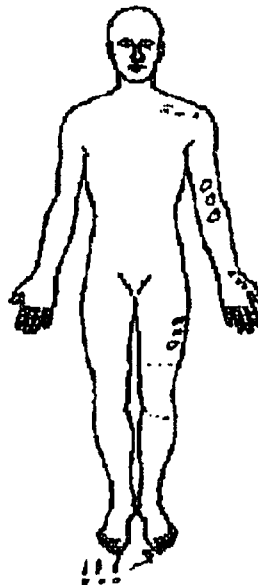
Are you in Physical Therapy? ☒ No ☐ Yes
If yes, date of last visit: _____

Are you doing a home exercise program? ☒ No ☐ Yes
If yes, how often? _____

PAIN DIAGRAM

Please mark the areas on the diagram using the appropriate symbols. These symbols describe what you feel.

Numbness Pins & Needles Burning Stabbing/Sharp Aching
ooo xxx !!! ----



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Orthopedic Specialties of Spartanburg

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Karen L. Babish, PA-C, Casey S. Judy, PA-C, Jack B. Sizemore, PA-C,
Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
06/18/2013 12:59 PM

Patient #: 98044

DOB: 08/05/1978

Gender: Male

REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male presenting for a follow up visit. Mr. Jimenez is here in follow-up if multiple MSK issues. He is s/p left L5-S1 TFESI on 5/14/13. He states that he had 3-4 days of relief. The pain then came back; he states he has continued leg pain, numbness, tingling, cramps with radiation into the big toe. He states like it is throbbing. He has some weakness in his leg. He states it will be wobbly at times. He denies any loss of bladder or bowel control. His pain is 6/10 in severity. He has low back pain associated with this. He will have pain with bending and twisting. He is taking Advil and tylenol for pain. He states that the low back and leg pain is the worst of his problems. It is making it difficult to do his job.

He continues to have pain in his neck with radiation into his right shoulder with radiation into his right arm; He reports some right sided chest pain as well. He is s/p trigger point injections to the thoracic spine which did not help. He also had a shoulder injection which did not help his symptoms. He has had an x-ray of his spine. He has done 6 weeks of PT at Mary Black. He has had an MRI of the L-Spine. He denies any arm weakness

Review of Systems (MATTHEW TERZELLA, MD; 06/18/2013 01:12 PM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood In Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Tuesday, August 13, 2013

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10): L5-S1 disc herniation and stenosis, L5 transitional S1, and lateral recess stenosis at L4-L5 as well. L5-S1 radiculopathy for a while.

CERVICALGIA (723.1)

DDD (DEGENERATIVE DISC DISEASE), CERVICAL (722.4)

CERVICAL RADICULAR PAIN (723.4)

MYOFASCIAL PAIN (729.1)

PAIN IN THORACIC SPINE (724.1)

LUMBAR RADICULOPATHY (724.4)

SHOULDER IMPINGEMENT (726.2)

LUMBAR STENOSIS WITH NEUROGENIC CLAUDICATION (724.03)

Other Problems

Drug Dependence: 02/25/2013: no

No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Tobacco use: 02/25/2013: Never smoker

Current work status: 02/25/2013: unable to work

Marital status: 02/25/2013: married

Race: 02/25/2013: other

Alcohol use: 02/25/2013: none

Illicit drug use: 02/25/2013: no

Who is your referring physician?: Erica Savage-Jeter, MD MB

Who is your primary care physician?: Erica Savage-Jeter, MD MB

Ethnicity: 02/25/2013: Hispanic/Latino

What is your ability to enjoy life?: 02/25/2013: poor

Highest Education Level Attained: 02/25/2013: high school

Medications

No Current Medications.

Family

No pertinent family history::

Physical Exam (MATTHEW TERZELLA, MD; 06/18/2013 01:29 PM)

The physical exam findings are as follows:

Musculoskeletal

X-RAY/IMAGING: Note: X-Ray of L-spine reviewed: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact. MRI from Mary Black 1/23/13 reviewed. L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. This is at L5 transitional S1 (2nd most distal segment).

LUMBAR: ROM limited on flexion - hands to shins with some pain; ROM limited on extension to 10 degrees with some mild pain. ROM limited on lateral side bending. Mild pain elicited in all planes of motion including with posterior quadrant loading.

Tender to palpation in left lumbar paraspinals from L3-S1; No significant bony tenderness noted. No sacral tenderness noted. Straight leg raise positive for low back/leg pain in the seated and supine positions on the left. SLR negative on the right. **LEFT LIMB:** TTP in both medial and lateral hamstring tendons proximal to the insertion at the knee. **CERVICAL:** Full ROM in all planes with only mild discomfort/pain. Pain elicited in bilateral neck musculature with flexion, mild. Mildly tender to palpation along paraspinals. No spinous process tenderness. Tender to palpation over the pillars bilaterally. Spurling's maneuver negative for arm symptoms bilaterally but it did elicit some neck pain. **THORACIC:** Upper thoracic spine with tenderness in the periscapular muscles on the right lateral to the thoracic spine at T2, T3, T4. **SHOULDER:** + Neers, + Hawkins on the right, mild. TTP over the AC joint. Some pain on Empty Can with some weakness on the right. **HIP:** Patrick/FABER negative bilaterally. ROM on external rotation mildly limited bilaterally. Tender to palpation in the left gluteal musculature. No tenderness over the SI joint bilaterally. No tenderness over the greater trochanter bilaterally. **GAIT:** normal gait; no lateralizing gait pattern noted. Motor - 5/5 in key muscle groups in the bilateral upper and lower extremities, appropriate for age. **DTRs:** 2/4 in the biceps, triceps, brachioradialis bilaterally; 2/4 in the bilateral knees and Achilles.

Sensation grossly intact to light touch in the bilateral upper extremities and bilateral lower extremities with the exception of the left lateral lower leg. Babinski downgoing bilaterally. No clonus at the ankles. Hoffman's negative.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (35 years)

Tuesday, August 13, 2013

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LUMBAR RADICULOPATHY (724.4)

Current Plans:

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

Current Plans:

PAIN IN THORACIC SPINE (724.1)

Current Plans:

- Referral to Physical Therapy
- Instructed to keep follow-up appointment as scheduled

PLAN: The above diagnoses and their prognoses and treatment options were discussed with the patient. The low back pain and radiculopathy are from the disc herniation at L5-S1 (2nd most distal segment). This did not have any significant relief with an epidural with the exception 3-4 days. He also has some shoulder impingement with upper thoracic pain; this did not respond to a SA injection, making neck or thoracic etiology more likely. He did not have any appreciable response to trigger point injections either and does report some what may be thoracic radicular pain. It is reasonable that these issues have been exacerbated given the physical nature of his job. After this discussion the following treatment plan was agreed upon:

** Medications: No new medications. Patient may continue NSAIDs as needed. Must be off 5 days prior to the procedure.*

** Therapy: Continue home exercise program as tolerated. Handout given for apparent hamstring tendinopathy.*

** Injections: Defer at this time. Referral back to ortho spine, Dr. Rodriguez for his lumbar spine issues to explore surgical options.*

Consider further cervical workup, C7-T1 ESI in the future if arm pain persists. However, it seems his thoracic spine is more troublesome.

** Imaging: X-rays and MRI reviewed as above. Recommend T-Spine MRI to evaluate for cause of his persistent pain. Consider C-Spine MRI in the future as well.*

** Electrodiagnostics: Defer at this time.*

** Counseling: The importance of weight control was discussed with the patient.*

** Follow-up: after the T-Spine MRI. Discussed loss of bladder and bowel control as emergent as Dr. Rodriguez had discussed previously.*

Electronically signed by MATTHEW TERZELLA, MD



Orthopedic Specialties, LLC

980 44-56

H: _____

W: _____

BP: _____

P: _____

NAME: Jose J. Jimenez

DATE: 06/18/13

Describe any symptom changes since your last visit:

The symptom is getting worse

If you have had an injection since your last visit, how would you rate your satisfaction (circle one)?

- ☒ 1. Not at all satisfied
- ☐ 2. Not very satisfied
- ☐ 3. Neither satisfied nor dissatisfied
- ☐ 4. Mostly satisfied
- ☐ 5. Very satisfied

What makes your symptoms: walk, stand, sit, sleep
Worse: anything

Better: _____

Since your last visit are you:

Better by _____ %
Worse by 5 %
Same

Are you in Physical Therapy? ☒ No ☐ Yes
If yes, date of last visit: _____

Are you doing a home exercise program? ☒ No ☐ Yes
If yes, how often? _____

Circle the number that best describes your current pain with "10" being the most severe.

NECK/ARM: 0 1 2 3 4 5 6 7 8 9 10
BACK/LEG: 0 1 2 3 4 5 6 7 8 9 10

How long/far can you

Sit 1 hrs Stand 30 min Walk 1 hrs

If you are taking medications, please list (include dosage):

Tylenol 325mg
adul

PAIN DIAGRAM

Please mark the areas on the diagram using the appropriate symbols. These symbols describe what you feel.

Numness: 000 Pins & Needles: Burning: XXX Stabbing/Sharp: !!! Aching: ----

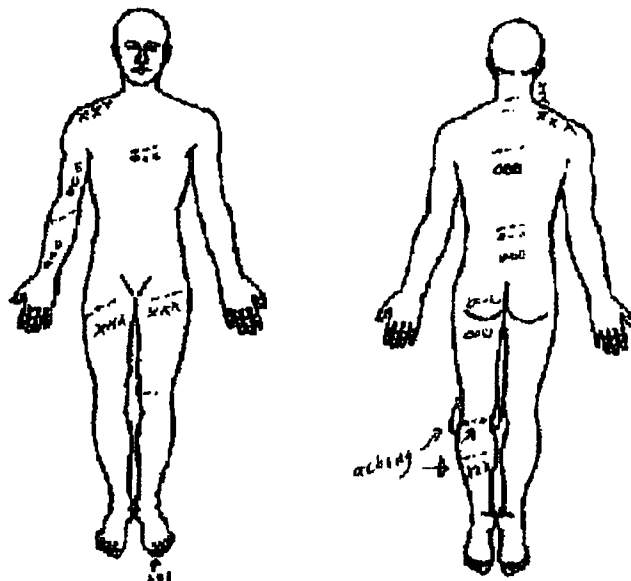
Have you had any medical testing since your last visit?
☒ No ☐ Yes (Please list)

Have you seen any other physicians since your last visit?
☒ No ☐ Yes

(If yes, who and for what reason?)

Are you currently working? ☒ No ☐ Yes

Any work restrictions? _____



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Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
05/14/2013 04:56 PM

Patient #: 98044
DOB: 08/05/1978
Gender: Male
REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male who presents with a complaint of low back and leg pain.

History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

PAIN IN THORACIC SPINE (724.1)
DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)
LUMBAR RADICULOPATHY (724.4)
SHOULDER IMPINGEMENT (726.2)
MYOFASCIAL PAIN (729.1)

Other Problems

Drug Dependence: 02/25/2013: no
No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Ethnicity: 02/25/2013: Hispanic/Latino
Current work status: 02/25/2013: unable to work
Alcohol use: 02/25/2013: none
Illicit drug use: 02/25/2013: no
Marital status: 02/25/2013: married
Race: 02/25/2013: other
Tobacco use: 02/25/2013: Never smoker
Who is your referring physician?: Erica Savage-Jeter, MD MB
Highest Education Level Attained: 02/25/2013: high school
What is your ability to enjoy life?: 02/25/2013: poor
Who is your primary care physician?: Erica Savage-Jeter, MD MB

Medications

No Current Medications.

Family

No pertinent family history::

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Tuesday, June 18, 2013

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LUMBAR RADICULOPATHY (724.4)

Current Plans:

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

Current Plans:

• PROCEDURE NOTE

PREOPERATIVE DIAGNOSES:

- 1) Lumbar HNP.
- 2) Lumbar radiculopathy.

POSTOPERATIVE DIAGNOSES: Same.

TOTAL FLUOROSCOPIC EXPOSURE TIME: 1 m 6 s

PROCEDURES PERFORMED:

- 1) Left L5-S1 transforaminal epidural injection.

PROCEDURE: The patient was brought into the fluoroscopy room and placed in a prone position. The patient was sterilely prepped and draped in the usual routine fashion. The patient's blood pressure and pulse were monitored by the physician and the medical assistant.

Left L5-S1: Using fluoroscopy, the lumbar vertebral bodies were counted from T12 and identified. A left oblique view was used to maximally visualize the foramen. The superficial tissue overlying this was marked and anesthetized with 1-2 cc of 1% preservative-free lidocaine. A 22-gauge 5 inch spinal needle was then passed through the previously anesthetized tissue and advanced under fluoroscopic guidance towards the superior aspect of the foramen. AP and lateral views were then used to guide the needle within the foramen until it was under the pedicle at approximately 6 o'clock. After checking for negative withdrawal of blood or CSF through the needle, proper placement was verified using approximately 0.5 mL of contrast injected under the live fluoroscopy producing an epidurogram/epineurogram. No vascular flow was seen. A spot film was taken. This was done in both AP and lateral views, individually. A test dose of 1 cc of preservative free 1% lidocaine was injected. A period of 90 seconds was waited and no adverse reactions were noted. No numbness was noted in the leg. A solution containing 0.8 cc of Dexamethasone (10 mg/mL) was slowly administered through high-caliber short-length extension tubing.

The patient tolerated the procedure well. There were no complications. Vital signs remained stable prior to, during and after the procedure. The patient was taken to the recovery room in good condition.

Electronically signed by MATTHEW TERZELLA, MD

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Tuesday, June 18, 2013

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Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
04/23/2013 07:59 AM

Patient #: 98044
DOB: 08/05/1978
Gender: Male
REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male who presents with a complaint of Low Back Pain. Mr. Jimenez is here in consultation for evaluation of low back and leg pain at the request of Marco Rodriguez, MD. He also has low back pain for some time. He states that he has low back pain 7/10 in severity; it is in the posterior leg, posterolateral leg into the ankle; he has numbness and tingling associated with it. The pain is worse with lifting, prolonged sitting and sometimes with walking; he also has a prior coccyx injury which hurts him; he will have numbness in his buttock. He states he has some urinary urgency and bowel urgency; He does have some left leg weakness at times. He notes it feels weaker with exertion.

He also has neck pain with radiation into his right shoulder blade; it is sensitive to the touch and this will cause him to have some pain radiate to the right shoulder blade. He has done 6 weeks of PT without relief. He states that his upper back has been bothering him more than his lower back. he has radiation of the pain, numbness and tingling into his lateral upper arm and lateral forearm into his fingers. he states it will lock up if he drives for any significant period of time. His pain is 7/10 in severity.

He is not taking any pain medications at this time.

Review of Systems (MATTHEW TERZELLA, MD; 04/23/2013 08:07 AM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Tuesday, June 18, 2013

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

PAIN IN THORACIC SPINE (724.1)
DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)
LUMBAR RADICULOPATHY (724.4)
SHOULDER IMPINGEMENT (726.2)
MYOFASCIAL PAIN (729.1)

Other Problems

Drug Dependence: 02/25/2013: no
No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Ethnicity: 02/25/2013: Hispanic/Latino
Current work status: 02/25/2013: unable to work
Alcohol use: 02/25/2013: none
Illicit drug use: 02/25/2013: no
Marital status: 02/25/2013: married
Race: 02/25/2013: other
Tobacco use: 02/25/2013: Never smoker
Who is your referring physician?: Erica Savage-Jeter, MD MB
Highest Education Level Attained: 02/25/2013: high school
What is your ability to enjoy life?: 02/25/2013: poor
Who is your primary care physician?: Erica Savage-Jeter, MD MB

Medications

No Current Medications.

Family

No pertinent family history;

Physical Exam (MATTHEW TERZELLA, MD; 04/23/2013 08:42 AM)

The physical exam findings are as follows:

Musculoskeletal

X-RAY/IMAGING: Note: X-Ray of L-spine reviewed: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact. MRI from Mary Black 1/23/13 reviewed. L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. This is at L5 transitional S1 (2 nd most distal segment).

LUMBAR: ROM limited on flexion - hands to shins with some pain; ROM limited on extension to 10 degrees with some mild pain. ROM limited on lateral side bending. Mild pain elicited in all planes of motion including with posterior quadrant loading. Tender to palpation in left lumbar paraspinals from L3-S1; No significant bony tenderness noted. No sacral tenderness noted. Straight leg raise positive for low back pain in the seated and supine positions on the left. SLR negative on the right. **CRVICAL:** Full ROM in all planes with only mild pain. Pain elicited in bilateral neck musculature with flexion, mild. Mildly Tender to palpation along paraspinals. No spinous process tenderness. Tender to palpation over the pillars bilaterally. Spurling's maneuver negative for arm symptoms bilaterally but it did elicit neck pain. **THORACIC:** Upper thoracic spine with tenderness in the periscapular muscles on the right lateral to the thoracic spine at T2-T3. **SHOULDER:** + Neers, + Hawkins on the right. TTP over the AC joint. Some pain on Empty Can with some weakness on the right. **HIP:** Patrick/FABER negative bilaterally. ROM on external rotation mildly limited bilaterally. Tender to palpation in the left gluteal musculature. No tenderness over the SI joint bilaterally. No tenderness over the greater trochanter bilaterally. **GAIT:** normal gait; no lateralizing gait pattern noted. Motor - 5/5 in key muscle groups in the bilateral upper and lower extremities, appropriate for age. DTRs: 2/4 in the biceps, triceps, brachioradialis bilaterally; 2/4 in the bilateral knees and Achilles. Sensation grossly intact to light touch in the bilateral upper extremities and bilateral lower extremities with the exception of the left lateral lower leg. Babinski downgoing bilaterally. No clonus at the ankles. Hoffman's negative.

Assessment & Plan (MATTHEW TERZELLA, MD; 04/23/2013 12:58 PM)

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

Current Plans:

LUMBAR RADICULOPATHY (724.4)

Current Plans:

MYOFASCIAL PAIN (729.1)

Current Plans:

- PROCEDURE NOTE:

PROCEDURE: Administered injection of trigger point(s), one or two muscle group(s)

MUSCLES INJECTED: thoracic paraspinal

PROCEDURE: TRIGGER POINT INJECTION

DESCRIPTION OF PROCEDURE: After obtaining verbal and written consent the above noted regions were palpated and 2 taut bands of muscle associated with significant tenderness were superficially marked for location. These areas were sterilely prepped with alcohol. The superficial tissue overlying each point was individually anesthetized with ethyl chloride spray. A 27 gauge needle was then passed through the previously-anesthetized tissue. After checking for negative withdrawal of blood at each point, a solution containing 0.25 mL Celestone (6 mg/mL) and 1 mL of 1% lidocaine was slowly injected in a fan-like distribution, divided into each area. The needle was then removed. A sterile bandage was applied to the injection site(s).

There were no complications. The patient tolerated the procedure well. Post-injection instructions were given. The patient was discharged in good condition.

SHOULDER IMPINGEMENT (726.2)

Current Plans:

- INJECTION OF TRIGGER POINTS: INJ TRIGGER POINT 1/2 MUSCL (20552) Routine
- INJECTION, STEROID, SUBACROMIAL BURSA (20610) Routine
- UNCLASSIFIED DRUGS (Special coverage instructions apply. See MCM: 2049) (J3490) Routine
- INJECTION, BETAMETHASONE ACETATE 3MG AND BETAMETHASONE SODIUM PHOSPHATE 3MG (Special coverage instructions apply. See MCM: 2049) (J0702) Routine
- LT L5/S1 TF ESI
- T- Discharge Instructions

PLAN: The above diagnoses and their prognoses and treatment options were discussed with the patient. The low back pain and radiculopathy are from the disc herniation at L5-S1 (2nd most distal segment). He also has some shoulder impingement with upper thoracic pain; his arm symptoms may be coming from the neck as well but we will inject the shoulder as well as a trigger point in the office today. It is reasonable that these issues have been exacerbated given his job. After this discussion the following treatment plan was agreed upon:

- * Medications: No new medications. Patient may continue NSAIDs as needed. Must be off 5 days prior to the procedure.
- * Therapy: Continue home exercise program as tolerated.
- * Injections: Recommend left L5-S1 (2nd most distal segment) TF ESI. The procedure and its benefits and risks were discussed including but not limited to pain, pain at the injection site, bleeding, infection, stroke, paralysis, and death. After our discussion, the patient wishes to proceed with the injection. In my opinion, the patient is medically stable to have the procedure done at the office. Trigger point and shoulder injection done today.
- Consider C7-T1 ESI in the future if arm pain persists.
- * Imaging: X-rays and MRI reviewed as above. Consider T-Spine, C-Spine MRI in the future if no improvement.
- * Electrodiagnostics: Defer at this time.
- * Counseling: The importance of weight control was discussed with the patient.
- * Follow-up: 2 weeks after the procedure. Discussed loss of bladder and bowel control as emergent as Dr. Rodriguez had discussed previously.

PROCEDURE NOTE: Patient would like to proceed with a steroid injection. I have gone over the risks and potential

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Tuesday, June 18, 2013

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complications along with the expected outcomes. The right shoulder is prepped with betadine and injected with 3 cc of 1% Lidocaine and 1 cc of Celestone 40 mg under sterile conditions into the subacromial space. The injection site was then wiped clean and dressed with a band-aid with no complications or adverse reactions observed.

Electronically signed by MATTHEW TERZELLA, MD

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Tuesday, June 18, 2013

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Scan documents for patient JOSE J JIMENEZ

Patient: JOSE J JIMENEZ
Patient DOB: 08/05/1978
Document Title: PATIENT HISTORY SHEET
Document Type: PATIENT HISTORY SHEET
Document Date: 4/23/2013

Number of Pages: 1

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Orthopedic Specialties of Spartanburg

303 E. Wood Street, Spartanburg, S.C. 29303, Phone: 864-208-8800, Fax: 864-208-8857

Mark D. Visk, M.D. LLC, John E. Keith Jr., M.D. LLC, Anthony A. Sanchez, M.D., LLC, Stephen M. Kana, M.D. LLC
Thomas A. Leong, M.D. LLC, Marco A. Rodriguez, M.D. LLC, Matthew Terzella, M.D.
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Ronald M. Kmiecik, PA-C, Elizabeth A. Spring, PA-C

JOSE J JIMENEZ
02/25/2013 09:57 AM

Patient #: 98044
DOB: 08/05/1978
Gender: Male
REFERRING PHYSICIAN: SAVAGE-JETER MD, ERICA

History of Present Illness

The patient is a 34 year old male who presents with a complaint of low back and left leg pain. The patient is seen today at the request of Dr. Savage-Jeter.

This pain has been going on a year. He has numbness, tingling and weakness in the left leg. He states really the whole leg. It is hard for him to tell distribution. He also has low back pain. He cannot remember a distinct injury at work, but believes it happened with lifting continuously. He started to realize he could not do what he used to be able to do for 12 years. He has had no injections or surgeries. He does have pain starting in the right leg. He has a knot behind the right knee. He did physical therapy at Mary Black. It did relax his muscles. He feels like it made him worse. No injections or surgeries. The pain is worse all the time. Nothing makes it better. He has a 9-month-old and it is hard for him to hold his child. He has pain in the neck and radiating into the right shoulder blade. Nothing further down the arm, mainly just in the shoulder. Dr. Savage-Jeter did an x-ray of his shoulder, did see abnormalities but feels like it is coming from the neck. He occasionally gets numbness in the arm if he holds the arm up for any length of time. It bothers him when he is driving more than 10 minutes.

I have reviewed the following: Allergies, Problem List, Social History, Family History, Medications and Review of Systems.

Vitals (Jennifer Smith, 02/25/2013 10:40 AM)

02/25/2013 10:40 AM

Weight: 208 lb **Height:** 69 in

Body Surface Area: 2.14 m² **Body Mass Index:** 30.72 kg/m²

BP: 135/87 Electronic (Sitting, Left Arm, Standard)

Review of Systems (Jacy Crocker, 02/25/2013 09:57 AM)

General: Present- Fever. Not Present- Weight Loss and Weight Gain.

Skin: Not Present- Rash, Ulcer and Psoriasis.

HEENT: Present- Impaired Vision and Hoarseness. Not Present- Blurred Vision, Double Vision, Hearing Loss and Trouble Swallowing.

Respiratory: Not Present- Chronic Cough.

Breast: Not Present- Breast Mass.

Cardiovascular: Not Present- Chest Pain, Palpitations and Shortness of Breath.

Gastrointestinal: Present- Reflux and Bloody Stool. Not Present- Vomiting, Nausea, Loss of Appetite and Stomach Pain with Anti-Inflammatories.

Male Genitourinary: Present- Excessive Urination. Not Present- Painful Urination, Blood in Urine and Kidney Problems.

Musculoskeletal: Present- Muscle Weakness. Not Present- Fibromyalgia.

Neurological: Present- Headaches, Sleep Disorder and Dizziness.

Psychiatric: Present- Anxiety, Depression and Bipolar.

Endocrine: Not Present- Cold Intolerance, Heat Intolerance and Excessive Thirst.

Hematology: Not Present- Anemia, Abnormal Bleeding, Easy Bruising and Prior Blood Transfusion.

JOSE J JIMENEZ

Patient #: 98044

DOB: 08/05/1978 (34 years)

Tuesday, June 18, 2013

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History

Allergy

No Known Drug Allergies (02/25/2013)

Problem List/Past Medical

PAIN IN THORACIC SPINE (724.1)
DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)
LUMBAR RADICULOPATHY (724.4)
SHOULDER IMPINGEMENT (726.2)
MYOFASCIAL PAIN (729.1)

Other Problems

Drug Dependence: 02/25/2013: no
No pertinent past medical history

Past Surgical

No pertinent past surgical history:

Social

Ethnicity: 02/25/2013: Hispanic/Latino
Current work status: 02/25/2013: unable to work
Alcohol use: 02/25/2013: none
Illicit drug use: 02/25/2013: no
Marital status: 02/25/2013: married
Race: 02/25/2013: other
Tobacco use: 02/25/2013: Never smoker
Who is your referring physician?: Erica Savage-Jeter, MD MB
Highest Education Level Attained: 02/25/2013: high school
What is your ability to enjoy life?: 02/25/2013: poor
Who is your primary care physician?: Erica Savage-Jeter, MD MB

Medications

No Current Medications.

Family

No pertinent family history::

Physical Exam (CASEY JUDY PAC; 02/27/2013 07:12 AM)

The physical exam findings are as follows:

General

Mental Status - Alert. **General Appearance** - Not in acute distress. **Orientation** - Oriented X3. **Build & Nutrition** - Well nourished and Well developed.

Breathing is regular rate, unlabored. Abdomen is nondistended. Pulses regular rate and rhythm.

Musculoskeletal

Strength is 5/5 in the quadriceps, hamstrings, hip flexors, tib/ant, gastroc soleus and EHL bilaterally. 2+ distal pulses bilateral lower extremities. No clonus bilateral lower extremities. 2+ knee reflexes. 1+ ankle reflexes bilateral lower extremities. Calves soft, nontender. Positive straight leg raise on the left for pain down the leg. Straight leg raise on the right is positive, left is worse than right. Tenderness to palpation throughout the lumbar spine and paraspinal muscles, also left greater than right buttocks. No change in pain with flexion forward. He can flex forward hands to knees. The pain is worse with extension and extension with rotation to the left and right. Strength is 5/5 in the deltoid, biceps, triceps, wrist extensors and flexors, grip strength bilaterally. 2+ radial pulses. Negative Phalen's. Negative Hoffman's. Absent left biceps reflex. 2+ triceps and brachioradialis reflex on the left. 2+ biceps, triceps and brachioradialis reflex on the right. Sensation intact bilateral upper extremities. Spurling's maneuver does not increase his pain, just the pain in the neck. The pain is worse with extension than flexion forward. He can flex forward two fingerbreadths above the chest. IMAGING: Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment it looks like. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact.

Assessment & Plan (MARCO A RODRIGUEZ MD: 02/27/2013 07:13 AM)

DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC (722.10)

Today's Impression: L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. L5 transitional S1 of the second most distal disc where the problems are. This is all from his MRI scan at Mary Black 01/23/2013.

Current Plans:

- X-RAY EXAM OF LOWER SPINE (72100) Routine (AP,FLEX,EXT JGP)

Three views of the lumbar spine, AP and lateral flexion/extension, shows no obvious instability or fractures. SI joint intact. He does have a transitional lumbar segment it looks like. Severe loss of disc height at L5 transitional S1. No other fractures or loss of disc height. SI joint intact.

Findings

- Referred to TERZELLA MD, MATTHEW, (Undefined)
- Given the fact he has gone through physical therapy and medications and has been dealing with these symptoms for a year now, I think it would be worth trying an epidural steroid injection at the L5 transitional S1 level (the only open disc on the plain x-rays shot today in clinic). If the injections are not successful, we may consider laminectomy and discectomy at L5-S1. As far as causality, given the fact he does not have a specific injury causing these symptoms, it is more difficult to make this relationship. However, regular heavy lifting could have caused the herniated disc superimposed on his baseline stenosis. We will see him back if conservative measures fail. The problems in his right shoulder are related to his work as well. He has a lot of periscapular pain related to the shoulder pain, stiffness and popping in the shoulder. I told him he may need a MRI scan to help better assess that. However, he is paying all this out of pocket, so we will hold off on that for now. I am going to have Dr. Terzella see him and see if we can try an L5 transitional S1 epidural steroid injection and then maybe shoulder injection. He is still working this all out with his employer. Given the type of work he does, this could be associated with it. He also has had a coccyx injury with a fall at work a few years ago that could have got things going. The other issue is if he develops loss of bowel or bladder function, I told him this is emergent and he needs to be seen immediately or get to the emergency room as things could be permanent if it is not fixed within 48 hours. He already has some urgency with both bowel and bladder. If this continues to worsen, we may need to consider surgical intervention. The patient was advised there is no need for bed rest at this time.

cc: Erica Savage-Jeter, M.D.

Electronically signed by MARCO A RODRIGUEZ MD,

Scan documents for patient JOSE J JIMENEZ

Patient: JOSE J JIMENEZ
Patient DOB: 08/05/1978
Document Title: PATIENT HISTORY SHEET
Document Type: PATIENT HISTORY SHEET
Document Date: 2/25/2013

Number of Pages: 7

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FF neck ext. work. spinal neu

98044-14

DATE 01/04/13

PATIENT NAME Jose J. Jimenez

Mark on the areas on your body where you feel the described sensations. Use the symbols list below.
Mark the areas of radiating pain or numbness as well. Include all affected areas.

Numbness
ooo

Tingling
|||

Burning
xxx

Stabbing/Sharp
///

Aching
aaa

Cramping
ooo

@ shoulder.

dring 10.
min.

- numb/ting.

worse: all time

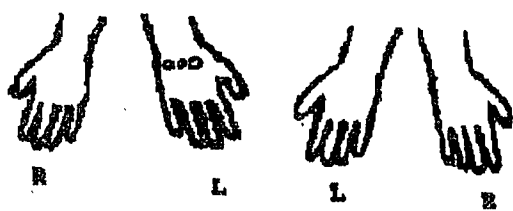
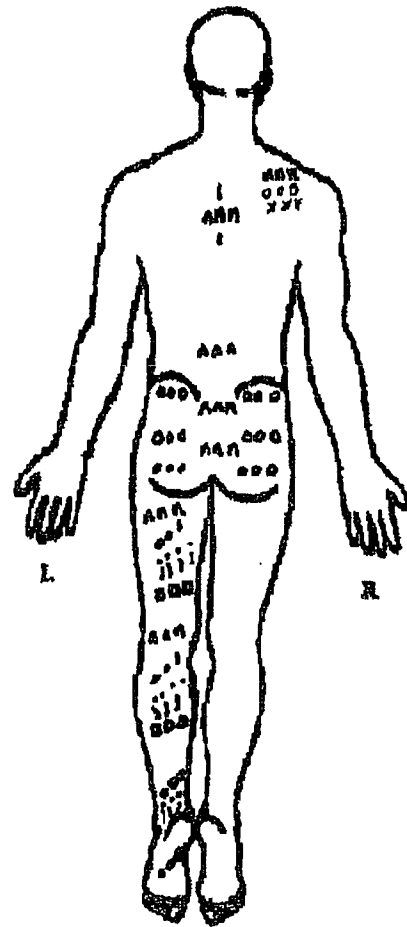
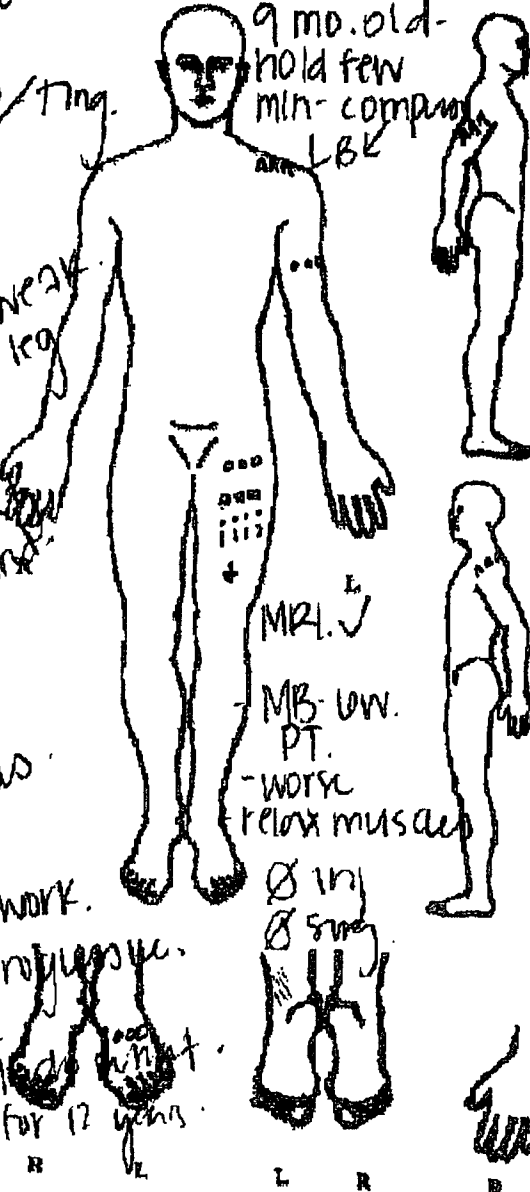
9 mo. old -
hold few
min - comp
LBR

② N/T weak
whole leg
1 year.

③ just stand
knee behind
knee.

LB = leg
Left buttocks.

- Injury at work.
lifting / propping up.
complian.
couldn't do that.
he did for 12 years.



CRSP 1012
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PATIENT HISTORY

Patient Name Jose J. Jimenez Date of Birth 08/05/78 Age 34
 Sex: Male ☒ Female ☐ Weight 208 lbs Weight One Year Ago 215 lbs Height 5.9
 Which hand do you write with: ☐ Left ☒ Right ☐ Both Which hand do you throw with: ☐ Left ☒ Right ☐ Both
 Occupation: employed Who referred you to our practice: ☒ Physician ☐ Attorney ☐ Self Referral ☐ Other
 Referring Name: Family medical center Address: 1300 D-Haven Skyline Drive
 Who is your primary care physician: Dr. Savage Gater Ericka
 Reason for Visit: I do not

ACCIDENT DETAILS

Was this an accident: Yes ☒ No ☐ Date of Accident I do not (almost 2 year) Something the getting worse
 Skip to Non-Accident Details below.
 Type of Accident: Work ☒ Employer KONKER
 If Auto, were seat belts worn? ☐ Yes ☐ No Were you the driver? ☐ Passenger? ☐ Home ☐ Auto ☐
 Sport - School Name _____ Which Sport _____ Other _____
 How did accident happen: _____
 Where did accident happen: at work
 Do you have an attorney: Yes ☒ No ☐ If yes, Attorney Name Alton martin (martin and martin, pa)

NON ACCIDENT DETAILS

How/When/Why did problem start: _____
 Was on set: Gradual ☐ Sudden ☐ Is Problem: Constant ☐ Intermittent ☐
 Have you been treated for the same / similar problem? Yes ☒ By whom Dr. Savage Gater No ☐
 Were you seen in the ER or Urgent Care? Yes ☐ Where _____ No ☒
 Have you had X-rays for this problem? Yes ☐ Where _____ When _____ No ☒
 Have you had an MRI for this problem? Yes ☒ Where mary black Hospital When 01/23/13 No ☐
 Are you out of work due to this problem: Yes ☒ Last Date Worked 01/31/13 No ☐
 What medications have you taken or been prescribed specifically for this problem: NONE
 What treatments have you received in the past 6 to 12 months and did they make you feel better / worse or no change:

History of Present Illness:

	1-6mth	7-12mth		1-6mth	7-12mth	Better	Worse	Same
X-Rays	☐	☐	Injections	☐	☐	☐	☐	☐
MRI	☒	☐	Therapy	☒	☐	☐	☒	☐
CT Scan	☐	☐	Cane/Crutch	☐	☐	☐	☐	☐
Bone Scan	☐	☐	TENS	☐	☐	☐	☐	☐
EMG/NCV	☐	☐	Traction	☐	☐	☐	☐	☐
Myelogram	☐	☐	Manipulation	☐	☐	☐	☐	☐
Discogram	☐	☐	Epidurals	☐	☐	☐	☐	☐
			Psychological	☐	☐	☐	☐	☐
			Consultation	☐	☐	☐	☐	☐

OREP 1012
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Weight _____ lbs. ☐ Stated ☐ Electronic Height _____ feet _____ inches ☐ Stated ☐ Electronic

Temperature: _____ Pulse: _____ ☐ Regular ☐ Irregular ☐ Electronically Acquired

Respiration: ☐ Unlabored ☐ Other _____

Blood Pressure: _____ Systolic _____ Diastolic Patient Position: ☐ Sitting ☐ Standing ☐ Supine Arm: ☐ Left ☐ Right

On a scale of 0-10 (10 is the worst) how severe is your pain (circle one): 0 1 2 3 4 5 6 7 8 9 10

Smoking Cessation Pamphlet Given: ☐ Yes ☐ No

Additional Information:

Patient History and Vitals reviewed by M.D. _____ Date _____

CRSP 1012
Page 5 of 5

History of Present Illness continued:

Did your pain/injury result from: ☒ Lifting ☐ Twisting ☒ Falling ☒ Bending ☒ Pulling ☒ Reaching

Do you have: Numbness ☒ Tingling ☒ Weakness ☒ Swelling ☐ Bruising ☐ Loss of Bladder Control ☐

How does the following affect your symptoms:

	Better	Worse	Same		Better	Worse	Same
Walking	☐	☒	☐	Lifting	☐	☒	☐
Standing	☐	☒	☐	Exercise	☐	☒	☐
Sitting	☐	☒	☐	Twisting	☐	☒	☐
Kneeling	☐	☐	☐	Bending	☐	☒	☐
Lying in Bed	☐	☒	☐	Stairs	☐	☒	☐
Sneezing	☐	☒	☐	Rising from Sitting	☐	☐	☒
Coughing	☐	☒	☐	Other _____	☐	☐	☐

Which makes your pain better: ☐ Rest ☐ Heat ☐ Ice ☐ Elevation ☐ Massage ☐ Other _____

Is your pain worse at night: ☐ Yes ☒ No Does pain awaken you from sleep: ☒ Yes ☐ No

Do your legs tire / hurt if you walk too far: ☒ Yes ☐ No

If yes, how far can you walk: ☐ less than one block ☐ 1-3 blocks ☒ more than 3 blocks

Is the pain relieved by: resting your legs ☐ Yes ☒ No Bending forward: ☐ Yes ☒ No

How long can you sit? 20 minutes Stand? 25 minutes

Since your problem started has it gotten: Better ☐ Worse ☒ Same ☐

If your pain has changed, what percentage? (circle one) 10 20 30 40 50 60 70 80 90 100%

IF YOU ARE BEING SEEN FOR BACK OR NECK PAIN PLEASE FILL OUT THE FOLLOWING SECTION

How bad is your pain? Place an "X" (---X---) on each of the lines below to indicate your pain.

How bad is your low back pain?

No Pain _____ Worst Possible _____

How bad is your leg pain?

No Pain _____ Worst Possible _____

How bad is your middle back pain?

No Pain _____ Worst Possible _____

How bad is your neck pain?

No Pain _____ Worst Possible _____

How bad is your arm pain?

No Pain _____ Worst Possible _____

Print in Color or Grayscale Only
Using Adobe Acrobat Reader 8.0 or later

Patient History

Please answer every question

STAFF: Handwritten responses
must be entered **MANUALLY**

Marking Instructions

Please use a #2 pencil
Fill in the complete oval as shown...

PLEASE PRINT PATIENT'S LAST NAME

JIMENEZ

PLEASE PRINT PATIENT'S FIRST NAME

JOSE

PATIENT'S DATE OF BIRTH

08 05 1978
Month Day Year

YOUR MEDICAL HISTORY

Please indicate if **YOU** have had any of the following. Mark all that apply.

anemia
anesthesia reaction
anxiety
angina
asthma
bleeding problems
blood clots
bronchitis
cancer
colon problems
COPD
depression
diabetes
drug / alcohol abuse
frequent pneumonia
gout
heart attack
heart disease
heart murmur
hepatitis
hepatitis C
high blood pressure

high cholesterol
HIV / AIDS
kidney problems
liver problems
menopause
MRSA infection
muscular disorders
neurological disorders
osteoarthritis
osteoporosis
pulmonary embolism
respiratory disease
rheumatoid arthritis
seizures
sexual difficulty
sleep apnea
stroke
thyroid problems
tuberculosis
ulcers
varicose veins

OTHER MEDICAL ILLNESS NOT LISTED
☒ NONE

NONE

FAMILY MEDICAL HISTORY

Please indicate if **YOUR FAMILY** has had any of the following. Mark all that apply.
(ONLY include parents, grandparents, siblings, and children.)

FAMILY HISTORY UNKNOWN

anemia
anesthesia reaction
anxiety
bleeding problems
blood clots
cancer
colon problems
depression
diabetes
drug / alcohol abuse
gout
heart problems
high blood pressure
high cholesterol

HIV / AIDS
kidney problems
liver problems
lung problems
muscular disorders
neurologic disorders
osteoarthritis
osteoporosis
rheumatoid arthritis
seizures
stroke
thyroid problems
ulcers

OTHER MEDICAL ILLNESS NOT LISTED
☒ NONE

NONE

Patient History
Please answer every question

STAFF: Handwritten responses
must be entered **MANUALLY**.

SOCIAL HISTORY

Marital status:

single
married ☒
partnered

separated
divorced
widowed

Race:

Asian
African American
White

American Indian / Alaska Native
Native Hawaiian / Pacific Islander
unknown
other ☒

If you chose "other", please specify: hispanic

Ethnicity:

Hispanic / Latino ☒

Non-Hispanic / Non-Latino

unknown

Highest level of education completed:

elementary
high school ☒

vocational
college

Current work status:

full time
part time
student
seeking employment

post graduate
not working by choice
unable to work ☒
retired
disabled

If disabled, please explain why: _____

What is your smoking status?

current (every day)
current (some days)

previous
never ☒

How many packs per day do you (did you) smoke?

< 1/2

1/2

3/4

1

1 1/2

2

> 2

If you smoked previously, when did you stop smoking? (in months)

< 2

2-6

6-12

12-24

> 24

Alcohol use (drinks per day):

occasional

1

2

3

> 3

NONE ☒

Illicit drug use:

yes

no ☒

Have you ever been addicted to or dependent on drugs or pain medicine?

yes

no ☒

What is your ability to enjoy life?

excellent

very good

good

fair

poor ☒

My home setting is supportive.

yes

no

SURGICAL HISTORY

Please indicate if you have had surgery in any of the following locations.
Mark all that apply.

☒ I HAVE HAD NO SURGERIES

back
neck
shoulder
hip
knee
other

If you chose "other", please specify: _____

Review of Systems

Please answer every question

Marking Instructions

Please use a #2 pencil
Fill in the complete oval as shown...

PLEASE PRINT PATIENT'S LAST NAME

JIMENEZ

PLEASE PRINT PATIENT'S FIRST NAME

JOSE

PATIENT'S DATE OF BIRTH

08 05 1978
Month Day Year

Mark only the symptoms that you are experiencing CURRENTLY.
Mark all that apply --- If no symptoms, please mark "NONE."

General

frequent fever ☒

weight loss
weight gain

NONE

Eyes

blurred vision

double vision
impaired vision ☒

NONE

Ear, Nose, and Throat

hoarseness ☒

hearing loss
trouble swallowing

NONE

Cardiovascular

chest pain

palpitations

NONE ☒

Respiratory

shortness of breath

chronic cough

NONE ☒

Gastrointestinal

vomiting
loss of appetite
stomach pain with anti-inflammatory

reflux ☒
nausea

blood in stool ☒

NONE

Genitourinary

painful urination
excessive urination ☒

blood in urine
kidney problems
irregular periods

NONE

Breast

breast lumps

NONE ☒

Skin

rash

skin ulcer
psoriasis

NONE ☒

Neurological

headache ☒

sleep disorder ☒
dizziness ☒

NONE

Musculoskeletal

muscle weakness ☒

fibromyalgia

NONE

Psychiatric

anxiety ☒

bipolar ☒
depression ☒

NONE

Endocrine

excessive thirst

cold intolerance
heat intolerance

NONE ☒

Heme / Lymphatic

anemia
prior blood transfusion

easy bleeding
easy bruising

NONE ☒

P117

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Orthopedic Specialties, LLC

98044-54

H: _____

W: _____

BP: _____

P: _____

NAME: Jose J. Jimenez

DATE: _____

Describe any symptom changes since your last visit:

None

If you have had an injection since your last visit, how would you rate your satisfaction (circle one)?

1. Not at all satisfied
2. Not very satisfied
3. Neither satisfied nor dissatisfied
4. Mostly satisfied
5. Very satisfied

What makes your symptoms:

Worse: _____

Better: _____

Since your last visit, are you:

_____ Better by _____ %

_____ Worse by 20 %

_____ Same

Are you in Physical Therapy? ☒ No ☐ Yes
If yes, date of last visit: _____

Are you doing a home exercise program? ☒ No ☐ Yes
If yes, how often? _____

Circle the number that best describes your current pain with "0" being the most severe.

NECK/ARM: 0 1 2 3 4 5 6 7 8 9 10

BACK/LEG: 0 1 2 3 4 5 6 7 8 9 10

How long/far can you
Sit 30 min to 1 hr Stand 30 min to 1 hr Walk 30 min to 1 hr

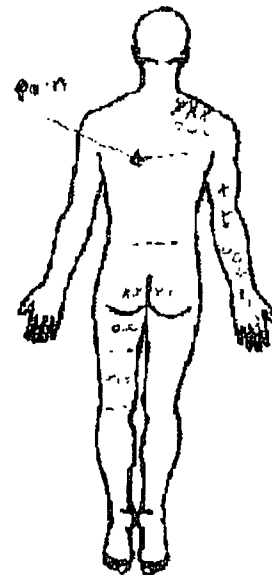
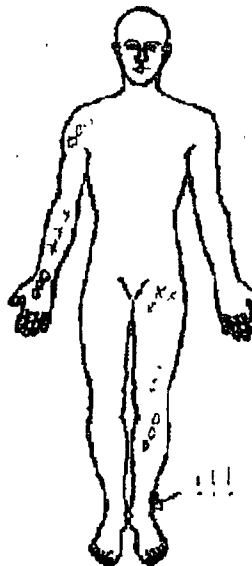
If you are taking medications, please list (include dosage):

None

PAIN DIAGRAM

Please mark the areas on the diagram using the appropriate symbols. These symbols describe what you feel.

Numbness Pins & Needles Burning Stabbing/Sharp Aching
ooo XXX IIII ----



ORSP 4014

Have you had any medical testing since your last visit?

☒ No ☐ Yes (Please list)

Have you seen any other physicians since your last visit?

☒ No ☐ Yes

(If yes, who and for what reason?)

Are you currently working? ☒ No ☐ Yes

Any work restrictions? _____

P118

PATIENT: JIMENEZ, JOSE
DOB: 08/05/1978
MRN: 921741
PHYSICIAN: MATTHEW TERZELLA, MD
EXAM DATE: 07/2 /2013

EXAM: MR-Cervical Spine Without Contrast

REASON FOR EXAM: Cervicalgia

ADDITIONAL HISTORY: 34-year-old male with neck pain for three months. No previous surgery. No known injury.

TECHNIQUE: The following sequences were obtained on a GE Signa 1.5 Tesla MRI unit: Multiple axial gradient echo, sagittal fat saturation T2 weighted, sagittal T1, axial and sagittal T2-weighted images.

FINDINGS: The study is slightly degraded due to motion artifact and grainy images. Decreased disc signal intensity is noted from the C3-4 through the C6-7 levels with very subtle anterior osteophytic lipping at the C5-6 and C6-7 levels.

A very shallow broad posterior central disc protrusion is appreciated at the C3-4 level causing impression upon the anterior thecal sac without spinal cord or nerve root compromise apparent. In addition, there is left neural foraminal encroachment due to uncovertebral joint hypertrophy without exiting nerve root compromise apparent.

Very minor bulging annuli are appreciated at the C4-5 and C5-6 levels causing very minimal impression upon the anterior thecal sac without spinal cord or nerve root compromise apparent.

There is bulging of the annulus fibrosus with or without superimposed left uncovertebral joint hypertrophy causing impression upon the anterior thecal sac and bilateral neural foraminal encroachment, slightly more on the left without spinal cord or nerve root compromise evident. The remaining levels are unremarkable without disc herniations or bulges evident. The remaining spinal canal and neural foramina are patent. The spinal cord is normal in signal intensity and morphology without focal lesions, atrophy or enlargement apparent. No compression fractures evident. No spondylolisthesis seen. The craniovertebral junction and C1-2 complex are unremarkable. No facet joint arthropathy evident. Normal bone marrow signal intensity is noted throughout. No paraspinal soft tissue pathology evident. There is loss of the lordotic curvature.

IMPRESSION:

1. Early multilevel degenerative disc disease.
2. Minor multilevel bulging annuli without spinal cord or nerve root compromise apparent.
3. Shallow broad posterior central disc protrusion and left uncovertebral joint hypertrophy at the C3-4 level without spinal cord or nerve root compromise apparent.
4. Loss of the lordotic curvature.

PATIENT: JIMENEZ, JOSE
DOB: 08/05/1978
EXAM: MR-Cervical Spine Without Contrast
EXAM DATE: 07/20/2013

5. No other abnormalities recognized.

Raul Ceballos, Jr., MD

RC/sl

DD: 07/22/2013 07:53 A

DT: 07/22/2013 08:38 A

Accession#: 08-1665022 VS#: 11444781 CS#: 406667

cc:

Electronically Signed and Reviewed by Raul Ceballos, Jr., MD 07/22/2013 08:44 A

Patient Name: Jimenez, Jose

DOB: 8 / 5 / 1978

Referring Physician: TERZELLA MD MATTHI

Study Ordered:

Spine MRI Patient History

Please list approximate weight 222

What problem are you having that caused your doctor to request this scan?

On what date did your symptoms start or injury occur (mm/dd/yyyy)? about 1 year and a half around

Did you have an injury to your back or neck? yes

Were any bones broken? ☐ Yes ☒ No

Did it happen at work? ☒ Yes ☐ No

Have you had surgery on your back or neck? ☐ Yes ☒ No

If YES, where and when?

What kind of surgery? At what level(s)? R or L

Have you had a CT, MRI scan or myelogram? ☒ Yes ☐ No

If YES, where and when? 2 weeks from now

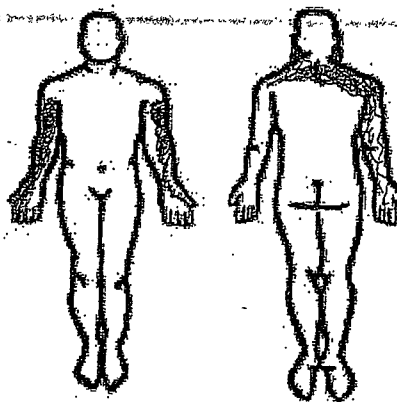
What were the results of the exam?

Are you having any pain, weakness or numbness in your back or legs? ☒ Yes ☐ No

Have you ever had cancer? ☐ Yes ☒ No

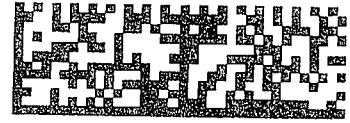
If YES, what kind?

Please shade areas of pain, weakness, and/or numbness on figures:



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* 756699w2186 Admin

Address: 130 DILLON DR, SPARTANBURG, SC, 29307-1018
Phone: (864) 216-4620
Fax: (864) 585-2488

Return to Work / School

Patient: Jimenez, Jose
DOB: 08/05/1978
Address: 520 Raleigh Ct
Spartanburg, SC 29301

Date: 02/07/2013
Patient ID: 736952

☒ Was Seen in my office on: 1/29/2013

Diagnosis: Severe Lumbar Stenosis, Degenerative changes to Thoracic spine as well.

☒ May return to work/school on: 1/30/2013

☒ Work limitations: Light Duty (see details below)

Activities involving standing or walking may need to be limited to less than 2-3 hours in an 8-12 hour work period. Work station modification to permit good posture or seated work is advised. Overhead work (spine extension), lifting greater than 20 pounds, and pushing should be avoided. Use of analgesics and other medications can affect dexterity and alertness.

Electronically Signed by: ERICA SAVAGE-JETER, MD

FMC_FAMILY MEDICAL CENTER

Jimenez, Jose (ID: 736952), DOB: 08/05/1978

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Lab Results

COMP. METABOLIC PANEL (14) 01/30/2013 (#743877, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
Specimen/Accession ID	02953661090	Specimen Source	
Specimen Coll. Date	01/29/2013 14:32	Result Status	Final
Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units		Status	Lab
GLUCOSE, SERUM	81	65-99	MG/DL		Final	01
BUN	21	6-20	MG/DL	High	Final	01
CREATININE, SERUM	0.93	0.76-1.27	MG/DL		Final	01
EGFR IF NONAFRICAN AM	107	>59	ML/MIN/1.73		Final	01
EGFR IF AFRICAN AM	123	>59	ML/MIN/1.73		Final	01
BUN/CREATININE RATIO	23	8-19		High	Final	01
SODIUM, SERUM	139	134-144	MMOL/L		Final	01
POTASSIUM, SERUM	4.1	3.5-5.2	MMOL/L		Final	01
CHLORIDE, SERUM	103	97-108	MMOL/L		Final	01
CARBON DIOXIDE, TOTAL	23	20-32	MMOL/L		Final	01
CALCIUM, SERUM	9.8	8.7-10.2	MG/DL		Final	01
PROTEIN, TOTAL, SERUM	7.6	6.0-8.5	G/DL		Final	01
ALBUMIN, SERUM	4.9	3.5-5.5	G/DL		Final	01
GLOBULIN, TOTAL	2.7	1.5-4.5	G/DL		Final	01
A/G RATIO	1.8	1.1-2.5			Final	01
BILIRUBIN, TOTAL	0.3	0.0-1.2	MG/DL		Final	01
ALKALINE PHOSPHATASE, S	112	25-150	IU/L		Final	01
AST (SGOT)	28	0-40	IU/L		Final	01
ALT (SGPT)	41	0-44	IU/L		Final	01

ESR, WESTERGREN 01/30/2013 (#743876, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
Specimen/Accession ID	02953661090	Specimen Source	
Specimen Coll. Date	01/29/2013 14:32	Result Status	Final
Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units		Status	Lab
SEDIMENTATION RATE-WESTERGREN	8	0-15	MM/HR		Final	01

ANA COMPREHENSIVE PANEL 1 01/30/2013 (#743875, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
Specimen/Accession ID	02953661090	Specimen Source	
Specimen Coll. Date	01/29/2013 14:32	Result Status	Final
Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units		Status	Lab

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

ANTI-DNA (DS) AB QN	<1	0-9	IU/ML		Final	01																																																																												
	NEGATIVE <5 EQUIVOCAL 5 - 9 POSITIVE >9																																																																																	
RNP ANTIBODIES	0.3	0.0-0.9	AI		Final	01																																																																												
SMITH ANTIBODIES	<0.2	0.0-0.9	AI		Final	01																																																																												
ANTISCLERODERMA-70 ANTIBODIES	<0.2	0.0-0.9	AI		Final	01																																																																												
SJOGREN'S ANTI-SS-A	<0.2	0.0-0.9	AI		Final	01																																																																												
SJOGREN'S ANTI-SS-B	<0.2	0.0-0.9	AI		Final	01																																																																												
ANTICHROMATIN ANTIBODIES	<0.2	0.0-0.9	AI		Final	01																																																																												
ANTI-JO-1	<0.2	0.0-0.9	AI		Final	01																																																																												
ANTI-CENTROMERE B ANTIBODIES	<0.2	0.0-0.9	AI		Final	01																																																																												
SEE BELOW:	SPRCS				Final	01																																																																												
<table><tr><th colspan="2">AUTOANTIBODY</th><th colspan="2">DISEASE ASSOCIATION</th></tr><tr><th></th><th>CONDITION</th><th colspan="2">FREQUENCY</th></tr><tr><td>ANTINUCLEAR ANTIBODY, DIRECT (ANA-D)</td><td>SLE, MIXED CONNECTIVE TISSUE DISEASES</td><td colspan="2"></td></tr><tr><td>DSDNA</td><td>SLE</td><td colspan="2">40 - 60%</td></tr><tr><td>CHROMATIN</td><td>DRUG INDUCED SLE</td><td colspan="2">90%</td></tr><tr><td></td><td>SLE</td><td colspan="2">48 - 97%</td></tr><tr><td>SSA (RO)</td><td>SLE</td><td colspan="2">25 - 35%</td></tr><tr><td></td><td>SJOGREN'S SYNDROME</td><td colspan="2">40 - 70%</td></tr><tr><td></td><td>NEONATAL LUPUS</td><td colspan="2">100%</td></tr><tr><td>SSB (LA)</td><td>SLE</td><td colspan="2">10%</td></tr><tr><td></td><td>SJOGREN'S SYNDROME</td><td colspan="2">30%</td></tr><tr><td>SM (ANTI-SMITH)</td><td>SLE</td><td colspan="2">15 - 30%</td></tr><tr><td>RNP</td><td>MIXED CONNECTIVE TISSUE DISEASE</td><td colspan="2">95%</td></tr><tr><td>(U1 NRNP, ANTI-RIBONUCLEOPROTEIN)</td><td>SLE</td><td colspan="2">30 - 50%</td></tr><tr><td></td><td>POLYMYOSITIS AND/OR DERMATOMYOSITIS</td><td colspan="2">20%</td></tr><tr><td>SCL-70 (ANTIDNA TOPOISOMERASE)</td><td>SCLERODERMA (DIFFUSE)</td><td colspan="2">20 - 35%</td></tr><tr><td></td><td>CREST</td><td colspan="2">13%</td></tr><tr><td>JO-1</td><td>POLYMYOSITIS AND/OR DERMATOMYOSITIS</td><td colspan="2">20 - 40%</td></tr><tr><td>CENTROMERE B</td><td>SCLERODERMA - CREST VARIANT</td><td colspan="2">80%</td></tr></table>							AUTOANTIBODY		DISEASE ASSOCIATION			CONDITION	FREQUENCY		ANTINUCLEAR ANTIBODY, DIRECT (ANA-D)	SLE, MIXED CONNECTIVE TISSUE DISEASES			DSDNA	SLE	40 - 60%		CHROMATIN	DRUG INDUCED SLE	90%			SLE	48 - 97%		SSA (RO)	SLE	25 - 35%			SJOGREN'S SYNDROME	40 - 70%			NEONATAL LUPUS	100%		SSB (LA)	SLE	10%			SJOGREN'S SYNDROME	30%		SM (ANTI-SMITH)	SLE	15 - 30%		RNP	MIXED CONNECTIVE TISSUE DISEASE	95%		(U1 NRNP, ANTI-RIBONUCLEOPROTEIN)	SLE	30 - 50%			POLYMYOSITIS AND/OR DERMATOMYOSITIS	20%		SCL-70 (ANTIDNA TOPOISOMERASE)	SCLERODERMA (DIFFUSE)	20 - 35%			CREST	13%		JO-1	POLYMYOSITIS AND/OR DERMATOMYOSITIS	20 - 40%		CENTROMERE B	SCLERODERMA - CREST VARIANT	80%	
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THYROID STIMULATING HORMONE (TSH) W/ REFLEX T4 FREE 01/30/2013 (#743874, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
Specimen/Accession ID	02953661090	Specimen Source	
Specimen Coll. Date	01/29/2013 14:32	Result Status	Final
Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units	Status	Lab
TSH	1.020	0.450-4.500	UIU/ML	Final	01

CBC W/DIFF 01/30/2013 (#743873, Final, 1/29/2013 2:32pm)

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
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Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units	Status	Lab
WBC	7.8	4.0-10.5	X10E3/UL	Final	01
RBC	5.11	4.14-5.80	X10E6/UL	Final	01
HEMOGLOBIN	14.0	12.6-17.7	G/DL	Final	01
HEMATOCRIT	41.7	37.5-51.0	%	Final	01
MCV	82	79-97	FL	Final	01
MCH	27.4	26.6-33.0	PG	Final	01
MCHC	33.6	31.5-35.7	G/DL	Final	01
RDW	13.9	12.3-15.4	%	Final	01
PLATELETS	340	140-415	X10E3/UL	Final	01
NEUTROPHILS	66	40-74	%	Final	01
LYMPHS	25	14-46	%	Final	01
MONOCYTES	8	4-13	%	Final	01
EOS	1	0-7	%	Final	01
BASOS	0	0-3	%	Final	01
NEUTROPHILS (ABSOLUTE)	5.2	1.8-7.8	X10E3/UL	Final	01
LYMPHS (ABSOLUTE)	2.0	0.7-4.5	X10E3/UL	Final	01
MONOCYTES (ABSOLUTE)	0.6	0.1-1.0	X10E3/UL	Final	01
EOS (ABSOLUTE)	0.0	0.0-0.4	X10E3/UL	Final	01
BASO (ABSOLUTE)	0.0	0.0-0.2	X10E3/UL	Final	01
IMMATURE GRANULOCYTES	0	0-2	%	Final	01
IMMATURE GRANS (ABS)	0.0	0.0-0.1	X10E3/UL	Final	01

CREATINE KINASE (CK), TOTAL 01/30/2013 (#743872, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
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Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units	Status	Lab
CREATINE KINASE, TOTAL, SERUM	304	24-204	U/L	High Final	01

RHEUMATOID FACTOR 01/30/2013 (#743871, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
Specimen/Accession ID	02953661090	Specimen Source	
Specimen Coll. Date	01/29/2013 14:32	Result Status	Final
Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units	Status	Lab

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

RA LATEX TURBID	10.5	0.0-13.9	IU/ML	Final	01

C-REACTIVE PROTEIN (CRP) 01/30/2013 (#743870, Final, 1/29/2013 2:32pm)

Ordering Provider	ERICA SAVAGE-JETER, MD	Performing Lab	LABCORP BURLINGTON (01) LABCORP BURLINGTON WILLIAM F HANCOCK 1447 YORK COURT BURLINGTON, NC 272153361 Account ID: 39110180
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Specimen Rec. Date	01/29/2013 21:25	Report Status	
Specimen Reported Date	01/30/2013 13:38		

Report	Result	Ref. Range	Units	Status	Lab
C-REACTIVE PROTEIN, QUANT	1.7	0.0-4.9	MG/L	Final	01

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Encounters and Procedures

Clinical Encounter Summaries

Encounter Date: 01/29/2013

Patient

Name	JIMENEZ, JOSE (34, M) ID# 736952	Appt. Date/Time	01/29/2013 02:00PM
DOB	08/05/1978	Service Dept.	FMC_FAMILY MEDICAL CENTER
Provider	ERICA SAVAGE-JETER, MD		
Insurance	Med Primary: UNITED HEALTHCARE - KOHLEK - CHOICE PLUS Insurance # : 836843258 Policy/Group # : 711809 Prescription: MHS - Member is eligible.		

Patient's Pharmacies

RITE AID-1811 EAST MAIN STREE (ERX): 1811 EAST MAIN STREET, SPARTANBURG SC 29307, Ph (864) 585-9184, Fax (864) 573-5771

Chief Complaint

follow up

discuss mri results

Problems

- Pain in joint; shoulder region (719.41)
- Degeneration of Intervertebral disc, site unspecified (722.6)
- Spinal stenosis, other than cervical; lumbar region, with neurogenic claudication (724.03)
- Backache, unspecified (724.5)

Medications

Reviewed Medications

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

Allergies

Allergies not reviewed (last reviewed 10/15/2012)

NKDA

Past Medical History

Past Medical History not reviewed (last reviewed 10/15/2012)

Surgical History

Surgical History not reviewed (last reviewed 10/15/2012)

Social History

Social History not reviewed (last reviewed 10/15/2012)

Smoking Status: Never smoker.

Vitals

Ht: 5 ft 9 in	Wt: 214 lbs	BMI: 31.6
BP: 128/80 sitting L arm	T: 98.5 F°	Pulse: 91 bpm
O2Sat: 98% Room Air		

HPI

Back Pain - Detailed

Reported by patient.

Location: pain radiating to the right leg(s)

Quality: throbbing

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Severity: **worsening**
 Duration: constant
 Context: overuse
 Alleviating Factors: noting
 Aggravating Factors: **movement/positioning; bending over; standing**
 Associated Symptoms: no fever; no numbness of the legs/feet; no incontinence; no shortness of breath; **weak limbs; tingling**
 reported prior tests or procedures denies having any previous treatment
 previous medications none

ROS**ROS as noted in the HPI****Physical Exam**

Patient is a 34-year-old male.

Constitutional: General Appearance: healthy-appearing. Level of Distress: NAD.**Psychiatric:** Insight: good judgement. Mental Status: normal mood and affect and active and alert.**Neck:** Neck: supple.**Lungs:** Respiratory effort: no dyspnea. Auscultation: breath sounds normal.**Cardiovascular:** Heart Auscultation: RRR and no murmurs.**Abdomen:** Bowel Sounds: normal. Inspection and Palpation: soft and no tenderness.**Musculoskeletal::** Extremities: no edema.**QM**

Provider: esavagejeter

Programs: Adult Preventive Care Guidelines, Asthma Care Guidelines, Cardiac Care Guidelines, Diabetes Guidelines, Meaningful Use Medicare - Year 1 - 2013, Pediatric Preventive Care Guidelines

Last updated 01/29/2013

Measure	Status
Active allergy list	Satisfied
Active medication list	Needs Data
Adult weight screening and followup (18-64)	Out of Range
Alcohol Use Assessment	Needs Data
Blood Pressure Screening	Satisfied
BMI Screening and Follow-up	Out of Range
BP Control (140/90)	Satisfied
Identify and provide patient specific education resources	Needs Data
Influenza Vaccination (Aug - Mar)	Needs Data
Provide clinical summaries for office visits	Satisfied
Record demographics	Satisfied
Record smoking status	Satisfied
Record vital signs	Satisfied
Td/Tdap Adult Booster	Needs Data
Tobacco Use Inquiry	Satisfied
Up-to-date problem list	Satisfied

Assessment / Plan

1. DEGENERATION OF INTERVERTEBRAL DISC, SITE UNSPECIFIED (722.6) - Reviewed MRI of lumbar spine as well as xray of cervical disease; Pt has referral to ortho next month; will check some rheum labs today also asked patient to forward paperwork to me concerning his job; He needs some job modifications.

- ANA
- ESR
- RHEUMATOID FACTOR WITH REFLEX TITER
- THYROID STIMULATING HORMONE (TSH) W/ REFLEX
- THYROID STIMULATING HORMONE (TSH) W/ REFLEX
- C-REACTIVE PROTEIN (CRP)

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Order Groups**Order Group Summaries**

Order Group on 01/24/2013 by FMC_SAVAGE-JETER

AllergiesAllergies not reviewed (last reviewed 10/15/2012)
NKDA**Medications**

Medications not reviewed (last reviewed 01/16/2013)

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

Problems

- Pain in joint; shoulder region (719.41)
- Degeneration of intervertebral disc, site unspecified (722.6)
- Spinal stenosis, other than cervical; lumbar region, with neurogenic claudication (724.03)
- Backache, unspecified (724.5)

Vitals

None recorded.

Assessment / Plan**1. SPINAL STENOSIS, OTHER THAN CERVICAL; LUMBAR REGION, WITH NEUROGENIC CLAUDICATION (724.03)**

- ORTHOPAEDIC REFERRAL

Appointment Date: 02/25/2013 Appointment Time: 10:00 with Dr Rodriguez

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

Order Group on 10/23/2012 by FMC_SAVAGE-JETER

AllergiesAllergies not reviewed (last reviewed 10/15/2012)
NKDA**Medications**

Medications not reviewed (last reviewed 10/15/2012)

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

Problems

- Pain in joint; shoulder region (719.41)
- Degeneration of intervertebral disc, site unspecified (722.6)
- Spinal stenosis, other than cervical; lumbar region, with neurogenic claudication (724.03)
- Backache, unspecified (724.5)

Vitals

None recorded.

Assessment / Plan**1. BACKACHE, UNSPECIFIED (724.5)**

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

- PHYSICAL THERAPY REFERRAL

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

01/17/2013 02:29 PM

Ref: 438943 From: 888-888-8888 To:

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1/16/2013 3:41:50 PM PAGE 1/002

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

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Imaging Order

01/16/2013

To Provider	From Provider
MARY BLACK MEMORIAL HOSPITAL (IMAGING SCHEDULING) 1700 SKYLYN DR SPARTANBURG, SC 29307 Phone: Phone: (864) 573-3245 Fax: Fax: (864) 216-4599	ERICA SAVAGE-JETER, MD FMC FAMILY MEDICAL CENTER 130 DILLON DR SPARTANBURG, SC 29307-1018 Phone: (864) 216-4620 Fax: (864) 585-2488

Imaging Order Information

Diagnosis	724.5: Backache, unspecified
Order Name	Orders Included: 1 724.5: Backache, unspecified • MRI, LS-SPINE Send To: MARY BLACK MEMORIAL HOSPITAL (IMAGING SCHEDULING)
Notes	

Patient Information

Patient Name	JIMENEZ, JOSE
Sex • DOB • Age	M 08/05/1978 34 YR
Address	520 RALEIGH CT SPARTANBURG, SC 29301
Phone	H: (864) 356-4507
Primary Insurance	UNITED HEALTHCARE - KOHLER - CHOICE PLUS ID: 836843268 Group: 711809 Policy Holder: JIMENEZ, JOSE
Secondary Insurance	None recorded.

Electronically Signed by: ERICA SAVAGE-JETER, MD

01/17/2013 02:30 PM

Ref: 438943 From: 888-888-8888 To:

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

01/17/2013 02:38 PM

Ref: 438843 From: 888-888-8888 To:

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Erica L. Savage-Jeter, M.D.

ERICA SAVAGE-JETER, MD

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

- CPK
- COMPREHENSIVE METABOLIC PANEL
- CBC W/DIFF

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

Encounter Sign-Off

Encounter signed-off by Erica Savage-Jeter, MD, 01/29/2013.

Encounter Date: 01/16/2013**Patient**

Name	JIMENEZ, JOSE (34, M) ID# 736952	Appt. Date/Time	01/16/2013 03:15PM
DOB	08/05/1978	Service Dept.	FMC_FAMILY MEDICAL CENTER
Provider	ERICA SAVAGE-JETER, MD		
Insurance	Med Primary: UNITED HEALTHCARE - KOHLEH - CHOICE PLUS Insurance # : 836843258 Policy/Group # : 711809 Prescription: MHS - Member is eligible.		

Patient's Pharmacies

RITE AID-1811 EAST MAIN STREE (ERX): 1811 EAST MAIN STREET, SPARTANBURG SC 29307, Ph (864) 585-9184, Fax (864) 573-5771

Chief Complaint

f/u

Problems

- Pain in joint; shoulder region (719.41)
- Backache, unspecified (724.5)

Medications**Reviewed Medications**

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

AllergiesAllergies not reviewed (last reviewed 10/15/2012)
NKDA**Past Medical History**

Past Medical History not reviewed (last reviewed 10/15/2012)

Surgical History

Surgical History not reviewed (last reviewed 10/15/2012)

Social HistorySocial History not reviewed (last reviewed 10/15/2012)
Smoking Status: Never smoker.**Vitals**

Ht: 5 ft 9 in	Wt: 214 lbs	BMI: 31.6
BP: 132/90	T: 97.9 F°	Pulse: 78 bpm
O2Sat: 98%		

HPI**Back Pain - Detailed**

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Reported by patient.

Location: pain is not radiating

Quality: **throbbing**Severity: **worsening**

Duration: constant

Timing: **worse**

Context: overuse

Alleviating Factors: rest

Aggravating Factors: **movement/positioning**

Associated Symptoms: no fever; no weak limbs; no tingling; no numbness of the legs/feet; no incontinence; no shortness of breath reported prior tests or procedures previous physical therapy did not help

Notes: also c/o pain in upper back with radiation into R shoulder

ROS**ROS as noted in the HPI****Physical Exam**

Patient is a 34-year-old male.

Constitutional: General Appearance: healthy-appearing. Level of Distress: NAD.**Psychiatric:** Insight: good judgement. Mental Status: normal mood and affect and active and alert.**Lungs:** Respiratory effort: no dyspnea. Auscultation: breath sounds normal.**Cardiovascular:** Heart Auscultation: RRR and no murmurs.**Abdomen:** Bowel Sounds: normal. Inspection and Palpation: soft and no tenderness.**Musculoskeletal::** Joints, Bones, and Muscles: **pain with palpation thoracic region.** Extremities: no edema.**QM**

Provider: esavagejeter

Programs: Adult Preventive Care Guidelines, Cardiac Care Guidelines, Diabetes Guidelines, Meaningful Use Medicare - Year 1 - 2013, Pediatric Preventive Care Guidelines

Last updated 01/16/2013

Measure	Status
Active allergy list	Satisfied
Active medication list	Needs Data
Adult weight screening and followup (18-64)	Out of Range
Blood Pressure Screening	Satisfied
BP Control (140/90)	Out of Range
Identify and provide patient specific education resources	Needs Data
Influenza Vaccination (Aug - Mar)	Needs Data
Provide clinical summaries for office visits	Needs Data (1/1)
Record demographics	Satisfied
Record smoking status	Satisfied
Record vital signs	Satisfied
Td/Tdap Adult Booster	Needs Data
Tobacco Use Inquiry	Satisfied
Up-to-date problem list	Satisfied

Assessment / Plan

- 1. BACKACHE, UNSPECIFIED (724.5)** - Has worsened despite therapy. Will try to order MRI. Also, we will xray thoracic spine to see if pathology.
 - MRI, LS-SPINE
 - X-RAY, THORACIC SPINE

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

Encounter Sign-Off

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Letters

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

MBPG FAMILY MEDICAL CENTER
130 DILLON DR
SPARTANBURG, SC 29307-1018
Phone: (864) 216-4620, Fax: (864) 585-2488

01/16/2013

Jose Jimenez
520 Raleigh Ct
Spartanburg, SC 29301

Dear: Jose Jimenez

The following is a summary of your visit with ERICA SAVAGE-JETER, MD on 01/16/2013.

ENCOUNTER REASON

f/u

VITALS

Ht: 5 ft 9 in
BP: 132/90
O2Sat: 98%

Wt: 214 lbs
T: 97.9 F°

BMI: 31.6
Pulse: 78 bpm

CURRENT MEDICATIONS

Your medical record indicates you are on the following medicine. If this list is not consistent with the medications you are actually taking, or if you are taking other over the counter medicines, please inform your provider.

Reviewed Medications

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

ALLERGIES

Please review your allergy list for accuracy. Contact your provider if this list needs to be updated.

Allergies not reviewed (last reviewed 10/15/2012)
NKDA

RECENT DIAGNOSTIC TEST RESULTS

N/A

0135

63

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

VACCINE LIST

Here is a copy of your most up-to-date vaccination list.

None recorded.

ASSESSMENT AND PLAN

The following list includes any diagnoses that were discussed at your visit, and information about any order(s) that your physician has deemed appropriate for these conditions.

1. **BACKACHE, UNSPECIFIED** (724.5) - Has worsened despite therapy. Will try to order MRI. Also, we will xray thoracic spine to see if pathology.
 - MRI, LS-SPINE
 - X-RAY, THORACIC SPINE

FOLLOW-UP APPOINTMENTS

Please be sure that the following appointments have been scheduled for you.

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

If you have any questions, or need to reschedule an appointment please call the office at (864) 216-4620.

FMC_FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

MBPG FAMILY MEDICAL CENTER
130 DILLON DR
SPARTANBURG, SC 29307-1018
Phone: (864) 216-4620, Fax: (864) 585-2488

11/28/2012

Jose Jimenez
520 Raleigh Ct
Spartanburg, SC 29301

Dear: Jose Jimenez

The following is a summary of your visit with ERICA SAVAGE-JETER, MD on 11/28/2012.

ENCOUNTER REASON

f/u

VITALS

Ht: 5 ft 9 in

BP: 136/84 sitting L arm

Wt: 212 lbs

T: 98.7 F°

BMI: 31.3

Pulse: 59 bpm

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FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

O2Sat: 98%

CURRENT MEDICATIONS

Your medical record indicates you are on the following medicine. If this list is not consistent with the medications you are actually taking, or if you are taking other over the counter medicines, please inform your provider.

Last reviewed Medications 10/15/2012

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

ALLERGIES

Please review your allergy list for accuracy. Contact your provider if this list needs to be updated.

Last reviewed Allergies / Adverse Reactions 10/15/2012
NKDA

RECENT DIAGNOSTIC TEST RESULTS

N/A

VACCINE LIST

Here is a copy of your most up-to-date vaccination list.

None recorded.

ASSESSMENT AND PLAN

The following list includes any diagnoses that were discussed at your visit, and information about any order(s) that your physician has deemed appropriate for these conditions.

- 1. BACKACHE, UNSPECIFIED (724.5)** - Has worsened despite therapy. Will order MRI.
 - MRI, LS-SPINE

FOLLOW-UP APPOINTMENTS

Please be sure that the following appointments have been scheduled for you.

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

If you have any questions, or need to reschedule an appointment please call the office at (864) 216-4620.

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

MBPG FAMILY MEDICAL CENTER

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Encounter signed-off by Erica Savage-Jeter, MD, 01/16/2013.

Encounter Date: 11/28/2012

Patient

Name	JIMENEZ, JOSE (34, M) ID# 736952	Appt. Date/Time	11/28/2012 04:00PM
DOB	08/05/1978	Service Dept.	FMC_FAMILY MEDICAL CENTER
Provider	ERICA SAVAGE-JETER, MD		
Insurance	Med Primary: UNITED HEALTHCARE - KOHLER - CHOICE PLUS Insurance # : 836843258 Policy/Group # : 711809 Prescription: MHS - Member is eligible.		

Patient's Pharmacies

RITE AID-1811 EAST MAIN STREE (ERX): 1811 EAST MAIN STREET, SPARTANBURG SC 29307, Ph (864) 585-9184, Fax (864) 573-5771

Chief Complaint

f/u

Problems

- Pain in joint; shoulder region (719.41)
- Backache, unspecified (724.5)

Medications

Last reviewed Medications 10/15/2012

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

Allergies

Last reviewed Allergies / Adverse Reactions 10/15/2012
NKDA

Surgical History

Last reviewed Surgical History 10/15/2012

Social History

Last reviewed Social History 10/15/2012
Smoking Status: Never smoker.

Vitals

Ht: 5 ft 9 in	Wt: 212 lbs	BMI: 31.3
BP: 136/84 sitting L arm	T: 98.7 F°	Pulse: 59 bpm
O2Sat: 98%		

HPI**Back Pain - Detailed**

Reported by patient.

Location: pain radiating to the bilateral buttock(s); pain radiating to the left leg(s); pain radiating to back of left leg(s)

Quality: burning; throbbing

Severity: worsening

Duration: constant

Timing: worse

Context: overuse

Alleviating Factors: Initially therapy was helping until he felt a pop and now it's worse

Aggravating Factors: movement/positioning; bending over

Associated Symptoms: no fever; no weak limbs; numbness of the left legs/feet; tingling reported prior tests or procedures denies having any previous treatment

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Encounters and Procedures

Clinical Encounter Summaries

Patient

Name JIMENEZ, JOSE (34, M) ID# 736952 Appt. Date/Time 10/15/2012 03:30PM
DOB 08/05/1978 Service Dept. FMC_FAMILY MEDICAL CENTER
Provider ERICA SAVAGE-JETER, MD
Insurance Med Primary: UNITED HEALTHCARE -
KOHLER - CHOICE PLUS
Insurance #: 836843258
Policy/Group #: 711809
Prescription: MHS - Member is eligible.

Patient's Pharmacies

RITE AID-1811 EAST MAIN STREET (ERX): 1811 EAST MAIN STREET, SPARTANBURG SC 29307, Ph (864) 585-9184, Fax (864) 573-5771

Chief Complaint

shoulder pain
both shoulders

Problems

- ♦ Pain in joint; shoulder region (719.41)
- ♦ Backache, unspecified (724.5)

Medications

Reviewed patient's medication history (as of 10/15/2012) without changes

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

Allergies

Reviewed allergy history (no data recorded) without changes
NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (no data recorded) without changes

Social History

Reviewed Social History & made changes

Vitals

Ht: 5 ft 9 in Wt: 208 lbs BMI: 30.7 BP: 136/80 T: 97.4 F° Pulse: 64 bpm O2Sat: 98% Pain Scale: 5

HPI

Back Pain - Detailed

Reported by patient.

Location: pain radiating to the bilateral buttock(s)
Quality: throbbing
Severity: worsening
Duration: intermittent
Timing: worse
Context: overuse
Alleviating Factors: rest

MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE HSV:PHY
Admit: 11/01/12 Med Rec #: 000226044
Att Dr.: SAVAGE JETER ERICA
Adm Dr.: SAVAGE JETER ERICA
DOB: 08/05/1978 34 Sex: M RM#: /
Pat #: 3317542

DATE 3/29/2013



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Aggravating Factors: movement/positioning, bending over; twisting; standing; riding in a car
 Associated Symptoms: no fever; no weak limbs; no incontinence; tingling

Upper Extremity - General
 Reported by patient.

Hand Dominance: right
 Location: right shoulder; anterior; deep
 Quality: started at first feeling heavy feeling, soreness now it's more sharp
 Duration: 10 months
 Timing: acute; intermittent episodes lasting:
 Context: work injury; overuse; began at work after doing alot of lifting because of a broken machine
 Alleviating Factors: no
 Aggravating Factors: lifting; grasping; throwing; ROM
 Associated Symptoms: no swelling; no redness; weakness; numbness; tingling
 Previous Surgery: none
 Prior Imaging: none

ROS

Musculoskeletal:: see above. Patient reports no fever, no chills, no night sweats, no significant weight gain, no significant weight loss, no exercise intolerance, normal appetite, and no sleep disturbances: insomnia. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, no known heart murmur, no lightheadedness, no calf or jaw pain, and no ankle edema. He reports no cough, no wheezing, no shortness of breath, no rapid breathing, no sputum production, and no coughing up blood. He reports no nausea, no vomiting, no vomiting blood, no abdominal pain, normal appetite, no diarrhea, no constipation, and no heartburn. He reports no dry skin, no abnormal mole, no jaundice, no rashes, no discoloration, no excessive facial or body hair (hirsutism), no hair thinning, no growths / lesions, and no excessive sweating.

Physical Exam

Patient is a 34-year-old male.

Constitutional: General Appearance: healthy-appearing and well-nourished. Level of Distress: NAD. Ambulation: ambulating normally.

Lungs: Respiratory effort: no dyspnea. Auscultation: breath sounds normal.

Cardiovascular: Heart Auscultation: RRR and no murmurs.

Abdomen: Bowel Sounds: normal. Inspection and Palpation: soft and no tenderness.

Musculoskeletal:: Motor Strength and Tone: normal. Joints, Bones, and Muscles: normal movement of all extremities. Extremities: no edema.

Neurologic: Gait and Station: normal gait.

Skin: Inspection and palpation: no rash.

Back: Thoracolumbar Appearance: normal curvature.

QM

Provider: esavagejeter

Programs: Adult Preventive Care Guidelines, Cardiac Care Guidelines, Diabetes Guidelines, Meaningful Use Medicare - Year 1 - 2012, Pediatric Preventive Care Guidelines

Last updated 10/15/2012

Measure	Status

Active Satisfied	
allergy list	

Active Satisfied	
medication list	

Adult weight screening Out of Range and followup (18-64)	

Blood Satisfied	
Pressure Screening	

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM
 JIMENEZ JOSE HSV:PHY
 Admit: 11/01/12 Med Rec #: 000226044
 Att Dr.: SAVAGE JETER ERICA
 Adm Dr.: SAVAGE JETER ERICA
 DOB: 08/05/1978 34 Sex: M RM#: /
 Pat #: 3317542

P140

BP Control Satisfied
 (140/90)
 Identify and provide patient Needs Data
 specific education
 resources
 Influenza Needs Data
 Vaccination (Aug
 - Mar)
 Provide clinical Needs Data (1/1)
 summaries for office
 visits
 Record Satisfied
 demographics
 Record Satisfied
 smoking
 status
 Record Satisfied
 vital signs
 Tdap Adult Needs Data
 Booster
 Tobacco Satisfied
 Use Inquiry
 Up-to-date Satisfied
 problem list

Assessment / Plan

1. PAIN IN JOINT; SHOULDER REGION (719.41) - X-ray unremarkable to me; official read is pending; I suggest NSAIDs, PT. Re-evaluate in 1 month
 - X-RAY, SHOULDER
 - Side: RIGHT
 - IBUPROFEN 600 MG TABLET - Take 1 tablet(s) 3 times a day by oral route. Qty: 90 tablet(s) Refills: 1 Pharmacy: RITE AID-1811 EAST MAIN STREE
 - PHYSICAL THERAPY REFERRAL
2. BACKACHE, UNSPECIFIED (724.5) - X-ray looks like old coccyx fracture that has healed, but nothing acute. Will include PT for this region as well; NSAIDs
 - X-RAY, LUMBOSACRAL SPINE

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

Encounter Sign-Off

Encounter signed-off by Erica Savage-Jeter, MD, 10/15/2012.

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM
 JIMENEZ JOSE HSV.PHY
 Admit: 11/01/12 Med Rec #: 000226044
 Att Dr.: SAVAGE JETER ERICA
 Adm Dr.: SAVAGE JETER ERICA
 DOB: 08/05/1978 34 Sex: M RM#: /
 Pat #: 3317542

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

130 DILLON DR
SPARTANBURG, SC 29307-1018
Phone: (864) 216-4620, Fax: (864) 585-2488

Date: 10/15/2012

Dear: Jose Jimenez

The following is a summary of your visit with ERICA SAVAGE-JETER, MD on 10/15/2012.

ENCOUNTER REASON

shoulder pain
both shoulders

VITALS

Ht: 5 ft 9 in
BP: 136/80
O2Sat: 98%

Wt: 208 lbs
T: 97.4 F°
Pain Scale: 5

BMI: 30.7
Pulse: 64 bpm

CURRENT MEDICATIONS

Your medical record indicates you are on the following medicine. If this list is not consistent with the medications you are actually taking, or if you are taking other over the counter medicines, please inform your provider.

Reviewed patient's medication history (as of 10/15/2012) without changes

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

ALLERGIES

Please review your allergy list for accuracy. Contact your provider if this list needs to be updated.

Reviewed allergy history (no data recorded) without changes
NKDA

RECENT DIAGNOSTIC TEST RESULTS

N/A

VACCINE LIST

Here is a copy of your most up-to-date vaccination list.

None recorded.

ASSESSMENT AND PLAN

The following list includes any diagnoses that were discussed at your visit, and information about any order(s) that your physician has deemed appropriate for these conditions.

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

FMC FAMILY MEDICAL CENTER • 130 DILLON DR, SPARTANBURG SC 29307-1018

JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

1. **PAIN IN JOINT; SHOULDER REGION (719.41)** - Xray unremarkable to me; official read is pending; I suggest NSAIDs, PT. Re-evaluate in 1 month
 - X-RAY, SHOULDER
 - Side: RIGHT
 - IBUPROFEN 600 MG TABLET -
 - Take 1 tablet(s) 3 times a day by oral route. Qty: 90 tablet(s) Refills: 1 Pharmacy: RITE AID-1811 EAST MAIN STREE
 - PHYSICAL THERAPY REFERRAL
2. **BACKACHE, UNSPECIFIED (724.5)** - Xray looks like old coccyx fracture that has healed, but nothing acute. Will include PT for this region as well; NSAIDs
 - X-RAY, LUMBOSACRAL SPINE

FOLLOW-UP APPOINTMENTS

Please be sure that the following appointments have been scheduled for you.

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

If you have any questions, or need to reschedule an appointment please call the office at (864) 216-4620.

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Admin Documents

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

1811 EAST MAIN STREE

- PHYSICAL THERAPY REFERRAL

2. BACKACHE, UNSPECIFIED (724.5) - Xray looks like old coccyx fracture that has healed, but nothing acute. Will include PT for this region as well; NSAIDs

- X-RAY, LUMBOSACRAL SPINE

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

Encounter Sign-Off

Encounter signed-off by Erica Savage-Jeter, MD, 10/15/2012.

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Alleviating Factors: no
 Aggravating Factors: lifting; grasping; throwing; ROM
 Associated Symptoms: no swelling; no redness; **weakness; numbness; tingling**
 Previous Surgery: none
 Prior Imaging: none

ROS

Musculoskeletal: **see above.** Patient reports no fever, no chills, no night sweats, no significant weight gain, no significant weight loss, no exercise intolerance, normal appetite, and no sleep disturbances: insomnia. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, no known heart murmur, no lightheadedness, no calf or jaw pain, and no ankle edema. He reports no cough, no wheezing, no shortness of breath, no rapid breathing, no sputum production, and no coughing up blood. He reports no nausea, no vomiting, not vomiting blood, no abdominal pain, normal appetite, no diarrhea, no constipation, and no heartburn. He reports no dry skin, no abnormal mole, no jaundice, no rashes, no discoloration, no excessive facial or body hair (hirsutism), no hair thinning, no growths / lesions, and no excessive sweating.

Physical Exam

Patient is a 34-year-old male.

Constitutional: General Appearance: healthy-appearing and well-nourished. Level of Distress: NAD. Ambulation: ambulating normally.

Lungs: Respiratory effort: no dyspnea. Auscultation: breath sounds normal.

Cardiovascular: Heart Auscultation: RRR and no murmurs.

Abdomen: Bowel Sounds: normal. Inspection and Palpation: soft and no tenderness.

Musculoskeletal: Motor Strength and Tone: normal. Joints, Bones, and Muscles: normal movement of all extremities. Extremities: no edema.

Neurologic: Gait and Station: normal gait.

Skin: Inspection and palpation: no rash.

Back: Thoracolumbar Appearance: normal curvature.

QM

Provider: esavagejeter

Programs: Adult Preventive Care Guidelines, Cardiac Care Guidelines, Diabetes Guidelines, Meaningful Use Medicare - Year 1 - 2012, Pediatric Preventive Care Guidelines

Last updated 10/15/2012

Measure	Status
Active allergy list	Satisfied
Active medication list	Satisfied
Adult weight screening and followup (18-64)	Out of Range
Blood Pressure Screening	Satisfied
BP Control (140/90)	Satisfied
Identify and provide patient specific education resources	Needs Data
Influenza Vaccination (Aug - Mar)	Needs Data
Provide clinical summaries for office visits	Needs Data (1/1)
Record demographics	Satisfied
Record smoking status	Satisfied
Record vital signs	Satisfied
Tdap Adult Booster	Needs Data
Tobacco Use Inquiry	Satisfied
Up-to-date problem list	Satisfied

Assessment / Plan

1. PAIN IN JOINT; SHOULDER REGION (719.41) - Xray unremarkable to me; official read is pending; I suggest NSAIDs, PT. Re-evaluate in 1 month

- X-RAY, SHOULDER

Side: RIGHT

- IBUPROFEN 600 MG TABLET - Take 1 tablet(s) 3 times a day by oral route. Qty: 90 tablet(s) Refills: 1 Pharmacy: RITE AID-

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Policy/Group #: 711809

Prescription: MHS - Member is eligible.

Patient's Pharmacies

RITE AID-1811 EAST MAIN STREE (ERX): 1811 EAST MAIN STREET, SPARTANBURG SC 29307, Ph (864) 585-9184, Fax (864) 573-5771

Chief Complaintshoulder pain
both shoulders**Problems**

- Pain in joint; shoulder region (719.41)
- Backache, unspecified (724.5)

Medications

Reviewed patient's medication history (as of 10/15/2012) without changes

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

AllergiesReviewed allergy history (no data recorded) without changes
NKDA**Past Medical History**

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (no data recorded) without changes

Social History

Reviewed Social History & made changes

Vitals

Ht: 5 ft 9 in	Wt: 208 lbs	BMI: 30.7
BP: 136/80	T: 97.4 F°	Pulse: 64 bpm
O2Sat: 98%	Pain Scale: 5	

HPI**Back Pain - Detailed**

Reported by patient.

Location: pain radiating to the bilateral buttock(s)

Quality: **throbbing**Severity: **worsening**

Duration: intermittent

Timing: **worse**

Context: overuse

Alleviating Factors: rest

Aggravating Factors: **movement/positioning; bending over; twisting; standing; riding in a car**

Associated Symptoms: no fever; no weak limbs; no incontinence; tingling

Upper Extremity - General

Reported by patient.

Hand Dominance: right

Location: right shoulder; anterior; deep

Quality: started at first feeling heavy feeling, soreness now it's more sharp

Duration: 10 months

Timing: acute; intermittent episodes lasting:

Context: work injury; overuse; began at work after doing alot of lifting because of a broken machine

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)**ROS**

ROS as noted in the HPI

Physical Exam

Patient is a 34-year-old male.

Constitutional: General Appearance: healthy-appearing. Level of Distress: NAD.**Lungs:** Respiratory effort: no dyspnea. Auscultation: breath sounds normal.**Cardiovascular:** Heart Auscultation: RRR and no murmurs.**Abdomen:** Bowel Sounds: normal. Inspection and Palpation: soft and no tenderness.**Musculoskeletal:** Motor Strength and Tone: normal. Joints, Bones, and Muscles: no contractures, malalignment, tenderness, or bony abnormalities and normal movement of all extremities. Extremities: no edema.**Neurologic:** Cranial Nerves: grossly intact. Motor Strength normal right and left.**Skin:** Inspection and palpation: no rash.**QM**

Provider: esavagejeter

Programs: Adult Preventive Care Guidelines, Cardiac Care Guidelines, Diabetes Guidelines, MU Prep Program Supervising Providers - 2012, Pediatric Preventive Care Guidelines

Last updated 11/28/2012

Measure**Status**

Active allergy list	Satisfied
Active medication list	Satisfied
Adult weight screening and followup (18-64)	Out of Range
Blood Pressure Screening	Satisfied
BP Control (140/90)	Satisfied
Identify and provide patient specific education resources	Needs Data
Influenza Vaccination (Aug - Mar)	Needs Data
Provide clinical summaries for office visits	Needs Data (1/2)
Record demographics	Satisfied
Record smoking status	Satisfied
Record vital signs	Satisfied
Tdap Adult Booster	Needs Data
Tobacco Use Inquiry	Satisfied
Up-to-date problem list	Satisfied

Assessment / Plan

- 1. BACKACHE, UNSPECIFIED (724.5)** - Has worsened despite therapy. Will order MRI.
 - MRI, LS-SPINE

Return to Office

- to see Erica Savage-Jeter, MD at FMC_FAMILY MEDICAL CENTER on or around 03/15/2013

Encounter Sign-Off

Encounter signed-off by Erica Savage-Jeter, MD, 11/28/2012.

Encounter Date: 10/15/2012**Patient**

Name	JIMENEZ, JOSE (34, M) ID# 736952	Appt. Date/Time	10/15/2012 03:30PM
DOB	08/05/1978	Service Dept.	FMC_FAMILY MEDICAL CENTER
Provider	ERICA SAVAGE-JETER, MD		
Insurance	Med Primary: UNITED HEALTHCARE - KOHLE - CHOICE PLUS Insurance #: 836843258		

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Facesheet

Demographics

Patient Name JIMENEZ, JOSE
 Sex M
 DOB 08/05/1978
 Address 520 RALEIGH CT
 City/State/Zip SPARTANBURG, SC 29301
 Home Phone (864) 356-4507

Internal (Private) Notes PHI JUANA CARDONA, ERNESTO JIMENEZ Mailed ltr for FMC 12/5/12 ccudd.....

Insurance Med Primary: UNITED HEALTHCARE - KOHLER - CHOICE PLUS
 Insurance #: 836843258
 Policy/Group #: 711809
 Prescription: No check performed in the last 72 hrs.

Default Pharmacy RITE AID-1811 EAST MAIN STREE (ERX)
 1811 EAST MAIN STREET
 SPARTANBURG
 SC 293072325
 Ph (864) 585-9184
 Fax (864) 573-5771

Problems

- Pain in joint; shoulder region (719.41)
- Degeneration of intervertebral disc, site unspecified (722.6)
- Spinal stenosis, other than cervical; lumbar region, with neurogenic claudication (724.03)
- Backache, unspecified (724.5)

Surgical History

None recorded.

Medications

Name	Date
IBUPROFEN 600 MG TABLET Take 1 tablet(s) 3 times a day by oral route.	10/15/12 prescribed
IBUPROFEN 800 MG TABLET	05/01/12 filled
TRAMADOL 50 MG TABLET	05/01/12 filled
BACLOFEN 10 MG TABLET	05/01/12 filled

Vaccines

None recorded.

Allergies / Adverse Reactions

NKDA

Past Medical History

ADD/ADHD	N	Hernias	N
Aneurysm, aortic	N	Hypertension	N
Anxiety disorder	N	Hypogonadism	N
Asthma	N	Immune deficiency	N
Bariatric surgery status	N	Inflammatory bowel disease	N
Breast disorders	N	Kidney disease (CKD)	N
COPD	N	Kidney stones/urolithiasis	N
Cancer	N	Lipid disorders	N
Cardiac dysrhythmia	N	Liver disease	N
Carotid atherosclerosis	N	Malnutrition/nutritional deficiency	N
Cerebrovascular disease or stroke	N	Mental/psychiatric disorders	N
Cervical dysplasia/abnormal Pap test	N	Migraine/headache	N
Chronic pain	N	Musculoskeletal disorders	N
Colon polyps	N	Neurologic disorders	N

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JIMENEZ, JOSE (id #736952, dob: 08/05/1978)

Congenital anomalies	N	Obesity	N
Coronary heart disease	N	Osteoarthritis	N
Degenerative disc disease	N	Osteoporosis/osteopenia	N
Dementia and cognitive impairment	N	Pacemaker/defibrillator	N
Depression	N	Parkinson disease	N
Diabetes	N	Peripheral artery disease	N
Disabilities	N	Pregnancy-related disorders	N
Ear and hearing disorders	N	Prostate disorders	N
Endocrine disorders	N	Respiratory/Allergy	N
Erectile dysfunction	N	Rheumatologic disorders	N
Eye and vision disorders	N	Seizure disorder/epilepsy	N
Fibromyalgia	N	Skin disorders	N
Fracture history	N	Sleep apnea	N
GERD/dyspepsia	N	Sleep disorders	N
GI bleeding	N	Splenectomy status	N
Gastrointestinal disorders	N	Thromboembolism	N
Genital and reproductive disorders	N	Thyroid disorders	N
Glaucoma	N	Transplant status	N
Glucocorticoid use	N	Tuberculosis	N
HIV/AIDS	N	Urinary tract disorders	N
Heart failure	N	Venous disorders	N
Hematologic disorders	N		

Social History

Smoking Status: Never smoker.

Family History

None recorded.

Patient History - Other

None recorded.

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MRI, LS-SPINE for JIMENEZ, JOSE 08/05/1978 (34yo M) #736952 E#568280

Ordering Provider	Unspecified	Performing facility	MARY BLACK MEMORIAL HOSPITAL RADIOLOGY
Reported Date	01/23/2013 17:08	Accession ID	82405530
Performed Date	01/23/2013		

Mary Black Health System
1700 skylyn Drive
Spartanburg, SC 29307
864 573 3861

IMAGING REPORT

NAME: JOSE J JIMENEZ

MRN: 0000226044 ROOM: DOB: 08/05/1978
ACCOUNT#: 0003344825 BED: AGE: 34 Y
PATIENT TYPE: RA3 ORDER DATE/TIME: 01/23/2013 14:31 SEX: M

ORDER#: 100 EXAM DESCRIPTION: MR-LUMB SPINE WO CON ADM DIAGNOSIS: BACK PAIN

Dictated by: PENELOPE GALBRAITH, MD
Ordering Physician: SAVAGE, JETER
Attending Physician: SAVAGE, JETER
Primary Care Physician: SAVAGE, JETER

ADMIT DATE and TIME: 01/23/2013 02:27 PM

MRI OF THE LUMBAR SPINE

HISTORY: Pain about 1 year, history of lots of lifting.

COMPARISON: None.

Sagittal T1 and T2 STIR, axial T1, T2.

FINDINGS: Images fail to reveal any significant bony findings. The conus is intact.

There is a transitional vertebral body at the lumbosacral junction. The last segmented body has been designated L5. On this basis, at T12-L1, there is a small central disc protrusion without significant lateralized findings.

At L1-2, there is also a small central disc protrusion.

At L2-3, further small central disc protrusion is present without significant lateralized findings.

At L3-4, there is mild facet hypertrophy. Again a small central disc protrusion is present. There is borderline central stenosis.

At L4-5, moderate facet hypertrophy is present. There is a broad-based central disc protrusion. There is extremely marked central stenosis on the basis of these changes and in addition, there is also fairly marked foraminal narrowing bilaterally.

At L5-S1, no significant findings are seen.

IMPRESSION: A transitional vertebral body is present at the
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IMAGING REPORT

NAME: JOSE J JIMENEZ

MRN: 0000226044 DOB: 08/05/1978
ACCOUNT#: 0003344825 ORDER DATE/TIME: 01/23/2013 14:31

MRI, LS-SPINE for JIMENEZ, JOSE 08/05/1978 (34yo M) #736952 E#569280

ORDER#:	EXAM DESCRIPTION:	ADM DIAGNOSIS:
100	MR-LUMB SPINE WO CON	BACK PAIN

lumbosacral junction. The last segmented body has been designated L5. on this basis, there is very severe central stenosis at L4-5 on the basis of disc protrusion and marked hypertrophic change.

This job has been electronically signed by: Penelope Galbraith
MD on 01/24/2013 at 9:18:00 AM (EST) verification:
6240553020130124091800

Print CC:

Fax CC:

D Date / Time: 01/23/2013 03:33 PM ET
T Date / Time: 01/23/2013 04:06 PM ET
R Date / Time:
S Job #: MBHS62405530
D Job #: 12859
MT: 945834
D: PG

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013 - Radiology Report

Patient: **Jiminez, Jose J** Ordering Physician: **Savage, Jeter**
 ID: **412908527** Phone, Pager: **Phone: 864-216-4620 Pager: N/A**
 DOB: **8/5/1978**
 Age/Gender: **34Y, M** Primary Location: **CL1**
 Procedure: **OCSP-THORACIC SPINE 2V** Study Date: **1/16/2013 3:36:41 PM**
 Accession #: **33434090000100** Order #: **100**
 Report Status: **Finalized**
 Reason: **pain**

Mary Black Health System
 1700 Skylyn Drive
 Spartanburg, SC 29307
 864 573 3861

IMAGING REPORT

NAME: JOSE J JIMINEZ

MRN: 0412908527 ROOM: DOB: 08/05/1978
 ACCOUNT#: 0003343409 BED: AGE: 34 Y
 PATIENT TYPE: CL1 ORDER DATE/TIME: 01/16/2013 15:38 SEX: M

ORDER#: 100 EXAM DESCRIPTION: OCSP-THORACIC SPINE ADM DIAGNOSIS: pain

DICTATED BY: JAMES DUNCAN JR, MD
 ORDERING PHYSICIAN: SAVAGE, JETER
 ATTENDING PHYSICIAN: SAVAGE, JETER
 PRIMARY CARE PHYSICIAN: UNKNOWN. PRIMARY

ADMIT DATE and TIME: 01/16/2013 03:35 PM

THORACIC SPINE, 01/16/2013

Exam is submitted on January 17, 2013, for interpretation.

HISTORY: Low back pain for 2 weeks. No known injury.

VIEWS: Frontal, lateral, and swimmer's, 3 exposures.

FINDINGS: Some dextroscoliosis to the thoracic spine is noted.
 Hypertrophic spurring to the vertebral bodies in the lower thoracic spine noted consistent with some osteoarthritis. Disc spaces are well maintained. No acute bone injury seen.

IMPRESSION: OSTEOARTHRITIS.

This job has been electronically signed by: James L Duncan Jr MD
 on 01/17/2013 at 12:47:00 PM (EST) Verification:
 6225455620130117124700

Print CC:

Fax CC:

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X-RAY, LUMBAR SPINE for JIMENEZ, JOSE 08/05/1978 (34yo M) #736952 E#569280

Ordering Provider	Unspecified	Performing facility	MARY BLACK MEMORIAL HOSPITAL RADIOLOGY
Reported Date	10/16/2012 16:18	Accession ID	60088401
Performed Date	10/15/2012		

Mary Black Health System
1700 skylyn Drive
Spartanburg, SC 29307
864 573 3861

IMAGING REPORT

NAME: JOSE J JIMENEZ

MRN: 0412908527 ROOM: DOB: 08/05/1978
ACCOUNT#: 0003312241 BED: AGE: 34 Y
PATIENT TYPE: CL1 ORDER DATE/TIME: 10/15/2012 16:15 SEX: M

ORDER#: 200 EXAM DESCRIPTION: ADM DIAGNOSIS:
OCSP-LS SPINE 2-3V pain

Dictated by: MICHAEL BRANNON, MD
Ordering Physician: SAVAGE, JETER
Attending Physician: SAVAGE, JETER
Primary Care Physician: UNKNOWN, PRIMARY

ADMIT DATE and TIME: 10/15/2012 4:06 PM

LUMBAR SPINE, 10/15/2012

HISTORY: A 34-year-old, lower back pain, radiating to left leg. No known injury.

FINDINGS: AP, lateral, and lateral lumbosacral spot views show normal alignment and normal disc spaces, with no evidence of fracture, spondylolysis or spondylolisthesis. Minor osteophyte formation is seen in the inferior thoracic spine.

IMPRESSION: NEGATIVE LUMBAR SPINE.

This job has been electronically signed by: Michael H Brannon MD
on 10/16/2012 at 8:21:00 AM (EST) Verification:
6008840120121016082100

Print CC:

Phy ER, MD

Fax CC:

Erica L. Savage-Jeter, MD

D Date / Time: 10/15/2012 5:24 PM ET

T Date / Time: 10/15/2012 6:18 PM ET

R Date / Time:

S Job #: MBHS60088401

D Job #: 193336

MT: 22961

D: MB

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X-RAY, SHOULDER for JIMENEZ, JOSE 08/05/1978 (34yo M) #736952 E#589280

Ordering Provider	Unspecified	Performing facility	MARY BLACK MEMORIAL HOSPITAL RADIOLOGY
Reported Date	10/15/2012 18:16	Accession ID	60090063
Performed Date	10/15/2012		

Mary Black Health System
1700 Skylyn Drive
Spartanburg, SC 29307
864 573 3861

IMAGING REPORT

NAME: JOSE J JIMENEZ

MRN: 0412908527 ROOM: DOB: 08/05/1978
ACCOUNT#: 0003312241 BED: AGE: 34 Y
PATIENT TYPE: CL1 ORDER DATE/TIME: 10/15/2012 16:15 SEX: M

ORDER#: 100 EXAM DESCRIPTION: ADM DIAGNOSIS:
OCUE-SHOULDER 2V+ pain

DICTATED BY: MICHAEL BRANNON, MD
ORDERING PHYSICIAN: SAVAGE, JETER
ATTENDING PHYSICIAN: SAVAGE, JETER
PRIMARY CARE PHYSICIAN: UNKNOWN, PRIMARY

ADMIT DATE and TIME: 10/15/2012 4:06 PM

RIGHT SHOULDER, 10/15/2012

HISTORY: A 34-year-old, right shoulder pain for 2 months. No known injury.

FINDINGS: Internal rotation, external rotation, Grashey, and scapular Y views show no evidence of acute fracture or dislocation. Minor osteophyte formation is suggested on the greater tuberosity of the humerus, and there is minimal osteophyte formation in the AC joint. No abnormal soft tissue calcifications are appreciated. I see no definite bony lesions.

IMPRESSION: MINOR DEGENERATIVE DISEASE WITH NO ACUTE RIGHT SHOULDER PATHOLOGY.

This job has been electronically signed by: Michael H Brannon MD
on 10/16/2012 at 8:21:00 AM (EST) Verification:
6009006320121016082100

Print CC:
Phy Er, MD
Fax CC:
Erica L. Savage-Jeter, MD

D Date / Time: 10/15/2012 5:22 PM ET
T Date / Time: 10/15/2012 6:16 PM ET
R Date / Time:
S Job #: MBHS60090063
O Job #: 193335
MT: 22961
D: MB

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"1PTHW"

Treatment Diagnosis: <u>LBP</u>	Time In: <u>4:00 pm</u>	Time Out: <u>4:55 pm</u>	Visit Number: <u>5</u>
SUBJECTIVE: <u>Shldr Pain</u>			
Patient Statement Regarding Change in Function: <u>Pt c c/o @ side LBP and @LE pain today which he said started last Wednesday. "I can't finish my job anymore. I have to have someone help me."</u>			
Pain Rating Beginning Treatment: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☒ 7 ☐ 8 ☒ 9 ☐ 10 ☐ N/A		Pain Rating Ending Treatment: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒ 9 ☒ 10 ☐ N/A	
- Location of Pain (if applicable): <u>error DB</u>			
OBJECTIVE			
Untimed Modalities/Procedures	Timed Modalities/Procedures	Minutes	Timed Modalities/Procedures
☐ PT Evaluation	☒ Therapeutic Exercise	<u>20</u>	☐ Physical Performance Test
☒ Hot/Cold Pack <u>7 cstm</u>	☐ Neuromuscular Re-education		☐ Orthotic/Prosthetic Management
☐ Mechanical Traction	☐ Gait Training		☐ Prosthetic Training
☐ Elec. Stim. - Unattended	☐ Massage Therapy		☐ Orthotic/Prosthetic - Check Out
☐ Selective Debridement Less Than 20 cm	☐ Manual Therapy		☐ Community/Work Reintegration
☐ Selective Debridement More Than 20 cm	☐ Therapeutic Activities		☐ Work hardening/Conditioning
☐ Group Therapy	☒ Elec. Stim. - Attended	<u>20</u>	☐ Other:
☐ TENS Application/Instruction	☐ Iontophoresis		☐ Other:
☐ Other:	☒ Ultrasound/Phonophoresis	<u>13</u>	☐ Other:
☐ Other:	☐ Other:		☐ Other:
Total Treatment Time: <u>55</u>		Total Timed Minutes: <u>55</u>	
☒ See Flow Sheet for Details of Exercise and Modality Parameters			
Any changes in Allergies/Medication/Medical Status? ☒ No ☐ Yes (see summary list for details)			
Changes to Treatment and Justification: <u>Pt did not c/o any shoulder pain until p tx session, stating that his @shldr now hurts lateral aspect in addition to anterior shldr pain.</u>			
Functional Gains/Progress (describe): ☒ No changes this visit			
Objective Tests/Measures Completed: ☐ No changes this visit			
<u>Tight hamstrings @ly</u>			
Patient/Family/Designee Education: ☐ No changes this visit			
Learner: ☒ Patient ☐ Family ☐ Other: _____			
Method: ☐ Demonstration ☐ Visual ☒ Audio			
Outcome: ☒ Verbalized understanding ☐ Return demonstrated ☐ No evidence of understanding			
<u>Pt asked, "If I keep doing the same things @ work, that's not good for me, right?"</u>			
<u>Pt instructed to be careful and use proper body mechanics @ work (which he was instructed in last visit)</u>			
ASSESSMENT/CLINICAL IMPRESSIONS (progress toward goals, effect of continued limitations): <u>instructed in last visit</u>			
<u>Pt stated he is concerned his symptoms are getting worse. All details of injury/symptoms cont to be unclear. Very little progress @ this time.</u>			
PLAN: ☒ Continue Current Plan of Care ☐ Discharge Patient ☐ Planned Changes for Next Visit			

Therapist Signature <u>Dana Barton, PTA</u>	Date <u>11/12/12</u>	Time <u>5:00 pm</u>

Outpatient Treatment Note

PT-2501HMS 03/08 (Rev. 08/09, 01/11, 05/11) Page 1 of 1

DATE

3/29/2013

Patient Label
MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE
Admit: 11/01/12 Med Rec #: 000226044
Att Dr.: SAVAGE JETER ERICA
Adm Dr.: SAVAGE JETER ERICA
DOB: 08/05/1978 34 Sex: M RMH: /
Pat #: 3317542

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P175



1PTHW

Treatment Diagnosis: <u>LBP</u>	Time In: <u>3:15pm</u>	Time Out: <u>4pm</u>	Visit Number: <u>4</u>
SUBJECTIVE: <u>SNIP/D/11/12</u>			
Patient Statement Regarding Change in Function: <u>"Im feeling an ↑ in numb down my @ leg since this week. I felt a big pop on my @ side of my back and it has hurt since."</u>			
Pain Rating Beginning Treatment: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ N/A		Pain Rating Ending Treatment: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ N/A	
- Location of Pain (if applicable):			
OBJECTIVE:			
Untimed Modalities/Procedures	Timed Modalities/Procedures	Minutes	Timed Modalities/Procedures
☐ PT Evaluation	☒ Therapeutic Exercise	<u>20'</u>	☐ Physical Performance Test
☒ Hot/Cold Pack <u>ice massage @</u>	☐ Neuromuscular Re-education		☐ Orthotic/Prosthetic Management
☐ Mechanical Traction <u>paraspinals</u>	☐ Gait Training		☐ Prosthetic Training
☐ Elec. Stim. - Unattended	☐ Massage Therapy		☐ Orthotic/Prosthetic - Check Out
☐ Selective Debridement Less Than 20 cm	☒ Manual Therapy	<u>15'</u>	☐ Community/Work Reintegration
☐ Selective Debridement More Than 20 cm	☐ Therapeutic Activities		☐ Work hardening/Conditioning
☐ Group Therapy	☐ Elec. Stim. - Attended		Initial 2 Hours
☐ TENS Application/Instruction	☐ Iontophoresis		
☐ Other:	☒ Ultrasound/Phonophoresis	<u>10'</u>	☐ Other:
☐ Other:	☐ Other:		☐ Other:
Total Treatment Time: <u>45'</u>		Total Timed Minutes: <u>45'</u>	
☒ See Flow Sheet for Details of Exercise and Modality Parameters			
Any changes in Allergies/Medication/Medical Status? ☒ No ☐ Yes (see summary list for details)			
Changes to Treatment and Justification: <u>Assessed Gillets test (+) on @; pt also % Numbness + "heaviness" down both legs now since last week.</u>			
Functional Gains/Progress (describe): ☒ No changes this visit			
Objective Tests/Measures Completed: ☐ No changes this visit			
<u>pt @ LE Δ in symptoms but also demos ↑ mm tenderness + ↑ mm tension visible on @ side paraspinals.</u>			
Patient/Family/Designee Education: ☐ No changes this visit			
Learner: ☒ Patient		☐ Family	
Method: ☒ Demonstration		☒ Visual	
Outcome: ☒ Verbalized understanding		☒ Return demonstrated	
		☐ Audio	
		☐ No evidence of understanding	
<u>Education on proper lifting techniques, sitting postures and abdominal</u>			
ASSESSMENT/CLINICAL IMPRESSIONS (progress toward goals, effect of continued limitations): <u>bracing, & lifting.</u>			
<u>pt also demod PPT in supine + standing to address weak core stabilizers. pt states he does a lot of repetitive mmt @ work &</u>			
PLAN: ☒ Continue Current Plan of Care ☐ Discharge Patient ☐ Planned Changes for Next Visit <u>reaching, twisting</u>			
<u>+ lifting + is unable to use proper body mechanics.</u>			
Therapist Signature <u>Jemica Keith, PT, DPT</u>		Date <u>11-9-12</u>	Time <u>4pm</u>

Outpatient Treatment Note
 PT-2501HMS 03/08 (Rev. 08/09, 01/11, 05/11) Page 1 of 1

* pt asked if he should quit his job b/c of pain getting worse. pt explained body mechanics + ergonomics + suggested to Δ posture → not quit his job.

MARY BLACK HEALTH SYSTEM
 JIMENEZ JOSE HSV:PHY
 Admit: 11/01/12 Med Rec #: 000226044
 Att Dr.: SAVAGE JETER ERICA
 Adm Dr.: SAVAGE JETER ERICA
 DOB: 08/05/1978 34 Sex: M RM#: Pat #: 13317542

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Mary Black Health System
1700 Skylyn Dr
Spartanburg, SC 29307
864-573-3000

Patient Number 3317542		I/P - O/P O		Adv. Directive N		Chart Number 000226044			
Patient Name & Address JIMENEZ JOSE 520 RALEIGH CT SPARTANBURG SC 29301 (864) 356-4507				Birthdate 08/05/1978					
				Patient Social Security Number					
				Age 34		Sex M		Race O	
				Status U		Rel U			
				Privacy Notice Received (Y/N) / Date N					
				History Number 000226044					
				Service PHY					
Admit Date & Time 11/01/12 01:06									
Discharge Date & Time 11/30/12 16:25									
Patient Employer & Address KOHLER (864) 582-3401				In Case of Emergency - Contact 1 X X X X (999) 999-9999					
Contact 2									
Guarantor Name & Address JIMENEZ JOSE 520 RALEIGH CT SPARTANBURG SC 29301 (864) 356-4507 SELF				Guarantor Employer Name & Address KOHLER (864) 582-3401					
Financial Class H				Legal Status					
Guarantor Social Security Number									
Primary Care Physician SAVAGE JETER ERICA									
Discharge Status 01				Last Admit Date 00/00/00					
Payor	Plan	Payor Name/Address/Phone		Name of Insured		Policy #:			
422	2	UHC PPO PO BOX 30555 SALT LAKE CITY UT 841300555 (877) 842-3210		JIMENEZ JOSE J 18 SELF DOB: 08/05/1978 TAN#:		836843258 Group #: 711809			
0	0			DOB: TAN#:		Policy #: Group #:			
0	0			DOB: TAN#:		Policy #: Group #:			
Admitting Diagnosis 71941 PAIN SHOULDER									
Admitting Physician 71506 SAVAGE JETER ERICA				Attending Physician 71506 SAVAGE JETER ERICA					
Discharge Status				Isolation Status					
Home:		AMA:		Transfer:		MRSA: VRE:			
Comments									
Referral Source						Admit By HMS			



DATE



>>>> 3317542 000226044 PHY 11/01/12 01:06

** 0133317542 PACR013R ADMISSIONS 11/01/12 000226044 JIMENEZ JOSE

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JIMENEZ, JOSE (id #736) dob: 08/05/1978

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Referral Order

10/15/2012

To Provider	From Provider
MARY BLACK PHYSICAL THERAPY 1650 SKYLYN DR SPARTANBURG, SC 29307 Phone: Phone: (864) 216-4670 Fax: Fax: (864) 216-4513	ERICA SAVAGE-JETER, MD FMC_FAMILY MEDICAL CENTER 130 DILLON DR SPARTANBURG, SC 29307-1018 Phone: (864) 216-4620 Fax: (864) 585-2488

Referral Order Information

Diagnosis	• 719.41: Pain in joint; shoulder region
Order Name	Orders Included: 1 719.41: Pain in joint; shoulder region • PHYSICAL THERAPY REFERRAL Send To: MARY BLACK PHYSICAL THERAPY Side: RIGHT
Notes	

Patient Information

Patient Name	JIMENEZ, JOSE
Sex - DOB - Age	M 08/05/1978 34 YR
Address	520 RALEIGH CT SPARTANBURG, SC 29301
Phone	H: (864) 356-4507
Primary Insurance	UNITED HEALTHCARE - KOHLER - CHOICE PLUS ID: 836843258 Group: 711809 Policy Holder: JIMENEZ, JOSE
Secondary Insurance	None recorded.

Electronically Signed by: ERICA SAVAGE-JETER, MD

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM
 JIMENEZ, JOSE HSV:PHY
 Admit: 11/01/12 Med Rec #: 000226044
 Att Dr.: SAVAGE JETER ERICA
 Adm Dr.: SAVAGE JETER ERICA
 DOB: 08/05/1978 34 Sex: M RM#: /
 Pat #: 3317542



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Erica L. Savage-Jeter, M.D.

ERICA SAVAGE-JETER, MD

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE HSV:PHY
Admit: 11/01/12 Med Rec #: 000226044
Att Dr.: SAVAGE JETER ERICA
Adm Dr.: SAVAGE JETER ERICA
DOB: 08/05/1978 34 Sex: M RM#: /
Pat #: 3317542



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"IPTHW"

LBP + shder pain

Treatment/Disagnosis:	Time In: 2:30	Time Out: 3:30	Visit Number: 2
SUBJECTIVE			
Patient Statement Regarding Change in Function: "I heard a big "pop" sound on my back; my leg still tingling"			
Pain Rating Beginning Treatment: □ 0 □ 1 □ 2 □ 3 □ 4 □ 5 ☒ 6 □ 7 □ 8 □ 9 □ 10 □ N/A		Pain Rating Ending Treatment: □ 0 □ 1 □ 2 □ 3 □ 4 □ 5 ☒ 6 □ 7 □ 8 □ 9 □ 10 □ N/A	
- Location of Pain (If applicable): Low back/shder			
OBJECTIVE			
Untimed Modalities/Procedures	Timed Modalities/Procedures	Minutes	Timed Modalities/Procedures
☐ PT Evaluation	☒ Therapeutic Exercise	10	☐ Physical Performance Test
☒ Hot/Cold Pack	☐ Neuromuscular Re-education		☐ Orthotic/Prosthetic Management
☐ Mechanical Traction	☐ Gait Training		☐ Prosthetic Training
☐ Elec. Stim. - Unattended	☐ Massage Therapy		☐ Orthotic/Prosthetic - Check Out
☐ Selective Debridement Less than 20 cm	☐ Manual Therapy		☐ Community/Work Reintegration
☐ Selective Debridement More than 20 cm	☐ Therapeutic Activities		☐ Work hardening/Conditioning
☐ Group Therapy	☒ Elec. Stim. - Attended	20	☐ Other:
☐ TENS Application/Instruction	☒ Iontophoresis	20	☐ Other:
☐ Other:	☒ Ultrasound/Phonophoresis	10	☐ Other:
☐ Other:	☐ Other:		☐ Other:
Total Treatment Time: 60'		Total Timed Minutes: 60'	
☒ See Flow Sheet for Details of Exercise and Modality Parameters			
Any changes in Allergies/Medication/Medical Status? ☐ No ☐ Yes (see summary list for details)			
Changes to Treatment and Justification:			
Functional Gains/Progress (describe): ☐ No changes this visit Pt continue to complaint of pain @ shoulder and low back at L5/S6 joint. He reported + tingling @ UE and @ LE. He reported he heard a "pop" sound when he had to stretch his body during work.			
Objective Tests/Measures Completed: ☐ No changes this visit Interferential current @ sacroiliac joint + low back & pain + mtd. 20 min.			
Patient/Family/Designee Education: ☐ No changes this visit			
Learner: ☐ Patient	☐ Family	☐ Other: _____	
Method: ☐ Demonstration	☐ Visual	☐ Audio	
Outcome: ☐ Verbalized understanding	☐ Return demonstrated	☐ No evidence of understanding	
ASSESSMENT/CLINICAL IMPRESSIONS (progress toward goals, effect of continued limitations): PER PT REPORT he talked 2 nurse at work; no file was done under work's comp. Pt reported in front of ms. Libby the secretary and myself he did not know when to go and follow nurses advice to go to his primary care physician Dr. Savage.			
PLAN: ☐ Continue Current Plan of Care ☐ Discharge Patient ☐ Planned Changes for Next Visit Conservative Tx today 2° pain level, gently AA ROM @ UE to limit of pain.			
Therapist Signature	Date	Time	
	11-1-12	17:00	

Outpatient Treatment Note

PT-2501HMS 03/08 (Rev. 08/09, 01/11, 05/11) Page 1 of 1

DATE 3/29/2013

Patient Label

MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE HSV:PHY
Admit: 11/01/12 Med Rec #: 000226044
Att Dr.: SAVAGE JETER ERICA
Adm Dr.: SAVAGE JETER ERICA
DOB: 08/05/1978 34 Sex: M RMH:
Pat #: 3317542



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Mary Black Memorial Hospital
Daily Therapy Training Sheet
1606-50-030

DATE

Page 2 of 2
12/20/13

Pati Label

MARY BLACK
JIMENEZ JOSE
DOB: 1978-08-05 34 M PHY
JETER SAVAGE

Patient Account #: 3313444

Printed on 10/18/12 at 8:13



Patient: _____
MR#: _____

DATE	10/30/12				
Modalities	Rt. come to therapy and express concern regarding his child pain which he stated he injured @ work ~ 1 year ago. PT listen to pt's concern & recommended him to talk to the unit secretary for further clarification of his coverage.				
Ther. Exercise					
Manual Therapy/ Massage					
Ther. Activities	Rt. reports he will talk to HR & He will call back for further				
Gait Training	clarifications regarding his denitrans				



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Medical Diagnosis: Backache 724.5	Treatment Diagnosis: lumbago 724.2	Onset Date: 10/25/12 eval date.
Precautions:		

History of Injury/Chief Complaint (reason for referral):
 Pt reported pain on low back started a year ago. Lately pain has increased causing tingling and numbness (L) LE. Pt reported he had several falls at work;

Past Treatment for Same Conditions: ☒ No ☐ Yes (specify): **2 slipper surface.**
 Past Medical History/Medications/Allergies: ☒ See Intake Form
 x-RAY lumbosacral spine showed old coccyx fx.

Any signs of Abuse/Neglect? ☒ No ☐ Yes (Follow hospital policy for reporting)

Prior Level of Function (what could patient do prior to injury/illness/surgery):
 Pt works for Kohler; stands and bending over all day. Pain on low back used to go away after standing for while at work. Per pt report he has to take a break occasionally to weaken OLE almost knee buckling.

Current Level of Function (limitations due to current injury/illness/surgery):
 Pt has difficulty standing for prolonged period, walking and bending forward.

PAIN (1-10)

☐ No Complaints of Pain ☒ Pain Best: **3/10** Worst: **6/10** Location: **low back/sacroiliac**

Pain Description: ☒ Sharp ☒ Burning ☒ Dull ☒ Constant ☒ Radiation ☒ Aching ☐ Other:

Aggravating Factors:
standing / walking

Relieving Factors:
nothing relief pain

Frequency of Pain Interfering With Function: ☒ Constant ☐ Daily But Not Constant ☐ Less Often Than Daily ☐ No Interference

Other Subjective Reports:

BARRIERS TO LEARNING/REHABILITATION

☐ No Barriers Noted at This Time Mental Status: ☒ Alert and Oriented ☐ Deficits (specify):
☐ Chronicity of Symptoms ☐ Visual Deficits ☐ Hearing Difficulty ☐ Speech Difficulty ☐ Difficulty With Reading ☐ Transportation
☐ Limited Comprehension ☐ Decreased Memory ☐ Decreased Attention Span
☐ Limited Family Support ☐ Work Activities ☐ Language Barrier
☐ Cultural or Religious Barriers ☐ Other:

INSTRUCTION/EDUCATION/TEACHING

☐ Hot Pack/Cold Pack Instructions ☐ Re-injury Prevention ☒ Body Mechanics ☐ Positioning ☒ Posture ☐ Home Safety
☐ Fall Precautions ☐ Anatomy/Pathology Related to Symptoms ☒ Home Exercise Program ☐ Other:

Age Specific Education Approach: ☐ Pediatric/Child ☐ Adolescent ☒ Adult ☐ Geriatric

Education/Instruction Provided to: ☒ Patient ☐ Family ☐ Caregiver ☐ Other:

Patient Instructed in Their Role in the Recovery Process: ☒ Yes ☐ No

Plan of Care, Potential Risks and Benefits Were Reviewed With Patient: ☒ Yes ☐ No

Patient/Family Understand Their Role in the Recovery Process: ☒ Yes ☐ No

Outpatient Initial Evaluation

PT-2001HMS

03/08 (Rev. 09/09, 09/11, 11/11, 02/12)

Page 1 of 3

DATE

3/29/201

Patient Label

MARY BLACK HEALTH SYSTEM
 JIMENEZ JOSE HSV:PHY
 Admit: 10/23/12 Med Rec #: 000226044
 Att Dr.: SAVAGE JETER ERICA
 Adm Dr.: SAVAGE JETER ERICA
 DOB: 08/05/1978 34 Sex: M RM#: /
 Pat #: 3313444



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Patient Number 3313444		I/P - O/P O		Mary Black Health System 1700 Skylyn Dr Spartanburg, SC 29307 864-573-3000		Adv. Directive N		Chart Number 000226044	
Patient Name & Address JIMENEZ JOSE 520 RALEIGH CT SPARTANBURG SC 29301 (864) 356-4507				Birthdate 08/05/1978		PREFERRED LANGUAGE: UNKNOWN			
				Patient Social Security Number		Age 34		Sex M	
				Privacy Notice Received (Y/N) / Date N		Race O		Status U	
				Service PHY		History Number 000226044		Rel U	
				Admit Date & Time 10/23/12 00:00		Room & Bed Number		Discharge Date & Time	
Patient Employer & Address KOHLER (864) 582-3401				In Case of Emergency - Contact 1 X X X X (999) 999-9999		Contact 2			
Guarantor Name & Address JIMENEZ JOSE 520 RALEIGH CT SPARTANBURG SC 29301 (864) 356-4507 SELF				Guarantor Employer Name & Address KOHLER (864) 582-3401		Financial Class H		Legal Status	
						Guarantor Social Security Number			
						Primary Care Physician			
						SAVAGE JETER ERICA			
						Discharge Status		Last Admit Date 00/00/00	
Payor	Plan	Payor Name/Address/Phone		Name of Insured		Policy #:			
422	2	UHC PPO PO BOX 30555 SALT LAKE CITY UT 841300555 (877) 842-3210		JIMENEZ JOSE J 18 SELF DOB: 08/05/1978 TAN#:		836843258			
0	0			DOB: TAN#:		Group #: 711809			
0	0			DOB: TAN#:		Policy #: Group #:			
Admitting Diagnosis 71941 PAIN SHOULDER									
Admitting Physician 71506 SAVAGE JETER ERICA					Attending Physician 71506 SAVAGE JETER ERICA				
Discharge Status									
Home:					AMA:				
Transfer:					MRSA:				
					VRE:				
Comments									
Referral Source									
					Admit By KRA				



DATE



>>>> 3313444 000226044 PHY 10/23/12 00:00

** 0133313444 FACE013B ADMISSIONS 10/23/12 000226044 JIMENEZ JOSE

0164

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shoulder pain



Treatment/ Diagnosis: Time In: 2:30 Time Out: 3:15 Visit Number: 1

SUBJECTIVE

Patient Statement Regarding Change in Function:

P.T. evaluation for (B) Shoulder pain completed.

Pain Rating Beginning Treatment:

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ N/A

Pain Rating Ending Treatment:

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ N/A

- Location of Pain (if applicable):

OBJECTIVE

Untimed Modalities/Procedures	Timed Modalities/Procedures	Minutes	Timed Modalities/Procedures	Minutes
☒ PT Evaluation	☐ Therapeutic Exercise		☐ Physical Performance Test	
☐ Hot/Cold Pack	☐ Neuromuscular Re-education		☐ Orthotic/Prosthetic Management	
☐ Mechanical Traction	☐ Gait Training		☐ Prosthetic Training	
☐ Elec. Stim. - Unattended	☐ Massage Therapy		☐ Orthotic/Prosthetic - Check Out	
☐ Selective Debridement Less Than 20 cm	☐ Manual Therapy		☐ Community/Work Reintegration	
☐ Selective Debridement More Than 20 cm	☐ Therapeutic Activities		☐ Work hardening/Conditioning	Initial 2 Hours
☐ Group Therapy	☐ Elec. Stim. - Attended		☐ Other:	
☐ TENS Application/Instruction	☐ Iontophoresis		☐ Other:	
☐ Other:	☐ Ultrasound/Phonophoresis		☐ Other:	
☐ Other:	☐ Other:		☐ Other:	

Total Treatment Time: 45'

Total Timed Minutes: 45'

☒ See Flow Sheet for Details of Exercise and Modality Parameters

Any changes in Allergies/Medication/Medical Status? ☐ No ☐ Yes (see summary list for details)

Changes to Treatment and Justification:

Functional Gains/Progress (describe):

☐ No changes this visit

Pt also c/o low back pain.

Objective Tests/Measures Completed:

☐ No changes this visit

Patient/Family/Designee Education:

☐ No changes this visit

Learner: ☐ Patient

☐ Family

☐ Other: _____

Method: ☐ Demonstration

☐ Visual

☐ Audio

Outcome: ☐ Verbalized understanding

☐ Return demonstrated

☐ No evidence of understanding

ASSESSMENT/CLINICAL IMPRESSIONS (progress toward goals, effect of continued limitations):

P.T. called MD to ask for order low back pain since pt do low back pain and stated doctor forgot to write the order. P.T. will evaluate low back if MD will send order.

PLAN: ☐ Continue Current Plan of Care

☐ Discharge Patient

☐ Planned Changes for Next Visit

Therapist Signature

Date

Time

Outpatient Treatment Note

PT-2501HMS 03/08 (Rev. 08/09, 01/11, 05/11) Page 1 of 1

DATE

3/29/2013

Patient Label

MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE HSV:PHY
Admit: 10/23/12 Med Rec #: 000225044
Att Dr.: SAVAGE JETER ERICA
Adm Dr.: SAVAGE JETER ERICA
DOB: 08/05/1978 34 Sex: M RM#: /
Pat #: 3313444



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JIMENEZ, JOSE (id #7369

dob: 08/05/1978)

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Referral Order

10/15/2012

To Provider	From Provider
MARY BLACK PHYSICAL THERAPY	ERICA SAVAGE-JETER, MD
1650 SKYLYN DR	FMC_FAMILY MEDICAL CENTER
SPARTANBURG, SC 29307	130 DILLON DR
Phone :	SPARTANBURG, SC 29307-1018
Phone : (864) 216-4670	Phone: (864) 216-4620
Fax:	Fax: (864) 585-2488
Fax: (864) 216-4513	

Referral Order Information

Diagnosis	719.41: Pain in joint; shoulder region
Order Name	Orders Included: 1 719.41: Pain in joint; shoulder region PHYSICAL THERAPY REFERRAL Send To: MARY BLACK PHYSICAL THERAPY Side: RIGHT
Notes	

Patient Information

Patient Name	JIMENEZ, JOSE
Sex - DOB - Age	M 08/05/1978 34 YR
Address	520 RALEIGH CT SPARTANBURG, SC 29301
Phone	H: (864) 356-4507
Primary Insurance	UNITED HEALTHCARE - KOHLER - CHOICE PLUS ID: 836843258 Group: 711809 Policy Holder: JIMENEZ, JOSE
Secondary Insurance	None recorded.

Electronically Signed by: ERICA SAVAGE-JETER, MD

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE HSY:PHY
Admit: 10/23/12 Med Rec #: 000226044
Att DR.: SAVAGE JETER ERICA
Adm DR.: SAVAGE JETER ERICA
DOB:08/05/1978 34 Sex: M RM#: /
Pat #:3313444



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Erica L. Savage-Jeter, M.D.

ERICA SAVAGE-JETER, MD

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM
JIMENEZ JOSE HSV:PHY
Admit: 10/23/12 Med Rec #: 000226044
Att Dr.: SAVAGE JETER ERICA
Adm Dr.: SAVAGE JETER ERICA
DOB: 08/05/1978 34 Sex: M RM#: /
Pat #: 3313444



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2PTHW

719.41

Medical Diagnosis: Pain in joint/shoulder	Treatment Diagnosis: pain shoulder	Onset Date: 10/23/12 eval date
History of Injury/Chief Complaint (reason for referral): Pt has o/p pain (R) shoulder. Pain started 6 months ago but lately increased level of pain; unable to perform his duties at work.		
Past Treatment for Same Conditions: ☒ No ☐ Yes (specify):		
Past Medical History/Medications/Allergies: ☒ See Intake Form		
Any signs of Abuse/Neglect? ☒ No ☐ Yes (Follow hospital policy for reporting)		
Prior Level of Function (what could patient do prior to injury/illness/surgery): Pt works for Kohler; standing/bending/overhead activities/weight lifting/repetitive motion. Pt had several falls but unable to relate pain (R) shoulder to any fall.		
Current Level of Function (limitations due to current injury/illness/surgery): Patient has limited AROM 2 (R) UE. pain at wrist 7/10 - pain radiates down the arm all the way to the hand. Pt has some ADL's limitation and some work limitation 2 certain motion:		
PAIN (P10):		
☐ No Complaints of Pain ☒ Pain Best: 6/10 Worst: 7/10 Location: (R) shoulder		
Pain Description: ☒ Sharp ☒ Burning ☒ Dull ☒ Constant ☒ Radiation ☐ Aching ☐ Other:		
Aggravating Factors: moving (R) UE up/down/side		
Relieving Factors: nothing, rest, ice		
Frequency of Pain Interfering With Function: ☒ Constant ☐ Daily But Not Constant ☐ Less Often Than Daily ☐ No Interference		
Other Subjective Reports:		
BARRIERS TO LEARNING/REHABILITATION:		
☐ No Barriers Noted at This Time Mental Status: ☒ Alert and Oriented ☐ Deficits (specify):		
☐ Chronicity of Symptoms ☐ Visual Deficits ☐ Hearing Difficulty ☐ Speech Difficulty ☐ Difficulty With Reading ☐ Transportation		
☐ Limited Comprehension ☐ Decreased Memory ☐ Decreased Attention Span		
☐ Limited Family Support ☐ Work Activities ☒ Language Barrier		
☐ Cultural or Religious Barriers ☐ Other:		
INSTRUCTION/EDUCATION/TEACHING:		
☐ Hot Pack/Cold Pack Instructions ☐ Re-Injury Prevention ☐ Body Mechanics ☐ Positioning ☐ Posture ☐ Home Safety		
☐ Fall Precautions ☐ Anatomy/Pathology Related to Symptoms ☒ Home Exercise Program ☐ Other:		
Age Specific Education Approach: ☐ Pediatric/Child ☐ Adolescent ☒ Adult ☐ Geriatric		
Education/Instruction Provided to: ☒ Patient ☐ Family ☐ Caregiver ☐ Other:		
Patient Instructed in Their Role in the Recovery Process: ☒ Yes ☐ No		
Plan of Care, Potential Risks and Benefits Were Reviewed With Patient: ☒ Yes ☐ No		
Patient/Family Understand Their Role in the Recovery Process: ☒ Yes ☐ No		

Outpatient Initial Evaluation

PT-2001HMS

03/08 (Rev. 09/09, 09/11, 11/11, 02/12)

Page 1 of 3

DATE 3/29/2013

Patient Lab el

MARY BLACK

JIMENEZ JOSE

DOB: 1978-08-05 34 M PHY

JETER SAVAGE

MR#: 228044

DOS: 2012-10-23



Patient Account #: 3313444

Printed on 10/19/12 at 9:13

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AROM AROM

A(P)ROM	Left	Right	Pain Left	Pain Right	Strength	Left	Right
Shoulder Flex SI/Supine (160-180)	180°	150°	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Shoulder Flexion	5/5	4-
Shoulder Abd SI/Supine (160-180)	160°	125°	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Shoulder Abduction		4-
Shoulder Ext. Rot. SI/Supine (90)	90°	80°	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Shoulder Ext. Rot.		4
Shoulder Int. Rot. SI/Supine (90)	Tip	belt line	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Shoulder Int. Rot.		3
Shoulder Extension SI/Supine (30-45)	60	50	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Elbow Flexion (C6)		5
Elbow Flexion/Extension (135/0)	135°	135°	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Wrist Extension (C6)		4
Wrist Flexion/Extension (80/80)	WFL	WFL	☐ ERP ☒ PDM	☐ ERP ☒ PDM	Elbow Extension (C7)		5
Wrist UD/RD (35/15)			☐ ERP ☐ PDM	☐ ERP ☐ PDM	Wrist Flexion (C7)		5
Forearm Sup/Pron (90/90)			☐ ERP ☐ PDM	☐ ERP ☐ PDM	Thumb Extension (C8-T1)	9	5
Hand			☐ ERP ☐ PDM	☐ ERP ☐ PDM	Hand Intrinsic (C8-T1)	6.5#	6.2#

ERP = End Range Pain PDM = Pain During Movement Strength Grades: 5 = Normal, 4 = Good, 3 = Fair, 2 = Poor, 1 = Trace

OBSERVATION

Posture:
☐ Normal ☐ Forward Head ☐ Protracted Scapula ☐ Anterior Tilted Scapula ☐ Depressed Scapula
☐ Scapular Winging ☐ Thoracic Kyphosis ☐ Scoliosis ☐ Other: ☒ Rounded Shoulders

PALPATION
 Pt in guarded posture of pain; mms spasms

NEUROLOGIC

Sensation: ☒ Intact ☐ Other: Reflexes: ☐ Intact ☐ Other: Myotome: ☐ Intact ☐ Other: Tone: ☒ Intact ☐ Other: Other:

FUNCTIONAL ABILITY/LIMITATIONS
 limitations c(R) UE AROM in abd/flexion/extension/rotation. Pt unable to perform work/daily activities

SPECIAL TESTS: 4 OR 5

Test	Left	Right	Test	Left	Right
Hawkins/Kennedy		+			
Speeds		-			
Empty Can		+			
Apprehension					
Sulcus		-			

Other Findings:

ASSESSMENT/CLINICAL IMPRESSIONS
 Patient's prognosis for return to prior functional level or maximum function is: ☒ Good ☐ Fair ☐ Poor
☒ Patient could benefit from skilled therapy to return to prior level of function.
☐ Patient would not benefit from skilled therapy at this time.
 Comments:

PROBLEM LIST

☒ Decreased Strength ☐ Decreased Flexibility ☒ Decreased ROM ☒ Decreased Functional Mobility ☐ Neurological Deficits
☒ Pain ☐ Abnormal Muscle Tone ☒ Postural Deviation ☒ ADL Limitation ☐ IADL Limitation ☒ Work Limitations
☐ Sports Limitations ☐ Fall Risk ☐ Other:

Outpatient Initial Evaluation-Shoulder/Upper
 PT-2005HMS 03/08 (Rev. 08/00) DATE 5/29/20

Patient Label

MARY BLACK
 JIMENEZ JOSE
 DOB: 1978-08-05 34 M PHY MR#: 226044
 JETER SAVAGE DOS: 2012-10-23



Patient Account #: 3313444 Printed on 10/18/12 at 8.13

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719.41

Medical Diagnosis: <u>Pain joint/shoulder</u>	Treatment Diagnosis: <u>Shoulder pain</u>	
Patient's Stated Goal:		
SHORT TERM GOALS 4 WEEKS (checked boxes only)		
☒ 1. Strength: <u>#1w</u> ☒ 2. ROM: <u>(R) UE AROM 5°-7° flexion/abd/internatrot.</u> ☒ 3. Pain: <u>pain ≤ 3/10 during (R) UE movement</u> ☒ 4. Transfers/Mobility/ADLs: <u>pt to be able to perform ADL's 5 restrictions</u> ☒ 5. Function: <u>pt to be able to + postural awareness + shoulders alignment</u> ☐ 6. Perform HEP Independently: ☐ 7.		
LONG TERM GOALS 6 WEEKS (checked boxes only)		
☒ 1. Increase Strength to Perform the Following Function(s): <u>pt to be able to (R) UE mm strength to 5/5</u> ☒ 2. Increase ROM to Perform the Following Function(s): <u>(R) UE AROM w/PL all planes</u> ☒ 3. Reduce Pain to Enable the Following Functions: <u>pain ≤ 1/10 during work/daily activities</u> ☒ 4. Improve ☐ Transfers ☐ Mobility ☐ ADLs to Enable: <u>pt to be able to perform ADL's 5 restrictions</u> ☒ 5. Participate in ☐ Work ☐ Sports ☐ Community Activities at the Following Level: <u>able to participate work activities 5 c/o pain and Restriction</u> ☐ 6. ☒ 7. Discharge Plan: Home With HEP When All Goals Met or Maximum Potential Has Been Reached.		
PLAN (checked boxes only)		
☒ Therapeutic Exercise ☒ Neuromuscular Exercise ☐ Balance ☒ Posture ☐ Developmental ☐ Gait Training ☐ Orthotic/Prosthetic Training ☒ Manual Therapy ☒ Joint/Soft Tissue Mobs ☐ Edema Management	☐ Physical Performance Testing ☐ Community/Work Integration ☐ Work Conditioning/Hardening ☐ Therapeutic Activities for: ☐ Functional Performance ☐ ADL/Mobility Training ☐ Assistive Technology Assessment ☒ Patient Education/Instruction ☐ Protocol (specify):	☒ Moist Heat/Ice ☒ Ultrasound/Phonophoresis ☒ Electrical Stimulation ☒ Iontophoresis ☐ TENS ☐ Other: _____ ☐ Traction (mechanical): ☐ Cervical ☐ Lumbar ☐ Vasopneumatic Device ☐ Wound Management ☐ Selective Debridement ☐ Medications for Wound Care: ☐ Other: _____
FREQUENCY/DURATION: <u>1-2</u> TIMES A WEEK FOR <u>4</u> WEEKS		
Therapist's Signature: <u>[Signature]</u> Date: <u>10-23-12</u> Time: <u>16:00</u> CERTIFICATION PERIOD FROM <u>10/23/12</u> THROUGH <u>12-4-12</u>		
I have read the plan of care for this patient and have determined that this service is reasonable and medically necessary. Physician's Signature: _____ Date / Time: _____ Physician's Name (please print): _____		

Outpatient Initial Evaluation
 PT-2001HMS
 03/08 (Rev. 09/09, 09/11, 11/11, 02/12)

Page 3 of 3

DATE

3/29/2013

Patient Label

MARY BLACK
 JIMENEZ JOSE
 DOB: 1978-08-05 34 M PHY MR#: 228044
 JETER SAVAGE DOS: 2012-10-23



Patient Account #: 3313444

Printed on 10/18/12 at 9:13

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330444

Tues 10/23/12

AFG

Lidia @ 2:30

NAME: (LAST) Jimenez FIRST Jose MI _____ DATE OF BIRTH: 8-5-78
 SEX: F MARITAL STATUS: _____ RACE: H Pt. SSN: _____
 PRIMARY LANGUAGE: _____
 REFERRAL PHYSICIAN: Erica Savage-Jeter PHYSICIAN TEL: _____

PATIENT/CAREGIVER ADDRESS

STREET ADDRESS: 520- Raleigh St.
 CITY/STATE/ZIP: Portsmouth NC 27801
 HOME TEL: 356-4307 WORK TEL: _____

☒ PT ☐ OT ☐ ST
 DIAGNOSIS: 719-4/ Pain mild INSTRUCTIONS: evaluate + treat

INSURANCE INFORMATION

☐ MEDICARE ☐ MEDICAID ☒ INSURANCE ☐ BABY NET ☐ WORKERS COMP ☐ MVA

INSURANCE

MARY BLACK TAX ID NUMBER: 571-04-7528

PRIMARY INSURANCE

NAME OF INSURANCE PLAN: United Health Care Pt. POLICY NO: 832843258
 NAME OF INSURED: same RELATIONSHIP TO Pt.: self

SECONDARY INSURANCE

NAME OF INSURANCE PLAN: _____ Pt. POLICY NO: _____
 NAME OF INSURED: _____ RELATIONSHIP TO Pt.: _____

INSURANCE LIMITED TO:

☐ PHYSICAL THERAPY: _____ DEDUCTIBLE: _____ CO-PAYMENT: _____
☐ OCCUPATIONAL THERAPY: _____ DEDUCTIBLE: _____ CO-PAYMENT: _____
☐ SPEECH THERAPY: _____ DEDUCTIBLE: _____ CO-PAYMENT: _____
 CONTACT: _____ DATE: _____ TIME: _____

AUTHORIZATION REQUIRED ☐ YES ☒ NO PRECERT REQUIRED ☐ YES ☒ NO
 AUTHORIZATION TEL: 18778423210

AUTHORIZATION NUMBER: NOR per VISITS: _____
 CONTACT: Stephanie at DATE: _____ TIME: _____
UHC

BABYNET

WRITTEN CONFIRMATION THAT INSURANCE DOES NOT COVER FOR SERVICES ☐ YES ☐ NO

PRIMARY CAREGIVER: _____ RELATIONSHIP: _____

WAS THE PATIENT REFERRED BY BABYNET ☐ YES ☐ NO CONTACT: _____

BABYNET AUTHORIZATION NO.: _____

CONTACT: _____ DATE: _____ TIME: _____

INFORMATION FAXED TO BABYNET: ☐ YES ☐ NO

Patient Referral Outpatient Therapy

Not Part of the Medical Record

1606-50-052 (2/09) Page 1 of 2

DATE 3/29/2013

MARY BLACK HEALTH SYSTEM

JIMENEZ JOSE

HSV:PHY

Admit: 10/23/12 Med Rec #: 000226044

Att Dr.: SAVAGE JETER ERICA

Adm Dr.: SAVAGE JETER ERICA

DOB: 08/05/1978 34 Sex: M RM#: /

Pat #: 3313444



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MEDICAL DEPARTMENT—CASE RECORD 4

KOHLER

DATE	REMARKS	Name	LOCK NO.
11-12-11	Meeting with J. Brown S. Barnwell and Mr. Tallman. EE has seen Dr. Eric Savage with his right shoulder. He is now alleging an injury on 8-8-11. Dr. Savage advised that for shoulder EE says Dr. Savage told him would not be W/C. EE says that he has seen a doctor with his back. EE came in on 3-14-12 and reported that on 3-13-12 the men rolling were over and his left low back felt sore (see note in card dated 3-14-12 8:55am) was treated here on 3-14-12 was supposed to be rechecked on 3-15-12 but did not return.	Johnson, J. J.	19204
		Card	

K-372 (4/06)

0172

100



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MEDICAL DEPARTMENT—CASE RECORD

KOHLE

DATE	REMARKS	Name	Clock No.
9-8-11	1000 contd. He can move his arm and shoulder without any pain. Suggested that he see his PMD. Suggests a bit to right shoulder. Take 1-2 of 4-b this. 85	Primarily 1 of 2 of 3	
10-11-11	245 Fluoral Vaccine 0.5 ml. Im Lot # A444A669 AB		
3-14-12	855 EE Saps was rolling wave over yesterday and left low back felt sore. Body area feels like electric shock down leg. Sig - Fuser - 2-4 min take it now and take 1-2 to take tab 1-1 of 4-b this. Malum far red in arm.		
3-19-12	800 S. Samuel Saps EE Saps he is fine and is doing production.		
6-28-12	200 Saps feels as though a pulse is beating in top of head towards forehead. Has been doing this for several days. EE Saps comes to gaze. When checked I could feel no pulse in that area. Saps has been having flashes of light before eyes. Bp 110/79 R-66 Saps does not have headache of neck in not sore when head. Has been under stress. Saps take it - Suggested see his PMD if continues to have these symptoms.	19204	

K-372 (4/06)

—Ov

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MEDICAL DEPARTMENT—CASE RECORD KOHLER CO.

DATE	REMARKS	Name	Clock No.
3-11-10 7:40	ES was rolling back of wave and hit body pulley breaking one of the bristles on top when he picked the bowl up to set it off. The bowl broke and a piece hit him above his left eye. First aid for a laceration. P. Zimmerman arrived to work. Cleared area above left eye - approx. 3/4 in. laceration. Steri-Strips by Dr. Ballard. Apply tape to wound. Take 4 4 in. P.B.W. 2 off until Monday after today. Rich. Plim de before it has any problem.	Dr. Ballard	
3-15-10 2:30	Came by for check.		
4-1-10 5:15	Left eye swollen - Healed. Wound 1 1/2 in. 14-11 @ 7:00 & 7:30. Am was draining wound. Picked up a slip from bed felt that back pull in same wound. Got tissue to fill back. Gave Quill tube. It was cut. Take it to take 4 4 in. P.B.W. Use Warm Soaks over the wound. Mech. Mon. Sump cut back production to 18. Sump today.	Dr. Ballard	19224
4-8-10 11:00	Sump Rt. Shoulder is different than left. Sump bone at the top of shoulder is more prominent. It does protrude more. He says he has not injured shoulder - not hit or twisted etc. Sump @ times feels as though something is sticking in shoulder. Duration - about a month.	Dr. Ballard	

K-372 (3/92)

Could Over

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EXAM ROOM TIME

Doctors
Care

CHECKOUT TIME 11:43

TICKET NO.

ACCOUNT NUMBER 274173	DATE 04/30/12	TIME 09:50am	DC EAST BLACKSTOCK,	1251343
NAME & ADDRESS JIMENEZ, JOSE 2110 WALL RD		DOB: 08/05/1978 (33 years) GENDER: M		INSURANCE BALANCE \$0.00
BOILING SPRINGS, SC 29316 64-356-4507		IBG: CELL:		ACCOUNT BALANCE \$0.00
WRK: INSURED: JIMENEZ, JOSE INS: UHC/UNITED HEALTHCARE REASON: BACK PAIN/ SHOULDER PAIN NICKNAME:		RELATION: SELF		CURRENT CHARGES
COPAY: 0.00				AMOUNT PAID
				NEW BALANCE
				CASH CHECK M.O. C.C.

Personal Hx DM HTN	Family Hx DM HTN	Social Hx Alcohol Tobacco	ROS (V or O): Fatigue, Dizzy, Weak, Wt. Loss, Fever, Chills, Nasal Congestion, Sinus Pain, Ear Pain, Sore Throat, SOB, CP, Cough, Sputum, Wheeze, ABD Pain, N, V, D, Constip., Dysuria, Freq., Urgency, Back Pain, Pelvic Pain, Vag. D/C, Headache, Syncope, Rash	Allergies: NKDA	Medications: None
Accident? ☐ yes ☐ no If yes, which state: _____ Date of Accident: _____ Prev. chart rev., no sig chg.: <u>LA</u> Above Hx rev.: <u>LA</u>			All others negative		
WT 210.8	HT 59	BMI 32.7	BP 124/72	PULSE 55	RESP 17
TEMP 98.7			☐ LMP ☐ Tetanus		
PHYSICAL: (see reverse) Omit if N/A (✓ if nml., O if abnml. & give details) ☒ General ☐ HEENT ☐ Neck ☐ Nodes ☐ Lungs ☐ CV ☐ Abd ☐ Back ☐ Ext ☐ GU ☐ Neuro ☐ Skin/Breasts ☐ Chaperone ☐ IV ☐ Injection ☐ Nebulizer ☐ Procedure ☐ Pulse Ox			Chief Complaint: <u>low back pain, getting worse since Wednesday</u> HPI: <u>worse Sat. Aggravated by lifting.</u> <u>(1) leg is weak. Some (2) back pain</u> <u>+ some numbness @ ant lat. + @ toes/feet</u> <u>Pain score 5/10.</u> <u>Happened 2-3 times in the</u> <u>past ~ 11 months. He took baclofen</u>		

☐ CBC	☐ EKG	☐ FBS	☐ Flu	☐ Heme	☐ Hgb A1C	☐ H. Pylori	☐ KOH	☐ Microalb	☐ Mono	☐ Strep	☐ Tetanus	☐ U/A	☐ U Prep	☐ Wet Prep	☐ X-Ray
Meds/Allergies Reviewed <u>LA</u>															

DIAGNOSIS: LBP 224.2 ☐ Labs - Send Out

☒ Patient Care Instructions Discussed	Crutches/Splints/Supplies ☐ Given ☐ Recommended	PSR Notes: <u>NEW</u>
☐ Lifestyle Modification		
☐ Preventative Recommendation(s)		
☒ Prescriptions / OTC Meds		
☐ Side Effects Discussed		
☐ Follow-Up: _____		
Return:		
☐ Worsening symptoms:		
☐ If not better <u>1-2 weeks 3. N/A</u>		
Go to ER if: _____		

Off Work/School Light duty Mon. - Wed. Return Time: SV

Staff: John Cox M.D., D.O., P.A., F.N.P.

1. I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that no guarantee has been or can be made as to the results of the treatments or examinations at Doctors Care.

2. I consent to the use and disclosure of my/the patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctors Care Notice of Privacy Practices.

3. I authorize payment of medical benefits in Doctors Care physicians or their designees for services rendered.

Patient or Authorized Person's Signature: Jose J. Jimenez Date: 4/30/12

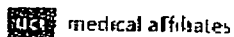
Workers Compensation patients: I hereby authorize Doctors Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records and the treatment I have received or will receive.

Patient or Authorized Person's Signature: _____ Date: _____

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Jose Jimenez
Employee's Name

4/30/12
Dates of Care

5/1/12
Return to Work Date

Nature of Illness/Injury (if requested)

Work Status ☒ Light Duty ☐ Full Duty

Comments:

Light Duty until 5/3/12
Medale, PH

Clinical

Phone

Center

Date _____

Release Information to Employer: YES NO

Patient Signature _____

{MED-FC04-(12-07)}

[illegible]

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CPT MASTER CODES

Patient Name _____

Account Number _____

Date of Service _____

NEW PATIENT E&M CODE	
Straightforward	99201
Brief/Limited	99202
Standard/Moderate	99203
Extensive	99204
Comprehensive	99205
ESTABLISHED PATIENT E&M CODE	
Nurse	99211
Minimal	99212
Brief/Limited	99213
Standard/Moderate	99214
Extensive	99215
INITIAL PHYSICAL	
Age 1 through 4 Years	99382
Age 5 through 11 Years	99383
Age 12 through 17 Years	99384
Age 18 through 39 Years	99385
Age 40 through 64 Years	99386
Age 65 Years & Older	99387
PERIODIC PHYSICAL	
Age 1 through 4 Years	99392
Age 5 through 11 Years	99393
Age 12 through 17 Years	99394
Age 18 through 39 Years	99395
Age 40 through 64 Years	99396
Age 65 Years & Older	99397
SPECIAL PHYSICAL	
Camp	CAMP
School	SCHOOL 1-2 or 3
Sport	SPORT
Dot	99385.D
Pre-Employment	99385.P
PELVIC EXAM	
Pelvic without illness or problem	appropriate PHY Code
Pelvic with problem	appropriate E&M Code
I&D/REMOVAL --- GLOBAL DAYS 10	
Abscess Simple/Single	10060
Abscess Complicated/Multiple	10061
Pilonidal Cyst	10080
Hematoma/Seroma/Fluid Collect	10140
Puncture Aspiration	10160
FB Removal Subcutaneous/Simple	
Subcutaneous Tissue	10120
Shoulder	23330
Upper Arm/Elbow	24200
Foot	28190
FB Removal Deep/Diff/Other	
Complicated I&D or FB Removal	10121
Upper Arm/Elbow	24201
Foot	28192
Nose	30300
Throat	42809
FB EYE/EAR --- GLOBAL DAYS zero	
Conjunctival	65205
Corneal w/slit lamp	65220
Corneal w/slit lamp	65222
External Auditory Canal	69200
Corneal Abrasion No Foreign Body	appropriate E&M Code
ASPIRATION/INJECTION --- GLOBAL DAYS 10	
Tendon Sheath or Ligament	20550
Trigger Point/Single or Multiple	20552
Joint or Bursa Small (finger-toe)	20600
Joint or Bursa Medium (wrist-elbow-ankle)	20605
Joint or Bursa Large (shoulder-hip-knee)	20610

WRITE IN CODES TO BE ENTERED IN HPM

LACERATION/REPAIR --- GLOBAL DAYS 10	
Simple/Scalp, Neck, Trunk, Extremities	
<2.5 cm	12001
2.6 - 7.5 cm	12002
7.6 - 12.5 cm	12004
Simple/Face, Ear, Eyelid, Nose, Lip	
<2.5 cm	12011
2.6 - 5.0 cm	12013
5.1 - 7.5 cm	12014
Layered/Scalp, Trunk, Extremities	
<2.5 cm	12031
2.6 - 7.5 cm	12032
Layered/Neck, Hand, Foot, or Ext Genitalia	
<2.5 cm	12041
2.6 - 7.5 cm	12042
Layered/Face, Ears, Eyelids, Nose, Lips	
<2.5 cm	12051
2.6 - 5.0 cm	12052
Complex (see book)	13100-13160
BURNS --- GLOBAL DAYS zero	
1st Degree - Initial	16000
follow up	appropriate E&M Code
Partial Thickness BSA	
Less than 5% Initial or Subsequent	16020
follow up with debridement or re-dressing	repeat code
follow up without debridement or re-dressing	appropriate E&M Code
5% - 10% Initial or Subsequent	16025
follow up with debridement or re-dressing	repeat code
follow up without debridement or re-dressing	appropriate E&M Code
SKIN LESIONS --- GLOBAL DAYS zero	
Skin Tag Removal (first 15)	11200
Skin Tag Removal (next 10) (use 11200 +)	11201
Shaving (see book for size)	11300 - 11303
Excision (benign) (see book)	11400-11446
Excision (malignant) (see book)	11600-11648
Destruction including Cauterization & Cryotherapy (except skin tags)	
1st Lesion	17000
2-14 Lesions (use 17000 +)	17003
15+ Lesions (use only this code)	17004
NAIL BED --- GLOBAL DAYS zero	
Trimming	11719
Avulsion of Nail Plate	11730
Drilling Subungual Hematoma	11740
Nail Bed **exception** Global Days 10**	11760
Nail Wedge/Ingrown Toe Nail **exception** Global Days 10**	11765
ORTHOPEDIC PROCEDURES --- GLOBAL DAYS 90	
Dislocated Shoulder	23650
Dislocated Metacarpophalangeal	26700
Dislocated Interphalangeal	26770
Manipulation **exception** Global Days zero**	98925
Fractures (see book)	21310-28899
Application of Splint --- Global Days zero	
Long Arm	29105
Short Arm	29125
Finger	29130
Long Leg	29505
Short Leg	29515
Application of Strapping --- Global Days zero	
Thorax	29200
Lower Back	29220
Shoulder	29240
Elbow or Wrist	29260
Hand or Finger	29280
Ankle and/or Foot	29540
Knee	29530
Toes	29550
Unna Boot	29560
Application of Cast --- Global Days zero	
Short Arm	29075
Hand & Lower Forearm (gauntlet)	29085
Finger	29088
Short Leg	29105

May 13, 2014

VIA HAND DELIVERY

Honorable T. Scott Beck, Commissioner
SC Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

RE: Jose J. Jimenez v. Kohler Company
WCC File No.: 1122474
Date of Accident: 07/14/11
Claim No.: 186482859-001
Our File No.: 6457/8005

and

Jose J. Jimenez v. Kohler Company
WCC File No.: 1219561
Date of Accident: 03/13/12
Claim No.: 186492343-001
Our File No.: 6457/8006

Dear Commissioner Beck:

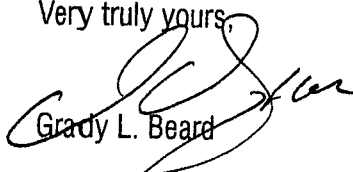
Please find enclosed a Pre-Hearing Brief which we are submitting on behalf of the defendants in the above-referenced matters.

In addition, we are enclosing our Notice of Witnesses and Written Medical Reports to be introduced as Direct Evidence on Behalf of the Defendants. Copies of supporting medical records will be presented to you at the hearing. This notice, submitted in support of our position at the hearing, and the medical reports referenced therein, are submitted pursuant to the provisions of the South Carolina Administrative Procedures Act. We are filing the original and retaining a clocked-in copy via our courier.

With a copy of this letter, we are serving counsel for the claimant with copies of these documents.

With kindest personal regards, I remain

Very truly yours,


Grady L. Beard

GLB:jlj

Enclosures

cc: ✓ Alton L. Martin, Jr., Esquire (w/enclosures)
Ms. Hope Grier (w/enclosures)(via e-mail only)
Ms. Donna Sides (w/enclosures)
Mr. Mike Tolleson (w/enclosures)(via e-mail only)
Mr. Dean Yagodinski (w/enclosures)(via e-mail only)
Mr. Sid DeVaul (w/enclosures)(via e-mail only)
Ms. Dawn Moore (w/enclosures)(via e-mail only)



Jose Jimenez
Claimant's Name SSN
520 Raleigh Court, Spartanburg, SC 29301
Address City State Zip
(864) 357-6636
Home Phone Work Phone

Kohler Company
Employer's Name
4000 South Pine Street, Spartanburg, SC 29302
Address City State Zip
Broadspire, a Crawford Company
Insurance Carrier

Preparer's Name: Grady L. Beard, Esquire Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

Compensation Rate: \$507.24 (2011); \$567.77 (2012) 2. AWW: \$760.83 (2011); \$851.61 (2012) Date of Injury: 07/14/11 and 03/13/12 (alleged)

Type of injury and body part(s): Back and right shoulder on 07/14/11 (denied); back and legs on 03/13/12 (denied).

Facts in controversy: Denied Claims. All facts in controversy. (1) Whether claimant sustained an injury by accident on the dates alleged; (2) Whether claimant gave timely and proper notice of either alleged accident; (3) Whether claimant had any pre-existing disability; (4) Whether defendants have sustained irreparable and unnecessary prejudice by claimant's unreasonable delay in prosecuting the claims; and (5) Claimant's credibility.

Legal issues involved: (1) See No. 4 above; (2) § 42-1-160; (3) § 42-15-20; (4) Doctrine of Laches; (5) Causation.

Unusual aspects: (1) Claimant purportedly requires an interpreter; and (2) Claimant admitted during his deposition that he is an illegal resident of the United States.

Witnesses (designate if expert):* (1) Claimant; (2) Mike Tolleson (via deposition). Also, the following witnesses may be called, as necessary, to rebut claimant's evidence: (3) Sam Barnwell; (4) Joe Brown; and (5) Nurse Zimmerman.

Exhibits: (A) SC Department of Employment and Workforce records (2 pages); (B) Casting Process or Plate # Change Questionnaire (11/28/12)(1 page); (C) Portions of claimant's personnel file may be submitted at Hearing as necessary (previously provided to opposing counsel in response to a subpoena); and (D) Claimant's Deposition, if necessary for impeachment purposes.

Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Witnesses and Medical Reports to be Introduced as Evidence of Behalf of the Defendants.

0. Name, address, and specialty, if any, of the treating physician: None as claims denied.

1. Impairment rating(s); body part(s); physician and date of opinion: None as claims denied.

2. I am amending my Form 50/51 in the following manner: N/A

☒ Mediation

- ☐ (a) Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ (b) Mediation is required pursuant to Reg. 67-1802.
- ☐ (c) Mediation is requested by consent of the parties pursuant to Reg. 67-1803.
- ☐ (d) Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

File this form and proof of service on the opposing party according to R.67-611. Do not send medical reports.
Commissioners reserve the right to admit expert witnesses at hearings.

C Workers' Compensation Commission
333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1122474 and 1219561
Carrier File #: 186482859-001
Carrier Code #:
Employer FEIN #:

Jose Jimenez
Claimant's Name SSN
20 Raleigh Court, Spartanburg, SC 29301
Address City State Zip
(864) 357-6636
Home Phone Work Phone

Kohler Company
Employer's Name
4000 South Pine Street, Spartanburg, SC 29302
Address City State Zip
Broadspire, a Crawford Company
Insurance Carrier

Preparer's Name: Grady L. Beard, Esquire Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to R. 67-211 by delivering a copy to: Honorable T. Scott Beck, Commissioner, South Carolina Workers' Compensation
Name
Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and Alton L. Martin, Jr., Esquire, Martin & Martin, P.A., 1415 Augusta Street (29605), Post
Office Box 8220, Greenville, SC 29604 (via U.S. Mail).

on the 13th day of May, 2014 by ☒ first class mail, ☐ certified mail, ☐ personal service.

Signature: [Signature]

Email: gbeard@sowellgray.com

Date of hearing: 05/28/14

Time needed for hearing: 2 hours

on behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611. Do not send medical reports.
*Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1122474 and 1219561

Jose Jimenez,	)	
	)	
Claimant,	)	
	)	
v.	)	<u>NOTICE OF WITNESSES AND</u>
	)	<u>WRITTEN MEDICAL REPORTS TO</u>
Kohler Company,	)	<u>BE INTRODUCED AS DIRECT</u>
	)	<u>EVIDENCE ON BEHALF OF</u>
Employer,	)	<u>DEFENDANTS</u>
	)	
Broadspire, a Crawford Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND ALTON L. MARTIN, JR., ESQUIRE, ATTORNEY FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants, to-wit:

	Physician	Practice	Dates of Service	Page Numbers
1.	Marco Rodriguez, M.D.		08/02/13	Deposition
2.	Erica Savage-Jeter, M.D.		08/05/13	Deposition

	Exhibits	Date of Reports	Page Numbers
A.	SC Department of Employment and Workforce		1 – 2
B.	Casting Process or Plate # Change Questionnaire	11/28/12	3

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C.	Portions of claimant's personnel file (previously provided to opposing counsel in response to a subpoena)		
D.	Claimant's deposition, if necessary		

Unusual Problems: (1) Claimant purportedly requires an interpreter; and (2) Claimant admitted during his deposition that he is an illegal resident of the United States.

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the employer-defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: (1) Claimant; (2) Mike Tolleson (via deposition). Also, the following witnesses may be called, as necessary, to rebut claimant's evidence: (3) Sam Barnwell; (4) Joe Brown; and (5) Nurse Zimmerman.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.


 Grady L. Beard
 1310 Gadsden Street
 Post Office Box 11449 (29211)
 Columbia, South Carolina 29201
 (803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
 May 13, 2014

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CERTIFICATE OF SERVICE

I, the undersigned, legal assistant of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendants, do hereby certify that I have served the following parties with the foregoing document(s) by mailing a copy of the same via United States Mail, postage prepaid, and/or hand delivering to the following address(es):

Pleading(s):

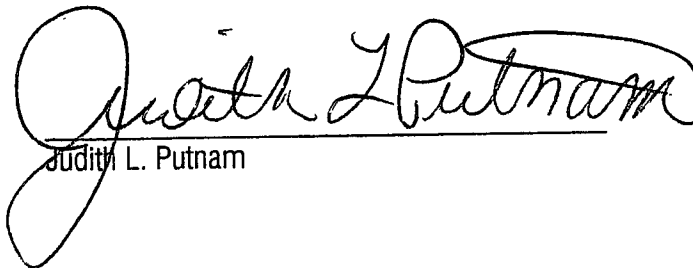
**FORM 58 AND NOTICE OF WITNESSES
AND MEDICAL REPORTS TO BE INTRODUCED
AS EVIDENCE ON BEHALF OF THE DEFENDANTS**

Parties Served:

VIA HAND DELIVERY

Honorable T. Scott Beck, Commissioner
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

Alton L. Martin, Jr., Esquire
Martin & Martin, P.A.
1415 Augusta Street (29605)
Post Office Box 8220
Greenville, SC 29604



Judith L. Putnam

Columbia, South Carolina

May 13, 2014

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Jose J. Jimenez v. Kohler Company
WCC File No.: 1122474
Date of Accident: 07/14/11
Claim No.: 186482859-001
Our File No.: 6457/8005

Jose J. Jimenez v. Kohler Company
WCC File No.: 1219561
Date of Accident: 03/13/12
Claim No.: 186492343-001
Our File No.: 6457/8006

INDEX TO DEFENDANTS' PRE-HEARING BRIEF APA SUBMISSIONS AND EXHIBITS

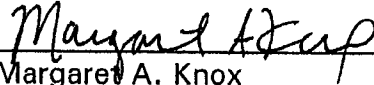
	Physician	Practice	Dates of Service	Page Numbers
1.	Marco Rodriguez, M.D.		08/02/13	Deposition
2.	Erica Savage-Jeter, M.D.		08/05/13	Deposition

	Exhibits	Date of Reports	Page Numbers
A.	SC Department of Employment and Workforce		1 – 2
B.	Casting Process or Plate # Change Questionnaire	11/28/12	3
C.	Portions of claimant's personnel file (previously provided to opposing counsel in response to a subpoena)		
D.	Claimant's deposition, if necessary		



**SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE**
Post Office Box 995
Columbia, South Carolina 29202

I certify that the attached is a true copy of the records pertaining to
Jose J. Jimenez, xxx-xx-8527.



Margaret A. Knox
SC Department of Employment & Workforce

Columbia, South Carolina
April 10, 2013

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001

SSN Wage Record Inquiry

SSN [REDACTED] 8527

Name	Acct #	Employer Name	Report Type	Year	Qtr - 1	Qtr - 2	Qtr - 3	Qtr - 4
J JIME	36744	KOHLER CO	Original	2012	\$11,137.54	\$13,059.00	\$11,574.49	\$10,092.91
J JIME	36744	KOHLER CO	Original	2011	\$8,458.39	\$8,954.32	\$10,995.47	\$13,119.37
J JIME	36744	KOHLER CO	Original	2010	\$9,250.53	\$12,181.90	\$10,705.47	\$10,247.72
J JIME	36744	KOHLER CO	Original	2009	\$8,213.21	\$11,570.00	\$12,426.44	\$12,249.63
J JIME	36744	KOHLER CO	Original	2008	\$10,010.91	\$10,089.17	\$9,588.87	\$11,732.19
J JIME	36744	KOHLER CO	Original	2007	\$8,542.28	\$13,136.51	\$9,081.14	\$8,101.07
J JIME	36744	KOHLER CO	Original	2006	\$7,956.42	\$9,079.21	\$9,253.49	\$8,357.29
J JIME	36744	KOHLER CO	Original	2005	\$8,349.81	\$9,921.45	\$9,977.40	\$10,110.31
J JIME	36744	KOHLER CO	Original	2004				\$9,438.85

A188

002

Casting Process or Plate # Change Questionnaire

Old plate number 4380

New plate number 4387

Transferring to Manual or Dry Finishing (circle one if applicable)

1.) Do you have any physical limitations that prevent you from casting this floor?

Yes

☒ No

If yes, please explain:

2.) Have you been trained properly?

☒ Yes

No

In no, please explain:

3.) Can you perform the job in a safe manner?

☒ Yes

No

If no, please explain:

4.) Are you ready to perform the job without further assistance?

☒ Yes

No

If no, please explain:

5.) Have you signed off on all of the applicable SOP's?

☒ Yes

No

If no, please explain:

6.) I have read this document and completely understand the contents of it, and have answered all of the questions honestly.

☒ Yes

No

Jose J Jimenez
Associate - Print Name/Clock #

Jose J Jimenez
Foreman Signature

Jose J Jimenez
Associate Signature

11/28/12
Date

[Signature] 11-28-12
Supervisor Signature

Kohler Associates – Completed form filed in employee's personal Foreman's folder, or HR folder, for at least as long as employed
Temporary Associates – Completed form kept in Foreman's Office

Rev. No: 05
Rev. Date: 11/26/12

Cast-43

0189

003

MARTIN Attorneys
& MARTIN, P.A.

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

November 17, 2014

Ms. Amy Bracy
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

RE: José Juan Jiménez vs. Kohler Co.
WCC: 1122474 and 1219561

Dear Ms. Bracy:

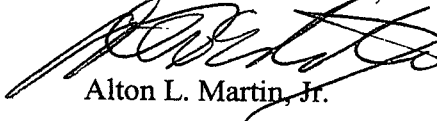
Please find enclosed a copy of our Form 30, Request for Commission Review that we are filing on behalf of the Claimant regarding the above-referenced matter. By copy, we have provided the defense attorney with a copy of same. I have also enclosed our firm's check in the amount of \$150.00 for the filing fee.

Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your attention in this matter.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, P.A.



Alton L. Martin, Jr.

ALMjr/kew

Enclosure

cc: Grady Beard, Esquire (w/enclosures)

1415 Augusta Street • Greenville, SC 29605
Post Office Box 8220 • Greenville, SC 29604

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WCC File #: **1122474 &
1219561**

Carrier File #: _____

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Jose Jimenez SSN: _____ Employer's Name: Kohler Company
Address: 520 Raleigh Court Address: 4000 S. Pine St.
City: Spartanburg State: SC Zip: 29301 City: Spartanburg State: SC Zip: 29301
Home Phone: (864) 357-6636 Work Phone: () - Insurance Carrier: Kohler Co./Broadspire
Preparer's Name: Alton L. Martin, Jr. Law Firm: Martin & Martin, PA Preparer's Phone #: (864) 271-1822

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 7/14/11 and 3/13/12

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

1. Did the Commissioner err in finding the injuries at work reported by Claimant to his supervisor and the company nurse immediately following the dates of accident did not satisfy the requirement of reporting an injury to the employer? (Finding 9 and Conclusion 13).
2. Did the Commissioner err in finding Claimant failed to carry his burden of proof, in light of the nurse's notes related to Claimant and Jesus Lugo, the testimony, and the medical evidence? (Findings 5,7,11,13,14 and Conclusion 3).
3. Did the Commissioner err in finding the testimony of Nurse Zimmerman "very credible" and Jesus Lugo not credible to establish a pattern, when the nurse's notes directly conflicted with her testimony and confirmed Mr. Lugo's testimony? Findings 5,6).

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Grady Beard, Esquire, Sowell Gray,
Name

Po Box 11449, Columbia, SC 29211

on the 17th day of November, 2014 by ☒ first class mail ☐ personal service ☐ certified mail.

[Signature]
Preparer's Signature

Attorney for Claimant
Title

November 17, 2014

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

STATE OF SOUTH CAROLINA

Jose Juan Jimenez,

Claimant,

V.

Kohler Company,

Employer,

and

Self Insured,

Carrier.

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION**

W.C.C. FILE NO: 1122474 and 1219561

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned did cause the Form 30 to be served upon the Amy Bracy, Judicial Director of the South Carolina Workers' Compensation Commission and attorney for Defendants, Grady Beard, Esquire, by mailing a copy of same in an envelope addressed as shown below and depositing same in the United States mail, proper postage affixed thereto on the 17th day of November, 2014.

Amy Bracy
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, S. C. 29202-1715

Grady Beard, Esquire
Sowell Gray
PO Box 11449
Columbia, SC 29211

~~MARTIN & MARTIN, P.A.~~

Alton L. Martin, Jr.

Greenville, South Carolina

P192



GRADY L. BEARD
Direct Dial 803 231.7824
Direct Fax 803 231.7874
Email gbeard@sowellgray.com

March 6, 2015

VIA E-CASE UPLOAD

Ms. Amy Bracy
Judicial Director
SC Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

RE: Jose J. Jimenez v. Kohler Company
WCC File Nos.: 1122474 and 1219561
Dates of Accidents: 07/14/11 and 03/13/12
Claim Nos.: 186482859-001 and 186492343-001
Our File No.: 6457/8006

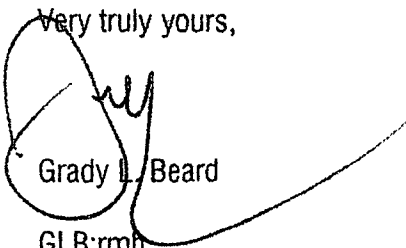
Dear Ms. Bracy:

Enclosed please find the Respondent's Full Commission Brief in support of our position on behalf of the employer/carrier in the above-referenced matter.

With a copy of this letter, we are hereby serving a copy of the brief on counsel for the claimant.

With kindest personal regards, I remain

Very truly yours,



Grady L. Beard

GLB:rmh

Enclosures

cc: Alton L. Martin, Jr., Esquire (via e-mail and regular U.S. mail) (w/enclosures)
Ms. Kim Stringer (via e-mail only) (w/enclosures)
Mr. Mike Tolleson (via e-mail only) (w/enclosures)
Mr. Dean Yagodinski (via e-mail only) (w/enclosures)
Broadspire.claims-NewOrleans@xerox.com (w/enclosures)

**STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1122474 & 1219561**

Jose Jimenez,

Claimant,

Appellant,

v.

Kohler Company,

Self-Insured Employer,

Respondent.

**RESPONDENT'S
FULL COMMISSION BRIEF**

STATEMENT OF THE CASE

This is an appeal by Jose Jimenez ("Claimant" or "Appellant") from the Decision and Order of Commissioner T. Scott Beck filed on October 24, 2014. This brief is submitted by Kohler Company ("Defendant" or "Respondent") in response to the claimant's appeal and Brief.

These claims were before the South Carolina Workers' Compensation Commission pursuant to Forms 50 filed by the claimant on February 1, 2013. It is the position of the claimant that he suffered compensable accidents on July 14, 2011, and on March 13, 2012, resulting in injuries to his back and left leg. The claimant is requesting a finding of compensability as to both claims, authorized causally-related medical treatment for his alleged injuries, reimbursement for out of pocket medical expenses for the causally-related medical treatment obtained to date, and temporary total disability benefits from January 30, 2013, and continuing until such time as the claimant reaches maximum medical improvement.

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To the contrary, the defendant has denied each of these claims in their entirety, but specifically based upon the claimant's failure to meet his burden of proving the alleged injuries arose out of and in the course of his employment with the defendant pursuant to Section 42-1-160, and based upon the claimant's failure to timely report the claims as work-related pursuant to Section 42-15-20. The defendant also specifically requested a determination as to the credibility or lack thereof of the claimant. Finally, the defendant contends that if either claim is compensable, the claimant sustained a subsequent intervening accident which is the true cause of his current alleged problems.

The Hearing in this matter was held before Commissioner T. Scott Beck ("Hearing Commissioner") in Columbia, South Carolina, on May 23, 2014, and June 4, 2014, and in Greenville, South Carolina, on June 3, 2014. By way of Decision and Order filed on October 24, 2014, the Hearing Commissioner determined the claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012. The claimant is therefore not entitled to any benefits under the Act. The Hearing Commissioner reasoned that although the claimant reported "incidents" following each alleged date of injury, these reported incidents do not rise to the level of defining an injury to the employer, especially due to the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. Finally, the Hearing Commissioner also found the claimant to not be credible.

Claimant now appeals the Decision and Order of the Hearing Commissioner to the Full Commission Appellate Panel ("Appellate Panel"), based upon the following grounds:

1. Did the Commissioner err in finding the injuries at work reported by claimant to his supervisor and the company nurse immediately following the dates of accident did not satisfy the requirement of reporting an injury to the employer?

2. Did the Commissioner err in finding the Claimant failed to carry his burden of proof, in light of the nurse's note related to claimant and Jesus Lugo, the testimony, and the medical evidence?
3. Did the Commissioner err in finding the testimony of Nurse Zimmerman "very credible" and Jesus Lugo not credible to establish a pattern, when the nurse's notes directly conflicted with her testimony and confirmed Mr. Lugo's testimony?

The defendant respectfully requests the Full Commission to affirm the Decision and Order of the Hearing Commissioner in its entirety, based upon the following grounds:

1. The determination of the Commissioner regarding the credibility of Nurse Zimmerman is supported by the greater weight of the evidence in the record.
2. The claimant's argument regarding notice is misplaced and fails to actually address the compensability of the claim.

STANDARD OF REVIEW

As an appellate body, the Full Commission is given great discretion to review decisions made at the Hearing Commissioner level and to make its own findings and conclusions.

Although it is logical for the Full Commission, which did not have the benefit of observing the witness, to give weight to the hearing commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the hearing commissioner.

McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992) (citing Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967)). "The final determination of witness credibility and the weight to be accorded evidence is left to the Full Commission." McGuffin, 307 S.C. at 186, 414 S.E.2d at 163 (citing Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728 (1989)).

Accordingly, the Full Commission is the ultimate finder of fact and is not bound by the single Commissioner's Findings of Fact. Lanford v. Clinton Cotton Mills, 204 S.C. 423, 30 S.E.2d 36 (1944); Linnen v. Beaufort Co. Sheriff's Dep't, 305 S.C. 341, 408 S.E.2d 248 (Ct. App.1991). The defendants request that the Full Commission now exercise its discretion to review the evidence presented at the

Hearing and provide an independent decision that the underlying Award, and specifically the issues raised on appeal, is supported by the greater weight of evidence or the law of South Carolina.

ARGUMENT

I. **THE DETERMINATION OF THE COMMISSIONER REGARDING THE CREDIBILITY OF NURSE ZIMMERMAN IS SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE IN THE RECORD.**

The claimant contends the Hearing Commissioner erred by failing to properly consider the records of Nurse Zimmerman from Jesus Lugo's workers' compensation claim which, according to the claimant, would have lent credibility to the testimony of the claimant and his witness, Mr. Lugo, and altered his finding regarding the credibility of Nurse Zimmerman. In support of his contention, the claimant submits the finding of the Commissioner can only be explained by the allegation that the Commissioner did not review the reports of Nurse Zimmerman.

To the contrary, the defendant maintains the assertion that the Hearing Commissioner did not review the records of Nurse Zimmerman is without any basis whatsoever. Because the Hearing Commissioner did not address the records of Nurse Zimmerman in the Decision and Order is not commensurate with his failure to review the records. A Commissioner is not required to comment on every record submitted into evidence.¹

Moreover, the claimant's position regarding Nurse Zimmerman's credibility is misleading at best and can only be supported by a cursory review of Nurse Zimmerman's testimony. Finally, the claimant's position on this issue fails to consider the complete testimony of Mr. Lugo, which Mr. Lugo himself admitted was inconsistent. As such, the defendant contends that if the totality of the evidence in the

¹ The Hearing Commissioner's decision comes with the presumption of regularity, which holds that in the absence of any positive showing as to what actually occurred, a presumption must be indulged in favor of concluding that the Hearing Commissioner did consider the nurses' notes. See generally Brown v. Allstate Insurance Co., 344 S.C. 21, 542 S.E.2d 723 (2001); see also State v. Mundell, 66 Idaho 297, 304, 316, 158 P.2d 818, 820, 825 (1945) ("[a]s a general rule the appellate court, in the absence of a showing in the record to the contrary, . . . will presume that the proceedings had in the progress of the cause were regular and free from error."). Claimant cannot overcome this presumption with speculation.

record is considered, the finding of the Hearing Commissioner regarding the relative credibility of Nurse Zimmerman and Mr. Lugo is supported by the greater weight of that evidence.

A. The Records Of Nurse Zimmerman Do Not Raise Questions As To The Credibility Of Her Testimony.

It has been the primary objective of the claimant throughout these claims to demonstrate Kohler's alleged "pattern of denying workers' compensation claims and refusing to send injured workers to the doctor." In keeping with that objective, the claimant submitted records from a prior claim from 2006 involving Mr. Jesus Lugo and solicited testimony from Nurse Zimmerman, all in hopes of establishing that Kohler intentionally denied the claims at bar and refused medical treatment to this claimant. None of these allegations have been substantiated by the evidence in the record.

The claimant asserts that a review of the records from Nurse Zimmerman in Mr. Lugo's claim demonstrates that Mr. Lugo reported an injury by accident on October 2, 2006, and requested to be seen by a doctor on October 25, 2006. The request was denied by Nurse Zimmerman because the claimant was working full duty and seeing a chiropractor on his own. In an effort to damage the credibility of Nurse Zimmerman, the claimant directs the Appellate Panel to her testimony that "if they specifically ask [to go to a doctor], they are sent." Importantly, the claimant conveniently does not provide or cite to the Appellate Panel her entire testimony on the matter, testimony which was actually solicited by counsel for the claimant and provided for exceptions to the apparent general rule referenced above. In fact, Nurse Zimmerman testified as follows:

- Q: Are there occasions where you tell them, I don't think you need to go to the doctor?
- A: I'll tell them, well, do light duty and then if it's - - and I tell them if they notice any change or anything different to come back that day. And then if there is they go to the doctor.

Deposition of Pat Zimmerman, p. 23, ll. 15-20. Nurse Zimmerman later testified again regarding the procedure for referring employees for off-site medical treatment, as follows:

Q: And if a person asks to go to the doctor you always sent them?

A: Yes, if they had a - - if they had an injury or something. We didn't always send them right then, we put them on light duty for a few days, like I said before. And I would tell them if they notice any change that day or anything different to come back, and they would be sent.

Deposition of Pat Zimmerman, p. 29, l. 19-p. 30, l. 2.

The point of citing this testimony is to demonstrate that not every workers' compensation claim has identical facts and, as such, claims are treated differently by employers depending upon those facts. Unfortunately, the claimant is attempting to assert by citing piecemeal testimony that every incident, accident and/or injury sustained by an employee is and should be treated in an identical fashion by Kohler, which is neither reasonable nor accurate for Kohler or any other employer in South Carolina. In fact, if that were the rule there would be no need for the South Carolina Workers' Compensation Commission or commissioners.

Additionally and critically important to both this argument and the general compensability of the claims is the actions of the claimant following his initial visits to Nurse Zimmerman after the incidents in July 2011 and March 2012. Nurse Zimmerman testified she advised him to follow-up on the Monday after his incident on July 15, 2011, but the claimant never returned. See Deposition of Nurse Zimmerman, p. 9. In fact, the claimant did not return to her office again until September 8, 2011, when he complained of shoulder pain, not back pain. See Deposition of Nurse Zimmerman, p. 10. Nurse Zimmerman confirmed the claimant never returned to ask for a referral for back treatment at any time between July 15, 2011, and September 9, 2011.

Nurse Zimmerman then testified that after the incident on March 13, 2012, the claimant did not return to her office again until June 28, 2012, when he presented with a headache. See Deposition of Nurse Zimmerman, p. 12. Nurse Zimmerman testified she actually checked with the claimant's foreman, Sam Barnwell, on March 19, 2012, and was advised claimant was "fine and doing his regular job." See Deposition of Nurse Zimmerman, p. 12. The claimant also admitted that when Joe Brown, his supervisor, followed-up with him after the incidents in July 2011 and March 2012, the claimant told him he was "doing all right." See H.T., Vol. III, p. 26. The claimant testified these conversations occurred two or three times. See H.T., Vol. III, p. 26.

Accordingly, it seems disingenuous for the claimant to claim Nurse Zimmerman provided incredible testimony when the claimant was admittedly provided multiple opportunities to report and pursue any continued back problems, yet inexplicably failed to do so.

B. Lugo Himself Was Without Credibility.

Lost by the claimant in his desire to attack the credibility of Nurse Zimmerman is his failure to address the finding by the Hearing Commissioner that the testimony of Mr. Lugo, his own witness, was without credibility. Mr. Lugo testified he was not employed at Kohler at the time of the claimant's alleged accidents and had no knowledge of whether either alleged accident actually occurred. See H.T., Vol. II, p. 82. Mr. Lugo also testified he has illegally been living in the United States of America for 20 years, and using a fake Social Security card to create an identity for himself. See H.T., Vol. II, pp. 87-88. Mr. Lugo further testified, regarding a seemingly minor issue, that he did not have a driver's license with him at the Hearing, only to later admit he did have a driver's license. See H.T., Vol. II, p. 92. Mr. Lugo concluded his testimony by admitting to the Hearing Commissioner that he provided inconsistent testimony.

As such, not only did the claimant take the testimony of Nurse Zimmerman out of context for the sole purpose of creating the appearance of impropriety, he did so by using the testimony of a witness who himself admittedly provided incredible testimony. There is simply no basis for the allegations of error made by the claimant. The finding of the Hearing Commissioner regarding the credibility of Nurse Zimmerman is supported by the greater weight of the evidence in the record and should be upheld by the Appellate Panel.

II. **THE CLAIMANT'S ARGUMENT REGARDING NOTICE IS MISPLACED AND FAILS TO ACTUALLY ADDRESS THE COMPENSABILITY OF THE CLAIM.**

The determination by the Hearing Commissioner that the claimant failed to prove an injury by accident on either July 14, 2011, or March 13, 2012, is supported by the greater weight of the evidence in the record and, therefore, should be affirmed by the Appellate Panel.

It is well-established in South Carolina that the claimant has the burden of proving by a preponderance of the evidence that his alleged injuries are causally-related to his employment and that he is entitled to any compensation or medical care as a result. S.C. CODE ANN. § 42-1-160 (Supp. 2007); Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E.2d 305 (1991). Importantly, however, an award under the Act cannot be based upon surmise, conjecture, or speculation, but must be founded upon sufficient substance to afford it a reasonable basis. Linen v. Ruscon Constr. Co., 286 S.C. 67, 68, 332 S.E.2d 211, 212 (1985).

Interestingly, the claimant fails to demonstrate or otherwise argue to the Appellate Panel how the claimant met his burden of proof regarding the compensability of his current problems under Section 42-1-160. In fact, the Hearing Commissioner's denial of these claims was based upon the claimant's lack of follow-up complaints with anyone at Kohler as well as his complete lack of additional medical treatment during the months following the minor incidents. Instead of addressing the Hearing

Commissioner's error in relying on these facts to support his finding regarding compensability under Section 42-1-160, the claimant instead focuses on the issue of notice. Specifically, the claimant asserts that he provided the defendant with proper notice of both alleged accidents under Section 42-15-20 of the Act. The claimant proceeds to cite Section 42-15-20 and corresponding case law to conclude that "[o]nce given, Notice cannot be taken back."

The claimant has simply missed the point. The Hearing Commissioner did not find as a fact or conclude as a matter of law that the claimant failed to provide timely Notice of his "incidents" under Section 42-15-20. In fact, the Hearing Commissioner does not even use the word "notice" in the finding of fact asserted by the claimant to be erroneous. It is admitted that the claimant reported to Nurse Zimmerman the incidents of July 14, 2011, and March 13, 2012. The issue for both the defendant and ultimately the Hearing Commissioner is that after neither incident did the claimant make further complaints or follow-up with Nurse Zimmerman as requested, or seek any medical treatment at all. In fact, his behavior and actions were to the contrary. See H.T., Vol. III, p. 26; Deposition of Nurse Zimmerman, pp. 9, 12; Defendant's Ex. B, p. 3. Had the claimant taken any affirmative action during the days, weeks or months following either incident to advise his employer he was still in need of treatment, as alleged, he would have received the necessary treatment. This did not occur, and the claimant has failed to provide any reasonable explanation as to why.

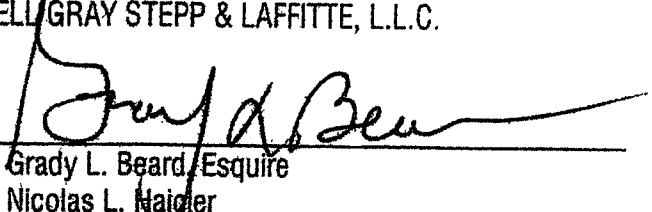
Accordingly, the finding of fact and conclusion of law by the Hearing Commissioner that the claimant did not meet his burden of proving a compensable injury by accident pursuant to Section 42-1-160 on either July 14, 2011, or March 13, 2012, is supported by the greater weight of the evidence in the record. In addition, the argument regarding the applicability of Section 42-15-20 is both misplaced and irrelevant to the determination of the Hearing Commissioner to deny these claims.

CONCLUSION

Based upon the foregoing, the defendants request the Full Commission Appellate Panel to affirm the Decision and Order of the Hearing Commissioner in its entirety as supported by the greater weight of the evidence in the record and devoid of any errors of law.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina

March 6, 2015

CERTIFICATE OF SERVICE

I, the undersigned, Legal Assistant of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendants, do hereby certify that I have served the following parties with the foregoing document(s) by mailing a copy of the same via United States Mail, postage prepaid, and/or hand delivering, or otherwise indicated, to the following address(es):

Pleading(s): **RESPONDENT'S FULL COMMISSION BRIEF**

Parties served:

VIA E-CASE UPLOAD

Ms. Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29202-1715

VIA E-MAIL: AL@MARTINSLAWFIRM.COM

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Racheal M Houston
Racheal M. Houston

Columbia, South Carolina

March 6, 2015

P204

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. #1122474

JOSE JIMENEZ,

EMPLOYEE/CLAIMANT,

VERSUS

KOHLER COMPANY, AND

BROADSPIRE, A CRAWFORD COMPANY,

EMPLOYER/INSURER/DEFENDANT.

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COPY

DEPOSITION OF
JOSE JIMENEZ

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF JOSE JIMENEZ
WAS TAKEN ON THE 16TH DAY OF APRIL, 2013, COMMENCING AT THE
HOUR OF 11:06 A.M., IN THE OFFICES OF MARTIN & MARTIN,
ATTORNEYS AT LAW, GREENVILLE, SOUTH CAROLINA.

FREELANCE REPORTING SERVICES
Certified Verbatim Reporters
Post Office Box 170637
Spartanburg, South Carolina 29301
(864) 587-7050 or (864) 706-1241
FreelanceRpt@charter.net

P205

APPEARANCES:

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POST OFFICE BOX 8220
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ATTORNEYS FOR THE CLAIMANT,

NICOLAS HAIGLER, ESQUIRE
SOWELL-GRAY
1310 GADSDEN STREET
COLUMBIA, SOUTH CAROLINA 29201,
ATTORNEYS FOR THE DEFENDANT.

ALSO ATTENDING: MIKE TOLLESON
SHONA JOHNSON

INTERPRETER: WILMER AVILES, A2Z INTERPRETING

REPORTED BY: MARLA J. O'BRIEN, CVR-M, ACR

Deposition of Jose Jimenez

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

- 4 1. THAT THIS DEPOSITION IS BEING TAKEN PURSUANT TO ALL
5 APPLICABLE RULES OF THE SOUTH CAROLINA WORKERS'
6 COMPENSATION COMMISSION;
7 2. THAT THE DEPONENT WAIVES HIS RIGHT TO READ AND SIGN THE
8 DEPOSITION TRANSCRIPT.

9 *****

10 JOSE JIMENEZ, BEING DULY SWORN TO TELL THE TRUTH,
11 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH OF HIS OWN
12 KNOWLEDGE CONCERNING THE MATTER HEREIN, TESTIFIED AS
13 FOLLOWS:

14 *****

15 EXAMINATION BY MR. HAIGLER:

16 Q. MR. JIMENEZ, MY NAME IS NICK HAIGLER. I REPRESENT
17 THE KOHLER COMPANY IN YOUR WORKERS' COMPENSATION
18 CLAIM. HAVE YOU EVER BEEN DEPOSED BEFORE TODAY?
19 HAVE YOU EVER BEEN IN A SITUATION WITH ATTORNEYS
20 WHERE YOU WERE UNDER OATH?

21 A. NO.

22 Q. OKAY. BASICALLY, THIS IS AN OPPORTUNITY FOR ME TO
23 DISCOVER WHAT I CAN ABOUT YOUR WORKERS' COMPENSATION
24 CLAIM. SO YOU BETTER UNDERSTAND KIND OF WHY WE'RE
25 HERE, I'M GOING TO GIVE YOU A LITTLE BIT OF DETAIL

1 AND SOME GROUND RULES, SO THAT YOU CAN ANSWER MY
2 QUESTIONS. SOME OF THE QUESTIONS I'LL BE ASKING YOU
3 WILL BE BIOGRAPHICAL IN NATURE, SOME WILL PERTAIN TO
4 YOUR WORK HISTORY, OBVIOUSLY ABOUT YOUR WORKERS'
5 COMPENSATION CLAIM, PRIOR MEDICAL HISTORY, AND KIND
6 OF HOW YOU'RE DOING AT THIS POINT. WHILE YOU ARE
7 FREE TO ELABORATE ON YOUR RESPONSES, PLEASE TRY TO
8 ANSWER MY QUESTIONS WITH A YES OR NO, AS OPPOSED TO
9 NODDING YOUR HEAD OR SAYING UH-HUH OR HUH-UH. DOES
10 THAT MAKE SENSE?

11 A. YES.

12 Q. ALSO, IF I ASK YOU A QUESTION THAT'S CONFUSING OR
13 YOU JUST NEED ME TO REPEAT OR REPHRASE, PLEASE ASK
14 ME TO DO THAT, AND I'LL BE GLAD TO DO SO. DO YOU
15 UNDERSTAND THAT?

16 A. YES.

17 Q. IF YOU NEED TO TAKE A BREAK FOR ANY REASON, WE
18 SHOULD NOT BE HERE A VERY LONG TIME. BUT IF YOU
19 NEED TO TAKE A BREAK FOR ANY -- WELL, WE MAY BE HERE
20 FOR AWHILE, JUST BASED ON THE NATURE OF THE
21 DEPOSITION. SO IF YOU NEED TO TAKE A BREAK FOR ANY
22 REASON, PLEASE LET ME KNOW.

23 A. YES.

24 Q. MR. JIMENEZ, PLEASE STATE YOUR FULL NAME FOR THE
25 RECORD.

1 A. JOSE JUAN JIMENEZ.

2 Q. MR. JIMENEZ, DO YOU SPEAK ANY ENGLISH?

3 A. I UNDERSTAND AND SPEAK SOME, BUT NOT WHAT'S
4 NECESSARY FOR THIS KIND OF SITUATION.

5 Q. OKAY. AND MR. JIMENEZ, I'LL ASK YOU, BASICALLY FOR
6 THE INTERPRETER'S BENEFIT, CAN YOU SPEAK UP AS
7 LOUDLY AS YOU CAN.

8 A. YES.

9 Q. WHEN YOU SAY NOT FOR THIS TYPE OF SITUATION, WHAT DO
10 YOU MEAN BY THAT, AS FAR AS YOUR ABILITY TO SPEAK
11 ENGLISH?

12 A. THAT I CAN SPEAK THE NORMAL PHRASES, THE NORMAL
13 WORDS, HI, HOW ARE YOU. BUT I CAN'T GO INTO DETAIL
14 IN ENGLISH WITH WHAT I WANT TO SAY.

15 Q. HAVE YOU UNDERSTOOD THE QUESTIONS THAT I'VE ASKED
16 YOU IN ENGLISH?

17 A. NO, NOT ALL.

18 Q. CAN YOU WRITE IN ENGLISH?

19 A. VERY DIFFICULT FOR ME. IF I DON'T KNOW HOW TO
20 EXPRESS MYSELF WELL IN ENGLISH, IT'S EVEN MORE
21 DIFFICULT TO TRY TO WRITE SOMETHING IN ENGLISH.

22 Q. OKAY. CAN YOU READ WORDS WRITTEN IN ENGLISH?

23 A. SOME, BECAUSE FOR ME, IT'S A LITTLE BIT EASIER TO
24 READ SOME OF IT THAN IT IS TO WRITE IT.

25 Q. OKAY. WHAT IS YOUR DATE OF BIRTH?

1 A. AUGUST 5TH OF 1978.

2 Q. AND HOW TALL ARE YOU, AND HOW MUCH DO YOU WEIGH?

3 A. I'M NOT VERY SURE, BUT SOMEWHERE AROUND 5,11 AND 220
4 POUNDS.

5 Q. DO YOU WEAR CONTACTS OR EYEGASSES?

6 A. NO.

7 Q. DO YOU HAVE A SOCIAL SECURITY NUMBER?

8 A. NO.

9 Q. ARE YOU AN ILLEGAL RESIDENT OF THE UNITED STATES?

10 A. NO.

11 BY MR. MARTIN:

12 OBJECT TO THE FORM.

13 EXAMINATION RESUMED BY MR. HAIGLER:

14 Q. DO YOU HAVE A GREEN CARD?

15 A. NO.

16 Q. DO YOU HAVE ANY FORM OF IDENTIFICATION ISSUED TO YOU
17 BY SOME AUTHORITY FROM THE UNITED STATES?

18 A. I HAVE AN EXPIRED LICENSE, BUT I DON'T HAVE IT ON
19 ME, SO IT'S ALREADY EXPIRED.

20 Q. WAS IT A LICENSE FROM THE SOUTH CAROLINA DEPARTMENT
21 OF MOTOR VEHICLES?

22 A. NO, FROM NORTH CAROLINA.

23 Q. WHEN DID THAT LICENSE EXPIRE?

24 A. I'M NOT SURE ON THE DATE, BUT MAYBE THREE TO FIVE
25 YEARS AGO.

- 1 Q. HOW LONG DID YOU HAVE THAT DRIVER'S LICENSE?
2 A. FIVE OR SIX YEARS.
3 Q. HOW LONG HAVE YOU LIVED IN THE UNITED STATES?
4 A. THIRTEEN TO 14 YEARS.
5 Q. AND WHERE ARE YOU FROM ORIGINALLY?
6 A. MEXICO.
7 Q. HOW DID YOU GET INTO THE UNITED STATES?
8 A. WELL, COMING ACROSS THE BORDER.
9 Q. WHICH BORDER?
10 A. TEXAS.
11 Q. DID YOU DRIVE TO THE DEPOSITION TODAY?
12 A. YES.
13 Q. WHAT KIND OF AUTOMOBILE DO YOU HAVE?
14 A. I HAVE A CAR, AND I ALSO HAVE A PICKUP THAT I SHARE
15 WITH MY BROTHER.
16 Q. WHAT DID YOU DRIVE TODAY?
17 A. HIS PICKUP.
18 Q. IS IT THE BLUE PICKUP IN THE PARKING LOT OUT THERE?
19 A. YES.
20 Q. WITH THE LADDER RACK ON THE BACK?
21 A. YES.
22 Q. WHAT KIND OF TRUCK IS THAT? WHO MAKES THE TRUCK?
23 A. DODGE.
24 Q. IS IT A BLUE TRUCK?
25 A. YES.

1 Q. AND WHAT KIND OF CAR DO YOU HAVE?

2 A. A CAMARO.

3 Q. WHAT YEAR IS THAT CAMARO?

4 A. '98.

5 Q. DO YOU OWN THAT CAMARO?

6 A. YES.

7 Q. DO YOU OWN THE TRUCK OUTSIDE?

8 A. IT'S IN MY NAME, BUT MY BROTHER AND I PAY THE BILL
9 HALFWAY.

10 Q. DO YOU HAVE ANY KIND OF CAR INSURANCE OR TRUCK
11 INSURANCE ON THOSE VEHICLES?

12 A. YES.

13 Q. WHO IS YOUR CARRIER?

14 A. I HAVE IT WITH A COMPANY, I DON'T REMEMBER WELL THE
15 NAME, BUT IT IS CALLED LA CIMA.

16 Q. HOW FAR DID YOU GO IN SCHOOL?

17 A. IN MEXICO, I ATTENDED A TECHNICAL COLLEGE WITH
18 INDUSTRIAL PRODUCTION TECHNIQUES.

19 Q. DID YOU RECEIVE A DEGREE OR SOME SORT OF CERTIFICATE
20 COMPLETING THE PROGRAM?

21 A. YES, I DO HAVE MY DIPLOMA.

22 Q. DID YOU GRADUATE FROM THE EQUIVALENCY OF HIGH SCHOOL
23 IN MEXICO?

24 A. YES.

25 Q. HAVE YOU HAD ANY EDUCATION, ANY FORMAL EDUCATION,

1 SINCE YOU'VE BEEN IN THE UNITED STATES?

2 A. NO.

3 Q. ARE YOU MARRIED AT THIS TIME?

4 A. I'M NOT LEGALLY MARRIED. I LIVE WITH MY PARTNER.

5 Q. DO YOU HAVE ANY CHILDREN?

6 A. THREE.

7 Q. DO THEY LIVE HERE IN THE UNITED STATES?

8 A. YES.

9 Q. HOW OLD ARE THEY?

10 A. FOUR, TWO, AND TEN MONTHS.

11 Q. WHAT'S YOUR CURRENT ADDRESS?

12 A. 420 RALEIGH COURT.

13 Q. WHICH CITY IS THAT LOCATED IN?

14 A. SPARTANBURG.

15 Q. IS THAT AN APARTMENT, OR A HOUSE, OR WHAT IS THAT?

16 A. TRAILER.

17 Q. HOW LONG HAVE YOU LIVED AT THAT ADDRESS?

18 A. SINCE AUGUST OR SEPTEMBER OF LAST YEAR.

19 Q. LET ME ASK YOU THIS: WHO LIVES WITH YOU AT THAT
20 ADDRESS?

21 A. MY BROTHER, MY WIFE, AND MY CHILDREN.

22 Q. HAVE YOU LIVED IN ANY OTHER STATE OTHER THAN SOUTH
23 CAROLINA?

24 A. YES.

25 Q. WHICH OTHER STATES HAVE YOU LIVED IN?

1 A. TEXAS.

2 Q. HOW LONG DID YOU LIVE IN TEXAS?

3 A. BETWEEN 11 MONTHS AND A YEAR.

4 Q. DID YOU HAVE ANY JOBS WHILE YOU WERE IN TEXAS?

5 A. YES.

6 Q. OKAY, WHAT DID YOU DO?

7 A. I WORKED WITH BLOCKBUSTER AT THEIR WAREHOUSE, AND IT
8 WAS THE WAREHOUSE THAT WOULD SUPPLY OR DISTRIBUTE
9 THE MOVIES TO THE SMALLER STORES. AND I ALSO WORKED
10 AT A FOOD PREPARATION COMPANY CALLED DELTA WHERE WE
11 PACKED DIFFERENT FOODS.

12 Q. WHERE WAS THE BLOCKBUSTER LOCATED, WHICH CITY?

13 A. MCKINNEY.

14 Q. AND WHERE WAS THE FOOD PREPARATION PLACE CALLED
15 DELTA? WHERE WAS THAT LOCATED?

16 A. ALSO IN MCKINNEY.

17 Q. THANK YOU. DID YOU WORK ANYWHERE ELSE IN TEXAS?
18 BY THE INTERPRETER:

19 THE INTERPRETER WISHES TO REQUEST CLARIFICATION ON A
20 TERM USED BY THE DEPONENT.

21 WITNESS ANSWERS:

22 A. I DON'T REMEMBER IF IT WAS TWO OR THREE DAYS THAT I
23 WORKED AT A FACTORY WHERE THEY MADE POPSICLES.

24 Q. WHEN YOU LIVED IN TEXAS, DID YOU EVER HAVE AN INJURY
25 ON ANY JOB YOU WORKED ON?

1 A. THE JOBS I USUALLY WORKED AT WERE PLACES WHERE YOU
2 HAD ABOUT 80 PERCENT FEMALE WORKERS, AND 20 PERCENT
3 MALE WORKERS, AND IN NONE OF THOSE JOBS WAS I
4 REQUIRED TO LIFT MORE THAN 20 POUNDS.

5 Q. WERE YOU EVER INJURED ON ANY OF THOSE JOBS?

6 A. NO.

7 Q. DO YOU REMEMBER WHEN YOU WERE HIRED BY KOHLER?

8 A. YES.

9 Q. HAVE YOU WORKED FOR THEM ON TWO DIFFERENT OCCASIONS?

10 A. YES.

11 Q. WHEN WAS THE FIRST PERIOD OF TIME THAT YOU WORKED
12 FOR THEM?

13 A. IT WAS ON APRIL 4TH OF 2001, AND THEY FIRED ME IN
14 JANUARY OF 2004.

15 Q. WHAT DID YOU DO FROM 2001 TO 2004? WHAT WAS YOUR
16 JOB TITLE?

17 A. THEY CALL IT THERE CASTING.

18 Q. IS THAT THE SAME JOB YOU'VE HAD RECENTLY?

19 A. YES.

20 Q. OKAY. WHY WERE YOU TERMINATED IN JANUARY OF 2004?

21 A. BECAUSE I WAS ABSENT -- WELL, BECAUSE OF POINTS.

22 Q. WAS IT YOUR UNDERSTANDING THAT YOU ACCRUED POINTS
23 FOR DIFFERENT VIOLATIONS OF COMPANY POLICY?

24 A. NO.

25 Q. WHEN YOU SAY POINTS, WHAT ARE YOU TALKING ABOUT?

1 A. THE COMPANY GIVES YOU A TOTAL OF 21 POINTS BEFORE
2 YOU ARE FIRED. IF YOU CALL IN, THEN YOU GET THREE
3 POINTS. IF YOU DON'T CALL IN, THEN YOU GET SIX
4 POINTS, UP UNTIL YOU REACH 21. IF YOU SURPASS THE
5 21 POINTS, THEN YOU'RE FIRED.

6 Q. WERE YOU EVER PROVIDED A COMPANY POLICY OR HANDBOOK
7 TO REVIEW?

8 A. NO.

9 Q. DURING EITHER PERIOD OF YOUR EMPLOYMENT, DID ANYONE
10 AT KOHLER EVER GO OVER COMPANY POLICY OR HANDBOOK
11 WITH YOU?

12 A. NO, NOT THAT I CAN REMEMBER.

13 Q. DID YOU KNOW WHAT TIME YOU WERE SUPPOSED TO BE AT
14 WORK AND WHAT TIME YOU HAD TO STAY UNTIL, WHAT YOUR
15 HOURS WERE WHEN YOU WERE WORKING? DID YOU
16 UNDERSTAND THAT?

17 A. YES.

18 Q. AND WHEN WERE YOU HIRED BACK WITH KOHLER?

19 A. IF I NOT MISTAKEN, IT WAS FEBRUARY 7TH OF 2004.

20 Q. AND WHEN WAS YOUR LAST DAY AT KOHLER?

21 A. IT WAS THE LAST THURSDAY OF JANUARY. I DON'T
22 REMEMBER THE EXACT DATE.

23 Q. 2013?

24 A. YES.

25 Q. AND WERE YOU ALSO THE CASTER DURING THE PERIOD FROM

1 2004 TO 2013?

2 A. NO.

3 Q. WHAT ELSE DID YOU DO FOR THEM?

4 A. I WORKED FOR ABOUT THREE TO FOUR YEARS SINCE 2004 IN
5 A MACHINE OR AN AREA THAT THEY CALL FLOWCAST. AND
6 AFTER THAT, I WENT ON TO THE OVENS WHERE THE CUPS
7 ALREADY ARE MADE. AND THEN I WENT BACK TO CASTING.

8 Q. HOW LONG DID YOU WORK IN THE OVENS AREA?

9 A. I DON'T REMEMBER VERY WELL. IT WAS MORE THAN A
10 YEAR, BETWEEN A YEAR AND TWO YEARS. BUT I DIDN'T
11 PUT MY MIND TO HOW LONG I WAS AT THAT POSITION.

12 Q. OKAY. TELL ME WHAT YOU DID AS A CASTER, WHAT KIND
13 OF JOB REQUIREMENTS THAT HAS.

14 A. WELL, IT'S ONE OF THOSE JOBS WHERE IT'S THE SAME
15 THING DAY IN, DAY OUT. WHEN YOU ARRIVE, YOU MAKE
16 THE SEATS FOR THE TOILETS, AND YOU FOLLOW THE
17 INSTRUCTIONS.

18 Q. DO YOU HAVE TO DO ANY KIND OF LIFTING?

19 A. EVERY SECOND.

20 Q. AND WHAT ARE YOU LIFTING EVERY SECOND?

21 A. ANYTHING THAT WEIGHS BETWEEN ONE POUND TO 100
22 POUNDS, OR MAYBE 150 POUNDS. AND SOMETIMES EVEN 300
23 POUNDS WITH A CO-WORKER.

24 Q. WHAT TYPES OF OBJECTS WOULD WEIGH 100 TO 150 POUNDS
25 THAT YOU WOULD LIFT ON YOUR OWN?

1 BY MR. MARTIN:

2 I'M GOING TO NOTE FOR THE RECORD THAT MR. TOLLESON
3 IS ROLLING HIS EYES AND SHAKING HIS HEAD, AND I
4 WOULD ASK THAT HE EITHER BE INSTRUCTED NOT TO DO
5 THAT AND MAKE FACIAL EXPRESSIONS, OR LEAVE THE ROOM.

6 BY MR. TOLLESON:

7 I'M SORRY.

8 BY MR. HAIGLER:

9 CAN YOU REPEAT THE QUESTION TO HIM THAT I ASKED?

10 (INTERPRETER COMPLIES)

11 WITNESS ANSWERS:

12 A. THE MOULDS.

13 Q. OKAY. AND HOW MANY TIMES A DAY WOULD YOU HAVE TO
14 LIFT A MOULD?

15 A. THREE TO FOUR TIMES.

16 Q. WOULD YOU LIFT THOSE MOULDS BY YOURSELF?

17 A. THE ONES THAT I HAD TO LIFT ON MY OWN, YES. BUT NOT
18 THE ONES THAT I HAD TO LIFT WITH A COWORKER.

19 Q. OKAY. WHO WAS YOUR SUPERVISOR?

20 BY THE INTERPRETER:

21 THE INTERPRETER WISHES TO ASK AGAIN ABOUT ONE OF THE
22 NAMES THAT HE EXPRESSED.

23 WITNESS ANSWERS:

24 A. MY BOSS MAN WAS SAM BARNWELL, AND MY IMMEDIATE
25 SUPERVISOR WAS JOE BROWN.

1 Q. WAS THIS YOUR BOSS AND YOUR SUPERVISOR AS OF YOUR
2 LAST DAY?

3 A. YES.

4 Q. WHO WAS YOUR SUPERVISOR IN EARLY 2011?

5 A. IF I'M NOT MISTAKEN, IT COULD HAVE BEEN EITHER MR.
6 TOM GIBSON OR MR. RICK BARKER.

7 Q. WHO WAS YOUR SUPERVISOR IN 2012, OR WHO WERE YOUR
8 SUPERVISORS IN 2012?

9 A. IT WAS EITHER RICK MORGAN OR DAVID LEE.

10 Q. WHAT WAS YOUR HOURLY WAGE, YOUR LAST HOURLY WAGE?

11 A. I MADE MORE THAN WHAT WAS NEEDED FOR PRODUCTION, AND
12 SO I WAS MAKING 18 TO 21.

13 Q. HOW LONG HAD YOU BEEN MAKING THAT MUCH MONEY?

14 A. EVER SINCE I WAS WORKING IN THAT POSITION, I ALWAYS
15 TRIED TO MAKE ABOVE PRODUCTION NUMBERS. SO THAT'S
16 HOW LONG I'VE BEEN MAKING THAT AMOUNT OF MONEY.

17 Q. IS YOUR HOURLY WAGE BASED UPON YOUR PRODUCTION?

18 A. NO, BECAUSE WE HAVE A BASE SALARY IF WE MEET
19 PRODUCTION.

20 Q. WHAT IS YOUR BASE SALARY IF YOU MEET PRODUCTION?

21 A. I'M NOT SURE, BECAUSE I'VE ALWAYS TRIED TO KEEP A
22 HIGH STANDARD. BUT IT'S ABOUT 15 AND CHANGE.

23 Q. FIFTEEN THOUSAND?

24 A. DO YOU MEAN HOW MUCH I MADE PER YEAR?

25 Q. CORRECT. IN 2012, HOW MUCH DID YOU MAKE?

1 A. I'M NOT SURE. BETWEEN 35 AND 40.

2 Q. THOUSAND DOLLARS?

3 A. YES.

4 Q. HOW MUCH DID YOU MAKE IN 2011?

5 A. I DON'T WANT TO LIE ABOUT THIS, BUT I KNOW I'VE
6 ALWAYS BEEN BETWEEN 33 AND 40,000.

7 Q. THANK YOU. DID YOU HAVE HEALTH INSURANCE THROUGH
8 KOHLER?

9 A. YES.

10 Q. WHO WAS YOUR CARRIER?

11 A. HEALTHCARE UNITED. AND BEFORE THAT, WE HAD BLUE
12 CROSS.

13 Q. DO YOU STILL HAVE HEALTH INSURANCE?

14 A. NO.

15 Q. HOW MANY HOURS A WEEK DID YOU NORMALLY WORK?

16 A. THEY ALWAYS GAVE US 40 HOURS A WEEK, BUT I ALWAYS
17 DID ABOUT 48.

18 Q. DID YOU EVER HAVE ANY -- WELL, LET ME ASK THIS
19 QUESTION. WERE YOU TERMINATED FROM KOHLER IN
20 JANUARY OF THIS YEAR?

21 A. NO.

22 Q. DID YOU RESIGN?

23 A. NO.

24 Q. HOW DID YOUR EMPLOYMENT END WITH KOHLER?

25 A. THE DAY I WENT TO LET THEM KNOW -- WELL, FIRST OF

1 ALL, THEY ALREADY KNEW WHAT WAS GOING ON WITH ME.
2 BUT THE DAY AFTER I SAW THE DOCTOR THAT I WENT OVER
3 TO THE JOB SITE TO LET THEM KNOW WHAT WAS GOING ON
4 WITH ME, I HAD ALREADY SEEN THE DOCTOR. AND THAT
5 DAY, MY SUPERVISOR TOLD ME THAT ALL MY POINTS HAD
6 GONE BACK TO ZERO.

7 Q. OKAY.

8 A. SO WHEN I WENT BACK, THEY TOLD ME TO WAIT SO THAT I
9 COULD SEE THE H.R. MANAGER. AND FROM THERE, THEY
10 SENT ME BACK HOME. I DIDN'T GET TO SPEAK TO ANYONE
11 ELSE FROM THERE. THE REASON I WENT TO THE JOB SITE
12 WAS TO REQUEST A SHEET SO THAT THE DOCTOR CAN PUT ON
13 THAT SHEET WHAT WAS I ABLE TO DO AND NOT DO.

14 Q. OKAY, WE'LL GET THERE IN A FEW MINUTES. SINCE
15 JANUARY OF 2004, SINCE YOU WENT BACK TO WORK FOR
16 KOHLER, HAVE YOU HAD ANY OTHER JOBS, ANY SIDE JOBS?

17 A. I WORKED ABOUT THREE TO FOUR WEEKS, IT WASN'T A
18 WHOLE MONTH, AT A COMPANY THAT MAKES CAR PARTS,
19 SPECIFICALLY, ALTERNATORS.

20 Q. WHAT WAS THE NAME OF THAT COMPANY?

21 A. IT'S IN COWPENS. IT'S A COMPANY THAT MAKES
22 ALTERNATORS.

23 Q. WHY DID YOU STOP WORKING FOR THAT COMPANY?

24 A. BECAUSE KOHLER GAVE ME MY JOB BACK.

25 Q. OKAY. SO YOU WORKED THERE IN BETWEEN YOUR TWO

1 PERIODS OF WORK AT KOHLER? YOU WORKED AT THIS PLACE
2 MAKING ALTERNATORS?

3 A. YOU COULD SAY THAT, BECAUSE ALL I DID THERE WAS
4 BASICALLY IN TRAINING. I REALLY DIDN'T DO ANY REAL
5 WORK BECAUSE OF THE TIME THAT I WAS THERE.

6 Q. HAVE YOU HAD ANY OTHER JOBS IN SOUTH CAROLINA OTHER
7 THAN WITH KOHLER AND THIS COMPANY IN COWPENS?

8 A. NO.

9 Q. HAVE YOU EVER, IN YOUR ENTIRE LIFE, HAD A PRIOR
10 WORKERS' COMPENSATION CLAIM?

11 A. NO.

12 Q. HAVE YOU EVER HAD AN INJURY ON THE JOB BEFORE THESE
13 ONES WITH KOHLER?

14 A. AT ANOTHER JOB, OR AT KOHLER?

15 Q. AT KOHLER, OR ANYWHERE.

16 A. I HIT MY FINGER, BUT BECAUSE THERE AT KOHLER, YOU'RE
17 ALWAYS WORKING WITH YOUR HANDS, YOU'RE LIMITED FROM
18 A HUNDRED PERCENT OF NOT GETTING INJURED OR NOT
19 HAVING ANY TYPE OF IMPACTS.

20 Q. OKAY. BEFORE YOU INJURED YOUR BACK AT KOHLER IN
21 2011, HAD YOU EVER HAD ANY PRIOR BACK PROBLEMS?

22 A. NO, I NEVER HAD PROBLEMS WITH MY BACK BEFORE.

23 Q. HAD YOU EVER TREATED WITH A DOCTOR FOR ANY BACK
24 PROBLEMS BEFORE 2011?

25 A. NO.

1 Q. DID YOU EVER COMPLAIN TO ANYONE AT KOHLER ABOUT BACK
2 PROBLEMS BEFORE YOUR INJURY IN 2011, YOUR FIRST
3 INJURY IN 2011?

4 A. I DON'T UNDERSTAND THE QUESTION.

5 Q. HAVE YOU EVER MADE ANY COMPLAINTS TO ANYONE AT
6 KOHLER ABOUT ANY BACK INJURIES OR PROBLEMS YOU WERE
7 HAVING BEFORE JULY OF 2011?

8 A. NO.

9 Q. HAVE YOU EVER COMPLAINED TO A DOCTOR ABOUT ANY BACK
10 PROBLEMS BEFORE JULY OF 2011?

11 A. I DID GO TO A DOCTOR IN SPARTANBURG. I WAS REFERRED
12 THERE FOR MY BACK, BUT I REALLY DON'T REMEMBER IF
13 THIS WAS BEFORE THE JULY ACCIDENT. BUT IT WAS ABOUT
14 MY BACK.

15 Q. WHO DID YOU SEE?

16 A. I DON'T REMEMBER THE DOCTOR'S NAME, BUT IT WAS AT
17 DOCTORS CARE.

18 Q. WHICH DOCTORS CARE? WHERE IS THAT? WHICH STREET IS
19 THAT DOCTORS CARE ON?

20 A. IT'S ON BLACKSTOCK ROAD.

21 Q. BLACKSTOCK?

22 A. IN FRONT OF WALMART.

23 Q. AND THAT'S IN SPARTANBURG?

24 A. YES.

25 Q. HOW MANY TIMES DID YOU TREAT AT THAT DOCTORS CARE?

1 A. ONCE.

2 Q. DID THEY SEND YOU ANYWHERE ELSE FOR ANY OTHER
3 TREATMENT?

4 A. NO.

5 Q. HAVE YOU BEEN IN A CAR ACCIDENT SINCE YOU'VE BEEN IN
6 THE UNITED STATES?

7 A. NO.

8 Q. HAVE YOU BEEN ARRESTED SINCE YOU'VE BEEN IN THE
9 UNITED STATES?

10 A. FOR NOT HAVING A DRIVER'S LICENSE.

11 Q. WHEN WAS THAT?

12 A. I DON'T REMEMBER, BUT MAYBE EIGHT OR MORE.

13 Q. EIGHT OR MORE?

14 A. ABOUT EIGHT YEARS AGO, BUT IT WAS ONLY ONCE.

15 Q. HAVE YOU EVER BEEN ARRESTED FOR ANYTHING ELSE IN THE
16 UNITED STATES?

17 A. NO.

18 Q. DO YOU HAVE A FAMILY DOCTOR OR A PERSONAL DOCTOR
19 THAT YOU SEE OUTSIDE OF WORKERS' COMP?

20 A. NO.

21 Q. IN YOUR NORMAL LIFE OUTSIDE OF WORKERS' COMP, WHERE
22 DO YOU GO WHEN YOU NEED MEDICAL TREATMENT?

23 A. IT'S BEEN MORE THAN 12 YEARS THAT I DON'T EVEN GET A
24 COLD.

25 Q. YOU'RE LUCKY. HAVE YOU EVER BEEN TO A HOSPITAL OR

1 ANYWHERE ELSE IN GREENVILLE OR SPARTANBURG FOR ANY
2 KIND OF MEDICAL TREATMENT NOT RELATED TO THESE
3 WORKERS' COMP ACCIDENTS?

4 A. NO.

5 Q. DO YOU HAVE ANY OTHER HEALTH PROBLEMS OTHER THAN
6 WHAT WE'RE DEALING WITH HERE IN WORKERS' COMP?

7 A. I DID REPORT A SHOULDER PAIN THAT I WAS FEELING, OR
8 A SHOULDER INJURY, THAT I THOUGHT THAT WAS SINGLE ON
9 ITS OWN. BUT IT'S ACTUALLY COMING FROM MY THORACIC
10 SPINE, AND IT RADIATES UP TO MY SHOULDER.

11 Q. WHEN YOU SAY REPORT, DID YOU REPORT THAT TO KOHLER?

12 A. YES.

13 Q. DID YOU BELIEVE THAT YOU HAD INJURED YOUR SHOULDER
14 AT WORK?

15 A. YES.

16 Q. DID YOU TELL SOMEONE AT KOHLER THAT?

17 A. YES, THE NURSE AND MY COWORKERS.

18 Q. WHEN DID YOU INJURE YOUR SHOULDER AT WORK?

19 A. I DON'T REMEMBER THE EXACT DATE, BUT IT WAS ABOUT
20 TWO YEARS AGO TOWARDS THE END OF 2011. NO, I MAKE A
21 CORRECTION. IT'S BEEN LESS THAN TWO YEARS. BUT
22 THEY HAVE THE REPORT AT THEIR NURSES STATION. THEY
23 DID SHOW IT TO ME.

24 Q. WAS IT IN 2011, OR 2010?

25 A. '11.

1 Q. DO YOU REMEMBER THE MONTH?

2 A. NO.

3 Q. YOU JUST CORRECTED HIS RESPONSE IN ENGLISH. DID YOU
4 UNDERSTAND WHAT HE SAID?

5 A. NO, BECAUSE I'M FOCUSED ON YOU ONLY. AND I DID
6 CORRECT IT BECAUSE I REALIZED THAT I GAVE YOU THE
7 WRONG DATE.

8 Q. HAVE YOU TREATED WITH ANY DOCTOR FOR YOUR SHOULDER?

9 A. YES.

10 Q. AND I SHOULD HAVE ASKED YOU THIS EARLIER, BUT WHICH
11 SHOULDER IS IT?

12 A. THIS ONE.

13 Q. THE RIGHT SHOULDER?

14 A. YES.

15 Q. WHO HAVE YOU TREATED WITH FOR THAT RIGHT SHOULDER?

16 A. DR. ERICA SAVAGE.

17 BY MR. MARTIN:

18 SAVAGE-JETER IS WHAT HE SAID.

19 BY THE INTERPRETER:

20 SAVAGE-JETER. THANK YOU.

21 EXAMINATION RESUMED BY MR. HAIGLER:

22 Q. WHO IS DR. ERICA SAVAGE-JETER?

23 A. THE SAME DAY THAT I WENT TO GET MY BACK CHECKED OUT,
24 I ALSO HAD MY SHOULDER CHECKED OUT.

25 Q. AT THAT POINT IN TIME, HOW LONG HAD YOUR SHOULDER

1 BEEN BOTHERING YOU?

2 A. I DON'T UNDERSTAND.

3 Q. HOW LONG HAD YOU BEEN HAVING SHOULDER PAIN WHEN YOU
4 FIRST WENT TO SEE DR. SAVAGE-JETER ABOUT IT?

5 A. I HAD BEEN EXPERIENCING IT SINCE -- OR FEELING IT
6 SINCE THE DATE OF THE ACCIDENT. BUT SINCE THEY
7 WOULD GIVE ME MEDICINE THERE, IT WOULD BE
8 CONTROLLED. IT WOULD CALM DOWN, BUT IT WOULD ALWAYS
9 COME BACK.

10 Q. ARE WE TALKING ABOUT YOUR SHOULDER OR YOUR BACK?

11 A. YOU ASKED ME ABOUT MY SHOULDER.

12 Q. OKAY, I JUST WANT TO MAKE SURE. DID YOU HAVE AN
13 ACCIDENT WHERE YOU SPECIFICALLY INJURED YOUR
14 SHOULDER?

15 A. I STARTED TO FEEL THAT PAIN ON THE DAY THAT I WAS
16 MOVED FROM MY WORK AREA INTO THE PACKING AREA. AND
17 I HAD NEVER WORKED THAT AREA BEFORE. BUT BECAUSE WE
18 WERE MISSING HOURS, THEY ALLOWED US TO WORK THAT
19 AREA. ALSO, THE MACHINE THAT DOES THE LIFTING AND
20 WRAPPING WAS DAMAGED AT THE TIME, AND SO THEY
21 ALLOWED US TO DO THE WORK MANUALLY.

22 Q. HOW LONG DID YOU WORK IN THE PACKING AREA?

23 A. EVERY TIME THAT THE SUPERVISOR NEEDED ME TO GO
24 THERE.

25 Q. FAIR ENOUGH. HAVE YOU TREATED WITH ANYONE OTHER

1 THAN DR. SAVAGE-JETER FOR YOUR SHOULDER?

2 A. NO, NOT UNTIL I SPOKE WITH WHAT'S HIS NAME, I DON'T
3 REMEMBER -- DR. MARCO RODRIGUEZ. AND I HAVE AN
4 UPCOMING APPOINTMENT, I THINK ON THE 22ND OF THIS
5 MONTH, FOR MY SHOULDER.

6 Q. WHERE IS DR. RODRIGUEZ LOCATED?

7 A. DR. ERICA WAS THE ONE THAT REFERRED ME THERE TO DR.
8 RODRIGUEZ FOR MY BACK AND ALSO FOR MY SHOULDER.
9 IT'S AN ORTHOPAEDIC CLINIC. I THINK IT'S ON HIGHWAY
10 9, BUT I DON'T REMEMBER THE EXACT ADDRESS.

11 Q. IN SPARTANBURG?

12 A. YES.

13 Q. HAVE YOU EVER BEEN TO THAT CLINIC BEFORE?

14 A. NO.

15 Q. AND THAT APPOINTMENT'S ON APRIL THE 22ND?

16 A. I'M NOT SURE OF THE DATE, IF IT'S 22 OR THE 26TH,
17 BUT IT IS GOING TO BE WITHIN THIS MONTH.

18 Q. MR. JIMENEZ, I HAVE TWO DATES OF ACCIDENT FOR YOU.
19 DID YOU HAVE TWO DIFFERENT ACCIDENTS INVOLVING YOUR
20 BACK AT KOHLER?

21 A. YES, IT IS TWO DIFFERENT DATES, BUT IT'S THE SAME
22 INJURY. BECAUSE SINCE THE FIRST INJURY, I WOULD
23 COMPLAIN AND I WOULD COMPLAIN AND THE PAIN WOULD BE
24 THERE AND GO AND COME. BUT ON THE SECOND TIME,
25 WELL, MY BACK JUST GOT INJURED MORE.

1 Q. WHEN WAS THE FIRST TIME YOU STARTED FEELING BACK
2 PAIN?

3 A. ARE YOU TALKING ABOUT DATES?

4 Q. YES.

5 A. I DON'T REMEMBER THE EXACT DATE.

6 Q. OKAY. YOU AND YOUR ATTORNEY, OR YOUR ATTORNEY HAS
7 FILED ON YOUR BEHALF, A DOCUMENT WITH THE WORKERS'
8 COMPENSATION COMMISSION INDICATING A DATE OF
9 ACCIDENT OF JULY 14TH, 2011. IS THAT DATE FAMILIAR
10 TO YOU?

11 A. WHEN I GAVE MY ATTORNEY THE DATES, THOSE WERE THE
12 DATES BASED ON WHAT THE NURSE TOLD ME I HAD GONE TO
13 THE INFIRMARY. SO IF THE ATTORNEY IS PUTTING THAT
14 ON THE FORMS, THOSE MUST BE THE DATES.

15 Q. OKAY. DO YOU REMEMBER ANYTHING HAPPENING CAUSING
16 INJURY TO YOUR BACK, CAUSING YOUR BACK TO HURT ON
17 JULY 14TH, 2011?

18 A. IT WAS A TIME WHEN I WAS LIFTING THE CONTAINERS
19 WHERE IT HAS THE -- IF I MAY, "SLEET," THE MIX. AND
20 THAT'S WHEN I FELT THAT MY BACK CRACKED, IF YOU
21 WOULD. AND I ALSO FELT THAT MY WAIST AND THAT MY
22 LEGS BECAME NUMB. I REPORTED IT. I TOLD THEM HOW I
23 FELT. IT PROBABLY TOOK TWO OR THREE MINUTES FOR
24 THEM TO GIVE ME SOME PILLS. AND MY BOSS MAN ALSO
25 GAVE ME HELP WITH A COWORKER TO FINISH MY SHIFT AND

1 MY WORK. THE DAY ENDED AND I WENT HOME, BUT THE
2 NEXT DAY WHEN I GOT UP, I FELT EVEN WORSE.

3 Q. WAS THIS IN JULY OF 2011?

4 A. I DON'T REMEMBER THE DATE.

5 Q. OKAY. I ASKED YOU EARLIER WHEN YOU FIRST STARTED
6 HAVING BACK PAIN. DO YOU REMEMBER A YEAR OR A MONTH
7 OR ANYTHING AS TO WHEN YOU FIRST REMEMBER FEELING
8 PAIN IN YOUR BACK?

9 BY MR. MARTIN:

10 I'LL OBJECT TO THE FORM.

11 EXAMINATION RESUMED BY MR. HAIGLER:

12 Q. YOU CAN ANSWER THE QUESTION.

13 A. I'M SORRY, I DIDN'T UNDERSTAND YOU.

14 Q. DO YOU REMEMBER WHEN YOU FIRST STARTED HAVING BACK
15 PAIN, WHETHER IT BE A MONTH OR A YEAR, WHERE YOU
16 FIRST SAID, HEY, MY BACK HURTS?

17 A. I DON'T REMEMBER THE EXACT MONTH, BUT I DO REMEMBER
18 THAT IT'S BEEN LESS THAN TWO YEARS.

19 Q. WHEN YOU FIRST INJURED YOUR BACK, WHEN YOU FIRST
20 FELT PAIN IN YOUR BACK WHEN YOU WERE LIFTING THOSE
21 CONTAINERS, DID YOU HAVE PAIN ANYWHERE ELSE OTHER
22 THAN JUST IN YOUR LOW BACK?

23 A. I FELT IT IN MY BACK, AND IT RADIATED TOWARDS MY
24 LEGS.

25 Q. THE VERY FIRST TIME YOU FELT BACK PAIN, THAT'S WHAT

1 HAPPENED?

2 A. FOR A FEW MINUTES.

3 Q. HOW LONG DID THAT FEELING LAST THE FIRST TIME YOU
4 HAD BACK PAIN?

5 A. THE REAL INTENSE PAIN WAS JUST FOR A FEW MOMENTS.
6 BUT THE PAIN THAT CAME AFTERWARDS CONTINUED.

7 Q. WHO DID YOU REPORT THAT BACK PAIN TO?

8 A. SAM BARNWELL.

9 Q. DID YOU TALK TO ANYBODY ELSE ABOUT IT AT KOHLER?

10 A. ALL OF MY COWORKERS KNEW ABOUT IT.

11 Q. CAN YOU GIVE ME A FEW NAMES?

12 A. WELL, THERE WAS FERNANDO ARELLANO. THERE WAS JUAN
13 CHAVES, JUAN SPINOSA, KEVIN SPOUSE, SAMMY. THEY ALL
14 KNEW ABOUT IT.

15 Q. HOW DID THEY KNOW ABOUT IT? DID YOU TELL THEM? OR
16 DID THEY WITNESS IT?

17 A. THROUGH BOTH MEANS. BECAUSE, YOU KNOW, WE WORK
18 CLOSE BY EACH OTHER. AND THE OTHER THING IS
19 WHENEVER YOUR BOSS MAN COMES, IF YOU LEAVE WITH YOUR
20 BOSS MAN, THEN EVERYBODY KNOWS THAT IT'S NOT BECAUSE
21 OF SOMETHING GOOD. SOMETHING'S GOING ON. AND SO I
22 HAD TO LEAVE WITH HIM, AND YOU KNOW, SOME OF THEM
23 DID ASK, AND I HAD TO EXPLAIN AND TELL THEM WHAT HAD
24 HAPPENED. AND ALSO, YOU HAVE PEOPLE WHO TELL OTHERS
25 WHAT HAPPENED.

1 Q. WHO DID YOU TELL, SPECIFICALLY, ABOUT YOUR BACK
2 INJURY?

3 A. MY BOSS MAN, WHICH WAS SAM. THE COWORKERS THAT I
4 ALREADY MENTIONED, AND OTHERS THAT I HAVEN'T
5 MENTIONED.

6 Q. WHEN YOU REPORTED THAT INJURY TO YOUR BACK TO SAM,
7 WHAT WAS HIS RESPONSE?

8 A. HE ASKED ME HOW WAS I FEELING, IF I WANTED
9 MEDICATION. I TOLD HIM YES. HE BROUGHT IT TO ME.
10 THAT WAS PRETTY MUCH IT. THEY TRY NOT TO PAY TOO
11 MUCH ATTENTION TO THAT.

12 Q. DID THEY SEND YOU TO THE NURSE, THE COMPANY NURSE,
13 FOR TREATMENT?

14 A. AFTER ASKING FOR IT SEVERAL TIMES.

15 Q. WAS IT DAYS OR WEEKS LATER THAT YOU WENT TO SEE HER?

16 A. DAYS.

17 Q. HOW MANY DAYS?

18 A. THREE TO FIVE DAYS AFTER.

19 Q. OKAY, WHAT DID SHE DO FOR YOU?

20 A. SHE JUST PUT SOME MENTHOL OINTMENT ON ME, WHICH YOU
21 WOULD PUT ON YOUR BACK.

22 Q. YOU JUST POINTED TO YOUR SHOULDER. DID SHE PUT IT
23 ON YOUR SHOULDER AS WELL?

24 A. ON BOTH, IN DIFFERENT DATES.

25 Q. ON DIFFERENT DAYS?

1 A. DIFFERENT OCCASIONS.

2 Q. OKAY. WHEN YOU SAW THE NURSE FOR THE FIRST TIME,
3 DID YOU TELL HER THAT YOU'D INJURED YOUR BACK A FEW
4 DAYS AGO?

5 A. SHE ALREADY HAD THAT ON THE REPORT, AND I ALSO DID
6 MENTION THAT TO HER.

7 Q. DID YOU MENTION TO HER THAT YOU WERE HAVING PAIN
8 RADIATING DOWN YOUR LEGS WHEN YOU FIRST SAW HER?

9 A. YES.

10 Q. DID YOU MENTION TO HER THAT YOUR SHOULDER WAS
11 HURTING?

12 A. THE MOMENT WHEN THE ACCIDENT OCCURRED, I DID GO TO
13 HER AND I DID MENTION THAT TO HER.

14 Q. DID YOU INJURE YOUR SHOULDER ON THE SAME DAY THAT
15 YOU INJURED YOUR BACK?

16 A. NO.

17 Q. BUT YOU DON'T REMEMBER THE DATE ON WHICH YOU INJURED
18 EITHER OF THOSE BODY PARTS; IS THAT FAIR?

19 A. THE REASON I DON'T REMEMBER IS BECAUSE YOU NEVER
20 THINK THAT THIS IS GOING TO BE SOMETHING TOO
21 SERIOUS. BECAUSE YOU TRUST IN THE EXPERIENCE OF
22 THOSE THAT ARE PROFESSIONALS, GIVING YOU HEALTH
23 CARE. SO YOU NEVER THINK THAT THIS IS GOING TO BE
24 SOMETHING TOO SERIOUS.

25 Q. AFTER YOU WENT TO SEE HER FOR THE FIRST TIME, DID

1 YOU CONTINUE TO DO YOUR JOB? DID YOU CONTINUE TO GO
2 TO WORK?

3 A. SHE HAD PUT ME ON LIGHT DUTY, BUT THE FOLLOWING DAY,
4 BECAUSE MY BOSS DID NOT KNOW THAT, HE PUT ME IN THE
5 REGULAR PRODUCTION JOB. AND ALL I COULD DO IS
6 FOLLOW INSTRUCTIONS.

7 Q. SO THE NURSE DIDN'T TELL YOUR SUPERVISOR THAT YOU
8 HAD RESTRICTIONS? OR AM I MISSING THAT?

9 A. I DON'T KNOW EXACTLY, BECAUSE EVEN THE GENTLEMAN
10 THAT'S HERE, MIKE, PUT ME ON LIGHT DUTY AS WELL.
11 BUT WHEN I ASKED MY SUPERVISOR, HE SAID THAT HE
12 HADN'T RECEIVED ANY TYPE OF EMAIL SO THAT I WAS ON
13 REGULAR DUTY.

14 Q. THEN DID YOU GO AHEAD AND DO THAT REGULAR DUTY THAT
15 DAY?

16 A. YES.

17 Q. HOW LONG DID YOU REMAIN ON REGULAR DUTY, EVEN THOUGH
18 YOU THOUGHT YOU HAD RESTRICTIONS?

19 A. I ALWAYS RECEIVED HELP FROM MY COWORKERS, AND AT
20 TIMES, ALSO, I WOULD ASK MY BOSS MAN TO GIVE ME SOME
21 HELP, AND HE ALWAYS WOULD.

22 Q. BUT MY QUESTION WAS HOW LONG DID YOU CONTINUE TO
23 WORK YOUR NORMAL JOB WHILE UNDER RESTRICTIONS?

24 A. THE TIME THAT IT WAS NECESSARY FOR ME TO CONTINUE
25 WORKING, UNTIL I DECIDED TO PUT A STOP TO IT.

1 Q. OKAY. DID YOU HAVE A SECOND ACCIDENT IN MARCH OF
2 2012, A SECOND TIME WHERE YOU INJURED YOUR BACK OR
3 RE-INJURED YOUR BACK?

4 A. I DON'T REMEMBER THE EXACT DATE, BUT I DID HAVE THE
5 SAME INJURY, OR SAME PROBLEM.

6 Q. IN BETWEEN THOSE TWO TIME PERIODS WHERE YOU FIRST
7 INJURED YOUR BACK AND WHEN YOU RE-INJURED OR RE-
8 AGGRAVATED YOUR BACK, DID YOU HAVE BACK PAIN
9 CONTINUOUSLY DURING THAT PERIOD OF TIME?

10 A. YES.

11 Q. HOW LONG WAS THAT PERIOD OF TIME BETWEEN YOUR
12 ORIGINAL INJURY AND WHEN YOU, AS YOU'VE FILED A
13 DOCUMENT WITH THE COMMISSION, RE-INJURED YOUR BACK?
14 HOW LONG WAS THAT PERIOD OF TIME?

15 A. I DON'T REMEMBER EXACTLY HOW MUCH TIME THERE WAS IN
16 BETWEEN THE TWO OCCASIONS, BUT WHAT I DO REMEMBER IS
17 THAT I ALWAYS HAD PAIN ALL THE TIME, AND I WOULD
18 ALWAYS COMPLAIN, BUT THOSE COMPLAINTS WOULD GO
19 NOWHERE.

20 Q. WAS IT WEEKS OR MONTHS, OR CAN YOU GIVE ME ANY
21 INDICATION AS TO HOW LONG THE PERIOD OF TIME BETWEEN
22 THE TWO INJURIES WAS?

23 A. PERHAPS MONTHS.

24 Q. OKAY. AND IT'S YOUR TESTIMONY THAT YOU CONTINUED TO
25 HAVE PAIN EVERY DAY IN BETWEEN THOSE -- BETWEEN

1 THOSE TWO INCIDENTS?

2 A. IT WAS PAIN ALL THE TIME, BUT PAIN THAT COULD BE
3 MANAGED WITH MEDICATION.

4 Q. WHAT KIND OF MEDICATIONS WERE YOU TAKING?

5 A. THE FIRST DOCTOR THAT I WENT TO SEE GAVE ME THREE
6 PRESCRIPTIONS. ONE WAS FOR IBUPROFEN. THE OTHER
7 ONE WAS FOR BACLOFEN. AND I DON'T REMEMBER THE
8 OTHER ONE.

9 Q. YOU JUST TESTIFIED THAT YOU WERE ESSENTIALLY TELLING
10 YOUR EMPLOYER THAT YOU WERE CONTINUING TO HAVE BACK
11 PAIN AND THEY WEREN'T DOING ANYTHING ABOUT IT. WHO
12 WERE YOU TELLING?

13 A. AT FIRST, I WOULD TELL SAM BARNWELL. BUT AFTER
14 AWHILE, WHEN I GOT TIRED OF NOT SEEING ANY RESULTS,
15 THEN I ASKED TO SPEAK WITH THE GENTLEMAN WHO'S HERE
16 PRESENT. AND THAT'S WHEN WE HAD A MEETING.

17 Q. ARE YOU TALKING ABOUT MIKE TOLLESON?

18 A. YES.

19 Q. OKAY. WHEN WAS THAT MEETING? HOW LONG AFTER YOUR
20 FIRST ACCIDENT WAS THAT MEETING?

21 A. I DON'T REMEMBER THE EXACT DATE, BUT IT WAS TOWARDS
22 THE END OF MY TIME THERE. IT WAS PROBABLY, I DON'T
23 KNOW, ONE OR TWO MONTHS BEFORE I WAS FIRED.

24 Q. OKAY. I'M TALKING ABOUT THE PERIOD BETWEEN WHEN YOU
25 FIRST FELT BACK PAIN, AND WHEN YOU HAD A SECOND

1 INJURY TO YOUR BACK. DURING THAT PERIOD OF TIME,
2 WERE YOU TELLING ANYONE AT YOUR EMPLOYER THAT YOU
3 WERE CONTINUING TO HAVE BACK PAIN?

4 A. YES.

5 Q. WHO WERE YOU TELLING?

6 A. THE NURSE, SAM BARNWELL, AND JOE BROWN.

7 Q. AND WHAT WAS THEIR RESPONSE TO YOU?

8 A. NONE.

9 Q. THEY JUST IGNORED YOU?

10 A. YES.

11 Q. DID THEY EVER REDUCE YOUR WORK OR GIVE YOU EASIER
12 WORK TO DO?

13 A. NO.

14 Q. DID YOU EVER ASK FOR EASIER WORK?

15 A. MANY TIMES.

16 Q. AND YOU'RE TALKING ABOUT YOU ASKED JOE BROWN AND SAM
17 BARNWELL FOR EASIER WORK?

18 A. YES.

19 Q. DID YOU ASK THEM FOR ADDITIONAL MEDICAL TREATMENT?

20 A. YES.

21 Q. AND WHAT WAS THEIR RESPONSE, WHEN YOU ASKED THEM FOR
22 MEDICAL TREATMENT?

23 A. THEY GAVE ME A KICK IN MY BUTT.

24 Q. LITERALLY?

25 A. YES.

1 Q. DID THEY EVER OFFER YOU MEDICAL TREATMENT?

2 A. NO.

3 Q. WOULD THEY COME BY EVERY DAY AND SEE HOW YOU WERE
4 DOING?

5 A. A COUPLE OF TIMES.

6 Q. NOT EVERY DAY?

7 A. NO.

8 Q. WOULD ANYONE ELSE FROM MANAGEMENT, MR. TOLLESON OR
9 ANYONE ELSE, COME BY AND SEE HOW YOU WERE DOING EACH
10 DAY AFTER YOUR INITIAL ACCIDENT?

11 A. ONLY THE GENTLEMAN HERE WENT TWO OR THREE TIMES, BUT
12 THAT WAS IT.

13 Q. WHAT WOULD MR. TOLLESON ASK YOU?

14 A. HE INITIALLY PUT ME ON LIGHT DUTY THE FOLLOWING DAY
15 AND TOLD ME TO ONLY DO ONE PIECE. BUT THE DAY AFTER
16 THAT, HE SAW ME DOING 20 PIECES, SO HE INQUIRED AS
17 TO WHY I WAS DOING THAT. AND I TOLD HIM, BECAUSE MY
18 BOSS MAN HAD TOLD ME SO. AND HE GOT UPSET, ASKED ME
19 AGAIN, WHY AREN'T YOU DOING ONLY ONE, AND I TOLD HIM
20 BECAUSE YOU ONLY TOLD ME THIS. YOU DIDN'T SEND OUT
21 AN ORDER, OR YOU DIDN'T TELL ANYONE ELSE. AND WHEN
22 I ASKED MY BOSS MAN, HE SAYS HE DOESN'T HAVE AN
23 EMAIL ABOUT THAT. AND SO I'M NOT HERE TO TELL
24 ANYBODY WHAT TO DO.

25 Q. WHEN WAS THAT CONVERSATION?

1 A. I DON'T REMEMBER THE DATE.

2 Q. HOW LONG BEFORE YOUR EMPLOYMENT ENDED WAS THAT
3 CONVERSATION?

4 A. TWO TO THREE MONTHS BEFORE.

5 Q. OKAY. LET ME ASK YOU THIS AGAIN. I'M TALKING ABOUT
6 RIGHT AFTER YOUR INITIAL INJURY IN 2011. DOES THAT
7 MAKE SENSE?

8 A. EVERY DAY I WOULD REPORT THE PAIN THAT I HAD. I WAS
9 LOOKING FOR THEM TO HELP ME. I WAS BEGGING FOR THEM
10 TO SEND ME TO THE DOCTOR. THEY NEVER DID IT.

11 Q. OKAY. AND WHEN YOU SAY REPORT, YOU WOULD REPORT TO
12 MR. BARNWELL AND MR. BROWN; IS THAT CORRECT?

13 A. WHEN, INITIALLY, I INFORMED ABOUT THE PAIN THAT I
14 HAD AND THE INJURY THAT I HAD, THEY TOLD ME, YOU
15 CAN'T GO ABOVE THE NEXT PERSON THAT YOU HAVE. YOU
16 CAN'T SPEAK TO JOE BROWN WITHOUT FIRST SPEAKING TO
17 SAM BARNWELL. YOU HAVE TO FOLLOW INSTRUCTIONS.

18 Q. DID YOU TELL SAM BARNWELL?

19 A. YES.

20 Q. EVERY DAY?

21 A. YES.

22 Q. DID YOU THEN TRY TO TELL MR. BROWN, JOE BROWN, ABOUT
23 YOUR BACK PAIN?

24 A. YES.

25 Q. HOW MANY TIMES DID YOU HAVE A CONVERSATION WITH HIM

1 ABOUT YOUR BACK PAIN AFTER YOUR ACCIDENT IN 2011?

2 A. FIVE, SIX TIMES.

3 Q. WHAT WAS HIS RESPONSE?

4 A. HE NEVER TOLD ME ANYTHING. HE WOULD ALWAYS TELL THE
5 BOSS MAN, THEN THE BOSS MAN WOULD COME AND TALK TO
6 ME. THOSE WERE THE RULES OF THE COMPANY.

7 Q. WHEN YOU SAY BOSS MAN, YOU MEAN SAM BARNWELL?

8 A. YES.

9 Q. DID YOU EVER HAVE A PERSONAL CONVERSATION WITH MR.
10 BROWN?

11 A. YES.

12 Q. DID YOU EVER ASK HIM FOR MEDICAL TREATMENT?

13 A. YES.

14 Q. DID HE EVER SAY, NO, YOU CANNOT HAVE ANY MORE
15 MEDICAL TREATMENT?

16 A. HE TOLD ME THAT HE WOULD SPEAK WITH THE PERSON IN
17 CHARGE OF THAT DEPARTMENT, WHICH WAS MR. TOLLESON.
18 HE WAS IN CHARGE OF THE SECURITY THERE, AND THAT HE
19 WOULD MAKE THAT DECISION.

20 Q. DO YOU KNOW WHETHER MR. TOLLESON EVER MADE THAT
21 DECISION?

22 A. IN THE MEETING THAT WE HAD, JOE BROWN OFFERED ME A
23 LIGHT DUTY JOB, BUT MR. TOLLESON SAID NO. IF HE'S
24 NOT CAPABLE OF DOING THAT JOB, THEN THE DOORS ARE
25 RIGHT THERE.

1 Q. DID YOU HEAR MR. TOLLESON SAY THAT, OR IS THAT WHAT
2 JOE SAID THAT HE SAID?

3 A. I WAS PRESENT.

4 Q. SO YOU HEARD MR. TOLLESON TELL YOU THAT YOU EITHER
5 DO THE JOB FULL DUTY OR YOU DON'T HAVE A JOB?

6 A. YES.

7 Q. WAS THAT CONVERSATION THE CONVERSATION YOU ALREADY
8 TALKED ABOUT THAT WAS TWO TO THREE MONTHS BEFORE
9 YOUR LAST DAY?

10 A. IT WAS AROUND THAT TIME.

11 Q. OKAY. HOW MANY TIMES HAVE YOU SEEN THE COMPANY
12 NURSE FOR YOUR BACK PAIN?

13 A. I SAW HER TEN, 15 TIMES OR MORE. BUT SHE ONLY
14 RECORDED THREE TIMES.

15 Q. DO YOU KNOW WHY THAT IS?

16 A. NO.

17 Q. DID SHE EVER PRESCRIBE YOU ANY MEDICATION WHEN YOU
18 WOULD SEE HER?

19 A. ONLY THE ONES THAT THEY HAD AVAILABLE THERE.

20 Q. AT ANY POINT IN TIME, DID KOHLER EVER SEND YOU FOR
21 ANY MEDICAL TREATMENT? AT ANY POINT IN TIME BEFORE
22 YOU STOPPED WORKING THERE, DID THEY EVER SEND YOU
23 SOMEWHERE FOR ADDITIONAL MEDICAL TREATMENT LIKE YOU
24 HAD REQUESTED?

25 A. HAD THAT BEEN THE CASE, WE WOULDN'T BE HERE TODAY.

1 Q. HAVE YOU SEEN ANYONE ELSE, OTHER THAN THE COMPANY
2 NURSE, FOR YOUR BACK SINCE YOUR ACCIDENTS?

3 A. THE DOCTORS THAT I'VE ALREADY MENTIONED.

4 Q. OKAY. I'VE GOT MEDICAL RECORDS THAT YOU SAW A
5 FAMILY MEDICAL CENTER. IS THAT TRUE? IS THAT DR.
6 SAVAGE-JETER?

7 A. YES.

8 Q. HOW DID YOU GET TO HER? HOW DID YOU GET TO DR.
9 JETER?

10 A. AS I GOT TIRED OF ASKING FOR HELP, I ASKED SEVERAL
11 OF MY COWORKERS, SINCE I DON'T HAVE A FAMILY DOCTOR
12 AND I DON'T REGULARLY GO TO A DOCTOR, AND MY FRIENDS
13 TOLD ME THAT THEY SEE HER FOR MEDICAL ATTENTION.
14 BUT I DID NOT KNOW THAT SHE WAS THE COMPANY DOCTOR.

15 Q. DID KOHLER SEND YOU TO SEE HER?

16 A. NO.

17 Q. HOW DID YOU FIND OUT THAT SHE WAS THE COMPANY
18 DOCTOR?

19 A. THROUGH THE PEOPLE THAT I WORKED WITH.

20 Q. WHEN DID YOU FIRST SEE HER?

21 A. I DON'T REMEMBER THE DATE.

22 Q. IF THE FIRST REPORT I HAVE IS OCTOBER OF 2012, HAVE
23 YOU SEEN HER BEFORE THEN?

24 A. IF THERE ISN'T ANOTHER, NO.

25 Q. DO YOU REMEMBER SEEING HER BEFORE THAT DATE?

1 A. I DON'T REMEMBER.

2 Q. OKAY. I ALSO HAVE A REPORT FROM DOCTORS CARE FROM
3 APRIL OF 2012, ABOUT A YEAR AGO. DO YOU REMEMBER
4 GOING TO DOCTORS CARE ABOUT A YEAR AGO?

5 A. YES.

6 Q. WHO SENT YOU TO DOCTORS CARE?

7 A. NO ONE.

8 Q. YOU WENT ON YOUR OWN?

9 A. YES.

10 Q. DID YOU PAY FOR THAT WITH YOUR OWN HEALTH INSURANCE?

11 A. YES.

12 Q. DID YOU PAY FOR THE TREATMENT WITH DR. SAVAGE-JETER
13 WITH YOUR OWN HEALTH INSURANCE?

14 A. YES.

15 Q. HAVE YOU HAD A MRI OF YOUR BACK?

16 A. YES.

17 Q. WHEN DID YOU HAVE THAT DONE?

18 A. I DON'T REMEMBER, DECEMBER OR MAYBE JANUARY.

19 Q. WAS THAT DONE IN SPARTANBURG?

20 A. IN MARY BLACK.

21 Q. OKAY. HAVE YOU SEEN A DOCTOR SINCE THAT MRI?

22 A. AFTER THAT, DR. JETER RECOMMENDED ME OR REFERRED ME
23 TO DR. MARCO RODRIGUEZ AT ORTHOPAEDIC CLINIC.

24 Q. WHEN DID YOU LAST SEE DR. SAVAGE-JETER?

25 A. I DON'T REMEMBER THE DATE, BUT IT WAS WHEN I WENT TO

1 GET THE RESULTS FOR THE MRI.

2 Q. DID SHE TAKE YOU OUT OF WORK WHEN YOU LAST WENT TO
3 SEE HER? DID SHE GIVE YOU A WORK NOTE?

4 A. SHE ASKED ME TO GO TO THE COMPANY AND GET HER THE
5 FORM SO THAT SHE COULD FILL IT OUT AND SEND IT TO
6 THE COMPANY, SO THAT SHE COULD INDICATE MY
7 LIMITATIONS ON THERE.

8 Q. DID YOU DO THAT?

9 A. YES.

10 Q. DID YOU TAKE THE FORM BACK TO DR. JETER?

11 A. THEY NEVER GAVE IT TO ME.

12 Q. DID YOU ASK FOR IT?

13 A. A HUNDRED TIMES.

14 Q. WHO DID YOU ASK?

15 A. I SPOKE TO SAM, TO JOE, AND LATER THEN, I WAS
16 WAITING ON THE HR MANAGER, AND THAT'S WHEN THEY TOLD
17 ME TO LEAVE, THAT THEY WOULD CALL ME UP. BUT THEY
18 NEVER DID.

19 Q. DO YOU KNOW WHETHER YOU'VE BEEN TERMINATED FROM
20 KOHLER?

21 A. NO.

22 Q. ARE YOU WILLING TO GO BACK TO WORK THERE IF THEY
23 HAVE A JOB FOR YOU?

24 A. IF IT'S WITHIN WHAT I CAN DO, WITHIN MY CAPACITY,
25 AFTER KNOWING WHAT'S GOING ON WITH ME, I'M MORE THAN

1 WILLING TO DO IT.

2 Q. WHEN YOU WENT TO DOCTORS CARE ABOUT A YEAR AGO WHEN
3 YOU WENT ON YOUR OWN, DID THEY GIVE YOU WORK
4 RESTRICTIONS?

5 A. NO.

6 Q. THEY DID NOT?

7 A. NO.

8 Q. THEY DIDN'T TELL YOU THAT YOU WERE ON LIGHT DUTY
9 UNTIL MAY THE 3RD, 2012?

10 A. NO.

11 Q. SO IF I HAVE A DOCUMENT THAT SAYS THAT THEY GAVE YOU
12 A RETURN-TO-WORK SLIP SAYING THAT YOU WERE ON LIGHT
13 DUTY UNTIL MAY 3RD, 2012, YOU WOULD SAY YOU NEVER
14 GOT THAT?

15 A. THE DAY I WENT TO THE DOCTOR, WAS LIKE A REGULAR
16 DOCTOR'S VISIT. I TOLD THEM WHAT I WAS FEELING,
17 THEY ASKED ME WHERE I HAD INJURED MYSELF, I TOLD
18 THEM AT WORK. IT WAS A REGULAR EVALUATION, TOUCH
19 YOUR FEET, WALK IN THIS DIRECTION. SHE GAVE ME A
20 PRESCRIPTION. THEY SAW MY RECEIPT AT THE EXIT, THAT
21 WAS IT.

22 Q. DID YOU GET A WORK NOTE ON THAT DAY?

23 A. NO, ONLY THE PRESCRIPTION.

24 Q. HAS YOUR ATTORNEY SCHEDULED ANY APPOINTMENTS FOR
25 YOU, ANY MEDICAL APPOINTMENTS?

- 1 A. NO.
- 2 Q. HAVE YOU APPLIED TO WORK ANYWHERE ELSE SINCE YOUR
3 LAST DAY AT KOHLER?
- 4 A. NO.
- 5 Q. ARE YOU WORKING ANYWHERE AT THIS TIME?
- 6 A. NO.
- 7 Q. HAVE YOU WORKED ANYWHERE AT ALL SINCE YOUR LAST DAY
8 AT KOHLER?
- 9 A. NO.
- 10 Q. WHAT ARE YOU DOING FOR INCOME AT THIS POINT IN TIME?
- 11 A. WITH MY SAVINGS.
- 12 Q. HAVE YOU APPLIED FOR ANY KIND OF SHORT- OR LONG-TERM
13 DISABILITY?
- 14 A. NO.
- 15 Q. WHEN YOU WERE TREATING WITH DR. SAVAGE-JETER, DID
16 SHE EVER GIVE YOU A NOTE TELLING YOU WHAT YOU COULD
17 OR COULDN'T DO, GIVING YOU WORK RESTRICTIONS?
- 18 A. NO.
- 19 Q. DID ANYONE AT THE HOSPITAL AT MARY BLACK GIVE YOU
20 ANY KIND OF WORK NOTE THAT YOU COULD GIVE TO YOUR
21 EMPLOYER?
- 22 A. NO.
- 23 Q. DID THE NURSE EVER GIVE YOU, THE NURSE AT KOHLER,
24 DID SHE EVER GIVE YOU A NOTE TELLING YOUR
25 SUPERVISORS WHAT YOU COULD AND COULDN'T DO AT WORK?

1 A. DIRECTLY TO ME? NO, SHE DIDN'T GIVE ME ANYTHING.
2 BUT SHE DID TELL MY SUPERVISORS ABOUT MY
3 LIMITATIONS.

4 Q. HOW DO YOU KNOW THAT?

5 A. BECAUSE SHE TOLD ME THAT SHE WAS GOING TO
6 COMMUNICATE THAT TO THEM.

7 Q. HAVE YOU EVER GIVEN YOUR SUPERVISORS ANY KIND OF
8 DOCUMENT TELLING THEM WHAT YOU COULD AND COULDN'T
9 DO?

10 A. NO.

11 Q. GO OFF THE RECORD.

12 (OFF THE RECORD)

13 EXAMINATION RESUMED BY MR. HAIGLER:

14 Q. WE ARE BACK ON THE RECORD. JUST A LAST COUPLE
15 QUESTIONS. I WANT TO MAKE SURE I CLARIFY A COUPLE
16 OF THINGS. WHEN YOU WENT TO SEE DR. JETER ON YOUR
17 OWN AND PAID FOR IT ON YOUR OWN, DID YOU TELL HER
18 THAT YOU HAD INJURED YOURSELF AT WORK?

19 A. YES.

20 Q. DID Y'ALL HAVE A DISCUSSION ABOUT THE FACT THAT YOU
21 INJURED YOURSELF AT WORK?

22 A. NO, BECAUSE SHE ASKED ME IF I HAD INJURED MYSELF AT
23 WORK. I SAID YES. SHE ASKED ME IF I WORKED AT
24 KOHLER. I TOLD HER YES. AND SHE SAID, OH, I SEE.
25 IT IS A HARD JOB TO DO, AND IT'S NORMAL FOR PEOPLE

1 TO GET INJURED THERE.

2 Q. DO YOU KNOW IF SHE EVER CONTACTED KOHLER?

3 A. I DON'T KNOW.

4 Q. AND DID YOU TESTIFY EARLIER THAT SHE GAVE YOU A FORM
5 OR ASKED YOU TO GET A FORM FROM KOHLER?

6 A. YES.

7 Q. WHAT KIND OF FORM DID SHE NEED?

8 A. SHE DIDN'T TELL ME THE NAME OF THE FORM, IF THAT'S
9 WHAT YOU'RE ASKING ME. BUT SHE TOLD ME THAT THE
10 COMPANY KNEW WHAT THE FORM THAT SHE NEEDED WAS.

11 Q. OKAY. DID YOU ASK HER FOR WORK RESTRICTIONS?

12 A. YES.

13 Q. AND WHAT WAS HER RESPONSE?

14 A. THAT YES.

15 Q. SHE TOLD YOU YOU DID HAVE WORK RESTRICTIONS?

16 A. NO.

17 Q. OKAY, I ASKED YOU, DID YOU ASK DR. JETER TO GIVE YOU
18 WORK RESTRICTIONS?

19 A. I ASKED HER TO PLEASE EVALUATE ME, AND SHE TOLD ME
20 THAT UNTIL SHE DETERMINED EXACTLY WHAT I COULD AND
21 COULD NOT DO, SHE COULDN'T GIVE ME WORK
22 RESTRICTIONS.

23 Q. OKAY. SO YES OR NO, DO YOU HAVE WORK RESTRICTIONS
24 FROM DR. JETER?

25 A. I DO HAVE RESTRICTIONS, BUT SINCE SHE DIDN'T GIVE ME

1 THE FORM AND I DON'T WORK THERE ANYMORE, THOSE
2 RESTRICTIONS DON'T EXIST.

3 Q. DID SHE TELL YOU WHAT YOUR RESTRICTIONS WERE?

4 A. NO.

5 Q. OKAY. AFTER YOU SAW DR. JETER, OR AFTER ANY OF THE
6 TIMES YOU'VE SEEN DR. JETER, DID YOU EVER GO BACK TO
7 THE COMPANY NURSE AND TELL HER ABOUT YOUR
8 RESTRICTIONS, OR PROVIDE HER WITH ANY RESTRICTIONS?

9 A. EVERY DAY. EVERY DAY I WOULD INFORM THEM. BECAUSE
10 THEY ASKED ME TO KEEP THEM AWARE OF WHAT WAS GOING
11 ON. AND EVERY DAY I WOULD TELL THEM HOW I FELT,
12 WHAT WAS GOING ON, BUT THAT'S AS FAR AS IT WENT.

13 Q. HAVE YOU SEEN THE COMPANY NURSE SINCE YOU'VE STARTED
14 SEEING DR. JETER? HAVE YOU SEEN HER SINCE THEN?

15 A. YES.

16 Q. HOW MANY TIMES?

17 A. THREE TIMES, MORE OR LESS.

18 Q. DID YOU TELL THE NURSE ABOUT WHAT DR. JETER SAID
19 ABOUT YOUR BACK, ABOUT ANY PROBLEMS YOU WERE HAVING
20 OR RESTRICTIONS YOU HAD? DID YOU TELL THE NURSE
21 THAT?

22 A. THERE REALLY WASN'T TIME TO DO THAT, BECAUSE THIS
23 WAS A DRAGGED OUT PROCESS TO DETERMINE WHAT WAS
24 GOING ON. FIRST, I HAD TO SEE THE DOCTOR, GO TO
25 PHYSICAL THERAPY, THEN I GOT THE MRI. AND THE DAY

1 AFTER I GOT THE MRI, THAT I WENT TO TELL THEM ABOUT
2 WHAT WAS GOING ON, THAT'S WHEN THEY TOLD ME TO GO
3 HOME.

4 Q. WOULD YOU AGREE THAT KOHLER DOES NOT HAVE ANY KIND
5 OF WORK NOTE OR WORK RESTRICTION NOTE WITH YOUR NAME
6 ON IT?

7 A. I HAVEN'T SEEN IT. I NEVER RECEIVED ONE. I NEVER
8 SIGNED ANYTHING WITH THAT ON IT.

9 Q. HOW CAN THEY ACCOMMODATE ANY RESTRICTIONS YOU MAY
10 HAVE IF THEY DON'T HAVE KNOWLEDGE OF THOSE
11 RESTRICTIONS?

12 A. WHEN I ASKED THEM FOR THE FORM TO TAKE BACK TO THE
13 DOCTOR, THEY DENIED IT.

14 Q. OKAY. SINCE YOU WERE TREATING AND PAYING FOR THIS
15 TREATMENT ON YOUR OWN, WHY DIDN'T YOU GET THE WORK
16 RESTRICTION NOTE ON YOUR OWN AND TAKE IT TO YOUR
17 EMPLOYER?

18 A. I NEVER PAID FOR ANY EXTENDED TREATMENT ON MY OWN
19 FROM MY OWN POCKET. WHEN I WASN'T GETTING WHAT I
20 NEEDED MEDICALLY FROM THE COMPANY, THAT'S WHEN I
21 DECIDED TO GO TO THE DOCTOR ON MY OWN. WHEN I ASKED
22 THE DOCTOR FOR A FORM THAT INDICATED WHAT MY
23 RESTRICTIONS WERE, SHE TOLD ME NO, I CAN'T GIVE YOU
24 THAT. THE COMPANY HAS TO GIVE ME THAT SHEET SO THAT
25 I CAN FILL IT OUT AND RETURN IT TO THEM.

1 Q. WHAT KIND OF PROBLEMS ARE YOU HAVING NOW? WHAT KIND
2 OF MEDICAL PROBLEMS OR SYMPTOMS ARE YOU HAVING NOW?

3 A. WELL, I'M VERY FATIGUED. I GET TIRED EASILY. I
4 CAN'T BEND DOWN AS I NORMALLY WOULD. I HAVE
5 PROBLEMS GETTING BACK UP FROM A CHAIR. I FEEL THAT
6 MY BACK LOCKS UP, I CAN'T STRAIGHTEN OUT EASILY.
7 THE PAIN IS CONSTANT IN MY BACK. WHENEVER I HAVE TO
8 USE THE BATHROOM, DO NUMBER TWO, IF I HOLD IT TOO
9 LONG, I'LL BLEED AFTERWARDS. AND WHEN I'M SITTING
10 DOWN, LIKE RIGHT NOW, MY COCCYX IS HURTING
11 CONSTANTLY.

12 Q. HOW LONG CAN YOU SIT DOWN WITHOUT HAVING TO STAND
13 UP?

14 A. THERE ISN'T A SPECIFIC TIME. IF IT'S HALF AN HOUR
15 OR AN HOUR, ONCE I TRY TO GET UP, MY CHEEKS AND MY
16 WAIST ARE NUMB.

17 Q. DO YOU HAVE LOW BACK PAIN?

18 A. YES.

19 Q. DO YOU HAVE PAIN STILL INTO YOUR LEGS?

20 A. PART OF MY LEFT LEG IS NUMB 24 HOURS A DAY.

21 Q. WHICH PART?

22 A. MY WHOLE LEG.

23 Q. DO YOU HAVE PAIN ANYWHERE ELSE?

24 A. YES, IN THE THORACIC AREA OF MY BACK, AND IT
25 RADIATES TOWARD MY SHOULDER.

1 Q. DID YOU TELL DR. JETER THAT THAT THORACIC PAIN UP
2 INTO YOUR SHOULDER WAS RELATED TO YOUR WORK
3 INJURIES?

4 A. YES.

5 Q. ARE YOU ON ANY MEDICATIONS AT THIS TIME?

6 A. I DON'T HAVE A DOCTOR.

7 Q. THOSE ARE ALL THE QUESTIONS I HAVE FOR YOU. THANK
8 YOU.

9 BY MR. MARTIN:

10 NO QUESTIONS.

11 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION
12 CONCLUDED AT 12:58 P.M.)
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CERTIFICATE OF REPORTER

I, MARLA J. O'BRIEN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING 49 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE DEPOSITION OF JOSE JIMENEZ, WHICH WAS TAKEN BY ME ON THE 16TH DAY OF APRIL, 2013.

THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH OF HIS OWN KNOWLEDGE CONCERNING THIS MATTER.

THAT I AM NOT RELATED TO NOR THE EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR RELATED TO OR EMPLOYED BY ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.



MARLA J. O'BRIEN, CVR-M, ACR
NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 8-12-2021

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APPEARANCES:

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

4 1. THAT THIS DEPOSITION IS BEING TAKEN PURSUANT TO ALL
5 APPLICABLE RULES OF THE SOUTH CAROLINA WORKERS'
6 COMPENSATION COMMISSION;

7 2. THAT THE DEPONENT WAIVES RIGHT TO READ AND SIGN THE
8 DEPOSITION TRANSCRIPT.

9 *****

10 MARCO RODRIGUEZ, M.D., BEING DULY SWORN TO TELL THE TRUTH,
11 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH OF HIS OWN
12 KNOWLEDGE CONCERNING THE MATTER HEREIN, TESTIFIED AS
13 FOLLOWS:

14 *****

15 EXAMINATION BY MR. HAIGLER:

16 Q. Dr. Rodriguez, please state your full name for the
17 record.

18 A. Marco Antonio Rodriguez, M.D.

19 Q. Dr. Rodriguez, my name is Nick Haigler. I represent
20 Kohler in Mr. Jimenez's workers' compensation claim.
21 Let me make sure -- well, just for the -- and I think
22 Al and I have agreed to stipulate to your
23 qualifications as a board certified orthopedic surgeon.

24 A. I am board eligible, not board certified.

25 Q. Okay. When will you be board certified?

1 A. I'm awaiting the results of my oral exam. The written
2 exam and your training can make you board eligible.
3 And then to be board certified, you have to pass an
4 oral exam.

5 Q. How long have you been board eligible?

6 A. Board eligible for four years.

7 Q. How long does that process normally take?

8 A. Five year process. Up to five years.

9 Q. Do you still have certain practicing privileges?

10 A. Yes, I have full practice -- full privileges.

11 Q. And what does the certification do?

12 A. It's more of a status than anything. Some insurance
13 companies and some hospitals require it for privileges
14 with their companies, but there's -- it has nothing to
15 do with state licensing or practice scope.

16 Q. Do you have practicing privileges now?

17 A. Yes.

18 Q. Where are those?

19 A. Spartanburg Regional, Mary Black Health Systems, and
20 then the state of South Carolina, Louisiana, Texas.

21 Q. What are your -- what's your specialty?

22 A. Orthopedic spine surgery.

23 Q. And does that include all three levels; cervical,
24 thoracic, lumbar?

25 A. Yes.

1 Q. And let me make sure I have -- before we kind of get
2 started, let me make sure I have all of your reports.
3 The first time you saw him, I think, was February 25th,
4 2013; is that right?

5 A. You might be correct. I will confirm that. Yes,
6 correct.

7 Q. And it looks like after that point, he was treating --
8 I think you referred him for some other treatment with
9 Dr. Terzella?

10 A. Yes.

11 Q. With your practice?

12 A. Yes.

13 Q. And then it looks like he had an ESI at some point?

14 A. Correct.

15 Q. Was that per your recommendation, or was that kind of
16 in conjunction with Dr. Terzella?

17 A. Both.

18 Q. And then it looks like the last report I have from your
19 practice is June 18th.

20 A. Yeah, I -- sorry.

21 Q. In fact, it looks like he was just seen --

22 A. Let me print out the last note. Just a moment.

23 Q. Oh, okay.

24 (OFF THE RECORD)

25 EXAMINATION RESUMED BY MR. HAIGLER:

1 Q. Doctor, when we were off the record for just a second,
2 you provided us with a report. It looks like it was
3 just dictated from Wednesday, July 31st, 2013; is that
4 correct?

5 A. Correct.

6 Q. And other than the February visit, was that the only
7 other time that you actually saw him?

8 A. Yes.

9 Q. And the rest of his presentations to your clinic were
10 to see Dr. Terzella?

11 A. Correct.

12 Q. Do you know how he got to you?

13 A. He was referred by Dr. Savage-Jeter, his primary care
14 doctor.

15 Q. And do you know Dr. Savage-Jeter?

16 A. You know, I believe I have mutual patients, but I don't
17 know her personally.

18 Q. And who was paying for the treatment with your
19 practice?

20 A. I'm not sure. I think it was his private insurance.

21 Q. Would you typically continue to see the patient if
22 there was no payment being made or no plan for payment?

23 A. Yeah. Well, we make an agreement, but we continue to
24 see them.

25 Q. Do you know whether workers' comp was paying for that

1 or some other -- do you have any idea if it was
2 workers' comp or some outside provider?

3 A. I'm not sure. I did notice his last visit that he was
4 paying for it himself, but I don't know who originally
5 was paying for it.

6 Q. I understand. And when you were sent -- when he was
7 sent over here from Dr. Jeter's office, did you get
8 records to review, or any of her records, or any other
9 records?

10 A. No, it was just a referral sheet essentially.

11 Q. It looks like -- were you aware that he actually had an
12 MRI done before he saw you the first time?

13 A. Yes, I was aware of that.

14 Q. Did you get that MRI?

15 A. Yes, I was able to review that MRI.

16 Q. Did you actually look at the scan?

17 A. Yes.

18 Q. Not just the report?

19 A. Yes.

20 Q. Is that what you typically do?

21 A. Yes.

22 Q. What were the results of that MRI?

23 A. MRI scan showed spinal stenosis at L4-5, L5-S1 had
24 stenosis as well as a disc herniation.

25 Q. Is that a -- is that something you typically see with

1 an acute injury, or is that something that's more of a
2 degenerative issue?

3 A. It can be both.

4 Q. It just depends?

5 A. Uh-huh (affirmative).

6 Q. Is that a yes?

7 A. Yes.

8 Q. Sorry. And I'm reading your first report from
9 February, and will you describe for me -- will you
10 describe for the record kind of what his complains were
11 at this time, subjective complaints?

12 A. Sure. On his presentation on February 25th, I noted
13 low back pain and left leg pain. The pain had been
14 going on for a year at that time, he said. And he
15 described it in the entire left leg, and that -- and at
16 that point, after reviewing his MRI scan, I felt that
17 he had L5 and S1 radiculopathy that was consistent with
18 the stenosis and herniation at the 5-1 level. I felt
19 the 4-5 stenosis also somewhat contributed to the pain,
20 or could contribute to the pain as well.

21 Q. Did you feel as though what he was telling you from a
22 subjective standpoint kind of correlated with the MRI
23 findings?

24 A. Yes.

25 Q. And your physical exam?

1 A. Yes.

2 Q. Okay. Doctor, can I see that report that you printed
3 off for us real quick? Okay. And I've read your
4 report from this February visit. Did he give you any
5 ideas as to what caused that back pain as of this
6 visit?

7 A. Yeah, you know, I usually try to specifically ask about
8 work injuries. And he says that -- he couldn't
9 remember a distinct injury at that time, but he said
10 that he constantly lifted at work and felt that that
11 was causing his pain.

12 Q. Did he tell you about a specific work accident that had
13 occurred?

14 A. Not at that time. But actually, when I saw him on
15 Wednesday, I again questioned him about it and I wanted
16 more detail. And he did say that he did remember an
17 episode that he reported in July of 2011 where he felt
18 a pop in the back, increase in pain, and that's when he
19 started getting care. So he said that there were times
20 that it waxed and waned, and he thinks it was because
21 of the pain medicine they prescribed. It helped
22 tolerate the pain. Got back to work, and then pain got
23 worse again, presented again. So it had been an on and
24 off thing, and he was concerned because -- he was
25 battling this so long, that finally he got to see me.

1 Q. Let me ask this question: Does he speak English?

2 A. He does speak English.

3 Q. Do you have a recollection of being able to discuss his
4 medical problems in English with him?

5 A. In English, yes.

6 Q. Did he have an interpreter with him?

7 A. No.

8 Q. Did he have anyone that was helping him understand what
9 you were saying?

10 A. well, myself. I mean, at times I spoke in Spanish just
11 to help because I could tell he was struggling a little
12 bit. But you know, did I specifically ask him about
13 the work injury in Spanish? No. But I did imply to
14 him that, "You can speak to me in Spanish if you need
15 to."

16 Q. When you saw him in February - and I just want to focus
17 on this February visit - were there any issues with
18 communication that would have prevented him from
19 disclosing a work injury in July of 2011?

20 A. well, I'll tell you, in my practice, generally a new
21 patient that presents without any work-up usually sees
22 my PA first, who doesn't speak any Spanish. And then I
23 follow up and I go back and ask specific questions to
24 clarify the history, and then re-check any exam
25 findings I need to, and then put it all together with

1 the studies that I look at. So she helps me in that
2 process, so that could have provided a bit of a
3 barrier. And I usually depend on her a lot to give me
4 some of the details of work injuries, car accidents,
5 things like that, and she's very meticulous about that.
6 And maybe I wasn't thorough enough in getting the
7 details of that, that work injury. Looking back after
8 talking to him this time, I think, you know, that could
9 have been something that I didn't work hard enough at
10 getting.

11 Q. Do you know that, or -- I mean, do you have any
12 recollection of asking him what caused his problem?

13 A. I don't recall specifically.

14 Q. Do you know whether -- I mean, I don't see any notation
15 on here about a PA. Do you know if a PA saw him on
16 this date, or are you not sure? And I'm talking about
17 the February visit.

18 A. The February visit?

19 Q. Do you know if it was just you or -- typically it will
20 show PA, and then you approve it.

21 A. Right.

22 Q. Most medical reports I see is -- I don't see that.

23 A. And maybe I dictated this because of the language
24 barrier. But looking specifically, there's different
25 categories that are filled. On this report, at least,

1 the way I filled it out, it looks like she dictated the
2 history of present illness on this portion. But let me
3 see what you're looking at because --

4 Q. Well, I'm reading the history of present illness as
5 well. And then I go to the third page, and typically -
6 -

7 A. Usually she'll sign it if she scribed part of it. So I
8 must have re-dictated the whole thing myself. So she
9 may have given me some of that history and I dictated
10 it.

11 Q. And I'm reading the history of present illness, and it
12 looks like she indicated he cannot remember a distinct
13 work injury.

14 A. Correct.

15 Q. Is that -- I mean, is that a question that she would
16 have asked?

17 A. Yes.

18 Q. Or you would have -- or whoever --

19 A. It should have been, and we probably just, you know --
20 and that's as much information as we had at that time.

21 Q. When you -- in your opinion, based on seeing him now
22 twice, if that question was asked, "Did you have a work
23 injury?" do you feel like he could have answered yes or
24 no?

25 A. Well, now he did. I mean, we talked about it more

1 clearly. So he's made it clear to me.

2 Q. So would there have been any reason why in February he
3 couldn't have told whoever -- the PA that saw him,
4 "Yes, I had a work injury"? Do you understand my
5 question?

6 A. Sure. The language barrier at that point. And
7 honestly, he presents himself as a person to me that
8 doesn't like to complain, that doesn't want to blame
9 somebody else. And you know, he says, you know, "It's
10 the kind of work I do. That happens all the time. I
11 lift heavy things." So he just didn't want to blame
12 someone else. That's the impression I got from him.

13 Q. Doctor, are you aware that he's filed two workers' comp
14 claims?

15 A. I know that there's a claim at this point, but I don't
16 know the details of it.

17 Q. And I'm going to represent to you that, on February the
18 1st of this year - what, 24 days before he initially
19 saw you - he had filed two documents -- or his attorney
20 had filed two documents with the workers' comp
21 commission alleging that he had sustained two
22 accidents, one in July of 2011 and one in March of
23 2012.

24 A. Okay. I don't know about the March one. But the July
25 one, we spoke about.

1 Q. If he could have -- if he was able to communicate to
2 his attorney or they were able to figure out that he
3 had a work accident allegedly in July of 2011, is there
4 any reason why he wouldn't have been able to explain
5 that to you 24 days later?

6 MR. MARTIN:

7 I'm going to object to the form as to in particular
8 anything he would have discussed with his attorney or
9 how he would have discussed it.

10 WITNESS:

11 A. Yeah. And I don't know how he spoke to him about it,
12 honestly. He maybe was more thorough with his
13 questioning than I was. And the goal of his discussion
14 is different than mine. He's speaking to him for legal
15 reasons. I'm speaking to him to try to solve the
16 problem. And I try to be thorough and I try to do
17 those things for this reason. But honestly, you know,
18 he just -- I probably failed in communicating clearly
19 enough with him.

20 EXAMINATION RESUMED BY MR. HAIGLER:

21 Q. Okay. But it looks like he was asked and he said, "No,
22 I don't have --" there was no distinct recollection of
23 a work injury?

24 A. Right.

25 Q. So it looks like the question was asked and he denied

1 it?

2 A. Definitely, yes.

3 Q. At least denied a specific work injury?

4 A. Correct.

5 Q. So in that regard, it looks pretty clear on this day
6 that he, at least at this point at least as of the
7 February visit, did not disclose a work injury in July
8 of 2011?

9 A. Correct.

10 Q. And then I'm reading kind of the plan part of your --
11 page 3 of what I have, page 3 of your report of that
12 February visit.

13 A. Okay.

14 Q. It starts "Given the fact". Do you have that page?

15 A. Uh-huh (affirmative). "Given the fact that physical --
16 "

17 Q. You don't need to read it. Is that part of the report,
18 is that something that -- is that your opinion? I
19 mean, is that something that you come up with?

20 A. Yes, that's my assessment.

21 Q. You dictate that yourself?

22 A. Uh-huh (affirmative).

23 Q. Is that a yes?

24 A. Yes.

25 Q. Whereas the history of present illness may be more of

1 the PA issue, is this more -- is this actually you?

2 A. This is -- yeah, once it's -- the plan is 99 percent of
3 the time my dictation, and this is my wording.

4 Q. And in that report, you addressed causation; did you
5 not? Or at least commented on it?

6 A. Yes.

7 Q. And you indicated in there that you -- given the fact
8 that he couldn't provide you with any kind of specific
9 incident --

10 A. Correct.

11 Q. -- it made causation difficult?

12 A. Yes.

13 Q. And I assume, as of this date, that's still your
14 opinion; is that fair?

15 A. It's not, because of the details he's giving me now.
16 And again, you can hash out how this came about. But
17 the way he's describing it now is that he had basically
18 a seminal incident where it started to get to the point
19 where he needed care, medical care. And that was July
20 of 2011. And he said he got -- he basically got a lot
21 of pushback from the company and the caretakers, the
22 nursing or the staff there because it would get better,
23 it would get worse, it gets better, it gets worse. And
24 they said, you know, "That's not how work comp injuries
25 work. You're hurt, and you're hurt, and that's it.

1 And once you're better, you're better." And in his
2 case, he just said, you know, "I was treated with
3 medicines, and I got better because I was on
4 medication. And then, you know, I was getting back to
5 work and trying to do my thing and it kept re-
6 exacerbating the problem." So I think it's plausible,
7 and I think it's consistent with his studies and the
8 way he's telling me the story now more clearly. And I
9 specifically tried to hammer this out in this last
10 visit to clarify it because I wanted to know what to
11 tell you guys. And you know --

12 Q. Did you have any discussions with his attorney in
13 between these two visits?

14 A. No.

15 Q. Any reason why it was of some importance on July 31st?

16 A. The discussion?

17 Q. Correct.

18 A. Yeah. Well, I knew I had -- I was speaking to you, so
19 I wanted the details of all this because I knew
20 specifically you'd ask me this. So I wanted to talk to
21 him, "Well, what's the incident?" He said, "Well, it
22 all started on this date, and this, and this, and
23 this." So --

24 Q. Do you have any -- go ahead. I'm sorry.

25 A. You know, I can't -- you know, I don't know any history

1 of -- I don't know if he's being coached or anything
2 like that. I'm sure you're going to imply that. But
3 all I have is what he tells me.

4 Q. Fair enough. Did he -- do you have any reason why he
5 wouldn't have -- why all of a sudden he came with this
6 clear story, whereas in February he couldn't give you
7 one and didn't give -- according to the records I have
8 from the other doctor who saw him, didn't give him any
9 clarity either?

10 A. I don't have -- and I don't know. And I think he's
11 probably clarifying it because he knows he has to
12 present a clear story and has to -- and he had to
13 finally think back in his brain, "Okay, when did this
14 start? How did it go from there?" And when I was
15 seeing him, he was more just like, "I just want to get
16 better. How do we fix this?" And you know, we're
17 looking for short -- we're looking for a quick answer.
18 We've got the injection, and we're trying to -- he just
19 really wanted to try to get back to work the way he
20 wanted to work. So it helped me at this point to be
21 able to clarify the story. And again, I asked him
22 those questions before, and he didn't have a good
23 answer. So it may be that he looked at himself and
24 looked at his history and really decided, "When did
25 this really get bad? And what if --" you know, and

1 kind of followed along from there. So, you know,
2 obviously -- again, I hate to blame him that he didn't
3 tell me the whole story from the beginning because he
4 did say he lifts at work all the time, that it could
5 have been an episode. And then he looked back and he
6 did report those incidents to his employer when they
7 happened, and he just said, you know, "That's when it
8 got to the point where it was constantly happening."

9 Q. Are you surprised that he was able to work for almost
10 two years with this type of problem?

11 A. Well --

12 Q. Or do you know when the actual --

13 A. Yeah. I mean, to work with that on medications is
14 possible, and it's really about a mindset, you know.
15 Pain can stop some, and others it doesn't. And it can
16 progress and, you know, sometimes people just get to
17 the point where mentally they just can't tolerate it
18 anymore and they just don't push on. And I just -- I
19 feel that some people have the mental capacity to push
20 through, and some don't. And some people six weeks
21 they're on the bed and they will do nothing, and others
22 keep working. And you know, I don't know his life
23 situation, you know. I know he probably needs to work,
24 and that's probably what he's doing.

25 Q. Did you get the impression that he felt like, during

1 this, I guess, two-year period or the better part of a
2 two-year period, that he was trying to communicate to
3 his employer that he was injured and they were not
4 taking him seriously? Is that --

5 A. Well, he said that, you know, he felt that they were
6 taking him seriously, but he was trying to, you know --
7 in talking to him this visit, he said, "I was trying to
8 get the right care and talk to them about it as a
9 workman's comp injury, and they said, 'well, this isn't
10 a work comp injury because you got better and now it's
11 bothering you again. So we can't say it's from a
12 specific injury.'" And I -- quite honestly, that
13 seminal type episode can create a waxing and waning
14 type of picture.

15 Q. Well let me ask you this, Doctor: Is it possible that -
16 - that happens on occasion, though, that you'll have,
17 you know, a back injury that is only a strain and it
18 will get better after a period of time?

19 A. Correct.

20 Q. Doesn't that happen all the time?

21 A. Definitely.

22 Q. And then some other event can trigger it to either
23 exacerbate or make it worse?

24 A. Yes. Trip at home, a car accident, or could have been
25 something else. But --

1 Q. Do you have any evidence of that?

2 A. I have no evidence that there's anything else.

3 Q. If there were evidence that he was doing things outside
4 of his employment that were during this period of time
5 that were significant lifting, would that be important
6 to know in giving a causation event?

7 A. Well, you know, it's hard because I have to -- you
8 know, seeing the records of what each of these nurses --
9 -- the nurse evaluations at different points that he's
10 complaining of the pain helps as well. But yeah, if he
11 had a significant -- if he was doing significant
12 lifting, those could exacerbate the problem, too. But
13 you know, again, he presented with this pain that he
14 was -- that was not a significant limitation until that
15 injury. So something -- something started this
16 cascade.

17 Q. When he was seeing you between February -- or seeing
18 your practice between February and Wednesday, did he
19 kind of tell you -- did y'all discuss kind of the
20 things he could and couldn't do?

21 A. No, I didn't give him any limitations. I mean, I did --
22 -- honestly, I didn't specifically address that, and
23 maybe I should. And I usually depend on therapists as
24 well to kind of guide them in what's safe and what's
25 not safe.

1 Q. Do you have an opinion now as to what he can do at this
2 point in time?

3 A. Yes. You know, with the way he's at now, I don't want
4 him to do anything more than lifting more than about 10
5 pounds, I don't want him bending over at the waist,
6 anything extended, you know, squatting, lifting. I
7 think he really needs to be doing something sedentary
8 at this point.

9 Q. So let me make sure I'm clear here. Instead of -- is
10 it your opinion now that he's claiming this accident,
11 this back injury, occurred on a specific date as
12 opposed to a continuation of --

13 A. Yeah, he's saying -- he's saying it started on July --
14 whatever that was in 2011.

15 Q. Did he tell you what he was doing when it happened?

16 A. I'd have to look at it again here. He said that he was
17 lifting. I think he lifts toilets; is that correct?
18 Or maybe you can clarify --

19 Q. Correct, among other things.

20 A. And then he said -- but he was lifting, he felt a pop
21 in his back, increase in pain, tried to go back to work
22 the next day, and then finally it was too much and he
23 reported it to the nurse. So it was really more of
24 just a bending over and lifting type of injury. He
25 said he constantly leans forward slightly in a kind of

1 hunched position so that he could do his job more
2 efficiently. So he's already in a position that leads
3 him to high risk for a disc injury. And then once you
4 add weight to that, you put further stress on the disc.

5 Q. And did he mention to you -- I know it says in here
6 that he was lifting between 50 and 70 pounds, the
7 toilet seat he was lifting.

8 A. Yes.

9 Q. Did he advise you that those lifts were done with
10 another person?

11 A. I didn't say that.

12 Q. He didn't say that, or you didn't?

13 A. I didn't ask him, but he didn't say it voluntarily.

14 Q. Would that have been important to know?

15 A. I mean, it helps if it -- I mean, that would decrease
16 the load.

17 Q. Does that make it less likely that he actually had an
18 injury at work?

19 A. Sure, but it still could happen with -- even with
20 sharing that load with somebody.

21 Q. Do you have any evidence other than just what he told
22 you to causally relate this to July 15th, 2011?

23 A. No.

24 Q. And Doctor, I want to show you a report, if I can, from
25 the physical therapist. Were you aware that he had had

1 therapy in -- gone through some therapy in October of
2 last year?

3 A. Yes, he said Dr. Savage-Jeter arranged that for him.

4 Q. Okay. I'm going to show you the initial evaluation for
5 therapy. Would you read the highlighted part, please?
6 Well, what's the date on that?

7 A. 10/25/2012. It says, "Outpatient initial evaluation
8 for physical therapy. Patient reported he had several
9 falls at work secondary to slippery surface, and then
10 x-ray of lumbosacral spine showed old coccyx fracture."

11 Q. Is that consistent with what he told you?

12 A. No.

13 Q. Did he ever mention anything about slipping and
14 falling?

15 A. No, the only -- correction. He did mention an episode
16 where he hurt his shoulder trying to catch himself when
17 he was walking down a narrow hall and slipped and fell.
18 But he didn't imply that that was related to the back
19 injury, more the shoulder and neck.

20 Q. Would that be in -- would his presentation in that
21 regard be inconsistent as it pertains to the back?

22 A. It could be another way to injure your back, yeah.

23 Q. Did he mention anything about slipping and falling
24 causing injury to his back when he saw you?

25 A. No, he felt that he -- he felt that that may have

1 exacerbated it as well, but he thought mostly that that
2 was where his shoulder problems started.

3 Q. Did you report that in your -- is that in your report?

4 A. I hope so, but we discussed it.

5 Q. Can we get a copy of this report today?

6 A. Definitely. You can have that.

7 Q. Okay. Doctor, is it of any concern to you from a
8 causation standpoint that he was able to identify to
9 the commission the mechanism of injury in early
10 February and could not identify it to your staff or you
11 in February, but yet came to you after the claim was
12 denied in July and explained it to you?

13 A. Sure, yeah. You know, we had a conversation about this
14 and I said, you know, "why the specific dates now? why
15 do you know so clearly?" Because I knew this would be
16 a discussion. And he said, "Honestly, you know, I just
17 thought it was just from lifting all the time." But he
18 said, you know, "If you look back, that's when it
19 really got bad." He said, "I just didn't think it was
20 a big deal when it happened or when it started. It was
21 at work, and I wasn't doing well, and I wanted some
22 help." So I think he was -- I think there was some,
23 you know, filtering of this information obviously with
24 somebody else that is educated in the system. But I
25 don't think it was made up, I don't think it was

1 fabricated. I think he just was able to dissect out,
2 "okay, when did this really become an issue and it's
3 kind of been an issue since?" So I think there was
4 some coaching, but I don't think it's fabricated. Is
5 it a concern? Yes. I mean, I wish it would have been
6 clear from the beginning. But his story is consistent
7 -- it makes sense at this point.

8 Q. Do you know whether his initial problem that apparently
9 occurred in July of 2011 resolved and then there was
10 some other incident that may have triggered this to
11 become worse?

12 A. I don't know that.

13 Q. Is that a possibility?

14 A. Yes.

15 Q. Does that happen on occasion?

16 A. Yes.

17 Q. If that incident were not a work-related type incident,
18 would that change the causation as to what actually
19 caused his current problem?

20 A. Yes.

21 Q. And what is your recommendation at this point? It
22 looks like you've gone ahead and recommended surgery
23 for this individual?

24 A. Yes.

25 Q. And what's the specific procedure you want to do?

1 A. L5-S1 laminectomy and discectomy with laminotomies at
2 the 4-5 level.

3 Q. And what's the -- kind of -- just for the record kind
4 of tell us what would be the expectation for treatment
5 post-surgery.

6 A. So generally expect about 80 to 90 percent relief of
7 radicular leg symptoms with unpredictable relief of
8 back pain.

9 Q. What's his primary problem at this time?

10 A. At this time, it's the left leg pain.

11 Q. Even more than the back pain?

12 A. Yeah, at this point.

13 Q. And what's the success rate on those to get that 80 to
14 90 percent?

15 A. So about 80 to 90 percent of the time, you get near
16 complete relief.

17 Q. Okay, I understand. Is there therapy post-surgery, or
18 does that --

19 A. Normally, yeah.

20 Q. -- depend on the patient?

21 A. Yeah, it depends. But with the type of work he's
22 doing, he'd probably need therapy to get back to the
23 level of the work he was doing. So it would be six
24 weeks of observation and walking, and then probably
25 another six weeks of aggressive therapy.

1 Q. And then would MMI be about three or four months later?

2 A. Normally I make an MMI at about six weeks -- sorry, six
3 months after a laminectomy/discectomy because data has
4 shown that people improve all the way that far out.
5 That tends to be where people plateau. Nerve
6 regeneration, weakness, things like that, all the way
7 out to a year. But for MMI, generally if it's more of
8 a pain thing, about six months.

9 Q. And do you -- assuming he gets the relief, the
10 anticipated relief, what will his impairment rating be?
11 Or estimated impairment rating be.

12 A. Depending on how much the back pain limits him at that
13 point. So I'd have to evaluate him at that point and
14 see how much that's stopping him. And without
15 instability and without radicular pain, it would be
16 minimal.

17 Q. Less than 10 percent?

18 A. I'd guess.

19 Q. Is that -- do you use the AMA guide to come up with
20 that?

21 A. I use the sixth generation.

22 Q. Sixth edition?

23 A. Edition, yeah.

24 Q. And what about future care for the back after -- well,
25 let me ask you this: would he -- would it be your

1 anticipation, if he had the surgery and if it was
2 successful, he would be able to go back to what he was
3 doing work-wise?

4 A. Yes.

5 Q. Would that be without restriction?

6 A. I'd hope so, yes.

7 Q. Do you see any -- would there be any indication or
8 possibility of further medical care?

9 A. You know, he's got the issue as well with the shoulder
10 and neck pain and Dr. Terzella is kind of carving that
11 out right now, and I'm sure you guys are going to speak
12 with him as well. I looked at his neck MRI scan. I
13 don't see anything that would indicate surgery, but he
14 may need some pain treatments, or therapy, or something
15 to that effect. Or even maybe something for his
16 shoulder, if that ends up being a problem. But in my
17 evaluation of his neck, I don't see any treatments for
18 that, but Dr. Terzella may be able to clarify that
19 some.

20 Q. Let me ask that question, then. With regard to the
21 shoulder, were you able to determine whether this was a
22 shoulder pathology or a neck pathology?

23 A. No, I didn't. I didn't get into too much detail about
24 it, honestly.

25 Q. Were you seeing him for that?

1 A. Not specifically.

2 Q. Was he seeing Dr. Terzella for that?

3 A. Terzella's been helping with that.

4 Q. With regard to the low back, post-MMI, do you need the
5 need for any kind of other treatment that you know
6 he'll need?

7 A. Without -- unless he has significant back pain that
8 requires pain management, then I don't foresee any
9 future needs.

10 MR. HAIGLER:

11 Thank you, Doctor.

12 EXAMINATION BY MR. MARTIN:

13 Q. Doctor, I just have -- hopefully I just have a few
14 questions. I'm going to try and go fast.

15 A. Sure.

16 Q. First of all, I'm showing you a diagram which is page
17 40 of our APA's, and this is dated January 4th of 2013.

18 A. Correct.

19 Q. And it's for Mr. Jimenez. And who would have filled
20 this out with the little X's, and dashes, and all that?

21 A. So this is a -- this looks like a pain diagram, a
22 picture of a -- a front and back picture of a person.
23 And generally these are patient -- patient filled --
24 patient volunteered complaints, I should say,
25 describing their pain. There are some notes in the

1 columns. These are probably from whoever was
2 evaluating the patient at that time, just taking some
3 notes. But the diagram itself is filled out by the
4 patient.

5 Q. Would this be something that would be in your chart
6 somewhere?

7 A. Yes.

8 Q. And looking at this from January 4th of 2013, the note
9 down here at the bottom says, "Injury at work"?

10 A. Yes.

11 Q. And it says "lifting"?

12 A. Yes.

13 Q. And then going over to page 42 of the APA's, this is
14 the patient history form.

15 A. I'm trying to figure out who -- who were they seeing
16 that day? Do you know?

17 Q. Well, I think he had to fill out the form before he
18 came in.

19 A. Because the writing in the columns is someone else.

20 Q. Yeah, that's -- my understanding was that came from
21 your office.

22 A. Okay. He filled it out on the 4th, but that's when he
23 saw me on the 25th?

24 Q. That's my understanding.

25 A. Okay. So this is probably my PA's handwriting because

1 it's not mine.

2 Q. Okay. And then here under "accident details" on the
3 patient history, he checks, "Was this an accident?"
4 "Yes". But then for date of accident, he says, "I do
5 not (almost 2 year)".

6 A. Correct.

7 Q. And then something "getting worse".

8 A. Yes.

9 Q. So, in February of 2013, he said, from what I can
10 understand here, that he had an accident almost 2 years
11 ago?

12 A. Correct.

13 Q. And he said he had that accident -- the type of
14 accident was -- he checked work, and he wrote in
15 "Kohler"?

16 A. Correct.

17 Q. And, "Where did the accident happen?" "At work"?

18 A. Yes.

19 Q. So if you go back almost 2 years from February of 2013,
20 would not July of 2011 fit that definition?

21 A. That's about right.

22 Q. And that was obviously at the very first visit. So
23 could it have been that, when your PA spoke with him,
24 she may have asked him if he could remember a work
25 accident --

1 A. Yes.

2 Q. -- instead of remembering if he had a work injury, and
3 maybe that's where the confusion came in since he
4 obviously put on his history form that day that he did
5 have a work accident almost 2 years ago?

6 A. Yes, that's possible.

7 Q. Now, if I understood you correctly, when he came in
8 here on July 31st earlier this week to see you, he
9 didn't ask you to change his medical records and put in
10 all this about his accident. That was something that
11 you took upon yourself to ask him because you knew you
12 had this deposition coming up?

13 A. Yes.

14 Q. So he wasn't -- he didn't come here and say, "Hey, Doc,
15 I need you to fix this because my records don't read
16 right. I need you to change it around," or, "My
17 attorney told me to get you to move this," or anything
18 like that?

19 A. No. It seems that someone clarified the story with him
20 and he was more clear about his story, but in no way
21 did he ask me to change the records.

22 Q. Would it make you feel more comfortable in your opinion
23 to know that, when records were subpoenaed from Kohler,
24 that the nurse had actually indicated in her reports
25 from 2011 that he reported an accident on that day to

1 his back?

2 A. Yes. Yeah, and I believed him that the accident
3 happened on that day.

4 Q. And would it also make you feel more comfortable to
5 know that another accident was reported in the Kohler
6 personnel file for March 13th or thereabouts of 2012 as
7 far as the accident he was complaining about with
8 slipping and injuring his shoulder?

9 A. Yes. Yeah, I mean, documenting that, I think, is key
10 in this type of situation, and I think it helps support
11 the story. So the second injury was after I saw -- no,
12 that was before I saw him. Okay. They were both
13 before I saw him.

14 Q. So with that additional information and your having
15 dealt with this patient for several months now and
16 reviewing his reports, do you feel comfortable saying
17 to a reasonable degree of medical certainty that the
18 back surgery that he needs at this point most probably
19 is as a result of the work accident that he had which
20 is documented by Kohler on July 11th or thereabouts of
21 2011?

22 A. Yes. I think it's important to note, to give further
23 support for that, that his symptoms continued
24 throughout that time. And he describes it that way.
25 But if there's anything, you know, that is against

1 that, then it's important to note, you know, where that
2 fits in as well. But from the story I know, yes.

3 Q. And you said you haven't discussed work restrictions
4 with him during the time that you've been seeing, but
5 he would definitely -- he's not capable of going back
6 to his full duty job at this point?

7 A. No.

8 Q. Not without -- and he needs that surgery?

9 A. Yes.

10 Q. And has he been in that condition since you saw him in
11 February, that he was not able to do a full duty job?

12 A. Well, you know, a lot of that decision is based on what
13 symptoms they have. If he can tolerate it, I say go
14 for it. And if they get to the point where they can't,
15 then they don't. And I usually warn them, "Work can
16 make it worse. And if you want to do it, that's your
17 life." I'm just -- I'm only here to recommend. But I
18 recommended he -- I recommended, with the symptoms he
19 had before, to change what he's doing. But people
20 don't usually have that option.

21 MR. MARTIN:

22 That's all the questions I have. Thank you.

23 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
24 AT 10:56 A.M.)

25

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CERTIFICATE OF REPORTER

I, LISA M. NOWELL, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING 36 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE DEPOSITION OF MARCO RODRIGUEZ, M.D., WHICH WAS TAKEN BY ME ON THE 2ND DAY OF AUGUST, 2013.

THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH OF HIS OWN KNOWLEDGE CONCERNING THIS MATTER.

THAT I AM NOT RELATED TO NOR THE EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR RELATED TO OR EMPLOYED BY ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

Lisa M. Nowell

LISA M. NOWELL, REPORTER

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 11/24/2013

W.C.C. #1214561

EMPLOYER/INSURER/DEFENDANT.

 COPY

DEPOSITION OF
ERICA SAVAGE-JETER, M.D.

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF ERICA SAVAGE-
JETER, M.D. WAS TAKEN ON THE 5TH DAY OF AUGUST, 2013,
COMMENCING AT THE HOUR OF 3:07 P.M., IN THE OFFICES OF
FAMILY MEDICAL CENTER, SPARTANBURG, SOUTH CAROLINA.

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ATTORNEYS FOR THE DEFENDANT.

REPORTED BY: MARLA J. O'BRIEN, CVR-M, ACR

Deposition of Erica Savage-Jeter, M.D.

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 IT IS AGREED BY AND BETWEEN THE COUNSEL FOR THE PARTIES AS
3 FOLLOWS:

- 4 1. THAT THIS DEPOSITION IS BEING TAKEN PURSUANT TO ALL
5 APPLICABLE RULES OF THE SOUTH CAROLINA WORKERS'
6 COMPENSATION COMMISSION;
7 2. THAT THE DEPONENT WAIVES HER RIGHT TO READ AND SIGN THE
8 DEPOSITION TRANSCRIPT.

9 *****

10 ERICA SAVAGE-JETER, M.D., BEING DULY SWORN TO TELL THE
11 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH OF HER OWN
12 KNOWLEDGE CONCERNING THE MATTER HEREIN, TESTIFIED AS
13 FOLLOWS:

14 *****

15 EXAMINATION BY MR. HAIGLER:

16 Q. Do you go by Dr. Jeter?

17 A. Yes, that's fine.

18 Q. Okay. Dr. Jeter, please state your full name for the
19 record?

20 A. Erica Savage-Jeter.

21 Q. Okay. Dr. Jeter, my name is Nick Haigler. I'm here on
22 behalf of Kohler Company --

23 A. Okay.

24 Q. -- for Mr. Jimenez's Workers' Compensation claim.

25 A. Yes, sir.

1 Q. Have you ever been deposed before?

2 A. No, I haven't.

3 Q. First time?

4 A. First time.

5 Q. Well, basically, this is just an opportunity -- I'm
6 primarily, I think, only going to be talking about your
7 medical records today. I won't ask you -- I don't
8 think I'll have to ask you about anyone else's medical
9 records.

10 A. Okay.

11 Q. And before we got started, you confirmed for me that
12 the records we have from 10/15/12 to January 29th, 2013
13 are all the records that you have, the only times he's
14 ever seen you, those four visits; is that correct?

15 A. Yes, sir.

16 Q. All right. And tell us what you do for a living, if
17 you will.

18 A. I am a family medicine physician.

19 Q. Okay. And how long have you been in practice?

20 A. Since 2009.

21 Q. Okay, where'd you go to medical school?

22 A. University of South Carolina School of Medicine.

23 Q. Did you do a residency internship?

24 A. Palmetto Health Richland Family Medicine.

25 Q. Okay. Any other education, or any kind of training?

- 1 A. No.
- 2 Q. And how long have you been at this practiced?
- 3 A. Since 2011.
- 4 Q. Where were you between 2009 and 2011?
- 5 A. At CHA Sanford Family Medicine in Union, South
- 6 Carolina.
- 7 Q. Have you worked anywhere else other than those two
- 8 practices?
- 9 A. I moonlighted for Doctors Care as a resident.
- 10 Q. Has all of your practice been pretty much in family
- 11 medicine?
- 12 A. Yes.
- 13 Q. Was that what your intern or --
- 14 A. Yes.
- 15 Q. -- residency was in, focused in?
- 16 A. Uh-huh (indicates affirmative response).
- 17 Q. And do you work as a family medicine physician, do you
- 18 handle workers' Comp patients?
- 19 A. Yes.
- 20 Q. A lot of those?
- 21 A. Not a lot.
- 22 Q. What percentage of your practice would you say that is?
- 23 A. Probably around 15, ten or 15 percent.
- 24 Q. When a patient comes in your office for the first time,
- 25 and in this case, I'm specifically referring to Mr.

1 Jimenez, on October the 15th, 2012, did he complete an
2 intake form?

3 A. Yes.

4 Q. When we subpoenaed your records, we issued a subpoena -
5 - I think a couple subpoenas, actually, to make sure we
6 had all of them -- but we did not get a copy of that.
7 In fact, the only thing we actually received were your
8 actual notes, each of which were about three pages. I
9 was going to see if I could get a copy of that intake
10 form.

11 A. Sure. I can print that for you.

12 Q. And I assume that Al would like a copy as well.

13 Mr. Martin:

14 Yes, ma'am.

15 The witness:

16 Sure, I'll get those.

17 Witness answers:

18 A. And what these are, they're mainly used by our -- for
19 registration. So -- but I'll print those for you.

20 Q. Does the patient, on those -- I'll have a chance to
21 look at it in a second -- but does the patient identify
22 what the problem is, or anything like that?

23 A. No. No, this is mainly insurance, their address,
24 things like that. There is nothing written about that.
25

- 1 Q. Okay.
- 2 A. There's no chief complaint or anything on those intake
- 3 forms.
- 4 Q. Okay.
- 5 A. We just recently went paperless, so we just have to
- 6 document in EMR.
- 7 Q. What's EMR?
- 8 A. Electronic Medical Record.
- 9 Q. Gotcha. Are you printing a copy of that?
- 10 A. Yes, I will.
- 11 Q. Super. I'd like to see it before we finish, if that's
- 12 okay.
- 13 A. That's fine.
- 14 Q. On that form, did he indicate an insurance company that
- 15 would be paying for the treatment?
- 16 A. Just a second. He listed United Health Care as his
- 17 primary insurance coverage.
- 18 Q. Okay. On that form, is there a place where he can
- 19 identify if it's a work-related injury, or work-related
- 20 problem?
- 21 A. No.
- 22 Q. There's nowhere on the form for him to do that?
- 23 A. No.
- 24 Q. How do you know if it's a Workers' Comp case?
- 25 A. Typically, if it's a Workers' Comp case, it's the

1 employer that calls us and schedules the appointment,
2 not the patients directly themselves. Or, during the -
3 - when I see them, you know, they say, they'll tell me
4 --

5 Q. I got hurt at work?

6 A. -- that it's -- right.

7 Q. Gotcha. In this case, did his employer call, did
8 anyone from Kohler call and --

9 A. Not to my knowledge.

10 Q. Would you have documented that somewhere? Or how would
11 you know that?

12 A. I would go to scheduling, look at the history. And the
13 reason, initially, what was documented for his reason
14 for making the appointment was, needs PCP, which stands
15 for primary care physician, when he called to make the
16 appointment.

17 Q. What does that stand for? I mean, I know what that
18 stands for, but what does that mean to you?

19 A. That he needed a primary care doctor.

20 Q. Okay. When someone calls to schedule an appointment --
21 and since he'd never been a patient, do y'all ask him
22 whether it was work-related? Or just --

23 A. No, because at this point, we didn't know if it -- we
24 didn't know anything -- we just thought he was coming
25 to establish as a -- the lady answering the phone

1 wouldn't have asked is this work related, because his -
2 - he's making an appointment because he needed a
3 doctor, not -- he didn't say because I have --

4 Q. Sure.

5 A. You know.

6 Q. Gotcha. When he came to see you on the 15th, did he
7 see anyone other than you, like, a nurse or anyone when
8 he first --

9 A. He saw -- Tora is my assistant.

10 Q. Did he see her first?

11 A. Yes. She does all my vital signs and things like that.

12 Q. Okay. Now, would she have done -- I'm looking at your
13 actual report. Do you have that report from 10/15?

14 A. Yes.

15 Q. Three pages?

16 A. Yes.

17 Q. About three pages? Okay. Any part of this her
18 notation, or is this all of your stuff?

19 A. The only thing she would have notated is -- the things
20 she would have notated are the vitals.

21 Q. Which are -- okay, right here.

22 A. Listed under the vitals.

23 Q. Anything else?

24 A. No.

25 Q. History of present illness would have been you?

1 A. Me, uh-huh (indicates affirmative response).

2 Q. Do you ask the patient for that information?

3 A. Yes, I do.

4 Q. Okay. And on that 10/15 visit, what did he note to you
5 was his -- what was his chief complaint when he came to
6 see you?

7 A. It was back pain. He complained of pain in his low
8 back with radiation to his bilateral buttocks,
9 intermittent. It was related to overuse and alleviated
10 by rest.

11 Q. Now, Mr. Jimenez, is he able -- do you remember him?
12 Do you have any --

13 A. Yes.

14 Q. Do you recall if he was able to speak English?

15 A. Yes, he does speak English, uh-huh (indicates
16 affirmative response).

17 Q. Did you have any issues communicating with him?

18 A. There were some barriers to communication.

19 Q. Were you able --

20 A. Mainly --

21 Q. Go ahead.

22 A. I wasn't sure if he always understood what I was trying
23 to tell him. I always understood what he was saying.

24 Q. Okay. Did he reference any kind of acute injury during
25 this visit, this first visit?

1 A. No, he gave me more of a -- well, he said that, no so
2 much with the back pain as I documented. He was
3 telling me he was having some problems with his upper
4 extremities as well. And he said this all began after
5 he did a lot of lifting at work because of a broken
6 machine.

7 Q. Okay.

8 A. Is what he told me. And he thought that a lot of his
9 back pain was from overuse as well.

10 Q. Now, and that information you just gave me, do you
11 remember that, or did you just read that from the --

12 A. No, I read that from my note.

13 Q. Okay. Do you have a direct recollection of this first
14 appointment?

15 A. I do. I do.

16 Q. Okay. Do you ever remember him specifically
17 referencing or indicating a work accident in July of
18 2011?

19 A. No, not a specific -- no, not a date, no, I don't
20 remember him referencing a date.

21 Q. Okay. Do you remember him telling you about an
22 accident in March of 2012, I guess about seven months
23 before he saw you?

24 A. No, I don't.

25 Q. Had he mentioned those dates to you or told you, hey,

1 doctor, I was hurt in July 2011 or March 2012, would
2 you have put that in your report?

3 A. I would have. I do remember him telling me about an
4 incident where he fell. I don't know, I don't remember
5 the date or if he was at work or wherever, but I do
6 remember him referencing a fall.

7 Q. But he didn't tell you where the fall occurred? Or you
8 don't remember where the --

9 A. I don't remember.

10 Q. Was that -- when you're talking about the fall, or the
11 falls that he referenced to you, is that just memory
12 that you're going on?

13 A. Uh-huh (indicates affirmative response).

14 Q. Is that a yes?

15 A. Yes.

16 Q. I'm sorry.

17 A. Sorry.

18 Q. That's okay. I should have told you that when you
19 answered uh-huh, like all of us tend to do. When she
20 types up the transcript, we won't know whether you mean
21 yes or no. It's more to protect you than anything
22 else.

23 A. Sure.

24 Q. But just to make sure I'm clear, if he had referenced a
25 specific work accident, you would have put that in your

1 report?

2 A. Yes, I would have.

3 Q. Where would that have been?

4 A. It would have been in the HPI.

5 Q. Okay.

6 A. In the history of present illness.

7 Q. Would that have been under context, or --

8 A. Yes, I probably would have free texted. There's a
9 space where you can free text.

10 Q. Okay. Was his primary problem the shoulder, or was it
11 the back, or could you put a percentage on that?

12 A. Initially, they were equal. In subsequent visits, it
13 became about the back. But on this day, he complained
14 about both of them equally, the shoulder and the back.

15 Q. When he saw you in October, did he have any complaints
16 about any kind of radicular problems that you could
17 appreciate?

18 A. Yes. He did complain of tingling.

19 Q. Where?

20 A. I want to say it was in his hand and his lower
21 extremities, both of them, posterior.

22 Q. Did you document that anywhere?

23 A. Not in that visit. Let me see if I documented it
24 someplace else. Yes, I put it in the encounter in
25 November, I documented the radicular symptoms in the

1 left leg and left foot.

2 Q. okay.

3 A. Burning and throbbing. And then --

4 Q. That was in the November visit?

5 A. November, uh-huh (indicates affirmative response). Yes.
6 And then, in the January visit, it was the right.

7 Q. So it had gone from the left to the right?

8 A. From what I can infer, is that we had already
9 documented the left. And so -- I can't say that it had
10 gone from the left to the right, but that's where we
11 documented he was having right sided symptoms.

12 Q. So you don't know whether it was the right in addition
13 to the left --

14 A. In addition, right.

15 Q. -- or the right instead of the left?

16 A. Uh-huh (indicates affirmative response).

17 Q. You're not sure?

18 A. Right.

19 Q. Okay. But he was having radicular symptoms --

20 A. Yes.

21 Q. -- according to his report. Did you test that in any
22 way? Straight leg raise or any other kind of --

23 A. Let's see.

24 Q. Take your time.

25 A. I don't see that documented. I just documented normal

1 gait, and normal strength testing. And some pain to
2 palpation in the thoracic spine, but I did not document
3 straight leg, no.

4 Q. Okay. Does that mean you didn't do it, that you didn't
5 perform that test?

6 A. I can't answer that with certainty.

7 Q. Sure, that's fine. I'm reading your note from 10/15.
8 It looks like you did an x-ray?

9 A. Yes.

10 Q. Of his lumbar spine?

11 A. Yes.

12 Q. What did that reveal, if anything?

13 A. It was read as negative. A normal alignment, normal
14 disc spaces, no evidence of fractures,
15 spondylolisthesis or spondylolysis, minor osteophytes
16 formation in the inferior thoracic spine. So read as
17 negative lumbar spine.

18 Q. Okay. I'm reading your report. It looks like you
19 indicated, and I'm on page three of that 10/15 report -
20 - x-ray looks like old coccyx fracture that has healed,
21 but nothing acute.

22 A. Uh-huh (indicates affirmative response). That's my
23 interpretation.

24 Q. Okay.

25 A. Uh-huh (indicates affirmative response).

1 Q. Did you actually see it?

2 A. Yes.

3 Q. How can you tell if there's an old coccyx, a fracture
4 there that had healed?

5 A. It looked like there were some calcifications in the
6 coccyx area. And I can pull it up just to refresh
7 myself.

8 Q. You can actually look at the x-ray?

9 A. Yes.

10 Q. That's nice.

11 A. Well, I thought I could. For some reason, it's not
12 registering in the -- maybe I can...

13 Q. I have 8/5/78.

14 A. Uh-huh (indicates affirmative response). I noticed
15 today was his birthday. So when I looked at his film,
16 which is here (indicating), here, you always use
17 reference, this is his coccyx, it looks different from
18 here and here. And you can see some more whitening
19 here. Then compared here (indicating). So this could
20 have possibly been an old coccyx fracture that had
21 healed.

22 Q. Okay.

23 A. But otherwise, I didn't see any (inaudible).

24 Q. Do you treat those type of problems?

25 A. No.

- 1 Q. Have you ever had to deal with a coccyx fracture?
- 2 A. They heal. There's not much you can do except pain
- 3 relief. They're going to heal.
- 4 Q. Would those in any way explain the symptoms he was
- 5 having?
- 6 A. No. That would cause any radicular symptoms.
- 7 Q. Even if the fracture weren't treated in any way? Or I
- 8 guess there is no treatment, according to what you're
- 9 telling me. Is that --
- 10 A. No. There are no --
- 11 Q. Just rest?
- 12 A. Yes. The nerves have already exited by the time you
- 13 get to that spot, so that would just cause local pain.
- 14 Q. I understand. Is that opinion to a reasonable degree
- 15 of medical certainty?
- 16 A. Medical certainty.
- 17 Q. As of the 10/15 visit, did you have any reason to
- 18 believe that he had sustained any acute injuries to his
- 19 spine?
- 20 A. No.
- 21 Q. Is that still your opinion as we sit here today, or has
- 22 anything changed in the interim to --
- 23 A. No, not -- I don't -- I don't know if I can --
- 24 Q. My question is has anything -- do you ha
- 25 this visit, have you received any new in

1 show to give you any indication that he's had any kind
2 of acute injuries, specifically in July of 2011 or
3 March 2012? Other than the fact I'm putting them in my
4 questions?

5 A. It's kind of hard to make that, to draw that
6 conclusion. Because of the type of injury that he --
7 of the type of disease that he does have could have
8 potentially began as an acute injury.

9 Q. Okay.

10 A. So it's hard to make that statement.

11 Q. But he didn't tell you about anything; is that fair?

12 A. No.

13 Q. Ever? In any of the four visits?

14 A. Not an acute -- not a --

15 Q. I picked something up and hurt my back.

16 A. There was just the, my back hurt after I worked, you
17 know, lifted the -- after I did some lifting because
18 the machine was broken. He did tell me that. But a
19 specific date, no. And it -- I think it was a -- the
20 second visit where I felt like when we were discussing
21 what was going on, that he was saying that I think this
22 is an injury from something that happened to me at
23 work. And my reply was, well, if this is workers'
24 Comp, then you need to get your employer involved.
25 That was my recommendation to him at that point. You

1 need to let someone know that this happened to you at
2 work, or so on and so forth. So...

3 Q. Did you get the indication that he'd not told his
4 employer about this?

5 A. Yes. And I got the indication that he was a little
6 fearful about telling his employer about this.

7 Q. Okay. Do you see that on occasion?

8 A. Yes.

9 Q. With patients?

10 A. Uh-huh (indicates affirmative response).

11 Q. After this October visit, did you put him out of work
12 for any length of time at all?

13 A. No.

14 Q. I don't have a note on that. I just was curious.

15 A. When I saw him on the 15th, I thought this was more
16 related to muscular pain. And so I sent him to
17 physical therapy, gave him some anti-inflammatories.
18 And then when he came back the next month, it was
19 worse. He told me his pain was worse. And so he had
20 failed conservative management. So that's when we
21 ordered the MRI. Then there was a delay in getting the
22 MRI because of some -- his insurance required a high
23 deductible, and he couldn't afford it at that time, and
24 so there was a little gap in care between November 28th
25 to January 16th. And then he came back again in

1 January, and at that time, we ordered the MRI again.
2 And that's when we found the spinal stenosis.

3 Q. I understand. The second visit, was it your
4 understanding he had been working during --

5 A. Yes.

6 Q. -- that three-month period of time?

7 A. Uh-huh (indicates affirmative response).

8 Q. And did you take him out of work in mid January?

9 A. Mid January.

10 Q. Were you still kind of waiting on the MRI?

11 A. I was waiting on the MRI.

12 Q. All right.

13 A. And then once I received the MRI, I referred him to an
14 orthopaedic.

15 Q. Did you review the MRI with him?

16 A. Yes.

17 Q. Okay. Is that more of an orthopaedic thing, or are you
18 -- and don't take this the wrong way -- are you
19 qualified to read the MRI from an orthopaedic
20 standpoint?

21 A. I know what needs to be --

22 Q. You know when to make a referral --

23 A. Right.

24 Q. -- and when not to?

25 A. Exactly. As far as surgical repair, things like that,

1 that's not my expertise. But I know what needs to be
2 referred, evaluated further.

3 Q. Okay. And based on your review of the MRI, did you
4 think he needed to be referred to an orthopaedic?

5 A. Yes.

6 Q. And did you make a specific referral, or just say, go
7 see an orthopaedic?

8 A. No, I referred him to Dr. Rodriguez.

9 Q. Is that who you typically refer patients to?

10 A. Yes, for back. For back and spinal stenosis issues.

11 Q. Okay. And did you -- and there's a note in here where
12 it says, will check some rheumatology --

13 A. Rheumatologic labs, yes.

14 Q. What was the point of that?

15 A. Because I thought he was rather young to have such
16 disease, and so I was looking to make sure there wasn't
17 another explanation for him having such disease in his
18 lower back.

19 Q. Okay. Did you get those back?

20 A. Yes.

21 Q. Any explanation?

22 A. No.

23 Q. And then, it looks like you asked the patient to
24 forward some paperwork to you concerning his job.

25 A. Right, because at that point, that's when I told him he

1 needed to go out of work.

2 Q. were you asking him to go to his employer and get some
3 paperwork?

4 A. Right, to his human resources.

5 Q. Okay. And to find out what his job duties were --

6 A. Uh-huh (indicates affirmative response).

7 Q. -- so you could modify those if necessary?

8 A. Right.

9 Q. And do you know if he actually did that?

10 A. I don't know.

11 Q. Was that the last time you saw him?

12 A. Yes.

13 Q. Okay. Did he ever come back with any documentation
14 that you know of?

15 A. No.

16 Q. Did you ever give him any formal restrictions?

17 A. No.

18 Q. Did you give him any medication or anything when he
19 left your office on that day?

20 A. No.

21 Q. Where did you leave it at that point, just see an
22 ortho, basically?

23 A. I said, see an ortho. And I anticipated receiving some
24 documentation from his employer.

25 Q. At this point in time, what did you think he could do?

1 I mean, what were his restrictions going to be, did you
2 think?

3 A. No lifting, no pushing, no pulling, no carrying. If he
4 was going to be -- at that point, I didn't have him on
5 any medications, but if he required pain medication,
6 he'd probably have problems with concentration and his
7 ability to react. So mainly, prolonged standing. So
8 mainly, he would need a sedentary job that didn't
9 require him to respond quickly to -- or to react
10 quickly, thinks of that nature.

11 Q. Okay. Dr. Jeter, can you give an opinion to a
12 reasonable degree of medical certainty, which is more
13 likely than not, as to whether Mr. Jimenez sustained
14 work-related back injury in July of 2011 or March of
15 2012?

16 A. No, I don't -- I cannot say that with medical
17 certainty.

18 Q. More likely that not?

19 A. I can't say that, either.

20 Q. Okay. Those are all the questions I have for you.

21 Mr. Haigler:

22 Go off the record just a second.

23 (Off the record)

24 EXAMINATION BY MR. MARTIN:

25 Q. Dr. Jeter, thank you for taking the time to speak with

1 us this afternoon.

2 A. No problem.

3 Q. And thank you for taking care of Mr. Jimenez. I'm his
4 attorney, my name is Al Martin, and I just have a few
5 follow-up questions. It'll be very brief, I think.

6 A. Okay.

7 Q. Your practice here is the authorized practice that
8 provides company doctor services for Kohler for their
9 workers' Compensation cases; is that right?

10 A. That's correct.

11 Q. And you said you anticipated receiving some documents
12 back from Kohler. Do you remember what type of
13 documents those were?

14 A. Typically, when I tell someone I don't think you should
15 work or you have impairments that will limit your job,
16 your job performance, my instructions are, go talk to
17 your human resource officer. Usually there are some
18 FMLA papers or some disability papers, something of
19 that nature that I anticipate receiving. Sometimes,
20 companies are different. Sometimes patients will call
21 me back and say, I need a statement saying I'm out of
22 work from this date to this date. They have to go talk
23 to their employers. It's a case by case, employer by
24 employer. Even in Kohler, there's been differences in
25 patients that need to be out of work. There's

1 different ways that we document that. And so my
2 anticipation was to receive a call back from someone.

3 Q. Okay. And if I just understood that last part,
4 sometimes Kohler asks for certain documents, and
5 sometimes they don't? Is that --

6 A. Well, typically when we have a patient that comes over
7 from Kohler for workers' Comp, we have a form that they
8 usually present with.

9 Q. Okay.

10 A. And so, we document on that form. Now, if it's someone
11 that comes and they've hurt themselves and they cannot
12 work, then there's another process. Not necessarily a
13 workers' Comp, but just, I have an injury and I cannot
14 work, then there's a separate process for that,
15 typically.

16 Q. Okay. Now, and going back over, if I understood and I
17 followed your testimony correctly, I think you said
18 that Mr. Jimenez indicated to you that he felt like
19 he'd gotten injured at work after he was lifting when a
20 machine was broken. That's how he thought he'd injured
21 his back. And then there was a fall where he thought
22 he'd injured his upper extremity.

23 A. I want to say it was the broken machine that he injured
24 his upper extremity.

25 Q. Okay.

1 A. And the fall, he injured his back, if I'm not mistaken.

2 Q. You don't have that documented, but that's best of your

3 --

4 A. From what I can remember.

5 Q. -- recollection at this point.

6 A. Uh-huh (indicates affirmative response).

7 Q. Okay. Now, you mentioned Dr. Rodriguez. If Dr.
8 Rodriguez is able to provide an opinion to a reasonable
9 degree of medical certainty regarding the origin of
10 these injuries, would you defer to him as far as the
11 orthopaedic injuries go?

12 A. Yes.

13 Q. Okay. I apologize for plowing the same ground over and
14 over again.

15 A. Sure.

16 Q. If I understand correctly, Mr. Jimenez told you that he
17 felt like he'd gotten hurt at work, he just didn't give
18 you a specific date.

19 A. He did not give me a date.

20 Q. I gotcha. All right, that's all the questions I have.
21 Thank you very much.

22 A. You're welcome.

23 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
24 AT 3:36 P.M.)

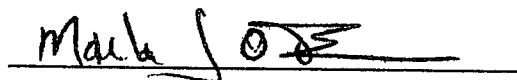
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CERTIFICATE OF REPORTER

I, MARLA J. O'BRIEN, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING 27 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT
OF THE DEPOSITION OF ERICA SAVAGE-JETER, M.D., WHICH WAS
TAKEN BY ME ON THE 5TH DAY OF AUGUST, 2013.

THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE
TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH OF HER OWN
KNOWLEDGE CONCERNING THIS MATTER.

THAT I AM NOT RELATED TO NOR THE EMPLOYEE OF ANY OF THE
PARTIES HERETO, NOR RELATED TO OR EMPLOYED BY ANY ATTORNEY
OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN
THE OUTCOME OF THIS ACTION.



MARLA J. O'BRIEN, CVR-M, ACR
NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 8-12-2021

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

JOSE JIMENEZ,

Employee

-VS-

KOHLER COMPANY,

Employer/Carrier

VOLUME I
WCC FILE NOS.
1122474 & 1219561

Pursuant to Notice of the Workers' Compensation
Hearing taken on the 23rd day of May 2014, heard before
the Honorable T. Scott Beck, and commencing at the hour
of 2:00 p.m. in Columbia, South Carolina.

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Translator

Mike Tolleson
Company Representative

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LEGEND OF THE TRANSCRIPT

dashes [--] intentional or purposeful interruption
[ph] denotes phonetically written
[sic] written as said

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PROCEEDINGS

(Whereupon, the Deposition Transcript of Erica Savage-Jeter, MD was premarked Defendant's Exhibit No. 1.)

(Whereupon, the Deposition Transcript of Marco Rodriguez, MD was premarked Defendant's Exhibit No. 2.)

COMMISSIONER BECK: Today's date is May 23, 2014. This is Workers' Compensation File Numbers 1122474 and 1219561. Claimant in this matter is Jose Jimenez, represented today by Attorney Al Martin, Jr. The Employer is Kohler Company, they are self-insured, represented today by Attorney Grady Beard. Dates of accident in this matter are July 14, 2011 and March 13, 2012. Average weekly wage, respectively, are \$760.83 for the '11 claim, \$851.61 for the 2012 claim. Compensation rate is \$507.24 for the 2011 claim, \$567.77 for the March 2012 claim. We are here today on Claimant's Form 50.

In a prior proceeding my representation of Mr. Beard some -- it's getting longer and longer, isn't it -- 16, 17 years ago --

MR. BEARD: Yes, sir.

1 **COMMISSIONER BECK:** -- was brought to the
2 attention of Mr. Martin.

3 Mr. Martin, it's my understanding from that
4 prior event that there is no objection to me ruling
5 on this matter today.

6 **MR. MARTIN:** That's correct, your Honor.

7 **COMMISSIONER BECK:** All right. As far as
8 other objections. Mr. Beard has objected to
9 Claimant's page seven, which is the --

10 **MR. BEARD:** Questionnaire --

11 **COMMISSIONER BECK:** -- from a Check the Box
12 questionnaire of Dr. Matthew Tercella. I'm
13 overruling that objection and it is being admitted.

14 Are there any other objections to APAs,
15 jurisdiction, venue, or any other matter,
16 Mr. Martin?

17 **MR. MARTIN:** No, your Honor.

18 **COMMISSIONER BECK:** Mr. Beard?

19 **MR. BEARD:** No, sir, your Honor.

20 **COMMISSIONER BECK:** All right. Without
21 objection the Commission File becomes a part of the
22 record with the exception of self-serving
23 declarations and un-stipulated medical reports.

24 Also, during the pre-hearing conference in
25 this matter the respective positions of both the

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1 parties was discussed. From the standpoint of the
2 Claimant. Claimant asserts that he suffered
3 compensable injuries on both dates of accident to
4 his back and left leg. He is seeking causally
5 related medical care, reimbursement for out of
6 pocket expenses for causally related medical care
7 rendered thus far, and further asserts an
8 entitlement to temporary total disability benefits
9 from January 30, 2013 to the present and
10 continuing.

11 Further, he stipulates that the four company
12 witnesses who are present today are entitled to
13 payment for appearance fees and milage fees.

14 Mr. Martin, anything in addition to that with
15 regard to the Claimant's position that you would
16 like to get on the record or any other matter
17 you're here to litigate today, sir?

18 **MR. MARTIN:** No, sir.

19 **COMMISSIONER BECK:** All right. With regard to
20 the Defendant's position. They deny compensability
21 of both of these claims in their entirety based on
22 three premises: Number one, proper notice was not
23 provided to the Employer on either the first or
24 second claim, they assert an issue of credibility
25 with the Claimant, further, they assert that no

1 injury by accident occurred. However, if I find a
2 compensable injury they would further assert that
3 the Claimant is not entitled to any temporary total
4 disability benefits. And as I mentioned before,
5 they are seeking payment for appearance and mileage
6 fees of the four company witnesses present for
7 today's proceeding.

8 There was also an issue with regard to the
9 Defendants pertaining to the Understandable Acts
10 absent of a nurse, Pat Zimmerman, and the potential
11 of the record being left open if needed. I'm going
12 to reserve any ruling on that issue until it's
13 properly made, maybe towards the latter part of
14 this proceeding, Mr. Beard.

15 **MR. BEARD:** Thank you, your Honor.

16 **COMMISSIONER BECK:** Anything else with regard
17 to the Defendant's position that you'd like to get
18 on the record or any other matter you're here to
19 litigate today, sir?

20 **MR. BEARD:** No, your Honor.

21 **COMMISSIONER BECK:** Mr. Aviles, there's a
22 series of questions I want to get through with you
23 first, then I'll swear you.

24 **TRANSLATOR:** Yes, your Honor.

25 **COMMISSIONER BECK:** Number one, are you a

1 friend, associate, or relative of a party or
2 Counsel for a party involved in this proceeding?

3 **TRANSLATOR:** No.

4 **COMMISSIONER BECK:** Have you served in any
5 investigative capacity for any party involved in
6 this case?

7 **TRANSLATOR:** No.

8 **COMMISSIONER BECK:** Do you, or your spouse, or
9 child have any financial interest in the subject
10 matter in controversy or in a party to the
11 proceeding, or any other interest that would be
12 effected by the outcome of this case?

13 **TRANSLATOR:** No.

14 **COMMISSIONER BECK:** Have you been involved in
15 the choice of Counsel or law firm in this case?

16 **TRANSLATOR:** No.

17 **COMMISSIONER BECK:** Are you an attorney or an
18 employee of an attorney in this case?

19 **TRANSLATOR:** No.

20 **COMMISSIONER BECK:** Have you previously been
21 retained for private employment by either of the
22 parties present today?

23 **TRANSLATOR:** No.

24 **COMMISSIONER BECK:** Is there any reason why
25 your independence of judgement would be compromised

1 in the course of providing services today?

2 **TRANSLATOR:** No.

3 *****

4 Whereupon,

5 **WILMER AVILES,**

6 having been first duly sworn to interpret
7 these proceedings truly, fairly, and impartially:

8 *****

9 **COMMISSIONER BECK:** Mr. Martin, you may call
10 your first witness, please.

11 **MR. MARTIN:** Thank you, your Honor. I call
12 Mike Tolleson.

13 *****

14 Whereupon,

15 **MIKE TOLLESON,**

16 having been first duly sworn,
17 was examined and testified as follows:

18 *****

19 **COMMISSIONER BECK:** Please state your full
20 name for the record.

21 **WITNESS:** It's Michael Gary Tolleson.

22 **COMMISSIONER BECK:** Mr. Martin.

23 **MR. MARTIN:** Thank you, your Honor.

24 **DIRECT EXAMINATION**

25 **BY MR. MARTIN:**

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- 1 Q. Mr. Tolleson, you're the Director of Safety at
2 Kohler?
- 3 A. I am the Safety Specialist at Kohler. I'm not a
4 director -- or I guess I'm not titled Director, but
5 I am the Safety Specialist.
- 6 Q. Okay. Are you in charge, the highest guy up, in
7 safety for the Kohler plant in Spartanburg?
- 8 A. Well, everybody has a responsibility. I run the
9 program, as far as the safety program so I do all
10 the training and stuff.
- 11 Q. Yes, sir. And you've been with Kohler for about 18
12 years now?
- 13 A. Eighteen, yes.
- 14 Q. Okay. And you would be the person primarily
15 responsible for workers' comp at the plant?
- 16 A. When you say workers' comp, I'm involved with
17 anybody who has an incident, near miss, property
18 damage, those kind of things, I am involved. But,
19 you know, we have a corporate headquarters who, I
20 guess, handles everything, you know, from that
21 standpoint.
- 22 Q. Yes, sir. But, as far as the plant in Spartanburg,
23 though, you're the number one guy?
- 24 A. Can you explain what you want me to say, far as the
25 number one guy? I mean...

1 Q. Sure. You're the main point person for workers'
2 comp at the Spartanburg Kohler plant.

3 A. I'm involved in it, yes, sir. You know, HR's
4 involved, I'm involved. You know, that's all I can
5 say, that I'm involved, yes, sir.

6 Q. Okay. You were also in the same position and
7 worked in correlation with the two claims that were
8 filed for Yuri Valderamma and Jesus Lugo, is that
9 correct?

10 A. I did investigations on those, I sure did, yes.

11 Q. And did all of those gentlemen work in the casting
12 department?

13 A. They did when they were injured --

14 Q. Yes, sir.

15 A. -- or the situation happened.

16 Q. And is that a fairly heavy job?

17 A. What do you mean by heavy job? You know, it's a
18 manual job, for sure. It's very physical, it's
19 partner work. So, you know, fifty pounds, one man,
20 you know, two men, a hundred pounds. You know, but
21 they are lifting, it is a manual job, yes.

22 Q. Okay. Now, I took your -- well, let me ask you
23 this first. In relation to this case there have
24 been several defenses pled. One of those is that
25 there was never any timely notice of either of

1 these accidents that have been pled. Another was
2 that this gentleman did not sustain any injury by
3 accident on the dates alleged. Were you aware of
4 those defenses?

5 A. I know that he did claim an incident and we did
6 investigate. And if I could I would explain our
7 process on how we do that.

8 Q. Okay. I'll ask you to do that in just a second.

9 A. Okay.

10 **MR. BEARD:** Well, I think he has the right to
11 do it now. He's answered the question, I think he
12 can -- I would hope your Honor would allow him to
13 explain his answer. He has answered his question.

14 **COMMISSIONER BECK:** You can explain it.

15 A. Okay. Any time that anything happens in our
16 facility, it doesn't matter if it's property
17 damage, it doesn't matter if it's a refuse to work,
18 it doesn't matter if it is a first aid, it doesn't
19 matter if it's a near miss, all those things are
20 investigated and they're documented. Those things
21 doesn't mean that a person is needing medical
22 attention. It lets us know a red flag has been
23 thrown up and that we, as a management group, need
24 to take our responsibilities in order to --
25 whatever the issue is. So it starts by the

1 employee informing, and that would be his
2 management, which would be a line foreman or a
3 direct foreman, it goes to a supervisor, then it
4 comes to me for investigation after the
5 investigation of that group. And then Pat, our
6 plant nurse, gets involved, they're to see her
7 everyday that this injury happens and every day
8 after until they are better. So it is a big
9 umbrella that we require for our people at the
10 company.

11 **COMMISSIONER BECK:** Mr. Martin, I think I need
12 to at least caution you on this. We've got two
13 dates of injury being alleged here.

14 **MR. MARTIN:** Yes, sir.

15 **COMMISSIONER BECK:** The question that you just
16 asked, I'm a little confused with his response
17 whether we're talking the first injury, the second
18 injury, the dates of injury, sometime subsequent to
19 the dates of injury.

20 **MR. MARTIN:** Yes, sir.

21 **COMMISSIONER BECK:** You're going to need to be
22 a little bit more specific in the type of question
23 you ask --

24 **MR. MARTIN:** Yes, sir.

25 **COMMISSIONER BECK:** -- to help me follow this.

1 **MR. MARTIN:** I will do that. And I apologize,
2 your Honor.

3 Q. Okay. Let me move on and we'll come back to a
4 little more specifics on that. You gave your
5 deposition back on March 22nd of 2013 in my office,
6 do you remember that?

7 A. Vaguely, yes, sir.

8 Q. Okay. And Mr. Beard was there with you, do you
9 remember that?

10 A. I thought it was Nick, I might have been Grady,
11 too. I mean, it was his organization or his
12 defense group, so.

13 Q. Okay. Well, we have the deposition. I believe
14 that we'll --

15 **MR. BEARD:** Commissioner, it's not admissible
16 yet. He has not asked him a single question that
17 puts anything as to credibility yet.

18 **MR. MARTIN:** Well, he just said that Nick
19 Hagler was the guy there. I believe this will
20 indicate otherwise.

21 **COMMISSIONER BECK:** That's not going to get
22 you there.

23 **MR. MARTIN:** Fair enough.

24 Q. During that deposition you said, as you just
25 testified a moment ago, that when there's an

1 accident or a near miss you document it.

2 A. We do.

3 Q. And that there are meetings that you have with the
4 plant manager every three days, or three days every
5 week, or every third day of the week.

6 A. It's called a huddle for management. It's my
7 management staff. It's a huddle, yes, sir.

8 Q. Huddle, that's it. And during the huddle you would
9 speak with the plant manager and you'd let him know
10 about any accidents or near misses that occurred?

11 A. He would know. I mean, it comes out on email any
12 time that we do that.

13 Q. Okay. And in the deposition you said that you
14 would let him know about that.

15 A. And I do comment on anything that happens, it
16 doesn't have to be a near miss or an injury.

17 Q. Okay. We also had a discussion during your
18 deposition about a meeting that occurred. It was a
19 meeting with you and Jose, Joe Brown, Sam Barnwell,
20 and the nurse in the nurse's office. And I believe
21 at that time you thought it'd happened two or three
22 months prior to your deposition. And, as I stated,
23 we took your deposition in March.

24 A. Sure.

25 Q. Okay. And your testimony then was that Jose had

1 come in and said he needed light duty and he
2 claimed he had seen a doctor. And that he never
3 mentioned it was work related, he never asked to go
4 to the company doctor, he said he could do his
5 regular job, he didn't know what doctor he had
6 seen, and you didn't learn it was one of your
7 company doctors until later in the deposition
8 when I showed you a letter that I had sent on
9 February 19th with a copy of the note attached.

10 A. That's correct. He came back to the plant, he
11 presented, I think, verbiage to his foreman and to
12 a supervisor that he had seen a doctor, but he had
13 no excuse. I was called at that point to basically
14 come out and investigate. So we called a meeting
15 in Pat's office and that's the meeting that we
16 talked about. And basically we asked him what his
17 situation was and he said he was ready for work.

18 Q. Okay. And was that the first that you heard he was
19 claiming a work accident, when you received my
20 letter scheduling your deposition?

21 A. Your letter?

22 Q. I sent you a letter. We discussed it in the
23 deposition. It was dated March 5th. It was made
24 an Exhibit.

25 A. That was that three page document to be subpoenaed,

1 I guess?

2 Q. Yes, sir.

3 A. Was that the first time, that day? No, he --

4 Q. No. Was that the first time, when you received
5 that letter, that you learned that there was a
6 pending workers' comp claim?

7 A. No.

8 Q. When did you learn that?

9 A. I assume when he came in and said to us that he had
10 a doctor's excuse that he did not present to us at
11 that point.

12 Q. Okay. Well, now, let's go back a little bit,
13 because I just asked you what you testified to in
14 that deposition. And you just told me that he
15 never mentioned it was work related. Do you
16 remember testifying to me in your deposition
17 repeatedly that he came in, he didn't have a note,
18 he said he needed to be on light duty, but he never
19 said anything about it being work related? He
20 didn't say anything about anything, I believe, is
21 what you said.

22 A. That's correct, yes.

23 Q. He never mentioned it was work related?

24 A. He never mentioned that it was work related. The
25 note didn't mention it. You know, he had no note.

1 We asked him to present us a note.

2 MR. BEARD: Commission, just for clarity,
3 could you ask Mr. Martin -- because, again, he's
4 not telling you the period of time we're talking
5 about.

6 COMMISSIONER BECK: Yes, we need to define
7 this to --

8 MR. BEARD: Because I think this was in
9 October or November of 2012 up until two months
10 before his deposition is somewhere in that range of
11 period of time.

12 MR. MARTIN: That's right. That's right.

13 Q. Well, I just want to make sure that I've got your
14 testimony accurately, as far as what went on in
15 this meeting. This meeting, I believe that we have
16 documentation that it occurred on November 1st of
17 2012. And --

18 A. That was, again, where I responded two or three
19 months could have elapsed either or, correct?

20 Q. Yes, sir. And, again, in your deposition in my
21 office you testified he never said anything about
22 it being work related, he never asked to go to the
23 company doctor, you didn't know what doctor he saw.
24 And it wasn't until I took your deposition that you
25 found out it was the company doctor. That's what

1 you testified to.

2 A. Again, he came in to the supervisor. I was -- he
3 didn't come to me, he came to the --

4 Q. Yes, sir. We're talking about the meeting --

5 A. Right.

6 Q. -- that you participated in on November 1st,
7 2012 --

8 A. Right.

9 Q. -- Mr. Tolleson. You testified about it in your
10 deposition. I have your deposition right here.

11 A. Right.

12 Q. Is that what you said or not?

13 A. Yes, sir.

14 Q. That is what you said?

15 A. Yes, sir.

16 Q. Thank you very much. All right. Now, I have the
17 report -- it's page 100 of the APAs -- APA number
18 six, page one hundred -- it is the medical note
19 from the nurse documenting that specific meeting.
20 And it says (As read): The employee has seen
21 Dr. Erica Savage with his right shoulder.

22 Now, so he did mention his right shoulder,
23 because your attorney said during our pre-trial
24 that the right shoulder was never part of his claim
25 and it was never mentioned prior to a pre-hearing

1 brief. But this is November 1st of 2012 where your
2 nurse is documenting that he talked about his right
3 shoulder to Dr. Erica Savage.

4 Dr. Erica Savage is one of your company
5 doctors, right?

6 A. She is.

7 Q. Okay. (As read): And he is now alleging an injury
8 on 9/8/11. Dr. Savage ordered patient for -- PT,
9 excuse me -- physical therapy for shoulder.

10 Employee says Dr. Savage told him would not be work
11 comp. Employee says that he has seen a doctor with
12 his back. Employee came in on 3/14/12 and reported
13 that on 3/13/12 he was rolling ware over and his
14 left low back felt sore. See note on card dated
15 3/14/12, 8:55 a.m. Was treated here on 3/14/12,
16 was supposed to be rechecked on 3/15/12, but did
17 not return.

18 So according to this, at that meeting you did
19 know that he saw a doctor, you knew who the doctor
20 was, you knew that doctor was one of the company
21 doctors, and --

22 **COMMISSIONER BECK:** Mr. Martin, I'm not sure
23 I'm not getting lost.

24 **WITNESS:** Yes.

25 **COMMISSIONER BECK:** As I understood his

1 testimony, he said there wasn't a note present at
2 that meeting.

3 **MR. MARTIN:** I'm sorry, your Honor, I'm not
4 taking about a note. I'm talking about what this
5 note here says (indicating).

6 **COMMISSIONER BECK:** I understand what this
7 note says, but you're trying to impart that
8 knowledge to him and I'm not so sure I've heard a
9 foundation that he even saw it or had access to it.

10 **MR. MARTIN:** Yes, sir. Your Honor, I'm not
11 saying anything about a note. I apologize. I must
12 be very unclear and I apologize for that. Okay. I
13 didn't say anything about a note, I said what was
14 stated in his deposition.

15 In his deposition he said he participated in
16 that meeting --

17 **COMMISSIONER BECK:** Yep, I got that.

18 **MR. MARTIN:** -- and that the Claimant was in
19 the meeting.

20 **COMMISSIONER BECK:** I got that, too.

21 **MR. MARTIN:** And the Claimant never said
22 anything about this being work related.

23 **COMMISSIONER BECK:** I got that part.

24 **MR. MARTIN:** Okay. But this says, this is the
25 meeting notes where it says he did say it was work

1 related.

2 MR. BEARD: No. I object.

3 COMMISSIONER BECK: That's the medical --

4 MR. BEARD: More importantly --

5 MR. MARTIN: Yes, sir, it is --

6 MR. BEARD: Let me make my objection. The
7 question that has been asked and the question that
8 was asked in this deposition were about the two
9 workers' compensation claims we are presently here
10 for.

11 This says he is saying that he had an accident
12 on September 8, 2011 to his right shoulder. With
13 all due respect, nowhere was that kind of question
14 asked. And it is completely improper for him to
15 have read the deposition, as he did improperly,
16 because that deposition is not part of the evidence
17 in this case and he's trying to get it in in a way
18 that's improper.

19 MR. MARTIN: I haven't read the deposition.

20 MR. BEARD: That's all you've been doing was
21 reading the deposition testimony to him. That's
22 what you've been doing.

23 MR. MARTIN: Where?

24 MR. BEARD: That's what you just read to him.

25 MR. MARTIN: I didn't read him any deposition

1 testimony. I didn't read any deposition --

2 **MR. BEARD:** Did you or did you not --

3 **MR. MARTIN:** The deposition was over here --

4 **MR. BEARD:** Did you or did you not say, In
5 your deposition you testified as follows?

6 **MR. MARTIN:** Yes, I did. That's exactly what
7 he testified to, that is not a verbatim reading
8 from the deposition, okay. I'm sorry. Let me back
9 up, okay?

10 **COMMISSIONER BECK:** Please.

11 **MR. MARTIN:** Thank you. I apologize.

12 Q. Okay. This note, page 100, says at the top from
13 November 1, 2012, the first work is meeting. (As
14 read): Joe Brown, Sam Barnwell, and Mike Tolleson,
15 okay?

16 **MR. BEARD:** Commissioner, with all due
17 respect, the note speaks for itself. There needs
18 to be a question about the note.

19 **MR. MARTIN:** Commissioner, I'll be glad to get
20 to a question.

21 **MR. BEARD:** Well, you haven't done it yet.
22 You read the whole note and you've never asked a
23 question.

24 **COMMISSIONER BECK:** Ask the question.

25 **MR. MARTIN:** Thank you, your Honor.

1 Q. This is the meeting that you testified about in
2 your deposition, correct?

3 A. Yes.

4 Q. Okay. The record of this meeting says that you
5 knew Dr. Erica Savage was the doctor that he
6 saw.

7 A. I didn't know that until he came and reported that,
8 and that was the first notice of that.

9 Q. Okay.

10 A. I didn't know that.

11 Q. Very good. Okay. In your deposition I asked you
12 did you -- what did he say at the meeting, do you
13 recall that? And you said he said nothing.

14 A. He didn't. He said he was ready to go back to
15 work. Pat was the one that said what you're
16 saying.

17 Q. Okay. So you said in your testimony about the
18 meeting that he never mentioned, and that no one
19 ever mentioned, and it was never mentioned that
20 this was work related, do you recall that? You
21 said nobody ever mentioned it was work related, he
22 didn't bring a note, we didn't know what doctor he
23 saw, and I never knew it was the company doctor
24 until you just told me in this deposition. But
25 according to the note from November 1st of 2012

1 that the nurse documented at the meeting that you
2 were in it says who the doctor was, you've told us
3 that's one of your company doctors --

4 A. Yes.

5 Q. -- it says that it was work related, it
6 specifically --

7 **COMMISSIONER BECK:** Mr. Martin, again, I don't
8 know whether it's just me being dense or whether
9 I'm just not getting it. There were two separate
10 meetings, one with he and the Claimant --

11 **MR. MARTIN:** No, sir.

12 **COMMISSIONER BECK:** Was the Claimant in this
13 one?

14 **MR. MARTIN:** Yes, sir.

15 **COMMISSIONER BECK:** Is his name on here?

16 **MR. MARTIN:** This is his medical note. There
17 was only one meeting.

18 Q. Am I correct in that, Mr. Tolleson? You met --

19 A. There's been several meetings. He had an
20 investigation at the initial -- I'm sort of, you
21 know --

22 **COMMISSIONER BECK:** And that's what I'm trying
23 to get to.

24 **MR. MARTIN:** Okay. I'll --

25 **COMMISSIONER BECK:** Because I would assume

1 that a note that references --

2 **MR. MARTIN:** There's only --

3 **COMMISSIONER BECK:** -- Mr. Brown,
4 Mr. Barnwell, and Mr. Tolleson --

5 **WITNESS:** Right.

6 **COMMISSIONER BECK:** -- if Jimenez was in there
7 his name would be in there, too.

8 **MR. MARTIN:** Well, this is his medical note,
9 his name is right there on the side (indicating),
10 okay. This is his medical record that they
11 produced, and this is from the meeting --

12 Q. Mr. Tolleson, did you have more than one meeting in
13 the nurse's office with Mr. Jimenez?

14 A. I would say if he had an incident there was
15 multiple meetings in there, 'cause he is required
16 to go to the nurses station. After anything
17 happens he's required, so.

18 Q. Okay. So what I'm talking about is --

19 A. Right.

20 Q. -- you and him --

21 A. Me and him.

22 Q. -- in the nurse's office?

23 A. I would say that we did have a meeting in the
24 nurse's office.

25 Q. And that's what's been documented right here

1 (indicating) and that's what you testified about in
2 your deposition. Are you saying now that the
3 meeting you talked about in your deposition is a
4 different meeting than this one?

5 A. No.

6 Q. There's only one meeting, right? Only one meeting
7 where you, Joe Brown, Sam Barnwell, and Mr. Jimenez
8 were in the Nurse's Office with the nurse?

9 A. I can't say that for sure, 'cause there could have
10 been another, based on what happened the first day
11 of anything that happens. I can't say that.

12 Q. Okay. But did you testify in your deposition --

13 A. I did.

14 Q. -- that there was --

15 A. I did.

16 Q. -- only one meeting?

17 A. I did.

18 Q. Okay. And going back to the note. It says (As
19 read): Employee came in on 3/14/12 and reported
20 that on 3/13/12 he was rolling ware over -- let's
21 look back on page 101 of the APAs. And on page 101
22 under the date 3/14/12, says (As read): Employee
23 says was rolling ware over yesterday and felt low
24 back --

25 **COMMISSIONER BECK:** (As read): And left low

1 back felt sore.

2 Q. (As read): And left low back felt sore. Today
3 area feels like electric shock down leg. Biofreeze
4 secondary to pain, tabs now and take -- given to
5 take tabs at four to six hours. Return for
6 recheck --

7 MR. BEARD: (As read): In a.m.

8 Q. -- in a.m.

9 MR. MARTIN: Thank you.

10 Q. So that was an accident that he reported on
11 March 14, 2012?

12 A. That was an occurrence.

13 Q. Okay. Let's --

14 A. It goes on to our near miss property damage
15 policies.

16 Q. Let's look at this document.

17 MR. BEARD: Is it in your APAs?

18 MR. MARTIN: No, it's in your personnel file.

19 MR. BEARD: Why isn't it in your APAs? You
20 filed this one in the APAs.

21 MR. MARTIN: Because those are medical notes.
22 Medical notes go in the APA.

23 MR. BEARD: Okay.

24 MR. MARTIN: Is it okay to mark?

25 COMMISSIONER BECK: For identification.

1 **MR. MARTIN:** Yes, sir.

2 (Whereupon, the below described Incident
3 Report was marked Claimant's Exhibit No.
4 1.)

5 Q. Okay. I'm showing you what's been marked as
6 Jimenez Exhibit 1. Tell me what that is.

7 A. This is our electronic system that is created by
8 our supervisors or supervision. This is what I
9 talked about earlier. When anybody reports an
10 ache, a pain, a near miss, injury, cuts, whatever,
11 property damage, this form is generated --

12 Q. And who --

13 A. -- for simple purposes.

14 Q. I'm sorry. I don't want to interrupt you. Who was
15 that completed by?

16 A. This was completed by Sam Barnwell.

17 Q. Sam Barnwell is the foreman over Mr. Jimenez?

18 A. He is the foreman over Mr. Jimenez.

19 Q. That's the first line supervisor?

20 A. Yes.

21 Q. And when was that report prepared?

22 A. It was generated on 3/13/2012.

23 Q. Okay. 3/13/2012. Thank you. And this says --
24 well, I tell you what, why don't -- and I'll just
25 have you read it, okay? Who does it say the

- 1 individuals involved are?
- 2 A. Individual is Jose Jimenez.
- 3 Q. Okay. And then that next section, if you could,
- 4 beginning here, where it says Incident Description,
- 5 read to us what that says.
- 6 A. (As read): On Tuesday morning, 3/13/12, associate
- 7 told me that he was passing -- told me as I was
- 8 passing by him that his back was sore and asked me
- 9 if he could get some pills from the nurse.
- 10 Q. Continue.
- 11 A. Okay. (As read): I asked the associate if he was
- 12 okay and he said yes. Wherein, I got him three
- 13 packs of back pills from Sid DeVaul. The associate
- 14 finished his work for the day at 13:30 and went
- 15 home with no more complaints. On Wednesday morning
- 16 at 4:50 a.m. associate came to me and stated that
- 17 his left leg felt like it was asleep or numb and
- 18 that it was -- and that this came from rolling the
- 19 molds over on his floor on Tuesday around 9:00 a.m.
- 20 When I asked the associate why he did not report
- 21 this he said this is why his back was sore and
- 22 needed pills. I asked the associate if he could
- 23 work and he stated that he had no problem casting
- 24 today and is running production.
- 25 Q. Go ahead and continue.

- 1 A. (As read): Talked to the associate about the
2 correct procedures and rolling over bowls and how
3 important it was to work with his partner and make
4 sure both castors were rolling over together and
5 that one not getting ahead of the other in order to
6 keep the weight distributed evenly. Also, to never
7 rush while doing this procedure. Associate will
8 also be required to do double exercises for the
9 week in order to keep back muscles loose.
- 10 Q. And this is a near miss, is what you documented
11 this as?
- 12 A. We have -- the choices are near miss, injury,
13 fatality, property damage, or refuse to work, we
14 have those categories that they can choose.
- 15 Q. So he reported to his supervisor on the day that he
16 was having a sore back. The following morning he
17 said it was worse, and he had done it when he was
18 rolling over molds at nine a.m. the day before. He
19 was sent to the nurse and the nurse documented that
20 he said he hurt his back when he was rolling over
21 molds, it was sore from that. Is that accurate?
- 22 A. That's what that paper states, yes.
- 23 Q. Okay.
- 24 A. And I want to comment, as well, on to that. I know
25 that the second day I went out and I talked to

1 Mr. Jimenez about casting a piece and he was
2 running his whole floor. I asked him why and he
3 said he felt fine. Then I said, no, you said you
4 had had something happen the previous day, we don't
5 cast our whole floor, we lighten up. You make sure
6 that you're better before you do that.

7 Our procedure is any time that anybody has a
8 hiccup -- which we call a near miss, which is not
9 an injury -- we allow them to lighten work and then
10 they -- to see the nurse every day until they're
11 better.

12 The second day Mr. Jimenez, I go out there and
13 he's casting his whole floor.

14 Q. Okay.

15 A. So that's a little bit of how that system works.
16 It's not saying that he is injured.

17 Q. Okay. This doesn't say he's injured?

18 A. Well, you're saying that it was a near miss. And
19 that Pat said that, you know, he was worse the next
20 day, so.

21 Q. Okay. And this was prepared the next day, though,
22 right? That's why it says that he was worse this
23 morning and that's why it has the next day's date
24 on it?

25 A. They have a 24 hour turn around to get them in.

1 Q. And you didn't mention anything to me about that
2 conversation in your deposition, did you?

3 A. Which conversation?

4 Q. The one you had with him the next day after the
5 incident.

6 A. I think I did. I think it was probably -- I know
7 there was two depositions. I know I went to his
8 deposition and to my deposition. So I think he
9 might have mentioned it in his, might not have
10 mention --

11 Q. I think he may have mentioned it in his --

12 A. That he saw me the second --

13 Q. But not for that accident. That was a different
14 accident he mentioned it for.

15 **MR. MARTIN:** I'd like to submit his
16 deposition.

17 **COMMISSIONER BECK:** You're going to have to
18 show me there's something that's incorrect or
19 that's he's contrary to. That's what impeachment
20 is.

21 **MR. MARTIN:** I can show you that he hasn't
22 testified to that and he just said he did.

23 **WITNESS:** I didn't say that.

24 **COMMISSIONER BECK:** No, he said that he'd been
25 involved in two depositions --

1 **WITNESS:** I didn't say that I did.

2 **MR. MARTIN:** Fair enough. We'll move on.

3 Q. All right.

4 **COMMISSIONER BECK:** Are you offering that?

5 **MR. MARTIN:** Yes, sir, your Honor. I'm sorry.

6 **COMMISSIONER BECK:** Mr. Beard?

7 **MR. BEARD:** No objection.

8 **COMMISSIONER BECK:** Claimant 1.

9 (Whereupon, the below described Incident
10 Report was marked Claimant's Exhibit No.
11 2.)

12 **COMMISSIONER BECK:** Two for identification
13 purposes.

14 Q. I'm showing you what's been marked as Jimenez
15 Exhibit 2. Does that appear to be another incident
16 report filled out by Mr. Barnwell?

17 A. That would be correct.

18 Q. Okay. And what does that say?

19 A. It says -- you want me to read the incident
20 description?

21 Q. Yes, sir.

22 A. Okay. (As read): Associate reported to me at 5:00
23 a.m. on Friday, 7/15/11, that during the process of
24 emptying his drain pans on his floor at 6:30 on
25 Thursday, 7/14/11, he felt something in the lower

1 middle part of his back. Associate stated there
2 was no pain, only a little tightness. Associate
3 stated that he could cast his floor, as he
4 continued to do all the procedures that day before
5 he reported this to me, and felt fine. Had
6 associate cast production and sent associate -- and
7 send associate to the reinstated -- that doesn't
8 make sense -- associate. All accidents must be
9 reported as soon as they happen, on the same day,
10 which he is aware of. Reinstated the associate
11 proper lifting techniques and how to bend his knees
12 while keeping his back straight and leg -- and let
13 the legs do the lifting.

14 Q. So he was counseled for reporting an accident on
15 time, is that the way you read that?

16 A. Canceled?

17 Q. Counseled.

18 A. What do you mean by canceled? Meaning he was -- I
19 mean...

20 Q. Well, I mean --

21 A. There's always a corrective action that is asked of
22 the associate -- of the supervision to make sure
23 they go over what happened. So there must have
24 been some comment that he made about lifting pans
25 that was incorrect on how he did it. So they

1 stated that he needed to lift properly, that that
2 was not -- I mean, I don't know what you mean by
3 the word canceled. I mean --

4 Q. Okay.

5 A. -- I doubt he got a reprimand --

6 Q. Okay.

7 A. -- from that. I mean, he was just --

8 Q. This says action plan.

9 A. That is our action plan and they're very vague.
10 I --

11 Q. I'm sorry. I'm going to have a question with that.

12 A. Okay.

13 Q. (As read): Action plan: Reinstated to associate
14 that all accidents must be reported as soon as they
15 happen and on the same day, which he is aware of.

16 Okay. That's because he reported this
17 accident a day late, right?

18 A. Again, that would have -- that was a question Sam
19 -- I mean, I didn't fill that out. I was not there
20 at the moment that that was done so --

21 Q. Right.

22 A. -- I'm not going to say any comments on that.

23 Q. But you speak to the plant manager once a week
24 about all the near misses?

25 A. He gets these. They come to us automatically.

1 When Sam generates it, they come to me. And I may
2 miss them, I'm not -- I may not even be there in
3 that meeting. But that is our process, that,
4 yes...

5 Q. Okay. So --

6 A. Not only our plant manager, it's any supervisor,
7 any line manager, it goes directly to them.

8 **COMMISSIONER BECK:** Mr. Martin?

9 **MR. MARTIN:** Yes, sir. I'm sorry. I'm going
10 to ask another question about that, your Honor.

11 **COMMISSIONER BECK:** About that document?

12 **MR. MARTIN:** I believe so, yes, sir.

13 **COMMISSIONER BECK:** All right.

14 Q. I'm showing you page 105 -- I'm sorry -- 102 of the
15 APAs. There's a note there for 7/15/11 halfway
16 down the page. And it says (As read): On 7/14/11
17 at 7:00 or 7:30 a.m. was draining molds, picked up
18 a slip pan and felt low back pull. Is sore now.
19 Biofreeze to low back, Back Quell tabs and tabs to
20 take four times at PRN. Use warm soaks over the
21 weekend. Says, Monday -- I believe that says --
22 I'm not sure what that says. Says, Cut back
23 production to 18 somethings today. What is that
24 word?

25 A. Pieces, probably, because that's what it's called,

1 pieces. Everything's pieces. Toilets.

2 Q. Okay. So would you agree -- what else is he
3 supposed to do to give you notice of an accident
4 besides report it to his supervisor, have the
5 supervisor prepare an incident report, go to the
6 nurse and tell the nurse about the accident?

7 A. He should request to see a doctor if he's hurt.

8 Q. Okay. So that was his fault?

9 A. No, it wasn't his fault. It's always taken -- when
10 somebody has a muscle strain, or even a little
11 tick, or they hear a pop in their body, or
12 whatever, they're to come to us and report
13 anything, everything. If you get a nick, you get a
14 splinter, you're to report it. We want to document
15 it and we want to take corrective action on it. If
16 it's something that we can resolve we want to
17 resolve it. So Pat put that in because she asked
18 him, more than likely, how many pieces can you run
19 without hurting yourself, and he probably gave her
20 that number. Because I'm sure he ran more than 18
21 pieces, because that is not production. We have a
22 production number -- or they have a production
23 number that their pay is based on and we allow them
24 to do whatever until it's better. And he's made
25 those comments to me, he's made them to Pat, he's

1 made them to Joe, he's made them to Sam, that in
2 both of these cases he was ready for the job.

3 So I'm just telling you that that document
4 that you're reading, it goes out to everybody,
5 because the process is implemented into our whole
6 facility. And we have 500 to 700 of those a year
7 that people report. And, you know, he needs to,
8 basically, or anybody -- if they request a doctors
9 visit they get it.

10 Q. Okay.

11 A. Period.

12 Q. Let me ask you two things now. One, until he asks
13 to go to the company doctor then he hasn't given
14 you notice of an accident, is that --

15 A. That would be correct, it's not anything workers'
16 comp, yes.

17 Q. Okay. So the fact that he went to the nurse, that
18 he reported an injury to his supervisor --

19 A. That is not a workers' comp, no, it is not.

20 Q. All right. And the second thing is, did he or did
21 he not on November 1, 2012 ask to go to the company
22 doctor?

23 A. I can't -- I mean, you're referring back to what
24 situation?

25 Q. Referring to the meeting that we talked about --

1 A. I think he'd already been at that time. I mean,
2 that's what we -- but he had went on his own,
3 because if he would have went to our company doctor
4 -- a lot of our guys have our company group as
5 their PCP, which is their Personal Care Physician.
6 If he would have went over there and said anything
7 to them about work related injury immediately the
8 plant would gotten a call -- a phone call. And if
9 we -- and at that point we had no phone call from
10 Family Medical. They would have called Pat, Sid,
11 myself to verify that an injury had taken place and
12 that they could be seen. So that was -- I assume
13 -- you had that note so I assume that he had been
14 to that group, but it was not for a work related
15 injury.

16 Q. Okay. So on November 1st of 2012 when you had this
17 meeting with him -- this is page 100 -- you had
18 this meeting and it says (As read): Employee says
19 that he has seen a doctor with his back. Employee
20 came in on 3/14/12 and requested -- and reported
21 that on 3/13/12 he was rolling ware over and his
22 left low back felt sore.

23 You're saying in that meeting he never asked
24 to go to see the company doctor?

25 A. In that meeting he never did, he'd already seen

1 them.

2 Q. Okay. And he didn't want to get any more medical
3 treatment?

4 **MR. BEARD:** Commissioner, with all due respect
5 -- and the only reason I'm objecting is, again, I
6 don't have the document in front of you, you're
7 being misrepresented. He's leaving out a very
8 important sentence that says (As read): Employee
9 says Dr. Savage told him this would not be workers'
10 compensation --

11 **MR. MARTIN:** That's related to the shoulder.

12 **MR. BEARD:** He's leaving out a very important
13 sentence of the document.

14 **MR. MARTIN:** It's related --

15 **COMMISSIONER BECK:** Related to what,
16 Mr. Beard?

17 **MR. BEARD:** Related to what he's asking him
18 right now about did he ask to go see a workers'
19 comp doctor and those types of things.

20 **COMMISSIONER BECK:** Is note specifically
21 related to the shoulder?

22 **MR. BEARD:** It's -- well, it says the shoulder
23 and then it starts talking about the back. Says he
24 also -- he has seen a doctor with his back. Right
25 after --

1 **MR. MARTIN:** I believe --

2 **MR. BEARD:** -- he says that he has seen a
3 doctor with his back.

4 **MR. MARTIN:** I don't think I'm misrepresenting
5 anything. I feel like I'm being interrupted at
6 this point for no other reason --

7 **MR. BEARD:** Well, it's the third time you've
8 actually read word for word the document, Al, so I
9 don't know how you're being interrupted.

10 **COMMISSIONER BECK:** All right, gentlemen.

11 **MR. MARTIN:** Well, if I read word for word
12 from the document then I'm not sure how I could be
13 misrepresenting it.

14 **MR. BEARD:** Because you skipped about two
15 sentences of the document.

16 **MR. MARTIN:** Well --

17 **COMMISSIONER BECK:** What's your question?

18 **MR. MARTIN:** My question to Mr. Tolleson, once
19 again, was, in that meeting he said, if I
20 understand correctly, that the gentleman never
21 asked to go see a company doctor and never asked
22 for medical treatment.

23 Q. Is that right?

24 A. In that meeting that is correct. He said he's
25 ready to go back to work.

1 Q. Okay. And was that in response to you saying you
2 need to go back to work if you can?

3 A. I don't ever say that.

4 Q. You never said anything like that?

5 A. Like I said, the day after which ever injury we're
6 talking about I went out to the his floor to make
7 sure that he was lighting up and he was not. He
8 was casting his whole floor. So what does that
9 tell me? There's not a lot wrong with the guy.

10 Q. Okay. So that means he didn't give you -- I'm not
11 even going to go there. Never mind.

12 In Mr. Lugo's case -

13 A. I don't recall -- I do recall Mr. Lugo. I was
14 probably one year into safety when Mr. -- and I'm
15 not for sure I was involved in any of what I'm
16 involved in now, with Mr. Lugo.

17 Q. Okay. Well, let me refresh your recollection. In
18 your deposition you said you started in safety in
19 2001?

20 A. 2001. His injury was --

21 Q. His injury occurred in 2006.

22 A. '06, okay.

23 Q. And in his case he injured his back at work, he
24 reported it to his supervisor, he was sent to the
25 company nurse, he had to be out of work for six

1 weeks. He came back, he hurt his back again at
2 work, he reported it to his supervisor again, he
3 was sent back to the company nurse, he asked to go
4 to the company doctor. He was never sent to the
5 company doctor for either injury. He had to pay
6 for the treatment that he received for the first
7 time for --

8 **MR. BEARD:** Commissioner, I'm going to object
9 to Counsel testifying. And more importantly, I'm
10 going to ask if he's allowed to do this that every
11 document from those files be produced, as far as
12 evidence, because I don't think we can sit here and
13 allow him to testify as this is what happened, this
14 is what happened. I assume there are depositions,
15 I assume there are medical evidence in those cases,
16 and they're completely irrelevant to this case at
17 all.

18 **MR. MARTIN:** I have Mr. Lugo's deposition
19 right here. It's from October 30th of 2007.

20 **MR. BEARD:** Well, this lawyer didn't cross-
21 examine Mr. Lugo so it's not admissible and I
22 object to it.

23 **MR. MARTIN:** It's sworn testimony and
24 Mr. Tolleson --

25 **COMMISSIONER BECK:** What's your question?

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1 **MR. MARTIN:** My question is --

2 **WITNESS:** The plant nurse would have sent --

3 **COMMISSIONER BECK:** Hang on a second.

4 **WITNESS:** Okay.

5 **COMMISSIONER BECK:** What's your question?

6 Q. Wasn't that exactly the same situation that
7 occurred here; the gentleman went to his supervisor
8 and reported an accident, he went to the nurse and
9 reported an accident, he had to get medical
10 treatment on his own, he was never provided a visit
11 to the company doctor, his workers' comp claim was
12 denied, and then he was terminated, isn't that
13 exactly what happened in this case?

14 A. I can't say for sure. Like I said, I was not in
15 the role that I'm in now, far as workers' comp. I
16 was the safety person, which was training. But,
17 you know, I don't even know that our reporting
18 system was the same back then. It probably was
19 close, but probably not the same. Again, our plant
20 nurse would have set all that up for doctor visits.
21 I'm not the medical professional, I am the safety
22 professional.

23 Q. So you don't have anything to do with whether or
24 not he gets to go see the nurse -- or gets to go
25 see a doctor after he requested a nurse?

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1 A. I don't have any -- I have no say so about that.

2 MR. MARTIN: Okay. That's all the questions I
3 have for this witness.

4 COMMISSIONER BECK: Mr. Beard.

5 MR. BEARD: Just a couple of question.

6 CROSS-EXAMINATION

7 BY MR. BEARD:

8 Q. These two near-miss reports that you were
9 questioned about, Mr. Tolleson, did you prepare
10 those?

11 A. No, sir.

12 Q. Okay. Those were prepared by?

13 A. Sam Barnwell.

14 Q. Sam Barnwell is the first line supervisor?

15 A. First line supervisor.

16 Q. And page 100 of the APAs --

17 MR. BEARD: May I approach the witness, your
18 Honor?

19 COMMISSIONER BECK: Yes, sir.

20 MR. BEARD: Thank you.

21 Q. Page 100 says -- well, first of all, what is page
22 100, do you know?

23 A. That's a medical note of Pat's that's in file for
24 all our --

25 Q. Okay. You were questioned as if you drafted up

1 this document, did you draft this document?

2 A. I did not, I don't sign these.

3 Q. Who does this document?

4 A. Pat.

5 Q. Pat Zimmerman, the nurse who's not here?

6 A. Plant nurse.

7 Q. The nurse who's now retired?

8 A. Nurse who's retired, yes, sir.

9 Q. And the document says at the meeting it says J.
10 Brown, and I understand that's Joe Brown.

11 A. Joe Brown.

12 Q. He is Sam Barnwell's supervisor?

13 A. He is.

14 Q. All right. S. Barnwell would be Sam Barnwell?

15 A. Sam Barnwell.

16 Q. And M. Tolleson is you?

17 A. Right.

18 Q. All right. That says meeting, and I assume those
19 were the people in the meeting.

20 A. Yes, sir.

21 Q. It says (As read): Employee has seen Dr. Erica
22 Savage with his right shoulder. He is now alleging
23 an injury on 9/8/11.

24 Now, 9/8/11 has nothing to do with what we're
25 here for today, correct, as far as you know?

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1 A. No.

2 Q. All right. It says (As read): Dr. Savage ordered
3 PT for the shoulder. Employee says Dr. Savage told
4 him would not be workers' comp.

5 Did he tell y'all that or did he tell Nurse
6 Zimmerman that?

7 A. She documented the notes. So she told -- told her.

8 Q. Okay. And when all you were in the meeting, does
9 Nurse Zimmerman have her own conversations separate
10 and apart with the employee or is everybody having
11 the same conversation?

12 A. Everybody's having the same conversation.

13 Q. Okay. So then it says (As read): Employee says
14 that he has seen a doctor with his back.

15 Wasn't that Dr. Erica Savage?

16 A. Yes.

17 Q. Okay. And employee -- then it goes and says (As
18 read): Employee came in on 3/14/12 and reported
19 that in 3/13/12 he was rolling ware over and on his
20 left low back felt sore. See note and card dated
21 3/14/12. Was told -- I can't read the word -- was
22 told something -- or was treated -- no -- was
23 treated here on 3/14/12, was supposed to be
24 rechecked on 3/15/12, but did not return.

25 Is that what the note says?

1 A. That's exactly what it --

2 Q. All right. Now, if, in fact, Mr. Jimenez was
3 injured on March 14, 2012 does the process say you
4 keep going back to the nurse and you let them know
5 that you have a problem until the point -- and if
6 you need to go to a doctor, that's what we do?

7 A. Exactly.

8 Q. And he never went back to her, is that correct?

9 A. Never. Never, went back.

10 Q. According to the notes --

11 A. According to the note.

12 Q. -- that you've been questioned about consistently
13 here today?

14 A. Yep.

15 Q. All right. Now, to your knowledge, is there any
16 evidence that Mr. Jimenez saw a doctor, asked to
17 see a doctor, has provided any evidence to you of
18 seeing a doctor from July of 2011 -- specifically,
19 July 14, 2011 until March 13, 2012?

20 A. No.

21 Q. Not a single medical document, is that correct?

22 A. Yep.

23 Q. Mr. Jimenez, how long has he been employed at
24 Kohler?

25 A. I don't know his hire date. It's been a while.

- 1 Q. If I told you the records that --
- 2 A. Yeah.
- 3 Q. -- we provided to opposing Counsel say 2001 --
- 4 A. I mean, yes, it would be awhile. It would be on
- 5 that accident investigation, I mean --
- 6 Q. 2001 up until 2011 would have been ten years he'd
- 7 been --
- 8 A. Right.
- 9 Q. -- working at Kohler?
- 10 A. Yes.
- 11 Q. All right. Did Mr. Jimenez bring an interpreter
- 12 with him to work?
- 13 A. He did not.
- 14 Q. Did Mr. Jimenez have to communicate with employees,
- 15 and supervisors, and management at work?
- 16 A. He did.
- 17 Q. Did he communicate in Spanish?
- 18 A. No.
- 19 Q. Has Mr. Jimenez, to your knowledge, ever needed an
- 20 interpreter other than when he started fighting
- 21 this workers' comp claim?
- 22 A. No.
- 23 Q. Okay. Relative to July to March of 2012, again,
- 24 there's no evidence of a doctor ever seeing him, is
- 25 that correct?

1 A. No.

2 Q. Now, March 2012 we have this note from the nurse,
3 we just talked about it, says he came in and said
4 he was sore, and she wrote, verbatim: Employee
5 says he was rolling ware over yesterday and low
6 left -- left low back felt sore. Today area feels
7 like electric shock down leg. Biofreeze --
8 something pain, I think, some kind of tabs. Now --
9 I can't read the rest of it -- take the tabs every
10 four to six hours. Return for recheck in the a.m.

11 And the next entry is an entry dated March 19,
12 2012. You weren't asked about this entry, but is
13 that correct? This is page 101 of the Claimant's
14 APA submissions. From March 14th is the next entry
15 March 19th?

16 A. March 19th, yes.

17 Q. All right. Is there an indication that
18 Mr. Jimenez, as instructed by the plant nurse,
19 returned to see her on March 15th?

20 A. No.

21 Q. How about 16th?

22 A. No.

23 Q. 17th?

24 A. No.

25 Q. 18th?

- 1 A. No.
- 2 Q. All right. The note on March 19th says (As read):
- 3 S. Barnwell says employee says he is fine and is
- 4 doing production. Is that correct?
- 5 A. That's correct.
- 6 Q. That means he didn't ask to go to a doctor and is
- 7 back doing his regular job, is that correct?
- 8 A. That's doing his whole job, meaning he's running
- 9 production, every piece --
- 10 Q. Regular duty?
- 11 A. Regular duty, yeah.
- 12 Q. Okay. What's the next entry after that?
- 13 A. 6/28.
- 14 Q. Okay. So literally over three months later, is
- 15 that correct?
- 16 A. Correct.
- 17 Q. Okay. And then that says something about he's got
- 18 headaches, is that right, talks about headaches?
- 19 A. Headaches, yes.
- 20 Q. All right. Now, this personnel file, these records
- 21 that Mr. Martin has put into evidence, he
- 22 subpoenaed those records from Kohler prior to you
- 23 retaining Counsel in this case, is that correct?
- 24 A. Correct.
- 25 Q. And, in fact, he was provided these records by

1 Kohler prior to any Counsel being hired in this
2 case, is that correct?

3 A. Correct.

4 Q. All right. So, surely, if you had something to
5 hide and some kind of reason to keep secrets from
6 Mr. Martin you would have taken all these kind of
7 things out and hid them if they were secretive
8 documents, wouldn't you?

9 A. You would think.

10 Q. Okay. I mean, there's nothing secretive about
11 anything you've provided, is there?

12 A. No.

13 **MR. MARTIN:** My objection is to suggest that
14 they would participate in criminal activity and
15 obstruction of justice.

16 **COMMISSIONER BECK:** No, he's just confirming
17 that he didn't do that.

18 **MR. MARTIN:** Okay.

19 Q. In fact, you did exactly like the subpoena asked
20 and you gave him --

21 A. Everything --

22 Q. You or the HR department gave him every --

23 A. Everything.

24 Q. -- single document in the Kohler files, correct?

25 A. Everything.

1 Q. Okay. And, as far as you're concerned as we sit
2 here today, when somebody comes in and says, you
3 know, I think I was -- I was doing something in
4 ware and I got a little sore and it was yesterday
5 and all that, do you consider that a workers' comp
6 claim?

7 A. No, I don't.

8 Q. Okay.

9 A. I consider that a red flag for me. We're going to
10 lighten you up and make sure you're better.
11 Period.

12 Q. Okay. Because you don't know what that person's
13 doing at home --

14 A. Exactly.

15 Q. -- do you?

16 A. Exactly.

17 Q. You don't know what that person -- may have another
18 job, do you?

19 A. No.

20 Q. In fact, I assume you let doctors decide if
21 there's, in fact, a workers' comp injury?

22 A. Exactly.

23 Q. All right. And at no time, according to these
24 records I've seen and according to your testimony,
25 was there any doctor involved from March -- excuse

1 me -- from July of '11 until March of '12, correct?

2 A. Not that I'm aware of, no.

3 Q. All right. Then we go to March '12 accident --

4 March of 2012 accident. At any time prior to this

5 meeting in November 1st of 2012 that we now know --

6 so we're talking about almost eight months --

7 A. Right.

8 Q. -- seven and a half to eight months -- at any time

9 is there any indication that Mr. Jimenez asked you

10 to go see a doctor, asked Kohler to go see a

11 doctor, or went and saw a doctor until he came and

12 reported that to you in this meeting?

13 A. No.

14 Q. Okay. And I assume he reported it to his

15 supervisor, who then called all of you together for

16 this meeting.

17 A. Exactly.

18 Q. All right. And so he told you then, I've already

19 been to a doctor, but I went about my shoulder and

20 she said it wasn't going to be workers' comp. Then

21 he throws in, I also went about my back, and he

22 reminded y'all about the March 14, 2012, right?

23 A. Correct.

24 Q. Okay. Did he ask to go see a doctor on March 14,

25 2012?

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1 A. He did not.

2 Q. Okay. And we've just gone through the nurse's
3 records. He was told to return the next day,
4 because y'all's policy is if you're still sore we
5 want you to keep coming back until you tell us
6 you're not sore or you tell us, I want to go see a
7 doctor, because something's wrong. He didn't do
8 that, did he?

9 A. He did not.

10 Q. In fact, by March 19th, according to Sam Barnwell,
11 he was back doing his regular production job in the
12 plant.

13 A. Correct.

14 Q. And he didn't come back and see anybody again about
15 any of this type information or stuff that we're
16 here about workers' comp until, it looks like,
17 November of 2012 when you had this meeting.

18 A. Correct.

19 Q. Okay. Mr. Jimenez has been an employee, according
20 to the records, since 2001. He, in fact, got
21 terminated once and rehired, correct, is that your
22 understanding or do you know that?

23 A. I don't know that, but --

24 Q. Okay. Well, I'll represent to you that's correct.

25 A. Okay.

- 1 Q. By the time of the first accident he'd been working
2 for the plant at least ten years, is that correct?
- 3 A. Correct.
- 4 Q. Does Mr. Jimenez have group insurance?
- 5 A. He does.
- 6 Q. In fact, when he went to see this nurse -- or,
7 excuse me, this doctor prior to this November 2012
8 incident did he go see them under workers' comp or
9 did he use his group insurance?
- 10 A. He had to use his group insurance, 'cause we did
11 not get a call.
- 12 Q. Okay. What does it cost an employee to use their
13 group insurance if they go see a doctor, what's the
14 co-pay, \$25?
- 15 A. I don't really know. I mean, there's different
16 levels, so.
- 17 Q. What's the most, do you think, 20, 25 bucks?
- 18 A. I guess. I mean, yeah.
- 19 Q. From July of 2011 up until November of 2012,
20 literally 16 months, no indication that he ever
21 used his group insurance or any other insurance to
22 do anything about seeing a doctor, did he?
- 23 A. No.
- 24 Q. Yet, he's coming in here today, is it your
25 understanding, and testifying that he's in severe

1 pain and he's got all these problems and he's now
2 asking to get workers' comp benefits since January
3 of 2013?

4 A. That's correct.

5 Q. Why was he terminated, if you know?

6 A. The only thing that I have --

7 Q. If you don't know --

8 A. I don't know --

9 Q. That's fine --

10 A. I got an email and it was points -- for points.

11 Q. Okay. What's the point rule?

12 A. Don't know if by heart, but --

13 Q. Okay. That's an HR issue?

14 A. -- there's certain situations you get so many
15 points and after 24, I think, you're terminated.

16 Q. Okay. That's not something you do?

17 A. No --

18 Q. All right.

19 A. -- I'm not HR.

20 Q. And when you actually talked to Mr. Jimenez
21 following these near misses about, I guess,
22 whatever it is you do -- you've explained to us
23 what you do -- at any point in time did he ask you,
24 Mr. Tolleson, please send me to a doctor?

25 A. He did not.

1 Q. At any point in time did he tell you he could not
2 perform his job?

3 A. He did not. In fact, I got on to him the second
4 day because he was doing his regular job once he
5 was told to lighten up.

6 Q. Okay. And, in fact, he was told to go back to the
7 nurse.

8 A. Yes.

9 Q. And then the next day he was doing his regular job
10 again, I think I heard you say.

11 A. Right.

12 Q. Okay. If Mr. Jimenez had, in fact, asked to be
13 sent to a doctor would you have sent him to a
14 doctor?

15 A. He would have went.

16 Q. Okay. What's the rule on that, how long do you
17 have a meeting after someone goes and sees a
18 doctor?

19 A. Well, we have an injury meeting at that point. Any
20 time that it becomes an injury, 'cause they had
21 medical assistant, we meet again with the
22 associate, make sure we've done what we're going to
23 do as a management group to correct the situation.
24 Plus we talk about any restrictions that they may
25 have, make sure that anything that they do they're

1 falling under any of those restrictions. So that's
2 my job, just to make sure that all those things go
3 right.

4 Q. Prior to November of 2012 were you aware that
5 Dr. Erica Jeter-Savage was Mr. Jimenez's family
6 doctor?

7 A. No.

8 Q. But her practice is also the company doctors,
9 correct?

10 A. They are, yes.

11 Q. I think you've testified in your deposition you
12 don't recall seeing her very often, you recalled
13 other names that generally see the workers' comp
14 folks?

15 A. She's pretty new. I mean, she's there now probably
16 four years. But she's the newest one on --

17 Q. Pretty convenient, though, that the workers' comp
18 doctor can serve, also, as the family practice
19 doctor.

20 A. Correct.

21 Q. And you said that happens to a lot of the folks --

22 A. Yes.

23 Q. -- that work out at the plant?

24 A. That's always been a practice.

25 Q. Nurse Zimmerman, how long did she work for Kohler?

1 A. I think it was 47 years.

2 Q. Forty-seven years. Always as the plant nurse?

3 A. Yes.

4 Q. Same capacity --

5 A. Same capacity.

6 Q. -- for 47 years? Okay. I assume workers' comp
7 changed a lot over those years, if you know? Has
8 it changed a lot since you've been there?

9 A. Well, I mean, there's a lot to it. I mean, I'm --

10 Q. Okay.

11 A. -- not an expert on it. But there's a lot to it.

12 Q. Did anyone at Kohler know that Mr. Jimenez was
13 going to see Dr. Savage-Jeter before he went and
14 saw her?

15 A. No.

16 Q. He hadn't come to see you or any of his
17 supervisors?

18 A. No.

19 Q. Okay. The first time he came to you was after the
20 fact?

21 A. That was the day I got an email or a call that he
22 had stated that he had been to the doctor and said
23 that light duty was needed, but he never produced a
24 form.

25 Q. Even that day?

1 A. Yeah. He was asked to and he never brought it.

2 Q. If, in fact, Mr. Jimenez had asked you, I need to
3 go see a doctor for my injuries, who accompanies
4 them to those types of...

5 A. Pat sets it up or if she's not there I set it up
6 and then, you know, and there's times that I will
7 go on the visit.

8 Q. You actually go with the employee?

9 A. Yes. Yes.

10 Q. Okay. Why is that?

11 A. For any doctor's thing, far as safety, what
12 happened, you know, what's he doing. Also for any
13 restrictions, to make sure that they can be put on
14 a lighter duty if needed or whatever, so just
15 restrictions, what we got that they can do as they
16 are injured or whatever.

17 **MR. BEARD:** That's all I have at this time.

18 **COMMISSIONER BECK:** Anything further?

19 **MR. MARTIN:** Yes, sir. First of all, if I did
20 not already accurately submit that, I'd like to.

21 **COMMISSIONER BECK:** Mr. Beard, any objection?

22 **MR. BEARD:** No, sir.

23 **COMMISSIONER BECK:** Without objection,
24 Claimant's 2.

25 **MR. MARTIN:** Thank you. Second of all, I have

1 the personnel file that was mailed to me on April
2 9th of 2013 from Sowell Gray and in that there is a
3 note --

4 **MR. BEARD:** From what date?

5 **MR. MARTIN:** Your letter is dated April 9,
6 2013.

7 **MR. BEARD:** Okay.

8 **MR. MARTIN:** And within that there is a note
9 from Doctors Care. That note is also the same note
10 that is on page 104 of the APAs.

11 **REDIRECT EXAMINATION**

12 BY MR. MARTIN:

13 Q. So if it was in your personnel file y'all must
14 have received it at some point, right?

15 A. That's HR.

16 Q. Okay. HR got a note from Doctors Care, since they
17 produced it in the personnel records, correct?

18 A. Again, I guess if you have it, yes. I mean, I
19 don't know what you're asking me of. That's not my
20 title, I'm not in --

21 **MR. BEARD:** Just -- also, Commissioner, just
22 for the record, it says at the top of that note
23 it's a fax number, it's dated February 21st of
24 2013, apparently is when it came in, but the note,
25 itself, is dated April 30th of '12.

1 What I'll submit to you is when we provided
2 the records to Mr. Martin we provided, also, what
3 we had subpoenaed and received as medical records,
4 which would include this, because then we already
5 knew about this by way of other information. This
6 is not all just personnel file, because that had
7 already been provided six months before I was even
8 involved in the case -- or four months before I was
9 involved in the case.

10 **MR. MARTIN:** I'm sorry, let me locate the
11 document in the personnel file again, because there
12 are no fax lines on the document in the personnel
13 file. That may be when you faxed it to me. That
14 is not when... If I'd of know that...

15 While we're looking for this --

16 **MR. BEARD:** Well, just with all due respect,
17 Al, you said that was the -- this is what you have
18 represented to the Commission as the personnel
19 file. You're the one who submitted this. I'm
20 reading off of your document, not off of something
21 that's my document.

22 **MR. MARTIN:** I said it is the same document
23 that is in the personnel file.

24 **MR. BEARD:** So you were about to present a
25 document different than you've submitted into

1 evidence? Because you can't do that, Al.

2 **MR. MARTIN:** While we're looking for this
3 document, I apologize. This is the document in the
4 personnel file -- straight out of the personnel
5 file.

6 **MR. BEARD:** Then why did you submit this
7 document as the personnel file?

8 **MR. MARTIN:** I submitted that document as a
9 medical note in my APAs --

10 **MR. BEARD:** Okay.

11 **MR. MARTIN:** -- under Doctors Care.

12 **MR. BEARD:** Okay. Well, why is this document
13 that you submitted different than this document?

14 **MR. MARTIN:** Because Doctors Care sent me that
15 document. If you'll notice the fax number on there
16 is mine. It came from the medical department,
17 which is Doctors Care. The fax number --

18 **MR. BEARD:** Well, I don't know -- I think it
19 came from the -- actually from the group insurance
20 people, because UCI, I don't know who that is.
21 Who's UCI Medical Billing?

22 **MR. MARTIN:** All I'm telling you is I got that
23 record faxed to me to my office as the notes from
24 Doctors Care. This note came in the personnel file
25 that you provided, okay?

1 **MR. BEARD:** Okay.

2 **MR. MARTIN:** This appears to be --

3 **MR. BEARD:** You talking about from my office?

4 **MR. MARTIN:** Yes, I am.

5 **MR. BEARD:** Okay.

6 **MR. MARTIN:** This appears to be the identical
7 report it just doesn't have the fax numbers at the
8 top.

9 **MR. BEARD:** Where is the personnel file you
10 got from them before you got one from me with the
11 medical records in addition to that? Where is the
12 first set of personnel file you got?

13 **MR. MARTIN:** Is this necessary?

14 **COMMISSIONER BECK:** What's the point?

15 **MR. BEARD:** Well, apparently he's trying to
16 show something that we didn't go into on direct or
17 cross about a medical record from Doctors Care.
18 The point is he's got different sets of documents,
19 I assume he's going to say, because I've already
20 heard him say it, that you have this record from
21 April of 2012. No, we didn't.

22 We got that record when we subpoenaed the
23 records after we learned of that from this
24 gentleman here. We've sent two sets of personnel
25 files. He subpoenaed it from them, they provided

1 it. He then subpoenaed it, again, after I got
2 involved and we provided the new stuff.

3 So do you have something else?

4 **MR. MARTIN:** Actually, this is the one that
5 they sent me. Still got the post-its on it.

6 **MR. BEARD:** Okay.

7 **MR. MARTIN:** And there it is.

8 **MR. BEARD:** Okay.

9 **MR. MARTIN:** So this was before you were
10 involved in the case --

11 **MR. BEARD:** Yeah.

12 **MR. MARTIN:** -- that they provided me this
13 exact same document from their personnel file.
14 Which means -- thank you for clarifying that --
15 that this document was in their personnel file
16 before they requested any records from Doctors
17 Care.

18 **COMMISSIONER BECK:** What's your question?

19 **MR. MARTIN:** My question is...

20 Q. Your attorney just said this gentleman didn't get
21 any medical treatment for many moons between these
22 accidents. This is a return to note work where he
23 was placed on light duty on May 1st of 2012 for
24 three days. That is a little over a month after
25 the second accident.

1 A. And that, also, they would have put on here work
2 related if it was. And that's what they've got,
3 Nature of Illness or Injury, it's not -- it's
4 personal, it's not anything work related, this is
5 personal.

6 Q. Where does it say personal?

7 A. This is where they would have filed it in as a work
8 related (indicating), that would have made it
9 become a workers' comp at that point. He went and
10 saw this on his own.

11 Q. Is Doctors Care your company doctor?

12 A. Doctor Care? Nope.

13 Q. Okay. And --

14 A. But they would have --

15 Q. -- did they write on there personal or not work
16 related?

17 A. They would have put on there work related, 'cause
18 we've had people go to the 24 hour clinic.

19 Q. Okay. And I'm going to point your attention to APA
20 page seven, number one oh three. This is the note
21 that came along with this same visit. Says (As
22 read): Low back pain, getting worse since
23 Wednesday, worse Saturday, aggravated by lifting.
24 Left leg is weak. Some left buttock pain and some
25 numbness. Left lower lateral -- or lower leg and

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1 toes, ankle. Pain score five or ten. Happened two
2 other times in the past eleven months. He took
3 Ibuprofen.

4 Now, let's go back 11 months --

5 **MR. BEARD:** Commissioner, then at this point I
6 would move that this is an intervening trial, this
7 would be after the second accident. He's just
8 brought it into evidence as part of his case. This
9 is clearly a third incident that apparently started
10 three days before this visit. We're not here for
11 any April 30, 2012 or any three days before. He's
12 trying to argue to you a third claim, because it
13 says on here he had two others like this 11 months
14 earlier. I'll argue that his case -- this is an
15 intervening trial and we raise that defense, and we
16 are raising that defense.

17 **MR. MARTIN:** Commissioner, these were APAs
18 that were provided to them in a timely manor.

19 **MR. BEARD:** We've raised intervening trauma as
20 a defense in our pre-hearing brief.

21 **MR. MARTIN:** I don't believe you have.

22 **MR. BEARD:** Look at the pre-hearing brief.

23 **MR. MARTIN:** And, moreover --

24 **MR. BEARD:** Hang on. No, I want you to make
25 sure you -- we've got it. It's actually in the 51.

1 I apologize, I said the pre-hearing brief. It's in
2 both 51s.

3 **MR. MARTIN:** So if it's not in the 58 it's
4 waived.

5 **COMMISSIONER BECK:** No, it isn't.

6 **MR. MARTIN:** They have to -- I'm sorry,
7 Commissioner, but my understanding was if they
8 don't raise a defense in their 58 that they raised
9 in their 51 they're no longer pursuing that
10 defense. I mean, I have to be --

11 **COMMISSIONER BECK:** On what rule or regulation
12 are you dispousing that --

13 **MR. MARTIN:** I have to have what their
14 defenses are prior to the hearing and I have no
15 notice if they -- if they say prior to the hearing,
16 we're disputing notice, and then in their 58 they
17 say, we're disputing comp rate, and average weekly
18 wage, and this, that, the other thing, and they
19 don't say notice then I'm not longer required to --

20 **COMMISSIONER BECK:** Let's go off the record.

21 (Off the record)

22 **COMMISSIONER BECK:** Mr. Martin.

23 **MR. MARTIN:** Thank you, Commissioner. May I
24 proceed with my questioning of this witness?

25 **COMMISSIONER BECK:** Please proceed.

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1 **MR. MARTIN:** Thank you.

2 Q. Page 103 indicates that he's had two prior problems
3 with his back in the past 11 months, that would
4 encompass, exactly, the accident in July of 2011
5 and the one of March 2012, would you agree with
6 that?

7 **MR. BEARD:** I would object. With all due
8 respect, and, Commissioner, I just need to make the
9 objection for the record. There's not a single
10 statement on this record that says anything
11 happened at work, it just says it was aggravated by
12 lifting. Doesn't say a word about work anywhere on
13 this document. Not a single word does it say that
14 this happened at work.

15 **COMMISSIONER BECK:** Mr. Martin?

16 **MR. MARTIN:** Your Honor, I didn't say anything
17 like that. I think that's something he would
18 typically ask the witness when he had another shot
19 at him instead of making an objection.

20 My questioning of the witness was, Wouldn't
21 this time period -- it says happened two other
22 times in the past eleven months, wouldn't that time
23 period encompass the two accidents that he
24 reported.

25 **COMMISSIONER BECK:** I'll allow him to answer

1 that question.

2 A. Well, again, he didn't have an injury.

3 **COMMISSIONER BECK:** I don't believe that was
4 the question he asked you, sir.

5 A. Okay. Well, what was the question?

6 Q. Wouldn't that encompass the two dates --

7 **MR. BEARD:** Commissioner, we'll stipulate that
8 that encompasses by math the two dates of accidents
9 they've alleged.

10 **COMMISSIONER BECK:** Very good. Let's move on.

11 **MR. MARTIN:** Thank you, Commissioner.

12 **COMMISSIONER BECK:** Anything else?

13 **MR. MARTIN:** Commissioner, I will just go
14 ahead and mark this one.

15 **MR. BEARD:** Sure. Claimant 3 without
16 objection.

17 (Whereupon, the above described Return
18 to Work Note was marked Claimant's
19 Exhibit No. 3.)

20 **MR. MARTIN:** Thank you. And that's from the
21 first personnel file that was provided.

22 **MR. BEARD:** And, Al, just because I need to
23 know -- because I don't know what all you have in
24 your personnel file -- is this medical record, page
25 103 in your APA submissions, part of the personnel

1 file?

2 MR. MARTIN: Not that I've seen.

3 MR. BEARD: Okay.

4 Two questions.

5 COMMISSIONER BECK: All right.

6 RECROSS-EXAMINATION

7 BY MR. BEARD:

8 Q. Page 104 is a light duty excuse that you were just
9 asked about from Doctors Care, is that correct?

10 A. That's correct.

11 Q. There's an indication on this form, it says (As
12 read): Nature of illness or injury.

13 And you've been doing safety and workers' comp
14 for --

15 A. Right.

16 Q. -- a pretty good while? Is that the workers' comp
17 spot for these?

18 A. Right.

19 Q. Okay. What did it indicate?

20 A. Nothing.

21 Q. All right. Is there any indication on this
22 document that he was claiming that whatever he got
23 light duty for was work related?

24 A. No.

25 Q. All right. Then let's go to page 103 of the APAs

that have been submitted, this is an actual report from this incident dated April 30th of 2012. Would you have sent Mr. Jimenez to Doctors Care?

A. No.

Q. Okay. Does that mean he went on his own?

A. Yes.

Q. What is UHC, United Health Care?

A. That is our group --

Q. Group insurance?

A. Right.

Q. Okay. So that's what it indicates he was insured by and whose insurance he used. It says reason, back pain and shoulder pain. And then it just says (As read): Low back pain getting worse since Wednesday.

If you go to Wednesday -- I'm not sure what date April -- well, it was actually Monday. So if you go back five days from April 30th that's April the 25th. Has he pled any kind of accident of April 25th?

A. No.

Q. Did he come to you on April 25th --

A. No.

Q. -- and report any kind of near miss or any kind of incident?

1 A. No.

2 Q. Have they presented any nurse's notes that indicate
3 that?

4 A. No.

5 Q. Okay. And this would be after both of the two
6 accidents that we're here for?

7 A. Correct.

8 MR. BEARD: That's all I have.

9 MR. MARTIN: I apologize. Just one other
10 thing, Commissioner.

11 COMMISSIONER BECK: All right.

12 FURTHER DIRECT EXAMINATION

13 BY MR. MARTIN:

14 Q. You said that November 1st meeting, after that you
15 knew he was claiming workers' comp --

16 MR. BEARD: Commissioner, I'm going to object
17 to now -- we've gone twice, and that's clearly
18 outside of the course of direct and scope that
19 we've done at least a second time. I don't think
20 he can go into, yet, a new matter.

21 MR. MARTIN: I believe I'm going to tie this
22 in to exactly what was asked about.

23 COMMISSIONER BECK: All right.

24 Q. Your attorney had asked you if you knew about
25 Mr. Jimenez treating with the company doctor, and

1 you said not prior to October 2012. We just went
2 over the note from March of 2012. You were aware
3 that he treated with the company doctor in October
4 of 2012, correct, immediately prior to the meeting
5 on November 1st of 2012?

6 A. That was the first, I guess.

7 Q. Okay. And you knew that he continued to treat with
8 the company doctors?

9 A. Didn't know he continued.

10 Q. Did you know that he continued to bring notes to
11 work?

12 **MR. BEARD:** Commissioner, how's that possibly
13 tying -- he gone six or seven months from what we
14 just talked about and talking about things that
15 must have happened after the meeting that he just
16 asked him about, have nothing to do with what we
17 just went into on direct and cross. He doesn't get
18 to -- with all due respect, I don't believe he has
19 the right to do that.

20 **COMMISSIONER BECK:** Mr. Martin?

21 **MR. MARTIN:** I'll use another witness. Thank
22 you.

23 **COMMISSIONER BECK:** Anything else for this
24 witness?

25 **MR. BEARD:** No, Commissioner.

1 **COMMISSIONER BECK:** You may step down, sir.

2 Thank you.

3 Your next witness, Mr. Martin?

4 **MR. MARTIN:** Sam Barnwell.

5 **TRANSLATOR:** May it please the Court, your
6 Honor?

7 **COMMISSIONER BECK:** Yes, sir.

8 **TRANSLATOR:** May we take a five minute break
9 so my brain doesn't fry.

10 **COMMISSIONER BECK:** Recess for five minutes.

11 **TRANSLATOR:** Thank you.

12 (Brief recess)

13 *****

14 Whereupon,

15 **SAM BARNWELL,**

16 having been first duly sworn,
17 was examined and testified as follows:

18 *****

19 **COMMISSIONER BECK:** Please state your full
20 name for the record.

21 **WITNESS:** Samuel K. Barnwell.

22 **COMMISSIONER BECK:** Mr. Martin.

23 **MR. MARTIN:** Thank you, your Honor.

24 **DIRECT EXAMINATION**

25 BY MR. MARTIN:

1 Q. Mr. Barnwell, thank you for coming down here today.
2 I understand you're retired and I appreciate your
3 willingness to come and testify.

4 You are a -- or were a foreman at Kohler?

5 A. Correct.

6 Q. And over what department?

7 A. Our cast shop -- casting department.

8 Q. And did Jose Jimenez work for you?

9 A. He did.

10 Q. Okay. And was he a pretty good producer?

11 A. He was.

12 Q. He had a problem with absenteeism on occasion?

13 A. On occasion, but, you know...

14 Q. Yes, sir. Do you recall in July of 2011 him coming
15 to you and reporting an incident involving his
16 back?

17 A. I don't really recall it, but, you know -- right to
18 mind, but --

19 Q. Okay.

20 A. -- I'm sure if he did they would have been
21 something -- you know, we got a procedure where it
22 would have been reported.

23 Q. Okay. You would have done an incident report for
24 that?

25 A. I would have.

1 Q. Okay. I'm showing you what's been marked as
2 Jimenez Exhibit 2. This is a Spartanburg Incident
3 Report dated July 15th of 2011. I'll ask you to
4 take a look at that and you take your time reading
5 over that.

6 A. (Complies.)

7 Q. Have you had a chance to read it?

8 A. That is.

9 Q. Okay. And does that appear to be a form that was
10 completed by you?

11 A. It does.

12 Q. Okay. And having reviewed that, does that refresh
13 your recollection of the events of that day?

14 A. It does, somewhat, yes.

15 Q. Okay. And on that occasion did he tell you that he
16 had had an accident where he had injured his back
17 and needed to go see the nurse?

18 A. Well, I believe it said he had some tightness or he
19 was emptying his drain pan and felt a pain in his
20 back, yeah.

21 Q. Okay. And this section under Action Plan, it says
22 (As read): Restated to associate that all
23 accidents must be reported as soon as they happen
24 and on the same day.

25 A. He did not report it 'til the next day.

- 1 Q. Okay.
- 2 A. They required or told so as it happen, regardless
- 3 of how minor, report it right away, immediately.
- 4 Q. Okay.
- 5 A. So I know that's why I would put that, that it
- 6 wasn't reported immediately. It was the next
- 7 morning when it was reported to me at five a.m.
- 8 Q. I got you. And you sent him to the nurse for this
- 9 incident?
- 10 A. That's correct, medical treatment was to the nurse.
- 11 Q. Okay. And was there anything else he would have
- 12 needed to do under Kohler policy to establish that
- 13 he'd gotten hurt at work besides telling you,
- 14 having you fill out an incident report, and then
- 15 going and seeing the nurse and having her treat it?
- 16 A. That's standard. That's the standard procedure.
- 17 Then, you know, the nurse would recommend -- and
- 18 when he would come back to me whether he could work
- 19 or not work. And, naturally, I would -- you know,
- 20 me and him would verbally talk about the injury,
- 21 also.
- 22 Q. Yes, sir. Now, believe -- make sure I've --
- 23 telling you right. I believe the nurse gave him
- 24 some pills for his back, was that fairly common for
- 25 the nurse to do?

1 A. (No response.)

2 Q. And I'll show you what I'm talking about. This is

3 her note of July 15th of 2011. It says (As read):

4 On 7/14/11 at 7:00 or 7:30 a.m. was draining molds.

5 Picked up a slip pan and felt low back pull and is

6 sore now. Biofreeze to low back, Back Quell tabs

7 and -- looks like -- to take every four hours. Use

8 warm soaks over the weekend.

9 Was that fairly standard for her to give out

10 back pills?

11 A. I couldn't say so on that.

12 Q. Okay.

13 A. I mean, you know, that was her treatment, that's

14 why we send them to her so --

15 Q. Okay.

16 A. -- regular treatment and all.

17 Q. Were you aware of other occasions where other

18 people would give pills -- back pills?

19 A. I'm sure there was occasion or two, you know,

20 someone would have a sore muscle or something, but

21 I can't recall them. I couldn't --

22 Q. Yes, sir. Did you keep back pills at your desk for

23 your workers in case --

24 A. I did not. Those was in the HR and the nurse's

25 office. I didn't keep no back pills.

1 Q. Okay. Did you keep any Ibuprofen or anything like
2 that?

3 A. No, sir.

4 Q. Okay. Did you keep a notebook that you would write
5 stuff down in?

6 A. A notebook?

7 Q. Yes, sir, just to help you remember things.

8 A. Well, you know, on my computer and all we had
9 records so forth like that. I could go back and
10 pull up, you know, the medical report or something
11 like that, or a near miss or something like that.

12 Q. Yes, sir.

13 A. But I really didn't keep a notebook.

14 Q. Okay. Do you remember how many pills would have
15 been in one of those Back Quell packs?

16 A. I do not, sir. I don't know whether they were
17 single, I don't know.

18 Q. And do you recall another accident that he reported
19 in March of 2012?

20 A. Don't recall it, sir.

21 Q. Okay. I'm showing you what's been marked as
22 Jimenez Exhibit 1. Take a look at that if you
23 would.

24 MR. MARTIN: Your Honor, I'm sorry, I was
25 referring to page 102 of the APAs a minute ago.

- 1 **COMMISSIONER BECK:** Yes, sir.
- 2 A. That's correct.
- 3 Q. Okay. That's a report that you prepared?
- 4 A. It is.
- 5 Q. Okay. And you recall him reporting that accident,
- 6 as well, now that you've reviewed your report?
- 7 A. Once I review the report. You know, I don't recall
- 8 it, but, I mean, I know that's my report and it was
- 9 written up -- I had several employees -- but, yes,
- 10 it helped recollect.
- 11 Q. Okay. And do you know what the nurse did for him
- 12 that day?
- 13 A. I do not.
- 14 Q. But you know he went to the nurse that day?
- 15 A. That was standard procedure any time, yes, sir.
- 16 Q. Okay. And you said that was standard procedure.
- 17 Let me ask you this. Once you went to the nurse
- 18 and reported that you'd hurt your back did you have
- 19 to go back to the nurse again?
- 20 A. Until release -- until the nurse released him, yes,
- 21 sir. Each morning the employee is to report to the
- 22 nurse, you know, to find out any progress, whether
- 23 he was still hurting or whatever before, you
- 24 know...
- 25 Q. And would he have gone back to the nurse, then,

1 each day?

2 A. That was a requirement, sir.

3 Q. Okay. And if he hadn't gone back to the nurse

4 would you have counseled him on that?

5 A. I would, yes.

6 Q. Okay. And you would have written him up, I

7 suppose.

8 A. Well, you know, sometimes verbal, sometimes

9 written, sometimes record of conversation, it

10 depends.

11 Q. Okay. Do you know if he went back to the nurse?

12 A. I can't recall, sir.

13 Q. Okay. What was the policy after him reporting it,

14 and you preparing an incident report, and him going

15 to the nurse, what else -- was there anything else

16 that occurred, was there any type of investigation

17 or was that pretty much --

18 A. Yes, sir, once this is filed it goes out to the

19 whole plant, safety director and all. And it's

20 investigated; what caused it, what can prevent it,

21 and all this, that, and the other. Yes, sir, it's

22 standard.

23 Q. And is that documented somewhere?

24 A. This is my document, you know, and then the nurse,

25 she has her records and so forth.

1 Q. Okay. So as far as any investigation that occurs
2 after you prepare that document the --

3 A. Well, the investigator will come out and
4 investigate and talk to the associate, and me and
5 the associate and all, what happened and so forth,
6 you know.

7 Q. Is there some report prepared for that?

8 A. I don't know on that end, sir, what the safety
9 director has.

10 Q. Okay. Do you remember Jose complaining about his
11 back any other times?

12 A. No, I do not.

13 Q. Do you remember him bringing in a slip that put him
14 on light duty in May of 2012?

15 A. No, sir. Any doctor's excuse or light duty or
16 something is brought to the foreman, which would
17 have been me, that morning before work. And all
18 associates -- and then, you know, if I'd of had a
19 light duty that would have been immediately turned
20 into my supervisor, he would have been notified.

21 Q. And would that note have been placed in his
22 personnel file?

23 A. It would, sir. I don't keep any documents, they
24 all turned over to supervision and would placed in
25 his file in HR, yes, sir.

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- 1 Q. There was a meeting on November 1st of 2012 and in
- 2 that meeting -- it was in the nurse's office and
- 3 looks like from the notes, you were there, the
- 4 nurse was there, Joe Brown was there, Mr. Tolleson
- 5 was there, and Jose was there, is that right?
- 6 A. Right.
- 7 Q. Okay. How did that meeting come about?
- 8 A. (No response.)
- 9 Q. Don't recall?
- 10 A. Don't recall, sir.
- 11 Q. Okay.
- 12 A. I don't recall none of --
- 13 Q. Let me ask you --
- 14 A. -- what initiated it.
- 15 Q. Let me ask you this, then. Do you recall Jose
- 16 coming in to you and saying anything about he
- 17 wanted to go to the company doctor and he was going
- 18 to go and talk to the nurse about it and you
- 19 scheduled the meeting with all these people so that
- 20 they would be there to meet him in the nurse's
- 21 office?
- 22 A. Seem like I recall that.
- 23 Q. Yes, sir. And when he --
- 24 A. He requested it, yes, sir, seem like that.
- 25 Q. Yes, sir. When he went in, he got there and the

1 nurse said to him, what is it that you want. And
2 he said, well, I need some help, I'd like to go see
3 the company doctor. And she said, well, I'll have
4 to ask Mike Tolleson about that. And that's when
5 you guys who were standing outside the doorway came
6 into the room. Do you remember that?

7 A. I don't remember the exact meeting, sir. I do
8 remember having a meeting. I remember being there,
9 but exactly the way it went about -- I mean, you
10 know, I remember him questioning him. The way it
11 about, I can't say.

12 Q. Okay. Well, let me ask you this. I'm going to
13 keep asking you questions, you tell me if any of
14 this refreshes your recollection, okay? Do you
15 recall Jose saying he'd like to see a doctor, and
16 then the nurse saying, let me get Mike, and then
17 Mike saying, well, did he report an accident, and
18 the nurse said, well, he did report an accident
19 back on March 14th of 2012 -- let me show you this
20 note to help you along. This is --

21 **MR. BEARD:** First of all, he needs to answer
22 your question before you show him the note, with
23 all due respect.

24 **MR. MARTIN:** Well, I'm not through with the
25 question, actually.

1 Q. I'm referring to page 100 of the APAs. It's a
2 meeting that occurred on November 1st of 2012.
3 Okay. (As read): Meeting: J. Brown, S. Barnwell,
4 M. Tolleson. Employee has seen Dr. Erica Savage
5 with his right shoulder. He is now alleging an
6 injury on 9/8/11. Dr. Savage ordered patient for
7 shoulder. Employee says Dr. Savage told him would
8 not be work comp. Employee says that he has seen a
9 doctor with his back. Employee came in on 3/14/12
10 and reported that on 3/13/12 he was rolling ware
11 over and his left low back felt sore. See note and
12 card dated 3/14/12, 8:55 a.m. Was treated here on
13 3/14/12. Was supposed to be rechecked on 3/15/12,
14 but did not return.

15 All right. Now -- sorry -- my question to you
16 was, having reviewed that, do you remember Mike
17 Tolleson saying to him something to the effect of
18 -- or saying to the nurse, did he report a prior
19 accident and she said, yes, on 3/14/12?

20 A. I don't recall it. This -- on this 3/14 on the --
21 that's the one that I turned in a near miss on.

22 Q. Yes, sir.

23 A. But the meeting --

24 Q. Don't remember the meeting, huh?

25 A. I remember being there, sir, but exactly what, you

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1 know, was said, you know, I might have, but -- you
2 know, a couple of years ago I really don't
3 remember, you know, exactly the words that were
4 said or stated by Mike or the nurse.

5 Q. Do you remember Jose saying he'd like to have a
6 lighter duty job if they wouldn't let him go to the
7 company doctor?

8 A. I don't recall that. Up to the time Jose quit
9 coming in he was running his regular job. You
10 know, he was running his regular job. I don't
11 recall him -- he would have to be put on light duty
12 not by me, by the nurse or something like that if
13 it's deemed, you know, light duty --

14 Q. Right. That's why you --

15 A. -- 'cause I don't do -- or the doctor's note or
16 something, you know. I don't have anything to do
17 with that.

18 Q. Yes, sir. That's why you were having the meeting
19 in the nurse's office, wasn't it, because he wanted
20 to go see the company doctor or --

21 **MR. BEARD:** Commissioner, with all due
22 respect, I think this is the third time he's asked
23 him and he said he doesn't have a recollection of
24 the specific content of the meeting. With all due
25 respect, I think at some point we have to stop.

1 **COMMISSIONER BECK:** I have to agree with
2 Mr. Beard.

3 **MR. MARTIN:** Okay.

4 Q. After that meeting do you recall Jose coming back
5 and bringing in medical records to you, or medical
6 notes, about going to Dr. Jeter and how he'd had a
7 MRI, do you remember that?

8 A. I remember Jose, me and him having a conversation
9 about some doctor that he said the doctor -- I
10 don't know whether it was female doctor or what --
11 but the doctor stated --

12 **MR. BEARD:** I'm just going to object and ask
13 that he not state what a doctor said, because I
14 don't know that he knows that rule.

15 A. But --

16 Q. What did Jose tell you --

17 A. If Jose brought any doctor notes in or anything,
18 once again, I don't keep -- I can't keep nothing
19 personal on an employee, it would have to be turned
20 in to my supervisor, which would then go to HR. So
21 that would be in HR. I get a lot of doctor notes,
22 you know, I had 30-something employees, which keep
23 up with all of them and...

24 Q. Yes, sir. Your supervisor was Joe Brown?

25 A. Yes, sir, my immediate supervisor was Joe Brown.

1 Q. And do you remember that Jose came in around
2 January 30th and that was the last day that he
3 worked?

4 A. I don't know the exact date, but, I mean, you know,
5 there was one day that he come in and then he was
6 going to have to bring an excuse, and never heard
7 from him again, you know.

8 Q. Okay. Did you tell him to go home that day?

9 **COMMISSIONER BECK:** Which day?

10 Q. The last day that he was there.

11 A. No, I would not have told him to go home. You
12 know, I can't tell them to go home. Then, there
13 once again, my immediate supervisor or, you know,
14 HR would've had to told him, you know.

15 Q. Do you remember you and David Lee meeting with him
16 on that last day when he brought in the -- or he'd
17 had the MRI for his back from -- Dr. Jeter had sent
18 him for the MRI and he'd had that MRI and he said
19 that he'd had a herniated disc in his back?

20 A. Don't recall that, sir.

21 Q. Don't remember that?

22 A. No, sir.

23 **MR. MARTIN:** Okay. That's all the questions I
24 have for this witness.

25 **COMMISSIONER BECK:** Mr. Beard.

1 **MR. BEARD:** Thank you, Commissioner.

2 **CROSS-EXAMINATION**

3 BY MR. BEARD:

4 Q. Mr. Barnwell, how long were you Mr. Jimenez's
5 foreman?

6 A. I would say, approximately, four years --

7 Q. Okay.

8 A. -- I don't know exactly when he --

9 Q. What was your relationship with Mr. Jimenez?

10 A. I thought we had a good working relationship. We
11 talked about personal things and all, he did to me,
12 you know, and we communicated, so.

13 Q. Correct me if I'm wrong, but I assume you talked to
14 him in Spanish when you talked to him.

15 A. No, sir, it was --

16 Q. You didn't talk to him in Spanish?

17 A. No, sir, English.

18 Q. So you always spoke to him in English?

19 A. Yes, sir.

20 Q. Did he communicate to you in Spanish or English?

21 A. English.

22 Q. Okay. Did he have any problems communicating?

23 A. Not to my -- no, me and him talked quite a bit, you
24 know.

25 Q. I assume --

1 A. About personal problems, one thing and another,
2 because, you know --

3 Q. I assume as the supervisor that production required
4 you to talk with and communicate with all the
5 employees.

6 A. It's not required.

7 Q. Well, I assume you had to talk to your employees at
8 some point in time.

9 A. Well, yes, sir. Yeah, you know.

10 Q. And at any time that you were Mr. Jimenez's
11 supervisor or any time that you were ever around
12 him did you ever see him have any problems
13 communicating in English?

14 A. No, sir.

15 Q. Does it surprise you today that he has indicated he
16 requires an interpreter to understand everything
17 that's going on?

18 A. Yes, sir.

19 Q. Did he have an interpreter when he came to that
20 meeting on November the 1st of 2012 at Kohler?

21 A. No, sir.

22 Q. Okay. I want to show you a document that's been
23 marked as Exhibit B under the APAs of the
24 Defendants.

25 MR. BEARD: It's page three, Commissioner,

1 under Exhibit B of Defendant's APAs.

2 Q. First of all, I want to ask you, do you know what
3 this document is?

4 A. I do, sir.

5 Q. What is that document?

6 A. It's a document, anytime a castor goes on a job, or
7 change floors, or a certain plate number that he
8 reads and understands that and make sure he
9 understand -- and he signs off that he's capable,
10 he has learnt the job, he's physically able to do
11 the job, and so forth.

12 Q. What is the date of this particular document I'm
13 showing you?

14 A. It was signed on 11/28/12, sir.

15 Q. Would you agree that 11/28/12 is after 11/1 of '12
16 when you had that meeting with the nurse, and Joe
17 Brown, and Mr. Jimenez, and Mr. Tolleson?

18 A. I would.

19 Q. It'd be four weeks later, correct?

20 A. Correct, sir.

21 Q. And it looks like Mr. Jimenez was transferring to
22 -- from, it says, old plate number 4380 to new
23 plate number 4387. Just tell us exactly what that
24 means.

25 A. It's just a different bowl or plate number that you

1 make sure before the employee -- either the plate
2 number or the floor, that before he goes on that
3 job that he's been trained properly. The only
4 difference between this, this is just a different
5 size bowl and all --

6 Q. Okay.

7 A. It's a different -- little bit different technique
8 in the bowl and all.

9 Q. And is it still manual labor?

10 A. It is, sir.

11 Q. Okay. Still the same type of lifting, same type of
12 work between 4380 and 4387?

13 A. It is, sir.

14 Q. Okay. Question number one on this document says
15 (As read): Do you have any physical limitations
16 that prevent you from casting this floor.

17 What answer did Jose Jimenez circle?

18 A. No.

19 Q. Okay. Did Jose Jimenez sign this document?

20 A. He did, sir.

21 Q. Did Samuel Barnwell, yourself, sign this document?

22 A. I did, sir.

23 Q. Whose -- says supervisor signature, is that Joe
24 Brown?

25 A. That is.

- 1 Q. Is that standard procedure, that any time someone
2 transfers they are required to meet with the
3 supervisors involved in the process and everyone
4 goes over these questions and they all sign the
5 document?
- 6 A. That's correct, sir.
- 7 Q. And did everyone sign this document on November 28,
8 2012?
- 9 A. They did, sir.
- 10 Q. All right. So if Mr. Jimenez was claiming to have
11 all these problems with his back that he's claiming
12 here today he certainly didn't claim that when you
13 were moving him to a different process in the plant
14 on November 28th, correct?
- 15 A. He did not, sir.
- 16 Q. Okay. And he certainly had an opportunity to tell
17 you right there and then on that document.
- 18 A. It had a place to explain on that document if you
19 have any problems or whatnot, yes, sir.
- 20 Q. Okay. You were shown two near miss documents,
21 Exhibits 1 and 2. The first -- Number 2 is the
22 July 15, 2011, says incident report, says near
23 miss. In your world, is a near miss different from
24 someone telling you I have a work related workers'
25 compensation injury?

1 A. It is, sir.

2 Q. Okay. What does a near miss mean in your world?

3 A. In my world in the cast shop, it's a minor
4 something that you tell somebody about, but yet it
5 don't progress into nothing more, you know, it just
6 something --

7 Q. In other words, no doctor visits for medical
8 treatment?

9 A. No.

10 Q. May go to a nurse for a pill, but that's --

11 A. Correct, that's it, sir, you know.

12 Q. Do you know whether Nurse Zimmerman had the
13 authority to prescribe or give prescription
14 medication to any of these individuals who would go
15 to her?

16 A. She does, sir, as far as the pain pills and all.

17 Q. Okay. Now, do you know if those pain pills are
18 prescription pills or just over the counter --

19 A. Over the counter, not prescription, sir.

20 Q. Okay. And this incident report number one -- or
21 excuse me -- number two, Plaintiff's Exhibit 2,
22 July 14th, '11 -- or 15th, '11 --

23 MR. BEARD: I'm sorry, Commissioner.

24 Q. -- says that Mr. Jimenez came to you the next day
25 and reported that the day before he felt a little

1 something in his lower part of his back and he,
2 basically, said he thought it happened during the
3 process of emptying the drain pans, is that right?

4 A. That's correct.

5 Q. You sent him to the nurse.

6 A. That's correct.

7 Q. To your knowledge, did he return to work regular
8 duty, thereafter, without any problems?

9 A. He did.

10 Q. Ever complain to you about this incident from
11 July 15th, 2011 up until the next time he came to
12 see you --

13 A. No.

14 Q. -- in March of 2012?

15 A. Worked every day, no.

16 Q. Did he ever go to a doctor, to your knowledge?

17 A. Not to my knowledge.

18 Q. Did he ever bring you a doctor slip, an out of work
19 slip, a light duty note, anything?

20 A. No, sir.

21 Q. If it had been an incident where Mr. Jimenez needed
22 to see a doctor -- if he'd of come in to you on
23 July 15th and said, Sam, my back is killing me, I
24 think I really need to go see a doctor, I assume
25 you send him to Nurse Zimmerman and then she sends

1 them to the doctor.

2 A. That's correct, sir.

3 Q. Okay. Do you have anything to do with sending
4 someone to the doctor?

5 A. I do not.

6 Q. And you don't have any evidence that he ever went
7 to a doctor, correct?

8 A. I do not, sir.

9 Q. All right. The next incident report is dated --
10 Plaintiff's Exhibit No. 1, and, again, it says near
11 miss, so you didn't consider this, again, to be
12 something that required anything that would be like
13 workers' comp where you go to a doctor, get
14 treated, and miss work, and things like that?

15 A. That's correct, sir.

16 Q. Okay. And, again, he didn't come in to see you
17 that day, like he should have, it looks like he
18 came in the next day, again.

19 A. Correct, sir.

20 Q. And just reported that -- he had some soreness in
21 his back and -- let's see -- for rolling the molds
22 over on the floor, and that's what he told you.

23 A. Correct.

24 Q. And then, do you always take corrective action just
25 so there's some sort of action, tell them proper

1 lifting techniques?

2 A. Yes, sir. Yes, sir, you know, that's preventive --
3 what we say, preventive action. We try to take
4 corrective action to keep -- and it become
5 knowledge throughout the plant, you know, prevent
6 that from happening again --

7 Q. And these are sent to all the employees of the
8 plant in hopes that they'll read, you know, let's
9 make sure we've got lifting techniques, and follow
10 all the --

11 A. Correct.

12 Q. -- safety procedures, and things of that nature.

13 A. That is correct.

14 Q. And that's what happened in this case?

15 A. Correct.

16 Q. All right. To you knowledge, did Mr. Jimenez ask
17 you on July 15, 2011 or on March 14, 2012 to go see
18 a doctor?

19 A. No, sir.

20 Q. You sent him to the nurse. Did he come back to
21 work regular duty both times?

22 A. He did, sir.

23 Q. Okay. Prior to the visit of November -- or the
24 meeting of November the 1st of 2012 between all of
25 you people that we've discussed -- you, Mr. Brown,

1 Mr. Tolleson, Nurse Zimmerman, and Mr. Jimenez --
2 did he ever tell you he had been to a doctor?

3 A. No, sir, he did not.

4 Q. Okay. And then, on November 28th -- I showed you
5 the casting transfer position where he said he
6 didn't have any physical problems and, in fact,
7 transferred to a different position, correct?

8 A. Correct, sir.

9 Q. Okay. Did you ever receive a light duty
10 restriction in April of 2012 from a Doctors Care?

11 A. No, sir.

12 Q. Is Doctors Care the company doctor for workers'
13 comp, or do you even know, or is it Family Medical
14 Center?

15 A. I think it's Family Medical where --

16 Q. Okay. Those are two different places, correct?

17 A. Correct, sir.

18 Q. Okay. And, as far as the -- you were asked certain
19 questions about these meetings. We're now in 2014
20 -- May of 2014. Do you have any personal
21 recollection about all of this stuff that happened
22 these years ago?

23 A. Not the exact said, no, sir, I do --

24 Q. Is that why you document things, so you can have
25 some recall?

1 A. Definitely for me, yes, sir.

2 Q. Do you rely on the documents as opposed to your
3 personal memory trying to remember all of that?

4 A. I do.

5 MR. BEARD: Okay. That's all I have.

6 COMMISSIONER BECK: Mr. Martin, anything
7 further?

8 MR. MARTIN: Yes, sir. Just quickly.

9 REDIRECT EXAMINATION

10 BY MR. MARTIN:

11 Q. Believe you said he came back from the nurse on
12 regular duty. That's not quite accurate, is it,
13 didn't he get placed on light duty after he was
14 seen by the nurse?

15 A. No, sir.

16 Q. No? How many pieces does he usually do a day?

17 A. His pieces was up and down. You know, a castor --
18 I think he was in the 20 range, 20-something -- 26
19 or 8. I'm not exactly sure at that time how many
20 pieces. But, you know, he was on what we call a
21 split floor and sometimes they would cut back on
22 it, sometimes the castor would cut back on his own,
23 sometimes you may have a quality issue that they
24 get cut back a couple of bowls because they're not
25 making the quality that -- but I couldn't tell you

1 how many he was running at the time, but he was not
2 placed on light duty.

3 Q. Okay. Did he get placed on points -- up to 21
4 points, is that what you get terminated for?

5 A. Once you go over twenty-one points. Twenty-one
6 will not terminate you unless you get it twice in
7 six months, and then you have -- you're on
8 probation for points, then if you have three more
9 days, that's all you'll have, then you will be
10 terminated. Which is a pretty lenient policy, but,
11 you know.

12 Q. Yes, sir. Did he go up on 21 points a couple of
13 times, but not get terminated because he was a
14 pretty good producer?

15 A. You don't get terminated on 21, 24 will terminate
16 you, 21 will not terminate you.

17 Q. Okay.

18 A. Takes 24 to terminate.

19 Q. Well, I got a couple of things I want to ask you
20 about, then.

21 **MR. BEARD:** The only objection, Commissioner
22 -- the only objection I have is, again, this is
23 completely outside the course of direct and cross
24 exam. We didn't go into any of this type of
25 information on termination or anything on this

1 witness. None.

2 COMMISSIONER BECK: He's your witness.

3 MR. MARTIN: Thank you.

4 COMMISSIONER BECK: No --

5 MR. MARTIN: I got this.

6 Q. This is the Casting Process or Plate Change
7 questionnaire that you were asked about a few
8 minutes ago.

9 A. Correct.

10 MR. BEARD: Exhibit B, page three.

11 MR. MARTIN: Exhibit B. page three. Thank
12 you.

13 Q. Now, personnel documents were -- well, let me ask
14 you this. You said that that's something that's
15 done every single time that they change a cast out?

16 A. When they trained on a different plate number or
17 they moved to a different floor, yes, sir.

18 Q. Okay. How often does that happen?

19 A. It can vary. You know, it depends on what -- when
20 you're in the plumbing industrial it depends on
21 supply and demand of the particular product, some
22 comes out, some comes in. So it can be sometimes
23 you get on one plate number and you stay on it or
24 it can be -- it varies, sir. There's no --

25 Q. Okay. Could it happen, I mean, on average would

1 you say several times a year, several times a
2 month?

3 A. No, not a month. One castor possibly could do it a
4 couple times a year, probably.

5 Q. Okay. And that would be documented, each time he'd
6 be required to fill out one of those?

7 A. That would be documented.

8 Q. That's the --

9 A. Yes, sir.

10 Q. Now, I was provided with his personnel file and I
11 just looked through it again, and that's the only
12 one of those in there. He worked there from 2001
13 to 2013, but that one is the only one in there, and
14 that's 28 days after y'all had that meeting on
15 November 1st. Do you know why none of the other
16 casting forms are in there from the other years
17 that he worked there?

18 A. Far as I can recollect, he was on 80s the whole
19 time I -- 4380 the whole time I had him, which was,
20 I'm guessing, around four years. I got him from
21 another foreman, you know, we transferred. So I
22 don't know exactly when I picked up Mr. Jimenez,
23 but, as far as being a foreman. But that's the
24 only time I know that he transferred from one plate
25 number to another with me.

1 **MR. MARTIN:** Okay. That's all the questions I
2 have for this witness.

3 **COMMISSIONER BECK:** Mr. Beard, anything
4 further?

5 **RE CROSS-EXAMINATION**

6 BY MR. BEARD:

7 Q. Does 4387 pay more money than 4380?

8 A. No.

9 Q. Pay the same?

10 A. About the same, yeah.

11 **MR. BEARD:** Thank you.

12 **COMMISSIONER BECK:** Take a five minute recess.

13 (Brief recess)

14 *****

15 Whereupon,

16 **JOE BROWN,**

17 having been first duly sworn,

18 was examined and testified as follows:

19 *****

20 **COMMISSIONER BECK:** Please state your full
21 name for the record.

22 **WITNESS:** Joseph Edmond Brown, III.

23 **COMMISSIONER BECK:** Mr. Martin.

24 **MR. MARTIN:** Thank you, your Honor.

25 **DIRECT EXAMINATION**

1 BY MR. MARTIN:

2 Q. Mr. Brown, you were the supervisor over the cast
3 department -- or casting department?

4 A. That's correct.

5 Q. And that's at the Kohler plant in Spartanburg?

6 A. That's true.

7 Q. Okay. And when it comes to employee issues, like
8 having a meeting with you or complaining about
9 something, is there a chain of command, do they go
10 through their foreman?

11 A. That's correct, they'll go through their foreman
12 first.

13 Q. Okay. And then the foreman is responsible for
14 scheduling a meeting with you?

15 A. If it's necessary.

16 Q. Okay. Do you remember Sam Barnwell coming to you
17 at some point, maybe around the end of October or
18 beginning of November of 2012, and saying that Jose
19 wanted to schedule a meeting?

20 A. No, I do not remember that. No.

21 Q. Okay. Do you remember a meeting, I believe it was
22 November 1st of 2012, where you, and Sam Barnwell,
23 and Jose, and Mike Tolleson all convened in the
24 nurse's office?

25 A. I do.

- 1 Q. Okay. Do you remember how that meeting came about?
- 2 A. I was in my office and I was called by Mr. Tolleson
- 3 and told me if -- asked me if I could attend a
- 4 meeting in the nurse's office. So I said, yes.
- 5 And he told me that Jose was up there, didn't
- 6 explain anything, but I was asked to come up and I
- 7 did. I came into that meeting and they were
- 8 discussing some issues when I got there. So,
- 9 basically, that's how it was presented to me.
- 10 Q. Okay. And so Sam Barnwell didn't come to you to
- 11 schedule that meeting, that was something that
- 12 Mr. Tolleson --
- 13 A. For October?
- 14 Q. This is November 1st.
- 15 A. No.
- 16 Q. And this was at -- did you have more than one
- 17 meeting in the nurse's office where all of you
- 18 guys --
- 19 A. No, just one in November.
- 20 Q. Okay. Was there -- do you recall ever having
- 21 another one besides that one where all you guys
- 22 were there talking to him?
- 23 A. No, I do not remember that.
- 24 Q. Okay. And at this meeting do you recall Jose
- 25 coming in and saying that -- telling the nurse that

1 he would like to go to the company doctor, because
2 he had injured himself several months back --
3 injured his back?

4 A. They were there discussing stuff before that ever
5 happened. So if there was any discussion between
6 Jose and the nurse, that happened before I got
7 there.

8 Q. Okay. Were you -- did you have some conversation
9 while you there in the room where you said, you
10 know, something like, Jose, what's going on, you
11 know, what is it that you want, and he said, Well,
12 you know, I'd like to do a lighter duty job, you
13 said, Well, I think there's another position that
14 may have come available, maybe you could do that,
15 and then Mr. Tolleson said, Well, no, if he -- if
16 he can't do this job full duty then he can't have
17 that one?

18 A. I'm here under oath. And I don't remember that.

19 Q. You don't remember, okay. You're not saying that
20 wasn't what was said, you're just saying you don't
21 remember --

22 A. I don't remember that conversation or that
23 statement being said.

24 Q. Okay. While you were there do you recall there
25 being a discussion about the medical treatment that

1 he was receiving for his back and his shoulder?

2 A. There was some discussion of medical treatment that
3 he said that he went to his own doctor.

4 Q. Right. And did he say that he -- why was he there,
5 was he saying that it was a work accident and he
6 wanted treatment?

7 A. All I can tell you is what -- when I walked into
8 the room they were discussing things. Mike
9 actually told me that Jose came to the nurse's
10 office and was talking to the nurse about --
11 complaining about, you know, some issues with his
12 back. And Mike was kind of just brief me going
13 into the room. So discussion, basically, was, you
14 know, that Jose was saying that he had some issues
15 with his back and went to his own doctor. And
16 that's where the discussion was going when I walked
17 in.

18 Q. Okay. And while you were in the room did he say,
19 you know -- at this point did he say what he
20 wanted? I mean, you got in the room, he said he's
21 already been to the doctor, he's having issues with
22 the back, what was the point of the meeting, so I
23 want what?

24 A. All I remember it to be is, you know, Mike and Jose
25 were basically just having the discussion. The

1 rest of us -- I don't want to say we were
2 witnesses, but we were standing there listening to
3 them talk back and forth. And, basically, you
4 know, Jose was saying that, you know, that I had a
5 back issue. Mike says that you haven't complained
6 about it, you haven't brought it to anybody's
7 attention from back when the case took place in
8 March of that year and said that, you know, you are
9 casting your floor every day and what seems to be
10 the problem. And, you know, basically, what I got
11 from the discussion they were having was Jose says,
12 Well, you know, it's always been bothering me. And
13 Mike asked him, Have you brought it to Sam, or
14 yourself, or to me's [sic] attention that you're
15 having a problem. And Jose said no. But that's
16 why he came to the nurse's office. That's what I
17 remember it to be.

18 Q. Okay. And following that meeting was he sent to
19 the company doctor?

20 A. No, he was not, not that I'm aware of.

21 Q. Okay. And you're aware that he continued to follow
22 up with his doctor, though.

23 A. No, I'm not.

24 Q. You didn't know that he went back to the doctor?

25 A. No.

- 1 Q. You don't recall him coming back in, maybe in
2 January, and bringing a note?
- 3 A. At that -- the way I was saying no was that at that
4 point when he was going back to work and working on
5 his bench there was no indication that he was going
6 back to his doctor until the day he asked me for a
7 day of vacation in January. And I honored it, even
8 though we had vacation closed during that period of
9 time I still honored it based on the plate number
10 that he was running, that I was okay to let him get
11 off. Then I found out the next day that he took
12 the day off for this vacation day and went and saw
13 a doctor. That's the last time that I knew that he
14 went to see his own doctor.
- 15 Q. Okay. And when he came back the next day --
- 16 A. Yes.
- 17 Q. -- did he say, I went to the doctor yesterday
18 and --
- 19 A. I was on vacation that day. He came in, I got a
20 phone call from Mr. Barnwell and another cash op
21 specialist, which is name is David Lee. They
22 called me and then said Jose came in and said that
23 he went to his doctor yesterday and has been
24 recommended to go onto light duty.
- 25 Q. Okay. And what did you do as a result of that?

1 A. Result is that we said that we had no complaints of
2 Jose of having an injury. Our normal practice,
3 when you go to your own personal doctor for a
4 personal injury we do not have light duty offered
5 in the plant at that time. We told Jose that he
6 would need to get a clearance from his own personal
7 doctor, where he went to, to bring back us a
8 clearance that he's restriction free, that he could
9 go back into casting before we would allow him to
10 come back to work. He was told at that point, you
11 could leave today, go get this note, give us a call
12 back and let us know what the status is. And, once
13 again, the rule of thumb in the plant is that if
14 you're out, every day you're out, unless you have a
15 note that says, Hey, I'm out from January 1st to
16 January 7th, then we honor that, no you don't have
17 to call between the 1st and the 7th. But if you
18 leave you're responsible to let us know what's
19 going on. And if there's multiple days and we
20 don't have a note that gives us that window you're
21 required to call every day.

22 Q. Got you. So if he came back in -- he was off on
23 the 29th and went to his doctor on his vacation
24 day. He came back in on the 30th and said, My
25 doctor says I need light duty. Is there a

1 particular form that Kohler uses for light duty?

2 A. If it's a work related --

3 Q. If it's work related?

4 A. Work relateds [sic] or -- the only thing that would

5 be is our near miss -- he would have to have an

6 incident --

7 Q. I'm sorry, that was a bad question on my part.

8 What I'm talking about is a form that you would

9 take to the doctor for the doctor to complete

10 regarding any restrictions. Doesn't Kohler have

11 it's own form?

12 A. No.

13 Q. Your not aware --

14 A. Not that I'm aware of.

15 Q. -- of that? Okay. And do you know if when he came

16 back in on the 30th to -- and spoke with Sam

17 Barnwell and David Lee, whether he told them, I

18 need a form to take to my doctor?

19 A. No, not that I'm aware of. No.

20 Q. Okay. And did you tell them to have him go home

21 and then call back when he got the note?

22 A. That's a -- I did tell them that, but they already

23 knew that. They said, Joe, we know. When I said,

24 Guys, you got to tell him to go back to his own

25 doctor and get us a release saying that he is

1 restriction free when he comes back, but make sure
2 that you reiterate to him that he must call us and
3 let us know what's going on.

4 Q. So he was supposed to go back and get a note that
5 said he didn't have any restrictions?

6 A. That's correct.

7 Q. Okay. Because he was saying he had restrictions --

8 A. That's correct.

9 Q. -- and you guys were saying, Well, we're not going
10 to honor it since it's not work doctor -- company
11 doctor, is that accurate?

12 A. Or work related injury, you know what I'm saying?
13 I mean, if there was a work related injury that was
14 reported then he wouldn't had to go to his own
15 doctor anyway. And it was our nurse's opinion to
16 send him to our doctor. Nothing was reported at
17 that time. He went to his own personal doctor, he
18 asked for a day's vacation, I honored it. Didn't
19 tell me he's going to the doctor and took vacation,
20 he was just saying, I'm going to the -- I think he
21 said, I need a days vacation. I gave it to him.

22 Q. Okay. And then on February 5th, that's when he
23 came back in and saw Sid DeVaul and Sid told him
24 that he was terminated?

25 A. At the point I was not involved in that meeting.

1 Once we started counting points, the way we have
2 our system set up -- he did not call back the day
3 he left, did not call back the next day, did not
4 call back the next day. And once he accumulated
5 his 24 points it's my responsibility as a
6 supervisor to contact HR and let them know that
7 this person or associate has pointed out. And they
8 make the decision if they're terminated. I don't
9 make that decision.

10 Q. Okay. So he pointed out because he wasn't there
11 January 30th, January 31st, February 1st -- 2nd and
12 3rd would have been the weekend -- and then --

13 A. Yeah, I'd have to have a calendar to tell you --

14 Q. Okay. So the 5th is when he came back in and met
15 with Sid DeVaul. So at that point Sid would have
16 told him, You've pointed out because you didn't
17 come back in since you told us you were on light
18 duty on January 29th.

19 A. I believe that would instituted him coming in on
20 the 5th. And I -- you know, you would have to ask
21 Sid that question -- was that Sid called him at
22 home and said that, Based on your point system you
23 are terminated. And that was generated Jose to
24 come in and see Sid.

25 Q. Okay. Now, did Jose have an issue with points?

1 A. Before?

2 Q. Yes.

3 A. Yes.

4 Q. Had he been on final warning, 21 points, in 2009
5 and 2010?

6 A. Without the paperwork in front of me I don't know.
7 But I do know that, you know, Jose asked numerous
8 times that there was -- I am on the second final
9 warning for 21 points, that means I'm probation.
10 When that happened, I couldn't tell you, but he did
11 ask that question.

12 Q. Okay. Would you disagree that that occurred in
13 2009, 2010, 2011, and 2012, that he was on the 21
14 point final warning?

15 A. I couldn't say that.

16 Q. Okay. Was he a good producer?

17 A. He was average.

18 Q. Did he get outstanding on his performance
19 evaluations?

20 A. Without the paperwork I couldn't tell you.

21 Q. Okay. If he reported an accident -- well, let me
22 show you these two forms.

23 A. Sure.

24 Q. This is Jimenez form one and Jimenez form two --
25 Exhibits 1 and 2 -- I'm sorry -- and these are two

1 incident reports.

2 A. Okay.

3 Q. Okay. Is that what's the procedure? Is that what
4 you do when somebody reports an accident, you fill
5 out one of those, or the supervisor --

6 A. It's really called an incident --

7 Q. Okay.

8 A. -- not an accident, incident. When you fill out
9 this form here, when you get down to the incident
10 there's a level in there that you determine what
11 that was; if it was a near miss, if it was an
12 injury, something of that nature, there's a safety
13 first where a person may refuse to work. There's
14 different levels that you do in the incident, but
15 this is an incident form or report, not an accident
16 form.

17 Q. Okay. What's the difference between a near miss
18 and an injury?

19 A. A near miss is an incident took place that was
20 anything less than first aid.

21 Q. Anything less than --

22 A. Anything less than seeing a doctor or of that
23 nature. First aid is included, it's first aid and
24 below. So it's first aid, having one of our first
25 responders talk to them, go up to see the nurse,

1 something of that nature. If it required stitches
2 or anything more that was more than first aid --
3 anything more than first aid would take it to an
4 injury.

5 Q. Okay. So if he didn't go to the company doctor
6 then it wouldn't be an injury?

7 A. It would be considered a near miss.

8 Q. Okay. Even if he said, I got hurt on the job, this
9 is how I did it, reported it to his supervisor, his
10 supervisor sends him to the nurse, the nurse gives
11 him, you know, pills and so forth, that would still
12 be considered a near miss and not an injury?

13 A. Yeah. At the point that the nurse would actually
14 be the person that determine -- that says, Hey, I
15 need to send him to the doctor, that means it would
16 no longer be a near miss, it would more than likely
17 -- there have been evaluations that have gone to
18 doctors that don't take it more than first aid --
19 but in most cases if there's something that goes to
20 the doctor, more than likely, it could turn into an
21 injury.

22 Q. Okay. Now, if he came in, as he did on November 1,
23 2012, and he said, I've been to my own doctor,
24 because I hurt my back back on March 13, 2012 and
25 there's an incident report showing that I reported

1 it to my supervisor and I went to the nurse. Now
2 I've gone and gotten medical treatment from my own
3 doctor, I'm still having problems, I'd like to go
4 see the company doctor. What happens there?

5 A. I think in a case -- you know, once again, that's a
6 decision that's beyond me. That's where
7 Mr. Tolleson and our plant nurse would discuss it.
8 I think it were -- what was discussed in that room
9 when he made similar statements was that, Well, you
10 haven't complained to any of us for six months, you
11 know, why are you bringing it up now, you haven't
12 talked to Joe, you haven't talked to Sam, and you
13 just out of the blue come in and you say that, you
14 know, I had this injury back in March and now
15 you're coming in in November and you're saying
16 that, you know, you're still hurt, why didn't you
17 bring it up to anybody else.

18 Q. Okay. And so they made the decision that since he
19 hadn't complained about it recently enough that he
20 would not be allowed to go to the company doctor.

21 A. I wouldn't say allowed. But the other thing that
22 the factors in that, he was making production, he
23 was making pieces every day and not complaining. I
24 think that was a factor. But it's not my decision,
25 once again, that was a decision beyond me.

- 1 Q. Okay. If you have an accident how often do you
2 have to follow up with the nurse -- or, excuse me
3 -- a near miss?
- 4 A. A near miss?
- 5 Q. Yeah. So you have a near miss --
- 6 A. Any time that you go to the nurse for a near miss,
7 injury, any of those things, you're supposed to go
8 every day -- every day until the nurse calls me and
9 said, He is released.
- 10 Q. Okay. And what if they don't do that -- what if an
11 employee doesn't go to the nurse the next day?
- 12 A. If we get a call -- if I personally get a call from
13 the nurse and says that he's not showing I
14 personally will contact the foreman or myself would
15 go down and say, Why are you not going back to the
16 nurse, are you saying you're ready to go back to
17 work, you're fine or you're wiping your hands, so
18 to speak, of the injury.
- 19 Q. Okay. In this situation he was given some pills --
20 some Back Quell pills.
- 21 A. Back Quell, probably.
- 22 Q. Yeah. Is that something that's handed out
23 regularly?
- 24 A. I don't want to say regularly. I mean, you know,
25 it was going to be handed out by the nurse. It's

1 something that I have no access to, my foremen have
2 no access to, so the nurse would be the only one
3 that would be handing that out.

4 Q. Would there ever be an occasion where anyone other
5 than the nurse handed anything out?

6 A. Not to my knowledge. You know, at the point that
7 this, I would say not to my knowledge as of this
8 right now. You know, we do have first responders
9 that have access to it that have been trained
10 through first aid. They would be the only other
11 ones that I know of.

12 Q. Okay. Now, there was a note in the personnel file,
13 I believe, of May 1st of 2012 that says he was --
14 it's from Doctors Care, says he's on light duty for
15 three days, are you familiar with that, are you
16 aware of that?

17 A. No.

18 Q. What would be the scenario if he came in with that
19 document?

20 A. From his own personal doctor?

21 Q. Yes, sir.

22 A. He would be sent back to his own personal doctor
23 and told that he has to be restriction free to come
24 back into the plant. It was not a reported, so to
25 speak, of an incident that took place in the plant

1 so the company is not going to take responsibility.
2 If you took this upon yourself to go to your own
3 doctor and he has put you on some light duty or
4 restricted duty then, once again, that, you know,
5 Kohler is not going to be taking responsibility.
6 It would be up to him to go back to his doctor and
7 bring us a note back stating that he's restriction
8 free, that he could go back to work.

9 Q. How would that note get into the personnel file,
10 then?

11 A. I have no idea.

12 **MR. MARTIN:** Just one second.

13 **COMMISSIONER BECK:** Yes, sir.

14 Q. Dr. Jeter was the company doctor that you guys
15 would use over at Family Medical Center?

16 A. I couldn't answer that question.

17 **MR. MARTIN:** Okay. In that case, that's all
18 the questions I have for this witness.

19 **COMMISSIONER BECK:** Mr. Beard.

20 **MR. BEARD:** Thank you, Commissioner.

21 **CROSS-EXAMINATION**

22 BY MR. BEARD:

23 Q. Mr. Brown, thank you for being here. As you know,
24 I represent Kohler, I represent you, in this
25 workers' comp claim. You were asked several

1 questions --

2 **MR. MARTIN:** I'm going to note an objection
3 to his representing Mr. Brown. I don't think
4 that's --

5 **MR. BEARD:** Well, you subpoenaed him. That's
6 the only way I could accept his subpoena, is I have
7 to represent him and all the management of the
8 company.

9 **MR. MARTIN:** You represent the management of
10 the company, but you don't represent the
11 individuals in the company.

12 **COMMISSIONER BECK:** Please proceed.

13 Q. Mr. Brown, you were subpoenaed here today by
14 Mr. Martin, correct?

15 A. Correct.

16 Q. And prior to today has Mr. Martin made any attempts
17 to take your deposition?

18 A. No.

19 Q. Okay. Now, you were asked just now near the end of
20 your testimony if you were aware of Mr. Jimenez
21 being seen by Doctors Care in April of 2012 and you
22 said no, correct?

23 A. That's correct.

24 Q. Now, he didn't show you the document. I want to
25 just show it to you. This is out of Mr. Jimenez's

1 evidence, this is page 104, it's a return to work
 2 waiver. It's dated April 30, 2012. It says (As
 3 read): Light duty. Says nature of illness or
 4 injury, nothing was written there. Return to work
 5 date, May 1 of 2012. Light duty until April 3rd,
 6 2012. Correct?

7 A. Correct.

8 Q. Have you ever seen this document?

9 A. No, I haven't.

10 Q. All right. Now, so I assume, Mr. Jimenez, to your
 11 knowledge, never gave this to you, or Mr. Barnwell,
 12 or someone who would have done something with this.

13 A. That's correct.

14 Q. Okay. As I read the report -- and I didn't notice
 15 this earlier, but I've noticed it now -- the person
 16 who did this report, it doesn't look like, is even
 17 a doctor, it's a person named Ms. Goodal, who's a
 18 physician's assistant. Do you know Ms. Goodal?

19 A. No, I do not.

20 Q. Do you know -- you do know that Doctors Care is not
 21 the company doctor for workers' comp purposes,
 22 correct?

23 A. That's correct.

24 Q. Family Medicine Center.

25 A. Yes, sir.

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1 Q. All right. And --

2 MR. MARTIN: I'm going to object. I believe
3 he's already stated that he didn't know if it was
4 Family Medical Center.

5 MR. BEARD: No, I think he said he didn't know
6 Dr. Jeter. I don't think he said about the
7 particular practice. You asked him about a
8 specific doctor that nobody knows, because she was
9 brand new.

10 COMMISSIONER BECK: Are you familiar with
11 which practice represents your company?

12 WITNESS: That's correct.

13 COMMISSIONER BECK: Which is it?

14 WITNESS: It's the Family Medical.

15 COMMISSIONER BECK: All right. Do you know
16 Dr. Jeter?

17 WITNESS: No, I do not.

18 COMMISSIONER BECK: Let's go on.

19 Q. And you remember Dr. Poole?

20 A. Heard of him, yes.

21 Q. Okay. The report that Mr. Jimenez apparently --
22 that was made when Mr. Jimenez went to Doctors Care
23 on April 30, 2012 -- it's page 103 of the document
24 -- and it indicates on the report, it says (As
25 read): Insured, Jose Jimenez; Insurance, UHC,

1 United Health Care. What is that?

2 A. That is our health care system that we provide.

3 Q. Group insurance?

4 A. Yeah.

5 Q. Okay. And, apparently, your group insurance
6 requires no co-pay, according to this document it's
7 free of charge, is that correct?

8 A. I can't --

9 Q. Is that what the document says?

10 A. That's what the document says.

11 Q. Okay. And this document says he was having low
12 back pain, getting worse since Wednesday.
13 Wednesday, according to this document it says he
14 was there on a Monday so it would have been five
15 days earlier, five days earlier being April the
16 25th of 2012. To your knowledge, did Mr. Jimenez
17 ever file a near miss, accident report, anything
18 indicating he had injured himself at Kohler on
19 April the 25th of 2012?

20 A. No.

21 Q. Okay. The only two near misses that we've been
22 provided and that we know about are dated July 15,
23 2011, which is the Exhibit No. 2, correct?

24 A. That's correct.

25 Q. Exhibit No. 1 is dated March the 14th of 2012,

1 correct?

2 A. That's correct.

3 Q. You would agree April 25th of 2012 would have been
4 month and a half, almost, after Exhibit No. 1?

5 A. That's correct.

6 Q. Okay. And there's no documentation, to your
7 knowledge, of any near miss or any complaints by
8 Mr. Jimenez to you, or Mr. Barnwell, or anyone else
9 at Kohler about April 25th?

10 A. No.

11 Q. Okay.

12 A. Could I say something else, though?

13 Q. Sure.

14 A. You know, just basically, all near misses in the
15 plant, in my position, come through me through a
16 computer despite even if it was one of my foreman.
17 So I get to see every near miss that's presented in
18 the plant. So the April one was nonexistent in my
19 opinion.

20 Q. And if it existed it would have been part of the
21 nurse's notes, and a part of the records, and all
22 of that would have been produced?

23 A. All supervision would have got that.

24 Q. Okay. Now, at any time, to your knowledge, did
25 Mr. Jimenez request medical treatment between July

1 of 2011 and March of 2012 -- medical treatment
2 meaning outside of going to the company nurse?

3 A. No, not that I'm aware of.

4 Q. Okay. And to your knowledge, did Mr. Jimenez
5 voluntarily return to work regular duty, full duty,
6 no restrictions, between July of '11 and March of
7 '12?

8 A. Yes.

9 Q. After the incident in March of 2012, the near miss,
10 we know, apparently, he went to Doctors Care in
11 April that you didn't know about.

12 A. That's correct.

13 Q. The first time, as I understand it, that you had
14 any mention that he had had any medical treatment
15 was the meeting that all of you -- being, you, Sam
16 Barnwell, Mike Tolleson, Nurse Zimmerman, and
17 Mr. Jimenez -- had on November 1st of that year.

18 A. That's correct.

19 Q. You would agree that that would be seven and a half
20 months after the second near miss?

21 A. Correct.

22 Q. Okay. I'm going to show you what's been marked by
23 Mr. Jimenez's counsel that's page 100. This is a
24 note, page 100 out of the nurse's notes, dated
25 November 1, 2012 indicating that you, Sam Barnwell,

1 Mike Tolleson, and Nurse Zimmerman were meeting
2 with Mr. Jimenez, correct?

3 A. That's correct.

4 Q. This is Nurse Zimmerman's rendition of the meeting.

5 A. That's correct.

6 Q. Did you make a rendition or did -- she the only one
7 who did this?

8 A. She would be the only one.

9 Q. Okay. And it says he was actually there
10 complaining about, at least initially, he had seen
11 this Dr. Savage -- Dr. -- it says Erica Savage, who
12 we now know is Dr. Savage-Jeter or Jeter-Savage, I
13 can't remember the order -- with his right
14 shoulder. Is that what he was complaining about or
15 do you even remember this meeting, the content?

16 A. On the 11th --

17 Q. Yeah.

18 A. Or, I mean, the November --

19 Q. Yeah.

20 A. -- meeting? He complained, first started with the
21 back, then went to the shoulder, then he says, I
22 don't understand why I can't claim any of this --
23 basically, what he was saying.

24 Q. Claim it as workers' comp?

25 A. Yeah.

1 Q. Okay. Then he related -- according to Nurse
2 Zimmerman, he related back to this March incident,
3 and as I think you testified earlier -- correct me
4 if I'm wrong -- you advised him, This is the first
5 time we've heard from you in seven and a half
6 months, where have you been.

7 A. That's correct.

8 Q. Okay.

9 A. The person who actually made that comment was
10 Mr. Tolleson.

11 Q. All right. And so he didn't come to anyone, to
12 your knowledge, for medical treatment between March
13 of 2012, when the near miss occurred on March 14th,
14 and November 1, 2012, never came and asked for
15 medical treatment?

16 A. No.

17 Q. If he had done that, Mr. Brown, what is your normal
18 procedure?

19 A. Normal procedure, anybody that -- you know,
20 especially, we've had -- even if it wasn't a near
21 miss that was documented we'd be -- documented it
22 that day when they came in and complaint. In his
23 case here, having the documentation that was
24 already provided, you know, we would take -- or
25 suggest that Mr. -- or Jose would actually go back

1 to the nurse, I would call the nurse or the foreman
2 would call the nurse and said, He's still
3 complaining of soreness or whatever it may be. And
4 that's how we would take it from there, we would
5 take him back to the nurse.

6 Q. And does Nurse Zimmerman, when that occurs multiple
7 times, she then immediate sends them to the
8 workers' comp doctors?

9 A. Once again, that would be a decision between
10 Mr. Tolleson and her.

11 Q. All right. To your knowledge, though, nothing
12 occurred after that?

13 A. Correct.

14 Q. And Mr. Jimenez returned to work doing his regular
15 duties throughout that process?

16 A. That's correct.

17 Q. All the way up until November of 2012?

18 A. That's correct.

19 Q. And, as I understood, the company refused to send
20 him to workers' comp doctors at that time or did he
21 ask to go see workers' comp doctors in November?

22 A. He said, Could I see somebody, could I see a doctor
23 -- the back is what I remember first -- and then he
24 said -- we said, Well, that was, you know, the back
25 was, you know, six, seven months ago. I know Mike

1 said six months, that's why I'm saying six months.
2 And he says, Well, how about my shoulder, can I go
3 see my doctor about the shoulder. And Mike says,
4 That's longer, yet. And he says, You've been doing
5 your job every single day so at this point right
6 now we don't have a near miss, we don't have an
7 injury report, you haven't complained, and you've
8 done your job everyday, no, we are not sending you.

9 Q. Okay. And do you recall him saying, as is reported
10 on page 100, that Mr. Jimenez, who would be the
11 employee, told you guys -- or at least he told
12 Nurse Zimmerman, I don't know if you were in there
13 when this was said -- that Dr. Savage said that
14 this would not be workers' comp?

15 A. I can't swear to it, no.

16 Q. All right. Now, this meeting took place on
17 November 1, 2012, correct?

18 A. Yes.

19 Q. All right. I'm going to show you what has been
20 marked as Kohler's Defense Exhibit B, page three
21 and ask you if you're familiar with this type
22 document, it's called a Casting Process or Plate
23 Change Questionnaire?

24 A. Yes, I am.

25 Q. Okay. What is that document? |

1 A. I made it.

2 Q. What is that document?

3 A. That document is, basically, to understand for us
4 in the plant when we have a casting process change
5 or a plate number change questionnaire, do we do
6 our job, as far as training to change from a plate
7 number to a different plate number, is there any
8 restrictions, do you feel that you were trained
9 properly, so on, and so on, and so on. I created
10 this document and the first thing is, you know, we
11 don't want to see any limitations, is there
12 something that can prevent you to go to this
13 different plate number. And that's really designed
14 for understanding. We have some older people in
15 the plant, we have younger people. Some of the
16 younger people can go on jobs that maybe some of
17 the older people can't. Is there anything
18 physically wrong with you to be able to go to that
19 -- you know, you can't wear a dust mask or you
20 can't -- something of that nature. And then, once
21 again, you know, I went through this and I
22 developed this whole sheet so I can understand when
23 a person signs off and are ready to go into
24 casting, have you been trained properly. If no, I
25 want an explanation of what it is, because I will

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- 1 not let him go on to the job by himself if he feels
- 2 that he wasn't trained properly. I will give him
- 3 more training. You know, can you perform the job
- 4 in a safe manor, once again, this is a document
- 5 that was put together for me -- for the plant, but
- 6 it was really for me to understand that an
- 7 individual's ready to go on to his next job.
- 8 Q. Okay. What's important to me is the first
- 9 question.
- 10 A. Yes.
- 11 Q. The first question says (As read): Do you have any
- 12 physical limitations that prevent you from casting
- 13 this floor.
- 14 A. That's --
- 15 Q. Now, my first question to you. The job -- he was
- 16 leaving 4380 plate number into 4387 plate number,
- 17 what is the difference, physically, between those
- 18 types of jobs?
- 19 A. The 4380 is an elongated bowl. It's the same
- 20 product when you go to 4387, it's just a round
- 21 front bowl.
- 22 Q. Okay.
- 23 A. That's the only thing that's different.
- 24 Q. Lifting restrictions the same?
- 25 A. Yeah, matter of fact, 4387's is actually lighter.

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1 Q. Okay.

2 A. It's a smaller bowl.

3 Q. All right. And what did Mr. Jimenez say, as far as
4 having any physical limitations that would have
5 prevented him from performing that job?

6 A. He said no.

7 Q. What is the date of the document?

8 A. 11/28/2012.

9 Q. Would you agree that that would have been four
10 weeks after the meeting that you all had with
11 Mr. Jimenez where he was complaining?

12 A. That's correct.

13 Q. And who all signed the document?

14 A. The document was signed by -- it was supposed to be
15 printed by Jose Jimenez, he signs it -- Jose
16 Jimenez, Sam Barnwell, is the foreman. This form
17 comes to me before I allow it to go anywhere else,
18 and I signed it and dated it 11/28/2012.

19 Q. Okay. As far as you know, did Mr. Jimenez continue
20 in 4387 up until he was terminated --

21 A. That's correct.

22 Q. -- doing his regular job?

23 A. That's correct.

24 Q. Ever ask -- after he started that job process did
25 he ever ask to go see a doctor, to your knowledge,

1 for workers' comp purposes?

2 A. No.

3 Q. Okay. The two near misses that we discussed, did
4 they ever mention the right shoulder? Did he hurt
5 his right shoulder in either one of those near
6 misses?

7 A. No.

8 Q. That's no?

9 A. (Nods head.)

10 Q. When you found out that Mr. Jimenez was treating on
11 his own in September or October -- whenever it was
12 before you came in with that meeting -- you found
13 out about that by virtue of him asking for a
14 meeting, or whoever asked for that meeting, that's
15 when you found out that Mr. Jimenez was treating on
16 his own?

17 A. That meeting is when I found out.

18 Q. Okay. When you found that out had you ever
19 received any of that information before that?

20 A. No, I did not.

21 Q. Okay. Did Mr. Jimenez ever tell you, even in that
22 meeting, why he had gone to those doctors? In
23 other words, was it related to a specific incident,
24 was it related to the job, was it related to home,
25 was it related to anything in general?

1 A. All I remember him saying was that it was sore and
2 I went to my own doctor.

3 Q. Okay. In January of 2012 you indicated he
4 presented with restrictions from, again, a personal
5 doctor, that was the first time he had ever given,
6 to your knowledge, restrictions?

7 A. It was given to my --

8 Q. To whoever --

9 A. foreman and --

10 Q. -- replaced you that day.

11 A. Yes.

12 Q. Okay.

13 A. That's correct.

14 Q. And was there any indication on those job
15 restrictions, to your memory, that that was related
16 to an on the job injury?

17 A. No.

18 Q. Okay. And I think you indicated that the policy at
19 the plant is you don't accommodate non-work related
20 -- that's just something the company has
21 procedurally chosen not to do.

22 A. That's correct.

23 Q. Okay. When Mr. Jimenez was asked to leave the
24 facility until he was released to full duty by
25 whoever the doctor was that gave the restrictions

1 in January of '13 was he explained the procedure?

2 A. Yes.

3 Q. Okay. Is that something that you talk to employees
4 about throughout the course of the year, throughout
5 the course of their time at the plant?

6 A. Absolutely.

7 Q. Okay. Do y'all have safety meetings fairly
8 regularly?

9 A. Once a month.

10 Q. Includes all associates?

11 A. Yes, sir.

12 Q. Associates would be employees?

13 A. And sign off -- they sign off that they attended.

14 Q. Did Mr. Jimenez regularly attend those meetings?

15 A. Yes.

16 Q. When these near misses occur is the employee asked
17 if they want to see a doctor?

18 A. Yes. I mean, the first thing that they ask -- once
19 it is a near miss the first question that is asked,
20 Do you need to see a first responder or do you need
21 to go see the nurse. That's when it's -- the first
22 two things we ask them.

23 Q. Okay. To your knowledge and to your memory, at any
24 time did Mr. Jimenez ask -- after July of 2011 or
25 February of 2012, did he ever ask you,

- 1 Mr. Barnwell, to your knowledge, come to you,
2 anyone who would have been in his chain of command,
3 that I need to go see a doctor, because I injured
4 myself on the job?
- 5 A. No.
- 6 Q. Okay. What was your relationship with Mr. Jimenez?
- 7 A. He was an employee. You know, once again, I think
8 highly of my employees. Us, as supervisors, are
9 only as good as our employees. I try to keep my
10 employees the best that I possibly can, because I'm
11 only as good as they are. When somebody is injured
12 or they have a personal problem at home I try to
13 treat it, case by case basis, but try to be as fair
14 as I possibly can to everybody. Relationship that
15 me and Jose had was just good morning, 'cause I
16 walked by his floor every day. Good morning, how
17 you doing, that type of thing, not too much more
18 than that.
- 19 Q. Are you available on June 3rd to come back to a
20 hearing if need be?
- 21 A. That's correct.
- 22 Q. And the reason I ask that question is it is
23 possible -- because we have not heard from
24 Mr. Jimenez in this case yet, it is possible you
25 would need to be recalled at some point to talk

1 about other things and I just want to make sure
2 you're available for June 3rd.

3 A. That's fine.

4 Q. How long have you been Mr. Jimenez's supervisor?

5 A. Probably about eight years.

6 **MR. BEARD:** That's all I have.

7 **COMMISSIONER BECK:** Mr. Martin, anything
8 further?

9 **MR. MARTIN:** Yes, sir, I do.

10 **REDIRECT EXAMINATION**

11 BY MR. MARTIN:

12 Q. First I'm going to ask you about this form, again.
13 This is the Casting Process or Plate Number Change
14 questionnaire. The old plate number and the new
15 plate number, are either one of these jobs lighter
16 than the other one?

17 A. Yeah, the 4387 would have been a lighter job.

18 Q. Okay. So he would was moved to a lighter position?

19 A. It was just a production change, it just happened
20 to fall that way.

21 Q. Okay. And that happened on November 28th?

22 A. November 28th is when he completed his training for
23 what this document is. The change actually didn't
24 happen until after the first of the year when the
25 molds changed.

1 Q. Okay. How often do you complete these forms?

2 A. Every mold change that we make or production
3 change.

4 Q. How many would you estimate Mr. Jimenez would have
5 in his 13 years with the company?

6 A. I can tell you he worked for me for the eight years
7 that I just responded to and during that eight
8 years I don't think I ever saw him on a different
9 plate number except for this change.

10 Q. Fair enough. All right. Let me ask you a couple
11 of other things. You were asked about Doctors
12 Care. And I'm going to show you page 103 of the
13 APAs. This was the note that Mr. Beard was asking
14 you about a minute ago. This says at the bottom
15 here (As read): Happened two other times in the
16 past, approximately, eleven months and he took
17 Ibuprofen. Okay. And this is -- going back up
18 here -- (As read): Low back pain, getting worse
19 since Wednesday, worse Saturday, aggravated by
20 lifting. Left leg is weak, some left buttock pain,
21 and some numbness left leg and left toes, ankle.
22 Pain score, five out of ten.

23 Now, eleven months prior to that two dates
24 would encompass these two dates, would it not?

25 A. I mean, it's referring to two times. I don't know

1 if that's the two times he was talking about.

2 Q. Certainly, and I'm not asking you about that. I'm
3 asking you if those two dates on those two incident
4 reports would be encompassed in the eleven months
5 prior to this note?

6 A. Yes.

7 **COMMISSIONER BECK:** I believe that's been
8 stipulated by the Defendants.

9 **MR. MARTIN:** Yes, sir.

10 Q. Thank you. All right. If you would, flip to page
11 50 in there. I'll help you.

12 **COMMISSIONER BECK:** Page 50?

13 **MR. MARTIN:** Yes, sir.

14 Q. Page 50. This is a work note and this was the
15 visit you were talking about. (As read): Was seen
16 in the office on 1/29/2013, may return to work on
17 1/30/2013 at light duty. Signed by Dr. Erica
18 Savage-Jeter. Are you...

19 A. I never saw the note.

20 Q. Never saw it? Okay.

21 A. No.

22 Q. That would be the same visit that you were
23 referring to earlier?

24 A. (No response.)

25 Q. When we were talking about the last time that he

1 went to the doctor before he was terminated.

2 A. Huh-huh.

3 Q. He took the vacation day on January 29th.

4 A. That's correct.

5 Q. So that corresponds to that visit.

6 A. I wasn't there. Remember, I was on vacation.

7 Q. Sure.

8 A. So this note, if it did get provided, it got
9 provided to Sam Barnwell and to David Lee. I never
10 saw a note. All they did was call me at home. I
11 told them, Guys, you know what the rules are. They
12 said, Joe, we know what the rules are, we just
13 wanted to confirm it with you. We're going to send
14 him back to the doctor to get a full release note.
15 So I never saw the note.

16 Q. Okay. Would they have sent him with a form?

17 A. No.

18 Q. You don't think so?

19 A. No.

20 Q. Okay.

21 A. Not to my knowledge, we've never given anybody a
22 form.

23 Q. Okay. Did you email the nurse about his visit with
24 the doctor the next day?

25 A. On this one here?

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1 Q. Yes.

2 A. Not to my knowledge.

3 Q. Okay. Do you think it's possible that you could
4 have emailed the nurse about his visit with the --
5 with his doctor on -- from January 30th?

6 A. I don't know.

7 Q. Okay.

8 MR. BEARD: Is that a document you
9 intentionally kept out?

10 MR. MARTIN: No, it's a document you sent me
11 in the personnel file.

12 MR. BEARD: Isn't that a nurse's note?

13 MR. MARTIN: It is a nurse's note.

14 MR. BEARD: Didn't you put all the nurse's
15 notes into evidence?

16 MR. MARTIN: I put all the nurse's notes into
17 evidence that you sent with the first personnel
18 file, this came with the second one.

19 MR. BEARD: Well, but you had that -- you had
20 the first and the second one when you produced your
21 APAs, correct?

22 MR. MARTIN: I did.

23 MR. BEARD: And you didn't produce a nurse's
24 note that you produced with the rest of the
25 documents?

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