V I R G I N I A:

IN THE CIRCUIT COURT FOR FREDERICK COUNTY

MICHAEL PASTERNACK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL24000051
	)	
PAUL ANTHONY AUSTIN,	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION IN LIMINE
TO PRECLUDE AND LIMIT INADMISSIBLE TESTIMONY OF DEFENSE EXPERT

Plaintiff, by counsel, respectfully moves the Court to exclude any testimony from defense expert William C. Andrews, M.D., that is inadmissible under Virginia law. Dr. Andrews is a retained, non-treating expert who did not examine the Plaintiff and based his opinions solely on a review of records. While the defense may offer admissible expert opinions, Dr. Andrews must not offer testimony that violates evidentiary rules, relies on speculation, or invades the province of the jury. This motion addresses five categories of improper testimony the Court should preclude:

1. Testimony relating or summarizing the contents of hearsay records. Dr. Andrews may not quote from, testify about matters contained in, or summarize medical records unless the defense first, out of the presence of the jury, introduces live witness testimony which proves that the record and the entries in the record referred to fall within a hearsay exception.

2. Lack of personal knowledge. Dr. Andrews may not make assertions about purported factual matters about which he lacks any personal knowledge.

3. Speculation and commentary as to matters on which Dr. Andrews has stated no scientifically-reliable opinion. Dr. Andrews must be limited to scientifically reliable opinions held to a reasonable degree of medical probability.

4. Impermissible comments on credibility, "symptom amplification," somatization, etc. Dr. Andrews may not give testimony which amounts to comments on the credibility of the Plaintiff or other witnesses.

5. Assertions as to "typical" or "average" recovery times, etc. In a tort action, the issue is not what damages a "typical" or "average" patient would have sustained; the defendant is liable for all damages which were sustained by the individual plaintiff.

Points and Authorities

A. The Court, as evidentiary gatekeeper, must exclude improper testimony.

The admissibility of proffered evidence must be decided by the Court in its role as the evidentiary "gatekeeper." A "trial court has no discretion to admit clearly inadmissible evidence because 'admissibility of evidence depends not upon the discretion of the court but upon sound legal principles.'" *Norfolk & Western Ry. Co. v. Puryear*, 250 Va. 559, 563, 463 S.E.2d 442, 444 (1995) (quoting authorities).

In *CSX Transportation, Inc. v. Casale*, 250 Va. 359 (1995), the Virginia Supreme Court cited and quoted with approval a Fourth Circuit Court of Appeals decision reversing a trial judge who "held that if an expert does not have an adequate basis for his opinion, it is for counsel to bring out the deficiencies on cross-examination and for the jury to decide what weight, if any, the opinion should be given." 250 Va. at 367. The Virginia Supreme Court quoted with approval the following language from the Fourth Circuit's decision:

> It was an abuse of discretion for the trial court to admit [the expert's] testimony . . . . The court may not abdicate its responsibility to ensure that only properly admitted evidence is considered by the jury.

CSX Transportation, Inc. v. Casale (quoting *Tyger Constr. Co. v. Pensacola Constr. Co.*, 29 F.3d 137 (4th Cir. 1994), *cert. denied*, 513 U.S. 1080 (1995)).

B. The testimony of William C. Andrews, M.D. must comply with Virginia law.

Dr. Andrews's report contains numerous and extensive assertions which would be improper and inadmissible testimony at trial. Exhibit 1 (Defendant's Expert Designation).

1. Testimony relating or summarizing the contents of hearsay records.

Dr. Andrews has not treated or examined Plaintiff. Instead, he has only reviewed hearsay medical records provided to him by the Defendant. Because Dr. Andrews has no personal knowledge regarding Plaintiff's medical condition before or after the crash, Dr. Andrews's opinions are solely based on his review of hearsay records. Dr. Andrews intends, however, to not only testify about his opinions, but he also intends to tell the jury about hearsay facts and opinions in the medical records. Virginia law allows experts to form and give their own opinions based upon hearsay records (if of a type normally relied upon by experts in the pertinent field of expertise), but experts cannot testify about hearsay entries contained in the hearsay documents.

"Generally, the hearsay rule precludes a witness from quoting from, or summarizing the contents of, even admissible records until they have been received in evidence." *Decipher, Inc. v. iTRiBE, Inc.*, 262 Va. 588, 595 (2001). The Defendant has made no attempt to establish that the hearsay documents reviewed by their experts are admissible as evidence. Any attempt to introduce the hearsay medical records would require testimony (out of the presence of the jury) from witnesses at trial to prove that all of the numerous elements of the business records exception (or some other hearsay exception) are met. *See Spruill v. Garcia*, 298 Va. 120 (2019).

The Plaintiff is not seeking to prevent the Defendant from presenting admissible testimony from medical experts or witnesses who have knowledge about any aspect of Plaintiff's medical condition, care, and treatment (whether before, at the time of, or after the crash). What the defense cannot do, however, is have Dr. Andrews testify about or summarize the contents of Plaintiff's hearsay medical records to provide background information or a foundation for their testimony.

2. Lack of personal knowledge.

One of the many problems with testimony about hearsay entries in hearsay records is, of course, that the testifying witness has no knowledge concerning the matters as to which he is testifying. Under Virginia law, an expert witness can give an opinion which is based upon hearsay documents which have not been introduced into evidence, but an expert witness is not permitted to testify about the facts and opinions contained in those hearsay documents.

3. Speculation and commentary as to matters on which Dr. Andrews has no scientifically-reliable opinion.

Expert testimony may include "opinions of the witness established with a reasonable degree of probability[.]" *Va. Sup. Ct. R.* 2:702(b). "Testimony that is speculative, or which opines on the credibility of another witness, is not admissible." *Id.* Dr. Andrews must be limited to scientifically-reliable opinions which are held to a reasonable degree of medical probability. *See Spruill v. Commonwealth*, 221 Va. 475, 479 (1980) ("opinion based on a 'possibility' is irrelevant, purely speculative and, hence inadmissible"); *Pettus v. Gottfried*, 269 Va. 69, 78 (2005) (trial court erred in allowing expert to comment on a matter about which he did not hold an opinion). "A medical opinion based on a 'possibility' is irrelevant, purely speculative and, hence, inadmissible. In order for such testimony to become relevant, it must be brought out of the realm of speculation and into the realm of reasonable probability; the law in this area deals in 'probabilities' and not

'possibilities.'" *Fairfax Hosp. Sys. v. Curtis*, 249 Va. 531, 535 (1995) (quoting earlier decision). The Virginia Supreme Court has made especially clear the critical importance of the trial court's role in properly limiting the testimony of experts to matters on which they have formed and hold opinions which are scientifically reliable. *Billips v. Commonwealth*, 274 Va. 805, 809-810 (2007).

Qualification of an expert witness does not insure admission of his every statement and opinion. *Swiney v. Overby*, 237 Va. 231, 233 (1989). Dr. Andrews will be on the stand to give medical opinions. He should not be allowed to give testimony which amounts, in effect, to arguing the case to the jury. *Brown v. Corbin*, 244 Va. 528, 533 (1992) (expert's "testimony was largely irrelevant to any legitimate area of inquiry, repeatedly invaded the jury's province as factfinder, and offered speculation in the guise of scientific opinion which, when presented through the testimony of an expert, prejudiced" the opposing party's case).

4. Impermissible comments on credibility, "symptom amplification," somatization, etc.

Dr. Andrews should not be allowed to give testimony which amounts to comments regarding credibility of witnesses or evidence. "[T]he credibility of witnesses and the weight to be given to the evidence are the province of the jury alone, since in a jury trial the jury is the final arbiter of the facts. This applies to all witnesses, expert or otherwise." Charles E. Friend & Kent Sinclair, *The Law of Evidence in Virginia* § 1-5. An expert cannot comment on the credibility of evidence or testimony. *Brown v. Corbin*, 244 Va. 528, 532-33 (1992) (expert testimony was inadmissible because "it suggested, by implication, that Dickson's investigation was inadequate and that Dickson's testimony was not credible"). Dr. Andrews should not be allowed to violate any of these principles.

Testimony of the foregoing types, if allowed, would improperly imply to the jury that Plaintiff is not truthfully reporting his symptoms and conditions but instead is amplifying or

exaggerating them (and doing so due to improper motives). Under Virginia law, no testimony can suggest that there is a scientific way to determine whether someone is telling the truth. *Robinson v. Commonwealth*, 231 Va. 142, 156 (1986) ("[t]he mention of polygraphs in the presence of the jury impermissibly suggests that there is a scientific way to find the truth where in reality, in our system of justice, the jury decides what is true and what is not"); *Coppola v. Commonwealth*, 220 Va. 243, 253 (1979) (testimony properly excluded where "the expert witness was expected to testify that Mill's [the witness's] testimony could not be believed").

Other courts have agreed that there is no scientific way to determine credibility and that such issues are exclusively entrusted to the jury. *See Nichols v. American National Insurance Co.*, 154 F.3d 875 (8th Cir. 1998) (holding that expert testimony regarding alleged 'malingering' is not scientifically reliable and furthermore such testimony improperly invaded the jury's role). A recent opinion of the New Jersey appellate court excluded this type of testimony categorically. The New Jersey court held that even if this type of testimony had a sufficient scientific basis (which Plaintiff, of course, denies) it is nevertheless inadmissible in all cases because its improper prejudicial effect would outweigh any proper probative value.

The court held:

> [I]n a jury setting, there is a great danger that an expert witness who characterizes a plaintiff as a "malingerer" or a "symptom magnifier," or some other negative term impugning the plaintiff's believability will unfairly infect the trier of fact's assessment of the plaintiff's overall narrative on both liability and injury. Such opinion evidence from a doctor inherently has a clear capacity to deprive a plaintiff of a fair jury trial. . . . . Consequently, we hold that such testimony at a civil jury trial should be categorically disallowed under N.J.R.E. 403 [New Jersey's counterpart to Va. Sup. Ct. R. 2-403].

Rodriguez v. Wal-Mart Stores, Inc., 449 N.J. Super. 577, 596, 159 A.3d 914, 925 (Super. Ct. App. Div. 2017) (holding that the admission of such testimony was reversible error).

Even if malingering testimony had a sufficient scientific basis to be admissible as evidence (which Plaintiff denies), the danger of it having an improper prejudicial effect on the jury would still require that it be excluded. As the New Jersey court held, malingering testimony, if believed, prejudices the jury against the plaintiff with respect to its weighing and evaluation of both liability and damages issues. Indeed, testimony that suggests that a plaintiff is willing to lie, exaggerate, or embellish his symptoms to recover larger damages in a civil case might improperly cause the jury to decide that the plaintiff is "not only unworthy of belief but [is] also morally undeserving of an award of damages," even for the injuries and harm that have been proved by the evidence. *Payne v. Carroll*, 250 Va. 336, 340 (1995). Even if such testimony had any scientifically reliable basis (which it does not), and even if it was relevant and reliable (which it is not), it must be excluded because it invades the province of the jury and because any probative value would be vastly outweighed by its improper prejudicial effect.

Under Virginia law, purportedly "scientific" evidence must be closely scrutinized and must not be admitted unless it is actually based upon scientific methodology or testing that produces results that are sufficiently scientifically reliable to be admissible as evidence. *See Billips v. Commonwealth*, 274 Va. 805, 807-810 (2007); *Spencer v. Commonwealth*, 240 Va. 78, 97-98, *cert. denied*, 498 U.S. 908 (1990). In *Billips*, the Supreme Court held:

> Advancements in the sciences continually outpace the education of laymen, a category that includes judges, jurors and lawyers not schooled in the particular field under consideration. Consequently, there is a risk that those essential components of the judicial system may gravitate toward uncritical acceptance of any pronouncement that appears to be "scientific," and the more esoteric the field, the more difficult it becomes for laymen to greet it with skepticism. That tendency has given rise to frequent complaints of "junk science" in the courts. To guard against that risk, we continue to require a "threshold finding of fact with respect to the reliability of the scientific method offered," subject only to the exceptions in Spencer, quoted above. See Spencer, 240 Va. at 97, 393 S.E.2d at 621.

Billips v. Commonwealth, 274 Va. at 809-810 (2007) (footnote omitted).

"Malingering testimony" in both its explicit and implicit forms not only violates the Virginia law principles discussed above, it is also not scientifically reliable. Moreover, even if it arguably might have some scientific basis in some cases, it would invade the province of the jury, and it should be excluded because it would have an improper prejudicial effect that would exceed any probative value. *See Va. Sup. Ct. R.* 2:403.

The Court needs to be aware that defense expert "malingering" and "symptom amplification" testimony can take a variety of forms, such as assertions that the Plaintiff is exaggerating his symptoms, is not being accurate, or his claims "make no objective sense." Often, a defense expert will not attempt to offer an explicit opinion directly asserting that the plaintiff is "malingering" or "faking" his impairments but will instead weave into his expert testimony phrases which assert, for example, that the plaintiff has been "inconsistent" in his reporting of the events of his injury or his condition and impairments, is "exaggerating his problems" due to "psychological stressors," is "motivated by secondary-gain," is "claims-minded," is "misattributing his symptoms," is "misunderstanding his injuries," or "has been erroneously caused by his doctors to mistakenly believe his impairments are the result of an injury." These are not scientifically-reliable medical opinions but instead are examples of the type of vague, subjective, adverse-innuendo testimony that should not be allowed at trial.

In a 2009 opinion, Magistrate Judge Hannah Lauck of the Richmond United States District Court, relying upon and citing Virginia authorities, refused to allow expert testimony that would have, in effect, amounted to comments upon the plaintiff's credibility. *See Kidd v. Wal-Mart Stores, Inc.*, 2009 U.S. Dist. LEXIS 105668 (E.D. Va. 2009). Judge Lauck held:

> Where expert testimony seeks to comment on the credibility of a witness, such testimony answers "the very question at the heart of the jury's task." *Nichols* v. *Am. Nat 'I Ins. Co.,* 154 F.3d 875, 883 (8th Cir. 1998). Thus, an expert may not testify as to a witness's veracity because such testimony

> "improperly invades the province of the jury to determine the reliability of the witness." *Pritchett* v. *Commonwealth,* 557 S.E.2d 205, 208 (Va. 2002); *see Jackson* v. *Commonwealth,* 587 S.E.2d 532, 544 (Va. 2003) ("Expert witnesses may not, however, render an opinion on the defendant's veracity or reliability of a confession because whether a confession is reliable is a matter in the jury's exclusive province."); *see also United States* v. *Lester,* 254 F. Supp. 2d 602, 608 (E.D. Va. 2003) ("[T]rial courts should be extremely reluctant to allow testimony under Rule 702 as to conclusions that are consistent with the common knowledge of juries."). . . . The record before the Court does not establish whether . . . [Dr. Andrews] possess sufficient psychological expertise to offer expert testimony as to whether Kidd evinces symptom magnification or somatoform disorder. Even if they possess the requisite expertise, the Court will not permit these doctors to opine as to whether Kidd has such disorders. Such testimony far too easily invades the province of the jury or comments on the credibility of the Plaintiff. . . . .

Kidd v. Wal-Mart Stores, Inc., 2009 U.S. Dist. LEXIS 105668, 6-8 (E.D. Va. 2009); *Wagoner v. Lewis Gale Med. Ctr.*, LLC, 2016 U.S. Dist. LEXIS 169892, at *15 (W.D. Va. 2016) ("Because the jury can and should determine the credibility of witnesses, Gingras will not be permitted to testify about Wagoner's credibility, a desire to settle the case, or malingering. Furthermore, even if the testimony were relevant, the court would exclude it under Rule 403 as unfairly prejudicial and confusing"). Numerous Virginia Circuit Courts have issued the same type of rulings.[1]

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[1] *See Batzel v. Gault*, Law Number 195596 (Fairfax Cir. Ct. May 2, 2002) (excluding any testimony that the plaintiff is malingering, faking, exaggerating, "didn't make his best effort," "not trying," "could have done better"); *Goins v Davis*, CL08-1087 (Chesterfield County Cir. Ct., May 1, 2009) ("[i]t is FURTHER ORDERED that Dr. Gordon shall not be permitted to testify about the credibility or veracity of the plaintiff or any other witness, including testifying that there is a functional component to plaintiff's complaints of pain beyond July 2007 which may be explained by malingering, lying, a motivation for secondary gain, a history of depression, or any other psychiatric or psychologic trait or condition"); *Adams v. Habit*, CL2004-0222036 (Fairfax County Cir. Ct., March 28, 2006). The United States District Court for the Eastern District of Virginia recently ruled that a defense medical expert "cannot express an opinion that they [the plaintiffs] were malingering or exercising a lack of effort." *Federico v. Mid-Atlantic Family Communities, LLC, et al.*, Civil Docket No. 2:12CV80, Ruling on April 12, 2016.

5. Assertions as to "typical" or "average" recovery times, etc.

Dr. Andrews should not be allowed to invite the jurors to limit Plaintiff's damages based upon the "average" or "usual" recovery times. Virginia law requires defendants to provide full compensation to Plaintiff for the injuries and impairments which this crash caused to him under the facts of this case. And this is true even if he had pre-existing conditions or difficulties which made his injuries worse or more difficult to treat. *Virginia Model Jury Instructions* - Civil Instruction No. 9.030.

The damages issues in this case must not be determined on the basis of when and how an "average" patient would "usually" be "expected" to recover. Testimony which tells the jury what has occurred in other cases involving other persons and other circumstances is inadmissible because it is not relevant and is misleading, and it is improperly prejudicial since it invites the jury to compensate Plaintiff not on the basis of what the evidence shows regarding the injuries and impairments actually sustained by Plaintiff under the facts of this case but for the harm that allegedly would "usually" have been suffered in other cases by other "average" persons. In *Isabell Masters v. Overnight Transportation*, the Winchester Circuit Court held that Dr. Andrews would not be allowed to testify about the "typical profile of a traumatic brain injury." *Isabell Masters v. Overnight Transportation*, Civil Action 10-1304, Order entered October 24, 2012 at paragraph 4 (Winchester Circuit Court).[2]

[2] *See Keesee v. Donigan*, 259 Va. 157, 161 (2000) (testimony about "average" reaction times was inadmissible); *Sanitary Grocery Co. v. Steinbrecher*, 183 Va. 495, 499-500 (1945) (evidence that 1,000 customers per day visited grocery store without injury inadmissible as misleading and throwing no light upon the facts of the case before the jury); *Goins v. Wendy's Int'l, Inc.*, 242 Va. 333, 335 (1991) (evidence that other customers did not become sick was irrelevant and inadmissible); *Holley v. Pambianco*, 270 Va. 180, 185, 613 S.E.2d 425, 428 (2005) (raw statistical data regarding other patients was inadmissible).

It would be irrelevant and improperly prejudicial to allow testimony that a typical, usual, ordinary, or average patient (or a patient who did not have Plaintiff's pre-existing conditions) would have sustained less serious injuries, would have recovered more quickly, would have recovered with no permanent impairments, or would have required less medical care.

Conclusion

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an order precluding defense expert William C. Andrews, M.D., from offering any testimony at trial that:

1. Summarizes or quotes from hearsay medical records not admitted into evidence;
2. Relies on facts outside his personal knowledge or lacks a proper evidentiary foundation;
3. Is speculative or not based on a reasonable degree of medical probability;
4. Comments—explicitly or implicitly—on the credibility of the Plaintiff or other witnesses, including references to malingering, symptom amplification, or secondary gain; or
5. Invites the jury to assess Plaintiff's injuries based on "typical" or "average" recovery patterns rather than the actual evidence in this case.

Such testimony is inadmissible under Virginia law, improperly invades the province of the jury, and poses a substantial risk of unfair prejudice in violation of Rule 2:403. The Court should exclude this testimony and instruct defense counsel to avoid eliciting it in the presence of the jury.

MICHAEL PASTERNACK

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2025, a true and accurate copy of the foregoing was served by e-mail and fax on the following:

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EXHIBIT
1

VIRGINIA: IN THE CIRCUIT COURT OF FREDERICK COUNTY

MICHAEL PASTERNACK,

Plaintiff,

v. Case No.: CL24000051-00

PAUL ANTHONY AUSTIN,

Defendant.

DEFENDANT'S EXPERT DESIGNATION & RESPONSES TO INTERROGATORY 4

Defendant, by counsel, designates **Dr. William C. Andrews, Jr.**, a licensed and practicing orthopedic surgeon, as an expert witness in this case. The substance of his opinions, testimony, and the grounds therefore, are stated in his attached report, which is incorporated herein by reference. Dr. Andrews' C.V. is attached and relates his qualifications, training, and experience in the field of orthopedic surgery and is incorporated herein by reference.

Dr. Andrews reserves the right to expound, change, or retract his opinions relating to new information, especially new issues regarding future surgery and disability ratings, or questions to him during litigation, depositions, and at trial.

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Furthermore, Defendant hereby supplements his prior discovery responses with this designation and the attached report and C.V.

Respectfully submitted,

PAUL ANTHONY AUSTIN

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I hereby certify that a copy of the foregoing was sent by U.S. Mail and electronic mail and on April 14, 2025 to:

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April 14, 2025

Graham Butler, Esq.
RE: Michael Pasternack v. Paul Austin
DOI: 02/01/2022

I performed a medical record review on Mr. Michael Pasternack, specifically relating to the accident of 02/01/2022.

In preparing this report, I have reviewed records from: neuropsychiatric evaluation by John Lewis, PsyD; notes from Body Elite Physical Therapy, Kara Prato; notes from Chester Radiology (I reviewed all of the films involved in this case, as well as the reports); notes from Creekside Chiropractic; notes from Poulin Chiropractic Clinic; notes from Energie Wellness, Kathleen Kelley; notes from Inova Concussion Clinic, Peter Wei; notes from Jennifer Willey; notes from Loudon Radiology; notes from Loudon Hospital; notes from NeuroGrow Brain Fitness Clinic; notes from Pain Center of Virginia; notes from Progressive Radiology; notes from Academy of Chiropractics; notes from Spinal Kinetics; police report; notes from Winchester Neurology, Neil Crowe, MD; notes from Winchester Orthopedics, John Zoller; notes from Winchester Urgent Care, Harjit Bagri; notes from Without Limits Speech Therapy, Lila Griffith, MS, LP; notes from Manassas Chiropractic, Steve Lininger; notes from Neurologic Associates, Mark Landrio, MD; PPI rating Steve Lininger, DC; police report; photographs of the vehicles; notes from Behavioral Resources; notes from Poulin Chiropractic; notes from Dr. Harjit Bagri; notes from The Pain Center, Waheed Baksh; notes from Jack Ricci, DC; notes from Virginia Brain and Spine, Patrick Ireland, MD, Joel Grant, MD; interrogatory responses; and videos of Michael Pasternack.

All opinions are rendered to a reasonable degree to medical certainty.

Mr. Pasternack was involved in a motor vehicle accident on 2/1/22. By review of the medical records, it appears that the impact was on the driver's front panel of Mr. Pasternack's vehicle. Photographs show a moderate amount of damage.

He was seen at Winchester Urgent Care on 2/4/22, three days after the accident. He had allegedly been seen on 2/1/22, but I did not see those records. By review of the report from Dr. Bagri, he had a normal neurologic examination, normal x-rays, and was referred to physical therapy.

He was treated at Body Right Physical Therapy by Kara Prato, from 2/11/22 until 5/19/22. On 5/19/22, he was noted to be much better and discharged to a home exercise program. Ms. Prato treated him with vestibular exercises and treatment for his neck and back.

During this time, he was also followed by his primary care provider Kathleen Kelley, MD, at Energie Wellness. She continued his PT referral, and ordered x-rays and scans on the visit on 3/18/22.

X-rays of the cervical spine showed degenerative disc disease at C4-5 and C5-6. X-rays of the lumbar spine showed mild degenerative disc disease at multiple levels. An MRI of the lumbar spine from 3/29/22 showed no abnormal cord signal with multi-level degenerative disc disease and disc bulges including a bulge at T12-L1, but no abnormal cord signal.

He was also treated at Creekside Chiropractic by Jack Ricci, DC, from 3/1/22 until 11/10/22. He noted that he had been wearing his seatbelt and his airbag did deploy.

During the next several months, he was treated by multiple providers. He was evaluated at Inova Concussion Clinic beginning on 4/12/22 by Dr. Peter Wei. Dr. Wei stated on 9/27/22 that his concussion had resolved, and that he had no findings of a persistent closed head injury. He also had an evaluation by John Lewis, PsyD who stated that there was no evidence of concussion, that Mr. Pasternack had an adjustment disorder, and that Mr. Pasternak could return on an as needed basis.

He also treated with Jessica Willey, PT from 4/14/22 until 7/12/22.

He was also seen at NeuroGrow Brain Fitness Center by Majid Fotohui, MD. He had neurocognitive testing and the decision was made that he needed “brain training.”

He also had other films which I have reviewed: left hip films, which showed mild osteoarthritis; an MRI of the brain from 3/31/22, which was normal; an MRI of the left elbow from 12/8/23, which showed some biceps tendinitis; and an MRI of the right shoulder from 12/15/23, which showed a rotator cuff tear. The biceps tendinitis, rotator cuff tear, and the hip complaints were unrelated to this accident.

He was treated by Steven Lininger, DC, who stated that he had multiple spinal subluxations. Dr. Lininger also later performed a permanent partial impairment rating.

He was treated by Neil Crowe at Winchester Neurology, who felt that he might benefit from speech therapy. His EEG was normal.

He was seen at Winchester Orthopedics by John Zoller, MD, on 3/29/22, who noted complaints of neck and back pain with a normal neurologic evaluation. X-rays showed no objective injury. Dr. Zeller saw him back on 5/3/22, and stated that he was improving and need not return unless his situation changed.

He also had speech therapy with Lila Griffith at Without Limits Speech Therapy.

Mark Landero, MD, at Neurology Associates, saw him on 8/15/23, and stated that he had initially had some calf pain on the right for three week and then developed some left leg at about four weeks after the accident. He noted an epidural steroid injection had not helped him. He performed an EMG, which showed bilateral L5 radiculopathy, moderately severe, of a chronic nature. In all likelihood, this was related to his poorly controlled diabetes.

As noted above, he was treated by Stephen Lininger, DC, and a repeat lumbar spine MRI was obtained on 8/21/23, which was unchanged. Mr. Lininger also recorded a permanent partial impairment rating and suggested that he needed chiropractic treatment for life. For his mental deficits, he stated that he would be two percent permanent partial impairment (though he is not trained in neurologic medicine) and for his spinal degenerative disc disease he was rated twenty percent for a total of twenty-two percent PPI of the whole body. Of significant note, this was based on the fifth edition AMA guides, not the sixth edition guides, which has been the guidebook of preference by the AMA since 2004. As well, he did not account for his prior degenerative disc disease and complaints, which would have made his permanent partial impairment roughly in the neighborhood of one percent.

He was later evaluated at Poulin Chiropractic. The report stated he had had degenerative disc disease prior to the MVA, but no leg pain until after the accident and therefore he would need chiropractic treatment in an ongoing fashion, and ultimately surgery. Careful review of the records however shows that he did not have initial leg symptoms, although he had had them in prior to the MVA.

He was seen at the Pain Center by Waheed Baksh on 4/18/23. He noted groin pain, without sciatica, and suggested a medial branch block. Multiple injections were performed.

He was seen by Patrick Ireland, MD, a neurosurgeon, on 1/18/24. It was noted that he was doing much better and he was told to work on core strength. Dr. Ireland had seen him on 9/18/23 and noted that his MRI showed some progression of his degenerative changes since an earlier one in 2016 and suggested an epidural. The epidural was performed by Dr. Joel Grant. He stated twice that Mr. Pasternack did not need surgery.

Dr. Ireland had seen him in 2016, and noted that he had had twenty-five years of back pain and that by Mr. Pasternak's own statement, could only function at fifty percent capacity. He stated to Dr. Ireland that his back pain was easy to trigger, that it caused pain with walking, it radiated down his leg. An MRI from 5/31/16 confirmed all the findings in the later MRI's. It showed severe degenerative disc disease with the L1-2 disc protrusion and the stenosis that was seen on the post-accident MRI's, with some progression, but basically similar findings.

I did review two videos where he explains that he is the chiropractor for treatment for car accidents.

ASSESSMENT:

Mr. Pasternak was in a motor vehicle accident on 2/1/21. His injuries were simply a strain/sprain of the muscles of the neck and back, and a closed head injury, which resolved. A neurologist, Peter Wei, stated that his concussion symptoms had resolved by 9/27/22.

His spinal complaints did respond to therapy somewhat, but he still had complaints after therapy. He had an excessive amount of therapy with two different physical therapists and multiple chiropractors.

He was seen by an orthopedic surgeon, Dr. Zoller, who did not think he needed any treatment after 5/3/22.

Later discussion of possible need for surgery is completely unrelated. He has had over twenty five years of back complaints and MRI-documented findings consistent with a spinal stenosis from 2016, which were also documented by the surgeon who treated him pre- and post-accident.

Claims of twenty-two percent of permanent partial impairment are completely wrong and unfounded. Based on his prior symptomatology and based on the wrong AMA Guidebook.

Reasonable treatment would be the following: his evaluation at Winchester Urgent Care on 2/1/22 and 2/4/22; his first physical therapy course by Kara Prato, PT; his MRI's of the lumbar and thoracic spine from 3/29/22; his x-rays from March of 2022; his evaluation by Peter Wei from 9/27/22; his evaluation by Dr. Zoller. No other treatment would be reasonable, necessary, or appropriate, as related to this accident. He has no need for ongoing treatment. He has no future treatment needs and no permanent disability.

William C. Andrews, Jr., M.D.

CURRICULUM VITAE

WILLIAM C. ANDREWS, JR., M.D., FAOA, FAAOS

DATE OF BIRTH:	December 12, 1953
PLACE OF BIRTH:	Norfolk, Virginia

OFFICE ADDRESS

Centra Orthopedic Group
935 South Main St.
Farmville, VA. 23901

Mailing Address:
4717 John Scott Dr.
Lynchburg, Va. 24503

EDUCATION

Bachelors of Arts Degree in
French Literature - "Phi Beta Kappa"
Duke University — 8/1972- 5/1976

Medical Degree
Duke University — 8/1976- 5/1980

Internship
University of Virginia Hospital — 6/1980 – 6/1981

General Surgery Residency
University of Virginia Hospital — 6/1981 – 6/1982

Orthopedic Surgery Residency
Duke University — 6/1982-6/1986

WORK HISTORY

Private Practice
Piedmont Orthopedic Surgery
Lynchburg, Virginia — 7/1986 – 6/2005

The Orthopedic Center of Central Virginia
Lynchburg, Virginia — 6/2005 – 2016

Ortho Virginia — 2016 – 2019

Centra Health 2019- present

ORTHOPEDIC SURGICAL APPOINTMENTS

Virginia Baptist Hospital – Lynchburg, Virginia

Lynchburg General Hospital – Lynchburg, Virginia

Southside General Hospital – Farmville, Virginia

OTHER HOSPITAL APPOINTMENTS

Clinical Instructor, Orthopedic Surgery
University of Virginia, Charlottesville, Virginia 1986 -2007.

Adjunct Faculty, Duke University Medical School
Duke University, Durham, North Carolina.

SOCIETIES

Diplomat of American Board of Orthopaedic Surgery

Piedmont Orthopedic Society
Board Member, Past President

Southern Orthopedic Society
Board Member
Treasurer, President
Past President

Duke Medical Center Alumni Association
Board Member
Past President

Duke University Alumni Association
Board Member

Virginia Orthopedic Society

Southern Medical Society

Lynchburg Academy of Medicine

Jubilee Family Development Center
Chairman of Board

Kids First
Board Member

Davison Society
President

Piedmont Orthopedic Foundation
Treasurer

Fellow American Orthopedic Association, inducted 2014.

Presentations

"Orthopedic Surgery in Underdeveloped Countries," Piedmont Orthopedic Society Meeting 2005

"Anterior Approach to Children's Supracondylar Humerus Fractures," Duke Hand Society Meeting, 2009

"Supracondylar Humerus Fractures in Children,"Hellenic Orthopedic Society Meeting, 2010

"International Orthopedic Surgical Volunteerism," Panel member; Southern Orthopedic Society Meeting, 2011

"Orthopedic Surgery Abroad," Piedmont Orthopedic Society Meeting 2012

"Pediatric Orthopedic Surgery Mission Work in Mexico, Report of 1,000 Surgical Cases," Duke Hand Society 2013

"Anterior Approach to Supracondylar Humerus Fractures." Duke Hand Society Meeting, 2016

"Children's Upper Extremity Surgery in Developing Nations." Duke Hand Society Meeting, 2019

Activities

1995 -1999 Kids First Medical Mission to Pereira, Columbia

2000 Kids First Medical Mission to Natal, Brazil

2002 - 2004 Kids First Medical Mission to Santa Domingo, Dominican Republic

2005 -2023 Kids First Medical Mission to San Miguel, Mexico

PUBLICATIONS:

Wheeless Textbook of Orthopedic Surgery-Associate Editor

AWARDS:

Medical Society of Va. Award for International Service 2018

Charles A. Dukes Award – Highest award for service to the university, given by Duke University 2019

Honored speaker Piedmont Orthopedic Society meeting, 2021.

Hudnall Ware, MD Guest Speaker MCV Feb 17, 2023