IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

LINDA FAVARON, Executrix of the Estate of Neil Favaron, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and WEST CHESTER HOSPITAL, LLC, and UC HEALTH, Defendants.	:	APPEAL NO. C-250065 TRIAL NO. A-1506607

STEVEN ANDREW SCHULTZ, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants,	:	APPEAL NO. C-250066 TRIAL NO. A-1506861

and :

WEST CHESTER HOSPITAL, LLC, :

and :

UC HEALTH, :

Defendants. :

MAURICE GRABOW, :

Plaintiff-Appellee, :

and :

HANNAH GRABOW, :

Plaintiff, :

vs. :

ABUBAKAR ATIQ DURRANI, M.D., :

and :

CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., :

Defendants-Appellants, :

and :

WEST CHESTER HOSPITAL, LLC, :

and :

UC HEALTH, :

Defendants. :

APPEAL NO. C-250274
TRIAL NO. A-1706526

JUDGMENT ENTRY

This cause was heard upon the appeals, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgments of the trial court are affirmed in part, reversed in part and vacated in part, and the cause is remanded.

Further, the court holds that there were reasonable grounds for these appeals, allows no penalty, and orders that costs be taxed 50% to Appellants and 50% to Appellees.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/25/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley

Administrative Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

LINDA FAVARON, Executrix of the Estate of Neil Favaron, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and WEST CHESTER HOSPITAL, LLC, and UC HEALTH, Defendants.	:	APPEAL NO. C-250065 TRIAL NO. A-1506607

STEVEN ANDREW SCHULTZ, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants,	:	APPEAL NO. C-250066 TRIAL NO. A-1506861

and

:

WEST CHESTER HOSPITAL, LLC,

:

and

:

UC HEALTH,

:

Defendants.

:

MAURICE GRABOW,

:

APPEAL NO. C-250274
TRIAL NO. A-1706526

Plaintiff-Appellee,

:

and

:

O P I N I O N

HANNAH GRABOW,

:

Plaintiff,

:

vs.

:

ABUBAKAR ATIQ DURRANI, M.D.,

:

and

:

CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,

:

Defendants-Appellants,

:

and

:

WEST CHESTER HOSPITAL, LLC,

:

and

:

UC HEALTH,

:

Defendants.

:

OHIO FIRST DISTRICT COURT OF APPEALS

Civil Appeals From: Hamilton County Court of Common Pleas

Judgments Appealed From Are: Affirmed in Part, Reversed in Part, Vacated in Part, and Cause Remanded

Date of Judgment Entry on Appeal: September 25, 2026

Statman Harris, LLC, and *Alan J. Statman*, for Plaintiffs-Appellees,

Taft Stettinius & Hollister LLP, *Philip D. Williamson, Aaron M. Herzig, Russell S. Sayre,* and *Lillian F. Rigby*, for Defendants-Appellants.

MOORE, Judge.

{¶1} Defendants-appellants Dr. Abubakar Atiq Durrani and the Center for Advanced Spine Technologies, Inc., ("CAST") (collectively, "Durrani"), appeal the judgments of the Hamilton County Court of Common Pleas in favor of plaintiffs-appellees Linda Favaron, mother of the late Neil Favaron and executrix of his estate, Steven Schultz, and Maurice Grabow ("plaintiffs"). Following a two-week trial, the jury found in favor of plaintiffs on their claims for battery, negligence, fraud, and lack of informed consent regarding the surgeries that Dr. Durrani performed on them, which plaintiffs asserted were unnecessary. This court has consolidated the appeals for purposes of argument and opinion.

{¶2} Durrani now raises four assignments of error alleging that the court erred by: (1) consolidating plaintiffs' cases for trial, (2) denying Durrani's combined motion for a judgment notwithstanding the verdict ("JNOV") or, in the alternative, a new trial in which Durrani asserted that the trial court committed several evidentiary errors, (3) denied their JNOV motion regarding their challenge of the jury's award for future medical expenses and their entitlement to a set-off based on plaintiffs' settlements with other tortfeasors, and their claim that the future-damages awards to Schultz and Grabow were against the manifest weight of the evidence. Durrani's fourth and final assignment of error asserts the court erred in awarding prejudgment interest.

{¶3} For the reasons set forth below, Durrani's arguments concerning their JNOV motion as it relates to the jury's future-damages award for Grabow as well as Durrani's entitlement to a set-off are meritorious. Therefore, the judgments of the trial court are affirmed in part and reversed in part, and the cause is remanded for the limited purpose of the trial court determining the proper amount of the set-off on plaintiffs' damages awards based on plaintiffs' settlements with other tortfeasors. The

jury's award of future damages to Grabow is vacated.

I. Factual and Procedural History

A. Pretrial

{¶4} Plaintiffs moved to join their trials. Durrani filed a motion in limine arguing that there were no common questions of law or fact to warrant joint trials. Durrani also sought to exclude testimony from Dr. Wilkey and Dr. Saini. On the first day of trial, prior to voir dire, the trial court held a hearing on Durrani's motion in limine, which was denied.

{¶5} The parties also apprised the court of their settlement efforts. Counsel for plaintiffs informed the court that each plaintiff had made a $500,000 settlement demand. Counsel for Durrani informed the court that they had made a global offer to plaintiffs, which was rejected, and that "no individual offers will be extended for these three plaintiffs" based on Durrani's belief that their expert testimony supported Dr. Durrani's course of care for each plaintiff. Counsel for Durrani stated that they would be "willing to further negotiate globally."

B. Plaintiffs' Testimony

1. Steven Schultz's and Lindsay Schultz's Testimony

{¶6} Steven Schultz testified that he first experienced back pain in 2008. After medication and conservative treatment failed to remedy the pain, Schultz consulted with Dr. Durrani in 2010, who recommended surgery. Schultz testified that he took several months to seek additional opinions and consulted with Dr. Shahbabian and Dr. Bohinski. Both doctors told Schultz that he did not need surgery.

{¶7} Schultz and his family had a prior relationship with Dr. Durrani as a care provider and, despite other doctors advising against it, Schultz agreed to surgery. Schultz testified that he relied on Dr. Durrani's insistence that surgery was the only

option, and that Dr. Durrani promised Schultz, "I'm going to fix you." Schultz claimed that at no point prior to surgery did Dr. Durrani identify the risks, or the percentage rates of success, failure, or complications.

{¶8} On September 26, 2011, Dr. Durrani, who was assisted by Dr. Schneeberger, performed Schultz's first surgery. Dr. Durrani's operative report referenced that he performed the following procedures on Schultz: (1) an AxiaLIF at the L5-S1 vertebrae, (2) installation of a lumbar interbody cage at L5-S1, (3) installation of pedicle screws at the L5-S1, and (4) a spinal fusion through allograft. However, Schultz remained sedated until September 28, 2011. Upon awakening, Schultz was informed an artery was struck during the procedure, which caused major internal bleeding and required a corrective procedure. Schultz remained hospitalized for eight days in the intensive care unit.

{¶9} Schultz recalled that his pain persisted after the operation. Despite being told by Dr. Durrani that he was not supposed to carry or lift any type of weight, Schultz testified that he did hold his one-year-old daughter after the operation.

{¶10} Schultz also recalled that he experienced several postoperative complications. One complication made going to the bathroom uncomfortable. Schultz explained that Dr. Durrani discredited Dr. Shahbabian's expertise and urged Schultz not to meet with other doctors. Schultz testified that Dr. Durrani warned him that another doctor might force Schultz to have a catheter inserted. This warning convinced Schultz not to consult with other doctors.

{¶11} Schultz's reproductive system was also damaged during the surgery. Despite years of consulting with fertility clinics and specialists, Schultz has remained infertile.

{¶12} Schultz claimed that despite Dr. Durrani's post-visit evaluation letters,

in which Dr. Durrani insisted that Schultz was doing well, Schultz was actually in immense pain. In the months following Schultz's surgery, he fell at home and suffered a herniated disc. He returned to consult with Dr. Durrani, who recommended either injections or surgery. Schultz opted to have a second surgery because he had "already missed so much work" and "[s]omething had to be fixed" because he "did not anticipate this much pain after [his] first surgery."

{¶13} On March 7, 2012, Dr. Durrani performed Schultz's second surgery, a lumbar hemilaminectomy and discectomy at the L4-L5 vertebrae. While Schultz initially felt better, this relief was short lived and the pain persisted.

{¶14} Schultz recalled being dissatisfied with Dr. Durrani and deciding to seek consultation with other doctors. Schultz returned to Dr. Bohinski at Mayfield Spinal Surgery Center, who had previously informed Schultz that he did not need any surgery. Following an evaluation, Dr. Bohinski advised Schultz to cease all care with Dr. Durrani. Schultz testified that he was informed that the fusion hardware was improperly placed, and that he had "pseudoarthrosis," which is pain resulting from hardware that had failed to fuse. In February 2013, Schultz underwent a corrective procedure with Dr. Bohinski and testified that following the procedure he felt slightly better than prior surgeries but that the pain remained.

{¶15} Lindsay Schultz, Schultz's wife, similarly testified about the assertions made by Dr. Durrani. Lindsay testified that Dr. Durrani minimized the potential adverse side effects from the procedure, that Dr. Durrani stated there was minimal risk of blood loss, and that Dr. Durrani stated that none of his patients had injuries or complications as a result. Lindsay testified that despite assurances from Dr. Durrani that he would only be using two pedicle screws for Schultz's procedure, she was surprised to discover Dr. Durrani used rods and heavy hardware. She stated that Dr.

Durrani claimed the hardware was necessary because portions of Schultz's spine fractured during the procedure.

2. Linda Favaron's and Shawna Marie Helsinger's Testimony

{¶16} Linda Favaron testified on behalf of her son Neil Favaron, who died in November of 2014. Neil was a marine who had worked in construction and had a history of back pain and other issues before a car accident magnified some of these issues. In 2010, after pursuing conservative care for several months and being told by multiple physicians that he was not a candidate for surgery, 30-year-old Neil visited with Dr. Durrani. In Dr. Durrani's notes from his first two visits with Neil, he stated that Neil complained that pain radiated from his mid-neck and along his lower back. Dr. Durrani diagnosed Neil with degenerative disc disease and disc herniation along the C4-C5 vertebrae, herniation along the T9-T10 vertebrae, and spinal stenosis along the L2-L3, L3-L4, L4-L5, and L5-S1 vertebrae. He recommended three separate surgeries.

{¶17} In May 2010, Durrani performed Neil's first surgery and completed a discectomy and a cervical fusion, and placed instrumentation and an interbody cage along the C4-C5 vertebrae. In September 2010, Durrani performed Neil's second surgery. Despite Dr. Durrani's preoperative notes concerning the T9-T10 vertebrae, Dr. Durrani actually performed a discectomy, a laminectomy and a thoracic fusion, and placed instrumentation and an interbody cage along the T11-T12 vertebrae. In December 2010, Dr. Durrani performed Neil's third surgery, which entailed an interbody fusion and installation of interbody cages along the L2-L5 vertebrae, completion of the AxiaLIF procedure along the L5-S1 vertebrae, and completion of a spinal fusion and instrumentation from L2-S1 vertebrae.

{¶18} Linda testified that Neil's condition did not improve after the

procedures. While Neil did not live with Linda, Linda stated that it appeared that Neil was getting worse after each surgery, and that he had a total loss of independence.

{¶19} Shawna Helsinger, Neil's live-in girlfriend, echoed many of the same sentiments as Linda. Shawna testified that the "first thing" she recalled was that Dr. Durrani promised Neil, "I can fix you" through surgery. Shawna further testified that Dr. Durrani told Neil during one visit that if he did not schedule surgery that day "you will be paralyzed" and that Neil would "be in a wheel chair." Shawna recalled that when Neil was anxious and had second thoughts the day of surgery, Dr. Durrani tried to pressure Neil to undergo the surgery. Shawna asserted that, despite Dr. Durrani's surgeries, Neil could not work, dress himself, or shower without assistance, persistently suffered falls, and was in constant pain following the surgeries.

3. Maurice Grabow's Testimony

{¶20} Maurice Grabow testified he had been a welder by profession but retired once the strain on his back became too intense. Grabow stated that he had suffered back pain his entire life and had consulted with a family doctor and chiropractor for years, but the pain persisted.

{¶21} In February 2011, 68-year-old Grabow first consulted with Dr. Durrani. Grabow complained of pain ranging from his lower back to the nape of his neck. Grabow testified that, on the intake form where it asked, "What do you want to see happen," he indicated that he sought nonsurgical options. Grabow stated that Dr. Durrani, however, told him that nonsurgical options weren't going to fix him and that surgery was necessary. Grabow further testified that Dr. Durrani advised that, without surgery, Grabow would eventually lose control of his bowels. After reviewing Grabow's imaging, Dr. Durrani diagnosed Grabow with cervical spinal stenosis, bilateral foraminal stenosis, and degenerative disc disease, all presenting along the C5-C6 and

C6-C7 vertebrae. In May 2011, Durrani performed Grabow's surgery and completed a lumbar interbody fusion at the L4-L5 vertebrae, an AxiaLIF along the L5-S1 vertebrae, and an interbody fusion with instrumentation along the L3-L4 vertebrae.

{¶22} Contrary to Durrani's postoperative report saying everything was fine, Grabow testified that he was in considerable pain and went to the emergency room to treat an abscess developing at the surgical site.

{¶23} Two years removed from treatment, Grabow continued to complain of pain, which had spread to his hips and joints. Grabow testified that he had been consulting Dr. Durrani for postoperative care but, at a certain point, Dr. Durrani never followed up. Grabow was scheduled to have a steroid injection done by Dr. Durrani, but Dr. Durrani did not show up, and Grabow never saw him again.

C. Plaintiffs' Expert Testimony

1. Dr. Keith Wilkey's Testimony

{¶24} Dr. Wilkey, an orthopedic surgeon, testified similarly as to all three plaintiffs. He asserted that Dr. Durrani's exaggeration of the radiological images conflicted with the findings of the reading radiologists, Dr. Durrani's misrepresentation of the findings led plaintiffs to believe that they needed surgery, and the surgeries that Dr. Durrani performed on plaintiffs were not medically necessary and injured them.

{¶25} Dr. Wilkey also testified concerning potential future medical expenses that Schultz and Grabow would incur. Regarding Schultz, Dr. Wilkey testified that every ten years there is a 30 percent likelihood that he would need corrective surgery. Dr. Wilkey explained that this was because "every ten years you can expect the next disc to – there's a one-third chance that the next disc will become problematic enough to need some type of intervention." Despite already having a revisionary surgery, Dr.

Wilkey opined that Schultz would incur medical expenses because Schultz was "looking at a lot more surgeries." Dr. Wilkey stated that he was familiar with these kinds of corrective procedures because he approves them daily, and they can cost anywhere from $100,000 to $150,000 per surgery with insurance and at least $500,000 without insurance.

{¶26} Dr. Wilkey testified that the procedures that Dr. Durrani performed on Grabow caused permanent functional injury to his spine. Dr. Wilkey stated that, as a direct result of the procedures, Dr. Durrani exacerbated Grabow's preexisting-degenerative-disc disease and, as a result, Grabow would need future pain management or surgery. Dr. Wilkey, however, did not offer any testimony as to what kind of surgeries Grabow may need or how much a future procedure or future pain management would cost.

2. Dr. Ranjiv Saini's Testimony

{¶27} Dr. Saini, a teleradiologist, neuroradiologist, and diagnostic radiologist, testified that he reviewed the imaging and radiology reports in each plaintiff's case. As a radiologist, Dr. Saini explained that he interprets images of the body including x-rays, CAT scans, MRIs, nuclear medicine, ultrasound, fluoroscopy, and postsurgical imaging. Dr. Saini explained that his interpretations give guidance to surgeons on whether they performed a procedure correctly or suggest which procedure should have been done.

a. Dr. Saini's Opinion Regarding Favaron's Surgeries

{¶28} Dr. Saini testified that Dr. Durrani breached the standard of care by dictating notes from Favaron's May 2010 surgery four months after surgery because dictation should occur within 24 hours to ensure that another physician knows what was done on a patient should an emergency arise. Dr. Saini explained that he saw no

need for surgery on Favaron's cervical spine to address his degenerative-disc disease as there was no evidence on Favaron's images of compression on the cervical or thoracic spine.

{¶29} Dr. Saini stated that there was "no way there was a disc herniation warranting the thoracic surgery," and agreed with the findings of the radiologists who reviewed Favaron's thoracic and lumbar images and concluded that surgery was not needed in those areas.

{¶30} Dr. Saini further testified that Dr. Durrani breached the standard of care by misrepresenting the conditions Dr. Durrani claimed to find in Favaron's cervical, thoracic, and lumbar MRIs. Noting the differences between Dr. Durrani's findings as compared to the original reading radiologist's findings, Dr. Saini stated that Dr. Durrani's readings of the imaging and reports—and recommendations for all three of Favaron's surgeries—were outside of the standard of care.

{¶31} Outside of the jury's presence, Durrani once again objected to Dr. Saini's testimony as to his surgical opinions. The trial court noted their objection and reiterated its prior finding pursuant to holdings from this court that, based on Dr. Saini's experience, background, "and training orthopedic surgeons and reviewing their work as they're doing it," he was qualified to give the opinions.

{¶32} As to the lumbar fusion that Dr. Durrani performed on Favaron, Dr. Saini testified that a discectomy and foraminotomy would have alleviated Favaron's pain, instead of performing the fusion, as the images did not indicate stenosis as Dr. Durrani noted. Dr. Saini further opined that performing the AxiaLIF on Favaron was unnecessary and breached the standard of care.

b. Dr. Saini's Opinion Regarding Grabow's Surgeries

{¶33} Dr. Saini testified that Dr. Durrani deviated from the standard of care

by recommending the surgery performed on Grabow and negligently interpreting or exaggerating radiologic imaging. Dr. Saini agreed with the findings of the reading radiologist for Grabow's May 2011 surgery that there was no evidence of spondylolisthesis at the levels that Dr. Durrani indicated. He stated that Grabow's condition was the type where physical therapy and injections could help the pain, and there was nothing in the images to justify performing surgery on Grabow.

c. Dr. Saini's Opinion Regarding Schultz's Surgeries

{¶34} Dr. Saini testified that Schultz's images reflect that he should not have undergone surgery. Dr. Saini opined that Dr. Durrani fabricated spondylolisthesis and radiculopathy findings. Dr. Saini explained that, although he saw some abnormalities or mild or early degenerative changes, he agreed with the reading radiologist that there was no evidence of stenosis. Dr. Saini testified to exhibits containing Dr. Shahbabian's and Dr. Bohinski's written opinions refuting Dr. Durrani's conclusion that Schultz had stenosis at L5-S1 or that surgery was necessary.

{¶35} Dr. Saini explained that, while Dr. Durrani reported that Schultz was taken out of the operating room in stable condition, Schultz's postsurgical record showed that he was transported "straight to the ICU." Dr. Saini discussed the images from the fluoroscopy during the surgery, which showed that Schultz underwent a posterior spinal fusion with pedicle screws and rods despite Dr. Durrani's assurances to Schultz that there would be no rods or screws used in the procedure outside of pedicle screws. Dr. Saini further explained that Dr. Durrani had placed the pedicle screws incorrectly and that they caused bleeding, and this bleeding accumulated because of the complications from Schultz's surgery.

{¶36} As to Schultz's second surgery, Dr. Saini testified that Dr. Durrani exaggerated his finding that the disc was herniated at L4-L5. Dr. Saini explained that

Dr. Bohinksi's notes reflected that the screws that Dr. Durrani placed were protruding in areas they should not have and the fusion that Dr. Durrani performed with the AxiaLIF was not successful, which led to Schultz undergoing a third surgery—the revision Dr. Bohinski performed.

{¶37} On cross-examination, Dr. Saini testified that Dr. Durrani never correlated the imaging pathology with the clinical presentation because Dr. Durrani did not read the images correctly.

3. Dr. Zeeshan Tayeb's Testimony

{¶38} The trial court permitted plaintiffs to read Dr. Tayeb's deposition transcript into the record over Durrani's objection that it contained inadmissible hearsay.

{¶39} Dr. Tayeb explained that he worked at CAST for three years as the pain-management physician, and he heard Dr. Durrani tell patients that he would "fix them" during the first few weeks when he shadowed Dr. Durrani. Dr. Tayeb testified that "here and there" he overheard Dr. Durrani tell patients that they could be paralyzed or lose control of their bowels or bladder if they did not undergo the surgery he recommended.

{¶40} Dr. Tayeb noted that Dr. Durrani was performing "quite a bit of surgery," which made him wonder "where's the conservative management taking place?" He recalled that Dr. Durrani would indicate in patients' preoperative and postoperative notes that those patients "underwent conservative measures or failed conservative measures." He explained that he had not seen those patients despite being the only conservative-treatment provider outside of CAST's lone physical therapist.

{¶41} Dr. Tayeb testified that there were instances where Dr. Durrani was not

getting the patients "back to baseline before setting up a second surgery, or maybe even a third or fourth." He added that it "always seemed like there was this push for surgery as opposed to looking for" conservative treatment. When asked whether Dr. Durrani ever coerced patients into having surgery, Dr. Tayeb responded, "Well, you tell a person that they're going to be paralyzed or they're not going to walk again, I would think you're basically telling that person, you need to do this."

{¶42} Dr. Tayeb testified that he witnessed Dr. Durrani's exaggeration of spinal stenosis firsthand and discussed the same with Dr. Shanti, another doctor at CAST. Dr. Tayeb recalled that Dr. Durrani's dictated notes would deem a stenosis "moderate to severe" while Dr. Tayeb or Dr. Shanti would conclude the spinal stenosis was "mild to moderate." Dr. Tayeb explained the process of determining the severity of spinal stenosis—that each image should be reviewed because "you're actually not supposed to make a call based off looking at one slice." He further explained that the images of a spine are taken in "slices" and a doctor can "make it say whatever you want" if he or she only looked at one slice, so reviewing each slice was necessary to make an accurate call as to the severity of spinal stenosis. Dr. Tayeb testified that the common theme in Dr. Durrani's conversations with patients was "severe stenosis" that could be helped with conservative management, but surgery would fix the problem. Dr. Tayeb stated that "a good percentage" of Dr. Durrani's patients would "go towards surgery, or he would recommend surgery."

4. Dr. Stephen Bloomfield's Testimony

{¶43} Dr. Bloomfield testified only to Favaron's and Schultz's cases. He opined that Dr. Durrani failed to meet the standard of care and that he operated without the plaintiffs' informed consent.

D. Durrani's Experts' Testimony

{¶44} Durrani called two witnesses in his defense. Both Dr. Derk Purcell and Dr. Mario Ammirati, a neuroradiologist and a neurosurgeon, testified that Dr. Durrani met the requisite standard of care.

E. Durrani's Proposed Jury Instructions

1. Intervening-and-Superseding-Cause and Comparative-Negligence Instructions

{¶45} On June 12, 2023, Durrani submitted supplemental proposed jury instructions, which requested an intervening-and-superseding-cause instruction. Durrani also requested an instruction on the inapplicability of the "captain of the ship" doctrine—a theory of liability that a lead doctor is responsible for all underlying negligence in the operating room. Durrani requested this instruction because of Dr. Wilkey's testimony that Dr. Durrani, as the "spine surgeon" was the "captain of the ship," despite identifying that Dr. Schneeberger was at fault for causing the bleed.

{¶46} Ultimately, the court denied Durrani's proposed jury instructions, noting that the "overriding question and the question that the jury has to decide is whether or not [Schultz] should have gone to surgery or not."

2. The Absent-Defendant Instruction

{¶47} Dr. Durrani did not attend the trial. With respect to Dr. Durrani's absence, the court provided the following instructions to the jury:

> The defendant, Dr. Durrani, has not attended these proceedings in person. He is represented by counsel. You shall not speculate on why he is not present or consider his absence for any purpose except as instructed below . . . Dr. Durrani has voluntarily left the jurisdiction removing himself from plaintiff's ability to subpoena him to trial . . . When a party, such as Dr. Durrani, has relevant evidence or testimony

> within his or her control, and the party fails to produce that relevant evidence or testimony, that failure gives rise to an inference that the evidence or testimony is unfavorable to that party.

The trial court also instructed the jury regarding making inferences:

> To infer or to make an inference is to reach a reasonable conclusion of fact which you may, but are not required to, make from other facts which you find have been established by direct evidence.
>
> Whether an inference is made rests entirely with you. You may not build one inference upon another inference. But you may make more than one inference from the same facts or circumstances.

F. The Jury's Verdict

{¶48} On June 16, 2023, the jury returned verdicts for all three plaintiffs on their claims for negligence, lack of informed consent, battery, and fraudulent misrepresentation and awarded damages as follows:

Plaintiff	Compensatory Damages	Punitive Damages	Future Medical Expenses
Favaron	$3,500,000	$3,500,000	$0
Schultz	$7,000,000	$7,000,000	$1,000,000
Grabow	$1,031,000	$1,031,000	$16,000

G. Durrani's motion for a new trial and or JNOV.

{¶49} On July 19, 2023, Durrani filed a motion for a JNOV or a new trial and remittitur, in which Durrani challenged the consolidation of the cases for trial, Dr. Wilkey's testimony and the absent-defendant instruction, and that plaintiffs were permitted to pursue claims for past and future medical expenses. Durrani further asserted that plaintiffs' awards for past medical expenses were against the manifest weight of the evidence, and the awards for noneconomic and punitive damages were

subject to reduction by statute.

{¶50} On March 20, 2024, Durrani filed a memorandum in support of their motion based on the holding in *Hounchell v. Durrani*, 2023-Ohio-2501, ¶ 69-70 (1st Dist.), that the trial court's absent-defendant instruction was prejudicial, and the holding in *Densler v. Durrani*, 2024-Ohio-14 (1st Dist.), that the trial court abused its discretion by admitting Dr. Tayeb's testimony. Durrani asserted that they were entitled to a new trial based on those holdings.

{¶51} On June 24, 2024, Durrani again moved for a JNOV or a new trial in Favaron's case only, citing several issues including the consolidation of the trials, Dr. Tayeb's testimony, past medical expenses, the noneconomic-damages award, punitive damages, and set-off.

{¶52} As discussed in more detail below, on August 27, 2024, the trial court denied Durrani's motion. On the issue of consolidation, the court noted that there was sufficient commonality and that the jury was able to parse through the evidence to reach independent conclusions. As to whether Dr. Wilkey met the expert-qualification requirement under Evid.R. 601, the trial court concluded that Dr. Wilkey was engaged in active clinical practice in his field of licensure, or to its instruction at an accredited school, at least 50 percent of his professional time and that he practiced "in the same or substantially similar specialty."

H. The Evidentiary Hearing on Plaintiffs' Motions for Prejudgment Interest

{¶53} On October 30, 2024, the trial court held an evidentiary hearing on plaintiffs' motions for prejudgment interest. The court's entry noted that plaintiffs' counsel asserted that each plaintiff made two settlement offers, for $1,000,000 and $500,000, and Durrani made no counteroffer. Plaintiffs' counsel claimed Durrani

represented that they had no interest in settling with individual plaintiffs, and that they were going to "stand on their group offer." The entry noted that counsel for plaintiffs indicated that there was ambiguity as to what the group offer was, and that Durrani had offered competing values.

{¶54} Based on the evidence elicited at the hearing, the court concluded that in June 2024, Durrani's insurer made a firm global settlement offer of $4,000,000 for the approximately 400 current and pending plaintiffs engaged in Durrani litigation. Based on the de minimis value that would be afforded to each plaintiff and the high success rates of plaintiffs in the Durrani litigation paired with Durrani's failure to make a counteroffer to plaintiffs' reduced settlement offer, the court concluded that Durrani failed to make a good-faith attempt at settling the cases and plaintiffs were, therefore, were entitled to prejudgment interest under R.C. 1343.03(C).

{¶55} This appeal followed.

II. Analysis

{¶56} Durrani raises four assignments of error on appeal, taking issue with the court's trial consolidation of the cases for trial, the court's denial of the combined JNOV and new trial motions, and the court's award of prejudgment interest. Before addressing these assignments of error in turn, we want to briefly address an argument raised in Durrani's reply brief.

A. Deficiencies in Plaintiffs-Appellees' Briefing

{¶57} Durrani argues that plaintiffs' failure to adequately respond to their merit brief warrants that we hold in Durrani's favor. Durrani asserts that plaintiffs' merit briefs failed to address three of Durrani's arguments, that plaintiffs gave two-sentence conclusory rationales for their positions, and that plaintiffs failed to meaningfully respond to Durrani's arguments. Durrani also contends that plaintiffs'

briefing identifies issues completely immaterial to this appeal, such as the failure to join plaintiffs' health insurers, as well as an argument concerning the validity of a past-medical-damages award.

{¶58} In addition, we note that plaintiffs' briefing is not consistently written in complete sentences, only intermittently cites to the record, and sporadically cites to caselaw in support of their arguments.

{¶59} Durrani further argues that plaintiffs' briefs fail to adequately give this court a reason to uphold the verdicts below, and therefore, we should vacate the judgments and remand the cause for a new trial.

{¶60} Durrani, however, has failed to cite any authority in support of their argument that an appellee's deficient briefing warrants reversal. Durrani does cite *Cook v. Lockland*, 2024-Ohio-9, ¶ 28 (1st Dist.), which concerned an appellee's reliance on a citation to a law without generating an argument in support of that proposition. While the *Cook* court concluded that the appellee had waived the opportunity to argue that issue, *Cook* did not stand for the proposition that an appellant's arguments are automatically meritorious where an appellee is precluded from arguing. *See State v. Sheets*, 2025-Ohio-355, ¶ 5 (10th Dist.) ("Appellants bear the burden of demonstrating error on appeal by reference to the record of the proceeding below and must designate specific rulings by the trial court challenged on appeal.").

{¶61} Durrani also cites to the proposition that "issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on the bones." *Rowitz v. McClain*, 2019-Ohio-5438, ¶ 23 (10th Dist.), quoting *United States v. Stewart*, 628 F.3d 246,

256 (6th Cir. 2010). However, *Rowitz* concerned an appellant's obligation to sufficiently develop its arguments, not the duties of an appellee. While the failure to put forth more than a "threadbare" argument might waive an appellee's chance to argue a certain point, *Rowitz* does not stand for Durrani's assertion that they are automatically entitled to a holding in their favor. In the absence of caselaw or any statutory authority in support of Durrani's arguments concerning deficiencies in plaintiffs' appellate briefing, Durrani's arguments are not well taken.

{¶62} However, plaintiffs' briefing habits have not gone unnoticed. While the burden is on the appellant to formulate arguments in support of the contentions and relief requested on appeal, this does not mean that appellees are free to shirk their responsibilities in appearing before this court. "This court may impose sanctions against a party as a valid exercise of its inherent authority to sanction a party 'where that party's conduct thwarts the administration of justice, disobeys court orders, abuses the judicial process, or when it is otherwise necessary for the administration of justice and protection of judicial powers and processes.'" *Smith v. Gamble*, 2025-Ohio-2381, ¶ 26 (12th Dist.), quoting *DiCuccio v. Lindsmith*, 2018-Ohio-2320, ¶ 30 (10th Dist.). While we do not do so now, appellees' continued submission of briefs like the ones in this case and those in the past may expose them to sanctions in the future, consistent with this court's inherent authority to punish conduct that thwarts the administration of justice. *See id.*

B. Joinder

{¶63} Durrani asserts that the court erred in joining these cases for trial. In light of our holding in *Wilson v. Durrani*, 2026-Ohio-2279, ¶ 51-52, 84 (1st Dist.),

Durrani's contention is correct.[1]

{¶64} In *Wilson*, the majority examined the language within Civ.R. 42(A) and concluded that the rule's reference to "common question of law or fact" requires that a party seeking to join cases must demonstrate that the cases present common questions that can be answered by a single common answer. *Id.* at ¶ 58, 77. The majority explained that a common question of law concerns questions about the defendant's liability that are capable of uniform resolution across the consolidated cases. *Id.* at ¶ 57. This is distinct from common questions of fact, which concern overlapping material facts that are capable of uniform resolution at once. *Id.* at ¶ 68. It is not enough that the cases contain common allegations, nor is it enough that there are overlapping insignificant facts that do not bear on the disposition of the cases. *Id.* at ¶ 68. Questions that require unique and individualized proof are not common in nature. *Id.* at ¶ 76.

{¶65} Where the cases are not linked by common questions, then joinder is improper. However, finding that joinder was improper is but the first step in the analysis of this issue. We must next assess whether the court's improper joinder constituted harmless error. *Id.* at ¶ 84.

{¶66} Pursuant to Civ.R. 61 and R.C. 2309.59, courts must disregard errors that do not affect a party's substantial rights. "To find that substantial justice has not been done, a court must find (1) errors and (2) that without those errors, the jury probably would not have arrived at the same verdict." *Hayward v. Summa Health Sys.*, 2014-Ohio-1913, ¶ 25. To determine the existence of prejudicial error, we are

[1] While acknowledging my dissent in *Wilson*, the majority obviously did not adopt my reasoning and *Wilson* is now the law of this court and therefore is followed for purposes of determining the instant appeal, my disagreement with that opinion notwithstanding. *See Wilson* at ¶ 95-125 (Moore, J., dissenting).

"bound by the disclosures of the record." *Id.*

{¶67} In this case, the court's consolidation was improper under the analysis adopted by the majority in *Wilson*. While the plaintiffs put forth common legal claims for negligence, battery, lack of informed consent, and fraud, these claims were reliant upon individualized facts and were incapable of uniform resolution. In *Wilson* we considered the same claims and held that those were incapable of uniform resolution. *Id.* at ¶ 72. Because "no one piece of evidence could answer" whether plaintiffs needed surgery, plaintiffs' claims should not have been consolidated. *Id.* at ¶ 76.

{¶68} In holding that the court erred in consolidating these cases, we next consider whether the court's decision to do so constituted a harmless error. *Id.* at ¶ 84. As stated, to determine the existence of prejudicial error, we are "bound by the disclosures of the record." *Hayward* at ¶ 25. Following our independent review of the record, we cannot say, based on the "disclosures of the record," that any error rose beyond the harmless threshold. *Id.* The verdicts, jury interrogatories, and damage awards all support the conclusion that the jury was able to and did follow the court's instruction and treat each of these cases separately and reach an independent resolution for each case.

{¶69} Accordingly, Durrani's first assignment of error is overruled.

C. Defendant's Motion for a New Trial[2]

1. Standard of Review

{¶70} A trial court may grant a motion for a new trial under Civ.R. 59(A) for a variety of reasons. Civ.R. 59(A)(1)-(9). The standard of review of a trial court's ruling on a Civ.R. 59 motion depends upon the grounds for the motion. *See Berardo v.*

[2] While most of the issues that Durrani raised on appeal were raised in their JNOV/new trial motion, issues regarding testimony of Drs. Tayeb and Saini were preserved for appeal via objections at trial, and in other posttrial motions.

Felderman-Swearingen, 2020-Ohio-4271, ¶ 7 (1st Dist.); *Yenni v. Yenni*, 2022-Ohio-2867, ¶ 60 (8th Dist.). Here, Durrani's motion alleged that the trial court's judgments were against the manifest weight of the evidence.

2. Dr. Wilkey's Testimony

{¶71} Durrani notes that they suspected that Dr. Wilkey was testifying based on a contingency fee, and they would have challenged his trial testimony on that basis. As Durrani failed to raise this issue below and does not make a plain-error argument on appeal, that argument is waived on appeal. *See Linder v. Ohio Dept. of Aging*, 2022-Ohio-177, ¶ 15 (1st Dist.), quoting *Carlson v. City of Cincinnati*, 2020-Ohio-4685, ¶ 33 (1st Dist.) ("Except for claims of plain error, the failure to raise an issue at the trial-court level acts as a waiver of the issue on appeal," and this court will not consider arguments where a party failed to argue that the plain-error doctrine applies.). Durrani has, however, preserved their other challenge to the admission of Dr. Wilkey's testimony.

{¶72} Durrani asserts that Dr. Wilkey was not qualified to testify pursuant to Evid.R. 601, which prohibits medical experts from testifying in a medical-malpractice action unless the person devotes one half of his professional time to practice or teaching. However, based on our holding in *Courtney v. Durrani*, 2025-Ohio-2335, ¶ 74-75 (1st Dist.), Dr. Wilkey was qualified to testify as an expert pursuant to Evid.R. 601(B)(5)(c) and 1102(Y). Thus, Durrani's arguments are meritless.

3. Dr. Tayeb's Hearsay Testimony

{¶73} This court has held that Dr. Tayeb's testimony about what Dr. Durrani told patients to convince them to have surgery and Dr. Shanti's statements to Dr. Tayeb regarding Dr. Durrani constituted improper habit evidence under Evid.R. 406 in *Stephenson v. Durrani*, 2023-Ohio-2500, ¶ 37 (1st Dist.), and *Densler*, 2024-Ohio-

14, ¶ 18 (1st Dist.), as plaintiffs failed to establish the proper foundation for how often Dr. Durrani advised his patients that they would not walk again or would be paralyzed without surgery. Based on the records in those cases, this court concluded that it was uncertain whether Durrani told "five [patients] or fifty" that they would face severe consequences if they turned down his services, which was insufficient to establish a habit under Evid.R. 406. *Stephenson* at ¶ 37.

{¶74} Here, in its decision on Durrani's combined JNOV motion or motion for a new trial, the trial court acknowledged that it abused its discretion by admitting Dr. Tayeb's testimony. The trial court, however, cited to *Densler* at ¶ 19-20, in finding that Duranni failed to point to anything in the record to show that the jury would not have reached the same conclusion had Dr. Tayeb's testimony been excluded. *See Densler* at ¶ 19-20 (An improper evidentiary ruling constitutes reversible error only when the error affects the substantial rights of the adverse party or the ruling is inconsistent with substantial justice, which requires a reviewing court to weigh the prejudicial effect of the errors and determine whether the trier of fact would have reached the same conclusion had the errors not occurred.).

{¶75} Unlike in *Densler*, the jury interrogatories here do not indicate that its findings were based on Dr. Tayeb's testimony. *See id.* ("[T]he jury awarded Mr. Densler punitive damages after finding that Dr. Durrani 'acted with malice and aggravated or egregious fraud' by telling Mr. Densler, 'that he would be paralyzed without surgery and lose control of his bodily functions.'"). Based on the interrogatories, the *Densler* court held that the record provided "clear confirmation" that the jury relied on Dr. Tayeb's improperly-admitted testimony, and we could not conclude that the jury would not have returned a different verdict had the testimony not been admitted. *Id.*

{¶76} Here, the jury interrogatories stated that Dr. Durrani acted with malice or aggravated or egregious fraud based on his "disregard for the rights and safety of others." Further, there was testimony that Dr. Durrani told each plaintiff that he would "fix" them—and he told Grabow that he would lose control of his bowels without surgery—which is further indication that the jury's verdict was not based on Dr. Tayeb's testimony. Although the trial court abused its discretion by admitting Dr. Tayeb's testimony, this error was harmless as the testimony covered the same ground as other properly-admitted evidence and was therefore cumulative. *See Slupski v. McGill Dev. Corp.*, 2025-Ohio-5235, ¶ 22 (10th Dist.) ("If the testimony is cumulative of other properly admitted evidence, there is no prejudice and any error is harmless.").

{¶77} As to Dr. Tayeb's testimony regarding Dr. Shanti's opinion, this court has previously held that this portion of the testimony was admissible as a statement against a party's interest under Evid.R. 804(B)(3) because Dr. Shanti was an agent of party-defendant CAST. *See Courtney*, 2025-Ohio-2335, at ¶ 68 (1st Dist.); *Bender v. Durrani*, 2024-Ohio-1258, ¶ 78 (1st Dist.).

4. Dr. Saini's Testimony

{¶78} Durrani argues that Dr. Saini's testimony regarding what the surgeries consisted of and the differences between certain surgeries, whether Dr. Durrani improperly placed screws during Schultz's AxiaLIF, how a surgeon's dictation of notes months after the procedure was a breach of the standard of care, and his opinion that another procedure should have been used on Grabow was beyond the scope of his expertise.

{¶79} This court has previously determined that Dr. Saini was qualified to give his opinions after reviewing plaintiffs' radiological images, including whether the surgeries that Dr. Durrani performed were medically necessary, based on the scope of

his knowledge of the standards of spine surgery. *See Adams v. Durrani*, 2022-Ohio-60, ¶ 57 (1st Dist.), *overruled in part on other grounds*, *Fenner v. Durrani*, 2025-Ohio-4477, ¶ 127-128 (1st Dist.) (a radiologist is equally, if not more, qualified to determine whether an image indicates a need for surgery; thus, a radiologist is qualified to opine on a surgeon's standard of care in reviewing diagnostic images and ordering surgery based on those images).

{¶80} Although Dr. Saini made an isolated comment regarding which procedure he would have used on Favaron based on his review of Favaron's radiological images, the admission of this comment was a harmless error. The remainder of Dr. Saini's testimony regarded his opinion that Dr. Durrani fabricated each plaintiffs' radiological images and performed unnecessary surgery—which went to the heart of plaintiffs' allegations in their complaints—and was echoed by the testimony of Drs. Wilkey and Bloomfield. *See Haggard v. Durrani*, 2025-Ohio-5327, ¶ 55 (1st Dist.) ("[Dr. Saini] . . . expressed his opinion that, after reviewing plaintiffs' radiological images, the surgeries Durrani performed were not indicated . . . Dr. Saini focused on *whether* Durrani should have operated. This was permissible."). Further, Durrani elicited contradictory testimony from Dr. Purcell that all hardware and screws were properly placed that the jury was free to consider. Accordingly, although the trial court abused its discretion by permitting Dr. Saini's isolated comment, it was harmless error as Duranni cannot show that the jury's verdict would have been different had this comment been excised. The jury was free to reject Dr. Saini's comment.

{¶81} In sum, except for the trial court's harmless error in admitting Dr. Tayeb's testimony and Dr. Saini's isolated comment, Durrani's evidentiary challenges are meritless.

5. Jury Instructions

a. The Absent-Defendant Instruction

{¶82} Durrani asserts that the trial court erred by giving the absent-defendant instruction and that the specificity in the instruction was "even worse" than the general instruction in *Hounchell*, 2023-Ohio-2501, at ¶ 65 (1st Dist.). They also argue that the instruction regarding making inferences was only applicable to circumstantial evidence.

{¶83} A trial court should give a requested instruction if (1) the instruction is a correct statement of the law, (2) it is applicable to the facts of the case, and (3) a reasonable jury could reach the conclusion sought by the instruction. *Niehaus v. Durrani*, 2023-Ohio-4818, ¶ 34 (1st Dist.), citing *Murphy v. Carrollton Mfg. Co.*, 61 Ohio St.3d 585, 591 (1991). A trial court will not instruct the jury where there is no evidence to support an issue. *Sanders v. Fridd*, 2013-Ohio-4338, ¶ 17 (10th Dist.), quoting *Murphy* at 591. A trial court's decision to grant or deny a proposed jury instruction is reviewed for an abuse of discretion. *Niehaus* at ¶ 35. A trial court abuses its discretion when its decision is unreasonable, unconscionable, or arbitrary. *Id.*

{¶84} This court has considered this same instruction, verbatim, in previous *Durrani* litigation, and determined that it was not an abuse of discretion to fail to give the instruction. *See Clark v. Durrani*, 2025-Ohio-3096, ¶ 20 (1st Dist.); *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 135-136 (1st Dist.). Therefore, consistent with our prior holdings, the trial court's decision not to issue Durrani's proposed absent-defendant instruction was not an abuse of discretion, and the instruction that the jury received was legally correct.

b. Intervening-and-Superseding-Cause Instruction for Schultz

{¶85} Durrani also argues that they were prejudiced by the court's rejection of

two of their proposed jury instructions. One of these instructions would have stated that the "captain of the ship" doctrine is obsolete in Ohio. Durrani argues that this instruction would have addressed Dr. Wilkey's comments that Dr. Durrani, as the spinal surgeon supervising Schultz's surgery, was the captain of the ship. This phrase was also repeated on cross-examination. Durrani also takes issue with the court's rejection of the intervening-or-superseding-cause instruction as it relates to Schultz's case. Durrani argues that the intervening-cause language was necessary to insulate Dr. Durrani from any adverse inferences the jury may have drawn from Dr. Schneeberger causing Schultz's internal bleeding during Schultz's first surgery.

{¶86} We review whether a given jury instruction is legally correct and factually warranted de novo. *Clark* at ¶ 36. A trial court's refusal to give a requested jury instruction is reviewed for an abuse of discretion. *Niehaus*, 2023-Ohio-4818, at ¶ 34 (1st Dist.).

{¶87} In Ohio, the "captain of the ship" doctrine had stood for the proposition that an operating physician was liable for all negligent conduct that may transpire in the operating room. However, the Ohio Supreme Court has rendered this doctrine obsolete. *Baird v. Sickler*, 69 Ohio St.2d 652, 655 (1982).

{¶88} In first addressing Durrani's proposed "captain of the ship" instruction, we hold the court's refusal to give the instruction was not erroneous. Dr. Wilkey's reference was at most an inappropriate yet harmless analogy rather than the introduction of an out-of-date theory of liability. The jury's interrogatories generally asked whether Dr. Durrani was negligent in Schultz's care, how he was negligent, and whether Dr. Durrani was the proximate cause of any harm. Dr. Wilkey made a limited reference to the phrase, and the jury was able to consider ample testimony from Durrani's expert, Dr. Ammirati, that rebutted Dr. Wilkey's claim. Based on a review of

the complete record, we cannot say that the court's failure to include the "captain of the ship" instruction constituted an abuse of discretion.

{¶89} As to Durrani's argument that the superseding-and-intervening-cause instruction was necessary to address Dr. Schneeberger's culpability for Schultz's bleeding, this is also meritless. In rejecting the proposed jury instruction, the court stated the ultimate question before the jury "was whether or not Dr. Durrani was negligent in recommending that Plaintiff undergo the surgery; what occurred after Plaintiff agreed to undergo surgery was something for which Dr. Durrani was responsible." "[T]he intervening cause must be disconnected from the negligence of the first person." *Niehaus*, 2023-Ohio-4818, at ¶ 33 (1st Dist.). Schultz's injury was sustained during the procedure that Dr. Durrani negligently recommended Schultz undergo. And, nothing in the record before us shows that there was any intervening cause that broke the connection to Dr. Durrani's negligent recommendation that Schultz should undergo the surgery.

{¶90} Accordingly, Durrani's challenge is unpersuasive.

c. The Comparative-Negligence Instruction in Schultz's Case

{¶91} Durrani argues that they were prejudiced by the court's failure to adopt their proposed jury instruction regarding comparative negligence as it pertained to Schultz.

{¶92} Ohio law recognizes contributory negligence as a defense in medical-malpractice cases. *Viox v. Weinberg*, 2006-Ohio-5075, ¶ 13 (1st Dist.); *see* R.C. 2315.33. To successfully establish the defense, a defendant doctor must prove the plaintiff's own negligence proximately caused the plaintiff's injury. *Segedy v. Cardiothoracic & Vascular Surgery of Akron, Inc.*, 2009-Ohio-2460, ¶ 61 (9th Dist.). Thus, the defendant must show the plaintiff's own "want of ordinary care . . . which

combined and concurred with the defendant's negligence and contributed to the injury as a *proximate* cause thereof, and as an element without which the injury would not have occurred." (Emphasis added.) *Id.*, quoting *Brinkmoeller v. Wilson*, 41 Ohio St.2d 223, 226 (1975). In other words, "[t]he contributory negligence of the patient must have been an active and efficient contributing cause of the injury that is the basis of the patient's claim." *Viox* at ¶ 13.

{¶93} Further, "If a patient is contributorily negligent, his recovery from the defendant will be reduced according to the principles of comparative negligence." *Courtney*, 2025-Ohio-2335, at ¶ 79 (1st Dist.). Disregarding a doctor's order can constitute contributory negligence, where there is evidence the patient's conduct proximately caused or contributed to his injuries. *Id.*

{¶94} The record does not support Durrani's assertion that a comparative-negligence instruction was warranted. Durrani asserts that Schultz's labor-intensive job aggravated his preexisting back problems and caused his need for surgery. Schultz testified, however, that multiple physicians recommended *against* surgery. The contention that Schultz did not need surgery, or underwent unnecessary surgery, was echoed by plaintiffs' expert testimony. While Durrani cites Schultz's decision to hold or carry his one-year-old daughter against medical advice, they fail to point to any testimony or other evidence in the record to show that Schultz's carrying his daughter was the proximate cause of his postsurgical problems such that, had he not done so, the injury would not have occurred. "As the party asserting the affirmative defense, it was incumbent upon [Durrani] to present sufficient evidence to warrant the giving of the [comparative negligence] instruction." *Courtney* at ¶ 83, quoting *Hacker v. Roddy*, 2013-Ohio-5085, ¶ 22 (3d Dist.). Because Durrani did not present any evidence of causation, the trial court properly declined Durrani's request for a comparative-

negligence instruction.

6. The Trial Court's Errors were Harmless

{¶95} Durrani asserts that the cumulative effect of the trial court errors were prejudicial. We disagree.

a. The Properly-Admitted Testimony Did Not Present a Close Case

{¶96} Durrani argues that the cases "boiled down to a battle of the experts." Indeed, there was competing expert testimony. The expert testimony criticizing Dr. Durrani's treatment of each plaintiff, however, was not all the jury had to rely on. Schultz and Linda Favaron testified that they were previously advised by other physicians that surgery was not necessary. Grabow testified that he went to Dr. Durrani seeking nonsurgical options while Dr. Durrani pushed for surgery. As to negligence and battery, Schultz echoed expert testimony that Dr. Bohinski had also concluded that the tips of the screws that Dr. Durrani installed were "very close to a vein or artery" and were "interfering with the ability for the joint above it to move."

{¶97} In *Stratman v. Durrani*, 2023-Ohio-3035, ¶ 21-28 (1st Dist.), this court held that there was cumulative reversible error where the case "was a close one" based on a battle of the experts, evidence of improvement of the plaintiff's condition following surgery, and potential intervening causes.

{¶98} Here, Durrani's evidence that the procedures that Dr. Durrani performed improved plaintiffs' conditions was contradicted by plaintiffs' evidence. Durrani raised the fact that Schultz held or carried his daughter without offering testimony to show that this was a potential intervening cause of Schultz's postsurgical injuries. Additionally, Schultz testified that he agreed to allow Dr. Bohinski to perform the revision surgery because he was suffering with pain after Dr. Durrani operated on him, and that his pain did not improve until Dr. Bohinski performed the revision

surgery. Favaron's pain never went away, and he could not do essential self-care tasks after Dr. Durrani's surgeries. Grabow, likewise, complained that his pain did not subside, and Dr. Durrani never saw him again to address postsurgical pain.

{¶99} Further, there are no instances of multiple improper evidentiary rulings here. *Compare Worley v. Durrani*, 2025-Ohio-2245, ¶ 25 (1st Dist.), quoting *Stephenson*, 2023-Ohio-2500, at ¶ 77-85 (1st Dist.) ("This court has held that multiple improper evidentiary rulings, including admission of the Durrani Collage and evidence of Durrani's license revocations, resulted in cumulative prejudicial error that warranted a new trial where the errors were extensive and interrelated and shifted the jury's attention away from the issue of medical malpractice and toward improper character issues concerning Durrani, and where the liability issues were 'hotly contested in a close case.'"). Unlike in *Worley*, the improperly-admitted testimony in this matter was harmless.

{¶100} Although this case presented a "battle of the experts," this term regards the credibility of and the weight to be given to an expert's opinions, rather than their admissibility. *See Walker v. Ford Motor Co.*, 2014-Ohio-4208, ¶ 35 (8th Dist.). The jury apparently gave credibility and weight to plaintiffs' experts opinions over Durrani's. Based on our review of the properly-admitted evidence, this case was not a close call.

b. The Improperly-Admitted Testimony Did Not Taint the Jury or Tip the Scales in Favor of Plaintiffs

{¶101} Durrani asserts that the scales were tipped in favor of plaintiffs because the trial court permitted plaintiffs' counsel to call Dr. Durrani a "liar" in voir dire and in opening and closing statements, and testimony elicited by plaintiffs' counsel focused on Dr. Durrani's credibility. Durrani further asserts that Dr. Wilkey made

inflammatory statements about Dr. Durrani, Dr. Tayeb's "improper testimony was even more egregious" as it "painted Dr. Durrani as a grifter who routinely told his patients that they would be paralyzed without surgery," Dr. Saini's improper testimony "skewed the jury's views on matters for which [Dr. Saini] had no expertise," and the theme of plaintiffs' closing argument was that Dr. Durrani and his experts were not credible. Durrani again raises Dr. Wilkey's "captain of the ship" comment, asserting that the trial court's decision not to instruct the jury regarding the comment was contrary to law. Durrani further asserts that had the trial court properly instructed the jury on comparative negligence and intervening-and-superseding causes, a reasonable jury would have found in Durrani's favor on those defenses.

{¶102} As Durrani has correctly asserted, improper evidentiary rulings constitute reversible error upon a showing that, but for those errors, the trier of fact would have reached a different conclusion. *See Worley*, 2025-Ohio-2245, at ¶ 24 (1st Dist.). This court has previously held that a trial court does not abuse its discretion by admitting testimony from plaintiffs' expert witness referring to defendant doctor as a liar where the comments predominately related to plaintiffs' claim that defendant doctor had misrepresented plaintiff's need for surgery. *Potts v. Durrani*, 2023-Ohio-4195, ¶ 32-33 (1st Dist.). The same holds true here.

{¶103} As stated earlier, the trial court's decision not to give an instruction on Dr. Wilkey's limited reference to the "captain of the ship" was harmless, as was the admission of Dr. Tayeb's testimony and Dr. Saini's isolated comment as to which procedure should have been done on Favaron. While Durrani asserts that Schultz and Favaron chose to have surgery because "everything else had failed them," the jury's conclusion that Dr. Durrani misrepresented Schultz's and Favaron's need for surgery was supported by the record where both plaintiffs were previously advised by other

physicians not to undergo surgery or that it was not necessary. Further, we have concluded that the trial court's decision not to instruct the jury on comparative negligence and intervening-and-superseding causes was not an abuse of discretion; thus, Durrani's argument is meritless

{¶104} The jury interrogatories do not suggest that any improperly-admitted evidence shifted the jury's attention away from the issues of medical malpractice and toward improper character issues regarding Dr. Durrani. The interrogatories do, however, suggest that the jury focused on plaintiffs' claims as to informed consent and battery, that Dr. Durrani misrepresented each plaintiff's need for surgery, and Dr. Durrani was negligent in performing those surgeries. The argument that the jury was tainted, or the improperly-admitted evidence tipped the scales in plaintiffs' favor is, therefore, meritless based on our conclusion that Durrani's evidentiary challenges fail and that the trial court did not abuse its discretion in instructing the jury.

{¶105} For the above reasons, Durrani's second assignment of error is overruled.

D. Failure to Enter JNOV

1. JNOV Motions

{¶106} Under Civ.R. 50(B)(1), a party may move for a JNOV after the trial court enters judgment on the jury's verdict. Indeed, "[a] motion for [JNOV] is used to determine only one issue: whether the evidence is totally insufficient to support the verdict." (Citations omitted.) *Grieser v. Janis*, 2017-Ohio-8896, ¶ 15 (10th Dist.). We review a court's JNOV ruling de novo. *Bender*, 2024-Ohio-1258, at ¶ 123 (1st Dist.). We must assess the legal sufficiency of the evidence, while construing the evidence in a light most favorable to the nonmoving party, and may "only reverse if reasonable minds could only find in favor of the moving party." *Id.*

2. Future Medical Expenses

{¶107} Durrani argues that the jury's award for future medical expenses was against the manifest weight of the evidence. Durrani alleges that Schultz and Grabow put forth unreliable testimony to support their future-damages awards. Schultz was awarded $1,000,000 and Grabow $16,000 for future medical expenses. Durrani takes issue with Dr. Wilkey's testimony as to future medical damages and alleges that his testimony was entirely speculative. Plaintiffs argue that their damages awards were supported by testimony from their three experts. However, only one of their experts, Dr. Wilkey, testified to future medical damages.

{¶108} Durrani has contended that the court's overruling of their JNOV motion was erroneous. Durrani has expressly raised a manifest-weight challenge, however this argument disregards that when ruling on a Civ.R. 50(B) motion, the appellate court may not weigh the evidence or assess the credibility of witnesses. *Grindling v. Shiff*, 2012-Ohio-764, ¶ 14 (1st Dist.), citing *Bair v. McDonagh*, 2008-Ohio-3696, ¶ 46 (1st Dist.). However, the body of Durrani's argument seems to set forth a sufficiency argument. We interpret the body of Durrani's argument to challenge the sufficiency of the evidence supporting the jury's future-damages award.

{¶109} "A plaintiff's claim for future medical expenses must be supported by evidence that reasonably establishes the amount to be incurred in the future." *Puckett-Morrissette v. Durrani*, 2026-Ohio-1444, ¶ 30 (1st Dist.), quoting *Potts*, 2023-Ohio-4195, at ¶ 58 (1st Dist.), quoting *Setters v. Durrani*, 2020-Ohio-6859, ¶ 40 (1st Dist.). A future-medical-expenses award must be supported by reasonably certain costs and cannot be purely speculative. *Id.*, citing *Bender*, 2024-Ohio-1258, at ¶ 136 (1st Dist.), citing *Setters* at ¶ 40. "[T]here must be some data furnished to the jury upon which to predicate an estimate of future costs." *Potts* at ¶ 58, citing *Setters* at ¶ 40, quoting

Waller v. Phipps, 2001 Ohio App. LEXIS 4119, *10-11 (1st Dist. Sept. 14, 2001).

{¶110} In our opinion in *Puckett-Morrissette*, we clarified the kind of evidence necessary to support a future-damages award. *Puckett-Morrissette* at ¶ 30-37. We stated that a future-medical-expenses award "must be supported by expert testimony regarding the duration, frequency, kind of care, and costs that plaintiffs could expect in the future." *Id.* at ¶ 31, citing *Waller* at *12-13. In *Waller*, we concluded that because plaintiff's expert offered no testimony to the duration, frequency, kind of care, or cost that the plaintiff would expect in the future, the jury was left to speculate as to costs. *Waller* at *12-13. Because the award was supported by legally insufficient evidence, the appropriate remedy was to vacate the award. *Id.* at *14.

{¶111} Here, there was sufficient evidence to support Schultz's future-damages award. Dr. Wilkey testified that there was a 30 percent likelihood that every ten years Schultz would experience disc failure and would require a corrective procedure that would cost from $100,000 to $150,000 if covered by insurance, and upwards of $500,000 if not. Dr. Wilkey concluded that it was a medical certainty that Schultz would need multiple surgeries. Therefore, there was sufficient testimony in the record to support the jury's future-damages award of $1,000,000 for Schultz.

{¶112} As for Grabow, Dr. Wilkey's testimony was totally insufficient. Dr. Wilkey speculated that Grabow may need surgery but offered no testimony as to the kind of procedure, how frequently it would be needed, or what a procedure might cost. Further, Dr. Wilkey offered no testimony as to the kind of pain management or treatments that Grabow would need in the future or the associated costs. While Dr. Wilkey recalled what care Grabow received in the months following his operation, no testimony of reasonably certain medical costs was adduced. While Dr. Wilkey offered some expert testimony, this cursory testimony that Grabow may need pain

management or may need future surgery, without addressing in any particular detail the kind of care or procedures or costs that he may face, is at most speculative. This conclusion is supported by our holdings in *Puckett-Morrissette* and *Waller*. Therefore, the court erred in its denial of Durrani's JNOV motion as it relates to the jury's future-medical-expenses award for Grabow.

{¶113} Accordingly, Durrani's arguments concerning future medical expenses are overruled in part and sustained in part, and the judgment as it relates to Grabow's award is vacated.

3. Set-off with Other Tortfeasors

{¶114} Durrani alleges that the court erred by denying their motion for a set-off of the damages. Our recent opinion in *Boggs v. Durrani*, 2026-Ohio-210, ¶ 100-101 (1st Dist.), recognized that Durrani is entitled to a set-off based on plaintiffs' settlements with other defendants. The cause must be remanded for the trial court to determine the set-off amount that Durrani is entitled to.

{¶115} Durrani's third assignment of error is overruled in part. It is sustained in part as it relates to the jury's future-medical-expenses award for Grabow, and that award is vacated. It is also sustained in part as to the set-off issue, and the cause is remanded to the trial court to determine the amount of the set-off to which Durrani is entitled.

E. Prejudgment Interest

{¶116} In their fourth assignment of error, Durrani argues that the court erred by granting plaintiffs' motions for prejudgment interest. Durrani argues that plaintiffs failed to make a good-faith effort to settle because they initially demanded $1,000,000 before trial commenced, then demanded $500,000 on the second day of trial.

{¶117} While the trial court found that Durrani made a "firm settlement offer

of $4 million to the remaining Durrani plaintiffs," which included plaintiffs in the instant matter, it concluded that this amount "would have provided each of the approximately 400 remaining plaintiffs . . . with an amount that was far lower than what they likely would have received by going to trial in their individual cases." The trial court further found that, although the attorneys for plaintiffs had demonstrated that they had "rationally evaluated [their] risks and potential liability," Durrani had failed to do so in all three cases. The trial court concluded that "Defendants failed to make a good-faith effort to settle" with all three plaintiffs, while plaintiffs "made a good-faith effort to settle," and therefore, plaintiffs were entitled to prejudgment interest under R.C. 1343.03(C).

{¶118} This court has considered this issue on the same facts in *Boggs*, 2026-Ohio-210 (1st Dist.), and we held that the trial court did not err in its judgment, and we do so here. *See Boggs* at ¶ 102-112. Durrani's fourth assignment of error is overruled.

III. Conclusion

{¶119} In sum, Durrani's first, second, and fourth assignments of error are overruled, and the third assignment of error is overruled in part and sustained in part as it relates to Durrani's arguments for a set-off and as it relates to the jury's future-damages award for Grabow. Because the evidence was legally insufficient to support Grabow's future-medical-expenses award, the award is vacated. The cause is remanded to the trial court to determine the amount of the set-off to which Durrani is entitled.

{¶120} The judgments of trial court are affirmed in part, reversed in part, and vacated in part, and the cause is remanded.

Judgments affirmed in part, reversed in part, vacated in part, and cause remanded.

NESTOR, J., concurs.
BOCK, P.J., concurs in part and dissents in part.

BOCK, P.J., concurring in part and dissenting in part.

{¶121} I agree with portions of the majority opinion. For example, I agree that the trial court improperly joined the plaintiffs' actions for trial, though, as I explain below, I believe the trial court should have rejected plaintiffs' request for group trials based on their deficient motion for "group trials."

{¶122} But I part ways with the majority on several points. First, I believe the trial court improperly admitted Dr. Tayeb's testimony recalling Dr. Shanti telling him that Dr. Durrani's surgical recommendations were "overaggressive." Second, from my perspective, the trial court improperly admitted several pieces of Dr. Saini's testimony. Third, the trial court's absent-defendant jury instruction—the same instruction this court consistently has held to be an error—was not legally correct and, under the circumstances in this case, misled the jury. And finally, I am convinced that the cumulative effect of the trial court's multiple errors deprived the defendants of a fair trial. Accordingly, I respectfully dissent from these portions of the majority opinion. I concur with the remainder of the majority opinion.

A. The plaintiffs' cases should have been tried separately

{¶123} I agree with the majority that the trial court abused its discretion by joining Favaron's, Schultz's and Grabow's cases for trial. Our recent Durrani opinions have held that Civ.R. 42(A) demands a common question of law or fact, not common facts or witnesses, before a court may join cases for trial. *See Wilson v. Durrani*, 2026-Ohio-2279, ¶ 51 (1st Dist.); *see also Wheeler v. Durrani*, 2026-Ohio-2475, ¶ 86 (1st Dist.); *Weisman v. Durrani*, 2026-Ohio-2639, ¶ 86 (1st Dist.). But I write separately about this topic to emphasize two points: the plaintiffs' motion for group trials was

wholly deficient and the trial court lacked a basis for denying Durrani's Civ.R. 42(B) motion for separate trials.

1. Plaintiffs' global motion for group trials was wholly deficient

{¶124} Counsel representing hundreds of plaintiffs in their lawsuits against Durrani filed a "global" motion for "group trials" in Robert Densler's lawsuit against Durrani. *See Densler v. Durrani*, 2025-Ohio-14 (1st Dist.). But the global motion failed to identify a particularized ground for the motion, as required by Civ.R. 7(B), to justify joining or consolidating plaintiffs' actions against Durrani under Civ.R. 42(A). The global motion, instead of setting forth grounds to justify their requests for group trials, rests on high-handed conviction.

{¶125} The global motion, filed months into the COVID-19 pandemic, complained of logistics and delays associated with litigating 500 medical-malpractice actions. Frustrated with the effect of the delays on their clients, counsel unjustifiably attacked the integrity of Ohio judges and the court system. And, while the global motion discussed then-General Ulysses S. Grant, it made no mention of Favaron, Schultz, Grabow, or any other plaintiff. The closest the motion came to particularized grounds to justify group trials was its request for the plaintiffs to be grouped "rationally" based on "location of surgery and/or type of surgery and/or time frame of surgery." In support of its request for group trials, the global motion cited this court's opinion in *Suida v. Howard*, 2002-Ohio-2292 (1st Dist.), which involved consolidated trials under Civ.R. 42(A). *Id.* at ¶ 10-12. But curiously, plaintiffs replied to Durrani's memorandum opposing group trials and insisted that "Civ.R. 42(A) has nothing to do with group trials" and "consolidation does not apply to group trials."

{¶126} Of course, identifying a common question of law or fact with particularity to justify joining 500 plaintiffs' cases is no small undertaking. But

attorneys often must "turn square corners" to successfully litigate their clients' cases. *See Rock Island, A. & L. R. Co. v. United States*, 254 U. S. 141, 143 (1920). For plaintiffs' counsel, this meant identifying a common question of law or fact as the grounds for joining multiple cases against Durrani. Considering the 100-page complaints and the 400-page motions that have been filed in these cases, plaintiffs' counsel seems capable of such an undertaking. Yet, plaintiffs' counsel failed to support the request for group trials with particularized grounds, which should have revealed a common question of law or fact to justify granting the motion.

{¶127} Because it contained no mention of a common question of law or fact, or any other legitimate ground to support its request, the global motion, in essence, asked the trial court to arbitrarily consolidate plaintiffs' cases against Durrani. *See Hageman v. Bryan City Schools*, 2019-Ohio-223, ¶ 13 (10th Dist.) ("An arbitrary decision is one that lacks adequate determining principle and is not governed by any fixed rules or standard."). The global motion's deficiencies should have caused the trial court to deny plaintiffs' request for group trials, and I would hold that the trial court abused its discretion when it granted the request for group trials in light of plaintiffs' deficient motion.

{¶128} Yet, the trial court accepted the global motion's invitation to group the cases together for trial. In 2020, it entered a decision in the *Densler* case that stated, "given the number of pending cases and the ability of the Court to accommodate trials, a modification of the trial procedure appears to be appropriate." It invited plaintiffs' counsel to submit a schedule for groups of two-to-three plaintiffs, noting that the group trials "must comply with Civ.R. 42."

{¶129} To add confusion, the trial court failed to enter that decision—or any order consolidating or grouping trials—on Favaron's, Grabow's, or Schultz's

journalized dockets. And "a court of record speaks only through its journal." *Schenley v. Kauth*, 160 Ohio St. 109, 111 (1953).

{¶130} The trial court abused its discretion by granting the global motion for group trials because that motion contained no legally-sound justification for the relief it sought.

2. The trial court arbitrarily and unreasonably denied the Civ.R. 42(B) motion

{¶131} Before trial, the Durrani defendants moved under Civ.R. 42(B) to hold three separate trials. Durrani argued that joining Schultz's, Favaron's, and Grabow's trials would permit the jury to hear propensity evidence that is prohibited by Evid.R. 404 and that would warrant exclusion under Evid.R. 403. Durrani asserted that the prejudicial effect of this evidence, as well as confusion stemming from the complexities inherent in medical-malpractice cases, outweighed trial-management concerns.

{¶132} Before voir dire, the trial court heard arguments on Durrani's request for separate trials and other evidentiary requests. For the first time in the case, the trial court discussed, on the record, whether common questions of law or fact existed. It said yes: "there are common questions of law and/or facts" and "sufficient commonalty of the issues" "based upon the cases that we've held" and because "[t]he parties are substantially the same."

{¶133} The trial court's analysis of commonality at such a high level of generality suggests that it looked beyond Favaron's, Schultz's, and Grabow's complaints to find a sufficiently common question of law or fact. Rather than focusing on the questions raised by these plaintiffs' complaints, the trial court relied on "the cases [it has] held." Which cases? Nobody knows. In any event, Civ.R. 42(A) demands a case-specific and forward-looking analysis. A common question of law requires an analysis of the allegations in each plaintiff's complaint in support of the respective

claims. *See, e.g., Wilson*, 2026-Ohio-2279, at ¶ 71-72 (1st Dist.) (conducting an "element-by-element analysis."). As for a common question of fact, courts must look at the allegations and claims to discern a common question of material fact and anticipate whether a single piece of evidence will resolve that question in a uniform manner. *See id.* at ¶ 76.

{¶134} Rather than discussing the complaints' allegations and claims, the trial court looked to other Durrani cases over which it had presided. Courts should exercise caution when taking judicial notice of unrelated proceedings. The unnamed cases referenced by the trial court ""are not part of the record as defined in App.R. 9, and whether the trial court correctly interpreted such prior proceedings is not reviewable by the appellate court."" *In re J.D.*, 2015-Ohio-4114, ¶ 42 (2d Dist.), quoting *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, ¶ 7, quoting *Phillips v. Rayburn*, 113 Ohio App.3d 374, 379, fn. 1 (4th Dist. 1996). Also, we have never held that the same defendant, alone, satisfies Civ.R. 42(A)'s test for consolidating or joining cases. *See, e.g., Wilson* at ¶ 64 ("common witnesses should not be confused for the separate inquiry into whether the actions present a common factual question.").

{¶135} Moreover, even if a common question of law or fact exists, "consolidation is by no means a necessity." *Bailey v. N. Trust Co.*, 196 F.R.D. 513, 517 (N.D.Ill. 2000). Indeed, "'court[s] must balance the probable savings of time and effort against the likelihood that a party might be prejudiced, inconvenienced[,] or put to extra expense.'" *Id.*, quoting *Bernardi v. City of Scranton*, 101 F.R.D. 411, 413 (D.C. Pa. 1983).

{¶136} The trial court denied Durrani's motion for separate trials. It based its denial on efficiency considerations outweighing the risk of prejudice, seeing that "we give them notebooks that segregate everything" and limiting instructions had

successfully mitigated the risk of unfair prejudice against Durrani in past cases.

{¶137} I understand the appeal of consolidation, especially when courts are faced with hundreds of plaintiffs asserting similar claims against the same defendants. And, in the appropriate case, consolidation or joinder under Civ.R. 42 avoids unnecessary litigation costs and delays. *See Wilson*, 2026-Ohio-2279, at ¶ 50 (1st Dist.). Yet, "a trial is no more efficient when evidence that would be required in individual trials is merely presented in sequence in a consolidated trial." *Id.* at ¶ 77. And litigation is no more efficient when the parties spend years litigating whether group trials, joinder, and consolidation are even justified, both in the trial court and on appeal. I question whether plaintiffs' counsel's pursuit of group trials—and the eventual joinder of these cases—was, in fact, efficient. In law and in life, the short road is often the longest in the end.

{¶138} Still more, "convenience and economy must yield to a paramount concern for a fair and impartial trial." *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990). Indeed, efficiency comes at a cost. It is well established that "any consolidation of trials will certainly result in some prejudice." *Courtney v. Durrani*, 2025-Ohio-2335, ¶ 57 (1st Dist.). So, the "urge to aggregate litigation must not be allowed to trump our dedication to individual justice, and we must take care that each individual plaintiff's—and defendant's—cause not be lost in the shadow of a towering mass litigation." *In re Brooklyn Navy Yard Asbestos Litigation*, 971 F.2d 831, 853 (2d Cir. 1992).

{¶139} The trial court arbitrarily granted plaintiffs' motion for group trials, especially as plaintiffs' global motion did not contain a single legitimate justification for grouping the trials. And the trial court unreasonably and arbitrarily denied Durrani's motion for separate trials. These decisions were abuses of discretion.

B. The trial court improperly admitted Dr. Tayeb's testimony involving Dr. Durrani's character and reputation

{¶140} I concur with the majority that Dr. Tayeb's account of Dr. Durrani remarking to patients, "here and there," about the risks of paralysis failed to lay a foundation to admit that testimony. But to the extent that the majority holds that Dr. Tayeb's testimony involving Dr. Shanti—recalling Dr. Shanti's belief that Dr. Durrani's surgical recommendations were "overaggressive"—was admissible, I cannot join that holding. The evidence would be admissible if the only obstacle were Evid.R. 802's prohibition against hearsay evidence because we have held that this testimony falls into a hearsay exception. *See Bender v. Durrani*, 2024-Ohio-1258, ¶ 78 (1st Dist.).

{¶141} But Dr. Tayeb's testimony recalling Dr. Shanti's characterization of Dr. Durrani's surgical recommendations as being "overaggressive" faced an additional obstacle to admission: the testimony constitutes inadmissible character evidence.

{¶142} When asked about Dr. Shanti's view of "Dr. Durrani's surgical indications," Dr. Tayeb testified that Dr. Shanti had described Dr. Durrani as "significantly more on the aggressive end, if not over, overaggressive." Dr. Shanti's description of Dr. Durrani as "overaggressive" is quintessential character evidence. A person's "character" is "'a person's disposition or a general trait such as honesty, temperance, or peacefulness.'" *State v. Sims*, 2010-Ohio-6228, ¶ 10 (2d Dist.), quoting Weissenberger, *Weissenberger's Ohio Evidence Treatise* § 404.3 (2009). In the context of evidence, "'character refers to an aspect of an individual's personality which is usually described . . . as a "propensity."'" *Id.*

{¶143} Character evidence is governed by Evid.R. 404, 405, and 803(21), and the three rules must be read together. First, Evid.R. 404(A) bars character evidence to prove that a person acted "in conformity" with his character "on a particular occasion,"

unless the evidence falls within three inapplicable exceptions. *See* Evid.R. 404(A)(1)-(3). Second, if the character evidence serves a nonpropensity purpose or falls within an exception, Evid.R. 405 allows "testimony as to reputation or testimony in the form of an opinion." Third, an out-of-court statement describing the "[r]eputation of a person's character among the person's associates or in the community" is an exception to the rule prohibiting hearsay evidence. Evid.R. 803(21).

{¶144} Again, we have held that this testimony about Dr. Shanti's opinion of Dr. Durrani falls within the hearsay exception for statements against a party's interest under Evid.R. 804(B)(3). *See Bender*, 2024-Ohio-1258, at ¶ 78 (1st Dist.). But the trial court admitted the evidence on other grounds. After the parties argued about the admissibility of Dr. Tayeb's deposition testimony, the trial court concluded that the testimony was admissible under Evid.R. 803(21) because "character testimony is appropriate when you're talking about the nature and character of Dr. Durrani's representations that he's made to patients." The trial court was incorrect.

{¶145} First, Dr. Tayeb's testimony "is inadmissible under Evid.R. 803(21)." *Weisman*, 2026-Ohio-2639, at ¶ 95 (1st Dist.). Evidence of a person's reputation must reflect "what the community as a whole thought or believed." *Weisman* at ¶ 96. Admitting out-of-court statements about a person's character or reputation requires the proponent to lay a "'proper foundation . . . establishing that the witness had the means of knowing the victim's reputation.'" *Id.*, quoting *State v. Collins*, 1987 Ohio App. LEXIS 8045, *19 (12th Dist. July 27, 1987). But reputation evidence cannot rest on rumors, gossip, or "'what a few persons say or may think about the party in question.'" *Id.* at ¶ 95, quoting *Collins* at *19. As we held in *Weisman*, Dr. Tayeb's testimony was inadmissible because it failed to address "what the community as a whole thought or believed about him." *Id.* at ¶ 96. I would follow our opinion in

Weisman and hold that Dr. Shanti's opinion that Dr. Durrani was "overaggressive" was inadmissible.

{¶146} Second, the trial court admitted Dr. Tayeb's testimony, because, in its view, "character evidence is relevant" under Evid.R. 803(21) and "appropriate when you're talking about the nature and character of Dr. Durrani's representations that he's made to patients, in general, about the paralysis and about the fixing, et cetera."

{¶147} The issue is not whether character evidence is relevant. Rather, it is "too relevant." *See People v. Fitch*, 55 Cal.App.4th 172, 179 (1997); *State v. Hahn*, 2000 Ohio App. LEXIS 4678, *12 (9th Dist. Sep. 27, 2000) ("It is not that character evidence has no probative value. It's loaded with it, and that's just the trouble."). Character evidence "'is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.'" *Old Chief v. United States*, 519 U.S. 172, 181 (1997), quoting *Michelson v. United States*, 335 U.S. 469, 475-476 (1948).

{¶148} Again, Evid.R. 803(21) provides that out-of-court statements involving a person's reputation or character in the community are not barred by Evid.R. 802's rule against hearsay. But Evid.R. 803 simply identifies statements that "are not excluded by the hearsay rule." Just because "testimony is not hearsay, or is hearsay that falls within an exception, that does not mean it must be received." *State v. Morris*, 2010-Ohio-5682, ¶ 3 (9th Dist.). Indeed, "[t]he trial court still has discretion to apply Rule 403 and exclude it." *Id.* Evid.R. 403(A) demands relevant evidence's exclusion when its probative value is "substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury."

{¶149} And Evid.R. 404 is simply a concrete application of Evid.R. 403(A) to the frequent issue of character evidence. *See United States v. Guardia*, 135 F.3d 1326,

1330 (10th Cir. 1998) ("the ban on character evidence is merely an application of Rule 403 to a recurring issue."). The Staff Notes to Evid.R. 404(A) recognize as much, explaining that "[c]haracter evidence is relevant in that it tends to prove a material proposition but its prejudicial effect substantially outweighs its probative value and it creates collateral issues."

{¶150} Dr. Tayeb's testimony recalling Dr. Shanti's opinion about Dr. Durrani was relevant to prove that Dr. Durrani's "overaggressive" character was consistent with his recommendations for surgery for these three plaintiffs. Look no further than the closing statements, where plaintiffs' counsel deployed Dr. Shanti's opinion to bolster the credibility of their experts and impugn the credibility of Durrani's experts. It should come as no surprise that, in the majority's words, "[t]he jury apparently gave credibility and weight to plaintiffs' experts opinions over Durrani's."

{¶151} I would hold that Dr. Tayeb's testimony, which was used to prove Dr. Durrani's "disposition to commit certain acts," was inadmissible. *See State v. Hartman*, 2020-Ohio-4440, ¶ 22.

C. Dr. Saini's testimony repeatedly exceeded the scope of his expertise

{¶152} I concur with the majority that Dr. Saini, as an expert in neuroradiology, may testify about his impressions of imaging and whether imaging shows that surgery is medically indicated. I also agree that Dr. Saini improperly testified that a discectomy and foraminotomy would have addressed Favaron's issues. *See Weisman*, 2026-Ohio-2639, at ¶ 105 (1st Dist.) ("determining the type of surgery necessary to correct those conditions fell within the purview of a surgeon."). But I dissent because there were additional examples of the trial court improperly permitting Dr. Saini to testify outside his area of expertise.

{¶153} Dr. Saini improperly critiqued Dr. Durrani's choice of which pedicle screw to use for Schultz's procedure and testified that the pedicle screws caused "extensive air and blood in the . . . peritoneal compartments." We have held that Dr. Saini's "testimony criticizing the spinal fusion that Durrani performed on [the plaintiff is] improper." *Wheeler*, 2026-Ohio-2475, at ¶ 104 (1st Dist.). In *Wheeler*, we explained that testimony critiquing the placement of pedicle screws and suggesting that the screws "could result in 'an aggravation of the scoliosis,' 'a lot of degenerative changes,' or 'problems with the nerves coming out'" falls "within the knowledge of a surgeon, and it exceeds the scope of Dr. Saini's expertise as a radiologist." *Id.*

{¶154} Consistent with *Wheeler*, I would hold that Dr. Saini's testimony about the cause of the blood and air in Schultz's peritoneal compartments was inadmissible and fell outside of the scope of his expertise.

D. The absent-defendant instruction

{¶155} I dissent from the majority's conclusion that the absent-defendant jury instruction was "legally correct."

{¶156} In relevant part, the trial court instructed the jury:

> Dr. Durrani[] did not attend these proceedings in person. . . . You shall not speculate on why he is not present or consider his absence for any purpose except as instructed below.
>
> Dr. Durrani has voluntarily left the jurisdiction removing himself from plaintiff's ability to subpoena him to trial. When a party such as Dr. Durrani has relevant evidence or testimony within his or her control, and the party failed to produce that relevant evidence or testimony, that

> failure *gives rise* to an inference that the evidence or testimony is unfavorable to that party.

(Emphasis added.)

{¶157} This court, in multiple cases, has held that the trial court erred by providing this exact absent-defendant instruction. *See Jones v. Durrani*, 2024-Ohio-1776, ¶ 34, 38 (1st Dist.) (the instruction "necessarily requires the inference to be made."); *see also Wheeler*, 2026-Ohio-2475, at ¶ 107 (1st Dist.); *Courtney*, 2025-Ohio-2335, at ¶ 84-87 (1st Dist.); *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 130-137 (1st Dist.); *Fenner v. Durrani*, 2025-Ohio-4477, ¶ 69-74 (1st Dist.). I would follow our precedent and hold that the trial court erred by providing this instruction.

{¶158} Moreover, unlike in our previous cases, I would hold that the error misled this jury. In *Jones*, *Wheeler*, *Courtney*, *Ravenscraft*, and *Fenner*, this court held that while a portion of the instruction required a negative inference, the jury charge as a whole adequately informed the jury that it need not infer that Durrani had unfavorable evidence based on his absence. *See Jones* at ¶ 37. So, in the ordinary case, these jury instructions would not mislead the jury.

{¶159} But here, the trial court's erroneous instructions were compounded by plaintiffs' counsel's closing argument. Throughout his closing argument, plaintiffs' counsel distorted the law by insisting that the jury was required to draw every negative inference from Dr. Durrani's absence.

{¶160} At one point during closing, counsel explained that a jury "may infer that" Dr. Durrani's testimony "would not have helped his case." So far, so good. But then plaintiffs' counsel littered the closing with misleading and false statements about appropriate inferences drawn from a defendant's absence. Counsel told the jury: (1) Dr. Durrani's absence "means that there is a negative inference in this case"; (2) the

jury "do[es]n't get to just say" that Dr. Durrani had many reasons to be absent from trial because "the consequence of being a missing witness is that, which is if he were sitting there (indicating), the words coming out of his mouth would not be favorable to him"; (3) the jury had to infer that Dr. Durrani's testimony "wouldn't have been good for him"; (4) "You can't say, well, I assume Dr. Durrani did it correctly. No. You don't assume that. The law says you do the opposite. You infer he didn't do it correctly because he wasn't here to explain it"; (5) "Because if he would have come in to explain it, the inference is, it wouldn't have been a very good explanation for him. That's how that works. That's the instruction. That's the law you follow"; and (6) while discussing Grabow's lack of informed and verbal consent, plaintiffs' counsel reminded the jury that Dr. Durrani was not present to testify and "[w]e already know that it wouldn't be favorable to him if he was."

{¶161} Of course, counsel's remarks during closing arguments are not jury instructions. But before the trial court had an opportunity to instruct the jury, plaintiffs' counsel launched a final salvo peppered with distortions of the law involving what adverse inferences jurors could draw from Dr. Durrani's absence. And the trial court made no attempt to correct these misstatements of law. True, counsel has significant leeway during closing arguments, when counsel can "summarize the evidence presented and assist the jury in analyzing, evaluating, and applying the evidence." *Kassay v. Niederst Mgt.*, 2018-Ohio-2057, ¶ 43 (8th Dist.). But the "'judge who presides over a cause is not a mere umpire.'" *Pesek v. Univ. Neurologists Assn.*, 87 Ohio St.3d 495, 501 (2000), quoting *Jones v. Macedonia-Northfield Banking Co.*, 132 Ohio St. 341, 351 (1937). The trial court judge has a duty "'to see that counsel do not create an atmosphere which is surcharged with passion or prejudice and in which

the fair and impartial administration of justice cannot be accomplished.'" *Id.*, quoting *Macedonia* at 351.

{¶162} The trial court gave the jury no reason to suspect that counsel's misrepresentations of the law were anything but correct, which is especially troubling considering the erroneous absent-defendant instruction. I fail to see how the trial court's jury instruction as a whole neutralized the taint caused by plaintiffs' closing argument. I would hold that the absent-defendant instruction was prejudicial error.

E. The cumulative errors deprived Durrani of a fair trial

{¶163} Even if the trial court's errors described above—improperly joining the three lawsuits for trial, admitting Dr. Tayeb's improper character testimony, permitting Dr. Saini to testify outside of his expertise, and providing a misleading absent-defendant instruction—were individually harmless, their cumulative effect denied Durrani the right to a fair trial.

{¶164} When a trial court errs, we must decide whether it affected "the substantial rights of the adverse party." *Weisman*, 2026-Ohio-2639, at ¶ 128 (1st Dist.), quoting *Beard v. Meridia Huron Hosp.*, 2005-Ohio-4787, ¶ 35. To do so, we weigh the error's prejudicial effect and then determine if the jury likely would have reached the same verdict without the error. *Id.* In other words, we ask if ""the jury . . . would probably have made the same decision"" in an error-free trial. *Bender*, 2024-Ohio-1258, at ¶ 93 (1st Dist.), quoting *Beard* at ¶ 35, quoting *O'Brien v. Angley*, 63 Ohio St.2d 159, 164-165 (1980).

{¶165} Even if a trial court's errors, standing alone, are individually harmless or only marginally prejudicial, the cumulative-error doctrine allows a reviewing court to reverse a judgment when a trial court's multiple errors' cumulative effect deprives a party of fair trial. *See Mattox v. S.W. Gen. Health Ctr.*, 2026-Ohio-3339, ¶ 96 (8th

Dist.); *see also Courtney*, 2025-Ohio-2335, at ¶ 88 (1st Dist.), citing *Woods v. Douglas*, 2024-Ohio-338, ¶ 51 (8th Dist.).

{¶166} Beginning with the prejudicial effect, the many errors resulted in Durrani being tried by inadmissible character evidence, other-acts evidence, and improper inferences, rather than the properly-admitted evidence involving Durrani's treatment of these three plaintiffs.

{¶167} To me, the prejudice is clear. The trouble began with the trial court joining Favaron's, Schultz's and Grabow's cases. Joining cases against "the same physician permit[s] the factfinder to hear details about another pending malpractice action against the defendant doctor." *Courtney* at ¶ 102 (Bock, J., concurring); *see Weisman*, 2026-Ohio-2639, at ¶ 130 (1st Dist.). This is why "joint professional-liability trials may be a trojan horse for [] improper character evidence." *Courtney* at ¶ 104 (Bock, J., concurring). We have held that the erroneous consolidation of plaintiffs' trials, alone, is reversable error where the record reveals "contamination across cases" and indicates that the jury would have reached a different conclusion if the plaintiffs' cases were tried separately. *See Wilson*, 2026-Ohio-2279, at ¶ 91 (1st Dist.). And we have held that prejudice caused by interrelated errors is clear where the errors "shift[ed] the jury's attention away from the issue of medical malpractice and towards improper character issues concerning Dr. Durrani." *Stephenson v. Durrani*, 2023-Ohio-2500, ¶ 79 (1st Dist.).

{¶168} During closing arguments, plaintiffs capitalized on the consolidation of Favaron's, Schultz's, and Grabow's cases to stress the quantity of the evidence against Durrani. Indeed, plaintiffs' closing argument reveals a "strength-in-numbers" theory of the cases. Counsel explained, "Credibility of my clients is an issue in this case. You have to decide if you believe what *they've* been telling you the truth about *their* visits

with Dr. Durrani . . . what *they* tell you about Dr. Durrani's ability to convince *them*." (Emphasis added.) Plaintiffs' counsel also leveraged the consolidation to frame the battle of the experts, with "17 different readers of radiology" for the plaintiffs and only two for the defense. Counsel continued,

> Dr. Durrani doesn't agree with one of the 17. Dr. Purcell doesn't agree with any of the 17. That doesn't make – you know, apply logic, because you're allowed to use philosophical concepts of logic.
>
> Does that make any sense that there could be 17 incompetent medical providers to these three people, and the only people that are competent is a radiologist from Northern California and a guy who's left the country? And all of these people (indicating), they don't know what they're talking about.
>
> Credibility of the witnesses. It's a must.

{¶169} But consolidation was not the only error that bolstered plaintiffs' cases. Plaintiffs' counsel relied on Dr. Tayeb's testimony containing impermissible character evidence to support Favaron's, Schultz's, and Grabow's claims. Throughout plaintiffs' closing argument, their counsel told the jury that his clients' and plaintiffs' experts' testimony involving informed consent "makes perfectly good sense" because of Dr. Tayeb's testimony. He told the jury that Dr. Durrani's treatment of the plaintiffs "falls right in line with the things Dr. Tayeb testified to" and he urged the jury to "[l]isten to Dr. Tayeb." And again, he insisted that Dr. Durrani's absence from trial carried negative inferences, particularly for Favaron's, Schultz's, and Grabow's informed-consent claims.

{¶170} Of course, the trial court's effort to cure an error is relevant to the prejudice analysis. The trial court did remind the jury that it must focus on each

plaintiff's case individually. Typically, I would presume that the jury followed the trial court's instructions. But the jury's verdicts and interrogatories undermine that presumption. The jury returned identical verdicts for all three plaintiffs, finding Durrani liable to Favaron, Schultz, and Grabow for negligence, battery, a lack of informed consent, fraud, and punitive damages. We have held in consolidation cases that split verdicts suggest that the jury compartmentalized the cases and evidence. *See Jones*, 2024-Ohio-1776, at ¶ 26 (1st Dist.); *see also Courtney*, 2025-Ohio-2335, at ¶ 58 (1st Dist.); *Bender*, 2024-Ohio-1258, at ¶ 102 (1st Dist.); *but see Wilson*, 2026-Ohio-2279, at ¶ 89 (1st Dist.) (split nonunanimous verdicts suggest that "the jury had doubts"); *Weisman*, 2026-Ohio-2639, at ¶ 129 (1st Dist.); *Greene v. Durrani*, 2023-Ohio-3069, ¶ 26 (1st Dist.) (split nonunanimous verdicts from shifting juror coalitions "reflects a compromise verdict.").

{¶171} But jury interrogatories provide the biggest clue of prejudice. Sometimes, jury interrogatories suggest that the jury relied on erroneously-admitted evidence to find Durrani liable. *See Wheeler v. Durrani*, 2026-Ohio-2475, ¶ 125 (1st Dist.). In our consolidation cases, we have held that errors are harmless where "jurors differentiated between the unique facts for each plaintiff" in the interrogatories. *See Meadows v. Durrani*, 2026-Ohio-3324, ¶ 54 (1st Dist.); *see also Krabacher v. Durrani*, 2026-Ohio-3368, ¶ 38 (1st Dist.). Significantly, the jury interrogatories in this case include identical findings for its basis to award punitive damages to Favaron, Schultz, and Grabow. In each case, it determined that Dr. Durrani "[d]isregard[ed] [] the rights and safety of others." The jury's identical interrogatories following identical verdicts, the sheer number of trial court errors, and the severity of those errors convince me that those errors contaminated the jury's verdicts, and that the jury probably would not have reached the same result without the errors.

{¶172} Holding separate trials, excluding Dr. Tayeb's testimony, confining Dr. Saini's testimony, and properly instructing the jury about Dr. Durrani's absence would have significantly weakened plaintiffs' strength-in-numbers theory. The trial would have been about the quality of the medical treatment Dr. Durrani provided to his former patients, rather than Dr. Durrani's character, propensity to behave in a particular manner, and what he was hiding by his absence.

{¶173} The result would have been a quintessential battle of the experts. The same decision was possible, but not probable. I would hold that the cumulative effect of the errors was not harmless and that Durrani is entitled to a new trial.

{¶174} Therefore, I respectfully dissent.