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Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN HODGE, an individual; HODGETWINS, LLC, a limited liability company,

Defendants.

Case No. 2:25-cv-01858-APG-BNW

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO MODIFY THE SCHEDULING ORDER

[ECF NO. 67]

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC oppose Plaintiff's Motion to Modify the Scheduling Order (ECF No. 67) to the extent it seeks to extend any deadline other than the deposition of Plaintiff Steve Smothermon and the resulting dispositive motion deadline. In the alternative, if Plaintiff insists his presence is required to assist his counsel as discovery winds down (even though it has not been thus far), Defendants suggest a complete **stay** of this case until Plaintiff Smothermon is healthy enough to sit for deposition. It would be inequitable to extend discovery in a case where Defendants have worked diligently to move this case toward summary judgment, and Plaintiff has instead exhibited no diligence at all. It would be especially inequitable when the Plaintiff has not been candid about the reasons for the lack of diligence, and seems to be both exaggerating the effect of a medical issue and using it as a pretext for a long-pre-existing lack of diligence.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

Plaintiff had back surgery on July 1, 2026. He did not say anything about it for six weeks. For those six weeks, when it served the Plaintiff's strategy, it was not an issue. On the day of his surgery, Plaintiff filed a motion to amend. When Defendants requested a short extension of the hearing on that Motion, it was *Plaintiff* who vehemently opposed any delay. Plaintiff served an expert disclosure on July 16 and a rebuttal disclosure a month later. His counsel defended four depositions. Plaintiff *now* claims that *nothing* in this case can proceed because of this back surgery, yet this case steamed ahead after that surgery until he decided he wanted more discovery.

Plaintiff *now* says he cannot be deposed before the end of discovery. That *might* be fair enough, but it appears to be an exaggeration of the condition to scratch out a litigation advantage. He says that no discovery can go forward because he cannot assist his counsel at the last minute. ECF No. 67 at 6. Defendants proposed a reasonable compromise on August 13: Extend only deadlines that could be affected – the cut-off for Plaintiff's deposition; and Defendants' dispositive motion deadline to follow it. ECF No. 66. Defendants are willing to accommodate claimed incapacity but not lack of diligence.

Plaintiff demands a great deal more than an accommodation for a claimed condition. He wants 3½ more months of unfettered discovery. In the 4½ months he already had, he conducted no depositions, filed no motions to compel, enforced no subpoena, and declined to take an expert deposition Defendants offered him and blew off a third-party deposition. He is seeking to have the Court give him a "do over" due to lack of diligence. Granting it would be unjust.

2.0 BACKGROUND

2.1 Plaintiff's Counsel Refused to Provide Information About This "Necessity"

On Monday, August 3, 2026, Defendants' counsel asked Plaintiff's counsel, Nicole Westbrook, for five available deposition dates for Plaintiff Smothermon. ECF No. 66-3. Ms. Westbrook answered that she would get back to Defendants, though perhaps not by August 6. She never got back to them, so Defendants asked again on August 12, 2026. *Id*.

The next day, Plaintiff's counsel responded at 7:48 a.m. that "due to a medical issue" her client could not sit for a deposition "until likely November" and asked Defendants to stipulate to a discovery extension "through the end of the year." *Id*. In her response, Plaintiff's counsel did not mention a motion to compel, did not mention any alleged deficiencies with Defendants' discovery responses, and did not mention any failure to get subpoena responses from third parties. *Id.* Plaintiff did not raise those issues at all until he filed the instant Motion.

Fifteen minutes later, Defendants' counsel responded with a fair question: "*Can you provide something that helps confirm this medical issue?*" He added that Defendants would consider extending discovery for the limited purpose of completing Plaintiff's deposition, but not for **all** discovery. ECF No. 66-3. Five minutes later, Plaintiff's counsel answered: "*We will let the Court know you oppose our requested extension*." *Id*. She did not provide any information. Attempting to accommodate Mr. Smothermon, Defendants offered to take the deposition remotely, in short sessions, at any location Plaintiff chose including his home or a hospital, and on any date before September 18, then asked what his availability was given those offered concessions. *Id*. Ms. Westbrook did not respond. ECF No. 66-1, at ¶ 9. Instead, Plaintiff's counsel spent that day finding a doctor to conform a letter to her litigation strategy needs. She found one on August 14, 2026, and bases her Motion upon it. Plaintiff's certification that this motion follows "personal consultation and a sincere effort to resolve the matter" lacks candor. His counsel made no attempt to meet and confer before filing this Motion in contravention of LR 26-6. *See* Declaration of Ronald Green ("Green Dec."), at ¶ 3. All "efforts" are described above.

2.2 Plaintiff's Discovery Thus Far

Discovery closes on September 18. ECF No. 49 at ¶ 3. Plaintiff blames Defendants. He claims that the discovery period needs to be extended because Defendants have not produced documents that include "metadata, the Google account/search-activity data, and the Meta/Facebook platform logs." ECF No. 67 at 2. Plaintiff first demanded this information on May 26, 2026. *See* May 26, 2026, Westbrook Letter, attached to the Green Dec. as **Exhibit 1**. Three days later, Defendants explained to Plaintiff's counsel that they did not have the information

Plaintiff sought. *See* May 29, 2026, Green Letter, attached to the Green Dec. as **Exhibit 2**. Since then, the parties have gone back and forth with Defendants attempting to glean what information Plaintiff hoped to gain through the production of these non-existent metadata, search logs, and platform logs but have never gotten a straight answer. *See, e.g.,* July 31, 2026, Green Letter, attached to the Green Dec. as **Exhibit 3**. Defendants speculated as to what it might be for, and offered to *stipulate to all the facts it could likely prove. See* July 24, 2026, Green Letter, attached to the Green Dec. as **Exhibit 4**. Plaintiff's counsel's response? "We do not want a stipulation, we want the facts." *See id.* When Defendants offer to stipulate to facts, and Plaintiff refuses that stipulation, what is really going on? Plaintiff is trying to multiply the proceedings and harass Defendants. It cannot be that they are eagerly seeking information.

Regardless of what Plaintiff claims to need this information for, he has not been diligent in seeking it, and discovery should not be extended for it.

Defendants have taken four depositions in this case. Plaintiff has taken zero. He has never inquired about deposition availability for any of the Defendants, or Defendants' expert. Green Dec., ¶ 4. Defendants volunteered availability for their expert, but Plaintiff has made no attempt to depose him or schedule his deposition. ECF Nos. 66-4, 66-5.

The only deposition Plaintiff has even *inquired* about is third party witness Nathan Hughes. Mr. Hughes' counsel offered Mr. Hughes for deposition on August 26, 2026. *See* Declaration of Stephen Parker ("Parker Dec."), ¶ 6. Plaintiff's counsel, Nicole Westbrook, issued a subpoena for the deposition. *See id.*, ¶ 7. However, as of August 24, 2026, she has not confirmed whether she *will* depose him on that date, has not scheduled a court reporter, and has not followed up regarding the logistics of the deposition. *See id.*

Ms. Westbrook asked defense counsel on August 7, 2026, if he was available on August 26 for Mr. Hughes' deposition. *See* August 20, 2026, Email Exchange, attached to the Green Dec. as **Exhibit 5**. Mr. Green responded that he was. *See id.* On August 12, 2026, Mr. Green asked Ms. Westbrook if the deposition would be remote or in person since it could require him to travel to Arkansas. *See id.* She never responded. *See id.* She has never confirmed to Mr. Green whether she

actually intends to depose Mr. Hughes on August 26. *See id.* Plaintiff has served discovery requests upon Defendants, which Defendants have timely answered. Otherwise, Plaintiff has done nothing. He has not been diligent. He has no basis to ask for an extension.

2.3 The Doctor's Note

The doctor's note provided by Smothermon was written for this Motion, not for his care. It is dated August 14, 2026, one day *after* Defendants offered the four accommodations, and its paragraphs answer them in the order they were offered. Paragraph 1 addresses sitting at a camera. Paragraphs 3 and 4 address sitting still. Paragraph 6 says Plaintiff cannot attend any proceeding by Zoom, video, audio, or in person, or "otherwise be interviewed for any reason." ECF No. 67-2. Treating physicians do not ordinarily opine on whether their patients may be *interviewed* or whether they may sit in front of a camera. The letter also says Plaintiff cannot travel "for at least three (3) months" after a July 1 surgery, which runs to early October, and then says the soonest he can be deposed is early November. *Id*. It comes from a pain physician in Albuquerque, about a procedure performed at Barrow Brain and Spine in Gilbert, Arizona, and is captioned a "Medical Excuse." *Id.* Nothing from the operating surgeon or his office appears anywhere.

The restrictions do not match published guidance for this procedure. For a lumbar fusion, the National Library of Medicine tells patients not to sit "longer than 20 or 30 minutes at one time" and clears short driving trips after the first two weeks. *Spine Surgery – Discharge*, MedlinePlus Med. Encyclopedia, U.S. Nat'l Libr. of Med. (rev. June 4, 2025), attached to the Green Dec. as **Exhibit 6**. A limit on how long a patient may sit at a stretch is not a bar on sitting, and it is why Defendants offered to break the deposition into short sessions. One study of this procedure found that patients not taking opioids may be able to resume driving as early as two weeks after surgery. *See* Trevor P. Scott et al., *When Is It Safe to Return to Driving After Spinal Surgery?*, 5 Global Spine J. 274 (2015), attached to the Green Dec. as **Exhibit 7**. The letter never identifies Plaintiff's medications, so that qualification cannot be tested.

That all said, it should inform the Plaintiff's credibility in this motion. Nevertheless, Defendants do not seek discovery into Plaintiff's medical condition. They do not ask to depose Dr.

Gonzalez and do not ask to see his records. That would be more litigation than it is worth. A physician says Plaintiff can be deposed in early November. Plaintiff's Motion asks for an extension of *everything* until December 31. The point of this opposition is not that an accommodation should be denied. It is that anyone can see that this is a mere pretext. Plaintiff seeks a discovery extension he is not entitled to, and his Motion should be mostly denied. To the extent it is granted, it should be granted in a limited way, narrowly focused on the claimed medical impediment. Smothermon's deposition alone can be put off or the case can be paused. But the unearned and undeserved advantage of additional discovery time for the Plaintiff should be denied.

3.0 ARGUMENT

3.1 Plaintiff Has Not Been Diligent

A scheduling order may be modified only for good cause. Fed. R. Civ. P. 16(b)(4). Good cause "primarily considers the diligence of the party seeking the amendment," and "carelessness is not compatible with a finding of diligence." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Plaintiff adds that diligence is "measured by the movant's conduct throughout the entire period of time already allowed." ECF No. 67 at 4. Defendants agree, and ask the Court to apply that standard.

The Scheduling Order issued on April 10, 2026. Plaintiff filed this motion 129 days later. He took no depositions in that time. His own statement under LR 26-3(a) lists four depositions taken in this case, all by Defendants. ECF No. 67 at 7. His list of remaining discovery names five depositions – four he has never noticed and one his counsel refuses to confirm. *Id*. at 8.

Defendants offered Plaintiff six dates for the deposition of their expert, Matt Shupe, starting July 28, 2026, and followed up twice. ECF No. 66-4. Plaintiff's counsel said she would let Defendants know *if* she wanted to depose Mr. Shupe. She never did. On July 31, Defendants told her Mr. Shupe was not available in September[1] and that they would not agree to extend discovery if she changed her mind later. ECF No. 66-5. That is the extension she now asks the Court to grant.

[1] However, Shupe offered to make himself available even during a number of business trips in August – seeking to give maximum accommodation to the need to depose him.

Plaintiff also promised on May 4 to serve a narrower request for the financial records he wanted, after Defendants said they would likely produce them under a protective order. ECF No. 53-1, ¶¶ 13-15. He never served it. He says subpoenas to Kylie Howerton and Blake Rynders went unanswered, but they have given him all responsive documents that they have. *See* Exhibit 4.

3.2 There Is No "Metadata Issue"

The only part of Plaintiff's motion that reaches past his own deposition is the claim that the remaining depositions "cannot responsibly proceed" until Defendants produce native files, metadata, Google activity data, and Meta logs. ECF No. 67 at 2. As stated above, Defendants informed Plaintiff that this information does not exist[2] and have spent four months asking Plaintiff what he is seeking through the production of metadata in an attempt to get him the information he desires — including by stipulation. Plaintiff and his counsel have never explained what they are looking for, have ignored Defendants' inquiries regarding whether the parties could stipulate to whatever that was, and primarily seek metadata regarding an email from Plaintiff Smothermon's employee, which he already has access to, and Defendants do not dispute its transmission or receipt. *See* Exhibit 4. Plaintiff's attorneys have never made any attempt to compel Defendants to produce this information (that they do not have), despite complaining about it for three months.

Plaintiff also has the order of operations backwards. He says he cannot take the Rule 30(b)(6) deposition on "electronically-stored-information systems, preservation practices, and agent authority" until Defendants produce the electronically stored information. ECF No. 67 at 8. That deposition is how a party finds out what data exists and whether it was preserved. Nothing was, because there was no duty nor reason to do so. Plaintiff's new theory of this case seems to be that the post he demanded be deleted was … actually deleted.

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[2] The reason it does not exist is that the post in question was deleted the day that Plaintiff's employee demanded it. Even his own lawyer did not see that as a litigation hold. *See* Carroll Deposition Transcript at pp. 32-35 (attached to Green Dec. at **Exhibit 8**).

Plaintiff does not need a Google Takeout export to ask Kevin Hodge which account he was signed into.[3] And Plaintiff has never moved to compel despite (falsely) calling Defendants' production deficient in May 2026. *See* Exhibit 1. Now, three months later, he vows to "promptly move to compel." ECF No. 67 at 2. That ship sailed months ago.

3.3 Plaintiff Has Not Been Candid with the Court

The only support Plaintiff offers for extending anything other than his deposition is that Defendants have not produced documents they told him they did not have three months ago. ECF No. 67 at 5. In late May 2026, Ronald Green wrote to Ms. Westbrook that Defendants do not have the "native browser histories, search logs, internal emails, or Slack communications" she had demanded, that "[o]ur clients cannot produce what they do not have," and that "[t]heir practice is to browse in incognito mode." *See* Exhibit 2. Mr. Green declared the letter restates what he represented during a May 4 telephone conference with Plaintiff's counsel. ECF No. 53-1, ¶ 9.

Defendants ask that the misrepresentations in Plaintiff's Motion not be credited in order to accommodate this strategic maneuver. Plaintiff has known that Defendants do not have these documents for over three months. He has made no effort to compel this information, and even if he did, it does not exist for him to compel.

Plaintiff Smothermon describes a months-old metadata dispute he has never defined and never brought to the Court despite ample opportunity to do so. And which he refuses to resolve by Defendants stipulating to the facts that it could reasonably prove. He cannot now use that dispute to demand three more months of discovery.

3.4 Plaintiff's Requested Relief Is Too Broad

Plaintiff argues that his condition keeps him from "meaningfully assisting counsel in preparing for his deposition and in evaluating the discovery that must precede it." ECF No. 67 at 6. If that were right, no third-party deposition could have gone forward while Plaintiff was unwell. No motion could have been filed. Clearly that has not happened. Plaintiff has moved to amend.

[3] He has already stated under oath that he was not signed in to any account in response to an Interrogatory.

Thomas Carroll was deposed on July 21, Robert Fisher on August 6, and Krisha Mason and Michael Morin on August 11. Plaintiff's counsel appeared at each one. Plaintiff does not claim his absence hurt her, and does not explain how the depositions he now wants differ from the four he already sat out.[4]

Plaintiff's reliance on *Ramos v. Sables, LLC*, No. 2:25-cv-00776-APG-BNW, 2026 WL 2099183 (D. Nev. July 21, 2026), cuts against him. The impediment there was counsel's illness, which went to the ability to conduct discovery. Counsel here has been working throughout. And *Ramos* granted a limited extension for identified remaining depositions, and Defendants have already consented to extending the deadline for Plaintiff's deposition.

3.5 Expert Deadlines Cannot Reopen

Plaintiff does not ask to reopen the July 16 or August 15 expert deadlines, but for the sake of completeness and a diligent effort to avoid defensive waiver, this will be addressed. Expert discovery cannot be reopened. It is "'significant' when a party is seeking to reopen discovery rather than extend a discovery deadline." *W. Coast Theater Corp. v. City of Portland*, 897 F.2d 1519, 1524 (9th Cir. 1990). A request to extend *unexpired* deadlines is premised on a showing of good cause, while reopening an *expired* deadline requires a showing of excusable neglect. *See Tommy Lynch as Adm'r for the Est. of Tammy Lynch v. Hernandez*, 2024 U.S. Dist. LEXIS 222644, at *4 (D. Nev. Nov. 7, 2024), citing *Branch Banking & Trust Co. v. DMSI, LLC*, 871 F.3d 751, 764-65 (9th Cir. 2017).

Plaintiff's Motion argues good cause but does not address excusable neglect. ECF No. 67 at 4. Plaintiff does not seek, and has no grounds to seek, an extension of expert discovery. In any case, whatever happens, the Court should be clear that it is not reopening any expert deadlines.

[4] And what could Mr. Smothermon need to do to prepare for the defendants' depositions? There are virtually no facts in dispute. The post was posted. One of the defendants admits posting it. The photo is the wrong guy. The defendants admit that. The parties agree that the post was up for a few hours. The only issue to resolve was whether the mistake was done on purpose (a theory which it seems even the plaintiff abandons) or if it was reckless. The facts are already in evidence to make that determination.

3.6 In the Alternative, the Case Should Be Stayed

If the Court credits the claim that Plaintiff cannot take part in his own case, the answer is to stop the clock completely – giving everyone a "time out." Defendants could accept that as somewhat equitable. Freeze the case. Every deadline stays where it is. Neither party gains discovery time it did not have on August 17, 2026. The expert disclosure deadlines are closed and stay closed. When Plaintiff is well enough to proceed, the remaining time runs from where it stopped. Defendants ask for one carve-out to that plan though: Plaintiff be free to file the motion to compel he has been promising since June, and Defendants will respond. That motion does not require Plaintiff to sit upright.

What Plaintiff has proposed is not a freeze. What Plaintiff proposes is a unilateral extension of discovery. On its face it goes both ways. But since discovery opened, Defendants have been diligent in taking discovery. Defendants have not sat on their hands and ignored the case. Defendants have been diligent. Now that Plaintiff squandered all that time, Plaintiff wants 3½ more months of discovery time. This convenient need for more discovery time will benefit only the party that has lacked diligence. A party who says he cannot take part in a case should get a *pause*. He should not get extra time.

4.0 CONCLUSION

Defendants have never resisted giving Plaintiff the time he needs for his deposition. They offered four accommodations before he would even tell them what was wrong, and moved for the extension themselves when he refused to say. Measured across the whole period already allowed, Plaintiff has not taken one deposition or filed one discovery motion, and he has spent four months demanding "metadata" he still cannot define, because he does not need it and to the extent he could, he refuses to accept offers to stipulate to the claimed facts. A back injury explains *one* missing deposition. It does not explain why Plaintiff wants to extend the entire discovery period for several months. Plaintiff's Motion should be denied, or if granted, granted in only the most limited manner possible.

Dated: August 24, 2026.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC
/s/ Marc J. Randazza

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Ronald D. Green, NV Bar No. 7360
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Attorneys for Defendants
Keith Hodge, Kevin Hodge, and
Hodgetwins, LLC

Case No. 2:25-cv-01858-APG-BNW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 24, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Marc J. Randazza
Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
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Attorneys for Defendants
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN HODGE, an individual; HODGETWINS, LLC, a limited liability company,

Defendants.

Case No. 2:25-cv-01858-APG-BNW

DECLARATION OF RONALD GREEN IN SUPPORT OF OPPOSITION TO MOTION TO MODIFY THE SCHEDULING ORDER

I, Ronald Green, declare:

1. I am an attorney, licensed to practice law in the State of Nevada and counsel of record for Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC in the above-captioned matter.

2. I submit this declaration in support of Defendants' Opposition to Motion to Modify the Scheduling Order.

3. Prior to filing the Motion to Modify the Scheduling Order, Plaintiff's counsel made no attempt to meet and confer.

4. Plaintiff's counsel has never inquired about deposition availability for Keith Hodge, Kevin Hodge, the person most knowledgeable for Hodgetwins, LLC, or Defendants' expert, Matthew Shupe.

5. Attached hereto as **Exhibit 1** is a true and correct copy of a letter from Plaintiff's counsel, Nicole Westbrook, dated May 26, 2026.

6. Attached hereto as **Exhibit 2** is a true and correct copy of a letter from me to Ms. Westbrook dated May 29, 2026.

7. Attached hereto as **Exhibit 3** is a true and correct copy of a letter from me to Ms. Westbrook dated July 31, 2026.

8. Attached hereto as **Exhibit 4** is a true and correct copy of a letter from me to Ms. Westbrook dated July 24, 2026.

9. Attached hereto as **Exhibit 5** is a true and correct copy of an email exchange primarily between me, Nicole Westbrook, and Stephen Parker dated August 20, 2026.

10. Attached hereto as **Exhibit 6** is a true and correct copy of *Spine Surgery – Discharge*, MedlinePlus Med. Encyclopedia, U.S. Nat'l Libr. of Med. (rev. June 4, 2025). I accessed this article on August 23, 2026.

11. Attached hereto as **Exhibit 7** is a true and correct copy of Trevor P. Scott et al., *When Is It Safe to Return to Driving After Spinal Surgery?*, 5 Global Spine J. 274 (2015), I accessed this article on August 23, 2026.

12. Attached hereto as **Exhibit 8** is a true and correct copy of the transcript excerpt of the deposition of Thomas Carroll II, taken on July 21, 2026.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 24, 2026.

/s/ Ronald D. Green
Ronald D. Green

Exhibit 1

Letter from Attorney Westbrook
May 26, 2026

JONES, DAVIS & JACKSON, PC
Attorneys + Counselors

15110 Dallas Parkway, Suite 300
Dallas, TX 75248
615.403.4862
Fax 972.733.3119

Nicole A. Westbrook
nwestbrook@jonesdavis.com
Licensed in Colorado

May 26, 2026

VIA EMAIL: mjr@randazza.com

Marc Randazza
Randazza Legal Group
8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

Re: ***Your May 13, 2026 Correspondence Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-01858-APG-BNW***

Dear Mr. Randazza,

We have received your May 13, 2026 letter. Pastor Smothermon will not be dismissing this lawsuit. We write to respond to your renewed Anti-SLAPP threat and to address why it cannot succeed on the present record.

As a threshold matter, your letter states that we have refused "certain stipulations" your office proposed to limit expenses. We have received no such proposed stipulations. If you have a specific proposal to narrow or sequence the issues in this case, please send it in writing and we will consider it in good faith.

On the merits, an Anti-SLAPP motion will not dispose of this case. As we explained in our February 10, 2026 letter, a motion that challenges the factual sufficiency of actual malice is governed in this Circuit by the Rule 56 summary judgment standard. *See Planned Parenthood Fed'n of Am., Inc. v. Center for Medical Progress*, 890 F.3d 828 (9th Cir. 2018). Under that standard, the Court must permit discovery before ruling. To defeat the motion, Pastor Smothermon need only present prima facie evidence sufficient for a reasonable jury to find a probability of prevailing on his defamation claim. *Schuman v. Carter* (Nev. Feb. 3, 2025). We intend to depose your clients regarding their identification and verification process before any such motion is adjudicated.

That procedural reality is the central problem with your clients' position, and it is why we write at some length. Your clients cannot prevail on a motion that turns on the factual record while simultaneously failing to preserve and produce that record. The May 22 discovery responses do not support an early dismissal; they expose a serious preservation problem.

Your clients' own sworn responses establish that responsive evidence exists. In their verified Amended Response to Interrogatory No. 3, your clients state that their web manager, Nathan Hughes, learned of the post through an email to their merchandise customer-service account, that he deleted the post, and that Defendants later communicated with him about this lawsuit. In their Responses to Requests for Admission Nos. 1, 2, and 7, your clients admit that Kevin Hodge performed a Google image search for "Steve Smotherman" and selected the resulting photograph. Those answers describe emails, communications, and a search that necessarily generated electronic records.

Yet in response to our Requests for Production, your clients state that they possess no documents. They claim no responsive internal communications (RFP Nos. 2 and 3), no third-party communications (RFP No. 4), and no native image file, search logs, or browser history (RFP No. 1). In response to Request for Admission No. 9, they state that they have not reviewed the photograph's metadata, while declining to produce it. These positions cannot be reconciled with the sworn interrogatory answer that the customer-service email and the related communications exist. One set of answers is incomplete, and we are entitled to know which.

The timing matters. On March 18, 2026, we served a written litigation hold directing your clients to suspend routine deletion and to preserve all relevant electronically stored information, including browser histories, search logs, internal messaging, and the native image file and its metadata. Your clients' preservation duty in fact arose earlier, as my office contacted them about the lawsuit the same day the post was made. If responsive records existed and were not preserved, that loss is governed by Federal Rule of Civil Procedure 37(e), and we will seek the full range of available remedies, up to and including an adverse-inference instruction on the question of actual malice. We are not asserting that spoliation has occurred; we are putting your clients on notice that their current "no documents" positions, set against their sworn testimony, squarely raise the issue and that we will pursue it.

As to the fee award your letter forecasts: any such award would require your clients to prevail, and any amount would be subject to the Court's review for reasonableness. We are not persuaded that either condition will be met, and the prospect of a fee award does not alter our client's assessment of the merits.

We are sending a separate meet-and-confer letter today addressing your clients' specific discovery and disclosure deficiencies in detail. We remain willing to resolve these issues without Court intervention and look forward to your response.

Sincerely yours,

JONES, DAVIS & JACKSON, PC

By: _____
Nicole A. Westbrook

CC: Pastor Steve Smothermon

Exhibit 2

Letter from Attorney Green

May 29, 2026

RANDAZZA
LEGAL GROUP

Ronald D. Green
Partner
Licensed in NV

29 May 2026

Via Email Only
<nwestbrook@jonesdavis.com>

Nicole Westbrook
JONES, DAVIS & JACKSON, PC
15110 Dallas Parkway, Suite 300
Dallas, TX 75248

Re: Hodgetwins, LLC, et al. adv. Smothermon

Dear Nicole:

This letter is in response to your May 26, 2026, correspondence. Our supplemental disclosures are attached. However, portions of your letter are inaccurate. I did not promise you additional documents because they do not exist. When we had our meet and confer conference, I informed you that I would supplement our descriptions of anticipated witness testimony as well as double check on the insurance information. That information has been updated.

As we discussed, Kevin Hodge is the party with knowledge regarding the Facebook post. He has knowledge regarding the internet search that led him to Plaintiff Smothermon's photograph. He has knowledge regarding the language of the post. Keith Hodge does not have that knowledge, so his testimony will necessarily be more general. We have additionally added Nathan Hughes, Kylie Howerton, and Krisha Mason as witnesses, and they will be the ones testifying about the removal of the post from Facebook and the takedown requests from Legacy Church.

I told you during our meet and confer that there were no additional documents. As we discussed, our clients do not have the "native browser histories, search logs, internal emails, or Slack communications regarding the drafting, publication, and eventual removal" of the Facebook post that you demanded in your earlier April 21, 2026, letter. Our clients cannot produce what they do not have.

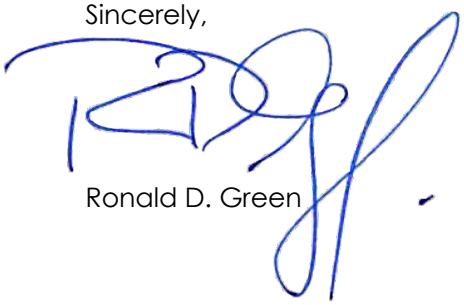
Their practice is to browse in incognito mode. By the time Defendants were served with your client's lawsuit and were even aware that there was a dispute over a Facebook post that erroneously contained the wrong picture and was only up for a very short time, any search logs, to the extent they ever existed, were gone. There are no internal emails or Slack communications. As stated, the Hodges were not even aware that the Facebook post contained the wrong photo until after your lawsuit was filed. They had no reason to discuss a Facebook post that they had long forgotten about.

With regard to the email that prompted Defendants' customer support team to take down the Facebook post with the erroneous photograph of Plaintiff Smothermon, our clients have provided us with a copy of it, and we will be producing it. For your reference, the

email was from Krisha Mason and was sent from the email address <kmason@legacychurchnm.com>.

If you have any questions about the attached supplemental disclosures, I would be happy to discuss. With regard to the portions of your recent letter regarding our responses to the requests for admission, requests for production, and interrogatories, I am discussing with my clients and will have a response at or before our meet and confer conference on Wednesday, June 3, 2026.

Sincerely,



Ronald D. Green

cc: First Supplemental Disclosures

encl: Marc J. Randazza; Clients

Exhibit 3

Letter from Attorney Green

July 31, 2026

RANDAZZA
LEGAL GROUP

Ronald D. Green
Partner
Licensed in NV

31 July 2026

Via Email Only
Nicole Westbrook
JONES DAVIS & JACKSON, PC
<nwestbrook@jonesdavis.com>

Re: Hodgetwins, LLC, et al. adv. Smothermon

Dear Nicole:

I write in response to your letter dated July 28, 2026.

In your letter, you demand that we provide "the supplementation agreed on May 4." I need to ask you to specify what you are contending we need to supplement because your letter provides no indication. Additionally, while your letter contends that the "overdue supplementation" was the subject of our recent meet and confer, the supplements that you demanded during the meet and confer conference did not fit within the parameters of your discovery requests, which we already addressed during the conference and in our July 24 letter.

Your letter still fails to explain what you hope to obtain through the metadata. No one is claiming that the Ms. Mason's email or Mr. Carroll's Facebook message are inauthentic or that Defendants' customer support team did not receive Ms. Mason's email. We are not trying to be difficult. We truly do not understand what you are looking for.

You do state in your letter that you are willing to consider our request to stipulate on the metadata issues if it will "narrow the native and metadata production," but you do not explain what you would like us to stipulate to. Marc already addressed this in an email sent the same day as your letter. Thus far, you have not been able to articulate what you want and why you want it. But if you tell us what facts you want us to stipulate to or what you want out of the metadata, we will consider your request.

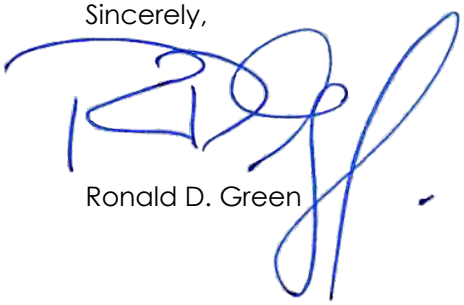
As you note in your letter, we did tell you that we are "engaging someone with greater technical facility" to see if the information you seek exists. Marc additionally addressed this in an email sent right after you sent your letter. We attempted to extract data about the post from Facebook but were unable to do so. The post was deleted, as Mr. Smothermon requested in both Ms. Mason's email and Mr. Carroll's message, and cannot be recovered. Given that neither message demanded preservation, Defendants certainly could not have predicted that they would need to preserve it.

Finally, we have provided you with dates Mr. Shupe is available for deposition. He is not available in September. If you wish to depose him, please let us know as soon as possible. We will not agree to extend discovery if you later decide that you would like to depose him.

RANDAZZA
LEGAL GROUP

Please let us know if you have any questions.

Sincerely,



Ronald D. Green

cc: Marc Randazza

Exhibit 4

Letter from Attorney Green

July 24, 2026

RANDAZZA
LEGAL GROUP

Ronald D. Green
Partner
Licensed in NV

24 July 2026

Via Email
<nwestbrook@joneskeller.com>

Nicole A. Westbrook
Jones & Keller
355 S. Teller Street, Suite 200
Lakewood, CO 80226

Re: Meet and Confer Follow-Up – Discovery Responses and Metadata Issues Smothermon v Hodge et al.

Dear Nicole,

On July 22, 2026, Marc Randazza and I engaged in a meet and confer conference with you, regarding your June 30 and July 9 letters.

I explained to you that we had already provided information regarding the Krisha Mason email and Nathan Hughes' telephone conversation with the Hodgetwins regarding the takedown of the Facebook post. While we previously discussed the sequence of events regarding the takedown on at least two occasions, you did not seem to remember them or know what I was talking about when I told you *again* that the Hodgetwins' conversations with Hughes were done over the phone and not via email.

You also demanded that we supplement our responses to discovery. However, the information you demanded we supplement with did not fit within the parameters of the discovery requests.

For example, you demanded a supplement to RFP No. 7, but that Request only asked for "doubts" about the Facebook post "expressed prior to publication," not after. There are no such documents, as nobody harbored any doubts about the publication prior to publication – and those doubts only surfaced after my clients' customer service team received notice that they had the wrong photo.

You also demanded that we supplement RFP No. 2 to include the Carroll Facebook message and the Krisha Mason email. However, that Request only asked for "internal communications" between Kevin Hodge, Keith Hodge, and their employees and agents. We also believe that even if the RFP did encompass these communications, that it would be improper to request it from us, when Mr. Carroll works for your firm - and thus should have no difficulty providing the message to you. Further, Krisha Mason works for your client, and again, you would have greater access to her communications than we would. Further, you have provided that very information to us, so are you seriously making demands in discovery that we send you back something that you sent us?

You took the position that you do not represent Legacy Church. However, Mr. Carroll testified the prior day that your firm represents Legacy Church. While Mr. Carroll had a bad memory during his deposition, we did not get the impression that he was dishonest. Therefore, we presume that you misspoke when you claimed that you do not represent Legacy Church. Now that you have had an opportunity to confirm that with Mr. Carroll, I presume that you will have no difficulty getting documents from them.

The majority of the conversation then turned to you being perturbed that we had not produced an email from Krisha Mason. When I informed you that we had already produced it, you replied that we hadn't produced it with "metadata." When we asked what you wanted from the metadata, you claimed that "metadata" would show when it was received and when it was opened.

Since you continue to invoke "metadata" as though the word itself were probative, let me clarify what email metadata actually contains. The standard headers of an email message — defined by the Internet Engineering Task Force in RFC 5322 (https://datatracker.ietf.org/doc/html/rfc5322) and the SMTP trace fields defined in RFC 5321 (https://datatracker.ietf.org/doc/html/rfc5321) — record when a message was *transmitted and received*, via the timestamped "Received:" lines added by each mail server in the delivery chain, which anyone can inspect using Gmail's "Show original" function (https://support.google.com/mail/answer/29436) or Microsoft's Message Header Analyzer (https://mha.azurewebsites.net).

What those headers do not and cannot record is when, or whether, a message was ever *opened or read*: no field for that exists in the message format, read receipts are merely optional requests that recipients' clients routinely decline or ignore under RFC 8098 (https://datatracker.ietf.org/doc/html/rfc8098), and third-party "open tracking" relies on remote-image pixels that are rendered unreliable in both directions by protections such as Apple's Mail Privacy Protection, which pre-loads content and masks user activity as a matter of design (https://www.apple.com/legal/privacy/data/en/mail-privacy-protection/). Accordingly, the "metadata" you keep demanding may establish delivery — a point we do not contest — and nothing more; if you contend otherwise, please identify the specific header field, by name and RFC citation, that you believe records the act of reading an email, and we will adjust our understanding and search for that record.

I then informed you that all this discussion was meaningless because the Hodgetwins' customer support team responded to it, admittedly spoke with Ms. Mason on the phone, and took the post down after receiving the email and speaking with Ms. Mason. Therefore, there is nothing that "metadata" could ever prove that we do not already admit.

During the conversation, Mr. Randazza invited you to tell us what you were looking for, and that he would access the message and search for what you wanted, in real time. You then took the position that if Mr. Randazza opened the message, it would "corrupt the metadata." Mr. Randazza asked you how it would or could "corrupt the metadata," and you baselessly accused him of attempting to alter the evidence in the case. You could

not explain what that meant, except to say that if the email was opened, it would "corrupt" the metadata.

Mr. Randazza then attempted to resolve the issue by asking what it was you thought this "metadata" would prove, because we might be willing to simply stipulate whatever fact you thought this "metadata" would prove. You responded that you did not want a stipulation, but you wanted the "facts." We still do not understand what your position is. If we stipulate to a fact, then the fact is proven. It seems to us that your intent is simply to multiply the proceedings, harass our clients, and hope to win through attrition or a shot at sanctions what you can not win at trial. We are not going to accommodate this kind of conduct.

Continuing to pursue your apparent "litigation through sanctions" plan, you made statements about Carroll's message and Mason's message triggering preservation responsibilities. You took the unsupportable position that the Hodgetwins should have made forensic images of their electronic devices upon receipt of the Carroll message and/or the Mason email. Neither message said anything about preserving data and neither threatened a lawsuit. In fact, Carroll testified the day before that he did not see anything in his message to the Hodgetwins that would have made him think he had to preserve anything. He testified that even he was not aware that there was going to be a lawsuit until after it had been filed. If Mr. Carroll was not aware, how do you think our clients should have been aware?

The conversation ended when I told you that since our discovery responses were not due for another week, the conversation seemed premature. Out of frustration, you agreed with me and said we could do the meet and confer again after we responded to the second round of discovery.

The next time we meet and confer, please, be able to articulate what it is you want, and why you want it. We will not allow you to harass our clients for information. If you take the position that "the metadata proves that we sent the email" for example, and we respond that the transmission of the email is not in controversy and we stipulate to that fact, the Court is not likely going to require expensive forensic analysis simply because you start yelling and saying, "but I want it *this way*."

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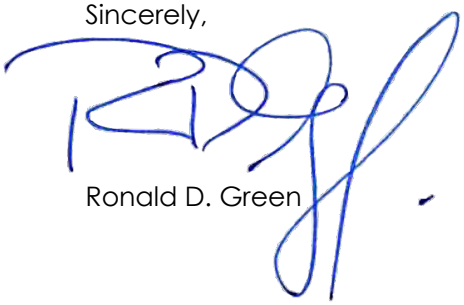
Despite how insupportably harassing some of your requests are, we are seeking the aid of someone more technologically savvy to try and find any further data that we can provide. While we do not believe you have a right to it, and that it is wildly disproportionate to the needs of the case, if it winds up being less expensive to spin up over-compliant information than it would be to argue in a motion to compel / protective order context, we will be providing it as a matter of economy.

Sincerely,



Ronald D. Green

cc: Marc Randazza

Exhibit 5

Emails Between Counsel

August 20, 2026

From: **Ron Green** rdg@randazza.com
Subject: Re: Hodgetwins adv. Smothermon - 6th Requests for Production and 5th Interrogatories
Date: August 20, 2026 at 5:26 PM
To: Stephen Parker stephen@westark.law
Cc: Nicole Westbrook nwestbrook@jonesdavis.com, Steve Jones sjones@jonesdavis.com, Mike Jackson mjackson@jonesdavis.com , Dana Reedle dreedle@jonesdavis.com

Nicole:

On August 7, you asked me if August 26 would work for me for Mr. Hughes' deposition. I responded that it did. On August 12, I asked you if it would be remote or in person. I still don't have an answer to that question. I also don't know whether you are actually still intending to take his deposition on the 26th, which is next Wednesday. Given Mr. Parker's email, it is clear that he has no idea whether you intend to take Mr. Hughes' deposition on that date either. Given that the 26th is now less than one week away and you still have not revealed your plans regarding this depo, we object to it going forward on August 26. You have not provided sufficient notice for the deposition. You have not provided me with enough time to fly halfway across the country if you intend to take it in person. Please confirm that the Nathan Hughes deposition will not be going forward next week.

Ronald D. Green* | **Randazza Legal Group, PLLC**
8991 W. Flamingo Road | Suite B | Las Vegas, NV 89147
Tel: 702-420-2001 | Email: rdg@randazza.com

---

* Licensed to practice law in Nevada.

> On Aug 19, 2026, at 1:08 PM, Stephen Parker <stephen@westark.law> wrote:
>
> Nicole,
>
> As stated in my previous email, these are the only documents Mr. Rynders and Ms. Howerton have related to this matter. Their responses are complete and proper.
>
> We did not obtain these documents from Mr. Green - rather, we provided these documents to Mr. Green. He previously requested everything they had when preparing responses to your discovery and these are the documents we provided to him - which are everything Mr. Rynders and Ms. Howerton have. If you are confused because I provided them in the same format as Mr. Green disclosed to you through discovery, I just did that to keep the Bates Numbers the same for simplification. If you want them in native or some other format, I will resend the documents.
>
> On August 4, 2026, I accepted service of your subpoena for deposition to Mr. Hughes, which is scheduled for August 26, 2026, at 9:00 a.m. CST at the office of Westark Law. Mr. Hughes will be at our office ready to be deposed on that day/time. If you do not want to take his deposition at the scheduled day/time/place, then you will need to have Mr. Hughes served with a new subpoena because he will not give me authority to accept another subpoena for deposition or otherwise reschedule.
>
> Other than the subpoenas to Mr. Rynders, Ms. Howerton and Mr. Hughes, I'm unaware of any outstanding discovery requested of from our clients.
>
> If you want to discuss these matters further, please feel free to email or call me at your convenience.
>
> Thanks,
>
> --
>
> Stephen C. Parker, Jr.
> Attorney I Managing Member
> WESTARK LAW
> Direct: (888) 680-4933, ext. 6
> Fax: (888) 680-6414
> Email: stephen@westark.law
>
> visit us on the web at westark.law
>
> **Electronic Communications Privacy Notification**
>
> This message is covered by the Electronic Communications Privacy Act, currently 18 USC §§ 2510-2521, and is legally privileged. The information contained in this message is exclusively intended for the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and destroy the original message with all attachments.
>
> On Aug 19, 2026, at 12:30 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:
>
> Stephen,
>
> We need discovery from your clients and responses to our subpoenas. Producing a single document you obtained from the Hodge Twin's counsel is not a proper response. We can't accept that and we won't be able to take Mr. Hughes' deposition in that vacuum. We will reschedule but we need to know when you will respond to the 3 subpoenas which were served some time ago. It seems we may need to take this issue up with the Court. Is there something you want us to consider narrowing or modifying in order to comply with the subpoenas? We are happy to work with you but this is information we need from your 3 clients and not from the Hodge Twins.
>
> Thanks,
> Nicole

Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
mobile: 615.403.4862 | *fax*: 972.733.3119

[www.jonesdavis.com]www.jonesdavis.com

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From: Stephen Parker <stephen@westark.law>
Sent: Monday, August 17, 2026 5:03 PM
To: Nicole Westbrook <nwestbrook@jonesdavis.com>
Subject: Re: Hodgetwins adv. Smothermon - 6th Requests for Production and 5th Interrogatories

Nicole,

Attached are the only documents Mr. Rynders and Ms. Howerton have related to this matter and are a complete response/disclosure to the subpoenas duces tecum. These documents were previously disclosed to attorney for defendants, Mr. Ron Green, during his preparation of responses to discovery.

Mr. Hughes has very limited information regarding this matter. He basically informed me that Hodgetwins may have a pending federal lawsuit and asked Westark Law to look into it, which we did, but everything responsive to his request is attorney work product. Without waiving any objections, I can tell you that we reviewed the pleadings, briefly discussed the allegations in the complaint and immediately dismissed any concern related to our clients (Mr. Hughes and related entities). With all due respect, taking his deposition would be a waste of time, but we are available at the scheduled day/time if you want to move forward.

Thanks,

--

Stephen C. Parker, Jr.
Attorney I Managing Member
WESTARK LAW
Direct: (888) 680-4933, ext. 6
Fax: (888) 680-6414
Email: stephen@westark.law

visit us on the web at westark.law

On Aug 17, 2026, at 4:32 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

Stephen - I thought you were going to make disclosures and give me a call to determine if Mr. Hughes is the correct witness. If you had your meeting with them, maybe we can still have that call once we get the responses to the subpoenas? Thanks, Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
mobile: 615.403.4862 | *fax*: 972.733.3119

[www.jonesdavis.com]www.jonesdavis.com

<image.png><image.png><image.png><image.png>

From: Stephen Parker <stephen@westark.law>
Sent: Friday, August 14, 2026 3:01 PM
To: Nicole Westbrook <nwestbrook@jonesdavis.com>
Cc: Mike Jackson <mjackson@jonesdavis.com>; amcdaniel@joneskeller.com<amcdaniel@joneskeller.com>; Brittany Hansen <bhansen@joneskeller.com>; Paul Bishop <pbishop@jonesdavis.com>
Subject: Re: Hodgetwins adv. Smothermon - 6th Requests for Production and 5th Interrogatories

The only document they produced is the email chain that was previously provided to counsel for defendants and disclosed to plaintiff through discovery, but I will get an official response to you in writing along with a copy of the email chain.

What are the logistics for Mr. Hughes deposition at our office?

--

Stephen C. Parker, Jr.
Attorney | Managing Member
WESTARK LAW
Direct: (888) 680-4933, ext. 6
Fax: (888) 680-6414
Email: stephen@westark.law

visit us on the web at westark.law

On Aug 14, 2026, at 11:16 AM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

Stephen - following up on this. The responses to the subpoenas are overdue but we don't want to move the court if we can avoid it. Thoughts? Thank you, Nicole

Jones, Davis & Jackson, PC

Attorneys + Counselors

Nicole A. Westbrook, Attorney at Law
15110 Dallas Parkway, Suite 300, Dallas, Texas 75248
mobile: 615.403.4862 | *fax*: 972.733.3119

[www.jonesdavis.com]www.jonesdavis.com

From: Stephen Parker <stephen@westark.law>
Sent: Friday, August 7, 2026 3:11 PM
To: Nicole Westbrook <nwestbrook@jonesdavis.com>
Cc: Mike Jackson <mjackson@jonesdavis.com>; amcdaniel@joneskeller.com<amcdaniel@joneskeller.com>; Brittany Hansen <bhansen@joneskeller.com>

Subject: Re: Hodgetwins adv. Smothermon - 6th Requests for Production and 5th Interrogatories

I will meet with them again on Tuesday and get everything we have to you.

I agree a phone call may be helpful, so I'll call you then as well.

--

Stephen C. Parker, Jr.
Attorney | Managing Member
WESTARK LAW
Direct: (888) 680-4933, ext. 6
Fax: (888) 680-6414
Email: stephen@westark.law

visit us on the web at westark.law

Electronic Communications Privacy Notification

On Aug 7, 2026, at 3:07 PM, Nicole Westbrook <nwestbrook@jonesdavis.com> wrote:

www.jonesdavis.com

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THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS

Exhibit 6

MedlinePlus Article

Spine Surgery – Discharge

URL of this page: //medlineplus.gov/ency/patientinstructions/000313.htm

Spine surgery - discharge

You were in the hospital for spine surgery. You probably had a problem with one or more disks or spine bones. A disk is a piece of cartilage that separates and cushions the bones in your spine (vertebrae).

Now that you're going home, follow the surgeon's instructions on how to care for yourself while you recover.

When You're in the Hospital

You may have had one of these surgeries:

- Diskectomy -- surgery to remove all or part of one of your disks
- Foraminotomy -- surgery to widen the opening in your spine where nerve roots leave your spinal column
- Laminectomy -- surgery to remove the lamina, two small bones that make up a vertebra, or bone spurs in your back, to take pressure off your spinal nerves or spinal column
- Spinal fusion -- the fusing of two bones together in your back to correct problems in your spine

What to Expect at Home

Recovery after diskectomy is usually quick.

After a diskectomy or foraminotomy, you may still feel pain, numbness, or weakness along the path of the nerve that was under pressure. These symptoms should get better in a few weeks.

Recovery after laminectomy and fusion surgery is longer. You will not be able to return to activities as quickly. It takes at least 3 to 4 months after surgery for bones to heal well, and healing may continue for at least a year.

If you had spinal fusion, you will probably be off work for 4 to 6 weeks if you are young and healthy and your job is not very strenuous. It may take up to 4 to 6 months for older people with more extensive surgery to get back to work.

The length of recovery also depends on how bad your condition was before surgery.

Wound Care

Your bandages (or tape) may fall off within 7 to 10 days. If not, you may remove them yourself if your surgeon says it's OK.

You may feel numbness or pain around your incision, and it may look a little red. Check it every day to see if the incision:

- Is more red or swollen
- Is draining fluid from the wound
- Feels warm
- Begins to open up

If any of these occur, contact your surgeon. You should also contact your surgeon if you have a headache that won't get better with usual medicines.

Check with your surgeon about when you can shower again. You may be told the following:

- Make sure your bathroom is safe.
- Keep the incision dry for the first 5 to 7 days.
- The first time you shower, have someone help you.
- Cover the incision with plastic wrap.
- Do not allow water from the showerhead to spray the incision.

Do not smoke or use tobacco products after spine surgery. Avoiding tobacco is even more important if you had a fusion or bone graft. Smoking and using tobacco products slow the healing process.

Activity

You will need to change how you do some things. Try not to sit for longer than 20 or 30 minutes at one time. Sleep in any position that does not cause back pain. Your surgeon will tell you when you can resume sexual activity.

You may be fitted for a back brace or corset to help support your back:

- Wear the brace when you are sitting or walking and as instructed by your surgeon.
- You do not need to wear the brace when you are sitting on the side of the bed for a short time or using the bathroom at night.

Do not bend at the waist. Instead, bend your knees and squat down to pick up something. Do not lift or carry anything heavier than around 10 pounds or 4.5 kilograms (about 1 gallon or 4 liters of milk). This means you should not lift a laundry basket, grocery bags, or small children. You should also avoid lifting something above your head until your fusion heals.

Other activity:

- Take only short walks for the first 2 weeks after surgery. After that, you may slowly increase how far you walk.
- You may go up or down stairs once a day for the first 1 or 2 weeks, if it does not cause much pain or discomfort.
- Do not start swimming, golfing, running, or other more strenuous activities until you see your surgeon. You should also avoid vacuuming and more strenuous household cleaning.

Your surgeon may prescribe physical therapy so that you learn how to move and do activities in a way that prevents pain and keeps your back in a safe position. These may include how to:

- Get out of bed or up from a chair safely
- Get dressed and undressed
- Keep your back safe during other activities, including lifting and carrying items
- Do exercises that strengthen your back and abdominal muscles to keep your back stable and safe

Your surgeon and physical therapist can help you decide whether or when you can return to your previous job.

Riding or driving in a car:

- Do not drive for the first 2 weeks after surgery. After 2 weeks, you may take short trips only if your surgeon says it's OK.
- Travel only for short distances as a passenger in a car. If you have a long ride home from the hospital, stop every 30 to 45 minutes to stretch a bit.

Pain Management

Your surgeon will give you a prescription for pain medicines. Get it filled when you go home so you have it available. Take the medicine before the pain becomes very bad. If you will be doing an activity, take the medicine about half an hour before you start.

When to Call the Doctor

Contact your surgeon if you have any of the following:

- Chills or a fever of 101°F (38.3°C), or higher
- More pain where you had your surgery
- Drainage from the wound, or the drainage is green or yellow
- Lose feeling or have a change of feeling in your arms (if you had neck surgery) or your legs and feet (if you had lower back surgery)
- Chest pain, shortness of breath
- Swelling
- Calf pain
- Worsening back pain that does not get better with rest and pain medicine
- Difficulty urinating and controlling your bowel movements
- Severe headaches that are not controlled with regular medicine

Alternative Names

Diskectomy - discharge; Foraminotomy - discharge; Laminectomy - discharge; Spinal fusion - discharge; Spinal microdiskectomy - discharge; Microdecompression - discharge; Laminotomy - discharge; Disk removal - discharge; Spine surgery - diskectomy - discharge; Intervertebral foramina - discharge; Spine surgery - foraminotomy - discharge; Lumbar decompression - discharge; Decompressive laminectomy - discharge; Spine surgery - laminectomy - discharge; Vertebral interbody fusion - discharge; Posterior spinal fusion - discharge; Arthrodesis - discharge; Anterior spinal fusion - discharge; Spine surgery - spinal fusion - discharge

References

Gardocki RJ. Anatomic approaches to the spine. In: Azar FM, Beaty JH, eds. *Campbell's Operative Orthopaedics*. 14th ed. Philadelphia, PA: Elsevier; 2021:chap 37.

Li Y, Ling MZ, Wang MY. Perioperative management protocols: enhanced recovery after surgery. In: Steinmetz MP, Berven SH, Benzel EC, eds. *Benzel's Spine Surgery*. 5th ed. Philadelphia, PA: Elsevier; 2022:chap 79.

Matys T, Sheikh-Bahaei N, Gillard JH. Postoperative spine. In: Adam A, Dixon AK, Gillard JH, Schaefer-Prokop CM, eds. *Grainger & Allison's Diagnostic Radiology*. 7th ed. Philadelphia, PA: Elsevier; 2021:chap 51.

Review Date 6/4/2025

Updated by: C. Benjamin Ma, MD, Professor, Chief, Sports Medicine and Shoulder Service, UCSF Department of Orthopaedic Surgery, San Francisco, CA. Also reviewed by David C. Dugdale, MD, Medical Director, Brenda Conaway, Editorial Director, and the A.D.A.M. Editorial team.

Learn how to cite this page

Exhibit 7

Global Spine Journal

When Is It Safe to Return to Driving After Spinal Surgery?

Global Spine J. 2015 Feb 2;5(4):274–281. doi: 10.1055/s-0035-1544154

When Is It Safe to Return to Driving After Spinal Surgery?

Trevor P Scott [1], William Pannel [2], David Savin [3], Stephanie S Ngo [2], Jessica Ellerman [4], Kristin Toy [1], Michael D Daubs [5], Daniel Lu [6], Jeffrey C Wang [2,✉]

Author information Article notes Copyright and License information

PMCID: PMC4516735 PMID: 26225275

Abstract

Study Design Prospective study.

Objective Surgeons' recommendations for a safe return to driving following cervical and lumbar surgery vary and are based on empirical data. Driver reaction time (DRT) is an objective measure of the ability to drive safely. There are limited data about the effect of cervical and lumbar surgery on DRT. The purpose of our study was to use the DRT to determine when the patients undergoing a spinal surgery may safely return to driving.

Methods We tested 37 patients' DRT using computer software. Twenty-three patients (mean 50.5 ± 17.7 years) received lumbar surgery, and 14 patients had cervical surgery (mean 56.7 ± 10.9 years). Patients were compared with 14 healthy male controls (mean 32 ± 5.19 years). The patients having cervical surgery were subdivided into the anterior versus posterior approach and myelopathic versus nonmyelopathic groups. Patients having lumbar spinal surgery were subdivided by decompression versus

fusion with or without decompression and single-level versus multilevel surgery. The patients were tested preoperatively and at 2 to 3, 6, and 12 weeks following the surgery. The use of opioids was noted.

Results Overall, the patients having cervical and lumbar surgery showed no significant differences between pre- and postoperative DRT (cervical $p = 0.49$, lumbar $p = 0.196$). Only the patients having single-level procedures had a significant improvement from a preoperative DRT of 0.951 seconds (standard deviation 0.255) to 0.794 seconds (standard deviation 0.152) at 2 to 3 weeks ($p = 0.012$). None of the other subgroups had a difference in the DRT.

Conclusions Based on these findings, it may be acceptable to allow patients having a single-level lumbar fusion who are not taking opioids to return to driving as early as 2 weeks following the spinal surgery.

Keywords: return to driving, lumbar surgery, cervical surgery, driver reaction time

Introduction

A question frequently asked of surgeons is when a patient may return to driving after a given procedure.[1] [2] The safety of the patient and the public must be weighed against the impact that an extended period of being unable to drive would have on the quality of life of the patient.[3]

A patient's cognitive state, sensory motor coordination, experience, and fatigue and the local environment all contribute to driving ability. However, one factor universally agreed upon is the ability to stop in an emergency; this can be measured as driver reaction time (DRT).[4] The DRT has been studied for many different orthopedic procedures of the lower extremity.[5] [6] [7] [8] [9] [10] However, there are few studies about DRTs in patients after spinal surgery. This lack of data makes it difficult for surgeons to provide patients with accurate information about when they may return to driving.

Al-khayer et al performed a prospective study of patients receiving nerve blocks of the lumbar spinal nerves and showed a small increase in DRTs at 2 weeks postoperatively, which resolved by 6 weeks postoperatively.[4] Likewise, Liebensteiner et al performed a prospective study of patients who had lumbar fusion surgery and found that the DRT was not significantly increased at 1 week after the surgery.[11] Thaler and colleagues demonstrated that patients who had lumbar disk surgery for radiculopathy showed a significant improvement in DRT at discharge compared with preoperatively; the same researchers also showed similar improvement in DRT on discharge after anterior cervical decompression and fusion (ACDF) for cervical radiculopathy.[12] [13] Finally, in a recent post hoc analysis of data from a

large prospective study, Kelly et al found that patients undergoing either ACDF or cervical single-level arthroplasty had no difficulty with driving based on a neck disability questionnaire by postoperative 6 weeks.[14]

Our purpose was to perform a prospective study of patients receiving cervical or lumbar spinal surgery and measure their DRTs preoperatively and at first (2 to 3 weeks), second (6 weeks), and third (12 weeks) follow-up visits to determine when DRT returned to preoperative levels. We hypothesized that the patients would have an increase in DRTs at 2 to 3 weeks postoperatively, which would return to normal by 6 to 12 weeks postoperatively. We planned to analyze subgroups of these patients based on anterior or posterior surgical approach and on myelopathic or nonmyelopathic groups. The lumbar spine surgery group was divided into multi- or single-level surgery and by decompression alone or those who had had fusion with or without decompression. We expected the subgroups receiving multilevel fusion and those patients who were myelopathic would have a larger and longer-lasting increase in DRTs.

Methods

Participants

Between September 2008 and July 2011, 14 patients receiving cervical spine surgery and 23 patients receiving lumbar surgery were enrolled in the study. Patients were excluded from the study if they did not have a valid driver's license, were no longer operating a vehicle, or had a prior surgery within the previous year. The participation was voluntary, and no incentives were given to patients. The experiment was conducted under the approval of the UCLA Institutional Review Board. The surgeries were performed by one of the two senior surgeons.

In all, 17 men and 6 women (mean age 50.5 ± 17.7 years) received lumbar surgery, for a total of 23 patients. Nine patients received single-level surgery and 14 received a multilevel surgery. In total, 11 patients underwent surgery involving decompression alone and 12 received fusion with or without decompression surgery (Table 1). Eight women and 6 men had cervical surgery (mean age 56.7 ± 10.9 years), and 5 patients had anterior cervical surgeries. Nine patients had the surgery via a posterior approach. One patient had both anterior and posterior surgeries and was included in the posterior surgery group. There were 11 patients with myelopathy and 3 without (Table 1). Using Chile's modified Japanese Orthopaedic Association myelopathy scale, the average score was 15.45 ± 0.69. All the patients in the cervical group completed the pre- and postoperative DRT testing (100%). However, only 6 patients completed the DRT testing at 6 weeks (42%), and 5 patients completed the testing at 12 weeks (36%). In the lumbar group, 21 of 23 patients completed the postoperative testing at 2 weeks (91%), 8

patients completed the testing at 6 weeks (35%), and 15 patients completed the testing at 12 weeks (65%). The patients were compared with a control group of 14 healthy men (mean age 32 ± 5.19 years).

Table 1. Demographic data.

	Cervical	**Lumbar**
Mean age (y)	56.7 ± 10.9	50.5 ± 17.7
Male:female	6:8	17:6
Single level:multilevelsurgery	NA	9:14
Decompression:fusion with or without decompression	NA	11:12
Anterior:posterior	5:9	NA
Myelopathic:nonmyelopathic	11:3	NA
Total	14	23

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Abbreviation: NA, not applicable.

Procedure

DRT was measured using commercial computer instrumentation and software (Vericom Reaction Timer; Rogers, Minnesota, United States).[15] The patients were given instructions and the chance to practice on the simulator. The patients then performed 15 separate successful simulations where they responded to a stimulus and reacted accordingly. A successful simulation meant the patient responded correctly. The simulation started with the patient holding the gas pedal down a predetermined amount, which was represented on the system by the speedometer measuring between 35 and 65 mph. The software then recorded the response time to five different stimuli: left turn, right turn, brake, brake + left turn, brake + right turn. The patients were tested preoperatively and then postoperatively at 2 to 3, 6, and 12 weeks following the surgery. At the postoperative visits, the patients were given the opportunity to do up to 5 practice simulations. The control group was tested once using the same protocol.

Statistical Analysis

The paired *t* test was used to compare the preoperative and 2- to 3-week postoperative reaction times. In the case of nonparametric data, Wilcoxon signed rank test was substituted. Linear mixed-effects regression modeling was used to compare the preoperative reaction times through 12-week postoperative values. This method was chosen over analysis of variance because the data were not assumed to be independent across a given patient's successive reaction times and because it allowed the authors to analyze the data with missing values. The preoperative times of all the groups and subgroups were compared with the control group using unpaired *t* test analysis, and the Mann-Whitney test was used for the nonparametric data. The independent sample *t* test was used to assess for the correlations between opioid use and reaction time. In the case of nonparametric data, the Wilcoxon-Mann-Whitney test was substituted. The Spearman correlation was used to the compare reaction times and visual analog scale (VAS) scores. All data analysis was performed using STATA (StataCorp, College Station, Texas, United States).

Results

Cervical

The 14 patients who had cervical surgery had a mean preoperative DRT of 0.976 seconds (standard deviation [SD] 0.242); the DRT at the first postoperative visit was slightly higher at 1.007 seconds (SD 0.312; $p = 0.49$). There was significant patient attrition at the 6- and 12-week postoperative appointments. Of the 6 patients who followed up at 6 weeks, the DRT decreased to 0.908 seconds (SD 0.234), though at 12 weeks, it increased to 0.936 seconds (SD 0.303). The mixed-effects regression analysis through the 12-week postoperative visit showed that there was no change in the DRT ($p = 0.851$; Table 2, Fig. 1).

Table 2. Mean driver reaction time (in seconds) after cervical surgery.

	Reaction time			
Patients	**Preoperative**	**Postoperative[a]**	**6 wk postoperative**	**12 wk postoperative[b]**
Overall	0.976 ± 0.242	1.007 ± 0. 312 ($p = 0.490$)	0.908 ± 0.234	0.936 ± 0.303 ($p = 0.851$)
Myelopathic	0.993 ± 0.267	1.021 ± 0. 340 ($p = 0.554$)	–	– ($p = 0.908$)
Nonmyleopathic	0.917 ± 0.127	0.957 ± 0. 227 ($p = 0.697$)	–	– ($p = 0.582$)
Anterior	0.814 ± 0.125	0.818 ± 0. 119 ($p = 0.893$)	–	– ($p = 0.899$)
Posterior	1.067 ± 0.248	1.112 ± 0. 341 ($p = 0.423$)	–	– ($p = 0.824$)

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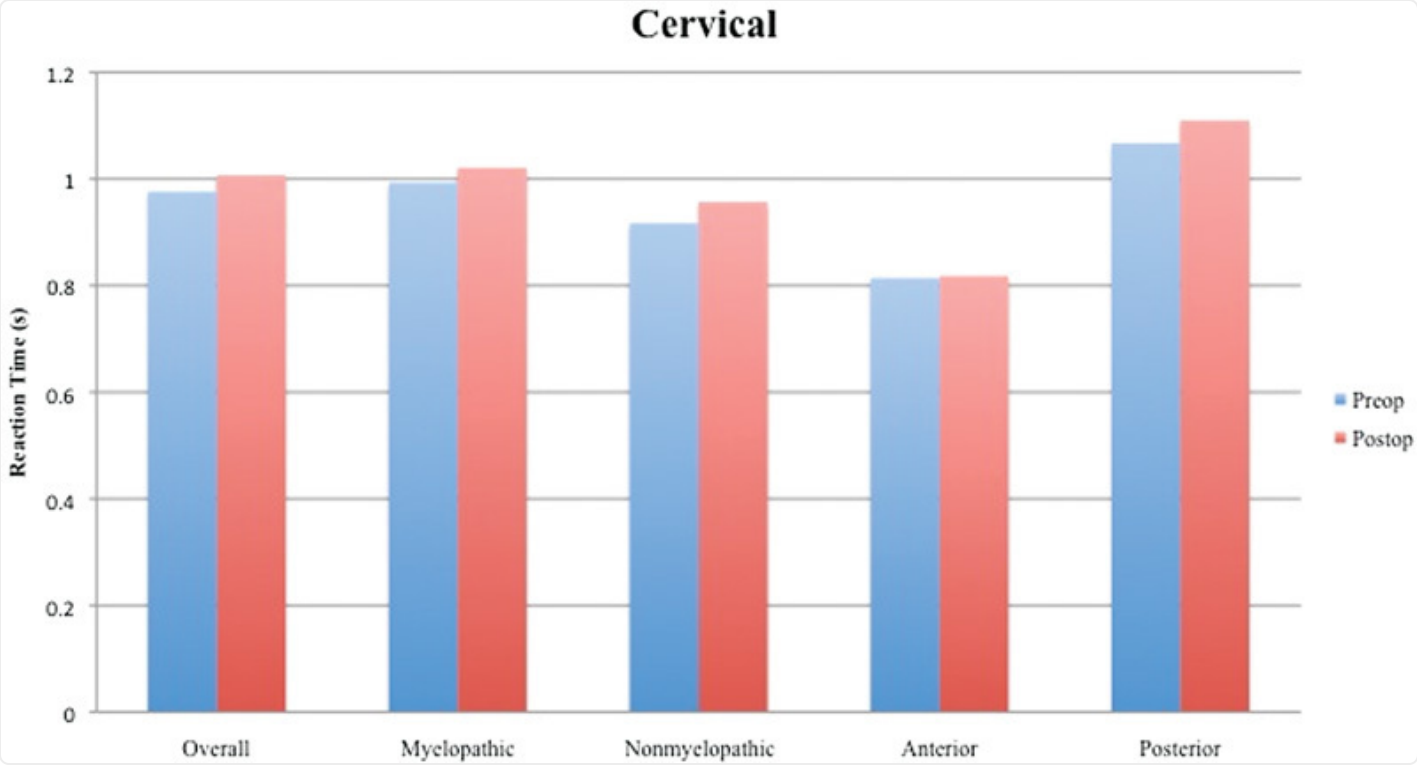
[a]Wilcoxon *t* test.

[b]Mixed-effect analysis.

Fig. 1.



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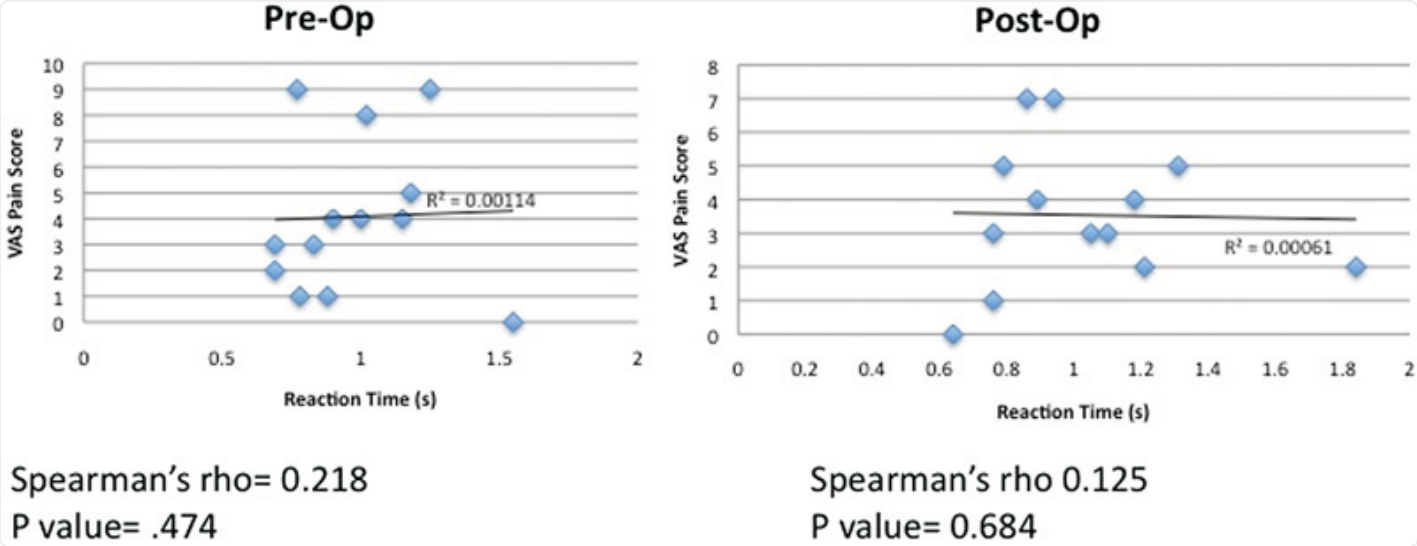
The mean driver reaction time (DRT) of patients having cervical surgery at the preoperative and first postoperative visit (2 to 3 weeks after surgery). There was no significant difference in pre- and postoperative DRT for the entire cervical group or any of the anterior approach, posterior approach, myelopathic, or nonmyelopathic groups.

When broken down by patients with myelopathy and patients without myelopathy, there was still no difference between the pre- and postoperative mean DRT for either group. There was a general trend for increased DRTs; however, those changes were small. The DRT of the myelopathic group was 0.993 seconds (SD 0.267) preoperatively and 1.021 seconds (SD 0.340) postoperatively ($p = 0.554$). The mean DRT of the nonmyelopathic group was 0.917 seconds (SD 0.127) preoperatively and 0.957 seconds (SD 0.227) postoperatively ($p = 0.697$). The mixed-effects regression analysis showed no difference in the DRT across the 12-week period for the myelopathic ($p = 0.908$) or nonmyelopathic groups ($p = 0.582$; Table 2, Fig. 1).

The analysis of anterior and posterior surgeries also showed no difference between the pre- and postoperative reaction time for either group, though there continued to be a trend for slight increase in the DRT postoperatively at 2 to 3 weeks. The mean DRT for the anterior group increased slightly from 0.814 seconds (SD 0.125) preoperatively to 0.818 seconds (SD 0.119) postoperatively ($p = 0.893$). The mean DRT for the posterior group was 1.067 seconds (SD 0.248) preoperatively and 1.112 seconds (SD 0.341) postoperatively ($p = 0.423$). The mixed-effects analysis of the DRT revealed no significant difference across all visits for either the anterior ($p = 0.899$) or the posterior groups ($p = 0.824$; Table 2, Fig. 1).

To assess whether pain played any role in the changes in DRT, we compared the preoperative and postoperative DRTs to the patient's self-reported VAS score but found no correlation. The preoperative Spearman rho was 0.218 ($p = 0.472$), and the postoperative Spearman rho was 0.125 ($p = 0.684$; Fig. 2). We also found no relationship between the DRT and opioid use either pre- ($p = 0.089$) or postoperatively ($p = 0.199$; Fig. 3).

Fig. 2.



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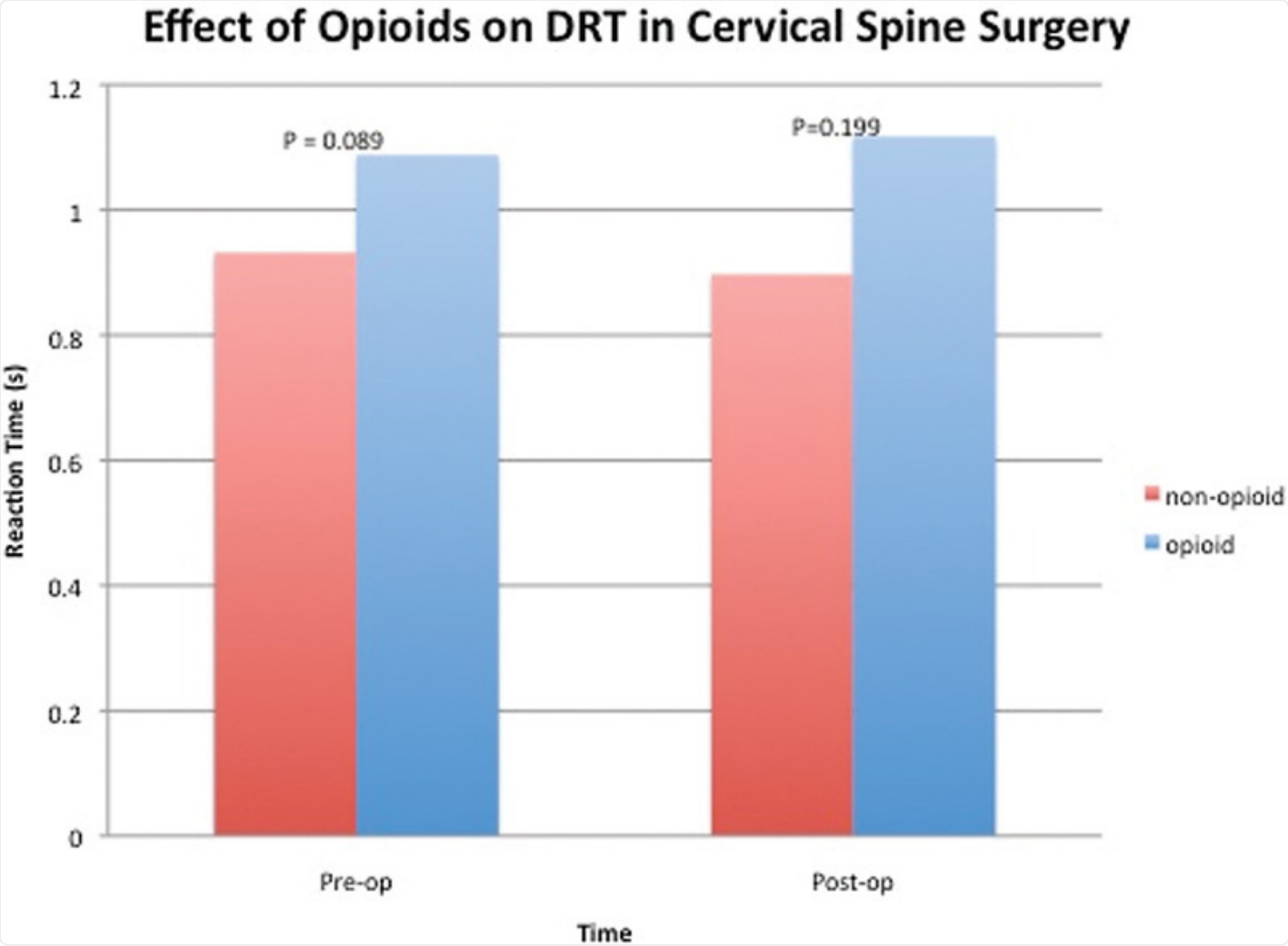
Visual analog scale (VAS) score correlation with driver reaction time after cervical spine surgery. Spearman correlation was used to compare reaction times and VAS scores of patients after cervical spine surgery. There was no statistical relationship either before ($p = 0.474$) or after surgery ($p = 0.684$) between VAS and driver reaction time.

Fig. 3.



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Opioid use and driver reaction time (DRT) in cervical spine surgery. We used an unpaired *t* test analysis to examine whether there was a relationship between patient opioid use and DRT. We found no relationship either preoperatively ($p = 0.089$) or postoperatively ($p = 0.199$).

The mean DRT of the control group was 0.762 seconds (SD 0.091). That was significantly faster than every cervical group at both pre- and postoperative visits except the anterior cervical approach group (presurgical $p = 0.521$; postsurgical $p = 0.3$).

Lumbar

Overall, the 23 patients who received lumbar surgery showed a trend toward decreased DRT. For all the lumbar patients, the mean DRT was 1.012 seconds (SD 0.222) preoperatively and 0.953 seconds (SD 0.222) at the first 2- to 3-week follow-up visit ($p = 0.196$). At 6 weeks, the mean DRT was 0.842 seconds (SD 0.071) and at 12 weeks it was 0.946 seconds (SD 0.133) The mixed-effects analysis revealed no significant difference in the DRT across all visits ($p = 0.110$; Table 3, Fig. 4). The Spearman rho analysis of the VAS scores revealed no correlation of pain and DRT. The preoperative Spearman rho was −0.199 ($p = 0.364$) and the postoperative Spearman rho was 0.011 ($p = 0.964$; Fig. 5). Likewise, there was no detectable effect of opioid use on the preoperative ($p = 0.327$) or postoperative ($p = 0.353$) reaction times (Fig. 6).

Table 3. Mean driver reaction time (in seconds) after lumbar surgery.

	Reaction time			
Patients	**Preoperative**	**Postoperative[a]**	**6 wk postoperative**	**12 wk postoperative[b]**
Overall	1.012 ± 0.222	0.953 ± 0. 222 ($p = 0.196$)	0.841 ± 0.071	0.945 ± 0.133 ($p = 0.110$)
Single level	0.951 ± 0.255	0.794 ± 0. 152 ($p = 0.012$)	–	– ($p = 0.008$)
Multilevel	1.051 ± 0.197	1.052 ± 0.204 ($p = 0.950$)	–	– ($p = 0.123$)
Fusion	1.077 ± 0.136	1.046 ± 0. 232 ($p = 0.713$)	–	– ($p = 0.229$)
Decompression	0.952 ± 0.270	0.884 ± 0. 198 ($p = 0.117$)	–	– ($p = 0.275$)

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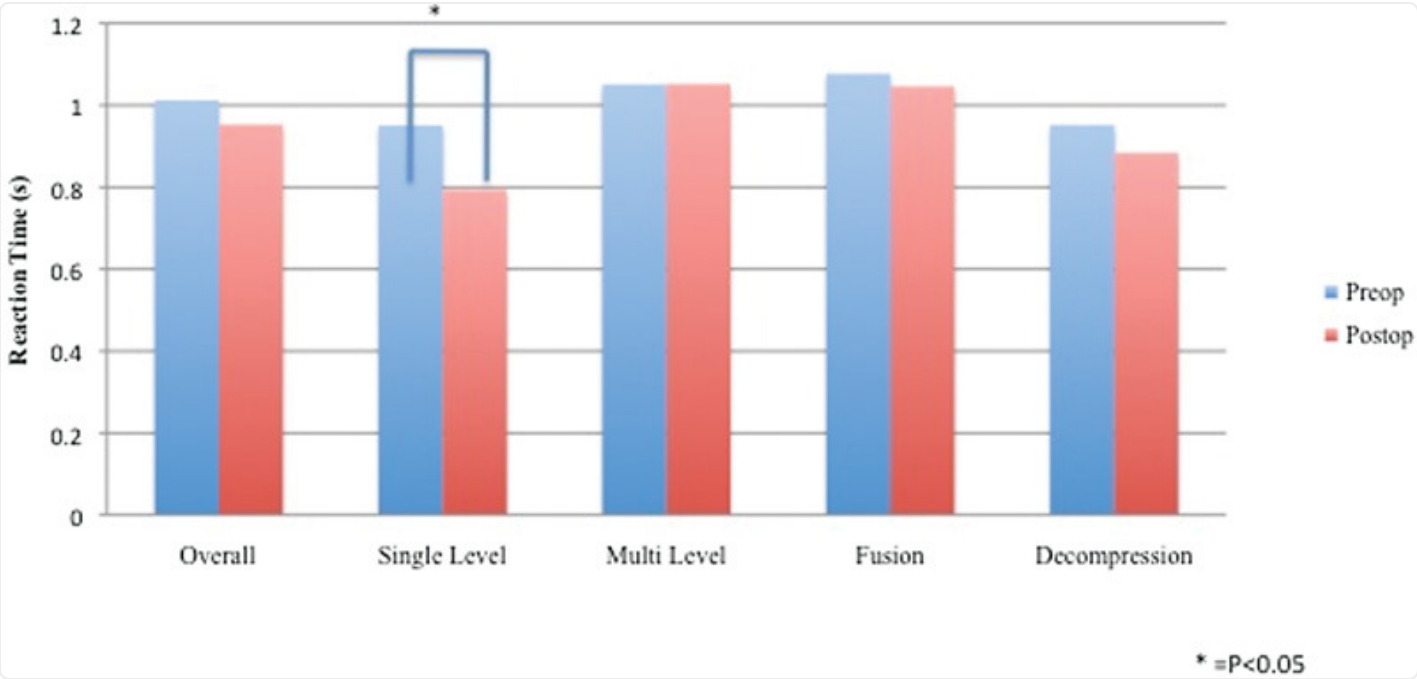
[a]Wilcoxon *t* test.
[b]Mixed-effect analysis.

Fig. 4.



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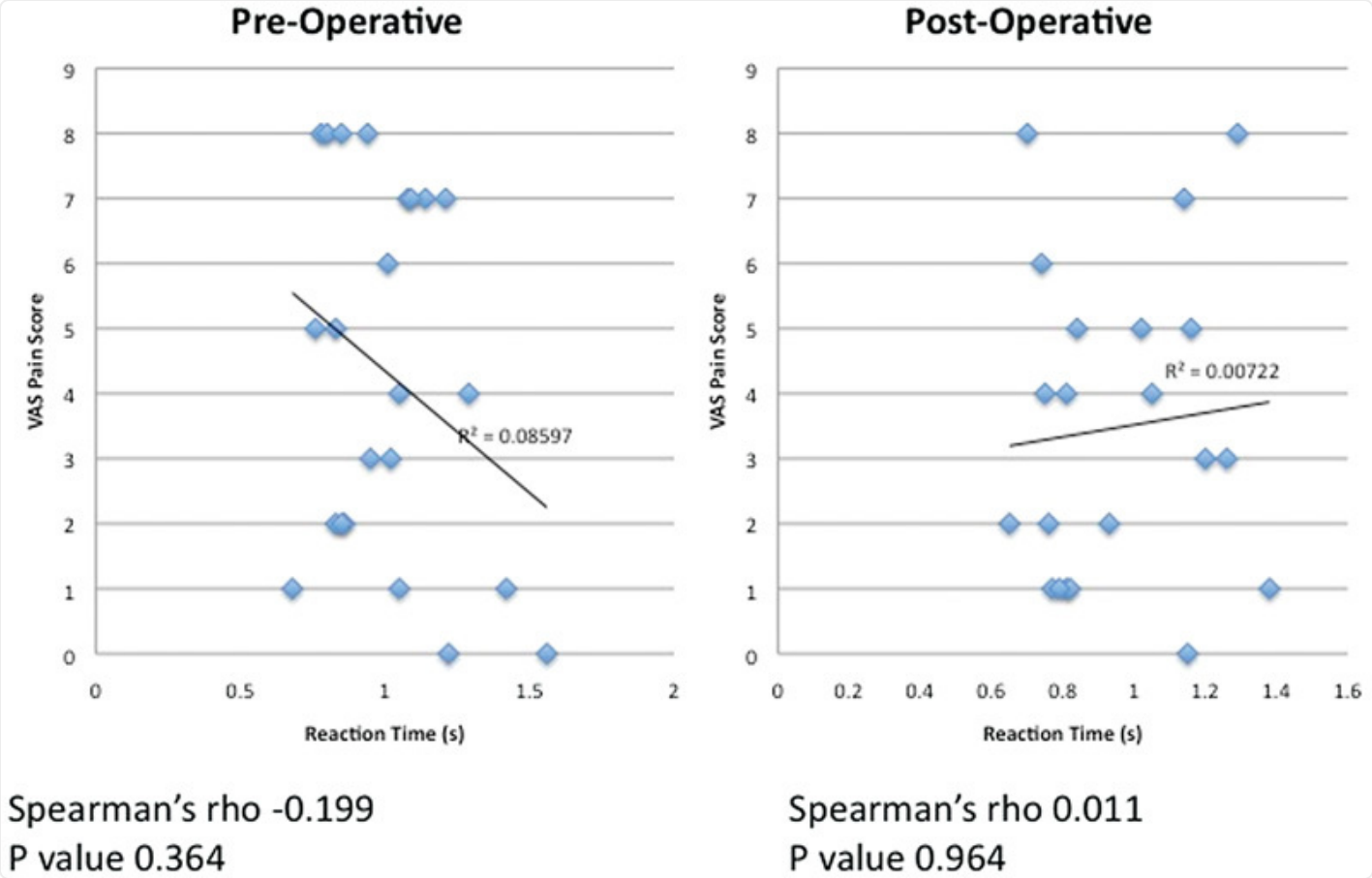
The mean driver reaction time (DRT) of patients having lumbar surgery at the preoperative and first postoperative visit (2 to 3 weeks after surgery). There was no significant difference in pre- and postoperative DRT for the entire lumbar group or any of the subgroups, except the single-level surgical group, which was improved.

Fig. 5.



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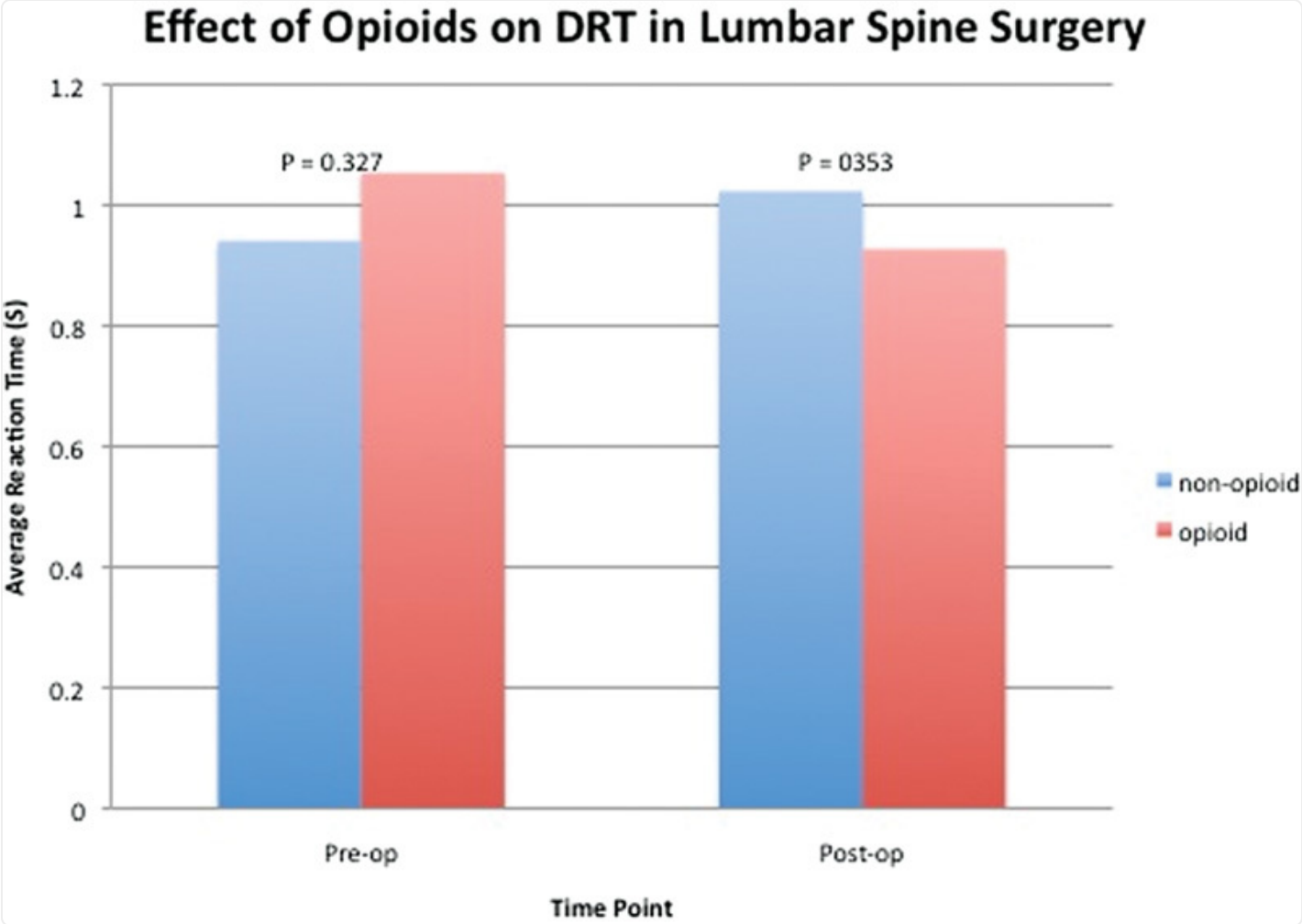
Correlation of visual analog scale (VAS) pain scale and driver reaction time after lumbar spine surgery. We used Spearman correlation to compare reaction times and VAS scores of patients after lumbar spine surgery. There was no statistical relationship either before ($p = 0.364$) or after surgery ($p = 0.964$).

Fig. 6.



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Opioid use and driver reaction time (DRT) in lumbar spine surgery. Unpaired *t* testing was used to determine if there was a relationship between patient opioid use and driver reaction time in lumbar surgery. There was no relationship either preoperatively ($p = 0.327$) or postoperatively ($p = 0.353$) between opioid use and DRT.

Patients in the lumbar group were then further analyzed by single- versus multilevel surgery. The single-level group had a mean preoperative DRT of 0.951 seconds (SD 0.255) and a mean postoperative DRT of 0.794 seconds (SD 0.152), which reached statistical significance ($p = 0.012$). Conversely, the mean DRT of the multilevel group was 1.051 seconds (SD 0.197) preoperatively and 1.052 seconds (SD 0.204) postoperatively ($p = 0.950$). For the single-level surgeries, the mixed-effects regression analysis had a *p*

value of 0.008, indicating decreased DRT across the postoperative visits. Conversely, the multilevel surgery group mixed-effects analysis revealed no postoperative difference across all four visits (p = 0.123; Table 3, Fig. 4).

When the lumbar group was broken down into the patients who had received fusion with or without decompression and the patients who had received decompression alone, the fusion group's mean DRT was 1.077 seconds (SD 0.136) preoperatively and 1.046 seconds (SD 0.232) postoperatively (p = 0.713). The decompression-only group's mean preoperative DRT was 0.952 seconds (SD 0.270), which decreased to 0.884 seconds (SD = 0.198) at the first postoperative visit (p = 0.117). The mixed-effects regression analysis of the fusion group (p = 0.229) and the decompression group (p = 0.275) showed no significant change across all postoperative visits (p = 0.229; Table 3, Fig. 4).

Again, every lumbar group was significantly slower than the control mean DRT of 0.762 seconds (SD 0.091) preoperatively. Postoperatively, only the single-level group (p = 0.691) and the decompression groups were not different than the control group (p = 0.128).

Discussion

The goal of this study was to establish when a patient's DRT returns to baseline after a spinal surgery. Although there are many subjective factors that contribute to a patient's ability to safely drive, one agreed-upon objective factor is DRT.[16] There is very limited literature on when post–spinal surgery DRT returns to preoperative times for the patients having lumbar surgery, and only two studies, focusing on ACDFs, for cervical surgery. Similarly to Liebensteiner et al and in contrast to Al-khayer et al, we found that lumbar patients' DRT at their first postoperative visit was not different from their preoperative DRT.[4 11] There was a trend for the lumbar surgery group as a whole to have improved DRTs between their preoperative and first postoperative visit. In the single-level surgical group, this improved DRT actually reached significance. The group that received decompression alone also approached statistical significance for improved DRT postoperatively. This was similar to the results found by Thaler et al, who showed that the postoperative DRT actually improved compared with the preoperative DRT for patients receiving lumbar disk surgery for radiculopathy.[12] As results were either improved or not statistically different from the preoperative groups, we feel comfortable stating that some patients having lumbar surgery, especially single-level surgery or decompression only, may consider return to driving at 2 weeks based on the DRT, although other factors especially including severity of disease, amount of muscular dissection performed, and baseline functional status must be taken into account.

It is not immediately clear why our results differ from that of Al-khayer et al and support Liebensteiner et al and Thaler et al.[4 11 12] It is possible that the nerve blocks studied by Al-khayer et al had a greater

effect on DRT than the fusions studied by Liebensteiner et al or the fusions and/or decompressions in our study because of the direct effect of selective nerve root block anesthesia on nerve roots. Interestingly, like Al-khayer et al,[4] we found no relationship between the self-reported pain and DRT; however, Liebensteiner et al did find a correlation between the pain and DRT. It is possible that the brake used by Liebensteiner et al required greater force to compress and thus was more affected by the pain.[11] In contrast, Thaler et al showed a statistically significant improvement in DRT postoperatively at discharge for the patients receiving surgery for lumbar radiculopathy.[12] Their patient group's more dramatic improvement was likely due to their described minimal surgical dissection and resolution of radicular pain, unlike our more heterogeneous patient population that likely continued to have some effect from chronic pain and the surgery at the first postoperative visit.[12]

To the best of our knowledge, only two other studies have addressed DRT after cervical surgery. Lechner et al found that the patients receiving ACDF for cervical radiculopathy had significant improvement in DRT at the time of discharge and recommended that it was safe for them to return to driving.[13] Kelly et al performed a post hoc analysis of patients' self-reported driving disability from neck pain on patients involved in an investigational device exemption study of ACDF and cervical arthroplasty and found that most patients reported no problem with driving at 6 weeks after surgery, which was the first postoperative time point recorded in their study.[14] In our study in contrast to lumbar surgery and in contrast to the results of Lechner's group, there was a slight trend toward an increased DRT after cervical surgery across all the groups. This is likely because our group was again more heterogeneous and included more patients with myelopathy and chronic pain who were less likely to have the immediate symptom resolution seen in the study of Lechner et al.[13] However, even in our group the overall difference between the mean preoperative and postoperative DRTs was only 0.031 seconds. At 70 mph, that difference would increase the total stopping distance by 3 feet. Given the small real-world effect this would have, it may be acceptable to allow some cervical patients who are not on narcotics to drive after the first postoperative visit, although surgeons should refrain from giving firm recommendations on this topic and factors including the disease severity must be considered.

DRT is one of many factors that affect a patient's ability to drive. It should be noted that though the medicolegal issues are outside the purview of this article, surgeons need to consider each patient individually and should probably refrain from giving firm recommendations. Although this study showed no significant effect on DRT from narcotic pain medication usage, we do not suggest any patient on narcotics return to driving, and furthermore, we did not have information about the amount of narcotic used by patients, so it remains very possible that patients using high doses of narcotic may have increased DRT. Also, the multilevel lumbar group did not trend toward a faster DRT like the other lumbar groups; likewise, the posterior cervical group showed the greatest increase in DRT postoperatively. Both these groups underwent more extensive surgeries than the other cohorts and likely

had more pre- and postoperative pain. Pain may lead to reflex inhibition, which could be the root cause of the high pre- and postoperative DRT for the multilevel group.[17] In California, the DMV handbook notes the recommended DRT is 750 milliseconds but in foreign countries the recommended DRT varies from 700 milliseconds in Great Britain to 1,500 milliseconds in Germany. Although various models of driving simulators were used to establish those numbers and therefore they are not directly applicable to the results of this study, in our study the fusion and multilevel lumbar surgery groups and posterior cervical groups were subsets of patients with a mean DRT that approached that upper limit, so those patients should exercise extra caution.[4 16 18 19 20] For all drivers, it is probably wise to begin by practicing driving on short trips around their local neighborhood with a passenger who is available to drive.[3]

Weakness of our study include that we were unable to recruit any female controls and our controls were younger on average than our patients, both of which may contribute to the faster DRTs in the control group. Other potential weaknesses of this study include the small population size and the high rate of patient attrition in study participation after the first postoperative visit. Furthermore, our study population is relatively heterogenous, a fact that impacts the overall power of our study especially for the groups undergoing more extensive surgery, which may require longer postoperative recovery. Such subgroups were those receiving multilevel lumbar surgery, lumbar fusion, or posterior cervical surgery. In addition, our study only measured the speed at which the patient can compress a pedal and not the strength with which they are able to do so, and thus the results may not be generalizable to more real-world conditions. It is also cannot be ruled out that some improvement in the DRT may be secondary to learning by the patients. Moreover, it is possible that our follow-up period is too short to show the full effect on DRT of surgeries with longer recovery times, such as with lumbar fusion. To address these issues, we plan to recruit more patients for a future study with longer time periods in those subgroups with greater DRTs and likely longer postoperative recovery periods required. Specifically we plan to perform another study with increased participant numbers on patients undergoing lumbar fusion, multilevel lumbar surgery, and cervical surgery via the posterior approach as those groups had both pre- and postoperative DRTs closest to the recommended limit for safe driving and thus most require further study to elucidate when such patients may safely return to driving. The return to driving in real-world situations is vastly more complex than the driving simulator. Furthermore, the legal implications of driving are beyond the scope of this article. The DRT is a reasonable proxy for patients' ability to brake in an emergency, but it must be remembered that it does not address the many other aspects of real-world driving like baseline functional status and the patients' ability to effectively maneuver within their seats to adequately observe their environments—all of which impact each individual patient's ability to return safely to driving.

In summary, for patients who have received either cervical or lumbar surgery, there is no measurable change in the DRT between the preoperative visit and the first postoperative visit. The one exception to this is single-level lumbar surgery, in which the DRT is significantly improved at the first operative visit. This is in contrast to our hypothesis that patients' DRTs would be elevated at 2 to 3 weeks postoperatively. We believe that these data indicate that some spinal patients, especially those having single-level lumbar surgery and those who have good baseline functional status, may be able to return to driving after their first postoperative visit. Our data may be useful in developing guidelines regarding return to driving, although further study is needed.

Disclosures Trevor P. Scott, none William Pannel, none David Savin, none Stephanie S. Ngo, none Jessica Ellerman, none Kristin Toy, none Michael D. Daubs, Consultant: Depuy-Synthes; Royalties: Depuy-Synthes Daniel Lu, none Jeffery C. Wang, Board membership: North American Spine Society, Cervical Spine Research Society, AOSpine Foundation, Collaborative Spine Research Foundation; Royalties: Stryker, Osprey, Aesculap, Biomet, Amedica, Seaspine, Synthes; Stock/stock options: Fziomed, Promethean Spine, Paradigm Spine, Benevenue, NexGen, Pioneer, Amedica, Vertiflex, Electrocore, Surgitech, Axiomed, VG Innovations, Corespine, Expanding Orthopaedics, Syndicom, Osprey, Bone Biologics, Curative Biosciences, PearlDiver **Conflicts of Interest and Source of Funding** The submitted manuscript does not contain any information about medical devices or drugs. No funds were received in support of this work. No benefits in any form have been or will be received from a commercial party related directly or indirectly to the subject of this manuscript.

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Exhibit 8

Deposition Transcript Excerpt
Thomas Carroll II
July 21, 2026

In the Matter Of:

SMOTHERMON vs HODGE ET AL

2:25-CV-01858-APG-BNW

THOMAS CARROLL II

July 21, 2026

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,	§	
	§	CASE NO.
PLAINTIFF,	§	2:25-CV-01858-APG-BNW
V.	§	
KEITH HODGE, AN INDIVIDUAL; KEVIN HODGE, AN INDIVIDUAL; HODGETWINS, LLC, A LIMITED LIABILITY COMPANY,	§	
DEFENDANTS.	§	

REMOTE AND VIDEOTAPED DEPOSITION OF
THOMAS C. CARROLL, II
JULY 21, 2026

REMOTE AND VIDEOTAPED DEPOSITION OF THOMAS C. CARROLL, II, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above styled and numbered cause on Tuesday, July 21, 2026, from 12:01 p.m. to 1:26 p.m., before TAMARA CHAPMAN, CSR, RPR-CRR in and for the State of Texas, reported remotely by computerized stenotype machine in Austin, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

Job No. J15120019

A P P E A R A N C E S

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ALSO PRESENT:
Brent Jordan, Videographer
Richard McLaren, law student, Randazza Legal Group

THE VIDEOGRAPHER: We are now on the record. The time is 12:01 p.m. Central Time on July 21st, 2026. This begins the videoconference deposition of Thomas C. Carroll, taken in the matter of Pastor Steve Smothermon v. Keith Hodge, et al. This case is filed in the United States District Court, District of Nevada, Case No. 2:25-CV-01858-APG-BNW. 12:01

My name is Brent Jordan. I'm the remote videographer for today. The court reporter is Tamara Chapman. We are representing Esquire Deposition Solutions. 12:02

Will counsel present please identify yourself and state whom you represent.

MR. GREEN: Good morning, this is -- good morning or good afternoon, depending on where you're at, I guess. This is Ronald Green of Randazza Legal Group in Las Vegas, Nevada. I am counsel for the defendants in this case. 12:02

MR. JACKSON: Good morning. Mike Jackson, appearing on behalf of the deponent, Mr. Carroll. 12:02

THOMAS C. CARROLL, II,
having been first duly sworn, testified as follows:

EXAMINATION 12:02

Q. The last line of the -- your message is: Time is of the essence.

What did you mean by that?

A. That the message should be taken down immediately. 12:40

Q. That the message, meaning the entire Facebook post?

A. Yes.

Q. Okay. And you do not know specifically when the Facebook post was taken down. That's correct? 12:40

A. I do not.

Q. Okay. So you don't know if they complied with that -- with your message?

A. I know eventually they did. 12:40

Q. Okay. But you do not know when?

A. Correct.

Q. All right. In your mind, does this message -- does your message to the Hodgetwins threaten litigation? 12:41

A. I don't know what you mean by threaten. It does not --

Q. Did you intend -- did you intend for the Hodgetwins to read this message and think that you were going to file a lawsuit if they did not comply? 12:41

A. I don't think this addresses that.
Q. Okay.
A. It just says take it down.
Q. So if they had seen your message -- so if they had seen your message, would you agree that they complied with it if they took the post down? 12:41
MR. JACKSON: Objection; speculative. Go ahead and answer.
A. Not fully because they didn't -- I don't believe they issued an apology. Or if they did, I'm -- I'm unaware of it. 12:41
Q. Okay. Do -- do you know whether Smothermon is taking the position that your message triggered a preservation requirement by the Hodgetwins? 12:42
MR. JACKSON: Objection; calls -- calls for communication between attorney and client. In your mind does this message tell the Hodgetwins that they have to preserve all evidence related to the Facebook message that they -- the Facebook post they made about Pastor Smothermon? 12:42
MR. JACKSON: Calls for communications between attorney and client. In your mind does this message tell the Hodgetwins that they have to preserve all evidence related to 12:42

Facebook message -- the Facebook post that they made about Pastor Smothermon?

A. I'm not a litigator. I don't know the answer to that question.

Q. As a layperson would you read this message and think I better preserve everything I have regarding this Facebook post? 12:43

A. I'm not sure.

Q. I'm sorry. I misspoke. The message is not about Pastor Smothermon. It's about Cracker Barrel's Steve Smotherman. I misspoke there. I apologize. So your -- your testimony is just to make sure I understand. You don't -- you do not know whether this message would have triggered a preservation -- would have triggered a thought by the Hodgetwins that they should preserve everything related to this Facebook post due to future legal action being possible? 12:43

A. Are you asking me to judge whether the Hodgetwins would have interpreted it that way? 12:43

Q. Is that how you intended for them to interpret it?

A. I don't -- I don't know how I intended them to interpret this with regard to that issue.

Q. Okay. Did your message ask the recipient 12:44

to retain documents?
A. It does not.
Q. Does it ask the recipient to retain search histories?
A. This message does not. 12:44
Q. Does it ask the recipient to retain analytics?
A. This message does not.
Q. Does it ask them to retain any communications? 12:44
A. This message does not.
Q. Does it ask them to retain anything?
A. It does not.
Q. Am I correct that the only things it tells them to do are to delete the post? Well, 12:45
that's -- it does tell them to delete the post. Correct?
A. Among other things, yes.
Q. And it tells them to make an apology. Correct? 12:45
A. Correct.
Q. Does it tell them to do anything else?
A. No.
Q. Why did you choose Facebook Messenger to send -- as your method of communication with the 12:46

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,	§	
	§	CIVIL ACTION NO.
PLAINTIFF,	§	2481CV00580
V.	§	
KEITH HODGE, AN INDIVIDUAL; KEVIN HODGE, AN INDIVIDUAL; HODGETWINS, LLC, A LIMITED LIABILITY COMPANY,	§	
DEFENDANTS.	§	

REPORTER'S CERTIFICATION
DEPOSITION OF THOMAS C. CARROLL, II
TAKEN JULY 21, 2026

I, TAMARA CHAPMAN, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, THOMAS C. CARROLL, II, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition was delivered to RONALD D. GREEN;

That a copy of this certificate was served on all parties and/or the witness shown herein on _____.

I further certify that pursuant to FRCP No.

30(f)(i) that the signature of the deponent:

was requested by the deponent or a party before the completion of the deposition and that the signature is to be returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

X was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 24th day of July, 2026.

Tamara Chapman, CSR, RPR-CRR
CSR NO. 7248; Expiration Date: 12-31-26
Firm Registration No. 77
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