

1 State of Ohio, )  
 County of Cuyahoga. ) SS:  
 2 - - - - -  
 IN THE COURT OF COMMON PLEAS  
 3 - - - - -  
 FLORETTA GRAHAM,  
 4 }  
 Plaintiff, }  
 5 }  
 -v- } Case No. 348454  
 6 }  
 ALI HALABI, M.D., }  
 7 ET AL., }  
 8 Defendants. - - } - -

9  
 10 DEPOSITION OF JOHN JEFFREY ALEXANDER, M.D.  
 11 Saturday, May 22, 1999

12 - - - - -  
 13  
 14 Deposition of JOHN JEFFREY ALEXANDER, M.D., called for  
 15 examination by the Plaintiff under the Ohio Rules of Civil  
 16 Procedure, taken before me, Robert A. Cangemi, a Notary  
 17 Public in and for the State of Ohio, at MetroHealth  
 18 Medical Center, Cleveland, Ohio, commencing at 7:45 a.m.,  
 19 the day and date set forth.

20 - - - - -  
 21  
 22  
 23  
 24  
 25 COMPUTER-AIDED TRANSCRIPTION



1           **APPEARANCES:**

2

3                   **On Behalf of the Plaintiff:**

4

5                   **HOWARD D. MISHKIND, ESQUIRE!**

6

7                   Becker &amp; Mishkind

8

9                   660 Skylight Office Tower

9

10                  Cleveland, Ohio 44113

11

12                   **On Behalf of the Defendants:**

13

14                   **STEPHEN CRANDALL, ESQUIRE**

15

16                   Reminger &amp; Reminger

17

18                   113 St. Clair Building

19

20                   Cleveland, Ohio 44115

21

22                   - - - - -

23

24

25

1                   MR. MISHKIND:                   Let the record  
2 reflect that we are here at MetroHealth Medical  
3 Center on Saturday, May 22, 1999, for purposes  
4 of perpetuating Dr. Jeffrey Alexander's  
5 testimony on direct examination for **use** at trial  
6 that starts on the 24th.

7                   Due to the circumstances in terms of the  
8 scheduling, Mr. Crandall and I have discussed  
9 the following, number one, that: *there* is a  
10 stipulation as to a waiver of the filing of the  
11 deposition, the one day rule, as well as the  
12 filing of the video and the transcript; is that  
13 correct?

14                   MR. CRANDALL:                   That is  
15 correct.

16                   MR. MISHKIND:                   And further, I  
17 guess, we can have a stipulation as to the  
18 retention of the video with Video  
19 Discovery.

20                   **And** further, Doctor, we will ask you at  
21 the end, but I will do it now in case we are  
22 rushed, *you* don't have a problem with waiving  
23 the viewing of the video deposition?

24                   THE WITNESS:                   No.

25                   MR. MISHKIND:                   And waiving the

1 reading of the deposition, do **you?**

2 THE WITNESS: No.

3 MR. MISHKIND: Very good, even  
4 though you **haven't** been sworn in, we will take  
5 that as an acknowledgement of that.

6 - - - - -  
7 (Plaintiff's Exhibit No. 1  
8 was marked for identification.)  
9 - - - - -

10 JOHN **JEFFREY ALEXANDER**, M.D.  
11 called by the Plaintiff for examination under the  
12 Ohio Rules of Civil Procedure, after having been first  
13 duly sworn, as hereinafter certified, was examined and  
14 testified as follows:

15 . . . - - - -  
16 **EXAMINATION**  
17 - - - - -

18 **BY MR. MISHKIND:**

19 Q Good morning.

20 A Good morning.

21 Q would **you** please introduce yourself to the  
22 jury?

23 A John Jeffrey Alexander.

24 Q And **would** you tell **the jury** what **your** occupation  
25 is, please?

1 A I am a vascular surgeon.

2 Q Dr. Alexander, where do you work?

3 A I work at MetroHealth Medical Center in  
4 Cleveland.

5 Q I am sorry?

6 A In Cleveland.

7 Q **And**, in fact, are we at MetroHealth Medical Center  
8 at about a quarter of eight in the morning on Saturday,  
9 May 22nd?

10 A Yes, we are.

11 Q Dr. Alexander, would *you* please tell the jury why  
12 it is that we are here at your office on Saturday morning  
13 for purposes of this deposition?

14 A I requested, if possible, to give a video  
15 deposition because of a tight schedule, and everyone  
16 agreed.

17 Q Thank you very much.

18 Tell the **jury**, if you would, how long have you been  
19 employed at MetroHealth Medical Center?

20 A Approximately fifteen years.

21 Q **And** would you outline briefly your educational  
22 background, beginning with medical school, and then  
23 continuing with your post medical school training,  
24 please?

25 A I went to the University of Pittsburgh and

1 graduated with an MD degree in 1978, after which I went to  
2 the University of Chicago and completed a surgical  
3 residency and vascular fellowship.

4 Q What is a fellowship?

5 A It is specialty training in a certain area, in my  
6 case, vascular surgery.

7 Q Are you Board certified?

8 A I am Board certified in general surgery, with a  
9 certificate of special competence in vascular  
10 surgery.

11 a What did you have to accomplish to become Board  
12 eligible, then what did you have to accomplish to be  
13 become Board certified?

14 A In vascular surgery?

15 Q Yes.

16 A To become Board eligible I had to complete a  
17 recognized training program and residency in general  
18 surgery.

19 I had to complete a recognized training program in  
20 vascular surgery.

21 I had to pass successfully both a written and oral  
22 examination in vascular surgery.

23 And I had to submit case reports for one hundred  
24 major reconstructions, which were then reviewed by the  
25 Board of Surgery.

1 Q And you became became Board certified first, when  
2 was that, Doctor?

3 A I don't remember the date.

4 Q In both general surgery and then in vascular  
5 surgery?

6 A Initially in general surgery, and then following my  
7 training in vascular, I received a Certificate of Special  
8 Competence.

9 There's no specific Board certification in vascular  
10 surgery.

11 Q You were kind enough to provide me with a CV, and  
12 it looks like it was 1984 that you first became Board  
13 certified; does that sound about right?

14 A In general surgery.

15 Q And vascular surgery, it looks like in --

16 A A few years later.

17 Q -- in 1988?

18 A Yes.

19 Q Thank you very much.

20 Now, doctor, you are licensed to practice medicine,  
21 correct?

22 A Yes.

23 Q Can you tell me approximately when it was that *you*  
24 become licensed?

25 A In the State of Ohio I was licensed in



1 1984.

2 Q And have you maintained your license continuously  
3 since then?

4 A Yes, I have.

5 Q Do you do inguinal hernia repairs?

6 A No, I do not.

7 Q As I ask you questions and as Mr. Crandall may ask  
8 you questions after I am done, will you be providing  
9 opinions on whether or not Dr. Halabi's inguinal hernia  
10 repair was or was not performed in accordance with the  
11 accepted standards of care?

12 A No.

13 Q Would you tell the jury why you will not be  
14 providing opinions on whether he did or did not violate  
15 the standard of care?

16 A Because I have not performed an inguinal hernia  
17 repair for fifteen years, and I don't feel qualified to  
18 give an opinion.

19 Q In fact, Doctor, have you even seen Dr. Halabi's  
20 operative report to understand the technique that he  
21 used?

22 A No, I have not.

23 Q You operated on Floretta Graham, so the jury has a  
24 framework as we talk about this case, on her left leg, on  
25 January 23, 1997; is that correct?

1 A That is correct.

2 Q And as you sit here now and the deposition begins,  
3 you have in front of **you** the original of Floretta Graham's  
4 medical records from MetroHealth Medical Center?

5 A Yes, I do.

6 Q Before the deposition started, we marked as Exhibit  
7 1 the entire chart that has everything from A to Z, is  
8 that correct?

9 A Correct.

10 Q And is that the true and original chart  
11 of the entries, to your knowledge, that were made at or  
12 near the time of the event that Floretta was seen here at  
13 Metro?

14 A Yes.

15 Q During my questioning, Doctor, please feel free to  
16 refer to the chart as necessary, okay?

17 A Yes.

18 Q When was Floretta Graham first seen at Metro as a  
19 patient?

20 A The first note recorded in the chart is September  
21 12, 1996.

22 Q And according to the records, **and** correct me if I  
23 am wrong, it appears that **she** was seen by the UC Clinic,  
24 the Neurology Clinic, and then in the Vascular Lab all on  
25 that first visit, is that correct?

1 A Yes.

2 a Could you briefly describe the history that was  
3 obtained and what took place on September 12,  
4 1996?

5 A I will paraphrase the note from the Neurology  
6 Clinic.

7 Ms. Graham was 37 years old, that she had undergone  
8 an inguinal herniorraphy in March of 1996; that she  
9 developed swelling approximately one month later, that was  
10 in April.

11 And that at the time of her examination had  
12 swelling of the leg to the knee. And then it goes on to  
13 describe left lower extremity pitting edema, grade three  
14 over four.

15 Then that she had palpable pulses in her foot, and  
16 that neurologically there didn't appear to be any  
17 abnormality.

18 Q When you mentioned marked pitting, grade three over  
19 four, what does that mean, Doctor?

20 A Well, it depends on the examiner, but it  
21 indicates that there is fairly significant swelling of the  
22 leg.

23 Q What causes that kind of swelling to cause grade  
24 three over four marked pitting edema?

25 A There are a number of things that can cause leg

1 swelling, from systemic illness, such as congestive heart  
2 failure, kidney failure, or if it is an unilateral  
3 swelling, it could be due to a blood clot in the vein or a  
4 narrowing of the vein.

5 Q Was there any history of kidney  
6 failure or heart failure, to your knowledge, of Floretta  
7 Graham?

8 A Not to my knowledge, no.

9 a What testing was performed or recommended at that  
10 time?

11 A The patient was sent to the Vascular Laboratory for  
12 a study of her veins and arteries.

13 Q **And** was that the duplex study?

14 A The duplex scan was a study of the vein, an image  
15 of the venous system.

16 Q **And** the duplex study to image the vein, how is that  
17 done, essentially?

18 A It uses an ultrasound technique to  
19 image the vein and to record flow through the veins of the  
20 leg.

21 Q What were the results of the study that were  
22 performed on September 12th?

23 A The study indicated that the patient had no blood  
24 clot in the venous system of either leg, but there was  
25 noted to be venous insufficiency in the left

1 popliteal vein.

2 Q Now, you said no blood clot. I think there is  
3 reference in the records that the jury will have to no  
4 DVT; are we talking about the same thing?

5 A Yes.

6 Q And what does DVT stand for?

7 A Deep vein thrombosis.

8 Q You mentioned that the results did show venous  
9 insufficiency?

10 A Yes.

11 Q And can you explain what that means?

12 A Yes, that is a condition where the valves and the  
13 vein are not functioning properly, and that also can lead  
14 to leg swelling.

15 Q Now, what is a doppler study?

16 A It is similar technique using ultrasound in looking  
17 at flow through blood vessels.

18 Q Was a Doppler study done, also?

19 A She had a Doppler study done of her arterial  
20 system, yes.

21 Q And what was the purpose of the Doppler study of  
22 arterial system?

23 A Normally the purpose of the study --

24 MR. MISHKIND: Let's go off the  
25 record a second, Doctor.

1                                   - - - - -

2                                   (Record read.)

3                                   - - - - -

4                                   THE VIDEOGRAPHER :                   Back on the  
5                                   record.

6 BY MR. MISHKIND:

7 Q            Doctor, we had gone off the record a moment ago  
8 because in the background we have Life Flight, and as I  
9 understand it, the pad is right outside of the conference  
10 room?

11 A           Correct.

12 Q           We will try to hopefully work through that, but  
13 just so the jury understands, if they hear some noise in  
14 background, what they are listening to.

15               In any event, I believe I was asking you, before we  
16 went off the record, about the purpose of a Doppler study  
17 of the arterial system.

18 A           Yes, a Doppler study is used to rule  
19 out any constriction or obstruction of the arterial  
20 system.

21 Q           Would you please briefly explain what the  
22 difference is between the arterial system and the venous  
23 system, what the difference is between a vein and an  
24 artery?

25 A           Arteries are muscular blood vessels which carry

1 blood away from the heart to supply the tissue with  
2 oxygen, and **veins** are thin walled vessels that return  
3 blood back to the heart.

4 Q What is a venogram, Doctor?

5 A A venogram is a dye study of the veins. It is an  
6 x-ray test.

7 Q Based upon the studies that were done on September  
8 12th, **was any** injury or **constriction of the** arterial  
9 system or **the** arteries, was **that** ruled out?

10 A Yes.

11 Q Now, on September 12, 1996, there's a note in the  
12 UC Clinic that the patient had not tried Ted hose as of  
13 that date; do you see that note?

14 A Yes, I do.

15 Q What are Ted hose?

16 A Ted hose are **surgical support stockings** that are  
17 used to **control** leg swelling.

18 Q Doctor, I want you to assume for purposes of this OUT  
19 question that Floretta Graham had pain and swelling  
20 beginning approximately three or four weeks after the  
21 hernia **repair**, and that she continued to have pain and  
22 swelling prior to the time that she came to Metro; do you  
23 have an opinion, Doctor, to a reasonable degree of medical  
24 certainty, as to whether it would have been **reasonable** and  
25 appropriate for a doctor to have prescribed the Ted hose

out

1 to her prior to her presentation to Metro?

2 MR. CRANDALL: Objection.

3 Q You can answer the question.

4 A Yes, I have an opinion.

5 Q And what is your opinion?

6 A My opinion is that Ted hose is effective in  
7 treating leg swelling.

8 Q And when one prescribes Ted hose to treat leg  
9 swelling, what is the intent or the purpose behind the use  
10 of those hose?

11 A Extrinsic compression of the leg prevents soft  
12 tissue swelling.

13 Q **And** if you prevent soft tissue swelling, what does  
14 that do in the total process of things?

15 A Initially it relieves the symptoms associated with  
16 swelling, and depending on the cause of the swelling, it  
17 can also reduce the risk of later complications of  
18 swelling.

19 Q According to the records, Doctor, and again,  
20 correct me if I am wrong, or verify it in the records,  
21 Floretta was next seen on October 24, 1996, is that  
22 correct?

23 A Yes.

24 Q What department was she seen in?

25 A She was seen by the Department of Family



1 Practice.

2 Q And what do the records indicate were the physical  
3 findings on that date?

4 A Essentially that she had left leg swelling. It  
5 states that her left leg was edematous, with pitting edema  
6 to the groin, and that there was slight tenderness of the  
7 leg, as well.

8 Q Would you explain to the jury what edematous  
9 means?

10 A It means that the leg is swollen.

11 Q **And** on that date, **was** Floretta referred for any  
12 testing?

13 A She was referred to the Radiology Department for a  
14 venogram.

15 Q And the venogram again you indicated, that studies  
16 the veins, correct?

17 A Yes, that is correct.

18 Q How is the venogram test performed,  
19 essentially?

20 A A needle is inserted into a vein at the  
21 ankle.

22 A tourniquet is placed just above that to force the  
23 contrast in the deep venous system, and then contrast is  
24 injected and x-rays are taken.

25 Q You eventually were provided with the results of

1 the venogram, correct?

2 A Yes.

3 Q **And** in a moment we will talk about those results.

4 Tell the jury, if you would -- do you need to take

5 that?

6 MR. MISHKIND: Off the record  
7 for one second.

8

- - - - -

9 (A discussion was had off the  
10 record.)

11

- - - - -

12

(Record read.)

13

- - - - -

14

15 THE VIDEOGRAPHER: Back on the  
16 record.

17 BY MR. MISHKIND:

18 Q Doctor, I believe before you took the call, we were

19 talking about the fact that you eventually did receive the

20 results of the venogram, correct?

21 A Yes, I did.

22 Q And we will talk about those momentarily, The

23 first time that you actually met Floretta Graham would

24 have been on what date?

25 A I would have met her on November 15,

1996.

1 Q And you saw her apparently in  
2 conjunction with another physician in the department at  
3 that time?

4 A Yes, I would have seen her with a surgical resident  
5 in the surgery clinic.

6 Q And briefly what was the history that was obtained,  
7 and what did the physical examination show on that visit,  
8 please?

9 A Again, I am going to refer to this note, that the  
10 patient is a 37 year old woman with a seven a month  
11 history of swelling of the left lower extremity or left  
12 leg following a left inguinal herniorrhaphy.

13 She had been evaluated with a duplex scan that was  
14 negative for a blood clot, and that she had the venogram,  
15 which showed findings of a three to four centimeter  
16 segment of femoral vein stenosis at the level of the  
17 inguinal ligament.

18 Her examination included a normal pulse. On  
19 examination she had left leg and foot swelling. It  
20 measures a calf circumference of, I believe it is 34  
21 centimeters and 30 centimeters on the right at the same  
22 level.

23 Q So her left calf was about four centimeters  
24 fatter?

25 A Yes, four centimeters greater in

1 circumference.

2 Q What causes that kind of leg discrepancy or  
3 circumference discrepancy?

4 A Well, I already mentioned there are a number of  
5 causes of leg swelling.

6 The list is fairly long, potentially.

7 Q Venous constriction, is that one of the  
8 causes?

9 A Yes.

10

11 (Plaintiff's Exhibit No. 2

12 was marked for identification.)

13

14 BY MR. MISHKIND:

15 Q Now, you mentioned the results of the venogram. I  
16 just want to hand you what has been marked for  
17 identification purposes as Deposition Exhibit 2, and ask  
18 you whether or not that is a copy of the report from the  
19 Radiology Department for the venogram.

20 A Yes, it is.

21 Q And the three to four centimeter stenosis was in  
22 the area of the common femoral vein, correct?

23 A Correct.

24 a And the common femoral vein runs from where to  
25 where as we look at the anatomy?

1 A It generally runs beneath the inguinal ligament, so  
2 it is in the groin region.

3 Q And the stenosis was in the area of the inguinal  
4 ligament?

5 A Yes.

6 Q Were various treatment options discussed at that  
7 date?

8 A Yes, they were.

9 Q And tell the jury what the treatment options  
10 were.

11 A There were four treatment options that were  
12 discussed with the patient. The first was the more  
13 conservative option of the use of surgical support  
14 stockings and leg evaluation.

15 The second was angioplasty or balloon dilatation of  
16 the vein.

17 The third was stent placement in the area of the  
18 narrowing.

19 And the fourth was surgical treatment.

20 Q Angioplasty and stent placement, what does that all  
21 mean?

22 A Angioplasty is a technique of using a balloon to  
23 open a narrowing blood vessel.

24 A stent is a rigid device that can be inserted in a  
25 blood vessel to maintain its diameter; in other words, to

1   **keep** it open.

2   Q       I may have omitted **to ask** this of **you, Doctor**, but  
3   **when we** refer to stenosis, significant stenosis, as  
4   reflected in the report; what does the **term** stenosis  
5   mean?

6   A       Stenosis means narrowing.

7   Q       Dr. **Alexander**, have you ever seen a three to four  
8   **centimeter** stenosis of the common femoral vein at the  
9   level of an inguinal ligament after an inguinal hernia  
10   repair?

11   A       No.

12   Q       The treatment options that were discussed with the  
13   patient, did the patient, based upon those options that  
14   were discussed, did she make a decision on that date as to  
15   which route she preferred to go?

16   A       The note says that she opted for surgery.

17   Q       **And** when did you then next see her?

18   A       The next note I have is from December 23,  
19   1996.

20   Q       I **take it** the surgery for the stenosis wasn't done  
21   on an emergency basis, is that correct?

22   A       That is correct.

23   Q       It was an elective procedure?

24   A       **Yes.**

25   Q       So the patient had the opportunity to consider the

1 various options, conservative, stent, angioplasty, as well  
2 as the surgical route, correct?

3 A That is correct.

4 Q And then you saw her on December 27th, and tell the  
5 jury what your findings were and tell the jury what you  
6 discussed on December 27, 1996, please.

7 A My note is really a summary of the findings that I  
8 already discussed, that the patient had left inguinal  
9 hernia repair, that that appeared to be complicated by  
10 left leg swelling, that she had undergone a venogram,  
11 which showed a three to four centimeter stenosis in the  
12 left common femoral vein.

13 That there was no clot identified at that  
14 time. Having reviewed these results, my thought was that  
15 this could be potentially due to either a stitch being  
16 placed through the vein, which is a known complication of  
17 of hernia repair, or constriction of some kind around the  
18 vein.

19 Again I reviewed the options for management with  
20 the patient, which included angioplasty or surgical --  
21 attempted surgical repair, and noted that the patient had  
22 elected to have surgery, and that arrangements had been  
23 made for presurgical testing, and that a venous repair or  
24 some form of bypass would be performed, it says within  
25 three weeks.

1           The patient was seen in the clinic at  
2 that time because she had a number of questions that  
3 had ~~come to~~ mind, and ~~so~~ she wanted to discuss this  
4 further.

5 Q           I take ~~it~~ that she was somewhat apprehensive about  
6 undergoing surgery?

7 A           She was concerned about her leg swelling. I ~~am~~ not  
8 sure she fully understood the different options, and she  
9 was apprehensive.

10           She also, as I remember, she had some family  
11 concerns and didn't want to have surgery right  
12 away.

13           She had a daughter and had to make  
14 arrangements.

15 Q           Fair enough.

16           In any event, after that visit the records reflect,  
17 and I understand that she had the surgery then a little  
18 bit less than month later, on January 23, 1997, ~~is~~ that  
19 correct?

20 A           That is correct.

21 Q           ~~And~~ you were the surgeon?

22 A           Yes, I was.

23 Q           would you tell the jury what type of surgery you  
24 did, and if you could describe it in simple terms, they  
25 will have the operative report, but what is it that you



1 did and what is it that you found?

2 A Again, we weren't exactly sure what was causing  
3 this narrowing of the vein, so we started by exploring the  
4 vein.

5 We made an incision in the left groin. We  
6 dissected, or took that incision down to the femoral vein,  
7 below the ligament, and then followed it up to and  
8 actually beyond the ligament.

9 Q And what were your findings based upon that  
10 procedure, please?

11 A We found that told patient had scar tissue around  
12 the femoral vein.

13 Q And was that scar tissue that you found, was that  
14 consistent with the scar tissue that was described in the  
15 venogram that we talked about?

16 A Well, the venogram didn't describe  
17 scar tissue. The venogram simply described a narrowing of  
18 the vein.

19 Q Fair enough.

20 Let me rephrase that, then. Was the narrowing of  
21 the vein that **was** described on the radiology report, was  
22 that consistent with the physiological findings that you  
23 found, in terms of the scar tissue around the vein at the  
24 time of surgery?

25 A Yes.

1 Q Now, *you* mentioned before that you  
2 were looking for a stitch, and did you in fact look for a  
3 stitch?

4 A Yes.

5 Q And did you find a stitch?

6 A No, **we** did not.

7 Q So there was no stitch that you could find through  
8 the femoral vein at the **time** that you went in and found  
9 the scar tissue, correct?

10 A That is correct.

11 Q And what did you do to the scar tissue?

12 A Well, we performed a procedure called lysis of the  
13 scar tissue, which means basically we opened up the scar  
14 and removed as much of it as we could.

15 Of course there's scarring around both  
16 the vein and artery, and the femoral nerve **lies** in there,  
17 so we can't remove all of the scar tissue, but we did the  
18 best we could to free up the vein from the scar  
19 tissue.

20 a After relieving as much of the scar tissue that you  
21 could, **was** there a return of flow in the vein at that  
22 point?

23 A There seemed to be improved flow through the  
24 vein. At least; the constriction seemed to be  
25 improved.

1 Q Was it back to normal?

2 A It wasn't normal, no.

3 Q And what residual issues existed that did not  
4 permit it to go back to normal?

5 A Well, I am not not sure why it did not  
6 go back to normal. What I recorded in my note, after the  
7 scar tissue had been removed and as the vein was  
8 completely freed up, we still noted some degree of  
9 narrowing of the vein.

10 Q Now, Doctor, based upon the surgical procedure and  
11 the findings that you made at the time of the surgical  
12 procedure, do you have an opinion to a reasonable degree  
13 of medical certainty as to what caused the femoral vein  
14 stenosis?

15 First, do you have an opinion?

16 A Yes.

17 Q And what is your opinion, please?

18 A I believe that the stenosis was due to scar tissue  
19 around the vein.

20 Q And do you have an opinion more likely than not as  
21 to what was the cause of the scar tissue around the vein?  
22 First do you have an opinion?

23 A Yes.

24 Q And what is your opinion?

25 A I believe that the scar tissue was in some way

1 related to the hernia repair.

2 Q Now, what causes scar tissue to form?

3 A Scar tissue forms as a result of an inflammatory  
4 process, and it can be due to trauma or injury to the  
5 tissue, which can -- or it can be due to infection or  
6 other causes that result in inflammation.

7 Q You didn't see any evidence of any infection that  
8 Floretta Graham had?

9 A No.

10 Q And surgery is considered trauma, is it  
11 not?

12 A Yes.

13 Q Now, after relieving or lysing or removing the scar  
14 tissue, a considerable amount of this constriction or  
15 narrowing of the vein was resolved, correct?

16 A Yes.

17 Q But not all of it?

18 A Not all of it.

19 Q How long was Floretta then in the  
20 hospital?

21 A I will just take a minute here.

22 Q Take your time.

23 A She **was** discharged the following day.

24 Q The procedure itself, was it done under a local or  
25 under a general anesthetic?

1 A The procedure was done under a general  
2 anesthetic.

3 Q So she **was** then put to sleep?

4 A Yes.

5 Q After she left the hospital the next day, I take it  
6 you had opportunities to see her on a postoperative  
7 basis?

8 A *Yes.*

9 Q Let's talk about that.

10 The first time that you saw **Floretta** after the  
11 surgery would **have** been when, please?

12 A I saw her on February the 7th, 1997.

13 Q **Tell us**, if *you* would, please, what  
14 complaints did she have at that time, and **was** she doing  
15 better?

16 A My notes state that she still had some mild leg  
17 swelling, although this was much better than prior to  
18 surgery.

19 Her left groin wound appeared to be healing without  
20 complication. She did have an occasional pain over the  
21 groin incision; that she had been given a prescription for  
22 surgical support stocking, and had been asked to maintain  
23 elevation of the leg.

24 At that point it was felt that she wouldn't need  
25 another clinic appointment unless some worsening of her

1 condition should occur.

2 Q What is the purpose of maintaining elevation when  
3 you have this condition?

4 A Elevation of the leg will help reduce any residual  
5 swelling.

6 Q You said that she didn't have to return unless she  
7 had some problems?

8 A Yes.

9 Q Did she in fact return to your office?

10 A Yes, she did.

11 Q And when was that, please?

12 A March 7, 1997.

13 Q And what were your findings on March 7,  
14 Doctor?

15 A Again, my note reflects that she had no significant  
16 swelling on that date.

17 She was not wearing her surgical stocking. She did  
18 have a follow-up duplex scan, which indicated some flow  
19 turbulence in the common femoral vein.

20 We felt that that might be consistent with the  
21 persistent narrowing of the vein, but felt that her  
22 symptoms had improved significantly.

23 We discussed at that time again she was concerned  
24 about some mild residual swelling.

25 I again reviewed with her options she might have,

1 which included angioplasty and stent placement, further  
2 residual venous stenosis.

3 But I felt that that would be too risky, and that  
4 her symptoms didn't warrant it, so I simply reminded her  
5 to wear her surgical support stocking and to maintain  
6 elevation of her leg.

7 Q This flow turbulence that you described from the  
8 study that had been, this was a new study after the  
9 operation?

10 A Yes.

11 Q Can you tell the jury about when that was  
12 done?

13 A That **was** done on February 27th.

14 Q What does flow turbulence mean?

15 A That means that flow through the blood vessel is  
16 **irregular.**

17 Q Is this consistent with the residual narrowing that  
18 the patient had after the surgery?

19 A Yes.

20 *a* Did Floretta have occasion to come back and see you  
21 after the March 7th visit?

22 A Yes, she did.

23 Q Tell the jury when that was and what you found on  
24 that date, please?

25 A She returned on April 18th. She wanted further

1 explanations about why her leg was swollen. Again, I am  
2 just going through this note and I am recapping the  
3 findings.

4 I basically went through all of the explanations  
5 that I had gone through on her previous visits.

6 I explained again to her the possibility of  
7 angioplasty and the stent placement, as really an only  
8 option for further treatment.

9 She **didn't** wish to consider that approach, and I  
10 told her that the leg swelling might improve over time,  
11 but it was likely to remain the same, and I again advised  
12 her to wear her surgical stockings.

13 Q When you told her that that the leg swelling may  
14 improve but it is most likely to remain the same, did you  
15 indicate to her or did you have an opinion as to a  
16 reasonable degree of probability that there was a  
17 permanent condition at that point?

18 A I indicated that it was most likely that her  
19 swelling would remain, that this would be a chronic  
20 problem for her, that it would remain the same.

21 Q And chronic meaning what, Doctor?

22 A Well, that would not improve over additional  
23 time.

24 Q So this **was**, in your opinion, a permanent condition  
25 that she would have to learn to live with?



1 A Yes.

2 Q Now, Doctor, before the surgery there was some  
3 indication in the records about some lymphatic obstruction  
4 or lymphatic problem; do you recall seeing that in the  
5 records?

6 A Yes, I do.

7 Q **And**, first, what is lymphatic obstruction?

8 A Lymphatic obstruction means blockage of the lymph  
9 channels, and the lymph drains body fluid **up** and  
10 eventually drains that fluid into venous system.

11 Q **And** as I understand it, from looking at the record,  
12 there was some consideration as to whether there was a  
13 lymphatic problem that was causing the patient's  
14 symptoms?

15 A The family practitioner that saw the patient  
16 mentioned lymphatic obstruction as a possible cause of leg  
17 swelling.

18 Q And after having seen the patient, operated on the  
19 patient and then followed her up, do you have an opinion  
20 to a reasonable degree of medical certainty as to whether  
21 or not the femoral vein stenosis and findings that you  
22 made at the time of the surgery were caused by a lymphatic  
23 problem or lymphatic obstruction?

24 First do you have an opinion?

25 A Yes, I do.

1 Q And what is your opinion?

2 A I have two opinions. One, there was  
3 **no evidence that** she **had** lymphatic obstruction, based on  
4 my clinical exam.

5 And two, these two systems are not related.

6 Q So, any issue of lymphatic obstruction was not the  
7 cause of the patient's --

8 A I didn't believe there was any component of  
9 lymphatic obstruction.

10 Q Fair enough.

11 MR. CRANDALL: ~~would object to~~  
12 ~~the last two questions, for the~~  
13 ~~record.~~

14 BY MR. MISHKIND:

15 Q Now, with residual narrowing or constriction of the  
16 femoral vein, from a physiological standpoint, what is  
17 happening inside the vein, the femoral vein of Floretta  
18 Graham?

19 A It slows down the blood flow through the venous  
20 system, and generally would increase the pressure in the  
21 veins below the area of the stenosis.

22 Q Now, this again is carrying blood  
23 back up to the heart, so it is going upstream, if you  
24 will?

25 A Yes.

1 Q And where there is this flow distrubance and/or  
2 constriction, what potential complications or problems  
3 exist when there is constriction or residual flow  
4 obstruction in the femoral. vein?

5 MR. GRANDALL: ~~Objection.~~

6 A It depends on the degree of constriction, so mild  
7 constriction may result in no residual -- obstruction  
8 might result in chronic leg swelling --

9 Q Okay.

10 A -- and pain.

11 MR. CRANDALL: ~~Same objection~~

12 ~~Move to strike.~~

13 BY MR. MISHKIND:

14 Q Doctor as Floretta gets older, and she is now 40  
15 years old, if she develops further stenosis, is she at  
16 risk of further complications based upon her condition in  
17 her left Leg?

18 A Yes.

19 Q And what are those further complications?

20 A Her leg swelling may worsen, and she may develop  
21 other changes in the leg as a result of continued high  
22 venous pressure.

23 Q And again, if there is a further  
24 stenosis developing, what are the other complications  
25 that can develop in a patient with femoral vein

1 stenosis?

2 A It could lead to clot formation if it becomes very  
3 severe.

4 Q If you develop clot formation of the **leg** and it  
5 becomes very severe, what complications can develop with  
6 the patient?

7 A A clot can break free and go into the  
8 lung.

9 Q And what is that called?

10 A Pulmonary embolism.

11 Q Is that a life threatening situation?

12 A Potentially, yes.

13 Q Now, based upon what you have seen with regard to  
14 Floretta Graham, and the condition, and the cause of the  
15 femoral vein stenosis and your follow-up of Floretta  
16 through April of 1997 -- actually before I ask you the  
17 next question, you haven't seen her since April of 1997,  
18 is that correct?

19 A That is correct.

20 Q Do you have an opinion, Doctor, as to whether  
21 Floretta's life expectancy is compromised at all from  
22 anything other than a normal life expectancy?

23 A Yes.

24 Q What is your opinion?

25 A That it is not.

1 Q You know of nothing that would cause, absent some  
2 complications down the road, for her to live a shorter  
3 life expectancy than normal, correct?

4 A Correct.

5 Q And from the standpoint of future follow-up, am I  
6 correct that so long as she does not develop further  
7 stenosis or complications associated with her condition,  
8 this is a condition that she can manage on her own without  
9 having follow-up medical care?

10 A Yes.

11 Q What type of recommendations are made to patients  
12 that have permanent residual stenosis of the femoral  
13 vein?

14 A Our recommendations were that she maintain the  
15 elevation of her leg whenever possible, that she wear  
16 surgical support stockings, and that she walk.

17 Q What is it about walking that helps with the venous  
18 constriction?

19 A Well, it increases venous blood flow and increases  
20 venous pressure.

21 MR. MISHKIND: Let's go off the  
22 record for just one second.

23 THE VIDEOGRAPHER: Off the  
24 record.

25

- - - - -

1 (A discussion was had off the  
2 record.)

3 - - - - -

4 MR. MISHKIND: On the  
5 stenography record, Mr. **Crandall** can reserve any  
6 objection he may have to the admission of the  
7 medical bills for purposes of authentication and  
8 the reasonableness of the bills from Metro for  
9 the treatments.

10 We have agreed that I don't have to  
11 present the bills to the Doctor or have him  
12 authenticate them or testify as the  
13 reasonableness of the treatment or subsequent  
14 treatment.

15 MR. CRANDALL: That's right.

16 MR. MISHKIND: Let's go back on  
17 the record.

18 THE VIDEOGRAPHER: Back on the  
19 record.

20 MR. MISHKIND: Doctor, I have no  
21 further questions for you at this point. I  
22 thank you very much.

23 Mr. Crandall may have some questions for  
24 you.

25 - - - - -

## EXAMINATION

1

2

- - - - -

3 BY MR. CRANDALL:

4 Q I do. Doctor, let's just start off where you and  
5 Mr. Mishkind left off.

6 Prior to the surgery that you performed on  
7 Ms. Graham, you found no clot or thrombosis, is that  
8 correct?

9 A That is correct.

10 Q And in your reviewing the Metro chart of the duplex  
11 scan and the various scans that she had, there was no clot  
12 formation of her found?

13 A Correct.

14 Q And when you went in surgery, you found no clots in  
15 her vein?

16 A' Correct.

17 Q And you told me earlier that she formed no clots,  
18 because, despite this narrowing, she had sufficient flow  
19 to avoid clot formation at that stenosis site?

20 A Yes, that's right.

21 Q And your surgery presumably improved the flow  
22 through that stenotic area, correct?

23 A Yes.

24 Q Now, after surgery you saw her on various follow-up  
25 visits?

1 A Yes.

2 Q And at no time did *you* put her on any  
3 anticoagulation medication, correct?

4 A That is correct.

5 Q And just so the jury is clear, in a situation when  
6 *you* have stenosis to the degree where you feel someone may  
7 form clots, anticoagulation medicine is something that you  
8 can place them on?

9 A Yes.

10 Q **And** how that works is they are put on the  
11 medication which thins the blood and hopefully prevents  
12 clots from forming at that area, is that fair?

13 A Yes.

14 Q You did not do that in her case?

15 A No, I did not.

16 Q **And** the reason why is because she never had a  
17 documented case of venous thrombosis?

18 A That's true. And also because I didn't feel her  
19 narrowing was severe enough to warrant it.

20 Q In other words, once she went in there and **saw** the  
21 narrowing, her risk for DVT or deep vein thrombosis **was**  
22 not high enough for you even to put her on that  
23 medication, correct?

24 A Yes.

25 Q Now you told her to wear Ted hose.



1           You told her to elevate her leg when she could and  
2 told her no prolonged sitting?

3   A       **Right.**

4   Q       There were no other precautions that you told her  
5 she needed to do?

6   A       No.

7   Q       There was no limitations on her  
8 activities?

9   A       Except, as you mentioned, I warned against  
10 prolonged sitting or standing, which might increase her  
11 leg swelling.

12 Q       Other than that, she had no other Limitation on her  
13 activities or what she could do in her Life?

14 A       No.

15 Q       In fact, you encouraged walking, that's  
16 positive?

17 A       Yes.

18 Q       Now, Mr. Mishkind asked **you** some questions  
19 about in the future, if she has increased stenosis; you  
20 have no evidence as *you* sit here, that since the last time  
21 you saw her, *she* has increased stenosis in that area, do  
22 you?

23 A       No, I don't.

24 Q       So that's just speculation into the future, if she  
25 should have increased stenosis, that she's going to have

1 problems with clots, correct?

2

MR. MISKIND:

~~objection.~~ out OR

3 A Yes.

4 Q In fact, the **last** time **you** saw her **on** April 18,  
5 1997, you welcomed her to come back for further  
6 evaluation?

7 A Yes. I advised her that if her leg swelling were  
8 to worsen, I **would** be happy to see her and re-evaluate  
9 her.

10 Q So you left an open door?

11 A Yes.

12 Q And she has not come back to you since that  
13 day?

14 A No, she has not.

15 Q At the time **you** saw her, there was no increased  
16 risk for any ulcerations to **form** on her leg because of  
17 what occurred, correct?

18 A Correct.

19 Q There's no increased **risk** of her losing her leg  
20 because of what occurred?

21 A That is correct.

22 Q And based on what **you** have seen, there's no  
23 increased risk of her chance of dying **any** sooner than  
24 anyone else, correct?

25 A Correct.

1 Q Now, I understand you told the jury already that  
2 you do primarily -- well, you do totaly vascular surgery,  
3 correct?

4 A Yes.

5 Q Now, before you became a vascular surgeon you had a  
6 five year resident program in general surgery?

7 A Yes, I did.

8 Q So for five years after you graduated  
9 from medical school, you performed general surgery  
10 practice?

11 A Right, I was in training in general  
12 surgery.

13 Q All right.

14 Part of that training included performance of  
15 hernia procedures?

16 A Yes.

17 Q I would imagine in five years -- do you have any  
18 estimation as to how many hernia procedures you  
19 did?

20 A I honestly don't recall.

21 Q Would it be in the hundreds?

22 A It is a commonly performed procedure.

23 Q Would it be in the hundreds?

24 A Probably not, no.

25 Q During that general surgery residency, you

1 performed hernias **yourself**, and you watched them be  
2 performed?

3 A Yes.

4 Q Certainly while you don't perform them today, you  
5 have seen hernias being performed, and you have performed  
6 them **yourself**?

7 A Yes.

8 Q Now, prior to us getting together today,  
9 you have met and spoke with the plaintiff's attorney,  
10 correct?

11 A Yes.

12 Q You guys met before **you** got together for your video  
13 today?

14 A Correct.

15 Q I know that you indicated to the jury you feel the  
16 Scar tissue was as a result of my client's hernia  
17 procedure; you don't have any opinions that the hernia  
18 procedure that my Doctor performed was done in a negligent  
19 manner?

20 MR. MISHKIND: Objection. For  
21 the record, the Doctor is not an expert witness,  
22 and he already indicated that he doesn't have  
23 any opinions one way or another.  
24 He is not testifying beyond the scope of  
25 his treatment.

OUT

1 MR. CRANDALL: Just to respond  
2 to the objection for the Judge, I was told tha  
3 this Doctor was not going to be offering any  
4 expert opinions.

5 I sat through a discovery deposition two  
6 days ago where you time and again said my  
7 questions were inappropriate because I asked for  
8 expert testimony, and I just sat here for 45  
9 minutes and had you elicit from him standard o  
10 care and proximate cause opinion questions and  
11 standard of care questions

12 MR. MISHKIN: I haven't asked  
13 any standard of care questions

14 MR. CRANDALL: You did.

15 MR. MISHKIND: Go ahead and ask  
16 your questions, Mr. Crandall.

17 BY MR. CRANDALL:

18 Q It is true, is it not, that you examined this  
19 patient and you did the surgery, and you have no opinions  
20 that the hernia procedure that my client did was below the  
21 standard of care, correct?

22 MR. MISHKIND: Objection.

23 Q Is that correct?

24 MR. MISHKIND: Object.

25 A Correct.

OUT

1 Q Let me jump ahead to your surgery, the  
2 surgery you did on January 23, 1997 on Floretta Graham,  
3 okay?

4 I want to ask you a few questions about that,  
5 now. You did, in your own words, a very thorough exam of  
6 her femoral vein during that surgery?

7 A Yes.

8 Q And you were concerned about her femoral vein even  
9 before you went in, weren't you?

10 A Yes, I was.

11 Q You wanted to make sure that you did not miss  
12 anything during your surgery, fair?

13 A Correct.

14 Q Now, before you even went into the surgery, I think  
15 you said on your direct examination that you thought she  
16 may have had a stitch placed through the vein, or she may  
17 have had a constriction caused by the hernia repair,  
18 correct?

19 A What I meant -- I didn't know what was causing the  
20 narrowing, I was really just reviewing in my notes  
21 possible problems that could lead to constriction of the  
22 vein, so I honestly didn't know what caused the  
23 narrowing.

24 Q I understand you wouldn't have known it because you  
25 had to get in there and see?

1 A Right.

2 Q But out of the common possibilites, two of the  
3 **common things** that occurred in your mind and that you  
4 wrote down in your notes were that my client may have  
5 placed the stitch in there or may have done the procedure  
6 too tight which caused a constriction, fair?

7 A Fair.

8 Q Those two things, a stitch, and a constriction  
9 caused by the repair, those are called iatrogenic  
10 problems, correct?

11 A Yes.

12

MR. MISHKIND:

Objection.

13 A **Yes.**

14 Q You are familiar with that term?

15 A Yes, I am.

16 Q I am just a lay person, but doesn't that mean that  
17 it was caused by the surgeon?

18 A Yes, that **implies** that it was caused by the  
19 surgeon.

20 Q When you went in and you had time to do your  
21 thorough exam of the femoral vein, you found that there  
22 were absolutely no stitches placed in the femoral vein,  
23 correct?

24 A Correct.

25 Q There were no stitches that -- once you took out

1 all of all scar tissue, there were no stitches that  
2 remained directly impacting or touching the femoral vein,  
3 correct?

4 A Correct.

5 Q There was no evidence that my client, Dr. Halabi,  
6 caused direct trauma to the femoral vein when he was doing  
7 the procedure, correct?

8

~~MR. MISHKIND:~~

~~objection.~~

*OR out*

9 A Correct.

10 Q When you took the scar tissue out, you did not find  
11 that the hernia repair was too tight, either, around the  
12 femoral canal, correct?,

13 A Yes, I did not find any -- I found scar tissue. I  
14 didn't find normal tissue constricting the vein.

15 Q In other words, when you removed the scar tissue,  
16 which we are going to talk about in a minute, when you  
17 removed that scar tissue, his surgery had not constricted  
18 the femoral vein, correct?

19 A Not that I could see, no.

20 Q And your job, after you removed this scar tissue,  
21 was to make sure there was no further constriction on that  
22 femoral vein or femoral artery, correct?

23 A well, I wasn't concerned with the artery. We  
24 didn't find any evidence of constriction, so I was  
25 concentrating on the femoral vein.



1           My job was to alleviate any constriction as best I  
2 could.

3   a       So after you removed the scar tissue, part of your  
4 job was to look and make sure, hey, nothing else is  
5 constricting the femoral vein, because if it is, I will  
6 deal with it now, fair?

7   A       Yes.

8   Q       After the scar tissue was removed, you  
9 were able to insert your finger along the femoral canal,  
10 correct?

11   A       Yes.

12   Q       And there was enough room around that femoral  
13 canal, in your opinion?

14   A       Yes.

15   Q       Dr. Halabi had not tied the procedure too tight and  
16 compromised the femoral canal, in your opinion?

17

~~MR. MISHKIND: Objection.~~ OR out

18   A       I didn't see any evidence of that.

19   Q       The ligament structure that you used to tie up the  
20 hernia procedure, they were not tied too tight and  
21 constricting the femoral canal or the femoral vein;  
22 correct?

23

~~MR. MISHKIND: Objection.~~ OR out

24   A       I didn't see any evidence that the ligament was  
25 constricting or compressing the vein.

1   **a**       And if you had seen this, you would have done  
2 something about it, correct?

3   **A**       Yes:

4   **Q**       You would have called in a general surgeon to help  
5 you with that repair?

6   **A**       Yes.

7   **Q**       **Let's** talk about the hernia repair itself. I  
8 understand you were not there to specifically examine the  
9 hernia repair?

10  **A**       Correct.

11  **a**       That was not your goal?

12  **A**       Correct.

13  **Q**       But you told me previously that in your  
14 surgery you found no evidence of a recurrent hernia, is  
15 that correct?

16  **A**       I didn't find any weakness, no.

17  **Q**       Well, you didn't find weakness in that  
18 area?

19  **A**       Yes. That is correct.

20  **Q**       Nor did you find a recurrent hernia,  
21 correct?

22  **A**       I did not, no.

23  **Q**       If you had, you would have called in a general  
24 surgeon to help out with that repair, correct?

25  **A**       Yes, I would have.

1 Q So from what you saw, you saw a solid repair  
2 performed by my client, correct?

3 MR. MISHKIND: Objection.

4 A It appeared to be solid. I didn't see any evidence  
5 of recurrence.

6 Q So after the procedure, once the scar tissue was  
7 removed, nothing about that repair was causing  
8 constriction on the femoral canal or the femoral vein,  
9 correct?

10 A Correct.

11 Q And you found out that it was not iatrogenic in  
12 nature, the cause of --

13 MR. MISHKIND: Objection.

14 Q Let me start over, if I could.

15 After your surgery, you did not find an iatrogenic  
16 cause to the femoral vein stenosis, in terms of the  
17 stitches, in terms of the constriction done by the  
18 procedure, correct?

19 MR. MISHKIND: Objection.

20 A Well, again, I didn't find any stitches in the  
21 vein. I didn't see any direct injury, and I didn't see  
22 any constriction by the ligament.

23 And at that point I really wasn't sure what had  
24 caused the scar tissue.

25 Q Let's talk about the scar tissue.

out

out

1 A Scar tissue is caused by an inflammatory response,  
2 correct?

3 A Yes.

4 Q **And** that inflammatory response comes from that  
5 person's body, correct?

6 A Yes.

7 Q I mean, there is no foreign material that caused  
8 this inflammatory response, it was, in essence, Mrs.  
9 Graham's body, is that fair?

10 A Well, just to clarify, a foreign body  
11 can cause inflammation, but I didn't find any foreign  
12 body.

13 Q Here.

14 A At my exploration, there **was** no foreign body that I  
15 found.

16 Q **Now**, you say the inflammatory response, in your  
17 opinion, was caused by the hernia procedure?

18 A What I said was that the patient developed swelling  
19 after the hernia repair, and I found scar tissue. I made  
20 an assumption that those were related.

21 Q But you can't tell this jury what portion of the  
22 hernia procedure caused that inflammatory reaction,  
23 correct?

24 A **No, I can't.**

25 Q You can't say whether it **was** the stitches, the

1 instrument he used, the way he did it, anything like  
2 that?

3 A No.

4 Q You were there and you saw it?

5 A I saw the scar tissue, yes.

6 Q Now, anyone who has a hernia procedure will have  
7 scar tissue in the groin area, correct?

8 ~~MR. MISHKIND: Objection.~~ OR

9 A Anyone that has surgerv will develop scar  
10 tissue.

11 Q Some people have -- let me start over.

12 Some people scar more readily than other people, don't  
13 they?

14 ~~MR. MISHKIND: Objection.~~ OR

15 ~~Beyond the scope of direct examination, and~~  
16 ~~certainly not appropriate cross.~~

17 BY MR. CRANDALL:

18 Q Go ahead, Doctor, you can answer that  
19 question.

20 A Some people have an increased response, yes, and  
21 develop more scar.

22 MR. MISHKIND: Let's go off the  
23 record.

24 - - - - -

25 (A discussion was had off the

1 record.)

2

- - - - -

3

THE VIDEOGRAPHER:

Back on the

4

record.

5

BY MR. CRANDALL:

6

Q And there is a phrase sometimes use in terms of  
7 inflammatory reactions, some people have an abnormal host  
8 response in terms of scar tissue?

9

A I guess that would be a scientific description,

10 yes.

11

Q And one that you have heard before?

12

A Yes. .

13

Q It is fair to say that *you* have never seen scar  
14 tissue like this before?

15

A No, I have seen scar tissue, and I have seen dense  
16 scar tissue, but I haven't seen scar tissue around a  
17 femoral vein like this, only in redo surgery.

18

Q Now, you are the surgeon who performed this  
19 procedure and saw this surgical field, and *you* just told  
20 me that you weren't able to tell me exactly what it is  
21 that percisely causes an inflammatory reaction and causes  
22 scar tissue, fair?

23

MR. MISHKIND:

Objection.

24

A Right. I don't know what caused the scar  
25 tissue.

1 Q Do you believe anybody can come up with  
2 that?

3 MR. MISHKIND: Objection.

4 Q I mean if you can't, how could someone who didn't  
5 do the surgery?

6 MR. MISHKIND: Objection.

7 A I don't think so. I couldn't determine  
8 it.

9 Q Now this scar tissue was not sent to **pathology**,  
10 correct?

11 A Correct.

12 Q Mr. Mishkind went through with *you* the training  
13 that you went through to **have** your added certification in  
14 vascular surgery.

15 A *Yes*.

16 Q That included a full year of fellowship in vascular  
17 surgery?

18 A *Yes*.

19 Q That included a number of cases that you had to do,  
20 vascular surgery cases, correct?

21 A **Yes**.

22 Q **And** that only makes you eligible to take the  
23 vascular certification?

24 A Correct.

25 Q After that you **have** to take **a** written

1 and an oral test to get your certification in vascular  
2 surgery?

3 A Yes.

4 Q Based upon your fellowship year, the cases that you  
5 did, the exam you passed, and your practice now as a  
6 vascular surgeon, do you believe that you have more  
7 expertise in terms of vascular issues with a vein, than a  
8 general surgeon who does not have that training and  
9 certification?

10 A Yes.

11 Q Now, after your surgery, it appears that her  
12 scaring returned, correct?

13 A I am not sure.

14 It appears as though there's a residual stenosis of  
15 the vein.

16 Q **And** are you telling me that you don't know whether  
17 or not it was the scaring?

18 A **well**, as I said in my operative note,  
19 there was some residual stenosis, or narrowing of the  
20 vein, even of after the scar was removed, so it is -- we  
21 don't have a good test to judge the amount of scaring  
22 around the vein.

23 Q I am looking at your April 18, 1997 note, and  
24 again, that's the last time you saw this patient,  
25 correct?



1 A Yes.

2 Q In the middle of your note it says, a duplex scan  
3 of the **femoral** canal has indicated continued flow  
4 turbulence in that area, and it is felt that this could be  
5 due to recurrent scaring around the vein; did I read that  
6 correctly?

7 A Yes.

8 Q It appears, at least, as of April 18th,  
9 that out of any thought in your mind, perhaps it was that  
10 recurrent scaring that was causing this increased flow  
11 turbulence?

12 A That certainly is a possibility, yes.

13 Q What is it that is causing the scaring to  
14 recur?

15 A Once scar tissue formation is initiated, it tends  
16 to recur, and second of all, we operated on the patient,  
17 and as I mentioned earlier, surgery itself creates scar  
18 tissue.

19 a Right. That was my point. You went in in an  
20 effort to clean out the scar tissue, but by the very  
21 nature of you being in there, there is going to be scar  
22 tissue that arises because of your surgery, as  
23 well?

24 A Yes, that's possible.

25 a That's just the nature of surgery.

MR. MISHKIND:

~~Objection.~~

W/D

1

2 A Yes, it is.

3 Q Now, the last thing I want to talk about is the  
4 care leading up to when you saw her, okay?

5 You can feel free to use those records.

6 First of all, when I looked through the original  
7 chart, it is clear that my client is the one who referred  
8 her to Metro, correct?

9 A Let's see.

10 Yes, that is correct.

11 Q I mean, the patient didn't come here  
12 on her own, she wasn't a walk in, she was sent by my  
13 client, right?

14 A Right. There's a referral to the Neurology  
15 Department for left leg pain.

16 Q In reviewing the records of the neurologist  
17 and the visits before you saw her in November, everyone  
18 here at Metro did a good job of the treating this woman,  
19 correct?

20 A I would think so, yes.

21 Q You have no problem with what occurred before you  
22 saw the patient at Metro?

23 A No.

24 Q In your opinion, they made the diagnosis,  
25 and you got her to surgery as quick as you possibly could

1 have?

2 A Right. There was time that elapsed from when I saw  
3 her, until we had her in the operating room, but it is not  
4 clear from the medical record why that time had elapsed,  
5 but I do remember the patient was somewhat reluctant and  
6 had a lot of questions and was not anxious to proceed  
7 right away.

8 Q We are going to talk about that in detail, but just  
9 in general, when you looked at the chart, the Metro people  
10 made the diagnosis, and you got her to surgery as fast as  
11 you possibly could as a group, is that fair?

12 A Right. I think we could have gotten her to surgery  
13 early if she made a definitive choice about or her other  
14 personal reasons.

15 Q Now, the September 12th visit that you went over  
16 with Mr. Mishkind, this was with the Neurology  
17 Department?

18 A Yes, her initial consultation was with  
19 neurology.

20 Q Why don't you turn to that, just in case you need  
21 to refer to that.

22 **Thank you.** There is no doubt by that note on the  
23 September 12th, they knew of her leg swelling, they knew  
24 of her history of a prior hernia repair.

25 They knew that she had pain in her leg,

1 correct?

2 A Yes.

3 Q In fact, you and Mr. Mishkind went over the fact  
4 that they had seen significant swelling with pitting  
5 edema?

6 A Yes.

7 Q And as a result of all of those symptoms, they  
8 ordered a duplex ultrasound?

9 A Correct.

10 Q And it appeared as though they were attempting to  
11 rule out DVT?

12 A Yes.

13 Q And that's appropriate, is it not?

14 A Yes, it is.

15 Q You don't think it was inappropriate, or you don't  
16 think those people fell below the standard of care because  
17 they didn't order a venogram on that day, do you?

18 A No, I don't.

19 MR. MISHKIND: Objection.

20 Q I am sorry, could you make the answer  
21 again?

22 A No, I think that that was an appropriate study to  
23 do.

24 Q They didn't do an EMG looking for nerve findings.

25 and that's appropriate, too, is it not?

1 A Yes. They examined the patient, a neurologic  
2 specialist, and felt there was no evidence of nerve  
3 injury.

4 Q And at that time they didn't make a direct  
5 referral to you, the vascular surgeon, on September 12th,  
6 correct?

7 A No, they didn't.

8 Q And that is fine, is it not?

9 A They didn't have a diagnosis.

10 Q They were attempting to work through what they  
11 thought the problem was, and they had not referred to you  
12 yet?

13 A That is correct.

14 Q And that's fine, is it not?

15 A Yes.

16 Q Now, after this visit on September 12th, it  
17 appears, from my review of the records, that  
18 she **was** to follow-up with the medical department for  
19 medicine?

20 A Well, I am sorry, earlier I said family practice,  
21 but in fact it says medical **group** practice, so that was  
22 the general medical clinic.

23 Q So after the neurologist saw her on the 12th, they  
24 were going to see -- someone was going to see her again,  
25 but it was the medical department?

1 A Yes.

2 Q That's not a surgical department?

3 A Correct.

4 Q Now, a venogram was done on October 25, 1996,  
5 right?

6 A Yes.

7 Q And I know you and Mr. Mishkind went through that,  
8 it shows the femoral vein stenosis?

9 A Correct.

10 Q So as of the latest possible time, we are talking  
11 towards the end of October, everyone here at Metro knew  
12 that she had femoral vein stenosis?

13 A That diagnosis was confirmed by the venogram on  
14 October 25th.

15 Q And after this venogram was done, the next time  
16 this patient was seen was October 15th, and that was by  
17 your service, right?

18 MR. MISHKIND: You mean November  
19 15th?

20 MR. CRANDALL: I am sorry, I  
21 mispoke.

22 A November 15th.

23 Q Let me ask the question again, I  
24 apologise.

25 After the October 25th venogram, the next time the

1 patient was seen by anybody at Metro from a clinical  
2 standpoint was November 15th?

3 A Yes.

4 Q And that was by your service?

5 A I believe it was. The note states general  
6 surgery.

7 We discussed this in deposition.

8 Q So it looks like it took about two months from the  
9 time she went into Metro to the time you finally saw her,  
10 is that about the time lapse?

11 A Yes.

12 Q And you have no problem with that, that's fine, in  
13 your opinion, that time elapsed?

14 A Well, I think in this circumstance that's all  
15 right.

16 I mean --

17 Q Sure.

18 A -- there's some delay there. She didn't have a  
19 life or a limb threatening problem. I don't know why  
20 there was a month between the venogram and the surgery  
21 consultation.

22 Q But you have no problem with what occurred in that  
23 time period?

24 A No.

25 Q Now, at the end of this November 15th visit

1 presumably with *you*, the patient chose to have  
2 surgery?

3 A Yes.

4 Q There's no doubt about that, she definitively chose  
5 surgery?

6 A The note states that she opted for  
7 surgery.

8 Q **And** being an elective procedure, *you*  
9 would have operated on her, or *you* could have within a  
10 week?

11 A Yes, if she desired.

12 Q **And** when she left that visit she was to call and  
13 she was to schedule that surgery, right?

14 A Right.

15 Q **And** she was to call and to schedule preadmission  
16 testing for that surgery?

17 A Yes.

18 Q And you already testified to me earlier that the  
19 reason why she didn't is because she wasn't sure, or she  
20 was anxious, she was not one hundred percent sure that she  
21 wanted to go ahead and do that, correct?

22 A Right.

23 Q And that's fine, you have had patients do that  
24 before?

25 A Yes, they have second thoughts and they wait and



1 want to talk about it some more.

2 Q       **And** that's normal?

3 A       **Yes.**

4 Q       **And** you have talked about the reasons why she was  
5 anxious, maybe she had some family issues, but the point  
6 is, she made the decision, and that's fine with you as the  
7 physician?

8 A       **Yes.** I didn't feel that this was a -- I felt that  
9 she could delay this, if she desired, yes.

10 Q       you can't force someone to have surgery?

11 A       **No.**

12 Q       Now, despite **the** fact that after the  
13 November visit she was supposed to call for surgery, it  
14 looks like **there's** another visit on December **27th** with  
15 you, correct?

16 A       **Yes.**

17 Q       Still haven't scheduled the **surgery**, still **no**  
18 preadmission testing?

19 A       Right.

20 Q       you told me at deposition, when I asked you why it  
21 was by December she had not gotten surgery, **you** said that  
22 you recall she would be instructed to call for  
23 appointments and she just wouldn't do it?

24 A       Right. I assume that she didn't call, and then  
25 came back the following month **and** wanted to discuss the

1 problem further.

2 Q Now, even after this visit of December 27, 1996,  
3 the surgery was not **done** for another month?

4 A Correct.

5 Q Your surgery was not until January 23,  
6 1997?

7 A **Yes.**

8 Q By the time time that you had an opportunity to  
9 look at the femoral vein stenosis on Floretta Graham, a  
10 total of four **and** a half months elapsed since she came  
11 into MetroHealth, is that fair?

12 A Yes.

13 Q Now, I asked you on deposition about this narrowing  
14 that was caused by the scar tissue, and I asked you, do  
15 *you* have an opinion, can *you* tell me when you believe it  
16 was permanent; in other words, the point of no return, and  
17 you told me you could not say, is that fair?

18 A *Yes.*

19 Q Go ahead.

20 A **I was going to say 3 was** -- I am not even sure that  
21 it is permanent.

22 Q It could have been two months, could have been  
23 three months, could have been five months, you are not  
24 sure?

25 A I am not sure,

1                   MR. CRANDALL:           That's all the  
2                   questions that I have.

3                   MR. MISHKIND:           Okay. Just a few  
4                   follow-up questions.

5                   - - - - -  
6                   EXAMINATION  
7                   - - - - -

8 BY MR. MISHKIND:

9 Q           When you say that you are not sure that it is  
10 permanent now, that's because you haven't gone back in to  
11 re-explore?

12 A           No, I wouldn't know that anyway. If I can just  
13 review, there were two problems that we found. One was  
14 the major problem of the scar tissue formation, and the  
15 second was that even after the scar was removed, the vein  
16 still appeared to be somewhat narrowed, and I didn't have  
17 a good explanation for that.

18 Q           Okay.

19 A           Now, I don't know if that's a permanent condition  
20 or not, because I don't think anybody really knows what  
21 the natural history of a vein stenosis would be.

22 Q           Okay.

23 A           I would suspect it could remain stable.

24 Q           Now, Doctor, there was a lot of questions asked of  
25 you on cross examination about the period of time that

1 went by in terms of her being worked **up**.

2 A Yes.

3 Q **And** you have already **indicated** that this was an  
4 elective procedure?

5 A Yes.

6 Q Do you have an opinion that the work-up that was  
7 done, from the time that she came to Metro, to the time  
8 that she had the surgery, that somehow the passage of time  
9 impacted or caused a worsening of her condition?

10 A Yes.

11 Q What is your opinion?

12 A That there is no evidence that it worsened her  
13 condition.

14 Q So the fact that the patient had questions and came  
15 back and talked to you, and that she had a test, and then  
16 the surgery **was** scheduled, that was all a reasonable and  
17 appropriate course of action to take prior to the surgery,  
18 is that correct?

19 A Yes. She was more anxious than most of my  
20 patients, and so the time period during these discussions  
21 was more prolonged than usual, but that was her  
22 nature.

23 Q But it didn't have a negative impact on the outcome  
24 of the case, did it?

25 A No, I don't believe it did.

1 Q Now, you were asked about host factors. Just so  
2 the jury is completely clear, **is** there any evidence in  
3 this case of **any abnormal host** factors that would cause  
4 Floretta Graham to scar more than other people?

5 A No.

6 Q There's no question that, at least, more likely  
7 than not, that the scar tissue that you found  
8 was **caused** by the hernia repair, we have talked about  
9 that?

10 A Right. I am assuming that scar tissue was related  
11 to a hernia repair.

12 Q **And** that's to a probability, more likely than  
13 not?

14 A Yes.

15 Q Now, after you removed the scar tissue, that  
16 permitted you to insert your finger into the femoral  
17 canal, correct?

18 A *Yes.*

19 Q Before you removed the scar tissue, you  
20 were not able to **insert** your finger into the femoral  
21 canal?

22 A Yes, that is correct.

23 Q That's because the scar tissue had essentially  
24 obliterated or constricted the femoral canal so you  
25 couldn't put your finger in it?

1 A It is hard to say that, because unless that canal  
2 is open, there's tissue planes that would prevent that  
3 anyway, but I couldn't.

4 There was scar tissue interior to the  
5 vein.

6 Q Now you were also asked about opinions, and you  
7 were asked whether you have an opinion as to whether Dr.  
8 Halabi violated the standard of care, and I asked you at  
9 the very beginning, and I just want to clear it up, you  
10 don't have an opinion one way or another whether he did or  
11 did not violate the standard of care.

12 A I have no evidence that he did or did not. I have  
13 no opinion.

14 MR. MISHKIND: Doctor, I have no  
15 further questions for you. I thank you for  
16 taking the time on a Saturday morning to talk  
17 with us, and I am sure the jury appreciates it,  
18 as well.

19 MR. CRANDALL: I have a few  
20 questions.

21 - - - - -

22 EXAMINATION

23 - - - - -

24 BY MR. CRANDALL:

25 Q You are not suggesting that if you saw something

OUT

OYT

1 that my client did very wrong, that you wouldn't say  
2 something about it, correct?

3 MR. MISHRIND: Objection.

4 A I am not sure I understand your question.

5 Q Let me see if I can clarify it.

6 You just said you don't have an opinion one  
7 way or the other on standard of care with my client, all  
8 right?

9 My question to you is specific, if you went in and  
10 you saw that my client had violated the standard of care,  
11 and had done a procedure out of the standard of care and  
12 caused this lady problems, you wouldn't stay quite about  
13 that, would you?

14 MR. MISHKIND Objection.

15 A No.

16 Q If you were asked, you would say because this is  
17 your patient?

18 MR. MISHRIND: Objection.

19 A I think I understand what you are asking me.

20 If I saw any evidence that there was a stitch  
21 through the vein or that the vein was constricted, I would  
22 have said that, and I said earlier I didn't find those  
23 things.

24 MR. MISHKIND: Object.

25 A I don't know how the hernia repair was done. I

1 really can't comment on it.

2 I mean, I found the hernia repair was  
3 intact. I didn't find any evidence of direct trauma to  
4 the vein.

---

5 Q Now, the abnormal host factors, when you have an  
6 inflammatory reaction on one person that is severe, and  
7 then you do the same procedure on someone else, and it is  
8 not as severe, that cannot be explained sometimes, is that  
9 correct?

10 A Correct.

11 a There's not always some nice neat little packaged  
12 explanation for why that occurs?

13 A We have no way to predict who is going to develop  
14 hypertrophic scarring and who isn't.

15 Q This narrowing of the vein that you  
16 found after *you* removed the scar tissue, *you* describe that  
17 in your progress notes as a natural narrowing of the vein,  
18 correct?

19 A I did use that word.

20 MR. CRANDALL: That's all the  
21 questions that I have.

22 MR. MISHKIND: Doctor, again,  
23 thank you very much, no further questions. You  
24 will waive the requirement of reading the  
25 deposition transcript and viewing the



1 video?

2 THE WITNESS: Yes.

3 - - - - -

4 (Deposition concluded.)

5 - - - - -

6 {Signature waived.}

7 - - - - -

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 The State of Ohio,            )  
   **county** of Cuyahoga.        }  
 2                                    **SS:        CERTIFICATE**

3           I, Robert A. Cangemi, a Notary Public within and for  
 4 the State of Ohio, duly commissioned and qualified, do  
 5 hereby certify that the within-named JOHN JEFFREY  
 6 ALEXANDER, M.D., was by me first duly sworn to testify the  
 7 truth, and nothing but the truth in the cause aforesaid;  
 8 that the testimony then given by him/her was by me reduced  
 9 to stenotypy in the presence of said witness, afterwards  
 10 transcribed upon a computer, and the foregoing is a true  
 11 and correct transcript of the testimony so given by  
 12 him/her as aforesaid.

13           I do further certify that this deposition was taken  
 14 at the time and place in the foregoing caption specified  
 15 and was completed without adjournment.

16           I do further certify that I am not a relative,  
 17 counsel or attorney of either party or otherwise  
 18 interested in the event of this action.


19           **IN WITNESS WHEREOF**, I have hereunto set my hand and  
 20 affixed my seal of office at Cleveland, Ohio on this 23rd  
 21 day of May, 1999.

22

23

24

25

  
 Robert A. Cangemi (Notary Public)  
 in and for the State of Ohio,  
 My Commission expires 3-5-02,

[illegible]