#480

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

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RITA J. BRIERS,

Plaintiff,

vs.) CASE NO. CV 87 04 1248

HERBERT M. AWENDER, M.D., et al.,

Defendants.

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Deposition of HERBERT AWENDER, M.D., a Defendant herein, called by the Plaintiff for Cross-Examination pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Constance McArdle, a Stenographic Reporter and Notary Public in and for the State of Ohio, at the offices of Buckingham, Doolittle & Burroughs, 50 South Main Street, Akron, Ohio, on Wednesday, the 23rd day of September, 1987, at 3:00 o'clock p.m.

APPEARANCES:

On Behalf of the Plaintiff:

Messrs. Nuremberg, Plevin,
Heller & McCarthy

BY: Maurice L. Heller, Attorney at Law
700 Engineers Building
Cleveland, Ohio 44114-1357

On Behalf of the Defendant Dr. Awender:

Messrs. Buckingham, Doolittle & Burroughs

BY: Gary A. Banas, Attorney at Law
3721 Whipple Avenue NW
P.O. Box 35519
Canton, Ohio 44735

On Behalf of the Defendant Dr. Blazik:

Messrs. Roetzel & Andress

BY: Edward A. DiGiantonio, Attorney at Law
75 East Market Street
Akron, Ohio 44308

On Behalf of the Defendants Dr. Shields
and Dr. Oddi:

BY: Ellen H. Murray, Attorney at Law

Messrs. Jacobson, Maynard, Tuschman & Kalur
100 Erieview Plaza
Cleveland, Ohio 44114

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HERBERT AWENDER, M.D.

Of lawful age, a Defendant herein, having been first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION

BY MR. HELLER:

Q. Let the record show that the deposition of the Defendant, Dr. Awender, is about to begin. The record should reflect it had been earlier agreed upon, between the counsel for Dr. Awender and Plaintiff's counsel, that this will be taken on September 23rd at 3:00 p.m. At this time and date, was duly notified by Mr. Banas, on behalf of Dr. Awender, to all parties. It is now 3:15 and we are going to commence without the presence of counsel for Dr. Shields and Dr. Oddi, although they were notified and will be respectfully reserving their rights to question further, if they so desire. The record should also reflect the counsel for Dr. Awender is present and counsel for Dr. Blazik. With the usual stipulations.

MR. BANAS: Yes'

MR. DiGIANTONIO: Yes.

BY MR. HELLER:

Q. Good afternoon, Dr. Awender. Have you ever had

your deposition taken before?
A. Yes.
Q. How many times?
A. Four or five times. I do not remember the details, roughly.
Q. We will get to those in a minute. You understand you are under oath and it is important you understand my questions.
A. Yes, sir.
Q. And hear me correctly. If you don't hear me right, or you don't understand something, please don't answer and let me know and I will be glad to repeat the question. I don't want you to answer anything you are confused about, okay?
A. Yes, sir.
Q. The only thing we do ask you is to speak out loud whatever you have to say, because the Reporter cannot get down nods or shakes of the head, all right?
A. Right.
Q. Would you please tell me your present profession and where your offices are located?
A. I am in the practice of general surgery and my office is located at 157 West Cedar Street, Akron, Ohio.

Q. Akron?
A. Yes.
Q. Doctor, you are licensed to practice medicine in the State of Ohio?
A. Yes, sir.
Q. For how long have you been so licensed?
A. Since 1962.
Q. Are you licensed to practice in any other states?
A. Yes, in Illinois.
Q. Where did you go to medical school, Doctor?
A. University of Innesbrook and University of Vienna in Austria.
Q. When did you graduate?
A. 1952.
Q. Where did you receive your post-graduate training?
A. University of Heidelberg, in the Department of Surgery, from 1953 until 1956.
Q. Did you do your residency in this country?
A. Yes, sir.
Q. Where?
A. Akron General Hospital from 1958 to 1962.
Q. When did you go into private practice?
A. October 1962.

Q. Have your offices been at the same address on West Cedar Street since then?
A. Since April 1963.
Q. Are you associated with any other physicians?
A. No, sir.
Q. Are you by yourself, then?
A. Yes, sir.
Q. Are you incorporated?
A. No, sir.
Q. Do you specialize in any type of surgery or general surgery?
A. General surgery.
Q. As a general surgeon, how much of your work on a day-by-day basis is in the field of vascular surgery, and can you tell me in terms of percentage, or any way you can best describe it?
A. Vascular surgery, excluding arterial work?
Q. Vascular including -- I want the general range of amounts of vascular surgery?
A. General work on hemorrhoids and varicose veins, that is a vascular surgeon by a wider definition. Arterial work I don't do.
Q. Are you Board certified?
A. Yes.
Q. In what areas and fields are you Board

certified?
A. General surgery.
Q. When did you become Board certified?
A. December 1963.
Q. With what hospital are you presently associated?
A. Akron General Medical Center, St. Thomas Hospital, Childrens Hospital and Barberton Citizens Hospital.
Q. Have you ever had your privileges suspended or withdrawn at any of those hospitals?
A. No, sir.
Q. Doctor, do you have a curriculum vita in your office?
A. No, sir.
Q. You don't have one already made up; is that correct?
A. No.
Q. Doctor, in your field of general surgery, and particularly in those areas of what you are calling a narrower form of vascular surgery, are there certain texts you consider more athoritative, you rely on if you have a question in the area of vascular surgery?
A. There are no textbooks, in my opinion, which are specifically dealing just with this vascular-type

work, which we rely on in general surgery.
Q. You rely on general surgical texts?
A. Which contain, in part, this type of work.
Q. What are some of the leading general surgical texts on which you rely in your specialty?
A. The most commonly used textbooks are Christopher, for instance, Sabastian.
Q. Is Schwartz?
A. Schwartz.
Q. Do you regularly subscribe to certain medical journals?
A Yes, sir.
Q What are the journals to which you subscribe?
A. Archives, The Surgery Journal of the AMA, Correspondence Society for Surgeons, Surgical Alert, American Journal of Gastrointestinal Endoscopy and Ohio State Medical Journal.
Q. Have you written anything? Have you contributed anything to any books, solo or contributed anything to professional journals?
A. No, sir.
Q. Doctor, you mentioned the fact you have given four or five other depositions. Have any of those been in cases where you have been sued as a defendant?

A. Both as a defendant and as an expert witness.
Q. How many cases have you testified as a defendant?
A. Three or four, I do not remember the details. In this vicinity.
Q. And did any of those cases involve issues similar to what we have in this case, namely the laceration of a femoral artery during a surgical procedure?
A. No, sir.
Q. They were entirely different subject matters?
A. Yes.
Q. When were these depositions given, mostly in the past year or more?
A. No, one was in 1973 or so. A long time ago. I think four or five years ago there was one. Maybe three years ago.

MR. BANAS: I think I can answer, if you want me to answer.

MR. HELLER: Go ahead.

MR. BANAS: I am not sure about 1973. I guess in about 1975 or 1976 there was the testicular atrophy case, which we tried and got a defendant's verdict. There was a case, Harmon, what was his problem?

THE WITNESS: Lipoma of the foot.

[illegible]: That case was arbitrated, we won. Ultimately they dismissed it. Those are the two I know where you have given depositions.

BY MR. HELLER:

Q. Did you testify in court on any of the cases? Obviously in the one dismissal, obviously not?

MR. BANAS: He testified somewhere in a the '70's, the testicular atrophy case.

MR. HELLER: Do you remember the name of the plaintiff in that case?

MR. BANAS: No.

MR. HELLER: The plaintiff's attorney?

MR. BANAS: I remember him.

MR. HELLER: Who was that?

MR. BANAS: Some young guy, by the name of Shafferon, from Cleveland.

BY MR. HELLER:

Q. These cases that your attorney discussed, were

they all filed in Summit County, to your knowledge?
A. Yes, sir.
Q. You said you also gave a deposition in cases where you have been an expert witness. How many times was that?
A. About two or three times.
Q. Did any -- I assume you were an expert on behalf of the defendant physician; is that correct?
A. The court, these were emergency cases and accidents and things like this. Gun shot wounds, I assume.
MR HELLER: Were they civil malpractice cases?
MR. BANAS: No, I think these cases he is telling you about, he was a treating physician and was subpoenaed to testify about a client, a patient.
THE WITNESS: Yes.
MR. BANAS: To my knowledge you never acted as an expert in a medical malpractice case, have you?
THE WITNESS: No.
BY MR. HELLER:
Q. Have you ever been asked by Mr. Banas, or any attorney at any time, to review a case and/or testify

to on behalf of a physician who h
negligence?
A. No, sir.
Q. And this is the first case i
particular subject matter, in which
personally involved?
A. Yes, sir.
Q Doctor, how many bilateral venous ligations and vein strippings had you done prior to the one in July of 1986, on Mrs. Briers?
A It goes back over 25 years, I will have to.
Q Your best approximation?
A 80 to 100.
Q Would you consider this procedure a fairly routine procedure?
A Yes, sir.
Q Can you tell me generally what the purpose of the procedure is usually, when is it done, why is it done?
A Patients who present with varicose veins, which are symptomatic and painful, are usually going to surgery and during the procedure you strip the veins.
Q This is usually done under general anesthesia, I presume?
A Yes, sir.

Q. How long of a procedure is it, generally?
A. Between one-and-a-half and four hours.
Q. Before the incident with Mrs. Briers, had you performed any vein stripping from the time you were in private practice in 1963 to 1986?
A. Yes, sir.
Q. Were those at Akron General Hospital?
A. Akron General and Barberton Citizens Hospital.
Q. Had any incident occurred during any of those procedures, that were out of the ordinary, or in any way similar to what happened in this case?
A. No, sir.
Q. Had you ever been involved in any vein stripping; or vein ligation is the correct name?
A Vein ligation and stripping.
Q Were you doing Mrs. Briers' vein stripping and ligation?
A. Yes, sir.
Q. Had you a had an incident before where a femoral artery was lacerated?
A. No, sir.
Q. Prior to coming here today, for which I do thank you far taking out the time to come, can you tell me what you did to prepare for this deposition? Let me help you out. Did you talk to Mr. Banas?

MR BANAS Briefly.

BY MR. HELLER:

Q. Did you review the file, your file?

A. Yes, sir.

Q. What else did you do, did you read the hospital record?

A. I read my own records and the operative report, the pathology report and Dr. Shields' report. I did not go through the nurse's notes or the hospital notes.

MR. BANAS: Have I ever given you a copy of those?

BY MR. HELLER:

Q. Yes. I presume in your work at the hospital, after the lawsuit was filed, you have looked through the records before; you have seen your operative notes before?

A. Yes, that is part of my record.

Q. That is part of the record we are going to be talking about; is that correct?

A. Yes.

Q. Did you read any textbooks prior to coming here today for the deposition?

A. In preparation for today?

Q. Yes.

A. No, sir.
Q. Have you read any journal on the subject, generally, with the subject of vein ligation and stripping?
A. I read journals all the time. Nothing was in preparation for this deposition.
Q. There was nothing in particular that you looked at or read to prepare yourself for today's deposition; is that correct? Specifically for today's deposition?
A. No, sir.
Q. Have you talked to any other medical personnel before appearing here today about the events of July 17, 1986?
A. I asked Dr. Shields, after his procedure, what he was doing and what the results were and so on. Other than with the surgeons who were immediately involved, Dr. Shields and Dr. Oddi --
Q. Were there any other surgeons involved other than Dr. Shields and Oddi?
A. No, sir.
Q. What role did Dr. Blazik play?
A. I do not know.
Q. Do you know who Dr. Blazik is?
A. Yes, sir.

Q. Who is he?
A. He is presently the Chief Resident at Akron General.
Q. Was he present at the surgery of July 17, 1986?
A. No.
Q. During any part of the procedure, initially or during the repair procedure?
A. Not that I know of.
Q. If he was, you are not aware of it?
A. Part of the procedure was done by Dr. Oddi, at which time I was not present, but to the best of my knowledge, he was not present during the surgery.
Q. Could he have been present when Dr. Oddi was doing the work?
A. It's possible.
Q. You personally don't recall when he was there?
A. That is right.
Q. Was he involved at all when Dr. Shields was doing his work?
A. I cannot answer that, I wasn't present.
Q. Have you consulted with any other physician, other than Dr. Shield and Oddi, before appearing here today on the subject matter we are going to be talking about?
A. No, sir.

Q. Pardon?
A. No, sir.
(Thereupon, Plaintiff's Exhibits 1A through 1G of the Awender Deposition were marked for purposes of identification.)
BY MR. HELLER:
Q. Doctor, handing you what has been marked as Plaintiff's Exhibit 1A through 1G, do they represent accurate copies of your entire file on this case on Rita Briers, of your own personal office file?
A. Yes, sir.
Q. Thank you. Except for one letter I wrote to you, asking for the record which I have not included. Doctor, following the incident we are going to be talking about in a few minutes, was there any subsequent investigation or inquiry by anyone, any representative of the hospital as to what occurred with Mrs. Briers?
A. As far as I was concerned?
Q. Yes.
A. No.
Q. Was there any peer review meeting regarding the events that took place in the surgery on Mrs. Briers?
MR. BANAS: Object.

Answer.

THE WITNESS: No, sir.

BY MR. HELLER:

Q. You know what that means, peer review?

MR. BANAS: Object.

THE WITNESS: It may be a general or specific committee.

BY MR. HELLER:

Q. Let me rephrase the question. Is there such a thing at Akron General Hospital?

A. Yes, sir.

Q. Is there such a thing at Akron General, whether you call it peer review or a commission, conferences following an event? There might be a meeting of various physicians, including a physician or physician in charge, and a discussion is held between the physician, among the physicians, as to how the incident should have been handled or how it can be handled in the future?

MR. BANAS: Objection.

MR. DiGIANTONIO: Objection.

BY MR. HELLER:

Q. Do such things take place place at Akron General?

A. There are such meetings.

Q. Is there a name? What do you call them?
A. Mortality and Complication.
Q. Conferences?
A. Yes.
Q. Was there any such mortality and complication conference, following the surgery of Mrs. Briers after July 17, 1986?
A. Yes.
Q. When was this?
A. The conferences take place every week, but there was nothing specifically dealing with this case.
Q. That was my question. You have one every week for general things that come up?
A. The most important cases are being discussed.
Q. Is it possible to have a conference meeting set up after the particular events, a special meeting that is set up other than the routine meeting?
A That is possible.
Q. Was one set up in any way that pertained to what took place to Mrs. Briers on July 17, 1986?
MR. BANAS: Object.
THE WITNESS: No, there was not.
BY MR HELLER:

Q. Dr. Awender, I want to start talking to you about your involvement in this case. I want you to feel free to look at your records, so your answers are accurate. I want to you look at the records your attorney will give to you, so we are not operating on guesswork. Everything I ask you, for the most part, is something you can refer to your memory or the records. In some cases, by memory, okay?
A. Yes, sir.
Q. When did you first have occasion ever to see Mrs. Rita Briers?
A. As a patient, I saw her the first time on July 11, 1986.
Q. You say "as a patient," did you know her personally?
A. She is an employee of Akron General Medical Center, therefore I have seen her before.
Q. Did you know her socially, to say hello and speak?
A. Nothing, other than say "hello" to her.
Q. What was the reason for her seeing you on July 11, 1986?
A. She presented with varicose veins of her legs and she requested treatment.
Q. Was this more or less routine, the typical kind

of complaint you have heard from other patients that have this kind of problem?
A. Yes, sir.
Q. Was there anything unusual about her complaints as she presented them?
A. No, sir.
Q. Do you have an office notes pertaining to the visit with you on July 11, 1986?
A. Yes.
Q. Please read them.
A. "Varicose veins right and left leg. Lateral and right tortuous, left conventional, (mild) right. Will schedule for operation, Thursday."
Q. Excuse me. After mild, what is next?
A. On left. That is a repetition.
Q. All right.
A. "Will schedule for operation Thursday, July 17th, outpatient, general anesthesia."
Q. Was this an outpatient procedure?
A. No, patients often go in as an outpatient and stay a couple of days.
Q. Was that your intention with her?
A. We leave it up to the patient. Some procedures for instance, hernias, they can be done as an outpatient procedure or as inpatient procedure with

the patient to be admitted after surgery. We leave it up to the patient.

Q. Did you leave this up to her whether she wanted to come in as an inpatient or outpatient?

A. Yes.

Q. That was her choice, come in as an inpatient.

Q. Before surgery?

A. Yes.

Q. She may?

A. She may have been planning to do it as an outpatient, with the understanding she may want to stay a day or two.

Q. What is the normal confinement when it's done as an inpatient for this procedure?

A. Five days.

Q. Go ahead. You have something else under that list as number two?

A. It says, "Intradermal nevi (3), supraumbilical area, 1 centimeter in diameter, growing changing color, will operate too."

Q. Could you describe what you mean by the first word, "intradermal"?

A. Intradermal nevi are basically moles.

Q. She had some three moles?

A. Yes.

Q Where were they located?
A. On the abdominal wall.
Q. Something in addition you were to remove?
A. Yes, sir.
Q. Was that the main reason for her coming to the hospital, or was the vein stripping the main reason?
A. The vein stripping.
Q. Go ahead, what do you have for number 3?
A. "Bigeminal rhythm, no treatment." This is a cardiac arrhythmia.
Q. Was it her understanding, if you know, that you were going to do a stripping on both legs?
A. Yes, sir.
Q. Was her main complaint more the left or the right leg, or was it to both? I am not sure from your records?
A. I cannot -- taking off my record I cannot answer that at this point.
Q. Do you remember what her specific complaints were?
A. Yes, she had pain on walking and particularly on standing, and it got progressively worse.
Q. There is a name for that symptom, does intermittent claudication cover that?
A. No, sir.

Q. Were her complaints characteristic of someone who needed vein stripping and vein ligations?
A Yes, sir
Q. Did you indicate to her you were going to do a vein stripping and ligation on both the right and left legs?
A. Yes, sir.
Q. As well as remove the moles?
A I have to look -- yes.
Q Yes what?
A We we were going to do both procedures.
Q. The vein stripping and removal of the moles?
A. Yes.
Q. She entered the hospital July 17, 1986; is that correct?
A. Yes, sir.
Q. Read what you have for the next notation, next to July 17, 1986.
A. The discharge 7/27/86.
Q. Could you read below that?
A. Bilateral vein ligation and stripping, multiple interruptions and secondary stripping long and short saphaneous symptoms. Number two repair of lacerated superficial femoral artery (Dr. Oddi) and AGA, triple A, Miss Metzger CRNA.

Q. What is CA?

MR. BANAS: CRNA.

THE WITNESS: Certified Registered Nurse Anesthetist.

BY MR. HELLER:

Q. Keep reading.

A. "Post-operative complication, obstruction of superficial femoral artery, left, 20 centimeters long on DSA."

Q. What do you mean by that?

A. Digital subtraction angiogram.

Q. What do you mean by obstruction of the superficial femoral artery?

A. After the artery was repaired by the vascular surgeon, it became apparent, post-operatively, it was not wide open, that there was some problem with circulation. Even though the leg appeared to be warm, the pulses were diminished. Because of this, a study was done, a digital subtraction angiogram and it showed a problem there.

Q. What was the problem?

A. Insufficient arterial flow.

Q. And this was after the repair work done by Dr. Oddi?

A. Yes, sir.

Q. Is that the condition what led ultimately to the surgery by Dr. Shields on July 23rd?
A. Yes, sir.
Q. Before that -- I want to go back to the first part of the July 17th note. You say here, "bilateral vein ligation and stripping with multiple interruptions;" what do you mean by that?
A. The main vein usually is stripped in one piece. Then in addition, in most patients, there are several varicose veins that are tortuous and cannot be stripped in one piece and they have to be removed by making separate incisions and interrupting them, or stripping them.
Q. Is that what you were doing with Miss Briers?
A. Yes, sir.
Q. Can you tell me, and you can look at the operative record if you like, the name of all the residents and other medical assistants who were present during the surgical procedure?
A. Dr. Munday.
Q. M-U-N-D-A-Y?
A. Yes.
Q. What was his position there or classification?
A. He was my first assistant.
Q. And is he an M.D. located at Akron General

Hospital?
A Yea.
Q Who else was present, other than Dr. Munday?
A I assume, even though I can't tell from the record, that there was a second assistant.
Q Do you remember the name?
A No, sir; he is not a physician.
Q Who?
A The second assistant is often not a physician.
Q I assume there were operative nurse's present?
A Yes.
Q And their names would be in other nurses notes?
A Yes
Q Was Dr. Oddi also present?
A Not in the beginning.
Q Can you describe for me what you were doing, up to the point where the femoral artery was lacerated, what exactly were you doing?
A The procedure starts by locating the long saphenous vein overlying the ankle. Once the vein has been identified, an incision is made and you introduce a stripper, a plastic stripper and you introduce it into the vein and bring it out in the groin.
You make a second incision in the groin and

identify the different veins and eventually proceed stripping the long saphenous vein. In addition to the long saphenous veins, there are other veins in both the rest of the leg and groin, they have to be separately interrupted.

Q. That is what you were doing before this incident took place?

A. Yes, sir.

Q. How long were you separating the various saphenous veins before the femoral artery became lacerated? Can you estimate for me the time involved?

A. First we worked on the right leg, then on the left; so talking about from the beginning of the procedure on the left or right?

Q. Which leg did you do first?

A. Right leg.

Q. That went off without incident?

A. Yes, sir.

Q. How long did that whole procedure take, the right leg that is?

A. I would have to look it up.

Q. If are you reading from the chart, maybe you can give me the page number.

A. This is an anesthesia record. 28.

Q. Go ahead. You are reading from the anesthesia record, page 28. From that, can you tell me how long the right leg took?

MS. MURRAY: It is page 19. Is that the right record?

MR. HELLER: Thank you. Page 19, does that give you the information, sir?

MR. BANAS: I think the answer is probably not.

THE WITNESS: The exact time, at what point Dr. Oddi was called in, I can't tell you.

BY MR. HELLER:

Q. The question was first how long the right leg, itself, took.

A. No, sir, I cannot answer that from this record.

Q. Based upon your experience, what is the normal amount of time it would take for one leg?

A An hour.

Q Then you started in on the left leg?

A Yes, sir.

Q Haw lang were you working on the -- strike that. When you began work on the left leg, did you also have the multiple interruptions you described existing on the right leg?

A We did the long, saphenous vein first That was done before anything else.
Q On the left leg?
A Yes, sir.
Q Did you find the same amount of interruptions of the various veins of the left leg as on the right?
A. No.
Q Less interruptions, less "tortuous interruptions" as you describe it?
A I cannot answer that as to the number of separate incisions we have made, because it doesn't say so on the record.
Q From memory, can you tell me if there were less separate incisions on the left than on the right?
A. No, sir, I cannot remember.
Q Can you tell me now what you were doing on left leg before the femoral artery became lacerated? You told me you picked up the long, saphenous vein.
A. Yes.
Q. Then what?
A. We were -- dissecting out tributaries and veins in the left groin.
Q. All right.
A. There is a variation of numbers of veins that we can find in the left groin, and we were

interrupting them separately. Those were in addition to the long, saphenous vein. In the process of dissecting out the structures, there was one structure in the location where the veins usually are located, and of the general size of a vein, and we applied clamps and interrupted the vessel.

Looking at the size of the wall, it became apparant to me, this is not a vein by an artery, an artery which was much smaller than the usual femoral artery; however, an artery nevertheless. So that was unusual. I was suddenly confronted with an anatomic abnormality. A situation which was not presenting the norm. We took the clamps off to make sure that this is an artery, yes it was.

I put several stitches in to repair and reproximate the artery, which went without incident. However, several minutes later it became apparent that the pulse in the distal leg was not as good as I wanted it to be. Because of this, I suspected that the repair was not optimal and I asked for a consultation with Dr. Oddi.

Q. Let me interrupt you there a minute before we go on. Doctor, there is no question that the left superficial femoral artery was lacerated?

A. Yes, sir.

Q And can you specify for me the location of that femoral artery?

A It was more superficial than I expected.

Q By "more superficial," you mean what?

A Closer to the skin.

Q Was it in the area where you would normally expect the femoral artery to be located?

A No, sir.

Q Where is the area the femoral artery is usually located?

A. Deeper

Q Where?

A In the leg.

Q Where in relation to the groin?

A Below the groin and deeper.

Q It was below the groin, where you would expect the femoral artery to be located; is that correct?

A. In the same general area, but quite a ways away.

Q. In what way was it different? I want to make sure I understand You said it was abnormal. I want to know what was unusual about the location of the femoral artery?

A. Two things. Number one the location was much more superficial.

Q. By that, you mean closer to the skin?
A. Right. The diameter was much smaller than normal.
Q What is a normal diameter?
A It depends on the individual.
Q Based on -- you have done about 80 to 100 -- based upon your experience of having seen 80 to 100 arteries?
A 11, 12 millimeters
Q Average?
A Yes.
Q What would you say the diameter was on Mrs. Briers?
A 6 millimeters.
Q Did you observe the 6 millimeter-wide femoral artery superficially located, before the laceration took place?
A. Yes.
Q. And are you telling, us your testimony is, you thought that was something else?
A. I thought it was a vein.
Q. Veins and arteries are easily identified, the vein itself isn't it, the difference is apparent from an artery to a vein?
A. Not necessarily.

Q. Are there any characteristics that would distinguish an artery from a vein?
A. Upon observation, not necessarily, sometimes it can be very different.
Q. So if I understand you, it is your testimony here that, you saw what you later learned to be a femoral artery, but you thought it was a vein?
A. Yes, sir.
Q. And you were missled because it was closer to the skin than the femoral artery usually is?
A. And mostly, by the size of it.
Q. It was about 6 millimeters wide, instead of, you say, 11 or 12?
A. Yes, sir.
Q. Probably, if it had not been as superficial and wider, you would have recognized it as a femoral artery?
A. Yes, sir.
Q. What additional precautions, if you know beforehand it was a femoral artery, what would you have done differently in the procedure at that point?
A. You dont' interrupt it.
Q. By interrupt, what do you mean?
A. Cut it.
Q. Why would you not cut it, because it's an

artery?

A It s not a part of a vein ligation stripping.

Q What kind of clamp did you use to interrupt what you thought was a veIn? You said you used a clamp, right?

A Yes.

Q As part of the vein stripping procedure, is there a name for the type of clamp?

A A hemostat.

Q Does a hemostat have rough ridges?

A Multiple, very tiny teeth

Q Would a hemostat be contraindicated for putting onto a femoral artery? Would it be the wrong type of clamp on the femoral artery?

A. Vascular surgeons would, as a rule, would not use that to repair an artery.

Q. What kind of clamp would they use on an artery? Are there certain types of clamps that are typically used?

A. Yes.

Q About how many different types are there?

A Six or seven different kinds.

Q Are they on a tray in front of you, at the operating table?

A. No, sir.

Q. If you want one, how do you get one in the operating room?
A. You would have to ask the nurse for them.
Q. How long does it take to get them, once you ask for them?
A. A few minutes.
Q. Did you need or ask for a special vascular clamp?
A. For the vein ligation.
Q. Yes?
A. No, sir.
Q. So, if I understand you now, Doctor, after you started on the left leg, you saw what you thought was a vein. You applied a hemostat, thinking it was another vein and part of the vein stripping procedure; is that correct?
A. Yes, sir.
Q. And did you then notice a flow of blood emenating from where you applied the hemostat?
A. No, sir.
Q. Did you see any blood at all?
A. Not after I cut.
Q. When did you realize it was a femoral artery you clamped?
A. When I looked at the transected vessel and I

saw the thicker wall than I would have expected.
Q. Then you know it as a femoral artery?
A. I suspected an artery. At this point, I still didn't suspect a femoral artery, because it was much smaller than a femoral artery would be.
Q. When did you finally confirm, in your mind, it was indeed a femoral artery?
A. I asked the vascular surgeon to take over at this point.
Q. Who would that have been?
A. Dr. Oddi.
Q. Do I understand you right, sir; you never saw any emenation of blood flowing from the artery; is that correct?
A. That is correct, as long as the hemostats were on.
Q. When did you notice -- I think you said you suspected it was an artery when you saw the difference in the wall thickness. What was there about the wall thickness that made you suspect it was a femoral artery?
A. It was thicker.
Q. Did you know the hemostat was on?
A. ***Yes, sir.***
Q. After that, did you remove the hemostat?

A For a brief moment.
Q Then what happened when you removed the hemestats?
A I saw arterial blood.
Q. I use this word relatively, was it gushing, or something that was there on a minute scale?
A You can tell there *is* a much more vigorous stream of blood in an artery than a vein.
Q At that moment, I presume you realized then it was an artery you had clamped?
A Yes
Q What did you do then to stop the flow of blood?
A I immediately put on the same clamp
Q The same clamp?
A Yes.
Q A hemostat?
A Yes.
Q Wouldn't one of the six or seven types of vascular clamps you said you can get, by asking the nurse, would not that have been more appropriate to use at that time?
A. If it had been available, yes.
Q. You said it would have taken one or two minutes to get one; is that right?
A. Yes, sir.

Q. Would that have been too long?
A. That is exactly what we did.
Q. I thought you said when you saw the arterial blood flow, you put the hemostat back on?
A. You cannot not let an artery pulsate for three minutes until the nurse comes back.
Q. It would have taken two or three minutes for the nurse to get the vascular clamp. You could not let the arterial blood pulsate unattended; so you did the next best thing, you put the hemostat back on?
A. Yes, sir.
Q. Even though the hemostat is not the right type of clamp for an artery?
A. That is correct.
Q. Was Dr. Oddi present during all of this or did he come in later?
A. He came in later.
Q. Was anyone -- were the people you mentioned earlier, Dr. Munday, did he observe all of this?
A. Yes, sir.
Q. Did you ask him, or discuss, or have any fast discussion with him what to do, or did he say anything or did you?
A. No, sir.
Q. This is a decision you were making on your own

responsibility?
A. Yes.
Q. Based upon what you felt should be done?
A. Yes, sir.
Q. Did Dr. Munday ever express to you, either then or later, the thought that indeed this was an artery that looked like a vein? Did he ever make that comment to you?
A. Dr. Munday did not comment on it.
Q. Did you ever discuss it with him one way or the other?
A. It was very obvious. There was no need to discuss it.
Q. What was obvious?
A. What was happening.
Q. Well, what about the fact you said the artery look liked it was an artery disguised as a vein? Are you saying you never discussed the appearance of the vein with Dr. Munday at any later time?
A. Yes, we discussed this was an anatomic abnormality.
Q. Dr. Munday agreed with you on that?
A. Yes, sir.
Q. Did the nurses also observe the same femoral abnormality?

A. I assume.
Q. Do you remember the name of the nurses, without looking through all the records?
A. No, sir.
Q. Ordinarily when are you doing a vein stripping and ligation, is it necessary to work around the femoral artery or in that area?
A. Close to it.
Q. Is it therefore necessary to exercise reasonable caution not to interrupt or cut it?
A. Yes, sir.
Q. That is basic in doing this kind of work; correct?
A. Yes.
Q. In the 80 to 100 vein strippings and ligations you had done prior to this, had you ever noticed an abnormality similar to what you describe to me now, the femoral artery being more superficial?
A. No, sir.
Q. Did you ask Dr. Munday if he had ever seen anything like this before?
A. No, I did not ask him.
Q. Have you ever seen anything, at any time, in literature that talks about this as being something that can happen?

A The vascular literature describing hypoplastic arteries of this kind, which are rare.
Q You call this "hypoplastic"?
A Yes
Q What do you mean?
A The diameter is much smaller than normal.
Q How about being more superficial? Does that have anything to do with being hypoplastic?
A. This may or may not have anything to do with this
Q I presume when you saw this in the literature, you read something about when or why it occurs?
A This a congenital abnormalSty that occurs in some people. It's difficult to know ahead of time who has it and who doesn't.
Q Which leads me to my next question. Is there anything about the pre-exam - I presume Mrs. Briers had a pre-exam before the surgery, right?
A. Yes, sir.
Q Is there anything about the pre-examine or your clinical observation of Mrs. Briers or any of the prior work-ups she had that would have in any way suggested to you that she might have a congenital anomaly such as this?
A No, sir.

Q. Are there any tests that you can do, or that can be done at the hospital under your direction, which will tend to show the condition of such an anomaly?
A. It's theoretically possible to visualize an artery by injecting a contrasting material.
Q. Before surgery?
A. Yes.
Q. Under what circumstances or conditions is that done?
A. If are you planning to do arterial work. Never vein ligations or strippings.
Q. Would it be fair to say if you had theoretically done this kind of injection, you would have uncovered this anomaly?
A. Yes, sir.
Q. You are saying you would have no reason to do it, because you are doing a vein stripping?
A. That is right.
Q. This type of injection is not done before a vein stripping?
A. Never.
Q. Once you removed the hemostat and you saw the pulsating blood, you put the hemostat back; did that stem the flow of blood?

A. Yes, sir.
Q. Then what did you do?
A. I asked for a vascular clamp, which I got.
Q. Then the two or three minutes that it took were covered, because you had the hemostat on the artery, right?
A Yes.
Q The circulating nurse brought you the vascular clamp?
A Yes.
Q What is the name of the clamp?
A A bulldog
Q. Did you take off the hemostat and put on a bulldog?
A. Yes.
Q. Then what did do you?
A I sutured the vascular structure, the transected end with number 60 arterial silk.
Q. You did this to the two ends of the femoral artery that had been cut?
A. Yes.
Q. You spliced them together, in other words?
A. Yes.
Q. Were you doing that yourself, or with the assistance of nurses, or was any other physician

there?
A. I did it myself with the assistance of Dr. Munday.
Q. And how long did all this take before you had everything sewed back together?
A. Maybe 10 minutes.
Q. The time you noticed the pulsating blood or the artery, until you got everything sown back together, what was the total time laps, 10, 12 minutes?
A. Yes, sir.
Q. Then what happened? What did you do after you had it sown together?
A. In any arterial repair, you are interested in the outflow and we were observing the leg to see if --
Q I am sorry?
A Observing the leg.
Q The left leg, of course?
A The left leg. We were particularly interested in the color and the distal pulses.
Q That means the pulses at the end of the leg?
A Yes, because that would give us an indication if everything was all right or not. The pulses were present but they were not -- after a few minutes, they were not as good as I wanted them to be.

Q Why do you think that was? What was the reason for that?
A. There was some sort of problem with the repair.
Q. With the sewing repair you had done?
A. That is correct.
Q. And you noticed that almost immediately after the sewing had been completed?
A. It took a few minutes.
Q. What did do you then?
A. I called for the vascular consult.
Q. That is where Dr. Oddi comes in?
A. Yes, sir.
Q. Is he associated -- he is a vascular surgeon associated with Akron General?
A. Yes, sir.
Q. Is he one of the regular vascular surgeons on call?
A. Yes.
Q. How long was it before he came in, approximately?
A. Immediately. Within a few minutes.
Q. You showed him the situation when he got there, distal pulse being week?
A. Yes.
Q. What did he then recommend and what did he do?

A. He said yes, the repair is fine. There is no bleeding. It's tight, however, the distal pulses are weaker than he would like to see them. At this point, he decided to reopen the incision and look.
Q. That is the incision where? At the artery?
A. The artery, yes.
Q. He undid the splicing work you had done?
A. Yes, sir.
Q. In order to find out what was going on?
A. Yes, sir.
Q Were you present when he was doing this?
A For a few minutes.
Q Then did you leave?
A Yes.
Q. Why?
A. He had his own assistance.
Q. Do you remember who they were?
A. No, sir.
Q. Is that where Dr. Blazik comes in?
A. I think so.
Q. What, if you know, what did Dr. Oddi learn when he uncovered the splicing you had done on the artery?
MS. MURRAY: Objection.
BY MR. HELLER:
Q If you look at the record, is it in the record

what he found?

A. Not in my records.

Q. Have you looked at a hospital record at some point?

A. No, I discussed it orally with him.

Q. What did you learn by discussing it orally with him?

A. He was particularly interested in, for instance, a thrombosis, a blood clot distally, which might be the problem. So they checked the distal arterial system and they inserted -- I assume they inserted something to make sure it remained open. He found -- and here I am speaking from my position, was not there.

MR. BANAS: If you don't know, you don't have to testify. If you know something, you tell him.

BY MR. HELLER

Q. Was in fact a thrombosis found after Dr. Oddi had uncovered the splicing?

A I cannot answer that,

Q If we look at your records, let's go back to your records of July 17th. You say here repair of -- I am sorry. I forgot what you said before.

A "Obstruction of superficial artery."

Q. Dr. Oddi, which you have just described -- and what does this thing say?
A. "AGA, AAA, Miss Metzger, CRNA."
Q. That is the nurse?
A. Yes.
Q. Below that?
A. "Postoperative complication, obstruction of superficial femoral artery, left, 20 centimeters long on DSA."
Q. What is 1eft 12 centimeters long? Is that the thrombus?
A. An obstruction. Whether the obstruction was due to a thrombus or spasm, I cannot answer that.
Q. Is it my understanding, when the postoperative complication you have in your record pertains to this problem that was affecting the distal pulse, after you spliced together the severed artery, that was the postoperative complication?
A. No, sir.
Q. What are you referring to?
A. To what happened after the patient was done, went back to the room and so on. After Dr. Oddi repaired the artery. This complication refers to what happened after Dr. Oddi.
Q. As to exactly what Dr. Oddi found, or would we

have to ask Dr. Oddi because he was there and he did it?

A. That is right.

Q. After he did whatever he did, in terms of attempting to repair, there was a complication?

MS. MURRAY: Objection.

BY MR. HELLER:

Q. What you call a "postoperative complication"?

A. It was no immediate problem after what he did, because the patient went back to the floor and the patient's leg was apparently normal. However, pulse also, again after awhile, became less rebounding than we wanted it to, and because of that, we got a digital subtraction angiogram.

Q. That is the obstruction of the superficial femoral artery DSA?

A. As visualized by X-ray.

Q. What was the nature of that test?

A. To find out the nature of the pulse.

Q. It was slow?

A. It was not quite as bonding as we would like.

Q. Whose decision is it to DSA?

A. Dr. Oddi's.

Q. Had the patient shifted to Dr. Oddi's care now, or still under your care?

A. Primarily to Dr. Oddi.
Q. Did you still maintain some supervision over what was happening though?
A. Yes. The treatment of the rest of patient, and the other leg, was up to me. The treatment of the femoral artery on the left was up to the vascular surgeons.
Q. For the reasons --
A. It's in their territory, not mine.
Q. Of course, you kept a close watch because she was your patient and you were interested in knowing what going on; is that correct?
A. Yes.
Q. Was it because of the finding on the DSA that decision was made she should go back surgery on July 23rd?
A. I assume, but the decision at this point was not between the patient and me; it was between the vascular surgeon and other people and the patient. At this point, I was an interested observer.
Q. Incidentally, do you know what the intima of an artery is?
A. Yes, sir.
Q. What is it?
A. An artery basically consists of three layers.

The intima, as a word, says the innermost layer.
Q. Would it be fair to say that as a result of the hemostat clamping on an artery the intima, that portion of the femoral artery, is crushed?
A. I cannot answer that. It can be, but sometimes you apply a hemostat, and it is not crushed.
Q. Could you go ahead in your notes and read what you have under July 23, 1986?
A On July 23rd?
Q Yes
A It says, "Repair and graft left superficial femoral artery, Akron General Hospital, Dr. Shields six millimeter diameter."
Q What does that refer to, if you know?
A To the size of the graft.
Q That was cortex graft, was it?
A Yes, sir.
Q And go ahead?
A "NB please note patient had stenotic ductor canal, left, needed to be repaired."
Q. Could you define what you mean by that?
A Everything I tell you now is the result of what Dr. Shields told me. I have no knowledge and have not treated a stenotic abductor canal because I was not in this area. However, when he tald me about it,

he said that in addition to the hypoplastic artery. In other words in addition to the first congenital abnormality on the patient, the patient presented with a congenital abnormality, namely a stenotic abductor canal.

Q. Did Dr. Shields indicate to you this stenotic abductor canal was a congenital abnormality?

A. Yes.

Q What was meant by a stenotic abductor canal?

A I am out of my territory. This is in the vascular territory. The area there, the artery goes through the fascial layer, which in this case apparently was constricted and stenotic.

Q. Rumor, or more or less, writing down what Dr. Shields told you?

A That is correct

Q. Continue reading. You left off narrow ductor canal.

A. "Needed to be repaired too."

Q. Too, t-o-o?

A T-o-o, yes. And then "NB numbness left knee, left knee area, lateral aspects."

Q. This again is all your handwriting, of course?

A Yes, sir.

Q Is that numbness of the left knee based on your

examination or what Dr. Shields told you?
A. On my examination.
Q. Did you see the patient after the repair?
A. I did on July 23rd and July 17th.
Q. Did you see her on a daily basis?
A. Yes, sir.
Q. Did you examine her? Would you examine her when you would see her?
A. Yes.
Q. What findings, if any, did you make during your visits between July 17th and July 23rd? What did you find that was abnormal when you examined her?
A. Frankly, everything looked pretty good to me. However, the vascular surgeons, who are much better trained in arterial work, thought after several days, there might be something not perfect in the outflow.
Q. Who primarily thought this? Dr. Oddi or Dr. Shields?
A. This is a group, and rounds are made by several of these gentlemen, and I cannot answer you who made the decision for the angiogram and who made the decision to take her back to surgery.
Q. Shields did the surgery, right?
A. The second surgery, yes.
Q. You don't know he made the decision for the

surgery, or Dr. Oddi may have made it?
A. Most likely they cooperated and did it together.
Q. They are in the same office?
A. Yes, sir.
Q. It would make sense for Dr. Oddi, having done the repair, to follow on consult with Shields, and the two of them did the surgery?
A. Yes.
Q. Did you notice numbness -- I think you said in the left knee?
A. At this point she did not have any numbness.
Q. You have, "NB numbness left knee." I thought you said you noted that yourself on one of your examinations?
A. After the second repair.
Q. After the July 23rd repair?
A. Yes.
Q. Did you have any explanation as to why she had numbness in the knee after the July 23rd repair?
A. I was asking for an explanation because this is not part and parcel of vein ligation or repair in this area, and Dr. Shields told me if it had been just a repair of the artery, in the groin, there would not have been any numbness. However, in

repairing the second congenital abnormality, namely the stenotic abductor canal, he had to do this and in the process the result was numbness, but I have this only secondhand and I would like to refer you to Dr. Shields.

MS. MURRAY: Objection, move to strike.

MR. HELLER: The answer will remain. It's in his notes. These are your notes we are reading from?

BY MR. HELLER:

Q. According to this, I only see two more entries. "10/7/86 request for insurance form"; is that correct?

A. Yes.

Q. No charges?

A. These are entries of my office girls, yes.

Q. Why were there no charges rendered, if you know?

MR. BANAS: I object.

THE WITNESS: There are charges.

BY MR. HELLER:

Q. Were there charges or not?

A. Yes, sir. You can see them on the first page.

Q. Where am I missing something?

MR. BANAS: Right here, look at those numbers.

BY MR. HELLER:

Q. I see over here it's faded out.

A. Yes.

Q. Whoever put in no charges, are you saying they were incorrect?

A. What that means is they just send out a request, but did not send out a statement with the charges.

Q. Then the next entry is "6/18/87, sent copy of all reports and charts to Attorney Banas."

A. Yes, sir.

Q. Doctor, when was the last time saw Mrs. Briers?

A. As a patient, I saw her the last time in the hospital.

Q. That would have been what? Can you give me a specific date?

A. I assume on 7/27/86.

Q. That is not in your office card. Is that from somewhere in the hospital record?

A I have a discharge date on my office records.

Q. Could you show me that?

A It says admitted and discharged

Q. Where does it say discharged? I am missing it here.
A. Discharged 7/27.
Q. Okay. You put down discharge date next to admission date?
A. Yes, sir.
Q. The last time you saw her was July 27th?
A. Yes.
Q. Can you recall for me what her condition was at that time?
A. She was recovered from both surgeries and ready to go home.
Q. Did she have any symptoms you can recall at this time?
A. No, sir.
Q. Was she under the care of Dr. Shields at that time?
A. All of us. I do not know whether she was officially in my service or Dr. Shields' service.
Q. Did you still consider her your patient when she was discharged July 27th?
A. Yes, sir.
Q. Even though she, because of the incident with the femoral artery, had come under the temporary care of Dr. Oddi and Dr. Shields?

A. Yes.
Q. Did you make any appointment to see her again?
A. Yes, we usually ask the patient to come back for the removal of sutures.
Q. Go ahead?
A. I asked the patient to come to my office.
Q. Did she come back to your office?
A. No, sir.
Q. Did you ever see her again on a social basis at the hospital?
A. I saw her in the admitting office. I did not talk to her, but I saw her.
Q. Did you ever have any further conversation with her, "How are you getting along? How come you didn't come back to the office?" Anything at all?
A. No, sir.
Q. I am looking at page 103, which Mr. Banas has been good enough to give me, which is part of the hospital record. Are any of these notes made by you?
MR. BANAS: This is the homegoing instructions.
THE WITNESS: No, sir, those are not my entries.
BY MR. HELLER:
Q. Do those -- looking at page 103 of that record,

does that gave us an indication what her condition was at the time of her discharge?

A It doesn't particularly address the issue. It says there was no dressing, "Rest of sutures out, no dressing, sutures intact to left thigh and left groin area from bypass graft."

Q. Is there an occasion -- maybe I am not reading, are the sutures supposed to come out based upon that?

A The one on the left side; those were sutures place in by the vascular team.

Q. Who would she have had to go to, to have those removed?

A Either Dr. Shields or Dr. Oddi.

Q There was nothing, in particular, you could do in a follow-up visit in regard to work they had done?

A. No.

Q. Dr. Awender, would you say the cut or laceration of the femoral artery during the vein ligation and stripping procedure done here, is not a generally accepted risk of this routine procedure? Would you agree with that?

A. If the artery is in a normal position, of a normal size. In other words, if we were dealing with normal circumstances, then you are quite correct, this is not part and parcel of vein ligation

stripping.

Q. You would say that in this case, because it was not in a normal position, because it was six millimeters, approximately and because it was more superficial, you are saying in this case, the cutting of this artery is a recognized risk of the procedure?

A. The findings are so rare that --

Q. Findings of what?

A. The findings of an artery of this size and location are so rare, this is a very rare complication. It is not a recognized, common problem.

Q. You would say, in this case, the cutting of the artery was a risk, is that what you are saying?

A. Cutting of an artery is always a risk. However -- that is all you want to know, isn't that right?

Q. My question was, would you say the cutting of a femoral artery during a vein ligation is a generally accepted risk of this procedure? I think you say, generally, it is not a risk of this procedure?

A. That is right.

Q. In this case, because of size, because it was narrower and closer to the skin, are you now saying -- are you saying under those circumstances it

becomes a special risk of the procedur
A Any time you are faced with an a.. abnormality or congenital abnormality with b. vessels of different sizes and different locations that is a potential risk.
Q. Would you say, Doctor, that the laceration of the femoral artery during a vein stripping and ligation, is a deviation of the standard of acceptable care in doing this procedure?
MR. BANAS: I object. You you are not talking in about this case?
BY MR. HELLER:
Q. In general, vein stripping and ligation, would you agree in doing a vein stripping or ligation to lacerate or cut a femoral artery is a deviation from the standard of accepted medical care?
A. In a patient with normal anatomy, it should not happen, yes.
Q. But are you saying, in this case, you feel it is not a deviation from care because it's abnormal in the ways you described?
A That Is correct.
Q Is that what you are saying?
A Yes, sir.
Q. Do you know from your own knowledge, whether or

not the repair work done by Dr. Shields was successful?

A. Yes.

MS MURRAY Object.

BY MR. HELLER:

Q. Yes you know, or yes it was successful, or both?

A. I have not had the opportunity to see the patient following her discharge, therefore I cannot say whether it was successful or not.

Q. Have you discussed her case with Dr. Shields?

A. Yes.

Q. Have you discussed it with Dr. Oddi?

A. Yes.

Q. What have you learned? Was it a successful procedure?

A. To the best of my knowledge, it was successful, yes.

Q. Did she suffer any problems upon her discharge, such as her foot falling asleep or decreased sensation to her foot?

A As I mentioned earlier, there was an area of numbne her leg.

Q. That is based upon your office note of July 23rd?

A. No, based upon what I heard from Dr. Shields.
Q. When was this numbness found, on discharge July 27th?
A. I cannot tell you the exact date.
Q. Would you have any explanation why that would be?
A. I don't, but Dr. Shields does.
Q. What is that, if you know?
MS. MURRAY: Objection.
THE WITNESS: I should not speak for Dr. Shields.
BY MR. HELLER:
Q. Do you know from having discussions with Dr. Oddi, or from your own knowledge, preferrably your own knowledge as a surgeon, whether or not upon her discharge additional surgery would have been anticipated?
A. No, sir. There was, from what I heard from Dr. Shields, there is no further surgery anticipated.
Q. Doctor, in your opinion, was the surgery by Dr. Shields on July 23rd necessitated by reason of the transection of the femoral artery and the attempted repair by Dr. Oddi?
A. The intervention of both vascular surgeries was a result of the transection of the hypoplastic

artery

Q If there was no laceration of the femoral artery, there would be no need for the repair by Dr. Oddi?

A Not at this point. Remember the patient had the congenital abnormality. She had a hypoplastic abductor canal. Therefore, at some future point, she may have had problems with the left leg, which would have led to the services of a vascular surgeon.

Q I move that part of the answer be striken since I am not talking about what may have happened in the future. Is it fair or correct to state that there have been no work done by Dr. Oddi, the initial repair work done by Dr. Oddi would not have taken place, had there not been a transection of this vein?

A That is correct. Artery.

Q And the surgery of Dr. Shields on July 23rd, would not have taken place had there not been a transection of the femoral vein and initial repair work by Dr. Oddi?

A Artery.

Q Is that correct?

A Yes.

Q. As to what may have happened in the future!, are you in a position to say, within reasonable medical

certainty, whether she would or would not have needed more surgery in the future?

A I cannot predict the future.

Q All right.

Q Do you know whether Mrs. Briers was having any problems as of the last time you saw her was July 27th, was she having problems with walking or what I understand to be intermittent claudication? You understand what I mean by that?

A. Yes.

Q. Was she having any symptoms along those lines, as of her discharge July 27th?

A. I don't think so.

Q Did you take a history as how she is feeling, getting along?

A Only while she was in the hospital.

Q. Based upon what you learned in the hospital and what you saw in the hospital, you had no reason to feel there was any problems; is that what you are saying?

A That is correct.

Q You say you saw her at work afterwards or not?

A Yes. She works in the admitting office. I walk by there twice a day.

Q. I do not mean to be repetitious. Did you ask

her how she was doing at all?
A. After I realized she is filing a lawsuit against me, I did not talk to her anymore.
Q. Before you learned about the lawsuit, in the intervening days, however long it was, did you have any discussion how she was getting along?
A. No, sir, because right after surgery, she didn't work.
Q. Then you saw her for a brief period of time, in the admitting room in her job?
A. I saw her for a few seconds. I never talked to her.
Q. Let's start over again. After her discharge, do you recall how long it was before you first saw her back at her job at the hospital?
A. No, sir.
Q. Was it some period of time?
A. Yes.
Q. Which you would expect after the surgical procedure?
A. Yes.
Q. And after you saw her there, however long it was, on the first occasion did you have any conversation with her, how she was getting along?
A. Never talked to her.

Q. So then, soon after this, you learned about the legal action, and you never talked to her before the legal action or after the legal action?
A. The legal action was coming pretty soon.
Q. Regardless of when it came, let's make it simple. Did you ever, whenever it was, have any conversation with Mrs. Briers while she was working at the hospital, as to what her condition was or how she was getting along?
A. No, sir. I have never talked to her after she left the hospital.
Q. Or at work while she was in the hospital?
A. That is correct.

MR. HELLER: That is all I have.

(Thereupon, the deposition was concluded at 4:30 p.m.)

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C E R T I F I C A T E

STATE OF OHIO,)
) SS
SUMMIT COUNTY,)

I, Constance McArdle a Stenographic Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, HERBERT AWENDER, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to Stenotypy in the presence of said witness, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 7th day of October 1987.

Constance McArdle,
Stenographic Reporter and
Notary Public in
and for the State of Ohio.

My commission expires January 14, 1988.