#488

STATE OF OHIO)
) SS:
ZUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS

CASE NO. 82-051,838

WARREN BARRINGER,ET AL)
)
PLAINTIFF,)
)
VS.)
)
CLEVELAND METROPOLITAN GENERAL)
HOSPITAL,ET AL,)
)
DEFENDANT.)

VIDEOTAPE DEPOSITION

OF

DR. MALCOLM BKAHMS

JUDGE JOHN E. CORRIGAN

VIDEOTAPE DEPOSITION taken before Jon Jastromb, a Notary Public within and for the State of Ohio, pursuant to Notice and as taken on October 18, 1985 at the office of Dr. Malcolm Brahm, 26900 Cedar Rd., Beachwood, Ohio, Said deposition taken of Dr. Malcolm Brahms is to be used as evidence on behalf of the Defendant in the aforesaid cause of action, pending in the Court of Common Pleas, within and for the County of Cuyahoga, for the State of Ohio.

APPEARANCES:

MR. STEVE WALTEAS,

On Behalf of the Defendant,

MR. HOWARD SCHULMAN,

On Befhalf of the Plaintiff.

MR. WALTERS: I think we can show hat this is the trial deposition of Dr. Malcolm Brahms who has been retained as an independent expert on behalf of the Defendants in the case of Warren Barringer vs. Cleveland Metropolitan General Hospital, et al, case number 051838 on the docket of The Common Pleas Court of Cuyahoga County, Ohio. The deposition is being taken in anticipation of a medical arbitration scheduled for this Thursday, October 10, 1985. My name is Stephen Walters, and I'm here on behalf of the Defendants, and also here today is Attorney Howard Schulman, representing the Plaintiff.

You may swear the witness.

After being sworn to tell the truth, the whole truth, and nothing but the truth the witness, Dr. Malcolm Brahms, testified as follows:

DURING DIRECT EXAMINATION MY MR. WALTERS:

Q Doctor, will you state your full name?

A Doctor Malcolm A. Brahms.

Q And Doctor, you are a physician, a medical doctor?

A That is correct.

Q And where do you maintain offices?
A 26900 Cedar Road, Beachwood, Ohio.
Q Doctor, are you involved in any specialty in medicine?
A Yes, orthopaedic surgery.
Q Where did you go to medical school?
A Western Reserve University.
Q And you obtained an M.D. Degree when?
A In 1950.
Q And subsequent to getting your M.D. Degree did you have post graduate training?
A Yes, I did.
Q And can you tell us about that?
A Yes, I'm a....I served an internship at Cleveland City Hospital, now know as Cleveland Metropolitan General Hospital, followed by a year of surgical residency at that same institution, followed by three years of orthopaedic surgery. One at Mt. Sinai Medical Center in Cleveland Ohio and two at the Indiana University Medical Center at Indianapolis, Indiana.
Q Upon completing your residency, did you enter into private practice?
A I did.
Q And where did you commence practicing?
A In Cleveland, Ohio
Q And you have been practicing in the Cleveland area

since then?

A That is correct.

Q Are you licensed to practice medicine in the State of Ohio?

A I am licensed to practice Podiatry, Chiropody, and medicine.

Q And when did you become licensed to practice medicine approximately?

A 1950.

Q You indicated that you are also licensed to practice Podiatry and Chiropody, is that correct?

A Well it was formerly called chiropody. It is now called Podiatry, yes,

Q And how did it come that you have a license in that specialty?

A I finished my training in 1941 at the Ohio College of Chiropody.

Q Now Doctor, how much of your professional time is spent in the practice of medicine, and I ask that indicating how much out of one hundred percent is spent?

A How much of my practice?

Q Yes, professional time.

A It is one hundred percent of the time.

Q All right.

A Except for the teaching aspects which is also the

practice of medicine.

Q. Doctor Brahms, are you a member of any association or specialty group within the medical profession?

A. Yes I am.

Q. And what specialty group is that ?

A. Well I'm a member of the Cleveland Academy of Medicine, the Ohio State Medical Association, the A.M.A. I'm a Fellow of The American College of Surgeons. I'm a Fellow of the American Academy of Orthopedic Surgeons. I am a member of the American Academy of Orthopedic Surgeons for Sports Medicine, and I'm one of the founding members of the American Academy of Orthopedic Surgeons for Foot and Ankle Surgery, I'm a member of the International Society *of* Orthopedists and Tramatologists. I'm a member of the Clinical Orthopedic Society, the MidAmerica orthopedic Society, and some other minor groups as well.

Q. Are you Board Society..

A. I am.

Q. in orthopedics ?

A. Yes I am.

Q. And when did you become Board Certified ?

A. 1958.

Q. And was that by taking an examination?

Q. There were two examinations, one at the completion *of* training and one both written and oral two years after

the practice of medicine.

Q. Alright. I noted in response to an earlier question that beside your license in Podiatry of Chiropody that you are also a member of a specialty association in connection with orthopedics of the foot. Is that correct ?

A. Yes, as a matter of fact , I'm on the ,have been for the last twenty-five years , on the teaching instructional course lectures of the Academy of Orthopedic Surgeons . And just this week , yesterday, returned from a three day teaching session in Houston, Texas on the foot and ankle surgery.

Q. Have you over the years written articles in the field of orthopedics ?

A. Yes. Have two chapters in the most current orthopedic textbooks referable to problems of the foot.

Q. Now Doctor, I believe you were sent a copy of the Cleveland Metropolitan General Hospital chart, both in-patient and out-patient for a Mr Warren Barringer and were asked to review that .

A. Yes.

Q. Is that correct ?

A. That's correct.

Q. And you did make a review of that chart and reached certain conclusions , is that correct ?

A. That's correct.

Q. Please feel free in response to my questions to refer

back to that chart as you would like. Mr. Barringer presented in November of 1981 to Metro with a general history of what problem with regard to the foot?

A He had sustained an injury when he fell down some stairs; injured his left foot.

Q All right. Besides that injury which apparently was recent in time to his presentment at the hospital, did he have any other problems with the foot?

A Yes. It was noted that he had a congenital deformity of his left foot. By congenital I mean something that he was born with. It was manifested by major deformities in the forefoot and the midfoot on his left to a greater degree than on his right, but present on both.

Q All right. And that problem, that deformity, is one that is visible in looking at a man's foot?

A Oh, *yes.* Quite obvious to the trained eye, it is like a red light.

Q And is that something that can and frequently does present problems for a patient in terms of ambulation?

A Not only in ambulation, but in shoe wear as well.

Q All right. Did the X-rays taken at Metro Hospital in November of 1981 confirm this congenital problem that you have indicated?

A Yes, it did.

Q All right. Now, initially how was Mr. Barringer treated during November of 1981?

A He was seen in the emergency room and the treatment that he received was that he had injured his foot. They had noted that he didn't have any swelling. There was tenderness over the 5th metatarsal which is the small toe area of the foot. Calluses were noted. Multiple hammertoes were noted. X-rays were taken without evidences of any fractures. It was noted that he had the deformities at all of the so-called "MP" joints. He was given a cane, told to remain absent from work for several days, and then told to report to the orthopaedic clinic for follow up care.

Q All right. Did there coma a time, as you look at the record of Mr. Barringer, that surgical intervention was recommended?

A After he was seen in the emergency room approximately a week later....or in the orthopaedic clinic a week later, it was presented to him in all likelihood that the deformities of his toes would benefit by a surgical correction.

Q And did there come a point in time then that that surgery was performed?

A Yes. He was admitted to the hospital on the 1st of December of 1981, surgery was performed, and he

remained in the hospital approximately 7 to 8 days.

Q All right. Now, the type of surgery performed, can you tell from the records what type of surgery that was?

A Yes. This is a surgical procedure which necessitates changing the angle of the metatarsal bone, principally of the 1st metatarsal because it is what we call plantar-flexed and which means that the big toe segment all the way back to about where one ties his shoes, that metatarsal is depressed towards the floor, towards the ground, in an abnormal degree. That produces.... as a result of that, and all the metatarsals are angulated but to a lesser degree, and all the toes are then hammered up or in what is known as a clawtoe position. By the claw-toe position it is meant that the segments of the toe as it corresponds to our hand are known as phalanges; proximal, middle, and distal phalanges. In the hammertoe the most proximal, the one closest to the metatarsal is the proximal, no longer sits in its normal straight alignment with the metatarsal but is subluxed or partially dislocated from its normal position sitting up on the top of the metartarsals while the other joints corresponding to your....to that joint below the knuckle and the one just behind the nail; those joints are also in an abnormal position, hooked and curled, producing what is known as a clawtoe deformity.

After a while these deformities become fixed or lack mobility and remain in an abnormal position and can not be straightened out. So that in order to (A) help by straightening out the toes, and which in turn helps to reduce the pressure under the metatarsal heads, it is necessary to bring the toes back in to normal alignment. In so doing it requires a certain amount of bone resection, holding them with pins, and it also requires a certain amount of movement or pulling the tendons back to a new position in the foot and which is the nature of what is know as Jones' Sling operations, plus the changing of the alignment of the toes which are then known as interphalangeal fusion.

Q All right. Now, this is a procedure that you are familiar with not only from your reading of the literature but from your own practice, is that correct?

A Yes. Quite common with me since one of my super specialties is surgery of the foot.

Q All right. And have you reviewed the operative report for Warren Barringer of December 2, 1981?

A Yes, I have.

Q And this appears to you to be the type of surgery done?

A That is correct.

Q All right. Subsequent to the surgery, did

Mr. Barringer remain in the hospital for a period of time?

A Yes. He remained there through the 7th of December which was approximately a week after his admission.

Q Now, during that period of time, is there any indication of anything untoward for Mr. Barringer? By that I am referring to any problem with his circulation or the vascularity of his foot?

A No. At Metropolitan General Hospital where there are interns and residents and visitants, this is. ... post-operatively these patients are carefully watched. The notes reflect that there was no vascular embarrassment during the time that he was hospitalized.

Q All right. Now, Mr. Barringer was then discharged from the hospital approximately one week post-operative?

A That is correct.

Q And was discharged in a cast?

A Yes.

Q Do you see any indication of him being followed as an out-patient subsequent to that discharge?

A It is obvious that it is necessary to follow these people in an out-patient manner because there were some pins in his toes which usually are permitted to remain 3 to 4 weeks. Cast changes are necessary when the pins are-removed, and so while I can't give you an accurate date of the time that he was asked to return, I am certain

that it had to be within that realm of when the pins would be removed and the cast...and the dressings changed.

Q Do you recall whether or not when Mr. Barringer, in the initial out-patient follow up, presented himself.... whether or not there was any indication of vascular compromise?

A Well, my recollection is that he went back to the emergency room on the 11th of December of 1981 presumably because he was having some discomfort. He was seen there, The emergency room doctors reviewed his circulatory status, found it to be adaquate, gave him some medication for pain, and then asked him to return to his....to the orthopaedic department on his scheduled appointment,

Q Moving forward in time then, did there reach a time where Mr. Barringer apparently had a vascular compromise or some problem in circulation?

A Yes. He was seen on the 17th of December again. I assume in the emergency room because he reported back with pain. It was noted then that there was some vascular embarrassment at the circulation to the 3rd toe and perhaps even to the 2nd toe was being compromised and he was admitted to the hospital for further treatment.

Q All right. Mr. Barringer then, I believe we can agree, ultimatley had further surgery on his foot. I ask you whether you have reviewed that operative report?

A Yes. In January, after a period of conservative management on the division, on the floor, in the orthopaedic department, he did have what is known as necrosis or death of tissue which was treated by removal of those segments surgically.

Q All right. And Mr. Barringer then had an amputation of portions of the 2nd and 3rd toes?

A Yes. That is correct.

Q All right. Now Doctor, can a patient with even the best of care obtain a compromise of his circulation in the lower extremities?

6:08:48 MR. SCHULMAN: I would object to the form of the question.

A Yes, The patient, after discharge from the hospital, may have a difficulty with circulatory problems principally on the basis of edema, gravity, not keeping the foot elevated, Secondly another factor, and I don't know whether Mr. Barringer is a smoker or not, but cigarettes, any form of smoking can cause vasoconstriction and make a compromising situation very vulnerable to a disaster.

Q The blood vessels that feed the tissue of the toes, can you give us some idea of what the size of those vessels is?

A Yes. They are in the realm of....the smaller

vessels towards the ends of the toes are in the realm of a millimeter or smaller. Now there are 25 millimeters in an inch, So we are talking about small, small vessels. Towards the metatarsal region, those may be in the realm of perhaps 3, 4, 5 millimeters. So they get progressively smaller as they reach towards the toes.

Q Now Doctor, based upon your review of the records for Warren Barringer, I would like you now to assume that everything revealed in those records is accurate, that Mr. Barringer presented himself in November of 1981 at Metro General Hospital and giving a history of recent injury to his foot, left foot, when he fell down some stairs. That presenting further with a history of a congenital deformities of the foot and specifically greater on the left in what is known as clawtoe deformities. That he was treated conservatively for a period of approximately 2 to 2½ weeks. Was ultimately scheduled for surgery and at the surgery a Jones' Sling procedure was performed on Mr. Barringer's foot, and performed in the fashion as indicated in the operative report from the Metro General records. I ask you to assume further that Mr. Barringer remained in the hospital for approximately one week. That during that period of one week his foot was examined per-iodically and there was no indication of any vascular compromise by any of the persons who did look at his foot.

I ask you to assume also that Mr. Barringer was then discharged from the hospital and returned to the emergency room on December 11th I believe it was, 10th or 11th. Again, although Mr. Barringer complained of some discomfort, his foot was examined and there was no indication of any problems of circulation. I ask you to assume further that later in the month of December, around the middle of the month, he was then re-admitted to the hospital and at that time was noted to have some necrotic changes in the toes. That he was followed in the hospital as an in-patient and ultimately required the surgery of January of 1982, and specifically the amputation to the 2nd and 3rd toes, I ask you to assume all of those facts, Doctor, and based upon those facts, and upon your training and experience in orthopaedic surgery, do you have an opinion based upon reasonable medical certainty as to whether or not the medical and surgical care rendered to Warren Barringer in November and December of 1981, and up to and including the time of his amputation, conform to the standards of care for the greater Cleveland community for orthopaedic medical and surgical care?

6:13:35 - MR. SCHULMAN: Objection.

A I have an opinion.

Q And what is that opinion?

A It is my opinion that the care that he received,

the surgery, and the follow up care was within the standards of the orthopaedic surgery performed in this community.

Q All right. And the fact that Mr. Barringer ultimately developed necrotic changes which required surgical correction in his case, is that in any way an indication of a falling short of the standard of care?

6:14:15 - MR. SCHULMAN: Objection to form.

A I have an opinion. The record reveals that the patient for 6, 7 or 8 days during his hospital stay showed no vascular embarrassment. It was after his discharge that changes occurred suggesting to me that this was not a factor of the care in the hospital, but the concern of edema dependency, et cetera, which resulted in the vascular embarrassment that he experienced.

Q Again, assuming all the facts that I have given you before and as reflected in the records of Warren Barringer, do you have an opinion based upon reasonable medical certainty as to whether or not the surgery performed on Mr. Barringer was warranted?

6:15:11 - MR. SCHULMAN: Objection.

A I have an opinion. There is only one way to correct clawtoes and that is surgically.

Q All right. And the choice of procedure, namely

the Jones' Sling procedure, do you have an opinion based upon all of the facts that I have previously asked you to assume as to whether or not the choice of that procedure conformed to the standards of orthopaedic, surgery in the greater Cleveland area?

6:15:36 - MR. SCHULMAN: Object,

A I have an opinion,

Q And what is that opinion?

A It does.... (VO)

6:15:40 - MR. SCHULMAN: Objection. (VO)

A It does conform to the standards in the Cleveland community and in the communities throughout the United States.

Q All right. I have no further questions,

MR. WALTERS: Do you want to go off the record for a moment in order to...,

MR. SCHULMAN: No. I am ready.

MR. WALTERS: Okay.

DURING CROSS EXAMINATION BY MR. HOWARD SCHULMAN:

Q Dr. Brahms, my name is Howard Schulman and I represent the Plaintiff, Warren Barringer. We have never met before this evening?

A No, we have not.

Q And I have never had an opportunity to question you before right now, is that correct?

A That is correct.

Q Okay. You have spoken with Mr. Walters before this deposition however?

A Just before this deposition. Never before.

Q Okay. I, however, only know you through the letter that you have submitted to Ms. Sondra Curtis Patrick prior to this date?

A That is the only way that Mr. Walters knows me too.

Q Okay. Now, I am going to ask you some questions about your letter and about the opinions that you have expressed here this evening.

A Okay. All right.

Q Am I correct, Doctor, that you have never met Warren Barringer?

A That is correct.

Q Am I correct, Doctor, that you have never examined Warren Barringer?

A That is correct,

Q Am I correct, Doctor, that you have never seen any photographs of Mr. Barringer's foot nor do you know how that foot appears today?

A That is correct.

Q Am I also correct that youhavenever discussed this matter with any of the physicians or surgeons who have

treated Mr. Barringer?

A I have not discussed this with anyone.

Q So am I correct, Doctor, that your opinions are based solely on a review of the medical records of Mr. Barringer's treatment?

A That is correct.

Q Okay. Can you tell me, Doctor, which records it is that you have reviewed in connection with rendering your opinions?

A Yes. The records of The Cuyahoga County Hospital.

Q And what dates do those records reflect?

A From the 10th of November of 1981 through April of 19.....May of 1982,

Q When did you first receive these records?

A I dated....my letter was dated the 26th of September. It was probably a day, at the most 2 days, before that. September the 24th or 25th.

Q And did you receive these records a second time?

A No. After I reviewed the records I returned them. These were brought back this evening for this deposition.

Q Okay. That is what I was asking, Doctor.

A Yes.

Q I would like to ask you a few questions about the letter that you wrote on September 26th, 1985.

A Yes.

Q Can you explain what you mean by increased edema with dependency?

A Sure. When one sits with his legs in a sitting.... a normal sitting position there is the effect of gravity that causes all of us in the sitting position to have an increase in the volume of our lower extremities. In one who has had surgery and one who has had....and one who is wearing a cast, that edema can be increased over and above the normal amount of swelling.

Q I just want to understand this as a layman, Doctor.

A Yes.

Q By edema do you mean swelling?

A That is correct.

Q And what do you mean by dependency?

A When the leg is in a sitting position it is dependent. It is in a position where it is down and not up. Dependency means from the flat position, in a sitting position, or in a position below the level of one's body.

Q I see. And would you expect that a person who had undergone the surgical procedure that Mr. Barringer had undergone would experience swelling of his foot inside the cast when he was discharged from the hospital?

A Yes. I think excessive sitting would do that without question.

Q Okay. And why would you expect that?

A That is natural.

Q Natural that....

A It occurs naturally.

Q Natural that it.....

A Even if one never had an operation it occurs with or without a cast, The dependent position causes an increased amount of increased volume in the lower extremity. If one, again, has had any major surgery or minor surgery to that matter on top of which he is wearing a cast which decreases the muscle activities, the swelling will increase.

Q And the swelling would tend to constrict the circulation within his foot, is that correct?

A Yes, It would compromise the.. ..if the volume in each toe or the foot is increased it puts pressure on everything; tendons, bones, blood vessels, nerves, everything is increased....decreased in space, increased in pressure.

Q Now, when ....that would cause what you refer to as vascular embarrassment, is that correct?

A In a person who has had surgery around the area which is already swollen because of the surgery, adding to that the effect of dependency increases the amount of swelling that can occur, especially if one sits with his

legs down.

Q And am I correct that when you use the term vascular embarrassment that you mean reduction of circulation?

A It means a reduction in the volume of blood getting through a vessel which is small, and also because of the swelling the veins can not bring that blood back from the toes to the region of the heart.

Q And you believe that some vascular embarrassment was experienced by Mr. Barringer between December 7th and December 17th?

A Between December the 1st and December the 17th. Right after....between...the day after his surgery or the day of his surgery, from that time on, the vascular....the reason for their staying in the hospital for the most part is to keep people's legs elevated so that the swelling can be minimized.

Q But my question was, do you believe that Mr. Barringer experienced vascular embarrassment after December 1st?

A Oh, no question. No question about that.

Q I thought you had testified earlier and written in your letter that there was no vascular embarrassment between December 1st and December 7th?

A Compromise. There was vascular embarrassment by

the nature of the surgery, but no embarrassment.

Q I think you just said there was vascular embarrassment by the nature of the surgery, but no embarrassment. What did you mean to say?

A I said vascular....you talked whether there was compromise. Compromise and embarrassment are two different degrees.

Q Okay. Which is the more extreme degree?

A The embarrassment.

Q Embarrassment is a more extreme degree than vascular compromise?

A Yes. Compromise, only because of the fact that the man has had surgery, or anyone, and in a dependent state.....if the circulation is compromised....if it is totally compromised there is total occlusion and that is what happens when there is gangrene. But if the vessels are supplying, and the veins are bringing the blood away from the part, their part remains viable. The records reveal that in the patient's stay in the hospital his circulation was intact, working, was there. When he.... after when there was embarrassment that meant that there was an embarrassment to his circulation. Compromised totally to produce gangrene.

Q Now, I don't think that we are communicating here,

Doctor.

A Well maybe it is a matter of semantics.

Q Well let me stop you.

A Yes, go ahead.

Q Because I want to make sure you understand my question.

A Yes, good.

Q Which is a more extreme condition; vascular embarrassment or vascular compromise?

A Both can be.

Q Is one a more extreme condition than the other?

A Depending upon our definitions. If we are going to define our definitions then I think we will be on the same terms. Let me just say this. Maybe I can clear it up for you. There is no question that this man, because of his surgery to his toes, had some insult to his circulation. His circulation was adequate until a time when his toes became dark and black. When that happened the circulation was cut off completely. Now whether it is embarrassment or whether it is compromise, there is no question that when the swelling occurred after his discharge that his circulation was decreased; decreased above that which it was when he was in the hospital.

Q You mean decreased to a greater extent than it was when he was in the hospital?

A That is correct. That is correct.

Q Now, the swelling alone you believe caused the decrease in the flow of his blood?

A No. The swelling alone can't do it. The swelling plus the surgery that he had, but not without the surgery. He lived for, whatever he was, 34 years of age without having any problems with his circulation.

Q Okay.

A But he did have surgery.

Q Am I correct then that you believe that the combination of his surgery and the swelling of his foot inside the cast...,.

A Yes, that is....

Q .....caused the problems that he presented with on December 17th?

A Let's eliminate one word. Cast, swelling. Whether he had a cast on or whether he had a dressing on the swelling.....the surgery plus the swelling is the factor of concern.

Q Okay. Let me finish my question before you answer, Doctor.

A Yes.

Q Okay. Am I correct that it is your opinion that the surgery he underwent on December 2nd, combined with the swelling in his foot, caused the condition that

he presented with on December 17th 1982?

A Yes. That is absolutely correct, yes.

Q I take it then, Doctor, that you believe that given the surgical procedure that he underwent on December 2nd, 1982, that swelling of his foot would be a very dangerous situation?

A That is correct.

Q Okay. If a patient who had undergone the surgery that Mr. Barringer underwent on December 2nd, 1982 had presented to you with swelling of his foot, what would you have done?

A On December the 2nd?

Q No. Subsequent to December 2nd. If...let me rephrase the question so you understand.

A Yes, sure.

Q I want you to assume that a patient had undergone the same surgery that Mr. Barringer underwent on December 2nd, 1982.

A Yes.

Q And that the patient some days later presented to you with a swollen foot.

A Yes.

Q What would you do?

A Tell him to go home and elevate his foot and keep it elevated,

Q That is all you would do?

A Well, if I could put him into the hospital. In 1981 we had an opportunity to put him in the hospital. In 1985 with "DRG's" we don't have that luxury any more.

Q Okay.

A So that I would.....if it was possible and the patient had. ..could have had insurance or could afford it we would like for him to stay in the hospital. If he couldn't afford it we would ask him to stay home and elevate his foot and keep it elevated.

Q Okay. Let me make sure I understand then. If a patient had presented to you who had undergone this kind of surgery on December 2nd, 1981....if he had presented to you subsequently with swelling in his foot, you would have suggested that he go into the hospital?

A If he could afford or had the luxury of going into the hospital, If not, then I would ask him to be certain to go home and keep his foot elevated and I would like to see him at a regular interval thereafter.

Q Okay, You don't know, by the way, what Mr. Barringer was doing between December 7th.....

A No, I don't.....

Q Let me finish my question, please.

A Go ahead.

Q Okay.

A There is no sense in asking me because you have already established that I don't know the man and never examined him.

Q I understand, but we lawyers operate under certain rules.

A Okay, fine,

Q One of them is that we always insist that the patient....sorry....that the witness wait until we finish our question because I may say something in the question that will change your answer.

A Okay.

Q Let me rephrase the question. You don't know what Mr. Barringer was doing between December 7th and December 17th, 1981, is that correct?

A I do not,

Q Okay. Now, I want to go back to something that I am not sure that I understood in your testimony. Did Mr. Barringer have any vascular embarrassment while he was in the hospital between December 2nd and December 7th, 1981?

A The records reveal that he did not.

Q Okay, What would you consider to be evidence or.... strike that....what would you consider to be a symptom or a sign of vascular embarrassment?

A The lack of a reflex of touching his toe to see

whether or not it had blanched and it pinked up again. One of the other factors would be the.. ..if one were to take his nail on one of his toes and to pinch it to see if it blanched and came back. To touch his toes to see if he had good sensation. Perhaps a factor of one would notice swelling and if he didn't have any swelling that would be a good sign. Pain might be an indicator as well.

Q Okay. What about sensation in the toes?

A I said that.

Q Oh, I'm sorry.

A Yes.

Q whether by pain you meant sensation?

A I said....no, no, no. I said that one would check him for his sensory perception which is sensation.

Q Okay. And the others that you mentioned were touching the nail, is that what is referred to as capillary refill?

A To see if....capillary refill is right.

Q And is it your testimony that the records disclose no signs or symptoms recorded of either poor capillary refill, or no sensation, or cold toes at all following the surgery on December 2nd, 1981?

A The record reveals that the patient had capillary refill. The record also reveals that he did have....that he

did complain of pain. As a matter of fact from almost the day after his surgery he wanted and was received pain medications to control his discomfort.

Q And you....are you saying that the complaints of pain indicate that he had good circulation.

A Complaints of pain may be.....you asked me what are some of the signs for decreasing circulation, and I said pain might be one of those signs.

Q Let me rephrase my question or repeat my question, Doctor, because I don't think you answered. Are you testifying that.....

6:32:02 - MR. WALTERS: Well, I'll object to that remark.

MR. SCHULMAN: Okay. Your objection is noted.

Q Are you testifying, Doctor, that there is no evidence in the record that Mr. Barringer had poor capillary refill, or no sensation in his toes, or no cold toes at any time after the surgery?

A His immediate.,..,

6:32:27 - MR. WALTERS: Objection to the form. Go ahead.

A His immediate post-op record in the hospital reveals that the patient was checked. That the circulation was intact. That there was no evidence at all for numbness.

There was no evidence that he did have the only reference is to the fact that he had some decreased motion in his toes. That he couldn't have very much motion, he had pins in his toes, But, the records clearly reveal that on those....on the immediate post-op and until the day of his discharge, that was clearly evident that his circulation was adequate,

Q Your understanding *of* the records is that immediately post-op there was no evidence of poor capillary refill? There was no evidence of cold toes? There was no evidence of lack of sensation?

A Yes. Up until the 7th of December when he was discharged, that is correct.

Q I want to call you attention, Doctor, to.....are your pages numbered, by the way, in your medical records?

A **No, I** don't think they are,

MR. WALTERS: Are yours numbered?

MR. SCHULMAN: Mine are, but I don't make the copies. I only receive them and so **I** don't know when the numbers were placed on them and whether they were on all **of** the copies and in exactly the same form.

MR. WALTERS: Where are the numbers on yours?

MR. SCHULMAN: They are in the bottom right hand corner. Why don't we go off the record just for one second and I'll find the page that I am looking for.

OPERATOR: We're off the record,

OPERATOR: We're on the record.

Q Okay, Doctor, I want to show you a document that is page 167 from the records of Cleveland Metropolitan General Hospital, the treatment of Warren Barringer, and ask you if you can identify what that is?

MR. WALTERS: May I see it first? Excuse me. Can I see it first so that I know that.....Are you indicating that you want an identification beyond what the title is on the sheet?

MR. SCHULMAN: What that document is essentially,

A Fine. This is a...what is known as a flow sheet. It is, for the most part, a nurse's record usually kept at the bedside.

Q Okay. The first line of that document, Doctor..,,

A Yes.

Q ...does that indicate nurse's observations at 4:00 p.m. on December 2nd, 1981?

A Yes.

Q And does that indicate that Mr. Barringer's toes were cold?

A That would be....we would expect that. It is the day of his surgery, We would expect that.

Q But it does indicate... .

A It says, "Temperature slightly cool," but that is not measured, That is just something that the nurse who observed this either puts her finger on the toe or looks at it, but there is no direct measurement. But, we would expect that the day of the surgery.

Q My question, Doctor, is does it indicate,....

A Yes, but I think it needs qualification, Mr. Schulman

Q Well, I understand, Doctor.

A Yes.

Q Okay. But my question is, does it indicate that his toes were slightly cool?

A It indicates, and I said that it makes. ...that would be an insignificant indication at that point in time.

Q Doctor, I'm just asking you to answer my questions.

A I will answer it and I will continue to qualify it because I think those who are listening to this tape or are seeing it must know the significance of these findings.

Q Okay. My only request is that you answer my question, Doctor.

A I will answer them, but they will be qualified if I think it is necessary to do so.

Q What does it indicate, Doctor, at 4:00 p.m. on December 2nd under the column of capillary refill?

A "Slow."

Q And what does it indicate at 4:00 p.m. on December 2nd under the column of sensation?

A "No sensation."

Q Thank you, Doctor,

A Yes.

Q Now, you say in paragraph 2 of your letter, Doctor, that there....."After his discharge from the hospital there was evidence for vascular changes in his 2nd and 3rd toe."

A Yes.

Q When was there evidence of vascular changes in his 2nd and 3rd toe?

A When he was seen in the emergency room on the 17th of December.

Q Okay. In paragraph 3 of your letter, Doctor, are you saying that the procedures performed on Mr. Barringer, by their very nature, would place stress on the blood supply to his toes?

A Yes, that is correct.

Q And is that because, by their very nature, they

essentially stretch out the vessels to his toes and constrict them?

A Yes. In straightening the toe there would be a little tension.....there would be tension placed on all the soft tissue structures, yes.

Q Is there any way to avoid that or to minimize that?

A Yes. Take out a lot of bone, shorten the toes, and not seek to get as good a cosmetic result.

Q Anything that was not done in this particular procedure performed upon Mr. Barringer that might have been done to minimize the risk of vascular problems?

A No. That didn't prove to be an important consideration for 7 days after his surgery, and so I would say no.

Q Am I correct, Doctor, that it is your opinion that Mr. Barringer would have lost the toes and tissue that he lost regardless of any treatment given to him after December 17th because of the condition he was in when he presented himself on December 17th?

A That is right,

Q Okay. How long would it take a condition such as this to develop?

A Gangrene?

Q Well, the condition with which Mr. Barringer

presented on December 17th?

A Well, the loss of blood supply, if he presented himself on the 17th, had to occur as little as 24 or 48 hours before it became black. It might have been longer depending upon when he presented himself.

Q How long might it have been?

A Well, it could have been any time after he was seen in the emergency room on the 11th of December.

Q Why could it not have been when he was seen in the emergency room?

A Because there was....the vascular changes noted by the emergency room doctor was that he had good circulation at that time.

Q Do you know what the observations were made by the doctor who initially saw him on December 17th?

MR. WALTERS: Could he have a moment to put that in front of him?

A I don't understand what you are talking about.

Q Well, let me ask you. You don't know whether Mr. Barringer appeared on December 17th at Metro General in the emergency room or not, is that correct?

A No, I don't.

Q I believe you testified that you assumed he presented in the emergency room.....

A That is correct.

Q ...because of the pain that he was experiencing?
A Yes, that is correct.
Q Okay. You don't know who the first physician to see him was when he presented on December 17th?
A No, I don't. I don't.
Q And you don't know what that physician initially observed when he checked Mr. Barringer's cast and foot?
A No, I don't. I don't.
Q Okay. If Mr. Barringer's condition had been recognized at an earlier point in time than December 17th, could it have been treated?

6:42:01 - MR. WALTERS: Objection. The question implies that it existed at an earlier point in time.

MR. SCHULMAN: Well, the witness has testified that it existed at least 24 to 48 hours in advance and maybe up to 6 or 7 days I think was your testimony. I'm not sure.

A It could....the only records that I have reviewed and the notes that are there is that if on December the 11th his circulation was found to be intact and adequate, that any time thereafter, 6 hours, 10 hours, 2 days, 5 days, any- time thereafter, that embarrassment could have occured. I don't know when it occured, but the answer to your

question is....what could have been done? It could have been....his toes might have been saved only if he was seen before the circulation was completely erased.

Q And how....what would be an indication of the circulation being completely erased?

A The fact that if a person's toes become....start to get white and then black, the circulation is gone.

Q Would you expect Mr. Barringer to have undergone pain during the process of development of the condition that he presented with on December 17th?

A Yes.

Q And would that pain have started with the deve opment of that condition?

A It could have. But once a toe gets,...loses its circulation after a period of time, short period of time, it becomes painless.

Q Is pain a symptom of this kind of condition?

A It can be.

Q You have read the surgical note, am I correct, Doctor?

A Yes. Casually.

Q Okay. Do you have that before you, by the way?

A Which surgical note?

Q Look at the third page of the surgical note of December 2, 1981.

A December 2nd, okay. All right, I have it. Look at what?

Q The third page of the December 2nd, 1981 surgical note.

A Yes.

Q Okay. The middle paragraph in the last sentence where it says, "The patient was then placed in a short leg cast with molding over the metatarsal pad of the foot to accomplish dorsiflexion and," I think that is, "to maintain," is what is intended, "the reduction of the closing wedge osteotomy." Can you explain what that means, Doctor?

A Yes. On his first metatarsal, the big toe metatarsal, they did what was known as a wedge osteotomy. They took a segment of the bone out with its apex at the top so that when the bone was pushed upward that that piece of segment of bone that was removed, the two ends could approximate themselves, and that is what is meant by pushing up or putting the foot into dorsiflexion in order to close that wedge that was made.

Q And what is meant by, "with molding over the metatarsal pad of the foot"?

A That is a....as a cast is drying there is an attempt made to mold it as a sculpture would in order to preserve the metatarsal arch. For we know that people post-operatively, after they have been in a cast, if there

is attention paid to the metatarsal area, they have less discomfort when they are walking after the cast is removed.

Q Okay. And is this casting in order to put some force on the foot to maintain it in a certain position, or influence it into a certain position?

A Not force. Molding, but not force.

Q Does that put any pressure on the foot when this kind of pad is put in?

A No, it is a molding situation. It forms a covering like putting your sock over your foot. It conforms to the....the cast is molded to conform to the position of the foot. Any influence that was placed on the wedge osteotomy is...the metatarsal is held in that position while the cast is molded around that area of the foot.

Q So the foot is held in a certain position while the cast is molded over it?

A The foot is held in what is known as dorsiflexion, and which is 90 degrees, so that if one walks he walks on a flat surface and not on the tip of his toes or on the back of his heel.

Q Okay. And....

A It is done to keep that foot in a physiological position.

Q And then the cast is molded to hold it in that

position?

A That is correct.

Q Okay. Doctor, am I correct that infection is always a concern when any hardware such as wires are implanted in the body?

A Oh, we are never overly concerned about the use of metal. Infection is a concern for any operation whether it is a tonsillectomy or whether it is a heart operation. We are always concerned about infection in any surgery.

Q Isn't it a greater concern when foreign objects are inserted in the body?

A We are not concerned about the use of wires and screws and plates in orthopaedic surgery. That is part of our armamentarium.

Q That doesn't increase your concern over infection when you operate?

A It doesn't increase, no. It does not. The infection.. ..the metals don't create infection. Infections are created by bacteria.

Q What symptoms or signs, Doctor, would indicate the presence of an infection in a person?

A Pain.. ...

MR. WALTERS: Are you talking in a general case?

MR. SCHULMAN: Yes.

A Pain, swelling, purulent discharge.

Q Elevated temperature?

A Yes, yes. Temperature elevation depending upon the variance of the bacteria, but temperature elevation can occur, right.

Q Elevated white blood count?

A That is not uncommon following any surgical procedure. An elevated white count 5 or 6 days after an operation would be of some concern, yes.

Q If there was any reason to suspect that Mr. Barringer had an infection on his foot inside the cast, what should have been done?

A Well, one usually sees a patient and takes their temperature in the emergency room. Looks at the wounds to see whether or not there is any swelling and purulent discharge.

Q Would you take off the cast if you had reason to suspect an infection was present?

A If one has reason to suspect an infection, yes.

Q Would you culture a specimen if you had reason to suspect an infection?

A If there is a purulent discharge, you would culture it. You wouldn't culture the skin without reasons for it.

Q And would you prescribe antibiotics?

A No. Not unless there is an infection. We don't

use antibiotics as a drugest does. We have to have an infection.

Q I meant once the specimen had been cultured.

A Oh, that is different, yes.

Q Then you would prescribe antibiotics?

A Absolutely.

Q Would an infection inside the cast, such as Mr. Barringer had, cause swelling of the foot?

A Infection ...any swelling, any infection, would result in swelling, but the swelling may well be a part of the operative procedure as well.

Q And would an infection inside the cast, such as Mr. Barringer's, cause some vascular embarrassment or compromise?

A Yes, that can happen,

Q Do you know whether Mr. Barringer presented with any infection on December 17th, 1981?

A To my....any time there is necrosis of skin there is infection, but infection is because there is death of tissue,

Q Do you know what the particular bacteria was?

A It wouldn't make a particle of difference. It could be a whole zoo of bacteria.

Q Do the records disclose what the bacteria was?

A I'm sure it did.

MR. WALTERS: Do you want him to take the time now and look at the records?

A It wouldn't make any difference because it would be,...it would be a conglomeration. I could name 10 or 12 bacteria that we commonly see in necrotic tissue, so it makes no difference.

Q What evidence in the record is there, Doctor, after the morning of December 4th, 1981 of Mr. Barringer's good circulation in his toe?

A From that flow sheet? Is that what you want to know? From the record?

Q I think the flow sheet, Doctor, ends at 6:00 a.m. on December 4th. I'm wondering what other evidence there is in the records of good circulation,

A Well, I'll tell you what the operative.....the note on December 4th is an anesthesia note post-operative. It doesn't refer to anything except the anesthesiologist's records.

OPERATOR: Excuse me. We're off the record.

END OF TAPE ONE.

START OF TAPE TWO.

OPERATOR: We're on the record.

DURING CROSS EXAMINATION BY MR. HOWARD SCHULMAN CONTINUED - TAPE 2

Q I think the question, Doctor, was what evidence

is there in the records after 6:00 a.m. on December 4th, 1981 of good circulation in Mr. Barringer's toes?

A After December 4th?

Q After 6:00 a.m. on December 4th.

A I don't have a note on December 4th. I have a note on December 3rd, December 4th, ...December 4th there is an anesthesia note. December 5th is the next note on his progress sheet.

Q Okay. And what is that note?

A December 5th?

Q With respect to the circulation in his toes.

A Okay. "Post-operative day, number 3; temperature down. Foot remains elevated with good neuro's," meaning that the. ...whoever checked him found out that his circulation and his sensation was intact.

Q It doesn't refer to what exactly was observed at that time, does it?

A If you can allow the doctor to talk in his language, when he is talking about neurovascular....he is talking about neurovascular status when he says, "neuro's," that is what he is talking about.

Q By the way, no one saw him on December 4th, 1981, is that correct? No doctor saw him?

A Oh, no. I wouldn't believe that at all. There may not have been a note placed down, but I'm certain that

he was seen. I would take great issue if someone would tell me that at City Hospital where I trained that patients weren't seen constantly, at least several times a day....

Q Am I correct.. ...

A ...so that when you tell me that he wasn't seen, I take exception to that. If you ask me if there was a note, the answer is, no, there was no note.

Q Am I correct, Doctor, that there is nothing in the record that indicates that Mr. Barringer was seen by a physician on December 4th, 1981?

A No. I haven't checked the nurse's notes and she may, of course, put down who saw the patient and what was done that day so that I can't answer that.

Q There is nothing in the physician's notes that indicates that Mr. Barringer was seen by a physician on December 4th?

A No. I would object to that. There is no note made, but I am....I take great exception to the fact that you are making the statement that the doctor was....that he wasn't seen by a doctor. It can't happen at City Hospital.

Q I see. Am I correct, Doctor, that you have no information other than what is contained in the medical records, is that correct?

A That is correct.

Q Okay. And there is nothing on this progress note on December 4th, 1981 that indicates that Mr. Barringer was seen by a physician on that date?

A I object to that. I will say that the....no notes were written by a doctor. Whether or not he was seen is something that I am most certain he was seen, but I have no record to tell me that the patient....that a note was written.

Q My question, Doctor, is that there is nothing on this progress note that indicates that Mr. Barringer was seen by a physician?

A Now, I would object to the word....your use of the verb, seen. I just don't believe that nor would I ever attempt to try to answer that in any other manner than I have already answered it. He may well have been seen, but there is no note.

7:07:44-MR. WALTERS: Let me also just interject. There is this anesthetic...,anesthesia note of December 4th.

A He was seen by a doctor then, yes. That is right.

Q There is anesthesia notes?

A Yes.

Q I'm sorry. I'm sorry.

MR. WALTERS: Aren't you talking about the December 4th?

MR. SCHULMAN: That is correct.

MR. WALTERS: And there is a note by a doctor.

MR. SCHULMAN: That is correct. I am not talking about the anesthesiologist.

Q When was the last time, Doctor, by the way, that you practiced at Metro General Hospital?

A Oh, I don't think I have been to Metropolitan General Hospital in 15 years.

Q So your last familiarity with procedures and practices at Metropolitan General Hospital is approximately 19703

A They still remain one of the best in the city,

Q Well, am I correct that your last familiarity with their procedures and practices was 1970?

A I know an awful lot about the orthopaedic surgery in the community since I was once the President of The American Academy....The American Orthopaedic Club in this city. I know about all the doctors.

Q But you have no personal knowledge of the procedures or practices of Metro General Hospital....

A I know about.. ..

Q ....since 1970?

A I know about the procedures and I know about the

practice, but I have not visited there in 15 years.

Q Okay, Doctor. Am I correct, Doctor, that the surgery that Mr. Barringer underwent on December 2nd, 1981 was elective surgery?

A Yes, that is correct.

Q Okay. And your testimony was that it was presented to Mr. Barringer that the deformity would benefit from surgery?

A I assume that. I didn't....I don't know that that is true.

Q Okay. Do you know how long Mr....well, strike that, Do you think that the 10 day period that Mr. Barringer was given for his return appointment was appropriate?

A Yes.

Q It was a 10 day period, was it not?

A I don't know when it was, but if it was PO days it was appropriate.

Q Isn't that indicated on the discharge summary?

A It might be on the discharge note. I don't know. I don't remember, but I can look it up for you.

Q It is page 141 of the medical records.

A I don't have a.....

MR. WALTERS: My copy is not numbered.

A I'll tell you in a minute on the discharge.

Q It is page 2 of the discharge.

A I have on the 7th of December the discharge summary, "34 year old male is with left foot deformity," and I can't read the next word. "Surgery performed."

Q I'm referring to the typed discharge summary.

A "Osteotomy," Well, this is the discharge note that was written by one of the doctors.

Q Doctor, so we are talking about the same document, can you refer to the typed discharge summary?

A Okay, fine. Yes, this is... ..

Q Page 2, Doctor.

A "Discharge medication. Follow up in orthopaedic clinic in 10 days," that is right.

Q And 10 days after December 7th would be December 17th 1981, is that correct?

A Yes, that is right.

Q And that was the date on which Mr. Barringer presented himself, is that correct?

A Well, he presented himself on the 11th initially and then on the 17th.

Q What were his complaints, by the way, on the 11th?

MR. WALTERS: Okay. If we are going to have the doctor jumping back and forth to the record, give him a chance to take a look, okay?

MR. SCHULMAN: Oh, that is fine. I prefer if he consulted the record. I thought he was going to do that.

MR. WALTERS: You may be able to get it in front of you faster than I can, Doctor. Why don't we go off the record while he turns to that.

OPERATOR: We're off the record.

OPERATOR: We're on the record.

Q The question, Doctor, was what were Mr. Barringer's complaints on December 11th when he presented in the emergency room?

A Good. The note that....there are two records here, One that you suggested and I found which is an emergency room record. I can read that one. "Chief complaint, had operation here. Left foot swollen. Problem leg, surgery, After discharge from the hospital on Monday, no better now. Pain is worse. Seen by Dr. Sacks. Given a prescription for Percodan, Follow up as scheduled." That as scheduled was the 17th of December. Now..,.

Q Okay. Let me stop you for a moment and ask you some questions about that just so that I make sure I understand.

A Yes.

Q The physician who saw Mr. Barringer observed that

his left foot was swollen at the time he presented on December llth?

A No. His chief complaint. He told the doctor that his pain....that his....that he had had an operation and that he had swelling of his left foot.

Q Okay. And he had also told the doctor that the pain was worse now than when he was discharged on Monday?

A As written by the....whoever saw the patient stated that exactly.

Q Okay. And he was seen by Dr. Sacks at that time?

A Yes.

Q And he was given a prescription for Percodan?

A Yes. As well as having his cast checked.

Q Okay. Percodan is a pain reliever, is that correct?

A That is correct, yes.

Q Is that a strong pain reliever?

A Yes. It is moderately strong.

Q Okay. And he was told to follow up as scheduled. Does that mean to return to the orthopaedic clinic as scheduled on December 17th?

A Yes, I assume that is right.

Q Okay. Now, what is the other note that you have, Doctor?

A Yes.

Q I'm not aware of that one,

A Well, if you look at his admission note on the 17th of December, 1981, his admission to the hospital, the house officer who wrote this note has, "34 year old black male with severe clawtoe deformity of his left foot of unknown ideology. The patient underwent foot surgery on the 2nd of December, 1981 consisting of a 1st metatarsal closing wedge osteotomy."

Q Doctor, let me stop you for a minute, okay?

A Well, we are getting to the 11th.

Q I understand that, but only because I don't want to waste any more of our time.

A Okay.

Q The doctor who wrote this note, do you have any reason to believe that he was present on December 11th?

A I don't have any idea.

Q Now Mr. Barringer presented with a swollen left foot on December 11th in the emergency room. Should that not have given the physician who saw him some cause for concern about what was happening inside his cast?

7:07:44 - MR. WALTERS: Objection. I believe the record indicated that the patient complained of that to the person at the emergency room. I'm not sure, and correct me if I am wrong, that

he presented with a swollen left foot.

Q Well Doctor, if Mr. Barringer had a swollen left foot when he presented on December llth, 1981, should that not have caused some concern to what was happening in his cast?

A It is obvious that Dr. Sacks who saw him was not concerned. That the patient did have a nerve vascular status which was okay. That he did not have any vascular embarrassment. That his cast was checked and let him go home.

Q My question was, Doctor, should that have caused some concerned?

A Only if the doctor who was there noticed that there was any embarrassment to his circulation would he have been admitted.

Q What about the pain, should that have caused any concern for what was happening in his cast?

A Well the man had a fair amount of surgery done. He was out of the hospital in a matter of 4 days on the llth when he was seen. The doctor assumed that he was entitled to have experienced some discomfort and gave him some medication probably stronger than the medication that was given to him when he was discharged.

Q What if Mr. Barringer's temperature had been elevated at that time, would that have caused some concern?

A Yes, it would have been of marked concern, yes.

Q Is there any information..,..

DR. BRAHMS: Can I get off the record. I've got to answer this,

OPERATOR: We're off the record.

OFF THE RECORD TO ANSWER TELEPHONE.

OPERATOR: We're on the record.

Q Doctor, among the articles that you have written, are there any that you have written on surgery of this type?

A Yes.

Q What articles are those?

A Well, you can refer to the articles in two of the latest textbooks. One written, Disorders of the Foot, by Dr. Mel....by Dr. Jahss. The textbook edited by Dr. McEverts (phonic) and if you want the exact title I'll go back and get it for you.

Q Dr. Jahss, how do you spell it?

A J-A-H-S-S.

Q Okay., Are these textbooks considered authoritative treatises in the area?

A Yes, they are.

Q Are there any other texts that you believe are authoritative in this area?

A Oh, there are a number of them.

Q Why don't you give me the names of them, please?

A I suggest that you go to the library and find them.

Q Well, Doctor.....

A I gave you mine, but I don't have to popularize others. There are some good textbooks.

Q Any that you can name that are authoritative with respect to this kind of surgery.

A I think that you will find that in the bibliography there is a lot of good textbooks. I know quite a few.

Q Just name me some, Doctor.

A Well, Giannestras....the book by Giannestras. The book by Dr. Kellikian. The book by Dr. DuVries. Those are all good textbooks.

Q Okay. Can you spell the first two names for me?

A Yes. K-E-L-L-I-K-I-A-N. Giannestras, G-I-A-N-N-E-S-T-R-A-S. And DuVries is D-U-V-R-I-E-S.

Q D-U-V-R?

A D-U-capitol-V-R-I-E-S, DuVries.

Q Is there any evidence in the record, Doctor, that Mr. Barringer was warned not to smoke cigarettes?

A No.

Q I don't have any further questions.

DURING REDIRECT EXAMINATION BY MR. STEPHEN WALTERS:

Q Just real briefly, Doctor. If we look at the anesthesia record for the surgery of December of 1981, we see

that Mr. Barringer apparently left the operating room suite at approximately what time?

A 2:00 o'clock,

Q 2:00 - 2:30; somewhere in between that?

A Yes.

Q Okay. Now, Mr. Schulman asked you about something called a flow sheet and I want to just ask you a couple of questions about it. On the very first entry on that flow sheet on December 2 at 4:00 o'clock, under the column for temperature what does it say?

A "Slightly cool."

Q And under the column for capillary refill what does it say?

A "Slow."

Q Thereafter will you examine the column....,

A Yes.

Q Both those columns as well as the entire chart and tell me whether or not in your opinion there is any indication of vascular embarrassment?

A There is none and I think that the question about the slightly coolness immediately after surgery is what we would normally expect.

Q All right. And just so that the record is clear, on the very next entry 2 hours later what is marked for temperature?

A "The temperature is warm."

Q And capillary refill?

A "Good."

Q Thank you. Nothing further.

DURING RECROSS EXAMINATION BY MR. HOWARD SCHULMAN

Q What is marked under sensation on that very next line?

A "Sensation, great toe, good."

Q Only the great toe?

A That is what it says.

Q Any mention of the other toes?

A Not on the next entry at 6:00 o'clock. At 8:00 o'clock, "Great toe is good. Slight in others." At 10:00 o'clock, "Slight in all."

Q I don't have any more questions.

MR. WALTERS: I have nothing further. Doctor, you have the right to view this videotape and also the right to read and sign any transcript that is done up of it. I am going to ask you if you will not waive those rights?

DR. BRAHMS: I waive them.

DR. WALTERS: Thank you so much.

MR. SCHULMAN: Thank you very much, Doctor.

DR. BRAHMS: Play that back. Let me hear.. ..

OPERATOR: We're off the record,

OPERATOR: We're on the record.

MR. WALTERS: Just so the record is clear, I believe Mr. Schulman has agreed to waive the filing on this so that Multi Video can hold onto the tape and then show it at the arbitration themselves?

MR. SCHULMAN: That is correct.

OPERATOR: We're off the record.

END OF THE TESTIMONY AS GIVEN BY DR. MALCOLM BRAHMS.

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS

WARREN BAKRINGEH, ET AL,

PLAINTIFF,

VS.

CLEVELAND METROPOLITAN GENERAL HOSPITAL, ET AL,

DEFENDANT.

CASE NO. 82-051,838

VIDEOTAPE DEPOSITION

OF

DR. MALCOLM BRAHMS

JUDGE JOHN E. CORRIGAN

CERTIFICATION

I, Jon Jastromb, a Notary Public within and for the State of Ohio, do hereby certify that the within named witness, Dr. Malcolm Brahms, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid.

I further certify that the testimony then given by him was, transcribed to typewritten form and that the foregoing is a true and accurate transcription of the testimony so given by him as aforesaid.

I do further certify that I am not of counsel for or relate to any of the parties involved in this action nor am I interested in the outcome of this matter. Also, I am an independent videotape reporter employed on an as needed basis and not in the employ on a regular or full time basis of any of the parties involved in the foresaid litigation.

IN WITNESS WHEREOF, I nave hereunto set my hand and affixed my seal of office to attest these facts to be true at Kent, Ohio on this 14TH day of October, 1985.

My Commission Expires:
May 22, 1988.

Jon Jastromb Notary Public
within and for the State of Ohio

MULTI VIDEO SERVICES, INC.
KENT, OHIO