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Martin D. Phillips, M.D.

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IN THE COURT OF COMMON PLEAS
CIVIL DIVISION, FRANKLIN COUNTY, OHIO
PHYLLIS A. HUFFORD)
VS.) NO. 94CVA 11-8373
JACK T. SOSNOWSKI,)
M.D., ET AL)
DEPOSITION OF MARTIN DOUGLAS PHILLIPS, M.D.
DEPOSITION AND ANSWERS OF MARTIN DOUGLAS
PHILLIPS, M.D., taken before Jenny Downing, a
certified shorthand reporter and notary public in
and for Harris County and the State of Texas, in
the offices of the University of Texas Medical
School, 6431 Fannin Street, Houston, Texas,
beginning at 10:00 a.m. on the 15th day of August
A.D. 1997, pursuant to the Ohio Rules of Civil
Procedure and the following stipulations and
waiver of counsel, viz:

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[1] **STIPULATIONS**
[3] **IT IS STIPULATED AND AGREED** by
and [4] between counsel for the re-
spective parties hereto [5] that the orig-
inal of the deposition shall be sent [6] to
the witness for reading and signing by
the [7] witness before any notary public.
[9] **IT IS STIPULATED AND AGREED** by
and [10] between counsel for the re-
spective parties hereto [11] that the re-
porter is no longer responsible for [12]
the original transcript once it leaves the
[13] offices of Houston Reporting Ser-
vice.

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APPEARANCES
MR. JOHN G. LANCIONE of the law firm of
Lancione & Simon, 1300 East 9th Street, Suite
1717, Bond Court Building, Cleveland, Ohio
44114, representing the Plaintiff
MR. THOMAS A. DILLON of the law firm of
Roetzel & Andress, 41 South High Street, Suite
2450, Huntington Center Columbus, Ohio 43215,
representing the Defendant

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[1] **MR. LANCIONE:** The deposition is [2]
taken by agreement of counsel pursuant
to the [3] Ohio Rules of Civil Procedure
and the Franklin [4] County Common
Pleas Rules.
[5] **MR. DILLON:** Yes.
[7] **MARTIN DOUGLAS PHILLIPS, M.D.,** [8]
called as a witness, having been first duly
[9] sworn, was examined by counsel and
testified as [10] follows:
[12] **EXAMINATION**
[14] **QUESTIONS BY MR. LANCIONE:**
[15] **Q:** Would you state your full name for
the [16] record, please?
[17] **A:** Martin Douglas Phillips.
[18] **Q:** Dr. Phillips, have you ever had
your [19] deposition taken before?
[20] **A:** Yes.
[21] **Q:** On how many occasions?

[22] **A:** Roughly three or four.
[23] **Q:** Were any of those in medical
malpractice [24] cases?
[25] **A:** Only as an expert.

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[1] **Q:** So all of them were as an expert in
[2] medical malpractice cases?
[3] **A:** Correct.
[4] **Q:** Did you ever testify in court?
[5] **A:** Never.
[6] **Q:** When were those depositions that
you [7] gave, roughly? I don't need the
exact date.
[8] **A:** Oh, through the late '80s and [9]
early '90s. The last one was probably two
or [10] three years ago.
[11] **Q:** And what kind of cases were they?
[12] **A:** Cases involving hematologic and
[13] coagulation abnormalities in other
people's [14] patients.
[15] **Q:** Could you be more specific?
[16] **A:** One was an infant who had head
trauma [17] and they were worried about
disseminated [18] intravascular coag-
ulation as part of the - as [19] part of his
problems.
[20] Another one was a patient who had
[21] amyloidosis, a-m-y-l-o-i-d-o-s-i-s. And
they [22] asked me - I had been peri-
pherally involved and [23] I was not
named in the suit, but they asked me to
[24] comment on it.
[25] I was deposed in one other case
where a

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[1] patient had a deep venous throm-
bosis, and I was [2] an expert in that case.
And I don't recall any [3] others, but there
may be another one. I don't [4] know.
[5] **Q:** Okay. Do you regularly consult in [6]
medical malpractice cases as an expert
witness to [7] attorneys or insurance
companies or whoever?
[8] **A:** I have probably done this 10 or a
dozen [9] times over my career.
[10] **Q:** In addition to the case that you are
[11] working on now that we are here on,
are you [12] working on any other cases at
the present time?
[13] **A:** No.
[14] **Q:** How did it happen that you be-
came [15] involved in this case?
[16] **A:** I don't recall precisely. I imagine
[17] Mr. Dillon called me, but I don't know
- I can't [18] be sure that's how I got
involved. I think [19] that's right. And I
have no idea if that's how [20] he got my
name if that's the case.
[21] **Q:** Who are you employed by at this
time?
[22] **A:** The University of Texas Houston
Medical [23] School.

[24] **Q:** Any other employers?
[25] **A:** No.

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[1] **Q:** What do you do as part of your [2]
employment duties?
[3] **A:** I am an assistant professor of [4]
hematology, recently promoted to as-
sociate. And [5] I see patients with blood
disorders, I teach [6] students, residents,
and fellows in hematology, [7] and carry
out some research in blood disorders.
[8] **Q:** Do you have any special interests?
[9] **A:** I do a lot of work in coagulation. I
am [10] the associate director of the Gulf
States [11] Hemophilia Center, and much
of my practice is [12] oriented towards
coagulation disorders.
[13] **Q:** Are you known as a clotter?
[14] **A:** That's the vernacular, and I would
say [15] yes.
[16] **Q:** Do you know Dr. Shafer?
[17] **A:** Andy Shafer?
[18] **Q:** Uh-huh.
[19] **A:** I know him well.
[20] **Q:** Is he one of the prominent figures
in [21] the field of coagulation?
[22] **A:** That would be a reasonable as-
sessment.
[23] **Q:** Do you work with Dr. Shafer at all?
[24] **A:** No. I used to be employed by
Baylor [25] College of Medicine and then
we were members of

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[1] the same section, although he was the
chief of [2] the service at the VA Hospital
and I was [3] primarily at the medical
school and the Methodist [4] Hospital.
But we worked together then and we [5]
consult. I have written a chapter for his
[6] textbook. Now he is the acting chair of
[7] medicine. He is exceptionally busy.
[8] **Q:** What were you asked to do in this
case [9] as an expert witness?
[10] **A:** Specifically that's hard to re-
member [11] because it - this has been
going on for a long [12] time. The basic
charge was to review the records [13]
with regard to the bleeding problem to
see if I [14] could determine what the
nature of the bleeding [15] problem was.
[16] **Q:** Were you able to do that?
[17] **A:** It's a very complicated problem to
which [18] there is not a simple answer.
[19] **Q:** What's the answer to my ques-
tion? Were [20] you able to do that?
[21] **A:** I can - it's not a - you are asking a
[22] yes-or-no question to which there is
not a [23] yes-or-no answer. I can spec-
ulate about a number [24] of possibilities
or probabilities, but I do not [25] have a
single definite diagnosis.

trolled.

[9] A: That is a possibility. The bleeding as [10] it was described in the operative reports and [11] progress notes is described variously as oozing [12] or seeping. And a vessel that is bleeding with [13] this magnitude has to be a fairly large artery. [14] And with the number of reexplorations that he [15] had, the angiogram that would have been done, [16] they tried to embolize the vessels, it makes it [17] less likely that there is a single large vessel [18] that's bleeding. With all of the efforts that [19] were aimed at finding and controlling such a [20] vessel, that goes down in likelihood.

[21] Q: All of those observations and [22] descriptions, of course, were made by [23] Dr. Sosnowski and reported by him, is that [24] correct, or his residents and approved by him?

[25] A: There were other cases where there were

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[1] other surgeons in the - there is one - at least [2] one case where Dr. Badalement (Spg.) is in the [3] operating room.

[4] Q: Well, I don't want to argue about those [5] kind of things. But for the most part, [6] Dr. Sosnowski was the surgeon in charge and the [7] surgeon that approved the descriptions of the [8] operative notes. Isn't that true?

[9] A: Yes. There were radiologists who did - [10] or perhaps vascular surgeons who did the [11] embolization procedure and there is always [12] angiography that goes with that, so they will be [13] independent.

[14] Q: Other than one large vessel, artery, or [15] vein that may have persistently been bleeding, [16] did you consider that there were new vessels that [17] were opened on the multiple occasions that he had [18] surgery because there was further surgery on the [19] prostate and removal of the prostate and [20] continuing surgery on and into late [21] November, that it was multiple different surgical [22] bleeding sites? Was that another possibility?

[23] A: That's pretty far fetched.

[24] Q: You are not a urological surgeon, are [25] you?

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[1] A: That's correct.

[2] Q: You are not going to express any [3] opinions as an expert in urological surgery, are [4] you?

[5] A: That's correct.

[6] Q: During this patient's various surgeries, [7] he did form clots. didn't he?

[8] A: We did.

[9] Q: And was there anything about the

[10] surgeries themselves, apart from the various [11] coagulation disorders, are there disorders in [12] hemostasis that are either created or exacerbated [13] by continuing surgery and stress of surgery?

[14] A: That's a fairly far-reaching, perhaps [15] vague question. Could you phrase it a bit [16] differently?

[17] Q: Well, in the broad field of hemostasis, [18] I am asking if the fact that surgery is done - [19] major surgery is done and the stresses of that [20] surgery, first of all, just the stresses of major [21] surgery and the effect on hemostasis, is there [22] any known adverse effect?

[23] A: Well, it's still a vague question. In [24] the broadest sense, if clots are forming - if [25] hemostasis is occurring normally after surgery,

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[1] you wouldn't want to disturb it and you just [2] allow the healing process to take place. [3] However, one of the indications for repeated [4] surgeries is if clots are not forming in the [5] correct manner. Does that answer your question?

[6] Q: No. If clots are forming, they don't [7] form and then break off, there is nothing - [8] there is something called fibrinolysis where [9] clots do form but yet they then break off [10] prematurely before healing or hemostasis has [11] taken place?

[12] A: I am afraid there are several concepts [13] in there that -

[14] Q: That I am not sophisticated to know [15] about probably. I know that.

[16] A: Thank you. Let's take in the broadest [17] sense the kind of hemostasis that occurs at [18] surgery, not referring to this specific case but [19] referring to surgery in general. Major vessels [20] are secured in one form or another whether it's [21] by heat coagulation or ligature with a stitch. [22] Minor vessels and capillaries that are too small [23] to be individually secured are - the leak is [24] initially sealed by a reaction within the vessel [25] which prevents further bleeding and then by

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[1] platelet adhesion and aggregation at the site [2] which is initially mediated by the von Willebrand [3] factor and subsequently by fibrinogen. After [4] that the coagulation cascade generates fibrin [5] which forms a physically strong meshwork that [6] supports the platelet plug through the duration [7] of healing, roughly 10 days. There are various [8] control mechanisms on this system. And one of [9] those is fibrinolysis that you mentioned, and [10] that is to keep the clot contained to the area [11] where the vessels were transected and then also [12]

to reopen those vessels after healing has [13] occurred so that what was - a vessel that was [14] plugged with fibrin and platelets is now patent [15] and can have blood flow. I elaborated on that so [16] that perhaps you can formulate the question in a [17] way that will be more easily understandable.

[18] Q: Some of the things that were going on in [19] this patient also may have had some effect upon [20] his hemostasis, and one of those I would ask you [21] about is whether the patient receiving heparin [22] would have the possibility of having some adverse [23] effect upon hemostasis?

[24] A: Could you refresh my memory as to how [25] much heparin he got and when he got it?

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[1] Q: I think the only heparin that he got [2] would have been the heparin flushes for his [3] I.V.'s.

[4] A: That is not a sufficient amount to have [5] this effect on hemostasis.

[6] Q: Are there some idiosyncratic reactions [7] that some patients' hematologic system has to [8] heparin?

[9] A: That's a broad question. There is no [10] idiosyncratic reaction that would make him [11] sensitive to heparin to cause this level of [12] bleeding. There is no such thing as a severe [13] idiosyncratic reaction causing this degree of [14] bleeding from heparin flush. You may or may not [15] be referring to heparin-induced thrombocytopenia [16] which is - which he clearly did not have.

[17] Q: He had a slight thrombocytopenia?

[18] A: Slight. But heparin-induced [19] thrombocytopenia is profound and paradoxically [20] causes clotting and not bleeding so -

[21] Q: So I guess the answer to my general [22] question at the beginning was that of these seven [23] possibilities that you mention as being suggested [24] by this degree of bleeding that the patient had, [25] none of them are more likely than any other or

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[1] probable in this scenario?

[2] A: You are essentially correct.

[3] Q: Okay.

[4] A: I raise those as possibilities that when [5] somebody is having such severe bleeding one could [6] bring these and potentially other disorders into [7] play to try and elucidate the nature of such [8] severe bleeding with normal screening studies.

[9] Q: Let's go to the surgeries themselves and [10] what, if anything, you feel should have been done [11] by way of

could have been the result not of a [20] congenital Factor XI deficiency in the typical [21] sense but a complication of the reaction to blood [22] fluid replacement, stress of surgery. Is that a [23] possibility too?

[24] A: When you talk specifics, on November [25] 16th, the Factor XI - Factor XI level was 30

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[1] percent. That is just below the normal range. [2] in the approximately 48 hours prior to that lie [3] had received 26 units of blood - red blood [4] cells, 12 units of platelets, one pheresis, [5] p-h-e-r-e-s-i-s, pack of platelets, 6 units of [6] FFP, 3 units of cryoprecipitate, and undoubtedly [7] a lot of saltwater as well. So a Factor XI level [8] drawn a short period of time after all that was [9] marginally low. At that time the - let me back [10] up a little bit. The Factor XI level is [11] reflected in the PTT test. On the 16th, the PTT [12] was 37 seconds; and the Factor XI level was 30 [13] percent after this massive blood replacement. [14] Twenty-six units of red blood cells is, oh, [15] roughly three times your blood volume, roughly. [16] So that in essence is not his blood that's [17] circulating. When Mr. Hufford came in the [18] hospital, his PTTs were normal, 30, 28 seconds [19] repeatedly and he'd never had any problem with - [20] suggestive of Factor XI in the past. After [21] modest replacement of fresh frozen plasma on the [22] 22nd of November, the Factor XI level had come up [23] to 85 percent; and the PTT had returned to 28 [24] seconds, which is the baseline. So I think that [25] the one Factor XI that was measured at 30 percent

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[1] is not suggestive that there is a Factor XI [2] deficiency. And I think that's in accord with [3] what you said Dr. Brandt said.

[4] Q: And there was nothing in the family [5] testing that indicated any -

[6] A: A couple of family members had levels in [7] the mid 40s, some of them had levels in the [8] 200s. It's a 50/50 sort of proposition which [9] gene you will get, so that doesn't sway me one [10] way or the other and his lack of bleeding at [11] several surgical and traumatic episodes in the [12] past do not indicate a lifelong Factor XI [13] deficiency of a magnitude to cause this kind of [14] problem. You can argue philosophically whether [15] or not he had a marginal level; but it would not [16] be related to this degree of bleeding, especially [17] after it's been replaced with - with plasma.

[18] Q: I take it that you conclude that there [19] was no way from the patient's history and [20] presentation that you

could have predicted that [21] he was going to have such a serious blood [22] disorder?

[23] A: Correct.

[24] Q: And there was nothing indicated during [25] the hospitalization and during the time when he

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[1] was bleeding that suggests that there was any way [2] to detect what this bleeding problem was and how [3] it could be treated effectively?

[4] A: The conditions that I mentioned could be [5] tested for in one form or another and potentially [6] could have targeted the replacement therapy more [7] appropriately. But it's very difficult to say [8] what could or could not have had an impact on the [9] outcome.

[10] Q: You can't say with any degree of [11] reasonable medical probability or certainty on [12] that issue. Correct?

[13] A: Right.

[14] Q: So my question was: Was there anything [15] that occurred during the hospitalization from the [16] first surgery on that indicated that there were [17] tests that should have been done that probably [18] would have had an effective result? And I think [19] you have answered that question. I just want to [20] make sure that you understood that was my [21] question.

[22] A: There remain a number of possibilities [23] that could have been tested for. Had one of [24] those conditions been extant, it could [25] potentially have altered the outcome. As we have

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[1] said throughout this entire proceeding, I cannot [2] say that any one of those disorders is present [3] with reasonable medical certainty. They are all [4] very rare. And an attempt to come up with an [5] explanation for why he had this bleeding reaction [6] was out of what was expected.

[7] Q: Okay. Was his condition with respect to [8] CBC - blood studies, the red blood cells, white [9] blood cells, hemoglobin, hematocrit, and platelet [10] count within normal limits for a surgical [11] procedure such as a TURP?

[12] MR. DILLON: At what time?

[13] MR. LANCIONE: Before the first [14] surgery.

[15] A: (Continuing) He had a very mild [16] anemia. I believe it was on the 2nd of October, [17] his hemoglobin was 11.5 or 11.7 grams. That [18] would not be a contraindication to surgery. [19] Going through the old records. I can't be more [20] specific. There were a number of occasions on [21] which his hemoglobin was in the 11 point [22] something range,

but then subsequent [23] determinations would be in the 13 point something [24] range which would be normal. That may or may not [25] be indicative of an underlying disorder: but it's

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[1] not germane to prostate surgery, for benign [2] prostatic disease.

[3] Q: (By Mr. LANCIONE) Those blood studies [4] were done - I think one was done on the 2nd of [5] October, one was done on the 5th. They were [6] fairly close in numbers to one another. And then [7] the surgery took place on the 27th, the first [8] surgery, without any further studies. So we [9] don't know what the studies were immediately [10] prior to the 27th of October, do we, from the [11] records?

[12] A: I don't. I don't have any reason to [13] believe that it would have changed radically [14] given the progress of the case and given his past [15] history, but technically I don't know what his [16] blood was like between the 2nd and the 27th.

[17] Q: Do you know whether Dr. Sosnowski [18] suspected a blood disorder prior to the time of [19] surgery?

[20] A: There was one reference to an episode of [21] gum bleeding, and he obtained the screening [22] studies or somebody obtained the screening [23] studies on the 2nd that were normal with the [24] exception of the hemoglobin. That is all I [25] recall about Dr. Sosnowski suspecting a bleeding

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[1] disorder.

[2] MR. LANCIONE: That's all I have, [3] Doctor. Thank you.

[4] THE WITNESS: Pleasure.

[5] MR. DILLON: You have the right to [6] read and sign. I would prefer that you - that [7] you do so, but that decision is yours to make.

[8] THE WITNESS: Okay. I will take [9] your advice.

[10] MR. DILLON: Send it directly to [11] the doctor.

[13] (Exhibits marked during this [14] deposition are attached hereto.)

[16] (Whereupon the deposition was [17] concluded.)

MARTIN DOUGLAS PHILLIPS, M.D.

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MARTIN DOUGLAS PHILLIPS, M.D.
THE STATE OF TEXAS)
COUNTY OF HARRIS)
SUBSCRIBED AND SWORN to before me,
the undersigned authority, on this the ____ day
of _____, 1997.
My Commission _____, Notary Public in and
Expires _____ For Harris County and the State
of Texas

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STATE OF TEXAS)

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