

THE STATE OF OHIO,)
) SS:
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

FRANCES SMITH, Administratrix)
of the Estate of Alvester)
Smith, Sr., Deceased,)

Plaintiff,)

vs.)

Saint Luke's Hospital, et al.,)

Defendants.)

Case No. 100877

Doc. 428

- - -

Deposition of TIMOTHY L. STEPHENS, Jr.,
MD, a Defendant herein, taken by the Plaintiff as
if upon cross-examination before Lorraine J. Box, a
Registered Professional Reporter and Notary Public
within and for the State of Ohio, at the office of
Charles Kampinski, Esq., 1530 Standard Building,
Cleveland, Ohio, on Monday, the 25th day of August,
1986, commencing at 1:38 p.m., by agreement of
counsel.

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1 APPEARANCES:

2 Charles Kampinski, Esq.,
3 On behalf of the Plaintiff.

4 Reminger & Reminger, by:
5 Mark Groedel, Esq.,
6 On behalf of the Defendants Timothy L.
7 Stephens, Jr., MD and Curtis W. Smith, MD.

8 Arter & Hadden, by:
9 Rita A. Bartnik, Esq.,
10 On behalf of the Defendants St. Luke's
11 Hospital, J. E. Edmonson, LPT and
12 K. Fedeshen, LPT.

13 Jacobson, Maynard, Tuschman & Kalur, by:
14 Stephen J. Charms, Esq.,
15 On behalf of Defendant S. J. Lee, MD.

16 ALSO PRESENT:

17 CURTIS W. SMITH, MD

18

19 - - -

20 STIPULATIONS

21 It is stipulated by and between counsel
22 for the respective parties that this deposition may
23 be taken in stenotypy by Lorraine J. Box; that her
24 stenotype notes may be subsequently transcribed in
25 the absence of the witness; and that all
requirements of the Ohio Rules of Civil Procedure
with regard to notice of time and place of taking
this deposition are waived.

26 - - -

27

1 TIMOTHY L. STEPHENS, JR., MD,
2 the Defendant herein, called by the Plaintiff for
3 the purpose of cross-examination as provided by the
4 Ohio Rules of Civil Procedure, being by me first
5 duly sworn, as hereinafter certified, deposes and
6 says as follows:

7 CROSS-EXAMINATION

8 BY MR. KAMPINSKI:

9 Q. State your full name, please.

10 A. Timothy L. Stephens, Jr.

11 Q. Where do you reside, sir?

12 A. 13475 North Park Boulevard, Cleveland
13 Heights, Ohio.

14 Q. How old are you, sir?

15 A. 54.

16 MR. KAMPINSKI: Did you bring any
17 type of CV for the doctor to short circuit a lot of
18 questioning?

19 MR. GROEDEL: Do you have a CV?

20 THE WITNESS: Yes, I have one.

21 MR. GROEDEL: I'll send you one.

22 MR. KAMPINSKI: Okay.

23 Q. (BY MR. KAMPINSKI) I'm going to ask you
24 a number of questions this afternoon, Doctor. If
25 you don't understand me, please tell me, I'll be

1 happy to rephrase them. When you respond to my
2 questions, please do so verbally. The court
3 reporter can't take down a nod of your head, okay?

4 A. I understand.

5 Q. If you would, sir, run me through your
6 educational background, starting with high school
7 graduation.

8 A. Graduated from John Adams High School,
9 Cleveland, Ohio.

10 Q. When was that?

11 A. 1950.

12 Q. What did you do after that?

13 A. Went to Howard University.

14 Q. Howard?

15 A. Howard, Washington DC, graduated 1954.
16 Military service, 1954 to 1957.

17 Q. Which branch, sir?

18 A. Air Force, officer in the Air Force.

19 Q. Okay.

20 A. 1957 to 1961 Howard University College of
21 Medicine, graduated in 1961. 1961 to 1966 Tufts
22 University, Boston City Hospital, Boston VA
23 Hospital, residency in general surgery and
24 orthopedic surgery. Board certified January 17,
25 1968.

1 MR. CHARMS: When was that, Doctor?

2 I'm sorry.

3 THE WITNESS: January 17, 1968.

4 Q. (BY MR. KAMPINSKI) Any education after
5 1966?

6 A. Yes. I have continuing medical education.

7 Q. Any formalized courses?

8 A. You say -- all of them are formalized.

9 Q. Seminars you're talking about?

10 A. Yes.

11 Q. Any course of training at any particular
12 hospital?

13 A. No further residency training or anything
14 after that.

15 Q. After 1966, what did you do for
16 employment purposes?

17 A. In July of 1966 I came to Cleveland, Ohio
18 and set up practice of orthopedic surgery and
19 practice here nonstop since.

20 Q. Okay. When you say you set up practice,
21 you're talking about a private practice, I take it?

22 A. That's correct.

23 Q. How is it that you operate, under what
24 name and what location when you first came here in
25 1966?

1 A. I operate as Timothy L. Stephens, Jr., MD.

2 Q. Just a sole proprietorship?

3 A. (Indicating).

4 Q. Where was that, sir?

5 A. At 1464 East 105th Street.

6 Q. How long were you there?

7 A. Until August of 1975.

8 Q. All right. Then in the same fashion,
9 that is, Stephens, sole proprietor?

10 A. Sole proprietor until 1970, became
11 Timothy L. Stephens, Jr., MD, Inc., Incorporated.

12 Q. Were you the sole shareholder?

13 A. No, I was not.

14 Q. All right. Who else was?

15 A. Consuelo M. Sousa, MD.

16 Q. Sousa?

17 A. That's right.

18 Q. S-u --

19 A. S-o-u-s-a.

20 Q. Okay. Any others?

21 A. No, that's all.

22 Q. How long did that organization remain
23 viable?

24 A. That organization remained and is still
25 viable; however, the name changed and in July of

1 1982 became Associates in Orthopedics, Inc.

2 Q. And who were the shareholders in that
3 when it was formed?

4 A. Remain the same.

5 Q. Yourself and Consuelo M. Sousa?

6 A. Yes.

7 Q. Has that changed since that time?

8 A. No.

9 Q. The location of 1464 East 105th, how long
10 has that remained the location of the business?

11 A. August 1975.

12 Q. Then where did you move to?

13 A. 11201 Shaker Boulevard, Suite --

14 Q. I'm sorry, 112 --

15 A. 01 Shaker Boulevard, Suite 328.

16 Q. Okay. And has that remained the business
17 residence since that time?

18 A. Yes.

19 Q. How many employees does the corporation
20 currently have, sir?

21 A. The corporation has seven employees.

22 Q. And how many of those seven are doctors?

23 A. Three are doctors -- yeah, three are
24 doctors.

25 Q. The other four?

1 A. Are clerical help.

2 Q. And who are the three doctors?

3 A. Myself, Dr. Stephens, Dr. Curtis Smith,
4 and Dr. Sousa, who is not employed -- who is a
5 physician, however, is a medical administrator that
6 is not practicing medicine in the corporation.

a Q. Okay. How long has that been true that
8 she hasn't practiced medicine?

9 A. She's never practiced medicine in this
10 corporation.

a1 Q. Okay. Has she practiced medicine --

12 A. Yes.

13 Q. -- outside of the corporation?

14 A. Yes.

15 Q. But her relationship to the corporation
16 is what, as medical administrator?

17 A. Medical administrator.

18 Q. Well, where does she practice medicine?

a9 A. She does not practice medicine.

20 Q. Where did she practice medicine?

21 A. She practiced at Hough Norwood Health
22 Care Center.

23 Q. Do you know why she no longer practices?

24 A. She chose to discontinue that.

25 Q. When was that?

1 A. Around 1975.

2 Q. So as far as active practicing doctors,
3 there are the two?

4 A. That's correct.

5 Q. And how long has Dr. Smith been with
6 what's currently Associates in Orthopedics, Inc.?

7 A. July 1982.

8 Q. And that's when the name was changed then?

9 A. That's correct.

10 Q. Was the other corporation dissolved, that
11 is, Dr. --

12 A. No.

13 Q. What was the name of the other
14 corporation? I'm sorry.

15 A. Timothy L. Stephens, MD, Inc.

16 Q. I take it you have privileges at various
17 hospitals --

18 A. Yes.

19 Q. -- is that correct, sir? Where do you
20 have privileges?

21 A. I have privileges at St. Luke's Hospital,
22 St. Vincent's Charity Hospital, Huron Road Hospital,
23 Marymount Hospital, Suburban Hospital, and Mt.
24 Sinai Hospital.

25 Q. When you said you were board certified,

1 is that in orthopedic surgery?

2 A. That's correct.

3 Q. Any other certifications?

4 A. No.

5 Q. And did you have privileges at all these
6 hospitals in 1984, sir?

7 A. In '84?

8 Q. Yes.

9 A. I don't think I had privileges at Mt.
10 Sinai in '84.

11 Q. That's one you currently have but didn't
12 then?

13 A. That's right.

14 Q. When did you get that?

15 A. Probably within the last year.

1.6 Q. Okay. Did you have any in '84 that you
17 don't have now?

18 A. No.

19 Q. Okay. Have you written any publications
20 that have been -- or articles that have been
21 published anywhere?

22 A. No.

23 Q. What organizations, medical organizations
24 do you belong to, sir?

25 A. Cleveland Medical Association, American --

2 the Academy of Medicine of Cleveland, Ohio State
3 Medical Association, the Cleveland Orthopedic Club,
4 American Medical Association, National Medical
5 Association, American Academy of Orthopedic
6 Surgeons, American College of Surgeons, American
7 College of Neurological and Orthopedic Surgeons.
8 That's about all.

9 Q. Okay. Your relationship with Alvester
10 Smith commenced when, Doctor?

11 A. When you say my relationship --

12 Q. As a doctor.

13 A. I was not -- I was not Alvester Smith's
14 doctor. We practiced as a -- as Stephens/Smith, as
15 a group. We see patients individually, and we
16 cover each other when the other is not on.

17 Q. There are two of you?

18 A. That's correct.

19 Q. When you say as a group, the two of you?

20 A. Dr. Smith and myself.

21 Q. Is Dr. Smith board certified in
22 orthopedic surgery?

23 A. No. Dr. Smith is board eligible in
24 orthopedic surgery.

25 Q. Does that make any difference to you in
terms of any particular procedures that have to be

1 undertaken?

2 A. No, it does not.

3 Q. You feel that whatever you're asked to do
4 he can do equally as well?

5 A. That's right, that's why he's with me.

6 Q. Okay. Do you have any recollection of
7 ever seeing Alvester Smith?

8 A. Yes.

9 Q. When did you see him?

10 A. I saw him in his -- once on his first
11 admission when I made rounds with Dr. Smith in his
12 room to tell Mr. Smith that he was not in any
13 condition to be operated on and was being
14 discharged back to his internist, and that was the
15 only time I remember seeing Mr. --

16 Q. Why is it you're the one that told him
17 that?

18 A. I did not say I told him that.

19 Q. I'm sorry, I thought you did.

20 A. No. I was with Dr. Smith. You asked me
21 when I saw him, and that was when I saw him. I
22 made rounds with Dr. Smith on this particular day.
23 What day, I don't remember what it is, but we
24 happened to be making rounds that day together and
25 I was present at the time.

1 Q. Who told him that?

2 A. Dr. Smith.

3 Q. Were you ever contacted by the family

4 doctor to get involved in this case --

5 A. No, I was not.

6 Q. -- Dr. Jackson? Were you involved in any

7 decision making process during that first

8 hospitalization in October of 1984 as to whether or

9 not Mr. Smith was an appropriate candidate for

10 surgery then?

11 A. No, I was not.

12 Q. You just happened to be there and that

13 was the only knowledge you had of his existence at

14 the time?

15 A. That's correct.

16 Q. All right. Did you ever become involved

17 in any treatment or care for Mr. Smith after that

18 time?

19 A. No, I did not.

20 Q. Did you ever see him again?

21 A. No, I did not.

22 Q. Did you ever talk to anybody at the

23 hospital about him?

24 A. No, I did not.

25 Q. Did you receive any billings on behalE of

1 treating him?

2 A. The office, Associates in Orthopedics,
3 sends out billings under the name of Associates in
4 Orthopedics, and I'm sure that there are billings
5 that have been sent out to him and payments made
6 under that corporate name.

7 Q. Do you know -- you've reviewed the file
8 since the lawsuit has begun, have you not, sir?

9 A. I've not reviewed the file. I've
10 reviewed the part that I signed off, which was at
11 the time of his death, yes.

12 Q. All right. Well, have you reviewed it
13 sufficiently to know that your name was listed as
14 the doctor doing the surgery on November 14, 1984?

15 A. I noted that when I saw the surgical
16 sheet at one time, however, that is in error.

17 Q. Okay. You in fact did not do the surgery?

18 A. I was not the surgeon.

19 Q. You say you signed something off when Mr.
20 Smith died. What is it you signed off, sir?

21 A. It was probably the last note, which was
22 probably written by the resident at the time of his
23 demise.

24 Q. Why would you sign that off?

25 A. Because I was present there and I read

1 his note and I agreed with what was said and I had
2 nothing further to add so I countersigned.

3 Q. You were present where, at the hospital?

4 A. Yes, I was.

5 Q. Why?

6 A. Because I was called about his condition
7 and I responded. Of course I was on that night and
8 I went to the hospital.

9 Q. Well, you responded as to what should be
10 done to Mr. Smith even before you went to the
11 hospital, didn't you?

12 A. When I was called about him, I'm sure
13 that I responded in a way as to give some advice as
14 to what should be done, and as I recall, I probably
15 told him to call the internist and may have made
16 some other suggestions. I can't really -- I can't
17 really recall.

18 Q. Would that be normal, typical for you to
19 give advice or instructions with respect to a
20 patient that you had never seen or treated?

21 A. Yes.

22 Q. Okay. If I could turn to page 160, I
23 think maybe we could focus in on some of your
24 involvement, sir.

25 A. Sure. What's the page?

1 Q. 160.

2 A. Okay.

3 Q. And at the bottom right-hand part of that
4 page under remarks, it does --

5 A. "Dr. Stephens call to" --

6 Q. "RR," recovery room?

7 A. Right.

8 Q. Next page 161 continues, I believe.

9 A. Right.

10 MR. CHARMS: Excuse me, Chuck. Are
11 you in the nursing notes?

12 THE WITNESS: These are the recovery
13 room notes.

14 MR. KAMPINSKI: They're numbered.

15 MR. CHARMS: For some reason, my
16 numbers didn't come out very well.

17 THE WITNESS: It's 160 and 161.

18 Q. (BY MR. KAMPINSKI) If we go back on 160,
19 just one line, the call apparently was made to the
20 answering service. It says "Dr. Smith's answering
21 service notified to contact RR." That was at 10:43?

22 A. Um-hmm.

23 Q. Then apparently you were on duty that
24 night and you returned the call?

25 A. That's right.

1 Q. Okay. That would have been at 10:48 or
2 somewhere around that time, apparently, correct?

3 A. That's right.

4 Q. All right. And then on page 161, if you
5 would indicate for the record, what is it that you
6 told whoever it is you talked to, apparently this
7 nurse that's writing these things, A. Simska, what
8 is it you told her to do?

9 A. I advised that the patient was to be
10 admitted to the surgical intensive care unit.

11 Q. Why did you do that, Doctor? What
12 information were you given that caused you to do
13 that?

14 A. I don't recall what information was given
15 me. However, if the patient were in some type of
16 difficulty and I was notified, then the thing that
17 was probably appropriate at that time was to send
18 him to the intensive care unit, and this is what I
19 recommended.

20 Q. Well, when you say intensive care unit,
21 that it was appropriate to send him, for example,
22 would shortness of breath be something that would
23 be sufficient for you to cause to send him there?

24 A. No.

25 Q. What information could there have been

1 without you having ever seen this man for you to
2 say send him to intensive care?

3 A. At this point in time I can't really
4 recall what was told me, but whatever was told me,
5 apparently this is what I, you know --

6 Q. That's a pretty important decision, isn't
7 it, Doctor?

8 A. Any time, you know -- again, you have to
9 go by what is told you at the time as far as the
10 facts and whatnot are concerned, and if this is
11 what a certain amount of facts were given to me,
12 this is what I told him to do.

13 Q. Okay. And would you have told them in
14 terms of an order like that to do that immediately,
15 or is that something they could have just done the
16 next day, later on?

17 A. This is -- the patient at the time
18 they're in the recovery room, is under the care.
19 Of course anesthesia is involved and it would not
20 be a direct order, in other words, there would have
21 to be more people involved. In other words, I just
22 can't say, Move the patient, but I can say, I feel
23 the patient should go and recommend that the
24 patient go to surgical intensive care unit.

25 Q. Well, let's assume, as was the case with

1 Dr. Smith, that you're the orthopedic surgeon
2 actually doing the procedure. Okay. You are the
3 one that indicates after the surgery or during the
4 surgery or even before where it is you want the
5 patient to go, and that's a decision you make,
6 isn't it?

7 A. No, it is not. The patients -- the
8 decision when a patient is operated on, it's
9 routine for the patient to go to the recovery room;
10 however, if there's some circumstance that
11 anesthesia is concerned about, they may request
12 themselves that the patient go to the surgical
13 intensive care unit.

14 Q. Well, could the orthopedic surgeon send
15 them there after a surgery?

16 A. Not usually, no.

17 Q. So that would usually be anesthesia's
18 responsibility?

19 A. Yes.

20 Q. Okay. Then why is it that you indicated
21 where he should go?

22 A. I may not have indicated where he should
23 go. I advised --

24 Q. Let me read it. "Dr. Stephens asked that
25 patient be admitted to SICU."

1 A. That is what I advised. That's what I
2 advised at that time.

3 Q. Did you expect them to do what you
4 advised?

5 A. This is what was advised at that time,
6 and again, there are other people caring for the
7 patient who are involved in those decisions to --

8 Q. So did you talk to the other people?

9 A. No, I did not talk to the --

10 Q. Why not? If you're going to make that
11 kind of advice, wouldn't you get some kind of
12 consensus or consult?

13 A. At that point in the information I
14 apparently had, I felt he needed to go to surgical
15 intensive care.

16 Q. Have you looked at the postoperative
17 condition of Mr. Smith at all prior to coming here
18 today?

19 A. No.

20 Q. Why don't you take a minute. I believe
21 it starts on page 155. It goes to 162. Take a
22 minute and look at that, Doctor. First of all,
23 read it with the thought in mind that you would
24 have been apprized presumably by the nurse of
25 whatever occurred from page 155, at the time he

1 arrived in the recovery room, until you were called
2 at approximately 10:45.

3 A. Now, what's your assumption? Repeat that
4 again.

5 Q. Assume you were told these matters having
6 occurred to Mr. Smith when you were called at 10:45.
7 You had to have some information upon which you
8 based this suggestion for him to go to intensive
9 care.

10 A. Um-hmm.

11 MR. GROEDEL: I'll object to that.

12 A. Okay.

13 Q. The information contained on page 155
14 commencing at about 5:25 p.m. on November 17, 1984,
15 until 10:45 p.m. that evening, would that
16 information, if passed on to you, be sufficient for
17 you to recommend that he be admitted to SICU?

18 A. Yes.

19 Q. All right. And I assume, and you correct
20 me if I'm wrong, that at least some of that would
21 have been told to you for you to recommend this?

22 A. Yes.

23 Q. Given that information then, Doctor,
24 would you have anticipated that your recommendation
25 or order or however you gave it at that time would

1 have been followed?

2 MR. GROEDEL: Objection. Go ahead.

3 A. Well, again, and it's not always clear to
4 me how the orders come down; however, a patient has
5 to be released from the recovery room, as I recall.
6 In other words, I can't myself release a patient
7 from the recovery room.

8 Q. If you see a patient in distress in
9 recovery and you're told about that, you can't
10 order them to send them to intensive care?

11 A. I'm just telling you the procedure.

12 Q. I'm asking you a question, Doctor. In
13 fairness to you and your patients in a hospital --

14 A. Procedure is a patient who goes from
15 surgery to the recovery room is usually most often
16 released from the recovery room by anesthesia.

17 Q. Okay. Fine. Who tells them to release
18 them? The doctor, right?

19 A. Right.

20 Q. That's you? In this case it's you?

21 A. No.

22 Q. You were so called, weren't you?

23 A. The anesthesiologist.

24 Q. Did you ask to talk to the
25 anesthesiologist here?

1 A. No, I did not.

2 Q. Why not?

3 A. Because I was talking -- I had talked to
4 the floor or the surgical -- not the surgical --
5 the recovery room themselves and had made --

6 Q. You're telling me the procedure is to get
7 it from the anesthesiologist, he's the one that
8 asked for the release --

9 A. I'm telling you the procedure is as
10 followed --

11 Q. Why didn't you follow the procedure?

12 A. I did.

13 Q. Why didn't you talk to the
14 anesthesiologist if you wanted him transferred to
15 SICU?

16 A. The anesthesia people had been talked to,
17 my resident Dr. Miller had been there, had talked
18 to the anesthesiologist, had seen the patient and
19 whatnot. When I was called, I felt that the
20 patient was in a situation that needed to go to
21 surgical intensive care unit.

22 Q. That's why you recommended it?

23 A. That's why I recommended it.

24 Q. My question is how do you make that
25 recommendation effective, sir, by telling a nurse

1 and not having a man transferred, or talking to the
2 doctor who is there and insuring that it's done?

3 A. I recommended to the nurse, to the people
4 there, that I felt that he needed to be in the
5 surgical intensive care unit.

6 Q. Was he transferred?

7 A. No, he was not.

8 Q. Do you know why?

9 A. No, I don't.

10 Q. Did you talk to your resident, Dr. Miller,
11 as you indicated, afterwards to find out why?

12 A. I don't believe that ever came up. I do
13 believe that, as I recall, things were happening
14 pretty fast with this man and I think that they got
15 busy and, you know, giving him IVs and intubating
16 him and whatnot, I don't think that happened.

17 Q. You're guessing? You weren't there?

18 A. I was not there.

19 Q. Okay. Is there a difference between
20 recovery room and intensive care? I assume there
21 is, otherwise you wouldn't have suggested that he
22 be transferred.

23 A. There are some differences.

24 Q. In terms of monitoring?

25 A. Yes.

1 Q. Ability to deal with emergencies?

2 A. (Indicating).

3 Q. You have to answer verbally.

4 A. Yes.

5 Q. In your opinion, was he treated for
6 appropriately after surgery in recovery room,
7 Doctor?

8 MR. CHARMS: Objection.

9 A. Best of my knowledge, yes.

10 Q. After reading those notes from page 155
11 to 162?

12 A. Best of my knowledge, yeah.

13 Q. In your opinion, he received adequate
14 care; is that correct?

15 A. Yes.

16 Q. Okay. You testified, sir, that you
17 believed that the charges were made by your
18 corporation; is that correct?

19 A. I know that the charges were made by the
20 corporation, yeah.

21 Q. Okay. And they emanated from Dr. Smith's
22 having seen the patient as opposed to yourself?

23 A. That's correct.

24 Q. Did you talk to the family after Mr.
25 Smith died?

1 A. Yes, I did.

2 Q. What did you say to them? Who did you
3 talk to first?

4 A. I talked to the wife and I believe there
5 were two daughters present.

6 Q. Okay. What did you tell them?

7 A. I told them that after the surgery, that
8 Mr. Smith had had some problems in the recovery
9 room and that he had died suddenly and Dr. Jackson,
10 who was an internist, was also present, and told
11 what we felt was the problem.

12 Q. What did you feel was the problem?

13 A. I didn't know. However, I felt from what
14 Dr. Jackson -- who was his attending physician who
15 had cared for him, that he most likely had had a
16 myocardial infarction.

17 Q. So you left that up to him to explain to
18 the family?

19 A. We were there together and we both -- I
20 don't know what I told them or what he told them,
21 but we were discussing the situation together with
22 the family.

23 Q. You felt knowledgeable enough to discuss
24 it with them?

25 A. I felt I was there with a person who knew,

1 who was Dr. Jackson, and we shared this
2 conversation with the family.

3 Q. Okay. Were they shocked that their
4 father and husband had gone in for hip replacement
5 surgery and had come out dead?

6 A. Of course they were shocked.

7 Q. Did you have any input into the second
8 surgery that was done, sir --

9 A. No, I did not.

10 Q. -- on November 17th? Was there consent
11 obtained for that second surgery?

12 A. I don't know.

13 Q. Why don't you look through the records,
14 see if you can find one for me.

15 A. There's a general consent form here,
16 which I'm not sure whether this is what they use in
17 here or not. I don't see anything other than a
18 general consent form, which is the form that I
19 think covers -- I don't find anything other than
20 general consent form as published by St. Luke's
21 Hospital.

22 Q. What's the date of that?

23 A. November 12, 1984, 1:20 p.m.

24 Q. What does it cover, Doctor? Any specific
25 procedure?

1 A. No, it does not.

2 Q. What page is that?

3 A. This is page 141.

4 Q. Could I see it?

5 A. (Witness complies.)

6 Q. Okay. Now, you correct me if I'm wrong,
7 sir. This is the general consent form for the
8 hospital care; is that correct?

9 A. If I may look at it again. It says
10 general consent form.

11 MR. GROEDEL: Page 39.

12 A. Okay. This is A. There is a consent
13 form which is on page 39.

14 Q. Now, does that have any specific
15 procedure on it, sir?

16 A. Yes, it does.

17 Q. What procedure?

18 A. Left total hip.

19 Q. What is that procedure?

20 A. Left total hip. It's a replacement of
21 parts of the hip joint with prosthetic components.

22 Q. Does that include any subsequent
23 procedures? When it says left total hip, does it
24 encompass revisions? Does it encompass additional
25 surgeries?

1 A. No, it does not.

2 Q. Is there another consent form for the
3 procedure that was done on November 17, 1984 to
4 Alvester Smith, sir?

5 A. I don't seem to see one here.

6 Q. How is it that surgery was performed then
7 on November 17th on Mr. Smith?

8 A. I don't know. I don't see a consent form
9 here for, you know, for that.

10 Q. Did you ever have any additional
11 involvment with the family after the death of Mr.
12 Smith?

13 A. I believe I talked to Mrs. Smith once on
14 the telephone.

15 Q. Okay. Do you recall what that
16 conversation was about, sir?

17 A. It's very vague. However, she wanted
18 some information -- she wanted some information as
19 to what she felt -- she wanted to know what
20 happened with her husband.

21 Q. What did you tell her?

22 A. I gave her, you know, the things that I
23 felt I knew and that was what was told to me by Dr.
24 Jackson as far as what I felt he died from, and
25 that's what I repeated.

1 Q. You mean this was -- let me make sure I
2 understand. What you heard Dr. Jackson say to her --

3 A. No.

4 Q. All right, wait. Let me ask the question.
5 Did you have additional discussions with Dr.
6 Jackson after Mr. Smith died?

7 A. No, I did not.

8 Q. Okay. Where did you get information then?

9 A. The record.

10 Q. When did you review the records?

11 A. At the time of his death.

12 Q. All right. And that was before you spoke
13 to the family?

14 A. Yeah.

15 Q. And so that you recall that again when
16 you spoke to Mrs. Smith?

17 A. Right.

18 Q. And what was there in the record that
19 assisted you in explaining to Mrs. Smith how her
20 husband had died?

21 A. Simply that he felt that he most likely
22 had died from a myocardial infarction.

23 Q. He had a heart attack, right?

24 A. That's right.

25 Q. Stress on the heart?

1 A. Myocardial infarction.

2 Q. Could be from a multitude of things?

3 A. That's right.

4 Q. Did you recommend an autopsy afterwards,
5 Doctor?

6 A. No, I did not.

7 Q. Do you know if Dr. Jackson did?

8 A. I don't know.

9 Q. Are there certain cases in which
10 autopsies were either required or desired by you as
11 a doctor?

12 A. Well, there's some cases that if there's
13 something unusual, there are some cases that you
14 sometimes request an autopsy on.

15 Q. Is this an unusual situation for a man to
16 go in for a left total hip and die?

17 A. It's an unusual situation, however, his
18 internist was there and felt that it was a
19 myocardial infarction, so there was no reason at
20 that time for me to second guess him or, you know,
21 he didn't feel that an autopsy was necessary and we
22 didn't ask for one.

23 Q. You indicated that you signed off
24 somewhere and I think I've seen it and I just can't
25 put my finger on it. Do you know where --

1 A. That would be the last progress note,
2 must be the last -- it would have to be. Look at
3 page 123. Here it is if you like.

4 MR. CHARMS: Progress notes, Doctor?

5 Q. (BY MR. KAMPINSKI) I can follow along
6 with you, sir. You've got the original there,
7 right? Okay. This would have been the November 17,
8 11 p.m. note?

9 A. Um-hmm.

10 Q. Okay. And this is written by whom, the
11 note?

12 A. Dr. Scott Miller.

13 Q. You said he was your resident?

14 A. He was a resident on call that night.

15 Q. But before you said he was your resident.
16 Were you training him or --

17 A. No. When I say he was my resident, in
18 other words, he was an orthopedic resident. There
19 are other residents in the hospital, but when I say
20 "my," I mean he was an orthopedic resident, not
21 that he belonged to me. He was an orthopedic
22 resident.

23 Q. But were you one of the doctors who was
24 responsible for training this man at the time of
25 his residency at St. Luke's?

1 A. In any training program, all of the
2 people on the staff have equal responsibility, sure.

3 Q. That's why the reference, I take it?

4 A. Yeah.

5 Q. Okay. And you would rely on him while
6 he's on call at the hospital, I take it?

7 A. Yes.

8 Q. But he would look to you as one of the
9 staff or other members of the staff, I take it, for
10 guidance; would he not?

11 A. That's right.

12 Q. Did you ever talk to him the night that
13 Mr. Smith died before he died?

14 A. Yes, I did,

15 Q. Before Mr. Smith died you spoke to him?

16 A. Yes.

17 Q. When was that?

18 A. I don't know exactly when, but when I
19 talked to him, he told me about Mr. Smith's
20 condition. That's, you know, when I came to the
21 hospital.

22 Q You have a distinct recollection of that?

23 A. I don't have a distinct recollection of
24 anything at that particular time.

25 Q. I don't want you to guess. If you don't

1 know whether you talked --

2 A. I did talk to him. Now, the sequence, I
3 cannot -- or time interval, I cannot specifically
4 say to you.

5 Q. All right.

6 A. However, I did talk to Dr. Miller and I
7 did come to the hospital.

8 Q. Okay. Did you come in response to what
9 he told you or you had called at 10:45 and at that
10 time suggested he go to recovery -- or to intensive
11 care? Did you call again or did you come right
12 down there or do you recall?

13 A. I don't recall.

14 Q. Okay. Dr. Miller was one of the doctors
15 who assisted in this procedure, this close
16 reduction that occurred on November 17th; is that
17 correct? As a matter of fact, you can look at the
18 page before that, 121. I think it reflects that.

19 A. Yes.

20 Q. I hate to use the word normal. Maybe you
21 would want to use a different word. But is this a
22 normal complication of total hip, that is, a
23 dislocation occurring within two days?

24 A. Yes, it is one of the complications of
25 total hip replacement.

1 Q. You said "one of the." I used the word
2 "normal." How often would that occur?

3 A. It's hard to say. We could go for -- I
4 would say at least in the neighborhood of 5 percent.

5 Q. Okay. I assume that's one of the
6 complications that you as an orthopedic surgeon
7 certainly tell your patients about beforehand?

8 A. We tell -- we give the patients a
9 multitude of, you know, we run down a list of
10 things, and yes, that is one of the things.

11 Q. If it's a 5 percent risk, that's a
12 specific one they should know about?

13 A. Sure.

14 Q. You would expect an employee of the
15 corporation that you belong to to advise them also,
16 that being Dr. Smith, correct?

17 A. Yes.

18 Q. Okay. And when that occurs, that has to
19 be dealt with in some fashion, correct?

20 A. That's correct.

21 Q. Is it an emergency when that occurs?

22 A. Any time a joint dislocates, it becomes a
23 situation that should be dealt with, yes.

24 Q. I understand. I asked you if it was an
25 emergency.

1 A. Yes.

2 Q. And if a situation is an emergency, does
3 it require consent or can you just go ahead and
4 take a patient in, perform surgery?

5 A. I'm sure any time you do something to a
6 patient, you always discuss what has happened, the
7 surrounding events, and I'm sure that the procedure
8 and whatnot was at least yes, if that's to -- why
9 don't you repeat your question. I'm getting too
10 far afield what you said there.

11 Q. Sure. If it's an emergency, as you
12 indicated a dislocated hip is, does it require an
13 additional consent form or can you operate without
14 getting an additional consent form?

15 MR. GROEDEL: Objection. Go ahead.

16 A. Most often we try to get additional
17 consent forms. However, many times it's not
18 possible. If we feel it's an emergency, many times
19 we go without it.

20 Q. Would you do any type of testing normally
21 to insure that a person was a suitable candidate
22 for an additional surgical procedure?

23 A. That would depend.

24 Q. Well, in this case, would you do it? And
25 I'll ask you to assume a couple things if you

1 haven't already looked at the records sufficiently
2 to realize their existence, and that is that Mr.
3 Smith was in the hospital in October, a month
4 before for this surgery, and I think you said you
5 were with Dr. Smith when he told him it wasn't
6 going to go forward at that time.

7 A. That's right.

8 Q. Do you recall what Dr. Smith indicated
9 the reason was for not going forward?

10 A. At that time he had some I think upper
11 respiratory tract --

12 Q. How about hypertension, did that come
13 into play?

14 A. I believe so, yes.

15 Q. So you were aware of that, just by having
16 been there?

17 A. Yeah.

18 Q. So I don't have to ask you to assume that;
19 you know that to be a fact?

20 A. Yes, I did.

21 Q. And you also know to be a fact that on
22 November 14th, a surgical procedure was done by Dr.
23 Smith, and that is the left total hip, correct?

24 A. Um-hmm, yes.

25 Q. Have you reviewed the records

1 sufficiently to determine whether or not any
2 consult was done before that surgery as far as the
3 suitability for Mr. Smith to undergo that surgery?

4 A. No, I have not.

5 MR. CHARMS: I'm sorry, were you
6 talking about the first surgery?

7 MR. KAMPINSKI: Yes, I was.

8 A. The first surgery?

9 Q. Yes.

10 A. Oh, yes, I know specifically.

11 Q. How do you know?

12 A. Because of the fact that the patient was
13 sent home.

14 Q. Okay. You're assuming then?

15 A. I know he was sent home and put back into
16 the care of the internist and the patient would
17 never come back unless the internist had consulted
18 and --

19 Q. So that's important for you as an
20 orthopedic surgeon to get some type of approval
21 from the internist as to suitability --

22 A. In that particular situation, yes.

23 Q. How about the situation on November 17,
24 1984 when he went back in for surgery, would it be
25 important then to get the consult for suitability

1 for surgery?

2 A. Depends on a lot of things, whether he
3 had been -- whether the patient had been stable.

4 Q. Was he stable?

5 A. Whether he had been seen by his internist,
6 whether any --

7 Q. You just can't tell from not having
8 reviewed the case? I mean, you can give me a lot
9 of possibilities, but without going through the
10 record, you can't really tell?

11 A. That's correct.

12 Q. All right. And it's your testimony that
13 you haven't discussed this case before coming here
14 today in terms of the care given to Mr. Smith?

15 A. That's correct.

16 MR. GROEDEL: With who?

17 MR. KAMPINSKI: With anybody. With
18 you, with his associate, with anybody.

19 Q. (BY MR. KAMPINSKI) Have you?

20 A. We haven't -- you know, generalities on a
21 case you're being sued on, but not the merits or
22 whatnot of what was done, no.

23 Q. Okay. All right. But you were able to
24 give an opinion that his postoperative care was
25 fine from looking at those notes?

1 A. To my knowledge, yes.

2 Q. What do you mean to your knowledge?

A. From what I had in front of me and
available, yes.

Q. And the fact that Dr. Lee was told by the
nurses that the man's condition was deteriorating,
he says okay, that doesn't disturb you at all by a
patient that was seen by your group, that doesn't
bother you?

MR. CHARMS: Objection.

MR. GROEDEL: Objection.

A. I didn't really -- again, from what I
read or whatnot, my answer remains the same.

Q. Did you see that portion of the chart?

A. I'm not sure what you're referring to.

Q. Okay. I'll show you specifically.

17 Starting at the bottom of 156 with the 6:15 entry,
18 actually the middle of 156. Is confusion an
19 ominous sign with respect to a patient or can it be?

20 A. No. Confusion, a person postoperatively
21 after an anesthetic can ex fusion.

22 Q. How about projectile emesis?

23 A. That again is something that, you know,
24 you can have if you have stress.

25 Q. How about multi-focal PVCs?

1 A. This is arrhythmia. That I can't really
2 speak. I'm not a cardiologist. However, PVCs are
3 arrhythmia. As I recall, he had these before, so I
4 can't really, you know, speak to that.

5 Q. Okay. So you don't know one way or
6 another if it's disturbing without actually looking
7 at the chart or looking at the EKG?

8 A. No, I wouldn't -- I personally would not
9 feel competent to read the EKG.

10 Q. And the anesthesiologist should be
11 confident to do that, I take it?

12 A. Yes.

13 Q. So you're relying upon his having done --
14 you're assuming he did the right thing?

15 A. That's right.

16 Q. Okay. When he comes in later on page 157,
17 states the pattern, "Dr. S. J. Lee and to check
18 patient, stated pattern," the nurse apparently put
19 in quotes "okay." That doesn't disturb you at all
20 that she would emphasize that?

21 MR. GROEDEL: Objection.

22 A. Again, it doesn't disturb me because
23 again, if Dr. Lee -- again, I am not a cardiologist,
24 I have no proficiency with reading, so I would be
25 relying on his knowledge as far as the EKG is

1 concerned.

2 MR. KAMPINSKI: Okay. That's all I
3 have. Some of the other attorneys may have some
4 questions.

5 MR. CHARMS: I have no questions for
6 Dr. Stephens at this time, but I would reserve my
7 right if it becomes necessary. Thank you very much.

8 MS. BARTNIK: I have no questions.
9 Thank you, Doctor.

10 MR. KAMPINSKI: You've got a right
11 to read the testimony or you have a right to waive
12 your signature. Your attorney can advise you
13 accordingly.

14 MR. GROEDEL: We'd like to take a
15 look at it.

16 (Adjourned at 2:23 p.m.)

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1 I have read the foregoing transcript from page
2 1 to page 42 and note the following corrections:

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4 PAGE: LINE: CORRECTION: REASON:

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TIMOTHY L. STEPHENS, MD,

17

18 Subscribed and sworn to before me this

19 day of , 1986.

20

21

Notary Public

22

23 My Commission Expires:


24

25

1 THE STATE OF OHIO,)
2) SS: CERTIFICATE
3 COUNTY OF CUYAHOGA.)

4 I, Lorraine J. Box, a Notary Public within and
5 for the State of Ohio, duly commissioned and
6 qualified, do hereby certify that TIMOTHY L.
7 STEPHENS, MD was by me, before the giving of his
8 deposition, first duly sworn to testify the truth,
9 the whole truth, and nothing but the truth; that
10 the deposition as above set forth was reduced to
11 writing by me by means of Stenotypy and was
12 subsequently transcribed into typewriting by means
13 of computer aided transcription under my direction;
14 that said deposition was taken at the time and
15 place aforesaid by agreement of counsel; and that I
16 am not a relative or attorney of either party or
17 otherwise interested in the event of this action.

18 IN WITNESS WHEREOF, I hereunto set my hand and
19 seal of office at Cleveland, Ohio, this 30th day of
20 September, 1986.

21 
22 Lorraine J. Box, RPR, Notary Public
23 Within and for the State of Ohio
24 540 Terminal Tower
25 Cleveland, Ohio 44113
My Commission Expires: June 20, 1987.

LAWYER'S NOTES

[illegible]