IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY
Civil Division

*

Plaintiff *

v. * CASE NO.

, M.D., *
et al.
*

Defendants *

* * * * * * *

DEPOSITION OF , M.D.

The deposition of , M.D., taken in the above-captioned case on Friday, September 28, 2012, commencing at 10:15 a.m., at , , , & , , , , Rockville, Maryland 20850 and was reported by , ., and a Notary Public.

EVANS REPORTING SERVICE
7 North Calvert Street, Suite 705
Baltimore, Maryland 21202
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1 APPEARANCES:
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410.553.6000
4 rodgaston@millerandzois.com
On behalf of Plaintiff
5
ESQUIRE
6 , ESQUIRE
7
8
9
On behalf of Defendant
10
ALSO PRESENT:
11
, VIDEOGRAPHER
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1 PROCEEDINGS
2 * * * * *
3 (Deposition Exhibit Nos. 1-12,
4 respectively, were marked by the Reporter.)
5 THE VIDEOGRAPHER: We are now on the
6 video record in the matter of v.
7 M.D. Today's date is September
8 28th, 2012. The time is approximately 10:15 a.m.
9 This is the video recorded deposition of
10 , M.D. being taken at in
11 Rockville, Maryland. I'm the Camera Operator. My
12 name is . Court Reporter is
13 . We are both from Evans Reporting.
14 Will attorneys please identify themselves, the
15 parties that are with them, who they represent.
16 MR. GASTON: Rodney M. Gaston. I
17 represent .
18 MR. : I
19 represent all of the Defendants in this matter.
20 MR. I
21 represent all of the Defendants in this matter.

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1 MR. : We have a stipulation
2 we'll put on the record before we get started,
3 before we swear the witness.
4 Through discovery and and discussions
5 between counsel, there, there are a number of
6 corporate Defendants in this case, but there is one
7 corporate Defendant that is about to be added, and
8 we have agreed that the process will be as follows:
9 Based upon the Answers to
10 Interrogatories and the information that I gave Mr.
11 Gaston prior to the deposition, the Plaintiff
12 deceased in this case was a patient of Dr.
13 and his practice. His practice was
14 . That was the entity in place
15 at the time of the care and treatment of the
16 patient at Hospital. All
17 billing was also done through that professional
18 association so, procedurally, we are going to
19 proceed as follows:
20 Mr. Gaston's going to file a statement
21 of claim in the Health Claims Arbitration Office,

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1 or Healthcare Alternative Dispute Resolution
2 Office, naming only . He'll
3 file the appropriate Certificate of Merit and
4 Report, and we'll then waive it out of ADR into the
5 Circuit Court for Prince George's County.
6 At that time, there will be been a
7 joint Motion to Consolidate that I am agreeing to
8 and consenting to, to add . as a
9 defendant in the current pending matter before the
10 Circuit Court for Prince George's County. We will
11 do everything that the two of us can do, legally,
12 to make sure that the consolidation occurs in any
13 5T (phonetically) order that may be existing at
14 that time, so there will be no alteration of dates.
15 I'll file the appropriate amended Certificate of
16 Merit and Report on behalf of
17 and we will then proceed from there.
18 Once that is accomplished and the
19 consolidation is accomplished, all other corporate
20 Defendants will be dismissed.
21 MR. GASTON: And the only thing I would

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1 add to that is that, in accordance with the Answers
2 to Interrogatories that I received yesterday, it is
3 also stated that the medical clinic merged into the
4 , LLC on or about
5 November 29, . Although the medical clinic was
6 in existence at the time, and it was the entity
7 that I understand employed Dr. I believe
8 that once the matter is filed and removed to the
9 Circuit Court, it would have to be a substitution
10 in name only, actually, so that the current legal
11 entity that is in existence for the purposes as a
12 defendant in the case would be, actually, the
13 , LLC.
14 MR. : You can do whatever you
15 think you need to do, but I'm telling you don't
16 screw up your insurance. The insurance coverage in
17 this case is for the for the
18 incident that occurred in February of What
19 entity exists in November of is of no merit or
20 no motion, whatsoever, for purposes of this event
21 for triggering of coverage for this claim in

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1 February of You screw it up, it's your risk.
2 MR. GASTON: Well -- and there's not
3 going to be an, an admission, or an agreement by
4 the parties that the correct current legal
5 entity --
6 MR. : It is the --
7 MR. GASTON: Hang on a second, so --
8 MR. You're, you're right,
9 that that's the correct current legal entity.
10 MR. GASTON: Right. That's -- yeah.
11 MR. And -- but that's not
12 relevant to the event of what the correct legal
13 entity was at the time of the incident, which is
14 what's going to trigger your coverage.
15 MR. GASTON: Right. But for a named
16 defendant, it's a little bit different.
17 MR. : Okay.
18 MR. GASTON: And, and I'll just ask the
19 doctor a couple of questions on that --
20 MR. : Okay.
21 MR. GASTON: -- as we get into this,

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1 but very well.
2 THE VIDEOGRAPHER: Ready to administer
3 the oath.
4 Whereupon,
5 M.D.,
6 a witness herein, called for oral examination
7 in the matter pending, being first duly sworn
8 to tell the truth, the whole truth, and
9 nothing but the truth, testified as follows:
10 EXAMINATION
11 BY MR. GASTON:
12 Q Sir, could you please state your name
13 and business address?
14 A **It's**
15 **, Maryland is where my office is.**
16 Q Okay. And your home address, sir?
17 A **It's**
18 **Maryland.**
19 Q Is located in
20 County?
21 A **Yes, sir.**

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1 Q Doctor, my name is Rodney Gaston. I'm
2 an attorney. I represent . The
3 reason I asked you to be here at your deposition
4 today is to obtain some answers from you with
5 respect to the medical care and treatment that you
6 provided Miss during the,
7 actually, first week in February
8 All my questions will be, unless I
9 state otherwise, would be a -- directed to that
10 course of treatment and Miss death
11 that occurred on December the ,
12 I, I understand that you've had your
13 deposition taken before?
14 A **Yes, sir.**
15 Q I just want to go over some of the
16 ground rules, so we can get through the deposition
17 efficiently.
18 The Court Reporter is here to take down
19 my questions and your answers. The Court
20 Reporter's very competent, but she can't take down
21 both of us talking at the same time. In normal

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1 conversation it's perfectly okay, people interrupt
2 each other on a constant basis. And during the
3 course of the deposition you'll be anticipating my
4 questions, and you'll want to get the answers out.
5 But so that we have a clean record, I'll just ask
6 that you wait until after I finished asking my
7 question before you answer, and I'll try to give
8 you the same courtesy; I'm not -- I'll try not to
9 interrupt you while you're answering my question.
10 Also, all of your answers have to be
11 verbal. The Court Reporter can't take down a shake
12 of the head or a nod.
13 Also, if at anytime you do not
14 understand the question that I'm asking for any
15 reason, stop me immediately and let me know, and
16 I'll try to rephrase the question. Otherwise, if
17 you don't interrupt me, and stop me, and tell me I
18 don't understand what -- the questions you're
19 asking, we'll assume that you have understood the
20 question, and did, and responded accordingly.
21 Do you have any questions before we do?

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1 **A No.**
2 Q Doctor, I believe your attorney sent me
3 a copy of your current curriculum vitae. I
4 received that last night. And I'm going to ask the
5 Court Reporter to mark this as the next exhibit.
6 (Deposition Exhibit No. 13
7 was marked by the Reporter.)
8 Q (MR. GASTON) And I also forgot to add,
9 Doctor, if at anytime during the deposition you
10 want to take a break, you just let us know, and
11 we'll stop, too.
12 **A Thank you.**
13 Q I'll show you what's been marked
14 Exhibit No. 13. I'll ask if you could please take
15 a look at this document.
16 **A Yes, sir.**
17 Q Does that appear to be a current copy
18 of your curriculum vitae?
19 **A Yes, sir.**
20 Q Okay. Thank you, Doctor. Doctor, are
21 are you licensed to practice medicine in the State

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1 of Virginia?
2 **A Yes, sir.**
3 Q Okay. That's not on here, I don't
4 think --
5 MR. : I don't think it is
6 either.
7 Q (MR. GASTON) -- that's why I'm just --
8 and can you tell me when you --
9 **A So does this have to be absolutely**
10 **complete?**
11 Q We would hope so. In, in a medical
12 license, in, in comparison to an article you may
13 have written, a medical license is pretty important
14 for, for the purposes of the deposition, so --
15 **A Well, then --**
16 MR. : Not if you don't use
17 it.
18 Q (MR. GASTON) -- can you tell me when
19 you were licensed according to that?
20 **A About two years ago. I'm -- again, I,**
21 **I do not know.**

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1 Q Approximately two years ago?
2 **A I, I do not know, sir. I'll have to**
3 **check my record to answer that question.**
4 Q Well, are you currently licensed?
5 **A Yes.**
6 MR. : Tell, tell you what.
7 I'll provide you the answer when he was licensed.
8 MR. GASTON: Okay.
9 MR. So we'll research it
10 and check it, and I'll send you a letter.
11 MR. GASTON: All right.
12 Q (MR. GASTON) And are you currently
13 licensed in Virginia?
14 **A Yes, sir.**
15 Q Other than Virginia, and the other
16 states, and the District that's listed on your CV,
17 are you licensed to practice medicine in any other
18 state in the United States?
19 **A I probably am, sir. I will have to get**
20 **you a list of those places.**
21 Q Are you licensed to practice medicine

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1 in the State of Michigan?
2 **A I, I am.**
3 Q Okay. And -- but you're unable to tell
4 me now, definitively, any other states, other than
5 those on the CV -- Virginia and Michigan -- whether
6 you're licensed to practice medicine?
7 **A I am practiced to license (sic)**
8 **medicine in a number of states. I need to get the**
9 **list of those states.**
10 Q You just don't have it in your memory
11 today?
12 **A I, do not. We've applied pretty much**
13 **all the states. I don't know what states I've only**
14 **quali- -- I've only got the license in. I don't**
15 **know what states I've not got the license in.**
16 Q And, and --
17 **A And the purpose of this was not to be**
18 **complete in any way. You know, if I am doing other**
19 **things -- it's, again, a curriculum vitae when you**
20 **send it somewhere, at least the way I look at it**
21 **as, what is the purpose I'm sending it. If a**

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1 **hospital says, for privileges, I print it out and**
2 **send it. So if this is supposed to be complete, I**
3 **would love to know what areas you want it to be**
4 **complete in, and I'm happy to fulfill that.**
5 Q Well, the only reason I'm going over
6 this, Doctor, is because we asked you a question.
7 The first question we asked you on the set of
8 questions that we sent you were to indicate all of
9 your licensures, board certifications, hospitals,
10 nursing group privileges, and memberships. And
11 your response was, See the attached CV, so the only
12 thing I have to go on is the CV.
13 And we asked you, specifically, to list
14 them all in the answer. When you refer us to the
15 CV, I was expecting that the CV would contain all
16 the information that I ask you. That's why I'm
17 going through this line of questioning. So now you
18 understand why I'm asking you these additional
19 questions.
20 **A I --**
21 MR. Wait. You don't need

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1 to do anything more. We'll provide you the
2 information as you need it. And if you want every
3 single license, we'll give you every single
4 license.
5 Q (MR. GASTON) And this is the next
6 question. Doctor, I'll show you what's been marked
7 as No. 8, and I'll ask you if you can identify that
8 document.
9 **A This is -- it says in the Circuit Court**
10 **for Prince George's County, Maryland. Defendant,**
11 **. Answers to Plaintiffs**
12 **Interrogatories.**
13 Q Okay. Do you remember seeing that
14 document before today?
15 **A Yes, sir.**
16 Q Okay. And I think on the next to the
17 last page, or the last page -- could you go to that
18 page and tell me if that's your signature?
19 **A Yes, sir.**
20 Q And were these Answers to
21 Interrogatories truthful when you executed those?

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1 **A Yes, sir.**
2 Q Do you, after reviewing the answers, do
3 you want to make any changes, corrections, or
4 modifications to those answers?
5 **A No, sir.**
6 Q Thank you, Doctor. Show you what's
7 been marked as the Exhibit No. 1, and ask if you
8 ever seen this document before?
9 **A To the best of my knowledge, I have.**
10 **I'm sure this is something we must have talked**
11 **about with my attorney.**
12 Q Okay. And, Doc-, and, Doctor, that is
13 actually your Notice of Deposition to appear here
14 today and to provide testimony. We've also asked
15 you to produce documents, and, and materials, and
16 other items. Can you tell me -- and your lawyer
17 can assist you, if you need assistance -- what are
18 the items that you produced here today in
19 accordance with that deposition?
20 MR. Well, we provide you
21 with a letter itemizing the information that was to

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1 be an attempt to resolve discovery issues between
2 counsel. So that's a product of my work, and Mr.
3 's work to try to address the issues. I
4 think a number of the issues weren't addressed by
5 the stipulation that we arrived this morning, that,
6 that was put on the record at the beginning of the
7 deposition that will resolve, you know, for
8 instance, 23, four, five.
9 Q (MR. GASTON) Okay. But the question
10 particularly is --
11 MR. : What else do you need?
12 Q (MR. GASTON) -- what, what are the
13 documents that you brought here today for your
14 deposition in response to the Notice of Deposition?
15 MR. : What -- we brought
16 what was attached to the letter.
17 MR. GASTON: Okay.
18 Q (MR. GASTON) One thing that was
19 attached to the letter -- and let me, let me show
20 you what's been marked as Exhibit No. 10.
21 MR. GASTON: I'll show counsel --

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1 MR. : Mm-hmm.
2 MR. GASTON: -- to make sure we're on
3 the right page.
4 MR. : Yeah, we are.
5 MR. GASTON: Okay.
6 Q (MR. GASTON) And, as counsel
7 identified, Exhibit, Exhibit No. 10 and the
8 attachments, the only attachments to Exhibit No. 10
9 that I printed off of the e-mail were two pages of
10 a Verizon bill. Would that be accurate?
11 MR. : Right. But we've also
12 provided, in response to the document requests, we
13 provided the CV that you all already went over; we
14 identified the medical records that he reviewed to
15 prepare for the deposition; we provided the, the
16 dec sheet for the insurance; we provided a copy of
17 the deposition; we provided the, the expert
18 reports. So there's a number of documents that are
19 included. We advised you what we were not
20 producing in the letter; we advised you that there
21 were records that we had previously sent to you,

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1 which included no record responses to deposition
2 notices; we have advised you information concerning
3 the medical clinic; we provided you information
4 concerning the previous lawsuits. So what do you
5 want to talk about?
6 MR. GASTON: Okay. I just want for the
7 record to reflect that what counsel and I are
8 talking about is Exhibit No. 10, which is a letter
9 that I received yesterday. And instead of me going
10 through and asking the Doctor if he intends to
11 provide the documents that you already say he's not
12 going to provide, if it's your proffer that this
13 letter contains the Response to the Request for the
14 Production of Documents, it also identifies what
15 documents were produced and what documents you do
16 not intend to produce. Would that be accurate?
17 MR. : That would be accurate.
18 MR. GASTON: Okay.
19 MR. : And if there's any
20 disputes that are remaining after our stipulation
21 today, I assume as Officers of the Court, we'll

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1 work through it. If we haven't resolved everything
2 to your satisfaction at that point, we should have
3 a sufficient record, and you can file any Motion to
4 Compel you think is necessary.
5 MR. GASTON: Right. And I'll just put
6 on the record now that I requested and need all of
7 the documents that I asked for in my Request for
8 Production of Documents. To the extent that they
9 aren't produced here today, then that issue remains
10 in dispute between the parties.
11 Q (MR. GASTON) Doctor --
12 MR. Well, then, I withdraw
13 the stipulation at the beginning of the deposition.
14 MR. GASTON: Okay.
15 MR. If you're going to play
16 that game, there's no point in trying to agree with
17 you. I thought we had agreed to all the, the
18 issues involving the corporate defendants and the
19 financial records, et cetera. You want me now to
20 produce financial records and Board of Directors
21 minutes, et cetera?

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1 MR. GASTON: The, the only issue we
2 have with respect to the corporations is my
3 addition to your proffer this morning with respect
4 to the Because you
5 indicated at the time, in accordance with Dr.
6 Answers to Interrogatories -- and I'll
7 ask him this question as well -- that he was
8 employed by , P.A. It's now
9 merged into , M.D.,
10 LLC. Those are the documents that I would need
11 with respect to the legal entities. I do not need
12 the documents with respect to all of the other
13 entities that are currently named as defendants,
14 but just that legal entity because we have a,
15 apparently, a, a difference of opinion as to
16 whether or not The
17 Maryland, LLC should be a defendant in the case,
18 so --
19 MR. : No, we don't, we don't
20 have a difference of opinion as to whether they
21 should be a defendant in the case. You can make

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1 that decision without my assent. What I'm trying
2 to tell you mas a practical matter is, it doesn't
3 make any difference.
4 MR. GASTON: I understand that, and
5 maybe I can ask the Doctor a couple of questions
6 about the merger --
7 MR. : Sure.
8 MR. GASTON: -- that will eliminate the
9 need for the production of documents.
10 MR. : Okay.
11 MR. GASTON: So let's, let's do that
12 right now.
13 MR. : All right.
14 MR. GASTON: Let's see if we can clear
15 this up.
16 MR. : Good.
17 Q (MR. GASTON) Doctor, in addition to
18 you, we've also brought a suit against several
19 other corporate entities --
20 ,
21 , M.D. LLC; , trading as

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1
2 Now, can, can you tell me whether or
3 not any of those corporate entities existed on
4 February 1st, through February 6,
5 **A Would it make sense I take you through**
6 **the process?**
7 MR. : No, try to --
8 Q (MR. GASTON) Whatever give you --
9 MR. ; -- try to answer his
10 question as best you can. If you cannot answer his
11 question directly, he'll ask another one.
12 **A Okay. for -- the only other**
13 **entity, other than the Maryland -- other than The**
14 **, P.A. that was at that time in**
15 **existence, was a Michigan entity, okay: , USA,**
16 **which was a whole different entity that did only**
17 **treatment of venous disease in Michigan.**
18 MR. : Okay. You've answered
19 his question. Wait for the next question.
20 Q (MR. GASTON) Thank you. Okay. All
21 right. Now, can you walk me through the

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1 organization of P.A. and how
2 that was merged into
3 , M.D., LLC?
4 **A P.A. was our only**
5 **entity in the State of Maryland, D.C., Virginia at**
6 **the time of this event. And we offered services**
7 **for cardiac, thoracic, vascular diseases, and**
8 **venous diseases through the , P.A.**
9 **We went through a structural change in November**
10 **when --**
11 MR. : November of what year?
12 **A November of ' , November of last year,**
13 **when the vein segment separated out and became**
14 **M.D., LLC. And since**
15 **-- and merged with , M.D.,**
16 **LLC doing just the venous part. Everything else**
17 **was separated out and went with a different entity.**
18 Q Okay. Now --
19 MR. : Does that help?
20 MR. GASTON: I think so.
21 Q (MR. GASTON) -- the part of The

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1 , P.A. -- and was that a Maryland
2 corporation?
3 **A Yes, sir, to the best of my knowledge.**
4 Q Okay. And --
5 **A Yes.**
6 Q -- were you either the President --
7 were you the President of that corporation?
8 **A Yes, sir.**
9 Q Okay. There came a time when you
10 decided that you wanted to merge with
11 M.D., LLC?
12 **A Yes.**
13 Q Is that has Maryland corporation?
14 **A That's a Delaware corporation.**
15 Q Delaware corporation. Does it have
16 privileges?
17 **A No. This, again, this is to the best**
18 **of my knowledge.**
19 Q Okay. And is a Delaware corporation
20 also licensed to conduct business in the State of
21 Maryland?

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1 **A To the best of my knowledge.**
2 Q Okay. So it's simply
3 M.D., LLC, for the lack of a
4 better word, swallowed up P.A.
5 in its entirety?
6 **A The venous component of this, the**
7 **cardiac thoracic and vascular component did not**
8 **join -- the , M.D.**
9 **LLC. That -- and, and I think, ultimately, we'll**
10 **need that answer -- that joined**
11 **, which is a separate corporation.**
12 Q Okay. That's -- and because that name
13 isn't on here. So --
14 , is it LLC, or is that the
15 complete full name of that entity?
16 **A It's also Maryland, LLC. Now, I'm**
17 **kind of going into areas which I'm not 100 percent**
18 **sure about, but I'm answering these questions to**
19 **the best of my ability. I, I know where struck --**
20 **things went, but the names and what kind of**
21 **entities they are --**

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1 Q Yeah. And that's sort of important,
2 because --
3 **A -- I can give you those answers.**
4 Q And, yeah, because what --
5 MR. : So, so let me see if I
6 got -- what you specifically want to know is that
7 the cardiovascular component in November of
8 merged into what current entity?
9 MR. GASTON: It's exactly the answer I
10 need.
11 MR. : We will get you that
12 answer.
13 MR. GASTON: Okay.
14 Q (MR. GASTON) And would it be fair to
15 say that at the time of the merger, that whatever
16 the name of the new entity in -- took over all of
17 the assets, debts, and liabilities of the vascular
18 cardiac portion of P.A.?
19 MR. : And, see, that's where
20 you -- you and I are having the source of our
21 difference. The asset that you are obviously

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1 interested in here is the policy of insurance that
2 insured this event through whatever corporate
3 entity was in existence in February of , not
4 November of . And the entity that was insured
5 in February of was P.A.
6 What legal entity that may have been 10 months
7 later isn't relevant from an insurance perspective.
8 And, so, if you want -- and, and you've
9 used the key word here, assets. Obviously, an
10 insurance policy is an asset, but the triggering
11 event here is not November of . The triggering
12 event to make that asset potentially available and
13 satisfy a judgment is the date of the occurrence,
14 which is February . That's why I think that
15 you're treading in a different area than what you
16 are looking for to trigger a coverage.
17 I don't care what the entity was in
18 , in November. I do care what it was in
19 February of , because I want my client to have
20 the maximum insurance coverage available to protect
21 him from any potential claim, such as the one

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1 you're asserting.
2 MR. GASTON: I agree, but I still have
3 to be sure that I have the right legal entity a
4 live legal entity in court, and that's why I'm
5 asking the Doctor whether -- and I think he, he's
6 already indicated that the thoracic --
7 MR. You can, you can pursue
8 that, if you want --
9 MR. GASTON: Yeah, I just want to --
10 MR. : -- and you can, you can
11 spend your legal money any way you want. And if
12 you want to go down that line, you can spend as
13 much time as you want.
14 What I've been trying to suggest to you
15 is, you and I both know this case never will, under
16 Maryland's caps, have a value in excess of $2
17 million, ever. If you want to spend your legal
18 money pursuing what the asset transfer was in
19 November of , feel free.
20 Q (MR. GASTON) And that's the question
21 that I asked you. In -- November 29th of ,

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1 when the thoracic vascular cardiac component of the
2 . merged into
3 is that merger --
4 **A No, I, I --**
5 Q -- reflected?
6 **A -- I think it's the other way around.**
7 Q I'm sorry?
8 **A The cardiac thoracic part was --**
9 Q Yes, I did. I, I misspoke. Thank you,
10 very much.
11 **A Sure.**
12 Q I did, I misspoke.
13 MR. :
14 .
15 MR. GASTON:
16 --
17 MR. : Right.
18 MR. GASTON: -- which is M.D.,
19 LLC, which you're not going to supplement and
20 provide me with the exact correct name of that
21 entity.

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1 Q (MR. GASTON) And the cardiac vascular
2 component of merged into
3 . That the
4 assumed all of the
5 assets and all of the liabilities?
6 MR. : Do you know the answer
7 to that?
8 **A I honestly do not know the correct**
9 **legal answer to that question.**
10 Q (MR. GASTON) Okay.
11 **A I'm really not trying to give you a**
12 **hard time here. I know we all want to get to the**
13 **truth, but I, I do not know the exact answer to**
14 **that question.**
15 MR. : But I -- we're going,
16 to, to ask, and that's who I'll ask, if I have to
17 go to his corporate lawyer.
18 Q (MR. GASTON) And who was the then
19 President of , at
20 the time of the merger?
21 **A I, I own that entity --**

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1 Q Yeah. So it's you?
2 **A -- okay? No, see, but now when we**
3 **start talking about legal asset changes and all, I**
4 **know we went through that with the component,**
5 **we did not go through all the details on the**
6 **side because it was all done very informally, okay?**
7 **So, on record, I don't want to say**
8 **there was an asset transfer, there was an**
9 **agreement, there was this, that. We will get you**
10 **that answer --**
11 Q Yeah.
12 **A -- to the best of our ability.**
13 Q And was it a, an arm's length
14 transaction?
15 **A It was done through our attorneys.**
16 **Whatever needs to be done, they took care of it.**
17 Q Okay. So even though you don't have
18 the answer today to the question, you're telling me
19 that you would be able to get me that answer --
20 **A Absolutely.**
21 Q -- through your attorney at a later

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1 date?
2 **A Absolutely.**
3 Q Thank you, Doctor. That -- and all of
4 the documents that I requested with respect -- as
5 long as I get the answer to that question, I don't
6 believe I'll need any additional documents. But I
7 have to wait and see what your lawyer produces.
8 MR. : So what you're looking
9 for is whether there was a formal asset transfer?
10 MR. GASTON: Right.
11 MR. : Okay.
12 MR. GASTON: Formal, or informal, or
13 any other way you want, want to describe it.
14 Q (MR. GASTON) And, and I, I think,
15 Doctor, you're unable to provide anymore
16 information today regarding the legality of that
17 transfer; would that be a fair statement?
18 **A That, that is a fair statement.**
19 Q We'll move on from that. Okay.
20 Doctor, you're currently board certified in the
21 State of Maryland in cardiovascular and thoracic

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1 surgery; is that correct?
2 **A Yes, sir.**
3 Q Okay. And how many years have you been
4 practicing medicine as a cardiothoracic surgeon?
5 **A Since '98.**
6 Q 1998. And how many hospitals have you
7 performed those surgeries at -- in the State of
8 Maryland since 1998?
9 **A In the State of Maryland, two.**
10 Q Two?
11 **A Yes.**
12 Q And which hospitals would those be?
13 **A Hospital, and**
14 **Hospital. Actually, I've also gone**
15 **to Hospital. And that's -- since we are on**
16 **the record, again, I did go once in a while to**
17 **Hospital, also.**
18 Q Okay.
19 **A All right.**
20 Q Now, have you had a chance to review
21 the medical chart from the hospital for

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1 for her care from February 1st,
2 through February 6, ?
3 **A Yes, sir.**
4 Q And would that include your operative
5 note?
6 **A Yes, sir.**
7 Q Okay. And I believe you also prepared
8 a death report as well?
9 **A Yes, sir.**
10 Q Okay. I'll show you those documents,
11 if you would. It's Exhibit No. 3. Would that be
12 the death report that you prepared for
13 ?
14 **A Yes, sir.**
15 Q And, what, Exhibit No. 4 contained your
16 operative note of the initial surgery, and the
17 operative note of the attempted repair of the last
18 radiograph?
19 **A Yes, sir.**
20 Q Okay. And I understand that you filled
21 out the death certificate for ?

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1 **A Yes, sir.**
2 Q Okay. And I'll show you what's been
3 marked as Exhibit No. 2 and ask if that's a death
4 certificate you filled out, and is that your
5 signature on the death certificate?
6 **A Yes, sir.**
7 Q Okay. The cause of death on the death
8 certificate is right heart failure, cardiac
9 tamponade, bleeding from graft injury. That's A,
10 B, and C in Box No. 23-A. In simpler terms, can,
11 can we agree that Miss died as a result
12 of the lacerated heart graft, which lead to
13 internal bleeding, which then lead to heart
14 failure?
15 **A She died of a lacerated graft that lead**
16 **to bleeding and ischemia of the right heart, and**
17 **altogether. So, right heart injury, ischemia,**
18 **tamponade, all those things together led to her**
19 **demise.**
20 Q All, all caused by the lacerated graft?
21 **A All caused or accentuated by the**

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1 **lacerated graft.**
2 Q And ischemia of the right heart, is
3 that a medical term for tissue death?
4 **A For death of the heart muscle.**
5 **Actually, that is not right. Infarction is death**
6 **of the heart muscle. Ischemia is lack of blood**
7 **supply for the heart muscle.**
8 Q And the lack of blood supply to the
9 heart muscle resulted in what?
10 **A In death of the heart, the heart**
11 **muscle.**
12 Q 'Cause all organs need blood to
13 survive?
14 **A Yes.**
15 Q Is that true?
16 **A Is that a trick question?**
17 Q No, no. It's -- all organs in the body
18 need heart -- need blood to survive, true?
19 **A All go through cervical spinal fluid**
20 **and bathe in some type of oxygen, so --**
21 Q Okay. All right. And it was a lack

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1 of --
2 MR. : Unfortunately, you
3 asked him potentially technical questions.
4 MR. GASTON: Yeah.
5 Q (MR. GASTON) Throughout the course of
6 the deposition, Doctor, I'm going to be asking you
7 if you can explain the procedures, the diagnosis,
8 the treatment, the surgery that you performed on
9 in plain and easy to
10 understand language so that I can understand it,
11 and also so the members of the jury can understand
12 it.
13 **A Yes.**
14 Q If we can try to do that, it might make
15 things a little bit easier. If there comes a point
16 in the deposition where you simply have to use the
17 complex medical terminology, then I understand that
18 as well, so --
19 **A Sure.**
20 MR. : You, you just need to
21 ask your questions, and you'll answer the

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1 questions, and we'll see where we go from there.
2 Q (MR. GASTON) Show you what's been
3 marked as Exhibit No. 6. I want to ask you if you
4 can explain what that is. It's part of the medical
5 chart for Miss
6 **A Sure. This is a venous mapping done**
7 **for evaluation of the veins.**
8 Q Thank you. And, Exhibit No. 7, if you
9 could take a look at this and explain what that is.
10 **A This is a note from the intensivist,**
11 **from the attending M.D. anesthesiologist, which**
12 **states that the patient was intubated, chest**
13 **opened, intra -- and transferred to the OR at 8:52**
14 **a.m.**
15 Q Okay. Doctor, on Page -- if we can
16 stay with that exhibit for just a moment, please.
17 If you can go to Page Two. And have you seen these
18 types of forms before from this hospital?
19 MR. . The only question is,
20 have you seen these kinds of forms?
21 **A I have usually not, sir.**

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1 Q Okay. Have you ever filled out one of
2 these forms for any of your patients at
3 Hospital?
4 **A Not that I can remember.**
5 Q Okay. Have you had a chance to look at
6 this report before this very minute?
7 **A I have not gone in any detail of this**
8 **report before this minute.**
9 Q Okay. I understand that this is
10 called, for lack a better word, a Code Sheet?
11 **A Yes.**
12 Q Where a -- where a person suffers
13 cardiac arrest and stops breathing. Would that be
14 an accurate statement?
15 **A That's what it seems like.**
16 Q Okay. And, Doctor, on Page Two of the
17 exhibit, it looks like at 7:58 a.m. -- now, this is
18 for Miss -- on six -- on February 6,
19 , at 7:58 a.m., her blood pressure was zero;
20 would that be fair?
21 **A It says -- does that mean not recorded,**

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1 **or does that mean zero? I -- it says BP, and**
2 **there's a cross through it.**
3 Q What would you interpret that notation
4 to be in a medical chart?
5 MR. : It's -- since he's only
6 rarely seen these reports, I think you need to ask
7 the person who actually drafted it, would have been
8 the zero or not recorded.
9 **A I would honestly not be able to answer**
10 **it, sir. Usually, when it's zero, they would say**
11 **zero. A, a notation with this, with a cross, means**
12 **I don't -- it was not taken, but I, I do not want**
13 **to interpret what somebody else wrote here.**
14 Q (MR. GASTON) If the patient had a
15 blood pressure, would you expect that those numbers
16 appear in that box?
17 **A If somebody took it at that time.**
18 Q Okay. Now, was Miss 's heart
19 beating on its own on -- 7:58 a.m. on February 6,
20 ?
21 **A Under the rhythm column, it says a.**

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1 **Now, a could mean asystole.**
2 MR. : Go down the bottom.
3 **A Oh, yeah. So a is asystole, so the**
4 **answer is no.**
5 Q (MR. GASTON) Okay. And what does P.A.
6 mean?
7 MR. P.A. is not
8 translated --
9 MR. GASTON: Yeah.
10 MR. : -- at the bottom of the
11 form.
12 MR. GASTON: I'm asking if he knows
13 what those initials might mean.
14 **A I do not, sir.**
15 Q (MR. GASTON) Can you tell from this
16 chart when Miss 's heart began to beat?
17 **A So, based on this chart, it is a from**
18 **7:58 to 8:07; it is pa from 8:08 to 8:14. I do not**
19 **know what pa means, so I cannot answer your**
20 **question after that time. At 8:15, again, it's**
21 **asystolic, and then up to 8:20, it is pa. Then, as**

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1 **we go further, it goes into b-fib 'till 8:30, and**
2 **then at 8:33, it is sr, which is the term usually**
3 **used for sinus rhythm.**
4 Q So would it be fair to say that, from
5 7:58 a.m. to 8:32 a.m., Miss 's heart was
6 not beating according to this chart?
7 **A Without knowing what pa means, that**
8 **seems like a reasonable assumption.**
9 Q Okay. Doctor, if a patient's heart is
10 not beating, how long does it take for the brain to
11 suffer injury and partial brain death?
12 MR. : Assuming there's no
13 resuscitation going on.
14 Q (MR. GASTON) Well --
15 **A That's the key thing. As long as**
16 **there's no circulation to the brain going on from**
17 **some other source --**
18 Q Right.
19 **A -- C-1 being resuscitative measures, it**
20 **takes about three minutes.**
21 Q About three minutes. And for

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1 resuscitative measures to work, it would have --
2 the blood would have to be throwing -- flowing
3 through the arteries up into the brain in order to
4 supply the brain with oxygen, correct?
5 **A Yes, sir.**
6 Q Okay. And when you do -- have you done
7 CPR on a patient before?
8 **A Yes, sir.**
9 Q Okay. There would be -- if the blood
10 pressure cuff was hooked up to the patient, or
11 other blood pressure monitoring was hooked up to
12 the patient, would you be able to see the blood
13 pressure; would it register on the machine while
14 you're doing the chest compressions?
15 **A If you have invasive a line in place,**
16 **an airline in place, you would be able to know**
17 **that. If you do not, it is difficult to know that.**
18 Q Difficult to know that. Also, if, in
19 the patient such as Miss , who has a
20 significant lacerated graft in her heart, would
21 that also impede the flow of blood through her

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1 arteries to a vein?
2 **A In the heart?**
3 Q Throughout the body. If there's a --
4 you have a lacerated, lacerated vein in her heart,
5 which I understand she had in this case, you're
6 doing the chest compressions, is the blood still
7 going through, still going to the vein, or is it
8 being pumped out into the chest cavity as a result
9 of the chest compressions?
10 **A It depends on the effectiveness of the**
11 **chest compressions.**
12 Q Would there by any way to know that
13 from this record?
14 **A Again, to the best of my ability in**
15 **reading this record, there -- let's see.**
16 **Spontaneous assistance. Spontaneous compression.**
17 **Based on just what I've been provided here, I don't**
18 **have any reason to be able to say yes or no.**
19 Q Do you believe that, from the period of
20 time of 7:58 through 8:32 on February 6, that
21 Miss suffered some sort of injury to her

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1 brain from a lack of blood and oxygen going through
2 her brain during that period of time?
3 **A I would not be able to say that, sir.**
4 Q Did you ever provide any advice to the
5 family as to whether or not she suffered
6 brain damage after this entire event was over?
7 MR. : So you're separating
8 out now just the --
9 MR. GASTON: Yeah.
10 MR. : -- 15-minute period to
11 the entire morning?
12 MR. GASTON: Right.
13 MR. : Okay. Go ahead.
14 Q (MR. GASTON) Yeah.
15 **A I do not absolutely recollect my**
16 **discussion with them, but usually in a situation**
17 **like this we do tell the patient that the patient**
18 **-- tell the family that the patient had a period of**
19 **cardiac arrest. We are not sure during that time**
20 **she suffered any kind of brain damage. That's the**
21 **usual for us.**

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1 **Now, I know I'm not supposed to go off,**
2 **but one thing. Based on the people who were there**
3 **at that time, I can guarantee you she got very good**
4 **care, the best possible. Obviously, we all hope**
5 **this would have never happened but, based on the**
6 **doctors who were there, they are very good doctors.**
7 Q Okay. And we'll go into the --
8 **A Sure.**
9 Q -- to that care in just a little bit.
10 I show you what's been marked as
11 Exhibit No. 5. These are some pages I pulled out
12 of the chart. And I'll ask you if you can
13 recognize if your handwriting is on any of those
14 pages first.
15 **A Yes.**
16 Q And then if you can recognize who
17 wrote -- whose handwriting is on those pages.
18 MR. : So, to the first
19 question --
20 **A My handwriting is not on any of these**
21 **papers.**

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1 Q (MR. GASTON) Okay.
2 MR. : Now, let's see if you
3 can recognize anything in writing.
4 **A You know, I --**
5 MR. If you --
6 **A -- will be guessing.**
7 MR. Well, and sometimes
8 guesses are okay because they are trying to figure
9 out who it was. If you have a reasonable sense as
10 to who you believe this handwriting was,
11 understanding that you're not binding that person,
12 that it's actually theirs, but to give him some
13 idea 'cause he's going to want to try to find out
14 who is, you can't do that.
15 **A My assumption would be this is Dr.**
16 **, , and this is**
17 **.**
18 Q (MR. GASTON) Okay. And did you --
19 MR. : And we're referring to
20 the signature at the bottom of Page One of
21 Exhibit -- excuse me -- Five, is it?

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1 THE WITNESS: Yes.
2 MR. : What's the exhibit
3 number here?
4 THE WITNESS: Five.
5 MR. : Five. Yeah, and
6 then --
7 THE WITNESS: Dr. is
8 intensivist at the hospital, and : is a
9 nurse practitioner at the hospital.
10 Q (MR. GASTON) Okay.
11 **A These, I would not be able to identify**
12 **it.**
13 MR. : And you're referring to
14 Page Three?
15 THE WITNESS: Page Three.
16 MR. : Okay.
17 Q (MR. GASTON) Back to Dr.
18 note. Doctor, can you decipher what he wrote on
19 that page for me?
20 **A Oh, that's, that's, to the best of my**
21 **ability?**

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1 Q Yes, sir. It's all I'm asking.
2 **A Responded to code. Patient developed**
3 **cardiac something following --**
4 MR. : Go ahead.
5 **A -- brief episode of the removal pacing**
6 **wires. The rhythm asystole, and then there's**
7 **something else here. Something else, something**
8 **else, something else. Dr. at bedside.**
9 **I'm sorry, sir, I would not be able**
10 **to --**
11 Q (MR. GASTON) Okay. Is that all you
12 can decipher from, from that report, from what you
13 just testified to, Doctor?
14 **A You know, I can pick up words in**
15 **between which, basically, Dr. is at the**
16 **bedside. Intubated word is there. Large clot in**
17 **front of the right atrium. I mean, he's not -- I**
18 **can't read -- in front of, then I see the word**
19 **right atrium.**
20 MR. : Adjacent to.
21 **A Yeah, adjacent to the -- yeah, adjacent**

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1 **to right atrium. Then he's named the medications**
2 **Atropine, Vasopressin, sinus rhythm with palpable**
3 **pulse, respiratory OR for washout; hydrotropes**
4 **would require something.**
5 Q (MR. GASTON) Thank you, very much.
6 Doctor, do you remember when Miss first
7 became your patient, the approximate time?
8 **A She'd come to the office. That's when**
9 **she first became my patient.**
10 Q Okay. And was she referred by another
11 doctor?
12 **A Yes, sir.**
13 Q And what doctor was that?
14 **A That was Dr.**
15 Q And do you know Dr.
16 **A Yes, sir.**
17 Q Does Dr. -- has he referred
18 patients to you in the past?
19 **A Yes, sir.**
20 Q Okay. Now, did you conduct an
21 examination of Miss

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1 **A I met with Miss**
2 Q Okay. And what was the purpose Dr.
3 sending Miss to you for further
4 medical treatment?
5 **A Miss had ischemic heart**
6 **disease, and also had a mild to moderate myocardial**
7 **devastation. That is why he had sought my**
8 **attention with respect to Miss**
9 Q Okay. Did she have any carterization
10 (sic) procedures before you initially saw her?
11 MS. : Catheterization?
12 Q (MR. GASTON) Catheterization.
13 **A Yes, sir, she did.**
14 Q Okay. And do you know what the results
15 of, of the catheterization was?
16 **A She had severe triple vascular heart**
17 **coronary artery disease.**
18 MR. : Keep your voice up a
19 little bit.
20 Q (MR. GASTON) Severe triple vessel --
21 **A Blockages in her coronary arteries.**

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1 Q Okay.
2 MR. GASTON: May I ask Madam Court
3 Reporter mark this as the next exhibit?
4 (Deposition Exhibit No. 14
5 was marked by the Reporter.)
6 (Off-record discussion.)
7 Q (MR. GASTON) Doctor, I show you what's
8 been marked as Exhibit No. 14. This the medical
9 records that your attorney has provided to us. And
10 what I pulled out, I believe, is the Cardiac
11 Catheterization Report for the cardiac
12 catheterization that was done on
13 on January 14th, . And I ask if, if that is
14 what that report reflects?
15 **A Yes, sir.**
16 Q Okay. And, Doc, could you explain to
17 me from the report, and are you able to identify
18 the arteries that were partially or 100 percent
19 blocked from that report?
20 **A Yes.**
21 Q Is it possible to name those for me?

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1 **A Yes, sir.**
2 Q All right. And if you could do so.
3 **A The left anterior descending had 50**
4 **percent blockage in the proximal part; it had 60**
5 **percent blockage in the mid-part, 60 to 70 percent,**
6 **and had diffuse disease in the rest of it, in the**
7 **distal segment. The first diagonal, which is --**
8 **had 80 to 90 percent blockage, had -- and then an**
9 **additional 80 percent blockage, and the second**
10 **diagonal had an ostial 90 percent blockage. The**
11 **circumflex, mid-circumflex was occluded a hundred**
12 **percent, and the first of two was marginal, was 80**
13 **percent blocked. The right coronary artery had**
14 **severe diffuse disease. The middle part of it**
15 **showed a 95 percent blockage, and the distal part**
16 **of it showed a hundred percent blockage. It's also**
17 **noted that the patient had two plus mitral**
18 **regurgitation and had ejection fraction of 40 to 45**
19 **percent.**
20 Q In order to understand where these
21 arteries are on the heart, I brought a heart model

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1 with me. Would you be able, based upon your
2 experience as a cardiac surgeon and based upon that
3 cardiac report, be able to tell me, by using a
4 heart model, where all of these vessels are?
5 **A Absolutely.**
6 Q Thank you, Doctor.
7 THE VIDEOGRAPHER: Watch your
8 microphone.
9 (Off-record discussion.)
10 Q (MR. GASTON) Okay. And I presume
11 you've seen a, a model of the heart like this
12 before in your practice?
13 **A Not exactly this one, sir, but --**
14 Q So what --
15 **A -- I have seen a model of the heart.**
16 Q All right. You think that the model
17 that I brought with me today fairly and accurately
18 depicts the structure of the human heart and the
19 vessels, although it's about two to three times
20 larger than the normal human heart?
21 **A Yes, sir, it does.**

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1 Q Okay. And if you could possibly point
2 the heart to the camera, we'll let the cameraman --
3 **A It okay to stand up,and --**
4 Q Sure, Doctor, whatever you like to do.
5 As comfortable as you can.
6 **A Okay.**
7 Q And I think the first you said, the
8 left anterior descending.
9 **A This is the left anterior descending**
10 **(Indicating).**
11 Q Okay. It was 50 percent proximal, 60
12 percent mid -- is it middle?
13 **A Fifty percent proximal --**
14 Q Okay.
15 **A -- mid is 60 percent, and -- 60 to 70**
16 **percent -- and then there is diffuse dis-, disease**
17 **in the apex.**
18 Q Okay. And we're talking about
19 proximal. Is that closer to the top of the heart?
20 **A Yes, sir.**
21 Q Okay. Thank you, Doctor. And what is

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1 the next artery?
2 **A The next one are the diagonals, which**
3 **are the branches that come off of the anterior**
4 **descending. So these are the diagonals**
5 **(Indicating). And then we're talking about the**
6 **obtuse marg- -- the circumflex, which is, which**
7 **wraps around the heart, and these are obtuse**
8 **marginals, these (Indicating).**
9 Q Can you turn it to me a little bit this
10 way?
11 **A (Witness complied.)**
12 Q Great. Thank you, Doctor.
13 **A These branches are the obtuse**
14 **marginals.**
15 **A And here we have the mid-circumflex was**
16 **a hundred percent blocked, and then the obtuse**
17 **marginals, the first one, was 80 percent blocked.**
18 **And, then, the right coronary artery is the one**
19 **that goes over --**
20 Q Can you turn it?
21 **A -- on this side --**

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1 Q Mm-hmm.
2 **A -- that's the coronary artery, and then**
3 **supplies blood to this area of the heart. And the**
4 **right coronary artery was 95 percent blocked, and**
5 **then the distal part was a hundred percent blocked.**
6 Q Okay. Thank you.
7 **A And then --**
8 Q Okay. Now, based upon -- and if you
9 want to keep the model there, right there, based
10 upon your review of the catheterization report and
11 any other evaluation you made of Miss
12 what was your course of treatment that you
13 recommended for her?
14 **A The course of treatment recommended to**
15 **her --**
16 MR. : For, for the a
17 second -- because of the way he didn't include the
18 regurgitation, so just address for the moment the
19 coronary artery disease component of this.
20 Q (MR. GASTON) Right. And, for the
21 purpose of the deposition, it's my understanding

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1 that you did not do any repair to the mitral valve.
2 MR. : Right.
3 **A Yes.**
4 Q (MR. GASTON) We're going to leave that
5 part of it out. I just want to talk about the
6 coronary bypass work that you did.
7 **A Okay.**
8 Q So if you could explain the course of
9 treatment that you recommended for Miss
10 with respect to the coronary arteries.
11 **A Okay. So once we get a referral from a**
12 **cardiologist, it's -- the discussion happens, is**
13 **this patient the right patient for conservative**
14 **management, or for surgical management. And here**
15 **the decision was that we will take over for**
16 **surgical management and treat her with coronary**
17 **artery bypass surgery.**
18 Q Okay. And, based upon your experience
19 as a cardiac surgeon, what is the operation that
20 you intended to perform on Miss
21 **A It's kind of hard to take the mitral**

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1 **valve position out of this, because even though we**
2 **didn't do anything, that was important in the whole**
3 **decision-making process. So is it okay if I --**
4 Q Sure.
5 **A -- conclude it, conclude it.**
6 Q You, you, you can. I just tried to
7 streamline it. But go ahead.
8 **A Okay.**
9 Q If you're comfortable with that Doctor,
10 go right ahead.
11 **A So can you repeat the question one more**
12 **time, please?**
13 Q Yeah. What is the operation that you
14 intended to perform on Miss
15 **A So the, the purpose of the operation**
16 **was to increase blood supply to her heart in a way**
17 **that we can then evaluate whether the valve still**
18 **needs to be done or not once her heart is getting**
19 **better blood supply.**
20 Q Okay. And before going into the
21 operation, did you have an idea of which of the

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1 arteries you were going to perform bypass surgery
2 on?
3 **A You know, the decision-making in**
4 **patients like Miss is this: That we**
5 **have to given increased blood flow to the inferior**
6 **and lateral walls, because that's where the mitral**
7 **valve is hooked to, and both the inferior and the**
8 **lateral wall had a hundred percent occlusion of the**
9 **blood vessels. So it's rare that we can decide**
10 **this, this, this, where I'm going to go for the**
11 **bypasses, because patients like her have very**
12 **diffuse disease. We say, okay, as long as I can**
13 **bring increased blood flow to these two areas,**
14 **that's my primary target. And then we go in, and**
15 **we see in her.**
16 **In some cases, the first obtuse**
17 **marginal may be an easy target; in some cases the**
18 **final -- the third marginal may be the final**
19 **target. So we don't really sketch it out in a**
20 **patient like her, that I'm going to go here, here,**
21 **here, here, here, because of the nature of the**

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1 **distal vessels that we find. Is that a reasonable**
2 **answer?**
3 Q It's my understanding you knew you were
4 going to have to perform some bypass surgery on
5 her, but the exact location of the bypass was going
6 to have to wait until you actually opened up her
7 chest, and looked at the heart yourself?
8 **A Yes, sir.**
9 Q Okay. So -- now, before this, you have
10 to make a determination as to which vein in her
11 body you're going to use for the grafting process?
12 **A Yes.**
13 Q Okay. How did you do that?
14 **A You know, that's where, in her case, we**
15 **needed extra help with an ultrasound to see what is**
16 **the nature of her veins; are veins usable in her.**
17 **And, consequently, we did the study that you had**
18 **talked about earlier, and we found that the veins**
19 **were -- they were not ideal, but quite reasonable.**
20 Q Okay. So based upon the Doppler study
21 that we've --

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1 **A Yes.**
2 Q -- already identified, you believe that
3 the veins in her leg were suitable for your
4 purposes?
5 **A Were, yes.**
6 Q Okay. Now, was there a decision made
7 as to whether to take the vein out of the left leg
8 or the right leg?
9 **A You know, she had had a stripping**
10 **procedure done in the past, but the decision was**
11 **made to make -- to take the vein.**
12 MR. : Jury's not, the jury's
13 not going to know what a stripping procedure is, so
14 why don't you explain what a stripping --
15 **A She had surgery for venous disease on**
16 **her right leg. And, based on the ultrasound, we**
17 **identified the vein that would be appropriate.**
18 Q (MR. GASTON) And did you use a vein on
19 her left leg?
20 **A Yes, sir.**
21 Q Okay. And --

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1 MR. You want to make sure
2 you got your lefts and rights straight. You can
3 always look at the records to make sure.
4 **A I see --**
5 Q (MR. GASTON) On your operative note,
6 it should be this, Doctor. I have it in my hand,
7 actually. There you go, Doctor.
8 **A Yeah. According to the operative note,**
9 **a left pie (phonetically) incision was made, and**
10 **vein was harvested from the left side.**
11 Q Okay. Now, is that done there -- is
12 that done immediately before the heart graft
13 surgery, or is that done hours or days before?
14 **A The harvesting of the vein?**
15 Q Yes, sir.
16 **A It's done simultaneously.**
17 Q Okay.
18 **A So we have a team working down on the**
19 **leg that takes the vein out --**
20 Q Okay.
21 **A -- under the physician supervision.**

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1 Q Okay. Now, from your operative note,
2 can you tell me which is -- which members of your
3 team were working to harvest the vein out of the
4 Miss 's left leg?
5 **A You know, according to my operative**
6 **note, the assistant is (phonetically) --**
7 **and we could have had a second assistant or a third**
8 **assistant who was not noted here -- and it's the**
9 **assistant who take the vein.**
10 Q Do you know in this case whether or not
11 it was Mr. or some unknown person,
12 unidentified person, who removed the vein from Miss
13 s leg?
14 **A I would not be able to say based on the**
15 **note I have, sir.**
16 Q In -- and this is an operative report
17 that you dictated following the procedure?
18 **A Yes, sir.**
19 Q Okay. Is there a reason why you -- if
20 you believe that there was another person assisting
21 in the operation, that you didn't name that person

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1 in your operative note?
2 **A There is no reason for that, sir.**
3 Q Do -- in your habit, if you will --
4 **A I should be able to get that answer,**
5 **though, for you.**
6 MR. : I was going to say, you
7 just handed one portion of the chart. If you want
8 him to look at the other portion of the chart, we
9 could do that.
10 Q (MR. GASTON) Let me see.
11 **A You should also hand --**
12 MR. : Yeah, hold on, hold on.
13 Yeah.
14 (Pause.)
15 MR. : Just make sure I give
16 you the right date. Is that the first or the
17 fifth?
18 THE WITNESS: It's the first. Yeah,
19 it's Mr. (phonetically) -- he was the other
20 assistant -- so it would be either , and
21 Miss -- or Mr.

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1 Q Okay. And when you mean assistant, do
2 you mean physician's assistant?
3 **A These are surgical assistants, sir.**
4 Q Surgical assistants. Is there a
5 difference between a surgical assistant and a
6 physician's assistant?
7 **A Yes, sir.**
8 Q What's the difference, Doctor?
9 **A A physician assistant is a different**
10 **certification than a surgical assistant. Physician**
11 **assistants could help you with practicing in an**
12 **office setting; they could, in fact, even see**
13 **patient, on their own, while a surgical assistant**
14 **is specialized to help you in the operating room**
15 **with surgery.**
16 Q Okay. And, so, is it fair to say that
17 during the operative procedure, the surgical
18 assistants who were assisting you, you would be
19 able to direct them to perform whatever procedure
20 you felt was reasonable and necessary on the
21 patient, and they would have the ability to do

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1 that?
2 MR. : Well, there's a statute
3 about this, so --
4 MR. GASTON: Well --
5 MR. : -- I, I don't think
6 your, your overreaching description is appropriate.
7 If you're --
8 MR. GASTON: Okay.
9 MR. -- talking about
10 coronary artery bypass surgery, and, and grafting
11 in obtaining veins, that's a very specialized area.
12 MR. GASTON: Okay.
13 MR. : So, if you're asking it
14 in that context, I think it's appropriate.
15 Q (MR. GASTON) In the context of this
16 operation on Miss , what could the
17 surgical assistants -- either Mr. or Mr.
18 -- have done to assist you; what were they
19 permitted to do?
20 **A Any surgical assistant who we work**
21 **with --**

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1 MR. : Just try to define and
2 limit it --
3 **A -- is --**
4 MR. : -- to this case,
5 because we're -- we don't want to know all the
6 general practice issues --
7 THE WITNESS: Yes.
8 MR. : -- of how they can do
9 it in other cases. This case.
10 **A They do surgical -- they, they do parts**
11 **of a surgical procedure under the direct**
12 **supervision of the physician, at the direction of**
13 **the physician, to help accomplish the goals in the**
14 **most efficient manner.**
15 Q (MR. GASTON) Okay. And I'm looking
16 at -- to those parts of the surgical procedures for
17 this patient during this operation that they can do
18 under your direct supervision.
19 **A They can take the vein out for us under**
20 **direct supervision.**
21 Q Is there anything else they can do?

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1 **A They --**
2 MR. : Is there anything else
3 they did do in this case?
4 Q (MR. GASTON) Well, is it -- is there
5 anything else they, they could have done,
6 generally, for this type of operation for Miss
7 -- Miss ?
8 **A See, this operation involves a step**
9 **of -- I mean, just like in work you do, there's**
10 **multiple steps, so -- and all those steps need more**
11 **than two pair of hands, so I, I really don't get**
12 **the exact meaning of your question. This is, it's**
13 **like a team orchestra. And does he help me tie the**
14 **knot down on the aorta? Absolutely.**
15 Q That's what I'm asking for. Can, can
16 you go --
17 **A But, see, it's always been a vague**
18 **legal issue what kind of surgery, that's why I'm**
19 **trying to be careful. I mean, they are our**
20 **partners in the surgery, but my absolute**
21 **responsibility. That's the best answer I can give.**

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1 Q Well, you mention one thing that you do
2 is tie the suture down.
3 **A Okay. So let me start from the --**
4 **again, I don't know. They can do pretty much every**
5 **part of the incision where I need more than two**
6 **hands to accomplish something.**
7 Q Okay.
8 MR. : But it's being done
9 under your direct supervision?
10 THE WITNESS: Absolutely.
11 MR. : Okay.
12 Q (MR. GASTON) So whenever you need them
13 to help you with something during the surgical
14 process, you ask for their help, and they can
15 provide the assistance?
16 **A Absolutely.**
17 Q Now, is there anything that they --
18 other than taking the vein out, which I think you
19 said they did not on their own, but they did
20 themselves while your there --
21 **A Yes.**

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1 Q -- is there any other part of the
2 procedure that you can recall from your notes, from
3 your operative notes or from your own memory, that
4 they did, quote, on their own, understanding that
5 with your supervision, but something that they did
6 on their own?
7 **A But, see, even taking the vein out is**
8 **not on their own. So I'm opening the chest, I'm**
9 **doing stuff up here. Here we -- okay -- can I make**
10 **an incision here? Sure, make an incision here.**
11 **Hey, Doc, what do you think about the vein; is this**
12 **good enough here; can we take it; do I need to go**
13 **in the other leg; what do you think about this**
14 **branch, is it too big to snip? So it's, it's a**
15 **constant communication, so I don't want to give you**
16 **a feeling that they are on their own doing it.**
17 Q I didn't mean to suggest that they
18 were. What I meant, on their own, I mean, they're
19 the ones with, with the scalpel and the retractor,
20 and taking out the vein, because you identified
21 that as something that the surgical assistants do

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1 separate and apart from your tasks with the chest.
2 Is there any other activities or tasks that the
3 surgical assistants do with their own two hands
4 that you don't have to be right there and assisting
5 them to perform the function?
6 **A Again, I don't think they do anything**
7 **without us right there. In fact, if I have to go**
8 **for a bathroom break, the surgery stops at that**
9 **time.**
10 Q That was going to be my next question.
11 **A Okay. So that's --**
12 Q If they -- you must be in the operating
13 room anytime a surgical assistant is going to put
14 their hands on the patient?
15 **A Now, I don't know for skin closure.**
16 **That may be the only exception that, you know, if I**
17 **have to leave and the skin is being closed, that**
18 **that may be the exception. But, otherwise, yes, we**
19 **have to be in the room anytime a surgical assistant**
20 **is doing anything to our patient.**
21 Q Okay. And if you have to leave the

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1 room for whatever reason, then the operative
2 procedure has to stop?
3 **A Has to stop.**
4 Q Okay. And your surgical assistants --
5 **A So there's two ways I can leave the**
6 **room. Either my partner needs to come in, or**
7 **this -- the surgery has to stop.**
8 Q Okay.
9 **A Partner, meaning another surgeon.**
10 Q Okay. And have there ever been times
11 during the 4,000 surgeries you performed that a
12 surgery had to stop for whatever reason?
13 **A You know, I'm usually not of that age**
14 **that I have to go too many times to the bathroom**
15 **yet, but have there been times? Absolutely, there**
16 **have been times somebody calls you from the cath**
17 **lab, hey, there's a patient who's in distress; can**
18 **you come help us out? There's no other surgeon in**
19 **the hospital at that time, and you feel you're in a**
20 **safe position --**
21 Q Can --

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1 **A -- but --**
2 Q Thank you. Can you tell from your --
3 let me ask you a question. Do you have an
4 independent recollection, as we're sitting here
5 now, back to February 1st when you operated on Miss
6 that surgical procedure, do you have an
7 independent recollection of that?
8 **A I honestly do not.**
9 Q Okay. So your testimony today in a
10 court would have to be based upon the medical
11 charts and your own operative note; would that be
12 correct?
13 **A Absolutely.**
14 MR. : And his normal
15 routines.
16 MR. GASTON: Well, we'll get to normal
17 routines in a second, but --
18 MR. ; Well, you didn't
19 include it.
20 MR. GASTON: Well, we'll, we'll get to
21 that in a minute.

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1 Q (MR. GASTON) You just don't have any
2 independent recollection of this pro- --
3 **A No.**
4 Q -- cedure? So there would be no way to
5 know whether or not you had left the room
6 temporarily for an emergency or a call of nature in
7 this case?
8 MR. . My understanding is --
9 MR. GASTON: Wait a minute. Let me ask
10 the question, then you can object.
11 MR. / : Well, no, no, no.
12 You're asking, would he have understanding. Now,
13 in order to answer that, he has to look at the
14 operative record to see if there is any reflection
15 of a departure from the room, because breaks and
16 substitutions are normally documented, reliefs are
17 documented. And none of that is documented, except
18 for the circulating nurse.
19 Q (MR. GASTON) Well, Doctor, I don't
20 know if all those things are supposed to be
21 documented, and your lawyer can't testify to that.

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1 In your practice, if you to have leave for a minute
2 to use the restroom, or you have to take an
3 emergency phone call, do you always, every single
4 time, write in the operative note, I had to leave
5 the OR room for one minute? Do you always note
6 that in your report?
7 MR. : You're asking if he
8 knows it?
9 **A I'll tell you it's -- the, the nurses**
10 **in the room are -- and I have not looked at my**
11 **notes from that perspective, but if there's a**
12 **substitution, if there is a stop, the nurses in the**
13 **room will note that.**
14 Q (MR. GASTON) So you're relying upon
15 the nurses to make that notation in the chart?
16 **A To the best of my knowledge, they will**
17 **be the ones who will be making that note.**
18 Q Do you ever dictate that in your
19 operative reports?
20 **A It is so rare, sir, that, you know, we**
21 **leave a procedure, like this one patient that I**

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1 **tell you about, when somebody was coding**
2 **downstairs. And that was not this case, because I**
3 **know the other -- I remember the other patient.**
4 **A -- it's not an issue.**
5 Q Well --
6 **A If this was happening even once a week,**
7 **then one would go there. But we just -- these**
8 **patients are our responsibilities. We are -- and,**
9 **believe it or not, we take our responsibility very,**
10 **very seriously. And if somebody's chest is opened,**
11 **you usually don't just walk out of the room.**
12 Q Back to my original question. Was --
13 do you, yourself, dictate that in your operative
14 note when you have to leave the operating room?
15 **A The one time I went down for that**
16 **bleeding patient, yes. Not just -- I also made a**
17 **note on that bleeding patient that this is where I**
18 **am for this bleeding patient.**
19 Q And --
20 **A So, yes, in that situation, a note was**
21 **made.**

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1 Q Okay. Now, when the vein graft was
2 harvested from Miss left leg, is there
3 more than one way to harvest the vein graft?
4 **A Yeah.**
5 Q Can you tell me, is there an open
6 procedure where you make incision along the
7 person's leg, spread the skin to have full access
8 to the graft; is that one way it can be done?
9 **A That's one way it's done.**
10 Q Is another way by a less invasive
11 laparoscopic procedure?
12 **A Yes, sir.**
13 Q Do you know in this case what procedure
14 you recommended for the removal of the graft?
15 **A Let me again refer to my op note.**
16 **Yeah, we used the endoscopic fashion.**
17 Q Endoscopic. Okay. During the
18 endoscopic procedure, is there some tugging that
19 happens on the vein in order to get it out of the
20 leg when you use the endoscopic procedure?
21 **A Yes, sir.**

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1 Q Do you believe that the vein that was
2 harvested from Miss 's leg suffered any
3 further injury, tearing, any adverse effect by
4 using the endoscopic procedure to remove the vein?
5 **A No, sir.**
6 Q So when you had that vein -- when the,
7 when the surgical assistants removed the vein,
8 would it be fair to say that you visually inspected
9 it --
10 **A Absolutely.**
11 Q -- and found it to be suitable for the
12 use?
13 **A Again, I don't remember the specifics**
14 **of this case, but that's kind of what you do. You**
15 **can use that vein, so you inspect it, you see which**
16 **portions of this I can use, which portions of it I**
17 **cannot use, and you make that call.**
18 Q And if you had determined that portions
19 of the vein were not usable, you simply would not
20 use that for your procedure, correct?
21 **A For that portion.**

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1 Q For that portion.
2 **A See, the vein is this long**
3 **(Indicating), you need two grafts. You say, from**
4 **here to here I can use it, here to here I can use**
5 **it; this part is not usable, I won't use it.**
6 Q Okay. And after the vein was
7 harvested, you made your analysis as to which
8 portions of the vein would be suitable for the
9 surgery, and then you prepare-, prepared to do the
10 grafting procedure?
11 **A Yes, sir.**
12 Q Okay. Now, do you know whether or not
13 both Mr. or, or I'm going to assume --
14 **A is what we call him, so --**
15 Q I'm sorry?
16 **A , the other guy, Mr.**
17 **(phonetically) --**
18 Q ?
19 **A We just call him ,**
20 Q . Okay. There two gentlemen?
21 **A Yes.**

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1 Q Do you know if both of them continued
2 to assist you with the cardiac bypass procedure, or
3 was it simply Mr. ?
4 **A Mr. 's the senior person. So,**
5 **typically, Mr. is there for the whole case,**
6 **and comes in whenever we need him.**
7 Q Okay. Now, I'm going to jump to the
8 end of the procedure.
9 **A Sure.**
10 Q I believe the last thing that's done
11 before the chest is closed is the placement of the
12 pacing wires?
13 **A Yes.**
14 Q Okay. Do you know, from reading your
15 operative note in this case, who placed the pacing
16 wires in Miss s chest?
17 **A No, sir, I do not know from reading the**
18 **op notes. It's --**
19 Q Is there a reason why, in your
20 practice, you don't write in the operative note
21 whether you or your surgical assistant actually

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1 placed the pacing wires in the patient's chest?
2 **A There is no reason to write that, sir.**
3 **It's all my responsibility. And, see, whoever**
4 **places a stitch, it's the surgeon.**
5 Q So, ultimately, your responsibility for
6 that action?
7 **A For everything that happens to this**
8 **patient.**
9 Q And that's why you don't name in your
10 report whether you did do it, or whether someone
11 else does it?
12 **A See, it's -- again, like I said, it's,**
13 **it's like an -- and I, I love that word, orchestra,**
14 **because it makes me feel good about what we do --**
15 **that, you know, it's, as you're closing the chest,**
16 **there's a routine we follow.**
17 **And Mr. and I have worked**
18 **together for a long period of time. It's -- if**
19 **there's bleeding happening on this side, he can**
20 **see, see better, he looks at that bleeding; I can**
21 **see the bleeding better. If he said, hey, this**

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1 **is -- do we need to put a stitch here, Dr.**
2 **? Okay, let's put a stitch here. If the**
3 **aorta bleeds here, you know, one person puts the**
4 **finger on it, the other person stitches it.**
5 **But is it his responsibility because he**
6 **put the stitch in the aorta? No. It's my**
7 **responsibility, and I'm there making that decision**
8 **whether we going to do it or not. So that's why**
9 **it's kind of immaterial -- and, please, I'm not**
10 **being disrespectful --**
11 Q Mm.
12 **A -- as to who put that stitch. It was**
13 **done under my responsibility, under my direct**
14 **supervision.**
15 Q But in this case, did you ask Mr.
16 if he remembered where -- whether --
17 **A No, sir, I have not.**
18 Q Again, and here's, here's --
19 **A So, so I apologize.**
20 Q -- for interrupting --
21 **A I apologize.**

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1 MR. . Can I help you to get
2 where you need to go -- I think you need to go?
3 MR. GASTON: Right.
4 MR. : If you ask him whether
5 he determined where the pacing wires were placed
6 before the chest was closed, then you're going to
7 get to where you need to go.
8 As to who placed it, the decision was
9 when it was placed, he was satisfied with the
10 placement.
11 MR. GASTON: I'm going to get -- I
12 will -- that's like my third question down the
13 road.
14 MR. : Sure.
15 THE WITNESS: I, I apologize. Didn't
16 mean to --
17 Q (MR. GASTON) It's, it's okay. I just
18 want to know if you spoke to Mr. anytime
19 after Miss 's death and talked about who
20 placed the pacing wire.
21 **A No, sir.**

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1 Q Did he call up and talk to you about
2 this case after Miss 's death?
3 **A You know, patient's demise is always --**
4 **it's, it's a, it's a big deal, okay? And , Mr.**
5 **, you know, we were a part of the team, and we**
6 **were all pretty shaken by that, okay? And these**
7 **kind of things happen. Once in a lifetime is, is a**
8 **little too much, okay?**
9 **The only words that everybody -- again,**
10 **see, as a leader of the team, when something bad**
11 **happens to a good team, it's my responsibility to**
12 **tell them, guys, we going to be fine. And we're**
13 **not even thinking of a lawsuit; we're thinking of**
14 **something much more serious here, our patient. And**
15 **what -- not -- , the only thing**
16 **he said is, --**
17 MR. : So he's not asking
18 about -
19 **A No, he --**
20 MR. -- he's asking about
21 , so answer the question. He's going to you --

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1 **A Yeah.**
2 MR. -- get to the question
3 about that. Ask the -- answer the question.
4 **A But k --**
5 MR. Listen, listen. Answer
6 the question.
7 **A Okay. With , the only thing**
8 **mentioned was, everything was done as always. This**
9 **is the only statement that was exchanged.**
10 Q (MR. GASTON) And did you have a
11 conversation with
12 **A Not, not . It was -- see, is**
13 **the junior guy, so it's -- with , again, the**
14 **only statement made was --**
15 MR. He hasn't asked you
16 that yet. Wait for the question.
17 **A No, I, I'm sorry.**
18 MR. Answer the questions.
19 **A I, I did not have a conversation with**
20
21 MR. There you go.

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1 Q (MR. GASTON) Okay. Okay. So the only
2 conversation you had with Mr. regarding Miss
3 leath was you said everything was
4 done?
5 **A That, that's what I remember.**
6 MR. : Wait for the question.
7 Q (MR. GASTON) It's okay. Everything
8 was done as usual?
9 **A That's all, what I remember.**
10 Q Okay. And you never went back to try
11 to remember, or recall, or figured out who actually
12 placed the pacing wires in Miss chest?
13 **A No, sir.**
14 Q And there be no way for you to do that
15 now?
16 **A No, sir.**
17 Q Well, let's get back to the bypass
18 itself.
19 **A Sure.**
20 Q Now, we're at the point of the
21 procedure where Miss in the operating

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1 room. The vein has been harvested. You take a
2 look at the vein. You figure out what portions are
3 good for the operation. Okay. Can you tell me
4 which is the first graft that you performed on Miss
5 ?
6 A **Let me refer back to my op note. The**
7 **first graft was anastomosis between the vein graft**
8 **and the obtuse marginal two.**
9 Q Okay. Obtuse marginal two, I have no
10 idea what that is --
11 A **Sure.**
12 Q -- so if you could help me out on the
13 heart?
14 A **So if that's a vein graft going to this**
15 **side of the heart, and that would be going -- so**
16 **this is an obtuse marginal one; this would be**
17 **obtuse marginal two, to this artery.**
18 Q Okay. Now -- and that means that one
19 part of the vein would have to be attached --
20 A **To --**
21 Q -- where your finger is. And where

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1 would the end of that vein be attached to?
2 A **So, before I go there, it also went to**
3 **obtuse marginal one, so --**
4 Q I got, I got something that might help
5 us. Hold on one second.
6 (Pause.)
7 Q (MR. GASTON) Doctor, I know we're not
8 in the operating room --
9 A **Oh.**
10 Q -- and this is simply for illustration
11 purposes only. And if you want to tell me where I
12 can cut the end of that tube off.
13 A **So this is how this would go,**
14 **typically.**
15 Q Okay. And where would the end of
16 that --
17 A **Onto the aorta here.**
18 Q Right up there?
19 A **Yes.**
20 Q Okay. If I can just take that back
21 from you real quick.

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1 (Pause.)
2 Q (MR.) Now, this is a little
3 crude, but I'm just trying to understand how these
4 grafts go on the heart when you get done with your
5 operation. So I'm going to try to stick it on
6 right there. Now, do you say it was --
7 A **Yeah.**
8 Q And, actually, you grafted two of the
9 arteries with the one vein; would that be true?
10 A **Yes.**
11 Q Okay. So this one goes across here.
12 Does it also lay on this one here?
13 A **Yes.**
14 Q Okay. That's good. And we have the --
15 now, does this go into the top up here?
16 A **Yeah.**
17 Q All right. See if we can put that on
18 as best as we can. Hmm. How's that look?
19 A **Good.**
20 Q Okay. All right. So that's the, so
21 that is the, the first graft that you did.

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1 Now, in our illustration, we have this
2 blue thing that we'll call the vein.
3 A **Yes.**
4 Q It's sticking a little bit up, apart
5 from the heart.
6 A **Yes.**
7 Q In the actual operation, do you try to
8 take out as much slack as you can to have it lay as
9 close to the heart as you can?
10 A **You know, it's the -- the adage is**
11 **that, a thousand long grafts before a short**
12 **graft --**
13 Q Okay.
14 A **-- okay? So you don't want to give too**
15 **much, but you don't want it, want it to be too**
16 **tight either. So you just leave it with some**
17 **laxity here so that if the heart is to expand, you**
18 **know, the heart goes into some post operative heart**
19 **failure, the heart gets bigger, you need to have**
20 **that extra freedom so that the graft doesn't get**
21 **too short.**

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1 Q Okay. Now, do you know how much, in
2 the terms of centimeters, or quarter of an inch, or
3 half an inch of laxity, you want to leave in the
4 graft in order to account for the beating of the
5 heart?
6 **A It's not just the beating. It's also**
7 **the, the heart getting bigger or smaller, okay?**
8 **Especially what you're worried about is some kind**
9 **of post-operative failure where the heart is now**
10 **bigger than what you saw at the time.**
11 **If the pulmonary artery pressures go up**
12 **post-operatively, this artery, which is this much,**
13 **becomes much bigger. And if your graft is already**
14 **tight, then when this gets bigger, it's going to**
15 **get even tighter and occlude it.**
16 Q Is there any way to give a definitive
17 answer as to, to how much leeway you leave in that?
18 **A I do not. It's based on -- you see,**
19 **there's a certain experience.**
20 Q Okay. So that's your first graft?
21 **A Yes.**

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1 Q Okay. And, actually, you accomplished
2 two grafting procedures with that one vein graft,
3 right?
4 **A Yes, sir.**
5 Q Okay. And what is the -- we'll go now
6 to the third, if you will, the third grafting
7 procedure. Where would that be done?
8 **A The third is an end-to-side anastomosis**
9 **between the vein graft segment and the PDB.**
10 Q What is PDB?
11 **A PDB is the artery in the back of the**
12 **heart. It's the -- right here (Indicating).**
13 MR. : Careful, you're going
14 to knock that over.
15 Q (MR. GASTON) Underneath?
16 **A Yeah.**
17 Q And where would the graft end?
18 **A Yes.**
19 Q Stuck that.
20 **A So this graft would come just below**
21 **this. So we would move this up a little --**

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1 Q Sure. There, right there?
2 **A -- the space for both.**
3 Q Mm-hmm.
4 (Pause.)
5 Q (MR. GASTON) Okay. Now, does this
6 graft come around the front of the heart, or do you
7 try to wrap it around the back of the heart?
8 **A Most of the times, invariably all of**
9 **the times, we do make it go in front of the heart.**
10 Q In front of the heart. And do you
11 think that this is what you did in Miss
12 case?
13 **A To the, to the best of my knowledge,**
14 **yes.**
15 Q Okay. Now, was there one other
16 graft --
17 **A Yes, sir.**
18 Q -- that you made? Now, I understand
19 that you used an artery --
20 **A Yes.**
21 Q -- coming off of the top of the heart

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1 that actually goes to the lungs, or mammary glands?
2 **A Goes to the chest.**
3 Q The chest?
4 **A Yes.**
5 Q And do you simply excise that artery
6 off of the chest, and bring it down, and attach it
7 to the heart?
8 **A Yes, sir.**
9 Q Okay. And let's see if we can figure
10 out where that is. So it's not using the veins
11 from her leg --
12 **A Yes.**
13 Q -- it's actually using the artery
14 that's already in existence and coming off of Miss
15 heart, so let's see if we can do that.
16 (Pause.)
17 MR. GASTON: That about right?
18 MR. : Yeah, I got it.
19 MR. GASTON: Okay. Well, just -- all
20 right. Thank you.
21 Q (MR. GASTON) Now, although it's a

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1 crude diagram, do you think that is a, a fair
2 depiction of what Miss heart and
3 grafts looked like at the conclusion of the bypass
4 surgery?
5 **A Yes, sir.**
6 MR. : Well --
7 Q (MR. GASTON) Okay.
8 **A That's not --**
9 MR. : Do you, do you mean to
10 represent to the jury that that's how far off the
11 heart they were, or that was the amount of graft
12 actually used, or are you just trying to show the
13 end point to end point?
14 MR. GASTON: Well, I'm asking the
15 Doctor if that is a fair depiction of the locations
16 of the graft, where they were on the heart, and
17 approximately how much, if you will, laxity, or --
18 MR. : See, that's what he's
19 trying to --
20 MR. GASTON: Yeah. Yeah, if you can --
21 MR. : -- to address.

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1 Q (MR. GASTON) -- if you can.
2 MR. So you may not have --
3 **A So --**
4 MR. -- understood what
5 he was asking.
6 **A -- the laxity part is very difficult to**
7 **assess.**
8 Q (MR. GASTON) Okay.
9 **A It just depends, how big was the right**
10 **ventricle at that time, how big -- now, if, in a**
11 **schematic sense, you say that this is how these**
12 **grafts look, that's how they look.**
13 Q Okay.
14 **A But --**
15 Q If we were going to do, if we were
16 going to do a medical illustration, then that would
17 be a pretty fair representation of what Miss
18 heart's, and the locations of the
19 grafts, look like, so --
20 MR. : So --
21 **A This would be, this would be a**

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1 **schematic illustration.**
2 Q (MR. GASTON) Okay.
3 **A Absolutely not an illustration of how**
4 **lax --**
5 Q Mm.
6 **A -- you keep a graft. It's a decision**
7 **that is made there based on the issues at hand.**
8 Q Okay. And from -- and in this case,
9 it's really impossible for you to describe for us
10 on illustration how much laxity was in the grafts;
11 would that be a fair statement?
12 **A Yes, sir.**
13 Q All right. So, we have the locations
14 of the graft in the right place on the heart, but
15 the laxity just can't be accounted for; is that
16 fair?
17 **A That's fair. That's, that's kind of**
18 **the direction that the grafts usually travel in.**
19 **Let's just --**
20 Q Okay.
21 **A -- keep it at that.**

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1 Q Now, the pacing wires, have we
2 accounted for all the grafting in this procedure?
3 **A Yes, sir.**
4 Q Okay. Doctor, I asked you to bring
5 similar pacing wires with you that were used in
6 Miss operation and -- but I don't
7 believe you've had -- provided those; is that
8 correct?
9 **A Yes, sir.**
10 Q Do you know, from your own experience
11 from doing these operations, the approximate type
12 of pacing wire that would have been used for Miss
13 operation?
14 **A We've used two or three different types**
15 **at the hospital, so I, I know what kind of pacing**
16 **wires --**
17 Q Okay.
18 **A -- we used.**
19 Q I'm going to show -- I'm going to pull
20 this out of Exhibit No. 11 -- and they're sharp,
21 and -- but I think you've probably handled these

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1 before -- and ask if you can identify what's in
2 that packet?
3 **A Yes. This is one kind of pacing wire**
4 **that is used.**
5 Q Okay. Do you know --
6 **A I have -- sorry.**
7 Q Go ahead, Doctor.
8 **A No. You first.**
9 Q Do you know whether or not, in this
10 case, this is a kind of pacing wire that was used
11 for Mrs. ?
12 **A I do not know that, sir.**
13 Q And what is the difference between this
14 kind and another kind of pacing wire that you
15 usually use?
16 **A You know, the other pacing wires we've**
17 **used, they do not have a needle at the end of it.**
18 **And the, the wire is kind of more squiggly, so that**
19 **it makes more contact with the, with the muscle.**
20 **Okay. So those.**
21 **But, in essence, this is where it is.**

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1 **There's a metallic part to it, and then there is a**
2 **part that is covered.**
3 Q Okay. Now, in the pacing wires --
4 again, we don't know whether or not you installed
5 the pacing wires in the heart, or were -- whether
6 Mr. installed the pacing wires; would that be
7 correct?
8 **A They were installed under my direct**
9 **supervision, sir.**
10 Q But we don't know whether you or he did
11 it?
12 **A We do not.**
13 Q Okay. Now, in the pacing wires, are
14 the ones that you use -- do they sometimes have the
15 suture at the end so that you, so that you could
16 put the suture through the heart muscle, itself, to
17 secure it to the heart, or do you use a different
18 type?
19 **A We use a different type. Usually, we**
20 **use a different type.**
21 Q Okay. So that type would not have the

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1 suture at the end?
2 **A Yes, sir.**
3 Q It would just have --
4 **A That's right.**
5 Q -- the, the wires?
6 **A Yeah.**
7 Q So I just pulled the suture off of the
8 end of this one. Now, I'm going to ask you if
9 that, if that's a reasonable replica of the pacing
10 wire?
11 **A It is a reasonable representation of**
12 **what we use.**
13 Q Okay. Now, what I want you to do --
14 oh, I'm sorry -- you have no recollection of where
15 the pacing wires are placed in Miss
16 heart; would that be fair?
17 **A That would be fair.**
18 Q All right. Is there any way that we
19 can provide any testimony to the jury, or we can
20 reasonably recreate where the pacing wire was
21 placed in her heart in this case?

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1 **A Absolutely.**
2 Q Okay.
3 **A It's -- the commonest area where we put**
4 **the pacing wires is around here (Indicating).**
5 Q That's a piece of tape, Doctor.
6 **A Okay. So there's two wires that go**
7 **here (Indicating) and here (Indicating).**
8 Q I'll hand you a second pacing wire,
9 Doctor.
10 (Pause.)
11 Q (MR. GASTON) If you could turn the
12 heart just a little bit this way. Okay. And do
13 you put any other pacing wires on the left side of
14 the heart?
15 **A Yes, sir. We put ventricular wires,**
16 **also.**
17 Q Okay. If you could turn the heart
18 around and just indicate where -- I don't have
19 three and four -- two more pacing wires, but where
20 on the other side of the heart would they go?
21 **A The ventricular wires would go here and**

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1 **here (Indicating).**
2 Q Okay. So they would go below the two
3 vein grafts on that side of the heart?
4 **A Yeah. Or they can go into the right**
5 **atrium. See, it's, again, whatever -- we have**
6 **space, good muscle available -- there's a lot of**
7 **fat on this heart -- so if there is muscle**
8 **available here, we go here; if there's easy muscle**
9 **access in the back, we go in the back.**
10 Q Okay. Do you know in this case where
11 the ventricle pacing wires were placed?
12 **A I do not.**
13 Q But, usually, it's, it's on the left
14 side of the heart --
15 **A It's on the right side of the heart.**
16 Q I'm sorry.
17 **A It's on the -- usually, it's on the**
18 **right side of the heart, and one inferiorly, or one**
19 **right, one left. It's whatever -- we can find good**
20 **muscle, that's where we put it.**
21 Q Do you always put four pacing wires --

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1 **A No, sir.**
2 Q -- I'm sorry -- on the heart?
3 **A No.**
4 Q Okay. Can you refer to your operative
5 note, and can you tell me how many pacing wires
6 were, were placed in Miss heart?
7 **A I do not know based on the note how**
8 **many pacing wires are placed.**
9 Q And are the pacing wires -- if you
10 could turn the heart just a little bit around. So
11 the pacing wires on this side of the heart should
12 go, would it be fair to say, in a downward
13 direction towards the abdomen?
14 **A Somewhere they --**
15 MR. You mean, as they come
16 out of the chest?
17 **A Yeah. They go from here -- this is**
18 **where the abdomen is -- they go in this direction**
19 **out of the chest wall.**
20 Q (MR. GASTON) Okay. Now, do they come
21 out of the chest wall above or below the heart?

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1 **A Above or below the heart. They go out**
2 **of the chest cavity. That's where the heart is, at**
3 **the level of the heart, and then they come out at**
4 **an angle so that they are in the -- they come out**
5 **below the diaphragm, if that's what you're asking.**
6 **So they go -- on the inside, they're above the**
7 **diaphragm; on the outside, they are usually above**
8 **or below the diaphragm.**
9 Q But I'm going to assume that you put
10 these two pace -- or either you or Mr. put
11 these two pacing wires on the right side of the
12 heart. Would they go down first and come out,
13 would they go straight across and come out; how
14 would they normally come out of the heart?
15 MR. : Why, why don't we, why
16 don't we do it this way because, obviously, he's
17 not operating with the patient standing up. Why
18 don't you put the heart down on the table as if the
19 patient's on the table, and then show the ladies
20 and gentlemen of the jury the angle that the wires
21 leave the heart and come out of the body, and then

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1 we can be on the same plane.
2 Q (MR. GASTON) You can do that --
3 **A Thank you.**
4 Q -- if you want just turn it over.
5 **A Okay. So this is how we go. These --**
6 **I'm standing on this side of the table. This is**
7 **where the skin and the subcutaneous -- this is**
8 **where the coverings are, and we go here, and we**
9 **take them out going this way (Indicating). We**
10 **just -- and then tie them off here. And that's --**
11 Q Okay. So, it's -- and if you could
12 just pull these a little bit snugger so we can --
13 so this -- is that -- yeah, and just --
14 **A Yes.**
15 Q Yeah. And, now, when you placed the
16 pacing wires in the place where you want them --
17 **A Yes.**
18 Q -- before the closure, is that the
19 approximate --
20 **A That's a reasonable representation.**
21 Q -- is that the reasonable

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1 representation?
2 **A Yes.**
3 Q So you don't want to have a whole lot
4 of wires back in here, or looped up anywhere over
5 here in the heart, do you?
6 **A No.**
7 Q Okay.
8 **A You, you don't want that --**
9 Q Okay.
10 **A -- yet. You do want -- so now when the**
11 **patient is going to breathe, or the patient is on**
12 **the ventilator, you don't want these wires. See,**
13 **these are put in place with very fine, silk suture.**
14 **If this wire doesn't have some laxity in it, this**
15 **will dislodge --**
16 Q Understand.
17 **A -- so -- but with the breathing, with**
18 **the respiration, with the movements of the**
19 **diaphragm, so there is laxity in the pacing wires,**
20 **also.**
21 Q But you wouldn't need four, or five, or

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1 six inches of extra wire inside the heart for that,
2 would you?
3 **A Not six inches, no.**
4 Q Okay. All right. Thank you, Doctor.
5 Now, it's my understanding, from
6 reading Answers to Interrogatories, that it's your
7 contention in this case that either the grafts
8 moved after the operation, or the pacing wires
9 moved after the operation, or a combination of both
10 movements that resulted in the laceration of Miss
11 graft; is that accurate?
12 **A They're positioned relative to one**
13 **another, moved after the operation that lead to the**
14 **laceration --**
15 Q Okay.
16 **A -- that brought them in close**
17 **opposition, which lead to the laceration.**
18 Q But you're -- would it be fair to say
19 that you're unable to give an explanation as to how
20 that occurred over that five-day period?
21 **A You know, it's very difficult to be**

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1 **dogmatic about it, but if I was to logically think**
2 **it through, what are the usual events that happened**
3 **after a surgery like this that could have lead to**
4 **that --**
5 Q Well, I'm talking about, in this case,
6 do you have an opinion within a reasonable degree
7 of --
8 MR. . You interrupted him --
9 MR. GASTON: Sorry.
10 MR. : -- but you can ask
11 another question. But let him finish answering it.
12 If you don't like the answer, ask another question.
13 MR. GASTON: I'll strike that question.
14 MR. : No, no, no, you can't
15 do that.
16 MR. GASTON: Well --
17 MR. : No. You asked your
18 question. He's not process of answering. You
19 cannot interrupt him, and stop him, 'cause you
20 don't like it. So, finish answering the question,
21 and then we can go on to the next question.

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1 **A Okay. Now, these are just theories**
2 **that I can present, what could have happened in**
3 **this particular case to bring the two structures in**
4 **close opposition. One of the commonest things that**
5 **happen -- not commonest -- it happens in every**
6 **patient -- is there is still collection of some**
7 **amount of blood. Not a tamponade, but some amount**
8 **of blood in the cavity around the heart.**
9 **Now, it is conceivable that this**
10 **collection happened in a direction that brought the**
11 **two structures together. Also, as blood goes**
12 **through fibrinous changes that can further bring**
13 **these two structures together, that can conceivably**
14 **come in opposition.**
15 Q I understood the first part. Say the
16 second part again for me. You said fibrinous
17 changes.
18 MR. : Fibrinous,
19 f-i-b-r-i-n-o-u-s.
20 Q (MR. GASTON) Explain to me what that
21 is, please.

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1 **A See, whenever there is blood and -- in**
2 **a cavity, it starts to clot then. And as it starts**
3 **to clot, there are also other structures around**
4 **here, which is the heart, which is the chest wall,**
5 **that start forming some strands which, ultimately,**
6 **over a longer period of time lead to scar**
7 **formation. But here, the time is too short for**
8 **scar formation. So it's just an early part of**
9 **those changes that would bring the two -- that**
10 **could have conceivably brought the two structures**
11 **together.**
12 Q So your theory is -- set aside the
13 first one -- the second one is that, at some, some
14 part of Miss ; heart, the blood started
15 to clot inside the heart, inside?
16 **A No, sir. No, no, no, no.**
17 Q You said started the clot, and then
18 that results in changes. I'm trying to figure out,
19 in this case, what is your theory --
20 **A Okay.**
21 Q -- about the blood clotting in the

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1 heart?
2 **A Is it okay if I --**
3 Q Hang on a second. What is your theory
4 about the blood clotting in the heart that pushes
5 the two things in together?
6 **A It's not in the heart, it's outside the**
7 **heart.**
8 Q You mean just blood laying in the heart
9 cavity?
10 **A No, sir, not in the heart cavity, in**
11 **the chest cavity, so outside the heart.**
12 Q Oh. I thought that -- all right -- I
13 thought that was the first explanation, that there
14 was blood clotting in the chest cavity that pushed
15 them together. You're saying this is something
16 different, your second explanation --
17 **A No, not --**
18 Q -- something different?
19 **A -- it's just a process of the same. So**
20 **once you have blood in any cavity, there is also**
21 **fibrinous changes that happen in the same cavity**

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1 **which would then grad -- which could have been a**
2 **contributing factor to this. But the second does**
3 **not happen without the first.**
4 Q The fibrinous changes, what is that; is
5 that scar tissue building up somewhere?
6 **A It's very early stages of fibrin**
7 **deposition. So, whenever we have a clot that forms**
8 **in the body, it's -- then we get a scab. The scab**
9 **is nothing but fibrin deposition and some other**
10 **blood components.**
11 Q All right. I do not understand what
12 you just said, so let me try to break it down
13 again. And, again, I'm saying, I'm trying to get
14 you to use language that's easy to understand. And
15 I'm not understanding this fibrinous changes. Is
16 that on the surface of the heart, itself?
17 **A Outside of the heart, yes.**
18 Q Outside of the heart, on the surface of
19 the heart?
20 **A In between the structure. In between**
21 **the heart and chest cavity.**

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1 Q Okay. What is changing? What is
2 changing about the structure of the heart that
3 causes the vein graft?
4 **A See, that's a whole different --**
5 Q And hang on a second. What, what is
6 changing about the structure of the heart that's
7 causing the vein graft and the pacing wires to get
8 intertwined or pushed together?
9 **A That's, that's a very good question.**
10 **What else changes with the heart? Now, if all of a**
11 **sudden -- think of this -- that this side of the**
12 **heart dilates, gets bigger.**
13 MR. , Here. The camera isn't
14 seeing what you did. Just slide it over. There
15 you go.
16 **A So -- I'm going to stand up again, if**
17 **you don't mind -- so, now, what could bring these**
18 **two things together? If this side of the heart**
19 **somehow gets bigger, which happens in heart**
20 **failure -- and this patient did have right heart**
21 **failure, and that's why, also, the, the mitral**

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1 valve issue is relevant -- but if we have this side
2 of the heart expanding, this will move this graft
3 in a particular direction.
4 If there is some kind of a space-
5 occupying lesion, okay, whether it's a clot, which
6 is the most conceivable here, that forms here and
7 here, these two structures will be pushed and
8 brought together. And these are just possibilities
9 that we are talking about.
10 Q Well, let's go from the realm of
11 possibilities to probabilities. Is there any way
12 that you can testify, within a reasonable degree of
13 medical probability, that that's what's happened in
14 this case?
15 A Absolutely, sir. That's -- now --
16 Q Absolutely yes?
17 A -- a probability is, a probability is
18 an informed opinion, is an informed -- you know,
19 unless, in a scientific experiment, you have clear
20 data, you have a Cat scan which shows that they're
21 together, and this clot, which you don't, you can

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1 only rely on logic. The logic here is that these
2 two things got together. The second part of the
3 logic is, when I close the chest, they were not
4 together. How did the two of them get together?
5 There's got to be some force that pulled it this
6 way, or some force that the heart expanded and
7 brought it this way. And these things happen,
8 especially in this patient -- patient did have
9 right heart failure, post-op -- the patient -- all
10 patients have blood. You -- despite our chest
11 tubes here, all patients collect blood. And this
12 patient, maybe it collected in an area that pushed
13 the two together.
14 Q All right. That's what I want to go
15 to. Maybe it collected in an area that pushed the
16 two together. Would you agree maybe it also did
17 not collect in an area that pushed the two
18 together?
19 A That's, that's a possibility.
20 Q It's -- each are equally possible?
21 A But the, the reason why one makes it

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1 more than the other is because the two did get -- I
2 mean, I'd love to be able to say that they were --
3 did not come together. The fact is that they came
4 together. That's the only way the vein got
5 lacerated.
6 So what happened in those five days
7 that got these two structures together? So the
8 probability, I would say, would be higher in this
9 case, that it really happened than did not happen.
10 Q And when did you reach the conclusion
11 that you just told me?
12 A In my thinking, you know, when you go
13 through the five stages of -- you know, despair of
14 that, why did this patient die, you try to think
15 what went wrong. And that's the only logical
16 explanation I could come up with. Now, it doesn't
17 bring the patient back, unfortunately.
18 Q Okay. When did you come up with that
19 logical explanation?
20 A In the period after the patient's, when
21 the graft lacerated, be -- I talked that through,

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1 why would this have happened.
2 Q So, you were aware of this when Miss
3 passed away?
4 A That was the number one logic in my
5 mind as to why this would happen.
6 Q Okay. And did you explain that to the
7 members of the family?
8 MR. : Now, we're -- all he's
9 asking is, do you remember explaining that to the
10 family?
11 THE WITNESS: I do not remember
12 explaining it in that detail to the members of the
13 family.
14 Q (MR. GASTON) If you had and knew the
15 reason that you believe she died, wouldn't that be
16 something that you would normally explain to the
17 family members?
18 A You know, it's -- you always make a
19 decision at that time when the family is grieving.
20 As to how much of a detail you want to go into, or
21 would the family want us to go into at that time,

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1 **there's really very few relationships that are more**
2 **sacred than the relationship between a patient and**
3 **doctor. There's not too many people you would let**
4 **your wife expose herself to, here, examine my wife.**
5 **So it's an extremely emotional time for both, yes.**
6 **Of course, way more emotional for the patient,**
7 **patient's family, than for the doctor, and you try**
8 **to tell them what you feel at that time is**
9 **appropriate.**
10 Q Do you believe they were entitled to
11 know the truth --
12 **A Oh, yeah. Sorry.**
13 Q -- they were entitled to know the truth
14 of how Miss died?
15 **A They are absolutely entitled to know**
16 **everything about it.**
17 Q But you made the decision not to
18 explain the reason that you came up with as to why
19 she died at that time?
20 **A I told --**
21 MR. : Hold on. Now, wait a

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1 second. That's an inappropriate question. If your
2 question is whether -- that you didn't explain to
3 them that she died of a lacerated vein graft -- and
4 I don't think you mean to suggest in your question
5 that he didn't say that -- you're asking whether
6 all the details were given; am I correct?
7 Q What I'm asking is, in your mind, when
8 Miss died, you came up with a theory of
9 what caused the vein graft to be lacerated; is that
10 true?
11 **A Yes.**
12 Q When you spoke to the family after Miss
13 died you choose -- you made a conscious
14 choice not to reveal that information to the
15 family; is that true?
16 **A I do not remember the exact discussion**
17 **I had with them. In most circumstances, what I**
18 **would tell the patients' family is that the patient**
19 **died because of this laceration. Usually, I would**
20 **not go into the details of how that that laceration**
21 **was caused unless -- and we've had patients who**

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1 **had --**
2 Q Mm.
3 **A -- family members who are physicians,**
4 **nurses, or anybody else who says, listen, Doc, I'm**
5 **just not -- I don't have an answer yet. Can you go**
6 **more into the details? I would absolutely do that**
7 **in that case.**
8 Q In any chart or in any note in Miss
9 file, does it relate what you believe
10 had caused the graft to be lacerated?
11 **A I cannot recollect going through that.**
12 Q I didn't see that in the chart, Doctor.
13 Is that something you would normally place in your
14 chart?
15 **A The logic -- I would usually not feel**
16 **the need to do that.**
17 Q Why not?
18 **A Because the graft is lacerated. The**
19 **problem we are trying to fix now is, now do you fix**
20 **the graft and take care of any sequela that are**
21 **happening subsequent to that.**

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1 Q Isn't why the graft became lacerated
2 the most important question and answer that needs
3 to be in the patient's chart?
4 **A No. The most important thing is how do**
5 **you fix that patient. The most important thing is**
6 **how do we address that issue; did we do our best to**
7 **fix it. That, to me, is the most important issue.**
8 MR. GASTON: I think we need to take a
9 break.
10 THE VIDEOGRAPHER: Going off the record
11 at the time of 12:10.
12 (At 12:10 p.m., the deposition was
13 recessed and resumed at 12:20 p.m.)
14 THE VIDEOGRAPHER: We are back on the
15 video record. This is start of Disk No. 2. The
16 time is 12:19.
17 Q (MR. GASTON) Doctor, do you know
18 ?
19 **A Yes, sir.**
20 Q And how do you know him?
21 **A is a nurse practitioner of the**

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1 **hospital.**
2 Q How long have you known] ?
3 **A I don't know exactly how many years,**
4 **but it's, it's a number of years.**
5 Q And I understand that Mr. is
6 the nurse that pulled the pacing wires from Miss
7 chest; is that true?
8 **A Nurse practitioner, yes, sir.**
9 Q And was that done at, under -- at your
10 request?
11 **A Yes, sir.**
12 Q Okay. And how did you make that
13 request?
14 **A You know, we make rounds, and on those**
15 **rounds there, it's decided that, hey, this patient**
16 **is ready for discharge, you can pull the chest**
17 **tubes, you can pull the pay -- pull the pacing**
18 **wires. Those instructions are given on rounds.**
19 Q Well, are they given verbally; do you
20 have to write a order verbally?
21 **A They can give verbally.**

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1 Q Verbally. And to whom do you give
2 that, that instruction?
3 **A To the nurse practitioners.**
4 Q So whatever floor Miss] was
5 on, whoever the nurse practitioner would have been
6 on that floor, generally when the patient's getting
7 ready to be discharge, and you think it's
8 appropriate for the pacing wires to be pulled, you
9 inform that nurse practitioner --
10 **A Yes, sir.**
11 Q -- that -- to go ahead and pull the
12 wires?
13 Okay. Did you make a decision earlier
14 on in her admission to pull the wires on the 4th,
15 but to delay it until the 6th?
16 **A You know, we --**
17 MR. : Answer the question.
18 Focus on his question, because otherwise we're
19 going to get sidetracked.
20 **A Could you repeat that question, please,**
21 **sir?**

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1 Q (MR. GASTON) All right. Had you made
2 a decision that Miss ! pacing wires were
3 to be pulled earlier in the week, but then
4 postponed the pulling of the wires until February
5 6?
6 **A I do not remember any such discussion.**
7 Q And what is it about the 6th that you
8 felt that that was the day the wires should be
9 pulled?
10 **A Again, I, I do not remember,**
11 **specifically in her case, when we told him that, go**
12 **ahead, pull the wires out. That's just the**
13 **routine.**
14 **Again, what is specific about her case**
15 **is that she also had that mitral problem. And**
16 **patients with those mitral issues, and some amount**
17 **of right ventricular failure, we do want to keep**
18 **the pacing wires in longer than a usual routine**
19 **CABBAGE where we say, okay, on the first, second**
20 **day, take the pacing wires out.**
21 Q Now, do you ever remove pacing wires

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1 from a patient that you performed open heart bypass
2 surgery on?
3 **A Do I personally ever remove them?**
4 Q Yes, Doctor.
5 **A If I have to, yeah.**
6 Q Okay. And would --
7 **A It's, usually it's the team members who**
8 **do it. But if I have to do it, it's -- we do it.**
9 Q Well, okay. I'm trying to figure out
10 in your practice, when do you make the decision
11 that you have to pull the wires, and the, the
12 pulling of the wires isn't delegated to a nurse
13 practitioner?
14 **A Usually, there would be one of two**
15 **reasons. One is the nurse practitioner's just not**
16 **not available, busy with other patients, and we**
17 **want to send the patient out, so we pull the wires,**
18 **take -- fill the discharge summary in, send the**
19 **patient home.**
20 Q Okay.
21 **A The second reason would be the nurse**

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1 **practitioner would call and say, hey, listen, I'm**
2 **having some problems with this wire, then they ask**
3 **you to come and help out.**
4 Q Okay. Are you aware of the training
5 that Mr. received in the pulling of pacing
6 wires?
7 **A I am personally not aware of that, sir,**
8 **but I will say he's been doing this for a long**
9 **period of time, and I'm personally not aware of**
10 **any --**
11 Q Mm-hmm.
12 **A -- particular training nurse**
13 **practitioners receive.**
14 Q So you don't know who might have
15 trained him, or what training he received?
16 **A I am personally not aware of that.**
17 Q Okay. Has he pulled pacing wires for
18 your patients before?
19 **A Yes, sir.**
20 Q Is there ever, ever come a time when he
21 decided to call for your assistance or help when

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1 the pacing wires were pulled?
2 **A Yes, sir.**
3 Q Okay. Did there ever come a time in
4 your practice that a patient, such as Miss
5 vho underwent bypass surgery, had had
6 one of her grafts lacerated by the pulling of the
7 pacing wire?
8 **A No, sir.**
9 Q This is the first time it's ever
10 happened?
11 **A Yes, sir.**
12 Q I would venture to say it's not
13 something that you anticipated happening?
14 **A No, sir.**
15 Q Now, how do you account or take into
16 consideration the fact that a patient can develop a
17 blood clot that moves the pacing wires into contact
18 with the vein grafts that could cause a laceration
19 resulting in the patients death; how do you, as a
20 surgeon and a doctor, account for that, and what
21 steps do you take to prevent that from happening?

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1 **A I didn't get the first part of the**
2 **question, how do we account for that.**
3 Q Right.
4 **A Well, what do you mean by that?**
5 Q It means, do you take that into
6 consideration during the treatment of the patient?
7 Are some patients more susceptible to this blood
8 clotting than others? How do you make the
9 determination that this patient may be at higher
10 risk for developing a blood clot that could cause a
11 laceration of a heart graft --
12 **A Sorry.**
13 Q -- and death; how do, how do you do
14 that and -- when you evaluate a patient after
15 performing the surgery?
16 **A So after every surgery, we leave drains**
17 **in the pericardial cavity so that any significant**
18 **amount of blood is drained out. How we determine**
19 **whether somebody will form a smaller collection**
20 **which could potentially move grafts around, that**
21 **pretty much happens in every patient. I mean, we**

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1 **can't prevent a little amount of bleed, which is**
2 **just part and parcel of the procedure.**
3 Q So the smaller collection of clots
4 happens in all patients?
5 **A Every patient has blood around the**
6 **heart after the procedure.**
7 Q Okay. Well, how do you prevent against
8 that blood clot from causing this type of a
9 devastating injury?
10 **A The only way we prevent that, and the**
11 **only thing we do is leave drains in the chest so**
12 **that the drains evacuate the blood.**
13 Q And where is the source of the bleeding
14 coming from that causes the clots in the patient's
15 heart?
16 **A The, the bleeding comes from,**
17 **essentially, all around. We've cut a lot of**
18 **tissues as we go in, so now there's, there's two**
19 **things here. One is massive bleeding, which would**
20 **'cause a condition called tamponade, and one is**
21 **just oozing, which is causes collection of small**

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1 amount of bloods -- blood here, there.
2 Now, massive bleeding is all taken care
3 of. If that was to happen, first of all, we, when
4 we close the chest, we make sure that all major
5 bleeding sites are controlled. If that blood is to
6 collect in the cavity, that would evacuate out of
7 the chest tubes, and that's how we prevent that.
8 The small amount of oozing, that is an
9 inherent part of -- whenever we cut any part of the
10 body, that's going to happen.
11 The goal, goal is how we prevent it
12 from becoming in any way it -- an, an,
13 particularly, element on the pump mechanism, and
14 that's why the drains are there.
15 Q And, in this case, was there any
16 indication that Miss was bleeding inside
17 the chest cavity before the pacing wires were
18 pulled?
19 A See, I, I, I do want to, again, clarify
20 that we talking about two different kinds of
21 bleeding. One is bleeding enough to cause cardiac

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1 tamponade. The -- what I am proposing is that this
2 blood was not enough to cause tamponade, but just
3 enough to change the direction of the grafts, or
4 push the graft in one direction or the other.
5 The bleeding that happens in a big way
6 usually happens if one of the grafts is leaking, or
7 if the aorta where we sew the graft in, that there
8 is blood leaking from there, or the chest wall can
9 bleed. So there's two different kinds of, or two
10 different quantities of blood that we're talking
11 about here.
12 Q My question was, in this case, was
13 there any indication that there was bleeding inside
14 of Miss chest cavity before the pacing
15 wires were pulled. And it's -- a bleeding that
16 we're talking about is the one that you suggest
17 caused the clot that forced the grafts to move.
18 A Okay. Again, there was no indication
19 in this patient that we had any massive bleeding,
20 and that is what we studied. We -- the patient had
21 postoperative echoes done, which showed that the

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1 patient does not have any amount of bleeding that
2 would cause a tamponade.
3 Was there any indication that the
4 patient had small amount of blood clot around the
5 heart? It's -- every patient has small amount of
6 blood clot around the heart.
7 So there was -- there's not a thing
8 that we look for. There is no indic-, no
9 indication that this patient did not have blood
10 around the heart. It, it's just an essential part
11 of the procedure that there is blood around the
12 heart.
13 Q So, if I understand this correct, every
14 patient will have a small amount of bleeding around
15 the heart following the heart bypass surgery?
16 A Yes, sir.
17 Q And the small amount of bleeding in
18 every patient can result in the grafts being moved
19 to get in contact with the patient wires to cause
20 the laceration and, unfortunately, ultimate death
21 of a patient?

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1 A If, potentially, if it is in,
2 unfortunately, the wrong place, it could.
3 Q Is there any quantity of blood clotting
4 around the heart that you believe is required in
5 order to move a vein graft into contact with the
6 pacing wire?
7 A I would not know that number, sir.
8 Q And what, if any, amount of blood
9 clotting was found in Miss heart after
10 the pacing wires were pulled?
11 A I'm sorry. Say that again.
12 MR. You mean at the time of
13 the second procedure?
14 MR. GASTON: Right.
15 Q (MR. GASTON) How did you determine or
16 conclude that there was clotting in Miss
17 chest cavity that pushed the pacing
18 wire into contact with the graft?
19 A Because that is an essential part of
20 what happens in every patient. Not, not the second
21 part, but that the two graftings come together, but

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1 **there is blood and blood clotting going on in the**
2 **chest cavity of pretty much every patient.**
3 Q Where in your operative note does it
4 indicate blood clotting in the chest cavity at the
5 site of the vein grafts laceration?
6 MR. : Excuse me. The note of
7 the 1st?
8 MR. GASTON: The 6th.
9 **A I, I'm sorry I'm not able to convey**
10 **this properly.**
11 MR. : No, no, no. You're
12 doing fine. I mean, I want --
13 Q (MR. GASTON) Let me ask the question.
14 MR. Yeah. I want, I
15 want -- we're going to have a time-out here for a
16 second. You're answering what you want to answer,
17 not what he's asking. And, so, I'm going to ask
18 you to -- and, and I understand you're trying to
19 articulate it, but that doesn't mean that's what he
20 wants to hear. He just wants to hear an answer to
21 his specific question. If it requires an

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1 explanation, we can explain it to the jury at the
2 time of trial.
3 Right now, I just want you to try and
4 focus on what he's asking, and answer his question;
5 okay?
6 **A Could you please ask the question one**
7 **more time?**
8 Q (MR. GASTON) I'll ask it a different
9 way. Maybe it would be easier for you to
10 understand.
11 What quantity of blood clotting did you
12 find and measure in Miss chest cavity
13 when you tried to go in and repair the cut vein
14 graft?
15 **A See, when we went in for the vein**
16 **graft --**
17 MR. : He's not asking about
18 that. He's asking you a quantive question. If you
19 can't answer it, say I can't answer it. If you
20 can, try to help him and answer his questions.
21 So ask your question again, please.

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1 THE WITNESS: I'm sorry. One more
2 time, please.
3 MR. That's okay. You're
4 just -- the two of you are on slightly different
5 wavelengths. I'm trying to get you together.
6 MR. GASTON: I'll ask it again.
7 MR. : Okay.
8 Q (MR. GASTON) What is the quantity of
9 the blood clotting that you found in Miss
10 chest cavity when you went in to try
11 to repair the lacerated vein graft?
12 **A When we went in to repair the lacerated**
13 **vein graft, there was a lot of fresh bleeding in**
14 **there.**
15 MR. ; There we go.
16 Q (MR. GASTON) Okay. But that doesn't
17 answer my question.
18 MR. Well, that's probably
19 'cause you're answering --
20 Q (MR. GASTON) My, my --
21 MR. : -- the question's not

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1 answerable, because --
2 Q (MR. GASTON) My, my question --
3 MR. -- because what you
4 found --
5 Q (MR. GASTON) Wait a second. You're --
6 and it all goes back to your theory, that there was
7 clotting inside the chest cavity that pushed the
8 vein graft into contact with the pacing wires; do I
9 have that correct?
10 **A There's two elements of that. There's**
11 **blood inside the chest cavity. Some of that clots,**
12 **which then pushes structures around. The second**
13 **component is the size of the heart, itself. The**
14 **size of the heart can increase or decrease,**
15 **especially the right heart in this patient, that**
16 **can change where the grafts lie. So those are the**
17 **two hypotheses that I have.**
18 Q Well, let's stick with the clotting one
19 first.
20 **A Okay.**
21 Q What is the amount of the clotting of

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1 the blood, what is the quantity of that clotting
2 that you found in heart at the closing of the site
3 where the graft was lacerated --
4 **A Well --**
5 Q -- when you went in to repair the
6 graft?
7 **A -- well, let me use this.**
8 MR. : No. Listen. No. Hold
9 on. We're going to get this straight, and we're
10 going to, we're going to move on to the next topic.
11 He's asking you if you can say what the amount of
12 clot was that moved the graft at a time when you're
13 in the heart after a --
14 THE WITNESS: I, I --
15 MR. -- and a huge
16 laceration --
17 THE WITNESS: I --
18 MR. - and a huge blood
19 loss is occurred. Can you answer that question?
20 THE WITNESS: No.
21 MR. Okay. There we go.

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1 THE WITNESS: Because there's so much
2 blood there --
3 MR. Didn't ask you why,
4 just asked you if you could answer it --
5 THE WITNESS: No.
6 MR. -- for him. Let's try
7 to keep this short and to point.
8 Q (MR. GASTON) Okay. What is the amount
9 of blood clot that you believe is required -- would
10 be required in order to move that vein graft in
11 connection with the pacing wire?
12 **A It would be very hard to say, sir. I**
13 **already answered that question.**
14 Q You have no, no idea?
15 **A It would be -- it, it has to be a**
16 **reasonable amount of blood that's pushing things**
17 **around.**
18 Q What is a reasonable amount of blood;
19 can you quantify that for me?
20 **A I can't answer.**
21 Q You cannot?

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1 **A No.**
2 Q And if you had seen blood clotting --
3 clotting of blood in the heart around the area of
4 the graft when you went in to repair it, would not
5 you have made a note of that in your operative
6 report?
7 **A Again, sir, there's blood all around**
8 **when you go in. There's a big graft that's**
9 **lacerated. It, it -- how would I -- I'm, I'm**
10 **sorry. I, I don't have an answer to that. You**
11 **open the chest, there's blood all around.**
12 Q Your, your defense is that there was
13 clotting on -- in the chest cavity that caused this
14 injury, correct?
15 **A There was blood. My defense is that**
16 **there was blood at the chest cavity that could**
17 **change the spacial relationship between the graft**
18 **and the pacing wire, in addition to some structural**
19 **size- related changes that would have happened in**
20 **the heart which also led to the two structures**
21 **coming close together.**

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1 Q How much blood in the chest cavity was
2 there that caused the graft to come in contact with
3 this patient with the pacing wire?
4 MR. : Is your answer any
5 different than the I don't know you gave five
6 minutes ago?
7 THE WITNESS: I would not know how much
8 that part would be.
9 MR. : All right.
10 Q (MR. GASTON) Okay. And how much did
11 the heart increase in size that contributed to the
12 vein graft coming into contact with the pacing
13 wire?
14 **A The heart was an right heart failure**
15 **post-op. We had to use fair amount of pressors on**
16 **this patient. How much in centimeters or**
17 **millimeters the heart would have dilated, I would**
18 **not know the answer of that, sir.**
19 Q But the right heart failure didn't
20 occur until after the vein graft was lacerated,
21 correct?

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1 A No, sir. The patient had symptoms of
2 heart, heart failure even -- and, see, it's --
3 MR. No, just answer --
4 THE WITNESS: Yeah.
5 MR. : -- his question.
6 THE WITNESS: Yeah.
7 MR. I don't want you to
8 start going into his own explanation.
9 THE WITNESS: Right.
10 MR. He just asked if you
11 had the right heart failure after the operation,
12 before the laceration of the vein.
13 Q (MR. GASTON) Didn't Miss
14 have right, or heart failure following the severed
15 vein graft?
16 A She did.
17 Q Okay. Did she have any right heart
18 failure that preceded the severing of the vein
19 graft?
20 A She, she had heart failure before that
21 also.

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1 Q Quantify that for me. Tell me how --
2 what type of heart failure did she have; what
3 caused it?
4 A She had longstanding coronary artery
5 disease, especially on the right side, which was a
6 hundred percent occluded. She also had mitral
7 valve regurgitation. Consequent to that, she did
8 have elements of heart failure before the, the
9 sentinel event here, and the sentinel event further
10 accentuated her heart failure.
11 Q What was the change in her heart due to
12 heart failure that occurred between the time you
13 finish the bypass surgery and the time the vein
14 graft was lacerated?
15 A In -- I have to give a description
16 here.
17 MR. : If you think it's
18 absolutely necessary, go ahead.
19 A In patients who have a residual mitral
20 regurgitation, it takes them a few days to totally
21 adapt to the increased blood flow. Now, the heart

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1 can increase or decrease in size based on its
2 status at a given time, and that is what -- one of
3 the things that was happening. That Miss
4 , for a while, did require increased
5 vasopressors as she was suffering from more
6 symptoms of heart failure.
7 Q (MR. GASTON) Back to my original
8 question. What was the change in the size of the
9 heart that occurred from the time you finished the
10 bypass operation to the time the pacing wires were
11 pulled?
12 A I --
13 MR. : He's already answered
14 that, that he can't measure it in millimeters, or
15 centimeters.
16 MR. GASTON: I, I didn't hear him say
17 that.
18 MR. Yes, he did.
19 A I -- it --
20 MR. : Yeah.
21 A It's hard for me for say that in any

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1 quantifiable terms.
2 Q (MR. GASTON) Okay. And because it's
3 hard for you to quantify that, it's very difficult
4 to, to then testify as to what effect that, in and
5 of itself, contributed to the laceration of the
6 vein graft; would that be a fair statement?
7 A No. Because the, the heart dilates,
8 and as the heart dilates -- now, what you're asking
9 me is, did it dilate one centimeter, did it dilate
10 two centimeter? I don't have the answer for that.
11 Q But don't you account for that dilation
12 when you do the grafting?
13 A Absolutely. That's why you need
14 the laxity.
15 MR. Relax. Relax, relax.
16 Q (MR. GASTON) So, if you accounted for
17 that at the time --
18 MR. Hold on. Hold on.
19 Let's take a break for a second so you can finish
20 up your deposition.
21 THE VIDEOGRAPHER: Would you like to go

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1 off?
2 MR. : That's fine. Go get
3 some more water.
4 THE VIDEOGRAPHER: Are we going off?
5 MR. GASTON: Yes, we are.
6 THE VIDEOGRAPHER: Going off the record
7 at 12:41.
8 (At 12:41 p.m., the deposition was
9 recessed and resumed at 12:42 p.m.)
10 THE VIDEOGRAPHER: Okay. Please wait
11 for my announcement. Back on the video record
12 record at 12:42.
13 Q (MR. GASTON) Okay. Doctor, during the
14 heart bypass surgery for Miss I believe
15 one of the things you do is anticipate the increase
16 in the size of the heart during the recovery
17 process; is that fair?
18 **A Yes, sir.**
19 Q And when you anticipate for that, then
20 you make sure that the size of the grafts that you
21 use will be adequate in order to prevent them from

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1 being pushed around inside the chest cavity by the
2 increase in the size of the heart, to the best you
3 can?
4 **A Yes, sir.**
5 Q Okay. Now -- so that was something
6 that was anticipated, would you agree, the increase
7 in the change and the size of the heart?
8 **A That, it is anticipated.**
9 Q Okay. And can the increase of the size
10 of the heart be measured by radiological study?
11 **A At any given moment, it's -- the right**
12 **ventricular diameter can be measured.**
13 Q Was that measured at anytime from
14 February 1st 'till February 6th?
15 **A We did have an echo done.**
16 Q Do you know what the results were?
17 **A I can read them to you.**
18 MR. Hold on.
19 (Pause.)
20 Q (MR. GASTON) And let's concentrate on
21 the right ventricular diagram -- diaphragm, if you

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1 can.
2 **A So that says, global ejection fracture**
3 **is --**
4 MR. : No, no, no.
5 THE WITNESS: Sorry.
6 MR. : Let's go back and
7 listen to his question. He asked you for a very
8 specific measurement. Answer his --
9 MR. GASTON: Please don't interr- -- I
10 would ask his counsel not --
11 MR. -- question.
12 MR. GASTON: -- to interrupt the
13 witness when he's answering the question.
14 MR. I just wanted him to
15 answer your question, so it -- ask it again, and
16 then you can answer it.
17 Q (MR. GASTON) Do you remember the
18 question, Doctor?
19 MR. , Apparently, he --
20 **A Yeah. Looking for the size and exact**
21 **centimeter size of the right ventricle.**

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1 Q (MR. GASTON) Yes, sir.
2 MR. Go ahead.
3 **A I do not have, at least in the quick**
4 **search that I'm doing, I do not see a size**
5 **measurement of the right ventricle.**
6 MR. Okay.
7 Q (MR. GASTON) All right. But you did
8 review the echocardiogram?
9 **A Doctor -- well, one of the treating**
10 **colleagues reviewed at that time, the cardiologist**
11 **reviewed the echocardiogram.**
12 Q Were you aware of the results of the
13 echocardiogram during the time Miss was
14 a patient under your care?
15 **A Yes, I was, sir.**
16 Q Okay. And would it be fair to say that
17 you did not change your course of action or medical
18 treatment based upon the echocardiogram?
19 **A Other than having to use more**
20 **vasopressors, we did not do anything else.**
21 Q Vasopressor, is that to increase blood

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1 pressure?
2 **A Yes, sir.**
3 Q Okay. Now, can you tell me what, what
4 device you use to secure the vein grafts to the
5 heart muscle, itself; was it a suture; was it a
6 clip?
7 **A Sutures.**
8 Q Suture.
9 **A You mean to make that anastomosis?**
10 Q Yes, sir.
11 **A Suture.**
12 Q Okay. And are you aware of any of your
13 colleagues ever having what happened to Miss
14 happen to any of their patients?
15 **A You mean any of my colleagues'**
16 **patients?**
17 Q Yes.
18 **A I am aware of one case that happened.**
19 Q Yeah. And when was that; how long ago?
20 **A That was almost 10 years ago.**
21 Q Ten years ago?

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1 **A Yes.**
2 Q And did that patient suffer a vein
3 laceration when the pacing wires were pulled?
4 **A I had just heard of this patient, sir.**
5 **I do not know -- the patient had bled at the time**
6 **of -- now, whether -- where that bleeding came**
7 **from, I have -- I do not know.**
8 Q Okay. So, from your own personal
9 knowledge, you've never heard of another patient
10 suffering the same fate that Miss
11 suffered in this case?
12 **A I have heard of patients, but I have**
13 **not directly talked to the physicians who have gone**
14 **through this, other than this one doctor you've**
15 **mentioned.**
16 Q Okay. How many times, other times have
17 you heard of it; can you give me an idea?
18 **A Probably about three, four times.**
19 Q Three to four times --
20 **A Yes.**
21 Q -- over your medical career --

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1 **A Yeah.**
2 Q -- would that be fair statement?
3 **A Yeah. Over my post-residency career,**
4 **yeah.**
5 Q How many years, how much years would
6 that be?
7 **A Fourteen now.**
8 Q Fourteen years. And, and was that some
9 other state, some other country, some other
10 facility; do you have any idea where those three or
11 four patients came from?
12 **A In the region.**
13 Q In Maryland?
14 **A Maryland, D.C.**
15 Q But you can't identify the patient or
16 the treating physician?
17 **A No.**
18 Q Just something you heard of?
19 **A Yes.**
20 Q Okay. All right. Your lawyer can help
21 us out with this answer --

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1 **A Thank you.**
2 Q -- but I have to, I have to ask you a
3 question. Are you contending that any other person
4 who was associated with Miss 's care did
5 anything negligently that caused or contributed to
6 her vein graft being lacerated and her ultimate
7 death?
8 MR. No, we're not.
9 **A No, sir.**
10 Q (MR. GASTON) Are you claiming that
11 Miss did anything on her own accord that
12 contributed to her vein graft being lacerated, and
13 her death?
14 MR. : There is not a claim of
15 contributory negligence, but there will be
16 presentation that she, obviously, had serious heart
17 disease.
18 Q (MR. GASTON) Well, then, I need to ask
19 the next question. If you can draw the connection
20 between the heart disease and the lacerated graft,
21 is there any direct connection between those two

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1 situations?
2 MR. He's given you quite a
3 bit of testimony concerning how, because of her
4 underlying disease process. That includes her MR,
5 and that, indirectly, her MR and her right heart
6 disease could change the anatomic relationships.
7 Other than what you've heard --
8 MR. GASTON: Oh --
9 MR. : -- there is nothing
10 additional.
11 MR. GASTON: -- okay.
12 MR. : Does that help?
13 MR. GASTON: Yes, it does. Thank you.
14 Q (MR. GASTON) Can you tell me where on
15 this diagram, which heart graft was lacerated, and
16 the approximate location?
17 **A Let me refer back to this one more**
18 **time.**
19 MR. : I don't know that the
20 records were precise enough to say exactly where
21 the length of the -- the long length of the graft

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1 actually occurred.
2 MR. GASTON: Well, please, please let,
3 let him answer instead of telling him it doesn't
4 say it.
5 **A You know, what my note says here is**
6 **that there was a long laceration in the right**
7 **coronary artery graft caused, probably, by the**
8 **pacing wire.**
9 Q (MR. GASTON) So, if you could point to
10 the members of the jury where the right coronary
11 artery graft was.
12 **A This is, right here (Indicating).**
13 Q Okay. Now, when you mean long, can you
14 give me an idea in, in centimeters, or inches?
15 **A I do not have it recorded here.**
16 Q Okay. Normally when you use the word
17 long laceration?
18 --
19 **A That's the first time I've had to use**
20 **long laceration on a graft, so --**
21 Q You never used the word long before?

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1 **A Long laceration --**
2 MR. : Not on a graft.
3 **A -- on a graft, no. Thankfully not.**
4 Q (MR. GASTON) You can't, you can't tell
5 me whether it's a millimeter --
6 **A No, it --**
7 Q -- or 50 millimeters? I'm just asking
8 for your best estimate. That's all I need, your
9 best estimate, Doctor, based upon your knowledge in
10 this case.
11 **A -- I think half a centimeter would be**
12 **long for a laceration.**
13 Q And do you know where about on the
14 graft the laceration occurred?
15 **A You know, I do not have a note here.**
16 **It's -- off of my memory, I know it was not here.**
17 **It wasn't one of the physical areas of --**
18 Q On the top side of the heart?
19 **A -- on, on the visible side of the**
20 **graft.**
21 Q Now, one of your notes indicated that

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1 you believed the tip of the pacing wire is what
2 caused the laceration. Can you explain why you
3 believe it was the tip of the pacing wire, and not
4 some other part of the pacing wire? And what does
5 the tip of the pacing wire --
6 **A Sure.**
7 Q -- look like?
8 **A Can I take these off now?**
9 Q Sure. Mm-hmm.
10 **A See, by tip, I mean the exposed part**
11 **the pacing wire. Usually, we don't leave this old**
12 **part, we leave a shorter segment of the exposed**
13 **part.**
14 Q Okay.
15 **A So that, obviously, this would not**
16 **lacerate anything. It has to be the metal part --**
17 Q Okay. So it's the wire, itself?
18 **A The wire, itself.**
19 Q And the tip --
20 **A The closed wire.**
21 Q -- indicating the top, very top end of

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1 the wire?
2 **A No. The tip, to me, means this is what**
3 **the exposed part of the wire would be, the tip of**
4 **the wire. So not, not the anatomical tip. And the**
5 **end probably would have been a better word.**
6 Q Okay. Have you ever --
7 MR. _ Talking about the
8 uninsulated portion?
9 THE WITNESS: That's right.
10 Q (MR. GASTON) Have you ever wrote any
11 articles, book chapters, texts that deal with the
12 pulling of the pacing wires?
13 **A No, sir.**
14 Q Do you find that any books, treatises,
15 or articles are authoritative on the placement of
16 pacing wires, or the pulling of pacing wires?
17 **A I have not looked at that, sir.**
18 Q And you're not, you're not claiming
19 that, what --
20 MR. Well, I mean, if he's
21 not looked into it, how can he answer this

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1 question?
2 Q (MR. GASTON) Well, I mean, you, you're
3 not -- what, what I -- what I'm trying to figure
4 out is this. You claim that, if you go to
5 Sabiston's Textbook on Surgery, you'll find, in
6 Chapter Six of, of -- the, the method of how to put
7 the wires in, or how to pull them. You, you would
8 not be referring to any such treatises or
9 textbooks, would you?
10 **A No.**
11 MR. : Let me put to you this
12 way. If we are going to do that, we'll provide you
13 notice.
14 Q (MS. GASTON) Doctor, from your Answers
15 to Interrogatories, I understand that you reserved
16 the right to give expert opinion on standard of
17 care. The next questions I have to do with
18 standard of care.
19 What is your understanding of the
20 definition of the standard of medical care in the
21 Maryland medical community?

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1 MR. That's going to be
2 asked of him by me. He doesn't have to recite the
3 law and, so, I'll ask him to assume what the
4 standard is.
5 Q (MR. GASTON) Well, I want -- I'm, I'm
6 trying to figure out what's your knowledge of the
7 standard?
8 MR. . If you --
9 **A I do not know any definitions. I'm**
10 **sure there is a definition. I do not know the**
11 **definition of standard of care.**
12 Q (MR. GASTON) Okay. Would you believe
13 that, as a surgeon, if you had an option of
14 performing the procedure in two ways, and one way
15 would it -- need, and see, expose the patient to
16 injury and harm, and the other way would not.
17 That, with all things being equal, the surgeon
18 would be required to choose the way that did not
19 need to see -- expose the patient to injury?
20 MR. : I, because I disagree
21 with that as anywhere even close to what the legal

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1 standard is in Maryland, I'll instruct him not to
2 answer.
3 Q (MR. GASTON) Doctor, do you agree
4 that, as a physician, you should not needlessly
5 expose a patient to harm or injury?
6 MR. : Same instruction.
7 MR. GASTON: You going to instruct him
8 not to answer?
9 THE WITNESS: I'm sorry --
10 MR. That's correct. Yes.
11 MR. GASTON: Okay. That --
12 Q (MR. GASTON) And, Doctor, if you're
13 claiming that you followed the standard of care in
14 this case, tell me, if you can, in your own words
15 why you believe you followed the standard of care?
16 MR. If you give him the
17 Maryland Pattern Jury Instruction definition of
18 standard of care, then he can answer the question.
19 MR. GASTON: I'm not going to give him
20 any.
21 Q (MR. GASTON) I just want you to tell

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1 me in your --
2 MR. : Okay.
3 Q (MR. GASTON) -- own words --
4 MR. : If you're not going
5 to --
6 Q (MR. GASTON) -- if you --
7 MR. : I'm sorry.
8 **A What's the definition?**
9 MR. Wait, wait, wait a
10 second. No, wait a second.
11 MR. GASTON: All right.
12 MR. So, you ask your
13 question, I'll make my statement, and then we'll
14 decide whether he's going to answer. And we're
15 talking over each other, and I apologize.
16 Q (MR. GASTON) Doctor, it's my
17 understanding in this case that, that you are
18 contending that you filed the applicable standard
19 of care for the treatment of Miss , is
20 that true?
21 MR. : You can answer that

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1 if --
2 THE WITNESS: Yes, sir.
3 MR. : -- he gives you -- now
4 hold on a second -- if he gives you the definition
5 of the standard of care that's applicable under
6 Maryland law. If he doesn't want to do that, I'll
7 instruct you not to answer the question.
8 **A If I was --**
9 MR. : Just --
10 **A -- provided with the definition of the**
11 **standard of care, I would be able to answer that**
12 **question.**
13 Q (MR. GASTON) But, as we sit here
14 today, in your own mind as a surgeon, you do not
15 have a working definition of the standard of care
16 that would be applicable to surgeons, such as
17 yourself, for performing a open heart bypass
18 procedure on a patient, such as Miss
19 MR. : See, that's not a
20 relevant inquiry. If you want to give him the
21 standard of care definition under Maryland law,

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1 I'll be happy to let him answer your questions.
2 But what is legally relevant in Maryland law along
3 those lines is very specific. So, as you phrased
4 your question, I'll instruct him not to answer.
5 Q (MR. GASTON) Doctor, did you ever
6 inform Miss that when the pacing wires
7 were pulled out of her chest, it was a possibility
8 or a probability that her vein graft would be cut,
9 and she could bleed to death, and die?
10 MR. You can answer.
11 **A I informed Miss --**
12 MR. No, no. Now, come on.
13 **A -- that there is --**
14 MR. Listen, listen, listen.
15 This one's real easy. Listen to his question. Did
16 you inform her of the risk, that if you could
17 pull -- when you pulled the wire out, you could
18 lacerate the vein and she could die; did you tell
19 her that?
20 **A No, sir, I did not.**
21 MR. Okay.

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1 Q (MR. GASTON) Is there a reason why you
2 didn't tell her that and explain that to her?
3 **A Because this is a such a rare**
4 **occurrence, that I do not feel it is appropriate to**
5 **name every possible complication that could happen**
6 **in any procedure.**
7 Q During the course of the bypass
8 surgery, did you administer potassium to Miss
9
10 **A Potassium is part -- yes, sir.**
11 Q And is that reflected anywhere in the
12 operative note?
13 MR. : Do you want to limit
14 him to the operative note, or to --
15 **A No. It's to be in the pump report.**
16 MR. : Right.
17 Q (MR. GASTON) Or you can show me in the
18 record. I'm -- you know, it's fine.
19 (Off-record discussion.)
20 **A So it's in the cardiopulmonary bypass**
21 **report where we give cardioplegia. This patient**

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1 **received both antegrade and retrograde**
2 **cardioplegia, yes, potassium as part of, as part of**
3 **the cardioplegia that is there, yes.**
4 Q Thank you, Doctor. Doctor, I've, I --
5 take, take a look at the one of the chest x-rays.
6 And it's up here on my laptop. I'm going to point
7 it over in your direction. There are two little
8 round, metal rings that are in the -- can you see
9 those in the chest x-ray?
10 **A Yes, sir.**
11 Q Can you tell me what they are?
12 MR. . Can you just tell me
13 what the --
14 MR. GASTON: Sure.
15 MR. -- date of the chest
16 x-ray is?
17 MR. GASTON: It is February 4th, ?
18 MR. : Okay.
19 **A These are the vein markers, sir.**
20 Q (MR. GASTON) And what's a vein marker?
21 **A So it marks this end of the vein. So**

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1 **whatever the vein is hooked onto the aorta, that's**
2 **where we put a vein marker.**
3 Q Okay. So this -- these two circles,
4 actually, on this heart model would be the area on
5 the heart, itself, where the two veins were --
6 **A Yes.**
7 Q -- attached to the aorta; would that be
8 correct?
9 **A Yes, sir.**
10 Q Okay. Thank you. Now, Doctor, I
11 understand you weren't in the hospital on February
12 6th. This was Superbowl Sunday. And you got a
13 call from someone that something happened to your
14 patient. Can you go through that conversation for
15 me?
16 MR. : You're talking about a
17 call that --
18 MR. GASTON: Well, he, he --
19 MR. -- about 8:00 or 8:30
20 in the morning, not when the Superbowl was playing
21 as you were implying.

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1 **A -- you asked me who --**
2 Q (MR. GASTON) No, I didn't. I was
3 saying --
4 **A -- who was playing Superbowl, I**
5 **wouldn't even know.**
6 MR. GASTON: No, it's Superbowl --
7 MR. : No, it's just, it's one
8 of those questions that just gets my blood pressure
9 boiling.
10 Q (MR. GASTON) -- it --
11 MR. That's okay.
12 Q (MR. GASTON) -- it's, it's Superbowl
13 Sunday, and you were not in the hospital. And I
14 want to know -- I understand you got a call; it's
15 in the medical record that you were called
16 regarding the situation with your patient -- can
17 you tell me who called you, and what was said, and
18 what you did?
19 **A Okay. To the best of my recollection,**
20 **the first call I got was from who**
21 **told me what had happened. Dr. was by**

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1 **the patient's bedside, and that's all -- what I**
2 **needed to know, to get in the car and start**
3 **driving.**
4 Q Okay. When he said he told you what
5 had happened, what did he -- what's the best of
6 your recollection did he tell you over the, over
7 the, the cell phone, or the telephone conversation?
8 **A The -- to the best of my recollection,**
9 **what he said was, he had pulled the pacing wires**
10 **absolutely uneventfully, and all of a sudden the**
11 **patient had bleeding coming out of the chest tubes,**
12 **chest tube sites. And Dr. is here; we**
13 **need you here right away.**
14 Q Okay.
15 **A And this is purely out of my**
16 **recollection.**
17 Q And I believe we've been provided with
18 your cell phone records, a Verizon bill from that
19 day that's a two-page attachment. And I'll show
20 you, it's from -- attached to Exhibit No. 10, and
21 it's two pages. And I'll let you take a look at

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1 both pages. And if you can tell me, from these
2 bills, number one, is that the phone that you
3 received the call from, and the approximate time?
4 It's two pages. Some's been redacted, so I want
5 you to --
6 MR. You hand me the letter
7 over there on your left? Just that letter, yeah.
8 Thank you.
9 **A Yes, sir, this is my bill.**
10 Q (MR. GASTON) Okay. And would that be
11 the -- was that your cell phone or home phone?
12 **A Cell phone, sir.**
13 Q Okay. Can you tell me what time,
14 according to those records, you received that call?
15 MR. Wait a minute. You
16 asked him what time did he receive the call from
17 Mr. on his cell?
18 Q (MR. GASTON) If that's depicted on
19 your cell phone.
20 MR. That's a different
21 question. Go ahead.

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1 **A Now, on this, I do not have the numbers**
2 **that called, but there was a call at 9:18, and then**
3 **a call at 9:30. That's the record I have in front**
4 **of me.**
5 Q To be fair with you, Doctor, there's a
6 page before that that has an earlier time. It's
7 all the way at the bottom --
8 **A Oh.**
9 Q -- where your finger is?
10 **A So 8:11, 8:37 --**
11 Q Okay.
12 **A -- and 9:18, and 9:30.**
13 Q Okay. Do you know which of those phone
14 calls were from Mr. ?
15 **A I would have to take a look at the full**
16 **records to say which was from whom.**
17 Q Okay. Is there, is there a reason why
18 you redacted the numbers that would have reflected
19 incoming call on there?
20 MR. I did that.
21 MR. GASTON: Okay. Can you tell me, or

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1 can anybody tell me which is the phone call from
2 Mr. , according to the records? It would
3 save us a lot of --
4 MR. Can you get the, the
5 complete thing? I'll see what I can do.
6 MR. GASTON: -- it save us a lot of
7 time.
8 THE WITNESS: Sure.
9 Q (MR. GASTON) It -- do you know whether
10 that call was at 8:11, 8:37?
11 **A I will have to look at that.**
12 Q You have to look? Okay.
13 **A Yes.**
14 Q After you got the phone call, what did
15 you do?
16 **A Got in the car and started driving.**
17 Q Okay. And how long did it take you to
18 get to the hospital?
19 **A Takes me about 30 minutes, 25 if I'm --**
20 **25 to 30 minutes.**
21 Q And were you at your residence in

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1 when you received the call?
2 **A To the best of my memory, yes.**
3 Q Okay. And when you arrived at the
4 hospital, did you go straight to Miss
5 room, or --
6 **A No --**
7 Q -- did you go straight to the OR?
8 **A -- no, to the operating room.**
9 Q Operating room. So, by the time you
10 arrived at the hospital, she was already in the OR?
11 **A In the OR.**
12 Q Did -- and I know it must have been an
13 urgent situation for you. When you arrived at the
14 OR, can you do the best to tell me where in the
15 procedure Dr. was when you got into the
16 OR?
17 **A Oh, that's right here. The patient's**
18 **chest was already opened by Dr. , and Dr.**
19 **on the floor. The patient was brought**
20 **down to the operating room, and initial surgery was**
21 **virtually conducted by Dr. as I was**

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1 **getting to the hospital.**
2 **When I got in, the following findings**
3 **were noted. There was a long laceration in the**
4 **right coronary artery caused, probably, by the**
5 **pacing wire. The laceration was still bleeding,**
6 **and then I repaired if with 7 oprolene (sic).**
7 **So he already had the chest open, and**
8 **there was a laceration that was visible, and it**
9 **still had not been repaired yet. So he was at a**
10 **stage where he opened the chest.**
11 Q Okay. And do you know how many sutures
12 or the techniques you used to repair the
13 laceration?
14 **A I don't know how many sutures, but I**
15 **used 7 oprolene, which is a fine suture to repair**
16 **that.**
17 Q Okay. And do you know how long it,
18 this procedure took once you got to the OR?
19 **A I would have to look at the exact**
20 **amount of time, but -- I, I would would have to**
21 **look at this.**

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1 Q And, and during this procedure, were
2 you able to place Miss back on the
3 heart-lung machine while you were doing the repair?
4 **A I do not see a note to that, that I put**
5 **her on the heart-lung machine.**
6 Q Is there a reason why you didn't put
7 her on the heart-lung machine, or did not --
8 **A Because the heart was already beating,**
9 **and we just repaired it.**
10 Q The heart was already beating?
11 **A Yeah.**
12 Q Oh.
13 **A So, on the floor, they got the heart**
14 **back, and we put an intra-aortic balloon pump, but**
15 **we -- there is no mention of putting the patient**
16 **back on bypass.**
17 Q Could there be any benefit to putting
18 the patient back on bypass at that time at all?
19 **A No.**
20 Q No. Is there a doctor by the name of
21 Dr. at the hospital? My clients testified --

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1 MR. Spell that for me.
2 MR. GASTON:
3 MR. : Okay.
4 Q (MR. GASTON) They call him -- he says,
5 I'm, he announces himself as, I'm Dr. and they
6 call me Dr. at the hospital. Do, in your
7 travels, do you know who this gentleman might be?
8 **A There is no doctor -- what kind of**
9 **doctor is he?**
10 Q It's the doctor that came out and spoke
11 to my clients after your your op- -- after the
12 operations that you performed on Miss
13 **A Mm, I cannot place anybody --**
14 Q Can't recall?
15 **A -- by the name , unless it was the**
16 **anesthesiologist. Now, I don't know what -- her**
17 **first name on that.**
18 Q Okay. Just doesn't ring a bell to you?
19 **A Nobody would call himself Dr.**
20 Q Okay.
21 **A The anesthesiologist would say, I'm Dr.**

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1 **with the last name.**
2 Q And how do you know Dr.
3 **A From -- Dr. is one the other**
4 **cardiac surgeons at the hospital.**
5 Q Is he associated with your, your
6 professional group?
7 **A No.**
8 Q Okay. Would it -- did Dr.
9 just happen to be on rounds?
10 **A Mm, yes.**
11 Q I know you're anticipating. Did he
12 just happen to be on rounds at the hospital at the
13 time Mr. pulled the pacing wires?
14 **A Yes.**
15 Q You didn't call or arrange for anyone
16 to be at Miss bedside when the wires
17 were pulled?
18 **A No.**
19 Q Okay.
20 MR. GASTON: Do we have an answer to my
21 earlier question?

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1 MR. : Let me talk to him, and
2 maybe we do. I --
3 MR. GASTON: Okay.
4 MR. : -- I don't want to say
5 on the record what my assumption is --
6 MR. GASTON: All right.
7 MR. -- but I think I can
8 answer your question. So if you give me a second.
9 MR. GASTON: Sure.
10 MR. : Okay. Go off the
11 record.
12 THE VIDEOGRAPHER: Going off the video
13 record at 1:13.
14 (At 1:13 p.m., the deposition was
15 recessed and resumed at 1:15 p.m.)
16 THE VIDEOGRAPHER: We're back on the
17 record at 1:15.
18 Q (MR. GASTON) Okay. Doctor, we've had
19 a chance to review the phone records that you
20 provided to us, and I think -- can we agree that on
21 February 16th at 9:18 in the morning is when you

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1 received a call from Mr. regarding Miss
2 's situation?
3 **A Yes, sir.**
4 Q Can we also agree that 9:30 a.m., you
5 then called the hospital for an update on her
6 situation?
7 **A On my way to the hospital, I called the**
8 **hospital -- called Mr. to get an update.**
9 Q Thank you. I think we might have
10 touched on this briefly, but after you made the
11 repair to Miss graft, I believe you
12 had to leave her chest opened --
13 **A Yes.**
14 Q -- and then she was taken into the
15 Intensive Care or Cardiac Care Unit --
16 **A Yes.**
17 Q -- is that true?
18 **A (Witness nodding affirmatively.)**
19 Q Yeah, I know you're shaking your head.
20 It's got to be a yes.
21 **A Yes. Sorry. Yes.**

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1 Q All right. Now, after that repair, did
2 you come out to address the family?
3 **A Again, I do not remember in this**
4 **particular case, but I would always go address this**
5 **with the family.**
6 Q Okay. And let me just -- I'll ask
7 another question. You don't remember the
8 conversations you had with Miss family
9 after you made the repair to Miss last
10 radiograph; would that be a fair statement?
11 **A That would be a fair statement, sir.**
12 Q Have you had any other conversations
13 with anyone associated with this case -- and
14 actually, with Miss -- I'm sorry -- with
15 Miss , or any of Miss family
16 after February 6th, ?
17 **A So --**
18 MR. : After February 6.
19 **A After the patient's death?**
20 Q (MR. GASTON) Right.
21 **A I would have definitely had a**

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1 **conversation with the patient's family after the**
2 **patient's death.**
3 Q Yeah. But, I mean, after that day at
4 the hospital, after February 6th --
5 **A Oh, after that date.**
6 Q -- after that day, and up 'till today's
7 date.
8 **A I do not recollect that.**
9 Q Okay. Doctor, did you have a
10 conversation with the Medical Examiner's Office,
11 either one of their investigators or one of the
12 doctors there, following Miss death?
13 **A I do not remember a conversation, if I**
14 **had one.**
15 Q And no autopsy was performed on Miss
16 , correct?
17 **A I need to check that fact. I'm sorry.**
18 **I should know that.**
19 Q That's okay. I -- there wasn't one
20 noted, and I wasn't aware of one, and I just want
21 to know. Sometimes the hospitals will do some

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1 autopsy that the family's not aware of, but --
2 MR. I'm not aware of one.
3 MR. GASTON: Okay. All right.
4 Q (MR. GASTON) Did you ever make any
5 other notes or memorandums on your own regarding
6 the situation, other than what's not contained in
7 the medical records, and before the lawsuit when
8 instituted in this case?
9 **A Not that I would recall, sir.**
10 Q Have you ever taught an intern, a
11 younger doctor, or a nurse the proper procedure to
12 pull a pacing wire out of the patient's chest?
13 **A Not since my residency, sir.**
14 Q Okay. And that would be 14 years ago?
15 **A Yes.**
16 Q Okay.
17 **A Formal teaching, that's -- no.**
18 Q Your formal teaching --
19 **A Yeah.**
20 Q -- not, not you teaching somebody else.
21 MR. His question is, did

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1 you ever teach anybody since you finished your
2 training.
3 **A No.**
4 Q (MR. GASTON) If the operation -- I'm
5 sorry -- did Miss present with normal
6 human, human anatomy?
7 **A She presented with normal anatomy**
8 **associated with the pathology that she had.**
9 Q Easier put, you found the organs where
10 you expected to find them in her body?
11 **A Yes.**
12 Q Okay. And if Miss had
13 survived her operation, would you anticipate that
14 she would be able to return to a normal, active
15 life?
16 MR. Wait a second. And
17 this question's relevant to what?
18 Q (MR. GASTON) Well, I just want to know
19 if she had lived, if she survived the operation,
20 did you expect her, and hope for and expert her to
21 return to a normal, active life?

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1 MR. : For a patient who's had
2 a --
3 MR. GASTON: A patient with her, with,
4 with her condition.
5 MR. : Okay.
6 **A She would be back to a life where she**
7 **would still be on the Methotrexate, which she had**
8 **for her other associated pathologies. She would**
9 **still have her mitral disease to deal with. Would**
10 **she have lived through this? Yes.**
11 Q (MR. GASTON) All right. And, and had
12 she survived, and you'd expected it would be a
13 relatively, quote, normal, active life, that she
14 would be able to live following this operation?
15 **A With the caveat of her other pulmonary**
16 **abilities still being there.**
17 Q I understand. That's all the questions
18 I have. Thank you.
19 **A Thank you, sir.**
20 MR. We'll read.
21 THE VIDEOGRAPHER: Concludes the

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1 deposition. Going off the record at 1:21.
2 (At 1:21 p.m., the deposition was
3 concluded.)
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