IN THE SUPREME COURT OF THE STATE OF NEVADA

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APPEAL

From the Eighth Judicial District Court, Clark County The Honorable Kathleen E. Delaney, District Judge District Court Case No.: A-17-766426-C

APPELLANT'S APPENDIX VOLUME XVIII

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Attorney for Appellant Darrell Moore and Charlene Moore

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of the law firm and that on this 21st day of July, 2021, I served a true and correct copy of the foregoing

APPELLANT'S APPENDIX VOLUME XVIII as follows:

by placing same to be deposited for mailing in the United States Mail,
in a sealed envelope upon which first class postage was prepaid in Las
Vegas, Nevada; and/or
to be sent via facsimile (as a courtesy only); and/or
to be hand-delivered to the attorneys at the address listed below:

to be submitted to the above-entitled Court for electronic filing and X service upon the Court's Service List for the above-referenced case.

Robert McBride, Esq. McBride Hall 8329 W. Sunset Rd., Ste. 260 Las Vegas, NV 89113

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> By: /s/ E. Breen Arntz An employee of E. Breen Arntz, Chtd.

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           IN THE EIGHTH JUDICIAL DISTRICT COURT
                    CLARK COUNTY, NEVADA
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   DARELL MOORE, ET AL.,
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              Plaintiffs,
                             ) Case No.
10
            vs.
                             ) A-17-766426
   JASON LASRY, M.D., ET
11
   AL.,
12
                             ) Dept. No. 25
13
             Defendants.
14
15
                         JURY TRIAL
16
           Before the Honorable Kathleen Delaney
           Tuesday, February 11, 2020, 1:30 p.m.
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18
            Reporter's Transcript of Proceedings
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22
23
24
   REPORTED BY ROBERT A. CANGEMI, CCR 888
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   APPEARANCES:
2
   FOR THE PLAINTIFFS:
                             Breen Arntz, Esq.
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                             Philip Hymanson, Esq.
                             Henry Hymanson, Esq.
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   FOR THE DEFENDANTS:
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                             Keith Weaver, Esq.
                             Alissa Bastick, Esq.
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   DARELL MOORE
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1 Las Vegas, Nevada, Tuesday, February 11, 2 3 4 5 (Thereupon, the following proceedings were had in open court and outside 6 7 the presence of the jury.) 8 9 10 THE COURT: My marshal informs me that we 11 are still missing one juror, but I came in just to 12 make a couple of quick records. 13 I did what popped up today, the 2 things 14 filed by Nurse Practitioner Bartmus by Mr. Weaver, 15 the notice of hearing, and the hearing on the issue 16 with regard to the testimony of Dr. Wiencek. 17 see that those things were filed yesterday, prior to our commencing trial. 18 19 I think the partitioners know that when you 20 submit something to file and serve, it goes out counsel but it doesn't go to the Court. 21 22 It just gets filed, so we don't know that 23 they are there. 24 We had full argument, so I am assuming anything in there is moot, and we can vacate the 25

hearing set for March 17. 1 2 MR. WEAVER: We can. We apologize. We were promised by the runner that there would be a 3 courtesy copy to the Court within the hour, so we 4 know that's obviously different than filing, but it is moot. 6 THE COURT: 7 If one got to the Court, it didn't get to my desk. 8 9 My law clerk is out at the moment taking the 10 bar, so I have an extern who is covering, and it is 11 very possible it landed somewhere, and he didn't see 12 it. I will give him the benefit of doubt that he 13 14 just missed it, but we had full argument. 15 Also, you did not see an e-mail from me this 16 morning. I apologize. I did almost finish the 17 draft from the jury instructions, but I just didn't have enough gas left in the tank to get it done last 18 19 night. And we have a couple of options, which we 20 can discuss later. If the jurors are here, we can 21 22 get started. 23 Are we still waiting for one the jurors? 24 THE MARSHAL: Yes. 25 My criminal calendar tomorrow THE COURT:

should not be too bad. If you wanted to make 1 2 argument before we put together the final, final set, I could schedule it either at 11 or 11:30, and 3 we can just you go ahead and nail it on those that 4 are in dispute. My intent is to have the draft to you by 6 7 like 7:00 o'clock tonight. It will come tonight. I am not trying to 8 9 force you to look at it tonight. I wanted to get it 10 to you, and then if there are any questions, we can have argument. 11 12 The other option would be, and it is up to 13 you after you see it, if you want to just wait and make a record afterwards. 14 15 I am not saying that I am wedded to the 16 draft, when it is complete, and I wouldn't consider 17 changing my mind. I would. It is just it is an added inconvenience to 18 19 have to come in tomorrow late morning calendar, so it up to you all what you wish to do. 20 If you want to wait to declare, I will 21 create the session, and if you want to wait until 22 23 the morning and say one way or the other, that's 24 fine, too.

When I send you the e-mail, I will explain

1 for those few that were disputed what I did and why, 2 and then we can go from there.

I did make some revisions to what I will call the stocks. There was one set of stocks obviously that the parties all agreed to, and Nurse Practitioner Bartmus through Mr. Weaver had offered up some other stocks just in case they would be applicable.

None of them however incorporated the 2018 version of the jury instructions, so my version does, just to have the most up-to date.

Those superceded the 2011 version. I am not saying that where there's one that is not covered, we can't go back to the 2011 version, or the 1986, or just rely on the case law.

I am open to all of those things, and some of the things that were offered up will require us to do that.

But for the ones that had stocks in the 2018, I just adjusted the language to match the 2018, so we had the most current version.

So that's what you will see as the difference there. I will give you a clear outline of what I did and why.

I just didn't get a chance to do a final

read through and make a final thing, so that's why 1 2 you didn't get it yet. For the most part it tracks to a stock 3 instruction, so for that one, I compared it to the 4 5 stock, but you might want to take a look. They were filed separately or at least 6 7 submitted separately, the one on loss of chance, and one on preexisting condition. 8 9 When I saw the one, I thought I had 2 copies 10 of the loss of chance. That is why I missed it, but Mr. Arntz pointed that out. 11 12 Otherwise I think that's it. My marshal is giving me the thumbs up that everybody is here. 13 14 Is there anything else that the parties have 15 outside of the presence? MR. McBRIDE: We will come in at 11 or 11:30. 16 17 MR. ARNTZ: I am not sure I am going to keep 18 the loss of chance. I may withdraw it. I will send you what I send you 19 THE COURT: tonight from my personal e-mail, and you can e-mail 20 back and say -- here is what you are up against 21 tomorrow is my criminal calendar. 22 23 It is not terrible. It regularly goes past 11, but not always until 12. We can say 11:30 and 24 we will just have 30 minutes to do any final, this

1 is this, or I have a problem with that. 2 Hear is something you missed, Judge. Here is a massive mistakes, you left this out. I know it is 3 an inconvenience. 4 5 I hate to put you through it. MR. McBRIDE: That is fine for me. 6 Whatever 7 is more convenient, if you get a chance to finish 8 up. THE COURT: When you see it tonight, say 9 10 Mr. Arntz decides I am going to withdraw that, if he sees in the final version it was included, or if it 11 12 wants to fight to have it in, if it wasn't, or there are some other issues, if you to e-mail and give 13 14 your input, and say I don't know that I need to come 15 and make a record, we can always make a record after 16 the jurors go out to deliberate, and make a final 17 record in the system. It is just that I want to make sure that we 18 19 have a record. 20 MR. McBRIDE: Perfect. 2.1 THE COURT: I think they are ready. 22 Do we want to have Mr. Moore back up on the 23 stand. 24 I know we have done that with other witnesses when we broke. 25

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           I think he should come up now.
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           (Thereupon, the following proceedings
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            were had in open court and in the
6
            presence of the jury.)
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           THE COURT: Welcome back, ladies and
   gentlemen. We will resume trial. Make sure
10
11
   any cell phones are off or silent.
12
           Mr. Moore, can you please acknowledge
13 for the record that you understand that you
14 are still under oath from your testimony
15 yesterday?
16
          THE WITNESS: I do.
17
           THE COURT: Thank you so much.
18
          Mr. Arntz, whenever you are ready to
19 proceed.
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21
                CONTINUED DIRECT EXAMINATION
22
      BY MR. ARNTZ:
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24
       Q. Okay.
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           Darell, we got about an hour, so we
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will start going through some material pretty quick,
okay.

Yesterday when we left we had not quite gotten into the medicine and how you started getting treated for your vascular disease here in Las Vegas.

If I recall, in the summer of 2012, you went saw Dr. Simon.

Is that right?

A. That's correct.

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- 10 Q. Explain to the jury why you went and saw 11 Dr. Simon.
- A. In 2012 I went to my general practitioner
 thinking I might have the beginning of a problem
 with my leg as far as infection.

He sent me to the emergency room, and the emergency room took a look at me. It wasn't a big deal.

They cleaned it. They took care of it, and then they asked me to go see Dr. Simon, because he was doing wound infection cleaning and everything, so they said would you go to him and have him look at it, and start taking care of it.

- Q. What kind of doctor was Dr. Simon?
- A. Well, one he is vascular, and he has a couple other credentials.

Basically besides doing wound care, he was doing that, because he started his practice up, and I think he was doing that to make money while his practice was getting going.

Q. Okay.

And you ended up having a conversation with Dr. Simon about your vascular condition?

A. It was either the second or the third time I went to see him, he said, Mr. Moore, I think I might know what your problem could be.

So he suggested that I get MRI, and he did the lower extremity and everything, and he said that the MRI was finished, and he contacted me and said that I had a lower aorta aneurysm, and that I had too much cut off blood flow to my leg.

So he suggested that one of the doctors that read this for him from the MRI, plus getting in the contact with Dr. Wiencek about how to follow-up on this MRI.

So I contacted the Dr. Wiencek, and he looked at the paperwork and everything, and he said you will need an operation.

So they got together, and it took them about 2 months or 2 and a half months for the 2 doctors to get together, and all of the time I am

thinking I have a lower aorta aneurysm, and it is 1 2 taking a long time for 2 doctors to get together, but they finally did, and they set up an operation 3 for November 3 -- I take that back, November 2. 4 5 That was my wife and my anniversary. Then they said they will have to change that. I thought, 6 7 that is good, it is not our anniversary, and then they November 8, which was my birthday. 8 9 Do you recall, did you meet with Dr. Wiencek 10 before the surgery? Yes, I did. 11 Α. 12 What did he tell you about what was going on Q. 13 with your leg? 14 I didn't have enough blood flow going to the foot, so he told me he was going to put 2 stents in 15 16 on the left side to help the blood flow. And then he also said if when they do the 17 operation basically that if he didn't feel that I 18 19 had enough blood flow, that he was going to go ahead and do something in the calf for me. 20 He said it would be an incision about one 21 22 inch long. It turned out to be about 4 and a half

Q. Did he make a decision during the surgery to

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inches long.

- A. He had to make that determination during the surgery.
 - Q. Do you remember what symptoms you had when you went in for the surgery on November 8?
- 5 A. Well, from the MRI I had a lower aorta 6 aneurysm.
 - Q. I don't know the findings, your own physical symptoms, were you complaining of anything, were you having any problems?
- A. Besides the open sores in my ankles, I had a problem there. I have been wrapping my legs for 31, 32 years.
 - Q. Were you having any problem with pain in your legs other than the pain from the sores?
 - A. I had pain from the sores.
- I also, because of my gait, walking with the cane I had pain in my hip, which would go sometimes into the thigh and the hip.
- Q. Do you remember if when you went into see him, did he tell you about any vascular issues or blood flow issues?
- 22 A. Dr. Wiencek?
- 23 Q. Yes.

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A. Yes. He was concerned about my blood flow to the leg.

1 That was a bad question. Ο.

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- Did he tell you anything specific about findings that he had made and whether you had pulses that were present, or things like that?
- 5 Well, most of the time when I went to Wiencek, we had to use a Doppler to even find the 7 pulses.
 - Q. But before -- was that true even the first time you went before you had the bypass?
- Α. The very first time I went to see him, it is hard to remember, but we mostly discussed what was with the MRI on the first visit. 12
 - Q. Did he explain to you before the surgery what the bypass might entail?
 - No, he didn't. Α.
 - He might have said something to me, but basically all I understood just before the surgery was that if the blood flow wasn't sufficient, he may have to do some more work in my calf, which I probably wouldn't understand what he was saying then, accept he was -- in my mind he was going to open up possibly more blood flow, which obviously he did with the femoral popliteal graft.
 - Q. So before you had the surgery, you were having -- you had been having problems with wounds

1 and sores on your legs for 30 some years?

A. Yes.

- Q. Tell me what happened, what kind of result you got after the femoral bypass was done.
- A. After the bypass was done, all of my sores on my left leg that I continually had to wrap for 30 some years healed up. They closed up.

Up until then, I couldn't find anybody that would help me get those closed.

I even went to my general practitioner in Paso Robles about the time I had to retire, and he had me go to a plastic surgeon which worked on me.

And, of course, he cut away the dead skin.

He took a rasp to the opening to clear it, rewrap it and start having it heal.

So I had no good results up until that operation.

Q. I want to ask you a couple of questions about that time period in your life.

How would you describe your quality of life before you had femoral popliteal graft?

A. Other than pain in my foot, which I wrapped for and everything, I just moved on ahead, and my quality of life, we flew places.

We did things.

As a matter of fact, just before this 1 2 problem on December 25, 2016 we went to Hawaii, and I rode a four-wheeler out in the jungle. 3 So I had pretty good life, even though I had 4 5 to wrap everything before that. I am talking before the femoral popliteal 6 Q. graft. 7 Before that? Α. 8 9 Ο. Yes. 10 Well, I tried to go through the motions of -Α. - we had a fairly good life, except for a lot of 11 12 pain that I struggled with. Q. And after the fem pop graft, did it improve 13 14 your quality of life? 15 Yes, it did. I didn't have to wrap my legs Α. 16 any longer. And for a while I could walk a whole lot 17 18 better without a bad gait. Okay. 19 Q. But then I still had to walk with a cane 20 after that. At least I didn't have no open sores 21 22 any longer. 23 Q. And you were walking with a cane because of 24 pain in your foot or your leg, or because of your

25

back?

- A. My lower back is a lot of my problems since that also.
 - But I still wasn't walking perfect, so I used the cane, because it would come up through my thigh into my hip and irritate me the most after the operation.
- 7 | 0. Okay.

3

4

5

6

8

9

- Now what was the plan for follow-up with Dr. Wiencek after you had the fem pop graft?
- A. Well, to begin with, he just checked out now I looked and everything, and the actual -- I assuming, I believe once or twice, but I don't believe that we did much follow-up until I had more
- 13 believe that we did much follow-up until I had more 14 problems later.
- Q. When you would go to Dr. Wiencek's office, did he always take a pulse in your feet?
- A. He always took a pulse by Doppler in both of my feet, checking my left and right leg.
- 19 Q. Was it only Dr. Wiencek that would do it or, 20 did he have staff members that would do it?
- A. He had one nurse one time try to do it. She couldn't quite find one on the top of my foot, so he had to come in and do it.
- Q. She couldn't find it with the Doppler?
 - A. No. She was having a hard time with the

```
1
   Doppler.
2
           Was that always the case after you had the
3
   fem pop graft?
4
           Always since I had the fem pop graft, they
       Α.
5
   always had to use a Doppler.
       Q.
6
          Okay.
7
           There had been, as you have seen up on the
   screen, you have seen different health care
8
9
   providers you have been to who have said they took
10
   your pulse.
11
           To your knowledge has anybody ever been able
12
   to get a pulse in your feet palpating, by putting
13
   their hand on your foot?
14
           MR. McBRIDE: Objection.
15
           That calls for speculation.
16
           MR. WEAVER: Join.
                        It seems to be a fair record
17
           THE COURT:
18
   that we can show, that we can show them, and asking
   this witness to talk about it, sort of similar to
19
   the question with Mrs. Moore palpate, what that
20
2.1
   means.
22
           I think the objection should be sustained.
23
           I am not saying you can't get to the
24
   information in a different way.
           Do you know what palpation means?
25
       Q.
```

- A. That you have blood flow through the foot and the coloring, part of the 5 P's they have been talking about.
- 4 Q. That's the pulse.

Do you know what it means to palpate a pulse?

7 | MR. McBRIDE: Asked and answered.

THE COURT: Overruled.

- 9 A. I thought I just explained that, the part 10 where they put pressure on your foot.
- 11 Q. You mean with your hand?
- 12 A. Yes.

8

- Q. When you would go to these -- for instance, when you went to Dr. Tran, did he have you take off your sock usually and then put his hand on your foot to see if you had a pulse?
- A. In the years that I went to Dr. Tran, I
 basically went there for my Lisinopril, blood
 pressure medicine, and to get a general physical
 check-up as far as him listening to my heart, and
 the basics.
- But only one time did I ever go to Tran that

 he -- that I can remember that he looked at my foot,

 and that's when I thought it might be infected.
 - Q. Before you saw Dr. Simon?

1 A. Before I saw Dr. Simon.

- This was early in 2012, I believe.
 - Q. How about the pain management clinic you went to, did they take off your sock and put their hand on your foot to get a pulse?
 - A. No. The pain management, that started about, it might have been 6, 7 years ago, 6 years ago.

They were setup to strictly control your medicine of Oxycodone, Percocet or whatever you need to take.

All they do is they go in there and check your oxygen level and everything.

And 4 times a year they check your urine to make sure that you are staying on your regimen of medicine without any extra stuff in it.

And that's all they do. They never check your feet. They ask about your pain level, and they ask from 1 to 10, and I would honestly say between 3 and 5 most of the time.

That's determined on how you feel that day at that moment. You could have had your medicine 5 hours ago or one hour ago, and it is going to make a a difference of how I would answer that question.

Q. To your recollection, when did you first start going to the pain management clinic?

- A. When it first opened. I can't tell you the day they opened, when they started that to control.
 - Q. Did somebody refer you to the pain management clinic?

- 5 A. That started I believe in Tran's office,
 6 because he said he couldn't write any more
 7 prescriptions unless I went to the Nevada Pain
 8 Center, and they control it, because they do all of
 9 the reporting, so it is unified, so everybody can
 10 see it.
- Q. To the best of your recollection, what were the pain problems that you were having that took you there?
 - A. Well, it was in my legs, mostly my left leg.

 It was in my lower back, and years ago I had broken my tailbone, which that's not what the medicine is for, but that's another irritating factor.

That's always going to be there.

- Q. It never repaired?
- A. Let's put it this way, the doctor checked it and said the tail end of it is not going to do any damage, and I asked him, you put me all through this pain, so what are you going to do about it, and he said nothing.

So nothing can really be done with that. 1 2 I want to take you through some records from Dr. Wiencek. They have already been shown to the 3 jury, so if you can enlarge that paragraph. 4 MR. McBRIDE: What Exhibit Number? 5 MR. HENRY HYMANSON: 113, page 105. 6 MR. McBRIDE: Thank you. 7 So you see in this record where it says, he 8 has good pulses in both lower extremities, dorsalis 9 10 on the left, and posterior tibial on the right. He also has changes of chronic venous 11 12 insufficiency in both lower extremities, do you see 13 that? 14 Α. Yes. 15 Now is your testimony that every time that 0. 16 you went to Dr. Wiencek the way that he took your 17 pulse was by Doppler. 18 Correct? 19 Α. Correct. I think there is another part of this 20 Ο. particular visit that wasn't shown to the jury. 21 Ι would like him to see now. 22 23 MR. HENRY HYMANSON: 113, page 107. 24 THE COURT: Thank you. 25 Q. You see here under extremities, it says,

```
1
   able to move all extremities equally, bilateral
   lower extremities, audible pulses on the posterior
   tibial and dorsalis pedis via Doppler examination.
3
           Is that what you recall him doing usually?
4
5
       Α.
           Yes.
           I think another one shown to you by
6
7
   Mr. Weaver -- shown to the jury by Mr. Weaver --
           MR. McBRIDE: What document?
8
9
           MR. HENRY HYMANSON: 113, page 82.
10
           MR. McBRIDE: Thank you.
11
           So in the history of present illness again
12
   they say he has the good pulses in both lower
   extremities, dorsalis pedis on the left, and
13
14
   posterior tibial on right.
15
           Do you see that?
16
       Α.
           Yes.
17
           It doesn't mention Doppler there. I think
   lower down on the page it does.
18
19
           Again, able to move all extremities equally
   bilateral.
20
           Audible pulses on -- is there another
21
22
   word -- on anterior and posterior tibial, and
23
   dorsalis pedis via Doppler examination.
24
           That's the way you recall it always being
25
   done?
```

A. Yes.

O. Then

13

20

right.

Q. Then a note from --

MR. HENRY HYMANSON: 113, page 56.

- Q. So, the first one was August 10, 2015, that would have been after you had an admission to the hospital for an occlusion.
- 7 The second one was February 8, 2016.

And then third one was May 9, 2016.

Again you will see in the paragraph
regarding history of present illness, it says you
have good pulses in both lower extremities, dorsalis
pedis on the left, and posterior tibial on the

And then if we go further down on the page,
it says, bilateral lower extremities, audible pulses
on anterior and posterior tibial, and dorsalis pedis
via Doppler.

Again, is that the way you always recall it being done?

- A. Yes, sir.
- Q. Does Dr. Wiencek at some point give you
 instructions about how you should react to certain
 things that are going on with you?
- A. Well, after I had my first clot, he explained to me how important it was to get taken

```
care of if I have any pain to my calf or think
1
2
   something is going wrong with me, it was too
   important to get to the emergency room to have a
3
4
   follow-up checkup.
5
       Q. Did he explain to you that time was of the
   essence?
6
7
       Α.
           Yes.
           MR. WEAVER: Leading, Your Honor.
8
9
           THE COURT: Slightly.
10
           Overruled.
           But just be mindful, Mr. Arntz.
11
12
           Are those words that you recall him telling
       Q.
13
   you?
           I thought I said part of that, that time was
14
15
   of the essence, and I need to get to the emergency
16
   room.
17
       Q.
          Okay.
           Was this the result of you taking longer
18
19
   than you should have when you first had the first
   clot in 2014?
20
2.1
           In 2014 --
       Α.
22
           MR. WEAVER: Objection, Your Honor.
23
           Leading.
24
           THE COURT: Mr. Arntz, we do have to be
25
   careful that we are not supplying the answer and the
```

question, that's not the intent. 1 These aren't really transitional questions. 2 If you can please ask more open-ended 3 questions, I sustain it. 4 5 Mr. Moore, if you can just pause just in case there is an objection, so it can heard, and we 6 are not talking over each other. Q. Why did he tell you that after the 2014 8 admission? 9 10 Well, when I had the problem in 2014, I took while getting to the emergency room. 11 12 I believe it might even have said a couple 13 of weeks. But my problem in 2014, the first one that I 14 had, I was walking around in my backyard one day, 15 16 and I felt this cool feeling that would go from my 17 groin to my ankle. It felt like a chill down my left leg, and 18 19 it is so quick and so slight, but it did bother me. 20 I thought to myself, I think I better pay attention to any other feeling in this leg. 21 And it took a while, but I finally got a 22 23 little pain in the calf, and checking my feet for warmth and coolness, like I always have to a certain 24

extent because of the open sores and everything all

```
time, and wrapping my leg, I felt the left leg was
1
2
   getting cooler, and then I went to the emergency
   room.
3
           I heard you describe these things to me, but
4
   explain to the jury, is the cold feeling that you
5
   have, is that something that you can actually feel
6
   to touch or something that you feel inside of your
7
   leg?
8
           You feel this inside of your leg, and it
9
10
   just -- it is so slight, but it is almost like
   somebody is blowing across the lower part of your
11
12
   back.
13
           It is there and gone. It just starts from
14
   the groin area to the angle, and it is quick.
15
           And then does it persist?
       0.
16
       Α.
           No.
           It lasts a second, if that much. It is so
17
       Ο.
   quick, but it is just a chill feeling that just goes
18
19
   really quick.
       Ο.
20
          Okay.
           Let's look at the admission record for 2014.
2.1
           MR. HENRY HYMANSON: Exhibit 100, page 2005.
22
23
           THE COURT: Just for charity, it is Bates
24
   Number 2005.
```

There are page numbers on the document as

```
well, because of that particular document itself, so
1
2
   if he can just say Bates Number for clarity, for the
   record.
3
           MR. HENRY HYMANSON: Understood.
4
           Thank you, Your Honor.
5
           THE COURT: Thank you.
6
7
       Q. So here it says that you presented to the
   hospital -- I am having to approach. I don't see
8
9
   very well.
10
           THE COURT: Not a problem.
11
       Q. Patient presents with lower extremity pain
12
   and lower extremity swelling.
13
           Did you always have swelling when this
14
   happened?
15
           I had it for 30 years. I have had swelling.
16
   At times it gets worse, and I have had to deal with
17
   that.
           But my leg hasn't been -- my left or right,
18
19
   especially my left leg has not been swollen since
   1980.
20
           But it can get a little larger. The leg can
21
22
   get numb, and I get pain in the calf area.
23
       Q. Explain to the jury what the onset of this
   particular one was, was it gradual or extreme pain
24
   immediately?
25
```

Explain it the jury. 1 2 In 2014, the first one was very gradual. 3 I even almost forget about it for a few 4 days, because first it is the first time I ever had 5 that feeling in my leg. It was always on my mind. It was very 6 7 gradual. Q. So in this one, you took a couple of weeks 8 9 to get there, and by the time you got there, what 10 was the diagnosis. Do you remember? 11 12 The diagnosis is that I had an occlusion in Α. 13 my popliteal graft. Q. Let's go to the physical exam. 14 15 MR. HENRY HYMANSON: Exhibit 100, Bates 2007. 16 17 THE COURT: Thank you. 18 We are looking at the physical exam that 19 they did. 20 Do you recall when you were at the hospital in 2014 whether they were able to get a pulse by 21 22 touching your foot? When I first went in, I can't recall exactly 23 24 when I first went into to the ED. 25 I do know that even after I had the problem,

```
and they took care of it, that they had to use a
1
2
   Doppler, the nurses every time to check my feet.
       Q. Do you recall them doing an ultrasound on
3
4
   your lower leg?
5
       Α.
           Yes.
           Was that something that was -- to you was
6
7
   that something that was normal for when they would
   check to see if you had any clots?
8
9
       Α.
           Yes.
10
           So here it says, left lower extremity
11
   arterial Doppler.
12
           That's how they took your pulse?
13
       Α.
           Yes.
           MR. WEAVER: Leading, Your Honor.
14
15
           Is that how they took your pulse during the
       Ο.
   ultrasound?
16
17
           MR. WEAVER: It is still leading, Your Honor.
18
           MR. ARNTZ:
                        It is not leading.
19
           THE COURT:
                        It is.
20
           I am not sure how you get to that line of
   question without the transition.
21
           Overruled.
22
23
           You can answer, Mr. Moore.
24
           Yes, they used a Doppler on my foot.
       Α.
25
           And you see from this that they did the
       Q.
```

```
ultrasound as well, and they did the venous duplex
1
2
   as well, but it showed no evidence of DVT?
           MR. WEAVER: Excuse me.
3
           It misstate the evidence.
 4
           He is asking questions about 2014. This is
5
   2015.
6
                       You are right.
7
           MR. ARNTZ:
           THE COURT: 2015 is date on this.
8
9
           Thank you, Mr. Weaver for the clarification.
10
           Do you want to switch documents?
11
           MR. ARNTZ: Here we go. I am in the wrong
12
   one.
           I apologize, Your Honor.
13
14
           Let's go to page --
       Ο.
15
           MR. HENRY HYMANSON: Exhibit 100, Bates 2007.
16
           THE COURT: Thank you.
17
           Just to clarify, let me see something that
18
   has the date.
19
           All right.
20
           Thank you.
           So originally when you went to the hospital
21
22
   in 2014, they made a differential diagnosis of deep
   vein thrombosis.
23
24
           Do you see that?
25
       Α.
           Yes.
```

```
1
           They also put on that differential diagnosis
       Ο.
   arterial occlusion.
2
           Do you recall them talking to you about
3
4
   these potential problems with your leg?
5
       Α.
           Yes.
           And to your knowledge, did they ever find a
6
7
   deep vein thrombosis?
           I don't know about the deep vein thrombosis.
8
       Α.
9
           I know that my femoral graft was occluded.
10
           I may not be understanding.
           MR. ARNTZ: Let's go to the next page 2008.
11
12
           This is a report from the ultrasound that
       Q.
13
   they did in 2014.
14
       Α.
           Yes.
15
           And you see that they ruled out a -- it says
       Ο.
16
   no evidence of deep vein thrombosis.
           No evidence of deep vein thrombosis in the
17
   left lower extremity.
18
19
       Α.
           Correct.
20
           Do you recall the finding from the rest of
   the lower arterial duplex, where it said that you
21
   had an arterial occlusion?
22
23
       Α.
           No.
```

THE COURT: We can't all talk over each

24

25

other.

```
Mr. Moore, wait for a highlighted version
1
2
   and a question from counsel.
           And, Mr. Weaver, you had an objection.
3
           MR. WEAVER: I was just going to say what is
4
5
   the question?
           THE COURT: What is the question, Mr. Arntz?
6
7
           The question is in regards to the findings
       Ο.
   from the lower extremity arterial duplex and
8
   ultrasound, do you recall them telling you that you
9
10
   had an occlusion to the arterial graft?
11
       Α.
          Yes.
12
       Q.
          Okay.
13
           Now, in this note it says, Dr. Wiencek was
14
   called.
15
           Did you have instructions when you went to
16
   the hospital that you should have them call
   Dr. Wiencek?
17
           On 2014 I went to the hospital, and I
18
   believe we asked them to contact Dr. Wiencek.
19
           It was later that he insisted that he be
20
   contacted.
2.1
22
           What did he specifically say to you?
23
           Any time I went to the emergency room to
       Α.
   contact him or have them contact him, meaning the
24
```

25

emergency room people.

```
1
           MR. ARNTZ: Go to page 2010.
2
           THE COURT:
                       Mr. Arntz, when you turn around
   and speak softly to your associate that way, nobody
3
4
   can hear you.
5
           I don't know that my reporter can take it
   down, and now we have a document that we don't know
6
   the date of.
7
           I think I heard you say 2010.
8
9
           I ask that the top part be highlighted, or
10
   give a date, or say out loud so we can hear you,
   what it is that you are asking him to pull up.
11
12
           MR. ARNTZ: I apologize. I wasn't thinking
13
   about it being on the record.
           This is it page 2010 from the admission from
14
   2014.
15
16
           And if you look at that history of present
17
   illness, is there anything about that history that
18
   you believe is not create.
19
           Read that to yourself.
           I don't understand.
20
       Α.
21
       Q.
           I am sorry.
           He has --
22
       Α.
23
           THE COURT: Mr. Moore, just like I
24
   instructed Mr. Arntz, we can't speak to ourselves.
25
           We have to speak up so everyone in the
```

1 courtroom can hear. 2 I know it is difficult. The question, if you want to repeat it, but as I understood it, is 3 there anything in this note that you do not agree 4 5 with. Do you have an answer to that question? 6 7 No, I agree with him. Α. 8 Q. Okay. 9 Let's go to the next time you had a problem 10 with your clot. Tell me what you remember from your physical 11 12 findings or what you were feeling before the 2015 13 admission, June of 2015. There again, I felt that cold chill go down 14 my leg, and I started checking my feet to feel a 15 16 difference, and the minute I felt one getting cooler than the other, I went right to the emergency room. 17 18 How long did you wait that time? Ο. 19 This time it was probably a day and a half. 20 They say 2 days. 2.1 Q. Okay. 22 And what do you recall the actual -- I say 23 physical findings, but how did you feel? 24 What were your feeling that made you feel

25

like it was the same?

```
Well, I got coolness of the foot.
1
       Α.
           I got numbness.
2
           I had some pain in the calf.
3
4
           Again, is this coolness that you are talking
   about something that you can feel with your hand, or
5
   something you are feeling in your leg, or both?
6
           In the beginning I felt the coolness go down
7
   my leg.
8
           The coolness, I am talking about later is
9
10
   the actual foot, compared to the right foot.
11
       Q.
          Okay.
           It would be something that someone who is
12
13
   examining you could feel the difference in the 2
   feet?
14
15
       Α.
           Yes.
16
       0.
           All right.
17
           Then you went to the hospital, just like you
   did in 2014?
18
19
       Α.
           Yes.
20
           MR. ARNTZ: Bring up 1423.
           MR. McBRIDE: Again, what page?
21
           MR. ARNTZ: 1423.
22
23
           MR. McBRIDE: Thank you.
24
           THE COURT: Of exhibit?
25
           MR. ARNTZ:
                        Exhibit 100.
```

```
1
           THE COURT: Thank you.
2
           You will see at the bottom, where it says
   history of present illness, the patients presents
3
4
   with lower extremity pain.
5
           The onset was 2 days ago and gradual.
           The course and the duration of symptoms is
6
7
   constant.
8
           Type of injury, none.
9
           The character of symptoms is pain, no
10
   swelling.
           Was this the first time -- do you recall
11
12
   there being swelling when you went in, in 2015?
13
           Yes. There was swelling in my leg.
           I think you said earlier --
14
       0.
15
           MR. WEAVER: Your Honor, leading.
           THE COURT: Overruled.
16
17
           Let him complete the question, please.
18
           And then it says the degree at present is
19
   moderate.
           Is that a fair description of what you
20
   presented with in 2015?
21
22
       Α.
           Yes.
23
       Q.
          Okay.
24
           The degree of pain was moderate.
       Α.
25
           Had you been taking Xarelto before the 2015
       Q.
```

1 | admission?

- A. Dr. Wiencek I believe put me on Xarelto after the 2015.
- 4 | Q. Okay.

7

8

9

10

11

12

And that's been an issue that's been brought up and discussed quite a bit.

What were the instructions you were given when you start taking Xarelto?

- A. Well, because of the 2 times I had been in and had problems, he put me on the Xarelto saying it would help thin my blood out, and to definitely take it consistently everyday.
- 13 | Q. Okay.
- 14 A. And I did so.

And when I went back to Dr. Wiencek, and I talked to him about my problem, he commented that the Xarelto seemed to be working, because it had been longer, and we hadn't any trouble yet.

- 19 Q. Was there ever a time that Dr. Wiencek told 20 you, you didn't need to take your Xarelto?
- 21 A. No.
- Q. And did you take it continuously everyday
 without exception from the time he started
 prescribing it to you?
- 25 A. Yes, I did.

```
He explained to you that if you didn't take
1
       0.
2
   it, it might create problems for you?
           When he first gave it to me, he just let me
3
   know I needed to take it everyday, and not to do
4
   without it.
5
           MR. ARNTZ: Go to 1425 from the same
6
7
   admission under cardiovascular.
       Q. So you will see under cardiovascular where
8
9
   it is talking about your pulses, arteries pulses,
10
   left posterior tibial, dorsalis pedis diminished.
           Left foot cooler than right.
11
12
           Do you have a recollection of whether they
13
   were able to get that pulse by Doppler or by
14
   palpation?
15
           All the time they had to use a Doppler.
       Α.
           What date was this?
16
17
       Q.
           The actual date was 6-27-2015.
18
       Α.
           Okay.
19
       Q.
           Is that right?
       Α.
20
           Yes.
           MR. ARNTZ: Let's go to page 1426.
21
22
           Did anybody every talk you to about the
23
   factor on your blood panel that was discussed the
```

Did you ever hear about that before the

other day, the AST number.

24

```
other day?
1
2
       Α.
           No.
           Okay.
3
       Ο.
4
           So nobody ever told you that what the range
   needed to be, that if it was too high, that meant
5
   that you were actually losing muscle tissue?
6
           I am not so sure I remember hearing that.
7
           I don't know if I was hearing that. I have
8
9
   missed a couple of days.
10
       Q. Okay.
           As you sit here now, nobody every talked you
11
   to be that number?
12
13
           I don't remember.
       Α.
14
       Q. All right.
           Let's talk about the admission on Christmas
15
   of 2016.
16
           Tell the jury as best you can everything you
17
   remember in the time, the days leading up to
18
19
   admission and what you were feeling.
       A. December 25, 2016?
20
2.1
          Yes.
       Ο.
22
           I normally don't sleep longer than 3, a
23
   maximum 4 hours any period.
24
           So I am up and down a lot.
           I recollect about 1:00 o'clock in the
25
```

morning feeling that strange feeling good down my 1 2 leg again, which by now it is the third time it happened, and it worried me. 3 But I wanted to follow-up and see what was 4 5 happening, because it just happened. So I went and back took a little longer nap. 6 About 4 o'clock in the morning I woke up. 7 felt both feet. They felt about the same. 8 9 So I think I am relaxing. 10 So I had some coffee, stayed up a couple of hours and went back, and went to sleep again. 11 12 I woke up about 8:00 o'clock in the morning. 13 The first thing I did, I felt my feet. This time I felt the left foot was cooler 14 15 than my right foot. 16 That was my next tell sign that I have to 17 start worrying about this. 18 I got up, got ready and went to the 19 emergency room. 20 Do you recall -- the notes have been shown to the jury quite a bit that has reflected a finding 21 22 or a complaint that you had of left calf pain. 23 Do you remember anything happening while you 24 were walking around in one of the casinos where you felt like you strained your calf? 25

A. Nurse Practitioner Bartmus asked me about that, about walking in the casinos, and I personally don't really remember straining my leg in the casino.

1

2

3

4

14

15

- She asked me if I had been excessively

 walking when I first came in, and I told her that I

 had been in the casino, but I believe at the same

 time that I walk grocery stores, and Wal-Mart,

 places like that, that I can walk.
- 10 I don't remember specifically straining it.
- Q. Did you discuss with her the fact that you were concerned about your leg because of the past history you have had of occlusions?
 - A. I explained to her what was bothering me was that I had pain in the calf, and I have a history of blood clots.
- And I think I have another blood clot in my calf. Now I know a lot more of the technology they talk about.
- Basically I said blood clot in my calf, the
 same as I have had before, which I have a history of
 that, which she had the history also.
- Q. So in the records it showed as -- one of the first things they mentioned was that you had a history of DVTs.

```
Do you know what a DVT is?
1
2
           I do now, deep vein thrombosis.
       Q. Do you understand how that is different than
3
   an arterial occlusion?
4
       A. Yes. One is in the arterial and one is in
5
   the vein.
6
       Q. Did you understand that difference before
7
   this lawsuit?
8
9
       Α.
          No.
10
       Q.
           Is it possible that you did go there and say
11
   that I have history of DVTs?
12
      A. I didn't.
           MR. WEAVER: I am sorry, I didn't hear the
13
14
   answer.
           Did or didn't?
15
           THE COURT: Did or did not?
16
           THE WITNESS: I did not.
17
       Q. What would you have said, just as simply as
18
19
   I do have a history of blood clots?
      A. Yes.
20
           MR. ARNTZ: Bring up 1331, history of present
21
   illness.
22
23
           THE COURT: Exhibit 100?
           MR. ARNTZ: Yes.
24
25
           Still 100, still on December 25.
       Q.
```

So you will see the way that they describe 1 2 it, patient presents with lower extremity pain. The onset was one day ago and gradual. 3 Course, duration of symptoms is constant. 4 Location, left calf. 5 The character of symptoms is pain. 6 7 The degree at present is moderate. 8 Does this refresh your memory of what you 9 would have told them when you went to the hospital? 10 Α. Yes. 11 Ο. Okay. 12 Let me ask you, Mr. Moore, do you have any 13 recollection of ever having what somebody described as deep vein thrombosis, or maybe an embolism, or 14 something like that that would not be arterial? 15 Not at this time. 16 Α. You have since? 17 Ο. 18 I am speaking of this date? Α. 19 Q. Right. 20 Α. No. 21 As of December 25, 2016, you do not recall Ο. 22 ever having a DVT or something that you might have called a DVT? 23 24 I wouldn't have called it a DVT. 25 I didn't know it as such. I always just

said blood clot, and tried to direct it to my calf. 1 2 All right. Let's talk about your admission to the 3 4 hospital on that day, and let's talk about everyone in order of when you saw them that you saw. What do you recall being the first person 6 7 you saw when you got there? A. Well, the first person that I saw was at the 8 9 reception desk, where I checked in. 10 I informed them that Dr. Wiencek would like to be informed that I am here. 11 12 He said immediately, and they took my 13 information, and then I sat around for quite a while. 14 15 Q. Let me stop you second. 16 On the top of this report it says the 17 primary care physician is not -- it says no PCP not 18 given, and then has Sang Tran. 19 Would you have given them the name of Tran as your primary care physician? 20 In talking to them? 21 Α. 22 0. Yes. 23 I don't remember saying that. Α. 24 I remember asking for Wiencek to be

25

contacted.

```
1
       0.
           Okay.
2
           To your knowledge was Dr. Wiencek ever
   contacted while you were there?
3
4
           When I got a chance to talk to him, he said
5
   he never was.
6
       Q. Okay.
7
           After you saw the initial intake person, did
   they ever touch your body or do any examination?
8
           After what?
9
       Α.
10
       Q.
           When you first got to the hospital, I think
   you said you saw an intake person?
11
12
       Α.
           After I checked in then, and I wait.
13
           Then I saw a triage person that took blood,
14
   took my blood pressure and everything.
15
       Q. Okay.
16
           Now, as you were doing that, was your son
   Chris there?
17
18
           Christopher was there, yes.
19
       Q.
           Right by you or just in the waiting room?
20
       Α.
           Right by me.
          Okay.
21
       Q.
22
           Where was this done in the hospital, was it
23
   in the actual emergency room in a bay or --
24
           No, it had its only office just off of your
```

25

waiting room.

And you go in through a door to this office, and then from this office they take you back to the emergency room.

- Q. And in that office did they take a history from you where they talk about your health and complaints, and things that happened in the past, that kind of thing?
- A. I am sure that we talked about it.

But mostly they did the normal triage that they were supposed to do.

And they could have asked me there. The
first time that I can honestly say that I explained
it all, other than saying why I was there when I
first got there and talked to the desk is talking to
Nurse Practitioner Bartmus.

Q. Before we get to that, while you were in this office, they took your blood.

Correct?

19 A. Yes.

1

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17

18

- Q. And they took your blood pressure?
- 21 A. Yes.
- 22 Q. And your other vital signs, your pulse?
- 23 A. Yes.
- Q. How did they take your pulse, do you
- 25 | remember?

- A. Well, they put a arm cuff on me and stuff, and they did stuff that way.
- They never touched my legs.
- Q. How did they take your pulse, did they put that thing on your finger?
- 6 A. They put the thing on my finger also, yes.
- Q. Did you take your shoes and socks off while you were in that office?
 - A. I did not.

- 10 Q. Do you recall talking to them about a 11 history of blood clots?
- 12 A. I might have mentioned it to them also.
- Q. And do you remember, can you describe that person?
- Do you have any recollection of what he or looked like?
- A. I believe it was a lady with lighter brunette hair, but I am not positive.
- 19 Q. Who is the next person you saw from the 20 hospital, or at the hospital?
- 21 A. The next person I saw at the hospital that I 22 can remember was Nurse Practitioner Bartmus.
- Q. Where were you -- after you left the office
 where you were sitting, and they were taking your
 blood pressure and so forth, where did they take you

```
after that?
1
2
           We went around the corner, and we ended up
   at the first cubicle with a chair in it.
3
           I almost got in the emergency room. I did
4
5
   get in there barely.
           There was a chair there that they set me
6
7
   down in.
       Q. And did they have a curtain that you can
8
9
   draw to give you some privacy?
10
           You don't recall if there was one?
       A. I don't recall that one was ever pulled.
11
12
           It just looked like an open cubicle.
13
           I remember that we were at a cross-room, and
14
   to my left as I was sitting there in the chair, and
15
   there were 2 nurses working on a computers.
16
           And I looked over to this side, and maybe 50
17
   to 75 or more feet started the beds.
18
       O.
           Okay.
19
           Then who was the next person you saw?
20
           I saw Nurse Practitioner Bartmus. We had
       Α.
   the discussion about pain in my calf.
21
22
           And I told her I thought it was clotted.
23
   She sent me to have a venous duplex.
           Give me like an amount of time.
24
25
           How long had you been sitting in that chair
```

before you saw Nurse Practitioner Bartmus? 1 2 Sitting in that chair wasn't too long. was able to see her fairly quick. 3 4 And when she came and saw you, she had a conversation with you? 5 Α. Yes. 6 7 0. Did she do any type of physical exam where she put her hands on you? 8 We just talked. 9 No. Α. 10 Did she then immediately order the ultrasound? 11 First she discussed a little bit about how 12 13 much I had been walking. And then when I told her I was concerned, 14 15 and my history, and I thought I was there for a 16 blood clot, and she sent me right to the ultrasound room. 17 How long was it from the time you first 18 19 started talking to her before they started taking you to the ultrasound? 20 2.1 10, 15 minutes. Α. 22 O. Okay. 23 And then did you go to the ultrasound by

yourself, or did you go -- did Chris with you?

I went by myself.

24

25

Α.

Q. Tell the jury about what happened when you went for the ultrasound.

A. Well, they were going to check my leg out, so I had take my pants off.

And they work -- in the beginning was using a Doppler between my groin and my knee, and she was going up and down my leg area for a vein search, and she stayed there quite a while.

And I believe that I had this technician one other time, this being the third time I was in there, and I got to talking to her.

And I said, you know, my problem is where this cut is in my leg on my calf. That's where I think we need to search and look at.

I said that's where I have had a problem twice before. I think it is right there again.

So she took the Doppler and dropped below the knee, where she had been searching above it, and extensively pretty much looked at that graft area.

- Q. First of all, did she say to you that she remembered you from another time?
- A. She didn't anything. What little talking went on, I did the talking, until the end of the examination, I asked her, did you find anything, and she said it is not for her to say, all her results

has to go to my doctor. 1 2 O. Okay. And explain for the jury what the -- what's 3 4 the ultrasound like; what kind of device is it, do they put jelly on your leg and that kind of thing? They have to put jelly anywhere they are 6 Α. going to look. 7 The Doppler can like this shape with a more 8 9 pointed end, and they run that up and down your leg. 10 First they have to put all of the grease and stuff on there. 11 12 Q. Right. 13 Then they run up and down, around your leg. 14 They were running between the knee and the groin, 15 and I got them to go down to the calf. 16 Q. Did you ever see someone who introduced 17 themselves as the radiologist? 18 I don't remember seeing the radiologist. 19 Q. Okay. 20 So how long did it take for them to do the ultrasound? 2.1 I could have been in there an hour. 22 Α. 23 All right. Q. 24 So they put you in a gown, is that what

25

happened?

```
Well, actually --
1
       Α.
           MR. WEAVER: Leading, Your Honor.
2
           THE COURT: Overruled.
3
           You may answer, Mr. Moore.
4
5
       Α.
           They just stripped you down to my jockey
   shorts and my T-shirt so they can actually work from
6
   my groin, inside of my jockey shorts a little down
7
   to the knee.
8
9
       Ο.
          Okay.
10
           After you were done with that, did you put
   all of your clothes back on, your shows and soaks
11
12
   and so forth?
13
           Yes, I did.
       Α.
           What happened after that?
14
       0.
15
           After that, I went back to my chair in the
       Α.
16
   beginning of the emergency room.
17
       Ο.
           Did they transport you by wheelchair, you
   said?
18
19
       Α.
           I don't remember.
20
       Q.
          Okay.
           I was still walking then, but --
21
           From the time that you went to the
22
23
   ultrasound, until the time you got back to the
24
   ultrasound, do you recall seeing anyone other than
25
   the tech?
```

- 1 A. Until I got back?
- 2 Q. Right.

3

4

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10

11

- A. The only ones I remember is the 2 nurses at the computers, and then Ms. Bartmus showed up again.
 - Q. Did somebody escort you to the ultrasound?
- A. Yes, back to the ultrasound. I don't remember that person.
 - Q. Okay.

Up until now in this story, have you been expected physically by any person at the hospital?

- A. Other than the triage doing the basics, no.
- 12 Q. Okay.
- And before you went and got the ultrasound, did you -- you saw Dr. Lasry when he was here.
- Did you recognize him when he came into the courtroom?
- 17 A. No, I did not.
- 18 Q. Did you recognize Nurse Practitioner
- 19 | Bartmus?
- 20 A. I do remember her height, stature, but I 21 thought she was a dark brunette.
- Q. She kind of looks like a dark brunette to me.
- Okay. Was there any other -- up until the time that we are at right now, where you have come

back from the ultrasound, had you seen any male 1 person from the hospital or from -- who was working there, like a male nurse or anybody like that? 3 A. At the time I first came back from the 4 ultrasound room, I had not seen a male. 5 Q. Okay. 6 7 Nurse or doctor. And when you got back to this little chair 8 9 that were you sitting on, was Chris there? 10 Α. Yes. From the time that you left the 11 12 ultrasound -- left to go to the ultrasound and come 13 back, is that only time that you were apart from Chris? 14 15 Α. Yes. 16 Q. Okay. 17 So what happened after you got back from the 18 ultrasound? 19 After I got back from the ultrasound, I sat down in the chair with the patch on the back of it. 20 21 Christopher noticed that because he is in infection control, and he said that's not right. 22 23 I sat down. I waited. Nurse Practitioner 24 Bartmus showed up, and I believe stood up to talk to

25

her.

It seems more like I was eye-to-eye with her, and she said we have found no reason to explain the pain in your calf, so we are going to release you.

Q. Okay.

1

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Did she give you a diagnosis that they were giving for the pain in your calf or anything?

- A. No. She said with we found no reason with the tests we had taken to find out a reason for the pain in your calf, to that effect.
- Q. She never told you that you were being discharged -- did she give you instructions, any kind of printed material when you were discharged?
 - A. Well, after she made that comment, we went back to possible muscle strain in the calf.
- 16 Q. Okay.
- A. We talked a little bit more about possibly walking too much.

So she said they were going to release me, and then I believe she turned the paperwork over to the male nurse that was at one of the computers off to my left.

- Q. Okay.
- A. And he did the write up for the release.
 - Q. At this point had anybody done any kind of

physical exam other than the triage nurse? 1 2 MR. WEAVER: Misstates the testimony. The testimony is nobody did. 3 THE COURT: Mr. Arntz. 4 5 Ο. I thought he just got done saying the triage nurse did the blood pressure and the pulse, and 6 those kind of things. 7 Correct? 8 Yes, I did. 9 Α. 10 Q. Okay. Other than what took place in that room when 11 12 you were first brought in, and they took your blood and the blood pressure, had anyone else -- did 13 anybody else from that point to the point of the 14 15 story we are at now, where she is talking about 16 muscles strain, has anybody done a physical exam 17 yet? 18 No, they have not. 19 At any point, other than when you were in the ultrasound, did you ever have to take off 20 your shoes and socks? 21 22 Α. No. 23 Did Nurse Practitioner Bartmus do anything Ο. 24 where she put her hands on you to examine you in any

way, whether it be pulse, or with a stethoscope or

anything?

- 2 A. No.
- Q. At the time you were released, is that still true?
- 5 A. By the time I was released, it was still 6 true.
- Q. Had anybody else taken your vital signs again?
- 9 A. No.
- 10 | Q. All right.
- So tell me how it went after she came back and told you they didn't find anything until the time you were discharged.
- 14 Tell me what happened.
- A. Well, when I got back and sat down and waited for her to show up, she told me that she didn't find anything, no evidence to show that there was any reason for the pain in your calf, so we are going to release you, and the release -- I started getting written up.
- And when I got the release, it said muscle
 strain basically, and to notify Ranathan, the doctor
 that she told me, and also my general practitioner.
- Q. Did she say anything to you about contacting Dr. Wiencek or a cardiovascular surgeon?

1 A. No.

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- Q. Did she say anything about the fact that the ultrasound showed a occlusion in the fem pop graft?
- A. No, she did not. That's why I was there. I was listening for every word that I could for that.

Even in the ultrasound room I am begging them to look here.

- Q. Did you have a plan or an expectation of what would happen if they did find an occlusion as to what you would do?
- 11 A. I was going to stay right in the hospital
 12 until Wiencek or one of their cardiovascular people
 13 looked at me.
- Q. Had you been treating with TPA therapy on the prior occasions when you went in for this problem and you were admitted?
- 17 A. They might have done that. I don't remember 18 everything that they did.

Mostly I think they went to the artery.

- Q. And did they administrator medication to the artery?
- 22 A. Yes, they did.
- Q. And on those other 2 occasions, do you have a recollection of how long it took for that blockage of your arterial graft to be cleared out?

A. Well, they took me downstairs both times on the first 2 times in 2014 and 2015, and they ran the tube in my leg and administer medicine to that.

I believe it took 24 to 30 hours before it was completed. I know there is only so long that they can keep that in your system.

Now when that started breaking up the clot, that's when you start climbing the wall.

Q. Why is that?

What did that feel like?

- A. Well, I would have to say if you almost held your hand up this way, and a car ran over your hand with the tire and sat on it, about as painful as it can get.
 - Q. This extreme pain, where is it?
- 16 A. It is -- well, it feels like it is all over 17 your body.
- 18 It is mainly in your calf where they are 19 dissolving that.
 - Q. Where they are dissolving the blockage?
- 21 A. Yes.

4

5

6

7

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9

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15

20

- Q. In both instances it work effectively?
- A. Well, in 2014, because it had been 2 weeks,
 and I am not sure why they decided it. I think they
 didn't think that they ran the tube far enough down

my leg. 1 2 And they only have so much time to mess with this, so it wasn't breaking it up satisfactorily, so 3 4 back down I went. And another technician pulled that one out 5 and ran another one down my leg deeper, is what I 6 7 understood, and then took me back upstairs, and that one cleared it. 8 9 Ο. Okay. 10 In 2015? In 2015, because it was -- I assume because 11 12 I got there quicker, that the one trip in putting 13 the tube in me, the thing that they needed, it 14 cleared it up in one try. 15 Do you remember conversation you had with 16 Dr. Wiencek about things you need to do in the 17 future, re-emphasize taking Xarelto, anything like 18 that? 19 MR. WEAVER: Objection, Your Honor. 20 Hearsay. THE COURT: Mr. Arntz what is it being 21 offered for; is it being offered for the truth? 22 23 MR. ARNTZ: It is being offered for his 24 understanding of what he was supposed to do with respect to his own care. 25

I can ask it a different way. 1 2 THE COURT: Ask it. Did you have an understanding of what your 3 responsibilities were as related to taking care of 4 yourself as you moved forward? Α. Yes, I did. 6 What things did you understand that you 7 needed to do? 8 Well, because I had back to back almost a 9 10 year a part or whatever of 2 clots, Dr. Wiencek put me on Xarelto. 11 12 Q. Right. 13 And because of the Xarelto, there was a 14 longer span. I was feeling a lot better about it. 15 It didn't come so quick. I wasn't having another 16 blood clot yet. 17 Q. Okay. 18 What else do you feel; what was your 19 responsibility? 20 Well, to take the medicine everyday. Α. 21 Also to make sure that I got to the 22 emergency room if I felt like I had the 2 previous 23 times, which by then I had noticed basically 3 big 24 symptoms.

Pain in the calf.

That coolness that goes down my leg, because the coolness or the colder foot.

- Q. When do you remember first being told that smoking can create problems as relates to your vascular condition?
- A. I'd say probably from the 90's, possibly mid-'80s they started saying that.
 - Q. Okay.

3

4

- 9 A. Prior to that, nobody said anything about 10 it. I wouldn't say every doctor got on you.
- Surely by 2000, every nurse, every doctor 12 you talk to tells you that.
- Q. When you were smoking the most, how much were you smoking a day?
- 15 A. 2 packs a day.
- 16 Q. Following some of these problems, did you 17 ever quit or reduce the amount of smoking?
- A. I quit over the years many times, but after these problems, I quit probably 3 times that was any length of time.
- 21 Q. What do you mean by any length of time?
- 22 A. 6 months to 8 months, in that range.
- I tried many times in the last 40 years that 24 may only last 1 or 2 months. I never count those.
- 25 | It was an honest effort.

- Q. Have you been successful in reducing the amount of smoking that you do everyday?
- A. Yes. This last time when I did go back to smoking, I kept it down to less than a half pack for a long time, but eventually it crept up to one, and it stayed at least there.
- 7 | Q. When was that?
 - A. That was probably -- I know the longer period of time that I was off, I believe was after the amputation.
- 11 | Q. Okay.

1

2

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8

9

- 12 How long were you off then?
- 13 A. A little over 8 months.
- 14 Q. Okay.
- So since you went back, you went back to labeled half a pack day, and now your are back to a pack a day?
- 18 A. Yes.
- 19 | Q. Okay.
- Let's talk about the days leading up -- I
 want to see if we can push through this stuff -the days leading up to the admission on the 28.
- Tell me what you are feeling in your leg the 24 26 and the 27.
- 25 A. The 26 and 27 was more almost exactly like

1 the 25. 2 I had some swelling, which was normal. I had numbness, I think a little more 3 4 numbness than normal. 5 And I had slight pain in the calf. Okay. Q. 6 And everything that I had on the 25 went the 7 26 and the 27. 8 9 So I went to bed feeling the same. When I 10 woke up on the 28, I had severe pain, more pain. So I took an Oxycodone 10 about three of 11 12 them, one hour a part. 13 I realized that wasn't helping me, and then 14 they drove me back to the emergency room. 15 Q. At that time when you were feeling all of 16 this pain, and you were feeling a change in your symptoms, did you look at your foot, and feel it to 17 18 see if it was cool or cold? 19 My foot was colder than it had been the 3 20 previous days. When did you realize that you were probably 2.1 22 in trouble and needed to go to the emergency room 23 again? 24 I felt a cooler foot, but after I had taken 25 2, 3 of the Oxycodones and they had not cured any of

```
1
   that pain, that it was more serious. So I knew I
   had to go.
2
       Q. Okay.
3
4
           So when you get to the hospital, tell me
5
   what your remember about that.
           When we got to the hospital, I don't
6
       Α.
7
   remember much.
8
       Q.
          Okay.
           I remember 2 times, actually 3, I recall
9
10
   almost going into the room where they put the tube
   in your leg. That was just a few a minute or 2.
11
12
           Then I woke up, and there was a gentleman on
13
   my waist or on my -- across my knees, pushing on my
14
   groin area so hard that I was almost screaming.
15
           And then I think I passed out.
16
           The third time -- we are talking this was
17
   15, 20 seconds.
           The third time was just before I was going
18
19
   to have my amputation. Dr. Wiencek woke me and said
   Darell --
20
21
           MR. McBRIDE: Objection.
22
           Hearsay.
23
           THE COURT: Mr. Moore, there is an
24
   objection.
25
           MR. McBRIDE: It is hearsay.
```

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1
           MR. WEAVER: Also there is an exhibit up that
2
   hasn't --
           THE COURT: A couple of things, we will take
3
4
   them one at time.
           As you may recall, Mr. Moore, through the
5
   trial, it is considered hearsay, if you give
6
7
   testimony about what someone else said to you, if it
   is being offered for the truth of what that someone
8
9
   else said to be cross-examined.
10
           Your counsel can rephrase, and if we are
11
   looking at a document, we need to identify what that
12
   is.
13
           MR. ARNTZ: Yes. My questions has less to do
14
   with the truth of the matter asserted as to his
15
   mental impression of what was going on with him.
16
           THE COURT: He can answer the questions
17
   without going into what Dr. Wiencek actually said.
18
           MR. ARNTZ: My response is that it is not
19
   hearsay, because I am not offering it for the truth
   of the matter asserted.
20
           MR. McBRIDE: Your Honor, can we approach if
21
   we are going to have a discussion?
22
23
           THE COURT: I would rather that you all not.
           MR. ARNTZ: I can rephrase it.
24
           What did you understand was going to happen
25
       Q.
```

when you woke up that third time? 1 2 The third time I woke up, we had a

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He said the leg had to go. Then there was a 4 discussion of a percentage, because time had went 6 by.

discussion of above or below the knee amputation.

They gave me a 30 percent chance that if I did a below the knee amputation, that there wouldn't be any problems.

And they gave me a 70 percent chance if we did above the knee amputation, that I wouldn't have any problems.

That's the way I remember it.

- When you say problems, what did you mean by problems?
- 16 Well, I had a friend that started with the toes, the foot, the knee, and they ended up almost 17 18 four operations going almost all the way to his hip.

And I am half drowsy, but I remembering this. So I am scared to death to even take a chance to go below the knee, not at 30 percent.

So I told them above the knee, and they explained that both doctors had agreed that that would be the best way to go.

So did you ever recall being told exactly Q.

```
what happened on the 28, what had happened that is
1
2
   now requiring you to lose your leg?
           What I was told?
3
           Yes.
4
       Q.
           MR. McBRIDE: Objection, Your Honor, hearsay.
5
           MR. WEAVER: Hearsay.
6
                       Let me see if you can rephrase.
7
           THE COURT:
   If not, it may be time to take a break.
8
9
           Do you recall at some point getting an
10
   understanding of what was wrong with your leg that
   was requiring it to be amputated?
11
12
           I unfortunately explained exactly when I was
       Α.
13
   awake.
           So when I went down to get the tube in my
14
   leg, and then when I woke up, they had pulled it
15
16
   out, and I was hemorrhaging, I don't remember
17
   anything.
           So until I woke up ready to have my leg
18
19
   amputated, everything was being done between my wife
20
   and my kids.
       Q. Okay.
2.1
           Before this trial, do you recall anybody
22
23
   ever taking to you about whether the blockage was
   acute, subacute or chronic?
24
```

Do you remember any of those words being

```
discussed prior to this trial?
1
2
           MR. McBRIDE: Your Honor, I think this calls
   for hearsay.
3
 4
           MR. ARNTZ: I can rephrase it.
           THE COURT: Mr. Arntz, just out of
5
   curiosity, how much more time do you have of this
6
7
   witness?
                       Well, I just need to move from
           MR. ARNTZ:
8
   here into damages.
9
10
           In 30 minutes I can probable do it.
11
           We need to completes with the witness, and
12
   you still obviously have remaining questions.
13
           I want to show you a document that's page --
14
           MR. HENRY HYMANSON: Exhibit 100, page 28,
15
   Bates 28.
           This is on the 28 of December.
16
       Ο.
17
           Do you see that?
18
           Yes.
       Α.
19
           So in this document they -- this is the
   after they examined you, and they have done the
20
   thrombolytic therapy.
21
22
           Do you see where it says that they diagnosed
23
   with acute to subacute occlusion of the left fem pop
24
   bypass graft.
25
           Do you see that?
```

```
1
       A. Yes.
2
       Q. Had anybody every talked to you about the
   question of whether that blockage in your artery had
  been there for a long time, or whether it was
  something recent?
           MR. McBRIDE: Again, Your Honor, it calls for
6
  hearsay.
8
           THE COURT: We are going to take a break.
9
           During this 10 minute recess, this will be
   the bathroom break.
10
11
          You will return at 3:15.
12
13
14
           (Thereupon, the jury was admonished
15
           by the Court.)
16
17
18
           THE COURT: We will see you back at
19
   3:15.
20
21
22
           (Thereupon, the following proceedings
23
            were had in open court and outside
24
            the presence of the jury.)
25
```

1 2 THE COURT: Mr. Moore, are you going to use the restroom? 3 My marshal can assist you if you need to 4 take a break from that area. 5 6 THE WITNESS: I am Okay. 7 So 5 minutes for this THE COURT: 8 discussion. 9 MR. McBRIDE: I was going to suggest if we 10 are going to have a discussion about hearsay, and what he is trying to elicit, I think it might be 11 12 best for the witness -- for this to be outside of 13 the presence of the witness. 14 MR. ARNTZ: The witness is a party. 15 MR. McBRIDE: True. 16 THE COURT: We don't have to have the 17 conversation outside of his presence. 18 I have already admonished him. 19 Here is my problem, Mr. Arntz, and here is problem, Mr. McBride and Mr. Weaver. 20 21 We need to get through this communication. 22 If we are going to object on hearsay and everything, 23 frankly, if it is going to be why he did what he did next, I will overrule and let him testify. 24 25 I don't know what the concern is with these

```
things coming in this way, if something happened
1
   that day, we had testimony about what happened that
2
3
   day.
           What are we doing here, because we are
4
5
   losing time.
           MR. McBRIDE: And the concern is the question
6
7
   is prompting the witness to basically say that these
   doctors told him that had he come in earlier on the
8
9
   earlier day, this would have a made a difference,
10
   and he would not have had that procedure.
           MR. ARNTZ: That is what I am asking.
11
12
           I am not going to ask him that.
13
           MR. McBRIDE: It is going to that direction.
14
           THE COURT: It is a fair premise that the
   conversation might go there, Mr. Arntz.
15
16
           MR. McBRIDE: And that's my concern, he is
17
   asking what did they tell you about --
18
           THE COURT: It is hearsay. It is offered
19
   for the truth of the matter asserted.
           So how can we get at, what do you do, and
20
   why did you decide to do that without going through
21
22
   those hearsay questions?
23
           MR. ARNTZ: I through up a document that
   says acute to subacute occlusion of the left fem pop
24
   bypass, and I said did anyone tell you that your
25
```

```
occlusion in that was older or had been there a long
1
2
   time or not.
           That was the question. I have no intention
3
   of asking him, did anybody tell you if you had only
4
   come in here sooner, we would have been able to save
5
   your leg.
6
7
           THE COURT: Let's go back to the first
   statement.
8
9
           Fair enough, if that's not where you were
10
   going, he is entitled to and better that he
11
   speculate what might be happening so that we prevent
12
   the problem, and not try to un-ring a bell.
13
           But even that first questions, it still
14
   requires you eliciting hearsay, does it not,
15
   Mr. Arntz?
16
           MR. ARNTZ:
                       No. It is a medical document
17
   that up in front of the jury, and I am essentially
   asking him, did anybody tell you this?
18
           THE COURT: No, that's not the question.
19
20
           You read what was on the paper, and then you
   then said, did anybody tell you whether it was
21
   older, or whatever.
22
23
           That's completely not addressed by --
   in fact, it says findings, acute to subacute.
24
25
           We have had quite a bit of testimony on the
```

difference between acute and chronic, so that is 1 2 eliciting hearsay, is it not? MR. ARNTZ: I could have said to him, did 3 anybody explain to you that you an acute to subacute 4 5 occlusion, but I was trying to dumb it down a little bit, so that he can explain it in his own words, 6 because I doubt he would have used the words acute 7 to subacute. 8 9 I don't think your question THE COURT: 10 was that, that it was eliciting hearsay. That's why I had a problem with it, and that 11 12 is why we needed to get to the end of this. 13 Maybe don't dumb it down, and then we don't 14 have a hearsay issue. I don't know. 15 But at same time say, this is what's written 16 here, do you remember somebody telling that you, 17 that is one thing. MR. ARNTZ: I don't believe these objections 18 19 are being made for the purpose they are stated. 20 I think that they are doing it to try to disrupt the flow of the conversation. 21 THE COURT: Well, that's why we are taking a 22 23 break and that is why we are only spending a few more minutes on this. 24 25 MR. ARNTZ: And I am telling you as an

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officer of court that I have never intended to ask 1 2 him the question that they thought I was going to 3 ask. I will tell him now, don't ever answer that 4 5 question, because that's not something I want answered. That is something I want the jury to 6 decide. 7 What we need to avoid are THE COURT: 8 9 questions of Mr. Moore of what did somebody tell 10 you, so that he is answering what somebody else told him, especially if it is intended for what the truth 11 12 of what that somebody told him. 13 MR. ARNTZ: Well, I can certainly ask him in a different format, where I say, did you ever 14 15 learn that somebody believed that the occlusion had 16 been there for a long time, but it just seemed 17 faster to do it the way I was doing it. 18 THE COURT: Mr. McBride. 19 MR. McBRIDE: And again, as an officer of 20 the court, I can sure you that my objections had nothing to do with disrupting his flow. 21 22 He has been going on for hours with this 23 witness, and I had not objected except where I thought it was a reasonable objection on the basis 24 25 of hearsay.

And my concern is with any witness, any lay witness is, that's the real concern that we have, is that they are going to start making discussions about that they had with other individuals. So it happens all of the time. In this particular case he has already -- as Your Honor has pointed out, he has already addressed this is what this document says. The more appropriate question is, if that's what he wants to question this witness about, ask him, did anyone ever tell you that this was a subacute occlusion of the left fem pop bypass. MR. ARNTZ: Did anybody ever tell you, how is that any different than what I asked him? THE COURT: Mr. Arntz, you added at the end of the question an aging question, how old was it, how long did --MR. ARNTZ: That's what acute refers to. jury has learned that. Everybody in this room has been taught what acute, subacute and chronic means. THE COURT: I don't think 2 we have the same agreement or understanding. So, at the end of the day we will come back.

If I believe it is hearsay eliciting, then I hear an

objection, I am going to ask you for your response,

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24

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and it is either not hearsay and why, or what
1
   exception this is, and I will call it like I see it.
2
            That is best I can do.
 3
            Bathroom, back at 3:15 please.
 4
5
б
                      (A recess was taken.)
7
8
9
10
11
12
13
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22
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```
REPORTER'S CERTIFICATE
1
2
3
       STATE OF NEVADA )
4
                        ) ss.
5
       CLARK COUNTY
6
7
            I, Robert A. Cangemi, a certified court
8
9
   reporter in and for the State of Nevada, hereby
10
   certify that pursuant to NRS 239B.030 I have not
   included the Social Security number of any person
11
   within this document.
12
13
           I further certify that I am not a relative
14
   or employee of any party involved in said action,
15
   nor a person financially interested in said action.
16
17
18
                  (signed) /s/ Robert A. Cangemi
19
20
                   ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25
```

```
1
              CERTIFICATE
2
       STATE OF NEVADA )
3
                       ) ss.
4
       CLARK COUNTY
5
6
7
8
9
           I, Robert A. Cangemi, CCR 888, do
   hereby certify that I reported the foregoing
10
11
   proceedings, and that the same is true and
  accurate as reflected by my original machine
12
13
   shorthand notes taken at said time and place.
14
15
16
           (signed) /s/ Robert A. Cangemi
17
18
           Robert A. Cangemi, CCR 888
19
           Certified Court Reporter
20
           Las Vegas, Nevada
21
22
23
24
25
```

/s/ bed

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anything (4:25)(8:14)(14:8)(15:2)(35:17)(36:4)(42:23)
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/s/
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                                                           approach (29:8)(68:21)
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                                                           associate (35:3)
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                                                           august (25:4)
already (23:3)(73:17)(78:6)(78:7)
also (5:15)(13:17)(14:16)(18:2)(23:11)(33:1)(43:22)
                                                           avoid (77:8)
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                                                           backyard (27:15)
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                                                                (5:10)
                                                           barely (50:5)
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anyone (54:24)(58:13)(74:25)(78:11)
                                                           bed (66:9)
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beds
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                                                          can't (7:14)(19:23)(22:1)(30:23)(33:24)(35:24)
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                                                          casinos (42:24)(43:2)
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                                                          ccr (1:25)(80:20)(81:9)(81:18)
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                                                          cell (10:11)
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being (24:24)(25:19)(35:13)(38:12)(46:6)(52:10)
                                                          certain (25:22)(27:24)
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                                                          certainly (77:13)
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                                                          certificate (80:1)
believe (18:12)(18:13)(21:2)(22:5)(27:12)(34:19)
                                                          certified (80:8)(81:19)
                                                          certify (80:10)(80:13)(81:10)
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(65:9)(76:18)(78:24)
                                                          chair (50:3)(50:6)(50:14)(50:25)(51:2)(54:15)(56:8)
believed (77:15)
                                                          (56:20)
bell (75:12)
                                                          chance (7:25)(8:7)(8:10)(8:18)(9:7)(47:4)(69:7)
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                                                          (69:10)(69:20)
benefit (5:13)
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best (22:11)(41:17)(69:24)(73:11)(79:3)
                                                          changing (6:17)
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                                                          character (38:9)(45:6)
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yourself (35:19)(51:24)(63:5)

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           IN THE EIGHTH JUDICIAL DISTRICT COURT
                    CLARK COUNTY, NEVADA
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8
   DARELL MOORE, ET AL.,
9
              Plaintiffs,
                             ) Case No.
10
            vs.
                             ) A-17-766426
   JASON LASRY, M.D., ET
11
   AL.,
12
                             ) Dept. No. 25
13
             Defendants.
14
15
                         JURY TRIAL
16
           Before the Honorable Kathleen Delaney
           Tuesday, February 11, 2020, 3:30 p.m.
17
18
            Reporter's Transcript of Proceedings
19
20
21
22
23
24
   REPORTED BY ROBERT A. CANGEMI, CCR 888
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   APPEARANCES:
2
   FOR THE PLAINTIFFS:
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                             Philip Hymanson, Esq.
                             Henry Hymanson, Esq.
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   FOR THE DEFENDANTS:
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                             Keith Weaver, Esq.
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   WITNESSES:
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 4
   DARELL MOORE
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                                  21 81
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1
            Las Vegas, Nevada, Tuesday, February 11,
                            2020
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3
           THE COURT: Be seated.
4
5
           Thank you.
           Mr. Arntz, when ever you are ready to
6
7
   resume.
8
9
                  CONTINUED DIRECT EXAMINATION
10
       BY MR. ARNTZ:
11
12
       Q. I am just going to ask you one more question
13
   about this, and then we will move on to another
14
   topic.
15
           Did you ever get gain an understanding of
16
   whether or not about a finding where they determined
17
   there was an acute or a subacute occlusion to your
18
   left fem pop bypass?
19
       A. You know, until this trial, all I knew was
20
   that occlusion means blocked.
21
           And when you are talking about my artery
   being blocked, that's serious to me.
22
23
           Now I see acute, subacute and chronic, I
24
   have heard that now, but I have to testify that
   anything that had to do with my bypass graft was
25
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serious. 1 2 And I am not a doctor. I couldn't determine what was what. 3 I understand it a whole lot more now. 4 But 5 then, just that it was serious to start with. Q. Last question on this. 6 7 Every time you ended up having to go to the hospital because of you had an occlusion to your 8 9 bypass graft, did it always feel the same with that 10 coolness going down your leg? Yes, it did. 11 Α. 12 The first time you felt that coolness going Ο. 13 down your leg prior to the December 25 admission was the day before? 14 15 MR. WEAVER: Leading, Your Honor. 16 THE COURT: I just found the question vague. If you can clarify, I believe that there was 17 testimony of other times. 18 19 Q. Remind the jury again, when was the first time you felt that coolness going down your leg 20 before you went to the hospital on Christmas Day? 21 22 Α. I felt it Christmas Day about 1:00 o'clock 23 in the morning. 24 So that would have still been the 25.

You didn't feel it the day before?

25

Q.

1 I have seen dates where people said the 24, 2 the 25. My testimony for the most part was late 3 evening, early morning, when I started discussing 4 5 this. And being that I was in the carpenter 6 7 business, that means somewhere between 3, 4 in the morning. 8 9 Q. All right. 10 Darell, let's finish your testimony by talking about how this has affected your life and 11 12 your life with your wife. Maybe just start by telling the jury what it 13 14 was like for you around the 28 when you were having 15 your leg cutoff? A. Well, on the 28, when we were going down, I 16 17 was very nervous. I don't remember a lot between the 28 and 18 19 the second when they amputated my leg, except for those 3 times that I quoted. 20 But obviously I am feeling terrible. 21 22 It is since then the problems that I have 23 had. 24 Q. Okay.

Let's talk about that.

1 What problems are you talking about? 2 Well, one of the first problems that I had the first day that I went home and went to bed 3 without a leg, you have no weight to counter your 4 5 upper body weight. So you are almost flopping like a fish in 6 7 bed. I realized that I can't get out of there 8 9 quick. 10 I couldn't protect my family -- excuse me -that was my first day. 11 12 And I had fallen Joe. I don't sleep but, 3 13 to 4 hours max a day. 14 I can't keep my wife up. Since we have got 15 married, she needs like 10 hours a day. 16 She'll survive on eight, so don't be waking 17 her up every 2, 3 hours. 18 Because of that, and the way I had to 19 maneuver to get out of bed, I moved you out of that bedroom and got my own bed set up where our old 20 office was. 2.1 22 The problem was I was laying sideways from 23 the original bed with my wife, instead of being able to lay this way, I had to hang my foot over all 24 night, my right foot, to let the blood flow, so I am 25

```
1
   laying cross-ways.
2
           Then if I got up on the bed, I felt awkward,
   because I couldn't get up fast or easy.
3
           So I just decided to get a smaller bed of my
4
   own, so I can get in and out of my wheelchair
5
   quicker, and feel more comfortable.
6
           My wife and I haven't been intimate since
7
   the amputation.
8
9
           I know most of it is my fault. I can't get
10
   over the shock and all of these feelings I have.
           We can't go and do the things. We haven't
11
   flown.
12
13
           We don't travel very much, because since the
14
   operation, just sitting in the seats of the car
15
   seems to hurt my hips more.
16
           I can't explain why. It just happens.
           I just realize that I used to be able to
17
18
   drive eight, 10 hours a day.
19
           I driver 2 hours now, and I can't stand to
   stay in the seat any more, so long trips are out
20
   unless you are going to take a lot of breaks.
21
           Also my right leg, it needs rest, too, so I
22
23
   can't stay behind the wheel. It is not smart to
   stay behind the wheel eight to 10 hours anyway.
24
25
           But we don't go out to dinner as much.
                                                     Wе
```

go to the movies. We used to go to the movies once 1 2 a week for a long time. There is only 2 spots to able to put a 3 4 wheelchair in a theater. If you are not there 30 minutes before the movie starts. As a matter of fact, they are still cleaning 6 up from the last movie. You have to get there, or 7 you don't get those 2 spots. 8 9 And if I had to set in a seat somewhere near 10 where you walk in and put my wheelchair to the side, I did that one time at Ceasars and they took my 11 12 wheelchair. 13 So you have to keep an eye on that, if you had to set in a seat. So I prefer to stay in my 14 15 chair and then have to walk out without it again. 16 Everyday you find out what you can and you can't do, or how hard it is. 17 18 I know my wife talked about me falling. 19 One of my problems, they I thought I could do it, put the crutches on. We just got the van. 20 She would fill it up a dozen times. 21 I finally decide I can do this. While I was 22 23 out and I was going to fill up the car, which I had never done before. 24

Of course I wheeled around it, so I pretty

1 | much know where the gas tank is.

So I opened up the slider. I get my crutches out, and I walk down to the gas pump. I am bracing myself.

I get the hose out, put my credit card in, and I turn around and there is -- when the door is open, it hides the fuel tank.

So I got to put the handle back. By time I got turned around and tried to get back where I can close the door, I just collapsed and fell on the island.

I didn't expect that I was going to have to have to go back and forth because of the sliding door hiding the gas tank area.

- Q. What was the other 2 times that you fell?
- A. There were 2 other times I fell in the bathroom. I tried to reach out, when I was started losing my balance, because these walkers have wheels on them, and I grabbed it by one hand, and it just slid out from underneath me.

So the only thing I can do was to pull my
head towards my chest, and I tried to flip over to
hit the softer part of your shoulder.

24 And luckily I didn't get hurt from either 25 one. It is the embarrassment and the struggle to get

1 up. 2 I was almost glad no one was really looking at me, especially at the gas station, because it 3 4 took me a long time to get up to my seat. In the bathroom, I finally had to throw the 5 door open and crawl up my wheelchair. 6 So the other time I fell in my bedroom. 7 forget to lock the wheels on my chair. I went to 8 stand up, and I pushed the chair. 9 10 I was trying to push forward, and I pushed the chair right out from underneath me. 11 12 I have had a couple of other close calls, 13 but those are the ones I actually completely went 14 down. 15 Q. Okay. 16 Explain to the jury why you don't use your 17 prosthetic. 18 Well, when I first went in to get my 19 prosthetic, the technician that was there that was well-qualified, he started dealing with me. 20 He gave me the socks to help shape the limb 21 22 that was going doing into the prosthetic, and he was 23 working with me. 24 Then when we got to the point where he was going to design the plastic, the piece that went 25

1 over your leg, I went in, and he says I have got a 2 better job in New Mexico, so he was heading for Albuquerque. 3 He told me, I am sorry, it is the last time 4 5 I am going to be able to see you. We'll have another one, another guy take care of you. 6 And this guy that left, he actually shaped 7 it and designed it there. The new technician, he 8 9 shipped it off. 10 And the new technician wasn't as good at it, and the inner liner came back and didn't fit my leg. 11 12 So the outer liner, he tried to make work. 13 And my first step, I collapsed forward because of 14 the pain of the nerve endings in my leg. 15 So he asked me, do you think if I cut a big 16 hole in it, where those nerves aren't pushing 17 against that, that would help you; I said, don't 18 know. 19 So he took it back, and he cut a hole about four inches wide by 5 or 6 inches long, and brought 20 it back to me. I tried to on. 21 22 It was still too painful. So, plus the inner liner didn't fit. 23 24 We talk about redoing the inner liner.

told him basically that I was going through therapy

on my walking with crutches and walkers, and I
needed to do a little more than that, than what I
had been doing before we worry about finishing up on
everything.

But nothing he did in design fit me. It was too long. It didn't fit. But as I was doing my therapy after the amputation, I got a blood clot and I had to go back in and have that taken care of.

And when I was in an outpatient observation at the hospital, instead of just a room, you are in a room with 40 other patients.

And, of course, they are all in there in February, hacking and coughing. So by the time, the next day or so when I got out, I came home, and for 10 to 14 days, I can't remember exactly, but it was between 10 and 14 days I thought I was going to die from flu symptoms, coughing, choking, throwing up several times a day for the first week.

And I told my wife, I said, you know, I am about a quarter of an inch -- showing my fingers -- away from going back to the emergency room.

I says, I don't know if I am going to make it. Whatever I caught in there wasn't good for me.

So I had to delay the therapist for a couple of weeks, and when she finally came back, and we

tried to start doing the walking and everything, I
was losing ground everyday.

She was coming to me Monday, Wednesday,
Friday, and when I first got my leg amputated, I
still had the strength in my right leg.

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8

- I could go from my kitchen. She made me go around the island twice, all the way back to my bedroom, which is probably 80 feet from the kitchen and back, and then sit down.
- And after the problem with my blood clot and everything, and getting sick after that first, the day I noticed I could go just straight from my kitchen to my bedroom and back.
- And then came -- that was a Monday, on then on Wednesday, when I got just to my bedroom, and I had to stop.
- So we did that, and we probably tried for 2 weeks. Every time the distance got shorter, and my leg got weaker.
- They followed me with a wheelchair, and it seemed like I was doing 10 percent almost every day that we tried it.
- So I need a lot more therapy.
- I need to strengthen it somehow, but with 25 all of the stuff going on between 2 trips to the

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hospitals, and the prosthesis not fitting, and
1
2
   trying to put everything together that I know I am
   going to need, it has been a long, hard process.
3
           And I should have completed a few more
4
   things, but I have been in business all of my life,
5
   between owning or managing, and you have got to go
6
   through a certain amount of steps before you move
7
8
   on.
9
           I think this is my last step since
10
   my amputation before I move on.
           You heard Dr. Fish talk about some of the
11
12
   needs that you have.
13
           One of the things that he talked to the jury
14
   about was some psychological counseling. Have you
15
   pursued any of that?
16
       Α.
           I haven't as of yet.
17
       Ο.
          Okay.
18
           Why is that?
           Because that's another one of those things,
19
20
   I haven't moved on yet.
21
           One, Dr. Fish gave me that paperwork not too
22
   long ago. It is not like 3 years.
23
           And it has been more like 6 months, but I
24
   have been struggling, coping with what happened to
25
   me.
```

And what has been happening to me is, it 1 2 seems like anything I have tried never gets one hundred percent completed. 3 4 There is always an never ending to each 5 segment right now. But I can see most everything, knowing me 6 7 and talking to him, I haven't with all of this yet. I am going to need to. 8 9 Are you willing to pursue psychological 0. 10 counseling? 11 Α. Yes. 12 Q. Okay. 13 I think we might let you be questioned by 14 the other lawyers. 15 Is there anything else that comes to mind 16 that is particularly significant in your life now 17 versus before you lost your leg? 18 Just my whole life right now has been 19 different. 20 And me getting a grip on it. About a year and a half, I guess, I let it go after the 21 22 amputation. 23 I asked my wife if she wanted to move on

24

25

Q.

without me, and she said no.

You got that going for you.

A. I better stop there.

Q. Other than the hospital that you were in at the time you were there and the treatment you received there, after you were released, what other treatment have you undertaken or undergone as a result of your amputation?

We talked about the therapy.

Were you in a rehab facility for a while?

A. No. Well, when I left the hospital, they sent me over to Kindred, which is a rehab for about 5 days.

And their job is to physically put you through the motions of using your walkers, and using machinery, if they don't hurt you before they get to that point.

When I first got delivered over there, after my amputation, they were opening a new section of the hospital there, and there weren't any doctors or nurses on-call.

And here I am, 3 days from being amputated, and I can't get no meds. I had to call my wife to bring the meds and stuff there.

She was running back and forth taking care of me, so that facility didn't work out real great.

I wanted out of there so bad, they took me

1 downstairs. I still had some strength in my right
2 leg, so I managed to get out of there by proving
3 what I can do.

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I probably wondered off of your question.

- Q. Over than Kindred Care, what other medical treatment have you had following the amputation?
- A. We had some nurses and therapy come to our house and work with me there.

9 Of course they also help massage my leg and 10 everything. But mostly just doing exercises on the 11 bed and stretching, lifting a little bit of the 12 weight, putting pressure against your legs and 13 stuff, all home therapy on that.

Q. Do you have any new pain management requirements that you have sought out that you didn't need prior to your amputation?

Are there any new doctors that you see for 18 that?

- A. Not so far for as far as like pain management. I am going to need to look into a lot more.
- Q. Has anybody talked to you, or have you seen anybody to address the sensitivity or the extreme nerve pain you have on the edge of your residual limb?

They had a person come to the house and he Α. scanned my leg, and he looked. And he said he couldn't find a reason why I am having that pain.

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- Just describe for the jury what it is that you are talking about. Is it just hypersensitivity, or what?
- It has to do with sensitivity. It is more like certain nerves.

And my understanding from the guy that started my prosthesis, he lost his leg and they sewed it back on, and he was talking about how his 12 nerves, sometimes if his foot itched, he had to scratch by his knee to make it quit itching. 13

And the way the nerves and stuff can pull up and they change, I think I have part of that, because when they cut off the leg, some of those go back in, and I don't know how they move.

But they couldn't find it on the first test that I had done, why it was causing pain, so much pain to me.

I do understand that there are other type of prosthesis tops that clamp your leg, instead of you just putting weight into the leg, but that's another step forward I have to take.

Clamping the thigh instead of having it rest Q.

on the end? 1 2 Α. Correct. The last thing I want to talk to you about, 3 you and I were talking about phantom pain, and I was 4 5 stunned to hear one of the things you have gone through. 6 Why don't you explain to the jury how you 7 still get calf pain. 8 9 A. Well, there is times where your foot itches, 10 and there's times when you get calf pain that felt 11 like it did right after the operation, or just before an occlusion. 12 13 Sometimes I roll over in bed, trying to get 14 up, and the meat on my leg feels like it is ripping 15 if I put the wrong type of pressure on it, and 16 tearing from the bone. 17 And that's a physical thing that actually 18 happens. 19 I woke up one night before we quit sleeping 20 together, and I was in tears from my calf cramp. I know we have all had them. 2.1 22 If you can't get your foot pulled back fast 23 enough, it gets so severe. It is one of the worst 24 one I have had.

And my brain is saying, this can't be, I

```
don't have a calf. I mean the pain can get just
1
2
   like you still had it.
           It is unbelievable, I have been told about
3
4
        I have had a lot of the different itchings and
   it.
   some little pains here and there, but that calf one,
5
   that was the most severe I have ever had.
6
7
           MR. ARNTZ: All right.
           Darell, if there nothing else you want to
8
9
   tell this jury, I am going to turn you over to the
10
   other lawyers.
11
           THE COURT:
                        Thank you, Mr. Arntz.
12
           Mr. Weaver.
13
14
                   CROSS-EXAMINATION
15
       BY MR. WEAVER:
16
17
       0.
           Good afternoon, Mr. Moore.
           Good afternoon.
18
19
       Q.
           Speaking of Mrs. Moore, I think you told us
20
   you have been married 51 years.
2.1
           Is that right?
22
       Α.
           That's right.
23
           Congratulations.
       Q.
24
           Do you see Nurse Practitioner Bartmus here
25
   today?
```

1 Α. Yes. 2 Which one is she, the one closest to McBride, or furthest away? 3 Furthest. 4 Α. 5 And would you tell us again what palpable pulses are? 6 I have listened to here them say that it is 7 like the 5 P's and how they can depress your foot 8 9 and look at the color that comes back, or feel they 10 can feel pulses through your foot. I am not a doctor. I can't explain it all. 11 12 I am just asking you, because you were asked Q. a lot questions by your lawyer about whether 13 Dr. Wiencek every attempted to or did feel palpable 14 15 pulses wants. 16 I just want to be clear. 17 Α. Dr. Wiencek, he always did a Doppler. 18 Did he try to get palpable pulses; what are Ο. 19 those? 20 Did he try palpable pulses first, sir? It has been so long, I don't remember. 21 Α. 22 Well, you have been testifying that Dr. Wiencek --23

Let me finish my question if I may, please,

I testified --

24

25

Α.

Q.

```
1
   sir.
2
           You testified in response to your lawyer's
   questions that Dr. Wiencek never got palpable
3
4
   pulses, but you haven't really said what palpable
5
   pulses are.
           What are they?
6
           I told you that I am not a doctor, and I
7
   don't know all of this.
8
9
           If you wanted me to finish my explanation.
10
       Ο.
           Please do.
           Why is when the first time I ever seen
11
12
   Dr. Wiencek was the operation, and he started with
13
   the Doppler then, and he always used a Doppler.
14
       Ο.
           Where is the -- are you finish, sir?
15
           Yes.
       Α.
16
           So when the Doppler is placed, your
17
   understanding is from what you are telling us, that
18
   the Doppler is what is used to identify pulses, when
19
   it has been done by Dr. Wiencek?
20
       Α.
           Yes.
           And where is it placed?
21
22
       Α.
           He can place it on the ankle or place it on
23
   the top of the foot.
24
       Q.
           Okay.
25
           And where did Dr. Wiencek always place it?
```

- A. More so on both of those areas, but he had to hunt the top of the foot most of the time.
 - Q. And what about your right leg?
- A. My right leg was a little easier to find
 pulses before. Now it is a little tougher, the same
 thing, good in the ankle, not so good in the top of
 the foot.
- Q. Has Dr. Wiencek ever even once attempted to palpate pulses in your right leg?
- 10 A. Not that I remember. Always with the 11 Doppler.
- Q. Whether it is your left leg or your right leg, including up to the present, Dr. Wiencek has always used a Doppler.

15 Correct.

3

- A. Either leg, yes.
- 17 Q. Thank you, sir.
- Mr. Moore did you hear your wife testify
 19 yesterday that she's gone to every visit you have
 20 ever had with Dr. Wiencek?
- 21 A. I heard her testify that every visit that 22 she was with me, she went back.
- 23 Q. No, sir.
- She has testified that every visit you have ever had with Dr. Wiencek she's been present at.

Was your recollection she said something different?

- A. I have been going to Dr. Wiencek quite a while. She has missed a couple of visits.
- Q. And do you recall that she testified that every time you have gone to Dr. Wiencek she's been in the room when you have been evaluated?
 - A. Every time she came, she was in the room.
- Q. And did you ever hear her testify that she's been with you to every appointment you have ever had with Dr. Wiencek.
- That she's been in the room every single time, and that every single time Dr. Wiencek was the one who identified the presence of pulses?
 - A. Do you want to repeat that?
- 16 | Q. Sure.

- Your wife testified that she's been with you to every appointment with Dr. Wiencek that you have ever had.
- That she has been in the room every single time, and that every single time, Dr. Wiencek personally was the only one who ever attempted to identify pulses.
- 24 Do you recall her testimony on that point?
 - A. Her testimony was that. I also said earlier

1 on she did miss a couple.

2

3

4

5

6

7

8

9

15

- Q. Was it just coincidental that any she missed were instances when somebody besides Dr. Wiencek attempted to get pulses?
- A. That I don't remember. Like I said, he always used a Doppler when I went in there.
- Q. If Dr. Wiencek's records identify that others besides him got pulses, what would be your explanation for that?
- 10 A. I have been in there when he had a couple of 11 ladies there that tried to get pulses.
- Some of them at one time might, and have some of them maybe not. But they are using a Doppler.
 - Q. The testimony of your wife was that it was only ever done by Dr. Wiencek.
- 17 Do you disagree with her on that point?
- 18 A. In the cases that she went to, it is
 19 probably true.
- Q. Mr. Moore, in response to one of your
 lawyer's questions, you said that after the
 ultrasound, the nurse practitioner never used the
 word occlusion.
- 24 Is that correct?
- 25 A. That's correct.

1 Did Nurse Practitioner Bartmus ever say Ο. 2 anything to you on December 25, 2016 about the graft at all? 3 4 Α. No. Not a word? 5 0. Α. The 25? 6 7 Yes, sir. Ο. No, she spoke of muscular stress, and that 8 9 they did not find anything to give us a reason why I 10 had pain in the calf. 11 What did she say about the ultrasound 12 specifically? 13 That they found nothing. So your recollection is Nurse Practitioner 14 15 Bartmus told you with regard to the ultrasound that 16 it showed nothing? 17 She said we didn't find anything to show. 18 Ο. I just --19 I am saying it also. 20 I just want to focus just for a moment on Ο. 2.1 the ultrasound itself. 22 Did Nurse Practitioner Bartmus tell you that 23 the ultrasound found nothing?

Nurse Practitioner Bartmus said in the

tests we have taken, we have found no reason for the

24

pain you are having in your calf.
So I can assume they foun

So I can assume they found nothing, but that's an assumption.

Q. Okay.

3

4

5

6

7

8

9

23

So she didn't tell you anything specifically about what the ultrasound found, but your assumption was that it found nothing.

Is that right?

- A. You can put it that way.
- 10 Q. And what did you tell your wife when you got 11 home that the ultrasound said?
- 12 You heard her testify to what her answer was 13 yesterday.

14 Right?

- A. I told my wife that they found nothing in the tests that they gave me, or any reason to say they were going to let me go.
- Q. Specifically, sir, what did you tell your wife with regard to what you were told about the ultrasound?
- 21 A. When I first walked in, I believe my wife 22 just grabbed the release papers.
 - Q. Let me back up a moment.

What did your wife testify to yesterday that 25 you told her about the ultrasound results?

I don't remember. 1 Α.

2

3

4

5

6

7

8

9

10

11

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14

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16

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18

19

20

25

Well, if you don't remember what she testified to yesterday, let's cut to the chase.

What did you tell her if anything you were told by Nurse Practitioner Bartmus about the ultrasound results?

- The same thing I told you.
 - Say it again. Q.
- She said we have not found anything to give us reason for why you have pain in the calf.

I may have worded it a couple of words one 12 way or another, but that is what I remember.

Thank you. Ο.

Were you here during Dr. Wilson's testimony, when we went through 10 instances that we put up on the screen whereby 5 or 6 different health care providers between November 8, 2012, when you had your fem pop graft procedure, and December 25, 2016 pulses were identified in your foot.

Were your here for that testimony?

- I don't believe I was here for all of his 21 Α. 22 testimony.
- 23 I do believe that you put that up on the 24 board when I was here.
 - Q. So is it your testimony that ever provider

who identified that you had pulses in your foot 1 2 could only have identified those by Doppler? What I remember is that some of those that 3 you said they found a pulse don't even do that type 4 5 or work, like the pain center. I am not asking you about the pain center, 6 7 sir. I am asking you of the 5 or 6 health care 8 providers who documented that you had pulses 9 10 in your foot between 2012 and 2016, that we put up on the screen that Dr. Wilson testified to, are you 11 saying that not one of those people actually -- sir, 12 let me finish. 13 14 Are you saying that not one of those people 15 palpated a pulse? 16 MR. ARNTZ: Your Honor, objection. 17 I think that misstates the testimony and the evidence. 18 19 My recollection is that he had 2 other places besides Dr. Wiencek. 20 THE COURT: The Court cannot independently 21 22 recall at this time unfortunately with the 23 interruption in the question. It almost somewhat 24 was compound.

Mr. Weaver, can you re-ask the question?

```
MR. WEAVER:
1
                         Sure.
2
           I will ask it as a hypothetical.
           If what was put up on the screen for
3
4
   Dr. Wilson is between Dr. Wiencek's office Nevada
   Comprehensive Pain Center and Dr. Tran, 5 or 6
5
   different providers within those 3 clinics
6
   identified pulses in your left leg of the 10
7
   examples we used, is it your view that all of those
8
9
   were done by Doppler?
10
           MR. ARNTZ: I object. It assumes facts not
   in evidence.
11
12
           THE COURT: The form of the question is
13
   fine.
           Overruled.
14
15
           You may answer.
           I don't remember --
16
       Α.
17
       Ο.
           Is that your answer?
18
           -- my pulses in my feet being checked by
19
   everybody.
20
           So you are not saying it didn't happen, you
   are just saying you don't remember.
21
22
           Is that fair?
23
           I better stay with that, I don't remember.
       Α.
24
           How good is your memory of December 25, 2016
25
   in the emergency department?
```

1 A. I think it is pretty good.

2

3

4

18

2.1

22

25

- Q. Do you think it is better today of what happened in the emergency department that day than when your deposition was taken in October of 2018?
- A. What I said today I believe to be the truth.
 I also, when I did the deposition, there were a
 couple of questions that were -- I remember one date
 being wrong.

I remember Lin who took the deposition

making a statement on his own that I agreed to after

being asked the same question 3 or 4 times that I

caught after I reread it.

So I know that's a correction.

So, yes, there is a few mistakes in my deposition.

- 16 Q. But you never corrected any of those 17 statements did you, sir?
 - A. No, and I didn't read it until recently.
- Q. You had the opportunity to make any corrections and you didn't.

Correct?

- A. I figure we are going to follow it up.
- Q. Sir, you signed your deposition attesting to the fact that you had no changes.

Correct?

- I signed that we took the deposition, yes. 1 Α.
 - Well, did you follow the instructions and review it to make sure it was accurate before you signed it?
 - I glanced over it.
 - You didn't see any changes that needed to be 0. made before you had sworn under penalty of perjury that it was accurate.

Right?

- Obviously I didn't. Α.
- You remember the admonitions that if you 11 12 made changes, even if you made changes, those may 13 get commented on at trial.

Correct?

2

3

4

5

6

7

8

9

10

14

15

16

2.1

- Correct. Α.
 - And you didn't make any changes. 0.

17 correct.

- 18 I didn't make any changes.
- 19 Q. So what is the statement that you recall that was inaccurate that you made? 20
- It is not that I made it. After being asked the same question 3 times in different ways, Mr. Lin 22 23 said, like I have heard you say in here, I believe you to have said and he slipped in vascular surgeon 24 and doctor, not Ranathan and doctor, the muscular. 25

34

```
1
           Sir, are you talking about the place in your
       0.
2
   deposition where Mr. Lin asked you whether or not
   you were told to call your vascular surgeon and
3
4
   another physician, and you said correct?
           On page 37, yes.
5
       Α.
       Ο.
           Okay.
6
7
           And he said it.
       Α.
8
       Q.
           Yes.
9
           Top and bottom of those I repeated what I
10
   thought about it, and it didn't bring up a vascular
11
   surgeon.
12
           Sir, you are talking about --
       Q.
           I am talking about missing him say that when
13
14
   he repeated what I said.
15
           But you said he asked it to you 3 times, so
       0.
16
   did you not hear it all 3 times?
           He didn't ask it all 3 times.
17
       Α.
18
           That is what you said.
       Ο.
19
       Α.
           It asked it 3 times in different ways.
20
           I will read the question and answer.
       Q.
21
           This page --
22
           MR. WEAVER: Your Honor, may we publish
23
   Mr. Moore's deposition?
24
           THE COURT: Again, I will just remind the
```

jurors that publishing is formality of unsealing the

```
original from the envelope.
1
2
           MR. WEAVER: May I approach?
           THE COURT: You may.
3
       Q. Mr. Moore, I will read into the record page
4
   36.
5
           MR. ARNTZ: Your Honor, if we can follow the
6
7
   proper deposition procedures.
           THE COURT: I think the foundation has been
8
   laid for this.
9
10
           Mr. Weaver, proceed.
           I just want to make sure Mr. Moore is on the
11
12
   right page.
       Q. Page 36, line 25 through line 5. I will
13
   read it.
14
           THE COURT: Just let him read it first to
15
16
   himself.
17
           MR. WEAVER: Sure.
          Which one?
18
       Α.
19
       Q. Page 36, line 25, through page 37, line 5.
20
           Would you read that to yourself, please?
           THE COURT: Let us know when you are
21
   finished.
22
23
       A. Okay.
       Q. Would you read that into the record, sir?
24
25
           I just want to clarify --
```

```
1
           MR. ARNTZ: Objection.
2
           MR. WEAVER: I am happy to read it.
           THE COURT: What is the objection,
3
4
   Mr. Arntz?
5
           MR. ARNTZ: That he is not following the
   procedure.
6
7
           THE COURT: I just indicated that I thought
8
   foundation had been laid.
9
           Can we just clear this up.
10
           There is confusion between what was said 3
   times or wasn't.
11
12
           I will go ahead and ask Mr. Weaver, please
   read it, and then we can follow-up and see if that
13
   refreshes the recollection.
14
15
           He has read it to himself. Mr. Weaver, ask
16
   the question, and we will see what Mr. Moore has to
17
   say.
           MR. WEAVER:
                         Thank you, Your Honor.
18
19
       Q.
           Page 36, line 25, question:
           I just want to clarify 2 points you just
20
   made.
21
           So there were 2 statements I think in what
22
23
   you just related to me, one, that you should follow-
24
   up with the either your vascular surgeon or your
   doctor.
25
```

1 Is that correct? 2 Answer: Correct. Mr. Moore are there any other parts of the 3 4 deposition that you now here in trial think are not truthful? 5 I think what you just read, if you will look 6 Α. 7 up just before it on line 21, that I said doctor or emergency room. 8 9 Mr. Moore, that part in your deposition, we Ο. 10 are not going to go through that with you right now. Your lawyer can follow-up with you on that. 11 12 That had to do whether you returned to the 13 emergency room department. 14 The answer that you just read into the 15 record had to do with the additional instruction, 16 which was to follow-up with your vascular surgeon 17 and/or primary care physician. 18 So the question I am asking you right now, are there any other parts of your deposition as you 19 sit here today that you think aren't truthful? 20 21 There's one. I believe I said 2014. Α. 22 might have been 2012. 23 Q. Fair enough. 24 Anything else, sir? 25 Α. Other than these can get very confusing, no.

1 And obviously you were ready for that Ο. 2 question that I asked. You even knew the page number, so you reviewed it in preparation for your 3 4 trial testimony today. 5 Correct? I felt it was wrong. 6 Α. 7 The question is, your reviewed your deposition for you trial testimony today. 8 9 Correct? 10 The question is, you reviewed your 11 deposition in preparation for your trial testimony 12 today. 13 Correct, Mr. Moore? 14 Yes. Α. 15 Are you as convinced today as you were in Ο. 16 your deposition that the triage nurse never touched 17 your leg on December 25, 2016? 18 I don't know the triage nurse had my sock 19 and shoe off, no. 20 Q. So you are as convinced today as you were in your deposition that the triage nurse did not touch 21 22 your leg. 23 Correct? 24 Correct. Α.

By the way, did you happen to recognize that

25

Q.

1 triage nurse, Amee Kuchinsky, on December 25, 2016
2 as being the triage nurse back in June of 2015?

- A. No, I did not.
- Q. Do you believe that the triage nurse in June of 2015 took off your sock and shoe, or that you took it off, and that triage nurse examined your leg?
- 8 A. I do not remember.
- 9 Q. Are you as convinced today as you were in 10 your deposition that Nurse Practitioner Bartmus 11 never touched your leg?
- 12 A. No.

3

19

20

- 13 | Q. Can you answer that yes or no?
- 14 A. Just yes or no, no, she did not touch my 15 leg.
- Q. And are you as convinced today as you were in your deposition that discharge nurse Jeffrey

 Germain didn't touch you before you were discharged?
 - A. He did not touch me.
 - Q. Okay. Thank Mr. Moore.
- By the way, when it comes to Nurse

 Practitioner Bartmus, did you tell your lawyer here

 today that not only didn't she touch your leg, but

 that she didn't examining you anywhere on your body?
 - A. No.

```
1
           Let's start with, is that your testimony
       O.
2
   that you gave to your lawyer?
           That I gave my lawyer?
3
4
           Did you testify to Mr. Arntz that Nurse
   Practitioner Bartmus did not examine any part of
5
   your body on December 25, 2016 in addition to not
6
   touching your leg?
7
           I don't remember her examining me.
8
9
           Well, did she look in your nose or your
       0.
10
   mouth?
            Standing there looking at me, I don't
11
       Α.
12
   believe I opened my mouth or raised my nose up.
           Did she feel your neck?
13
       0.
           I don't believe Nurse Bartmus did.
14
       Α.
15
           Did she feel your stomach?
       Ο.
16
       Α.
           No.
17
       0.
           Did she feel your back?
18
       Α.
           No.
           We will switch gears and we come back to
19
       Q.
   that emergency department in a few minutes.
20
2.1
           You have been smoking 50 years.
           Correct?
22
23
       Α.
           49.
24
           Fair enough.
       Q.
25
            You are turning 70 this year.
```

```
Right?
 1
            Yes.
 2
       Α.
            And you have been smoking sense you were 20?
 3
       Q.
 4
       Α.
            Yes.
            One to 2 packs a day?
 5
       0.
            Probably more, one pack a day than 2.
 6
       Α.
 7
            And you are still smoking.
       Q.
            Correct?
 8
9
            Yes.
       Α.
10
            And testified in your deposition that you
   have been advised by many people over many years to
11
12
   stop smoking.
13
            Correct?
14
       Α.
            Yes.
15
            Is it fair to say it just too hard a habit
       Ο.
   to stop?
16
17
       Α.
            It is a tough habit to stop.
18
            Fair enough.
       Ο.
19
            And you have been on Social Security
20
   disability since 2006.
2.1
            Correct?
22
       Α.
            Yes.
            So, even before this incident on December
23
       Q.
24
   25, 2016, you had been totally disability from
25
   working for 10 years.
```

Correct? 1 2 Since you were 58? Yes. 3 Α. 4 And in order for you to have been on the Q. Social Security disability you had to attest under 5 oath that you were totally unable to work because 6 you were totally disabled from working. 7 Correct? 8 9 I don't know that they don't allow you to 10 work a little. 11 You had to attest that you were totally 12 unable to work because you were totally disabled, 13 true? I don't remember that. 14 15 The reason when you were 58, 10 years before Ο. 16 this incident, that you went out on Social Security 17 disability is because of the vascular issues in your 18 legs. 19 Correct? Correct. 20 Α. 21 And for about 15 years now, you have had chronic back pain and pain in both of your legs 22 23 prior to December 25, 2016. 24 Fair? 25 Α. Yes.

1 You even had that before you went out on Ο. 2 disability. Correct? 3 4 Yes. Α. And prior to December 25, 2016, was the 5 reason that you were seeing a pain management 6 physician because of your chronic leg and the back 7 8 pain issues? 9 Α. Yes. 10 Ο. And even before December 25, 2016, you were 11 taking Oxycodone 3 to 4 times a day due to your 12 chronic pain. 13 Is that fair? 14 Α. Yes. 15 And for years, and we saw it up on the 0. screen as of 2012, you were seeing your primary care 16 17 physician, Dr. Tran, and then a few years before 18 2016, you switched over to specifically to a pain 19 management specialist to manage your chronic pain, 20 correct? Rephrase that. 21 22 Ο. Sure. 23 You have been going to Dr. Tran for years, 24 correct, at least as of 2012. 25 True?

```
1
       Α.
           Yes.
2
           And then a few years before December 25,
   2016, you switched over from Dr. Tran to Nevada
3
4
   Comprehensive Pain Center to manage your chronic
5
   pain.
           Correct?
6
7
       Α.
           Correct.
           And even up until today Nevada Comprehensive
8
9
   Pain Center is managing your chronic pain, is that
10
   fair?
           That's correct.
11
       Α.
12
           And before December 25, 2016, you had a
       Q.
   disability plate on the your car.
13
           Correct?
14
15
       Α.
           Yes.
16
           Before you heard Dr. Fish say it is
   insulting and lacks insight to use the term stump
17
   that instead residual limb should be used, you used
18
19
   the term stump.
20
           Correct?
           In my deposition I believe I said it once.
21
22
           Well, and that's what you were referring to,
23
   correct?
24
           My limb, yes.
       Α.
```

Until you heard from Dr. Fish that it is an

25

Q.

```
offensive term to use, you didn't consider it an
1
2
   offensive term, or you wouldn't have used it.
           Right?
3
4
           Yes.
       Α.
           Prior to December 25, 2016, on at least one
5
   occasion you had difficulty getting your Xarelto
6
7
   filled through Dr. Wiencek's office.
           Correct?
8
           Prior to when?
9
       Α.
10
       Q.
          Prior to December 26, 2015?
11
       Α.
          {\tt No.}
12
           MR. WEAVER:
                         If we can bring up Exhibit 100,
13
   it has been admitted into evidence, page 1462,
14
   please.
15
           Exhibit 100, which has been admitted into
16
   evidence, Bates 1462.
17
       Q. Mr. Moore, it will get highlighted here, but
   do you see where it says, patient called this
18
19
   morning and said this was his third call for a
   refill of Xarelto.
20
           Do you see that?
21
22
       Α.
           Yes.
23
           And do you see the date is October 30, 2015?
       Q.
24
           Yes.
       Α.
25
           Do you dispute that on October 30, 2015 you
       Q.
```

```
called Dr. Wiencek's office and said it was the
1
2
   third time you called for a refill of the Xarelto?
             I don't recall if it was the third call.
3
4
           He was ordering my Xarelto for me.
           If it says it was your third call, do you
5
       0.
   have basis to dispute the accuracy of that --
6
           No.
7
       Α.
           Please let me finish, please.
8
       Q.
9
           If it says it was your third call, do you
10
   have a basis to dispute the accuracy of it?
           No.
       Α.
11
12
           Do you think you have a basis to dispute the
       Q.
13
   accuracy of anything in Dr. Wiencek's records?
14
       Α.
           No.
15
           Did you call Dr. Wiencek's office on
       0.
   December 27, 2016?
16
17
       Α.
           I believe Walgreen's was trying to get a
   refill from him.
18
19
       Q.
           My question is --
20
           I did not personally call.
       Α.
2.1
           Did your wife?
       Ο.
           I don't believe she did.
22
       Α.
23
           How would Walgreen's know to call?
       Q.
24
           They track your medicine.
       Α.
25
           Who does?
       Q.
```

```
1
           Walgreen's. They call me when it is time to
       Α.
2
   either refill, or that my refill is ready.
           So are you saying that on December 27,
3
4
   Walgreen's was the one independently with no
   prompting from you or your wife, called
   Dr. Wiencek's office and asked that a prescription
6
   be filled on your behalf, is that what you are
7
8
   telling us?
9
           MR. ARNTZ: Objection.
10
           Speculation.
           THE COURT: Overruled.
11
12
           Is that what you are telling us, sir?
       Q.
13
           I don't know whether my wife called
14
   Walgreen's to have them request a new prescription
15
   or whether Walgreen's called us saying that our
16
   prescription was running out and we need to get a
17
   new one.
           I didn't do it. My wife takes care of that
18
19
   stuff.
20
           When did your prescription for Xarelto
   before December 27, 2016 run out?
21
22
       Α.
           I am assuming by the end of the month.
```

By the end of what month?

The month you were describing.

23

24

25

Q.

Α.

Q.

December?

December? 1 I am assuming. I don't know. 2 But you told us that when your medication 3 runs out Walgreen's will call to get a refill, is 4 5 that what you told us? If we call to get a refill and I am out of 6 Α. 7 refills, they call the doctor for us to get a new refill. 8 9 So you don't call Dr. Wiencek like you did 10 in October of 2015, you called pharmacy and asked 11 them for the prescription, not Dr. Wiencek? 12 Α. Yes. That's one it can be done. 13 14 And that's the way you do it, sir? 0. 15 Α. Yes. 16 Q. All right. 17 Mr. Arntz represented to the jury in opening statement that Dr. Wiencek told you "call any time," 18 19 is that true? 20 Just answer that with a yes or no, if you would, please? 21 22 Α. Yes. 23 So given that you knew that you could call Q. Dr. Wiencek any time, because he told you to call 24 25 him any time, you wouldn't have had any concern

about calling him on December 25 or December 26 to 1 report that you been in the emergency department on 2 December 26. 3 Correct? 4 We could have called him. 5 You not only could have called him, but he 6 7 encouraged you to call any time, so you could have called on December 25. 8 Correct? 9 10 Α. I requested --11 Sir, just answer my question. 12 I am asking you specifically about 13 Dr. Wiencek telling you to call him any time, which 14 you have agreed with. 15 So you could have called him on December 25 16 if you wished.

17 | Correct?

18

- A. If I could have got ahold of him, yes.
- 19 Q. He told you to call him any time, so doesn't 20 that assume that you could have gotten ahold of him?
- A. I think we have all called doctors and have not been able to get ahold of them.
- Q. Have other doctors also told you to call them any time?
 - A. Years ago.

```
1
       O.
           Fair enough.
2
           Did you attempt to call Dr. Wiencek on the
   25?
3
4
           Personally, I did not.
           Did your wife; did anyone in your household
5
   on your behalf?
6
           On the 25, I don't believe she called
7
   either, because I said I would tell them at the
8
9
   hospital.
10
           What about on December 26, did you or anyone
   in your household attempt to call Dr. Wiencek,
11
12
   knowing that he told you to call any time?
13
       Α.
           No.
           What about on December 27?
14
       Ο.
15
           No.
       Α.
           What about on December 28?
16
       0.
           She called him. My wife called Dr. Wiencek
17
       Α.
   I believe on the 28.
18
19
           Then you went to the emergency department
   after that?
20
2.1
           Yes.
       Α.
           Mr. Moore, are you still maintaining that
22
23
   you never prior to December 25, 2016 had a DVT?
24
           Is that still your testimony?
```

I don't think I had before, you said

```
December 25, 2016?
1
2
       Ο.
           Yes.
           I didn't even know the full understanding of
3
       Α.
4
   a DVT.
           You never heard of that term before?
5
       0.
           I probably heard of it. I didn't have a
6
       Α.
7
   full understanding.
           You never used that term before December 25,
8
   2016?
9
10
       Α.
           I don't remember using it, no.
           When I talk about something like that, just
11
   clot.
12
           It wouldn't be a term that you would use,
13
14
   because you didn't even know what it meant.
15
           Right?
16
       Α.
           Right.
17
           You understand that your son testified that
18
   at St. Rose Hospital you gave a history of past
19
   DVTs, and you used that specific language?
           I don't know that he said that.
       Α.
20
           Well, the jury heard what he testified to.
21
       Q.
22
           If he said that you said you had a history
23
   of DVT, he wouldn't be telling the truth.
24
           Correct?
                       Would or would not?
25
           THE COURT:
```

1 MR. WEAVER: Would not.

- A. I thought he said he may have said DVT.
- Q. No, sir. He testified in his deposition, and we went over it here at trial.
 - A. I never read his deposition.
- Q. If he testified in his deposition that you said at St. Rose Hospital and used the term DVT, your position is his testimony would be inaccurate, true?
- 10 A. Correct.

2

5

16

- Q. You do know that that is what he testified to in his deposition, because you recall him telling the jury that after talking with you and Mrs. Moore and your lawyers, he was persuaded to say you didn't say that.
 - Do you recall him testifying to that here?
- 17 A. Chris?
- 18 | Q. Yes, sir.
- 19 | A. You lost me again.
- 20 | O. Sure.
- Do you recall your son testifying that he
 changed parts of his deposition testimony and
 testified differently here to this jury after
 consulting with you and Mrs. Moore and your lawyers.
 - Do you remember that as a starting point?

- A. I don't know if he consulted with us as much as he reread it, and just like I ran into with you.
 - Q. Do you recall his testimony where he testified here in front of this jury that after consulting with you and Mrs. Moore, and your lawyers, that he was persuaded to change his deposition testimony to be different in trial.

Do you recall him saying that?

- A. I don't remember.
- Q. Do you recall -- if you don't remember him saying that, you wouldn't recall any of the things that he said he testified differently to in trial from his deposition.

Is that fair?

- A. What was that again?
- Q. Sure.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

2.1

- Since you don't remember him testifying to
 that, is it fair to say you don't remember the
 things that he changed from his deposition to his
 trial testimony?
 - A. I don't know for sure.
- Q. Do you understand that he testified in his
 deposition that he reviewed your medical records and
 saw that on December 25, 2016 it identified past
 history of DVTs, do you understand that he testified

```
to that in his deposition?
1
2
           That he found a past history.
           Yes, that in his deposition he testified --
3
       0.
4
           He might have said that.
       Α.
           -- that he reviewed your medical records
5
       Ο.
   from December 25, 2016, and understood that you had
6
   a pass history of DVTs.
7
           He might have.
8
       Α.
9
           That wouldn't be accurate.
       Ο.
10
           Right?
           THE COURT: Would or would not?
11
12
           MR. WEAVER: Would not, sorry.
13
           That I had a history of DVT?
       Α.
           Yes, sir.
14
       O.
           I don't think it is accurate.
15
       Α.
           And you never would have told anybody that
16
       0.
   you had a history of DVTs, because as far as you
17
   were concerned, you didn't.
18
19
           Correct?
20
       Α.
           No.
21
           But you have seen documentation that showed
   you had a history of DVT prior to December 25, 2016,
22
23
   correct, or do we need to bring that up so you can
24
   see it?
25
           I think I have seen some of it.
```

- 1 But you dispute it, you think whoever Ο. 2 documented that got it wrong?
- My understanding was DVT is like vein blood 4 clots.
- Yes, sir. 5 0.

3

8

16

17

18

19

20

2.1

22

25

- I don't remember many people saying I 6 7 actually had them. I have been tested for it.
 - Sir, my question is different.

9 Is it your testimony, because this is a 10 really big issue that came up in the opening 11 statement.

12 It was really big issue that Nurse 13 Practitioner Bartmus got cross-examined on for at least 30 or 40 minutes about whether you had a 14 15 history DVT.

Is it your position that if prior to December 25, 2016 any health care provider identified that you had a DVT, that that health care provider got it wrong.

Yes or no?

- I don't know. Α.
- What do you mean you don't know.
- 23 You said that you never had a DVT before 24 December 25, 2016.
 - I have had blood clots to my popliteal

I don't know about DVTs. 1 graft. 2 Do you know that now you are saying you just don't know, as opposed to it didn't happen, is that 3 4 fair? I don't know. 5 Do you understand that your son testified in 6 7 his deposition that going to the emergency department on December 25, 2016 you told him that 8 9 what you felt in your calf was different than what 10 you felt ever before? I don't remember telling him that. 11 12 If that's what he testified to in his Ο. 13 deposition, is that your testimony here today his 14 testimony was wrong? 15 Α. No. 16 0. I wouldn't say his testimony was wrong. 17 just don't remember saying that to him. 18 Did you meet with Dr. Fish? Ο. 19 Α. Yes, I did. How long did you meet with Dr. Fish? 20 0. 21 An hour, 20 minutes, something like that. Α. little over an hour. 22 Did you meet with him at someone's office? 23 Q.

I went I thought to his office.

Here in Las Vegas?

24

25

Α.

Q.

1 A. Yes.

6

8

9

10

25

Q. And do you recall me asking Dr. Fish about his deposition testimony, where he said that Mrs. Moore wasn't present, and it wouldn't be his custom to have a familiar member present during am

7 Do you recall that?

interview of the patient.

- A. No, Mrs. Moore was present.
- Q. Do you recall me asking him questions where in his deposition he said she wasn't present?
- 11 A. I don't remember Dr. Fish saying that she 12 wasn't present, because I talked to her.
- Q. Did Dr. Fish tell you during that July 2019
 interview with you any medical care that he believed
 you needed?
- 16 A. I don't remember everything we discussed.
- He talked to me and had concerns, and we went over a labeled to me and had concerns, and we went over a labeled them.
- He was more or less analyzing, and figuring out, not me figuring him out.
- 21 | O. Sure.
- Did he tell you during that visit anything
 that he believed you needed in terms of medical
 care, medical equipment or anything else?
 - A. I remember him making the comment since I

was a general contractor what I thought the expenses 1 2 in total at my house would be. I can't recall him bringing up things to 3 4 tell me all of that I would possibly needed. Did you tell him anything that you thought 5 that you needed? 6 7 There's always several things a person 8 needs. 9 There is possibility that with my hip and 10 everything else that I have that I will need a van where I can roll up into the van. 11 12 Q. Anything else, sir? 13 Α. Possible electric wheelchairs. 14 0. Okay. I don't remember much more than that. 15 Α. 16 Ο. And as of that visit with Dr. Fish, you were being fitted for an electric wheelchair, is that 17 18 right? 19 Α. I had called and was talking about wanting to see one. 20 Well, he testified that as of July 2019 when 2.1 Ο. he met with you, you were being fitted for an 22 electric wheelchair? 23 24 I never got fitted. Α.

25

Q.

Why not?

- A. Because this court case was supposed to be done at the end of March, the first of April, and it got moved up 2 months.
- 4 Q. What does that have to do with anything?
- A. It has to do with my fitting time was going to be while we are in Court.
- Q. So in the 7 months since you met with Dr. Fish in July, have you been fitted for the electric wheelchair?
- 10 | A. Not yet.
- 11 Q. How about the prosthesis?
- 12 A. No. I haven't completed that?
- Q. Do you know that Dr. Fish represents himself
 as an expert in prosthesis and the fitting of
 prostheses?
- 16 Do you understand that?
- 17 A. No.
- Q. Did you have any discussion with Dr. Fish that because you were having difficulty getting a good fitting prosthesis could he help you?
- 21 A. I don't think we talked about that.
- 22 | O. He didn't offer that?
- 23 A. No.
- Q. Did he offer to write you a prescription or an order for any medical care, any medical

```
equipment, anything?
1
           Not at the time.
2
           Well, has he ever?
3
       Ο.
 4
          Not that I --
       Α.
5
          Has he ever called you since that initial
   meeting?
6
7
       Α.
           No.
           MR. ARNTZ: Your Honor, he keeps cutting him
8
9
   off, and he is trying to answer.
10
           THE COURT: He is probably trying to
   despite -- how much longer are you going to be,
11
   Mr. Weaver?
12
13
           MR. WEAVER: Probably 30 minutes.
14
           THE COURT: Counsel approach at your own
15
   risk.
           MR. WEAVER:
16
                         15.
17
            (A bench conference as had.)
18
19
20
           THE COURT: All right.
21
           Thank you for that brief scheduling bench
   conference.
22
23
           You may proceed.
24
       Q. Mr. Moore, I have 15 minutes. I will finish
25
   at a minute of 59.
```

Your lawyer was right, I stepped on your 1 2 lines and I apologize. Was your answer finished? 3 I believe it was. 4 Α. 5 Ο. Okay. 6 Mr. Moore, the times that you said that you 7 fell, one was when with you were getting gas, and one was when you were in the bathroom, and I missed 8 the third time. 9 10 Α. In my bedroom. In your bedroom. 11 Ο. 12 None of those 3 times did you have a 13 prosthesis on. Is that fair? 14 15 That is correct. Α. Did you have a discussion with Dr. Fish that 16 0. 17 if you got a good fitting prosthesis, he would 18 expect that you wouldn't have a safety risk of 19 falling? 20 A. I don't remember having a conversation with him on that. 21 Did Dr. Fish ever offer to talk to any of 22 23 your health care providers to help get you any of 24 the things that he says you need right here, right

25

now?

```
1
       Α.
           No.
2
       Ο.
           Okay.
3
           Have you talked to any of your health care
4
   providers about getting even one thing that Dr. Fish
   had on his life care plan?
5
       Α.
           No.
6
7
           Do you have any basis to believe that any of
       0.
   your multiple health care providers:
8
           Dr. Wiencek.
9
10
           Dr. Tran.
11
           Dr. Chang.
12
           Your general surgeon.
13
           Anyone of the physicians at Nevada Pain
14
   Center, is there any reason that you are aware of
15
   that any of them couldn't get you any of the medical
16
   equipment or any of the medical care and treatment
17
   that Dr. Fish says you have needed over the last 3
18
   years?
19
       Α.
             I don't know if they could have tried to
   get me the smaller things, the stuff that he is
20
   talking about, and the stuff that I need, some of
21
2.2
   that can't --
23
           Go ahead, sir.
       Q.
24
           -- cannot be gotten easy.
       Α.
```

What do you base that on?

25

Q.

- A. I base it on just like the vehicle we were talking about to get the wheelchair in and stuff.
- Q. What if any medical care or medical items, medical equipment do you think would be difficult to get if any of your multiple physicians ordered or prescribed one at any time in the last 3 years up to right now?
- A. I don't know.

1

2

3

4

5

6

7

8

17

18

19

20

21

- 9 Q. Have you had a discussion with any of your 10 health care providers about any medical treatment 11 you currently need, or any medical equipment that 12 you need?
- A. I don't believe that I have had a

 14 conversations with many of them about everything

 15 that I need.
- 16 Q. Not everything, sir, anything.
 - A. I can't think of a specific thing.
 - Q. Are you aware that there is not a single entry in the records from the Nevada Comprehensive Pain Center that says you have every once every brought up having phantom pain in your left leg?
- 22 A. In the Nevada Pain?
- 23 Q. Yes, sir.
- 24 A. You go there to get Oxycodone.
 - Q. The question is --

- 1 A. They never asked me.
 - Q. It is not whether they asked you.

Are you aware that think document that they do an examination of you, that they ask you how you are doing, and that they do in fact ask you questions about where you have pain, and what time, are you aware of that?

- A. They ask you how your pain feels right now.

 We have never discussed phantom pains in my

 leg.
- Q. You never once every, in the last 3 years, brought up to your pain physicians that you have phantom pain in your left leg.

14 True?

2

3

4

5

6

7

8

9

10

15

16

- A. No. I have mentioned that to some of the physicians that I have talked to.
- 17 | Q. At Nevada Pain Center?
- 18 A. No.
- Q. Why haven't you ever, even once in last 3
 years brought up to the people who are managing your
 pain that you have pain in your left leg?
- 22 A. The phantom pain?
- 23 Q. Yes.
- 24 A. How are they going to cure it?
 - Q. Sir, is that your explanation as to why you

- haven't brought it up even once is because you are 1 2 not sure how they are going to cure it, is that your explanation? 3
- A. Basically, I am saying, Nevada Pain Center 4 doesn't, as far as I knew, didn't deal in the phantom pains of your leg, they dealt with what 6 7 physically actually hurts you.
 - So is that your explanation how never once over the years you have never brought it up to them?
- 10 Α. Correct.

5

8

9

- So if your basis for never bringing it up is 11 12 because you are not sure how they are going to cure it, how do you think Dr. Fish is going to cure it? 13
- 14 Well, the Pain Center is not going to cure it, like I can see Dr. Fish says that I need some 15 16 help with.
- 17 What do you think understand that Dr. Fish said is going to cure your phantom pain that the 18 19 Nevada Pain Center couldn't help with?
- He basically says that I need to talk to 20 21 somebody.
- 22 0. I am sorry?
- 23 Α. That I need to talk to people and maybe see if that can't help. 24
 - Psychological help? Q.

1 A. Possibly.

2

3

4

5

18

19

Q. That's your understanding of what Dr. Fish had suggested for anything having to do with your phantom pain.

Correct?

- A. I am not sure everything that Dr. Fish plans for sure.
- Q. But Dr. Fish never suggested to you that you talk to the people who are managing your pain about your phantom pain, or anything having to do with your hips either.

12 Is that right?

- 13 A. No.
- Q. Because there is no documentation in the Nevada Pain Center that you ever brought up a problem with your hips either.

17 | True?

- A. No, I haven't to them about my hips --
 - Q. You haven't brought up --
- 20 A. -- pain that I do have that can be 21 controlled.
- Q. And you haven't brought up anything to your pain management physician about right knee pain either.

25 Correct?

- 1 A. Not as of net yet, no.
- Q. But you brought up to your Nevada Pain
 Center pain specialist that you have right ankle
 pain.

5 True?

- A. My Nevada Pain specialist that I have pain, yes, in my ankle area.
- Q. So you talked to them about pain in your ankle, but not pain in your right knee, not pain in your hips, and not phantom pain.

11 Right?

- 12 A. No.
- 13 Q. Am I wrong?
- 14 A. No, you are right.
- 15 Q. That was a bad question. It was a double 16 negative.
- 17 MR. WEAVER: Your Honor, I almost done.
- Q. Mr. Moore, can we rely on what you testified to in your deposition about how your leg was on the December 25, and how your leg was on December 26, and how your leg was on December 27, and how your
- 22 leg was on December 28.
- Is there any of that deposition testimony
 that you need to say wasn't truthful in your
- 25 | deposition?

- A. I think most everything I said in the deposition was true.

 Q. Well, is there anything that you said in your deposition, and how you described it, that
- 5 | isn't true?
- 6 A. No.
- Q. I am just trying to cut through the chase.

 If you say there was something that wasn't truthful, then we will go through it.
- 10 A. Most all of it was true.
- 11 Q. Is there anything, sir, that you believe 12 wasn't?
- I know you are saying most of it was. I am

 14 asking you specifically, is there anything you

 15 testified to --
- 16 A. I believe that in my testimony I said that 17 there was a cool foot.
- 18 It was numb. I think that's part of what I
 19 testified about that time.
- 20 Q. Let's start with the coolness.
- You testified in your deposition that your left foot was the same temperature as your right foot always.
- 24 Correct?
- 25 In fact, you testified that you double

checked it to make sure it was the same temperature 1 2 as right foot. Correct? 3 4 That was the morning at 4:00 o'clock, when I Α. said it was still the same as the other foot. 5 At 4:00 o'clock in the morning, you double 6 0. 7 checked and the temperature of the left foot was the same as right foot. 8 9 Right? 10 Close to it, yes. Α. And testified that with regard to the 11 12 numbness, you testified in your deposition that you 13 get numbness all time, and didn't think it was 14 anything unusual. 15 That's what you testified to. Correct? 16 17 Α. I have numbness. It comes and goes in my 18 legs. 19 But I also have the numbness that's created by this problem, too. 20 Q. Mr. Moore, do you agree or disagree that 21 22 what you testified to in your deposition was the numbness that you felt on December 25 is the 23

numbness you feel all the time, that's what you

24

25

testified to.

1 Correct?

2

3

5

7

10

15

16

17

2.1

- I believe they asked me how my leg felt, and I said cool and numb.
- 4 Mr. Moore, did you or did you not testify in your deposition that the numbness you believe you felt on December 25 is what you feel in your feet 6 all the time?
- Do you dispute that's what you testified to, 8 9 sir?
 - Yes, I agree with you.
- 11 Ο. Okay.
- 12 When you got to St. Rose Hospital, did you 13 tell anybody that you believed your left leg was 14 cool, but the same temperature as the other one.
 - No, I didn't say it was cool and the same temperature as the other one, because it was cooler than the other foot.
- By the time from 4:00 a.m., until the time 18 19 you got to St. Rose Hospital it became cooler on the left than the right. 20
 - Is that what you are telling us now?
- 22 Α. Yes, but I said that when I woke up I felt 23 it too, not just when I got to the hospital.
- 24 Q. You never said in your deposition, did you sir, that it every became cooler on the left than 25

```
1
   the right.
2
            True?
3
            I don't remember now.
4
       Q. Did you ever tell anybody at St. Rose
   Hospital on December 25, 2016 that your left foot
5
   was more numb than your right foot, you didn't, did
6
7
   you?
            I believe I said there was a numbness.
8
       Α.
9
            I never said it was number than right.
10
       Q. You walked into the hospital.
11
            Correct?
12
       Α.
           Yes.
13
           You walked out of the hospital.
       Ο.
            Correct?
14
15
           Yes.
       Α.
16
            MR. WEAVER: That's all the questions I
17
   have.
18
            Thank you, Mr. Moore.
19
            THE COURT:
                       Thank you, Mr. Weaver.
20
            MR. WEAVER: I yield the 4 minutes.
21
            THE COURT: Mr. McBride.
22
23
                         CROSS-EXAMINATION
24
25
       BY MR. McBRIDE:
```

```
1
       Ο.
           Good afternoon, Mr. Moore.
2
           Now we met before, right?
           Yes.
3
       Α.
           We met at your deposition back on October of
4
       Q.
   2018?
5
           Yes.
6
       Α.
7
           And I had an opportunity to ask you a bunch
   questions in addition to Mr. Weaver's associate,
8
   Mr. Lin.
9
10
           Right?
11
       Α.
           Yes.
12
           At that time, you would agree with me,
       Q.
13
   Mr. Moore, when you were asked about what happened
14
   and those conversations you had with went down to
15
   the ultrasound department -- before we get there,
16
   when you first met the person at the front desk, do
17
   you remember that, what you testified to in your
18
   deposition about any conversation you had with that
19
   person?
           That I checked and told them that
20
       Α.
   Dr. Wiencek wants me to call any time I come to the
21
22
   ED.
23
           But that's not what you testified to your
       Q.
24
   deposition.
```

25

True?

```
1
            I don't remember that.
       Α.
2
           Let me refer you to your deposition, if I
   could, and take a minute to look at it.
3
4
           It is at page 31, lines 21 through 24.
           Let me know when you are done reading that.
5
       Α.
           21 to where?
6
7
           21 to 24, page 31?
       0.
8
       Α.
           Okay.
9
           So the question was:
       Ο.
10
           And do you recall specifically what you told
   the front desk?
11
12
           Answer, I probably told them I was there to
13
   check out to see if I possibly had a clot in my left
   leg again.
14
15
           That's the extent of what you told us in
16
   your deposition.
           Right?
17
18
           Yes.
       Α.
19
           In fact you never once mentioned anything
20
   about advising the front desk that Dr. Wiencek
2.1
   wanted to be contacted.
22
           True?
23
           I may not have.
       Α.
24
           All right.
       Q.
25
           And, in fact, you testified in response to
```

```
1
   Mr. Weaver's questions that you knew, and
   Dr. Wiencek had told you before to call him if you
 2
 3
   had any problems.
 4
            Right?
            Yes.
 5
       Α.
       Q.
            And you knew to do that.
 6
 7
            Right?
            What's that?
 8
       Α.
9
            You knew to do that, correct?
       0.
10
       Α.
            I knew I could.
            Well, he told you to.
11
       Ο.
            Yes.
12
       Α.
13
       0.
            And you never did on December 25.
14
            Right?
15
       Α.
            No.
            And you never did on December 26.
16
       Q.
            Right?
17
18
       Α.
            No.
19
       Q.
            And you never did on the December 27.
            Right?
20
21
            No.
       Α.
22
            And your foot still remained cool and with
   some numbness from the 25 through the 27.
23
24
            Correct?
25
            Yes.
        Α.
```

```
1
           But you never called Dr. Wiencek at all to
       Ο.
2
   tell him that your leg still felt different.
           Right?
3
           Isn't that true?
4
5
       Α.
           Yes.
6
       Q.
           Okay.
7
           Now, you talked about, I think about the
   examination that Nurse Practitioner Bartmus did, and
8
9
   do you recall that at your deposition in fact you
10
   testified that you did not remember if Nurse
   Practitioner Bartmus examined you.
11
12
           Do you remember testifying to that?
13
           In some of the wording, I could have.
14
   do definitely know she did not.
15
           Let me refer you to page 33, lines 11
       O.
16
   through 16.
17
           Take a minute to read that to yourself.
           33?
18
       Α.
19
       Q.
           33, lines 11 through 16.
20
           THE COURT: Mr. McBride, in the interest of
   time, if it refreshes his recollection as to what he
21
   testified to, maybe you can ask him that question
22
23
   first before just reading it.
24
           MR. McBRIDE: Sure.
25
           Great.
```

```
1
           Page 33, lines 11 through 16, let me know
       0.
2
   when you are through reading that.
       Α.
           Okay.
3
4
           Does that refresh your recollection as to
       Ο.
   what you testified to at your deposition?
5
       Α.
           Yes.
6
7
           15 through 16.
       0.
           As far as an examination, I don't remember
8
9
   her doing anything.
10
           True?
           Is that what you testified to, sir?
11
12
       Α.
           On that line, yes.
13
           Now, Mr. Moore, what did Nurse Practitioner
   Bartmus' Scribe look like?
14
           I don't remember what her Scribe looked like
15
       Α.
   I don't even know if she was standing beside her.
16
           I know she can dictate to her.
17
           You in never mentioned the Scribe or anyone
18
19
   else in the room with Nurse Practitioner Bartmus.
20
           Correct?
21
           Other than the 2 at the computer, I don't
   believe I said that.
22
23
           Now, you already testified that Dr. Lasry
       0.
24
   also never examined you.
25
           Right?
```

```
1
       Α.
            Yes.
2
       Ο.
            Your certain of that.
3
            Right?
4
       Α.
            Yes.
            And you testified that your son, who works
5
       Ο.
   in a hospital, that he also did not see Dr. Lasry.
6
7
            Do you remember that?
           He said that.
8
       Α.
           Okay.
9
       0.
10
            At no time did you or your son ever ask to
   see a doctor, correct, on December 25?
11
            We did not.
12
       Α.
13
       0.
            Okay.
            And you had been to the emergency room on
14
15
   prior occasions for complaints, similar complaints
16
   to your leg that you were concerned about a clot.
            Right?
17
18
            Yes.
       Α.
19
            And on each of those occasions, a doctor or
20
   some other provider examined your leg on every
2.1
   occasion.
22
            Right?
23
       Α.
            Yes.
24
            So when you went there on the December 25,
25
   and no one took off your shoe no one took off your
```

```
sock, and no one examined your leg at any point in
1
   time, you demanded to see a doctor to examine your
2
   leg.
3
           Right?
4
           On the 25?
5
       Α.
       Ο.
           On the 25.
6
7
           I went in there and told them what I fell
   was happening.
8
9
           That wasn't my question.
       0.
10
           You demanded to see a doctor.
           Correct?
11
           When I went in?
12
       Α.
13
                 At the end of the session, when they
   had completed the ultrasound, at any point in time
14
15
   during that visit to the emergency department, you
   never --
16
           I did not demand to see a doctor.
17
           You did not demand to see a doctor?
18
       Ο.
19
       Α.
           I did not.
20
           Your son did not, right?
       Q.
2.1
           No.
       Α.
22
           In fact, your son who works in a hospital, I
23
   think the only thing that you said that he commented
24
   upon was the patch that was on back of the chair,
25
   and that that didn't appear right.
```

1 Correct?

2

7

8

9

10

11

22

- A. I said I talked about the patch.
- Q. And your son said that didn't look like right.

5 Correct?

- 6 A. Correct.
 - Q. And it didn't occur to either one of you that the fact that no nurse, no health care practitioner on December 25 bothered to even take off your sock or look at your leg, that didn't appear not right to you?
- A. What was right is the 2 times I went in before, they sent me to the ultrasound, which they found an occlusion and took care of it.

And I went in, and after talking Nurse

Practitioner Bartmus, she sent me to the ultrasound,

so I assumed that especially with me directing the

technician that we were going to get the test

results, good, bad or indifferent.

20 Unfortunately, I was never told of the 21 results.

- O. I understand.
- A. As far as worrying about whether they took
 my shoes and socks off, the reason why I know that
 they didn't is because after 30 some years of

```
wearing socks and putting bandages on them and
1
2
   everything else, they are black and blue, and they
   are terrible looking.
3
           If I don't have to take them off, I am happy
4
5
   not to, if they give me the test that I was going in
   for.
6
7
           Mr. Moore, are you through with your answer?
       0.
8
       Α.
           Yes.
9
           You described the appearance of your leg
       Ο.
10
   from the 25 through the 27 as appearing normal.
           There was no difference in coloration.
11
12
           No swelling.
13
           There was nothing that was unusual about the
14
   appearance of your feet from the 25 through the 28,
15
   until your foot became so severely painful.
16
           True?
17
       Α.
           Normal to me was what they look like right
18
   now.
19
       Q.
           That's not what you said, sir.
20
           You said they look normal.
           Correct?
2.1
22
       Α.
           No.
23
           In your deposition that's what you told me.
       Q.
24
           I might have said they looked normal.
       Α.
25
           And on those prior occasion in 2014 and
       Q.
```

```
1
   2015, when you went there, on both of those
2
   occasions you were not taking Xarelto or any other
   anticoagulant before that those visits.
3
4
           Correct?
5
       Α.
          Correct.
6
       Q. You were on Xarelto, and by your own
7
   testimony, you took that faithfully every day,
   correct, from 2015 to 2016.
8
9
           Right?
10
       A. Yes.
11
           MR. McBRIDE: Court's indulgence.
           I think I am done.
12
13
           THE COURT: Mr. Arntz, any redirect for
   Mr. Moore?
14
15
           MR. ARNTZ: Yes.
16
17
                   REDIRECT EXAMINATION
18
19
       BY MR. ARNTZ:
20
       Q. Darell, what's normal to you for the
   appearance of your legs?
21
22
           Normal to me is always slight swelling in my
   left foot.
23
24
           Discoloration of the skin clear up to the
25
   thigh part of the calf.
```

1 That is normal to me.

- Q. And why do your legs look that way?
- A. From wrapping them for over 30 years, and going to work as a carpenter, a house builder, and just wearing boots and working hard.
- Q. When you left the hospital on the 25, did you feel relieved?
- A. I felt relieved because I was told that
 there was absolutely nothing found in the tests that
 was taken to show us why there is was pain in my
 calf.
- 12 Q. Did you feel you needed to call Dr. Wiencek
 13 at that time?
- 14 A. No, I did not.
- Q. I want you to turn to your deposition transcript, page 36.
- Tell us when you are there, please.
- 18 | A. Okay.

2

3

4

- Q. Could you read the response to the question that starts at line 21 and ends at line 24; read that to yourself and tell me if that refreshes your memory as to what you said in your deposition.
- 23 A. Yes.
- Q. And is that the question you thought you were answering on page 37, when you said correct?

```
1
       Α.
           Yes.
2
           And what was that that you believed you were
3
   saying?
4
           I believed that I was saying -- you want me
       Α.
5
   read the whole thing.
       Ο.
           Sure.
6
7
           Read your response starting at --
8
           THE COURT: Actually, Mr. Arntz, can you
9
   assist, because it is more proper to say question,
10
   read the question and the answer.
11
           Mr. Moore may not be well versed.
12
           MR. McBRIDE: What page?
13
           MR. ARNTZ: Page 36.
           You would like me to read the question?
14
15
           THE COURT:
                       Either ask a question or orient
16
   us to what you are talking about, or if it needs to
17
   be read, I would like you to read it along with that
18
   it is a question or an answer.
19
           So at line 18, the question was:
20
           Did anybody every tell you to come back to
   the ED, emergency department, if your symptoms
21
22
   worsen.
23
           And your responsible was:
24
           They said I should, I believe, either see my
25
   doctor, or if gets worse, or something is happening
```

```
1
   to come back to the emergency room. I believe they
2
   said that.
           Is that what you understood happened at the
3
4
   emergency room?
5
       Α.
           That is correct.
       Q. And the last thing.
6
7
           Did anyone at Dr. Tran's office or at the
   pain management clinic you went to, did they every
8
9
   take your shoes and socks off to check your pulses?
10
       Α.
           Never at the Pain Center.
           One time I had my sock and shoe off at
11
12
   Tran's office because I thought I might have an
13
   infection.
           This is before 2012.
14
15
       Q. Okay.
16
           Mr. Moore --
17
           MR. HENRY HYMANSON: Exhibit 100, 1333.
18
           -- were you aware on the 25 of December when
19
   you went to the hospital that they -- do you know
20
   what a differential diagnosis is?
2.1
          Differential no.
       Α.
22
           Do you see there where it says differential
23
   diagnosis?
24
       A. Deep vein thrombosis.
25
                        Mr. Moore, again, if you are
           THE COURT:
```

```
speaking out loud, it has to be loud enough for my
1
2
   reporter and for everyone else in Court to hear you.
           You can read it yourself, if that would be
3
4
   helpful.
5
           Mr. Arntz is standing right so that he can
   read the board, but that doesn't change anything.
6
           You have to project your answers.
7
           Let me do it this way.
8
9
           I will represent to you that it has been
10
   testified to by various people at this trial that a
   differential diagnosis is a list of things that
11
12
   might be a problem.
13
           And you see that things that Nurse
   Practitioner Bartmus listed were:
14
15
           Deep vein thrombosis.
           Arthritis.
16
           Sprain and strain.
17
18
           Were you ever told, or did you every learn
19
   while you were at the hospital that those are the
20
   things that they are ruling out?
2.1
           MR. WEAVER: Lacks foundation.
22
       0.
           I am asking if you ever learned that.
23
           THE COURT: Asked him what he learned at the
24
   hospital about those things.
25
           MR. ARNTZ:
                        I can't ask him if he ever
```

```
1
   learned that at the hospital?
2
           THE COURT:
                        The objection was that it was an
   improper question.
3
4
           MR. ARNTZ: I thought he said it was
5
   compound.
           MR. WEAVER: I said it lacks foundation.
6
7
           Did you know that those were the things that
   Nurse Practitioner Bartmus was ruling out?
8
9
           I did not know that she was ruling that out.
10
       O.
           Did you know that she wasn't looking to see
   if you had an arterial occlusion?
11
12
           THE COURT: Was or was not?
13
           That she was not looking to see if you had
   an arterial occlusion.
14
15
           MR. WEAVER: Misstates the evidence.
16
           THE COURT: It states one version of the
   evidence.
17
18
           I am going to ask you rephrase, Mr. Arntz,
19
   because we have had testimony to the contrary as
   well.
20
2.1
           MR. ARNTZ: Nerve mind.
           I am done.
22
23
           THE COURT:
                        Mr. Weaver.
24
           MR. WEAVER: Thank you, Your Honor.
25
           Just very briefly.
```

1 2 RECROSS-EXAMINATION 3 4 BY MR. WEAVER: 5 Mr. Moore, do you recall your deposition testimony where you said there was no change in the 6 color of your leg from December 25 until the 28, 7 when it became black and blue? 8 9 I probably said that. 10 And do you recall that not only was there no change between the 25 and the 28, when it suddenly 11 12 became black and blue, but on the 25 it wasn't 13 discolored --14 THE COURT: Was or was not? 15 MR. WEAVER: Was not. 16 Please, the contractions are 17 making me insane. 18 It is not a good record. 19 My legs are always discolored. Then why did you testify in your deposition 20 Ο. that on December 25 your leg was not discolored? 21 22 From what I am normal to, when you ask me a 23 question, I have to answer from what I am normally 24 used to. 25 If you say does your leg look like mine, I

1 | would say no.

2

3

4

7

8

9

10

Q. From December 24 and the 23, there was no difference as to how it looked on December 25 than how it always looked.

5 Correct?

- 6 A. To the foot, no.
 - Q. Between December 25, when it did not look any different than it always looked, and until December 28, it continued to look the same as it always did.
- 11 A. The 26 and 27, it did.
- 12 Q. So let's just go back to clear up this thing
 13 about the vascular surgeon.
- Did I just hear you tell Mr. Arntz that you thought the question that you were answering was whether or not you should return to the emergency room?
- 18 A. No.
- 19 Q. Is that --
- A. I said I understood that I was supposed to return to the either the emergency room or my general practitioner.
- Q. But when you testified in your deposition
 that you agreed you were told you should follow-up
 with your vascular surgeon, and you said correct, is

what you are telling Mr. Arntz that you thought you 1 2 were being told to follow-up in the emergency department if you had any further complaints? 3 Yes, the question before that. 4 So let's go to that, if we might please. 5 Ο. Page 36, Mr. Moore, of your deposition, at 6 7 line 21 through line 10 now on page 37, would you please read that to yourself to see if it refreshes 8 9 your recollection? 10 Α. 36 --Line 21, to page 37, line 10. 11 12 Would you please read that to yourself to 13 see if it refreshes your recollection as to what you testified to in your deposition? 14 15 Α. Okay. 16 Would you please read into the record line 0. 6? 17 THE COURT: 18 Mr. Weaver, I already asked 19 counsel multiple time to do the reading, because I 20 don't believe that the witness is very well versed 2.1 at it. MR. ARNTZ: Your Honor, this testimony was 22 23 acquired through Mr. Moore the first time he asked

MR. WEAVER: No, it wasn't. I am clarifying

24

25

it.

```
what Mr. Arntz said the correct answer was.
1
2
           THE COURT: We are looking at a slightly
   different section, but we are covering ground that
3
4
   we have covered.
5
           Mr. Weaver, please wrap it up.
           MR. WEAVER: Right, but it is an important
6
7
   difference, Your Honor.
           THE COURT: Go ahead and read.
8
9
           I overruled.
10
       Q. Do you agree that what you answered in your
   deposition with regard to line 6 through 10 --
11
12
           THE COURT: On page?
13
           MR. WEAVER: 37.
14
           -- had to do with the second statement,
15
   which was to return to the emergency department.
16
           So you answered in part one that you recall
17
   your vascular surgeon.
18
           And then pages 6 to 10, you answered the
19
   second part, which was to return to the emergency
   department.
20
2.1
           Correct?
22
           They told me to see my --
       Α.
23
           Mr. Moore, I am just cutting through the
       Q.
24
   chase.
25
           THE COURT:
                        Let him answer.
```

```
Answer if you understand the question.
1
           If you don't, Mr. Weaver can re-ask it.
2
           Line 6?
3
       Α.
          Yes, sir.
4
       Q.
5
           Let me rephrase the question or re-ask it.
           You were asked in your deposition 2 things,
6
7
   and you responded that you were told one thing,
   which was to call your vascular surgeon.
8
           And on line 6 to 10, you testified that the
9
10
   other thing you were told was to return to the
11
   emergency department if you had changes.
           Correct?
12
13
           Correct.
       Α.
14
           MR. WEAVER:
                         Thank you.
15
           No further questions.
16
           Thank you, Your Honor.
           THE COURT: Mr. Arntz?
17
18
           MR. ARNTZ: No, thank you.
19
           THE COURT:
                        Let me see by a show of hands if
   any jurors have questions for this witness.
20
2.1
           I am anticipating some questions.
22
           Take your time rake and I will go over them
23
   with counsel as soon as they are ready.
24
           Counsel.
25
```

```
(A bench conference was had.)
1
2
3
                         EXAMINATION
4
5
       BY THE COURT:
6
           Mr. Moore, you are reminded that I am going
7
   to read the question exactly as written.
           I am not at liberty to enhance the questions
8
9
   in anyway.
10
           Answer to the best of your ability, please,
   to the jurors, and then counsel will an have
11
12
   opportunity to follow-up.
13
           Okay?
14
       Α.
           Yes.
15
           The first question.
       Q.
16
           What were the date of your 3 falls?
17
       Α.
           I couldn't actually tell you the exact
18
   dates.
19
           My first fall probably came a month, maybe 5
   weeks after the amputation, and the 3 that I have
20
   described came probably 2 to 3 weeks a part after
21
22
   that.
23
           So we are talking about maybe a 3 month
24
   period that I had those 3 falls.
25
       Q.
           Okay.
```

Mr. Moore, how long does it typically take 1 2 to remove a comprehension stocking? Again, I can't embellish the question. 3 Answer to the best of your ability? 4 5 Well, in my mind there's several different compression stockings, the one that is put over your 6 7 leg after the amputation to protect any blood clots or anything, that's one. 8 9 Just answer to the best of your ability, Ο. 10 please. 11 If there are others, you are willing to 12 share those as well. I don't know if they are talking about the 13 14 compression stocking that you pull up on your leg to 15 help the swelling and stuff on your leg, that can 16 take 30, 40 minutes, if you are going over bandages. 17 Just to remind you of the question, how long does it typically take to remove the comprehension 18 19 stocking? Most of the time just a couple of minutes. 20 Α. Okay. 21 Q. 22 Mr. Moore, aside from during the ultrasound

on December 25, 2016, did anyone touch your foot or

leg even over your closing while at the hospital?

23

24

25

Α.

No.

```
1
       O.
           Okay.
2
           The last question.
           Mr. Moore, if you were to go back to the
3
4
   days leading up to December 25, 2016, would you have
   done anything differently; why or why not?
5
           Well, looking back at it now -- what was the
6
       Α.
7
   date, please?
       Q. Mr. Moore, if you were to go back to the
8
9
   days leading up to December 25, 2016, would you have
10
   done anything differently; why or why not?
       A. Okay.
11
           I wanted to be clear on the date.
12
13
   Everything happened approximately 1:00 o'clock a.m.
   On the 25.
14
15
           So I monitored it until, let's say, 8:00 or
16
   9:00 o'clock in the morning, and decided to go to
17
   the hospital.
18
           When I got to the hospital, I had the
19
   triage.
           MR. McBRIDE: Objection, Your Honor.
20
           It is nonresponsive to the question.
21
           THE COURT: Overruled.
22
23
           I am reminding you that the question was, if
       Q.
24
   there was anything you would or would not have done
   differently, why or why not.
25
```

```
1
       Α.
           Okay.
2
           Seeing what I have in here, I would have
   done things a little bit different.
3
4
           I would have made sure that they did the 5
5
   P's.
           But, because of the 2 previous problems, the
6
7
   ultrasound they had caught it, they had taken care
   of it, so at the time I didn't feel that I needed to
8
9
   do more.
10
           THE COURT: Mr. Arntz, do you have any
   follow-up to the jurors' questions?
11
12
           MR. ARNTZ: I just wanted to clarify.
13
14
                       EXAMINATION
15
       BY MR. ARNTZ:
16
           I think that the juror's question was,
17
18
   in the days leading up to the 25.
19
           So, prior to the 25, would you have done
   anything different?
20
21
           In the way of my leg?
       Α.
           Leading up to the 25, I don't know that I
22
23
   would change anything.
24
           MR. ARNTZ: That's all I have.
25
           THE COURT: Mr. Weaver?
```

```
1
           MR. WEAVER: Thank you, Your Honor, just very
2
   briefly.
3
4
                       EXAMINATION
5
       BY MR. WEAVER:
6
7
          Mr. Moore, you weren't -- not were wearing
8
   comprehension stockings on December 25, 2016.
9
           Correct?
10
       Α.
          Correct.
11
           And you had not worn compression stockings
12
   for sometime prior to December 25, 2016, because you
13
   understood, didn't you, that comprehension stockings
   were for venous issues?
14
15
           That I understood they were for venous, I
       Α.
16
   knew they were to help to keep the swelling down.
           The bottom line is on December 25, 2016, you
17
       Ο.
18
   were not wearing compression stockings?
19
       Α.
           I was not wearing compression stockings.
                         Thank you, sir.
20
           MR. WEAVER:
           Nothing further, Your Honor.
2.1
           THE COURT: Mr. McBride.
22
23
           MR. McBRIDE: Nothing, Your Honor.
24
           THE COURT: Thank you.
25
           The marshal can assist you.
```

```
1
           Mr. Moore, you can retake your place behind
2
   counsel table.
           THE WITNESS: Okay.
3
4
           THE COURT: Do Plaintiffs' have any
   additional witnesses to call at this time?
5
           MR. ARNTZ: No, Your Honor.
6
           I do have some exhibits that I would like --
7
   we can do that any time.
8
9
           THE COURT: Subject to completing the
10
   exhibits that have been admitted, and ensuring that
   any redactions are redacted, does the Plaintiff rest
11
   their case?
12
13
           MR. ARNTZ: With the exception of the
14
   exhibits I want do have admitted, I rest my case.
15
           THE COURT: We can have that discussion when
16
   we resume tomorrow.
17
           Mr. McBride, anything further from the
18
   Defendant Lasry's case?
19
           MR. McBRIDE: Nothing further from the
20
   defense as part of our case.
21
           However, I would like to address something
22
   outside of the presence, before we conclude today.
23
           THE COURT: Before we conclude today?
24
           MR. McBRIDE:
                          Right.
25
           THE COURT:
                          Meaning you want me to have
```

```
the jurors step out and then step back in?
1
2
           MR. McBRIDE: No, they are free to go.
           THE COURT:
                       Understood.
3
           MR. WEAVER: Nothing further, Your Honor.
4
5
   Thank you.
           THE COURT: All right.
6
7
           Ladies and gentlemen, and I guess the reason
   I am asking the question is, are counsel unable to
8
9
   state today whether or not they rest their case?
10
           MR. McBRIDE: No, we rest our case, Your
11
   Honor.
12
           THE COURT: That is what I was looking for.
13
           MR. WEAVER: Yes, Your Honor.
14
           THE COURT:
                        Thank you.
15
           The parties have rested their case.
16
           Ladies and gentlemen, when we resume
17
   tomorrow with the jurors present, we will proceed to
18
   the instructions on the law, and we will then have
19
   counsel make their closing arguments.
20
           You will be reminded that those closing
   arguments are to help guide you in applying the
21
22
   evidence as has presented in the case to the law as
23
   the Court has instructed you on.
24
           We will then allow you to deliberate once
25
   that is complete.
```

```
1
2
           (Thereupon, the jury was admonished
3
4
           by the Court.)
5
6
           THE COURT: I will see you tomorrow
8
  at 1. 30?
9
          We will be back in our courtroom,
10
   15 - B.
11
12
           (Thereupon, the following proceedings
13
14
            were had in open court and outside
15
            the presence of the jury.)
16
17
           THE COURT: Why don't we see if we
18
  dispose of, Mr. Arntz, if there are some
19
20
  additional exhibits that up want to seek to
21 have admitted for you case in chief.
22
           There so far have not been any
23 objections to the exhibits.
24
           Do you want to state what they are?
           MR. ARNTZ: Yes. I want to move for
25
```

```
1
   the admission of the St. Rose Hospital bills, and
2
   the Kindred care bills.
           THE COURT: Can you identify by exhibit
3
4
   number what those are?
           MR. ARNTZ: 210 is the St. Rose - San Martin
5
   bills, and Kindred Care.
6
           Those are the only 2 that I have had
7
   testimony regarding. The reason was about the
8
9
   treatment.
10
           THE COURT: Does anybody remember which one
   the Kindred Care was?
11
12
           MR. ARNTZ: It is 203.
           THE COURT: Any objection from the defense?
13
           MR. WEAVER: Yes, Your Honor.
14
           MR. McBRIDE: Yes.
15
16
           THE COURT: Is that what you wanted talk
17
   about outside of the presence?
18
           MR. McBRIDE: No, there is another issue.
19
           But on those issues, I don't believe that
   there's been a sufficient foundation for any
20
   admission of the medical bills, or that they been
21
   testified to.
22
23
           No one has reviewed those medical bills,
   talked about those medical bills.
24
```

Mr. Moore did not discuss reviewing those

25

```
bills, and none of the other experts, especially
1
2
   Dr. Fish, or any expert offered by the Plaintiff has
   reviewed those bills, or determined they are
3
   reasonable and necessary.
4
5
           THE COURT: Mr. Weaver, any additional
   argument?
6
7
           MR. WEAVER: No, Your Honor.
           THE COURT: Mr. Arntz, any response?
8
9
           MR. ARNTZ: Yes.
10
           The treatment, and the need for that
11
   treatment following the amputation was a topic of
12
   testimony by the defense experts, because I
   questioned them on it.
13
14
           And I think it was Dr. Barcay, who said that
15
   the treatment at the hospital, and the ICU and all
16
   of these things was reasonable and necessary as a
17
   result of amputation.
           I didn't ask if it was casually related, but
18
19
   I asked that of Dr. Marmureanu.
20
           I also asked him regarding the rehab
   treatment at Kindred Care.
2.1
22
           THE COURT: If you can find, since you have
23
   the dailies, those reference, I am inclined to allow
   it, but I would like to have a complete record on
24
25
   that, and we can have further argument tomorrow.
```

```
MR. ARNTZ: I don't have the dailies.
1
2
           THE COURT: I thought you indicated before
   we started the trial that you guys were going to
3
4
   split the cost.
5
           MR. ARNTZ: I wasn't given the authority to
   do that.
6
           MR. WEAVER: All I can say on that, Your
7
   Honor, is that there was questions about whether the
8
9
   care was appropriate.
           But certainly there weren't any defense
10
   experts who said they reviewed the bills and that
11
12
   they were reasonable and customary.
13
           Obviously if there was going to be testimony
14
   on whether the bills were reasonable and customary,
15
   it would be Plaintiffs' experts testifying so they
16
   could be cross-examined on it.
17
           MR. ARNTZ: Well, we have already had this
   issue come up in our pretrial motions.
18
19
           I don't have to have an expert say that they
20
   were reasonable and customary bills.
           I have to have somebody say that the
21
22
   treatment was reasonable and necessary as a result
23
   of the amputation.
24
           I had Dr. Marmureanu testify that everything
25
   that happened that led up to the amputation and
```

```
1
   required the amputation.
2
           So I have provided the foundation for the
3
   bills coming in.
           The question is, will the jury find those
4
5
   bills to be reasonable.
           THE COURT: I will make a final decision
6
7
   tomorrow.
           MR. WEAVER: Just very briefly on that.
8
9
           The problem even with that is,
10
   Dr. Marmureanu said that had their been something
   done on the 25 that was similarly done, that he may
11
12
   have been in the hospital for a few days.
13
           So, for the jurors to accept the entire
   amount of the bills doesn't even take into account
14
15
   what the difference would have been, had something
   different been done.
16
17
           So there is no foundation for those bills,
18
   Your Honor.
19
           THE COURT: There is able to be further
   argument tomorrow.
20
           We are not at a place today to make a
21
22
   decision on this topic.
23
           Mr. McBride, what is the other issue?
24
           MR. McBRIDE: And very quickly, Your Honor,
   at this point, now that the Plaintiff has rested
25
```

their case, the defense would move for a Rule 50 1 2 motion for judgment as a matter of law, based on fact that the Plaintiffs have offered no testimony 3 from any expert, which is required in the State of 4 5 Nevada to testify as to the standard of care from a qualified expert who practices in the same or 6 7 similar community, in the same field of emergency medicine to talk about the care and treatment 8 9 provided by Dr. Lasry, a Board Certified Emergency 10 Room Physician, or Nurse Practitioner Bartmus. 11 Dr. M was the only expert that they offered 12 to testify. It is clear that he is a cardiothoracic 13 surgeon. 14 I went through in great detail, the fact 15 that he has never practiced full-time in an 16 emergency room. 17 He is not Board Certified as a emergency room physician. 18 19 He does not belong to any societies of 20 emergency medicine physicians. The only time that he works in the emergency 21 22 room is as a consultant, whenever there is a 23 vascular issue. 24 So that is not enough to qualify him or make 25 him the type of expert that needs to be provided to

```
testify against these Defendants.
1
2
           And on that basis, I am happy to provide the
   specifics of Dr. M's testimony to the Court
3
   tomorrow, which layout the reasons why I think that
4
   this motion is appropriate, but that's the motion at
5
   this point.
6
7
           THE COURT: Mr. Weaver, do you join or have
   any additional motions to make?
8
9
           MR. WEAVER: Thank you, Your Honor.
10
           I will join and briefly add to that that
   when Dr. Marmureanu testified to this, his basis for
11
12
   being a qualified expert to talk to emergency room
   medicine care is that he takes calls for the
13
14
   emergency department.
15
           He testified that's what qualifies him as an
16
   emergency medicine expert.
17
           THE COURT: Mr. Arntz, do you want to
18
   respond to this motion at this time?
19
           Just like with the other matter, I will
   still hear briefly additional argument tomorrow,
20
   before making a final determination.
21
22
           Do you have anything you want to add for the
23
   record at this time?
24
           MR. ARNTZ: I am happy to address it
25
   tomorrow.
```

```
Clearly he is qualified as a physician.
1
                                                      Не
2
   has had experience in emergency rooms.
           But I am happy to respond more fully
3
4
   tomorrow.
           THE COURT: Well, I am sure it was not a
5
   surprise that the motion is coming, but you don't
6
7
   have anything further you want to add today.
           Again, we will keep it very short. We are
8
   reconvening at 11:30. We still have to settle the
9
10
   jury instructions.
11
           I really can't go much past 12:15 so that we
12
   have some reasonable break.
13
           So we need to keep it tight see.
14
           We everybody in the courtroom. I will do my
15
   best to finish the criminal calendar by then,
16
   otherwise you will have to just sit tight.
           MR. McBRIDE: 11:30?
17
18
           THE COURT: You come in whenever you want.
19
           We are scheduled at 11:30.
20
           I don't typically finish by 11. We will do
   the best we can.
21
22
           MR. McBRIDE: Thank you, Your Honor.
23
           MR. WEAVER: Thank you.
           MR. ARNTZ: Thank you, Your Honor.
24
25
```

```
(Court adjourned.)
 1
 2
 3
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REPORTER'S CERTIFICATE
1
2
3
       STATE OF NEVADA )
4
                        ) ss.
5
       CLARK COUNTY
6
7
            I, Robert A. Cangemi, a certified court
8
9
   reporter in and for the State of Nevada, hereby
10
   certify that pursuant to NRS 239B.030 I have not
   included the Social Security number of any person
11
   within this document.
12
13
           I further certify that I am not a relative
14
   or employee of any party involved in said action,
15
   nor a person financially interested in said action.
16
17
18
                  (signed) /s/ Robert A. Cangemi
19
20
                   ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25
```

```
1
              CERTIFICATE
2
       STATE OF NEVADA )
3
                       ) ss.
4
       CLARK COUNTY
5
6
7
8
9
           I, Robert A. Cangemi, CCR 888, do
   hereby certify that I reported the foregoing
10
11
   proceedings, and that the same is true and
  accurate as reflected by my original machine
12
13
   shorthand notes taken at said time and place.
14
15
16
           (signed) /s/ Robert A. Cangemi
17
18
           Robert A. Cangemi, CCR 888
19
           Certified Court Reporter
20
           Las Vegas, Nevada
21
22
23
24
25
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authority certified

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your vourself

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           IN THE EIGHTH JUDICIAL DISTRICT COURT
                    CLARK COUNTY, NEVADA
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   DARELL MOORE, ET AL.,
9
              Plaintiffs,
                             ) Case No.
10
            vs.
                             ) A-17-766426
   JASON LASRY, M.D., ET
11
   AL.,
12
                             ) Dept. No. 25
13
             Defendants.
14
15
                         JURY TRIAL
16
           Before the Honorable Kathleen Delaney
           Tuesday, February 11, 2020, 1:30 p.m.
17
18
            Reporter's Transcript of Proceedings
19
20
21
22
23
24
   REPORTED BY ROBERT A. CANGEMI, CCR 888
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1
   APPEARANCES:
2
   FOR THE PLAINTIFFS:
                             Breen Arntz, Esq.
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                             Philip Hymanson, Esq.
                             Henry Hymanson, Esq.
 4
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                             Robert McBride, Esq.
6
                             Keith Weaver, Esq.
                             Alissa Bastick, Esq.
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   DARELL MOORE
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1 Las Vegas, Nevada, Tuesday, February 11, 2 3 4 5 (Thereupon, the following proceedings were had in open court and outside 6 7 the presence of the jury.) 8 9 10 THE COURT: My marshal informs me that we 11 are still missing one juror, but I came in just to 12 make a couple of quick records. 13 I did what popped up today, the 2 things 14 filed by Nurse Practitioner Bartmus by Mr. Weaver, 15 the notice of hearing, and the hearing on the issue 16 with regard to the testimony of Dr. Wiencek. 17 see that those things were filed yesterday, prior to our commencing trial. 18 19 I think the partitioners know that when you 20 submit something to file and serve, it goes out counsel but it doesn't go to the Court. 21 22 It just gets filed, so we don't know that 23 they are there. 24 We had full argument, so I am assuming anything in there is moot, and we can vacate the 25

hearing set for March 17. 1 2 MR. WEAVER: We can. We apologize. We were promised by the runner that there would be a 3 courtesy copy to the Court within the hour, so we 4 know that's obviously different than filing, but it is moot. 6 THE COURT: 7 If one got to the Court, it didn't get to my desk. 8 9 My law clerk is out at the moment taking the 10 bar, so I have an extern who is covering, and it is 11 very possible it landed somewhere, and he didn't see 12 it. I will give him the benefit of doubt that he 13 14 just missed it, but we had full argument. 15 Also, you did not see an e-mail from me this 16 morning. I apologize. I did almost finish the 17 draft from the jury instructions, but I just didn't have enough gas left in the tank to get it done last 18 19 night. And we have a couple of options, which we 20 can discuss later. If the jurors are here, we can 21 22 get started. 23 Are we still waiting for one the jurors? 24 THE MARSHAL: Yes. 25 My criminal calendar tomorrow THE COURT:

should not be too bad. If you wanted to make 1 2 argument before we put together the final, final set, I could schedule it either at 11 or 11:30, and 3 we can just you go ahead and nail it on those that 4 are in dispute. My intent is to have the draft to you by 6 7 like 7:00 o'clock tonight. It will come tonight. I am not trying to 8 9 force you to look at it tonight. I wanted to get it 10 to you, and then if there are any questions, we can have argument. 11 12 The other option would be, and it is up to 13 you after you see it, if you want to just wait and make a record afterwards. 14 15 I am not saying that I am wedded to the 16 draft, when it is complete, and I wouldn't consider 17 changing my mind. I would. It is just it is an added inconvenience to 18 19 have to come in tomorrow late morning calendar, so it up to you all what you wish to do. 20 If you want to wait to declare, I will 21 create the session, and if you want to wait until 22 23 the morning and say one way or the other, that's 24 fine, too.

When I send you the e-mail, I will explain

1 for those few that were disputed what I did and why, 2 and then we can go from there.

I did make some revisions to what I will call the stocks. There was one set of stocks obviously that the parties all agreed to, and Nurse Practitioner Bartmus through Mr. Weaver had offered up some other stocks just in case they would be applicable.

None of them however incorporated the 2018 version of the jury instructions, so my version does, just to have the most up-to date.

Those superceded the 2011 version. I am not saying that where there's one that is not covered, we can't go back to the 2011 version, or the 1986, or just rely on the case law.

I am open to all of those things, and some of the things that were offered up will require us to do that.

But for the ones that had stocks in the 2018, I just adjusted the language to match the 2018, so we had the most current version.

So that's what you will see as the difference there. I will give you a clear outline of what I did and why.

I just didn't get a chance to do a final

read through and make a final thing, so that's why 1 2 you didn't get it yet. For the most part it tracks to a stock 3 instruction, so for that one, I compared it to the 4 5 stock, but you might want to take a look. They were filed separately or at least 6 7 submitted separately, the one on loss of chance, and one on preexisting condition. 8 9 When I saw the one, I thought I had 2 copies 10 of the loss of chance. That is why I missed it, but Mr. Arntz pointed that out. 11 12 Otherwise I think that's it. My marshal is giving me the thumbs up that everybody is here. 13 14 Is there anything else that the parties have 15 outside of the presence? MR. McBRIDE: We will come in at 11 or 11:30. 16 17 MR. ARNTZ: I am not sure I am going to keep 18 the loss of chance. I may withdraw it. I will send you what I send you 19 THE COURT: tonight from my personal e-mail, and you can e-mail 20 back and say -- here is what you are up against 21 tomorrow is my criminal calendar. 22 23 It is not terrible. It regularly goes past 11, but not always until 12. We can say 11:30 and 24 we will just have 30 minutes to do any final, this

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   is this, or I have a problem with that.
2
           Hear is something you missed, Judge. Here is
   a massive mistakes, you left this out. I know it is
3
   an inconvenience.
4
5
           I hate to put you through it.
           MR. McBRIDE: That is fine for me.
6
                                                Whatever
7
   is more convenient, if you get a chance to finish
8
   up.
           THE COURT: When you see it tonight, say
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10
   Mr. Arntz decides I am going to withdraw that, if he
   sees in the final version it was included, or if it
11
12
   wants to fight to have it in, if it wasn't, or there
   are some other issues, if you to e-mail and give
13
14
   your input, and say I don't know that I need to come
15
   and make a record, we can always make a record after
16
   the jurors go out to deliberate, and make a final
17
   record in the system.
           It is just that I want to make sure that we
18
19
   have a record.
20
           MR. McBRIDE: Perfect.
2.1
           THE COURT: I think they are ready.
22
           Do we want to have Mr. Moore back up on the
23
   stand.
24
           I know we have done that with other
   witnesses when we broke.
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           I think he should come up now.
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           (Thereupon, the following proceedings
5
            were had in open court and in the
6
            presence of the jury.)
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           THE COURT: Welcome back, ladies and
   gentlemen. We will resume trial. Make sure
10
11
   any cell phones are off or silent.
12
           Mr. Moore, can you please acknowledge
13 for the record that you understand that you
14 are still under oath from your testimony
15 yesterday?
16
          THE WITNESS: I do.
17
           THE COURT: Thank you so much.
18
          Mr. Arntz, whenever you are ready to
19 proceed.
20
21
                CONTINUED DIRECT EXAMINATION
22
      BY MR. ARNTZ:
23
24
       Q. Okay.
25
           Darell, we got about an hour, so we
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will start going through some material pretty quick,
okay.

Yesterday when we left we had not quite gotten into the medicine and how you started getting treated for your vascular disease here in Las Vegas.

If I recall, in the summer of 2012, you went saw Dr. Simon.

Is that right?

A. That's correct.

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- 10 Q. Explain to the jury why you went and saw 11 Dr. Simon.
- A. In 2012 I went to my general practitioner
 thinking I might have the beginning of a problem
 with my leg as far as infection.

He sent me to the emergency room, and the emergency room took a look at me. It wasn't a big deal.

They cleaned it. They took care of it, and then they asked me to go see Dr. Simon, because he was doing wound infection cleaning and everything, so they said would you go to him and have him look at it, and start taking care of it.

- Q. What kind of doctor was Dr. Simon?
- A. Well, one he is vascular, and he has a couple other credentials.

Basically besides doing wound care, he was doing that, because he started his practice up, and I think he was doing that to make money while his practice was getting going.

O. Okay.

And you ended up having a conversation with Dr. Simon about your vascular condition?

A. It was either the second or the third time I went to see him, he said, Mr. Moore, I think I might know what your problem could be.

So he suggested that I get MRI, and he did the lower extremity and everything, and he said that the MRI was finished, and he contacted me and said that I had a lower aorta aneurysm, and that I had too much cut off blood flow to my leg.

So he suggested that one of the doctors that read this for him from the MRI, plus getting in the contact with Dr. Wiencek about how to follow-up on this MRI.

So I contacted the Dr. Wiencek, and he looked at the paperwork and everything, and he said you will need an operation.

So they got together, and it took them about 2 months or 2 and a half months for the 2 doctors to get together, and all of the time I am

thinking I have a lower aorta aneurysm, and it is 1 2 taking a long time for 2 doctors to get together, but they finally did, and they set up an operation 3 for November 3 -- I take that back, November 2. 4 5 That was my wife and my anniversary. Then they said they will have to change that. I thought, 6 7 that is good, it is not our anniversary, and then they November 8, which was my birthday. 8 9 Do you recall, did you meet with Dr. Wiencek 10 before the surgery? Yes, I did. 11 Α. 12 What did he tell you about what was going on Q. 13 with your leg? 14 I didn't have enough blood flow going to the foot, so he told me he was going to put 2 stents in 15 16 on the left side to help the blood flow. And then he also said if when they do the 17 operation basically that if he didn't feel that I 18 19 had enough blood flow, that he was going to go ahead and do something in the calf for me. 20 He said it would be an incision about one 21 22 inch long. It turned out to be about 4 and a half

Q. Did he make a decision during the surgery to

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inches long.

- A. He had to make that determination during the surgery.
 - Q. Do you remember what symptoms you had when you went in for the surgery on November 8?
- 5 A. Well, from the MRI I had a lower aorta 6 aneurysm.
 - Q. I don't know the findings, your own physical symptoms, were you complaining of anything, were you having any problems?
- A. Besides the open sores in my ankles, I had a problem there. I have been wrapping my legs for 31, 32 years.
 - Q. Were you having any problem with pain in your legs other than the pain from the sores?
 - A. I had pain from the sores.
- I also, because of my gait, walking with the cane I had pain in my hip, which would go sometimes into the thigh and the hip.
- Q. Do you remember if when you went into see him, did he tell you about any vascular issues or blood flow issues?
- 22 A. Dr. Wiencek?
- 23 Q. Yes.

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A. Yes. He was concerned about my blood flow to the leg.

1 That was a bad question. Ο.

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- Did he tell you anything specific about findings that he had made and whether you had pulses that were present, or things like that?
- 5 Well, most of the time when I went to Wiencek, we had to use a Doppler to even find the 7 pulses.
 - Q. But before -- was that true even the first time you went before you had the bypass?
 - Α. The very first time I went to see him, it is hard to remember, but we mostly discussed what was with the MRI on the first visit.
 - Q. Did he explain to you before the surgery what the bypass might entail?
 - No, he didn't. Α.
 - He might have said something to me, but basically all I understood just before the surgery was that if the blood flow wasn't sufficient, he may have to do some more work in my calf, which I probably wouldn't understand what he was saying then, accept he was -- in my mind he was going to open up possibly more blood flow, which obviously he did with the femoral popliteal graft.
 - Q. So before you had the surgery, you were having -- you had been having problems with wounds

1 and sores on your legs for 30 some years?

A. Yes.

- Q. Tell me what happened, what kind of result you got after the femoral bypass was done.
- A. After the bypass was done, all of my sores on my left leg that I continually had to wrap for 30 some years healed up. They closed up.

Up until then, I couldn't find anybody that would help me get those closed.

I even went to my general practitioner in Paso Robles about the time I had to retire, and he had me go to a plastic surgeon which worked on me.

And, of course, he cut away the dead skin.

He took a rasp to the opening to clear it, rewrap it and start having it heal.

So I had no good results up until that operation.

Q. I want to ask you a couple of questions about that time period in your life.

How would you describe your quality of life before you had femoral popliteal graft?

A. Other than pain in my foot, which I wrapped for and everything, I just moved on ahead, and my quality of life, we flew places.

We did things.

As a matter of fact, just before this 1 2 problem on December 25, 2016 we went to Hawaii, and I rode a four-wheeler out in the jungle. 3 So I had pretty good life, even though I had 4 5 to wrap everything before that. I am talking before the femoral popliteal 6 Q. graft. 7 Before that? Α. 8 9 Ο. Yes. 10 Well, I tried to go through the motions of -Α. - we had a fairly good life, except for a lot of 11 12 pain that I struggled with. Q. And after the fem pop graft, did it improve 13 14 your quality of life? 15 Yes, it did. I didn't have to wrap my legs Α. 16 any longer. And for a while I could walk a whole lot 17 18 better without a bad gait. Okay. 19 Q. But then I still had to walk with a cane 20 after that. At least I didn't have no open sores 21 22 any longer. 23 Q. And you were walking with a cane because of 24 pain in your foot or your leg, or because of your

25

back?

- A. My lower back is a lot of my problems since that also.
 - But I still wasn't walking perfect, so I used the cane, because it would come up through my thigh into my hip and irritate me the most after the operation.
- 7 | 0. Okay.

3

4

5

6

8

9

- Now what was the plan for follow-up with Dr. Wiencek after you had the fem pop graft?
- A. Well, to begin with, he just checked out now I looked and everything, and the actual -- I assuming, I believe once or twice, but I don't believe that we did much follow-up until I had more
- 13 believe that we did much follow-up until I had more 14 problems later.
- Q. When you would go to Dr. Wiencek's office, did he always take a pulse in your feet?
- A. He always took a pulse by Doppler in both of my feet, checking my left and right leg.
- 19 Q. Was it only Dr. Wiencek that would do it or, 20 did he have staff members that would do it?
- A. He had one nurse one time try to do it. She couldn't quite find one on the top of my foot, so he had to come in and do it.
- Q. She couldn't find it with the Doppler?
 - A. No. She was having a hard time with the

```
1
   Doppler.
2
           Was that always the case after you had the
3
   fem pop graft?
4
           Always since I had the fem pop graft, they
       Α.
5
   always had to use a Doppler.
       Q.
6
          Okay.
7
           There had been, as you have seen up on the
   screen, you have seen different health care
8
9
   providers you have been to who have said they took
10
   your pulse.
11
           To your knowledge has anybody ever been able
12
   to get a pulse in your feet palpating, by putting
13
   their hand on your foot?
14
           MR. McBRIDE: Objection.
15
           That calls for speculation.
16
           MR. WEAVER: Join.
                        It seems to be a fair record
17
           THE COURT:
18
   that we can show, that we can show them, and asking
   this witness to talk about it, sort of similar to
19
   the question with Mrs. Moore palpate, what that
20
2.1
   means.
22
           I think the objection should be sustained.
23
           I am not saying you can't get to the
24
   information in a different way.
           Do you know what palpation means?
25
       Q.
```

- A. That you have blood flow through the foot and the coloring, part of the 5 P's they have been talking about.
- 4 Q. That's the pulse.

Do you know what it means to palpate a pulse?

7 | MR. McBRIDE: Asked and answered.

THE COURT: Overruled.

- 9 A. I thought I just explained that, the part 10 where they put pressure on your foot.
- 11 Q. You mean with your hand?
- 12 A. Yes.

8

- Q. When you would go to these -- for instance, when you went to Dr. Tran, did he have you take off your sock usually and then put his hand on your foot to see if you had a pulse?
- A. In the years that I went to Dr. Tran, I
 basically went there for my Lisinopril, blood
 pressure medicine, and to get a general physical
 check-up as far as him listening to my heart, and
 the basics.
- But only one time did I ever go to Tran that

 he -- that I can remember that he looked at my foot,

 and that's when I thought it might be infected.
 - Q. Before you saw Dr. Simon?

1 A. Before I saw Dr. Simon.

- 2 This was early in 2012, I believe.
 - Q. How about the pain management clinic you went to, did they take off your sock and put their hand on your foot to get a pulse?
 - A. No. The pain management, that started about, it might have been 6, 7 years ago, 6 years ago.
 - They were setup to strictly control your medicine of Oxycodone, Percocet or whatever you need to take.
- All they do is they go in there and check 12 your oxygen level and everything.
 - And 4 times a year they check your urine to make sure that you are staying on your regimen of medicine without any extra stuff in it.
 - And that's all they do. They never check your feet. They ask about your pain level, and they ask from 1 to 10, and I would honestly say between 3 and 5 most of the time.
 - That's determined on how you feel that day at that moment. You could have had your medicine 5 hours ago or one hour ago, and it is going to make a a difference of how I would answer that question.
- Q. To your recollection, when did you first start going to the pain management clinic?

- A. When it first opened. I can't tell you the day they opened, when they started that to control.
 - Q. Did somebody refer you to the pain management clinic?

- 5 A. That started I believe in Tran's office,
 6 because he said he couldn't write any more
 7 prescriptions unless I went to the Nevada Pain
 8 Center, and they control it, because they do all of
 9 the reporting, so it is unified, so everybody can
 10 see it.
- Q. To the best of your recollection, what were the pain problems that you were having that took you there?
 - A. Well, it was in my legs, mostly my left leg.

 It was in my lower back, and years ago I had broken my tailbone, which that's not what the medicine is for, but that's another irritating factor.

That's always going to be there.

- Q. It never repaired?
- A. Let's put it this way, the doctor checked it and said the tail end of it is not going to do any damage, and I asked him, you put me all through this pain, so what are you going to do about it, and he said nothing.

So nothing can really be done with that. 1 2 I want to take you through some records from Dr. Wiencek. They have already been shown to the 3 jury, so if you can enlarge that paragraph. 4 MR. McBRIDE: What Exhibit Number? 5 MR. HENRY HYMANSON: 113, page 105. 6 MR. McBRIDE: Thank you. 7 So you see in this record where it says, he 8 has good pulses in both lower extremities, dorsalis 9 10 on the left, and posterior tibial on the right. He also has changes of chronic venous 11 12 insufficiency in both lower extremities, do you see 13 that? 14 Α. Yes. 15 Now is your testimony that every time that 0. 16 you went to Dr. Wiencek the way that he took your 17 pulse was by Doppler. 18 Correct? 19 Α. Correct. I think there is another part of this 20 Ο. particular visit that wasn't shown to the jury. 21 Ι would like him to see now. 22 23 MR. HENRY HYMANSON: 113, page 107. 24 THE COURT: Thank you. 25 Q. You see here under extremities, it says,

```
1
   able to move all extremities equally, bilateral
   lower extremities, audible pulses on the posterior
   tibial and dorsalis pedis via Doppler examination.
3
           Is that what you recall him doing usually?
4
5
       Α.
           Yes.
           I think another one shown to you by
6
7
   Mr. Weaver -- shown to the jury by Mr. Weaver --
           MR. McBRIDE: What document?
8
9
           MR. HENRY HYMANSON: 113, page 82.
10
           MR. McBRIDE: Thank you.
11
           So in the history of present illness again
12
   they say he has the good pulses in both lower
   extremities, dorsalis pedis on the left, and
13
14
   posterior tibial on right.
15
           Do you see that?
16
       Α.
           Yes.
17
           It doesn't mention Doppler there. I think
   lower down on the page it does.
18
19
           Again, able to move all extremities equally
   bilateral.
20
           Audible pulses on -- is there another
21
22
   word -- on anterior and posterior tibial, and
23
   dorsalis pedis via Doppler examination.
24
           That's the way you recall it always being
25
   done?
```

A. Yes.

O. Then

13

20

right.

Q. Then a note from --

MR. HENRY HYMANSON: 113, page 56.

- Q. So, the first one was August 10, 2015, that would have been after you had an admission to the hospital for an occlusion.
- 7 The second one was February 8, 2016.

And then third one was May 9, 2016.

Again you will see in the paragraph
regarding history of present illness, it says you
have good pulses in both lower extremities, dorsalis
pedis on the left, and posterior tibial on the

And then if we go further down on the page,
it says, bilateral lower extremities, audible pulses
on anterior and posterior tibial, and dorsalis pedis
via Doppler.

Again, is that the way you always recall it being done?

- A. Yes, sir.
- Q. Does Dr. Wiencek at some point give you
 instructions about how you should react to certain
 things that are going on with you?
- A. Well, after I had my first clot, he explained to me how important it was to get taken

```
care of if I have any pain to my calf or think
1
2
   something is going wrong with me, it was too
   important to get to the emergency room to have a
3
4
   follow-up checkup.
5
       Q. Did he explain to you that time was of the
   essence?
6
7
       Α.
           Yes.
           MR. WEAVER: Leading, Your Honor.
8
9
           THE COURT: Slightly.
10
           Overruled.
           But just be mindful, Mr. Arntz.
11
12
           Are those words that you recall him telling
       Q.
13
   you?
           I thought I said part of that, that time was
14
15
   of the essence, and I need to get to the emergency
16
   room.
17
       Q.
          Okay.
           Was this the result of you taking longer
18
19
   than you should have when you first had the first
   clot in 2014?
20
2.1
           In 2014 --
       Α.
22
           MR. WEAVER: Objection, Your Honor.
23
           Leading.
24
           THE COURT: Mr. Arntz, we do have to be
25
   careful that we are not supplying the answer and the
```

question, that's not the intent. 1 These aren't really transitional questions. 2 If you can please ask more open-ended 3 questions, I sustain it. 4 5 Mr. Moore, if you can just pause just in case there is an objection, so it can heard, and we 6 are not talking over each other. Q. Why did he tell you that after the 2014 8 admission? 9 10 Well, when I had the problem in 2014, I took while getting to the emergency room. 11 12 I believe it might even have said a couple 13 of weeks. But my problem in 2014, the first one that I 14 had, I was walking around in my backyard one day, 15 16 and I felt this cool feeling that would go from my 17 groin to my ankle. It felt like a chill down my left leg, and 18 19 it is so quick and so slight, but it did bother me. 20 I thought to myself, I think I better pay attention to any other feeling in this leg. 21 And it took a while, but I finally got a 22 23 little pain in the calf, and checking my feet for warmth and coolness, like I always have to a certain 24

extent because of the open sores and everything all

```
time, and wrapping my leg, I felt the left leg was
1
2
   getting cooler, and then I went to the emergency
   room.
3
           I heard you describe these things to me, but
4
   explain to the jury, is the cold feeling that you
5
   have, is that something that you can actually feel
6
   to touch or something that you feel inside of your
7
   leg?
8
           You feel this inside of your leg, and it
9
10
   just -- it is so slight, but it is almost like
   somebody is blowing across the lower part of your
11
12
   back.
13
           It is there and gone. It just starts from
14
   the groin area to the angle, and it is quick.
15
           And then does it persist?
       0.
16
       Α.
           No.
           It lasts a second, if that much. It is so
17
       Ο.
   quick, but it is just a chill feeling that just goes
18
19
   really quick.
       Ο.
20
          Okay.
           Let's look at the admission record for 2014.
2.1
           MR. HENRY HYMANSON: Exhibit 100, page 2005.
22
23
           THE COURT: Just for charity, it is Bates
24
   Number 2005.
```

There are page numbers on the document as

```
well, because of that particular document itself, so
1
2
   if he can just say Bates Number for clarity, for the
   record.
3
           MR. HENRY HYMANSON: Understood.
4
           Thank you, Your Honor.
5
           THE COURT: Thank you.
6
7
       Q. So here it says that you presented to the
   hospital -- I am having to approach. I don't see
8
9
   very well.
10
           THE COURT: Not a problem.
11
       Q. Patient presents with lower extremity pain
12
   and lower extremity swelling.
13
           Did you always have swelling when this
14
   happened?
15
           I had it for 30 years. I have had swelling.
16
   At times it gets worse, and I have had to deal with
17
   that.
           But my leg hasn't been -- my left or right,
18
19
   especially my left leg has not been swollen since
   1980.
20
           But it can get a little larger. The leg can
21
22
   get numb, and I get pain in the calf area.
23
       Q. Explain to the jury what the onset of this
   particular one was, was it gradual or extreme pain
24
   immediately?
25
```

Explain it the jury. 1 2 In 2014, the first one was very gradual. 3 I even almost forget about it for a few 4 days, because first it is the first time I ever had 5 that feeling in my leg. It was always on my mind. It was very 6 7 gradual. Q. So in this one, you took a couple of weeks 8 9 to get there, and by the time you got there, what 10 was the diagnosis. Do you remember? 11 12 The diagnosis is that I had an occlusion in Α. 13 my popliteal graft. Q. Let's go to the physical exam. 14 15 MR. HENRY HYMANSON: Exhibit 100, Bates 2007. 16 17 THE COURT: Thank you. 18 We are looking at the physical exam that 19 they did. 20 Do you recall when you were at the hospital in 2014 whether they were able to get a pulse by 21 22 touching your foot? When I first went in, I can't recall exactly 23 24 when I first went into to the ED. 25 I do know that even after I had the problem,

```
and they took care of it, that they had to use a
1
2
   Doppler, the nurses every time to check my feet.
       Q. Do you recall them doing an ultrasound on
3
4
   your lower leg?
5
       Α.
           Yes.
           Was that something that was -- to you was
6
7
   that something that was normal for when they would
   check to see if you had any clots?
8
9
       Α.
           Yes.
10
           So here it says, left lower extremity
11
   arterial Doppler.
12
           That's how they took your pulse?
13
       Α.
           Yes.
           MR. WEAVER: Leading, Your Honor.
14
15
           Is that how they took your pulse during the
       Ο.
   ultrasound?
16
17
           MR. WEAVER: It is still leading, Your Honor.
18
           MR. ARNTZ:
                        It is not leading.
19
           THE COURT:
                        It is.
20
           I am not sure how you get to that line of
   question without the transition.
21
           Overruled.
22
23
           You can answer, Mr. Moore.
24
           Yes, they used a Doppler on my foot.
       Α.
25
           And you see from this that they did the
       Q.
```

```
ultrasound as well, and they did the venous duplex
1
2
   as well, but it showed no evidence of DVT?
           MR. WEAVER: Excuse me.
3
           It misstate the evidence.
 4
           He is asking questions about 2014. This is
5
   2015.
6
                       You are right.
7
           MR. ARNTZ:
           THE COURT: 2015 is date on this.
8
9
           Thank you, Mr. Weaver for the clarification.
10
           Do you want to switch documents?
11
           MR. ARNTZ: Here we go. I am in the wrong
12
   one.
           I apologize, Your Honor.
13
14
           Let's go to page --
       Ο.
15
           MR. HENRY HYMANSON: Exhibit 100, Bates 2007.
16
           THE COURT: Thank you.
17
           Just to clarify, let me see something that
18
   has the date.
19
           All right.
20
           Thank you.
           So originally when you went to the hospital
21
22
   in 2014, they made a differential diagnosis of deep
   vein thrombosis.
23
24
           Do you see that?
25
       Α.
           Yes.
```

```
1
           They also put on that differential diagnosis
       Ο.
   arterial occlusion.
2
           Do you recall them talking to you about
3
4
   these potential problems with your leg?
5
       Α.
           Yes.
           And to your knowledge, did they ever find a
6
7
   deep vein thrombosis?
           I don't know about the deep vein thrombosis.
8
       Α.
9
           I know that my femoral graft was occluded.
10
           I may not be understanding.
           MR. ARNTZ: Let's go to the next page 2008.
11
12
           This is a report from the ultrasound that
       Q.
13
   they did in 2014.
14
       Α.
           Yes.
15
           And you see that they ruled out a -- it says
       Ο.
16
   no evidence of deep vein thrombosis.
           No evidence of deep vein thrombosis in the
17
   left lower extremity.
18
19
       Α.
           Correct.
20
           Do you recall the finding from the rest of
   the lower arterial duplex, where it said that you
21
   had an arterial occlusion?
22
23
       Α.
           No.
```

THE COURT: We can't all talk over each

24

25

other.

```
Mr. Moore, wait for a highlighted version
1
2
   and a question from counsel.
           And, Mr. Weaver, you had an objection.
3
           MR. WEAVER: I was just going to say what is
4
5
   the question?
           THE COURT: What is the question, Mr. Arntz?
6
7
           The question is in regards to the findings
       Ο.
   from the lower extremity arterial duplex and
8
   ultrasound, do you recall them telling you that you
9
10
   had an occlusion to the arterial graft?
11
       Α.
          Yes.
12
       Q.
          Okay.
13
           Now, in this note it says, Dr. Wiencek was
14
   called.
15
           Did you have instructions when you went to
16
   the hospital that you should have them call
   Dr. Wiencek?
17
           On 2014 I went to the hospital, and I
18
   believe we asked them to contact Dr. Wiencek.
19
           It was later that he insisted that he be
20
   contacted.
2.1
22
           What did he specifically say to you?
23
           Any time I went to the emergency room to
       Α.
   contact him or have them contact him, meaning the
24
```

emergency room people.

```
1
           MR. ARNTZ: Go to page 2010.
2
           THE COURT:
                       Mr. Arntz, when you turn around
   and speak softly to your associate that way, nobody
3
4
   can hear you.
5
           I don't know that my reporter can take it
   down, and now we have a document that we don't know
6
   the date of.
7
           I think I heard you say 2010.
8
9
           I ask that the top part be highlighted, or
10
   give a date, or say out loud so we can hear you,
   what it is that you are asking him to pull up.
11
12
           MR. ARNTZ: I apologize. I wasn't thinking
13
   about it being on the record.
           This is it page 2010 from the admission from
14
   2014.
15
16
           And if you look at that history of present
17
   illness, is there anything about that history that
18
   you believe is not create.
19
           Read that to yourself.
           I don't understand.
20
       Α.
21
       Q.
           I am sorry.
           He has --
22
       Α.
23
           THE COURT: Mr. Moore, just like I
24
   instructed Mr. Arntz, we can't speak to ourselves.
25
           We have to speak up so everyone in the
```

1 courtroom can hear. 2 I know it is difficult. The question, if you want to repeat it, but as I understood it, is 3 there anything in this note that you do not agree 4 5 with. Do you have an answer to that question? 6 7 No, I agree with him. Α. 8 Q. Okay. 9 Let's go to the next time you had a problem 10 with your clot. Tell me what you remember from your physical 11 12 findings or what you were feeling before the 2015 13 admission, June of 2015. There again, I felt that cold chill go down 14 my leg, and I started checking my feet to feel a 15 16 difference, and the minute I felt one getting cooler than the other, I went right to the emergency room. 17 18 How long did you wait that time? Ο. 19 This time it was probably a day and a half. 20 They say 2 days. 2.1 Q. Okay. 22 And what do you recall the actual -- I say 23 physical findings, but how did you feel? 24 What were your feeling that made you feel

25

like it was the same?

```
Well, I got coolness of the foot.
1
       Α.
           I got numbness.
2
           I had some pain in the calf.
3
4
           Again, is this coolness that you are talking
   about something that you can feel with your hand, or
5
   something you are feeling in your leg, or both?
6
           In the beginning I felt the coolness go down
7
   my leg.
8
           The coolness, I am talking about later is
9
10
   the actual foot, compared to the right foot.
11
       Q.
          Okay.
           It would be something that someone who is
12
13
   examining you could feel the difference in the 2
   feet?
14
15
       Α.
           Yes.
16
       0.
           All right.
17
           Then you went to the hospital, just like you
   did in 2014?
18
19
       Α.
           Yes.
20
           MR. ARNTZ: Bring up 1423.
           MR. McBRIDE: Again, what page?
21
           MR. ARNTZ: 1423.
22
23
           MR. McBRIDE: Thank you.
24
           THE COURT: Of exhibit?
25
           MR. ARNTZ:
                        Exhibit 100.
```

```
1
           THE COURT: Thank you.
2
           You will see at the bottom, where it says
   history of present illness, the patients presents
3
4
   with lower extremity pain.
5
           The onset was 2 days ago and gradual.
           The course and the duration of symptoms is
6
7
   constant.
8
           Type of injury, none.
9
           The character of symptoms is pain, no
10
   swelling.
           Was this the first time -- do you recall
11
12
   there being swelling when you went in, in 2015?
13
           Yes. There was swelling in my leg.
           I think you said earlier --
14
       0.
15
           MR. WEAVER: Your Honor, leading.
           THE COURT: Overruled.
16
17
           Let him complete the question, please.
18
           And then it says the degree at present is
19
   moderate.
           Is that a fair description of what you
20
   presented with in 2015?
21
22
       Α.
           Yes.
23
       Q.
          Okay.
24
           The degree of pain was moderate.
       Α.
25
           Had you been taking Xarelto before the 2015
       Q.
```

1 | admission?

- A. Dr. Wiencek I believe put me on Xarelto after the 2015.
- 4 | Q. Okay.

7

8

9

10

11

12

And that's been an issue that's been brought up and discussed quite a bit.

What were the instructions you were given when you start taking Xarelto?

- A. Well, because of the 2 times I had been in and had problems, he put me on the Xarelto saying it would help thin my blood out, and to definitely take it consistently everyday.
- 13 | Q. Okay.
- 14 A. And I did so.

And when I went back to Dr. Wiencek, and I talked to him about my problem, he commented that the Xarelto seemed to be working, because it had been longer, and we hadn't any trouble yet.

- 19 Q. Was there ever a time that Dr. Wiencek told 20 you, you didn't need to take your Xarelto?
- 21 A. No.
- Q. And did you take it continuously everyday
 without exception from the time he started
 prescribing it to you?
- 25 A. Yes, I did.

```
He explained to you that if you didn't take
1
       0.
2
   it, it might create problems for you?
           When he first gave it to me, he just let me
3
   know I needed to take it everyday, and not to do
4
   without it.
5
           MR. ARNTZ: Go to 1425 from the same
6
7
   admission under cardiovascular.
       Q. So you will see under cardiovascular where
8
9
   it is talking about your pulses, arteries pulses,
10
   left posterior tibial, dorsalis pedis diminished.
           Left foot cooler than right.
11
12
           Do you have a recollection of whether they
13
   were able to get that pulse by Doppler or by
14
   palpation?
15
           All the time they had to use a Doppler.
       Α.
           What date was this?
16
17
       Q.
           The actual date was 6-27-2015.
18
       Α.
           Okay.
19
       Q.
           Is that right?
       Α.
20
           Yes.
           MR. ARNTZ: Let's go to page 1426.
21
22
           Did anybody every talk you to about the
23
   factor on your blood panel that was discussed the
```

Did you ever hear about that before the

other day, the AST number.

24

```
other day?
1
2
       Α.
           No.
           Okay.
3
       Ο.
4
           So nobody ever told you that what the range
   needed to be, that if it was too high, that meant
5
   that you were actually losing muscle tissue?
6
           I am not so sure I remember hearing that.
7
           I don't know if I was hearing that. I have
8
9
   missed a couple of days.
10
       Q. Okay.
           As you sit here now, nobody every talked you
11
   to be that number?
12
13
           I don't remember.
       Α.
14
       Q. All right.
           Let's talk about the admission on Christmas
15
   of 2016.
16
           Tell the jury as best you can everything you
17
   remember in the time, the days leading up to
18
19
   admission and what you were feeling.
       A. December 25, 2016?
20
2.1
          Yes.
       Ο.
22
           I normally don't sleep longer than 3, a
23
   maximum 4 hours any period.
24
           So I am up and down a lot.
           I recollect about 1:00 o'clock in the
25
```

morning feeling that strange feeling good down my 1 2 leg again, which by now it is the third time it happened, and it worried me. 3 But I wanted to follow-up and see what was 4 5 happening, because it just happened. So I went and back took a little longer nap. 6 About 4 o'clock in the morning I woke up. 7 felt both feet. They felt about the same. 8 9 So I think I am relaxing. 10 So I had some coffee, stayed up a couple of hours and went back, and went to sleep again. 11 12 I woke up about 8:00 o'clock in the morning. 13 The first thing I did, I felt my feet. This time I felt the left foot was cooler 14 15 than my right foot. 16 That was my next tell sign that I have to 17 start worrying about this. 18 I got up, got ready and went to the 19 emergency room. 20 Do you recall -- the notes have been shown to the jury quite a bit that has reflected a finding 21 22 or a complaint that you had of left calf pain. 23 Do you remember anything happening while you 24 were walking around in one of the casinos where you felt like you strained your calf? 25

A. Nurse Practitioner Bartmus asked me about that, about walking in the casinos, and I personally don't really remember straining my leg in the casino.

1

2

3

4

14

15

- She asked me if I had been excessively

 walking when I first came in, and I told her that I

 had been in the casino, but I believe at the same

 time that I walk grocery stores, and Wal-Mart,

 places like that, that I can walk.
- 10 I don't remember specifically straining it.
- Q. Did you discuss with her the fact that you were concerned about your leg because of the past history you have had of occlusions?
 - A. I explained to her what was bothering me was that I had pain in the calf, and I have a history of blood clots.
- And I think I have another blood clot in my calf. Now I know a lot more of the technology they talk about.
- Basically I said blood clot in my calf, the
 same as I have had before, which I have a history of
 that, which she had the history also.
- Q. So in the records it showed as -- one of the first things they mentioned was that you had a history of DVTs.

```
Do you know what a DVT is?
1
2
           I do now, deep vein thrombosis.
       Q. Do you understand how that is different than
3
   an arterial occlusion?
4
       A. Yes. One is in the arterial and one is in
5
   the vein.
6
       Q. Did you understand that difference before
7
   this lawsuit?
8
9
       Α.
          No.
10
       Q.
           Is it possible that you did go there and say
11
   that I have history of DVTs?
12
      A. I didn't.
           MR. WEAVER: I am sorry, I didn't hear the
13
14
   answer.
           Did or didn't?
15
           THE COURT: Did or did not?
16
           THE WITNESS: I did not.
17
       Q. What would you have said, just as simply as
18
19
   I do have a history of blood clots?
      A. Yes.
20
           MR. ARNTZ: Bring up 1331, history of present
21
   illness.
22
23
           THE COURT: Exhibit 100?
           MR. ARNTZ: Yes.
24
25
           Still 100, still on December 25.
       Q.
```

So you will see the way that they describe 1 2 it, patient presents with lower extremity pain. The onset was one day ago and gradual. 3 Course, duration of symptoms is constant. 4 Location, left calf. 5 The character of symptoms is pain. 6 7 The degree at present is moderate. 8 Does this refresh your memory of what you 9 would have told them when you went to the hospital? 10 Α. Yes. 11 Ο. Okay. 12 Let me ask you, Mr. Moore, do you have any 13 recollection of ever having what somebody described as deep vein thrombosis, or maybe an embolism, or 14 something like that that would not be arterial? 15 Not at this time. 16 Α. You have since? 17 Ο. 18 I am speaking of this date? Α. 19 Q. Right. 20 Α. No. 21 As of December 25, 2016, you do not recall Ο. 22 ever having a DVT or something that you might have called a DVT? 23 24 I wouldn't have called it a DVT. 25 I didn't know it as such. I always just

said blood clot, and tried to direct it to my calf. 1 2 All right. Let's talk about your admission to the 3 4 hospital on that day, and let's talk about everyone in order of when you saw them that you saw. What do you recall being the first person 6 7 you saw when you got there? A. Well, the first person that I saw was at the 8 9 reception desk, where I checked in. 10 I informed them that Dr. Wiencek would like to be informed that I am here. 11 12 He said immediately, and they took my 13 information, and then I sat around for quite a while. 14 15 Q. Let me stop you second. 16 On the top of this report it says the 17 primary care physician is not -- it says no PCP not 18 given, and then has Sang Tran. 19 Would you have given them the name of Tran as your primary care physician? 20 In talking to them? 21 Α. 22 0. Yes. 23 I don't remember saying that. Α. 24 I remember asking for Wiencek to be

25

contacted.

```
1
       0.
           Okay.
2
           To your knowledge was Dr. Wiencek ever
   contacted while you were there?
3
4
           When I got a chance to talk to him, he said
5
   he never was.
6
       Q. Okay.
7
           After you saw the initial intake person, did
   they ever touch your body or do any examination?
8
           After what?
9
       Α.
10
       Q.
           When you first got to the hospital, I think
   you said you saw an intake person?
11
12
       Α.
           After I checked in then, and I wait.
13
           Then I saw a triage person that took blood,
14
   took my blood pressure and everything.
15
       Q. Okay.
16
           Now, as you were doing that, was your son
   Chris there?
17
18
           Christopher was there, yes.
19
       Q.
           Right by you or just in the waiting room?
20
       Α.
           Right by me.
          Okay.
21
       Q.
22
           Where was this done in the hospital, was it
23
   in the actual emergency room in a bay or --
24
           No, it had its only office just off of your
```

waiting room.

And you go in through a door to this office, and then from this office they take you back to the emergency room.

- Q. And in that office did they take a history from you where they talk about your health and complaints, and things that happened in the past, that kind of thing?
- A. I am sure that we talked about it.

But mostly they did the normal triage that they were supposed to do.

And they could have asked me there. The
first time that I can honestly say that I explained
it all, other than saying why I was there when I
first got there and talked to the desk is talking to
Nurse Practitioner Bartmus.

Q. Before we get to that, while you were in this office, they took your blood.

Correct?

19 A. Yes.

1

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6

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17

18

- Q. And they took your blood pressure?
- 21 A. Yes.
- 22 Q. And your other vital signs, your pulse?
- 23 A. Yes.
- Q. How did they take your pulse, do you
- 25 | remember?

- A. Well, they put a arm cuff on me and stuff, and they did stuff that way.
- They never touched my legs.
- Q. How did they take your pulse, did they put that thing on your finger?
- 6 A. They put the thing on my finger also, yes.
- Q. Did you take your shoes and socks off while you were in that office?
 - A. I did not.

- 10 Q. Do you recall talking to them about a 11 history of blood clots?
- 12 A. I might have mentioned it to them also.
- Q. And do you remember, can you describe that person?
- Do you have any recollection of what he or looked like?
- A. I believe it was a lady with lighter brunette hair, but I am not positive.
- 19 Q. Who is the next person you saw from the 20 hospital, or at the hospital?
- 21 A. The next person I saw at the hospital that I 22 can remember was Nurse Practitioner Bartmus.
- Q. Where were you -- after you left the office
 where you were sitting, and they were taking your
 blood pressure and so forth, where did they take you

```
after that?
1
2
           We went around the corner, and we ended up
   at the first cubicle with a chair in it.
3
           I almost got in the emergency room. I did
4
5
   get in there barely.
           There was a chair there that they set me
6
7
   down in.
       Q. And did they have a curtain that you can
8
9
   draw to give you some privacy?
10
           You don't recall if there was one?
       A. I don't recall that one was ever pulled.
11
12
           It just looked like an open cubicle.
13
           I remember that we were at a cross-room, and
14
   to my left as I was sitting there in the chair, and
15
   there were 2 nurses working on a computers.
16
           And I looked over to this side, and maybe 50
17
   to 75 or more feet started the beds.
18
       O.
           Okay.
19
           Then who was the next person you saw?
20
           I saw Nurse Practitioner Bartmus. We had
       Α.
   the discussion about pain in my calf.
21
22
           And I told her I thought it was clotted.
23
   She sent me to have a venous duplex.
           Give me like an amount of time.
24
25
           How long had you been sitting in that chair
```

before you saw Nurse Practitioner Bartmus? 1 2 Sitting in that chair wasn't too long. was able to see her fairly quick. 3 4 And when she came and saw you, she had a conversation with you? 5 Α. Yes. 6 7 0. Did she do any type of physical exam where she put her hands on you? 8 We just talked. 9 No. Α. 10 Did she then immediately order the ultrasound? 11 First she discussed a little bit about how 12 13 much I had been walking. And then when I told her I was concerned, 14 15 and my history, and I thought I was there for a 16 blood clot, and she sent me right to the ultrasound room. 17 How long was it from the time you first 18 19 started talking to her before they started taking you to the ultrasound? 20 2.1 10, 15 minutes. Α. 22 O. Okay. 23 And then did you go to the ultrasound by

yourself, or did you go -- did Chris with you?

I went by myself.

24

25

Α.

Q. Tell the jury about what happened when you went for the ultrasound.

A. Well, they were going to check my leg out, so I had take my pants off.

And they work -- in the beginning was using a Doppler between my groin and my knee, and she was going up and down my leg area for a vein search, and she stayed there quite a while.

And I believe that I had this technician one other time, this being the third time I was in there, and I got to talking to her.

And I said, you know, my problem is where this cut is in my leg on my calf. That's where I think we need to search and look at.

I said that's where I have had a problem twice before. I think it is right there again.

So she took the Doppler and dropped below the knee, where she had been searching above it, and extensively pretty much looked at that graft area.

- Q. First of all, did she say to you that she remembered you from another time?
- A. She didn't anything. What little talking went on, I did the talking, until the end of the examination, I asked her, did you find anything, and she said it is not for her to say, all her results

has to go to my doctor. 1 2 O. Okay. And explain for the jury what the -- what's 3 4 the ultrasound like; what kind of device is it, do they put jelly on your leg and that kind of thing? They have to put jelly anywhere they are 6 Α. going to look. 7 The Doppler can like this shape with a more 8 9 pointed end, and they run that up and down your leg. 10 First they have to put all of the grease and stuff on there. 11 12 Q. Right. 13 Then they run up and down, around your leg. 14 They were running between the knee and the groin, 15 and I got them to go down to the calf. 16 Q. Did you ever see someone who introduced 17 themselves as the radiologist? 18 I don't remember seeing the radiologist. 19 Q. Okay. 20 So how long did it take for them to do the ultrasound? 2.1 I could have been in there an hour. 22 Α. 23 All right. Q. 24 So they put you in a gown, is that what

25

happened?

```
Well, actually --
1
       Α.
           MR. WEAVER: Leading, Your Honor.
2
           THE COURT: Overruled.
3
           You may answer, Mr. Moore.
4
5
       Α.
           They just stripped you down to my jockey
   shorts and my T-shirt so they can actually work from
6
   my groin, inside of my jockey shorts a little down
7
   to the knee.
8
9
       Ο.
          Okay.
10
           After you were done with that, did you put
   all of your clothes back on, your shows and soaks
11
12
   and so forth?
13
           Yes, I did.
       Α.
           What happened after that?
14
       0.
15
           After that, I went back to my chair in the
       Α.
16
   beginning of the emergency room.
17
       Ο.
           Did they transport you by wheelchair, you
   said?
18
19
       Α.
           I don't remember.
20
       Q.
          Okay.
           I was still walking then, but --
21
           From the time that you went to the
22
23
   ultrasound, until the time you got back to the
24
   ultrasound, do you recall seeing anyone other than
25
   the tech?
```

- 1 A. Until I got back?
- 2 Q. Right.

4

5

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10

11

- A. The only ones I remember is the 2 nurses at the computers, and then Ms. Bartmus showed up again.
 - Q. Did somebody escort you to the ultrasound?
- A. Yes, back to the ultrasound. I don't remember that person.
 - Q. Okay.

Up until now in this story, have you been expected physically by any person at the hospital?

- A. Other than the triage doing the basics, no.
- 12 Q. Okay.
- And before you went and got the ultrasound, did you -- you saw Dr. Lasry when he was here.
- Did you recognize him when he came into the courtroom?
- 17 A. No, I did not.
- 18 Q. Did you recognize Nurse Practitioner
- 19 | Bartmus?
- 20 A. I do remember her height, stature, but I 21 thought she was a dark brunette.
- Q. She kind of looks like a dark brunette to me.
- Okay. Was there any other -- up until the time that we are at right now, where you have come

back from the ultrasound, had you seen any male 1 person from the hospital or from -- who was working there, like a male nurse or anybody like that? 3 A. At the time I first came back from the 4 ultrasound room, I had not seen a male. 5 Q. Okay. 6 7 Nurse or doctor. And when you got back to this little chair 8 9 that were you sitting on, was Chris there? 10 Α. Yes. From the time that you left the 11 12 ultrasound -- left to go to the ultrasound and come 13 back, is that only time that you were apart from Chris? 14 15 Α. Yes. 16 Q. Okay. 17 So what happened after you got back from the 18 ultrasound? 19 After I got back from the ultrasound, I sat down in the chair with the patch on the back of it. 20 21 Christopher noticed that because he is in infection control, and he said that's not right. 22 23 I sat down. I waited. Nurse Practitioner 24 Bartmus showed up, and I believe stood up to talk to

25

her.

It seems more like I was eye-to-eye with her, and she said we have found no reason to explain the pain in your calf, so we are going to release you.

Q. Okay.

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Did she give you a diagnosis that they were giving for the pain in your calf or anything?

- A. No. She said with we found no reason with the tests we had taken to find out a reason for the pain in your calf, to that effect.
- Q. She never told you that you were being discharged -- did she give you instructions, any kind of printed material when you were discharged?
 - A. Well, after she made that comment, we went back to possible muscle strain in the calf.
- 16 Q. Okay.
- A. We talked a little bit more about possibly walking too much.

So she said they were going to release me, and then I believe she turned the paperwork over to the male nurse that was at one of the computers off to my left.

- Q. Okay.
- A. And he did the write up for the release.
 - Q. At this point had anybody done any kind of

physical exam other than the triage nurse? 1 2 MR. WEAVER: Misstates the testimony. The testimony is nobody did. 3 THE COURT: Mr. Arntz. 4 5 Ο. I thought he just got done saying the triage nurse did the blood pressure and the pulse, and 6 those kind of things. 7 Correct? 8 Yes, I did. 9 Α. 10 Q. Okay. Other than what took place in that room when 11 12 you were first brought in, and they took your blood and the blood pressure, had anyone else -- did 13 anybody else from that point to the point of the 14 15 story we are at now, where she is talking about 16 muscles strain, has anybody done a physical exam 17 yet? 18 No, they have not. 19 At any point, other than when you were in the ultrasound, did you ever have to take off 20 your shoes and socks? 21 22 Α. No. 23 Did Nurse Practitioner Bartmus do anything Ο. 24 where she put her hands on you to examine you in any

way, whether it be pulse, or with a stethoscope or

anything?

- 2 A. No.
- Q. At the time you were released, is that still true?
- 5 A. By the time I was released, it was still 6 true.
- Q. Had anybody else taken your vital signs again?
- 9 A. No.
- 10 | Q. All right.
- So tell me how it went after she came back and told you they didn't find anything until the time you were discharged.
- 14 Tell me what happened.
- A. Well, when I got back and sat down and waited for her to show up, she told me that she didn't find anything, no evidence to show that there was any reason for the pain in your calf, so we are going to release you, and the release -- I started getting written up.
- And when I got the release, it said muscle
 strain basically, and to notify Ranathan, the doctor
 that she told me, and also my general practitioner.
- Q. Did she say anything to you about contacting Dr. Wiencek or a cardiovascular surgeon?

1 A. No.

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- Q. Did she say anything about the fact that the ultrasound showed a occlusion in the fem pop graft?
- A. No, she did not. That's why I was there. I was listening for every word that I could for that.

Even in the ultrasound room I am begging them to look here.

- Q. Did you have a plan or an expectation of what would happen if they did find an occlusion as to what you would do?
- 11 A. I was going to stay right in the hospital
 12 until Wiencek or one of their cardiovascular people
 13 looked at me.
- Q. Had you been treating with TPA therapy on the prior occasions when you went in for this problem and you were admitted?
- 17 A. They might have done that. I don't remember 18 everything that they did.

Mostly I think they went to the artery.

- Q. And did they administrator medication to the artery?
- 22 A. Yes, they did.
- Q. And on those other 2 occasions, do you have a recollection of how long it took for that blockage of your arterial graft to be cleared out?

A. Well, they took me downstairs both times on the first 2 times in 2014 and 2015, and they ran the tube in my leg and administer medicine to that.

I believe it took 24 to 30 hours before it was completed. I know there is only so long that they can keep that in your system.

Now when that started breaking up the clot, that's when you start climbing the wall.

Q. Why is that?

What did that feel like?

- A. Well, I would have to say if you almost held your hand up this way, and a car ran over your hand with the tire and sat on it, about as painful as it can get.
 - Q. This extreme pain, where is it?
- 16 A. It is -- well, it feels like it is all over 17 your body.
- 18 It is mainly in your calf where they are 19 dissolving that.
 - Q. Where they are dissolving the blockage?
- 21 A. Yes.

4

5

6

7

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9

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15

20

- Q. In both instances it work effectively?
- A. Well, in 2014, because it had been 2 weeks,
 and I am not sure why they decided it. I think they
 didn't think that they ran the tube far enough down

my leg. 1 2 And they only have so much time to mess with this, so it wasn't breaking it up satisfactorily, so 3 4 back down I went. And another technician pulled that one out 5 and ran another one down my leg deeper, is what I 6 7 understood, and then took me back upstairs, and that one cleared it. 8 9 Ο. Okay. 10 In 2015? In 2015, because it was -- I assume because 11 12 I got there quicker, that the one trip in putting 13 the tube in me, the thing that they needed, it 14 cleared it up in one try. 15 Do you remember conversation you had with 16 Dr. Wiencek about things you need to do in the 17 future, re-emphasize taking Xarelto, anything like 18 that? 19 MR. WEAVER: Objection, Your Honor. 20 Hearsay. THE COURT: Mr. Arntz what is it being 21 offered for; is it being offered for the truth? 22 23 MR. ARNTZ: It is being offered for his 24 understanding of what he was supposed to do with respect to his own care. 25

I can ask it a different way. 1 2 THE COURT: Ask it. Did you have an understanding of what your 3 responsibilities were as related to taking care of 4 yourself as you moved forward? Α. Yes, I did. 6 What things did you understand that you 7 needed to do? 8 Well, because I had back to back almost a 9 10 year a part or whatever of 2 clots, Dr. Wiencek put me on Xarelto. 11 12 Q. Right. 13 And because of the Xarelto, there was a 14 longer span. I was feeling a lot better about it. 15 It didn't come so quick. I wasn't having another 16 blood clot yet. 17 Q. Okay. 18 What else do you feel; what was your 19 responsibility? 20 Well, to take the medicine everyday. Α. 21 Also to make sure that I got to the 22 emergency room if I felt like I had the 2 previous 23 times, which by then I had noticed basically 3 big 24 symptoms.

Pain in the calf.

That coolness that goes down my leg, because the coolness or the colder foot.

- Q. When do you remember first being told that smoking can create problems as relates to your vascular condition?
- A. I'd say probably from the 90's, possibly mid-'80s they started saying that.
 - Q. Okay.

3

4

- 9 A. Prior to that, nobody said anything about 10 it. I wouldn't say every doctor got on you.
- Surely by 2000, every nurse, every doctor 12 you talk to tells you that.
- Q. When you were smoking the most, how much were you smoking a day?
- 15 A. 2 packs a day.
- 16 Q. Following some of these problems, did you 17 ever quit or reduce the amount of smoking?
- A. I quit over the years many times, but after these problems, I quit probably 3 times that was any length of time.
- 21 Q. What do you mean by any length of time?
- 22 A. 6 months to 8 months, in that range.
- I tried many times in the last 40 years that 24 may only last 1 or 2 months. I never count those.
- 25 | It was an honest effort.

- Q. Have you been successful in reducing the amount of smoking that you do everyday?
- A. Yes. This last time when I did go back to smoking, I kept it down to less than a half pack for a long time, but eventually it crept up to one, and it stayed at least there.
- 7 | Q. When was that?
 - A. That was probably -- I know the longer period of time that I was off, I believe was after the amputation.
- 11 | Q. Okay.

1

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- 12 How long were you off then?
- 13 A. A little over 8 months.
- 14 Q. Okay.
- So since you went back, you went back to labeled half a pack day, and now your are back to a pack a day?
- 18 A. Yes.
- 19 | Q. Okay.
- Let's talk about the days leading up -- I
 want to see if we can push through this stuff -the days leading up to the admission on the 28.
- Tell me what you are feeling in your leg the 24 26 and the 27.
- 25 A. The 26 and 27 was more almost exactly like

1 the 25. 2 I had some swelling, which was normal. I had numbness, I think a little more 3 4 numbness than normal. 5 And I had slight pain in the calf. Okay. Q. 6 And everything that I had on the 25 went the 7 26 and the 27. 8 9 So I went to bed feeling the same. When I 10 woke up on the 28, I had severe pain, more pain. So I took an Oxycodone 10 about three of 11 12 them, one hour a part. 13 I realized that wasn't helping me, and then 14 they drove me back to the emergency room. 15 Q. At that time when you were feeling all of 16 this pain, and you were feeling a change in your symptoms, did you look at your foot, and feel it to 17 18 see if it was cool or cold? 19 My foot was colder than it had been the 3 20 previous days. When did you realize that you were probably 2.1 22 in trouble and needed to go to the emergency room 23 again? 24 I felt a cooler foot, but after I had taken 25 2, 3 of the Oxycodones and they had not cured any of

```
1
   that pain, that it was more serious. So I knew I
   had to go.
2
       Q. Okay.
3
4
           So when you get to the hospital, tell me
5
   what your remember about that.
           When we got to the hospital, I don't
6
       Α.
7
   remember much.
8
       Q.
          Okay.
           I remember 2 times, actually 3, I recall
9
10
   almost going into the room where they put the tube
   in your leg. That was just a few a minute or 2.
11
12
           Then I woke up, and there was a gentleman on
13
   my waist or on my -- across my knees, pushing on my
14
   groin area so hard that I was almost screaming.
15
           And then I think I passed out.
16
           The third time -- we are talking this was
17
   15, 20 seconds.
           The third time was just before I was going
18
19
   to have my amputation. Dr. Wiencek woke me and said
   Darell --
20
21
           MR. McBRIDE: Objection.
22
           Hearsay.
23
           THE COURT: Mr. Moore, there is an
24
   objection.
25
           MR. McBRIDE: It is hearsay.
```

```
1
           MR. WEAVER: Also there is an exhibit up that
2
   hasn't --
           THE COURT: A couple of things, we will take
3
4
   them one at time.
           As you may recall, Mr. Moore, through the
5
   trial, it is considered hearsay, if you give
6
7
   testimony about what someone else said to you, if it
   is being offered for the truth of what that someone
8
9
   else said to be cross-examined.
10
           Your counsel can rephrase, and if we are
11
   looking at a document, we need to identify what that
12
   is.
13
           MR. ARNTZ: Yes. My questions has less to do
14
   with the truth of the matter asserted as to his
15
   mental impression of what was going on with him.
16
           THE COURT: He can answer the questions
17
   without going into what Dr. Wiencek actually said.
18
           MR. ARNTZ: My response is that it is not
19
   hearsay, because I am not offering it for the truth
   of the matter asserted.
20
           MR. McBRIDE: Your Honor, can we approach if
21
   we are going to have a discussion?
22
23
           THE COURT: I would rather that you all not.
           MR. ARNTZ: I can rephrase it.
24
           What did you understand was going to happen
25
       Q.
```

when you woke up that third time? 1 2 The third time I woke up, we had a

3

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25

He said the leg had to go. Then there was a 4 discussion of a percentage, because time had went 6 by.

discussion of above or below the knee amputation.

They gave me a 30 percent chance that if I did a below the knee amputation, that there wouldn't be any problems.

And they gave me a 70 percent chance if we did above the knee amputation, that I wouldn't have any problems.

That's the way I remember it.

- When you say problems, what did you mean by problems?
- 16 Well, I had a friend that started with the toes, the foot, the knee, and they ended up almost 17 18 four operations going almost all the way to his hip.

And I am half drowsy, but I remembering this. So I am scared to death to even take a chance to go below the knee, not at 30 percent.

So I told them above the knee, and they explained that both doctors had agreed that that would be the best way to go.

So did you ever recall being told exactly Q.

```
what happened on the 28, what had happened that is
1
2
   now requiring you to lose your leg?
           What I was told?
3
           Yes.
4
       Q.
           MR. McBRIDE: Objection, Your Honor, hearsay.
5
           MR. WEAVER: Hearsay.
6
                       Let me see if you can rephrase.
7
           THE COURT:
   If not, it may be time to take a break.
8
9
           Do you recall at some point getting an
10
   understanding of what was wrong with your leg that
   was requiring it to be amputated?
11
12
           I unfortunately explained exactly when I was
       Α.
13
   awake.
           So when I went down to get the tube in my
14
   leg, and then when I woke up, they had pulled it
15
16
   out, and I was hemorrhaging, I don't remember
17
   anything.
           So until I woke up ready to have my leg
18
19
   amputated, everything was being done between my wife
20
   and my kids.
       Q. Okay.
2.1
           Before this trial, do you recall anybody
22
23
   ever taking to you about whether the blockage was
   acute, subacute or chronic?
24
```

Do you remember any of those words being

```
discussed prior to this trial?
1
2
           MR. McBRIDE: Your Honor, I think this calls
   for hearsay.
3
 4
           MR. ARNTZ: I can rephrase it.
           THE COURT: Mr. Arntz, just out of
5
   curiosity, how much more time do you have of this
6
7
   witness?
                       Well, I just need to move from
           MR. ARNTZ:
8
   here into damages.
9
10
           In 30 minutes I can probable do it.
11
           We need to completes with the witness, and
12
   you still obviously have remaining questions.
13
           I want to show you a document that's page --
14
           MR. HENRY HYMANSON: Exhibit 100, page 28,
15
   Bates 28.
           This is on the 28 of December.
16
       Ο.
17
           Do you see that?
18
           Yes.
       Α.
19
           So in this document they -- this is the
   after they examined you, and they have done the
20
   thrombolytic therapy.
21
22
           Do you see where it says that they diagnosed
23
   with acute to subacute occlusion of the left fem pop
24
   bypass graft.
25
           Do you see that?
```

```
1
       A. Yes.
2
       Q. Had anybody every talked to you about the
   question of whether that blockage in your artery had
  been there for a long time, or whether it was
  something recent?
           MR. McBRIDE: Again, Your Honor, it calls for
6
  hearsay.
8
           THE COURT: We are going to take a break.
9
           During this 10 minute recess, this will be
   the bathroom break.
10
11
          You will return at 3:15.
12
13
14
           (Thereupon, the jury was admonished
15
           by the Court.)
16
17
18
           THE COURT: We will see you back at
19
   3:15.
20
21
22
           (Thereupon, the following proceedings
23
            were had in open court and outside
24
            the presence of the jury.)
25
```

1 2 THE COURT: Mr. Moore, are you going to use the restroom? 3 My marshal can assist you if you need to 4 take a break from that area. 5 6 THE WITNESS: I am Okay. 7 So 5 minutes for this THE COURT: 8 discussion. 9 MR. McBRIDE: I was going to suggest if we 10 are going to have a discussion about hearsay, and what he is trying to elicit, I think it might be 11 12 best for the witness -- for this to be outside of 13 the presence of the witness. 14 MR. ARNTZ: The witness is a party. 15 MR. McBRIDE: True. 16 THE COURT: We don't have to have the 17 conversation outside of his presence. 18 I have already admonished him. 19 Here is my problem, Mr. Arntz, and here is problem, Mr. McBride and Mr. Weaver. 20 21 We need to get through this communication. 22 If we are going to object on hearsay and everything, 23 frankly, if it is going to be why he did what he did next, I will overrule and let him testify. 24 25 I don't know what the concern is with these

```
things coming in this way, if something happened
1
   that day, we had testimony about what happened that
2
3
   day.
           What are we doing here, because we are
4
5
   losing time.
           MR. McBRIDE: And the concern is the question
6
7
   is prompting the witness to basically say that these
   doctors told him that had he come in earlier on the
8
9
   earlier day, this would have a made a difference,
10
   and he would not have had that procedure.
           MR. ARNTZ: That is what I am asking.
11
12
           I am not going to ask him that.
13
           MR. McBRIDE: It is going to that direction.
14
           THE COURT: It is a fair premise that the
   conversation might go there, Mr. Arntz.
15
16
           MR. McBRIDE: And that's my concern, he is
17
   asking what did they tell you about --
18
           THE COURT: It is hearsay. It is offered
19
   for the truth of the matter asserted.
           So how can we get at, what do you do, and
20
   why did you decide to do that without going through
21
22
   those hearsay questions?
23
           MR. ARNTZ: I through up a document that
   says acute to subacute occlusion of the left fem pop
24
   bypass, and I said did anyone tell you that your
25
```

```
occlusion in that was older or had been there a long
1
2
   time or not.
           That was the question. I have no intention
3
   of asking him, did anybody tell you if you had only
4
   come in here sooner, we would have been able to save
5
   your leg.
6
7
           THE COURT: Let's go back to the first
   statement.
8
9
           Fair enough, if that's not where you were
10
   going, he is entitled to and better that he
11
   speculate what might be happening so that we prevent
12
   the problem, and not try to un-ring a bell.
13
           But even that first questions, it still
14
   requires you eliciting hearsay, does it not,
15
   Mr. Arntz?
16
           MR. ARNTZ:
                       No. It is a medical document
17
   that up in front of the jury, and I am essentially
   asking him, did anybody tell you this?
18
           THE COURT: No, that's not the question.
19
20
           You read what was on the paper, and then you
   then said, did anybody tell you whether it was
21
   older, or whatever.
22
23
           That's completely not addressed by --
   in fact, it says findings, acute to subacute.
24
25
           We have had quite a bit of testimony on the
```

difference between acute and chronic, so that is 1 2 eliciting hearsay, is it not? MR. ARNTZ: I could have said to him, did 3 anybody explain to you that you an acute to subacute 4 5 occlusion, but I was trying to dumb it down a little bit, so that he can explain it in his own words, 6 because I doubt he would have used the words acute 7 to subacute. 8 9 I don't think your question THE COURT: 10 was that, that it was eliciting hearsay. That's why I had a problem with it, and that 11 12 is why we needed to get to the end of this. 13 Maybe don't dumb it down, and then we don't 14 have a hearsay issue. I don't know. 15 But at same time say, this is what's written 16 here, do you remember somebody telling that you, 17 that is one thing. MR. ARNTZ: I don't believe these objections 18 19 are being made for the purpose they are stated. 20 I think that they are doing it to try to disrupt the flow of the conversation. 21 THE COURT: Well, that's why we are taking a 22 23 break and that is why we are only spending a few more minutes on this. 24 25 MR. ARNTZ: And I am telling you as an

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officer of court that I have never intended to ask 1 2 him the question that they thought I was going to 3 ask. I will tell him now, don't ever answer that 4 5 question, because that's not something I want answered. That is something I want the jury to 6 decide. 7 What we need to avoid are THE COURT: 8 9 questions of Mr. Moore of what did somebody tell 10 you, so that he is answering what somebody else told him, especially if it is intended for what the truth 11 12 of what that somebody told him. 13 MR. ARNTZ: Well, I can certainly ask him in a different format, where I say, did you ever 14 15 learn that somebody believed that the occlusion had 16 been there for a long time, but it just seemed 17 faster to do it the way I was doing it. 18 THE COURT: Mr. McBride. 19 MR. McBRIDE: And again, as an officer of 20 the court, I can sure you that my objections had nothing to do with disrupting his flow. 21 22 He has been going on for hours with this 23 witness, and I had not objected except where I thought it was a reasonable objection on the basis 24 25 of hearsay.

And my concern is with any witness, any lay witness is, that's the real concern that we have, is that they are going to start making discussions about that they had with other individuals. So it happens all of the time. In this particular case he has already -- as Your Honor has pointed out, he has already addressed this is what this document says. The more appropriate question is, if that's what he wants to question this witness about, ask him, did anyone ever tell you that this was a subacute occlusion of the left fem pop bypass. MR. ARNTZ: Did anybody ever tell you, how is that any different than what I asked him? THE COURT: Mr. Arntz, you added at the end of the question an aging question, how old was it, how long did --MR. ARNTZ: That's what acute refers to. jury has learned that. Everybody in this room has been taught what acute, subacute and chronic means. THE COURT: I don't think 2 we have the same agreement or understanding. So, at the end of the day we will come back.

If I believe it is hearsay eliciting, then I hear an

objection, I am going to ask you for your response,

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and it is either not hearsay and why, or what
1
   exception this is, and I will call it like I see it.
2
            That is best I can do.
 3
            Bathroom, back at 3:15 please.
 4
5
6
                      (A recess was taken.)
7
8
9
10
11
12
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```
REPORTER'S CERTIFICATE
1
2
3
       STATE OF NEVADA )
4
                        ) ss.
5
       CLARK COUNTY
6
7
            I, Robert A. Cangemi, a certified court
8
9
   reporter in and for the State of Nevada, hereby
10
   certify that pursuant to NRS 239B.030 I have not
   included the Social Security number of any person
11
   within this document.
12
13
           I further certify that I am not a relative
14
   or employee of any party involved in said action,
15
   nor a person financially interested in said action.
16
17
18
                  (signed) /s/ Robert A. Cangemi
19
20
                   ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25
```

```
1
              CERTIFICATE
2
       STATE OF NEVADA )
3
                       ) ss.
4
       CLARK COUNTY
5
6
7
8
9
           I, Robert A. Cangemi, CCR 888, do
   hereby certify that I reported the foregoing
10
11
   proceedings, and that the same is true and
  accurate as reflected by my original machine
12
13
   shorthand notes taken at said time and place.
14
15
16
           (signed) /s/ Robert A. Cangemi
17
18
           Robert A. Cangemi, CCR 888
19
           Certified Court Reporter
20
           Las Vegas, Nevada
21
22
23
24
25
```

/s/ bed

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anything (4:25)(8:14)(14:8)(15:2)(35:17)(36:4)(42:23)
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                                                          approach (29:8)(68:21)
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       (28:11)(67:13)
                                                          appropriate (78:9)
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                                                           argument (4:24)(5:14)(6:2)(6:11)
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                                                          arm (49:1)
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                                                          backyard (27:15)
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anniversary (13:5)(13:7)
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                                                          because (11:19)(12:2)(14:16)(17:23)(17:24)(18:4)
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anyone (54:24)(58:13)(74:25)(78:11)
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before (1:16)(6:2)(13:10)(15:8)(15:9)(15:13)(15:17)
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                                                          casinos (42:24)(43:2)
begging (60:6)
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begin (18:10)
                                                          cell (10:11)
beginning (11:13)(37:7)(52:5)(54:16)
                                                          center (22:8)
being (24:24)(25:19)(35:13)(38:12)(46:6)(52:10)
                                                          certain (25:22)(27:24)
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                                                          certainly (77:13)
(70:25)(76:19)
                                                          certificate (80:1)
believe (18:12)(18:13)(21:2)(22:5)(27:12)(34:19)
                                                          certified (80:8)(81:19)
                                                          certify (80:10)(80:13)(81:10)
(35:18)(39:2)(43:7)(49:17)(52:9)(56:24)(57:20)(61:4)
(65:9)(76:18)(78:24)
                                                          chair (50:3)(50:6)(50:14)(50:25)(51:2)(54:15)(56:8)
believed (77:15)
                                                          (56:20)
bell (75:12)
                                                          chance (7:25)(8:7)(8:10)(8:18)(9:7)(47:4)(69:7)
below (52:17)(69:3)(69:8)(69:21)
                                                          (69:10)(69:20)
benefit (5:13)
                                                          change (13:6)(66:16)
besides (12:1)(14:10)
                                                          changes (23:11)
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yourself (35:19)(51:24)(63:5)

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           IN THE EIGHTH JUDICIAL DISTRICT COURT
                    CLARK COUNTY, NEVADA
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8
   DARELL MOORE, ET AL.,
9
              Plaintiffs,
                             ) Case No.
10
            vs.
                             ) A-17-766426
   JASON LASRY, M.D., ET
11
   AL.,
12
                             ) Dept. No. 25
13
             Defendants.
14
15
                         JURY TRIAL
16
           Before the Honorable Kathleen Delaney
           Tuesday, February 11, 2020, 3:30 p.m.
17
18
            Reporter's Transcript of Proceedings
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20
21
22
23
24
   REPORTED BY ROBERT A. CANGEMI, CCR 888
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   APPEARANCES:
2
   FOR THE PLAINTIFFS:
                             Breen Arntz, Esq.
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                             Philip Hymanson, Esq.
                             Henry Hymanson, Esq.
 4
5
   FOR THE DEFENDANTS:
                             Robert McBride, Esq.
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                             Keith Weaver, Esq.
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   WITNESSES:
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 4
   DARELL MOORE
                               5
                                  21 81
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1
            Las Vegas, Nevada, Tuesday, February 11,
                            2020
2
3
           THE COURT: Be seated.
4
5
           Thank you.
           Mr. Arntz, when ever you are ready to
6
7
   resume.
8
9
                  CONTINUED DIRECT EXAMINATION
10
       BY MR. ARNTZ:
11
12
       Q. I am just going to ask you one more question
13
   about this, and then we will move on to another
14
   topic.
15
           Did you ever get gain an understanding of
16
   whether or not about a finding where they determined
17
   there was an acute or a subacute occlusion to your
18
   left fem pop bypass?
19
       A. You know, until this trial, all I knew was
20
   that occlusion means blocked.
21
           And when you are talking about my artery
   being blocked, that's serious to me.
22
23
           Now I see acute, subacute and chronic, I
24
   have heard that now, but I have to testify that
   anything that had to do with my bypass graft was
25
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serious. 1 2 And I am not a doctor. I couldn't determine what was what. 3 I understand it a whole lot more now. 4 But 5 then, just that it was serious to start with. Q. Last question on this. 6 7 Every time you ended up having to go to the hospital because of you had an occlusion to your 8 9 bypass graft, did it always feel the same with that 10 coolness going down your leg? Yes, it did. 11 Α. 12 The first time you felt that coolness going Ο. 13 down your leg prior to the December 25 admission was the day before? 14 15 MR. WEAVER: Leading, Your Honor. 16 THE COURT: I just found the question vague. If you can clarify, I believe that there was 17 testimony of other times. 18 19 Q. Remind the jury again, when was the first time you felt that coolness going down your leg 20 before you went to the hospital on Christmas Day? 21 22 Α. I felt it Christmas Day about 1:00 o'clock 23 in the morning. 24 So that would have still been the 25.

You didn't feel it the day before?

25

Q.

1 I have seen dates where people said the 24, 2 the 25. My testimony for the most part was late 3 evening, early morning, when I started discussing 4 5 this. And being that I was in the carpenter 6 7 business, that means somewhere between 3, 4 in the morning. 8 9 Q. All right. 10 Darell, let's finish your testimony by talking about how this has affected your life and 11 12 your life with your wife. Maybe just start by telling the jury what it 13 14 was like for you around the 28 when you were having 15 your leg cutoff? A. Well, on the 28, when we were going down, I 16 17 was very nervous. I don't remember a lot between the 28 and 18 19 the second when they amputated my leg, except for those 3 times that I quoted. 20 But obviously I am feeling terrible. 21 22 It is since then the problems that I have 23 had. 24 Q. Okay.

Let's talk about that.

1 What problems are you talking about? 2 Well, one of the first problems that I had the first day that I went home and went to bed 3 without a leg, you have no weight to counter your 4 5 upper body weight. So you are almost flopping like a fish in 6 7 bed. I realized that I can't get out of there 8 9 quick. 10 I couldn't protect my family -- excuse me -that was my first day. 11 12 And I had fallen Joe. I don't sleep but, 3 13 to 4 hours max a day. 14 I can't keep my wife up. Since we have got 15 married, she needs like 10 hours a day. 16 She'll survive on eight, so don't be waking 17 her up every 2, 3 hours. 18 Because of that, and the way I had to 19 maneuver to get out of bed, I moved you out of that bedroom and got my own bed set up where our old 20 office was. 2.1 22 The problem was I was laying sideways from 23 the original bed with my wife, instead of being able to lay this way, I had to hang my foot over all 24 night, my right foot, to let the blood flow, so I am 25

```
1
   laying cross-ways.
2
           Then if I got up on the bed, I felt awkward,
   because I couldn't get up fast or easy.
3
           So I just decided to get a smaller bed of my
4
   own, so I can get in and out of my wheelchair
5
   quicker, and feel more comfortable.
6
           My wife and I haven't been intimate since
7
   the amputation.
8
9
           I know most of it is my fault. I can't get
10
   over the shock and all of these feelings I have.
           We can't go and do the things. We haven't
11
   flown.
12
13
           We don't travel very much, because since the
14
   operation, just sitting in the seats of the car
15
   seems to hurt my hips more.
16
           I can't explain why. It just happens.
           I just realize that I used to be able to
17
18
   drive eight, 10 hours a day.
19
           I driver 2 hours now, and I can't stand to
   stay in the seat any more, so long trips are out
20
   unless you are going to take a lot of breaks.
21
           Also my right leg, it needs rest, too, so I
22
23
   can't stay behind the wheel. It is not smart to
   stay behind the wheel eight to 10 hours anyway.
24
25
           But we don't go out to dinner as much.
                                                     Wе
```

go to the movies. We used to go to the movies once 1 2 a week for a long time. There is only 2 spots to able to put a 3 4 wheelchair in a theater. If you are not there 30 minutes before the movie starts. As a matter of fact, they are still cleaning 6 up from the last movie. You have to get there, or 7 you don't get those 2 spots. 8 9 And if I had to set in a seat somewhere near 10 where you walk in and put my wheelchair to the side, I did that one time at Ceasars and they took my 11 12 wheelchair. 13 So you have to keep an eye on that, if you had to set in a seat. So I prefer to stay in my 14 15 chair and then have to walk out without it again. 16 Everyday you find out what you can and you can't do, or how hard it is. 17 18 I know my wife talked about me falling. 19 One of my problems, they I thought I could do it, put the crutches on. We just got the van. 20 She would fill it up a dozen times. 21 I finally decide I can do this. While I was 22 23 out and I was going to fill up the car, which I had never done before. 24

Of course I wheeled around it, so I pretty

1 | much know where the gas tank is.

So I opened up the slider. I get my crutches out, and I walk down to the gas pump. I am bracing myself.

I get the hose out, put my credit card in, and I turn around and there is -- when the door is open, it hides the fuel tank.

So I got to put the handle back. By time I got turned around and tried to get back where I can close the door, I just collapsed and fell on the island.

I didn't expect that I was going to have to have to go back and forth because of the sliding door hiding the gas tank area.

- Q. What was the other 2 times that you fell?
- A. There were 2 other times I fell in the bathroom. I tried to reach out, when I was started losing my balance, because these walkers have wheels on them, and I grabbed it by one hand, and it just slid out from underneath me.

So the only thing I can do was to pull my
head towards my chest, and I tried to flip over to
hit the softer part of your shoulder.

24 And luckily I didn't get hurt from either 25 one. It is the embarrassment and the struggle to get

1 up. 2 I was almost glad no one was really looking at me, especially at the gas station, because it 3 4 took me a long time to get up to my seat. In the bathroom, I finally had to throw the 5 door open and crawl up my wheelchair. 6 So the other time I fell in my bedroom. 7 forget to lock the wheels on my chair. I went to 8 stand up, and I pushed the chair. 9 10 I was trying to push forward, and I pushed the chair right out from underneath me. 11 12 I have had a couple of other close calls, 13 but those are the ones I actually completely went 14 down. 15 Q. Okay. 16 Explain to the jury why you don't use your 17 prosthetic. 18 Well, when I first went in to get my 19 prosthetic, the technician that was there that was well-qualified, he started dealing with me. 20 He gave me the socks to help shape the limb 21 22 that was going doing into the prosthetic, and he was 23 working with me. 24 Then when we got to the point where he was going to design the plastic, the piece that went 25

1 over your leg, I went in, and he says I have got a 2 better job in New Mexico, so he was heading for Albuquerque. 3 He told me, I am sorry, it is the last time 4 5 I am going to be able to see you. We'll have another one, another guy take care of you. 6 And this guy that left, he actually shaped 7 it and designed it there. The new technician, he 8 9 shipped it off. 10 And the new technician wasn't as good at it, and the inner liner came back and didn't fit my leg. 11 12 So the outer liner, he tried to make work. 13 And my first step, I collapsed forward because of 14 the pain of the nerve endings in my leg. 15 So he asked me, do you think if I cut a big 16 hole in it, where those nerves aren't pushing 17 against that, that would help you; I said, don't 18 know. 19 So he took it back, and he cut a hole about four inches wide by 5 or 6 inches long, and brought 20 it back to me. I tried to on. 21 22 It was still too painful. So, plus the inner liner didn't fit. 23 24 We talk about redoing the inner liner.

told him basically that I was going through therapy

on my walking with crutches and walkers, and I
needed to do a little more than that, than what I
had been doing before we worry about finishing up on
everything.

But nothing he did in design fit me. It was too long. It didn't fit. But as I was doing my therapy after the amputation, I got a blood clot and I had to go back in and have that taken care of.

And when I was in an outpatient observation at the hospital, instead of just a room, you are in a room with 40 other patients.

And, of course, they are all in there in February, hacking and coughing. So by the time, the next day or so when I got out, I came home, and for 10 to 14 days, I can't remember exactly, but it was between 10 and 14 days I thought I was going to die from flu symptoms, coughing, choking, throwing up several times a day for the first week.

And I told my wife, I said, you know, I am about a quarter of an inch -- showing my fingers -- away from going back to the emergency room.

I says, I don't know if I am going to make it. Whatever I caught in there wasn't good for me.

So I had to delay the therapist for a couple of weeks, and when she finally came back, and we

tried to start doing the walking and everything, I
was losing ground everyday.

She was coming to me Monday, Wednesday,
Friday, and when I first got my leg amputated, I
still had the strength in my right leg.

6

7

8

- I could go from my kitchen. She made me go around the island twice, all the way back to my bedroom, which is probably 80 feet from the kitchen and back, and then sit down.
- And after the problem with my blood clot and everything, and getting sick after that first, the day I noticed I could go just straight from my kitchen to my bedroom and back.
- And then came -- that was a Monday, on then on Wednesday, when I got just to my bedroom, and I had to stop.
- So we did that, and we probably tried for 2 weeks. Every time the distance got shorter, and my leg got weaker.
- They followed me with a wheelchair, and it seemed like I was doing 10 percent almost every day that we tried it.
- So I need a lot more therapy.
- I need to strengthen it somehow, but with 25 all of the stuff going on between 2 trips to the

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hospitals, and the prosthesis not fitting, and
1
2
   trying to put everything together that I know I am
   going to need, it has been a long, hard process.
3
           And I should have completed a few more
4
   things, but I have been in business all of my life,
5
   between owning or managing, and you have got to go
6
   through a certain amount of steps before you move
7
8
   on.
9
           I think this is my last step since
10
   my amputation before I move on.
           You heard Dr. Fish talk about some of the
11
12
   needs that you have.
13
           One of the things that he talked to the jury
14
   about was some psychological counseling. Have you
15
   pursued any of that?
16
       Α.
           I haven't as of yet.
17
       Ο.
          Okay.
18
           Why is that?
           Because that's another one of those things,
19
20
   I haven't moved on yet.
21
           One, Dr. Fish gave me that paperwork not too
22
   long ago. It is not like 3 years.
23
           And it has been more like 6 months, but I
24
   have been struggling, coping with what happened to
25
   me.
```

And what has been happening to me is, it 1 2 seems like anything I have tried never gets one hundred percent completed. 3 4 There is always an never ending to each 5 segment right now. But I can see most everything, knowing me 6 7 and talking to him, I haven't with all of this yet. I am going to need to. 8 9 Are you willing to pursue psychological 0. 10 counseling? 11 Α. Yes. 12 Q. Okay. 13 I think we might let you be questioned by 14 the other lawyers. 15 Is there anything else that comes to mind 16 that is particularly significant in your life now 17 versus before you lost your leg? 18 Just my whole life right now has been 19 different. 20 And me getting a grip on it. About a year and a half, I guess, I let it go after the 21 22 amputation. 23 I asked my wife if she wanted to move on

24

25

Q.

without me, and she said no.

You got that going for you.

A. I better stop there.

Q. Other than the hospital that you were in at the time you were there and the treatment you received there, after you were released, what other treatment have you undertaken or undergone as a result of your amputation?

We talked about the therapy.

Were you in a rehab facility for a while?

A. No. Well, when I left the hospital, they sent me over to Kindred, which is a rehab for about 5 days.

And their job is to physically put you through the motions of using your walkers, and using machinery, if they don't hurt you before they get to that point.

When I first got delivered over there, after my amputation, they were opening a new section of the hospital there, and there weren't any doctors or nurses on-call.

And here I am, 3 days from being amputated, and I can't get no meds. I had to call my wife to bring the meds and stuff there.

She was running back and forth taking care of me, so that facility didn't work out real great.

I wanted out of there so bad, they took me

1 downstairs. I still had some strength in my right
2 leg, so I managed to get out of there by proving
3 what I can do.

4

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I probably wondered off of your question.

- Q. Over than Kindred Care, what other medical treatment have you had following the amputation?
- A. We had some nurses and therapy come to our house and work with me there.

9 Of course they also help massage my leg and 10 everything. But mostly just doing exercises on the 11 bed and stretching, lifting a little bit of the 12 weight, putting pressure against your legs and 13 stuff, all home therapy on that.

Q. Do you have any new pain management requirements that you have sought out that you didn't need prior to your amputation?

Are there any new doctors that you see for 18 that?

- A. Not so far for as far as like pain management. I am going to need to look into a lot more.
- Q. Has anybody talked to you, or have you seen anybody to address the sensitivity or the extreme nerve pain you have on the edge of your residual limb?

A. They had a person come to the house and he scanned my leg, and he looked. And he said he couldn't find a reason why I am having that pain.

- Q. Just describe for the jury what it is that you are talking about. Is it just hypersensitivity, or what?
- A. It has to do with sensitivity. It is more like certain nerves.

And my understanding from the guy that

started my prosthesis, he lost his leg and they

sewed it back on, and he was talking about how his

nerves, sometimes if his foot itched, he had to

scratch by his knee to make it quit itching.

And the way the nerves and stuff can pull up and they change, I think I have part of that, because when they cut off the leg, some of those go back in, and I don't know how they move.

But they couldn't find it on the first test that I had done, why it was causing pain, so much pain to me.

I do understand that there are other type of prosthesis tops that clamp your leg, instead of you just putting weight into the leg, but that's another step forward I have to take.

Q. Clamping the thigh instead of having it rest

on the end? 1 2 Α. Correct. The last thing I want to talk to you about, 3 you and I were talking about phantom pain, and I was 4 5 stunned to hear one of the things you have gone through. 6 Why don't you explain to the jury how you 7 still get calf pain. 8 9 A. Well, there is times where your foot itches, 10 and there's times when you get calf pain that felt 11 like it did right after the operation, or just before an occlusion. 12 13 Sometimes I roll over in bed, trying to get 14 up, and the meat on my leg feels like it is ripping 15 if I put the wrong type of pressure on it, and 16 tearing from the bone. 17 And that's a physical thing that actually 18 happens. 19 I woke up one night before we quit sleeping 20 together, and I was in tears from my calf cramp. I know we have all had them. 2.1 22 If you can't get your foot pulled back fast 23 enough, it gets so severe. It is one of the worst 24 one I have had.

And my brain is saying, this can't be, I

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don't have a calf. I mean the pain can get just
1
2
   like you still had it.
           It is unbelievable, I have been told about
3
4
        I have had a lot of the different itchings and
   it.
   some little pains here and there, but that calf one,
5
   that was the most severe I have ever had.
6
7
           MR. ARNTZ: All right.
           Darell, if there nothing else you want to
8
9
   tell this jury, I am going to turn you over to the
10
   other lawyers.
11
           THE COURT:
                        Thank you, Mr. Arntz.
12
           Mr. Weaver.
13
14
                   CROSS-EXAMINATION
15
       BY MR. WEAVER:
16
17
       0.
           Good afternoon, Mr. Moore.
           Good afternoon.
18
19
       Q.
           Speaking of Mrs. Moore, I think you told us
20
   you have been married 51 years.
2.1
           Is that right?
22
       Α.
           That's right.
23
           Congratulations.
       Q.
24
           Do you see Nurse Practitioner Bartmus here
25
   today?
```

1 Α. Yes. 2 Which one is she, the one closest to McBride, or furthest away? 3 Furthest. 4 Α. 5 And would you tell us again what palpable pulses are? 6 I have listened to here them say that it is 7 like the 5 P's and how they can depress your foot 8 9 and look at the color that comes back, or feel they 10 can feel pulses through your foot. I am not a doctor. I can't explain it all. 11 12 I am just asking you, because you were asked Q. a lot questions by your lawyer about whether 13 Dr. Wiencek every attempted to or did feel palpable 14 15 pulses wants. 16 I just want to be clear. 17 Α. Dr. Wiencek, he always did a Doppler. 18 Did he try to get palpable pulses; what are Ο. 19 those? 20 Did he try palpable pulses first, sir? It has been so long, I don't remember. 21 Α. 22 Well, you have been testifying that Dr. Wiencek --23

Let me finish my question if I may, please,

I testified --

24

25

Α.

Q.

```
1
   sir.
2
           You testified in response to your lawyer's
   questions that Dr. Wiencek never got palpable
3
4
   pulses, but you haven't really said what palpable
5
   pulses are.
           What are they?
6
           I told you that I am not a doctor, and I
7
   don't know all of this.
8
9
           If you wanted me to finish my explanation.
10
       Ο.
           Please do.
           Why is when the first time I ever seen
11
12
   Dr. Wiencek was the operation, and he started with
13
   the Doppler then, and he always used a Doppler.
14
       Ο.
           Where is the -- are you finish, sir?
15
           Yes.
       Α.
16
           So when the Doppler is placed, your
17
   understanding is from what you are telling us, that
18
   the Doppler is what is used to identify pulses, when
19
   it has been done by Dr. Wiencek?
20
       Α.
           Yes.
           And where is it placed?
21
22
       Α.
           He can place it on the ankle or place it on
23
   the top of the foot.
24
       Q.
           Okay.
25
           And where did Dr. Wiencek always place it?
```

- A. More so on both of those areas, but he had to hunt the top of the foot most of the time.
 - Q. And what about your right leg?
- A. My right leg was a little easier to find
 pulses before. Now it is a little tougher, the same
 thing, good in the ankle, not so good in the top of
 the foot.
- Q. Has Dr. Wiencek ever even once attempted to palpate pulses in your right leg?
- 10 A. Not that I remember. Always with the 11 Doppler.
- Q. Whether it is your left leg or your right leg, including up to the present, Dr. Wiencek has always used a Doppler.

15 Correct.

3

16

- A. Either leg, yes.
- 17 Q. Thank you, sir.
- Mr. Moore did you hear your wife testify
 19 yesterday that she's gone to every visit you have
 20 ever had with Dr. Wiencek?
- 21 A. I heard her testify that every visit that 22 she was with me, she went back.
 - Q. No, sir.
- She has testified that every visit you have 25 ever had with Dr. Wiencek she's been present at.

Was your recollection she said something different?

- A. I have been going to Dr. Wiencek quite a while. She has missed a couple of visits.
- Q. And do you recall that she testified that every time you have gone to Dr. Wiencek she's been in the room when you have been evaluated?
 - A. Every time she came, she was in the room.
- Q. And did you ever hear her testify that she's been with you to every appointment you have ever had with Dr. Wiencek.
- That she's been in the room every single time, and that every single time Dr. Wiencek was the one who identified the presence of pulses?
 - A. Do you want to repeat that?
- 16 | Q. Sure.

- Your wife testified that she's been with you to every appointment with Dr. Wiencek that you have ever had.
- That she has been in the room every single time, and that every single time, Dr. Wiencek personally was the only one who ever attempted to identify pulses.
- 24 Do you recall her testimony on that point?
 - A. Her testimony was that. I also said earlier

1 on she did miss a couple.

2

3

4

5

6

7

8

9

15

- Q. Was it just coincidental that any she missed were instances when somebody besides Dr. Wiencek attempted to get pulses?
- A. That I don't remember. Like I said, he always used a Doppler when I went in there.
- Q. If Dr. Wiencek's records identify that others besides him got pulses, what would be your explanation for that?
- 10 A. I have been in there when he had a couple of 11 ladies there that tried to get pulses.
- Some of them at one time might, and have some of them maybe not. But they are using a Doppler.
 - Q. The testimony of your wife was that it was only ever done by Dr. Wiencek.
- 17 Do you disagree with her on that point?
- 18 A. In the cases that she went to, it is
 19 probably true.
- Q. Mr. Moore, in response to one of your
 lawyer's questions, you said that after the
 ultrasound, the nurse practitioner never used the
 word occlusion.
- 24 Is that correct?
- 25 A. That's correct.

1 Did Nurse Practitioner Bartmus ever say Ο. 2 anything to you on December 25, 2016 about the graft at all? 3 4 Α. No. Not a word? 5 0. Α. The 25? 6 7 Yes, sir. Ο. No, she spoke of muscular stress, and that 8 9 they did not find anything to give us a reason why I 10 had pain in the calf. 11 What did she say about the ultrasound 12 specifically? 13 That they found nothing. So your recollection is Nurse Practitioner 14 15 Bartmus told you with regard to the ultrasound that 16 it showed nothing? 17 She said we didn't find anything to show. 18 Ο. I just --19 I am saying it also. 20 I just want to focus just for a moment on Ο. 2.1 the ultrasound itself. 22 Did Nurse Practitioner Bartmus tell you that 23 the ultrasound found nothing?

Nurse Practitioner Bartmus said in the

tests we have taken, we have found no reason for the

24

pain you are having in your calf.
So I can assume they foun

So I can assume they found nothing, but that's an assumption.

Q. Okay.

3

4

5

6

7

8

9

23

So she didn't tell you anything specifically about what the ultrasound found, but your assumption was that it found nothing.

Is that right?

- A. You can put it that way.
- 10 Q. And what did you tell your wife when you got 11 home that the ultrasound said?
- 12 You heard her testify to what her answer was 13 yesterday.

14 Right?

- A. I told my wife that they found nothing in the tests that they gave me, or any reason to say they were going to let me go.
- Q. Specifically, sir, what did you tell your wife with regard to what you were told about the ultrasound?
- 21 A. When I first walked in, I believe my wife 22 just grabbed the release papers.
 - Q. Let me back up a moment.

What did your wife testify to yesterday that 25 you told her about the ultrasound results?

I don't remember. 1 Α.

2

3

4

5

6

7

8

9

10

11

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14

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19

20

25

Well, if you don't remember what she testified to yesterday, let's cut to the chase.

What did you tell her if anything you were told by Nurse Practitioner Bartmus about the ultrasound results?

- The same thing I told you.
 - Say it again. Q.
- She said we have not found anything to give us reason for why you have pain in the calf.

I may have worded it a couple of words one 12 way or another, but that is what I remember.

Thank you. Ο.

Were you here during Dr. Wilson's testimony, when we went through 10 instances that we put up on the screen whereby 5 or 6 different health care providers between November 8, 2012, when you had your fem pop graft procedure, and December 25, 2016 pulses were identified in your foot.

Were your here for that testimony?

- I don't believe I was here for all of his 21 Α. 22 testimony.
- 23 I do believe that you put that up on the 24 board when I was here.
 - Q. So is it your testimony that ever provider

who identified that you had pulses in your foot 1 2 could only have identified those by Doppler? What I remember is that some of those that 3 you said they found a pulse don't even do that type 4 5 or work, like the pain center. I am not asking you about the pain center, 6 7 sir. I am asking you of the 5 or 6 health care 8 providers who documented that you had pulses 9 10 in your foot between 2012 and 2016, that we put up on the screen that Dr. Wilson testified to, are you 11 saying that not one of those people actually -- sir, 12 let me finish. 13 14 Are you saying that not one of those people 15 palpated a pulse? 16 MR. ARNTZ: Your Honor, objection. 17 I think that misstates the testimony and the evidence. 18 19 My recollection is that he had 2 other places besides Dr. Wiencek. 20 THE COURT: The Court cannot independently 21 22 recall at this time unfortunately with the 23 interruption in the question. It almost somewhat 24 was compound.

Mr. Weaver, can you re-ask the question?

```
MR. WEAVER:
1
                         Sure.
2
           I will ask it as a hypothetical.
           If what was put up on the screen for
3
4
   Dr. Wilson is between Dr. Wiencek's office Nevada
   Comprehensive Pain Center and Dr. Tran, 5 or 6
5
   different providers within those 3 clinics
6
   identified pulses in your left leg of the 10
7
   examples we used, is it your view that all of those
8
9
   were done by Doppler?
10
           MR. ARNTZ: I object. It assumes facts not
   in evidence.
11
12
           THE COURT: The form of the question is
13
   fine.
           Overruled.
14
15
           You may answer.
           I don't remember --
16
       Α.
17
       Ο.
           Is that your answer?
18
           -- my pulses in my feet being checked by
19
   everybody.
20
           So you are not saying it didn't happen, you
   are just saying you don't remember.
21
22
           Is that fair?
23
           I better stay with that, I don't remember.
       Α.
24
           How good is your memory of December 25, 2016
25
   in the emergency department?
```

1 A. I think it is pretty good.

2

3

4

18

2.1

22

25

- Q. Do you think it is better today of what happened in the emergency department that day than when your deposition was taken in October of 2018?
- A. What I said today I believe to be the truth.
 I also, when I did the deposition, there were a
 couple of questions that were -- I remember one date
 being wrong.

I remember Lin who took the deposition

making a statement on his own that I agreed to after

being asked the same question 3 or 4 times that I

caught after I reread it.

So I know that's a correction.

So, yes, there is a few mistakes in my deposition.

- 16 Q. But you never corrected any of those 17 statements did you, sir?
 - A. No, and I didn't read it until recently.
- Q. You had the opportunity to make any corrections and you didn't.

Correct?

- A. I figure we are going to follow it up.
- Q. Sir, you signed your deposition attesting to the fact that you had no changes.

Correct?

- I signed that we took the deposition, yes. 1 Α.
 - Well, did you follow the instructions and review it to make sure it was accurate before you signed it?
 - I glanced over it.
 - You didn't see any changes that needed to be 0. made before you had sworn under penalty of perjury that it was accurate.

Right?

- Obviously I didn't. Α.
- You remember the admonitions that if you 11 12 made changes, even if you made changes, those may 13 get commented on at trial.

Correct?

2

3

4

5

6

7

8

9

10

14

15

16

2.1

- Correct. Α.
 - And you didn't make any changes. 0.

17 correct.

- 18 I didn't make any changes.
- 19 Q. So what is the statement that you recall that was inaccurate that you made? 20
- It is not that I made it. After being asked the same question 3 times in different ways, Mr. Lin 22 23 said, like I have heard you say in here, I believe you to have said and he slipped in vascular surgeon 24 and doctor, not Ranathan and doctor, the muscular. 25

34

```
1
           Sir, are you talking about the place in your
       0.
2
   deposition where Mr. Lin asked you whether or not
   you were told to call your vascular surgeon and
3
4
   another physician, and you said correct?
           On page 37, yes.
5
       Α.
       Ο.
           Okay.
6
7
           And he said it.
       Α.
8
       Q.
           Yes.
9
           Top and bottom of those I repeated what I
10
   thought about it, and it didn't bring up a vascular
11
   surgeon.
12
           Sir, you are talking about --
       Q.
           I am talking about missing him say that when
13
14
   he repeated what I said.
15
           But you said he asked it to you 3 times, so
       0.
16
   did you not hear it all 3 times?
           He didn't ask it all 3 times.
17
       Α.
18
           That is what you said.
       Ο.
19
       Α.
           It asked it 3 times in different ways.
20
           I will read the question and answer.
       Q.
21
           This page --
22
           MR. WEAVER: Your Honor, may we publish
23
   Mr. Moore's deposition?
24
           THE COURT: Again, I will just remind the
```

jurors that publishing is formality of unsealing the

```
original from the envelope.
1
2
           MR. WEAVER: May I approach?
           THE COURT: You may.
3
       Q. Mr. Moore, I will read into the record page
4
   36.
5
           MR. ARNTZ: Your Honor, if we can follow the
6
7
   proper deposition procedures.
           THE COURT: I think the foundation has been
8
   laid for this.
9
10
           Mr. Weaver, proceed.
           I just want to make sure Mr. Moore is on the
11
12
   right page.
       Q. Page 36, line 25 through line 5. I will
13
   read it.
14
           THE COURT: Just let him read it first to
15
16
   himself.
17
           MR. WEAVER: Sure.
          Which one?
18
       Α.
19
       Q. Page 36, line 25, through page 37, line 5.
20
           Would you read that to yourself, please?
           THE COURT: Let us know when you are
21
   finished.
22
23
       A. Okay.
       Q. Would you read that into the record, sir?
24
25
           I just want to clarify --
```

```
1
           MR. ARNTZ: Objection.
2
           MR. WEAVER: I am happy to read it.
           THE COURT: What is the objection,
3
4
   Mr. Arntz?
5
           MR. ARNTZ: That he is not following the
   procedure.
6
7
           THE COURT: I just indicated that I thought
8
   foundation had been laid.
9
           Can we just clear this up.
10
           There is confusion between what was said 3
   times or wasn't.
11
12
           I will go ahead and ask Mr. Weaver, please
   read it, and then we can follow-up and see if that
13
   refreshes the recollection.
14
15
           He has read it to himself. Mr. Weaver, ask
16
   the question, and we will see what Mr. Moore has to
17
   say.
           MR. WEAVER:
                         Thank you, Your Honor.
18
19
       Q.
           Page 36, line 25, question:
           I just want to clarify 2 points you just
20
   made.
21
           So there were 2 statements I think in what
22
23
   you just related to me, one, that you should follow-
24
   up with the either your vascular surgeon or your
   doctor.
25
```

1 Is that correct? 2 Answer: Correct. Mr. Moore are there any other parts of the 3 4 deposition that you now here in trial think are not truthful? 5 I think what you just read, if you will look 6 Α. 7 up just before it on line 21, that I said doctor or emergency room. 8 9 Mr. Moore, that part in your deposition, we Ο. 10 are not going to go through that with you right now. Your lawyer can follow-up with you on that. 11 12 That had to do whether you returned to the 13 emergency room department. 14 The answer that you just read into the 15 record had to do with the additional instruction, 16 which was to follow-up with your vascular surgeon 17 and/or primary care physician. 18 So the question I am asking you right now, are there any other parts of your deposition as you 19 sit here today that you think aren't truthful? 20 21 There's one. I believe I said 2014. Α. 22 might have been 2012. 23 Q. Fair enough. 24 Anything else, sir? 25 Α. Other than these can get very confusing, no.

1 And obviously you were ready for that Ο. 2 question that I asked. You even knew the page number, so you reviewed it in preparation for your 3 4 trial testimony today. 5 Correct? I felt it was wrong. 6 Α. 7 The question is, your reviewed your deposition for you trial testimony today. 8 9 Correct? 10 The question is, you reviewed your 11 deposition in preparation for your trial testimony 12 today. 13 Correct, Mr. Moore? 14 Yes. Α. 15 Are you as convinced today as you were in Ο. 16 your deposition that the triage nurse never touched 17 your leg on December 25, 2016? 18 I don't know the triage nurse had my sock 19 and shoe off, no. 20 Q. So you are as convinced today as you were in your deposition that the triage nurse did not touch 21 22 your leg. 23 Correct? 24 Correct. Α.

By the way, did you happen to recognize that

25

Q.

1 triage nurse, Amee Kuchinsky, on December 25, 2016
2 as being the triage nurse back in June of 2015?

- A. No, I did not.
- Q. Do you believe that the triage nurse in June of 2015 took off your sock and shoe, or that you took it off, and that triage nurse examined your leg?
- 8 A. I do not remember.
- 9 Q. Are you as convinced today as you were in 10 your deposition that Nurse Practitioner Bartmus 11 never touched your leg?
- 12 A. No.

3

19

20

- 13 | Q. Can you answer that yes or no?
- 14 A. Just yes or no, no, she did not touch my 15 leg.
- Q. And are you as convinced today as you were in your deposition that discharge nurse Jeffrey

 Germain didn't touch you before you were discharged?
 - A. He did not touch me.
 - Q. Okay. Thank Mr. Moore.
- By the way, when it comes to Nurse

 Practitioner Bartmus, did you tell your lawyer here

 today that not only didn't she touch your leg, but

 that she didn't examining you anywhere on your body?
 - A. No.

```
1
           Let's start with, is that your testimony
       O.
2
   that you gave to your lawyer?
           That I gave my lawyer?
3
4
           Did you testify to Mr. Arntz that Nurse
   Practitioner Bartmus did not examine any part of
5
   your body on December 25, 2016 in addition to not
6
   touching your leg?
7
           I don't remember her examining me.
8
9
           Well, did she look in your nose or your
       0.
10
   mouth?
            Standing there looking at me, I don't
11
       Α.
12
   believe I opened my mouth or raised my nose up.
           Did she feel your neck?
13
       0.
           I don't believe Nurse Bartmus did.
14
       Α.
15
           Did she feel your stomach?
       Ο.
16
       Α.
           No.
17
       0.
           Did she feel your back?
18
       Α.
           No.
           We will switch gears and we come back to
19
       Q.
   that emergency department in a few minutes.
20
2.1
           You have been smoking 50 years.
           Correct?
22
23
       Α.
           49.
24
           Fair enough.
       Q.
25
            You are turning 70 this year.
```

```
Right?
 1
            Yes.
 2
       Α.
            And you have been smoking sense you were 20?
 3
       Q.
 4
       Α.
            Yes.
            One to 2 packs a day?
 5
       0.
            Probably more, one pack a day than 2.
 6
       Α.
 7
            And you are still smoking.
       Q.
            Correct?
 8
9
            Yes.
       Α.
10
            And testified in your deposition that you
   have been advised by many people over many years to
11
12
   stop smoking.
13
            Correct?
14
       Α.
            Yes.
15
            Is it fair to say it just too hard a habit
       Ο.
   to stop?
16
17
       Α.
            It is a tough habit to stop.
18
            Fair enough.
       Ο.
19
            And you have been on Social Security
20
   disability since 2006.
2.1
            Correct?
22
       Α.
            Yes.
            So, even before this incident on December
23
       Q.
24
   25, 2016, you had been totally disability from
25
   working for 10 years.
```

Correct? 1 2 Since you were 58? Yes. 3 Α. 4 And in order for you to have been on the Q. Social Security disability you had to attest under 5 oath that you were totally unable to work because 6 you were totally disabled from working. 7 Correct? 8 9 I don't know that they don't allow you to 10 work a little. 11 You had to attest that you were totally 12 unable to work because you were totally disabled, 13 true? I don't remember that. 14 15 The reason when you were 58, 10 years before Ο. 16 this incident, that you went out on Social Security 17 disability is because of the vascular issues in your 18 legs. 19 Correct? Correct. 20 Α. 21 And for about 15 years now, you have had chronic back pain and pain in both of your legs 22 23 prior to December 25, 2016. 24 Fair? 25 Α. Yes.

1 You even had that before you went out on Ο. 2 disability. Correct? 3 4 Yes. Α. And prior to December 25, 2016, was the 5 reason that you were seeing a pain management 6 physician because of your chronic leg and the back 7 8 pain issues? 9 Α. Yes. 10 Ο. And even before December 25, 2016, you were 11 taking Oxycodone 3 to 4 times a day due to your 12 chronic pain. 13 Is that fair? 14 Α. Yes. 15 And for years, and we saw it up on the 0. screen as of 2012, you were seeing your primary care 16 17 physician, Dr. Tran, and then a few years before 18 2016, you switched over to specifically to a pain 19 management specialist to manage your chronic pain, 20 correct? Rephrase that. 21 22 Ο. Sure. 23 You have been going to Dr. Tran for years, 24 correct, at least as of 2012. 25 True?

```
1
       Α.
           Yes.
2
           And then a few years before December 25,
   2016, you switched over from Dr. Tran to Nevada
3
4
   Comprehensive Pain Center to manage your chronic
5
   pain.
           Correct?
6
7
       Α.
           Correct.
           And even up until today Nevada Comprehensive
8
9
   Pain Center is managing your chronic pain, is that
10
   fair?
           That's correct.
11
       Α.
12
           And before December 25, 2016, you had a
       Q.
   disability plate on the your car.
13
           Correct?
14
15
       Α.
           Yes.
16
           Before you heard Dr. Fish say it is
   insulting and lacks insight to use the term stump
17
   that instead residual limb should be used, you used
18
19
   the term stump.
20
           Correct?
           In my deposition I believe I said it once.
21
22
           Well, and that's what you were referring to,
23
   correct?
24
           My limb, yes.
       Α.
```

Until you heard from Dr. Fish that it is an

25

Q.

```
offensive term to use, you didn't consider it an
1
2
   offensive term, or you wouldn't have used it.
           Right?
3
4
           Yes.
       Α.
           Prior to December 25, 2016, on at least one
5
   occasion you had difficulty getting your Xarelto
6
7
   filled through Dr. Wiencek's office.
           Correct?
8
           Prior to when?
9
       Α.
10
       Q.
          Prior to December 26, 2015?
11
       Α.
          {\tt No.}
12
           MR. WEAVER:
                         If we can bring up Exhibit 100,
13
   it has been admitted into evidence, page 1462,
14
   please.
15
           Exhibit 100, which has been admitted into
16
   evidence, Bates 1462.
17
       Q. Mr. Moore, it will get highlighted here, but
   do you see where it says, patient called this
18
19
   morning and said this was his third call for a
   refill of Xarelto.
20
           Do you see that?
21
22
       Α.
           Yes.
23
           And do you see the date is October 30, 2015?
       Q.
24
           Yes.
       Α.
25
           Do you dispute that on October 30, 2015 you
       Q.
```

```
called Dr. Wiencek's office and said it was the
1
2
   third time you called for a refill of the Xarelto?
             I don't recall if it was the third call.
3
4
           He was ordering my Xarelto for me.
           If it says it was your third call, do you
5
       0.
   have basis to dispute the accuracy of that --
6
           No.
7
       Α.
           Please let me finish, please.
8
       Q.
9
           If it says it was your third call, do you
10
   have a basis to dispute the accuracy of it?
           No.
       Α.
11
12
           Do you think you have a basis to dispute the
       Q.
13
   accuracy of anything in Dr. Wiencek's records?
14
       Α.
           No.
15
           Did you call Dr. Wiencek's office on
       0.
   December 27, 2016?
16
17
       Α.
           I believe Walgreen's was trying to get a
   refill from him.
18
19
       Q.
           My question is --
20
           I did not personally call.
       Α.
2.1
           Did your wife?
       Ο.
           I don't believe she did.
22
       Α.
23
           How would Walgreen's know to call?
       Q.
24
           They track your medicine.
       Α.
25
           Who does?
       Q.
```

```
1
           Walgreen's. They call me when it is time to
       Α.
2
   either refill, or that my refill is ready.
           So are you saying that on December 27,
3
4
   Walgreen's was the one independently with no
   prompting from you or your wife, called
   Dr. Wiencek's office and asked that a prescription
6
   be filled on your behalf, is that what you are
7
8
   telling us?
9
           MR. ARNTZ: Objection.
10
           Speculation.
           THE COURT: Overruled.
11
12
           Is that what you are telling us, sir?
       Q.
13
           I don't know whether my wife called
14
   Walgreen's to have them request a new prescription
15
   or whether Walgreen's called us saying that our
16
   prescription was running out and we need to get a
17
   new one.
           I didn't do it. My wife takes care of that
18
19
   stuff.
20
           When did your prescription for Xarelto
   before December 27, 2016 run out?
21
22
       Α.
           I am assuming by the end of the month.
```

By the end of what month?

The month you were describing.

23

24

25

Q.

Α.

Q.

December?

December? 1 I am assuming. I don't know. 2 But you told us that when your medication 3 runs out Walgreen's will call to get a refill, is 4 5 that what you told us? If we call to get a refill and I am out of 6 Α. 7 refills, they call the doctor for us to get a new refill. 8 9 So you don't call Dr. Wiencek like you did 10 in October of 2015, you called pharmacy and asked 11 them for the prescription, not Dr. Wiencek? 12 Α. Yes. That's one it can be done. 13 14 And that's the way you do it, sir? 0. 15 Α. Yes. 16 Q. All right. 17 Mr. Arntz represented to the jury in opening statement that Dr. Wiencek told you "call any time," 18 19 is that true? 20 Just answer that with a yes or no, if you would, please? 21 22 Α. Yes. 23 So given that you knew that you could call Q. Dr. Wiencek any time, because he told you to call 24 25 him any time, you wouldn't have had any concern

about calling him on December 25 or December 26 to 1 report that you been in the emergency department on 2 December 26. 3 Correct? 4 We could have called him. 5 You not only could have called him, but he 6 7 encouraged you to call any time, so you could have called on December 25. 8 Correct? 9 10 Α. I requested --11 Sir, just answer my question. 12 I am asking you specifically about 13 Dr. Wiencek telling you to call him any time, which 14 you have agreed with. 15 So you could have called him on December 25 16 if you wished.

17 | Correct?

18

- A. If I could have got ahold of him, yes.
- 19 Q. He told you to call him any time, so doesn't 20 that assume that you could have gotten ahold of him?
- A. I think we have all called doctors and have not been able to get ahold of them.
- Q. Have other doctors also told you to call them any time?
 - A. Years ago.

```
1
       O.
           Fair enough.
2
           Did you attempt to call Dr. Wiencek on the
   25?
3
4
           Personally, I did not.
           Did your wife; did anyone in your household
5
   on your behalf?
6
           On the 25, I don't believe she called
7
   either, because I said I would tell them at the
8
9
   hospital.
10
           What about on December 26, did you or anyone
   in your household attempt to call Dr. Wiencek,
11
12
   knowing that he told you to call any time?
13
       Α.
           No.
           What about on December 27?
14
       Ο.
15
           No.
       Α.
           What about on December 28?
16
       0.
           She called him. My wife called Dr. Wiencek
17
       Α.
   I believe on the 28.
18
19
           Then you went to the emergency department
   after that?
20
2.1
           Yes.
       Α.
           Mr. Moore, are you still maintaining that
22
23
   you never prior to December 25, 2016 had a DVT?
24
           Is that still your testimony?
```

I don't think I had before, you said

```
December 25, 2016?
1
2
       Ο.
           Yes.
           I didn't even know the full understanding of
3
       Α.
4
   a DVT.
           You never heard of that term before?
5
       0.
           I probably heard of it. I didn't have a
6
       Α.
7
   full understanding.
           You never used that term before December 25,
8
   2016?
9
10
       Α.
           I don't remember using it, no.
           When I talk about something like that, just
11
   clot.
12
           It wouldn't be a term that you would use,
13
14
   because you didn't even know what it meant.
15
           Right?
16
       Α.
           Right.
17
           You understand that your son testified that
18
   at St. Rose Hospital you gave a history of past
19
   DVTs, and you used that specific language?
           I don't know that he said that.
       Α.
20
           Well, the jury heard what he testified to.
21
       Q.
22
           If he said that you said you had a history
23
   of DVT, he wouldn't be telling the truth.
24
           Correct?
                       Would or would not?
25
           THE COURT:
```

1 MR. WEAVER: Would not.

- A. I thought he said he may have said DVT.
- Q. No, sir. He testified in his deposition, and we went over it here at trial.
 - A. I never read his deposition.
- Q. If he testified in his deposition that you said at St. Rose Hospital and used the term DVT, your position is his testimony would be inaccurate, true?
- 10 A. Correct.

2

5

16

- Q. You do know that that is what he testified to in his deposition, because you recall him telling the jury that after talking with you and Mrs. Moore and your lawyers, he was persuaded to say you didn't say that.
 - Do you recall him testifying to that here?
- 17 A. Chris?
- 18 | Q. Yes, sir.
- 19 | A. You lost me again.
- 20 | O. Sure.
- Do you recall your son testifying that he
 changed parts of his deposition testimony and
 testified differently here to this jury after
 consulting with you and Mrs. Moore and your lawyers.
 - Do you remember that as a starting point?

- A. I don't know if he consulted with us as much as he reread it, and just like I ran into with you.
 - Q. Do you recall his testimony where he testified here in front of this jury that after consulting with you and Mrs. Moore, and your lawyers, that he was persuaded to change his deposition testimony to be different in trial.

Do you recall him saying that?

- A. I don't remember.
- Q. Do you recall -- if you don't remember him saying that, you wouldn't recall any of the things that he said he testified differently to in trial from his deposition.

Is that fair?

- A. What was that again?
- Q. Sure.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

2.1

- Since you don't remember him testifying to
 that, is it fair to say you don't remember the
 things that he changed from his deposition to his
 trial testimony?
 - A. I don't know for sure.
- Q. Do you understand that he testified in his
 deposition that he reviewed your medical records and
 saw that on December 25, 2016 it identified past
 history of DVTs, do you understand that he testified

```
to that in his deposition?
1
2
           That he found a past history.
           Yes, that in his deposition he testified --
3
       0.
4
           He might have said that.
       Α.
           -- that he reviewed your medical records
5
       Ο.
   from December 25, 2016, and understood that you had
6
   a pass history of DVTs.
7
           He might have.
8
       Α.
9
           That wouldn't be accurate.
       Ο.
10
           Right?
           THE COURT: Would or would not?
11
12
           MR. WEAVER: Would not, sorry.
13
           That I had a history of DVT?
       Α.
           Yes, sir.
14
       O.
           I don't think it is accurate.
15
       Α.
           And you never would have told anybody that
16
       0.
   you had a history of DVTs, because as far as you
17
   were concerned, you didn't.
18
19
           Correct?
20
       Α.
           No.
21
           But you have seen documentation that showed
   you had a history of DVT prior to December 25, 2016,
22
23
   correct, or do we need to bring that up so you can
24
   see it?
25
           I think I have seen some of it.
```

- 1 But you dispute it, you think whoever Ο. 2 documented that got it wrong?
- My understanding was DVT is like vein blood 4 clots.
- Yes, sir. 5 0.

3

8

16

17

18

19

20

2.1

22

25

- I don't remember many people saying I 6 7 actually had them. I have been tested for it.
 - Sir, my question is different.

9 Is it your testimony, because this is a 10 really big issue that came up in the opening 11 statement.

12 It was really big issue that Nurse 13 Practitioner Bartmus got cross-examined on for at least 30 or 40 minutes about whether you had a 14 15 history DVT.

Is it your position that if prior to December 25, 2016 any health care provider identified that you had a DVT, that that health care provider got it wrong.

Yes or no?

- I don't know. Α.
- What do you mean you don't know.
- 23 You said that you never had a DVT before 24 December 25, 2016.
 - I have had blood clots to my popliteal

I don't know about DVTs. 1 graft. 2 Do you know that now you are saying you just don't know, as opposed to it didn't happen, is that 3 4 fair? I don't know. 5 Do you understand that your son testified in 6 7 his deposition that going to the emergency department on December 25, 2016 you told him that 8 9 what you felt in your calf was different than what 10 you felt ever before? I don't remember telling him that. 11 12 If that's what he testified to in his Ο. 13 deposition, is that your testimony here today his 14 testimony was wrong? 15 Α. No. 16 0. I wouldn't say his testimony was wrong. 17 just don't remember saying that to him. 18 Did you meet with Dr. Fish? Ο. 19 Α. Yes, I did. How long did you meet with Dr. Fish? 20 0. 21 An hour, 20 minutes, something like that. Α. little over an hour. 22 Did you meet with him at someone's office? 23 Q.

I went I thought to his office.

Here in Las Vegas?

24

25

Α.

Q.

1 A. Yes.

6

8

9

10

25

Q. And do you recall me asking Dr. Fish about his deposition testimony, where he said that Mrs. Moore wasn't present, and it wouldn't be his custom to have a familiar member present during am

7 Do you recall that?

interview of the patient.

- A. No, Mrs. Moore was present.
- Q. Do you recall me asking him questions where in his deposition he said she wasn't present?
- 11 A. I don't remember Dr. Fish saying that she 12 wasn't present, because I talked to her.
- Q. Did Dr. Fish tell you during that July 2019
 interview with you any medical care that he believed
 you needed?
- 16 A. I don't remember everything we discussed.
- He talked to me and had concerns, and we went over a labeled to me and had concerns, and we went over a labeled them.
- He was more or less analyzing, and figuring out, not me figuring him out.
- 21 | O. Sure.
- Did he tell you during that visit anything
 that he believed you needed in terms of medical
 care, medical equipment or anything else?
 - A. I remember him making the comment since I

was a general contractor what I thought the expenses 1 2 in total at my house would be. I can't recall him bringing up things to 3 4 tell me all of that I would possibly needed. Did you tell him anything that you thought 5 that you needed? 6 7 There's always several things a person 8 needs. 9 There is possibility that with my hip and 10 everything else that I have that I will need a van where I can roll up into the van. 11 12 Q. Anything else, sir? 13 Α. Possible electric wheelchairs. 14 0. Okay. I don't remember much more than that. 15 Α. 16 Ο. And as of that visit with Dr. Fish, you were being fitted for an electric wheelchair, is that 17 18 right? 19 Α. I had called and was talking about wanting to see one. 20 Well, he testified that as of July 2019 when 2.1 Ο. he met with you, you were being fitted for an 22 electric wheelchair? 23 24 I never got fitted. Α.

25

Q.

Why not?

- A. Because this court case was supposed to be done at the end of March, the first of April, and it got moved up 2 months.
- 4 Q. What does that have to do with anything?
- A. It has to do with my fitting time was going to be while we are in Court.
- Q. So in the 7 months since you met with Dr. Fish in July, have you been fitted for the electric wheelchair?
- 10 | A. Not yet.
- 11 Q. How about the prosthesis?
- 12 A. No. I haven't completed that?
- Q. Do you know that Dr. Fish represents himself
 as an expert in prosthesis and the fitting of
 prostheses?
- 16 Do you understand that?
- 17 A. No.
- Q. Did you have any discussion with Dr. Fish that because you were having difficulty getting a good fitting prosthesis could he help you?
- 21 A. I don't think we talked about that.
- 22 | O. He didn't offer that?
- 23 A. No.
- Q. Did he offer to write you a prescription or an order for any medical care, any medical

```
equipment, anything?
1
           Not at the time.
2
           Well, has he ever?
3
       Ο.
 4
          Not that I --
       Α.
5
          Has he ever called you since that initial
   meeting?
6
7
       Α.
           No.
           MR. ARNTZ: Your Honor, he keeps cutting him
8
9
   off, and he is trying to answer.
10
           THE COURT: He is probably trying to
   despite -- how much longer are you going to be,
11
   Mr. Weaver?
12
13
           MR. WEAVER: Probably 30 minutes.
14
           THE COURT: Counsel approach at your own
15
   risk.
           MR. WEAVER:
16
                         15.
17
            (A bench conference as had.)
18
19
20
           THE COURT: All right.
21
           Thank you for that brief scheduling bench
   conference.
22
23
           You may proceed.
24
       Q. Mr. Moore, I have 15 minutes. I will finish
25
   at a minute of 59.
```

Your lawyer was right, I stepped on your 1 2 lines and I apologize. Was your answer finished? 3 I believe it was. 4 Α. 5 Ο. Okay. 6 Mr. Moore, the times that you said that you 7 fell, one was when with you were getting gas, and one was when you were in the bathroom, and I missed 8 the third time. 9 10 Α. In my bedroom. In your bedroom. 11 Ο. 12 None of those 3 times did you have a 13 prosthesis on. Is that fair? 14 15 That is correct. Α. Did you have a discussion with Dr. Fish that 16 0. 17 if you got a good fitting prosthesis, he would 18 expect that you wouldn't have a safety risk of 19 falling? 20 A. I don't remember having a conversation with him on that. 21 Did Dr. Fish ever offer to talk to any of 22 23 your health care providers to help get you any of 24 the things that he says you need right here, right

25

now?

```
1
       Α.
           No.
2
       Ο.
           Okay.
3
           Have you talked to any of your health care
4
   providers about getting even one thing that Dr. Fish
   had on his life care plan?
5
       Α.
           No.
6
7
           Do you have any basis to believe that any of
       0.
   your multiple health care providers:
8
           Dr. Wiencek.
9
10
           Dr. Tran.
11
           Dr. Chang.
12
           Your general surgeon.
13
           Anyone of the physicians at Nevada Pain
14
   Center, is there any reason that you are aware of
15
   that any of them couldn't get you any of the medical
16
   equipment or any of the medical care and treatment
17
   that Dr. Fish says you have needed over the last 3
18
   years?
19
       Α.
             I don't know if they could have tried to
   get me the smaller things, the stuff that he is
20
   talking about, and the stuff that I need, some of
21
2.2
   that can't --
23
           Go ahead, sir.
       Q.
24
           -- cannot be gotten easy.
       Α.
```

What do you base that on?

25

Q.

- A. I base it on just like the vehicle we were talking about to get the wheelchair in and stuff.
- Q. What if any medical care or medical items, medical equipment do you think would be difficult to get if any of your multiple physicians ordered or prescribed one at any time in the last 3 years up to right now?
- A. I don't know.

1

2

3

4

5

6

7

8

17

18

19

20

21

- 9 Q. Have you had a discussion with any of your 10 health care providers about any medical treatment 11 you currently need, or any medical equipment that 12 you need?
- A. I don't believe that I have had a

 14 conversations with many of them about everything

 15 that I need.
- 16 Q. Not everything, sir, anything.
 - A. I can't think of a specific thing.
 - Q. Are you aware that there is not a single entry in the records from the Nevada Comprehensive Pain Center that says you have every once every brought up having phantom pain in your left leg?
- 22 A. In the Nevada Pain?
- 23 Q. Yes, sir.
- 24 A. You go there to get Oxycodone.
 - Q. The question is --

- 1 A. They never asked me.
 - Q. It is not whether they asked you.

Are you aware that think document that they do an examination of you, that they ask you how you are doing, and that they do in fact ask you questions about where you have pain, and what time, are you aware of that?

- A. They ask you how your pain feels right now.

 We have never discussed phantom pains in my

 leg.
- Q. You never once every, in the last 3 years, brought up to your pain physicians that you have phantom pain in your left leg.

14 True?

2

3

4

5

6

7

8

9

10

15

16

- A. No. I have mentioned that to some of the physicians that I have talked to.
- 17 | Q. At Nevada Pain Center?
- 18 A. No.
- Q. Why haven't you ever, even once in last 3
 years brought up to the people who are managing your
 pain that you have pain in your left leg?
- 22 A. The phantom pain?
- 23 Q. Yes.
- 24 A. How are they going to cure it?
 - Q. Sir, is that your explanation as to why you

- haven't brought it up even once is because you are 1 2 not sure how they are going to cure it, is that your explanation? 3
- A. Basically, I am saying, Nevada Pain Center 4 doesn't, as far as I knew, didn't deal in the phantom pains of your leg, they dealt with what 6 7 physically actually hurts you.
 - So is that your explanation how never once over the years you have never brought it up to them?
- 10 Α. Correct.

5

8

9

- So if your basis for never bringing it up is 11 12 because you are not sure how they are going to cure it, how do you think Dr. Fish is going to cure it? 13
- 14 Well, the Pain Center is not going to cure it, like I can see Dr. Fish says that I need some 15 16 help with.
- 17 What do you think understand that Dr. Fish said is going to cure your phantom pain that the 18 19 Nevada Pain Center couldn't help with?
- He basically says that I need to talk to 20 21 somebody.
- 22 0. I am sorry?
- 23 Α. That I need to talk to people and maybe see if that can't help. 24
 - Psychological help? Q.

1 A. Possibly.

2

3

4

5

18

19

Q. That's your understanding of what Dr. Fish had suggested for anything having to do with your phantom pain.

Correct?

- A. I am not sure everything that Dr. Fish plans for sure.
- Q. But Dr. Fish never suggested to you that you talk to the people who are managing your pain about your phantom pain, or anything having to do with your hips either.

12 Is that right?

- 13 A. No.
- Q. Because there is no documentation in the Nevada Pain Center that you ever brought up a problem with your hips either.

17 | True?

- A. No, I haven't to them about my hips --
 - Q. You haven't brought up --
- 20 A. -- pain that I do have that can be 21 controlled.
- Q. And you haven't brought up anything to your pain management physician about right knee pain either.

25 Correct?

- 1 A. Not as of net yet, no.
- Q. But you brought up to your Nevada Pain
 Center pain specialist that you have right ankle
 pain.

5 True?

- A. My Nevada Pain specialist that I have pain, yes, in my ankle area.
- Q. So you talked to them about pain in your ankle, but not pain in your right knee, not pain in your hips, and not phantom pain.

11 Right?

- 12 A. No.
- 13 Q. Am I wrong?
- 14 A. No, you are right.
- 15 Q. That was a bad question. It was a double 16 negative.
- 17 MR. WEAVER: Your Honor, I almost done.
- Q. Mr. Moore, can we rely on what you testified to in your deposition about how your leg was on the December 25, and how your leg was on December 26, and how your leg was on December 27, and how your
- 22 leg was on December 28.
- Is there any of that deposition testimony
 that you need to say wasn't truthful in your
- 25 | deposition?

- A. I think most everything I said in the deposition was true.

 Q. Well, is there anything that you said in your deposition, and how you described it, that
- 5 | isn't true?
- 6 A. No.
- Q. I am just trying to cut through the chase.

 If you say there was something that wasn't truthful, then we will go through it.
- 10 A. Most all of it was true.
- 11 Q. Is there anything, sir, that you believe 12 wasn't?
- I know you are saying most of it was. I am

 14 asking you specifically, is there anything you

 15 testified to --
- 16 A. I believe that in my testimony I said that 17 there was a cool foot.
- 18 It was numb. I think that's part of what I
 19 testified about that time.
- 20 Q. Let's start with the coolness.
- You testified in your deposition that your left foot was the same temperature as your right foot always.
- 24 Correct?
- 25 In fact, you testified that you double

checked it to make sure it was the same temperature 1 2 as right foot. Correct? 3 4 That was the morning at 4:00 o'clock, when I Α. said it was still the same as the other foot. 5 At 4:00 o'clock in the morning, you double 6 0. 7 checked and the temperature of the left foot was the same as right foot. 8 9 Right? 10 Close to it, yes. Α. And testified that with regard to the 11 12 numbness, you testified in your deposition that you 13 get numbness all time, and didn't think it was 14 anything unusual. 15 That's what you testified to. Correct? 16 17 Α. I have numbness. It comes and goes in my 18 legs. 19 But I also have the numbness that's created by this problem, too. 20 Q. Mr. Moore, do you agree or disagree that 21 22 what you testified to in your deposition was the numbness that you felt on December 25 is the 23

numbness you feel all the time, that's what you

24

25

testified to.

1 Correct?

2

3

5

7

10

15

16

17

2.1

- I believe they asked me how my leg felt, and I said cool and numb.
- 4 Mr. Moore, did you or did you not testify in your deposition that the numbness you believe you felt on December 25 is what you feel in your feet 6 all the time?
- Do you dispute that's what you testified to, 8 9 sir?
 - Yes, I agree with you.
- 11 Ο. Okay.
- 12 When you got to St. Rose Hospital, did you 13 tell anybody that you believed your left leg was 14 cool, but the same temperature as the other one.
 - No, I didn't say it was cool and the same temperature as the other one, because it was cooler than the other foot.
- By the time from 4:00 a.m., until the time 18 19 you got to St. Rose Hospital it became cooler on the left than the right. 20
 - Is that what you are telling us now?
- 22 Α. Yes, but I said that when I woke up I felt 23 it too, not just when I got to the hospital.
- 24 Q. You never said in your deposition, did you sir, that it every became cooler on the left than 25

```
1
   the right.
2
            True?
3
            I don't remember now.
4
       Q. Did you ever tell anybody at St. Rose
   Hospital on December 25, 2016 that your left foot
5
   was more numb than your right foot, you didn't, did
6
7
   you?
            I believe I said there was a numbness.
8
       Α.
9
            I never said it was number than right.
10
       Q. You walked into the hospital.
11
            Correct?
12
       Α.
           Yes.
13
           You walked out of the hospital.
       Ο.
            Correct?
14
15
           Yes.
       Α.
16
            MR. WEAVER: That's all the questions I
17
   have.
18
            Thank you, Mr. Moore.
19
            THE COURT:
                       Thank you, Mr. Weaver.
20
            MR. WEAVER: I yield the 4 minutes.
21
            THE COURT: Mr. McBride.
22
23
                         CROSS-EXAMINATION
24
25
       BY MR. McBRIDE:
```

```
1
       Ο.
           Good afternoon, Mr. Moore.
2
           Now we met before, right?
           Yes.
3
       Α.
           We met at your deposition back on October of
4
       Q.
   2018?
5
           Yes.
6
       Α.
7
           And I had an opportunity to ask you a bunch
   questions in addition to Mr. Weaver's associate,
8
   Mr. Lin.
9
10
           Right?
11
       Α.
           Yes.
12
           At that time, you would agree with me,
       Q.
13
   Mr. Moore, when you were asked about what happened
14
   and those conversations you had with went down to
15
   the ultrasound department -- before we get there,
16
   when you first met the person at the front desk, do
17
   you remember that, what you testified to in your
18
   deposition about any conversation you had with that
19
   person?
           That I checked and told them that
20
       Α.
   Dr. Wiencek wants me to call any time I come to the
21
22
   ED.
23
           But that's not what you testified to your
       Q.
24
   deposition.
```

25

True?

```
1
            I don't remember that.
       Α.
2
           Let me refer you to your deposition, if I
   could, and take a minute to look at it.
3
4
           It is at page 31, lines 21 through 24.
           Let me know when you are done reading that.
5
       Α.
           21 to where?
6
7
           21 to 24, page 31?
       0.
8
       Α.
           Okay.
9
           So the question was:
       Ο.
10
           And do you recall specifically what you told
   the front desk?
11
12
           Answer, I probably told them I was there to
13
   check out to see if I possibly had a clot in my left
   leg again.
14
15
           That's the extent of what you told us in
16
   your deposition.
           Right?
17
18
           Yes.
       Α.
19
           In fact you never once mentioned anything
20
   about advising the front desk that Dr. Wiencek
2.1
   wanted to be contacted.
22
           True?
23
           I may not have.
       Α.
24
           All right.
       Q.
25
           And, in fact, you testified in response to
```

```
1
   Mr. Weaver's questions that you knew, and
   Dr. Wiencek had told you before to call him if you
 2
 3
   had any problems.
 4
            Right?
            Yes.
 5
       Α.
       Q.
            And you knew to do that.
 6
 7
            Right?
            What's that?
 8
       Α.
9
            You knew to do that, correct?
       0.
10
       Α.
            I knew I could.
            Well, he told you to.
11
       Ο.
            Yes.
12
       Α.
13
       0.
            And you never did on December 25.
14
            Right?
15
       Α.
            No.
            And you never did on December 26.
16
       Q.
            Right?
17
18
       Α.
            No.
19
       Q.
            And you never did on the December 27.
            Right?
20
21
            No.
       Α.
22
            And your foot still remained cool and with
   some numbness from the 25 through the 27.
23
24
            Correct?
25
            Yes.
        Α.
```

```
1
           But you never called Dr. Wiencek at all to
       Ο.
2
   tell him that your leg still felt different.
           Right?
3
           Isn't that true?
4
5
       Α.
           Yes.
6
       Q.
           Okay.
7
           Now, you talked about, I think about the
   examination that Nurse Practitioner Bartmus did, and
8
9
   do you recall that at your deposition in fact you
10
   testified that you did not remember if Nurse
   Practitioner Bartmus examined you.
11
12
           Do you remember testifying to that?
13
           In some of the wording, I could have.
14
   do definitely know she did not.
15
           Let me refer you to page 33, lines 11
       O.
16
   through 16.
17
           Take a minute to read that to yourself.
           33?
18
       Α.
19
       Q.
           33, lines 11 through 16.
20
           THE COURT: Mr. McBride, in the interest of
   time, if it refreshes his recollection as to what he
21
   testified to, maybe you can ask him that question
22
23
   first before just reading it.
24
           MR. McBRIDE: Sure.
25
           Great.
```

```
1
           Page 33, lines 11 through 16, let me know
       0.
2
   when you are through reading that.
       Α.
           Okay.
3
4
           Does that refresh your recollection as to
       Ο.
   what you testified to at your deposition?
5
       Α.
           Yes.
6
7
           15 through 16.
       0.
           As far as an examination, I don't remember
8
9
   her doing anything.
10
           True?
           Is that what you testified to, sir?
11
12
       Α.
           On that line, yes.
13
           Now, Mr. Moore, what did Nurse Practitioner
   Bartmus' Scribe look like?
14
           I don't remember what her Scribe looked like
15
       Α.
   I don't even know if she was standing beside her.
16
           I know she can dictate to her.
17
           You in never mentioned the Scribe or anyone
18
19
   else in the room with Nurse Practitioner Bartmus.
20
           Correct?
21
           Other than the 2 at the computer, I don't
   believe I said that.
22
23
           Now, you already testified that Dr. Lasry
       0.
24
   also never examined you.
25
           Right?
```

```
1
       Α.
            Yes.
2
       Ο.
            Your certain of that.
3
            Right?
4
       Α.
            Yes.
            And you testified that your son, who works
5
       Ο.
   in a hospital, that he also did not see Dr. Lasry.
6
7
            Do you remember that?
           He said that.
8
       Α.
           Okay.
9
       0.
10
            At no time did you or your son ever ask to
   see a doctor, correct, on December 25?
11
            We did not.
12
       Α.
13
       0.
            Okay.
            And you had been to the emergency room on
14
15
   prior occasions for complaints, similar complaints
16
   to your leg that you were concerned about a clot.
            Right?
17
18
            Yes.
       Α.
19
            And on each of those occasions, a doctor or
20
   some other provider examined your leg on every
2.1
   occasion.
22
            Right?
23
       Α.
            Yes.
24
            So when you went there on the December 25,
25
   and no one took off your shoe no one took off your
```

```
sock, and no one examined your leg at any point in
1
   time, you demanded to see a doctor to examine your
2
   leg.
3
           Right?
4
           On the 25?
5
       Α.
       Ο.
           On the 25.
6
7
           I went in there and told them what I fell
   was happening.
8
9
           That wasn't my question.
       0.
10
           You demanded to see a doctor.
           Correct?
11
           When I went in?
12
       Α.
13
                 At the end of the session, when they
   had completed the ultrasound, at any point in time
14
15
   during that visit to the emergency department, you
   never --
16
           I did not demand to see a doctor.
17
           You did not demand to see a doctor?
18
       Ο.
19
       Α.
           I did not.
20
           Your son did not, right?
       Q.
2.1
           No.
       Α.
22
           In fact, your son who works in a hospital, I
23
   think the only thing that you said that he commented
24
   upon was the patch that was on back of the chair,
25
   and that that didn't appear right.
```

1 Correct?

2

7

8

9

10

11

22

- A. I said I talked about the patch.
- Q. And your son said that didn't look like right.

5 Correct?

- 6 A. Correct.
 - Q. And it didn't occur to either one of you that the fact that no nurse, no health care practitioner on December 25 bothered to even take off your sock or look at your leg, that didn't appear not right to you?
- A. What was right is the 2 times I went in before, they sent me to the ultrasound, which they found an occlusion and took care of it.

And I went in, and after talking Nurse

Practitioner Bartmus, she sent me to the ultrasound,

so I assumed that especially with me directing the

technician that we were going to get the test

results, good, bad or indifferent.

20 Unfortunately, I was never told of the 21 results.

- O. I understand.
- A. As far as worrying about whether they took
 my shoes and socks off, the reason why I know that
 they didn't is because after 30 some years of

```
wearing socks and putting bandages on them and
1
2
   everything else, they are black and blue, and they
   are terrible looking.
3
           If I don't have to take them off, I am happy
4
5
   not to, if they give me the test that I was going in
   for.
6
7
           Mr. Moore, are you through with your answer?
       0.
8
       Α.
           Yes.
9
           You described the appearance of your leg
       Ο.
10
   from the 25 through the 27 as appearing normal.
           There was no difference in coloration.
11
12
           No swelling.
13
           There was nothing that was unusual about the
14
   appearance of your feet from the 25 through the 28,
15
   until your foot became so severely painful.
16
           True?
17
       Α.
           Normal to me was what they look like right
18
   now.
19
       Q.
           That's not what you said, sir.
20
           You said they look normal.
           Correct?
2.1
22
       Α.
           No.
23
           In your deposition that's what you told me.
       Q.
24
           I might have said they looked normal.
       Α.
25
           And on those prior occasion in 2014 and
       Q.
```

```
1
   2015, when you went there, on both of those
2
   occasions you were not taking Xarelto or any other
   anticoagulant before that those visits.
3
4
           Correct?
5
       Α.
          Correct.
6
       Q. You were on Xarelto, and by your own
7
   testimony, you took that faithfully every day,
   correct, from 2015 to 2016.
8
9
           Right?
10
       A. Yes.
11
           MR. McBRIDE: Court's indulgence.
           I think I am done.
12
13
           THE COURT: Mr. Arntz, any redirect for
   Mr. Moore?
14
15
           MR. ARNTZ: Yes.
16
17
                   REDIRECT EXAMINATION
18
19
       BY MR. ARNTZ:
20
       Q. Darell, what's normal to you for the
   appearance of your legs?
21
22
           Normal to me is always slight swelling in my
   left foot.
23
24
           Discoloration of the skin clear up to the
25
   thigh part of the calf.
```

1 That is normal to me.

- Q. And why do your legs look that way?
- A. From wrapping them for over 30 years, and going to work as a carpenter, a house builder, and just wearing boots and working hard.
- Q. When you left the hospital on the 25, did you feel relieved?
- A. I felt relieved because I was told that
 there was absolutely nothing found in the tests that
 was taken to show us why there is was pain in my
 calf.
- 12 Q. Did you feel you needed to call Dr. Wiencek
 13 at that time?
- 14 A. No, I did not.
- Q. I want you to turn to your deposition transcript, page 36.
- Tell us when you are there, please.
- 18 | A. Okay.

2

3

4

- Q. Could you read the response to the question that starts at line 21 and ends at line 24; read that to yourself and tell me if that refreshes your memory as to what you said in your deposition.
- 23 A. Yes.
- Q. And is that the question you thought you were answering on page 37, when you said correct?

```
1
       Α.
           Yes.
2
           And what was that that you believed you were
3
   saying?
4
           I believed that I was saying -- you want me
       Α.
5
   read the whole thing.
       Ο.
           Sure.
6
7
           Read your response starting at --
8
           THE COURT: Actually, Mr. Arntz, can you
9
   assist, because it is more proper to say question,
10
   read the question and the answer.
11
           Mr. Moore may not be well versed.
12
           MR. McBRIDE: What page?
13
           MR. ARNTZ: Page 36.
           You would like me to read the question?
14
15
           THE COURT:
                       Either ask a question or orient
16
   us to what you are talking about, or if it needs to
17
   be read, I would like you to read it along with that
18
   it is a question or an answer.
19
           So at line 18, the question was:
20
           Did anybody every tell you to come back to
   the ED, emergency department, if your symptoms
21
22
   worsen.
23
           And your responsible was:
24
           They said I should, I believe, either see my
25
   doctor, or if gets worse, or something is happening
```

```
1
   to come back to the emergency room. I believe they
2
   said that.
           Is that what you understood happened at the
3
4
   emergency room?
5
       Α.
           That is correct.
       Q. And the last thing.
6
7
           Did anyone at Dr. Tran's office or at the
   pain management clinic you went to, did they every
8
9
   take your shoes and socks off to check your pulses?
10
       Α.
           Never at the Pain Center.
           One time I had my sock and shoe off at
11
12
   Tran's office because I thought I might have an
13
   infection.
           This is before 2012.
14
15
       Q. Okay.
16
           Mr. Moore --
17
           MR. HENRY HYMANSON: Exhibit 100, 1333.
18
           -- were you aware on the 25 of December when
19
   you went to the hospital that they -- do you know
20
   what a differential diagnosis is?
2.1
          Differential no.
       Α.
22
           Do you see there where it says differential
23
   diagnosis?
24
       A. Deep vein thrombosis.
25
                        Mr. Moore, again, if you are
           THE COURT:
```

```
speaking out loud, it has to be loud enough for my
1
2
   reporter and for everyone else in Court to hear you.
           You can read it yourself, if that would be
3
4
   helpful.
5
           Mr. Arntz is standing right so that he can
   read the board, but that doesn't change anything.
6
           You have to project your answers.
7
           Let me do it this way.
8
9
           I will represent to you that it has been
10
   testified to by various people at this trial that a
   differential diagnosis is a list of things that
11
12
   might be a problem.
13
           And you see that things that Nurse
   Practitioner Bartmus listed were:
14
15
           Deep vein thrombosis.
           Arthritis.
16
           Sprain and strain.
17
18
           Were you ever told, or did you every learn
19
   while you were at the hospital that those are the
20
   things that they are ruling out?
2.1
           MR. WEAVER: Lacks foundation.
22
       0.
           I am asking if you ever learned that.
23
           THE COURT: Asked him what he learned at the
24
   hospital about those things.
25
           MR. ARNTZ:
                        I can't ask him if he ever
```

```
1
   learned that at the hospital?
2
           THE COURT:
                        The objection was that it was an
   improper question.
3
4
           MR. ARNTZ: I thought he said it was
5
   compound.
           MR. WEAVER: I said it lacks foundation.
6
7
           Did you know that those were the things that
   Nurse Practitioner Bartmus was ruling out?
8
9
           I did not know that she was ruling that out.
10
       O.
           Did you know that she wasn't looking to see
   if you had an arterial occlusion?
11
12
           THE COURT: Was or was not?
13
           That she was not looking to see if you had
   an arterial occlusion.
14
15
           MR. WEAVER: Misstates the evidence.
16
           THE COURT: It states one version of the
   evidence.
17
18
           I am going to ask you rephrase, Mr. Arntz,
19
   because we have had testimony to the contrary as
   well.
20
2.1
           MR. ARNTZ: Nerve mind.
           I am done.
22
23
           THE COURT:
                        Mr. Weaver.
24
           MR. WEAVER: Thank you, Your Honor.
25
           Just very briefly.
```

1 2 RECROSS-EXAMINATION 3 4 BY MR. WEAVER: 5 Mr. Moore, do you recall your deposition testimony where you said there was no change in the 6 color of your leg from December 25 until the 28, 7 when it became black and blue? 8 9 I probably said that. 10 And do you recall that not only was there no change between the 25 and the 28, when it suddenly 11 12 became black and blue, but on the 25 it wasn't 13 discolored --14 THE COURT: Was or was not? 15 MR. WEAVER: Was not. 16 Please, the contractions are 17 making me insane. 18 It is not a good record. 19 My legs are always discolored. Then why did you testify in your deposition 20 Ο. that on December 25 your leg was not discolored? 21 22 From what I am normal to, when you ask me a 23 question, I have to answer from what I am normally 24 used to. 25 If you say does your leg look like mine, I

1 | would say no.

2

3

4

7

8

9

10

Q. From December 24 and the 23, there was no difference as to how it looked on December 25 than how it always looked.

5 Correct?

- 6 A. To the foot, no.
 - Q. Between December 25, when it did not look any different than it always looked, and until December 28, it continued to look the same as it always did.
- 11 A. The 26 and 27, it did.
- 12 Q. So let's just go back to clear up this thing
 13 about the vascular surgeon.
- Did I just hear you tell Mr. Arntz that you thought the question that you were answering was whether or not you should return to the emergency room?
- 18 A. No.
- 19 Q. Is that --
- A. I said I understood that I was supposed to return to the either the emergency room or my general practitioner.
- Q. But when you testified in your deposition
 that you agreed you were told you should follow-up
 with your vascular surgeon, and you said correct, is

what you are telling Mr. Arntz that you thought you 1 2 were being told to follow-up in the emergency department if you had any further complaints? 3 Yes, the question before that. 4 So let's go to that, if we might please. 5 Ο. Page 36, Mr. Moore, of your deposition, at 6 7 line 21 through line 10 now on page 37, would you please read that to yourself to see if it refreshes 8 9 your recollection? 10 Α. 36 --Line 21, to page 37, line 10. 11 12 Would you please read that to yourself to 13 see if it refreshes your recollection as to what you testified to in your deposition? 14 15 Α. Okay. 16 Would you please read into the record line 0. 6? 17 THE COURT: 18 Mr. Weaver, I already asked 19 counsel multiple time to do the reading, because I 20 don't believe that the witness is very well versed 2.1 at it. MR. ARNTZ: Your Honor, this testimony was 22 23 acquired through Mr. Moore the first time he asked

MR. WEAVER: No, it wasn't. I am clarifying

24

25

it.

```
what Mr. Arntz said the correct answer was.
1
2
           THE COURT: We are looking at a slightly
   different section, but we are covering ground that
3
4
   we have covered.
5
           Mr. Weaver, please wrap it up.
           MR. WEAVER: Right, but it is an important
6
7
   difference, Your Honor.
           THE COURT: Go ahead and read.
8
9
           I overruled.
10
       Q. Do you agree that what you answered in your
   deposition with regard to line 6 through 10 --
11
12
           THE COURT: On page?
13
           MR. WEAVER: 37.
14
           -- had to do with the second statement,
15
   which was to return to the emergency department.
16
           So you answered in part one that you recall
17
   your vascular surgeon.
18
           And then pages 6 to 10, you answered the
19
   second part, which was to return to the emergency
   department.
20
2.1
           Correct?
22
           They told me to see my --
       Α.
23
           Mr. Moore, I am just cutting through the
       Q.
24
   chase.
25
           THE COURT:
                        Let him answer.
```

```
Answer if you understand the question.
1
           If you don't, Mr. Weaver can re-ask it.
2
           Line 6?
3
       Α.
          Yes, sir.
4
       Q.
5
           Let me rephrase the question or re-ask it.
           You were asked in your deposition 2 things,
6
7
   and you responded that you were told one thing,
   which was to call your vascular surgeon.
8
           And on line 6 to 10, you testified that the
9
10
   other thing you were told was to return to the
11
   emergency department if you had changes.
           Correct?
12
13
           Correct.
       Α.
14
           MR. WEAVER:
                         Thank you.
15
           No further questions.
16
           Thank you, Your Honor.
           THE COURT: Mr. Arntz?
17
18
           MR. ARNTZ: No, thank you.
19
           THE COURT:
                        Let me see by a show of hands if
   any jurors have questions for this witness.
20
2.1
           I am anticipating some questions.
22
           Take your time rake and I will go over them
23
   with counsel as soon as they are ready.
24
           Counsel.
25
```

```
(A bench conference was had.)
1
2
3
                         EXAMINATION
4
5
       BY THE COURT:
6
           Mr. Moore, you are reminded that I am going
7
   to read the question exactly as written.
           I am not at liberty to enhance the questions
8
9
   in anyway.
10
           Answer to the best of your ability, please,
   to the jurors, and then counsel will an have
11
12
   opportunity to follow-up.
13
           Okay?
14
       Α.
           Yes.
15
           The first question.
       Q.
16
           What were the date of your 3 falls?
17
       Α.
           I couldn't actually tell you the exact
18
   dates.
19
           My first fall probably came a month, maybe 5
   weeks after the amputation, and the 3 that I have
20
   described came probably 2 to 3 weeks a part after
21
22
   that.
23
           So we are talking about maybe a 3 month
24
   period that I had those 3 falls.
25
       Q.
           Okay.
```

Mr. Moore, how long does it typically take 1 2 to remove a comprehension stocking? Again, I can't embellish the question. 3 Answer to the best of your ability? 4 5 Well, in my mind there's several different compression stockings, the one that is put over your 6 7 leg after the amputation to protect any blood clots or anything, that's one. 8 9 Just answer to the best of your ability, Ο. 10 please. 11 If there are others, you are willing to 12 share those as well. I don't know if they are talking about the 13 14 compression stocking that you pull up on your leg to 15 help the swelling and stuff on your leg, that can 16 take 30, 40 minutes, if you are going over bandages. 17 Just to remind you of the question, how long does it typically take to remove the comprehension 18 19 stocking? Most of the time just a couple of minutes. 20 Α. Okay. 21 Q. 22 Mr. Moore, aside from during the ultrasound

on December 25, 2016, did anyone touch your foot or

leg even over your closing while at the hospital?

23

24

25

Α.

No.

```
1
       O.
           Okay.
2
           The last question.
           Mr. Moore, if you were to go back to the
3
4
   days leading up to December 25, 2016, would you have
   done anything differently; why or why not?
5
           Well, looking back at it now -- what was the
6
       Α.
7
   date, please?
       Q. Mr. Moore, if you were to go back to the
8
9
   days leading up to December 25, 2016, would you have
10
   done anything differently; why or why not?
       A. Okay.
11
           I wanted to be clear on the date.
12
13
   Everything happened approximately 1:00 o'clock a.m.
   On the 25.
14
15
           So I monitored it until, let's say, 8:00 or
16
   9:00 o'clock in the morning, and decided to go to
17
   the hospital.
18
           When I got to the hospital, I had the
19
   triage.
           MR. McBRIDE: Objection, Your Honor.
20
           It is nonresponsive to the question.
21
           THE COURT: Overruled.
22
23
           I am reminding you that the question was, if
       Q.
24
   there was anything you would or would not have done
   differently, why or why not.
25
```

```
1
       Α.
           Okay.
2
           Seeing what I have in here, I would have
   done things a little bit different.
3
4
           I would have made sure that they did the 5
5
   P's.
           But, because of the 2 previous problems, the
6
7
   ultrasound they had caught it, they had taken care
   of it, so at the time I didn't feel that I needed to
8
9
   do more.
10
           THE COURT: Mr. Arntz, do you have any
   follow-up to the jurors' questions?
11
12
           MR. ARNTZ: I just wanted to clarify.
13
14
                       EXAMINATION
15
       BY MR. ARNTZ:
16
           I think that the juror's question was,
17
18
   in the days leading up to the 25.
19
           So, prior to the 25, would you have done
   anything different?
20
21
           In the way of my leg?
       Α.
           Leading up to the 25, I don't know that I
22
23
   would change anything.
24
           MR. ARNTZ: That's all I have.
25
           THE COURT: Mr. Weaver?
```

```
1
           MR. WEAVER: Thank you, Your Honor, just very
2
   briefly.
3
4
                       EXAMINATION
5
       BY MR. WEAVER:
6
7
          Mr. Moore, you weren't -- not were wearing
8
   comprehension stockings on December 25, 2016.
9
           Correct?
10
       Α.
          Correct.
11
           And you had not worn compression stockings
12
   for sometime prior to December 25, 2016, because you
13
   understood, didn't you, that comprehension stockings
   were for venous issues?
14
15
           That I understood they were for venous, I
       Α.
16
   knew they were to help to keep the swelling down.
           The bottom line is on December 25, 2016, you
17
       Ο.
18
   were not wearing compression stockings?
19
       Α.
           I was not wearing compression stockings.
                         Thank you, sir.
20
           MR. WEAVER:
           Nothing further, Your Honor.
2.1
           THE COURT: Mr. McBride.
22
23
           MR. McBRIDE: Nothing, Your Honor.
24
           THE COURT: Thank you.
25
           The marshal can assist you.
```

```
1
           Mr. Moore, you can retake your place behind
2
   counsel table.
           THE WITNESS: Okay.
3
4
           THE COURT: Do Plaintiffs' have any
   additional witnesses to call at this time?
5
           MR. ARNTZ: No, Your Honor.
6
           I do have some exhibits that I would like --
7
   we can do that any time.
8
9
           THE COURT: Subject to completing the
10
   exhibits that have been admitted, and ensuring that
   any redactions are redacted, does the Plaintiff rest
11
   their case?
12
13
           MR. ARNTZ: With the exception of the
14
   exhibits I want do have admitted, I rest my case.
15
           THE COURT: We can have that discussion when
16
   we resume tomorrow.
17
           Mr. McBride, anything further from the
18
   Defendant Lasry's case?
19
           MR. McBRIDE: Nothing further from the
20
   defense as part of our case.
21
           However, I would like to address something
22
   outside of the presence, before we conclude today.
23
           THE COURT: Before we conclude today?
24
           MR. McBRIDE:
                          Right.
25
           THE COURT:
                          Meaning you want me to have
```

```
the jurors step out and then step back in?
1
2
           MR. McBRIDE: No, they are free to go.
           THE COURT:
                       Understood.
3
           MR. WEAVER: Nothing further, Your Honor.
4
5
   Thank you.
           THE COURT: All right.
6
7
           Ladies and gentlemen, and I guess the reason
   I am asking the question is, are counsel unable to
8
9
   state today whether or not they rest their case?
10
           MR. McBRIDE: No, we rest our case, Your
11
   Honor.
12
           THE COURT: That is what I was looking for.
13
           MR. WEAVER: Yes, Your Honor.
14
           THE COURT:
                        Thank you.
15
           The parties have rested their case.
16
           Ladies and gentlemen, when we resume
17
   tomorrow with the jurors present, we will proceed to
18
   the instructions on the law, and we will then have
19
   counsel make their closing arguments.
20
           You will be reminded that those closing
   arguments are to help guide you in applying the
21
22
   evidence as has presented in the case to the law as
23
   the Court has instructed you on.
24
           We will then allow you to deliberate once
25
   that is complete.
```

```
1
2
           (Thereupon, the jury was admonished
3
4
           by the Court.)
5
6
           THE COURT: I will see you tomorrow
8
  at 1. 30?
9
          We will be back in our courtroom,
10
   15 - B.
11
12
           (Thereupon, the following proceedings
13
14
            were had in open court and outside
15
            the presence of the jury.)
16
17
           THE COURT: Why don't we see if we
18
  dispose of, Mr. Arntz, if there are some
19
20
  additional exhibits that up want to seek to
21 have admitted for you case in chief.
22
           There so far have not been any
23 objections to the exhibits.
24
           Do you want to state what they are?
           MR. ARNTZ: Yes. I want to move for
25
```

```
1
   the admission of the St. Rose Hospital bills, and
2
   the Kindred care bills.
           THE COURT: Can you identify by exhibit
3
4
   number what those are?
           MR. ARNTZ: 210 is the St. Rose - San Martin
5
   bills, and Kindred Care.
6
           Those are the only 2 that I have had
7
   testimony regarding. The reason was about the
8
9
   treatment.
10
           THE COURT: Does anybody remember which one
   the Kindred Care was?
11
12
           MR. ARNTZ: It is 203.
           THE COURT: Any objection from the defense?
13
           MR. WEAVER: Yes, Your Honor.
14
           MR. McBRIDE: Yes.
15
16
           THE COURT: Is that what you wanted talk
17
   about outside of the presence?
18
           MR. McBRIDE: No, there is another issue.
19
           But on those issues, I don't believe that
   there's been a sufficient foundation for any
20
   admission of the medical bills, or that they been
21
   testified to.
22
23
           No one has reviewed those medical bills,
   talked about those medical bills.
24
```

Mr. Moore did not discuss reviewing those

25

```
bills, and none of the other experts, especially
1
2
   Dr. Fish, or any expert offered by the Plaintiff has
   reviewed those bills, or determined they are
3
   reasonable and necessary.
4
5
           THE COURT: Mr. Weaver, any additional
   argument?
6
7
           MR. WEAVER: No, Your Honor.
           THE COURT: Mr. Arntz, any response?
8
9
           MR. ARNTZ: Yes.
10
           The treatment, and the need for that
11
   treatment following the amputation was a topic of
12
   testimony by the defense experts, because I
   questioned them on it.
13
14
           And I think it was Dr. Barcay, who said that
15
   the treatment at the hospital, and the ICU and all
16
   of these things was reasonable and necessary as a
17
   result of amputation.
           I didn't ask if it was casually related, but
18
19
   I asked that of Dr. Marmureanu.
20
           I also asked him regarding the rehab
   treatment at Kindred Care.
2.1
22
           THE COURT: If you can find, since you have
23
   the dailies, those reference, I am inclined to allow
   it, but I would like to have a complete record on
24
25
   that, and we can have further argument tomorrow.
```

```
MR. ARNTZ: I don't have the dailies.
1
2
           THE COURT: I thought you indicated before
   we started the trial that you guys were going to
3
4
   split the cost.
5
           MR. ARNTZ: I wasn't given the authority to
   do that.
6
           MR. WEAVER: All I can say on that, Your
7
   Honor, is that there was questions about whether the
8
9
   care was appropriate.
           But certainly there weren't any defense
10
   experts who said they reviewed the bills and that
11
12
   they were reasonable and customary.
13
           Obviously if there was going to be testimony
14
   on whether the bills were reasonable and customary,
15
   it would be Plaintiffs' experts testifying so they
16
   could be cross-examined on it.
17
           MR. ARNTZ: Well, we have already had this
   issue come up in our pretrial motions.
18
19
           I don't have to have an expert say that they
20
   were reasonable and customary bills.
           I have to have somebody say that the
21
22
   treatment was reasonable and necessary as a result
23
   of the amputation.
24
           I had Dr. Marmureanu testify that everything
25
   that happened that led up to the amputation and
```

```
1
   required the amputation.
2
           So I have provided the foundation for the
3
   bills coming in.
           The question is, will the jury find those
4
5
   bills to be reasonable.
           THE COURT: I will make a final decision
6
7
   tomorrow.
           MR. WEAVER: Just very briefly on that.
8
9
           The problem even with that is,
10
   Dr. Marmureanu said that had their been something
   done on the 25 that was similarly done, that he may
11
12
   have been in the hospital for a few days.
13
           So, for the jurors to accept the entire
   amount of the bills doesn't even take into account
14
15
   what the difference would have been, had something
   different been done.
16
17
           So there is no foundation for those bills,
18
   Your Honor.
19
           THE COURT: There is able to be further
   argument tomorrow.
20
           We are not at a place today to make a
21
22
   decision on this topic.
23
           Mr. McBride, what is the other issue?
24
           MR. McBRIDE: And very quickly, Your Honor,
   at this point, now that the Plaintiff has rested
25
```

their case, the defense would move for a Rule 50 1 2 motion for judgment as a matter of law, based on fact that the Plaintiffs have offered no testimony 3 from any expert, which is required in the State of 4 5 Nevada to testify as to the standard of care from a qualified expert who practices in the same or 6 7 similar community, in the same field of emergency medicine to talk about the care and treatment 8 9 provided by Dr. Lasry, a Board Certified Emergency 10 Room Physician, or Nurse Practitioner Bartmus. 11 Dr. M was the only expert that they offered 12 to testify. It is clear that he is a cardiothoracic 13 surgeon. 14 I went through in great detail, the fact 15 that he has never practiced full-time in an 16 emergency room. 17 He is not Board Certified as a emergency room physician. 18 19 He does not belong to any societies of 20 emergency medicine physicians. The only time that he works in the emergency 21 22 room is as a consultant, whenever there is a 23 vascular issue. 24 So that is not enough to qualify him or make 25 him the type of expert that needs to be provided to

```
testify against these Defendants.
1
2
           And on that basis, I am happy to provide the
   specifics of Dr. M's testimony to the Court
3
   tomorrow, which layout the reasons why I think that
4
   this motion is appropriate, but that's the motion at
5
   this point.
6
7
           THE COURT: Mr. Weaver, do you join or have
   any additional motions to make?
8
9
           MR. WEAVER: Thank you, Your Honor.
10
           I will join and briefly add to that that
   when Dr. Marmureanu testified to this, his basis for
11
12
   being a qualified expert to talk to emergency room
   medicine care is that he takes calls for the
13
14
   emergency department.
15
           He testified that's what qualifies him as an
16
   emergency medicine expert.
17
           THE COURT: Mr. Arntz, do you want to
18
   respond to this motion at this time?
19
           Just like with the other matter, I will
   still hear briefly additional argument tomorrow,
20
   before making a final determination.
21
22
           Do you have anything you want to add for the
23
   record at this time?
24
           MR. ARNTZ: I am happy to address it
25
   tomorrow.
```

```
Clearly he is qualified as a physician.
1
                                                      Не
2
   has had experience in emergency rooms.
           But I am happy to respond more fully
3
4
   tomorrow.
           THE COURT: Well, I am sure it was not a
5
   surprise that the motion is coming, but you don't
6
7
   have anything further you want to add today.
           Again, we will keep it very short. We are
8
   reconvening at 11:30. We still have to settle the
9
10
   jury instructions.
11
           I really can't go much past 12:15 so that we
12
   have some reasonable break.
13
           So we need to keep it tight see.
14
           We everybody in the courtroom. I will do my
15
   best to finish the criminal calendar by then,
16
   otherwise you will have to just sit tight.
           MR. McBRIDE: 11:30?
17
18
           THE COURT: You come in whenever you want.
19
           We are scheduled at 11:30.
20
           I don't typically finish by 11. We will do
   the best we can.
21
22
           MR. McBRIDE: Thank you, Your Honor.
23
           MR. WEAVER: Thank you.
           MR. ARNTZ: Thank you, Your Honor.
24
25
```

```
(Court adjourned.)
 1
 2
 3
 4
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REPORTER'S CERTIFICATE
1
2
3
       STATE OF NEVADA )
4
                        ) ss.
5
       CLARK COUNTY
6
7
            I, Robert A. Cangemi, a certified court
8
9
   reporter in and for the State of Nevada, hereby
10
   certify that pursuant to NRS 239B.030 I have not
   included the Social Security number of any person
11
   within this document.
12
13
           I further certify that I am not a relative
14
   or employee of any party involved in said action,
15
   nor a person financially interested in said action.
16
17
18
                  (signed) /s/ Robert A. Cangemi
19
20
                   ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25
```

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1
              C E R T I F I C A T E
2
       STATE OF NEVADA )
3
                        ) ss.
4
       CLARK COUNTY
5
6
7
8
9
           I, Robert A. Cangemi, CCR 888, do
   hereby certify that I reported the foregoing
10
11
   proceedings, and that the same is true and
  accurate as reflected by my original machine
12
13
   shorthand notes taken at said time and place.
14
15
16
           (signed) /s/ Robert A. Cangemi
17
18
           Robert A. Cangemi, CCR 888
19
           Certified Court Reporter
20
           Las Vegas, Nevada
21
22
23
24
25
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authority certified

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