Royal College of Surgeons
ADVANCING SURGICAL CARE

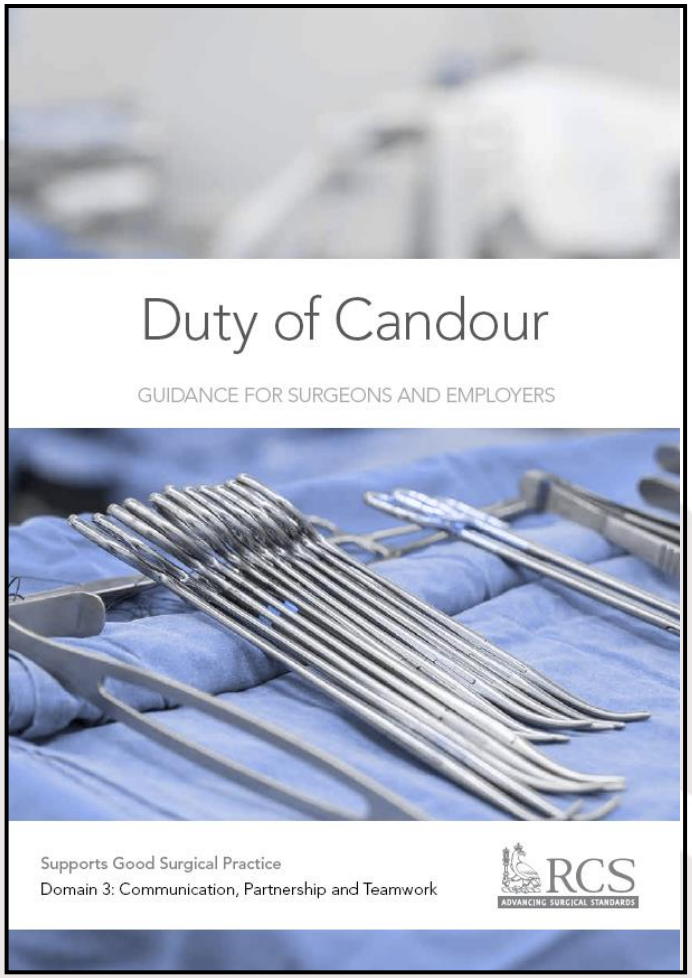
The Duty of Candour and You

Peter Lamont

RCS Council Member

Author:
Dr Suzanne Shale, Ethics Consultant
www.clearer-thinking.co.uk

with help from:
Leslie Hamilton
Sue Hill
Peter Lamont
Clare Marx
Katerina Sarafidou



Health and Social Care Act 2008 (Regulated Activities), Regulations 2014, Regulation 20

- **Statutory duty of candour for healthcare providers in England**
- **Ensure they are open and honest with patients when things go wrong**
- **Any patient coming to harm should be informed of the facts and offered an appropriate remedy**

DH Department of Health

Duty of Candour

- Inform patients promptly and openly of any significant harm
- Excludes recognised complications or undesirable outcomes that occur as a part of the patient's illness
- Not just a response to patient request or complaint
- Report incident through local governance process

The Disclosure Gap

- **Patients and bereaved want to know what happened, that it was an error (if it was) and what will be done to prevent a similar event in future. When they suspect a 'cover up' it fuels unquenchable distrust.**

- **Research suggests clinicians refer to harm without identifying error, provide details only if patients ask specific questions, rarely volunteer an apology and rarely discuss the prevention of future errors. (Many studies from US, UK one was pre-statutory duty)**

(Levinson, Disclosing medical errors to patients: a challenge for health care professionals and institutions. Patient Educ Couns. 2009;76(3):296-9)

Definitions

Low Harm:

- **Requires only extra observation or minor treatment, causing minimal harm to patient**

Moderate Harm:

- **Temporary lessening of bodily, sensory, motor, physiologic or intellectual functions directly related to the incident.**
- **An increase in treatment, such as unplanned return to theatre, unplanned re-admission, prolonged episode of care, cancellation of treatment or transfer to another treatment area (eg ITU)**

Severe Harm:

- **Permanent lessening of bodily, sensory, motor, physiologic or intellectual functions including removal of the wrong limb or organ or brain damage**

What Do Surgeons Have To Do?

1. Notify patient as soon as possible
2. Provide an honest explanation of all the facts and any remaining uncertainties
3. Explain fully the short and long term effects of the incident
4. Provide a verbal apology
5. Offer appropriate remedy or support
6. Explain steps taken to avoid recurrence
7. Document details of discussion in patient's notes

Low Harm and Near Misses

- Statutory duty triggered when an incident has the potential to result in moderate harm, severe harm or death

- Surgeons should discuss all safety incidents with the patient that have resulted in harm or have potential to do so, even if low harm, as part of Good Surgical Practice

- Report all incidents, including near miss, no harm and low harm, through local governance process to support learning and service improvement

Who Should See the Patient?

- Prior to a surgical procedure, surgeons are required to provide information on the procedure and its implications, including the risks inherent in the procedure and any side effects and complications.

- Correspondingly, after the procedure, the surgeon has a duty to the patient to give an account of what happened during the surgery

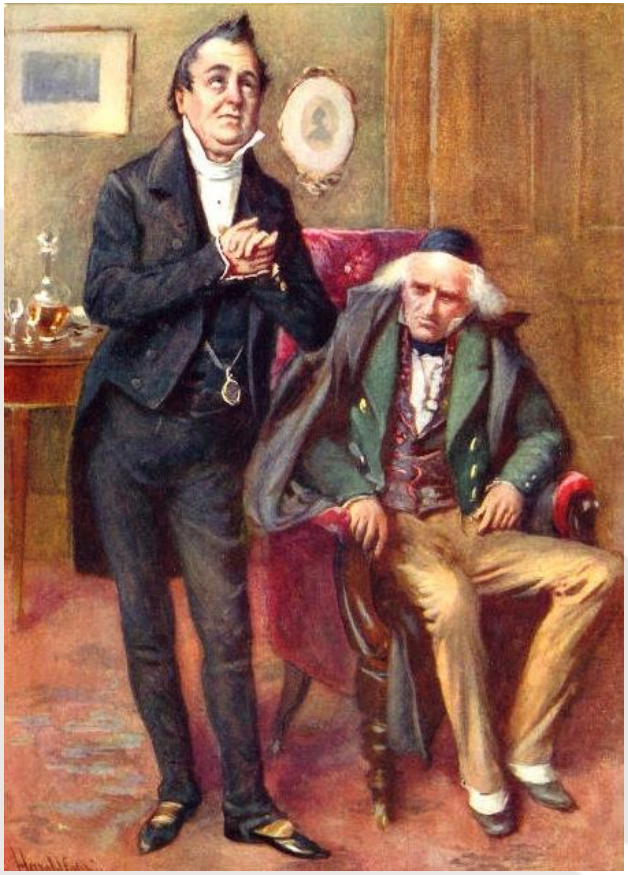
- The duty of candour should be seen as a part of the ongoing relationship between the surgeon and the patient

Communication Skills

- Use a sensitive and compassionate manner
- Speak in a language the patient can understand
- Be factual
- Be clear and unambiguous
- Do not provide conflicting views from different members of staff. Where these exist, wait until investigation has been completed
- Allow time for questions
- Offer follow-up
- Do not avoid the patient
- Respect the patient's wishes if they do not want further information (but document their wishes in the notes)

Do Not:

- Speculate
- Provide conflicting information
- Deny all responsibility
- Attribute blame or criticism of others
- Claim liability
- Make excuses, be defensive, misleading or evasive

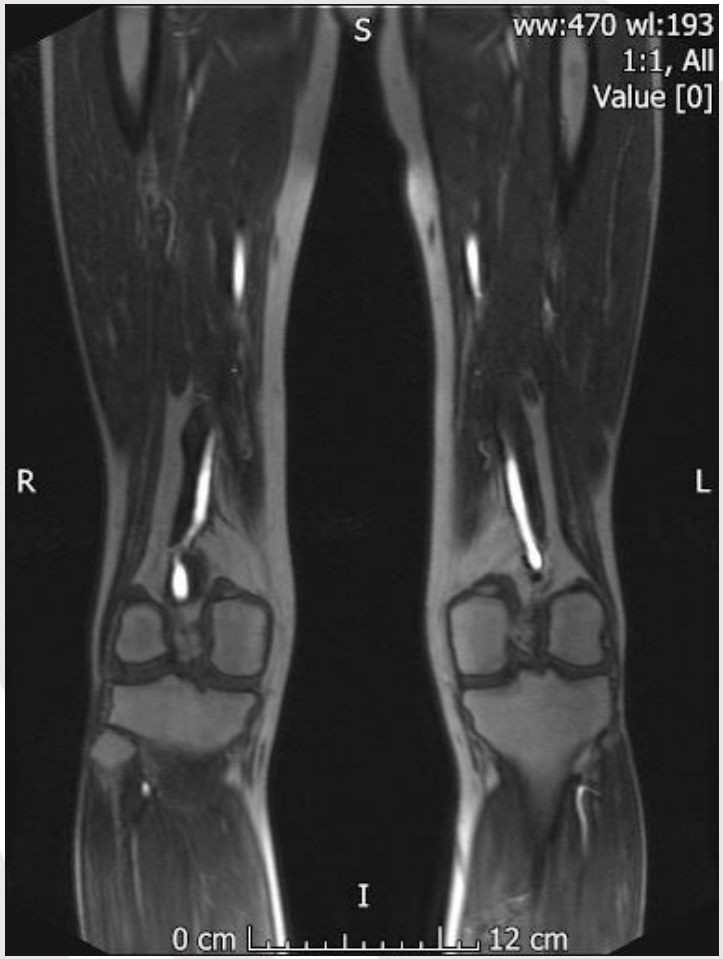


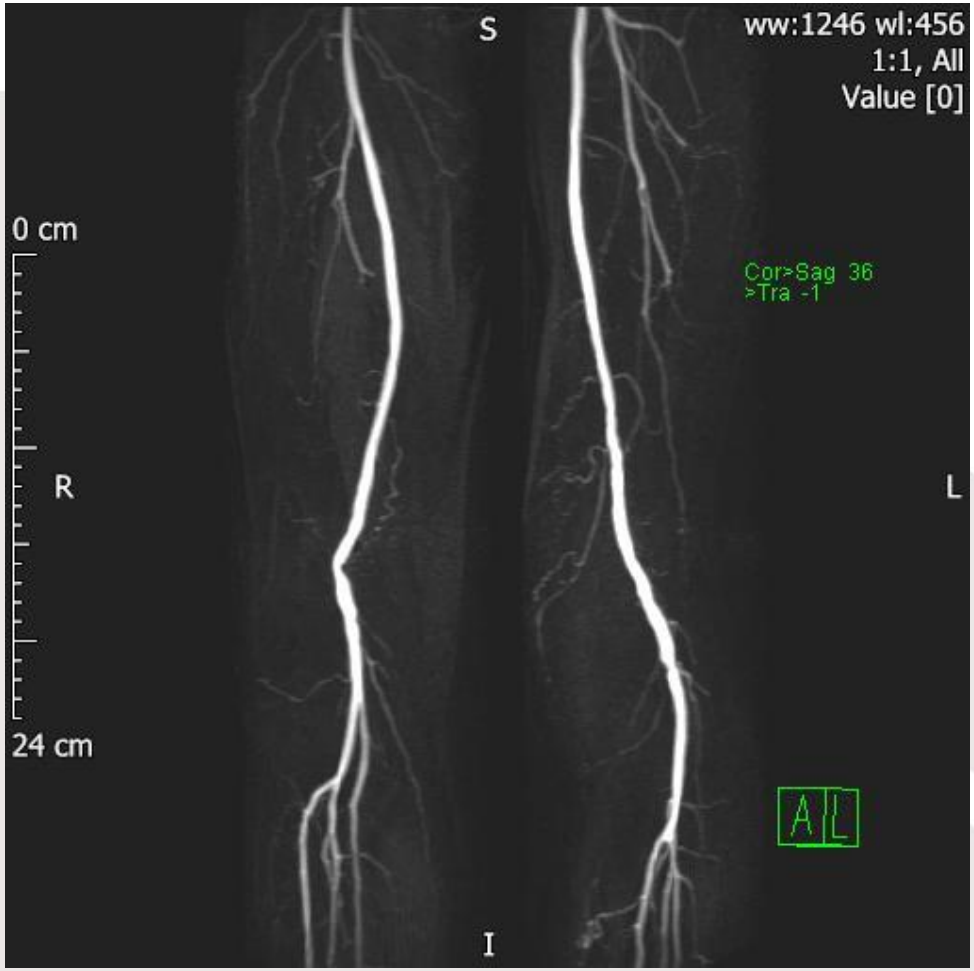
Fear of Litigation?

- An apology and explanation is not an admission of liability, so NHSLA will continue to indemnify those that do it

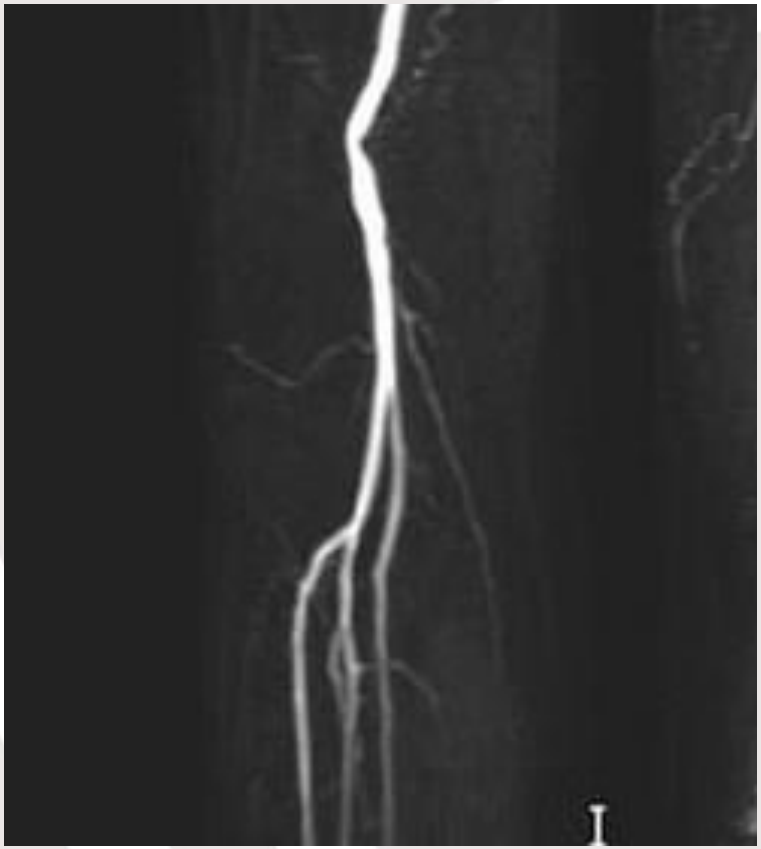
- Early apology and explanation may prevent drawn out legal process where patient's desire is to find out what happened, to have an acknowledgement of harm and to prevent it happening again to others

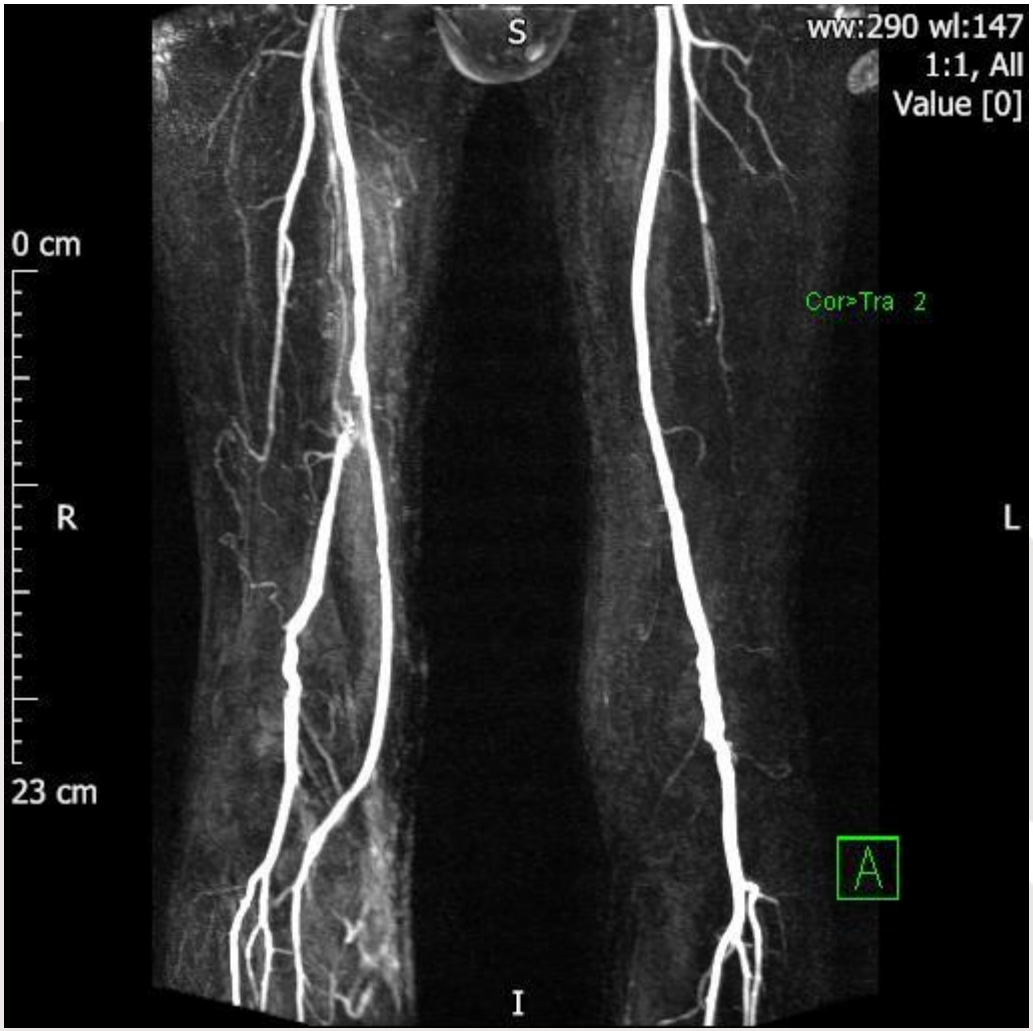
Popliteal aneurysm exclusion bypass



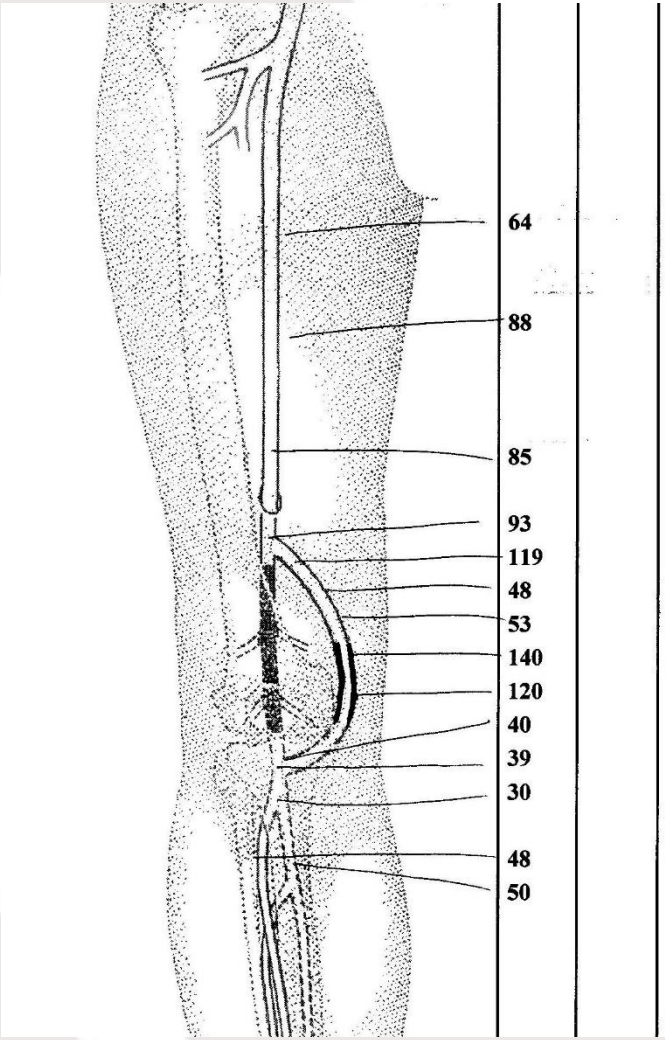


Popliteal aneurysm exclusion bypass





Popliteal aneurysm exclusion bypass



Time post origional op: **9 months**

Graft material: **Reversed Vein**

Revisions/PTAs: **None**

Time post revisions/PTAs: **6 months 2/12/2014**

Symptoms

None

Ankle Brachial Pessure Index

Brachial pressure: **154**

Site of AP measurement: **ATA**

Ankle pressure: **148**

ABPI: **0.96**

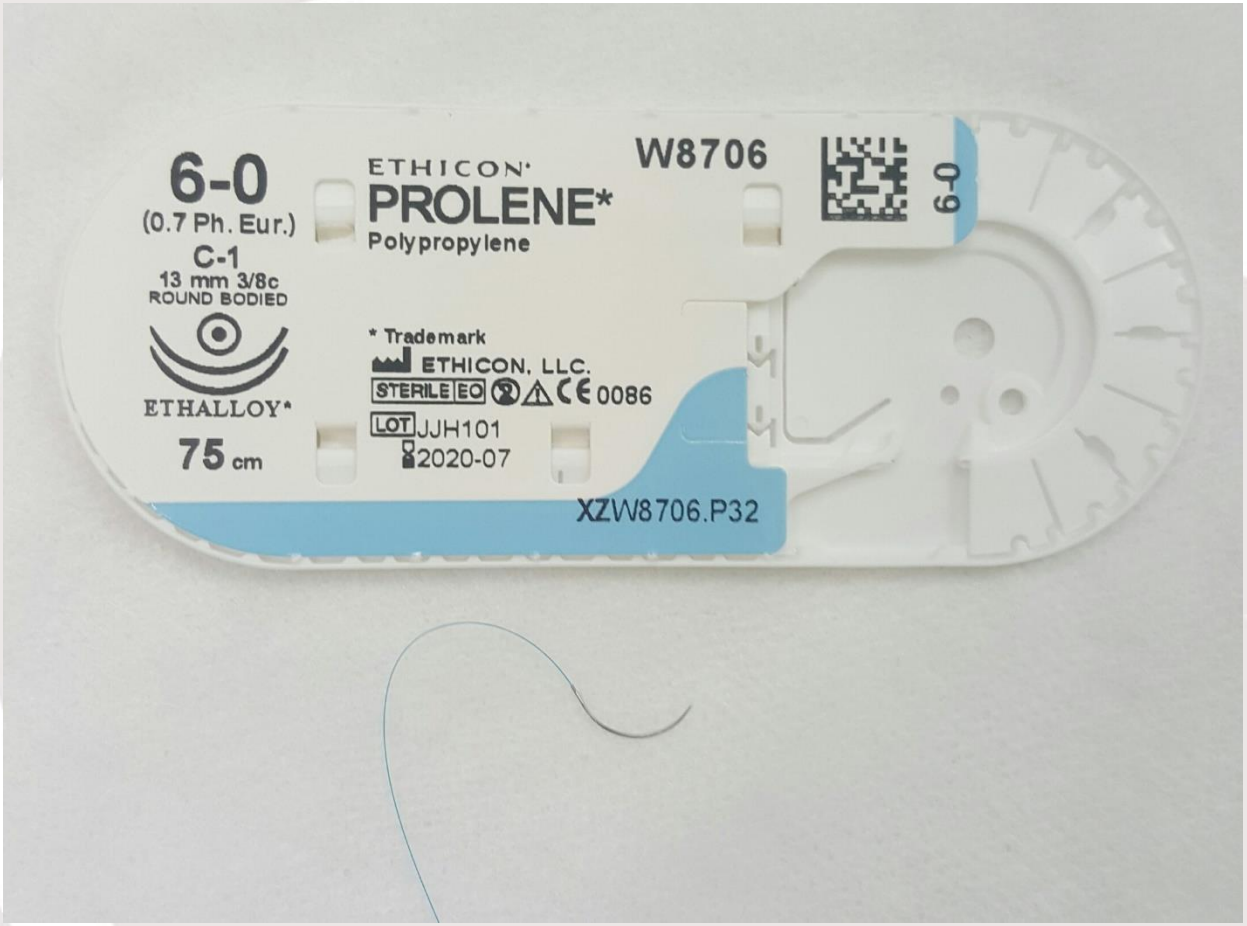
Comments

Good ABPI with bi/triphasic pedal pulses. Mildly atheromatous SFA infolow with triphasic signals. Proximal graft is large calibre (6-7mm diameter) becoming small caliber from knee level causing raised velocities x2.5 as seen previously, to observe.Triphasic signals throughout graft and runoff.

Conclusion

Graft functioning well. Raised velocities in mid graft from knee level likely due to caliber change in graft unchanged from previous duplex - to observe.

A Missing Needle



Duty of Candour