

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Case No. 2009-CP-08-3237

RECEIVED
MAY 02 2013

SC Court of Appeals

Finley C. Evans..... Appellant

v.

Roper Hospital, Inc. d/b/a Roper
St. Francis Healthcare and d/b/a
Roper-St. Francis Home Health..... Respondents.

RECORD ON APPEAL (VOLUME 1)

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP0803237

Findley C Evans	Roper Hospital Inc Roper St Francis Home Health	Roper St Francis Healthcare
PLAINTIFF(S)	DEFENDANT(S)	
Submitted by: The Court	Attorney for: ☐ Plaintiff ☒ Defendant ☐ Self-Represented	

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

The Defendant's motion for directed verdict is granted.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section only when the judgment affects title, lien or personal property or if any amount is to be enrolled. If the clerk is to be provided information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Stephen P. McGrath
Circuit Court Judge

2163

Judge Code

January 12, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on 12th Day of January, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 12th Day of January, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

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Anderson, SC 29622
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Joseph Griffith Jr Joe Griffith Law Firm, LLC 946 Johnnie
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Mary P. Brown
Mary P. Brown - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-08-3237

FINLEY C. EVANS

ROPER HOSPITAL, INC. D/B/A ROPER ST. FRANCIS

HEALTHCARE AND D/B/A ROPER ST. FRANCIS HOME
HEALTH

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's post-trial motion to reconsider, alter, and amend the judgment is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

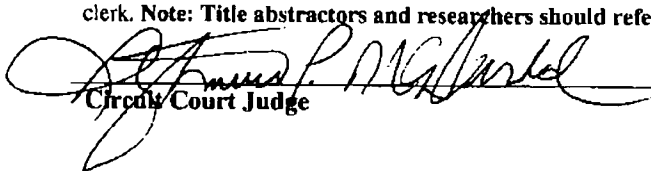
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2163
Judge Code

3/26/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of May 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of May 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary P. Blum
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JANE A. EVANS and FINLEY C.
EVANS,

Plaintiffs,

vs.

ROPER HOSPITAL, INC. d/b/a
ROPER ST. FRANCIS HEALTHCARE
and d/b/a ROPER-ST. FRANCIS HOME
HEALTH, and JANELLE BELK, RN,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 09-CP-08-3237

SUMMONS

FILED
2010 APR 30 AM 10:14
MARK P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: DEFENDANT ROPER HOSPITAL, INC. d/b/a ROPER ST. FRANCIS
HEALTHCARE and d/b/a ROPER-ST. FRANCIS HOME HEALTH

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint herein served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber hereunder within thirty (30) days from date of service upon you of said complaint, exclusive of the date of service. AND IF YOU FAIL to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to this Court for the relief prayed for in the attached Complaint, INCLUDING THE RENDERING OF A DEFAULT JUDGMENT AGAINST YOU.

Joe Griffith Law Firm, LLC

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Attorneys for Plaintiffs

Mount Pleasant, South Carolina
April 29, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JANE A. EVANS and FINLEY C.
EVANS,

Plaintiffs,

vs.

ROPER HOSPITAL, INC. d/b/a
ROPER ST. FRANCIS HEALTHCARE
and d/b/a ROPER-ST. FRANCIS HOME
HEALTH, and JANELLE BELK, RN,

Defendants.

)IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 09-CP-08-3237

COMPLAINT

(Jury Trial Demanded)

FILED
2010 APR 30 AM 10:14
MAG. P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiffs, complaining of the acts of the Defendants, allege and show unto
this Honorable Court as follows:

JURISDICTION AND VENUE

1. That the Plaintiffs, Jane A. Evans and Finley C. Evans, are citizens and residents of Berkeley County, South Carolina.
2. That upon information and belief, the Defendant Roper Hospital, Inc. d/b/a Roper St. Francis Healthcare and d/b/a Roper-St. Francis Home Health ("Roper") is a corporation organized and existing under the laws of the State of South Carolina, located and doing business within the County of Berkeley, State of South Carolina.
3. That upon information and belief, the Defendant Janelle Belk, RN ("Belk") is a citizen and resident of the County of Berkeley, State of South Carolina and, at all relevant times herein, engaged in providing nursing services within the County of Berkeley, State of South Carolina, for Defendant Roper.

4. That upon information and belief, that at all times mentioned herein, Defendant Belk was a licensed Registered Nurse in the State of South Carolina.

5. That at all times mentioned herein, Defendant Roper was acting by and through its employees, servants and agents, was responsible for the acts and omissions of its employees and agents pursuant to the laws of agency and respondeat superior, and held a non-delegable duty that made it responsible for the acts and omissions of its employees and agents.

6. That upon information and belief, at all times relevant herein, Defendant Belk was an agent, servant, and/or employee of Defendant Roper.

7. That upon information and belief, at all relevant times herein, Defendant Belk was acting within the course and scope of her agency and/or employment with Defendant Roper.

8. That Defendant Roper is vicariously liable for the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness and unlawful acts and omissions of all of its employees, agents, servants and/or contractors, including, but not limited to, Defendant Belk.

9. That Mr. Evans was treated by Defendant Belk in Berkeley County, South Carolina.

10. This Honorable Court has subject matter jurisdiction over this action pursuant to the common law, statutes and constitution of the State of South Carolina.

FACTS

11. Mr. Evans underwent a surgical procedure for hydradenitis at Trident Medical Center on September 21, 2006, performed by Dr. Brian Widenhouse, was hospitalized overnight and discharged home the next day.

12. Mr. Evans continued to see Dr. Widenhouse for follow up care, including a visit on September 27, 2006, when Dr. Widenhouse ordered wound vac use and management, dressing changes three times per week and a wound care nurse consult, among other things.

13. Mr. Evans sought care and treatment from Defendant Roper for dressing changes, wound vac management as well as other treatment of scrotal and groin wounds beginning on September 29, 2006.

14. Dr. Widenhouse ordered home health care for Mr. Evans, to be provided by Defendant Roper and to begin on September 29, 2006.

15. On or about September 29, 2006, one of Defendant Roper's nurses applied the wound vac to Mr. Evans' wound and adjusted the settings.

16. On or about October 2, 2006, Defendant Belk was the nurse sent by Defendant Roper to provide wound care to Mr. Evans, including changing the dressing and reapplying the wound vac. During that visit, Defendant Belk stated that she had no experience in applying a wound vac, declined Mrs. Evans' offer to play the instructional video that was provided to them for her, questioned Dr. Widenhouse's order for a wound vac, and had problems taking the wound vac off and reapplying it.

17. Later on in the day on October 2, 2006, Mr. Evans called Defendant Belk to report that he was experiencing pain in his wound although he had not with previous wound care treatment.

18. Defendant Belk returned the next day, October 3, 2006, to reapply the wound vac to Mr. Evans' wound.

19. During Defendant Belk's visit on October 3, 2006, Mr. Evans wound began bleeding profusely. Defendant Belk responded by requesting and obtaining from Mrs. Evans a bag of rice and a bag of grits to put on the wound to apply pressure to it. Defendant Belk then left while Mr. Evans continued bleeding.

20. When Mr. and Mrs. Evans noticed blood pooling under Mr. Evans, they looked at the wound and then saw the blood projecting up into the air.

21. Mrs. Evans immediately called Defendant Belk to come back, but Defendant Belk said to call EMS and hung up on her.

22. Mrs. Evans then immediately called 911. Upon arrival, EMS personnel questioned why Mr. Evans was left in that condition and transported him to the hospital.

23. During the ambulance transport, Mr. Evans went into shock and resuscitative efforts had to be undertaken.

24. Mr. Evans was transported to Trident Medical Center in Moncks Corner, and then transferred to Trident Medical Center in Summerville for admission and inpatient treatment overnight.

COUNT I

NEGLIGENCE/GROSS NEGLIGENCE/

NEGLIGENCE PER SE/PROFESSIONAL NEGLIGENCE

25. Plaintiffs reiterate and reallege the above paragraphs as though set forth verbatim herein, and further allege:

26. The Defendants did undertake the duty to render medical care to Mr. Evans in accordance with the prevailing professional standards of care.

27. That at all relevant times herein, the Defendants owed Mr. Evans a duty to exercise that degree of care that would have been exercised by reasonable healthcare professionals in the same or similar circumstances.

28. That at all relevant times herein, the injuries and damages suffered by Mr. Evans were a direct and proximate result of the Defendants' breaches of their duties to Mr. Evans and departures from prevailing professional standards of care and treatment of Mr. Evans, through their negligent, grossly negligent, reckless, willful, wanton and careless acts and omissions, including, but not limited to, one or more of the following particulars:

- A. As to all Defendants, failing to provide appropriate and timely assessment, care and treatment to Mr. Evans;
- B. As to Defendant Roper, failing to adequately oversee and manage Mr. Evans' care;
- C. As to Defendant Roper, failing to adequately train and supervise the staff assigned to care for and treat Mr. Evans;

- D. As to Defendant Roper, failing to hire and retain qualified staff to properly care for and treat Mr. Evans;
- E. As to all Defendants, failing to exercise sound medical and nursing judgment in providing care and treatment to Mr. Evans;
- F. As to all Defendants, failing to exercise that degree of care, skill and diligence that would have been exercised by healthcare providers in the same or similar circumstances;
- G. As to Defendant Roper, failing to provide proper supervision of nursing staff, including Defendant Belk;
- H. As to all Defendants, failing to properly, timely and accurately document the care and treatment provided to Mr. Evans;
- I. As to all Defendants, abandoning Mr. Evans while he was under their care and treatment and during a time of medical need;
- J. As to Defendant Roper, failing to have in place proper and adequate policies, procedures and protocols for management of patients in Mr. Evans' condition, or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- K. In violating the standard, laws, and regulations of the United States and the State of South Carolina; and
- L. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

Any one or more of which was the direct or contributing proximate cause of the injuries and damages suffered by Mr. Evans.

29. Further, to the extent that the Defendants have violated their own policies and procedures, or any state or federal laws or regulations or other standards, these standards were specifically enacted for the protection of a class of persons which includes Mr. Evans, and the Defendants' failure to comply with the same constitutes a prima facie case of negligence per se.

30. As a direct and proximate result of the aforesaid negligent, grossly negligent, reckless, willful, wanton and careless acts and omissions of the Defendants, jointly and severally, Mr. Evans suffered the following:

- a. serious medical complications requiring extensive medical care and treatment;
- b. extreme and unnecessary physical and emotional pain and suffering;
- c. emotional and physical trauma;
- d. mental and emotional distress;
- e. intentional infliction of emotional distress;
- f. mental anguish and distress;
- g. a fear of premature death;
- h. loss of enjoyment of life;
- i. otherwise unnecessary medical treatments and expenses;
- j. a lengthy recovery period;
- k. additional missed time from work; and

1. such other damages as may be shown through discovery and trial.

31. Defendants know or should have known that their acts and omissions would result in grave and severe injuries to Mr. Evans.

32. Each of the acts and omissions of Defendants constitutes a breach of each Defendant's duty of care and proximately caused Mr. Evans' severe injuries.

33. Plaintiff seeks recovery from Defendants for the reasonable and necessary charges for all expenses incurred and loss of income as a result of Defendants' acts and omissions.

34. Defendants' conduct involved such an entire want of care to amount to conscious and willful indifference to and heedless and reckless disregard of the rights, welfare and safety of Mr. Evans. As such, Defendants' conduct amounted to gross negligence and malice for which Plaintiff seeks recovery of actual damages as well as exemplary and/or punitive damages in an amount sufficient to deter such unconscionable and irresponsible conduct in the future.

35. As a direct and proximate result of Defendants' negligence, carelessness, recklessness, gross negligence and willful and/or malicious conduct, as set forth above, Plaintiff is entitled to recover actual, special, consequential and punitive damages in an amount to be determined by the trier of fact together with the costs and disbursements of this action, and hereby demands such and other relief from Defendants, jointly and severally, as this Court deems just and proper.

COUNT II

LOSS OF CONSORTIUM

36. Plaintiffs reiterate and reallege the above paragraphs as though set forth verbatim herein, and further allege:

37. As a further direct and proximate result of the aforesaid negligent, grossly negligent, reckless, willful, wanton and careless acts and omissions of the Defendants, jointly and severally, Mrs. Evans has lost and been deprived of the love and affection, consortium and companionship, society, comfort, aid, advice, and solace, the rendering of material services, as well as other elements usually provided by a spouse in good health, for which she seeks recovery in this action for these and all other elements of damages recoverable in an action for loss of consortium as provided by South Carolina law.

COUNT III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

38. Plaintiffs reiterate and reallege the above paragraphs as though set forth verbatim herein, and further allege:

39. As a further direct and proximate result of the aforesaid negligent, grossly negligent, reckless, willful, wanton and careless acts and omissions of the Defendants, jointly and severally, Mrs. Evans suffered emotional distress from being in close proximity to and witnessing her husband's serious bodily injury, profuse bleeding and rapid decline in health.

40. Mrs. Evan's resulting emotional distress was foreseeable and manifested itself by physical symptoms capable of objective diagnosis.

41. As a result of and in direct and proximate consequence of the aforementioned actions and omissions of Defendants, Evans suffered acute and severe emotional distress, for which she seeks judgment against Defendants for actual and punitive damages.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS/OUTRAGE

42. Plaintiffs reiterate and reallege the above paragraphs as though set forth verbatim herein, and further allege:

43. Mr. and Mrs. Evans are informed and believe that Defendants intentionally or recklessly inflicted severe emotional distress, and/or that Defendants were certain or substantially certain that such distress would result from their conduct.

44. Mr. and Mrs. Evans are informed and believe that Defendants undertook conduct that was so extreme and outrageous as to exceed all possible bounds of decency, with such conduct being regarded as atrocious and intolerable in a civilized community.

45. As a result of and in direct and proximate consequence of the outrageous actions taken by Defendants, Mr. and Mrs. Evans suffered acute and severe emotional distress, which no reasonable person could be expected to endure.

46. Plaintiffs are informed and believe that they are entitled to judgment against Defendants for actual and punitive damages.

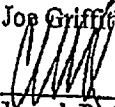
As a direct and proximate result of Defendants' negligence, carelessness, recklessness, gross negligence and willful and/or malicious conduct, as set forth above,

Plaintiff is entitled to recover actual and punitive damages in an amount to be determined by the trier of fact together with the costs and disbursements of this action, and hereby demands such relief from Defendants, jointly and severally.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, jointly and severally, for such amount of actual, consequential, special and punitive damages as the trier of fact may find as will fully, fairly and justly compensate the Plaintiffs, together with the costs and disbursements of this action, and such other and further relief as the Court deems just, equitable and proper under the circumstances.

Respectfully submitted,

Joe Griffith Law Firm, LLC



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christymdeluca@yahoo.com
Attorneys for Plaintiffs

Mount Pleasant, South Carolina
April 29, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
JANE A. EVANS and	)	CASE NO. 2009-CP-08-3237
FINLEY C. EVANS,	)	
	)	
PLAINTIFF,	)	
	)	ANSWER ON BEHALF OF ROPER
vs.	)	HOSPITAL, INC. D/B/A ROPER ST.
	)	FRANCIS HEALTHCARE AND D/B/A
ROPER HOSPITAL, INC. D/B/A ROPER	)	ROPER-ST. FRANCIS HOME HEALTH;
ST. FRANCIS HEALTHCARE AND	)	JANELLE BELK, RN
D/B/A ROPER-ST. FRANCIS HOME	)	
HEALTH; JANELLE BELK, RN	)	
	)	
DEFENDANTS.	)	
	)	

TO: CHRISTY M. DELUCA, JOSEPH P. GRIFFITH, JR., ATTORNEYS FOR JANE A. EVANS AND FINLEY C. EVANS:

1. Any allegations of the Plaintiff's Complaint not specifically admitted, modified, or denied are expressly denied.
2. Defendants ROPER HOSPITAL, INC. D/B/A ROPER ST. FRANCIS HEALTHCARE AND D/B/A ROPER-ST. FRANCIS HOME HEALTH; JANELLE BELK, RN cannot admit or deny the allegations contained in paragraph 1 of Plaintiffs complaint as Defendants have no knowledge of same.
3. Defendants ROPER HOSPITAL, INC. D/B/A ROPER ST. FRANCIS HEALTHCARE AND D/B/A ROPER-ST. FRANCIS HOME HEALTH (IMPROPERLY NAMED DEFENDANT); admits that it is a corporation organized and existing under the laws of the State of South Carolina with a primary location in the County of Charleston, State of South Carolina but does do business in the County of Berkeley, State of South Carolina in response to paragraph 2 of Plaintiff's complaint. Defendant affirmatively pleads that

the proper corporate identity of defendant is ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH. Defendant is a 501 (c) (3) "charitable organization" as that term is defined in SC Code Ann. §33-56-170 (a) and is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed \$300,000 (three hundred thousand dollars) in response to paragraph 2 of the Plaintiff's complaint.

4. Defendant JANELLE BELK, RN admits the allegations contained in paragraphs 3 and 4 of the Plaintiffs complaint.
5. Defendant ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH cannot admit or deny the allegations contained in paragraphs 5, 6, 7 and 8 of Plaintiffs complaint as these paragraphs calls for a legal conclusion.
6. Defendants; ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN admit the allegations contained in paragraph 9 of Plaintiffs complaint.
7. Defendants; ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN cannot admit or deny the allegations contained in paragraph 10 of Plaintiffs complaint as this paragraph calls for a legal conclusion.
8. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN crave reference to the hospital chart and medical record for a more complete summary of the Plaintiff's medical care, treatment and healthcare providers in response to paragraphs 11, 12, 13, 14 and 15 of the Plaintiff's

complaint and would deny any allegations inconsistent with those admissions or records or any allegations intended to allege liability or a deviation from the standard of care.

9. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN admit only, in response to paragraph 16 of Plaintiffs complaint, that Janelle Belk, RN was the nurse sent by Roper St. Francis Home Health to provide wound care to Finley Evans on October 2, 2006. The remaining allegations contained in paragraph 16 of Plaintiffs complaint are denied and strict proof is demanded thereof.
10. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN crave reference to the hospital chart and medical record for a more complete summary of the Plaintiff's medical care, treatment and healthcare providers in response to paragraphs 17, 18, 19 and 20 of the Plaintiff's complaint and would deny any allegations inconsistent with those admissions or records or any allegations intended to allege liability or a deviation from the standard of care.
11. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN admit that Janelle Belk, RN would have instructed Plaintiff to call EMS but denies any inference that Janelle Belk, RN "hung up" or was unprofessional in any manner in response to paragraph 21 of Plaintiffs complaint.
12. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN crave reference to the hospital chart and medical record for a more complete summary of the Plaintiff's medical care, treatment and healthcare providers in response to paragraphs 22, 23 and 24 of the Plaintiff's

complaint and would deny any allegations inconsistent with those admissions or records or any allegations intended to allege liability or a deviation from the standard of care.

13. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN re-iterate all previous responses in response to paragraph 25 of Plaintiff's complaint.
14. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN cannot admit or deny the allegations contained in paragraphs 26 and 27 of Plaintiffs complaint as this paragraph calls for a legal conclusion.
15. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraph 28 (to includesub-parts (a.-1.) of Plaintiffs complaint and in denying same affirmatively state that ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH is a 501 (c) (3) "charitable organization" as that term is defined in SC Code Ann. §33-56-170 (a) and is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed \$300,000 (three hundred thousand dollars).
16. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraph 29 of Plaintiffs complaint and in denying same demand strict proof thereof.
17. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraph 30 (to includesub-parts (a.-1.) of Plaintiffs complaint and in denying same affirmatively

state that ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH is a 501 (c) (3) "charitable organization" as that term is defined in SC Code Ann. §33-56-170 (a) and is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed \$300,000 (three hundred thousand dollars).

18. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraphs 31 and 32 of Plaintiffs complaint and in denying same demand strict proof thereof.
19. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN cannot admit or deny the allegations contained in paragraph 33 of Plaintiffs complaint as this paragraph calls for a legal conclusion.
20. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraphs 34 and 35 of Plaintiffs complaint and in denying same affirmatively state that ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH is a 501 (c) (3) "charitable organization" as that term is defined in SC Code Ann. §33-56-170 (a) and is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed \$300,000 (three hundred thousand dollars).

21. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN re-iterate all previous responses in response to paragraph 36 of Plaintiff's complaint.
22. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraph 37 of Plaintiffs complaint and further AFFIRMATIVELY PLEAD that the allegations contained in paragraph 37 of the Plaintiffs complaint should be struck as a matter of law as the applicable statute of limitations to bring such a claim has run.
23. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN re-iterate all previous responses in response to paragraph 38 of Plaintiff's complaint.
24. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraphs 39, 40 and 41 of Plaintiffs complaint and further AFFIRMATIVELY PLEAD that any allegations contained in paragraphs 39, 40 and 41 for a claim on behalf of Jane A. Evans should be struck as a matter of law as the applicable statute of limitations to bring such claims has run.
25. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN re-iterate all previous responses in response to paragraph 42 of Plaintiff's complaint.
26. Defendants ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH and JANELLE BELK, RN deny the allegations contained in paragraphs 43, 44, 45 and 46 of Plaintiffs complaint and further AFFIRMATIVELY

PLEAD that any allegations contained in paragraphs 43, 44, 45 and 46 for a claim on behalf of Jane A. Evans should be struck as a matter of law as the applicable statute of limitations to bring such claims has run.

**FURTHER ANSWERING AND
FOR A FURTHER AFFIRMATIVE DEFENSE**

Hospital Defendant states that pursuant to S.C. Code Ann. §33-56-170 and §33-56-180, their liability is limited to \$300,000 actual damages as a protected "charitable organization." They are not subject to a claim for punitive damages.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Joint and several liability does not apply to these Defendants to the extent they are less than fifty percent at fault in accordance with S.C. Code Ann. §15-38-15.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Defendant would affirmatively state that at all times they complied with the applicable standard of care.

**FUTHER ANSWERING AND FOR A
FURTHER AFFIRMATIVE DEFENSE**

There was no negligence, recklessness, gross negligence or wantonness on the part of this Defendant which proximately caused or contributed to Plaintiffs' alleged injuries.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

This Defendant does not waive any defense that whatever injury or damage that was suffered by the Plaintiff was the proximate result of the contributory negligence, intervening

negligence, recklessness, willfulness and wantonness of parties other than this Defendant (should the discovery process reveal this), barring Plaintiffs from recovery from these Defendants.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

This Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to, caused and occasioned by a natural disease process over which this Defendant had no control and, as such, this Defendant pleads such a natural disease process as a complete bar to this action.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

To the extent Plaintiff's causes of action arise after July 1, 2005, Plaintiff's non-economic damages are capped in accordance with S.C. Code Ann. §15-32-220(a) and (b).

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

The Defendant would affirmatively assert that it would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability, any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Bill including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; §15-32-222; and §15-79-125 and any other applicable provisions under the acts.

**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

The Defendants affirmatively plead that ROPER ST. FRANCIS HEALTHCARE d/b/a ROPER ST. FRANCIS HOME HEALTH is a 501 (c) (3) "charitable organization" as that term is defined in SC Code Ann. §33-56-170 (a) and is not subject to a claim for punitive damages and is only subject to a judgment for actual damages in an amount not to exceed \$300,000 (three hundred thousand dollars).

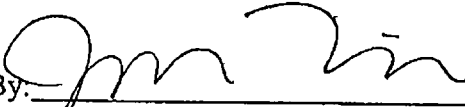
**FURTHER ANSWERING AND FOR A
FURTHER AND AFFIRMATIVE DEFENSE**

Any claim brought on behalf of JANE A. EVANS should be struck as a matter of law as the applicable statute of limitations to bring any such claim on behalf of JANE A. EVANS has run.

WHEREFORE, HAVING FULLY ANSWERED SAID COMPLAINT, Hospital Defendants prays as follows:

1. That their Liability for Actual Damages be limited to \$300,000.
2. That Punitive Damages be stricken.
3. For such other relief as this Court deems just and proper.

YOUNG CLEMENT RIVERS, LLP

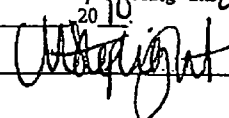
By: 
Joseph J. Tierney, Jr.
Christine Kent Toporek
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P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jtierney@ycrlaw.com
Attorneys for the Defendants

Charleston, South Carolina

Dated: June 2, 2010

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 2nd day of June 2010.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)		
COUNTY OF BERKELEY	)	NINTH JUDICIAN DISTRICT	
	)		
FINLEY C. EVANS,	)	CASE NO.: 2009-CP-08-3237	
	)		
PLAINTIFF,	)		
	)		
vs.	)	PLAINTIFF'S MOTION TO	
	)	RECONSIDER, ALTER AND	
	)	AMEND JUDGMENT	
ROPER HOSPITAL, INC. D/B/A ROPER	)		
ST. FRANCIS HEALTHCARE AND	)		
D/B/A ROPER-ST. FRANCIS HOME	)		
HEALTH,	)		
	)		
DEFENDANTS.	)		

FILED
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CLERK OF COUNTY COURT
BERKELEY COUNTY, SC

Pursuant to Rule 59(e), SCRPC, Plaintiff Finley C. Evans will move at a date and time to be set by the Court, for an order reconsidering, altering, or amending the Court's January 12, 2012, order directing a verdict for Defendants and the preclusion of causation testimony by Plaintiff's nurse expert.

PROCEDURAL HISTORY

This medical negligence suit was tried before Judge Stephanie McDonald during the January 9th court term. Pursuant to Rule 50(a), SCRPC, Defendants moved for a directed verdict at the conclusion of Plaintiff's case-in-chief. This motion was denied. At the close of Defendants' case-in-chief, Defendants renewed their Rule 50 motion. Judge McDonald granted the motion from the bench and issued a form order granting the motion on January 12, 2012. Plaintiff files this Motion to Reconsider within 10 days of the court's initial order as required by Rule 59(c).

FACTS

Plaintiff underwent surgery in September 2006 in which surgeons made incisions in Plaintiff's groin and scrotum. Following surgery, wound care treatment was necessary to manage the incisions and the healing process. Defendants were responsible for Plaintiff's in-home wound care treatment. As part of this treatment, Defendants used a wound vac system that is applied to the incision site and is intended to promote healing. On October 3, 2006, Plaintiff was treated by Defendant's employee/agent Janelle Belk, RN. Nurse Belk was responsible for assessing Plaintiff's condition, changing the dressing covering Plaintiff's wound, and communicating Plaintiff's condition to his treating physician, among other things.

During the October 3rd visit, Nurse Belk noted bleeding after she peeled off the dressing. After collecting blood for laboratory analysis and placing a bag of rice over the bleeding sites to apply pressure, Nurse Belk left Plaintiff's home. A short time later, Plaintiff's wife called Nurse Belk and informed her that Plaintiff was bleeding profusely from the incision site. Plaintiff suffered physical injuries as a result of significant blood loss, including, but not limited to, a vasovagal response, hypotension, and bradycardia. Plaintiff was rushed to the hospital via ambulance, receiving fluids intravenously and anti-shock treatment en route, and was treated and admitted overnight for observation.

LEGAL STANDARD

A trial judge has the authority to direct a verdict where the case "presents only questions of law." Rule 50(a), SCRPC. A directed verdict should be granted only "where the evidence raises no issue for the jury." Fletcher v. Med. Univ. of S.C., 390 S.C. 458, 702 S.E.2d 372 (Cl. App. 2010). In ruling on a motion for a directed verdict, the trial court must view the evidence in the light most favorable to the nonmoving party and must draw all inferences reasonably

deducible from the evidence in favor of the nonmoving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002); O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 638 S.E.2d 96 (Ct. App. 2006). The court "must resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party's favor." Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006).

In ruling on a directed verdict motion, the trial court should not "decide credibility issues or...resolve conflicts in the testimony or evidence." Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). The court must focus solely on the "existence or non-existence of evidence" and not the existing evidence's credibility or weight. Jones v. General Elec. Co., 331 S.C. 351, 503 S.E.2d 173 (Ct. App. 1998). In sum, a directed verdict is "not favored" and must be denied "if there is even a scintilla of evidence tending to prove the allegations of the complaint[]." Jamison v. The Pantry, Inc., 301 S.C. 443, 444, 392 S.E.2d 474, 475 (Ct. App. 1990).

ARGUMENT

Defendants claimed in their motion that Plaintiff has failed to provide any evidence demonstrating his injuries or demonstrating Defendants' conduct proximately caused Plaintiff's injuries. See Def. Br. at 4. Specifically, Defendants assert "there is no testimony or evidence from an expert as to the proximate cause of the bleeding or the Plaintiff's injuries. More importantly, there is also no testimony or evidence that any actions of the Defendant were the proximate cause of the Plaintiff's injuries."¹ Id. at 2. However, there was evidence presented at

¹ Defendants' motion did not claim Plaintiff failed to present a scintilla of evidence demonstrating Defendants' duty to Plaintiff, Defendants' standard of care for treating Plaintiff, or Defendants' breach of their duty to Plaintiff. Consequently, Plaintiff's evidence raising a jury question on these issues is not addressed in this memorandum.

trial demonstrating Plaintiff's damages and that they were proximately caused by Defendants' breaches of duty in a quantity that far exceeds the scintilla necessary to submit the case to a jury.

Plaintiff's damages were established at trial through his own testimony as to his physical and mental pain and suffering, EMS medical records stating Plaintiff's blood loss, physical condition and mental state, Defendants' own medical records setting forth Plaintiff's physical pain, bleeding, condition, and cause and sources of the bleeding, as well as other medical records received in evidence at the trial. Plaintiff's expert physician Dr. Gezen testified to the physical and mental pain and suffering and increased recovery time. Gezen Dep. P. 20, 22-23. However, the Court ruled during the trial that expert testimony was not required to establish the Plaintiff's mental and emotional pain and suffering.

South Carolina law clearly establishes a causation rule applicable to medical negligence suits. For most medical negligence cases, the plaintiff must present expert testimony indicating the plaintiff's injuries "most probably resulted from the defendant's negligence." Martasin v. Hilton Head Health Sys., 364 S.C. 430, 438, 613 S.E.2d 795, 800 (Ct. App. 2005)(quoting Ellis v. Oliver, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996)). However, for instances where the subject matter of the claim "is of common knowledge or experience," the general rule requiring expert testimony meeting the "most probably" rule does not apply. Additionally, in cases where the plaintiff does not rely exclusively on expert testimony to establish causation, e.g., when the plaintiff relies on both expert testimony and circumstantial evidence, the "most probably" rule does not control. Green v. Lilliewood, 272 S.C. 186, 190-91, 249 S.E.2d 910, 912 (1978)(citing Gambrell v. Burleson, 252 S.C. 98, 101, 165 S.E.2d 622, 623 (1969)). When something more than expert testimony is presented to establish causation, the appropriate standard is "whether

there [is] sufficient competent evidence from which the jury [can] infer[] a causal connection.” Id. (citing 70 C.J.S. Physicians & Surgeons § 62 at 1004).

In reversing a directed verdict, the Green court recounted a combination of evidentiary showings sufficient to create a jury question on causation. The Green plaintiff presented expert testimony, a tacit admission by the defendant, and other circumstantial evidence demonstrating a causal connection between the defendant’s misconduct and the plaintiff’s injuries. Importantly, the circumstantial evidence included the events following the injury that provided a “temporal causal sequence which warrants a reasonable inference” of negligence. Green, 272 S.C. at 193, 249 S.E.2d at 913. The court noted that, for purposes of a directed verdict motion, any “uncertainty of the medical testimony was sufficiently supplied by the sequence of events which followed the injury.” Id. (quoting Grice v. Dickerson, Inc., 241 S.C. 225, 230-31, 127 S.E.2d 722, 725 (1962)).

Furthermore, although physicians provide the orders for wound care and home health care, the actual performance of home health and wound care, specifically including dressing changes and assessments in this case was delegated to nurses. The South Carolina Nurse Practice Act, S.C. Code Ann, § 40-33-10 et seq., empowers nurses to make nursing diagnoses. Accordingly, Plaintiff’s nurse expert, as well as treating nurses, should be allowed to offer expert opinions in this matter and those opinions should be recognized as expert causation testimony. See, Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003).

In this case, Plaintiff’s expert testimony satisfied the “most probably” rule of causation. Plaintiff presented expert testimony from Lauren Cauwels, R.N. and Murat Gezen, M.D. The testimony of these two witnesses raised a jury question on the two issues discussed in Defendants motion: (1) causal connection between Defendants’ deviations from the standard

care on October 2 and 3, 2006 and Plaintiff's bleeding episode on October 3, 2006 (2) causal connection between Plaintiff's October 3rd bleeding episode and Plaintiff's claimed damages. In Nurse Cauwels' opinion, Nurse Belk deviated from the standard of care by, among other things, failing to properly set the pressure and dress the wound on October 2nd, failing to perform an initial assessment of Plaintiff's condition and by improperly removing the dressing on October 3rd. As Nurse Cauwels explained, Nurse Belk should have, but failed to, performed an initial assessment and another assessment of Plaintiff before leaving. Both Plaintiff's and Defendants' nurse experts testified as to how the transparent dressing should have been loosened and removed. Nurse Belk acknowledged in her deposition that she treated dressing changes "like removing tape." Belk Dep. 22:24-25. Nurse Belk admitted in the medical records that her dressing change caused the bleeding. Roper St. Francis Healthcare Home Health "RSFH" records bates stamped RSFH 36, 64.

Nurse Belk also noted and notified the Defendants' wound care nurse of her "difficulty of applying wound vac" on October 2, 2006 and that Mr. Evans' "pain level increased significantly". RSFH 0031. Nurse Cauwels, in her deposition and trial testimony, testified that the maladies Plaintiff endured on October 3rd would not have happened if Nurse Belk had properly dressed the wounds, set the pressure, assessed the Plaintiff, and removed the dressing.

Dr. Gezen's testimony clearly and definitively links Plaintiff's bleeding with the damages Plaintiff claimed in this litigation. According to Dr. Gezen, Plaintiff's "bleeding actually led to a vasovagal event which caused him to be hypotensive, bradycardic, and present to the emergency room the way he did." Gezen Dep. 20:6-9. In Dr. Gezen's expert opinion, the bleeding episode caused Plaintiff a significant amount of mental stress. Gezen Dep. 22:15-16. Dr. Gezen also

testified that the bleeding episode prolonged the amount of time necessary for Plaintiff's wound to heal. Gezen Dep. 23:2-10.

This testimony from Plaintiff's experts establishes a causal connection between Defendants' misconduct and Plaintiff's bleed and between Plaintiff's bleed and the damages claimed in this case. According to the combined testimony of Nurse Cauwels and Dr. Gezen, Nurse Belk's misconduct most probably led to Plaintiff's bleed and the bleed most probably led to Plaintiff's damages. Without anything more, this testimony at the very least represents a scintilla of evidence on the causation issues.

Plaintiff's causation evidence, however, was not limited to the testimony of these experts. The medical records, Nurse Belk's testimony, and circumstantial evidence all support the dual claims that Defendants' conduct caused the bleed and the bleed caused Plaintiff's damages. Defense counsel mentions in their brief and argued in court that Plaintiff suffered two bleeding episodes. Under their theory, the first instance of bleeding began at some point before Nurse Belk's arrival on October 3rd and was resolved by the time Nurse Belk left Plaintiff's home. Then, after Nurse Belk left, Plaintiff began to bleed a second time and emergency medical intervention became necessary. Defendants' theory suggests that there could be no causation because the injury was caused by a spontaneous and unexpected second bleeding episode.

Several pieces of evidence contradict this theory. First and most importantly, Nurse Belk's deposition testimony indicates Plaintiff had a single and prolonged bleeding episode. According to Nurse Belk, "It's unfortunate that bleeding continued after I left." Belk Dep. 69:3-4. Nurse Belk also testified as follows:

Q. What time did the bleeding begin?

A. I can't say. I would be speculating. With the removal of the dressing.

Q. And what time did the bleeding stop?

A. Once again I can't pinpoint that.

Belk Dep. 69:15-19.

...

Q. Okay. And what was the purpose of your return visit?

A. To reassess and change the dressing.

Belk Dep. 40:16-15.

Nurse Belk planned to come back to change the dressing because she knew the dressing was bloody and would require changing later that afternoon.

Second, Nurse Belk never documented that the bleeding stopped. Nowhere in the medical records does it state that the bleeding stopped. The only evidence that the bleeding stopped is testimony from Nurse Belk years after the incident and after the lawsuit was filed. Third, the Plaintiff Mr. Evans testified at trial that he was in severe pain from the dressing removal, felt a trickling down his leg continuously, and only later realized that the trickling sensation he was feeling was bleeding from his wounds.

Fourth, the circumstances surrounding Nurse Belk's exit from Plaintiff's home on October 3rd support the inference of active bleed at her departure. As indicated in the medical records and as stated in trial testimony, Nurse Belk placed a heavy bag of rice on top of the wounds before she left. Plaintiff's expert testified that this is not a step taken unless there was active bleeding and that placing a rice bag placement is not something normally done. Furthermore, Nurse Belk noted applying gauze and rice, instructing Plaintiff to "remain in bed and still", and that "outer dressings dry" upon her departure. [RSFH 35] However, the trial

testimony of ALL of the nurses, experts for Plaintiff and Defendant as well as treating and supervisory nurses, was that the gauze would not have been visible under the bag of rice.

In total, this evidence was more than sufficient to get Plaintiff's claim to the jury. Plaintiff presented expert testimony that satisfies the most probably rule of causation that applies generally to medical malpractice cases. Plaintiff's experts testified to a clear connection between Defendants' misconduct and the bleed and a clear connection between the bleed and Plaintiff's injuries. This testimony far exceeds the standard necessary to defeat a directed verdict motion. Based on Plaintiff's expert testimony, a reasonable jury could very easily conclude Defendants' conduct proximately caused the bleed that led to Plaintiff's injuries.

Even if the court concludes Plaintiff's expert testimony is alone insufficient to create a jury question, Plaintiff did not rely solely on expert testimony to prove causation. More evidence of a causal connection was also established by the circumstances of Nurse Belk's October 3rd visit to Plaintiff's home, Plaintiff's medical records, and Nurse Belk's testimony. Further, a supposed second episode of bleeding, the factual assertion at the center of Defendants' argument supporting their motion, is rejected by Plaintiff's expert testimony and severely undermined by the evidence discussed above. At the very least, whether Plaintiff had one or two bleeding episodes is a factual inquiry, the resolution of which is improper on a directed verdict motion. Moreover, by denying Defendants' motion for directed verdict at the close of Plaintiff's case, the Court ruled that the evidence was susceptible of more than one reasonable inference and the case should be submitted to the jury. Accordingly, without weighing the evidence, the case should be submitted to the jury to determine credibility and decide upon the more reasonable inference. In the aggregate, Plaintiff's evidence certainly created a question of fact on the causation issue and a directed verdict was inappropriate under these circumstances.

CONCLUSION

Based on the discussion above, it is clear Plaintiff presented at least a scintilla of evidence of causation and met all causation rules applicable to medical negligence cases and Plaintiff's nurse expert was qualified to render expert causation testimony. Since the preclusion of Plaintiff's nurse expert's causation testimony and directed verdict in this case directly contradict South Carolina law, Plaintiff asks the court to reconsider and alter its earlier rulings and order.

Respectfully submitted,


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cdeluca@mcgowanhood.com

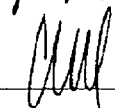
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CLERK OF COURT
FOR SOUTHERN DISTRICT OF SC

FILED

January 23, 2012
Rock Hill, South Carolina

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed and emailed to all counsel of record in this proceeding this day of Jan 23, 2012



STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
Finley C. Evans, et al	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 09-CP-08-3237
	)	
Roper Hospital, Inc. d/b/a Roper St.	)	
Francis Healthcare and d/b/a Roper	)	
St. Francis Home Health; and	)	
Janelle Belk, R.N.,	)	
	)	
Defendants.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held in the above-captioned action on January 9-12, 2012, before The Honorable Stephanie P. McDonald in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Christy M. DeLuca, Esq.
McGOWAN HOOD FELDER
 1538 Health Care Drive
 Rock Hill, SC 29732
 Appearing for Plaintiff

Joseph J. Tierney, Esq.
 Christine Toporek, Esq.
YOUNG CLEMENT RIVERS
 P O Box 993
 Charleston, SC 29402
 Appearing for Defendant

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Murat Gezen, M.D.	via deposition designations, see Page 453			
Janelle Belk	via deposition designations, see Page 461			
Brian Widenhouse	360	397	410	
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6	Deposition of Janelle Belk
7	Deposition designations for Belk

1 (ROLL CALL)

2 (STATUTORY JURY QUALIFICATION)

3 THE COURT: Thank you, Ladies and
4 Gentlemen, for your patience as we work out some
5 housekeeping matters.

6 We are now going to strike a jury in
7 the case of Finley C. Evans versus Roper
8 Hospital, Incorporated doing business as Roper
9 St. Francis Healthcare and also doing business
10 as Roper St. Francis Home Health.

11 This case is expected to last about
12 three to four days and, as you know, this is a
13 civil action, a civil term where we are trying
14 to resolve a dispute between parties. The
15 dispute here, the issues, you'll hear more about
16 them from the attorneys, if you're selected on
17 the jury, is whether Roper Home Health Care and
18 its staff followed the appropriate standard of
19 care in treating the plaintiff's wound and
20 bleeding at home following groin surgery. As I
21 said, you will hear more about that, but that is
22 the general case that we're going to be striking
23 a jury for.

24 Now, -- so what I am going to be doing

1 now is ask you some questions that are more
2 specifically directed to the facts of this case,
3 to make sure that we get the most fair and
4 impartial jury that we possibly can.

5 The first thing that I will ask the
6 lawyers to do is to introduce themselves and
7 their clients or anybody that they have at the
8 table with them.

9 If any member of the jury panel is
10 related by blood or marriage to any of the
11 attorneys or the parties in this matter, I am
12 going to ask you to stand and give me your name
13 and juror number. We will start with
14 plaintiff's counsel.

15 MS. DELUCA: Good morning. My name is
16 Christy DeLuca of the McGowan Hood & Felder Law
17 Firm. I was formerly with the Joe Griffith Law
18 Firm. My clients are Mr. Finley Evans and Mrs.
19 Jane Evans.

20 THE COURT: Thank you. Counsel, you
21 may be seated.

22 Has any member of the panel been
23 represented by Christy DeLuca or the firms of
24 McGowan Hood & Felder or the Joe Griffith Law
25 Firm? If so, please stand. (No response).

1 Thank you.

2 Is any member of the jury panel related
3 by blood or marriage, or close personal friends
4 of, or do you know Mr. Finley C. Evans or Mrs.
5 Jane Evans. If so, please stand. (No
6 response). Thank you.

7 Mr. Tierney?

8 MR. TIERNEY: Thank you, Your
9 Honor. Good morning, my name is Joe Tierney.
10 My law office is Young Clement Rivers. We
11 practice in Charleston, South Carolina.

12 Also assisting me this week is
13 Christine Toporek our office.

14 Seated with me is Janelle Belk, who is
15 one of the Roper Healthcare nurses who was
16 involved with the care of Mr. Evans.

17 Thank you, Your Honor.

18 THE COURT: Thank you, sir. Any
19 member of the panel ever been represented by Mr.
20 Joe Tierney, Ms. Christine Toporek or the firm
21 of Young Clement Rivers of Charleston? If so,
22 please stand. (No response). Thank you.

23 Is any member of the jury panel related
24 by blood or marriage or who is a close personal
25 friend of Ms. Janelle Belk, who is seated with

1 counsel at the table? (No response). Thank
2 you.

3 I also have been -- the attorneys have
4 been kind enough to provide me with a potential
5 witness list. I am going to read a list of
6 names now. If anyone is related by blood or
7 marriage or is a close personal friend of any
8 these potential witnesses, if you would, please
9 stand and I'll take your name and juror number.
10 Potential witnesses, in addition to Mr. and Mrs.
11 Evans and Ms. Belk are:

12 Ben Evans
13 Dr. Brian Widenhouse
14 Bonnie Mello
15 Judy Burbage
16 Lauren Cauwels
17 Murat Gezen, or
18 Renee Epting

19 Do any of y'all know these folks, are
20 related by blood or marriage or a close personal
21 friend? Yes, ma'am, if you could give us your
22 name and juror number?

23 JUROR NUMBER 17: Julie Ryan, Number
24 17. Dr. Widenhouse is a former doctor of mine.

25 THE COURT: A former doctor of yours?

1 JUROR NUMBER 17: Yes, I work for HCA,
2 Trident Hospital, so I know him personally.

3 THE COURT: Would that relationship
4 and knowledge with Dr. Widenhouse interfere with
5 your ability to be fair and impartial in this
6 case?

7 JUROR NUMBER 17: Yes.

8 THE COURT: It would interfere?

9 JUROR NUMBER 17: Yes.

10 THE COURT: Number 17 is struck.
11 Thank you.

12 (JUROR NUMBER 17 EXCUSED)

13 THE COURT: Yes, sir? Just being a
14 gentleman -- thank you! Anyone else know any of
15 these witnesses? (No response).

16 Has any member of the panel served as a
17 juror in the past? If so, please stand. Have
18 you been on a jury before, before this one?
19 Yes, sir, if you would, give us your name and
20 juror number.

21 JUROR NUMBER 126: James Poston,
22 126.

23 THE COURT: What kind of case was it?

24 JUROR NUMBER 126: It was a civil
25 case about four or five years ago.

1 THE COURT: Would that prior service
2 affect your ability to be fair and impartial?

3 JUROR NUMBER 126: No.

4 THE COURT: Yes, ma'am?

5 JUROR NUMBER 42: Juror Number 42. I
6 am not sure of the year but it was before 2005,
7 in North Charleston.

8 THE COURT: That is totally different
9 than what we are doing here, but would that
10 affect your ability to serve in this case?

11 JUROR NUMBER 42: No.

12 THE COURT: Thank you, ma'am.

13 JUROR NUMBER 139: Juror 139. I
14 was on a domestic case for the City of Goose
15 Creek and also another criminal case.

16 THE COURT: Thank you, sir. Would
17 those prior experiences interfere in any way
18 with your ability to serve impartially in this
19 case?

20 JUROR NUMBER 139: No.

21 THE COURT: Yes, sir? In the back.

22 JUROR NUMBER 122: Number 122,
23 Jonathon Phillips. Back in the mid '90s, I
24 served on a civil jury. That would not affect
25 my ability.

1 THE COURT: Thank you, sir. Yes,
2 sir?

3 JUROR NUMBER 8: Juror Number 8, I
4 made a worker's compensation claim in '09.

5 THE COURT: Would that interfere with
6 your ability to serve here?

7 JUROR NUMBER 8: No.

8 THE COURT: Thank you, sir. Does any
9 member of the panel have a physical or medical
10 problem that would make jury duty difficult for
11 you? We've kinda asked this before but this is
12 more specific. If so, please stand. (No
13 response). Thank you.

14 Has any member of the panel or your
15 spouse ever worked in the field of medicine,
16 nursing or hospital care? If so, please stand.
17 (Number of potential jurors respond).

18 Mr. Tierney, do you want me to go
19 through these -- or do you want to ---

20 MR. TIERNEY: As long as they can
21 be fair and impartial, I have no objection to
22 you not doing an individual *voir dire*.

23 THE COURT: Of everyone who is
24 standing, is there anybody whose work in that
25 field would make it impossible for them to be

1 fair and impartial in this case? If you can be
2 fair, have a seat -- (all jurors seated).

3 Any objection from counsel, not going
4 through all of those? It was pretty much the
5 whole panel.

6 MS. DELUCA: No, Your Honor.

7 MR. TIERNEY: No objection.

8 THE COURT: Thank you. I appreciate
9 it. Has any member of the panel or anyone in
10 your immediately family been involved in a
11 lawsuit, including a worker's compensation
12 claim? If you have been involved in a lawsuit
13 or a member of your family has, including a
14 compensation claim, please stand. Okay, I am
15 going to get your names and juror number, and
16 then if you would tell us if it was you or your
17 family member; whether you were the plaintiff or
18 defendant, what type of case it was and who your
19 lawyer was. We will start right here.

20 JUROR NUMBER 8: Juror 8, a workers
21 compensation claim back in '09. I have had back
22 surgery through my work.

23 THE COURT: Okay. Who was your
24 attorney, sir?

25 JUROR NUMBER 8: Patrick Jennings

1 with the Joye Law Firm.

2 THE COURT: Would that experience
3 interfere with your ability to be fair and
4 impartial in this case?

5 JUROR NUMBER 8: No.

6 THE COURT: Yes, sir?

7 JUROR NUMBER 165: William Turner,
8 165. I've been in several EEO cases and I've
9 had one myself, civil suits.

10 JUROR NUMBER 165: I was a
11 plaintiff and assisted other members of my
12 Union.

13 THE COURT: Who was your attorney(s)?

14 JUROR NUMBER 165: Bonnie Hunt.

15 THE COURT: Would those experiences
16 interfere with your ability to be fair and
17 impartial?

18 JUROR NUMBER 165: No, ma'am.

19 THE COURT: Yes, ma'am, name and
20 juror number, please?

21 JUROR NUMBER 161: My name is
22 Brandi Thomas, Juror Number 161. Workmen's
23 comp. We ended up settling out of court. It
24 took three years. Represented myself. And a
25 '98 car accident. Demal Mattison.

1 THE COURT: Demal Mattison?

2 JUROR NUMBER 161: Yes, ma'am.

3 THE COURT: Would those experiences
4 interfere with your ability to be fair in this
5 case?

6 JUROR NUMBER 161: No, ma'am.

7 THE COURT: Thank you. Yes, ma'am?

8 JUROR NUMBER 133: Juror 133. I
9 had a suit last year and my attorney was
10 Attorney Peagler.

11 THE COURT: Sorry?

12 JUROR NUMBER 133: Attorney
13 Peaglar.

14 THE COURT: Would that interfere
15 with your ability to be fair in this case?

16 JUROR NUMBER 133: No.

17 THE COURT: In the back?

18 JUROR NUMBER 146: My husband's
19 son, a couple of years ago against a local
20 hospital.

21 COURT REPORTER: I can't hear her.

22 THE COURT: If you could speak up,
23 ma'am.

24 JUROR NUMBER 146: My husband's son
25 had a case a couple of years ago against a local

1 hospital. I don't think that it would affect my

2 ---

3 THE COURT: What hospital was it?

4 JUROR NUMBER 146: MUSC.

5 THE COURT: Would that affect your
6 ability to be fair in this case?

7 JUROR NUMBER 146: No.

8 THE COURT: Yes, sir?

9 JUROR NUMBER 123: Juror 123.

10 I guess I was the plaintiff -- in a head-on
11 collision, somebody hit me. John Glennon was
12 my attorney.

13 THE COURT: Would that interfere with
14 your ability to be fair in this case?

15 JUROR NUMBER 123: No.

16 THE COURT: Thank you, sir. Yes,
17 ma'am?

18 JUROR NUMBER 11: My sister had a
19 workers comp claim last year and I was involved
20 with that also.

21 THE COURT: Do you know who her
22 attorney was?

23 JUROR NUMBER 11: Scott Harbin.

24 THE COURT: Would that interfere with
25 your ability to be fair and impartial in this

1 case?

2 JUROR NUMBER 11: No, ma'am.

3 THE COURT: Has any member of the
4 panel or any member of your immediate family
5 ever received home healthcare? If so, please
6 stand. Yes, sir?

7 JUROR NUMBER 48: My dad did, Hospice,
8 prior to his death.

9 THE COURT: Would that in any way
10 interfere with your ability to be fair in this
11 case?

12 JUROR NUMBER 48: Possibly. Yes,
13 ma'am.

14 THE COURT: Possibly it would?

15 JUROR NUMBER 48: (Affirmative nod).

16 THE COURT: If you could come
17 forward, please, sir.

18 SIDEBAR:

19 THE COURT: Yes, sir? Why would
20 that influence you?

21 JUROR NUMBER 48: I believe that
22 they company didn't do a very good job and that
23 it led to a timely -- faster death to him. I
24 didn't agree with the way that they took care of
25 him. I see it day to day on my job, too.

1 (SIDEBAR CONCLUDED)

2 THE COURT: I am going to strike
3 Number 48. Thank you, sir. You are excused
4 from this case, but you need to call after 6:00.

5

6 (JUROR NUMBER 48 EXCUSED)

7 THE COURT: Yes, sir?

8 JUROR NUMBER 165: William Turner.
9 My grandmother is getting home care right now.

10 THE COURT: Will that interfere with
11 your ability to serve in this case?

12 JUROR NUMBER 165: No, ma'am.

13 THE COURT: Yes, sir?

14 JUROR NUMBER 23: John Champion,
15 Number 23. My father is presently received home
16 healthcare.

17 THE COURT: Would that in any way
18 interfere with your ability to be fair in this
19 case?

20 JUROR NUMBER 23: No.

21 THE COURT: Thank you, sir. Yes,
22 ma'am?

23 JUROR NUMBER 31: Shelby Coward, Juror
24 Number 31. My grandfather had hospice.

25 THE COURT: Would that in any way

1 interfere with your ability to be fair in this
2 case?

3 JUROR NUMBER 31: No, ma'am.

4 THE COURT: Yes, ma'am?

5 JUROR NUMBER 70: Number 70, my father
6 received hospice in North Carolina.

7 THE COURT: And could you be fair and
8 impartial in this case?

9 JUROR NUMBER 70: Yes.

10 THE COURT: Yes, ma'am.

11 JUROR NUMBER 27: Juror Number 27,
12 Leann Coleman. My father also received help
13 through hospice the year before he passed away.

14 THE COURT: Would that interfere with
15 your ability to be fair in this case?

16 JUROR NUMBER 27: (Negative gesture).

17 THE COURT: Yes, ma'am, in the back.

18 JUROR NUMBER 75: Juror 75, my
19 grandmother received home healthcare services,
20 and it would not affect me.

21 THE COURT: Yes, ma'am?

22 JUROR NUMBER 111: Laura Murphy, Juror
23 111. My father received Hospice care before he
24 passed away and it would not affect me.

25 THE COURT: Appreciate it. Has any

1 member of the panel or any member of your
2 immediate family ever used a wound vac or
3 provided care for someone who had a wound vac
4 placed? If so, please stand. Yes, sir?

5 JUROR NUMBER 23: John Champion, 23.
6 I -- as a nurse, in the past I have used wound
7 vacs.

8 THE COURT: Would that interfere with
9 your ability to be fair in this case?

10 JUROR NUMBER 23: No, ma'am.

11 THE COURT: Yes, ma'am?

12 JUROR NUMBER 111: Laura Murphy,
13 Juror 111. I am a nursing instructor at
14 Orangeburg Technical College, so I take students
15 into the clinical setting and, therefore, I am
16 exposed to and have to deal with wound vacs
17 occasionally.

18 THE COURT: Thank you, ma'am. Yes,
19 ma'am, in the purple?

20 JUROR NUMBER 175: I have used them
21 as a nurse, multiple times.

22 THE COURT: Yes, ma'am?

23 JUROR NUMBER 146: Juror Number
24 146, I've used them in the hospital setting in
25 the care of patients; it would not affect my

1 ability to be fair.

2 MR. TIERNEY: Your Honor, would
3 you mind asking what hospital that was in?

4 THE COURT: Which hospital?

5 JUROR NUMBER 146: East Cooper
6 Hospital.

7 THE COURT: Thank you, ma'am.
8 Has any member of the jury panel ever had an
9 unpleasant or unsatisfactory experience with a
10 hospital, doctor or nurse who cared for you,
11 your spouse, children or other family member or
12 close personal friend(s). If so, please stand.
13 (No response). Finding none.

14 Can you listen to the evidence
15 involving this dispute between a patient and a
16 healthcare provider concerning wound care and
17 alleged medical negligence and fairly and
18 impartially decide the issues under the law a
19 the court will present to you at the conclusion
20 of this case? If you cannot be fair and
21 impartial in this dispute involving wound care
22 and alleged medical negligence and apply the law
23 as the court gives it to you, please stand. If
24 you cannot be. (No response). Thank you, I
25 find none.

1 Does any member of the panel have any
2 beliefs or opinions about medical malpractice
3 cases that would make you feel uncomfortable
4 about whether you could be fair and impartial in
5 a case against a healthcare provider concerning
6 alleged medical malpractice. If so, please
7 stand. (No response). Finding none.

8 Does any member of the panel have any
9 beliefs or opinions about the opening of a
10 hospital by Roper St. Francis in Moncks Corner;
11 if so, would that belief or opinion affect your
12 ability to fairly and impartially decide the
13 issues under the law in this case?

14 If you have particular strong feelings
15 or beliefs about the opening of a Roper St.
16 Francis Hospital in Moncks Corner and that would
17 affect your ability to apply the law in this
18 case, please stand. (No response). Finding
19 none.

20 Is any member of the jury panel, or
21 your immediate family, employed by Trident
22 Hospital System? If so, please stand. Yes,
23 ma'am?

24 JUROR NUMBER 14: Fourteen (14),
25 Bobbie Brown.

1 THE COURT: Are you employed by
2 Trident Health System?

3 JUROR NUMBER 14: My sister is.

4 THE COURT: Would her employment with
5 Trident affect your ability to be fair and
6 impartial in this case?

7 JUROR NUMBER 14: No, ma'am.

8 THE COURT: Yes, ma'am?

9 JUROR NUMBER 42: Lisa Turee, Juror
10 Number 42. I am employed at Trident.

11 THE COURT: Would that interfere with
12 your ability to be fair and impartial in this
13 case?

14 JUROR NUMBER 42: No.

15 THE COURT: Has any member of the
16 jury panel ever played in a band or performed
17 with the plaintiff, Mr. Evans? If you have
18 played in a band or performed with Mr. Evans,
19 please stand. (No response). Finding none.

20 Is any member of the jury panel a
21 member of the Garden of Gethsemane Baptist
22 Church? Is so, please stand. (No response).

23 Is any member of the jury panel a
24 member of the Mason's Lodge located in Goose
25 Creek, which is Lodge Number 401? If so, please

1 stand. (No response).

2 Is any member of the panel or member of
3 your family employed by Roper Hospital, Roper
4 St. Francis Healthcare, Roper St. Francis Home
5 Healthcare, or any Roper organization or
6 affiliate? If so, please stand.

7 JUROR NUMBER 23: John Champion, 23.
8 Presently a Roper employee.

9 THE COURT: Would that interfere with
10 your ability to be fair in this case?

11 JUROR NUMBER 23: No, ma'am.

12 THE COURT: Yes, ma'am?

13 JUROR NUMBER 61: Brandi Thomas,
14 Number 61. My aunt is employed by one of the
15 family physicians.

16 THE COURT: With the Roper network?

17 JUROR NUMBER 61: Yes, ma'am.

18 THE COURT: Would that interfere with
19 your ability to be fair and impartial?

20 JUROR NUMBER 61: No.

21 THE COURT: Yes, sir?

22 JUROR NUMBER 96: Number 96, my mother
23 works for Roper in Mount Pleasant.

24 THE COURT: Would that interfere with
25 your ability to be fair in this case?

1 JUROR NUMBER 96: No, ma'am.

2 THE COURT: Is any member of the
3 panel or member of your family employed by a
4 physician, chiropractor, dentist or other member
5 of the medical profession? If so, please stand.

6 JUROR: Say that one more time?

7 THE COURT: Is any member of the
8 panel or member of your family employed by a
9 physician, chiropractor, dentist or other member
10 of the medical profession? If so, please stand.

11 JUROR NUMBER 161: Brandi Thomas.

12 THE COURT: I think we've got your
13 information but if you'd give it to us again,
14 please.

15 JUROR NUMBER 161: Brandi Thomas,
16 Number 161.

17 THE COURT: Would that interfere with
18 your ability to be fair in this case?

19 JUROR NUMBER 161: No.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 4: Number 4, registered
22 dental hygienist.

23 THE COURT: Would that interfere with
24 your ability to be fair in this case?

25 JUROR NUMBER 4: No, ma'am.

1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 70: My daughter in law
3 is an R.N.

4 THE COURT: Would that interfere with
5 your ability to be fair in this case?

6 JUROR NUMBER 70: No, ma'am.

7 THE COURT: Yes, sir?

8 JUROR NUMBER 122: Number 122, my
9 wife is CNA and, no, it would not affect my
10 ability at all.

11 THE COURT: Thank you, sir. Unless
12 you've answered this question before, the next
13 question is, is there any member of the panel or
14 member of your family employed by a hospital in
15 any capacity: medical, paramedical or
16 administrative capacity. If so, please stand.
17 Yes, sir?

18 JUROR NUMBER 165: William Turner,
19 my wife is an LPN. She does work for Trident
20 Tech. My mom is a nurse also.

21 THE COURT: Where does your mom work?

22 JUROR NUMBER 165: She is currently
23 retired. She worked at the Moncks Corner E.R.

24 THE COURT: Would interfere with your
25 ability to be fair in this case?

1 JUROR NUMBER 165: No.

2 THE COURT: Yes, sir?

3 JUROR NUMBER 23: John Champion, 23,
4 Roper employee.

5 THE COURT: Yes, ma'am?

6 JUROR NUMBER 4: Number 4, my aunt is
7 a nurse but not in this state.

8 THE COURT: Yes, ma'am?

9 JUROR NUMBER 119: Number 119, I am
10 a registered nurse with MUSC.

11 THE COURT: Would that interfere with
12 your ability to be fair in this case?

13 JUROR NUMBER 119: No.

14 THE COURT: I believe that we have
15 covered these, but out of an abundance of
16 caution, we've got two more categories.

17 Any member of your family employed as a
18 nurse, nurse's aide, LPN, or orderly by any
19 hospital, clinic, physician's office, dental
20 office or any member of the medical profession
21 and you have not already given us your
22 information, please stand. (No response).

23 Any member of your family employed as
24 a medical tech, lab tech, therapist, x-ray
25 technician or other paramedical occupation and

1 you have not already given us that information,
2 please stand. (No response).

3 Does any prospective juror or member of
4 your family engage in any business that depends,
5 in whole or in part, on the sale of goods or
6 services to a healthcare provider, physician,
7 clinic or similar practitioner or provider of
8 healthcare services? If so, please stand.
9 Yes?

10 JUROR NUMBER 164: My wife works
11 for Hill-Rom, sells hospital beds.

12 THE COURT: Would that interfere with
13 your ability to be fair in this case?

14 JUROR NUMBER 164: No.

15 THE COURT: Yes, ma'am?

16 JUROR NUMBER 53: Julie Garrett, 53.
17 My daughter works for OccuPain Corporation.

18 THE COURT: Would that interfere with
19 your ability to be fair in this case?

20 JUROR NUMBER 53: No.

21 THE COURT: Yes, sir?

22 JUROR: I work for Quatro (phonetic)
23 Corporation, we make surgical lights and also
24 pivotal for emergency rooms and operating.

25 THE COURT: Would that interfere with

1 your ability to be fair in this case?

2 JUROR: No.

3 THE COURT: Thank you, sir. Does any
4 prospective juror or member of your family
5 engage in any business concerned with the
6 investigation, settlement or processing of
7 claims relating to a physician, hospital, clinic
8 or other healthcare provider? If so, please
9 stand.

10 JUROR NUMBER 130: Patrick Reed,
11 Juror 130. My wife works for Select Health of
12 South Carolina, which they credential doctors
13 for Medicaid/Medicare.

14 THE COURT: Would you wife's
15 employment in any way interfere with your
16 service in this case?

17 JUROR NUMBER 130: No.

18 THE COURT: Counsel, I think number
19 five was covered during roll call. Do you want
20 us to go through any of that?

21 MR. TIERNEY: No, that's fine.

22 THE COURT: Does any member of the
23 panel or member of your family own stock or hold
24 a proprietary interest in any hospital or
25 physician's medical supply company, drug company

1 or other business concerned in whole or in part
2 with selling goods or services to any aspect of
3 the medical profession -- healing arts, or
4 healthcare providers. If you have stock or
5 proprietary interest, or a member of your family
6 does, in those fields, please stand.

7 JUROR: My husband and I do have stock
8 but it would not affect me.

9 THE COURT: What is your juror
10 number?

11 JUROR NUMBER 27: I'm sorry. Leann
12 Coleman, Juror Number 27.

13 THE COURT: Has any member of the
14 panel or member of your immediate family studied
15 medicine or nursing or is presently pursuing a
16 course of study in medicine, the healing arts
17 and sciences, nursing and related fields,
18 paramedical services or other similar vocations
19 and you have not already stood, please stand.
20 Yes, ma'am?

21 JUROR NUMBER 61: I am currently in
22 nursing school.

23 THE COURT: Where are you in school?

24 JUROR NUMBER 61: Trident Tech.

25 THE COURT: Would that interfere with

1 your ability to be fair in this case?

2 JUROR NUMBER 61: No, ma'am.

3 THE COURT: Is there any member of
4 the panel, your family or close personal friend
5 suffering from any chronic or disabling illness
6 that requires regular or periodic medical care,
7 examination, treatment or therapy of any kind.
8 If so, please stand -- if you have not already
9 given us that information. Yes, ma'am?

10 JUROR NUMBER 14: Barbara Brown,
11 Number 14. He had a kidney transplant.

12 THE COURT: Would his treatment and
13 care and your knowledge of that, would that in
14 any way interfere with your ability to be fair
15 in this case?

16 JUROR NUMBER 14: No, ma'am.

17 THE COURT: Yes, ma'am?

18 JUROR: My father has had recent
19 prostate cancer, so the procedures of going in
20 for treatment.

21 THE COURT: Would that interfere with
22 your ---

23 JUROR: No.

24 THE COURT: What is your juror
25 number?

1 JUROR NUMBER 4: Number four.

2 JUROR: My grandfather -- 165 -- my
3 grandfather is in Trident right now getting
4 care.

5 THE COURT: Thank you, sir. Has any
6 member of the family, member of your immediate
7 family or close personal friend received
8 negative pressure wound therapy or wound vac
9 treatment? If so, please stand. (No response).

10 Does any member of the panel have
11 independent knowledge of the facts,
12 circumstances or issues that will be heard in
13 this case? Have you heard about the case?
14 (No response).

15 Has any member of the panel formed any
16 opinion concerning any of the issues or persons
17 involved in this case? (No response).

18 Has any member of the panel formed an
19 opinion concerning this case merely because a
20 former patient has brought a claim against a
21 healthcare provider? If so, please stand. (No
22 response).

23 Has any prospective juror formulated
24 any opinion about the effects of a lawsuit,
25 seeking damages for alleged medical negligence,

1 or formed an opinion that claims or suits from
2 alleged medical negligence should be barred from
3 the court or in any way limited in the amount of
4 recovery. (No response).

5 If you have strong opinions in these
6 areas and have previously formed opinions,
7 please stand. (No response).

8 Thank you. I believe that we have
9 covered this one already. Is any member of the
10 panel -- has any member ever been a party to a
11 lawsuit other than a matrimonial or Family Court
12 case? If you have not already given us that
13 information, please stand and let us know
14 whether you were the person who sued or was
15 sued. (No response).

16 Is there any member of the panel who
17 has religious or personal beliefs that would
18 interfere with your ability to pass judgment on
19 the role of a physician or healthcare provider
20 in the care of a patient who alleges injury
21 resulting from that treatment? Anyone that has
22 strong religious or personal beliefs that would
23 interfere from their passing judgment in such a
24 civil case? If so, please stand. (No
25 response).

1 Is any member of the panel a member of
2 the following organizations:

3 Order of the Eastern Star
4 Berkeley Shriners Club
5 Berkeley Ladies Club or
6 Relay for Life

7 If so, please stand. (No response).

8 Is there any member of the panel who
9 has an opinion or believes that our legal system
10 needs legal reform or that there is a lawsuit
11 crisis in this country? If so, please stand.
12 (No response).

13 If negligence is proved in this case,
14 is there any member of the panel who would not
15 be able to fairly compensate the plaintiff
16 despite that proof? If so, please stand. (No
17 response).

18 Does any member of the panel know of
19 any reason whatsoever that you cannot give all
20 parties a fair and impartial case? (No
21 response).

22 Is there any member of the panel who
23 cannot listen to the evidence in this case and
24 who cannot follow the law as the court instructs
25 you, to render a fair and impartial verdict? If

1 THE COURT: That's okay. Thank you.
2 Everybody ready?

3 MS. DELUCA: Yes, Your Honor.

4 THE COURT: Ms. Rhonda.

5 CLERK: Beginning with the plaintiff,
6 the plaintiff will strike using the numbers one
7 through twenty for the jury.

8 MS. DELUCA: Your Honor, may I
9 approach?

10 THE COURT: Yes.

11 (OFF RECORD BENCH CONFERENCE)

12 SIDEBAR:

13 THE COURT: What have you got?

14 MS. DELUCA: I would like to take
15 up with you striking Number 23 for cause. He is
16 a Roper employee and he has someone in his care
17 receiving *pro bono* care currently.

18 THE COURT: Is he the nurse at
19 Roper?

20 MS. DELUCA: Number 23.

21 MR. TIERNEY: You were very
22 thorough with him and said that he was the --
23 asked if that would cause him any problems. I
24 mean, you had at least five questions under voir

1 dire and he was fine with it. We would object
2 to his being struck.

3 THE COURT: Yeah, he did say
4 that he could be fair. But in an abundance of
5 caution, with all his involvement, I am going to
6 go ahead and strike him for cause. Do you want
7 to put anything specific on the record about
8 that?

9 MR. TIERNEY: Yes, I would
10 like to just put on the record, just real quick,
11 that -- it won't take me two seconds.

12 The attorney in plaintiff's case
13 approached the bench and requested that Juror
14 Number 23 be stricken for cause. Defendant,
15 Roper St. Francis Healthcare objects to this
16 juror being stricken for cause because he was
17 repeatedly asked if he could be fair and he even
18 though he said his employer is St. Francis
19 Healthcare, he responded that he could be fair.

20 MS. DELUCA: And he also has a
21 family member receiving healthcare services.

22 THE COURT: Thank you. That's
23 on the left, number 7. Number seven (Juror
24 Number 23) is stricken for cause. Yes. So we

1 need to put one more in -- or move up from the
2 back, or just keeping going. Keep going.

3 (SIDEBAR CONCLUDED)

4 (JUROR NUMBER 23 EXCUSED)

5 THE COURT: They are going to get you
6 a new sheet, Counsel. Sorry, Ladies and
7 Gentlemen.

8 MR. TIERNEY: Your Honor, are they
9 just adding one juror?

10 THE COURT: I believe so and then we
11 will strike for two alternates.

12 MR. TIERNEY: Thank you.

13 THE COURT: Do you want them to
14 strike from one through twenty for the body of
15 the jury and then twenty-one to twenty-six for
16 the alternates?

17 CLERK: Correct.

18 THE COURT: Okay. Are we ready?

19 MS. DELUCA: Yes, Your Honor.

20 MR. TIERNEY: Yes, ma'am.

21 THE COURT: In an ideal world, number
22 twenty-six would have become number twenty, but
23 y'all will have to readjust a little bit.
24 Madam Clerk.

1 MS. DELUCA: Plaintiff strikes juror
2 number four.

3 MR. TIERNEY: Defendant strikes
4 juror number three.

5 CLERK: Defendant strikes number
6 three. Plaintiff?

7 MS. DELUCA: Plaintiff strikes number
8 five.

9 CLERK: Plaintiff strikes five.
10 Defendant?

11 MR. TIERNEY: Defendant strikes
12 number twelve.

13 CLERK: Defendant strikes twelve.
14 Plaintiff?

15 MS. DELUCA: Plaintiff strikes number
16 fourteen.

17 CLERK: Plaintiff strikes number
18 fourteen. Defendant?

19 MR. TIERNEY: Defendant strikes
20 number sixteen.

21 CLERK: Defendant strikes number
22 sixteen. Plaintiff?

23 MS. DELUCA: Plaintiff strikes number
24 ten.

1 CLERK: Plaintiff strikes number ten.
2 Defendant?

3 MR. TIERNEY: Your Honor, could we
4 approach a second?

5 THE COURT: Yes.

6 SIDEBAR:

7 MR. TIERNEY: I think I know
8 what's happening, Christy, as well.

9 THE COURT: Are the numbers off?

10 MR. TIERNEY: Yeah, the
11 numbers are off on the left-hand side.

12 THE COURT: This is strange
13 printing.

14 (OFF RECORD REVIEW OF STRIKES)

15 THE COURT: I understand. Do we
16 need to start over?

17 MR. TIERNEY: Yes. It's not
18 going to affect -- we just need to recall them
19 back out. That's the only thing.

20 MS. DELUCA: What do you have on
21 the new list? We've struck three, four, five.

22 THE COURT: I know what you're
23 saying.

24 MS. DELUCA: I think that we

1 struck Juror Number 12 when we intended to
2 strike number eleven, because the numbers do not
3 match up on the sheet.

4 THE COURT: Okay. I understand.

5

6 MR. TIERNEY: I think that was
7 the only one that ---

8 MS. TOPOREK: I lost track
9 trying to keep up. That doesn't match up
10 either.

11 THE COURT: I tell you what. Do
12 you each want to give me a list of the names and
13 I will make sure that the numbers are correct?

14 MR. TIERNEY: Sure. Sorry
15 about that.

16 THE COURT: No problem at all.

17 (SIDEBAR CONCLUDED)

18 THE COURT: For the record, in
19 reprinting the jury list after the strike for
20 cause, the numbers have realigned. Counsel is
21 each going to write their four names that they
22 want to strike down for me and give it to the
23 court, basically in-camera each. We will then
24 call the numbers and, hopefully, they will line

1 up correct this time. Then we will strike for
2 the two alternates. Does that suit everybody?
3 Does that make it easier?

4 MR. TIERNEY: Yes, Your Honor.

5 MS. DELUCA: Yes.

6 THE COURT: Then we kinda have a
7 double blind check? Okay. Ladies and
8 Gentlemen, thank you.

9 We need to start over.

10 CLERK: Do you want a new list?

11 THE COURT: No, I don't need a new
12 list. They know who they want to strike but the
13 numbers are realigned. So that's the issue.

14 MR. TIERNEY: May I approach?

15 THE COURT: I think in the future
16 what we need to do is not to print a new list.
17 This is confusing. We will do it by number but
18 I will do it by number and make sure that the
19 numbers match up. Okay.

20 MS. DELUCA: Are we doing the initial
21 strikes on that one, or were we supposed to do
22 them all.

23 THE COURT: It doesn't matter. I
24 think the alternates are going to be all right,

1 it's okay, you don't have to, it's fine. This
2 is not the attorneys' mistake. It's okay. I
3 have the name.

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: Your strike.

6 MS. DELUCA: Plaintiff strikes number
7 ten.

8 CLERK: Plaintiff strikes number ten.
9 Defendant?

10 MR. TIERNEY: Defendant strikes
11 number fifteen.

12 CLERK: Defendant strikes number
13 fifteen. As to the alternate, Plaintiff will
14 strike.

15 MS. DELUCA: Number twenty-three.

16 CLERK: Plaintiff strikes number
17 twenty-three.

18 Defendant?

19 MR. TIERNEY: Defendant strikes
20 number twenty-two.

21 CLERK: Defendant strikes number
22 twenty-two. Plaintiff?

23 MS. DELUCA: Plaintiff strikes twenty-
24 five.

1 CLERK: Plaintiff strikes number
2 twenty-five. Defendant?

3 MR. TIERNEY: Defendant strikes
4 number twenty-four.

5 CLERK: Defendant strikes number
6 twenty-four. Ladies and Gentlemen, if you will
7 please check our strikes. Plaintiff strikes
8 number four, number five, number ten, number
9 fourteen, number twenty-three and number twenty-
10 five. Is that correct?

11 MS. DELUCA: Yes, ma'am.

12 THE COURT: The Defendant strikes
13 number three, number eleven, number thirteen,
14 number fifteen, number twenty-two and number
15 twenty-four.

16 MR. TIERNEY: That is correct.
17 Thank you.

18 THE COURT: Thank you.

19 CLERK: Ladies and Gentlemen, as I
20 call your name, please step forward to serve on
21 the jury. Please bring all your personal
22 belongings at this time, as well:

23 Juror Number 54, Lance E. Gaskins

24 Juror Number 100, Loverta Middleton

1 Juror Number 12, Marcus K. Britt
2 Juror Number 157, William Stuart
3 Juror Number 4, Alyssa A. Barber
4 Juror Number 164, Cliffton Tinsley
5 Juror Number 96, Gerald McKee, Jr.
6 Juror Number 119, Jill Pentz
7 Juror Number 126, James Poston
8 Juror Number 130, Matthew Reeve
9 Juror Number 44 Russell Dunich
10 Juror Number 8, Shawn Bergeron
11 Juror Number 81, Dustin Lewis

12 And the alternate:

13 Juror Number 123, Paul Piedmont.

14 (JURY SEATED)

15 THE COURT: Thank you, Ladies and
16 Gentlemen. You will be our jury in the trial of
17 this case, which is expected to last through
18 Wednesday, possibly into Thursday morning but we
19 do not know yet. We'll just have to see how the
20 witnesses proceed.

21 If you will hold on one minute, we will
22 give you your oath and some instructions.

23 But in the meantime, I am going to
24 release the rest of the panel. If you will,
25 call back every night after 6:00 o'clock.

1 (JURY PANEL EXCUSED)

2 THE COURT: You may swear the jury.

3 (WHEREUPON JURY SWORN)

4 THE COURT: Thank you, Ladies and
5 Gentlemen. I appreciate it, and I appreciate
6 your time and kind attention. I am going to let
7 you all go to lunch and have a break until about
8 2:15.

9 Normally we will not break for such an
10 extended period for lunch, but I have matters of
11 law that I need to take up with the attorneys
12 that will probably take about an hour and I
13 don't want y'all to be stuck in the jury room
14 while we do that. So we're going to get as much
15 of that out of the way that we can before we
16 bring y'all back.

17 Issues will arise during the trial that
18 we may have to send you back but we truly do try
19 to minimize that as much as possible, so that if
20 you're here that you are hearing evidence in the
21 case.

22 So we will let you go to lunch and then
23 we will get started with the trial. Enjoy your
24 lunch. The bailiffs will show you where to
25 return.

1 (JURY OUT @ 12:12 P.M.)

2 THE COURT: We have got several
3 Motions *in limine*. I am happy to do them right
4 now or if y'all want to take a break and get
5 something to eat, then come back and do them.
6 It's your preference. What do you all want to
7 do?

8 MS. DELUCA: I would rather do them
9 now so that we're good to go with the openings.

10 THE COURT: That sound perfectly
11 reasonable to me. Are y'all ready to roll? Do
12 you need a five-minute break or anything?

13 MR. TIERNEY: No, we're ready to
14 go. May I approach?

15 (SIDEBAR WITH COURT)

16 THE COURT: Also, we need to put on
17 the record - are there any objections to the
18 selection of the jury, however strange it was,
19 or the composition? I didn't make any notes of
20 concern. I apologize for not asking earlier.
21 Does anybody have anything that they need to put
22 on the record?

23 MS. DELUCA: No, Your Honor.

24 MR. TIERNEY: No, Your Honor.

25 THE COURT: Thank you all for bearing

1 with us. We're trying to get used to the case
2 management system. It's different than when we
3 used to pull the numbers out of the hopper.
4 We're all still trying to figure it out. Thank
5 you, Mr. Tierney, for bringing that up.

6 MR. TIERNEY: Yes, ma'am.

7 THE COURT: I am ready -- I think
8 it's mostly defense motions, but whenever you
9 all are ready.

10 MS. DELUCA: Yes, Your Honor.

11 MR. TIERNEY: Your Honor, the
12 first Motion *in limine* that the defendant's
13 filed was a Motion to prevent any testimony that
14 might be considered a *res ipsa* finding of fact.

15 The facts in this case are that Ms.
16 Belk was taking care of Mr. Evans. Specifically
17 on October 2nd she came to his home and she
18 actually replaced his wound vac and did some
19 dressing changes. During the evening of
20 October 2nd, he had a complaint of additional
21 pain. He called the home health agency.

22 Nurse Belk came back on the 3rd. When
23 she came back on the 3rd, she took the vac off
24 and performed a dressing change, she noted
25 bleeding. As a result of that, she went and got

1 a lab run and -- of course, the allegations
2 against Nurse Belk are that there was active
3 bleeding when she left.

4 There has not been any testimony to
5 date as to what the actual cause of bleeding
6 was. There hasn't been any medical testimony
7 which has stated that to a reasonable degree of
8 medical certainty, more probably than not, that
9 the removal of the wound vac or the removal of
10 the dressings actually caused the bleeding.

11 In fact, it's well known in the record
12 that Mr. Evans was on Coumadin, which is a blood
13 thinner, which obviously can cause bleeding in
14 an open wound such as the one that Mr. Evans
15 had.

16 So we believe that any testimony in
17 front of the jury that says because Nurse Belk
18 was there on the 3rd when the bleeding began that
19 she must have caused it is res ipsa, which is
20 not recognized by our Court. Obviously with the
21 Coumadin issue out there, you could easily say
22 that the Coumadin was the causative factor.

23 So we don't believe that there could be
24 testimony in front of the jury. We believe that
25 would prejudice the jury if one of the witnesses

1 were to be able to take the stand and say that
2 'I can't tell you definitely how the bleeding
3 occurred, but we know that Janelle Belk was
4 there on the 2nd and the 3rd. There was no
5 bleeding before she was there, there was
6 bleeding when she left, therefore she caused.'
7 I think that's classic res ipsa.

8 THE COURT: I am not sure that it's
9 res ipsa, but I think that a proper foundation
10 has to be laid before anybody could offer any
11 kind of opinion about that. You know, not
12 having heard the evidence yet, I can't really
13 discuss that.

14 Counsel, do you want to address that?

15 MS. DELUCA: Your Honor, we would
16 assert that it is not a res ipsa. There have
17 been -- there's been much testimony about the
18 opinions of the various fact and expert
19 witnesses as to what caused the bleed to begin,
20 when it began, when it ended, when it continued.
21 I think that it's a factual issue in the case.

22 Like I said, there has been fact and
23 expert witness testimony on it. It's been
24 brought out, I think, in all of the depositions.
25 The Nurse Practice Act states that a nursing

1 diagnosis consisted of clinical judgment that's
2 derived from thorough nursing assessment and
3 standard nursing taxonomy also allows that the
4 practice of registered nursing -- and in this
5 case it is all registered nurses -- meet the
6 conformation of the health acts, including
7 assessment, analysis, intervention and
8 evaluation -- among other things, which I think
9 gives the nurses the opportunity to opinion as
10 to the facts surrounding the cause and
11 continuation of the bleed.

12 THE COURT: Well, and -- I am not
13 going to disagree with you, yet, but I think
14 that's responsive to a later Motion in limine
15 that we are going to hear -- possibly kind of
16 a *Watson v. Ford* issue.

17 The issue now is, uh, Mr. Tierney is
18 moving in limine, and he can certainly object
19 contemporaneously, and I know he will, if no
20 foundation is laid to set forth an opinion that
21 the bleed started when it started or because it
22 started. Like I said, it's hard for me to rule
23 on that now, not knowing it. But you know that
24 you have to lay a proper foundation and that we
25 don't follow *res ipsa loquitur* here in South

1 Carolina.

2 MS. DELUCA: Yes, Your Honor. The
3 witnesses would rely on specific facts that
4 relate to the cause.

5 THE COURT: We just need to make sure
6 that those facts come in before we get to any
7 cause and continuation of the bleed.

8 MS. DELUCA: (Affirmative nod).

9 THE COURT: Anything further?

10 MR. TIERNEY: Not on that issue,
11 Your Honor.

12 THE COURT: Okay.

13 MR. TIERNEY: I think now would be
14 a good time to go into the second Motion in
15 limine, which was the testimony by plaintiff's
16 expert, Lauren Cauwels, regarding a medical
17 opinion of proximate cause for the actual cause
18 of the bleed.

19 The case law of *Botelho v. Vicura* is
20 clear that a witness must acquire by reason of
21 study or experience, or both, the ability to
22 offer medical diagnoses. In this particular
23 case, the cause of the bleed falls into the
24 purview of being a medical opinion, not a
25 nursing opinion. Therefore, we don't believe

1 that Nurse Cauwels should be able to offer a
2 medical opinion, because based on that case
3 law, uh, she had not acquired by reason of
4 study or experience the ability to diagnose.
5 Only physicians diagnose.

6 THE COURT: What is the cite for
7 that case?

8 MR. TIERNEY: It is 282 SE 578
9 or SE 2nd. We have a copy of the case, Your
10 Honor.

11 THE COURT: You know, all of that
12 is pre-Watson. We also have the case law
13 abundantly pre-Watson that states such
14 situations, if someone is qualified, would go
15 to the weight and not to the admissibility. I
16 am specifically thinking about the one, I
17 think, the EMT that was able to make the
18 diagnosis.

19 I can't recall the case right now.

20 MR. TIERNEY: Brown. I think it
21 was the Anderson case.

22 THE COURT: I will take a look at
23 those and hear from counsel for the plaintiff.
24 I do have an issue with the diagnostic opinion
25 if she is not qualified to render that

1 opinion. Tell me about that.

2 MS. DELUCA: Your Honor, Ms. Cauwels
3 is a registered nurse. She has a bachelor of
4 science in Nursing. She has over sixteen
5 years of nursing experience in home health,
6 exclusively. That includes wound care and
7 wound vac experience. I have a copy of her
8 CV.

9 She has looked at all of the medical
10 records in this case, she has reviewed the
11 depositions in this case, she has more than
12 sufficiently scientific, technical and
13 specialized knowledge to testify to a
14 reasonable degree of nursing certainty the
15 origin of the bleed.

16 So I believe that her skill and
17 training as a nurse renders her qualified to
18 testify to the diagnosis and cause of Mr.
19 Evans' bleed.

20 I do have a memo in support of that,
21 (tendering).

22 THE COURT: Thank you.

23 MS. DELUCA: As you stated, the
24 qualification of the witness, it's within the
25 discretion of the court, and then it goes to

1 the weight given the testimony, not the
2 admissibility of it.

3 I would again refer back to what I
4 cited in the Nurse Practice Act previously.
5 It states that a "nursing diagnosis means
6 clinical judgment about a person, family or
7 community that is derived through a nursing
8 assessment and standard nursing taxonomy." I
9 believe that you would find that those things
10 have been done and applied to this case.

11 THE COURT: Why would that not fall
12 within her nursing expertise and within the
13 Nurse Practice Act, Mr. Tierney?

14 MR. TIERNEY: I believe that the
15 Nurse Practice Act specifically refers to
16 treating nurses, whereas this is an expert
17 witness who wasn't actually treating Mr.
18 Evans.

19 THE COURT: I am going to look in
20 detail at the diagnostic issue some more, read
21 the case. So I am going to hold this in
22 abeyance until we get back from lunch. I am
23 inclined to let her testify to a reasonable
24 degree of Nursing certainty. That's certainly
25 abundant fodder for cross-examination on your

1 part, but I will look at it over lunch. Okay?

2 MR. TIERNEY: Thank you, Your
3 Honor. Your Honor, I believe that the next
4 Motion that we filed would be a Motion in
5 limine to exclude testimony of evidence
6 related to emotional distress.

7 Specifically Mr. Evans testified in
8 his deposition that he believed that he
9 experienced emotional distress as a result of
10 the events of October 3rd, 2006. There has not
11 been medical testimony that he sought any
12 psychiatric or psychological counseling for
13 the emotional distress. In addition,
14 obviously he is a layperson and I think should
15 he be able to offer an opinion that he
16 suffered emotional distress, uh, does not fall
17 within that purview of limited subject matter
18 where laypeople can testify.

19 I believe that that would be offering
20 a medical opinion by a layperson. We don't
21 believe that a jury should be prejudiced by
22 him being allowed to state that claim without
23 any medical testimony backing that claim.
24 Thank you.

25 THE COURT: Yes, ma'am?

1 MS. DELUCA: Your Honor, Mr.
2 Evans is fully able to testify as to the
3 emotional distress that he personally
4 suffered. He's not giving any medical
5 diagnosis to it. He's simply going to testify
6 to what his experience was.

7 THE COURT: I think that he can
8 testify as a layperson as whether he felt
9 anxiety, or stress, or concern. I would just
10 avoid using loaded terms of art like
11 "emotional distress." He certain is able to
12 testify to what he personally experienced.

13 He can't offer any diagnoses or --
14 you know. I think you know where I am going.
15 It is denied in part, subject to limitations
16 that he can only testify within his personal
17 experience and not anything diagnostically --
18 or with any kind of medical term of art.

19 MS. DELUCA: Thank you, Your Honor.

20 THE COURT: Anything further on
21 that?

22 MR. TIERNEY: Just that I believe
23 that's -- the Motion also was to encompass the
24 expert Lauren Cauwels, as well, that she would
25 be precluded from offering any expert opinion

1 as to emotional distress claimed by Mr. Evans,
2 because she obviously is not a psychiatrist or
3 a psychologist and is not qualified to do so.

4 THE COURT: Yeah, that would not be
5 within her range of qualification. Do you
6 want to address that at all?

7 MS. DELUCA: Your Honor, she is not
8 going to offer any diagnoses as to the mental
9 distress that he suffered. She has reviewed
10 records wherein he makes statements about what
11 his thoughts were at that time. That was a
12 direct statement, basically to the effect that
13 'I don't think I am going to make it.' So,
14 again, it is not any type of diagnosis that
15 was ever made.

16 THE COURT: I don't think that I am
17 going to make it -- I think a subjective
18 opinion on his part is okay. I don't think
19 that she can testify to that, or anything
20 absent her expertise, unless you can find a
21 way around the hearsay issue. It's obviously
22 not a statement against interest or an
23 admission against his interest. He can say
24 that he felt like he wasn't going to make it
25 because he was so stressed out, but I don't

1 think that is within her purview of
2 qualifications or within the proper hearsay
3 exception. If you can give me a case that
4 says otherwise, I'm happy to revisit that.
5 Again, it's hard for me to know until I hear
6 the question.

7 MS. DELUCA: I can just think of one
8 medical record in particular that contains
9 that medical statement. I know that she will
10 be addressing that document.

11 THE COURT: Have y'all given that
12 record to me yet? I don't recall seeing
13 attachments. They may have been there.

14 MS. DELUCA: I don't think so.

15 THE COURT: I will look at the
16 record, if you want me to look at the record,
17 but ---

18 MR. TIERNEY: I'm not sure what
19 record she is referring to.

20 MS. DELUCA: The one that comes to
21 mind is the EMS run sheet with the statements
22 in there.

23 THE COURT: Usually you're not
24 going to get an EMS run report in, but I will
25 take a look at it.

1 MS. DELUCA: We've stipulated ---

2 MR. TIERNEY: Due to some reasons
3 that are good for the defense in my case, I've
4 stipulated to that.

5 THE COURT: Well, if it is in, it's
6 in. So -- I don't think that she can offer
7 her opinion about it.

8 MR. TIERNEY: And that's my
9 point, Your Honor.

10 THE COURT: She can't offer her
11 opinion about it.

12 MS. DELUCA: No, I've -- just around
13 that in the course of reading the surrounding
14 context that it may come up. I am not going
15 to ask her to offer any type of diagnosis or
16 opinion regarding the statement.

17 THE COURT: Well, just let her know
18 that the court ordered that it not be a part
19 of her opinion, because she is not qualified
20 to render that opinion.

21 MS. DELUCA: Yes, Your Honor.

22 THE COURT: So, thank you.

23 MR. TIERNEY: And, finally, we
24 filed a Motion in limine to exclude subjective
25 opinions or judgments contained in the

1 plaintiff's medical records. I believe that
2 this is more of a cautionary Motion, Your
3 Honor. We have agreed to some records coming
4 in.

5 I believe that Ms. Deluca would like
6 to introduce some records from Trident
7 Hospital which we could not agree to their
8 admission, the reason being that there is
9 subjective information in the records from
10 Trident Hospital that we do not believe fall
11 within the business records exception.
12 Therefore, I believe that we could cross that
13 bridge when we come to it.

14 THE COURT: Or if you have extra
15 copies of them, I could take -- we've got -- I
16 am going to eat lunch here, so I could look at
17 them now if you want me to, while y'all take a
18 break. Or we can do that later if we don't
19 get to that. The jury is coming back at 2:15.
20 It will take a little while to give them an
21 intro, maybe ten minutes, and then your
22 openings. That may be something that we can
23 address later. I would love to get premarked
24 as much as we possibly can. Up to y'all.

25 MS. DELUCA: I don't really know

1 what records that you're referencing, so I
2 don't really know how to address it except
3 that -- I guess we can cross that bridge when
4 we get there, if you want to address certain
5 things.

6 MR. TIERNEY: As an example, the
7 exact example that she just pointed out, I
8 know in the Trident records that Mr. Evans
9 makes statements of the history, or chief
10 complaint, that indicate that there was some
11 decompensation in his anxiety, fear levels.
12 That's clearly subjective information in the
13 medical record. That is not a real great
14 example, but that's just kinda some of the
15 things in the record that I want -- am
16 concerned about.

17 When Dr. Widenhouse and some of the
18 other physicians dictated their records, they
19 included some subjective information in those
20 records, but I can't give you specifically
21 examples. Just for precautionary ---

22 THE COURT: Well, -- okay.

23 MR. TIERNEY: --- reasons.

24 THE COURT: At this point we are
25 going to try to comply with the hearsay

1 exception, 803 and 804.

2 MR. TIERNEY: Right.

3 THE COURT: Until I see the
4 records, it's hard for me to make a
5 preliminary call. We can do that later
6 tonight, we can do that tomorrow morning,
7 whatever you all can't agree on. We can also
8 redact, as needed, if y'all are able to
9 stipulate to the parts that can come in. But
10 I kinda have to call those when I see them.

11 MR. TIERNEY: Yes, ma'am.

12 THE COURT: Okay.

13 MR. TIERNEY: I believe that
14 addresses all of my Motions. Thank you, Your
15 Honor.

16 THE COURT: Wonderful. I have one
17 from the plaintiff, I think. To exclude any
18 reference to Dr. Widenhouse. Is that still
19 viable?

20 MS. DELUCA: Yes, Your Honor, and I
21 do have one other.

22 THE COURT: Sure.

23 MS. DELUCA: The one with regard to
24 Dr. Widenhouse. He was initially named in the
25 lawsuit as a precautionary matter, and I think

1 more as a practical matter because of the
2 time. He was later dismissed. Early on, I --
3 we had talked about the caption before. I
4 believe that he is going to be called to
5 testify and I didn't want the jury prejudiced
6 by hearing that he was a defendant and now he
7 is not a defendant, and any discussion of the
8 basis for that. I think it's more prejudicial
9 than probative in having any part in the
10 lawsuit itself. He is a treating physician
11 but he was dropped early on.

12 THE COURT: I think that they can
13 point to the empty chair all day.

14 MR. TIERNEY: He was a named
15 defendant. It's a public record. Anybody can
16 go online and look at it. It's factual that
17 he was a named defendant and then he was
18 dismissed. I don't ---

19 THE COURT: Anybody got any case
20 law on that for me?

21 MS. DELUCA: Your Honor, I just
22 think it would be misleading, confusing and
23 more prejudicial than probative to the jury.
24 I don't know what him being a party to a
25 lawsuit at any point, how that's probative of

1 any relevant issues in the case.

2 THE COURT: I will take a look at
3 that over lunch. I know that I've had it come
4 in. I am not sure that I've ever had that not
5 come in. But I will take at look at it from a
6 Rule 403 perspective. I am not sure why it's
7 overly prejudicial.

8 MS. DELUCA: I guess that there
9 could be some inference drawn that he settled
10 out or that -- I guess if it is going to come
11 in that we'd want to fully explore the
12 circumstances surrounding it, but I -- I think
13 that it opens a whole can of worms that it not
14 relevant to any issue in the case.

15 THE COURT: Well, I -- and I think
16 that they open that door if they go into that.
17 If you say, 'well, on further investigation,
18 this is what we determined.' So they might
19 want to be careful about that, but I will look
20 at that over lunch.

21 MR. TIERNEY: One more point to
22 add to that argument, Your Honor, is that
23 their expert, Lauren Cauwels, testified after
24 Dr. Widenhouse was dismissed from the case
25 that she believed that he was negligent in his

1 care plan. That's deposition testimony, so I
2 believe that's open to cross examination of
3 her to determine what her criticisms are of
4 Dr. Widenhouse and how that ultimately could
5 have affected the plan of care, that Janelle
6 Belk walked in on October 2nd and the 3rd, 2006.

7 MS. DELUCA: Specifically
8 referencing the plan of care, that was done by
9 a Roper Home Health nurse. His orders were
10 transcribed in a different way onto that plan
11 of care. She signed the plan of care. He
12 signed off on the plan of care, but after
13 everything had come to a conclusion in this
14 case. I don't believe that there was any
15 testimony that he was negligent by the nurse.

16 THE COURT: I will have to hear
17 what the testimony is and see what the
18 deposition testimony is, to be able to make
19 that call. I just don't know enough yet to be
20 able to rule on that.

21 MR. TIERNEY: Thank you, Your
22 Honor.

23 MS. DELUCA: I have one more. The
24 plaintiffs have a Motion in limine to exclude
25 testimony by Renee Epting, who is the

1 defense's nurse expert. She testified
2 repeatedly in her deposition that she has no
3 home healthcare experience. That's the
4 precise issue in this case, it does involve
5 healthcare in the home health context. In her
6 deposition she testified that there are
7 different standards in the home health context
8 versus the hospital context. So while wound
9 care is provided in both studies, it is a
10 different situation as far as the supervision
11 and the monitoring.

12 Then there is another issue in this
13 case that's really not even involving wound
14 care. It deals with home health and patient
15 abandonment.

16 So I don't think she's qualified to
17 speak to that.

18 THE COURT: Okay.

19 MS. TOPOREK: Your Honor, Nurse
20 Epting is a certified wound care nurse with
21 over, I think, twenty years experience --
22 fourteen years in the wound care arena. She
23 is more than qualified to testify about the
24 issue in this case, which primarily involve
25 the application of a wound vac.

1 The certification for her and other
2 nurses, the standards are the same regardless
3 of the area that they practice in, home health
4 or hospital. She also testified that even
5 though the settings are different that the
6 standard of care is the same.

7 THE COURT: Again, I think that
8 goes to the weight and not to the
9 admissibility, but I'm happy to hear from you
10 on that. My inclination is to allow her to
11 testify if she's a wound care specialist, then
12 you can cross-examine her at length as her
13 experience or lack thereof in the home
14 healthcare setting.

15 MS. DELUCA: Your Honor, then I
16 would ask that her opinions be restricted only
17 to the wound care issues in the care, not
18 issues with patient abandonment in a health
19 setting.

20 MS. TOPOREK: She is -- patient
21 abandonment is something that I think she can
22 testify to. She knowledgeable about patient
23 care and I believe that would be the same in
24 any setting. Again, I think that would go to
25 the credibility of her testimony and not the

1 setting.

2 THE COURT: I really am going to
3 have to wait and hear the questions as they
4 are posed. But if she had no experience in
5 the home healthcare setting, I think it would
6 be difficult for her to testify as to patient
7 abandonment in the home healthcare setting --
8 unless that is otherwise a part of her
9 education and expertise.

10 MR. TIERNEY: The issue in the
11 case, though, is whether she abandoned the
12 patient, and I believe that's what she does in
13 her current position, is treat patients with
14 bleeds.

15 THE COURT: I believe that an
16 active bleed would be analyzed, probably, in
17 the home health setting as in a hospital. But
18 if you provide me with some evidence otherwise
19 from some expert, we can revisit that. But,
20 again, I am a little bit premature -- I mean,
21 an active bleed is an active bleed.

22 MS. DELUCA: Yes, but some of it is
23 with respect to the monitoring, that you would
24 leave a patient in a certain condition in the
25 hospital where there are other people there to

1 monitor, where you wouldn't leave them in that
2 condition in the home where there is no one to
3 monitor and there is not going to be that
4 immediately response.

5 THE COURT: Sometimes there are
6 other people there to monitor and sometimes
7 there's an immediate response.

8 As I will tell you from when my
9 stepfather was in the hospital following open
10 heart surgery, the responsiveness is not
11 always as immediate as some would like.

12 So I am really not sure that's enough
13 of a difference to render her unqualified to
14 make an opinion. We will just have to see
15 that when we get there. Okay?

16 MS. DELUCA: Thank you, Your Honor.

17 THE COURT: Anything further?

18 MR. TIERNEY: That's it, Your
19 Honor. Thank you.

20 THE COURT: Okay. Well, the jury
21 is gone to 2:15, so y'all take some time.

22 MS. DELUCA: Your Honor, if I could
23 just address a few things because, like I
24 said, I'd like to be able to jump right into
25 that when we get back.

1 THE COURT: That's great. Go
2 ahead.

3 MS. DELUCA: So I guess some of the
4 exhibits, I have some blowups and, uh, I would
5 like to go ahead and address that now so I
6 know whether ---

7 THE COURT: Okay. The more that we
8 can do now before they come back, the better.

9 MS. DELUCA: Do you want me to go
10 ahead and get them out?

11 THE COURT: Thank you. Has Mr.
12 Tierney already seen everything?

13 MS. DELUCA: I'm sorry?

14 THE COURT: Has he already seen
15 everything?

16 MS. DELUCA: I was going to say that
17 most of them are blowups from the health
18 records that we have stipulated to.

19 THE COURT: Okay.

20 MS. DELUCA: We have thirty-five,
21 thirty-six, thirty-seven, thirty-eight on
22 those -- doublesided. So forty-two to sixty-
23 four and then seventy.

24 MR. TIERNEY: I have no
25 objection. In fact, I have these all blown up

1 myself.

2 THE COURT: Well, that makes life
3 much easier.

4 MS. DELUCA: There may be one other
5 one that I didn't blow up but -- it's from
6 that set of seventy-one through two or three.

7 MR. TIERNEY: From the Roper Home
8 Health records?

9 MS. DELUCA: Yes, from that set of
10 records. RSFH-something.

11 MR. TIERNEY: All right.

12 MS. DELUCA: And then I also have
13 some demonstrative exhibits. There's -- the
14 medical records there is testimony that a
15 five-pound bag of rice was used as
16 compression. "I have a five-pound bag of
17 rice." I can show you that.

18 Then there's testimony that he lost
19 a liter or more of blood, so I've got a liter.

20 I've not really dealt with groceries
21 before in court. I am not sure how we will do
22 that, but these are my demonstrative exhibits.

23 MR. TIERNEY: (Inaudible).

24 MS. DELUCA: It should be. That
25 would have been a good idea. I don't know if

1 you have any objection to these.

2 MR. TIERNEY: I don't have any
3 objection to you using them for demonstrative
4 only. That's fine.

5 MS. DELUCA: Okay. Then I -- I
6 think that's all of the issues. The other is
7 just sort of a technology discussion.

8 THE COURT: That is probably for
9 somebody else, like Tom (law clerk). Do you
10 need help setting something up?

11 MS. DELUCA: I think that we had all
12 talked about using an ELMO type arrangement,
13 so we'd coordinate what we need and the best
14 way to do that.

15 THE COURT: Okay.

16 MS. DELUCA: I've also an easel for
17 these things.

18 MR. TIERNEY: We were not able to
19 -- I thought that my firm had an ELMO. We do
20 not have one. We have got -- you basically
21 put it on a laptop and project it. We decided
22 to go with the old-fashioned blowups.

23 THE COURT: I am not sure what we
24 have up here -- overhead.

25 CLERK: We have a screen but we

1 don't have an ELMO.

2 MS. DELUCA: I'll just bring in the
3 pieces.

4 THE COURT: So you will get those
5 set up before your opening? Let's get the
6 screen set up as soon as we can.

7 (OFF RECORD DISCUSSION RE VISUAL EQUIPMENT)

8 THE COURT: Premark as much as we
9 can. Thank you for being so organized. I
10 really appreciate it.

11 (LUNCH RECESS)

12 THE COURT: Okay. I have
13 negligence, professional negligence,
14 infliction of emotional distress, loss of
15 consortium and intentional infliction of
16 emotional distress. Do we just have the
17 professional negligence claim left?

18 MS. DELUCA: You said negligence and
19 professional negligence?

20 THE COURT: It just says
21 negligence\ -- it's the same thing.

22 MS. DELUCA: Yeah.

23 THE COURT: So that's it?

24 MS. DELUCA: Yes.

25 THE COURT: Okay. The reason that

1 I need to know now is because I give a little
2 introductory to the jury. I saw what the case
3 is about. I don't go through all of the
4 claims and all of the affirmative defenses but
5 I certainly don't want to read out a claim if
6 it is no longer an issue in the case and get
7 them all confused. So, -- everybody good with
8 that?

9 MR. TIERNEY: Yes.

10 THE COURT: I didn't see that there
11 was any kind of contributory negligence issue.
12 I saw natural disease process.

13 MR. TIERNEY: I believe in that,
14 in their ---

15 THE COURT: It says 'we don't waive
16 it.'

17 MR. TIERNEY: I believe that
18 we've got approval on ---

19 THE COURT: Okay. Gotcha. Are you
20 ready for the jury? I did look at some more
21 law, again. Most everything is going to the
22 weight and not to the admissibility, but we'll
23 deal with the questions as they come.

24 You know, I think a nurse can
25 certainly testify as to wound care. If it

1 gets too far afield and we start getting into
2 specific home care settings that can't
3 possibly be conceived of in a hospital
4 setting, that might be different.

5 Again, if your expert, as a nurse, is
6 trying to make some medical diagnoses out of
7 her field, that would also be problematic and
8 likely not admissible. But she can testify to
9 her observations and what, in her
10 understanding and knowledge as a nurse, the
11 proper standard of in-hospital care and
12 treatment would be.

13 Did that help enough for the purposes of
14 opening statements?

15 MR. TIERNEY: That's fine.

16 THE COURT: Anything thing before
17 we bring in the jury?

18 MR. TIERNEY: Nothing, Your
19 Honor.

20 THE COURT: Thank you.

21 (JURY IN @ 2:34 P.M.)

22 THE COURT: Thank you, Ladies and
23 Gentlemen. I hope that you had a nice lunch
24 break. We are ready to begin the trial of
25 Finley C. Evans versus Roper Hospital versus

1 Roper Hospital, Roper St. Francis Healthcare
2 and Roper St. Francis Home Health.

3 As I am sure that you could tell from
4 the voir dire questions this morning, this is
5 a claim involving the providing of home health
6 care and sets forth a cause of actions for
7 professional negligence.

8 As I explained, this is a civil case.
9 You're here to resolve the dispute between
10 these parties, the plaintiff and defendants.

11 Plaintiff has alleged that the
12 defendants were professionally negligent in
13 failing to appropriately and timely assess his
14 wound, and to care and treat him as he
15 recovered; that they failed to adequately
16 oversee and manage his care; and failed to
17 adequately train and supervise their staff.
18 Plaintiff further alleges that they failed to
19 exercise sound medical and nursing judgment,
20 failed to maintain proper staff, failed to
21 provide proper supervision of the nursing
22 staff, failed to properly document Mr. Evans
23 core care and treatment; and improperly
24 abandoned him, in violation of the Healthcare
25 Provider Standard of Care, while he was under

1 their care.

2 The defendants have raised a number
3 of affirmative defenses, including a general
4 denial of any negligence whatsoever. They've
5 further alleged that the plaintiff was
6 contributorily negligent and that the natural
7 disease process caused any problems that he
8 might have had, not any negligence on the part
9 of their employees.

10 Please understand that the claims
11 that are set forth in the plaintiff's
12 complaint and the defenses that are raised in
13 the defendant's answer are not evidence. They
14 are merely allegations and defenses for you to
15 consider in light of the evidence which will
16 be presented here during the trial.

17 I know you have already met the
18 plaintiff, plaintiff's counsel, and the
19 defense but I will introduce you again.

20 The plaintiff is seated at the table
21 closest to you, because the plaintiff has the
22 burden of proof. It's one of the traditions
23 in our American court systems that the party
24 seated closest to the jury carries the burden
25 of proof in the case.

1 The plaintiff has the burden of
2 proving each and every element of the cause of
3 action alleged in his Complaint. I will tell
4 you more about those elements later when we
5 have the charge at the end of the case.

6 The purpose of this trial is to
7 determine whether or not the plaintiff is
8 entitled to the relief that he seeks because
9 he has sued alleging -- there has been no
10 proof yet -- but alleging that he was damaged
11 at the hands of the defendant.

12 The way that we are going to work
13 together to resolve this dispute is that you
14 are the sole judges of the facts. I am just
15 the judge of the law, but you consider the
16 evidence and weigh the facts here. That means
17 that you are going to listen to the testimony
18 presented, determine what those facts are and
19 apply those facts to the law that I will
20 charge you at the end of the case. We will
21 reach a verdict by working together, applying
22 the law to those facts as you find them.

23 One of the key things that you are
24 going to need to do in determining the facts
25 and what the evidence is in this case is to

1 gauge the credibility and the believability of
2 the witnesses. I am sure that you know that
3 already. But here's why that is so important
4 -- I haven't heard the evidence in this case,
5 yet, just as you haven't -- but in many cases
6 that we try here in the courtroom, and it is
7 interesting. There will sometimes be
8 witnesses who will testify to thing
9 inconsistently from other witnesses.
10 Sometimes it is absolutely mutually
11 inconsistent with what other witnesses say
12 and, at times, it is difficult, if not
13 impossible, to reconcile one witness with
14 another.

15 I am not telling you that anyone is
16 going to be dishonest with you, I am not
17 telling you that at all. But I think you all
18 know that we bring different perceptions to
19 the way that we observe facts and
20 circumstances. You've probably had situations
21 in your life where you've wondered, 'did I
22 even see the same event that the person next
23 to me saw', because your descriptions and
24 recollection of it were so different.

25 You have to judge the credibility

1 here and determine which facts, indeed, are
2 the evidence. And you've got the tools that
3 you need to do that. You need your ability to
4 listen, your common sense and the judgment
5 that you apply every day in your normal life.
6 That's why the witnesses sit right in the box,
7 where you can watch their demeanor and observe
8 the way that they testify. That's some of the
9 things that you might want to do because the
10 observance is often just as important or more
11 important than what the witness actually says.
12 You need to notice what their demeanor is,
13 whether they are hesitant or not hesitant,
14 whether they're straightforward or elusive,
15 and what is a witness' ability to even know
16 what they are even here to testify about.

17 You also want to consider whether a
18 witness' testimony is consistent with other
19 testimony from that same witness, is it
20 weakened or strengthen by other evidence in
21 the case. By light of the global evidence
22 that you will consider, how reasonable is what
23 a particular witness said in light of other
24 oral testimony and the documents that come in
25 as evidence at trial.

1 One final thing that is important and
2 I think again that common sense and judgment
3 tell you this, but when you listen to the
4 witnesses, determine whether there is a reason
5 that one witness or another would want to help
6 one side or the other. Is there a bias or a
7 prejudice that is built in.

8 Those are the things that you need to
9 consider when watching a witness, and in
10 looking at the testimony.

11 A little bit about the procedure or
12 the way that the case is going to go forward.
13 I will finish these remarks shortly, I
14 promise, and then I will introduce plaintiff's
15 counsel for her opening statement and you will
16 then hear from defense counsel for an opening
17 statement, which will just be a roadmap of the
18 testimony you're going to hear -- kind of a
19 way for them to lay out a map of how the trial
20 is going to go.

21 An opening statement is not argument.
22 You will hear the stronger argument at the end
23 of the trial in the closing arguments after
24 all of the evidence comes in. But in the
25 opening statement, you will get that roadmap.

1 Then the plaintiff will put up her witnesses
2 and Mr. Tierney or Ms. Toporek will be able to
3 cross-examine them.

4 Then we will have another break so
5 that the court can consider some matters of
6 law before you hear from the defendant.

7 That's the way that we will proceed.
8 We generally are going to go for about an hour
9 and a half at a time, if we can, before we
10 take a break. But we don't want anybody to
11 feel like are being tortured or they're
12 uncomfortable. If something comes up and you
13 need a break, just raise your hand. I will
14 tell you all that I am not very good at
15 catching that, but my law clerk is very good.
16 If my court reporter, Miss Vivian, needs a
17 break, her hand -- you all do the same thing.
18 Sometimes we get caught in trying to get
19 through a witness' testimony and I miss our
20 regular break time. We'll try to gauge them
21 by the witnesses but I certainly don't want
22 anybody to be uncomfortable.

23 In addition to not wanting anyone to
24 be uncomfortable, you can't listen or give
25 proper attention to the parties if you're

1 uncomfortable in the jury box. We don't want
2 you to be distracted or worried about anything
3 else that is going on, so we can stop if you
4 need to.

5 Likewise, if I said this morning, if
6 some kind of family emergency or issue comes
7 up and you know, that, say, 'I am going to
8 need to make a phone call at 3:30 because I am
9 not sure who is picking my child up, we can
10 certainly accommodate you for those kinds of
11 issues.

12 Again, as I explained this morning,
13 when we do take our break, please don't go
14 back and discuss the facts of the case. It
15 would be truly unfair and improper to hear a
16 part of the case and then go back and talk
17 about it without hearing what the other side
18 has to say. You need to wait until all of the
19 testimony is in and all of the documents are
20 gathered together and sent back to you before
21 you're able to deliberate. So I will remind
22 you all of that every day when we leave. I
23 will probably remind you at lunch, as well.

24 I do permit notes to be taken during
25 the trial. I think it is important and some

1 people truly are visual learners, they learn
2 as they write. I know that it helps me
3 sometimes to pay attention, if I'm writing
4 down or taking notes. One thing about notes,
5 though. Don't let you notetaking distract you
6 from observing the demeanor of the witness in
7 the box. Notes are really just an aid.
8 Really, you need to watch and listen more than
9 being worried about the notes that you take
10 down.

11 We will ask you to leave your notes
12 here at the end of the day. We will keep them
13 in a secure location. We don't read those.
14 Those are your private thoughts about the
15 evidence as it has come in, for your reference
16 only. At the time of the trial, we shred the
17 notes. Nobody gets to invade the province of
18 the jury to determine what you saw - other
19 than at the end of the case the attorneys will
20 be allowed to contact y'all, if it's okay.
21 I'll ask you that at the end of the case.

22 In the meantime, as I mentioned
23 before, they are not allowed to talk to you.
24 So they are not being rude if you run into
25 them in the hall and they just wave or go the

1 other way.

2 One other thing about the behavior of
3 the lawyers. We operate under the Rules of
4 Civil Procedures here in Common Pleas Court
5 and the South Carolina Rules of Evidence.
6 When one or the other attorneys believes that
7 there has been a violation of the rules of
8 evidence or say -- you may have heard on TV
9 somebody say, 'Judge, that's hearsay' or some
10 other objection. It's their job to raise
11 that. Then I have to rule on it. So please
12 don't hold it against the attorneys if you
13 feel like they're interrupting because they
14 are objecting. They have to do that. They're
15 not doing their job if they don't object when
16 they need to object. It's only to make sure
17 that the testimony comes in properly, but also
18 to preserve their record if we make a mistake
19 here in Circuit Court.

20 I will tell you about the law later,
21 at the end, I will let you know that even if
22 the law, as it is given to you, you think is
23 wrong or that we've made a mistake, they can
24 fix that in Columbia if there is a mistake.
25 That's one of the reasons why the attorneys

1 need to make sure that they properly object.

2 Also know, as well, that the way that
3 I rule on a particular objection has
4 absolutely nothing to do with how I feel about
5 the facts of the case. I don't know anything
6 about the facts of the case other than what I
7 have read in the brief part of the file that I
8 have. I just have to rule on the objections
9 as they come in, to try to make sure that you
10 receive proper evidence to help you with your
11 deliberations.

12 So, again, please don't hold it
13 against the attorneys when they have to
14 object.

15 That being said, unless there are any
16 objections to my introductory remarks to the
17 jury, I will introduce Ms. Deluca for our
18 opening statement?

19 MR. TIERNEY: No objection, Your
20 Honor.

21 THE COURT: Thank you.

22 MS. DELUCA: Thank you, Your Honor.

23 Good afternoon. As I know, this is a medical
24 malpractice case. Medical malpractice cases
25 can get very complicated, medical, has lots of

1 facts.

2 To get into the story that brings us
3 all here this afternoon. Roper Home Health
4 sends a nurse out to provide care to Finley
5 Evans for two surgical wounds that he had.

6 The first Roper Home Health nurse
7 comes out on a Friday evening. She performs
8 her thorough assessment, reviews the
9 medications issues, she looks at the doctor's
10 orders for the wound vac therapy pressure of
11 125 to 150, she sets the pressure at 125 and
12 applies the wound vac without any difficulty.
13 The wound vac stands on Mr. Evans's wound the
14 weekend, from Friday night all the way to
15 Monday. The second nurse visit is to be on
16 Monday. No problems, no pain. The wound vac
17 stays on all weekend.

18 The second visit, the Roper Home
19 Health nurse comes out, changes the dressing,
20 applies the wound vac, sets pressure at 125 to
21 150, she does make a note that she had
22 "difficulty applying the wound vac" and that
23 the patient's pain level was significantly
24 increased after the dressing change. She
25 calls the first nurse to report that to her.

1 Then she makes notes in her visit that pain
2 increased.

3 Later that day, Mr. Evans called
4 Roper Home Health to report that he did have a
5 lot of pain.

6 The next day Roper sends a nurse back
7 out. She wasn't scheduled to come out for
8 another dressing change until Wednesday, but
9 she came back the very next day. She took the
10 wound vac off again and noted that he was
11 bleeding from the surgical event, his wounds.
12 She asked Mrs. Evans for a bag -- or a five-
13 pound bag of rice or for something heavy to
14 use as a weight. That's noted in the record.
15 Mrs. Evans gave her a five-pound bag of rice.
16 The nurse applied the bag of rice to the wound
17 in his crotal area - the bag of rice over that
18 area to help stop the bleeding.

19 The Roper nurse told Mrs. Evans to
20 leave the rice on "until I come back." She
21 was going to go to Roper laboratory and then
22 come back.

23 In the meantime, Mr. Evans feels and
24 then his wife sees that he is still bleeding.
25 So they called the mobile number that the

1 nurse left on the Roper Home Health pamphlet.

2 They called her and she said "Call 911."

3 They called 911. 911 came, pick up
4 Mr Evans, transport him to the hospital, uh, -
5 - EMS reports that Mr. Evans lost one liter or
6 more of blood. This (displaying) is one
7 liter. The body has about six to eight liters
8 of blood in it.

9 EMS supported treatment, they provided fluids.
10 In transit, his heart rate dropped,
11 bradycardia, and they stated to Mr. Evans in
12 the ambulance that he wasn't going to make it
13 to the Trident Hospital and diverted to the
14 Moncks Corner Medical Center because it was
15 closer.

16 At the time that they did get to the
17 hospital, he had regained blood pressure, was
18 coming back. He was kept in the hospital for
19 overnight observation hospitalization. He was
20 discharged the next day, after which he
21 received home health care from a different
22 agency, without the use of a wound vac.

23 So the evening following the
24 afternoon of that third visit by the home
25 health nurse, she learned that following her

1 visit he was transported to the hospital and
2 admitted. That evening she makes her entries
3 of that day on her laptop. Then the next
4 morning -- or that evening -- she goes back
5 into the records and she makes about two more
6 pages of entries, late entries and correction
7 entries. She made fourteen entries in all
8 over a span of about three and a half hours,
9 according to the record itself.

10 During this trial you are going to
11 hear from Mr. Evans, Ms. Evans, eyewitness
12 testimony, see medical records and other
13 documents regarding the events that I have
14 described.

15 In the end you will be asked to
16 determine whether or not Roper St. Francis,
17 Roper Home Health through their employee,
18 Janelle Belk, provided appropriate care, took
19 appropriate actions. If they did not provide
20 appropriate care, we will ask you to hold them
21 responsible for that.

22 THE COURT: Thank you.

23 MR. TIERNEY: Your Honor, Ladies
24 and Gentlemen of the jury, my name is Joe
25 Tierney. We met briefly while you were being

1 selected to fulfil your civil duty here today.

2 I represent Roper Home Health and
3 while some of the nurses who actually provided
4 services to Mr. Evans during that time period
5 are not named defendants in this case,
6 obviously by my representing Roper St. Francis
7 and Roper Home Health, I am representing and
8 defending their actions. So I would ask that
9 you pay particular attention to what the
10 nurses testify to in this case.

11 I need to go back for a second,
12 factually, and fill in a few of the details
13 that Ms. Deluca left out. Mr. Finely Evans
14 had a condition called hydradenitis. It's a
15 hard term for me to pronounce. You'll see it
16 spelled in the medical records. It's a skin
17 condition that is a severe form of acne. It
18 is so severe that sometimes you have to have
19 surgery to remove the acne, do skin grafts.
20 It can be a very lingering type of illness.

21 Mr. Evans had this illness for the
22 majority of his adult life. As early as 2000,
23 he required surgery for the hydradenitis. He
24 was treated by a plastic surgeon at Trident
25 Hospital, Dr. Brian Widenhouse.

1 In 2006, I believe that it was late
2 August or early September of 2006, Mr. Evans
3 was seen once again by Dr. Widenhouse.
4 Unfortunately this time the hydradenitis had
5 formed on his scrotum, which obviously is a
6 very delicate area of the body. As a result
7 of that, Dr. Widenhouse once again had to
8 perform surgery; wherein, he had to go in and
9 extract, for lack of a better word, the
10 hydradenitis, and in fact do skin grafting and
11 things of that nature.

12 Dr. Widenhouse will testify and you
13 can hear more from him about the actual
14 medicals in the case.

15 Getting to Roper Home Health. What
16 happened as a result of Dr Widenhouse's
17 surgery is that Mr. Evans was left with two
18 open wounds on his groin. Specifically, I
19 believe that they are on his left groin. This
20 wounds were not healed. In fact, where Dr
21 Widenhouse had done the surgery, he had put in
22 a suture line, which is where he stitched when
23 he did the surgery, and the suture line
24 dehiscenced, which is a fancy word that means
25 it came undone. Unfortunately for Mr.

1 Evans, as of late September, about September
2 29th, he's got two open wounds on his groin,
3 dehiscence of the suture lines, and Dr.
4 Widenhouse needs to come up with a solution
5 for treatment of the wound.

6 What he does, he calls Roper Home
7 Health. Roper Home Health has certified wound
8 care nurses, all who are R.N.'s, whose job is
9 to take care of open wounds and to try to get
10 a place to heal. To assist a wound in
11 healing, what you had do is apply dressings.
12 You monitor the wound, you've very careful in
13 putting on specific dressing in an effort to
14 try to get a wound to heal.

15 Another thing that you can do is to
16 apply a wound vac. Obviously I'm a lawyer
17 and I may not always give the best description
18 of how a medical device works, so please
19 listen to the testimony from the stand on the
20 proper application of a wound vac. I am just
21 here trying to give you an overview. A wound
22 vac apparently is placed on a wound in an
23 effort to get tissue to oxygenate and to form
24 and to quickly heal the wound, in an effort to
25 clear up the wound.

1 So Roper Home Health is called in to
2 take care of this open wound and to apply a
3 wound vac. The first nurse that comes to see
4 Mr. Evans is a nurse by the name of Judy
5 Burbage. She is a certified wound care nurse.
6 That's a specialization in the field of
7 nursing. She has done extensive training to
8 learn how to take care of people with open
9 wounds. There are certified wound care nurses
10 who work in a hospital, and they certainly
11 provide care in the hospital setting. Then
12 there are ones that do it in home. They are
13 all exactly the same.

14 Judith Burbage came out to the house,
15 met with the Evans family, she developed a
16 plan of care for how she was going to treat
17 this wound. As a part of this treatment plan,
18 and per the orders of Dr. Widenhouse, Judith
19 Burbage placed a wound vac on Mr. Evans. The
20 placement of the wound vac was on two wounds
21 on his groin and scrotum which is, keep in
22 mind, a very difficult place to have an open
23 wound and obviously a very painful place to
24 have an open wound.

25 Judith Burbage set up an appointment

1 for follow up care, and the follow up care was
2 to be performed by Janelle Belk, who is over
3 here to our left. Nurse Belk is an RN who
4 works for Roper Home Health. In 2006, Janelle
5 Belk had worked for Roper for nine years.
6 During those nine years, all she did was take
7 care of people with wounds. She'd placed
8 wound vacs multiple times prior to coming to
9 the Evans home on October 2nd and 3rd, 2006.
10 She had done multiple wet/dry dressings.

11 These are experienced people. The
12 reason Janelle Belk was assigned to care for
13 him is because her territory is Berkeley
14 County. She pretty much covers all of
15 Berkeley County for Roper Home Health.

16 So Janelle Belk comes to the home on
17 the 2nd and she does have to apply a dressing
18 change. As a part of applying dressing
19 change, she had to take the wound vac off,
20 remove the dressing, put it back on, and put
21 the wound vac back on. Mr. Evans does report
22 that he feels some pain. Rightfully so,
23 Janelle picks up the phone, she calls Judy
24 Burbage -- a certified wound care nurse -- and
25 tells Judy what she encountered. Judy advises

1 her what to be on the lookout for.

2 The plan at that point, on October
3 2nd, is for another visit to take place three
4 or four days later -- and you'll see the
5 medical records. During the evening hours of
6 October 2nd, Mr. Evans called the office of
7 Roper Home Health and said that he was
8 experiencing pain and that he needed somebody
9 to come and make sure that everything was
10 performing adequately.

11 Janelle Belk got a call from her
12 agency, Roper Home Health, on October 3rd to go
13 do a visit prn -- and I know that some of you
14 who are probably in the healthcare field know
15 that "prn" wasn't a scheduled visit, it's a
16 work-in. So she went to the Evans house prn.

17 Now, when she got to the home, and
18 this is where we get to the facts of the case,
19 she once again performed a dressing change.
20 When she took the dressing off, presumably
21 after she took the wound vac off, she noticed
22 bleeding. Now, this is an open wound.

23 And one of the factors that we
24 haven't discussed is the fact that Mr. Evans
25 was on Coumadin as the result of some other

1 health issues that he had. I think you all
2 probably know what Coumadin is, but Coumadin
3 is a blood thinner. All right?
4 A blood thinner obviously will cause problems
5 with blood clotting, so you need to be very
6 concerned when someone is on blood thinner,
7 especially when a patient has an open wound
8 such as Mr. Evans did on October 3rd.

9 Janelle takes off the wound vac. She
10 is changing the dressing and she notes
11 bleeding, which is a concern. As a result of
12 that, she places several phone calls. The
13 phone calls that she places are to Mr. Evans'
14 doctor because she is concerned about the
15 bleeding and she wanted to have a test run --
16 called a PT/INR. A PT/INR is simply a lab
17 where you draw blood, you take it to the lab
18 and run it. In this particular case the point
19 of the PT/INR was find out if the Coumadin was
20 affecting Mr. Evan's ability for his blood to
21 clot.

22 She is there at the house, she takes
23 -- she did get an order from the doctor to do
24 the blood draw and to do the PT/INR. She
25 takes the sample and after she takes the

1 sample, she has two hours to get the blood
2 run. That's just policy.

3 After she takes the sample, she
4 redresses Mr. Evans' wound and she makes sure
5 that there is no active bleeding when she
6 redressed the wound. To make sure that the
7 bleeding has completely stopped while she is
8 going to the lab, she asks Mrs. Evans for
9 anything heavy to apply pressure on top of the
10 wound, to ensure that the thing wouldn't start
11 bleeding again.

12 This is a knowledgeable nurse that's
13 got nine years of experience. She put a bag
14 of rice on there. The wound is dressed, the
15 bag of rice is on top of the dressing.

16 She tells the Evans, 'I need to go
17 and get this lab run because I am concerned
18 about you and I don't want you to have an
19 active bleed or a problem clotting.

20 So she runs up the road from the
21 Evans home to go to the Roper Berkeley Day
22 Hospital at Stoney Landing where she gets the
23 lab drawn (sic).

24 While she is going to other
25 appointment or while she is at another

1 appointment, she gets a phone call from Ms.
2 Evans that says "he's bleeding, what should I
3 do." She rightfully says, "Call 911."

4 They call 911, the ambulances comes,
5 Mr. Evans is taken to -- while in the
6 ambulance his body went through a shock, a
7 syncopal episode, which you'll learn what that
8 is. There is a difference between a shock
9 from a drop in blood and a syncopal episode.
10 He had a syncopal episode and as a result of
11 that the EMS responders made the decision to
12 try to get him to Trident Hospital, over by
13 the university.

14 What is important in this case are
15 two things. One, did Janelle Belk leave Mr.
16 Evans with an active bleed. Two, did she
17 cause that bleed in the first place.

18 Judge McDonald told you that she is
19 going to go over the elements of what you need
20 to prove in a negligence case to recover. I'm
21 just going to give you a brief sketch of that
22 right now. There's four elements that you
23 have to prove in a negligence case to be able
24 to recover:

25 You have to prove that the

1 defendant had a duty to the plaintiff.

2 You have to prove that the
3 defendant breached that duty.

4 You have to prove that the
5 breach of that duty was the proximate cause --
6 and we will discuss that -- the proximate
7 cause of the injury.

8 The fourth thing that you have
9 to prove is damages.

10 In order for y'all to bring back a
11 verdict against my client, the first thing
12 that you have to do is determine whether or
13 not there is testimony from this witness stand
14 that says that Janelle Belk was the proximate
15 cause. If she wasn't the proximate cause of
16 the bleeding in the first place, then you
17 don't need to consider whether or not her
18 actions were appropriate after she went and
19 got the labs.

20 Damages. That is the last thing that
21 they've got to prove. If Coumadin caused the
22 bleeding and Mr. Evans had to go to the
23 hospital regardless of Janelle Belk's being
24 there that day, did they prove damages -- the
25 last element. Because regardless of what

1 Janelle Belk did on that day, was Mr. Evans
2 going to have to go to hospital because he had
3 an active bleed? He had another wound on his
4 groin.

5 I am going to show you two documents
6 in this case, a chronology, which will show
7 you that when Janelle Belk left the Evans home
8 that there was over an hour and ten minutes
9 before there was a phone call. An hour, ten
10 minutes. There will be testimony as to the
11 severity of the bleeding by Mr. Evans.

12 Remember, the allegations in this
13 case are that Janelle Belk abandoned Mr.
14 Evans. His home health nurse, with nine years
15 experience, who is getting a lab run to make
16 sure that he won't have a bleeding problem,
17 the allegations are that she abandoned Mr.
18 Evans, that she left him there bleeding to go
19 get this lab done. For you to believe that,
20 you're going to have examine the time and look
21 at those records. I believe that the medical
22 records will show you that over an hour went
23 by, as I said, before EMS was even called.

24 Now, could there have been an active
25 bleed for an hour that he never saw? These

1 are things that you need to consider.

2 I intend to put up witnesses who
3 provided care. I intend to put up Dr.
4 Widenhouse, the plastic surgeon. I believe
5 that ultimately you will see that Janelle
6 Belk's actions were reasonable, that Judy
7 Burbage's actions were reasonable; and that's
8 all that they needed to be, was reasonable.

9 You will instruct by the Judge what
10 you need to consider at the conclusion of the
11 evidence.

12 I ask that you be patient. It is a
13 medical malpractice case and sometimes the
14 records are not the most exciting thing in the
15 world but we want to be courteous to y'all and
16 present the entire case. I believe when we
17 conclude that you will concede that Roper Home
18 Health was not negligent in this case. Thank
19 you.

20 THE COURT: Thank you. Does
21 anybody need a break before we put up the
22 first witness?

23 JUROR: I need to tell you that I
24 might know Judith Burbage.

25 THE COURT: Okay. We will send all

1 of you to the jury room for just a minute and
2 then we will chat with you. Just stay with us
3 for a minute.

4 (JURY OUT @ 3:07 P.M.)

5 THE COURT: Thank you, sir. Is Ms.
6 Burbage one of the potential witnesses?

7 MR. TIERNEY: Yes. She was on
8 the *voir dire*.

9 JUROR: I know her. I mean, I
10 think -- does she live on John Hancock? My
11 son and hers ran around together, and I knew
12 her as "Judy." I just made the connection.

13 THE COURT: Sir, I think you're one
14 of our alternate jurors; is that correct?

15 JUROR: Yes.

16 THE COURT: Would your knowledge of
17 Ms. Burbage -- it sounds like you know her
18 pretty well, --- make it difficult for you to
19 sit on the case or interfere with your ability
20 to be fair and impartial?

21 JUROR: (No verbal response).

22 THE COURT: If you think it might,
23 go ahead and tell us.

24 JUROR: It might.

25 THE COURT: My inclination would be

1 to let this gentleman go and risk it with no
2 alternate, but I'm certainly happy to hear
3 from counsel.

4 MS. DELUCA: I am agreeable to
5 that, Your Honor.

6 MR. TIERNEY: No objection.

7 THE COURT: Thank you, sir. Thank
8 you for being honest. What is your juror
9 number, sir?

10 JUROR: 123.

11 THE COURT: Juror Number 123 is
12 dismissed.

13 (JUROR NUMBER 123/ALTERNATE JUROR EXCUSED)

14 THE COURT: Anything from the
15 plaintiff?

16 MS. DELUCA: No, Your Honor.

17 THE COURT: Anything from the
18 defendant?

19 MR. TIERNEY: No, Your Honor.

20 THE COURT: Let's take about a
21 five-minute break and then we will start the
22 first witness. We will be at-ease.

23 (BRIEF RECESS)

24 (OFF RECORD DISCUSSION AMONG COUNSEL)

25 MR. TIERNEY: Your Honor, we have a

1 stipulation.

2 THE COURT: Good. The more you can
3 stipulate to the better.

4 MS. DELUCA: And if I could get two
5 more marked.

6 THE COURT: That's fine. I just
7 hate leaving them back there for too long.

8 (OFF RECORD DISCUSSION AMONG COUNSEL)

9 MS. DELUCA: And we are going to
10 mark one through seventy-one as Plaintiff's
11 Exhibit 2.

12 COURT REPORTER: These are notes
13 during the charting session, seventy-one
14 pages.

15 THE COURT: Are you ready?

16 MS. DELUCA: Yes, Your Honor. Your
17 Honor, would you prefer if I mark these for
18 identification if I am going to reference
19 them?

20 THE COURT: It doesn't really
21 matter to me. Your choice.

22 MS. DELUCA: Okay, I think we're
23 ready when you are.

24 THE COURT: I'm ready. Thank you,
25 ma'am. Bring in the jury. I don't require you

1 to stand up for the jury.

2 (JURY IN @ 3:20 P.M.)

3 THE COURT: Thank you, please be
4 seated. Ladies and Gentlemen, I appreciate
5 your patience. We took our afternoon break a
6 little more quickly than I anticipated but we
7 did have a matter that we needed to address.

8 As you can see, we have an empty
9 chair. We're down an alternate juror. Mr.
10 Piedmont properly brought it to our attention
11 that he does indeed know one of the witnesses
12 in the case. In fact, he knew what street she
13 grew up on and their children played together.
14 That's the kind of thing that I needed to know
15 and I am glad he brought that to my attention
16 at this stage of the case.

17 Fortunately we have another alternate juror,
18 which is a very important position, in case --
19 in the unlikely event that we were to lose one
20 of our twelve, first set, of jurors. Anyway,
21 that's where Mr. Piedmont at all. No problem
22 at all. We will proceed. Call your first
23 witness.

24 MS. DELUCA: The plaintiff calls
25 Lauren Cauwels to the stand.

1 THE COURT: Thank you, ma'am.

2 Please come forward and be sworn.

3 (WITNESS TAKES STAND)

4 LAUREN CAUWELS, being duly sworn to
5 tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY MS. DELUCA:

9 Q. Good afternoon, Mr. Cauwels. Will you
10 please tell us where you live?

11 A. I live in Mocksville, Georgia.

12 Q. How long have you lived there?

13 A. About ten years.

14 Q. What is your occupation?

15 A. I am a clinical manager for a home health
16 company.

17 Q. Can you describe what you do there, what
18 your job duties are?

19 A. Initially when I started I worked both
20 with adults and children, private duty home
21 care to children and adults who were on
22 ventilators, adults who had a wound vac. Now,
23 since I split off, I worked strictly on the
24 pediatric side.

25 Q. You provide hands-on home healthcare to

1 patients?

2 A. I do when needed.

3 Q. How long have you been providing hands-on
4 home healthcare to patients?

5 A. I graduated in 1989 and entered home
6 health about two years after that, part-time,
7 and but exclusively since about 1994 I've been
8 in home health.

9 MS. DELUCA: Your Honor, may I
10 approach the witness?

11 THE COURT: You may.

12 DIRECT EXAMINATION CONTINUED

13 BY MS. DELUCA:

14 Q. Ms. Cauwels, I would like to show you what
15 has previously been marked for identification
16 as Plaintiff's Exhibit 1. Can you identify
17 that?

18 A. That is my CV.

19 Q. Is the information on your CV accurate and
20 current?

21 A. Yes.

22 Q. You can refer to it if that helps you with
23 the dates.

24 A. Okay.

25 Q. My question is where you worked prior to

1 your current position.

2 A. Prior to my current position I was at
3 Interim Health Care in Atlanta from 2007 to
4 2008.

5 Q. What was your position there?

6 A. I was manager of the pediatric towards the
7 end but initially was brought to get their
8 adult care up and running, trained their
9 clinical manager, trained their field staff on
10 wound care and the like.

11 Q. And when did you begin with Interim?

12 A. June of 2007. No, sorry, June of 2006 is
13 when I started with the adults.

14 Q. Did you provide not only home health care
15 but home health wound care to patients?

16 A. Yes.

17 Q. At Interim?

18 A. At Interim and also did at my prior ---

19 Q. That is where you worked prior to Interim?

20 A. Yes.

21 Q. And you provided wound care, home health
22 wound care to patients at Amedicus, as well?

23 A. Yes.

24 MR. TIERNEY: Objection to the
25 leading. I don't mind her leading as to her

1 background but we're getting a little bit into
2 her qualification.

3 THE COURT: Sustained. Don't lead.
4 Thank you.

5 DIRECT EXAMINATION CONTINUED

6 BY MS. DELUCA:

7 Q. How long have you provided wound vac
8 dressing change care to patients in their
9 home?

10 A. I'd say since about 2003.

11 Q. Where do you practice?

12 A. I practice right now, currently, in the
13 state of Georgia. I go as far up as the South
14 Carolina border. All over Georgia.

15 Q. Have you been working fulltime since you
16 obtained your nursing license?

17 A. Yes.

18 Q. Are you a R.N., registered nurse?

19 A. I am a registered nurse with a bachelor's
20 degree.

21 Q. What year did you graduate with that
22 degree?

23 A. 1989.

24 Q. Have you served as a nursing expert
25 witness previously?

- 1 A. I've never given testimony, no.
- 2 Q. Have you reviewed records?
- 3 A. I have reviewed records.
- 4 Q. How many times have you reviewed records
- 5 in a legal matter?
- 6 A. Prior to this case, I believe three.
- 7 Q. Have you reviewed cases for both the
- 8 plaintiff and the defense side?
- 9 A. Yes.
- 10 Q. Are you compensated for your time spent
- 11 reviewing records?
- 12 A. Yes.
- 13 Q. What is your hourly fee for that?
- 14 A. My hourly fee is a hundred and twenty-five
- 15 dollars an hour to review the records and two
- 16 hundred an hour for trial testimony.
- 17 Q. Can you approximate what percentage of
- 18 your income over the past five years has come
- 19 from being a legal expert witness, as opposed
- 20 to your clinical duties?
- 21 A. I would say percent about one to three
- 22 percent.
- 23 Q. Are you familiar with the standard of care
- 24 with respect to the treatment that was
- 25 rendered Mr. Evans?

1 A. Yes.

2 MR. TIERNEY: Objection.

3 THE COURT: Sustained.

4 DIRECT EXAMINATION CONTINUED

5

6 BY MS. DELUCA:

7 Q. Mr. Cauwels, have you reviewed the medical
8 records of Mr. Evans relating to his care in
9 this case?

10 A. Yes.

11 Q. Have you reviewed his deposition?

12 A. Yes.

13 Q. Are you familiar with the standard of care
14 with regard to the treatment that was rendered
15 in this case?

16 MR. TIERNEY: Objection.

17 THE COURT: Y'all approach for a
18 minute.

19 (OFF RECORD BENCH CONFERENCE)

20 THE COURT: Objection sustained.

21 MS. DELUCA: Your Honor, at this
22 time the plaintiff offers Ms. Cauwels as an
23 expert witness in the practice of home
24 healthcare and home wound care.

25 THE COURT: Any voir dire?

1 MR. TIERNEY: Briefly, Your
2 Honor?

3 THE COURT: Certainly.

4 MR. TIERNEY: Can you tell me how
5 long you have been working in home health?

6 THE WITNESS: Probably since
7 about 1991.

8 MR. TIERNEY: How much of your
9 practice since 1991 has been hands-on wound
10 care?

11 THE WITNESS: That's hard to
12 quantify over such a long period of time.
13 Initially when I started I was per diem, but I
14 was also working in a hospital where there was
15 a lot of wound care and -- like with the
16 clients that I have now -- they developed
17 dehiscence and they can't move.

18 MR. TIERNEY: I understand your
19 testimony to be that you are a manager; is
20 that correct?

21 THE WITNESS: I am a clinical
22 manager, yes.

23 MR. TIERNEY: As a clinical
24 manager, do you actually have patients that
25 you see on a daily basis?

1 THE WITNESS: Not on a daily
2 basis. Back in 2006 when this case was taking
3 place, I was seeing roughly about fifteen to
4 twenty clients a week. It was required of us
5 to see that many clients, plus any clients
6 that were overflow to the other nurses, that
7 they couldn't see.

8 MR. TIERNEY: I note from your
9 testimony that you have an RN degree, correct?

10 THE WITNESS: Correct.

11 THE COURT: Are you a certified
12 wound care nurse?

13 THE WITNESS: No, I am not.

14 MR. TIERNEY: I would ask the
15 court to ask plaintiff's counsel, once again,
16 what she wants her qualified in.

17 THE COURT: Yes, if ---

18 MS. DELUCA: The plaintiff offers
19 Mr. Cauwels as an expert in the area of home
20 healthcare and home health wound care.

21 MR. TIERNEY: With the caveat,
22 Your Honor, my objection would be that she may
23 testify as an RN but not as a certified wound
24 care nurse. I would object to her offering
25 opinions as to any of certified wound care

1 nurses.

2 THE COURT: Do we need a minute?

3 MS. DELUCA: Yes, Your Honor.

4 THE COURT: Ladies and Gentlemen,
5 this is one of those cases that I told you
6 about earlier when we will take this matter up
7 off the record and hopefully have you back in
8 a short period of time.

9 (JURY OUT @ 3:33 P.M.)

10 THE COURT: Okay. I think she can
11 testify - first, as to your earlier objection,
12 as an RN in the general wound care field,
13 obviously she can't be qualified as a wound
14 care expert, but they could offer her as an
15 expert in the nursing field, in the --

16 MS. DELUCA: --- area of wound care,
17 home health care, and home health wound care.

18 MR. TIERNEY: Your Honor, I don't
19 know what the distinction is between home
20 health care and home health wound care. My
21 concern is that that might mislead the jury to
22 some extent, that there is some specialization
23 ---

24 THE COURT: Why don't you both *voir*
25 *dire* on wound care. I don't want to admit her

1 as a specialist in that area if it just
2 general home health care. I'm happy for you
3 to go into that in detail right now.

4 VOIR EXAMINATION

5 (JURY NOT PRESENT)

6 MS. DELUCA: Ms. Cauwels, while
7 working as a home healthcare nurse, have you
8 provided wound care in the home?

9 THE WITNESS: Yes.

10 MS. DELUCA: For how long have you
11 done that?

12 THE WITNESS: Since, I'd say,
13 1991.

14 MS. DELUCA: Have you changed wound
15 dressings since 1991?

16 THE WITNESS: Yes, many times.

17 MS. DELUCA: Have you changed wound
18 vac dressings?

19 THE WITNESS: Yes.

20 MS. DELUCA: When did you begin
21 doing that?

22 THE WITNESS: I think 2002,
23 around 2003.

24 MS. DELUCA: And have you provided
25 wound care, including wound vac care, since

1 that time up to the present?

2 THE WITNESS: Yes.

3 MS. DELUCA: You have provided
4 hands-on care?

5 THE WITNESS: Yes.

6 THE COURT: I mean, I'm ready to
7 qualify her as a nurse experienced in home
8 healthcare. But before we get to the step, --
9 do you want to *voir dire* her on ---

10 MR. TIERNEY: Ms. Cauwels, you
11 testified that you've provided wound care in
12 the home setting; is that correct?

13 THE WITNESS: Yes.

14 MR. TIERNEY: You've also
15 provided wound care in hospital settings?

16 THE WITNESS: No.

17 MR. TIERNEY: Is there any
18 difference between providing wound care in a
19 hospital setting as opposed to wound care in
20 the home setting?

21 THE WITNESS: Yes.

22 MR. TIERNEY: How are you
23 qualified to discuss that if you don't offer
24 wound care in the hospital setting?

25 THE WITNESS: Just the overall

1 environment in a hospital is different than in
2 a home. You have more support in a hospital,
3 your policies and procedures for a hospital,
4 the support that you have available may be
5 different than what is in the home. When you
6 leave clients who may be bleeding in the
7 hospital, to check on another client, there
8 are other nurses that are available. When you
9 leave a client in the home that may be
10 bleeding, you are leaving them unmonitored
11 with, hopefully, the help of a layperson to
12 understand the symptoms of a situation and/or
13 when to call 911.

14 MR. TIERNEY: Have you ever
15 provided wound care in a hospital setting?

16 THE WITNESS: In my early nursing
17 years, yes. I was an ICU nurse.

18 MR. TIERNEY: Is there any
19 specialization for an RN who provides wound
20 care that states they're specialized in a home
21 setting versus a hospital setting?

22 THE WITNESS: No. The training
23 is different and the policies and procedures
24 may be different.

25 MR. TIERNEY: The training is

1 different, how?

2 THE WITNESS: When we have nurses
3 that come out of a hospital into home care,
4 it's not always an easy transition. You don't
5 always necessarily -- say, take a nurse that
6 has worked in a hospital for, say, twenty
7 years and tell them, 'Okay, you can now come
8 out and take care of Ms. Jones in her home
9 without properly' being precepted or oriented.
10 You need to make sure that they have those
11 critical skills, make sure you can think and
12 act independently in the way that you make
13 contacts for help. So it's a different
14 scenario.

15 MR. TIERNEY: I believe your
16 testimony is that there is no distinction in
17 any qualifications to be a home health wound
18 care nurse than opposed to a hospital nurse?

19 THE WITNESS: Training. Mostly
20 you want to ---

21 MR. TIERNEY: Can you answer yes
22 or not, and then you can explain yourself.

23 THE WITNESS: Yes, there is a
24 difference. There is more training that goes
25 into being a home health nurse than being in

1 the hospital, to the home setting.

2 MR. TIERNEY: My question really
3 is, is there a difference in designation? Can
4 you specialize in being a home health nurse as
5 opposed to being a hospital nurse?

6 THE WITNESS: No.

7 MR. TIERNEY: There is no
8 specialization, correct?

9 THE WITNESS: No. Correct.

10 MR. TIERNEY: Everybody who is a
11 wound care nurse is an RN, correct?

12 THE WITNESS: Yes.

13 MR. TIERNEY: As a wound care
14 nurse who is an RN, do you develop the initial
15 plan of care for a patient?

16 THE WITNESS: Yes.

17 MR. TIERNEY: You read Judy
18 Burbage's deposition, correct?

19 THE WITNESS: Yes.

20 MR. TIERNEY: And you know that
21 she is the one who initially drew out the plan
22 of care for Mr. Evans, correct?

23 THE WITNESS: Yes.

24 MR. TIERNEY: Did you draw out
25 those plans of care?

1 THE WITNESS: Yes.

2 MR. TIERNEY: I think that's all
3 the questions that I have.

4 THE COURT: Anything further?

5 MS. DELUCA: Thank you, Your Honor.

6 At this time, I would again offer her as an
7 expert ---

8 THE COURT: Okay. I am going to
9 qualify her as an expert in the nursing field
10 with wound health care, which includes the
11 treatment of wounds. But I don't think she is
12 an expert in the wound care area. Do you
13 object to any of that?

14 MR. TIERNEY: No, Your Honor.

15 MS. DELUCA: So should say ---

16 THE COURT: An expert in the field
17 of home health care which includes wound
18 treatment.

19 I see where both of you were going,
20 so your objections are noted. I certainly
21 think your objection to any of her
22 qualifications, we will have to deal with
23 those as they come up.

24 MR. TIERNEY: Yes, Your Honor.

25 THE COURT: Ready for the jury?

1 MR. TIERNEY: Yes, ma'am.

2 THE COURT: I am going to give them
3 a little expert witness charge when they come
4 in.

5 MS. DELUCA: So when we take up, I'm
6 going to offer her or not?

7 THE COURT: I am going to let you
8 offer her and then I am going to charge them -
9 - you've already offered her. Okay. Bring in
10 the jury.

11 MS. DELUCA: That's fine.

12 (JURY IN @ 3:41 P.M.)

13 THE COURT: Thank you, Ladies and
14 Gentlemen. I certainly appreciate your
15 patience. We are ready to proceed.

16 MS. DELUCA: Your Honor, at this
17 time I would like to offer Nurse Cauwels as an
18 expert in the nursing fields of home care and
19 treatment of wounds.

20 THE COURT: Thank you, she is so
21 qualified. Ladies and Gentlemen of the jury,
22 normally a person cannot give opinion
23 testimony in court. Generally when a person
24 testifies, they would testify as to what they
25 saw, heard, felt, smelled. However, when

1 witnesses have certain areas of experience or
2 education, they are permitted to provide their
3 opinions in certain limited areas. I have
4 qualified this particular witness as an expert
5 in the nursing field of home healthcare and
6 will permit her to give you testimony in that
7 limited area.

8 That does not mean that you have to
9 accept her testimony, but it is evidence for
10 you to consider with the global evidence in
11 the case, and to give it any weight that you
12 see fit.

13 Thank you. You may continue.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. DELUCA:

16 Q. Ms. Cauwels, are you familiar with the
17 standard of care with respect to the treatment
18 that was rendered in this case?

19 A. Yes, ma'am.

20 Q. When we talk about whether a RN or
21 registered nurse has met or fallen below the
22 standard of care, I want you understand that
23 the standard of care that an RN or a
24 registered ---

25 MR. TIERNEY: Objection.

1 Leading.

2 THE COURT: Sustained.

3 DIRECT EXAMINATION CONTINUED

4 BY MS. DELUCA:

5 Q. As a result of reviewing material related
6 to this case, did you form an opinion to a
7 reasonable degree of nursing certainty whether
8 the Roper Home Health nurses owed a duty of
9 care to provide Mr. Evans with appropriate
10 treatment that met the standard of care?

11 A. I believe that they did have a duty.

12 Q. Do you have an opinion to a reasonable
13 degree of nursing certainty whether the Roper
14 nurses fulfilled or breached that duty?

15 A. I believe that they breached that duty,
16 based on the care that was documented.

17 Q. Do you have an opinion to a reasonable
18 degree of nursing certainty whether the Roper
19 nurses' breach of this duty proximately caused
20 Mr. Evans' bleed, leading to his transport and
21 hospitalization?

22 MR. TIERNEY: Objection.
23 Foundation.

24 THE COURT: Sustained.

25 DIRECT EXAMINATION CONTINUED

1 BY MS. DELUCA:

2 Q. Ms. Cauwels, have you reviewed Roper Home
3 Health's records in this case?

4 A. I have.

5 Q. Have you reviewed the EMS record?

6 A. I have.

7 Q. Have you reviewed the hospital records in
8 this case?

9 A. Before and after the transport. I've
10 reviewed both.

11 Q. After the transport, once the ambulance
12 arrived at the hospital?

13 A. Yes.

14 Q. Have you reviewed the testimony of the
15 nurses and Mr. and Mrs. Evans in this case?

16 A. I have.

17 Q. Based on that, do you have an opinion to
18 reasonable degree of nursing certainty whether
19 the Roper nurses breach of their healthcare
20 duty most probably caused the bleed ---

21 MR. TIERNEY: Objection.
22 Foundation.

23 THE COURT: Approach, if you would.

24 (OFF RECORD BENCH CONFERENCE)

25 DIRECT EXAMINATION CONTINUED

1 BY MS. DELUCA:

2 Q. Ms. Cauwels, are all of your opinions that
3 we have discussed here today to a reasonable
4 degree of nursing certainty, most probably?

5 A. Yes, they are.

6 Q. I am going to hand you a copy of what has
7 previously been marked as Plaintiff's Exhibit

8 2. Can you identify that document for me?

9 A. They are the Roper St. Francis Home Health
10 charting session records.

11 Q. I want to talk to you about what the Roper
12 nurse did on -- you can make reference to that
13 if it is helpful to you, but don't feel like
14 you have to. Ms. Cauwels, what did the Roper
15 nurse do on the initial visit on Friday,
16 September 29th, 2006?

17 A. Without looking back, my recollection is
18 that the nurse went out, did a thorough
19 assessment, including a OASIS assessment,
20 which is used for Medicare. Collected
21 information on the client's medications.
22 Inspected the wound, initiated wound vac
23 therapy.

24 Q. Are you critical of the Roper nurse's
25 treatment on that first home health visit?

1 A. I have a couple of issues with the first
2 home health visit. The first being that the
3 original order that came over specified that
4 the wound vac be placed in a different area.
5 When she went out there and she saw that the
6 wounds were actually in the groin and scrotum,
7 that he had adjunct medications that would
8 increase his potential for bleeding, she did
9 not contact the physician to clarify those
10 orders, to make sure that he wanted the wound
11 vac placed on those specific wounds.

12 Q. I want to make sure that I understand what
13 you said. The first issue is that the orders
14 did not address the right areas for the wound?

15 A. Correct.

16 Q. Then you mentioned adjunct medication?

17 A. He was on Coumadin and I think the other
18 one, off the top of my head, was Avandia.
19 Those two medications together can actually
20 increase the effect of your Coumadin, which
21 makes you even more at-risk for bleeding.

22 MR. TIERNEY: Objection, Your
23 Honor. I will be more than happy to state it
24 for the record. She is now offering opinions
25 based on the orders of Dr. Widenhouse. She

1 hasn't been qualified as a medical doctor and
2 she is offering medical doctor opinions.

3 MS. DELUCA: Your Honor, I think she
4 is commenting on actions taken by the nurse.

5 THE COURT: I am going to overrule
6 the objection. She is exercising her general
7 knowledge of how drugs may interact. Thank
8 you.

9 DIRECT EXAMINATION CONTINUED

10 BY MS. DELUCA:

11 Q. Was another drug Warfarin?

12 A. Yes.

13 Q. Warfarin is the same as Coumadin?

14 A. Correct.

15 Q. Tell me what your issue was with respect
16 to the medication.

17 A. The medications basically, used together,
18 increase -- either the Coumadin or the
19 Warfarin alone is going to make clotting
20 sometimes slow down, so you're going to be
21 prone to bleeding. When you put these two
22 medicines together that increases that effect,
23 so as a nurse it's my obligation to contact
24 the physician to, number one, see if he is
25 aware of these medications -- they may have

1 been ordered by two different physicians, and
2 the physicians don't talk to each other, so
3 it's the nurse's obligation to let the
4 physician know whenever you find something
5 that is contraindicated.

6 Q. Those are the medications that are known
7 to increase the risk of bleeding?

8 A. Yes.

9 Q. Did the home health nurse treat the wounds
10 that were present when she treated Mr. Evans,
11 or did she treat the wounds on the orders?

12 A. She treated the wounds -- well, there is
13 some confusion. If you look at the
14 prescription that came over from K.C.I., I
15 believe that it was actually for the wounds
16 that were treated in 2000 but had a date of
17 2006.

18 Q. Did that order also address the pressure
19 that the wound vac was to be set at?

20 A. It did, between 150 and 125.

21 Q. Can you just explain briefly what a wound
22 vac is?

23 A. A wound vac is basically a closed system
24 that applies negative pressure to a wound,
25 helps to take out any excess drainage or

1 bacteria. It helps to prevent infection.

2 Because you only have to change it three times
3 a week, it helps to keep that wound
4 environment moist and sealed, comfortably
5 promotes quicker healing times.

6 Q. So is it a mechanical machine that exerts
7 negative pressure?

8 A. Yeah, it looks like a vacuum that sucks.

9 Q. You can set the machine at various
10 pressure setting to determine how strong that
11 vacuum is?

12 A. Like setting a thermostat, yes.

13 Q. So what did you order the pressure be set
14 to?

15 A. The physician ordered 125. Then in the
16 initial plan of care that the nurse wrote, she
17 wrote 125 to 150.

18 Q. What is the purpose of using a wound vac,
19 generally?

20 A. To help promote quicker healing. It's
21 difficult to move, and it basically cuts down
22 on the healing time, healing process.

23 Q. And on the second Roper nurse's visit --
24 let me ask, is this a digital type display or
25 a dial?

1 A. It's digital.

2 Q. And you can't tell from the notes that
3 were made that day by the nurse what the
4 pressure was actually was set at?

5 MR. TIERNEY: Objection, leading.

6 THE COURT: Sustained.

7 DIRECT EXAMINATION CONTINUED

8 BY MS. DELUCA:

9 Q. Ms. Cauwels, were you able to tell what
10 the pressure was set at on that second nurse
11 visit?

12 A. Can I refer to my notes to be sure.

13 Q. Yes.

14 A. (Upon review), no.

15 Q. You can't tell from the notes made that
16 day by the nurse what the pressure was
17 actually set at?

18 A. No.

19 Q. Ms. Cauwels, were you able to tell what it
20 was set at on the second nurse's visit?

21 A. From what it was set at before?

22 Q. Yes.

23 A. Do you happen to know what page it is?

24 Q. Yes, the second visit was on the 30th --
25 no, the 29th.

1 A. It says here 125 to 150. I don't know if
2 you want me to -- are there other issues with
3 this day?

4 Q. Yes. Let's continue with your criticisms
5 from the first visit.

6 A. Well, one of the issues is that there was
7 no pain assessment done until therapy was
8 completed? Wound vacs sometimes, when you
9 change the dressing, it can be painful; so
10 it's helpful to have 'what my pain is now,
11 what my pain it at later.'

12 When you look down and see exactly what
13 she did on one of the wounds, on the scrotal
14 wound, she documents that she used a black
15 sponge to pack it, which is standard for the
16 wound vac. But on the left groin wound she
17 actually documents that she only applied a
18 transparent dressing and there is no
19 documentation of using a black sponge. The
20 sponge is what you need to touch that wound
21 bed. So if there was just a transparent
22 dressing on there and you're applying suction,
23 it could be painful.

24 I don't think the pain level was
25 addressed until after the vac was pulled.

1 Yes, she said "Patient's pain verbalized by
2 patient as almost intractable. Patient is not
3 satisfied with pain relief, related that on a
4 scale of one to ten, one being none and ten
5 being the worst, he was a six." Then her
6 notes indicate that she contacted the
7 physician regarding the increased pain, but
8 she was given instructions to tell the patient
9 to try to hang on until his next doctor's
10 visit.

11 Q. If you could look at page thirty-one in
12 the medical records.

13 A. Okay, I see it.

14 Q. Is that the note that you are referencing?

15 A. Yes.

16 Q. About calling the other nurse about the
17 increased pain?

18 A. Yes.

19 Q. So tell me if I am wrong, but I understand
20 your criticism of the second Roper nurse's
21 visit to be that there was no pain assessment
22 prior to the dressing change, there was no ---

23 MR. TIERNEY: Objection.

24 Leading.

25 THE COURT: Sustained.

1 DIRECT EXAMINATION CONTINUED

2 BY MS. DELUCA:

3 Q. Ms. Cauwels, call you summarize for me
4 your criticisms are of the Roper nurses second
5 visit?

6 A. There was no pain assessment done before
7 the treatment was provided, there was pain
8 noted after the treatment was provided but the
9 physician was not contacted.

10 And, again, anytime that there is a chance
11 in condition, especially new pain, increased
12 pan, intractable pain or pain that is not
13 alleviated by the medicines given by the
14 physician, especially new pain, increased pain
15 or intractable pain the physician should be
16 contacted to adjust the care given.

17 It does not look like she applied the
18 black sponge to the left groin wound, which is
19 the wound that I believe had dehisced in the
20 hospital prior to coming home. It looks like
21 she just applied a transparent dressing to
22 that wound and then connected it to the wound
23 vac.

24 Q. And is it proper to apply a transparent
25 dressing without the sponge?

1 A. No.

2 Q. What problems could doing so cause?

3 A. More trauma to the wound bed. It's almost
4 like if you put a vacuum directly onto a wound
5 bed. There was no protection, none, if there
6 is not a sponge to help draw anything of that
7 wound bed area. It also helps to protect that
8 wound bed area.

9 Q. What was done to alleviate the pain that
10 the nurse reported to the other nurse, that
11 Mr. Evans reported?

12 A. Nothing that was documented.

13 Q. Are the criticisms that you have mentioned
14 with regard to the second Roper nurse visit a
15 breach of the standard of care?

16 A. I believe so, yes. If I may add to that,
17 basically as a nurse we have an obligation to
18 assess, to intervene, and to evaluate. If at
19 any time during the assess we find a problem
20 with the plan of care or that something about
21 the plan in not being followed, then we have
22 to re-evaluate to come with a new plan.

23 Q. What does the standard of care require a
24 nurse to do in her assessment?

25 A. Whenever you go to see a client, you

1 should at least as a minimum review their
2 vital signs, ask 'are you on any new
3 medications', do a pain assessment, you review
4 the plan of care, you assess the patient, you
5 communicate with the physician. If you
6 haven't seen him in three days, you ask what's
7 been going on on the days when they haven't
8 been seen. With regard to wounds, you want to
9 look at drainage in the wound. You want to
10 see if it is bloody, if there is any watery
11 bleeding, drainage, how much drainage is
12 there. If there is a lot of drainage, you may
13 actually increase the pressure. You look at
14 the wound dressing itself, is it clean, is it
15 dry? Does it have any bloody drainage to it.
16 Is there any redness around the wound bed
17 itself, any swelling, any odor, any
18 temperature.

19 Q. Was an assessment of Mr. Evans done on the
20 second Roper nurse visit?

21 A. She does have his vital signs down. He
22 states that he said he has some numbness and
23 tingling in his left thigh, pain. She
24 assessed the skin color. When it got to the
25 wound care, she did mention the wound. She

1 did note that there was bloody drainage, left
2 scrotum. So she's documented it pretty well.

3 Q. What is the standard of care require a
4 home health nurse to do when she receives
5 reports of pain, significant pain?

6 A. To contact the physician.

7 Q. Was the physician contacted after the
8 Roper Health nurse's second visit?

9 A. No.

10 Q. Can you walk me through the actual
11 changing of a wound vac dressing?

12 A. Okay.

13 Q. Briefly.

14 A. Normally what you do when you go in, like
15 I said, is you always want to check and make
16 sure that no one has come along and bumped the
17 pressure up or down. So you want to make to
18 sure that the machine is set correctly.

19 You want to make sure that you document
20 and look at the drainage that is in the
21 cannister.

22 You want to assess their vital signs
23 because there is going to be some pain with
24 the dressing change. If you take his vital
25 signs afterwards, you're not quite sure if it

1 is related to pain or to something else. So
2 you need to have a baseline before to compare
3 to afterwards. It's help to document how the
4 patient tolerates the dressing change.

5 You look at the dressing, see if it is
6 intact.

7 Once you have done your assessment, you
8 proceed to remove the wound vac.

9 Under that you have a adhesive dressing,
10 like a transparent but because it is sometimes
11 sticky and sometimes we use a skin prep that
12 makes it every stickier, on elderly people and
13 on people that have frail skin, you have to
14 take care not to pull the skin. So if you
15 take the corners and kinda of like lift them
16 up and pull it, you just kind of lift it off
17 as opposed to just ripping it off. If you
18 have difficulty removing the wound vac, you
19 usually can take some normal saline and squirt
20 it onto the sponge, let it sit there for a
21 minute so that you're not pulling off any
22 healthy tissue or granulating tissue.

23 You count the number of sponges that you
24 remove. You may have little bits and
25 fragments of the black sponge in the wound

1 that you have to remove that with maybe a Q-
2 tip so they don't get embedded and so you
3 don't have stitches growing over the piece of
4 black sponge.

5 Q. Did the Roper home health nurse change the
6 wound vac dressing in the manner that you've
7 described, on the second visit?

8 A. It's difficult to keep these straight.
9 Sorry.

10 Q. That visit is page 0039.

11 A. (Upon review), it doesn't say how she
12 removed it. It just says that she inspected
13 it, but it doesn't say that the dressing was
14 removed. But it does go on to say that she
15 dressed the first wound, put the black sponge
16 in it and then the second wound was just the
17 dressing. Then in her conference with Judith
18 Burbage, she said that she'd had problems
19 applying the wound vac, there pain has
20 increased significantly.

21 Q. Are there any late entries or corrections
22 that you note that were made for this visit?

23 A. No.

24 Q. Approximately how many pages of notes
25 pertain to that visit?

1 A. Looks like two.

2 Q. Now looking at the third Roper nurse visit
3 and that documentation, Page 0033, can you
4 tell when that third Roper nurse visit
5 occurred?

6 A. The third visit was October 3rd at 10:22 -
7 - is that right?

8 Q. How many days after the second visit did
9 the third visit occur?

10 A. The next day. Yeah, the next day.

11 Q. Why did the Roper nurse come back again on
12 the next day?

13 A. Mr. Finley -- Mr. Evans, sorry. Mr. Evans
14 had actually contacted the home health agency
15 and told them that he was in pain. There's
16 nothing documented. No one went out to see
17 him, no one called the physician, and the
18 visit the next day was made as what we call an
19 prn, as needed, visit.

20 Q. What did the Roper nurse do on that third
21 visit?

22 A. On the third visit, it looks like she went
23 in and -- because he was in pain, she took off
24 that dressing. It gets very confusing because
25 there were a lot of late entries and things

1 that aren't documented. It's hard for me to
2 piece it together. But it looks like that's
3 all that she wrote, that she took the dressing
4 off, noted some bleeding, applied pressure to
5 the wound, ---

6 Q. Let me stop you there. Is it clear
7 whether one or both wounds are bleeding?

8 A. One of them had a slow continuous drip.
9 She said "faint red" -- "frank red blood."
10 It's hard to tell.

11 MR. TIERNEY: Objection.

12 THE COURT: Please rephrase your
13 question.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. DELUCA:

16 Q. Ms. Cauwels, if you would refer to Page
17 0036.

18 A. Okay.

19 Q. About two-thirds of the way down the page,
20 do you see a wound assessment?

21 A. Yes, (reading): "...patient had open
22 surgical wound, wound was bright red and had
23 active bleeding." That's where she said that
24 she applied pressure and -- applied 8-ply
25 4x4's and put a five-pound bag of rice over

1 the top. Patient was instructed to stay in
2 the bed and still. Upon leaving, instructed
3 spouse about emergency care if bleeding
4 through, to call 911.

5 Q. Can you tell if that entry is a delay or
6 correction entry?

7 A. Okay -- 10:50.

8 Q. The last one you read?

9 A. 10:53, correction entry on the 4th at
10 7:34. Yeah. So that was a day and a half
11 over the event.

12 Q. Did the Roper nurse meet the standard of
13 care in her treatment on the third visit, in
14 her treatment of Mr. Evans?

15 A. I do not believe so, no.

16 Q. What criticisms, if any, do you have about
17 the care that the Roper nurse provided on that
18 third visit?

19 A. Initially, again I think as assessment
20 should have been done. He complained of pain,
21 she needed to know where the pain was coming
22 from. Because he had a wound vac, the pain
23 could have been coming from the wound vac.
24 You don't just rip off the dressing without
25 assessing what is going on.

1 Ultimately, but more importantly, when you
2 have an active bleed, you have to use
3 extraordinary measures, such as putting a
4 five-pound bag of rice on them to prevent them
5 from bleeding, instruct them that they can't
6 move, -- at that point it's not necessarily to
7 take bloodwork or to run to the lab because
8 you already know his clotting time has
9 dropped. He needs to get emergency help.

10 There were options. The wife could have
11 taken the bloodwork and she could have stayed
12 with Mr. Evans. She had a nursing student
13 with her. That nursing student could have
14 taken the bloodwork and she could have stayed
15 and monitored Mr. Evans.

16 At one point she said that she wanted to
17 call 911, that the family refused. However,
18 as a nurse, if you feel that 911 is warranted,
19 it is your obligation to that client to call,
20 let 911 come out and then let the client
21 refuse at that time.

22 Q. Have you seen anything else in any of the
23 other records that supports the statement that
24 the Evans did not want 911 called?

25 A. I think that it was only in Ms. Belk's

1 deposition.

2 Q. Do you have any other criticisms of the
3 care provided by the Roper nurse on that third
4 visit?

5 A. She left the wound undressed, she left it
6 open to infection, that she didn't take the
7 vital signs or do an assessment beforehand.
8 Again, if her documentation is not timely -- I
9 don't even know if it was accurate because
10 there were so many late entries over the
11 course of the two-day period.

12 Q. What is the standard of care regarding
13 appropriate documentation?

14 A. It should be done in a timely manner,
15 which is normally within twenty-four hours.
16 Excuse me. When you go out and do a visit,
17 you really want to get that documented while
18 you were in the home. When I did it, I used
19 to sit out in the driveway and document it
20 before going on to my next visit. It's very
21 difficult after the fact to sit and figure out
22 the timeline or what when on, or where was
23 that wound? What did I dress? It's hard to
24 recreate the scene that you were in. So it's
25 usually best if it is done in the home.

1 Q. Was the wound vac reapplied on that third
2 visit?

3 A. No, it was not and the physician was not
4 contacted. Well, I shouldn't - it looks like
5 the physician was contacted but I couldn't
6 tell you, really, where, when, why. Looks
7 like she finally got in touch with him - or
8 with Jenny, I don't know if Jenny is a
9 secretary or a nurse for Dr. Widenhouse. We
10 obtains the order but there was nothing in her
11 notes that said, 'By the way, he's bleeding
12 from these two wounds, so I had to apply a
13 five-pound bag of rice. What do you want me
14 to do?' You know, at that point he may have
15 said to transport him to the emergency room.
16 At that point he may felt that he needed
17 something to slow down his bleeding time.

18 Q. Does the standard of care require a nurse
19 to contact the doctor if she not going to
20 follow the orders relating to the wound vac
21 dressing?

22 A. Most definitely. If you have to deviate
23 from that plan or schedule, the physician has
24 to order it. She needs to contact the
25 physician.

1 In nursing, we are not -- I can't even
2 apply sunscreen to a patient because it's
3 considered a medicine.

4 Q. Is it a breach of the standard of care not
5 to contact the wound care nurse with regard to
6 the dressing?

7 A. Yes, it is.

8 Q. What is the proper dressing to apply?

9 A. That would be hard to say. It could be
10 anywhere from a 4x4 gauze, to a five-pound bag
11 of rice, to a towel and rice.

12 Q. Have you ever used a five-pound bag of
13 rice in the wound care of a patient?

14 A. No.

15 Q. Have you ever heard, other than in this
16 case, of a five-pound bag of rice being used
17 in wound care?

18 A. No.

19 Q. What was Mr. Evan's condition when the
20 Roper nurse left the Evans home?

21 A. To me, he was unstable. We don't know if
22 that bleeding actually had stopped because,
23 again, it was covered and it had a five-pound
24 bag of rice on it. But for a client not to be
25 able to move, his risk would have been

1 assessed as being pretty high for bleeding.

2 And at that point he needed to be transported.

3 Q. Do you know how long Mr. Evans was told
4 not to move for?

5 A. No, I believe that she said she was going
6 to come back around 3:00. I'd have to go back
7 and look for exactly the right time, but I do
8 remember from her nurse's logs that she was
9 still out seeing patients at 3:00. So had he
10 not gone to the emergency room, I don't know
11 when she would have been back.

12 Q. Is the nurse's documentation of that third
13 visit -- does it present a picture of what his
14 condition and what her care was?

15 A. Can you rephrase that?

16 Q. What are you criticisms of the
17 documentation by the Roper nurse on that third
18 visit?

19 A. It's very unclear as to what happened that
20 day. It's anywhere from -- and I may be
21 getting depositions mixed up with what is
22 written in here, but it's anywhere from left
23 and came back, to left and was going to come
24 back, went to one lab, then had to go to
25 another lab at some point, and -- the timeline

1 is very, very difficult to figure out.

2 Q. Do you know what happened to Mr. Evans
3 after the nurse left?

4 A. I know that after she left that he was in
5 bed. I believe that his son went to the
6 grocery store. I believe that is confirmed by
7 the testimony of Ms. Evans, that the nurse had
8 instructed her to go down and get him some
9 collard greens because it has Vitamin K in it
10 and that would help with the clotting. That
11 while they were eating, I believe that Mr.
12 Evans said that he felt something trickling.
13 His wife lifted up the towel and then -- I
14 think in her words that was "spewing blood."
15 She called the nurse and the nurse instructed
16 her to call 911. I think she actually asked
17 the nurse, according to her testimony, if she
18 would call 911 for her and was told that she
19 couldn't do that.

20 Q. After the call was placed to 911, what
21 happened?

22 A. 911 came out and they found him to have
23 lost -- if I could look at Ms. Belk's, so that
24 I am not misstating anything, is that in here?

25 Q. No, it's not.

1 A. Okay. All right, I just don't want to
2 misstate anything.

3 Q. Handing you Plaintiff's Exhibit 3. Can
4 you identify that document for me?

5 A. (Upon review), it's the emergency
6 transport record. Do you want me to look?

7 Q. Please. Just tell me what happened after
8 the Roper Home Health nurse was called.

9 A. I believe that your travel log said that
10 she left at 12:18. EMS received a call at
11 1:40, arrived at 1:47. They said that his
12 patient status was urgent on scene. Blood
13 pressure was 71/34, which is his baseline. At
14 one point he had a heart rate of forty to
15 forty-five, which looking back at his early
16 medicals, his heart rate was in the seventies
17 before they arrived. It just says that he was
18 found in bed, bleeding from his surgical
19 incision. Patient appeared to have lost
20 approximately one liter of blood or more.

21 (Reading): "Unable to get a blood
22 pressure. Patient placed in unit. Upon
23 leaving, patient became very diaphoretic,
24 heart rate in the forties, bradycardia.

1 Patient stated, "I am not going to make it."
2 Decision made to divert from Roper Berkeley to
3 Trident. An IV was given. He couldn't
4 breathe. They ran approximately 500cc's of
5 fluid and his blood pressure came up to 71/34,
6 his pulse rate was forty-five. Patient
7 initially cold, clammy, ashen-gray, would
8 respond only by moaning. Patient turned over
9 to ER, good color, blood pressure 90/60, now
10 talking."

11 Q. Do you see the box in the middle -- it's
12 not very clear.

13 A. Yes.

14 Q. Where it says, in number fourteen, "IV
15 attempted."

16 A. Four times. Yes.

17 Q. Is that any indication of the ---

18 A. In the ambulance they're strapped down,
19 veins could be a little more spongy.

20 Q. Right above that box is a box for primary
21 assessment?

22 A. Yes. That says other, and that's what I
23 just read.

24 Q. And if you could turn to the next page, --

1 -

2 A. (Affirmative nod), hemorrhage.

3 Q. --- under Trauma heading, ---

4 A. Yes. It says "Trauma: Hemorrhage."

5 Q. How much blood did EMS report that Mr.
6 Evans lost?

7 A. A liter or more.

8 Q. Would you agree that the bottle there
9 (indicating demonstrative aid) contains a
10 liter of liquid?

11 A. Yes.

12 Q. Do you know how many liters of blood are
13 in our bodies, on average?

14 A. I will say about six to eight.

15 Q. Do you know whether or blood loss can
16 result in shock?

17 A. Ten to fifteen percent.

18 MR. TIERNEY: Objection. Not
19 qualified to give that opinion.

20 MS. DELUCA: Your Honor, I am not
21 asking her for a medical diagnosis. I'm just
22 asking if ---

23 THE COURT: Overruled.

24 DIRECT EXAMINATION CONTINUED

25 BY MS. DELUCA:

1 Q. It there are seven, six to eight liters on
2 average, in our body, can you tell us what
3 percentage of blood loss that Mr. Evans
4 suffered that day?

5 A. Well, the report says a liter.

6 Q. Do you know where the Roper Home Health
7 nurse was at the time that EMS was called at
8 1:40?

9 A. I believe in one of the records that she
10 said that she was on her way to a client's
11 house. According to her time in travel, she
12 was actually at a client's house.

13 Q. I believe in the record that I have
14 already provided which have been marked as
15 Exhibit 2 that there is a lab report.

16 A. Okay.

17 Q. Can you identify that document for me?

18 A. This is the daily log for the Roper nurse.

19 Q. Can you tell us what information the
20 nurse's daily log provides?

21 A. Basically this is where we document
22 anytime we go to a client's house, our
23 mileage, how long it takes us to get there,
24 the time we arrived, th time that leave, so on
25 and so forth about each of the clients that we

1 see that day. In her logs, it appears that
2 she had a student with her that day.

3 Q. Where do see that Mr. Belk had a student
4 with her that day?

5 A. It say underneath Notes, "MUSC student."

6 Q. Can you tell me how the times on here are
7 arrived at?

8 A. Okay. We will start with the first one,
9 even though it is blacked out, it shows her
10 travel time from 9:10 to 9:33, and her
11 mileage. Then the next blacked out line,
12 says "nurse visit" and that means that she
13 went to see a client on an as-needed visit.
14 She arrived at 9:33 and she left at 10:03.

15 Then underneath that travel time to Mr.
16 Evans house was 10:03 to 10:51, the mileage
17 was documented. His care and visit lasted
18 from 10:52 to 12:18.

19 Then the travel time under that to the
20 next visit, 12:18 to 1:01. Inbetween that, I
21 believe that she had stopped at the lab and
22 there was a ten-minute wait at the lab. I
23 don't see that on here.

24 Q. So from 12:18 to 1:01?

25 A. Right.

1 Q. The mileage is indicated there?

2 A. The mileage is indicated there, yes. It
3 says thirty-one miles.

4 Q. Also a stop at the lab and a wait at the
5 lab?

6 A. I think that it was a twenty-minute wait
7 at the lab.

8 Q. Do you know how far the lab was from the
9 Evans home?

10 A. I don't.

11 Q. What time did the daily log indicate that
12 the nurse got to her next visit?

13 A. At 1:01.

14 Q. And how many appointments did she have
15 after Mr. Evans that day?

16 A. One, two. Two.

17 Q. Are these entries that the nurse makes or
18 are they automatically generated by the
19 system?

20 A. I am not sure what their system was. I
21 believe that I read somewhere that it was a
22 honor-based system, and I think it was Judy
23 Burbage that said -- I don't know if they --
24 they somehow mark it when they get there and
25 they mark it when they get back.

1 Q. Going back to that third visit, do you
2 know when the original entries were made in
3 that record?

4 A. I believe that it was later that evening
5 so that it could be transmitted by 8:00 a.m.
6 the next morning.

7 Q. In your opinion, are entries that are made
8 that evening for a visit that occurred at
9 10:03 that morning made contemporaneously?

10 A. Can you repeat it one more time?

11 Q. Were the original entries made that
12 evening timely documentation of the visit that
13 began at 10:03?

14 A. Depending on what their policy is for
15 documentation, it could go either way. But
16 normally you document from the client's house.

17 Q. Do you know when the entries that are
18 noted as late entries and correction entries
19 were made for that visit?

20 A. (Upon review), there were some made on
21 October 4th at 7:34. There was another one on
22 October 4th at 7:17.

23 Q. Is that a.m. or p.m.?

24 A. P.m. On both of those. At the bottom of
25 Page 0036.

1 Q. Thirty-six?

2 A. Yes, ma'am.

3 Q. Looking at Page 0037, are those originals,
4 delayed or corrections?

5 A. They are delayed.

6 Q. Page 0037?

7 A. Yes.

8 Q. What date was those entries?

9 A. October 4th from 6:52 p.m. through 10:20
10 looks like the latest one. No. Yeah.

11 MR. TIERNEY: Objection. The
12 question was are those originals, delayed or
13 corrections?

14 THE WITNESS: They are all
15 documented as late entries.

16 DIRECT EXAMINATION CONTINUED

17 BY MS. DELUCA:

18 Q. Ms. Cauwels, looking at the top entry, is
19 it designated as a correction entry?

20 A. Some are correction, some are late.

21 THE COURT: I needed to rule on the
22 objection. How much longer do you have?

23 MS. DELUCA: Five minutes.

24 THE COURT: Five minutes?

25 MS. DELUCA: (Affirmative nod).

1 THE COURT: Go ahead and finish and
2 then we will take a quick break before we
3 start cross-examination. Okay? Thank you.

4 DIRECT EXAMINATION CONTINUED

5 BY MS. DELUCA:

6 Q. Ms. Cauwels, looking at Page 0037, I just
7 want to make sure that we have the same
8 understanding. You said that these were late
9 entries?

10 A. (Affirmative nod).

11 Q. Is that based on the date and time that
12 they were made, as opposed to whether they are
13 labeled "late entry"?

14 A. Technically any entry that you make after
15 the nurse notes are written should be
16 considered a late entry. Once you've written
17 your nursing note and your visit and
18 documentation is complete, anything that you
19 enter after that point should be documented as
20 a late entry.

21 Q. Looking at Page 0038, are those original,
22 late or correction entries?

23 A. Two say late, one says correction.

24 Q. When were those entries made?

25 A. 7:12 p.m., 10:19 p.m., 9:04 p.m.

1 Q. Were any of the entries that the Roper
2 nurses made in the record at the time that the
3 treatment was rendered?

4 A. No, they were made after the fact, after
5 he was transported.

6 Q. Is a home health agency responsible for
7 the actions or treatment provided by Nurse
8 Belk?

9 A. Yes, they are.

10 Q. Is K.C.I. considered a reliable authority
11 in the field of wound care?

12 A. Yes.

13 MR. TIERNEY: Objection. I don't
14 know that she is qualified to render opinions
15 on K.C.I.

16 MS. DELUCA: Your Honor, I am just
17 asking her opinion whether that is true.

18 THE COURT: Well, I am not sure
19 what K.C.I. is. Explain -- I will be happy to
20 hear you if you want to ---

21 MR. TIERNEY: I will withdraw my
22 objection.

23 THE COURT: Thank you.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. TIERNEY:

1 Q. Ms. Cauwels, can you explain what K.C.I.
2 is?

3 A. K.C.I. is the biggest manufacturer of the
4 wound vac. They hold seminars, they come out
5 to train nurses, they will come to a client's
6 home to ensure that wound care is properly
7 conducted. Q. Does K.C.I.'s wound vac
8 therapy meet clinical guidelines?

9 A. Yes.

10 Q. In your opinion do those guidelines set
11 the standard of care in wound vac ---

12 A. Yes, since they're the manufacturer of the
13 product; we often defer to the manufacturer.

14 Q. Ms. Cauwels, do you have an opinion to a
15 reasonable degree or nursing certainty whether
16 Roper Home Health's treatment of Mr. Evans
17 most probably breached the standard of care?

18 A. I do. I believe that it did.

19 Q. Do you have an opinion to a reasonable
20 degree of nursing certainty whether Roper's
21 breach of the standard of care most probably
22 caused Mr. Evans complications?

23 A. I do.

24 MR. TIERNEY: Objection.

25 THE COURT: Sustained.

1 MR. TIERNEY: Thank you.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. DELUCA:

4 Q. Ms. Cauwels, in your experience, what is
5 your overall opinion of the care that was
6 provided by the Roper nurses to Mr. Evans?

7 A. In my opinion the overall care was --
8 there was a lack of communication, follow up
9 with the physician.

10 It is their obligation to contact the
11 physician to clarify orders, to clarify where
12 the wound is going to be, not change the
13 parameters of a wound vac from 125 to 150.

14 They are to notify the client's physician
15 if there is any increase in intractable pain
16 or change in the client's condition. In this
17 case, bleeding was a change of condition.

18 If there is something emergent, such as
19 that, their obligation is to call 911 to have
20 the client transported to a more monitored
21 environment, where he could be cared for
22 properly.

23 MS. DELUCA: Your Honor, may I
24 approach?

25 THE COURT: You may.

1 (OFF RECORD SIDEBAR)

2 THE COURT: Thank you.

3

4 DIRECT EXAMINATION CONTINUED

5 BY MS. DELUCA:

6 Q. Ms. Cauwels, were you taught as a nurse
7 that if it wasn't documented that it wasn't
8 done?

9 A. I was.

10 Q. Do you adhere to that guideline?

11 A. I do.

12 Q. Ms. Cauwels, do you have any criticisms of
13 the care provided by the Roper nurses other
14 than what we have already discussed here
15 today?

16 A. I don't believe so. I think I've touched
17 on everything.

18 MS. DELUCA: That's all the
19 questions that I have of this witness, Your
20 Honor.

21 THE COURT: Ladies and Gentlemen,
22 we will take a short recess, about a five-
23 minute break. I will like to try to get this
24 witness off the stand today, but I promise
25 that we won't run too late.

1 (JURY OUT @ 4:54 P.M.)

2 THE COURT: We will be at-ease.

3 (BRIEF RECESS)

4 THE COURT: Are you ready for the
5 jury?

6 MR. TIERNEY: Yes, ma'am.

7 THE COURT: Bring in the jury.

8 (JURY IN @ 4:54 P.M.)

9 THE COURT: Cross-examination, Mr.
10 Tierney.

11 CROSS EXAMINATION

12 BY MR. TIERNEY:

13 Q. Ms. Cauwels, I am Joe Tierney. We met
14 before?

15 A. Yes, we did. How are you?

16 Q. I came to Atlanta and took your
17 deposition, is that correct?

18 A. It is.

19 Q. A few follow up questions, please.

20 MR. TIERNEY: May I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 CROSS EXAMINATION CONTINUED

24 BY MR. TIERNEY:

25 Q. I am going to hand you, Ms. Cauwels, what

1 has been agreed to go into evidence as
2 Defendant's Exhibit 1. I will represent to
3 you that that is a lab sheet filled out by
4 Janelle Belk. Have you see that prior to
5 today?

6 A. I have.

7 Q. And on the document -- hold on one second,
8 I've got a blowup.

9 MR. TIERNEY: May I publish the
10 blowup to the jury?

11 THE COURT: You may.

12 MR. TIERNEY: Thank you.

13 CROSS EXAMINATION CONTINUED

14 BY MR. TIERNEY:

15 Q. Ms. Cauwels, does Defendant's Exhibit 1,
16 the last sheet, indicate what time Janelle
17 Belk actually drew the blood from Finley
18 Evans?

19 A. It does. It looks like it says 10/3/06 at
20 11:45.

21 Q. 11:45, p.m. or a.m.?

22 A. A.M.

23 Q. Do you understand from your reviewing of
24 the deposition in this case that the blood was
25 drawn at the home of Mr. Evans?

- 1 A. I do.
- 2 Q. Do you dispute that at all?
- 3 A. No, I don't.
- 4 Q. Have you also reviewed what I believe was
5 previously marked as Plaintiff's Exhibit 3? I
6 will represent to you that's the DHEC run
7 sheet. You're welcome to examine it. Can you
8 take a minute and review that and tell me when
9 you're ready?
- 10 A. Is this the same one that we just
11 reviewed?
- 12 Q. It is the same one.
- 13 A. Okay.
- 14 Q. Ready?
- 15 A. I am.
- 16 Q. Does the DHEC run sheet actually provide a
17 time when the Evans called EMS?
- 18 A. It does. The call was received at 1:40.
- 19 Q. 1:40
- 20 A. Um-humm.
- 21 Q. And based on your review of Defendant's
22 Exhibit 1, that last sheet, what time was the
23 sample that the blood was drawn?
- 24 A. 11:45.
- 25 Q. I believe that you testified earlier that

1 based on your review of Janelle Belk's daily
2 log that we left the residence at 12:18,
3 correct?

4 A. Correct.

5 Q. And when I deposed you in Atlanta, I think
6 you told me that you had a document that
7 showed that the lab, meaning that the blood
8 was actually run at the lab, at 12:35; is that
9 correct?

10 A. That sounds about right.

11 Q. I am not trying to trick you. I've got
12 the document.

13 A. That's okay.

14 Q. So we know that based on Defendant's
15 Exhibit 1, that Janelle Belk drew the lab at
16 the Evans home at 11:45 a.m.; correct?

17 A. Correct.

18 Q. And we know that the lab was actually run
19 at the Roper Berkeley Center at 12:36;
20 correct?

21 A. Correct.

22 Q. And her daily log says that she left the
23 Evans home at 12:18; right?

24 A. Correct.

25 Q. Is there any question to you that she left

1 the Evans house at 12:18 and had the blood at
2 the lab somewhere before 12:36 to get that lab
3 run?

4 A. Well, she would have to be there at 12:36
5 if that's what -- I can't dispute that.

6 Q. And we know from the DHEC run sheet that
7 EMS wasn't called until 1340; correct?

8 A. Correct.

9 Q. And I believe that you testified earlier
10 that when you reviewed Ms. Evans' deposition
11 that she said that when Janelle left the house
12 she picked up the towel that was over Mr.
13 Evans' leg and blood was spurting; is that
14 correct?

15 A. At some point in time after she'd left the
16 home, she picked up the towel. Yes. I
17 believe that it was while they were eating.

18 Q. Have you read Mr. Evans' deposition?

19 A. I have.

20 Q. Did he tell you or did you read in a
21 review of his deposition that the son ran up
22 to Piggly-Wiggly and got dinner for them right
23 after Janelle ---

24 A. It was in someone's deposition, yes.

25 Q. Do you dispute the fact that the Evans

1 testified in their sworn statements, in their
2 depositions, that Mr. Evans began to bleed
3 right after Janelle Belk left?

4 A. I dispute ---

5 MS. DELUCA: Objection.

6 THE WITNESS: I'm sorry, can you
7 repeat it one more time?

8 CROSS EXAMINATION CONTINUED

9 BY MR. TIERNEY:

10 Q. My question was, is there any dispute that
11 the Evans testified that the blood -- scratch
12 that. I'll withdraw it.

13 When you were retained to act as an expert
14 in this case, were you provided a copy of the
15 Complaint?

16 A. I believe that I was.

17 Q. Do you know what a Complaint is?

18 A. I believe that I was. If you could show
19 it to me, I could tell you.

20 Q. All right. Let me represent to you -- and
21 I'll give you a copy of it, if you need it. A
22 Complaint is the actual document that gets
23 filed by the plaintiff that starts the
24 lawsuit. Okay?

25 A. Okay.

1 Q. Do you understand that the allegations in
2 the Complaint against my clients, against my
3 Roper Home Health nurses, is that they left
4 Mr. Evans with an active bleed?

5 A. Yes.

6 Q. And y'all have used the term "abandonment"
7 today. Is it your testimony that the
8 abandonment that y'all allege occurred is when
9 Janelle Belk left the house that Mr. Evans had
10 an active bleed?

11 A. I think the abandonment is when you have
12 to use extraordinary means to control a bleed,
13 that has the potential of rebleeding and you
14 cannot finish the care that was ordered by the
15 physician that you're abandoning your client.
16 At some point in time during your visit, if
17 you say 'you need to go to the emergency
18 room', it's your obligation to call the --
19 it's your obligation to call 911. So that, to
20 me, is the abandonment part.

21 Q. Is there was no active bleed when Janelle
22 Belk left the home at 12:18 to go get a PT/INR
23 done, to find out whether or not Mr. Evans'
24 clotting -- whether or not Mr. Evans' blood is
25 clotting -- then, did she do anything wrong?

1 A. Yes. She still left her patient in a
2 condition that was not ordered by the
3 physician and in a condition that he was not
4 notified of. She had no other orders for
5 wound care. She abandoned her client. You
6 don't know when she was going to come back.

7 Q. Why was she going to the lab in the first
8 place?

9 A. To get a PT/INR.

10 Q. What is the purpose of a PT/INR?

11 A. To find out how fast the blood was
12 clotting.

13 Q. Was she then concerned about whether or
14 not Mr. Evans could potentially experience an
15 active bleed?

16 A. She most likely was concerned but, on the
17 same hand, calling 911 to transport him to the
18 emergency room could do the same thing there,
19 plus treat the bleed and no leave him alone in
20 the home.

21 Q. Do you contend that Mr. Evans had an
22 active bleed when Janelle Belk left the home?

23 A. I believe that he had an active bleed,
24 yes.

25 Q. Then what explains the fact that when she

1 left at 12:18 that the Evans did not call EMS
2 until 1340, which is 1:40?

3 A. Because that's when they lifted up that
4 pressure bag of rice.

5 Q. So your testimony today is that the Evans
6 did not lift up the towel or take the bag of
7 rice off until 1:40?

8 A. I am not sure of the time but I know that
9 that is when she noticed the bleed.

10 Q. Have you read their depositions?

11 A. I did. I will be happy to look at it
12 again if you have a copy of it.

13 Q. But it is your testimony that in the
14 deposition that they say that it happened,
15 that the bleed happened around 1:40?

16 A. I am saying that the bleed happened after
17 the nurse left. I am not sure of the time.
18 I'd need to refer to the deposition to see
19 what they said on that.

20 Q. If he had an active bleed at 12:18 and it
21 was spurting, would you expect that at 1:40
22 that there would only be one liter of blood?

23 A. It all depends on how fast that it was
24 bleeding. The pressure could have slowed it
25 down a little bit. It all depends.

1 Q. Do you know?

2 A. Do I know if -- do I know what?

3 Q. Do you know how it was bleeding?

4 A. I know that according to her note that
5 there was a continuous drip on one and that
6 the other one, the wound bed couldn't be
7 visualized because of the active bleeding.

8 Q. You also know from her notes that what she
9 said was that there was no bleeding, that the
10 outer dressing was dry when she left at
11 12:181; correct?

12 A. Correct. The dressing was dry, yes.

13 Q. Then she went to the lab to get the PT/INR
14 done; correct?

15 A. Correct.

16 Q. And isn't it true that the reason for
17 getting the PT/INR done is to tell the
18 physician what the results are -- so that the
19 physician may then change the plan of care?

20 A. Yes, but at that time the priority wasn't
21 -- the lab with the priority was ensuring that
22 he wasn't bleeding and wasn't going to bleed.
23 In home care, it is not protocol to leave a
24 client with a five-pound bag of rice on his
25 groin and tell him not to move. That's not

1 normal in home care. I mean, our job is to
2 protect the client. They don't have a medical
3 background. They are relying on whomever is
4 there.

5 Q. We are missing one key part, aren't we
6 though? How did she get the order for the
7 PT/INR?

8 A. Hopefully she called the physician. She
9 documented that she got it from a Jenny. As I
10 said before, I don't know if Jenny is a
11 secretary, an RN, LPN, nurse practitioner. I
12 don't know what role she plays in Dr.
13 Widenhouse's office.

14 Q. Well, you've seen the orders from Dr.
15 Widenhouse for the PT/INR, haven't you?

16 A. I could find it, (affirmative nod).

17 Q. So is there any question that she called
18 the doctor?

19 A. No.

20 Q. All right. So you are telling this jury
21 that she called the doctor to get an order for
22 a PT/INR because she concerned about the
23 potential for an active bleed. She left to go
24 get the lab done, stated in her record that
25 there was no active bleed when she left, and

1 that's patient abandonment?

2 A. That is patient abandonment because she
3 left him in an unsafe condition. There were
4 no orders to leave him with a five-pound bag
5 of rice on his groin area and the wound not
6 dressed.

7 Q. Where do you get that the wound wasn't
8 dressed?

9 A. There was no occlusive dressing on that --
10 gauze and a five-pound bag of rice is not a
11 wound care order. I mean, it would have been
12 more appropriate had she called him and said,
13 'Hey, he's actively bleeding. I think his
14 PT/INR may be elevated. I'm afraid to put the
15 wound vac on because he is bleeding. I am
16 afraid that he is not going to clot off
17 because his PT/INR is elevated. Do you think
18 maybe we should transport him to the emergency
19 room?'

20 Q. How do you know that those things weren't
21 stated when she called Dr. Widenhouse?

22 A. It's not documented in her notes that she
23 said that to him.

24 Q. Oh, another one of those that if it is not
25 documented that it didn't happen?

1 A. Yes.

2 Q. Right. Because documentation take
3 precedence over patient care?

4 A. Documentation is in conjunction with
5 patient care.

6 Q. But it doesn't take precedence over
7 patient care?

8 A. I guess it all depends on the situation.
9 If you don't document something that is fairly
10 important, it can cause something life
11 threatening.

12 Q. Did you see documented anywhere in the
13 record that Mr. Evans got a blood transfusion
14 when he went to Trident Hospital?

15 A. Actually I thought that I did, but in
16 reviewing them, no, he did not. He got normal
17 saline.

18 Q. When you testified in your deposition that
19 I took in Atlanta, you said three or four
20 times that he got a blood transfusion.

21 A. Correct. Then I reviewed the records
22 prior to coming here and noted that he did not
23 have a transfusion.

24 Q. All right. Tell me about the black sponge
25 that you talked about, as far as the wound

1 vac. You said that based on there not being
2 any notation of a black sponge that Janelle
3 Belk didn't place one when she replaced the
4 wound vac on the 2nd. Is that correct?

5 A. It doesn't look like one was placed there.

6 Q. How does a wound vac work without the
7 sponge?

8 A. It doesn't.

9 MR. TIERNEY: Thank you, no more
10 questions.

11 THE WITNESS: But -- can I
12 finish, please? You're still ---

13 THE COURT: You are welcome to
14 explain on redirect.

15 MS. DELUCA: Thank you.

16 THE COURT: Redirect?

17 MS. DELUCA: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. DELUCA:

20 Q. Ms. Cauwels, if you would like, go ahead
21 and finish your explanation.

22 A. Thank you. It doesn't work effectively
23 but you're still exerting pressure on an
24 unprotected wound, which can cause trauma to
25 the wound bed.

1 Q. Is that how it is intended to work?

2 A. No.

3 Q. Is that a safe operation of the wound vac?

4 A. It is not recommended by K.C.I. as a part
5 of the wound vac protocol.

6 Q. Does it meet the standard of care?

7 A. No.

8 Q. We were just talking about Page 0030.

9 I've put it up on the overhead and you have a
10 copy in front of you if you need to review it,
11 to look at.

12 A. Okay.

13 Q. That page that you were referencing
14 regarding the notation of a sponge in one
15 wound but not the other wound, ----

16 A. Yes.

17 Q. --- the bottom?

18 A. The very bottom, the left one.

19 Q. Okay. Can you explain or point out what
20 we are basing your statement on that there was
21 no black sponge placed in the left groin
22 wound?

23 A. If you look up at the third paragraph from
24 the bottom where it talks about the left
25 scrotal wound, it says basically "dressing and

1 packing removed from the wound, ... packed
2 with black sponge..." -- the very last
3 paragraph says, "Wound cleansed with normal
4 saline, covered with transparent dressing as
5 primary dressing. Wound care pressure set at
6 125 to 150."

7 Q. So the scrotal wound is the black sponge?

8 A. Yes, it fits in the wound bed.

9 Q. Then what would the transparent dressing
10 be labeled as far as the scrotal wound care?

11 A. The primary dressing.

12 Q. But I am talking about the scrotal wound
13 care, was it the black sponge or -- packed
14 with the black sponge?

15 A. Let me rephrase it. I wouldn't say that
16 it is the primary, but it is the packing. So
17 I wouldn't say that you'd call it, like, the
18 primary wound care dressing. It's the pieces,
19 it's layered.

20 Q. Then looking at the last paragraph, there
21 is no packing of the sponge?

22 A. Right. The transparent dressing is
23 basically like a piece of Saran Wrap.

24 Q. You talked with Mr. Tierney about Ms.
25 Belk, the home health nurse, taking the blood

1 and going to the lab.

2 A. Um-humm.

3 Q. Because perhaps she got concerned about
4 the blood.

5 A. Right.

6 Q. Did she return to the Evans home after the
7 lab?

8 A. No, she didn't.

9 Q. Where did she go?

10 A. She went to another client's home.

11 Q. And you said that she went to two
12 different client's homes following the Evans?

13 A. Yes.

14 Q. You were concerned about a patient, and
15 you do a PT/INR, would you leave their home in
16 order to deliver the labwork, to go to another
17 patient's home before returning back to that
18 wound patient's home?

19 A. No. But I will tell you that there are
20 certain circumstances where you walk into a
21 client's home and there's anticoagulant
22 therapy and they say, 'You know, I've gotten a
23 couple of bruises over the last day.' And I'm
24 not quite sure, I'd be concerned, and I'd say
25 like, 'well, you know, let's call the doctor

1 and get an order for a PT/INR.' Something
2 that involves an active bleed, you tell them
3 to watch out for nosebleeds, when shaving to
4 watch out that they don't cut themselves
5 because it may cause an active bleed, if
6 they're on Coumadin. So there are just
7 different levels when an active bleed is more
8 of a concern.

9 Q. What is the source of the information that
10 we do not from looking at the record? Who
11 provided that information?

12 MR. TIERNEY: Objection.
13 Foundation.

14 THE COURT: Sustained.

15 REDIRECT EXAMINATION CONTINUED

16 BY MS. DELUCA:

17 Q. Who provided the information as to the
18 nursing care that was provided to Mr. Evans on
19 the third visit?

20 A. The nurse that was out there visiting with
21 him.

22 Q. Who was responsible for any confusion or
23 lack of information pertaining to that third
24 nursing visit?

25 A. The nurse that documented the care.

1 MS. DELUCA: No further questions.

2 MR. TIERNEY: Briefly.

3 THE COURT: Yes, sir.

4 MR. TIERNEY: May I approach the
5 witness, Your Honor?

6 THE COURT: You may.

7 RECROSS EXAMINATION

8 BY MR. TIERNEY:

9 Q. Ms. Cauwels, I hand you what has been
10 agreed upon to go into evidence as Defendant's
11 Exhibit 2.

12 A. Okay.

13 Q. If you could, just take a minute to review
14 that and identify that document, if you could,
15 please.

16 A. It's the PT/INR results.

17 MR. TIERNEY: Your Honor, may I
18 publish it to the jury?

19 THE COURT: Yes.

20 RECROSS EXAMINATION CONTINUED

21 BY MR. TIERNEY:

22 Q. And is this the actual lab report from
23 when the PT/INR was run?

24 A. Yes.

25 Q. And, more specifically, the results of the

1 PT/INR; correct?

2 A. Correct.

3 Q. What time did the results for the PT/INR
4 actually become available from the lab?

5 A. Looks at 1:48 is when it was faxed, unless
6 I can see another time.

7 Q. Right, 1:48 p.m. is when the lab results
8 were actually available; right?

9 A. Yes, ma'am.

10 Q. And Janelle Belk was waiting to get those
11 lab results before she could determine whether
12 or not to replace the wound vac, correct?

13 A. I don't know if that is what she was
14 waiting for.

15 Q. That makes sense, doesn't it?

16 A. I would have to defer to Ms. Belk on that.

17 Q. But, regardless, that information wasn't
18 available until 1:48; correct?

19 A. Correct.

20 Q. And that was when she went on and saw
21 another patient, correct?

22 A. Right.

23 Q. While she was waiting on that information
24 did you expect her to stay there, at Finley
25 Evans' house?

1 A. Yes.

2 MR. TIERNEY: No further
3 questions.

4 THE COURT: Thank you. You may
5 step down.

6 (WITNESS STEPS DOWN)

7 THE COURT: Ladies and Gentlemen,
8 we are going to break for the day. We will
9 come back at 9:30 tomorrow morning. I have a
10 few matters to take up with the attorneys
11 before we get started. Please be here at
12 9:30.

13 Please do not discuss the case with
14 anyone at home or with each other until you
15 are advised to begin your deliberations. Do
16 not do any research. That would not be
17 appropriate. We will start tomorrow at 9:30.
18 Thank you.

19 (JURY OUT @ 6:00 P.M.)

20 THE COURT: Anything before we
21 recess?

22 MR. TIERNEY: No, ma'am.

23 THE COURT: At some point you may
24 want to move into evidence the things that you
25 have actually stipulated.

1 MR. TIERNEY: Good point.

2 THE COURT: We can do that now or
3 we can do it in the morning. Doesn't matter
4 to me.

5 MR. TIERNEY: Can we do it in the
6 morning, because we have the Bates numbers and
7 we're waiting on three things?

8 THE COURT: That's fine. Anything
9 before we adjourn for the day?

10 MR. TIERNEY: The page
11 designations, we haven't really gotten a
12 chance to look at them. We will try to do
13 that tonight.

14 THE COURT: Okay. See you shortly
15 before 9:30.

16 (COURT IN RECESS)

17 (TRANSCRIPT CONTINUED NEXT PAGE)

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3 JANUARY 10, 2012

9:50 A.M.

4

5 THE COURT: Anything before we
6 bring in the jury?

7 MR. TIERNEY: Your Honor, as we
8 discussed, I would just like the record to
9 reflect my opinion that any statements made by
10 nurses of the Hospital would be considered
11 hearsay. So before Ms. Deluca does her
12 examination(s) and I interrupt her, if the
13 evidence -- if they intend to testify
14 regarding statements by Janelle Belk or Judith
15 Burbage, I think maybe a preliminary ruling by
16 Your Honor on whether or not you believe that
17 would be hearsay would be appropriate, so that
18 I don't interrupt the examination of Ms.
19 Deluca.

20 THE COURT: Well, to the extent
21 that it is an admission of the agent of the
22 party opponent, it may be admissible. I don't
23 know what they are going to say, but -- that's
24 an excellent position to take. I'm not sure
25 if it holds up. But thanks for giving me a

1 heads up.

2 MR. TIERNEY: I think that if I
3 object one time that then Your Honor can make
4 a ruling ---

5 THE COURT: --- and you will be
6 preserved.

7 MR. TIERNEY: Yes.

8 THE COURT: But if you want to
9 object, that's fine. I think one objection
10 ought to cover it. I'll make a statement that
11 will protect you on the record.

12 MR. TIERNEY: Thank you, Your
13 Honor.

14 THE COURT: But I am looking at 803
15 and 804. I think that -- you know, I've tried
16 to take that position before, too,
17 representing law enforcement when just the
18 entity was named. I don't recall that being -
19 - well, I take it back.

20 MR. TIERNEY: I just didn't ---

21 THE COURT: I appreciate your
22 candor.

23 MR. TIERNEY: Thank you, Your
24 Honor.

25 THE COURT: Yes, make your

1 objection and I will rule on it when it comes
2 in.

3 MR. TIERNEY: Thank you.

4 MS. DELUCA: Okay. We are back in
5 business.

6 THE COURT: Great. I couldn't see
7 from that far away ---

8 MS. DELUCA: Well, we can zoom and
9 we've got blowups -- and they can get their
10 glasses. Sorry for the technical
11 difficulties.

12 THE COURT: Are you ready for the
13 jury?

14 MR. TIERNEY: Yes, ma'am.
15 Defense is ready.

16 THE COURT: Plaintiff ready?

17 MS. DELUCA: Yes, Your Honor.

18 THE COURT: Thank you.

19 (JURY IN @ 9:50 A.M.)

20 THE COURT: Good morning, Ladies
21 and Gentlemen. I hope you all had a nice
22 evening. Some of us stayed up too late
23 watching football, so if anyone needs a break,
24 needs to walk around and wake up, raise your
25 hand and we'll do that.

1 Thanks for your patience. We had a
2 couple of technical issues to work out. We've
3 moved the screen, so hopefully that will be
4 easier for everybody -- please be seated
5 y'all. Sorry. We are ready to go.

6 Plaintiff may call her next witness.

7 MS. DELUCA: Yes, Your Honor. The
8 plaintiff calls Ms. Evans.

9 (WITNESS TAKES STAND)

10 JANE EVANS, being duly sworn to tell
11 the truth, the whole truth and nothing but the
12 truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY MS. DELUCA:

15 Q. Ms. Evans, where do you live?

16 A. 119 Land of Pines, Moncks Corner.

17 Q. How long have you lived there?

18 A. Since 2001.

19 Q. Are you currently working?

20 A. No, ma'am.

21 Q. Are you retired?

22 A. Yes, ma'am.

23 Q. What did you do for a living when you were
24 working?

25 A. I did a lot of things. I did everything.

1 I worked for a living, I had two kids to
2 support, I got married in 1997 and -- yes, I
3 had been married before, but found someone
4 that I liked and ---

5 Q. Ms. Evans, do you have children?

6 A. Yes, but not by him. I have two, a boy
7 and a girl.

8 Q. How old are they?

9 A. The boy is about forty-seven, no, forty-
10 eight. He was born on Christmas Day. I have
11 a daughter and she is forty-four.

12 Q. How long have you been married to Mr.
13 Evans?

14 A. (No verbal response).

15 Q. What year were you married?

16 A. '97. So about fifteen years. I've never
17 really counted it.

18 Q. Do you have any medical or nursing
19 education or training?

20 A. No.

21 Q. Did you ever work in the medical or
22 nursing profession?

23 A. No.

24 Q. I want to talk to you about what brings us
25 here today, starting with the first visit by

1 the Roper Home Health nurse. So think about
2 that first visit, on September 29th. What do
3 you remember about that?

4 A. I remember getting a package in the mail
5 which came from FedEx or UPS. They dropped it
6 off and I put it in the house. The nurse came
7 and I got -- the nurse came and she helped me
8 -- she opened the box, because I didn't know.
9 It said -- it had all this stuff on it.
10 Somebody had called and told us to expect the
11 package, so I put it back.

12 She and I opened it up together and we
13 looked at it. It had a VCR tape, you know,
14 and I asked her -- we both looked at each
15 other, kinda like, you know, we knew what it
16 was but we weren't sure. She was sure. I
17 wasn't sure because I had never been with it.
18 I knew that it was for him, to use on him.
19 Being a nurse, I figured that she knew. She
20 did. She said that's a wound vac. We both
21 acknowledged it, so -- I asked her, I said,
22 'well you've got a tape here' and I had a TV
23 in the bedroom, with a VCR. She said no, but
24 that if she needed it that she would -- she
25 knew that she'd seen it done and everything.

1 She'd never had to work with it but that she
2 could do it, she said. And if she did have
3 trouble, she knew what to expect. You know?
4 So I said, 'okay, let's go for it.'

5 So we talked and made ourselves
6 comfortable with each other, along with my
7 husband. She put it on and -- that's mostly
8 what it was. I thought that she was very
9 nice, very pleasant to take care of him and
10 me. Because, you know, she assured me that if
11 anything happened, at least we'd all be in it
12 together and we'd know what was going on. She
13 didn't leave me holding the bag, or whatever
14 you call it.

15 Q. So you were pleased with the care that
16 Nurse ---

17 A. Yes, I was very happy. Couldn't complain
18 about anything.

19 Q. And was Mr. Evans in any pain?

20 A. No. Oh, he was in pain from coming home.
21 You know, he was in bed. He couldn't move or
22 nothing, do anything at that point -- anytime,
23 at that time.

24 Q. Did the nurse's application of the wound
25 vac on that first visit cause him any pain?

1 A. No, ma'am.

2 Q. What do you remember about the next
3 nursing visit by the Roper Home Health nurse,
4 which was on Monday, three days later?

5 A. She told -- well, Janelle told me that
6 there was another lady coming in and her name
7 was Ms. Belk. She told me that, uh, she
8 seemed sufficient, that she'd had nursing and
9 everything, and told me that she was good.

10 Q. Do you know why Ms. Belk was assigned to
11 care for Mr. Evans?

12 A. No, ma'am. Just, I guess, they have
13 certain areas that they go to and she had --
14 she had other patients. Maybe. She didn't
15 say. She just said that she wouldn't be with
16 me.

17 Q. Did Mr. Evans have any pain or problems
18 with the wound vac between that first and
19 second visit?

20 A. No.

21 Q. If you would, continue. Tell me what you
22 remember about that second visit.

23 A. Well, she came in. She was kinda abrupt
24 but, you know, some people are like that. You
25 know, you can't take everybody at their own --

1 you have to go with the personalities when
2 they come to your house. So you treat them
3 just like they treat you.

4 She was -- she came in and I told her that
5 my husband was in the bedroom, and I
6 introduced him and her. At first, she thought
7 that it was a joke.

8 Q. That what was a joke?

9 A. Because he slept in the nude for most of
10 the time and he had a towel over him, a hand
11 towel. Where they had to work on was in his
12 private area, in the groin, so -- when she --
13 when she came in, the sheet was off of him. I
14 told her where it was, to check the wound vac,
15 and she looked at me kinda odd and she said
16 'this is a joke.'

17 MR. TIERNEY: Your Honor, if I
18 could just object to the hearsay. The two
19 nurses that she has referred to during this
20 direct examination are not party defendants
21 and, therefore I believe it is hearsay to
22 state anything that she said.

23 THE COURT: Did they work for the
24 party defendants?

25 MR. TIERNEY: Yes, they are

1 employees of Roper St. Francis Home Health.

2 THE COURT: I think under Rule
3 801(d)(2)(c) and 801(d)(2)(d) that they are
4 not hearsay.

5 MR. TIERNEY: If you could just
6 note my objection for the record.

7 THE COURT: I will note your
8 continuing objection and overrule the
9 objections.

10 MR. TIERNEY: Thank you, Your
11 Honor.

12 DIRECT EXAMINATION CONTINUED

13 BY MS. DELUCA:

14 Q. All right, Ms. Evans. If you would,
15 continue with what the nurse told you on that
16 second visit.

17 A. That she thought it was a joke, at first.
18 She said, 'You're kidding.'

19 I said, 'What?'

20 She said, 'What is this?'

21 And I said 'it's a wound vac.'

22 She said, 'a wound vac, why does he
23 have a wound vac on?'

24 I said, 'they're making it so that
25 the wound heals faster, the doctor prescribed

1 it.'

2 She said, 'Nobody does this.'

3 I mean, there was an argument then.

4 I said, 'Well, if you don't want to
5 do it.' I said I'd show her the tape that
6 showed you how to do it.

7 She said, 'Oh, I don't need that.
8 I've seen it done. I know what they are.'

9 And I said -- well, it kinda struck
10 me as odd. But then my husband said
11 something, I don't know, to the effect that it
12 makes him go back to work faster, something
13 like this, and it kinda broke the ice because
14 he was at least alert enough to talk to her.
15 Everything was fine there.

16 Then they started talking about -- we
17 asked her about her family, if she had a
18 family and they lived here. She said yes.
19 She said that because her son played music --
20 not played but was interested in music, -- and
21 then it came to, well, that's Finley's way of
22 breaking the ice and they started talking
23 about music. So I thought, 'oh, well.'

24 Then she went on to say that she was
25 just upset about the wound vac, and she asked

1 me why the doctor had prescribed it. I told
2 her again, you know. She said, 'you ought to
3 talk to somebody else.' I said okay, who do
4 we talk to? You know, at least give me some--
5 , -- you know, you go to one doctor. If you
6 don't know anything about other doctors, what
7 are you going to do? I said, 'do you not want
8 to do it?' She said that she would do it but
9 it wasn't something that she did. I said,
10 'okay.' I said, -- I didn't question too
11 much.

12 So they got to working on him and she
13 took it -- took it off, and it didn't seem to
14 faze her then. You know, she went ahead and
15 did it. But in the meantime, she -- after she
16 got through changing it, she said, 'you ought
17 to think about this.'

18 She said she didn't like -- she asked
19 me about Dr. Widenhouse. She asked me which
20 doctor we were seeing and I told her. She
21 said that she didn't think it was wise that he
22 should stay with him, 'I would talk to
23 somebody else about it.' I said, 'he had this
24 done once before and he had a bigger wound',
25 which he did, he was like this (gesturing),

1 and ---

2 Q. The last time?

3 A. (Affirmative nod), the time before. I
4 said, 'he took real good care of him, he used
5 a wound vac and it was better than what he
6 would have had had he had' -- you know, like
7 he said, it takes less time and the wound
8 heals faster.

9 You know, you go with what's there.

10 Q. So Dr. Widenhouse had prescribed the use
11 of a wound vac when Mr. Evans had a similar
12 surgery in 2000?

13 A. Yes. That's what ---

14 Q. And it did help him?

15 MR. TIERNEY: Objection to
16 leading.

17 THE COURT: Sustained.

18 THE WITNESS: Then he come back -
19 - that's why we had it done with him.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. DELUCA:

22 Q. In 2006, who was the doctor?

23 A. Dr. Williams. That's why he -- he wanted
24 it on, because it would take him back to work.
25 My husband said that he wanted it on because

1 it would get him back to work faster, it
2 wouldn't take near as long.

3 Q. Had you all been happy with Dr.
4 Widenhouse?

5 A. Yes, ma'am.

6 Q. Was Mr. Evans in pain prior to the second
7 Roper nurse's visit?

8 A. Later on that afternoon. Well, actually,
9 when she put it on he said that 'it feels
10 kinda tight.' She said that 'it will be all
11 right.'

12 And, like he said, it just kept getting
13 worse and worse. The pressure from the vac
14 that was on him, the wound vac, was terrible.
15 He said, "I hurt." I said, 'we will call her
16 back and tell her.' Because I couldn't tell
17 her how much pain he was in. I didn't know.
18 All I said was, 'Finley, if it don't feel
19 right, call her.'

20 So he called her and he told her, I guess.
21 Well, the first time he didn't get her but
22 when we did get her, he told that he was in a
23 lot of pain. It did. It got worse and worse.
24 It didn't get any better.

25 We tried to get them to come back, but to

1 no avail. She had other things to do,
2 company, whatever, I don't know. I don't know
3 if they have a service there that you call or
4 what. But it seemed that they didn't seem to
5 -- it was like, 'oh, well, you'll be taken
6 care of tomorrow.' It's like you wait in
7 line.

8 Q. Did she come back the next day?

9 A. Oh, yes. She did.

10 Q. Was Mr. Evans in pain from the time that
11 she applied the wound vac on the second visit
12 until she came on that third visit?

13 A. Yes, ma'am.

14 Q. Tell me what you remember about that third
15 visit.

16 A. It was a terrible day, terrible night --
17 (emotional), I'm sorry. Just all night long,
18 we'd both been under stress because he was in
19 pain all night. I mean, it wasn't something
20 that you go through -- I could say like a bad
21 toothache or what, I don't know. It wasn't
22 something you want to put anyone through.

23 Had I known about some of the stuff then,
24 I should have taken a look at it that day.
25 Which I didn't, which is my own fault. They

1 don't tell you a lot. It makes for heartache
2 when you see a man in pain, or anybody in
3 pain. It doesn't get any easier.

4 Q. So were you relying on the Roper Home
5 Health nurses for proper wound vac treatment?

6 A. Yeah. I mean, they're supposed to be
7 nurses. I know nothing about these. I know
8 that I'm there to help them, but when you sit
9 there and you see somebody in pain, it's like
10 seeing -- like seeing someone hurt on the
11 street, you know, and you can't do -- you want
12 to do something, but what? You're trying to
13 do the best that you can. It's the same way
14 with my husband.

15 You would give him something but you can't
16 give him anything because you know nothing.
17 Seeing him in pain all night long and the next
18 morning, -- it doesn't regulate (sic) in your
19 mind when you're in a hospital 'cause you can
20 have somebody take care of them, because
21 sooner or later they are tired of hearing you
22 gripe. I know that sounds horrid, but it's
23 true.

24 In something like this, no, you can't.

25 I mean, think about it. You're there -- I

1 should have ran outside and screamed, or
2 called on the phone, for help. I probably
3 should have called 911 then, probably. He
4 would have been better off, but I -- it didn't
5 seem that serious. I know that he would
6 probably hold on. If he had been bleeding or
7 something like this, I probably would have
8 said 'you know', but there was no signs. I
9 just knew that he was in pain.

10 Q. Did the Roper Home Health nurses provide
11 you with any phone numbers to contact if you
12 needed help?

13 A. They had one on the back of the paper that
14 she left, and that was it. That was if you
15 had good luck in calling them.

16 Q. Was that number for the officer or their
17 mobile numbers?

18 A. I guess it was for their office, because
19 the number that she did give him the last time
20 -- when she came in the last time, she gave
21 him the mobile number then. That was it.

22 Q. On the third visit the nurse provided her
23 with the mobile number?

24 A. She talked to him about it. I didn't --
25 she didn't make it a point. You don't think

1 -- I guess my attitude sucks when it comes to
2 taking down phone numbers. It's like --
3 anybody can take down a phone number. They
4 give you a card, that's about the height of
5 it.

6 Q. Do you think the nurse provided it to Mr.
7 Evans or to you or a card ---

8 A. No, she didn't give us a card. She gave
9 him a phone number and he put it in his little
10 phone, cell phone.

11 Q. Ms. Evans, I am going to start with when
12 the Roper nurse came to your house on that
13 third visit. Tell me what you remember about
14 that.

15 A. She came in. She looked like she was in a
16 hurry. She really didn't -- I don't know.
17 She came in and I was surprised -- I walked in
18 the hallway and she was in like a rush, like
19 'Here I am.' If that makes sense. I said,
20 'he's back here' and I took her back to the
21 back.

22 Q. Ms. Evans, when you say the back, is that
23 your bedroom?

24 A. My bedroom. And I asked her -- I didn't
25 ask her anything. She looked at me, she knew

1 that he was in pain -- and he was. He told
2 her, 'please get this thing off me, I can't
3 stand it, it hurts so bad that I can't stand
4 it.'

5 She took it off -- then she looked at me and
6 she said, 'Has he had his Coumadin?' I said,
7 'not yet.'

8 It wasn't time, you know, because he has a
9 regular time that he takes it and it wasn't
10 time yet. So I said no. I told her that he
11 has a regular time that he takes it, that it
12 wasn't time. When they take it, they have to
13 worry about the blood and all. That's the way
14 that it is.

15 So she sat there and she told me, she
16 said, 'Well, I am not supposed to do this.
17 But she said, 'I am going to take -- I am not
18 going to take his blood. I am going to do
19 something, and I'm not supposed to do it.' I
20 asked her why. You know, I said, 'What's
21 happening?'

22 Because of the pain, I don't know. I
23 said, 'can you give him a shot to relieve it
24 or not?' I don't know, you know.

25 So she said, 'I am going to take

1 this' -- and she put a needle in him and drew
2 his blood. I said -- it didn't make no sense
3 to me, but I asked her again why. She didn't
4 give me an answer. She explained to me that
5 she was going to have to go to Roper. But at
6 first she started -- anyway, I went in the
7 kitchen. She -- before I did this, she asked
8 me, she said 'about Vitamin K', she asked me
9 if I had any Vitamin K. I looked at her and I
10 said, 'What do you mean, Vitamin K?' Sorry.
11 I take Vitamin C, Vitamin B, whatever. She
12 said, 'You know, something like turnip bruise
13 or collards bruise (phonetic).' I said 'no.'
14 I mean, -- I said, 'so, well' -- she said,
15 'anything green?' I said, how about green
16 beans.' I might have some green beans, so I
17 went in there and got some green beans, in a
18 can, and she said -- well, it was close to
19 lunch time and I usually fixed him something
20 like a salad with, you know, chicken, cut up
21 salad and things like that, I would cut up
22 that and make that for him for lunch.

23 That day she said 'greens.' Okay.
24 Sometimes we go to Piggly-Wiggly and they have
25 a buffet. She said, 'Get him some greens. Do

1 it now.' I said okay. I sent Ben, he was on
2 the lawnmower, my stepson, Finley's son, so he
3 was on the lawnmower and -- anyway, I called
4 him and I told him, I said, 'Ben, I need you
5 to go down and get something green for lunch,
6 for Finley.' I said, 'get him something with
7 turnip greens, anything green.' So he went
8 down. I said, 'get him some chicken, some
9 greens and some rice.' And I said, 'Go ahead
10 and bring that back.' And I said, 'Get you
11 some, too.' You know.

12 So anyway, he went down and -- before he
13 could get down (sic), she asked me to come
14 back and she said, I didn't know if she had
15 taken the wound vac off at that time or not,
16 she said 'I've got to go to Roper.' I said
17 okay. She had her shadow -- or what she calls
18 her shadow. She didn't come in at the
19 beginning. She came in after she went to
20 Roper, but she -- and she went upstairs.

21 Q. When you say "shadow", she had another
22 person with her that was observing?

23 A. Yeah.

24 Q. Did you know who that person was?

25 A. I can't remember the name. I know what

1 she looks like, but I don't remember the name.

2 Q. Did that shadow do any of the care or say
3 anything?

4 A. No. Because when she came in she was with
5 her when she came back from Roper. She came
6 in with her. It was at that -- when she was
7 coming in and going out. It doesn't make
8 sense to you. But when she came in, she went
9 with her to Roper. It was like she came in
10 for -- I don't know whether she was running
11 late or what, but she wasn't with her when she
12 walked in. It's like that's why she -- maybe
13 she was upset because of that. I don't know.

14 But she was like 'there.' Because she
15 walked in the kitchen and I -- I was standing
16 there at the time when she came through, but
17 before she went to Roper, it was odd --
18 because I was making out a grocery list,
19 things for him to pick up because I didn't
20 have time for that either, -- and the first
21 thing that she asked me for was some rice.
22 Well, first it was a bag of rice. I said
23 okay. She asked me for that first. So I
24 thought, 'well,' -- I didn't stop to question
25 it. I was like, 'Yeah, I've got a bag of

1 chickpeas.' So I gave it to her. She went
2 back in the room.

3 Then she came out to me and said, 'I've
4 got to go to Roper.' And I said, 'Well, you
5 are not going to leave him open, are you?'
6 And she was sorta like -- she had the bags
7 kinda situated -- and I thought, 'well, why
8 does he' -- it didn't dawn on me at the time,
9 but I thought, 'well, maybe it was cold or
10 whatever.' She said, 'No, I will be back.'
11 I said 'fine.' I said, 'how long is it going
12 to take you?' You don't want to leave an
13 open wound like this. I mean, I live in a
14 house -- my house is lived in. I don't know
15 about you. I change the sheets once a week
16 but, you know, anything is bacteria to me.
17 It's not the cleanest house in town, so I -- I
18 asked her, 'You don't want to leave him open
19 like that.' She took off. She was oblivious
20 to what I said. She went up to Roper.

21 Q. Were you relying on the care that she
22 provided and her judgment in that situation?

23 A. Yeah. So she went on to Roper with her
24 shadow. And I said, 'Aren't you going to
25 leave the shadow with him?' She said no,

1 'She's got to come with me, she's my shadow.
2 She can't stay.' I'm thinking that's odd, it
3 doesn't make sense. Anyway, she took off.

4 She came back. She went to Roper and
5 she came back. My stepson hadn't come back
6 yet. I can't tell you the exact time but it
7 was close to lunchtime. And she told me,
8 'well, just give me some' -- so she came back
9 in and she was talking to Finley, so I figured
10 that everything was okay. Then she turned to
11 me and says, 'Well, I've got to run again.'
12 That was later.

13 I figured that she had already done
14 what she needed to do, because the towel was
15 draped across him again. It was like this
16 (gesturing). I didn't see bags anywhere, so I
17 figured that -- well, I didn't know exactly
18 what she had done with them. I wasn't
19 thinking 'bags.' I wasn't thinking. For all
20 I knew, she wanted a recipe. I don't know.
21 They had -- they talked about anything.

22 So she came back out and she said,
23 'I've got to go to Goose Creek.' She said,
24 'they didn't take my thing' or whatever it
25 was.

1 Q. Blood sample?

2 A. Yes. And I said, ---

3 MR. TIERNEY: Leading.

4 THE COURT: Sustained.

5 THE WITNESS: She said that they
6 weren't open. They weren't -- they weren't
7 there. So she had to go to Goose Creek. As
8 to this, I don't know -- I don't know where
9 all the hospitals are in this place. So,
10 anyway, she said that she would be back.

11 Then he was saying that he was weak.
12 Then he'd say that he felt like his -- that
13 something was wrong. He said, 'Why are you
14 leaving me? Are you leaving me?' She said
15 yes, that she would be back. But she never
16 came back. She never called, never did
17 anything to see if he was all right or
18 nothing.

19 I went in there and I fed him,
20 because his food had gotten there. I guess it
21 was just a few minutes after the nurse had
22 pulled out that he came back with the food,
23 and I started feeding him lunch. He was
24 eating lunch, we were sitting there talking
25 about lunch and, all of a sudden, he said --

1 you never know, so all of a sudden, I pulled
2 up the corner of the towel and the blood
3 squirted out -- blood from the towel.

4 I called her. I said, 'I need the
5 nurse's number, because he had this little
6 thing on his little dial the number, so I
7 called her to ask her. I said, 'Where are
8 you? Are you coming back?' I said, because I
9 said, I said, 'I'm worried because this blood
10 is starting to shoot up.' And I said, 'I
11 don't know what to do.' I said, 'it's so
12 fast', to me it was horrendous.

13 And what do you know when blood is
14 shooting at you? I mean, it was. And she
15 says, 'Well, I can't come.' The first thing
16 she said was to call EMS. I said, 'Can you do
17 that for me? My hands are full. I am trying
18 to stop the blood.' Because I had my hand on
19 -- and then I see that the package is there.
20 I am thinking, 'my God, what do I do?' I
21 mean, you're in panic. I didn't know what to
22 do. He's my husband.

23 I didn't say anything nice. I called her
24 a bitch. I said, 'Listen, bitch, do something
25 please. I can't handle this all by myself.'

1 I said, 'for God's sake, I need help.' She
2 said, 'Well, you will have to do that
3 yourself. I can't do it.'

4 I thought, 'Lady, you leave me holding the
5 bag, wondering what to do! What do you expect
6 me to do? I got my hands full.' I gave him
7 the thing -- called 911, told him to hold on
8 for dear life, thinking, 'please, God, help
9 me.' That's all that I could think. I was
10 mad. I was upset. Yes, I used cuss words, I
11 was -- God.

12 I called 911. It seemed like it took
13 forever. Yes, I was in panic mode because
14 he's my husband and I love him. I don't care
15 what she thought. All I thought was -- I
16 thought it was pretty damn cruel that she
17 couldn't have called. Something. She knew
18 that he was bleeding when she left because he
19 kept telling her -- because she kept telling
20 him that it was bleeding. So she tells him --
21 so how am I supposed to know?

22 DIRECT EXAMINATION CONTINUED

23 BY MS. DELUCA:

24 Q. Were you in the room when she was
25 providing the wound care?

1 A. No.

2 Q. Do you ---

3 A. No, I wished I had stayed with her but she
4 was asking for Vitamin K. She was sitting
5 there -- and then she was asking for -- I
6 didn't -- you know, that's something that you
7 don't think about. If she had told me, I
8 would have called 911 then and said, 'hey,
9 let's take him back to the hospital, but he
10 wasn't there.' That's what made me ---

11 Q. At the time did you question any of her
12 actions or the Vitamin K and various ---

13 A. No, I didn't. It didn't dawn on me. Had
14 she told me, 'Well, he needs Vitamin K because
15 of this or that' I would have said 'okay.'
16 When she said to go get him some collard
17 greens and turnip greens, that's the first
18 thing that came out of my mouth - 'okay.' But
19 if she'd called that Vitamin K, I would have
20 gotten Vitamin K.

21 She knows more than I do. Like I say, I
22 am not one for watching things like that
23 unless the doctor tells you. You don't take a
24 pain pill unless the doctor tells you --
25 unless you -- or not, but -- I don't like