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**Copy of Transcript**

STATE OF SOUTH CAROLINA  
COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON

TASHA MURPHY AND STEVEN MURPHY,

Plaintiffs,

vs.

CASE NO. 05-CP-10-4734

PALMETTO LOWCOUNTRY BEHAVIORAL  
HEALTH, LLC, RICHARD J. FERMO, M.D.,  
AND STEVEN G. LOPEZ, M.D.,

Defendants.

---

**DEPOSITION OF**

**THOMAS VICTOR MARTIN, M.D.**

July 16, 2008  
2:11 p.m.

Martin Psychiatric Services, PC  
1330 Richland Street  
Columbia, South Carolina

Angela D. Zuver, Court Reporter



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1 assessment, treatment of people with fantasies,  
2 behaviors and mental illness disorders with  
3 the interface of the legal system.

4 Q. And does that often involve serving  
5 as an expert witness?

6 A. Yes, it does.

7 Q. And I'm going to talk to you more  
8 in a little bit in more detail about your  
9 expert witness work, but I want to get a  
10 little more background from you. Have you  
11 ever been arrested for anything?

12 A. No.

13 Q. Ever been treated for any drug,  
14 alcohol or other addictive problems?

15 A. Absolutely not.

16 Q. In terms of your employment  
17 history, where did you work after you  
18 finished your medical education?

19 A. After medical school?

20 Q. Right.

21 A. I worked in Maryland at Andrews  
22 Air Force Base until 1999, and there I worked  
23 inpatient and day program treatment. Then  
24 from there, when I left the Air Force, I  
25 came down here for the fellowship. And then



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1 I started working with the Department of  
2 Mental Health here in South Carolina. I  
3 worked with the Department of Mental Health  
4 as well as started a private practice. I  
5 was permanent part time in the Department of  
6 Mental Health and then I also had a private  
7 practice on the side. And then when I left  
8 the Department of Mental Health, I went full  
9 time in private practice.

10 Q. At any point, have you had any  
11 partners in private practice?

12 A. No.

13 Q. Has it always been known as the  
14 current name --

15 A. Yes.

16 Q. -- Martin Psychiatric Services?

17 A. That's correct.

18 Q. In what year did you form that  
19 entity?

20 A. I believe in August of 2000.

21 Q. Do you belong to any civic  
22 organization, clubs, churches, et cetera, in  
23 the Columbia area?

24 A. Sure. I belong to St. Peter's  
25 Catholic Church. I'm an active member there.



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1 I'd say that's the primary one. I belong to  
2 a number of organizations, but nothing  
3 necessarily in the local area.

4 Q. More professional organizations?

5 A. And vocational. Like I'm an  
6 airplane pilot, so I belong to that  
7 association, AOPA, and I also belong to a  
8 number of professional organizations.

9 Q. Which ones are those?

10 A. I belong the American Psychiatric  
11 Association, the American Academy of Psychiatry  
12 and the Law, the -- let's see. The  
13 Association for the Treatment of Sexual  
14 Abusers. Those are the primary professional  
15 organizations I belong to.

16 Q. Association for Treatment of Sexual  
17 Abusers?

18 A. That's correct.

19 Q. As I looked through your CV I  
20 noticed that there were a lot of articles and  
21 references to treatment of sexually violent  
22 predators or sexual abusers. Is that a  
23 specialty of yours?

24 A. Probably about a third of my  
25 practice has been the assessment, risk



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1 assessment and treatment of sex offenders.

2 Q. Is that where the bulk of your  
3 legal work comes from as well?

4 A. No.

5 Q. You said that was about a third of  
6 your practice. How would you break down the  
7 remainder of your practice?

8 A. I'd probably say about maybe 20 to  
9 25 percent I actually see patients for  
10 therapy or medication management, but it's  
11 usually therapy and medication management  
12 together. The remainder is other forensic  
13 work that could be anywhere from working with  
14 the federal system as a collaborator, or with  
15 the state system, or with the family court  
16 system in anything from child custody, murder,  
17 competency to stand trial, criminal  
18 responsibility. That is quite a large spectrum  
19 of forensic.

20 Q. That would be over half of your  
21 work?

22 A. I would say that's about right,  
23 yes.

24 Q. And when you're retained in those  
25 cases, who are you typically retained by?



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1 Murphy's admission to Palmetto Behavioral. What  
2 is your understanding of what prompted her to  
3 seek that admission? This is, again,  
4 referring to November 19, 2002.

5 A. Well, she was going -- she was  
6 suffering from a depressive condition and, I  
7 believe, the report was suicidal. She'd gone  
8 to her previous facility that hospitalized her  
9 before during 2002, which was MUSC, and for  
10 whatever reason, they were unable to admit  
11 her at that time and she was referred to  
12 Palmetto Lowcountry. She was seen there, and  
13 according to the records, I saw several  
14 reasons why she was admitted. One was that  
15 she was suicidal. She was also severely  
16 depressed. The discharge summary from that  
17 admission stated that she'd also overdosed on  
18 her medication, and also that she required  
19 mood stabilization. So the big picture was  
20 that she was in a bipolar crisis.

21 Q. Do you have an opinion as to how  
22 it is that Ms. Murphy registered these toxic  
23 readings on the lithium levels? How did she  
24 get to a toxic level?

25 A. I don't know for certain. I do



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1 know that she received lithium on admission  
2 to the Palmetto Lowcountry facility.

3 Q. After having reported to the  
4 doctors there that she hadn't taken her  
5 medication for a week; is that right?

6 A. That is my understanding, yes.

7 Q. And that's a fact that was  
8 consistently reported by not only Ms. Murphy  
9 but also by her husband to the doctors and  
10 nurses; is that correct?

11 A. He may have said the same thing  
12 too.

13 Q. And she was placed back on the  
14 same dose that she'd been taking for the last  
15 six plus years; is that right?

16 A. I believe she was placed on 600  
17 milligrams twice a day.

18 Q. And that was the same dosage she'd  
19 been on for at least a year or more?

20 A. I believe so, yes.

21 Q. Do you believe it was appropriate  
22 to put her back on the medication that she'd  
23 been taking as prescribed by Dr. Robbins?

24 A. The way she was put on it, no.  
25 I don't agree with the way she was put on



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1 time to think. With regard to my client, Dr.  
2 Lopez, do you have any opinions about whether  
3 he violated the standard of care? I don't  
4 think I asked you that question point blank  
5 yet.

6 A. I believe he should have drawn a  
7 lithium level on admission and I believe that  
8 that is essentially the biggest problem in  
9 Ms. Murphy's case, because everything that  
10 followed after that, as you've gone through  
11 very nicely, was methodically executed except  
12 for the fact that she was wasn't getting very  
13 much better and they had actually totally  
14 missed that she was lithium toxic. So yes, a  
15 lithium level, along with the rest of the  
16 labs that were drawn, should have been done  
17 on admission, and that was not done.

18 Q. Do you believe the failure to do  
19 that was a violation of the standard of care  
20 for a psychiatrist?

21 A. Yes, I do.

22 Q. Is that the only violation of  
23 standard of care that you believe Dr. Lopez  
24 committed in this case?

25 A. Yes, because if everything else was



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1 fine -- if it was fine, her lithium level  
2 was fine, I think that the course of her  
3 care at Palmetto seemed to have been  
4 appropriate.

5 Q. Do you believe that any of the  
6 other physicians involved in Ms. Murphy's care  
7 violated the standard of care?

8 A. No. I haven't noticed anything.

9 Q. We've been using the term standard  
10 of care. What do you understand that to  
11 mean?

12 A. That what is accepted in my field  
13 of practice of general psychiatry in the  
14 treatment of a bipolar individual who has  
15 decompensated, who has been known to be  
16 taking psychotropic medications and can be  
17 actively suicidal, who presents in a deranged,  
18 confused, potentially psychotic manner, that a  
19 complete metabolic workup to include toxic --  
20 in fact, if you want my honest -- total  
21 honest opinion, I would have run a drug  
22 screen on her too, but I wasn't going to  
23 make a big deal out of that, to find out why  
24 there is a change in mental status as  
25 dramatic as hers. Knowing that she was on



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1 lithium, that should have been drawn  
2 immediately and followed throughout her  
3 hospital stay. They did have a follow-up  
4 that would be five days later, like we talked  
5 about earlier, of a lithium level, but the  
6 original baseline was never checked. And so  
7 that would have been the standard of care of  
8 assessment and treatment.

9 Q. Do you believe it was negligent  
10 for any of the subsequent physicians not to  
11 order a baseline?

12 A. No. Having been one of those  
13 follow-up physicians as well as a primary  
14 physician on an inpatient unit, you generally  
15 have faith in the primary physician who's  
16 done the complete evaluation as the broadest  
17 scope to have passed on any concerns that may  
18 have been needed to be examined further to  
19 follow-up physicians who might cover. I  
20 think that's who you're referring to, like a  
21 weekend staff or whatever.

22 Q. Right.

23 A. That I would not have presumed  
24 that other people would have to reinvent the  
25 wheel, reassess and do what should have been



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1 done on admission. So no, I'm not citing  
2 that anybody else should have gone back and  
3 reexamined whether or not the primary  
4 psychiatrist had done all the work he was  
5 supposed to do.

6 Q. To what degree does a physician's  
7 subjective observations, I guess, of a patient  
8 play into the decision whether or not to  
9 order a lithium level on a patient? In  
10 other words, can you look at a patient,  
11 observe their behaviors, list responses from  
12 them and say, I think a lithium test is  
13 warranted here or not warranted here, or is  
14 it your opinion that if somebody says, I've  
15 been on lithium before, that it's mandated  
16 that you check the lithium level no matter  
17 what? Does that make sense?

18 A. Yes, and the latter is the most  
19 appropriate. I've been on lithium before in  
20 the recent past. I've been noncompliant with  
21 it; that's all they need to hear. But would  
22 anybody else notice anything? If you look at  
23 her admission signature on day one when she  
24 came in, she has a lithium tremor in her  
25 signature. You can look at that and that is



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1 that time. Somebody who was very coherent  
2 and said, I just went off my lithium. They  
3 have absolutely no abnormal mental status  
4 exam, they're not demonstrating anything  
5 physical or mental that would make me  
6 suspicious of the history given, I would be  
7 less likely to be aggressive with a lithium  
8 level.

9 Q. So if they come from another  
10 facility, if they appear coherent. Any other  
11 exceptions?

12 A. And let's say I know them really  
13 well too, so I would know their mannerisms, I  
14 would know the way they think and I would  
15 know whether or not I could trust them.

16 Q. Since we don't know what caused  
17 her toxicity for sure, are you able to say  
18 to a reasonable degree of medical certainty  
19 that the failure to order that test caused  
20 her to become toxic or resulted in her  
21 toxicity?

22 A. It resulted in them not seeing  
23 that she was toxic, yes. It didn't cause  
24 her -- I mean, the test had nothing to do  
25 the toxicity. That's just how you measure



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1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
2 COUNTY OF CHARLESTON ) CASE NO. 08-CP-10-7980

3 TASHA MURPHY AND STEVEN MURPHY, )  
4 )  
 ) Plaintiff, )

5 vs. )

6 PALMETTO LOWCOUNTRY BEHAVIORAL )  
7 HEALTH, LLC, AND STEVEN G. LOPEZ, )  
 ) M.D., )  
8 )  
 ) Defendants. )

9 \* \* \* \* \*

10 DEPOSITION OF: JAMES C. BALLENGER, M.D.

11 DATE TAKEN: Friday, March 4, 2011

12 TIME: 9:00 a.m.

13 PLACE: 134 Meeting Street  
14 3rd Floor  
Charleston, SC

15 REPORTED BY: TERI L. SAMPSON, RPR,  
16 Notary Public and Certified  
Live Note Reporter

17 \* \* \* \* \*

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20  
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22  
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24

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1 quickly, swiftly, accurately, can be confused about who  
 2 they are and where they are in the severe state. That  
 3 cleared up. The next day she was better, the day after  
 4 that better and the day after that better. And she,  
 5 within two or three days, started saying things like,  
 6 "I'm better, the medicine is working like it always  
 7 does." The people evaluating her were saying her  
 8 thoughts were now becoming organized and clear.  
 9 So she had some signs of not doing well, but  
 10 that's why she was admitted in the hospital. But I  
 11 believe those were signs of illness, not toxicity.  
 12 Q The first opinion you said that you held was  
 13 that there was no violation of the standard of care by  
 14 Dr. Lopez. Define for me, please, the standard of care  
 15 to which you're referring.  
 16 A Well, the standard of care is generally  
 17 thought of as the standard of carefulness and  
 18 scientific knowledge that is shared by similar  
 19 practitioners, either in the locale where the doctor  
 20 works or sometimes nationally. And his care of her, in  
 21 my opinion, didn't violate it anywhere.  
 22 Q Is there a difference between the standard of  
 23 care for Dr. Lopez in his locale as opposed to the  
 24 standard of care nationally?  
 25 A You know, in this particular instance, I

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1 don't really think there is any difference between  
 2 those two. It is sometimes, but I don't in this  
 3 particular instance -- Lithium has been used so widely  
 4 and for so long and is so relatively simple that every  
 5 psychiatrist ought to know it and, in my opinion, it  
 6 would be a sign of a really poor psychiatrist if they  
 7 really don't know how to use Lithium correctly.  
 8 Q For a patient who -- let me withdraw that.  
 9 Does the standard of care applicable to  
 10 Dr. Lopez change when there is some question whether  
 11 the patient has been compliant with her medication?  
 12 A To the sense I understand your question, I  
 13 think it does not. I mean, part of what a doctor has  
 14 to do, particularly with suicidal patients, is evaluate  
 15 what he or she thinks is the truth and the range of  
 16 possible truths with the person, because when somebody  
 17 is suicidal, they are not necessarily on the same team  
 18 with the doctor. They could be hiding the fact that  
 19 they want to die and the doctor is obviously committed  
 20 to keeping them alive. So sometimes they just frankly  
 21 lie to us and we have to do the best we can to figure  
 22 that out. And so the standard of care is to think  
 23 about that, try to get corroborative information, try  
 24 to figure out what the truth about compliance is. And  
 25 since -- you almost have to assume that a suicidal

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1 patient is not compliant, sort of start with that  
 2 skepticism.  
 3 Q Would corroborative information include  
 4 getting a blood -- a Lithium blood level?  
 5 A It could be one of the things that -- if  
 6 there were reason to think that that was a possibility,  
 7 it would, but Dr. Lopez, when he saw the patient on the  
 8 morning of the 20th, she was already on Lithium. And  
 9 to draw a blood level at that point would be a clear  
 10 mistake, because all it would produce is a level that  
 11 nobody would know how to interpret and it would lead to  
 12 confusion in the record and in her care. So as soon as  
 13 she was given a Lithium tablet the night before by  
 14 Dr. Jenkins, Dr. Lopez, if he's going to practice good  
 15 psychiatry and the standard of care, had no choice but  
 16 to go for it.  
 17 The other thing is that all of the other  
 18 corroborative evidence that he needed to evaluate as a  
 19 competent psychiatrist says she's not Lithium toxic.  
 20 She had had more Lithium and -- but she was better.  
 21 She was clearer the next morning, more oriented,  
 22 thinking better. Now, she was still sick, you don't  
 23 cure somebody with one Lithium pill, but she was  
 24 better, not worse. Now, if she had been Lithium toxic  
 25 the night before and they gave her more Lithium, which

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1 they did, that would make her worse, not better.  
 2 So what he was presented with the next  
 3 morning was a patient who had already gotten it, so he  
 4 didn't have any choice about -- I mean, he could have  
 5 gotten it, but it wouldn't have helped. It would have  
 6 confused things. As you said earlier, we have to draw  
 7 Lithium after a trough, and so his choices at that  
 8 point are do I draw and get a confusion into the record  
 9 or I just proceed based on my clinical judgment that  
 10 this woman is not toxic, she's actually better. She's  
 11 clearly credibly, she and her husband, presenting that  
 12 I haven't taken any Lithium for quite a long time and  
 13 that was his judgment, it was his opinion that that's  
 14 true.  
 15 Q He trusted what Tasha Murphy told the  
 16 admitting folks?  
 17 A I wouldn't put it that way. He evaluated the  
 18 totality of the evidence and made a judgment that the  
 19 most likely truth is that she was telling the truth  
 20 when she and her husband said she hadn't been taking it  
 21 because it fit all the clinical facts, and it didn't  
 22 matter because if she was given more Lithium and was  
 23 better the next morning, it was resolving.  
 24 Q Why not wait until the next trough and then  
 25 do a blood draw and check for her Lithium level?

3

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Tasha Murphy and Steven Murphy,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 08-CP-10-7890
	)	
Palmetto Lowcountry Behavioral	)	
Health LLC et al,	)	
	)	
Defendants.	)	

**TRANSCRIPT OF HEARING**

The within Hearing was held the above-captioned action on March 10, 2011, before The Honorable R. Markley Dennis, Jr. in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

**APPEARANCES:**

Marshall H. Waldron, Jr., Esq.  
 GRIFFITH SADLER & SHARP, P.A.  
 Post Office Box 570  
 Beaufort, SC 29901  
 Appearing for Plaintiffs

Todd W. Smyth, Esq.  
 HAYNSWORTH SINKLER BOYD  
 134 Meeting Street, 3<sup>rd</sup> Floor  
 Charleston, SC 29401  
 Appearing for Defendants

**DEBORAH GARRISON**  
*Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit*  
 Post Office Box 901  
 Johns Island, South Carolina 29457  
[dGarrison@sccourts.org](mailto:dGarrison@sccourts.org)

1 THE COURT: Are there two motions for  
2 summary judgment or just one?

3 MR. SMYTH: I am the last of the  
4 Mohicans, Your Honor. I believe the rest have  
5 settled out.

6 THE COURT: All right. If you will,  
7 please identify yourselves for the record and  
8 the parties that you are representing.

9 MR. SMYTH: Your Honor, Todd Smyth  
10 for Defendant Dr. Steven Lopez.

11 MR. WALDRON: I am Marshall  
12 Waldron and I represent the plaintiffs.

13 THE COURT: Thank you. Mr. Smyth,  
14 your Motion, sir.

15 MR. SMYTH: Your Honor, good morning.

16 THE COURT: Good morning.

17 MR. SMYTH: As I mentioned to you,  
18 procedurally where we are in this case is that  
19 we are the last defendant remaining in the case.  
20 The two other defendants have now resolved their  
21 issues with the plaintiff. We are here before  
22 you to ask for summary judgment this morning.

23 THE COURT: Okay.

24 MR. SMYTH: We feel like we've got  
25 three good basis to do that. I will give you a

1 brief background of the case just in case you  
2 haven't had a chance to look at the briefs yet.

3 THE COURT: Thank you. Excuse me for  
4 interrupting, but all briefs are incorporated  
5 fully for the purposes of review and you are  
6 certainly entitled to rely on those for future  
7 review. Please feel free to summarize whatever  
8 portions you think you need to cover.

9 MR. SMYTH: I will try to be brief,  
10 Your Honor.

11 THE COURT: No problem.

12 MR. SMYTH: Tasha Murphy is the  
13 plaintiff in this case. She unfortunately  
14 suffers from two very serious psychiatric  
15 conditions; one of which is bipolar disease and  
16 the other is severe depression. She's been  
17 managed by her physician since the early 1990s  
18 on a drug called Lithium; specifically for the  
19 bipolar disease. She's done well with it, been  
20 on the same dose, had no particular problems.

21 However, in the Fall of 2002, she  
22 stopped taking her medications and began to  
23 become symptomatic. She experienced some  
24 symptoms of severe depression as well as bipolar  
25 disease and unfortunately made a threat to take

1 her own life.

2 At that point she was taken to a former  
3 codefendant's hospital, Palmetto Behavioral  
4 Hospital, which is a psychiatric hospital here  
5 in town. She was evaluated by a Dr. Jenkins on  
6 admission. Dr. Jenkins got the information  
7 about her conditions and symptoms and put her  
8 back on the same medication that she had been  
9 taking for the last decade and a half: same  
10 dose, same strength, everything.

11 The next day, my client, Dr. Lopez,  
12 makes rounds and see the plaintiff. He agrees  
13 with Dr. Jenkin's diagnosis and assessment. He  
14 didn't make any changes to Dr. Jenkin's order.  
15 Notes that she has improved a little bit since  
16 she's been on the medication again.

17 The next day she is seen by a different  
18 doctor, Dr. Fermo, who was also a former  
19 defendant in this case. He again agrees with  
20 the recommendations and treatment recommended by  
21 Dr. Jenkins.

22 Then over the weekend, she was sent by  
23 a fourth doctor, Dr. Sukin, who saw her on  
24 Saturday and Sunday and continued the same  
25 treatment recommendations that were put in place

1 by Dr. Jenkins.

2           However, on that follow Monday she  
3 began to exhibit symptoms that are consistent  
4 with getting too much Lithium. Her hands  
5 started to shake and she became a little bit  
6 comatose. So she was taken to the hospital  
7 where, indeed, she was found to have too much  
8 Lithium in her system.

9           So far we've done all the depositions,  
10 we've done all the discovery in this case and  
11 thus far nobody has been able to say with any  
12 real certainty what caused her to reach this  
13 toxic level. She was receiving the same dosage  
14 that she had been taking for the last decade and  
15 a half during her hospitalization and the notes  
16 indicate that she was improving gradually.

17           She also over the course of the weekend  
18 developed a urinary tract infection, which may  
19 have had some effect on this.

20           But our basis before Your Honor are  
21 three-fold today.

22           THE COURT:     Okay.

23           MR. SMYTH:     First, we are going to  
24 assert that there is no evidence that Dr. Lopez  
25 breached the standard of care. Now, Lithium is

1 one of these drugs that is very effective. It  
2 is referred to as the gold standard for treating  
3 bipolar disease. It's got what they call a very  
4 narrow therapeutic index. In other words there  
5 is a certain amount of that medication in your  
6 bloodstream that is effective. Too little  
7 doesn't work, too much can be problematic. So  
8 it is a very effective medicine. It just needs  
9 to be monitored.

10 THE COURT: Correct.

11 MR. SMYTH: The way that they do that  
12 is that they check the -- they start the  
13 medication and they wait five days for it to get  
14 to what's call a steady state in your body,  
15 where your body is taking in and excreting the  
16 right amounts so that you have a balance on that  
17 therapeutic index that we talked about. So  
18 that's exactly what was done here. She was  
19 brought in, she was put on her medications, they  
20 ordered tests to be taken that Monday when she  
21 actually became toxic. So everything was done  
22 according to the standard of care.

23 Now, plaintiffs have hired an expert  
24 named Dr. Thompson Martin from Columbia. Dr.  
25 Martin has a little bit different opinion on

1 this, but we're not convinced that his opinion  
2 carries the day with regards to a breach of the  
3 standard of care.

4 His opinion -- and I think that it was  
5 basically largely on a misunderstanding as to  
6 who admitted the patient. Dr. Jenkins is the  
7 one who show her on admission and put her back  
8 on the medication. She actually took a dose the  
9 day that she was admitted to the hospital; which  
10 our expert has testified that once you've had  
11 that dose, running a test on how much Lithium is  
12 in your system really isn't going to be helpful  
13 or determinative. In fact, it would be  
14 misleading because you'd get a false indicator.

15 Dr. Martin seems to believe that if  
16 they had taken this test earlier they could have  
17 found out whether she had Lithium in her system.  
18 However, he pins that on the admitting doctor,  
19 which Dr. Lopez was not. Dr. Jenkins was the  
20 admitting doctor. She was seen by three other  
21 subsequent physicians after Dr. Jenkins, all of  
22 whom were of the same mindset, that this Lithium  
23 needed to be tested on Monday.

24 So argument one is that there was no  
25 breach of the standard of care by Dr. Lopez,

1 because he wasn't the one who put her back on  
2 the medication. We have cited in our memo some  
3 of the deposition testimony of Dr. Martin. That  
4 is really the only thing that he alleges that  
5 Dr. Lopez did inappropriately, was not to order  
6 Lithium be tested.

7 But interestingly, he says that none of  
8 the other treating physicians were outside the  
9 standard of care in not ordering -- just Dr.  
10 Lopez. So for some reason we have been singled  
11 out in this particular case and I don't believe  
12 that makes a whole lot of sense. From a  
13 standard of care perspective, everybody should  
14 be held to the same standard of care. So it is  
15 inconsistent in that regard. Plus it doesn't  
16 line up with his opinion that the admitting  
17 doctor should have done it, and not Dr. Lopez.

18 The second argument that we put forward  
19 and I think that this is probably the strongest  
20 one of the three; that there is a lack of  
21 proximate cause. When we deposed Dr. Martin or  
22 asked him, and I'll paraphrase:

23 *'Q. Since we don't know what caused*  
24 *this lady to be toxic, how can you say that a*  
25 *failure to run this Lithium level test at any*

1 *point caused that injury?'*

2 *And he said, 'Well, it really had*  
3 *nothing to do with it, running that Lithium*  
4 *test. All it would have told them was what she*  
5 *had in her system when she came in. It had*  
6 *nothing to do with her becoming toxic.'*

7 *He can't say what caused her to become*  
8 *toxic. Therefore, if that's the case, then even*  
9 *if you assume that we've breached the standard*  
10 *of care there's no cause of action here because*  
11 *there is proximate cause to link it. So, you*  
12 *know, his verbatim testimony was that it had*  
13 *nothing to do with her being toxic.*

14 *Those are our two main arguments on*  
15 *liability. The third one has to do with*  
16 *punitive damages. This case is scheduled to*  
17 *come before you or before this court in two*  
18 *weeks, April 4<sup>th</sup>, date certain. The Complaint*  
19 *alleges conduct sufficient to rise to the level*  
20 *of punitive conduct. There has been no*  
21 *evidence, no testimony of anybody saying that*  
22 *Dr. Lopez did anything that was reckless,*  
23 *willful or wanton, so we also think that there*  
24 *is a failure to carry the burden of proof in*  
25 *that regard.*

1 THE COURT: Okay. Thank you.

2 MR. SMYTH: Yes, sir.

3 THE COURT: I will be happy to hear  
4 from you.

5 MR. WALDRON: May it please the  
6 Court?

7 THE COURT: Yes, sir.

8 MR. WALDRON: My name is Marshall  
9 Waldron and I represent the plaintiffs in this  
10 action. If I might approach, I would like to  
11 hand the court -- I've got a copy of Dr.  
12 Martin's transcript if it would help you.

13 THE COURT: I don't -- you can refer  
14 to whatever you want me to rely on out of that  
15 transcript. Unless I find it necessary to read  
16 it, I am not going to -- I am not going to read  
17 it unless you -- if you want me to, I'll be  
18 happy to.

19 MR. WALDRON: No, sir. I just  
20 thought if you wanted to follow along.

21 THE COURT: That's fine. I don't  
22 need to. Just tell me what you believe refutes  
23 that position stated by Mr. Smyth.

24 MR. WALDRON: I will do so. The  
25 difference of opinion that we have -- it's not

1 really a difference of opinion. We believe that  
2 it's contained in the evidence as testified by  
3 both Tasha Murphy and her husband as well as the  
4 expert, Dr. Thomas Martin, which also supports  
5 the -- the theory in this case, which is not  
6 that the doctor caused her to become toxic, not  
7 that Dr. Lopez is responsible for the initial  
8 toxicity.

9 The theory is that he failed to do a  
10 baseline check. Nobody at the hospital did a  
11 baseline check before administering Lithium to  
12 this woman. As a result, she ---

13 THE COURT: But according to the  
14 recitation and according to the fact finder,  
15 as I understand it, it had already been  
16 administered to her at that time that he saw  
17 her.

18 MR. WALDRON: That's correct, by  
19 the time that he saw her.

20 THE COURT: All right.

21 MR. WALDRON: However, he is her  
22 chief physician, her primary treating physician  
23 while she's in the hospital. As she -- and Dr.  
24 Martin testified that she got worse and worse,  
25 she already -- when she checked in, before she

1 had any Lithium in her system, she had such a  
2 severe tremor that she not only spelled her name  
3 wrong, it's almost illegible. That should have  
4 been a sign to anybody who'd actually look at  
5 her. Dr. Martin's testimony will be at the  
6 trial that had Dr. Lopez actually spent time  
7 enough to look at her, talk to the people around  
8 her, that he would have see her getting  
9 progressively worse and worse and worse.

10 The testimony from Dr. Martin is that  
11 in those times that he did see that -- that Dr.  
12 Lopez did see her, that he failed to do a  
13 baseline and failed to -- he failed to ever do a  
14 blood test until she was on her way out the  
15 door, at which point -- the therapeutic range  
16 can be anywhere from .3 to a 1.4, and I think  
17 all the experts have agreed on that. By the  
18 time that she was going out the door, she had  
19 between two to three times the amount of Lithium  
20 in her system that she was supposed to have.  
21 That's when they got the baseline or that's when  
22 they got the amount.

23 Mr. Smyth talks about the fact that it  
24 would have been a misleading test the next day.  
25 Dr. Martin, in his testimony, talked about how

1 to draw a draw on the morning of administration  
2 or after administration of the medication and  
3 what they would tell you. If they had done  
4 that, they perhaps would have seen -- I can't  
5 say perhaps. They would have seen the actual  
6 level in her system. If she was toxic at that  
7 point, then we would have known that, we would  
8 have known to stop her. That never happened.

9 That failure to verify a baseline, that  
10 failure to follow up is what Dr. Martin  
11 testifies to throughout his deposition. That is  
12 -- that actually goes to the last point, the  
13 recklessness. That's a jury question.

14 THE COURT: I disagree with you on  
15 that issue. I think you've got to have an  
16 expert that says that it is reckless to make him  
17 -- because it is clear and convincing evidence,  
18 it's not a -- I think that could be the case --  
19 and this is certainly not a layperson's ability.  
20 So, no, I disagree with you on that.

21 Tell me about -- when did the doctor  
22 say that it meets the probable cause aspect.  
23 In a medical malpractice case, we have to have  
24 both.

25 MR. WALDRON: Well, Your Honor, if

1 I could walk through both ---

2 THE COURT: No, just tell me what he  
3 says when he says -- because Mr. Smyth pointed  
4 out that he said 'I can't tell you that.'  
5 Basically was what he was saying.

6 Therein lies the problems. Without him  
7 saying, 'yes, I think that was the proximate  
8 cause', that his departure was the proximate  
9 cause of the damage and injury -- where does he  
10 say that?

11 MR. WALDRON: In his deposition,  
12 at Page 46, he talks about the failure to get  
13 the history, the failure to complete the  
14 evaluation, the fact that they knew that she was  
15 ---

16 THE COURT: All of that goes to a  
17 departure from the standard of care. Where is  
18 it that he says that it proximately the -- that  
19 the departure proximately caused her injury or  
20 damage?

21 MR. WALDRON: He doesn't use the  
22 words "proximate cause".

23 THE COURT: Does he say probably,  
24 does he say 'I think it did cause it.'

25 MR. WALDRON: Yes.

1 THE COURT: All right. Where does he  
2 say that?

3 MR. WALDRON: If you will let me  
4 walk through here, Your Honor. I ---

5 THE COURT: No, I just want you to --  
6 you don't have to walk through it. Just tell me  
7 where he says that. Read it to me. His  
8 testimony.

9 MR. WALDRON: On Page 73 of his  
10 deposition he was asked whether Dr. Lopez is  
11 ordering a Tranzine into Tenormin (phonetic) for  
12 something that fell below the standard of care.

13 THE COURT: Again, I am not  
14 quarreling with that. Go on to -- just talk  
15 about the probable -- get me to the bottom line.  
16 I don't want to hear about this testimony. The  
17 part I want you to tell me is where he says that  
18 'I think all of these proximately caused her  
19 injury.'

20 MR. WALDRON: Your Honor, I'm  
21 trying to get there.

22 THE COURT: Well, don't waste the  
23 time to read what more he's told you that I  
24 agree with.

25 MR. WALDRON: In answer to that

1 question, he testified "I believe that it  
2 worsened the situation for the providing staff  
3 because it inadvertently masked some of the  
4 early signs of Lithium toxicity."

5 He then talks about the problem that  
6 she has because of the Lithium toxicity,  
7 throughout his testimony. His testimony is that  
8 "Because of this incident, she is afraid to go  
9 back to her doctor. She is afraid to report the  
10 problems that she is having. She will not go  
11 for further hospitalization..." ---

12 THE COURT: So that is your damage?

13 MR. WALDRON: Yes, sir. She  
14 doesn't come out of the house anymore, she  
15 doesn't socialize.

16 THE COURT: All right. Anything  
17 else?

18 MR. WALDRON: No, sir.

19 THE COURT: Mr. Smyth?

20 MR. SMYTH: Your Honor, I think  
21 you've got a good grasp of the problem and of  
22 the gap that still remains in terms of the  
23 toxicity.

24 THE COURT: It's gigantic. It's like  
25 the ocean. Thank you. Motion is granted. And,

1 please, -- I think it is granted, primarily, Mr.  
2 Smyth, because there is no connection. I think  
3 that the problem with it -- given the testimony,  
4 in the light most favorable to the plaintiffs,  
5 there is evidence of departure from the  
6 standard. I don't quarrel with that part of it  
7 from a summary judgment standpoint. Whether or  
8 not it meets the test for directed verdict, I  
9 don't know. But certainly at this stage there  
10 is a scintilla as to the departure. The  
11 connection is the problem. Please draft the  
12 Order. Thank you.

13 I want that clear, because I think  
14 you're correct. I don't disagree with you that  
15 all of the testimony that you referenced in your  
16 deposition -- clearly he's testifying as to a  
17 departure from the standard. I don't quarrel  
18 with that.

19 (HEARING CONCLUDED)

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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,  
official court reporter for the 9<sup>th</sup> Judicial  
Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true,  
accurate and complete transcript of the hearing  
held before The Honorable R. Markley Dennis,  
Jr., on March 10, 2011;

I further certify that I am neither kin nor  
counsel to any of the parties and have no  
interest in the outcome of this action.



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Deborah Garrison  
Circuit Court Reporter  
9<sup>th</sup> Judicial Circuit

Charleston, South Carolina  
March 31, 2013