

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis Jr., Circuit Court Judge

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AUG 19 2013

SC Court of Appeals

Civil Action No. 2008-CP-10-07380
Appellate Case No. 2012-212771

Tasha Murphy and Steven Murphy Appellants

v.

Palmetto Lowcountry Behavioral Health,
LLC; and Steven G. Lopez, M.D. Defendants

Of whom Steven G. Lopez, M.D. is Respondent

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TASHA MURPHY AND STEVEN MURPHY,)

Plaintiffs,)

v.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

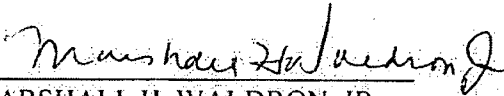
Civil Action No.: ~~05-CP-10-4734~~

08-CP-10-7380

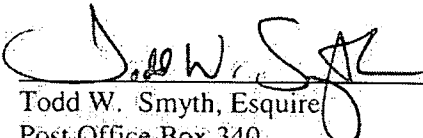
STIPULATION OF PARTIAL
DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, the parties hereby stipulate to the voluntary dismissal of the Plaintiffs' action against Defendant Ricardo J. Fermo, M.D., with prejudice.

AND IT IS SO STIPULATED.


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JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

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CLERK OF COURT
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TASHA MURPHY AND
STEVEN MURPHY,

Plaintiffs,

v.

STEVEN G. LOPEZ, M.D.,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 08-CP-10-7380

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

FILED
2011 APR 13 AM 8:39
JULIE A. CLEGG
CLERK OF COURT

This case came before the Court upon Defendant Steven G. Lopez, M.D.'s ("Dr. Lopez") Motion for Summary Judgment filed September 3, 2010. I heard the motion in open court on March 10, 2011 at which time all parties appeared through their attorneys. I have reviewed the file along with all submissions and applicable law and considered arguments of counsel as well. The briefs of the parties were specifically incorporated into the record. Based upon the record and applicable law, I grant Dr. Lopez's motion for the reasons explained below.

FACTS

This is a medical malpractice action arising out of Plaintiff Tasha Murphy's ("Mrs. Murphy") treatment at Palmetto Lowcountry Behavioral Health ("Palmetto") from November 19, 2002 to November 25, 2002. Plaintiffs allege that Dr. Lopez failed to exercise the appropriate standard of care in his diagnosis, care and treatment of Mrs. Murphy during the aforementioned time period. Pl. Compl. ¶ 28(o) (Nov. 25, 2005). Specifically, Plaintiffs allege that Dr. Lopez was negligent by introducing or causing to be introduced into Mrs. Murphy a toxic level of the drug Lithium. Id. at ¶¶ 26-27.

RWD

Mrs. Murphy was admitted to Palmetto on November 19, 2002. She presented as being off her medications, depressed, suffering from bipolar affective disorder, and suicidal with a plan to shoot herself. Mrs. Murphy was admitted by a Dr. Jenkins who immediately started her back on her previous Lithium dosage of 600 mg. twice a day. The following day, November 20th, was when Dr. Lopez first saw Mrs. Murphy. Dr. Lopez reviewed the Needs Assessment Package and interviewed Mrs. Murphy at that time. Dr. Lopez concurred with Dr. Jenkins' diagnosis and treatment recommendations from the prior day. He noted that Mrs. Murphy showed some improvement in her condition from the prior day and recalls that Mrs. Murphy re-confirmed she had not been taking her medication. As Dr. Jenkins had done on the previous day, Dr. Lopez agreed it was appropriate to continue Mrs. Murphy on her regular dosages of Lithium which amounted to 600 mg. once in the morning and once in the evening.

The following day, November 21st, Mrs. Murphy was seen by Dr. Lopez's supervisor at the time, Dr. Ricardo Fermo. On this day, as with previous days, Dr. Fermo noted some improvements in her condition and continued Mrs. Murphy on her Lithium dosage. Dr. Lopez rounded on Mrs. Murphy on November 22nd. His notes reveal no real change in Mrs. Murphy's condition. Over the next two days, November 23 and 24, Mrs. Murphy was seen by a Dr. Sukan. As with the other physicians, Dr. Sukan did not change the previous orders or insist that Lithium levels be drawn.

On November 25, Dr. Lopez once again saw Mrs. Murphy. His notes reflect Mrs. Murphy was suffering from a urinary tract infection, very psycho-motor retarded (a symptom of depression), and lethargic. The notes also reflect Mrs. Murphy was not improving throughout the day and was not ready for discharge. It was on this day, November 25, that Mrs. Murphy's Lithium levels had been checked per the standard of care for this drug as it takes 5 days to reach a steady state in the body. That evening, Dr. Lopez noted that Mrs. Murphy had begun a significant change in condition and exhibited jerky movements which possibly indicated Lithium

toxicity. Mrs. Murphy was taken to St. Francis Hospital where she was treated for Lithium toxicity.

STANDARD OF REVIEW

Rule 56(c), SCRPC provides for judgment as a matter of law where "there is no genuine issue as to any material fact for trial." The purpose of summary judgment is to dispose of factually unsupported claims. Celotex v. Catrett, 477 U.S. 317, 322 (1986). "Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ." Thompkins v. Festival Centre Group, 306 S.C. 193, 410 S.E.2d 593 (Ct. App. 1991).

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 673 S.E.2d 801 (2009). However, the "[plaintiff] may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e), SCRPC. To survive a summary judgment motion by the defendant in a lawsuit, however, the plaintiff must offer some evidence that a genuine issue of material fact exists for each element of the claim at issue except for those elements that are either uncontested or agreed to by stipulation. Kase v. Ebert, Op. No. 4806 (S.C.Ct.App. filed March 9, 2011) (Shearouse Adv.Sh. No. 9 at 78) citing Eadie v. Krause, 381 S.C. 55, 65, n.5, 671 S.E.2d 389, 393 n.5 (Ct. App. 2008), cert. denied (June 10, 2010). The plaintiff's failure to prove an essential element of a case renders all other facts immaterial. Celotex, 477 U.S. at 322.

DISCUSSION

Medical malpractice lawsuits have specific requirements that must be satisfied in order for a genuine factual issue to exist. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626

S.E.2d 1, 3 (2006). Specifically, a plaintiff alleging medical malpractice must provide evidence showing (1) the generally recognized and accepted practices and procedures that would be followed by average, competent practitioners in the defendant's field of medicine under the same or similar circumstances, and (2) that the defendant departed from the recognized and generally accepted standards. Id., 367 S.C. at 247-248, 626 S.E.2d at 4 (citing Pederson v. Gould, 288 S.C. 141, 143-144, 341 S.E.2d 633, 634 (1986); Cox v. Lund, 286 S.C. 410, 414, 334 S.E.2d 116, 118 (1985)). Also, the plaintiff must show that the defendant's departure from such generally recognized practices and procedures was the proximate cause of the plaintiff's alleged injuries and damages. Id., 367 S.C. at 248, 626 S.E.2d at 4 (citing Green v. Lilliewood, 272 S.C. 186, 193, 249 S.E.2d 910, 913 (1978)). The plaintiff must provide expert testimony to establish both the required standard of care and the defendant's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge so that no special learning is required to evaluate the conduct of the defendants. Id. (citing Pederson, 288 S.C. at 143, 341 S.E.2d at 634). In South Carolina, medical malpractice actions require a greater showing than generic allegations and conjecture: Id.

A. Plaintiffs have not provided any evidence that Dr. Lopez's alleged breach of the standard of care proximately caused Mrs. Murphy's Lithium toxicity.

"In a medical malpractice action, it is incumbent on the plaintiff to establish proximate cause as well as the negligence of the physician." Ellis v. Oliver, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996) (citing Armstrong v. Weiland, 267 S.C. 12, 225 S.E.2d 851 (1976)). "When one relies solely upon the opinion of medical experts to establish a causal connection between the alleged negligence and the injury, the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from the defendant's negligence." Id. at 125, 473 S.E.2d at 795. When expert testimony is the only evidence of proximate cause relied upon, the testimony "must provide a significant causal link between the

alleged negligence and the plaintiff's injuries, rather than a tenuous and hypothetical connection." Id. "Negligence is not actionable unless it is a proximate cause of the injuries, and it may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided." Hughes v. Children's Clinic, P. A., 269 S.C. 389, 398, 237 S.E.2d 753, 757 (1977) (citing Gunnels v. Roach, 243 S.C. 248, 133 S.E.2d 757 (1963)).

In the instant case, Plaintiffs have failed to produce any evidence that establishes Plaintiffs' damages were proximately caused by Dr. Lopez's alleged negligence. Plaintiffs' own expert, Dr. Martin, readily conceded the failure to draw Mrs. Murphy's Lithium level "had nothing to do" with her eventual Lithium toxicity. Depo. Martin 125:16-25. Dr. Martin further testified that he does not know for certain how Mrs. Murphy reached a toxic Lithium level while at Palmetto. Id. 68:21-69:2. In short, Plaintiff has no evidence linking the alleged breach in standard of care to her claimed injuries and none exists.

Proximate causation is only present where the injury "most probably" came from the cause alleged." Goewey v. United States, 886 F.Supp. 1268, 1279 (D.S.C. 1995) (quoting Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)), *aff'd*, 106 F.3d 390 (4th Cir. 1997), *cert. denied*, 522 U.S. 1945 (1998). Similarly, proximate cause is absent "where the cause of plaintiff's injury may be as reasonably attributed to an act for which defendant is not liable as to one which he is liable." Messier v. Adicks, 251 S.C. 268, 161 S.E.2d 845, 846 (1968).

Plaintiffs have not introduced any evidence that their injuries were most probably caused by Dr. Lopez's alleged negligence. In fact, Plaintiffs' own expert admitted that the failure to order a Lithium test "had nothing to do" with Mrs. Murphy's eventual toxicity. Depo. Martin 125:16-25. Accordingly, Plaintiffs cannot meet their burden of proof and Dr. Lopez is entitled to judgment as a matter of law.

B. Plaintiffs cannot meet their burden of proof with regard to the claim for punitive damages.

Plaintiffs' Complaint alleges they are entitled to punitive damages as a result of Dr. Lopez's reckless, willful or wanton conduct. Pl's Compl. ¶¶ 29 and 32. However, Plaintiffs have failed to present any evidence to support such a claim.

"In order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." McCourt v. Abernathy, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). "A tort is characterized as reckless, willful, or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." Nesbitt v. Lewis, 335 S.C. 441, 448, 517 S.E.2d 11, 15 (Ct. App. 1999). There must be clear and convincing evidence of actual malice to warrant an award for punitive damages. Hainer v. American Medical Intern, Inc., 328 S.C. 128, 135, 492 S.E.2d 103, 107 (1997).

In the present case, Plaintiffs have produced no evidence of reckless, willful or wanton conduct on the part of Dr. Lopez to warrant the imposition of punitive damages. During Mrs. Murphy's treatment at Palmetto, four different physicians treated her for her various medical conditions. All of these physicians, including Dr. Lopez, continued Mrs. Murphy on her previously prescribed Lithium dosage. Furthermore, none of these physicians measured Mrs. Murphy's Lithium levels until November 25, 2002 as it takes five days to reach a steady state in the body per the standard of care for this drug. According to Plaintiffs' own expert Dr. Martin, none of the other three physicians who treated Mrs. Murphy at Palmetto violated the standard of care. Depo. Martin 120:5-8. Dr. Martin has not offered any testimony that Dr. Lopez's treatment of Mrs. Murphy was reckless, willful or wanton. As such, Plaintiffs have failed to

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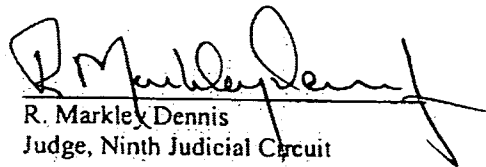
produce any evidence, much less clear and convincing evidence, of actual malice on the part of Dr. Lopez. Accordingly, Dr. Lopez is entitled to judgment as a matter of law on the issue of punitive damages.

ORDER

In this case, even viewing the evidence as contained in the record and all inferences which can be reasonably drawn from the evidence in the light most favorable to Plaintiffs, this Court finds that there are no genuine issues of material fact for trial as to Dr. Lopez.

Accordingly, and based upon the foregoing, it is therefore

ORDERED, ADJUDGED AND DECREED that Defendant Steven G. Lopez, M.D.'s Motion for Summary Judgment be, and it hereby is, granted and Defendant is dismissed with prejudice.


R. Markley Dennis
Judge, Ninth Judicial Circuit

April 5, 2011
Charleston, South Carolina

RMD7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Tasha Murphy and Steven Murphy,	)	C/A No. 08-CP-10-7380
	)	
Plaintiffs,	)	ORDER OF DISMISSAL AS TO
	)	PALMETTO LOWCOUNTRY
Versus	)	BEHAVIORAL HEALTH, LLC
	)	
Palmetto Lowcountry Behavioral	)	
Health, LLC and Steven G. Lopez, M.D.,	)	
	)	
Defendants.	)	

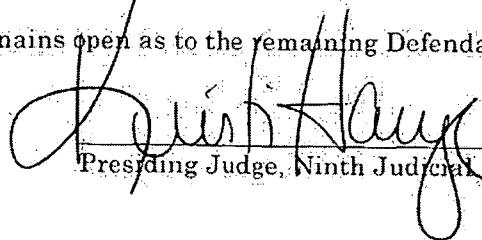
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JULIE J. ARMSTRONG
CLERK OF COURT
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IT APPEARING that this case has been amicably settled by and between the Plaintiffs and Defendant Palmetto Lowcountry Behavioral Health, LLC hereto, obviating the necessity for further litigation;

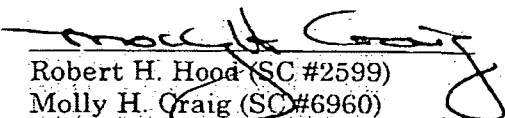
ON MOTION of Hood Law Firm, LLC, Attorneys for Palmetto Lowcountry Behavioral Health, LLC, and with the consent of Todd W. Smyth, Esquire of Haynsworth, Sinkler, Boyd, P.A., Attorney for Steven G. Lopez, M.D. Marshall H. Waldron, Jr., Esquire of Griffith, Sadler & Sharp, P.A., Attorney for the Plaintiffs, it is

ORDERED, ADJUDGED, AND DECREED that this case be, and the same is hereby, dismissed with prejudice and forever ended as to Defendant Palmetto Lowcountry Behavioral Health, LLC only, with each party bearing its own costs, fees, and expenses. The case remains open as to the remaining Defendant.

9-16, 2011
Charleston, South Carolina
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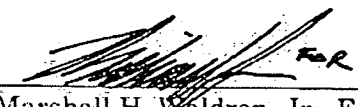

Presiding Judge, Ninth Judicial Circuit

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Tasha Murphy and Steven Murphy,
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vs.

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Defendants.

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FOR THE NINTH JUDICIAL CIRCUIT

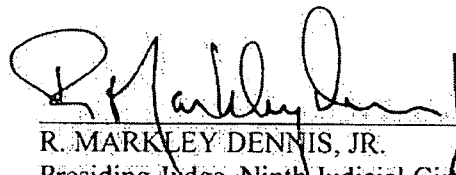
CASE NO. 2008-CP-10-7380

ORDER

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before me upon Motion for Reconsideration filed by Marshall H. Waldron, Jr., Esquire, Attorney for Plaintiffs, Tasha Murphy and Steven Murphy, on April 22, 2011. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is respectfully DENIED;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

June 21, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TASHA MURPHY AND
STEVEN MURPHY,

Plaintiffs,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. ~~05 CP-10-~~ 4734

08-CP-10-7380

COMPLAINT
(JURY TRIAL REQUESTED)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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NOW COME the Plaintiffs, Tasha Murphy and Steven Murphy, complaining of the negligent, reckless and willful acts and/or omissions of the Defendants Palmetto Lowcountry Behavioral Health, LLC, Ricardo J. Fermo, M.D., and Steven G. Lopez, M.D., and state as follows:

1. Venue in this Court is proper pursuant to §15-7-30, S.C. Code.
2. The parties hereto and the subject matter of this action are within the jurisdiction of this Court, as is more fully set out below.
3. Plaintiffs Tasha Murphy and Steven Murphy at all times pertinent to this action were residents and citizens of Hardeeville, Jasper County, South Carolina.
4. Defendant Palmetto Lowcountry Behavioral Health, LLC, (Palmetto) is a South Carolina limited liability company registered to do business in the State of South Carolina with a principal place of business at Charleston, County of Charleston, South Carolina and at all times relevant herein, acted by and through its agents, contractors

and employees for the purpose of carrying on its business as a medical healthcare facility and therefore, it is liable for the negligent acts and omissions of its agents, contractors and employees under the theories of non-delegable duty and *respondeat superior*.

5. Defendant Steven G. Lopez, M.D. (Lopez) is a medical doctor licensed to practice in South Carolina with a specialty in psychiatry.
6. Defendant Lopez is a resident of South Carolina and is among the staff of and provides professional services at Defendant Palmetto.
7. Defendant Ricardo J. Fermo, M.D. (Fermo) is a medical doctor licensed to practice in South Carolina with a specialty in child and adolescent psychiatry.
8. Defendant Fermo is a resident of South Carolina and is among the staff of and provides professional services at Defendant Palmetto.
9. The acts and/or omissions complained of occurred in Charleston, South Carolina at the facility owned and operated by Defendant Palmetto.
10. Defendant Palmetto at all times pertinent to this action held itself out to the public and to the Plaintiffs as a facility providing professional medical, psychiatric and mental health care and treatment to persons suffering from mental diseases and ailments by skilled, educated, competent, experienced and qualified physicians, nurses, laboratory and staff pursuant to the laws of the State of South Carolina and by physicians and staff with a specialty in the care and treatment of mental health disorders.
11. Defendant Lopez at all times pertinent to this action held himself out to the public and to the Plaintiffs as a physician licensed by the State of South Carolina, qualified in the field of psychiatry and possessing the education, training and skills required of

physicians practicing his specialty within the United States of America and the State of South Carolina.

12. Defendant Fermo at all times pertinent to this action held himself out to the public and to the Plaintiffs as a physician licensed by the State of South Carolina, qualified in the field of psychiatry and possessing the education, training and skills required of physicians practicing his specialty within the United States of America and the State of South Carolina.
13. At all times pertinent to this action, there existed a healthcare provider/patient relationship between Plaintiff Tasha Murphy and each of the Defendants.
14. By virtue of the healthcare provider/patient relationship cited above, the Defendants owed a duty of professional care and diligence in all aspects of Defendant Tasha Murphy's medical and mental health care, including but not limited to the diagnosis and treatment of Plaintiff Tasha Murphy.
15. Defendant Palmetto owed a duty to Plaintiff Tasha Murphy to provide competent, professional and qualified staff and nurses licensed to practice in the State of South Carolina skilled in treating mental health ailments.
16. Defendant Palmetto owed a duty to Plaintiff Tasha Murphy to provide competent, professional and qualified physicians licensed to practice in the State of South Carolina skilled in treating mental health ailments.
17. Defendant Palmetto owed a duty to Plaintiff Tasha Murphy to provide staff and laboratory services as part of their treatment of the Plaintiff, including but not limited to initial patient evaluation, observation, testing and monitoring the effects of prescription medication, proper documentation and reporting of findings and

observations to and by medical staff, diagnosis and treatment of mental health and psychiatric disorders.

18. Defendant Lopez owed a duty to Plaintiff Tasha Murphy to exercise reasonable care and diligence in all aspects of his treatment of the Plaintiff, including but not limited to initial patient evaluation, diagnosis, treatment, testing, prescribing appropriate medications and monitoring the effects of prescription medications.
19. Defendant Fermo owed a duty to Plaintiff Tasha Murphy to exercise reasonable care and diligence in all aspects of his treatment of the Plaintiff, including but not limited to initial patient evaluation, diagnosis, treatment, testing, prescribing appropriate medications and monitoring the effects of prescription medications.
20. On or about November 19, 2002, Plaintiff Tasha Murphy displayed symptoms of severe depression and noncompliance with her medication and sought admission and treatment from the Defendants.
21. On or about November 19, 2002, the Defendants accepted Plaintiff Tasha Murphy as a patient and admitted her as an inpatient.
22. As part of their admission of Plaintiff Tasha Murphy, the Defendants interviewed the Plaintiff, received Tasha Murphy's personal property, received all of Tasha Murphy's medications and prescription information and obtained a history of Tasha Murphy's mental health condition and treatment.
23. On or about November 19, 2002, Defendants Palmetto, Fermo and Lopez knew or should have known that Plaintiff Tasha Murphy had previously been diagnosed with bipolar affective disorder and that her physician prescribed Lithium as a medication.

24. On or about November 19, 2002, prior to commencing their treatment of Plaintiff Tasha Murphy, the Defendants should have known or ascertained the level of Lithium in her system.
25. The Defendants failed to determine the amount of Lithium in Plaintiff Tasha Murphy's body until November 26, 2002.
26. Between November 19, 2002 and November 25, 2002, the Defendants, introduced or caused to be introduced into Plaintiff Tasha Murphy a toxic level of Lithium.
27. Between November 19, 2002 and November 25, 2002, the Defendants' carelessness, negligence, willfulness, wantonness and recklessness caused deterioration in Plaintiff Tasha Murphy's mental state rendering her comatose, which necessitated emergency treatment, multiple transfers to other hospitals for medical treatment and extended her time as an inpatient.
28. The injuries and damages suffered by Plaintiff Tasha Murphy were due to and proximately caused by the carelessness, negligence, willfulness, wantonness and recklessness of one or more of the Defendants in one or more of the following particulars:

AS TO DEFENDANTS FERMO AND LOPEZ

The Plaintiffs are informed and believe that Defendants Fermo and Lopez, jointly and severely, were negligent, grossly negligent, willful, wanton, reckless and careless in the following particulars:

- a. In failing to obtain a complete, thorough and accurate medical, factual and mental history for Plaintiff Tasha Murphy and, if obtained, failed to appreciate her history which was highly indicative of Lithium complications;

- b. In failing to properly examine Plaintiff Tasha Murphy;
- c. In failing to fully consider and appreciate Plaintiff Tasha Murphy's medical and psychiatric signs and symptoms which were highly indicative of Lithium complications;
- d. In failing to make a correct diagnosis of Plaintiff Tasha Murphy's medical condition, specifically failing to diagnose a toxic level of Lithium;
- e. In failing to appropriately treat Plaintiff Tasha Murphy's condition;
- f. In failing to prevent and/or avoid Lithium toxicity and its resultant medical complications;
- g. In failing to provide appropriate medical care to Plaintiff Tasha Murphy;
- h. In failing to provide appropriate psychiatric care to Plaintiff Tasha Murphy;
- i. In failing to properly monitor Plaintiff Tasha Murphy;
- j. In failing to obtain necessary consultations;
- k. In failing to refer Plaintiff Tasha Murphy to a specialist;
- l. In failing to order appropriate tests;
- m. In failing to provide treatment necessary to prevent material deterioration of Plaintiff Tasha Murphy's condition.
- n. In failing to exercise that degree of medical knowledge, training, experience, skill and/or care in the diagnosis, care and treatment of Plaintiff Tasha Murphy which was ordinarily possessed or exercised by physicians in good standing similarly situated under the same or similar circumstances;
- o. In departing from generally accepted standards of medical and psychiatric practice, knowledge and skill which is generally accepted throughout the United States,

FOR A SECOND CAUSE OF ACTION

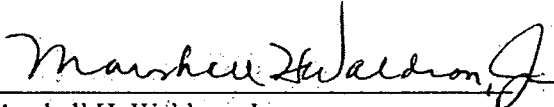
30. The Plaintiffs repeat and reallege all previous paragraphs as if stated verbatim herein.

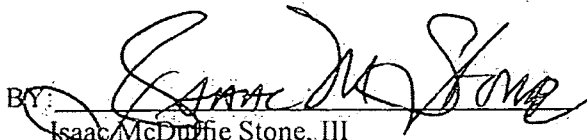
31. At all times pertinent to this action, the Plaintiffs were married and lived together as husband and wife.

32. As a direct and proximate result of the Defendants' reckless, wanton, willful and negligent conduct as described herein, Plaintiff Steven Murphy has suffered and will continue to suffer the loss of his wife's society and companionship and is entitled to receive damages from the Defendant.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants in a sum sufficient to adequately compensate the Plaintiffs for actual damages, for such punitive damages as a jury may reasonably award, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

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ATTORNEYS FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. ~~05 CP 10 4734~~ **08 CP 10 7380**

TASHA MURPHY AND
STEVEN MURPHY,

Plaintiffs,

v.

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

Defendants.

DEFENDANT STEVEN G. LOPEZ,
M.D.'S ANSWER

(JURY TRIAL REQUESTED)

FILED
2005 JAN 11 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Defendant, Steven G. Lopez, M.D., (hereinafter "this Defendant" or "Dr. Lopez"), and answers Plaintiffs' Complaint (hereinafter "Complaint") as follows:

1. This Defendant denies each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted.

2. As to the allegations contained in Paragraphs 1 and 2, these allegations call for a legal conclusion to which no response is required.

3. As to the allegations contained in Paragraph 3, this Defendant is without information sufficient to admit or deny these allegations and, therefore, denies the same and leaves the Plaintiffs to their proof.

4. As to the allegations contained in Paragraph 4, these allegations are not directed at this Defendant and, therefore, no response is required.

5. As to the allegations contained in Paragraph 5, this Defendant admits the same.

6. As to the allegations contained in Paragraph 6, this Defendant admits he is a resident of South Carolina and provides professional medical services at the Palmetto Behavioral Health facility. Further responding, Dr. Lopez is not an employee of the facility. All other inconsistent allegations are denied.

7. As to the allegations contained in Paragraphs 7 and 8, these allegations are not directed at this Defendant and, therefore, no response is required.

8. As to the allegations contained in Paragraph 9, this Defendant denies he committed the alleged negligent acts and/or omissions, but admits only, upon information and belief, the Plaintiff Tasha Murphy was a patient at the stated facility at the time in question.

9. As to the allegations contained in Paragraph 10, these allegations are not directed at this Defendant and, therefore, no response is required.

10. As to the allegations contained in Paragraph 11, this Defendant admits only that he is a duly licensed physician who is board-certified in psychiatry and practices medicine in the State of South Carolina. All other inconsistent allegations are denied.

11. As to the allegations contained in Paragraph 12, these allegations are not directed at this Defendant and, therefore, no response is required.

12. As to the allegations contained in Paragraph 13 as they relate to this Defendant, the same is admitted.

13. As to the allegations contained in Paragraph 14, this Defendant admits the same.

14. As to the allegations contained in Paragraphs 15, 16, and 17, these allegations are not directed at this Defendant and, therefore, no response is required.

15. As to the allegations contained in Paragraph 18, this Defendant admits the same.

16. As to the allegations contained in Paragraph 19, these allegations are not directed at this Defendant and, therefore, no response is required.

17. As to the allegations contained in Paragraph 20, this Defendant denies that the stated allegations encompass the Plaintiff's complete medical condition. Further answering, this Defendant craves reference to the medical records of Plaintiff Tasha Murphy for a more complete and accurate account of the Plaintiff's medical condition, and to the extent these allegations differ from the same is denied.

18. As to the allegations contained in Paragraph 21, this Defendant denies the same. Further answering, upon information and belief, this Defendant did not become involved in the medical care of Plaintiff Tasha Murphy until November 20, 2002.

19. As to the allegations contained in Paragraph 22, these allegations are not directed at this Defendant and, therefore, no response is required. To the extent a response is required, this Defendant craves reference to the medical records of Tasha Murphy for a more complete and accurate description of the care rendered and to the extent these allegations differ from the same is denied.

20. As to the allegations contained in Paragraph 23, this Defendant denies the same and states, upon information and belief, this Defendant did not become involved in the medical care of Plaintiff Tasha Murphy until November 20, 2002. Further answering, this Defendant craves reference to the medical records of Tasha Murphy for a more complete and accurate description of the care rendered and to the extent these allegations differ from the same is denied.

21. As to the allegations contained in Paragraph 24, this Defendant denies the same and demands strict proof thereof.

22. As to the allegations contained in Paragraph 25, this Defendant denies the same and demands strict proof thereof. Further answering, this Defendant craves reference to the medical records of Tasha Murphy for a more complete and accurate description of the care rendered and to the extent these allegations differ from the same is denied.

23. As to the allegations contained in Paragraph 26, this Defendant denies the same and demands strict proof thereof. Further answering, this Defendant craves reference to the medical records of Tasha Murphy for a more complete and accurate description of the care rendered and to the extent these allegations differ from the same is denied.

24. As to the allegations contained in Paragraph 27, this Defendant denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION

25. As to the allegations contained in Paragraph 28, including all subparts (a)-(p) this Defendant denies the same and demands strict proof thereof. As to the remaining subparts (q)-(cc); these allegations are not directed at this Defendant and, therefore, no response is required.

26. As to the allegations contained in Paragraph 29, including all subparts (a)-(g), this Defendant denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION

27. As to the allegations contained in Paragraph 30, this Defendant incorporates by reference, repeats and realleges its answers to the foregoing allegations as if repeated herein verbatim.

29. As to the allegations contained in Paragraph 31, this Defendant is without information sufficient to admit or deny the same and, therefore, leaves the Plaintiffs to their strict proof.

30. As to the allegations contained in Paragraph 32, those being the remaining allegations of the Plaintiffs' Complaint, this Defendant denies the same and demands strict proof thereof.

WHEREFORE, having fully answered the Plaintiffs' Complaint, this Defendant asserts the following additional defenses:

ADDITIONAL DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted against this Defendant and, therefore, should be dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

2. Plaintiffs' alleged injuries or damages, if any, may have been the result of preexisting and/or subsequent conditions unrelated to the actions of this Defendant as may be proven through discovery and at trial.

3. The Plaintiff suffered from one or more significant medical conditions and the injuries complained of herein are the result of a natural disease process as may be proven through discovery and at trial and, therefore, the Plaintiff is not entitled to any recovery from this Defendant.

4. At all times material to Plaintiffs' Complaint, the conduct of this Defendant conformed to and complied with the then-existing applicable standard of care. Accordingly, Plaintiffs' claims are barred as a matter of law.

5. Plaintiffs' injuries, if any, were caused in whole or in part by the acts or omissions of others for whose conduct this Defendant is not responsible and/or resulted from conditions unrelated to any conduct of this Defendant.

6. That even if this Defendant was negligent as alleged in the Complaint, which is specifically denied, the acts of this Defendant are not the direct and proximate cause of Plaintiffs' injuries and damages, so as to bar the Plaintiffs from recovery against this Defendant.

7. Any injury that the Plaintiffs sustained due to the alleged negligence of this Defendant, which is expressly denied, may have been caused by and/or contributed to by Plaintiffs' own negligence, recklessness, or gross negligence as may be proven through discovery and at trial, and any recovery should be barred and/or reduced accordingly.

8. Plaintiffs' alleged injuries and damages may have been the result of an independent, intervening, and superseding cause over which this Defendant had no control as may be proven through discovery and at trial. Any alleged action or alleged omission on the part of this Defendant was not the proximate cause of alleged damages.

9. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiff has received or will receive from others for the same injuries Plaintiff claims in this lawsuit.

10. Plaintiffs' claims should be barred or reduced to the extent Plaintiffs failed to mitigate their damages.

11. With respect to Plaintiffs' demands for punitive damages, this Defendant asserts his conduct does not rise to the level required to sustain a claim for punitive damages. Further, the award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution and, therefore, may not be awarded to Plaintiff, in that:

- a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

- b) Any award of punitive damages serving a compensatory functions is inconsistent with due process guarantees;
- c) Any award of punitive damages based upon the wealth of this Defendant violates due process guarantees;
- d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards, is arbitrary, promotes grossly excessive awards and is inconsistent with due process guarantees;
- e) Assuming *arguendo* that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and
- f) The Plaintiffs' claim for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of this Defendant.

This Defendant specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of State Farm v. Campbell, U.S. Supreme Court, Op. No. 01-1289, (April 7, 2003); BMW of North America v. Gore, 517 U.S. 559 (1996) and Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), together with all such standards applicable under state law.

12. Punitive damages are a punishment, a quasi-criminal sanction for which this Defendant has not been afforded the specific procedural safeguards prescribed in the Fifth and Sixth Amendments to the United States Constitution and in the Constitution of South Carolina.

13. The Plaintiffs failed to comply with the applicable statute of limitations and/or statute of repose and, therefore, this matter must be dismissed as a matter of law.

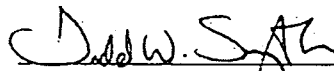
14. This Defendant hereby gives notice that it intends to rely upon such other defenses as may become available or appear through discovery or otherwise, or as may be raised

by any other defendant, and hereby reserve the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiffs' Complaint and asserted the foregoing defenses, this Defendant respectfully requests:

- (1) a trial by jury of twelve;
- (2) this Court to dismiss this matter with prejudice and enter judgment in its favor and against Plaintiffs; and
- (3) this Court to award this Defendant its costs and expenses, including attorney's fees incurred in this matter and grant whatever additional relief the Court deems appropriate.

Respectfully Submitted,



Todd W. Smyth, Esquire
Neil D. Thomson, Esquire

HAYNSWORTH SINKLER BOYD, P.A.

134 Meeting Street, Third Floor

Post Office Box 340

Charleston, SC 29402

843/722-3366 - Telephone

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Attorneys for Steven G. Lopez, M.D.

Charleston, South Carolina
January 11, 2006

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TASHA MURPHY AND
STEVEN MURPHY,

Plaintiffs,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. ~~05-CP-10-4734~~

2008-CP-10-7380

DEFENDANT STEVEN G. LOPEZ,
M.D.'S NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT

2010 SEP -3 AM 12:24
JULIE J. ARMSTRONG
CLERK OF COURT

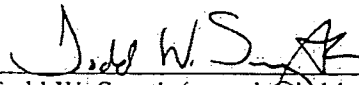
FILED

PLEASE TAKE NOTICE that Defendant Steven G. Lopez, M.D. (hereinafter "Dr. Lopez" or "this Defendant") hereby moves at a time and place to be arranged by the Court and counsel involved for an order granting this Defendant summary judgment on all claims against it pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The basis for the motion is that, in the light most favorable to the Plaintiffs, there is no genuine issue of material fact in regard to the existence of any actionable negligence or other wrongdoing on the part of Dr. Lopez and, therefore, he is entitled to judgment as a matter of law. The evidence in this case conclusively establishes Plaintiffs cannot meet their burden of proof as to any of the claims asserted against this Defendant.

In support of the Motion, this Defendant will rely upon the pleadings, the record herein, deposition testimony taken in this matter, documents and medical records exchanged during discovery, any supporting memorandum of law to be filed subsequently and the oral arguments of counsel at the time of the hearing.

10-15216

Respectfully Submitted,


Todd W. Smyth (tsmyth@hsblawfirm.com)
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P. O. Box 340 (29402)
Charleston, SC 29401
(843) 722-3366 Telephone
(843) 722-2266 Facsimile

September 3, 2010
Charleston, South Carolina

Attorneys for Defendant Steven G. Lopez, M.D.,

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TASHA MURPHY AND)
STEVEN MURPHY,)

Plaintiffs,)

v.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 08-CP-10-7980

7380

MOTION TO ALTER OR AMEND
Rule 59(e), SCRCP

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 APR 25 PM 4:14

FILED

TO: TODD W. SMYTH, ESQUIRE, ATTORNEY FOR DEFENDANT LOPEZ:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiffs will move before the Court at the Charleston County Courthouse, Charleston, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCP, altering or amending his April 13, 2011, Order granting summary judgment.

The Defendant moved for summary judgment on September 3, 2010. The Court heard from the parties on March 10, 2011, and granted the motion by an Order filed on April 13, 2011. The Plaintiff received written notice of the Court's Order on April 18, 2011.

In his Order, the Court states, "I have reviewed the file along with all submissions and applicable law and considered arguments of counsel as well."¹ The Court correctly ruled that the Plaintiffs must show that the Defendant's departure from generally recognized practices and procedures was the proximate cause of the Plaintiffs' injuries and damages.²

¹ Order, Page 1.

² Order, Page 4.

The Court found that, "In the instant case, Plaintiffs have failed to produce any evidence that establishes Plaintiffs' damages were proximately caused by Dr. Lopez's alleged negligence... In short, Plaintiff has no evidence linking the alleged breach in standard of care to her claimed injuries and none exists."³

The Plaintiffs would show the Court that the evidence, the testimony of the Plaintiff's expert, appears in the record in Dr. Martin's deposition transcript and that that evidence clearly establishes and defines in detail the standard of care,⁴ the Defendant's breach and Dr. Martin's testimony that the breach proximately caused Tasha Murphy's injuries:

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

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

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

A. Yes, I do.⁵

Dr. Martin provides a page and a half of testimony illustrating the injuries proximately caused by the breach, including the effect not only of the initial breach that resulted in the Defendant

³ Order, Page 5.

⁴ Transcript of Thomas V. Martin, M.D., Page 120, Line 9, through Page 121, Line 8.

⁵ Id., Page 119, Lines 1-21.

not seeing that his patient was toxic but detailing the other symptoms present that Dr. Lopez failed to appreciate and which he failed to investigate or treat.⁶

Q. [A]re you able to say to a reasonable degree of medical certainty that the failure to order that test caused her to become toxic or resulted in her toxicity?

A. It resulted in them not seeing that she was toxic, yes.⁷

Q. As far as the cause of her desire to be more shut in, are you able to say to a reasonable degree of medical certainty whether it was due to this incident versus a progression or a natural evolution of her depressive disorder?

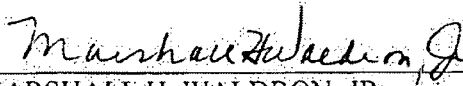
A. Well, I'm going to say it's a combination of both.⁸

The Plaintiffs urge the Court to reconsider his Order in light of the testimony cited herein and issue an Order denying the Defendant's Motion for Summary Judgment.

DATED at Beaufort, South Carolina this 22nd day of April 2011, and

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.


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Beaufort, South Carolina 29901
Telephone (843) 521-4242
Facsimile (843) 521-4247
ATTORNEYS FOR THE PLAINTIFF

⁶ Id., Page 69, Line 21 through Page 72, Line 6.

⁷ Id., Page 125, Lines 17-23.

⁸ Id., Page 105, Lines 15-22.

NOTICE OF APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2008-CP-10-7980

1380

Tasha Murphy and Steven Murphy,

Appellants,

v.

Palmetto Lowcountry Behavioral Health, LLC, Ricardo J. Fermo, M.D. and Steven G. Lopez,

Respondent.

FILED
2012 JUL 23 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

NOTICE OF APPEAL

Tasha Murphy and Steven Murphy appeal the June 21, 2012, Orders of the Honorable R. Markley Dennis, Jr. filed on April 13, 2011 and June 21, 2012. A true copy of each Order is attached hereto. Appellant received written notice of entry of the Order denying reconsideration on June 26, 2012.

July 20, 2012


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Attorneys for the Appellant

Other Counsel of Record:
TODD W. SMYTH, ESQUIRE
Smith Whitley, LLC.
234 Seven Farms Drive
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Phone: 843-606-563
Attorney for the Respondent

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, 3rd Floor
 Charleston, SC 29401
 Appearing for Defendants

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
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 4th, 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)

20

21

22

23

24

25

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

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON
 3 IN THE COURT OF COMMON PLEAS
 4 NINTH JUDICIAL DISTRICT
 5 Case No. 08-CP-10-7890

6 TASHA MURPHY AND STEVEN :
 7 MURPHY, :
 8 :
 9 Plaintiff, : DEPOSITION OF:
 10 :
 11 vs. :
 12 :
 13 STEVEN G. LOPEZ,
 14 PALMETTO LOW COUNTRY : M.D.
 15 BEHAVIORAL HEALTH, LLC, :
 16 and STEVEN G. LOPEZ, M.D., :
 17 :
 18 Defendant. :
 19 :
 20 :
 21 :
 22 :
 23 :
 24 :
 25 :
 - - -

Transcript of deposition taken by and
 before Teresa J.F. Bautz, a Registered
 Professional Reporter, License No. 833523, and
 Notary Public of the State of South Carolina, at
 the Law Offices of HAYNSWORTH, SINKLER BOYD,
 P.A., 134 Meeting Street, 3rd Floor, Charleston,
 South Carolina, on Wednesday, May 19, 2010 at
 1:41 p.m.

TERESA J. F. BAUTZ
 Certified Court Reporter
 2205 Ships Anchor Court
 Surfside Beach, SC 29575
 Phone/Fax: (843) 215-3836

1 Q Do you know if it was in the workup that
2 you looked at?

3 A I would have to see it, I don't recall.

4 Q All right. In your discussion with her
5 husband, did you talk about what her symptoms
6 were when she went off the medication?

7 A I believe so. I don't remember exactly
8 what he said.

9 Q You don't remember Mr. Murphy telling you
10 that she spends a lot?

11 A Not by my recollection, no, sir.

12 Q On page four --

13 A Yes, sir.

14 Q -- of your deposition exhibit, the bottom
15 it says, initial treatment plan, will start
16 three medications as prior to admission.

17 A Yes, sir.

18 Q Is that your decision?

19 A Yes, sir.

20 Q Did you talk to --

21 A Actually back up, back up. That was my
22 decision to continue with the plan. Dr. Jenkins
23 is the one who ordered the medications.

24 Q If we can go --

25 MR. SMYTH: Just for the

1 A Yes, sir.

2 Q Does that indicate that she received
3 lithium, a 600-milligram dose of lithium the
4 evening of her admission to the hospital?

5 A Yes, sir.

6 Q Do you know whose initials they are?

7 A No. That's a nurse's initials.

8 Q Okay. You indicated that Dr. Jenkins was
9 the one who prescribed this, that you got that
10 from looking at the chart?

11 A Yes, sir. Can I show you, or no?

12 Q Sure.

13 A Okay. These are admission orders that are
14 called in the day before Dr. Jenkins was on call
15 the night of -- the day she came in. And he's
16 the one who calls in the initial orders, those
17 medications, and he prescribed Prozac, Seroquel,
18 lithium and Tranxene.

19 Q Do you know if Dr. Jenkins actually saw
20 Tasha Murphy?

21 A He did -- I'm going to assume no, but I
22 can't speak for him.

23 Q You don't know for sure that he saw her?

24 A I don't know.

25 Q Who is Dr. Jenkins?

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.

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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

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

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.

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

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?

1           Q.       Have you talked to -- do you know  
2           Dr. Lopez or Dr. Fermo?

3           A.       No, I don't.

4           Q.       Let's talk a little bit about the  
5           evaluation that you did of Ms. Murphy in  
6           August of 2007. Explain to me what occurred  
7           in that two-hour meeting.

8           A.       Well, first of all, I'd already  
9           reviewed all of these records that you see  
10          here, and I went over her psychiatric  
11          history, I went over what she understood to  
12          have happened surrounding the allegations that  
13          she and her husband are making against the  
14          Palmetto Lowcountry facility. I went over  
15          her personal history, medical history, family  
16          history, her ability to comply with treatment  
17          and all of her psychiatric history surrounding  
18          that, what her psychiatric history was before  
19          this incident in 2002 and what her  
20          psychiatric history has been like since the  
21          incident in 2002.

22          Q.       What is your understanding of why  
23          you were asked to evaluate her? My  
24          understanding is that you're going to limit  
25          your opinions to what the standard of care is

1           for admitting and treating a patient like  
2           this, but what was the purpose of the  
3           evaluation?

4           A.       The purpose was to understand from  
5           her whether or not she suffered any perhaps  
6           unnecessary aftereffects from her treatment at  
7           the Palmetto Lowcountry facility primarily  
8           surrounding her lithium toxicity.

9           Q.       And do you have an opinion on that  
10          issue?

11          A.       Yes, I do.

12          Q.       What is your opinion?

13          A.       It appears -- well, it's a  
14          two-part opinion. The first part is, it  
15          appeared that the history gathered from the  
16          facility on her admission there while being  
17          admitted, it appeared to be emergently, failed  
18          to do a complete evaluation of her metabolic  
19          state. They knew that she was taking  
20          lithium. They also knew that she was  
21          confused, disoriented, suffered from thought  
22          blocking, essentially was an unreliable  
23          historian. However, they restarted her, or  
24          they thought they restarted her on lithium to  
25          help stabilize her bipolar mood disorder and

1 she developed lithium toxicity which was not  
2 even checked until it was, apparently, her  
3 date of discharge some six days later.  
4 However, she had already developed the  
5 toxicity and due to the other medications  
6 that she was also prescribed, to include  
7 Tranxene and Tenormin for anxiety and headache  
8 respectfully, some of those symptoms of  
9 lithium toxicity were further masked.

10 The second issue is that since  
11 this time, she has found it very difficult to  
12 even seek psychiatric treatment. She has, at  
13 least in August of 2007, held onto her  
14 relationship with Dr. Robbins, who is her  
15 outpatient psychiatrist, but yet even with him  
16 she and her husband both state that she's  
17 very reluctant to reveal any difficulties,  
18 from a psychiatric perspective, changes in  
19 mood. She is, I think fair to say, deathly  
20 fearful of reporting any decompensation in her  
21 mental status for fear that she will be  
22 admitted again to a psychiatric facility as  
23 an inpatient.

24 And the treatment which she reports  
25 was frightening, difficult to remember;

1           however, what she does remember was  
2           horrifying. My concern on that issue is that  
3           she will be very reluctant to be honest with  
4           treatment and therefore she will not be  
5           compliant with treatment or recommendations in  
6           treatment because of the incident.

7           Q.       Are there any other opinions that  
8           you've formulated based on your review of the  
9           medical records and your evaluation of Ms.  
10          Murphy?

11          A.       I think those are the basic ones.

12          Q.       Have you reviewed any medical  
13          records in this stack in front of us that  
14          supports the contention that she is reluctant  
15          to either seek psychiatric care or follow the  
16          recommendations of her psychiatric care  
17          providers? Is there anything in these  
18          documents that supports that?

19          A.       No.

20          Q.       That's all based on her subjective  
21          comments to you during the evaluation?

22          A.       Yes, and her husband's.

23          Q.       And her husband's. Okay. Did you  
24          find Ms. Murphy to be truthful during your  
25          evaluation?

1 previous hospitalizations. She was very  
2 suicidal in previous ones with a clear, solid  
3 plan of how to kill herself with her  
4 husband's service revolver. I didn't get the  
5 impression that -- from the summaries that I  
6 read from Palmetto Lowcountry that she was  
7 quite that clear. In fact, they argued to  
8 the contrary, that she was quite disoriented  
9 and confused, and so -- they also thought she  
10 was suicidal, they also thought she overdosed  
11 on medication, and they also thought that her  
12 mood was unstable. So she could have been  
13 all those things. She may have said all those  
14 things.

15 Q. Did you find any instances in your  
16 review of the medical records where Ms.  
17 Murphy gave false or misleading information to  
18 her care providers?

19 A. I didn't notice that anywhere.

20 Q. In terms of her diagnosis, it's my  
21 understanding she carries a diagnosis of  
22 bipolar -- is it mood disorder, or how would  
23 you describe it?

24 A. Well, it's -- she has a bipolar  
25 disorder. She has what used to be called a

1 manic depressive disorder. She has at least  
2 a mania and she also has a very severe  
3 depression. And I covered both of those  
4 polarities with her and she met the criteria  
5 for both of those polarities, and it was  
6 consistent with what had been reported in  
7 previous psychiatric documents.

8 Q. And those are conditions that she's  
9 had since her late 20s?

10 A. That's correct.

11 Q. In your opinion, are those  
12 conditions that she's going to have for the  
13 rest of her life?

14 A. Yes.

15 Q. She's going to require treatment  
16 for those -- both of those problems for the  
17 rest of her life?

18 A. That's correct.

19 Q. When you say she met the criteria  
20 for the bipolar disorder, what specific  
21 criteria did you note that she met?

22 A. Okay. For mania that would be  
23 needless -- no need for sleep, hypervigilance,  
24 hyperactive, hyperenergetic, exercises poor  
25 judgment, very impulsive, often euphoric, can

1           be irritable, reckless in their behavior.  
2           For the depressive it would be very  
3           melancholic, actively suicidal with a clear  
4           plan and intent, difficulties with sleep, poor  
5           appetite, loss of energy, just to name a few.

6           Q.           And I think you told me that as  
7           far as patients that carry these diagnoses  
8           go, Tasha Murphy's case is severe?

9           A.           Yes. I would say she has a  
10          severe case that is difficult to treat.

11          Q.           Is lithium a medication that's  
12          widely used to treat these disorders?

13          A.           Yes, it is.

14          Q.           Is it prescribed for depression and  
15          mania, or one or the other?

16          A.           It's primarily for mania. In  
17          order to be diagnosed with bipolar disorder  
18          you must have at least a period of mania.  
19          And it is considered a mood stabilizer.

20          Q.           Are there certain side effects  
21          associated with the use of -- long-term use  
22          of lithium?

23          A.           Yes, there are.

24          Q.           What are those?

25          A.           Tremulousness.

1           Q.       Which is suffering tremors or  
2 shaking?

3           A.       Yes.   Usually of the upper  
4 extremities. That's where it's most easy to  
5 recognize. It could be nausea. It could be  
6 polydipsia, which means very thirsty and  
7 drinks a lot of water, and therefore  
8 polyuria, where they're often having to go to  
9 the bathroom. There could be mental status  
10 changes, feelings of anxiety, gastrointestinal  
11 problems.

12          Q.       What kinds of gastrointestinal  
13 problems?

14          A.       Cramping, sickness to the stomach,  
15 nausea. Those types of things. Those are  
16 perhaps the most common.

17          Q.       Do you believe that it was  
18 appropriate to have Ms. Murphy on lithium?

19          A.       She appeared to respond to it in  
20 the past. Lithium is a very toxic medication  
21 that needs to be monitored closely. It was  
22 perhaps one of the first mood stabilizers  
23 found in the field of psychiatry and it's  
24 proven to be quite beneficial in people with  
25 bipolar disorder, and she appeared to have

1           responded to it appropriately in the past.

2           Q.       By my reading of the records, she  
3           had been on it since 1996. Is that  
4           consistent with your understanding?

5           A.       I don't recall how long she'd been  
6           on it. She'd been on it, I believe, with  
7           Dr. Robbins, and I believe she started seeing  
8           him around 1997. I'm going by memory there,  
9           but -- so it would be about the same amount  
10          of time, I believe.

11          Q.       In any event, she'd been on it  
12          approximately six years at the time of this  
13          incident, give or take?

14          A.       A number of years. I believe so,  
15          yeah.

16          Q.       And the dosage that she was on was  
17          predominantly 1,200 milligrams a day?

18          A.       Yes.

19          Q.       How would you characterize that  
20          dosage? Is that a --

21          A.       That's an average dose.

22          Q.       An average dose. Would you expect  
23          somebody who'd been on 1,200 milligrams a day  
24          for six years to start exhibiting some of the  
25          side effects from the long-term use of

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

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

1           it.

2           Q.       Explain that to me.

3           A.       This woman was foreign to this  
4           facility. Most likely -- I didn't see  
5           anywhere in there that they had any records.  
6           They didn't mention that, having any records,  
7           and the Roper facility that saw her on the  
8           26th also said there were no records. So  
9           this woman was foreign on this admission.  
10          They described her as disoriented, confused,  
11          thought blocking, which actually is a symptom  
12          of psychotic illness, and it appeared that  
13          they relied on her history all the same that  
14          she had given, that she had stopped taking  
15          her medications and had been noncompliant and  
16          that she'd been noncompliant in the past.  
17          I'm sure it wasn't presented exactly like I  
18          just presented it, but she was in a  
19          disoriented and confused state. I believe  
20          those were terms they used. And I believe  
21          by the following day, which would have been  
22          the 20th of November 2002, she was started on  
23          600 milligrams twice a day of lithium.

24                   Where I take issue is that I would  
25          not have relied on this woman's history

1           knowing that lithium -- and I have not used  
2           lithium with patients for several years  
3           because of this. Knowing how toxic lithium  
4           can be and what a delicate medication it is,  
5           even without knowing her history of toxicity  
6           in the past, that I would be very wary of  
7           even relying on her history and that I would  
8           check to see if she had any lithium in her  
9           system at all. I believe that was  
10          considered, but it was written in a fashion,  
11          I believe, on November 20th to be drawn on  
12          the 25th of November, and I can't explain the  
13          thinking behind that at all.

14                Regardless, she proceeded with the  
15          medication, and it may have been increased to  
16          600/1,200. I can't remember exactly. But  
17          anyway, she continued on the lithium regimen.  
18          And also, I believe, she had some complaints  
19          of anxiety and some headache. She was still  
20          not a participant in any of the treatment  
21          that they offered her, meaning an interactive  
22          participant. Her anxiety, I believe, was  
23          treated with a benzodiazapine called Tranxene  
24          and her headaches were treated with an  
25          antihypertensive medicine called Tenormin.

1           Those are very common medications for the  
2           treatment of those particular ailments.  
3           However, it may have been some of the early  
4           symptoms of toxicity that was being treated  
5           with those medications and not just pure  
6           anxiety and not just a routine headache.

7           Q.       Let me stop you there for a  
8           second.

9           A.       Sure.

10          Q.       You said may have been. Do you  
11          hold an opinion to a reasonable degree of  
12          medical certainty as to whether or not she  
13          was really having anxiety or headaches  
14          independent of the lithium toxicity or whether  
15          those symptoms were, in fact, due to  
16          toxicity?

17          A.       Actually, I believe I gained that  
18          from the doctor's order where you have to say  
19          what the Tenormin was for and it says  
20          headaches. You're not supposed to give it  
21          unless they have a headache or a complaint of  
22          headache, and that's how she got it.

23          Q.       I guess my question was really  
24          directed towards the cause of those headaches.  
25          Are you able to say to a reasonable degree

1 know. I have no idea whether or not she --  
2 she did not know if she had actually really  
3 taken any lithium. That's what she had told  
4 me, she had not known whether or not she had  
5 really taken it. She knew that by report,  
6 like her husband was sitting right there and  
7 said that she had stopped taking her lithium,  
8 according to her.

9 Q. Well, you've got the benefit of  
10 looking at this thing in hindsight now. Do  
11 you have an opinion as to whether she had  
12 been taking lithium and, in fact, gave the  
13 doctors misleading information, whether  
14 intentional or unintentional?

15 A. I would have to say more yes, and  
16 the reason for that is because the rest of  
17 her laboratory values looked like she was  
18 pretty healthy, meaning renal function, for  
19 example, and thyroid function appeared to be  
20 healthy. And the renal function would have  
21 disposed of the lithium so she probably came  
22 in with lithium onboard and more was added.  
23 Now, whether she intentionally overdosed on  
24 lithium before she came in, I have no idea.  
25 If she had overdosed on lithium, either

1 things that she had going on physically in  
2 terms of her infection that she had and was  
3 being treated for? Do you think that had  
4 anything to do with the lithium levels in  
5 this case?

6 A. Oh. The urinary tract infection?

7 Q. Right.

8 A. I don't know that that would have  
9 anything to do with the case. It doesn't --  
10 I mean it's -- I know what a urinary tract  
11 infection is and I know some treatments for  
12 it and use of antibiotics, which it sounds  
13 like they gave the right ones, the ones that  
14 I've given in the past, but I don't know  
15 what that would have to do with the lithium  
16 level.

17 Q. What other explanations are there  
18 for her becoming toxic other than coming in  
19 the facility with lithium onboard already?

20 A. Well, if I'd noticed on her  
21 admission labs that her kidney function was  
22 significantly impaired, I would expect them  
23 not to give her lithium based on that because  
24 she wouldn't have been able to excrete it.  
25 As I recall, it was fine.

1           that she was dehydrated and I don't know if  
2           they -- I know somebody wrote that down  
3           because I read it, but you always have to  
4           give them something to drink. And when I've  
5           had patients that do that, I measure their  
6           looping level a little bit more frequently  
7           because they may be diluting it and washing  
8           it out.

9           Q.       If she's dehydrated, could that  
10          explain kind of the false high that we were  
11          talking about earlier in the reading?

12          A.       It could. It could, but I -- I  
13          wouldn't know a hundred percent on that. I  
14          would have to ask a toxicologist on that.

15          Q.       And as I understand it, she went  
16          from Palmetto to Roper Hospital and received  
17          treatment there for a period of several days?

18          A.       She was transferred, I believe, in  
19          the middle of the morning. It's not clear  
20          from the records when she was transferred. I  
21          may have had a hard time reading it, but I  
22          believe she left in the middle of -- like  
23          the wee hours of the morning, after midnight,  
24          but the dates and the times on the doctor's  
25          orders in the Palmetto record often don't

1           have times. They just have dates. There's  
2           supposed to be a time underneath those, so  
3           I'm not exactly sure when she was discharged  
4           to St. Francis Roper on the 26th. I believe  
5           she got in there maybe after midnight. It's  
6           hard for me to tell.

7           Q.       And what's the treatment that's  
8           used to reverse the toxic effects of lithium?

9           A.       Well, they'll give them a saline  
10          bolus. They're going to try to rehydrate  
11          somebody. Often if they're not sure if --  
12          how it was taken, they may even use activated  
13          charcoal, which is an absorption device, to  
14          absorb toxins that have been ingested orally.  
15          If it's a point of 5.0 lithium level, they  
16          will -- that's, I believe, the cutoff where  
17          you need to go for hemodialysis, which is  
18          what people use in kidney failure, in order  
19          to cleanse the blood because that's a serious  
20          toxic dose of lithium.

21          Q.       And in terms of the treatment that  
22          Ms. Murphy received, how would you  
23          characterize that?

24          A.       She received all those things  
25          except for the hemodialysis, but it was

1           entertained at Roper.

2           Q.       Do you believe the physicians at  
3           Roper were successful in returning her back  
4           to a normal hydrated state?

5           A.       Yes.   And they did serial lithium  
6           checks to make sure the lithium level was  
7           coming down, and it was.

8           Q.       Does the fact that it came down  
9           pretty quickly have an effect on your  
10          opinions in this case?

11          A.       Well, I assume by looking at her  
12          lab function that her renal system was still  
13          intact, and that would indicate that it  
14          appears to at least be functioning.

15          Q.       Is it generally true that an acute  
16          lithium toxicity does not involve or result  
17          in any permanent damage?

18          A.       Oh, certainly.   It doesn't -- one  
19          does not equal the other.

20          Q.       In this particular case, do you  
21          believe or plan to offer any opinions as to  
22          whether Ms. Murphy suffered any physical  
23          damage beyond her hospitalization to reverse  
24          the effects of the lithium?

25          A.       No, I'm not offering any opinion

1           on that.

2           Q.       So in terms of how this incident  
3           may have affected her, your only opinion is  
4           there's a possibility she may be more  
5           reluctant to seek additional psychiatric care?

6           A.       Yes. She's already a revolving  
7           door patient. That actually predates the  
8           Palmetto admission. Bipolar disorder is  
9           typically a relapsing illness, meaning that  
10          it's cyclic, it keeps coming back. It's not  
11          one where, Boy, I'm glad I got over that.  
12          It always has to be monitored. It always  
13          has to be, I would say, 99 percent of the  
14          time medically, meaning medicinally, treated,  
15          and the levels, if they're on medications  
16          that require levels like lithium, they have  
17          to be monitored closely. In her case --  
18          historically they have to be monitored very  
19          closely if on lithium, and in her case, she  
20          needs to be able to have an alliance with a  
21          psychiatrist who can intervene early so she  
22          doesn't decompensate to a point of where she  
23          could be harmful to herself or others. My  
24          concern is that she's going to be less likely  
25          to do that.

1           Q.       But at this point, we don't have  
2 any evidence to that effect?

3           A.       I don't know of any. That is  
4 correct. That's actually from her perspective  
5 to me.

6           Q.       Understood. You've had the  
7 opportunity to read Dr. Robbins' records since  
8 this incident, so from 2002 to 2007, a period  
9 of four and a half to five years. Do you  
10 believe that she received appropriate care  
11 during that time period?

12          A.       Yes. She was not restarted on  
13 lithium, which I think was absolutely correct.  
14 She had actually also been managed in the  
15 past, before the Palmetto hospitalization, with  
16 ECT, and that was restarted as well, and  
17 that's also an appropriate -- I've done a lot  
18 of ECT in the 1990s, and that is also an  
19 appropriate treatment for people who have had  
20 difficulty with major mood or psychotic  
21 illness.

22          Q.       And that's the electroshock  
23 therapy?

24          A.       Electroconvulsive therapy. That's  
25 correct.

1           appropriate for outpatient. Stable meaning  
2           she was on maintenance management. Now, I  
3           don't know if she'll ever be on -- what I  
4           would call a maintenance patient, meaning that  
5           she's essentially stabilized and doesn't have  
6           fluctuations in mood. I would say she still  
7           has bouts of depression that are significant.  
8           I mean, that's one reason why they wanted to  
9           keep going with the ECT, both elevation as  
10          well as depressed moods. So her being  
11          totally stabilized, no. I have very  
12          stabilized bipolar patients and she's nothing  
13          like them.

14           Q.       Maybe my question was poorly worded  
15           or the choice of words was wrong. Would you  
16           say that the reason you don't classify her as  
17           stable is due to the severity of her disease?

18           A.       Yeah, I guess that's why I would  
19           say that.

20           Q.       And I guess what I intended to ask  
21           you is, is she back to baseline, where she  
22           was before this incident?

23           A.       Well, she's -- when she saw me in  
24           August she was more reclusive. She was  
25           having more of the neurovegetative symptoms of

1           depression. She didn't call them depression,  
2           but she wouldn't come out of her house much.  
3           She's not socializing much anymore. She's  
4           more withdrawn, not very conversive. I spent  
5           a while with her. Usually I can get a lot  
6           of history in just a half hour or 45  
7           minutes. I could have gone on for hours  
8           trying to help her become more comfortable.  
9           Which I would imagine Dr. Robbins has done  
10          over years now, but me being new to her, I  
11          think there's a whole lot of things that she  
12          won't talk about. That's part of my concern  
13          in terms of some of the repercussions of her  
14          experience at Palmetto. But do I feel that  
15          she's got it all out and she's on cruise  
16          control now? No, not even close. I doubt  
17          if she ever will be somebody like that.

18                Q.       And I didn't mean that she wasn't  
19               suffering from the disease anymore. I just  
20               meant back to baseline where she was before  
21               the incident. It's my understanding that she's  
22               had a lot of these same things that you're  
23               talking about now before this hospitalization  
24               in November of 2002. And I know it's kind  
25               of an up and down --

1           A.       That's true.

2           Q.       -- pattern with these patients.

3           Is she back to where she was before this  
4           hospitalization, I guess, is what I'm asking.

5           A.       Well, according to her and her  
6           husband, she's not as social as she used to  
7           be before. She used to be better  
8           functioning. Maybe that's what you're asking,  
9           is what's her functioning like now. Her  
10          activities of daily living are now suboptimal  
11          to what she was before she went in. She  
12          doesn't come out now. Again, in August.  
13          After that I don't know. But she was more  
14          -- she was more shut in now, and that was  
15          part of my concern, that she would not go  
16          back to treatment, and definitely not go back  
17          for hospitalization. Which might not be an  
18          unusual thing in her -- and her illness is  
19          recurrent or what I call revolving door  
20          hospitalizations because that's not unusual in  
21          some severe cases. But now, she is -- her  
22          activities of daily living, when I saw her,  
23          were more impaired than before she had gone  
24          in, when she was more stable.

25          Q.       Based on what the Murphys have

1           Q.       But it's not reflected that she's  
2           ever said that to her physician, correct?

3           A.       No.   That's just what she's told  
4           me.

5           Q.       Did she understand what your role  
6           was in this case, that you were going to be  
7           a testifying expert for her in the lawsuit?

8           A.       Yeah, I think she understood what  
9           I was trying to evaluate in her case.  
10          Whether or not I was going to testify or  
11          even do this deposition, I never discussed  
12          that with her.

13          Q.       I want to make sure I'm clear  
14          because I'm not sure I completely understand.  
15          As far as the cause of her desire to be more  
16          shut in, are you able to say to a reasonable  
17          degree of medical certainty whether it was  
18          due to this incident versus a progression or  
19          a natural evolution of her depressive  
20          disorder?

21          A.       Well, I'm going to say it's a  
22          combination of both.   Depression -- you're  
23          right. It does have elements of reclusiveness,  
24          asocial behavior, but also there's an  
25          identifiable factor that she, in her state of

1 mind, in August of 2007, has identified that  
2 I'm afraid to actually go to my doctor to  
3 tell him -- and this is the one that she  
4 likes -- that I'm actually doing poorly  
5 because I'm afraid he's going to admit me.  
6 And yes, I think that that does have  
7 something to do with the Palmetto incident  
8 because she directly relates it to that.

9 Q. Is that a paranoia of sorts?

10 A. No. It's fact.

11 Q. I mean, her fear of going back to  
12 see a physician or open up to a physician,  
13 you wouldn't classify that as that a  
14 paranoia?

15 A. Paranoia really would be a  
16 psychotic -- not based in fact or reality.  
17 She had an uncomfortable experience somewhere  
18 based on a decompensation in her mental  
19 condition and she doesn't want to repeat it.

20 Q. Right. But she's never had an  
21 uncomfortable experience with Dr. Robbins, that  
22 you're aware of, has she?

23 A. Not that I'm aware of, no.

24 Q. So there's no reason for her to be  
25 scared to go back to see him or open up and

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

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

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

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

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

1           whether or not there's lithium in someone's  
2           system. If they had measured the lithium on  
3           day one and, let's say, it was zero, as I  
4           stated earlier, starting her on a lithium  
5           regimen would be very appropriate.

6                       And I would have done -- as they  
7           would have suggested in their records, then I  
8           would have waited four to five days and found  
9           out what the level is before I dispositioned  
10          the person to make sure that they were at a  
11          steady state and they were at a therapeutic  
12          level. The thing is, though, they did not  
13          do that. And it didn't appear -- and I  
14          believe I'm being fair about this, is that  
15          she also didn't seem to be tuning up mentally  
16          very well while she was there. She remained  
17          reclusive, not a participant is what a lot of  
18          the notes said, that she was not very  
19          forthcoming and -- although she would say,  
20          I'm not hallucinating, I'm not suicidal, and  
21          all those kinds of things, which are the  
22          right things to say if you want to get out,  
23          it appeared that she still was not doing well  
24          because she was shaky when she was going out  
25          the door, which sounded like it was

1           definitely the lithium definitely causing her  
2           problems. And so that was never picked up  
3           until the last minute on discharge, and that  
4           is not the standard of care that you should  
5           have in terms of lithium. You don't find  
6           out what the lithium level is for the first  
7           time when you're sending them out the door.

8           Q.       Do you agree it's possible that  
9           even if you had checked the lithium level on  
10          admission that she still could have become  
11          toxic during the hospitalization?

12          A.       Oh, I'm sure there's a possibility.  
13          I mean, let's say her kidneys shut down.  
14          That would have made her toxic. But I  
15          looked at the Roper -- now, they didn't know  
16          that because they didn't do any labs in that  
17          area on her way out. Roper did, and her  
18          kidney function was fine.

19          Q.       In the situations where you said  
20          it was okay not to check the lithium level,  
21          that is if you knew the patient well, if  
22          they were coming from another facility or if  
23          they were coherent, do you believe it's  
24          permissible and complies with the standard of  
25          care to start them back on their pre-incident

1 dosage of lithium?

2 A. I actually start them off on a  
3 starting dose of lithium. I don't just start  
4 them off on a therapeutic -- dose of lithium  
5 which might be therapeutic.

6 Q. I understand what your personal  
7 practice is, but is it within accepted  
8 standards in your field to start them back on  
9 their normal dose?

10 A. No. You would start them back up  
11 like I do, yeah, because it takes a body a  
12 while to get used to that level of lithium  
13 and you can have a lot of side effects in  
14 the patients. They'll quit their medicine  
15 when they have those side effects. And so you  
16 would start them off the way -- my practice  
17 is based on not only experience but also what  
18 I've been told is the safest way to do it  
19 and administer lithium, and that would be to  
20 start out slow. Especially if they're new to  
21 lithium, again.

22 Q. But if they've been on it for six  
23 years, does that matter?

24 A. No. Once that's out of their body  
25 -- you could drink a case a day and be an

1           A.       Now, here are the two -- and I'm  
2           not a handwriting expert so I can't tell you,  
3           but here are the two orders that are -- both  
4           are untimed. Well, if that one's a time, I  
5           can't tell what it is, but here's 11/20/02 in  
6           the doctor's orders, and it says: Check --  
7           and for some reason they crossed that out  
8           like that -- lithium on 11/25, Monday.  
9           Whatever that is.

10                  And then the next time I see  
11           anything about lithium is on the 25th, and  
12           that says: Lithium level. I don't know why  
13           they wrote it twice. And there's no time on  
14           that one either. I can see an LPN took off  
15           the order, but I don't know whose -- I  
16           didn't compare signatures. I didn't feel  
17           that's what I was supposed to be doing.

18           Q.       Okay.

19           A.       So whoever those people are.

20           Q.       Give me just a second. I think  
21           I'm done.

22                  (Off-the-record conference.)

23           BY MR. SMYTH:

24           Q.       When, in your mind, did Ms. Murphy  
25           first exhibit symptoms of being toxic?

1           A.       Well, from looking at her whole  
2           hospital course, again, as a Monday morning  
3           quarterback, she looked like she could have  
4           been toxic the entire time. I would have  
5           bet drug -- drug intoxication, whether it be  
6           lithium or any other types of drug of abuse,  
7           for a patient I don't know anything about  
8           should have been in the differential.

9           Q.       And you base the fact -- or that  
10          opinion that she could have been toxic the  
11          whole time on what symptoms?

12          A.       Her presentation of severe mental  
13          status changes that were pretty consistent  
14          with what little she could recall, what her  
15          husband could recall and what other people  
16          had seen at the Palmetto facility.

17          Q.       Do you know who the on-call  
18          physician was?

19          A.       For the weekend?

20          Q.       No. Who originally took the  
21          admission call for Ms. Murphy.

22          A.       Oh. No, I do not know that.

23          Q.       I think those are all my  
24          questions. Do you have or could we get a  
25          copy of your report and attach it as an

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) : NINTH JUDICIAL CIRCUIT  
) Case No. 05-CP-10-4734

TASHA MURPHY and STEVEN MURPHY, )  
) Plaintiffs, ) DEPOSITION OF:  
) -vs- ) TASHA LYNN MURPHY  
) PALMETTO LOWCOUNTRY BEHAVIORAL )  
) HEALTH, LLC, RICARDO J. FERMO, )  
) M.D. and STEVEN G. LOPEZ, M.D., )  
) Defendants. )

COPY

Given before G. Michael Alexander, Notary  
Public and Registered Professional Reporter, at the law  
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Plantation Drive, Suite 1, Bluffton, South Carolina, on  
Friday, November 10, 2006, commencing at 11:08 o'clock,  
a.m.

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1 sitting here today; is that correct?

2 A I take one of the Ativan in the morning time.

3 Q Okay. Do these medications affect your ability  
4 to give your deposition today?

5 A No..

6 Q Okay. Do any of these medications affect your  
7 memory?

8 A No.

9 Q Do any of them affect your ability to  
10 understand my questions and give me truthful answers to  
11 my questions, to the best of your ability?

12 A No.

13 Q Have you had an opportunity to meet with your  
14 counsel before your deposition today?

15 A Yes.

16 Q Is there any reason, that you can think of,  
17 that today is not a good day for you to give your  
18 deposition?

19 A No.

20 Q Okay. Could you please state your full name  
21 for the record.

22 A Tasha Lynn Murphy.

23 Q And, Ms. Murphy, what's your date of birth?

24 A 11/19/67.

25 Q And where were you born?

1 Q Okay. How often did your husband come visit  
2 you?

3 A Every couple of days.

4 Q Okay. When he came every couple of days, how  
5 long would he stay?

6 A I don't remember.

7 Q Where did you visit with him? Was there a  
8 visiting room or a conference room?

9 A It was just open, in that open area.

10 Q And did he sit and talk to you?

11 A Yes.

12 Q When was the last time that he came to visit  
13 before you were transferred from the facility on November  
14 25th?

15 A I don't remember.

16 Q Okay. Do you remember anything about being  
17 transferred from Palmetto to St. Francis?

18 A I remember taking the ambulance.

19 Q Okay. Were you conscious in the ambulance,  
20 were you awake and talking?

21 A Yes.

22 Q Did you talk to the ambulance drivers and the  
23 EMTs?

24 A As far as I remember.

25 Q Okay. Did you voice any concerns to the staff

1 Q Do you remember or do you have any knowledge,  
2 as we sit here today, of any of your physicians making  
3 any criticisms of Palmetto Behavioral Health?

4 A Not that I remember.

5 Q Okay. Meaning no physicians ever told you they  
6 did anything wrong or that they caused your lithium  
7 overdose.

8 A No.

9 Q Okay. What are your criticisms of Palmetto  
10 Behavioral Health?

11 A I just think that they should of did a blood  
12 test, when I first come into the hospital, instead of  
13 waiting.

14 Q Okay. Anything else?

15 A That's it.

16 Q Talk to me about your stay at St. Francis. How  
17 long were you admitted into St. Francis after you left  
18 Palmetto Behavioral Health? How long did you stay there?

19 A As far as I remember, a couple of weeks.

20 Q And what kinds of treatments did you get while  
21 you were there?

22 A I don't remember.

23 Q Do you have any ongoing problems today from  
24 what you believe was a lithium overdose when you were at  
25 Palmetto Behavioral Health?

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1 A Yes, sir.

2 Q You testified earlier that you had never  
3 attempted suicide.

4 A No, sir.

5 Q Have you ever taken an overdose of any sort  
6 with any medications?

7 A No, sir.

8 Q In other words, even if it wasn't necessarily  
9 an attempt at suicide, have you ever taken more than what  
10 was prescribed for any reason?

11 A No, sir.

12 Q You made some reference in your earlier  
13 testimony to memory problems.

14 A Yes, sir.

15 Q Can you elaborate on that.

16 A I have memory loss from the ECT.

17 Q Is it short-term or long-term memory?

18 A Short-term.

19 Q Okay. And you know the difference between  
20 that?

21 A Yes, sir.

22 Q Can you describe for me, then, an example of  
23 short-term memory loss.

24 A Uh, forgetting simple things, like on how to  
25 get here today, even though I've been here I don't know

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1 how many times. Forget things when I go to the grocery  
2 store.

3 Q Okay. And getting here, would that be  
4 forgetting where, in other words you were forgetting  
5 where you were going and why you were going there?

6 A No. I remembered why I was coming here, but I  
7 didn't remember how to get here.

8 Q Okay. And forgetting things at the grocery  
9 store is another example. Can you think of any others?  
10 As far as your long-term memory --

11 A It had some effects on my long-term memory, as  
12 far as my kids bringing up things that happened in the  
13 past and I don't remember them.

14 Q That may just be a trick that kids play. Can  
15 you remember your wedding to your husband?

16 A Yes.

17 Q And events and things like that, you remember  
18 those fine.

19 A Major events.

20 Q Okay. Have you ever had that memory condition  
21 assessed?

22 A No.

23 Q Since you moved here from Tennessee, you  
24 described a couple of those jobs, dermatologists, and so  
25 forth. The longest-duration job you ever had, was that

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1 A No, sir.

2 Q To your knowledge was the store profitable?

3 A I'm not sure.

4 Q Okay. You said you didn't get anything when  
5 the store was sold.

6 A No, sir.

7 Q Why did you sell the store in 2004?

8 A Because I was unable to run the store, and  
9 Steve had a job already, and it was hard for him to do  
10 both.

11 Q Okay. What is it about your condition right  
12 now that prevents you from working?

13 A The ECT that I go to every four weeks affects  
14 my memory.

15 Q That's what I was going to ask you. Is it the  
16 fact that you have to go to the appointments regularly or  
17 the side effects of the memory loss?

18 A The side effects of the memory loss.

19 Q So other than that you don't have anything that  
20 would prevent you from working.

21 A No, sir.

22 Q You were also asked a question about prior  
23 arrests. I saw a note in Dr. Robbins' chart that seemed  
24 to indicate that you were charged with selling something  
25 at the convenience store to underaged kids, either

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
R. Markley Dennis Jr., Circuit Court Judge

---

Civil Action No. 2008-CP-10-07380  
Appellate Case No. 2012-212771

---

Tasha Murphy and Steven Murphy .....Appellants

v.

Palmetto Lowcountry Behavioral Health,  
LLC; and Steven G. Lopez, M.D. ....Defendants

Of whom Steven G. Lopez, M.D. is ..... Respondent

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CERTIFICATE OF COUNSEL

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I certify that the Record on Appeal contains all material proposed to  
be included by any of the parties and not any other material.

[SIGNATURE PAGE FOLLOWS]

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August 8, 2013  
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
R. Markley Dennis Jr., Circuit Court Judge

---

Civil Action No. 2008-CP-10-07380  
Appellate Case No. 2012-212771

---

Tasha Murphy and Steven Murphy,..... Appellants,

v.

Palmetto Lowcountry Behavioral Health,  
LLC; and Steven G. Lopez, M.D.,.....Defendants,

Of whom Steven G. Lopez, M.D., is.....Respondent.

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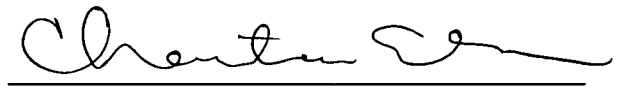
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I certify that I am a legal assistant at Griffith, Sadler & Sharp, P.A.,  
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