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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Maite Murphy, Circuit Court Judge

Appellate Case No. 2024-000443
Case No. 2021-CP-38-1138

Se'Anne Davis (Personal Representative for the
Estate of Adrienne Branton) Respondent,

v.

The Regional Medical Center of Orangeburg and Calhoun Counties, ... Appellant.

RECORD ON APPEAL – VOLUME I
(pp. 1-540)

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INDEX

Volume I

Order Denying Defendant’s Motion for JNOV, Granting Defendant’s Motion for Remittitur and Set-Offs, and Partially Granting Plaintiff’s Motion for Costs and Offer of Judgment Interest, filed February 16, 2024	1
Verdict Form, filed October 17, 2023	14
Complaint, filed September 27, 2021.....	16
Answer of the Regional Medical Center; the Regional Medical Center of Orangeburg and Calhoun; RMC Behavioral Health; and Bryan West, MD, filed November 2, 2021.....	41
Plaintiff’s Offer of Judgment, filed August 15, 2023	48
Plaintiff’s Pre-Trial Brief, dated September 27, 2023	50
Defendant the Regional Medical Center’s Motion in Limine, filed October 8, 2023.....	64
Notice of Motion and Motion for JNOV or Judgment as a Matter of Law or, in the Alternative for a New Trial Absolute or, in the Alternative, for Remittitur of Verdict Pursuant to Tort Claims Act and for Set-Off of Amounts Paid by Settling Parties, filed October 23, 2023.....	72
Plaintiff’s Motion for Costs and Interest, filed October 23, 2023	92
Plaintiff’s Response in Opposition to Defendant’s Motion for JNOV/New Trial/Remittitur or Set-Off, filed November 2, 2023	97
Trial Transcript, October 9-13, 2023.....	133
Opening Statement by Moore	144
Opening Statement by Mr. Tanner	166
Andrew Hayes	
Direct Examination by Mr. Williams.....	190
Cross-Examination by Mr. Tanner.....	207
Redirect Examination by Mr. Williams	233

Steven Burkholz, M.D.

Direct Examination by Mr. Moore	240
Cross-Examination by Mr. Tanner	275
Redirect Examination by Mr. Moore	286

Alberto Gonzalez, M.D.

Direct Examination by Mr. Williams	287
Voir Dire Examination by Mr. Tanner	304
Continued Direct Examination by Mr. Williams	306
Cross-Examination by Mr. Tanner	325
Redirect Examination by Mr. Williams	344

Estelle Hutchinson

Direct Examination by Mr. Tanner	355
Cross-Examination by Mr. Goings	406
Redirect Examination by Mr. Tanner	431

David Husted, M.D.

Direct Examination by Mr. Evans	445
Cross-Examination by Mr. Tanner	499
Redirect Examination by Mr. Evans	513

Kelly Rose, M.D.

Direct Examination by Mr. Moore	516
Voir Dire Examination by Mr. Tanner	517
Continued Direct Examination by Mr. Moore	518
Cross-Examination by Mr. Tanner	534
Redirect Examination by Mr. Moore	539

Volume II

Se'Anne Davis

Direct Examination by Mr. Goings	540
Cross-Examination by Mr. Tanner	572
Redirect Examination by Mr. Goings	598

Adrianna Walls

Direct Examination by Mr. Goings	603
Cross-Examination by Mr. Ersoy	608

Video testimony of Bryan West, M.D.	622

Tony Hartwell

Direct Examination by Mr. Tanner	626
Cross-Examination by Mr. Williams	634
Redirect Examination by Mr. Tanner	636

Brenda Williams

Direct Examination by Mr. Tanner	638
Cross-Examination by Mr. Goings	661
Redirect Examination by Mr. Tanner	666

Susan Hardesty, M.D.

Direct Examination by Mr. Tanner	672
Cross-Examination by Mr. Williams	725
Redirect Examination by Mr. Tanner	795

Charging of the Jury	814

Verdict	835

Plaintiff’s Trial Exhibit #1: Note of Dr. Bryan West.....	839
Plaintiff’s Trial Exhibit #2: ER Documentation	844
Plaintiff’s Trial Exhibit #3: Note of Dr. Gonzalez.....	858
Plaintiff’s Trial Exhibit #4: Probate Court Documents	862
Plaintiff’s Trial Exhibit #5: Treatment Note	868
Plaintiff’s Trial Exhibit #6: TRMC Medical Records	869
Plaintiff’s Trial Exhibit #7: Death Certificate	971
Plaintiff’s Trial Exhibit #8: Orangeburg County Sheriff’s Office’s File.....	972
Plaintiff’s Trial Exhibit #10: Orangeburg County Sheriff’s Office’s CAD Report	979
Plaintiff’s Trial Exhibit #12: Calhoun County EMS Run Report (2 pages).....	990
Plaintiff’s Trial Exhibit #13: Calhoun County EMS Run Report (5 pages).....	992
Deposition of David S. Husted, M.D., M.S.	997

Volume III

Deposition of Susan Hardesty, M.D.....	1054
Exhibit 1: Deposition Notice	1147
Exhibit 2: October 2, 2023 Letter from Michael Tanner.....	1154
Exhibit 3: Case List.....	1158
Exhibit 4: Regulation 61-84.....	1161
Exhibit 5: October 2, 2019 TRMC Medical Record	1177
Deposition of Dr. Bryan West, M.D.	1187
Defendants’ Exhibit 1: TRMC Medical Records, Bates TRMC001 through TRMC100.....	1331
Defendants’ Exhibit 2: Patient Information, Bates TRMC001	1431
Plaintiff’s Exhibit 1: Dr. West Consultation Notes, Bates TRMC060 through TRMC064.....	1432

Plaintiff's Exhibit 2: ER Documentation, Bates TRMC001 through TRMC014	1437
Plaintiff's Exhibit 3: Dr. Gonzalez Progress Note, Bates TRMC064 through TRMC067.....	1451
Plaintiff's Exhibit 4: Probate Court Documents, Bates TRMC071 through TRMC076.....	1455
Plaintiff's Exhibit 5: Treatments/Procedures Forms, Bates TRMC091.....	1461
Plaintiff's Exhibit 6: TRMC Medical Records.....	1462
Email from David Williams to Judge Murphy, dated September 28, 2023	1564
Certificate of Counsel	
Certificate of Compliance	
Certificate of Service	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO.: 2021-CP-38-01138
	)	
Se'Anne Davis (Personal Representative	)	
for the Estate of Adrienne Branton),	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR JNOV; GRANTING
v.	)	DEFENDANT'S MOTION FOR
	)	REMITTITUR AND SET-OFFS; AND
The Regional Medical Center of	)	PARTIALLY GRANTING PLAINTIFF'S
Orangeburg and Calhoun Counties,	)	MOTION FOR COSTS AND OFFER OF
	)	JUDGMENT INTEREST
Defendant.	)	

This matter is before the Court for consideration of Defendant the Regional Medical Center of Orangeburg and Calhoun Counties' (TRMC) Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Remittitur of Verdict and Set-Off, and for consideration of Plaintiff Se'Anne S. Davis, as Personal Representative of the Estate of Adrienne T. Branton's Motion for Costs and Interest. After careful review of the filings submitted by all parties and the relevant law, the Court rules as follows:

I. Defendant's Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute

a. Occurrences

As this Court noted during trial, Plaintiff pled multiple occurrences at Paragraph 10 of her Complaint and in subsection (a) of Plaintiff's prayer for relief of her Complaint. In addition, Plaintiff's Complaint incorporates a sworn expert affidavit by reference which clearly sets forth the evidentiary basis for a finding of multiple occurrences. TRMC did not argue or present any evidence that it was surprised or prejudiced by Plaintiff presenting multiple occurrences at trial,

since these facts were revealed throughout discovery in this case. TRMC is not able to set forth any South Carolina case to support its proposition that actions involving evidence of multiple occurrences call for heightened or specific pleading requirements beyond those required of Rule 8(a), SCRCP. Even if there were such a requirement, Rule 15(b), SCRCP, provides that pleadings may be amended at any time to conform to the evidence, but “failure so to amend does not affect the result of the trial of these issues.” Defendant was given notice of the evidentiary support Plaintiff intended to offer into evidence at the time Defendant was initially served with the Complaint and attached affidavit of expert Dr. David Husted. At trial, Dr. Husted set forth a specific evidentiary basis from which the jury could find up to four separate occurrences, and the jury properly made a finding of two separate occurrences based on the evidence before it. The expert testimony introduced by Defendant’s expert witness, Dr. Susan Hardesty, highlighted “systematic failures” throughout the TRMC system, as well as separate discharge errors committed by TRMC.

Defendant’s assertion that Plaintiff had a burden to show that “a different ‘loss’ arose from each of the multiple occurrences claims during trial” is directly contrary to the South Carolina Supreme Court’s ruling in Boiter v. South Carolina Department of Transportation.¹ The Boiter Court indicated that multiple occurrences can combine to cause a single injury, and that it is up to the finder-of-fact to determine whether the acts of negligence were separate or were part of the same unfolding sequence of events.²

The South Carolina Supreme Court held in Boiter that “the circuit court erred in tying the number of occurrences to the number of injuries sustained by the [plaintiffs].”³ The Boiter Court

¹ Boiter v. S.C. Dep’t of Transp., 393 S.C. 123, 712 S.E.2s 401 (2011).

² Id. at 133–34, 712 S.E.2d at 406.

³ Id. at 134, 712 S.E.2d at 406.

further explained there was “no indication that the [defendants’] actions combined to form a single act of negligence.”⁴ In this case, after being instructed on the definition of occurrence, the jury affirmatively answered special interrogatories specifically identifying two occurrences of negligence. The evidence before the jury clearly supported its finding that separate and distinct acts of negligence combined to cause Mrs. Branton’s death.

TRMC’s argument as to the verdict form is unavailing. Plaintiff requested the jury be provided with a line on which to write in the number of occurrences. In response, TRMC specifically asked that the verdict form be fashioned in the format that was ultimately provided to the jury. With the input of both parties, this Court drafted language which would allow the jury to make a finding of up to three separate occurrences which allegedly combined to cause the death of Adrienne Branton based upon the specific evidence presented at trial. The special interrogatories properly summarized the evidence of record, and the jury made a specific finding that two independent acts of negligence combined to cause the death of Adrienne Branton.

The verdict form was clear and unambiguous, and the jury charges provided sufficient instruction and guidance as to their duties. Defendant TRMC correctly notes that it is Plaintiff’s burden to prove separate “occurrences,” and Plaintiff met that burden at trial by providing a record of separate and distinct acts and omissions which combined to cause Mrs. Branton’s death. As noted above, TRMC’s own expert provided evidence of two distinct acts of negligence on cross examination.

Defendant’s final position, as it relates to the issue of multiple occurrences, asks this Court to weigh issues of material fact that were in dispute at the trial of this matter. While the jury was free to conclude that Mrs. Branton’s death was not proximately caused by any negligent act of the

⁴ Id.

Defendant, or was proximately caused by only one single act negligence by the Defendant, the jury, after being charged on the law of occurrences, weighed the evidence and determined that Mrs. Branton's death was proximately caused by two separate and distinct acts of negligence. The South Carolina Tort Claims Act (Tort Claims Act) defines an "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence."⁵ An occurrence is something that flows from "a *single* act of negligence" and not something that flows from a combination of multiple acts of negligence.⁶ The jury found two separate and distinct occurrences of negligence, as was permissible based upon the record before the jury.

The South Carolina Supreme Court has held that state entities can be subject to *multiple* caps under the Tort Claims Act, even in situations in which independent acts of negligence result in a *single injury*.⁷ In Boiter, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight.⁸ The Supreme Court reversed the trial court's finding that each separate act of negligence claimed by the Plaintiffs was "part of the *same 'unfolding sequence of events'* that resulted in the Boiters' damages."⁹ Instead, the Court held "that two independent and separate acts of negligence occurred here."¹⁰ In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained.¹¹

While Boiter involved allegations against two separate governmental entities, the Boiter Court discussed a prior South Carolina case involving allegations of multiple occurrences against

⁵ S.C. Code Ann. § 15-78-30(g).

⁶ Id. (emphasis added).

⁷ See Boiter, 393 S.C. at 134, 712 S.E.2d at 406.

⁸ Id. at 126, 712 S.E.2d at 402.

⁹ Id. at 133, 712 S.E.2d at 406 (emphasis added).

¹⁰ Id. at 134, 712 S.E.2d at 406.

¹¹ Id.

a *single* entity.¹² The Supreme Court’s decision in Chastain v. AnMed Health Foundation has been widely cited over the last 12 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and be required to make a finding of fact in cases involving evidence of multiple, distinct acts of negligence.¹³ In Chastain, the plaintiffs had filed claims against several nurses and their employer, Defendant AnMed Health Foundation, which was protected under the South Carolina Solicitation of Charitable Funds Act (Charitable Funds Act) pursuant to S.C. Code Ann. § 33-56-180(A).¹⁴ The Charitable Funds Act incorporates the Tort Claims Act damages caps and “occurrence” definition for non-governmental, charitable medical facilities.¹⁵ The jury found Defendant AnMed liable for the negligent acts of its nurses.¹⁶ On appeal, the Supreme Court discussed the issue of occurrences in the context of multiple, distinct acts of negligence within a single charitable entity.¹⁷ The Chastain Court held that a finding of multiple occurrences must be clearly indicated on the jury form, and after the jury is properly instructed on the definition of “occurrence.”¹⁸

The Boiter Court also briefly mentioned Williamson v. South Carolina Insurance Reserve Fund, a case in which the plaintiffs alleged independent acts of negligence by representatives of a single governmental entity resulting in a single injury.¹⁹ In Williamson, the circuit court made a specific finding that, by establishing the minor child’s injury was caused by two independent acts of negligence by two separate physicians employed by a *single* governmental defendant, the

¹² Id. at 132–33, 712 S.E.2d at 406.

¹³ Chastain v. AnMed Health Found., 388 S.C. 170, 694 S.E.2d 541 (2010).

¹⁴ Id. at 172, 694 S.E.2d at 542.

¹⁵ Id. at 172–73, 694 S.E.2d at 542–43 (quoting S.C. Code Ann. § 33-56-180(A)).

¹⁶ Id. at 172, 694 S.E.2d at 542.

¹⁷ Id. at 173–74, 694 S.E.2d at 543–44.

¹⁸ Id. at 174, 694 S.E.2d at 543–44.

¹⁹ Boiter, 393 S.C. at 132 n.2, 712 S.E.2d at 406 n.2 (citing Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 586 S.E.2d 115 (2003)).

plaintiffs “had established two separate ‘occurrences’ for purposes of the TCA.”²⁰ The South Carolina Supreme Court declined to address the circuit court’s finding on appeal.²¹

More recently, United States District Judge Cameron McGowan Currie noted in a trial court order:

The South Carolina Supreme Court has held in Chastain that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence.²²

In 2014, the Honorable R. Markley Dennis, Jr. similarly held:

Our Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff’s claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment.²³

This Court properly held that the evidence presented at trial required the issue of occurrences be submitted to the jury, and the submission was made by way of special interrogatories on the verdict form. At the specific request of TRMC, the special interrogatories summarized the alleged occurrences rather than inviting the jury to simply write out the number of occurrences proven. As such, there is no basis for this Court to overturn the jury’s factual finding that two separate and distinct occurrences resulted in the injuries to the Plaintiff.

The jury was properly charged as to the elements of negligence, the burden of proof to show negligence, and the definition of occurrence under the Tort Claims Act. At the request of

²⁰ Williamson, 355 S.C. at 423, 586 S.E.2d at 116.

²¹ Id. at 426, 586 S.E.2d at 118.

²² Knox v. United States, No. 0:17-cv-36-CMC, 2018 WL 3241931, at *6 (D.S.C. July 3, 2018) (citing Chastain, 388 S.C. at 174, 694 S.E.2d at 543–44).

²³ Doe 2 v. The Citadel, No. 2012CP1001858, 2014 WL 8727884, at *30 (S.C. Com. Pl. Dec. 9, 2014) (citing Chastain, 388 S.C. at 174, 694 S.C.2d at 543).

TRMC, detailed special interrogatories were included on the verdict form in lieu of a simplified verdict form which would have allowed the jury to write in the number of separate occurrences. The jury heard the evidence and made a specific finding, based on the evidence and the definition of occurrence as defined by the General Assembly, of two occurrences.

Finally, the South Carolina Court of Appeals has recently affirmed a verdict in which “the jury found two occurrences of gross negligence” by the Horry County School District.²⁴ The independent acts both took place over the course of the same football game and combined to cause a single brain injury to a student athlete.²⁵ Thus, the contention that the holding in Boiter is only applicable to cases filed against multiple state entities has already been rejected by the Court of Appeals. In June 2023, the South Carolina Court of Appeals affirmed the trial court’s 2022 decision to allow the issue of occurrences to go to the jury, and confirmed that multiple occurrences could be returned against a single state entity when multiple acts of negligence committed by the same state entity combined to form a single injury.²⁶ In August of 2023, the Court of Appeals denied the defendant’s request for a rehearing.

Based on established precedent of this State, the Court will not grant TRMC’s motion based on charging the jury on “occurrences” and presenting these questions on the jury form, and the Court finds that sufficient evidence was presented to the jury to support its finding of multiple occurrences in this case.

b. Photos and Video Were Properly Admitted into Evidence

This Court finds the photographs admitted into evidence were not overly graphic. On instructions from the Court, the Plaintiff culled a select few photographs from the dozens of

²⁴ Wood v. Horry Cnty. Sch. Dist., No. 2021-000535, 2023 WL 4105395, at *1 (Ct. App. June 21, 2023).

²⁵ Pls.’ Compl. ¶ 6–9 (filed Oct. 11, 2017); Verdict Form (filed May 13, 2021).

²⁶ Wood, at *1.

photographs produced by both parties in discovery to offer into evidence. The photographs that were selected were not overly prejudicial but instead depicted the scene of Mrs. Branton's death without focusing on the graphic details of her death.

Further, the video of Mrs. Branton's grandson speaking at her funeral does not constitute hearsay as it was not offered for the truth of the matter asserted. "[A] statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay."²⁷

The brief video played for the jury depicted a grandson recalling memories of his grandmother's love of preparing food and finding a way to visit with family and friends despite the fact that she never had a driver's license. The video was introduced simply to provide some context as to the daily life of Mrs. Branton when her mental health condition was at its baseline, and to show the strong affection her family had for her. It was not introduced as proof that she enjoyed cooking and visiting family members. None of these facts were in dispute, and TRMC was not prejudiced by its inability to cross-examine O'Maury Davis—who had died unexpectedly prior to the start of trial—about these undisputed facts.

c. Defendant is Not Entitled to a New Trial Based Upon the Thirteenth Juror Doctrine

Defendant is not entitled to a new trial based upon the thirteenth juror doctrine. "South Carolina's thirteenth juror doctrine allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict."²⁸ "As the 'thirteenth juror,' the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict."²⁹

²⁷ Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC, 413 S.C. 58, 69, 773 S.E.2d 607, 613 (Ct. App. 2015) (quoting R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000)).

²⁸ First S. Bank v. S. Causeway, LLC, 414 S.C. 434, 452, 778 S.E.2d 493, 502 (Ct. App. 2015) (quoting Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct. App. 2004)).

²⁹ Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (citing Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)).

The record contains an abundance of evidence that TRMC acted with both negligence and gross negligence on multiple, separate occurrences. When combined with the evidence presented to the jury in the Plaintiff's case and chief, the evidence of separate occurrences of negligence by TRMC is overwhelming. As such, the unanimous verdict of the jury should not be disturbed.

d. The Jury's Verdict was Not Excessive

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice."³⁰ The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.³¹ In other words, to warrant a new trial absolute, the verdict reached must be so "grossly excessive" as to clearly indicate the influence of an improper motive on the jury.³²

This case involved the allegedly preventable and painful death of a woman who was denied an additional 17 years of life, according to the South Carolina life expectancy tables. Defendant TRMC did not present any suggested damages amount to the jury or respond to Plaintiff's damages model, despite the opportunity to do so at trial. Further, Defendant failed to offer any objection to the arguments made by Plaintiff's counsel as to suggested damages ranges. Based upon the evidence of record before the jury, the Court does not find that the damages awarded were excessive.

³⁰ Allstate Ins. Co. v. Durham, 314 S.C. 529, 530–31, 431 S.E.2d 557, 558 (1993) (citing Easler v. Hejaz Temple, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985)).

³¹ Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App.1996).

³² Rush v. Blanchard, 310 S.C. 375, 379–80, 426 S.E.2d 802, 805 (1993) (citing Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 76 S.E.2d 301 (1953)).

Having considered the filings of the parties in connection with the relevant law, Defendant's Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute is hereby **DENIED**.

II. Defendant's Motion for Remittitur and Set-Off

Defendant's Motions for Remittitur and Set-Off Amounts are **GRANTED**. The set-off amounts are to be assessed prior to imposing the statutory cap.³³

Two settlements were reached prior to the present case. Combined, those resulted in \$75,000.00 towards Plaintiff's Survival Claim and \$75,000.00 towards Plaintiff's Wrongful Death Claim. Applying those set-offs to the jury's verdict, the Survival Claim Verdict is thus reduced from \$4,000,000.00 to \$3,925,000.00, and the Wrongful Death Claim is reduced from \$1,000,000.00 to \$925,000.00. The total amount after set-offs is \$4,850,000.00.

Based on the jury's finding of two occurrences, the damages are to be capped at \$2,400,000.00.³⁴ Using the process laid out in Smalls,³⁵ the Court finds the \$925,000.00 Wrongful Death Claim award does not exceed the statutory cap and is therefore undisturbed. The Survival Claim, however, is reduced to \$1,475,000.00. Therefore, after set-offs and the Tort Claims Act cap, the Plaintiff is awarded \$2,400,000.00 in damages.

III. Plaintiff's Motion for Costs and Interest

Plaintiff's Motion for Costs and Interest is **PARTIALLY GRANTED**. As conceded by the Defendant, Plaintiff is entitled to costs pursuant to Rule 54(e), SCRCP, in the amount of

³³ Smalls v. S.C. Dep't of Educ., 339 S.C. 208, 222, 528 S.E.2d 682, 689 (Ct. App. 2000).

³⁴ S.C. Code Ann. § 15-78-120(a)(3), (4).

³⁵ Smalls, 339 S.C. at 222, 528 S.E.2d at 689.

\$2,434.41. The motion as to these costs is **GRANTED**.

The court costs under Rule 68(b), SCRCP, being strictly construed, do not permit recovery for witness fees, deposition transcripts, or travel and accommodation.³⁶ As such, Plaintiff's request for costs under Rule 68(b) is **DENIED**.

The eight-percent offer-of-judgment interest is distinct from prejudgment interest and thus is not barred by the Tort Claims Act.³⁷ The eight-percent interest is to be assessed on the final \$2,400,000.00 award and not on the jury's original \$5,000,000.00 verdict.³⁸ Furthermore, the eight-percent interest is to be assessed only "from the date of the offer to the entry of judgment."³⁹ In this case, the offer of judgment was made August 15, 2023, and the judgment was rendered on October 13, 2023, for a period of 59 days. Thus, the total offer-of-judgment interest is \$31,035.62.00. Plaintiff's motion for offer-of-judgment interest in this amount is **GRANTED**.

The applicable costs and interest together equal \$33,470.03, and are to be awarded in addition to the verdict of \$2,400,000.00.⁴⁰ This holding is in tune with the plain language and intent behind Rule 68, SCRCP, and § 15-35-400(B), which exist to encourage settlement and reduce unnecessary litigation efforts.⁴¹

IT IS SO ORDERED.

The Honorable Maité Murphy
South Carolina Circuit Court Judge

February __, 2024
Orangeburg, South Carolina

³⁶ Black v. Roche Biomedical Lab'ys, 315 S.C. 223, 230, 433 S.E.2d 21, 25 (Ct. App. 1993) (citing Steinert v. Lanter, 284 S.C. 65, 66, 325 S.E.2d 532, 533 (1985)).

³⁷ Garrison v. Target Corp., 435 S.C. 566, 587, 869 S.E.2d 797, 809 (2022).

³⁸ O'Shields v. Columbia Auto., LLC, 435 S.C. 319, 344, 867 S.E.2d 446, 459–60 (Ct. App. 2021).

³⁹ Rule 68(b)(2), SCRCP.

⁴⁰ See Oliver v. SC Dep't of Highways & Transp., 309 S.C. 313, 320, 422 S.E.2d 128, 132 (1992).

⁴¹ See Black, 315 S.C. at 227, 433 S.E.2d at 24.



Orangeburg Common Pleas

Case Caption: Se'Anne Davis VS Orangeburg County, South Carolina , defendant,
et al
Case Number: 2021CP3801138
Type: Order/JNOV

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2024-02-15 11:34:11 page 13 of 13

ELECTRONICALLY FILED - 2024 Feb 16 11:33 AM - ORANGEBURG - COMMON PLEAS - CASE#2021CP3801138

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL ACTION 2021-CP-38-01138

SE'ANNE S. DAVIS, As Personal
Representative of the ESTATE OF
ADRIANNE T. BRANTON, Deceased,

Plaintiff,

v.

THE REGIONAL MEDICAL CENTER
OF ORANGEBURG AND CALHOUN,

Defendant.

FILED FOR RECORD
WINNIEA B. CLARK
2023 OCT 17 A 8:40
CLERK OF COURT
ORANGEBURG, SOUTH CAROLINA
VERDICT FORM

You are instructed to answer the following questions. The foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

Please check one of the two options below:

1. ☒ We, the Jury, find in favor of Plaintiff.

OR

☐ We, the Jury, find in favor of Defendant.

If you find unanimously for Defendant, you have completed your deliberations. If you answer Question No. 1 in favor of Plaintiff, also answer the following questions:

2. For the survival claim, list the amount of damages you find for any conscious pain, agony, sorrow, mental anguish, and emotional distress suffered by Adrienne Branton as a result of the Defendant's negligence:

\$ 4 million \$ 4,000,000.00

3. For the wrongful death claim, list the amount of damages you find for any grief, shock, sorrow, wounded feelings, loss of Adrienne Branton's companionship and society suffered by the beneficiary as a result of her death:

\$ 1 million \$ 1,000,000.00

4. Having been charged on the law of occurrences, we, the jury, unanimously find as follows:

a. That the Defendant breached the standard of care by failing to stabilize Adrienne Branton, who was actively psychotic.

Answer:

☒ YES

☐ NO

b. That the Defendant breached the standard of care by failing to admit Adrienne Branton to the Behavioral Health Unit.

Answer:

☐ YES
☒ NO

c. That the Defendant breached the standard of care by discharging Adrienne Branton to an environment unequipped to handle her medical needs.

Answer:

☒ YES
☐ NO

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form below:

10/13/2003

DATE

Quia Phann

FOREPERSON

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL ACTION 2021-CP-38-_____

SE'ANNE S. DAVIS, As Personal)
Representative of the ESTATE OF)
ADRIANNE T. BRANTON, Deceased,)

Plaintiff,)

v.)

ORANGEBURG COUNTY, SOUTH)
CAROLINA; ORANGEBURG COUNTY)
SHERIFF'S OFFICE; REGIONAL)
MEDICAL CENTER; THE REGIONAL)
MEDICAL CENTER OF ORANGEBURG)
AND CALHOUN; RMC BEHAVIORAL)
HEALTH; and BRYAN WEST, MD;)

Defendants.)

COMPLAINT
(Jury trial requested)

The Plaintiff, Se'Anne S. Davis, as Personal Representative of the Estate of Adrienne T. Branton, complaining of the Defendants herein named would respectfully show unto this Honorable Court and allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff, Se'Anne S. Davis, is a citizen and resident of the County of Richland, South Carolina. Se'Anne S. Davis is the daughter and duly appointed Personal Representative of the Estate of Adrienne T. Branton, having been so appointed by the Orangeburg County Probate Court.
2. This suit is filed on behalf of the heirs of Adrienne T. Branton, to include her two children, Se'Anne S. Davis and Herman Branton.
3. The Defendant, Orangeburg County, South Carolina (hereinafter referred to as "Orangeburg County"), is a political subdivision of the State of South Carolina, existing under

the laws of the State of South Carolina (as defined by Section 15-78-10 of the Code of Laws of South Carolina (1985), as amended). At all times hereinafter mentioned in this Complaint, this Defendant operated and controlled Orangeburg County dispatch, Orangeburg County Sheriff's Office, and Orangeburg County EMS, and acted and carried on its business by and through its agents, servants, and/or employees who were operating within the scope of their officially assigned and/or compensated duties.

4. The Defendant, Orangeburg County Sheriff's Office is a political subdivision of the State of South Carolina, existing under the laws of the State of South Carolina (as defined by Section 15-78-10 of the Code of Laws of South Carolina (1985), as amended). At all times hereinafter mentioned in this Complaint, this Defendant acted and carried on its business by and through its agents, servants, and/or employees who were operating within the scope of their officially assigned and/or compensated duties.

5. Defendant Regional Medical Center is a hospital doing business in the State of South Carolina. At all times mentioned herein, this Defendant was acting by and through its agents, servants, and/or employees, including but not limited to Bryan West, MD and RMC Behavioral Health, and had a doctor-patient relationship with the decedent, Adrienne T. Branton. Additionally, Regional Medical Center is liable for the acts and omissions of its agents, contractors and employees under the theories of agency, respondeat superior, and non-delegable duty.

6. Defendant The Regional Medical Center of Orangeburg and Calhoun is a medical center doing business in the State of South Carolina. At all times mentioned herein, this Defendant was acting by and through its agents, servants, and/or employees, including but not limited to Bryan West, MD and had a doctor-patient relationship with the decedent, Adrienne T. Branton. Additionally, The Regional Medical Center of Orangeburg and Calhoun is liable for the acts and

omissions of its agents, contractors, and employees under the theories of agency, respondeat superior, and non-delegable duty.

7. Defendant RMC Behavioral Health Center is a South Carolina company providing psychiatric services within the Regional Medical Center and/or The Regional Medical Center of Orangeburg and Calhoun. Upon information and belief, Defendant Bryan West, MD is an employee and/or member/shareholder of RMC Behavioral Health Center and/or Regional Medical Center and/or The Regional Medical Center of Orangeburg and Calhoun and had a doctor-patient relationship with the Plaintiff's decedent.

8. Upon information and belief, Defendant Brian West, MD is a citizen and resident of the State of South Carolina. At all times mentioned in this lawsuit, Defendant West was acting as an agent, contractor, or employee of the Defendants and was acting within the scope of his employment as a psychiatrist. Additionally, at all times mentioned herein, a doctor/patient relationship existed between Defendant West and the Decedent.

9. Plaintiff is informed and believes that at present it has not been established whether the pre-litigation filing requirements of the Medical Malpractice Reform Act of 2005 are applicable to cases involving governmental entities. However, since the incident giving rise to this cause of action occurred after the effective date of the act, the Plaintiff herein is both filing this Summons and Complaint against the Defendants, while also complying with the pre-lawsuit procedural requirements as to all Defendants provided for by the act, including those provided for in §15-79-120, 15-70-100 and 15-36-100 of the 1976 South Carolina Code of Laws. Should the Defendants concede or stipulate (or should it be determined) that the pre-lawsuit procedural requirements are applicable to the causes of action alleged in this case, the Plaintiff concedes that the case should continue pursuant to the Notice of Intent and the applicable provisions of the Medical Malpractice

Reform Act of 2005. Additionally, if one or all of the Defendants concede that the Medical Malpractice Reform Act of 2005 does not apply to them as governmental entities or otherwise, then the Plaintiff will agree to dismiss its Notice of Intent to sue (filed simultaneously herewith) and proceed with this action under the instant complaint. Additionally, as required by the Act, the Plaintiff has attached, and incorporates by reference, the affidavit of medical expert David S. Husted, MD, MS, as Exhibit 1.

10. The Plaintiff is informed and believes that venue is proper in Orangeburg County as the actions and/or occurrences giving rise to this action took place within Orangeburg County.

FACTS

11. Adrienne T. Branton was a 69-year-old woman who was born and raised in South Carolina. She has a longstanding history of severe mental illness, including Schizophrenia and a neurocognitive disorder, and had required multiple hospitalizations and treatment with multiple antipsychotics.

12. In August and September 2019, Ms. Branton was non-compliant with medication and decompensated, with resultant hallucinations, delusions, agitation, irritability, mood lability, impulsivity, poor sleep, decreased self-care, and wandering. Her caregivers and peers were concerned by her behavior and sought emergency medical attention, and she was hospitalized at Three Rivers Behavioral Health in August 2019 and at the Mary Black Campus of Spartanburg Medical Center in September 2019.

13. On October 1, 2019, Ms. Branton was discharged from Spartanburg Medical Center to the care of Estelle Hutchinson, the owner and operator of iKare Boarding House.

14. Unfortunately, after discharge from Spartanburg Medical Center, Ms. Branton remained delusional, was hallucinating, did not sleep that night, was agitated, was impulsive, refused medication, wandered away from the home, and had poor insight and judgment. As a result, Mrs.

Hutchinson sought emergency medical attention on October 2, 2019, by requesting that she be transported to The Regional Medical Center in Orangeburg, South Carolina via ambulance.

15. Upon information and belief, while in the Emergency Department, Ms. Branton received an injection of Haloperidol (an antipsychotic) and Lorazepam (an anxiolytic-sedative) and the attending physician, Steven Burkholz, filed an emergency petition for involuntary admission and ordered a psychiatric consultation. A psychiatrist, Alberto Gonzalez, M.D., evaluated Ms. Branton and opined that she required admission to the Behavioral Health Unit for stabilization.

16. Notwithstanding, several hours later a different psychiatrist, Bryan West, M.D., evaluated Ms. Branton and deemed her stable for discharge and reversed the petition for involuntary admission. Dr. West attributed her complaints to Klonopin, and advised discontinuation of this medication, made no other changes to her care, and discharged Ms. Branton back to her boarding home.

17. Upon information and belief, Ms. Branton's caregiver, Estelle Hutchinson, was contacted and expressed concern about the discharge and reported that Ms. Branton may "act out" in the immediate future. Hutchinson was advised to bring Ms. Branton back to the hospital if she was concerned about any subsequent behavior.

18. Upon discharge from The Regional Medical Center, Ms. Branton remained unstable and with poor insight and judgment. Thereafter, Hutchinson transferred Ms. Branton from iKare Boarding House to Heavenly Living Boarding located at 167 Benthomp Road in Orangeburg, South Carolina.

19. While at Heavenly Living Boarding, Ms. Branton continued to be noncompliant. For example, she refused to come inside and insisted on remaining outside in the extreme heat, while wearing a heavy wool jacket. Thereafter, a call was made to Orangeburg County dispatch,

requesting an ambulance to transfer Ms. Branton back to The Regional Medical Center-Orangeburg for further evaluation and treatment.

20. As a result of the emergency call, Orangeburg County dispatched an Orangeburg County sheriff's deputy and ambulance to 167 Benthomp Road. Upon arriving at 167 Benthomp Road and determining that Ms. Branton had previously been examined by the medical staff at The Regional Medical Center, the Orangeburg County sheriff's deputy cancelled the Orangeburg County EMS dispatch despite the fact that Ms. Branton was exhibiting clear signs of distress.

21. Upon information and belief, Plaintiff is informed and believes that Heavenly Living Boarding (like iKare Boarding House) was not DHEC licensed or regulated in any fashion and was not capable of providing the higher level of care that Ms. Branton needed.

22. According to the Orangeburg County Sheriff's Office investigative file, Ms. Branton arrived at Heavenly Living Boarding at 167 Benthomp Road in Orangeburg, South Carolina on October 2, 2019. The investigative file does not mention that the Orangeburg County EMS had been dispatched and was thereafter canceled at the request of the Orangeburg County Sheriff's Office.

23. On October 3, 2019 at approximately 5:39 p.m., Orangeburg County Sheriff's Office was called by Brenda Williams, one of the owner/operators of Heavenly Living Boarding at 167 Benthomp Road, in reference to Ms. Branton being found unresponsive in a folding chair in the yard.

24. According to the incident report narrated by the Orangeburg County Sheriff's Office, Ms. Branton was found fully clothed and wearing a wool jacket. Given the high temperatures occurring on October 2, 2019 and October 3, 2019, Deputies suspected that Ms. Branton had suffered from heat stroke and dehydration.

25. According to the subsequent autopsy report, Ms. Branton's cause of death was "nonexertional hyperthermia with hypotonic dehydration" due to "prolonged exposure to environmental heat."

26. The Defendants had more than sufficient knowledge of Ms. Branton's condition, yet acted in blatant disregard for her safety and well-being. Further, the Defendants had actual and/or constructive knowledge of Ms. Branton's medical condition, and her need for appropriate medical treatment and care. As a direct and proximate result of Defendants' acts and omissions, the Plaintiff's decedent, Adrienne Branton, has incurred damages to include conscious pain, suffering and death.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS REGIONAL MEDICAL CENTER; THE REGIONAL MEDICAL CENTER OF ORANGEBURG AND CALHOUN; RMC BEHAVIORAL HEALTH; AND BRYAN WEST, MD
(Medical Negligence/Gross Negligence – Survival)

27. Each and every allegation of fact contained in the above stated paragraphs are re- alleged herein, as if re-stated verbatim.

28. The above referenced Defendants, as well as their agents, servants, and/or employees, owed the Plaintiff a duty to administer medical care with the degree of care and skill which is ordinarily employed by the profession generally, under similar conditions and in like surrounding circumstances.

29. Defendants breached this duty of due care to the Plaintiff in the following particulars:

- a. In failing to protect the Decedent from harm;
- b. In failing to exercise reasonable care to treat and stabilize the Decedent's mounting mental health emergency;
- c. By discharging the Decedent despite knowledge that she was psychiatrically unstable;

- d. In failing to exercise reasonable care to appropriately plan discharge due to insufficient knowledge of placement;
 - e. In failing to secure proper care for the Decedent, when the Defendants and/or their personnel, agents, and/or employees knew or should have known that she was in open and obvious distress;
 - f. In failing to provide reasonable, necessary, and appropriate supervision, care, and access to medical treatment to the Decedent;
 - g. In failing to monitor the Decedent and take the proper steps to provide assistance to her when they knew or should have known that he was unable to care for herself;
 - h. In failing to review or request past medical records and spoke to reliable historians regarding the Decedent's medical history;
 - i. In failing to properly treat and/or care for the Decedent;
 - j. In abandoning the Decedent when she was in desperate need of medical care; and
 - k. For any and all deviations set forth in the affidavit of medical expert David S. Husted, MD, MS, attached as Exhibit 1 and incorporated by reference.
30. The above acts of negligence and gross negligence and gross breaches of the proper standard of care caused the Decedent to suffer conscious pain and suffering, leading to her death. As such, the Plaintiff is entitled to ACTUAL, CONSEQUENTIAL, and PUNITIVE damages (where applicable) from the Defendants.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS REGIONAL MEDICAL CENTER; THE REGIONAL MEDICAL CENTER OF ORANGEBURG AND CALHOUN; RMC BEHAVIORAL HEALTH; AND BRYAN WEST, MD
(Medical Negligence/Gross Negligence – Wrongful Death)

31. The Plaintiff reiterates each and every allegation stated above as if repeated verbatim herein.
32. This action is brought for the wrongful death of Adrienne T. Branton, pursuant to the

provisions of § 15-51-10 *et seq.*, Code of Laws of South Carolina (1976, as amended), and is brought for the statutory heirs of Adrienne T. Branton, who was pronounced dead on the 3rd day of October, 2019.

33. The death of the Decedent was caused and occasioned by the negligent and grossly negligent acts on behalf of the Defendants as set forth above.

34. As a direct and proximate result of the grossly negligent acts, omissions, willful and wanton conduct of the Defendants, the deceased's family have been damaged and suffered as follows:

- a. Extreme mental shock and suffering;
- b. Extreme wounded feelings;
- c. Tremendous grief and sorrow;
- d. Loss of friendship and companionship;
- e. Loss of a relative; and
- f. Deprivation of the use and comfort of the deceased's society, knowledge, judgment and experience.

35. Based on the foregoing allegations, the Plaintiff is entitled to ACTUAL, CONSEQUENTIAL, and PUNITIVE damages (where applicable) from the above referenced Defendants to an amount to be determined by a jury in accordance with the law and evidence in this case.

**FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS ORANGEBURG
COUNTY, SOUTH CAROLINA AND ORANGEBURG COUNTY SHERIFF'S OFFICE**
(Negligence/Gross Negligence - Survival)

36. The Plaintiff reiterates each and every relevant allegation stated above as if repeated verbatim herein.

37. The Defendants undertook the duty to render care to Ms. Branton. The above referenced Defendants failed to act with reasonable or slight care and were thereby negligent, careless,

grossly negligent, and or reckless in one or more of the particulars:

- a. In failing to act with reasonable or slight care in undertaking to respond to a distress call involving the Plaintiff;
- b. In failing to secure proper care for the Decedent, when the Defendants and/or their personnel, agents, and/or employees knew or should have known that the Decedent was in open and obvious distress;
- c. In cancelling the notification of emergency medical personnel, despite knowledge of a potentially serious and/or life threatening medical condition;
- d. In failing to maintain and provide complete records;
- e. In disregarding the Decedent's complaints of distress;
- f. In failing to monitor the Decedent and take the proper steps to provide assistance to her when they knew or should have known that she was unable to care for herself;
- g. In failing to properly treat and/or care for the Decedent; and
- h. In such other particulars as may be ascertained through discovery or shown at trial.

38. The above acts of negligence and gross negligence and gross breaches of the proper standard of care (by and through the employees, agents, and/or servants of these Defendants) have caused the Decedent to suffer conscious pain and suffering, leading to her death.

39. As such, the Plaintiff is entitled to ACTUAL and CONSEQUENTIAL damages from Defendants Orangeburg County and Orangeburg County Sheriff's Office in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS ORANGEBURG COUNTY, SOUTH CAROLINA AND ORANGEBURG COUNTY SHERIFF'S OFFICE

(Negligence/Gross Negligence - Wrongful Death)

40. The Plaintiff reiterates each and every allegation stated above as if repeated verbatim herein.

41. This action is brought for the wrongful death of Adrienne T. Branton, pursuant to the provisions of § 15-51-10 *et seq.*, Code of Laws of South Carolina (1976, as amended), and is brought for the statutory heirs of Adrienne T. Branton, who was pronounced dead on the 3rd day of October, 2019.

42. The death of the Decedent was caused and occasioned by the negligent and grossly negligent acts on behalf of the Defendants as set forth above.

43. As a direct and proximate result of the grossly negligent acts, omissions, willful and wanton conduct of the Defendants, the deceased's family have been damaged and suffered as follows:

- a. Extreme mental shock and suffering;
- b. Extreme wounded feelings;
- c. Tremendous grief and sorrow;
- d. Loss of friendship and companionship;
- e. Loss of a relative; and
- f. Deprivation of the use and comfort of the deceased's society, knowledge, judgment and experience.

44. Based on the foregoing allegations, the Plaintiff is entitled to ACTUAL and CONSEQUENTIAL damages from the above referenced Defendants to an amount to be determined by a jury in accordance with the law and evidence in this case.

DEMAND FOR JURY TRIAL

WHEREFORE, the Plaintiff hereby requests a trial by jury on all of the issues that have been or may hereafter be raised in any of the pleadings. Plaintiff further seeks judgment against

Defendants for:

- a. actual and consequential damages as to each independent cause of action for each occurrence against the Defendants;
- b. punitive damages against the non-governmental defendants in on amount to be assessed by the jury as just and proper and in an amount sufficient to punish Defendants and to deter future misconduct;
- c. the costs and disbursements of this action; and
- d. such other and further relief as this Court deems just and proper.

EVANS MOORE, LLC

s/James B. Moore III

James B. Moore III, SC Bar # 74268

Scott C. Evans, SC Bar # 77684

121 Screven Street

Georgetown, SC 29440

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Fax: (877) 789-6340

Attorneys for the Plaintiff

September 27, 2021

Exhibit 1

PSYCHIATRIC REPORT

NAME OF DECEDENT: Adrianne Theodosia Branton

DATE OF BIRTH: May 31, 1950

DATE OF DEATH: October 3, 2019

AGE AT DEATH: 69 years-old

DATE OF REPORT: September 24, 2021

INTRODUCTION: Adrianne Branton was a 69-year-old black female with a longstanding history of severe mental illness, including Schizophrenia and a neurocognitive disorder, who had required multiple hospitalizations and treatment with multiple antipsychotics. In August and September 2019, Mrs. Branton was non-compliant with medication and decompensated, with resultant hallucinations, delusions, agitation, irritability, mood lability, impulsivity, poor sleep, decreased self-care and wandering. Her caregivers and peers were alarmed by her behavior and sought emergency medical attention and she was hospitalized at Three Rivers in August 2019 and Spartanburg in September 2019. On October 1, 2019, Mrs. Branton was discharged from Spartanburg to the care of Estelle Hutchinson and transported back to her boarding home. Unfortunately, she remained delusional, was hallucinating, did not sleep that night, was agitated and threatening to her fellow residents in the boarding home, was impulsive, refused medication, wandered away from the home, and had poor insight and judgment. As a result, Mrs. Hutchinson sought emergency medical attention on October 2, 2019, bringing her to The Regional Medical Center in Orangeburg, South Carolina. In the Emergency Department she received an injection of Haloperidol (an antipsychotic) and Lorazepam (an anxiolytic-sedative) and the attending physician, Steven Burkholz, filed an emergency petition for involuntary admission and ordered a psychiatric consultation. A psychiatrist, Alberto Gonzalez, M.D., evaluated Mrs. Branton and deemed her needing admission to the Behavioral Health Unit for stabilization. A few hours later, another psychiatrist, Bryan West, M.D., evaluated Mrs. Branton and deemed her stable for discharge and reversed the petition for involuntary admission. Dr. West attributed her complaints to Klonopin and advised discontinuation of this medication, made no other changes to her care, and advised Mrs. Branton be discharged back to her boarding home once medically cleared. Mrs. Branton remained unstable and with poor insight and judgment, refused Mrs. Hutchinson's attempts to take her to her outpatient psychiatric provider, sat outside in the heat wearing a wool coat, resisted boarding home staff's attempts to coax her inside, and was found pulseless later that day. The medical examiner determined her cause of death was accidental and a product of heat exhaustion with resultant marked dehydration and renal failure. I am asked by Scott Evans and James

Adrianne Branton Report

B. Moore, III, attorneys retained by Mrs. Branton's family, to review the records and opine on the actions of The Regional Medical Center staff to determine whether their assessment and treatment of Mrs. Branton deviated from the standard of care and, if so, what role this played, if any, in her demise.

CONFIDENTIALITY: The nature, purpose and non-confidential aspects of this report are clear to the plaintiffs and their attorneys. I have been asked to prepare a report and might be called upon to testify about my findings. It is clear my involvement constitutes solely a record review and expert testimony and, thus, a physician-patient relationship, including treatment, shall not exist.

SOURCES OF DATA:

1. Statement by Estelle Hutchinson, undated.
2. Spartanburg Medical Center-main campus records for Adrianne Branton, dated September 24 to October 1, 2019.
3. The Regional Medical Center records for Adrianne Branton, dated October 2, 2019.
4. Incident report by Officer S. Thompson, dated October 3, 2019.
5. Newberry Pathology report, signed by pathologist Kelly Rose, M.D., dated
6. Kaplan and Sadock's Synopsis of Psychiatry: Behavioral Sciences/Clinical Psychiatry, Eleventh Edition; BJ Sadock, VA Sadock and P. Ruiz; 2015.

BRIEF REVIEW OF COLLATERAL DATA:

Statement by Estelle Hutchinson:

On September 23, 2019, Mrs. Branton was in "I Kare boarding home" in Saint Matthew, South Carolina. She **refused to take her medication**, started acting up, **started arguments** with other patients in the boarding home, went out to the porch and sat there with her belongings and waited until 9 PM. She then **walked down the street and refused to come back**. She **tried to hit a male** on the street and he called the police. The police responded and she requested to go to Lexington Hospital, so they took her there.

Adrianne Branton Report

A social worker called from the hospital to get information. Ms. Hutchinson reported that she was refusing to take her medication, starting fights with other patients, walking down the street and refusing to come back. She was transferred to another hospital. That other hospital (Spartanburg) called asking if they would take her back and she said yes, if Mrs. Branton would take her medication and not act up. **Spartanburg Hospital reported she was "okay" and "ready to come back home"** and Ms. Hutchinson presumed she must "be feeling good." When she returned, she hugged Ms. Hutchinson and stated, "I miss you." Estelle made her go apologize to the man (Kenneth) that she was mean to and then put her to bed. **She repeatedly apologized for her behavior and stated, "I'm redeemed."** Estelle wasn't too concerned because she knew Mrs. Branton had an appointment the next morning at Orangeburg mental health. **Around 1 AM she got a call saying Mrs. Branton was in the house with no clothes on talking about "Will."** Estelle made it clear she could not be naked in the house as there were males residing there. Estelle **found it hard to reason with Mrs. Branton** about this man "Will" and ultimately had to have one of her male peers pretend that Will was on the phone stating he wanted nothing to do with her. **Mrs. Branton refused to go back to bed and stayed up the whole night, knocking on people's doors.** Ms. Hutchinson knew that she would return at 9 AM to take her to the doctor. At 8 AM she received a call stating Mrs. Branton was on the porch. **Mrs. Branton refused to come back inside, sat by the road, was speaking repeatedly about "Will," and would not respond to reasoning** with her about how nobody of that name existed in her life. Ms. Hutchinson **ultimately called the police** and they tried to reason with her, couldn't get her to take her medication and **ultimately took her to TRMC. Within three hours Ms. Hutchinson received a call stating they were sending her back. Initially Mrs. Branton refused to leave the ED with her and Ms. Hutchinson informed the nurse and eventually she complied. Mrs. Branton refused to come back to her boarding house and Ms. Hutchinson was finally forced to take her to her cousin's house. Ms. Hutchinson was convinced her grandson was coming to pick her up and would not respond to reasoning. She sat on the steps. Ms. Hutchinson called TRMC and they told her to call the police if she needed to. Mrs. Branton refused to go back in and started trying to get out of the gate and cursing at Ms. Hutchinson, telling her she was a bitch and crazy and the devil. She then started quoting the Bible stating, "any weapon formed against me shall not prosper."** She proceeded to state **"get the fuck on"** and finally a gentleman at the boarding home told Ms. Hutchinson to leave.

Adrianne Branton Report

Spartanburg Medical Center-main campus records for Adrianne Branton, dated September 24 to October 1, 2019:

She was referred to Spartanburg Hospital by the Lexington County ED on September 23, 2019. It was noted she was **noncompliant with medication, left the boarding home**. Had **schizophrenia, bipolar, dementia**, paranoid. Estelle Hutchinson spoke with Intake and stated she had been at her boarding home **since September 13 when she had been discharged from Three Rivers**. She asserted she would take her back post discharge. Admitted to the psychiatric unit September 24. Discharged October 1, 2019. She was noted to have schizophrenia. Treated by Sunil Bhatia MD. **Dr. Bhatia noted that she had unreliable information when she first presented because of poor cognition**. He noted emergency department notes from Lexington Medical Center **referenced a recent admission to Three Rivers in which she was diagnosed with dementia and schizophrenia**. He noted she presented to Spartanburg due to **acting out, wandering, and noncompliance with medication**. She was **harassing people and picking fights with residents and refusing to eat and sat out on the porch and would not come back** in the house. She had **poor insight** to why she was in the Mary Black Geropsychiatric unit. He documented **she presented "paranoid... very guarded so could not explore her paranoia and just defined her presenting complaints as feeling depressed."** She stated, "I'm here for a checkup." Mrs. Branton received a degree in early childhood education and worked for the environmental protection agency in Washington DC for one year. She then stopped working to raise her children. She stated her father was a lieutenant colonel in the US Army and she was born at Walter Reed Hospital. She received **Haldol 10 mg three times daily and Abilify lauroxil 882/3.2 mL monthly injection** at Columbia Area Mental Health Clinic. Dr. Bhatia noted she was hallucinating. She also was **depressed**. He deemed her to have **poor insight**. Her last Abilify injection was likely in April. He admitted her to the hospital and expected her length of stay to be 5 to 7 days. He started her again on Abilify long acting injectable and she received a 400 mg injection on September 24, 2019. She received her first dose of Abilify 5 mg on September 25, 2019. Nursing noted her long history of schizophrenia and she **was wandering from her boarding home, which she called her apartment, placing her in "potential danger."** She was bright and happy with nursing and guarded with the social worker. Nursing reported noncompliance with some meds and paranoia on September 26. Over the next few days nursing and Dr. Bhatia noted she was improving and compliant with care and medication. On September 28 she

Adrianne Branton Report

refused her morning medication including Abilify 10 mg. Dr. Bhatia told her she needed to take oral Abilify for 2-4 weeks before Abilify LAI took effect. On September 30 she **was paranoid and claimed she had heard high heels walking around the unit all night. She refused medication.** At 1300 nursing noted she refused her morning medications (including refusing Abilify 10 mg) and **was angry and acting out.** She was **"paranoid and angry."** She had no explanation for that the next morning when she spoke with Dr. Bhatia. He discussed with her the need "to make sure when she goes back to the facility she doesn't run into the same issues" and so **he increased Abilify dose to 15 mg.** She was guarded when questions were asked of her by nursing in the evening. She took her medication though. She was discharged the next day, October 1. On that day she took her 15 mg dose of Abilify. Discharge summary noted that she presented very noncompliant and paranoid but was gradually convinced during the course of her stay to take oral Abilify as well as receive a long-acting Abilify injection. She received an Abilify Maintenna injection as the Abilify lauroxil was not on formulary. In his discharge summary Dr. Bhatia reported **she improved to the point she was able to be discharged to outpatient care.** She was **discharged on Abilify 15 mg daily oral to supplement the Abilify injection she received.** She was to resume her Abilify Lauroxil 882 mg injection every 30 days.

The Regional Medical Center records for Adrianne Branton, dated October 2, 2019:

She presented to the emergency department of regional Medical Center in Orangeburg South Carolina on October 2, 2019 at 9:26 AM. She was **transported from her boarding home due to noncompliance with her medication.** She stated she was concerned her "medications are wrong." The attending physician was Steven Burkholz, D.O. He initially documented that she was **agitated** and placed on papers and was **depressed, angry, anxious, paranoid, agitated, and had impaired judgment.** He documented her med list was Klonopin 1 mg twice daily, Haldol 10 mg three times a day and **made no mention of Abilify 15 mg or the Abilify long-acting injectable medication.** She **received a Haldol injection of 5 mg, Ativan 1 mg, and Benadryl 50 mg at 12:24 PM.** It was ordered by Dr. Burkholz. Her urine drug screen was negative. Dr. Burkholz **consulted Alberto Gonzalez MD with psychiatry who recommended admission.**

Dr. Gonzalez evaluated the patient at 11:27 AM. He noted she was not compliant with her medications. He noted the **boarding home reported**

Adrianne Branton Report

she was irritated and moody. On exam he noted **she was depressed and anxious, had a labile affect, had limited insight, poor judgment, was impulsive. He noted she had paranoid and persecutory delusions.** He recommended hospitalization and administration of **Haldol decanoate (Haldol LAI) and Haldol 10 mg three times a day.**

Dr. Burkholz later revised his note and he noted she was staying at a boarding house and they reported she was non-compliant with her medication and was irritated, moody. He stated he found her "clear in direction, thinking and processing with no evidence of SI/HI, no AVH and no threat to herself." He noted she had been discharged from Three Rivers one month prior. He **made no mention of her discharge the day prior from Spartanburg.** He **reversed previous plan to admit and medically cleared her for discharge.**

Bryan West MD provided a psychiatric ED consult on October 2, 2019 at 1404. He **considered the severity of her problem to be "mild."** He noted she had schizophrenia and bipolar affective disorder. He noted she denied suicidal or homicidal ideation and auditory and visual hallucinations. She stated she was not taking her medication because it made her dizzy. She knew the year, location, her name, and birthdate. **He claimed she was brought in for not taking her outpatient psychiatric medication.** She received Haldol in the ED. He **did not comment on what behavior precipitated receiving an intramuscular injection of Haldol.** He reasoned it would be expected her behavior would improve when she was restarted on the medication she was supposed to be taking as an outpatient. **He recommended she be discharged to home.** He **recommended Klonopin be stopped** as it might be causing her dizziness and agitation and reasoned abrupt cessation would be tolerated as it is "self-tapering." He **obtained no collateral information.** He claimed he reviewed records from referring facility, prior records, home medication but his note did not list any of the information contained in her psychiatric records. **He did not speak with Mrs. Hutchinson. He did not reference her recent psychiatric hospitalization. He did not seek and review the correct medication list.**

Dr. Burkholz completed a certificate of license physician examination for emergency admission form at 10 AM. **He noted her diagnosis of schizophrenia and that she had just been discharged from a psychiatric facility and was not compliant with medication.** He observed she **had flight of ideas.** He opined that based on his examination

Adrianne Branton Report

he believed **she needed involuntary emergency psychiatric hospitalization.**

When Dr. West evaluated Mrs Branton, he completed a re-examination form at 1400 stating and was of the opinion she no longer was in need of immediate involuntary emergency admission. He based this on her report of denied SI/HI/AVH and that she was refusing medication because it made her dizzy. No collateral information was referenced in developing and rendering his opinion.

She was discharged at 15:03. Dr. West advised she stop Klonopin due to complaints of dizziness. **Estelle Hutchinson was contacted and expressed concern the patient may "act out" in the future** and she was advised to bring her back to the hospital if she was concerned.

Incident report by Officer S. Thompson, dated October 3, 2019:

Officer S Thompson. The report was at 1739. She was found at 1700. Officers Hayes, Culpepper, McCormick assisted. The individuals who called in were Tyson Nelson and Rosa Starks. **Officers found Ms. Branton deceased.** She was found **sitting in a folding chair near a gate.** Ms. Hutchinson was contacted and **she stated Ms. Branton was in Spartanburg Hospital from around September 15, 2019 to October 1, 2019. Shortly after her return home she was disruptive and was taken to TRMC on October 2, 2019.** After Ms. Branton returned, Ms. Hutchinson contacted Brenda Williams at Salley Keitt Rest Home. Ms. Hutchinson called throughout the day, at first to try to get her to go to her **mental health appointment but she refused**, and during the remainder of the day to get updates. When she called a few times during the rest of the day she was told **Ms. Branton was walking around outside, briefly came back inside, and then around 1500 was in the yard cursing Mrs. Starkes** (Rosa). Officers contacted Mrs. Starkes who reported her duties were to serve the clients food and clean up after dinner. When she arrived at the facility between 1 to 2 PM on October 3, 2019, Ms. Branton was in the yard. She had **tried to get the victim to come inside to eat but she was cursing at her and swatting at her and she left Ms. Brandon outside because she did not want to get assaulted.** When she later went out again to try to get her to eat she noted that she was not responding and had no pulse. The scene was turned over to CSI and CID. **Investigators found Ms. Branton seated in a metal folding chair, fully dressed with a wool Union replica battle jacket on.** Investigators

Adrianne Branton Report

interviewed **Estelle Hutchinson**. She reported she **became caregiver** to Ms. Branton on **September 13, 2019**. She **reported the first week at her facility Ms. Branton was cooperating and taking her medication as prescribed**. She then started **refusing to take her medication and became combative and walking away from the residence and causing problems with other clients**. As a result, she took Ms. Branton to the hospital. She then took Ms. Branton to Salley Keitt Rest home when it was clear she did not want to be at her house. Law-enforcement was called sometime near midnight on October 2, 2019 as she was outside the residence. On October 3, 2019 Ms. Hutchinson attempted to take her to her mental health appointment but she refused. The next update she heard about the victim she was deceased.

Newberry Pathology report, signed by Kelly Rose, M.D., dated:

Pathologist Kelly Rose, MD. noted Mrs. Branton had a history of **schizophrenia**. She had **sat outside on a day the heat index was 103°F. She was wearing a wool coat. Final autopsy diagnoses included prolonged exposure to environmental heat with hypotonic dehydration and acute renal failure**. Manner of death was an accident. Toxicology was **negative for all illicit substances**. She had **trazodone and Aripiprazole and diphenhydramine** in her system.

OPINION:

It is my opinion, with a reasonable degree of medical certainty, that when Adrianne Branton was brought to The Regional Medical Center on October 2, 2019, she suffered from severe mental illness and was at high risk of harm, a fact inexcusably and egregiously overlooked or downplayed when she was assessed by Bryan West, M.D. In a gross deviation from the standard of care, Dr. West performed a cursory and incomplete assessment of Mrs. Branton, which directly led to erroneous conclusions, failure to provide her proper treatment, and her subsequent demise. The following evidence supports this opinion:

1. It is indisputable Mrs. Branton suffered from a severe mental illness, Schizophrenia, and had developed a neurocognitive disorder. Due to her schizophrenia, she was prone to agitation, hallucinations, delusions, impulsivity, poor sleep, poor self-care, placing herself at risk, and violence. She was known to have poor insight and poor judgment, including non-compliance with her psychiatric medication.

Adrianne Branton Report

The development of a neurocognitive disorder worsened her insight, judgment and impulsivity and, consequently, heightened her risks.

2. Due to her severe mental illness, non-compliance with treatment, and resultant dangerous behaviors and active psychosis, Mrs. Branton was hospitalized in August 2019 at Three Rivers and in September 2019 at Spartanburg. She was on the geriatric psychiatry unit at Spartanburg from September 24 to October 1, 2019. During this hospitalization she was noted to be agitated, hallucinating, delusional, moody, a time sleeping poorly, and prone to refuse her medication. She underwent significant adjustment of her antipsychotic regimen, including discontinuation of Haldol, initiation of oral Abilify, and administration of Abilify LAI. She was discharged because it was believed she was stable for outpatient treatment.

3. As is typical with those who have severe mental illness, Mrs. Branton proved she remained quite ill soon after discharge and it became clear to her caregivers that Mrs. Branton remained unstable and at risk. She was agitated, hallucinating, delusional, not sleeping, sexually inappropriate, threatening, impulsive, and wandering. She exhibited poor insight and judgment and was not compliant with medication and refusing to see her outpatient mental health provider. As a result, Ms. Hutchinson contacted police and she was brought to the Emergency Department at The Regional Medical Center.

4. When she presented to the Emergency Department at The Regional Medical Center, it was expected Mrs. Branton would receive a proper psychiatric evaluation and appropriate treatment of her emergency psychiatric condition. This would be expected to involve re-hospitalization and further necessary adjustment of her psychotropic regimen with the goal of restoring mood stability, resolution of hallucinations and delusions, and improved insight and judgment. With proper adjustment of medication in a safe environment, it could be reasonably expected Mrs. Branton would stabilize and be more likely to comply with medication and be safely managed in an outpatient setting.

5. Indeed, when she presented to the Emergency Department Mrs. Branton immediately received an injection of Haldol and Ativan given her emergency condition and Dr. Burkholz requested a psychiatric consultation. Dr. Gonzalez, the psychiatrist who first evaluated Mrs. Branton, noted her agitation, paranoia, depression and anxiety and opined she needed hospitalization for stabilization. Dr. Burkholz completed an emergency involuntary commitment petition.

Adrianne Branton Report

6. In a marked deviation from the standard of care, Dr. West inexplicably and inexcusably countermanded the admission order and opined she was stable for discharge based on a superficial, incomplete and cursory evaluation. He based his entire evaluation on her faulty report. The reasonably prudent clinician would be well aware an individual with severe mental illness who has poor insight and poor judgment will be a very poor historian and a complete psychiatric evaluation necessitates obtaining collateral information which is a thorough review of recent hospital records, outpatient medical records, and discussion of her behaviors with family or caregivers. Indeed, Dr. Bhatia recognized this when she presented to Spartanburg, noting she was an unreliable historian and he relied heavily on collateral information. Indefensibly and inexcusably, Dr. West failed to do the same.

7. Dr. West claimed in his cursory note that he reviewed prior records but clearly did not as he made no mention of her hospitalization at Spartanburg and her discharge from the psychiatric unit just the day prior. Further, Dr. West clearly did not review records as he referenced an incorrect and outdated medication list. Dr. West clearly did not speak with Mrs. Hutchinson or boarding home staff as he indefensibly deemed her condition "mild" despite ample available evidence to the contrary.

8. The reasonably prudent physician would have reviewed medical records and spoken to reliable historians and learned that over the past month she had repeatedly been agitated, threatened staff and peers, wandered from her boarding home, refused to comply with staff attempts to keep her from harm's way, resisted necessary safety measures, refused her medication, was sexually inappropriate, hallucinated and was delusional. The reasonably prudent physician would have noted the condition in which she presented to TRMC was precisely that which had led to her hospitalization at Spartanburg and this represented a failure of transition to the outpatient setting that necessitated readmission. Dr. West was not aware of this crucial information as he failed to seek it and, therefore, made erroneous conclusions and failed to provide necessary treatment. Without obtaining collateral information from Mrs. Hutchinson, staff at the boarding home, or family members and without reviewing records from Three Rivers or Spartanburg, Dr. West determined her condition was "mild" and her presenting complaints were solely due to side effects from Klonopin. He erroneously claimed she was brought in solely for noncompliance with her medication, failing to recognize or

Adrianne Branton Report

consider the alarming behavior and signs and symptoms of severe mental illness that were noted by Dr. Gonzalez and Dr. Burkholz. He faultily concluded her sole problem was dizziness and cessation of Klonopin would lead to stabilization of her condition and compliance with her medication. As a result of his cursory assessment of Mrs. Branton and his erroneous conclusion she was stable for discharge, she was discharged back to her boarding home, continued her same dangerous behaviors, and proceeded in her psychosis to die of heat exhaustion.

9. A reasonably physician would have considered the setting in which she was being released as part of the calculation to determine whether she could be safely discharged and managed in an outpatient setting. If Dr. West had complied with the standard of care, he would have recognized she was being released to the boarding home from which she presented. A boarding home is unable to administer medications, monitor compliance or keep her from wandering. It is simply a place of residence. The reasonably prudent clinician would have recognized an individual such as Mrs. Branton, who is hallucinating, delusional, agitated, threatening, not sleeping, and wandering, will be at great risk when being discharged to such a setting. Sadly, in a marked deviation from the standard of care, Dr. West failed to do so. As a result, she was discharged to an environment in which she clearly was not safe, continued her same dangerous behaviors, and proceeded in her psychosis to die of heat exhaustion.

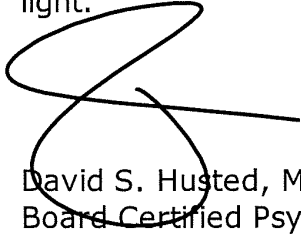
Summary:

When Adrianne Branton was brought to The Regional Medical Center on October 2, 2019, she suffered from severe mental illness and was at high risk of harm, a fact inexcusably and egregiously overlooked or downplayed when she was assessed by Bryan West, M.D. The reasonably prudent clinician would have recognized an individual such as Mrs. Branton, who is hallucinating, delusional, agitated, threatening, not sleeping, sexually inappropriate, refusing medication and treatment, and wandering, will be at great risk when being discharged from the emergency department back to a boarding home. In a gross deviation from the standard of care, Dr. West performed a cursory and incomplete assessment of Mrs. Branton, which directly led to erroneous conclusions, failure to provide her proper treatment, and her subsequent demise. As a

Adrianne Branton Report

result, she was discharged to an environment in which she clearly was not safe, continued her same dangerous behaviors, and proceeded in her psychosis to die of heat exhaustion.

Please note my opinion is subject to change if further information comes to light.



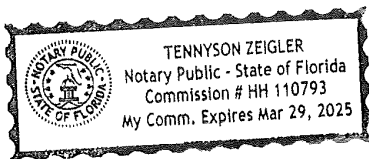
David S. Husted, M.D., M.S.
Board Certified Psychiatrist
Chairman, Department of Psychiatry
JFK Medical Center
Atlantis, FL and West Palm Beach, FL

Affiliated Assistant Professor of Psychiatry
University of Miami Miller School of Medicine
Regional Medical Campus
Boca Raton, FL

9/24/21



Tennyson Zeigler



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	C/A no. 2021-CP-38-01138
	)	
SE'ANNE S. DAVIS, as Personal	)	
Representative of the Estate of Adrienne T.	)	ANSWER OF THE REGIONAL
Branton, deceased,	)	MEDICAL CENTER; THE
	)	REGIONAL MEDICAL CENTER
	)	OF ORANGEBURG AND
Plaintiff,	)	CALHOUN; RMC BEHAVIORAL
	)	HEALTH; AND BRYAN WEST, MD
v.	)	
	)	
Orangeburg County, South Carolina;	)	
Orangeburg County Sheriff's Office;	)	
Regional Medical Center; The Regional	)	
<u>Medical Center of Orangeburg and Calhoun;</u>	)	
RMC Behavioral Health; and Bryan West,	)	
MD;	)	
	)	
Defendants.	)	

The Defendants The Regional Medical Center, RMC Behavioral Health, and Bryan West, MD (hereinafter "TRMC"), answers the Plaintiff's Complaint as follows:

1. Defendant TRMC denies all allegations contained in the Complaint unless specifically admitted, qualified, or explained.
2. The allegations contained in Paragraphs 1, 2, 3, and 4 of the Complaint contain legal conclusions which are denied.
3. Defendant denies the allegations in Paragraphs 5, 6, 7, and 8 of the Complaint, and demands strict proof thereof. Defendant asserts the proper party is The Regional Medical Center of Orangeburg and Calhoun Counties, which is the employer of Dr. West.
4. The allegations contained Paragraphs 9 and 10 of the Complaint contain a legal conclusion to which no response is required. Defendant denies a deviation from the standard of care by its employees.

5. As to Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the Complaint, Defendant craves reference to any medical records and/or law enforcement investigative records and denies a breach of the standard of care.

6. Defendant TRMC denies allegations contained in Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, and 35 of the Complaint, and demands strict proof thereof.

7. The allegations contained in Paragraph 36, 37, 38, 38, 39, 40, 41, 42, 43, and 44 of the Complaint, are not directed to TRMC and are denied.

FOR A SECOND DEFENSE

8. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 7 above and repeated herein verbatim.

9. The defendant asserts that all time relevant to the Complaint its employees were in compliance with the applicable standard of care and the defendant asserts its employees did not deviate at any time from the standard of care and the treatment of plaintiff. This defendant further asserts that all supervision, staffing, training and medical equipment available to staff fully conformed to and was in full compliance with the applicable standard of care. Therefore, plaintiff is barred from recovery against the defendant for the allegations contained in the Complaint.

FOR A THIRD DEFENSE

10. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 9 above and repeated herein verbatim.

11. The defendant asserts it is a governmental entity as contemplated by the South Carolina Tort Claims Act, and it hereby asserts all defenses afforded it by the South Carolina Tort Claims Act §15-78-10, et seq. Code of Laws of South Carolina, whether or not specifically

or separately pleaded herein, including §15-78-60 and all subparts, and *Smith v. TRMC*, 713 S.E.2d 656, 310 S.C. 110 (S.C. Ct. App. 2011).

FOR A FOURTH DEFENSE

12. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 11 above and repeated herein verbatim.

13. The defendant asserts it is not liable for any conduct constituting the exercise of judgment or discretion, pursuant to §15-78-60(5) Code of Laws of South Carolina.

FOR A FIFTH DEFENSE

14. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 13 above and repeated herein verbatim.

15. Pursuant to §15-78-120 (A)(1), the plaintiff, if entitled to any damages, which the defendant specifically denies, is limited to a maximum of \$1,200,000.00 dollars as Defendant TRMC is a political subdivision of the State of South Carolina. Defendant TRMC is informed and believes that it is entitled to an Order of this Court striking all reference to damages being construed to be over the amount of \$1,200,000.00 dollars. Plaintiff is also not entitled to punitive or exemplary damages pursuant to § 15-78-120(B).

FOR A SIXTH DEFENSE

16. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 15 above and repeated herein verbatim.

17. The defendant that plaintiff's injuries and damages were proximately caused by the sole negligence of the plaintiff, including failing to give proper medical history, failure to exercise due care, failing to follow medical/health advise and other acts proven through discovery, which serves as a complete bar to recovery in this action.

FOR A SEVENTH DEFENSE

18. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 17 above and repeated herein verbatim

19. The defendant asserts any injuries or damages sustained by the plaintiff, which are denied, were a direct and proximate result of the negligence, gross negligence, recklessness, willfulness, and wantonness of the plaintiff, which is greater than any negligence of the defendant, which is specifically denied. The defendant asserts that if it was equally or more negligent than plaintiff, which is denied, the amount of damages, if any, must be reduced in proportion to the amount of plaintiff's negligence

FOR AN EIGHTH DEFENSE

20. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 19 above and repeated herein verbatim.

21. The defendant asserts plaintiff's injuries, if any, were the direct and proximate result of the natural disease process and the defendant, therefore, is not liable to plaintiff.

FOR A NINTH DEFENSE

22. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 21 above and repeated herein verbatim.

23. The defendant asserts to the extent plaintiff suffered a compensable injury from a course of medical treatment that was in any way negligent, that Plaintiff was at least equally negligent as the defendant, which is denied, as much is barred from recovery under the doctrine of comparative negligence.

FOR A TENTH DEFENSE

24. The defendant reiterates and realleges the allegations contained in paragraphs 1 through

23 above and repeated herein verbatim.

25. The defendant denies it is liable and/or responsible for any acts and/or omissions of any alleged actual and/or apparent agents and/or servants and/or independent contractors either directly or vicariously, under the principals of partnership, agency, apparent authority, corporate liability, ostensible agency, negligent hiring and respondeat superior, pursuant to S.C. Code Ann. §15-78-60(20) and *Smith v. TRMC*, 713 S.E.2d 656, 310 S.C. 110, 116 (S.C. Ct. App. 2011).

FOR AN ELEVENTH DEFENSE

26. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 25 above and repeated herein verbatim.

27. The defendant denies it has a non-delegable duty to provide physicians, nurses, and other staff, with adequate knowledge and training to be able to provide necessary and reasonable medical care any routine, ministerial, administrative and/or non-medical care, to Plaintiff Se'Anne S. Davis, the personal representative of Adrienne T. Branton. The Defendant TRMC further denies it is liable for a loss resulting from responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of patient pursuant to §15-78-60(25).

FOR A TWELFTH DEFENSE

28. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 27 above and repeated herein verbatim.

29. Plaintiff asserts in his complaint that third parties, not under the control of the defendant, TRMC, caused plaintiff's injuries. To the extent the Plaintiff may prove the negligence at trial, which the defendant denies, the defendant asserts it cannot be liable for any negligence of the third party not under its control. The defendant also denies it has a right or power to hire, retain, supervise, direct and control the matter in which its alleged or agents,

servants, and/or independent contractors provide medical care and operate the business or delivering medical care and any routine, ministerial and/or non-medical care.

FOR A THIRTEENTH DEFENSE

30. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 29 above and repeated herein verbatim.

31. The defendant denies each alleged act and/or omission and/or breach of the standard of care by them, as outlined in the Complaint, constitutes a distinct, independent and separate occurrence. The defendant also denies there is more than one unfolding sequence of events in the care and treatment of Adrienne T. Branton that proximately flows from a separate, single act of negligence, which is also denied.

FOR A FOURTEENTH DEFENSE

32. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 31 above and repeated herein verbatim.

33. The defendant asserts the Plaintiff's claims are barred by the defense of intervening cause and superseding cause not under the control of Defendant TRMC.

FOR A FIFTEENTH DEFENSE

34. The defendant reiterates and realleges the allegations contained in paragraphs 1 through 33 above and repeated herein verbatim.

35. Plaintiff asserts that in his Complaint that third parties, not under the control of these Defendants, cause plaintiff's decedent's injuries leading up to death. To the extent Plaintiff may prove this negligence at trial. Defendant asserts it cannot be liable for any negligence of third party not under its control. Defendant TRMC is entitled to a Special Verdict pursuant to the Tort Claim Act.

WHEREFORE, the defendant, TRMC, requests the Court inquire into the matters herein, dismiss the Plaintiff's Complaint with prejudice and with costs and grant such order and further relief as this Court may deem just and proper.

MICHAEL C. TANNER L.L.C.

By : s/ Michael C. Tanner

Bamberg, SC
November 2, 2021

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL ACTION 2021-CP-38-01138

SE'ANNE S. DAVIS, As Personal
Representative of the ESTATE OF
ADRIANNE T. BRANTON, Deceased,

Plaintiff,

v.

THE REGIONAL MEDICAL CENTER
OF ORANGEBURG AND CALHOUN
COUNTIES,

Defendant.

Plaintiff's Offer of Judgment to
Defendant

Come now the Plaintiff, pursuant to Rule 68 of the South Carolina Rules of Civil Procedure and S.C. Code § 15-35-400, who hereby offers to Defendant The Regional Medical Center of Orangeburg and Calhoun Counties to allow judgment to be taken in favor of Plaintiff for the lump sum of One Million Two Hundred Thousand Dollars and no/100 (\$1,200,000.00) for all damages, fees, and costs related to Plaintiff's claims. If this Offer of Judgment is not accepted within 20 days and Plaintiff obtains a verdict or determination at least as favorable as the rejected offer of judgment, Plaintiff will move the Court to recover from Defendant: (1) any administrative, filing or other court costs from the date of the offer until judgment is rendered and/or satisfied; and (2) statutory interest computed on the amount of the verdict or award from the date of the offer.

Respectfully submitted,

s/James B. Moore, III

James B. Moore III, SC Bar #74268

Scott C. Evans, SC Bar # 77684

George W. Bryan, III, SC Bar # 104088

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Attorneys for the Plaintiff

August 15, 2023
Georgetown, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) CIVIL ACTION 2021-CP-38-01138

SE'ANNE S. DAVIS, As Personal)
Representative of the ESTATE OF)
ADRIANNE T. BRANTON, Deceased,)
)
Plaintiff,)

v.)

THE REGIONAL MEDICAL CENTER)
OF ORANGEBURG AND CALHOUN)
COUNTIES,)
)
Defendant.)

PLAINTIFF'S PRETRIAL BRIEF

TO: THE HONORABLE MAITE MURPHY

Pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure, the Plaintiff Se'Anne Davis as Personal Representative of the Estate of Adrienne T. Branton hereby submits her pretrial brief to this Honorable Court.

1. Statement of Facts

This is a medical malpractice and wrongful death action filed on behalf of the family of Adrienne Branton. Mrs. Branton was a resident of Richland County for most of her life. She was 69 years old at the time of her death on October 3, 2019. Mrs. Branton had a well-documented history of dementia, schizophrenia, bipolar disorder, anxiety, and depression. During the last two years of her life, she had multiple inpatient hospitalizations at various hospitals in South Carolina – primarily due to mental health concerns. On September 13, 2019, Mrs. Branton was discharged from Three Rivers Behavioral Health in Columbia to a boarding home operated by Estille Hutchinson in Calhoun County. The boarding home was identified simply as IKare. Upon arrival

to IKare, Mrs. Branton repeatedly vocalized that she did not want to be there and was found wandering from the boarding home on multiple occasions. On September 23, 2019, Mrs. Branton was transported from IKare to Lexington Medical Center via EMS after she wandered from IKare to a neighbor's residence who contacted 911. After being evaluated in the emergency room department at Lexington Medical Center, the determination was made to transfer her to the geriatric psychiatric unit at the Spartanburg Medical Center due to noncompliance with medications, increased paranoia, confusion, and depression. At Spartanburg Medical Center she was diagnosed with dementia, bipolar disorder, schizophrenia, and hypertension. Although it was determined that she would be discharged to an "assisted-living facility," she was instead discharged back to IKare, a boarding home, on October 1, 2019.

On October 2, 2019, Mrs. Branton was transported via ambulance from the Heavenly Living Boarding Home to The Regional Medical Center ("TRMC") emergency room based upon reports of that she was refusing to take her mental health medications, was refusing to attend a mental health appointment, and was refusing to enter IKare boarding home. Upon examination by TRMC emergency room physician, Dr. Steven Burkholz, it was determined that Mrs. Branton was paranoid, anxious, agitated, delusional, and lacked insight and judgment. Based on her presentation, Dr. Burkholz recommended that she be admitted to the Behavioral Health Unit located within TRMC for monitoring and treatment of her psychiatric condition. Additionally, Dr. Burkholz filed a petition for involuntary emergency hospitalization by and through the Calhoun County Probate County due to concerns regarding her mental health condition, concerns that she was a risk and/or danger to herself, as well as concerns of neglect.

Dr. Burkholz thereafter consulted with Dr. Alberto Gonzales, a board-certified psychiatrist working within TRMC. Dr. Gonzales also recommended that Mrs. Branton be stabilized

medically with psychotropic medications and admitted to the Behavioral Health Unit. Mrs. Braton was then medicated with several powerful, short acting sedatives, including Haldol, Ativan, and Benadryl.

Shortly after receiving the short acting sedatives, Mrs. Branton was evaluated by Dr. Bryan West, a psychiatrist and the director of the Behavior Health Unit at TRMC. Upon evaluating Mrs. Branton, Dr. West determined that her mental health condition was “mild.” Dr. West then reversed the petition for involuntary commitment and recommended that she be discharged. Although Dr. West reported and testified that she needed to be discharged to a facility capable of managing her medications, which including antipsychotic medications, Dr. West discharged Mrs. Branton to a “boarding home” which according to SC Code of Reg. 61-81, Section 101(k), is specifically forbidden to provide any “degree of personal care” including medication management. Community residential care facilities, which function as boarding homes and provide some assistance with the activities of daily living including medication management are strictly monitored and inspected by DHEC. Because boarding homes are forbidden from providing this level of care, they are not regulated, licensed, or inspected by DHEC.

After expressing her desire not to return to the IKare boarding home, the owner of the home brought Mrs. Branton to the Heavenly Living Boarding Home in Orangeburg County, which was operated by her cousin, Brenda Williams. Upon arriving to Heavenly Living Boarding Home, Mrs. Branton continued with the same behavior that had previously resulted in emergency transports to Lexington Medical Center and TRMC. Specifically, she continued to be noncompliant with medications and refused to enter the boarding home. Later that evening around 8:00 pm, the owner of the boarding home, Brenda Williams, contacted 911 due to concerns that Mrs. Branton was refusing to enter the residence. Two deputies with the Orangeburg County

Sheriff's Office responded and convinced Mrs. Branton to enter the boarding home. The following day, Mrs. Branton remained outside trying to leave the Heavenly Living Boarding Home. At some point the fence surrounding Heavenly Living Boarding was locked closed. Thereafter, Mrs. Branton, who was wearing her late father's wool U.S. Army dress blazer which was her prized possession, spent several hours outside in the extreme heat in the blazer, refusing to come inside.

Around 5:00 pm 911 was called after Mrs. Branton was discovered unresponsive sitting in a folding chair. EMS determined that Mrs. Branton was pulseless and apneic. According to an autopsy conducted by Dr. Kelly Rose of Newberry Pathology, the cause of death was determined to be non-exertional hyperthermia with hypotonic dehydration due to prolonged exposure to elevated environmental temperatures.

2. Facts in Controversy

Defendant TRMC identified a psychiatric expert, Dr. Susan Hardesty, yesterday, September 27, 2023. Plaintiff Counsel believes TRMC will concede that Mrs. Branton died from non-exertional hyperthermia, but will defend on the grounds that TRMC and Dr. Bryan West did not deviate from the standard of care by failing to admit Mrs. Branton to the Behavioral Health Unit. Plaintiff Counsel is unaware of any defense to the claimed deviation in discharging to a boarding home that cannot provide personal care.

3. Legal Issues

This case involves allegations that TRMC acted with negligence and gross negligence on multiple occurrences. Since the Plaintiff has alleged medical malpractice claims against Dr. Bryan West, a physician employed by the Defendant, the statutory cap as to each single occurrence of negligence against Dr. West cannot exceed \$1,200,000. See S.C. Code 15-78-120(3). The South Carolina Supreme Court has held that state entities can be subject to *multiple* caps under the South

Carolina Tort Claims acts in situations in which independent acts of negligence result in even a *single injury*. Boiter v. S.C. Dept. of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405(2011). In Boiter, the Supreme Court reviewed a case involving multiple claims against the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a single stoplight. The South Carolina Supreme Court rejected the state defendants' arguments that each allegedly separate act of negligence claimed by the Plaintiffs "was a part of the *same unfolding sequence of events* that resulted in the Boiter's damages." Id. at 133, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406. The Plaintiff intends to present expert testimony that Defendant engaged in multiple, distinct acts/occurrences of gross negligence which resulted in a Logan Wood's brain injury.

The South Carolina Supreme Court has further indicated the issue of occurrences is to be addressed in the Judge's charge and on the verdict form. See, Chastain v. AnMed Health Foundation, 694 S.E.2d 541 (S.C. 2010). United States District Judge Cameron McGowan Currie noted in a recent trial court order:

[t]he South Carolina Supreme Court has held in Chastain that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. 694 S.E.2d at 543-44. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence.

(Exhibit 1, Order in Knox v. United States of America et al., at Pages 10-11).

United States District Court Judge David C. Norton agreed, submitting the question regarding the number of occurrences arising under the South Carolina Tort Claims Act to the jury in 2019. (Exhibit 2, Verdict Form in W.S. v. South Carolina Department of Social Services, et al.).

Every South Carolina Circuit Court Judge to have addressed the question has agreed. In 2014, the Honorable R. Markley Dennis, Jr. held that “[o]ur Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff’s claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment.” (Exhibit 3)(Doe 2 v. The Citadel, No. 2012CP1001858, 2014 WL 8727884, at *30 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)). Judge Dennis went on to further explain his holding, noting:

[t]he courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA’s protection of employees from individual liability. For the state entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

Id. at *31 (emphasis in original).

In 2017, the Honorable J. Mark Hayes, II determined that the number of occurrences under the South Carolina Tort Claims Act was a factual issue to be submitted to the jury in the case of Baby Girl Smith v. South Carolina Department of Social Services. (Exhibit 4, Verdict Form in Baby Girl Smith v. South Carolina Department of Social Services). In late 2019 (in what was one of the last cases involving the South Carolina Tort Claims Act to be tried before the pandemic), the Honorable Roger E. Henderson determined that the number of occurrences under the South

Carolina Tort Claims Act was a factual issue to be submitted to the jury in a case involving the same insurance carrier who insures this defendant. (Exhibit 5, Verdict Form of Judge Henderson in Est. of Oliver Johnson v. SCDC¹)(Exhibit 6, Jury Charge of Judge Henderson in Est. of Oliver Johnson v. SCDC).

The issue of occurrences arose at a late 2020 hearing involving two of the cases stemming from the 2018 riot at Lee Correctional Institution. During the hearing, the lawyer representing the state agency, Will Davidson, who claims to have been involved in more trials involving state agencies than any other defense lawyer in the state, conceded on the record that there is a question of fact for determination by the jury as to the number of occurrences in each state action, noting:

I have tried more SCDC cases probably than anybody in the state. I'm not scared to try this case. I'm not scared to raise the occurrence issue. **I know it's a question of fact.**

(Exhibit 7)(November 10, 2020 Hearing Transcript at Page 34, Lines 1-5)(emphasis added).

In May of 2022, the Honorable Mary Geiger Lewis allowed the issue of occurrences to go to the jury in the case of Jessica Gifford v. Horry County Police Department and Sandra Rhodes, United States District Court C/A No. 4:16-cv-03136-MGL. In denying the Horry County Police Department's motion for JNOV based upon the jury's finding of multiple occurrences against the same state entity, Judge Lewis held in March of 2023 that:

[a]pplying the holding of Boiter to this case, the Court multiplies HCPD's three occurrences of negligence by the one plaintiff, and then multiplies that number, three, by the \$300,000 cap on damages for each occurrence, which equals a capped award of \$900,000.

¹ It should be noted that as soon as the Court disseminated the final draft of the verdict form and jury charge, the South Carolina Insurance Reserve Fund elected to settle the case for a statutory cap of \$600,000.00. This settlement was accepted before the jury had the opportunity to complete the verdict form attached hereto as Exhibit 4 or receive the charge attached hereto as Exhibit 5).

(Exhibit 8, Order of Judge Lewis at p. 12). In rejecting the state entity’s interpretation of Boiter, Judge Lewis held that the state entity “fails, however, to cite any binding authority that has adopted this approach to jury verdicts in cases such as this. And, the Court has searched in vain to find one.” (Exhibit 8, Order of Judge Lewis at p. 10).

The Honorable William H. Seals, Jr. allowed the issue of occurrences to be submitted to the jury in 2021 in the case of Logan and Sarah Wood v. Horry County School District, C/A 2017-CP-26-6643. Judge Seals noted that the South Carolina Circuit Court during post-trial motions wherein the South Carolina Circuit Court confirmed that the South Carolina “Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained” and upheld the jury’s finding of liability for two of three occurrences alleged by the Plaintiff. (Exhibit 9, Order of Judge Seals at p. 3). After reviewing the case law in detail, Judge Seals held:

This Court finds that the evidence presented at trial raised a question of fact as to the number of occurrences of gross negligence which caused [Plaintiff’s] brain injury. After an accurate charge on the law, the jury found that there were two separate and distinct occurrence of gross negligence which caused [Plaintiff’s] brain injury, and this Court finds no basis to overturn the jury’s factual finding that two separate and distinct occurrences resulted in the permanent injury of [Plaintiff].

(Exhibit 9, Order of Judge Seals at p. 6). In June of 2023, the South Carolina Court of Appeals affirmed Judge Seals’ decision to allow the issue of occurrences to go to the jury and confirmed that multiple occurrences could be returned against a single state entity when multiple acts of negligence committed by the same state entity combined to form a single injury. (Exhibit 10, Wood v. Horry County School District, Appellate Case No. 2021-000535). Just last month the Court of Appeals denied the defendant’s request for a rehearing. (Exhibit 11).

Plaintiff will present evidence that multiple, independent acts of negligence by the Defendant combined to cause the death of the Adrienne Branton. Under the above-cited precedent,

will be up to the jury to determine the number of occurrences applicable to Estate's claim for medical malpractice.

4. List of Exhibits and Witnesses

a) Exhibits

a. Documents produced by the parties including but not limited to:

EXHIBIT	DESCRIPTION
1	Orangeburg County Sheriff's Office Dispatch Record
2	Orangeburg County Sheriff's Office Investigatory File w/ Photos
3	Orangeburg County Sheriff's Office Incident Reports for Subject Location
4	Orangeburg County Sheriff's Office CAD Report
5	10/3/2019 Pre-Hospital Care Report
6	9/22/2019 Calhoun County EMS Run Report
7	10/2/2019 Calhoun County EMS Run Report
8	10/2/2019 Orangeburg County Run Report
9	Orangeburg County Coroner's File
10	Newberry Pathology Records
11	Lexington Medical Center Medical Records
12	Spartanburg Medical Center/Mary Black Hospital Records
13	Three Rivers Behavioral Health Records
14	Columbia Area Mental Health Clinic Records
15	TRMC Medical Records
16	TRMC Policies and Procedures
17	Expert Report of Dr. Husted
18	CV of Dr. Husted
19	SC DHEC Regulations RE: Boarding Homes and Residential Care Facilities
20	Obituary
21	Family Photographs
22	Death Certificate
23	West Physician Employment Agreement
24	Hutchinson Statement
25	Phone records of Brenda Williams
26	Phone records of the Plaintiff, Se'Anne Davis

b. Additionally, the Plaintiff hereby identifies the following as potential exhibits at the trial of this case:

1. Plaintiff will ask the court and opposing counsel to give access to exhibit annotations, specifically with respect to voluminous records.

2. Curriculum Vitae of named experts;
3. Any deposition, previous statement, and/or transcript for purposes of impeachment or other use provided by the South Carolina Rules of Evidence;
4. Plaintiff reserves the right to use any demonstrative exhibits as are deemed admissible at the trial of the case;
5. Plaintiff reserves the right to include any exhibits listed by the Defendant;
6. Any and all records and/or discovery responses produced by any party in discovery.
7. Plaintiff reserves the right to amend this list as trial approaches.

b) Witnesses

The Plaintiff reserves the right to call any witnesses listed by the Defendant or previously listed in Defendant's Responses to Plaintiff's Interrogatories and reserves the right to call rebuttal witnesses. Plaintiff identifies the following potential individuals:

1. Se'Anne S. Davis- as the Personal Representative and the daughter of the decedent, it is expected the Plaintiff will testify regarding her knowledge of the facts and circumstances leading to this action as well as the pain, sorrow, and grief her family has experienced as result of Mrs. Branton's tragic death.
2. Herman Branton- as the son of the decedent, it is expected Mr. Branton will testify regarding his knowledge of the facts and circumstances leading to this action as well as the pain, sorrow, and grief her family has experienced as result of Mrs. Branton's tragic death.
3. O'Maury T.A. Davis – as the grandson of the decedent, it is expected Mr. Davis will testify regarding his knowledge of the facts and circumstances leading to this action as well as the pain, sorrow, and grief her family has experienced as result of Mrs. Branton's tragic death.
4. Brenda Williams-as the owner and operator of Heavenly Living Boarding Home where Mrs. Branton died, it is anticipated that Mrs. Williams will testify as to the circumstances leading to her death.
5. Estill A. G. Hutchinson- as the owner and operator of IKare Boarding Home, it is anticipated that Ms. Hutchinson will testify as to the level of care her boarding home was permitted to provide under S.C. law as well as her interactions with Mrs. Branton.

6. Tyson Nelson- as an employee of Heavenly Living Boarding Home, it anticipated Mr. Nelson will testify in accordance with the incident report of the Orangeburg County Sheriff's Office.
7. Steven Burkholz, MD – Dr. Burkholz was the TRMC emergency room physician who evaluated Mrs. Branton on October 2, 20219. It is anticipated that he will testify in accordance with his medical records and recollection of Mrs. Branton.
8. Brian West, MD - Dr. West is a psychiatrist and the Director of the Behavioral Health Unit at TRMC. Dr. West evaluated Mrs. Branton on October 2, 20219 and determined that she did not meet the criteria for admission to the Behavioral Health Unit. It is anticipated that he will testify in accordance with his medical records and recollection of Mrs. Branton.
9. Alberto Gonzalez, MD – Dr. Gonzales was a TRMC psychiatrist who evaluated Mrs. Branton on October 2, 20219 while she was in the emergency room. It is anticipated that he will testify in accordance with his medical records and recollection of Mrs. Branton.
10. Rosa Starks- as an employee of Heavenly Living Boarding Home, is anticipated Ms. Starks will testify in accordance with the incident report of the Orangeburg County Sheriff's Office.
11. Deputy Coroner Phil Bass- it is anticipated Deputy Coroner Bass will testify in accordance with the Orangeburg County Coroner's File.
12. Kelly Rose, MD-as the performing pathologist, it is anticipated Dr. Rose will testify in accordance with the autopsy report of Newberry Pathology.
13. Ashlyn Gunnells, EMT - it is anticipated the EMTs will testify in accordance with the records of Orangeburg County EMS
14. Anna McIntyre, EMT- it is anticipated the EMTs will testify in accordance with the records of Orangeburg County EMS.
15. Deputy Andrew Hayes- as one of the investigating officers on behalf of the Orangeburg County Sheriff's Office, it is anticipated that he will testify in accordance with his investigation into the death of Mrs. Branton.
16. Deputy F. Williams - as one of the investigating officers on behalf of the Orangeburg County Sheriff's Office, it is anticipated that he will testify in accordance with his investigation into the death of Mrs. Branton.
17. Deputy T. Hartwell- as one of the investigating officers on behalf of the Orangeburg County Sheriff's Office, it is anticipated that he will testify in accordance with his interactions with Mrs. Branton.

18. Deputy W. McCormack - as one of the investigating officers on behalf of the Orangeburg County Sheriff's Office, it is anticipated that he will testify in accordance with his investigation into the death of Mrs. Branton.
19. Dr. David Husted – Dr. Husted is a board-certified psychiatrist who has served as the medical director of various behavioral health units and psychiatric centers. As an expert retained by the Plaintiff, it is anticipated that Dr. Husted will testify to the multiple acts of malpractice by Dr. West and TRMC with respect to care provided to Mrs. Branton.
20. Records Custodian – to the extent necessary, Plaintiff reserves the right to call a record custodian to authenticate records.

5. Unusual Problems Relating to Evidence to be Introduced

The Plaintiff may be filing a Motion in Limine prior to trial. Further, the Plaintiff anticipates calling several witnesses associated with the Defendant and would request permission to examine these witnesses pursuant to S.C. Rule Evid. 611(c).

6. Unusual Questions or Matters for the Court's Attention

To the extent that the Defendant asserts that the jury must find gross negligence rather than simple negligence to return a verdict for the Plaintiff, the Plaintiff would note that such a position is not appropriate. In true emergency situations, South Carolina law provides that the standard of liability is gross negligence. Specifically, S.C. Code § 15-32-230(A) states that gross negligence shall be the standard of liability for medical treatment provided in a genuine emergency where a patient is at immediate risk of death or serious bodily injury. Importantly, the “the limitation on physician liability established by [this statute] shall only apply if the patient is not medically stable and:

- (1) in immediate threat of death; or
- (2) in immediate threat of serious bodily injury.”

S.C. Code § 15-32-230(C).

This limitation on liability is intended to encourage medical professionals to intervene in emergency and trauma situations even when the patient's prognosis may be grim. This standard would be applicable in a situation in which an emergency room physician intervenes to provide treatment for a life-threatening rattlesnake bite. However, the limitation would not be applicable in the same situation if the emergency room physician were to misdiagnose a rattlesnake bite as a non-threatening insect bite and provide simple first aid.

In this case, Defendant contends that Mrs. Branton was not experiencing a life-threatening medical emergency at any point during her time within the Behavioral Health Unit of TRMC. In fact, discharging psychiatrist Dr. Bryan West characterized the severity of Mrs. Branton's mental health condition as "mild." Defendant has taken the position that the care provided to Adrienne Branton was not in the context of a true emergency, but instead that Mrs. Branton was medically and psychologically stable and was appropriately discharged into the community. Accordingly, standard negligence applies as the liability standard, instead of gross negligence as set forth in Section 15-32-230.

7. Settlement Negotiations

The possibility of compromise settlement has been discussed and explored with the parties at great length during and following mediation, however, significant differences exist based on evaluations of the respective parties.

Respectfully Submitted,

s/David R. Williams

David R. Williams

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Attorneys for the Plaintiff

September 27, 2023
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
SE'ANNE S. DAVIS, as Personal	)	
Representative of the Estate of Adrianne T.	)	C/A no. 2021-CP-38-01138
Branton, deceased,	)	
	)	
	)	DEFENDANT THE REGIONAL
	)	MEDICAL CENTER'S MOTION IN
Plaintiff,	)	LIMINE
	)	
v.	)	
	)	
The Regional Medical Center of	)	
Orangeburg and Calhoun;	)	
	)	
	)	
Defendants.	)	
_____	)	

Defendant, The Regional Medical Center of Orangeburg and Calhoun (hereinafter referred as "Defendant" or "Defendant TRMC") by and through the undersigned, hereby states the following for their Motion in *Limine*:

The Plaintiff commenced this action alleging medical negligence/gross negligence for survival Action, medical negligence/gross negligence for wrongful death, against Defendant TRMC. The matter is scheduled for a date certain trial on October 9, 2023. Defendant TRMC seeks to exclude certain evidence from being presented to the jury or mentioned in opening statement. Defendant TRMC is moving pursuant to this Motion in *Limine* to exclude the following:

- 1. Any reference to Plaintiff's Claims or any arguments to be made by Plaintiff of Multiple Occurrences as she did not plead any assertions claiming more than one occurrence happened in her Summons and Complaint.**

Rule 8(a)(2), SCRCF requires a litigant to plead "a short and plain statement of the facts showing the pleader is entitled to relief." "The ultimate facts required to be stated in a pleading are those which the evidence upon the trial will prove, and not the evidence which will be

required to prove those facts." Stroud v. Riddle, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973). See also HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 637 (holding the Court did not err in concluding Appellants failed to plead a cause of action based on substantive process because they failed to explain *how the facts pled in their complaint* state a claim for violation of their substantive due process rights or cited any authority to support this contention.)(emphasis added.)

In the current matter, Plaintiff pled medical negligence/gross negligence for survival actions and for wrongful death as her causes of actions against Defendant TRMC. Nowhere in her Complaint suggests any pleadings or assertion as to multiple occurrences. Plaintiff has not moved to amend her Pleadings. Thus, Defendant asserts it is not substantially just for Defendant TRMC to defend against the issue of whether multiple occurrences exist as it did not receive a fair notice. See Rule 8(f), SCRCP "All pleadings shall be so construed as to do substantial justice to all parties." "The purpose of a pleading is fair notice to the opponent and the court." Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001).

The only case in South Carolina that has found multiple occurrences under §15-78-30 is Boiter v. S.C. Dept. of Transportation & S.C. Dept. of Public Safety, 393 S.C. 123, 712 S.E.2d 401, (2011). The facts of Boiter are summarized as follows: Plaintiff, after suffering damages from a car accident, sued South Carolina Dept. of Transportation for failing to implement an appropriate re-lamping policy to replace bulbs in traffic signals before they burn out. Plaintiff also sued the South Carolina Department of Public Safety for failing to notify a trooper to report to the scene and direct traffic despite there was a citizen's call one hour and twenty-seven minutes prior to the accident reporting the outage. The South Carolina Supreme Court held for

the Plaintiff, concluding that there were *two separate entities* which committed *two separate and independent acts* of negligence.

TRMC, however, argues that the current matter is distinguished from Boiter. There, the Court held that because there were two separate entities which committed two separate acts of negligence, each agency's act was a separate occurrence, entitling the victims to a combined verdict of \$ 1.2 million, \$600,000.00 non-physician cap per entity. In the current case, Plaintiff's Summons and Complaint as well as subsequent records show that the only TRMC *employee* that Plaintiff's expert has criticism of when she presented to TRMC was Dr. Bryan West, M.D. (Dr. West.) Plaintiff alleges that, Dr. Steven Burkholz D.O. (Dr. Burkholz) and Dr. Alberto Gonzalez, M.D. (Dr. Gonzales) are the physicians who also saw Adrienne T. Branton (Ms. Branton) when she presented to TRMC in addition to Dr. West in her Summons and Complaint. Neither Dr. Gonzalez, nor Dr. Burkholz are, or were, TRMC employees at the time of the treatment. "[the governmental] entity is not liable for a loss resulting from 'an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.'" Smith v. Reg'l Med. Center *supra* at 115 citing S.C. Code Ann. § 15-78-60(20) (2005) (holding the TCA provides *immunity* to governmental entities, such as TRMC, from the negligence of its independent contractors.)

For the reason herein above, TRMC is only liable for the alleged conduct of Dr. West, of which TRMC denies any deviation of standard of care. Plaintiff has not alleged multiple occurrences in this action and should not be allowed to characterize this as "multiple occurrences."

2. Any reference or attribution of any alleged negligence committed by Dr. Burkholz and Dr. Gonzales to Defendant TRMC because they were independent contractors and non-TRMC employees at the time they saw Ms. Adrienne T. Branton.

TRMC is informed and believed it is entitled to an immunity from the negligence of its independent contractors under S.C. Code Ann. §15-78-60(20) and Smith v. Reg'l Med. Ctr., 394 S.C. 110, 116. S.C. Code Ann. §15-78-60(20) states, “the governmental entity is not liable for a loss resulting from . . .an act or omission of a person other than an employee including but not limited to the criminal actions of third persons.” (emphasis added.) (See also Smith v. Reg'l Med. Ctr. Supra at 115, holding the Legislature, through the TCA, has stated its intention for independent contractors to be excluded from the definition of employee and mandated strict construction of statutory language.)

Defendant believes and is informed Dr. Burkholz testified in his deposition that he was an employee of Sound Physicians when he saw Ms. Branton. Defendant TRMC is not liable for Dr. Burkholz’s ultimately discharging Ms. Branton from TRMC. For this reason herein, TRMC asserts it is not liable for any negligent conduct done by Dr. Burkholz. Furthermore, Defendant TRMC believes and is informed Dr. Gonzales was also not a TRMC employee when he saw the decedent, Adrienne T. Branton (Ms. Branton.) Therefore, Defendant TRMC believes attributing the alleged negligence of Dr. Burkholz and Dr. Gonzales to TRMC would create an unfair prejudice to Defendant TRMC and mislead the jury. See Rule 403 of the SCRE “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence;” See also Busillo v. City of North Charleston, 404 S.C. 604, 610, 745 S.E.2d 142 (2013) “A trial court has particularly wide discretion in ruling on Rule 403 objections.” Hence, TRMC is not liable for

any conduct of Dr. Burkholz or Dr. Gonzales pursuant to the Tort Claims Act and Smith v. Reg'l Med. Center.

3. Any reference regarding testimony elicited during the trial deposition of Dr. Bryan West held October 5, 2023, regarding a separate law suit and allegations which are not related to the issue in this lawsuit.

Rule 401 of the SCRE states “Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Although all relevant evidence is generally admissible, subject to certain exceptions, *irrelevant evidence* is never admissible. Daufuskie Island Util. Co. v. S.C. Office of Regulatory Staff, 420 S.C. 305, 314, 803 S.E.2d 280, 285, 2017. (Emphasis added.)

While cross examining Dr. Bryan West (Dr. West) during his trial deposition, Plaintiff asked Dr. West questions regarding another and unrelated law suit, namely Ellen Corley and James Vanburen, individually and as the Personal Representatives of the Estate of Andrew Vanburen v. The Regional Medical Center C/A No.: 2021-CP-38-01418, for which the Plaintiff’s counsel referred to as “a 29-year-old patient” who had died the day before Ms. Branton was admitted. The questions consisted of, including but not limited to, whether this event traumatized Dr. West and/or influenced Dr. West’s decision making in treating Ms. Branton. Defendant TRMC’s counsel objected to any and all questions regarding the above-mentioned lawsuit on the grounds that it exceeds the bounds of this lawsuit, is highly prejudicial against TRMC, and is not relevant to this lawsuit. Defendant TRMC asserts that the jury must judge the conduct of the defendant **as of the time they were treating the plaintiff**. See, e.g., Ellis v. United states, 484 F. Supp. 4 (D.S.C. 1978). See, also, Myles v Lafitte, et al, Case No. 19-1821, (4th Cir. 2/16/93). A non-published, *per curiam*, opinion. They must not judge the care and treatment rendered based upon hindsight or

based upon what was learned or on what happened after the defendants made their decisions with respect to the care and treatment given. *Id.* Defendant TRMC further believes a decision on the issue of professional negligence must result from resolving whether any of the defendants, either separately or in concurrence, deviated from the standard of care required of each of them in the practice of his or her particular calling **at the time the alleged acts** or omissions occurred. *Id.*

Here, Defendant TRMC believes and is informed that Plaintiff attempts to bring another unrelated lawsuit into jury's attention to relate Dr. West's treatment of Ms. Branton on October 2, 2019, to the events of the other case which, Defendant believes, would unduly mislead and influence the jury against Defendant TRMC. For this reason, Defendant TRMC believes any reference regarding testimony elicited during the trial deposition of Dr. Bryan West on October 5, 2023, regarding a separate law suit and allegations which are not related to the issue in this lawsuit should not be presented to the jury.

4. Any photographs showing Ms. Branton's dead body or her sitting dead on a chair as those close-up images will create an undue tendency to suggest a decision on an emotional basis and are highly prejudicial to the defendant.

Defendant TRMC again reiterates that Rule 403 of the SCRE states, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "A trial court has particularly wide discretion in ruling on Rule 403 objections." *Busillo v. City of North Charleston*, 404 S.C. 604, 610, 745 S.E.2d 142 (2013). Furthermore, "to constitute unfair prejudice, the photographs must create 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d, 690, 697 (2012) (quoting *State v. Jackson*, 364 S.C. 329, 334, 613 S.E.2d 374 (2005)).

At trial, Plaintiff intends to introduce photographs of Ms. Branton's lifeless body sitting on a chair staring up. Defendant believes these photographs will create an undue tendency to suggest a decision on an emotional basis and are highly prejudicial to Defendant. Moreover, Defendant asserts that the probative value of these photographs of a dead body is substantially outweighed by the prejudice defendant TRMC would face if these are introduced to the jury.

Therefore, Defendant asserts these photographs should be excluded and not introduced to the jury.

5. Any reference to S.C. Department of Health and Environmental Control (DHEC) Regulations regarding Standards for Licensing Community Residential Care Facilities coded as § 61-84, and attribution of negligence to TRMC because they are not plead in Plaintiff's Complaint.

Defendant TRMC reiterates its citations in Paragraph 1 herein verbatim. Pursuant to Rule 8(a)(2), SCRCF requires a litigant to plead "a short and plain statement of the facts showing the pleader is entitled to relief." "The ultimate facts *required* to be stated in a pleading are those which the evidence upon the trial will prove . . ." Stroud v. Riddle, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973). (emphasis added.) See also Rule 8(f), SCRCF "All pleadings shall be so construed as to do substantial justice to all parties." "The purpose of a pleading is fair notice to the opponent and the court." Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001).

Again, just like the "multiple occurrences," nowhere in her Complaint suggests any pleadings or assertion as to TRMC's violation of DHEC Regulations. Defendant TRMC reiterates that Plaintiff has not moved to amend her Pleadings. Thus, Defendant asserts it is not substantially just for Defendant TRMC to defend against this issue of as well as it did not receive a fair notice.

WHEREFORE, Defendants hereby pray this Court issue its Order granting its Motion in *Limine* excluding the above-mentioned references and testimony.

MICHAEL C. TANNER, L.L.C.

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Bamberg, SC
October 8, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

SE'ANNE S. DAVIS, as Personal)
Representative of the Estate of Adrianne T.) Civil Action No. 2021-CP-38-01138
Branton, deceased,)
) Plaintiff,)
) v.)
) The Regional Medical Center of)
Orangeburg and Calhoun,)
) Defendant.)
_____)

**NOTICE OF MOTION AND MOTION FOR JNOV OR
JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE,
FOR A NEW TRIAL ABSOLUTE OR, IN THE ALTERNATIVE,
FOR REMITTITUR OF VERDICT PURSUANT TO TORT CLAIMS ACT
AND FOR SET-OFF OF AMOUNTS PAID BY SETTLING PARTIES**

TO: THE HONORABLE MAITE MURPHY

DAVID WILLIAMS, SCOTT C. EVANS, JAMES B. MOORE III , AND ROBERT
F. GOINGS, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendant The Regional Medical Center ("TRMC"), by and through its undersigned counsel, shall at such time and place as the Court may direct, move for an Order pursuant to Rule 50(b), SCRCF, granting judgment as a matter of law in favor of the Defendant notwithstanding the jury's verdict. Alternatively, the Defendant moves for a new trial absolute pursuant to Rule 59(a), SCRCF and pursuant to the thirteenth juror doctrine. If the foregoing motions are denied, the Defendant moves that the verdicts in favor of the Plaintiff

be reduced to the aggregate of \$1,200,000 in accordance with S.C. Code Ann. § 15-78-120(a)(3) and 15-78-120(a)(4) and that the Court apply the set-off under the common law and S.C. Code Ann. § 15-38-50 for the \$150,000 in settlement funds received by the Plaintiff from other settling parties.

The grounds for the Defendant's post-trial motions are as follows:

I. Grounds related to the Issue of Multiple Occurrence under the South Carolina Tort Claims Act

Section 15-78-120 of the South Carolina Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a)(3) provides that "[n]o person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, *a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence* regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(3).¹ (Emphasis added). The Tort Claims Act must be liberally construed to limit the liability of the state and its political subdivisions. S.C. Code Ann. § 15-78-20(f).²

¹ Additionally, Section 15-78-120(a)(4) establishes an aggregate cap of \$1.2 million for multiple claims as follows: "The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." S.C. Code Ann. § 15-78-120(a)(4).

² See, Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"). See also, Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990); Bayle v. South Carolina Department of Transportation, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

In Parker v. Spartanburg Sanitary Sewer District, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), the South Carolina Court of Appeals, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding \$300,000." 607 S.E.2d at 716. The same is true with respect to the statutory cap for torts committed by a physician pursuant to Section 15-78-120(a)(3). Thus, the application of the monetary caps is a self-executing duty imposed on the trial court where, as here, the jury's verdict exceeds \$1.2 million. Notably, in Campbell v. City of North Charleston, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), the Court of Appeals reaffirmed that "the plain meaning of the statute indicates this cap must be executed" and that "under the plain meaning of section 15-78-120(a), courts must apply the statutory cap to actions brought pursuant to the Act." 848 S.E.2d at 793-794. The Court of Appeals also emphasized that "the application of the cap is mandatory and self-executing." 848 S.E.2d at 793.

As the italicized language above shows, Section 15-78-120(a)(3) caps a judgment at \$1.2 million "because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(3). The term "occurrence," which is part of the court's analysis in applying the caps, is defined in the Tort Claims Act as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). The statutory definition of "occurrence" is complex and nuanced and frankly not one that can be easily understood or applied by a jury. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. See, Boiter v. South Carolina Department of Transportation, 393 S.C. 123, 712 S.E.2d 401 (2011); Chastain v. AnMed Health Foundation, 388 S.C. 170, 694 S.E.2d 541 (2010).

The "occurrence" issue presents a mixed question of law and fact. See, Charleston County Parks & Recreation Comm'n v Somers, 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory

construction are a matter of law). Notably, in Boiter, the South Carolina Supreme Court made the determination that the facts as found by the jury gave rise to multiple occurrences. The jury in Boiter did not make that determination; the jury only determined that both defendants committed acts of negligence. The Defendant's position that the number of occurrences presents an issue of law for the court is further supported by reference to the related context of insurance coverage where the Supreme Court treated as an issue of law whether a particular factual scenario gives rise to a single occurrence or multiple occurrences. See e.g., Owners Ins. Co. v. Salmonsens, 366 S.C. 336, 622 S.E.2d 525, 526 (2005) (Supreme Court determined as matter of law that "placing a defective product into the stream of commerce is one occurrence" rather than multiple occurrences); Beaufort County School District v. United National Ins. Co., 392 S.C. 506, 709 S.E.2d 85 (2011) (Supreme Court determined as matter of law that the sexual molestation of multiple victims constituted multiple occurrences).

Accordingly, the application of the monetary caps is a mandatory and self-executing duty imposed on the trial court – and not the jury -- where, as here, the jury's verdict exceeds \$1.2 million. In effect, the statutory definition of "occurrence" presents an issue of statutory construction, and that is an issue of law for the trial court to apply post-verdict after the jury has made its factual findings.

A. Plaintiff has not properly alleged nor pled multiple occurrences in her Complaint and the verdict as returned by the jury is insufficient to allow this Court to enter judgment for the Plaintiff.

As a threshold issue, it is the Plaintiff's burden of proving each "occurrence" as pled. In Chastain v. AnMed Health Foundation, 388 S.C. 170, 694 S.E.2d 541 (2010), the South Carolina Supreme Court clearly ruled that "[i]f [plaintiff] *alleges* multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence

of events, she bears the burden of proving each occurrence." 694 S.E.2d at 544. (Emphasis added). In the current case, however, the Plaintiff has not properly alleged nor pled the "occurrences" in her Complaint, but rather the Plaintiff merely mentioned in the prayer of her Complaint that "Plaintiff further seeks judgment against Defendants for (a) actual and consequential damages as to each independent cause of action for each occurrence against the Defendants." See, Prayer in Complaint.

The Defendant asserts this is not the proper way to plead and allege that more than one "occurrence" was caused by this Defendant. However, the Plaintiff initially argued during the motion in *limine* hearing that there were two occurrences, and in the middle of the trial, surprised the Defendant by alleging the existence of four occurrences. The Plaintiff eventually reduced her claim to three occurrences as to (i) whether the Defendant breached the standard of care by failing to stabilize the decedent who was believed to be actively psychotic; (ii) whether the Defendant breached the standard of care by failing to admit the decedent to Behavioral Health Unit; and (iii) whether the Defendant breached the standard of care by discharging the decedent to an environment unequipped to handle her medical needs. The Defendant maintained its objections throughout the trial that Plaintiff had not pled with the required specificity any of the above-mentioned occurrence claims in her Complaint. The Defendant further argued, for the reasons discussed above, that the issue relating to the number of occurrences should be a question of law based upon factual findings by the jury rather than simply a question of fact which would be submitted to the jury to answer. Notably, the Plaintiff did not plead any specific incidents, including date and time, nor any alleged "loss" specifically arising from any purported

“occurrences.”³ Dr. West was the only TRMC employee who examined and treated the patient on October 2, 2019. He saw her over the course of seventy minutes before reaching his “Impression and Plan.” This plan recommended:

Discharge to home once medically cleared, recommendation to stop Clonazepam 1 mg daily as it is self tapering... the patient got Haldol in the ED with an improvement in behavior. Her main complaint to me at bedside was that she was dizzy and didn’t want to take meds that made her dizzy. Most likely the Clonazepam was making her dizzy. She should stop taking this medication Says she is comfortable with this plan. Lives at a boarding home and this plan should be communicated to the boarding home regarding med administration.

It is hard to fathom how a single medical encounter of seventy minutes on one date gives rise to anything other than one “unfolding sequence of events.”

Moreover, the Defendant asserts that the Plaintiff suffered only one “loss” as defined by Section 15-78-30(f). Nonetheless, that burden of proof falls on the Plaintiff, who failed to satisfy her burden of showing a different “loss” arose from each of the multiple occurrences claimed during trial. See, S.C. Code Ann. § 15-78-120(a)(3) (“[n]o person may recover in any action ... a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence”).

To reiterate, the Plaintiff has the burden of pleading and proving not only the number of "occurrences" but also proving the damages awarded for each “loss” arising from each separate occurrence. In this case, the Plaintiff did not meet her burden of proof, much like the plaintiff in

³ “Loss” is a defined term under the Tort Claims Act. Section 15-78-30(f) provides: “‘Loss’ means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.” See, S.C. Code Ann. § 15-78-30(f).

Chastain. Rule 8(a), SCRPC, requires a litigant to plead the ultimate facts which will be proved at trial. Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328 (1987). There are no allegations in the Complaint regarding “multiple occurrences” with each occurrence proximately causing a separate, unique “loss.”

Critically, while the verdict form does include a total amount of actual damages awarded by the jury for the survival and wrongful death claims and two “breaches of the standard of care” as found by the jury, the verdict form fails to satisfy the Plaintiff’s burden of proof necessary to show more than a single “occurrence” or, if multiple occurrences are claimed, that each purported “occurrence” proximately resulted in a “loss.” And most certainly, if multiple occurrences are claimed, there is no proof that each of the purported “occurrences” resulted in a loss of at least \$1.2 million. The jury was never requested to provide that information, much like what occurred in Chastain. The Plaintiff never requested a special verdict form or special interrogatories that would allow this Court to determine the “loss” attributable to any of the purported occurrences claimed by the Plaintiff at trial. In other words, the verdict form does not reflect what portion of the survival claim verdict of \$4 million or wrongful death claim verdict of \$1 million is attributable to what “occurrence.” It is possible – in fact, it is likely -- that all of the damages were caused by just one of the purported occurrences claimed by the Plaintiff at trial. Even if there are multiple “losses,” it is also just as possible that one or more of the purported occurrences caused a “loss” in excess of \$1.2 million. It simply cannot be determined based on this verdict form, and thus, the Plaintiff has not met her burden of proof. In short, the verdict as returned by the jury is insufficient to allow this Court to enter judgment for the Plaintiff in any amount, let alone in excess of \$1.2 million for a single occurrence.

B. The verdict form does not support a finding of two “acts of negligence” that must be shown to support the Plaintiff’s request for the Court to find two “occurrences.” The verdict form likewise does not support a finding of a separate loss arising from the multiple occurrences claims by the Plaintiff.

The definition of "occurrence" requires there to be an "act of negligence" as a necessary prerequisite. The elements of negligence are well-settled. In order to prove negligence under South Carolina law, a plaintiff must show three elements on a negligence claim: "(1) a duty of care owed by [the] defendant to [the] plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." Dawkins v. Sell, 434 S.C. 572, 865 S.E.2d 1, 5 (Ct. App. 2021), citing J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97, 101 (2006). Proximate cause is ordinarily a question of fact for the jury and "requires proof of: (1) causation-in-fact, and (2) legal cause." Id. "Causation-in-fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence, and legal cause is proved by establishing foreseeability." Id. at 5-6. "Foreseeability 'is determined by looking to the natural and probable consequences of the defendant's conduct.'" Id., citing Gause v. Smithers, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013). "A negligence claim is insufficient if one of these elements is absent." Gause v. Doe, 317 S.C. 39, 451 S.E.2d 408, 409 (Ct. App. 1994). See, Lord v. D&J Enterprises, Inc., 407 S.C. 544, 757 S.E.2d 695, 702 (2014) ("[t]o prevail on a negligence claim, a plaintiff must establish duty, breach, causation, and damages").

Therefore, an "act of negligence," as used in Section 15-78-30(g), requires all elements of the claim to be established in order to prove an "occurrence." If any element is missing, such as where there is a breach of a duty but no proximately caused damages, then there is no "act of negligence" giving rise to a separate "occurrence" or allowing for an additional "cap" of damages on which to enter judgment. This is particularly true in the application of the damages caps because the absence of proven damages does not and cannot support the imposition of an additional \$1.2

million cap. In other words, the Plaintiff cannot claim a \$1.2 million cap for an "unfolding sequence of events" that does not include proximately caused damages. That is why each of the four elements of negligence must be demonstrated for each claimed "occurrence."

As stated above, it is the Plaintiff's burden of proving each "occurrence" as pled. See, Chastain v. AnMed Health Foundation, 388 S.C. 170, 694 S.E.2d 541, 544 (2010). In the case at bar, the Plaintiff has not made that showing. In addition to not being able to show that the record supports a finding of two "occurrences," as discussed above, the Plaintiff cannot show more than a single act of negligence by the Defendant. The Plaintiff alleged at trial that the Defendant is liable for (1) failing to admit the decedent to Behavioral Health Unit (BHU) and (2) discharging her to a facility which does not provide medical care. As the trial continued, the Plaintiff's alleged that two additional, not specifically plead occurrences existed. This was eventually modified by Plaintiff that (3) the Defendant also failed to stabilize the decedent who was alleged to be actively psychotic when she had gone to the Defendant hospital. The record demonstrates that the decedent was alive when she left the hospital on October 2, 2019, and that she left with a caretaker who signed the discharge documentation on behalf of the decedent. It was the next date that the damages began to accrue with the contribution of intervening and superseding causes, such as the third-party caretaker's transferring the decedent to another facility without supervision and sheriff's deputy's cancelling the EMS call which was designated to take the decedent back to the hospital. No cause of action for negligence accrued until that date. See, Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438, 442 (1971) ("It is basic that a negligent act is not in itself actionable and only becomes such when it results in injury or damage to another"); Murphy v. Owens-Corning Fiberglas, Inc., 356 S.C. 592, 590 S.E.2d 479, 482 (2003) (same).

Likewise, the decedent did not suffer a “loss” until she sustained physical injury and subsequently died from dehydration and heat stroke on October 3, 2019. Nonetheless, while the jury eventually came to a verdict that the Defendant breached the standard of care by failing to stabilize the decedent and by discharging her to a boarding home unequipped to handle her medical needs, the special interrogatories make no mention of nor any finding of proximate cause with respect to either of those breaches of the standard of care. The jury was only asked to find breaches of the standard of care. The jury was also not called upon on the special verdict form to find that the two breaches of the standard of care, as found by the jury, were “separate and independent” acts of negligence as opposed to concurrent..

C. The record reflects that the same "unfolding sequence of events" proximately flows from the alleged multiple acts of negligence, and as a result, there is, at most, a single "occurrence" under the Tort Claims Act.

The leading case on the application of the term "occurrence" under the Tort Claims Act is the Supreme Court's decision in Boiter v. South Carolina Department of Transportation, 393 S.C. 123, 712 S.E.2d 401 (2011). In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident the red signal light bulbs in the traffic signal for other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence

by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. The Supreme Court did, in fact, acknowledge that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. But, based on what it described as "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id.*⁴

The present case is readily distinguishable from Boiter in that this case involves a single governmental entity, specifically a single physician (Dr. West), that allegedly committed multiple acts of negligence. The Supreme Court in Boiter offers considerable insight as to how a case with those characteristics should be adjudicated. The Court points out that "[c]ases from other

⁴ Other courts have misread Boiter as not requiring the factfinder to allocate the "loss" arising from each occurrence. See e.g., Gifford v. Horry County Police Department, 2023 WL 2702953, *6 (D.S.C. 2023) (where the federal district court erroneously concluded that the jury in Boiter did not "parse out" the verdicts between each claim and each defendant). As reflected in the Supreme Court's opinion, Boiter did not involve one lawsuit with two plaintiffs and two defendants. Instead, as the Supreme Court explained, "[t]he Boiters filed four separate lawsuits against South Carolina Department of Transportation (SCDOT) and South Carolina Department of Public Safety (SCDPS) (collectively, Respondents) alleging negligence in their failure to prevent the accident." Boiter, 712 S.E.2d at 402. Thus, there were four separate lawsuits, and as a result, when the cases were tried, the jury returned *four separate verdicts*. Those four verdicts totaled \$1.875 million for each plaintiff. 712 S.E.2d at 402-403. In adjudging the post-trial motions, the trial judge in Boiter did have available to him the jury's determination of the "loss" attributable to each defendant (SCDOT or SCDPS) in favor of each plaintiff (Larry Boiter and Jeannie Boiter). That allowed the Supreme Court to know on appeal that the jury found in excess of \$300,000 in damages for each of the two occurrences that the Supreme Court found, one by SCDOT and another by SCDPS.

jurisdictions are similarly inapposite because they involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." Boiter, 712 S.E.2d at 406. The Supreme Court then cites favorably to two cases from other jurisdictions that are instructive in the present case. Those cases are factually similar to the present case where, unlike in Boiter, there is a single governmental entity that allegedly committed multiple acts of negligence.

The most comparable of those cases is Folz v. State, 110 N.M. 457, 797 P.2d 246 (1990), which the South Carolina Supreme Court described as holding that the "negligence by [the] highway department which resulted in a truck striking five separate vehicles in [a] collision was only one occurrence under [the applicable] statute." *Id.* In Folz, a personal injury suit was brought against the state highway department after a runaway truck successively struck five vehicles in a mountainous construction site. The plaintiffs alleged that the highway department committed two acts of negligence described as "negligen[ce] in failing to design and implement an appropriate traffic-control plan for the project." 797 P.2d at 249. The court concluded that "[t]he Department committed at least two negligent acts or omissions (planning and implementation) that, although committed successively, combined concurrently with the negligence of the other tortfeasors to proximately cause indivisible harm to each of multiple person facing the singular risk of a runaway truck." 797 P.2d at 252. The court further explained "while a 'series' of acts or omissions on the part of the Department created an undue risk of injury, these acts contributed to a unitary risk, and only one triggering event occurred giving rise to liability." 797 P.2d at 254. The New Mexico court found that there was a "single occurrence" under that state's Tort Claims Act.

Importantly, in Boiter, the South Carolina Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712

S.E.2d at 407. This would likewise be true where there are multiple acts of negligence committed by the same entity, particularly where those acts are the same or similar and result in a continuous “unfolding sequence of events.” To reiterate, in Boiter, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or “unfold” to cause each plaintiff’s injury. Here, the facts as found by the jury reveal that one governmental defendant committed the same or at least similar or related breaches of the standard of care that combined or “unfolded” to result in the Defendant failing to appropriately stabilize the decedent and in improperly discharging her.

Critically, the number of “occurrences” is not determined by the number of acts of negligence (or in this case the number of breaches of the standard of care). Boiter, 712 S.E.2d at 406 (“we do not adopt a bright-line test based on the existence of multiple acts of negligence”). Rather, an “occurrence” is an “unfolding sequence of events.” Given the jury’s verdict, the Court must now apply the statutory definition of “occurrence,” and analyze whether the two breaches of the standard of care, as found by the jury, gave rise to or proximately caused different “unfolding sequences of events.” If the two breaches of the standard of care each give rise to a new “sequence of events” so as not to be “unfolding” or “evolving” from past events, only then is there a new and separate “occurrence.” In other words, if the same “unfolding sequence of events” proximately flows from multiple acts of negligence (or in this case breaches of the standard of care since the jury did not find acts of negligence), there is but a single occurrence, as the Supreme Court in Boiter explains.

In this case, there was a single event which proximately flowed from the two breaches of the standard of care as found by the jury, that being the decedent’s discharge on October 2, 2019, without providing additional psychiatric care. The two breaches of the standard of care flow into

that singular event, i.e., they combined and concurred to proximately cause at most a single occurrence – the unfolding sequence of events that ended with the decedent’s death on October 3, 2019. In sum, if the same "unfolding sequence of events" proximately flows from multiple acts of negligence (or in this case breaches of the standard of care since the jury did not find acts of negligence), there is still but a single occurrence. That is the scenario the Plaintiff has presented in the case at bar. The Plaintiff has not pled multiple “unfolding sequence of events.” Moreover, the evidence does not support a finding of new or different "unfolding sequences of events." Accordingly, the verdicts should at the very least be reduced to the aggregate statutory cap of \$1.2 million in accordance with the mandates of Sections 15-78-120(a)(3) and 15-78-120(a)(4).⁵

II. The trial court erred by not excluding the prejudicial photographs of the decedent and her grandson’s video

The photographs of the decedent Adrienne Branton on the chair and in a body bag should have been excluded from the jury as the prejudicial effect substantially outweighed the probative value. Rule 403, SCRE, states: “Although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. “To constitute unfair prejudice, the photographs must create ‘an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” State v. Holder, 382 S.C. 278, 676 S.E.2d 690, 697 (2012).

⁵ Even if the Court finds there to be two occurrences and that the verdict form allows the Court to find two occurrences, the statutory cap of Section 15-78-120(a)(3) and the aggregate cap of Section 15-78-120(a)(4) require a reduction of the \$4 million and \$1 million verdicts accordingly. Those verdicts cannot stand under any analysis, and if two occurrences are found, the Court is asked to reduce each verdicts as required by Section 15-78-120(a)(3) and Section 15-78-120(a)(4).

The photographs were grotesque, close-up images of the deceased taken immediately after her death. The Plaintiff also submitted the images of the decedent in a body bag when the pathologist testified. Clearly, these images were admitted solely to anger and incite the passions of the jury and did not otherwise serve any probative benefit. As the excessive jury award demonstrates, the jury reached their decision on an emotional basis when they saw the photographs of the decedent's dead body. At the very least, even if the photographs did have a probative purpose, the prejudicial effect clearly outweighed that the probative value under a Rule 403 analysis, and the photographs should have been excluded.

Additionally, the video of the decedent's grandson O'Maury Davis giving a eulogy for the decedent should have been excluded. Some of the statements made in the eulogy were factually inaccurate to the point it would have unduly influenced the jury. O'Maury Davis died shortly before the trial. He had not been deposed, and as a result of his death and the unavailability of any sworn testimony, the Defendant was denied the opportunity to cross-examine him. Therefore, the video clip was inadmissible hearsay. Hearsay consists of out-of-court statements offered in evidence to prove the truth of the matter asserted. South Carolina Dept. of Social Services v. Doe, 292 S.C. 211, 355 S.E.2d 543, 544 (1987). The rule against hearsay provides that statements made out of court, without an opportunity for cross-examination of the declarant and without the sanction of an oath, shall not be received as evidence in judicial proceedings. Id., citing Haseldon v. Standard Mutual Life Asso., 190 S.C. 1, 1 S.E.2d 924 (1939). A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion, pursuant to Rule 801, SCRE. "Probably the most important objection to admitting hearsay testimony in evidence is that the *declarant is not present and available for cross-examination.*" Cooper Corp. v. Jeffcoat, 217 S.C. 489, 494, 61 S.E.2d 53, 55 (1950). (Emphasis

added.) Again, the Defendant was not able to cross-examine O'Maury T. Davis regarding his knowledge of and relation to the decedent as well as the decedent's caretakers Estelle Hutchinson and Brenda Williams. For this reason, the Defendant believes the trial court improperly admitted the video into evidence and this unduly influenced the jury in reaching their verdict. There is no South Carolina appellate decision which allows this video to be admitted as an exception to the hearsay rule as asserted by the Plaintiff.

III. The Defendant is entitled to a new trial absolute based upon the thirteenth juror doctrine

A trial court has the authority to grant a new trial absolute when the trial court finds that the evidence does not justify the verdict. Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265, 267 (1990); Ex parte Travelers Home & Marine Ins. Co., 427 S.C. 238, 830 S.E.2d 718, 721 (Ct. App. 2019); Trivelas v. South Carolina Dept. of Transportation, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004). See also, Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 422, 453 S.E.2d 908, 912 (Ct. App. 1995) (stating a new trial absolute pursuant to the thirteenth juror doctrine may also be granted "if the verdict is inconsistent and reflects the jury's confusion"). Commonly referred to as the thirteenth juror doctrine, the doctrine serves as a vehicle for the trial court to serve as a thirteenth juror and "hang" the jury as if the jury failed to reach a verdict and a new trial is ordered. Id. The trial judge is not required to give reasons for invoking the thirteenth juror doctrine, just as a jury is not required to give reasons why it was unable to reach a verdict. Id.

The Defendant is entitled to a new trial absolute as allowed by the thirteenth juror doctrine. As discussed above, the Plaintiff did not plead with specificity "multiple occurrences." The Plaintiff then argued there was evidence were at least two occurrences, which were (1) that the Defendant failed to admit the decedent to Behavioral Health Unit and (2) the discharging of the decedent to the boarding house. After the Plaintiff's expert Dr. David Husted testified, the Plaintiff

added another purported “occurrence” that the Defendant failed to stabilize the decedent. Over the Defendant’s objection, the trial court submitted a question to jury to determine whether that constituted a breach of the standard of care. In actuality, this confused and misdirected the jury as evidenced by the fact that after an hour of deliberation, the jury had a question regarding “do they have to answer all parts of Question 4 the same.” The trial court answered that the jury had to answer each question independently. Furthermore, the injury instruction also confused the jury as again during deliberations, the jury asked if it needed to assign a financial value as to question #4 of the verdict, which sets out the checkbox of “yes” or “no” for each alleged occurrences.

As the evidence does not support the verdict, or in the alternative, the verdict is inconsistent with the evidence and reflects the jury’s confusion, the Defendant should be granted a new trial absolute pursuant to the thirteenth juror doctrine.

IV. The Court should grant a new trial nisi remittitur because the jury rendered an excessive verdict compared to the evidence offered by Plaintiff.

When a verdict “is so grossly excessive ... that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge ... to set aside the verdict absolutely.” Allstate Ins. Co. v. Durham, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993), citing Easler v. Hejaz Temple, 285 S.C. 348, 329 S.E.2d 753, 758 (1985); Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (stating a “trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives”).

Here the jury’s verdict was grossly excessive. The Plaintiff asserted \$4,000 in medical bills from her October 2, 2019 hospital treatment. The jury returned a verdict for the survival claim

that was 1000 times the actual damages. The jury returned a verdict for \$4 million for the survival action and \$1 million for the wrongful death claim, which combined together is 1,250 times higher than the actual damages.

As the verdict is grossly excessive and shocks the conscious, the Defendant's motion for a new trial absolute should be granted. The amount is shockingly disproportionate to the Plaintiff's injuries as discussed above.

V. The Defendant is entitled to set-off for the settlement amounts paid by the other parties.

South Carolina law recognizes that a trial court possesses "jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties." Smalls v. South Carolina Department of Education, 339 S.C. 208, 528 S.E.2d 682, 688 (Ct. App. 2000). The South Carolina Court of Appeals has explained that "the reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." Id. The Court of Appeals in *Smalls* concluded:

Equity dictates Department be given a credit for the amount paid by the settling parties and thus, a double recovery is avoided. The settlement amount represents, in effect, the portion of total damages attributable to [the settling defendant].

528 S.E.2d at 688-689. See also, Rutland v. South Carolina Department of Transportation, 390 S.C. 78, 700 S.E.2d 451 (Ct. App. 2010).

It is well established that "[a] nonsettling defendant is entitled to credit for the amount paid by another defendant who settles." Hawkins v. Pathology Associates of Greenville, P.A., 330 S.C. 92, 498 S.E.2d 395, 406 (Ct. App. 1998), citing Powers v. Temple, 250 S.C. 149, 156 S.E.2d 759

(1967); Vaughn v. City of Anderson, 300 S.C. 55, 386 S.E.2d 297 (Ct. App. 1989). "Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188, 190 (Ct. App. 2012), citing Hawkins v. Pathology Associates of Greenville, P.A., 330 S.C. 92, 498 S.E.2d 395, 406 (Ct. App. 1998). "When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." Smith, 724 S.E.2d at 190, citing Ellis v. Oliver, 335 S.C. 106, 515 S.E.2d 268, 271-72 (Ct. App. 1999). "Therefore, a plaintiff's claim for actual and punitive damages arising from the same injury is the same claim for purposes of setoff under section 15-38-50(1)." Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188, 191 (Ct. App. 2012).

In Ellis v. Oliver, 335 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999), the Court of Appeals explained that "[a]pplication of the settlement credit was statutorily mandated in this case. S.C. Code Ann. § 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." 515 S.E.2d at 272.

In the case at bar, the Plaintiff filed suit against Lonell Phaire, Carlton Phaire, and Brenda Williams d/b/a Heavenly Living Boarding and Salley Keitt's Rest Home (Civil Action Number 2020-CP-38-01142) for both wrongful death and survival claim action for the same injuries as claimed in this action. The Defendant understands that the Plaintiff and those parties settled for \$100,000.00 on December 21, 2021. The Order Approving the Settlement Agreement further states that the net proceeds were allocated fifty percent to the wrongful death claim (\$50,000) and fifty percent to the survival action claim (\$50,000). The Plaintiff also filed an action against the

Orangeburg County's Sheriff's Office as co-Defendant to TRMC in this action. On March 24, 2023, the Plaintiff and the Sheriff's Office settled for \$50,000 which were allocated fifty percent to the wrongful death claim (\$25,000) and fifty percent to the survival action claim (\$25,000).

Equity dictates that the Defendant TRMC be given a credit for the amount paid by the settling parties so that a double recovery is avoided. As a result, in application of South Carolina law, the Defendant TRMC is entitled to a set-off under the common law and S.C. Code Ann. § 15-38-50 for the \$150,000 in settlement funds received by the Plaintiff from the settling Defendants, specifically a set-off of \$75,000.00 on the wrongful death claim and a set-off of \$75,000.00 on the survival action claim.

Respectfully submitted,

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*Counsel for Defendant
 The Regional Medical Center*

October 23, 2023

ORAL ARGUMENT REQUESTED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	CIVIL ACTION No.: 2021-CP-38-01138
Se'Anne S. Davis, as Personal Representative	)	
of Estate of Adrianne T. Branton,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MOTION FOR COSTS
	)	AND INTEREST
The Regional Medical Center of Orangeburg	)	
and Calhoun,	)	
	)	
Defendant.	)	

Pursuant to Rule 54 and 68 of the South Carolina Rules of Civil Procedure, together with S.C. Code Section Ann. 15-35-400, Plaintiff hereby moves for an order to tax costs and to recover the consequences for the Defendant's non-acceptance of the Plaintiff's Offer of Judgment to settle this case. The plain language and intent behind Rule 68 exists to encourage settlement and reduce litigation. *Black v. Roche Biomedical Laboratories*, 315 S.C. 223, 227, 433 S.E.2d 21, 24 (Ct. App. 1993). The Defendant must suffer the consequences under the Rules of Civil Procedure of its failure to reasonably settle this case and forcing this case to trial.

On August 15, 2023, Plaintiff filed an Offer of Judgment for One Million Two Hundred Thousand Dollars (\$1,200,000.00). This offer was rejected. At trial, on October 13, 2023, the jury award a verdict in the amount of Five Million Dollars (\$5,000,000.00). Since the verdict is certainly more than the Offer of Judgment, Plaintiff is entitled to both costs and interest following the judgment for the Defendant's rejection of the offer.

A) Taxable Costs and Offer of Judgment Costs

Rule 54 allows for specifically enumerated certain costs and disbursements to the prevailing party. Plaintiff seeks the following costs under Rule 54:

(a)	Fees of the Clerk: (Rule 54(e)(1), SCRCP)	\$ 307.28
(b)	Fees for Exemplification and Copies of Papers Necessarily Obtained for Trial: (Rule 54(e)(6), SCRCP) 13,250 pages of records	\$2,052.13
(c)	Fees incurred in Service of Process (Rule 54(e)(4), SCRCP)	\$ 75.00

In addition to the costs taxable under Rule 54, Plaintiff is entitled to reimbursement of additional costs incurred for Defendants failure to accept the Offer of Judgment. Rule 68, SCRCP provides that Plaintiff is broadly entitled to “*any administrative, filing, or other court costs* from the date of the offer until the entry of the judgment.” (emphasis added). Unlike Rule 54(e), which sets for the “taxable costs allowed under that rule”, additional costs under Rule 68 are permitted for “any administrative, filing, or other court costs” from the date of the offer of judgment. Rule 68 does not limit costs allowed as set forth Rule 54, nor has any South Carolina decision limited the costs allowed under Rule 68 to only costs that allowed under Rule 54. Since the offer of judgment, Plaintiff has incurred the following case costs:

(a)	Witness Fee Required for Trial Testimony of Dr. David Husted	\$15,375.00
(b)	Witness Fee Required for Trial Testimony of Dr. Gonzalez	\$ 2,635.00
(c)	Deposition Transcripts	\$ 3,537.87
(d)	Out of town travel and accommodations	\$ 750.00

If the plain language and intent behind Rule 68 is to encourage settlement and reduce litigation costs, then Plaintiff should be reimbursed for these necessary trial administration and court costs that had to be paid to effectively present the case to the jury due to Defendant's refusal to reasonably settle this case. If the spirit of Rule 68 is to be honored, then Plaintiff should not have to bear these litigation related costs. Therefore, Plaintiff requests an order of costs in the amount of \$22,297.87. Counsel for the Plaintiff certifies below that the above costs are correct and were necessarily incurred in the action.

B) Offer of Judgment Interest

Both Rule 68, SCRCP, and section 15-35-400 (Supp. 2020), which govern the award of interest in the offer of judgment context, specifically state the plaintiff is entitled to eight (8%) percent interest "on the amount of the verdict or award" from the date of the offer to the entry of judgment.

Rule 68(b), SCRCP, provides in relevant part:

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: ... (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment

Similarly, section 15-35-400(B) states:

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: ... (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer

"We find the language of both the rule and the statute clearly and unambiguously provides that [Plaintiff] is entitled to eight percent interest on the entire amount of the verdict, including punitive damages." *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (emphasis

added). Further, in *Garrison*, the South Carolina Supreme Court made it clear that “interest award in the offer of judgment context” is different from “prejudgment interest.” Both Rule 68 and section 15-35-400 does not to exempt governmental entities or parties protected by the South Carolina Tort Claims Act from the consequences of a non-acceptance of an offer of judgment.

The Defendant is not exempt from interest in the offer of judgment context. The only type of civil cases or parties that an offer of judgment does not apply to is “domestic actions”. See Rule 68 (“any party in a civil action, except a domestic relations action.”). The protections afforded under the Tort Claims Act does not apply in this case as this case concerned liability stemming from the acts and omissions of a licensed physician. “Section 15-78-70 (b) & (c) specifically states the liability of licensed physicians and dentists is not affected by the South Carolina Tort Claims Act.” *Stewart v. Richland Memorial Hosp.*, 350 S.C. 589, 594, 567 S.E.2d 510, 513 (2002). In any event, the Tort Claims Act does not prohibit offer of judgment interest or post-judgment interest. the South Carolina Tort Claims Act, specifically S.C. Code Section 15-78-120(b), only states that “no award for damages shall include punitive or exemplary damages or *interest prior to judgment*.” (emphasis added). Offer of judgment interest is *not* pre-judgment interest, and the Act does not expressly prohibit interest allowed under Section 15-35-400 or Rule 68.

The amount of the verdict is \$5,000,000.00, but is subject to being reduced to \$2,400,000.00 due to the jury finding of two occurrences. The calculation of interest from the date of the offer of judgment of this verdict based on an award of \$2,400,000.00 to the date of the verdict is \$31,035.62.

Counsel for the Plaintiff certifies below that the above costs are correct and were necessarily incurred in the action. Therefore, Plaintiff respectfully requests this Court award her costs and offer of judgment interest as set forth herein.

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Attorneys for Plaintiff

October 23, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL ACTION 2021-CP-38-01138

SE'ANNE S. DAVIS, As Personal
Representative of the ESTATE OF
ADRIANNE T. BRANTON, Deceased,

Plaintiff,

v.

THE REGIONAL MEDICAL CENTER
OF ORANGEBURG AND CALHOUN
COUNTIES,

Defendant.

PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION FOR JNOV/NEW
TRIAL/REMITTITUR OR SET-OFF

TO: THE HONORABLE MAITE MURPHY

Plaintiff Se'Anne S. Davis, as Personal Representative of the Estate of Adrienne T. Branton, files this memorandum in opposition to Defendant the Regional Medical Center of Orangeburg and Calhoun Counties' (hereinafter "TRMC") Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Remittitur of Verdict and Set-Off. As set forth below, sufficient evidence exists to support the jury's verdict and the verdict should not be disturbed. Therefore, Defendant's motion must be denied, and judgment should be entered against Defendant in the amount of \$2,400,000.00 plus costs as set forth below.

I. Multiple Occurrences

A. Multiple Occurrences Were Properly Pled and Significant Evidence of Multiple Occurrences was Presented to the Jury

In support of its motion, Defendant TRMC asserts that Plaintiff failed to sufficiently plead multiple occurrences. As this Court properly noted during trial, Plaintiff pled multiple occurrences

at Paragraph 10 of her complaint and in subsection (a) of Plaintiff's prayer for relief of her complaint. In addition, Plaintiff's complaint incorporates a sworn expert affidavit by reference which clearly sets forth the evidentiary basis for a finding of multiple occurrences. TRMC is not able to set forth any South Carolina case that supports its proposition that there are any heightened or specific pleading requirements beyond those required of S.C. Rule Civ. P. 8(a) for actions in which there is evidence of multiple occurrences. Even if there were such a requirement, S.C. Rule Civ. P. 15(b) provides that pleadings may be amended at any time to conform to the evidence, but "failure so to amend does not affect the result of the trial of these issues." TRMC was well-aware of the evidentiary support which Plaintiff intended to offer into evidence at the time that it was initially served with the complaint and affidavit of expert Dr. David Husted. This evidentiary basis supporting a finding of multiple occurrences based upon the various acts of negligence and gross negligence committed by TRMC by and through its employees was echoed in the deposition of Dr. David Husted which took place on December 16, 2022. Further, Defendant was on notice as of September 28, 2023, when TRMC was served with a copy of the Plaintiff's S.C. Rule Civ. P. 16 pre-trial brief, that Plaintiff would be seeking a special interrogatory from the jury as to the allegations of multiple occurrences, the evidentiary basis for which was already well-established in the record based upon the expert opinions and deposition testimony of Dr. David Husted. At trial, Dr. Husted set forth a specific evidentiary basis from which the jury could find up to four separate occurrences, and the jury properly made a finding of two separate occurrences based on the evidence before it. In fact, the expert testimony of TRMC's own expert witness, Dr. Susan Hardesty, highlighted both "systematic failures" throughout the TRMC system as well as separate discharge errors committed by TRMC. As such, the jury was justified in finding multiple occurrences of negligence based upon the testimony of TRMC's expert alone. The assertion that

TRMC was somehow surprised or ambushed by the request that the jury be permitted to make a factual finding of multiple occurrences would ask that this Court disregard the testimony entered into the record by TRMC's own expert in both her discovery deposition and at trial. Surely, a Defendant cannot be surprised by evidence propounded by its own retained expert in a discovery deposition.

TRMC's assertion that the Plaintiff had a burden to show that a "a different 'loss' arose from each of the multiple occurrences claims during trial" is directly contrary to the South Carolina Supreme Court's ruling in Boiter v. South Carolina Department of Transportation, 393 S.C. 123 (2011). Notably, Defendant's attempt to dissect the occurrences fails to cite to any supporting authority to support the arguments. This exact position was specifically considered and subsequently rejected by the South Carolina District Court just this year when the Honorable Mary Geiger Lewis held that, after making the very same argument now raised in this case, counsel for the Defendant "fails, however, to cite any binding authority that has adopted this approach to jury verdicts in cases such as this. And, the Court has searched in vain to find one." (Exhibit 1, Order of Judge Lewis at p. 10). The entire premise of the South Carolina Supreme Court's decision in Boiter is that multiple acts of negligence or gross negligence can combine to cause a single injury (in that case impact injuries from a single motorcycle versus vehicle collision), and that it is up to the finder-of-fact to determine whether the acts of negligence were separate or were part of the same unfolding sequence of events.

The South Carolina Supreme Court held in Boiter that the "circuit court erred in tying the number of occurrences to the number of injuries sustained by the [plaintiffs]." See Boiter, at 134. The Boiter Court further explained there was "no indication the [defendants]' actions combined to form a single act of negligence." Id. In this case, the jury affirmatively answered special

interrogatories specifically identifying two occurrences of negligence. The evidence before the jury clearly supported its finding that separate and distinct acts of negligence combined to cause Mrs. Branton's death.

B. The Verdict Form Executed by the Jury Set Forth a Factual Finding of Two Occurrences

TRMC's argument as to the verdict form is unavailing, as TRMC specifically requested that the verdict form be fashioned in the format that was ultimately provided to the jury in response to the Plaintiff's request that the jury be provided with a line within which to write in the number of occurrences. With the input of both parties, this Court endeavored to craft language which would allow the jury to make a finding of up to three separate occurrences which allegedly combined to cause the death of Adrienne Branton based upon the specific evidence which was then before the jury. The special interrogatories properly summarized the evidence of record, and the jury made a specific finding that two independent acts of negligence combined to cause the death of Adrienne Branton.

The verdict form was clear and unambiguous, and the charges to the jury provided sufficient instruction and guidance as to their duties. Defendant TRMC correctly notes that it is Plaintiff's burden to prove separate "occurrences," and Plaintiff embraced that burden in discovery and at trial by providing a record of separate and distinct acts and omissions which combined to cause Mrs. Branton's death. As noted above, TRMC's own expert provided evidence of two distinct acts of negligence on cross examination.

With regard to Defendant's assertion that the verdict form is insufficient to support a finding of separate losses, the Plaintiff would incorporate the arguments set forth above and again contend that this position is simply made up by TRMC and is in direct contravention of the South Carolina Supreme Court's holding in Boiter.

C. The Record Supports a Finding of Multiple Occurrences

Defendant's final position as it relates to the issue of multiple occurrences amounts to its own biased attempt to weigh issues of material fact that were in dispute at the trial of this matter. While the jury was free to conclude that Mrs. Branton's death was not proximately caused by any negligent act of the Defendant or was proximately caused by only one single act negligence by the Defendant, the jury, after being charged on the law of occurrences, properly weighed the evidence and determined that Mrs. Branton's death was proximately caused by two separate and distinct acts of negligence. TRMC asks this Court to invade the province of the jury and make the opposite factual conclusion. Such a result is unwarranted.

From outset, the jury heard testimony and was shown documents that were subsequently admitted into evidence which confirmed that Mrs. Branton's death was the result of separate and distinct occurrences of negligence by Defendant TRMC in this case. The SCTCA defines an "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). Using this plain language, it is apparent that there is more than one occurrence in this case. Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) ("Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction."). An occurrence is something that flows from "a **single** act of negligence" and not something that flows from a combination of multiple acts of negligence. S.C. Code Ann. § 15-78-30(g) (emphasis added). The jury properly found two separate and distinct occurrences of negligence based upon the record before it.

The South Carolina Supreme Court has held that state entities can be subject to *multiple* caps under the South Carolina Tort Claims Act in situations in which independent acts of

negligence result in even a *single injury*. Boiter, 393 S.C. at 132 (emphasis added). In Boiter, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight. The South Carolina Supreme Court rejected the state defendants’ argument that each allegedly separate act of negligence claimed by the Plaintiffs “was a part of the *same unfolding sequence of events* that resulted in the Boiter’s damages.” Id. at 133, 406. Instead, the Court held that “[w]e are persuaded that two independent and separate acts of negligence occurred here.” Id. at 134, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406.

While Boiter involved allegations against two separate governmental entities, the prior South Carolina cases addressing the issue of “occurrences” as it is defined by the Tort Claims Act that were cited by the South Carolina Supreme Court in reaching its decision in Boiter both involved allegations of multiple, independent acts of negligence against *single* entities pursuant to the Tort Claims Act (in one case as applicable against a private, charitable medical facility pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-180(A) which incorporates the Tort Claims Act damages caps and “occurrence” definition for non-governmental, charitable medical facilities). The South Carolina Supreme Court’s decision in Chastain v. AnMed Health Foundation, discussed in more detail below, has been widely cited over the last 12 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and required to make a finding of fact in cases in which evidence of multiple, distinct acts of negligence comes before the jury. 694 S.E.2d 541 (S.C. 2010). Although the plaintiffs in that case had filed separate claims against individual nurses, the jury found against the plaintiffs on their claims

against individual employees, and the Supreme Court's discussion regarding occurrences was related solely to the claim of multiple occurrences caused by the multiple, distinct acts of negligence by representatives of Defendant AnMed Health Foundation, a *single* medical provider subject to the tort claims act pursuant to S.C. Code Ann. §§ 33-56-180(A). The Supreme Court held that the evidence suggesting multiple occurrences is an issue to be addressed in the jury charge and on the verdict form, as was done in this case.

The second case referenced by the South Carolina Supreme Court in Boiter is Williamson v. South Carolina Ins. Rsrv. Fund, a case in which the plaintiffs alleged that two independent acts of negligence by two physicians employed by a single governmental entity (the Spartanburg County Services District, Inc., a political subdivision of South Carolina which operated the Spartanburg Regional Hospital) resulted in a single, catastrophic injury to the plaintiffs' minor child. 355 S.C. 420, 586 S.E.2d 115 (2003). The circuit court made a specific finding that by establishing that the minor child's injury was caused by two independent acts of negligence by two separate physicians employed by a *single* governmental defendant, the plaintiffs "had established two separate 'occurrences' for purposes of the TCA." Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 423, 586 S.E.2d 115, 116 (2003). The South Carolina Supreme Court declined to address the circuit court's finding on appeal.

United States District Judge Cameron McGowan Currie noted in a recent trial court order:

[t]he South Carolina Supreme Court has held in Chastain that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. 694 S.E.2d at 543-44. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence.

Knox v. United States, C/A No. 0:17-cv-36-CMC, 2018 U.S. Dist. LEXIS 111445, *10-12 (D.S.C.

July 3, 2018). The Honorable R. Markley Dennis, Jr. held in 2014 that “[o]ur Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff’s claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment.” Doe 2 v. The Citadel, Case No. 2012-CP-10-01858, 2014 WL 8727884, *30 (S.C. Com. Pl. Dec. 9, 2014) (citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)).

This Court properly held that the evidence presented at trial required that the issue of occurrences be submitted to the jury, and the submission was made by way of special interrogatories on the verdict form. At the specific request of TRMC, the special interrogatories summarized the alleged occurrences rather than inviting the jury to simply write out the number of occurrences proven. As such, there is no basis for this Court to overturn the jury’s factual finding that two separate and distinct occurrences resulted in the injuries to the Plaintiff.

The jury was properly charged as to the elements of negligence, the burden of proof to show negligence and the definition of occurrence under the South Carolina Tort Claims Act. At the request of TRMC, detailed special interrogatories were included on the verdict form in lieu of a simplified verdict form which would have allowed the jury to write in the number of separate occurrences. The jury heard the evidence and made a specific finding, based on the evidence and the definition of occurrence as defined by the Generally Assembly, of two occurrences.

With regard to TRMC’s final argument that Boiter only applies to actions brought against separate state entities, the South Carolina Court of Appeals has recently affirmed a verdict in which the jury found that separate acts of gross negligence by the Horry County School District over the course of the same football game combined to cause a single brain injury to a student athlete. Thus,

the contention that the holding in Boiter is only applicable to cases filed against multiple state agencies/entities has already been rejected by the Court of Appeals. In June of 2023, the South Carolina Court of Appeals affirmed the Honorable William H. Seals, Jr.'s 2022 decision to allow the issue of occurrences to go to the jury and confirmed that multiple occurrences could be returned against a single state entity when multiple acts of negligence committed by the same state entity combined to form a single injury. (Exhibit 2, Wood v. Horry County School District, Appellate Case No. 2021-000535). In August of 2023, the Court of Appeals denied the defendant's request for a rehearing. (Exhibit 3).

II. The Court Properly Admitted a Limited Number of Photographs and the Brief Video Depicting a Recently Deceased Trial Witness

The photographs admitted into evidence were not overly graphic. With the input of the Court, the Plaintiff culled a select few photographs from the dozens of photographs produced by both parties in discovery to offer into evidence. Great care was used to select photographs that would not be overly prejudicial, but would merely depict the scene of Mrs. Branton's death without focusing too heavily on the gruesome details. Though the performing pathologist was a trial witness, all but two of the photos contained in her file were deleted from her file before it was offered into evidence. Neither of the photos displayed any graphic details regarding the condition of Mrs. Branton's body. Defendant was not prejudiced by any of the photos introduced at the trial of this case.

Further, the video of Mrs. Branton's grandson speaking at her funeral does not constitute hearsay as it was not offered for the truth of the matter asserted. A statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay. Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC, 413 S.C. 58, 69, 773 S.E.2d 607, 613 (Ct. App. 2015)(R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct.App.2000). The

brief eulogy played for the jury depicted a grandson recalling memories of his grandmother's love of preparing food and finding a way to visit with family and friends despite the fact that she never had a driver's license. The video was introduced simply to provide some context as to the habits and daily life of Mrs. Branton when her mental health condition was at its baseline, and not to provide proof that she enjoyed cooking and visiting family members. None of these facts were in dispute, and TRMC's assertion that it was denied the opportunity to meaningfully cross-examine O'Maury Davis, who died unexpectedly just two weeks prior to the start of trial, about his grandmother's affinity for preparing meals and visiting family members strains credulity.

Finally, even if the statements of O'Maury Davis were characterized as hearsay, which they are not, they would be properly admissible as present sense impressions of Mr. Davis's grief at the time of his grandmother's funeral under S.C. Rule Evid. 803(1), recorded recollections under S.C. Rule Evid. 803(5), and general statements of reputation among members of a person's family under S.C. Rule Evid. 803(19).

III. Defendant is Not Entitled to a New Trial Based Upon the Thirteenth Juror Doctrine

TRMC is not entitled to a new trial based upon the thirteenth juror doctrine. "South Carolina's thirteenth juror doctrine allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict." First S. Bank v. S. Causeway, LLC, 414 S.C. 434, 452, 778 S.E.2d 493, 502 (Ct. App. 2015)(citing Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct.App.2004). As the "thirteenth juror," the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 477–78, 567 S.E.2d 851, 854 (2002)(citing Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)).

The record contains an abundance of evidence that TRMC acted with both negligence and

gross negligence on multiple, separate occurrences. In fact, Defendant's own expert highlighted two separate breaches in the standard of care by TRMC. The testimony provided by TRMC's own expert on cross examination alone is sufficient to justify the jury's unanimous verdict as to two separate occurrences of negligence. When combined with the evidence presented to the jury in the Plaintiff's case and chief, the evidence of separate occurrences of negligence by TRMC is overwhelming. As such, the unanimous verdict of the jury should not be disturbed.

IV. The Jury's Verdict was Conservative

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice. Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993). The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct.App.1996). In other words, to warrant a new trial absolute, the verdict reached must be so "grossly excessive" as to clearly indicate the influence of an improper motive on the jury. Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993).

This case involved the preventable and very painful death of a woman who was denied an additional 17 years of life. The jury heard detailed testimony from the performing pathologist of the painful manner in which Mrs. Branton died. The jury also heard testimony about how Mrs. Branton used her later years to rekindle a relationship with her daughter that had been strained for many decades, and to form a deep and loving relationship with her young grandchildren. The jury learned that the Personal Representative was denied the comfort and companionship of her mother

during her present time of great loss, and of the opportunities that Mrs. Branton missed with her two great-grandchildren moving forward. Whereas the Plaintiff was denied 17 years with her family, the jury also heard that TRMC placed a high value on the time of its own employees, charging over \$4,000.00 for a deficient¹ 6-hour hospital stay that was causally connected to the death of Mrs. Branton. Based upon the evidence of record in this case, the jury would have been justified in awarding tens of millions of dollars.

Defendant TRMC did not present any suggested damages amount to the jury or respond to Plaintiff's damages model despite the opportunity to do so at trial. Further, Defendant failed to offer any objection to the arguments made by Plaintiff's counsel as to suggested damages ranges, presumably because Defendant's counsel understood the arguments were well within the bounds allowed in closing argument. That failure in retrospect serves to prohibit interference after the jury verdict since Defendant abrogated its responsibility to inform the Court of any alleged improper conduct.

V. Set-offs Are to Be Applied Before The Statutory Caps, Thus No Set-Off is Warranted

Plaintiff does not dispute that the verdict must be reduced from \$5 million to \$2.4 million based upon the jury's factual finding of two separate occurrences. However, no further setoff is warranted based upon the prior settlements. South Carolina law dictates that the Defendant is not entitled to a set-off from the amount of two statutory caps of \$1,200,000.00, but instead a set-off from the amount of the total judgement of \$5,000,000.000. See Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 223 (S.C. Ct. App. 2000) ("Contrary to the Department's argument, it is not entitled to a set-off from the amount of the cap because Smalls has not recovered all damages

¹ Again, even TRMC's own retained expert criticized multiple aspects of Mrs. Branton's course within the hospital.

awarded by the jury and application of a set-off in this manner would unfairly deprive a plaintiff of the verdict”). Because the settlements with prior parties are to be set off against the total verdict before the Court applies the statutory caps on damages, no set-off is applicable to the jury’s verdict.

CONCLUSION

For the reasons set forth herein, the Plaintiff respectfully requests that Defendant TRMC’s motion be denied, and that Judgment be entered for the Plaintiff in the amount of two million four hundred thousand dollars (\$2,400,000.00) plus thirty-one thousand thirty-five dollars and sixty-two cents (\$31,035.62) in costs as set forth by way of separate motion.

Respectfully submitted,

s/Scott C. Evans

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Attorneys for the Plaintiff

November 2, 2023
Georgetown, South Carolina

Exhibit 1



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

JESSICA GIFFORD,
Plaintiff,

VS.

HORRY COUNTY POLICE DEPARTMENT,
and SAUNDRA RHODES,
Defendants.

CIVIL ACTION NO. 4:16-cv-03136-MGL

**MEMORANDUM OPINION AND ORDER
DENYING DEFENDANT’S MOTION FOR JUDGMENT AS A MATTER OF LAW,
OR ALTERNATIVELY, FOR A NEW TRIAL,
OR ALTERNATIVELY, FOR A REDUCTION OF THE VERDICT,
AND GRANTING DEFENDANT’S MOTION FOR A SET-OFF**

I. INTRODUCTION

Plaintiff Jessica Gifford (Gifford) filed this lawsuit in the Horry County Court of Common Pleas against Defendants the Horry County Police Department (HCPD) and Saundra Rhodes (Rhodes) (collectively, Defendants), along with several other defendants, who have since been dismissed.

Rhodes was the Chief of HCPD during the relevant time period. Gifford alleged violations of her constitutional rights against Rhodes, 42 U.S.C. § 1983, and a state law claim of negligence/gross negligence against HCPD.

Defendants removed the case to this Court. The Court has federal-question jurisdiction over Gifford's federal claim pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over her state claim in accordance with 28 U.S.C. § 1367.

Pending before the Court is HCPD's motion for judgment as a matter of law in accordance with Fed. R. Civ. P. 50(b), or alternatively, for a new trial under Fed. R. Civ. P. 59(a), or alternatively, a reduction of the verdict pursuant to Fed. R. Civ. P. 59(e). HCPD also moves for a set-off. Having considered the motions, the response, the reply, the record, and the relevant law, the Court will deny HCPD's motion for judgment as a matter of law, for a new trial, and for a reduction of the verdict, and grant the motion for a set-off.

II. FACTUAL AND PROCEDURAL HISTORY

Gifford's negligence/gross negligence claim against HCPD, as well as her constitutional claim against Rhodes, relate to the illegal and inappropriate actions of HCPD's former detective, Troy Allen Large (Large).

Three of the individually named original defendants were dismissed pre-trial as a result of a negotiated settlement agreement in the amount of \$125, 000.

The jury in this matter rendered a verdict in favor of Gifford on her negligence claim against HCPD in the amount of \$500,000. It determined Gifford proved three occurrences of negligence. The jury also found for Gifford on her constitutional claim against Rhodes, and awarded her nominal damages in the amount of \$1.

HCPD subsequently filed a motion for judgment as a matter of law, or alternatively, for a new trial, or alternatively, for a reduction of the verdict. HCPD also filed a motion for a set off. Gifford then filed a response, and HCPD filed a reply.

The Court, now having been fully briefed on all the relevant issues, is prepared to adjudicate HCPD's motions.

III. DISCUSSION AND ANALYSIS

A. *Whether HCPD is entitled to judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b)*

1. *Standard of Review*

"Rule 50(b) permits a party to bring a renewed motion for judgment as a matter of law after the jury has rendered its verdict." *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 279 (4th Cir. 2021). The standard of review for the Court's consideration of a Rule 50(b) motion is generally the same as the standard of review for a Rule 56 summary judgment motion. *Brown v. CSX Transp., Inc.*, 18 F.3d 245, 248 (4th Cir.1994).

"To grant the motion[,] the district court must examine the evidence in the light most favorable to the non-moving party and determine whether a reasonable trier of fact could draw only one conclusion from the evidence." *Id.* (citation omitted) (internal quotation marks omitted). In other words, the Court should grant a Rule 50(b) motion only if the Court "determines, without weighing the evidence or considering the credibility of the witnesses, that substantial evidence does not support the jury's findings." *S. Atl. Ltd. P'ship of Tenn., L.P. v. Riese*, 284 F.3d 518, 532 (4th Cir.2002) (quoting *Konkel v. Bob Evans Farms, Inc.*, 165 F.3d 275, 279 (4th Cir.1999)).

2. *Discussion and Analysis*

The gist of HCPD's claimed basis for its entitlement to judgment as a matter of law is that it was unaware of Large's misbehavior and misconduct during the relevant time period. Gifford, however, claims that she "set forth substantial evidence by and through . . . HCPD's own employees,

witnesses, and internal documents showing that . . . HCPD was placed on actual notice as early as 2003 that . . . Large was forming inappropriate, sexual relationships with members of the public through the course of his employment with . . . HCPD.” Gifford’s Response at 1-2. Gifford has the better argument. No plausible assessment of the evidence under the Rule 50(b) standard can lead to a contrary conclusion.

For instance, as detailed by Gifford, “[t]he jury heard testimony from Kenneth Evans, the father-in-law of . . . Large, placing . . . HCPD on direct notice that . . . Large formed an inappropriate, sexualized relationship with a crime victim and moved her into his martial home.” *Id.* at 2. “This testimony was corroborated by his letter, dated July 7, 2003, that was served on HCPD and contained within the Department’s files.” *Id.*

“The jury [also] heard testimony and received exhibits revealing that on March 13, 2014, an ‘in-house,’ off-the-books investigation was conducted at the request of two of . . . Large’s supervisors, Captain Dale Buchanan and Lieutenant Chip Squires.” *Id.* at 3. “The investigation was based upon reports that Large was romantically involved with [a crime victim], conduct which . . . HCPD employees verified would be both improper and illegal.” *Id.*

In addition, “[a] ‘formal’ Internal Affairs investigation took place in June of 2014 after [a crime victim] specifically reported . . . Large’s sexual misconduct directly to . . . HCPD.” *Id.* at 4.

Further, “the jury heard testimony from [Gifford’s] mother . . . [who] testified that she became suspicious when her daughter returned home from visiting with . . . Large visibly high on drugs.” *Id.* at 5. “She testified that she contacted Defendant HCPD and asked to speak with . . . Large’s supervisor.” *Id.* “She spoke with a male officer who identified himself as Detective Large’s

supervisor.” *Id.* “She then reported that Detective Large had been picking up her daughter and bringing her home high on drugs.” *Id.*

Although HCPD questions the admissibility of some of this evidence, the Court stands by its earlier evidentiary rulings on these matters.

In sum, there is substantial admissible evidence upon which a reasonable jury could return a verdict against HCPD and in favor of Gifford. *See Price v. City of Charlotte*, 93 F.3d 1241, 1249–50 (4th Cir.1996) (holding that the Court may not substitute its judgment for that of the jury and must uphold the verdict if there is evidence upon which a reasonable jury could return a verdict in favor of the nonmoving party.). Therefore, HCPD’s motion for judgment as a matter of law will be denied.

B. Whether HCPD is entitled to a new trial in accordance with Fed. R. Civ. P. 59(a)

1. Standard of Review

Pursuant to Rule 59(a) of the Federal Rules of Civil Procedure, the Court “may weigh the evidence and consider the credibility of the witnesses and, if [she] finds the verdict is against the clear weight of the evidence, is based on false evidence or will result in a miscarriage of justice, [she] must set aside the verdict, even if supported by substantial evidence, and grant a new trial.” *Poynter by Poynter v. Ratcliff*, 874 F.2d 219, 223 (4th Cir.1989).

To order a new trial the jury verdict must be against the great weight, not just a preponderance, of the evidence. *Shows v. Jamison Bedding, Inc.*, 671 F.2d 927, 930 (5th Cir.1982).

2. Discussion and Analysis

First, HCPD contends the Court should grant them a new trial because, based on a lack of evidence, the jury’s \$500,000 verdict was excessive. Gifford, of course, disagrees.

“[A] district court sitting in diversity must apply state law standards when it considers a Rule 59(a) motion for a new trial based upon the alleged excessiveness of the jury’s compensatory damage award.” *Konkel*, 165 F.3d at 280.

As per South Carolina law, “[a] new trial absolute should be granted only if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motives.” *Wright v. Craft*, 640 S.E.2d 486, 505 (S.C. Ct. App. 2006) (citation omitted) (internal quotation marks omitted).

The Court explained in its Jury Instructions that

[t]he amount of actual damages is that amount of money that’ll put the injured person in as near the same position as she would have been in had she not been injured. In other words, damages means the amount of money that’ll reasonably and fairly compensate . . . Gifford for her damages.

In this situation, you may consider the amount that would be necessary to make . . . Gifford whole with respect to any out-of-pocket loss and other monetary harms. You may also consider injuries such as impairment of reputation, personal humiliation, and mental anguish and suffering.

Jury Instructions at 15.

There is overwhelming credible evidence in the record establishing that Gifford experienced loss of enjoyment of life, mental anguish, extreme despair and hopelessness as a result of Large’s sexual abuse. She also “suffers from PTSD” and has “received extensive counseling and therapy through multiple inpatient drug treatment programs in connection with the sexual assaults she endured as the hands of . . . HCPD’s employee, . . . Large.” Gifford’s Response at 9. Thus, the Court is unable to agree that the jury’s \$500,000 verdict was excessive based on a lack of evidence.

HCPD also contends the \$500,000 jury verdict is excessive because Gifford “presented no evidence of any proximate causal connection between any alleged negligent training, supervision, or retention of Large and any damages allegedly sustained by [her].” HCPD’s Motion at 9.

On the issue of proximate case, the Court instructed the jury as follows: “Concerning the term ‘proximate cause,’ if . . . [HCPD’s] acts or omissions had such an effect in producing . . . Gifford’s injury or injuries that reasonable persons would regard it as being a cause of the injury or injuries, then the act or omission is a proximate cause of . . . Gifford’s damages.” Jury Instructions at 7-8.

The Court discussed above that HCPD was on notice of Large’s misbehavior and misconduct. And, there can be no reasonable objection to the jury’s conclusion that “[HCPD’s] acts or omissions had such an effect in producing . . . Gifford’s injury or injuries that reasonable persons would regard it as being a cause of the injury or injuries, [such that HCPD’s] act or omission is a proximate cause of . . . Gifford’s damages.” *Id.* Therefore, it would be improper for the Court to rule that there is no causal connection between HCPD’s negligence and Gifford’s damages.

Simply put, the jury’s \$500,000 “verdict is [not] so grossly excessive that it shocks the conscience of the [C]ourt[.]” *Wright*, 640 S.E.2d at 505. What, instead, shocks the Court is HCPD’s statement that there was “no evidence tending to establish any physical encounters between [Gifford] and Large other than [Gifford’s] own testimony[.]” HCPD’s Motion at 8-9. It earlier stated that, “[o]ther than [Gifford’s] own testimony, [she] presented no additional evidence or witness testimony tending to establish any physical encounters between her and Large.” *Id.* at 3-4.

No corroboration. The inference is that Gifford’s testimony alone is insufficient “to establish any physical encounters between her and Large.” *Id.*

The flimsy no-corroboration defense has too often protected guilty sexual predators and been the mantra of their enablers. But, not here. Not in this case. Gifford bore witness to Large's misbehavior and misconduct. And, a jury of her peers believed her. So does the Court. *See Poynter by Poynter*, 874 F.2d 219 at 223 (the Court "may weigh the evidence and consider the credibility of the witnesses[.]").

One need only tap into common sense and life experience to know that there are often just two eyewitnesses to sexual abuse: the victim and the perpetrator. Except, in this case, the perpetrator is dead. So, there is just one eyewitness: Gifford.

* * * * *

Turning now to HCPD's second contention as to why it claims the Court should grant it a new trial: irrelevant evidence and jury confusion. This concerns evidence of Internal Affairs investigations and disciplinary actions against other HCPD employees. Gifford, expectantly, takes issue with this argument, too.

The Court stands by its evidentiary rulings during the trial of this case. HCPD opened the door to having the above-referenced evidence admitted by its insistence that it promptly and thoroughly investigated instances of misconduct.

HCPD also complains that Gifford's "counsel . . . argued during closing arguments that jury trials in the United States District Court are very rare, that this was a significant case, that [Gifford] had been waiting six years for justice, and that every law enforcement agency in South Carolina was eagerly waiting for the message they would send about whether the actions of HCPD were reasonable under the circumstances." HCPD's Motion at 10. According to HCPD, "these arguments were not related to any claim of negligent training, supervision, or retention of Large and were offered only to anger and incite the passions of the jury." *Id.*

Three things: first, HCPD failed to object to Gifford’s closing argument at trial. Second, this portion of Gifford’s closing argument appears to be directed at Gifford’s request for punitive damages. *See* Jury Instructions at 16 (“Punitive damages are intended . . . to serve as a deterrent to others and to the defendants not to engage in or repeat such conduct. These damages are awarded for the benefit of society and the public interest[.]”). And third, even if the remarks were improper, the Court is unconvinced it is enough to make the granting of a new trial under Rule 59(a) appropriate.

Consequently, for all these reasons, the Court will deny HCPD’s Rule 59(a) new trial motion.

C. *Whether HCPD is entitled to a reduction in the verdict pursuant to Fed. R. Civ. P. 59(e)*

1. *Standard of Review*

“A Rule 59(e) motion may . . . be granted [only] in three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Mayfield v. National Ass’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 378 (4th Cir. 2012).

2. *Discussion and Analysis*

HCPD moves, pursuant to Fed. R. Civ. P. 59(e), that the verdict in favor of Gifford be reduced from \$500, 000 to \$300,000. Although HCPD fails to say so, it appears the motion is filed to correct what it thinks to be “a clear error of law[.]” *Id.* Gifford opposes the motion.

HCPD cites to S.C. Code § 15-78-120(a) in support of its motion. That statute provides, in relevant part, that “no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.”

As the Court instructed the jury “[a]n occurrence is defined as an unfolding sequence of events that proximately flow from a single act of negligence.” Jury Instructions at 10. The Court further directed the jury that “Gifford ha[d] the burden of proving that each act of negligence was separate and independent for [them] to find that more than one occurrence occurred.” *Id.*

The jury found three occurrences of HCPD’s negligence. The evidence and the applicable law overwhelmingly supports that finding and forecloses any contention otherwise . HCPD’s argument to the contrary is thus unavailing.

HCPD also contends that “the verdict form does not reflect what portion of the \$500,000 verdict is attributable to what ‘occurrence’ and what ‘loss.’” HCPD’s Reply at 3. According to HCPD, “[i]t is possible that all of the damages were caused by just one of the three ‘occurrences’ found by the jury. It is also just as possible that one or more of the occurrences caused damages in excess of \$300,000.” *Id.* Thus, according to HCPD, the jury verdict form is defective because it failed to detail “what each occurrence was and . . . what was the ‘loss,’ if any, that arose from each occurrence found.” HCPD’s Reply at 7.

HCPD fails, however, to cite to any binding authority that has adopted this approach to jury verdicts in cases such as this. And, the Court has searched in vain to find one.

Nevertheless, HCPD does point to a state trial court order that it thinks supports its arguments. In the trial court’s order granting the defendant’s motion for a remittitur, it stated that it “conclude[d] that the Plaintiff has proven a single occurrence and, accordingly, the verdict must be reduced to a single statutory cap of \$300,000 in accordance with the mandates of S.C. Code § 15-78-120(a).” *Larson v. South Carolina Dep’t of Corrections*, No. 2019-CP-20-0241 at 6 (Fairfield Cty, S.C., Feb. 10, 2022).

But, it does not stop there. In dicta, the trial goes on to state the following:

Clearly, a trial judge may not speculate as to the jury's verdict, particularly on questions that jury was never asked to answer on the verdict form. . . . In this case, the jury was asked to return a general verdict and to state a number of occurrences. The jury did not tell this Court – because it was not asked to do so – what each occurrence was and, even more importantly, what was the “loss,” if any, that arose from each occurrence found. The specific language of Section 15-78-120(a) requires this Court to determine the award for the “loss arising from” each occurrence and then to reduce any such award that exceeds \$300,000 to the statutory cap. Based on the absence of that needed information from the jury, the Court cannot award more than one cap of \$300,000[.]

Id. at 7. The Court is unpersuaded by this dicta.

As an aside, the Court notes that the attorney for the prevailing party in a state court motion hearing often writes a proposed order adjudicating the motion. One of the attorneys for HCPD was the attorney for the prevailing party in the *Larson* case. Thus, not surprisingly, much of the language in HCPD's motion tracks word for word the language in the *Larson* order, albeit without any citation to the *Larson* order.

As HCPD states, “[t]he leading case on the application of the term ‘occurrence’ under the Tort Claims Act is the South Carolina Supreme Court's decision in *Boiter v. South Carolina Dep't of Transp.*, 712 S.E.2d 401 (2011).” HCPD's Motion at 15. But, *Boiter* suggests a different result than what HCPD and the trial court in *Larson* do.

First, some background: the Boiters' motorcycle collided with an automobile when they entered an intersection at the same time. *Id.* at 402. The red signal light bulbs in the traffic signal for the other vehicle had burned out. *Id.*

The Boiters brought a negligence claim against the South Carolina Department of Transportation (DOT) for its failure to have a relamping policy in place; and against the South

Carolina Department of Public Safety (DPS) for its failure to send a trooper to direct traffic at the intersection after it was notified the red light was out. *Id.*

The jury returned a verdict in favor of the Boiters and awarded them \$1.875 million each for their claims against DOT and DPS. *Id.* 402-03. No separate or special request was made to apportion liability between the DOT and DPS.

The trial court subsequently granted DOT and DPS's motion to reduce the verdict to a total of \$600,000, \$300,000 for each of the plaintiffs. *Id.* at 403. The Boiters appealed. *Id.*

The Supreme Court determined that there were "two independent and separate acts of negligence occurred here—one by [DOT] and one by [DPS]." *Id.* at 406. As such, each act of negligence by DOT and DPS "was a separate occurrence entitling the Boiters to a combined verdict of 1.2 million dollars[.]" *Id.* at 407.

In *Boiter*, no effort was made to parse out what loss was attributable to DOT and what loss was attributable to DPS—either by the jury or by the Supreme Court. Instead, the Supreme Court merely multiplied the DOT's and DPS's two occurrences of negligence by the two plaintiffs, and then multiplied that number, four, by the \$300,000 cap on damages for each occurrence. That equaled a total capped award of \$1.2 million.

Applying the holding of *Boiter* to this case, the Court multiplies HCPD's three occurrences of negligence by the one plaintiff, and then multiplies that number, three, by the \$300,000 cap on damages for each occurrence, which equals a capped award of \$900,000. Because the \$500,000 jury award is less than the \$900,000 cap, the \$500,000 jury award will stand.

Thus, in light of the holding in *Boiter*, the Court will deny HCPD's Rule 59(e) motion to reduce the jury verdict to \$300,000.

D. Whether HCPD is entitled to a set-off

1. Standard of Review

“A nonsettling defendant is entitled to credit for the amount paid by another defendant who settles.” *Smalls v. South Carolina Dept. of Educ.*, 528 S.E.2d 682, 688 (S.C. Ct. App. 2000) “The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong.” *Id.* (citation omitted) (internal quotation marks omitted) (alteration marks omitted).

2. Discussion and Analysis

HCPD maintains it is entitled s entitled to a set-off for the \$125,000 in settlement funds Gifford received from three defendants with whom she previously settled her claims. Gifford agrees that this is proper.

The Court also thinks this is appropriate. Therefore, it will grant HCPD’s motion for a \$125,000 set-off. Therefore, the \$500,000 judgment will be reduced to \$375,000.

IV. CONCLUSION

In light of the foregoing discussion and analysis, Gifford’s motion for judgment as a matter of law, for a new trial, and a reduction of the verdict is **DENIED**; and its motion for a set-off is **GRANTED**. Accordingly, the judgment against HCPD shall be reduced from \$500,000 to \$375,000.

IT IS SO ORDERED.

Signed this 29th day of March, 2023, in Columbia, South Carolina.

/s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

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Exhibit 2

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Logan Wood and Sarah Wood, Respondents,

v.

Horry County School District, Appellant.

Appellate Case No. 2021-000535

Appeal From Horry County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2023-UP-244
Submitted May 1, 2023 – Filed June 21, 2023

AFFIRMED

Joseph P. McLean, of Clarke Johnson Peterson &
McLean, PA, of Florence; and Andrew F. Lindemann, of
Lindemann Law Firm, P.A., of Columbia, both for
Appellant.

Amy Suzanne Lawrence and Justin Michael Lovely, both
of The Lovely Law Firm, of Myrtle Beach; Kathleen
Chewning Barnes, of Barnes Law Firm, LLC, of
Hampton; and James Bernice Moore, III and Scott
Christopher Evans, both of Evans Moore, LLC, of
Georgetown, all for Respondents.

PER CURIAM: Horry County School District (HCSD) appeals the trial court's denial of its motions for judgment notwithstanding the verdict (JNOV) and to deposit the judgment amount with the clerk of court. On appeal, HCSD argues the trial court erred in (1) determining the jury found two occurrences of gross negligence under the South Carolina Tort Claims Act and failing to reduce the award to \$300,000 and (2) denying its motion to pay the amount of the judgment into court pursuant to Rule 67, SCRCP. We affirm.

1. We hold the trial court did not err in denying HCSD's motion for JNOV and refusing to reduce the award to \$300,000 because evidence in the record supported its ruling. *See Dawkins v. Sell*, 434 S.C. 572, 580, 865 S.E.2d 1, 5 (Ct. App. 2021) ("The trial court's ruling on a directed verdict or JNOV motion will be reversed only if the ruling is governed by an error of law or no evidence supports the ruling."). The trial court did not err in finding the jury could determine the number of occurrences because applying the facts of a case to the statutory definition of "occurrence" is a question of fact for the jury. *See Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) ("[W]hether the facts of a case were correctly applied to a statute is a question of fact" (quoting *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 749, 646 S.E.2d 162, 165 (Ct. App. 2007))); S.C. Code Ann. § 15-78-30(g) (2005) ("'Occurrence' means an unfolding sequence of events which proximately flow from a single act of negligence.").

Moreover, evidence in the record supported the trial court's determination that the jury found two occurrences of gross negligence. The jury was instructed on the definition of occurrence and that each alleged act of gross negligence had to be "separate and independent" in order to find more than one occurrence. Additionally, the jury checked "yes" to two separate acts of gross negligence on the verdict form. Although the special verdict form did not specifically ask the jury to write down the number of occurrences, HCSD requested the removal of an interrogatory that would have asked the jury to make such a determination. We further hold HCSD may not now complain that the special verdict form lacked such an interrogatory. *See Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error or object to a trial procedure which his own conduct has induced."); *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350, 479 S.E.2d 67, 79 (Ct. App. 1996) (holding a party may not complain on appeal when it receives what it asked for at trial).

2. We hold the trial court did not abuse its discretion in denying HCSD's motion to deposit the judgment amount with the court. *See* Rule 67, SCRCP ("In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum"); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) ("The granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion."); *id.* ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."); S.C. Code Ann. § 34-31-20(B) (2020) ("A money decree or judgment of a court enrolled or entered must draw interest according to law."); *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004) ("[A] claimant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course.").

AFFIRMED.¹

KONDUROS and VINSON, JJ., and LOCKEMY, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

Exhibit 3

The South Carolina Court of Appeals

Logan Wood and Sarah Wood, Respondents,

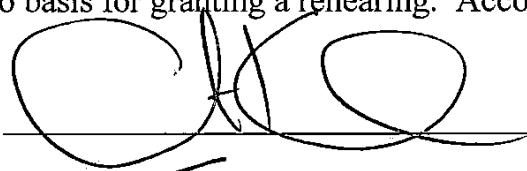
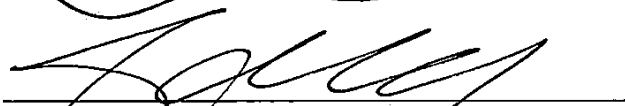
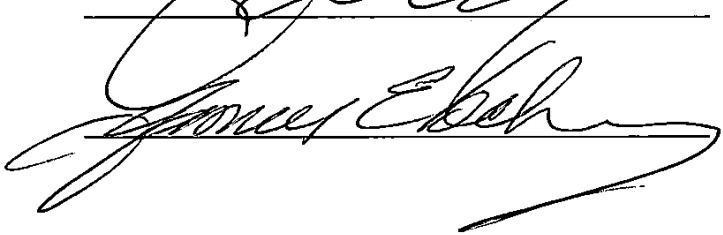
v.

Horry County School District, Appellant.

Appellate Case No. 2021-000535

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:
Andrew F. Lindemann, Esquire
Joseph P. McLean, Esquire
James Bernice Moore, III, Esquire
Scott Christopher Evans, Esquire
Justin Michael Lovely, Esquire

FILED
Aug 17 2023

Amy Suzanne Lawrence, Esquire
Kathleen Chewing Barnes, Esquire
The Honorable William H. Seals, Jr.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF ORANGEBURG) IN THE COURT OF
 3 SE'ANNE S. DAVIS, As Personal)
 Representative of the ESTATE)
 4 OF ADRIANNE T. BRANTON, Deceased)
 5 Plaintiffs,)
 6 Vs.) CASE NO. 2021-CP-38-1138
 7 THE REGIONAL MEDICAL CENTER OF)
 ORANGEBURG AND CALHOUN COUNTIES,)
 8 Defendants.)
 9

10 OCTOBER 9-13, 2023
 11 ORANGEBURG, SOUTH CAROLINA

12 HONORABLE MAITE MURPHY, JUDGE

13
14 A P P E A R A N C E S:

15 BY: DAVID R. WILLIAMS, ESQUIRE
 SCOTT C. EVANS, ESQUIRE
 16 ROBERT F. GOINGS, ESQUIRE
 JAMES B. MOORE, III, ESQUIRE
 17 Attorneys for the Plaintiffs

18 BY: MICHAEL C. TANNER, ESQUIRE
 EMRE ERSOY, ESQUIRE
 19 Attorneys for the Defendants

20
 21 KATHERINE A. SPIRES
 22 REGISTERED PROFESSIONAL REPORTER
 23
 24
 25

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	OPENING STATEMENTS				
4	Mr. Moore	64			
5	Mr. Tanner	86			
6	ANDREW HAYES				
7	Mr. Williams	110		153	
8	Mr. Tanner		127		
9	STEVEN BURKHOLZ				
10	Mr. Moore	160		206	
11	Mr. Tanner		195		
12	ALBERTO GONZALEZ				
13	Mr. Williams	207		264	
14	Mr. Tanner		245		
15	ESTELLE HUTCHINSON				
16	Mr. Tanner	275		351	
17	Mr. Goings		326		
18	DAVID HUSTED				
19	Mr. Evans	365		433	
20	Mr. Tanner		419		
21	KELLY ROSE				
22	Mr. Moore	436		459	
23	Mr. Tanner		454		
24					
25					

1	SE'ANNE DAVIS		
2	Mr. Goings	460	518
3	Mr. Tanner	492	
4	ADRIANNA WALLS		
5	Mr. Goings	523	
6	Mr. Ersoy	528	
7	VIDEO OF DR. BRYAN WEST	541	
8	TONY HARTWELL		
9	Mr. Tanner	545	555
10	Mr. Williams	553	
11	BRENDA WILLIAMS		
12	Mr. Tanner	557	585
13	Mr. Goings	580	
14	VERDICT		
15	SUSAN HARDESTY		
16	Mr. Tanner	591	714
17	Mr. Williams	644	
18	CLOSING ARGUMENTS		
19	Mr. Evans	733	
20	Mr. Tanner	751	
21	Mr. Williams	764	
22	JURY CHARGE	786	
23	VERDICT	807	
24	Certificate of Reporter	811	
25			

E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
1				
2				
3	P-1	Dr. West Note		
4	P-2	ER Documentation		
5	P-3	Dr. Gonzalez Note		
6	P-4	Probate Court Documents		
7	P-5	Treatment Note		
8	P-6	TRMC Medical Records		
9	P-7	Death Certificate		
10	P-8	OCSO File		
11	P-10	OCSO CAD Report		
12	P-12	CC EMS Run Report		
13	P-13	CC EMS Run Report		
14	P-15	OC Coroner's file		
15	P-16	Newberry Pathology Records		
16	P-17	Lexington Medical Center		
17	P-18	Spartanburg/Mary Black Records		
18	P-19	Three Rivers Records		
19	P-20	Columbia Area Mental Health Records		
20	P-24	Place Holder		121
21	P-25	Obituary		
22	P-26	Family Photographs/Video		
23	P-27	Place Holder		
24	C-1	Deposition		
25	C-2	Note		

1 speculation as to why she's not a party anymore.

2 MR. EVANS: Would we then be permitted
3 to go into the fact that TRMC consented to their
4 dismissal?

5 THE COURT: I think that's fair. I
6 think we just can't go into any amounts because I
7 think that would -- improperly influence the jury
8 as to --

9 MR. TANNER: As to Ms. Williams, we
10 didn't have we privy, we weren't a party to that
11 lawsuit, so I would think they wouldn't be able to
12 get into that. As to the sheriff's office they
13 want to ask them that, they were a party, then
14 that's fine. But we weren't in the separate 1442
15 case, that was just against Ms. Williams and some
16 other individuals.

17 MR. EVANS: That's correct, Your Honor.

18 THE COURT: Okay. So just limit it as
19 far as that is concerned the sheriff's department
20 you can ask that specific question.

21 MR. EVANS: Thank you, Your Honor.

22 THE COURT: Anything else?

23 MR. EVANS: That is it for the
24 Plaintiff, although this factual dispute as to
25 intervening cause is going to have some overlap

1 which we're going to get to shortly with Mr.
2 Tanner's motion in limine.

3 THE COURT: Okay.

4 MR. TANNER: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. TANNER: Our first was, I think, in
7 the Plaintiff's pretrial brief, they raised an
8 argument, if you will, on multiple occurrences.

9 THE COURT: I thought I had them all
10 here with me, hold on. All right. You may
11 proceed.

12 MR. TANNER: Yes, ma'am. They had
13 raised some issue about multiple occurrences that I
14 thought it was proper to take up with the Court.
15 That is not pled in the complaint, again, in terms
16 of what their expert testified to at his
17 deposition, Dr. Husted, says that he's critical of
18 Dr. West. Dr. West is a TRMC employee under the
19 Tort Claims Act, we have a physician cap of 1.2.
20 The way I read that section, it's an aggregate cap
21 regardless of the number of employees, incidents,
22 you name it.

23 The only multiple occurrence case that
24 I'm aware of is the *Boiter* case which we cited in
25 our memo. And my understanding of that case that

1 | there was, A, there was two parties, but then there
2 | was two sort of complete different specifications
3 | of negligence. There was, I believe, public safety
4 | had an issue with some bulbs in a traffic signal
5 | and then there was a law enforcement component to
6 | that case, I think, someone in a motorcycle chase
7 | of two -- two parties, two entirely different
8 | things at different time periods.

9 | And the court in that case said that,
10 | yeah, we're going to recognize that that is
11 | potentially a different occurrence. We've had this
12 | case a number of times without any clear guidance
13 | from the Supreme Court as what's an occurrence and
14 | what's not an occurrence. So outside of *Boiter*,
15 | I'm not aware of any appellate decision. I know
16 | the Plaintiff has all kind of trial orders and I'm
17 | not being disrespectful when I say that those
18 | aren't appellate orders and that's what sort of
19 | carries the day.

20 | So, again, we've also got a notice
21 | issue of this occurrence wasn't pled. This
22 | multiple occurrence argument, I don't think putting
23 | it in your pretrial brief raises it, but I felt if
24 | I didn't bring it to the Court's attention, I would
25 | somehow waive it and then when we're talking about

1 the former verdict, I'm having a Maalox moment. So
2 I think all -- I think all that they're entitled to
3 is one physician cap at 1.2 million and not any
4 stacking of caps or any additional occurrences. I
5 don't think they can say that Dr. West, for
6 example, his failure to recommend admission is one
7 occurrence and then something else he did during
8 that hospital stay is another occurrence and try to
9 somehow stack them as to him.

10 Again, based on the lack of pleading,
11 based on lack of case law, this clearly is not a
12 *Boiter* case. And, obviously, as the Court knows, a
13 Tort Claims Act is to be construed liberally to
14 limit the liability of the stay and I think
15 expanding that would greatly enhance that. And I
16 don't know how from a funding -- a budgetary
17 funding process the legislature could potentially
18 theorize about some sort of unfunded mandates
19 about, you know, can you have -- you know, there's
20 that *Chastain verses AnMed* case that seems to give
21 a roadmap and a charitable session that's saying
22 she could have like 2,000 and some odd occurrences.
23 I just don't know how from a practical standpoint a
24 court can say that that's somehow proper and
25 somehow the government could do that. And so based

1 on that, I would ask that any reference to multiple
2 occurrences through the testimony or through
3 opening be limited.

4 THE COURT: Any response?

5 MR. EVANS: Your Honor, we disagree
6 with Mr. Tanner on that. We have cited, I believe,
7 ten cases in our pretrial brief including the Court
8 of Appeals case where the Court of Appeals has
9 weighed into this issue just this summer in a case
10 involving two occurrences that the jury found
11 against the same governmental entity. It was the
12 Horry County School District and the Court of
13 Appeals upheld a factual finding by the jury of two
14 occurrences against the same governmental entity
15 stemming from the same injury which occurred during
16 the same football game.

17 All of the cases that are cited involve
18 situations in which multiple acts of negligence
19 combine to form the same injury. And all of these
20 cases across the board have said that if there's
21 any evidence whatsoever that the defendant
22 governmental entity committed multiple acts of
23 negligence even though they later combined into the
24 same injury and in our situation it would be the
25 death of Ms. Branton, that's an issue that needs to

1 be determined by the jury. There's a jury charge
2 that's been approved that the Court of Appeals had
3 no problem with in this *Wood* case which was
4 decided, I believe, in May, CERT was denied in July
5 and the cases have been clear on that.

6 As to the notice, we did at paragraph 6
7 of our complaint talk about occurrences. We didn't
8 plead multiple occurrences because there's been no
9 case saying that's an issue that needs to be pled.
10 It's a factual issue that comes to light as
11 discovery progresses. And it's essentially the
12 same thing as a coverage issue because that's what
13 it amounts to.

14 With regard to the 1.2 million dollar
15 aggregate cap, again, that's defined as an
16 aggregate cap per occurrence. So it would be our
17 position that the case law is clear that if there
18 is evidence that multiple deviations in the
19 standard of care by Dr. West and the staff at TRMC
20 caused Ms. Branton's death, the jury has to decide
21 how many occurrences there were. And we do intend
22 to put that evidence forward and it is already in
23 the record.

24 THE COURT: So what occurrences are you
25 alleging?

1 MR. EVANS: We are essentially alleging
2 that the failure to stabilize a person who is
3 actively psychotic is one occurrence. And then
4 sending somebody to a boarding home which is
5 legally forbidden from providing any level of
6 assistance whatsoever, it's a separate act of
7 negligence. That would be a separate occurrence.
8 Because either of the two had the ability to save
9 Ms. Branton's life. But by neglecting both of
10 those requirements under the standard of care,
11 those two independent breaches combined to form the
12 same injury, much along the lines of what's been
13 alleged in all of the cases that we cited.

14 THE COURT: What I'm going to do is I'm
15 going to take the time to read the cases and read
16 your memos and I'll let you know first thing before
17 we get started.

18 MR. EVANS: Thank you, Your Honor.

19 MR. TANNER: Moving right along. And I
20 don't know if this is an issue or not, but we've
21 raised it. I don't know if the Plaintiff was
22 planning to get into any acts against Dr. Burkholz
23 or Dr. Gonzales who are not hospital employees.

24 MR. EVANS: (Nodded.)

25 MR. TANNER: Okay. Great. All right.

OPENING STATEMENT BY MR. MOORE

1 MR. MOORE: May it please the Court?

2 THE COURT: Yes, sir.

3 OPENING REMARKS

4 BY MR. MOORE:

5 Good morning. As we grow older, as our
6 parents grow older, the patient rights as senior
7 citizens becomes more and more important. For
8 example, dementia is a medical condition that many
9 of us have been touched by in some way.
10 Statistically, one out of nine of us will be
11 diagnosed with dementia if we live to turn 65.
12 Those odds increase to one out of three once we
13 turn 80. Likewise, I'd be willing to bet that
14 everybody in this courtroom has been impacted by
15 mental health in some form or fashion. Like
16 dementia, complications of mental health only tend
17 to worsen as we grow older.

18 I along with David Williams, Scott
19 Evans and Robert Goings have the honor and
20 privilege of representing Ms. Se'Anne Davis who was
21 appointed by the probate court here in Orangeburg
22 to serve as the personal representative of the
23 estate of her deceased mother, Adrienne Branton.

24 And you may be wondering why
25 Ms. Se'Anne and her family have four lawyers in the

OPENING STATEMENT BY MR. MOORE

1 courtroom this week. And I'll tell you, Scott
2 Evans is my law partner. We've been practicing
3 together for 13 years at our firm in Georgetown.
4 David and Robert, are friends of mine, we go back
5 over 20 years. We went to college together at
6 Wofford College. Robert actually served as the
7 student body president when David and I were at
8 Wofford. But the reason that we're all here
9 together this week is that we -- that we share a
10 passion and that passion is advocating for mental
11 health.

12 Not only do we share that passion, but
13 it's something that is very personal to the four of
14 us in our own lives and that's why we're here.
15 And, quite frankly, when an individual plaintiff
16 like Se'Anne is going against the hospital system,
17 it takes a team and we have all gathered here this
18 week on behalf of Se'Anne and her family.

19 As I mentioned earlier, Se'Anne has
20 been appointed as the personal representative of
21 her mother's estate. She's here on behalf of her
22 mother, Ms. Branton. She's also here on behalf of
23 their family. Mr. Branton died here in Orangeburg
24 on October 3rd of 2019. She was 69 years old. She
25 didn't die because it was her time to go. She

OPENING STATEMENT BY MR. MOORE

1 | didn't die because she had a terminal illness. She
2 | didn't die from a freak accident. She died because
3 | the hospital system charged her \$4,000 and sent her
4 | out the door. We're here this week seeking justice
5 | for Ms. Branton.

6 | The Defendant in this case is The
7 | Regional Medical Center which operated a Behavioral
8 | Health Unit through its medical director, a doctor
9 | by the name of Dr. Bryan West. The Behavioral
10 | Health Unit is essentially a psychiatric unit that
11 | is designated to treat patients like Ms. Branton
12 | who are physically healthy, but unstable due to
13 | mental health conditions like dementia. Like
14 | schizophrenia. Like bipolar disorder.

15 | As you all heard yesterday and may
16 | already know, The Regional Medical Center is no
17 | longer a part of this community. However, under
18 | the law, The Regional Medical Center is still
19 | responsible for the past conduct of itself and the
20 | past conduct of its employees. You may remember
21 | The Regional Medical Center when it was here it had
22 | a slogan. And that slogan was that The Regional
23 | Medical Center, we treat our patients with the same
24 | level of respect and attention that we would want
25 | to treat our own families.

OPENING STATEMENT BY MR. MOORE

1 We're here this week because we don't
2 believe that Ms. Branton was treated with the level
3 of respect and attention that she deserved. And
4 instead of treating her, who was mentally unstable
5 and suffering from dementia, she was sent to an
6 environment that was unequipped and legally unable
7 to care for her and she died.

8 As we move forward with this case and
9 as you see the evidence and you hear the testimony,
10 I want you to ask yourself, when a patient presents
11 to the hospital that is unstable and psychotic,
12 should the hospital monitor the patient? Should
13 the hospital stabilize the patient? Should the
14 hospital treat the patient? Or should the hospital
15 simply send the patient back to the environment
16 that she came from? Think about that as you hear
17 the testimony and as you see the evidence.

18 As the Judge instructed you yesterday,
19 this is a medical negligence case. And in this
20 community, there are safety rules that protect
21 citizens like you, like me, like our parents, like
22 our children. Safety rules that --

23 MR. TANNER: Your Honor, I object. May
24 we approach?

25 THE COURT: Yes, sir.

OPENING STATEMENT BY MR. MOORE

1 (WHEREUPON, there was a bench
2 conference.)

3 THE COURT: You may proceed.

4 MR. MOORE: In medicine, the safety
5 rule is the standard of care. The standard of care
6 is what would a reasonable doctor do under the same
7 circumstances? What would a reasonable hospital do
8 under the same circumstances? The thing about the
9 standard of care is it doesn't matter if it's a
10 hospital or a doctor in New York or LA or Florida
11 or here in Orangeburg, the standard of care is the
12 same. It protects all patients no matter who you
13 are, where you're from, how old you are, how much
14 money you have in the bank, it protects us all.
15 But the standard of care like any safety rule means
16 nothing unless juries like you choose to enforce
17 it. And that's why we're here this week, ladies
18 and gentlemen.

19 At the end of the trial, we're going to
20 ask you to return a verdict. We're going to ask
21 you to hold The Regional Medical Center responsible
22 for its conduct and the conduct of its former
23 employee, Dr. Bryan West, by returning a verdict
24 against them. Verdict is Latin for "speak the
25 truth." So naturally, we want you to know the

OPENING STATEMENT BY MR. MOORE

1 truth of what happened. Se'Anne wants you to know
2 what happened. And in order to understand what
3 really happened, we have to go back in time to
4 October 3rd of 2019, almost four years ago -- or
5 just over four years ago.

6 And while The Regional Medical Center
7 and Dr. Bryan West have moved on from this
8 community, Se'Anne, her brother Herman, their
9 family, they'll never be able to move on from what
10 happened on October 3, 2019 right up the road from
11 this courthouse.

12 As you all know, October here in South
13 Carolina, it can be hot. It can be cold.
14 Yesterday was pretty chilly. October 3rd of 2019
15 was a hot, hot day. According to the heat index it
16 was 103 degrees. Around 5:24 p.m., Orangeburg
17 9-1-1 is dispatched to a residence located at 167
18 Benthomp Road. Now this wasn't an ordinary
19 residence, ladies and gentlemen. This was a
20 boarding home. And you'll hear this week what a
21 boarding home is.

22 Now the paramedics that arrived, they
23 had been to this boarding home before, but this
24 time was different. When they arrived, they
25 entered through a tall chain link fence and when

OPENING STATEMENT BY MR. MOORE

1 they entered the property, they encountered a woman
2 who was seated in a metal folding chair. She was
3 wearing a heavy wool military jacket. Her face was
4 to the sky. Her eyes were closed and her mouth was
5 open. The medics walked up, they immediately knew
6 this was somebody who was deceased.

7 Her body was cold. Her body was stiff
8 from rigor mortis. That lady was identified as
9 Ms. Adrienne Branton. The medics quickly contacted
10 the Orangeburg County Sheriff's Office. They
11 contacted the coroner. An autopsy was conducted
12 and the cause of death was determined to be heat
13 exhaustion. Exposed prolonged exposure to
14 environmental temperatures. Dehydration.

15 Ms. Branton was 69 years old. And you
16 may be asking yourself, ladies and gentlemen, how
17 could this happen in our community in 2019 right up
18 the road from this courthouse at a boarding home?
19 You may be asking yourself why is The Regional
20 Medical Center responsible for this? I'm going to
21 tell you, but in order to understand that, we have
22 to go back even further in time.

23 Ms. Branton was born in DC, but spent
24 most of her life in Columbia, South Carolina. She
25 went off to college at Fayetteville University

OPENING STATEMENT BY MR. MOORE

1 | where she studied early childhood education. She
2 | married. She had two wonderful children, Se'Anne
3 | and Herman, who are here in the courtroom. She was
4 | active in her church. She loved to sing gospel
5 | music. Her friends called her "Bunny." She loved
6 | spending time with her grandchildren. Her
7 | granddaughter is here in the courtroom today. She
8 | loved spending time with her great-grandchildren.

9 | But Ms. Branton, like many of us,
10 | started showing signs of mental illness at a young
11 | age. She was diagnosed with schizophrenia. In
12 | growing up in the '60's and '70's with mental
13 | health conditions was a lot different than it is
14 | now. It wasn't understood as much and it was
15 | difficult and she faced very severe challenges.
16 | And did it impact her relationship with her friends
17 | and family? Of course, it did. But Ms. Branton
18 | did reasonably well. And the reason she did so
19 | well is because she had friends and family that
20 | rallied around her.

21 | In fact, she lived 19 years on her own
22 | in Columbia without problems. Mostly because
23 | Se'Anne who lived in Columbia as well was able to
24 | help her. Ms. Branton never drove, so Se'Anne
25 | would take her to the grocery store and take her to

OPENING STATEMENT BY MR. MOORE

1 her medical appointments, but she did well. Now
2 that all started to change in 2018 and really in
3 2019. You'll hear testimony this week that elderly
4 patients, particularly those who have mental health
5 conditions, that if they get off their medications,
6 for example, or if they get an infection like a
7 urinary tract infection, that can cause them to
8 deteriorate rapidly and it takes time to stabilize
9 them to where they can go back to living on their
10 own like they did before. And that's what happened
11 with Ms. Branton.

12 I'll fast forward. So in July of 2019,
13 Ms. Branton spent almost -- over a month at a
14 behavioral health unit in Columbia called, Three
15 Rivers Behavioral Health. On August 1st of 2019,
16 she was released from the behavioral health center
17 and instead of going home, she stayed with her
18 daughter, Se'Anne. You'll hear testimony from
19 Se'Anne this week, that was a very challenging
20 week. Se'Anne works. She has family. She's not a
21 medical professional, but she wanted to care for
22 her mom and her mom was not stabilized at that
23 point in time. She was still very agitated. She
24 got off her medications. You'll hear testimony
25 that Ms. Branton was the sweetest lady that you

OPENING STATEMENT BY MR. MOORE

1 every met until she got sick. If she had an
2 episode, she could be a totally different person
3 that wasn't her. She could be violent. She could
4 say things that her family knew she didn't mean.
5 And that was a tough week.

6 One of her symptoms when she was
7 unstable is that she would just want to go. She
8 wanted to be out the door, walking around and it
9 wasn't safe for her to be doing that by herself.
10 Se'Anne didn't know what to do. She couldn't
11 barricade the door. So one day, Ms. Branton said,
12 look, I really want to go back to my apartment.
13 Se'Anne said, you know what, let's drive over to
14 your apartment and let's go see it. You can't stay
15 there, but we'll go hang out in your apartment.

16 And that day on the road to her
17 apartment, Ms. Branton got agitated, she was trying
18 to open the car door to get out of the car, and
19 Ms. Se'Anne not knowing what else to do, she
20 stopped at a local law enforcement agency and got
21 help. She wanted somebody to reason with her
22 mother and they did. And they got her to the
23 hospital where she was admitted and she was
24 discharged back to the Three Rivers Behavioral
25 Health Unit where she stayed throughout the rest of

OPENING STATEMENT BY MR. MOORE

1 August and all the way to September 13th and was
2 discharged again.

3 But this time it was different.
4 Instead of discharging Ms. Branton back to
5 Se'Anne's home or to Ms. Branton's home, she was
6 discharged to a facility in St. Matthews called,
7 IKare. The night of September 13th, Ms. Se'Anne
8 received a call from a woman named Estelle
9 Hutchinson who introduces herself as the owner and
10 operator of IKare. To Se'Anne, this was a relief.
11 Her mom was in a stepdown unit. She was working
12 towards getting back to a place where she was
13 stabilized and could go home. Unbeknownst to
14 Se'Anne, this was not a facility. IKare was what
15 is called a boarding home. And you'll learn more
16 about what a boarding home is this week, but
17 essentially it's a place where patients or not
18 patients, residents like you or me can go live.
19 They provide a roof. They can provide a warm meal,
20 but they don't provide medical management. They
21 can't even brush your hair. I mean, it is not a
22 medical facility. It is an independent living
23 home.

24 And Ms. Branton did not do well in this
25 environment. She was one of the only women that

OPENING STATEMENT BY MR. MOORE

1 | was living there. There were eight individuals
2 | there, some of whom didn't have family and friends.
3 | Didn't have support from their family like Se'Anne
4 | and like Herman. And during the course of these
5 | ten days, Ms. Branton didn't do well. She was
6 | constantly leaving. She was knocking on neighbor's
7 | doors. The police were called. She was confused.

8 | And finally on September 22nd, the
9 | police were called when they found Ms. Branton in
10 | the road with her belongings. The paramedics, they
11 | picked her up. They took her to Lexington Medical
12 | Center. And like every hospital that had come
13 | before, Lexington Medical Center recognized that
14 | she was unstable, that she was agitated, that she
15 | was psychotic, and they sent her to a Spart -- to a
16 | behavioral health unit in Spartanburg. It's called
17 | Spartanburg Medical Center you may hear referred to
18 | as Mary Black. It's a behavioral health unit that
19 | specializes in patients over the age of 65.

20 | She stayed there until October 1st. As
21 | I mentioned earlier, Ms. Branton dies on
22 | October 3rd. On October 1st she goes back to IKare
23 | and the same thing continues. She's upset. She's
24 | agitated. She's confused. She doesn't want to be
25 | in that environment. She wants to be home. She

OPENING STATEMENT BY MR. MOORE

1 wants to be with her daughter. She wants to be
2 with her grandson. And on October 2nd, just
3 24 hours after leaving Spartanburg Medical Center,
4 EMS is called again. This time she's in the road
5 at the end of the driveway. She's a resident at a
6 boarding home. She's refusing to take her
7 medications. She claims that the boarding home is
8 giving her the wrong medications. But instead of
9 sending Ms. Branton to Lexington Medical Center,
10 this time they send her to The Regional Medical
11 Center and that's what brings us here today, ladies
12 and gentlemen.

13 When she arrived at The Regional
14 Medical Center, she was evaluated by a doctor named
15 Dr. Steven Burkholz. Dr. Burkholz is an emergency
16 room physician. He's been practicing medicine for
17 34 years. He immediately recognized that this was
18 somebody that was agitated, uncooperative, lacked
19 insight, and was a threat of harm to herself
20 because of the untreated mental illness, because
21 she was unstable. And he did -- what he was he
22 started a process called, involuntary commitment.
23 And you may hear about that commitment or placing a
24 patient on papers.

25 He signed this document which is an

OPENING STATEMENT BY MR. MOORE

1 official document that should be submitted to the
2 court saying we need to keep this patient here. It
3 would be unsafe to discharge this patient back into
4 the environment. She's a threat to herself. She's
5 a threat to bodily harm to herself. She's not
6 taking medications. There are a number of things
7 that could go wrong if she goes back into the
8 environment where she came from. And Dr. Burkholz
9 recommended that she be admitted to the Behavioral
10 Health Unit so she can be monitored, stabilized,
11 kept safe.

12 He also recommended that she be
13 evaluated by a psychiatrist. The psychiatrist that
14 evaluated her is a guy named Dr. Alberto Gonzalez.
15 He has been providing psychiatric care in this
16 community for over 35 years. Dr. Gonzalez came to
17 the same conclusion. This was somebody who was
18 depressed, her affect was labile, meaning she would
19 go from happy to sad, angry to happy, she was all
20 over the place. Her insight was limited. Her
21 judgement was poor. She was impulsive. His plan
22 was to stabilize the patient medically, optimize
23 psychotropic medications to stabilize the patient,
24 and to admit this patient to the Behavioral Health
25 Unit.

OPENING STATEMENT BY MR. MOORE

1 Ladies and gentlemen, we agree with all
2 of these things. These doctors, Dr. Gonzalez and
3 Dr. Burkholz, they were not employed by The
4 Regional Medical Center. They were there on a
5 contract. These doctors recognized that this was
6 somebody who was unstable, this was somebody who
7 was a threat to themselves, and that somebody that
8 needed to be kept at this hospital until we could
9 find the safe place to send her.

10 She was then provided with several
11 short-acting psychotic medications. These are
12 injections, Benadryl, Ativan, Haldol, medications
13 that are in your system for a few hours. They
14 stabilize the patient. They don't fix the patient.
15 This is not a long-term solution. That was the
16 plan. Two doctors recommended that she be admitted
17 to the Behavioral Health Unit.

18 The problem is, these two doctors don't
19 have what's called, admitting privileges. They can
20 only ask for it, but they can't accept it. They
21 have to depend on the director of the Behavioral
22 Health Unit to actually accept the patient. That
23 doctor was Dr. Bryan West. He was the gatekeeper
24 of who comes in the Behavioral Health Unit. He had
25 only been practicing unsupervised for two years.

OPENING STATEMENT BY MR. MOORE

1 He finished his residency in 2017 and this all
2 happened in 2019.

3 Dr. West sees Ms. Branton at 2 p.m. and
4 the first thing he does is he reverses the petition
5 for involuntary commitment. Doesn't speak to Dr.
6 Burkholz. Doesn't speak to Gonzalez. Just on his
7 own says, this patient doesn't need to be admitted.
8 He then describes her mental health condition as
9 mild. Ladies and gentlemen, this was a woman who
10 had spent 133 days of the last 155 days in an
11 inpatient psychiatric center. You get to make the
12 determination whether you believe her condition was
13 mild.

14 He then discharges Ms. Branton back to
15 a boarding home and ask that his staff communicate
16 with the boarding home about medication
17 administration. Ladies and gentlemen, the problem
18 with that, is boarding homes don't administer
19 medications. That is illegal for them to do.
20 They're not regulated by DHEC. They're a shelter.
21 And as you would expect, the same problems
22 continued as soon as she got back to the boarding
23 home.

24 She didn't even want to get out of the
25 car. And so the woman who owned IKare, took her to

OPENING STATEMENT BY MR. MOORE

1 another boarding home, the one located at 167
2 Benthomp Road. It was called, Heavenly Living
3 Boarding Home. It was also called, Sally Keitt's
4 Rest Home. And, listen, ladies and gentlemen,
5 there's a place for boarding homes. People who
6 don't have a family and don't have support and
7 don't have medical conditions and need a place to
8 live, we're okay with that. Ms. Branton though,
9 she had no business in a boarding home. Not in the
10 condition that she was in.

11 And the problems persisted. She
12 arrives at the boarding home several hours after
13 she's discharged from The Regional Medical Center.
14 Within hours, 9-1-1 is called again. Ms. Branton
15 is outside, she won't come in. She's trying to
16 jump the fence. She's in a hospital gown. The
17 sheriff's office comes out, they find out she had
18 just been discharged from the hospital a few hours
19 ago, they calm her down. They bring her inside and
20 she goes to sleep.

21 The problem is the next day, the
22 behavior continues. She's agitated. She's
23 confused. She doesn't want to be there. At this
24 point in time, Ms. Branton has essentially no
25 personal possessions. I mean, you saw she had a

OPENING STATEMENT BY MR. MOORE

1 hospital gown. But the one thing that she had was
2 her father's jacket. Her father was a great man.
3 He was a lieutenant colonel in the Army which was a
4 big deal. He served in World War II and Ms.
5 Branton loved him deeply. And everywhere she would
6 go, she would take his jacket. It was a heavy wool
7 military jacket and you'll see it this week.

8 And when she would become agitated,
9 depressed, confused, she would put that jacket on
10 because it was a cloak of comfort that would
11 surround her. She felt closer to him. She -- it
12 would calm her down. And so that day she put on
13 that jacket, she went outside, despite the fact it
14 was over 100 degrees, and she sat in a metal chair
15 and she sat and she waited, and she waited, and she
16 waited thinking that her grandson was on the way to
17 come pick her up. The problem is, her family
18 didn't even know she was there.

19 Ladies and gentlemen, we have the
20 burden of proof in this case. We have to prove to
21 you our burden is a preponderance of the evidence.
22 You may have all heard and the Judge will instruct
23 you on this that in a criminal case the burden of
24 proof is beyond a reasonable doubt. You don't have
25 to prove that in a civil case. It's much

OPENING STATEMENT BY MR. MOORE

1 different. And the reason is, in a civil case, the
2 measure of damages that our judicial system has
3 determined is the appropriate measure of damages is
4 monetary damages.

5 In the criminal system, the measure of
6 damages is loss of your liberty. You go to jail.
7 To the measure of damages in a civil case, it's
8 much lower. Preponderance of the evidence, more
9 likely than not. If you think of Lady Justice, the
10 scales of justice are equal right now. But after
11 you've heard the evidence, you've seen the evidence
12 and you've heard the testimony, if you believe that
13 we have proven our case in a way that the scales of
14 justice slips so very -- tips so very slightly in
15 favor of Se'Anne and her family, then you must
16 return a verdict for the Plaintiff.

17 And we understand, ladies and
18 gentlemen, that y'all live very busy lives. Y'all
19 have families. You have work. You have a lot of
20 other things that you could be doing other than
21 being in this courtroom this week. And our goal is
22 to present this case in the most time efficient
23 manner possible. But, please, as you sit here this
24 week, understand what this family has gone through
25 and they have waited four years for this moment.

OPENING STATEMENT BY MR. MOORE

1 Four years for justice. Four years for closure.

2 I anticipate you will hear from some of
3 the doctors at The Regional Medical Center this
4 week. You will hear from some of the officers that
5 responded, investigated her death. You may hear
6 from the pathologist that determined that she died
7 from heat exposure. You'll hear from the family.
8 Unfortunately, you will not hear from Ms. Branton's
9 grandson, Se'Anne's son. And I'll just go ahead
10 and say it, it's terribly tragic, he died two weeks
11 ago. He was 24 years old. And he had diabetes and
12 died in his sleep, thankfully without any pain.
13 But he was scheduled to testify this week. But
14 you'll hear from Se'Anne's daughter and you'll hear
15 from their mouth, not mine, how the loss of Ms.
16 Branton has impacted their family.

17 And after we present our case, you'll
18 have an opportunity hear from the Defense. And you
19 may be asking yourself, well, what is the defense
20 of this case of discharging a woman against two
21 doctor's orders to a boarding home where she died?
22 Well, you're going to hear from Dr. West, the
23 doctor that discharged her. And Dr. West, he had
24 the opportunity to come here this week and testify,
25 but he chose not to --

OPENING STATEMENT BY MR. MOORE

1 MR. TANNER: Objection, Your Honor.

2 May we approach?

3 THE COURT: Yes, sir.

4 (WHEREUPON, there was a bench
5 conference.)

6 THE COURT: You may proceed.

7 MR. MOORE: You'll hear from Dr. West
8 on video. His testimony has already been taken.
9 We know what he's going to say. And I want you to
10 listen very closely if he accepts any
11 responsibility or instead he blames everybody else.
12 Oh, Spartanburg Medical shouldn't have discharged
13 her. Dr. Burkholz shouldn't have recommended that
14 she be committed. Dr. Gonzalez, he didn't know
15 what he was doing. He shouldn't have recommended
16 that she be admitted. I'm the smartest guy in the
17 room, yet she died 24 hours after she left him.

18 As you hear the defenses in this case,
19 ladies and gentlemen, I want you to ask yourself
20 some questions, should Dr. West have kept her at
21 the hospital like the two doctors asked? Who was
22 the only person at that hospital with authority to
23 admit Ms. Branton to the Behavioral Health Unit?
24 Once she returned to the boarding home, did the
25 same behavior continue? Refusal to come inside,

OPENING STATEMENT BY MR. MOORE

1 wandering, not taking medications. Are boarding
2 homes like the one where she died, are they able to
3 provide any medical care at all? Or the residents
4 live there independently? Would we be here today
5 if Dr. West and The Regional Medical Center
6 admitted her to the Behavioral Health Unit like Dr.
7 Burkholz and Dr. Gonzalez asked? And did The
8 Regional Medical Center provide Ms. Branton with
9 the same level of attention and respect that it
10 would want for its own family? Ask yourselves as
11 you hear the defenses in this case.

12 At the end of the week, the Judge is
13 going to instruct you on the law and how to make up
14 for the harms and the losses caused by the
15 Defendant. David, Scott, Robert, and I, we sense a
16 great responsibility in this case is making sure
17 that Ms. Branton, although she's no longer with us,
18 that she gets the justice that she deserves. It's
19 insuring that we provide you all with enough
20 testimony and enough evidence to make crystal clear
21 that this type of conduct isn't acceptable. But
22 ultimately, it's a responsibility that you as
23 jurors must bear.

24 It has been said that jurors are the
25 conscious of the community. You bring

OPENING STATEMENT BY MR. TANNER

1 responsibility. You bring accountability. You
2 impose the notion that truth and justice in our
3 society. You not only get to set the standard of
4 care, but you have the power to enforce it --

5 MR. TANNER: Objection, Your Honor.
6 Standard of care is set by experts not by jurors.

7 THE COURT: Sustained.

8 MR. MOORE: Ladies and gentlemen, thank
9 you for your time, for your attention, and the oath
10 that you took to administer justice fairly. You
11 can make a difference and I trust that you will.
12 Thank you.

13 THE COURT: Counsel?

14 MR. TANNER: May it please the Court.
15 Thank you, Judge Murphy.

16 THE COURT: Yes, sir.

17 OPENING REMARKS

18 BY MR. TANNER:

19 Ladies and gentlemen, as I introduced
20 myself yesterday, I'm Michael Tanner, a lawyer in
21 Bamberg. This is Emre Ersoy in my office. This is
22 Ms. Cassie Booker, the former TRMC board server.
23 As you heard, we certainly appreciate your service.
24 Again, I can only imagine when y'all got the jury
25 notification, no one was probably jumping for joy.

OPENING STATEMENT BY MR. TANNER

1 No one was excited. But this is a tremendous civic
2 duty that we all have as citizens of Orangeburg
3 County. This is your job. Just as important to
4 the Plaintiff, it's important to Ms. Booker and The
5 Regional Medical Center. So we thank you for that.

6 Again, as you figured it out, the
7 Plaintiff gets to go first. They get to speak
8 first. They get to come up here, they get to tell
9 you things. They get to put their witnesses up. I
10 can't go until the end. So you're not going to
11 hear from The Regional Medical Center witnesses
12 until our part of the case. And that's why as
13 Judge Murphy told you, you don't want to prejudge
14 anything. You don't want to take anything that I
15 say or anything of these four lawyers say, you're
16 going to hear from the witnesses who were sworn in
17 either by video or live or in person and that's all
18 we can ask you. So listen to the testimony.
19 Listen to the exhibits.

20 And as Mr. Moore said, this is an
21 unfortunate case. This is a sad case. This is a
22 society case. This is not just The Regional
23 Medical Center's case, this is society.
24 Unfortunately, mental health is a prevalent illness
25 that people are exposed to time and time again.

OPENING STATEMENT BY MR. TANNER

1 And as you heard, Ms. Branton unfortunately for
2 her, had a long standing history of mental illness.

3 Again, she grew up some in Wilmington,
4 North Carolina. She went to Eau Claire High School
5 in Columbia for those of you who know where that is
6 and it's in the southern part of Richland County.

7 She went to Fayetteville State University as they
8 said. She studied early childhood education.

9 Unfortunately, her children weren't always able to
10 be with her. And that's an unfortunate fact. And
11 I'm not going to try to hide that from you, but
12 you're going to hear that. And that was part and
13 partial of her disease process. And, again, that's
14 unfortunate to hear, but, again, that's not The
15 Regional Medical Center's burden to take on, no.

16 You're going to hear that the evidence
17 that she was living independently in Columbia for
18 about 19 years. And then sometime in 2018, 2019, I
19 believe a gentleman friend of hers unfortunately
20 passed and that seemed to send her into this
21 spiral. That seemed to cause her schizophrenia as
22 well as her bipolar disorder to get worse. She was
23 also a diabetic. She took pills for that. She
24 also had high blood pressure as many of us have.
25 She took pills for that. She was able to take care

OPENING STATEMENT BY MR. TANNER

1 of her medication and adjust when she could. But
2 unfortunately, actually starting in May, May 18th
3 of 2019 was her first admission to Three Rivers
4 Behavioral Hospital, which for those of you may
5 know is in Lexington. It's located right next to
6 Lexington Medical Center. And she was there from
7 May 18th to July 31, 2019.

8 But she was discharged from there. So,
9 again, in this country, we do not take people that
10 have mental health disorders and just throw them in
11 a warehouse forever. She was being treated. But
12 while she was there, the records you're going to
13 hear from, you're going to hear from these doctors
14 that have reviewed these records, she had a number
15 of psychological psychotic episodes. She was
16 hallucinating. She was having paranoid delusions.
17 She had none of those on October 2nd at The
18 Regional Medical Center.

19 She came out of Three Rivers, again,
20 and as Mr. Moore said, not to belabor the point,
21 unfortunately, it didn't work. She ended up back
22 at Three Rivers on August 8th. Again, the records
23 reflect she was having more hallucinations, more
24 paranoid disorder, been behavior there. Goes back
25 to Three Rivers on September 5th through the 13th.

OPENING STATEMENT BY MR. TANNER

1 Again, she was hallucinating. At one point she got
2 a blood born infection called sepsis which is very
3 serious which led her to be taken from there, go
4 back to Lexington Medical only to come back to
5 Three Rivers. And this is where sort of everything
6 changes. And, again, frankly, has nothing to do
7 with The Regional Medical Center.

8 Three Rivers Behavioral Health
9 contacted Estelle Hutchinson of IKare Boarding
10 Home. And if you notice on the TRMC admission
11 form, this is when she come to the hospital on the
12 2nd and you have Adrienne Branton, address, 210
13 Church Street, St. Matthews, South Carolina, 29135.
14 That is the address of Estelle Hutchinson's IKare
15 Boarding Home that you've heard about. So, again,
16 as you're asking yourself questions, ask yourself,
17 why did Three Rivers call a boarding home for Ms.
18 Branton? Where is Three Rivers in this courtroom?

19 The emergency contact is given as
20 Estelle Hutchinson. Phone number: 843-855-7702.
21 Which if you look, matches what's given to the
22 hospital as her home phone number. Why is that?
23 Again, that's information provided to The Regional
24 Medical Center on October 2nd.

25 But before she got here, again, as

OPENING STATEMENT BY MR. TANNER

1 Mr. Moore, you heard from him, she was at the
2 Spartanburg Regional Medical Center, Mary Black is
3 what it's also known as. She was in their geri
4 psych unit. And, again, you're going to hear from
5 the witnesses who reviewed those records, and,
6 again, Mary Black contacted Estelle Hutchinson in
7 the IKare Boarding Home and went so far as
8 transporting her from Spartanburg to St. Matthews
9 to the boarding home.

10 Now, ask yourself, where was Ms. Davis?
11 Where was the family? What was going on? Why
12 didn't Spartanburg call her? Why didn't Three
13 Rivers call her? I don't have the answers to those
14 questions. But, again, ask yourself, where are the
15 Spartanburg folks? Where is the Spartanburg
16 hospital in this courtroom?

17 This is going to be a trial that
18 unfortunately is probably going to take the balance
19 of the week because there is a lot of evidence and
20 material to present. So we know she's back with
21 the IKare home on October 1st. She was discharged
22 by Spartanburg. There's even notes that you'll
23 hear from that they've contacted Ms. Hutchinson to
24 discuss the discharge plan. Again, you're going to
25 hear evidence that's going to show that when

OPENING STATEMENT BY MR. TANNER

1 Ms. Hutchinson first got her, Ms. Branton from
2 Three Rivers, she called Ms. Davis.

3 Now, she made representations to Ms.
4 Davis that we know after the fact are not true.
5 One of those representations was that she was a
6 nurse. That's not true. Has nothing to do with
7 The Regional Medical Center. She represented to
8 Ms. Davis that she could take care of her mother.
9 That she could assist her with her medication.
10 That she could assist her with making sure that she
11 was fed. That she could put a roof over her head.

12 Now, you're going to hear evidence, she
13 wasn't doing this out of the kindness of her heart
14 or the benevolence of her heart, she was doing this
15 because she was getting paid. And you're going to
16 hear that one of those times that Ms. Branton was
17 released from Three Rivers, what did Ms. Hutchinson
18 do but take her to her apartment in Columbia, get
19 her debit card, take her to the bank and have her
20 withdraw \$800 to give to Ms. Hutchinson. So ask
21 yourself again as you're thinking about who's here
22 and who's not here, where is Ms. Hutchinson in
23 this?

24 But Ms. Davis knew that her mother was
25 with Ms. Hutchinson. I don't believe there's going

OPENING STATEMENT BY MR. TANNER

1 to be any evidence that Ms. Davis went to the
2 boarding home at that time in August or September
3 to inspect the boarding home. Maybe she should of,
4 maybe she shouldn't have, I'm not going to judge
5 her on that, but she certainly knew that Ms.
6 Hutchinson was the caregiver for her mother and
7 that was the information that was conveyed to The
8 Regional Medical Center when she came on that day.

9 So she comes in that day, as you've
10 heard, Dr. Burkholz is the attending physician in
11 the ER. What that means is that he is in charge of
12 arranging for admission or discharge of a patient.
13 He and he alone. He's not a hospital employee,
14 that's correct. He was an employee of Sound
15 Physicians, it's a staffing company that the
16 hospital had for the last several years when they
17 were The Regional Medical Center. As you heard
18 from Judge Murphy, they're now part of the MUSC
19 family and they're known as MUSC Orangeburg.

20 But she saw Dr. Burkholz -- actually,
21 first she was triaged. She saw Nurse Brady.
22 Again, basically triage is a military term, it's a
23 fancy term, but all it means is sorting. And so
24 the purpose of triage as you'll hear is you don't
25 want someone who's had a heart attack seen after

OPENING STATEMENT BY MR. TANNER

1 someone that's had a sprained ankle. So she sees
2 Ms. Brady -- sees Nurse Brady and the chief
3 complaint is patient transported from boarding home
4 in Calhoun County for noncompliance with medication
5 for one day. Patient denies SI, HI and AVH. And
6 those are medical terms that you're going to hear a
7 number of times and what those are is she denied
8 suicidal ideation. That is a desire to harm
9 herself. She denied homicidal ideation. That is a
10 desire to harm others and she denied audio and
11 visual hallucinations. The same hallucinations
12 that time after time all those dates that the
13 Plaintiff showed you she was in all these
14 facilities, she was having them. She didn't have
15 any of those on October 2nd at The Regional Medical
16 Center. None of the physicians that saw her, three
17 physicians, documented that.

18 She also denies any other complaints
19 which she said she's concerned her medications are
20 wrong. Now, again, in this country, we don't
21 simply tell people that you have to take all your
22 medicine, you have to be locked up forever.
23 Patients have autonomy and you're going to hear
24 that from Dr. West. You're going to hear his
25 definition of patient autonomy, but those were her

OPENING STATEMENT BY MR. TANNER

1 | complaints. And like any of us, if you go to a
2 | doctor, the doctor's going to say, what's wrong,
3 | why are you here? And like the rest of us and like
4 | all of us, I think you'd want the doctor to listen
5 | to why you think you're here. And, obviously,
6 | we're not saying that the patient substitutes their
7 | judgement for the doctor, but the doctor has to
8 | listen. The doctor has to take a personal touch
9 | and try to get to the reason why a patient is in
10 | there.

11 | So patient sees Nurse Brady and then
12 | Dr. Burkholz comes along. Dr. Burkholz does an
13 | examination like any prudent physician would do.
14 | He also examines her and shows that she's not
15 | suicidal, not homicidal, she has no auditory or
16 | visual hallucinations. He does document a little
17 | further down, he shows that the triage note that
18 | we've heard from Nurse Brady, he said at some point
19 | she does become anxious. She does become agitated.
20 | She does become irritated. At that point, Dr.
21 | Burkholz orders medications.

22 | Now, Dr. Burkholz sees Ms. Branton
23 | around 9:30 in the morning. He orders these
24 | medications. These medications are administered at
25 | 12:24 is the initial. She gets three drugs as

OPENING STATEMENT BY MR. TANNER

1 | you've heard from Mr. Moore. She gets injectable
2 | Benadryl. She gets Ativan and she gets one
3 | antipsychotic medication, Haldol. So she has all
4 | of those between 12:24 and 12:45. Now, Dr.
5 | Burkholz does a consult to Dr. Gonzalez. Who while
6 | he has been a psychiatrist in the Orangeburg area
7 | for a number of years, he's not board certified.
8 | Dr. West is board certified. What that means is
9 | Dr. West is recognized by his board agency as
10 | having the highest level of education as a
11 | psychiatrist. It's a mandatory program that anyone
12 | that wants to achieve that has to have. He's board
13 | certified. Dr. Gonzalez is not.

14 | Dr. Gonzalez's notes mirrors Dr.
15 | Burkholz's note almost identically. In fact, if
16 | you look at them together side by side, you'd think
17 | it was written by the same person. But he sees --
18 | Dr. Gonzalez sees Ms. Branton at 11:27. That's
19 | before any of this medication has even been
20 | administered. So there's no chance that anything
21 | was going to substantially change between 9:30 and
22 | 11:27.

23 | Again, he doesn't document she's
24 | suicidal. She's homicidal or she's having an
25 | auditory or visual hallucination. None of the

OPENING STATEMENT BY MR. TANNER

1 things that we've seen in the Spartanburg records
2 and the Three Rivers' records as documented even by
3 him.

4 He does a mental status exam. And
5 that's sort of a standard of care for psychiatrists
6 and that is a number of questions that he asked
7 her. He documents she makes good eye contact. Why
8 is that important? You're going to hear from Dr.
9 West extensively on this, because if someone's
10 having a psychotic episode or some psychiatric
11 issues, they're more likely to look over here, look
12 down, but she's making good eye contact with Dr.
13 Gonzalez.

14 He documents she has a linear thought
15 process. She can explain why she's there. She can
16 explain what's going on. It tracks a path. It's
17 not meandering. She's not making wild complaints.
18 Which, again, you're going to hear was
19 unfortunately part of her mental health problems
20 she had at Three Rivers.

21 Again, the plan he comes up with is to
22 optimize her medication, to admit her to the
23 Behavioral Health Unit. Later on, again, Dr. West
24 and his partner, Nurse Practitioner Cameo Green see
25 Ms. Branton at 2 o'clock. And unlike what Mr.

OPENING STATEMENT BY MR. TANNER

1 Moore said, they don't just willy-nilly go up there
2 and repudiate the plan. Now Dr. West does a
3 physical exam. He takes a history. She again, Ms.
4 Branton tells him the reason she's there is because
5 of her issues with her medication. She's not sure
6 that she's on the right medication. She's feeling
7 dizzy. And you're going to hear from Dr. West that
8 the medications that she's on can cause dizziness
9 because of her psychiatric and because of her age
10 causes that combination to occur.

11 But what does Dr. West document?
12 Again, she's got a pleasant mood. She is
13 cooperative. She's maintaining good eye contact.
14 She's actually sitting in bed eating. And you're
15 going to hear from him in a hallmark of people with
16 mental disease is trust. So, unfortunately, you're
17 going to have a patient that may not trust someone.
18 Why would I eat the food that you're giving me?
19 You may be trying to poison me. Well, that wasn't
20 what -- that wasn't how he found Ms. Branton that
21 day. She was sitting in bed. She was alert and
22 oriented times four which means she knew who she
23 was, where she was, what year she was -- it was at
24 the time, and where she was at. She knew all of
25 those. And she was alert and oriented and

OPENING STATEMENT BY MR. TANNER

1 | documented not only by Dr. West, but by Dr.
2 | Burkholz and by Dr. Gonzalez. So she knew all of
3 | that.

4 | Again, we can't just put folks, lock
5 | them away in a behavioral health unit because
6 | that's convenient. There was no medical reason
7 | according to Dr. West for her to be admitted. So
8 | Dr. West reviewed all that. Took all that into
9 | account. At that point in time, she was medically
10 | stable. That medication, that Haldol is a
11 | fast-acting medicine and it was in her system, she
12 | was calm, she was coherent, she had a good plan and
13 | she agreed with Dr. West about her plan. The plan
14 | was to stop the one medication that was making her
15 | feel dizzy and adjust that medication.

16 | So that medication is Clonazepam. And,
17 | again, it can cause dizziness. You're going to
18 | hear about that from the doctors. But, again, Dr.
19 | West is not a gatekeeper. He's not the final
20 | decision maker as the Plaintiff likes to say. He's
21 | a consultant. He does not have the final decision.
22 | He relays that information back to Dr. Burkholz.
23 | Dr. Burkholz ultimately makes the final decision.

24 | Now, Dr. Burkholz was free to accept
25 | Dr. West's recommendation or reject it. He could

OPENING STATEMENT BY MR. TANNER

1 have contacted Dr. West. He could have said, hey,
2 I see something differently. He had an opportunity
3 to interact with the patient after Dr. West had
4 seen Ms. Branton. There's nothing in the chart
5 that shows that any such conversation happened that
6 occurred. There's nothing in his document of the
7 patient that shows that. And instead, what he
8 documents is the patient was medically stable and
9 he discharges the patient.

10 Around that same time, Dr. West has his
11 Nurse Practitioner Cameo Green contact Ms.
12 Hutchinson. Again, Ms. Hutchinson is who is listed
13 as the caregiver. Ms. Hutchinson is who brought
14 Ms. Branton to the hospital. You see Cameo Green,
15 nurse practitioner's note, patient was discharged
16 at 15:03 p.m. from the emergency department.
17 Again, that's discharged by Dr. Burkholz. Dr. West
18 advised Cameo Green informed the boarding home of
19 her treatment plan. Cameo Green called Ms. Estelle
20 Hutchinson at IKare Boarding Home and notified her
21 that the patient's Clonazepam should be stopped due
22 her complaints of dizziness per Dr. West.

23 Patient's caretaker, Ms. Hutchinson,
24 verbalized understanding of the treatment plan.
25 She was concerned the patient may act out in the

OPENING STATEMENT BY MR. TANNER

1 future. So what did they tell her? If she acts
2 out in the future, she was advised to bring her
3 back to the hospital if she's concerned. And that,
4 ladies and gentlemen, unfortunately is what didn't
5 happen and that, ladies and gentlemen, is you'll
6 hear a number of intervening acts by people that,
7 again, ask yourself where are they in this
8 courtroom and that is unfortunately which led to
9 the death of Ms. Branton. So that was the plan
10 when Ms. Branton was discharged. She wasn't
11 wearing a military coat. She wasn't wearing heavy
12 clothing. She was in a hospital gown and that's
13 how Dr. West saw her.

14 But you're going to hear from a number
15 of witnesses sort of what happened next in that sad
16 unfortunate 24 hours. And what happened is Ms.
17 Hutchinson received this call. She, in fact, signs
18 her out of the hospital. Right there, Ms.
19 Hutchinson signs the discharge instructions. As we
20 go back up you'll see that Nurse Terry discharge
21 information reviewed with patient's caregiver and
22 patient. Patient's caregiver and patient V/U,
23 which means, voice understanding. NAD noted upon
24 discharge. No acute distress.

25 So, again, what information was

OPENING STATEMENT BY MR. TANNER

1 provided to the hospital is that Ms. Hutchinson is
2 her caregiver. That was why we reached out to Ms.
3 Hutchinson. That was the plan, that was the
4 information that we were told. So, again, why did
5 Three Rivers get Ms. Hutchinson in here to start
6 with? Ask yourself that as this trial goes on.

7 But what happened and you're going to
8 hear, unfortunately after this point, is Ms.
9 Hutchinson then began having problems again with
10 Ms. Branton being noncompliant. She should have
11 taken her back to the hospital like she was told,
12 but she didn't do that. Instead, unbeknownst to
13 Dr. West, unbeknownst to Nurse Practitioner Green
14 or anyone else, she calls a lady by the name of
15 Brenda Williams who lives here in Orangeburg at
16 that 167 Benthomp Street address. And Ms. Williams
17 has her own boarding home. And she calls her and
18 says, I'm going to take Ms. Branton to you. Why
19 doesn't she call her -- Ms. Davis? There's a
20 conflict between those two ladies of one of them
21 says that they thought she was calling Ms. Davis,
22 the other one says, she didn't. But, again,
23 neither one of those ladies work for the hospital.
24 Neither one of those ladies has ever worked for the
25 hospital.

OPENING STATEMENT BY MR. TANNER

1 You're going to hear that law
2 enforcement was contacted that night. Now there's
3 no incident report. Which is odd. The officer was
4 there for over 30 minutes. There's no body camera
5 footage of his interaction with the patient. Which
6 is also odd. But what you're going to hear from
7 the witnesses is that the deputy had to coax Ms.
8 Branton out of the car because she didn't want to
9 go with Ms. Williams.

10 He somehow got her to go in the house.
11 He refused to call EMS. He substituted his own
12 judgement for all the doctors in the case and said,
13 no, she was at the hospital earlier today, I'm
14 going to cancel EMS. So EMS never calls. Instead,
15 he takes her inside, you're going to hear some
16 testimony from some of the witnesses that he
17 basically tells her to see if you can't calm down
18 and see how you're doing in the morning. Again,
19 he's not a medical professional. He's not a mental
20 health professional. He doesn't do an incident
21 report. He doesn't have his body cam on which he
22 should have, so ask yourself, where is the
23 sheriff's office in this? Where are they?

24 The next morning, October 3rd, she's
25 scheduled to go to Orangeburg Area Mental Health.

OPENING STATEMENT BY MR. TANNER

1 Now, Ms. Hutchinson comes back to Ms. Williams'
2 boarding home. She's told she speaks to Ms.
3 Branton, Ms. Branton had taken a shower, she had
4 her breakfast. She's supposed to take her to
5 mental health for some unknown reason, she doesn't.
6 She tells Ms. Branton that someone else is going to
7 come get you and take you. But then you're going
8 to hear lots of testimony about Ms. Branton thought
9 that her grandson was going to come pick her up.
10 She didn't want to stay there with Ms. Williams.
11 Again, ask yourself, why didn't Ms. Hutchinson call
12 the hospital? Why didn't Ms. Hutchinson call
13 9-1-1? Why didn't she call EMS? Why didn't anyone
14 call Orangeburg Mental Health and say, we have your
15 patient and she's refusing her treatment. But,
16 unfortunately, none of that happens.

17 And what we do know, unfortunately, did
18 happen and you're going to see and hear, has
19 nothing to do with The Regional Medical Center.
20 Instead, it has to do with Ms. Williams and her
21 employees. And Ms. Williams' employees know that
22 she's wearing a wool coat. They know that it's hot
23 outside. They don't bring her back in the house.
24 They don't get her adequate water. One of their
25 employees, a lady named Rosa Starks gives a

OPENING STATEMENT BY MR. TANNER

1 statement to law enforcement that says, I thought
2 she was dehydrated, but I didn't want to bring her
3 back in because I thought she was going to hit me.
4 Never does Ms. Starks or Ms. Williams call 9-1-1
5 and say, hey, we have Ms. Branton, she's in a wool
6 coat, come render aid to her. Never do they call
7 EMS. Never do they call Orangeburg Mental Health.
8 Never do they even call The Regional Medical Center
9 and say, this lady was here yesterday, she's had a
10 drastic change, she's wearing a wool coat in the
11 heat. Instead, they know she's there, they do
12 nothing. She's there all day long from about 10:30
13 in the morning until about 5:30 in the afternoon
14 when someone finally at that boarding home calls
15 9-1-1 and, unfortunately by this time, Ms. Branton
16 is dead. And that's what EMS finds when they come
17 upon the scene. And so, again, ask yourself, where
18 are all these intervening actors? Why are they not
19 in this courtroom.

20 You heard a lot about the standard of
21 care and that's the standard that all doctors and
22 all professionals are judged by. And the Plaintiff
23 has to have the burden of proof that Dr. West
24 deviated from the standard of care and that
25 deviation was the proximate cause in this case of

OPENING STATEMENT BY MR. TANNER

1 Ms. Branton's death. And I submit to you as the
2 evidence comes in, you're going to see that Dr.
3 West was not the proximate cause of her death
4 because he did not deviate. There was
5 unfortunately no reason to admit her that day when
6 she's not psychotic, when she's not suicidal, she's
7 not homicidal and she's not having any
8 hallucinations. And everything that came after
9 that once she was discharged was not foreseeable to
10 Dr. West. Because you have a number of actors, law
11 enforcement, Estelle Hutchinson, Brenda Williams
12 and her staff are doing things purely for
13 self-motivation. But they're supposed to be taking
14 care of Ms. Branton.

15 Again, Ms. Branton took \$800 of her
16 income. She had a disability income and gave it to
17 Ms. Hutchinson. Ask yourself, what did she expect
18 for that \$800? She probably didn't expect that she
19 was going to be taken to some new place and let lay
20 outside in the heat in a wool coat all day. Ask
21 yourself that.

22 At the end of this trial, again, you're
23 going to hear everything from the Plaintiff first,
24 you're not going to hear from the Hospital
25 witnesses until it's our turn to go. So I'd ask

OPENING STATEMENT BY MR. TANNER

1 | you again, keep an open mind, but at the end of
2 | this case I'm going to stand back up before you and
3 | I'm going to ask you to render a verdict for The
4 | Regional Medical Center and I'm going to tell you
5 | it's because the Plaintiff did not prove that Dr.
6 | West breached his standard of care to Ms. Branton.

7 | Again, I thank you for your time. I'll
8 | do everything I can to help move this trial along
9 | as expeditiously as possible, but it is a lot of
10 | information as you heard. There's a lot of details
11 | that you just heard that you may not have known
12 | before I presented them to you. So I thank you all
13 | for your time and attention.

14 | THE COURT: You may call your first
15 | witness.

16 | MR. WILLIAMS: Do you want to give or
17 | poll the jury if they want to take a quick bathroom
18 | break?

19 | THE COURT: Are y'all okay? Do you
20 | want a quick break? Is that a, yes? Okay. All
21 | right. We'll take a brief recess. Y'all let us
22 | know when you're ready. Again, please remember not
23 | to discuss the case amongst yourselves. Thank you.

24 | (WHEREUPON, the jury left the courtroom
25 | at 11:07 p.m.)

1 MR. MOORE: Can I raise one issue?

2 THE COURT: Yes, sir.

3 MR. MOORE: Towards the end of Mr.
4 Tanner's closing (verbatim), he brought up the
5 issue of disability coverage which that she had
6 disability payments which is a collateral source
7 that we filed a motion in limine on yesterday about
8 which he said he consented to and he just opened
9 the door by talking about that she has disability.
10 They're going to be thinking that there would be
11 insurance coverage for all of this. And we take
12 the position, Your Honor, by opening the door to
13 that in opening, he has since opened up the door to
14 liability coverage which pertains to his client.

15 THE COURT: Mr. Tanner?

16 MR. TANNER: I totally disagree.
17 That's certainly those two things are not related.
18 If I did it, it was unintentional. It was to show
19 the limited amount of money that he has. There's
20 certainly nothing that would show that that somehow
21 can -- equates to liability insurance coverage from
22 the jury and to do that would be, again, highly
23 prejudicial and I think would warrant a mistrial.
24 Obviously, as Your Honor knows, you cannot get into
25 anything about liability insurance.

1 THE COURT: I don't think he opened the
2 door to that extent. I'll be happy to give them
3 limited instruction as to what disability she was
4 receiving if you wish, but your motion is
5 respectfully denied.

6 MR. MOORE: Thank you, Your Honor.

7 THE COURT: Y'all just let us know when
8 you're ready.

9 (WHEREUPON, there was a short break.)

10 THE COURT: Thank you, everyone.
11 Please have a seat. Counsel, everyone ready to
12 proceed?

13 MR. TANNER: Yes, Your Honor.

14 MR. WILLIAMS: Yes, ma'am.

15 THE COURT: All right. Let's have our
16 jury, please.

17 (WHEREUPON, the jury entered the
18 courtroom at 11:24 a.m.)

19 THE COURT: You may be seated. Welcome
20 back, ladies and gentlemen of the jury. We're
21 ready to proceed with the trial of this case. You
22 may call your first witness.

23 MR. WILLIAMS: Your Honor, may it
24 please the Court, Kat, I call Andy Hayes to the
25 stand.

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 ANDREW HAYES,
2 being first duly sworn, was examined and testified
3 as follows:

4 THE COURT: Please have a seat. Your
5 witness.

6 DIRECT EXAMINATION
7 BY MR. WILLIAMS:

8 Q. Andy, good morning. First, if you
9 don't mind, tell the jury what you're currently
10 doing for a living?

11 A. I'm an investigator with the South
12 Carolina Department of Corrections Office of
13 Inspector General.

14 Q. All right. And most of us, including
15 me, don't really know what that means, but what do
16 you do?

17 A. I am a Class 1 law enforcement officer
18 who is assigned to the South Carolina Department of
19 Corrections to investigate and investigate criminal
20 activity that happens inside and outside the South
21 Carolina state prison system as well as we got full
22 state authority just like SLED.

23 Q. And, you know, when did you take this
24 position? What year was that?

25 A. February 27th of this year.

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 Q. All right. And before taking this
2 position, what did you do for a living?

3 A. I was a criminal investigator for the
4 Orangeburg County Sheriff's Office.

5 Q. How long were you in the criminal
6 investigation unit of Orangeburg County Sheriff's
7 Office?

8 A. I believe it was 2007 -- late 2017,
9 early -- Christmas of 2017 when I was transferred
10 from the courthouse where I was working here. I
11 came here in 2015, left the courthouse and went to
12 investigations in 2017 -- end of 2017, first of
13 2018.

14 Q. All right. And what does it mean to be
15 an investigator with the sheriff's department?

16 A. Investigator -- criminal investigator
17 with Orangeburg County Sheriff's Department is any
18 major crime or suspicious incident that occurs
19 inside the County of Orangeburg would -- it could
20 or does have criminal indications to it we would be
21 investigating the facts of the case to try to
22 determine whether there was probable cause to make
23 charges on an individual or come to findings.

24 Q. All right. And that's a lot for most
25 people to understand. Some folks might understand

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 | what all that means, but basically what you do if
2 | there's a death, for instance, you go and
3 | investigate that death to determine if you want to
4 | write out an affidavit per se of Judge Murphy to
5 | sign issue an arrest warrant; is that fair?

6 | A. That would be correct.

7 | Q. Okay. When there's deaths such as the
8 | death that occurred on October 2019, sometimes
9 | you're called out and you make a determination that
10 | there's nobody to charge, nobody to swear a warrant
11 | against?

12 | A. That is correct.

13 | Q. Okay. And how long have you been in
14 | law enforcement?

15 | A. Twenty-four years.

16 | Q. All right. And, you know, to become
17 | investigator, that's kind of like the pinnacle of
18 | an active law enforcement, is taking over like a
19 | command position?

20 | A. Not necessarily. I've had a large
21 | amount of different titles throughout my 24 years
22 | of law enforcement service. Just happens to be
23 | with the sheriff's office, you have the sheriff,
24 | the assistant sheriff or the chief deputy and his
25 | command staff. Then you have your field services

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 division which is the regular road officers that
2 you would see, they're going to be the ones who
3 initially make first contact with individuals, they
4 take reports based on different crimes that occur
5 or different situations that occur. And then you
6 have investigators that are assigned to your
7 special units, it could be homicide, it could be
8 general investigations, so on and so forth and
9 they're the ones who take the initial reports from
10 the deputies and determine the findings of those
11 crimes.

12 Q. Okay. Do you recall investigating the
13 incident that occurred on or about October 3, 2019?

14 A. I do.

15 Q. All right. And I'm going to put in
16 front of you, there are several exhibits and so the
17 jury can understand, we've stipulated that certain
18 exhibits are already admitted, okay?

19 A. Okay.

20 Q. And a lot of things have been presented
21 in opening statements like you were here for both
22 side's opening statements, a lot of different
23 exhibits that are already into evidence have been
24 shown to this jury. I will try to expedite your
25 testimony for this jury's sake and I'm going to

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 hand you excerpts of these. But, for instance,
2 Exhibit 8, you know, and I'll put it up on the
3 screen for you. And this would be a file that was
4 the Orangeburg County Sheriff's Department's file.
5 And I'm going to put it up so that you see like the
6 cover page on these two screens. Is this kind of
7 what a normal report or file case jacket looks
8 like?

9 A. Somewhat, yes.

10 Q. Okay. And this actually has a death
11 report to it too, but that Exhibit 8 is a complete
12 copy of what we understand to be the Orangeburg
13 County Sheriff's Office's file; fair enough?

14 A. Okay.

15 Q. Before I go into the specifics that are
16 outlined in this investigative file, do you have an
17 independent recollection of October 3, 2019?

18 A. I remember a lot of it, yes.

19 Q. Okay. And why -- and we don't need to
20 get into the very specifics yet, but why do you
21 have this -- I mean, you investigate a lot of
22 cases; right, a lot of deaths?

23 A. Yes.

24 Q. And why do you have this burning
25 recollection of this particular event?

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. Just the nature of the way that the
2 victim was positioned and what her outer clothing
3 was just was concerning.

4 Q. Okay. And I want to go to the next
5 page which is hard to read, but this is a bunch of
6 highlights from the investigative file that's
7 another reporting officer's narrative. Is it
8 common that you would have narratives by other
9 officers that come to the scene?

10 A. Yes, it is.

11 Q. And in your investigation, do you rely
12 on their -- I assume when you get there you ask
13 other officers what happens at the scene, what
14 they've already uncovered, who the witnesses, et
15 cetera?

16 A. That's correct.

17 Q. Okay. And one of the things you
18 quickly determined was that, you know, this
19 particular individual that's seated in that chair,
20 you know, and I've got it blown up here for you,
21 but did you quickly understand that she had been in
22 a prior mental health facility and had mental
23 health issues?

24 A. Yes, we were told that she had been
25 hospitalized prior.

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 Q. And you understood that she was at a
2 facility up until the day that -- before this
3 event; right?

4 A. That's what we were understanding, yes.

5 Q. And you understood that she was found
6 deceased sitting in a lawn chair where you found
7 her?

8 A. Correct.

9 Q. Okay. And, ultimately, you know, this
10 particular description, they had already been a
11 deputy coroner that showed up on the scene and made
12 a belief that she suffered from a heat stroke and
13 died?

14 A. That is correct.

15 Q. All right. And so I guess what begs
16 the question is, why did you get called out as an
17 investigator?

18 A. A lot of times what will happen is when
19 a -- when you come to a death scene, of course,
20 you've got your normal homicides, you've got other
21 problematic death incidents or reasons that an
22 individual dies, and the deputy coroner will arrive
23 and the deputy coroner as they are somewhat
24 medically trained, they could deem what they call
25 it as suspicious. Well, one of our protocols is

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 homicides we always responded to. Suicides we
2 always responded to. Any kind of suspicious death
3 or suspicious act, an investigator would be called
4 out to help determine whether it is actually what
5 they deem as suspicious or could it be something
6 else.

7 Q. Were you -- when you learned that this
8 particular patient of mental health care facilities
9 is who had passed away, were you concerned that she
10 should be under the care of some other person?

11 A. It was a question, yes.

12 Q. Okay. And, like, charges like abuse or
13 neglect, is that something you often investigate?

14 A. We could, yes.

15 Q. Okay. And in this particular scene and
16 I'm going to show you the picture that has been
17 already admitted, but is this the scene you arrived
18 on that October 3, 2019 night?

19 A. Yes, sir, it is.

20 Q. Okay. And, unfortunately, we're going
21 to have to show behind that curtain at some point,
22 but when you came here and you did your initial due
23 diligence, did you find that she was under the care
24 of a specific facility that has the ability to care
25 for her?

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. It was determined -- we had to
2 determine what the status of the facility was and
3 it was determined that the facility she was at was
4 classified as a boarding home.

5 Q. All right.

6 MR. WILLIAMS: Your Honor, at this time
7 I'd ask the Court take judicial notice of DHEC
8 Regulation 61-84.

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: And, specifically, the
11 boarding house is not permitted under the laws of
12 South Carolina to provide services such as personal
13 care services or assistance with active daily
14 living activities.

15 THE COURT: Notice is taken.

16 MR. WILLIAMS: Thank you.

17 Q. And, you know, you as an officer of the
18 law, you can't charge somebody for neglecting this
19 individual who legally can't provide any care for
20 them; right?

21 A. That's correct.

22 Q. Okay. And, ultimately, your -- this is
23 your narrative; correct? The jury's going to have
24 this back there, they're going to have hopefully,
25 Michael and the Judge will agree to allow the

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 highlights to skip over some of it, but it's not
2 overly long; right? It's what, two pages is your
3 narrative?

4 A. I think it was about two pages, yes,
5 sir.

6 Q. Okay. And you describe specifically,
7 you know, how this victim and I think earlier you
8 alluded to it to this jury why this still burns in
9 your brain this particular outfit, this blue, what
10 appeared to be a wool union replica battle jacket?

11 A. That's what it appeared to be, yes,
12 sir.

13 Q. And, again, in your own testimony or
14 sworn report here, you've got a discussion about
15 the temperatures of this particular evening; right?

16 A. It was extremely hot that evening. It
17 was weird. Because normally, those who live in
18 South Carolina, as you heard earlier, you don't
19 never know what day you're going to get once the
20 fall comes. You know, might be cold one morning,
21 might be hot one morning, you don't ever know, it's
22 up and down temperatures. That day it was
23 sweltering hot. Matter of fact, when we arrived on
24 scene, it was still -- it was just dusky dark or
25 right at dark and, I mean, we were sweating it was

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 | so hot outside. It was still in the, you know,
2 | high 80's low 90's that evening and it was
3 | unbearable and we walked around drenched and we
4 | were all commenting about how this is October, why
5 | are we still sweating like this.

6 | Q. And would it surprise you as you've
7 | already heard that the temperature got up to 103
8 | with the heat index?

9 | A. It would not surprise me at all.

10 | Q. Okay. I'm going to hand you what's
11 | previously been marked as Plaintiff's Exhibit 24.
12 | And I want you to just look at these real quick and
13 | tell me if this accurately depicts the clothing
14 | that the Decedent was wearing if we peel back that
15 | tarp?

16 | A. Yes, sir, that's correct.

17 | MR. WILLIAMS: Your Honor, at this
18 | time, I would move to introduce what is Plaintiff's
19 | Exhibit 24. I've removed a couple of pictures that
20 | we don't want and I'm literally just wanting to
21 | publish the first picture of that series.

22 | MR. TANNER: May we approach, Your
23 | Honor?

24 | THE COURT: Yes, sir.

25 | (WHEREUPON, there was a bench

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 conference.)

2 THE COURT: Any objection, Mr. Tanner?

3 MR. TANNER: Your Honor, I have an
4 objection, same objection that I made yesterday in
5 our lengthy motion in limine and I'd asked Your
6 Honor to incorporate that on the record, but that
7 would be the same objection I made yesterday.

8 THE COURT: Yes, sir. And for the same
9 reasons as articulated by the Court yesterday, your
10 motion is overruled.

11 MR. TANNER: Thank you, Your Honor.

12 THE COURT: It's admitted.

13 (WHEREUPON, Plaintiff's Exhibit No. 24
14 was entered.)

15 MR. WILLIAMS: At this point, Your
16 Honor, I would like to publish the first photo of
17 that series to the jury.

18 THE COURT: Yes, sir.

19 Q. You know, and I see -- they'll have the
20 picture in the jury room when they deliberate, but
21 corduroy pants which typically you'd wear in cold
22 whether; right?

23 A. Right.

24 Q. And then this wool jacket on the victim
25 as well; correct?

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. Yes, sir, that's what stands out the
2 most.

3 Q. And this is not something that you
4 expected to see when you peeled back that sheet;
5 correct?

6 A. No, it is not.

7 Q. And, ultimately, in your report you put
8 Decedent passed due to heat exhaustion around 5
9 p.m.?

10 A. That's what was told to me by the
11 deputy coroner as what he believed it was and we
12 felt like that that was a good assumption at that
13 time.

14 Q. And, ordinarily, that would be hearsay,
15 but we've stipulated the admissibility of the
16 report. All I'm asking this is what you put in
17 your report --

18 A. Yes, that's what I put in my report.

19 Q. Okay. And, you know, again, to lay a
20 different foundation, this is one that's going in
21 without objection, but it's to show you the -- this
22 yard. I mean, it's a pretty sizeable little acre
23 or two acres or something; is that fair to say?

24 A. Yes, sir.

25 Q. And the Decedent, Ms. Branton, was

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 sitting up at the very front of this by the gate
2 like she was waiting on somebody?

3 A. She was, yes.

4 Q. Okay. And, you know, in your
5 investigation you talked to some of the people that
6 worked at the boardinghouse; correct?

7 A. Correct.

8 Q. And, you know, for instance here you
9 document, what, that the victim was talking and
10 fussing and became combative, is that what you
11 understood from the people working at this
12 boardinghouse?

13 A. That is what was told to us, yes.

14 Q. And then that was not cooperating with
15 the them, is that not cooperating with say taking
16 medication, things like that, is that what you
17 understood from your investigation?

18 A. Correct. When I said not cooperating
19 with them, it was in reference to the individuals
20 at the boardinghouse that were assisting the
21 occupants.

22 Q. And we've had the Judge take judicial
23 notice of this regulation, is this something that
24 you recall reviewing back on the event date?

25 A. Something of that, yes.

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 Q. And, specifically, this part that we
2 read where it defines the boardinghouse; do you see
3 that?

4 A. Yes, I do.

5 Q. What does it say a boardinghouse is?

6 A. A boardinghouse is a -- it's hard to
7 read --

8 Q. Sorry. The close-ups behind you. Does
9 this say it's a business entity which provides room
10 and board, but does not provide a degree of
11 personal care?

12 A. That is what we understood.

13 Q. But, initially, you were called out,
14 you were concerned maybe this is a residential care
15 facility that does provide services that could be
16 accused of neglecting a patient; correct?

17 A. That is correct.

18 Q. That wasn't what this was because they
19 couldn't provide personal care which includes those
20 activities of daily living; right?

21 A. That's correct.

22 Q. Which, you know, includes even being
23 aware of the resident's general whereabouts; right?

24 A. That's right.

25 Q. Even includes monitoring or doing

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 anything to insure his or her health, safety, and
2 wellbeing; right?

3 A. That's correct.

4 Q. This is a facility that can do none of
5 those things; right?

6 A. That's what we understood; right.

7 Q. And one of the big ones in this
8 particular case when you had the medical records
9 even of this particular patient, I mean, medical
10 records from Three Rivers; right?

11 A. Correct.

12 Q. You on the night that she's deceased
13 had medical records from a stay in Spartanburg;
14 correct?

15 A. Either I had the medical records or I
16 was told about the stay in Spartanburg; correct.

17 Q. Okay. And I would advise if you look
18 in that whole file there, not only do you have
19 those medical records, but you have the discharge
20 instructions from The Regional Medical Center;
21 right?

22 A. Yes.

23 Q. And one of the big issues is the
24 administration of medication that you see there;
25 right?

ANDREW HAYES - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. Correct.

2 Q. You know, had she been at the assisted
3 living facility and they failed to administer her
4 medication or failed to protect her from these
5 environmental exposures, would you have charged
6 them?

7 A. They could have been charged, yes.

8 Q. Okay.

9 MR. WILLIAMS: Your Honor, the final
10 thing I'd ask that you take judicial notice is the
11 South Carolina Code Section 44-7-260 that requires
12 licenser to provide these personal services and the
13 assistance with active daily living activities.

14 THE COURT: Yes, sir, the Court takes
15 judicial notice of that.

16 Q. And, specifically, what's the focus
17 here is we look at all these different entities
18 that can provide this level of care, we don't see a
19 boarding home anywhere on this list, do we?

20 A. No, we don't.

21 Q. Okay. And, ultimately, that led to
22 what, did you charge anybody in this case?

23 A. No. It meant that we could not charge
24 anybody in this case.

25 Q. Okay. And, ultimately, your

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 investigation led to a death certificate being
2 issued after the pathology report; correct?

3 A. That is correct.

4 Q. And that death certificate, if I zoom
5 in on these things says, exposure to environmental
6 temperatures how the injury occurred. Talks about
7 dehydration and a lot of other words to say that
8 she died from basically sweating to death; correct?

9 A. That's correct.

10 Q. All right. I appreciate your time here
11 today. Please answer any questions Mr. Tanner may
12 have.

13 MR. TANNER: May it please the Court?

14 THE COURT: Yes, sir.

15 MR. TANNER: Thank you, Judge Murphy.

16 CROSS-EXAMINATION

17 BY MR. TANNER:

18 Q. Thank you for being here, Investigator
19 Hayes. You mentioned earlier that you've been in
20 law enforcement for 24 years?

21 A. Yes, sir.

22 Q. You would have gone to the Criminal
23 Justice Academy?

24 A. I did.

25 Q. Okay. And what are the things that you

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 learn in the Criminal Justice Academy?

2 A. Things you learn at the Criminal
3 Justice Academy is just basic law enforcement.
4 You're administered the basics to become a law
5 enforcement officer.

6 Q. Do you learn how to conduct an
7 investigation?

8 A. No.

9 Q. Do you learn how to write a report?

10 A. Briefly, yes.

11 Q. All right. Do you learn how to talk to
12 other officers that you may be working with?

13 A. You learn to communicate; correct.

14 Q. Okay. Do you learn what crimes exist
15 in the State of South Carolina?

16 A. Basically, yes.

17 Q. Do you learn how if you think there's a
18 crime what you as law enforcement do regarding
19 contacting the circuit solicitor about moving
20 forward with any potential charging of a crime?

21 A. Not during the basic Criminal Justice
22 Academy.

23 Q. Okay. Is that something that you've
24 learned in your practice as a law enforcement
25 officer over these 24 years?

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 A. Oh, yes, sir.

2 Q. Okay. And you've worked with the First
3 Judicial Circuit Solicitor, I presume, in those
4 24 years here in Orangeburg?

5 A. Yes, sir.

6 Q. Okay. And have you learned through the
7 Orangeburg County Sheriff's Office how to complete
8 a report?

9 A. I did.

10 Q. Okay. And that's something that is
11 necessary as an investigator, is it not?

12 A. Correct.

13 Q. Because you want to have as much detail
14 as possible for something that may go to court;
15 correct?

16 A. That is correct.

17 Q. Okay. And so you don't want to be
18 brief in your reports, do you?

19 A. No.

20 Q. You want all the pertinent facts out
21 there; correct?

22 A. I would put as much detail as humanly
23 possible that we were able to obtain.

24 Q. As much detail as humanly possible and
25 that would involve talking to other members of the

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Orangeburg County Sheriff's Office, would it not?

2 A. If there was reason to, yes.

3 Q. Okay. And if there was reason to, that
4 should be in your report, should it not?

5 A. If it's knowledge that I have pertinent
6 to the investigation it should be.

7 Q. Okay. Because, again, that would be
8 important, that would be important for a jury such
9 as this or any other jury in a criminal matter,
10 would it not?

11 A. Correct.

12 Q. Okay. Can you tell me what the
13 definition of a nursing home is or a residential
14 care facility?

15 A. Not without looking it up, no.

16 Q. Okay. And can you tell me what the
17 definition of a boarding home is without looking it
18 up?

19 A. Not without looking it up, no.

20 Q. Okay. And in the report that
21 Mr. Williams, I believe was Defendant's 8
22 (verbatim); do you see that?

23 A. Yes, sir.

24 Q. And it's got your two page report
25 there; is that right, on page 7 and 8?

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 A. Yes, sir.

2 Q. Where in your report did you note what
3 the definition of a boarding home is?

4 A. I didn't.

5 Q. Okay. That would be a detailed piece
6 of information, don't you think?

7 A. It could be, but it doesn't necessarily
8 have to be in the narrative of the report.

9 Q. It's nowhere in your report, is it?

10 A. Not that I remember or recall or look
11 at by putting it down. I just referred to it as
12 the facility.

13 Q. Well, take your time because, again,
14 this is the only time the jury has to hear from
15 you. So if I've overlooked it, I want you to tell
16 me. So is it anywhere in reviewing your two page
17 report where you define this -- Ms. Branton was at
18 a boarding home?

19 A. No, I can tell you I did not define it
20 as a boarding home in reference to my report.

21 Q. Okay. But you're defining it as a
22 boarding home as you sit here today; correct?

23 A. Well, when we were doing the
24 investigation, we had to determine whether -- what
25 type of facility this was. And based on what we

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 | were told by, if I remember correctly, we contacted
2 | some DHEC individuals, and -- in reference to who
3 | was defined the care and they said that that -- the
4 | facility itself did not classify as -- it was
5 | classified as a boarding home.

6 | Q. Is any of that in your two page report?

7 | A. Not that I remember, no.

8 | Q. Well, again, take your time and look.
9 | Any of those details in there that you want to make
10 | sure that you have, are any of those details in
11 | your report?

12 | A. I did not note that that part of it,
13 | no.

14 | Q. Okay. All right. What is the
15 | Orangeburg County Sheriff's Office policy on a
16 | deputy activating their body cam?

17 | A. I did not have a body cam at that time,
18 | so it was not pertinent to investigations.

19 | Q. So that wasn't my question. My
20 | question was, you worked for the Orangeburg County
21 | Sheriff's Office; correct?

22 | A. That's correct.

23 | Q. And y'all have a policy -- you have
24 | deputies that wear body cam; correct?

25 | A. Right.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. Including yourself as an investigator;
2 right?

3 A. Right.

4 Q. All right. What was the sheriff's
5 office policy on when that body cam is to be
6 activated?

7 A. At the time of this incident, criminal
8 investigations division did not have body cams,
9 only field services which was the deputies on the
10 road that actually took the initial calls. Policy
11 was that, if I remember correctly, and without
12 having the policy in front of me, I'm not a
13 hundred percent sure the exact verbiage, but you
14 were suppose to activate the body cam when you are
15 in contact with individuals per se referenced to
16 calls of service.

17 Q. All right. So when a deputy is
18 interacting with a member of the public on a calls
19 of service, they're suppose to have that body cam
20 activated?

21 A. Well, when you talk about deputies,
22 understand that at that time, the field services
23 division which is the road patrol, the active --
24 the guys who come the first, those were the only
25 ones who had the body cams at that time.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. So 2019, I or any other citizen call
2 9-1-1 --

3 A. Correct.

4 Q. -- that's the kind of deputy that's
5 going to come out there and take care of my
6 emergency; right?

7 A. At the first contact, yes.

8 Q. First contact. And those deputies have
9 bod cameras; correct?

10 A. That's correct.

11 Q. And they are suppose to activate them
12 when they get to the scene so we can know what they
13 said and what they saw; correct?

14 A. As far as I know, yes, sir.

15 Q. And that evidence is suppose to be
16 recorded for use in the future; correct?

17 A. Yes, sir.

18 Q. Okay. Where in your investigation
19 report do you note that the Orangeburg County
20 Sheriff's Office came to the same address on
21 October 2nd?

22 A. I don't because I didn't know that.

23 Q. Okay. Have you ever learned that
24 Orangeburg County Sheriff came out there, a deputy
25 came out there the night before?

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 A. Just recently when I was doing prep for
2 my testimony.

3 Q. And when was that?

4 A. A couple of -- late last week I think
5 it was when we were doing prep and also this
6 Sunday.

7 Q. So it's your testimony to this jury
8 that before September or October of 2023, you had
9 no idea that a fellow deputy had come to 167
10 Benthomp Road the night before?

11 A. No, I didn't.

12 Q. But you know it now; right?

13 A. I'm aware of it now.

14 Q. Okay. And have you reviewed that
15 report?

16 A. No, I don't. I had no reason to review
17 that report.

18 Q. Okay. You don't think it's important
19 to know what was happening the night before to
20 warrant a 9-1-1 call for an Orangeburg County
21 deputy to come out there?

22 A. First, you have to have common
23 knowledge of it. Second, you would have to have
24 pertinent information that it would pertain to the
25 investigation in which you were called out to. At

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 that time, I had no knowledge of it and also
2 whether it was pertinent to the investigation, it
3 was not mentioned to me, so there would be no
4 reason why I would go and pull the report.

5 Q. Well, you're the investigator; right?

6 A. Correct.

7 Q. All right. And you know that the call
8 you got was to respond to 167 Benthomp Road;
9 correct?

10 A. I was to respond to 167 Benthomp Road
11 in reference to a suspicious death.

12 Q. What did you do to investigate when the
13 sheriff's office was called to that same address
14 prior to your call?

15 A. I didn't have to investigate anything
16 prior to the call at which I was on that day.

17 Q. What did you do to investigate it?

18 A. I mean, when you arrive on scene, you
19 determine -- you look at the nature of the scene,
20 you determine whether there's any kind of what
21 would appear to be foul play, any kind of way is
22 there any -- is the victim, would it be subject to
23 abuse, neglect, you know, anything, homicide,
24 homicidal issues, things of that nature to
25 determine whether it's going to be something that

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 would be considered a crime against another person
2 or whether it would be a natural cause or something
3 that would -- that would be outside of the realm of
4 something that was caused upon that person.

5 Q. Investigator Hayes, are you telling the
6 jury that what happened the night before is not
7 relevant at all to how Ms. Branton died?

8 A. As stated earlier, I did not know that
9 a deputy had arrived the night before.

10 Q. And, again, you didn't do anything to
11 check on that same address, did you?

12 A. I had no reason to.

13 Q. Well, isn't that part of your
14 investigation? Don't you want to find out what's
15 going on, who these people are, how she came to be
16 there?

17 A. When you're talking to individuals, you
18 talk to the individuals at the scene or people
19 pertaining to the scene that would give you enough
20 history to where you don't have to research
21 anything. And at that time, the best of my
22 knowledge, I was not referred to anybody responding
23 the night before.

24 Q. Well, how much of your time would it
25 have taken to check the CAD reports to see if a

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 call had been made to that address prior to your
2 call?

3 A. I mean, we get calls at numerous places
4 all the time. We may have repeat calls, we may not
5 have repeat calls. The fact of the matter is, at
6 that time it was not pertinent to what we were
7 faced with right there on scene.

8 Q. Yes, sir, and I appreciate your answer.
9 But if you could answer my question first, then you
10 can explain whatever you want to the jury. But my
11 question was, how much of your time as the
12 investigator assigned to Ms. Branton's death would
13 it have taken for you to determine when the last
14 call was to that same address?

15 A. It wouldn't have taken any time. But
16 the thing is, why would I investigate that side of
17 it when it's not pertinent to the issue at hand.

18 Q. How do you know that it's not pertinent
19 if you don't take the time to investigate it to
20 start with?

21 A. Because if it would have been a
22 pertinent information it would have been relayed to
23 us while we were on scene to be able to assist us
24 with further information and that just was not
25 provided.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. And no one from the sheriff's office
2 told you who's investigating a suspicious death, in
3 your words, that they had been called out there the
4 night prior?

5 A. That's correct.

6 Q. But you know about it now; right?

7 A. I found out about it, yes.

8 Q. Okay. And would you agree that that's
9 a pretty important detail in this whole timeline?

10 A. I mean, it could have been something to
11 consider at the time, yes.

12 Q. Okay. And there's no body cam footage
13 that exists of that call, is it?

14 A. I have no idea.

15 Q. Okay. Have you investigated to see if
16 there is?

17 A. I don't work for the sheriff's office
18 anymore, so I wouldn't look into that part of it.

19 Q. When you finished your report, it looks
20 like it was finalized on October 8, 2019; is that
21 right? And it's right there if you want --

22 A. On or about, yes, sir.

23 Q. All right. So as of October 8, 2019,
24 you did no investigation to see that there was a
25 call at the same address the night before; correct?

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 A. It would have warranted information if
2 I would have had that knowledge at that time;
3 correct.

4 Q. And you didn't do it; right?

5 A. Didn't have any reason to.

6 Q. Okay. You didn't do it. In your
7 thorough investigation, you did not investigate
8 that call, did you?

9 A. I guess I'm missing your point.

10 Q. My point is, you didn't do it; right?
11 That's my whole point.

12 A. I've already told you I didn't look
13 into that part of it.

14 Q. You didn't determine that there was any
15 body cam footage or why there was no body cam
16 footage, did you?

17 A. To which call?

18 Q. The call the night prior?

19 A. I didn't know about the call night
20 prior, so how would I look for body cam footage
21 unless I knew about the call the night prior.

22 Q. And, again, I would suggest and that's
23 why I was asking you, what did you do to find out
24 about any prior calls? Nothing; right?

25 A. I had no reason to believe that there

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 was something to look into from the night prior or
2 anything pertinent to what I was at hand.

3 Q. But you've reviewed Deputy Hartwell's
4 CAD callout for the night before, have you not?

5 A. No.

6 Q. Okay. You said you learned about it a
7 few weeks ago getting ready, you've never taken a
8 look at that document?

9 A. No, I've never seen it.

10 Q. All right.

11 MR. TANNER: Beg the Court's
12 indulgence. I think this is one that's in
13 evidence, Your Honor, but let me find it.

14 MR. WILLIAMS: It's Plaintiff's 10 up
15 on the table if you want me to grab it for you.

16 MR. TANNER: Here we go, Plaintiff's
17 10.

18 Q. Let me show you it's been admitted as
19 Plaintiff's Exhibit 10.

20 A. Okay.

21 Q. Take your time and take a look at that
22 and let me know when you're ready and I'll ask you
23 questions. I want to give you the opportunity to
24 review it.

25 A. Okay.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. All right. Tell the jury what that is.

2 A. It's a printout of -- from the
3 communications division in reference to a call for
4 service that Deputy Hartwell went to. That was at
5 167 Benthomp Road.

6 Q. It's the same address we're talking
7 where you found Ms. Branton deceased the next day;
8 correct?

9 A. That is correct.

10 Q. Okay. And the way I understand that
11 they way those CAD reports work is anytime someone
12 calls 9-1-1, it's captured on that report; is that
13 right?

14 A. Once the stuff is entered into the
15 computer; correct.

16 Q. And it shows that a deputy was
17 dispatched to the scene; is that right?

18 A. That is correct.

19 Q. It shows the time?

20 A. Right.

21 Q. At the top of the screen it says
22 services involved, EMS; is that right?

23 A. It does talk about all the units that
24 were in route, dispatched, arrived, cleared, so on
25 and so forth, yes.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. Okay. So we know it lists the crime
2 unit is Tony Hartwell; correct?

3 A. Yes, sir.

4 Q. And C-110, is that his badge number,
5 his identifier?

6 A. At the time, if I remember correctly,
7 yes.

8 Q. Okay. And it shows he was dispatched
9 to the scene; correct?

10 A. It shows he was dispatched to a call
11 there, yes.

12 Q. And what time does that CAD report show
13 that that call, that 9-1-1 call came in?

14 A. I'm looking. Call received was at 7:54
15 in the evening.

16 Q. All right. And he was dispatched
17 shortly thereafter; is that right?

18 A. It shows that he was in route at 7:54
19 and dispatched at 7:58, and then he cleared at
20 8:29.

21 Q. And what time does it show he arrived
22 to that address?

23 A. There is no notation about arrival
24 time.

25 Q. Okay. You see where it says, notes, in

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 the middle of the page?

2 A. Yes.

3 Q. Okay. And what is the dispatch or note
4 that the complaint was?

5 A. Responds from a psychiatric event.

6 Q. It says --

7 A. Psychiatric behavior calls -- stated
8 she has -- she has a 10/68 patient which is the
9 code for psychiatric behavior that's outside, won't
10 come in. She's trying to jump the fence and go to
11 the neighbors. Ms. Adrienne Branton wearing
12 hospital outfit, still currently outside.

13 Q. Okay. And so that would be all
14 information that would have been communicated to
15 Deputy Hartwell; correct?

16 A. That could have been, yes.

17 Q. So he knew what he was going into;
18 correct?

19 A. That would have been what Deputy
20 Hartwell knew he was going into, yes.

21 Q. Right. And then from there, if we had
22 some body cam footage we could have seen his
23 interaction with Ms. Branton and anyone else who's
24 there; correct?

25 A. That is correct.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. Okay. Is there any report that Deputy
2 Hartwell did of this interaction that lasted until
3 8:30 at night, 8:29 and 23 seconds?

4 A. I have no idea.

5 Q. Have you searched for it?

6 A. I had no reason to search for it.

7 Q. Okay. You don't have it to share with
8 the jury today, do you?

9 A. If I had a reason to search for the
10 report or if I would have needed to look into the
11 report, it would have been added to my case in
12 chief at the time.

13 Q. And this report was generated and
14 available to you on October 2nd of 2019; correct?

15 A. No. Like I told you, I did not find
16 out about that Tony Hartwell had even been to that
17 address the day before when we began to get ready
18 for trial for this case.

19 Q. And, again, sir, that's not responsive
20 to my question. My question was, this report was
21 generated on October 2, 2019, so it would have been
22 in existence when you came the next night on
23 October 3rd?

24 A. Oh, that is correct, yes.

25 Q. Okay. And there's nothing on this CAD

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 report that's been admitted that shows what
2 Ms. Hartwell (verbatim) said to Ms. Branton, what
3 Deputy Hartwell said to Ms. Williams, what he said
4 to any member of the staff about what to do, how to
5 get her out of the car, how to take care of her or
6 anything of that nature, is there?

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

8 Q. Okay. And you never talked to Deputy
9 Hartwell?

10 A. No.

11 Q. Okay. What are some criminal offenses
12 that may apply to this situation?

13 A. Which situation is that?

14 Q. The fact that Ms. Branton was left
15 outside in the heat all day with presumably no
16 water and was found deceased about 5:30 at night
17 when you were contacted.

18 A. Well, if it would have been pertinent
19 to -- if it was pertinent to the investigation and
20 we would have deemed that this was some type of
21 residential care facility or a facility that was
22 actually physically in charge of her and she was
23 not in charge of herself and that they were just
24 assisting or even more -- assisting is not even
25 good because assisting living facility still has

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 the rights to do medication and other things to
2 help. Other than just a person that just goes
3 there to help cook food and basic needs. If it was
4 anything other than that and it was deemed
5 appropriate, they could have been charged with some
6 type of abuse or neglect or, you know, in reference
7 to the care of the -- what would then consider a
8 patient not just a person who's living at the
9 facility.

10 Q. And what solicitor or assistant
11 solicitor told you that that factual situation
12 would not warrant a criminal investigation or
13 criminal charges?

14 A. I did not run this by the solicitor's
15 office.

16 Q. So, again, in your investigation, you
17 didn't run that part by the solicitor's office
18 either as well; correct?

19 A. We don't run every case by the
20 solicitor's office.

21 Q. Again, I'm not asking for every case.
22 In this case involving Ms. Branton, you didn't run
23 this by the solicitor; correct?

24 A. It did not warrant to run it by the
25 solicitor.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Q. Let's turn back to your two page
2 report, if you will, that, again, you finalized on
3 October 8th. There's a reference to a witness,
4 Rosa Starks in here; is that right?

5 A. I believe so, yes, sir.

6 Q. Okay. And Ms. Starks works for Ms.
7 Williams?

8 A. To the best of my knowledge, yes.

9 Q. Okay. And, again, if you need to take
10 your time to look at it and make sure the questions
11 I'm asking are factually correct, take all the time
12 you need. Your report reflects that Ms. Starks
13 told you or other members of law enforcement that
14 she was worried about Ms. Branton being dehydrated,
15 did she not?

16 A. That is correct.

17 Q. Okay. She knew that she had been
18 outside for a number of hours; correct?

19 A. That is correct.

20 Q. Okay. And you document both of those
21 things in your report; right?

22 A. Yes, sir.

23 Q. And there's nothing in here about did
24 Ms. Starks or anyone else or Ms. Williams bring any
25 water to Ms. Branton when she was sitting outside

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 in a wool coat; correct?

2 A. It does -- it does not -- they didn't
3 refer to that, but it does say that when she
4 attempted to get her to come inside that is when
5 the Decedent began to -- she refused, she began to
6 fuss -- she was talking and fussing at them and
7 then became combative and she was instructed by the
8 -- Ms. Williams at the facility to not try to do
9 anything with her because of the fact that they
10 didn't want her to get hurt.

11 Q. And there's nothing in here that shows
12 when they saw that she wasn't drinking that anyone
13 called 9-1-1; correct?

14 A. I was not told they did.

15 Q. Again, there's nothing in your report
16 that says they did; correct?

17 A. That's correct.

18 Q. There's nothing in there that shows how
19 much water that she would have been provided as
20 she's sitting there in a wool coat, is there?

21 A. It was not told to us how much water
22 she was provided.

23 Q. Okay. And don't you feel that would be
24 an important part of your investigation?

25 A. At the time when we were talking to Ms.

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 Starks, the best of my recollection, my report
2 reflects exactly what she told us. And it was that
3 they attempted to get her inside -- she arrived
4 there to help prepare food, they attempted to get
5 her inside. When they attempted to get her inside,
6 she became combative and everything. They went
7 back inside. When they came back out to check on
8 her, that's when they found her in the condition
9 they called 9-1-1.

10 Q. In fact, it says a little more than
11 that, doesn't it, Investigator Hayes? Doesn't it
12 say, and this is Ms. Hayes, she was worried about
13 the victim and in her opinion the victim appeared
14 to be dehydrated. That's what you've got in your
15 report, is it not?

16 A. I mean, if she said it, yes, that's
17 what I put.

18 Q. And, again, Ms. Starks is not a doctor
19 or a nurse as far as you know, is she?

20 A. No.

21 Q. So she thought she was dehydrated?

22 A. I mean, I cannot speculate to what her
23 thought was, I know what she said and I noted it.

24 Q. And I'm not asking you to speculate to
25 your thought. I'm just asking you, she told you, a

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 member of law enforcement, that you put in your
2 report that Ms. Branton was dehydrated in Ms.
3 Starks' opinion; correct?

4 A. That would have been her opinion;
5 correct.

6 Q. And she said that the victim was
7 sweating and was not cooperating with them; right?

8 A. Right.

9 Q. And there's nothing in here where Ms.
10 Starks or Ms. Williams or anyone else out there
11 attempted to call anyone else in the world to
12 intervene and get Ms. Branton some hydration or get
13 her inside and out from the heat, is there?

14 A. At that time they didn't refer to any
15 of that.

16 Q. And it's certainly not in your report;
17 correct.

18 A. That's correct.

19 Q. Okay. What about a charge of
20 involuntary manslaughter? Is that something you
21 considered?

22 A. It was not warranted at that time that
23 we believed and when I referred back to the other
24 individuals in my unit which would have been my
25 supervisor and my captain, they concurred with that

ANDREW HAYES - CROSS-EXAMINATION BY MR. TANNER

1 specifically that there was no charge that was
2 warranted in this case.

3 Q. And what is the definition for the jury
4 of involuntary manslaughter?

5 A. Without having it in front of me, I
6 can't cite it verbatim.

7 Q. What's your best recollection as a
8 24-year old licensed law enforcement officer?

9 A. Well, I'm a 50 year old --

10 Q. Twenty-four years service, excuse me.

11 A. Involuntary manslaughter is the killing
12 of another without malice aforethought and just
13 more or less without cause.

14 Q. So seeing someone in a wool coat when
15 the air temperature is 102 degrees, who hasn't been
16 drinking water, who's been left outside all day,
17 that to you would arise as an issue of the
18 possibility of discussing with the solicitor
19 involuntary manslaughter?

20 A. No.

21 Q. Okay. Thank you, sir. That's all I
22 have for you.

23 THE COURT: Any redirect?

24 MR. WILLIAMS: Please, Your Honor.

25 REDIRECT EXAMINATION

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 BY MR. WILLIAMS:

2 Q. First, let me -- based on that line of
3 questioning, you're not like internal
4 investigations; right? You don't investigate,
5 like, whether Officer Hartwell is actually a
6 licensed doctor or something else and failed to
7 provide a treatment to the Decedent; correct?

8 A. No, sir.

9 Q. You were investigating a third party
10 for potential wrongful conduct; right?

11 A. That's correct.

12 Q. You also aren't a malpractice
13 investigator; right? You don't investigate
14 hospitals to determine whether they breached the
15 standard of care, do you?

16 A. No.

17 Q. Only time you would investigate
18 hospitals is if there was some intentional conduct
19 that led to a death; right?

20 A. That would be correct.

21 Q. And as far as, you know, I want to be
22 clear, I mean, the sheriff's department's a
23 government entity; right?

24 A. Yes.

25 Q. The Regional Medical Center is a

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 government entity; right?

2 A. Yes, sir.

3 Q. So y'all two both work the State of
4 South Carolina, you didn't think that you made a
5 mistake by not arresting some person at some
6 boardinghouse, do you?

7 A. No.

8 Q. I mean, I just heard involuntary
9 manslaughter is a good way that this summarize for
10 this jury, involuntary manslaughter is criminal
11 negligence; right?

12 A. That's correct.

13 Q. Okay. Negligence, they're going to
14 hear it because the Judge is going to charge them
15 negligence. And what is the -- I mean, is it fair
16 to say the number one thing you got to have in
17 negligence is a duty owed to the other person?

18 A. Pretty much, yes, sir.

19 Q. So to charge this boardinghouse or this
20 Ms. Starks with criminal negligence, she'd have to
21 owe a duty to Ms. Branton; right?

22 A. Yes.

23 Q. And this jury and you just heard that
24 our Judge, the finder of all things law has just
25 taken judicial notice of a boardinghouse does not

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 provide a degree of personal care. You heard her
2 say that; right?

3 A. That is correct.

4 Q. And you heard her reference this same
5 DHEC regulation, you called DHEC, you didn't call
6 the solicitor's office, but you did call DHEC?

7 A. We did.

8 Q. And then DHEC says you can't assist
9 with active daily living. You can't even be aware
10 of the resident's general whereabouts, you know,
11 that's not a duty owed by a boardinghouse. You
12 can't have a duty to monitor the resident to insure
13 his or her health, safety, and wellbeing; right?

14 A. That is correct.

15 Q. So if legally there can't be a duty,
16 how would you even fathom to charge somebody with
17 criminal negligence?

18 A. That's why we did not charge -- didn't
19 make any charges.

20 Q. And, I mean, you did this for awhile, I
21 mean, it's a lot of cases that end up and charge
22 people at Orangeburg County; right?

23 A. Charged a lot of people in Orangeburg
24 County.

25 Q. If this was a criminal trial right

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 here, this courtroom, first appearances is this
2 full of people; right?

3 A. That is correct.

4 Q. These solicitors don't need to come and
5 direct you every single case before you take it
6 before Judge Murphy, do they?

7 A. We will not go to the solicitor on
8 every single case.

9 Q. You ain't looking for another junk case
10 to charge somebody who ought to be free and deprive
11 them of their rights; right?

12 A. I take pride in my cases and I will not
13 take a case before a magistrate, a circuit court
14 judge or the solicitor that does not have
15 prosecutorial merit.

16 Q. Right now we've got problems with
17 drugs, we got problems with people killing each
18 other, kids killing each other --

19 MR. TANNER: Your Honor, I'd object.
20 Sort of outside the scope of my cross-examination.
21 It's more of a societal issue.

22 THE COURT: You opened the door to
23 that. You can continue with the question, but
24 let's move on.

25 Q. I mean, you got kids killing each other

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 in parking spots at Bojangle's right now; correct?

2 A. Yes, sir.

3 Q. You don't need to be charging Ms.
4 Starks for failing to -- or even worse, charging
5 her for checking on Ms. Brandon, for calling 9-1-1,
6 for worrying about her, for determining and
7 conveying to you that this woman appeared to be
8 dehydrated when she doesn't even have a duty to do
9 that; right?

10 A. That's correct.

11 Q. You're not in the business of charging
12 people for doing more than they have to do just out
13 of the goodness of their heart, are you?

14 A. That's correct.

15 Q. You know, but she's not licensed to
16 administer medication --

17 A. Nope.

18 Q. -- right? She's not licensed to be
19 responsible for these duties; right?

20 A. That's right.

21 Q. And, ultimately, you know, what we do
22 know though is that this -- well, strike that real
23 quick. That exhibit right there that I handed you
24 the first thing, that's the complete Orangeburg
25 County Sheriff's Department file; right?

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 A. Yes, sir.

2 Q. And Orangeburg County Sheriff's
3 Department lawyers and assistants are here today in
4 this courtroom over here around the corner behind
5 Michael; correct?

6 A. They are.

7 Q. And if there's anything else to be had
8 from them, I don't know about it, but all the
9 reports that he's talking about, they're in there
10 and the Plaintiff's already put those in evidence
11 for this jury to look and see everything they want
12 to; correct?

13 A. That is correct.

14 Q. And, you know, but what they don't have
15 in that is the simple question if this woman's
16 mother had been admitted in the Behavioral Health
17 Unit, would she have had water?

18 MR. TANNER: Your Honor, I'd object.
19 He hasn't been qualified as an expert on the
20 Behavioral Health Unit and what it affords
21 patients, he's a law enforcement officer.

22 THE COURT: Sustained.

23 MR. WILLIAMS: Okay.

24 Q. Tony Hartwell didn't bill her mother
25 \$4,000 for his visit to --

ANDREW HAYES - REDIRECT EXAMINATION BY MR. WILLIAMS

1 MR. TANNER: Same objection, Your
2 Honor. Obviously, it's public duty rule that law
3 enforcement is not going to bill when they respond
4 to someone, so to characterize that as a billing of
5 a hospital just sort of conflicts the two issues
6 together.

7 MR. WILLIAMS: I'll take that, Your
8 Honor. That's fine by me. I don't need the answer
9 to the question.

10 Q. But, again, nobody from the sheriff's
11 department is charged with the care of Ms. Branton
12 on the night that she passed away; right?

13 A. No.

14 Q. Thank you.

15 MR. WILLIAMS: No further questions.

16 THE COURT: You may step down, Deputy
17 Hayes. Thank you.

18 Ladies and gentlemen of the jury, the
19 Court took judicial notice of several facts during
20 this witness' testimony. What that means is that
21 it's a fact that is not in dispute and that you are
22 to accept as conclusive any fact which is
23 judicially noticed. You may call your next
24 witness.

25 MR. WILLIAMS: Mr. Moore is going to

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 call Dr. Branton (verbatim). And, Your Honor,
2 we're putting all these exhibits that are into
3 evidence on this table and it might become messy, I
4 hope you and Kat are okay with that if I just stack
5 it all right here?

6 THE COURT: Yes, sir.

7 MR. MOORE: Your Honor, the Estate
8 calls Doctor Steven Burkholz.

9 STEVEN BURKHOLZ,
10 being first duly sworn, was examined and testified
11 as follows:

12 THE CLERK: You may have a seat.

13 THE COURT: Your witness.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q. Good afternoon, Dr. Burkholz.

17 A. Good afternoon.

18 Q. Can you please introduce yourself to
19 the ladies and gentlemen of the jury?

20 A. My name is Dr. Steven Burkholz. Last
21 name is B-U-R-K-H-O-L-Z.

22 Q. And where do you live, Dr. Burkholz?

23 A. I currently reside in Greenville, South
24 Carolina and been living there for about the last
25 23 years.

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Q. And, Dr. Burkholz, have you been issued
2 a subpoena to be here today to testify?

3 A. I have.

4 Q. And what is your profession?

5 A. I'm a board certified emergency
6 physician.

7 Q. And what does it mean to be board
8 certified?

9 A. I was formally trained for acute care,
10 emergency care, to practice in those realms. I had
11 to go through a series of examinations to ascertain
12 the certification and qualification and to maintain
13 that qualification.

14 Q. And, Dr. Burkholz, are you licensed to
15 provide medical care in South Carolina?

16 A. I am.

17 Q. And how long have you been licensed to
18 provide medical care?

19 A. In South Carolina since 1999.

20 Q. And do you hold licenses to provide
21 medical care in any other states beyond South
22 Carolina?

23 A. I have. I had an interesting position
24 of starting up new contracts, so I have had
25 licenses in Kansas, Missouri, Illinois,

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 | Pennsylvania, New York, Maryland, Virginia, West
2 | Virginia, North Carolina, South Carolina, Florida
3 | Georgia, Tennessee.

4 | Q. Thank you. I know you mentioned how
5 | long you've been practicing in South Carolina, but
6 | how many years have you worked as an emergency room
7 | physician?

8 | A. I am commencing my 34th year.

9 | MR. MOORE: Your Honor, at this time,
10 | we would move to identify Dr. Burkholz as an expert
11 | in the field of emergency room medicine.

12 | THE COURT: Any voir dire?

13 | MR. TANNER: No objection from the
14 | Hospital and no voir dire, Your Honor.

15 | THE COURT: He's qualified.

16 | Q. Dr. Burkholz, what type of medical
17 | conditions do you regularly evaluate patients in an
18 | emergency room setting?

19 | A. Wow, it's just about everything from
20 | acute strokes to heart attacks, surgical abdomen,
21 | sick babies, and everything in between.

22 | Q. Have you ever had the occasion to
23 | evaluate patients who you believe to be suffering
24 | from mental health conditions in an emergency room
25 | setting?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. I do. It seems over the last ten years
2 it's an every day basis.

3 Q. And would that include patients who
4 have bipolar disorder?

5 A. Yes.

6 Q. Patients who have schizophrenia?

7 A. Absolutely.

8 Q. And, Dr. Burkholz, in October of 2019,
9 where were you providing emergency room medicine
10 services?

11 A. I was under contract under Sound
12 Physicians and I was providing care at Orangeburg
13 Regional Medical Center.

14 Q. So you were here treating patients at
15 The Regional Medical Center?

16 A. Correct.

17 Q. But you didn't work for The Regional
18 Medical Center?

19 A. No, I did not.

20 Q. So you worked for a private group that
21 The Regional Medical Center contracted with?

22 A. Exactly.

23 Q. And, Dr. Burkholz, we're here as you
24 know regarding Ms. Adrienne Branton. And her
25 medical records from The Regional Medical Center,

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 the parties have already stipulated those are in
2 evidence as Exhibit No. 6. I'd like to give you a
3 copy of The Regional Medical Center chart for you
4 to review. Have you that had the opportunity to
5 review the medical chart prior to today?

6 A. I have.

7 Q. And, again, you know that we're here
8 regarding Ms. Adrienne Branton, do you have any
9 independent recollection of Ms. Branton other than
10 what you have noted in your medical chart?

11 A. It's very difficult, I see -- I've seen
12 a lot of patients. It's difficult to -- the chart
13 that I dictated brings some memory, but a lot of it
14 I'm dependent upon the documentation.

15 Q. Thank you. And, Dr. Burkholz, if you
16 could please turn to page 5 and there's a Bates
17 stamp down at the bottom. That Bates stamp number
18 on the bottom of the page; do you see that?

19 A. Page 5.

20 Q. And there is a part of the chart that
21 says, ESI; do you see that?

22 A. I do.

23 Q. And at this point in time, would this
24 be the triage records when Ms. Branton first
25 appeared to be -- to The Regional Medical Center?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. Yes.

2 Q. And there was a nurse that performed
3 the triage of this patient?

4 A. A Jessica Brady, RN.

5 Q. And if you can see, it says, How many
6 resources will this patient need; do you see that?

7 A. It said -- yes, I see the question and
8 the response was, many.

9 Q. What does that mean to you as an
10 emergency room doctor?

11 A. Well, the patient's going to require,
12 first of all, the emergency medicine physician to
13 evaluate and determine what is needed. Also with
14 many resources it also indicates that other
15 services would be involved such as a consulting
16 service, possibly case management and maybe even
17 Social Services. So there's services within the
18 hospital and services that extend beyond the
19 hospital possibly.

20 Q. And would it be fair to say that Nurse
21 Brady made a determination that this is a patient
22 that shouldn't wait?

23 A. That's correct. ESI is severity index.
24 We are universal in the ER. We always put
25 psychiatric patients usually two or threes which

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 indicates that they're seen in a relatively short
2 time, less than about 15 minutes.

3 Q. And if you see at the top it says,
4 looks like she was evaluated by Nurse Brady at
5 9:26; do you see that?

6 A. I do. I see the 10/2/2019, 9:26
7 Eastern Daylight time.

8 Q. And if you could, Dr. Burkholz, turn to
9 page 9 and tell the jury what time you have the
10 opportunity to evaluate the patient yourself.

11 A. It states -- I initiate a note at 9:38,
12 but it's possible I've seen her before then.

13 Q. So according to the chart within about
14 ten minutes over her being discharged, you had the
15 opportunity to evaluate her --

16 A. Being admitted -- you mean, being
17 presented to the ED?

18 Q. Yes.

19 A. I wanted to understand your question.
20 Okay.

21 Q. So within ten minutes you had the
22 opportunity to evaluate Ms. Branton?

23 A. Right. Right. I was physically
24 examining her.

25 Q. And did you document anywhere in your

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 | chart that she had been transferred to the
2 | emergency room department from a boarding home?

3 | A. There's collateral information and
4 | there was information provided to me that she was
5 | from a boardinghouse in Calhoun County.

6 | Q. And were there any concerns noted about
7 | Ms. Branton's compliance with medications?

8 | A. Yes. In fact, it states exactly the
9 | same word that she's noncompliant with medications
10 | and she wasn't receiving the medicines.

11 | Q. And after evaluating Ms. Brandon
12 | initially, did you make a determination whether or
13 | not she was suffering from a psychiatric problem?

14 | A. Yes. There's -- again, a preexisting
15 | knowledge that was provided to me that she had a
16 | psychiatric history of schizophrenia, bipolar type,
17 | and that she had multiple stressors including, she
18 | mentioned a personal loss, loneliness,
19 | estrangement, and then there's just a tremendous
20 | transition in her life recently.

21 | Q. And, Dr. Burkholz, during the course of
22 | your evaluation, was there a period of time where
23 | Ms. Branton became agitated?

24 | A. Yes, she did. Initially, it was -- the
25 | first two or three minutes were pleasant and then

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 | it digressed. She was agitated. Unstable. Even
2 | got to the point where eventually in our
3 | interaction in the department I had to medicate
4 | her.

5 | Q. And so you described her as being
6 | unstable?

7 | A. Yes.

8 | Q. What does that mean to you as an ER
9 | physician?

10 | A. Well, basically, when I say, unstable,
11 | I'm not talking about her vital signs per se, I'm
12 | talking -- and other medical conditions, I'm
13 | talking about when she presented with mental
14 | issues. That part of her evaluation was unstable.
15 | She wasn't thinking clearly.

16 | Q. And still on page 9, Doctor, beyond
17 | unstable and agitated, are there any other
18 | descriptions that you used to describe her
19 | presentation?

20 | A. She was depressed. She was paranoid.
21 | She did not voice any perception of auditory or
22 | visual hallucinations and she did not state she
23 | wanted to harm somebody or harm herself. Let's
24 | see. That's pretty much it.

25 | Q. Also, if you look at the screen, you

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 identify her as being anxious?

2 A. Yes.

3 Q. Angry?

4 A. She was upset, yes.

5 Q. And paranoid?

6 A. She was paranoid.

7 Q. But despite all of those things, did
8 you still find her to be clear in direction in
9 thinking and processing?

10 A. She was able to -- she had concrete
11 thinking. She knew where she was. She knew who
12 she was. Just because you have a mental illness,
13 you're still able to interact. But it was as
14 observation continued in the ED in a short amount
15 of time, she started to digress and become upset,
16 angry, thinking I was out to get her, people were
17 out to get her.

18 Q. So a patient can know who they are,
19 where they are, but still be psychotic, would that
20 be fair to say?

21 A. They can hold some reasonable degree of
22 conversation or interaction and still have
23 psychosis.

24 Q. Is that what you found to be the case
25 with Ms. Branton?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. Actually, I had. Exactly, that was my
2 conclusion.

3 Q. And if you turn to page 12 of the chart
4 towards the top under emergency documentation.
5 There's a highlight underlined portion that says,
6 documents reviewed; do you see that?

7 A. Page?

8 Q. It is, excuse me, page 12.

9 A. Okay. Thank you. And the highlight at
10 the top?

11 Q. Yes. Do you see where it says,
12 documents reviewed? And it says, not available.
13 And you can rook at the screen if that helps.

14 A. Okay. Yes, not available.

15 Q. What does that mean?

16 A. Well, other than collateral
17 information, most times you have a medical record
18 and you're documenting somebody on a computer, but
19 you have the ability to look at their previous
20 interactions. The system at Orangeburg is just, at
21 that time, was just their own system. I've worked
22 at other facilities where, like currently where I'm
23 at in the Upstate, and I have the ability -- I work
24 at AnMed, but I can look at Prisma, Bon Secours,
25 Spartanburg Regional, Piedmont Hospital system in

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Georgia, and Lavonia and Oconee, all their medical
2 records are there. Because sometimes people go to
3 different hospitals, but within a catch area. So
4 you're able to see whether or not they were in a,
5 let's say, a Patrick B. Harris, a psych facility or
6 in one of the hospital's behavioral health units.
7 So you have access to all their records for
8 continuity care.

9 Q. But The Regional Medical Center, the
10 charting system they had didn't allow you to look
11 at other records in other hospitals?

12 A. No, other than just its own which she
13 had no admissions there and no previous encounters,
14 so I had no collateral information.

15 Q. And, Doctor, can you please explain to
16 the jury the significance of an involuntary
17 commitment?

18 A. Absolutely. It's a legal document when
19 you interact with a patient and you think they
20 provide possible self-harm or harm to other
21 individuals or self-neglect, you want to protect
22 that patient. Otherwise, they can walk out of the
23 ER and say, hey, I have the right to walk out. So
24 the state gives me permission to make a decision
25 for the patient. And at that time, I filled out

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 parts 1 and 2 stating that the patient could not
2 leave that I felt that she was in danger. I didn't
3 know the full workup yet.

4 And then in the process of doing that,
5 we consult a service. But before we consult a
6 service, I do a medical evaluation. The medical
7 evaluation is to rule out if there's any infectious
8 problem such as urinary tract infection, pneumonia.
9 Rule out neurological problems such as a stroke or
10 something along those lines. Something along the
11 lines that somebody may be intoxicated, either on
12 drugs or even over-the-counter pharmaceuticals.
13 Also, there's electrolyte imbalances. For
14 instance, if your sodium is real low or real high
15 that would cause what we call mental status changes
16 where you're not thinking clearly.

17 So before we go to diagnosing the --
18 even though there was documented history of mental
19 illness, we have to by rule of exclusion, exclude
20 other medical problems so that the patient could
21 then -- we can focus purely on their mental
22 illness.

23 Q. And, Dr. Burkholz, is petitioning a
24 court to involuntarily commit somebody, is that
25 something that you as a physician take lightly?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. Not at all. Not at all.

2 Q. Would it be fair to say that you only
3 do this in fairly extreme circumstances?

4 A. In circumstances where the patient and
5 the interaction provides myself with information
6 that the patient's in danger, that the patient
7 would -- would possibly, the whole purpose is to
8 prevent them from leaving because they have the
9 right to leave, but they may not have the proper
10 knowledge or insight as to their disease process,
11 so I kind of garnish their privileges in a
12 participation of working them up to determine do
13 they need psychiatric care emergently.

14 Q. Thank you. Can you please turn to page
15 73 of the chart. And, Dr. Burkholz, is this the
16 part 2 of the involuntary commitment paperwork that
17 you completed on behalf of Ms. Branton?

18 A. You want me on page 73?

19 Q. 73.

20 A. Okay. I'm good. There's part -- yes.
21 There's part 2, the certification of the license
22 examiner for emergency admission. And I did fill
23 this out with patient's name, time, county of
24 residence, the date, the time, patient's age.

25 Q. And did you check two boxes under your

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 recommendation for --

2 A. Right.

3 Q. -- hospitalization -- involuntary
4 hospitalization?

5 A. The line reads -- my recommendation is
6 for involuntary emergency hospitalization is based
7 on the following symptoms and examples of behavior
8 which indicate mental illness and probable risk of
9 harm. Two boxes checked were threats or attempts
10 at suicide with serious bodily harm and
11 self-neglect, inability to care and/or protect
12 herself if not immediately hospitalized.

13 Q. And, Dr. Burkholz, can a patient not be
14 suicidal, not have suicidal ideations, but still be
15 a threat to themselves?

16 A. Oh, yes.

17 Q. How does that work?

18 A. Well, she has mental illness. The only
19 way she can function -- or the patient, I'm sorry,
20 can only function reasonably is to take her
21 medications. And, you know, and sometimes
22 medications are not alone. She could also walk out
23 in the streets, wondering. Could, unfortunately, I
24 heard earlier that possibly jumping out of cars
25 which is not unheard of. Those are types of --

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 even though they had no intent of killing
2 themselves, but they don't have the sensibility to
3 know that jumping out of cars is life threatening.

4 Q. Would be wearing a heavy wool jacket in
5 the hot sun be an example of self-harm?

6 A. I mean, it's not reasonable and in this
7 particular case based on the environment it caused
8 a serious medical problem.

9 Q. And if you could move down to the
10 handwritten notes by Dr. Burkholz and not only did
11 you check these boxes, but you also noted that she
12 had been discharged from Three Rivers Behavioral
13 Health on certain antipsychotic medications;
14 correct?

15 A. Correct. She had a regimen that
16 consisted of Haldol, Cogentin, Clonazepam and
17 Trazodone.

18 Q. And she was noncompliant with her
19 medications?

20 A. That is the second line, noncompliant
21 with that regimen.

22 Q. That she had a diagnosis of
23 schizophrenia and bipolar disorder?

24 A. That is correct.

25 Q. That her stresses of personal loss,

1 | estrangement, loneliness?

2 | A. Correct.

3 | Q. But despite that, she did not have any
4 | -- she wasn't trying to intentionally hurt herself,
5 | she wasn't suicidal?

6 | A. Right. And also -- go ahead.

7 | Q. You go ahead.

8 | A. The last one it says, flight of ideas,
9 | so she really didn't have tangil thinking. She
10 | wasn't -- at that time, she started to digress to
11 | the point where she wasn't thinking, she wanted to
12 | leave. She wanted -- she didn't want to be there.
13 | She was confrontational and that's kind of
14 | escalated to the point where I had to medicate her.

15 | Q. And at the bottom, we're still on that
16 | same page, there's a line that says, the medical
17 | conditional of the patient; do you see that?

18 | A. Yes. It says, medical condition,
19 | patient is medically clear unstable. What that
20 | means, from the medicine part which we're trying to
21 | rule out if there's any medical problem such as
22 | infection, electrolyte imbalance, all the medical
23 | aspects, we're ruling out so that we can go solely
24 | to the psychiatry aspect. There are times we do
25 | see people that have psychiatric illness, but other

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 medical illnesses, so the reason for the medical
2 clearance is that we can totally focus on the
3 psychiatric aspect. And then my duty, the medical
4 clearance was done.

5 Q. So medically she was okay, but mentally
6 she was unstable?

7 A. That is a hundred percent correct.

8 Q. And did you sign this document, Dr.
9 Burkholz?

10 A. I signed part 1 and -- yes, I signed
11 these.

12 Q. And after you sign it, what happens to
13 this document from there?

14 A. This document usually the chart -- part
15 1 and part 2, this is part 2, I check off the
16 medical conditions of the patient on part 2 saying
17 that she had some diabetes, hypertension, but she
18 had no communicable diseases that would preclude
19 her from going to a unit. Usually these things I
20 signed it, put my phone number as well as my state
21 license on it and usually this is notarized.

22 Q. Would it be notarized by hospital
23 staff?

24 A. Yes. Somebody of a -- this is given to
25 the charge nurse and usually there's a notary

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 available, even after hours there's a notary
2 available.

3 Q. And then is it submitted by The
4 Regional Medical Center to the probate court?

5 A. It should be. But sometimes the
6 probate court, sometimes also people come in on
7 papers that's seen and signed by a judge.

8 Q. Now, after you completed the paperwork
9 to have Ms. Branton committed, did you also take it
10 a step further and request a consultation with a
11 psychiatrist?

12 A. I did. I called Dr. Gonzalez, the
13 Behavioral Health Unit psychiatrist. Discussed the
14 patient. The only pending lab at that time is the
15 urinalysis for a drug screen.

16 Q. And Dr. Gonzalez, would that be Dr.
17 Alberto Gonzalez?

18 A. Yes, it would be.

19 Q. And at the time, he was not the
20 director of the Behavioral Health Unit; correct?

21 A. I had no knowledge of that. I mean, I
22 interacted with Dr. Gonzalez countless numbers of
23 time, I never really discussed his position, but I
24 understand that he wasn't the director.

25 Q. But nonetheless, you consulted with Dr.

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Gonzalez?

2 A. Absolutely.

3 Q. In your interactions with Dr. Gonzalez
4 in the past, how would you describe those?

5 A. Outstanding collegial, a great human
6 being and always listening and attentive.

7 Q. And did Dr. Gonzalez have the
8 opportunity to perform a mental exam on Ms.
9 Branton?

10 A. Based on the records, yes, he did.

11 Q. And if you can turn to page 65 of the
12 chart, please. Would this be the mental status
13 exam of Dr. Gonzalez?

14 A. Yes.

15 Q. And the appearance, would it be fair to
16 say, that she looked okay, she was adequately
17 groomed? She was in a hospital gown?

18 A. Correct.

19 Q. And her behavior at that time was
20 cooperative? She had eye contact?

21 A. Yes.

22 Q. How did he describe her mood?

23 A. Depressed and anxious.

24 Q. How did he describe her affect?

25 A. Very labile.

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Q. What does that mean?

2 A. It's not stable. It's all over the
3 place. She's up and down.

4 Q. How did he describe her thought
5 content?

6 A. He thought that she could process --
7 well, her thought content was no suicide or
8 homicide ideation. No auditory/visual
9 hallucination, but she had a paranoid persecutory
10 active delusion.

11 Q. What does it mean to be actively
12 delusional?

13 A. She's -- things that are untrue.
14 Things that aren't real she's believing.

15 Q. How did he describe her insight?

16 A. Very limited.

17 Q. And her judgement?

18 A. Very poor and impulsive.

19 Q. Was that consistent with the mental
20 health examination that you had performed on her
21 several hours earlier in the emergency room?

22 A. Yes.

23 Q. And if you can go down further on the
24 same page there's plans and recommendations
25 identified by Dr. Gonzalez; do you see that?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. I do.

2 Q. And what were those plans and
3 recommendations?

4 A. Stabilize her to admit her, place her
5 on the unit. Optimize psychotropic medications. I
6 used Haldol short-acting, he recommended using
7 long-acting Haldol with Cogentin. And then trying
8 to put her on some oral Haldol as well. And
9 Cogentin as well. In other words, first a
10 long-acting (IM) intramuscular drug and then
11 switching her to an oral agent, admit to the
12 Behavioral Health Unit. And basically what they do
13 is they observe titrate and try to find out what
14 drug regiment works for her.

15 Q. And does that take monitoring?

16 A. It does.

17 Q. Does it take observation?

18 A. It does.

19 Q. Can you do that in an hour?

20 A. No.

21 Q. And so it was Dr. Burkholz -- excuse
22 me, Dr. Gonzalez' recommendation that she be
23 admitted to the Behavioral Health Unit so she could
24 receive those medications, be monitored and
25 stabilized, would that be fair to say?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. That is a correct statement.

2 Q. And, Dr. Burkholz, I understand that
3 you're not a psychiatrist, you're an emergency room
4 physician, but did you agree with Dr. Gonzalez'
5 plan?

6 A. I did.

7 Q. And did you also chart in the records
8 that this was a patient that needed to be admitted
9 to the Behavioral Health Unit?

10 A. Yes, that's when I called Dr. Gonzalez.

11 Q. So at the time you called Dr. Gonzalez,
12 you thought she needed to be admitted, Dr. Gonzalez
13 had a chance to evaluate her, and he also came to
14 the conclusion she needed to be admitted?

15 A. (No response.)

16 Q. Did you feel the need to stabilize Ms.
17 Branton before she was admitted into the Behavioral
18 Health Unit?

19 A. She wasn't -- it's a tough word because
20 stabilize, I augmented her mental presentation with
21 -- acutely with drugs. I mean, that's all I'm
22 trained for. She had responded to the drugs, but
23 whether or not she was stable, I can't say.

24 Q. And so you did administer drugs before
25 she went to the Behavioral Health Unit; correct?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. I did.

2 Q. And what was the purposes -- and were
3 those short-acting drugs or long-acting drugs?

4 A. Well, actually they're short-acting
5 drugs, but they were chosen because she had
6 tolerated those medications before. And,
7 basically, the Haldol, there's supposedly in the
8 brain there is a neurotransmitter mismatch and so
9 this helps rise the dopamine level. It also causes
10 a little sedation. Would take her anxiety down.
11 Take her presentation or lability, everything down
12 a notch so that she was more usually managed for
13 lack of a better term because I didn't want her to
14 go off where I had to start using other kinds of
15 restraints on her other than chemicals.

16 Q. So would it be fair to say that you
17 wanted to medicate her for a short period of time
18 to allow her to be safely transferred to the
19 Behavioral Health Unit?

20 A. Correct. And, you know, you don't want
21 a patient that's thrashing around, beating and
22 throwing things. I mean, it's unsafe for the
23 patient, it's unsafe for the staff, so basically
24 we're molding her into a more physical and mental
25 conducive situation where we can transfer to the

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Behavioral Health Unit to start her mental health
2 therapy.

3 Q. And who was the next physician that
4 evaluated Ms. Branton?

5 A. Well, apparently, Dr. West came behind
6 Dr. Gonzalez and saw the patient.

7 Q. And by the time, and you can turn to
8 page 60, what time would Dr. West have evaluated
9 Ms. Branton? It is actually on to page 61. Starts
10 on the bottom of page 60, goes into page 61.

11 A. Okay. This is a consult. This is a
12 consult by Dr. --

13 Q. We put it up on the screen if that is
14 makes it easier. It says, 14:04; do you see that?

15 A. Yes.

16 Q. Would that be 2:04?

17 A. That's correct, that's military time,
18 yes.

19 Q. And by the time Dr. West had the
20 opportunity to evaluate Ms. Branton, would he have
21 known -- would it be part of her chart that she had
22 been medicated by you prior to her transfer?

23 A. Yes.

24 Q. And would the evaluation that you
25 conducted be part of the chart?

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 A. Yes.

2 Q. And would the evaluation that Dr.
3 Gonzalez as the psychiatrist been a part of the
4 chart?

5 A. He dictated it. It should be part of
6 the chart, yes.

7 Q. And so the time that she arrived and is
8 evaluated by Dr. West, how long had those
9 short-acting sedatives that you had given to Ms.
10 Branton been in her system?

11 A. I believe I wrote the order at 11:47,
12 but the administration may have been around noon.

13 Q. So about an hour or two later she's
14 seen by Dr. West?

15 A. Right.

16 Q. And would those medications in your
17 professional opinion, would they be kicking in at
18 that point in time?

19 A. They may be taking -- she may start --
20 well, she did feel the affect of the drugs after an
21 hour, yes.

22 Q. So by the time Dr. West evaluates her,
23 the sedatives are kicking in?

24 A. The medical regimen that I gave her of
25 the Haldol, Cogentin and -- Haldol, Cogentin,

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Benadryl and Ativan probably taken affect.

2 Q. And Dr. West would have been able to
3 see that in the medical chart?

4 A. Correct.

5 Q. Dr. West is a psychiatrist as well;
6 right?

7 A. Yes.

8 Q. And he was the director of the
9 Behavioral Health Unit in October of 2019?

10 A. I was informed, yes, that's what his
11 position was.

12 Q. And even though you had recommended
13 that she be admitted to the Behavioral Health Unit,
14 did you have what's called admitting privileges to
15 do that?

16 A. No. I can only either call consultants
17 to admit, I cannot admit.

18 Q. So you can recommend that a patient be
19 admitted, but you can't actually do it?

20 A. Right. But I also -- well, yeah, I
21 consult people in that particular area.

22 Q. And so we established that 14:04 is
23 when Dr. West enters into this chart that he
24 evaluated Ms. Branton. If you could, please, turn
25 to page 76. And if you could, please, share with

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 the jury what the document is on page 76.

2 A. Well, this is a reexamination and mimic
3 to the certificate of license physician.
4 Basically, this is a chart or legal document that
5 rescinded my commitment of the patient.

6 Q. And what time did he do that?

7 A. 14:00.

8 Q. So 2 o'clock?

9 A. 2 o'clock.

10 Q. And we established that his chart
11 started at 2:04, but this paperwork was at least
12 entered at 2 p.m.?

13 A. Correct.

14 Q. And what was the reason that he put in
15 his report to override your recommendation to
16 commit this patient?

17 A. Denies suicidal ideation, homicidal
18 ideation, auditory/visual hallucinations which is
19 basically the hope that was treated throughout the
20 ED stay. Does say that she was -- that she wanted
21 to stop her meds. This is pretty jumbled.

22 Q. Something about the medications making
23 her dizzy?

24 A. Well, he was talking about the
25 benzodiazapine, stop her meds. I guess he was

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 talking about the benzodiazepines because it made
2 her dizzy and she was alert and oriented. The
3 person placed time and situation. So he said
4 decrease the Clonazepam -- no. First, he put
5 decrease Clonazepam and then he wrote stop the
6 Clonazepam and then he signed this rescinding
7 order.

8 Q. Now, on the same document it says, I,
9 the undersigned physician have reviewed the
10 certificate of the licensed physician; do you see
11 that?

12 A. I do.

13 Q. And would you have been the licensed
14 physician?

15 A. I am.

16 Q. And then there's a name there and it
17 says, Steven Branton; do you see that?

18 A. I do. That's not me.

19 Q. You're Dr. Burkholz; correct?

20 A. I am.

21 Q. Steven Burkholz?

22 A. That's correct.

23 Q. Do you think that was a typo?

24 A. I don't know, it could be. I don't
25 know.

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Q. Nonetheless, he rescinds your process
2 of having her involuntarily committed; correct?

3 A. Correct, on this legal document here.

4 Q. And if you can turn to page 62, Dr.
5 Burkholz, Dr. West's note. It states under
6 diagnosis, impression and plan and then it says,
7 diagnosis; do you see that?

8 A. Yes.

9 Q. And it says discharge to home once
10 medically cleared; do you see that?

11 A. Yes.

12 Q. Had you medically cleared Ms. Branton
13 before she even made it to Dr. West?

14 A. Only on the medical aspect of it. I
15 can't medically clear her on the psychiatric aspect
16 of it.

17 Q. Right. You testified to the jury
18 earlier that when you completed that petition for
19 involuntary commitment, medically she was clear,
20 mentally she was unstable; correct?

21 A. That's correct.

22 Q. And so Dr. Burkholz wanted her to be
23 discharged to home once medically cleared; is that
24 right?

25 A. Yeah, but I didn't clear her. I mean,

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 I cleared her for medical issues.

2 Q. But not mental issues?

3 A. No. No. No, not at all.

4 Q. And it also says, lives at a boarding
5 home and this plan should be communicated to the
6 boarding home regarding medical administration; do
7 you see that?

8 A. Yes.

9 Q. And that would be Dr. West's
10 recommendation, not yours; correct?

11 A. Again, that's correct.

12 Q. Now, you were the admitting or
13 attending physician in the ER that day; is that
14 right?

15 A. That is correct.

16 Q. And when the patient was recommended to
17 be discharged by Dr. West back to the boarding
18 home, that wasn't a plan that you came up with, was
19 it?

20 A. No. I was -- obviously, I'm seeing a
21 lot of patients and I try to have my memory serve
22 me, I believe either he or the nurse practitioner
23 came to me and said, we're not admitting, discharge
24 her.

25 Q. And as an emergency room physician; do

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 | you rely on specialists like a psychiatrist?

2 | A. I do rely on specialists. Particularly
3 | if I have an opinion they should be admitted and
4 | let's say sometimes somebody might disagree, they
5 | would actually they would come down and see the
6 | patient and discharge them. There's other times --
7 | I'll give you an example. Let's say somebody has a
8 | heart disease and he saw a cardiologist last week,
9 | he got a heart cath and he knows the patient more
10 | intimately. I have opinion that this patient is
11 | unstable. He says, you know, I know Mr. Jones so
12 | well, I just cath'd him, he's normal. He's taking
13 | his medicines, just tell him everything's going to
14 | be okay. We ran the EKG's, the Troponin's, the
15 | Deltas and tell him, just come to my office
16 | tomorrow. So that's an example where I thought she
17 | should be admitted and I called the specialist, but
18 | he knew the patient and he was going to have a
19 | follow-up scheduled.

20 | Q. And, again, you didn't have admitting
21 | privileges to the Behavioral Health Unit, did you?

22 | A. I have no privileges to admit anybody
23 | at any section of the hospital.

24 | Q. And although you had recommended that
25 | she be admitted, would it be fair to say that Dr.

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 West overrode those recommendations?

2 A. He did. He rescinded my commitment
3 papers.

4 Q. And at that point in time --

5 THE COURT: Counsel, I hate to
6 interrupt, will y'all please approach?

7 (WHEREUPON, there was a bench
8 conference.)

9 Q. Dr. Burkholz, after Dr. West
10 disregarded your recommendation --

11 MR. TANNER: Your Honor, I'd object to
12 the characterization. He testified a second ago
13 that doctors disagree and to say that he
14 disregarded is sort of a characterization that he
15 didn't testify to.

16 THE COURT: You can ask him how he
17 characterizes it.

18 Q. How would you characterize it?

19 A. What, the discharge? Rephrase the
20 question, please.

21 Q. I think you testified earlier that Dr.
22 West, he rescinded your --

23 A. He did. Which leaves me with no
24 options. I don't -- I know how to take manage
25 acute care. I don't have the training in even

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 making the diagnosis of schizophrenia, bipolar
2 disease. I just know the acute care. As far as
3 the long care treatment, long-term management, I
4 depend on a specialist in that area. I don't have
5 tremendous psychiatric training other than somebody
6 coming in and it's either on toxins and have bad
7 bizarre behavior. People who have mental illness
8 and have bizarre behavior and how to stabilize
9 them.

10 Q. You said that --

11 A. Or attempt to stabilize them.

12 Q. And you said you were left with no
13 choice, so at that point in time, was there
14 anything that you could do as the attending
15 physician but move forward with the discharge of
16 this patient?

17 A. No. We have the facilities to admit,
18 so transferring to another facility is a lateral
19 transfer and that would be a penalty to myself and
20 the institution.

21 Q. Did you feel like you did everything
22 you could for Ms. Branton?

23 A. I did. I did. And I have to rely upon
24 the psychiatrist for the final word. I mean, he's
25 a specialist. This is his bread and butter.

STEVEN BURKHOLZ - DIRECT EXAMINATION BY MR. MOORE

1 Q. And, Dr. Burkholz, have any of your
2 opinions today been to a reasonable degree of
3 certainty?

4 A. Yes.

5 Q. Those are all the questions I have.
6 Thank you.

7 THE COURT: Ladies and gentlemen of the
8 jury, it's a little after 1 o'clock, so it's a good
9 time for us to take our lunch break. I know it's
10 hot in here, the air-conditioner's out, so we're
11 working on getting a couple of fans in here for us,
12 so I apologize for that. And, also, when you come
13 back you're welcome to bring a water bottle with
14 you if you like. We can certainly provide you with
15 water too so that you'll be more comfortable. But
16 if you would please be back in your jury room in
17 one hour, we'll resume the trial at 2:10, gives you
18 about an hour. And, again, please remember my
19 previous instruction not to discuss the case
20 amongst yourselves or with anyone else. Thank you.
21 We'll be at recess.

22 (WHEREUPON, the jury left the courtroom
23 at 1:07 p.m.)

24 THE COURT: Counsel, we'll be at our
25 lunch recess. I know the air-conditioner's broke,

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 we have the option of moving upstairs, but I know
2 you have all your equipment and whatnot, so that
3 might be more burdensome --

4 MR. WILLIAMS: I feel good.

5 THE COURT: All right. I just want to
6 make sure everybody's comfortable. We'll be at
7 recess.

8 (Lunch break.)

9 THE COURT: Parties ready for the jury?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: Doctor, you want to come
12 back to the witness stand, sir?

13 DR. BURKHOLZ: Sure.

14 THE COURT: You're still under oath.
15 Let's have our jury, please.

16 (WHEREUPON, the jury entered the
17 courtroom at 2:18 p.m.)

18 THE COURT: You may be seated. Welcome
19 back, ladies and gentlemen of the jury. We're now
20 ready to proceed with the cross-examination. Your
21 witness.

22 MR. TANNER: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. TANNER:

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 Q. Afternoon, Dr. Burkholz.

2 A. Mr. Tanner.

3 Q. Good to see you again. I'm going to
4 direct you to those records as you took them. So
5 if you want to get them, but what I want to start
6 out with is one of the sort of final things that
7 you said during your direct exam and if I wrote it
8 down right, you don't have the training for the
9 treatment of schizophrenia and bipolar disorder,
10 did I hear you correctly?

11 A. Yes, long-term treatment. Yes, that's
12 correct.

13 Q. And you would agree and you would
14 concede to the jury that you don't have the
15 treatment, knowledge, training, and experience that
16 a board certified psychiatrist would have for the
17 treatment of schizophrenia and bipolar disorder;
18 right?

19 A. I don't have their training, no, I
20 don't.

21 Q. You're not board certified in
22 psychiatry, are you?

23 A. Not at all.

24 Q. Okay. Let me direct you to Exhibit 8
25 there. And, again, I'm going to refer you to Bates

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 page 1 which, I believe, should be the face sheet.

2 Is that what that is, Dr. Burkholz?

3 A. That's correct. It's the face sheet
4 with patient information, contact information and
5 counter information.

6 Q. And, again, that lists Ms. Branton with
7 a residence of 210 Church Street, St. Matthews,
8 South Carolina; is that right?

9 A. That's correct.

10 Q. And lists an emergency contact is
11 Estelle Hutchinson. Says patient's relation
12 unknown and then a home phone number with an 843
13 area code; is that correct?

14 A. That's what the record says, yes.

15 Q. And that would have been brought to
16 someone at the hospital in registration's attention
17 that that's who Ms. Branton was and where she
18 lived?

19 A. Correct. Somebody gained demographic
20 information.

21 Q. And, again, I believe the triage note
22 with Nurse Brady is on page 5. And, again, that
23 would have been -- the chief complaint that would
24 have been conveyed by Ms. Branton or her caregiver,
25 Ms. Hutchinson, at the time to the ER nursing; is

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 that right?

2 A. That is the related history and it's
3 documented in the triage note.

4 Q. And Nurse Brady documents the ability
5 to self report and she has, yes; is that correct?

6 A. Yes.

7 Q. And for the jury's purposes that means
8 that Ms. Hutchinson is able to presumably -- I'm
9 sorry, Ms. Branton's able to understand these
10 questions and give appropriate responses?

11 A. She's able to communicate to the
12 questions asked of her.

13 Q. And then ED wait time it says, patient
14 taken to treatment area; correct?

15 A. Correct.

16 Q. And I believe we talked about that a
17 little bit and that would be you always want to
18 give those psychiatric patients, see them as soon
19 as possible; is that right?

20 A. That is correct.

21 Q. And it looks like Nurse Brady did to
22 vitals on the next page, page 6. Her blood
23 pressure is a little high, but everything else is
24 sort of pretty much within normal limits; is that a
25 fair reading?

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 A. Yes, it's slightly elevated. It's not
2 malignant, yeah, and I'm sure it's to the arena of
3 the ER in transferring.

4 Q. Has it been your experience in all your
5 years as a ER physician that going to the ER will
6 raise a patient's blood pressure sort of the
7 uncertainty?

8 A. Absolutely.

9 Q. And then it looks like Nurse Brady
10 conducted her own ED psych exam on page 8. If you
11 want to get to that page of the chart.

12 A. Okay.

13 Q. And Nurse Brady also documented that
14 Ms. Branton had an appropriate calm and cooperative
15 affect in behavior; correct?

16 A. At 9:32 that's correct.

17 Q. Okay. And, again, no history of
18 suicide attempts or suicidal ideation; correct?

19 A. That's correct. There's nothing in the
20 past or in the current state of being.

21 Q. And then where it says intent or
22 ambience, what is the significant of that inquiry
23 with the patient?

24 A. Where would that be at?

25 Q. It's under the suicide risk assessment.

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 A. I guess she asked her do you intend to
2 die or not to die and it says no intent to die.

3 Q. Ms. Branton had no intent to die when
4 she was at the emergency department that day;
5 correct?

6 A. Yes.

7 Q. And, again, that's sort of coupled
8 that's why you asked about do you have a desire to
9 harm yourself; right?

10 A. That's correct.

11 Q. And where it says, hopelessness, that
12 the response to that is hopeful; is that right?

13 A. Hopeful, yes.

14 Q. And the takeaway from that is that
15 Ms. Branton was hopeful of the future, again, had
16 no current plan to harm herself or others?

17 A. That is correct.

18 Q. Okay. And then, again, I think your
19 physical examination starts on page 9 that we've
20 talked about; right?

21 A. Yes, sir.

22 Q. Okay. And, again, I'm not going to
23 belabor the jury to hear all that again because
24 they've heard it before, but it looks like your
25 exam was done sometime around 9:44 in the morning;

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 is that a fair reading of the chart?

2 A. My documentation took place at 9:38 on
3 the 2nd. That's when I documented. I may have
4 encountered the patient before that.

5 Q. So that most likely -- and I get it,
6 you can't -- is it fair to say that you don't
7 always examine the patient and then have a chance
8 to step over to the computer and type everything
9 into the computer?

10 A. That is correct. We usually evaluate
11 the patient and then go to a desk, wait for the
12 patient to start recording and ordering appropriate
13 labs.

14 Q. So we see a number of timestamps as you
15 mentioned, your time and date seen, we've seen that
16 you've typed in there 10/2/2019 at 9:38 and then
17 performed by the computer note on page 9 is
18 10/2/2019, 9:44. So somewhere around that point in
19 time is when you would have examined her and
20 started entering your notes; is that right?

21 A. Correct.

22 Q. And, again, it looks like the
23 medications ordered that you placed, that medicine
24 was administered beginning, I believe, around
25 12:24 in the afternoon? And if you want to, I'll

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 tell you where you can find that. If you want to
2 go to TRMC-002.

3 A. Well, I think it was ordered at 11:47,
4 so I guess it took the nurse time to gather the
5 medications and administer it.

6 Q. Okay. And, again, it looks like the
7 diphenhydramine injectable solution was
8 administered at 12:45 on TRMC-002. The Haldol was
9 administered first at 12:24 and then the Ativan at
10 12:24.

11 A. That is correct. That is documented by
12 the nurse.

13 Q. And, again, if Dr. Gonzalez had seen
14 the patient at around about 11 in the morning or
15 shortly thereafter, that would have been before any
16 of that medication was administered; correct?

17 A. If that's what he documented, yes --
18 documented before I -- yes.

19 Q. And let me get you to that just so you
20 can sort of check your -- check the time. If you
21 want to go to 64. Starting at page 64, I believe,
22 is Dr. Gonzalez' note.

23 A. Okay. The time of his note was charted
24 at 11:27.

25 Q. So at 11:27. And, again, you found Ms.

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 Branton not to be suicidal or homicidal; correct?

2 A. That's correct.

3 Q. You did not see that she was exhibiting
4 auditory or visual hallucinations at any point
5 during your care of her?

6 A. That is correct.

7 Q. And, again, you were the attending
8 physician that day; correct?

9 A. On the ER -- yes, I was the ER
10 attending physician.

11 Q. And there was nothing that Dr. Gonzalez
12 documented that she was suicidal or homicidal when
13 he saw her at 11:27; is that correct?

14 A. I believe if my memory serves me that's
15 what his note said.

16 Q. Okay. And, again, he also denies
17 auditory or visual hallucinations; is that correct?

18 A. That is correct.

19 Q. Okay. And, again, Dr. West then comes
20 on and sees her at some point after 2 o'clock that
21 afternoon and conducts his physical exam; correct?

22 A. Right.

23 Q. And, again, similar findings of her
24 maintaining good eye contact, her being coherent in
25 her linear and thought pattern; is that correct?

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 A. Correct.

2 Q. I didn't see anywhere in the chart
3 where you had ever reexamined her after that
4 pre-10 o'clock time in the morning; is that -- I
5 just want to make sure I'm reading it accurately?

6 A. I would say that it's not documented.
7 As you well know, the department's pretty busy and
8 a lot of things are moving around, different
9 patients, different acuities. I probably backed
10 off from multiple reassessments for the fact that I
11 was under the impression she was going to be
12 admitted.

13 Q. But, again, there's nothing documented
14 about any reassessment --

15 A. I understand. If it's not documented,
16 it's not done, but she was viewed.

17 Q. But nothing that you documented in the
18 chart; correct?

19 A. Nothing that I see after the initial
20 exam, no.

21 Q. And, again, Dr. West would be a
22 consultant in this case?

23 A. He's also a consultant, yes.

24 Q. I also didn't see anything documented
25 where after his recommendation was to discharge the

STEVEN BURKHOLZ - CROSS-EXAMINATION BY MR. TANNER

1 patient where you had documented any meeting with
2 Dr. West to go over his findings; is that fair?

3 A. All I can recall is I was told to
4 discharge, but I don't -- I didn't write our
5 discussion. I don't even know if there was a
6 discussion, he just said send her home.

7 Q. Okay. But you certainly didn't
8 document that you disagreed with that decision and
9 you wanted to follow-up and speak to Dr. West or
10 his nurse practitioner, there's nothing in Ms.
11 Branton's chart that reflects that; correct?

12 A. That's correct, but I was under the
13 impression she was going to be admitted, first, or
14 at least I had that with my first consultant.

15 Q. Let me direct you to page 89 and that's
16 some notations by Nurse Shaquille Terry, LPN?

17 A. Yes.

18 Q. Do you remember Nurse Terry?

19 A. Yeah, I think he goes by the name Shaq.

20 Q. Okay. And Nurse Terry documented under
21 additional comments at 14:58, so right around
22 3 o'clock, discharge information reviewed with
23 patient's caregiver and patient. Patient's
24 caregiver and patient voice understanding; do you
25 see that?

STEVEN BURKHOLZ - REDIRECT EXAMINATION BY MR. MOORE

1 A. I do.

2 Q. No acute distress noted upon discharge;
3 correct?

4 A. That is correct.

5 Q. And then discharge transportation other
6 caregiver vehicle; correct?

7 A. Yes.

8 Q. And so, again, Nurse Terry would have
9 gone over your discharge instructions with the
10 patient that's what that note reflects; correct?

11 A. Correct.

12 Q. Thank you, Dr. Burkholz, for your time?

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. MOORE:

16 Q. After Dr. West evaluated her, I
17 understand he reached out or somebody from
18 behavioral health reached out to you; is that
19 right?

20 A. I cannot recall which member of that
21 team told me to discharge.

22 Q. And the order was to send her home?

23 A. Send her home.

24 MR. MOORE: That's all the questions I
25 have. Thank you.

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 THE COURT: You may step down, Doctor.
2 Thank you. You may call your next witness.

3 MR. WILLIAMS: Your Honor, at this
4 time, we call Dr. Alberto Gonzalez.

5 ALBERTO GONZALEZ,
6 being first duly sworn, was examined and testified
7 as follows:

8 THE CLERK: You may have a seat.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Good afternoon, Dr. Gonzalez. First, I
13 mean, you're here today under a subpoena; right?

14 A. I guess.

15 Q. I think you were suppose to be in
16 Florida, is that what I understand and we kept you
17 from your family and delayed you in getting back,
18 that I apologize. For starters, tell this jury
19 about yourself, where did you attend school?

20 A. Well, I attended medical school in
21 Puerto Rico. Then I did my first two years of
22 residency in Penn State in Hershey. And then the
23 other third and fourth year at Boston -- Boston
24 Medical Center.

25 Q. When were you first licensed to

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 practice medicine -- when were you first licensed
2 to practice medicine, Doc?

3 A. When I started in Boston, I'd taken my
4 medical boards and passed them, so started
5 practicing medicine in my residency training for
6 psychiatry and that was around '87, '88.

7 Q. All right. And I don't know if you've
8 been here for the entire presentation, I know you
9 came in a little bit for Dr. Burkholz's testimony,
10 but are you board certified?

11 A. No, I'm board eligible. I took the
12 boards and the boards have two parts, a written
13 part and an oral part. I passed the written part,
14 but I didn't pass the oral part. It was so
15 expensive, I decided I don't really need it. I'm
16 satisfied that I have the information that I passed
17 it. And by that time, I had gotten a full-time
18 job, so I decided not to go for it.

19 Q. In my office, you go in my office and
20 I've these plaques, all these certifications on my
21 wall that I paid for. Board certification is
22 basically a plaque that you pay for?

23 A. Retaking that test would have been
24 \$5,000. At that time I was working for mental
25 health and did not make a lot of money, so I

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 decided it wasn't worth it.

2 Q. This jury's heard me, they've heard my
3 colleague, Boo Moore, today, I bet I've got more
4 plaques than Boo, but I don't think that jury
5 thinks that I'm a better lawyer just because I've
6 got more plaques, do they?

7 A. No, I -- you know, those things, you
8 know, sometimes are more important than others, but
9 for me I just didn't see -- and as far as I know, I
10 never needed them. I was medical director of the
11 inpatient psych unit. I worked for the VA
12 Hospital. I trained the medical student. I was
13 named professor of the year twice by them and so I
14 just never thought I needed it.

15 Q. You got plenty on your resume including
16 a long service here in Orangeburg County; right?

17 A. Thirty-two years.

18 Q. Thirty-two years you've been serving
19 this community?

20 A. Uh-huh.

21 Q. What brought you down here?

22 A. I was the poorest medical student and
23 that's going to help pay for my education with the
24 understanding that for every year that they paid, I
25 would come to a medically underserved area which

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 happened to be Orangeburg. And so after three
2 years, we decided to stay. We liked the area and
3 my youngest daughter was born here and we've been
4 here ever since.

5 Q. You grew deep roots pretty fast here in
6 Orangeburg; right?

7 A. Uh-huh.

8 Q. And you came here because this is
9 labeled an underserved medical community?

10 A. The famous words that they said to me
11 was everything that you need is in Orangeburg.
12 Everything you want is somewhere else. I got to go
13 to Columbia. I got to go to Charleston.

14 Q. Well, Doc, you know, this is a
15 promotion how we recruit physicians like yourself
16 to come to Orangeburg; right? I mean, that we pay
17 for your medical school, government will pay for
18 it; is that right?

19 A. Right.

20 Q. Okay. And 31 years, you know, I
21 understand you haven't been in a contractual
22 relationship with Regional Medical Center for the
23 entire time, but of that 31 years, how long have
24 you worked with Regional Medical Center?

25 A. Off and on more than 20 years. When I

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 first got here, I went to work at the mental health
2 center at the old hospital. And I did not think
3 the hospital wanted to hire me, but I did not think
4 it was ethical for me to work in both places
5 because I would be referring patients to myself.
6 And so after my second year, I finished my
7 obligation with the mental health center and went
8 to private practice and I started working at the
9 hospital. And so off and on at the hospital at
10 least 20 years.

11 Q. Do you currently maintain privileges at
12 the hospital in Orangeburg?

13 A. Yes. Well, the former Regional Medical
14 Center and you see I have the ID, but it's just a
15 free lunch.

16 Q. Once it became Medical University of
17 South Carolina, they're reengaged a lot of you to
18 come back with privileges; right?

19 A. Correct.

20 Q. And so the jury understands a little
21 bit more about your qualifications, I mean, you
22 were the director of all the psychiatric divisions
23 at the hospital at one point; is that right?

24 A. I was. I actually hired Dr. West. He
25 was a resident and he was moonlighting for me. And

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 I thought a hospital like, you know, I'm getting
2 old I'd like to retire. And so then there were two
3 people that were covering for me on weekends and
4 Dr. West was one and the other one was a young lady
5 that worked at the mental health center in
6 Columbia. She already had a job. So as soon as he
7 finished his residency training, we asked him to
8 come over and, you know, he accepted.

9 Q. And it's very important for the jury to
10 understand, so I want you to describe though that
11 transition. So you ran all psychiatric services at
12 The Regional Medical Center and there was a period
13 of time, short period of time, that you weren't
14 involved with Regional Medical Center at all;
15 right?

16 A. As I was running -- the hospital was
17 always looking for ways to cut their expenses. And
18 so they made a deal with MUSC that they would run
19 the inpatient psych unit, they would run all, and
20 so essentially I was left out. They told me if I
21 wanted to, I could moonlight for them, but I had my
22 private practice and I filled out the paperwork,
23 but never really moonlit for them. And so they got
24 one of their alumni and he worked for six months
25 and he burned out and quit. So they got another

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 alumni. He worked for six months and five days he
2 burnt out too, five days before the contract was
3 over, MUSC gave an ultimatum to the hospital they
4 said, we're just going to cover the inpatient psych
5 unit, we're not going to do the emergency room,
6 we're not going to do consults and it will cost you
7 one million dollars. And you kind of have to go
8 with us because it takes a long time to get people
9 assimilated into the hospital. But I had forgotten
10 that I still had privileges. So the hospital came
11 to me and said, could you take over because we
12 don't want to close the inpatient unit and the cost
13 was prohibitive. So I agreed to take over with the
14 understanding that it would be for a short period
15 of time until I could get somebody to replace me
16 and that's where Dr. West came in.

17 Q. So hanging out with, I got five days
18 either pay the one million dollars or I go to my
19 old friend Alberto Gonzalez and get him back on
20 board and you volunteered to do it as long as they
21 understood you were going to groom a replacement?

22 A. Well, I didn't volunteer.

23 Q. You got paid, excuse me.

24 A. Yeah.

25 Q. But you did agree to enter a

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 relationship to handle this and that's both the ER
2 consults as well as managing this Behavioral Health
3 Unit where there are other beds for psychiatric
4 illness; correct?

5 A. Right. And I told the hospital, you
6 know, at least two people have it really is too
7 much and so they allowed me to bring in a nurse
8 practitioner, Latasha Hutt and she helped me and,
9 you know, we would divide the work so that it could
10 all be done.

11 Q. And so just so I have a clear
12 understanding timeline, you know, this new entrance
13 you back to The Regional Medical Center, we talking
14 like 2016? 2017?

15 A. Correct. I believe that. And during
16 that time 2016, Dr. West was moonlighting for me
17 and then 2017, I think is when we signed him in.
18 And the hospital was afraid that he would also quit
19 after six months, so they asked me to mentor him
20 which he didn't need any mentoring, that for six
21 months so that -- to see what happened. And I made
22 it a point that he was going to love his job, so I
23 covered for him.

24 He lived close to Charleston and I told
25 him, you know, you can come anytime you want, I'll

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 cover for you in the morning. And we, you know, by
2 the time six months turned into a year and then two
3 years and we divided the work. I was in charge of
4 the emergency room and he was in charge of the
5 inpatient unit and the consult on the floor. And
6 then he kept my nurse practitioner Latasha Hutt to
7 help him. So the two of them did inpatient unit
8 and the consults and I just was in charge of the
9 emergency room.

10 Q. Dr. Gonzalez, how old are you today?

11 A. Seventy.

12 Q. All right. And so the jury
13 understands, how long have you been doing this
14 limited practice where you practice every other
15 week or what's your current schedule?

16 A. Right now I'm working Monday through
17 Thursday every other week. That started four or
18 five months ago. Before that it was Monday through
19 Thursday every week.

20 Q. Okay. And the same kind of course and
21 scope of what you told the hospital, I'm looking to
22 do, I'm looking to wind down my practice; right?

23 A. I really love my job, so I don't
24 particularly want to quit, but I don't want to work
25 that hard. I want to spend time with my family.

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 Q. Understood. Like the trip to Florida
2 that I'm messing up?

3 A. (Nodded.)

4 Q. You know, Doc, the jury's heard a lot
5 and seen a lot of different documents and you've
6 got a folder that's got all the medical records
7 from The Regional Medical Center. I'm going to
8 hand you what are excerpts out of that. I assure
9 you that everything's in there and if you want to
10 look at anything in the full record, it's right
11 there in front of you. These have the same numbers
12 as the documents that are in there, but I've
13 already pre-annotated so they're a little bit
14 easier to read. And I'm going to put these in
15 front of the jury so they'll have those.

16 First five pages, these are your
17 records there at the hospital. This is you where
18 you entered, you performed this at 11:27 and
19 entered Alberto Gonzalez MD, this is you. And I
20 also put it on the screen too, the second page.
21 These are your notes from your mental status exam,
22 your plans and recommendations and ultimately the
23 finalization document, that's that fourth page and
24 is this how you normally keep a record when you do
25 services there at the hospital?

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. Yes.

2 Q. This is known as an EMR, electronic
3 medical record; correct?

4 A. Correct.

5 Q. It's not meant to be in like this
6 printed paper form, it's literally a computer
7 system that's a running log of what all goes on;
8 right?

9 A. Correct.

10 Q. And it's easy for a physician like you
11 or nurses to skip through to the meat and potatoes,
12 if you will, to review what other interactions,
13 what other consults are contained in that
14 electronic medical record; right?

15 A. Correct.

16 Q. And in the grand scheme of things, if I
17 told you this is all we got, that little notebook
18 right there, this isn't a whole lot logs is it,
19 it's a pretty short medical record; right?

20 A. Correct.

21 Q. I can show you, you know, these folders
22 here which are like Lexington Medical Center
23 records which are double sided print, you know,
24 thousands of pages, comparatively speaking, this is
25 very easy for you as a doctor to skim through these

1 records; right?

2 A. Yes. This was very, very routine. It
3 was very simple for me.

4 Q. And if you go to that fifth page, I
5 want to show you and I'm going to point up here on
6 the screen a couple of things that you noted. I
7 mean, these history of present illness, these are
8 items that you're notating in your record; correct?

9 A. Correct.

10 Q. And, you know, the important things and
11 tell me if anything I'm pointing out is I'm missing
12 anything. But this first highlight, noncompliance,
13 that's important in a psychiatric world; right?

14 A. Correct.

15 Q. And noncompliance where you're not
16 receiving medication that's really important in a
17 psychiatric world; right?

18 A. Very, very important, yes.

19 Q. Explain to the jury what psychotropic
20 medication is and what does it do to one's body?

21 A. Well, there's medications that really
22 that we use for psychiatric sterilization. And it
23 could be anything from antipsychotics,
24 antidepressants, antianxiety, for attention
25 deficit, different things, but we call them

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 | psychotropics because they're medications for
2 | psychiatry or for psychiatric purposes.

3 | Q. You know, Doc, I hated taking meds as a
4 | kids, I still hate taking meds today, but I want to
5 | understand psychotropic medication. Let us
6 | understand why you use that in these patients that
7 | suffer things like schizophrenia.

8 | A. Well, they're mood stabilizers and they
9 | -- they have a way of -- sometimes they can take
10 | away hallucinations. Sometimes they can take away
11 | delusions. Sometimes they can calm patients down.
12 | You know, when you have schizophrenia, it's various
13 | degrees, and -- but, essentially, you're in some
14 | way out of touch with reality. It could be a
15 | delusion which is a fixed false belief or it could
16 | be paranoia that you think people are out to get
17 | you or it could be hearing voices that tell you
18 | that, you know, so and so is trying to hurt you.
19 | But the medications sort of give you a little bit
20 | more mental energy so you can start maybe feeling
21 | equal to or bigger than your problems and function
22 | more effectively.

23 | Q. Boo, Robert and I had a professor, Dr.
24 | Machovec at Wofford together he use to love to use
25 | this Latin phrase, *ceteris paribus*, like holding

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 one thing constant. Is the goal psychotropic
2 medication to try to hold something constant so you
3 can deal with changing one variable at a time to
4 try to fix this patient's delusions or their
5 anxieties and the things that are getting out of
6 balance?

7 A. Correct. Yes.

8 Q. And that's what we've got here, someone
9 who, in your note, again, you know they've been
10 discharged from Three Rivers which is a, you know,
11 that's all they do; right, treat people that are
12 having some type of mental health issues; right?

13 A. Correct.

14 Q. And they're increased, not some
15 constant, but an increased irritation moodiness
16 noncompliance with all -- not one, two, three, four
17 different medications, so if they're noncompliant,
18 you know, that ceteris paribus, there's no way to
19 just throw it all back in their system, you need to
20 do some modification; right?

21 A. Correct.

22 Q. And you noted and I underlined it,
23 housing problems. For someone that suffers mental
24 illness, why is that important for a medical
25 record? I mean, housing problem, that's a personal

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 | problem, not a medical problem; right?

2 | A. Well, it's really a difficult thing.
3 | Because, you know, a lot of times a family, you
4 | know, they love the relative, but they really are
5 | not able to take care of them and so they try to
6 | put them in a place that would be safer because
7 | they cannot control. And so that became a problem.
8 | Because my understanding is she didn't want to be
9 | there, didn't want to be at this home.

10 | Q. A 69-year old female usually doesn't
11 | want to be in a home with a bunch of male strangers
12 | living with a bunch of men that she's never met
13 | before; right?

14 | A. Correct. And proof of that is that she
15 | was escaping. She was trying to leave.

16 | Q. A 69-year old woman who suffers from
17 | schizophrenia, paranoid delusions, they aren't the
18 | person you put in this environment with a bunch of
19 | strangers; right?

20 | A. Correct.

21 | Q. And, ultimately, you noted and I
22 | underlined this too, you reviewed the chart, that
23 | means you went through the electronic medical
24 | record before you started your consultation; right?

25 | A. Correct.

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 Q. And, you know, you then saw the patient
2 and discussed with not only the emergency
3 department staff, but also that BHU nurse, that's
4 Behavioral Health Unit nurse; right?

5 A. Correct.

6 Q. So that would be the staff that was
7 accepting this family's loved one; right?

8 A. Correct -- well, I don't really
9 remember talking to anyone specifically. If you
10 look at my recommendations --

11 Q. And that's the next page, I'm going to
12 skip to that now if you're ready to go there.

13 A. Yeah, it says plans and recommendation.
14 Patient on ICP means involuntary commitment papers.
15 And the accommodations was to stabilize patient
16 medically because before we transfer her to the
17 inpatient psych unit, we need to make sure
18 medically that she's stable. And I thought that
19 there was still some lab work that was -- so after
20 that then up to my psychotropic medications. So I
21 put down Haldol Decanoate 100 milligrams. Haldol
22 Decanoate is a long lasting medication. And
23 because we had problems with her being compliant,
24 she would get this shot and it would last for
25 30 days and so it would help stabilize her because

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 she was just taking the immediate and that hadn't
2 been effective.

3 So I recommended that. And then
4 because it takes a little while to kick in, I added
5 the Haldol tablets sort of like to hold her until
6 the Decanoate kicked in. The Cogentin is to
7 prevent side effects from the Haldol. And
8 sometimes, not everyone, but they develop tremors
9 or their eyes, you know, and so this helps prevent
10 that.

11 I did not -- the Klonopin because the
12 Klonopin -- first of all, she wasn't taking it.
13 Second of all, I figured that's something that's
14 going to be taken care of over there, but the
15 Klonopin is -- can be overly sedating and can
16 accumulate in your system and so I did not. But I
17 just thought, you know, they'll handle that in the
18 inpatient psych unit. So -- and so then I put
19 admit to the Behavioral Health Unit and that's all
20 I knew. I thought it was going to take place.

21 Q. You know, Doctor, forgive me --

22 MR. WILLIAMS: -- and I apologize to
23 the Court, but at this time, I'd like to move that
24 Dr. Gonzalez be deemed an expert in both the
25 short-term and long-term treatment of psychiatric

ALBERTO GONZALEZ - VOIR DIRE BY MR. TANNER

1 disorders in all things in a psychiatric field.

2 THE COURT: Any voir dire?

3 MR. TANNER: Just briefly.

4 VOIR DIRE

5 BY MR. TANNER:

6 Q. And, Doctor, Mr. Williams asked you
7 about board certification and you said you passed
8 the written, but not the oral; correct?

9 A. Correct.

10 Q. That's not just something you pay
11 \$5,000 and you get a diploma in the mail, is it?

12 A. No. No. No.

13 Q. It not just a plaque on the wall that
14 you get; right?

15 A. Correct. The exam is two parts. And
16 the oral part, if you don't pass the oral part, you
17 have to retake the whole thing. And as I recall,
18 the next showing was going to be in California,
19 talking about \$5,000. I was working at mental
20 health making, you know, 40 something thousand a
21 year, I decided I don't need this. I mean, I have
22 a full-time job and I did -- in my mind I had
23 passed the information part, I knew it. So I
24 decided to forgo it.

25 Q. Yes, sir. But, again, it's not just

ALBERTO GONZALEZ - VOIR DIRE BY MR. TANNER

1 | some plaque on the wall that you order and you
2 | automatically get it without passing both parts of
3 | the test; correct?

4 | A. Correct.

5 | Q. Likewise, you have to take a residency
6 | in psychiatry; correct?

7 | A. Uh-huh.

8 | Q. And a residency in neurology?

9 | A. It's psychiatry and neurology, they go
10 | together.

11 | Q. And you've never had your privileges
12 | revoked, have you?

13 | A. No.

14 | Q. So there was a time where you
15 | voluntarily gave those privileges up, you mentioned
16 | earlier with MUSC when they came in, is that my
17 | understanding of your testimony?

18 | A. Well, I didn't give my privileges up, I
19 | just stopped working there. But I continue to work
20 | at -- in my office and my office was full.

21 | Q. You just didn't have hospital
22 | privileges --

23 | A. I did.

24 | Q. You just weren't seeing patients in the
25 | hospital?

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. Correct. They asked me to set up and
2 do moonlighting, but, you know, you're used to
3 being the medical director, I don't want to come in
4 and work Sunday's and holidays, so I just kept the
5 privileges, but I never.

6 Q. Never practiced in the hospital setting
7 during that full-time?

8 A. During that time I did not.

9 MR. TANNER: That's all the voir dire I
10 have, Your Honor. I don't have an objection to Dr.
11 Gonzalez.

12 THE COURT: He's qualified. You may
13 proceed.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. WILLIAMS:

16 Q. What's your primary language you grew
17 up speaking?

18 A. Well, I was born in Cuba, but I left
19 when I was seven. So I pretty much got raised in
20 the states. I was in the Air Force for six years.
21 I was a letter carrier in Florida for six years, so
22 I grew up here. I grew up in the states. So,
23 essentially, an interesting thing is, you know, the
24 things that I learned in Spanish, like I do lower
25 math in Spanish in my head, but higher math in

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 English because I learned it, you know, when I was
2 old.

3 Q. Well, I've heard you on the telephone,
4 I guess I don't know who you talking to, but you
5 speak Spanish on the telephone, is that how you
6 talk to your family, in Spanish?

7 A. No. No. My wife is from Florida and
8 my kids came to learn Spanish. I have four
9 children, they came to learn Spanish a little bit
10 at home, but almost afterwards that's an
11 afterthought they used to do like mission work and
12 so they would go to Mexico and Guatemala, so they
13 learned Spanish mostly over there.

14 Q. Well, I'm striking out here, Doc, but
15 let me ask simply is this, do you think you're any
16 less qualified to render an opinion for this fine
17 jury's consideration because you failed an oral
18 portion of a board exam?

19 A. No.

20 Q. Do you how many times Dr. West failed
21 his board exams?

22 A. I don't know how many times. I tried
23 to console him and let him know, you know, you
24 don't really need them, but I guess, you know.

25 Q. Did he fail multiple times?

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 A. I heard several times that he had, but
2 I did not -- I did not ask him directly, just that
3 I heard --

4 MR. TANNER: Your Honor, I'd object to
5 anything he's heard from someone else is hearsay.

6 THE COURT: Sustained.

7 Q. Doctor, did Dr. West come to you asking
8 you to help him get his licenser in Tennessee?

9 A. He did. And I questioned that. I said
10 why? He says, well, I had a licenser before, my
11 parents live there. I'm not planning on moving
12 there or anything, but I'd like to have it. And so
13 I think what happens is one of their requirements
14 is that you have to have someone that works with
15 you recommend you. That you're in good standing.
16 And so he gave me that form and I wrote like a
17 little paragraph. I said that I've been working
18 with him and he's a good person.

19 Q. Okay. And he ended up leaving, he's in
20 Tennessee now is where he's working; right?

21 A. That's what I heard. But, again,
22 hearsay.

23 Q. All the opinions you've offered about
24 the treatment plan for Ms. Branton, were those
25 offered to a reasonable degree of professional

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 certainty?

2 A. Yes.

3 Q. Okay. And all the opinions you've
4 offered here today as it relates to use of
5 psychotropic medication or treatment plans, are
6 those offered to a reasonable degree of
7 professional certainty?

8 A. Yes.

9 Q. And I want to take a step back, okay.
10 So one document before this is the list of current
11 medications. And I want to make sure if you can go
12 one page back, and I'm sorry, you can look at it
13 here. But these oral tablets, I mean, you know,
14 this Haldol, basically, is what this is, is that
15 accurate?

16 A. Yes, that's an antipsychotic. Help
17 prevents hallucinations, paranoia, delusions. So
18 it's a major tranquillizer.

19 Q. And I see a 90 tablet dosage means you
20 take it multiple times a day?

21 A. Three times a day.

22 Q. Three times?

23 A. Ten milligrams three times a day.

24 Q. So this woman has to take these pills
25 three times a day, this concoction of medication in

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 order to remain stable?

2 A. That's what they had prescribed for
3 her. She had been for a long time over at the
4 Three Rivers and so that's what they used to
5 stabilize her.

6 Q. Okay. But we knew she wasn't taking
7 this?

8 A. Correct.

9 Q. So going back to the jury so they
10 understand, you know, what your recommendations,
11 forget taking a pill three times a day, let's just
12 give her an injection every 30 days where we know
13 she's gotten the injection, we know if she hadn't
14 gotten the injection, we don't have to rely on her
15 to take pills three times a day; right?

16 A. Right. Until that injection kicked in,
17 I kept her on the pills three times a day. But
18 hopefully it would kick in within seven to
19 ten days.

20 Q. But this short-acting Haldol -- this
21 long-acting Haldol with Cogentin to reduce the side
22 effects, this isn't something wham-bam stick ya,
23 go; right? You have to make sure it works; right?

24 A. Correct.

25 Q. And that's why your other

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 recommendation other than optimizing this
2 medication stabilizer; correct?

3 A. Correct.

4 Q. And what kind of time period are we
5 talking to monitor someone in this condition before
6 they could be potentially be stabilized?

7 A. It's different for everybody. When I
8 have a patient that is older, the recommendation is
9 you start low and go slow because you don't want to
10 overdose them. But being that she had been on
11 these medications before, she -- I usually just do
12 one medication at a time. But since she had been
13 on these medications before and they had apparently
14 been good enough to stabilize her enough to
15 discharge her, it seemed safe to maybe resume the
16 medications that made her stable before.

17 Q. I guess what I'm looking at, are we
18 talking a day? Two days? A week?

19 A. Oh, no. No. No. No, it's different
20 for different people, but I would say a minimum of
21 maybe a week or more.

22 Q. Okay. So a minimum of seven to
23 ten days?

24 A. I would say.

25 Q. Okay. And that's why final plan

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 recommendation is just like the doctor said in the
2 prior testimony to admit to the Behavioral Health
3 Unit; correct?

4 A. Correct.

5 Q. Okay. But, ultimately, you know, we've
6 got Dr. Burkholz's record and we've been through
7 it, it talks about all those different agitating
8 factors, but that, you know, we got that you had
9 this call consult where it was agreed recommend to
10 admit; right? He talked about, I'm not a
11 psychiatrist, I can treat the medical issues, but I
12 can't treat the psychiatric issues, but you both
13 concur and recommend admission; right?

14 A. That was a very sound decision. I
15 mean, you don't want to send somebody back to the
16 same environment that sent them to you with no
17 changes. Part of what happens when you accept the
18 patient is you have to be mindful of the
19 disposition. So I had -- I was -- when I was
20 working in the emergency room, I was in charge.
21 Sometimes I could not find a place for a patient
22 and I've kept it's suppose to be three, four, five
23 days, I've kept patients for over 160 days because
24 we couldn't find.

25 And so like if I was going to put the

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 patient in a assisted living facility or a nursing,
2 I would have the owner of the facility come,
3 interview the patient, you think you can -- and
4 then I would discharge them. But it just made a
5 lot of sense not to send the patient back to the
6 same environment that sent her to us without any
7 changes. She was still acting out.

8 Q. And let me be clear, I don't want to
9 mince words later. I don't want to argue about
10 what she said verses what he said, yada-yada-yada.
11 Is the standard of care in this situation for
12 Adrienne Branton to modify medication before you
13 ship her out?

14 A. Yes.

15 Q. Is the standard of care to not send
16 Adrienne Branton back to the same environment that
17 was unstable for her that led her back in an
18 emergency room setting a day later?

19 A. Correct. Yes.

20 Q. Is the standard of care that you
21 consult with the discharging -- the facility where
22 you're going to discharge to ensure they can care
23 for the person that's being discharged to their
24 care?

25 A. Correct. Yes. See, I did not know

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 that she was sent home. But an alternative would
2 have been to go back to Three Rivers. They knew
3 her and they might have been able to take her back.
4 But I don't think it was a good idea to send her
5 back that's why I said admit.

6 Q. Is it the standard of care to not send
7 Adrienne Branton to a facility that legally cannot
8 provide any level of care in order that they
9 provide care in your discharge?

10 A. See even if they could provide the
11 level of care, they weren't doing it because they
12 were the ones because they can't handle her and
13 they sent her to the emergency room, that's not a
14 good fit. But, yeah, certainly if they could not
15 enforce her medications and she needs her
16 medications to function and that's why I think they
17 were having those problems and she was trying to
18 escape because she was paranoid. She did not want
19 to be there.

20 Q. So we know now that known of those
21 things, the standard of care were met, whose fault
22 were those breaches?

23 A. I'm not privy to the evaluation that
24 Dr. West did. I don't know if by the time he
25 evaluated the patient, the medication I had been

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 giving her earlier made her seem more -- I don't
2 know because I did not even know he examined her.
3 But -- so the decision to send her back home to the
4 same environment that brought her there, I thought
5 was the wrong decision. I don't know who made that
6 decision, but I don't think it was a good decision.

7 Q. Okay. And on top of that, is the
8 standard of care that if a doctor at a facility,
9 two doctors, one has an opinion of X and one has an
10 opinion of Y, they talk before they go against each
11 other?

12 A. Correct. And I could see, you know, if
13 what I rely on the expert, I was sitting here when
14 I heard the explanation about that he gave about
15 the cardiologist. But, you know, if you could have
16 sold somebody that is an expert, then it would be a
17 good idea to follow what the expert says because
18 they're more experienced in that area.

19 Q. Well, if there are two experienced
20 experts, two psychiatrists, you don't know about
21 the other one because it came after you; right?

22 A. Correct.

23 Q. But you would expect standard of care
24 is those two psychiatrists talk if second
25 psychiatrist disagrees with the first psychiatrist;

1 right?

2 A. Correct.

3 Q. It's a breach of the standard of care
4 not to consult you before you discharge someone
5 that has just been ordered to not only be admitted,
6 but make a drastic change in this medication to
7 include this injectable form of medication rather
8 than just popping pills three times a day; right?

9 A. I don't know what information he had.
10 I don't know what he took, but, again, I never knew
11 what happened. As far as I knew, she had been
12 admitted.

13 Q. Do you understand that you and Dr.
14 Burkholz had over 70 years of combined medical
15 experience at the time you made this
16 recommendation?

17 A. I didn't know how long he had been, but
18 I do respect him. I've worked with him at the
19 emergency room.

20 Q. Verses Dr. West, you understand only
21 had two years of experience as a licensed medical
22 provider in the psychiatric field; right?

23 A. Yes. And I felt that where I would not
24 have recommended him, I felt that, you know, he was
25 a good candidate, you know, to become the director.

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 But, again, I don't know what information he had or
2 did not have. I wish we would have talked about
3 it.

4 Q. Well, he has the chart. He has
5 everything you wrote in there. He has everything
6 Dr. Burkholz's wrote in there is at his fingertips;
7 right?

8 A. I would imagine that.

9 Q. I mean, that's TRMC --

10 A. Yeah, it was available to him, I guess.

11 Q. And, you know, I'm going to show you --
12 he had this where you've already been consulted in
13 the electronic medical record and you both
14 concurred and recommended admission; right?

15 A. Yes.

16 Q. Okay. But, ultimately, Dr. West
17 advised -- who's Cameo Green? Do you know Cameo?

18 A. She is a nurse practitioner that worked
19 with Dr. West. Her experience was in medicine, but
20 she was being -- she was working with him and she
21 was being trained by him.

22 Q. Okay. And he advised her, you see this
23 in the electronic medical record, informed the
24 boarding home of her treatment plan. All right.
25 And had Ms. Hutchinson, the boardinghouse, she

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 already expressed in this medical record concern
2 that patient may act out in the future. And she's
3 advised, oh, just bring her back to the hospital if
4 you remain concerned; do you see that? Does that
5 sound like the kind of discharge meeting that you
6 would have with a nursing home or assisted care
7 facility where they were scared they can't take
8 her?

9 A. No. I can't explain that. I don't
10 know what they were thinking. I think maybe they
11 thought -- maybe they thought that they could give
12 her the medication. But, again, even if they
13 could, they couldn't. But even if they could, they
14 said we can't handle her. They called the
15 ambulance. They sent her to the hospital. So,
16 again, it's not a good idea to send a patient back
17 to the same environment that brought her here
18 without changing anything.

19 Q. It's a breach of the standard of care;
20 correct?

21 A. Well, in my mind, yes.

22 Q. In your mind and you're a professional
23 who's been doing this for this many years that has
24 the an understanding of this community here in
25 Orangeburg, you understand the population, you

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 understand folks that suffer from mental illness,
2 you understand the limitations this community has
3 on providing safe environments for those people;
4 correct?

5 A. Correct.

6 Q. And in your mind, your professional
7 opinion to a reasonable degree of professional
8 certainty is it is a breach of the standard of care
9 to do so --

10 A. Yes.

11 Q. -- correct?

12 A. Correct.

13 Q. All right. And, again, this evaluation
14 is being performed at 2:04 p.m., we see his
15 evaluation. And it goes on in his, again, I would
16 tell you this is Dr. West's note, was brought in
17 for not taking outpatient psych medication. Got
18 Haldol in the emergency department which is exactly
19 what she's taking as an outpatient, so it would be
20 expected that her behavior would improve when she
21 is restarted on exactly what she's supposed to be
22 taking as an outpatient. And then they note, you
23 know, and then they say they didn't want to take
24 her there, but they have the note that, oh, we'll
25 give her the Haldol and she'll be back to where she

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 | was before. But ignore the fact that she just came
2 | from the hospital; right?

3 | A. Yeah. And -- right. And the 50
4 | milligram shot that he gave her was not going to be
5 | -- not going to be enough.

6 | Q. And it's only going to last for hours
7 | at best; right?

8 | A. Well, it's just, you know, the
9 | medication takes awhile to kick in. Probably the
10 | only thing that kicked in was the Ativan. The
11 | Ativan is an antianxiety medication and it made her
12 | a little bit sedated. But the other would have
13 | taken a little while longer to kick in.

14 | Q. And, ultimately, the jury's already
15 | seen the admission paperwork, the serious bodily
16 | harm, self-neglect, et cetera, but then is reversed
17 | by Dr. West. I'm going to do the side by side
18 | though because it was brought up in the last
19 | deposition, it's in your pages, about five more
20 | pages, but it's here, we have this examination of
21 | 14:00 which is 2 p.m. We have his notes where he
22 | first encounters this patient at 2:04 p.m.; Do you
23 | see that? I mean, is it a breach of standard of
24 | care to be in the process of denying someone who
25 | two other physicians with 70 years of combined

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 | experience said this person needs to be
2 | involuntarily committed, but here you are reversing
3 | the involuntary commitment four minutes before you
4 | even start performing an evaluation?

5 | MR. TANNER: Your Honor, I'd object.
6 | That's not what the records reflect. That's not
7 | what the testimony is and it's taking things
8 | outside the record. There's nothing from any
9 | computer person, I think the testimony was that Dr.
10 | West saw her, I believe Dr. Burkholz testified he
11 | don't always type things up at the same time as you
12 | are writing them, so it's twisting what the records
13 | show.

14 | THE COURT: Mr. Williams?

15 | MR. WILLIAMS: The records show, TRMC
16 | produced by The Regional Medical Center, Bates No.
17 | 76 says that he is filing this at 2 p.m. is when
18 | he's doing his examination time and date of
19 | reexamination. And then it shows in the medical
20 | record at 60 which is also TRMC's document which
21 | said Dr. West didn't even start his evaluation
22 | until 14:04 and finished about 14:35 is when he
23 | signed it. And I'm just using their own records
24 | which, again, I think we can address their accuracy
25 | if Mr. Tanner wants at a later time or in

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 cross-examination.

2 MR. TANNER: Again, what the records
3 show is that's when Dr. West entered the computer
4 chart at 2:04, not when he --

5 THE COURT: Y'all will have an
6 opportunity to cross-examine. The records speak
7 for themselves, your objection is overruled.

8 Q. So it would be a breach of standard of
9 care to basically reverse an involuntary commitment
10 prior to even doing, performing your evaluation of
11 the person; right?

12 A. Right. I'm thinking that maybe you
13 preferably do the examination first, but then
14 dictate it and so based on that maybe -- I'd say, I
15 don't know. I'm not trying to -- I don't know what
16 happened. But I'm not trying to excuse it, but I'm
17 just saying that, you know, sometimes because you
18 want to -- in the interest of time, you know, maybe
19 do that and then, you know, you dictate it. I
20 don't know what happened. I didn't even know he
21 had seen her. So I can't talk as to what happened,
22 but certainly it would seem like that the report
23 should have been there so that people can figure
24 out why, you know, the information was to send her
25 home.

ALBERTO GONZALEZ - DIRECT EXAMINATION BY MR. WILLIAMS

1 Q. Dr. Gonzalez, Ms. Branton is not here
2 to testify as to what happened, when it happened,
3 how it happened. There's no video camera that
4 captures realtime footage in the hospital; right?

5 A. (Nodded.)

6 Q. Is that a, yes or no?

7 A. No, you're right.

8 Q. I'm not trying to be rude, I just want
9 to make sure it's accurate.

10 A. Right.

11 Q. All we have to go by when we look in
12 here, all this testimony is actually the hospital
13 records themselves and what they say, you know. If
14 he found -- whether he ended this haphazardly or by
15 error, you know, this is what we got; right? This
16 is what The Regional Medical Center has as the
17 record to set the time when things happen, this is
18 what sets, what this jury gets to consider is was
19 this person experiencing the delusional paranoia
20 that you found. Well, Dr. West didn't find it or
21 at least the record doesn't say that he checked the
22 box. This is all we got to go by; right?

23 A. Correct.

24 Q. Either it's right or it's wrong, it
25 can't be right when it helps and wrong when it

1 | hurts; right?

2 | A. Correct. Well, we don't even know --
3 | I'm just throwing this out, we don't even know if
4 | he did the evaluation or he sent the nurse
5 | practitioner to do it. Based on what she said, he
6 | made the decision. I don't know.

7 | Q. Ultimately, your record though says
8 | you've literally put in that you spent greater than
9 | 50 minutes in your consultation and treatment
10 | options for this encounter; right? You met with
11 | Ms. Branton for over 50 minutes; right?

12 | A. I don't remember, but I usually do a
13 | thorough examination.

14 | Q. And, additionally, in the record and
15 | we've been through this about a boardinghouse, we
16 | can't have her discharged to somewhere that can't
17 | monitor her, can't ensure that she's administered
18 | the medication --

19 | MR. TANNER: I object. Asked and
20 | answered I think several times.

21 | THE COURT: I'll allow it. You can
22 | continue it.

23 | MR. WILLIAMS: I'm trying to wrap it up
24 | real quick.

25 | Q. And, ultimately, if she had been

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 admitted to the Behavioral Health Unit, we wouldn't
2 have this very tragic photo for y'all to look at,
3 yet again in this case; right?

4 A. Correct.

5 Q. She would have been no access to water,
6 no access to the food, the environment that she
7 needs with her mental health; correct?

8 A. Correct.

9 Q. Dr. Gonzalez, I appreciate your time
10 today. Please answer any questions opposing
11 counsel may have.

12 THE COURT: Cross-examination?

13 MR. TANNER: May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. TANNER:

17 Q. Dr. Gonzalez, that notebook in front of
18 you has been admitted as Plaintiff's 8. Let's go
19 ahead and start there regarding Dr. West's ICP
20 form. It should be on page 76 if you want to flip
21 to that; do you see that, sir?

22 A. Page 76, yes, sir.

23 Q. I think you just -- you just were
24 there. I think you flipped one back. Do you see
25 Dr. West's note? There it is, yes, sir.

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 A. Oh, yes, 77.

2 Q. Okay. And that's Dr. West's signature
3 at the bottom of that page?

4 A. Yes.

5 Q. Okay. And that's his handwriting?

6 A. Looks like it.

7 Q. Okay. And, again, he states the
8 factual basis and grounds for my opinion are as
9 follows: Patient denies SI, HI, AVH; correct?

10 A. Correct.

11 Q. So no suicidal or homicidal ideation,
12 no auditory or visual hallucinations; correct?

13 A. Correct.

14 Q. All right. It does say that she wanted
15 to stop her meds, did not take meds because were,
16 and then in quote, making me dizzy; do you see
17 that?

18 A. Yes.

19 Q. So when you read that as a physician,
20 when a physician documents something in quotes,
21 does that not tell you that that's from an
22 interaction with the patient?

23 A. Well, I mean, I sense these things that
24 I heard and you said to me that was hearsay and it
25 was hearsay, but I don't know. I don't know what

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 | happened. It says here, making me dizzy. They
2 | were quoting her words. But it doesn't -- this
3 | does not address -- they did not bring her in
4 | because she was suicidal/homicidal or having
5 | auditory hallucinations. They brought her in
6 | because she was running away and it was unsafe and
7 | that's not addressed in here.

8 | Q. No, sir, they didn't bring her in that
9 | -- let's go to her chief complaint on page 5 that
10 | she made in the ED to Nurse Jessica Brady?

11 | A. Page 5?

12 | Q. Yes, sir. Do you see the triage note
13 | of Nurse Brady?

14 | A. Oh, this is page -- help me here.

15 | MR. TANNER: If I may approach the
16 | witness, Your Honor?

17 | THE COURT: Yes, sir.

18 | A. This says, TRMC-005, but this is page
19 | -- show me --

20 | Q. It should be the numbers at the bottom.
21 | Yes, sir, right there.

22 | A. Okay.

23 | Q. So when we're looking at the numbers --
24 | the numbers at the bottom you have TRMC-005;
25 | correct?

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 A. Correct.

2 Q. And you see that emergency
3 documentation, ED adult triage note; right?

4 A. Correct.

5 Q. All right. And it says, chief
6 complain, other. Patient transported from boarding
7 home in Calhoun County for noncompliance with
8 medication for one day; do you see that?

9 A. Yes.

10 Q. It doesn't say anything about her
11 running away from the boarding home, that's what
12 happened afterwards, after she was discharged;
13 correct?

14 A. My understanding was that the reason
15 that the boarding home called to transport her was
16 that not just not compliance, but that she was --
17 she was trying to go away. She was trying to
18 leave. And -- but, see, I don't know -- if they
19 are not in charge of giving her medications, then
20 how would they know if she's complaint or
21 noncompliant? I looked at it very simply that they
22 couldn't handle her. They were concerned about her
23 safety and that's why they called. But at no point
24 were they concerned about her being suicidal or
25 homicidal or having audio/visual hallucination.

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 They were concerned with her care. And that's when
2 they told her that the police to bring her over.

3 Q. Okay. So if all that would have been
4 there, then you would have documented that in your
5 note as well, Dr. Gonzalez; correct?

6 A. What do you mean?

7 Q. If that was the history of why you saw
8 the patient then that should be in your note as
9 well, shouldn't it?

10 A. No. What I put in my note was, patient
11 seen, chart reviewed. And it was -- she was
12 already -- commitment papers and so that seemed
13 very appropriate. I did not have to reinvent the
14 wheel. That's -- to me was very straight forward.
15 You don't want to send her back to the same
16 environment that brought her here. And so she's
17 not -- she's not safe and so let's bring her in,
18 stabilize her and send her home.

19 Q. And, again, Dr. Gonzalez, we're talking
20 about her chief complaint in the ER?

21 A. But her chief complaint was not the
22 chief complaint that was sent from the people that
23 called the police.

24 Q. It's the chief complaint that you
25 documented, is it not, on page 64 of your record?

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 Go ahead and turn to your note that we just saw a
2 second ago?

3 A. Page 64?

4 Q. Page 64 at the bottom. Let me know
5 when you're on page 64. History of present
6 illness.

7 A. Transported from boarding home in
8 Calhoun County for noncompliance with medications
9 --

10 Q. Times one day; right?

11 A. Uh-huh.

12 Q. Patient denies suicidal, homicidal
13 ideations, audio/visual hallucinations, patient
14 denies any complaints. Patient states she is
15 concerned her medications are wrong. You
16 documented that at 11:27 on October 2nd; correct?

17 A. Correct.

18 Q. You don't document anything about she's
19 running away, the police are called, there's
20 nothing in your note that says that; correct, Dr.
21 Gonzalez?

22 A. Correct.

23 Q. Okay. So earlier when I asked you what
24 her chief complaint was, you were incorrect, were
25 you not? Her chief complaint was that she was

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 transported from the boarding home in Calhoun
2 County for noncompliance with medication for one
3 day; correct?

4 A. That was a history of present illness.

5 Q. Yes, sir. That's what we're talking
6 about. That's the whole reason she's in the
7 hospital that day; correct?

8 A. Correct.

9 Q. Okay.

10 A. But history of present illness is not
11 the same thing as chief complaint.

12 Q. Well, tell me, Dr. Gonzalez, anywhere
13 on page 64 where you documented that she was
14 running away and the police were -- tell the jury
15 --

16 A. I did not.

17 Q. Okay.

18 A. I did not. What I documented or what
19 the concern that I had was the place that is taking
20 care of her does not feel comfortable doing that.

21 MR. TANNER: Your Honor, I'd ask that
22 his answer is nonresponsive and be struck. Again,
23 we're talking about her chief complaint and he's
24 going into -- he's not answering the question, he's
25 going into whatever he feels about the place that

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 she's at.

2 MR. WILLIAMS: Your Honor, he's simply
3 trying to elaborate as he's being asked a leading
4 question, I think that I should be able to treat
5 the witness as a hostile witness, not Mr. Tanner.
6 He's contracted with the government entity that
7 Mr. Tanner represents and to try to suggest that
8 it's nonresponsive, it's just -- as he's right to
9 do so, further explaining his response of, you
10 know, why he believes this to be the chief
11 complaint rather than just the history of the
12 illness.

13 THE COURT: So, Doctor, you can answer
14 whether or not it's the chief complaint and if it's
15 not, then you can complain what -- I believe you
16 have already, you can explain your reasons for why
17 you don't believe that's accurate or whether it is
18 accurate. So can you please rephrase the question,
19 Mr. Tanner?

20 MR. TANNER: Yes, ma'am.

21 Q. Dr. Gonzalez, again, look at page 64 of
22 your note -- that is your note; correct?

23 A. Yes.

24 Q. And this is information that you
25 yourself would have entered in the computer;

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 correct?

2 A. Uh-huh.

3 Q. And that's a, yes, for the record?

4 A. Yes.

5 Q. Patient was staying at a boardinghouse
6 in Calhoun County. The boardinghouse stated she is
7 noncompliant. Patient stated she was not receiving
8 medication; do you see that in there?

9 A. No, but I'm looking for it.

10 Q. See where it says patient discharged
11 from Three Rivers one month ago?

12 A. Uh-huh.

13 Q. And are you aware that Three Rivers
14 discharged her to the boarding home where she came
15 from?

16 A. No, I was not aware how she ended over
17 there. I don't know. I mean, she could have been
18 discharged from Three Rivers, went to her
19 daughter's or families' home and then the family
20 could have sent her. I don't know how she ended up
21 at the -- at the boarding home. I just knew that
22 the boarding home did not feel comfortable.

23 Q. Well she ended up at the boarding home
24 because that's where Three Rivers discharged her;
25 correct?

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 A. Like I said, I don't know if they
2 discharged her there or not. I know that the
3 boarding home did not feel comfortable taking care
4 of her. A boarding home -- I mean, Three Rivers
5 could have discharged her to the family and then
6 the family could have said we can't handle her and
7 take her to the boarding home. I don't know how
8 she ended up in the boarding home. I know she came
9 to us from the boarding home.

10 Q. Do you know that the day prior she had
11 been hospitalized at Spartanburg-Mary Black geri
12 psych unit for approximately five or six days?

13 A. No, I did not know that.

14 Q. Okay. Are you aware that Spartanburg
15 discharged her back to the boarding home in Ms.
16 Estelle Hutchinson?

17 A. I did not know that.

18 Q. Why don't you flip over to the face
19 sheet at the front of Exhibit 8. It should be
20 TRMC-001 at the bottom.

21 A. Gotcha.

22 Q. See where that lists emergency contact,
23 that list Estelle Hutchinson; correct?

24 A. Estelle Hutchinson; correct.

25 Q. That would have been information that

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 would have been provided to the ER when she came;
2 correct?

3 A. I would imagine, yes.

4 Q. Well, it's the chart; right?

5 A. Yes.

6 Q. Okay. And, again, you did a mental
7 status exam on page 65; correct?

8 A. Correct.

9 Q. And we've talked about that some.
10 Again, you saw her before any of Dr. Burkholz's
11 medication had been administered to her; correct?

12 A. Correct.

13 Q. Okay. And do you have any knowledge or
14 understanding that she was on a medication called
15 Abilify that was prescribed and administered at
16 Spartanburg-Mary Black geri psych unit?

17 A. I only had the information that was
18 presented to me from the doctor at the emergency
19 room. That's all the information that I had.

20 Q. But you examined the patient herself?

21 A. I examined the patient herself, but she
22 -- when you are in the emergency room, you don't go
23 back through her childhood, you have to take care
24 of the acute problem. The acute problem was
25 obviously doesn't matter what medication she's

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 supposed to be on, she wasn't taking them and the
2 people that were taking care of her did not feel
3 comfortable. So to me it was very straight forward
4 this patient needed to be admitted. Period. So
5 why her -- by sending her back was never, never
6 came to my mind. What made sense was let's
7 stabilize this woman. So where was Abilify,
8 Abilify is another antipsychotic. But it didn't
9 matter if it was Abilify or Haldol, she wasn't
10 taking them.

11 Q. Well, Abilify is an injection; correct?

12 A. No, it's pill and injection. Abilify
13 is -- it's a major tranquilizer, but it's got
14 different properties, but it's not only an
15 injection. It's a tablet as well.

16 Q. If I told you that she received an
17 Abilify injection in Spartanburg, according to
18 their records; do you have any evidence or
19 recollection that would dispute that fact?

20 A. I didn't have any reason that she was
21 given that. But, again, let's say that they gave
22 her that shot that you're talking about, the place
23 where she's staying does not feel comfortable
24 handling her, so we need to stabilize her.

25 Q. Well, should the place that she --

1 | should Spartanburg have known that that place was
2 | uncomfortable that gave her the Abilify and
3 | discharged her back to that environment from which
4 | she came from?

5 | A. I don't know. I don't have any of that
6 | information. I'm seeing a person in front of me
7 | that needs to be stabilized. And I make the
8 | decision, please admit her. As far as I knew, she
9 | was going to be admitted. It was very straight
10 | forward to me.

11 | Q. You never saw her after she was
12 | administered the medication; correct?

13 | A. Correct.

14 | Q. You never saw her after Dr. West
15 | assessed her starting somewhere around 2 o'clock;
16 | correct?

17 | A. Correct.

18 | Q. All right. Why don't you flip over to
19 | Dr. West's note which starts on page 60?

20 | A. Yes, sir. 60?

21 | Q. Yes, sir, 6-0.

22 | A. This is page 61. This is page 61 and
23 | they're different.

24 | Q. 60, I'm sorry.

25 | A. We have three pages 61. Okay, page 60.

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 Q. And that is Dr. West's consult note;
2 correct?

3 A. Cameo Green.

4 Q. Okay. Look at the bottom of that
5 consult note, psych ED consult.

6 A. Okay. Yes.

7 Q. Do you see Dr. West's name and then it
8 goes to page 61?

9 A. Yes.

10 Q. Okay. Do you see that where Dr. West
11 notes under history of present illness, patient is
12 a 69-year old black female with history of
13 hypertension, schizophrenia, bipolar, effective
14 disorder, diabetes and peripheral edema; do you see
15 where Dr. West diagnosed --

16 A. Yes.

17 Q. Patient is alert and oriented times
18 four?

19 A. Yes.

20 Q. Patient denies suicidal ideations,
21 auditory and visual hallucinations or homicidal
22 ideation; correct?

23 A. Correct.

24 Q. She states that she is not taking her
25 medications because it makes her dizzy; do you see

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 where he's documented that?

2 A. Yes.

3 Q. Patient knows who year, location, her
4 name and birthday; do you see that from Dr. West?

5 A. I see that.

6 Q. She denies history of cutting herself;
7 correct?

8 A. Yes.

9 Q. That's important to make sure that
10 someone has not had a history of harming themselves
11 before; correct?

12 A. Correct.

13 Q. Because often times people that have
14 mental illness unfortunately will cut themselves;
15 correct?

16 A. Correct.

17 Q. And that's a first time anyone in the
18 chart has documented that. You didn't document any
19 question to her about whether or not she was
20 cutting herself, did you, Dr. Gonzalez?

21 A. It's not an issue. The issue was not
22 anything related to that. The issue was the people
23 that were taking care of her did not feel
24 comfortable taking care of her. Whether she cut
25 herself or not, it was not, you know --

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 Q. And I'll go on, Dr. Gonzalez. Patient
2 states she went to college for three years for
3 childhood development; do you see that?

4 A. Yes.

5 Q. Was brought in for not taking psych
6 medication; correct?

7 A. Correct.

8 Q. And, again, that is the ER triage chief
9 complaint whether you like it or not; correct?
10 That's what she told the nurse?

11 A. Okay.

12 Q. Okay. See where Dr. West goes on to
13 say, got Haldol in the ED which is exactly what she
14 is taking as an outpatient, so it would be expected
15 that her behavior would improve when she is
16 restarted on exactly what she is suppose to be
17 taking as an outpatient; do you see that?

18 A. I see that, yes.

19 Q. And Dr. West's note says that she
20 didn't want to take her meds because they were
21 making her dizzy, sitting up in bed eating; do you
22 see that?

23 A. Yes.

24 Q. The fact she's sitting up in bed and
25 eating is a sign of trust; correct?

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 A. No.

2 Q. No.

3 A. No, it's a sign that she's seating.

4 Q. You've never had patients that have not
5 eaten because they were worried, psychiatric
6 patients, that someone was being poisoned --

7 A. And I have also seen patients that, you
8 know, have all kinds of other problems eating
9 anyway. Eating is not a sign that she feels -- and
10 by the way, the medications which she was suppose
11 to be taking was not the medication that was given
12 to her in the emergency room. She was given 50
13 milligrams IM. She was not resumed on the
14 medications as they were when she was stable.

15 Q. Again, those medications that she came
16 on were prescribed at Spartanburg; correct?

17 A. I don't know.

18 Q. You don't know. Okay. And the
19 medications that she got at the hospital were
20 ordered by Dr. Burkholz; correct?

21 A. Correct.

22 Q. Okay. All right. Flip over to the
23 next page where Dr. West notes his mental status
24 exam; do you see that?

25 A. No.

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 Q. Page 62 at the bottom.

2 A. Mental status exam.

3 Q. Okay. Says documents appearance

4 moderately groomed; do you see that?

5 A. Yes.

6 Q. Speech clear, regular rate and rhythm,

7 pleasant mood; do you see that?

8 A. Yes.

9 Q. Affect mood, congruent; do you see

10 that?

11 A. Yes.

12 Q. Thought process, coherent?

13 A. Yes.

14 Q. Alert and oriented times four?

15 A. Yes.

16 Q. Judgement good; do you see that?

17 A. Well, yes, I see that. Yes.

18 Q. Intelligence average?

19 A. Uh-huh.

20 Q. Do you see that?

21 A. Yes, I see that.

22 Q. Memory positive recall, that means she

23 was able to give appropriate answers to his

24 questions; correct?

25 A. I'm not sure what you mean by that.

ALBERTO GONZALEZ - CROSS-EXAMINATION BY MR. TANNER

1 Q. Well, it says, positive recall; right
2 and we talked about it a second ago where she told
3 Dr. West that she had studied early childhood
4 education in college; do you remember that where he
5 documented that?

6 A. Yeah, but that's not -- when you check
7 memory, you check immediate memory, long-term
8 memory, and so, you know, if you have really bad
9 dementia, you can still remember where you went to
10 college. The part that I think you missed here was
11 the insight was limited. She doesn't have good
12 insight. Yeah, and I don't think -- I don't know
13 what he saw, but I don't see where the judgement is
14 good, but I didn't see it. He saw her after me.
15 Maybe her judgement improved after. But, you know,
16 she was not -- she was not able to stay at that
17 place, that's all that there is to it. They did
18 not feel comfortable. I put her on the medications
19 --

20 MR. TANNER: Your Honor, I have not
21 asked a question, he's continuing to state the same
22 thing. It's nonresponsive.

23 THE COURT: Move on to the next
24 question, please.

25 Q. Again, if you will notice under his

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 impression of plan, total time spent with patient
2 has been greater than 70 minutes; do you see that?

3 A. Yes.

4 Q. Okay. And more than half the encounter
5 involved counseling regarding treatment plan,
6 medication management, ADL's and expected outcomes
7 for hospital admission; do you see that?

8 A. Yes.

9 Q. Okay. Again, you didn't see her at any
10 point in time after your 11:20 encounter?

11 A. Correct.

12 Q. And that was before she received her
13 medication; correct?

14 A. Correct.

15 Q. And you testified earlier that
16 medication improves you when you're taking it like
17 you're suppose to; correct?

18 A. Correct.

19 Q. All right. That's all the questions I
20 have for you, Dr. Gonzalez. Thank you.

21 THE COURT: Any redirect?

22 MR. WILLIAMS: I do.

23 REDIRECT EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Doc, I want to, you know, pull up the

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 discharge paperwork here for the jury and I can
2 hand this to you. I'm going to hand you a zoomed
3 in -- well, first tell the jury, what is discharge
4 paperwork? What is that? What does that mean?

5 A. That means the instructions for
6 discharge. In other words, what your disposition
7 is and what your recommendations are.

8 Q. So I'm going to hand you and I'm going
9 to put on the screen for the jury, but this
10 follow-up instruction here, who does it tell the,
11 you know, who does The Regional Medical Center tell
12 Ms. Branton that she needs to follow-up with?

13 A. With me, but I didn't know about this.
14 I didn't accept her as a patient.

15 Q. So they didn't listen or pay attention
16 to your three things you told them to do, but they
17 tell, like when she gets out, you should go back to
18 Dr. Gonzalez?

19 A. Again, this is the first time -- well,
20 I have not seen this. This is -- it doesn't make
21 sense to me.

22 Q. Doesn't tell when to follow-up with
23 you. It just says, the guy that told me that I
24 need to be involuntarily committed or put in my
25 records and then met with me and went through -- I

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 need to change my medication and get this injection
2 treatment. I need to get off of the three pills a
3 day method and try to get something to be
4 injectable that I don't have to worry about
5 administration of medication. We do opposite of
6 what he tells us to do and then we put send back to
7 you?

8 A. And it's incomplete. It doesn't say
9 when. Obviously, doesn't say when because it
10 wasn't checked with us. You know, my office
11 manager would say, you know, we've got this --
12 we've had this patient to us, do you want to see
13 this patient.

14 Q. I'm going to hand you also what's been
15 admitted into evidence as Plaintiff's 13, this is
16 the Calhoun County EMS services report. And there
17 was a lot of back and forth about, you know, the
18 chief complaint and the argument of whether or not
19 this patient was trying to flee the premises of
20 this boardinghouse.

21 Does refusing to take meds and moving
22 all your belongings to the road and accusing the
23 boardinghouse of giving you the wrong medication,
24 does that sound like someone that's trying to flee
25 when they're sitting in the road at the end of the

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 driveway? Is that kind of synonymous of what you
2 remember from the records?

3 A. Yes.

4 Q. And that supports, there's a lot of
5 critic, why do you even put this in your report
6 that somebody that's being involuntarily committed,
7 are you listening to everything just they're
8 complaining about or are you listening to
9 everything everybody is saying about that
10 individual?

11 A. To tell you the truth, I don't -- it's
12 been so long, I don't remember. I remember very
13 distinctly having the sense that she should be
14 admitted. Just the fact whether she was trying to
15 run away or not, the place where she's at does not
16 feel that they can handle her safely. That's good
17 enough for me. That's good enough for me.

18 So you can say that she's not
19 hallucinating, you can say she's not suicidal or
20 homicidal, and she's not gotten herself all of that
21 is irrelevant at this point. She's not in a safe
22 place. And there's no one to take care of her.
23 And so --

24 Q. That's what The Regional Medical Center
25 is for; right, Doc?

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 A. Well, when you discharge -- when I
2 discharge a patient, I want to make sure that my
3 discharge instructions are good. When I had people
4 in the emergency room and I was in charge of the
5 emergency room at that time, sometimes I would have
6 -- well, I've had patients over 100 days, 165 days
7 was one because we couldn't get anybody to take him
8 that was acceptable. And so if we were going to
9 send to a boarding home, we'd have the boarding
10 home person come to the emergency room, look at the
11 patient, do you feel comfortable taking them? If
12 they didn't feel comfortable, we did not discharge
13 them. We had to have good disposition otherwise
14 they come right back.

15 And so this is not good disposition.
16 Follow-up appointment with me without asking me
17 without giving her a time. This is not -- now, my
18 -- I don't know if Dr. West did this or if his
19 nurse practitioner did this, I don't know who did
20 that, but that's not good deposition.

21 Q. That's not the standard of care The
22 Regional Medical Center did this though; correct?

23 A. I don't --

24 MR. TANNER: Objection, Your Honor.
25 He's testified he doesn't know who did it. He's

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 answered the question.

2 Q. I'll put it up on the screen, full
3 paperwork. The Regional Medical Center patient
4 summary follow-up instructions; do you see this?

5 A. Uh-huh.

6 Q. This is this document generated, this
7 is the ordinary course and scope of work at
8 Regional Medical Center, this is what's generated
9 upon discharge; correct?

10 A. I can't see it from here.

11 MR. TANNER: I have a matter of law to
12 take up with you, if we may approach?

13 THE COURT: Yes.

14 (WHEREUPON, there was a bench
15 conference.)

16 Q. Where does the discharge summary come
17 from at the hospital?

18 A. The person that -- that discharges the
19 patient puts a discharge order, has to put in the
20 discharge summary. And the discharge summary
21 states what the disposition -- well, what was done,
22 is she committed, we found this, we did this and
23 this is our disposition. It's a summary of what
24 was done. And so, you know, if I admit a patient
25 and the history and then when I discharge the

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 patient, say a patient spent the week in the
2 inpatient unit, I'm going to put that on there.
3 Inpatient came in on that day, we started this
4 medication and then the patient -- well, you know,
5 became stable and so we made arrangements and we
6 agreed to discharge her to this place with, you
7 know, with follow-up with an outpatient provider on
8 this date.

9 But all of those things are usually
10 done before the patient is discharged. It's
11 disposition, you have to have a good disposition
12 for the patient. It's sort of like the patient is
13 my responsibility until I give it to someone who
14 accepts that responsibility and says, okay, I can
15 handle from here. And so that's why it was
16 inconceivable to me that to send her back to the
17 same place that says we can't handle her. No
18 changes. Well, okay, they discontinued the
19 Clonazepam, but it's a mute point. She wasn't
20 taking it anyway's. So for all practical purposes,
21 sending her back to the same environment that sent
22 her here.

23 And this thing about, you know,
24 follow-up with me, that's a joke. I mean, nobody
25 consulted me. It doesn't have a time because it

ALBERTO GONZALEZ - REDIRECT EXAMINATION BY MR. WILLIAMS

1 wasn't done. Somebody was trying to fill out the
2 papers and they just put -- that wasn't accurate.

3 Q. Dr. Gonzalez, thank you for your time
4 today. I appreciate your --

5 MR. TANNER: Your Honor, if I may
6 recross of his redirect?

7 THE COURT: No, sir, there's nothing
8 new brought up. You may step down.

9 MR. TANNER: I think the discharge
10 instruction was a new matter. I didn't get into
11 that on cross-examination.

12 THE COURT: I'm not going to allow you,
13 you can step down, Doctor. You can step down, sir.
14 Thank you.

15 MR. GOINGS: Your Honor, he's under
16 subpoena, can he be released?

17 THE COURT: Any objection to him being
18 released?

19 MR. TANNER: No objection.

20 THE COURT: Ladies and gentlemen of the
21 jury, do you need a quick break to stretch your
22 legs or are you good to power through?

23 (No response.)

24 THE COURT: Everybody good. All right.
25 You may call your next witness.

1 MR. WILLIAMS: Can we -- might we just
2 talk to you about the next step because there's
3 that video and it's 4 o'clock. It's, what, two and
4 a half hours long.

5 THE COURT: Y'all want to approach?

6 (WHEREUPON, there was a bench
7 conference.)

8 THE COURT: Ladies and gentlemen of the
9 jury, at this juncture, it's a good time actually
10 for a recess for the evening. We're going to be on
11 schedule to finish as we had promised. So since
12 the air-conditioner doesn't work and it's been a
13 long day, I'm going to ask you to report back to
14 your jury room again at 9:20 in the morning and
15 please remember my previous instructions not to
16 discuss the case amongst yourselves or with anyone
17 else. Have a nice evening and we'll see you in the
18 morning.

19 (WHEREUPON, the jury left the courtroom
20 at 4 o'clock.)

21 MR. TANNER: There is one issue, Ms.
22 Hutchinson who you obviously heard about, she's
23 under subpoena, she's apparently taking some trip
24 on Thursday and so I'm going to need to call her
25 out of order.

1 MR. GOINGS: Why don't you call her
2 first thing tomorrow morning?

3 MR. TANNER: We were thinking about
4 Wednesday afternoon, but we can try and see if she
5 can come in the morning.

6 THE COURT: That's fine, however, y'all
7 want to do it. We can explain to the jury it's out
8 of order. Not a problem. Anything else before we
9 recess?

10 MR. TANNER: That's it.

11 THE COURT: Y'all have a good night.

12 (WHEREUPON, court was adjourned at 4:02
13 p.m.)

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1 (OCTOBER 11, 2023)

2 THE COURT: Are the parties ready to
3 proceed?

4 MR. EVANS: Yes, Your Honor.

5 MR. GOINGS: Your Honor, as I
6 understand, the Defense is taking a witness out of
7 turn; am I correct?

8 MR. TANNER: That's correct, Your
9 Honor. I think we both subpoenaed Ms. Hutchinson,
10 but I understand that she's got some sort of travel
11 issue Thursday and, so, I guess, in order to
12 accommodate her, I'm going to need to call her out
13 of order.

14 MR. GOINGS: I don't know if you want
15 to, you know, tell the jury that.

16 THE COURT: Are we going to call her
17 first thing this morning right now?

18 MR. TANNER: I think that was the plan,
19 Your Honor.

20 THE COURT: This's not a problem.
21 Let's have our jury, please.

22 (WHEREUPON, the jury entered the
23 courtroom at 9:44 a.m.)

24 THE COURT: You may be seated. Good
25 morning, ladies and gentlemen of the jury. I hope

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 that you had a nice evening. We're ready to
2 proceed with the trial of this case, but I want to
3 let you know that due to some scheduling conflicts,
4 through no fault of either party, the Defense is
5 going to be allowed to call a witness this morning
6 out of order before the Plaintiff rests their case.
7 So if it doesn't make quite since to you
8 chronologically, that's why. So we are allowing
9 the Defense to call a witness this morning. You
10 may call your first witness.

11 MR. TANNER: May it please the Court.
12 The Hospital would call Estelle Hutchinson.

13 ESTELLE HUTCHINSON,
14 being first duly sworn, was examined and testified
15 as follows:

16 THE CLERK: You may have a seat.

17 MR. TANNER: May it please the Court?

18 THE COURT: Yes, sir, your witness.

19 DIRECT EXAMINATION

20 BY MR. TANNER:

21 Q. Can you please state your full name for
22 the record?

23 A. Estelle Amelia Hutchinson.

24 Q. Okay. And where do you live, Ms.
25 Hutchinson?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. Orangeburg, South Carolina.

2 Q. Okay. Did you formally own a boarding
3 home?

4 A. Yes.

5 Q. What was the name of that boarding
6 home?

7 A. IKare Boarding Home.

8 Q. Where was that boarding home located?

9 A. St. Matthews, South Carolina.

10 Q. Okay. What sort of -- are you a nurse?

11 A. No. No, sir.

12 Q. Okay. Are you a physician?

13 A. No, sir.

14 Q. Are you a certified nursing assistant?

15 A. No, sir.

16 Q. Do you have any medical degree or
17 nursing degree that you've earned?

18 A. No, sir.

19 Q. Do you have any sort of certification
20 that to care for folks?

21 A. Yes, I have training through -- I was
22 going to college in Florida to be a CNA, but I
23 didn't finish that.

24 Q. What was the name of that college?

25 A. It's the University -- I don't remember

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 the name, but it's in Florida. I did it online.

2 Q. Okay. Are you from here or are you
3 from Florida?

4 A. Oh, I'm from South Carolina.

5 Q. Okay. You from Calhoun County
6 originally?

7 A. No, I'm from Holly Hill, South
8 Carolina.

9 Q. At some point in time, Adrienne Branton
10 came to be at your boarding home; is that right?

11 A. Yes, sir.

12 Q. Okay. And at the time she was at the
13 Three Rivers Behavioral Health Hospital?

14 A. Yes, sir.

15 Q. Do you know how Ms. Branton came to be
16 placed with you by Three Rivers?

17 A. Yes, sir. I was going there to visit a
18 young lady there, you know, to give her a place and
19 a gentleman. Every time I would go there Ms.
20 Branton would talk to me that she wanted to go
21 home. I said I can't take you home because you
22 belong here. So when she was being discharged,
23 they asked me did I have a place for her. So I was
24 like hesitant and I said, yes, I will give her a
25 try for at least 60 days and see how she would

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 acts. So like a week later they called me to get
2 her.

3 Q. Are you any kin to Ms. Branton?

4 A. No, sir.

5 Q. Other than seeing her at Three Rivers,
6 had you ever had an interaction with her before?

7 A. That's the only time at Three Rivers.

8 Q. And when would that have been?

9 A. Oh, lord. I would say about two years
10 ago, three years ago.

11 Q. Let me refresh your recollection, I
12 think she came to stay with you September 13, 2019
13 from some of the documents, does that sound right?

14 A. That sounds correct, yes, sir.

15 Q. So it would have been some point in
16 time before that?

17 A. Yeah, I was going back and forth to
18 Three Rivers.

19 Q. Okay. And so did you tell the Three
20 Rivers staff that you could be a placement for Ms.
21 Branton?

22 A. When Mr. Jeff, he reach out to me and
23 ask me, you know, that I could help her because,
24 you know, she don't have no place to go right now.
25 I said, sure, I would give her a try.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Do you know where Ms. Branton was
2 staying prior to being in Three Rivers?

3 A. All I know is when throughout the
4 history that I got that she had an apartment that
5 she was living in, yes.

6 Q. And where was that apartment?

7 A. In Columbia.

8 Q. Okay. And do you know how long she was
9 in that apartment?

10 A. I didn't got all that information, sir.

11 Q. Okay. Prior to you agreeing to let Ms.
12 Branton come with you, had you had any interaction
13 with her family?

14 A. No, sir.

15 Q. Did you know she had any family?

16 A. Yes, she did, she told me she had a
17 daughter and a grandson.

18 Q. Did she tell you she had a son?

19 A. Yeah, one time she did, yes, sir.

20 Q. Okay. And so at some point in time
21 around before September 13th, someone from Three
22 Rivers, I presume, called you and said they were
23 discharging Ms. Branton?

24 A. They asked me did I have a female bed
25 available.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Okay. And what was the name of your
2 facility?

3 A. IKare Boarding Home.

4 Q. Okay. And that was in St. Matthews?

5 A. Yes, sir.

6 Q. And how many other folks stayed at your
7 boarding home?

8 A. I had eight.

9 Q. Okay. And what was the breakup of men
10 verses women?

11 A. Men was on one side, women's on the one
12 side.

13 Q. How many other women were there besides
14 Ms. Branton?

15 A. It was four other women.

16 Q. Okay. And so they called you from
17 Three Rivers and you came up to get Ms. Branton?

18 A. I did evaluation first. When I got
19 there, she was calm, very pleasant lady and that's
20 it.

21 Q. So you felt you could take care of her?

22 A. Yes.

23 Q. Did anyone from Three Rivers tell you
24 what sort of medication she was on?

25 A. Yes, they did. They told me she was on

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 a bunch of medication and she had needed to take it
2 to stay calm, you know, stuff like that.

3 Q. Did you have any experience giving
4 medicine to other residents there at your facility?

5 A. No, sir.

6 Q. Okay. Was it your expectation that Ms.
7 Branton was going to take her own medicine?

8 A. Well, Three Rivers give me heads up at
9 first that she was -- well, refused the meds, but
10 when I got her, you know, she took it for a week or
11 two.

12 Q. And were you giving her the meds or was
13 she taking them on her own?

14 A. No. What I do, I'll get the bottles
15 out the lockbox and then she'll read them off to me
16 and then tell me. She know what her medicine was
17 she was taking and she would say I take this in the
18 morning, this at night.

19 Q. Okay. There's no doubt in your mind
20 Three Rivers knew that they were sending her to
21 live with you?

22 A. That they knew they was sending --
23 yeah, they know she was coming to IKare Boarding
24 Home.

25 Q. And did Three Rivers bring her to you

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 or did you go to Lexington to pick her up?

2 A. I had to go transport her.

3 Q. Okay. And so it looks like she came to
4 you around September 13, 2019; is that right?

5 A. That sound about right.

6 Q. Did at any point in time did you have
7 an interaction with her daughter, Ms. Se'Anne
8 Davis, about the fact you had her momma?

9 A. Yes, the same night that I got her, we
10 called the daughter and she let her daughter know
11 she was at.

12 Q. Okay. And did you have a chance to
13 speak to Ms. Davis?

14 A. Yes.

15 Q. Okay. And what did you tell Ms. Davis?

16 A. I told her she was in St. Matthews at
17 IKare Boarding Home. She asked me what the
18 address, I give her the address.

19 Q. Okay. So you gave her the address?

20 A. Yes, sir.

21 Q. Okay. Did she ask you anything about
22 how her mother was doing?

23 A. Yeah, she did. She asked me how her
24 momma was doing, I said right now she's calm. I
25 don't have no trouble out of her. But she said if

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 I do, just give her a call back.

2 Q. She asked that you call her if you had
3 any problems with her mother?

4 A. Yes.

5 Q. Did she mention anything about coming
6 to visit her mother?

7 A. Yes, she did. That's why she wanted
8 the address.

9 Q. Okay. And did she in fact visit her
10 mother?

11 A. Not at that point she didn't.

12 Q. Okay. Did she ever visit her when she
13 was at IKare?

14 A. No, sir. She tried one time, but I
15 think at the time, I think Ms. Branton was at a
16 doctor's appointment or on the way to a doctor's
17 appointment.

18 Q. How do you know she tried?

19 A. Because she asked called back again, I
20 think the granddaughter reach out to me that's how
21 I know she had a granddaughter. She reach out for
22 the address and wanted to come by and visit her.

23 Q. How many times do you think you
24 personally spoke to Ms. Davis?

25 A. The whole time that I had Ms. Bruxton,

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 I would say --

2 Q. Did you say, Ms. Bruxton?

3 A. Well, I call her Ms. Adrienne, the
4 mother.

5 Q. But you know her name is Adrienne
6 Branton; right?

7 A. Yeah.

8 Q. Okay.

9 A. And I would say about ten times.

10 Q. She called you ten times?

11 A. Yeah, I talked to her -- not in the
12 whole, you know, like every day she will call. I
13 talk to her about ten times. Like if the daughter
14 will call her, I would talk to her. If she acting
15 up, I would talk to her like that.

16 Q. Now you've been deposed in another
17 lawsuit in this matter, have you not?

18 A. Yes.

19 Q. Do you remember testifying under oath
20 in that case?

21 A. Yes.

22 Q. Do you remember testifying under oath
23 that you talked to her two times?

24 A. No, I didn't say that, sir.

25 Q. You didn't say two times? Okay. We'll

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 take a look at it in a little bit. Did Ms.
2 Branton's son ever come visit her?

3 A. No, sir. No, sir.

4 Q. Did you know that she had a son?

5 A. I didn't know until when she went to --
6 what this place was? Greenville? Or Spartanburg?

7 Q. Spartanburg?

8 A. Spartanburg. That's when I know she
9 had a son.

10 Q. Did she talk about her son?

11 A. That's the only time she talked when
12 she came back from Spartanburg.

13 Q. Okay. Did any of her grandchildren
14 ever visit Ms. Branton at IKare?

15 A. No, sir.

16 Q. Did -- was she able to take her
17 medication there for that week?

18 A. Oh, yes, she did. She did fine for
19 that week.

20 Q. It was more like 11 days; is that
21 right?

22 A. Yes.

23 Q. Okay. And then did some behavioral
24 event happen with her?

25 A. Yes, sir.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. And what was that?

2 A. She start going side the highway,
3 taking the pictures off the walls. Getting
4 undressed in front of people and going sitting on
5 people's porch trying to get in their houses.

6 Q. And did that lead you to call 9-1-1?

7 A. Yes, I had called -- even called the
8 police officer in St. Matthews as well.

9 Q. Okay. And did law enforcement come out
10 there?

11 A. Yes.

12 Q. EMS came out there?

13 A. Yes, sir.

14 Q. And they took her to the hospital?

15 A. Yes, sir.

16 Q. And then she ended up at the
17 Spartanburg Hospital?

18 A. Yes, sir.

19 Q. Did you call Ms. Davis and tell her
20 that her momma was now in Spartanburg?

21 A. I don't recall I did, but I don't
22 thinks I did.

23 Q. You don't think you did?

24 A. No, sir.

25 Q. Okay. And, likewise, I think you told

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 me a little while ago Ms. Davis asked that if her
2 mother was not calm, could you call her. Did you
3 call her before you called EMS or 9-1-1?

4 A. No, I didn't call her.

5 Q. Okay. Is there a reason why you didn't
6 call to tell her that her momma was in Spartanburg?

7 A. The reason why I didn't call because --
8 I had the impression that they didn't get along.
9 That's my impression. That's how the mom give it
10 to me.

11 Q. And what did she specifically say that
12 gave you that impression?

13 A. She was just saying bad things, like,
14 her daughter did this, her daughter did that. Like
15 --

16 Q. This is sort of the time for the jury
17 to hear the whole picture, so what did she accuse
18 her daughter of doing?

19 A. She was saying her daughter mistreat
20 her, take her places, left her there, and this and
21 that and the third. And she was saying the only
22 person she had trust in was her grandson.

23 Q. Okay. And was there a point before
24 Spartanburg where you took Ms. Branton back to her
25 apartment in Columbia to get some personal affects?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. Yes, I did.

2 Q. Okay. And was one of those things you
3 got a debit card?

4 A. Yeah, she got her debit card and she
5 got a mirror, a bed, she gave me that. I still got
6 the mirror.

7 Q. You still have the mirror?

8 A. Yes, sir. And two chairs.

9 Q. You said some chairs?

10 A. Yes, sir.

11 Q. What happened to the chairs?

12 A. Well, really they wasn't no good, but I
13 just took them because she gave them to me.

14 Q. Okay. Any other items that she gave
15 you from her apartment?

16 A. The rest of the stuff she just say,
17 whoever was there before they trashed the
18 apartment. Yeah.

19 Q. And she thought -- so you took her to
20 the apartment; correct?

21 A. Uh-huh. Yes.

22 Q. And she told you someone had broken in?

23 A. Yes.

24 Q. Who did she think broke into her
25 apartment?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. She didn't say. She just say she had
2 an idea, but she never call anyone name.

3 Q. Okay. She never told you she thought
4 it was her daughter?

5 A. No.

6 Q. Okay. Did you get her debit card then?

7 A. I think we went to the bank and get a
8 debit card because someone had done stole her
9 money.

10 Q. Okay. And did she withdraw money to
11 give to you?

12 A. No, they had to replace the money back.

13 Q. Yes, ma'am. But, ultimately, did she
14 withdraw money for you?

15 A. Yes.

16 Q. And how much money did you get?

17 A. I think it was like -- oh, my god.
18 About 7- or \$800.

19 Q. \$800 is what you testified before, does
20 that sound about right?

21 A. I think about that, yes, sir.

22 Q. And what was your rate for people like
23 Ms. Branton to stay at the IKare facility?

24 A. It was 1100 and something -- 1150,
25 yeah, because of her condition.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Okay. And what was her condition?
2 What made her condition different than other folks?

3 A. Well, she had schizophrenia/bipolar.
4 Other patients didn't have that. They had like the
5 schizophrenia. Because it's a different -- because
6 you got schizophrenia/bipolar that's more trouble,
7 you know, more stuff come along with that.

8 Q. What was your rate for someone that
9 just had regular schizophrenia in your words?

10 A. Okay. It goes based on the income,
11 sir. If your income is 900, you pay 650.

12 Q. Okay. And so -- it sounded a second
13 ago like matter on what your condition was. Is it
14 solely based on income --

15 A. Yeah, based on income. It's based on
16 income.

17 Q. So what conditions you may or may not
18 have has nothing to do with the rate?

19 A. Yes.

20 Q. What other rates did you charge your
21 residents?

22 A. Well, that's based on income.

23 Q. So across the board based on income?

24 A. Yeah, based on income.

25 Q. So is it fair to say, the more money

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 | you have, the more you charged?

2 | A. No, it don't work -- but it goes like
3 | this, if I -- I never got someone who's saying they
4 | getting \$2,000 a month. They always say 1200 or
5 | 800, 500 or some of them don't get nothing.

6 | Q. How did you know to charge Ms. Branton
7 | 800 per month?

8 | A. I went by based on her income of what
9 | she told me, yes.

10 | Q. Okay. And what did she tell you her
11 | income was?

12 | A. She told me she was getting -- first
13 | she started with 1500. Then I said, well, I don't
14 | know, I have to get proof that you're getting 1500.
15 | So she said, well, she deal with AllSouth. So we
16 | went down to AllSouth, someone had done stole all
17 | her money. And then we went from there then the
18 | money started coming in and she said, well, I'm
19 | going -- this is what she said, she said I'm going
20 | to give you 800 because of what you did for me you
21 | got me out of Three Rivers.

22 | Q. And did she ever give you that proof of
23 | whatever her income was at AllSouth to get --

24 | A. We went to the bank and I don't
25 | remember what the income was that she was getting a

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 month.

2 Q. Okay. Did you ever tell her daughter
3 that someone had stolen her money?

4 A. Yes, we called the daughter.

5 Q. What did her daughter say?

6 A. The daughter said she don't know who
7 did it. Because I think she had -- was dealing
8 with a gentleman in the complex that she was living
9 at. They were saying that he probable did it
10 because when we went to the complex, she was asking
11 for him.

12 Q. Did you ever report any of this to law
13 enforcement?

14 A. Yeah. We had to called the police
15 there because -- at the complex and because she was
16 saying this and that was stolen, so the police came
17 and she got a little agitated when the police came.

18 Q. And do you know why she was agitated?

19 A. Because some of her stuff was missing.

20 Q. Okay. And so, again, fast forward now,
21 you take her, you call EMS, they send her up to
22 Spartanburg; is that right?

23 A. Yeah, we got back at home and they took
24 her up to Spartanburg because she was outside the
25 road. And, you know, she was walking nude and she

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 was going on people porches and other people was
2 getting upset, but they didn't understand her
3 condition.

4 Q. Okay. But you never called her
5 daughter to tell her that she was now in
6 Spartanburg; correct?

7 A. No.

8 Q. You had her daughter's number; right?

9 A. Uh-huh.

10 Q. And you talked to her -- at one time
11 you testified, twice now today, it's ten times;
12 right?

13 A. Yeah, it was a couple of times.

14 Q. Well, is it a couple?

15 A. Yeah, it's a couple of times.

16 Q. Or is it ten? Because --

17 A. It's been awhile --

18 Q. Let me finish and then you can say
19 whatever you want. Is it a couple, two, like you
20 said under oath or is it ten like you're saying
21 under oath today?

22 A. Well, I'm going to say it like this, I
23 don't remember how many times, but I spoke with her
24 daughter.

25 Q. Okay. And there's no doubt in her mind

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 her daughter knew that she was with you at IKare?

2 A. You saying her daughter didn't know she
3 was with me?

4 Q. You didn't have any doubt that her
5 daughter knew that she was --

6 A. Her daughter had know she was with me.

7 Q. And she had your phone number; right?

8 A. Yes, sir.

9 Q. She had your address?

10 A. Yes.

11 Q. Okay. Did Spartanburg when she was
12 there, would they call you and give you periodic
13 updates to how Ms. Branton was doing?

14 A. Yes, they did.

15 Q. Okay. Did you pass any of those on to
16 her daughter?

17 A. No, sir, I did not.

18 Q. Did you ever tell anyone at Spartanburg
19 that she had a daughter and a son?

20 A. Yes. I know no son, just the daughter.

21 Q. You just knew about the daughter?

22 A. Yes.

23 Q. And then there came a time where it was
24 ready to discharge her back again?

25 A. Yes.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. And did Spartanburg psychiatric
2 hospital call you and tell you they were going to
3 send her back to you?

4 A. Yes, sir.

5 Q. Okay. Did you have any question in
6 your mind about taking Ms. Branton again?

7 A. At first I wasn't going to take her
8 back, but when I spoke to her, she apologized to me
9 for what she did and she asked me would I give her
10 another chance. I said, yes, ma'am, I will.

11 Q. And did she specifically say what she
12 was apologizing for?

13 A. For misbehaving, taking the stuff off
14 the wall and sitting outside the road and take off
15 her clothes.

16 Q. Okay. What is that \$800 that you
17 charged her, what did that cover?

18 A. What that covers her room and board,
19 food, because she couldn't get food stamps.

20 Q. And so you would prepare her meals?

21 A. Yes. Whatever she like, yes, sir.

22 Q. Okay. Would you go to the grocery
23 store with her?

24 A. We went to the grocery store one time.

25 Q. With Ms. Branton or one time for

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 everybody?

2 A. No, me and her went to the store, she
3 had needed some personal items.

4 Q. Okay. And so you -- that came out of
5 the \$800?

6 A. Yes, sir.

7 Q. Okay. And how did she get from
8 Spartanburg back to you?

9 A. They transported her back.

10 Q. They transported her?

11 A. Yes, sir.

12 Q. So Spartanburg brought her, car or bus,
13 van, EMS, how did she arrive?

14 A. I think that was a transport van.

15 Q. Transport van?

16 A. Yes, sir.

17 Q. And she got back to you on October 1st;
18 is that right?

19 A. That sound right.

20 Q. Okay. Did anyone from Spartanburg ever
21 tell you about the medication that she was on?

22 A. Yes, they said they wasn't going to
23 change the meds that she was already on, they was
24 going to continue giving -- they was just going to
25 continue give her the same medication that she was

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 on.

2 Q. Okay. The medication that she was
3 taking before, did you still have that locked up
4 with you or did that get sent to Spartanburg with
5 her?

6 A. No, that was still locked up in the
7 house.

8 Q. Okay. So you had the medicine?

9 A. Yes, sir.

10 Q. Okay. And you knew that she was
11 supposed to take it in the same way that she was
12 taking it before?

13 A. Yes, sir.

14 Q. Okay. And then did some other incident
15 occur with you?

16 A. Yes. Probably -- probably about three
17 days later she act up again. She was going into
18 the gentleman room, getting in their beds and
19 saying one was her husband, one was the boyfriend
20 and she accused one of the other lady's that going
21 with the guy, which that wasn't true. Then she
22 start taking off her clothes again, then she went
23 around the corner to another gentleman house, got
24 on his porch. And he came and told me she was on
25 the porch, so I had to end up calling 9-1-1 again.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Okay. Was it three days or was it the
2 next day? Because I believe the records show that
3 she came back to you from Spartanburg on
4 October 1st?

5 A. I don't know how many days it was, sir.
6 It's been awhile, but I know she went back -- she
7 started acting up again.

8 Q. And you once again called EMS?

9 A. Uh-huh. First the police came.

10 Q. All right. Then I believe, if we can
11 get this up, it looks like we've got it over here
12 for the jury and I don't know if you can -- we'll
13 get it on this screen too, it looks like she came
14 to The Regional Medical Center on October 2nd; is
15 that right?

16 A. (No response.)

17 Q. I know it's on this one. Hold on,
18 we're having a tech issue.

19 MR. TANNER: Beg the Court's
20 indulgence.

21 THE COURT: Yes, sir. Mr. Tanner, do
22 you have the actual exhibit, we could do it old
23 school.

24 MR. TANNER: Sure. And I appreciate
25 Mr. Williams helping out. Sorry about that.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Technology is great except when it doesn't work.

2 THE COURT: That's true.

3 Q. I'm going to hand you what is already
4 in evidence as Plaintiff's 6, these are a hard copy
5 of the records.

6 MR. WILLIAMS: I'm sorry.

7 Q. Ms. Branton that's what's known and
8 there's been a number of witnesses who have
9 testified as a face sheet anytime someone comes in
10 the hospital they get some basic information. Do
11 you see there where it lists Adrienne Branton as a
12 patient?

13 A. Uh-huh.

14 Q. That's a, yes? I'm sorry. Just so the
15 court reporter can get it down. I'm not trying to
16 be difficult.

17 A. Yes, sir.

18 Q. And it says home address, 210 Church
19 Street, St. Matthews, South Carolina; do you see
20 that?

21 A. Yes, sir.

22 Q. And that was the address of the IKare
23 Boarding Home; correct?

24 A. Yes, sir.

25 Q. And then it has a phone number,

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 843-855-7702; do you see that? Under patient
2 information?

3 A. Yes, I see that. Yes, sir.

4 Q. And that's your phone number; correct?

5 A. No, sir.

6 Q. No, it's not?

7 A. No, sir.

8 Q. Okay. Whose phone number is that?

9 A. I don't know, sir.

10 Q. You don't know. Okay. Do you see
11 where it has emergency contact?

12 A. Yes, sir.

13 Q. It says, Estelle Hutchinson?

14 A. That's not how you spell my name, sir.

15 Q. Okay. Is that close to how you spell
16 your name?

17 A. No, it's E-S-T-E-L-L-E.

18 Q. Okay. Do you know how your name came
19 to be listed as her emergency contact?

20 A. I guess because it was on her
21 paperwork, but it was spelled correctly.

22 Q. And that would be the paperwork she
23 came back from Spartanburg with?

24 A. No, the paperwork that I give the --
25 told the hospital my name Estelle Hutchinson when

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 they called me.

2 Q. Okay. And which hospital is that?

3 A. TRMC.

4 Q. Okay. All right. Did you go to the
5 hospital with her?

6 A. No, sir, she was transported by
7 ambulance.

8 Q. Okay. Did the hospital call you at
9 some point in time and tell you that they were
10 going to discharge Ms. Hutchinson -- I'm sorry, Ms.
11 Branton back to you?

12 A. Yes, sir, they called me. Yes, sir.

13 Q. And I'm going to direct you to page 60
14 in Exhibit 6.

15 A. Exhibit 6?

16 Q. Yes, ma'am. And it's the page numbers
17 at the bottom too. I know some of the witnesses
18 were confused about it yesterday.

19 A. You say 60?

20 Q. 6-0, yes, ma'am.

21 A. Yes, sir, I have it.

22 Q. Okay. You see where it says history
23 and physical report about the middle of the page?

24 A. Yes, sir.

25 Q. Okay. You see that it says, this is a

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 | note by Nurse Practitioner Cameo Green, patient was
2 | discharged at 15:03 p.m. from the emergency
3 | department; do you see that?

4 | A. Where is that located at?

5 | MR. TANNER: If I may approach the
6 | witness, Your Honor?

7 | THE COURT: Yes, sir.

8 | Q. One more, page 6-0. Right about there.

9 | A. Okay. Thank you.

10 | Q. Yes, ma'am. And it's on this screen if
11 | you can see that as well. But you see where it
12 | says, patient was discharged at 15:03 from the
13 | emergency department?

14 | A. Yes, sir.

15 | Q. You see where it says, Dr. West advised
16 | Cameo Green to inform the boarding home of her
17 | treatment plan?

18 | A. Yes, sir.

19 | Q. See where it says, Cameo Green, a nurse
20 | practitioner called Ms. Estelle Hutchinson at IKare
21 | Boarding Home and notified her that the plaintiff's
22 | -- patient's Clonazepam should be stopped due to
23 | her complaints of dizziness per Dr. West; do you
24 | see that?

25 | A. Yes, sir.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Is that the call that you recall
2 having?

3 A. No, the call that -- I can say what the
4 call I had?

5 Q. Yeah.

6 A. The call that I had it was saying --
7 well, the young man that I spoke to, he was telling
8 me she had a UTI and she was being discharged.

9 Q. So you don't recall having this
10 conversation that's here on TRMC-60?

11 A. No, sir.

12 Q. All right. Well, let's read a little
13 further down. And it says, patient's caregiver,
14 Ms. Hutchinson, verbalized understanding of
15 treatment plan; do you deny talking about that with
16 Nurse Green?

17 A. Ms. Nurse Green?

18 Q. Yes, ma'am.

19 A. I didn't talk to a Nurse Green, I
20 talked to a gentleman. I don't know his name.

21 Q. Okay. A little further on down it says
22 she was concerned the patient may act out in the
23 future. Do you deny telling Nurse Green that?

24 A. No, not Nurse Green, the gentleman who
25 I spoke with. I don't know what his name is, it

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 was a guy.

2 Q. Okay. She was advised her to bring her
3 back to the hospital if she's concerned; do you
4 recall discussing that?

5 A. If the UTI get worse, that's what they
6 told me. She had a UTI.

7 Q. So you totally discount this
8 conversation that Nurse Practitioner Green has
9 documented in her records?

10 A. I did, yes, sir.

11 Q. Okay. And you say none of that
12 happened?

13 A. No, sir. Because they told me she had
14 a UTI. And that's not why she went to the
15 hospital.

16 Q. Okay. She didn't have a UTI, did she?

17 A. They told me that's what she had.

18 Q. When she went to the hospital, was she
19 complaining of any issues --

20 A. No, sir.

21 Q. Let me finish first -- with urinating?

22 A. No, sir.

23 Q. Okay. But you said a gentleman told
24 you she had a UTI?

25 A. Yes.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Okay. Well, let's flip over to a few
2 more pages. Let's go to TRMC-089.

3 A. 089. I'm here.

4 Q. And this is the male nurse you're
5 talking about, Shaquille Terry, do you see that,
6 LPN? Are you on 89?

7 A. I'm on PG 89.

8 MR. GOINGS: Your Honor, I object to
9 the question. He's on direct and he asked the
10 witness is this Shaquille Terry, the male nurse.
11 Shaquille Terry is not a male. And so he just
12 added testimony that's not even in the record and
13 it's inconsistent with what this witness previously
14 testified.

15 MR. TANNER: Dr. Burkholz testified he
16 goes back Shaq Terry, he was a male nurse
17 yesterday. That's what he said from the witness
18 stand.

19 THE COURT: Just rephrase the question
20 and see what she knows.

21 Q. Did you find page 89? And if I may
22 approach because it looks like you're confused
23 again. It's the bottom numbers.

24 A. Oh, yes, sir.

25 Q. Do you see that?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. What am I looking for?

2 Q. You see where it's got --

3 A. L. Terry --

4 Q. L. Terry, LPN, Shaquille?

5 A. Yes, sir, I see that.

6 Q. Do you see where it says, discharge
7 information reviewed with patient's caregiver and
8 patient?

9 A. Yes.

10 Q. And you testified about a male nurse;
11 right?

12 A. It was a male nurse, a guy I talked to,
13 a heavy set guy.

14 Q. Okay. And do you know if that's Nurse
15 Shaq Terry?

16 A. I don't know, sir. I can describe him.

17 Q. Okay. Well, why don't you describe
18 him.

19 A. He had dreads, had his hair cornrowed
20 back. He was kind of like, thick, heavy set guy,
21 brown skin.

22 Q. Okay. Do you see where it goes on
23 where Nurse Terry's note goes on to say, patient's
24 caregiver and patient voice understanding; do you
25 see that? V/U?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. Is it on the same page?

2 Q. Yes, ma'am, it's literally the same
3 sentence. Do you see information reviewed with
4 patient's caregiver --

5 A. I see.

6 Q. You see, patient's caregiver and
7 patient V/U; do you know that means voice
8 understanding?

9 A. Yes, I know that.

10 Q. And so that was a discussion you had
11 with Nurse Terry; correct?

12 A. Yes, about the UTI.

13 Q. And then you see about the discharge
14 information, it says, caregiver's vehicle?

15 A. Yes.

16 Q. Okay. And then I believe you actually
17 -- do you remember signing the discharge plan at
18 the hospital, discharge sheet?

19 A. I don't remember. I don't recall that,
20 sir.

21 Q. You don't recall that. Hold on, let me
22 get you to the page. Can you turn to page 68?
23 While you're doing that, I think you told me the
24 proper spelling of your name is, E-S-T-E-L-L-E; is
25 that right?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. Yes, sir.

2 Q. And if it's easiest to look on the
3 screen, Ms. Hutchinson, behind me, you can?

4 A. Yes, I got it. It's my name.

5 Q. That's your name; right?

6 A. Yes, sir.

7 Q. That's your signature?

8 A. Yes, sir.

9 Q. That's you signing that you got the
10 discharge instructions; right?

11 A. Uh-huh.

12 Q. That's a, yes, for the record?

13 A. Yes, sir.

14 Q. Okay. At what point -- so you go
15 outside with Ms. Branton; right?

16 A. Yes, sir.

17 Q. Put her in your car?

18 A. Yes, sir.

19 Q. At what point does she say she doesn't
20 want to go with you?

21 A. As we was pulling out the parking lot.
22 She didn't want to go back to St. Matthews.

23 Q. Okay. Did you stop the car?

24 A. Yes, I stopped it. I said,

25 Ms. Braxton, what's going on?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Ms. who?

2 A. I mean, Ms. Adrienne. I call her
3 Ms. Braxton. Ms. Adrienne. I said, what's going
4 on? She said, I just don't want to go back to St.
5 Matthews. I said, well, I can't leave you out on
6 the streets, so that's when I reach out to
7 Ms. Williams, asked her.

8 Q. Did you take her back into the hospital
9 and say she's refusing to go with you?

10 A. No, sir.

11 Q. Did you call 9-1-1 and say she's
12 refusing to go with you?

13 A. No, sir.

14 Q. Okay. Did you call EMS and say she's
15 refusing to go with you?

16 A. No, sir.

17 Q. Did you call her daughter?

18 A. No, sir.

19 Q. And say that she's refusing to go with
20 you?

21 A. No, sir.

22 Q. You still had her daughter's number;
23 right?

24 A. Yes, sir.

25 Q. Did you ever call her daughter and tell

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 her that she was discharged from The Regional
2 Medical Center?

3 A. No, sir.

4 Q. Why?

5 A. Because I had the impression that her
6 and her daughter didn't get along.

7 Q. Okay. Did you ever have that
8 discussion with her daughter?

9 A. Well, the only thing -- no, me and her
10 daughter never had that discussion.

11 Q. Why not?

12 A. Because I was going on what the mom
13 said.

14 Q. But don't you want to validate what
15 someone tells you is correct information?

16 A. Not if she's the mom and she raised
17 her.

18 Q. Did she -- and you didn't think you
19 needed -- you knew she had mental health issues;
20 right?

21 A. Yes.

22 Q. Did she appear to be truthful to you?

23 A. When I first got her, yes, but she
24 never told me a lie. But, you know, you sit and
25 hear her story then you're like, okay, like, I hear

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 most of my people stories now and some of it's
2 true.

3 Q. But some of it's not true; right?

4 A. Yes.

5 Q. And the stuff that you hear that's not
6 true, what do you do to validate what's truth and
7 what's a lie?

8 A. I call -- well, these ones I have, they
9 don't have no family. So she had a family. I did
10 not call and validate it, no, I did not.

11 Q. You don't have any explanation for why
12 you didn't do that?

13 A. No, sir.

14 Q. And you deny that Nurse Practitioner
15 Green called you and you told her that if she's
16 acting out to bring her back to the hospital --

17 A. I'll didn't talk to Nurse Green --

18 Q. -- you're telling that jury -- let me
19 finish. You're telling that jury that that record
20 is not true?

21 A. I did not talk to a Nurse Green. I
22 don't know the guy name who I spoke with.

23 Q. What did you do after she's in the car
24 and she tells you she doesn't want to go back to
25 St. Matthews?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. I reach out to Ms. Williams and asked
2 her did she have a female bed and she said, yes,
3 ma'am, I do.

4 Q. Okay. And who is Ms. Williams for the
5 jury?

6 A. She has another boarding home as well.

7 Q. Okay. Is she any relation to you?

8 A. No, sir.

9 Q. Y'all any sort of business partners?

10 A. No, sir.

11 Q. Okay. Is her boarding home like yours?

12 A. Hers is much bigger. I only can have
13 five.

14 Q. And hers is located where?

15 A. I think that's off of 33.

16 Q. Here in Orangeburg?

17 A. Yes, sir.

18 Q. Okay. Say within five miles of the
19 hospital? Does that sound about right?

20 A. I don't know. I don't know how far.

21 Q. Is it in the town limits?

22 A. No, I think it's out the town limits.
23 I think so, I'm not sure.

24 Q. Okay. And so how long did you and Ms.
25 Branton drive around Orangeburg before you got to

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Ms. Williams?

2 A. Probably about 15 minutes because I
3 really didn't know where the place was at first.

4 Q. Okay. And then when y'all got to Ms.
5 Williams' house, did Ms. Branton get out of the
6 car?

7 A. No, she wanted to talk to her grandson.
8 I didn't have her grandson telephone number.

9 Q. Okay. You had her --

10 A. She didn't want to talk to the
11 daughter.

12 Q. You can tell me whatever you want, but
13 I've got to ask you the questions first.

14 A. Okay.

15 Q. You had her daughter's number; right?
16 You could have called her?

17 A. Yes.

18 Q. You could have said, your momma wants
19 to talk to her grandson; right?

20 A. Yes.

21 Q. You didn't do that?

22 A. No, I did not.

23 Q. Okay. And did Ms. Branton herself have
24 a phone?

25 A. At one point, but I think she misplaced

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 | it.

2 | Q. Okay. But you had a phone and you --
3 | did you have the granddaughter's number too because
4 | you said she had called you --

5 | A. No, I didn't, just the daughter.

6 | Q. Just the daughter?

7 | A. Uh-huh.

8 | Q. Okay. And did you think that if she
9 | could talk to her grandson maybe that might calm
10 | her down, that might change her attitude?

11 | A. It could.

12 | Q. But you didn't -- you never were able
13 | to get the grandson?

14 | A. I didn't have his number.

15 | Q. Again, you had his momma's number;
16 | right?

17 | A. But she didn't want to talk to the
18 | mother.

19 | Q. Gotcha. How long were you at Ms.
20 | Williams' house before she got out of the car?

21 | A. Oh, we been there for, I'd say it took
22 | us about 45 minutes to get out of the car.

23 | Q. Okay. Did you have to call 9-1-1?

24 | A. Yes, we did.

25 | Q. Okay. And what did 9-1-1 do when they

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 got there?

2 A. The police officer, he was very nice.
3 He talked to her, she was sitting on the outside on
4 the step, got her inside the house. And, then, you
5 know, let her know that she had to take her
6 medicine because that's important that she take her
7 medication. She took her medication and then we
8 all left and she said goodnight. She said
9 goodnight to me then she left because she had an
10 appointment the next day.

11 Q. She had an appointment at mental
12 health; right?

13 A. Yes.

14 Q. And I saw where she had prearrangement
15 when she was in Spartanburg; right?

16 A. I think, yes, sir.

17 Q. That's how you knew that she had an
18 appointment; right?

19 A. Yes, sir.

20 Q. Okay. So she's sitting in the car for
21 45 minutes?

22 A. Yes.

23 Q. And then she gets out and she's on Ms.
24 Williams' steps?

25 A. Yes, sir.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. What was Ms. Williams doing at this
2 time?

3 A. Trying to help me get her in the house.

4 Q. Okay. Which one of you called 9-1-1?

5 A. I think it was Ms. Williams called
6 9-1-1.

7 Q. Okay. Did the officer actually give
8 her any medicine?

9 A. No. No, sir, he did not.

10 Q. Who gave her her medicine?

11 A. Was it Ms. Williams? Ms. Williams,
12 yes, sir, I think it was Ms. Williams.

13 Q. Ms. Williams gave her her medicine?

14 A. Yes, sir.

15 Q. Is Ms. Williams a nurse?

16 A. No, sir.

17 Q. Is Ms. Williams a doctor?

18 A. No, sir.

19 Q. Okay. Same kind of qualifications as
20 you to have a boarding home as far as you know?

21 A. Yes, sir.

22 Q. And how long were you there that night?

23 A. I been there it was dark. No, stayed
24 after the police left to make sure she was good.

25 Q. Did you ever observe Ms. Branton trying

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 to climb over a fence there at that address?

2 A. I never witnessed that, sir.

3 Q. Okay. And do you know the name of the
4 deputy who came out there that night?

5 A. Officer Hartwell.

6 Q. Deputy Hartwell from Santee; right?

7 A. Yes, sir.

8 Q. And so she took her medicine, you left,
9 you don't remember what time; is that fair to say?

10 A. Yes, sir.

11 Q. Okay. Did you at any point at that
12 time call Ms. Davis --

13 A. No, sir.

14 Q. -- and tell her what was going on?

15 A. No, sir.

16 Q. Why?

17 A. Because her and her daughter -- she
18 never -- she didn't want me to call the daughter.
19 She always say don't call my daughter. Do not call
20 my daughter, so I give her that respect. She asked
21 me not to do it, so I didn't do it.

22 Q. Even though you and her daughter talked
23 either two times or ten times?

24 A. I going to say it like this, I don't
25 know how many times it was, but I know when she was

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 in St. Matthews she always would call her daughter
2 and I would speak with her daughter.

3 Q. Okay. You never called back to the
4 hospital that night and said, hey, Ms. Branton is
5 acting up, we had to call law enforcement, what
6 should I do?

7 A. No, sir, I never called back to the
8 hospital.

9 Q. Did you come see Ms. Branton the next
10 morning?

11 A. Yes. I was going to take her to the
12 mental health.

13 Q. Okay. And what was she doing when you
14 got there?

15 A. In there brushing her teeth.

16 Q. Okay. How did her mood seem to you?

17 A. It seemed good.

18 Q. Okay. And you were going to take her
19 to mental health?

20 A. Yes.

21 Q. Did you take her to mental health?

22 A. No, sir.

23 Q. Why not?

24 A. Ms. Brenda was coming to take her.

25 Q. I thought you just said you were going

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 to take her?

2 A. But Ms. Brenda had called and said she
3 was coming on the way to take her. I went there to
4 make sure she got there. But, you know, Ms. Brenda
5 said she was on the way to take her.

6 Q. When did you and Ms. Brenda have that
7 conversation about taking her to mental health?

8 A. I would say when she got through
9 brushing her teeth. Because she was aware of the
10 appointment as well.

11 Q. Was that in person conversation?

12 A. Telephone conversation.

13 Q. Telephone conversation?

14 A. Yes, sir.

15 Q. And who called who?

16 A. I called Ms. Brenda and let her know I
17 was at the house, Ms. Adrienne was brushing her
18 teeth and she said, okay, I'm on the way there to
19 take her to mental health. I said, well, I'm about
20 to leave since you are coming to do it.

21 Q. Okay. Do you know if Ms. Branton got
22 to mental health that day?

23 A. I did not -- no, sir, I did not ask.

24 Q. How long were you there before you
25 left?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. I'll say at least about -- I was there
2 30 minutes.

3 Q. Okay. Did you ever ask Ms. Williams to
4 confirm if Ms. Branton got to her mental health
5 appointment?

6 A. No, sir, I never did.

7 Q. Okay. Do you know if she ever got to
8 her mental health appointment?

9 A. I don't know, sir.

10 Q. Okay. What is the next time you recall
11 about Ms. Branton?

12 A. I was called the next day said she was
13 outside with the father jacket on which she loved
14 the father jacket. She was outside standing by the
15 fence. And the lady that I spoke with, I don't
16 remember her name, she said she was taking waters
17 and stuff, she tried to get her back in the house.
18 And a couple of hours later I got a call and said
19 she was passed away. She was outside by the fence
20 passed away.

21 Q. Okay. And law enforcement contacted
22 you?

23 A. Yes, sir.

24 Q. Okay. And, again, at no point did you
25 call her daughter to tell her that she had left

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 your placement and was with Ms. Williams; right?

2 A. No, sir.

3 Q. When you spoke -- did you speak to law
4 enforcement on the 3rd?

5 A. Yes, I was out there the whole time.

6 Q. Okay. And do you remember an
7 Investigator Hayes?

8 A. Hayes? Hayes? Who is that? I don't
9 remember the names.

10 Q. Fair enough. Do you remember telling
11 anyone about your interaction with Deputy Hartwell
12 the night before?

13 A. Telling him --

14 Q. Telling him that y'all had to call
15 9-1-1 --

16 A. Yes, sir.

17 Q. -- Deputy Hartwell had to come out?
18 You told that to law enforcement; right?

19 A. Yes.

20 Q. Okay. And what did they say about
21 Deputy Hartwell coming out there?

22 A. I don't remember what they say. I
23 don't remember.

24 Q. Anything else you remember telling to
25 law enforcement about the call the night before?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. No, sir.

2 Q. Okay. And at some point in time, did
3 you ever call Ms. Davis to tell her that her momma
4 had passed away?

5 A. I think I called her -- did I call her
6 that night? I don't remember. I know I did call
7 her and told her.

8 Q. Do you remember what you told her?

9 A. I just call -- so I would say -- I
10 can't remember her daughter name, what's her
11 daughter name? But I called her and let her know,
12 I said, your mom passed away and she was saying,
13 oh, no, what happened? And I just told her she was
14 at Ms. Brenda then she passed away because she was
15 outside, she didn't want to go back inside and she
16 passed away.

17 Q. Did she ask you how she came to be with
18 Ms. Brenda?

19 A. No, she didn't ask me that.

20 Q. She didn't ask you that?

21 A. Huh-uh.

22 Q. The belongings that you had, I think
23 you still have Ms. Branton's mirror; right?

24 A. Yes, sir.

25 Q. And you have a couple of chairs?

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 A. Those chairs is destroyed, sir.

2 Q. You have them somewhere -- or you had
3 them?

4 A. Yes.

5 Q. Okay. Did Ms. Davis or her family come
6 get any of her possessions?

7 A. I think the grandson took something out
8 the room, I don't know what it was.

9 Q. Do you remember giving the grandson
10 \$400?

11 A. Yes, sir. Uh-huh.

12 Q. And that's a, yes?

13 A. Yes, sir.

14 Q. Okay. Did he specifically ask about
15 money?

16 A. Yes, he did.

17 Q. Okay. And tell the jury about that
18 conversation.

19 A. He asked me did his grandmamma have any
20 funds left. I said, yes, she has \$400 and I gave
21 it to him -- give it to him.

22 Q. Okay. And how did you figure out of
23 the \$800, is that for 30 days? Is that for a
24 month?

25 A. Yes.

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 Q. Okay. And she was there for 11 days;
2 is that right?

3 A. She was with me probably -- she was
4 with me more than 11 days because when I got her
5 from Three Rivers.

6 Q. Well, you got her from Three Rivers, I
7 believe, September 5th through the 13th, does that
8 sound right?

9 A. Yes.

10 Q. And then she went back to Spartanburg
11 from September 24th to October 1st?

12 A. Uh-huh.

13 Q. That's a, yes?

14 A. Yes, sir.

15 Q. And then she got to you on October 2nd?

16 A. Uh-huh.

17 Q. And that's the day that you took her to
18 the hospital?

19 A. Yes, sir.

20 Q. Picked her up?

21 A. Not me, EMS.

22 Q. EMS, you're right. But you picked her
23 up from the hospital?

24 A. Yes, sir.

25 Q. And then you took her to Ms. Williams

ESTELLE HUTCHINSON - DIRECT EXAMINATION BY MR. TANNER

1 that night?

2 A. Yes, sir.

3 Q. Okay. So the 5th through the 13th is
4 eight days?

5 A. Uh-huh.

6 Q. And say for whatever you did on the
7 2nd, so that's only nine days, so how did you come
8 up with 400 which would probably be 15 days?

9 A. So to come up with 400 because she
10 bought personal hygienes. She bought stuff for
11 her. She wanted to eat out and I explained that to
12 him.

13 Q. Did you give him any receipts?

14 A. Yes, I did, I sent it through on the
15 Cash App.

16 Q. On the Cash App, you sent the receipts
17 that his grandmamma had spent?

18 A. Yes.

19 Q. Okay. Did you have any other
20 interaction with the Davis family?

21 A. No, sir.

22 Q. Did you ever speak to Mr. Herman
23 Branton about his momma passing away?

24 A. Who's that?

25 Q. Her son?

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 A. No, sir.

2 Q. Okay. Because, again, you knew she had
3 a son; right?

4 A. Yeah, after she came back from
5 Spartanburg, but I never spoke with him.

6 Q. Okay. Thank you, ma'am, for your time.
7 And you're here by subpoena; right?

8 A. Yes, sir.

9 Q. Okay.

10 THE COURT: Cross-examination?

11 MR. GOINGS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GOINGS:

14 Q. Ms. Hutchinson, I want to make sure
15 everybody is clear about the actual dates that you
16 kept Ms. Branton. If you could just stand up and
17 look at this monitor. You took Ms. Branton on
18 September 13th; isn't that correct?

19 A. Yes, sir.

20 Q. And then so, September 13th, you had
21 the 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st,
22 and then on the 22nd which was a Sunday, she was
23 taken to Lexington Medical Center and then up to
24 Spartanburg; is that correct?

25 A. Yes, sir.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Q. And then Spartanburg --

2 MR. GOINGS: Go to the next slide,
3 Mr. Williams.

4 Q. -- brought her to you on the Tuesday
5 the 1st; is that correct?

6 A. Yes, sir.

7 Q. And then on the 2nd, she really spent
8 most of the time on the 2nd, actually at The
9 Regional Medical Center; right?

10 A. Yes, sir.

11 Q. All right. So let's count these up.
12 You got maybe a half day on Tuesday, maybe a half
13 day on Sunday, we'll count that one day. Two days,
14 three days, four days, five days, six days,
15 seven days, eight days, and nine days, roughly nine
16 days she was at IKare; is that correct?

17 A. Yes, sir.

18 Q. Okay. You can take a seat. So it's
19 not 11 days, it's actually nine days; right?

20 A. Yes, sir.

21 Q. All right. Now the information that
22 you learned about Ms. Branton's family, you learned
23 from Ms. Branton; correct?

24 A. Yes, sir.

25 Q. Okay. And Ms. Branton told you that

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 she was mad at her daughter; right?

2 A. Yes, sir.

3 Q. And did she tell you that she was mad
4 at her daughter because her daughter was making
5 sure that she got the medical care she needed for
6 her illness?

7 A. Yes, sir.

8 Q. Okay. She was mad at her daughter
9 because her daughter was trying to get her help;
10 right?

11 A. Yes, sir.

12 Q. She was made at her daughter because
13 her daughter was taking her to Three Rivers for her
14 to get better; right?

15 A. Yes, sir.

16 Q. And you knew that Ms. Branton suffered
17 from schizophrenia and bipolar; right?

18 A. Yes, sir.

19 Q. And you know that when you suffer from
20 schizophrenia and bipolar, unfortunately, you take
21 it out on the people that love you the most?

22 A. Yes, sir.

23 Q. And you've seen that in your own
24 experience; right?

25 A. Yes, sir.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Q. And when you suffer from schizophrenia
2 and bipolar disorder, you become paranoid; right?

3 MR. TANNER: Objection, Your Honor.
4 This is outside of her scope. She has no nursing
5 or medical training to give such an opinion is what
6 he's asking for her to do.

7 THE COURT: Mr. Goings?

8 MR. GOINGS: I'm not asking for her
9 opinion, but she's been around people she testified
10 earlier that were schizophrenic and bipolar and she
11 understands the traits that they exhibit and the
12 behaviors they exhibit.

13 THE COURT: I'll allow it in that
14 context, but not any type diagnosis to basically
15 it's a lay opinion which she has personally
16 observed.

17 MR. GOINGS: Thank you, Your Honor.

18 Q. And you personally observed people who
19 have schizophrenia and bipolar become paranoid;
20 correct?

21 A. Yes, sir.

22 Q. They think the people that love them
23 are hurting them; right?

24 A. Yes, sir.

25 Q. They think that helping them is

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 actually hurting them; right?

2 A. Yes, sir.

3 Q. And Ms. Branton as hard as it may be
4 for this family to hear, at this point in time was
5 mad at her daughter; right?

6 A. Yes, sir.

7 Q. And she was mad at her daughter because
8 she thought her daughter was hurting her; right?

9 A. Yes, sir.

10 Q. Instead of helping her; is that right?

11 A. Yes, sir.

12 Q. And did you understand that that could
13 be a trait or a symptom of someone who has this
14 mental health condition?

15 A. Yes, sir.

16 Q. Okay. And every time you spoke with
17 Se'Anne Davis, the daughter, she was very nice to
18 you, wasn't she?

19 A. Oh, yes, she was. Yes, sir.

20 Q. And she acted like she loved her
21 mother, didn't she?

22 A. Yes, sir.

23 Q. She never said anything of ill will
24 about her mother, did she?

25 A. No, sir.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Q. She expressed concern about her health,
2 didn't she?

3 A. Yes, sir.

4 Q. She wasn't this daughter that just
5 abandoned her mother, was she?

6 A. No, sir.

7 Q. You knew that she loved her mother;
8 right?

9 A. Yes, sir.

10 Q. But you knew that Ms. Branton had
11 schizophrenia and bipolar and at that point in
12 time, the episodes that she was having at that
13 point in time, she was mad at her daughter?

14 A. Yes, sir.

15 Q. Okay. And you don't know if it was ten
16 times y'all talked on the phone or two times, but
17 you know you talked to her; is that right?

18 A. Yes, sir.

19 Q. But at the same time you were trying to
20 honor the wishes of a lady that was staying at your
21 boarding home; right?

22 A. Yes, sir.

23 Q. Okay. Now, let's talk about IKare. In
24 2019, you were the owner and operator of IKare;
25 correct?

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 A. Yes, sir.

2 Q. What is IKare?

3 A. It's a place I open up for homeless
4 people, people have mental health or people that
5 don't have nowhere to go.

6 Q. Now, IKare is not a assisted living
7 facility, is it?

8 A. No, sir.

9 Q. IKare is not a residential care
10 facility, is it?

11 A. No, sir.

12 Q. IKare is strictly a boarding home;
13 right?

14 A. Yes, sir.

15 Q. And a boarding home provides shelter
16 and food; correct?

17 A. Yes, sir.

18 Q. Did IKare employ nurses?

19 A. No, sir.

20 Q. Did IKare employ CNA, certified nursing
21 assistants?

22 A. No, sir.

23 Q. Did IKare employ any therapists?

24 A. No, sir.

25 Q. And you're none of those, are you?

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 A. No, sir.

2 Q. And no medical professional worked at
3 IKare; is that correct?

4 A. No, sir.

5 Q. And by law, isn't it true that a
6 boarding home is prohibited from providing personal
7 care services to the residents?

8 A. Yes, sir.

9 Q. In fact, I think you used the word that
10 she was a patient there. She actually wasn't a
11 patient, she was only a resident; right?

12 A. Well, we call them tenants.

13 Q. Tenants?

14 A. Yes, sir.

15 Q. So she was a tenant there; correct?

16 A. Yes, sir.

17 Q. And as a tenant, are you the operator
18 of a boarding home able to provide medical
19 attention?

20 A. No, sir.

21 Q. Are you as a boarding home operator
22 able to require a patient or a tenant or whatever
23 you want to call them, residents to take their
24 medication?

25 A. No, sir.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Q. Do you have the ability to force them
2 to take their medication?

3 A. No, sir.

4 Q. Do you have the ability to control
5 their whereabouts?

6 A. No, sir.

7 Q. So, if someone was staying at a
8 boarding home, they could leave for the entire day
9 and come back?

10 A. Yes, sir.

11 Q. In fact, they could leave and not come
12 back for a couple of days and then come back later
13 in the week; right?

14 A. Yes, sir.

15 Q. If someone sitting out in the yard at
16 the boarding home, are you required or permitted to
17 require them to come inside?

18 A. No, sir.

19 Q. What is the requirement for someone to
20 be a tenant at IKare?

21 A. Well, the requirements is they have to
22 be able to bathe, wash -- I mean, bathe, do their
23 laundry, keep their room clean and no disrespect
24 and no fighting, no cursing, no drugs, no alcohol.

25 Q. Did a tenant at the boarding home have

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 to be able to take care of themselves?

2 A. Yes, sir.

3 Q. IKare is no longer in business, is it?

4 A. No, sir.

5 Q. Is IKare, was it governed by DHEC or
6 LLR?

7 A. No, sir.

8 Q. It's not licensed or anything?

9 A. No, sir.

10 Q. Explain to us how you first got to see
11 and introduce yourself to Ms. Branton.

12 A. I was -- I deal with Three Rivers. I
13 get patients from there. And when I goes there, I
14 used to go there to see a young lady, was a friend
15 of hers and she passed away as well. And she would
16 talk to me everyday I go there, I want to go home
17 with you, you seem like you a nice person. I said,
18 you can't go with me you have to talk to your
19 family and you have to be discharged. Well, when
20 it's time for me to be discharged, can I come home
21 with you? I said you have to talk with your
22 family. And she said, you sure you coming back at
23 me? I said what I just told you, you have to talk
24 to your family. And everyday I would go there to
25 see a young man who I got, still got him, she would

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 talk to me everyday. She would be sitting to the
2 table, I just was waiting on you because you coming
3 to see Corey, his name was Corey. And she was just
4 -- she was just a pleasant person when I go in
5 there every time. I go like every other day to see
6 Corey, so I make sure that he is qualified to come
7 into the boarding home.

8 Q. And did you end up telling, at some
9 point in time, whoever at Three Rivers Behavioral
10 Health that if she needed a boarding home you would
11 take her in?

12 A. Yes, I did.

13 Q. Okay. And that's how she got to IKare?

14 A. Yes, sir.

15 Q. Did you call her daughter before she
16 came to IKare and say, is it okay if your mom comes
17 to IKare?

18 A. No, sir.

19 Q. When did you first contact Ms. Davis
20 right here?

21 A. The night that she -- the night that
22 she came, she called her daughter herself.

23 Q. Okay. Did you listen to that phone
24 call?

25 A. Yes, I did.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Q. Tell the jury about that telephone
2 call.

3 A. She was talking, she said, mom, are you
4 okay? She said, yeah. She was telling her mom she
5 was at a place, but she said, I don't know how long
6 I'm going to be here, but I'm at a place this nice
7 lady got me and the daughter was telling her mom,
8 behave now. You behave. She said I'm going to
9 behave. And the daughter said take your medicine.
10 She said, yeah, I'm going to take my medicine. And
11 she was just telling the daughter -- she asked her
12 daughter when she going to come, she was saying she
13 had to work and she asked about the grandson. I
14 don't think -- I didn't eavesdrop in on no
15 conversation. After she got off the phone with the
16 daughter, she called another friend. And her and
17 the other friend stay on the phone for about two
18 hours to talk about old days and stuff like that.

19 Q. Okay. And that's when her phone was
20 actually in her possession; right?

21 A. No, she used the house phone.

22 Q. She used the house phone --

23 A. The business phone, yes.

24 Q. Okay. Did you end up talking to Ms.

25 Davis personally about her wanting to come down and

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 visit her mom and to meet you?

2 A. Yeah, she called -- I think it was a
3 Saturday. I think the granddaughter reach out to
4 me and asked me was the address and she used her
5 mom phone to call me. And I give her the address,
6 but I think they never got there that day.

7 Q. Didn't you say that Ms. Branton had
8 gone to an appointment or was not there that day?

9 A. Yeah, she had went to a appointment and
10 she wasn't there that day and I told the daughter
11 she wasn't there. The daughter said, well, give me
12 a call when she got there. But I never called the
13 daughter back because she always tell me don't call
14 my daughter because I'm grown, you don't have to
15 call my daughter. You know, we don't get along
16 like that.

17 Q. So is it fair to say then that you were
18 kind of stuck in a hard place where you knew the
19 family wanted to see their mother, but the mother
20 was telling you that she didn't want to see them
21 right now?

22 A. Yes, I was stuck in the -- yes, I was.
23 Yes, sir.

24 Q. Okay. And it wasn't like this family
25 just didn't want her back; right?

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 A. No, it's not like they didn't want her
2 back. They was trying to get her help.

3 Q. Okay. Did you understand that the goal
4 was to once she got stabilized, got to feeling
5 better that she was actually coming back and live
6 with the family?

7 A. Yes.

8 Q. Because IKare is just a temporary
9 place?

10 A. Yes, sir.

11 Q. And we saw that it was only just eight,
12 nine days that she was even there the whole time;
13 right?

14 A. Yes, sir.

15 Q. What was the reason why she ended up
16 leaving IKare the first time?

17 A. Because she went outside the road. You
18 know, in St. Matthews you can't be wondering
19 outside the road because with pictures and she had
20 -- man, she had everything. She even had stuff
21 that she brought there, that hot jacket, her father
22 jacket. She took -- she had a chair with her. So,
23 you know...

24 Q. She started taking her stuff out of
25 IKare?

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 A. Yes, sir.

2 Q. Okay. And did she start getting off
3 her medicine at this point?

4 A. She missed one dose that day, but the
5 night medicine she would take.

6 Q. Did that throw her off?

7 A. Yes, sir.

8 Q. And then she started kind of getting in
9 the spiral of paranoia and delusions?

10 A. Yes, sir. Yes, sir, going in people
11 room calling mens her boyfriends, walking through
12 the house with no clothes on.

13 Q. And you called the ambulance; right?

14 A. Yes, sir.

15 Q. And then the ambulance took her to
16 Lexington Medical Center; right?

17 A. Yes, sir.

18 Q. Then Lexington Medical Center realized
19 that, yeah, something's wrong, she's not stabilized
20 and they ended up transporting her to the
21 behavioral health unit in Spartanburg which is at
22 Mary Black Hospital; right?

23 A. Yes, sir.

24 Q. All right. And when she was able to
25 get her medication stabilized, she was then brought

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 back to you; is that right?

2 A. Yes, sir.

3 Q. All right. How did she do when she
4 came back from Spartanburg Behavioral Health?

5 A. Oh, she was fine when she got out the
6 ambulance. She was talking. She apologized to me
7 and the two nurses -- well, the two transport
8 people brought her back said she talk about you the
9 whole time getting back to you. I said, yeah, she
10 did a number on me one time, but I still love her.

11 Q. And that goes back to what you said
12 earlier is that you were trying to help, but she
13 turned on you; right?

14 A. Yes, sir.

15 Q. Okay. Did you understand that was her
16 illness?

17 A. Yes, sir.

18 Q. How did she do when she came back from
19 Spartanburg?

20 A. She was fine.

21 Q. First you said she did fine then what
22 happened?

23 A. Oh, she started taking off the clothes
24 again. Started walking out in the street. She
25 started going on people porches. It was like she

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 | didn't -- I don't know, she just didn't want to
2 | stay in the house.

3 | Q. Did she start getting off her medicine
4 | again?

5 | A. Yes, she didn't take her medicine that
6 | night. When she came back that evening she didn't
7 | take the night medicine.

8 | Q. All right. Let's go to October 2nd,
9 | okay. October 2nd, is that the morning that you
10 | called EMS?

11 | A. Yes, sir.

12 | Q. Why did you call EMS?

13 | A. Because she was taking off her clothes.
14 | She was messing with the men. She put on that
15 | jacket again and went outside stand aside the road.
16 | Took the pictures off the wall. She just was doing
17 | weird stuff.

18 | Q. She wasn't taking medication; right?

19 | A. Yes, sir.

20 | Q. She was acting irrational; right?

21 | A. Yes, sir.

22 | Q. Was she acting delusional?

23 | A. Yes.

24 | Q. Was she acting paranoid?

25 | A. Yes, sir.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Q. Was she acting like someone who had
2 schizophrenic behaviors?

3 A. Yes, sir.

4 Q. Was she not making any sense?

5 A. No, she wasn't making no sense.

6 Q. Was she mentally sound?

7 A. Yes.

8 Q. She was mentally sound?

9 A. Yeah, she was like -- no, she wasn't
10 mentally sound.

11 Q. She was mentally unsound?

12 A. Yes, sir, unsound.

13 Q. She was sick?

14 A. Yeah, she was.

15 Q. Did you think she was a danger to
16 herself?

17 A. At one point I did at one time.

18 Q. Okay. On the 2nd? The morning of the
19 2nd; right?

20 A. Not that morning.

21 Q. Okay. But you knew on the morning of
22 the 2nd when you called the ambulance that she
23 didn't need to be at your boarding home?

24 A. Yes, I explained that to EMS as well.

25 MR. GOINGS: Mr. Williams, pull up

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 Exhibit 13, which is the RUN report.

2 Q. Ms. Hutchinson, so you don't have to
3 get down, I'm going to hand you the paper copy and
4 we'll put it up on the monitor here. You actually
5 spoke to EMS, didn't you?

6 A. Yes, sir.

7 Q. And it says 60-year old female found
8 sitting by the road at the end of the driveway.
9 Patient resident at boarding resident home placed
10 by Social Services. Staff states patient is
11 refusing to take her meds and has moved her
12 belongings to the road. Patient, that is Ms.
13 Branton, states that staff is giving her the wrong
14 meds; do you see that?

15 A. Yes, sir.

16 Q. Is that the information that you gave
17 to the paramedics?

18 A. Yes, but I didn't say I was giving her
19 wrong meds.

20 Q. Right. You didn't say that, but Ms.
21 Branton says you were giving her the wrong meds?

22 A. The correct statement right here I told
23 EMS.

24 Q. All right. And then do you know where
25 on the 2nd EMS took Ms. Branton?

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 A. TRMC.

2 Q. The Regional Medical Center here in
3 Orangeburg; right?

4 A. Yes, sir.

5 Q. Did you go with her to the hospital?

6 A. No, sir.

7 Q. What did you tell the paramedics?

8 A. I told her she was acting up. She was
9 -- well, she was beside the road already. She was
10 taking off her clothes. She refused to take her
11 meds. And she just was doing unusual things like
12 bothering with the men, I didn't like that.

13 Q. Did you ever go into the emergency room
14 with her?

15 A. No, sir.

16 Q. You didn't go to the hospital at all?

17 A. No, sir.

18 Q. Okay. Did you ever get a call from
19 anyone at The Regional Medical Center?

20 A. Yes, sir.

21 Q. When was that?

22 A. It was about when they discharged her.
23 The young man called me, told me she was being
24 discharged could I come pick her up. First -- yes,
25 and they was calling me earlier that day and I told

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 | them I was busy and the guy said whenever you get a
2 | chance, come by, pick her up, she's ready for
3 | discharge.

4 | Q. Okay. Did anyone at the hospital tell
5 | you that the emergency room doctor, Dr. Burkholz,
6 | first witness, medical doctor that testified, that
7 | he had committed her and recommended that she be
8 | admitted to stay at the hospital at the Behavioral
9 | Health Unit?

10 | A. No, sir, nobody ever told me that.

11 | Q. Did anybody tell you that the second
12 | doctor, Dr. Gonzalez, also said that she should not
13 | be released and she needs to be here at the
14 | hospital in the Behavioral Health Unit?

15 | A. No one told me that, sir.

16 | Q. Did anybody tell you that a third
17 | doctor that only been practicing medicine for two
18 | years refused to keep her and sent her out the
19 | door?

20 | A. No, sir, no one told me that either.

21 | Q. What did this gentleman you talked to
22 | tell you?

23 | A. He just said she had a UTI, if she get
24 | worse bring her back.

25 | Q. A urinary tract infection is what they

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 told you?

2 A. Yes, sir.

3 Q. But did you think she needed to go to
4 the hospital for a urinary tract infection?

5 A. No, sir, she needed to go for behavior.

6 Q. For her mental?

7 A. Yes.

8 Q. When you called the ambulance to come
9 pick her up, was it your fault that the hospital
10 just give her right back to you?

11 A. No, sir.

12 Q. Why?

13 A. Not the way she was acting.

14 Q. Not the way she was acting?

15 A. Yes, sir.

16 Q. I'm going to show you page 89 of these
17 records. Maybe I can help you find it. Page 89.
18 Look what it says. That Ms. Branton is being
19 discharged to a residential assisted living
20 facility; do you see that?

21 A. Yes, sir.

22 Q. Now, was IKare a residential assisted
23 living facility?

24 A. No, sir.

25 Q. But the hospital clearly knew that she

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 was going to a boarding home; isn't that right?

2 A. Yes, sir.

3 Q. Let me show you page 9. Flip to page
4 9. Boarding home -- although they released her to
5 a boarding home, their own paperwork said she
6 needed to go to an assisted living residential
7 facility; right?

8 A. Yes, sir.

9 Q. And an assisted living residential
10 facility has doctors, doesn't it?

11 A. Yes, sir.

12 Q. It has nurses, doesn't it?

13 A. Yes, sir.

14 MR. TANNER: Objection, Your Honor.

15 Again, if they're going to try to qualify her as an
16 expert, they have to do that. She can't testify to
17 these opinions. She's a boarding home operator as
18 they've asked her numerous times and not an
19 assisted living facility; so, therefore, it would
20 -- she wouldn't know the staffing requirements
21 there.

22 MR. GOINGS: And this witness knows the
23 distinctions between the two.

24 THE COURT: She has personal knowledge
25 of the distinctions.

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 MR. TANNER: They haven't laid any
2 foundation for that, Your Honor.

3 MR. GOINGS: I'm happy to lay that
4 foundation right now.

5 Q. Do you understand the distinctions
6 between a boarding home and a residential care
7 facility?

8 A. Yes, sir. I use to work to a resident
9 care facility.

10 Q. Tell the Hospital the difference
11 between the two.

12 A. At a residential care facility you have
13 doctors, you have nurses there. The one that I
14 came from, Presbyterian Home, had physical therapy,
15 and we had head nurses there. We had doctors
16 there. We had CNA's there. I wasn't a CNA, but I
17 was working for a patient care assistant.

18 Q. Do you have any of those at a boarding
19 home?

20 A. No, sir.

21 Q. Okay. Now, you were not in this
22 courtroom yesterday, were you?

23 A. No, sir.

24 Q. Yesterday, the hospital accused you of
25 causing Ms. Branton's death because you did not

ESTELLE HUTCHINSON - CROSS-EXAMINATION BY MR. GOINGS

1 call and take her back to the hospital on the 2nd
2 or on the 3rd. My question is, tell the jury why
3 you didn't take her back to the hospital.

4 A. The reason why I didn't take her back
5 to the hospital is because the young man that just
6 told me that she had UTI, bring her back if the UTI
7 get worse. They didn't say mental or behavior,
8 they say UTI. That's why I didn't brought her
9 back. That's why I seek help for her to another
10 place. I didn't want to put her out on the street
11 and I couldn't force her to go back home with me.

12 Q. She had just gotten discharged from the
13 hospital and they said they couldn't do anything
14 for her; right?

15 A. That's right. They showing she had a
16 UTI.

17 Q. Now, when you got Ms. Branton from The
18 Regional Medical Center, was she better?

19 A. No, sir.

20 Q. The same or worse?

21 A. She was worse. I never seen her try to
22 jump out my vehicle.

23 Q. So she tried to jump out of your
24 vehicle?

25 A. Yes, sir.

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 Q. Did she tell you that she tried to jump
2 out of the vehicle that her daughter was driving
3 when she was trying to get her help?

4 A. No, sir, she never told me that.

5 Q. Ms. Hutchinson --

6 A. Yes, sir.

7 Q. -- when you got Ms. Branton from the
8 hospital at the direction of The Regional Medical
9 Center, was she able to take care of herself?

10 A. No, sir.

11 MR. GOINGS: Nothing further from this
12 witness, Your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. TANNER:

16 Q. So now she tried to jump out of a
17 vehicle?

18 A. Yes, sir.

19 Q. But yet you kept driving the vehicle?

20 A. No, I didn't, sir. I stopped.

21 Q. Where did you stop?

22 A. I stopped on the side when you turn off
23 the side of the hospital.

24 Q. Okay. And you didn't tell me that ten
25 minutes ago when I was asking you questions about

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 | how she was when she got in the car and you said
2 | all she told you is she didn't want to go back to
3 | St. Matthews.

4 | A. She tried to jump out, sir.

5 | Q. And you -- that didn't warrant coming
6 | back to the hospital?

7 | A. The hospital -- the gentleman that
8 | discharged her, give me the paperwork, said bring
9 | her back if the UTI get worse, they didn't say
10 | mental.

11 | Q. Ms. Hutchinson, you're really not going
12 | to sit here and tell this jury that all the times
13 | you took her to Spartanburg and to Three Rivers and
14 | --

15 | A. I never took her to Three Rivers.

16 | Q. Let me finish then you can say whatever
17 | you want.

18 | A. Okay.

19 | Q. And The Regional Medical -- you called
20 | EMS, that was a mental issue, that was bad, but her
21 | trying to jump out of your car didn't have anything
22 | to do with her mental status; is that what you're
23 | telling this jury?

24 | A. No, I'm not telling the jury that. The
25 | jury -- I'm going by what the hospital told me when

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 I got in -- just from the hospital. Don't bring
2 her back if the UTI -- I sent her there for mental,
3 but they check for a UTI, so they looked over the
4 mental issue what I sent her for.

5 Q. They didn't check her for a UTI, you're
6 making that up. There's nothing in the record
7 about the UTI.

8 A. The guy did say she had a UTI. The
9 black guy did say that, she had a UTI.

10 Q. And you deny that Nurse Green told you
11 --

12 A. No, I didn't talk to no Nurse Green,
13 sir.

14 Q. Let me finish. You deny that she told
15 you to bring her back and you said if she acts out
16 what do I do and you said bring her back?

17 A. You said I talked to a lady, it was a
18 gentleman.

19 Q. There's two different nurses. There's
20 Nurse Practitioner Green and then there's Nurse
21 Shaq Terry the man.

22 A. I never talked to a lady, I talked to a
23 gentleman.

24 Q. Okay. And you now are telling the jury
25 that she tried to jump out of your car and you

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 pulled over, but then you kept driving with her?

2 A. I pulled over, I asked her what was the
3 problem. She said she wanted to speak to her
4 grandson. So I reach out to Ms. Brenda because she
5 didn't want to go back to St. Matthews. So I
6 didn't want to leave her on the street, so I tried
7 to find her a safe place.

8 Q. How far from the hospital was it where
9 she tried to jump out of the car?

10 A. When you turn off, when you're coming
11 out the hospital, it's right on the curve right
12 there before you get to the 300 building, right
13 there.

14 Q. So literally are you talking along Cook
15 Road in between the hospital and Orangeburg Tech?

16 A. You know where the 300 building at
17 right there before you get to the 300 building?

18 Q. So you're right there on the hospital
19 campus?

20 A. Yes, right there.

21 Q. You could have stopped your car there;
22 correct?

23 A. I stopped my car there to make sure she
24 don't jumped out.

25 Q. Okay. And you could have gone back to

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 the hospital, could you not of?

2 A. Yeah, I could of.

3 Q. Okay. But you didn't?

4 A. No.

5 Q. Okay. Likewise, you could have called
6 Ms. Davis and said, hey Ms. Davis, I've got your
7 momma, she's at The Regional Medical Center; right?

8 A. I could have did that, but she said
9 don't call her daughter.

10 Q. And that's another thing, Mr. Goings
11 asked you a number of questions and you just told
12 the jury about how Ms. Branton told you that she
13 had such a loving relationship and the reason that
14 she was where she was is because her family wanted
15 her to get help and wanted her to get better;
16 right? You remember all those questions?

17 A. Yes, but he didn't say that she had a
18 loving relationship. By the impression that she
19 gave me that her and her daughter didn't get along,
20 but I think it was -- you know, I should have
21 checked into that, but I didn't.

22 Q. But you didn't. But you testified when
23 he asked you that you spoke to Ms. Davis and you
24 understood from Ms. Davis that they had a loving
25 relationship?

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 A. Yeah, the way they talked on the phone
2 they did, yes.

3 Q. And that her family wanted her to get
4 better; right?

5 A. Yes, they did.

6 Q. And you're around her and you had her
7 sent to Spartanburg for mental health issues;
8 right?

9 A. Uh-huh.

10 Q. You had her sent to Three Rivers for
11 mental health?

12 A. I never sent to Three Rivers. She was
13 at Three Rivers already.

14 Q. Got her from Three Rivers; right?

15 A. Yes.

16 Q. Okay. And you knew that her family
17 just wanted her to get better, but you didn't have
18 the courtesy to tell them that she was with you,
19 did you?

20 A. The daughter know that night that she
21 was with me and she got discharged from Three
22 Rivers.

23 Q. With you from The Regional Medical
24 Center?

25 A. No, I didn't call the daughter then,

1 no, sir.

2 Q. You didn't call the daughter when you
3 got her from Spartanburg when they sent her back to
4 you; right?

5 A. No, sir.

6 Q. And all these times you went on about
7 how the boarding home, what a boarding home can do
8 and what a boarding home can't do, when you got Ms.
9 Branton from Three Rivers, you were still a
10 boarding home; right?

11 A. Sure. Correct.

12 Q. And they sent her to you; right?

13 A. Yes.

14 Q. Did you ever tell anyone at Three
15 Rivers that you were a nurse?

16 A. No, sir.

17 Q. So they knew you were a boarding home;
18 right?

19 A. Yes, they did.

20 Q. They discharged Ms. Branton to your
21 care; right?

22 A. Yes.

23 Q. Okay. And the same thing at
24 Spartanburg, did you ever tell them that you were a
25 nurse?

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 A. No. No, sir.

2 Q. And they discharged Ms. Branton back to
3 you; right?

4 A. Yes, sir.

5 Q. Okay. You testified that the family
6 was going to come see her on a Saturday; is that
7 right?

8 A. I think it was a Saturday. I'm not
9 sure what day it was, but I know it was a Saturday
10 or something like that.

11 Q. Okay. And -- but she had an
12 appointment that day?

13 A. That's what I'm saying, I don't know
14 what day it was. I know that she called and I give
15 the information to the granddaughter. She called
16 off her daughter phone and they wanted to come see
17 her. I don't know whether it was a Saturday -- a
18 Friday or a Saturday, but she wasn't there that
19 day.

20 Q. Okay. And you never called -- why
21 didn't you stop the car when you said she tried to
22 jump out of the car?

23 A. I did stop the car that how I know -- I
24 did stop -- I just said I stopped the car. Stopped
25 around the corner.

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 Q. I'm sorry. Why didn't you go back into
2 the hospital and say, this patient that was just
3 discharged tried to jump out of my car and since
4 you knew she was there for mental health reasons;
5 right, because that was why you called?

6 A. Okay. If they didn't help her the
7 first time, why do you think they were going to
8 help her the second time?

9 Q. Did you give them the opportunity?

10 A. Yes, I did. I give them the first
11 time, yes.

12 Q. Did you give them the opportunity --

13 A. Yes, I did, sir.

14 Q. Again, let me finish my question. When
15 you testified that she tried to jump out of the
16 car, that was new information; right?

17 A. Yes.

18 Q. Had she ever tried to jump out of a car
19 with you before?

20 A. No, sir.

21 Q. Okay. Did you -- but you didn't go
22 back and tell anyone in the hospital that she tried
23 to jump out of the car, did you?

24 A. No, I did not.

25 Q. Okay. You remember when Mr. Moore took

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 your deposition?

2 A. Uh-huh.

3 Q. That's a yes, for the record?

4 A. Yes, sir. Yes, sir.

5 Q. And, again, you remember me asking you
6 about money?

7 A. Yes, sir.

8 Q. And you said you gave them \$400?

9 A. Yes, sir.

10 Q. Okay. Do you remember telling

11 Mr. Moore --

12 MR. GOINGS: Your Honor, this is
13 outside the scope of the cross. He's only bringing
14 up further testimony from his direct.

15 MR. TANNER: Again, all we've heard
16 about on cross-examination was this loving
17 relationship and this caring relationship that they
18 asked her about.

19 THE COURT: You did go into the \$400 as
20 well, so I will allow it.

21 Q. Do you remember telling Mr. Moore at
22 your deposition it was like they came here, they
23 really didn't, they really wasn't concerned about
24 her because if they was they would have been, you
25 know, trying to help us with her from day one; do

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 | you remember telling Mr. Moore that?

2 | A. I don't remember. Is that Mr. Moore
3 | right there?

4 | Q. Yes, ma'am. Do you remember being
5 | deposed, giving a deposition where you raised your
6 | hand like you did today and swore to tell the
7 | truth?

8 | A. Where was this at?

9 | Q. This was June 9, 2021 at the office of
10 | Mike Horger who's a lawyer here in Orangeburg?

11 | A. Oh, we went for Ms. Brenda?

12 | Q. Uh-huh.

13 | A. I probably did say that, sir.

14 | Q. Okay. That's different than what you
15 | said today; right?

16 | A. Yeah, because memory is coming back.

17 | Q. Okay. And do you remember telling him
18 | that when they found out that she had a couple of
19 | dollars left they were down there in the blink of
20 | an eye?

21 | A. Oh, no, I didn't say that, sir. No,
22 | sir.

23 | Q. You deny --

24 | A. Is that my handwriting?

25 | Q. It's your testimony, Estelle

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 Hutchinson?

2 A. Did I write it?

3 Q. No, ma'am, it was a deposition.

4 A. Well, I didn't say that, sir.

5 Q. Okay. So the court reporter is lying
6 now too?

7 A. Probably so. I don't know.

8 Q. Okay. And you said -- you also said
9 that the daughter, Ms. Davis, came down there that
10 day; right?

11 A. Yeah, her and the granddaughter --

12 Q. Before you told me --

13 A. -- grandson.

14 Q. All right. You said the daughter, the
15 grandson, and the daughter?

16 A. Yes.

17 Q. And the granddaughter?

18 A. The daughter, the grandson, and the
19 daughter.

20 Q. Okay. And, again, despite knowing that
21 you thought they had a loving relationship, you
22 never gave Ms. Davis the courtesy of knowing her
23 momma was with Ms. Williams; correct?

24 A. If I would have really talked to the
25 daughter I probably would have got an understanding

ESTELLE HUTCHINSON - REDIRECT EXAMINATION BY MR. TANNER

1 | instead of listening to the mom, if I really would
2 | have just stopped hearing what the mom was telling
3 | me because that's her daughter. And if I really
4 | would have sit down and talk to the daughter and
5 | got the understanding, I probably would have had a
6 | different eyesight of seeing what happened and what
7 | was going on.

8 | Q. And when you have these ten
9 | conversations or two conversations, you never got
10 | to that point with her?

11 | A. The only thing when I speak with the
12 | daughter, she say, how my momma's doing today? She
13 | taking her meds? I said, she is usually person as
14 | like taking off her clothes, walking aside the
15 | road, doing whatever, but she would come back in
16 | the yard. Other than that, a long conversation, we
17 | never had a long conversation. She was concerned
18 | how she doing. Is she acting up and stuff like
19 | that.

20 | Q. But you thought she was concerned about
21 | her mother?

22 | A. She is concerned -- she was concerned,
23 | but she would ask me how she was doing.

24 | Q. Okay.

25 | MR. TANNER: Nothing further.

1 THE COURT: You may step down, Ms.
2 Hutchinson. Thank you. Would counsel please
3 approach?

4 (WHEREUPON, there was a bench
5 conference.)

6 THE COURT: Ladies and gentlemen of the
7 jury, do you need a quick break? Is everybody
8 okay? You need a break?

9 THE JURY: Yes.

10 THE COURT: Okay. So we'll take about
11 a five or ten minute break. When you're ready to
12 proceed, let me know. Please remember not to
13 discuss the case with anyone.

14 (WHEREUPON, the jury left the courtroom
15 at 11:07 a.m.)

16 THE COURT: We'll be at recess for a
17 few minutes.

18 (WHEREUPON, there was a short break.)

19 THE COURT: Thank you, everyone, please
20 have a seat. Is everyone ready for the jury?

21 MR. EVANS: Yes, Your Honor.

22 THE COURT: Let's have our jury,
23 please.

24 (WHEREUPON, the jury entered the
25 courtroom at 11:21 p.m.)

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 THE COURT: Welcome back, ladies and
2 gentlemen of the jury. We're ready to proceed with
3 the trial of this case. You may call your next
4 witness.

5 MR. EVANS: May it please the Court.
6 Plaintiff calls Dr. David Husted.

7 DAVID HUSTED,
8 being first duly sworn, was examined and testified
9 as follows:

10 THE CLERK: You may be seated.

11 THE COURT: Your witness.

12 DIRECT EXAMINATION

13 BY MR. EVANS:

14 Q. Good morning, sir.

15 A. Good morning.

16 Q. Can you please introduce yourself to
17 the ladies and gentlemen of the jury?

18 A. I'm David Husted, a physician from
19 Florida. Father of two, twin.

20 Q. What type of medicine do you practice
21 in Florida?

22 A. Psychiatry.

23 Q. Are you originally from the State of
24 Florida?

25 A. I am.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. And have you ever practiced in the
2 Carolina?

3 A. Yes, for five years I was in North
4 Carolina, Asheville area.

5 Q. Where did you go to college, sir?

6 A. University of Florida.

7 Q. How about medical school?

8 A. University of Florida.

9 Q. And as I understand it in most
10 industries they call it apprenticeship, but in
11 medicine instead of an apprenticeship it's an
12 internship, residency, and fellowship; correct?

13 A. Correct. I did an internship,
14 residency, and fellowship.

15 Q. And can you walk us through where you
16 did each one of those and in what subject?

17 A. All of them were at the University of
18 Florida. I was in Gainesville for many years.
19 Internship was in psychiatry and then the residency
20 was completing my training in psychiatry. And then
21 the fellowship was forensic psychiatry which is
22 really geared on preparing someone to be an
23 objective expert witness really emphasizing proper
24 patient evaluation review of records and answering
25 legal questions.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. And can you give us a thumbnail sketch
2 of the type of work you've done since you finished
3 your training?

4 A. Well, for a short period, I was a
5 physician at the University of Florida. I was an
6 attending physician, so I supervised residents and
7 medical students in the emergency room and also
8 evaluating patients throughout Shands Hospital
9 which is a large hospital. I worked in
10 correctional psychiatry for a couple of years in
11 Florida at a women's prison and also men's prison
12 death row. Women's prison was more for crisis
13 stabilization, so emergency situations in which
14 someone was not doing well mentally.

15 I then became medical director of a
16 geriatric psychiatric unit in Asheville -- well,
17 Hendersonville, North Carolina, that's where I was
18 for five years working both on the geriatric unit
19 which are a trained with 65 and older, average age
20 probably about 80. And also worked in what we had
21 a woman's unit which is just only women that were
22 admitted there and also worked in the emergency
23 room and a med psych unit which people that had
24 significant medical problems and psychiatric
25 problems.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 And then I took a job to come back home
2 to Florida to be the medical director of a -- the
3 psychiatric program at a large hospital, JFK. JFK
4 Main is what we call it. And that involved working
5 in psychiatric unit and also in the emergency room
6 of the psychiatric hospital and also in outpatient.
7 And then I became chairman. I was promoted to
8 chairman of the Department of Psychiatry where I
9 remain chairman.

10 And then in 2021, I opened up my own
11 psychiatric practice which is Psychiatry of the
12 Palm Beaches. I do other things too, but Mr. Evans
13 might ask me that too.

14 Q. And the stuff we heard a lot about
15 yesterday, are you board certified, sir?

16 A. I am board certified.

17 Q. And in what area?

18 A. Psychiatry.

19 Q. Now, in your professional life, have
20 you ever been called down to the emergency room to
21 evaluate a patient for admission to a behavioral
22 health unit or a mental hospital?

23 A. Literally hundreds of time. I don't
24 think it would be an exaggeration to say more than
25 a thousand times.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. And do you have an understanding of
2 what the standard of care requires for
3 psychiatrists?

4 A. I do.

5 Q. Have you had the opportunity to review
6 the medical records of Adrienne Branton?

7 A. I have.

8 MR. EVANS: At this time, Your Honor,
9 we would move to qualify Dr. Husted as an expert in
10 the field of psychiatry.

11 THE COURT: Any voir dire?

12 MR. TANNER: No objection, Your Honor.

13 THE COURT: He's qualified.

14 Q. Now, is this something that you have
15 done before, come to court and testify on behalf of
16 either doctors or patients?

17 A. Yes, I have.

18 Q. And what percentage of your time and
19 income comes from doing this type of work?

20 A. Fifteen percent. It varies from year
21 to year. It's a small percentage of what I do for
22 a living.

23 Q. And why is it that you choose to step
24 aside from your patients from time to time and come
25 do this kind of work?

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 A. I enjoy it and I think it makes me a
2 better doctor to be able -- it's a constant
3 reminder of the importance of not cutting corners.
4 The constant reminder of the importance of doing
5 things the right way the reasonably prudent
6 physician would do and what happens when you don't.
7 So I think it just constantly reminds me to do the
8 right thing.

9 Q. And you touched on it earlier, but what
10 experience do you have treating patients in that
11 specific age range of Ms. Branton, I guess they
12 call it geriatric patient?

13 A. Oh, I'm very comfortable treating
14 geriatric. During your residency, you're prepared
15 for that, but, of course, most of your training
16 occurs in real world. Seeing patients you learn
17 throughout your career. And the five years that I
18 was the medical director of that geriatric psych
19 unit in which we had 13 patients everyday on that
20 psych unit and like I said, the average age was
21 probably 80 plus, and they're there for a sundry of
22 reasons, but including schizophrenia,
23 schizoaffective disorder, they just happen to be
24 older folks that's still living and have that
25 illness and dementia and so I'm very comfortable

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 with that population.

2 Q. And that was right up, our beautiful
3 Interstate 26 in Asheville?

4 A. Yes. Yes, sir.

5 Q. And do you have an understanding of
6 what type of mental health conditions Ms. Branton
7 had been diagnosed with in the course of her life?

8 A. I do.

9 Q. Can you explain that for us, please,
10 sir?

11 A. Well, in the records for years she was
12 labeled schizophrenia which is a psychotic
13 disorder. And then later she was diagnosed with
14 schizoaffective disorder, bipolar type which means
15 a combination of schizophrenia and bipolar.

16 Q. And how are these conditions treated?

17 A. They're treated with antipsychotics and
18 mood stabilizers. When we're talking
19 schizoaffective disorder, it can be antipsychotics
20 alone or antipsychotics with mood stabilizers. So
21 medication.

22 Q. And, sir, can you explain to the ladies
23 and gentleman of the jury what the concept of a
24 baseline in psychiatry is?

25 A. When you've treated someone

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | effectively, what their typical mental state is.
2 | At that point what they're -- they live at with
3 | that effective treatment that's considered their
4 | baseline.

5 | Q. And, Doctor, you've reviewed a few
6 | thousands pages dating back over 20 years with
7 | regard to Ms. Branton; correct?

8 | A. I've reviewed a lot, yes, sir.

9 | Q. Can you explain to the ladies and
10 | gentlemen what Ms. Branton's baseline was or could
11 | be with treatment?

12 | A. She lived a normal life. She was a
13 | woman who had a boyfriend. She had friends. She
14 | was pleasant with her neighbors. Her porch was
15 | described as the hangout. She lived independently
16 | in her own apartment for 19 years, I believe. She
17 | went to a niece's wedding. She went to family
18 | reunions. She went on family vacations. She
19 | enjoyed going out to dinner. She lived a normal
20 | life. She enjoyed her son, her daughter, three
21 | grandchildren, and babysitting her
22 | great-grandchildren. She would see her
23 | psychiatrist maybe every two to three months and
24 | they didn't change the meds because she took it.
25 | It was one med, Haloperidol and she took that and

1 did well.

2 Q. Coming through the '80's and '90's,
3 sir, up until 2003, how many times had Ms. Branton
4 been in a mental health hospital?

5 A. It seems like it took five
6 hospitalizations before 2003 to stabilize her.

7 Q. And then focussing on just 2003 to
8 2018, what was the course of Ms. Branton's
9 treatment and baseline within that timeframe?

10 A. She saw her doctor every two to
11 three months. They were pleasant visits. No
12 changes were made. She was doing well. She spoke
13 of her family and what she was doing to keep busy.
14 They focused mostly on trying to lose weight, get
15 more fit and talking about how she enjoyed being
16 with her grandchildren, great-grandchildren, and
17 talking about her daughter and son.

18 Q. And that was from 2003 until 2018, sir?

19 A. Correct.

20 Q. What was sort of a bump in the road
21 that she had in 2018? If you can explain that,
22 what the course of treatment was.

23 A. It seemed from the records that her
24 boyfriend died sometime after May of 2018. And
25 what is typical is in your grief and then that can

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 trigger a recurrence of the illness or it can
2 trigger probably what happened, she stopped taking
3 her medication.

4 Q. What treatment was she provided at
5 Bryan Psychiatric?

6 A. Well, when she stopped taking her
7 medication, she became quite agitated and hostile
8 towards her daughter who would check in on her and
9 she tore up her apartment and she got very agitated
10 with her family and they brought her for an
11 emergency visit to her psychiatrist who wasn't
12 there, so she saw a nurse practitioner. And she
13 lunged at the nurse practitioner which was
14 atypical, knocked stuff off the nurse
15 practitioner's table, her desk, started screaming
16 at the staff and threatening them and so she was
17 involuntarily committed to Bryan. And she was in
18 Bryan from I believe that was July of 2018 until
19 November of 2018. So she had a long stay at Bryan.
20 And she underwent significant medication
21 adjustments.

22 Q. After that point in time, was she able
23 to head back to her baseline for a time period?

24 A. Yes. They started her on another
25 medication, Aristada which is another antipsychotic

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 that they combined with Haldol. So they had her on
2 two antipsychotics and they also provided her a
3 medication called Depakote which is a mood
4 stabilizer. And when she presented to see Dr.
5 Johnson who was her psychiatrist at Columbia Area
6 Mental Health in November, she was back to doing
7 well and she was talking about how she was going to
8 spend Thanksgiving with her daughter and
9 grandchildren. And she received that injection,
10 that Abilify injection for five, six months and had
11 visits monthly with the provider and was described
12 as warm and pleasant and doing well until about
13 April of 2019.

14 MR. EVANS: And if we can, David, pull
15 up a calendar for us to take a look at as we move
16 into this next sort of period of time.

17 Q. And were you able to tell starting in
18 the spring of 2019, sir, what seemed as though it
19 was happening with Ms. Branton to cause another
20 bump in the road?

21 A. Well, I suspect she stopped taking the
22 Haldol and Depakote because she was getting the
23 injection of the Aristada. She got that every
24 month including in April. And what happened is she
25 started getting irritable, agitated. She started

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 not thinking right and not acting right. And,
2 again, her daughter was checking in on her and she
3 got pretty angry towards her daughter and she
4 started believing she was homeless and started
5 wandering and she was walking long distances and
6 wandered into Palmetto Parkridge ER. And a doctor
7 there called her daughter and called Columbia Area
8 Mental Health because the doctor there figured, ah,
9 I don't think this is a homeless issue, I think
10 this is Ms. Branton is not thinking right issue.
11 And that's when the doctor, Dr. Widner discovered
12 that she did have mental illness, she wasn't taking
13 her medications. She had been paranoid and spoke
14 with Ms. Davis and she was involuntarily committed
15 to Three Rivers.

16 Q. And what type of facility is Three
17 Rivers, sir?

18 A. It's a psychiatric facility.

19 Q. In looking at the calendar, we know
20 that day starts on May 18th of 2019, how long is
21 Ms. Branton kept at Three Rivers the first time
22 before she's first discharged?

23 A. Goodness, I didn't count the number of
24 days, but we can all see it's a number of days.

25 Q. The records indicate that was until

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | roughly the 30th of July I know was the last night
2 | she spent -- she's discharged on the 31th of July.
3 | Focussing just on this time period, these two and a
4 | half months, what kind of treatment was provided by
5 | the doctors and nurses at Three Rivers?

6 | A. Significant medication adjustments
7 | because that's what you do. When someone's not
8 | thinking right, when they're not acting right, and
9 | they have an illness like schizophrenia or
10 | schizoaffective disorder, you know you have to
11 | adjust the medication to get it right. And then
12 | you're monitoring -- in this case, they're
13 | monitoring her for weeks because it took weeks to
14 | get her stable. You're monitoring how she's
15 | responding to that medication because just because
16 | someone is doing well for ten minutes doesn't mean
17 | that they're actually doing well. So you monitor
18 | them for days and then by the end of July they had
19 | determined that she was stable for discharge to be
20 | discharged in this case back to her daughter's
21 | house.

22 | Q. So essentially though they had gotten
23 | the right mix?

24 | A. Correct. They had increased the
25 | Haldol, the Haloperidol. They had continued the

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 injectable antipsychotic Aristada, the Abilify, and
2 they had provided her Klonopin which is a
3 medication that is an anxiety medication, but it's
4 also used at times as a mood stabilizer.

5 Q. And we know that on the 31st, instead
6 of going back to her own apartment, she was
7 discharged to live with her daughter. What do the
8 records indicate happens once Ms. Branton gets home
9 for that roughly one week?

10 A. Well, unfortunately, she starts doing
11 poorly. My suspicion is because she's not taking
12 the Haldol which is a pill that she has to take and
13 she's not taking the Klonopin and so she starts
14 becoming pretty paranoid and pretty destructive.
15 She thinks that her grandson and her daughter are
16 poisoning her food. She refuses to eat. She tries
17 to -- a common thing for her was wandering. She
18 tried to wander out of the house, her daughter
19 tries to stop her, she becomes violent towards Ms.
20 Davis. She threatened to cut body parts off of her
21 grandson. And so in desperation, they brought her
22 to the Lexington Police Department.

23 Q. And this is all stuff that plays out in
24 the official medical records; correct?

25 A. It's all in the medical records. This

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 is the information I got was from the medical
2 records.

3 Q. And then where does Ms. Branton go once
4 the Lexington Police Department take her for some
5 medical treatment?

6 A. Well, when she arrived at the Lexington
7 Police Department, they quickly -- they're police
8 officers, but they quickly figure out she's not
9 right. She tells them that her family is trying to
10 poison her food, but they determined she looks like
11 she needs to get help and so she's involuntarily
12 committed back to Three Rivers.

13 Q. And she then spends from the 8th of
14 August, the last night would be the 12th of
15 September, discharged on the 13th of September, so
16 she spends another several weeks back in the same
17 Three Rivers?

18 A. Correct. And actually interestingly
19 enough, when they got her back on the Haloperidol,
20 10 milligrams three times a day and the Klonopin, 1
21 milligram twice a day and the Aristada, she's
22 stabilized. She stayed a little longer simply
23 because she developed pneumonia and got sepsis and
24 had to go to another hospital and then come back.
25 But essentially the notes record that she -- once

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 they got her back on her medication, she started
2 doing well.

3 Q. And, Doctor, if you could just thumb
4 through this, this is something that was a part of
5 your file electronically. These are the medical
6 records from that treatment over those several
7 months at Three Rivers. Does that appear to be a
8 fair and accurate copy of the medical records from
9 the treatment at Three Rivers?

10 A. Well, it says, Three Rivers. It's a
11 lot of records which was consistent. And in there
12 it says, Three Rivers. It's Three Rivers' records,
13 yes.

14 Q. And those are the records that you
15 reviewed?

16 A. Yes, sir.

17 MR. EVANS: And we've marked these,
18 Your Honor, just as Plaintiff's Exhibit 19 just for
19 ID only, we don't need to put these into the
20 record.

21 THE COURT: Yes, sir.

22 Q. And during these two hospitalizations
23 at Three Rivers, did Ms. Branton indicate signs of
24 active psychosis at any point?

25 A. Oh, yeah. She thought she was cured.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 And psychosis is, again, you're thinking's off,
2 your behavior is off, you can hallucinate and you
3 can also believe things that aren't true. And she
4 believed that her diabetes was cured. She also
5 declared that she was a saint and a profit. She
6 thought that the staff at Three Rivers owed her
7 money. She at one point thought it was her
8 birthday when it wasn't. She was really worried
9 about her son who lives in Atlanta about needing
10 clothing and shoes and wanted a two-week pass to
11 have to go help him and he didn't need help. She
12 was meowing like a cat at one point. She was
13 paranoid about the staff. She thought her daughter
14 and landlord were trying to trap her.

15 Q. And, unfortunately, Dr. Husted, is it
16 common for those who have schizophrenia to have
17 delusions about conflicts with those that they are
18 closest too?

19 A. Well, it's absolutely common. It's
20 because the people that they're closest to are the
21 people that are going to be the most concerned
22 about. And so the people that are most concerned
23 about them are going to be advocates for their
24 health and try to get them to take their medication
25 and go to the doctor. And they go from being your

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 ally to your -- in your mind, to your enemy when
2 you're ill and you don't think you need medication,
3 you don't think you need to go to the doctor, you
4 have no insight you have a problem, you don't even
5 understand the problem. You don't understand why
6 you're here. You have a variety of different
7 explanations why you're in the hospital in the
8 emergency room and it's not actually reality. Any
9 one else if they were asked would tell the staff
10 why they're really there. But according to the
11 patient, it's going to be a different reason
12 altogether and they will commonly view their family
13 as enemies.

14 And so in the Columbia Area Mental
15 Health records, she would go back to realizing her
16 daughter was supportive of her and that she would
17 speak warmly about her daughter and grandchildren
18 and great-grandchildren and son when she was
19 stabilized and would admit that -- in the records,
20 she admitted that she just felt like whenever she
21 would stop taking her meds, her daughter would get
22 her committed and that upset her.

23 Q. Dr. Husted, at the end of the Three
24 Rivers stay where all this medical care was
25 administered, did the doctors think they had found

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 a mix of medications that worked for Ms. Branton at
2 the time they discharged her?

3 A. They did. I mean, again, when she came
4 back to Three Rivers, just getting her back on the
5 Haloperidol three times a day, the Klonopin twice a
6 day, the Aristada injection, she had improved
7 greatly pretty quickly. And by the time that she
8 was discharged, they felt she was stable to
9 discharge to a lower level of care which means some
10 place other than the hospital.

11 Q. These medicines are a little bit
12 confusing to me. So Haldol, we've heard referred
13 to a number of times yesterday. What does that
14 treat?

15 A. It's an antipsychotic. It's an old
16 one, but still a very good one. It can be a very
17 effective treatment. Just because it's old,
18 doesn't make it bad. It can carry more side
19 effects. Everything we prescribe carries side
20 effects. You're always weighing that. We don't
21 discount the side effects. We're working with the
22 patient to try to find what's effective, but also
23 tolerated by them.

24 And so Haloperidol treats schizophrenia
25 and treats schizoaffective disorder bipolar type.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 It helped with that abnormal thinking, it helps
2 with that abnormal behavior, and it can take away
3 the hallucinations which is hearing voices or
4 seeing things and can take away the delusions. But
5 the paranoia or grandiose religious beliefs someone
6 might have when they're not well.

7 Q. And then that second one, Klonopin,
8 that's not an antipsychotic, that's something that
9 sort of chills themselves out; right?

10 A. Yeah, Klonopin is traditionally used
11 for anxiety. Klonopin is what we call a sedative,
12 it's a benzodiazapine is the fancy term. It's an
13 anxiety medication. So Klonopin can be taken for
14 someone who just has a lot of anxiety. Klonopin
15 has been found to have some mood stabilizing
16 properties. So when someone has a bipolar element
17 to their illness, you could put someone on Klonopin
18 to try to calm them. And the bipolar is that
19 maniac depression. So with schizoaffective
20 disorder bipolar type, you've got a mixture of this
21 mood elevation or mood swings, massive mood swings,
22 which can carry with it a lot of anger and
23 impulsivity and recklessness and poor sleep. And
24 then you also have the schizophrenia which is the
25 brain isn't working, you're not thinking right and

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | you're not acting right and you're hallucinating
2 | and delusional.

3 | Q. And then, Dr. Husted, there's another
4 | age drug that pops up in the records and I've seen
5 | it referred to as Abilify and Aristada and then by,
6 | I guess, it's generic name which is aripiprazole?

7 | A. Aripiprazole. So Abilify is a more
8 | modern antipsychotic. It is common in individuals
9 | who are not doing well. The ideal is to use one
10 | antipsychotic. One. The ideal is to use only one
11 | med. And for years she was only on one med,
12 | Haloperidol. She did well. Unfortunately, when
13 | someone stops taking their medications and gets
14 | ill, you might have to use two or even three meds
15 | to pull them back into stability. And maybe
16 | months, years down the road you're able to trim it
17 | back down to one. Maybe. With time, the brain
18 | heals.

19 | But Aristada, if it -- is the
20 | long-acting injectable form of Abilify. What
21 | long-acting injectable means is you give an
22 | injection and then it lasts for a whole month and
23 | it's great for people who are not good at taking
24 | their pills. And schizophrenia and schizoaffective
25 | disorder bipolar type people are prone to not take

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 their meds as with Ms. Branton and so using
2 Aristada, had worked with Haldol, had worked for
3 five months, that's why it makes sense to me that
4 Three Rivers would use that. Because Bryan had
5 done that and she had done well from November of
6 2018 to April of 2019.

7 Q. And so at this point when Ms. Branton
8 is discharged, she's on benzo, the Klonopin?

9 A. Correct.

10 Q. And then these two antipsychotics, the
11 one that starts with an A and is known by three
12 different names and then the old-fashioned Haldol?

13 A. Correct. Yes.

14 Q. And the only reason I ask is the jury's
15 going to hear later in the week from TRMC's expert,
16 Dr. Hardesty, who was critical of using those two
17 antipsychotics in connection. But at this point,
18 did the doctors at Three Rivers think that
19 combination was appropriate?

20 A. They did and it was. You, again, if I
21 already said, forgive me, but it's common to use
22 two antipsychotics in someone who is doing very
23 poorly. The goal is to ultimately be able to
24 transition to one antipsychotic. But Three Rivers
25 used those two antipsychotics because it worked

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | when Bryan used those three antipsychotics -- I
2 | mean, two antipsychotics. She did well for five
3 | months on that combination. The crucial thing was
4 | just keep taking it. That's the key thing.

5 | Q. Dr. Husted, Mr. Tanner asked the ladies
6 | in the jury -- ladies and gentlemen of the jury two
7 | or three times yesterday, where's Three Rivers in
8 | this? Where's Three Rivers in this? Why aren't
9 | they in the courtroom? Did you see any deviations
10 | in the standard of care by any of the physicians or
11 | staff at Three Rivers when they administered all
12 | this kind of treatment?

13 | A. No, they were trying to help her. It
14 | doesn't make sense to me because Three Rivers spent
15 | countless days working hard to stabilize Ms.
16 | Branton and get her on a medication combination
17 | that was effective. They hospitalized and kept her
18 | until she was stable. And then when she was not
19 | stable, they took her back and hospitalized and
20 | kept her until she was stable.

21 | Q. And at the time she left, they thought
22 | she was stable; correct?

23 | A. Correct.

24 | Q. And we just heard, I guess you were in
25 | the courtroom for Ms. Hutchinson's testimony, we

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 know that she then went to live with Ms. Hutchinson
2 for at this point I guess seven and a half days;
3 correct?

4 A. Correct.

5 Q. And what happened subsequently plays
6 out in the medical records; correct?

7 A. Yes, it does.

8 Q. What happens to cause Ms. Branton to
9 decompensate in that time period based on your
10 review of the medical records?

11 A. I strongly suspect Ms. Branton was not
12 taking much of her Haldol or Klonopin, if any. So
13 I strongly suspect that when she left Three Rivers
14 to go to Ms. Hutchinson's boarding home that and,
15 again, it was up to Ms. Branton to take her
16 medication. She ultimately, she was the one that
17 was responsible for taking her medication and
18 unfortunately, she did not.

19 Q. Where did she go next, Doctor?

20 A. Well, from the behaviors that she
21 manifested which we're not surprised by when she
22 decompensates, it goes back to being agitated,
23 wanting to wander out, putting yourself in
24 dangerous situations, standing out in the road,
25 hostile towards people, picking fights, thinking

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 people are her husband, taking off her clothes, so
2 she gets involuntarily committed and ends up
3 ultimately at Mary Black. I think she spent a
4 couple of days at one hospital in the ED waiting
5 for a bed to become available and then ends up at
6 Spartanburg.

7 Q. And, Dr. Husted, what I've marked as
8 Plaintiff's Exhibit 18 for identification purposes
9 only or what I understand to be the Spartanburg and
10 Mary Black records, do those --

11 A. Yes, sir.

12 Q. Do those look like the records that are
13 a part of your file that were part of your review?

14 A. Yes, sir.

15 Q. Tell the ladies and gentlemen of the
16 jury what kind of treatment was tried out at
17 Spartanburg at Mary Black Hospital?

18 A. Well, Dr. Bhatia, the psychiatrist
19 there, he attempted to stabilize her on one
20 medication, one antipsychotic, I mean. He instead
21 of providing Haldol, from what I can see in the
22 records, he decided to try oral Abilify and use an
23 Abilify injection, a reasonable approach, try and
24 see if he can just keep her stable on that one
25 antipsychotic. She takes the -- starts at a low

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 dose of the oral Abilify and then they go up on it
2 and she gets that injection of Abilify Maintena
3 which is similar to Aristada. They're both
4 Abilify. They're both long-acting injections
5 that will last about 30 days.

6 And she stays, I guess, about seven
7 days or so, and I mean, when she first showed up
8 she said she was there for a checkup. She had no
9 understanding or really rational explanation for
10 why she was in the hospital. She had no insight.

11 Dr. Bhatia described her as pleasant,
12 but evidently psychotic. And during the course of
13 her hospitalization, I think he came down on the
14 Klonopin to from 1 milligram twice a day to half a
15 milligram twice a day. And by the -- by
16 October 1st, she was stable enough for discharge to
17 a lower level of care.

18 Q. Same question was asked by TRMC
19 yesterday, Dr. Husted, as to where is Spartanburg?
20 Where is Spartanburg? Where is Spartanburg? Did
21 you see any deviations in the standard of care by
22 any of the staff or physicians within the Mary
23 Black Hospital or the Spartanburg medical system?

24 A. No, it doesn't make sense to me.
25 They're, again, trying to help her and they

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 hospitalized her and kept her on a psychiatric unit
2 adjusting medication providing her treatment and
3 monitoring her response to that medication to the
4 point where she appeared stable for discharge. Dr.
5 Bhatia, I have no criticisms of.

6 Q. In looking at the calendar, it appears
7 that she's in the acute care unit or the regular
8 hospital for two days -- excuse me, two nights and
9 then seven nights in the locked behavioral health
10 unit, so a total of nine nights; correct?

11 A. Nine nights of being under an
12 involuntary commitment, yes, in a hospital setting.

13 Q. And now that brings us into the crucial
14 time period of October 1st and October 2nd. Was
15 Ms. Branton compliant with the plan that was set up
16 at Spartanburg when she left and went back to Ms.
17 Hutchinson's boarding home?

18 A. I doubt she took a pill. I doubt -- I
19 mean, maybe she did. She clearly was not well.
20 And, unfortunately, soon demonstrated that she was
21 not able to be outside of the hospital.

22 Q. And the ladies and gentleman of the
23 jury heard extensive testimony from Dr. Burkholz
24 yesterday here live in person, you understand that
25 Dr. Burkholz then evaluated Ms. Branton; correct?

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 A. Correct.

2 Q. And not as an emergency room physician,
3 but as a psychiatrist who works with emergency room
4 physicians from that standpoint, do you have any
5 criticisms of any of the treatment provided by Dr.
6 Burkholz?

7 A. No. Dr. Burkholz -- I mean, the
8 records, TRMC records, say that she's there because
9 her medications aren't right. It seems like the
10 TRMC records say what she said is the reason she's
11 there. What she said is the reason she's there is
12 absolutely not the reason she's there. The records
13 though, however unfortunately in triage, say that
14 she's there because her medications aren't right.

15 So the Regional Medical Center doesn't
16 even get right why she's there. She was there
17 because she was acting very unsafe, bizarre,
18 erratic. She's not thinking right. She's not
19 behaving right, she's clearly mentally unwell.
20 She's there because EMS was contacted out of
21 desperation by Ms. Hutchinson because she's doing
22 poorly, she's putting herself in harms way in the
23 road. So The Regional Medical Center would be
24 right to actually say that's why she's there, but
25 they don't say that. They say she's there because

1 her meds aren't right.

2 And so -- but Dr. Burkholz quickly
3 figured out it's not a med issue, it's an Adrienne
4 Branton issue that she's not doing well. Dr.
5 Burkholz observed that she was agitated, labile,
6 poor insight, poor judgement, impulsive, flight of
7 ideas, flight of ideas means that your thoughts are
8 all over the place. You're saying one thing,
9 another thing, another thing, that's a manic
10 person. You can tell that they're not thinking
11 right because of the way they're talking.

12 So Dr. Burkholz actually gave her an
13 injection of Haldol and Ativan which is another
14 medication like Klonopin to calm someone down and
15 Benadryl to help prevent side effects from Haldol.
16 Because Dr. Burkholz realizes she's not well and
17 puts her under an involuntary commitment and asks
18 Dr. Gonzalez to see her.

19 Q. What's the significance of putting
20 somebody under an involuntary commitment?

21 A. Well, it's you recognizing as a
22 physician that this person is not mentally well and
23 as a result of their mental illness, they are
24 either going to hurt themselves or put themselves
25 in harms way. Because even if they have no overt,

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 no actual thought of hurting themselves, we all
2 know that if you're wandering in the road and
3 you're thinking that people are your husband who's
4 not your husband and you're taking off your clothes
5 and you're attacking people, something bad is going
6 to happen. We all know something bad is about to
7 happen and so an involuntary commitment is to
8 prevent that. They have a mental illness and they
9 need to be somewhere safe.

10 Q. We know that Dr. Gonzalez then
11 evaluates Ms. Branton; correct?

12 A. Correct.

13 Q. Can you walk me through your opinions
14 as they relate to the examination and
15 recommendations by Dr. Gonzalez?

16 A. Dr. Gonzalez came to the right
17 conclusion. He determined that she was not well.
18 He observed that she was depressed, anxious,
19 agitated, impulsive, labile in her mood which means
20 mood up and down. That she had poor insight in
21 judgement that she needed actually to be on the
22 behavioral health unit for stabilization and he
23 actually recommended putting her on Haldol
24 Decanoate which I think is an excellent idea. That
25 medication, that Haldol, that seems to be a really

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | crucial part of her wellness, the medication that
2 | kept her well for 15 years. That medication now
3 | given as an injection and it lasts for 30 days, so
4 | that we don't have to worry about her taking the
5 | pill. That was Dr. Gonzalez' plan. I think that
6 | was an excellent plan.

7 | Q. And that's sort of a new piece of the
8 | puzzle this Haldol injection or Decanoate; correct?

9 | A. Correct. It's a new piece that just
10 | makes perfect sense.

11 | Q. There was a lot of trial and error done
12 | to try and get the right mix at Spartanburg;
13 | correct?

14 | A. Correct.

15 | Q. And there was a lot of trial and error
16 | trying to get the right mix at Three Rivers;
17 | correct?

18 | A. Correct.

19 | Q. And both of these facilities thought
20 | they had gotten the appropriate mix; correct?

21 | A. Correct.

22 | Q. But each time, what happened with Ms.
23 | Branton in taking the pills?

24 | A. She didn't take them. And so that's a
25 | crucial problem.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. So doing this right here, using this
2 30-day injection would address that problem?

3 A. Correct. You keep at it until you get
4 it right. Psychiatry is trial and error. And it's
5 a frustrating thing for more as a psychiatrist and
6 frustrating for the patient by telling them you're
7 not a guinea pig, it's just we're trying to figure
8 out what works for you. Because what works for
9 you, I only met your brain once. I know the
10 illness, but I just met you once and we're trying
11 to find what works for your brain.

12 And so if it takes five
13 hospitalizations, like it did before 2003, you do
14 the five hospitalizations until you get it right.
15 Because then that person can live 15 years
16 independently or 19 years independently and have a
17 normal life. So you do what it takes to get it
18 right.

19 Q. Now, Dr. Husted, did you find anywhere
20 in the record from The Regional Medical Center
21 where it was disclosed officially that Ms. Branton
22 had just gotten out of the Spartanburg Medical
23 Center yesterday?

24 A. Yes. Shaq -- sorry, I blanked on the
25 last name, the LPN that gave the injection of the

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Haldol, the antipsychotic actually documented that
2 she had been at Spartanburg until the day before.

3 Q. And we'll take a look, that record is
4 already in evidence as Plaintiff's Exhibit 5. Is
5 this the record that you're referring to?

6 A. Yes, Shaq Terry.

7 Q. And how does electronic medical record
8 work? Is that something that everybody can see
9 once it's entered?

10 A. Yeah, everybody can see it, they just
11 got to actually read it.

12 Q. So it's right there in the chart that
13 she just got out of the hospital yesterday?

14 A. Correct.

15 Q. And we know Ms. Hutchinson, at least
16 she testified she wasn't at the hospital, but who
17 is the source of this information?

18 A. Ms. Hutchinson.

19 Q. So at some point, that information was
20 relayed that I just got this lady yesterday from
21 Spartanburg Hospital; right?

22 A. Reading into this as things play out,
23 it seems like Shaq Terry contacted Ms. Hutchinson,
24 the male contacted her and Ms. Hutchinson reports
25 Spartanburg is where Ms. Branton was until

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | yesterday. And this is put in the chart, but
2 | unfortunately, no one reads it and it's not
3 | communicated to the staff. It's staff not talking
4 | to each other. And so nobody at Regional Medical
5 | Center, they first said they don't know why she's
6 | there. They think they do, but they don't. And
7 | they don't convey crucial information and don't
8 | read it.

9 | Q. With a mental health patient, what's
10 | the significance of just having been released from
11 | the hospital the day before?

12 | A. Well, if someone is back in the ER, a
13 | day after they got out of a psychiatric hospital,
14 | it alerts the reasonable prudent clinician to
15 | realize that, okay, number one, I'm not dealing
16 | with a, like, medication side effect issue, I'm --
17 | maybe it's a tip off to Dr. West, hey, I'm dealing
18 | with mental illness here. I'm dealing with someone
19 | who's not doing right. And it would prompt Dr.
20 | West to ask, one would think, why was she in
21 | Spartanburg and explore that. Explore to ask why
22 | she was in Spartanburg which would reveal what all
23 | of you have heard. And then that could prompt Dr.
24 | West to hopefully talk to Ms. Hutchinson more and
25 | gather the information to actually realize, oh,

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 she's here because she's got severe mental illness,
2 she's not taking her meds, she's not doing well,
3 and she's a danger to herself. This is not about
4 Klonopin causing dizziness.

5 Q. Now, Dr. Husted, it doesn't appear
6 based on the testimony yesterday that either Dr.
7 Gonzalez or Dr. Burkholz knew about this
8 Spartanburg admission. Let's assume they did for
9 purposes of this question. Assuming they didn't
10 pick up on this note, Dr. Burkholz and Dr.
11 Gonzalez, why aren't you mad at them?

12 A. Because they came to the right
13 conclusion. They didn't know that, but using their
14 eyes and talking to Ms. Branton, they realized that
15 even though Ms. Branton said the reason she was
16 there is because people aren't giving her the right
17 meds, they realized Ms. Branton's there because
18 she's got severe mental illness that's not stable.

19 So even if they didn't know she was in
20 Spartanburg because they didn't read that, even if
21 they didn't reach out to Ms. Hutchinson, even if
22 they didn't reach out to Ms. Davis, even if they
23 didn't go and get the Three Rivers' records or
24 Spartanburg records, they still came to the right
25 conclusion. They realized she's ill and she needs

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 hospitalization for stability.

2 Q. Essentially you don't need to look both
3 ways if you're not going to jump into traffic;
4 right?

5 A. I can see that saying being applicable.

6 Q. Now, in case you'd like to look at it,
7 what is Exhibit No. 1 is the treatment that was
8 actually provided by Dr. West. And before you ask
9 -- excuse me, before I ask you any specific
10 questions about his treatment, can you explain to
11 the ladies and gentleman of the jury what the
12 standard of care means in psychiatry?

13 A. What would the reasonably prudent
14 psychiatrist do in this situation or a situation
15 like this.

16 Q. And did you find multiple deviations in
17 connection with Dr. West's treatment?

18 A. I did.

19 Q. Can you walk these ladies and gentlemen
20 through the deviations that you found?

21 A. As a psychiatrist, of course, I talk to
22 my patient. Of course, I ask them necessary
23 questions and hopefully make the right
24 observations. But I also realize that my patient,
25 especially if they're severely ill, will not be

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | able to tell me really why they're there. They
2 | either don't want to tell me or they don't have an
3 | understanding of why they're there. And I know
4 | that the questions I ask, if I'm talking to someone
5 | who's an unreliable historian, I'm not going to get
6 | the right answers.

7 | So I know I cannot restrict my
8 | evaluation to that one person. I realize I need to
9 | ask more questions of other people. I can reach
10 | out and should reach out to the caregiver. A very
11 | standard thing that I've done hundreds of times in
12 | the emergency room, does not take much effort.
13 | It's harder because the right thing is usually the
14 | harder thing to do. It does take some effort, but
15 | it's the right thing to do. And it's not actually
16 | that hard, you just reach out to Ms. Hutchinson.
17 | She'll tell you she's been acting out. She's not
18 | been acting right.

19 | Ask some questions as a mental health
20 | professional and you'll be able to figure out what
21 | that actually equals. Reach out to Ms. Davis, her
22 | daughter, who knows her well. You'll find out a
23 | wealth of information. It won't take a rocket
24 | scientist to figure out she needs to be in the
25 | hospital. And Dr. West just focused on what Ms.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Branton told him which wasn't even the right
2 information. I'm here because my meds aren't
3 right. Dr. West focused on Klonopin and dizziness
4 from Klonopin. She wasn't even taking her
5 medication.

6 So it's kind of silly to me to say that
7 you're doing something effective by stopping a
8 medication she wasn't even taking. And then he's
9 focussing on how she's dizzy. She's not there
10 because she's dizzy. She might be dizzy, I'm not
11 questioning that, but we all know that's not the
12 reason why she's at The Regional Medical Center.

13 Dr. West restricted all of his
14 questions to Ms. Branton. Then what also astounds
15 me, the reasonably prudent clinician would say,
16 okay, well, I think she's stable, but I see Dr.
17 Gonzalez, my colleague, a psychiatrist, actually
18 thinks she needs to be on the behavioral health
19 unit. Maybe I'll ask Dr. Gonzalez what he observed
20 or found out that is different than what I'm
21 thinking.

22 And Dr. Burkholz, the emergency room
23 doctor who's right there, I'm here, he's right over
24 there, I can go ask him why he put her under an
25 involuntary commitment and why he give her an

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 injection of Haldol. Why did he do that? What
2 made him do that? Let me go talk to him. Dr. West
3 doesn't do that. Dr. West restricts all of his
4 questions to Ms. Branton who's not a reliable
5 historian, thinks this is all about Klonopin and
6 dizziness, thinks that he's doing something
7 effective by stopping the medication she's not even
8 taking and says that she's stable to go to a
9 boarding home.

10 Now, we also know that if he had
11 explored like I said he should of, he would have
12 realized she can't go to a boarding home. She's
13 not capable of taking care of herself and making
14 rational decisions and she's been wandering in the
15 road, she's been standing out in the middle of the
16 road, she's been taking her belongings and putting
17 them out in the road. She's been taking off her
18 clothes and thinking that the people in the
19 boarding home are her husband. She's been
20 attacking people. She -- and she's not taking her
21 meds. She can't go to a boarding home. They can't
22 make sure she takes her meds. They can't even
23 provide her for her own needs. She's got to be
24 able to provide for her needs.

25 So he thinks that she can go safely to

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 a boarding home which just means he's completely
2 missing the boat here because she can't go safely
3 to a boarding home.

4 Q. A couple of follow-ups to that, Dr.
5 Husted. Now, you and I and the lawyers behind both
6 tables that had the benefit of seeing into the
7 future, so to speak, and Dr. West gave his trial
8 testimony last week on videotape rather than coming
9 live, and you've had the chance to review his
10 testimony that will be played for the ladies and
11 gentlemen of the jury; correct?

12 A. I have.

13 Q. And I'm paraphrasing his testimony, but
14 as I understand it, his response was, why didn't
15 you get the Spartanburg records? Why didn't you
16 call the Spartanburg doctor? His response to that
17 was, hey, man, that's too hard.

18 MR. TANNER: Your Honor, I object. If
19 he's going to ask the question that hadn't been
20 admitted into evidence, he needs to ask the proper
21 question not just some characterization. That's
22 not what Dr. West said. In fact, the Spartanburg
23 record wasn't even finalized until October 3rd, so
24 no one could have reviewed it on October 2nd.

25 MR. EVANS: I'll rephrase, Your Honor.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 THE COURT: Thank you.

2 Q. Now, Dr. West was asked did he have the
3 ability to call Spartanburg; right?

4 A. I recall that.

5 Q. And he was asked, did he have the
6 ability to either call or fax or somehow obtain the
7 records from the Spartanburg Medical Center in the
8 Mary Black Hospital; correct?

9 A. Correct.

10 Q. Would he even have had to have a HIPPA
11 release signed?

12 A. No. Your HIPPA allows you in an
13 emergency situations over that person's objection.
14 You can reach out and get any information you need.
15 So if Ms. Branton said, do not call Spartanburg,
16 you can call Spartanburg. If she says, do not call
17 Three Rivers, you can call Three Rivers. If she
18 says do not call Ms. Davis, okay, we can definitely
19 call Ms. Davis. In fact, that's actually a tip
20 off, hmm, maybe I should call Ms. Davis. If she
21 says, don't call Ms. Hutchinson, you could call Ms.
22 Hutchinson. You can gather whatever information
23 you need. In fact, you have to gather whatever
24 information you need to ensure that what you're
25 about to do is not dangerous.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. And we know that Dr. West did not in
2 fact do that; correct? He did not contact
3 Spartanburg doctor, he didn't try and get the
4 Spartanburg records?

5 A. He didn't do that.

6 Q. And he indicated that that would
7 involve some level of difficulty; correct?

8 A. He indicated that, yes.

9 Q. What's your response to that? How
10 difficult is it, Dr. Husted?

11 A. It's not. Again, the right thing is
12 always the harder thing. It's very easy to not do
13 the right thing. It's very easy to spend
14 20 minutes with someone, only ask them questions,
15 call no one, seek out no other information, say
16 that they're ready to go and safe to go back to a
17 boarding home. That's easy to do. Very, very
18 easy.

19 Q. And, Dr. Husted, did he even need to
20 get all these 400 pages and comb through them to
21 understand the diagnosis?

22 A. No, you don't even need records to
23 finalize, for instance, Spartanburg. He can reach
24 out and find out that she was in Spartanburg for
25 seven days on Mary Black psychiatric unit. You

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 don't even need the records necessarily to be
2 finalized to figure that out and that's a tip off,
3 I'm dealing with someone, I'm evaluating someone
4 who's a day removed from being seven days on a
5 psychiatric unit. This is a clue. Maybe I pursue
6 this. If I speak with Ms. Hutchinson I'll find out
7 a lot more. If I speak with Ms. Davis I'll find
8 out a lot more. All of this Dr. West can do. And
9 Three Rivers he absolutely can get the records
10 from. And the belief that that's arduous to get
11 Three Rivers' records. Hospitals are open 24/7, so
12 this amount of time, we're not dealing with this.
13 Hospitals are open 24/7 and everything is
14 electronic. And we also have fax if you actually
15 want to go with paper. There is a way to get
16 records.

17 In the emergency room, those hundreds
18 of times that I've evaluated people, I strive to do
19 the right thing because I don't want dangerous
20 decisions to be made under my name. And what you
21 do is you can have your social worker or your
22 staff, you don't even have to do it yourself, you
23 say, could you please get these records, call me
24 when you got them, I'll come back down and finish
25 my evaluation of her. Because if you're a busy

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 doctor and you've got other things to do in the
2 hospital, you don't have to finalize your
3 evaluation right there in that 20 minute period.
4 You get that information, you get me Ms.
5 Hutchinson's phone number, please, I'll call her
6 when you have it. Get me Ms. Davis' phone number,
7 I'll call when you have it, just let me know and
8 then you can come back and finish your evaluation.
9 Once all that information is gathered for you.
10 There are plenty of people that will do that for
11 you.

12 Q. Quick question, Dr. Husted. And you
13 made a point, Doctor, most of the medical records
14 are electronic these days; right?

15 A. Yes, sir.

16 Q. And sometimes there's fields kind of
17 like when you're buying something online, sometimes
18 there's a drop down menu; correct?

19 A. Yes, sir.

20 Q. Kind of like when I'm ordering
21 something on Amazon and wants to know if I'm Mr. or
22 Mrs. or Miss and there's a choice?

23 A. Correct.

24 Q. You can also free text?

25 A. Yes, you can free type. Yes.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. What does that mean?

2 A. You're typing into the chart. A lot of
3 times on electronic medical records they only give
4 you so many options to click off on. And so if
5 there's something that is not one of those options,
6 you can actually just type in something that wasn't
7 an option.

8 Q. And in his trial testimony, Dr. West
9 testified that he text -- excuse me, pretexted this
10 portion, lives at a boarding home?

11 A. Yes, sir.

12 Q. So he would have typed that in himself?

13 A. Correct.

14 Q. So there's no question, according to
15 the records, that Dr. West was advised that this
16 patient is going to a boarding home verses a
17 residential care facility; right?

18 A. Correct.

19 Q. In medicine, what is an activity of
20 daily living?

21 A. The things that we do to take care of
22 ourselves. We feed ourselves. We bathe ourselves.
23 We toilet ourselves. We dress ourselves.

24 Q. Do you have an opinion as to whether or
25 not at this stage when Ms. Branton is discharged on

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | October 2nd whether she was capable of managing her
2 | own medication?

3 | A. She was not capable of managing her own
4 | medication.

5 | Q. Do you have an opinion as to whether or
6 | not Ms. Branton was still actively psychotic at
7 | this stage?

8 | A. She was actively psychotic. She was
9 | not thinking right. She was not behaving right.
10 | Those are two aspects of psychosis and she had
11 | delusional beliefs.

12 | Q. Also within this chart at Spartanburg,
13 | for the first time in her medical records there's a
14 | notation that Ms. Branton has some early onset of
15 | dementia, were you aware of that?

16 | A. I saw that.

17 | Q. Does that appear to have been picked up
18 | by Dr. West based on his trial testimony that you
19 | read?

20 | A. I didn't see any evidence of that.

21 | Q. Would that be relevant as to whether or
22 | not this woman is an accurate historian?

23 | A. Well, it doesn't make you a better
24 | historian.

25 | Q. Is that something that could have been

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | ascertained had the Spartanburg physician been
2 | talked to and the medical records reviewed?

3 | A. Yes.

4 | Q. What did Dr. West testify that his
5 | understanding of the reason that Ms. Branton is
6 | even in front of him, what's her primary reason for
7 | being there?

8 | A. Dizziness from her Klonopin.

9 | Q. Is that a reasonable conclusion to
10 | draw?

11 | A. Not at all.

12 | Q. And we talked about Ms. Branton would
13 | have been administered some medications while she
14 | had been seen by Dr. Burkholz or ordered by Dr.
15 | Burkholz, would those have a calming effect on her?

16 | A. It's an antipsychotic, so absolutely it
17 | will temporarily calm her and help with her
18 | behavior. The Ativan, the Lorazepam is an anxiety
19 | medication that would calm her, so that will help
20 | temporarily with behavior. And Benadryl for some
21 | people sedating, definitely, and so that can have a
22 | help with calming her.

23 | Q. Would these medicines pull her out of
24 | her actively psychotic state?

25 | A. No. No, this is temporary. This is --

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | it's just going to help for a short period of time.

2 | Q. Are the effects of these temporary stop
3 | gap medications known within the practice of
4 | psychiatry?

5 | A. They are. In some patients it will
6 | help them for a few hours and some it might help
7 | them for ten hours, but it varies greatly and it's
8 | just a temporary measure. Usually given in the
9 | emergency room just so you can calm someone down
10 | and keep them from hurting somebody. Because when
11 | we're labile, impulsive, paranoid, and we know
12 | we're staying, we can get pretty agitated and
13 | combative and you're trying to protect that patient
14 | and you're trying to protect the staff.

15 | Q. Does the standard of care require that
16 | a psychiatrist understands the difference between a
17 | medication regimen that's a short-term filler and a
18 | medication regimen that's a long-term solution?

19 | A. Absolutely.

20 | Q. What further treatment did Ms. Branton
21 | require at the time she was discharged?

22 | A. She needed to be hospitalized in the
23 | behavioral health unit like Dr. Gonzalez
24 | recommended. That was absolutely a good of action.
25 | She needed to be somewhere that she would be

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | stable. You are trying to do a complete
2 | evaluation, to draw the right conclusions, to
3 | prepare safe and effective treatment plans. First
4 | and foremost, be safe. Do no harm by the patient.
5 | So Dr. Gonzalez planned to admit her to the
6 | Behavioral Health Unit because she was not safe and
7 | started back on Haldol and get the Haldol
8 | Decanoate, that was a very, very appropriate, that
9 | was the right move.

10 | Q. What's the significance of Dr. West
11 | withdrawing the commitment paperwork?

12 | A. It's Dr. West declaring that he knows
13 | that she's right and she's fine. She's safe. Dr.
14 | West declaring that he does not think she's
15 | unstable. Dr. West declaring that he does not
16 | think she needs to be the Behavioral Health Unit.
17 | Dr. West knowing that Dr. Gonzalez thought that and
18 | knowing Dr. Burkholz thought that and Dr. West
19 | saying that they're wrong and that she doesn't need
20 | that.

21 | Q. And now we know that after this
22 | paperwork is withdrawn, Ms. Branton ultimately has
23 | to have a discharge note signed by Dr. Burkholz?

24 | A. Correct.

25 | Q. As a psychiatrist who works with ER

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 physicians, I'm not asking you for a standard of
2 care opinion as to an ER physician, but as a
3 psychiatrist who works with ER physicians, are you
4 critical of Dr. Burkholz for signing that discharge
5 note?

6 A. No, I'm very sympathetic. The
7 emergency room physician is not the mental health
8 specialist. The emergency room physician thinks
9 Ms. Branton is not right. Thinks that she needs to
10 be under an involuntary. Gives Haldol because
11 she's not behaving right, but then he consults the
12 Behavioral Health Unit medical director, Dr. West,
13 Dr. West is the medical director of the Behavioral
14 Health Unit. Dr. West is the psychiatrist other
15 than Dr. Gonzalez, but Dr. West has the title. He
16 consults Dr. West and Dr. West says, no, she
17 doesn't need to be here. She's not unsafe. This
18 is Klonopin and dizziness. She can be discharged.
19 She can go back to the boarding home.

20 So Dr. Burkholz who is not a
21 psychiatrist would understandably say, I guess I
22 got it wrong. And he would rely on the consultant.
23 That's how they're trained to rely on their
24 consultants. If you consult someone and you're
25 going to disregard what they say, what's the point

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 of consulting them. They're the specialist. So
2 Dr. Burkholz understandably says, okay, I guess I
3 got it wrong. Dr. West says she's stable for
4 discharge, I'll write discharge orders.

5 Dr. Burkholz can't even admit to the
6 Behavioral Health Unit. An ER physician has no
7 admitting privileges. They only are in control in
8 the ER. So if Dr. West doesn't want to admit her
9 to the Behavioral Health Unit, Dr. Burkholz can't
10 admit her. He has to listen to Dr. West.

11 Q. In your 17 years of practice, Dr.
12 Husted, have you ever had an ER physician come back
13 and not follow your recommendation when you're
14 consulted as a specialist?

15 A. No, it would be a complete declaration
16 that they have absolutely no faith in me. And I've
17 never seen that, I've never heard of that. Not
18 just for me, but for colleagues. They go by our
19 recommendation.

20 Q. Dr. Husted, you are aware of what
21 happened after Ms. Branton was discharged and her
22 ultimate cause of death; correct?

23 A. I am.

24 Q. You were here for Ms. Hutchinson's
25 testimony; correct?

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 A. I was.

2 Q. You've read some deposition testimony
3 of Brenda Williams; correct?

4 A. I have.

5 Q. You've seen the police file -- or have
6 you seen the police file which details some of the
7 interactions with Ms. Williams?

8 A. Yes, I have.

9 Q. Okay. As a physician, do you have
10 criticisms of Ms. Williams and Ms. Hutchinson?

11 A. No, they don't know what they don't
12 know. They know that she's not right. They know
13 that she's -- something's wrong with her, she's not
14 well. Ms. Hutchinson knows that she has a mental
15 illness. Knows that she needs -- may or may not be
16 taking her medication, but they have to go with the
17 recommendations of the specialist.

18 So if Ms. Hutchinson takes Ms. Branton
19 to The Regional Medical Center and is told that
20 she's stable to go, is told that this is a urinary
21 tract infection or whatever she's told, and -- but
22 told that from a mental health standpoint she does
23 not need to be there. Well, then Ms. Hutchinson is
24 going to believe what she was told by the mental
25 health professionals. She doesn't know what she

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 | doesn't know. And it's a very common scenario by
2 | the way that individuals will take their loved one
3 | to a psychiatrist or a hospital and they're let go
4 | and then the question comes up, well, why didn't
5 | you take them back? Well, I already did that and I
6 | was told that it's not a mental health issue.

7 | Q. Where did you stay last night, Dr.
8 | Husted?

9 | A. The Hampton Inn in Orangeburg.

10 | Q. Okay. Now, fair to say that the desk
11 | clerk at the Hampton Inn doesn't have any duty to
12 | provide you medical care; correct?

13 | A. Correct.

14 | Q. Now, for a boarding home operator it's
15 | a little different. Not only did they not have a
16 | duty, but DHEC comes after them if they provide
17 | assistance with the activities of daily living;
18 | correct?

19 | A. From what I understood from what I
20 | reviewed, I saw that in South Carolina.

21 | Q. Because once you bump up to an assisted
22 | living facility, there's a whole list of
23 | requirements that you have to fulfill and hoops
24 | that you have to jump through; correct?

25 | A. That's my understanding, yes.

DAVID HUSTED - DIRECT EXAMINATION BY MR. EVANS

1 Q. And, again, do you believe it was a
2 deviation in the standard of care for Ms. Branton
3 to be discharged to a boarding home given their
4 limitations?

5 A. Yes.

6 Q. Do you feel as though it was a breach
7 in the standard of care for Dr. West to fail to
8 stabilize the patient, Ms. Branton?

9 A. Yes.

10 Q. And do you believe it was a deviation
11 in the standard of care for Dr. West not to admit
12 Ms. Branton to the Behavioral Health Unit?

13 A. Yes.

14 Q. Given what we know about Ms. Branton's
15 history, what type of baseline and life could we
16 expect her to have led had she been brought back to
17 her baseline?

18 A. This is a treatable illness. It's why
19 I went into psychiatry. We treat treatable
20 illnesses. I have a lot of joy in seeing patients
21 get better. And this is treatable. You have to
22 keep at it. You have to do the right treatment.
23 You have to keep them safe while you're putting in
24 place an effective treatment plan. You have to
25 keep them long enough to make sure it's working.

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 You have to discharge them to the right level of
2 care. You have to follow them closely, but
3 Ms. Branton could have been stabilized and go back
4 to living independently and living a normal life
5 again.

6 Q. Thank you, Dr. Husted. That's all the
7 questions that I have.

8 THE COURT: Cross-examination?

9 MR. TANNER: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. TANNER:

13 Q. Afternoon, Dr. Husted.

14 A. Afternoon, Mr. Tanner.

15 Q. You were here, again, for Ms.
16 Hutchinson's testimony; right?

17 A. Yes, sir, I was.

18 Q. Had you ever seen or heard in these
19 thousands of pages, videos, depositions, her claim
20 that Ms. Branton had attempted to jump out of the
21 car as she's leaving the TRMC parking lot prior to
22 today?

23 A. I don't recall her saying jump out of
24 the car. I do recall and I'm paraphrasing this, a
25 lot of agitation in the car insisting she wasn't

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 going to go back with Ms. Hutchinson.

2 Q. Never anything about jumping out of a
3 car until today sworn under oath; correct?

4 A. Correct. I don't remember that.

5 Q. And you testified a couple of times
6 that hospital could have called Ms. Davis. Again,
7 Ms. Hutchinson, you hear she testified she didn't
8 tell Ms. Davis that she had called EMS to take her
9 momma to the hospital; correct?

10 A. Correct.

11 Q. And we've seen the face sheet, I won't
12 put it up there again, but it lists Estelle
13 Hutchinson as the emergency contract; correct?

14 A. Correct.

15 Q. So Ms. Hutchinson is the one that had
16 that key piece of information that Ms. Branton even
17 had a daughter; correct?

18 A. Correct.

19 Q. Okay. Again, so -- and I know they put
20 the calendar up there of all these days that
21 unfortunately Ms. Branton has been hospitalized, a
22 substantial amount of time from May of 2019 through
23 October of 2019; correct?

24 A. Correct. Yes, sir.

25 Q. I think one of the lawyers I want to

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 say said like 77 percent, I have a history degree,
2 so I won't quibble with that, but does that sound
3 about right, it was substantial from that May to
4 October time period?

5 A. Yes, sir.

6 Q. Okay. So, again, let's sort of go back
7 to those whenever this event happened that caused
8 her to have this issue. It looks like she was
9 taken to Three Rivers the first time May 18th of
10 2019; does that sound right?

11 A. Yes, sir.

12 Q. And if you want to look at any of the
13 records, let me know, I'll get them for you. And
14 it looks like she was there through July 31, 2019?

15 A. Yes, sir.

16 Q. In reading the records, is it fair to
17 say that during that hospital stay at Three Rivers,
18 she has a number of hallucinations?

19 A. Yes, sir.

20 Q. She has a number of psychotic episodes?

21 A. Yes, sir.

22 Q. She's noncompliant with taking her
23 medication?

24 A. There are times, yes, sir.

25 Q. Okay. She sort of -- there's a

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 reference on her discharge summary that says that
2 when doing an assessment for dementia, she does not
3 have any obvious deficits consistent with
4 Alzheimer's. Do you recall reading that in the
5 record?

6 A. I do recall some discussion about that,
7 yes, sir.

8 Q. And, again, that would have been in
9 that Three Rivers stay. Also reference her calming
10 down with Ativan and was started on Klonopin twice
11 a day?

12 A. Yes, sir.

13 Q. Okay. So you're not critical of Three
14 Rivers for discharging her to a boarding home; is
15 that right?

16 A. Correct.

17 Q. But you're critical of The Regional
18 Medical Center discharging her to a boarding home?

19 A. Correct.

20 Q. Okay. I just want to make sure that --

21 A. Well, she was stabilized at Three
22 Rivers and she was stabilized at Spartanburg. She
23 wasn't stabilized at The Regional Medical Center.
24 There's a key distinction there.

25 Q. So it's your testimony that she was

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 stabilized at Spartanburg when she takes her
2 medicine the morning of October 1st before she's
3 discharged; right?

4 A. Yes, sir.

5 Q. She's driven by Spartanburg to St.
6 Matthews to Ms. Hutchinson; right?

7 A. Yes, sir.

8 Q. So she's stabilized that day, but then
9 on October 2nd she's not stabilized?

10 A. It's unfortunately common that a
11 patient during their hospitalization appears that
12 they're progressively improving and that they're
13 stabilizing and that they're ready for discharge.
14 But then, of course, if they prove otherwise once
15 they leave the hospital, then you recognize that
16 they need to come back in the hospital so they can
17 keep at it until you do get them stabilized. So,
18 yes, sir, during her course of her hospitalization
19 at Spartanburg, it appeared to Dr. Bhatia and the
20 treatment team that she was progressively improving
21 and stable at the time of discharge.

22 Q. And, again, you spoke earlier in your
23 direct, one of these medications, this 30-day
24 Aristada, that's what she got in Spartanburg;
25 correct?

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 A. No, she got Abilify Maintena.

2 Q. I'm sorry. Maintena. Abilify
3 Maintena?

4 A. They're very related though.

5 Q. Okay. They're similar class of drugs?

6 A. Similar class of drug, long-acting
7 antipsychotic. They're in fact the same
8 antipsychotic. Aristada is Abilify Maintena in
9 that they're both aripiprazole. They're just --
10 they work a little differently in how long they can
11 last. But they're both long-acting aripiprazole.

12 Q. And it was your opinion in this case
13 that she probably needed another seven more days
14 after Dr. Bhatia had given her that injection to be
15 stabilized on it; correct?

16 A. She needed another seven more days of
17 taking the aripiprazole oral. Dr. Bhatia had given
18 her the Abilify pill and also given her the Abilify
19 Maintena injection. And multiple times made it
20 clear to Ms. Branton, you really need to keep
21 taking this medication for 14 days, the pill, until
22 the Abilify Maintena has really taken ahold. And
23 she had gone seven days of the pill and she just
24 needed to take it another seven days.
25 Unfortunately, it appears that she didn't.

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 Q. And, in fact, if you are Ms. Branton's
2 psychiatrist seeing her at Spartanburg, you would
3 have kept her those extra seven days; correct?

4 A. I remember telling you in deposition, I
5 would have probably kept her longer just because I
6 would have wanted to make sure she took more of the
7 pill.

8 Q. And because, again, that injection is
9 not fully in her system by that point, is it?

10 A. It really needs 14 days of the pill for
11 the Abilify Maintena to have reached steady state
12 or reached enough -- level enough that it can be
13 fully effective, yes, sir.

14 Q. Okay. And, again, during her
15 Spartanburg stay, the record is sort of replete
16 with times where she had hallucinations; correct?

17 A. It's particularly at the beginning of
18 her stay.

19 Q. Isn't there a time towards the end of
20 the discharge where she tells the nurse that she
21 was kept up all night by someone wearing high heels
22 down the hall and she couldn't sleep, didn't take
23 her medicine; do you recall that from the records?

24 A. I do recall that, yes, sir.

25 Q. Okay. And, in fact, I think we know on

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 the Spartanburg history and physical, that Dr.
2 Bhatia notes since discharge to her caretaker,
3 which again would be Ms. Hutchinson; correct?

4 A. Correct.

5 Q. Has become noncompliant with
6 medications and acting more paranoid; right?

7 A. That was when she was admitted, yes,
8 sir.

9 Q. Right. That was from when she was
10 discharged from Three Rivers to her caregiver Ms.
11 Hutchinson; correct?

12 A. Correct. I'm just clarifying that
13 that's Dr. Bhatia's note when she's admitted to
14 Spartanburg. He's describing her history in his
15 initial evaluation, yes, sir.

16 Q. Right. I think we're just maybe saying
17 the same thing a different way?

18 A. We are saying the same thing. I'm just
19 making it clear to the jury.

20 Q. So, again, we know Dr. Bhatia knows
21 that she was in Three Rivers and she was discharged
22 to her caregiver, Estelle Hutchinson; right?

23 A. Correct. Yes, he knows.

24 Q. He also knows that she was noncompliant
25 with her medications when she was back with Ms.

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 Hutchinson; right?

2 A. Correct. That's why he gives her an
3 Abilify long-acting injectable, yes, sir.

4 Q. And then we also know that Dr. Bhatia
5 discharged her on October 1st and apparently,
6 shockingly, not to anyone, she's also noncompliant
7 again just like she was when she came into
8 Spartanburg?

9 A. Unfortunately, yes, sir.

10 Q. Okay. And, again, you would have kept
11 her those extra seven days to make sure that
12 medication, the oral pill, would have come up,
13 would have titrated into her system and she would
14 have been at the same level; correct?

15 A. To be clear for the jury, reasonably
16 prudent physician, what they would do in that like
17 or similar circumstance is the standard of care.
18 Me simply saying in deposition, I probably would
19 have kept her a few more days, is not me saying
20 that it's a deviation from the standard of care for
21 Dr. Bhatia to release her when he did. That was
22 not what I was saying in the deposition and that's
23 not what I'm saying today.

24 In the deposition with Mr. Tanner
25 asking me back and forth, I can see that I'd

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 | probably kept her a few more days. I'm not saying
2 | Dr. Bhatia deviated by saying she was stable for
3 | discharged on the 1st.

4 | Q. And, again, Dr. Bhatia also documented
5 | in his history and physical that on September 13th
6 | she went to a new boarding home from Three Rivers
7 | and has been having a hard adjustment to not being
8 | in her own home; do you recall that being in the
9 | record?

10 | A. Correct. Yes, sir.

11 | Q. So a couple of things we know from Dr.
12 | Bhatia in Spartanburg knew that she was going to a
13 | boarding home; right?

14 | A. Yes, sir.

15 | Q. And she had been in a boarding home?

16 | A. Yes, sir.

17 | Q. And that she had noncompliance with
18 | medication after going back to the boarding home;
19 | correct?

20 | A. Correct.

21 | Q. And she also was having issues at the
22 | boarding home because she wasn't in her home;
23 | right?

24 | A. Yes.

25 | Q. And those were all things Dr. Bhatia

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 | knew when he discharged her on October 1, 2019;
2 | right?

3 | A. Correct.

4 | Q. Okay. Again, nothing in Dr. Burkholz's
5 | note that he contacted Spartanburg and attempted to
6 | get the records?

7 | A. Correct.

8 | Q. Okay. Nothing in his note that he
9 | picked up on Nurse Terry's comment about knowing
10 | about the Spartanburg discharge the day prior;
11 | correct?

12 | A. Correct.

13 | Q. Same thing with Dr. Gonzalez, nothing
14 | in his documentation that he contacted Spartanburg;
15 | right?

16 | A. Correct.

17 | Q. And, likewise, nothing with Dr.
18 | Gonzalez on reviewing Nurse Terry's note about the
19 | Spartanburg records; correct?

20 | A. Correct.

21 | Q. And you would agree with me, again, in
22 | terms of physically getting or electronically
23 | getting, if the record's not closed until
24 | October 3rd, there's no way anyone in Orangeburg
25 | can get the record?

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 A. As I already clarified to the jury, you
2 can still find out information by calling, but you
3 can't get the actual record I imagine until it is
4 closed.

5 Q. You can't get the record; correct?
6 Whether it be electronic or physical until it's
7 closed on an EMR?

8 A. You absolutely can get information and
9 very good information.

10 Q. But you can't get the record itself;
11 correct?

12 A. Not the entire record, no.

13 Q. Okay. And, again, the triage note has
14 the complaint of Ms. Branton; correct?

15 A. Correct.

16 Q. And you would agree triage is a term
17 for sorting?

18 A. Okay. Yes.

19 Q. Is that fair? You don't have to agree.

20 A. No, we'll go with that.

21 Q. Okay. And that's essentially the same
22 thing that she told Dr. Burkholz, patient was
23 staying at boardinghouse in Calhoun County and the
24 boardinghouse stated she is noncompliant, patient
25 stated she was not receiving medication, patient

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 discharged from Three Rivers one month ago;
2 correct?

3 A. Correct.

4 Q. Okay. And obviously she got the
5 medication that she had been ordered by Dr.
6 Burkholz I think sometime around 12:24 that
7 afternoon?

8 A. Okay.

9 Q. Is that --

10 A. I wouldn't know the exact time, but
11 I'll go with you on that.

12 Q. Okay. We know that she had seen Dr.
13 Gonzalez earlier around 11 or so in the morning,
14 11:20, I believe, somewhere in that neighborhood;
15 does that sound right?

16 A. I'll just have to believe you on the
17 timeline.

18 Q. And then she sees Dr. West at 2; right?

19 A. Okay. Yes.

20 Q. And you testified earlier that there
21 was a number of notations in the record where she
22 was scared to eat because she thought her family
23 was poisoning her; right?

24 A. Yes, sir.

25 Q. Okay. But yet we know when Dr. West

DAVID HUSTED - CROSS-EXAMINATION BY MR. TANNER

1 evaluates her she's sitting up in bed, she is
2 eating lunch?

3 A. The records you're referring to when
4 she's afraid of her family poisoning her food, this
5 is the hospital giving her food in the emergency
6 room. It's not really the same situation. Not
7 even the same month.

8 Q. You wouldn't think that someone that's
9 weary of being poisoned would think anyone could
10 possibly be poisoning them?

11 A. Sir, delusions can fluctuate and they
12 can be different in nature. You can have delusions
13 of your food being poisoned back in July of 2019
14 and then in October of 2019 you are fixated on
15 something else. You're thinking that the next male
16 you encounter is your husband. The delusions can
17 -- the key thing is her thinking's off and her
18 behavior's off, the exact details will fluctuate.
19 She thinks she's a saint and a profit when she's in
20 Three Rivers. Does she necessarily think she's a
21 saint and a profit when she's at The Regional
22 Medical Center? Not necessarily. Doesn't mean
23 that her thinking's not off and her behavior's not
24 off.

25 Q. Well, and, again, you testified to that

DAVID HUSTED - REDIRECT EXAMINATION BY MR. EVANS

1 earlier that she thought again when she was having
2 active psychosis at Three Rivers, I think you said
3 that she thought she was a saint, she was paranoid,
4 she was meowing, I think you said. She was
5 delusional. Again, none of that is found anywhere
6 on October 2nd at The Regional Medical Center;
7 correct?

8 A. No, sir.

9 Q. All right. Thank you, Doctor.

10 THE COURT: Any redirect?

11 MR. EVANS: Just very few questions,
12 Your Honor, on redirect.

13 REDIRECT EXAMINATION

14 BY MR. EVANS:

15 Q. Now, Dr. Husted, you mentioned that in
16 2003 it took five hospitalizations before Ms.
17 Branton was finally able to discover and good in
18 her baseline; correct?

19 A. Correct.

20 Q. Would it be fair to say that there were
21 four game plans that were tried before the fifth
22 one worked?

23 A. I mean, probably.

24 Q. Now, is it fair to say that Three
25 Rivers came up with a game plan before discharge?

DAVID HUSTED - REDIRECT EXAMINATION BY MR. EVANS

1 A. Yes.

2 Q. Unfortunately, that game plan didn't
3 work out, did it?

4 A. No, because she had to take it.

5 Q. And Spartanburg Medical Center came up
6 with a game plan; correct?

7 A. Right.

8 Q. And unfortunately that didn't work
9 because Ms. Branton failed to take her medicines;
10 correct?

11 A. Correct.

12 Q. Who was it that had a change to that
13 game plan to change that variable that caused these
14 two game plans to fail?

15 A. I don't understand the question. I'm
16 sorry.

17 Q. Well, these two game plans failed
18 because Ms. Branton wasn't taking her oral meds?

19 A. Correct. Yes, sir.

20 Q. Who had the idea to change that up so
21 that maybe the game plan works?

22 A. That was Dr. Gonzalez.

23 Q. Did Dr. West come up with a game plan?

24 A. No. He said she could leave the
25 hospital.

1 Q. Thank you, Dr. Husted?

2 THE COURT: You may step down, Doctor.
3 Thank you. Ladies and gentlemen of the jury, it's
4 about 12:30, it might be a good time for us to take
5 our lunch break. If you would be back in your jury
6 room in one hour, we will resume the trial at 1:40.
7 Have a nice my lunch and please remember my
8 previous instruction not to discuss the case.

9 (WHEREUPON, the jury left the courtroom
10 at 12:31 p.m.)

11 THE COURT: All right. Counsel,
12 anything before we recess for lunch? And who are
13 you going to be your next witnesses?

14 MR. EVANS: We have got Dr. Kelly Rose,
15 Your Honor, the pathologist, and then we're going
16 to have two of the family members testify today.

17 THE COURT: All right. Thank you.
18 Everyone have a good lunch.

19 (Lunch break.)

20 THE COURT: Thank you, everyone, have a
21 seat. Are you ready for the jury?

22 MR. TANNER: Yes, Your Honor.

23 MR. WILLIAMS: Yes, Your Honor.

24 THE COURT: Let's have our jury,
25 please.

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 (WHEREUPON, the jury entered the
2 courtroom at 1:46 p.m.)

3 THE COURT: You may be seated. Welcome
4 back, ladies and gentlemen of the jury. I hope
5 that you had a nice lunch. We're now ready to
6 proceed with the trial of the case. You may call
7 your next witness.

8 MR. MOORE: Thank you, Your Honor. The
9 Estate calls Dr. Kelly Rose.

10 KELLY ROSE,
11 being first duly sworn, was examined and testified
12 as follows:

13 THE CLERK: You can have a seat.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q. Good afternoon, Dr. Rose.

17 A. Good afternoon.

18 Q. Could you please introduce yourself to
19 the ladies and gentlemen of the jury?

20 A. My name is Kelly Rose, R-O-S-E, like
21 the flower. I am a forensic pathologist and I work
22 in Newberry, South Carolina.

23 Q. And can you tell the jury what it is to
24 be a forensic pathologist?

25 A. A forensic pathologist is a medical

KELLY ROSE - VOIR DIRE BY MR. TANNER

1 doctor. So you have to go to medical school. And
2 then I selected pathology as my specialty. That
3 includes anatomic and clinical pathology. Now
4 after that I decided I wanted to subspecialize in
5 forensic pathology which is the determination of
6 cause of death using autopsies.

7 Q. And are you board certified in any
8 areas?

9 A. I am. I am board certified in anatomic
10 pathology, clinical pathology and forensic
11 pathology.

12 Q. And, Dr. Rose, have you ever been
13 qualified by a court to testify as an expert
14 witness?

15 A. I have.

16 Q. On how many occasions?

17 A. Approximately 50.

18 MR. MOORE: Your Honor, at this time
19 we'd tender Dr. Rose as an expert in the field of
20 forensic pathology.

21 THE COURT: Any voir dire?

22 VOIR DIRE

23 BY MR. TANNER:

24 Q. Dr. Rose, it wasn't asked, but I
25 presume you're licensed to practice medicine in the

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 State of South Carolina?

2 A. Yes, I am.

3 MR. TANNER: That would be all, Your
4 Honor. No objection.

5 THE COURT: All right. She's
6 qualified.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. MOORE:

9 Q. Dr. Rose, can you please tell the jury
10 where you currently work?

11 A. I work for Newberry Pathology Group.
12 It's in Newberry, South Carolina. It's a private
13 practice forensic pathology group. We use the
14 morgue at Newberry County Memorial Hospital and do
15 autopsies for 16 different counties in the state,
16 the South Carolina Department of Corrections and
17 Federal Bureau of Prisons.

18 Q. Is Orangeburg County one of the
19 counties that you perform autopsies for?

20 A. Yes, it is.

21 Q. And do you know how many autopsies
22 you've perform over the course of your career?

23 A. It's approaching 6,000.

24 Q. Through your profession as a
25 pathologist, have you ever had the occasion to

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 perform autopsies on individuals who've died from
2 complications of heat exposure?

3 A. I have.

4 Q. And did you perform the autopsy on Ms.
5 Branton?

6 A. I did.

7 Q. And before coming to the court today to
8 testify, and, Dr. Rose, are you under subpoena to
9 be here?

10 A. Yes.

11 Q. Yes, I sent a subpoena to your office.
12 And before you got here, Dr. Rose, did you have the
13 occasion to review the autopsy pertaining to Ms.
14 Branton?

15 A. I did.

16 Q. And are you familiar enough to assist
17 the jury with your conclusions as it relates to the
18 cause of her death?

19 A. I am.

20 Q. And we have previously stipulated to
21 the admissibility of your autopsy report which is
22 in evidence as Exhibit No. 16 --

23 MR. MOORE: And I believe the Court
24 also determined that the two photographs could come
25 into evidence over your objection.

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 MR. TANNER: I know you made a
2 preliminary ruling and I know I need to object, but
3 if you want to treat that as an objection for -- if
4 they're going to tender them, now I can do that.

5 THE COURT: Yes, sir. That way you can
6 preserve the record for the same ruling applies,
7 it's subject to your objection.

8 MR. TANNER: Thank you, Your Honor.

9 MR. MOORE: Thank you.

10 Q. And could you please, Dr. Rose, explain
11 to the jury the process in which you receive a body
12 at Newberry Pathology.

13 A. South Carolina is a coroner state, so
14 each county has a head coroner and then some deputy
15 coroners under them. They will go to the scene and
16 they decide what cases should be autopsied. If
17 it's one of my 16 counties that I handle, they will
18 call the office. Someone is always on call. We
19 will get the information from them and schedule the
20 case.

21 Q. And understand that the coroner here in
22 Orangeburg County reached out to you sometime after
23 Ms. Branton was discovered deceased on October 3rd
24 of 2019?

25 A. Yes, he did.

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 Q. And at that point in time, do you
2 schedule with the coroner a time that you can
3 perform the autopsy?

4 A. Yes, we do. Often it depends on their
5 transportation issue, so we find a mutual time that
6 will work.

7 Q. And how is the body transported to your
8 office at Newberry Pathology?

9 A. They have a transport service that is
10 actually one of the coroners. Then they are
11 licensed to transport bodies and they will
12 transport the body to the morgue. And, you know,
13 sign the body in and then we take custody of the
14 body for the autopsy. They're usually in body
15 bags. And, you know, on gurneys and then they get
16 rolled into the morgue.

17 MR. MOORE: And if you can please show
18 the photograph of Ms. Branton.

19 Q. Does this photograph accurately depict
20 Ms. Branton when she arrived to your office back in
21 October of 2019?

22 A. Yes, it does.

23 Q. And we have gone through the process of
24 selecting one of many of your photographs that does
25 not show Ms. Branton's face, but does show her body

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 after the bag was removed.

2 MR. MOORE: And if you don't mind
3 showing that photograph.

4 Q. Would this photograph accurately depict
5 the clothing that Ms. Branton was wearing when she
6 arrived?

7 A. Yes, it does.

8 Q. Okay. So she would have been wearing
9 the military jacket?

10 A. It was a wool military style jacket.

11 Q. And she would have had corduroy pants
12 on?

13 A. Green corduroy pants.

14 Q. And these were the shoes that she was
15 wearing at the time?

16 A. Yes.

17 Q. Okay.

18 MR. MOORE: Thank you. You can take
19 that down.

20 Q. And if you could, going back to your
21 autopsy report, do you have a copy of it?

22 A. I don't.

23 Q. I've got a copy of it for you right
24 here. I'd like you to read to the ladies and
25 gentlemen of the jury your case history which is on

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 the second page of the autopsy report.

2 A. Case history. According to the
3 coroner, this 69-year old black woman lived in an
4 assisted care facility. She had been sitting
5 outside all day and refused to come inside. The
6 heat index was 103 degrees Fahrenheit and she was
7 wearing a wool coat. She had a history of
8 schizophrenia.

9 Q. Now, where would you have gathered this
10 information from, Dr. Rose?

11 A. Directly from the coroner when he
12 called to schedule the case.

13 Q. And I understand that the case history
14 indicates that she was living at an assisted care
15 facility; do you see that?

16 A. Yes.

17 Q. Did you later learn that it was not in
18 fact an assisted care facility?

19 A. I did. Much later.

20 Q. And I believe and it should be -- let
21 me see if it's a copy of your file. On page 9 of
22 your file is the coroner's authorization for
23 autopsy; do you see that?

24 A. I do.

25 Q. And it indicates the type of premises;

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 do you see that?

2 A. Yes.

3 Q. And does that indicate that it was
4 actually a boarding home?

5 A. It does.

6 Q. And so sometime after the autopsy was
7 conducted, did you come to learn that it was not an
8 assisted care facility, but instead a boarding
9 home?

10 A. Yes.

11 Q. Okay. And the autopsy -- the case
12 history also indicates that the heat index was 103
13 degrees on this October 3rd day back in 2019.
14 Where would you have gotten that information from?

15 A. Directly from the coroner.

16 Q. And is it typical for you to rely on
17 that type of information provided from the county
18 coroner?

19 A. I do. And that's why I start all my
20 case histories with according to the coroner.
21 Because that's where I'm getting this information.

22 Q. And based on your professional
23 experience and just your personal experience, was
24 it unusual to you when you learned of the
25 temperature and then the clothing that Ms. Branton

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 arrived in prior to you beginning your autopsy?

2 A. I thought it was very unusual.

3 Q. And did the history of schizophrenia
4 help you understand as to why she may have been
5 wearing that?

6 A. Yes, it gave me some indication as to
7 why she would be inappropriately dressed for the
8 weather.

9 Q. And did you formulate an opinion as to
10 the cause of Ms. Branton's death?

11 A. I did.

12 Q. And what did you determine the cause of
13 her death to be?

14 A. I called it a nonexertional
15 hyperthermia with hypotonic dehydration due to
16 prolonged exposure to elevated environmental
17 temperatures.

18 Q. Can you please explain to us what that
19 means?

20 A. That is medical speak for a heat
21 stroke.

22 Q. And what do you mean by non -- what's
23 the word?

24 A. Nonexertional.

25 Q. Nonexertional. What does that mean?

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 A. So there are two types of heat stroke.
2 One is exertional, where it's usually a young
3 healthy person who's exercising and gets
4 overheated. Nonexertional heat stroke, which is
5 what this case was, typically involves elderly
6 people, people with underlying health conditions,
7 and they don't have to be exerting themselves, they
8 can just be in a hot environment.

9 Q. And I think we've all been familiar
10 with the term hypothermia when it's too cold?

11 A. Correct.

12 Q. And I'm assuming hyperthermia would be
13 the opposite of that?

14 A. Correct. Your core body temperature is
15 not compatible with life.

16 Q. And according to your findings in the
17 report, what was the manner of death?

18 A. Accident was the manner of death.

19 Q. And what do you mean by accident in
20 terms of the different choices that you can
21 determine as a pathologist?

22 A. So accident means an injury or toxin or
23 poison caused someone's death, but the death was
24 not intentional. It was an unintentional death.
25 So, for example, in this case, the injury was the

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 heat, but I don't believe anyone intended for her
2 to die.

3 Q. And so, for example, if there's
4 somebody that arrives to your office that has been
5 shot and killed, what could be a manner of death if
6 it was determined to be a murder?

7 A. That is homicide.

8 Q. But based under these circumstances,
9 your determination was that this was an accidental
10 death that occurred at a boarding home?

11 A. Correct.

12 Q. Can you please explain to the jury a
13 little bit more about how you came to the
14 conclusion as it relates to Ms. Branton's cause of
15 death?

16 A. Well, first of all, as a forensic
17 pathologist you have to be very aware of heat
18 related illnesses, the risk factors involved. So I
19 determined that she had several risk factors
20 including the inappropriate attire and then you
21 basically rule out other causes of death.

22 So at that time when she died, was
23 there anything that might have trumped the heat
24 that would have caused her to die at that exact
25 moment? And in this case there was not.

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 Q. They're obviously indications that Ms.
2 Branton suffered from mental health conditions,
3 schizophrenia is listed in the report, but other
4 than mental health conditions, from a physical
5 health standpoint, how would you describe
6 Ms. Branton's health based on your examination of
7 her body?

8 A. She was average 69 year old.

9 Q. You noted in the autopsy that she had
10 severe cardiovascular disease, is that unusual for
11 a 69-year old woman?

12 A. No, and that is more of a descriptive
13 term, a pathological descriptive term, it doesn't
14 necessarily correlate with clinical.

15 Q. And is the cardiovascular disease that
16 you discovered when doing your autopsy, did that
17 cause her death?

18 A. It did not.

19 Q. Okay. Did it contribute to her death?

20 A. It would have contributed to her death.

21 Q. And that's just her underlying health
22 condition?

23 A. Correct.

24 Q. And how were you able to rule out that
25 the cardiovascular disease is not what caused her

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 death?

2 A. Several different ways. When I was
3 looking at the heart itself, there was some
4 blockage, but not complete blockage of a branch of
5 a coronary artery. The other coronary arteries
6 were open. Okay. And so then when I sectioned
7 through the heart, which is what we do, when you
8 look at the tissue, there was no evidence of her
9 ever having had a heart attack. Remote or recent.
10 So that is how I determined that that did not lead
11 to her death at that time.

12 Q. And, again, it was your opinion that it
13 was the hyperthermia due to exposure to heat?

14 A. Correct.

15 Q. Okay. Was there any reason for you to
16 believe as a pathologist that Ms. Branton wouldn't
17 have a normal life expectancy?

18 A. No. I see individuals with her health
19 conditions and they're much older. In their 90's.

20 Q. And, Dr. Rose, can you explain to the
21 jury what a toxicology study is?

22 A. Okay. Toxicology studies are where you
23 -- postmortem in the forensic study, you take a
24 specimen from a body, it's usually urine, blood,
25 the fluid behind your eyes and you send it to be

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 analyzed for drugs or other toxins.

2 Q. And is that standard during autopsies
3 to do a toxicology study?

4 A. Yes.

5 Q. And did the toxicology study that you
6 performed reveal the presence of any types of
7 medications in her system?

8 A. It did.

9 Q. And what were those medications?

10 A. She had Benadryl. She had Trazodone
11 and she had Abilify which is an atypical
12 antipsychotic. Benadryl is an antihistamine. It
13 can always be used to calm people down. And
14 Trazodone is -- works on serotonin, a chemical in
15 your brain, and it also can sedate you. It was one
16 of the very first antidepressants.

17 Q. And in your experience, what type of
18 patients do you see have these types of medication
19 in their system?

20 A. Definitely someone with mental illness
21 and one that is probably agitated and they're
22 trying to sedate them.

23 Q. And the jury has heard testimony this
24 week from a number of witnesses that Ms. Branton
25 received an injection of short-acting Haldol at the

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 emergency room around 12 o'clock the day before, so
2 roughly 24 to 30 hours before she died, was that
3 Haldol still in her system?

4 A. No, it was not.

5 Q. Okay. So the Haldol by the time she
6 died was no longer in her system?

7 A. Correct.

8 Q. There's also been some indication that
9 she was prescribed the Haldol. Had she had taken a
10 Haldol pill, for example, the day that she died,
11 would you have expected for that to be in her
12 system?

13 A. I would.

14 Q. And did these medications that you did
15 find in her system, the Benadryl, the Abilify, the
16 Trazodone, do these type of medications put elderly
17 patients at a higher risk of heat related illness?

18 A. They do. When you take an
19 antihistamine or Benadryl when you have allergies
20 or a cold, it dries you up. It doesn't just dry up
21 your nose and mouth, it dries up your skin. It
22 prevents blood flow to the surface of your skin
23 which causes you not to go to sweat properly. So
24 she would not have been able to sweat properly with
25 that drug. Trazodone has been indicated in causing

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 hyperthermia or heat related illnesses in
2 psychiatric patients as have a lot of antipsychotic
3 medications.

4 Q. And can you explain to the jury how
5 that could lead to dehydration?

6 A. Well, it can definitely lead to -- it's
7 a little complicated situation, we have one on
8 here. It can definitely lead to your body -- core
9 body temperature elevating beyond what's compatible
10 with life. Some of these drugs affect electrolytes
11 in your body, so the heat caused her to dehydrate.
12 These made her not be able to cool properly. So
13 just didn't have the coping mechanism needed if
14 you're going to be out in that heat.

15 Q. Thank you, Dr. Rose. And you explained
16 earlier -- you testified earlier that beyond Ms.
17 Branton you've had the occasion to perform
18 autopsies on individuals who have died from heat
19 related exposure; correct?

20 A. Yes.

21 Q. And as a forensic pathologist, are you
22 able to formulate opinions with regard to any pain
23 and suffering Ms. Branton would have endured as a
24 result of dying in this manner?

25 A. I am.

KELLY ROSE - DIRECT EXAMINATION BY MR. MOORE

1 Q. And if you can, explain to the jury
2 what type of suffering you believe she would have
3 endured leading up to her death on October 3rd of
4 2019?

5 A. Probably most important is to
6 understand that this would not have been an
7 immediate death. This would have taken some time.
8 And your body goes through stages as it is getting
9 overheated. You start to sweat. You become
10 uncomfortable. And the elderly, they get very
11 tired and confused, they're not even sure what's
12 going on. The heart rate speeds up because the
13 body -- it's having to deliver blood to the
14 periphery of your body to your skin and such, so
15 your blood pressure goes down, so you're then even
16 more confused. They tend to get agitated, anxious,
17 I'm sure she was very scared, did not know what was
18 going on. They become stuporous, meaning they
19 don't understand where they are or what's going on.
20 They're very scared. It's -- in a psychiatric
21 elderly patient, I would say it is somewhat
22 comparable to a child in that situation who has no
23 idea what's going on. Can't figure out how to get
24 fluid, water out of the environment and how scared
25 that child would be and this can last for hours.

KELLY ROSE - CROSS-EXAMINATION BY MR. TANNER

1 Q. Thank you, Dr. Rose. Have your
2 opinions today been to a reasonable degree of
3 medical certainty?

4 A. Yes.

5 Q. Those are all the questions I have.
6 Please answer any questions Mr. Tanner may have.

7 THE COURT: Cross-examination?

8 MR. TANNER: May it please the Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. TANNER:

12 Q. Dr. Rose, you just testified that it
13 takes -- it's not immediate death; correct?

14 A. Correct.

15 Q. Do you have an opinion on how many
16 hours that took?

17 A. When the coroner found her, she was
18 already in rigor which is some stiffing of your
19 muscles and that develops anywhere from one to six
20 hours after death. One being the quickest, six
21 being the longest it takes to start to develop, so
22 I would say a minimum of three hours.

23 Q. So she had been sitting outside for at
24 least three hours like this?

25 A. Yes.

KELLY ROSE - CROSS-EXAMINATION BY MR. TANNER

1 Q. Okay. And presuming -- did you look at
2 other than the coroner's records, did you review
3 any other records in conducting your autopsy?

4 A. I did not.

5 Q. You wouldn't have reviewed any of her
6 mental health records?

7 A. I did not.

8 Q. You wouldn't have reviewed any law
9 enforcement materials?

10 A. I did not.

11 Q. Okay. If law enforcement noted that
12 staff had observed her sweating and thought she was
13 dehydrated, would that be consistent with your
14 findings?

15 A. Yes and no. I'll explain that a little
16 bit. With the medications that she was on and with
17 her age, they -- elderly people can't dilate their
18 vessels as well, so she might not have appeared
19 sweating to them, she might have been sweating
20 under all the clothes. She wouldn't have been as
21 sweaty as say a healthy young person.

22 Q. Yes, ma'am. And my question was it's
23 documented that she was visibly sweaty to a staff
24 person, would that be consistent with what you
25 found?

KELLY ROSE - CROSS-EXAMINATION BY MR. TANNER

1 A. Yes.

2 Q. Okay. Thank you. And did you do any
3 sort of testing to -- strike that. You mentioned
4 you ruled out some things and I know we talked
5 about her severe atherosclerotic cardiovascular
6 disease as not being a cause of her death, but
7 contributed to the death; do you recall that?

8 A. Yes.

9 Q. What other medical conditions did you
10 rule out as not being the primary cause of her
11 death?

12 A. Stroke, tumors, certain toxins like
13 cocaine can present like this. If you have a
14 lesion in your hypothalamus in your brain it can
15 cause stuff like this. I ruled out severe kidney
16 failure. She did not have that. I ruled out
17 diabetic complication. I ruled out respiratory
18 issues. I ruled out other injuries. Liver issues.
19 GI diseases.

20 Q. Anything else?

21 A. Whatever -- every organ system that I
22 went through, whatever disease is associated with
23 that organ system, I ruled out.

24 Q. Did you rule out cardiac arrhythmia?

25 A. You can't rule that out. And, in fact,

KELLY ROSE - CROSS-EXAMINATION BY MR. TANNER

1 people that are suffering a heat stroke and also
2 have a bad heart, often will get arrhythmia, but
3 it's not the underlying heart, it's the heat.

4 Q. So did you rule that out or did you
5 not? I'm sorry, I didn't understand your answer.

6 A. Well, you can't rule out arrhythmia
7 because someone has to be alive to know that
8 they're having an arrhythmia. That just means an
9 atypical heartbeat, so I don't see evidence of
10 arrhythmia at autopsy because you have to be alive
11 to see an arrhythmia.

12 Q. And conversely, is it fair to say that
13 it's -- there's no way to ever exclude the
14 possibility of a person having a fatal arrhythmia;
15 is that fair?

16 A. Indirect setting you can say it would
17 be more likely that they would have had dysrhythmia
18 is arrhythmia just means without a rhythm.
19 Dysrhythmia means improper rhythm. So a lot of
20 people have those when they're dying, it doesn't
21 mean that's what caused their death. That's not
22 the underlying cause of death.

23 Q. And you noted again in examining the
24 heart that the branch of her left anterior
25 descending coronary was up to 80 percent narrow by

KELLY ROSE - CROSS-EXAMINATION BY MR. TANNER

1 atherosclerosis?

2 A. Yes.

3 Q. Okay. Which should say a normal
4 healthy person, what level, if any, of coronary
5 narrowing would you expect to find in a healthy
6 heart?

7 A. In the major coronary arteries, you --
8 70 percent or less. This was in a branch of a
9 major coronary artery, so while it's not ideal,
10 from the autopsies that I've performed, I did not
11 think that it was lethal.

12 Q. Yes, ma'am, but 10 percent more than
13 you would anticipate to find; correct, from based
14 on your testimony?

15 A. Well, that's kind of a hard question to
16 answer because everybody's heart are different.
17 Like, I'll get some young people that have bad
18 hearts. You just don't know. So I never expect
19 anything because I want to see what this person is
20 showing me.

21 Q. Well, I mean, let me make sure I'm
22 understanding you right. If I just ask you, a
23 normal healthy person and I thought you told me you
24 would expect to see about 70 percent of narrowing
25 in the coronary for due to atherosclerosis, did I

KELLY ROSE - REDIRECT EXAMINATION BY MR. MOORE

1 understand that right?

2 A. For someone be considered completely
3 healthy, 70 percent or less.

4 Q. Okay. And so again here, we know Ms.
5 Branton's 80 percent; right?

6 A. Yes, and branch.

7 Q. Okay. And, again, you classified this
8 death as an accidental death; correct?

9 A. I did.

10 Q. Okay. And, again, it's your opinion to
11 a reasonable degree of medical certainty more
12 probable than not that no one intended for Ms.
13 Branton to die; correct?

14 A. Correct.

15 Q. Thank you, Dr. Rose?

16 THE COURT: Any redirect?

17 MR. MOORE: Very quickly.

18 REDIRECT EXAMINATION

19 BY MR. MOORE:

20 Q. Mr. Tanner asked you about a lot of
21 different possibilities; do you remember that?

22 A. Yes.

23 Q. But you were actually able to rule out
24 that she died from complications of cardiovascular
25 disease; correct?

SE'ANNE DAVIS - DIRECT EXAMINATION BY MR. GOINGS

1 A. I was.

2 Q. Okay. And you actually came to the
3 conclusion that she died from heat exposure?

4 A. I did.

5 Q. All right. And would she have died
6 from heat exposure if she had been in a hospital
7 setting?

8 A. No.

9 Q. Thank you, Dr. Rose.

10 THE COURT: You may step down, Doctor.
11 Thank you. You may call your next witness.

12 MR. GOINGS: Your Honor, at this time,
13 Estate calls Ms. Se'Anne Davis.

14 SE'ANNE DAVIS,
15 being first duly sworn, was examined and testified
16 as follows:

17 THE CLERK: You may have a seat.

18 THE COURT: Your witness.

19 DIRECT EXAMINATION

20 BY MR. GOINGS:

21 Q. Ms. Davis, how hard was it just now to
22 hear about your mother's last hours, minutes, and
23 seconds of her life?

24 A. It was very hard. Some of the details
25 I didn't know about. Already cried every day