

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY in the Court of Common Pleas

Judge Maite Murphy

Case No.: 2023-CP-38-00331

Serge R. Wandji, Plaintiff/Appellant

v.

The Regional Medical Center, Defendant/Respondent

RECORD ON APPEAL

Volume I (Pages 1-290)

Appellate Case No.2025-000108

s/Serge Wandji

Pro se Appellant

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DECISION AND ORDER

SCWCC File No.: 2118696

Claimant,

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Employer,

and

Carrier,

Defendants.

Orangeburg District

Hearing held in Columbia, South Carolina,
on February 16, 2023,

Per notice timely and properly served upon all Parties of Interest.

Appearances: The Claimant appeared *pro se*.

Roy A. Howell, III, of Trask & Howell, LLC, appeared on behalf of Defendants.

Purpose of Hearing: To determine the issues on the Forms 50 and 51.

Court Reporter: Megan A. Brown, ABC Reporting Service, 257 Summerland Ave., Batesburg, SC 29006, (803)532-6255, cwiz1959@aol.com

Filed:

May 31, 2023

I. STATEMENT OF THE CASE

The Claimant filed a Form 50 on September 9, 2022, alleging an "infection of whole body" due to an injury and an illness on August 27, 2021, in Orangeburg, South Carolina.¹ He alleges that on that date, he "went to the hospital (TRMC/my employer) to get tested at the Employee Health, and the results came out to be positive for COVID-19." The Claimant seeks additional medical examination and treatment for "COVID-19," as well as "Long COVID-19 complications and PTSD," which he described at the hearing to also include chronic pain, loss of smell, and inflammation. In addition, the Claimant seeks temporary total disability compensation from August 28, 2021, and continuing and benefits for permanent, specific disability.

The Defendants filed a Form 51 on October 7, 2022, denying the claim and raising affirmative defenses under S.C. Code Ann. § 42-11-10, *et seq.* The Defendants deny the Claimant suffered any injury or illness as alleged and deny he is entitled to any medical or compensation benefits. According to the Defendants' Form 58, the Defendants contend that COVID-19 is one of the ordinary diseases of life for which more than 32% of the population of South Carolina have tested positive; therefore, the Claimant bears the burden of proving that he was infected with COVID-19 naturally and unavoidably from an accident arising out of and in the course of his employment and that his employment, which required him to wear an N-95 mask with a population subject to stringent testing protocols, placed him at an increased risk of such infection. The Defendants further deny the Claimant has properly raised an occupational disease claim and deny the claim meets any of the requirements of S.C. Code Ann. § 42-11-10. In addition, the Defendants specifically contend that the Claimant has failed to meet his burden of proving his entitlement to medical benefits under S.C. Code Ann. § 42-15-60 and that any period of temporary disability ended upon his reaching maximum medical improvement by January 14, 2022, or at the latest May 14, 2022, when the Claimant began working for a new employer.

¹ The Claimant's Form 50 does not allege an occupational disease.

After an extensive pre-hearing conference, the Claimant was advised by the undersigned Commissioner of his right to counsel. At both the pre-hearing conference and on the record at the hearing, the Claimant expressed his understanding of the significance of proceeding without the advice or assistance of counsel. The Claimant was also given the opportunity to consult or to retain counsel and declined this opportunity. The Claimant stated that he desired to go forward with the hearing as scheduled by representing himself and waiving his right to legal counsel.

II. STIPULATIONS

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
2. The venue is proper.
3. Notice of the hearing was timely and properly served upon all parties in interest.
4. The Commission's file, save self-serving declarations and unstipulated medical records, shall become part of the record.

III. APA SUBMISSIONS

By the Claimant:

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2.	Claimant's Negative COVID test result attached in APA #1	08/16/2021	2
3.	Claimant's Negative COVID test result received after he specifically requested a result with the heading and Doctor's signature on it, as required by his school	08/16/2021	3
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14.	TRMC requesting claimant to report to work though he is being devastated by COVID at home	09/03/2021	15-18

15.	Hospitalization 'Progress Notes' confirming Pneumonia due to COVID with acute Hypoxemic respiratory failure, and oxygen Treatment. Also, diagnosis of 'Acute stress Disorder'	09/06/2021	19
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21.	Claimant's fifth email to the HR Director Pleading for any information about his workers' compensation, but still being ignored by everyone at TRMC	11/22/2021	25
22.	After more than three months of being ignored and neglected by the Defendant in regards to his Workers' Compensation claim, Claimant filed his first form 50 with the SC Workers' Compensation Commission	11/29/2021	26
23.	TRMC hired a lawyer in Charleston	01/07/2022	27-29

	(Mr. Howell) who responded to Claimant's Form 50		
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26.	Medical Notice from PCP returning Claimant back to work with some few restrictions which was provided to the Defendant	01/17/2021	37
27.	Claimant's health condition at the time as well as his job requirements as defined by the Defendant was considered		38-39
28.	Claimant's former lawyer even wrote an Email to Mr. Howell (The Defendant's lawyer) specifically requesting when Claimant can return to work?	01/25/2022	40
29.	In the meantime, the 'Acute stress disorder' Diagnosis received while being hospitalized Has progressed into Post-Traumatic Stress Disorders (PTSD), and Claimant was referred By his PCP to a Clinical Psychologist in Columbia for therapy sessions	02/15/2022	41
30.	More PTSD therapy sessions' Notes	02/22/2021-03/08/2022	42-43
31	After actually driving to work (TRMC) to Resume employment (on 1/26/22) and was not allowed to, Claimant wrote an email to the entire TRMC leadership to plead for his job back	02/25/2022	44

32.	Even the Psychological Clinic in Columbia where Claimant was receiving therapy wrote a Medical Notice recommending his return to Work	03/11/2022	45
33.	The Defendant finally responded to Claimant's Multiple pleads to return to work, by a Termination letter in pure retaliation of filing a form 50 with the SC Workers' Compensation Commission	03/15/2022	46
34.	Following his unlawful employment Termination, Claimant had his former lawyer returned all the items the Defendant (TRMC) Requesting, including keys, ID card, parking tag, etc....	04/05/2022	47
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IV. EVIDENCE OF THE CASE

The Claimant testified on his own behalf before the undersigned Commissioner. The Claimant began working for the Regional Medical Center in Orangeburg as a full-time staff nurse in March 2021, at which time he was already registered in the College of Nursing at the University of South Carolina. He testified that he officially works a minimum of three 12-hour shifts per week but averaged four 12-hour shifts per week. (T. p.18). The Claimant testified that he was responsible for assigning direct care, direct nursing care, and he was also a charge nurse. (T. pp.18--19). He referred to a list of employees at the Regional Medical Center who tested positive for COVID-10 between August 1, 2021, and August 27, 2021. (APA p.84).²

According to the Claimant, he went to the Regional Medical Center on August 16, 2021, to take a "COVID test for school purposes," and the result of that test was negative. (T. p.17, ll.17—19). The Claimant denies that he was symptomatic on August 16, 2021 (T. p.53, ll.9—13). The report of his August 16, 2021, COVID test states:

"Symptomatic as defined by CDC?	Yes
Date of onset (Lab)?	8/16/2021"

(APA pp.2--3; Def. APA pp.1—2; T. p.54, ll.1—6). The August 16, 2021, report further states that "[n]egative results do not preclude SARS-CoV-2 infection and should not be used as the sole basis for

² The Claimant presented no testimony or other evidence that he was exposed to these persons or the nature of any alleged exposure.

treatment or other patient management decisions. Negative results must be combined with clinical observations, patient history, and epidemiological information.” (APA p.3).

On August 25, 2022, the Claimant received a text message from the hospital stating that all patients in the Behavioral Health Unit were to required to wear masks and stay in their rooms and to that all staff were required to wear N-95 masks and face shields. (APA pp.4-5). He claims that on August 26, 2022, he “started experiencing symptoms; my throat, temperature.” (T. p.21, ll.16—17). On August 27, 2022, he tested positive for COVID-19. (T. p.22). The Claimant sent an email to Kellie Evans at the Regional Medical Center on September 2, 2021, stating that “[i]t wasn’t until Thursday 26, that I started feeling really bad.” (APA p.13).

On September 6, 2021, the Claimant was hospitalized with pneumonia and acute hypoxemic respiratory failure and a “[p]ossible acute stress disorder ... flashbacks with nightmares.” (T. p.23, APA pp.19--20). The Claimant saw a psychiatrist at the hospital and reported “that he is still anxious about how sick he felt before arrival. Says he has “PTSD” from “that feeling.” (T. p.23, APA p.21).

After the Claimant was discharged from the hospital, his primary care physician, Dr. Fayssoux, continued to give him work excuses until January 17, 2022, which he provided to his employer. (T. pp.24—25). According to Dr. Fayssoux’s report dated January 14, 2022, the Claimant reported “[d]oing well and continuing to improve related to his severe COVID-19 infection. Smell has still not completely returned to normal. Taste is still improving. His stamina is still improving. BP has been under good control. Plans to start working for FEMA in March.” (APA p.36, Def. APA pp.19--22). With regard to what Dr. Fayssoux assessed as “[r]eactive depression (situational),” the Claimant’s “symptoms are improving and are not as severe as they were several months ago” but he “would probably benefit from counseling/psychotherapy.” (Def. APA p.20). Dr. Fayssoux further noted that the Claimant had “[r]ecovered” from COVID-19 but was [s]till having PTSD symptoms related to his illness ... He cannot to work [sic] yet in his previous capacity 12 hours a day but has been cleared to return for administrative work on an 8 hour a day schedule.” (Def. APA p.20). The Claimant testified that this was only “some slight restriction” and he reached out to the Regional Medical Center about returning to work. (T. p.25).

On March 15, 2022, the Regional Medical Center informed the Claimant that the organization did not have a part-time administrative position available and that because his leave was exhausted, the employment would end effective March 15, 2022. (T. p.26, APA p.46). The Claimant's maximum period of leave was actually exhausted on December 21, 2021. (Def. APA p.50). He admits that he started a new job at the Tri-County Commission of Alcohol and Drug Abuse as a staff nurse on May 12, 2022. (T. pp.27—28; Def. APA p.111). On his application for employment with the Tri-County Commission on Alcohol and Drug Abuse, he listed his "Current or Most Recent Employer" as "Graduate Research Assistant at the University of South Carolina in Columbia." (Def. APA p.108).

no counsel
The Claimant was asked whether he completed a medical questionnaire when he applied for employment with the Tri-County Commission on Alcohol and Drug Abuse. The Claimant testified, "I don't remember." (T. p.89, II.18—20). However, the record clearly reveals that when the Claimant applied for work at the Tri-County Commission on Alcohol and Drug Abuse, he denied having any medical problems or "Chronic Ailment." (Def. APA p.126). He specifically denied having any chest pain or shortness of breath, chronic cough, depression or excessive worry, fatigue, frequent trouble sleeping, nervous trouble of any sort, rheumatism or arthritis, swollen or painful joints, or any other conditions. (Def. APA p.129). At his required health examination on April 21, 2022, the Claimant was found to have "Ø significant illnesses or injuries" and a "normal PE." (Def. APA pp.130—131). The Claimant claims that he does not "remember" this physical exam or medical questionnaire. (T. p.91).

The Claimant admits that he worked 12-hour shifts for the Tri-County Commission on Alcohol and Drug Abuse (T. p.92, I.10—12) but he denies remembering what his hourly wage was there (T. p.92, II.13—16). He claims that when he started working and "getting exposed to ambulance coming in with substance abuse patient, and that's what was triggering my -- my acute stress disorder ... I also started realizing how it was impossible for me to work as a nurse with all the Long COVID-related disease symptoms I had." (T. p.28, II. 19—25). He claims that he "was confusing giving the wrong medication to the patient" and that he could not do his job as a nurse with loss of smell and "brain fatigue." (T. p.29). At that point, he returned to Dr. Fayssoux.

However, according to Dr. Fayssoux's report dated June 3, 2022,

"Patient comes back in today for routine follow-up. He has been doing well since his last visit. He is still living in Columbia, South Carolina. He currently has an administrative job in an inpatient psychiatric treatment facility for teenagers with drug and alcohol problems. Currently working at night. He has some mild unpredictable episodes of palpitations but has not had any symptoms that limit his busy schedule or exercise routine. He's had some right hamstring and left calf discomfort which he responded to changing his exercise regimen. He is also used [sic] a topical anti-inflammatory medication successfully. His sense of taste is largely returned since recovering from COVID 19. He has also had some mild though gradual improvement in his anosmia. He is no longer short of breath with his usual exercise regimen. He is still talking to a counselor on a regular basis primarily related issues that occurred after he recovered from COVID 19." (Def. APA p.22).

Dr. Fayssoux further stated that the Claimant's COVID-19 "long term recovery is actually gone [sic] quite well ... He still has some symptoms that are suggestive of mild PTSD but that "these symptoms are improving and are not as severe as they were several months ago." Dr. Fayssoux did not issue any work restrictions for the Claimant at the June 3, 2022, visit, nor did he recommend any medical treatment to a reasonable degree of medical certainty.

On June 16, 2022, the Claimant resigned his position at the Tri-County Commission on Alcohol and Drug Abuse for "personal health and personal safety reasons." (Def. APA pp.105—106). At an appointment with Dr. Fayssoux on July 14, 2022, the Claimant reported that he was "in the process of changing jobs so that he can work during the day. He felt like some of his mild cognitive issues have been more problematic while working at night. He still feels that he is unable to work 12 hour shifts

effectively.” (Def. APA p.26). Again, Dr. Fayssoux did not issue any work restrictions or recommend any specific treatment.

According to the Claimant, he currently suffers from generalized fatigue, problems remembering and recalling information, forgetfulness, loss of smell, PTSD, acute stress disorder, inflammation, lower and upper body pain, anxiety, and depression. (T. pp.31-32). On November 18, 2022, Dr. Fayssoux ordered MRI scans of the Claimant’s lumbar and cervical spine (APA p.76) after the Claimant complained of a “3-week history of worsening lumbar back pain ...that radiates down into his left buttock and is associated with numbness along the left posterolateral thigh, left lateral leg, and to a certain degree on the left lateral foot” and “discomfort in his right neck, right trapezius, and pain down into the right lateral and posterior arm.” (Def. APA p.51). Dr. Fayssoux stated that it was “[u]nclear why he would have coincident neck and low back pain.” (Def. APA p.54). Dr. Fayssoux did not relate the Claimant’s back or neck pain to his prior COVID-19 infection,³ did not address work restrictions, and did not recommend any medical treatment to a reasonable degree of medical certainty on November 18, 2022. Instead, Dr. Fayssoux stated that the Claimant had “[l]argely recovered” from COVID-19 “with the exception of a persistent problem with anosmia” and that the Claimant’s “[r]eactive depression (situational)” was “[n]ot currently problematic.” (Def. APA p.54). When asked at the February 15, 2023, hearing if he was honest with Dr. Fayssoux on November 18, 2022, the Claimant testified, “I don’t remember.” (T. p.87, ll.9—14).

Neither the results of the MRI scans, nor records of his neurosurgical evaluation were submitted into evidence; however, the record does contain the report of Dr. Matthew Drakely dated January 14, 2023. Dr. Drakely’s assessment was cervical and lumbar radiculopathy with acute lumbar radiculitis, though he acknowledged that he had not reviewed the Claimant’s MRI scans. Dr. Drakely recommended

³ The Claimant’s Form 50 dated September 9, 2022, does not claim any injury to his neck or back. In addition, Dr. Fayssoux’s records reveal the Claimant has a pre-existing history of back problems with radicular pain. (Def. APA 14)

an L5-S1 epidural steroid injection but did not address either causation or work restrictions and gave no opinion regarding medical treatment (or otherwise) to a reasonable degree of medical certainty.

The record also contains the report of the Claimant's annual physical examination with Dr. Fayssoux dated January 5, 2023. Reportedly, the Claimant's chief complaint at that time was "numbness in L leg." (APA p.77). Dr. Fayssoux's assessments on that date included "[l]umbar back pain with radiculopathy affecting left lower extremity," "[c]ervical pain (neck)," "[e]ssential hypertension," "[v]itamin B12 deficiency," "[v]itamin D deficiency," "[r]eactive depression (situational)," "[p]rediabetes," and "[l]ong COVID." With respect to the Claimant's depression, Dr. Fayssoux noted that his "depression objectively does not seem any worse than previously noted" and that the Claimant was not taking any antidepressant medications, though he was in active counseling.⁴ Dr. Fayssoux did not issue any work restrictions for depression (or any other condition) and did not recommend any treatment for depression to a reasonable degree of medical certainty. Likewise, Dr. Fayssoux did not issue any work restrictions or recommend any treatment for "[l]ong COVID" to a reasonable degree of medical certainty. Dr. Fayssoux did not relate the Claimant's lumbar pain, radiculopathy, cervical pain, hypertension, vitamin deficiencies, or prediabetes to the Claimant's prior COVID-19 infection. (APA pp.77—81).

On cross-examination, the Claimant was asked about his February 8, 2021, application for employment with the Regional Medical Center. (Def. APA #5). On that application, the Claimant was asked "[h]ave you been terminated from a job for cause or forced resignation?" (Def. APA p.31). The Claimant answered, "[n]o." When asked at the hearing whether this answer was truthful, the Claimant testified, "I don't remember. Objection ... I don't remember. That's my answer." (T. p.40, ll. 15—20).

The Claimant was then asked if he had ever worked for the Department of Veterans Affairs. The Claimant testified, "I don't remember ... If it's in my resume, then it is true because I wrote it—but I don't – I don't recall." (T. p.41, ll.1—9). When asked if he was terminated for cause by the Department

⁴ The record reflects that the Claimant has not seen a counselor since March 2022. The Claimant submitted no record or opinion, stated to a reasonable degree of medical certainty, that he requires treatment for PTSD.

of Veterans Affairs, the Claimant testified, "... you have no evidence for that. I don't know." (T. p.41, ll. 15—16).

The Defendants then marked as Exhibit 1 the Order of United States Magistrate Judge Mary Gordon Baker in the case of Serge R. Wandji v. Robert Wilkie, Secretary of Veterans Affairs, dated November 9, 2020, which was later affirmed by the Fourth Circuit Court of Appeals on June 24, 2021. According to that Order, the Claimant's employment with the Department of Veterans Affairs was terminated on March 14, 2018, because of the Claimant's "inappropriate conduct and lack of candor," as well as "multiple no-call, no-show incidents" and "aggressive behavior." The Claimant was asked again whether he was truthful on his application for employment with the Regional Medical Center when he denied having been terminated from a job with cause" – the Claimant claimed that "[t]hey didn't ask me anything about a job at the VA."

The Claimant admits that he was employed by the Regional Medical Center as a nurse in the Behavioral Health Unit. (T. p.46, ll.22-24). He admits that he did not provide direct patient care to COVID patients in the ICU. (T. p.47, l.24—p.48, l.1). He admits that he did not provide direct patient care to COVID patients in the emergency room. (T. p.48, ll.2—4). Instead, he provided care for psychiatric patients, all of whom tested negative for COVID prior to admission.

The Claimant denied having any knowledge of the visitation policy for the Behavioral Health Unit. (T. p.51, l.22; p.52, ll.5—10). The Claimant denied having any knowledge of the Regional Medical Center's policies for testing patients prior to admission to the Behavioral Health Unit and denied having any knowledge of the requirement that he wear protective equipment, including a N-95 mask, at work. (T.p.49, ll.14—25). However, the record contains documentation of the Regional Medical Center's policies in this regard, including a memorandum dated August 6, 2021, addressed to "All Employees" stating that N-95 masks were required to be worn by anyone with contact with patients. (Def. APA 6). The Claimant alleges that he did not receive this memorandum (T. p.50, ll.9—14), which was included in his own APA submissions (#50, pp.91—93), and claims that he had a "regular" mask (T. p.50, l.25).

The Claimant testified that he does not remember what classes he was taking at the University of South Carolina in August 2021. (T. p.57). Likewise, he does not remember what dates he worked in August 2021. (T. p.58). He also claims to not remember that COVID-19 infections were rising in Orangeburg County and throughout South Carolina in August 2021. (T. p.60). He claims that he does not recall leaving his house at any time between August 17, 2021, and August 22, 2021. (T. p.58—62). He also does not recall speaking to anyone at Employee Health to schedule a testing appointment on August 27, 2022. (T. p.62).

The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021. (T. p.61, ll.1—9). In addition, he admits that there was “no injury” on August 27, 2021. (T. p.64, l.25—p.65, l.4). The Claimant was previously asked at his deposition when he claims to have been infected with COVID-19 and the Claimant responded,

“[n]obody except God can tell exactly what day a person was infected. Do you understand? No doctor, no nurse, no lawyer, no human being can tell exactly what date, what time somebody was infected with COVID. Do you understand?” (APA p.82).

At the hearing, the Claimant again admitted that he has no evidence as to the date or time of his exposure to COVID-19:

“Nobody can answer that question ... You are asking a question, with all due respect, that’s very stupid.” (T. p.66, l.15—p.67, l.14).³

Kelci Caruso testified on behalf of the Defendants. Ms. Caruso has an RN and BSN degree and was employed as the Employee Health nurse at the Regional Medical Center in August 2021. (T. p.96).

³ The Claimant was ultimately instructed to “answer the question that’s asked of [him]” because he was “evading the questions.” (T. p.68, ll.16—29).

Her office was responsible for testing employees for COVID during that time. (T. p.96). Ms. Caruso testified that in August 2021, the Regional Medical Center offered employees COVID testing if they were symptomatic or had an exposure, but free tests were not offered for personal reasons (such as travel or school). (T. p.97). In addition, Ms. Caruso testified that in August 2021, employees in clinical areas were required to wear N-95 masks and were required to wear a surgical mask in other areas of the hospital. (T. p.97, ll.11—14). She confirmed that a memorandum was sent to all employees reminding them of these protocols on August 6, 2021. (T. p.97, ll.18—21). Therefore, Ms. Caruso opined that an employee's risk of exposure to COVID at the hospital was "low," as long as everyone was wearing their protective equipment. (T. p.97, l.25—p.98, l.1).

Ms. Caruso testified that the Claimant presented to Employee Health on August 16, 2021. (T. p.98, ll.23—25). For more than a year prior, the Regional Medical Center's policy was that employees who were symptomatic or needed testing, pre-registration was required. (T. p.98). However, the Claimant did not schedule an appointment or register for testing on August 16, 2021 – he "just showed up." (T. p.97, ll.1-3). Ms. Caruso explained that,

"...shortly after 11:00, I came back to my office after testing other employees outside of the same-day surgery entrance that had an appointment ... he was sitting in Kellie's portion of the office ... She informed me that **he needed to be tested for COVID due to an exposure**, and I let him know that our next testing was at 2:00, and he said that he could not come back at 2:00, because he was getting an admission, and he was going to stay in the office until we tested him. So I told him that it was going to be a few minutes, because like I said, I had to process those specimens, and we had asked him to step outside ... He should have waited outside for us. We actually have a note on our door that stated if you needed to be tested, that we ask that you not come in our office." (T. p.99, l.12—p.100, l.14) (emphasis added).

Ms. Caruso testified that the Claimant was “[v]ery demanding. He wasn’t going to leave until we, you know, did his COVID test” but he did not tell her that he needed the test for school. (T. p.100, ll. 15—23). In particular, Ms. Caruso testified that if the Claimant had told her that he needed a COVID test for school, she would have recommended other areas that he could go to be tested because she “did not test for any school purposes, travel purposes, surgery purposes, or anything like that. It was only for exposure or symptoms.” (T. p.100, l.24—p.101, l.5).

Ms. Caruso testified that her next interaction with the Claimant was on August 27, 2021, when she tested him for COVID a second time. (T. p.101). His results were positive on that date. Ms. Caruso testified that the Claimant told her on that day that his symptoms had begun four to five days before and he settled on Monday, August 23rd as the date. (T. p.101). According to Ms. Caruso, if the Claimant’s symptoms began on August 23, 2021, as the Claimant stated to her, then he could have contagious up to two days prior, including on Sunday, August 22nd when the Claimant was working, and she was “concerned that he possibly could have brought COVID into the hospital.” (T. p.102, ll.23—25). On cross-examination, Ms. Caruso confirmed that her “concern” was based on guidelines published by the CDC. (T. p.105).

Kellie Evans also testified on behalf of the Defendants. She is the administrative assistant in the Employee Health Services office at the Regional Medical Center. (T. p.112). Ms. Evans testified that on August 16, 2021, the Claimant came into her office to request a COVID test because “he had been exposed.” (T. p.113, ll.16—16). Upon questioning from the undersigned, Ms. Evans clarified that “he was exposed but not having symptoms.” (T. p.116, ll.1—2). She further testified that he did not claim to need a COVID test “for school.” (T. p.113, l.20). According to Ms. Evans, if the Claimant had informed her that he needed a COVID test “for school,” he would not have been given a free test at the Regional Medical Center. (T. p.126).

In addition, Ms. Evans testified that when she spoke to the Claimant on August 27, 2021, to schedule his second COVID test, the Claimant told her that his symptoms began on August 23, 2021. (T. p.114, ll.9—10). The Claimant later called back and stated he started feeling bad on August 25th. The

Claimant changed his history yet again in an email on September 9th, at which time he claimed his symptoms started on August 26, 2021. (T. p.114). Ms. Evans and Ms. Caruso documented their conversations with the Claimant contemporaneously. (Def. APA 15, pp.76—78).

Teresa Noe also testified on behalf of the Defendants. She is a nurse manager on the Behavioral Health Unit at the Regional Medical Center and was the Claimant's supervisor when he was employed there. (T. p.128). Ms. Noe explained that the Behavioral Health Unit was a "locked" unit (meaning that you must have a badge to go in or out) that treated geriatric behavioral health patients. (T. p.128). Patients in the Behavioral Health Unit were required to have a negative COVID test prior to admission. (T. p.129). In August 2021, visitors were only allowed on Saturdays and Sundays from 2:00 to 4:00. (T. p.129). All staff on the unit were required to wear N-95 masks and the Claimant would not have been allowed on the unit without one. (T. pp.129--130). In his position, the Claimant did not provide care to any COVID patients. (T. p.130). According to Ms. Noe, the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14).

On cross-examination, the Claimant questioned Ms. Noe about the discharge instructions he received from the Regional Medical Center. According to the Claimant's APA pages 88 and 89, the

"virus that causes COVID-19 mainly spreads from person to person ... Doctors also think it is possible to get infected if you touch a surface that has the virus on it and then touch your mouth, nose or eyes ... A person can be infected, and spread the virus to others, even without having symptoms ... Symptoms usually start 4 or 5 days after a person is infected with the virus. But in some people, it can take up to 2 weeks for symptoms to appear."

Dr. John H. Samies, an infectious disease specialist at Palmetto Infectious Disease Physicians, reviewed the Claimant's records, including his COVID-19 Questionnaire and the testing log for

Behavioral Health Unit employees. (Def. APA p.57). According to Dr. Samies, while hospital policy required the use of protective equipment,

"[o]f more importance to this case is [the Claimant's] self reported exposure and request for testing on 8/16/2001. This was negative. The details of this exposure are unclear. Certainly a positive test on 8/27 and symptoms beginning on 8/23 as he initially reported or on 8/25 or 8/26 (which he subsequently stated) would be consistent with exposure on or near the 8/16 date. Generally COVID incubation is 2 – 14 days with onset for most being about 5 – 10 days from exposure. It is highly unlikely that 8/22 was the date of exposure if his symptoms began on 8/23 and not possible that 8/24 was the date of exposure for onset 8/23. The exposure of 8/22 with onset on 8/25 is unlikely being at the shortest end of incubation period and the exposure of 8/24 with onset of 8/25 is highly unlikely being shorter than the incubation period of the virus.

The recanting of the 8/16 exposure by the claimant and the confusion about date of onset of symptoms puts doubt on all claimant statements in this case. Since the reporting by Employee Health of RMC appears to be a real time event, it would seem that the timing of onset of symptoms should have been quite clear to the claimant.

It is my opinion that a link to employment exposure here is unlikely based on the information presented to me." (Def. APA p.57) (emphasis added).

No other infectious disease experts gave an opinion in this claim.

The report of psychologist Dr. Nicholas Lind of Post Trauma Resources, LLC, dated January 12, 2023, is also contained in the record. (Def. APA 13). The Claimant was referred by the Defendants to Dr. Lind for evaluation of potential emotional impairment he claims to have suffered as a result of his prior COVID infection. The Claimant reportedly "invalidated the measures pertaining to potential posttraumatic stress symptoms because of overreporting and endorsement of unlikely symptoms." In

addition, the Claimant was administered the MMPI-3 but the result was "invalid" and "uninterpretable" because he only "completed 97 of the 335 items." (Def. APA p.63). The Claimant was also administered the Detailed Assessment of Posttraumatic Stress, "a measure of the impact of potentially traumatic events" and was "determined to have endorsements inconsistent with a legitimate posttraumatic stress reaction." (Def. APA p.63). According to Dr. Lind, the Claimant has reached maximum medical improvement "for any psychological distress he experienced secondary to his COVID diagnosis." (Def. APA p.64). In addition, Dr. Lind opined that "[t]here is no credible evidence of any ongoing psychological distress directly associated with his COVID diagnosis ... there was no evidence of memory or attention dysfunction ..." (Def. APA p.64). The Claimant prepared a written response to Dr. Lind's report. (APA #57, pp.141-143).

V. FINDINGS OF FACT

1. The undersigned spent a significant amount of time advising the Claimant on the complexity of this matter and potential legal challenges in satisfying his burden of proving a compensable claim. He was also advised of his right to retain counsel and the potential repercussions of proceeding without the assistance of counsel. In spite of those admonishments, Claimant elected to proceed *Pro Se* in this matter.
2. The Claimant filed a Form 50 claiming an "injury" or "illness" and alleging that on August 27, 2021, his "whole body" was infected with COVID-19. I find that this pleading triggers the requirements of S.C. Code Ann. § 42-1-160 and I find that COVID-19 must be evaluated as a "disease" under that statute. As such, the Claimant's claim must fail, as I find he did not satisfy his burden of proving it resulted "naturally or unavoidably" from an accident at work by a preponderance of the evidence. There is no medical evidence, as defined in the Act, in the record to satisfy this requirement or to otherwise support a finding that the Claimant's employment placed him at an increased risk of exposure to COVID-19.

In addition, based on the greater weight of the lay and circumstantial evidence presented, the Claimant's COVID-19 infection did not result "naturally or unavoidably" from an accident arising out of or in the course of his employment, as alleged. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was "no injury" on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence, including the testimony of his supervisor, Ms. Teresa Noc, reveals that the Claimant and all staff on the "locked" unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Even the Claimant testified that "[n]obody except God" knows when or how he was exposed to, or infected with, COVID-19. (APA p.82).

The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23rd or August 25th or August 26th) according to the persuasive testimony of Ms. Kelci Caruso and Ms. Kellie Evans. (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that "[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant." Dr. Samies ultimately opined "that a link to employment exposure here is unlikely," negating the probability of a causal connection between the Claimant's COVID-19 infection and his employment. (Def. APA p.57). While the Claimant's personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant "contracted Covid-19 at his place of employment" (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) gave no basis for this opinion, nor does explain when he believes the Claimant was exposed or the nature of any such exposure, does not

explain how he excluded the possibility of exposure outside of work during a pandemic, and he does not reconcile the inconsistencies in the Claimant's timeline. Therefore, after carefully considering and weighing all of the evidence presented, I find that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2022.

3. While the Claimant did not file a claim alleging an occupational disease, and while I believe the Claimant's pleading limits him to a claim under S.C. Code Ann. § 42-1-160, I have also analyzed the claim under S.C. Code Ann. § 42-11-10 analysis out of an abundance of caution. The Claimant's claim must also fail under this analysis. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the evidence, the Claimant must not only prove that his COVID infection was "a direct result of continuous exposure to the normal working conditions" of his employment, but the Claimant must also prove that he contracted COVID due to "hazards in excess to those ordinarily incident to employment" and "peculiar to the occupation in which he was engaged." The Claimant has presented no competent evidence to support such findings.

The record contains no opinion of any person, lay or expert, that the Claimant's employment subjected him to hazards in excess to those ordinarily incident to employment, nor any opinion that COVID-19 was peculiar to the Claimant's occupation. Instead, the record reveals that COVID-19 was contracted by at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). The Claimant's supervisor, nurse manager Teresa Noe (a nurse manager), testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public" because of the stringent testing protocols and the personal protective equipment, including N-95 masks, required in the Claimant's position as a nurse in the Behavioral Health Unit. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined "that a link to employment exposure here is unlikely," which does not support a finding that the

Claimant's COVID-19 infection was "a direct result of continuous exposure to the normal working conditions" of the Claimant's employment. (Def. APA p.57).

Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no persuasive evidence that his employment as a nurse in the Behavioral Health Unit placed him at an increased risk of exposure to COVID-19 over and above his risk of exposure outside of his employment. Relevant to this risk analysis is the fact that not only was the Claimant also a student at the University of South Carolina at the time in question, but his employment required him to wear an N-95 mask at all times in clinical areas and he worked in a locked unit where patients were required to test negative for COVID prior to admission. Importantly, the only witness to assess the Claimant's relative risk, Ms. Noe (a nurse manager), testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, 11.13—14). Therefore, COVID-19 was not "peculiar" to the Claimant's occupation and the disease was not directly caused by, especially incident to, or the natural consequence of his work based upon the greater weight of the evidence in the record, including the testimony of Ms. Noe and the opinion of Dr. Samies.

VI. CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant is not entitled to any medical or compensation benefits under the South Carolina Workers' Compensation Act because the greater weight of the evidence indicates that his alleged injuries were not caused naturally or unavoidably by any accident on or about August 27, 2022, and his alleged injuries did not otherwise arise out of or in the course of his employment.
2. Pursuant to S.C. Code Ann. § 42-11-10, the Claimant is not entitled to any medical or compensation benefits under the Workers' Compensation Act because he did not file a claim for an occupational disease and because the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was

peculiar to the Claimant's occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Defendants are not responsible for, any medical or compensation benefits under the South Carolina Workers' Compensation Act for any alleged accident, injury, or occupational disease on or about August 27, 2021.

AND SO IT IS ORDERED.

5/26/23
Columbia, SC


T. Scott Beck, Commissioner

Order served via USPS & Email

Serge Wandji
PO Box 523
Columbia, SC 29202
sergewandji@gmail.com

Roy A. Howell, III Esquire
Trask & Howell, LLC
PO Box 2167
Mt. Pleasant, SC 29465
rhowell@trask-howell.com

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawnee DeBruhl on May 31, 2023

P-33

**State of South Carolina
Workers' Compensation Commission**

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Melody L. James, Commissioner; Gene McCaskill, Commissioner;
and Avery B. Wilkerson, Jr., Commissioner, Chair

SCWCC File No.: 2118696

Serge Wandji,
Claimant/Appellant,

v.

The Regional Medical Center,
Self-Insured Employer,

through

Antum Risk,
Carrier,
Defendants/Respondents.

AFFIRMED

Hearing held in Richland County, South Carolina,
on September 18, 2023

Per notice timely and properly served upon all Parties in Interest.

Appearances: Serge Wandji, Claimant/Appellant, appeared *pro se*.
Roy A. Howell, III, Esq., of Trask & Howell, L.L.C., Mt.
Pleasant, South Carolina, appeared on behalf of
Defendants/Respondents.

Court Reporter: Sarah Costilow, (803) 252-3445,
contact@creelreporting.com

Filed: March 8, 2024

I. STATEMENT OF THE CASE

This matter is before the Commission's Appellate Panel pursuant to the *pro se* Claimant's Form 30, seeking review of Hearing Commissioner T. Scott Beck's Decision and Order dated May 31, 2023. Following a hearing on February 16, 2023, Commissioner Beck concluded that the greater weight of the evidence indicates that the Claimant's alleged injuries (a COVID-19 infection and related symptoms) were not caused naturally or unavoidably by any accident on or about August 27, 2021, and his alleged injuries did not otherwise arise out of or in the course of his employment as required by S.C. Code Ann. § 42-1-160. Commissioner Beck further concluded that, pursuant to S.C. Code Ann. § 42-11-10, the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was peculiar to the Claimant's occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work. Accordingly, the claim for medical and compensation benefits was denied.

On June 16, 2023, the Claimant filed a Form 30, Request for Review, with the Commission.

The Claimant seeks a full reversal of Commissioner Beck's May 31, 2023, Decision and Order and an award of medical and compensation benefits.

The Respondents, the Regional Medical Center of Orangeburg and Palmetto Hospital Trust, contend that Commissioner Beck's findings and conclusions are supported by the greater weight of the evidence in the record and the applicable law and seek a full affirmation by the Appellate Panel.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMMISSIONER BECK'S FINDINGS OF FACT

1. The undersigned spent a significant amount of time advising the Claimant on the complexity of this matter and potential legal challenges in satisfying his burden of proving a compensable claim. He was also advised of his right to retain counsel and the potential repercussions of proceeding without the assistance of counsel. In spite of those admonishments, the Claimant elected to proceed *Pro Se* in this matter.
2. The Claimant filed a Form 50 claiming an "injury" or "illness" and alleging that on August 27, 2021, his "whole body" was infected with COVID-19. I find that this pleading triggers the requirements of S.C. Code Ann. § 42-1-160 and I find that COVID-19 must be evaluated as a "disease" under that statute. As such, the Claimant's claim must fail, as I find he did not satisfy his burden of proving it resulted "naturally or unavoidably" from an accident at work by a preponderance of the evidence. There is no medical evidence, as defined in the Act, in the record to satisfy this requirement or to otherwise support a finding that the Claimant's employment placed him at an increased risk of exposure to COVID-19.

In addition, based on the greater weight of the lay and circumstantial evidence presented, the Claimant's COVID-19 infection did not result "naturally or unavoidably" from an accident arising out of or in the course of his employment, as alleged. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was "no injury" on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence,

including the testimony of his supervisor, nurse manager Teresa Noe, reveals that the Claimant and all staff on the “locked” unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant “would have had a less chance of catching COVID on the unit versus in the public.” (T. p.130, ll.13—14). Even the Claimant testified that “[n]obody except God” knows when or how he was exposed to, or infected with, COVID-19. (APA p.82).

The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23rd or August 25th or August 26th) according to the persuasive testimony of Ms. Kelci Caruso and Ms. Kellie Evans. (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that “[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant.” Dr. Samies ultimately opined “that a link to employment exposure here is unlikely,” negating the probability of a causal connection between the Claimant’s COVID-19 infection and his employment. (Def. APA p.57). While the Claimant’s personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant “contracted Covid-19 at his place of employment” (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) neither gave a basis for this opinion, nor does he explain when he believes the Claimant was exposed or the nature of any such exposure; he does

not explain how he excluded the possibility of exposure outside of work during a pandemic; and he does not reconcile the inconsistencies in the Claimant's timeline. Therefore, after carefully considering and weighing all of the evidence presented, I find that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2021.

3. While the Claimant did not file a claim alleging an occupational disease, and while I believe the Claimant's pleading limits him to a claim under S.C. Code Ann. § 42-1-160, I have also analyzed the claim under S.C. Code Ann. § 42-11-10 analysis out of an abundance of caution. The Claimant's claim must also fail under this analysis. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the evidence, the Claimant must not only prove that his COVID infection was "a direct result of continuous exposure to the normal working conditions" of his employment, but the Claimant must also prove that he contracted COVID due to "hazards in excess to those ordinarily incident to employment" and "peculiar to the occupation in which he was engaged." The Claimant has presented no competent evidence to support such findings.

The record contains no opinion of any person, lay or expert, that the Claimant's employment subjected him to hazards in excess to those ordinarily incident to employment, or any opinion that COVID-19 was peculiar to the Claimant's occupation. Instead, the record reveals that COVID-19 was contracted by at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). Ms. Noe testified without objection that the Claimant "would have had a less chance of catching

COVID on the unit versus in the public" because of the stringent testing protocols and the personal protective equipment, including N-95 masks, required in the Claimant's position as a nurse in the Behavioral Health Unit. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined "that a link to employment exposure here is unlikely," which does not support a finding that the Claimant's COVID-19 infection was "a direct result of continuous exposure to the normal working conditions" of the Claimant's employment. (Def. APA p.57).

Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no persuasive evidence that his employment as a nurse in the Behavioral Health Unit placed him at an increased risk of exposure to COVID-19 over and above his risk of exposure outside of his employment. Relevant to this risk analysis is the fact that not only was the Claimant also a student at the University of South Carolina at the time in question, but his employment required him to wear an N-95 mask at all times in clinical areas and he worked in a locked unit where patients were required to test negative for COVID prior to admission. Importantly, the only witness to assess the Claimant's relative risk, Ms. Noe, testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Therefore, COVID-19 was not "peculiar" to the Claimant's occupation and the disease was not directly caused by, especially incident to, or the natural consequence of his work based upon the greater weight of the evidence in the record, including the testimony of Ms. Noe and the opinion of Dr. Samies.

COMMISSIONER BECK'S CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant is not entitled to any medical or compensation benefits under the South Carolina Workers' Compensation Act because the greater weight of the evidence indicates that his alleged injuries were not caused naturally or unavoidably by any accident on or about August 27, 2021, and his alleged injuries did not otherwise arise out of or in the course of his employment.

Pursuant to S.C. Code Ann. § 42-11-10, the Claimant is not entitled to any medical or compensation benefits under the Workers' Compensation Act because he did not file a claim for an occupational disease and because the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was peculiar to the Claimant's occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work.

III. ISSUES ON APPEAL

1. [Whether] the Claimant demonstrated solid evidence that he was exposed to COVID-19 at Regional Medical before and during the time of his confirmed infection.
2. [Whether] the Defendants were able to produce or demonstrate evidence to support their defense strategies, as outlined in their Pre-Hearing Brief of January 12, 2023.
3. [Whether] the Defendants engaged in forgery and falsification of documents which they introduced as evidence as part of their APAs in this case.
4. [Whether] the Defendants' [actions] resulted in fraudulent representation, racist attacks and unlawful [conduct].

IV. DECISION OF THE APPELLATE PANEL

On November 29, 2021, the Claimant filed a Form 50 claiming an “injury” or “illness” and alleging that, his “whole body” was infected with COVID-19. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was “no injury” on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence, including the testimony of his supervisor, nurse manager Teresa Noe, reveals that the Claimant and all staff on the “locked” unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant “would have had a less chance of catching COVID on the unit versus in the public.” (T. p.130, ll.13—14). Even the Claimant testified that “[n]obody except God” knows when or how he was exposed to, or infected with, COVI-19. (APA p.82).

The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23rd or August 24th or August 25th) according to the testimony of Ms. Kelci Caruso and Ms. Kellie Evans, who Hearing Commissioner Beck found to be “persuasive.” (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that:

“[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant.”

Dr. Samies ultimately opined “that a link to employment exposure here is unlikely,” negating the probability of a causal connection between the Claimant’s COVID-19 infection and his employment. (Def. APA p.57).¹

While the Claimant’s personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant “contracted Covid-19 at his place of employment” (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) neither gave a basis for this opinion, nor does explain when he believes the Claimant was exposed or the nature of any such exposure, does not explain how he excluded the possibility of exposure outside of work during a pandemic, and he does not reconcile the inconsistencies in the Claimant’s timeline. Therefore, Hearing Commissioner Beck properly

¹ The Claimant’s allegations with respect to Dr. Samies are improper, unfounded, and irrelevant. The Claimant, himself, submitted Dr. Samies’s report into evidence as APA #58. The Claimant did not object to the admission of this report at the hearing, or did he seek to exercise his right to cross-examine Dr. Samies. Therefore, the Claimant cannot be heard to complain about the admissibility of Dr. Samies’s report on appeal. See Turner v. Med. Univ. of S.C., 430 S.C. 569, 590, 846 S.E.2d 1, 12 (Ct. App. 2020) (holding that a “contemporaneous objection is required to preserve issues for appellate review” and citing Webb v. CSX Transp., Inc., 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005); see also Scott v. Porter, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000) (holding that “[o]rdinarily, if an appellant fails to object the first time a statement is made, he or she waives the right to raise the issue on appeal”). Dr. Samies’s relationship with the Regional Medical Center was always made clear to the Claimant and to the Commission, as the Respondents submitted Dr. Samies’s resume into evidence (Def. APA #12, pp.58—60), showing that he was on the medical staff at the Regional Medical Center, as well as serving on the Executive Committee and Board of Trustees. However, there is no competent evidence that Dr. Samies’s report was based upon anything other than the facts and his own expert opinion and therefore, the Claimant’s allegations of bias do not affect the weight accorded to his opinion by the Commission. Perhaps more importantly, the Claimant’s allegations regarding Dr. Samies in no way change the fact that the Claimant failed to meet his burden of proving any accident at work, any injurious exposure at work, or any increased risk of exposure to a worldwide pandemic at work, especially given the stringent personal protective equipment and testing protocols required in his workplace.

gave the reports of Dr. Fayssoux little weight in finding that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2021.

The Claimant's argument that he is entitled to a workers' compensation benefits because the Respondents did not prove that the Claimant was exposed to COVID-19 outside of work is without merit. Not only must workers' compensation awards not be based on surmise, conjecture, or speculation, but the "the difficulty in proving a fact in a compensation case does not relieve the party on whom the burden rests of proving it and does not shift the burden to the other party." Herndon v. Morgan Mills, Inc., 246 S.C. 201, 209, 143 S.E.2d 376, 380–81 (1965) (*internal citations omitted*). Accordingly, the Appellate Panel hereby affirms Hearing Commissioner Beck's findings of fact and conclusions of law under S.C. Code Ann. § 42-1-160, because even the Claimant, when asked if he has any evidence of his alleged exposure to COVID-19, testified:

"Nobody can answer that question ... You are asking a question, with all due respect, that's very stupid." (T. p.66, l.15—p.67, l.14).

Even though the Claimant did not file a claim alleging an occupational disease, and his pleadings limit him to a claim under S.C. Code Ann. § 42-1-160, Hearing Commissioner Beck also analyzed the claim under S.C. Code Ann. § 42-11-10 "out of an abundance of caution" and concluded that the claim must also fail under this analysis. The Appellate Panel agrees. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the

evidence, the Claimant must not only prove that his COVID infection was “a direct result of continuous exposure to the normal working conditions” of his employment, but the Claimant must also prove that he contracted COVID due to “hazards in excess to those ordinarily incident to employment” and “peculiar to the occupation in which he was engaged.” The Claimant has presented no competent evidence to support such findings.

The record contains no opinion of any person, lay or expert, that the Claimant’s employment subjected him to hazards in excess to those ordinarily incident to employment, or any opinion that COVID-19 was peculiar to the Claimant’s occupation. Instead, the record reveals that COVID-19 was contracted at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). Ms. Noe, testified that the Claimant “would have had a less chance of catching COVID on the unit versus in the public” because of the stringent testing protocols and requirements for personal protective equipment, including N-95 masks, in the Claimant’s place of employment. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined “that a link to employment exposure here is unlikely,” which is clearly contrary to the requirement that the Claimant’s COVID-19 infection be “a direct result of continuous exposure to the normal working conditions” of the Claimant’s employment. (Def. APA p.57).

Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no competent evidence that his employment placed him at an increased risk of exposure over and above his risk of exposure outside of his employment, especially considering the fact that the Claimant was a student at the University of South Carolina at the time in question and his

employment required him to wear an N-95 mask at all times. Instead, the only witness to assess the Claimant's relative risk, Ms. Noe, testified that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Moreover, it would be specious to suggest that COVID-19 was "peculiar" to the Claimant's occupation or that the disease was either directly caused by, especially incident to, or the natural consequence of his work and there is no persuasive or competent evidence in the record to support any such suggestion. Therefore, Hearing Commissioner Beck's findings and conclusions under S.C. Code Ann. § 42-11-10, are hereby affirmed by the Appellate Panel, as they are supported by the greater weight of the evidence and the applicable law.

FINDINGS OF FACT

1. The Hearing Commissioner spent a significant amount of time advising the Claimant on the complexity of this matter and potential legal challenges in satisfying his burden of proving a compensable claim. He was also advised of his right to retain counsel and the potential repercussions of proceeding without the assistance of counsel. In spite of those admonishments, Claimant elected to proceed *Pro Se* in this matter.
2. The Claimant filed a Form 50 claiming an "injury" or "illness" and alleging that on August 27, 2021, his "whole body" was infected with COVID-19. The Commission finds that this pleading triggers the requirements of S.C. Code Ann. § 42-1-160 and finds that COVID-19 must be evaluated as a "disease" under that statute. As such, the Claimant's claim must fail, as the Commission finds he did not satisfy his burden of proving it resulted "naturally or unavoidably" from an accident at work by a preponderance of the evidence. There is no medical evidence, as defined in the Act, in the record to satisfy this requirement or to

otherwise support a finding that the Claimant's employment placed him at an increased risk of exposure to COVID-19.

3. In addition, based on the greater weight of the lay and circumstantial evidence presented, the Claimant's COVID-19 infection did not result "naturally or unavoidably" from an accident arising out of or in the course of his employment, as alleged. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was "no injury" on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence, including the testimony of Ms. Noe, reveals that the Claimant and all staff on the "locked" unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Even the Claimant testified that "[n]obody except God" knows when or how he was exposed to, or infected with, COVI-19. (APA p.82).
4. The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23rd or August 25th or August 26th) according to the persuasive testimony of Ms. Caruso and Ms. Evans. (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that "[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant

statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant." Dr. Samies ultimately opined "that a link to employment exposure here is unlikely," negating the probability of a causal connection between the Claimant's COVID-19 infection and his employment. (Def. APA p.57). While the Claimant's personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant "contracted Covid-19 at his place of employment" (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) neither gave a basis for this opinion, nor does explain when he believes the Claimant was exposed or the nature of any such exposure, does not explain how he excluded the possibility of exposure outside of work during a pandemic, and he does not reconcile the inconsistencies in the Claimant's timeline. Therefore, after carefully considering and weighing all of the evidence presented, the Commission finds that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2021.

5. While the Claimant did not file a claim alleging an occupational disease, and while the Commission is of the belief that the Claimant's pleading limits him to a claim under S.C. Code Ann. § 42-1-160, the Commission has also analyzed the claim under S.C. Code Ann. § 42-11-10 analysis out of an abundance of caution. The Claimant's claim must also fail under this analysis. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the evidence, the Claimant must not only prove that his COVID infection was "a direct result of continuous exposure to the normal working conditions" of his employment, but the Claimant must also prove that he contracted COVID due to "hazards in excess to those ordinarily incident to employment" and

“peculiar to the occupation in which he was engaged.” The Claimant has presented no competent evidence to support such findings.

6. The record contains no opinion of any person, lay or expert, that the Claimant’s employment subjected him to hazards in excess to those ordinarily incident to employment, or any opinion that COVID-19 was peculiar to the Claimant’s occupation. Instead, the record reveals that COVID-19 was contracted by at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). Ms. Noe testified without objection that the Claimant “would have had a less chance of catching COVID on the unit versus in the public” because of the stringent testing protocols and the personal protective equipment, including N-95 masks, required in the Claimant’s position as a nurse in the Behavioral Health Unit. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined “that a link to employment exposure here is unlikely,” which does not support a finding that the Claimant’s COVID-19 infection was “a direct result of continuous exposure to the normal working conditions” of the Claimant’s employment. (Def. APA p.57).
7. Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no persuasive evidence that his employment as a nurse in the Behavioral Health Unit placed him at an increased risk of exposure to COVID-19 over and above his risk of exposure outside of his employment. Relevant to this risk analysis is the fact that not only was the Claimant also a student at the University of South Carolina at the time in question, but his employment required him to wear an N-95 mask at all times in clinical areas and

he worked in a locked unit where patients were required to test negative for COVID prior to admission. Importantly, the only witness to assess the Claimant's relative risk, Ms. Noe, testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Therefore, COVID-19 was not "peculiar" to the Claimant's occupation and the disease was not directly caused by, especially incident to, or the natural consequence of his work based upon the greater weight of the evidence in the record, including the testimony of Ms. Noe and the opinion of Dr. Samies.

CONCLUSIONS OF LAW

1. "[T]he difficulty in proving a fact in a compensation case does not relieve the party on whom the burden rests of proving it, and does not shift the burden to the other party."
Herndon v. Morgan Mills, Inc., 246 S.C. 201, 209, 143 S.E.2d 376, 380–81 (1965)
(Internal citations omitted).
2. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant is not entitled to any medical or compensation benefits under the South Carolina Workers' Compensation Act because the greater weight of the evidence indicates that his alleged injuries were not caused naturally or unavoidably by any accident on or about August 27, 2021, and his alleged injuries did not otherwise arise out of or in the course of his employment.
3. Pursuant to S.C. Code Ann. § 42-11-10, the Claimant is not entitled to any medical or compensation benefits under the Workers' Compensation Act because he did not file a claim for an occupational disease and because the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was peculiar to the Claimant's

occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Respondents are not responsible for, any medical or compensation benefits under the South Carolina Workers' Compensation Act for any alleged accident, injury, or occupational disease on or about August 27, 2021.

AND SO IT IS ORDERED.

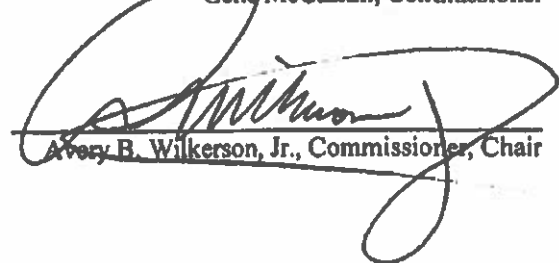
Columbia, SC



Melody L. James, Commissioner



Gene McCaskill, Commissioner



Avery B. Wilkerson, Jr., Commissioner, Chair

Order Served via email:

Serge Wandj sergewandji@gmail.com	Roy A. Howell, III Trask & Howell rhowell@trask-howell.com
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Order Served via USPS:

Serge Wandji P.O. Box 523 Columbia, SC 29202	Roy A. Howell, III Trask & Howell P.O. Box 2167 Mt. Pleasant, SC 29465
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on March 8, 2024

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 2118696

Serge Wandji,

Claimant,
vs.

The Regional Medical Center,

Employer,

Antum Risk

Carrier,

P51
MOTION ORDER

A Motion regarding the following Motion has been received by Claimant,
Mr. Serge Wandji.

Motion to Reopen Case or Request for Modification based on extraordinary
circumstances.

The Motion request is DENIED, as it goes to the merits of the Claim.

Motion Order served via USPS:

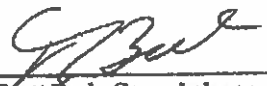
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Mt. Pleasant, SC 29465

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawnee Radcliff on November 1, 2024


T. Scott Beck, Commissioner

Serge Wandjl,
Employee/Claimant,
-vs-
The Regional Medical Center,
Self-Insured Employer,
Through
Antum Risk,
Defendant.

**MOTION TO REOPEN CASE OR REQUEST FOR
MODIFICATION BASED ON EXTRAORDINARY
CIRCUMSTANCES**

Pro se Claimant Serge Wandji respectfully moves this Honorable Commission to reopen the above-captioned workers' compensation case or, in the alternative, to modify the decision rendered by Commissioner Scott Beck and affirmed by the Workers' Compensation Appellate Panel based on extraordinary circumstances pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 42-17-90.

I. INTRODUCTION

II. GROUNDS FOR MOTION

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The Claimant has uncovered evidence that was not available during the initial hearings and could not have been discovered with due diligence. This includes the affidavit and deposition of Dr. John H. Samies, a medical and infectious diseases 'expert', which directly contradicts the findings relied upon by Commissioner Beck and the Appellate Panel.

Dr. Samies, presented as an independent and unbiased expert witness, was later revealed to be an executive Medical Staff and a member of the Board of Trustees at TRMC. His affiliation with the Defendant organization was never explicitly disclosed, resulting in a clear conflict of interest. Additionally, Dr. Samies did not appear to the hearing for cross-examination, depriving the Claimant of a fair opportunity to challenge his testimony, which was relied upon in the Commissioner's decision.

This newly discovered evidence demonstrates that Dr. Samies was not an independent expert, as portrayed. His 'expert' testimony, which played a critical role in the decision-making process, was biased due to his position at TRMC. This evidence could not have been uncovered during the original proceedings despite the exercise of due diligence.

2. Fraud, Misrepresentation, and Conflict of Interest

Following the original workers' compensation hearing, the Claimant successfully pursued a workers' compensation retaliation lawsuit, during which Dr. Samies was compelled to sit for a deposition. During this deposition, it was revealed that Dr. Samies was not an independent expert, as originally presented, but a sitting member of TRMC's Board of Trustees. This conflict of interest was not explicitly disclosed at the original hearing, resulting in significant misrepresentation.

Moreover, Dr. Samies admitted during the deposition that the timing and location of the Claimant's COVID-19 exposure, as stated in his expert letter, were inaccurate. Dr. Samies acknowledged that the Claimant, as a nurse at TRMC, was exposed to COVID-19 during August 2021 at his workplace, when multiple staff members and patients at TRMC had tested positive and that Claimant cared for patients who tested positive for COVID-19 on his own unit, per TRMC records. Thereby retracting the his previously made statement in his 'expert' letter which stated that *"a link to employment exposure here is unlikely"*.

These facts were omitted in his expert letter, which was relied upon by the Commissioner in denying the Claimant's claim.

3. Impact on Commissioner's Decision

The Commissioner's decision to deny the Claimant's workers' compensation claim was significantly influenced by Dr. Samies' expert testimony. Given the newly discovered evidence of bias, conflict of interest, and fraudulent misrepresentation, it is clear that the decision to deny the claim was based on faulty and incomplete evidence. If the conflict of interest and fraudulent conduct had been disclosed during the original proceedings, the outcome of this case would likely have been different.

III. LEGAL STANDARD

Under Rule 60(b) of the South Carolina Rules of Civil Procedure, relief from judgment may be granted for:

- 60(b)(2): Newly discovered evidence that could not have been discovered in time to move for a new trial;
- 60(b)(3): Fraud, misrepresentation, or misconduct by an opposing party; and
- 60(b)(6): Any other reason justifying relief from the judgment.

Further, S.C. Code Ann. § 42-17-90 permits the Workers' Compensation Commission to review and modify decisions based on new evidence or changed circumstances.

IV. RELIEF REQUESTED

In light of the newly discovered evidence and the fraudulent misrepresentation by the Defendant's expert witness, the Claimant respectfully requests the following relief:

1. **Reopen the Case:** The case should be reopened to allow the introduction of this newly discovered evidence and to correct the fraudulent testimony presented during the original hearing.
2. **Modify the Decision:** In the alternative, the Commission should modify its decision in favor of the Claimant, as the newly discovered evidence and revelations of misconduct materially affect the validity of the original ruling.
3. **Any Additional Relief:** The Claimant requests any additional relief the Commission deems just and proper.

V. CONCLUSION

The Claimant respectfully asserts that the grounds presented constitute extraordinary circumstances warranting the reopening or modification of this case. This Motion seeks a fair opportunity to present the newly discovered evidence and correct the unjust result caused by the fraud, misrepresentation, and undisclosed conflict of interest.

Should this Motion be denied, the Claimant requests permission to file an appeal to the South Carolina Court of Appeals on these same grounds.

Date: October, 4, 2024

Respectfully submitted,
Serge Wandji
Pro se Claimant
P.O. Box 523
Columbia SC, 29202

sergewandji@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this October 4, 2024, a true and correct copy of the Motion to Reopen Case or Request for Modification Based on Extraordinary Circumstances was served upon the following party via certified mail, and electronic mail, to the Defendant Attorney in file as followed:

Mr. Roy A. Howell, III
Trask & Howell, L.L.C.
Attorneys for Defendants
763 Johnnie Dodds Blvd
P.O. Box 2167 Mt. Pleasant, SC 29465

s/Serge Wandji
P.O. Box: 523
Columbia, SC, 29202
sergewandji@gmail.com

**TRASK
HOWELL**
WORKERS' COMPENSATION DEFENSE

Beck

Reply to
Roy A. Howell, III
(843) 881-2236
rhowell@trask-howell.com

October 11, 2024

VIA REGULAR & CERTIFIED MAIL

Ms. Amy Bracy
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

NH

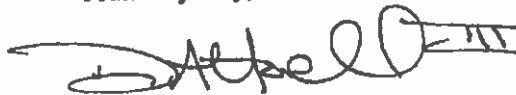
#5 p.56

Re: Serge Wandji v. The Regional Medical Center
W.C.C. File No.: 2118696
Carrier File No.: WC2021098080
Date of Accident: August 27, 2021

Dear Ms. Bracy:

Enclosed herewith for filing please find a Return to Motion "To Reopen Claim or Request for Modification" in regard to the above-named matter. By a copy of this letter, I am serving the Claimant with a copy of the motion.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/mkb
Enc.

cc: Sandra Axson, Antum Risk (w/enc.) (via upload only)
Tiffany Kirby, MUSC Health - Orangeburg (w/enc.) (via email only)
Serge Wandji (w/enc.)

**SCWCC
OCT 15 2024
JUDICIAL**

763 JOHNNIE DODDS BLVD. | P.O. BOX 2167
P 843.881.4228 | F 843.881.8784



MT. PLEASANT, SOUTH CAROLINA 29465
www.TRASK-HOWELL.com

3842/418U-wcc return to motion to reopen

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

Serge R. Wandji,
Claimant/Appellant,

y.

**The Regional Medical Center of
Orangeburg,
Employer, and
Palmetto Hospital Trust,
Carrier,
Respondents.**

W.C.C. FILE NO. 2118696

**RETURN TO MOTION
"TO REOPEN CLAIM OR
REQUEST FOR MODIFICATION"**

The Regional Medical Center of Orangeburg and the Palmetto Hospital Trust respectfully request that the Claimant's Motion to "reopen his claim or request for modification" be denied by the Commission based upon the following:

1. The Claimant filed a Form 50 on September 9, 2022, alleging an "infection of whole body" due to both an injury and an illness on August 27, 2021, in Orangeburg, South Carolina. The Claimant's Form 50 does not allege an occupational disease.
2. The Respondents filed a Form 51 on October 7, 2022, denying the claim and raising affirmative defenses under S.C. Code Ann. § 42-11-10, *et seq.*. The Respondents denied the Claimant suffered any injury or illness as alleged and deny he is entitled to any medical or compensation benefits based on the Claimant's failure to meet his burden of proof. The Respondents contended that COVID-19 is one of the ordinary diseases of life for which more than 32% of the population of South Carolina has tested positive; therefore, the Claimant bore the burden of proving that he was infected with COVID-19 naturally and unavoidably from an accident arising out of and in the course of his employment and that his employment, which required him to wear an N-95 mask while

working with a population subject to stringent testing protocols, placed him at an increased risk of such infection. The Respondents further denied the Claimant properly raised an occupational disease claim and deny that any occupational disease claim meets any of the requirements of S.C. Code Ann. § 42-11-10. In addition, the Respondents specifically argued that the Claimant has failed to meet his burden of proving his entitlement to medical benefits with expert medical evidence stated to a reasonable degree of medical certainty as required by S.C. Code Ann. § 42-15-60, and failed to meet his burden of proving any loss of wage earnings capacity after reaching maximum medical improvement by January 14, 2022 (or at the latest May 14, 2022, when the Claimant began working for a new employer).

3. Following a hearing on February 16, 2023, Commissioner Beck concluded by Order dated May 31, 2023, that the Claimant's alleged injuries (a COVID-19 infection and related symptoms) were not caused naturally or unavoidably by any alleged accident on or about August 27, 2022, and his alleged injuries did not otherwise arise out of or in the course of his employment as required by S.C. Code Ann. § 42-1-160. Commissioner Beck further concluded that, pursuant to S.C. Code Ann. § 42-11-10, the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was not peculiar to the Claimant's occupation, and that the disease was neither directly caused by, nor especially incident to, nor the natural consequence of the Claimant's work.
4. The Commission's Appellate Panel affirmed Commissioner Beck by final Decision and Order dated March 8, 2024. The Claimant did not appeal.

5. On October 4, 2024, the Claimant filed a Motion to “reopen claim or request for modification” alleging newly discovered evidence and “fraud,” citing Rule 60(b), S.C.R.C.P. and S.C. Code Ann. § 42-17-90. The Respondents respectfully contend that the Claimant's Motion is without merit.
6. Rule 60(B) of the South Carolina Rules of Civil Procedure does not apply to administrative proceedings before the South Carolina Workers' Compensation Act. See Rule 1, S.C.R.C.P., Rule 81, S.C.R.C.P.; see also Stone v. Roadway Express, Emp., 367 S.C. 575, 582, 627 S.E.2d 695, 699 (2006); accord Nettles v. Spartanburg Sch. Dist. #7, 341 S.C. 580, 588, 535 S.E.2d 146, 150 at *fn.4* (Ct. App. 2000) (concluding that the workers' compensation law does not provide for a motion under Rule 60, S.C.R.C.P.)
7. Instead, procedure before the Workers' Compensation Commission is governed by Title 42 and Regulation 67 and neither permit a claimant to relitigate a claim or modify an order under the present circumstances.
8. Pursuant to S.C. Code Ann. § 42-17-60, an award of the Commission “is conclusive and binding as to all questions of fact.” Because the Claimant did not appeal¹ the Commission's decision to the Court of Appeals, the Commission's finding that that the Claimant's alleged injuries (a COVID-19 infection and related symptoms) were not caused naturally or unavoidably by any alleged accident on or about August 27, 2022, and the finding that his alleged injuries did not otherwise arise out of or in the course of

¹ The Claimant's Motion also “requests permission to file an appeal to the South Carolina Court of Appeals on these same grounds.” The Commission does not have authority to grant such “permission.” S.C. Code Ann. § 42-17-60 is a statute of repose and neither the Commission, nor the Courts, have any authority to extend the mandatory 30-day deadline, which was unequivocally imposed by the Legislature. See *infra*, ¶ 9.

his employment as required by S.C. Code Ann. § 42-1-160, are the conclusive and binding law of the case and not subject to review by any motion.

9. According to the South Carolina Supreme Court, S.C. Code Ann. § 42-17-60 is a statute of repose. See Lloyd v. AT & T Nassau Metals Corp., 299 S.C. 207, 209, 383 S.E.2d 257, 259 (Ct.App.1989) (holding that “the proper remedy [to an error in the single commissioner’s order] is a timely appeal to the full Commission and then to the courts.... It is a rule of repose.”); see also Lloyd v. AT & T Nassau Metals Corp., 299 S.C. 207, 209, 383 S.E.2d 257, 259 (Ct. App. 1989) (explaining that the time limit for administrative remedies under S.C. Code Ann. § 42-17-10 promotes the finality and certainty of Commission decisions and is “a rule of repose”).
10. As further explained by the Supreme Court in Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass’n, 411 S.C. 557, 560, 769 S.E.2d 847, 848–49 (2015), a “statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time.” Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citing Langley v. Pierce, 313 S.C. 401, 403–04, 438 S.E.2d 242, 243 (1993)). “A statute of repose is typically an *absolute time limit* beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.” *Id.* (emphasis added) (citing Langley, 313 S.C. at 404, 438 S.E.2d at 243). Thus, “[s]tatutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists.” *Id.* (quoting Camacho v. Todd & Leiser Homes, 706 N.W.2d 49, 54 n. 6 (Minn.2005)). Respectfully, S.C. Code Ann. § 42-17-60

imposes an absolute time limit for review of a final decision of the Commission and absolutely mandates denial of the Claimant's Motion.

11. Furthermore, pursuant to S.C. Code Reg. 67-215(B), the "Commission will not address a motion involving the merits of the claim." While the Commission "may entertain motions to reconsider an order, opinion, or award if the purpose of the motion is not an attempt to reargue the merits of the dispute," the Claimant's October 4, 2024, Motion is a clear attempt to reargue the merits of the claim. Therefore, the Claimant's Motion is improper and should be denied as a matter of law pursuant to the plain terms of S.C. Code Reg. 67-215(B).
12. Additionally, S.C. Code Reg. 67-215(B), clearly and unequivocally states that "[a]ny motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served." (emphasis added). See generally, Strickland v. Richland Cnty. Legislative Delegation, 440 S.C. 438, 442, 892 S.E.2d 288, 290 (2023) (explaining "the prevailing rule of statutory interpretation is that the 'use of words such as *'shall'* or *'must'* indicates the legislature's intent to enact a *mandatory* requirement." (internal citations omitted; emphasis original). Here, the Claimant's Motion to reopen his claim or to modify the Commission's March 8, 2024, Decision and Order was filed 210 days after the Decision and Order was served upon the Claimant and must be denied.
13. To the extent that the Claimant relies on S.C. Code Ann. § 42-17-90 because that statute empowers the Commission to review an award on the ground of "a change in condition," this reliance is misplaced. Firstly, a "change of condition," as the term is used in § 42-17-90, "means a change in the claimant's *physical condition* as a result of the original injury, occurring after the first award." Causby v. Rock Hill Printing & Finishing Co.,

249 S.C. 225, 227, 153 S.E.2d 697, 698 (1967) (citing Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E.2d 19) (emphasis added). In addition, review under § 42-17-90 is not available as an alternative to, or substitute for, an appeal under S.C. Code Ann. § 42-17-60. *Id.*

14. Even if the Claimant's Motion were timely or proper, it is nevertheless not supported by any evidence and it does not comply with the Commission's regulatory requirements. S.C. Code Reg. 67-215(D)(1) requires that "[i]f the ground on which the motion or reply depend is based on the existence of facts not in the Commission's file, the moving party shall file an affidavit or affidavits evidencing those facts." No such affidavit was filed by the Claimant and the allegations contained in his Motion are not supported by any evidence in the Commission's file.

15. Moreover, the allegations contained in the Claimant's Motion are demonstrably false.

For example, the Motion states that "the Claimant successfully pursued a workers' compensation retaliation lawsuit." In reality, a Motion for Summary Judgment is currently pending in his civil suit against the Regional Medical Center and neither that Motion, nor the merits of the civil suit, have been decided in the Claimant's favor.

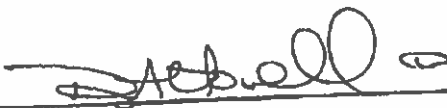
16. With regard to the Claimant's claims about the recent deposition testimony of Dr. Samies in his civil case, they are likewise without merit. Not only did the Claimant fail to exercise his right to depose Dr. Samies in the workers' compensation claim prior to (or even after) the February 16, 2023, hearing, but the recent deposition of Dr. Samies did not concern the merits of his workers' compensation claim and would not have been admissible in this claim because the Respondents were not present to exercise their own rights at that deposition. More importantly, Dr. Samies did not "retract" his previous

written statements at his recent deposition, as the Claimant baselessly alleges in his Motion.

17. The Claimant's Motion also baselessly alleges that Dr. Samies's "affiliation" with the Regional Medical Center "was never explicitly disclosed" and "could not have been uncovered during the original proceedings despite the exercise of due diligence." In fact, the Respondents' APA 12 (p.60) is the actual *Curriculum Vitae* for Dr. Samies and it explicitly states that he was a member of the "Board of Trustees—The Regional Medical Center, 2006, 2022—present" and "Chief of Medical Staff, The Regional Medical Center 2020-2021." Obviously, if the Claimant had exercised reasonable diligence (e.g., actually reading the documentary evidence submitted at the hearing and provided to him ten days before that hearing), he would have known of Dr. Samies's affiliations. However, they do not change the underlying fact that the Claimant simply failed to prove his entitlement to benefits under the Workers' Compensation Act.

Therefore, based upon the facts and arguments set forth herein above, the Respondents respectfully request that the Claimant's Motion to Reopen Case or Request for Modification be denied and dismissed with prejudice.

Respectfully submitted,



Roy A. Howell, III
Trask & Howell, LLC
Attorneys for the Respondents

October 11, 2024
Mount Pleasant, SC

Serge Wandji
Claimant,

v.

The Regional Medical Center
Employer,
And

Self insured through Antum Risk
Carrier, Defendants.

SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC FILE NO: 2118696

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this Return to Motion "To Reopen Claim or Request for Modification" in the above-captioned action upon Claimant, Serge Wandji, to be served by certified and first-class mail prepaid postage at the addresses shown below on October 11, 2024.

Serge Wandji
P.O. Box 523
Columbia, SC 29202


Roy A. Howell, III
Trask & Howell, LLC
P.O. Box 2167
Mt. Pleasant, SC 29465
Bar ID: 11888
(843) 881-2236
rhowell@trask-howell.com

October 11, 2024
Mt. Pleasant, South Carolina

Serge Wandji,
Employee/Claimant,
-vs-
The Regional Medical Center,
Self-Insured Employer,
Through
Antum Risk,
Defendant.

**CLAIMANT'S REPLY TO DEFENDANT'S
RETURN TO CLAIMANT'S MOTION TO
REOPEN CLAIM OR REQUEST FOR
MODIFICATION**

II. Grounds for Motion

1. Newly Discovered Evidence:

The Claimant has recently uncovered crucial new evidence, including an Affidavit and the deposition of Dr. John H. Samies. This evidence was not available during the original hearing and could not have been found through due diligence. Dr. Samies, who was presented as an independent expert, was later revealed to hold an executive position on The Regional Medical Center (TRMC)'s Board of Trustees, an undisclosed conflict of interest that casts doubt on his credibility. His deposition revealed inaccuracies in his previous expert testimony, particularly regarding the timing and location of the Claimant's COVID-19 exposure at TRMC.

2. Misrepresentation, and Conflict of Interest:

In his pre-hearing brief, as well as throughout both hearings, Mr. Roy A. Howell III, counsel for the Defendant, presented Dr. Samies as an independent and unbiased expert witness in the field of infectious diseases. However, it was subsequently revealed that Dr. Samies holds an executive position on the Medical Staff and serves as a member of the Board of Trustees at TRMC, the Defendant organization. In his deposition, when asked What kind of additional role he had at TRMC beside practicing medicine there? Dr. Samies answered "*I've been on a variety of committees, chaired a variety committees, have served on Board of Trustees. I've served on the Medical Executive Committee*" (Exhibit # 1: Deposition Transcript Pg. 5, Lines 11-16). This affiliations were not expressly disclosed in the so-called "expert" letter (Exhibit #2:APA # 58 pg. 144, Dr. Samies' 'expert' letter), which was introduced as evidence in the workers' compensation proceedings by Mr. Howell, thereby creating a clear and undeniable conflict of interest.

The Defendant with the help of their attorney Mr. Howell, has improperly relied on a letter solicited from one of its own Board of Trustees members (Exhibit # 1: Excerpt from Dr. Samies' deposition Transcript Pg. 6, Lines 15-21; Pg. 7, Lines 1-2), purporting it to be an independent expert opinion, to substantiate its position in this workers' compensation case. Such reliance is inappropriate and legally problematic. A member of the Board of Trustees, who holds a vested interest in the Defendant organization, cannot be regarded as an independent expert witness, as is required under established legal standards.

According to South Carolina's Code of Civil Procedure, expert testimony must be impartial, objective, and devoid of any conflicts of interest. Courts have consistently emphasized the importance of credibility and independence in expert testimony, noting that biased testimony cannot be used to support a judgment. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the court held that expert testimony must adhere to rigorous standards of reliability and independence. As such, the use of Dr. Samies' testimony in this case violates the legal requirement for unbiased expert evidence, further undermining the Defendant's position.

In this matter, the financial and professional relationship between Dr. Samies, a member of the Board of Trustees, and the Defendant (TRMC), gives rise to an inherent conflict of interest that renders Dr. Samies's testimony unreliable and unsuitable for consideration as independent expert testimony. Dr. Samies's deposition unequivocally revealed that his so-called "independent" letter of testimony was, in fact, initiated and generated by the Defendant itself. Specifically, when questioned about who requested that he author this letter, Dr. Samies admitted that the request originated from the Defendant's Infection Control Department, where he not only works but also serves as the chairperson (Deposition Transcript Pg. 6, Lines 15-21; Pg. 7, Lines 1-2). Dr.

Samies also admitted he well knew that his letter will be used for a labor litigation involving TRMC stating "*I understood that there was Workers' Compensation Questions*" (Deposition Transcript Pg. 8, Lines 12-15).

Furthermore, Dr. Samies acknowledged in his deposition that, as both a staff member and Board member at the Defendant hospital (TRMC), he received "*nothing*" in compensation for his participation, including the signing of the letter in question (Deposition Transcript Pg. 7, Lines 3-5). This disclosure underscores the conflict of interest that pervades Dr. Samies's involvement, particularly given his dual roles within the organization.

South Carolina courts have long recognized that the presentation of biased or self-serving evidence is a sufficient ground to deny or reject such testimony. In *State v. Galbreath*, 359 S.C. 398 (2004), the court established that biased testimony undermines the fairness of proceedings. Moreover, in *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119 (2014), the court affirmed that presenting an expert witness with undisclosed ties to the employer, such as holding a position on the employer's Board of Trustees, could be viewed as evidence of bias intended to undermine the claimant's position. These legal precedents further support the conclusion that Dr. Samies's testimony should not be relied upon as independent or impartial in this case.

3. Fraud and False Statements

Dr. Samies' deposition unequivocally reveals that he knowingly provided false statements in his expert report, a pivotal piece of evidence that materially influenced the Commissioner's decision to deny the Claimant's compensation claim. Specifically, Dr. Samies admitted that the Claimant,

Samies also admitted he well knew that his letter will be used for a labor litigation involving TRMC stating "*I understood that there was Workers' Compensation Questions*" (Deposition Transcript Pg. 8, Lines 12-15).

Furthermore, Dr. Samies acknowledged in his deposition that, as both a staff member and Board member at the Defendant hospital (TRMC), he received "*nothing*" in compensation for his participation, including the signing of the letter in question (Deposition Transcript Pg. 7, Lines 3-5). This disclosure underscores the conflict of interest that pervades Dr. Samies's involvement, particularly given his dual roles within the organization.

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3. Fraud and False Statements

Dr. Samies' deposition unequivocally reveals that he knowingly provided false statements in his expert report, a pivotal piece of evidence that materially influenced the Commissioner's decision to deny the Claimant's compensation claim. Specifically, Dr. Samies admitted that the Claimant,

a registered nurse, was exposed to COVID-19 in August 2021 at TRMC, where multiple patients and staff tested positive (Exhibit # 3: APA # 50 pg. 91 ; and Exhibit # 4: APA # 47 pg. 84-86). The Claimant had been caring for COVID-positive patients on his own unit during this time (Exhibit # 5: APA #7 pg. 7-8; Deposition Transcript Pg. 31, Lines 16-23). Also, on Claimant's unit staff members tested positive for the COVID-19 virus (Exhibit # 5: APA #7). Dr. Samies himself acknowledged, "It's possible that any employee (at the hospital including Claimant) can be exposed when there are patients with COVID-19" (Deposition Transcript Pg. 31, Lines 22-23). This admission directly contradicts his earlier assertion in his expert testimony letter that it was "unlikely" the Claimant's exposure to COVID-19 was related to his employment.

Additionally, during the deposition, Dr. Samies conceded that his statements concerning the timing and location of the Claimant's COVID-19 exposure were inaccurate. He admitted to asserting in his letter that the Claimant's workplace exposure was "unlikely," despite not knowing when the Claimant was actually exposed to COVID-19 (Deposition Transcript Pg. 26, Lines 11-13). In other words, Dr. Samies repeatedly admitted that he lacked critical information about the Claimant's exposure but nonetheless concluded that workplace exposure was improbable (Deposition Transcript Pg. 27, Lines 9-11). Moreover, Dr. Samies admitted that his previous statements were both biased and speculative. In his so-called "expert" letter, he explicitly stated, "Given that he (the Claimant) had concerns about non-employment exposure, which prompted testing only a short time prior to his illness, I must wonder how much other potential non-employment exposure he had" (Exhibit # 2: Dr. Samies' Expert Testimony Letter). However, during his deposition, when confronted about this statement, Dr. Samies changed his account and claimed, "That is what I gleaned from the records of Employee Health" (Deposition Transcript Pg. 11, Lines 3-6), later adding, "It is what I understood from the records"

(Deposition Transcript Pg. 14, Line 5). These admissions indicate that Dr. Samies's statements were not based on any direct information he had read or been told but rather his personal imagination and interpretation of records, further demonstrating the biased and speculative nature of his testimony. It is imperative to underscore that the defense strategy employed by Mr. Roy Howell hinged primarily on presenting witnesses who would testify that the Claimant reported a potential COVID-19 exposure outside the hospital. This approach was outlined explicitly in Mr. Howell's Pre-Hearing Brief under the "Facts in Controversy" section (Exhibit #6: APA #). At the hearing held on February 16, 2023, the Defendant introduced two employees of TRMC, Mrs. Kelci Caruso, the head of the Employee Health Department, and Mrs. Kellie Evans, staff member of the same department, in an attempt to support this defense strategy.

Contrary to the Defendant's expectations, neither Mrs. Caruso nor Mrs. Evans corroborated Mr. Howell's defense. These two employees, being the only individuals with whom the Claimant discussed his COVID-19 exposure at TRMC, failed to support the notion that the Claimant reported exposure outside the hospital. During her testimony, Mrs. Caruso explicitly stated, "No sir, I don't recall you telling me where you were exposed" (Exhibit #7: WCC Hearing Transcript excerpt, Pg. 108, Lines 1-4). Likewise, Mrs. Evans testified, "I stated that you (Claimant) were exposed. I did not say that you stated you were exposed outside of the hospital" (Exhibit #7: WCC Hearing Transcript excerpt, Pg. 115, Lines 6-8). Even the presiding Commissioner, T. Scott Beck, after directly questioning Mrs. Evans for further clarification, noted, "Mrs. Wandji (Claimant) we've already made the point clear" that the Claimant never reported a possible COVID-19 exposure outside the hospital (Exhibit #7: WCC Hearing Transcript excerpt, Pg. 115, Lines 20-25; Pg. 116, Line 15-16).

It is also crucial to consider Dr. Samies' deposition, where he claimed that his assertion regarding the Claimant's potential non-employment-related exposure to COVID-19 was based on information "gleaned from the records of Employee Health" (Deposition Transcript Pg. 11, Lines 3-6). These records, referred to by Dr. Samies, were provided by Mrs. Caruso and Mrs. Evans, who, as demonstrated during their testimonies, did not support the narrative of an external COVID-19 exposure.

This inconsistency between Mr. Howell's defense strategy and the testimonies of key witnesses not only undermines the credibility of the Defendant's case but also raises concerns about the ethical integrity of the defense. The South Carolina Workers' Compensation system, like all judicial proceedings, requires that claims be based on credible and honest evidence. As established in *Rule 702 of the Federal Rules of Evidence* and the decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), expert testimony and evidence must be grounded in reliable principles and methods. Here, the defense's reliance on speculative and unsupported assertions fails to meet these legal standards.

The lack of corroboration from key witnesses and the misleading reliance on biased and speculative expert testimony calls for a thorough reconsideration of the facts and legal arguments presented in this case.

Misrepresentation of facts by an expert witness, as evident in this case, calls into question the integrity of the evidence. Case law, including *Lauderdale v. Dixon* and *Hines v. Blue Cross Blue Shield of South Carolina*, emphasizes the importance of transparency and impartiality in workers' compensation claims, particularly where expert testimony is involved. The failure to disclose a

conflict of interest and the fabrication of evidence to bolster a defense may constitute violations of workers' compensation laws and undermine the fairness of the proceedings.

Additionally, Dr. Samies' failure to appear at the original hearing—despite being listed as a witness in the Defendant's pre-hearing brief (Exhibit # 6: APA #)—denied the Claimant a critical opportunity for cross-examination, obstructing the process of achieving a fair and just outcome (Deposition Transcript Pg. 30, Lines 11-18). When questioned about his absence, Dr. Samies stated, "I wasn't asked, to my knowledge" (Deposition Transcript Pg. 31, Line 6). If this is indeed the case, it suggests that Mr. Roy Howell III, counsel for the Defendant, listed Dr. Samies as a witness to appear in person but failed to inform him of the hearing, thereby denying the Claimant the legal right to question the witness.

Taken together, these actions—including the false statements, undisclosed conflicts of interest, and the obstruction of the cross-examination process—raise substantial concerns regarding the ethical conduct of the defense and the integrity of the original proceedings. The cumulative impact of these misrepresentations, combined with unethical legal tactics, demands careful judicial scrutiny and may warrant revisiting the decision in this case.

4. Impact on Commissioner's Decision:

The Commissioner's decision to deny the Claimant's workers' compensation claim was significantly influenced by Dr. Samies' testimony. The revelations about Dr. Samies' role at TRMC and his misleading testimony demonstrate that the original judgment was based on faulty evidence. Had these newly discovered evidence been available during the original hearings, it would have had a substantial effect on the outcome, likely leading to a different decision.

III. Legal Standard

Under Rule 60(b) of the South Carolina Rules of Civil Procedure, a judgment may be revisited for reasons including newly discovered evidence, fraud, misrepresentation, or misconduct. S.C. Code Ann. § 42-17-90 further allows the Workers' Compensation Commission to review and modify its decisions based on new evidence or changed circumstances. Both of these legal standards apply in this case.

IV. Relief Requested

In light of the newly discovered evidence and the fraudulent misrepresentation by the Defendant's expert witness, the Claimant respectfully requests the following relief:

1. **Reopen the Case:** The case should be reopened to introduce this new evidence and to rectify the misrepresentations made during the original hearing.
2. **Modify the Decision:** In the alternative, the Commission should modify its ruling in favor of the Claimant based on the new evidence of misconduct.
3. **Additional Relief:** The Claimant requests any further relief the Commission deems just and proper.

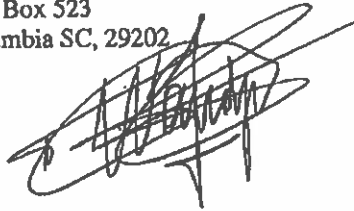
V. Conclusion

The Claimant respectfully submits that the circumstances outlined above constitute extraordinary grounds for reopening or modifying this case. The newly discovered evidence, combined with the fraud, misrepresentation and unethical legal tactics revealed during the proceedings, calls for a reconsideration of the original decision to ensure a just outcome.

If the Commission denies this Motion, the Claimant requests permission to appeal the decision to the South Carolina Court of Appeals.

Date: October 23, 2024

Respectfully submitted,
Serge Wandji
Pro se Claimant
P.O. Box 523
Columbia SC, 29202

A handwritten signature in black ink, appearing to be 'Serge Wandji', written over the typed name and address.

CERTIFICATE OF SERVICE

I hereby certify that on this October 23, 2024, a true and correct copy of the Reply to Defendant's Return to Claimant's Motion to Reopen Case or Request for Modification Based on Extraordinary Circumstances was served upon the following party via certified mail, and electronic mail, to the Defendant Attorney in file as followed:

Mr. Roy A. Howell, III
Trask & Howell, L.L.C.
Attorneys for Defendants
763 Johnnie Dodds Blvd
P.O. Box 2167 Mt. Pleasant, SC 29465
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s/Serge Wandjl
P.O. Box: 523
Columbia, SC, 29202
sergewandjl@gmail.com

A handwritten signature in black ink, appearing to read 'Serge Wandjl', with a large, sweeping flourish extending from the end of the signature.

LIST OF EXHIBITS:

1. **Exhibit # 1:** Dr. Samies Deposition excerpts (Newly Discovered Evidence).
2. **Exhibit # 2:** APA # 58 pg. 144; Dr. Samies' expert letter testimony.
3. **Exhibit # 3:** APA # 50 pg. 91 -Hospital (TRMC) Memo on the Number of Patients with COVID-19 at the hospital as of August 6, 2021.
4. **Exhibit # 4:** APA # 47 pg. 84-86 - List of Staff member at TRMC who tested positive for COVID-19 in August 2021.
5. **Exhibit # 5:** APA # 7 pg. 7-8 - List of Patients who tested positive for COVID-19 and who were cared for by Claimant on his Unit in August 2021.
6. **Exhibit # 5 a** APA # 7- List of other employee on Claimant Unit who tested positive for COVID-19 in August 2012
7. **Exhibit # 6:** APA # 48 Pg. 88- Pre-Hearing Brief prepared by Mr. Roy A. Howell, III for the Defendant listing Dr. Samies as a Defendant witness to appear at the hearing.
8. **Exhibit # 7:** February 16, 2023 Workers Compensation Commission hearing excerpt

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2023-CP-38-00331

Serge R. Wandji,
Plaintiff,

v.

The Regional Medical Center
and Dr. John H. Samies,
Defendants.

DEPOSITION OF
DR. JOHN H. SAMIES

Tuesday, September 17, 2024
4:00 p.m. - 4:38 p.m.

The deposition of DR. JOHN H. SAMIES was taken on behalf of the Plaintiff on the 17th day of September, 2024 at the Orangeburg County Administrative Offices, 1437 Amelia Street, 3rd Floor Training Room, Orangeburg, South Carolina before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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APPEARANCES

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Plaintiff Pro Se

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Charleston, South Carolina 29403
Attorney for Defendant

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EXHIBITS

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(Letter from Dr. Samies to Roy A. Howell, III, dated 12/5/2022)	
Plaintiff's Exhibit Number 2	12
(Workers' Compensation 2/16/2023 Hearing Transcript)	
Plaintiff's Exhibit Number 3	20
(Affidavit of John H. Samies, M.D.)	
Plaintiff's Exhibit Number 4	30
(Letter to Commissioner T. Beck, Amended Prehearing Brief dated 1/12/2023)	
Plaintiff's Exhibit Number 5	31
(RMC letter to All Employees regarding COVID and Other Updates (8/6/2021))	
Plaintiff's Exhibit Number 6	32
(Outbreak Line Listing Form for Patients)	
Plaintiff's Exhibit Number 7	32
(Outbreak Line Listing Form for Employees)	



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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



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1 DR. JOHN H. SAMIES, having been duly sworn, deposes
2 and testifies as follows:

3 DR. SAMIES - EXAMINATION BY MR. WANDJI:

4 Q: All right. Dr. John Samies, will you please
5 state your name and title for the record?

6 A: John Hunter Samies, M.D., Medical Doctor.

7 Q: All right. You are under oath, Dr. Samies, and
8 I'm going to ask you some questions and I
9 expect an answer to each of my questions. Your
10 lawyer cannot help you outside any of those
11 questions. If you don't understand any
12 question, please just say so and I will repeat
13 the question. Do you understand, sir?

14 A: Yes.

15 Q: Okay. Dr. Samies, do you practice medicine at
16 the Regional Medical Center?

17 A: The Regional Medical Center no longer exists.
18 I practice at the institution that took over
19 for it.

20 Q: Did you practice when it was still the Regional
21 Medical Center?

22 A: Yes.

23 Q: How long did you practice medicine there?

24 A: Since 1997.

25 Q: How many days a week on average are you at the



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1 Regional Medical Center?

2 A: Probably six.

3 Q: So, when you practice medicine there, do you
4 get paid for your services?

5 A: I bill for my services, yes.

6 Q: Beside practicing medicine, do you have any
7 additional role at the Regional Medical Center?

8 A: At present, no.

9 Q: Did you? Whe- ---

10 A: Yes.

11 Q: What kind of additional role did you have
12 beside practicing medicine?

13 A: I've been on a variety of committees, chaired
14 a variety committees, have served on the Board
15 of Trustees. I've served on the Medical
16 Executive Committee.

17 Q: Did you get paid in those leadership roles that
18 you were part of?

19 A: I was paid a stipend for hours practiced. So,
20 I billed as a contractor, basically.

21 Q: This is Exhibit Number 1. I'm gonna give a
22 copy to Dr. Samies.

23 MS. WILLIAMS: Do you have an extra copy for me?

24 MR. WANDJI: That's another one. You -- you can
25 have this one.



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1 MS. WILLIAMS: Thank you.

2 (Plaintiff's Exhibit Number 1 was marked for
3 identification purposes.)

4 Q: This is a one-page letter, Dr. Samies. Your
5 name is written at the bottom of it. Do you
6 recognize that letter?

7 A: Yes.

8 Q: Did you personally type the entirety of that
9 letter?

10 A: (No audible response.)

11 Q: Did you type it yourself?

12 A: Yes.

13 Q: Every single thing on that letter?

14 A: Yes.

15 Q: Why did you write that letter?

16 A: I was requested to do a review of information.

17 Q: Who requested you?

18 A: It was initially requested by the Infection
19 Control Department ---

20 Q: Okay.

21 A: --- which I served as a consultant for.

22 Q: Okay. Who asked -- requested you to do it?
23 You said initially.

24 A: Well, and then they wanted me to speak to the
25 attorney that's on the letter.



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1 Q: Who is they?

2 A: Infection Control Department at the hospital.

3 Q: Okay. How much did you get paid for writing
4 that letter?

5 A: Nothing.

6 Q: Why would the Infection Control ask you to
7 write a letter?

8 A: I served as the Hospital Infection Control
9 Consulting and Hospital Epidemiologist and they
10 had asked me to review information pertinent to
11 the epidemiology.

12 Q: The letter was written and signed on December
13 2022; is that correct?

14 A: Yes.

15 Q: Okay. How many of such a letter for your
16 Infection Disease expertise have you written
17 that year, 2022?

18 A: I don't know.

19 Q: Have you written any?

20 A: Yes.

21 Q: Beside this one?

22 A: Yes.

23 Q: That was put into the judicial system of any
24 kind?

25 A: Not that I'm aware of, no.



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1 Q: But you knew this one had to do with some kind
2 of lawsuit, right?

3 A: I knew that it was information requested.

4 Q: But you knew it was ...

5 A: I did not specifically know what precisely it
6 would be used for. I did an epidemiologic
7 review at the request.

8 Q: Okay. So, you didn't know how I was the
9 Claimant or didn't know ---

10 A: Oh, I knew -- I knew the subject was you in the
11 letter, yes.

12 Q: But you didn't know that it had to do with some
13 kind of judicial process?

14 A: I understood that there was Workers'
15 Compensation questions.

16 Q: So, how many letter after you written like that
17 that in year 2022? How many?

18 MS. WILLIAMS: Object to the form. You can answer
19 the question.

20 A: The -- well, you asked whether or not it was
21 for judicial things. No other for judicial
22 things. I wrote multiple other letters over
23 time about a variety of infection control and
24 epidemiology issues.

25 Q: Okay. Have you ever testified for anybody or



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1 through a letter like this in some kind of
2 judicial process?

3 A: I've never testified, no.

4 Q: So, this was the very first one?

5 A: I ---

6 MS. WILLIAMS: Object ---

7 A: --- did not ---

8 MS. WILLIAMS: --- to form.

9 A: --- testify. I wrote a review at the re- -- at
10 the request of information they provided.

11 Q: In the second sentence of that letter that you
12 wrote, Dr. Samie, you claim that the materials
13 you reviewed to prepare the letter were a
14 COVID-19 Questionnaire from Mr. Wandji -- I'm
15 quoting what you wrote -- and two, additional
16 employees, a log of Behavioral Health Employees
17 and a series of emails; is that correct?

18 A: That's correct.

19 Q: Okay. Beside the material I just read from
20 your letter, did you get any other information
21 from anyone to help you prepare for your
22 letter?

23 A: No.

24 Q: Did you discuss about this assignment you
25 received from the Infection Disease Committee,



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1 did you discuss about that with anyone before
2 preparing your letter?

3 A: No.

4 Q: The last sentence in the last paragraph in your
5 letter, and I'm quoting, you wrote, giving that
6 he, talking about me, had concern about non-
7 employment exposure, which prompted testing
8 only a short time prior to his illness, I must
9 wonder how much other potential non-employment
10 exposure he had. Is that correct what you
11 wrote?

12 A: That's correct.

13 Q: And you say you wrote this entire letter?

14 A: Yes.

15 Q: Who told you that I had concern about non-
16 employment exposure?

17 A: It merely states, given that he had concerns
18 about non-employment exposure, which prompted
19 testing only a short time prior to his illness,
20 I must wonder how much other potential non-
21 employment exposure he had.

22 Q: That's what I read. My question is, who told
23 you that I had concern about non-employment
24 exposure? Who told you that?

25 A: I can't re- -- let's see. Of more importance



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1 in this case is his self-reported exposure and
2 request for testing on 8/16/2021.

3 Q: What is the non-employment exposure there?

4 A: That's what was -- I reviewed the records and
5 that was gleaned from the records of Employee
6 Health.

7 Q: Oh. Employee Health told you that I had non-
8 employment ---

9 A: They did not tell me. They -- they forwarded
10 their documents.

11 Q: Where are those documents?

12 A: I don't have them.

13 Q: You reviewed them and then you gave it back to
14 them?

15 A: No. I reviewed them and they would have been
16 in email, which is no longer existent at the
17 Regional Medical Center. And probably I
18 deleted them at that time.

19 Q: And on those email that said I had non-
20 employment exposure to COVID-19?

21 A: That's what I gleaned from it.

22 Q: What's where you took it?

23 A: That's what I gleaned from.

24 Q: What do you mean gleaned? Can you explain?

25 A: Gleaned means understood from that materials.



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1 Q: Oh, okay. From the materials you got from
2 whom?

3 A: From Employee Health.

4 Q: Oh. Employee Health at the Regional Medical
5 Center at that time ---

6 A: Correct.

7 Q: --- right?

8 A: Correct.

9 Q: Is it possible that you read wrong?

10 A: Certainly.

11 Q: I'm gonna give you a copy. This is Exhibit
12 Number 2.

13 (Plaintiff's Exhibit Number 2 was marked for
14 identification purposes.)

15 Q: This is the testimony of both Employee Health,
16 the only people I talked to about my COVID at
17 the Regional Medical Center and the people you
18 received email and information from. Kelci
19 Caruso, she was the head of the Employee
20 Health. Do you remember her?

21 A: Yes.

22 Q: Good. And then Katie Evans, she's just a staff
23 there. Do you remember her?

24 A: I do not remember her specifically.

25 Q: I know it.



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- 1 A: Okay.
- 2 Q: Now, under oath, the position, this is what
3 Kelci Caruso, the head of Employee Health, said
4 when asked if I told her that I was exposed to
5 COVID-19, this is what she says, no, sir, I
6 don't recall you telling me where you were
7 exposed. That's page 108, line 124.
- 8 A: Okay.
- 9 Q: Just look at this ---
- 10 A: I got it.
- 11 Q: --- page -- part here (indicating). So, let me
12 ask you again, based on what I just told you.
13 Who told you that I had concern about non-
14 employment exposure?
- 15 A: It is what I gleaned from the records that were
16 provided to me by Employee Health.
- 17 Q: Employee Health just said I've never told him
18 that.
- 19 A: I see that.
- 20 Q: So, why did you write that in your letter that
21 I got non- ---
- 22 A: It ---
- 23 Q: --- -employment exposure?
- 24 A: --- it is what I gleaned ---
- 25 MS. WILLIAMS: Object to the form.



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1 A: --- it is what I gleaned from the records
2 provided to me by Employee Health.

3 Q: Gleaned for your truth; is that correct?

4 MS. WILLIAMS: Object to the form.

5 A: It is what I understood from those records.

6 Q: So, did you understand that -- did you
7 understood that wrong?

8 MS. WILLIAMS: Object to ---

9 A: I don't ---

10 MS. WILLIAMS: --- the form.

11 A: --- know.

12 Q: You don't know?

13 A: I don't know. No.

14 Q: Ms. Kelly [sp], those are the only two people
15 working at Employee Health during my tenure
16 there and when I had COVID. On page 115, line
17 68, and I'm quoting, I stated that you talking
18 about Wandji, me, were exposed, I did not say
19 that you stated you were exposed outside of the
20 hospital. That's what she says. That's her
21 testimony. I was exposed to COVID, but not
22 outside of the hospital. She didn't say that.
23 So, let me ask you for the third time, where
24 did you get that I was exposed to COVID ---

25 MS. WILLIAMS: Object ---



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1 Q: --- out of the hospital?

2 MS. WILLIAMS: Object to the form.

3 A: Once again, it is what I gleaned from the
4 information that was provided to me.

5 Q: The head of the Employee Health, Ms. Caruso,
6 that you said you know, also testified that
7 October 16, when I first requested to be tested
8 for COVID-19, it already had several patients
9 and employees at the hospital who had tested
10 for COVID-19. That's the testimony on line --
11 on page 108, line 9 to 10. So, as the
12 infection disease expert, is it possible that
13 me, working as a nurse, between all the up and
14 down with patients, is it possible that, as a
15 full-time nurse there, I was exposed to COVID-
16 19 on or before August 16? Is it at all
17 possible?

18 MS. WILLIAMS: Object to the form.

19 A: I'd have to review the record of your
20 employment dates and your working hours in
21 order to make that determination.

22 Q: I'm telling you I was a full-time employee
23 working there full-time as a nurse. I'm
24 telling you that as I just read, according to
25 Employee Health, before August 18, there were



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1 already both employees and patient who tested
2 positive at that hospital. Is it possible at
3 all as a -- as a nurse at that hospital that I
4 could have been exposed to COVID-19?

5 A: Again ---

6 MS. WILLIAMS: Object to form.

7 A: --- I would need to know your hours of work,
8 where you worked during that time period. That
9 information is not available to me.

10 Q: But you were able to write in your letter that
11 it's unlikely that I got COVID at that
12 hospital. How did you come up with that kind
13 of scientific expertise?

14 A: Of more importance in this case, is his self-
15 reported exposure and request for testing on
16 8/16. This was negative. The details of this
17 exposure are unclear. Certainly, a positive
18 test on 8/27 and symptoms beginning on 8/23 as
19 he initially reported on 8/25 or 8/26, which he
20 subsequently stated, would be consistent with
21 exposure on or near the 8/16 date. Generally,
22 COVID incubation is 2 to 14 days, with onset
23 for most being about 5 to 10 days from
24 exposure. It is highly unlikely that 8/22 was
25 the date of exposure if his symptoms began on



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1 8/23 and not possible that 8/24 was the date of
2 exposure for exposure on 8/23. The exposure
3 of 8/22 with onset 8/25 is unlikely being the
4 shortest end of the incubation period and the
5 exposure of 8/24 with onset of 8/25 is highly
6 unlikely being shorter than the incubation
7 period of the virus.

8 Q: What you just read justified the fact that, as
9 you said, I didn't get -- I got COVID not at
10 the hospital. What you just read justified
11 that I didn't get COVID at the hospital?

12 A: I wasn't justifying anything. I ---

13 Q: You said ---

14 A: --- was merely discussing the epidemiology ---

15 Q: Okay.

16 A: --- and the reports that I reviewed from
17 Employee Health.

18 Q: Okay. The last paragraph, you said, it is my
19 opinion that a link to employment exposure is
20 here is unlikely.

21 A: Based on the information presented to me.

22 Q: How did you come up with that?

23 A: Of more importance in this case, is his self-
24 reported exposure ---

25 Q: You already read that.



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1 A: --- and request for testing ---
2 Q: You already read that.
3 A: --- on 8/16/- ---
4 MS. WILLIAMS: Let him answer the question.
5 A: --- -2021. This was negative. The details of
6 this exposure are unclear. Certainly, a
7 positive test on 8/27 and symptoms beginning on
8 8/23 as he initially reported on 8/25 or 8/26,
9 which he subsequently stated, would be
10 consistent with exposure on or near the 8/16
11 date. Generally, COVID incubation is 2 to 14
12 days, with the onset for most being five to ten
13 days from exposure.
14 Q: You already ---
15 A: It is ---
16 Q: --- read that ---
17 A: --- highly ---
18 Q: --- Dr. Samies.
19 A: --- unlikely that 8/22 is a date of exposure if
20 his symptoms began on 8/23 ---
21 Q: Dr. Samies, you ---
22 A: --- and not ---
23 Q: --- already ---
24 A: --- possible ---
25 Q: --- you already read that for the record. I



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1 don't want you to repeat that. The question
2 is, the -- the question is, how did you come up
3 with the fact that it is unlikely that I got
4 COVID out of the hospital? That's the
5 question.

6 MS. WILLIAMS: Object to the form.

7 A: I did not come to any conclusion. I merely
8 stated that it was unlikely. There is no
9 conclusion there.

10 Q: Okay.

11 A: Of more importance in this case, is the self-
12 reported exposure and request for testing on
13 8/16. I'll read the rest, if necessary.

14 Q: Have you been the Medical Director of the
15 Regional Medical Center?

16 A: Medical Director?

17 Q: Yeah.

18 A: There is no Medical Director.

19 Q: Oh. Have you ever been the Chief of Medical
20 Staff at the Regional Med- ---

21 A: I've been the Chief of Staff.

22 Q: For how long?

23 A: I believe it was two years.

24 Q: Okay. Did you get paid for that?

25 A: I was a contract employee, meaning that I got



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1 paid by the hour for that as a contracted
2 service. Much like if you brought an
3 conditioning specialist over to fix your air
4 conditioner, you would pay him for the time
5 that he spent.

6 Q: This is another Exhibit. This -- this is your
7 Affidavit, Dr. Davis -- Dr. Sammies.

8 (Plaintiff's Exhibit Number 3 was marked for
9 identification purposes.)

10 Q: Did you prepare, you wrote and signed that?
11 Did you do that on that one?

12 A: Yes.

13 Q: On number five of your Affidavit, you said
14 you've never been an employee of the Regional
15 Medical Center.

16 A: That's correct.

17 Q: That's correct?

18 A: That's correct.

19 Q: You've been a member of the Board of Trustee-
20 -- of Trustees; is that correct?

21 A: That's correct.

22 Q: Since when?

23 A: I have the dates on my thing, but at -- at any
24 point when I was the Chief of Staff or the
25 Chairman of Medical Executive Committee, I was



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1 automatically a Board Member.

2 Q: And you were also the member of the Finance
3 Committee Board of Trustees at the Regional
4 Medical Center; is that correct?

5 A: That's correct.

6 Q: For how long?

7 A: I don't recall.

8 Q: So, you practice medicine there for
9 compensation and you were on the Board of
10 Trustees at that hospital?

11 A: That's correct. It's an elected position.

12 Q: So, with all these financial ties and
13 employment ties with the Regional Medical
14 Center, why did you agree to be a witness in
15 this litigation ---

16 MS. WILLIAMS: Object to the form.

17 Q: --- against the Regional Medical Center?

18 A: I am not financially tied to the Regional
19 Medical Center. I practice medicine there. I
20 am privileged there. I was appointed by
21 election to a position of leadership on the
22 medical staff, but not an employment position.

23 Q: Since you practice there and whatever your
24 company gets paid for your services, why did
25 you agree to be a witness in the litigation



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1 where the Regional Medical Center is the party?

2 A: I agreed to do ---

3 MS. WILLIAMS: Objection to form.

4 A: --- I agreed to do a review, as I stated
5 previously ---

6 Q: And you know ---

7 A: --- on information presented to me.

8 Q: --- and you know it was for the Worker
9 Compensation case?

10 A: I knew that it was going to the Workers'
11 Compensation attorney, yes.

12 Q: Don't you see a conflict of interest in there?

13 A: I ---

14 MS. WILLIAMS: Object to form.

15 A: --- do not.

16 Q: You don't?

17 A: I do not.

18 Q: So, you think that's lawful?

19 MS. WILLIAMS: Object to the form.

20 Q: To be on the Board of Directors of the Trustees
21 of your hospital and still write an expert
22 letter for them in the litigation. You think
23 that's lawful?

24 MS. WILLIAMS: Object to the form.

25 A: I wrote -- I opined on the information that I



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1 was presented for the epidemiology and
2 infectious disease portion of what was
3 submitted to me.

4 Q: So, you give your expertise in the litigation
5 case that the Regional Medical Center is
6 involved in; is that correct?

7 MS. WILLIAMS: Object to the form.

8 A: Again, I opined on the information that was
9 presented to me at the request of the
10 institution.

11 Q: And you knew it's liti- -- that it is a legal
12 case, but still you decided to give your
13 expertise?

14 MS. WILLIAMS: Object to the form.

15 A: I provided what my request was, which was to
16 review and opine on the epidemiology and
17 infectious disease aspects of the information
18 that I was presented with.

19 Q: Knowing that it was a legal case that the
20 Regional Medical Center was involved in; isn't
21 that correct? You knew that. Did you?

22 A: I knew that there was a Workman's Compensation
23 case, but I did not know that it was in
24 litigation.

25 Q: Thank you. On point Number 6 of your



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1 Affidavit, you stated that, and you've been
2 saying that all along, you provide infectious
3 control services to the Regional Medical Center
4 pursuant to a contract with them for those
5 services?

6 A: Yes. I've had a contract ---

7 Q: That's correct.

8 A: --- I've had a contract since 1997.

9 Q: Why didn't you disclose in your Affidavit that
10 you have leadership position at that
11 organization in the past? Like the Chief
12 Medical Officer, like being on the board?

13 A: I was not Chief Medical Officer.

14 Q: Like ---

15 A: I was Chief of Staff.

16 Q: Yeah.

17 A: An elected position for the medical staff.

18 Q: Why didn't you disclose that in your Affidavit?

19 A: The Affidavit said what I thought it needed to
20 say.

21 Q: Okay. And why didn't you disclose that you are
22 on the Board of Trustees in your Affidavit?

23 A: That was a -- again, a leadership position that
24 I was voted to, not a employment issue. And
25 this is describing employment relationships.



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1 Q: Thank you. So, I want to understand here. I
2 want to follow that with a question. You said
3 you are like a contractor for medical services
4 at the Regional Medical Center; is that
5 correct?

6 A: Correct.

7 Q: And you are also a member of the Finance
8 Committee Board of Trustees; is that correct?

9 MS. WILLIAMS: Object to the form.

10 A: At a period of time, I was on the Finance
11 Committee of the Board of Trustees.

12 Q: Is that ethical business practice ---

13 MS. WILLIAMS: Object to the form.

14 Q: --- to be a contractor and in the Board of
15 Finance of the same organization?

16 A: It was a ---

17 Q: Is that ethical?

18 A: --- position I was elected to and among the
19 things that you're required to do is disclose
20 any conflicts of interest when you're a Board
21 member.

22 Q: Is that lawful to be a contract to an
23 organization and still be on the Board of
24 Financial Trustees? Is that legal?

25 MS. WILLIAMS: Object to the form.



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1 A: I believe, yes.

2 Q: Okay.

3 A: I am not aware it's not.

4 Q: Back to Exhibit Number 1, Dr. Sammie.

5 (Plaintiff's Exhibit Number 1 was referenced at this
6 time.)

7 Q: The material which you reviewed before writing
8 that letter, from those material, can you tell
9 when I was exposed to COVID-19?

10 A: I did not opine on that.

11 Q: So you don't even know when I was exposed to
12 COVID-19?

13 A: I do not.

14 Q: Okay. But you know and you wrote in your
15 letter that it is unlikely that I got it at the
16 Regional Medical Center; is that correct?

17 A: In my opinion a link to employment exposure is
18 unlikely based on the information presented to
19 me.

20 Q: So you don't know when I was exposed, but you
21 know that it is unlikely that I got it at the
22 Regional Medical Center; is that correct?

23 A: Of more importance in this case is hi a self-
24 reported exposure and request for testing on
25 8/16/21. This was negative. The details of



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1 this ---

2 Q: We already ---

3 A: --- exposure ---

4 Q: --- we already -- we already had that. I don't
5 want you ---

6 A: --- are unclear ---

7 Q: --- to repeat it.

8 A: --- and that is how this opinion is generated.

9 Q: I'm gonna repeat that question. You don't know
10 when I was exposed to COVID-19?

11 A: That's correct.

12 Q: But you know that it is unlikely that I got it
13 from the hospital?

14 MS. WILLIAMS: Object to the form. Asked and
15 answered.

16 Q: Is that correct?

17 A: That is correct, based on the information ---

18 Q: Okay.

19 A: --- presented.

20 Q: On page 107, line 16 to 18, Exhibit -- on
21 Exhibit 2.

22 (Plaintiff's Exhibit Number 2 was referenced at this
23 time.)

24 Q: This is the head of the Employee Health, Ms.
25 Caruso, RN. She stated, and I quote, we did



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1 not ask you what -- when you were exposed in
2 the Questionnaires. They don't ask when you
3 were exposed. We didn't need to know
4 specifically when you were exposed. So, even
5 the hospital don't know when I was exposed.
6 But you knew for sure I didn't -- I was at --
7 unlikely got it from the hospital. Is that
8 correct?

9 A: What I stated ---

10 MS. WILLIAMS: Object to the form.

11 A: --- again is, in my opinion, that a link to
12 employment exposure here is unlikely based on
13 the information presented to me.

14 Q: So, you didn't know when I was exposed?

15 A: That's correct.

16 MS. WILLIAMS: Object to the form.

17 Q: Okay. Do you regret writing that letter?

18 A: No.

19 Q: You would write it the same as it is today?

20 A: (No audible response.)

21 Q: You need to ---

22 A: I don't know -- I don't know that I can answer
23 that. I don't know.

24 Q: Would you change anything on that letter, given
25 the information you have now?



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1 A: I don't know.

2 Q: You mentioned a series of emails that you
3 received. How many emails did you received?

4 A: I do not know.

5 Q: Who wrote those emails?

6 A: It would've been information coming from
7 Employee Health and from Infection Control.

8 Q: Where are those emails?

9 A: I don't have them.

10 Q: What happened to them?

11 A: The informa- -- the -- the email system of the
12 ho- -- Regional Medical Center sunsetted a
13 fairly long time ago and no longer exists.

14 Q: Have you discussed this Worker Compensation
15 case with any other executive in any of your
16 executive letters?

17 A: No.

18 Q: Have you discussed this Worker Compensation
19 case with any of your Board of Trustees
20 meeting?

21 A: No.

22 Q: Are you sure?

23 A: Yes.

24 Q: Did you discuss this Worker Compensation case
25 with anyone at all?



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1 A: No. My attorney.

2 Q: Did you personally hire Ms. Williams to
3 represent you in this case?

4 A: I did not.

5 Q: Who hired her to represent you?

6 A: Medical University of South Carolina.

7 Q: Do you mean the previous Regional Medical
8 Center?

9 A: The organization that took over the Regional
10 Medical Center.

11 Q: Yeah. Okay. This is Exhibit Number 4.

12 (Plaintiff's Exhibit Number 4 was marked for
13 identification purposes.)

14 Q: This is a letter where Dr. Samies was called
15 among the staff of the Regional Medical Center,
16 as witnessed, for the January -- I'm sorry.
17 This is your copy -- January hearing. So, you
18 were called here in page number -- second page
19 ---

20 MS. WILLIAMS: Mr. Wandji, can I interrupt you for
21 just one second?

22 MR. WANDJI: Yeah.

23 MS. WILLIAMS: Have these documents been produced in
24 discovery? I don't recall this being produced.

25 MR. WANDJI: Yeah. I'll send you everything that I



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1 have.

2 Q: So, this is -- is the list of the -- the staff
3 and your name is right there as one of the
4 staff that were called to wait for -- for the
5 hearing. Why didn't you show up?

6 A: I wasn't asked, to my knowledge.

7 Q: Oh. Okay. That's why you didn't show up?

8 A: Correct.

9 Q: Okay. This is another, Exhibit Number 5. Let
10 me see, here's your copy.

11 (Plaintiff's Exhibit Number 5 was marked for
12 identification purposes.)

13 Q: That's just a letter from the Reg- -- Regional
14 Medical Center. That's ---

15 A: Uh-huh.

16 Q: --- back to August 6th. There were already
17 patients all over the hospital with COVID-19.
18 As a nurse working there, is it possible that
19 I could have been exposed to COVID-19 at that
20 hospital?

21 MS. WILLIAMS: Object to the form.

22 A: It's possible that any employee can be exposed
23 when there are patients with COVID-19.

24 Q: Thank you. This is the -- another Exhibit,
25 Number 6.



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1 (Plaintiff's Exhibit Number 6 and 7 were marked for
2 identification purposes.)

3 Q: It's actually two. One for the patients and
4 one for the employees. This is one for the
5 patient and one for the employees. Both are
6 Exhibits. I got it from the Regional Medical
7 Center. Dr. Samie, those are the August
8 infected people in the unit that cared for
9 patients who had COVID-19. Is it possible that
10 I was exposed to COVID-19 at the hospital?

11 A: It's possible.

12 MS. WILLIAMS: Object to the form.

13 Q: It's possible, okay.

14 MR. WANDJI: Dr. Samies, you're a busy and good man.
15 I don't want to waste your time. I'm gonna end
16 this deposition at this point. I want to thank
17 you for your time, sir.

18 DR. SAMIES: Thank you.

19 MS. WILLIAMS: I don't have any questions.

20 (Off the record from 4:34 p.m. - 4:37 p.m.)

21 MS. WILLIAMS: We're back on the record. Exhibits 6
22 and 7, we've noted include patient names that
23 the -- the facility would have concerns about
24 confidentiality and HIPPA violations, so these
25 -- we would maintain these should be protected



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1 and the confidentiality of them maintained.

2 **MR. WANDJI:** And I want to add that those

3 communication was provided by the facility via

4 email ---

5 **MS. WILLIAMS:** They ---

6 **MR. WANDJI:** --- to me.

7 **MS. WILLIAMS:** --- they were not produced by the

8 facility in the context of this litigation.

9 These are not documents I'm familiar with.

10 **MR. WANDJI:** They were provided in the Worker

11 Compensation phase of this same case by the

12 Regional Medical Center via email to me.

13 **MS. WILLIAMS:** Okay. Let me ---

14 **MR. WANDJI:** I didn't produce this communication.

15 **MS. WILLIAMS:** I understand that. I just want to

16 confirm, Mr. Wandji, do you have any objection

17 to maintaining the confidentiality of these

18 names if they are produced ---

19 **MR. WANDJI:** I am saying ---

20 **MS. WILLIAMS:** --- in the context ---

21 **MR. WANDJI:** --- it's gonna be blacked out, the name

22 I'm gonna be blacked out before it is publicly

23 exposed.

24 **MS. WILLIAMS:** Okay. Thank you.

25 (There being no further questions, the deposition



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concluded at 4:38 p.m.)

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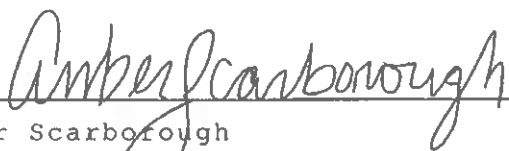
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CERTIFICATE

This is to certify that the deposition of **DR. JOHN H SAMIES**, consisting of thirty-four (34) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 2, 2024.



Amber Scarborough
Court Reporter

Notary Public for South Carolina
My Commission Expires: June 13, 2033



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Palmetto Infectious Disease Physicians, LLC

1097 B Cook Road
Orangeburg, SC 29118

John H. Samies, MD, FSHEA
Marie L. Gehling, NP-C, CWOCN

803-539-0505
fax 803-539-0410

Roy A. Howel III
PO Box 2167
Mt Pleasant, SC 29465

December 5, 2022

Dear Mr Howell,

I am writing this letter to you in response to your request for review of materials concerning claimant Serge Wandji. Reviewed were COVID19 Questionnaires from Mr Wandji and two additional employees, a testing log for Behavioral Health Employees and a series of emails. Mr Wandji is claiming work related injury resultant from COVID 19 infection diagnosed 8/27/2021. He reports this as a result of exposure on 8/22/2021 and 8/24/2021 while working at the Behavioral Health Unit of the Regional Medical Center of Orangeburg and Calhoun Counties.

Clearly there were patients on the Behavioral Health Unit who tested positive for COVID 19 in that time period. While the hospital policy required use of protective attire, it is unclear if this was followed by the claimant.

Of more importance in this case is his self reported exposure and request for testing on 8/16/2021. This was negative. The details of this exposure are unclear. Certainly a positive test on 8/27 and symptoms beginning on 8/23 as he initially reported or 8/25 or 8/26 (which he subsequently stated) would be consistent with exposure on or near the 8/16 date. Generally covid incubation is 2-14 days with onset for most being about 5-10 days from exposure. It is highly unlikely that 8/22 was the date of exposure if his symptoms began on 8/23 and not possible that 8/24 was the date of exposure for onset 8/23. The exposure of 8/22 with onset 8/25 is unlikely being at the shortest end of incubation period and the exposure of 8/24 with onset 8/25 is highly unlikely being shorter than the incubation period of the virus.

The recanting of the 8/16 exposure by the claimant and the confusion about date of onset of symptoms puts doubt on all claimant statements in this case. Since the reporting by Employee Health of RMC appears to be a real time event, it would seem that the timing of onset of symptoms should have been quite clear to the claimant.

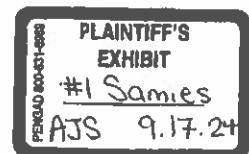
It is my opinion that a link to employment exposure here is unlikely based on the information presented to me. Given that he had concern about non-employment exposure which prompted testing only a short time prior to his illness, I must wonder how much other potential non-employment exposure he had.

If I may be of further assistance in this case, please feel free to contact me.

Sincerely,



John H. Samies, MD FSHEA



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APA #50

rmc

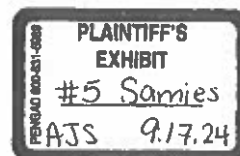
Regional Medical Center

DATE: August 6, 2021
TO: All Employees
SUBJECT: COVID & Other Updates at Regional Medical Center (RMC)

Numbers of COVID positive cases continue to rise across the country and within our state and surrounding areas. As of today, August 6, 2021, we have 12 COVID-19 patients in our hospital.

1. **Personal Protective Equipment (PPE)**
RMC currently has an adequate supply of all PPE. Please discard isolation gowns after each use for precaution patients.
2. **N-95 Masks**
 - N-95 Masks are required to be worn by anyone who has contact with patients. Replacement masks are available on all units and from Employee Health or Nursing Supervisor. A new mask should be obtained daily or when your mask does not fit snugly to your face, the straps are broken or the mask is soiled.
 - Employees should only wear the style/model of mask they have been fit tested for.
 - Staff should continue to maintain social distancing and not congregate without masks in breakrooms, lounges, meetings, etc.
3. **Masking**
Masks are required to be worn while in the facility regardless of vaccination status. Surgical or cloth masks are required at all times for all staff outside of patient care areas. Staff in offices that have multiple individuals where social distancing cannot be achieved are required to wear a mask at all times. In addition to wearing a mask, a face shield is available if necessary. A face shield alone is not an acceptable replacement for a mask.
4. **Patient Care/Transport**
 - When transferring patients, ensure that patient has mask on in the hallway.
 - Use COVID elevator when transporting COVID patients.
 - Negative pressure rooms have been completed in PCU, ICU and CCU.
5. **Virtual Meetings vs. In-Person Meetings**
RMC is transitioning back to virtual meetings. If meetings are in-person, adhere to social distancing, masks and hand hygiene.

"continued on next page"



38

APA # 47

**TRASK
HOWELL**
WORKERS' COMPENSATION DEFENSE

Reply to
Roy A. Howell, III
(843) 881-2236
rhowell@trask-howell.com

December 13, 2022

Via Certified Mail

Serge Wandji
P.O. Box 523
Columbia, SC 29115

Re: Serge Wandji v. The Regional Medical Center
W.C.C. File No.: 2118696
Carrier File No.: WC2021098080
Date of Accident: August 27, 2021

Dear Mr. Wandji:

Enclosed please find a list of all employees at the Regional Medical Center testing positive for Covid-19 during the month of August 2021.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/lth
Enc.

cc: Sandra Axson, Antum Risk (w/ enc.) (via upload only)
Jonathan Vallentine, The Regional Medical Center (w/ enc.) (via email only)

763 JOHNNIE DODDS BLVD. | P.O. BOX 2167
P 843.881.4228 | F 843.881.8784



MT. PLEASANT, SOUTH CAROLINA 29465
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3842-418U-clr covid pos emp 8.21

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Last Name	First Name	Department	Date Tested	Results	Location Where Swabbed
		PCU	8/1/2021		Swabbed Outside of RMC
		PCU	8/2/2021		RMC-Employee Health
		PCU	8/2/2021		RMC-Employee Health-ED
		DAI	8/3/2021		RMC-Employee Health
		4 West	8/3/2021		RMC-Employee Health
		Recovery Room	8/4/2021		RMC-Employee Health
		SCOI	8/5/2021		RMC Employee Health
		Float Pool	8/5/2021		RMC-Employee Health
		ED	8/9/2021		RMC-Employee Health
		BBEMC Registration	8/9/2021		RMC-Employee Health
		BBEMC-Guest Assistant	8/9/2021		RMC-Employee Health-BBEMC
		Administration	8/10/2021		Swabbed Outside of RMC
		Cancer Center	8/10/2021		RMC-Employee Health
		Dietary	8/10/2021		RMC-Employee Health
		Resource Management	8/12/2021		RMC-Employee Health
		Insurance Specialist	8/12/2021		Swabbed Outside of RMC
		IT	8/13/2021		RMC-Employee Health
		IT	8/13/2021		RMC-Employee Health
		DAI	8/13/2021		Swabbed Outside of RMC
		Utilization Review	8/16/2021		RMC-Employee Health
		Cancer Center	8/16/2021		RMC-Employee Health
		Float Pool	8/16/2021		Swabbed Outside of RMC
		Emergency Room	8/16/2021		Swabbed Outside of RMC
		OR	8/18/2021		RMC-Express Care
		Dietary	8/19/2021		RMC-Employee Health
		4W	8/19/2021		RMC-Employee Health
		ICU	8/19/2021		RMC-Employee Health
		Her Place	8/19/2021		Swabbed Outside of RMC
		Security	8/20/2021		RMC-Employee Health-ED
		Pharmacy	8/20/2021		RMC-Employee Health
		Pharmacy	8/20/2021		RMC-Employee Health-ED
		ICU	8/23/2021		RMC-Employee Health
		OR	8/23/2021		RMC-Employee Health
		HIM	8/23/2021		RMC-Employee Health
		Dietary	8/23/2021		RMC-Employee Health
		HIM	8/23/2021		RMC-Employee Health
		ICU	8/23/2021		Swabbed Outside of RMC
		Engineering	8/24/2021		RMC-Employee Health
		Emergency Department	8/26/2021		RMC-Employee Health
		SCOI	8/27/2021		RMC-Employee Health
		BHU	8/27/2021		RMC-Employee Health
Wandji	Serge	BHU	8/27/2021		RMC-Employee Health

Page 25

		BBEMC	8/28/2021		RMC-Employee Health-BBEMC
		Engineering (contractor)	8/30/2021		RMC-Employee Health
		PCU	8/30/2021		RMC-Employee Health
		PCU	8/30/2021		RMC-Employee Health
		BHU	8/30/2021		RMC-Employee Health-ED
		ICU	8/31/2021		RMC-Employee Health

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Outbreak Line Listing Form

ERCLER

Name Regional Medical Center

Staff List ☐ Patient/Resident List ☒

Date: 8/25/21 - 9/6/21
(Hospital Onset = 14 days after admission)

Time:

Case Identification				Symptoms (new onset)					Specimens, Diagnosis												
Name of Patient/Resident/Staff (Surname, Initial)	Sex M/F	Room/Bed No.	Date of Birth DDMM/YYYY	Fever	Night sweats	Sore throat	Cough s of	Shortness of Breath	Loss of smell/taste	Diarrhea	Vomiting	Headache	Muscle Aches	Other Symptoms	Symptom Onset DDMM	Initial Swab DDMM	Initial Swab Result	Second Swab DDMM	Second Swab Result	R-Resected H-Hospitalized D-Death	Date DDMM
[REDACTED]	F	2308 2313 3140	[REDACTED]	8/24						8/24	8/14 One episode, nausea for several days				8/24	08/12 prior to admit	Neg	08/24	Pos	Hosp.	Moved 8/25 to inpatient unit
[REDACTED]	M	2311 2314 3353	[REDACTED]				8/27							Dr. 89 called on 8/26. Pt. moved to medical floor 8/27. No COVID symptom	8/16 prior to admit	Neg	8/25	Pos	Death 8/29		
[REDACTED]	F	2312 2316 2315	[REDACTED]				8/22			8/12 per pt. 8/22 stomach ache		8/19		No symptoms present	8/12 prior to admit	Neg	8/25	Pos	R- Released to Bishopville Manor		Admitted 5/13/21, de 10/27/21
[REDACTED]	M	2315	[REDACTED]											No	No Symp			8/25	Pos.	Hosp. Onset	

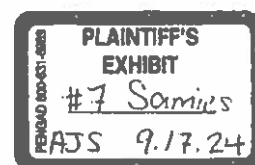
Updated on 23 August 2020
Updated by: C. Baker

Page 1 of 3

PLAINTIFF'S EXHIBIT
#6 Samies
A7C 0.1.2.21

Name of Patient/Resident/ Staff (Surname, Initial)	Sex	Room/ Bed No.	Date of birth	Fever	Night sweats	Chest	Sore throat	Cough	Shortness of Breath	Loss of taste/smell	Diarrhea	Vomiting	Headache	Myalgia	Other Symptoms	Symptom Onset	Initial Swab Result	Second Swab Result	R-Resolved	Date	
	M/F		DDMM/YYYY													DDMM	Swab Result	Swab Result	H-Hospitalized	DDMM	
2316	M	3304	2313												No Symp	8/12	Neg	8/25	Pos	Hosp. Onset	Admitted in June
136700	M	2311	8/24												asymptomatic	8/12	Neg	8/25	Pos	R-Resolved	Admitted 8/13
703335	M	2313	3349	8/25														8/25	Pos	Hospitalized 8/31 due to hematuria	
23891	F	2314 (COU)	2308	8/29												Prior to admit 8/25	Neg	8/29	Pos	Hospitalized 9/4 for sepsis secondary to UTI	9/13
706256	F	2307 (COU)	2316												No symp	Prior to admit 8/25	Neg	8/30	Pos	Hospitalized 9/7 to inpatient unit	
7062561	F	2308													No Sympto ms	Prior to admit 8/25	Neg	8/31	Neg		Dc 9/9
7062172	M	2312													No Symp	Prior to admit 8/25	Neg	8/25	Pos	Hospital Onset	Pt dcd 8/25

Last Name	First Name	Department	Date Tested	Results	Location Where Swabbed
[REDACTED]	[REDACTED]	Behavioral Health	8/16/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/19/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/25/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/27/2021	[REDACTED]	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/27/2021	[REDACTED]	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/29/2021	Negative	RMC-Employee Health-ED
[REDACTED]	[REDACTED]	BHU	8/30/2021	[REDACTED]	RMC-Employee Health-ED
[REDACTED]	[REDACTED]	BHU	8/30/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/30/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/31/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	8/31/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	9/13/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	9/18/2021	Negative	RMC-Employee Health
[REDACTED]	[REDACTED]	BHU	9/23/2021	Negative	RMC-Employee Health



TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

Reply to
Roy A. Howell, III
(843) 881-2236
rhowell@trask-howell.com

January 12, 2023

UPLOAD ONLY

Commissioner T. Scott Beck
S.C. Workers' Compensation
133 Main Street, Suite 500
Columbia, SC 29202-1715

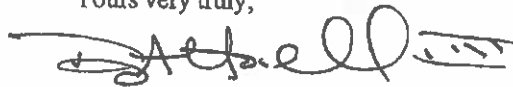
Re: Serge Wandji v. The Regional Medical Center
W.C.C. File No.: 2118696
Carrier File No.: WC2021098080
Date of Accident: August 27, 2021

Dear Commissioner Beck:

Enclosed please find an Amended Pre-Hearing Brief with regard to the above-named matter, which is scheduled for a hearing on January 25, 2023.

By Proof of Service to the Claimant, I am notifying him that I have submitted the Brief, and I am providing him with copies of the medicals and documents that will be submitted at the time of the hearing to be made a part of the record in the case under the Administrative Procedures Act.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/lth

Enc.

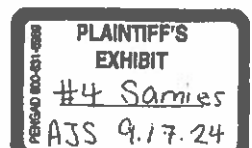
cc: Sandra Axson, Antum Risk (w/enc.) (via upload only)
Jonathan Vallentine (w/ enc.) (via email only)
Serge Wandji (w/enc.) (via certified/regular mail and OneDrive)

763 JOHNNIE DODDS BLVD. | P.O. BOX 2167
P 843.881.4228 | F 843.881.8782



MT. PLEASANT, SOUTH CAROLINA 29465
www.TRASK-HOWELL.com

3842/418N-PHB



South Carolina Workers' Compensation Commission
1833 Marion Street, Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739



PRE-HEARING BRIEF
WCC FILE NO: 2118696

Serge Wandji
Claimant's Name
P.O. Box 523
Address
Columbia, SC 29115
City State Zip
678-612-9649
Home Phone Work Phone

The Regional Medical Center
Employer's Name
3000 St. Matthews Road
Address
Orangeburg, SC 29115
City State Zip
Palmetto Hospital Trust via Antum Risk
Carrier

Roy A. Howell, III
Preparer's Name

(843) 881-4228
Phone #

A claim for workers' compensation benefits is made based on the following grounds:

☐ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$903.40 2. AWW: \$1,735.47 Date of Injury: August 27, 2021
3. Type of injury and body part(s): Claimant is alleging an infection of the whole body. Claim is denied.
4. Facts in controversy: See attachment.
5. Legal issues involved: See attachment.
6. Unusual aspects: See attachment.
7. Witnesses (designate if expert*): Kelci Caruso, Teresa Noe, Kellie Evan, Wanda Summers, Dr. John Samies, and Jonathan Vallentine
8. Exhibits: See attached Notice of Submissions
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) See attached Notice of Submissions
10. Name, address, and specialty, if any, of the treating physician: Roper St. Francis Primary Care, 615 Wesley Drive, Suite 200, Charleston, SC 29407; Roots Psychological Associates, 1531 Laurel Street, Columbia, SC 29201; Orangeburg County EMS; Regional Medical Center, 3000 St. Matthews Road, Orangeburg, SC 29118
11. Impairment rating(s); body part(s); physician and date of opinion:
12. I am amending my Form 50/51 in the following manner:

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B
☐ b. Mediation is required pursuant to Reg. 67-1802
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse

Questions regarding mediation may be submitted to mediation@wcc.sc.gov

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: Serge Wandji, P.O. Box 523, Columbia, SC 29115; sergewandji@gmail.com

on the 12th day of January 2023

by ☒ first class postage ☒ certified mail ☐ personal service ☒ OneDrive.

Signature: [Signature]

Email: rhowell@trask-howell.com

Date of hearing: 1/25/2023

Time needed for hearing: 1 hour

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

1 BEFORE THE SOUTH CAROLINA
2 WORKERS' COMPENSATION COMMISSION
3

4 SERGE WANDJI,)
5 Plaintiff,)
6 vs.)
7 THE REGIONAL MEDICAL)
8 CENTER OF ORANGEBURG,)
9 Employer,)
10 and)
11 PALMETTO HOSPITAL)
12 TRUST,)
13 Carrier,)
 Defendants.)

CASE NO.: 2118696

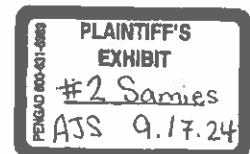
 COPY

14 H E A R I N G

15 DATE: Thursday, February 16, 2023
16 TIME: 2:51 p.m.
17 LOCATION: SC Workers' Compensation Commission
18 1333 Main Street, Suite 500
19 Columbia, South Carolina
20 BEFORE: Commissioner T. Scott Beck
21 REPORTED BY: Megan R. Brown
 South Carolina Court Reporter

22 _____
23 ABC REPORTING SERVICE
 257 Summerland Avenue
24 Batesburg, South Carolina 29006
 1-803-532-5255
25 1-803-730-3015 (cell)

ABC REPORTING SERVICE (803) 730-3015



WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 APPEARANCES:

2

3

ATTORNEY FOR THE DEFENDANTS

4

THE REGIONAL MEDICAL CENTER OF ORANGEBURG
AND PALMETTO HOSPITAL TRUST:

5

TRASK & HOWELL, LLC

6

BY: ROY A. HOWELL, III, ESQUIRE

7

763 Johnnie Dodds Boulevard

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Post Office Box 2167

9

Mount Pleasant, South Carolina 29464

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(INDEX AT REAR OF TRANSCRIPT)

24

25

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 A. -- on the CDC website.
2 Q. You don't have it with you?
3 A. No, sir.
4 Q. Oh, so how are we going to -- how are you
5 going to convince the Commissioner that that's what the
6 CDC says? You just out of your head like how do we
7 know? What is the CDC guideline?
8 A. I mean, the CDC guidelines were published on
9 several websites, news sources, social media sources,
10 but that is what we use to determine onset of symptoms.
11 Q. Where is it? I mean, your lawyer sent all
12 kinds of documentation. He didn't --
13 A. Yes, sir. I understand. I do not have it
14 with me. No, sir.
15 Q. You -- are you a nurse, you said?
16 A. Yes, sir.
17 Q. And when all that happened, you had like, as
18 I said, degree nurse. Is that right?
19 A. I'm sorry? Yes. Yes.
20 Q. And that's a nursing degree nurse?
21 A. Yes, sir. Uh-huh.
22 Q. So now you decide when I was infected like
23 you know exactly when somebody is infected, when they
24 get symptoms with a nursing degree in nursing? What
25 is --

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 A. No, sir. That's what the CDC says.

2 Q. Again, where is that CDC note, madam?

3 A. Again, I do not have the -- I do not have the
4 CDC. I have answered that question.

5 Q. You don't have it?

6 A. No, sir.

7 Q. So you are just making that up, because we
8 have no evidence?

9 A. No, sir.

10 Q. Okay. So under -- on August the 16 --

11 A. Uh-huh.

12 Q. -- when I came to get a test --

13 A. Uh-huh.

14 Q. -- for my school, did you ask me when I was
15 exposed?

16 A. No, sir, we did not ask when you were --

17 Q. Okay.

18 A. -- exposed.

19 Q. You did not ask me when I was exposed. Why
20 not?

21 A. We -- we didn't need to know specifically
22 when you were exposed. You indicated that you were
23 exposed, and that's why you needed a test when we asked
24 what you needed a test for.

25 Q. Did I tell you where I was exposed?

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WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 A. No, sir.

2 Q. Okay. I didn't tell you where I was exposed;
3 is that correct?

4 A. I don't recall you telling me where you were
5 exposed.

6 Q. Oh, okay. You are the head of the Employee
7 Health, right?

8 A. Yes, sir.

9 Q. On that day, 16th, we already had a lot of
10 Covid-positive employee at the hospital; is that
11 correct?

12 A. We had several. Yes, sir.

13 Q. We already had patients with Covid positive
14 in the hospital; is that correct?

15 A. Correct.

16 Q. It's amazing. During your testimony here
17 exchanged with your lawyer, you said, Oh, if somebody
18 has their personal protective gears, he cannot get
19 Covid. Where did you --

20 A. I did not --

21 Q. -- get that?

22 A. I did not say he could not get Covid.

23 Q. Oh, what did you say?

24 A. I said that the risk was low if you wore the
25 proper protective equipment.

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WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 Q. So with that, you can still get Covid; is
2 that correct?

3 A. If you wear the proper corrected -- proper
4 PPE, your risk for Covid is low.

5 Q. But you can still get it; is that correct?

6 A. There is a possibility.

7 Q. Thank you.

8 THE COURT: Anything else?

9 MR. WANDJI: Huh?

10 THE COURT: Anything else?

11 MR. WANDJI: Yes, sir. Yes, sir. I'm not
12 finished.

13 THE COURT: All right.

14 MR. WANDJI: Thank you. This is on my
15 exhibit 47. That will be page 84.

16 THE COURT: Hang on. Hang on. Before you
17 approach the witness, what page are you on?

18 MR. WANDJI: I am on page 84.

19 BY MR. WANDJI:

20 Q. Did you post this? Did you put this list
21 together?

22 A. Yes, sir.

23 Q. You put that?

24 A. Yes, sir.

25 Q. Where did you get those names and your test

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 and everything? How did you get that?

2 A. It is from the employees that we tested or
3 the employees that reported to us that they were
4 positive.

5 Q. Is that the same list that you send to the
6 CDC for employees work who tested positive?

7 A. That was not my responsibility.

8 Q. Whose responsibility is it?

9 A. I'm not sure. I believe it was the lab at
10 the hospital. It was their responsibility to send that
11 information to DHEC once you're tested.

12 Q. Okay. So you are the one who put this
13 together?

14 A. Yes. That was our list that we kept up with
15 on who was out with Covid at the time.

16 Q. And this is the list of all those who tested
17 positive at the hospital in the month of August 2021?

18 A. I believe so, yes.

19 Q. Okay.

20 A. All that were reported to us or that we
21 tested.

22 MR. WANDJI: I have no other question for
23 her, your Honor.

24 THE COURT: Thank you, sir.

25 Mr. Howell, any on --

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WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 MR. WANDJI: Thank you --

2 THE COURT: -- redirect?

3 MR. WANDJI: -- madam.

4 REDIRECT EXAMINATION

5 BY MR. HOWELL:

6 Q. Any employee that -- that reported a positive
7 test -- well, number one, that list only lists
8 employees who reported a positive test or tested
9 positive. It doesn't indicate where the exposure came
10 from, correct?

11 A. That list does not, no, sir.

12 Q. Okay. Number -- number two, any employee
13 that did have a positive test was quarantined, correct?

14 A. Correct.

15 Q. All right. Until they were safe to come back
16 to work, correct?

17 A. Correct.

18 MR. HOWELL: All right. Thanks. That's all
19 I have.

20 THE COURT: Anything further?

21 MR. WANDJI: No. I am done with her. Thank
22 you, madam.

23 THE COURT: You may step down. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Howell?

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WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 MR. HOWELL: Kellie Evans.

2 THE COURT: Your name, ma'am?

3 MS. EVANS: Kellie Evans.

4 THE COURT: K-E-L-L-?

5 MS. EVANS: -I-E.

6 THE COURT: Glad I asked. E-V-A-N-S?

7 MS. EVANS: Yes, sir.

8 THE COURT: I got that right. Would you
9 raise your right hand, please?

10 KELLIE EVANS, being duly sworn and cautioned
11 to speak the truth, the whole truth and nothing but the
12 truth, testified as follows:

13 THE COURT: Again, please state your name for
14 the record.

15 THE WITNESS: Kellie Evans.

16 THE COURT: Okay. Ms. Evans, you may be
17 seated.

18 Mr. Howell?

19 DIRECT EXAMINATION

20 BY MR. HOWELL:

21 Q. By whom are you employed, Ms. Evans?

22 A. The Regional Medical Center of Orangeburg.

23 Q. And what is your job?

24 A. I am the administrative assistant in the
25 Employee Health services office.

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 Q. Was that your job in August of 2021?

2 A. Yes, sir.

3 Q. Were you in the office on August 16, 2021?

4 A. Yes, sir.

5 Q. And describe what happened.

6 A. Mr. Wandji came in the office stating that he
7 needed to be tested for Covid. Kelci had just come
8 inside from testing several other employees at 11:00,
9 so she came in shortly after. I asked Kelci if she
10 could get him tested.

11 She -- once she processed her lab specimens
12 and took them over, she went out and tested Mr. Wandji.
13 While he was in our office, he did sit in one of our
14 chairs, stated he would wait there until we could get
15 him tested after we asked him to go to same-day.

16 Q. Did Mr. Wandji indicate that he had been
17 exposed outside of the hospital?

18 A. Yes, sir.

19 Q. Did Mr. -- on that day, did Mr. Wandji ever
20 tell you or Kelci that he needed to test for school?

21 A. No, sir.

22 Q. Were you in the office on August 27, 2021?

23 A. Yes, sir.

24 Q. And do you recall when Mr. Wandji called

25 or --

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 A. Yes, sir. He came -- or he called, and I got
2 some information from him to get him registered. We
3 got him registered. He came in for a test. Once we
4 got the results -- it takes about an hour-and-a-half,
5 two hours. We got results. We called Mr. Wandji with
6 results and started to go through that questionnaire.

7 Q. And what was the date that he gave you for
8 symptom onset?

9 A. On the first original date was August 23rd of
10 '21.

11 Q. And did he give any other dates of a later
12 time?

13 A. Yes, sir. As Ms. Caruso stated, he did call
14 back a little later. He gave us a date of August the
15 25th, and then in an email that he sent me on September
16 the 9th, I believe, he -- he stated that he started
17 feeling bad on August 26th.

18 Q. Okay. So he's given three different dates
19 for date of onset; is that correct?

20 A. Yes, sir.

21 MR. HOWELL: That's all I have. Thank you.

22 THE COURT: Mr. Wandji, any questions of this
23 witness, sir?

24 CROSS-EXAMINATION

25 BY MR. WANDJI:

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 Q. Excuse me, madam. What's your name again?

2 A. Kellie Evans.

3 Q. Ms. Evans, you just said that I told you that
4 was -- I was exposed to Covid-19 outside of the
5 hospital. Did I tell you that?

6 A. I stated that you said you were exposed. I
7 did not say that you stated you were exposed outside of
8 the hospital.

9 Q. Oh, maybe I didn't hear very well. I -- I
10 hope it is on the transcript. My bad, because what I
11 heard is you said that I told you that I was exposed
12 out of the hospital, so I didn't tell you that, did I?

13 A. You said you were exposed.

14 Q. Okay. And that was on August the 16th?

15 A. Yes, sir.

16 Q. And you work at Employee Health?

17 A. Yes, sir.

18 Q. And you know we have patients with Covid in
19 the hospital like I --

20 THE COURT: All right. Let -- let me stop
21 right now, because I want to get a clarification.

22 Ms. Evans, my notes indicated that you testified that
23 he said he had been exposed outside of the hospital on
24 your direct examination. I just need clarity on what
25 he actually said to you.

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 THE WITNESS: Okay. All it states is that he
2 was exposed but was not having symptoms.

3 THE COURT: All right. Thank you.

4 THE WITNESS: Yes, sir.

5 MR. WANDJI: Thank you, Commissioner, because
6 that's exactly what I heard. I just thought maybe,
7 because I have Long Covid, I -- I was -- my memory --

8 THE COURT: All right. Let's proceed.

9 BY MR. WANDJI:

10 Q. So -- so -- so the testimony you gave him is
11 wrong. I did not tell you that I was exposed out of
12 the hospital.

13 THE COURT: We -- we've already made that --

14 Q. Is that correct?

15 THE COURT: Mr. Wandji, we've already made
16 the point clear. Let's move on.

17 MR. WANDJI: Okay. Good.

18 BY MR. WANDJI:

19 Q. Who is your supervisor?

20 A. At the time, Kelci was my direct supervisor,
21 and over Kelci was Tina Norris.

22 Q. Was who?

23 A. Tina Norris.

24 Q. Oh, okay. My exhibit, sir, is exhibit -- APA
25 number 60, page number 148.

ABC REPORTING SERVICE (803) 730-3015

WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 THE COURT: 148?

2 MR. WANDJI: Yes, sir.

3 THE COURT: All right.

4 BY MR. WANDJI:

5 Q. , I got this from your lawyer, Mr. Howell. It
6 says it's the final report on all my Covid testing,
7 whatever. Did you put this together or is it
8 something -- did you put that together?

9 A. Ms. Caruso actually put that part together --

10 Q. Oh.

11 A. -- because she was still employed with us at
12 that time.

13 Q. Who's Ms. Caruso?

14 A. Kelci.

15 Q. Oh, okay. She's not an employee at The
16 Medical Center no more?

17 A. Not right now.

18 Q. Okay. On this report, APA 60, this is like
19 a -- it's not like a report that somebody wrote. It's
20 like a cut and paste of different email; is that
21 correct?

22 A. Correct, and I do have the emails that were
23 sent.

24 Q. Why didn't you submit the original email?
25 Why did you have to --

ABC REPORTING SERVICE (803) 730-3015

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Serge R. Wandji,

Plaintiff,

vs.

The Regional Medical Center,

Defendants.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

Case No.: 2023-CP-38-00331

AFFIDAVIT OF JOHN H. SAMIES,
M.D.

I, Dr. John H. Samies, being first duly sworn, deposes and states as follows:

1. My name is Dr. John H. Samies, and I am over the age of eighteen (18) years old and am competent to give sworn testimony.

2. I have personal, first-hand knowledge of the matters set forth in this Affidavit.

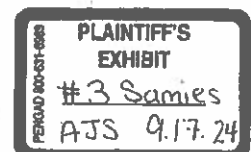
3. I offer this Affidavit in support of Defendant's Opposition to Plaintiff's Motion to Compel.

4. Since 1997, I have maintained and worked as a physician at my own private medical practice, which became known as Palmetto Infectious Disease Physicians, LLC in 2005.

5. I am not now, nor was I ever, an employee of RMC.

6. For many years, I provided infection control services to RMC pursuant to a contract with RMC for those services.

7. On or about November or December 2022, in my role as the head of infection control, I was asked to opine on RMC's infection control procedures, the modes of transmission, timing, and other items of epidemiology of the COVID-19 disease. These opinions were offered as part of a theoretical infection control situation involving a worker's compensation litigation matter filed by Serge Wandji.



8. My role in Mr. Wandji's worker's compensation matter was solely as an expert in infection control and disease epidemiology.

9. I have never had any involvement in the decision to grant or deny any worker's compensation claims submitted by an employee of RMC, including Mr. Wandji.

10. I have never had any involvement in the submission or processing of any worker's compensation claims submitted by an employee of RMC, including Mr. Wandji.

11. I have never had any supervisory authority over Mr. Wandji or any nurse employed by RMC.

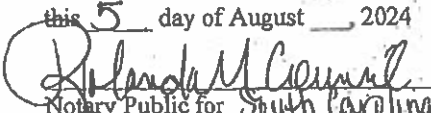
12. I have never had authority to hire or fire employees at RMC, including Mr. Wandji.

13. I have never had any involvement or input into the decision to terminate any employee at RMC, including Mr. Wandji. In fact, I did not learn of the termination of Mr. Wandji's employment from RMC until May 2023 when Mr. Wandji served me with a subpoena for deposition in this lawsuit.

FURTHER AFFIANT SAYETH NOT.


Dr. John H. Samies

Sworn to and subscribed before me
this 5 day of August, 2024


Notary Public for South Carolina
My commission expires: 04/02/2025



TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

Reply to
Roy A. Howell, III
(843) 881-2236
rhowell@trask-howell.com

October 31, 2024

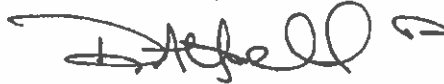
Ms. Amy Bracy
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

Re: Serge Wandji v. The Regional Medical Center
W.C.C. File No.: 2118696
Carrier File No.: WC2021098080
Date of Accident: August 27, 2021

Dear Ms. Bracy:

Enclosed herewith for filing please find a Motion to Strike in regard to the above-named matter. By a copy of this letter, I am serving the Claimant with a copy of the Motion. Also enclosed is our check in the amount of \$50.00 for the filing of this Motion.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/mkb
Enc.

cc: Sandra Axson, Antum Risk (w/enc.) (via upload only)
Tiffany Kirby, MUSC Health - Orangeburg (w/enc.) (via email only)
Serge Wandji (w/enc.) (via regular & certified mail only)

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763 JOHNNIE DODDS BLVD. | P.O. BOX 2167
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MT. PLEASANT, SOUTH CAROLINA 29465
www.TRASK-HOWELL.com

3842-318 1-motion to strike

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL**

Serge R. Wandji,	)	W.C.C. FILE NO. 2118696
Claimant/Appellant,	)	
	)	
v.	)	MOTION TO STRIKE
	)	
The Regional Medical Center of	)	
Orangeburg,	)	
Employer, and	)	
Palmetto Hospital Trust,	)	
Carrier,	)	
Respondents.	)	
_____	)	

TO THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND SERGE
R. WANDJI, *PRO SE* CLAIMANT:

PLEASE TAKE NOTICE that the Regional Medical Center of Orangeburg and the
Palmetto Hospital Trust hereby move before the South Carolina Workers' Compensation
Commission pursuant to S.C. Code Reg. 67-215 for an order STRIKING the Claimant's Reply
filed on October 23, 2024, based upon the following:

1. The Workers' Compensation Commission finally decided the above-referenced claim by
Decision and Order filed on March 8, 2024. The Claimant did not file a Motion to
Reconsider within five days, pursuant to S.C. Code Reg. 67-215(B), and he did not file any
appeal to the Court of Appeals within 30 days, as required by S.C. Code Ann. § 42-17-60.
Therefore, the March 8, 2024, Decision and Order is "conclusive and binding" and not
subject to further review by the Commission or the appellate courts.
2. Seven months after the Commission issued its final Decision and Order in this claim, the
Claimant filed an untimely "Motion to reopen case or request for modification based on

extraordinary circumstances,” which attempted to improperly re-argue the merits of his claim in direct contravention of S.C. Code Reg. 67-215(B).

3. The Respondents timely filed and served a Return to the Claimant's Motion on October 11, 2024. *See* S.C. Code Reg. 67-215(F) (imposing a 10-day deadline for a memorandum in opposition to a motion) and S.C. Code Reg. 67-215(E)(1) (stating that service is deemed complete upon mailing).
4. On October 23, 2024 – 12 days after the Respondents' Return was served – the Claimant filed a Reply; however, S.C. Code Reg. 67-612(F) clearly states that after a memorandum in opposition is filed, “no further memoranda are allowed.” Therefore, the Respondents respectfully contend that the Commission should refuse to accept for filing the Claimant's untimely and improper Reply (and improper exhibits attached thereto), pursuant to the plain terms of S.C. Code Reg. 67-612.
5. In addition, the Claimant's untimely and improper Reply not only attempts to relitigate the merits of his claim in contravention of S.C. Code Reg. 67-215(B), but also improperly and prejudicially quotes extensively from a deposition transcript that is not part of the record in this claim and which would not have been admissible even if it had been timely presented in accordance with S.C. Code Reg. 67-612. The Claimant has even attached portions of this transcript as an “exhibit” to his Reply. The Respondents respectfully request that if the Commission chooses to accept the Claimant's Reply for filing, the Commission should strike any and all references to this deposition testimony not in evidence, including citations, quotations, and deposition transcript itself.
6. The deposition at issue was taken by the Claimant on September 17, 2024, – 19 months after the record closed in this workers' compensation claim – ostensibly for the purpose of

discovery in support of civil litigation pending in the Orangeburg County Court of Common Pleas. While the Claimant did take the deposition of the Regional Medical Center's CEO in the course of his workers' compensation claim, he chose not to schedule the deposition of Dr. Samies in his workers' compensation claim at any time, and he did not seek to postpone his workers' compensation hearing on February 16, 2023, for this, or any other, purpose. Therefore, pursuant to S.C. Code Reg. 67-612(J) and Reg. 67-613(A), any attempt to conduct additional depositions in a closed workers' compensation claim is wholly improper and any and all references to such improper discovery contained in the Claimant's Reply (and exhibits thereto) should be stricken by the Commission.

7. Moreover, both S.C. Code Ann. § 1-23-320(C) and S.C. Code Ann. § 42-3-160 require that the Claimant give notice of a deposition in accordance with the Rules of Civil Procedure, which specifically mandates that the Claimant "shall give ten (10) days notice in writing to every other party." *See* Rule 30(b)(1), S.C.R.C.P.. Neither the Respondent, Palmetto Hospital Trust, nor the undersigned counsel for the Respondents (the only counsel of record for the Palmetto Hospital Trust and the Regional Medical Center in the workers' compensation claim) were given any notice of the September 17, 2024, deposition of Dr. Samies. This fact alone should render any testimony elicited at this deposition inadmissible in his workers' compensation claim and necessitates that any and all references to such improper discovery contained in the Claimant's Reply (and exhibits thereto) be stricken from the Commission's file.
8. Additionally, the September 17, 2024, deposition was apparently not noticed for use as evidence in any trial or hearing and certainly was not noticed for use as evidence in a closed workers' compensation claim. However, the Rules of Civil Procedure, S.C. Code Ann. § 1-

23-320, and S.C. Code Ann. § 42-3-160 clearly require that "[t]he notice shall specify that the purpose of the deposition is for evidence at a trial or hearing." *See* Rule 30(i), S.C.R.C.P. Accordingly, any and all references to such improper discovery contained in the Claimant's Reply (and exhibits thereto) should be stricken by the Commission.

9. In addition, if the Commission were to allow the Claimant to now introduce testimony from a discovery deposition taken in a civil action 19 months after his workers' compensation hearing without proper notice to the Respondents, in contravention of all applicable statutes, rules, and regulations, the Respondents' constitutional right to due process would be irredeemably violated. The constitutional requirements of due process clearly afford the Respondents the right to notice, and the opportunity cross-examine all witnesses, including Dr. Samies, should his untimely testimony be deemed admissible. *See* S.C. Const. Art. 1, § 22, Stono River Envtl. Protection Ass'n v. S.C. Dep't Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991).

THEREFORE, any and all references to the September 17, 2024, deposition, including the exhibited portions of the transcript itself, should be stricken from the Commission's file. In the alternative, the Commission should reject the Claimant's Reply in its entirety, as it is untimely and improper under S.C. Code Reg. 67-612.

WE SO MOVE.

Respectfully submitted,



Roy A. Howell, III
Trask & Howell, LLC
Attorneys for the Respondents

October 31, 2024
Mount Pleasant, SC

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of October 2024, I have caused a true and correct copy of the Motion to Strike to be mailed first-class mail prepaid postage and certified mail prepaid postage to the Claimant addressed as follows:

Serge Wandji
P.O. Box 523
Columbia, SC 29202



Roy A. Howell, III

3842418vmtion

Return in Opposition to Defendant's Motion to Strike

South Carolina Workers' Compensation Commission

Orangeburg County (Location of Injury)

W.C.C. FILE NO. 2118696

P. 146

**Serge Wandji,
Employee/Claimant,
vs.**

**The Regional Medical Center, Self-Insured Employer, through Antum Risk,
Defendant.**

CLAIMANT'S RETURN IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE

INTRODUCTION

Claimant, Serge Wandji, appearing pro se, submits this Return in Opposition to Defendant's Motion to Strike the deposition of Dr. Samies, Defendant's expert witness, from the Commission's file. The deposition is crucial to Claimant's Motion to Reopen or Modify the Commission's Decision based on newly discovered evidence, fraud, misrepresentation, and undisclosed conflicts of interest. This deposition unveils substantial discrepancies and contradictions in Dr. Samies' prior statements and expert letter, which Defendant submitted as key evidence during the original proceedings without any opportunity for cross-examination by Claimant.

BACKGROUND

The Commission's original Decision and Order concluded the workers' compensation case. Seven months later, Claimant sought to reopen or modify the case due to newly discovered evidence, including Dr. Samies' deposition. This deposition uncovered statements that

1

contradicted those in his expert letter, which Defendant had introduced as evidence to refute Claimant's claims. Although Dr. Samies was listed as a witness to appear at the hearing in the Defendant's pre-hearing brief, he failed to attend the hearing, thereby depriving Claimant of the right to cross-examine him and challenge the credibility of his testimony. When questioned in his deposition about his absence, Dr. Samies admitted, "I wasn't asked, to my knowledge" (Deposition Transcript Pg. 31, Line 6).

Defendant has now moved to strike Claimant's Reply, including the deposition of Dr. Samies and related excerpts, from the Commission's file. This motion should be denied, as it seeks to eliminate critical evidence that substantiates Claimant's assertions of fraud, misrepresentation, and undisclosed conflicts of interest.

ARGUMENT

I. The Deposition of Dr. Samies Qualifies as Newly Discovered Evidence Warranting Reopening the Case

South Carolina law allows the Workers' Compensation Commission to reopen or modify a case on the basis of newly discovered evidence. Pursuant to S.C. Code Ann. § 42-17-90, the Commission may review an award on the grounds of a change in condition, mistake, or fraud. Dr. Samies' deposition constitutes a **new and central piece of evidence** that was not available at the original hearing and reveals inconsistencies in his statements and acknowledgment of conflicts of interest. This evidence is essential for assessing the credibility of Defendant's expert testimony, which heavily influenced the initial outcome.

In *Reaves v. Clemson Univ.*, 424 S.C. 555, 562 (2018), the court held that newly discovered evidence must be such that it could not have been obtained before the original hearing with due diligence. The post-hearing deposition of Dr. Samies meets this standard, as it provides critical insights that were previously unavailable.

II. The Right to Cross-Examine Expert Witnesses Is Fundamental to Due Process

Denying the inclusion of Dr. Samies' deposition would be unjust, particularly as he was listed by Defendant as a witness but failed to appear at the hearing, depriving Claimant of the right to cross-examine him. Cross-examination is a fundamental procedural right, essential for evaluating witness credibility and the reliability of their testimony. The South Carolina courts have underscored this right, stating in *State v. Fletcher*, 354 S.C. 555, 562 (2003), that cross-examination is crucial for testing the veracity of witnesses.

The subsequent deposition serves as a necessary corrective to the lost opportunity for cross-examination during the original hearing. By attempting to strike this deposition, Defendant seeks to suppress newly discovered evidence that exposes material discrepancies, undermining the fairness of the proceedings.

III. The Deposition Provides Evidence of Fraud, Misrepresentation, and Undisclosed Conflicts of Interest

The deposition of Dr. Samies demonstrates clear evidence of misrepresentation and undisclosed conflicts of interest. Although Defendant presented Dr. Samies as an independent expert, he admitted during his deposition that he held executive positions at TRMC, including membership on the Board of Trustees and the Medical Executive Committee (Deposition Transcript Pg. 5,

Lines 11-16). This affiliation was not disclosed in the expert letter submitted during the original hearing, creating a conflict of interest that affects the credibility of his testimony. In *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119 (2014), the court noted that undisclosed conflicts of interest and biased testimony could impact the fairness of proceedings.

Further, Dr. Samies' deposition revealed that his expert letter was solicited by TRMC's Infection Control Department, where he serves as chair (Deposition Transcript Pg. 6, Lines 15-21). He admitted he was aware that the letter would be used in litigation, acknowledging, "I understood that there was Workers' Compensation Questions" (Deposition Transcript Pg. 8, Lines 12-15). Such admissions contradict his prior assertion of impartiality and support Claimant's contention of bias and misrepresentation.

Dr. Samies admitted in his letter that it was "unlikely" the Claimant's COVID-19 exposure occurred at work, despite not knowing when the exposure actually took place (Deposition Transcript Pg. 26, Lines 11-13). He repeatedly acknowledged lacking key information about the Claimant's exposure but still concluded that workplace exposure was improbable (Deposition Transcript Pg. 27, Lines 9-11). Dr. Samies also admitted that his statements were biased and speculative. In his letter, he affirmed non-employment exposure of Claimant based on factual evidence (Exhibit #2: Dr. Samies' Expert Testimony Letter). However, during his deposition, he clarified that this was only based on what he "gleaned from the records of Employee Health" (Deposition Transcript Pg. 11, Lines 3-6; Pg. 14, Line 5) and not on any evidence.

Dr. Samies further conceded, "It's possible that any employee (including Claimant) can be exposed in the hospital (TRMC) where there were patients with COVID-19" (Deposition Transcript Pg. 31, Lines 22-23). This directly contradicts his earlier statement in the expert letter

that Claimant's workplace exposure was "unlikely". These admissions are crucial to Claimant's Motion to reopen or modify the case, as they cast doubt on the reliability of the evidence that influenced the Commission's original decision. The deposition transcript provides a basis for the Commission to reconsider its findings due to potential fraud or misrepresentation.

IV. Excluding the Deposition Would Violate Principles of Fairness and Transparency

The Commission's mandate is to ensure proceedings are conducted fairly and with transparency. Striking the deposition of Dr. Samies would prevent the Commission from considering essential evidence relevant to Claimant's allegations. In *Lauderdale v. Dixon*, 374 S.C. 222, 230 (2007), the court emphasized that fairness and justice are central to judicial and administrative proceedings. Defendant's motion to strike seeks to obscure evidence crucial to the reconsideration of the Commission's prior decision.

V. Legal Standard

The admissibility of evidence in a workers' compensation case in South Carolina is guided by the principle that the Workers' Compensation Commission has a degree of latitude in considering relevant evidence to ensure fair outcomes (see *S.C. Code Ann. § 42-3-180*). In the context of a motion to reopen a workers' compensation case, the Commission may admit exhibits presented in replies to motions if they provide substantial information relevant to the determination of the case's merit. According to *Branham v. Rock Hill School Dist. No. 3*, 375 S.C. 497, 653 S.E.2d 267 (2007), the Commission has discretion to consider any evidence that bears upon the issues being adjudicated, provided it aligns with procedural fairness and supports the equitable administration of justice. Therefore, when a **new and central piece of evidence** such as Dr.

Samies' deposition in this case, is included as an exhibit in a reply to the defendant's return and contributes significantly to the assessment of the Claimant's motion to reopen, it should be admitted into the commission file to facilitate a comprehensive review of the case's facts and circumstances.

VI. Defendant's Misstatements in Its Motion to Strike

Finally, Defendant falsely asserted in its Motion to Strike that its Return was served to Claimant on October 23, 2024—12 days before Claimant's response. However, there is no proof of such service. Claimant was properly served via certified mail on October 22, 2024 at the post office in Columbia, and did not receive any related correspondence or email before that date. Defendant's misrepresentation further undermines the credibility of its motion.

CONCLUSION

For these reasons, Claimant respectfully requests that the Commission deny Defendant's Motion to Strike the deposition of Dr. Samies and the exhibited transcript portions. The deposition constitutes newly discovered evidence essential for reviewing allegations of fraud, misrepresentation, and conflicts of interest. Excluding this evidence would contravene principles of fairness and due process.

Respectfully submitted,



**Serge Wandji, Pro se Claimant
P.O. Box 523
Columbia, SC 29202**

Date: November 5, 2024

6

CERTIFICATE OF SERVICE

I hereby certify that on this November 5, 2024, a true and correct copy of the Claimant's **Return in Opposition to Defendant's Motion to Strike** was served upon the following party via certified mail, to the Defendant Attorney in file as followed:

Mr. Roy A. Howell, III
Trask & Howell, L.L.C.
Attorneys for Defendants
763 Johnnie Dodds Blvd
P.O. Box 2167 Mt. Pleasant, SC 29465
rhowell@trask-howell.com

s/Serge Wandji
P.O. Box: 523
Columbia, SC, 29202
sergewandji@gmail.com

Exhibit #1 For # 8 (Appellant Return to Respondent's Motion to Strike)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) CASE NO.: 2023-CP-38-00331

Serge R. Wandji,)
)
 Plaintiff,)
)
v.)
)
The Regional Medical Center)
and Dr. John H. Samies,)
)
 Defendants.)
)
-----)

**DEPOSITION OF
DR. JOHN H. SAMIES**

Tuesday, September 17, 2024
4:00 p.m. - 4:38 p.m.

The deposition of DR. JOHN H. SAMIES was taken on behalf of the Plaintiff on the 17th day of September, 2024 at the Orangeburg County Administrative Offices, 1437 Amelia Street, 3rd Floor Training Room, Orangeburg, South Carolina before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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(803) 252-3445 / contact@creelreporting.com

APPEARANCES

Serge R. Wandji
Plaintiff Pro Se

Amanda Williams, Esquire
Parker, Poe, Adams & Bernstein, LLP
850 Morrison Drive, Suite 400
Charleston, South Carolina 29403
Attorney for Defendant

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EXHIBITS

Plaintiff's Exhibit Number 1	6, 26
(Letter from Dr. Samies to Roy A. Howell, III, dated 12/5/2022)	
Plaintiff's Exhibit Number 2	12
(Workers' Compensation 2/16/2023 Hearing Transcript)	
Plaintiff's Exhibit Number 3	20
(Affidavit of John H. Samies, M.D.)	
Plaintiff's Exhibit Number 4	30
(Letter to Commissioner T. Beck, Amended Prehearing Brief dated 1/12/2023)	
Plaintiff's Exhibit Number 5	31
(RMC letter to All Employees regarding COVID and Other Updates (8/6/2021))	
Plaintiff's Exhibit Number 6	32
(Outbreak Line Listing Form for Patients)	
Plaintiff's Exhibit Number 7	32
(Outbreak Line Listing Form for Employees)	



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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



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1 DR. JOHN H. SAMIES, having been duly sworn, deposes
2 and testifies as follows:

3 DR. SAMIES - EXAMINATION BY MR. WANDJI:

4 Q: All right. Dr. John Samies, will you please
5 state your name and title for the record?

6 A: John Hunter Samies, M.D., Medical Doctor.

7 Q: All right. You are under oath, Dr. Samies, and
8 I'm going to ask you some questions and I
9 expect an answer to each of my questions. Your
10 lawyer cannot help you outside any of those
11 questions. If you don't understand any
12 question, please just say so and I will repeat
13 the question. Do you understand, sir?

14 A: Yes.

15 Q: Okay. Dr. Samies, do you practice medicine at
16 the Regional Medical Center?

17 A: The Regional Medical Center no longer exists.
18 I practice at the institution that took over
19 for it.

20 Q: Did you practice when it was still the Regional
21 Medical Center?

22 A: Yes.

23 Q: How long did you practice medicine there?

24 A: Since 1997.

25 Q: How many days a week on average are you at the



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1 Regional Medical Center?

2 A: Probably six.

3 Q: So, when you practice medicine there, do you
4 get paid for your services?

5 A: I bill for my services, yes.

6 Q: Beside practicing medicine, do you have any
7 additional role at the Regional Medical Center?

8 A: At present, no.

9 Q: Did you? Whe- ---

10 A: Yes.

11 Q: What kind of additional role did you have
12 beside practicing medicine?

13 A: I've been on a variety of committees, chaired
14 a variety committees, have served on the Board
15 of Trustees. I've served on the Medical
16 Executive Committee.

17 Q: Did you get paid in those leadership roles that
18 you were part of?

19 A: I was paid a stipend for hours practiced. So,
20 I billed as a contractor, basically.

21 Q: This is Exhibit Number 1. I'm gonna give a
22 copy to Dr. Samies.

23 MS. WILLIAMS: Do you have an extra copy for me?

24 MR. WANDJI: That's another one. You -- you can
25 have this one.



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1 MS. WILLIAMS: Thank you.

2 (Plaintiff's Exhibit Number 1 was marked for
3 identification purposes.)

4 Q: This is a one-page letter, Dr. Samies. Your
5 name is written at the bottom of it. Do you
6 recognize that letter?

7 A: Yes.

8 Q: Did you personally type the entirety of that
9 letter?

10 A: (No audible response.)

11 Q: Did you type it yourself?

12 A: Yes.

13 Q: Every single thing on that letter?

14 A: Yes.

15 Q: Why did you write that letter?

16 A: I was requested to do a review of information.

17 Q: Who requested you?

18 A: It was initially requested by the Infection
19 Control Department ---

20 Q: Okay.

21 A: --- which I served as a consultant for.

22 Q: Okay. Who asked -- requested you to do it?
23 You said initially.

24 A: Well, and then they wanted me to speak to the
25 attorney that's on the letter.



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- 1 Q: Who is they?
- 2 A: Infection Control Department at the hospital.
- 3 Q: Okay. How much did you get paid for writing
- 4 that letter?
- 5 A: Nothing.
- 6 Q: Why would the Infection Control ask you to
- 7 write a letter?
- 8 A: I served as the Hospital Infection Control
- 9 Consulting and Hospital Epidemiologist and they
- 10 had asked me to review information pertinent to
- 11 the epidemiology.
- 12 Q: The letter was written and signed on December
- 13 2022; is that correct?
- 14 A: Yes.
- 15 Q: Okay. How many of such a letter for your
- 16 Infection Disease expertise have you written
- 17 that year, 2022?
- 18 A: I don't know.
- 19 Q: Have you written any?
- 20 A: Yes.
- 21 Q: Beside this one?
- 22 A: Yes.
- 23 Q: That was put into the judicial system of any
- 24 kind?
- 25 A: Not that I'm aware of, no.



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1 Q: But you knew this one had to do with some kind
2 of lawsuit, right?

3 A: I knew that it was information requested.

4 Q: But you knew it was ...

5 A: I did not specifically know what precisely it
6 would be used for. I did an epidemiologic
7 review at the request.

8 Q: Okay. So, you didn't know how I was the
9 Claimant or didn't know ---

10 A: Oh, I knew -- I knew the subject was you in the
11 letter, yes.

12 Q: But you didn't know that it had to do with some
13 kind of judicial process?

14 A: I understood that there was Workers'
15 Compensation questions.

16 Q: So, how many letter after you written like that
17 that in year 2022? How many?

18 MS. WILLIAMS: Object to the form. You can answer
19 the question.

20 A: The -- well, you asked whether or not it was
21 for judicial things. No other for judicial
22 things. I wrote multiple other letters over
23 time about a variety of infection control and
24 epidemiology issues.

25 Q: Okay. Have you ever testified for anybody or



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1 through a letter like this in some kind of
2 judicial process?

3 A: I've never testified, no.

4 Q: So, this was the very first one?

5 A: I ---

6 MS. WILLIAMS: Object ---

7 A: --- did not ---

8 MS. WILLIAMS: --- to form.

9 A: --- testify. I wrote a review at the re- -- at
10 the request of information they provided.

11 Q: In the second sentence of that letter that you
12 wrote, Dr. Samie, you claim that the materials
13 you reviewed to prepare the letter were a
14 COVID-19 Questionnaire from Mr. Wandji -- I'm
15 quoting what you wrote -- and two, additional
16 employees, a log of Behavioral Health Employees
17 and a series of emails; is that correct?

18 A: That's correct.

19 Q: Okay. Beside the material I just read from
20 your letter, did you get any other information
21 from anyone to help you prepare for your
22 letter?

23 A: No.

24 Q: Did you discuss about this assignment you
25 received from the Infection Disease Committee,



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1 did you discuss about that with anyone before
2 preparing your letter?

3 A: No.

4 Q: The last sentence in the last paragraph in your
5 letter, and I'm quoting, you wrote, giving that
6 he, talking about me, had concern about non-
7 employment exposure, which prompted testing
8 only a short time prior to his illness, I must
9 wonder how much other potential non-employment
10 exposure he had. Is that correct what you
11 wrote?

12 A: That's correct.

13 Q: And you say you wrote this entire letter?

14 A: Yes.

15 Q: Who told you that I had concern about non-
16 employment exposure?

17 A: It merely states, given that he had concerns
18 about non-employment exposure, which prompted
19 testing only a short time prior to his illness,
20 I must wonder how much other potential non-
21 employment exposure he had.

22 Q: That's what I read. My question is, who told
23 you that I had concern about non-employment
24 exposure? Who told you that?

25 A: I can't re- -- let's see. Of more importance



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1 in this case is his self-reported exposure and
2 request for testing on 8/16/2021.
3 Q: What is the non-employment exposure there?
4 A: That's what was -- I reviewed the records and
5 that was gleaned from the records of Employee
6 Health.
7 Q: Oh. Employee Health told you that I had non-
8 employment ---
9 A: They did not tell me. They -- they forwarded
10 their documents.
11 Q: Where are those documents?
12 A: I don't have them.
13 Q: You reviewed them and then you gave it back to
14 them?
15 A: No. I reviewed them and they would have been
16 in email, which is no longer existent at the
17 Regional Medical Center. And probably I
18 deleted them at that time.
19 Q: And on those email that said I had non-
20 employment exposure to COVID-19?
21 A: That's what I gleaned from it.
22 Q: What's where you took it?
23 A: That's what I gleaned from.
24 Q: What do you mean gleaned? Can you explain?
25 A: Gleaned means understood from that materials.



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1 Q: Oh, okay. From the materials you got from
2 whom?

3 A: From Employee Health.

4 Q: Oh. Employee Health at the Regional Medical
5 Center at that time ---

6 A: Correct.

7 Q: --- right?

8 A: Correct.

9 Q: Is it possible that you read wrong?

10 A: Certainly.

11 Q: I'm gonna give you a copy. This is Exhibit
12 Number 2.

13 (Plaintiff's Exhibit Number 2 was marked for
14 identification purposes.)

15 Q: This is the testimony of both Employee Health,
16 the only people I talked to about my COVID at
17 the Regional Medical Center and the people you
18 received email and information from. Kelci
19 Caruso, she was the head of the Employee
20 Health. Do you remember her?

21 A: Yes.

22 Q: Good. And then Katie Evans, she's just a staff
23 there. Do you remember her?

24 A: I do not remember her specifically.

25 Q: I know it.



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1 A: Okay.

2 Q: Now, under oath, the position, this is what
3 Kelci Caruso, the head of Employee Health, said
4 when asked if I told her that I was exposed to
5 COVID-19, this is what she says, no, sir, I
6 don't recall you telling me where you were
7 exposed. That's page 108, line 124.

8 A: Okay.

9 Q: Just look at this ---

10 A: I got it.

11 Q: --- page -- part here (indicating). So, let me
12 ask you again, based on what I just told you.
13 Who told you that I had concern about non-
14 employment exposure?

15 A: It is what I gleaned from the records that were
16 provided to me by Employee Health.

17 Q: Employee Health just said I've never told him
18 that.

19 A: I see that.

20 Q: So, why did you write that in your letter that
21 I got non- ---

22 A: It ---

23 Q: --- -employment exposure?

24 A: --- it is what I gleaned ---

25 MS. WILLIAMS: Object to the form.



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1 A: --- it is what I gleaned from the records
2 provided to me by Employee Health.
3 Q: Gleaned for your truth; is that correct?
4 MS. WILLIAMS: Object to the form.
5 A: It is what I understood from those records.
6 Q: So, did you understand that -- did you
7 understood that wrong?
8 MS. WILLIAMS: Object to ---
9 A: I don't ---
10 MS. WILLIAMS: --- the form.
11 A: --- know.
12 Q: You don't know?
13 A: I don't know. No.
14 Q: Ms. Kelly [sp], those are the only two people
15 working at Employee Health during my tenure
16 there and when I had COVID. On page 115, line
17 68, and I'm quoting, I stated that you talking
18 about Wandji, me, were exposed, I did not say
19 that you stated you were exposed outside of the
20 hospital. That's what she says. That's her
21 testimony. I was exposed to COVID, but not
22 outside of the hospital. She didn't say that.
23 So, let me ask you for the third time, where
24 did you get that I was exposed to COVID ---
25 MS. WILLIAMS: Object ---



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1 Q: --- out of the hospital?

2 MS. WILLIAMS: Object to the form.

3 A: Once again, it is what I gleaned from the
4 information that was provided to me.

5 Q: The head of the Employee Health, Ms. Caruso,
6 that you said you know, also testified that
7 October 16, when I first requested to be tested
8 for COVID-19, it already had several patients
9 and employees at the hospital who had tested
10 for COVID-19. That's the testimony on line --
11 on page 108, line 9 to 10. So, as the
12 infection disease expert, is it possible that
13 me, working as a nurse, between all the up and
14 down with patients, is it possible that, as a
15 full-time nurse there, I was exposed to COVID-
16 19 on or before August 16? Is it at all
17 possible?

18 MS. WILLIAMS: Object to the form.

19 A: I'd have to review the record of your
20 employment dates and your working hours in
21 order to make that determination.

22 Q: I'm telling you I was a full-time employee
23 working there full-time as a nurse. I'm
24 telling you that as I just read, according to
25 Employee Health, before August 18, there were



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1 already both employees and patient who tested
2 positive at that hospital. Is it possible at
3 all as a -- as a nurse at that hospital that I
4 could have been exposed to COVID-19?

5 A: Again ---

6 MS. WILLIAMS: Object to form.

7 A: --- I would need to know your hours of work,
8 where you worked during that time period. That
9 information is not available to me.

10 Q: But you were able to write in your letter that
11 it's unlikely that I got COVID at that
12 hospital. How did you come up with that kind
13 of scientific expertise?

14 A: Of more importance in this case, is his self-
15 reported exposure and request for testing on
16 8/16. This was negative. The details of this
17 exposure are unclear. Certainly, a positive
18 test on 8/27 and symptoms beginning on 8/23 as
19 he initially reported on 8/25 or 8/26, which he
20 subsequently stated, would be consistent with
21 exposure on or near the 8/16 date. Generally,
22 COVID incubation is 2 to 14 days, with onset
23 for most being about 5 to 10 days from
24 exposure. It is highly unlikely that 8/22 was
25 the date of exposure if his symptoms began on



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1 8/23 and not possible that 8/24 was the date of
2 exposure for exposure on 8/23. The exposure
3 of 8/22 with onset 8/25 is unlikely being the
4 shortest end of the incubation period and the
5 exposure of 8/24 with onset of 8/25 is highly
6 unlikely being shorter than the incubation
7 period of the virus.

8 Q: What you just read justified the fact that, as
9 you said, I didn't get -- I got COVID not at
10 the hospital. What you just read justified
11 that I didn't get COVID at the hospital?

12 A: I wasn't justifying anything. I ---

13 Q: You said ---

14 A: --- was merely discussing the epidemiology ---

15 Q: Okay.

16 A: --- and the reports that I reviewed from
17 Employee Health.

18 Q: Okay. The last paragraph, you said, it is my
19 opinion that a link to employment exposure is
20 here is unlikely.

21 A: Based on the information presented to me.

22 Q: How did you come up with that?

23 A: Of more importance in this case, is his self-
24 reported exposure ---

25 Q: You already read that.



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1 A: --- and request for testing ---
2 Q: You already read that.
3 A: --- on 8/16/- ---
4 MS. WILLIAMS: Let him answer the question.
5 A: --- -2021. This was negative. The details of
6 this exposure are unclear. Certainly, a
7 positive test on 8/27 and symptoms beginning on
8 8/23 as he initially reported on 8/25 or 8/26,
9 which he subsequently stated, would be
10 consistent with exposure on or near the 8/16
11 date. Generally, COVID incubation is 2 to 14
12 days, with the onset for most being five to ten
13 days from exposure.
14 Q: You already ---
15 A: It is ---
16 Q: --- read that ---
17 A: --- highly ---
18 Q: --- Dr. Samies.
19 A: --- unlikely that 8/22 is a date of exposure if
20 his symptoms began on 8/23 ---
21 Q: Dr. Samies, you ---
22 A: --- and not ---
23 Q: --- already ---
24 A: --- possible ---
25 Q: --- you already read that for the record. I



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1 don't want you to repeat that. The question
2 is, the -- the question is, how did you come up
3 with the fact that it is unlikely that I got
4 COVID out of the hospital? That's the
5 question.

6 **MS. WILLIAMS:** Object to the form.

7 A: I did not come to any conclusion. I merely
8 stated that it was unlikely. There is no
9 conclusion there.

10 Q: Okay.

11 A: Of more importance in this case, is the self-
12 reported exposure and request for testing on
13 8/16. I'll read the rest, if necessary.

14 Q: Have you been the Medical Director of the
15 Regional Medical Center?

16 A: Medical Director?

17 Q: Yeah.

18 A: There is no Medical Director.

19 Q: Oh. Have you ever been the Chief of Medical
20 Staff at the Regional Med- ---

21 A: I've been the Chief of Staff.

22 Q: For how long?

23 A: I believe it was two years.

24 Q: Okay. Did you get paid for that?

25 A: I was a contract employee, meaning that I got



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1 paid by the hour for that as a contracted
2 service. Much like if you brought an
3 conditioning specialist over to fix your air
4 conditioner, you would pay him for the time
5 that he spent.

6 Q: This is another Exhibit. This -- this is your
7 Affidavit, Dr. Davis -- Dr. Sammies.

8 **(Plaintiff's Exhibit Number 3 was marked for**
9 **identification purposes.)**

10 Q: Did you prepare, you wrote and signed that?
11 Did you do that on that one?

12 A: Yes.

13 Q: On number five of your Affidavit, you said
14 you've never been an employee of the Regional
15 Medical Center.

16 A: That's correct.

17 Q: That's correct?

18 A: That's correct.

19 Q: You've been a member of the Board of Trustee-
20 -- of Trustees; is that correct?

21 A: That's correct.

22 Q: Since when?

23 A: I have the dates on my thing, but at -- at any
24 point when I was the Chief of Staff or the
25 Chairman of Medical Executive Committee, I was



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1 automatically a Board Member.

2 Q: And you were also the member of the Finance
3 Committee Board of Trustees at the Regional
4 Medical Center; is that correct?

5 A: That's correct.

6 Q: For how long?

7 A: I don't recall.

8 Q: So, you practice medicine there for
9 compensation and you were on the Board of
10 Trustees at that hospital?

11 A: That's correct. It's an elected position.

12 Q: So, with all these financial ties and
13 employment ties with the Regional Medical
14 Center, why did you agree to be a witness in
15 this litigation ---

16 MS. WILLIAMS: Object to the form.

17 Q: --- against the Regional Medical Center?

18 A: I am not financially tied to the Regional
19 Medical Center. I practice medicine there. I
20 am privileged there. I was appointed by
21 election to a position of leadership on the
22 medical staff, but not an employment position.

23 Q: Since you practice there and whatever your
24 company gets paid for your services, why did
25 you agree to be a witness in the litigation



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1 where the Regional Medical Center is the party?

2 A: I agreed to do ---

3 **MS. WILLIAMS:** Objection to form.

4 A: --- I agreed to do a review, as I stated

5 previously ---

6 Q: And you know ---

7 A: --- on information presented to me.

8 Q: --- and you know it was for the Worker

9 Compensation case?

10 A: I knew that it was going to the Workers'

11 Compensation attorney, yes.

12 Q: Don't you see a conflict of interest in there?

13 A: I ---

14 **MS. WILLIAMS:** Object to form.

15 A: --- do not.

16 Q: You don't?

17 A: I do not.

18 Q: So, you think that's lawful?

19 **MS. WILLIAMS:** Object to the form.

20 Q: To be on the Board of Directors of the Trustees

21 of your hospital and still write an expert

22 letter for them in the litigation. You think

23 that's lawful?

24 **MS. WILLIAMS:** Object to the form.

25 A: I wrote -- I opined on the information that I



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1 was presented for the epidemiology and
2 infectious disease portion of what was
3 submitted to me.

4 Q: So, you give your expertise in the litigation
5 case that the Regional Medical Center is
6 involved in; is that correct?

7 MS. WILLIAMS: Object to the form.

8 A: Again, I opined on the information that was
9 presented to me at the request of the
10 institution.

11 Q: And you knew it's liti- -- that it is a legal
12 case, but still you decided to give your
13 expertise?

14 MS. WILLIAMS: Object to the form.

15 A: I provided what my request was, which was to
16 review and opine on the epidemiology and
17 infectious disease aspects of the information
18 that I was presented with.

19 Q: Knowing that it was a legal case that the
20 Regional Medical Center was involved in; isn't
21 that correct? You knew that. Did you?

22 A: I knew that there was a Workman's Compensation
23 case, but I did not know that it was in
24 litigation.

25 Q: Thank you. On point Number 6 of your



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1 Affidavit, you stated that, and you've been
2 saying that all along, you provide infectious
3 control services to the Regional Medical Center
4 pursuant to a contract with them for those
5 services?

6 A: Yes. I've had a contract ---

7 Q: That's correct.

8 A: --- I've had a contract since 1997.

9 Q: Why didn't you disclose in your Affidavit that
10 you have leadership position at that
11 organization in the past? Like the Chief
12 Medical Officer, like being on the board?

13 A: I was not Chief Medical Officer.

14 Q: Like ---

15 A: I was Chief of Staff.

16 Q: Yeah.

17 A: An elected position for the medical staff.

18 Q: Why didn't you disclose that in your Affidavit?

19 A: The Affidavit said what I thought it needed to
20 say.

21 Q: Okay. And why didn't you disclose that you are
22 on the Board of Trustees in your Affidavit?

23 A: That was a -- again, a leadership position that
24 I was voted to, not a employment issue. And
25 this is describing employment relationships.



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1 Q: Thank you. So, I want to understand here. I
2 want to follow that with a question. You said
3 you are like a contractor for medical services
4 at the Regional Medical Center; is that
5 correct?

6 A: Correct.

7 Q: And you are also a member of the Finance
8 Committee Board of Trustees; is that correct?

9 MS. WILLIAMS: Object to the form.

10 A: At a period of time, I was on the Finance
11 Committee of the Board of Trustees.

12 Q: Is that ethical business practice ---

13 MS. WILLIAMS: Object to the form.

14 Q: --- to be a contractor and in the Board of
15 Finance of the same organization?

16 A: It was a ---

17 Q: Is that ethical?

18 A: --- position I was elected to and among the
19 things that you're required to do is disclose
20 any conflicts of interest when you're a Board
21 member.

22 Q: Is that lawful to be a contract to an
23 organization and still be on the Board of
24 Financial Trustees? Is that legal?

25 MS. WILLIAMS: Object to the form.



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1 A: I believe, yes.

2 Q: Okay.

3 A: I am not aware it's not.

4 Q: Back to Exhibit Number 1, Dr. Sammie.

5 (Plaintiff's Exhibit Number 1 was referenced at this

6 time.)

7 Q: The material which you reviewed before writing

8 that letter, from those material, can you tell

9 when I was exposed to COVID-19?

10 A: I did not opine on that.

11 Q: So you don't even know when I was exposed to

12 COVID-19?

13 A: I do not.

14 Q: Okay. But you know and you wrote in your

15 letter that it is unlikely that I got it at the

16 Regional Medical Center; is that correct?

17 A: In my opinion a link to employment exposure is

18 unlikely based on the information presented to

19 me.

20 Q: So you don't know when I was exposed, but you

21 know that it is unlikely that I got it at the

22 Regional Medical Center; is that correct?

23 A: Of more importance in this case is hi a self-

24 reported exposure and request for testing on

25 8/16/21. This was negative. The details of



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1 this ---

2 Q: We already ---

3 A: --- exposure ---

4 Q: --- we already -- we already had that. I don't

5 want you ---

6 A: --- are unclear ---

7 Q: --- to repeat it.

8 A: --- and that is how this opinion is generated.

9 Q: I'm gonna repeat that question. You don't know

10 when I was exposed to COVID-19?

11 A: That's correct.

12 Q: But you know that it is unlikely that I got it

13 from the hospital?

14 **MS. WILLIAMS:** Object to the form. Asked and

15 answered.

16 Q: Is that correct?

17 A: That is correct, based on the information ---

18 Q: Okay.

19 A: --- presented.

20 Q: On page 107, line 16 to 18, Exhibit -- on

21 Exhibit 2.

22 **(Plaintiff's Exhibit Number 2 was referenced at this**

23 **time.)**

24 Q: This is the head of the Employee Health, Ms.

25 Caruso, RN. She stated, and I quote, we did



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1 not ask you what -- when you were exposed in
2 the Questionnaires. They don't ask when you
3 were exposed. We didn't need to know
4 specifically when you were exposed. So, even
5 the hospital don't know when I was exposed.
6 But you knew for sure I didn't -- I was at --
7 unlikely got it from the hospital. Is that
8 correct?

9 A: What I stated ---

10 MS. WILLIAMS: Object to the form.

11 A: --- again is, in my opinion, that a link to
12 employment exposure here is unlikely based on
13 the information presented to me.

14 Q: So, you didn't know when I was exposed?

15 A: That's correct.

16 MS. WILLIAMS: Object to the form.

17 Q: Okay. Do you regret writing that letter?

18 A: No.

19 Q: You would write it the same as it is today?

20 A: (No audible response.)

21 Q: You need to ---

22 A: I don't know -- I don't know that I can answer
23 that. I don't know.

24 Q: Would you change anything on that letter, given
25 the information you have now?



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- 1 A: I don't know.
- 2 Q: You mentioned a series of emails that you
3 received. How many emails did you received?
- 4 A: I do not know.
- 5 Q: Who wrote those emails?
- 6 A: It would've been information coming from
7 Employee Health and from Infection Control.
- 8 Q: Where are those emails?
- 9 A: I don't have them.
- 10 Q: What happened to them?
- 11 A: The informa- -- the -- the email system of the
12 ho- -- Regional Medical Center sunsetted a
13 fairly long time ago and no longer exists.
- 14 Q: Have you discussed this Worker Compensation
15 case with any other executive in any of your
16 executive letters?
- 17 A: No.
- 18 Q: Have you discussed this Worker Compensation
19 case with any of your Board of Trustees
20 meeting?
- 21 A: No.
- 22 Q: Are you sure?
- 23 A: Yes.
- 24 Q: Did you discuss this Worker Compensation case
25 with anyone at all?



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1 A: No. My attorney.

2 Q: Did you personally hire Ms. Williams to
3 represent you in this case?

4 A: I did not.

5 Q: Who hired her to represent you?

6 A: Medical University of South Carolina.

7 Q: Do you mean the previous Regional Medical
8 Center?

9 A: The organization that took over the Regional
10 Medical Center.

11 Q: Yeah. Okay. This is Exhibit Number 4.

12 (Plaintiff's Exhibit Number 4 was marked for
13 identification purposes.)

14 Q: This is a letter where Dr. Samies was called
15 among the staff of the Regional Medical Center,
16 as witnessed, for the January -- I'm sorry.
17 This is your copy -- January hearing. So, you
18 were called here in page number -- second page
19 ---

20 MS. WILLIAMS: Mr. Wandji, can I interrupt you for
21 just one second?

22 MR. WANDJI: Yeah.

23 MS. WILLIAMS: Have these documents been produced in
24 discovery? I don't recall this being produced.

25 MR. WANDJI: Yeah. I'll send you everything that I



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1 have.

2 Q: So, this is -- is the list of the -- the staff
3 and your name is right there as one of the
4 staff that were called to wait for -- for the
5 hearing. Why didn't you show up?

6 A: I wasn't asked, to my knowledge.

7 Q: Oh. Okay. That's why you didn't show up?

8 A: Correct.

9 Q: Okay. This is another, Exhibit Number 5. Let
10 me see, here's your copy.

11 (Plaintiff's Exhibit Number 5 was marked for
12 identification purposes.)

13 Q: That's just a letter from the Reg- -- Regional
14 Medical Center. That's ---

15 A: Uh-huh.

16 Q: --- back to August 6th. There were already
17 patients all over the hospital with COVID-19.
18 As a nurse working there, is it possible that
19 I could have been exposed to COVID-19 at that
20 hospital?

21 MS. WILLIAMS: Object to the form.

22 A: It's possible that any employee can be exposed
23 when there are patients with COVID-19.

24 Q: Thank you. This is the -- another Exhibit,
25 Number 6.



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1 (Plaintiff's Exhibit Number 6 and 7 were marked for
2 identification purposes.)

3 Q: It's actually two. One for the patients and
4 one for the employees. This is one for the
5 patient and one for the employees. Both are
6 Exhibits. I got it from the Regional Medical
7 Center. Dr. Samie, those are the August
8 infected people in the unit that cared for
9 patients who had COVID-19. Is it possible that
10 I was exposed to COVID-19 at the hospital?

11 A: It's possible.

12 MS. WILLIAMS: Object to the form.

13 Q: It's possible, okay.

14 MR. WANDJI: Dr. Samies, you're a busy and good man.
15 I don't want to waste your time. I'm gonna end
16 this deposition at this point. I want to thank
17 you for your time, sir.

18 DR. SAMIES: Thank you.

19 MS. WILLIAMS: I don't have any questions.

20 (Off the record from 4:34 p.m. - 4:37 p.m.)

21 MS. WILLIAMS: We're back on the record. Exhibits 6
22 and 7, we've noted include patient names that
23 the -- the facility would have concerns about
24 confidentiality and HIPPA violations, so these
25 -- we would maintain these should be protected



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1 and the confidentiality of them maintained.

2 **MR. WANDJI:** And I want to add that those

3 communication was provided by the facility via

4 email ---

5 **MS. WILLIAMS:** They ---

6 **MR. WANDJI:** --- to me.

7 **MS. WILLIAMS:** --- they were not produced by the

8 facility in the context of this litigation.

9 These are not documents I'm familiar with.

10 **MR. WANDJI:** They were provided in the Worker

11 Compensation phase of this same case by the

12 Regional Medical Center via email to me.

13 **MS. WILLIAMS:** Okay. Let me ---

14 **MR. WANDJI:** I didn't produce this communication.

15 **MS. WILLIAMS:** I understand that. I just want to

16 confirm, Mr. Wandji, do you have any objection

17 to maintaining the confidentiality of these

18 names if they are produced ---

19 **MR. WANDJI:** I am saying ---

20 **MS. WILLIAMS:** --- in the context ---

21 **MR. WANDJI:** --- it's gonna be blacked out, the name

22 I'm gonna be blacked out before it is publicly

23 exposed.

24 **MS. WILLIAMS:** Okay. Thank you.

25 **(There being no further questions, the deposition**



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1 concluded at 4:38 p.m.)
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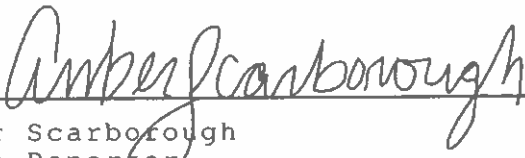
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CERTIFICATE

This is to certify that the deposition of **DR. JOHN H SAMIES**, consisting of thirty-four (34) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 2, 2024.



Amber Scarborough
Court Reporter

Notary Public for South Carolina
My Commission Expires: June 13, 2033



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Exhibit + 2 For # 8 (Appellant Return to Respondent's Motion to Strike)

Palmetto Infectious Disease Physicians, LLC

1097 B Cook Road
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Marie L. Gehling, NP-C, CWOCN

803-539-0505
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Roy A. Howel III
PO Box 2167
Mt Pleasant, SC 29465

December 5, 2022

Dear Mr Howell,

I am writing this letter to you in response to your request for review of materials concerning claimant Serge Wandji. Reviewed were COVID19 Questionnaires from Mr Wandji and two additional employees, a testing log for Behavioral Health Employees and a series of emails. Mr Wandji is claiming work related injury resultant from COVID 19 infection diagnosed 8/27/2021. He reports this as a result of exposure on 8/22/2021 and 8/24/2021 while working at the Behavioral Health Unit of the Regional Medical Center of Orangeburg and Calhoun Counties.

Clearly there were patients on the Behavioral Health Unit who tested positive for COVID 19 in that time period. While the hospital policy required use of protective attire, it is unclear if this was followed by the claimant.

Of more importance in this case is his self reported exposure and request for testing on 8/16/2021. This was negative. The details of this exposure are unclear. Certainly a positive test on 8/27 and symptoms beginning on 8/23 as he initially reported or 8/25 or 8/26 (which he subsequently stated) would be consistent with exposure on or near the 8/16 date. Generally covid incubation is 2-14 days with onset for most being about 5-10 days from exposure. It is highly unlikely that 8/22 was the date of exposure if his symptoms began on 8/23 and not possible that 8/24 was the date of exposure for onset 8/23. The exposure of 8/22 with onset 8/25 is unlikely being at the shortest end of incubation period and the exposure of 8/24 with onset 8/25 is highly unlikely being shorter than the incubation period of the virus.

The recanting of the 8/16 exposure by the claimant and the confusion about date of onset of symptoms puts doubt on all claimant statements in this case. Since the reporting by Employee Health of RMC appears to be a real time event, it would seem that the timing of onset of symptoms should have been quite clear to the claimant.

It is my opinion that a link to employment exposure here is unlikely based on the information presented to me. Given that he had concern about non-employment exposure which prompted testing only a short time prior to his illness, I must wonder how much other potential non-employment exposure he had.

If I may be of further assistance in this case, please feel free to contact me.

Sincerely,


John H. Samies, MD FSHEA

1 BEFORE THE SOUTH CAROLINA
2 WORKERS' COMPENSATION COMMISSION
3

4 SERGE WANDJI,)
5 Plaintiff,)
6 vs.) CASE NO.: 2118696
7 THE REGIONAL MEDICAL)
8 CENTER OF ORANGEBURG,)
9 Employer,)
10)
10 and)
11 PALMETTO HOSPITAL)
11 TRUST,)
12)
12 Carrier,)
13 Defendants.)
13 _____)

14 H E A R I N G
15 DATE: Thursday, February 16, 2023
16 TIME: 2:51 p.m.
17 LOCATION: SC Workers' Compensation Commission
18 1333 Main Street, Suite 500
19 Columbia, South Carolina
20 BEFORE: Commissioner T. Scott Beck
21 REPORTED BY: Megan R. Brown
21 South Carolina Court Reporter

22 _____
23 ABC REPORTING SERVICE
23 257 Summerland Avenue
24 Batesburg, South Carolina 29006
24 1-803-532-5255
25 1-803-730-3015 (cell)

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WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 APPEARANCES:

2

3 ATTORNEY FOR THE DEFENDANTS

4 THE REGIONAL MEDICAL CENTER OF ORANGEBURG
AND PALMETTO HOSPITAL TRUST:

5 TRASK & HOWELL, LLC
6 BY: ROY A. HOWELL, III, ESQUIRE
7 763 Johnnie Dodds Boulevard
Post Office Box 2167
Mount Pleasant, South Carolina 29464

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23 (INDEX AT REAR OF TRANSCRIPT)

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WANDJI SERGE V. REGIONAL MEDICAL CENTER 2/16/2023

1 THE COURT: All right. Today's date is
2 February 16, 2023. This is workers' compensation file
3 No. 2118696. Claimant in this matter is --

4 Is it Serge? Serge?

5 MR. WANDJI: Yes, sir.

6 THE COURT: Serge or Serge?

7 MR. WANDJI: Serge.

8 THE COURT: Serge Wandji. Mr. Wandji is
9 unrepresented today. The employer is Regional Medical
10 Center of Orangeburg. Carrier is Palmetto Hospital
11 Trust. They are both represented today by Attorney Roy
12 Howell. Date of accident in this matter is alleged to
13 be August 27, 2021. Average weekly wage is \$1,735.47.
14 Compensation rate is \$903.40. We are here today on
15 Claimant's Form 50.

16 Prior to the call of the case, Defense
17 Counsel objected to Claimant APA submission page 66.
18 That objection has been sustained, and for the record
19 not viewed by me. It involved settlement negotiations.
20 That report has been returned to Mr. Wandji. Other
21 than that, I've received submissions from both the
22 Defendant and the Claimant in this matter.

23 Are there any objections to APAs,
24 jurisdiction, venue, or any other matter? Mr. Wandji,
25 that means any objections to these submissions, any

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1 objection to the Commission having jurisdiction over
2 this matter, any objection to it being heard here in
3 Columbia, South Carolina, or any other matters that you
4 want to file an objection. Any objections whatsoever?

5 MR. WANDJI: No, sir.

6 THE COURT: All right. Mr. Howell?

7 MR. HOWELL: No, sir.

8 THE COURT: All right. Without further
9 objection, the commission file becomes a part of the
10 record with the exception of self-serving declarations
11 and unstipulated medical reports. During the
12 prehearing conference in this matter, respective
13 positions of both the parties was discussed. From the
14 standpoint of the Claimant, Mr. Wandji is here seeking
15 a finding of compensability for a claim of Covid, Long
16 Covid in particular, seeking a finding of
17 compensability for PTSD related to that Covid, asking
18 for causally-related medical care, and asserts he's
19 entitled to an award of temporary benefits commencing
20 on August 27, 2021 through the present and continuing
21 minus a one-month period in May or June of 2022 at
22 which point in time he was employed for that period of
23 one month.

24 Mr. Wandji, anything in addition to what I
25 just put in the record that you want to litigate here

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1 today or any other matter you need to get on the
2 record, sir?

3 MR. WANDJI: Yes. You mention PTSD, sir.

4 THE COURT: I did mention the PTSD.

5 MR. WANDJI: It's not the only Long Covid
6 related symptoms that I'm experiencing, and my -- the
7 doctors' medical records. I have more than that. It's
8 not just PTSD. It's also chronic pain. It's also loss
9 of smell. It's also inflammation. It's also --

10 THE COURT: Yeah, but those items all --
11 would all be related to the Covid.

12 MR. WANDJI: Yes, sir.

13 THE COURT: That would be encompassed into
14 Covid, so we --

15 MR. WANDJI: Oh --

16 THE COURT: -- have the Covid and --

17 MR. WANDJI: -- okay.

18 THE COURT: -- you have the PTSD are the two
19 issues here today, correct?

20 MR. WANDJI: And PTSD is related to Covid
21 too.

22 THE COURT: That's what I just said.

23 MR. WANDJI: Okay.

24 THE COURT: Anything else?

25 MR. WANDJI: Well, just the others that I

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1 just told you.

2 THE COURT: Okay.

3 MR. WANDJI: And then on everything --

4 THE COURT: Okay.

5 MR. WANDJI: -- that the doctors' medical
6 record.

7 THE COURT: From the Defendants' standpoint,
8 first off, procedurally it is their position the
9 Claimant has pled an injury under 421160, that being an
10 injury by accident, not occupational disease. There's
11 no medical evidence that Covid occurred naturally in
12 the employment I think is your position?

13 MR. HOWELL: The statute provides that it
14 excludes a disease in any form unless it's naturally --
15 unless it results naturally and unavoidably from an
16 injury by it, so we don't believe number one, there was
17 an injury by accident, and there's no medical evidence
18 that Covid or PTSD resulted naturally and unavoidably
19 from an injury by accident.

20 THE COURT: All right. And I believe your
21 other position is that it doesn't -- that the
22 occupational disease is not properly before me, because
23 it wasn't pled, and even if it was, that Covid is -- is
24 a contagious disease and therefore excluded, and
25 there's no opinion that the Covid was of -- and that

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1 Covid was a hazard pursuant to the employment.

2 MR. HOWELL: Correct.

3 THE COURT: Anything else you would like to
4 get on the record, sir?

5 MR. HOWELL: I'd like the get on the record
6 my position regarding the TTD and the medical.

7 THE COURT: Yes, sir.

8 MR. HOWELL: With regards to medical care, of
9 course he has to present medical evidence that he is
10 currently in need of treatment related to his injury
11 that will lessen his period of disability. Our
12 position is that his -- the records from his primary
13 care physician, Dr. Fayssoux, show with -- with
14 reference to the Covid, and I'll refer you to APA 19,
15 pages 19 through 21 specifically, he indicates in the
16 note that says Recovered, it's our position that the
17 Claimant reached maximum medical improvement at that
18 time for any Covid-related symptoms.

19 THE COURT: What's that date?

20 MR. HOWELL: January 14, 2022. While the
21 Claimant has seen Dr. Fayssoux since that time, there's
22 no evidence that he's actually received any
23 treatment, and there's no opinion from a doctor stated
24 to a reasonable degree of medical certainty that he
25 needs any further treatment for Covid itself.

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1 THE COURT: What about the treatment he's
2 been -- he's been provided thus far?

3 MR. HOWELL: What do you mean?

4 THE COURT: Well, assuming for argument's
5 sake he prevails on the compensability of the Covid,
6 he would certainly be entitled to any medical care he
7 received for that up to this point or at least up to
8 the MMI point.

9 MR. HOWELL: Correct.

10 THE COURT: Okay.

11 MR. HOWELL: If he proves his case.

12 THE COURT: Correct.

13 MR. HOWELL: With reference to the PTSD, the
14 record -- what's in the record, there are three visits
15 in February and March of 2022. There's no record of
16 any treatment after that date. We had Mr. Wandji
17 evaluated by Nicholas Lind at Post Trauma Resources,
18 and he said he's at maximum medical improvement, and
19 Mr. Wandji has presented no medical evidence stated to
20 a reasonable degree of medical certainty that he needs
21 further treatment for PTSD.

22 THE COURT: Is there medical evidence that
23 it's causally related?

24 MR. HOWELL: Not to a reasonable degree of
25 medical certainty.

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1 THE COURT: And you indicated you had
2 something you wanted to add regarding the TTD?

3 MR. HOWELL: Oh, with respect to the TTD,
4 again, our position is he reached MMI on January 14,
5 2022, so any TTD would stop at that point to the extent
6 that you found otherwise he -- he went to work for this
7 substance abuse place on May 14, 2022. The -- his
8 application process, he had to undergo a physical. The
9 physical shows that he had a normal exam and was
10 allowed to work without restriction. Ended up quitting
11 that job, but no doctor took him out of work, so our
12 position is that once he took that job, any TTD would
13 stop after that as well.

14 THE COURT: Okay.

15 MR. WANDJI: I have something to add if
16 that's okay.

17 THE COURT: Give me just a second, please.

18 Mr. Howell, anything else?

19 MR. HOWELL: No, your Honor.

20 THE COURT: All right. Yes, sir?

21 MR. WANDJI: I just want to add, your Honor,
22 that everything he said about my medical condition is
23 wrong. Completely wrong.

24 THE COURT: Well, that's sort of why we're
25 here today.

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1 MR. WANDJI: I'm going to show with evidence
2 that the day that he said that I was cleared by my
3 primary care physician about Covid and Long Covid is
4 false. The latest update on my Long Covid, which he
5 has a copy of it, it was on -- it was on -- it was on
6 January of this year, 2023 of this year, where the
7 doctor came out with a plan of care for my Long Covid.
8 They actually sent me to a neurosurgeon because of the
9 inflammation, Covid-19-related inflammation.

10 They send me to a neurosurgeon. I went to
11 the neurosurgeon. The neurosurgeon examined me,
12 examined my MRI, and then refer me to a pain specialist
13 where I'm taking steroid shot. He has all those
14 documentation, and it is also in my -- so when he said
15 that my Covid was over in 2022, that's not true. It's
16 wrong.

17 My medical doctor has been following up with
18 me and treating me for Covid-related symptoms and
19 illness, and that include my pain. It include my PTSD,
20 so what he said is wrong about my health condition.

21 THE COURT: All right. And we're in
22 agreement --

23 MR. WANDJI: And then I just want to add
24 something also about the job that I had in Orangeburg.
25 I have evidence with doctors.

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1 THE COURT: That's what I'm getting ready to
2 put you on the stand to talk --

3 MR. WANDJI: Oh, okay.

4 THE COURT: -- about. Okay?

5 MR. WANDJI: I -- I just thought maybe I
6 should just contradict what he just said, because
7 everything he said is wrong about my medical condition.

8 THE COURT: And we'll give you an opportunity
9 to do that under oath up here.

10 MR. WANDJI: Okay.

11 THE COURT: Mr. Howell?

12 MR. HOWELL: I'll briefly in reply, I will
13 refer the Commissioner to APA pages 51 through 56.
14 This is a November 18, 2022 from his doctor. Under
15 review of symptoms, his behavioral psych negative. Exam
16 normal of lungs. Reactive depression not curb -- not
17 currently problematic. That's page -- APA page 50- --
18 51.

19 His PHQ-9 score, which is the score of
20 depression, was a 2, which means it was normal. Again,
21 just to highlight that what the doctor and -- and
22 regarding Covid-19, and this is in the report. It
23 says, Covid-19, largely recovered with the exception of
24 persistent problem with -- with an -- with anosmia,
25 which is smell, and, again, you know, I think what he's

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1 referring to, Mr. Wandji has some -- some back issues.

2 He had back issues before, and his doctor
3 when he -- when he was seen on November 18, 2022, he
4 was actually seen for his back. He wasn't seen for
5 Covid. You can read the report, and it says what it
6 says, but my interpretation of the report, he was seen
7 for his back.

8 There's no opinion stated to a reasonable
9 degree of medical certainty that any back issues he had
10 is related to Covid-19, so he's -- if he's been
11 referred to a neurosurgeon for any back-related issue,
12 it don't have anything to do with this case, and he
13 doesn't have any medical evidence about that here to
14 give to you.

15 MR. WANDJI: Again, I have to -- I have to
16 propose that. What he's saying, again, is wrong. I
17 was seen by my primary care physician with generalized
18 inflammation that gave me pain. Not on my back. On my
19 whole body.

20 In fact, the last report that I send, which
21 is 61 APA. My APA 61, 62, 63, 64, I received a shot on
22 my shoulder. On my -- not on my back, like he said.
23 That's upper body inflammation all over the body
24 reflecting on my arm. Has nothing to do with my back.
25 That's Covid-19-related inflammation, so he's

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1 distorting my medical record. I have that.

2 I was seen by a neurosurgeon. Because of that
3 inflammation, I went to my primary care physician. He
4 sent me to a neurosurgeon. He -- the neurosurgeon gave
5 the MRI of my -- I got an MRI of my entire body.

6 He then put that in front of me, and he said,
7 I am surgeon. I can't help you, but you need to take
8 care of this. I'm going to refer you to a pain
9 specialist. I just sent in 61, 62, 63, 64 APA from
10 my -- from me that I placed down, already take to the
11 infection like a few days ago I took the first shot.
12 That was for my shoulder and upper body. I have an
13 appointment on the -- on the 20th to take the second
14 steroid shot to address my -- my Covid-related pain, so
15 he's distorting my medical record again.

16 THE COURT: All right. Well, rather than
17 doing this from counsel table, may I ask you to stand
18 up here. We're going to give everything under oath.

19 I'm going to ask you to raise your right
20 hand, sir.

21 SERGE WANDJI, being duly sworn and cautioned
22 to speak the truth, the whole truth and nothing but the
23 truth, testified as follows:

24 THE COURT: All right. Please state your
25 full name for the record.

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1 THE WITNESS: My name Serge Wandji.

2 THE COURT: All right. You may have a seat,
3 sir. All right. Mr. Wandji, before we went on the
4 record, we had a rather extensive prehearing conference
5 in this matter, and at the onset of that conference, I
6 advised you of your -- your right to counsel, and you
7 need to pay attention to me, sir.

8 THE WITNESS: Yes, sir.

9 THE COURT: Advised you of your right to
10 counsel. I've also discussed with you the various
11 defenses that Mr. Howell has raised in this matter, and
12 it's my understanding that you understand the
13 significance of what you're doing here today and still
14 choose to proceed without the advice or assistance of
15 counsel; is that correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: And I've given you the
18 opportunity to consult and or retain counsel, and
19 you've declined that opportunity; is that correct as
20 well?

21 THE WITNESS: That's correct, sir.

22 THE COURT: And -- and it's your opinion that
23 you are prepared to move forward today representing
24 yourself in this proceeding. Is that correct as well?

25 THE WITNESS: I want to move forward, sir.

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1 THE COURT: Okay. All right. As I indicated
2 to you before we went on the record as well, the way
3 the process will work is I'll let -- allow you to
4 present your case. Once you've concluded your
5 presentation, Mr. Howell will have an opportunity to
6 cross-examine you. If something comes up in
7 cross-examination that you wish to make a clarification
8 on, you will have a right to do that as well.

9 Once your testimony is concluded, I'll ask
10 you to return back to counsel's table, and Mr. Howell
11 will then call his witnesses. Each of those witnesses
12 that he calls, you will have a right to cross-examine
13 as well, and I've walked you through the rest of the
14 process about how the order process works and any
15 appellate process. Any questions about how this thing
16 works globally?

17 THE WITNESS: No, sir.

18 THE COURT: All right. I'll be happy to hear
19 from you, sir.

20 THE WITNESS: I have to stand up? I have to
21 stand up?

22 THE COURT: No. You can -- you can sit
23 there.

24 THE WITNESS: All right. This is my
25 testimony on this case. My name is Serge Wandji. I'm

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1 a registered nurse. I started working as a full-time
2 staff nurse at The Regional Medical Center in
3 Orangeburg, South Carolina on March 8, 2021.

4 I just want to mention really quick that
5 before I even accepted that position, I was already
6 registered in the College of Nursing at the University
7 of South Carolina, and I have been registered in that
8 throughout my tenure at The Regional Medical Center
9 until I was unlawfully terminated. My job was
10 unlawfully terminated on March 15, 2022 in retaliation
11 for me filing for a worker compensation --

12 MR. HOWELL: Your Honor, I object. It
13 doesn't have anything to do with this case.

14 THE WITNESS: To --

15 THE COURT: Hang on. There's been an
16 objection that it -- that that testimony --

17 MR. HOWELL: Any -- any testimony about --

18 THE WITNESS: Will you allow me to finish the
19 sentence --

20 THE COURT: Well, no. That's not how --
21 that's not how the process works. He's allowed to --

22 MR. HOWELL: Any testimony --

23 THE COURT: -- object --

24 MR. HOWELL: -- regarding his termination or
25 alleged retaliation is not here before you and should

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1 be stricken.

2 THE COURT: And your response to that, sir?

3 THE WITNESS: When I file a motion about
4 retaliation, it's just fair that when I do my testimony
5 that I talk about it. In my Form 50 I talk about
6 unlawful termination as a retaliation from --

7 THE COURT: All right. To -- to Mr. Howell's
8 objection, I'm going to sustain the objection. You can
9 proceed without, beyond that.

10 THE WITNESS: So to meet my -- the student
11 requirement under virtue of South Carolina for the upcoming
12 fall semester of 2021, that was in August, that was in
13 the middle of Covid, all the student were required
14 whether you are positive or negative, the University
15 wanted a Covid test. So I went to my hospital, they
16 offer Covid tests to everybody including the community,
17 so I went there, and then I took my Covid test for
18 school purposes. That was August the 16th. That test
19 was negative August the 16th, so now we know for sure
20 by science that I was Covid-free August 16th, and then
21 I sent it to the University.

22 Now, initially, the Defendant disputed that.
23 They said, Oh, why did you take the Covid test? Why
24 did you take it on the 16th? We want to make sure you
25 are even at school. We don't know whether you're at

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1 school or not. So the -- the Defendant filed a motion
2 that was granted by the Commissioner to get my student
3 record.

4 They wanted my transcript or something like
5 that, so when I read the motion, I thought to myself,
6 well, if he -- they just want to see whether I was in
7 school. I didn't even -- I didn't even oppose it, so
8 the -- the Commissioner granted them that -- that --
9 that -- that motion, and they got my transcript, so now
10 we know that I was registered, and I was enrolled for
11 that fall, and that's the reason I took that Covid, so
12 now we know for sure.

13 So as a staff nurse at The Regional Medical
14 Center, I work full-time. I work officially a minimum
15 of three days a week 12-hour shifts, but because we
16 were running out of -- we didn't have enough staff,
17 most of the weeks I work like four times, four days a
18 week 12-hour shifts, but officially it was three days a
19 week, but in average, I actually did four days a week
20 12-hours shifts. I was responsible to assign direct
21 care, direct nursing care, and then most of the day,
22 most of the time that I work, I was also a charge
23 nurse.

24 Now, I said direct. As part of my job and
25 here I am quoting exhibit APA, my APA number 27.

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1 That's my job description. According to the Defendant
2 himself, which is true, I am regularly exposed to
3 infection. I am --

4 THE COURT: No, sir. Your -- your page 27 is
5 Mr. Howell's 51.

6 THE WITNESS: No. That -- that's my APA
7 number 27. The number of the APA is 27.

8 THE COURT: And aren't these the numbers
9 you're following down here?

10 THE WITNESS: No. No. No. No. The APA is
11 at the top. Not the page number. The APA number.

12 THE COURT: All right. Please refer to the
13 page number if you will.

14 MR. HOWELL: Page 38, Commissioner.

15 THE COURT: Thank you.

16 THE WITNESS: Yes.

17 THE COURT: All right.

18 THE WITNESS: Yeah. Yeah. The AP- -- yeah.

19 A- -- that's --

20 THE COURT: I'm on it.

21 THE WITNESS: Yeah. Okay.

22 THE COURT: I have it.

23 THE WITNESS: It says that I am regularly
24 exposed to infection, contagious disease, contact with
25 patient under a wide variety of circumstances. I am

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1 exposed to illness and injury. That's my job
2 description. That's what's -- that a staff nurse are
3 exposed to, and we are in 2021 when Covid was already
4 in. In August Covid was already spread throughout the
5 hospital both with patients and with staff.

6 Now, another thing that we both agree, the
7 Defendant and myself, is that by the beginning of August
8 of 2000- -- and that's what I just said -- of 2021,
9 Covid was already spread out throughout The Regional
10 Medical Center on both patient and staff. You can see
11 APA 47. 47, which is the list of employees.

12 THE COURT: Page 47?

13 THE WITNESS: No. The page is 84.

14 THE COURT: Thank you. Please refer to the
15 page.

16 THE WITNESS: Okay.

17 THE COURT: All right.

18 THE WITNESS: That's the list that the
19 Defendant sent me of all the employees at The Regional
20 Medical Center who tested positive, employees, and then
21 APA 50, which is page 91, that's another document from
22 the Defendant, which is like an official memo, clearly
23 stating that we had Covid patient throughout the
24 hospital. That was August the 6th, so both patients
25 and employees, Covid was all over the hospital the

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1 entire month of August, and that's why also on my job
2 description there, under said writing, the nurse is
3 regularly exposed to contagious disease and infection
4 at that hospital, and now we have evidence.

5 Then on August 25, I receive a text message,
6 group text message, from my unit supervisor telling the
7 whole staff that there has been a Covid outbreak and
8 with some other instruction. That's APA number 4,
9 which is page number 4, and then provided also some
10 exposure instruction. That's APA number 6, page number
11 6, and then they sent out -- they sent another text
12 message from the nurse manager with some newly
13 improvised Covid-19 safety protocol because of the
14 Covid result that we just got on the unit. That's APA
15 number 4 and 5, which is page number 4 and 5.

16 On August 26, I started experiencing
17 symptoms; my throat, temperature. I know my body, and
18 I am a nurse. I realized this is not right, so I
19 started experiencing symptoms on the 26th. APA
20 12, that's page number 13.

21 THE COURT: Page what, sir?

22 THE WITNESS: Page number 13. 1-3, sir.

23 THE COURT: Thank you.

24 THE WITNESS: I stated that on my incident
25 report. So the next day on the 27th, I went back to my

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1 employer, The Regional Medical Center, and I asked to
2 get a test, and the test was given to me, the Covid
3 test. They call me two hours later, and it was
4 positive. That's APA number 8 and page number 9, and I
5 was immediately medically removed. They asked me not
6 to come back to work and rightly so. Medically removed
7 from work by my employer after I tested positive for
8 Covid. I also sent a text message to my supervisor,
9 and she was already aware. That's APA number 9, page
10 number 10 to inform my supervisor.

11 Employee Health, who was already aware of the
12 test, because that's the department that run the -- the
13 Covid tests for employees, of the outbreak around the
14 hospital, sent me a link to a electronically file
15 for -- it's like a workers' compensation form online
16 from the employer. They sent me that link to do that.
17 That's APA number 10, and that's page number 11.

18 On August 31, 2021, a staff from Employee
19 Health requested from me via email that I send her a
20 detailed email about my Covid-19 exposure at work, which
21 I did. That's APA number 11. That's page number 12.
22 In the meantime, my Covid-19 and health condition
23 deteriorated really quick.

24 On September 6, 2021, I was rushed by
25 ambulance to the hospital, my employer. I went back to

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1 where I worked. I mean, that's where the ambulance
2 took me, where I was officially diagnosed with
3 pneumonia due to Covid-19 virus. That was September
4 6th. I was also diagnosed with acute hypoxemic
5 respiratory failure related to Covid-19. I received
6 treatment at the hospital, where I was hospitalized,
7 including oxygen treatment, antiviral, antiinflammatory
8 pain, and many other treatment.

9 I was also diagnosed with stress -- acute
10 stress disorder. Acute stress disorder. That's APA
11 number 15, and that will be page number 19, and because
12 of the nightmare and flashback that I was getting at
13 the hospital and hearing all over the place, I was
14 also -- I was referred to a psychiatrist by the
15 hospitalist that came and saw Covid patient. He
16 thought that I should see the hospital psychiatrist, so
17 he referred me to the hospital psychiatrist, and that's
18 APA number 16, and that's page number 20.

19 The psychiatrist at the hospital when I was
20 still receiving treatment for my Covid came and saw me,
21 and he diagnosed me for anxiety and depression right
22 there at the hospital. That's APA number 17, page 21.
23 I was discharged from the hospital in September the 9
24 or the 10. I don't remember. I think it was the 9.
25 The 10.

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1 I was discharged from the hospital, and then
2 I went back home. I tried to reach my employer to find
3 out what happened about that link that you sent me to
4 file the worker compensation. They immediately went
5 silence on me. I never receive replies. They just
6 sticking like, Oh, my Covid, like what does that -- how
7 does that work. I was just trying to get more
8 information. Nothing.

9 So after three months of back and forth
10 trying to find out what's going on with my worker
11 compensation and I didn't get any responses, complete
12 silence from my employer, I decided to file the Form 50
13 with the Worker Compensation Commission of the State of
14 South Carolina. That's APA number 22, page 26, and
15 that's when they hired Mr. Howell here to defend them,
16 and then he immediately filed a Form 51, which is APA
17 number 23, page 27.

18 Now, in the meantime I was regularly meeting
19 with my primary care physician following my discharge
20 from the hospital, and I was sending updates of my
21 health condition to my employer. You can see my APA
22 number 24 and 25. That's -- 24 is page 30 and 31, and
23 then 25 is page 32 all the way through 36. I was
24 regular being follow and by my primary care physician,
25 and I updated my employer.

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1 Now, on January 17, 2022, my primary care
2 physician cleared me back to work with some temporary
3 work restriction.

4 THE COURT: Give me that date again.

5 THE WITNESS: On January 17th my primary care
6 physician send me back to work with some temporary work
7 restriction on me. That's APA number 26, page 37.
8 Now, prior to that date of January 17, he, my primary
9 care physician, had written me out of work. He didn't
10 want me to work at all. I was not ready to do any kind
11 of work at all. It wasn't until January 17th that he
12 sent me back to The Regional Medical Center to work
13 with some restriction. Now, despite all my multiple
14 attempts to get back to work after I served my employer
15 with that note from my physician clearing me back to
16 work with some slight restriction, I kept reaching out
17 to my employer. Hey, I want to go to work. I want to
18 go to work. They wouldn't even respond to me.

19 I actually drove to Orangeburg and went to HR
20 and talked to them about returning to work, and what HR
21 told me was, I'm going to talk to leadership. Go back
22 home, and I will let you know. APA -- to back what I
23 just said, APA number 28. That's page 40. 4-0. APA
24 number 31, page 44, and then APA number 32, that's page
25 45. Those are just three example of how I tried to

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1 reach out to employer like, My doctor clear me. I need
2 to start working.

3 They refused, and then on March 15, 2022 in
4 the pure retaliation from me filing my Form 50 with the
5 South Carolina Worker Compensation --

6 MR. HOWELL: Objection.

7 THE WITNESS: -- my employer --

8 THE COURT: Sustained.

9 THE WITNESS: My employer terminated my
10 employment with them with no disciplinary reason
11 whatsoever. APA 33, that's page 46. In which in that
12 letter, my employer say, We have received -- I'm just
13 quoting what they order. We have received another
14 medical update. Unfortunately, The Regional Medical
15 Center does not have a part-time administrative
16 position as requested by a primary care physician. At
17 this time, we have no choice but to end your
18 employment. What I just read is on APA 33, page 46.

19 THE COURT: Got it.

20 THE WITNESS: And then now, in the meantime,
21 the acute stress disorder, page 15 -- oh, no. APA 15,
22 page 19, the acute stress disorder that I was diagnosed
23 with at the hospital has progressed to a PTSD. When
24 I was at the hospital, I was diagnosed with
25 Covid-19-related acute stress disorder by a physician

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1 who worked for my employer diagnosed me with that.
2 That same acute stress disorder Covid-related
3 progressed into a full-blown PTSD diagnosed
4 Covid-related -- diagnosed by my primary care
5 physician, and he referred me for psychological
6 Covid-related -- Covid-19-related PTSD therapy, and I
7 have been taking PTSD therapy. See APA number 29, page
8 41.

9 Now, two months after The Regional Medical
10 Center unlawfully terminated my employment for
11 retaliation --

12 MR. HOWELL: Objection, your Honor.

13 THE COURT: Sustained.

14 MR. HOWELL: Move to strike.

15 THE WITNESS: -- for filing for a worker
16 compensation with the commission --

17 MR. HOWELL: Same objection.

18 THE WITNESS: -- I --

19 MR. HOWELL: Move to strike.

20 THE WITNESS: -- started --

21 THE COURT: I'm sorry, Mr. Howell. I --

22 MR. HOWELL: Same objection. Move to strike.

23 THE COURT: Sustained.

24 THE WITNESS: I -- I started a new nursing
25 job at the Tri-County Commission of Alcohol and Drug

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1 Abuse in Orangeburg. APA 38 and 39, and that will be
2 page 67 and 68. I worked as a staff nurse night shift
3 two months after I was unlawfully terminated by The
4 Regional Medical Center.

5 MR. HOWELL: And objection. Move to strike.

6 THE COURT: I'm sorry?

7 MR. HOWELL: Objection. Move to strike.

8 THE COURT: I -- I'm not sure I heard --

9 MR. HOWELL: Objection. Move to strike. He
10 keeps talking about his unlawful termination.

11 THE COURT: All right. Every time you say
12 it, I'm going to strike it from the record, so you
13 just -- you can say you were terminated, but leave it
14 at that. I think I've got the point here.

15 THE WITNESS: Okay.

16 THE COURT: Okay. Thank you, sir.

17 THE WITNESS: Okay, sir. Now, unfortunately
18 for me, my new -- with my new job, when I started
19 working, I started getting exposed to ambulance coming
20 in with substance use patient, and that's what was
21 triggering my -- my acute stress disorder that was
22 already progressing to a PTSD full-blown, and then I
23 started -- I also started realizing how it was
24 impossible for me to work as a nurse with all the Long
25 Covid-related disease symptoms that I had. Like I had

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1 palpitation, and my employer actually put me on two
2 weeks with monitors to monitor my heart. Like I had
3 that on me for two weeks, and -- and then other
4 symptoms include brain -- brain fog.

5 I was confusing giving the wrong medication
6 to the patient, which is really patient safety. I
7 mean, you can kill a person like that. Loss of smell,
8 as a nurse, you cannot do your job if you don't have a
9 smell. Now, if you look -- also, if you refer to the
10 job description of The Regional Medical Center, in
11 fact, you cannot work as a staff nurse there if you
12 don't have your smell. It's part of your nursing
13 assessment, and with all that plus the brain fatigue,
14 giving the wrong medication, the -- the patient safety
15 was in danger, and stuff like that, I decided, I need
16 to go and talk to my primary care physician about this,
17 so I went there.

18 I had a conversation with him. He -- he put
19 me on the monitor to see my heart rate, and then he
20 evaluated everything, and if you see on APA number 40,
21 that will be page number 69 all the way to 70, after
22 looking at the monitor and doing his assessment,
23 monitoring my heart for two weeks and everything and
24 what it was when I work, he -- he recommended right
25 there on his notes that he -- that job is not for me.

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1 It's not for me for my own safety and more importantly
2 for the safety of the patient as a registered nurse who
3 actually administer medication to a patient.

4 I had no choice but to quit my job with the
5 backing of a doctor with my own feeling of how I feel.
6 With patient coming to me and saying, Hey, Nurse, this
7 is not my medication, I almost fell out of my feet.
8 So we ordered me to cut back in on everything I
9 was weighing on.

10 Unfortunately, I turned in my resignation
11 and I told my employer, I really love to work here, but
12 I have to take care of myself. I have to take care of
13 myself. If you see APA number 40 and APA number 41,
14 that's page 70, that's my resignation, what I told them
15 for patient safety -- page 7-1.

16 For patient safety and for my own well-being,
17 I love this place, but I have to go. And then on page
18 APA number 42, my employer also return -- accepted my
19 resignation and said, Yeah, patient safety comes first.
20 Go on, take care of yourself. That was my employer
21 telling me that they accept my resignation. That's on
22 page 72.

23 Now, since I had to quit that job for my own
24 safety and patient -- for patient safety, I -- I've
25 been struggling with life imitation due to long Covid,

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1 generalized fatigue, problem remembering. I have to
2 write things out. Otherwise, I cannot recall
3 information. I have to write it, write it, write it
4 all the time.

5 Loss of my smell, Long Covid. I also had
6 loss of my taste, but that came back already. That
7 came back like six months after. My -- my smell, until
8 today, I don't smell. PTSD, my acute stress disorder
9 was diagnosed by employer itself. They -- they
10 diagnosed me with that. They transferred me to PTSD.
11 I still have it, and I was having therapy treatment for
12 that. Generalized fatigue, forgetfulness, cognitive
13 issues, inflammation, body pain, lower and upper body
14 unlike what the Defendant said, Oh, he had back pain.
15 No. All my body. I have inflammation. My primary
16 care physician said that's Covid-related inflammation.
17 It's like --

18 MR. HOWELL: Objection, your Honor. He can't
19 testify to what --

20 THE COURT: Sustained. It's hearsay.

21 MR. HOWELL: -- the doctor told him.

22 THE WITNESS: I want -- I want to -- I'm
23 going to back that up with medical records.

24 THE COURT: You still can't testify to what
25 the physician said. The medical record --

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1 THE WITNESS: Okay.

2 THE COURT: -- will have to speak for itself.

3 THE WITNESS: Okay. I -- I understand, your
4 Honor. My bad. I apologize. So to -- to address all
5 this anxiety, depression, inflammation, for the
6 inflammation and pain body, my doctor sent me to do a
7 body MRI, refer all that to -- to a neurologist
8 specialist surgeon. I met with the neurologist. He
9 look at the MRI in front of me, explained it to me,
10 showed me all the inflammation in my body, and then he
11 referred me saying, This doesn't require surgery, he
12 said, so I can't help you, but I can refer you to
13 somebody who is going to address your inflammation, and
14 that's going to address your pain.

15 He send me to pain specialist. APA 43, 44,
16 45. 43 is 7-4, page 74 to 76. APA 44 is page 77. APA
17 45 start with page 78 to 82. That's inflammation from
18 my Long Covid was addressed through my primary care
19 physician, MRI, neurosurgeon, all the way to the pain
20 specialist for Covid-19-related, and then this Long
21 Covid condition that I still have until now include
22 chronic and permanent health condition, and I have been
23 seen by my primary care physician on a regular basis.
24 I see him at least once a month, and then he kept
25 updating my care plan based on how I do.

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1 The latest care plan that I had was APA 45.
2 That start on page 78, where it included depression,
3 generalized fatigue due to inflammation related to
4 Covid-19, prediabetics, entire body pain. Like I said
5 earlier, the neurosurgeon -- the neurologist said
6 he's -- actually he's neuro, but he's also a surgeon.
7 That's what he specialize and then some treatment, but
8 because my care doesn't need surgery, it can be
9 addressed with steroid shots.

10 He referred me to a pain specialist where
11 I've been taking steroid shots. That's APA number 61,
12 62, 63, and 64, so that start from page 150 to page
13 160. That's the pain specialist after the neuro
14 surgery.

15 MR. HOWELL: Commissioner, I don't have
16 those. The APAs I -- APAs I have from Mr. Wandji end
17 on page -- end at 60.

18 THE COURT: Mine go to page --

19 MR. HOWELL: I'm not talking about the page.
20 I'm talking about the tab.

21 THE COURT: Oh, you -- the page numbers at
22 the bottom?

23 MR. HOWELL: What page number are you
24 referring to, Mr. Wandji?

25 THE WITNESS: From 150 to 156.

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1 MR. HOWELL: 150 to 156.

2 THE COURT: Yours ends at APA 60? I

3 have that's page 150 to --

4 MR. HOWELL: Mine end --

5 THE COURT: -- 156.

6 MR. HOWELL: Mine end at page 149.

7 THE WITNESS: I have the post office tracking
8 report.

9 THE COURT: The point is he doesn't have what
10 you're referring to.

11 THE WITNESS: Yeah. Yeah. I sent it to him.
12 That's what I'm saying. I sent it to him.

13 MR. HOWELL: It's not --

14 THE WITNESS: If he doesn't --

15 MR. HOWELL: -- in my --

16 THE WITNESS: -- have it --

17 MR. HOWELL: I don't mind. I'm not -- I just
18 need to see it. I don't --

19 THE WITNESS: Oh, okay.

20 MR. HOWELL: -- know that -- I don't know
21 that I have an objection or not.

22 THE WITNESS: Oh, okay.

23 MR. HOWELL: Yeah. This is the first time
24 I've seen this.

25 THE WITNESS: Should I continue, sir?

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1 THE COURT: No.

2 THE WITNESS: Okay.

3 MR. HOWELL: I don't have any objection, but
4 I don't -- I don't have it, but I don't have any
5 objection.

6 THE COURT: All right. We just need to make
7 a note to get 150 to 156 to Mr. Howell.

8 All right. You may continue, sir.

9 THE WITNESS: For the record, those were sent
10 to Mr. Howell from APA -- from 61 to 64 was sent.

11 THE COURT: All right. We're -- we're going
12 to make sure --

13 THE WITNESS: Sent --

14 THE COURT: We're going to make sure he gets
15 provided those.

16 THE WITNESS: Okay. So I just want to kind
17 of wrap up my testimony by saying that when I'm
18 representing myself, my case is very straightforward.
19 This is an occupational disease case where both side in
20 this case agree the following: That I was a staff,
21 nursing staff, with direct patient care, which the job
22 description describe that I am regularly exposed to
23 disease and illness. That's what I do for a living.
24 I'm a hands-on staff nurse, so we all agree with that.

25 We also agree that in the month of August

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1 where all this happened, from August 1st, Covid-19 was
2 already widespread all over the hospital both with
3 patients and with staff from the documentation
4 provided. I've already gone through the APA by the
5 Defendant. We also agree based on my job description
6 provided by the Defendant that based on what I do, I am
7 regularly exposed to infection, contagious disease,
8 injury, and illness, and Covid was already all
9 throughout the hospital.

10 Now that the Defendant has filed a motion and
11 got my transcript from the University, and this motion
12 clearly said "I want to know whether he was really at
13 school, because he claimed that on August the 16 the
14 reason he was taking the test was because he wanted
15 that for school. I want his transcript." The
16 Commissioner granted him that. He got my transcript.

17 The University called me to say, We're going
18 to have to release it, so I know that he has it, so now
19 we know that I was saying the truth. I needed to get that.
20 And I live in Orangeburg, and I know it's cheap, and
21 it's free at my hospital. I just went downstairs. I
22 walked upstairs to a nurse, and I took it and I sent
23 it to my University.

24 Now we know that on August 16, I took the
25 Covid test for school purposes because I was registered

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1 school, and it was negative, so we know from August 16
2 all the way to where I was officially diagnosed with
3 Covid-19, which is August 26th, from August 6th up to
4 August 16, I was Covid-free. No symptoms. No nothing.
5 Science test said he has no Covid on August 16, but
6 Covid was already all over the hospital since August
7 1st.

8 We also know because we have the letter of
9 termination that on March 15 I was terminated by
10 employer, not for any disciplinary reason. No. I was
11 terminated by my employer. I brought them the note
12 from my doctor to return to work. They refused me.
13 They refused letter I should return to work, and
14 then finally they sent me an email that said, We have
15 no choice but to terminate you. That was March 15.
16 That we agree, because we have evidence from them
17 themself signed.

18 We also agree, because I have my doctor's
19 note and everything to back it up, that I have been
20 suffering from Long Covid symptoms, Long, which is
21 Covid-19 related, and I have been meeting regular with
22 my primary care physician, who has refer me to
23 different specialists, depending on the area, like the
24 psychologist for PTSD or inflammation or neurosurgeon,
25 pain specialist, and then he handle the other ones

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1 like smell and prediabetes and the other stuff. I have
2 already went through the APA. We have the evidence for
3 all that.

4 So, Mr. Commissioner, this is my testimony.
5 This is my case, and I was exposed to Covid-19, either
6 from -- my case is really, really straightforward,
7 because the evidence states we have at least some date
8 line here. It's not like, oh, I just -- I'm a nurse;
9 I got exposed. No. Just because of my school, I had
10 at least someone had said up to August 16, I was
11 Covid-free. Never had it.

12 We have evidence that Covid was spread out in
13 entire hospital, both patient and staff since August
14 1st. August 16, I had nothing. August 27, I got Covid
15 when Covid was -- at that time, it was all over the
16 place at the hospital. The only place where I was
17 exposed to Covid-19 from August 16 to where I tested
18 positive, the only document with evidence which I've
19 shown where I was exposed to Covid was at the hospital,
20 my only job.

21 I live by myself from 16 to where I have
22 Covid. The only place that I was exposed to Covid that
23 can be proven by anybody on earth is at the hospital,
24 and I have proven that I was exposed to Covid, because
25 we have Covid all over the hospital. I got Covid,

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1 because I work for the Defendant, and I'm suffering
2 from Covid now, and I am entitled for worker
3 compensation. That's my testimony, sir.

4 THE COURT: All right. Thank you, sir.

5 Mr. Howell?

6 MR. HOWELL: Thank you, Commissioner.

7 DIRECT EXAMINATION

8 BY MR. HOWELL:

9 Q. Mr. Wandji, you said you started working for
10 The Regional Medical Center on March 8, 2021; is that
11 correct?

12 A. What did you say?

13 Q. You testified on direct examination that you
14 began working for The Regional Medical Center on March
15 the 8th of 2021; is that correct?

16 A. I started working there around -- around
17 March. I -- I don't -- I have to remember. I don't
18 remember.

19 Q. Well, that's what you testified to under
20 direct examination. Are you now changing your --

21 A. Then -- then --

22 Q. -- testimony?

23 A. -- that's what it is.

24 Q. Okay. And when you -- before you got the
25 job, you had to apply for it, correct?

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1 A. Oh, yes.

2 Q. Okay. And you submitted an -- an application
3 for employment, and you had to certify that all your
4 answers on that application were true, correct?

5 A. Yeah.

6 Q. Okay. APA, Commissioner, Defendants' APA
7 pages 31 through 37. On the application on page 1, the
8 question down at the bottom says, Have you been
9 terminated from a job for cause or forced resignation,
10 and your answer was no. Was that true?

11 A. Did you say it was there?

12 Q. On -- on this application, the question was
13 asked if you'd ever been terminated from a job, and
14 your answer was no. Was that answer true?

15 A. I don't remember. Objection. What does that
16 have to do with me being exposed to Covid-19 at the
17 hospital?

18 Q. Mr. Wandji, did you -- did -- is it true or
19 not that you've never been terminated for --

20 A. I don't remember. That's my answer.

21 Q. Okay. Well, let me see if I can refresh your
22 recollection.

23 A. Yeah.

24 Q. You worked for the VA, Department of Veterans
25 Affairs?

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1 A. I don't remember.

2 Q. You don't remember?

3 A. Yes.

4 Q. Well, your resume shows that you worked for
5 the Department of Veterans Affairs.

6 A. If it's in my resume, then it is true,
7 because I wrote it --

8 Q. Okay.

9 A. -- but I don't -- I don't recall.

10 Q. And when you applied for the job with the
11 hospital, you indicated that you've never been
12 terminated from a job, but the fact of the matter is is
13 that you were terminated for cause from the Department
14 of Veterans Affairs. Isn't that correct?

15 A. That's -- you have no evidence for that. I
16 don't know.

17 Q. I have some -- a case here from Magistrate.
18 Serge R. Wandji, Plaintiff, versus Robert Wilkie,
19 Secretary of Veterans Affairs. Did you sue the
20 Department of Veterans Affairs for --

21 A. That's APA --

22 Q. -- among -- among other things,
23 discrimination, retaliation, and harassment?

24 A. It -- that's APA number what?

25 Q. That's not in our APAs. I'm -- I'm on

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1 cross --

2 A. Oh, he's --

3 Q. -- examination.

4 A. He's --

5 Q. This is -- this is used for impeachment
6 purposes.

7 A. Oh, you are bringing something that I
8 wasn't -- you don't have that in the APA?

9 Q. I haven't offered anything into evidence.

10 A. Oh, I don't...

11 Q. Do you deny that you sued --

12 A. I don't know that.

13 Q. -- the Department of Veterans Affairs? Do
14 you deny that you were terminated?

15 A. I don't remember.

16 Q. Okay. Commissioner, I'd like to mark this as
17 an exhibit for impeachment purposes.

18 THE COURT: Megan, mark it as Exhibit --
19 Defense --

20 THE WITNESS: This is mine?

21 THE COURT: -- Exhibit 1.

22 (DFT. EXH. 1, Serge R. Wandji vs. Robert
23 Wilkie, Secretary of Veterans Affairs, was marked for
24 identification.)

25 BY MR. HOWELL:

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1 Q. The case indicates that the board unanimously
2 recommended that Plaintiff's employment with the --
3 meaning Department of Veteran --

4 THE COURT: Hang on. Hang on, Mr. Howell.

5 COURT REPORTER: Sorry.

6 THE COURT: It's okay. The stenographer
7 needs her fingers to do both -- both of these tasks up
8 here. All right. Mr. Howell?

9 BY MR. HOWELL:

10 Q. The board unanimously recommended that
11 Plaintiff, Serge R. Wandji's employment with VA is to be
12 terminated based upon said contact. If you look at the
13 footnote, After reviewing -- interviewing and reviewing
14 all pertinent documentation, it was obvious to the
15 board members that Mr. Wandji demonstrated
16 inappropriate conduct and a lack of candor.
17 Additionally, he had multiple no call, no show
18 instances in which he was charged with leave without
19 pay and absent without leave status.

20 The time and leave policy states that you
21 must contact your supervisor within two hours at the
22 start of your tour. When asked if he was aware of the
23 leave procedures, leave policy procedures for a
24 questioned leave and for time off, he stated he was
25 knowledgeable of the policy. It was evident during

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1 some questioning that Mr. Wandji demonstrated
2 aggressive behavior.

3 Mr. Wandji contends all charges are either
4 false or fabricated. The board finds the charges
5 against Mr. Wandji to be substantiated. It is the
6 board's recommendation to separate Mr. Wandji's
7 employment from the Ralph H. Johnson VA Medical Center,
8 and you were sent notice of termination on February 28,
9 2021.

10 So in fact, Mr. Wandji, when you applied for
11 the job at The Regional Medical Center, you did not
12 tell them the truth about never being terminated from a
13 job, isn't that true?

14 A. They didn't ask me anything about a job at
15 the VA, and then there is no causal relationship
16 between any job that I had before with The Regional
17 Medical Center being -- having Covid all over the place
18 and me being exposed to Covid. This case is about me
19 being exposed to Covid-19. First of all, I don't agree
20 with everything you just read, because I'm just hearing
21 it.

22 I'm going to go home and read it, and
23 secondly, even if it was true, it is not causally
24 related to having exposure of Covid at my workplace at
25 The Regional Medical Center. It is not causally

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1 related to me contracting what as -- just like I have
2 just demonstrated, Covid-19 at The Regional Medical
3 Center. It is not related to the fact that as a result
4 of me getting Covid-19 at The Regional Medical Center,
5 I am suffering with Long Covid --

6 Q. So you don't --

7 A. -- so it does not affect my case --

8 Q. So you -- so you don't --

9 A. -- at all.

10 Q. You don't think it's a problem that you swore
11 on your job application --

12 A. It is not a problem, because I haven't had --

13 MR. HOWELL: Commissioner, if you --

14 THE WITNESS: I'm answering --

15 THE COURT: Let him ask --

16 MR. HOWELL: Let me finish --

17 THE COURT: -- the question first.

18 MR. HOWELL: -- my question.

19 THE WITNESS: Oh, okay.

20 THE COURT: Then you may answer, sir.

21 BY MR. HOWELL:

22 Q. You don't think it's a problem that you swore
23 on your job application that everything on there was
24 true, and in fact, it wasn't the truth? You don't
25 think that's a problem?

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1 A. I don't remember that. I just told you.

2 Q. Okay. Okay. Mr. Wandji, your job at The
3 Regional Medical Center was you were a staff nurse in
4 the behavioral health unit, correct?

5 A. I was assigned to work there.

6 Q. Answer my question, Mr. Wandji. Were you --

7 A. I will answer --

8 Q. Were you a behavioral --

9 A. If you allow me to answer the question --

10 Q. -- nurse --

11 A. -- I will, just --

12 Q. -- in the behavioral --

13 A. -- like I don't --

14 Q. -- unit? It's a --

15 A. -- interrupt you.

16 Q. -- yes or no question. It's a yes or no
17 question.

18 THE COURT: Answer it yes or no, and then you
19 can explain, sir.

20 THE WITNESS: Okay.

21 BY MR. HOWELL:

22 Q. Were you a nurse in the behavioral health
23 unit?

24 A. Yes --

25 Q. Okay.

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1 A. -- and I need to elaborate. I was a nurse at
2 The Regional Medical Center, and part of my hiring job
3 description says --

4 Q. We -- we understand what you -- your position
5 is. I just want --

6 A. Don't -- no. No --

7 Q. -- you to answer --

8 A. Let -- let me finish.

9 Q. You've got your time, and I get my time.

10 A. Don't answer for me. I'm not finished.

11 Don't answer for me. Don't -- don't say you
12 understand. You don't understand. Let me tell you
13 what you don't understand by my answer. Don't put
14 words into me.

15 Q. Mr. --

16 A. Now what I'm trying to say is --

17 Q. Mr. Wandji --

18 A. Yes?

19 Q. -- did you provide direct patient care to
20 Covid patients in ICU?

21 THE COURT: Yes or no, sir?

22 Q. Yes or no?

23 A. No, I did not.

24 Q. Did you provide direct patient care to Covid
25 patients in CCU?

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1 A. No, I did not.

2 Q. Did you provide direct Covid -- direct
3 patient care to Covid patients in the emergency room?

4 A. No, I did not.

5 Q. Did you provide direct patient care to
6 patients with Covid anywhere in the hospital?

7 A. Yes.

8 Q. Where?

9 A. On my unit.

10 Q. Okay. So it's your testimony that you
11 provided direct patient care to patients with Covid on
12 your unit?

13 A. It is my testimony that I provided direct
14 nursing care to patient that tested there after they
15 told me that they are positive for Covid.

16 Q. Okay. So you're talking about after --
17 you're talking about on one day in August?

18 A. I'm talking about on August 24th I worked
19 12-hour --

20 Q. Okay.

21 A. -- shift, and then in the morning of the
22 25th, they sent me a text message saying, Oh, my
23 goodness. Everybody on the unit is Covid positive --

24 Q. Okay.

25 A. -- so yes I got -- I gave direct care --

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1 Q. Mr. Wandji --

2 A. -- to Covid patients.

3 Q. Mr. Wandji, the patients in the -- in the
4 behavioral health unit were geriatric patients,
5 correct?

6 A. No.

7 Q. They weren't? They weren't all 65 and older?

8 A. No. Sometimes we got patients with a
9 discretion of the admitting doctor.

10 Q. They were psych patients?

11 A. They were psych patient.

12 Q. Okay.

13 A. That's true that --

14 Q. And -- and isn't it true that all the psych
15 patients before they could be admitted into that unit
16 had to have a negative Covid test?

17 A. I don't know.

18 Q. Okay. You don't dispute that?

19 A. I -- I don't know.

20 Q. Okay. Isn't it also true that throughout
21 this period of time that the hospital had protocols
22 that when you were interacting with patients in a
23 clinical setting that you had to wear protective
24 equipment including N95 masks?

25 A. No. I don't know that.

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1 Q. You don't know that?

2 A. No.

3 Q. So you deny that? Well, there was a memo
4 sent to all employees on August the 6th of 2021. APA
5 38 to 40, Commissioner, dated August 6th in which it
6 specifically says that.

7 A. APA what?

8 Q. APA -- my APA 38 says --

9 A. I didn't receive that memo.

10 Q. You were an employee, correct?

11 A. Of course I was an employee. That's how --

12 Q. The memo was sent to all employees. So it's
13 your testimony you didn't receive that memo?

14 A. I didn't receive it.

15 Q. So it's your testimony that in a clinical
16 setting, you never wore N95 masks?

17 A. No.

18 Q. Did you wear any other personal protective
19 equipment?

20 A. Yeah. I had a -- we had -- I had a --

21 Q. Okay.

22 A. I had a mask.

23 Q. Despite the -- the hospital policy, you
24 didn't follow it?

25 A. No. I'm telling you I had the regular mask,

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1 and most of my -- all of my colleague on the floor had
2 the regular mask.

3 Q. And the -- and the behavioral health unit is
4 a locked unit, isn't that correct?

5 A. It's just a unit on --

6 Q. But it's a locked unit. Not -- not -- not
7 just anybody can come into the --

8 A. Anybody comes in. We're open to them.

9 Q. Okay. That's --

10 A. Anybody comes in.

11 Q. That's your --

12 A. What you said --

13 Q. -- testimony --

14 A. -- is false.

15 Q. That's your testimony under oath?

16 A. Yeah. Anybody can come in and knock on the
17 door, and we will open it.

18 Q. Okay. And visitors were allowed only on
19 weekends, correct?

20 A. Visitors were allowed on my unit.

21 Q. On weekends?

22 A. I don't know. Visitors were allowed on my
23 unit.

24 Q. On Saturday and Sunday from 2:00 to 4:00,
25 isn't that correct? That's the --

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1 A. I don't --

2 Q. -- only time --

3 A. -- know.

4 Q. -- visitors --

5 A. I don't know. That's you talking.

6 Q. And the visitors were screened by the
7 hospital before they came on the unit, isn't --

8 A. That's you --

9 Q. -- that correct?

10 A. -- talking. I don't agree with that.

11 Q. Okay.

12 A. That's not true.

13 Q. Let's talk about August 16, 2021. Now,
14 again, this memo which you said you didn't get and
15 didn't read refers to Covid testing. Covid testing was
16 offered to employees with symptoms and who had an
17 exposure to Covid, and it was by appointment only,
18 isn't that correct?

19 A. That's not correct.

20 Q. The memo says, and I have witnesses who will
21 testify, that -- that you had to schedule an
22 appointment, and the tests were at 8:15, 11:15, and I
23 think 2:00 or 2:15 -- 11:00 -- 8:15, 11:00, and 2:00 in
24 the afternoon. When you went in for your test on
25 August 16, 2021, you didn't follow that protocol, did

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1 you? You just came in to the office and said, I want a
2 test, isn't that correct?

3 A. I worked second shift. I work on the second
4 floor of the unit. I went downstairs to Employee
5 Health where I know that's where they do the test, and
6 I said, I need to be tested.

7 Q. Okay. And the reason --

8 A. And they tested me.

9 Q. And the reason you told them you needed to be
10 tested is because you had had an exposure outside of
11 work, isn't that correct?

12 A. No. That's not true. That's false. I've
13 never said that.

14 Q. Now, you've made much about the fact that
15 your Covid test was negative. Did you read the results
16 of your Covid test?

17 A. Which one? I did two.

18 Q. August --

19 A. On what --

20 Q. It's August -- August 16, 2021.

21 THE COURT: What page, Mr. Howell?

22 MR. HOWELL: This is APA pages 1 and 2, or
23 page 1 is what I'm referring to now.

24 THE COURT: All right.

25 BY MR. HOWELL:

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1 Q. Number one on here it says, Symptomatic as
2 defined by CDC, and it says yes on your Covid test,
3 isn't that right?

4 A. The 16th?

5 Q. That's what it says. That's what the test
6 says.

7 A. I was negative.

8 Q. It also says down under interpretive data,
9 Negative result 2019 Corona -- Novel CoronaVirus target
10 are not detected. Negative results do not preclude
11 SARS Covid infection and should not be used as a sole
12 basis for treatment or other patient management
13 decision -- decisions. So the mere fact that you
14 tested negative for Covid doesn't mean that you didn't
15 have Covid, isn't that correct?

16 A. That's not correct. You are -- you are not a
17 doctor. You are a lawyer. You cannot say a negative
18 Covid says that I still have Covid.

19 Q. Now --

20 A. This is why -- I'm not finished. This is
21 what happened. I went downstairs. I said, I want to
22 get tested, and I was tested, and then they sent me an
23 email on my APA number 1, page 1. Employee Health
24 sent -- what they did, they first call me to say, You
25 good. You are good. You negative.

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1 I said, No. No. You don't understand. I'm
2 doing that for school. I need some paper showing that
3 I'm negative. I need something.

4 They said they send me a email, APA 1 -- send
5 me an email, page 1, with -- with what I wanted. It
6 came to me. I look at it. It had no heading of the --
7 the name of the hospital, no -- no provider sign it,
8 and then I said, This is not good for my school. I
9 need something with official, and my school was like,
10 Where did you take it? Is it the CDC, the name of the
11 hospital, and then I wanted physician to sign it, then
12 to send me APA number 2, page number 2, when I got
13 that, I said, Thank you. That's what I need, and
14 that's exactly what I need, and then I sent it to my
15 school, so that's what happened, sir.

16 They first called me on the phone, and then
17 they said, You good. You good. You're -- you're good.
18 It's negative. You're all fine.

19 I said, No. No. No. I know I'm fine. I
20 have no symptoms. I want something in writing. Then
21 they send me APA 1, and then I said, That's not good
22 enough. Then they send me APA 2, page 2, which have
23 the heading signed by the doctor, which is exactly what
24 University of South Carolina want --

25 Q. Mr. --

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1 A. -- and I sent it to them.

2 Q. Mr. --

3 A. So that's what happened.

4 Q. Mr. Wandji, you claim that you needed the
5 test for -- for school. Do you have anything here from
6 the University of South Carolina showing that you
7 needed the test for school?

8 A. Oh, that's -- go to the website. Everybody
9 can find it.

10 Q. Do you have anything to present to the
11 Commissioner as evidence to show that? The answer is
12 no, correct? And in fact, your academic transcript
13 shows that you took three classes in the fall 2021.
14 Commissioner, this is APA page 144 through 146. These
15 are PhD-level classes, correct?

16 A. This is graduate school. Yeah.

17 Q. But you're studying for your PhD, correct?

18 A. Oh, yeah.

19 Q. These are -- these -- these are not 101
20 classes. These are PhD-level classes, correct?

21 A. I don't know what you mean by PhD. Maybe for
22 you it's like the whole world. For me, it's just
23 another class.

24 Q. Okay.

25 A. So maybe --

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1 Q. And all these --

2 A. -- it's relative. Let me finish, sir, if you
3 may. Don't interrupt me, please. Thank you. For you,
4 it might be the whole world. For me, it's just a
5 graduate class.

6 Q. Okay.

7 A. Yeah. So don't --

8 Q. And you've --

9 A. -- say it's just PhD --

10 Q. And these --

11 A. -- like it's the --

12 Q. -- classes --

13 A. -- end of the world.

14 Q. -- were online, correct?

15 A. It is online.

16 Q. Okay. And the three classes that you took
17 were nursing research methods, correct?

18 A. I don't remember. You have the -- you have
19 the --

20 Q. Well, your transcript --

21 A. Well, if you have the transcript in your
22 hands, then that's what I took.

23 Q. Okay. The transcript shows you took nursing
24 research methods, independent study, and grant proposal
25 development. By the way, you made "A"s in all that,

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1 all your classes in the fall of 2021. I congratulate
2 you, but what I'm trying to figure out is why you would
3 need a negative Covid test for nursing research
4 methods, independent study, and a grant proposal
5 development. Can you explain that?

6 A. Every student at the University of South
7 Carolina is required to send a Covid test.

8 Q. Do you have anything from the University that
9 has that to show the Commissioner? The answer is no,
10 do you?

11 Now, that week, your -- your work schedule
12 shows that you worked Sunday, Monday, and Tuesday,
13 which would have been the 15th, 16th, and 17th, and
14 then you were off work the 18th, 19th, 20th, and 21st,
15 and you returned to work Sunday, August the 22nd, isn't
16 that correct?

17 A. I -- I don't know. I don't remember.

18 Q. Okay.

19 A. You're asking me --

20 Q. The point --

21 A. -- something --

22 Q. The point is --

23 A. -- from --

24 Q. -- is that you were off --

25 A. -- 2021, and I'm not saying that what you're

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1 saying is true. I don't know.

2 Q. Okay.

3 A. And I don't -- I don't know what --

4 Q. Well, let's assume --

5 A. -- that's saying.

6 Q. -- for the sake of my question that you were

7 off Wednesday, Thursday, Friday, Saturday --

8 A. All I can say, sir, is --

9 Q. Let me finish my question.

10 A. Oh, okay. I'm sorry.

11 Q. Let's assume that. That means that you were

12 away from the hospital on those four days, correct?

13 A. I am not going to answer something that you

14 assume that your -- your prelude is an assumption, and

15 I don't know with assumption.

16 Q. I -- I am asking you to assume, and --

17 A. Well, I don't --

18 Q. -- and we ask --

19 A. -- know about --

20 Q. I'll get -- I'll have testimony from a

21 witness who will testify that you were off those days.

22 A. Okay.

23 Q. Assuming you were, you were out -- not at

24 work those four days, correct?

25 A. When I'm off --

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1 Q. All right.

2 A. -- I don't come to the hospital.

3 Q. And Covid, according to -- and this is APA
4 147 and 148, was rising throughout the state and in
5 Orangeburg County during that period of time, wasn't
6 it?

7 A. Oh, you're asking me?

8 Q. Yes.

9 A. I don't know.

10 Q. Okay.

11 A. I don't know.

12 Q. And as you indicated in our prehearing
13 conference, you -- you indicated that you were unaware
14 of any Covid exposure --

15 A. That's correct.

16 Q. -- during that period of time?

17 A. That's correct.

18 Q. But you could have had a Covid exposure --

19 A. No.

20 Q. -- and wouldn't have known it?

21 A. No.

22 Q. Okay. Did --

23 A. I live by --

24 Q. Did you --

25 A. Let me finish.

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1 Q. Did you during that week --

2 A. Let me finish. I live by myself. The only
3 exposure I had from the 16th, when I was negative, to
4 where I tested positive was at the hospital.

5 Q. So didn't --

6 A. The only place that --

7 Q. So you didn't --

8 A. -- I have --

9 Q. -- leave the house?

10 A. I am a man of silence. The only proof that I
11 have where I was exposed was at the hospital. That
12 is --

13 Q. That we know of.

14 A. -- proven.

15 Q. That we know of.

16 A. That we know of.

17 Q. Okay.

18 A. That we can show.

19 Q. Okay.

20 A. Yeah. Is at the hospital.

21 Q. And is it your testimony you didn't leave the
22 house between Wednesday and Sunday when you went to
23 work?

24 A. No. I stay at home, do my homework.

25 Q. You didn't leave the house during that period

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1 of time? Is that what you want the Commissioner to
2 believe?

3 A. I don't -- I don't recall leaving the house.

4 Q. Okay.

5 A. I live in Orangeburg. I went to work where I
6 work four days at -- four days a week, come back home
7 where I live by myself. There is no other place during
8 that timeframe where I got infected that I was exposed
9 somewhere that I can show for it, no, besides my
10 workplace, which was my only job at The Regional
11 Medical Center, sir.

12 Q. Now, on August the 27th, you went and got
13 tested, correct? And this time you actually called and
14 scheduled an appointment, isn't that right?

15 A. I don't remember. I just went to the
16 hospital, and I got -- to get tested, and I got tested.

17 Q. And you -- did you speak to Ms. Kelci here?

18 A. I don't remember.

19 Q. Okay. But you did speak to somebody in
20 Employee Health, didn't you?

21 A. I don't remember. I know I got tested.

22 Q. Okay. So you don't remember what you said
23 to -- to people in Employee Health. Is that your
24 testimony?

25 A. No. I -- I told them that it's an exposure

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1 on my unit. Everybody has it.

2 Q. Okay.

3 A. I receive a text message --

4 Q. Well, didn't you -- didn't you --

5 A. Let me finish, sir. I receive a -- I receive

6 a text message that said -- the text message is

7 exhibit -- my exhibit -- the text -- it was a text on

8 the phone. It's -- that's exhibit number 4, which is

9 page 4 and 5. That said, Go to Employee Health.

10 That's the protocol for exposure. There was an

11 exposure. They need to go to Employee Health.

12 Q. Okay. Isn't it true that you -- when you

13 initially were asked when your symptoms began, you told

14 Ms. Kelci that your symptoms began on August the 23rd?

15 A. That's not true.

16 Q. Okay. Isn't it true that several hours

17 later, you called back and said that your symptoms

18 actually started on the 25th?

19 A. I didn't call back.

20 Q. Okay.

21 A. That's very false.

22 Q. All right. Is it also true that you gave a

23 third date that your symptoms began on August 26th?

24 A. That's not true.

25 Q. Okay. Your -- the Form 50 that you filed

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1 alleges an injury on August 27, 2021. You did not work
2 on August 27, 2021, did you?

3 A. The form that I sent --

4 Q. Answer my -- answer my question.

5 A. I am answering my question the best I can,
6 sir.

7 Q. No. It's a yes or no question. Did you work
8 on August 27, 2021?

9 A. That question is -- the answer is no.

10 Q. Thank you. That's all I have.

11 A. But I need to add that the form that I filled
12 for my -- for my Form 50, it is an addendum then
13 attached. 27 was the day that I know I am positive.
14 That's the day. Covid is not like falling and breaking
15 a leg. Covid is an infection. I have the evidence on
16 the 27th that I have Covid.

17 Q. Okay. I --

18 A. That's why I put that date.

19 Q. I understand that, Mr. --

20 A. I couldn't put any date before --

21 Q. So you agree --

22 A. -- because it is an infection.

23 Q. So you agree --

24 A. So the only thing to show for it was 27th.

25 Q. So you agree there was no injury on August

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1 27, 2021?

2 A. I am not --

3 Q. Yes or no?

4 A. There is no injury. There is an --

5 Q. Okay.

6 A. -- infection that I got at the workplace.

7 Q. And you agree that the form that you filed in

8 September of 2022, you didn't check occupational

9 disease, did you?

10 A. I wrote it on the -- on the -- on the type

11 addendum to that file. I wrote it that it's

12 occupational. I wrote it on the addendum that I got a

13 disease at work.

14 Q. Did you check the box occupational disease,

15 yes or no?

16 A. I wrote it.

17 Q. Yes or no?

18 A. I wrote it on the addendum.

19 Q. Yes or no?

20 A. I don't know.

21 Q. You can look at it.

22 A. I'm telling you I don't know. That's my

23 answer.

24 Q. Well, can you not see that?

25 A. I -- I don't trust that. I have mine at

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1 home.

2 THE COURT: Mr. Wandji, you filled the form
3 out, sir.

4 THE WITNESS: Yes.

5 THE COURT: Did you check it or didn't you?

6 THE WITNESS: That's what I'm saying. I
7 don't know.

8 THE COURT: Well, look at it and answer the
9 question.

10 THE WITNESS: That's not my form. That's his
11 copy.

12 MR. HOWELL: I'll move on, Commissioner.

13 THE COURT: Thank you.

14 BY MR. HOWELL:

15 Q. So as we sit here today, you have no specific
16 evidence as the date or time of your exposure; is that
17 correct?

18 A. No. I do.

19 Q. You have the -- you have the date and time?
20 You haven't -- you have medical evidence that says
21 Mr. Wandji was exposed to Covid on this date and where
22 it occurred? Yes or no?

23 A. I have been exposed to Covid-19 --

24 Q. Yes or no, do you have --

25 A. -- every single day that I work at that place

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1 in the month of --

2 Q. Yes --

3 A. -- August.

4 Q. It's a yes or no question, Mr. Wandji. Do
5 you have any evidence --

6 A. Nobody --

7 Q. -- to show the Commissioner the date and time
8 that you were exposed anywhere?

9 A. Nobody can answer that question.

10 Q. Okay. And, in fact, you testified in your
11 deposition, God only knows. Isn't that right?

12 A. Nobody can say this is the exact moment I got
13 Covid. You are asking a question, with all due
14 respect, that's very stupid. Covid-19 is an infection.
15 You cannot say, I had that at this day and this second.
16 That's where I got it.

17 Nobody in the world, no lawyer, no medical
18 official can say this day, this time, that's when I got
19 infected with Covid. Nobody can say that.

20 Q. Do you have an expert opinion to show the
21 Commissioner today that you were infected at work?

22 A. Yes, sir. I was infected at -- at work.

23 Q. Do you have an expert opinion that says to a
24 reasonable degree of medical certainty that your Covid
25 came from work? The answer --

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1 A. I have --

2 Q. -- is -- the answer is --

3 A. I have --

4 Q. -- no, correct?

5 A. That's not the answer. The answer is I have
6 shown with evidence in my testimony that the only place
7 that I was exposed to Covid is at work.

8 THE COURT: Mr. Wandji, you -- you had an
9 opportunity on direct examination when you were giving
10 your testimony to say anything you wanted to say.
11 Mr. Howell, and I talked to you about this before we
12 started, has a right to cross-examine you, and you have
13 an obligation to answer his questions, not your
14 questions, and then if you want to explain it,
15 you're -- you're more than welcome to explain it, but
16 you have to answer the question that's asked of you.

17 THE WITNESS: Okay.

18 THE COURT: Thank you.

19 THE WITNESS: That -- that's what I'm doing.

20 THE COURT: No, you're not --

21 THE WITNESS: And that's --

22 THE COURT: -- doing that.

23 THE WITNESS: Oh, okay.

24 THE COURT: You're evading the questions.

25 THE WITNESS: Oh.

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1 BY MR. HOWELL:

2 Q. Do you have an opinion from an expert stated
3 to a reasonable degree of medical certainty that your
4 Covid came from -- that number one, that you had an
5 injury, and that your Covid resulted naturally and
6 unavoidably from your injury?

7 A. I don't have that.

8 Q. Okay. Now, with regards to your medical
9 treatment, would it be fair to say that your health
10 insurance covered the bulk of your medical bill?

11 A. I don't know.

12 Q. Did you submit your bills to your --

13 A. Absolutely.

14 Q. Okay.

15 A. And -- and then the -- they told me that the
16 hospital filed a claim, and they have paid.

17 Q. All right.

18 A. They called me to follow up when I got out
19 from the hospital.

20 Q. Now, we know about your hospitalization, and
21 then you went to see your family physician,
22 Dr. Fayssoux, who is in Charleston, correct?

23 A. Yes.

24 Q. All right. And Dr. Fayssoux has -- you've
25 seen him on a number of occasions over the last year or

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1 so, but Dr. Fayssoux has actually not provided any
2 specific treatment, has he?

3 A. He has.

4 Q. Has he given you medication for Covid?

5 A. I was treated with Covid at the hospital.

6 Q. Answer it. Yes or no, has he given you any
7 medication for -- for Covid?

8 A. Yes. He gave me medication --

9 Q. What medication?

10 A. -- for Long Covid.

11 Q. What medication?

12 A. Painkillers.

13 Q. Painkillers?

14 A. Yeah.

15 Q. And you have --

16 A. That's --

17 Q. You have an opinion from him stated to
18 reasonable degree of medical certainty that the
19 painkillers are for Long Covid?

20 A. Yeah. It's for inflammation.

21 Q. That wasn't my question. Do you have an
22 opinion from him that it was for Long Covid?

23 A. Yeah.

24 Q. Okay. In Dr. Fayssoux's note of January 14,
25 2022, his note indicates that in terms of your Covid

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1 symptoms, that you had recovered. Since that time,
2 you've seen him on several occasions, but, again, has
3 he actually provided you any treatment?

4 A. Yeah. He provide me Long Covid treatment.

5 Q. Okay.

6 A. And then he also --

7 Q. Then tell --

8 A. -- refer me --

9 Q. -- the Commissioner specifically what that
10 treatment was.

11 A. He also refer me to specialist to address
12 some Long Covid symptoms like this psychologist, like
13 the painkiller, like the neurosurgeon to address my
14 pain. Yeah. He -- he's the family doctor. He address
15 what he can, and then it's like the quarterback in
16 football. He coordinate my care.

17 What he cannot do, he sent me to -- to the
18 specialist. That's what he did. Those that he could
19 address, he address. Those symptoms that he couldn't
20 address, he send me to a specialist, so yes. The
21 answer is yes. He has been addressing my Covid and
22 Long Covid since I got out from the hospital.

23 Q. Commissioner, I'll refer to you Defendants'
24 APA 19 through 21, page 19. When you saw Dr. Fayssoux
25 on January 14, 2022, it says, Plans to start working at

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1 FEMA in March. Did you tell him that?

2 A. In what? What was that? January?

3 Q. January 14, 2022, his note says, Plans to
4 start working for FEMA in March. Did you tell --

5 A. Oh, I remember telling him that I am applying
6 to work with FEMA.

7 Q. Okay. So you remember that?

8 A. Yeah, I remember that --

9 Q. Okay.

10 A. -- but I told him that I --

11 Q. And then under treatment, it says, Recovered.
12 Still having PTS symptoms related to his illness
13 particularly as it relates to severe respiratory
14 failure and rapid onset illness. He cannot work yet in
15 his previous capacity but has been cleared to return to
16 work for eight hours a day. Do you agree with that?

17 A. That's what he wrote. That's my doctor.

18 Q. Okay. So he --

19 A. Yeah.

20 Q. -- cleared you to work for eight hours a day
21 as of January 14, 2022, correct? Is that correct?

22 A. What he wrote.

23 Q. Okay. Also indicates walking daily without
24 limitation other than expected slow recovery of his
25 stamina. So you were doing well at that time, isn't

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1 that right?

2 A. That's in -- you interpreted. He didn't say
3 I was doing well.

4 Q. Okay.

5 A. Because you are talking to a nurse who was
6 working 12-hour shift. I was a full-time practice
7 student, so. So when he take it down to eight hours,
8 and then he say an order without restriction, I was not
9 doing well. That's you interpreting --

10 Q. Well, and you --

11 A. -- so I do not agree.

12 Q. And you continued to go to school, because
13 your -- your classes show that you made "A"s in your
14 classes --

15 A. Oh, that --

16 Q. -- so you continued to be a full-time student
17 during the time that you were supposedly unable to
18 work; isn't that right?

19 A. That's not true.

20 Q. Well, how in the world --

21 A. I didn't go to --

22 Q. -- did you make --

23 A. -- school.

24 Q. -- "A"s -- "A"s in your classes?

25 A. Oh, I don't know. You have to ask the

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1 professor. Are you doubting the grade that the PhD
2 professor gave me?

3 Q. I'm not doubting the grade at all.

4 A. Okay. So -- so I try -- I'm trying to
5 understand your question, sir. If you explain it to
6 me, I will understand. What are you trying to explain?

7 Q. You have testified that you were unable to
8 work --

9 A. Yes.

10 Q. -- have made that point, yet during this
11 period of time you were a full-time student in PhD
12 classes at the University of South Carolina and made
13 "A"s.

14 A. Yes.

15 Q. Okay. But you couldn't work?

16 A. Yeah, I couldn't work. As a -- as a
17 registered nurse who has -- who -- who can give the
18 wrong medication and kill a patient.

19 Q. Now, you made --

20 A. It doesn't mean -- I'm not finished. It
21 doesn't mean that I cannot -- I am a PhD student, sir.
22 I write papers. I send it to my advisor. They will
23 revise it. Why don't you look at this? Why don't
24 you -- I am not --

25 Q. So --

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1 A. -- a undergrad. I am not finished. I'm not
2 a undergrad student where they give multiple choice.
3 I'm a PhD student. I write reports, and then they say,
4 Oh, no. Do this. Do this. That's a different thing
5 than being responsible for the care of a U.S. citizen,
6 or anybody, for that matter, where I can do a mistake and
7 kill them.

8 When I write a report, I say to my professor,
9 I said, Dr. Absha(phonetic), can you please look at this?
10 Oh, Serge, I will write this. I will write this.
11 Correct that. I understand English not
12 a primary language, but we are patient. Do -- do this.
13 Send it back to me next week. All right. That's how
14 we do in PhD, sir. We don't do like undergrad where
15 you have to cram stuff.

16 Q. Well, your grade --

17 A. So I can be a PhD -- I'm not finished. I can
18 be a PhD student, get an "A," yet not be a good nurse,
19 be a nurse that can kill a patient the next minute.

20 Q. So -- so your classes didn't involve critical
21 thinking, critical writing, things that require
22 cognitive skills? Is that your testimony?

23 A. That's not my testimony.

24 Q. Because they do require critical thinking,
25 critical analysis, and cognitive skills; isn't that

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1 right?

2 A. Not necessarily. Not necessarily. And I -- I
3 need to add again something about the "A"s that you are
4 making a big deal about. Maybe for you, it's like, Oh,
5 wow. That must be a big deal. For me, it's not,
6 because I am a seasoned nurse, you know.

7 I -- I got my Master here in the U.S., at
8 (unintelligible), prestigious, so there are some stuff that --
9 that -- that we do in this at that level of PhD. That
10 was just a repetition of something that I already did
11 in New Jersey. That's for one.

12 Secondly, they knew I was hospitalize. They
13 knew that I was sick. My semester was exceptionally, by
14 the Dean, extended, so those what you call "A"s, I
15 was -- they gave me two more weeks. I did my -- my
16 cohort, let's say, finish this week. They gave me two
17 more weeks, because I send them my paperwork and they
18 were like, Oh, my goodness. You were sick Covid. We
19 are so sorry, Serge. We can help you salvage your
20 semester, so I was given more time.

21 You are emphasizing on how he got "A". He
22 got "A," and he couldn't work. Yes, I did that,
23 because that's a university that understand what it
24 means to be a student and being sick. They work with
25 me, and they help me salvage my semester. That doesn't

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1 mean that because I had an "A," they extended my
2 semester, I was ready to go and give medication to
3 patient and be able to kill them. Nursing, sir -- I'm
4 not finished.

5 Nursing has been voted this year the best
6 trusted profession in this country for 21st year in the
7 row. Not -- not lawyers. Not doctors. Nothing.
8 Nurses. You know why? Because people like you and
9 everybody in this room when they come to the hospital,
10 we take care of them. Staff nurse like me, hands-on.
11 We give them medication. They don't even know what
12 they are taking. We care for them. We treat them.
13 That's why the American people trust us.

14 Q. Okay.

15 A. We are the number one profession in this
16 country 21 years in the row, because people trust us
17 with your lives. Because I have "A" in school doesn't
18 mean that I can go and give medication to a patient
19 when I know that I've been diagnosed with brain fog
20 that in the other hand I can write a report knowing
21 that I have brain fog and send it to my professor as a
22 PhD student. I'm not undergrad. And then we read it.
23 I say, Oh, my God. Serge, too much mistake here. Wow.
24 Review this and send it back to me, and then we work on
25 that back and forth, and the end, they look at the

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1 content, and then they give me an "A," but because I
2 have "A" in a PhD program doesn't mean that I was fit
3 to be trusted with an American sick person to give them
4 their IV and medication.

5 THE COURT: All right. Let's --

6 THE WITNESS: It's not the same thing.

7 THE COURT: Let's move on.

8 BY MR. HOWELL:

9 Q. In your direct testimony, you referred to a
10 note from Dr. Fayssoux in June, but you only submitted
11 a portion of the note. And, Commissioner, I'd like you
12 to refer to page 22 through 25. This is a June 3, 2022
13 note, and I'll just read this and ask a question.

14 THE COURT: Where -- which page are you
15 reading from?

16 MR. HOWELL: Page 22.

17 THE COURT: Okay.

18 BY MR. HOWELL:

19 Q. Patient comes back in today for routine
20 follow-up. He has been doing well since his last
21 visit. He's still living in Columbia, South Carolina.
22 He currently has an administrative job in an inpatient
23 psychiatric treatment facility for teenagers with drug
24 and alcohol problems. He is currently working at
25 night. He has had some mild unpredictable episodes of

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1 palpation but has not had any symptoms that limit his
2 busy schedule or his exercise routine. Now, you didn't
3 tell the Commissioner that part of that visit, did you?
4 Yes or no question.

5 A. I didn't tell him that part, and I want to
6 elaborate. On that submission, I want to elaborate.
7 I'm not a lawyer. I'm a nurse. I'm coming here to
8 defend -- defend representing myself. I'm not
9 finished. Representing myself. So I -- I -- I try to
10 summarize my testimony the best I can. There is a lot
11 of things that --

12 Q. Mr. Wandji, I don't mean --

13 A. -- I -- I -- don't --

14 Q. I don't mean --

15 A. -- interrupt me.

16 Q. -- to interrupt you, but --

17 A. Don't interrupt me, sir.

18 Q. -- your testimony was that the doctor --

19 A. Don't interrupt me, please.

20 Q. -- recommended that you not work because of
21 what you told him on June 3, 2022, and that's just
22 simply not true.

23 A. That's what you're saying. Let me finish.

24 Q. Isn't that correct?

25 A. I'll answer your question. Let me finish.

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1 So I didn't say that, and I didn't say a lot of things
2 to the Commissioner, and I didn't say a lot of things,
3 because I have to focus on me being exposed to Covid at
4 work, contracting Covid, and have been subject -- I
5 stay on the call of my case. I will tell you another
6 thing I didn't tell the Commissioner. I didn't tell
7 the Commissioner that when you deposed me you used
8 racist -- racist profiling. You asked me --

9 MR. HOWELL: Commissioner, this is --

10 THE WITNESS: -- for as I --

11 MR. HOWELL: This is unresponsive.

12 THE WITNESS: I -- I -- I am -- I am
13 telling -- I am answering. I already answered --

14 MR. HOWELL: Commissioner, I --

15 THE WITNESS: -- the question, and I
16 elaborated.

17 BY MR. HOWELL:

18 Q. I asked you a specific --

19 THE COURT: How is this --

20 Q. -- question --

21 THE COURT: -- responsive to the question,
22 sir?

23 THE WITNESS: I -- I -- because I'm trying to
24 tell him -- he says I didn't tell you something, so I
25 am telling him that I stay on the call of my case, so

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1 I'm giving him an example of another thing that I
2 didn't tell the Commissioner. He asked me --

3 MR. HOWELL: Is that -- it's unresponsive.

4 THE WITNESS: He asked me, Have you ever been
5 to jail, and I said, No. He said, Oh, so you remember
6 that there. Are you sure you've never been to jail?
7 Are you serious? I've -- I -- I -- he --

8 THE COURT: Mr. Howell, please ask the
9 question again.

10 THE WITNESS: Five times in the row.

11 MR. HOWELL: My -- my --

12 THE COURT: Please ask the question --

13 BY MR. HOWELL:

14 Q. My -- I read from the report. My question
15 was on direct examination was that he referred to this
16 same report to you and indicated that the doctor as a
17 result of this recommended that he not keep the job at
18 that substance abuse center, and if you read the
19 report, it doesn't say that at all. I'll move on.

20 THE COURT: Thank you.

21 THE WITNESS: I -- I need to give you
22 precision on that.

23 THE COURT: There's not -- there is not a
24 question to you --

25 THE WITNESS: Oh.

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1 THE COURT: -- at this moment.

2 THE WITNESS: Okay.

3 BY MR. HOWELL:

4 Q. With regards to your PTSD, when you were
5 initially diagnosed with an acute stress disorder after
6 your -- during your hospitalization, the doctors
7 offered treatment, and you declined it. Isn't that
8 correct?

9 A. The psychiatrist who diagnosed me.

10 Q. It's a yes or no question, Mr. Wandji. Isn't
11 it correct that you declined the treatment?

12 A. I didn't decline.

13 Q. All right. Commissioner, I will just refer
14 you --

15 A. I -- I didn't decline. I -- let -- let me
16 finish.

17 Q. His APA --

18 A. I didn't --

19 Q. -- will show --

20 A. -- decline.

21 Q. -- that he declined the treatment.

22 A. I told -- I told him I'm going to discuss
23 that with my primary care physician. I didn't decline.
24 I told him I'm going to discuss that with my primary
25 care physician.

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1 Q. And in January, Dr. Fayssoux did suggest that
2 you seek psychological counseling, and you went to Root
3 Psychology three times; is that correct?

4 A. No, that's not correct.

5 Q. Well, the only reports that have been
6 submitted are two reports from February and one in
7 March of 2022. You have not -- you don't have any
8 other records of you having any treatment for PTSD
9 since that time, do you?

10 A. I answered that question. It wasn't just
11 three times. I went there more than three times.

12 Q. Did you bring those records to show the
13 Commissioner?

14 A. I don't know. I file -- I -- I sent him some
15 the note -- some of the notes --

16 Q. You -- you --

17 A. -- of my --

18 Q. There are three notes that you submitted.
19 There are two from February and one from March. Do you
20 have any other medical records from a psychologist
21 indicating the need for ongoing treatment, yes or no?

22 A. Well, I don't have -- that's the only
23 psychologist that I -- that -- that I -- I met --

24 Q. Okay.

25 A. -- but it -- it wasn't just --

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1 Q. In fact, you --

2 A. -- three times.

3 Q. -- haven't had any treatment for PTSD since
4 March of last year, have you?

5 A. Haven't had any therapy with the Roots --

6 Q. You haven't --

7 A. -- but I -- I am also --

8 Q. You haven't had any therapy --

9 A. Therapy...

10 Q. -- and you don't take any medications, isn't
11 that correct?

12 A. I am not a doctor. I follow doctors'
13 instruction. You are not a doctor either, so when you
14 say, you didn't get any medication, you are moving from
15 being a lawyer to being a doctor --

16 Q. Well --

17 A. -- because you are -- you -- you are assuming
18 that PTSD, you must take medication. I am a nurse,
19 sir. You are not. You don't treat everything with
20 medication. Sometimes you go to a doctor. He says,
21 Well, spend some time with your wife.

22 Q. Did the doctor --

23 A. Go --

24 Q. -- offer you any medication?

25 A. The doctor says something like that also.

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1 It's treatment. We are talking psychological stuff
2 here. You are trying to tell the Commissioner to buy
3 to the notion that, Oh, he didn't take a tablet, a
4 chemical, so he wasn't receiving PTSD treatment.
5 You don't treat PTSD exclusively with medication, sir.
6 I am a nurse. You treat PTSD with a lot of stuff.
7 It's psychological.

8 Q. I'm looking at --

9 A. Like when I --

10 Q. I'm looking --

11 A. -- went to --

12 Q. I'm looking at --

13 A. I am not finished.

14 Q. -- your APA.

15 A. I am not finished.

16 Q. I'm looking at your --

17 A. When I went to go --

18 Q. -- APA.

19 A. -- to Roots -- when I went to go to Roots

20 Psychology, he didn't give me tablets either.

21 Q. Okay.

22 A. Do you think it wasn't treatment when my
23 physician says, Serge, take some time off? Where do
24 you have your immediate family? I said France. Go
25 there and spend some time. You think that's not PTSD

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1 treatment?

2 He encouraged me to join a group of -- they
3 call it -- it's a support group. I joined the support
4 group for PTSD where we only talk about our PTSD issue.
5 You think that's not treatment? Treatment is not just
6 giving tablet, sir. It's not just that.

7 Q. That's not a response to my question. My
8 question was --

9 A. Oh, that's the --

10 Q. -- are you taking --

11 A. -- best I can.

12 Q. -- any medication for PA- -- PTSD?

13 A. I wasn't prescribed any medication for --

14 Q. Okay.

15 A. -- PTSD, but I took --

16 Q. In your --

17 A. -- treatment --

18 Q. In your --

19 A. -- for --

20 Q. In your APA --

21 A. -- PTSD.

22 Q. -- page 81, it says, Reactive depression. He
23 remains resistant to treatment with antidepressant
24 medication, which is probably reasonable, because his
25 depression objectively does not seem to be any worse

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1 than previously noted. So not only did the doctor say
2 that you didn't need medication, but he said you
3 weren't any worse. Isn't that correct?

4 A. You are interpreting. That's not correct.
5 You are interpreting.

6 Q. When you -- when you saw Dr. Fayssoux in
7 November of 2022, were you honest with him?

8 A. In November what?

9 Q. November 18, 2022. This was about -- at that
10 time, about six weeks before your hearing. Were you
11 honest with him?

12 A. I -- I don't remember. You --

13 Q. Okay.

14 A. I don't remember.

15 Q. Well, Commissioner, I'll refer you to page 51
16 of our APAs; 51, 52, 53, and through 56. A couple
17 things; number one, the doctor administered a PHQ-9
18 test, which is a test to determine your level of
19 depression. Isn't that correct?

20 A. Oh, no. I don't know what it is.

21 Q. Okay. Your PHQ score was 2. Meaning,
22 your -- you were normal. Isn't that right?

23 A. That's you interpreting. You are not a
24 doctor. I -- I don't agree.

25 Q. Also under review of symptoms, page 53, under

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1 behavioral psych, it says negative. My interpretation
2 of that is that you were not having any symptoms.

3 A. What -- what did you say? I didn't hear you,
4 sir.

5 Q. Under review of symptoms, it says behavioral
6 psych, and it says negative. Meaning, you weren't
7 having any symptoms at that --

8 A. Well, that's --

9 Q. -- that time.

10 A. -- you interpreting. I don't know what it
11 means.

12 Q. Well, that's what the report says.

13 A. It says negative. That's what it says.

14 Q. On page 54, under impression plan, it says,
15 Reactive depression, and it reads, Not currently
16 problematic. So at that time, you were not having any
17 problems with depression or post-traumatic stress.
18 Isn't that correct?

19 A. They are talking about depression. They're
20 not talking -- post-traumatic syndrome is a complete
21 different diagnostic from -- you are -- I understand
22 you are a lawyer.

23 Q. Then under --

24 A. I went to nursing school.

25 Q. -- Covid --

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1 A. I am not finished. I went to nursing school
2 for that. Depression is not PTSD. They are two
3 different diagnostics. You -- you are trying to get
4 the Commissioner mixed up between depression and PTSD.
5 You are wrong, sir.

6 Q. Okay. And under five, it says, Covid-19
7 largely recovered with the exception of persistent
8 problems with your smell. That was in November 2018,
9 just about a month-and-a-half before your hearing was
10 originally scheduled.

11 A. What's your question, sir?

12 Q. Isn't that true?

13 A. No, that's not true.

14 Q. Okay. Now, you took a job with the
15 Tri-County Council on Substance Abuse on May 8 -- May
16 14, 2021- -- '22, correct?

17 A. So what did you mean on June, sir?

18 Q. Okay. And when you applied for the job, you
19 had to complete a medical questionnaire, did you not?

20 A. I don't remember.

21 Q. Okay. Well, let's see if we can refresh your
22 memory. Well, first of all, in your -- in your
23 application for employment, it says, Current and most
24 recent employer, and this is --

25 THE COURT: Mr. Howell, where are you at?

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1 MR. HOWELL: Page 108 of the APAs.

2 THE COURT: Thank you.

3 BY MR. HOWELL:

4 Q. It says, Graduate Assistant at the University
5 of South Carolina, so were you employed as a graduate
6 assistant at the University of South Carolina in the
7 spring of 2022?

8 A. That's not an employment. That's part of our
9 training. You -- you've got --

10 Q. Well, they ask you for your current or most
11 recent employer, and that's what you put.

12 A. Yeah. That's my --

13 Q. Okay. So you were --

14 A. But the reason --

15 Q. You were working as a research assistant; is
16 that correct?

17 A. I was helping a researcher do his research.
18 That's part of our training. All everybody in our
19 core get assigned to a PhD working on a project so
20 you can learn how to do that when you graduate, if you
21 graduate.

22 Q. Commissioner, page 126. As part of your
23 application process, you were asked to complete a
24 medical questionnaire, and it asked you whether you had
25 a number of different medical problems, and you -- you

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1 answered no to all of them; isn't that correct?

2 A. I don't remember.

3 Q. Okay. You also had to actually undergo a
4 physical exam; isn't that true?

5 A. I don't remember.

6 Q. Commissioner, pages 129 and 130 and 131. You
7 underwent a physical examination, denied any ongoing
8 health problems, and the doctor said that your physical
9 examination was normal; isn't that correct?

10 A. I didn't meet with any doctor. I didn't meet
11 with a doctor.

12 Q. Well, a minute ago you said you didn't even
13 remember. Now you remember?

14 A. I remember not meeting with a doctor.

15 Q. Okay. So was it a nurse practitioner --

16 A. I remember --

17 Q. Do you remember that?

18 A. -- not meeting with a doctor. I was sent --

19 Q. Do you remember meeting with a nurse
20 practitioner --

21 A. Don't remember.

22 Q. -- and having a physical examination?

23 A. I don't remember.

24 Q. And do you remember that the physical
25 examination was entirely normal?

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1 A. I -- I don't know.

2 Q. And do you --

3 A. I don't know.

4 Q. Do you remember based upon that normal
5 physical examination, you were cleared to work in that
6 job at Tri-County?

7 A. They found me -- they -- they found me
8 suitable to do -- to work. I didn't -- I wasn't -- I
9 wasn't part of that decision.

10 Q. And you were working 12-hour shifts; isn't
11 that correct?

12 A. Yeah, I worked 12-hour shifts.

13 Q. And you were working making \$33 an hour;
14 isn't that correct?

15 A. I -- I don't remember, to be honest. I don't
16 remember that.

17 Q. And then you quit that job?

18 A. Oh, yeah. I --

19 Q. You weren't fired?

20 A. No, I wasn't fired.

21 Q. You quit?

22 A. Oh, yeah. I resigned for -- for patient
23 safety purposes. I resigned and -- and the -- the
24 medical -- the doctor stuff that you read, that will
25 be -- I don't know, but, Commissioner, that will be on

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1 my APA. That will be APA number -- that will be APA --

2 Q. Yeah. Show the --

3 A. Yeah.

4 Q. -- Commissioner --

5 A. That -- that will be APA --

6 Q. Show the Commissioner the report --

7 A. That will be --

8 Q. -- from your doctor that says --

9 A. That --

10 Q. -- that --

11 A. That says --

12 Q. -- he must quit this job.

13 A. No. It's -- I was working --

14 Q. Do you have that?

15 A. -- 12-hour -- I have a note from the doctor

16 who says I'm having mental and memory issues, and then

17 he doesn't recommend me to work eight-hour shift, and then

18 he did. He monitor me for two weeks, and then I have

19 palpitation, PV- -- P- -- PVS(sic). He says that on my

20 APA -- APA number 40, page 69.

21 The doctor asked me to do -- to do the

22 contrary of what I was doing; not to work for 12-hours

23 shifts, which is what I was doing; not to work night,

24 which is what I was doing; and then to -- and then I

25 also had problem with my heart, so, and then when he --

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1 after that that I was giving the wrong medication to
2 the patient, it was time for me to leave that job
3 before somebody gets killed. That's why nurses is
4 number one profession --

5 THE COURT: All right. Mr. Howell --

6 A. -- in this country.

7 THE COURT: -- anything further, sir?

8 Mr. Howell?

9 MR. HOWELL: No, your Honor.

10 THE COURT: All right. You have an exhibit
11 marked up here.

12 MR. HOWELL: I'd like to offer it. It is --

13 THE COURT: When --

14 MR. HOWELL: -- for impeachment purposes.

15 THE COURT: He's offered this exhibit for
16 impeachment purposes.

17 THE WITNESS: For what?

18 THE COURT: Impeachment purposes. This is
19 the Wandji versus Robert Wilkie Secretary of Veterans
20 Affair case.

21 THE WITNESS: For impeachment purposes?

22 THE COURT: Yes. He's already spoken to you
23 about this. He's offered this into evidence. Do you
24 have an objection?

25 THE WITNESS: Yes.

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1 THE COURT: That objection --

2 THE WITNESS: I have an objection.

3 THE COURT: That objection is overruled.

4 Defense Exhibit No. 1 is in evidence. We're going
5 to take a five-minute -- wait a minute.

6 (DFT. EXH. 1, Serge R. Wandji vs. Robert
7 Wilkie, Secretary of Veterans Affairs, was admitted
8 into evidence.)

9 Anything you want to add as a result of
10 cross-examination before we move on to other witnesses?

11 THE WITNESS: No, sir.

12 THE COURT: All right. I'm going to ask you
13 to step back to your counsel table. We're going to
14 take a five-minute break.

15 (A short break transpired.)

16 KELCI CARUSO, being duly sworn and cautioned
17 to speak the truth, the whole truth and nothing but the
18 truth, testified as follows:

19 THE COURT: All right. Again, please state
20 your name for the record.

21 THE WITNESS: Kelci Caruso.

22 THE COURT: Mr. Howell?

23 DIRECT EXAMINATION

24 BY MR. HOWELL:

25 Q. Ms. Caruso, give us a little information in

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1 terms of your educational background.

2 A. I graduated from Orangeburg County Technical
3 College with my RN in 2014, and since I have went back
4 and -- and obtained my BSN and graduated in September
5 of 2020. No. 2022. Sorry.

6 Q. And in August of 2021, were you employed at
7 The Regional Medical Center in Orangeburg?

8 A. Yes, sir.

9 Q. In what capacity?

10 A. I was the Employee Health nurse.

11 Q. And what were your --

12 THE COURT: Say that again.

13 THE WITNESS: Employee Health nurse.

14 THE COURT: Thank you.

15 BY MR. HOWELL:

16 Q. What were your duties as the Employee Health
17 nurse?

18 A. We did employee health assessments on new
19 hires. We assisted with Covid testing of employees and
20 followed up with that as well as any type of bloodborne
21 pathogen exposures and workers' comp incidents.

22 Q. Okay. And were you and your office
23 responsible for testing employees for Covid in that
24 timeframe?

25 A. Yes, sir.

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1 Q. What was the hospital's policy regarding free
2 testing?

3 A. You could obtain a test through employee
4 health if you were symptomatic or you had an exposure.

5 Q. Okay. Were free tests offered for personal
6 reasons such as travel or school?

7 A. No, sir.

8 Q. What personal protection protocols did the
9 hospital have in place in August 2021 to reduce the
10 risk of Covid-19 exposures?

11 A. We offered any employee that was in a
12 clinical area was required to wear an N95 mask. Other
13 areas at the hospital, you were required to wear a
14 surgical mask, and if you were taking care of a
15 Covid-positive patient, excuse me, you were required to
16 wear a -- a gown, a face shield, and an N95 mask as
17 well as gloves.

18 Q. And in August -- on August 6, 2021, was a
19 memo sent to all employees reminding them of that
20 protocol?

21 A. Yes, sir.

22 Q. Based upon the protocols in place, how would
23 you characterize the risk of exposure at the hospital
24 compared to the general public?

25 A. As long as everyone was wearing the proper

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1 PPE, then the risk was low.

2 Q. What was the protocol for employees who
3 wanted to be tested?

4 A. We held Covid testing three times a day; at
5 8:15, 11:00 a.m., and 2:00 p.m. If an employee was
6 symptomatic or if they needed testing, they were to
7 call our office and let -- let us know that they needed
8 to be tested. We would get them registered and obtain
9 the order, and we would have them meet us at the
10 same-day surgery entrance, and we would test them
11 outside of the same-day surgery entrance.

12 Q. And I believe that was also in the August 6,
13 2021 memo?

14 A. Yes, sir, I believe so.

15 Q. Okay. But people were aware of that even
16 before that --

17 A. Yes, sir. That has been pretty much a couple
18 months after Covid had kind of --

19 Q. Like for over a year, that had been the
20 policy?

21 A. Yes, sir.

22 Q. Okay. I want to turn your attention now to
23 August 16, 2021. Did Mr. Wandji come to employee
24 health that day?

25 A. Yes, sir.

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1 Q. Did he schedule an appointment or did he just
2 show up?

3 A. He just showed up.

4 Q. And describe what occurred.

5 A. I came into the Employee Health office
6 shortly after 11:00, because I had been outside testing
7 employees who had made an appointment. Uh-huh.

8 Q. Let me stop you. Was this 11:00 in the
9 morning?

10 A. Yes, sir.

11 Q. Okay. Go ahead.

12 A. So shortly after 11:00, I came back to my
13 office after testing other employees outside of the
14 same-day surgery entrance that had an appointment. He
15 was sitting in the -- our office is kind of set up,
16 Kellie is who you see when you first walk in, and then
17 my office is a little bit in the back.

18 Q. Kellie is this lady here?

19 A. Yes, sir. And he was sitting in Kellie's
20 portion of the office. I had just came back, like I
21 said, from testing, so I was making sure that all the
22 specimens were ready to go to the lab.

23 She informed me that he needed to be tested
24 for Covid due to an exposure, and I let him know that
25 our next testing was at 2:00, and he said that he could

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1 not come back at 2:00, because he was getting an
2 admission, and he was going to stay in our office until
3 we tested him. So I told him that it was going to be a
4 few minutes, because like I said, I had to process
5 those specimens, and we had asked him to step outside,
6 and at the same-day surgery entrance, we meet him over
7 there, and he said that he would wait there in our
8 office until it was -- until we could go out and meet
9 him.

10 Q. Was this the way it should have gone?

11 A. No, sir. He should have waited outside for
12 us. We actually have a note on our door that stated if
13 you needed to be tested, that we ask that you not come
14 in our office.

15 Q. Okay. How would you describe Mr. Wandji's,
16 for lack of a better word, behavior? Was it polite?
17 Was it aggressive? Was it rude? How would you
18 characterize it?

19 A. Very demanding. He wasn't going to leave
20 until we, you know, did his Covid test.

21 Q. Did Mr. Wandji tell you that he needed the
22 test for school?

23 A. No, sir.

24 Q. If he had told you that he needed the test
25 for school, what would you have told him?

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1 A. We would recommend other areas that he could
2 go to to be tested, but we did not test for any school
3 purposes, travel purposes, surgery purposes, or
4 anything like that. It was only for exposure or
5 symptoms.

6 Q. When was the next time you interacted with
7 Mr. Wandji?

8 A. On the 27th.

9 Q. And tell me about that.

10 A. So he came to the same-day surgery entrance
11 to be tested. I believe he had spoke to Kellie earlier
12 that -- earlier to that and made an appointment to be
13 tested, so we went -- or I went outside and tested him
14 for Covid, and then we called him with his results.

15 Q. And what were his results at that time?

16 A. His results were positive.

17 Q. And did he -- did he tell you at that time
18 when his symptoms had begun?

19 A. He originally said four to five days before
20 and settled on the 23rd, which was that prior Monday.

21 Q. Okay. And he had worked on that Sunday?

22 A. I believe so.

23 Q. Now, if he had symptoms beginning on Monday,
24 the --

25 A. Uh-huh.

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1 Q. -- 23rd, what was your concern in terms of
2 him being contagious --

3 A. He could have been --

4 Q. -- previous?

5 A. He could have been contagious up to two days
6 prior to that Monday, so the -- what is that? The
7 21st --

8 Q. Okay.

9 A. -- I believe.

10 Q. And the 21st, his records show he didn't work
11 that day?

12 A. Yes, sir.

13 Q. Did you have a conversation with him about
14 that, about the fact that his symptoms started on the
15 23rd, and -- and that -- that he might have been
16 contagious before that, and -- and whether maybe he
17 exposed some people at work?

18 A. Correct. Yes, sir. We were trying to
19 determine when the correct date was. He later told me
20 that the correct date would have been the Wednesday,
21 the 25th is when his symptoms started, but we did need
22 to verify that information, because we did have a few
23 patients on the BHU unit test positive, so we were
24 concerned that he possibly could have brought Covid
25 into the hospital.

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