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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
HONORABLE J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE
C/A NO. 2004-CP-16-322

Ruth J. Person,

Appellant,

vs.

Carolina Pines Regional Medical Center,

Respondent.

RECORD ON APPEAL
(VOLUME II OF V)

Daryl J. Corbin, Esquire
Corbin Law Firm
227 West Evans Street
Post Office Box 447
Florence, SC 29503
(843)667-6119
Attorney for Appellant

Martin S. Driggers, Jr., Esquire
Sweeny, Wingate & Barrow
115 Cargill Way, Suite B
Hartsville, SC 29551
(843)878-0930
Attorney for Respondent

PAGE 3
OPERATIVE NOTE

#15398

COMPLICATIONS: None.

THOMAS V. MINCHEFF, M. D.

DATE

DD 7-1-96
TT 7-1-96

TVM:ch

THE BYERLY HOSPITAL

OPERATIVE NOTE

HOSPITAL #: 14731
ROOM:

DATE: 7-6-99

PREOPERATIVE DIAGNOSES: REFLUX ESOPHAGITIS, SEVERE
GASTROESOPHAGEAL REFLUX DISEASE.

POSTOPERATIVE DIAGNOSES: SAME.

PROCEDURE: LAPAROSCOPIC NISSEN FUNDOPLICATION.

SURGEONS: THOMAS V. MINCHEFF, M. D.
FIRST ASSISTANT: DR. HARRIS.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE:
35-year-old white male who has a history of gastroesophageal reflux disease since the age of 18. The patient has been maintained on medical management, however, the patient continues to have severe symptoms. Upper GI work up including an EGD, 24 hour pH probe studies, and esophageal manometry studies revealed severe gastroesophageal reflux disease. The patient is now scheduled for a laparoscopic Nissen fundoplication.

DESCRIPTION OF THE PROCEDURE: The patient is taken to the operating room and placed in a supine position upon the operating room table. Preoperative IV antibiotics were given. Sequential pneumatic compression stockings are placed on the lower extremities. After induction of general anesthesia and endotracheal intubation, a 16 French Foley catheter is inserted and a 16 French nasogastric tube is inserted. The entire abdomen and upper chest is shaved and then prepped with Betadine solution. Sterile towels as well as sterile drapes are applied in the usual manner. The first incision is made approximately 3 cm. above, and to the left of the umbilicus. Using a 15 blade scalpel, a transverse skin incision is made. The subcutaneous layers are divided with the electrocautery. The anterior rectus fascia is incised and the underlying rectus muscle is spread apart revealing the posterior rectus fascia which is also incised. The abdominal cavity is entered using the Hasson procedure. Fixation sutures are placed using 0 Polysorb. A 10-12 mm. trocar is then inserted and secured in place with the fixation sutures. The abdominal cavity is then inflated with 4-6 liters of CO2 reaching a pressure of 15 mm. of Mercury. A 10 mm. camera is inserted into the abdominal cavity and the abdominal cavity is examined. No significant abnormalities are seen.

000502

1

Through a separate stab wound, just beneath the xiphoid, a 10 mm. trocar is passed through the abdominal wall. In the right upper quadrant, just below the subcostal margin, through a separate stab wound, a 10 mm. trocar is passed and the same is performed on the left side. Staying four cm. above and the right of the umbilicus, a fifth incision is made and a 10 mm. trocar is passed through the abdominal wall, again under direct vision. The patient is then placed in a reverse Trendelenburg position.

Through the epigastric port, a liver fan is inserted and the left lobe of the liver is retracted cephalad. A Babcock clamp is placed along the stomach and the stomach is retracted inferiorly. The gastrohepatic ligament is divided with the use of the harmonic scalpel, staying very close to the upper portions of the stomach. The patient is noted to have a significant amount of fat around the distal esophagus and to the left of the esophagus. The phrenoesophageal membrane is divided with the harmonic scalpel and the space on either side of the esophagus is carefully freed through blunt dissection.

The 30 degree scope is then inserted and the retroesophageal space is developed. The right and left crus are exposed and clearly visualized. After the retroesophageal space has been freed a vessel loop is placed around the distal esophagus. Traction is placed on the vessel loop. The short gastrics are then taken down, using the harmonic scalpel. This is done along the fundus of the stomach. A length of 10 cm. is thereby freed. After enough of stomach has been freed, a wrap is then tested around the esophagus, and there appears to be enough of stomach for the wrap. A 56 French bougie is then carefully inserted into the esophagus after the nasogastric tube has been removed. Careful attention is taken not to perforate the esophagus or proximal stomach. Using the dissector the 58 French Maloney bougie is clearly palpated within the esophagus. The left and right crus are then reapproximated with placement of a 0 Surgitec suture using the Endostitch device. Extracorporeal knot tying is conducted and just above the knot a clip is placed and the suture is cut. The hiatus is thereby narrowed. The hiatus is narrowed just to allow the dissector to go through. The 58 French bougie is then carefully retracted back. The fundus of the stomach is brought posterior to the esophagus using a Babcock clamp and a 360 degree Nissen Fundoplication is made with placement of 3-0 Surgitec interrupted sutures, approximating the stomach anteriorly. Extracorporeal knot tying is performed, and just above the knot a clipped is placed and the sutures are cut. Prior to the wrap, the bougie is inserted, and after placement of the sutures, the bougie is removed. As a reinforcing suture, I placed a suture between the stomach and the crus on the right, again using 0 Surgitec and extracorporeal knot tying was

performed and placement of a clip was placed above the knot and the suture was cut. The vessel loop was later removed. The Nissen was localized over the esophagus and a 2 cm. segment was clearly made. The wrap was not tight, as we used a 58 French bougie. The area was dry. The liver fan was removed. The patient was returned to normal supine position.

Individual cannulas were removed. The umbilical wound as well as the trocar site at 4 cm. above the umbilicus was closed in layers. The fascia at the 4 cm. trocar site was closed with an endoclose suture using 0 Polysorb. The incision made at 3 cm. above the umbilicus into the left was closed in layers using 0 Polysorb. The skin was closed with staples. The abdominal cavity was deflated prior to closure. The other three incision sites were closed with staples. During the dissection, we inserted a 2 mm. trocar which facilitated in holding the stomach down so that there would not be any angulation during the insertion of the bougie. Also the 2 mm. trocar and grasper were used in holding back some of the fat close to the spleen.

After closure of the individual wounds, the skin is cleansed and dried. Sterile dressings are applied. The nasogastric tube and Foley were removed and after extubation, the patient was transferred to the recovery room in stable condition. Complications none. The patient tolerated the procedure well. Estimated blood loss 100 cc. Fluids - Crystalloids.

ADDENDUM: Posterior and anterior vagus were individually identified and preserved.

THOMAS V. MINCHEFF, M. D.

TVM:lt
D&T 7-6-98

cc: Dr. Robert Bullard

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:

HOSPITAL#: 0013703

DATE: 02/26/01

PREOPERATIVE DIAGNOSIS: Large, fixed, hiatal hernia with gastroesophageal reflux disease.

POSTOPERATIVE DIAGNOSES: Large, fixed, hiatal hernia with gastroesophageal reflux disease and esophageal perforation.

PROCEDURE PERFORMED: Exploratory laparotomy, closure of the crus of the diaphragm, closure of the perforation of the esophagus with a Thal stomach patch over top of this, and a feeding gastrostomy tube.

SURGEON: C. Brooks Bannister, M.D.

ASSISTANTS: Arthur Cooler, M.D. and Thomas Mincheff, M.D.

INDICATIONS FOR THE SURGERY: This is a 61-year-old black male kindly referred by Dr. Robert Bradley with a large, fixed, hiatus hernia. He had approximately a third to a half of his stomach up in his chest. He had severe nausea and vomiting and reflux. He had been evaluated in the past and had been advised to have this corrected. However, due to a fear of the surgery, he had not consented to the operation. Due to profound nausea and vomiting, at this time he had reached a point that he could no longer function without having this corrected.

DESCRIPTION OF THE PROCEDURE: With the patient in a supine position on the operating room table and under adequate general endotracheal anesthesia, the abdomen was prepped and draped in a sterile manner. An incision was made from the xiphoid to the umbilicus and the abdomen entered in the usual careful manner obtaining hemostasis with the cautery.

Following this, the area was inspected. He had a large hiatus hernia with a portion of his stomach up in the chest and his GE junction was actually above the diaphragm. Following this, the left triangle of the liver was sharply taken down, exposing the hiatus. An incision was made over the hiatus and this area was then mobilized. The stomach was mobilized down out of the chest. He had a thick hernia sac anteriorly. This was bluntly and sharply mobilized. Short gastrics were then controlled by mobilizing these with a right-angle clamp and then controlling them with large Hemoclips and dividing. Once an adequate length of stomach had been exposed, continued dissection was carried along the esophagus to expose the esophagus for the wrap.

We were then inspecting, looking for the crura which were quite attenuated, when it was noted that he had what appeared to be a perforation or a leak. There had essentially been no real sharp dissection done in this area and this was felt to most likely be due to very friable esophagus from his reflux disease. This was then repaired with silk sutures in an interrupted fashion and we were then planning on performing a wrap around this to buttress it. However, the crura were then approximated under the esophagus with interrupted 0 silks.

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:

HOSPITAL#:

Again, this area was inspected, and with any mobilization or inspection of the esophagus that was so friable, it would literally fall apart and again was repaired with 2-0 silk interrupted sutures. Once the repair had been performed, an NG tube was gently passed down and guided into the stomach.

Following this, the repair was reinforced by suturing the stomach to the esophagus and around the repair with multiple 3-0 silk sutures. This essentially gave a 180 to 270 degree wrap but was not a true wrap in the sense of the word. Essentially, this amounted to a Thal patch being sutured around the repair of the esophagus to reinforce this and hopefully prevent a further leak. The wound irrigated copiously with saline and suction. The case was very difficult in that the esophagus was so friable and literally seemed to fall apart in front of our eyes.

Once the repair had been performed, it was elected to place a 10 mm Jackson-Pratt to run down in this area. Also, the stomach was checked and he certainly had adequate length that we could perform a gastrostomy tube without putting any tension on what we had already done. An incision was made in the left upper quadrant. A 20-French Mik gastrostomy tube was then brought in. The gastrostomy was performed and the tube secured into the stomach with a double roll of 3 -0 pursestring silks. The stoma was then sutured to the abdominal wall and four quadrants around the tube with interrupted 3-0 silks. The tube was secured to the skin with 3-0 silks.

Following this, again it was inspected and there was found to be absolutely no tension whatsoever on the repair that had been performed around the esophagus. The peritoneum was closed with a running #1 Polysorb and the fascia closed with a running #1 PDS suture. The skin was closed with the skin stapler. Sterile dressings were applied. The patient was awakened, extubated, and carried to the recovery room in satisfactory condition.

C. BROOKS BANNISTER, M.D.

CBB:226/BD/TSI
D 2/25/91
T 2/26/91

CC: Robert Bradley, M.D.

000506

From: Lynn G. Blackmon [lgbnsc@bellsouth.net]
Sent: Saturday, November 11, 2006 3:40 PM
To: 'cbscorbinlaw@bellsouth.net'
Cc: 'Martin S. Driggers, Jr.'
Subject: Person vs. Carolina Pines Regional Medical Center
Christine,

Martin Driggers asked me to send the attached letter and medical records to your e-mail address since my attempts by fax would not go through.

This is the first of two e-mails sending these records.

Lynn G. Blackmon
Blackmon Paralegal Services
123 N. Ervin Street
Darlington, SC 2952
P: (843) 398-1282
F: (843) 398-1772
E: lgbnsc@bellsouth.net

S·W·B

SWEENY WINGATE & BARROW P.A.

November 12, 2006

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 383-2146
msd@swblaw.com

VIA FACSIMILE (843) 664-9180:
MR DARYL J CORBIN
CORBIN LAW FIRM
PO BOX 447
FLORENCE SC 29503

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-322
Our File No. 1863/4975

Dear Daryl,

Enclosed please find copies of medical records from Carolina Pines Regional Medical Center responsive to your request for operative notes and discharge summaries from Dr. Thomas Mincheff involving Nissen or Hill procedures. These were produced to Carolina Pines by Iron Mountain Records Management in Florence, South Carolina yesterday and today. There may be more records produced when we receive them, as Iron Mountain is still searching for other records through the weekend.

This fax letter is the first of two fax letters sending these documents.

With kind regards, I remain

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

Martin S. Driggers, Jr.

MSD/lgb
Enclosures

000508

THE BYERLY HOSPITAL

DISCHARGE SUMMARY

HOSPITAL #15399
ADMITTED 7-01-96
DISCHARGED 7-03-96

ADMITTING DIAGNOSIS: Gastroesophageal reflux disease.

CHIEF COMPLAINT/HISTORY OF PRESENT ILLNESSES: is a 60-year-old white female who was referred to us by Dr. Bell. The patient has a history of severe heartburn. She has been on medications, H2 blockers and Propulsid, for quite some time. She also has a history of a hiatal hernia. She has had no relief with medications. She recently underwent an EGD which showed a hiatal hernia and esophagitis as well as gastritis. She also had some duodenitis. The patient underwent a 24-hour pH probe and esophageal manometry studies, which confirmed gastroesophageal reflux disease, and an antireflux procedure was recommended. The patient was scheduled for a laparoscopic Nissen fundoplication.

PAST HISTORY: Unremarkable.

OPERATIONS: EGD with biopsy.

ALLERGIES: SULFA AND DAYPRO.

CURRENT MEDICATIONS: Tagamet 400 mg., Estrace 1 mg., Propulsid 10 mg.

FAMILY HISTORY: Unremarkable.

INVENTORY BY SYSTEMS: Noncontributory.

SOCIAL HISTORY: Alcohol yes, socially. Drugs none. Tobacco none. Patient lives with family.

PHYSICAL EXAM: General appearance - Sixty-year-old white female in no apparent distress, alert and oriented x3. HEENT - EOMI, PERRLA. Neck - Supple. Chest - Symmetric. Lungs - Clear to A&P. Cor - Regular rhythm. Breasts - No masses. Abdomen is soft, nontender. The patient does have some fullness and burning in the epigastric area. Pelvic - No discharge. Rectal exam - No rectal masses. Extremities - Full range of motion. Pulses - 2+ bilaterally equal. Neurologic status - Grossly intact.

LABORATORY FINDINGS: CBC and urine analysis were unremarkable. HIV antibody test was completed. HIV nonreactive.

CHEST X-RAY was negative.

EKG showed abnormal left axis deviation consistent with pulmonary disease. Left ventricular hypertrophy with repolarization abnormality. ST T wave abnormality. EKG essentially unchanged.

HOSPITAL COURSE: On the 1st of July 1996, the patient was admitted and underwent a 360 degree laparoscopic Nissen fundoplication.

The postoperative course was essentially unremarkable. The patient had one elevated temperature up to 101 postop, possibly secondary to atelectasis. The patient was allowed to ambulate and her temperature fell within normal limits.

Clinically, the patient was doing very well. Postoperatively, the patient was given a clear liquid diet which was advanced to a soft diet the following day. This was well tolerated. The abdomen remained soft and nontender. The wounds were clean and dry.

On the 3rd of July 1996, the patient was then discharged home.

DISCHARGE INSTRUCTIONS:

MEDICATIONS: Lortab 500 - 1-2 tablets q. 4-6 hours p.r.n. pain. The patient is allowed to resume her previous medications.

DIET: The patient has been advised to stay on a soft diet. She is not allowed to eat any bread. She has also been advised to chew her food carefully and to slice her meat in small pieces.

ACTIVITIES: The patient is allowed to do light activities.

SPECIAL INSTRUCTIONS: The patient is to followup in our office in one week for suture removal.

CONDITION ON DISCHARGE: Improved.

FINAL DIAGNOSES:
(1) Hiatal hernia.
(2) Gastroesophageal reflux disease.

THOMAS V. MINCHEFF, M. D.

TVM:mg
D 7-03-96
T 8-05-96

cc: T. James Bell, Jr., M. D.

THE BYERLY HOSPITAL

OPERATIVE NOTE

NAME:
HOSPITAL # 20507
ROOM:
DATE: 12-17-96

PREOPERATIVE DIAGNOSES: GASTROESOPHAGEAL REFLUX DISEASE.

POSTOPERATIVE DIAGNOSES: SAME.

OPERATION: LAPAROSCOPIC NISSEN FUNDOPLICATION.

SURGEON: Dr. Mincheff.

FIRST ASSISTANT: Dr. Harris.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE: is a 32-year-old white male who has had severe symptoms consistent with gastroesophageal reflux disease. He is status post laparoscopic cholecystectomy. For quite some time now, the patient has been receiving Zantac and later Prilosec as well as Reglan to relieve symptoms, however, the medications were ineffective. The patient's workup which consisted of an EGD, upper GI, 24 hour PH probe and esophageal motility studies showed that the patient has gastroesophageal reflux disease. The patient has been refractive to medications and has been found to be a candidate for a nissen fundoplication.

DESCRIPTION OF THE PROCEDURE: The patient is taken to the Operating Room and placed in a supine position upon the operation table. Preoperative antibiotics are given. Pneumatic sequential compression stockings are placed on the lower extremities. After induction of general anesthesia and endotracheal intubation, the entire abdomen is shaved and then prepped with Betadine solution. Sterile towels as well as sterile drapes were applied in the usual manner. A 16 French nasogastric tube was inserted and a 16 French Foley catheter was also inserted. Staying 3 cm. above the umbilicus, and 3 cm. to the left, using the 15 blade scalpel, an incision is made in the skin. The skin incision is transverse. The incision is carried down the subcutaneous layers. The underlying fascia is incised transversely, exposing the underlying rectus muscle which is spread and the posterior rectus fascia is opened. The abdominal cavity is entered using the Hasson procedure. Fixation sutures are placed on either side of the fascia using 2-0 Polysorb. A 10-12 mm. Trocar is then passed through the abdominal wall and secured in place with the fixation sutures. The abdominal cavity is then inflated with 4-6 liters of CO2, reaching a pressure of 15 mm. of Mercury. A 0 degree camera is then inserted through the cannula and the abdominal

cavity is explored. No abnormalities are seen. No adhesions from previous surgery were encountered. Using the 15 blade scalpel, a small transverse skin incision is made in the left subcostal area. A 10 mm. trocar is passed through the abdominal wall under direct vision. The same is performed on the right subcostal area passing a 10 mm. trocar through the abdominal wall, again through direct vision. A small vertical incision is made in the subxiphoid area and a 10 mm. trocar is passed through the abdominal wall, again under direct vision. Staying 4 cm. above the umbilicus and 4 cm. to the right, through a separate stab wound through the abdominal wall, another 10 mm. trocar is passed through the abdominal wall. Through the subxiphoid cannula, a liver retractor is inserted and the left lobe of the liver is raised and retracted cephalad, thereby exposing the upper portions of the stomach and esophagus. Using the harmonic scalpel, the gastrohepatic ligament is divided. Through careful blunt dissection, the right crura of the diaphragm is exposed. The peritoneum anterior to the esophagus is incised with the harmonic scalpel and the dissection is carried to the left side. Again using careful blunt dissection, the left crura is identified. The 0 degree camera is then replaced using the 30 degree camera and the retroesophageal space is then developed. The dissection is carried up into the mediastinum. Once the esophagus has been completely freed, a vessel loop is then placed at the GE junction and the vessel loop is used for traction. The patient was found to have a significant amount of a reaction around the esophagus which may be result of his reflux disease. The short gastric vessels were then divided using the harmonic scalpel. Staying along the greater curvature of the stomach a distance of 10 cm. were freed. During the case, to facilitate dissection, the patient was placed in a reverse Trendelenburg position. The nasogastric tube was then replaced by passing down a 58 French Maloney dilator through the esophagus. The Bougie or dilator was carefully passed down, and using my dissector I could feel the dilator as it passed the GE junction. Careful attention was made not to angulate the GE junction. The dilator passed easily through the esophagus into the stomach. Once this has been performed, the esophageal hiatus is carefully narrowed by approximating the left to the right crura using 0 Surdek sutures. After this has been completed, the Bougie is carefully pulled back and the fundus of the stomach is grasped and brought behind the esophagus and preparations are made for the wrap. The Bougie is then carefully reinserted and the nissen fundoplication is then completed by placing three sutures using 0 Surgitek approximating the left side of the stomach to the right, taking a bite of the anterior esophagus and then securing the sutures. Extracorporal knot tying was conducted and I placed a clip just

above the knot and then divided the suture. The same procedure was used with the crural sutures. The wrap was high on the esophagus and exteded for approximately 2 cm. A good result was obtained. After the wrap was completed, the bougie was removed. I also secured the wrap with placement of Expa sutures to the stomach and right and left crua. Small amount of fluid, which had collected beneath the liver and behind the stomach was suctioned. Good hemostasis was obtained and there was minimal bleeding. The liver fan retractor was removed. The individual cannulas were removed and the abdominal cavity was deflated. The cannulas were individually removed and there was no bleeding from the entry sites. The two supraumbilical ports were closed in layers. The fascia was closed with 0 Polysorb and 2-0 Polysorb interruped sutures. The patient was returned to a normal supine position. The skin was closed with staples. The skin was cleansed and dried. Sterile dressings were applied. Postoperatively, the nasogastric tube and Foley were removed. The patient was later transferred to the Recovery Room in stable condition.

COMPLICATIONS: None.

ESTIMATED BLOOD LOSS: Minimal.

FLUIDS: Crystalloids.

ADDENDUM: During the dissection the anterior and posterior vagus nerves were identified and preserved.

THOMAS V. MINCHEFF, M.D.

TVM: tj
D 12-17-96
T 12-20-96

BYERLY HOSPITAL

DISCHARGE SUMMARY

NAME:

HOSPITAL #: 20507
ADMITTED: 12/17/96
DISCHARGED: 12/19/96

ADMITTING DIAGNOSIS:
1. Gastroesophageal reflux disease.

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESS:
is a 32 year old white male who for the last several months has been complaining of severe heartburn and epigastric pain. He is status post laparoscopic cholecystectomy for biliary dyskinesis. He has been on medications for quite sometime and he has not responded well to the medications. Gastroenterology consultation with Dr. Isaac was obtained. The patient underwent an upper GI as well as EGD. He also underwent a 24 hour pH probe and esophageal manometry studies which confirmed gastroesophageal reflux disease. Since the patient has not improved on medical management we have elected to proceed with a laparoscopic Nissen fundoplication.

PAST HISTORY: The patient denies any serious illnesses.

OPERATIONS: Appendectomy, arthroscopic left knee surgery. Orchiectomy. Laparoscopic cholecystectomy. Tonsillectomy.

ALLERGIES: ASPIRIN.

CURRENT MEDICATIONS: Prilosec and Reglan.

FAMILY HISTORY: Unremarkable.

INVENTORY BY SYSTEMS: Noncontributory.

PHYSICAL EXAMINATION:
GENERAL APPEARANCE: 32 year old white male in no apparent distress, alert and oriented times three.
VITAL SIGNS: Stable. Afebrile.
HEENT: EOMI, PERRLA.
NECK: Supple. No goiter or nodules. Trachea is in the midline. No carotid bruits. No venous distention.
CHEST: Symmetric.
LUNGS: Clear to A&P.
HEART: Regular rate and rhythm. No murmurs, gallops or rubs.
BREAST: No masses.
ABDOMEN: The patient is mildly over weight. Abdomen is soft, nontender. Bowel sounds positive. No masses. No organomegaly.

BYERLY HOSPITAL

DISCHARGE SUMMARY

NAME:

HOSPITAL #: 20507
ADMITTED: 12/17/96
DISCHARGED: 12/19/96

MALE GENITALIA: The patient has one testicle.
RECTAL: No rectal masses.
EXTREMITIES: Full range of motion of all joints.

PREOPERATIVE LABORATORY FINDINGS: Within normal limits.

HOSPITAL COURSE: The patient was admitted on the 17th of December 96. The patient underwent a laparoscopic Nissen fundoplication on the 17th of December 96. The postoperative course was essentially unremarkable. On the day of surgery postop the patient was allowed to have ice chips and on the first postop day was started on clear liquids and the diet was slowly advanced to a soft diet. Postoperatively the patient did have a temperature up to 101 which later fell within normal limits. The patient was ambulating well and was tolerating a soft diet. Postoperatively the patient was given analgesics, Demerol 50-75 mgs IM q 4-6 hours prn for pain with Phenergan 25 mgs IM q 4-6 hours prn for pain. When the patient was tolerating po intake he was switched to po analgesics, Loracet Plus 1/2 to 1 tablet po q 6 hours. Overall the patient did well. The wounds remained clean and dry. On the 19th of December 96 the patient was then discharged home.

DISCHARGE INSTRUCTIONS: Discharge medications - Loracet Plus 1/2 to 1 tablet po q 6 hours. Diet - soft. The patient has been advised to refrain from eating bread foods. Activities - are restricted. No heavy lifting, however, the patient has been encouraged to ambulate. The patient is allowed to shower.

SPECIAL INSTRUCTIONS: The patient is to follow-up with me in one week for staple removal.

CONDITION ON DISCHARGE: Good.

BYERLY HOSPITAL

DISCHARGE SUMMARY

NAME:

HOSPITAL #: 20507
ADMITTED: 12/17/96
DISCHARGED: 12/19/96

Page Two

FINAL DIAGNOSIS:
1. Gastroesophageal reflux disease.

THOMAS V. MINCHEFF, M.D.

TVM:72ms
dd: 12/19/96
td: 01/07/97
t: 235
#: 5544

THE BYERLY HOSPITAL

DISCHARGE SUMMARY

HOSPITAL # 14731
ADMITTED 7-6-98
DISCHARGED 7-9-98

ADMITTING DIAGNOSES: (1) Reflux esophagitis.
(2) Gastroesophageal reflux disease.

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESSES:
is a 35-year-old white male who has been complaining of reflux symptoms since the age of 18. He has been treated medically since then but symptoms have worsened and have not responded to medical management. The patient was hospitalized over a month ago, had a foreign body lodged in the esophagus. The patient subsequently had an esophagogastroduodenoscopy which showed marked reflux esophagitis intractable to medical management. The patient was referred for esophageal manometry and 24 hour PH Probe studies which revealed severe reflux disease. The patient is now scheduled for a laparoscopic Nissen Fundoplication. The patient was referred to me by Dr. Bullard.

PAST HISTORY: Significant for gastroesophageal reflux disease since the age of 18, hiatal hernia.

OPERATIONS: Adenoids and tonsils, eye surgery, EGD.

ALLERGIES: IVP DYE.

Current medications - Zantac and Tums.

FAMILY HISTORY: Unremarkable.

INVENTORY BY SYSTEMS: Noncontributory.

SOCIAL HISTORY: Alcohol occasionally. Drugs none. Tobacco none. The patient lives with his family. He is married, has two children, and works for A.O. Smith.

GENERAL APPEARANCE/PHYSICAL EXAM: 35-year-old white male in no apparent distress. Vital signs stable, afebrile. HEENT, EOMI, PERRLA. Neck is supple. Chest is symmetric. Lungs are clear to A&P. Heart - Regular rhythm. No murmurs, gallops, or rubs. Breasts - No masses. Abdomen - Soft, nontender. Male genitalia within normal limits. Rectal exam within normal limits. Extremities - Free range of motion.

LABORATORY FINDINGS: Within normal limits.

HOSPITAL COURSE: On the 6th of July, 1998, the patient underwent a laparoscopic Nissen Fundoplication. For further details, please see operative note. The postoperative course was

unremarkable. Postoperatively, the patient was given ice chips. On postop day #1, the patient was advanced to a clear liquid diet. Ice chips were well tolerated. The IV was placed on KVO. The patient had some right shoulder pain postoperatively, which was a result of positioning upon the operating room table and also probably air within the abdominal cavity. This resolved with analgesics.

On postop day #2, the patient was noted to have tolerated clear liquids and was placed on a soft diet. The patient was allowed to shower. The wounds remained clean and dry.

On the 9th of July, 1998, the patient had tolerated a soft diet and was doing well. He was discharged to home on the 9th of July 1998.

DISCHARGE INSTRUCTIONS: Medications - Darvocet N 100 1-2 tabs p.o. q. 4-6 houre p.r.n. for pain. The medication needs to be crushed and given with water.

DIET: The patient is to resume or continue soft Puree diet for a period of 4-6 weeks. The patient has been advised not to eat any bread or chunks of meat.

ACTIVITIES: The patient is allowed to light activity but no heavy lifting.

SPECIAL INSTRUCTIONS: The patient has been given a work excuse. The patient is to follow up with me in one week for staple removal.

Conditioning on discharge was good.

FINAL DIAGNOSES: (1) Reflux esophagitis.
(2) Gastroesophageal reflux disease intractable to medical management.

THOMAS V. MINCHEFF, M. D.

TVM:lt
D 7-9-98
T 7-22-98

cc: Dr. Bullard

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0009813

DATE: 08/09/99

PREOPERATIVE DIAGNOSIS:
1. Gastroesophageal reflux disease.

POSTOPERATIVE DIAGNOSIS:
1. Gastroesophageal reflux disease.

PROCEDURE PERFORMED:
1. Laparoscopic fundal plication.

SURGEON:
1. DR. MINCHEFF.

FIRST ASSISTANT:
1. DR. BANNISTER.

ANESTHESIA:
1. GENERAL ENDOTRACHEAL.

INDICATIONS FOR THE PROCEDURE: is a 64-year-old black female who has had symptoms consistent with gastroesophageal reflux disease. The patient has undergone multiple studies including an upper GI, esophagogastroduodenoscopy, 24-hours pH probe studies, and esophageal manometry. The patient has been on Prilosec for quite some time and has not done well on medical management. We now elected to proceed with a laparoscopic fundal plication.

DESCRIPTION OF THE PROCEDURE: The patient is taken to the operating room and placed in a supine position upon the operating room table. Preoperative IV antibiotics were administered. After induction of general anesthesia and endotracheal intubation, a 16- French Foley catheter was inserted and a 16-French nasogastric tube was inserted. Pneumatic sequential compression stockings are placed on the lower extremities. The entire abdomen is then prepped with Betadine solution and sterile towels as well as sterile drapes are applied in the usual manner. Staying approximately 3 cm above and to the left of the umbilicus, a small transverse skin incision is made with the 15 blade scalpel. The abdominal cavity is entered using an open procedure. On the other side of the fascia, two fixation sutures were placed using 0 Polysorb and a 10 to 12 mm trocar is inserted. A total of 5 trocars are used for the procedure. Through a separate stab wound in the epigastric area, a 10 mm trocar was inserted. In the right upper quadrant, just beneath the subcostal margin, another 10 mm trocar was inserted again under direct vision. Staying approximately 4 cm above and to the right of the umbilicus, another 10 mm trocar was inserted through the abdominal wall, again under direct vision. On the left side, beneath the subcostal margin, the fifth 10 mm trocar was inserted. The patient was then repositioned in a reverse Trendelenburg position. A Babcock clamp was then inserted and the stomach is grasped and retracted downwards. The gastrohepatic ligament was opened and a window was developed using the Harmonic scalpel as well as careful

blunt dissection. Once this has been performed, the 0 degree scope was replaced with a 30 degree scope and the retroesophageal area was carefully dissected. The posterior vagus is identified and preserved. The right crus was carefully identified as well as the left crus. The peritoneal attachments anterior to the esophagus are carefully freed and the gastrophrenic ligament was divided using the harmonic scalpel on the left. A good retroesophageal window was developed. A vessel loop was then brought around the esophagus and this was used for traction. The head does not appear to be too wide. The patient is noted to have a small hiatal hernia. This was reduced during the dissection. The dissection is carried up into the mediastinum so that a good length of esophagus is brought down into the abdominal cavity. Prior to repairing the hiatus, I elected to proceed in dividing the short gastrics. This was done using the Harmonic scalpel. Going along the curvature and fundus of the stomach, the short gastrics are divided with the Harmonic scalpel. The dissection was carried over to the cardia of the stomach. The gastrophrenic ligament was divided further. After this had been completed and adequate stomach had been mobilized for the wrap, I then proceeded in closing the hiatus. This was performed with a 0 surgideck suture using the endostitch device. An extra corporal knot tying technique was used. After this was completed, a Babcock clamp is then placed in the retroesophageal window and passed around and a portion of the stomach is then brought around in a 360 degree wrap. The wrap was then sutured using again three individual 0 Surgideck sutures and an extra corporal knot tying technique is performed. This wrap was performed after placement of a 56 French Bougie which was easily passed down through the esophagus without difficulty. After completion of this, we removed the Bougie and attempted to place a nasogastric tube and had difficulty placing the nasogastric tube. After close inspection, the wrap appeared to be too low and I elected to proceed in taking down the wrap and redoing it. The sutures were divided and the wrap was performed once again in a similar manner. At this time, I placed the wrap a little bit higher along the esophagus including the anterior esophageal muscle in the suture. The 306 degree wrap was done again using the 56 French Bougie. After completion of this, the Bougie was then removed and replaced with a nasogastric tube and this time there was no problem passing the nasogastric tube. The wrap looked good and then I added an additional suture, suturing the stomach up to the crus, thereby preventing any slippage of the wrap into the mediastinum. Irrigation fluid was then suctioned. The vessel loop was removed. Through the epigastric port, a fan was inserted enabling us to lift up the left lobe of the liver providing exposure to the GE junction and the hiatus. After the admission fundal plication was completed, the fan was closed and pulled out through the port. The area was checked for hemostasis. There was no bleeding. The area was dry. The patient was returned to a normal supine position. The individual cannulas were removed. The port site which was then opened was then closed in layers. The fascia was closed with interrupted 0 Polysorb sutures. The skin was closed with staples. The other four incision sites or puncture sites were closed merely with staples. The skin was cleansed and dried. Sterile dressings were applied. After extubation, the Foley was removed. The pneumatic

CAROLINA PINES REGIONAL

OPERATIVE NOTE

HOSPITAL#: 0009813

stockings were left on. The patient was transferred to the [illegible] blood loss was minimal.

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CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

HOSPITAL#: 0009813

NAME:

ADMITTED: 08/09/99
DISCHARGED: 08/18/99

ADMITTING DIAGNOSIS: Gastroesophageal reflux disease.

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESS: is a 64-year-old black female complaining of severe dysphagia for the last five to six years. She has become progressively worse. She has had an upper GI, EGD, 24 hour pH probe, and esophageal manometry studies. The final results revealed moderate to severe gastroesophageal reflux disease. Medial management has been ineffective and the patient is now scheduled for a laparoscopic Nissen fundoplication.

PAST HISTORY: Significant for pancreatitis two weeks ago. The patient also has a history of seizure activity. She also has a past medical history significant for electrolyte abnormalities, hypocalcemia, hypomagnesemia, and hypokalemia. She also has a history of chronic anxiety.

SURGICAL HISTORY: Significant for a hysterectomy, laparoscopic cholecystectomy, and thyroidectomy. The patient is on Darvocet, K-Dur, Prilosec, Adalat, Celebrex, Dilantin, Mag-Ox and Ativan.

ALLERGIES: None.

FAMILY HISTORY: Significant for mother with high blood pressure and cerebral vascular accident. Father significant for CVA.

INVENTORY BY SYSTEMS: Gravida five, para five, A0.

SOCIAL HISTORY: Alcohol positive. Drugs none. Tobacco none. The patient lives alone.

PHYSICAL EXAMINATION:

General appearance: A 64-year-old black female in no apparent distress, alert and oriented times three.

HEENT: EOMI, PERRLA.

Neck: Supple.

Chest: Symmetric.

Heart: Regular rhythm.

Lungs: Clear to auscultation and percussion.

Breasts: No masses.

Abdomen: Midline lower scar, soft, nontender, no masses, no organomegaly.

000522

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Pelvic exam: Status post hysterectomy.

Rectal exam: Revealed no masses.

Extremities: Free range of motion.

Neurologic status: Grossly intact.

LABORATORY DATA: Dilantin level within normal limits. All other laboratory findings were within normal limits. Preoperative chest x-ray was unremarkable.

HOSPITAL COURSE: On 9 August 1999, the patient underwent a laparoscopic Nissen fundoplication. For further details, please see operative note. The postoperative course was initially unremarkable On the first postoperative day, the patient was started on clear liquids and was slowly advanced to a soft diet. The patient received two units of packed red blood cells postoperatively. By the third postoperative day, the patient was showering and was tolerating a soft diet. The patient's calcium was noted to be 7.2 and she received supplemental calcium. Medical consultation was obtained with Dr. Bradley during the patient's hospital stay.

On 12 August 1999 in the afternoon, the patient developed shortness of breath and had a decreased oxygen saturation on the pulse oximeter. In order to rule out a possible pulmonary embolus, we obtained a CT scan of the chest which was normal. The patient did have some atelectasis and infiltrate in the lower lobes. The patient was felt to be in some failure and was given Lasix 40 mg IV and the patient responded quite well. The patient was placed in the intensive care unit for monitoring and the patient was noted to have a severe bradycardia. Cardiology consultation was subsequently obtained and a pacemaker was recommended. The patient was noted to have sinus arrest with junctional escape rhythms.

The patient was monitored over the weekend and on 16 August 1999, the patient received a dual chamber atrioventricular pacemaker. For further details of the procedure, see the operative note. The postprocedure course was unremarkable. The patient remained in the intensive care unit for one day and then was transferred to the telemetry unit. The patient's wound remained clean and dry. On 17 August 1999, the staples were removed along the abdomen. The wounds were well healed. Overall, the patient did well and on 18 August 1999, I elected to discharge the patient home.

DISCHARGE INSTRUCTIONS:

MEDICATIONS:

Lorcet plus one tablet p.o. q.6h. p.r.n. pain.
The patient is to resume her regular p.o. medications.

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 0009813

ACTIVITY: Restricted. The patient has been advised to do no strenuous activity. The patient is allowed to shower.

DIET: The patient is to remain on a soft diet for the next several weeks. She has been advised not to eat any bread.

SPECIAL INSTRUCTIONS: The patient is to follow up with me in one week.

CONDITION ON DISCHARGE: Improved.

FINAL DIAGNOSES:

1. Gastroesophageal reflux disease.
2. Tachycardia-bradycardia syndrome.

THOMAS V. MINCHEFF, M.D.

3KD0823/KD/TSI
D 8/18/99
T 8/23/99

cc: Robert L. Bradley, M.D.

000524

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CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0039765

DATE: 12/20/99

PREOPERATIVE DIAGNOSIS:
1. Large type 4 hiatal hernia.

POSTOPERATIVE DIAGNOSIS:
1. Large type 4 hiatal hernia.

PROCEDURE PERFORMED:
1. Repair of large type 4 hiatal hernia, Hill procedure with posterior gastropexy and partial fundal plication.

SURGEON:
1. Dr. Mincheff.

FIRST ASSISTANT:
1. Dr. Bannister.

ANESTHESIA:
1. General endotracheal.

INDICATIONS FOR PROCEDURE: is a 57-year-old white male who has been complaining of fullness in the chest associated with nausea and vomiting for several months. A barium enema was performed recently which suggested that the mid transverse colon was in the chest. A CT scan was subsequently obtained which confirmed a large type 4 hiatal hernia with the entire stomach and portion of the mid transverse colon in the chest. Since the patient is symptomatic the patient will require repair of the large type 4 hiatal hernia.

DESCRIPTION OF THE PROCEDURE: The patient was taken to the operating room and placed in a supine position upon the operating room table. Preoperative IV antibiotics were administered. Compression stockings were placed on the lower extremities. After induction of general anesthesia and endotracheal intubation the abdomen and anterior chest was shaved and then prepped with Betadine solution. Sterile towels as well as sterile drapes were applied in the usual manner. A Foley catheter was previously inserted as well as a nasogastric tube. Using a 10 blade scalpel, a midline skin incision was made from the xiphoid down to below the umbilicus. The incision was carried down to the subcutaneous layers with use of electrocautery. The abdominal cavity was entered. The abdominal cavity was explored. The spleen was then placed and is normal. The rest of the colon and small bowel were normal. The liver is normal. The patient was found to have a large hiatal hernia and the entire stomach is in the chest. The mid transverse colon was also in the chest. The stomach and mid transverse colon were reduced into the abdominal cavity. The hernia sac is carefully excised. The dissection is carried out bluntly posterior to the esophagus and a Penrose drain is placed around the esophagus and the esophagus is given inferior traction. The gastrohepatic ligament is divided with the LDS. The Balfour retractor was inserted prior to exploring the abdominal cavity and this provided better exposure. A

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CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0039765

Beaver was placed along the liver and the liver was retracted cephalad. This provided better exposure to the hiatus. After the esophagus was completely freed and the sac was removed, the left and right crus were then identified. Further dissection was carried inferiorly to identify the median ligament and the preaortic fascia. The left and right crus was then reapproximated using 0 silk sutures. A 46 Maloney dilator was inserted and the hiatus was narrowed. Even after removal of the 46 French dilator, there was enough space to allow the fingertip to enter. After the hiatus was repaired, I then proceeded with a Hill procedure. The GE junction was cleared. The anterior vagus was identified. The posterior vagus was also palpated and preserved. Using 0 silk sutures, three sutures were placed seromuscular to the left and right of the anterior vagus and secured to the median ligament and preaortic fascia. The Penrose drain was removed. A good repair was obtained. The nasogastric tube was retained in the stomach. The patient was placed in reverse Trendelenburg during the case to allow for better exposure. He was then placed back into a normal supine position. The Balfour retractor was removed and then the wound was closed. The fascia was closed with a #1 Polysorb continuous suture. The skin was closed with staples. The skin was cleansed and dry. A sterile dressing was applied. The patient was later transferred to the recovery room in stable condition. Complications were none.

Material forwarded to the lab was a hernia sac.

THOMAS V. MINCHEFF, M.D.

3MB1220/MB/TSI
D 12/20/99
T 12/20/99

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CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME:

HOSPITAL#: 0039765

ADMITTED: 12/12/99
DISCHARGED: 12/27/99

The patient is a 57-year-old white male with a history of alcoholism. He presented with a two-week history of anorexia, nausea, vomiting, and unable to keep food down. He was felt to be clinically dehydrated and was admitted for IV fluids and evaluation.

His chest x-ray was significant for showing a very large hiatal hernia with loops of colon in the chest. With this, surgery consultation was requested and a CT of the chest and abdomen were ordered, which confirmed the hernia but also showed thrombosis of the inferior vena cava. Because of the inferior vena cava thrombosis, the patient was anticoagulated with heparin. When he was felt to be stable, he had surgical repair of his large hiatal hernia.

Postoperatively, he did well and had no complications.

On the day of discharge he was tolerating a regular diet well and had been converted to p.o. Coumadin for his anticoagulation.

DISPOSITION: He was discharged home with a diagnosis of dehydration, hiatal hernia, inferior vena cava thrombosis, and alcoholism.

DISCHARGE MEDICATIONS: Coumadin 2.5 mg once a day, Berocca Plus once every other day, Paxil 20 mg once a day, Valium 10 mg three times a day as needed, Lorcet Plus 1 q.4h. as needed.

He is to follow a regular diet and see Dr. Ward in a week.

TRESHA T. WARD, M.D.

1zd0108/ZD/TSI
D 1/05/00
T 1/09/00

2769

CALLIMA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:

HOSPITAL#: 4345

DATE: 07/31/01

PREOPERATIVE DIAGNOSIS: Gastroesophageal reflux disease, chronic asthma.

POSTOPERATIVE DIAGNOSIS: Gastroesophageal reflux disease, chronic asthma.

PROCEDURE PERFORMED: Laparoscopic Nissen fundoplication.

SURGEON: Thomas V. Mincheff, M.D.

FIRST ASSISTANT: Arthur W. Cooler, M.D.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE: [redacted] is a 57-year-old white female who was recently hospitalized with pneumonia and recurrent asthma. The patient has been complaining of dysphagia and occasional regurgitation. This has been going on for quite some time. The patient also has gastric emptying problems as well. The patient was referred for a 24 hour pH probe which confirmed marked gastroesophageal reflux disease. She has also undergone an EGD. Barium swallow noted a large hiatal hernia. The patient has tried medical management and this has failed. We have decided to proceed with laparoscopic repair of the hiatal hernia along with a 360 degree Nissen fundoplication.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room and placed in a supine position upon the operating room table. Preoperative IV antibiotics were administered. After induction of general anesthesia and endotracheal intubation, a 16 French Foley catheter was inserted and a 16 French orogastric tube was inserted. The entire abdomen was prepped with betadine solution. Sterile towels as well as sterile drapes were applied in the usual manner. Pneumatic compression stockings were placed on the patient prior to the prep.

Applying approximately 2 cm above the umbilicus a transverse skin incision was made just to the left with a 15 blade scalpel. Using the Hasson procedure, the abdominal cavity was entered. A 10/12 trocar was inserted. The balloon was inflated. The abdominal cavity was then insufflated with 4-6 liters of CO2 reaching a pressure of 15 mm Hg. The 10 mm camera 0 degree was inserted and the abdominal cavity was examined.

[illegible]

000528

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:

HOSPITAL#: 5215

The gastrohepatic ligament was carefully divided. A window was found. The dissection was carried out also using the harmonic scalpel dividing the ligamentary attachments. The peritoneum was incised anterior to the esophagus with the use of the harmonic scalpel. The right crus was first identified and later the left crus of the diaphragm is identified. The large hiatal hernia was reduced into the abdominal cavity. Fatty tissue was carefully freed. The posterior vagus as well as anterior vagus were clearly identified and preserved. A window was then developed behind the esophagus.

The dissection was carried out to the left of the esophagus freeing up the lateral attachments. A vessel loop was then placed around the esophagus and this provided traction. The Babcock clamp which was placed on the stomach prior to that was removed. After the distal esophagus has been freed circumferentially, I then proceeded with taking down the short gastrics. A 10-12 cm segment was freed. Using the harmonic scalpel, the short gastrics are divided. Dissection is carried all of the way up to the apex or cardia of the stomach. The frenuloesophageal attachments were divided.

After good length had been accomplished along the fundus, I then proceeded with closure of the esophageal hiatus. A 56 French bougie was inserted after the nasogastric tube was removed. The Bougie was carefully passed into the distal esophagus and then stomach under direct vision.

The left and right crus were then reapproximated with several 0 Surgidek sutures using the endostitch device. Clips were placed above the knot and then suture was divided. After partial closure of the hiatus, I then proceed with the 360 degree wrap. During the dissection, posterior to the esophagus and laterally, the 30 degree probe was used. With the partial closure of the hiatus, I then proceeded with the 360 wrap as stated above and a Babcock clamp was placed posterior to the esophagus. The fundus was brought up and brought behind the esophagus and a 360 degree wrap was obtained. A 56 French Bougie was passed down in order to provide a floppy wrap. Sutures were placed seromuscular using 3 Surgidek or nonabsorbable suture and using the endostitch device by Auto-suture encompassing the anterior portion of the esophagus with each stitch. Extracorporeal knot tying was performed and the knot was slid down toward to the esophagus as desired. After the knots had been tied, a clip was placed and the suture was cut. The Babcock clamp was released.

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 5245

was closed with 0 Polysorb interrupted sutures. The puncture sites were closed with staples. The skin was cleansed and dried. Sterile dressings were applied. After extubation, the patient was transferred to the recovery room in stable condition.

COMPLICATIONS: None. The patient tolerated the procedure well.

THOMAS V. MINCHEFF, M.D.

SKD0707/KD/TSI
D 7/06/00
T 7/07/00

cc: W. Rice Dixon, M.D.
Allen C. Smith, M.D.

000530

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME:

HOSPITAL#: 0007245

ADMITTED: 07/06/00
DISCHARGED: 07/08/00

ADMITTING DIAGNOSIS: Gastroesophageal reflux disease.

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESSES

is a 59-year-old white female who has recently been diagnoses with gastroesophageal reflux disease. She has also had pulmonary problems, including asthma and pneumonia as a result of her reflux problems. She has been on medical management for quite some time. However, conservative management has been unsuccessful. The patient is now scheduled for definitive care. She is scheduled for a laparoscopic Nissen fundoplication.

PAST HISTORY: Significant for gastroesophageal reflux disease, asthma, and arthritis.

OPERATIONS: Appendectomy, tonsillectomy, jaw surgery, C6 & C7 fusion.

ALLERGIES: Penicillin and Solu-Medrol.

CURRENT MEDICATIONS: Asthma inhalers, Prevacid, Reglan, Carafate, arthritis medications, and sleeping medications.

FAMILY HISTORY: Father had diabetes. Parents, heart disease.

INVENTORY BY SYSTEMS: Noncontributory.

SOCIAL HISTORY: Alcohol: None. Drugs: None. Tobacco: None. The patient lives with her family.

PHYSICAL EXAMINATION: Essentially unremarkable except for some mild inspiratory wheeze.

LABORATORY FINDINGS: Within normal limits.

HOSPITAL COURSE:

The patient was admitted on July 6, 2000. She underwent a laparoscopic Nissen fundoplication. Preoperatively and postoperatively IV steroids were administered. On the first postoperative day, the nasogastric tube was removed and the patient was started on clear liquids which was slowly advanced to a regular diet. Wounds remained clean and dry. Antiemetics were administered as needed. On July 8, 2000, the patient was

000531

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 0005215

SPECIAL INSTRUCTIONS: The patient is to follow up with me in 1 week for staple removal. The patient is allowed to shower.

CONDITION ON DISCHARGE: Good.

FINAL DIAGNOSIS: Gastroesophageal reflux disease.

THOMAS V. MINCHEFF, M.D.

tm:0717/ZD/TSI
D: 7/12/96
T: 7/17/96

cc: W. Elton Dixon, M.D.

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 13723

ADMITTED: 02/16/01
DISCHARGED: 03/22/01

DISCHARGE DIAGNOSES:

1. Persistent nausea and vomiting.
2. Recurrent pancreatitis.
3. Chronic alcohol abuse.
4. Large fixed hiatal hernia with gastroesophageal reflux disease.
5. Status post exploratory laparotomy with closure of the crura of the diaphragm and closure of perforation of esophagus with a Tahl stomach patch. Status post feeding gastrostomy.
6. Helicobacter pylori gastritis.
7. Distal esophageal stricture.
8. Postbulbar duodenitis.
9. Gastroparesis of undetermined etiology.
10. Polychromal gamma globinopathy (IGA, IGM).
11. Chronic hypotension with systolic about 100.
12. Medical noncompliance.

DISCHARGE MEDICATIONS: The patient was discharged home on TPN. The patient was placed on a clear liquid diet only and he had some Flonase for some allergic rhinitis. Other medications included; Zantac drip and his TPN. This will be monitored by home health for daily tube feedings. No additional medications were given on discharge.

HISTORY AND PHYSICAL: This patient's history and physical is as per the medical record, see the chart for full clinical details.

CLINICAL COURSE: This patient when admitted to this institution had been recently discharged two weeks prior. He has a known history of recurrent nausea, vomiting, chronic pancreatitis, chronic ethanol abuse, and medical noncompliance. This has put off surgery on his chronic reflux for several months to years refusing surgical intervention secondary to significant fear of surgery. However, the patient's symptoms progressively worsened and the patient finally agreed to surgical intervention.

The patient was taken to surgery for a fundoplication. He was found to have a very friable esophagus and perforation was noted and ~~closed~~ repaired. With the above, the patient had a G-tube placed for feeding supplementation. However, when the feeding tube was used, high residual was noted and the feeding tube was held. Therefore, the patient had to be started on peripheral TPN for nutritional supplement. The patient was tried on a clear liquid diet and then advanced and the patient still had recurrence of nausea and vomiting.

5/14/01 RLM

A gastrografin study and referral to GI was done via Dr. Bright Williamson in Florence. This revealed that he had an esophageal stricture which is the site of his esophageal repair which explains his recurrence of nausea and vomiting. In addition, it was noted that the patient had gastroparesis. He had no emptying of the stomach.

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 13723

Initially it was thought that the patient had a duodenal stricture, but it was found that he had some postbulbar duodenitis along with gastroparesis. Therefore, the patient's stomach was not emptying and therefore made his G-tube ineffective. There was a consideration about whether the patient was a candidate for a J-tube placement, however, the patient refused.

With the above interventions, the patient had a prolonged stay with a waxing and waning course. He was deconditioned secondary to prolonged bed rest. Physical therapy was ordered. The patient became ambulatory and felt somewhat stronger. The patient had some intermittent joint pains which were treated symptomatically. However, he continued to have persistent nausea and vomiting with poor gastric emptying. This became problematic as how to treat the patient.

The patient's distal esophageal stricture was status post surgery and it needed at least 6-8 weeks of healing before dilatation could be commenced, however, the exact etiology of his postbulbar duodenitis is unclear. The patient has been on Helicobacter pylori therapy while hospitalized and consideration of this could be secondary to Helicobacter pylori infection as the patient has been treated with this in the past with no significant improvement.

It was decided that this patient will be managed as an outpatient. A Hickman catheter was placed for TPN. He was to continue on the above peripheral feedings for the next three weeks and then be reseen back in the GI clinic with Dr. Bright Williams and followup with Dr. Bannister, Dr. Cooler and Dr. Mincheff for additional intervention. This patient is to take all medications as directed and follow up as scheduled.

Bradley

ROBERT L. BRADLEY, M.D.

1KD0410/KD/TSI
D 4/08/01
T 4/10/01

BLACKMON PARALEGAL SERVICES
123 N. ERVIN STREET
DARLINGTON, SC 29532

Lynn G. Blackmon
Paralegal

Phone: (843) 398-1282
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DATE: November 12, 2006 FAX NO.: (843) 664-9180

TO: Daryl Corbin, Esq. COMPANY: Corbin Law Firm

FROM: Lynn G. Blackmon
Paralegal to Martin S. Driggers, Jr.

NUMBER OF PAGES: 27

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-0322

Martin S. Driggers, Jr. of Sweeny, Wingate & Barrow, P.A. is defending Carolina Pines Regional Medical Center in the above-referenced matter. I am paralegal to Mr. Driggers.

See attached **first of two** groupings of medical records from Mr. Driggers.

From: Lynn G. Blackmon [lgbnsc@bellsouth.net]
Sent: Saturday, November 11, 2006 3:59 PM
To: 'cbscorbinlaw@bellsouth.net'
Subject: Person vs. Carolina Pines Regional Medical Center
Christine,

See attached continuation of medical records from Mr. Driggers in this matter.

Lynn G. Blackmon
Blackmon Paralegal Services
123 N. Ervin Street
Darlington, SC 2952
P: (843) 398-1282
F: (843) 398-1772
E: lgbnsc@bellsouth.net

S·W·B

SWEENY WINGATE & BARROW P.A.

November 12, 2006

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 383-2146
msd@swblaw.com

VIA FACSIMILE (843) 664-9180:
MR DARYL J CORBIN
CORBIN LAW FIRM
PO BOX 447
FLORENCE SC 29503

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-322
Our File No. 1863/4975

Dear Daryl,

Enclosed please find copies of medical records from Carolina Pines Regional Medical Center. Please allow this letter to serve as my supplemental response to your Request for Production of Documents.

This fax letter is the second of two fax letters sending these documents.

With kind regards, I remain

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

Martin S. Driggers, Jr.

MSD/lgb
Enclosures

000537

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 000004444687

DATE: 12/16/02

PREOPERATIVE DIAGNOSIS: Gastroesophageal reflux disease.

POSTOPERATIVE DIAGNOSIS: Gastroesophageal reflux disease.

PROCEDURE PERFORMED: Laparoscopic Nissen fundoplication.

SURGEON: Thomas V. Mincheff, M.D.

FIRST ASSISTANT: C. Brooks Bannister, M.D.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE: a 31-year-old Vietnamese male who has had severe reflux symptoms. The patient has undergone an EGD, a 24-hour pH probe and esophageal manometry studies which indicates severe gastroesophageal reflux disease. The patient has been treated aggressively with medications. However, the patient persists to have severe symptoms. After careful discussion with the patient, we elected to proceed with a reflux procedure. As discussed, we will perform a laparoscopic Nissen fundoplication. The risks and complications of the procedure have been thoroughly reviewed with the patient and the patient wishes to proceed.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room and initially placed in the supine position upon the operating room table. Pneumatic sequential compression stockings were placed on the lower extremities. Preoperative IV antibiotics were administered. After induction of general anesthesia and endotracheal intubation, a 16 French Foley catheter was inserted and an 18 French nasogastric tube was inserted. The patient was then repositioned in the lithotomy position upon the operating room table with both legs in stirrups. The entire abdomen was prepped with betadine solution and sterile towels as well as sterile drapes were applied in the usual manner.

Initially five trocars were used. An incision was made 4 cm above and to the left of the umbilicus. Using a Hasson open approach, the abdominal cavity was entered. An origin 10 mm trocar was inserted and secured. The abdominal cavity was inflated with 4-6 liters of CO2 reaching a pressure of 15 mm of Hg. A 10 mm 0 degree camera was then inserted and then in the right upper quadrant or right subcostal area a 10 mm trocar was inserted under direct vision. To the right of the xiphoid, through a separate stab wound a 10 mm trocar was inserted again under direct vision in the left subcostal area through a separate stab wound a 10 mm trocar was inserted, again under direct vision. The fifth 10 mm trocar was inserted.

The patient was then repositioned in a reverse Trendelenburg position. I elected to work from the right side. A Babcock clamp was placed on the stomach and the stomach was retracted inferiorly. The gastrohepatic ligament was carefully opened and a small window was

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000538

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 00000444687

developed and the dissection was carried superiorly. The peritoneal attachments across the esophagus were carefully freed and divided with the use of the harmonic scalpel. The phrenoesophageal attachments were carefully divided with the harmonic scalpel. The zero degree camera was changed over to a 30 degree scope and dissection was carried up into the mediastinum. The esophagus was freed circumferentially. The posterior vagus is identified and later kept within the wrap. The left and right crux are carefully dissected free and clearly identified.

After a complete window has been provided through careful dissection posterior to the esophagus, I then proceeded in taking down the short gastric vessels. This will provide less tension on the wrap. The short gastric were divided using a harmonic scalpel. Careful dissection was provided and hemostasis was obtained.

After we had dissected around the esophagus prior to taking down the short gastric, a vessel loop was placed around the esophagus and this was used as traction. After completion of taking down the short gastric, we were ready for the wrap. First the right and left crux were approximated and the hiatus was narrowed with placement of two 0 nonabsorbable rated sutures.

An endostitch was used to place the sutures. Extracorporal knot tying was performed. A clip was placed across the suture and the sutures were cut. After the hiatus was narrowed down, a Babcock clamp was passed behind the esophagus and the stomach was grasped and brought around the esophagus in a 360 degree wrap. The wrap was placed high on the esophagus and a 2 cm wrap was performed. The wrap was performed over a Bougie. I used an 18 French nasogastric tube and a 40 French Bougie which equals 58 French. A loose wrap was thereby obtained. The first muscular suture was placed on the fundus and then a suture was placed into the muscle of the esophagus and through the seromuscular layer on the right side. An endostitch was used and the suture was tied using endocorporal knot tying.

Several other sutures were placed in a similar manner again using a 0 nonabsorbable graded suture. A tension-free wrap was completed. The area was checked for hemostasis and the area was dry. The Bougie had been previously removed. The nasogastric tube was retained. The individual cannulas were then removed under direct vision. The two sites above the umbilicus were closed. The one to the right was closed with an endoclose suture using 0 Vicryl and the one on the left was closed after deflation of the abdomen and the fascia was closed with interrupted 0 Vicryl sutures.

The other sites were later closed with staples. During the procedure, I used a sixth port which was a 5 mm trocar which helped me advance the camera. This was also later closed with staples. The patient was taken out Trendelenburg. The abdomen was cleansed and dried and sterile dressings were applied. The patient was later extubated and transferred to the recovery room in stable condition.

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0000044667

COMPLICATIONS: None.

ESTIMATED BLOOD LOSS: 100 cc.

FLUIDS: 3700 cc of crystalloid.

DRAINS: None.

INTRAOPERATIVE FINDINGS: A significant amount of reaction was noted around the esophagus.

THOMAS V. MINCHEFF, M.D., F.A.C.S.

lkd1227/KD/TSI
D 12/16/02
T 12/17/02

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 0000044687

ADMITTED: 12/16/02
DISCHARGED: 12/18/02

ADMITTING DIAGNOSIS: Gastroesophageal reflux disease.

BRIEF HISTORY AND HOSPITAL COURSE: a 31-year-old Vietnamese male who has documented severe gastroesophageal reflux disease and symptoms. The patient has undergone an EGD, a 24-hour pH probe and esophageal manometry studies which indicate severe gastroesophageal reflux disease. The patient has been treated aggressively with medications. However, the patient persists to have severe symptoms. After careful discussion with the patient, we elected to proceed with an anti-reflux procedure.

On the 16th of December, 2002, the patient underwent a laparotomy Nissen fundoplication. For further details, please see operative note.

The postoperative course was essentially uneventful. The patient received postoperative analgesics on a p.r.n. basis. On postoperative day #1, the nasogastric tube was removed and the patient was started on clear liquids. By the second postoperative day, the patient was on a soft diet.

Postoperative day #2, the patient was doing remarkably well, tolerating his diet. His wounds remained clean and dry. He was ambulating well. We elected to discharge the patient home on the 18th of December 2002.

DISCHARGE MEDICATIONS: Lorcet 1-2 tablets p.o. q.6h.

DIET: Soft.

The patient has been advised to eat no bread foods.

ACTIVITIES: The patient is to convalesce at home.

SPECIAL INSTRUCTIONS: The patient is to followup with me towards the end of the week for a wound check.

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 0000044687

CONDITION ON DISCHARGE: Improved.

FINAL DIAGNOSIS: Gastroesophageal reflux disease.

THOMAS V. MINCHEFF, M.D., F.A.C.S.

Sod1228/OD/TSI
D 12/26/02
T 12/28/02

000542

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CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0003024292

DATE: 5/12/03

PREOPERATIVE DIAGNOSIS: Type 3 paraesophageal hernia.

POSTOPERATIVE DIAGNOSIS: Type 3 paraesophageal hernia.

PROCEDURE PERFORMED: Paraesophageal hernia repair.

SURGEON: Thomas V. Mincheff, M.D.

FIRST ASSISTANT: Arthur W. Cooler, M.D.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE: [redacted] is a 79-year-old white female who has been complaining of severe dysphagia and chest pain for quite sometime. She has been unable to eat. A CT scan and upper GI were performed which revealed a large hiatal hernia. On careful evaluation, the patient was noted to have a type 3 paraesophageal hernia which will require repair. Medical and cardiology consultation were obtained and the patient was cleared for surgery. The risks and complications of the procedure have been thoroughly reviewed with the patient and her family. All aspects of the procedure have been discussed and reviewed and the patient and family wish to proceed.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room and placed in a supine position upon the operating room table. Pneumatic sequential compression stockings were placed on the lower extremities. A central line was placed via the right internal jugular vein for better access. The patient had poor peripheral access.

After induction of general anesthesia and endotracheal intubation, a Foley catheter and nasogastric tube were inserted. The entire abdomen was prepped with betadine solution. Sterile towels as well as sterile drapes were applied in the usual manner. With the using of a 10 blade scalpel, an upper midline skin incision was made from the xiphoid down to the umbilicus. The incision was carried down through the subcutaneous layers with the use of electrocautery. The incision was carried down through the abdominal wall. The abdominal cavity was entered. The patient was then placed in a reverse Trendelenburg position. Palpation of the abdominal cavity does not reveal any further pathology. Retractors were inserted. The stomach was then mobilized and reduced into the abdominal cavity. The cardia and portion of the fundus were noted to be in the chest. The patient had a type 3 paraesophageal hernia.

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PLAINTIFF'S EXHIBIT
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CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0000034382

The hernia sac was carefully freed. The esophagus was mobilized and a Penrose was placed around the esophagus. Attention was taken to preserve the posterior and anterior vagus nerves. In order to get better exposure, the short gastrics were taken down, divided between clamps and ligated using 1-0 Vicryl ties. The gastrohepatic ligament was divided between clamps and ligatures were placed using 2-0 Vicryl ties. A few of the branches of the left gastric were thereby taken. The esophagus was freed posteriorly identifying the left and right cruz. The dissection was carried down to identify the preaortic fascia staying anterior to the aorta. The median arcuate ligament was identified as part of the preaortic fascia.

The nasogastric tube was checked to make sure that now it was in the stomach. The anesthesiologist had trouble initially passing the nasogastric tube since a portion of the stomach was in the chest. With the stomach now reduced and in normal anatomic position, the nasogastric tube was carefully passed into the stomach and checked for position.

We then proceeded with closure of the esophageal hiatus. A 46 French Bougie was passed and then the left and right cruz were reapproximated with several 0 silk interrupted sutures. The sutures were tied and after the sutures were tied, the Bougie was removed. In order to obtain better exposure, previously the triangular ligament was taken down to fold the left lobe of the liver down. This provided better exposure to the anterior esophagus.

After the cruz was sutured, we then proceeded with the partial wrap. I elected to proceed with a Hill procedure placing 3-4 muscular sutures along the cardia fundus securing the anterior stomach to the medial arcuate ligament with interrupted 2-0 silk sutures. A good partial wrap was thereby completed securing the stomach within the abdominal cavity and recreating the normal position of the GE junction and angle within the stomach cavity. The Penrose drain was then removed. The nasogastric tube was checked once again for good position and then the patient was taken out of reverse Trendelenburg.

The abdominal wound was then closed. The fascia was closed with a running #1 Vicryl continuous suture. The wound was irrigated with normal saline. The skin was closed with staples. The skin was cleansed and dried. A sterile dressing was applied. After extubation, the patient was transferred to the recovery room in stable condition. A postprocedure chest x-ray was obtained to verify position of the central venous line.

COMPLICATIONS: None.

ESTIMATED BLOOD LOSS: Minimal.

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Report status: TRANSCRIBED

Pat Nbr: 1829977 /
Req By: 0121 MINCHEFF, THOMAS V
Med. Rec: 0000024382 Pat.Type: I1
Type: MED Dict.: 06/06/2003 06:05 3kd06052
Physician: MINCHEFF, THOMAS V

Admit...: 05/06/2003 12:26
Dischrg: 05/23/2003 16:51
Location: Unknown
Trnsc.: 06/06/2003 06:05

PATIENT NAME:
MEDICAL REC#: 0000024382
ACCOUNT NO.: 1829977
DICTATED BY: THOMAS V. MINCHEFF, M.D., F.A.C.S.

DATE OF ADMISSION: 5/06/2003
DATE OF DISCHARGE: 5/23/2003

ADMITTING DIAGNOSIS: Large paraesophageal hernia.

BRIEF HISTORY AND HOSPITAL COURSE: is a 79-year-old white female who had been complaining of severe dysphagia and chest pain for quite sometime. She was unable to eat. A CT scan and upper GI were performed which revealed a large hiatal hernia. On careful evaluation, the patient was noted to have a type-3 paraesophageal hernia which will require repair.

PAST MEDICAL HISTORY: The patient's past medical history was significant for gravida 6, para 5, abortus 1, status post total abdominal hysterectomy for benign disease, status post permanent pacemaker implantation with complications in 1998, status post laparoscopic cholecystectomy in 1998. Status post excision of a benign mass from the right breast. Status post right rotator cuff repair. Status post appendectomy. Status post hemorrhoidectomy. Status post bilateral total knee replacements. Marked gastroesophageal reflux disease, depression, anxiety, status post excision of a stomach polyp in 1999, chronic hypertension, history of heel spurs, plantar fasciitis of the right foot. History of insomnia. History of esophageal stricture.

History of proctitis. Allergic rhinitis. Raynaud's disease, osteoarthritis, Baker's cyst behind the left knee, status post transient excision of a tubulovillous adenoma of the rectum with high grade dysplasia on September 21, 2000, status post cardiac

Report status: TRANSCRIBED

Pat Nbr: 1209977 Admit...: 05/06/2003 11:30
Req By: 0191 MINCHEFF, THOMAS V Discharge: 05/23/2003 16:51
Med. Rec: 9000024382 Pat.Type: II Location: Unknown
Type: MED Dict.: 06/06/2003 08:05 3kd06052 Trnsc.: 06/06/2003 08:01
Physician: MINCHEFF, THOMAS V

catheterization in August of 2000, right-sided low back pain with sciatica, iron deficiency anemia secondary to heme-positive stools in 2000, hyperlipidemia, osteopenia.

Medical and cardiology consultations were obtained and the patient was cleared for surgery. On 12 May 2003, the patient underwent repair of a large paraesophageal hernia. For further details, please see the operative note. Postoperatively, the patient developed a postoperative ileus which gradually resolved spontaneously. No further surgery was required. The patient was started on clear liquids and gradually the diet was slowly advanced. For a short period of time, the patient was on total parenteral nutrition. Physical therapy was performed. The patient's wounds remained clean and dry. There were no signs of infection. Respiratory therapy was performed.

The patient had bibasilar atelectasis. Dietary consultation was obtained. The patient later regained normal bowel activity and once the ileus resolved, was started back on p.o. intake and this was gradually increased. By 20 May 2003, the patient was on a soft diet. White count remained normal. TPN was gradually decreased and later discontinued. By 23 May 2003, the patient was tolerating solid food. On 23 May 2003, the patient was subsequently discharged home.

DISCHARGE INSTRUCTIONS: The patient is to resume the same diet at home.

ACTIVITIES: The patient has been advised to do no heavy lifting or straining.

MEDICATIONS: During the patient's hospitalization, she appeared to have developed a reaction to Lorcet. The patient was given a prescription for Darvocet. The patient is to continue on her regular medications.

SPECIAL INSTRUCTIONS: The patient is to follow up with us in our office.

CONDITION ON DISCHARGE: Was improved.

FINAL DIAGNOSIS: Large paraesophageal hernia.

000546

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0000025140

DATE: 9/15/03

PREOPERATIVE DIAGNOSIS:
1. Gastroesophageal reflux disease.
2. Reflux esophagitis.

POSTOPERATIVE DIAGNOSIS:
1. Gastroesophageal reflux disease.
2. Reflux esophagitis.

PROCEDURE PERFORMED: Nissen fundoplication.

SURGEON: Thomas V. Mincheff, M.D.

FIRST ASSISTANT: C. Brooks Bannister, M.D.

ANESTHESIA: General endotracheal anesthesia.

INDICATIONS FOR PROCEDURE: is a 56-year-old white female who was initially referred to us by Dr. Bell. The patient has been complaining of chronic reflux symptoms. The patient has been refractory to medical management. A 24-hour pH probe and esophageal manometry studies were obtained. The patient was found to have severe reflux disease with a DeMeester score of 56. Esophageal motility was normal.

Since the patient has not responded to medical treatment, we have thoroughly reviewed the options for correction of the reflux symptoms. The patient has elected to proceed with a Nissen fundoplication. We have discussed both the open and laparoscopic approaches. As discussed with the patient, we will first attempt a laparoscopic approach. However, the patient has had previous surgery. The patient is aware of the risks and complications of the Nissen fundoplication including injury to the esophagus, stomach, spleen, and liver. All aspects have been thoroughly reviewed, and the patient wishes to proceed. The patient is also aware that, should we not be able to proceed laparoscopically, we may have to convert to an open procedure.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room and placed in a supine position upon the operating room table. Preoperative antibiotics were administered. Pneumatic sequential compression stockings were placed on the lower extremities. After induction of general anesthesia and endotracheal intubation, the patient was placed in a modified lithotomy position upon the operating room table. A Foley catheter was inserted. The nasogastric tube was inserted. An 18-French nasogastric tube was inserted. The [illegible] was prepped with Betadine solution, and sterile drapes were applied in the usual manner.

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CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0000077140

DESCRIPTION OF PROCEDURE, CONTINUED: Staying approximately 4 cm above and to the left of the umbilicus, a small transverse skin incision was made with the #15 blade scalpel. Using a Hasson open approach, the abdominal cavity was entered. The abdominal cavity was inflated with 4 -6 liters of CO2, reaching a pressure of 15 mmHg. The 10 mm 0-degree camera was first inserted, and the abdominal cavity was examined. The liver appears normal in size. The stomach appears normal. However, there is a large amount of fat overlying the stomach. The patient has multiple adhesions in the right upper quadrant. This is from previous surgery.

Through a separate stab wound in the left upper quadrant, a 10 mm trocar was inserted just beneath the ribs. Through a separate stab wound in the right upper quadrant, a third 10 mm trocar was inserted. In the subxiphoid area through a separate stab wound, another trocar was inserted. Four cm above and to the right of the umbilicus, the fifth trocar was inserted, again under direct vision.

The patient was then placed in a reverse Trendelenburg position. Using the fan, the liver was carefully reflected superiorly. A Babcock clamp was placed along the stomach, and the stomach was pulled down. We first attempted to approach the area laparoscopically. I first tried to take down the gastrohepatic ligament. However, due to a large amount of fat in this area, exposure was difficult. Since we could not progress, we elected then to convert to an open procedure. The individual trocars were removed. The Hasson trocar was removed, and the fascia was closed with a #0 Vicryl figure-of-eight sutures.

Using a #10 blade scalpel, a midline skin incision was made from the xiphoid down to the umbilicus. The incision was carried down through the subcutaneous layers with use of electrocautery. The fascia was divided with electrocautery, and the abdominal cavity was entered. Retractors were inserted. In order to get better exposure we took down the triangular ligament and folded the left lobe of the liver over. The spleen was densely attached to the left lobe, and through careful dissection, this was freed. A small superficial capsular tear was noted in the spleen. This was controlled with mere placement of Surgicel.

The gastrohepatic ligament was then divided, and careful dissection was carried across the esophagus, dividing the peritoneum. The left lateral attachments were then divided. The phrenoesophageal attachments were divided using careful sharp dissection. Through careful blunt dissection, the esophagus was palpated posteriorly and freed. The posterior vagus was identified and preserved. A Penrose drain was placed around the esophagus and was placed on traction. The 18-French nasogastric tube was easily palpated within the esophagus.

000548

548

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0[illegible]0025140

DESCRIPTION OF PROCEDURE, CONTINUED: A substantial window was then developed, dissecting the esophagus up into the mediastinum. The left and right crura were then identified. The hiatal hernias were brought down into the stomach. The left and right crura were approximated with placement of #0 silk interrupted sutures. In order to perform a 360 degree wrap, we took down several of the short gastrics approximately one-third of the way down along the greater curvature of the stomach. Short gastrics were divided between clamps, and ligatures were placed using 2-0 Vicryl ties. Also clips were applied. The other portions of the stomach were then wrapped around the esophagus without difficulty.

A floppy wrap was then developed. A 40-French bougie was then passed down through the esophagus alongside the 18-French nasogastric tube, thus providing a 58-French dilation. Then a 360-degree wrap was performed with placement of 2-0 silk seromuscular sutures placed individually. A suture was placed through the muscular layer of the esophagus as well. Three sutures were placed, thereby providing at least a 3 cm wrap on the esophagus. No kinking was noted. Each suture was placed individually and then tied. After the fundoplication was completed, the bougie was removed, leaving the nasogastric tube behind.

The wrap was checked again and found to be adequate. The spleen was checked again, and there was no bleeding. The abdomen was then irrigated with normal saline. The area was dry. The posterior vagus nerve was incorporated in our wrap. The Penrose drain was removed.

The patient was then placed back in supine position. The abdominal wound was then closed. The fascia was closed with a running #1 PDS continuous suture. The subcutaneous layer, which is quite thick, was then closed with interrupted 3-0 Vicryl sutures. The skin was closed with staples. The skin was cleansed and dried. The sterile dressing was applied. After extubation, the patient was transferred to the recovery room in stable condition.

COMPLICATIONS: None.

THOMAS V. MINCHEFF, M.D.

4CWC015/5[illegible]/127
D: 4/3-/0[illegible]
T: 5/15/0[illegible]

cc: [illegible]

0000548

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME:

HOSPITAL#: 0000025143

ADMITTED: 9/15/03
DISCHARGED: 9/20/03

HISTORY OF PRESENT ILLNESS: This is a 56-year-old Caucasian female kindly referred by Dr. James Bell with a significant gastroesophageal reflux disease. This has been documented with appropriate studies and also she showed no abnormality on her esophageal manometry. She had endoscopy and had been treated aggressively with proton pump inhibitors. Due to her ongoing symptoms, she was prepared for a possible laparoscopic cholecystectomy. She had multiple prior abdominal procedures, and it was unknown as to whether she would have to be converted to an open because of adhesive disease.

SURGERIES: Prior surgeries included a partial hysterectomy, cholecystectomy, umbilical hernia, exploration for adhesions.

MEDICATIONS: She is on multiple medications including: Celebrex, Feridium, and Protonix.

PHYSICAL EXAMINATION: Was essentially unremarkable except for multiple abdominal scars.

LABS: Any important labs will be discussed in the hospital course.

HOSPITAL COURSE: The patient was taken to the operating room on September 15, 2003, where attempted laparoscopic repair was performed. This had to be converted to an open procedure. Postoperatively on the first postoperative day, she was afebrile. She had minimal NG tube drainage and the nasogastric tube was discontinued at that time. Because of prior deep venous thrombosis, she was maintained on Lovenox prophylactically. On the second postoperative day, she was ambulatory and complaining of some headaches. She continued to slowly improve.

She was having gas pains on the third postoperative day, but had passed flatus on three different occasions. Her pulse oximetry at this time was 91% and she was placed on two liters of nasal cannula. On the nineteenth, she had stooled. Her Foley catheter was discontinued at this time and her diet was advanced. On the twentieth, she was taking p.o. feedings well. She was doing quite well and she was discharged to home at that time. She was to be followed up in our office.

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CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 00-02025140

DISCHARGE MEDICATIONS: Include Lorcet plus for pain.

FINAL DIAGNOSES: Gastroesophageal reflux disease and hiatal hernia.

C. BROOKS BANNISTER, M.D.

4KD1025/KD/TSI
D 10/24/03
T 10/25/03

000551

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 000002040[illegible]

DATE: 6/21/05

PREOPERATIVE DIAGNOSIS: Gastroesophageal reflux disease.

POSTOPERATIVE DIAGNOSIS: Gastroesophageal reflux disease.

PROCEDURE PERFORMED: Open Nissen fundoplication.

SURGEON: C. Brooks Bannister, MD

ASSISTANT: Thomas Mincheff, MD

ESTIMATED BLOOD LOSS: 450 cc.

INDICATIONS FOR PROCEDURE: This is a 70-year-old Caucasian male who had documented gastroesophageal reflux disease. This was both by endoscopy and with a pH probe monitoring. His esophageal manometry was normal. He was also having recurrent respiratory problems, which his referring physician felt might be secondary to his reflux. He was referred for an open Nissen fundoplication. He was kindly referred by Dr. James Bell.

DESCRIPTION OF PROCEDURE: The patient was placed in the supine position on the operating room table and under adequate general endotracheal anesthesia, the abdomen was prepped and draped in a sterile manner. A midline incision was made from xiphoid at the umbilicus and the abdomen was entered in the usual careful manner obtaining hemostasis with electrocautery. Once entering the abdomen and exploration was carried out, his preoperative hemoglobin was 9.4 gm. He had fairly significant diverticular disease in the sigmoid colon. There were no masses lesions palpable in the colon. There were no other masses felt in the abdomen. The liver appeared normal. Following this, the left triangle region of the left lobe of the liver was mobilized with Metzenbaum scissors exposing the hiatus. The peritoneum at the hiatus was incised with scissors and then the esophagus was bluntly mobilized passing a Penrose drain around the esophagus. A small amount of areolar tissue in the peritoneum and hernia sac was then lysed along the lesser curvature side of the stomach and esophagus. Following this, the area was chosen and the short gastrics were then mobilized. They were divided between Hemoclips and dividing more towards the upper pole of the spleen. The Hemoclips malfunctioned here and there was some bleeding encountered. This was controlled by isolating the bleeder carefully, clamping it, and then suture ligating with 3-0 silk suture ligature, and then ligating proximally with a free tie of 2-0 silk. Further mobilization was carried out mobilizing the entire greater curvature to the esophagus. There was a good more than two fingerbreadth window created and the stomach was very floppy and easily wrapped around the esophagus. Following this, once we had mobilized enough and had enough stomach, the NG tube was removed and then a 50-French bougie dilator passed into the stomach. Prior to performing the wrap, the crura were approximated with interrupted 0 silk sutures.

000552

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME: HOSPITAL#: 0000020458

Once the crura had been approximated to again about a two fingerbreadth hiatus, the wrap was then performed. The stomach was passed around the esophagus and the stomach was very mobile in this area and easily came around. The Nissen wrap was then performed by suturing the stomach, taking a bite in the stomach, and then through the esophagus, and then back into the stomach creating about a 3 to 4-cm wrap. This was right at the EG junction. A very good wrap was performed. It was under no tension and it was formed easily. The Penrose drain was then removed, the Bougie dilator was removed, and the nasogastric tube easily passed into the stomach. The area was then irrigated and suctioned. Hemostasis was adequate. Estimated blood loss to be about 450 cc, which sounds a little high to me; however, that was an estimate from the anesthetist. Because his hemoglobin was 9.4 preoperatively, he would be starting with 1 unit transfusion because of his age and the past history of coronary artery disease, (he had, had a prior CABG). Once the area was carefully inspected and no bleeding was seen, the abdominal closure was accomplished by closing the fascia with continuous running #1 PDS suture. The skin was closed with the skin staplers. The patient was then awakened, extubated, and taken to the recovery room in satisfactory condition.

C. BROOKS BANNISTER, M.D.

42M0621/ZM/TS1
D 6/21/05
T 6/21/05

cc: T. James Bell, MD

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME: HOSPITAL#: 0000020458

ADMITTED:
DISCHARGED: T/S 8/5/05

HISTORY AND HOSPITAL COURSE: The patient was admitted to the hospital with Either transient ischemic attack or Petit mal attack. He was confused at home. He had been having similar spells. Seizure was considered, and Dr. Pan was seen in consultation. Arrhythmia was considered due to anemia, probably from esophageal blood loss from reflux esophagitis. His B12 was low, and hopefully this was the cause of some of his dementia. His gastroesophageal reflux was stable. EEG was pending. After four days in the hospital, he was stable. He was given B12, and he will need to take B12 on a daily basis for a while at dialysis or at home. It also was found he needed reflux surgery, but he was able to be discharged from the hospital to resume his home medications, takes B12 2 cc Wednesday at dialysis, and Chromogen one a day.

FINAL DIAGNOSIS:
1. Acute mental status changes.
2. Vitamin B12 deficiency with dementia, early.
3. Anemia secondary to esophageal bleed and B12 deficiency.
4. Gastroesophageal reflux disease.
5. Atherosclerotic cardiovascular disease, remote, post bypass.

T. JAMES BELL, JR., M.D.

3SW0726/SW/TSI
D 7/24/05
T 7/26/05

73466

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:
MR #: 63399
ROOM #:

HOSPITAL #: 008868361
DOB: 12/23/1969
DATE: 08/02/2006

PREOPERATIVE DIAGNOSIS:
1. Morgagni congenital diaphragmatic hernia.
2. Biliary dyskinesia.

90 day

POSTOPERATIVE DIAGNOSIS:

PROCEDURE:
1. Laparoscopic repair of congenital diaphragmatic hernia with Alloderm.
2. Laparoscopic cholecystectomy.

39541

SURGEON: Jason Richard Dameron, MD

ASSISTANT: Thomas Mincheff, M D

ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: Minimal.

DRAINS: None.

SPECIMENS: Gallbladder.

COMPLICATIONS: None.

HISTORY: The patient is a 36-year-old Caucasian male previously evaluated by Dr. Mincheff for abdominal pain. CT scan was obtained which demonstrated a diaphragmatic hernia containing what appeared to be the transverse colon in the anteromedial aspect of the right hemidiaphragm. The patient was also having postprandial abdominal pain with nausea and vomiting especially after the intake of fatty, greasy foods. A HIDA scan was obtained which demonstrated an abnormal gallbladder ejection fraction. Laparoscopic with possible conversion to an open procedure for his diaphragmatic hernia repair as well as laparoscopic and possible open cholecystectomy were discussed with the patient. After all risks and benefits and alternative therapies were discussed with the patient, he elected to proceed.

DESCRIPTION OF THE PROCEDURE: After informed consent was obtained, the patient was taken to the operating room and placed in the supine position. After general endotracheal anesthesia was administered, the abdomen was prepped and draped in sterile fashion. A transverse supraumbilical skin incision was made with a scalpel and carried down through the skin and subcutaneous tissue using cautery. The fascia was incised vertically and a stay suture of 0 Vicryl was placed on each side of the fascial incision. The perineum was grasped on opposite sides using tonsil clamps and incised with Metzenbaum scissors. The peritoneal cavity was then entered. A Hasson trocar was placed and the pneumoperitoneum was created.

Next, two 5 mm trocars were placed in the patient's right upper quadrant

NAME:
MR #: 63399
ROOM #:

HOSPITAL #: 008868361
DOB: 12/23/1969
DATE: 08/02/2006

under direct laparoscopic visualization. A third 5 mm trocar was placed in the patient's left upper quadrant under laparoscopic visualization as well. Prior to placing the trocar, skin incisions were made with a scalpel. The patient was noted to have a large diaphragmatic defect in the anteromedial aspect of the left hemidiaphragm. The majority of the transverse colon was noted to be within the defect. Atraumatic bowel graspers were used to grasp the transverse colon and reduce it. There were no adhesions noted to the pleura. There were two adhesive bands that were incised with a Harmonic scalpel between the undersurface of the diaphragm and the colon. Once the colon had been reduced, Alloderm was reconstituted and sutured in place using 2-0 and 0 Surgidac using endo-stitch device. The most anterior aspect of the Alloderm was secured to the abdominal wall using the laparoscopic tacking device.

Next, the gallbladder was retracted cephalad. The cystic duct and cystic artery were bluntly dissected. The cystic artery and cystic duct were then clipped and divided leaving two clips each on the cystic duct remnant and the cystic artery remnant. Cautery was used to remove the gallbladder from the gallbladder fossa. The gallbladder fossa was retrieved using an endo-catch bag. Hemostasis was confirmed. The peritoneal cavity was irrigated. The endo-catch bag containing the gallbladder was removed from the peritoneal cavity and passed off as specimen. All trocars were then removed with direct laparoscopic visualization and there was noted to be no bleeding from the trocar sites. The supraumbilical fascia was closed with 0 Vicryl in a simple running fashion. The skin of all incisions was closed with staples. The patient was extubated and taken to the post anesthesia recovery room in stable condition. All needle and sponge counts are correct. The patient tolerated the procedure well.

Jason Richard Dameron, MD

cc: Thomas V Mincheff

20149 \42590574
DD: Wed Aug 02 15:35:34 2006
TD: Wed Aug 02 17:35:07 2006

000556

DICTATOR COPY for Jason Richard Dameron, MD

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CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME:		**HOSPITAL #:**	008868361
MR #:	63399	**DOB:**	12/23/1969
ROOM #:		**ADMITTED:**	07/28/2006
		DISCHARGED:	08/02/2006

ADMISSION DIAGNOSES:

1. Abdominal pain.
2. Diaphragmatic hernia.

BRIEF HISTORY AND HOSPITAL COURSE: a 36-year-old Caucasian male, a patient of Dr. Nichols who for the last several months has been complaining of abdominal discomfort. He was initially referred to me by Dr. Nichols with some right lower quadrant pain and the concern was that the patient may have a right inguinal hernia. On examination the patient was not found to have an inguinal hernia. However, I elected to send the patient for a CT scan of the abdomen and pelvis and on the CT scan the patient was noted to have a hernia of the foramen of Morgagni. There was a large intestine noted up in the chest. The patient had frequent emergency room visits and was seen by several physicians and finally the diagnosis of a hernia of the foramen of Morgagni was obtained. The patient has had increasing symptoms over the last several weeks. As discussed with the patient in my office we were planning to make arrangements to repair this on an elective basis. The patient had been given some pain medication and was advised to follow up with me the following week. Due to increased symptoms, however, the patient came back to the emergency room and was admitted. The patient's symptoms, however appeared to be more consistent with biliary tract disease and I elected to obtain biliary studies prior to the patient's planned surgery for the diaphragmatic hernia. Biliary studies revealed that the patient had biliary dyskinesia with a diminished ejection fraction. Arrangements were made to remove the gallbladder at the same time as repairing diaphragmatic hernia. On the 1st of August 2006 the patient underwent laparoscopic repair of the congenital diaphragmatic hernia with AlloDerm and also underwent laparoscopic removal of the gallbladder. For further details please see operative note. The patient's postoperative course was uneventful. The patient received preop and postop antibiotics and was started on a clear liquid diet and slowly advanced to a regular diet as tolerated. The patient received analgesics on a p.r.n. basis. The patient's wounds remained clean and dry. With the uneventful postoperative course the patient was discharged on the 2nd of August 2006 and was given a prescription for analgesics on a p.r.n. basis. The patient is to follow up with Dr. Dameron in the next week. The patient has been advised to do no heavy lifting or straining. The patient is allowed to shower.

000557

CAROLINA PINES REGIONAL MEDICAL CENTER

DISCHARGE SUMMARY

NAME:
MR #: 63399
ROOM #:

HOSPITAL #: 008868361
DOB: 12/23/1969
ADMITTED: 07/28/2006
DISCHARGED: 08/02/2006

CONDITION ON DISCHARGE: Improved.

FINAL DIAGNOSIS: Diaphragmatic hernia, biliary dyskinesia.

Thomas V Mincheff, MD FACS

cc: Dr. Nichols

30060 \42655720
DD: Mon Aug 28 11:24:24 2006
TD: Mon Aug 28 11:59:54 2006

000558

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:
MR #: 34170
ROOM #: 0220 A

HOSPITAL #: 00887296
DOB: 12/08/1920
DATE:

DATE OF PROCEDURE: 09/28/2006.

PREOPERATIVE DIAGNOSIS: Type 3 paraesophageal hernia.

POSTOPERATIVE DIAGNOSIS: Type 3 paraesophageal hernia.

PROCEDURE:
1. Laparoscopic repair of type 3 paraesophageal hernia.
2. Percutaneous endoscopic gastrostomy tube placement.

SURGEON: Jason Richard Dameron, MD

ASSISTANT: Thomas V Mincheff, MD

ANESTHESIA: General endotracheal anesthesia.

ESTIMATED BLOOD LOSS: 100 mL.

DRAINS: 22 French gastrostomy tube.

SPECIMENS: None.

COMPLICATIONS: None.

HISTORY: The patient is an 85-year-old male with a history of dysphagia for solids and liquids as well as some hematemesis. An esophagogastroduodenoscopy was performed as well as an upper gastrointestinal series, which demonstrated a very large paraesophageal hernia. Repair was recommended, and all risks, benefits, and alternative therapies were discussed with the patient, he elected to proceed.

DESCRIPTION OF THE PROCEDURE: After informed consent was obtained, the patient was taken to the operating room and placed in the supine position. After adequate general endotracheal anesthesia was administered, the abdomen was prepped and draped in a sterile fashion. A 10 mm incision was made superior and just to the left of the umbilicus after the skin and subcutaneous tissues were infiltrated with local anesthetic. The incision was carried down through the skin and subcutaneous tissues using cautery. Stay sutures of 0-Vicryl were placed in the rectus fascia and the fascia was incised between the two stay sutures. The peritoneum was then entered. Digital exploration was performed. There was no evidence of adhesions. A Hasson trocar was then placed and pneumoperitoneum was created. Next the skin and subcutaneous tissues were infiltrated with local anesthetic at the site of a right upper quadrant 5 mm trocar in the anterior axillary line just inferior to the costal margin. A skin incision was made and a 5 mm trocar was placed under direct laparoscopic visualization. Next a 5 mm trocar was placed in the mid clavicular line and intercostal margin in the same manner. A 10 mm trocar was then placed in the same manner inferior and medial to the

000559

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:
MR #: 34170
ROOM #: 0220 A

HOSPITAL #: 008872966
DOB: 12/08/1929
DATE:

previously placed 5 mm trocar in the mid clavicular line. Next a 5 mm trocar was placed in the same fashion in the mid clavicular line, costal margin in the left upper quadrant. A liver retractor was placed and attached to the Martin arm. The patient was noted to have a very large type 3 paraesophageal hernia. The stomach was noted to be densely adherent to the mediastinum. The harmonic scalpel was used to dissect the stomach and wash the adhesions between the stomach and mediastinal structures. The stomach was eventually reduced. The gastrohepatic ligament was incised with cautery. The peritoneum overlying the right crus was incised. This was secured around circumferentially. A window was made posterior to the esophagus. The posterior aspect of the left crus was identified and dissected. The crura were then closed with interrupted 0 Surgitek sutures using the Endo stitch device. Hemostasis was confirmed. Next was gastroscope was introduced into the oropharynx and passed into the stomach and insufflated.

The abdominal wall was transilluminated. An introducer needle was placed into the abdominal wall into the stomach under endoscopic visualization. A snare was used to grasp with the guidewire that was placed through the introducer needle and was pulled through the mouth. A gastrostomy tube was then placed over the guidewire and pulled through the mouth and subsequently through the abdominal wall. The gastroscope was then placed back into the stomach and photographs were taken to confirm positioning and placement of the G tube. It was then cut to an appropriate length and secured to the abdominal wall using interrupted 3-0 Ethilon sutures. A bolster was applied for this. It was then attached to a drainage bag. The patient was extubated and taken to the post anesthesia recovery room in stable condition. All needle and sponge counts were correct. He tolerated the procedure well.

Jason Richard Cameron, MD

cc:

30859 \42746071
DD: Tue Oct 03 08:36:29 2006
TD: Wed Oct 04 10:03:37 2006

000560

9799

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:
MR #: 000033051
ROOM #: 0315 A

HOSPITAL #: 003045183
DOB: 07/15/1924
DATE: 10/11/2006

PREOPERATIVE DIAGNOSIS: Type 3 hiatal hernia.

POSTOPERATIVE DIAGNOSIS: Type 3 hiatal hernia.

PROCEDURES:
1. Laparoscopic repair of type 3 hiatal hernia with mesh.
2. Percutaneous endoscopic gastrostomy.

SURGEON: Jason Richard Dameron, MD

ASSISTANT: Thomas V Mincheff, MD FACS

10 days

ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: 100 ml.

DRAINS: 20-French gastrostomy tube.

SPECIMENS: Hernia sac.

COMPLICATIONS: None.

INDICATIONS: The patient is an 82-year-old African-American male who was having dysphagia for solids and liquids. CT and upper GI revealed a large hiatal hernia containing stomach. Surgical treatment was recommended. After all risks, benefits and alternative therapies were discussed with the patient, he elected to proceed.

DESCRIPTION OF THE PROCEDURE: After informed consent was obtained, the patient was taken to the operating room and placed in supine position. After adequate general endotracheal anesthesia was administered, the abdomen was prepped and draped in sterile fashion. The skin and subcutaneous tissue were infiltrated with local anesthetic just superior and to the left of the umbilicus. A skin incision was made with #11 scalpel blade, and carried down through skin and subcutaneous tissue using cautery. Stay sutures of 0 Vicryl were placed in the fascia. The fascia was incised and the peritoneum entered. The Hasson trocar was placed and a pneumoperitoneum created.

Again, the skin and subcutaneous tissue were infiltrated with local anesthetic at the site of a 5 mm trocar in the anterior axillary line in the right upper quadrant just beneath the costal margin. The skin incision was made, and the 5 mm trocar placed under direct laparoscopic visualization. A laparoscopic liver retractor was then placed into the peritoneal cavity, and the liver was retracted cephalad. The liver retractor was secured using a Morton arm.

POSTED

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:
MR #: 000033051
ROOM #: 0315 A

HOSPITAL #: 003045183
DOB: 07/15/1924
DATE: 10/11/2006

Next, the skin and subcutaneous tissue were infiltrated with local anesthetic at the site of two right upper quadrant trocars, and the skin incisions were made. One of the 5 mm trocars was placed in the midclavicular line just beneath the costal margin. The other one was placed 4 fingerbreadths inferior and medial to the previously placed trocar. Both of these were placed under direct laparoscopic visualization. The skin and subcutaneous tissue were infiltrated with local anesthetic at the site of a left upper quadrant trocar. The skin incision was made, and the trocar was placed in the midclavicular line beneath the costal margin.

Evaluation of the diaphragm revealed a large, diaphragmatic defect with the majority of the stomach herniated up into the chest. The hernia sac was noted to be dense and adherent to the mediastinum. A combination of sharp and blunt dissection was used to dissect the hernia sac and reduce the stomach into the peritoneal cavity. The short epigastrics, halfway down the greater curvature of the stomach, were divided using the Harmonic scalpel. A window was made posterior to the esophagus to facilitate placement of AlloDerm. The esophageal hiatus was closed with two curled sutures. These were interrupted 0 Surgidac sutures, which were placed using the endo stitch device.

Next, an 8 x 12 AlloDerm was cut to the appropriate size, and placed into the peritoneal cavity. It was passed posterior to the esophagus and was used as an onlay to reinforce the esophageal hiatus. It was secured using 0 Surgidac using the Endo stitch device. Six simple interrupted sutures were used to secure the mesh in place. Hemostasis was confirmed. All trocars were removed under direct laparoscopic visualization. The laparoscopic liver retractor was also removed under direct laparoscopic visualization as well.

Next, the gastroscope was placed into the oropharynx and passed into the stomach. The abdominal wall was transilluminated. An introducer needle was placed into the stomach under endoscopic visualization. A guidewire was passed and retrieved using the gastroscope. The gastrostomy tube was placed over the guidewire, and in antegrade pull fashion was pulled through the anterior abdominal wall. It was secured using interrupted 3-0 silk sutures. It was then placed to a drainage bag after being cut to the appropriate length.

000562

DICTATOR COPY for Jason Richard Dameron, MD

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:
MR #: 000033051
ROOM #: 0315 A

HOSPITAL #: 003045183
DOB: 07/15/1924
DATE: 10/11/2006

The patient was extubated and taken to the PACU in stable condition. All needle, instrument and sponge counts were correct. There were no complications. He tolerated the procedure well.

Jason Richard Dameron, MD

cc: Leon Hunt, Gary A. Barker, MD

30033 \62886430
DD: Fri Oct 13 10:53:49 2006
TD: Sat Oct 14 12:10:04 2006

000563

DICTATOR COPY for Jason Richard Dameron, MD

BLACKMON PARALEGAL SERVICES
123 N. ERVIN STREET
DARLINGTON, SC 29532

Lynn G. Blackmon
Paralegal

Phone: (843) 398-1282
Fax: (843) 398-1772
E-mail: lgbnsc@bellsouth.net

DATE: November 12, 2006 FAX NO.: (843) 664-9180

TO: Daryl Corbin, Esq. COMPANY: Corbin Law Firm

FROM: Lynn G. Blackmon
Paralegal to Martin S. Driggers, Jr.

NUMBER OF PAGES: 27

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-0322

Martin S. Driggers, Jr. of Sweeny, Wingate & Barrow, P.A. is defending Carolina Pines Regional Medical Center in the above-referenced matter. I am paralegal to Mr. Driggers.

See attached **second of two** groupings of medical records from Mr. Driggers.

From: Lynn G. Blackmon [lgbnsc@bellsouth.net]
Sent: Sunday, November 12, 2006 3:05 PM
To: 'cbscorbinlaw@bellsouth.net'
Subject: Person vs. Carolina Pines Regional Medical Center
See attached letter from Mr. Driggers along with additional medical records from Carolina Pines Regional Medical Center.

Lynn G. Blackmon
Blackmon Paralegal Services
123 N. Ervin Street
Darlington, SC 2952
P: (843) 398-1282
F: (843) 398-1772
E: lgbnsc@bellsouth.net

S·W·B

SWEENY WINGATE & BARROW P.A.

November 12, 2006

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 383-2146
msd@swblaw.com

VIA EMAIL TRANSMISSION TO cbscorbinlaw@bellsouth.net:
MR DARYL J CORBIN
CORBIN LAW FIRM
PO BOX 447
FLORENCE SC 29503

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-322
Our File No. 1863/4975

Dear Daryl,

Enclosed please find additional copies of medical records from Carolina Pines Regional Medical Center. Please allow this letter to serve as my supplemental response to your Request for Production of Documents.

With kind regards, I remain

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

MSD/lgb
Enclosures

000566

THE BYERLY HOSPITAL

OPERATIVE NOTE

NAME:
HOSPITAL #15399
ROOM: 340
DATE: 7-1-96

[illegible], THOM
29.15.1969 60 F
11/199
720 W MORE AVE
HARTSVILLE SC 29550

PREOPERATIVE DIAGNOSES: GASTROESOPHAGEAL REFLUX DISEASE.

POSTOPERATIVE DIACNOSES: SAME.

OPERATION: LAPARSCOPIC NISSEN FUNDOPLICATION.

SURGEON: Thomas V. Mincheff, M. D.

FIRST ASSISTANT: R. M. Harris, M. D.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE: [illegible] is a 60-year-old, white female with documented gastroesophageal reflux disease. The patient has been treated for many years and has continued to be symptomatic. Recent studies, 24 hour pH probe, esophageal motility studies confirmed gastroesophageal reflux disease. The patient also has a hiatal hernia and her symptoms have not been relieved with long term medication. A Nissen fundoplication is indicated.

DESCRIPTION OF THE PROCEDURE: The patient is taken to the Operating Room and placed in the supine position upon the operating table. Sequential pneumatic compression stockings are placed on the lower extremities. After induction of general anesthesia and endotracheal intubation, a 16 French nasogastric tube was inserted into the stomach and a 16 French Foley catheter was inserted into the bladder. The entire abdomen is then prepped with Betadine solution. Sterile towels as well as sterile drapes are applied in the usual manner. Staying approximately 3 cm. above and to the left and lateral of the umbilicus, a small transverse skin incision is made into the skin with the 15 blade scalpel, the incision is carried down through the fascia. The abdominal cavity is entered using the Hasson procedure. Two fixation sutures are placed on the fascia with 2-0 Poly-Sorb. The 10-12 mm. trocar and cannula are inserted into the abdominal cavity and secured with the fixation sutures. The abdominal cavity is then inflated with 4-6 liters of CO2 reaching a pressure of 15 mm. of Mercury. The camera is then inserted and the stomach and liver appear normal. No abnormalities are seen with use of a 15 blade scalpel, a small vertical midline incision is made just below the xiphoid. Through this small incision, a second 10-12 mm. trocar is inserted through the abdominal wall under direct vision. This trocar was placed for our liver fan retractor. A third incision is made in the right upper quadrant

beneath the costal margin with a 15 blade scalpel. A third trocar is passed through the abdominal wall under direct vision. The same is performed then on the left side staying below the costal margin and the fourth trocar is passed through the abdominal wall. A fifth trocar is placed approximately 4 cm. above and to the right of the umbilicus. The left lobe of the liver is then retracted with a liver fan retractor. A Babcock clamp is placed on the stomach and the stomach is retracted inferiorly. The dissection is initially started in the gastrohepatic ligament staying close to the hiatus. The peritoneum is incised with the electrocautery as well as using the harmonic scalpel. The esophagus is freed anteriorly and posterior through careful blunt dissection. The hiatus is exposed. The left and right crus are clearly identified. The anterior and posterior vagus are identified and preserved. After the esophagus has been freed circumferentially, a vessel loop is placed around the esophagus and later used for traction. There was a moderate of fat around the esophagus and this was carefully freed off. After the esophagus was completely exposed, the left and right crus are then reapproximated. The hiatal hernia is reduced and the hiatus is narrowed by approximating the left and right crus with several interrupted 2-0 Surgidec sutures. Extra corporal knot tying was performed. The sutures were placed using the endosuture device. After closure of the hiatus, the short gastrics are then divided approximately 10 to 12 cm. along the greater curvature along the fundus. This is done with the harmonic scalpel. Once an adequate amount of stomach has been freed for the wrap, a Babcock clamp is placed posteriorly to the esophagus and the stomach is brought around esophagus for the wrap. A 58 French Bougie is then carefully passed down the esophagus and kept in place until the sutures have been placed. Three sutures are placed for the wrap which is approximately 2 cm. in length. Extra corporal knot tying is performed and a clip is placed just above the knot and the sutures are cut individually. The suture encompasses portion of the stomach and the anterior esophagus. After an adequate wrap has been performed, the Bougie is removed and a fourth suture is placed along the stomach and secured to the crus on the right. Again, 2-0 Surgidec suture material is used and extra corporal knot tying is performed. A clip is placed above the knot and the suture is cut. The fundoplication looks good. All sutures are secure. Bleeding was minimal. Under direct vision, all five cannulas are individually removed. The abdominal cavity is deflated. The wounds are then closed. The fascia is closed with interrupted 2-0 Poly-Sorb sutures. The skin is closed with staples. Sterile dressings are applied after the wounds have been cleansed and dried. The patient is extubated and transferred to the Recovery Room in stable condition.

000568

PAGE 3
OPERATIVE NOTE

#15203

COMPLICATIONS: None.

THOMAS V. MINCHEFF, M. D.

DATE

DD 7-1-96
DT 7-1-96

TVM:ch

THE BYERLY HOSPITAL

OPERATIVE NOTE

HOSPITAL #: 14731
ROOM:

DATE: 7-6-99

PREOPERATIVE DIAGNOSES: REFLUX ESOPHAGITIS, SEVERE
GASTROESOPHAGEAL REFLUX DISEASE.

POSTOPERATIVE DIAGNOSES: SAME.

PROCEDURE: LAPAROSCOPIC NISSEN FUNDOPLICATION.

SURGEONS: THOMAS V. MINCHEFF, M. D.
FIRST ASSISTANT: DR. HARRIS.

ANESTHESIA: General endotracheal.

INDICATIONS FOR THE PROCEDURE:
35-year-old white male who has a history of gastroesophageal reflux disease since the age of 18. The patient has been maintained on medical management, however, the patient continues to have severe symptoms. Upper GI work up including an EGD, 24 hour pH probe studies, and esophageal manometry studies revealed severe gastroesophageal reflux disease. The patient is now scheduled for a laparoscopic Nissen fundoplication.

DESCRIPTION OF THE PROCEDURE: The patient is taken to the operating room and placed in a supine position upon the operating room table. Preoperative IV antibiotics were given. Sequential pneumatic compression stockings are placed on the lower extremities. After induction of general anesthesia and endotracheal intubation, a 14 French Foley catheter is inserted and a 16 French nasogastric tube is inserted. The entire abdomen and upper chest is shaved and then prepped with Betadine solution. Sterile towels as well as sterile drapes are applied in the usual manner. The first incision is made approximately 3 cm. above, and to the left of the umbilicus. Using a 15 blade scalpel, a transverse skin incision is made. The subcutaneous layers are divided with the electrocautery. The anterior rectus fascia is incised and the underlying rectus muscle is spread apart revealing the posterior rectus fascia which is also incised. The abdominal cavity is entered using the Hasson procedure. Fixation sutures are placed using 0 Polysorb. A 10-12 mm. trocar is then inserted and secured in place with the fixation sutures. The abdominal cavity is then inflated with 4-6 liters of CO2 reaching a pressure of 15 mm. of Mercury. A 10 mm. camera is inserted into the abdominal cavity and the abdominal cavity is examined. No significant abnormalities are seen.

000570

Through a separate stab wound, just beneath the xiphoid, a 10 mm. trocar is passed through the abdominal wall. In the right upper quadrant, just below the subcostal margin, through a separate stab wound, a 10 mm. trocar is passed and the same is performed on the left side. Staying four cm. above and the right of the umbilicus, a fifth incision is made and a 10 mm. trocar is passed through the abdominal wall, again under direct vision. The patient is then placed in a reverse Trendelenburg position.

Through the epigastric port, a liver fan is inserted and the left lobe of the liver is retracted cephalad. A Babcock clamp is placed along the stomach and the stomach is retracted inferiorly. The gastrohepatic ligament is divided with the use of the harmonic scalpel, staying very close to the upper portions of the stomach. The patient is noted to have a significant amount of fat around the distal esophagus and to the left of the esophagus. The phrenoesophageal membrane is divided with the harmonic scalpel and the space on either side of the esophagus is carefully freed through blunt dissection.

The 30 degree scope is then inserted and the retroesophageal space is developed. The right and left crus are exposed and clearly visualized. After the retroesophageal space has been freed a vessel loop is placed around the distal esophagus. Traction is placed on the vessel loop. The short gastrics are then taken down, using the harmonic scalpel. This is done along the fundus of the stomach. A length of 10 cm. is thereby freed. After enough of stomach has been freed, a wrap is then tested around the esophagus, and there appears to be enough of stomach for the wrap. A 58 French bougie is then carefully inserted into the esophagus after the nasogastric tube has been removed. Careful attention is taken not to perforate the esophagus or proximal stomach. Using the dissector the 58 French Maloney bougie is clearly palpated within the esophagus. The left and right crus are then reapproximated with placement of a 0 Surgitec suture using the Endostitch device. Extracorporeal knot tying is conducted and just above the knot a clip is placed and the suture is cut. The hiatus is thereby narrowed. The hiatus is narrowed just to allow the dissector to go through. The 58 French bougie is then carefully retracted back. The fundus of the stomach is brought posterior to the esophagus using a Babcock clamp and a 360 degree Nissen fundoplication is made with placement of 3-0 Surgitec interrupted sutures, approximating the stomach anteriorly. Extracorporeal knot tying is performed, and just above the knot a clipped is placed and the sutures are cut. Prior to the wrap, the bougie is inserted, and after placement of the sutures, the bougie is removed. As a reinforcing suture, placed a suture between the stomach and the crus on the right, again using 0 Surgitec and extracorporeal knot tying was

PAGE 3
OPERATIVE NOTE

performed and placement of a clip was placed above the knot and the suture was cut. The vessel loop was later removed. The Nissen was localized over the esophagus and a 2 cm. segment was clearly made. The wrap was not tight, as we used a 58 French bougie. The area was dry. The liver fan was removed. The patient was returned to normal supine position.

Individual cannulas were removed. The umbilical wound as well as the trocar site at 4 cm. above the umbilicus was closed in layers. The fascia at the 4 cm. trocar site was closed with an endoclose suture using 0 Polysorb. The incision made at 3 cm. above the umbilicus into the left was closed in layers using 0 Polysorb. The skin was closed with staples. The abdominal cavity was deflated prior to closure. The other three incision sites were closed with staples. During the dissection, we inserted a 2 mm. trocar which facilitated in holding the stomach down so that there would not be any angulation during the insertion of the bougie. Also the 2 mm. trocar and grasper were used in holding back some of the fat close to the spleen.

After closure of the individual wounds, the skin is cleansed and dried. Sterile dressings are applied. The nasogastric tube and Foley were removed and after extubation, the patient was transferred to the recovery room in stable condition. Complications none. The patient tolerated the procedure well. Estimated blood loss 100 cc. Fluids - Crystalloids.

ADDENDUM: Posterior and anterior vagus were individually identified and preserved.

THOMAS V. MINCHEFF, M. D.

TVM:lc
D&T 7-6-98

cc: Dr. Robert Bullard

000572

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:

HOSPITAL#: 0011733

DATE: 02/26/01

PREOPERATIVE DIAGNOSIS: Large, fixed, hiatal hernia with gastroesophageal reflux disease.

POSTOPERATIVE DIAGNOSES: Large, fixed, hiatal hernia with gastroesophageal reflux disease and esophageal perforation.

PROCEDURE PERFORMED: Exploratory laparotomy, closure of the crus at the diaphragm, closure of the perforation of the esophagus with a Thal stomach patch over top of this, and a feeding gastrostomy tube.

SURGEON: C. Brooks Bannister, M.D.

ASSISTANTS: Arthur Cooler, M.D. and Thomas Mancheff, M.D.

INDICATIONS FOR THE SURGERY: This is a 61-year-old black male kindly referred by Dr. Robert Bradley with a large, fixed, hiatus hernia. He had approximately a third to a half of his stomach up in his chest. He had severe nausea and vomiting and reflux. He had been evaluated in the past and had been advised to have this corrected. However, due to a fear of the surgery, he had not consented to the operation. Due to profound nausea and vomiting, at this time he had reached a point that he could no longer function without having this corrected.

DESCRIPTION OF THE PROCEDURE: With the patient in a supine position on the operating room table and under adequate general endotracheal anesthesia, the abdomen was prepped and draped in a sterile manner. An incision was made from the xiphoid to the umbilicus and the abdomen entered in the usual careful manner obtaining hemostasis with the cautery.

Following this, the area was inspected. He had a large hiatus hernia with a portion of his stomach up in the chest and his GE junction was actually above the diaphragm. Following this, the left triangle of the liver was sharply taken down, exposing the hiatus. An incision was made over the hiatus and this area was then mobilized. An incision was mobilized down out of the chest. He had a thick hernia sac anteriorly. This was bluntly and sharply mobilized. Short gastrics were then controlled by mobilizing these with a right-angle clamp and then controlling them with large Hemoclips and dividing. Once an adequate length of stomach had been exposed, continued dissection was carried along the esophagus to expose the esophagus for the wrap.

We were then inspecting, looking for the crura which were quite attenuated, when it was noted that he had what appeared to be a perforation or a leak. There had essentially been no real sharp dissection done in this area and this was felt to most likely be due to very friable esophagus from his reflux disease. This was then repaired with silk sutures in an interrupted fashion and we were then planning on performing a wrap around this to buttress it. However, the crura were then approximated under the esophagus with interrupted 0 silks.

000573

CAROLINA PINES REGIONAL MEDICAL CENTER

OPERATIVE NOTE

NAME:

HOSPITAL#: 0019733

Again, this area was inspected, and with any mobilization or inspection of the esophagus that was so friable, it would literally fall apart and again was repaired with 2-0 silk interrupted sutures. Once the repair had been performed, an NG tube was gently passed down and guided into the stomach.

Following this, the repair was reinforced by suturing the stomach to the esophagus and around the repair with multiple 2-0 silk sutures. This essentially gave a 180 to 270 degree wrap but was not a true wrap in the sense of the word. Essentially, this amounted to a Thal patch being sutured around the repair of the esophagus to reinforce this and hopefully prevent a further leak. The wound irrigated copiously with saline and suction. The case was very difficult in that the esophagus was so friable and literally seemed to fall apart in front of our eyes.

Once the repair had been performed, it was elected to place a 10 mm Jackson Pratt to run down in this area. Also, the stomach was checked and he certainly had adequate length that we could perform a gastrostomy tube without putting any tension on what we had already done. An incision was made in the left upper quadrant. A 20-French Mik gastrostomy tube was then brought in. The gastrostomy was performed and the tube secured into the stomach with a double roll of 3-0 pursestring silks. The stoma was then sutured to the abdominal wall in four quadrants around the tube with interrupted 3-0 silks. The tube was secured to the skin with 3-0 silks.

Following this, again it was inspected and there was found to be absolutely no tension whatsoever on the repair that had been performed around the esophagus. The peritoneum was closed with a running #1 Polysorb and the fascia closed with a running #1 PDS suture. The skin was closed with the skin stapler. Sterile dressings were applied. The patient was awakened, extubated, and carried to the recovery room in satisfactory condition.

C. BROOKS BANNISTER, M.D.

CBB0226/CD/TSI
D 2/26/01
T 2/26/01

CC: Robert Bradley, M.D.

000574

574

S·W·B

SWEENY WINGATE & BARROW P.A.

April 13, 2007

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 383-2146
msd@swblaw.com

MR DARYL J CORBIN
CORBIN LAW FIRM
PO BOX 447
FLORENCE SC 29503

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-322
Our File No. 1863/4975

Dear Daryl,

Enclosed please find documents responsive to Judge Baxley's Order including:

1. Carolina Pines Regional Medical Center Fax Order Form to Iron Mountain dated October 17, 2006;

2. Carolina Pines Regional Medical Center follow-up facsimile to Iron Mountain dated November 10, 2006;

3. My three letters to you sent by e-mail producing documents received from Iron Mountain documents dated November 11, 2006 (2) and November 12, 2006 (1).

With kind regards, I remain

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

MSD/lgb
Enclosures

000575

STATE OF SOUTH CAROLINA	)	**THE COURT OF COMMON PLEAS**
	)	
COUNTY OF DARLINGTON	)	**FOR THE FOURTH CIRCUIT**
Ruth J. Person,	)	**Civil Action No.: 2004-CP-16-322**
Plaintiff,	)	
v.	)	**AFFIDAVIT OF BAMBI AUSTIN PARNELL**
C. Brooks Bannister, M.D., Hartsville Surgical Center, and Carolina Pines Regional Medical Center,	)	
Defendants.	)	

FILED
2007 OCT -4 AM 11:49
SCOTT B. SUGGS
CLERK OF COURT/REG
DARLINGTON COUNTY, S.C.

1. My name is Bambi Austin Parnell and I am the Operations Supervisor for Iron Mountain Records Management in Florence, South Carolina.

2. I have worked with Iron Mountain for approximately ten years. As part of my job, since 2004, we have housed a certain portion of older medical records for Carolina Pines Regional Medical Center. As part of that account, I work often and closely with Lou Jean Gainey, the health information management director for Carolina Pines.

3. As described in my earlier deposition testimony in this matter, the Carolina Pines records are filed according to a system maintained by Carolina Pines Regional Medical Center. Due to changes in Carolina Pines' procedures for their medical records over the years, there are various numbers and codes that are used to track various records and patients for Carolina Pines' medical records held and stored at Iron Mountain.

4. In the above referenced case, we initially received a request for records for certain patients on October 17, 2006. Records responsive to the request were produced to Carolina Pines on October 23, 2006, according to our records.

5. As is described in my earlier testimony, when records were produced for Carolina Pines there would oftentimes be subsequent conversations because the records we provided would not be the records they needed. Often times our office would send a record that we believed to be responsive for the proper patient name, but due to the filing system used by Carolina Pines, it would not be the correct date of treatment or procedure records that Carolina Pines needed. As described in my earlier testimony, Iron Mountain would then talk back and forth with Carolina Pines in an effort to get the record that was requested.

6. After the initial request on October 17, 2006, our office had subsequent interaction with Carolina Pines regarding each record requested. Brian Tapper and Gavin Brown with our office were able to produce the correct records on November 10 and 11, 2006. I have reviewed the Affidavit of Lou Jean Gainey in connection with this matter and I agree with her account of the interaction between our offices between October 17, 2006, and November 11, 2006 in searching for the requested records.

Bambi Austin Parnell

SWORN TO and subscribed before me

this 3rd day of October, 2007

(L.S.)

Notary Public for South Carolina

My commission Expires: 3-12-14

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOR THE FOURTH CIRCUIT
Ruth J. Person,	)	Civil Action No.: 2004-CP-16-322
Plaintiff,	)	
v.	)	AFFIDAVIT OF LOU JEAN GAINEY
C. Brooks Bannister, M.D., Hartsville Surgical Center, and Carolina Pines Regional Medical Center,	)	
Defendants.	)	

1. My name is Lou Jean Gainey and I am the Director of Health Information Management at Carolina Pines Regional Medical Center.

2. I have worked at Carolina Pines Regional Medical Center and its predecessor, the Byerly Hospital for the last 21 years, all in the medical record's department of both of those facilities. I have been the manager of the Health Information Management for Carolina Pines Regional Medical Center since March of 1998.

3. Our hospital keeps certain hardcopy records from the years 2004 through the present. For hardcopy records older than the 2004 date, our records are kept off site at Iron Mountain Record Storage in Florence, South Carolina. Carolina Pines Regional Medical Center has contracted with Iron Mountain to house these records since April 28, 2004.

4. While the Iron Mountain Florence facility houses our records, they are still filed according to a system maintained by Carolina Pines Regional Medical Center. Due to changes in our medical records keeping over the years, there are various numbers and codes that are used to track the medical records held and stored at Iron Mountain.

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5. Due to the different numbers and codes, when searching for specific records for a patient or procedure, it is common for the personnel at Iron Mountain to initially retrieve records for a particular patient or date, only to find out that the record retrieved is not the correct record. The likelihood of finding incorrect records increases when the patients in question have multiple procedures during the course of their lifetime at Carolina Pines Regional Medical Center. This is because the records produced are often for the correct patient name, but not the correct procedure or date of treatment. There is oftentimes several conversations between our department and Iron Mountain when tracking down older records.

6. I was actively and intimately involved with the above-referenced case during the course of its litigation, up to and including October and November of 2006 when the case was approaching its trial.

7. On the above-referenced case, the Health Information Management department had been involved with producing the medical records for Ms. Person at the initial stages of the litigation.

8. My department subsequently became involved on or about October 17, 2006. It was on or just prior to this date that we received a request from Ms. Stephanie Foreman, the risk manager for Carolina Pines Regional Medical Center, for older medical records for certain patients of Dr. Thomas Mincheff and for radiological films for Ms. Ruth Person. The medical records included procedures for several different patients. Ms. Foreman indicated to us that a Subpoena had been received requesting these records.

9. Regarding the prior medical records for patients of Dr. Thomas Mincheff, after taking time to determine what patients met the criteria for the procedures that the Plaintiff was requesting, Ms. Foreman then asked us to locate operative notes and discharge summaries for these

particular patients. A copy of our initial request sent to Iron Mountain is attached to this Affidavit as Exhibit A, which is a fax request form sent by Ms. Shelly Poston, another employee in the Health Information Management System's department who worked for me in October of 2006.

10. As stated above, when such requests were made for Iron Mountain, it was not uncommon for them to call Carolina Pines for further direction on where the records may be located. Often times, there would be multiple conversations with the Iron Mountain personnel as they were attempting to track down a particular record. The same was true for these records that we were requesting for the above-referenced litigation.

11. After our initial request on October 17, 2006, over the course of the next several days and weeks, myself and Ms. Poston had multiple conversations with the Iron Mountain personnel over the records we had requested. There were several incidences where the Iron Mountain personnel would provide us with medical records they believed were responsive to our request, only to learn that they had provided either the wrong patient name, or the wrong procedure. We would then have to call them back to let them know what they had provided was not what we were looking for and they needed to look further for the records in question.

12. Through November 8, 2006, I continued to have phone conversations with Iron Mountain personnel regarding the requested records. The records provided from Iron Mountain had been for the correct patients, but were neither the correct procedures nor the correct dates of service.

13. When the correct records had not been received by November 10, 2006, I again phoned Brian Tapper, another employee of Iron Mountain Records Management. After speaking with Mr. Tapper, I faxed the request to Iron Mountain and their personnel that were present at the facility, Mr. Tapper and Gavin Brown. A copy of our follow up request sent to Iron Mountain is

attached to this Affidavit as Exhibit B. Through our working on November 10 and 11, 2006, my department was able to finally obtain the records originally requested on October 17, 2006. I immediately informed Mr. Martin S. Driggers, Jr., counsel for Carolina Pines that we had the subpoenaed records in hand.

14. I was instructed by Mr. Driggers to appear with him at the Darlington County Courthouse on Monday morning, November 13, 2006, as there may be questions from the Court regarding the production of these records and the search for them over the last several weeks prior to that date. I did appear and was available at the Darlington County Courthouse before the Honorable J. Michael Baxley, prior to the trial restarting on November 13, 2006.

15. At court, Mr. Driggers explained the efforts we had gone through to find these records and that he had provided them to the attorney for the Plaintiff's over the weekend as my department was providing them to him.

16. After reviewing the records, Plaintiff's counsel represented that there would be no need to question me or anyone else from the Health Information Management department of Carolina Pines Regional Medical Center. I was then excused and left the Courtroom on that Monday morning.

Lou Jean Gainey

SWORN TO and subscribed before me

this 1st day of October, 2007

Cindy Blackwell (L.S.)

Notary Public for South Carolina

My commission Expires: 2-15-2017

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOR THE FOURTH CIRCUIT
Ruth J. Person,	)	Civil Action No.: 2004-CP-16-322
Plaintiff,	)	
v.	)	AFFIDAVIT OF B. TODD HENIFORD, M.D.
Carolina Pines Regional Medical Center,	)	
Defendants.	)	

FILED
2006 DEC 29 PM 2:20
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, the undersigned, B. Todd Heniford, M.D., who after being duly sworn, deposes and says:

1. I am B. Todd Heniford, M.D., a licensed general surgeon practicing primarily at the Carolinas Medical Center in Charlotte, North Carolina, specializing in advanced laparoscopic surgery.

2. I was retained as an expert witness in the above-referenced matter by the Defendant, Carolina Pines Regional Medical Center. My deposition was taken in conjunction with my role as an expert witness on October 2, 2006. This was in anticipation of the trial of this case set for November 6, 2006.

3. Prior to the trial date, I was informed that my testimony had been excluded by the court and therefore, there was a great deal of uncertainty as to whether I would be allowed to testify at the trial of this case.

4. On November 6, 2006, I was informed by counsel for Defendant Carolina Pines Regional Medical Center, that the court had reversed its decision and would indeed allow my testimony at the trial of the case.

5. At that point, the only date I had available on my schedule to testify was Wednesday, November 8, 2006. I had a previous long-standing engagement to teach specific

medical procedures to a group of physicians in the State of Arizona, beginning on Thursday, November 9, 2006 and carrying through November 12, 2006.

6. Over the course of my time in Arizona, I was informed by counsel for Defendant Carolina Pines Regional Medical Center that the case was going over into a second week, beginning November 13, 2006. I was asked at that time to take steps to see if I could appear at trial during that second week.

7. Unfortunately, I had moved a great number of surgical procedures, meetings, and appointments into the week of November 13, 2006. Furthermore, I was obligated to attend a including a Board Meeting of the American College of Surgeons at the end of that week.

8. After returning to Charlotte, North Carolina, on November 13, 2006, I attempted to rearrange my schedule in hopes of appearing and testifying at the trial of this case.

9. Those efforts to clear my schedule continued even until the morning of November 14, 2006. However, I was ultimately forced to inform counsel for Defendant Carolina Pines Regional Medical Center that I would not be able to travel to Darlington, South Carolina to testify at the trial of the case that day or any other day that week.

10. My staff and I spent a great deal of time attempting to rearrange my and other surgeons' schedules in order to make myself available for testimony at trial, but these last minute efforts simply were not successful.

FURTHER AFFIANT SAYETH NOT.

B. Todd Heniford, M.D.

SWORN TO and subscribed before me

this 19 day of December, 2007

Faye E Scott (L.S.)

Notary Public for North Carolina

My commission Expires: 4/24/2010

00058

FAYE E SCOTT
Notary Public
Mecklenburg County
State of North Carolina
My Commission Expires Apr 24, 2010

STATE OF SOUTH CAROLINA	)	**THE COURT OF COMMON PLEAS**
	)	
COUNTY OF DARLINGTON	)	**FOR THE FOURTH CIRCUIT**
Ruth J. Person,	)	**Civil Action No.: 2004-CP-16-322**
	)	
Plaintiff,	)	
	)	
v.	)	**AFFIDAVIT OF EDDIE MOORE**
	)	
C. Brooks Bannister, M.D., Hartsville Surgical Center, and Carolina Pines Regional Medical Center,	)	
Defendants.	)	

FILED
2007 OCT -4 AM 11:50
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

1. My name is Eddie Moore and I am the Director of the Radiology Department at Carolina Pines Regional Medical Center.

2. I have worked at Carolina Pines Regional Medical Center for the last 27 years. I have been the Director of the Radiology since 12/01/1980.

3. Regarding radiological films, our office does not have any radiological records for Ms. Ruth Person. Oftentimes, when patients are transferred from Carolina Pines to another hospital or medical care facility, the patients take their original films with them to the new facility. In this case, Ms. Person was transferred from Carolina Pines to Palmetto Richland Hospital in Columbia, South Carolina and did not return to Carolina Pines.

4. Information from the Department of Radiology indicate that when Ms. Person was discharged from Carolina Pines Regional Medical Center and transferred to Palmetto Richland Memorial Hospital in Columbia, South Carolina, that she or a family member took the X-rays with her for the physicians in Columbia to review. Iron Mountain Records Maintenance was never involved in storing or keeping any radiological films.

Eddie Moore

SWORN TO and subscribed before me

this 1st day of October, 2007

Notary Public for South Carolina (L.S.)

My commission Expires: 2/19/13

State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL
BAXLEY
JUDGE

531 EAST CAROLINA AVENUE
HARTSVILLE, SOUTH CAROLINA 29550
TELEPHONE: (843) 383-4114
FAX: (843) 383-4116
E-MAIL: jbaxleyj@sccourts.org

August 15, 2007

Daryl J. Corbin, Esquire
Attorney at Law
Post Office Box 447
Florence, SC 29503

Re: Ruth J. Person v. Carolina Pines RMC (C/A No.: 04-CP-16-322)

Dear Mr. Corbin:

On March 6, 2007, you appeared before this Court on a Motion for Relief from a jury verdict in the above entitled matter. At that time, you requested on opportunity to take depositions and gather further evidence. It was my request to you at that time that this post trial discovery be done quickly. Unfortunately, in spite of several contacts to your office, the discovery has not been completed and we have not yet received your final position in this matter.

Please accept this letter as notice that this matter will be held open for twenty (20) additional days from the date of this letter. Within that time, the Court expects to receive a memorandum with any relevant evidence attached that bears on the issue of relief from the jury verdict. Thereafter, Mr. Driggers shall have thirty (30) days to reply in written form. Thereafter, the Court will decide whether to grant a further hearing or decide the issue on the memoranda. Because the ongoing continuation of this matter results in expense and further legal entanglement for the Defendant, which was found by the jury to not be liable for Plaintiff's injuries, I cannot grant further a extension of your already overdue response. Thank you for your immediate attention to this matter.

Sincerely yours,

J. Michael Baxley

JMB/jlc

cc: Martin S. Driggers, Jr., Esquire
Honorable Scott B. Suggs (for filing)

000586

TRUE CERTIFIED COPY
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

FILED
2007 AUG 17 AM 9:00
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON) C/A NO.: 2004-CP-16-322

RUTH J. PERSON,

Plaintiff,

vs.

CAROLINA PINES REGIONAL MEDICAL CENTER,

Defendant.

DEPOSITION OF:
BAMBI AUSTIN PARNELL

The deposition of BAMBI AUSTIN PARNELL was taken pursuant to Notice under the South Carolina Rules of Civil Procedure before Joan B. Branham, a Notary Public in and for the State of South Carolina, at Iron Mountain, Florence, South Carolina on August 28, 2007, beginning at 2:00 p.m.

APPEARANCES OF COUNSEL:

For Plaintiff: Daryl J. Corbin, Esquire
The Corbin Law Firm
Post Office Box 447
Florence, South Carolina 29503

For Carolina Pines: Martin S. Driggers, Jr., Esquire
Sweeney, Wingate & Barrows
115 Cargill Way
Hartsville, South Carolina 29550

For Iron Mountain: David M. Souza, Esquire
Bartlett Hackett Feinberg, P.C.
155 Federal Street 9th Floor
Boston, Massachusetts 02110

COURT REPORTER'S NOTE: -- indicates interruption; incomplete sentences; trailing off; unfinished sentences.

JOAN B. BRANHAM
Court Reporter
910 Cherokee Road
Florence, SC 29501
(843) 662-4163

857000 000587

STIPULATIONS:

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above-entitled action, or for both purposes;

That all objections would be reserved until the time of the trial except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was not waived.

BAMBI AUSTIN PARNELL, first duly sworn deposed as follows:

DIRECT EXAMINATION BY MR. CORBIN:

Q. Good afternoon, Ms. Parnell. As you know, my name is Daryl Corbin. I am an attorney from Florence who represents Ruth Person in this lawsuit. If I ask you a question during the deposition that you do not understand, would you please let me know so I can

rephrase it for you?

A. Yes.

Q. Is it fair to assume that if you answer a question that you understood it?

A. Yes.

Q. Under the Rules, if you have any questions during the deposition, you need to address me instead of your attorney or somebody else. Will you do that, please?

A. Yes.

Q. Please state your complete name for the record.

A. Bambi Austin Parnell.

Q. What is your date-of-birth, please?

A. 12-06-1963.

Q. Would you please just give me a brief sketch of your educational background starting with high school?

A. High school.

Q. OK. And which high school, please?

A. Columbus Christian Academy, Columbus, Georgia.

Q. What is your current occupation?

A. I am the Record Center supervisor -- operation supervisor for Iron Mountain in Florence.

Q. What is Iron Mountain?

A. Iron Mountain is a legal document storage facility.

Q. Would one of the big customers at Iron Mountain be

hospitals?

A. Yes, it would.

Q. What would Iron Mountain actually do with hospital records?

A. We would store them for the customer.

Q. Is one of Iron Mountain's customers Carolina Pines?

A. Yes.

Q. Are you also familiar with the company that owns Carolina Pines, HMA?

A. No.

Q. Do you know how long you have been storing Carolina Pines' medical records, roughly speaking?

A. Roughly, five years.

Q. How long have you been with Iron Mountain?

A. Ten years.

Q. Is there anybody else in Florence that has more authority than you do at Iron Mountain?

A. In Florence, no.

Q. If Carolina Pines, for example, wanted to retrieve some medical records being stored at Iron Mountain, explain to me the process, please.

A. They would place a handwritten or verbal request stating the patient's name, patient's medical record number, and they should state the box that the record is stored in.

Q. What would happen next?

A. The -- once the order is placed, our outbound department releases the order. Iron Mountain employees would pull -- complete the order and either depending on their request, fax or deliver the order.

Q. If Carolina Pines were to request, for example, a certain patient's discharge summary and gave you the patient's name and the medical record number, how long would it take you to retrieve that particular document?

A. It would depend on the request. If they requested it as a rush, it would be within two hours. If they requested it as a half-day, it would be within four hours. Next day would be the following day.

Q. So if Carolina Pines were to request information from you, gave you the patient's name and medical record number certainly within a day, you ought to be able to retrieve it, if in fact, you have it?

A. Depending on the number of files requested, yes.

Q. Have you ever lost any Carolina Pines' records?

A. No.

Q. I would assume it is very important to Iron Mountain not to lose records.

A. Correct.

Q. Do you recall losing any records at Iron Mountain here in Florence?
A. No, sir.
Q. And how would you keep track of the records so they would not be lost?
A. Computer; they are scanned in by bar code to a location. We --
Q. So -- I am sorry.
A. I am sorry. With Carolina Pines, their boxes are scanned into the location.
Q. When the boxes are scanned into the computer, can you do a search by the patient's name?
A. Not by box, no, not unless the files are individually listed within that box.
Q. So if Carolina Pines requests a certain patient's records and gives you the patient's name and the patient's number, because they do it by the box, does that mean you cannot find it within a day?
A. Your question again?
Q. Carolina Pines' records, --
A. Correct.
Q. -- if you have the patient's name --
A. Correct.
Q. -- and the medical number for that patient, the patient's number, --

A. Correct.
Q. -- how long does it take you to find that particular record?
A. If it is one box, it is within an hour.
Q. What would some of the other parameters for time be, one box, one hour?
A. Our warehouse is three floors and 44,000 square feet so it would be depending on where the box was stored and how many files they were requesting on that order. If it is one -- one box, you know, and it is on the first floor, of course, it would take less time than a box that is on the top shelf on the third floor six boxes back.
Q. How long would it take to retrieve that file?
A. Probably twenty minutes.
Q. The one that is on the third floor?
A. Third -- correct.
Q. Twenty minutes?
A. Correct.
Q. Do you recall ever Carolina Pines requesting medical records from Iron Mountain and you telling anybody at Iron Mountain that, in fact, the records are lost?
A. No.
Q. Have you ever told anybody affiliated with Carolina

Pines, either Carolina Pines' personnel or their attorney when requesting medical records of Carolina Pines that it would take several, several days to find the records?
A. Yes.
Q. Explain that to me, please.
A. They placed a request for -- I cannot remember the number of files. I believe it was a couple of pages of handwritten files. Some of them had box numbers attached to them. Most of them did not, so we had to physically pull an inventory sheet and the Iron Mountain staff had to decipher which boxes these may be in. We do that out of a courtesy for the customer. It is not required that we do that.
Q. Has that happened more than once with Carolina Pines?
A. Yes.
Q. When you had to actually do the inventory and pull out the boxes, how long did it take you to turn around that particular order?
A. They have placed many, many orders in the years that we have had them. The longest that we have had take would be three days. And again, that is for several files, not just one or two, not a handful.
Q. How about if they requested six files from you,

would it take three days?
A. I could have that -- depending on the time the order is placed, I could have that -- if it was in the morning, by the end of the day; lunchtime, by around 10:00 the next morning.
Q. If, for example, Carolina Pines were to request eight or ten files from you --
A. Um-hum.
Q. -- gave you the patient's name and the patient's number, and gave you that order sometime before October 26th, 2006, --
A. Um-hum.
Q. -- do you know of any reason why it would take beyond November 10th of that year to produce those records?
MR. DRIGGERS: Object to the form.
MR. CORBIN CONTINUING:
Q. We are talking two weeks or so.
A. If they placed an order for a file, we retrieved it and sent it to Carolina Pines and the particular dates of service they were looking for was not contained in that file, they would request it out of another box. Once the box numbers that they have knowledge of don't contain that particular box, then we would go a step further and, again, pull the

inventory list and look and see if there might be anywhere else that it may be.

Q. Do you recall working with Carolina Pines retrieving records involving the Ruth Person case?

A. Yes.

Q. With whom did you speak at Carolina Pines about the Ruth Person retrieval?

A. Jean Gainey and Shelley Poston.

Q. Did Iron Mountain produce everything that Jean Gainey and Shelley Poston requested of you involving the Person case?

MR. DRIGGERS: Object to the form.

A. We produced everything that we had for her request.

MR. CORBIN CONTINUING:

Q. The question was, if they requested something, --

A. Um-hum.

Q. -- did you ever come back and tell them, gosh, we don't have those records?

A. Yes. We would tell them "No, it was not in the box you requested."

Q. Would you continue looking for those records?

A. Only at the customer's request.

Q. Do you recall doing that?

A. Yes.

Q. Do you recall in the Carolina Pines' case after you

might have been told to continue looking for the records that you could not find the records?

MR. DRIGGERS: Object to the form.

A. There were one or two. I cannot remember offhand what the names were, but I do remember it seems like there were two that we could not find at the time in the boxes they requested.

MR. CORBIN CONTINUING:

Q. Did you ever find those two files?

A. We did find files on that person; not the dates they were looking for.

Q. How much of a lapse in time was it when you actually found some records on those two files that you gave it to Carolina Pines from the date they requested it? Are we talking days or months?

A. Per request would be just within twenty-four to forty-eight hours. If they called back at a later date requesting that file again it would, again, be another twenty-four to forty-eight hours.

Q. You said from the one or two files that you had to go back and search another box that you could not find all the records or the dates that they are talking about, what do you mean by that?

A. If they place a request for a specific date-of-stay in the hospital and the chart does not contain those

dates, then we would tell them, yes, we found the file and send it to them, and then she would call us back and say this doesn't contain the date, can you look in this box or can you just do a search and see if you can find something containing these dates.

Q. Did you ever deal with Mr. Driggers?

A. I remember speaking to Mr. Driggers, yes.

Q. Did you speak to him more than once?

A. Not that I recall, no.

Q. Do you recall the nature of the conversation between Mr. Driggers and you?

A. Yes. I phoned Carolina Pines to let them know that I had received a subpoena for customer courtesy and was about the extent of the conversation. The orders were placed. I sent everything I had.

Q. Why did you call the attorney for Carolina Pines?

A. The attorney called me.

Q. And that was a courtesy to Carolina Pines or that was a courtesy to you or?

A. I called Jean Gainey as a courtesy -- customer courtesy.

Q. After you spoke to Jean Gainey, then you got a telephone call from Mr. Driggers, correct?

A. Yes, not that day. I don't remember how many days, but yes.

Q. What do you recall about that telephone conversation?

A. Just was I sure that everything had been pulled that we could find and, of course, the answer was yes and to explain as I have explained here today what the process is for pulling medical record files.

Q. Do you recall about when that conversation occurred?

A. Within a week. It was not several days.

Q. Within a week of what date, please?

A. I don't know the date.

Q. You said within a week?

A. Within a week of my conversation with Jean.

Q. Were you aware of a lawsuit involving Ms. Person at anytime?

A. Not until I received the subpoena. Carolina Pines will on occasion tell me I need this for a court case, but it is no specifics. Not for a particular person or for a particular thing.

Q. On Iron Mountain's computers involving Carolina Pines' records, --

A. Yes.

Q. -- if you want to search for a particular doctor's records, can you do that?

A. No, sir.

Q. For example, if you wanted to look for Mr.

Mincheff's records --
A. Um-hum.
Q. -- without actually physically pulling out the boxes, can you do it any other way?
A. No, sir.
Q. What, in general, is a "Retrieval History Report Sorted by Customer Box Form?"
A. If a customer calls and requests, for instance, what files have I pulled or what requests have I made this month, I can key a date range into this report and it will pull up everything, all customer history between those two dates.
Q. Do you recognize that document?
A. Yes, I do.
Q. In general, what is that document, please?
MR. DRIGGERS: You got another copy of that, Daryl?
MR. CORBIN: I do.
MR. DRIGGERS: Thank you.
A. This is a "Retrieval History Report Sorted by Customer Box Number" which is the bar code ID number that would be on the box, on the customer's box from dates 10-17-06 to 11-10-06. It states the customer box number, the date of request, the file that was requested from that box and the order number on

which that box was requested.
MR. CORBIN CONTINUING:
Q. Who is the particular customer on that form, please?
A. Carolina Pines.
MR. CORBIN: Could we mark that, please?
PLAINTIFF'S EXHIBIT #1 MARKED.
Q. Ms. Parnell, on the bottom of that particular document, Exhibit A -- or Exhibit #1 is some handwriting. Is that your handwriting?
A. Yes, it is.
Q. Could you read for the record, please, the handwriting; what it says?
A. Jean's name and her fax number, activity for patient's records requested by Carolinas -- Carolina Pines. It says previously done by Mr. Mincheff. That is what she was looking for in those records.
Q. Does it say procedures or prejious -- previous?
A. "Procedures done by Dr. Mincheff."
Q. The Jean person, that would be somebody from Carolina Pines?
A. Jean Gainey.
Q. Does this mean that Jean Gainey called you and asked you to produce records of procedures preformed by Dr. Mincheff --
A. No.

Q. -- listed on this sheet?
A. No, sir. This means that Jean Gainey called and requested a history report on the patients that were requested between these two dates, because she was looking for procedures from Dr. Mincheff. At that time, I told her that we could not pull up through the computer anything per doctor and those are my notes down there. Dr. Mincheff -- it is just stating that is who she stated she was looking for, any procedures done by him.
Q. Did you deliver anything to Carolina Pines according to this request involving procedures not done by Dr. Mincheff?
A. We delivered the charts that were requested. What those charts had within them, I do not know. This particular form was faxed to Jean Gainey. The form as you can see only lists the chart numbers and the requestor. It does not list the name of the person the chart actually belongs to. That is my handwriting as to who those patients are --
Q. Yes, ma'am.
A. -- and whether we delivered or faxed that information to Carolina Pines on the date that is listed on the report.
Q. How did you know the records requested by Carolina

Pines, they wanted them to involve procedures done by Dr. Mincheff?
A. I did not know that. When it is written on the bottom, she stated during the phone call requesting this that she is looking for records for Dr. Mincheff. Those are just my notes on the bottom of the report as to what she was looking for.
Q. Do you know on what date you spoke to her?
A. The date of the report, 4-6-07.
Q. Do you know if the records listed on Exhibit #1 contain Dr. Mincheff's procedures?
A. I do not know.
Q. The patient's names, you indicated that you had added those patients' names?
A. Correct.
Q. Are you sure you added the patients' names or did Ms. Gainey indicate to you the patients' names?
A. Those are my handwriting. I looked up the order number and took the information from the computer.
Q. Did Ms. Gainey mention any patient names to you?
A. No, not during this request, no. When she received the fax request, she did not know to whom the charts were and I made the notations after looking everything up and re-faxed it.
Q. On the right-hand side of that particular document,

you indicated it shows whether or not it was delivered or sent to Carolina Pines, is that correct?

A. Delivered or faxed, yes.

Q. Were each one of these patients' files delivered or faxed to Carolina Pines?

A. Either delivered or faxed. "DEL" is delivered; "FAX" would be faxed. It does not state whether it is the entire chart that was faxed or specific documents that they requested. That information would be on the packing slip that she received.

Q. In response to the subpoena, did you give us copies of packing slips involving this particular document?

A. I gave at that time everything that I had, yes. The computer only holds up to six months, so this particular -- some of these would not be available if they are over six months old at this time. But at the time of the request, whatever was available was given, yes.

Q. The time frame of these particular records on this document appear to be October and November and early December 2006, is that correct?

A. October 17th through November the 10th.

Q. We also have some on this list, for example, of December 1, 2006.

A. Probably requested at a particular time. If, by chance, that record was already out, it would state. I don't know why that one slipped in there. It is whatever the computer generated prints out on the report.

Q. What is the refile date listed on the record? It has re -- request date and then refile date. What does that mean?

A. If we re -- the request date would be the one on the top. If it has not been requested -- if the chart has not been returned to Iron Mountain, it will be blank underneath there. That very well may be your 12-1. They requested that chart on 10-24 and it was returned to our office on 12-1. That would be the date that it was returned to Iron Mountain for refile.

Q. Can you look at that particular list and tell me which files Carolina Pines got, on what day they got it and did not return it; in other words, the ones they ought to still have?

A. Not according to this list, no, because this would be as of April, not as of this date.

Q. Do you recognize what that document is?

A. Yes.

Q. What, in fact, is that?

A. This --

MR. DRIGGERS: You got a copy of that, Daryl?

MR. CORBIN: I don't -- don't know.

MR. DRIGGERS: Thank you.

A. This is an order that I placed for any files that we had requested for this deposition today.

MR. CORBIN CONTINUING:

Q. Would that list contain information about what files Carolina Pines got but did not return?

A. Yes. Anything on the right-hand side that says "found" which is listed "FND" would have a "yes." Those files would be here on the table. Anything that says "no" has not been returned for refile.

MR. CORBIN: Could we mark that, please?

PLAINTIFF'S EXHIBIT #2 MARKED.

MR. DRIGGERS: And, I hadn't said anything about this before, but just out of precaution for -- for Carolina Pines and Iron Mount -- Iron Mountain, I know we have got some other patients' names that are listed on these documents, and I don't know if it is going to be necessary for us to redact those, but I at least want to ask for some agreement that these documents just be kept in the confines of this litigation --

MR. CORBIN: Absolutely. Yes, sir.

MR. DRIGGERS: -- so as to protect any violation of the privacy laws.

MR. CORBIN: Absolutely.

MR. SOUZA: Agreed.

MR. CORBIN: I agree.

Q. Ms. Parnell, Exhibit #2, can you tell me what files Carolina Pines requested and as of August 24th, 2007, has not returned to Iron Mountain?

A. Patient Medical Record No. 20507, last name Dixon.

Q. And if you could, tell me the date Carolina Pines requested the record if you can.

A. That chart was delivered on November the 10th, 2006.

Q. And not returned, correct?

A. And not returned.

Q. The next one, please?

A. 15399, the last name Lender, delivered 11-10-06, not returned.

Q. Please continue.

A. Medical Record 671, not returned. There is no name on the packing slip. Medical Record 44687, Duong, D-O-, D-U-O-N-G, not returned, delivered on 11-10-of 06. Medical Record No. 1115, name Sandra, delivered 11-10-06, not returned.

Q. When you say "Sandra," would that be the person's complete name, last name, first name, or do you

know?
A. I do not know.
Q. If you compare the name on the other sheet that you provided --
A. Yes.
Q. -- with the handwritten names on it, it looks like that particular person's name is Sandra Hanley?
A. Sandra Hanley and that is the same person the box number matches.
Q. So Carolina Pines requested Ms. Hanley's file?
A. Um-hum.
Q. Iron Mountain found it, gave it to them --
A. Correct.
Q. -- in November and for whatever reason, Carolina Pines has not returned the box to you?
A. Correct; the file.
Q. The next one is what, please?
A. 14731, Walbee.
Q. Is that Walbee or might it be Wallace?
A. It was requested as Walbee. The chart was delivered on 11-10 and not returned.
Q. Was the name actually Walbee or was it Wall -- Wallace?
A. I do not know.
Q. The next file is what, please?

A. The next file is 55208, Blyther, delivered 10-17-06, not returned.
Q. The next one is what, please?
A. 671, no name, delivered 11-15, not returned.
Q. Is that the same 671 file requested above or would that be a different file?
A. It could possibly be two volumes. It is listed twice in the computer, so it was requested twice here.
Q. We do know that Carolina Pines for whatever reason requested that particular file twice, is that fair to say?
A. According to this, yes.
Q. Is that what this file -- is this what this form means, they requested it twice?
A. It could possibly be two different volumes.
Q. What is the next one, please?
A. That is all that are not deliv -- that have not been returned.
Q. Did you gather the Hanley file for me?
A. Yes.
Q. Do you have that with you?
A. Let me doublecheck and make sure Hanley is one I do have. No, I was mistaken. Hanley is one that Carolina Pines still has. Hanley has not been

returned.
Q. When you say Carolina Pines did not return the file, did they take the entire contents of Ms. Hanley's medical record or just parts of it?
A. The entire chart was delivered.
Q. The entire chart of Sandra Hanley was delivered to Carolina Pines in accordance with Exhibit #1, is that correct?
A. Correct.
Q. And on the bottom of Exhibit #1, you indicated it had something to do with Dr. Mincheff, fair?
A. No. No. Dr. Mincheff's name is written there, because she stated she was looking for procedures done by Dr. Mincheff. That name was not mentioned at the time these were requested between October and November.
Q. Do you know why Carolina Pines did not return these several files?
A. No.
Q. Is it a common practice of Carolina Pines to request files from Iron Mountain and do not return them for months?
A. Yes.
Q. That is a common practice.
A. Some of them are not returned at all. Yes.

Q. How common of a practice would that be?
A. Probably weekly or monthly. It depends on what they need the chart for.
Q. Did you ever have any discussions with Ms. Gainey or the other person that you mentioned discussing the fact that the document you sent to them were the correct ones that they were looking for?
A. The only time that would be discussed is if they called back looking for additional items on that person.
Q. Another patient on Exhibit #1 that indicates you had delivered to Carolina Pines, it is Patient Account No. 46725, Ms. Shawntae Polk?
A. Um-hum.
Q. Did Carolina Pines receive her medical records?
A. At this particular time, the records were faxed.
Q. On what date, please?
A. Faxed on 10-30-06.
Q. Did Carolina Pines return those particular records?
A. The chart itself was returned on 11-29-06.
Q. Do you have that particular chart?
A. Yes, it is on the table.
Q. Do you know where it would be?
A. I do not. It is one of the thinner charts. The medical record number is listed down the side of the

chart.

MR. DRIGGERS: You want to take a few minutes to see, you know, which ones are which. Take a break or something or -- I mean, I am just trying to think of a easier way to do it so you don't have to go through each time.

OFF THE RECORD. BACK ON THE RECORD.

MR. CORBIN CONTINUING:

Q. Would this be one of the files you went through to determine whether or not it had anything to do with Mr. Mincheff, or do you know?

MR. DRIGGERS: Object to the form.

A. For this deposition, yes.

MR. CORBIN CONTINUING:

Q. Does it have anything to do with Dr. Mincheff, Ms. Polk's file?

A. I found several different procedures, none of which had that name associated.

Q. So you did go through Ms. Polk's file and you did not see Dr. Mincheff's name in it?

A. No, I did not.

Q. The next file I want to ask you about is Crystal Blyther. Did, in fact, you produce that record for us?

A. No, Blyther is still at Carolina Pines.

Q. Her patient account number appears to be 55208. Is that one of the files Carolina Pines requested under Exhibit #1?

A. Yes.

Q. On what -- what date were the records delivered to Carolina Pines and how?

A. That chart was delivered on 10-17-06.

Q. How so, please?

A. Delivered via courier.

Q. The next file I want to ask you about -- and I appreciate your going through the exhibit that I have given to you trying to make things a little bit easier for everybody, the patient's name was Jack Holgate, H-O-L-G-A-T-E.

A. Um-hum.

Q. Did you find that particular file?

A. I have two files on Mr. Holgate.

Q. Did you go through Mr. Holgate's files to determine whether or not Dr. Mincheff was involved in his care?

A. This was one of the files I went through early on. I did find three different procedures that were done. At that time, I did not know I was looking for Dr. Mincheff or the other doctor.

Q. Dr. Bannister?

A. Right.

Q. You are looking at some files. Did you write down the procedures that you found and what files contained Dr. Mincheff's records?

A. I wrote down whether -- if nothing was found, I wrote down nothing and after my conversation finding out that is what I was looking for, then yes, I did make some notes.

Q. For Mr. Holgate, what do your notes say?

A. "Colonoscopy, 3-1-of 2000; steroid injection, 2-21-of 02; and cardiac cath, 11-24-97."

Q. The next patient I believe is Freddie Goodson. Do you have a reference on Mr. Goodson's file?

A. "Op notes, 12-6-2003."

Q. Do you know what kind of procedure it was?

A. I did not write that down, no.

Q. Was that particular file delivered to Carolina Pines involving Mr. Goodson?

A. That chart, there were items faxed at one point, and then the chart delivered after that and the chart returned 11-29-06.

Q. The next file involves Ms. Margaret Dixon. Do you have any references involving her file?

A. Yes. Mix -- Ms. Dixon had nothing for Dr. Mincheff.

Q. Was there anything for Dr. Bannister?

A. No, nothing for Dr. Bannister.

Q. The next issue involved a particular order number. Do you know which one I am talking about, the order number 68407861?

A. Yes.

Q. Did you find that particular order?

A. That order was over six months old and I cannot pull it up that old.

Q. Do you know when the order was made by looking at the number sequence?

A. I can tell by Exhibit #1.

Q. How can you tell?

A. The order number is listed on the right-hand side for three of those patients.

Q. Which three patients, please?

A. Is it 7861, is that the order -- last four of the order number? I need the order number again, please.

Q. Oh, it is 7861.

A. 7861?

Q. Yes, ma'am.

A. 7861 is 10-23-06 for Virginia Moses. 7861, same date, Sandra Hanley and Timothy Walbee.

Q. And the date of that order, can you tell?

A. 10-23-06.

Q. And you say you cannot pull that record back up for what reason?
A. Our system only contains information within the last six months.
Q. So that information would have been deleted from --
A. The history of the file is not deleted. The order itself is not in the system.
Q. The order itself would have been deleted probably in April or May of this year?
A. Correct.
Q. Do you recall getting I guess as part of the first correspondence from me involving Ms. Person's case, I think this is the letter dated December 5th, 2006?
A. Yes.
MR. CORBIN: Can we mark that, please?
PLAINTIFF'S EXHIBIT #3 MARKED.
MR. DRIGGERS: Do you have a copy of that, Daryl?
MR. SOUZA: Here's one.
MR. DRIGGERS: Thanks.
MR. CORBIN: You got one?
MR. DRIGGERS: Thank you.
MR. CORBIN CONTINUING:
Q. Is it Iron Mountain's practice anything over six months old, any kind of orders would be deleted?

Would anything else be deleted or taken out of the system?
A. No, the history remains in the system.
Q. So even though -- could you tell because the order has -- form has been deleted, what Carolina Pines actually ordered?
A. I don't remember which exhibit this is.
Q. But you can reconstruct that?
A. Exhibit #2?
Q. Yes, ma'am.
A. Where the "no's" are will tell you the history of the patient. As you can see some of them are 10-23, 10-17, so the history is still there. The only thing I cannot reproduce would be the packing slip which is delivered with the files.
Q. And what information would the packing slip provide to us?
A. The packing slip has the customer number, the person that requested it, the date it was requested, the box numbers, the information requested, and yes or no whether it was found or not found.
Q. Would anything else be deleted from the computer records except for the order numbers after six months, everything else be kept?
A. Correct.

Q. In that particular letter I had sent to you in December, I had asked Iron Mountain not to delete, change, modify or change any records involving this particular litigation. Nothing has been deleted except in the normal practice which would be after six months, the order number and that request form will be deleted, correct?
A. Correct.
Q. OK. Besides those three patients that you told me about under this particular order number, can you tell me whether or not any other patients were included within that order number?
A. No. According to the history, there were only three patients on that order; otherwise, it would show their names on that list.
Q. So you are absolutely sure it just included those three patients and nobody else?
A. Yes.
Q. Let's talk about CT films, or CAT scan films, or radiological films. Does Iron Mountain actually keep hospital films?
A. We do for certain customers, yes.
Q. Have you ever kept hospital films for Carolina Pines?
A. No, sir.

Q. What do they do with their hospital films?
A. I have no idea what Carolina Pines does with those.
Q. Are you familiar with any statute that requires hospitals to maintain records for any length of time?
A. I know there are statutes. I do not know what those statutes are.
Q. That is something you don't feel familiar talking about?
A. I just know the Iron Mountain regulations is not to destroy anything unless the customer specifically asks for it to be destroyed, and then we have to have a report and a signature on that.
Q. For example, if the law says you must maintain them ten years, if the hospital wanted to destroy records after two years as long as they signed off and instructed you to do it, it would be done, correct?
A. Correct.
Q. OK. In other words, you don't -- you are not a gatekeeper, you don't --
A. No, sir.
Q. -- keep records for ten years even if the patient -- even if the hospital wants to destroy them. If they want to destroy the records, if they sign off on it, you destroy them?

A. Correct.
MR. CORBIN: If we could take a short break and give me a chance to go through some of these files here.
MR. SOUZA: OK. Sure.
MR. CORBIN: Want to take a fifteen-minute break?
MR. DRIGGERS: That sounds good.
OFF THE RECORD AT 2:50 P.M.
BACK ON THE RECORD AT 3:30 P.M.
MR. CORBIN CONTINUING:
Q. Ms. Parnell, do you know what that document is?
A. From what I can tell, it is a fax coversheet for Gavin or Brian.
Q. Who are Gavin and Brian?
A. Gavin -- there is a Gavin Brown that works in this office who is the Record Center coordinator and Brian Tapper, at that time, was the account rep who is no longer in this area.
Q. What is -- that request form is from who, please?
A. From Carolina Pines.
Q. What is the date of that request form?
A. The date is 11-10-06.
Q. May I see it, please?
A. Uh-huh.

Q. The document is from Jean Gainey, is that correct?
A. Yes, that is what it says.
Q. And it says "Have a good day, Brian. Please bring the records to me ASAP on...," and it lists Sandra Hanley, Timothy Wallace, David Dixon, Minh, M-I-N-H, Duong, D-U-O-N-G, and Virginia Lender. "We need these records this morning so we can begin copying the information needed. Thanks."
A. Um-hum.
Q. Did you comply with that request?
A. I have not seen that request, no.
Q. Would there be some kind of record at Iron Mountain to see if, in fact, you did comply with this request --
A. I can look --
Q. -- dated November the 10th --
A. -- in the system and see --
Q. -- dated --let me finish, please.
A. I am sorry.
Q. Do you know of any way you can look at records at Iron Mountain and tell me whether or not Iron Mountain complied with this request dated November 10th, 2006?
A. Yes.
Q. When it says, "Please bring me the records ASAP," is that unusual?

A. Yes.
Q. Especially when you are asking for one, two, three, four, five files?
A. That is not an unreasonable request, no.
Q. To bring records ASAP on five different people?
A. Correct.
Q. That is not unusual at Carolina Pines?
A. For Carolina Pines, yes. That is unusual for Carolina Pines.
Q. Have you ever seen any other request where they requested ASAP records to be delivered involving five separate patients?
A. Multiple patients, yes. I can't say if it was five or more, but I have had requests for multiple patients as a rush, yes.
Q. Do you know why Carolina Pines needed these particular files ASAP?
A. I do not.
Q. How long would it take you to look in your files to see if, in fact, these records were delivered to Carolina Pines?
A. Just a few minutes.
Q. OK. We will do that in a couple of minutes.
A. OK.

Q. The next -- I am sorry. The next record it appears to be a fax order form. Can you tell me, in general, what that document is?
A. This is the way we normally receive their faxes. As I said, I have never seen anything typed like that one before.
MR. DRIGGERS: That is another one? The earlier one marked?
MR. CORBIN: We can go ahead and mark it. That is the only copy I have.
MR. DRIGGERS: Oh. I have got another copy I brought.
MR. CORBIN: You have got another copy?
MR. DRIGGERS: Yeah.
MR. CORBIN: OK.
MR. DRIGGERS: I will take care of it.
A. Yes, this is a normal fax sheet. I have seen this one before.
MR. CORBIN CONTINUING:
Q. What is the date on that fax order sheet, please?
A. The date on this fax is 10-17-06.
Q. Again, that is from Carolina Pines to Iron Mountain?
A. Correct.
Q. Which files were they requesting?
A. There are seven files listed: Mingh Duong, Virginia

Moses, Sandra Hanley, Timothy Walbee spelled W-A-L-B-E-E, David Dixon, Virginia Lender, and Linda Caulder.

MR. CORBIN: And maybe we need to get copies of these records. Is there someplace you can get three -- three copies of these things?

MS. PARNELL: Absolutely.

COURT REPORTER NOTE: At this time, Ms. Parnell left the room.

Ms. Parnell returned to the room with copies.

MR. CORBIN: Thank you. Did you get a copy of these?

MS.PARNELL: I didn't hand them out.

MR. CORBIN: OK.

MS. PARNELL: Two of these I believe are the same out of the three.

MR. CORBIN: Look like it, don't it. Yeah.

PLAINTIFF'S EXHIBITS #4, #5 & #6 MARKED.

Q. Exhibit #5 which is a fax order form, the typical form that Iron Mountain is used to, --

A. Um-hum.

Q. -- do you know whether or not those actual records were delivered to Carolina Pines?

A. The first one was faxed.

Q. Which name is that, please, that was faxed?

A. Mingh Duong. Virginia Moses was delivered. Sandra Hanley was faxed. Timothy Walbee was faxed. David Dixon, two charts on him were delivered. And Virginia Lendler was faxed and delivered.

Q. On what date, please?

A. Delivered on 11-10-06 and faxed on 10-23-06. And 5245, Linda Caulder is not on this history sheet.

Q. Did you pull Ms. Caulder's file for us today?

A. No, I did not, There are no box numbers listed on this fax sheet, so these were researched and apparently we could not find anything to pull on Linda Caulder at that time anyway.

Q. The Hanley file, --

A. Um-hum.

Q. -- according to your records, when was that actually delivered to Carolina Pines?

A. I have a fax on 10-23 and delivered on 11-10.

Q. Does that indicate that the documents that were faxed on 10-23 are the same documents delivered on November 10th involving Ms. Hanley or would it be two separate orders?

A. They are two separate orders, the same chart coming out of the same box.

Q. So according to your records, Carolina Pines requested records of Ms. Hanley twice; they received

by fax the records on October 23rd of 2006, --

A. Uh-huh.

Q. -- and they had delivered to them the same record on Ms. Hanley on November 10th, 2006, --

A. Um-hum.

Q. -- correct?

A. Correct.

Q. Ms. Hanley's file was never returned to Carolina Pine -- I mean, Ms. Hanley's file was never returned to Iron Mountain, correct?

A. Correct.

Q. When you look at Exhibit B which we had provided to you trying to reduce down some of the searching, --

A. Um-hum.

Q. -- at the top there were two account numbers, --

A. Yes.

Q. -- and I believe you indicated just with the account number, because they are more than six months old, you really can't tell me what was requested, fair?

A. That is not an Iron Mountain account number. That is the account -- hospital account number that Carolina Pines provided.

Q. If you actually had some of that patient's medical records, for example, these two records, would that help you identify where that patient's chart would

be?

A. Yes.

Q. How so?

A. We do not house the records -- excuse me, Carolina Pines does not house their records by account number only. Even though that is within the chart, I would need a patient's name and/or medical record number.

Q. Do you see it on that document?

A. I do.

Q. What do you see?

A. I see there is no name. The medical record number is 34170.

Q. So with the medical record number 34170, you could pull that particular document for me?

A. Yes, this chart is on the table.

Q. Would it be contained within the charts on the table?

A. The 34170, I called this morning and got that information and was able to pull the file for you. It is here.

Q. The other patient involving the second account number, I believe those are the records that we have. Can you also look at that --

A. Yes.

Q. -- and -- and tell us what the medical record number

would be?
A. Medical Record 33051.
Q. Did you also produce that file for us to look at?
A. I did.
MR. CORBIN: Do you see them? (Directed to his paralegal)
Q. When you look at those two particular files, the first one 34170 --
A. Uh-huh.
Q. -- appears to be Ashton Byrd.
A. Correct.
Q. On the notes that you have taken, does that relate to Dr. Mincheff?
A. No.
Q. The other file number 33051, does that relate to Dr. Mincheff?
A. No, sir.
Q. Do either one of those files relate to Dr. Bannister?
A. No, sir. Sometimes, it would be listed that Dr. Mincheff was the patient's family physician, but none of the op notes or any of the treatment was actually done by the physician, by Dr. Mincheff or Dr. Bannister.
Q. Show me where it says that. For example, Patient

No. 34170, --
A. Uh-huh.
Q. -- which I -- what name was I -- was that that I just gave to you?
A. Ashton Byrd.
Q. Byrd, you say it has nothing to do with Dr. Mincheff?
A. Not in the file that I viewed this morning, no.
Q. The Operative Note indicates the assistant on that particular operation. Who was the assistant on that operation?
A. Thomas Mincheff.
Q. So it does involve Dr. Thomas Mincheff?
A. Um-hum.
Q. Are your notes in error?
A. I was looking at the signature. The signature does not have Dr. Mincheff's signature on it, so I would not have pulled that, no.
Q. The two folders that you did produce --
A. Uh-huh.
Q. -- were Byrd which you say has nothing to do with Mincheff, but he was the assistant surgeon, and Marion Thomas. The files that you produced are for the wrong hospitalizations for those two patients. Can you confirm that to the partial records we

received?
A. The date of procedure on the paperwork you handed me is 9-28-06.
Q. For which patient, please?
A. For patient 34170 which is Ashton Byrd and the chart contains January 16th of 1998 and February 6th of 1998.
Q. Where is the chart involving this particular operation?
A. Oh, I have no idea.
Q. You cannot look at that file, that particular record for Mr. Byrd --
A. Um-hum.
Q. -- that shows that Dr. Mincheff was the assistant surgeon --
MR. SOUZA: Objection. The -- the witness is only able to respond to what was requested of Iron Mountain and what was produced by I -- Iron Mountain. She is not in a position to speak to what the records contain. And just to be clear, I want on the record, too, the witness is appearing today pursuant to the subpoena that was served and dated on January 9th, 2007, including the scope of the production includes Exhibit A and -- and the paragraphs therein. As you stated on the record

today in referring to Exhibit B was delivered to us as a courtesy, a road map if you will, and that is not the scope of the subpoena that we are responding to today.
MR. CORBIN CONTINUING:
Q. Ms. Parnell, did you limit the scope when you were looking for those particular patients' names we have provided to you?
A. No. I received the document that you sent stating that there was an unknown name and an account number which there is no possible way I can find anything by that account number, so I phoned the Medical Record Department and asked for the name, the medical record number that matched, and which they gave me. I keyed both numbers into the system. Only one name came up. I cannot remember which name it was that was individually listed in the system. The other one, I went through the manual inventory list to find a box that contained that and pulled these of my own accord for this deposition.
Q. So when we gave you the list, Exhibit #B, did you research the entire system, for example, Mr. Holgate's files and Mr. Goodson's files or did you restrict what you were actually looking for the dates?

A. I looked for everything. There are files here that have been previously requested and files that were not. I did my search by medical record number and by last name, first name.
Q. So the Byrd file that apparently was delivered to Carolina Pines before by Iron Mountain, we had requested the Discharge Summary of this particular patient and we don't have that and you are saying -- are you saying you are not going to produce that for us, we just got a partial record?
A. I don't haye a Byrd file that was requested by Carolina Pines.
Q. That is what I requested -- you said you needed more information about this one particular patient account number --
A. Um-hum.
Q. -- and Carolina Pines gave us partial records involving that particular patient.
A. OK.
Q. You were kind enough to look at it. You can identify who it was. You said you actually before this deposition pulled out this patient's file.
A. Correct.
Q. I didn't know who the patient was, apparently you did. You pulled out the file. I gave you the

records where it is a different hospitalization than the ones you produced, --
A. Correct.
Q. -- so the question was how much trouble would it be --
A. Um-hum.
Q. -- to produce the rest of these records?
A. I produced everything that I can find on this patient. I do not have that date of service.
Q. And Iron Mountain does not have it --
A. No.
Q. -- to your knowledge?
A. To my knowledge, no. If I remember correctly, that is a 2006, is that right?
Q. It is. Yes, ma'am.
A. That would be an in-house chart for Carolina Pines.
Q. And the other patient that we are talking about, the same question. Would it be difficult to find that particular patient's Discharge Summary?
A. On Thomas Marion, 33051?
Q. Yes, ma'am.
A. I have pulled everything that I have on that person as well.
Q. And the date of the surgical procedure we have is October 11, 2006. Again, that would be the same

response --
A. Correct.
Q. -- in-house file of Carolina Pines? Have you had any discussions with Mr. Driggers about the production besides the initial courtesy telephone call?
A. No, sir.
Q. Have you had any discussions with Ms. Gainey or anybody else affiliated with Carolina Pines about your deposition?
A. No, sir.
Q. Were you present for any meetings between Mr. Driggers and anybody else discussing this case?
A. No, sir.

MR. CORBIN: If we can take a five-minute break, I think we are done. We appreciate it, Ms. Parnell. If we could take a short break.

OFF THE RECORD AT 3:55 P.M.

BACK ON THE RECORD AT 4:00 P.M.

MR. CORBIN: Ms. Parnell, I appreciate your time. I would just like instead of you sitting here going through these two files here, if we may spend time after the deposition going through those things. It is the Waiters' file and the Rhodes' file. I just hadn't had a chance to go all the way

through it, but I have no more questions. If that is okay if I can spend thirty minutes going through those things.

MR. SOUZA: What, you need, Waiters?

MR. CORBIN: Waiters and Rhodes.

MR. DRIGGERS: I have got just a couple.

MR. CORBIN: OK.

MR. DRIGGERS: I promise. Let me see those exhibits. I just had a couple of questions about those.

MR. SOUZA: Sure.

CROSS-EXAMINATION BY MR. DRIGGERS:

Q. Ms. Parnell, again, my name is Martin Driggers. I am the attorney for Carolina Pines Regional Medical Center in this litigation and I just wanted to ask you a couple of questions about these exhibits that we have been discussing. First of all, Exhibit #1, and I know you have already been through that, but that is a chart that is generated based on dates, correct?
A. Correct.
Q. That has no -- no bearing necessarily to any particular patient, or doctor, or anything other than the dates, correct?
A. Correct.

Q. And tho -- that document is request made by Carolina Pines Regional Medical Center I think you said from 10-17-06 through 10-06, correct?
A. Correct.
Q. OK. So there may be documents pertinent to this case you are discussing; there may be documents that aren't pertinent to this case that we are discussing, right?
A. Correct.
Q. OK. All right. On Exhibits #4 and #5 -- first of all, Exhibit #5, if you don't mind --
A. Uh-huh.
Q. -- looking at that first. What is the date on that document?
A. 10-17-06.
Q. OK. And it doesn't say who actually received it, but I am assuming that just comes across a fax machine and the person that is here that can grab it and start working on it is who gets it, is that correct?
A. Correct.
Q. OK.
A. As you can see --
Q. You may not have -- go ahead.
A. As you can see there is a fax number on the top

which is an 800-number that goes to our Customer Service Center --
Q. Got 'cha.
A. -- but with no box numbers listed, the Customer Service Center cannot create an order off of this,--
Q. OK.
A. -- so then it in return is either rerouted to us or they call the customer and the customer sends it to us directly.
Q. OK. And Exhibit #4, the date on that one I think we have already established is November the 10th and that is a fax coversheet, correct, --
A. Correct.
Q. -- from Carolina Pines Regional Medical Center?
A. Correct.
Q. And on that fax coversheet, does it say how many pages are -- are included in that fax?
A. Yes, two.
Q. OK. And is -- is it your understanding that the same form is attached to that fax coversheet?
A. Yes, it was the same form.
Q. OK. All right. And this one in particular was sent to -- you mentioned to employees of Iron Mountain, to Gavin or Brian, is that correct?

A. Correct.
Q. OK. And in between these two dates, and I think I have heard you describe that procedure, it sounds like there would have been some kind of discussion between the folks here at Iron Mountain and the folks with Carolina Pines Medical Records, correct?
A. Correct.
Q. OK. And it sounds like it would have probably been more than one discussion, correct?
A. Correct.
Q. Is it fair to say that it would have been back and forth trying to -- trying to get down just like we have been doing today what records they are looking for, what records ya'll had, the box numbers, all that -- that goes back and forth with finding those records?
A. Correct. And according to the request and according to the history, --
Q. Um-hum.
A. -- the items that were faxed, --
Q. Um-hum.
A. -- in fact, were delivered on the 11-10 request.
Q. OK. And can you tell from that chart whether the whole chart was faxed, or certain items from the chart were faxed, or -- or can you say one way or

the other?
A. Not from the report, no. From the fax, --
Q. Um-hum.
A. -- it lists that they are requesting an op note only --
Q. OK.
A. -- for dates between these dates.
Q. OK. All right. And on the delivery date, would that have been the entire chart or would that just have been a particular note or do you know?
A. We do not deliver partial charts --
Q. OK.
A. -- to this particular customer.
Q. Got 'cha. All right. Let's see. And also just for the record, you have never seen me before today, have you?
A. No.
Q. OK. And you mentioned having a conversation with me. I think you dated it some point in time after receiving a subpoena from Mr. Corbin, correct?
Q. Correct.
Q. OK. Not during this time frame where you were getting requests for records from Carolina Pines and ya'll were finding records for Carolina Pines in November and October of 2006, correct?

A. Correct.
Q. OK. And the same goes for anybody else from my law office, correct?
A. Correct.
Q. In fact, I would be surprised you probably don't even know the name of the law firm I work for, am I right on that?
A. Correct.
MR. DRIGGERS: OK. Let me see those exhibits one more time. Is that all of them?
COURT REPORTER: Should be one through five.
MR. DRIGGERS: I have got one, four and five. You got two and three over there. Here we go. I found them. Just because I don't think it has been identified, the letter has but, this hasn't. This -- that is just a copy of the subpoena that accompanied that December '06 letter.
DEFENDANT CAROLINA PINES' EXHIBIT #1 MARKED.
Q. Ms. Parnell, can you or do you recognize what has been marked Defendant's Exhibit #1?
A. Yes, I do.
Q. OK. And what is that document?
A. This is the subpoena that is dated January 9th, 2007.
Q. OK. And it is your understanding that is what we

are here for today, your deposition is pertaining to that subpoena?
A. Correct.
MR. DRIGGERS: OK. That is all the questions I have.
MR. SOUZA: Just to go on the record about the -- I think you were asking about the transcript. We do want a copy and to read -- I think was it thirty days to --
COURT REPORTER: Yes, you have thirty days in which to read and sign.
MR. CORBIN: I just have a couple of more questions. Very brief.
RE-DIRECT EXAMINATION BY MR. CORBIN:
Q. Have you ever spoken with Lynn Blackmon?
A. No, I don't recognize that name.
Q. The deposition today, we also sent or hand-delivered to you and we did that because your Boston attorney refused to accept it by fax. He agreed one day, then the next day said no, so we had to hand-deliver it to you Friday.
A. Um-hum.
MR. CORBIN: And, I would like to just mark a clean copy. I have written all over this.
MR. SOUZA: Objection. I never agreed to

accept service.
MR. CORBIN: Well, that -- that is fine. I am going to introduce it as an exhibit. That is fine.
PLAINTIFF'S EXHIBIT #6 MARKED.
Q. Ms. Parnell, that is the August 24th letter and subpoena that you actually were hand-delivered, is that correct?
A. Yes.
Q. And attached to that is also what is called "Exhibit B." You see that?
A. Yes.
Q. And it appears that you fully complied with Exhibit B, isn't that correct?
A. Yes.
Q. OK. And based upon your testimony, it appeared as though with that information that it wouldn't take several days to gather those documents for me, correct?
MR. DRIGGERS: Object to the form.
MR. CORBIN CONTINUING:
Q. In other words, it -- it was not an undue burden on you to produce those records for me, correct?
MR. DRIGGERS: Object to the form.
MR. CORBIN: Please go ahead and answer.
A. For the two unknowns, no, it did not take a lot of

time.
Q. And the other documents that we had asked for, you have actually produced those as well?
A. The other documents had been requested in the past and when you key in the number, it automatically comes up so there was no research done on those at this time.
Q. OK. So if somebody complained that Exhibit B contained a whole lot more work for you to do, it really didn't, correct?
A. It would depend. If somebody requested that all of these documents be faxed, that is a lot of copying and faxing. You cannot fax a lot of these original documents because the paper is too thin, so it would be to copy and fax those entire forms as well as my other daily duties, because we do not have a customer service here in this office.
Q. And, I certainly didn't ask you to fax those to me, correct?
A. Correct.
Q. OK. So the bottom line is gathering those documents for me that had been requested before was not a major task?
A. No, --
Q. OK.

A. -- not at this time.

MR. CORBIN: OK. That's all I have. Thanks.

MR. DRIGGERS: I have no further questions.

AND FURTHER THIS DEPONENT SAITH NOT.

DEPOSITION WAS ENDED AT 4:15 P.M.

CERTIFICATE OF NOTARY PUBLIC

I, Joan B. Branham, do hereby certify that the foregoing deposition was taken by me, a duly authorized Notary Public, and the same transcribed as a correct transcription of the testimony taken at the time and place indicated therein;

That the witness was duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That I am not related to any of the parties or their counsel nor interested in the outcome of the foregoing litigation financially or otherwise.

Witness my official seal and signature at Florence, South Carolina this 29th day of August, 2007.

_____

Joan B. Branham, Notary Public
My Commission Expires: 12-15-09

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON RUTH J. PERSON, Plaintiff, v. CAROLINA PINES REGIONAL MEDICAL CENTER, Defendant.	)	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT CASE NO. 2004-CP-16-322 **PLAINTIFF PERSON'S REPLY MEMORANDUM (Post-Trial Discovery)**

FILED
2007 OCT 15 PM 3:27
SCOTT B. SUGGS
CLERK OF COURT/CO
DARLINGTON COUNTY, S.C.

I. INTRODUCTION

The primary purpose of this reply memorandum is to address issues raised in the defense brief involving whether post-trial discovery materials prove Defendant Carolina Pines and defense counsel violated the Court's Orders. In addition, Plaintiff's counsel believes all of the other issues raised in the initial motion and memorandum require judicial evaluation.

II. ISSUES

Quite frankly, the ultimate issues facing the Court are (1) whether Defendant Carolina Pines had in its possession or under its control any of the hospital records the Court ordered it to produce before the October 26, 2006, deadline date; (2) whether Defendant Carolina Pines failed to produce all the relevant records in its possession in a timely manner during trial; and (3) whether Defendant Carolina Pines and defense counsel complied with the Court's post-trial March 29, 2007, Order "to provide Plaintiff's counsel with complete and

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legible copies of all document requests, correspondence, transmittal letters, facsimile transmissions, and material produced for or by Iron Mountain involving Plaintiff's case within fifteen (15) days; and (4) whether Defendant Carolina Pines and defense counsel properly acted to "facilitate complete and full disclosure of all information under the Court's order involving Plaintiff's discovery requests and efforts."

III. ARGUMENTS

A. Defendant Carolina Pines and defense counsel clearly violated the Court's March 29, 2007, Order.

Defendant Carolina Pines' brief totally ignores the fact that defense counsel and it failed to produce the Hanley and Blyther hospital records for Plaintiff's counsel's inspection in accordance with the Court's March 29, 2007, Order. It is beyond dispute Iron Mountain delivered the complete Hanley and Blyther hospital charts to Defendant Carolina Pines between October 17 - 24, 2007, even before expiration of the Court's October 26, 2006, discovery production deadline date. Moreover, Defendant Carolina Pines never returned the Hanley and Blyther hospital charts to Iron Mountain. In addition, defense counsel refused to produce the Hanley and Blyther hospital charts for Plaintiff's counsel's inspection. Does such conduct comply with the Court's March 29, 2007, Order?

The March 29, 2007, Order in relevant part states as follows:

> (T)he Court hereby orders Defendant Carolina Pines and defense counsel to comply with the Court's discovery order to provide Plaintiff's counsel with complete and legible copies of all documents requests, correspondence, transmittal letters, facsimile transmissions, and material produced for or by Iron Mountain involving Plaintiff's case within fifteen (15) days of the date of this Order. In addition, the Court orders defense counsel to participate in the document production process and Iron Mountain deposition in a good faith manner to facilitate complete and full disclosure of all information under the Court's order involving Plaintiff's discovery requests and efforts.

See copy of March 29, 2007, Order attached hereto as Exhibit A.

Although the March 29, 2007, Order instructed Defendant Carolina Pines and defense counsel to produce the materials it attained from Iron Mountain, the defense never produced the Hanley and Blyther hospital charts for Plaintiff's counsel's inspection. Defendant Carolina Pines and defense counsel violated the Court's Orders.

The March 29, 2007, Order allowed Plaintiff's counsel to depose Ms. Bambi Parnell ("Parnell"), the manager of Iron Mountain, a local company which stores some of Defendant Carolina Pines' hospital records. Without Ms. Parnell's deposition, Plaintiff's counsel would not have known Defendant Carolina Pines still has sole possession of the complete Hanley and Blyther hospital charts. There is no valid dispute that Ms. Parnell's deposition testimony and Iron Mountain's records prove Defendant Carolina Pines never returned the Hanley and Blyther files to Iron Mountain. See copy of Parnell deposition attached hereto as Exhibit B. Accordingly, Iron Mountain could not produce the Hanley and Blyther hospital charts during Ms. Parnell's deposition for Plaintiff's counsel's review. Defense counsel's refusal to produce the Hanley and Blyther hospital charts in Defendant Carolina Pines' sole possession constitutes an intentional violation of the Court's March 29, 2007, Order.

B. Does the defense brief say anything about Defendant Carolina Pines' failure to produce the Hanley and Blyther hospital charts under the Court's Orders?

Defendant Carolina Pines' brief falsely states defense counsel provided to Plaintiff's counsel on April 13, 2007, "transmittal letters and records produced to Plaintiff's counsel during the case which had already been produced." Defense Brief, page 8. The Court's March 29, 2007, Order absolutely required Defendant Carolina Pines and defense counsel to produce all "material produced for or by Iron Mountain involving Plaintiff's case." The Plaintiff's initial brief expressed serious concerns about defense counsel's undisputed refusal to produce the Hanley and Blyther hospital charts that Iron Mountain produced to Defendant Carolina Pines between October 17 - 24, 2007, and never returned to Iron Mountain.

Why does the defense brief totally ignore such an obvious violation of the Court's March 29, 2007, Order? Defendant Carolina Pines' behavior is consistent with its continuing pattern of chronic discovery abuse for years in this case before, during, and after Plaintiff Person's trial. The Court ought to grant Plaintiff Person a new trial and issue appropriate, meaningful sanctions against Defendant Carolina Pines.

C. The defense mischaracterized facts surrounding the Court's August 15, 2007, letter.

The defense brief contains misleading and factually incorrect comments involving the Court's August 15, 2007, correspondence. For example, the defense brief states as follows:

> Only after receiving the Court's (August 15, 2007) letter, the Plaintiff took steps to conduct any further discovery and schedule a deposition of Ms. Bambi Parnell (of Iron Mountain).

See Defense Brief, page 9.

The statement is simply untrue and immaterial to the real issues facing the Court.

On July 26, 2007, Plaintiff's counsel sent defense counsel a letter requesting some convenient dates for Ms. Parnell's deposition. See copy of Plaintiff's counsel's July 26, 2007, letter attached hereto as Exhibit C. On August 3, 2007, defense counsel informed Plaintiff's counsel that he could depose Ms. Parnell during the week of September 10, 2007. See copy of defense counsel's August 3, 2007, letter attached hereto as Exhibit D. In short, defense counsel's correspondence contradicts the defense brief's comment that Plaintiff's counsel "finally took steps to conduct any further discovery and schedule a deposition of Ms. Bambi Parnell" . . . (only after receiving the Court's August 15, 2007, letter). In fact, Plaintiff's counsel requested a deposition date from defense counsel three (3) weeks before the Court's August 15, 2007, letter; and defense counsel was too busy to depose Ms. Parnell until approximately seven (7) weeks later. Accordingly, it is rather misleading and disingenuous for defense counsel to falsely accuse Plaintiff's counsel of not pursuing Ms. Parnell's deposition until after the Court's August 15, 2007, letter.

D. Ms. Parnell's deposition testimony proves Defendant Carolina Pines and defense counsel violated the March 29, 2007, Order.

The Plaintiff's initial memorandum cites parts of Ms. Parnell's deposition that prove Defendant Carolina Pines requested, attained, and never returned the complete Hanley and Blyther hospital charts. In short, Defendant Carolina Pines and defense counsel never produced the Hanley and Blyther records for Plaintiff's counsel's inspection in violation of the Court's March 29, 2007, Order. Moreover, Defendant Carolina Pines received various hospital charts from Iron Mountain involving Dr. Mincheff's surgical procedures between October 17 - 24, 2006. However, Defendant Carolina Pines failed to produce those records

to Plaintiff's counsel until November 11 - 12, 2006, near the end of the trial.

Most troubling is the fact that defense counsel stated to the Court during the trial that Iron Mountain lost or misplaced the records after Iron Mountain had already delivered some of the items to Defendant Carolina Pines. Why does the defense brief stand silent involving important issues for the Court to consider in deciding whether to grant Plaintiff Person's Motion for a New Trial and issue appropriate discovery abuse sanctions against Defendant Carolina Pines? Defendant Carolina Pines' failure to produce the Hanley and Blyther hospital charts support Plaintiffs Person's petition for a new trial.

E. Defendant Carolina Pines' "abandonment" argument is misleading and false.

The "abandonment" argument in the defense brief is misleading and false. For example, the defense brief states as follows:

> Plaintiff has seemingly abandoned four of these grounds (noted in the original Rule 59 Motion) and is proceeding only on the allegation that Carolina Pines failed to produce certain records regarding prior surgical procedures performed by Dr. Mincheff, though no Motion to Compel their production was ever filed.

Defense Brief, pages 10 - 11.

The abandonment statement in the defense brief is obviously false. In fact, the first sentence of Plaintiff Person's Memorandum (Post-Trial Discovery) states as follows:

> Plaintiff Ruth J. Person ("Person") incorporates into this memorandum her "Rule 59 Motion" for a new trial absolute she previously submitted to the Court for consideration.

Plaintiff's Memorandum, page 1.

The second portion of the Defendant Carolina Pines' "abandonment" assertion complaining Plaintiff's counsel never filed a "motion to compel" is misleading and

immaterial. The Court ordered Defendant Carolina Pines and defense counsel to provide Plaintiff's counsel with the following materials no later than October 26, 2006:

> (1) all hospital operative notes, history and physical records, and discharge summaries involving open and laparoscopic fundoplication surgeries of Thomas V. Mincheff, M.D. ("Mincheff"); (2) Plaintiff's CT Scan film of her spleen taken at the hospital; and (3) records involving surgical complication rates of Dr. Mincheff and his surgical assistant, C. Brooks Bannister, M.D.

See copy of March 29, 2007, Order.

The Court's March 29, 2007, Order further states:

> In fact, the Court ordered the Defendant to provide all these items and other materials to Plaintiff's counsel no later than October 26, 2006, almost two (2) weeks prior to trial.

Id.

The defense missed the October 26, 2006, deadline date; it produced only some of the hospital records near the end of the trial; it never produced the radiographic film; and it never provided Plaintiff's counsel with surgical complication rates of Dr. Mincheff or Dr. Bannister.

Why must Plaintiff's counsel file a "motion to compel" Defendant Carolina Pines' production of records given its violation of the Court's discovery order? Instead of merely failing to answer Plaintiff's discovery requests, Defendant Carolina Pines and defense counsel violated the Court's Order. Under the circumstances, one ought to carefully examine statements in Defendant Carolina Pines' brief that reference, paraphrase, or characterize evidence in this case. Defendant Carolina Pines' "no motion to compel" claim has no merit.

F. The defense "missing" radiological film and adverse inference argument is invalid.

The Plaintiff's original motion notes Defendant Carolina Pines had a legal duty to maintain complete hospital records involving patients for ten (10) years under South Carolina law. Since Defendant Carolina Pines could not produce Plaintiff Person's radiological film in violation of statutory law, Plaintiff's counsel believes the Court should have given the jury an adverse inference charge involving the "missing" record. The defense argues (1) Plaintiff Person or her family took the original film from Carolina Pines, and (2) no adverse inference charge was warranted at trial. In support of the defense argument, Defendant Carolina Pines' Director of Radiology, Mr. Eddie Moore ("Moore"), signed an affidavit.

In relevant part, Mr. Moore's affidavit states as follows:

> Information from the Department of Radiology indicate that when Ms. Person was discharged from Carolina Pines Regional Medical Center and transferred to Palmetto Richland Memorial Hospital in Columbia, South Carolina, that she or a family member took the X-rays with her for the physicians in Columbia, to review.

See Moore Affidavit, paragraph 4.

Why did Mr. Moore and defense counsel decide not to attach a copy of the "source" document of the "information from the Department of Radiology" Mr. Moore asserts indicates Plaintiff Person or her family "took the x-rays with her for the physicians in Columbia to review?" Does such a document proving the defense's position even exist? If so, where is it?

Further, the defense brief asserts "records produced by the Plaintiff from Palmetto Richland confirm that Plaintiff arrived at their facility with her medical records." Defense Brief, page 13. What proof of such a statement does the defense have? The defense brief

relies upon the "Affidavit of Martin S. Driggers, Jr., at paragraph 4" which states in relevant part as follows:

> Information from the Department of Radiology indicated that Ms. Person or someone associated with her had taken the films with her when she was transferred from Carolina Pines to Palmetto Health Richland in Columbia, South Carolina.
>
> This information regarding the radiological films was confirmed by the records obtained from Palmetto Health Richland, which show that on her transfer to Palmetto Richland Ms. Person's medical records were transferred with her. (See Transfer Intake Form from Palmetto Richland (attached hereto as Exhibit A)).

See Driggers Affidavit, paragraphs 3 - 4.

What does the Driggers affidavit attachment prove? The attachment to the Driggers affidavit supposedly proves Plaintiff Person or her family took the original radiological film from Defendant Carolina Pines. However, close scrutiny of the Driggers affidavit attachment indicates it is an "Intra-Hospital Transfer Record" from Palmetto Richland Memorial Hospital ("Palmetto Richland") dated June 15, 2001. But, Plaintiff Person was transferred from Defendant Carolina Pines to Palmetto Richland on April 25, 2001.

It is apparent, the "old records" reference in Plaintiff Person's Palmetto Richland hospital chart involves Plaintiff Person's transfer from Palmetto Richland's STICU (Surgical Trauma Intensive Care Unit) to Palmetto Richland's eight floor. Moreover, the "transferring nurse" was a Palmetto Richland nurse, Barbara Watson, RN, not a Carolina Pines nurse. Accordingly, the affidavits of Mr. Moore and Mr. Driggers fail to prove Plaintiff Person or her family took Defendant Carolina Pines' original radiology film anywhere at anytime. Simply put, it is misleading for anyone to argue Palmetto Richland's June 15, 2001, "Intra-

Hospital Transfer Record" proves Plaintiff Person or her family took x-rays from Defendant Carolina Pines on April 30, 2001.

What Mr. Moore's affidavit does not say raises another question. For example, Mr. Moore's affidavit states as follows:

> Oftentimes . . .patients take their original films with them to the new facility . . and information from (Carolina Pines) Department of Radiology indicates that when Ms. Person was discharged from Carolina Pines Regional Medical Center (on April 30, 2001) and transfer to Palmetto Richland Memorial Hospital in Columbia, South Carolina, that she or a family member took the x-rays with her for the physicians in Columbia to review."

Mr. Moore's affidavit, paragraphs 3 - 4.

In addition to the fact Mr. Moore's affidavit does not disclose nor identify the source document for his statement, it also does not state Defendant Carolina Pines did not keep a copy of Plaintiff Person's radiological film. Quite frankly, defense counsel told Plaintiff's counsel and the Court during trial that Iron Mountain lost or misplaced Plaintiff Person's original film. After the trial, the defense now argues Iron Mountain never had the film so Plaintiff Person or her family must have taken it to Palmetto Richland. Defendant Carolina Pines has not told the Court it never kept a copy of Plaintiff Person's film. If Defendant Carolina Pines failed to at least keep a copy of Plaintiff Person's film in violation of statutory law, the Court should have given an adverse inference charge to the jury.

G. The defense argument non-compliance is justifiable since Plaintiff's experts did not need the Court ordered discovery materials is immaterial.

In a self-serving manner, the defense brief states the Plaintiff's experts did not need the records and Plaintiff's counsel "could not use the prior medical records to even

effectively question Dr. Mincheff's credibility or competence because Dr. Mincheff had experienced no other significant complications in any of his laparoscopic Nissen esophageal procedures." Defense Brief, page 10. The defense brief further boldly concludes "the "Plaintiff had absolutely no use for the prior medical records at issue." What does such an attitude of justifiable noncompliance really mean? If a party believes its compliance with a Court order would not benefit the other party, it can ignore the Order without any sanction. What is in the hospital charts Defendant Carolina Pines and defense counsel refuse to produce? How can anyone even argue Plaintiff's counsel could not benefit from the contents of the missing medical charts without actually knowing what information is in the records? Should the Court allow Defendant Carolina Pines and defense counsel to unilaterally determine what information would help the Plaintiff's case? The Court ought to reject the defense position that Defendant Carolina Pines' noncompliance was justified since it believes the information would not have benefitted Plaintiff's counsel's trial presentation.

However, the defense brief ought to explain why Defendant Carolina Pines failed to produce Hanley and Blyther hospital charts or some of Dr. Mincheff's eleven (11) other laparoscopic Nissen fundoplication or open Hill antireflux surgery hospital charts in accordance with his affidavit and verified Answers to Interrogatories. See copy of Dr. Mincheff's May 2, 2002, Answers to Interrogatories attached hereto as Exhibit E. Without doubt, post-trial discovery proves Defendant Carolina Pines and defense counsel withheld from the Plaintiff and the Court relevant hospital charts, despite the Court's Orders.

Dr. Mincheff's deposition testimony indicates he performed eight (8) Nissen

fundoplication and three (3) open Hill antireflux procedures before Plaintiff's Person's operation. See copy of Dr. Mincheff's deposition parts attached hereto as Exhibit F. The Court ordered Defendant Carolina Pines to produce the History & Physical, Operative Notes, and Discharge Summaries for all eleven (11) antireflux surgical patients of Dr. Mincheff. During the trial, long after the Court's October 26, 2006, deadline date, the defense disclosed partial hospital records of only seven (7) [not eleven (11)] of Dr. Mincheff's antireflux surgeries prior to Plaintiff Person's April 25, 2001, operation. Why has the defense not produced all eleven (11) hospital charts involving Dr. Mincheff's antireflux surgeries before Ms. Person's operation? Why did Defendant Carolina Pines request and receive the Hanley and Blyther charts from Iron Mountain before trial; refuse to produce them to Plaintiff's counsel before, during or after the trial; and decide not to return them to Iron Mountain? Defendant Carolina Pines' violation of the Court's March 29, 2007, Order warrants the granting of a new trial for Plaintiff Person.

H. The defense argument that "something is wrong with the Castleberry deposition" is immaterial.

Defendant Carolina Pines wants to argue something was improper about Plaintiff's counsel's Deposition Notice and Subpoena Duces Tecum involving Defendant Carolina Pines' Chief Executive Officer, Mr. Castleberry. In fact, defense counsel filed an initial "Motion to Quash" which the Court correctly denied. The Court ordered defense counsel to produce Mr. Castleberry for his deposition along with the records indicated on the subpoena. Moreover, defense counsel provided Plaintiff's counsel with a convenient date for Mr. Castleberry's deposition in Defendant Carolina Pines' conference room. In addition, defense

counsel's letters confirm the fact Mr. Castleberry was required to produce the items listed in the subpoena. See copies of October 20, 2006, and October 24, 2006, letters attached hereto as Exhibit G.

In response, Plaintiff's counsel sent defense counsel a Notice of Video Depositions for Mr. Castleberry with the same list of records the Court ordered him to produce on October 23, 2006. The day before the deposition date on which defense counsel agreed to produce Mr. Castleberry and the court-ordered records, he filed another Motion to Quash Mr. Castleberry's deposition. Plaintiff's counsel reminded defense counsel the Court Order governed Mr. Castleberry's deposition and document production; and Plaintiff's counsel appeared the next day in accordance with the deposition notice for Mr. Castleberry's deposition and production request. See copy of Plaintiff's counsel's October 30, 2007, letter attached hereto as Exhibit H.

Defense counsel appeared without Mr. Castleberry or the court-ordered records. In response, Plaintiff's counsel initiated a telephone conference with the Court, including defense counsel's participation. The Court heard arguments from both counsel and again ordered Defendant Carolina Pines to produce Mr. Castleberry, along with the records, for his deposition or incur the "most severe" sanction for violation of the Court's Order. On November 2, 2006, Mr. Castleberry appeared for his deposition and failed to produce all the records. In fact, Mr. Castleberry produced none of Dr. Mincheff's antireflux surgery hospital charts.

Why does Defense counsel argue about an immaterial issue of whether Plaintiff's

counsel's deposition subpoena to Defendant Carolina Pines' Chief Executive Officer was proper? Defense counsel unsuccessfully attempted twice to quash Mr. Castleberry's deposition and document production. The material fact is that Defendant Carolina Pines had some hospital records in its possession which it failed to properly disclose before, during, and after the trial in violation of the Court's pretrial and post-trial Orders to do so.

Given true facts which evidence Defendant Carolina Pines' extensive pretrial discovery abuse and violation of the Court's discovery Orders, it is unfortunate the defense brief argues its noncompliance with Mr. Castleberry's court-ordered document production is justified given "something was wrong" with Plaintiff's counsel's deposition subpoena. Such an argument is stale and immaterial. The Court ought to reject defense counsel's new-found justification for violating its Orders.

IV. CONCLUSION

In conclusion, Defendant Carolina Pines and defense counsel failed to produce records in their possession in violation of the Court's October 26, 2006, deadline date and the March 29, 2007, post-trial Order. In fact, Defendant Carolina Pines failed to produce various hospital charts it got from Iron Mountain even before the Court's October 26, 2006, deadline date. Defendant Carolina Pines' defense counsel told the Court Iron Mountain lost or misplaced some of the hospital charts it already had in the hospital's possession. The defense has no valid excuse nor justification for its violations of the Court's Orders. Post-trial discovery proves Defendant Carolina Pines currently has sole possession of the Hanley and Blyther hospital charts which it continues to refuse to produce. Despite the Court's

March 29, 2007, Order, Defendant Carolina Pines still refuses to comply with court-ordered discovery.

Under the circumstances, the only effective sanction against Defendant Carolina Pines for its chronic and continuing discovery abuse and repeated violation of the Court's discovery orders is to grant Plaintiff Person a new trial and issue appropriate sanctions against Defendant Carolina Pines to insure a fair trial under the South Carolina Rules of Civil Procedure.

RESPECTFULLY SUBMITTED,

CORBIN LAW FIRM
227 West Evans Street
Post Office Box 447
Florence, SC 29503
(843)667-6119

BY: 
DARYL J. CORBIN
Attorney for Plaintiff

Florence, South Carolina

October 15, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	CASE NO. 2004-CP-16-322
RUTH J. PERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
CAROLINA PINES REGIONAL MEDICAL CENTER,	)	
	)	
Defendant.	)	
	)	

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CLERK OF COURT/C.C.P.
DARLINGTON COUNTY, S.C.

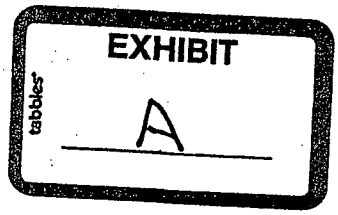
I, the undersigned, an employee of Daryl J. Corbin, Esquire, attorney for the Plaintiff, do hereby certify that I have served a copy of the foregoing **Plaintiff Person's Reply Memorandum (Post-Trial Discovery)** via hand-delivery on October 15, 2007, addressed to the person(s) as indicated below.

Honorable J. Michael Baxley
Chief Administrative Judge
Fifteenth Judicial Circuit
531 E. Carolina Avenue
Hartsville, SC 29550

Martin S. Driggers, Jr., Equire
Sweeny, Wingate & Barrow
115 Cargill Way, Suite B
Hartsville, SC 29550

Christina B. Stewart

Florence, South Carolina



STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
RUTH J. PERSON,)
)
Plaintiff,)
)
v.)
)
CAROLINA PINES REGIONAL)
MEDICAL CENTER,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 2004-CP-16-322

FILED
2007 APR -4 AM 10:14
SCOTT B. SUGGS
CLERK OF COURT
DARLINGTON COUNTY, S.C.

ORDER
(Motion for a New Trial and Motion to Quash Rule 45 Subpoena)

I. Ms. Person's Rule 59 Motion for a New Trial

On November 14, 2006, the jury returned a defense verdict in favor of Defendant Carolina Pines Regional Medical Center against Plaintiff Ruth J. Person involving her negligent credentialing cause of action. The Court allowed Plaintiff's counsel ten (10) days to file a Rule 59 Motion for a New Trial. On November 27, 2006, Plaintiff's counsel filed a Rule 59 Motion for a New Trial with the Darlington County Clerk of Court's Office; and by facsimile he transmitted the Motion to the trial judge and defense counsel. Defendant's counsel argues (1) Plaintiff's request for ten (10) days to file the Rule 59 Motion was untimely; and (2) Plaintiff's counsel filed the Motion beyond the time limit of ten (10) days granted by the Court.

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DARLINGTON COUNTY, S.C.

A. Plaintiff's request for ten (10) days to file a Rule 59 Motion was timely.

At the immediate close of the trial after dismissal of the jury, Plaintiff's counsel

did not request ten (10) days to file a Rule 59 Motion for a New Trial. However, the next morning Plaintiff's counsel by facsimile transmitted to the Court a request for ten (10) days to file a Rule 59 Motion. In response, the Court granted the request for the following reasons:

(1) The trial lasted almost two (2) weeks;

(2) The trial was uniquely exhausting and complex given its novel negligent credentialing cause of action and the nature of Plaintiff's physical and emotional injuries;

(3) Plaintiff is obviously disabled and the jury verdict appeared to the Court to confuse, upset, and surprise her;

(4) After the jury verdict, defense counsel promptly left the courtroom while Plaintiff's counsel conferred with her about the verdict;

(5) In the absence of defense counsel, Plaintiff's counsel could not in an adversarial setting formally request ten (10) days to file a Rule 59 Motion after conferring with his client;

(6) The morning after the verdict, Plaintiff's counsel requested from the Court ten (10) days to file a Rule 59 Motion; and

(7) In the interests of justice and fairness, the Court concluded the Plaintiff should have the benefit of ten (10) days to thoughtfully consider whether to file a Rule 59 Motion for a New Trial.

B. Plaintiff's counsel timely filed the Rule 59 Motion in accordance with the Court's instruction.

Defendant's argument that Plaintiff's counsel failed to timely file a Rule 59 Motion in accordance with the Court's instruction no later than ten (10) days after the November 14, 2006, jury verdict has no merit. The tenth day after the jury verdict was

Friday, November 24, 2006, the day after Thanksgiving. In fact, November 24, 2006, was a national holiday on which the Darlington County Courthouse was closed. Further, November 25 and November 26, 2006, were a Saturday and Sunday, respectively. Plaintiff's counsel timely filed the Rule 59 Motion on the first business day the courthouse was open ten (10) days following the November 14, 2006, verdict. In short, Plaintiff's counsel timely filed the Rule 59 Motion.

II. Plaintiff's Rule 59 Motion Argument

A. The Court preserved Plaintiff's counsel's objections to the jury charge for appellate purposes.

Prior to closing arguments, the Court held a comprehensive in-chambers charge conference with all counsel. During the jury charge conference, Plaintiff's counsel submitted several written proposed jury charges to the Court for consideration. Amongst others, the Court denied Plaintiff's request for three (3) particular jury charges involving the adverse inference doctrine attached to Plaintiff's Rule 59 Motion and a request the Court charge the jury that South Carolina law required Defendant to maintain medical records for a period of ten (10) years. Although Plaintiff's counsel did not take exception on the record to the Court's formal jury charge, the Court and counsel understood the official record would include all jury charges he submitted to the Court in chambers.

In addition, Defendant's counsel acknowledged at the hearing that the parties agreed Plaintiff's counsel's proposed jury charges the Court rejected in chambers would be included in the record on appeal.

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CLERK OF COURT
DARLINGTON COUNTY, S.C.

B. Plaintiff's Rule 59 Motion raises significant issues for the Court's consideration.

In general, Plaintiff's counsel argues Defendant repeatedly violated the South Carolina Rules of Civil Procedure during pretrial discovery and failed to honor the Court's order requiring Defendant to produce for him prior to trial various medical records and financial data. Although Plaintiff's motion notes several areas of concern, a central issue is whether Defendant provided Plaintiff's counsel with (1) all hospital operative notes, history and physical records, and discharge summaries involving open and laparoscopic fundoplication surgeries of Thomas V. Mincheff, M.D. ("Mincheff"); (2) Plaintiff's CT scan film of her spleen taken at the hospital; and (3) records involving surgical complication rates of Dr. Mincheff and his surgical assistant, C. Brooks Bannister, M.D. In fact, the Court ordered the Defendant to provide all these items and other materials to Plaintiff's counsel no later than October 26, 2006, almost two (2) weeks prior to trial.

However, the Defendant failed to fully comply with the Court's order. As an explanation, Defendant's counsel represented to the Court during trial that several of the records were missing, lost, or unavailable. In addition, defense counsel told the Court that a local records storage business called "Iron Mountain" had stored Defendant's medical records and could not locate some of the items, including Plaintiff's CT scan film and most of the other hospital records.

After the jury verdict, Plaintiff's counsel issued a Rule 45 subpoena to Iron

Mountain seeking information about the missing, lost, or unavailable records in anticipation of a deposition. In response, defense counsel filed a Motion to Quash. Plaintiff's counsel requested permission from the Court to attain those records noted in the Rule 45 Subpoena and depose Ms. Bambi Parnell ("Parnell") of Iron Mountain. Further, Plaintiff's counsel requested that the Court order defense counsel and Defendant to provide him with complete copies of all document requests, correspondence, transmittal letters, facsimile transmissions, and any material produced by Iron Mountain to Defendant Carolina Pines, its attorneys, paralegals, office staff, and anyone else involving Plaintiff's case. In response, defense counsel agreed on the record to provide all such items to Plaintiff's counsel.

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DARLINGTON COUNTY, S.C.

C. Carolina Pines' Motion to Quash

The Court believes Plaintiff's counsel is entitled to ascertain from Defendant Carolina Pines, its counsel, and Iron Mountain all information involving the Defendant's attempt to comply with the Court's discovery order. Accordingly, the Court denies Defendant's Motion to Quash and shall allow Plaintiff's counsel to attain all items previously sought under the Rule 45 subpoena, as well as depose Ms. Parnell, employee of Iron Mountain, on these issues. Any further requests for depositions in this post trial matter must be approved by this Court, with all counsel being given an opportunity to be heard.

III. Conclusion

Under the circumstances, the Court shall hold in abeyance any ruling involving the substantive merits of Plaintiff's Rule 59 Motion for a New Trial until completion of the document production and Iron Mountain deposition. Further, the Court hereby orders Defendant Carolina Pines and defense counsel to comply with the Court's discovery order to provide Plaintiff's counsel with complete and legible copies of all document requests, correspondence, transmittal letters, facsimile transmissions, and material produced for or by Iron Mountain involving Plaintiff's case within fifteen (15) days of the date of this Order. In addition, the Court orders defense counsel to participate in the document production process and Iron Mountain deposition in a good faith manner to facilitate complete and full disclosure of all information under the Court's order involving Plaintiff's discovery requests and efforts. The Court shall expect and require Iron Mountain to fully cooperate with Plaintiff's counsel in this matter.

IT IS SO ORDERED.

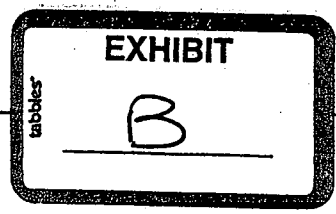
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J. Michael Baxley, Presiding Judge
Fourth Judicial Circuit

Hartsville, South Carolina

March 29, 2007

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DARLINGTON COUNTY, S.C.



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON) C/A NO.: 2004-CP-16-322

RUTH J. PERSON,

Plaintiff,

vs.

CAROLINA PINES REGIONAL MEDICAL CENTER,

Defendant.

DEPOSITION OF:
BAMBI AUSTIN PARNELL

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DARLINGTON COUNTY, S.C.

The deposition of BAMBI AUSTIN PARNELL was taken pursuant to Notice under the South Carolina Rules of Civil Procedure before Joan B. Branham, a Notary Public in and for the State of South Carolina, at Iron Mountain, Florence, South Carolina on August 28, 2007, beginning at 2:00 p.m.

APPEARANCES OF COUNSEL:

For Plaintiff: Daryl J. Corbin, Esquire
The Corbin Law Firm
Post Office Box 447
Florence, South Carolina 29503

For Carolina Pines: Martin S. Driggers, Jr., Esquire
Sweeney, Wingate & Barrows
115 Cargill Way
Hartsville, South Carolina 29550

For Iron Mountain: David M. Souza, Esquire
Bartlett Hackett Feinberg, P.C.
155 Federal Street 9th Floor
Boston, Massachusetts 02110

COURT REPORTER'S NOTE: -- indicates interruption; incomplete sentences; trailing off; unfinished sentences.

JOAN B. BRANHAM
Court Reporter
910 Cherokee Road
Florence, SC 29501
(843) 662-4163

STIPULATIONS:

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above-entitled action, or for both purposes;

That all objections would be reserved until the time of the trial except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was not waived.

BAMBI AUSTIN PARNELL, first duly sworn deposed as follows:

DIRECT EXAMINATION BY MR. CORBIN:

Q. Good afternoon, Ms. Parnell. As you know, my name is Daryl Corbin. I am an attorney from Florence who represents Ruth Person in this lawsuit. If I ask you a question during the deposition that you do not understand, would you please let me know so I can

rephrase it for you?

A. Yes.

Q. Is it fair to assume that if you answer a question that you understood it?

A. Yes.

Q. Under the Rules, if you have any questions during the deposition, you need to address me instead of your attorney or somebody else. Will you do that, please?

A. Yes.

Q. Please state your complete name for the record.

A. Bambi Austin Parnell.

Q. What is your date-of-birth, please?

A. 12-06-1963.

Q. Would you please just give me a brief sketch of your educational background starting with high school?

A. High school.

Q. OK. And which high school, please?

A. Columbus Christian Academy, Columbus, Georgia.

Q. What is your current occupation?

A. I am the Record Center supervisor -- operation supervisor for Iron Mountain in Florence.

Q. What is Iron Mountain?

A. Iron Mountain is a legal document storage facility.

Q. Would one of the big customers at Iron Mountain be

hospitals?

A. Yes, it would.

Q. What would Iron Mountain actually do with hospital records?

A. We would store them for the customer.

Q. Is one of Iron Mountain's customers Carolina Pines?

A. Yes.

Q. Are you also familiar with the company that owns Carolina Pines, HMA?

A. No.

Q. Do you know how long you have been storing Carolina Pines' medical records, roughly speaking?

A. Roughly, five years.

Q. How long have you been with Iron Mountain?

A. Ten years.

Q. Is there anybody else in Florence that has more authority than you do at Iron Mountain?

A. In Florence, no.

Q. If Carolina Pines, for example, wanted to retrieve some medical records being stored at Iron Mountain, explain to me the process, please.

A. They would place a handwritten or verbal request stating the patient's name, patient's medical record number, and they should state the box that the record is stored in.

Q. What would happen next?

A. The -- once the order is placed, our outbound department releases the order. Iron Mountain employees would pull -- complete the order and either depending on their request, fax or deliver the order.

Q. If Carolina Pines were to request, for example, a certain patient's discharge summary and gave you the patient's name and the medical record number, how long would it take you to retrieve that particular document?

A. It would depend on the request. If they requested it as a rush, it would be within two hours. If they requested it as a half-day, it would be within four hours. Next day would be the following day.

Q. So if Carolina Pines were to request information from you, gave you the patient's name and medical record number certainly within a day, you ought to be able to retrieve it, if in fact, you have it?

A. Depending on the number of files requested, yes.

Q. Have you ever lost any Carolina Pines' records?

A. No.

Q. I would assume it is very important to Iron Mountain not to lose records.

A. Correct.

Q. Do you recall losing any records at Iron Mountain here in Florence?
A. No, sir.
Q. And how would you keep track of the records so they would not be lost?
A. Computer; they are scanned in by bar code to a location. We --
Q. So -- I am sorry.
A. I am sorry. With Carolina Pines, their boxes are scanned into the location.
Q. When the boxes are scanned into the computer, can you do a search by the patient's name?
A. Not by box, no, not unless the files are individually listed within that box.
Q. So if Carolina Pines requests a certain patient's records and gives you the patient's name and the patient's number, because they do it by the box, does that mean you cannot find it within a day?
A. Your question again?
Q. Carolina Pines' records, --
A. Correct.
Q. -- if you have the patient's name --
A. Correct.
Q. -- and the medical number for that patient, the patient's number, --

A. Correct.
Q. -- how long does it take you to find that particular record?
A. If it is one box, it is within an hour.
Q. What would some of the other parameters for time be, one box, one hour?
A. Our warehouse is three floors and 44,000 square feet so it would be depending on where the box was stored and how many files they were requesting on that order. If it is one -- one box, you know, and it is on the first floor, of course, it would take less time than a box that is on the top shelf on the third floor six boxes back.
Q. How long would it take to retrieve that file?
A. Probably twenty minutes.
Q. The one that is on the third floor?
A. Third -- correct.
Q. Twenty minutes?
A. Correct.
Q. Do you recall ever Carolina Pines requesting medical records from Iron Mountain and you telling anybody at Iron Mountain that, in fact, the records are lost?
A. No.
Q. Have you ever told anybody affiliated with Carolina

Pines, either Carolina Pines' personnel or their attorney when requesting medical records of Carolina Pines that it would take several, several days to find the records?
A. Yes.
Q. Explain that to me, please.
A. They placed a request for -- I cannot remember the number of files. I believe it was a couple of pages of handwritten files. Some of them had box numbers attached to them. Most of them did not, so we had to physically pull an inventory sheet and the Iron Mountain staff had to decipher which boxes these may be in. We do that out of a courtesy for the customer. It is not required that we do that.
Q. Has that happened more than once with Carolina Pines?
A. Yes.
Q. When you had to actually do the inventory and pull out the boxes, how long did it take you to turn around that particular order?
A. They have placed many, many orders in the years that we have had them. The longest that we have had take would be three days. And again, that is for several files, not just one or two, not a handful.
Q. How about if they requested six files from you,

would it take three days?
A. I could have that -- depending on the time the order is placed, I could have that -- if it was in the morning, by the end of the day; lunchtime, by around 10:00 the next morning.
Q. If, for example, Carolina Pines were to request eight or ten files from you --
A. Um-hum.
Q. -- gave you the patient's name and the patient's number, and gave you that order sometime before October 26th, 2006, --
A. Um-hum.
Q. -- do you know of any reason why it would take beyond November 10th of that year to produce those records?
MR. DRIGGERS: Object to the form.
MR. CORBIN CONTINUING:
Q. We are talking two weeks or so.
A. If they placed an order for a file, we retrieved it and sent it to Carolina Pines and the particular dates of service they were looking for was not contained in that file, they would request it out of another box. Once the box numbers that they have knowledge of don't contain that particular box, then we would go a step further and, again, pull the

inventory list and look and see if there might be anywhere else that it may be.

Q. Do you recall working with Carolina Pines retrieving records involving the Ruth Person case?

A. Yes.

Q. With whom did you speak at Carolina Pines about the Ruth Person retrieval?

A. Jean Gainey and Shelley Poston.

Q. Did Iron Mountain produce everything that Jean Gainey and Shelley Poston requested of you involving the Person case?

MR. DRIGGERS: Object to the form.

A. We produced everything that we had for her request.

MR. CORBIN CONTINUING:

Q. The question was, if they requested something, --

A. Um-hum.

Q. -- did you ever come back and tell them, gosh, we don't have those records?

A. Yes. We would tell them "No, it was not in the box you requested."

Q. Would you continue looking for those records?

A. Only at the customer's request.

Q. Do you recall doing that?

A. Yes.

Q. Do you recall in the Carolina Pines' case after you

might have been told to continue looking for the records that you could not find the records?

MR. DRIGGERS: Object to the form.

A. There were one or two. I cannot remember offhand what the names were, but I do remember it seems like there were two that we could not find at the time in the boxes they requested.

MR. CORBIN CONTINUING:

Q. Did you ever find those two files?

A. We did find files on that person; not the dates they were looking for.

Q. How much of a lapse in time was it when you actually found some records on those two files that you gave it to Carolina Pines from the date they requested it? Are we talking days or months?

A. Per request would be just within twenty-four to forty-eight hours. If they called back at a later date requesting that file again it would, again, be another twenty-four to forty-eight hours.

Q. You said from the one or two files that you had to go back and search another box that you could not find all the records or the dates that they are talking about, what do you mean by that?

A. If they place a request for a specific date-of-stay in the hospital and the chart does not contain those

dates, then we would tell them, yes, we found the file and send it to them, and then she would call us back and say this doesn't contain the date, can you look in this box or can you just do a search and see if you can find something containing these dates.

Q. Did you ever deal with Mr. Driggers?

A. I remember speaking to Mr. Driggers, yes.

Q. Did you speak to him more than once?

A. Not that I recall, no.

Q. Do you recall the nature of the conversation between Mr. Driggers and you?

A. Yes. I phoned Carolina Pines to let them know that I had received a subpoena for customer courtesy and was about the extent of the conversation. The orders were placed. I sent everything I had.

Q. Why did you call the attorney for Carolina Pines?

A. The attorney called me.

Q. And that was a courtesy to Carolina Pines or that was a courtesy to you or?

A. I called Jean Gainey as a courtesy -- customer courtesy.

Q. After you spoke to Jean Gainey, then you got a telephone call from Mr. Driggers, correct?

A. Yes, not that day. I don't remember how many days, but yes.

Q. What do you recall about that telephone conversation?

A. Just was I sure that everything had been pulled that we could find and, of course, the answer was yes and to explain as I have explained here today what the process is for pulling medical record files.

Q. Do you recall about when that conversation occurred?

A. Within a week. It was not several days.

Q. Within a week of what date, please?

A. I don't know the date.

Q. You said within a week?

A. Within a week of my conversation with Jean.

Q. Were you aware of a lawsuit involving Ms. Person at anytime?

A. Not until I received the subpoena. Carolina Pines will on occasion tell me I need this for a court case, but it is no specifics. Not for a particular person or for a particular thing.

Q. On Iron Mountain's computers involving Carolina Pines' records, --

A. Yes.

Q. -- if you want to search for a particular doctor's records, can you do that?

A. No, sir.

Q. For example, if you wanted to look for Mr.

Mincheff's records --
A. Um-hum.
Q. -- without actually physically pulling out the boxes, can you do it any other way?
A. No, sir.
Q. What, in general, is a "Retrieval History Report Sorted by Customer Box Form?"
A. If a customer calls and requests, for instance, what files have I pulled or what requests have I made this month, I can key a date range into this report and it will pull up everything, all customer history between those two dates.
Q. Do you recognize that document?
A. Yes, I do.
Q. In general, what is that document, please?
MR. DRIGGERS: You got another copy of that, Daryl?
MR. CORBIN: I do.
MR. DRIGGERS: Thank you.
A. This is a "Retrieval History Report Sorted by Customer Box Number" which is the bar code ID number that would be on the box, on the customer's box from dates 10-17-06 to 11-10-06. It states the customer box number, the date of request, the file that was requested from that box and the order number on

which that box was requested.
MR. CORBIN CONTINUING:
Q. Who is the particular customer on that form, please?
A. Carolina Pines.
MR. CORBIN: Could we mark that, please?
PLAINTIFF'S EXHIBIT #1 MARKED.
Q. Ms. Parnell, on the bottom of that particular document, Exhibit A -- or Exhibit #1 is some handwriting. Is that your handwriting?
A. Yes, it is.
Q. Could you read for the record, please, the handwriting; what it says?
A. Jean's name and her fax number, activity for patient's records requested by Carolinas -- Carolina Pines. It says previously done by Mr. Mincheff. That is what she was looking for in those records.
Q. Does it say procedures or prejious -- previous?
A. "Procedures done by Dr. Mincheff."
Q. The Jean person, that would be somebody from Carolina Pines?
A. Jean Gainey.
Q. Does this mean that Jean Gainey called you and asked you to produce records of procedures preformed by Dr. Mincheff --
A. No.

Q. -- listed on this sheet?
A. No, sir. This means that Jean Gainey called and requested a history report on the patients that were requested between these two dates, because she was looking for procedures from Dr. Mincheff. At that time, I told her that we could not pull up through the computer anything per doctor and those are my notes down there. Dr. Mincheff -- it is just stating that is who she stated she was looking for, any procedures done by him.
Q. Did you deliver anything to Carolina Pines according to this request involving procedures not done by Dr. Mincheff?
A. We delivered the charts that were requested. What those charts had within them, I do not know. This particular form was faxed to Jean Gainey. The form as you can see only lists the chart numbers and the requestor. It does not list the name of the person the chart actually belongs to. That is my handwriting as to who those patients are --
Q. Yes, ma'am.
A. -- and whether we delivered or faxed that information to Carolina Pines on the date that is listed on the report.
Q. How did you know the records requested by Carolina

Pines, they wanted them to involve procedures done by Dr. Mincheff?
A. I did not know that. When it is written on the bottom, she stated during the phone call requesting this that she is looking for records for Dr. Mincheff. Those are just my notes on the bottom of the report as to what she was looking for.
Q. Do you know on what date you spoke to her?
A. The date of the report, 4-6-07.
Q. Do you know if the records listed on Exhibit #1 contain Dr. Mincheff's procedures?
A. I do not know.
Q. The patient's names, you indicated that you had added those patients' names?
A. Correct.
Q. Are you sure you added the patients' names or did Ms. Gainey indicate to you the patients' names?
A. Those are my handwriting. I looked up the order number and took the information from the computer.
Q. Did Ms. Gainey mention any patient names to you?
A. No, not during this request, no. When she received the fax request, she did not know to whom the charts were and I made the notations after looking everything up and re-faxed it.
Q. On the right-hand side of that particular document,

you indicated it shows whether or not it was delivered or sent to Carolina Pines, is that correct?

A. Delivered or faxed, yes.

Q. Were each one of these patients' files delivered or faxed to Carolina Pines?

A. Either delivered or faxed. "DEL" is delivered; "FAX" would be faxed. It does not state whether it is the entire chart that was faxed or specific documents that they requested. That information would be on the packing slip that she received.

Q. In response to the subpoena, did you give us copies of packing slips involving this particular document?

A. I gave at that time everything that I had, yes. The computer only holds up to six months, so this particular -- some of these would not be available if they are over six months old at this time. But at the time of the request, whatever was available was given, yes.

Q. The time frame of these particular records on this document appear to be October and November and early December 2006, is that correct?

A. October 17th through November the 10th.

Q. We also have some on this list, for example, of December 1, 2006.

A. Probably requested at a particular time. If, by chance, that record was already out, it would state. I don't know why that one slipped in there. It is whatever the computer generated prints out on the report.

Q. What is the refile date listed on the record? It has re -- request date and then refile date. What does that mean?

A. If we re -- the request date would be the one on the top. If it has not been requested -- if the chart has not been returned to Iron Mountain, it will be blank underneath there. That very well may be your 12-1. They requested that chart on 10-24 and it was returned to our office on 12-1. That would be the date that it was returned to Iron Mountain for refile.

Q. Can you look at that particular list and tell me which files Carolina Pines got, on what day they got it and did not return it; in other words, the ones they ought to still have?

A. Not according to this list, no, because this would be as of April, not as of this date.

Q. Do you recognize what that document is?

A. Yes.

Q. What, in fact, is that?

A. This --

MR. DRIGGERS: You got a copy of that, Daryl?

MR. CORBIN: I don't -- don't know.

MR. DRIGGERS: Thank you.

A. This is an order that I placed for any files that we had requested for this deposition today.

MR. CORBIN CONTINUING:

Q. Would that list contain information about what files Carolina Pines got but did not return?

A. Yes. Anything on the right-hand side that says "found" which is listed "FND" would have a "yes." Those files would be here on the table. Anything that says "no" has not been returned for refile.

MR. CORBIN: Could we mark that, please?

PLAINTIFF'S EXHIBIT #2 MARKED.

MR. DRIGGERS: And, I hadn't said anything about this before, but just out of precaution for -- for Carolina Pines and Iron Mount -- Iron Mountain, I know we have got some other patients' names that are listed on these documents, and I don't know if it is going to be necessary for us to redact those, but I at least want to ask for some agreement that these documents just be kept in the confines of this litigation --

MR. CORBIN: Absolutely. Yes, sir.

MR. DRIGGERS: -- so as to protect any violation of the privacy laws.

MR. CORBIN: Absolutely.

MR. SOUZA: Agreed.

MR. CORBIN: I agree.

Q. Ms. Parnell, Exhibit #2, can you tell me what files Carolina Pines requested and as of August 24th, 2007, has not returned to Iron Mountain?

A. Patient Medical Record No. 20507, last name Dixon.

Q. And if you could, tell me the date Carolina Pines requested the record if you can.

A. That chart was delivered on November the 10th, 2006.

Q. And not returned, correct?

A. And not returned.

Q. The next one, please?

A. 15399, the last name Lender, delivered 11-10-06, not returned.

Q. Please continue.

A. Medical Record 671, not returned. There is no name on the packing slip. Medical Record 44687, Duong, D-O-, D-U-O-N-G, not returned, delivered on 11-10-of 06. Medical Record No. 1115, name Sandra, delivered 11-10-06, not returned.

Q. When you say "Sandra," would that be the person's complete name, last name, first name, or do you

know?
A. I do not know.
Q. If you compare the name on the other sheet that you provided --
A. Yes.
Q. -- with the handwritten names on it, it looks like that particular person's name is Sandra Hanley?
A. Sandra Hanley and that is the same person the box number matches.
Q. So Carolina Pines requested Ms. Hanley's file?
A. Um-hum.
Q. Iron Mountain found it, gave it to them --
A. Correct.
Q. -- in November and for whatever reason, Carolina Pines has not returned the box to you?
A. Correct; the file.
Q. The next one is what, please?
A. 14731, Walbee.
Q. Is that Walbee or might it be Wallace?
A. It was requested as Walbee. The chart was delivered on 11-10 and not returned.
Q. Was the name actually Walbee or was it Wall -- Wallace?
A. I do not know.
Q. The next file is what, please?

A. The next file is 55208, Blyther, delivered 10-17-06, not returned.
Q. The next one is what, please?
A. 671, no name, delivered 11-15, not returned.
Q. Is that the same 671 file requested above or would that be a different file?
A. It could possibly be two volumes. It is listed twice in the computer, so it was requested twice here.
Q. We do know that Carolina Pines for whatever reason requested that particular file twice, is that fair to say?
A. According to this, yes.
Q. Is that what this file -- is this what this form means, they requested it twice?
A. It could possibly be two different volumes.
Q. What is the next one, please?
A. That is all that are not deliv -- that have not been returned.
Q. Did you gather the Hanley file for me?
A. Yes.
Q. Do you have that with you?
A. Let me doublecheck and make sure Hanley is one I do have. No, I was mistaken. Hanley is one that Carolina Pines still has. Hanley has not been

returned.
Q. When you say Carolina Pines did not return the file, did they take the entire contents of Ms. Hanley's medical record or just parts of it?
A. The entire chart was delivered.
Q. The entire chart of Sandra Hanley was delivered to Carolina Pines in accordance with Exhibit #1, is that correct?
A. Correct.
Q. And on the bottom of Exhibit #1, you indicated it had something to do with Dr. Mincheff, fair?
A. No. No. Dr. Mincheff's name is written there, because she stated she was looking for procedures done by Dr. Mincheff. That name was not mentioned at the time these were requested between October and November.
Q. Do you know why Carolina Pines did not return these several files?
A. No.
Q. Is it a common practice of Carolina Pines to request files from Iron Mountain and do not return them for months?
A. Yes.
Q. That is a common practice.
A. Some of them are not returned at all. Yes.

Q. How common of a practice would that be?
A. Probably weekly or monthly. It depends on what they need the chart for.
Q. Did you ever have any discussions with Ms. Gainey or the other person that you mentioned discussing the fact that the document you sent to them were the correct ones that they were looking for?
A. The only time that would be discussed is if they called back looking for additional items on that person.
Q. Another patient on Exhibit #1 that indicates you had delivered to Carolina Pines, it is Patient Account No. 46725, Ms. Shawntae Polk?
A. Um-hum.
Q. Did Carolina Pines receive her medical records?
A. At this particular time, the records were faxed.
Q. On what date, please?
A. Faxed on 10-30-06.
Q. Did Carolina Pines return those particular records?
A. The chart itself was returned on 11-29-06.
Q. Do you have that particular chart?
A. Yes, it is on the table.
Q. Do you know where it would be?
A. I do not. It is one of the thinner charts. The medical record number is listed down the side of the

chart.

MR. DRIGGERS: You want to take a few minutes to see, you know, which ones are which. Take a break or something or -- I mean, I am just trying to think of a easier way to do it so you don't have to go through each time.

OFF THE RECORD. BACK ON THE RECORD.

MR. CORBIN CONTINUING:

Q. Would this be one of the files you went through to determine whether or not it had anything to do with Mr. Mincheff, or do you know?

MR. DRIGGERS: Object to the form.

A. For this deposition, yes.

MR. CORBIN CONTINUING:

Q. Does it have anything to do with Dr. Mincheff, Ms. Polk's file?

A. I found several different procedures, none of which had that name associated.

Q. So you did go through Ms. Polk's file and you did not see Dr. Mincheff's name in it?

A. No, I did not.

Q. The next file I want to ask you about is Crystal Blyther. Did, in fact, you produce that record for us?

A. No, Blyther is still at Carolina Pines.

Q. Her patient account number appears to be 55208. Is that one of the files Carolina Pines requested under Exhibit #1?

A. Yes.

Q. On what -- what date were the records delivered to Carolina Pines and how?

A. That chart was delivered on 10-17-06.

Q. How so, please?

A. Delivered via courier.

Q. The next file I want to ask you about -- and I appreciate your going through the exhibit that I have given to you trying to make things a little bit easier for everybody, the patient's name was Jack Holgate, H-O-L-G-A-T-E.

A. Um-hum.

Q. Did you find that particular file?

A. I have two files on Mr. Holgate.

Q. Did you go through Mr. Holgate's files to determine whether or not Dr. Mincheff was involved in his care?

A. This was one of the files I went through early on. I did find three different procedures that were done. At that time, I did not know I was looking for Dr. Mincheff or the other doctor.

Q. Dr. Bannister?

A. Right.

Q. You are looking at some files. Did you write down the procedures that you found and what files contained Dr. Mincheff's records?

A. I wrote down whether -- if nothing was found, I wrote down nothing and after my conversation finding out that is what I was looking for, then yes, I did make some notes.

Q. For Mr. Holgate, what do your notes say?

A. "Colonoscopy, 3-1-of 2000; steroid injection, 2-21-of 02; and cardiac cath, 11-24-97."

Q. The next patient I believe is Freddie Goodson. Do you have a reference on Mr. Goodson's file?

A. "Op notes, 12-6-2003."

Q. Do you know what kind of procedure it was?

A. I did not write that down, no.

Q. Was that particular file delivered to Carolina Pines involving Mr. Goodson?

A. That chart, there were items faxed at one point, and then the chart delivered after that and the chart returned 11-29-06.

Q. The next file involves Ms. Margaret Dixon. Do you have any references involving her file?

A. Yes. Mix -- Ms. Dixon had nothing for Dr. Mincheff.

Q. Was there anything for Dr. Bannister?

A. No, nothing for Dr. Bannister.

Q. The next issue involved a particular order number. Do you know which one I am talking about, the order number 68407861?

A. Yes.

Q. Did you find that particular order?

A. That order was over six months old and I cannot pull it up that old.

Q. Do you know when the order was made by looking at the number sequence?

A. I can tell by Exhibit #1.

Q. How can you tell?

A. The order number is listed on the right-hand side for three of those patients.

Q. Which three patients, please?

A. Is it 7861, is that the order -- last four of the order number? I need the order number again, please.

Q. Oh, it is 7861.

A. 7861?

Q. Yes, ma'am.

A. 7861 is 10-23-06 for Virginia Moses. 7861, same date, Sandra Hanley and Timothy Walbee.

Q. And the date of that order, can you tell?

A. 10-23-06.

Q. And you say you cannot pull that record back up for what reason?
A. Our system only contains information within the last six months.
Q. So that information would have been deleted from --
A. The history of the file is not deleted. The order itself is not in the system.
Q. The order itself would have been deleted probably in April or May of this year?
A. Correct.
Q. Do you recall getting I guess as part of the first correspondence from me involving Ms. Person's case,. I think this is the letter dated December 5th, 2006?
A. Yes.
MR. CORBIN: Can we mark that, please?
PLAINTIFF'S EXHIBIT #3 MARKED.
MR. DRIGGERS: Do you have a copy of that, Daryl?
MR. SOUZA: Here's one.
MR. DRIGGERS: Thanks.
MR. CORBIN: You got one?
MR. DRIGGERS: Thank you.
MR. CORBIN CONTINUING:
Q. Is it Iron Mountain's practice anything over six months old, any kind of orders would be deleted?

Would anything else be deleted or taken out of the system?
A. No, the history remains in the system.
Q. So even though -- could you tell because the order has -- form has been deleted, what Carolina Pines actually ordered?
A. I don't remember which exhibit this is.
Q. But you can reconstruct that?
A. Exhibit #2?
Q. Yes, ma'am.
A. Where the "no's" are will tell you the history of the patient. As you can see some of them are 10-23, 10-17, so the history is still there. The only thing I cannot reproduce would be the packing slip which is delivered with the files.
Q. And what information would the packing slip provide to us?
A. The packing slip has the customer number, the person that requested it, the date it was requested, the box numbers, the information requested, and yes or no whether it was found or not found.
Q. Would anything else be deleted from the computer records except for the order numbers after six months, everything else be kept?
A. Correct.

Q. In that particular letter I had sent to you in December, I had asked Iron Mountain not to delete, change, modify or change any records involving this particular litigation. Nothing has been deleted except in the normal practice which would be after six months, the order number and that request form will be deleted, correct?
A. Correct.
Q. OK. Besides those three patients that you told me about under this particular order number, can you tell me whether or not any other patients were included within that order number?
A. No. According to the history, there were only three patients on that order; otherwise, it would show their names on that list.
Q. So you are absolutely sure it just included those three patients and nobody else?
A. Yes.
Q. Let's talk about CT films, or CAT scan films, or radiological films. Does Iron Mountain actually keep hospital films?
A. We do for certain customers, yes.
Q. Have you ever kept hospital films for Carolina Pines?
A. No, sir.

Q. What do they do with their hospital films?
A. I have no idea what Carolina Pines does with those.
Q. Are you familiar with any statute that requires hospitals to maintain records for any length of time?
A. I know there are statutes. I do not know what those statutes are.
Q. That is something you don't feel familiar talking about?
A. I just know the Iron Mountain regulations is not to destroy anything unless the customer specifically asks for it to be destroyed, and then we have to have a report and a signature on that.
Q. For example, if the law says you must maintain them ten years, if the hospital wanted to destroy records after two years as long as they signed off and instructed you to do it, it would be done, correct?
A. Correct.
Q. OK. In other words, you don't -- you are not a gatekeeper, you don't --
A. No, sir.
Q. -- keep records for ten years even if the patient -- even if the hospital wants to destroy them. If they want to destroy the records, if they sign off on it, you destroy them?

A. Correct.
MR. CORBIN: If we could take a short break and give me a chance to go through some of these files here.
MR. SOUZA: OK. Sure.
MR. CORBIN: Want to take a fifteen-minute break?
MR. DRIGGERS: That sounds good.
OFF THE RECORD AT 2:50 P.M.
BACK ON THE RECORD AT 3:30 P.M.
MR. CORBIN CONTINUING:
Q. Ms. Parnell, do you know what that document is?
A. From what I can tell, it is a fax coversheet for Gavin or Brian.
Q. Who are Gavin and Brian?
A. Gavin -- there is a Gavin Brown that works in this office who is the Record Center coordinator and Brian Tapper, at that time, was the account rep who is no longer in this area.
Q. What is -- that request form is from who, please?
A. From Carolina Pines.
Q. What is the date of that request form?
A. The date is 11-10-06.
Q. May I see it, please?
A. Uh-huh.

Q. The document is from Jean Gainey, is that correct?
A. Yes, that is what it says.
Q. And it says "Have a good day, Brian. Please bring the records to me ASAP on...," and it lists Sandra Hanley, Timothy Wallace, David Dixon, Minh, M-I-N-H, Duong, D-U-O-N-G, and Virginia Lender. "We need these records this morning so we can begin copying the information needed. Thanks."
A. Um-hum.
Q. Did you comply with that request?
A. I have not seen that request, no.
Q. Would there be some kind of record at Iron Mountain to see if, in fact, you did comply with this request --
A. I can look --
Q. -- dated November the 10th --
A. -- in the system and see --
Q. -- dated --let me finish, please.
A. I am sorry.
Q. Do you know of any way you can look at records at Iron Mountain and tell me whether or not Iron Mountain complied with this request dated November 10th, 2006?
A. Yes.
Q. When it says, "Please bring me the records ASAP," is

that unusual?
A. Yes.
Q. Especially when you are asking for one, two, three, four, five files?
A. That is not an unreasonable request, no.
Q. To bring records ASAP on five different people?
A. Correct.
Q. That is not unusual at Carolina Pines?
A. For Carolina Pines, yes. That is unusual for Carolina Pines.
Q. Have you ever seen any other request where they requested ASAP records to be delivered involving five separate patients?
A. Multiple patients, yes. I can't say if it was five or more, but I have had requests for multiple patients as a rush, yes.
Q. Do you know why Carolina Pines needed these particular files ASAP?
A. I do not.
Q. How long would it take you to look in your files to see if, in fact, these records were delivered to Carolina Pines?
A. Just a few minutes.
Q. OK. We will do that in a couple of minutes.
A. OK.

Q. The next -- I am sorry. The next record it appears to be a fax order form. Can you tell me, in general, what that document is?
A. This is the way we normally receive their faxes. As I said, I have never seen anything typed like that one before.
MR. DRIGGERS: That is another one? The earlier one marked?
MR. CORBIN: We can go ahead and mark it. That is the only copy I have.
MR. DRIGGERS: Oh. I have got another copy I brought.
MR. CORBIN: You have got another copy?
MR. DRIGGERS: Yeah.
MR. CORBIN: OK.
MR. DRIGGERS: I will take care of it.
A. Yes, this is a normal fax sheet. I have seen this one before.
MR. CORBIN CONTINUING:
Q. What is the date on that fax order sheet, please?
A. The date on this fax is 10-17-06.
Q. Again, that is from Carolina Pines to Iron Mountain?
A. Correct.
Q. Which files were they requesting?
A. There are seven files listed: Mingh Duong, Virginia

Moses, Sandra Hanley, Timothy Walbee spelled W-A-L-B-E-E, David Dixon, Virginia Lender, and Linda Caulder.

MR. CORBIN: And maybe we need to get copies of these records. Is there someplace you can get three -- three copies of these things?

MS. PARNELL: Absolutely.

COURT REPORTER NOTE: At this time, Ms. Parnell left the room.

Ms. Parnell returned to the room with copies.

MR. CORBIN: Thank you. Did you get a copy of these?

MS.PARNELL: I didn't hand them out.

MR. CORBIN: OK.

MS. PARNELL: Two of these I believe are the same out of the three.

MR. CORBIN: Look like it, don't it. Yeah.

PLAINTIFF'S EXHIBITS #4, #5 & #6 MARKED.

Q. Exhibit #5 which is a fax order form, the typical form that Iron Mountain is used to, --

A. Um-hum.

Q. -- do you know whether or not those actual records were delivered to Carolina Pines?

A. The first one was faxed.

Q. Which name is that, please, that was faxed?

A. Mingh Duong. Virginia Moses was delivered. Sandra Hanley was faxed. Timothy Walbee was faxed. David Dixon, two charts on him were delivered. And Virginia Lendler was faxed and delivered.

Q. On what date, please?

A. Delivered on 11-10-06 and faxed on 10-23-06. And 5245, Linda Caulder is not on this history sheet.

Q. Did you pull Ms. Caulder's file for us today?

A. No, I did not. There are no box numbers listed on this fax sheet, so these were researched and apparently we could not find anything to pull on Linda Caulder at that time anyway.

Q. The Hanley file, --

A. Um-hum.

Q. -- according to your records, when was that actually delivered to Carolina Pines?

A. I have a fax on 10-23 and delivered on 11-10.

Q. Does that indicate that the documents that were faxed on 10-23 are the same documents delivered on November 10th involving Ms. Hanley or would it be two separate orders?

A. They are two separate orders, the same chart coming out of the same box.

Q. So according to your records, Carolina Pines requested records of Ms. Hanley twice; they received

by fax the records on October 23rd of 2006, --

A. Uh-huh.

Q. -- and they had delivered to them the same record on Ms. Hanley on November 10th, 2006, --

A. Um-hum.

Q. -- correct?

A. Correct.

Q. Ms. Hanley's file was never returned to Carolina Pine -- I mean, Ms. Hanley's file was never returned to Iron Mountain, correct?

A. Correct.

Q. When you look at Exhibit B which we had provided to you trying to reduce down some of the searching, --

A. Um-hum.

Q. -- at the top there were two account numbers, --

A. Yes.

Q. -- and I believe you indicated just with the account number, because they are more than six months old, you really can't tell me what was requested, fair?

A. That is not an Iron Mountain account number. That is the account -- hospital account number that Carolina Pines provided.

Q. If you actually had some of that patient's medical records, for example, these two records, would that help you identify where that patient's chart would

be?

A. Yes.

Q. How so?

A. We do not house the records -- excuse me, Carolina Pines does not house their records by account number only. Even though that is within the chart, I would need a patient's name and/or medical record number.

Q. Do you see it on that document?

A. I do.

Q. What do you see?

A. I see there is no name. The medical record number is 34170.

Q. So with the medical record number 34170, you could pull that particular document for me?

A. Yes, this chart is on the table.

Q. Would it be contained within the charts on the table?

A. The 34170, I called this morning and got that information and was able to pull the file for you. It is here.

Q. The other patient involving the second account number, I believe those are the records that we have. Can you also look at that --

A. Yes.

Q. -- and -- and tell us what the medical record number

would be?
A. Medical Record 33051.
Q. Did you also produce that file for us to look at?
A. I did.
MR. CORBIN: Do you see them? (Directed to his paralegal)
Q. When you look at those two particular files, the first one 34170 --
A. Uh-huh.
Q. -- appears to be Ashton Byrd.
A. Correct.
Q. On the notes that you have taken, does that relate to Dr. Mincheff?
A. No.
Q. The other file number 33051, does that relate to Dr. Mincheff?
A. No, sir.
Q. Do either one of those files relate to Dr. Bannister?
A. No, sir. Sometimes, it would be listed that Dr. Mincheff was the patient's family physician, but none of the op notes or any of the treatment was actually done by the physician, by Dr. Mincheff or Dr. Bannister.
Q. Show me where it says that. For example, Patient

No. 34170, --
A. Uh-huh.
Q. -- which I -- what name was I -- was that that I just gave to you?
A. Ashton Byrd.
Q. Byrd, you say it has nothing to do with Dr. Mincheff?
A. Not in the file that I viewed this morning, no.
Q. The Operative Note indicates the assistant on that particular operation. Who was the assistant on that operation?
A. Thomas Mincheff.
Q. So it does involve Dr. Thomas Mincheff?
A. Um-hum.
Q. Are your notes in error?
A. I was looking at the signature. The signature does not have Dr. Mincheff's signature on it, so I would not have pulled that, no.
Q. The two folders that you did produce --
A. Uh-huh.
Q. -- were Byrd which you say has nothing to do with Mincheff, but he was the assistant surgeon, and Marion Thomas. The files that you produced are for the wrong hospitalizations for those two patients. Can you confirm that to the partial records we

received?
A. The date of procedure on the paperwork you handed me is 9-28-06.
Q. For which patient, please?
A. For patient 34170 which is Ashton Byrd and the chart contains January 16th of 1998 and February 6th of 1998.
Q. Where is the chart involving this particular operation?
A. Oh, I have no idea.
Q. You cannot look at that file, that particular record for Mr. Byrd --
A. Um-hum.
Q. -- that shows that Dr. Mincheff was the assistant surgeon --
MR. SOUZA: Objection. The -- the witness is only able to respond to what was requested of Iron Mountain and what was produced by I -- Iron Mountain. She is not in a position to speak to what the records contain. And just to be clear, I want on the record, too, the witness is appearing today pursuant to the subpoena that was served and dated on January 9th, 2007, including the scope of the production includes Exhibit A and -- and the paragraphs therein. As you stated on the record

today in referring to Exhibit B was delivered to us as a courtesy, a road map if you will, and that is not the scope of the subpoena that we are responding to today.
MR. CORBIN CONTINUING:
Q. Ms. Parnell, did you limit the scope when you were looking for those particular patients' names we have provided to you?
A. No. I received the document that you sent stating that there was an unknown name and an account number which there is no possible way I can find anything by that account number, so I phoned the Medical Record Department and asked for the name, the medical record number that matched, and which they gave me. I keyed both numbers into the system. Only one name came up. I cannot remember which name it was that was individually listed in the system. The other one, I went through the manual inventory list to find a box that contained that and pulled these of my own accord for this deposition.
Q. So when we gave you the list, Exhibit #B, did you research the entire system, for example, Mr. Holgate's files and Mr. Goodson's files or did you restrict what you were actually looking for the dates?

A. I looked for everything. There are files here that have been previously requested and files that were not. I did my search by medical record number and by last name, first name.
Q. So the Byrd file that apparently was delivered to Carolina Pines before by Iron Mountain, we had requested the Discharge Summary of this particular patient and we don't have that and you are saying -- are you saying you are not going to produce that for us, we just got a partial record?
A. I don't haye a Byrd file that was requested by Carolina Pines.
Q. That is what I requested -- you said you needed more information about this one particular patient account number --
A. Um-hum.
Q. -- and Carolina Pines gave us partial records involving that particular patient.
A. OK.
Q. You were kind enough to look at it. You can identify who it was. You said you actually before this deposition pulled out this patient's file.
A. Correct.
Q. I didn't know who the patient was, apparently you did. You pulled out the file. I gave you the

records where it is a different hospitalization than the ones you produced, --
A. Correct.
Q. -- so the question was how much trouble would it be --
A. Um-hum.
Q. -- to produce the rest of these records?
A. I produced everything that I can find on this patient. I do not have that date of service.
Q. And Iron Mountain does not have it --
A. No.
Q. -- to your knowledge?
A. To my knowledge, no. If I remember correctly, that is a 2006, is that right?
Q. It is. Yes, ma'am.
A. That would be an in-house chart for Carolina Pines.
Q. And the other patient that we are talking about, the same question. Would it be difficult to find that particular patient's Discharge Summary?
A. On Thomas Marion, 33051?
Q. Yes, ma'am.
A. I have pulled everything that I have on that person as well.
Q. And the date of the surgical procedure we have is October 11, 2006. Again, that would be the same

response --
A. Correct.
Q. -- in-house file of Carolina Pines? Have you had any discussions with Mr. Driggers about the production besides the initial courtesy telephone call?
A. No, sir.
Q. Have you had any discussions with Ms. Gainey or anybody else affiliated with Carolina Pines about your deposition?
A. No, sir.
Q. Were you present for any meetings between Mr. Driggers and anybody else discussing this case?
A. No, sir.

MR. CORBIN: If we can take a five-minute break, I think we are done. We appreciate it, Ms. Parnell. If we could take a short break.

OFF THE RECORD AT 3:55 P.M.

BACK ON THE RECORD AT 4:00 P.M.

MR. CORBIN: Ms. Parnell, I appreciate your time. I would just like instead of you sitting here going through these two files here, if we may spend time after the deposition going through those things. It is the Waiters' file and the Rhodes' file. I just hadn't had a chance to go all the way

through it, but I have no more questions. If that is okay if I can spend thirty minutes going through those things.

MR. SOUZA: What, you need, Waiters?

MR. CORBIN: Waiters and Rhodes.

MR. DRIGGERS: I have got just a couple.

MR. CORBIN: OK.

MR. DRIGGERS: I promise. Let me see those exhibits. I just had a couple of questions about those.

MR. SOUZA: Sure.

CROSS-EXAMINATION BY MR. DRIGGERS:

Q. Ms. Parnell, again, my name is Martin Driggers. I am the attorney for Carolina Pines Regional Medical Center in this litigation and I just wanted to ask you a couple of questions about these exhibits that we have been discussing. First of all, Exhibit #1, and I know you have already been through that, but that is a chart that is generated based on dates, correct?
A. Correct.
Q. That has no -- no bearing necessarily to any particular patient, or doctor, or anything other than the dates, correct?
A. Correct.

Q. And tho -- that document is request made by Carolina Pines Regional Medical Center I think you said from 10-17-06 through 10-06, correct?
A. Correct.
Q. OK. So there may be documents pertinent to this case you are discussing; there may be documents that aren't pertinent to this case that we are discussing, right?
A. Correct.
Q. OK. All right. On Exhibits #4 and #5 -- first of all, Exhibit #5, if you don't mind --
A. Uh-huh.
Q. -- looking at that first. What is the date on that document?
A. 10-17-06.
Q. OK. And it doesn't say who actually received it, but I am assuming that just comes across a fax machine and the person that is here that can grab it and start working on it is who gets it, is that correct?
A. Correct.
Q. OK.
A. As you can see --
Q. You may not have -- go ahead.
A. As you can see there is a fax number on the top

which is an 800-number that goes to our Customer Service Center --
Q. Got 'cha.
A. -- but with no box numbers listed, the Customer Service Center cannot create an order off of this,--
Q. OK.
A. -- so then it in return is either rerouted to us or they call the customer and the customer sends it to us directly.
Q. OK. And Exhibit #4, the date on that one I think we have already established is November the 10th and that is a fax coversheet, correct, --
A. Correct.
Q. -- from Carolina Pines Regional Medical Center?
A. Correct.
Q. And on that fax coversheet, does it say how many pages are -- are included in that fax?
A. Yes, two.
Q. OK. And is -- is it your understanding that the same form is attached to that fax coversheet?
A. Yes, it was the same form.
Q. OK. All right. And this one in particular was sent to -- you mentioned to employees of Iron Mountain, to Gavin or Brian, is that correct?

A. Correct.
Q. OK. And in between these two dates, and I think I have heard you describe that procedure, it sounds like there would have been some kind of discussion between the folks here at Iron Mountain and the folks with Carolina Pines Medical Records, correct?
A. Correct.
Q. OK. And it sounds like it would have probably been more than one discussion, correct?
A. Correct.
Q. Is it fair to say that it would have been back and forth trying to -- trying to get down just like we have been doing today what records they are looking for, what records ya'll had, the box numbers, all that -- that goes back and forth with finding those records?
A. Correct. And according to the request and according to the history, --
Q. Um-hum.
A. -- the items that were faxed, --
Q. Um-hum.
A. -- in fact, were delivered on the 11-10 request.
Q. OK. And can you tell from that chart whether the whole chart was faxed, or certain items from the chart were faxed, or -- or can you say one way or

the other?
A. Not from the report, no. From the fax, --
Q. Um-hum.
A. -- it lists that they are requesting an op note only --
Q. OK.
A. -- for dates between these dates.
Q. OK. All right. And on the delivery date, would that have been the entire chart or would that just have been a particular note or do you know?
A. We do not deliver partial charts --
Q. OK.
A. -- to this particular customer.
Q. Got 'cha. All right. Let's see. And also just for the record, you have never seen me before today, have you?
A. No.
Q. OK. And you mentioned having a conversation with me. I think you dated it some point in time after receiving a subpoena from Mr. Corbin, correct?
Q. Correct.
Q. OK. Not during this time frame where you were getting requests for records from Carolina Pines and ya'll were finding records for Carolina Pines in November and October of 2006, correct?

A. Correct.
Q. OK. And the same goes for anybody else from my law office, correct?
A. Correct.
Q. In fact, I would be surprised you probably don't even know the name of the law firm I work for, am I right on that?
A. Correct.
MR. DRIGGERS: OK. Let me see those exhibits one more time. Is that all of them?
COURT REPORTER: Should be one through five.
MR. DRIGGERS: I have got one, four and five. You got two and three over there. Here we go. I found them. Just because I don't think it has been identified, the letter has but, this hasn't. This -- that is just a copy of the subpoena that accompanied that December '06 letter.
DEFENDANT CAROLINA PINES' EXHIBIT #1 MARKED.
Q. Ms. Parnell, can you or do you recognize what has been marked Defendant's Exhibit #1?
A. Yes, I do.
Q. OK. And what is that document?
A. This is the subpoena that is dated January 9th, 2007.
Q. OK. And it is your understanding that is what we

are here for today, your deposition is pertaining to that subpoena?
A. Correct.
MR. DRIGGERS: OK. That is all the questions I have.
MR. SOUZA: Just to go on the record about the -- I think you were asking about the transcript. We do want a copy and to read -- I think was it thirty days to --
COURT REPORTER: Yes, you have thirty days in which to read and sign.
MR. CORBIN: I just have a couple of more questions. Very brief.
RE-DIRECT EXAMINATION BY MR. CORBIN:
Q. Have you ever spoken with Lynn Blackmon?
A. No, I don't recognize that name.
Q. The deposition today, we also sent or hand-delivered to you and we did that because your Boston attorney refused to accept it by fax. He agreed one day, then the next day said no, so we had to hand-deliver it to you Friday.
A. Um-hum.
MR. CORBIN: And, I would like to just mark a clean copy. I have written all over this.
MR. SOUZA: Objection. I never agreed to

accept service.
MR. CORBIN: Well, that -- that is fine. I am going to introduce it as an exhibit. That is fine.
PLAINTIFF'S EXHIBIT #6 MARKED.
Q. Ms. Parnell, that is the August 24th letter and subpoena that you actually were hand-delivered, is that correct?
A. Yes.
Q. And attached to that is also what is called "Exhibit B." You see that?
A. Yes.
Q. And it appears that you fully complied with Exhibit B, isn't that correct?
A. Yes.
Q. OK. And based upon your testimony, it appeared as though with that information that it wouldn't take several days to gather those documents for me, correct?
MR. DRIGGERS: Object to the form.
MR. CORBIN CONTINUING:
Q. In other words, it -- it was not an undue burden on you to produce those records for me, correct?
MR. DRIGGERS: Object to the form.
MR. CORBIN: Please go ahead and answer.
A. For the two unknowns, no, it did not take a lot of

time.
Q. And the other documents that we had asked for, you have actually produced those as well?
A. The other documents had been requested in the past and when you key in the number, it automatically comes up so there was no research done on those at this time.
Q. OK. So if somebody complained that Exhibit B contained a whole lot more work for you to do, it really didn't, correct?
A. It would depend. If somebody requested that all of these documents be faxed, that is a lot of copying and faxing. You cannot fax a lot of these original documents because the paper is too thin, so it would be to copy and fax those entire forms as well as my other daily duties, because we do not have a customer service here in this office.
Q. And, I certainly didn't ask you to fax those to me, correct?
A. Correct.
Q. OK. So the bottom line is gathering those documents for me that had been requested before was not a major task?
A. No, --
Q. OK.

A. -- not at this time.

MR. CORBIN: OK. That's all I have. Thanks.

MR. DRIGGERS: I have no further questions.

AND FURTHER THIS DEPONENT SAITH NOT.

DEPOSITION WAS ENDED AT 4:15 P.M.

CERTIFICATE OF NOTARY PUBLIC

I, Joan B. Branham, do hereby certify that the foregoing deposition was taken by me, a duly authorized Notary Public, and the same transcribed as a correct transcription of the testimony taken at the time and place indicated therein;

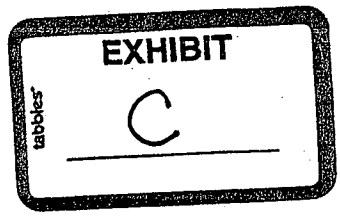
That the witness was duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That I am not related to any of the parties or their counsel nor interested in the outcome of the foregoing litigation financially or otherwise.

Witness my official seal and signature at Florence, South Carolina this 29th day of August, 2007.

_____

Joan B. Branham, Notary Public
My Commission Expires: 12-15-09



Corbin Law Firm

227 WEST EVANS STREET
POST OFFICE BOX 447
FLORENCE, SOUTH CAROLINA 29503

DARYL J. CORBIN
ATTORNEY AT LAW

TELEPHONE: (843)667-6119
FACSIMILE: (843)664-9180

July 26, 2007

FILED
2007 OCT 15 PM 3:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Via Facsimile Transmission Only (843)383-6150
Martin S. Driggers, Jr., Esquire
Sweeny, Wingate & Barrow
Post Office Box 88
Hartsville, SC 29551

Re: Ruth J. Person v. Carolina Pines Regional Medical Center
(Case No. 2004-CP-21-322)

Dear Martin:

Please check your schedule and provide me with three (3) dates and times you are available to attend the deposition of Ms. Bambi Parnell of Iron Mountain. Could we do the deposition during August? I appreciate your cooperation.

Thank you; and, with warm regards, I am

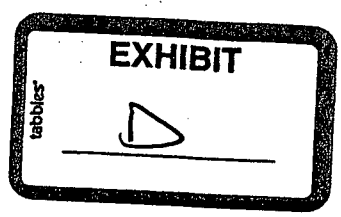
Sincerely yours,

Daryl J. Corbin

DJC/cbs/6069

S·W·B

SWEENY WINGATE & BARROW P.A.



August 3, 2007

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 878-0390 ext 101
msd@swblaw.com

FILED
2007 OCT 15 PM 3:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

MR DARYL J CORBIN
CORBIN LAW FIRM
PO BOX 447
FLORENCE SC 29503

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-322
Our File No. 1863/4975

Dear Daryl:

In response to your July 26, 2007 letter I can be available for the deposition of Bambi Parnell during the week of September 10, 2007.

If you have questions please call my paralegal Lynn Blackmon at (843) 398-1282 or me at the above number.

With kind regards, I remain

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

MSD/lgb

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EXHIBIT
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E

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)

Ruth J. Person,

Plaintiff,

vs.

Thomas V. Mincheff, M.D., Hartsville Surgical Center, and Carolina Pines Regional Medical Center,

Defendants.

Civil Action Number: 01-CP-16-813

ANSWERS TO PLAINTIFF'S INTERROGATORIES ON BEHALF OF THE DEFENDANTS, THOMAS V. MINCHEFF, M.D., AND HARTSVILLE SURGICAL CENTER, LLP

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2001 OCT 15 P 1:28
CLERK OF COURT
DARLINGTON C.P. S.C.

The Defendants, Thomas V. Mincheff, M.D. and Hartsville Surgical Center, LLP, answer Plaintiff's Interrogatories, as follows:

1. Give the names and addresses of persons known to the party addressed or to counsel to be witnesses concerning the facts of the case; indicate whether or not written or recorded statements have been taken from the witnesses; and indicate who has possession of such statements.

ANSWER: a) Thomas V. Mincheff, M.D.
Hartsville Surgical Center, LLP
704 Medical Park Drive
Hartsville, South Carolina 29550

Dr. Mincheff is a Defendant. He will testify in accordance with the medical records from treatment rendered to Ruth J. Person and that the Defendants did not violate any standards of medical practice that were a proximate cause of any injury or damage to Ruth J. Person.

b) Raymond P. Bynoe, M.D.
USC Department of Surgery
2 Richland Medical Park
Columbia, South Carolina 29203

Dr. Bynoe is one of Ruth J. Person's treating physicians. He is expected to testify in accordance with the medical records from treatment rendered to Ruth J. Person at Richland Memorial Hospital.

c) Any and all physicians, nurses or other medical personnel as revealed in any of the medical records from treatment rendered to Ruth J. Person. They are expected to testify in accordance with the medical records.

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No written or recorded statements have been taken from any of the witnesses revealed above, other than those contained in the office records and/or medical records from treatment rendered to Ruth J. Person.

The Defendants reserve the right to call any witnesses who may be identified by any other party in Interrogatory Answers.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party addressed or counsel that relate to the claim or defense in the case.

ANSWER: The Defendants have the following records regarding treatment rendered to the Plaintiff:

a) The office records of Hartsville Surgical Center, LLP.
b) The office records of Florence Orthopaedics Associates, P.A.
c) The office records of Care South Carolina, Inc., Society Hill.
d) The pharmacy records of Wal-Mart #10-1135.
e) The office records of William C. Campbell, M.D.
f) The medical records from treatment rendered in the emergency room at Carolina Pines on March 28, 2001.
g) The medical records from treatment rendered at Byerly Hospital on December 7, 1998.
h) The medical records from treatment rendered at Carolina Pines from April 7, 2001 to April 13, 2001.
i) The medical records from treatment rendered at Carolina Pines from April 25, 2001 to April 30, 2001.
j) The office records of Care South Carolina, Inc., Hartsville.
k) The office records of Care South Carolina, Inc., Bennettsville.
l) The office records of Domenic J. DeMichele, M.D.
m) The office records of McClellan Banks Ambulatory Care Center.
n) The office records of Columbia Skin Clinic, P.A.
o) The office records of Pee Dee Neurological Service.
p) The office records of Prestwood Ear, Nose and Throat, P.C.
q) The medical records from treatment rendered at McLeod Regional Medical Center from November 6, 1995 to November 8, 1995.
r) The medical records from treatment rendered in the emergency room at McLeod Regional Medical Center on May 23, 1996.
s) The medical records from treatment rendered at McLeod Regional Medical Center on November 12, 1999.
t) The medical records from treatment rendered at McLeod Regional Medical Center on July 1, 1998.
u) The medical records from treatment rendered at Richland Memorial Hospital from April 30, 2001 to July 2, 2001.

The Defendants object to this Interrogatory to the extent that it may require the Defendants to reveal documents or other physical things protected by the attorney-client and work-product privileges.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim; and set forth the number or numbers of the insurance policies involved and the amount or amounts of liability coverage provided in the policy.

ANSWER: The Defendant, Thomas V. Mincheff, M.D., has coverage through the South Carolina Medical Malpractice Joint Underwriting Association, Two Liberty Square, 75 Beattie Place, Suite 300, Greenville, South Carolina 29601-2130, Policy Number JB016467, affording limits of $100,000 per occurrence, $300,000 annual aggregate. The Defendant is a member of the Patient Compensation Fund pursuant to the Code of Laws of South Carolina, 1976, as amended, Section 38-59-10, et. seq., and the limits, terms and conditions are set forth therein.

The Defendant, Hartsville Surgical Center, LLP, has coverage through the South Carolina Medical Malpractice Joint Underwriting Association, Two Liberty Square, 75 Beattie Place, Suite 300, Greenville, South Carolina 29601-2130, Policy Number JB022719, affording limits of $100,000 per occurrence, $300,000 annual aggregate.

4. List the names and addresses of any expert witnesses whom the party addressed proposes to use as a witness at the trial of the case.

ANSWER: At this time, none, other than those treating physicians who are revealed in Answer to Interrogatory Number One (1).

5. For each party known to the party addressed or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the undersigned party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory Number One (1).

6. For each expert whom the party addressed proposes to use as a witness at the trial of the case, set forth a summary of his or her anticipated testimony sufficient to inform the undersigned party of the evidence, information, and documents utilized by such expert in the review of this matter, the opinion reached by such expert and the basis thereof, and the theory which such opinion is based.

ANSWER: See Answer to Interrogatory Number Four (4).

7. Has the party addressed or anyone on its behalf obtained any statement in any form from the undersigned party or its agents, servants, or employees concerning the events referred to in the pleadings herein; and, if so, indicate who has possession of such statements and state the contents of such statements or attach copies to answers hereto?

ANSWER: The Defendants object to this Interrogatory to the extent that it may require the Defendants to reveal documents or other physical things protected by the attorney-client and work-product privileges. Without waiving the objection, none, other than the medical records and office records from treatment rendered to Ruth J. Person.

8. Did the party addressed or does such party know of anyone who had any conversation with the undersigned party or its agents, servants, or employees concerning the events described in the pleadings and the allegations of fact contained therein; and, if so, state the contents of such conversations?

ANSWER: The Defendants object to this Interrogatory to the extent that it may require the Defendants to reveal documents or other physical things protected by the attorney-client and work-product privileges. Furthermore, the Defendants object to this Interrogatory on the ground that the information requested is overly broad and unduly burdensome. Without waiving the objections, the Defendant talked with his partners about the case. In addition, the Defendant spoke with Dr. Bynoe, who said that there was no injury to the pancreas.

9. Have you ever had any restrictions or limitations of any kind imposed upon your license to practice medicine or exercise any hospital privileges during the last ten (10) years; and, if so, state the nature, date, and duration of such restrictions and limitations?

ANSWER: No.

10. Have you ever been a party or witness to any civil or criminal litigation, including traffic offenses; and, if so, state the type and nature of such litigation, your connection with such litigation, the date and place thereof, and its outcome?

ANSWER: The Defendant testified at trial as a treating surgeon/expert in a medical malpractice case in Darlington County in October 2001. Also, the Defendant testified in a deposition as a treating surgeon when he was an intern at New York University.

11. Does any other person, film, or corporation have any financial interest or responsibility in the claim set forth in the pleadings herein; and, if so, state the nature and extent of such interest or responsibility, the basis thereof, and the date when such interest or responsibility was established?

ANSWER: Upon information and belief, no.

12. From April 25, 1995, until the present time how many Nissen fundoplication procedures have you performed; where was each procedure performed; how many times did you injure a patient's pancreas during the procedures; and what is your rate of complications involving this particular surgical procedure?

ANSWER: Upon information and belief, Dr. Mincheff has performed 9 Nissen fundoplication procedures at Byerly/Carolina Pines, has not injured a patient's pancreas and has not had any complications involving this particular procedure other than Ruth J. Person's post-operative pancreatitis.

James E. Parham, Jr.
James E. Parham, Jr., P.A.
Attorney for the Defendants,
Thomas V. Mincheff, M.D. and
Hartsville Surgical Center, LLP
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

May 2, 2002

FILED
2002 OCT 15 PM 3:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 2nd day of May, 2002, I mailed a copy of the foregoing Answers to Plaintiff's Interrogatories on Behalf of the Defendants, Thomas V. Mincheff, M.D. and Hartsville Surgical Center, LLP, by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Daryl J. Corbin, Esquire
Corbin Law Firm
227 West Evans Street
Post Office Box 447
Florence, South Carolina 29503

Martin S. Driggers, Jr., Esquire
Sweeney, Wingate & Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211

Sherri Johnson

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

VERIFICATION

Personally appeared before me, Thomas V. Mincheff, M.D., individually and on behalf of Hartsville Surgical Center, LLP, who being duly sworn, deposes and says: that he is a Defendant named herein; that he has read the foregoing Answers to Plaintiff's Interrogatories on behalf of the Defendants, Thomas V. Mincheff, M.D. and Hartsville Surgical Center, LLP, and that the matter and things stated therein are true to his knowledge, except for those matters and things therein stated on information and belief and as to those, he believes them to be true.

FILED
2002 OCT 15 PM 3:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Thomas V. Mincheff, M.D., individually
and on behalf of Hartsville Surgical
Center, LLP

SWORN to before me this
2nd day of May. 2002.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 9-2-2008

000648

EXHIBIT
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Q. HAVE YOU PUBLISHED ANYTHING ABOUT LAPAROSCOPIC PROCEDURES?

A. YES.

Q. WE'LL GET BACK TO YOUR PUBLICATIONS IN A MINUTE, I JUST WANT TO COMPLETE YOUR TRAINING. NOW, WE HAVE ONE COURSE AT DUKE 1994 TO 1995, YOU DID A SURGICAL PROCEDURE ON A PIG INVOLVING THIS PARTICULAR PROCEDURE. YOU HAD ANOTHER COURSE AT DUKE FOR ABOUT TWO DAYS SOME TIME AROUND 1997, AGAIN, YOU DID ONE PROCEDURE ON A PIG. THE THIRD TRAINING ASPECT YOU HAD WAS YOU REFERRED A PATIENT TO DR. LONGACRE IN COLUMBIA AND HE ALLOWED YOU TO WATCH HIM DO THAT PROCEDURE. CORRECT?

A. I WENT TO COLUMBIA SEVERAL TIMES TO SEE DR. LONGACRE.

Q. TELL ME WHAT OTHER TRAINING YOU HAD, PLEASE, INVOLVING THIS PARTICULAR LAPAROSCOPIC PROCEDURE.

A. THAT'S ALL MY TRAINING AND THEN I STARTED DOING THEM MYSELF.

Q. WHEN DID YOU DO THE FIRST LAPAROSCOPIC NISSEN FUNDOPLICATION PROCEDURE?

A. I BELIEVE IT WAS AROUND '95, '96 TIME FRAME.

Q. DID YOU DO IT IN HARTSVILLE?

A. YES, SIR.

Q. AND I THINK IF I RECALL CORRECTLY, YOU INDICATED

FILED
2008 OCT 15 PM 3:38
CLERK OF COURT
DARLINGTON COUNTY, S.C.

YOU HAD DONE ONE OPEN PROCEDURE BEFORE MRS. PERSON'S LAPAROSCOPIC IN NEW YORK. CORRECT?

A. IN NEW YORK.

Q. HOW MANY LAPAROSCOPIC NISSEN FUNDOPLICATION PROCEDURES HAD YOU DONE BEFORE MRS. PERSON'S?

A. EIGHT.

Q. AND THE LAST TIME YOU HAD DONE IT WAS WHEN, PLEASE, BEFORE MRS. PERSON'S?

A. THE LAST ONE BEFORE MRS. PERSON'S?

Q. YES, SIR. MRS. PERSON'S LAPAROSCOPIC PROCEDURE, WHICH WAS CONVERTED TO AN OPEN PROCEDURE, OCCURRED ON APRIL 25, 2001. BEFORE THAT TIME, WHEN WAS THE LAST TIME YOU HAD DONE A NISSEN PROCEDURE, PLEASE?

A. I'D HAVE TO LOOK AT THE RECORDS. I CAN'T RECALL.

Q. CAN YOU SWEAR YOU'D DONE ONE THE YEAR BEFORE?

A. I CAN'T SWEAR TO IT.

Q. CAN YOU SWEAR DURING THE FIVE YEARS BEFORE THAT YOU'D DONE ONE?

A. YES.

Q. CAN YOU SWEAR YOU'D DONE MORE THAN ONE?

A. YES. WITHIN, BETWEEN '95 AND THE TIME I DID MRS. PERSON'S I DID EIGHT.

Q. THOSE EIGHT WERE LAPAROSCOPIC. CORRECT?

A. CORRECT. AND I ALSO DID THREE LAPAROSCOPIC HILL PROCEDURES.

Q. SO THE BOTTOM LINE IS YOU'D DONE EIGHT LAPAROSCOPIC NISSEN PROCEDURES, THREE LAPAROSCOPIC HILL PROCEDURES.

A. CORRECT.

Q. AND YOU CONSIDERED YOURSELF TO BE AN EXPERT IN THAT FIELD. CORRECT?

A. CORRECT.

Q. HAVE YOU READ ANY LITERATURE THAT INDICATES THAT IT REALLY TAKES AT LEAST 50 TIMES TO HAVE EXPERTISE - - -

A. THAT ALL DEPENDS ON - - -

Q. LET ME FINISH THE QUESTION, PLEASE. I ASSUME YOU'RE FAMILIAR WITH THE LITERATURE ABOUT LAPAROSCOPIC PROCEDURES, ESPECIALLY NISSEN. CORRECT? IS THAT A YES?

A. YES.

Q. ARE YOU FAMILIAR WITH WHAT THE LITERATURE INDICATES THAT REALLY TO OBTAIN EXPERTISE DOING LAPAROSCOPIC NISSEN PROCEDURES, A PHYSICIAN REALLY NEEDS TO DO ABOUT 50. ARE YOU AWARE OF THAT?

A. I'M AWARE OF THAT NUMBER, BUT I'VE ALSO SEEN NUMBERS IN THE 20 RANGE WHERE A LEARNING CURVE IS 20.

Q. HAVE YOU SEEN A LEARNING CURVE THAT IS LESS THAN 20 TO BECOME AN EXPERT?

EXHIBIT

tabbies

G

SWB

SWEENY WINGATE & BARROW P.A.

October 20, 2006

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 383-2146
msd@swblaw.com

VIA FACSIMILE (843) 664-9180:
MR DARYL J CORBIN
CORBIN LAW FIRM
PO BOX 447
FLORENCE SC 29503

FILED
2006 OCT 15 PM 3:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Re: Ruth J. Person vs. Carolina Pines Regional Medical Center
Darlington County 2004-CP-16-322
Our File No. 1863/4975

Dear Daryl:

This letter is to confirm all of the following:

1. The document review meeting at Carolina Pines Regional Medical Center is set for Wednesday, October 25, 2006 at 11:00 a.m. I am still gathering the documents you requested and determining the response to the proposed stipulation regarding H.M.A. which will determine what documents are produced;

2. The deposition of Oliver Wood is set for Monday, October 30, 2006 at 10:30 a.m. I or someone from my firm will attend this deposition in person with Dr. Wood in his office but understand you plan to attend by telephone;

3. The depositions of Castleberry, Barker and Enoch are set for Tuesday, October 31, 2006 at 10:00 a.m., 1:00 p.m., and 3:00 p.m., respectively. These depositions will be taken at Carolina Pines Regional Medical Center in the Administrative Conference Room. I understand that if we are able to reach an agreement as to H.M.A.'s role then the Castleberry deposition will not be necessary; and

4. The depositions of Ruth Person and Lori White are set for Thursday, November 2, 2006 at 10:00 a.m. and 11:30 a.m., respectively in your office.

I again repeat my request for copies of the settlement and release in the Mincheff case. I have previously requested these documents a number of times but have not received those documents. Please provide them right away.

000652

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211

Thank you for your attention to this matter.

With kind regards, I remain

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

MSD/lgb

SWB

SWEENY WINGATE & BARROW P.A.

October 24, 2006

Reply to: Pee Dee Office

Martin S. Driggers, Jr.
(843) 383-2146 x
msd@swblaw.com
Also Admitted in NC

VIA FACSIMILE AND U.S. MAIL
Daryl J. Corbin, Esquire
Corbin Law Firm
227 West Evans Street
Post Office Box 447
Florence, South Carolina 29503

RE: Ruth J. Person v. C. Brooks Bannister, M.D., Hartsville Surgical Center, and Carolina Pines Regional Medical Center
Civil Action No.: 2004-CP-16-322
Our File: 1863/4975

Dear Daryl:

I wanted to give you an update on the progress that I have made in locating documents responsive to your subpoena for David Castleberry's deposition.

1. Greeley Company materials

We have those materials available, including materials from a seminar that Greely presented to certain members of the Carolina Pines Medical staff and administration, a printout of the power point slide show that was presented, and a credentialing guide and form book that they gave as part of their materials. The Greely Company's direct involvement with Carolina Pines was limited to this one visit and presentation in January of 2005. Please understand that our position is that the materials are not relevant to the credentialing and privileging claims in this case, which would have occurred during or before 2001.

2. Radiology films

Carolina Pines does not have copies of the radiology films of Ms. Person. Medical records personnel believe that these films were sent with Ms. Person when she was transferred to Palmetto Richland Hospital. Our medical records office contacted Palmetto Richland who has told them that Palmetto Richland no longer has films for Ms. Person.

3. Other operative reports of Dr. Thomas D. Mincheff

000654

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
• POST OFFICE BOX 88 • HARTSVILLE, SC 29551

We are obtaining these operative reports now, but it is just taking a great deal of time. They were all housed in storage in an off-site facility. I do believe we should have most if not all available by tomorrow. Any not available tomorrow will be made available shortly thereafter.

4. Health Management Associates, Inc. Information

Pursuant to my requests to Health Management Associates, Inc., it does not have information responsive to your requests: including any operating agreement, monetary lending agreement, or other documents you requested from them. I know you have expressed a desire to depose David Castleberry concerning these items and his deposition is set for Tuesday, October 31.

5. Insurance Policies and Declarations Page

I am receiving those from the insurer, The Doctors Company. I should have those by tomorrow.

6. CPRMC Tax Returns

I have requested these, but do not have them yet. I may be able to get the tax information from them more quickly, which I will try to do if possible.

7. Employment Agreements

See above response for HMA information.

8. Lending/Leasing Information

See above response for HMA information.

9. Lawsuit correspondence

See above response for HMA information.

10. Declarations Page

See above for insurance information.

11. Vehicle leasing agreements
See above response for HMA information.

12. Control documents.

See above response for HMA information.

13. Communications regarding bylaws.

See above response for HMA information.

I will be happy to make the copies of the above items that we do have at Carolina Pines at this point and have those delivered by Wednesday, so as not to inconvenience you with a trip to Hartsville, unless you believe it is necessary. We do have a conference room available for you at 11 o'clock.

Also, as I understand from our phone conference, you have no objection to our presenting testimony from the CPRMC medical staff regarding the credentialing process employed at Carolina Pines. I do intend to call the witnesses you have already deposed for testimony at trial.

Finally, I think it would be a good idea if we either together, or with the court, look at the witnesses we will present and try to accommodate everyone as best we can, by setting some loose schedule for testimony. I could be mistaken, but I believe that election day falls during our term of court. I am not sure if we will be in trial on that day, but nevertheless, we need to take some steps to map out as best we can, what witnesses should be available on what days.

One final point, you have been strangely silent in the midst of all these discussions about the settlement documents that Ms. Person entered in to with the physicians in this case. I have never been provided with the copies of those after repeated requests. As you know, I have sent a subpoena for them to be produced prior to her deposition next week. Please let me know if you have any objection to that so that we can have that matter heard by the court prior to Ms. Person's deposition.

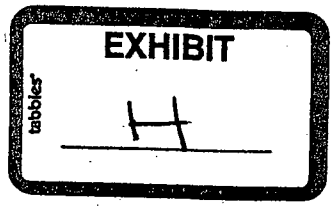
With kind regards, I am

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Martin S. Driggers, Jr.

MSD/smt



Corbin Law Firm

227 WEST EVANS STREET
POST OFFICE BOX 447
FLORENCE, SOUTH CAROLINA 29503

DARYL J. CORBIN
ATTORNEY AT LAW

TELEPHONE: (843)667-6119
FACSIMILE: (843)664-9180

October 30, 2006

FILED
2006 OCT 15 PM 3:28
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Via Facsimile Transmission Only (843)383-6150
Martin S. Driggers, Jr., Esquire
Sweeny, Wingate, & Barrow, P.A.
323 W. Home Avenue
Hartsville, SC 29551

Re: Ruth J. Person v. Carolina Pines Regional Medical Center
(Case No. 2004-CP-21-322)

Dear Martin:

Please do not violate Judge Baxley's order and the subpoena requiring you to produce for deposition testimony Mr. David Castleberry ("Castleberry"), Carolina Pines' CEO, on Tuesday, October 31, 2006, at 10:00 a.m. as you previously arranged. If you fail to produce Mr. Castleberry, I will petition the Court for sanctions against Carolina Pines and Mr. Castleberry, including striking Carolina Pines' Answer and entering default. Why must we always have this continuing "put on the brakes" litigation strategy? I have arranged for you to depose Dr. Wood, Dr. DeMichele, Ms. Person, and Ms. Person's daughter.

I subpoenaed Mr. Castleberry; Judge Baxley overruled your Motion to Quash his deposition; you informed the Court and me you would honor the order; and you selected the date, time, and location for Mr. Castleberry's deposition. Your letter states: "Regarding the Castleberry deposition, that will not go forward." The letter you sent unilaterally instructing me that you would not produce Mr. Castleberry as ordered by Judge Baxley for his deposition is inappropriate. I certainly have the right to depose Mr. Castleberry under the rules and Judge Baxley's order.

I will have a court reporter present for Mr. Castlberry's deposition in accordance with Judge Baxley's order and the subpoena on Tuesday, October 31, 2006, at 10:00 a.m. Please reconsider your decision to prevent Mr. Castleberry from honoring Judge Baxley's order and the subpoena. I have fully-cooperated with all of your requests involving our efforts to complete pretrial discovery. I am entitled to expect you to abide by the rules and the Court's order.

Thank you; and, with warm regards, I am

Sincerely yours,

Daryl J. Corbin

DJC/cbs/6069

cc: Honorable J. Michael Baxley
[Via Facsimile Transmission Only (843)479-5640]

FILED
2006 OCT 15 PM 3:28
SCOTT D. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN COMMON PLEAS COURT

COUNTY OF DARLINGTON

RUTH J. PERSON,

COPY

PLAINTIFF,

V. 04-CP-16-0322

CAROLINA PINES REGIONAL
MEDICAL CENTER,

DEFENDANT.

VIDEOTAPED DEPOSITION OF: DAVID CASTLEBERRY
LOCATION: CAROLINA PINES HOSPITAL
ADMINISTRATIVE CONFERENCE ROOM
HARTSVILLE, SOUTH CAROLINA
DATE: THURSDAY, NOVEMBER 2, 2006

TIME: 1:57 P.M. - 3:35 P.M.

COURT REPORTER: MARK W. HAGOOD, RPR

THE DEPOSITION IS TAKEN PURSUANT TO NOTICE AND/OR AGREEMENT, IN THE ABOVE-ENTITLED CAUSE PENDING IN THE ABOVE-NAMED COURT AND PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

Q & A COURT REPORTING SERVICES
POST OFFICE BOX 4563 (29502)
FLORENCE, SOUTH CAROLINA
TOLL FREE (866) 673-9845 LOCAL (843) 673-9845
FAX (843)661-2960
E-MAIL: INFO@QACOURTREPORTING.COM
VISIT: WWW.QACOURTREPORTING.COM

A P P E A R A N C E S

FOR THE PLAINTIFF:
CORBIN LAW FIRM
227 WEST EVANS STREET
PO BOX 447
FLORENCE, SC 29503
BY: DARYL J. CORBIN, ESQ.

FOR THE DEFENDANT:
SWEENY, WINGATE & BARROW, P.A.
1515 LADY STREET
PO BOX 12129
COLUMBIA, SC 29211
BY: MARTIN DRIGGERS, II, ESQ.

I N D E X

EXAMINATION BY MR. CORBIN 5
EXAMINATION BY MR. DRIGGERS 84
FURTHER EXAMINATION BY MR. CORBIN 87

E X H I B I T S

PG/LN EX. DESCRIPTION
(NO EXHIBITS PROFFERED.)

** UH-HUH = AFFIRMATIVE
HUH-UH = NEGATIVE

000660

S T I P U L A T I O N S

IT IS STIPULATED BETWEEN COUNSEL THAT THIS DEPOSITION IS BEING TAKEN PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE; AND THAT ALL OBJECTIONS, EXCEPT AS TO THE FORM OF THE QUESTION, ARE RESERVED UNTIL THE TIME OF TRIAL.

IT IS ALSO STIPULATED BETWEEN COUNSEL FOR THE RESPECTIVE PARTIES AND THE DEPONENT THAT THE DEPONENT WILL WAIVE THE RIGHT TO READ AND SIGN THIS TRANSCRIPT.

THEREUPON,

(WRITTEN RECORD ONLY)

MR. DRIGGERS: COUNSEL SPOKE BEFORE WE BEGAN THE DEPOSITION THIS MORNING AND WE ARE TAKING THIS PURSUANT TO THE COURT'S ORDER. AND WE HAVE AGREED TO HAVE IT TAKEN PURSUANT TO A REASONABLE PROTECTIVE ORDER WHERE THE INFORMATION DISCUSSED, QUESTIONS ASKED, ANSWERS GIVEN, TRANSCRIPTS AND ANY DISSEMINATION WOULD NOT GO OUTSIDE THE BOUNDS OF THIS PARTICULAR CASE AND THAT WE WOULD BE ABLE TO RE-TAKE -- OR RE-GATHER TRANSCRIPTS AT THE CLOSE OF THE CASE OR CLOSE OF THE APPEAL OR WHATEVER ELSE IS NECESSARY.

MR. CORBIN: THAT'S ACCEPTABLE. I AGREE.

MR. DRIGGERS: GREAT.

(VIDEO AND WRITTEN RECORD BEGINS.)

VIDEO TECHNICIAN: THIS VIDEOTAPED DEPOSITION IS BEGINNING AT 1:57 P.M. THIS IS THE VIDEOTAPED DEPOSITION OF DAVID CASTLEBERRY TAKEN IN THE CASE OF RUTH J. PERSON VERSUS CAROLINA PINES REGIONAL MEDICAL CENTER. THE CAUSE NUMBER IS 04-CP-16-0322 IN THE COURT OF COMMON PLEAS FOR THE STATE OF SOUTH CAROLINA, COUNTY OF DARLINGTON. THIS DEPOSITION IS BEING TAKEN AT THE CAROLINA PINES REGIONAL MEDICAL CENTER ADMINISTRATIVE CONFERENCE ROOM IN HARTSVILLE, SOUTH CAROLINA ON THURSDAY, NOVEMBER 2ND, YEAR 2006. THE COURT REPORTER IS MARK HAGOOD. THE VIDEO TECHNICIAN IS JOE OVERHOLSER.

WILL COUNSEL INTRODUCE THEMSELVES FOR THE RECORD, PLAINTIFF'S ATTORNEY FIRST, PLEASE.

MR. CORBIN: YES. MY NAME IS DARYL CORBIN. I'M AN ATTORNEY FROM FLORENCE WHO REPRESENTS THE PLAINTIFF, RUTH J. PERSON.

MR. DRIGGERS: AND I'M MARTIN S. DRIGGERS, JR., AN ATTORNEY IN HARTSVILLE, SOUTH CAROLINA WHO REPRESENTS CAROLINA PINES REGIONAL MEDICAL CENTER.

VIDEO TECHNICIAN: WILL THE COURT

REPORTER PLEASE SWEAR IN THE DEPONENT.

DAVID CASTLEBERRY,

HAVING BEEN FIRST DULY SWORN BY THE COURT REPORTER, TESTIFIED AS FOLLOWS:

E X A M I N A T I O N

BY MR. CORBIN:

Q MR. CASTLEBERRY, DO YOU HAVE A BUSINESS CARD I COULD HAVE, PLEASE? THANK YOU. COULD YOU PLEASE STATE YOUR COMPLETE NAME FOR THE RECORD?

A DAVID LAWRENCE CASTLEBERRY.

Q MR. CASTLEBERRY, IN THIS DEPOSITION, IF I ASK YOU ANY QUESTION THAT YOU DO NOT UNDERSTAND OR YOU THINK IT IS CONFUSING IN ANY WAY, WOULD YOU PLEASE LET ME KNOW SO I CAN REPHRASE IT FOR YOU?

A CERTAINLY.

Q IS IT FAIR TO ASSUME THAT IF YOU DECIDE TO ANSWER THE QUESTION THAT YOU UNDERSTOOD IT?

A FAIR.

Q YOU ARE UNDER OATH TODAY TO TELL THE TRUTH. ARE YOU AWARE OF THAT?

A YES, SIR.

Q IF YOU HAVE ANY QUESTION DURING THE DEPOSITION, UNDER THE RULES, YOU'RE REQUIRED TO ADDRESS THOSE QUESTIONS TO ME INSTEAD OF TO YOUR ATTORNEY. WILL YOU DO THAT, PLEASE?

A YES, SIR.
Q WHAT IS YOUR DATE OF BIRTH, PLEASE?
A AUGUST 24TH, 1967.
Q WHAT IS YOUR CURRENT OCCUPATION?
A CHIEF EXECUTIVE OFFICER AT CAROLINA PINES REGIONAL MEDICAL CENTER.
Q FOR WHOM DO YOU ACTUALLY WORK?
A HEALTH MANAGEMENT ASSOCIATES AND REPORT TO THE BOARD OF TRUSTEES HERE AT THE HOSPITAL.
Q WHEN YOU SAY HEALTH MANAGEMENT ASSOCIATES, WHAT IS THAT?
A THEY ARE AN ENTITY THAT IS THE SOLE SHAREHOLDER OF CAROLINA PINES REGIONAL MEDICAL CENTER.
Q IS IT COMMONLY CALLED HMA?
A YEAH, IT IS.
Q IS IT FAIR TO SAY THAT HMA OWNS CAROLINA PINES REGIONAL MEDICAL CENTER?
A AS A SHAREHOLDER -- AS THE SOLE SHAREHOLDER, YES, SIR.
Q IN FACT, NOBODY ELSE IN THE WORLD OWNS CAROLINA PINES BUT HMA. CORRECT?
A THAT WOULD BE CORRECT.
Q AND IN FACT, EVEN THOUGH YOU FUNCTION AS THE CHIEF EXECUTIVE OFFICER OF CAROLINA PINES,

YOU ARE REALLY EMPLOYED BY HMA, ARE YOU NOT?

A WELL, YES, IN THAT I AM -- I AM EMPLOYED BY HEALTH MANAGEMENT ASSOCIATES AND -- YES.

Q WAS THAT A DIFFICULT QUESTION TO ANSWER?

A WELL, YOU KNOW, I -- I AM PLACED HERE AND EMPLOYED BY HEALTH MANAGEMENT ASSOCIATES, BUT I AM RESPONSIBLE FOR THIS FACILITY AND -- AND REPORT TO THE BOARD AND WORK WITH OUR PHYSICIANS AND AM ACCOUNTABLE TO THE BOARD AND THE PHYSICIANS, SO...

Q CAN THE PHYSICIANS AT CAROLINA PINES FIRE YOU?

A IF THEY WERE DISPLEASED WITH MY PERFORMANCE, THEY COULD -- THEY COULD CALL FOR MY TERMINATION.

Q CAN THEY FIRE YOU?

A NO, SIR.

Q OKAY. YOU UNDERSTAND A PRIMARY ISSUE FOR YOU TODAY IS TO DISCUSS THE CONTROL OF CAROLINA PINES BY HMA. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I DO.

BY MR. CORBIN:

Q DO YOU UNDERSTAND THAT? PLEASE GO AHEAD AND ANSWER.

A I DO UNDERSTAND THAT.

Q OKAY. AND IN FACT, DID YOU GET A SUBPOENA FROM ME TO APPEAR FOR YOUR DEPOSITION?

A I DID.

Q DO YOU RECOGNIZE THIS DOCUMENT, PLEASE?

A YES, SIR. IT LOOKS LIKE THE SAME DOCUMENT THAT YOU SENT.

Q IN FACT, WE NOT ONLY SENT IT. WE HAD A DEPUTY SHERIFF SERVE YOU WITH THAT DOCUMENT, DID WE NOT?

A YOU DID.

Q OKAY. DO YOU REALIZE THAT IN FACT IS A SUBPOENA REQUIRING YOU TO PRODUCE CERTAIN DOCUMENTS ON THAT LIST ATTACHED TO THE DEPOSITION NOTICE?

A YES, SIR.

Q HAVE IN FACT YOU COMPLIED WITH THE COURT'S SUBPOENA?

A I BELIEVE WE HAVE COMPLIED WITH EVERYTHING THAT WE COULD PRODUCE, I -- THUS FAR.

Q DO YOU BELIEVE THAT EVERY ITEM ON THAT LIST UNDER THE SUBPOENA, THAT YOU ARE REQUIRED TO PRODUCE IF YOU IN FACT HAVE IT, YOU'VE DONE IT?

A I BELIEVE THAT IF WE HAVE IT, IT'S BEEN PRODUCED.

Q MAY I SEE IT, PLEASE? YOUR POSITION AT CAROLINA PINES IS THE CEO. CORRECT?

A YES, SIR.

Q YOU WERE ACTUALLY HIRED BY HMA AND APPOINTED CEO FOR THIS HOSPITAL. CORRECT?

A YES, SIR.

Q THE DOCTORS DID NOT APPOINT YOU TO BE THE CEO. CORRECT?

A CORRECT.

Q AND IN FACT, YOU WERE TRANSFERRED FROM ANOTHER HMA HOSPITAL BECAUSE THE PEOPLE IN FLORIDA WANTED YOU TO OPERATE THIS HOSPITAL. CORRECT?

A RIGHT.

MR. DRIGGERS: OBJECT TO THE FORM.

BY MR. CORBIN:

Q DID THE DOCTORS AT CAROLINA PINES HAVE THE AUTHORITY TO HAVE YOU TRANSFERRED FROM WHEREVER YOU CAME FROM TO BE THEIR CEO HERE?

A THEY DIDN'T KNOW ABOUT ME, SO...

Q OKAY. WAS IT ANY OF THEIR BUSINESS?

A YES. IT'S THEIR BUSINESS WHO THE CEO OF THE HOSPITAL IS. YES, SIR.

Q WAS IT THEIR BUSINESS BEFORE YOU WERE

HIRED?

A WAS IT THEIR BUSINESS BEFORE I WAS HIRED THAT I BECOME CEO? THEY TAKE A KEEN INTEREST IN WHOEVER BECOMES CEO. AND SO I WOULD BELIEVE THAT BEFORE I WAS ASKED OR OFFERED THE OPPORTUNITY TO COME UP HERE AS CEO, THAT -- THAT MY SUPERVISOR WOULD HAVE TALKED TO THEM ABOUT ME AND DESCRIBED THEM TO ME, AND THEN I WAS ASKED TO COME MEET THEM AND TALK WITH THEM AND BE INTERVIEWED BY SOME OF THEM, AS IT WERE.

Q WHAT SUPERVISOR?

A PAGE VAUGHN IS THE ONE I REPORT DIRECTLY TO.

Q SO PAGE VAUGHN WORKS AT CAROLINA PINES?

A NO, SIR.

Q IN FACT, HE'S AN EXECUTIVE WITH HMA. CORRECT?

A HE IS. HE WORKS FOR HMA, YES, SIR.

Q OKAY. SO YOU REPORT DIRECTLY TO ANOTHER EXECUTIVE OF HMA ABOUT YOUR PERFORMANCE HERE. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

BY MR. CORBIN:

Q IF YOU KNOW. TO WHOM DO YOU REPORT?

A PAGE VAUGHN.

Q OKAY. PAGE VAUGHN IS AN EXECUTIVE AT HMA WITH SOME MORE AUTHORITY THAN YOU. CORRECT?

A YES, SIR.

Q WHO APPOINTED THE CEO OF H--- WHO APPOINTED THE CEO OF CAROLINA PINES BEFORE YOU GOT HERE?

A I HAVE TO BELIEVE THAT -- I'M NOT -- I DON'T KNOW FOR SURE. I DON'T.

Q WHO WAS IT?

A THE -- BEFORE I WAS HERE?

Q YES, SIR?

A MELODY TRIMBLE.

Q WHERE DID MELODY TRIMBLE GO?

A SHE IS AT A HOSPITAL IN FLORIDA.

Q CAN YOU DESCRIBE THE HOSPITAL A LITTLE BIT MORE? WHO OWNS IT?

A IT IS -- I BELIEVE IT'S VENUS REGIONAL HOSPITAL OR VENUS REGIONAL MEDICAL CENTER.

Q THE QUESTION WAS WHO OWNS IT?

A AND -- I AM NOT CERTAIN, BUT IT -- I HAVE TO BELIEVE THAT IT'S OWNED BY HEALTH MANAGEMENT ASSOCIATES.

Q OKAY. SO MS. TRIMBLE, SHE WAS THE CEO HERE BEFORE YOU GOT HERE?

A UH-HUH.

Q AND THEN SHE WAS TRANSFERRED BY HMA TO THE OTHER HOSPITAL IN FLORIDA. CORRECT?

A CORRECT.

Q SHE STILL WORKS FOR HMA AND ANSWERS TO THE CORPORATION. CORRECT?

A SHE ANSWERS I'M SURE TO A DIRECT SUPERVISOR MUCH LIKE I ANSWER TO PAGE VAUGHN.

Q IN OTHER WORDS, HMA. CORRECT?

A YES, SIR.

Q OKAY. ARE YOU HAVING A DIFFICULT TIME TESTIFYING ABOUT THE CONTROL OF HMA OVER YOU?

MR. DRIGGERS: OBJECT TO THE FORM. HE'S ANSWERING THE QUESTIONS FINE, DARYL.

BY MR. CORBIN:

Q DO YOU BELIEVE HMA CONTROLS YOU?

A OH, NO, SIR.

Q IF HMA WANTS TO TRANSFER YOU, COULD HMA DO IT?

A YES, SIR.

Q WHO SETS YOUR AGE?

A HMA DID.

Q WHO DECIDES WHETHER OR NOT YOU CAN BE FIRED?

A WELL, HEALTH MANAGEMENT ASSOCIATES COULD MAKE THAT DECISION.

Q WHO DECIDES WHETHER OR NOT YOU CAN RECEIVE A RAISE FOR YOUR WORK?

A HEALTH MANAGEMENT ASSOCIATES.

Q DO YOU HAVE A RETIREMENT FUND WITH HMA?

A I HAVE A RETIREMENT FUND THAT IS MANAGED BY SOMEONE THAT HMA CONTRACTS WITH.

Q IS IT AN HMA 401K PLAN?

A YES, SIR.

Q OKAY. DOES HMA PROVIDE HEALTH INSURANCE TO YOU?

A I PAY -- THEY DO.

Q OKAY.

A AND I PAY FOR A PORTION OF THAT.

Q SO HMA CONTROLS YOUR WAGE. HMA CONTROLS WHETHER OR NOT YOU GET A RAISE. HMA CAN FIRE YOU. HMA CAN TRANSFER YOU. YOU HAVE YOUR RETIREMENT THROUGH HMA. AND IN FACT, YOU EVEN HAVE YOU HEALTH INSURANCE THROUGH HMA. DOES HMA CONTROL YOU?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: NO, SIR. HMA DOES NOT CONTROL ME.

BY MR. CORBIN:

Q DOES HMA TELL YOU WHAT TO DO AT CAROLINA PINES?

A NO, SIR.

Q CAN YOU DO WHAT YOU WANT TO DO AT CAROLINA PINES WITHOUT THE AUTHORITY FROM HMA?

A I COULD.

Q IF YOU DID, YOU WOULD GET FIRED. RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: LET ME SAY THAT IF I DID SOMETHING THAT WAS NOT IN THE BEST INTEREST OF THE MEDICAL STAFF AND THE PATIENTS, THEN THAT WOULD BE -- I COULD BE TERMINATED FOR THAT.

BY MR. CORBIN:

Q TERMINATED BY WHO, PLEASE?

A MY EMPLOYER.

Q HMA. CORRECT?

A YES, SIR.

Q OKAY.

A CAN WE CLOSE THE BLIND DIRECTLY BEHIND YOU BECAUSE I'M --

VIDEO TECHNICIAN: SURE. WE'RE GOING OFF THE RECORD AT 2:07 P.M.

(OFF-THE-RECORD DISCUSSION.)

VIDEO TECHNICIAN: WE'RE GOING BACK ON THE RECORD AT 2:07 P.M.

BY MR. CORBIN:

Q DOES HMA OWN OTHER HOSPITALS TOO?
A YES, SIR.
Q ABOUT HOW MANY, PLEASE?
A I BELIEVE IT'S ABOUT 60.
Q IN ADDITION TO OWNING HOSPITALS, DOES HMA ACTUALLY OPERATE HOSPITALS?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: HMA IS A SOLE SHAREHOLDER. THE OPERATOR OF THE HOSPITALS ARE -- IS THE LOCAL ADMINISTRATOR AND THE BOARD AND THE MEDICAL STAFF. THEY OVERSEE THE DAY-TO-DAY OPERATIONS.
BY MR. CORBIN:
Q IF SOMEONE WERE TO SAY THAT HMA OWNS AND OPERATES HOSPITALS, WHAT WOULD YOU SAY TO THAT?
A I WOULD AGREE.
Q OKAY. WOULD YOU AGREE THAT HMA OWNS AND OPERATES CAROLINA PINES?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: WHEN YOU SAY OPERATES, THEY -- WE OPERATE IT LOCALLY. WE MAKE THE DECISIONS THAT -- THAT AFFECT THE DAY-TO-DAY OPERATIONS OF THE HOSPITAL. WE DECIDE WHAT TO SPEND CAPITAL ON, WHAT TO -- WHAT, YOU KNOW, OUR

MEDICAL STAFF NEEDS TO DO THEIR JOBS. DAY-TO-DAY OPERATIONS ARE TAKEN CARE OF LOCALLY.

BY MR. CORBIN:

Q WOULD YOU AGREE THAT WHOEVER CONTROLS DAY-TO-DAY OPERATIONS HAS A SIGNIFICANT CONTROL OF THE HOSPITAL?

A YES.

Q IS IT YOUR POSITION THAT HMA DOES NOT CONTROL DAY-TO-DAY OPERATIONS OF CAROLINA PINES? IS THAT YOUR POSITION?

A COULD YOU -- RESTATE IT AGAIN, PLEASE.

Q IS IT YOUR POSITION THAT HMA DOES NOT CONTROL DAY-TO-DAY OPERATIONS OF CAROLINA PINES?

A THAT WOULD BE MY -- YES, SIR. THEY DO NOT CONTROL DAY-TO-DAY OPERATIONS OF THE HOSPITAL.

Q WOULD YOU AGREE WHOEVER CONTROLS THE DAY-TO-DAY OPERATIONS OF THE HOSPITAL HAS A SIGNIFICANT CONTROL OVER WHAT HAPPENS HERE?

A YES, SIR.

Q WOULD YOU AGREE THAT WHOEVER CONTROLS DAY-TO-DAY OPERATIONS WOULD ALSO HAVE A GRAVE EFFECT ON PATIENT CARE?

A I WOULD AGREE THAT WHOEVER CONTROLS DAY-TO-DAY OPERATIONS CAN HAVE AN EFFECT OVER PATIENTS CARE BOTH -- IN ANY RESPECT.

Q DO YOU KNOW OF ANY MORE POWERFUL TOOL THAT A HOSPITAL HAS THAN ITS ABILITY TO CREDENTIAL AND PRIVILEGE DOCTORS INVOLVING PATIENT SAFETY?

A ANY MORE POWERFUL TOOL IN WHAT REGARD?

Q PATIENT SAFETY, NUMBER ONE.

A WELL, THERE ARE MANY ASPECTS TO PATIENT SAFETY. CREDENTIALING PHYSICIANS IS ONE ASPECT OF IT.

Q ANYTHING MORE IMPORTANT?

A THERE ARE MANY -- THERE ARE MANY THINGS THAT ARE IMPORTANT TO MAKING SURE THAT PATIENTS GET SAFE CARE. PHY--- PHYSICIAN CREDENTIALING IS ONE OF THEM. MAKING SURE MEDICATIONS ARE DISPENSED PROPERLY AND ACCURATELY IS ANOTHER VERY IMPORTANT THING THAT GOES ON DAY TO DAY. MANY THINGS. AND YES, PHYSICIAN CREDENTIALING IS AN IMPORTANT ASPECT OF PATIENT SAFETY.

Q YOU INDICATED THAT YOU BELIEVE HMA DOES NOT CONTROL DAY-TO-DAY OPERATIONS OF THE HOSPITAL. CORRECT?

A YES, SIR.

Q WOULD YOU AGREE THAT WHOEVER HAS THE AUTHORITY OR ABILITY TO CONTROL THE OVERALL MANAGEMENT OF THE HOSPITAL EXERTS SIGNIFICANT CONTROL OVER IT?

A I WOULD AGREE.

Q OKAY. DOES HMA CONTROL THE OVERALL MANAGEMENT OF CAROLINA PINES?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: CONTROL THE OVERALL MANAGEMENT OF -- I BELIEVE THAT THEY ARE A RESOURCE. THEY OVERSEE -- THEY PROVIDE RESOURCES FOR US SO THAT WE CAN MANAGE THE HOSPITAL DAY TO DAY.

BY MR. CORBIN:

Q DO THEY CONTROL THE OVERALL MANAGEMENT OF CAROLINA PINES?

A THAT IS LEFT UP TO THE LOCAL PHYSICIAN, THE CEO, THE ADMINISTRATIVE TEAM AND THE BOARD.

Q OKAY. ARE YOU AWARE IN THE BYLAWS, ARTICLE 1(A)(5), WHEN IT STATES THE FOLLOWING, QUOTE --

MR. DRIGGERS: WAIT ONE SECOND. HE'S -- HE'S TURNING TO IT.

THE DEPONENT: WHAT PAGE ARE YOU ON?

MR. CORBIN: PAGE THREE, PLEASE. I'M SORRY. PAGE TWO, WHERE IT TALKS ABOUT YOU. DO YOU SEE IT?

THE DEPONENT: WHAT -- WHAT ARTICLE? A, WHICH -- WHICH NUMBER?

MR. CORBIN: FIVE.

THE DEPONENT: FIVE. OKAY.

BY MR. CORBIN:

Q IS THAT YOU?

A YES, SIR.

Q OKAY. IT STATES -- WELL, COULD YOU READ IT TO US, PLEASE?

A ARTICLE 1, NUMBER 5 SAYS, CHIEF EXECUTIVE OFFICER OR CEO, HEREIN AFTER EXECUTIVE DIRECTOR, MEANS THE INDIVIDUAL APPOINTED BY HEALTH MANAGEMENT ASSOCIATES, INCORPORATED TO ACT ON ITS BEHALF IN THE OVERALL MANAGEMENT OF THE HOSPITAL.

Q DO IN FACT YOU HAVE THE CAPABILITY TO CONDUCT THE OVERALL MANAGEMENT OF CAROLINA PINES FOR HMA?

A ON THEIR BEHALF, IT'S MY RESPONSIBILITY TO OVERSEE THE OVERALL OPERATIONS, YES, SIR.

Q DO IN FACT YOU DO THAT?

A YES, SIR.

Q DO YOU DO IT FOR HMA?

A YES, SIR.

Q YOU TALKED ABOUT THE LOCAL TEAM BEING IMPORTANT, INVOLVING CONTROL OF CAROLINA PINES. THE LOCAL TEAM, ACCORDING TO HMA, WOULD CONSIST OF THE CEO, YOU; THE CFO, THE COO AND THE CON.

CORRECT?

A CNO?

Q CNO. CORRECT? DID I HAVE IT RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WELL, YOU SAID CON, BUT CNO, CHIEF NURSING OFFICER, YES, SIR.

BY MR. CORBIN:

Q YOU'RE THE CEO. WHO IS THE CFO AND WHAT IS A CFO?

A JIM YOUNG IS THE CFO. AND JIM YOUNG'S RESPONSIBILITY AS CFO OR ANY -- ANY CFO'S RESPONSIBILITY AT -- IN THE HOSPITAL IS TO ENSURE THE PROPER ACCOUNTING OF ALL OF OUR EXPENSES AND INCOME AND REPORTING OF SUCH.

Q REPORTING OF SUCH TO WHOM, THE OWNER?

A TO THE OWNER, THE SOLE -- THE SOLE OWNER, HEALTH MANAGEMENT ASSOCIATES.

Q IN FACT, WOULDN'T YOU AGREE THAT HMA APPOINTS YOU AND IT ALSO APPOINTED MR. YOUNG TO FUNCTION AS -- AS THE CFO?

A YES, SIR.

Q MR. YOUNG IS AN HMA MAN. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: HE IS EMPLOYED BY HMA, IF THAT'S WHAT YOU'RE MEANING.

BY MR. CORBIN:

Q WHAT IS A COO?

A CHIEF OPERATING OFFICER.

Q THE PERSON IN CHARGE OF OPERATIONS?

A DAY-TO-DAY OPERATIONS. YES, SIR.

Q WHO IS THE COO OF CAROLINA PINES?

A MIKE KOSOR -- OR MICHAEL KOSOR.

Q WHAT ARE MR. KOSOR'S RESPONSIBILITIES AT CAROLINA PINES?

A TO MANAGE THE -- THE -- THE DETAILS AS IT WERE OF THE DAY-TO-DAY OPERATIONS OF THE HOSPITAL, NON-NURSING DEPARTMENTS SUCH AS FOOD AND NUTRITION SERVICES. RADIOLOGY SERVICES ARE AN EXAMPLE OF A NON-NURSING DEPARTMENT THAT HE OVERSEES. PLANT OPERATIONS, RESPIRATORY THERAPY, SUCH AS THAT.

Q WOULD THE CEO AND THE COO HAVE ANYTHING TO DO WITH PATIENT QUALITY OF CARE?

A WE ALL HAVE SOMETHING TO DO, I BELIEVE, WITH PATIENT QUALITY OF CARE.

Q AND IN FACT, WOULD YOU AGREE THAT'S YOUR PRIMARY RESPONSIBILITY, PATIENT QUALITY OF CARE?

A YES, SIR.

Q WOULD YOU FURTHER AGREE THAT HMA'S --

MR. YOUNG, WHO IS A COO, THAT'S HIS PRIMARY RESPONSIBILITY TOO, QUALITY OF PATIENT CARE?

A YES, SIR.

Q THE CNO, THE CHIEF NURSING OFFICER --

A UH-HUH.

Q -- SHE ALSO WAS APPOINTED BY HMA?

A NO, SIR. I BELIEVE SHE WAS APPOINTED AND -- SELECTED AND APPOINT--- AND APPOINTED BY WHOEVER THE ADMINISTRATOR WOULD HAVE BEEN AT THE TIME.

Q ANOTHER HMA PERSON?

A SHE'S BEEN THE CNO FOR A NUMBER OF YEARS. YES, SIR.

Q ANY OTHER MORE AUTHORITATIVE EXECUTIVES AT CAROLINA PINES THAN ITS CEO, COO, CFO AND CNO?

A NO, SIR.

Q IN FACT, IS THAT IT, IN TERMS OF EXECUTIVE OFFICERS?

A EXECUTIVE -- YES, SIR.

Q ALL OF THESE PEOPLE REPORT DIRECTLY TO HMA. CORRECT?

A WELL, THEY REPORT TO ME. THESE PEOPLE REPORT TO ME.

Q AND YOU REPORT DIRECTLY TO HMA. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I REPORT TO PAGE VAUGHN.

BY MR. CORBIN:

Q WOULD YOU AGREE THAT HMA, BECAUSE IT CONTROLS THE CEO, THE COO, THE CFO AND THE CNO CONTROLS CAROLINA PINES?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I DO NOT AGREE THAT HMA CONTROLS CAROLINA PINES BECAUSE WE ARE CHARGED WITH CARRYING OUT THE -- THE OPERATIONS OF THE FACILITY AS BEST WE SEE FIT IN CONJUNCTION WITH OUR BOARD AND MEDICAL STAFF.

BY MR. CORBIN:

Q SO THE BOARD AND MEDICAL STAFF CAN TRUMP HMA'S INSTRUCTIONS TO YOU?

A THEY COULD.

Q WHEN HAS THAT HAPPENED?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: IT'S NOT HAPPENED, TO MY KNOWLEDGE.

BY MR. CORBIN:

Q WHEN HAS IT EVER HAPPENED?

A I WOULDN'T KNOW.

Q BUT YOU'RE WILLING TO TESTIFY UNDER OATH THAT THE BOARD OF TRUSTEES AT CAROLINA PINES

COULD TRUMP HMA'S INSTRUCTIONS TO YOU. IS THAT YOUR TESTIMONY?

A I BELIEVE THAT COULD HAPPEN. YES, SIR.

Q UNDER WHAT CIRCUMSTANCE?

A IT WOULD BE HARD TO SAY. I MEAN, I JUST BELIEVE THAT IF THE MEDICAL STAFF FELT STRONGLY ABOUT AN ISSUE OR A DECISION, THEY -- THEY WOULD -- THEY COULD OVERRULE IT IF THEY DIDN'T FEEL LIKE IT WAS A QUALITY DECISION OR IN THE BEST INTEREST OF OUR PATIENTS.

Q WHO HAS THE AUTHORITY TO CLOSE CAROLINA PINES IF IT WANTS TO?

A WELL, THE STATE DEPARTMENT OF -- DHEC COULD CLOSE US. I SUPPOSE HMA AS SOLE SHAREHOLDER COULD SHUT DOWN THE FACILITY.

Q DO YOU SUPPOSE OR DO YOU KNOW?

A I DON'T KNOW FOR SURE.

Q DO YOU KNOW OF ANYBODY ELSE WHO COULD CLOSE THE HOSPITAL IF IT WANTED TO BESIDES DHEC OR HMA?

A I CANNOT THINK OF ANYBODY OFF -- OFFHAND THAT COULD, NO, SIR.

Q DOES THAT INDICATE TO YOU SIGNIFICANT CONTROL?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: THAT INDICATES CONTROL, YES, SIR.
BY MR. CORBIN:
Q WHAT INDICATES ANY MORE CONTROL THAN THE ABILITY TO CLOSE THE HOSPITAL?
A I CAN'T THINK OF ANY.
Q THERE IS NONE, IS THERE?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: I CAN'T THINK OF ANY.
BY MR. CORBIN:
Q WHO CONTROLS THE MONEY AT CAROLINA PINES? WHERE DOES IT GO?
A I -- I'M NOT CERTAIN WHERE IT GOES SPECIFICALLY.
Q DOES IT GO TO HMA?
A IT WOULD HAVE TO AS SOLE -- SOLE OWNER SHAREHOLDER, IT WOULD HAVE TO.
Q AND IN FACT, WOULD YOU AGREE WITH THE STATEMENT THAT HMA, THROUGH ITS PROPRIETARY PULSE SYSTEM, ON A DAY-TO-DAY BASIS CONTROLS THE FINANCIAL OPERATIONS OF THE HOSPITAL?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: THEY DON'T CONTROL IT. THEY MIGHT BE ABLE TO MONITOR IT. BUT AGAIN, IT'S CONTROLLED AT THE LOCAL LEVEL EVERY DAY.

BY MR. CORBIN:

Q MR. CASTLEBERRY, WHO HAS MORE AUTHORITY OVER THE FINANCIAL AFFAIRS OF CAROLINA PINES THAN HMA AS ITS OWNER? ANYBODY?

A NONE THAT I CAN THINK OF.

Q WOULD YOU AT LEAST AGREE WITH ME THAT CAROLINA PINES FINANCIALLY IS CONTROLLED BY HMA?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I COULD AGREE TO THAT.

BY MR. CORBIN:

Q WHEN A PATIENT COMES TO CAROLINA PINES, FOR EXAMPLE, LIKE MS. PERSON, AND SHE RECEIVES A BILL FROM THE HOSPITAL, IN FACT, THE MONEY GOES TO HMA, DOES IT NOT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: EVENTUALLY, I WOULD SAY THAT THE MONEY WOULD GO TO HMA AS OWNER OF THE FACILITY -- SHAREHOLDER -- SOLE SHAREHOLDER.

BY MR. CORBIN:

Q WHAT IS THE PULSE SYSTEM?

A IT'S AN ACCOUNTING SYSTEM THAT'S USED HERE AT THE HOSPITAL.

Q IN FACT, IT'S USED AT ALL HMA HOSPITALS, TO YOUR KNOWLEDGE?

A YES, SIR. IT'S --

Q HMA OFTEN TIMES IN ITS SEC FILINGS AND PRESS RELEASES TALKS ABOUT THE PULSE SYSTEM GIVES IT CONTROL OVER THE DAY-TO-DAY FINANCIAL OPERATIONS OF ITS HOSPITALS, DOES IT NOT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: YES, SIR.

BY MR. CORBIN:

Q OKAY. SO YOU WOULD AT LEAST AGREE THAT HMA CONTROLS THE DAY-TO-DAY FINANCIAL OPERATIONS OF CAROLINA PINES. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WELL, AS I SAID BEFORE, IT -- IT CAN MONITOR -- IT USES THE PULSE SYSTEM TO MONITOR EVERYTHING THAT'S GOING ON, BUT WE ARE RESPONSIBLE AND WE DO CONTROL THE DAY-TO-DAY FINANCIAL OPERATIONS OF THE HOSPITAL.

BY MR. CORBIN:

Q WHO -- WHO IS WE, PLEASE?

A THIS MANAGEMENT TEAM.

Q THE CMA PEOPLE. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: HMA PEOPLE?

BY MR. CORBIN:

Q I'M SORRY. THE HMA PEOPLE. CORRECT?

A YES, SIR.

Q OKAY. IN FACT, THE PULSE SYSTEM IS A SYSTEM DEVELOPED BY HMA THAT'S IN PLACE IN ALL OF ITS HOSPITALS PRETTY MUCH FROM DAY ONE OR DAY TWO OR AS SOON AS POSSIBLE WHEN IT BUYS A HOSPITAL. CORRECT?

A THAT'S MY UNDERSTANDING.

Q IN OTHER WORDS, HMA WANTS TO GET CONTROL OF THE FINANCES OF THE HOSPITAL AS QUICKLY AS POSSIBLE. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: YES, SIR. AND OBVIOUSLY, IN MOST CASES, THEY BUY HOSPITALS THAT ARE IN NEED OF SOME CONTROL IN THAT REGARD.

BY MR. CORBIN:

Q DOES HMA CARE ABOUT CREDENTIALING AT CAROLINA PINES?

A I BELIEVE THEY DO.

Q DOES HMA ACCEPT ANY RESPONSIBILITY AT ALL FOR CREDENTIALING AT CAROLINA PINES, THE HOSPITAL THAT IT OWNS?

MR. DRIGGERS: I OBJECT TO THE FORM.

THE DEPONENT: HMA EXPECTS THE ADMINISTRATIVE TEAM TO -- LET ME RESTATE THAT. THE MEDICAL STAFF IS WHO CONTROLS THE CREDENTIALING PROCESS AT CAROLINA PINES. AND

THE -- THE ADMINISTRATIVE TEAM IS IN ATTENDANCE AT THE VARIOUS MEETINGS -- CREDENTIALING COMMITTEE MEETINGS AND THINGS LIKE THAT. BUT THE MEDICAL STAFF AND THEN ULTIMATELY THE BOARD IS THE ONE THAT CONTROLS THE CREDENTIALING PROCESS.

BY MR. CORBIN:

Q WHAT INPUT DOES THE OWNER HAVE OVER CREDENTIALING OF PHYSICIANS AT THIS HOSPITAL? ANY?

A I ATTEND THE CREDENTIALING MEETINGS, BUT I'M NOT A VOTING MEMBER AND DON'T HAVE ANY INFLUENCE OVER CREDENTIALING DECISIONS AS I'M NOT A PHYSICIAN.

Q IN YOUR OPINION, IN OTHER WORDS, HMA HAS NO INPUT INTO MAKING DECISIONS AT CAROLINA PINES AS TO WHETHER OR NOT A SURGEON IS QUALIFIED TO DO SURGERY. IS THAT WHAT YOU'RE SAYING?

A I BELIEVE THAT HMA LEAVES THAT RESPONSIBILITY TO THE PHYSICIANS ON THE CREDENTIALING COMMITTEE AND THE MEDICAL EXECUTIVE COMMITTEE AND ULTIMATELY THE BOARD TO MAKE THOSE DECISIONS.

Q WHEN YOU SAY EXECUTIVE COMMITTEE, WHAT'S YOUR INPUT?

A THE MEDICAL -- THE MEDICAL EXECUTIVE

COMMITTEE? I'M NOT -- I -- I ATTEND THOSE MEETINGS.

Q IF HMA CONTROLS THE FINANCES OF THE HOSPITAL, ITS DAY-TO-DAY OPERATIONS AND ACTUALLY OWNS THE HOSPITAL AND CAN MAKE THE DECISION WHETHER OR NOT TO CLOSE IT, WHY WOULD IT NOT AT LEAST EXERT INFLUENCE OVER THE MOST IMPORTANT THING IT CAN DO FOR PATIENT SAFETY?

MR. DRIGGERS: OBJECT TO THE FORM. THAT'S A COMPLETE MISCHARACTERIZATION OF ANYTHING THAT HE SAID, SO --

MR. CORBINX: I NOTE YOUR OBJECTION.

THE DEPONENT: WHY WOULD -- WHY WOULD THEY NOT -- SAY THAT AGAIN, PLEASE.

BY MR. CORBIN:

Q HMA CONTROLS FINANCIAL OPERATIONS OF CAROLINA PINES. CORRECT?

A YES, SIR.

VIDEO TECHNICIAN: EXCUSE ME. MR. DRIGGERS, YOU'RE ALMOST IN THE PICTURE.

MR. DRIGGERS: OH, PARDON ME. SORRY.

BY MR. CORBIN:

Q HMA CONTROLS THE DAY-TO-DAY OPERATIONS, THROUGH YOU, OF CAROLINA PINES. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: YES, SIR.
BY MR. CORBIN:
Q YOU SAID THAT THE CEO, THE COO HAD RESPONSIBILITIES NUMBER ONE FOR PATIENT QUALITY OF CARE. CORRECT?
A WE ARE -- WE ARE CHARGED WITH MAKING SURE THAT IT'S A SAFE ENVIRONMENT IN CARRYING OUT THE DELIVERY OF QUALITY CARE. YES, SIR.
Q THE MOST POWERFUL TOOL THAT THE HOSPITAL HAS IN ENSURING PATIENT SAFETY IS THROUGH THE CREDENTIALING PROCESS, IS IT NOT?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: WELL, AS I SAID BEFORE, I THINK IT IS A VERY IMPORTANT TOOL, ALONG WITH OTHER IMPORTANT TOOLS. I CANNOT DISCOUNT THE IMPORTANCE OF DELIVERY OF MEDICATIONS IN A TIMELY MANNER, THE PROPER MEDICATIONS, PROPER CERTIFICATION EQUIPMENT USED IN PATIENT CARE. THERE ARE MANY THINGS THAT ARE VERY IMPORTANT TO THE DELIVERY OF QUALITY CARE, SO I DO NOT WANT TO LEAVE YOU WITH THE IMPRESSION THAT THAT ONE THING IS THE ONLY THING THAT'S INVOLVED IN THE DELIVERY OF QUALITY PATIENT CARE.
BY MR. CORBIN:
Q WITH RESPECT TO SURGERY, WOULD YOU

AGREE THAT THE MOST POWERFUL TOOL THAT HMA HAS AT THIS HOSPITAL INVOLVES CREDENTIALING OF SURGEONS?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: AGAIN, THAT ENVIRONMENT, THE SURGEONS, THE PHYSICIANS ARE A VERY IMPORTANT PART OF DELIVERING QUALITY SURGICAL CARE. BUT A SAFE OPERATING ENVIRONMENT, PROPER EQUIPMENT, ALL OF THAT DO PLAY A PART.

BY MR. CORBIN:

Q TELL ME WHAT'S MORE IMPORTANT THAN CREDENTIALING IN TERMS OF ENSURING PATIENT SAFETY THAT AN UNQUALIFIED SURGEON WOULD NOT BE GIVEN PRIVILEGES OR PERMISSION TO OPERATE ON.

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: AN UNQUALIFIED SURGEON WOULDN'T BE GIVEN PRIVILEGES TO OPERATE ON A PATIENT HERE.

BY MR. CORBIN:

Q HOW DOES HMA PREVENT AN UNQUALIFIED SURGEON FROM OPERATING ON PATIENTS IN ITS HOSPITALS?

A HMA RELIES ON OUR CREDENTIALING COMMITTEE, WHICH IS MADE UP OF PHYSICIANS, TO REVIEW QUALIFICATIONS, PAST WORK HISTORY, AND RENDER AN OPINION OR A DECISION AS TO WHETHER A

PHYSICIAN IS QUALIFIED OR NOT. HMA RELIES ON ITS MEDICAL STAFF AND THE PHYSICIANS INVOLVED IN THE CREDENTIALING COMMITTEE.

Q IF THE CREDENTIALING COMMITTEE MAKES A MISTAKE, HMA RELIES UPON IT AND HAS CHOSEN TO, DO YOU BELIEVE HMA HAS ANY RESPONSIBILITY FOR THAT BAD DECISION?

MR. DRIGGERS: I OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE ANY -- ALL OF US THAT ARE INVOLVED HAVE RESPONSIBILITY.

BY MR. CORBIN:

Q WHAT IS HMA'S RESPONSIBILITY?

A WITH REGARD TO?

Q CREDENTIALING OF A SURGEON TO ENSURE ONLY QUALIFIED SURGEONS ARE GIVEN PERMISSION TO OPERATE ON HUMANS.

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE THAT HMA'S RESPONSIBILITY IS TO ENSURE THAT WE HAVE A COMPETENT GROUP OF PHYSICIANS INVOLVING -- OR INVOLVED IN THE CREDENTIALING PROCESS AND SITTING ON OUR CREDENTIALING COMMITTEE. IT DEFERS THOSE OPINIONS TO PHYSICIANS.

BY MR. CORBIN:

Q THE QUESTION WAS IF THE PHYSICIANS TO

WHOM HMA DEFERS --

A YES, SIR.

Q -- BECAUSE IT CHOOSES TO, IF THOSE PHYSICIANS MAKE A WRONG DECISION, WOULD HMA ACCEPT ANY RESPONSIBILITY FOR THAT BAD DECISION?

MR. DRIGGERS: I OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE THEY WOULD, YES, SIR.

BY MR. CORBIN:

Q IN FACT, WOULD YOU AGREE THAT WOULD BE THE DECENT THING FOR HMA TO DO?

MR. DRIGGERS: OBJECT TO THE FORM.

BY MR. CORBIN:

Q PLEASE ANSWER.

A SURE.

Q A PATIENT HAS ABSOLUTELY NO CONTROL OVER THE CREDENTIALING PROCESS. CORRECT?

A THAT'S CORRECT.

Q MS. PERSON HAD NO CONTROL OVER THE CREDENTIALING OF DR. MINCHEFF. CORRECT?

A SHE WOULD NOT HAVE.

Q OKAY. THE EMPLOYEES OF CAROLINA PINES, FROM WHOM DO THEY RECEIVE THEIR PAYCHECKS?

A CAROLINA PINES.

Q ARE THEY HMA EMPLOYEES?

A THEY ARE EMPLOYEES OF HARTSVILLE HMA, INC.

Q WELL, IN FACT, YOU KNOW, HMA OWNS HARTSVILLE HMA, INC. RIGHT?

A YES, SIR.

Q AGAIN, IT'S ANOTHER LAYER, BUT HMA, INC. ABSOLUTELY OWNS HARTSVILLE HMA, INC. CORRECT?

A YES, SIR.

Q AND CAROLINA PINES IS THE NAME THAT HMA, INC. HAS CHOSEN TO DO BUSINESS. CORRECT?

A YES, SIR.

Q BUT NO DOUBT IN YOUR MIND, HMA OWNS CAROLINA PINES. CORRECT?

A YES, SIR.

Q IT'S JUST A TWO-STEP PROCESS. RIGHT? IS THAT CORRECT?

A HEALTH MANAGEMENT ASSOCIATES OWNS THE HOSPITAL THROUGH THIS COMPANY HERE, HEALTH MANAGEMENT HMA -- HARTSVILLE HMA, INC. I GUESS YOU COULD LOOK AT IT LIKE THAT.

Q ANY OTHER WAY TO LOOK AT IT?

A CAN'T THINK OF ANY.

Q OKAY. SO NO DOUBT IN YOUR MIND, WHEN THE EMPLOYEES AT CAROLINA PINES GET A CHECK FROM

HARTSVILLE HMA, INC., IT'S REALLY GETTING A CHECK FROM HMA, INC. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: AS SOLE SHAREHOLDER, YOU COULD INFER THAT.

BY MR. CORBIN:

Q ANY OTHER INFERENCE THAT YOU WOULD DRAW FROM IT?

A NONE COMES TO MIND. NO, SIR.

Q IF WE COULD TALK ABOUT MARKETING OR ADVERTISING OF CAROLINA PINES, WOULD YOU AGREE HMA, INC. CONTROLS THAT PROCESS TOO?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WELL, NO, SIR. THOSE ARE -- THOSE DECISIONS ARE MADE LOCALLY. WE COULD CHOOSE TO DO NO MARKETING IF WE WANTED TO. WE COULD -- WE CHOOSE WHAT THINGS WE DECIDE WE WANT TO MARKET. THEY DO NOT TELL US OR HAVE INPUT IN THAT.

BY MR. CORBIN:

Q YOU SAY IT CAN BE A LOCAL DECISION. BY WHOM?

A BY THE ADMINISTRATIVE TEAM.

Q YOU, THE CE---

A RIGHT.

Q CFO AND COO? CORRECT?
A RIGHT.
Q ALL EMPLOYEES OF HMA. RIGHT?
A YES, SIR.
Q YOU GET YOUR INSTRUCTIONS FROM HMA. CORRECT?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: ON MARKETING? NO, SIR. WE DO THOSE THINGS ON OUR OWN HERE.
BY MR. CORBIN:
Q SO THERE'S NO COMPANY-WIDE STRATEGY ABOUT MARKETING AT HMA?
A COMPANY-WIDE STRATEGY? NO.
Q YOU CAN DO WHATEVER YOU WANT?
A IF WE -- IF WE CAN -- WE MARKET WHAT WE CHOOSE TO MARKET. YES, SIR. OR ADVERTISE THOSE THINGS THAT WE SEE FIT TO ADVERTISE.
Q DOES HMA HAVE INPUT INTO WHAT YOU MARKET AT CAROLINA PINES?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: IF -- NO, SIR. IF WE DECIDED TO MARKET EMERGENCY SERVICES, WE WOULD MARKET EMERGENCY SERVICES. IF WE DECIDED TO MAR--- MARKET CARDIAC REHAB, WE WOULD MARKET AND ADVERTISE CARDIAC REHAB.

BY MR. CORBIN:

Q AND IT'S NONE OF HMA'S BUSINESS. RIGHT?

A THEY LEAVE THAT UP TO US. THEY DON'T DICTATE THAT WE MARKET CARDIAC REHAB. IF THAT'S WHAT WE FEEL LIKE WE NEED TO DO, WE WILL DO THAT.

Q SO HMA HAS NO CONTROL OVER YOUR ADVERTISING. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM. HE'S ANSWERED THAT QUESTION ABOUT SIX TIMES NOW, DARYL.

BY MR. CORBIN:

Q WHO PAYS FOR IT?

A THE FUNDS COME FROM THE HOSPITAL'S OWN REVENUE.

Q WHO WRITES THE CHECK FOR IT?

A CHECKS ARE WRITTEN LOCAL -- OR CHECKS ARE PROCESSED LOCALLY.

Q WHOSE NAME IS ON THE CHECK?

A I BELIEVE IT SAYS HARTSVILLE HMA, INC., DOING BUSINESS AS CAROLINA PINES REGIONAL MEDICAL CENTER.

Q IS IT HMA, INC. MONEY?

A AS A SOLE SHAREHOLDER, YES, SIR.

Q NOW, HMA, INC. IS A MULTI-BILLION

DOLLAR HOSPITAL MANAGEMENT AND OPERATIONS COMPANY. RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I AM NOT CERTAIN IF IT'S MULTI-BILLION OR NOT.

BY MR. CORBIN:

Q AND IN FACT, YOU'RE AWARE THAT IT'S LISTED ON THE NEW YORK STOCK EXCHANGE. CORRECT?

A YES, SIR.

Q YOU PROBABLY OWN STOCK IN THE COMPANY. CORRECT?

A YES, SIR.

Q OKAY. THAT'S PART OF YOUR INCENTIVE PROGRAM AT HMA, IF YOU MEET YOUR GOALS AND DO WELL AND PLEASE HMA, YOU HAVE THE RIGHT TO STOCK OPTIONS IN HMA. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: NO, SIR. WE GET OUR STOCK OPTIONS REGARDLESS. THEY ARE GIVEN AS JUST PART OF OUR NORMAL COMPENSATION.

BY MR. CORBIN:

Q IT'S PART OF YOUR --

A IT'S ROUTINE.

Q -- COMPENSATION PACKAGE?

A IT'S ROUTINE. YES, SIR.

Q BEING A PUBLIC COMPANY, HMA MUST FILE CERTAIN DOCUMENTS WITH THE SEC. CORRECT?

A THAT'S MY UNDERSTANDING, YES, SIR.

Q OKAY. WHAT'S YOUR COLLEGE BACKGROUND, PLEASE?

A I HAVE AN UNDERGRADUATE DEGREE AND A MASTER'S IN BUSINESS ADMINISTRATION.

Q SO YOU KNOW WHAT THE SEC IS?

A YES, SIR.

Q AND YOU KNOW HMA MUST FILE CORRECT AND ACCURATE DOCUMENTS TO THE SEC. CORRECT?

A CERTAINLY.

Q OKAY. WOULD YOU AGREE THAT ALSO HMA MUST SUBMIT SEVERAL DOCUMENTS A YEAR TO THE SEC TO COMPLY WITH ITS REGULATIONS. AGREE?

A YES, SIR.

Q EACH ONE OF THOSE DOCUMENTS HAS TO BE TRUTHFUL. CORRECT?

A YES, SIR.

Q WHO IS MR. WILLIAM SCHOEN?

A HE IS THE CHAIRMAN OF THE BOARD OF HEALTH MANAGEMENT ASSOCIATES.

Q HMA --

A HMA.

Q -- INC.? HMA, INC. IS IN NAPLES,

FLORIDA?

A YES, SIR.

Q IF MR. SCHOEN WERE TO PUT SOMETHING IN A PRESS RELEASE OF HMA, WOULD YOU BELIEVE HIM?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I WOULD. YES, SIR.

BY MR. CORBIN:

Q IF HMA WERE TO PUT INFORMATION IN A DOCUMENT FILED WITH THE SEC, WOULD YOU BELIEVE IT?

A YES, SIR.

Q IS IT FAIR TO SAY THAT WHATEVER MR. SCHOEN SAYS IN A PRESS RELEASE, YOU CAN BANK ON IT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE YOU COULD, SIR.

BY MR. CORBIN:

Q CAN YOU ALSO BANK ON HMA'S SEC FILINGS AS BEING TRUTHFUL?

A YES, SIR.

Q SO IF YOU WANT TO LOOK AT DOCUMENTS TO PROVE HOW MUCH CONTROL HMA, INC. HAS OVER THIS HOSPITAL OR ITS OTHER HOSPITALS, A GOOD PLACE TO LOOK WOULD BE THE SEC FILINGS. RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I WOULD -- I WOULD THINK SO. YES, SIR.

BY MR. CORBIN:

Q IF SOMEONE WERE TO SAY ABOUT HMA THAT, QUOTE, "OUR LOCAL LEADERSHIP TEAMS WHO HAVE ACCESS TO HMA'S CONSIDERABLE CORPORATE RESOURCE AND EXPERTISE MAKE THE DAY-TO-DAY OPERATIONAL DECISIONS IN OUR HOSPITALS", WOULD THAT BE TRUTHFUL?

A YES, SIR.

Q IT DOESN'T SAY THAT DOCTORS MAKE THOSE DECISIONS, DOES IT?

A I DID NOT HEAR YOU READ THAT.

Q OKAY. DO YOU KNOW OF ANY SEC DOCUMENT OF HMA THAT WOULD INDICATE THAT DOCTORS REALLY CONTROL THE DAY-TO-DAY OPERATIONS OF CAROLINA PINES?

A I KNOW OF NONE.

Q OKAY. THE ONLY DOCUMENTS THAT YOU KNOW FILED WITH THE SEC INDICATE THAT THE LOCAL LEADERSHIP TEAM CONSISTING OF THE CEO, THE COO, THE CFO AND THE CNO, THEY CONTROL DAY-TO-DAY OPERATIONS. CORRECT?

A YES, SIR.

Q AND THAT'S THE TRUTH. RIGHT?

A YES, SIR.

Q DOES HMA MAINTAIN CENTRALIZED FINANCIAL CONTROL OVER THIS HOSPITAL IN FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: COULD YOU BE MORE SPECIFIC ABOUT CENTRALIZED FINANCIAL CONTROL?

BY MR. CORBIN:

Q IF YOU WERE TO HEAR THE PHRASE IN AN SEC FILING THAT STATES, QUOTE, "UNIQUE TO THE HOSPITAL INDUSTRY, HMA EMPLOYS A DECENTRALIZED APPROACH TO HOSPITAL MANAGEMENT WHILE MAINTAINING CENTRALIZED FINANCIAL CONTROLS THROUGH THE IMPLEMENTATION OF OUR PROPRIETARY PULSE SYSTEM MANAGEMENT INFORMATION TECHNOLOGY, WOULD YOU AGREE WITH THAT STATEMENT?

A IF THAT WAS PUBLISHED IN AN SEC FILING, I WOULD AGREE TO IT AND BELIEVE IT.

Q HOW IMPORTANT TO THE FINANCIAL OPERATIONS OF CAROLINA PINES IS HMA'S PULSE SYSTEM? IS IT A BIG DEAL?

A IT'S IMPORTANT. YES, SIR. IT'S HOW WE MANAGE OUR BILLING AND COLLECTIONS AND OTHER FINANCIAL ACTIVITIES.

Q WOULD YOU AGREE THAT A GOAL OF HMA IS TO PERSUADE LOCAL PERSONS THAT THEY CAN RECEIVE

THE CARE THEY NEED AT CAROLINA PINES AND REALLY DON'T NEED TO GO SOMEWHERE ELSE?

A YES, SIR.

Q IS THAT ONE OF THE MARKETING STRATEGIES OF HMA?

A I BELIEVE THAT IT IS. I BELIEVE THAT OTHER HOSPITALS HAVE -- WOULD USE THE SAME THEME BECAUSE WE ALL BELIEVE THAT WE CAN PROVIDE THE CARE LOCALLY. WE WOULD RATHER FOLKS STAY HERE THAN GO ELSEWHERE.

Q INSTEAD OF TALKING ABOUT OTHER HOSPITALS, DO YOU MIND IF WE TALK ABOUT HMA?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: THAT'S FINE.

BY MR. CORBIN:

Q CAN WE TALK ABOUT HMA? IN FACT, YOU KNOW THAT'S ONE OF HMA'S STRATEGIES AT THIS HOSPITAL IS TRY TO PERSUADE LOCAL PEOPLE DON'T GO ELSEWHERE FOR YOUR MEDICAL CARE; COME TO CAROLINA PINES. CORRECT?

A YES, SIR.

Q IF THAT STRATEGY WORKS, CAROLINA PINES AND HMA MAKE MORE MONEY. RIGHT?

A YES, SIR.

Q HMA BOUGHT CAROLINA PINES -- WELL, IT

REALLY BOUGHT BYERLY HOSPITAL IN 1995 AND CREATED CAROLINA PINES SHORTLY THEREAFTER. RIGHT?

A YES, SIR.

Q IN FACT, HMA BUILT AND PAID FOR CAROLINA PINES. RIGHT?

A YES, SIR.

Q HMA PROVIDED THE -- THE EQUIPMENT IN THE HOSPITAL. CORRECT?

A YES, SIR.

Q HMA OWNS THE BUILDING AND THE LAND UPON WHICH THIS HOSPITAL SITS. CORRECT?

A I BELIEVE HARTSVILLE HMA, INC. OWNS IT, TO BE -- TO BE SPECIFIC.

Q BUT WE BOTH KNOW THAT'S HMA. RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

BY MR. CORBIN:

Q WE CAN BE SPECIFIC IF YOU'D LIKE. THE NEXT QUESTION THEN WOULD BE WHO OWNS HMA, INC. -- HARTSVILLE HMA, INC.?

A HEALTH MANAGEMENT SYSTEMS.

Q OKAY. WE CAN SKIP THAT PROCESS IF YOU WANT TO. IF YOU DON'T, I CAN ASK THAT QUESTION. OKAY? IS IT FAIR TO SAY THAT WHEN YOU SAY HMA, YOU REALLY MEAN HMA, INC. AS WELL AS HARTSVILLE HMA, INC.? IS THAT FAIR?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: YES, SIR.

BY MR. CORBIN:

Q ALL HMA HOSPITALS HAVE THE SAME ACCOUNTING SYSTEM THAT RUNS FROM NAPLES, FLORIDA. CORRECT?

A YES, SIR.

Q THE PULSE SYSTEM INSTITUTED BY HMA GIVES IT AN EXTREMELY ACCURATE PICTURE OF CAROLINA PINES' OPERATING STA--- STATUS EVERY DAY. WOULDN'T YOU AGREE?

A YES, SIR.

Q NOT JUST ONCE A QUARTER, NOT JUST ONCE A YEAR, BUT EVERY SINGLE DAY, THEY KNOW WHAT'S HAPPENING HERE FINANCIALLY. CORRECT?

A YES, SIR.

Q WHY WOULD THEY WANT TO KNOW THAT?

A IT'S -- IT'S IMPORTANT TO THEM AS -- AS OWNERS OF HARTSVILLE HMA, INC. ANY GOOD OWNER IS GOING TO WANT TO KNOW HOW THEIR BUSINESS ENTITY IS DOING.

Q AND IN FACT, HMA IS ABSOLUTELY RESPONSIBLE FOR THE DAY-TO-DAY OPERATION OF CAROLINA PINES. CORRECT?

MR. DRIGGERS: THAT'S -- OBJECT TO THE

FORM.

THE DEPONENT: AS WE'VE SAID BEFORE, THE FOLKS THAT ARE RESPONSIBLE FOR THEE DAY-TO-DAY OPERATIONS AT CAROLINA PINES ARE MYSELF AND THE OTHER MEMBERS OF THE ADMINISTRATIVE TEAM.

BY MR. CORBIN:

Q IN AN SEC FILING OF HMA, IF IT STATES THE FOLLOWING, TELL ME IF IT'S A TRUTHFUL STATEMENT, QUOTE, "LOCAL LEADERSHIP TEAMS COMPRISED OF A HOSPITAL'S CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND CHIEF NURSING OFFICER ARE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THEIR RESPECTIVE FACILITY. IS THAT A TRUTHFUL STATEMENT?

A YES, SIR.

Q ANYBODY ELSE RESPONSIBLE FOR IT?

A WELL, I BELIEVE THAT NOT ONLY ARE WE RESPONSIBLE, BUT OUR -- ALL OF THE EMPLOYEES HERE ARE ALL RESPONSIBLE. WE ALL HAVE A RESPONSIBILITY. ULTIMATELY, THE EXECUTIVE LEADERSHIP HERE IS THE -- I MEAN, EVERYTHING REPORTS UP.

Q THE BUCK STOPS THERE. CORRECT?

A YES, SIR.

Q IN FACT, THE BUCK DOESN'T STOP AT YOU.

IT STOPS AT HMA, DOES IT NOT?

MR. DRIGGERS: OBJECT TO THE FORM.

BY MR. CORBIN:

Q IS THAT FAIR?

A I THINK THAT'S A GENERAL STATEMENT. I THINK IN A LOT OF THINGS, THE BUCK STOPS AT THE LOCAL LEVEL. WE'RE ACCOUNTABLE TO OUR PHYSICIANS AND OUR BOARD AND THEY LOOK TO US FOR ANSWERS AND TO SOLVE PROBLEMS, AND -- AND THEY LOOK TO US.

Q IN THIS SEC FILING WHEN IT TALKS ABOUT THE DAY-TO-DAY OPERATIONS FOR WHICH YOUR HMA LEADERSHIP TEAM IS RESPONSIBLE FOR, WOULD YOU AGREE THE BUCK STOPS AT HMA IN FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: ULTIMATELY, I -- I SUPPOSE YOU WOULD SAY THAT. YEAH, I CAN -- I WOULD AGREE.

BY MR. CORBIN:

Q IN FACT, YOU KNOW THAT'S THE TRUTH. RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: AGAIN, I THINK THAT'S A GENERAL STATEMENT THAT YOU'RE MAKING. AND I THINK IN SOME WAYS AND SOME THINGS ARE RESPONSIBLE ULTIMATELY AT THE LOCAL LEVEL. I DON'T THINK YOU

CAN GENERALIZE THAT STATEMENT.

BY MR. CORBIN:

Q WOULD YOU AT LEAST AGREE WITH RESPECT TO PATIENT QUALITY OF CARE, THE MOST IMPORTANT FUNCTION OF THIS HOSPITAL, THE BUCK STOPS AT HMA IN FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: ULTIMATELY AS THE SOLE SHAREHOLDER, I SUPPOSE IT WOULD ULTIMATELY STOP WITH THEM.

BY MR. CORBIN:

Q WHERE ELSE DO YOU BELIEVE IT WOULD STOP?

A I THINK IT STOPS HERE AT THIS LOCAL LEVEL AS WELL. AS I SAID BEFORE, I THINK WE'RE RESPONSIBLE FOR THAT. I THINK THE MEDICAL STAFF HAS GOT A PART TO PLAY IN THAT, THE BOARD, THE ADMINISTRATIVE TEAM.

Q ARE YOU AT LEAST WILLING TO ACCEPT RESPONSIBILITY YOURSELF AS THE CEO THAT YOU'RE ULTIMATELY RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS AND THE QUALITY OF PATIENT CARE HERE? WILL YOU ACCEPT THAT RESPONSIBILITY?

A YES, SIR.

Q OKAY.

A YES, SIR. OF COURSE.

Q YOU'RE NOT GOING TO SAY ANYBODY ELSE IS RESPONSIBLE -- OR MORE RESPONSIBLE THAN YOU. RIGHT?

A WE'RE RESPONSIBLE. YES, SIR.

Q YOU'RE THE CEO OF THIS HOSPITAL. RIGHT?

A YES, SIR.

Q GIVEN HMA'S RESPONSIBLE FOR YOU BEING HERE, WOULD YOU AT LEAST AGREE THAT THE BUCK STOPS IN FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM, DARYL. HE'S ANSWERED THIS QUESTION. I DON'T KNOW HOW MANY TIMES YOU WANT TO ANSWER IT -- ASK IT.

BY MR. CORBIN:

Q PLEASE ANSWER THAT QUESTION.

A I BELIEVE THAT WE'RE CHARGED TO BE RESPONSIBLE LOCALLY TO CARRY THESE THINGS OUT. THEY LEAVE -- THEY LEAVE THE DECISIONS UP TO US LOCALLY.

Q SO AS A LOCAL CEO --

A I MEAN, I -- TO ELABORATE ON THAT QUESTION, I AM NOT GETTING PHONE CALLS OR -- OR -- OR DIRECTIONS DAY TO DAY ON -- ON DO THIS OR DON'T DO THAT. IT'S LEFT UP TO US TO MAKE THE DECISIONS

THAT ARE IN THE BEST INTEREST OF THIS HOSPITAL.

Q WHO LEAVES IT UP TO YOU?

A HMA HAS CHARGED ME WITH THIS, AS WE -- AS WE HAVE TALKED ABOUT EARLIER.

Q IF HMA WANTED MORE CONTROL OVER WHAT YOU DO HERE INVOLVING PATIENT CARE, COULD IT EXERT THAT?

A I SUPPOSE THAT IT COULD.

Q WHO MAKES THE DECISION WHETHER OR NOT TO EXPAND CAROLINA PINES?

A LOCALLY, WE WOULD MAKE THE DECISION WHETHER WE WANTED TO PURSUE SUCH AN EXPANSION OR NOT.

Q WHO CONTROLS THAT DECISION?

A WHO CONTROLS THAT DECISION? HMA WOULD PROVIDE THE CAPITAL RESOURCES TO ALLOW SUCH AN EXPANSION TO GO FORWARD OR...

Q WITHOUT HMA'S PERMISSION OR AUTHORITY, EXPANSION DOES NOT GO FORWARD. CORRECT?

A COULD NOT GO FORWARD BECAUSE I WOULD NOT HAVE THE CAPITAL RESOURCES TO DO SO. YES, SIR.

Q DO YOU THINK HMA HAS A DUTY TO DELIVER HIGH QUALITY HEALTH CARE TO PATIENTS AT CAROLINA PINES?

A I BELIEVE AS OWNERS OF CAROLINA PINES, HMA WOULD EXPECT US TO DO NO LESS THAN THAT. BUT HMA CAN'T THEMSELVES AS AN ENTITY DELIVER THAT QUALITY OF CARE -- OR QUALITY OF CARE -- OR CARE OF ANY KIND BECAUSE THAT'S GOT TO BE DONE AT THE LOCAL LEVEL. THEY EXPECT US TO DO THAT. THEY EXPECT THE PHYSICIANS TO DO THAT.

Q SO --

A IT'S ALMOST ARE YOU ASKING IF A -- IF AN ENTITY CAN DO SOMETHING. AND IT'S NOT THE ENTITY THAT'S TAKING CARE OF THE PATIENTS AND SEEING AFTER BUSINESS HERE. IT'S THOSE OF US LOCALLY.

Q IS IT YOUR POSITION THAT THE ULTIMATE CONTROL OVER PATIENT SAFETY AT CAROLINA PINES IS NOT WITH HMA IN FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM.

BY MR. CORBIN:

Q IS THAT YOUR POSITION?

A MY POSITION IS THAT WE ARE RESPONSIBILITY FOR DELIVERING SAFE, PATIENT CARE HERE LOCALLY.

Q HMA IN FLORIDA, THAT'S -- THAT'S -- ACCORDING TO WHAT YOU KNOW ABOUT THE CORPORATION DOWN THERE AND THE EXECUTIVES, DO THEY SUPPORT

YOUR POSITION THAT THE HMA CORPORATION IN FLORIDA HAS NO RESPONSIBILITY FOR PATIENT CARE HERE?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: NO, I THINK -- I THINK I SAID IT BEFORE, THAT AS OWNERS OF HARTSVILLE HMA, INC., THEY ARE ALSO RESPONSIBLE FOR THE DELIVERY. BUT THEY EXPECT US TO CARRY THAT DELIVERY -- ENSURE THAT DELIVERY TAKES PLACE.

BY MR. CORBIN:

Q ARE YOU ABLE, AS BEING AN HMA EXECUTIVE AND HAVING AN MBA DEGREE, TO AT LEAST RANK FOR US -- IT SEEMS OBVIOUS THAT HMA, THE OWNER OF THIS HOSPITAL FOR WHOM YOU WORK, WOULD HAVE THE GREATEST RESPONSIBILITY OR AUTHORITY TO CONTROL PATIENT CARE. DOES ANYBODY ELSE HAVE MORE AUTHORITY TO CONTROL PATIENT CARE?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I --

MR. DRIGGERS: AGAIN, THESE ARE QUESTIONS -- YOU'RE ASKING THE SAME ONES OVER AND OVER AND OVER.

THE DEPONENT: OUR PHYSICIANS HAVE THE AUTHORITY TO CONTROL PATIENT CARE.

BY MR. CORBIN:

Q SO YOU BELIEVE THE PHYSICIANS HAVE MORE

CONTROL OVER PATIENT CARE AT CAROLINA PINES THAN HMA, INC. IN FLORIDA WHO OWNS THE OPERATION AND CONTROLS THE DAY-TO-DAY OPERATIONS?

A I BELIEVE THAT HMA, INC., FLORIDA, HOWEVER YOU WANT TO TERM THAT, PROVIDES THE RESOURCES AND THE TOOLS TO DELIVER PATIENT CARE SO THAT THE PHYSICIANS CAN DIRECT THAT PATIENT CARE AND ENSURE THAT THAT PATIENT CARE IS DELIVERED.

Q IF HMA IN ITS SEC FILINGS WERE TO STATE THAT IN FACT THEY ARE RESPONSIBLE AND PROUD OF QUALITY PATIENT CARE IN THEIR HOSPITALS, WOULD THAT BE A TRUTHFUL STATEMENT?

A IF THEY WERE TO STATE THAT IN AN SEC FILING, I WOULD BELIEVE THAT IT'S TRUTHFUL.

Q OKAY. IT'S JUST DIFFERENT FROM YOUR IMPRESSION. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WELL, I THINK THAT WE'RE ALL -- ALL OF YOU THAT ARE ASSOCIATED WITH HEALTH MANAGEMENT ASSOCIATES ARE PROUD OF THE CARE THAT'S DELIVERED.

BY MR. CORBIN:

Q I WAS ASKING ABOUT RESPONSIBILITY TOO.

A AND I BELIEVE THAT WE ARE ALL RESPONSIBLE.

Q OKAY.

A I SAID THAT ONCE BEFORE.

Q WHAT IS THE PRO-MED SYSTEM OF HMA?

A IT IS A SYSTEM THAT IS INSTALLED IN OUR EMERGENCY ROOM THAT ALLOWS US TO MONITOR THE PROGRESS OF PATIENTS THROUGH THE EMERGENCY ROOM PRESENT -- THE ENTIRE EMERGENCY ROOM LENGTH OF STAY FROM THE TIME THEY PRESENT TO THE TIME THEY ARE DISCHARGED, AND HELPS MANAGE PATIENT FLOW AND --

Q IN FACT, THAT'S -- I'M SORRY. PLEASE CONTINUE.

A IT ALSO HAS QUALITY INDICATORS BUILT IN AS WELL TO HELP ENSURE THE BEST QUALITY CARE IS DELIVERED BY THOSE E.D. DOCTORS.

Q IN FACT, HMA OWNS THE PRO-MED PROGRAM. CORRECT?

A THAT'S NOT MY UNDERSTANDING. I -- PRO-MED I BELIEVE IS A COMMERCIALLY-AVAILABLE PRODUCT, AND I BELIEVE IT'S IN PLACE IN OTHER COMPANIES, HOSPITALS.

Q FAIR ENOUGH. BUT YOU ARE AWARE HMA INSTRUCTS ITS HOSPITALS, AND IN FACT EVEN HERE, TO USE PRO-MED. IS THAT RIGHT?

A YES, SIR.

Q THAT'S PART OF YOUR RESPONSIBILITY IS TO USE PRO-MED. CORRECT?

A YES, SIR.

Q AND PART OF THE PRO-MED PROGRAM THAT HMA INSTRUCTS YOU TO USE, IT HELPS YOU FORMULATE A DIAGNOSIS AND TELLS YOU HOW TO TREAT PATIENTS. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: IT DOESN'T TELL -- IT DOESN'T TELL ANYBODY HOW TO TREAT PATIENTS. IT -- IT CAN -- IT -- THE PROGRAM ITSELF WAS DEVELOPED BY A PHYSICIAN, AS I UNDERSTAND IT. AND IT HAS CERTAIN TEST PROTOCOLS AND THINGS BUILT INTO THE SYSTEM. AND WHEN A DIAGNOSIS IS PUT INTO THE SYSTEM, PHYSICIANS DIAGNOSIS IS PUT IN THERE, IT LOOKS FOR CERTAIN TESTS THAT SHOULD HAVE BEEN ORDERED. AND IF CERTAIN TESTS WEREN'T ORDERED, IT ALLOWS THE PHYSICIAN TO CONSIDER HIMSELF WHY CERTAIN TESTS WERE ORDERED. SO IT'S MORE OF A TRACKING TOOL AND A PROCTOR FOR GOOD CARE.

BY MR. CORBIN:

Q DOES IT HELP THE DOCTORS FORMULATE THE DIAGNOSIS?

A I DON'T BELIEVE THAT IT DOES. I THINK THAT IT SUPPORTS THEIR DIAGNOSIS AND IT HELPS THEM

THINK OF OTHER TESTS THAT MAYBE THEY COULD DO TO SUPPORT THEIR OWN DIAGNOSIS.

Q WOULD IT SUGGEST A COURSE OF TREATMENT FOR PATIENTS AT CAROLINA PINES?

A I DON'T KNOW THAT IT WOULD SUGGEST A COURSE OF TREATMENT. I BELIEVE -- IT WOULD SUGGEST THAT CERTAIN LABS COULD BE ORDERED, THINGS -- THINGS LIKE THAT. BUT I DON'T BELIEVE IT WOULD SUGGEST A COURSE OF TREATMENT.

Q IN HMA'S SEC FILING, IT STATES PRO-MED, QUOTE, "THIS IS A COMPUTEROUS ACCESS DIAGNOSTIC TOOL THAT HELPS DOCTORS ASSESS THE PATIENT'S CONDITION, FORMULATE A DIAGNOSIS AND SUGGEST A COURSE OF TREATMENT." IS THAT WHAT IT DOES?

A IT HELPS THEM IN THEIR DECISION MAKING.

Q WOULD YOU AGREE THAT HMA, THROUGH DIRECTING CAROLINA PINES ABOUT ITS DAY-TO-DAY OPERATIONS AND THE USE OF PRO-MED, IS INVOLVED IN PATIENT CARE HERE?

MR. DRIGGERS: OBJECT TO THE FORM. HE NEVER SAID HMA WAS INVOLVED IN DIRECTING DAY-TO-DAY OPERATIONS. YOU KEEP SAYING THAT OVER AND OVER.

THE DEPONENT: RESTATE IT AGAIN, PLEASE.

MR. CORBIN: WELL, LET'S GET THAT CLEARED UP.

MR. DRIGGERS: SURE.

BY MR. CORBIN:

Q HMA, THROUGH YOU, CONTROLS THE DAY-TO-DAY OPERATIONS, ALONG WITH THE LOCAL CFO, COO, CNO, CONTROLS THE DAY-TO-DAY OPERATIONS OF THIS HOSPITAL. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WE ARE HERE TO ENSURE AND CONTROL THE DAY-TO-DAY OPERATIONS ON BEHALF OF HMA.

BY MR. CORBIN:

Q OKAY. SO HMA, THROUGH YOU, CONTROLS DAY-TO-DAY OPERATIONS. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I DON'T LIKE THE WAY YOU'RE STATING THAT. I LIKE -- BUT WE'RE -- WE'RE HERE TO ENSURE -- YOU KNOW, CARRY OUT THE DAY-TO-DAY OPERATIONS AND ENSURE THAT THINGS ARE DONE ON BEHALF OF HMA.

BY MR. CORBIN:

Q YOU DO WHAT HMA WANTS YOU TO DO. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WELL, WE'RE LEFT -- IT'S LEFT UP TO US TO RUN THE HOSPITAL DAY TO DAY. THEY DON'T DICTATE HOW THAT DAY-TO-DAY OPERATIONS IS CARRIED OUT.

BY MR. CORBIN:

Q HMA DOES NOT?

A THEY LEAVE DAY-TO-DAY DECISIONS -- AS YOU'VE EVEN READ IT TO ME BEFORE, THEY LEAVE IT UP TO THE ADMINISTRATIVE TEAM, THE CEO AND THE OTHER ADMINISTRATORS. DAY TO DAY.

Q BUT NO NON-HMA EMPLOYEES. CORRECT? PART OF THAT LEADERSHIP TEAM?

A CORRECT.

Q OKAY. DO YOU AGREE WITH THIS STATEMENT: QUOTE, "CORPORATE GOVERNANCE AT HMA IS AN ONGOING DISCIPLINE THAT IS RIGOROUSLY MONITORED AT ALL LEVELS WITHIN THE COMPANY. IS THAT TRUTHFUL?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE IT IS.

BY MR. CORBIN:

Q CERTAINLY PATIENT CARE WOULD BE WITHIN THOSE LEVELS OF THE COMPANY. CORRECT? THAT THEY MONITOR?

A YES, SIR.

Q OKAY. HAVE YOU DISCUSSED MS. PERSON'S CARE WITH ANYBODY FROM HMA IN FLORIDA?

A NO, SIR.

Q ARE YOU AWARE OF HMA, THE OWNER OF THIS HOSPITAL, ANYBODY ON THE EXECUTIVE TEAM IN FLORIDA KNOWING ANYTHING ABOUT MS. PERSON'S CASE?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE THAT --

MR. DRIGGERS: I WOULD INSTRUCT HIM IF THERE'S ANY CONVERSATIONS WE'VE HAD OR ATTORNEY/CLIENT PRIVILEGE --

MR. CORBIN: I'M NOT ASKING THAT.

MR. DRIGGERS: OKAY. I JUST WANTED TO MAKE THAT CLEAR --

BY MR. CORBIN:

Q DO YOU HAVE ANY PERSONAL KNOWLEDGE, BEING THE CEO EMPLOYED BY HMA TO RUN THIS HOSPITAL, OF ANYBODY AT CORPORATE HEADQUARTERS EVEN KNOWING ABOUT MS. PERSON'S SITUATION?

A YES, SIR.

Q WHEN ARE YOU AWARE THE FIRST TIME HMA CORPORATE WAS NOTIFIED ABOUT MS. PERSON'S SITUATION?

A PROBABLY -- PROBABLY AFTER I RECEIVED YOUR SUBPOENA AND I LOOKED INTO THE MATTER AND

WANTED TO KNOW, YOU KNOW, WHAT -- WHAT THAT WAS ABOUT AND LOOKED INTO THAT.

Q IN FACT, I BELIEVE YOU GOT YOUR SUBPOENA SOMETIME IN OCTOBER 2006. CORRECT? I BELIEVE OCTOBER 13TH, 2006?

A I BELIEVE -- YES, SIR.

Q 2006. CORRECT?

A YES, SIR.

Q MS. PERSON'S LAWSUIT STARTED IN 2004. THE FIRST TIME YOU HAD ANY DISCUSSIONS WITH CORPORATE OFFICE IN FLORIDA WAS A COUPLE OF WEEKS AGO. CORRECT?

A NO, I HAVEN'T HAD ANY DISCUSSIONS WITH CORPORATE OFFICE.

Q DO YOU HAVE ANY IDEA WHETHER OR NOT HMA, INC. CARES ABOUT MS. PERSON'S LAWSUIT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I BELIEVE THEY DO.

BY MR. CORBIN:

Q UPON WHAT DO YOU BASE THAT? WHO IS INVOLVED?

A WHO IS INVOLVED WHERE?

MR. DRIGGERS: OBJECT TO THE FORM. THE -- WE NEED TO GO OFF THE RECORD FOR THIS.

VIDEO TECHNICIAN: WE'RE GOING OFF THE

RECORD AT 2:58 P.M.

(OFF-THE-RECORD DISCUSSION.)

VIDEO TECHNICIAN: WE'RE GOING BACK ON THE RECORD AT 2:59 P.M.

BY MR. CORBIN:

Q MR. CASTLEBERRY, DO YOU HAVE ANY KNOWLEDGE YOURSELF, HAVE YOU SPOKEN TO ANYBODY AT HMA HEADQUARTERS IN NAPLES, FLORIDA ABOUT MS. PERSON'S SITUATION?

A NO, SIR.

Q NEVER. CORRECT?

A NO, SIR.

Q WHY, AS THE CEO OF CAROLINA PINES, EMPLOYED BY HMA, NOT NOTIFY THE OWNER OF THIS HOSPITAL ABOUT MS. PERSON'S CLAIM?

A WELL, HER CLAIM OCCURRED BEFORE I WAS HERE. SO I HAD NO KNOWLEDGE OF IT UNTIL I RECEIVED YOUR SUBPOENA.

Q YOU GOT THE SUBPOENA A COUPLE OF WEEKS AGO. HAVE YOU, AS THE CEO, THE HIGHEST-RANKING HMA OFFICIAL AT THIS HOSPITAL, NOTIFIED ANYBODY AT CORPORATE HEADQUARTERS ABOUT MS. PERSON'S LITIGATION?

A NO, SIR. THE REASON I HAVE NOT IS BECAUSE WHEN I WAS SERVED, IT WAS SERVED ON US AND

IT'S MY UNDERSTANDING THAT MR. DRIGGERS WAS THE ATTORNEY LOCALLY HANDLING THE CASE, AND ANY CONVERSATIONS THAT WERE BEING HAD WOULD HAVE BEEN HANDLED BY MR. DRIGGERS.

Q DO YOU UNDERSTAND THE NATURE OF MS. PERSON'S CLAIM AGAINST THE HOSPITAL?

A YES, SIR.

Q THE NATURE OF MS. PERSON'S CLAIM IS THAT SHE BELIEVES CAROLINA PINES ALLOWED AN UNQUALIFIED SURGEON TO OPERATE ON HER AND CAUSED HER TO BE HURT. DO YOU THINK THAT INFORMATION WOULD BE IMPORTANT TO HMA IN FLORIDA?

A YES, SIR.

Q DOES HMA PUBLISH A NEWSLETTER?

A YES, SIR.

Q AND IN FACT, HMA'S NEWSLETTER CAN BE FOUND IN CAROLINA PINES' WAITING ROOM. CORRECT?

A YES, SIR.

Q DO YOU KNOW WHO PAYS THE PROPERTY TAXES FOR THIS HOSPITAL?

A IT WOULD HAVE TO BE HMA.

Q DO YOU KNOW WHO PAYS FOR PROPERTY DAMAGE INSURANCE COVERAGE OF THIS HOSPITAL?

A HEALTH MANAGEMENT ASSOCIATES, INC., HARTSVILLE.

Q IF HMA -- WELL, LET ME ASK THIS QUESTION. IF CAROLINA PINES HAD A FINANCIAL DEFICIT, WHERE WOULD YOU LOOK FOR THE MONEY?

A WE WOULD ASK OUR CORPORATE OFFICE TO HELP US IF WE WERE IN SUCH A DEFICIT THAT WE COULD NOT COVER OUR EXPENSES.

Q WHEN YOU SAY CORPORATE OFFICE, IF CAROLINA PINES HAD INABILITY TO PAY A DEBT, YOU WOULD LOOK TO HMA CORPORATE OFFICE IN FLORIDA TO ASSIST YOU. CORRECT?

A I WOULD INQUIRE.

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: CERTAINLY WOULD INQUIRE AS TO THAT OPTION.

BY MR. CORBIN:

Q HMA HAS A WEBSITE. CORRECT?

A YES, SIR.

Q WOULD YOU CONSIDER THE INFORMATION THAT HMA ACTUALLY PUTS ON ITS PUBLIC WEBSITE TO BE ACCURATE AND TRUTHFUL?

A YES, SIR.

Q AND IN FACT, ON THE HMA WEBSITE, IT PROVIDES ALL OF THE SEC FILINGS AND PRESS RELEASES PUT UP BY MR. SCHOEN AND OTHER EXECUTIVES. CORRECT?

A YES, SIR.

Q WOULD YOU CONSIDER ALL -- ALL THAT INFORMATION TO BE TRUTHFUL TOO?

A YES, SIR.

MR. CORBIN: AND MARTIN, I KNOW YOU MIGHT HAVE AN OBJECTION TO THIS.

MR. DRIGGERS: SURE.

BY MR. CORBIN:

Q BUT IN TERMS OF THE EXPENSES OF CAROLINA PINES, WOULD YOU AGREE THAT ONE EXPENSE WOULD BE PROFESSIONAL LIABILITY COVERAGE?

A I --

MR. DRIGGERS: I OBJECT TO THAT CERTAINLY FOR THE RECORD. I DON'T THINK THERE'S ANY DISCUSSION OF THAT TO BE HAD IN THE CASE. AND I DON'T KNOW WHETHER THAT'S RELEVANT. IT CERTAINLY CAN'T GO TO THE JURY.

MR. CORBIN: AND THAT'S -- AND I NOTE YOUR OBJECTION. OKAY.

BY MR. CORBIN:

Q AND IN FACT, HMA PROVIDES PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR THIS HOSPITAL. CORRECT?

A WELL, ANY EXPENSE LIKE THAT WOULD COME OUT OF THE OPERATING EXPENSES OF THE HOSPITAL. WE

HAVE INCOME. WE HAVE OPERATING EXPENSES. AND HMA ON BEHALF OF THIS HOSPITAL AND OTHERS WOULD COORDINATE THE OBTAINING OF THAT INSURANCE.

Q IF FOR EXAMPLE IN THE SEC FILING IT STATES, QUOTE, "IN THE ORDINARY COURSE OF BUSINESS, OUR SUBSIDIARY HOSPITALS ARE SUBJECT TO MEDICAL MALPRACTICE LAWSUITS. SOME OF THESE ACTIONS MAY INVOLVE LARGE CLAIMS AS WELL AS SIGNIFICANT DEFENSE COST. WE BELIEVE THAT BASED ON OUR PAST EXPERIENCE IN ACTUARIAL ESTIMATES, OUR INSURANCE COVERAGE IS SUFFICIENT TO COVER CLAIMS ARISING FROM THE OPERATIONS OF OUR SUBSIDIARY FACILITIES." THIS IS ONE OF HMA'S SUBSIDIARY FACILITIES, IS IT NOT?

A YES, SIR.

MR. DRIGGERS: SAME -- SAME OBJECTION AS EARLIER MADE.

BY MR. CORBIN:

Q WOULD YOU AGREE THAT ACCORDING TO THAT STATEMENT THAT HMA ACTUALLY CONTROLS PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR THIS HOSPITAL?

MR. DRIGGERS: SAME OBJECTION.

THE DEPONENT: I WOULD AGREE.

BY MR. CORBIN:

Q WOULD YOU AGREE THAT'S A PRETTY GOOD

INDICATION THAT CORPORATE HMA IN FLORIDA BELIEVES IT IN FACT IS RESPONSIBLE FOR PATIENT CARE AND THE BUCK STOPS IN FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM. ANY --

BY MR. CORBIN:

Q IF IT HAS INSURANCE COVERAGE TO COVER IT?

A I DON'T -- I BELIEVE THAT AS PART OF A -- AS AN OWNER OF -- OF A SUBSIDIARY HOSPITAL, THEY -- IT'S A GOOD BUSINESS DECISION TO HAVE THAT, TO -- TO COORDINATE AND INSURE THAT LIABILITY COVERAGE. ASK THE QUESTION AGAIN.

Q WOULD YOU AGREE THAT'S A PRETTY GOOD INDICATOR THAT THE HMA EXECUTIVES IN FLORIDA BELIEVE THE BUCK STOPS IN FLORIDA INVOLVING CLAIMS OF MEDICAL MALPRACTICE AT THIS HOSPITAL?

MR. DRIGGERS: SAME OBJECTION.

THE DEPONENT: I WOULD AGREE.

BY MR. CORBIN:

Q AND IN FACT, HMA, FOR WHATEVER REASONS, HAS DECIDED TO CREATE ITS OWN INSURANCE COMPANY TO COVER MEDICAL MALPRACTICE CLAIMS AGAINST HOSPITALS LIKE THIS. ISN'T THAT TRUE?

MR. DRIGGERS: SAME OBJECTION.

THE DEPONENT: I DO BELIEVE THAT WE HAVE A SELF-INSURED PRODUCT.

BY MR. CORBIN:

Q WHEN YOU SAY SELF-INSURED PRODUCT, WITH RESPECT TO MEDICAL MALPRACTICE CLAIMS AGAINST SUBSIDIARY HOSPITALS, HMA SET UP A PROGRAM TO COVER THOSE EXPENSES ON A SELF-INSURED BASIS. CORRECT?

A I BELIEVE THAT IS CORRECT.

Q HAVE YOU EVER READ ANYTHING FROM HMA ABOUT THEIR MARKETING PLAN INVOLVING HOSPITALS LIKE CAROLINA PINES?

MR. DRIGGERS: OBJECT TO THE FORM. HE'S ALREADY BEEN ASKED ABOUT THAT.

THE DEPONENT: I DON'T BELIEVE THEY HAVE A -- AN OVERALL MARKETING PLAN FOR ANY OF THEIR HOSPITALS. I BELIEVE THAT THE OVERALL MARKETING PLAN IS SOMETHING DEVELOPED AND EXECUTED LOCALLY.

BY MR. CORBIN:

Q IF AN SEC DOCUMENT FILED BY HMA STATED, QUOTE, "WE BELIEVE THAT WE CAN ENHANCE AND INCREASE THE LEVEL AND QUALITY OF HEALTH CARE SERVICES IN MANY UNDERSERVED MARKETS", WOULD THAT BE A TRUTHFUL STATEMENT?

A I BELIEVE IT IS.

Q AND IN FACT, HMA BELIEVES IT HAS A RESPONSIBILITY FOR THE LEVEL AND QUALITY OF HEALTH CARE SERVICES IN THIS HOSPITAL, DOES IT NOT?

A I BELIEVE SO.

Q OKAY. IN FACT, HMA RECRUITS THE PHYSICIANS WHO WORK IN ITS HOSPITALS?

A WELL, THAT RESPONSIBILITY LIES WITH THE CEO AND SOME MEMBERS OF THE EXECUTIVE TEAM TO RECRUIT -- TO FIND, RECRUIT AND BRING INTO THE MARKET THOSE PHYSICIANS.

Q HMA HAS A WEBSITE, IF SOMEBODY WANTS TO APPLY FOR A JOB IN ITS SUBSIDIARY HOSPITAL LIKE CAROLINA PINES, YOU CAN GO TO HMA'S WEBSITE IN FLORIDA AND FIND A JOB LISTING FOR HARTSVILLE, SOUTH CAROLINA, CAN YOU NOT?

A IF ONE WERE AVAILABLE, IF IT WERE AN EXECUTIVE POSITION.

Q AND IN FACT, IF A PHYSICIAN WERE LOOKING FOR A JOB, IT COULD GO TO HMA'S WEBSITE AND HMA RECRUITS THE PHYSICIANS WHO WORK IN THIS HOSPITAL TOO. RIGHT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: IT CAN GO TO HMA'S WEBSITE AND LOOK FOR A LISTING OF ANY VACANCIES AT

ANY OF OUR HOSPITALS THAT NEED TO BE FILLED. AND THAT'S A TOOL FOR RECRUITMENT THAT WE USE JUST LIKE WE WOULD USE A RECRUITMENT FIRM OR A DIRECT MAIL PIECE OR ANYTHING ELSE.

BY MR. CORBIN:

Q TALKING AGAIN ABOUT WHERE THE BUCK STOPS INVOLVING PATIENT CARE, I WANT TO READ TO YOU ANOTHER SECTION OF YOUR COMPANY'S SEC FILING. TELL ME IF THIS IS TRUTHFUL. QUOTE, "FOR OUR EXISTING HOSPITALS, WE SEEK TO INCREASE OUR PATIENT SERVICE REVENUE BY PROVIDING QUALITY HEALTH CARE NECESSARY TO INCREASE ADMISSIONS AND OUTPATIENT BUSINESS." IS THAT TRUTHFUL?

A IF THAT'S WHAT IT SAYS IN OUR SEC FILINGS, I WOULD BELIEVE SO.

Q SOUNDS LIKE HMA HAS SOMETHING TO DO WITH PATIENT QUALITY. WOULD YOU AGREE?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: YES, SIR.

BY MR. CORBIN:

Q AND IT TALKS FURTHER ABOUT WHO IS RESPONSIBLE FOR PATIENT QUALITY. IT STATES, QUOTE, "THESE HOSPITALS ARE ADMINISTERED AND DIRECTED ON A LOCAL LEVEL BY EACH HOSPITAL'S CEO." IS THAT TRUTHFUL?

A YES, SIR.

Q DO YOU NOT ONLY ADMINISTER, BUT DO YOU ALSO DIRECT DAY-TO-DAY BUSINESS AT CAROLINA PINES?

A YES, SIR.

Q THE SEC FILING FURTHER STATES -- TELL ME IF THIS IS FALSE -- QUOTE, "OUR EXISTING HOSPITALS ALSO INCREASE ADMISSIONS AND OUTPATIENT BUSINESS THROUGH THE IMPLEMENTATION OF SELECTIVE MARKETING PROGRAMS. THE MARKETING PROGRAM FOR EACH HOSPITAL IS DIRECTED BY THE HOSPITAL'S CEO." DO YOU DIRECT IT?

A YES, SIR.

Q AND IT'S YOUR POSITION YOU CAN DIRECT IT IN OPPOSITION TO WHAT HMA REQUIRES YOU TO DO? IS THAT YOUR POSITION?

MR. DRIGGERS: OBJECT TO THE FORM. HE HASN'T LISTED ANY REQUIREMENTS FOR ANYTHING.

BY MR. CORBIN:

Q DOES HMA CONTROL MARKETING THROUGH YOU?

A HMA DOES NOT CONTROL MARKETING. THEY -- WE DO OUR MARKETING. WE SET OUR MARKETING PLANS AT OUR LOCAL LEVELS. AS I SAID BEFORE, IF WE CHOOSE TO MARKET CARDIAC REHAB, WE'LL MARKET CARDIAC REHAB.

Q ARE YOU RESPONSIBLE FOR MAKING THAT

DECISION?

A YES, SIR. WHETHER OR NOT I WOULD DECIDE TO MARKET CARDIAC REHAB OR -- YES, SIR.

Q DO YOU CONTROL, BECAUSE YOU MAKE THE DECISION LOCALLY, WHAT TO MARKET AS CEO?

A YES, SIR.

Q WHEN YOU MAKE THE DECISION WHAT CAROLINA PINES WILL MARKET OR ADVERTISE, ARE YOU FUNCTIONING AS THE CEO EMPLOYED BY HMA?

A WELL, I AM THE CEO EMPLOYED BY HMA. WE'VE ESTABLISHED THAT.

Q DOES HMA EVEN GET INVOLVED WITH CLINICAL ASPECTS OF WHAT HAPPENS IN THE HOSPITAL?

A HMA PROVIDES A NUMBER OF RESOURCES FOR CLINICAL -- FOR THE CLINICAL ENVIRONMENT, WHETHER IT BE PROVIDING BENCHMARKING DATA FROM OTHER FACILITIES, PROVIDING DATA TO US FROM OTHER QUALITY ENTITIES, MAYBE CMS, THINGS THAT -- OF THAT NATURE SO THAT IT IS EASIER FOR US TO KNOW WHERE WE STAND AS WE COLLECT OUR OWN DATA AND THEY'VE DONE SOME DATA GATHERING FOR US FOR US TO BENCHMARK OURSELVES AGAINST.

Q WOULD SURGERY BE CONSIDERED PART OF THE CLINICAL ASPECT OF THE HOSPITAL?

A CERTAINLY.

Q DOES HMA DO ANYTHING TO INFLUENCE SURGERY AT THE HOSPITAL?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I WOULD NEED YOU TO EXPLAIN THAT QUESTION TO ME. I DON'T REALLY UNDERSTAND IT.

BY MR. CORBIN:

Q WHEN YOUR SEC FILING STATES, QUOTE, WE PURSUE VARIOUS CLINICAL MEANS TO INCREASE THE UTILIZATION OF SERVICES, WOULD YOU AT LEAST AGREE THAT INCLUDES SURGICAL SERVICES?

A YES, SIR.

Q IN OTHER WORDS, HMA IS DIRECTING YOU AS THE CEO TO UTILIZE MEANS TO INCREASE SURGICAL SERVICES. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: IT WOULD BE MY RESPONSIBILITY TO SEEK TO INCREASE SURGICAL SERVICES AND LOCAL UTILIZATION OF ALL OF OUR PRODUCTS -- LINES -- PRODUCT LINES.

BY MR. CORBIN:

Q HMA CONTINUALLY SEEKS TO IMPROVE QUALITY OF HEALTH CARE SERVICES, INCLUDING SURGERY, AT CAROLINA PINES. CORRECT?

A YES, SIR.

Q AND IN FACT, IT HAS A DUTY TO DO SO. CORRECT?

A YES, SIR.

Q THE CEO'S BEFORE YOU, YOU MENTIONED MS. TRIMBLE, ALSO PAGE VAUGHN WAS CEO FOR AWHILE.

A YES, SIR.

Q HE WAS APPOINTED BY HMA TO RUN THIS HOSPITAL ON A DAY-TO-DAY BASIS. CORRECT?

A YES, SIR.

Q HE WAS PROMOTED BY HMA TO BE THE REGIONAL MANAGER. CORRECT?

A YES, SIR.

Q MS. TRIMBLE, SHE WAS ALSO APPOINTED BY HMA AND SHE HAS SINCE GONE TO ANOTHER HMA HOSPITAL. CORRECT?

A YES, SIR.

Q THEN ALONG CAME YOU BEING APPOINTED BY HMA TO RUN THE DAY-TO-DAY OPERATIONS OF CAROLINA PINES. CORRECT?

A YES, SIR.

Q HAVE WE ESTABLISHED THAT HMA IS IN FACT RESPONSIBLE TO BE THE OPERATOR OF CAROLINA PINES? CAN WE AGREE TO THAT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WE CAN -- I WOULD SAY

THEY ARE THE OWNER. AND WE'RE RESPONSIBLE FOR THE DAILY OPERATIONS HERE LOCALLY BECAUSE I THINK WHAT YOU'RE MAKING IT SOUND LIKE IS THAT THEY ARE OPERATING IT FROM OUR FLORIDA OFFICE. AND THAT'S THE FEELING I'M GETTING WHEN YOU ASK THAT QUESTION. AND WE'RE OPERATING IT LOCALLY.

BY MR. CORBIN:

Q IF FOR EXAMPLE MR. SCHOEN WERE TO PUBLISH IN A PRESS RELEASE THROUGH HMA'S WEBSITE AND THE PRESS RELEASE STATES, QUOTE, "MR. SCHOEN ADDED, QUOTE, 'HMA HAS CLEARLY ESTABLISHED ITSELF AS A LEADING OPERATOR OF NON-ACUTE AND ACUTE CARE MEDICAL HOSPITALS IN THE SOUTHEAST AND SOUTHWESTERN UNITED STATES'," IS THAT A TRUTHFUL STATEMENT?

A SINCE I SAID EARLIER THAT IF ANYTHING PUBLISHED IN AN SEC FILING OR OTHERWISE WOULD BE ACCURATE AND TRUTHFUL, AND IF THAT WAS PUBLISHED IN AN SEC FILING OR SOME SORT OF PRESS RELEASE, I WOULD HAVE TO SAY THAT WOULD HAVE TO ALSO BE ACCURATE.

Q AND IN FACT, THE PRESS RELEASE STATES, QUOTE, "HEALTH MANAGEMENT ASSOCIATES IS A MAJOR OPERATOR OF THESE HOSPITALS." IT DOESN'T SAY ANYTHING ABOUT THE LOCAL PEOPLE AND THE DOCTORS

OPERATE IT. HMA TAKES CREDIT FOR OPERATING THESE HOSPITALS. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WELL, IN EARLIER PRESS RELEASES, IT SAID -- AND IN SEC FILINGS, IT SAID THAT THE CEO'S AND SUCH WERE LOCALLY OPERATED. BUT OF COURSE THAT SAYS WHAT IT SAYS.

BY MR. CORBIN:

Q ARE YOU WILLING TO ACCEPT -- WE CAN GO THROUGH OTHER PRESS RELEASES -- THAT IN FACT HMA IS A LEADING OPERATOR OF GENERAL ACUTE CARE HOSPITALS?

A AS I'VE SAID, IF IT'S PUBLISHED IN A PRESS RELEASE, I WOULD HAVE TO AGREE WITH IT.

Q IN FACT, WAS THERE A PRESS RELEASE WHEN HMA DECIDED TO APPOINT YOU TO RUN THIS HOSPITAL?

A I CANNOT RECALL, BUT I WOULD THINK THAT THERE WAS.

Q DID THAT PRESS RELEASE SAY ANYTHING ABOUT THE DOCTORS' INFLUENCE IN HAVING MADE A DECISION TO APPOINT YOU OR WAS IT HMA APPOINTING YOU?

A AS I SAID, I CAN'T RECALL IF THERE WAS A PRESS RELEASE. SO I WOULDN'T KNOW WHAT IT SAID. TRUTHFULLY, I JUST CANNOT RECALL IF THERE WAS A

PRESS RELEASE OR NOT. IF ONE WAS DONE, I WOULD THINK THAT IT WOULD HAVE BEEN DONE LOCALLY BY OUR MARKETING DEPARTMENT.

Q IF THE PRESS RELEASE WERE TO SAY THAT HMA APPOINTED YOU, AND NOT THE DOCTORS HERE, WOULD THAT BE A TRUTHFUL STATEMENT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: IF PRE--- IF THE PRESS RELEASE WAS -- WAS RELEASED BY HMA, THEN I WOULD THEN HAVE TO AGREE WITH THE PRESS RELEASE.

BY MR. CORBIN:

Q CAN CAROLINA PINES ON ITS OWN -- ARE YOU AUTHORIZED BY HMA TO GO BORROW MONEY FROM BANKS?

A NO, SIR.

Q IN FACT, HMA CONTROLS THE DEBT OF ITS CORPORA--- OR THE DEBT OF THE HOSPITAL. CORRECT?

A YES, SIR.

Q HMA DOES NOT GIVE YOU AUTHORITY LOCALLY TO GO TO BANKS AND BORROW MILLIONS OF DOLLARS, EVEN IF YOU WANT TO. RIGHT?

A THAT'S CORRECT.

Q HMA CONTROLS THE FINANCIAL CONDITION OF THIS HOSPITAL. CORRECT?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: YOU KNOW, I WOULD GO BACK AND SAY THE FINANCIAL CONDITION OF THIS HOSPITAL IS CREATED OR -- OR AFFECTED BY OUR DAILY OPERATIONS. IF YOU -- AGAIN, IF YOU'RE TRYING TO ASSERT THAT CORPORATE IS CONTROLLING THE FINANCIAL OPERATIONS DAY TO DAY, FROM A -- FROM OUR MAIN OFFICE, THAT'S OUR RESPONSIBILITY LOCALLY. WE DO THOSE THINGS.

BY MR. CORBIN:

Q THE LOCAL HMA PEOPLE DO IT?

A YES, SIR.

Q OKAY.

MR. DRIGGERS: CAN WE TAKE A BREAK?

MR. CORBIN: YES.

VIDEO TECHNICIAN: WE'RE GOING OFF THE RECORD AT 3:20 P.M.

(WHEREUPON, A BREAK WAS TAKEN FROM THE PROCEEDINGS.)

VIDEO TECHNICIAN: WE'RE GOING BACK ON THE RECORD AT 3:24 P.M.

BY MR. CORBIN:

Q MR. CASTLEBERRY, YOU INDICATED TO ME THAT CAROLINA PINES DOES NOT HAVE THE AUTHORITY TO BORROW MONEY WITHOUT IT GOING THROUGH HMA IN FLORIDA. CORRECT?

A. YES, SIR.

Q. THE BILLING AND COLLECTION OF ACCOUNTS RECEIVABLES OR PATIENTS' BILLS, IS THAT CONTROLLED THROUGH FLORIDA?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: WE U--- UTILIZE THE PULSE SYSTEM.

BY MR. CORBIN:

Q. UNDER THE PULSE SYSTEM, FLORIDA CAN MONITOR EVERY SINGLE DAY. CORRECT?

A. THAT'S MY UNDERSTANDING. YES, SIR.

Q. WOULD YOU AGREE THAT HMA IS RESPONSIBLE FOR THE PULSE SYSTEM AND THE ACCOUNTING AND ACCOUNTS RECEIVABLES ACTIONS OF THE CORPORATION -- OF THE HOSPITAL?

A. NO, I WOULD AGREE THAT WE LOCALLY ARE RESPONSIBLE FOR AFFECTING THE ACCOUNTS RECEIVABLE -- RECEIVABLE FUNCTIONS OF -- OF THIS HOSPITAL. WE ARE THE ONES MANAGING THAT PROCESS AND ENSURING THAT CHARGES ARE ENTERED AND THINGS OCCUR.

Q. IF HMA DOES NOT CONTROL THAT PROCESS, WHY DOES IT MONITOR IT ON A DAY-TO-DAY BASIS?

A. AS I SAID BEFORE, I THINK AS AN OWNER, AS THE SOLE OWNER OF THIS HOSPITAL, IT'S --

IT'S -- THAT'S ITS BUSINESS INTEREST.

Q IF HMA THROUGH ITS DAILY MONITORING OF THE BILLING AND RECEIPT PROCESS OF THE HOSPITAL DIDN'T LIKE WHAT YOU WERE DOING, WOULD THEY HAVE THE AUTHORITY TO INSTRUCT YOU TO DO SOMETHING DIFFERENTLY?

A YES, SIR.

Q DO YOU HAVE A WRITTEN EMPLOYMENT CONTRACT WITH HMA?

A NO, SIR.

Q DOES CAROLINA PINES, TO YOUR KNOWLEDGE, AS THE CEO, EVEN PREPARE ITS OWN INCOME TAX RETURNS?

A NOT TO MY KNOWLEDGE.

Q AND IN FACT, YOU KNOW IT'S DONE THROUGH HMA IN FLORIDA. CORRECT?

A AS I UNDERSTAND IT, THEY DO CONSOLIDATED RETURNS, I THINK.

Q AND IN FACT, HMA IS RESPONSIBLE FOR THE TAXES OF THIS HOSPITAL AND CONTROLS THAT PROCESS DOWN IN FLORIDA. CORRECT?

A I BELIEVE SO.

Q ARE YOU AWARE OF ANY LEASING AGREEMENTS INVOLVING VEHICLES OR ANYTHING ELSE WITH RESPECT TO THIS HOSPITAL?

A NO, SIR.
Q DOES THE HOSPITAL LEASE ANY VEHICLES?
A NOT TO MY KNOWLEDGE.
Q OKAY. DOES IT LEASE ANY EQUIPMENT?
A YES, SIR. WE HAVE SOME CLINICAL EQUIPMENT LEASED, I DO BELIEVE.
Q CAROLINA PINES EQUIPMENT IS BOUGHT BY HMA. CORRECT?
A YES, SIR.
Q CAROLINA PINES LEASED EQUIPMENT IS LEASED THROUGH HMA. CORRECT?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: YES, SIR.
BY MR. CORBIN:
Q DOES HMA CONTROL THE EQUIPMENT IN THIS HOSPITAL THROUGH OWNERSHIP AND LEASING OF IT?
A DO THEY CONTROL THE OWNERSHIP OF IT? IS THAT YOUR QUESTION?
Q DO THEY CONTROL THE EQUIPMENT THAT'S PUT IN THIS HOSPITAL?
MR. DRIGGERS: OBJECT TO THE FORM.
THE DEPONENT: THE UTILIZATION OF THE EQUIPMENT? I NEED TO -- COULD YOU CLARIFY?
BY MR. CORBIN:
Q DO THEY CONTROL WHAT EQUIPMENT IS

ACTUALLY BOUGHT AND PUT IN THIS HOSPITAL?

A ONE OF THE RESOURCES THAT WE HAVE AVAILABLE TO US AT CORPORATE IS -- IS THE ABILITY TO COLLECTIVELY BARGAIN, AS IT WERE. A NUMBER OF HOSPITALS MIGHT TRY TO PURCHASE A C.T. SCANNER OR LEASE A C.T. SCANNER OR AN M.R.I. OR SOMETHING LIKE THAT. BUT ANY PARTICULAR HOSPITAL CAN GET ITS OWN QUOTES FROM DIFFERENT VENDORS AND -- AND MAKE THE SUGGESTION OR THE REQUEST THAT WE PURCHASE THAT PIECE OF EQUIPMENT. WE TAKE INPUT FROM OUR PHYSICIANS. AND SO IF THEY ARE KEENLY INTERESTED IN ONE PIECE OF EQUIPMENT OVER ANOTHER, WE'RE GOING TO ACCOMMODATE THAT.

Q WHEN YOU SAY WE'RE WILLING TO ACCOMMODATE THAT --

A I SAID THAT WE WOULD ACCOMMODATE -- IF A PHYSICIAN -- IF THE PHYSICIAN SAID THIS M.R.I. WE THINK IS BETTER BECAUSE OF THIS, THIS AND THIS, YOU KNOW, WHATEVER, WE -- THAT MATTERS TO US.

Q WHO IS WE?

A THE MANAGEMENT TEAM HERE LOCALLY. AND IF -- IF WE'RE LOOKING AT BUYING A PIECE OF EQUIPMENT, WE GET THE INPUT FROM OUR PHYSICIANS.

Q AND HMA BUYS IT. RIGHT?

A YES, SIR.

Q IF YOU WERE TO ASK MR. SCHOEN, WHO IS THE CHAIRMAN OF THE BOARD OF THE CORPORATION DOWN IN FLORIDA, TO APPEAR AT THE TRIAL NEXT WEEK, DO YOU THINK HE WOULD COME?

MR. DRIGGERS: OBJECT TO THE FORM. HE HAS NO IDEA WHAT --

THE DEPONENT: I COULDN'T -- I COULDN'T ANSWER THAT. I WOULDN'T KNOW.

BY MR. CORBIN:

Q HAVE YOU EVER SPOKEN TO MR. SCHOEN, THE CHAIRMAN OF YOUR BOARD?

A I HAVE MET HIM SEVERAL TIMES.

Q IF YOU WERE TO ASK HIM TO COME, DO YOU THINK HE WOULD?

MR. DRIGGERS: OBJECT TO THE FORM.

THE DEPONENT: I COULDN'T KNOW. I WOULDN'T BE ABLE TO ANSWER THAT.

BY MR. CORBIN:

Q DO YOU THINK MR. SCHOEN CARES ABOUT WHAT'S HAPPENING IN THIS LAWSUIT?

A YES, SIR. WELL, IF HE KNOWS -- I DON'T KNOW. BUT I BELIEVE THAT HE WOULD CARE. YES, SIR.

Q IF IN FACT MR. SCHOEN CARED, DO YOU

THINK HE WOULD COME?

MR. DRIGGERS: OBJECT TO THE FORM. HE CAN'T KNOW WHAT --

THE DEPONENT: I CAN'T KNOW OR I CAN'T ANSWER THAT. I DON'T KNOW. I DON'T KNOW.

BY MR. CORBIN:

Q IF HMA CARED ABOUT MR. PERSON'S LITIGATION, WOULD YOU EXPECT SOMEBODY FROM HMA IN FLORIDA TO COME?

MR. DRIGGERS: OBJECT TO THE FORM. WOULD HE --

THE DEPONENT: WOULD I EXPECT THEM?

MR. CORBIN: YES, SIR.

THE DEPONENT: THAT WOULD BE THEIR DECISION. I -- I...

BY MR. CORBIN:

Q DO YOU KNOW WHY AN EXECUTIVE FROM FLORIDA OF HMA WOULD NOT WANT TO COME?

A I CAN'T SPECULATE ON EITHER -- NO, I CAN'T -- I CAN'T SPECULATE ON THAT.

MR. CORBIN: I BELIEVE THAT'S ALL I HAVE. THANK YOU, MR. CASTLEBERRY.

E X A M I N A T I O N

BY MR. DRIGGERS:

Q I JUST THINK I HAVE A COUPLE.

MR. CASTLEBERRY, YOU WERE ASKED SEVERAL QUESTIONS ABOUT HMA AND ITS AUTHORITY. WOULD YOU AGREE THAT UNDER THE BYLAWS OF THIS HOSPITAL, THE BOARD ALSO HAS I THINK IT'S TERMED ULTIMATE RESPONSIBILITY FOR THE -- WHAT GOES ON IN THE HOSPITAL. CORRECT?

A THAT'S HOW IT'S TERMED IN THE BYLAWS. RIGHT.

Q OKAY. SO THAT -- AND CERTAINLY, AT LEAST UNDER THE BYLAWS, IT'S CONCEIVABLE THAT THE BOARD COULD FIRE YOU OR FIRE OTHER EMPLOYEES OR TAKE STEPS, WHATEVER THEY FELT -- DEEMED APPROPRIATE FOR THE ADMINISTRATION OF THE HOSPITAL?

A YES.

Q OKAY. AND THAT INCLUDES ALL OF THE OTHER THINGS YOU TALKED ABOUT AS FAR AS EXPENSES, MARKETING DECISIONS. THE BOARD ULTIMATELY AT SOME POINT IN TIME SEES ALL OF THAT. CORRECT?

A THEY DO SEE IT.

Q AND WHEN I SAY BOARD, I'M TALKING ABOUT THE LOCAL BOARD OF CAROLINA PINES REGIONAL MEDICAL CENTER. OKAY? JUST SO IT'S CLEAR.

A OKAY.

Q DO YOU UNDERSTAND THAT?

A UH-HUH.

Q NOW, THE BOARD IS COMPRISED OF HOW MANY PEOPLE, AS BEST YOU CAN REMEMBER?

A FIFTEEN.

Q OKAY. AND HOW MANY PHYSICIANS SIT ON THE BOARD?

A NEARLY HALF --

Q OKAY.

A -- ARE PHYSICIANS.

Q SO THROUGH THE BOARD INVOLVEMENT, THE PHYSICIANS PLAY A GREAT ROLE IN THE OVERSIGHT AND MANAGEMENT OF THE HOSPITAL. TRUE?

A TRUE.

Q OKAY. YOU MENTIONED I BELIEVE A MR. PAGE VAUGHN WHO YOU SAID THAT YOU WOULD DEAL WITH IN REGARDS TO HMA. CORRECT?

A CORRECT.

Q NOW, YOU DON'T HAVE ANY DAILY MEETINGS WITH MR. VAUGHN. CORRECT?

A CORRECT.

Q YOU DON'T HAVE ANY REGULAR REPORTING REQUIREMENTS AT ALL TO MR. VAUGHN. CORRECT?

A CORRECT.

Q OKAY. AND YOU DON'T HAVE TO HAVE MR. VAUGHN'S APPROVAL FOR ANY DECISIONS THAT YOU MAKE. CORRECT?

A CORRECT.

Q OKAY. AND THIS GOES BACK TO MY QUESTIONS ABOUT THE BOARD, BUT YOU SEVERAL TIMES USED THE TERM ADMINISTRATIVE TEAM FOR THE GROUP THAT RUNS THE HOSPITAL ON A DAY-TO-DAY BASIS. CORRECT?

A UH-HUH. RIGHT. CORRECT.

Q AND THAT TEAM ALSO WOULD ULTIMATELY REPORT TO THE LOCAL BOARD. CORRECT?

A CORRECT.

MR. DRIGGERS: OKAY. THAT'S ALL THE QUESTIONS I'VE GOT.

F U R T H E R E X A M I N A T I O N

BY MR. CORBIN:

Q MR. CASTLEBERRY, IF THE LOCAL BOARD THAT YOU JUST STATED HAS CONTROL OVER YOU, HOW IN THE WORLD CAN HMA HAVE CONTROL OVER APPOINTING YOU, IT HAS CONTROL OVER THE FINANCES OF THIS HOSPITAL, IT HAS CONTROL OVER THE DAY-TO-DAY OPERATIONS OF THIS HOSPITAL THROUGH YOU, IT CONTROLS THE ACCOUNTS RECEIVABLES, IT CONTROLS WHETHER OR NOT YOU CAN EVEN BORROW MONEY AT THE HOSPITAL, HOW CAN YOU SAY THAT THE LOCAL BOARD TRUMPS THE OWNER OF THIS HOSPITAL?

A IT WOULD DEPEND ON THE CIRCUMSTANCE.

IT WOULD DEPEND ON WHAT WAS GOING ON AT THE TIME. IF THERE WERE HORRIBLE DECISIONS BEING MADE, BAD BUSINESS DECISIONS, EMPLOYEES WERE BEING TREATED TERRIBLY, WAGES WERE CUT, ANYTHING CONTRARY TO RUNNING A SOUND BUSINESS WAS GOING ON, THE BOARD COULD -- I BELIEVE YOUR QUESTION EARLIER WAS COULD THEY FIRE ME. THEY COULD CONTACT MR. VAUGHN AND SAY THIS IS NOT WORKING, THIS IS NOT GOOD FOR OUR HOSPITAL, YOU NEED TO GET RID OF THIS FELLOW.

Q COULD THEY GET RID OF YOU WITHOUT CONTACTING MR. VAUGHN OR SOMEBODY FROM HMA?

A NO.

MR. CORBIN: THAT'S ALL I HAVE.

MR. DRIGGERS: THAT'S ALL I'VE GOT.

VIDEO TECHNICIAN: THIS DEPOSITION IS CONCLUDED AT 3:35 P.M.

(DEPONENT EXCUSED.)

(WHEREUPON, AT 3:35 P.M., THE TAKING OF THE FOREGOING DEPOSITION WAS CONCLUDED.)

CERTIFICATE OF REPORTER

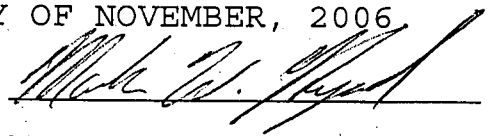
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, MARK W. HAGOOD, RPR, REGISTERED PROFESSIONAL REPORTER AND NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE DEPONENT IN THE FOREGOING DEPOSITION WAS, BY ME, FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH; THAT SAID DEPOSITION TRANSCRIPT IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE DEPOSITION OF SAID DEPONENT.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA, THIS THE 3RD DAY OF NOVEMBER, 2006.



MARK W. HAGOOD, RPR

MY COMMISSION EXPIRES:

FEBRUARY 15, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
RUTH J. PERSON,	)	2004-CP-34-0322
PLAINTIFF,	)	TRANSCRIPT OF RECORD
VS.	)	
CAROLINA PINES REGIONAL MEDICAL CENTER	)	MARCH 5, 2007
DEFENDANT.	)	

B E F O R E

THE HONORABLE J. MICHAEL BAXLEY

A P P E A R A N C E S

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Attorney for the Plaintiff

Martin S. Driggers, Jr., Esquire
Attorney for the Defendant

PAMELA OZMENT-CARTEE
CIRCUIT COURT REPORTER

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EXHIBITS

No Exhibits Offered

(Whereupon, The Court comes to order, at 3:24 p.m. Monday, March 5, 2007.)

The Court: All right counsel, are you ready?

Mr. Corbin: Yes, sir, good after noon Judge.

The Court: Good afternoon. Are you the moving party?

Mr. Corbin: I am. I promise to take less that twenty minutes as well.

The Court: Wait a minute.

Mr. Corbin: I'll take fifteen or less.

The Court: All right, go ahead.

Mr. Corbin: Your Honor, to save time I know I don't need to recite the procedural history of this case. You are fully aware of this case. All of us worked hard for a couple of years, and we tried this case last November.

The first issue that I have Your Honor, with respect to the charges in this case. If Your Honor recalls, we had a charging conference in chambers. At that point in time I actually submitted written posed charges for Your Honor to consider. Your Honor thoughtfully considered the charges, and denied my request to incorporate those charges in the final charge.

At that point in time I felt a strong, I guess, a grievance Your Honor. You let me argue against it to no avail. And, I would ask Your Honor, at this point in time to make the record clear for appellate purposes to

incorporate the argument that we had in chambers. There was no dispute in the work that I submitted, the charges to your Honor for consideration. We took, I believe, thirty to forty-five minutes arguing these Motions in chambers. Your Honor considered it, denied the Motion. I did not believe that I needed to reargue those same issues on the record, and ask the Court to incorporate that into the record for appellate purposes.

The Court: Mr. Driggers, do you want to be heard on that specific issue?

Mr. Driggers: Your Honor, I don't think there is any dispute that we had a charge conference in your chambers, and these charges were submitted, and that you denied, to enter them into the record. There is no dispute on that.

The Court: Wasn't that preserved in the record Mr. Corbin?

Mr. Corbin: I thought so Your Honor, I wanted to make certain that it was preserved in the record.

The Court: Madame Court Reporter, didn't we place a package of those charges that Mr. Corbin offered to us in the record?

Court Reporter: I believe so, Your Honor.

The Court: I am certain that your position was preserved, because of the pivotal nature of that issue.

Mr. Corbin: Yes, sir.

The Court: And, the Court certainly had no objection to making sure whatever was in the record for appellate review would be there.

Mr. Corbin: I appreciate that judge. The second point which might seem minuscule; but it is my point that it kind of set the tone for what had happened for two years in this case, is the issue by Doctor Heniford. If Your Honor recalls, Doctor Heniford was an expert witness from Charlotte, North Carolina. There were issues about proper disclosure, whether or not he honored the Court's subpoena, whether or not he could produce certain records, that whole issue. In addition Your Honor after hearing the argument to exclude Doctor Heniford, you decided to exclude him as a sanction.

I relied upon that decision. I did not read the five-hour deposition that I had taken of Doctor Heniford. The morning of trial, Your Honor reversed yourself, and decided to allow Doctor Heniford to testify. That is an issue, because on the last day of trial, after counsel cooperated with defense counsel on a daily basis, told them who the witnesses would be the next day, or upcoming witnesses. I did that. We were concerned whether or not we could finish or would finish on that Thursday. Your Honor, on Wednesday after court asked defense counsel whether or not they would in fact use Doctor Heniford to testify. That was important,

because if they were going to use Doctor Heniford, because of the reversal of Your Honor, about the exclusion of him, I had to spend four or five hours at least getting prepared to cross examine Doctor Heniford the next day.

Out of fairness, you inquired of Mr. Driggers; do you intend to call Doctor Heniford? The response we got at that point was that we really don't know. Your Honor instructed defense counsel to call me at home that night with a decision, so I would not have to stay up all night getting prepared for Doctor Heniford. I got no telephone call. The next day I raised that issue with Your Honor. Mr. Driggers told the Court that he just learned that morning, a few minutes before that Doctor Heniford would not testify that morning. And, they decided not to call him.

It is my position that it was part of their strategy which dovetails into the two years of abuse, of abuse in this case, in my opinion, to let me spend four or five hours reading a deposition, getting prepared, because of Your Honor's reversal of that order, knowing they were not going to call him anyway. How do I know that? If Your Honor remembers, there was a school class here that day for closing arguments. I think it was a fourth or fifth grade class. I don't know the teacher's name.

The Court: It was Ms. Hines, Business Law Class from Hartsville High School.

Mr. Corbin: Yes, sir. My paralegal, in front of my client Ms. Person, spoke with the school teacher before closing arguments. I did not learn until after the case was finished about this conversation. According to my paralegal and my client, and I have submitted an Affidavit of my paralegal to Your Honor for consideration, Ms. Stewart, she said that the school teacher, as my paralegal said, I'm sorry you are not going to hear testimony today; because they decided not to call their witness, but at least you have closing arguments to listen to. The teacher responded to you, oh, don't worry, I spoke to Mr. Driggers last night, and he told me there would be no testimony today, just closing arguments.

I would ask the Court, and Mr. Driggers submitted an Affidavit from Doctor Heniford, which to me is wishy-washy about the issues. I would like Your Honor to inquire of Mr. Driggers, did in fact himself, or anybody on his behalf speak to the school teacher the day before closing, and was she informed that they were not going to call any witnesses on the last day of trial? I would ask Your Honor to do that.

The Court: Gentlemen, we have known each other a long time. We practiced law together, and against one another. Mr. Driggers, let me just ask you. I did, you know, there are Court Orders in a trial, the trial is extremely

stressful. There are professional courtesies outside of the Court Orders, and what I had asked at the end of the day was that you to advise Mr. Corbin whether you were going to call that witness. What concerned me the next morning when I came in and learned that Mr. Corbin did not know that, and it would be understandable, because I had previously ruled as a sanction earlier, that you could not call that witness, and then as, I guess, in an effort to make sure that everyone was treated fairly, and every side heard, I reversed myself, which did leave Mr. Corbin standing there somewhat surprised. Why didn't you call him to say that night well, I just still don't know. Why was there not a response to my request of you?

Mr. Driggers: I will get to that Your Honor. I do want to just say we had some jurisdictional arguments, and I did not want to be seen as waiving any of those before I respond sort of in kind. I am happy to respond to that, Your Honor. And, I will get to the jurisdictional matters when plaintiff's counsel finishes his arguments.

But, Your Honor, that case with Doctor Heniford was like the whole case in many ways, was like a roller coaster. He was excluded. We told him not to take us off of his calendar completely, because we were going to make an attempt to ask the Court to reconsider that decision, which we did; and the Court did reconsider, and the Court did

allow us to use him. We said he could not be kept out completely. But, if Your Honor recalls, I believe Mr. Corbin would acknowledge this. At that point in time we did not know when we actually would be able to get Doctor Heniford to Darlington, South Carolina. It was in play a lot later in the game, and all through the course of the trial, simply because he practices in Charlotte. It wasn't as if he was in New York, Los Angeles, or somewhere we could just say this ain't going to happen. He was an hour and a half up the road, so we were working diligently to try to get him here if at all possible. That work continued up until the morning of the final day of the case. I asked Mr. Corbin earlier in the week, when we knew we had a day, and we knew we had a time, that he had slated that we could call. I said, Mr. Corbin can we call him out of order. I know this is asking a courtesy of him. But, this would guarantee us to be able to get him here. It would guarantee him to be able to do whatever cross he needed to do. And, understandably Mr. Corbin said, absolutely not. I have a case to put up. I am not going to give Mr. Heniford any time during my portion of the case. So, I said okay, fine. So, we continued to work knowing that through the week. In fact, if the case had ended on Friday, we would not have had an opportunity at all. But, because we carried it over into a second week, it left over some time where we might could

be able to work it in, because Doctor Heniford was actually in Arizona giving a conference over that weekend. I was in contact with him on his cell phones, in contact with his office, literally up until that morning where I was hoping against hope that we would be able to get him here in time to testify before the close of the case. Unfortunately, for us, that did not work out, and at that point in time we just elected not to call any further witnesses. If we couldn't have Doctor Heniford, there were some others we had discussed which had not even been brought up as issue. Doctor Leroy Robinson, Doctor Art Cooler, there were several that we were potentially going to call. But, when Doctor Heniford couldn't make it, and we know that for sure; and again just that morning, literally that Tuesday morning, November 14, is when we knew finally and fairly. So, that is my response Your Honor, and that is what the Affidavit of Doctor Heniford says.

The Court: Why did you not call Mr. Corbin that night, first of all in response to my request; but secondly as a courtesy to him; to tell him what you just told me? Just to say we don't know, he's in Arizona, we don't know?

Mr. Driggers: Because Mr. Corbin already knew that. He knew that we were working to get him here if we could. I was going to call if we knew we couldn't, but I didn't know that. That is how we left it that day in Court.

The Court: But, that doctor --- The issue of my request for you to call Mr. Corbin to notify him of whether that witness would be called?

Mr. Driggers: And Your Honor, and sure I could have called him. There is no question that I could have called him during the night and said, we don't know, it's still up in the air. But, that is how we left it at five o'clock that afternoon, and nothing had changed. I did not know if he was going to be called; I didn't know if he wasn't going to be called. So, I didn't call him that night for that reason. There wasn't a definite answer one way or the other. It wasn't an attempt to avoid, or any part of strategy, it was just literally because I did not have an answer, and we did not have one until the next morning.

The Court: And, then Mr. Corbin alleges or argues through his affidavit, through his paralegal's affidavit that Ms. Kathy Hines said, you said the night before you were not going to call any more witnesses.

Mr. Driggers: Your Honor, I don't want to bring in Kathy Hines in here to testify. She taught me business law for crying out loud. But, she --- I know what I talked to her about. I know what I told her. I know that whatever conversations we had, and it was exactly the same thing that I told Mr. Corbin. We might have testimony, we might not, and we are working diligently to do that.

The Court: All right. I am well aware --- You probably think that I have forgotten what it is like to be a lawyer, but I have not. For eighteen years I did exactly what you gentlemen do, all of you do everyday. I know that a trial is extremely stressful, and believe it or not, when I try to preside over a trial, particularly one of this duration and gravity of issues, hotly contested as it was; I try to do what I can to relieve the stress among counsel, which is what my request was to you Mr. Driggers, to try to give Mr. Corbin some direction where he could best apply his diminishing resources of his time as the trial came to a close.

All right, go ahead Mr. Corbin.

Mr. Corbin: Your Honor, the next issue which to me is much more troubling. Your Honor, because of the chronic discovery abuse in this case. You issued a verbal order sometime in October of 2006, and under that Order you instructed the defendant, no later than October 26, 2006, a week or ten days before trial to finally participate in discovery, and answer my interrogatories, and my production request. If Your Honor recalls a key issue in this case is the surgical accruement, or the experience of Doctor Mincheff in doing that particular laparoscopic surgical procedure. He said he had done eight before, and I don't believe it. We requested those particular records from the

hospital, the only hospital where he has ever done that procedure. We requested those records, Your Honor ordered them, and I incorporated into the Motion lots of records that I requested. Your Honor heard that Motion, you ordered them to do it, and they ignored it. If Your Honor recalls even in the midst of the trial, it might have been one day Monday, two days or three. I was still squawking and complaining. I don't have these records from the Hospital. Your Honor ordered them to do it. At one point I even asked Your Honor to give a curative charge about some of the questions asked of my witnesses. You have not seen the CT Scan of Ms. Person have you, expert doctor? That might change your opinion, expert doctor? At that point in time I asked Your Honor, please, you know, and I know that they violated your Order. They put me in a bad light, at least give a curative charge, tell them under the rules I am entitled to that information, you Ordered them to give me that information before the trial, and they still have not complied with it. Your Honor refused that.

In addition, at the close of the trial, I asked for at least an adverse inference charge that, in fact, they had to give me these records. They either lost them, if you want to put the best face on it, or they didn't disclose them. Your Honor refused to do that.

Now, I have spoken with a person from what is called

Iron Mountain, which is a document retention company that the defense indicated the hospital uses to retain their records. I spoke to a Ms. Bambi Parnell after the case verdict was returned, and asked her; Ms. Parnell, if I want to find out what records' defense requested of you, and what records you produced for them in accordance with your Order, how can I do that? She indicated to me that they had shredded the actual request form. I suspect that the defense ought to have that form. But, for whatever reason Iron Mountain shredded that form. Ms. Parnell, how can I find out what records you actually sent to them? Because Your Honor, I believe that they have got more records than what they gave to me. If you will recall I requested like twenty-two different sets of records, and I got two or three that helped them. I did not get the ones that helped me. I got the ones that helped them. Out of twenty-three, I think I got three. Ms. Parnell told me that the way you can get the information Mr. Corbin, is to send me a subpoena, and request the packing slips because we shredded the requested form they sent to us, but the packing slips, we ought to have copies of those. That would tell us what we sent to them before the trial. So, I issued a subpoena asking for the packing slips. And, Oh, Ms. Parnell also told me that we have lots of document request from the hospital in that trial; and we produced all of the records except for one

document, all of them. I sent Ms. Parnell a subpoena, and how in the world would I know to ask for a packing slip unless she told me. I requested packing slips and other documents from Iron Mountain, consistent with this case, during the two years of pre-trial discovery, and we got a Motion to Quash. So, I don't have that information. Ms. Parnell did call me after I got the Motion to Quash, and she said gosh, I don't know if I can reconstruct this or not now Mr. Corbin.

So, I would ask Your Honor, because I contend that the trial was unfair. There was no sanction issued at all for their refusing to give me the records I am entitled to under the Rules of Civil Procedure. On top of that Your Honor issued an Order which they did not comply with. They ignored the rules. They ignored your Order. I asked for a curative charge, or I asked for a charge about adverse inferences, which Your Honor refused. I asked if you are not going to give an adverse inference charge, at lest allow me to tell the jury under the rules I have a right to get these medical records. Your Honor issued an Order which is absolute truth in this case; and they did not comply with it. They either lost it, or they did not produce it. You refused me to even make that argument.

Your Honor, I know you have read the memorandum, which is a twelve, thirteen, fourteen, fifteen page memorandum.

So, I am not going to spend my time reading it to you. But, the Court of Appeals and the Supreme Court have made it clear, for example in the Downey Case, which is cited, it states quote: "The rights of discovery provided by the rules, gives the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed, and unless the party who has failed to submit to discovery can show lack of prejudice, reversal is required."

In addition the Supreme Court has held in the case of Anonymous Member of the South Carolina Bar, 346 S.C. 177, a 2001 Order as follows, quote: "Our Judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal; achieving success through abusive discovery rules rather than by the rule of law." Your Honor that is exactly what happened in this case.

Even talking about the deposition abuse, if Your Honor recalls. I think I got a Motion to Quash for every deposition notice I filed. It was tooth-and-nail about everything. Your Honor had to Order them to produce their CEO for me to depose, because they said he was not relevant. Your Honor ordered that, and they ignored that Order again, and I had to get you on the phone. I plead with you Your Honor, to make them produce him. So, you gave them another,

forty-eight-hours to produce him, within three or four days of trial. They finally produced him, consistent with their discovery abuse tactics in this case, Mr. Driggers objected about a hundred times in that deposition. And, I know Your Honor went through objections during the trial. And, I think you found two or three maybe that may have had even a modicum of merit. They other ninety-seven had nothing to do with the merits in this case. That was their strategy in this case, to stone wall me.

Oh, in addition I asked Your Honor to charge the law, because they were telling Your Honor, well, gosh we can't find him, we are still looking for him though. The day before closing, we are still looking for the documents judge, we can't find them. We found the ones that helped us, but we can't find the rest.

I asked you, at least charge the jury under South Carolina Law, the hospital had an absolute legal duty to preserve these records for ten years. Your Honor would not do that.

Now, I don't know what the sanction was for not only abusing interrogatories and production request, and I had an absolute right to submit and receive answers too. I don't know what the sanctions were at all for them ignoring your Order, not producing the records according to your Order. In fact, I was punished because they could not even talk

about it. I don't know what the sanction was for that. And, I don't know any worse sanction that an attorney can do other than to absolutely violate a Court's Order. If there is a sanction for that I would like to know what it was.

Under the Supreme Court, and my position is that the most critical evidence in this case is Doctor Mincheff's prior surgical history. That is exactly what they hid the ball on was those records. His Honor did not cure that you would not issue a curative charge. You would not let me do an adverse inference charge. You would not even let me discuss it. In my opinion, the rules were not enforced. Your Order was not enforced. And, we did not receive a fair trial.

Your Honor, there is one more issue that I want to raise, and it is about the CT Scan of Ms. Person's spleen. If Your Honor recalls the doctor conceded, Doctor Mincheff, gosh, have I really sliced up her spleen? That fell beneath the standard of care. I hope Your Honor remembers that portion of the case. I have requested the CT scan of this hospital taken of Ms. Person showing her spleen, because my expert wanted to see it for one thing. Again, they told Your Honor we can't find it, we lost it, and we don't know where it is. Maybe they have got it in Columbia somewhere, where she was transferred. Your Honor issued no sanction at all for that. No curative charge at all for that. No

adverse inference at all for that. During the trial my expert witness who did not have the benefit of seeing the CT scan. If Your Honor, if you recall he was asked the question. Well, Doctor DeMaria, you haven't seen Ms. Person's CT scan of her spleen have you? You don't know what that would show do you? And, yet you want to come to this Court and accuse Doctor Mincheff of malpractice. You have not even seen the records. How unfair is that?

If Your Honor recalls, I asked you, I plead with you, give a curative charge. Tell this jury instead of letting them beat up on my witness like that, because of their misconduct, tell the jury they had a duty to maintain it for ten years under the law. They say they lost it, or they don't have it anymore. And, you can take an adverse inference from that. But, they didn't produce it, because they know it hurt their case. You wouldn't do that.

I am asking the Court in the spirit of fairness, looking back at any sanctions issued in this case, and you issued two sanctions, and in my opinion horrible misconduct. I have never asked for any sanction from any Court ever in another case. I had enough of it in this case. After two years of taking this stuff, I asked you to sanction Doctor Heniford, restrict him from testifying. You agreed to do that. During the trial you reversed yourself, and the sanction was he can testify to what the interrogatory

answers say. To me, that is no sanction at all.

The other sanction that Your Honor issued was, because they would not even give me their tax returns. The burden was on me to show their ability to pay punitive damages. You ordered them to give me their tax returns; you ordered them to give me their financial statements, insurance information. Gosh, judge, we are looking for it, we know closing is tomorrow, and we still haven't found it. There were no sanctions issued except if Your Honor recalls when they would not give me the information. I know I have a duty to prove this information about the financial status. I spent six thousand dollars, and hired Doctor Oliver Wood. And, Your Honor, as a sanction allowed him to testify for the cost of six thousand dollars to me. That was no sanction at all. Under the rules he had an absolute right to testify. What sanction did they receive for anything in this case?

I would ask Your Honor to allow us to have a new trial; and enforce the rules and the Court's Order.

The Court: Mr. Driggers?

Mr. Driggers: Yes, sir, Your Honor. First of all, we do dispute the characterizations and allegations that have been made by Mr. Corbin in his presentation this afternoon. But, much more foundational than that, our position is that this Court, the Court of Common Pleas no longer has any

authority or jurisdiction over this case, and that is because the plaintiff did not either make a request for a new trial at the close of the case; nor did the plaintiff ask for any additional time in which to make that request.

Your Honor, in the case of Boone versus Goodman unequivocally states, and I have some exhibits that are in the Court's record that I have handed up for Your Honor's benefit, just for ease and reference. But, on page three of our brief, in Boone, the Court says in discussing Motions for a New Trial. The Motion for a new trial shall be made promptly, after the jury is discharged, or the discretion of the Court no later than ten days thereafter. And, it goes on and we have it highlighted. In jury trials, post trial Motions are made promptly at the end of the trial, or at that time, the Court upon Motion may grant an additional ten days to make them. In that case the case closed. The plaintiff made a request following the close of the case for an additional ten days. And, the Supreme Court held that that was insufficient. Your Honor --

The Court: Didn't I issue a Form 4, which said that I found that the one day delay was within an appropriate time, given the circumstances of this case?

Mr. Driggers: If you have Your Honor, I have not seen that.

Mr. Corbin: You did, Your Honor, if I may please.

The ruling was, and you looked up and the defense counsel was gone.

Mr. Driggers: Your Honor, I have a trial record, behind tab one, and beginning at the bottom of page four of the record that is behind Your Honor, excuse me, at the bottom of page five, and this is your own words: **"The Court: All right, while we are all still in the courtroom, nobody has left."** We haven't run out and tried to avoid anything. **"The Court: All right, the door is closed, and the jury has departed the courtroom. Now, out of the presence of the jury, are there any Motions for which a Court response will be necessary from the plaintiff? Mr. Corbin: None. The Court: From the defendant? Mr. Driggers: None, Your Honor. The Court: Then ladies and gentlemen I will state to you again what I said in front of the jury."** You appreciate us, you thanked us for the trial, and your final words were: **"This case has been an interesting one, a challenging one, and I declare this record closed. November 14, 2006."** The letter requesting any such more time, not even filing a Motion for a new trial, or giving the Court an actual Motion, or request for more time came the following day, November 15.

Your Honor, we believe the Boone case is emphatic that that is beyond the time, that it is a jurisdictional issue

that once a case is closed, no additional requests have been made, that that removed the case Person versus Carolina Pines Regional Medical Center from the Court's authority.

And Your Honor, once more, even outside of that fact, which we contend is jurisdictional. The plaintiff's Motion in this case wasn't filed until November 27, thirteen days after the close of the case. So, even if you could somehow read or read back into the record that additional time was made, the Motion itself was not made within that ten-day window. And, again the same case, Boone cites that that has to be done, it has to be done.

The Court: Mr. Driggers, are you telling me that you did not get my Form 4 on that?

Mr. Driggers: If you did Your Honor, I don't dispute --- I mean --

The Court: This case was over, it came back and I recall issuing a Form 4; do you have a copy of it Mr. Corbin?

Mr. Corbin: I don't know if I do or not Your Honor. I recall getting it.

Mr. Driggers: Your Honor, there was an exchange --- After we received Mr. Corbin's letter on the fifteenth, we did write the Court, and said look, we think this is jurisdictional. I don't know how and when the response was given that the Motion would be allowed. But, we do contend

that it was after the time. Even if you go past that argument, the Motion itself was not filed until after the ten-day window, the 27th.

So, Your Honor, we believe that this again, this Court should not grant any relief, because this case has been closed, and the time for making a request has long since passed. The South Carolina Case Law that we have presented to Your Honor, cites that and cites the fact that it is jurisdictional.

So, Your Honor, for that reason, first and foremost we don't think this Court should take any action, simply because the Supreme Court and the case law on this issue simply don't allow it.

The Court: All right, the Court issued a Form 4, on that matter, and I don't know where it is. I don't see it in the file. But, I distinctly recall listing six reasons for which I found that the plaintiff's request was timely under the prevailing case law. So, I would respectfully deny your Motion, but I do not have the benefit of that Form 4 at this moment before us.

Mr. Corbin: Your Honor, if I may please. I recall sending Your Honor a letter requesting permission to file a Motion. I think that was in response to that. I don't believe I missed any deadline, according to your instructions.

Mr. Driggers: Your Honor, if an Order was issued, I certainly don't dispute that. But, I would like for the record to reflect that I have not received a copy of that Order when it was filed.

The Court: Well, what I do with a Form 4 is I send it to the Clerk, with a request that the Clerk mail it to the parties.

Mr. Driggers: Yes, sir. But, even outside of that Your Honor, even if that was effective to give him the additional time, it is still a ten-day rule from the close of the case.

The Court: All right. Setting that aside for a moment, tell me about the merits.

Mr. Driggers: Yes, sir Your Honor. I believe you have already addressed the issue with Doctor Heniford.

Your Honor, the issue with these records, we have heard a time frame set for this case to be two years, it is an 04 case, we tried it in 06. It is actually older than that. The case against Doctor Mincheff was initially filed in 2001. The hospital was dismissed, and we were brought into a second lawsuit that surrounded the same matters.

There is a lot of age on this case coming into the trial on November of 2006. I think that is important for a couple of reasons. First of all, because whatever discovery matters there were, whatever records that had not been

produced, Mr. Corbin had from 01 to 06 to have that addressed. To have whatever needed to be done, done. If there were going to be a sanction against us, have it done then. Approximately thirty days, and by my best estimate before the trial of this case; and I think it was even closer in time than that we started getting subpoenas for records. We started getting notices for deposition of our CEO. We started getting all manner of request for records which we did have phone conferences with Your Honor, and we got orders on what we needed to produce; and what we didn't produce. But, the final instructions on what we were given were just in the days leading up to this trial. So, we literally were looking for some of these records, and most of the records and during the trial. We had our medical record's personnel here, in court. Mr. Corbin wanted to bring them in, or question them, or ask them about our procedures, or what was produced, or not produced, or have, or didn't have, or what was stored, or wasn't stored. That was here, that was available. That certainly was available for cross examination on any of the many doctors that practice in our hospital that testified during this case; or for the experts or whatever else, all of that available. But, Your Honor, we did not keep anything from him. We did not disobey any Court's Order, and, in fact, by the end of the case we had given Mr. Corbin every record pertaining to

Doctor Thomas Mincheff that we have. That includes the ones we had gotten out of storage from an off cite records facility, which we had to work through the weekend to get. We spent a lot of time during this trial providing him, and we did provide. We complied with ever single request that he had.

The Court: Did you move to Quash, his Post Trial Subpoena?

Mr. Driggers: Yes, sir Your Honor, for our jurisdictional argument. We don't think this court has jurisdiction over this case, because of the timing issue, so we did not want there to be a whole other litigated matter during the post trial motions for that reason.

But, Your Honor again Iron Mountain or the storage facility, we had six years to go into that if that was necessary. But, thirty days or less before the trial of this case, all of this comes to a head pursuant to a Mr. Corbin's request, and Motions, and Notices, and Subpoenas, and we complied to the best of our ability during the course of the trial, and we got him all records that he requested. The same thing goes for the x-rays. Your Honor heard our response to that, which is still the same one today. We let those go with Ms. Person, his client to the hospital. If that was wrong, then he could ask that of the doctors, or he could ask that of Mr. Castleberry, the CEO. But Your Honor,

we did not disobey any Court Order. We did not disregard any request from the plaintiff. It is just the timing of it all that required that to be rushed up until the end and during the course of the trial.

The Court: Thank you, counsel. Mr. Corbin, didn't really what happen here the jury found the hospital, and perhaps even Doctor Mincheff was not negligent; isn't that what happened?

Mr. Corbin: That is the way it looks without seeing the records that I requested. I mean when the doctor testifies that the spleen was sliced up, I committed malpractice, and then I can't get the record from them.

The Court: You have expressed great concern about the Court's failure to impose sanctions or failure to do this or to do that. Why didn't you ask Doctor Mincheff, when he said he did not commit malpractice why his carrier paid a million dollars in this case?

Mr. Corbin: Is that really germane? I did not care to introduce insurance coverage into the case or those kinds of issues. I think it is more germane to get the records. Instead of saying gosh, we didn't do anything wrong, why did you pay us a whole bunch of money? Maybe that is an appropriate question, but it is not my style. I would rather produce the actual records, and them saying they have produced all records that I have requested just isn't t:

This case was about Doctor Mincheff's surgical history. Those records, he said he had done eight, before Ms. Person. They produced one or two records out of the eight. He said he had done three or four after Ms. Persons, and they produced maybe one of those. The statement that they produced all the records is absolutely false. I believe if they had produced the records, you would have seen the evidence, the high complication rate, or higher than what he said.

The Court: All right, then counsel what I am going to do is this. I am going to deny the defense you raise to jurisdiction Mr. Driggers.

I am going to take this matter under advisement. I am going to deny your Motion to Quash this post trial subpoena. And, let's see what Iron Mountain produces. If Iron Mountain produces packing slips and the defendant's received information that you didn't get, that will in great part drive the Court's decision in this case.

Mr. Corbin: Your Honor, may I ask one thing please?

The Court: Yes, sir.

Mr. Corbin: She indicated that they had shredded the request they got from whomever on this side, the hospital or Mr. Driggers. They have got their request form. They have got whatever documents that were sent back to them. And, I will also ask Your Honor please, make them produce all the

records they have involving Iron Mountain for records they requested, and whatever documents they got back from Iron Mountain.

I would also ask Your Honor, if I could do the Order, and Order Iron Mountain to cooperate with the subpoena.

Mr. Driggers: We will be happy to do that Your Honor. We will give them whatever request that they have got.

The Court: All right. The Court is going to grant your request Mr. Corbin, to the extent that I am going to let you prepare an Order that quashes, that denies the Motion to Quash the subpoena. We will revisit the issue of whether there is information out there that the defendants received, or that counsel received that you did not.

Mr. Corbin: Yes, sir.

The Court: Then the Court will be prepared to make a decision. Otherwise, and meanwhile this matter will be retained under advisement.

Mr. Driggers: Thank you, Judge, I appreciate it.

The Court: All right gentlemen, thank you. You folks do the same type of work, and you are going to be having other cases together, so my suggestion is as best as possible that you work together as best possible as you can.

Mr. Corbin, how about prepare that Order within ten

days, if you would, and forward it to me electronically at the address I gave earlier.

Mr. Corbin: Yes, I will. Thank you.

The Court: Mr. Corbin, Mr. Driggers, when I go back to my office I am going to look and see what happened to the Form 4, because we keep records of what we send, when, and to whom. I may have to reissue that document. I recall working on it, but you will hear from me on that issue.

Mr. Corbin: I remembering getting it. You said, because the defense had left. Because there it was such an exhausting trial, very emotional, it took us a lot time, exhausting trial, I remember you listing five or six reasons.

The Court: I will do that.

Mr. Driggers: If it please the Court when does Your Honor think that you executed that Form Order?

The Court: Within two or three days of receiving Mr. Driggers letter, objecting to Mr. Corbin's request for additional request for additional time to file Post Trial Motions.

Mr. Driggers: I know it has to be at least two days later. Well, I'm not sure two days, maybe one day, one and a half days, two days, because I called the Court myself, the next morning through the law clerk, to thank the Court for its courteously during the trial during the trial. He

stepped out early because of so many hard feelings that we did not want to cause a commotion.

The Court: Thank you, counsel. I enjoyed working with you. Have a good day.

(Whereupon, this matter concluded at 4:03 p.m. on March 5, 2007.)

-- End of Transcript --

I, the undesigned Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record in the above captioned case, relative to appeal, in the circuit court for Darlington County, South Carolina on the 27TH day of November 2006.

I further certify that I am neither kin, counsel, nor interested to any party hereto.

April 25, 2007

Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO.: 2004-CP-16-322

RUTH J. PERSON,

Plaintiff,

vs.

CAROLINA PINES REGIONAL MEDICAL CENTER,

Defendant.

DEPOSITION OF: BAMBI AUSTIN PARNELL

The deposition of BAMBI AUSTIN PARNELL was taken pursuant to Notice under the South Carolina Rules of Civil Procedure before Joan B. Branham, a Notary Public in and for the State of South Carolina, at Iron Mountain, Florence, South Carolina on August 28, 2007, beginning at 2:00 p.m.

APPEARANCES OF COUNSEL:

For Plaintiff: Daryl J. Corbin, Esquire
The Corbin Law Firm
Post Office Box 447
Florence, South Carolina 29503

For Carolina Pines: Martin S. Driggers, Jr., Esquire
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For Iron Mountain: David M. Souza, Esquire
Bartlett Hackett Feinberg, P.C.
155 Federal Street 9th Floor
Boston, Massachusetts 02110

COURT REPORTER'S NOTE: -- indicates interruption; incomplete sentences; trailing off; unfinished sentences.

JOAN B. BRANHAM
Court Reporter
910 Cherokee Road
Florence, SC 29501
(843) 662-4163

000781

STIPULATIONS:

Prior to the giving of any testimony by the witness, it was expressly stipulated and agreed between the parties to this action, through their respective counsel, that:

By Notice and/or Consent, said deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, which shall control the taking of said deposition and its use thereof;

Said deposition shall be taken for the purpose of discovery and/or for use as evidence in the above-entitled action, or for both purposes;

That all objections would be reserved until the time of the trial except as to the form of the question;

Reading and signing of the transcript of testimony by the witness was not waived.

BAMBI AUSTIN PARNELL, first duly sworn deposed as follows:

DIRECT EXAMINATION BY MR. CORBIN:

Q. Good afternoon, Ms. Parnell. As you know, my name is Daryl Corbin. I am an attorney from Florence who represents Ruth Person in this lawsuit. If I ask you a question during the deposition that you do not understand, would you please let me know so I can

rephrase it for you?

A. Yes.

Q. Is it fair to assume that if you answer a question that you understood it?

A. Yes.

Q. Under the Rules, if you have any questions during the deposition, you need to address me instead of your attorney or somebody else. Will you do that, please?

A. Yes.

Q. Please state your complete name for the record.

A. Bambi Austin Parnell.

Q. What is your date-of-birth, please?

A. 12-06-1963.

Q. Would you please just give me a brief sketch of your educational background starting with high school?

A. High school.

Q. OK. And which high school, please?

A. Columbus Christian Academy, Columbus, Georgia.

Q. What is your current occupation?

A. I am the Record Center supervisor -- operation supervisor for Iron Mountain in Florence.

Q. What is Iron Mountain?

A. Iron Mountain is a legal document storage facility.

Q. Would one of the big customers at Iron Mountain be

hospitals?

A. Yes, it would.

Q. What would Iron Mountain actually do with hospital records?

A. We would store them for the customer.

Q. Is one of Iron Mountain's customers Carolina Pines?

A. Yes.

Q. Are you also familiar with the company that owns Carolina Pines, HMA?

A. No.

Q. Do you know how long you have been storing Carolina Pines' medical records, roughly speaking?

A. Roughly, five years.

Q. How long have you been with Iron Mountain?

A. Ten years.

Q. Is there anybody else in Florence that has more authority than you do at Iron Mountain?

A. In Florence, no.

Q. If Carolina Pines, for example, wanted to retrieve some medical records being stored at Iron Mountain, explain to me the process, please.

A. They would place a handwritten or verbal request stating the patient's name, patient's medical record number, and they should state the box that the record is stored in.

Q. What would happen next?

A. The -- once the order is placed, our outbound department releases the order. Iron Mountain employees would pull -- complete the order and either depending on their request, fax or deliver the order.

Q. If Carolina Pines were to request, for example, a certain patient's discharge summary and gave you the patient's name and the medical record number, how long would it take you to retrieve that particular document?

A. It would depend on the request. If they requested it as a rush, it would be within two hours. If they requested it as a half-day, it would be within four hours. Next day would be the following day.

Q. So if Carolina Pines were to request information from you, gave you the patient's name and medical record number certainly within a day, you ought to be able to retrieve it, if in fact, you have it?

A. Depending on the number of files requested, yes.

Q. Have you ever lost any Carolina Pines' records?

A. No.

Q. I would assume it is very important to Iron Mountain not to lose records.

A. Correct.

Q. Do you recall losing any records at Iron Mountain here in Florence?
A. No, sir.
Q. And how would you keep track of the records so they would not be lost?
A. Computer; they are scanned in by bar code to a location. We --
Q. So -- I am sorry.
A. I am sorry. With Carolina Pines, their boxes are scanned into the location.
Q. When the boxes are scanned into the computer, can you do a search by the patient's name?
A. Not by box, no, not unless the files are individually listed within that box.
Q. So if Carolina Pines requests a certain patient's records and gives you the patient's name and the patient's number, because they do it by the box, does that mean you cannot find it within a day?
A. Your question again?
Q. Carolina Pines' records, --
A. Correct.
Q. -- if you have the patient's name --
A. Correct.
Q. -- and the medical number for that patient, the patient's number, --

A. Correct.

Q. -- how long does it take you to find that particular record?

A. If it is one box, it is within an hour.

Q. What would some of the other parameters for time be, one box, one hour?

A. Our warehouse is three floors and 44,000 square feet so it would be depending on where the box was stored and how many files they were requesting on that order. If it is one -- one box, you know, and it is on the first floor, of course, it would take less time than a box that is on the top shelf on the third floor six boxes back.

Q. How long would it take to retrieve that file?

A. Probably twenty minutes.

Q. The one that is on the third floor?

A. Third -- correct.

Q. Twenty minutes?

A. Correct.

Q. Do you recall ever Carolina Pines requesting medical records from Iron Mountain and you telling anybody at Iron Mountain that, in fact, the records are lost?

A. No.

Q. Have you ever told anybody affiliated with Carolina

Pines, either Carolina Pines' personnel or their attorney when requesting medical records of Carolina Pines that it would take several, several days to find the records?

A. Yes.

Q. Explain that to me, please.

A. They placed a request for -- I cannot remember the number of files. I believe it was a couple of pages of handwritten files. Some of them had box numbers attached to them. Most of them did not, so we had to physically pull an inventory sheet and the Iron Mountain staff had to decipher which boxes these may be in. We do that out of a courtesy for the customer. It is not required that we do that.

Q. Has that happened more than once with Carolina Pines?

A. Yes.

Q. When you had to actually do the inventory and pull out the boxes, how long did it take you to turn around that particular order?

A. They have placed many, many orders in the years that we have had them. The longest that we have had take would be three days. And again, that is for several files, not just one or two, not a handful.

Q. How about if they requested six files from you,

would it take three days?

A. I could have that -- depending on the time the order is placed, I could have that -- if it was in the morning, by the end of the day; lunchtime, by around 10:00 the next morning.

Q. If, for example, Carolina Pines were to request eight or ten files from you --

A. Um-hum.

Q. -- gave you the patient's name and the patient's number, and gave you that order sometime before October 26th, 2006, --

A. Um-hum.

Q. -- do you know of any reason why it would take beyond November 10th of that year to produce those records?

MR. DRIGGERS: Object to the form.

MR. CORBIN CONTINUING:

Q. We are talking two weeks or so.

A. If they placed an order for a file, we retrieved it and sent it to Carolina Pines and the particular dates of service they were looking for was not contained in that file, they would request it out of another box. Once the box numbers that they have knowledge of don't contain that particular box, then we would go a step further and, again, pull the

inventory list and look and see if there might be anywhere else that it may be.

Q. Do you recall working with Carolina Pines retrieving records involving the Ruth Person case?

A. Yes.

Q. With whom did you speak at Carolina Pines about the Ruth Person retrieval?

A. Jean Gainey and Shelley Poston.

Q. Did Iron Mountain produce everything that Jean Gainey and Shelley Poston requested of you involving the Person case?

MR. DRIGGERS: Object to the form.

A. We produced everything that we had for her request.

MR. CORBIN CONTINUING:

Q. The question was, if they requested something, --

A. Um-hum.

Q. -- did you ever come back and tell them, gosh, we don't have those records?

A. Yes. We would tell them "No, it was not in the box you requested."

Q. Would you continue looking for those records?

A. Only at the customer's request.

Q. Do you recall doing that?

A. Yes.

Q. Do you recall in the Carolina Pines' case after you

might have been told to continue looking for the records that you could not find the records?

MR. DRIGGERS: Object to the form.

A. There were one or two. I cannot remember offhand what the names were, but I do remember it seems like there were two that we could not find at the time in the boxes they requested.

MR. CORBIN CONTINUING:

Q. Did you ever find those two files?

A. We did find files on that person; not the dates they were looking for.

Q. How much of a lapse in time was it when you actually found some records on those two files that you gave it to Carolina Pines from the date they requested it? Are we talking days or months?

A. Per request would be just within twenty-four to forty-eight hours. If they called back at a later date requesting that file again it would, again, be another twenty-four to forty-eight hours.

Q. You said from the one or two files that you had to go back and search another box that you could not find all the records or the dates that they are talking about, what do you mean by that?

A. If they place a request for a specific date-of-stay in the hospital and the chart does not contain those

dates, then we would tell them, yes, we found the file and send it to them, and then she would call us back and say this doesn't contain the date, can you look in this box or can you just do a search and see if you can find something containing these dates.

Q. Did you ever deal with Mr. Driggers?

A. I remember speaking to Mr. Driggers, yes.

Q. Did you speak to him more than once?

A. Not that I recall, no.

Q. Do you recall the nature of the conversation between Mr. Driggers and you?

A. Yes. I phoned Carolina Pines to let them know that I had received a subpoena for customer courtesy and was about the extent of the conversation. The orders were placed. I sent everything I had.

Q. Why did you call the attorney for Carolina Pines?

A. The attorney called me.

Q. And that was a courtesy to Carolina Pines or that was a courtesy to you or?

A. I called Jean Gainey as a courtesy -- customer courtesy.

Q. After you spoke to Jean Gainey, then you got a telephone call from Mr. Driggers, correct?

A. Yes, not that day. I don't remember how many days, but yes.

Q. What do you recall about that telephone conversation?

A. Just was I sure that everything had been pulled that we could find and, of course, the answer was yes and to explain as I have explained here today what the process is for pulling medical record files.

Q. Do you recall about when that conversation occurred?

A. Within a week. It was not several days.

Q. Within a week of what date, please?

A. I don't know the date.

Q. You said within a week?

A. Within a week of my conversation with Jean.

Q. Were you aware of a lawsuit involving Ms. Person at anytime?

A. Not until I received the subpoena. Carolina Pines will on occasion tell me I need this for a court case, but it is no specifics. Not for a particular person or for a particular thing.

Q. On Iron Mountain's computers involving Carolina Pines' records, --

A. Yes.

Q. -- if you want to search for a particular doctor's records, can you do that?

A. No, sir.

Q. For example, if you wanted to look for Mr.

Mincheff's records --

A. Um-hum.

Q. -- without actually physically pulling out the boxes, can you do it any other way?

A. No, sir.

Q. What, in general, is a "Retrieval History Report Sorted by Customer Box Form?"

A. If a customer calls and requests, for instance, what files have I pulled or what requests have I made this month, I can key a date range into this report and it will pull up everything, all customer history between those two dates.

Q. Do you recognize that document?

A. Yes, I do.

Q. In general, what is that document, please?

MR. DRIGGERS: You got another copy of that, Daryl?

MR. CORBIN: I do.

MR. DRIGGERS: Thank you.

A. This is a "Retrieval History Report Sorted by Customer Box Number" which is the bar code ID number that would be on the box, on the customer's box from dates 10-17-06 to 11-10-06. It states the customer box number, the date of request, the file that was requested from that box and the order number on

which that box was requested.

MR. CORBIN CONTINUING:

Q. Who is the particular customer on that form, please?

A. Carolina Pines.

MR. CORBIN: Could we mark that, please?

PLAINTIFF'S EXHIBIT #1 MARKED.

Q. Ms. Parnell, on the bottom of that particular document, Exhibit A -- or Exhibit #1 is some handwriting. Is that your handwriting?

A. Yes, it is.

Q. Could you read for the record, please, the handwriting; what it says?

A. Jean's name and her fax number, activity for patient's records requested by Carolinas -- Carolina Pines. It says previously done by Mr. Mincheff. That is what she was looking for in those records.

Q. Does it say procedures or prejious -- previous?

A. "Procedures done by Dr. Mincheff."

Q. The Jean person, that would be somebody from Carolina Pines?

A. Jean Gainey.

Q. Does this mean that Jean Gainey called you and asked you to produce records of procedures preformed by Dr. Mincheff --

A. No.

Q. -- listed on this sheet?
A. No, sir. This means that Jean Gainey called and requested a history report on the patients that were requested between these two dates, because she was looking for procedures from Dr. Mincheff. At that time, I told her that we could not pull up through the computer anything per doctor and those are my notes down there. Dr. Mincheff -- it is just stating that is who she stated she was looking for, any procedures done by him.
Q. Did you deliver anything to Carolina Pines according to this request involving procedures not done by Dr. Mincheff?
A. We delivered the charts that were requested. What those charts had within them, I do not know. This particular form was faxed to Jean Gainey. The form as you can see only lists the chart numbers and the requestor. It does not list the name of the person the chart actually belongs to. That is my handwriting as to who those patients are --
Q. Yes, ma'am.
A. -- and whether we delivered or faxed that information to Carolina Pines on the date that is listed on the report.
Q. How did you know the records requested by Carolina

Pines, they wanted them to involve procedures done by Dr. Mincheff?

A. I did not know that. When it is written on the bottom, she stated during the phone call requesting this that she is looking for records for Dr. Mincheff. Those are just my notes on the bottom of the report as to what she was looking for.

Q. Do you know on what date you spoke to her?

A. The date of the report, 4-6-07.

Q. Do you know if the records listed on Exhibit #1 contain Dr. Mincheff's procedures?

A. I do not know.

Q. The patient's names, you indicated that you had added those patients' names?

A. Correct.

Q. Are you sure you added the patients' names or did Ms. Gainey indicate to you the patients' names?

A. Those are my handwriting. I looked up the order number and took the information from the computer.

Q. Did Ms. Gainey mention any patient names to you?

A. No, not during this request, no. When she received the fax request, she did not know to whom the charts were and I made the notations after looking everything up and re-faxed it.

Q. On the right-hand side of that particular document,

you indicated it shows whether or not it was delivered or sent to Carolina Pines, is that correct?

A. Delivered or faxed, yes.

Q. Were each one of these patients' files delivered or faxed to Carolina Pines?

A. Either delivered or faxed. "DEL" is delivered; "FAX" would be faxed. It does not state whether it is the entire chart that was faxed or specific documents that they requested. That information would be on the packing slip that she received.

Q. In response to the subpoena, did you give us copies of packing slips involving this particular document?

A. I gave at that time everything that I had, yes. The computer only holds up to six months, so this particular -- some of these would not be available if they are over six months old at this time. But at the time of the request, whatever was available was given, yes.

Q. The time frame of these particular records on this document appear to be October and November and early December 2006, is that correct?

A. October 17th through November the 10th.

Q. We also have some on this list, for example, of December 1, 2006.

A. Probably requested at a particular time. If, by chance, that record was already out, it would state. I don't know why that one slipped in there. It is whatever the computer generated prints out on the report.

Q. What is the refile date listed on the record? It has re -- request date and then refile date. What does that mean?

A. If we re -- the request date would be the one on the top. If it has not been requested -- if the chart has not been returned to Iron Mountain, it will be blank underneath there. That very well may be your 12-1. They requested that chart on 10-24 and it was returned to our office on 12-1. That would be the date that it was returned to Iron Mountain for refile.

Q. Can you look at that particular list and tell me which files Carolina Pines got, on what day they got it and did not return it; in other words, the ones they ought to still have?

A. Not according to this list, no, because this would be as of April, not as of this date.

Q. Do you recognize what that document is?

A. Yes.

Q. What, in fact, is that?

A. This --

MR. DRIGGERS: You got a copy of that, Daryl?

MR. CORBIN: I don't -- don't know.

MR. DRIGGERS: Thank you.

A. This is an order that I placed for any files that we had requested for this deposition today.

MR. CORBIN CONTINUING:

Q. Would that list contain information about what files Carolina Pines got but did not return?

A. Yes. Anything on the right-hand side that says "found" which is listed "FND" would have a "yes." Those files would be here on the table. Anything that says "no" has not been returned for refile.

MR. CORBIN: Could we mark that, please?

PLAINTIFF'S EXHIBIT #2 MARKED.

MR. DRIGGERS: And, I hadn't said anything about this before, but just out of precaution for -- for Carolina Pines and Iron Mount -- Iron Mountain, I know we have got some other patients' names that are listed on these documents, and I don't know if it is going to be necessary for us to redact those, but I at least want to ask for some agreement that these documents just be kept in the confines of this litigation --

MR. CORBIN: Absolutely. Yes, sir.

MR. DRIGGERS: -- so as to protect any violation of the privacy laws.

MR. CORBIN: Absolutely.

MR. SOUZA: Agreed.

MR. CORBIN: I agree.

Q. Ms. Parnell, Exhibit #2, can you tell me what files Carolina Pines requested and as of August 24th, 2007, has not returned to Iron Mountain?

A. Patient Medical Record No. 20507, last name Dixon.

Q. And if you could, tell me the date Carolina Pines requested the record if you can.

A. That chart was delivered on November the 10th, 2006.

Q. And not returned, correct?

A. And not returned.

Q. The next one, please?

A. 15399, the last name Lender, delivered 11-10-06, not returned.

Q. Please continue.

A. Medical Record 671, not returned. There is no name on the packing slip. Medical Record 44687, Duong, D-O-, D-U-O-N-G, not returned, delivered on 11-10-of 06. Medical Record No. 1115, name Sandra, delivered 11-10-06, not returned.

Q. When you say "Sandra," would that be the person's complete name, last name, first name, or do you

know?

A. I do not know.

Q. If you compare the name on the other sheet that you provided --

A. Yes.

Q. -- with the handwritten names on it, it looks like that particular person's name is Sandra Hanley?

A. Sandra Hanley and that is the same person the box number matches.

Q. So Carolina Pines requested Ms. Hanley's file?

A. Um-hum.

Q. Iron Mountain found it, gave it to them --

A. Correct.

Q. -- in November and for whatever reason, Carolina Pines has not returned the box to you?

A. Correct; the file.

Q. The next one is what, please?

A. 14731, Walbee.

Q. Is that Walbee or might it be Wallace?

A. It was requested as Walbee. The chart was delivered on 11-10 and not returned.

Q. Was the name actually Walbee or was it Wall -- Wallace?

A. I do not know.

Q. The next file is what, please?

A. The next file is 55208, Blyther, delivered 10-17-06, not returned.

Q. The next one is what, please?

A. 671, no name, delivered 11-15, not returned.

Q. Is that the same 671 file requested above or would that be a different file?

A. It could possibly be two volumes. It is listed twice in the computer, so it was requested twice here.

Q. We do know that Carolina Pines for whatever reason requested that particular file twice, is that fair to say?

A. According to this, yes.

Q. Is that what this file -- is this what this form means, they requested it twice?

A. It could possibly be two different volumes.

Q. What is the next one, please?

A. That is all that are not deliv -- that have not been returned.

Q. Did you gather the Hanley file for me?

A. Yes.

Q. Do you have that with you?

A. Let me doublecheck and make sure Hanley is one I do have. No, I was mistaken. Hanley is one that Carolina Pines still has. Hanley has not been

returned.

Q. When you say Carolina Pines did not return the file, did they take the entire contents of Ms. Hanley's medical record or just parts of it?

A. The entire chart was delivered.

Q. The entire chart of Sandra Hanley was delivered to Carolina Pines in accordance with Exhibit #1, is that correct?

A. Correct.

Q. And on the bottom of Exhibit #1, you indicated it had something to do with Dr. Mincheff, fair?

A. No. No. Dr. Mincheff's name is written there, because she stated she was looking for procedures done by Dr. Mincheff. That name was not mentioned at the time these were requested between October and November.

Q. Do you know why Carolina Pines did not return these several files?

A. No.

Q. Is it a common practice of Carolina Pines to request files from Iron Mountain and do not return them for months?

A. Yes.

Q. That is a common practice.

A. Some of them are not returned at all. Yes.

Q. How common of a practice would that be?
A. Probably weekly or monthly. It depends on what they need the chart for.
Q. Did you ever have any discussions with Ms. Gainey or the other person that you mentioned discussing the fact that the document you sent to them were the correct ones that they were looking for?
A. The only time that would be discussed is if they called back looking for additional items on that person.
Q. Another patient on Exhibit #1 that indicates you had delivered to Carolina Pines, it is Patient Account No. 46725, Ms. Shawntae Polk?
A. Um-hum.
Q. Did Carolina Pines receive her medical records?
A. At this particular time, the records were faxed.
Q. On what date, please?
A. Faxed on 10-30-06.
Q. Did Carolina Pines return those particular records?
A. The chart itself was returned on 11-29-06.
Q. Do you have that particular chart?
A. Yes, it is on the table.
Q. Do you know where it would be?
A. I do not. It is one of the thinner charts. The medical record number is listed down the side of the

chart.

MR. DRIGGERS: You want to take a few minutes to see, you know, which ones are which. Take a break or something or -- I mean, I am just trying to think of a easier way to do it so you don't have to go through each time.

OFF THE RECORD. BACK ON THE RECORD.

MR. CORBIN CONTINUING:

Q. Would this be one of the files you went through to determine whether or not it had anything to do with Mr. Mincheff, or do you know?

MR. DRIGGERS: Object to the form.

A. For this deposition, yes.

MR. CORBIN CONTINUING:

Q. Does it have anything to do with Dr. Mincheff, Ms. Polk's file?

A. I found several different procedures, none of which had that name associated.

Q. So you did go through Ms. Polk's file and you did not see Dr. Mincheff's name in it?

A. No, I did not.

Q. The next file I want to ask you about is Crystal Blyther. Did, in fact, you produce that record for us?

A. No, Blyther is still at Carolina Pines.

Q. Her patient account number appears to be 55208. Is that one of the files Carolina Pines requested under Exhibit #1?

A. Yes.

Q. On what -- what date were the records delivered to Carolina Pines and how?

A. That chart was delivered on 10-17-06.

Q. How so, please?

A. Delivered via courier.

Q. The next file I want to ask you about -- and I appreciate your going through the exhibit that I have given to you trying to make things a little bit easier for everybody, the patient's name was Jack Holgate, H-O-L-G-A-T-E.

A. Um-hum.

Q. Did you find that particular file?

A. I have two files on Mr. Holgate.

Q. Did you go through Mr. Holgate's files to determine whether or not Dr. Mincheff was involved in his care?

A. This was one of the files I went through early on. I did find three different procedures that were done. At that time, I did not know I was looking for Dr. Mincheff or the other doctor.

Q. Dr. Bannister?

A. Right.
Q. You are looking at some files. Did you write down the procedures that you found and what files contained Dr. Mincheff's records?
A. I wrote down whether -- if nothing was found, I wrote down nothing and after my conversation finding out that is what I was looking for, then yes, I did make some notes.
Q. For Mr. Holgate, what do your notes say?
A. "Colonoscopy, 3-1-of 2000; steroid injection, 2-21-of 02; and cardiac cath, 11-24-97."
Q. The next patient I believe is Freddie Goodson. Do you have a reference on Mr. Goodson's file?
A. "Op notes, 12-6-2003."
Q. Do you know what kind of procedure it was?
A. I did not write that down, no.
Q. Was that particular file delivered to Carolina Pines involving Mr. Goodson?
A. That chart, there were items faxed at one point, and then the chart delivered after that and the chart returned 11-29-06.
Q. The next file involves Ms. Margaret Dixon. Do you have any references involving her file?
A. Yes. Mix -- Ms. Dixon had nothing for Dr. Mincheff.
Q. Was there anything for Dr. Bannister?

A. No, nothing for Dr. Bannister.
Q. The next issue involved a particular order number. Do you know which one I am talking about, the order number 68407861?
A. Yes.
Q. Did you find that particular order?
A. That order was over six months old and I cannot pull it up that old.
Q. Do you know when the order was made by looking at the number sequence?
A. I can tell by Exhibit #1.
Q. How can you tell?
A. The order number is listed on the right-hand side for three of those patients.
Q. Which three patients, please?
A. Is it 7861, is that the order -- last four of the order number? I need the order number again, please.
Q. Oh, it is 7861.
A. 7861?
Q. Yes, ma'am.
A. 7861 is 10-23-06 for Virginia Moses. 7861, same date, Sandra Hanley and Timothy Walbee.
Q. And the date of that order, can you tell?
A. 10-23-06.

Q. And you say you cannot pull that record back up for what reason?

A. Our system only contains information within the last six months.

Q. So that information would have been deleted from --

A. The history of the file is not deleted. The order itself is not in the system.

Q. The order itself would have been deleted probably in April or May of this year?

A. Correct.

Q. Do you recall getting I guess as part of the first correspondence from me involving Ms. Person's case, I think this is the letter dated December 5th, 2006?

A. Yes.

MR. CORBIN: Can we mark that, please?

PLAINTIFF'S EXHIBIT #3 MARKED.

MR. DRIGGERS: Do you have a copy of that, Daryl?

MR. SOUZA: Here's one.

MR. DRIGGERS: Thanks.

MR. CORBIN: You got one?

MR. DRIGGERS: Thank you.

MR. CORBIN CONTINUING:

Q. Is it Iron Mountain's practice anything over six months old, any kind of orders would be deleted?

Would anything else be deleted or taken out of the system?

A. No, the history remains in the system.

Q. So even though -- could you tell because the order has -- form has been deleted, what Carolina Pines actually ordered?

A. I don't remember which exhibit this is.

Q. But you can reconstruct that?

A. Exhibit #2?

Q. Yes, ma'am.

A. Where the "no's" are will tell you the history of the patient. As you can see some of them are 10-23, 10-17, so the history is still there. The only thing I cannot reproduce would be the packing slip which is delivered with the files.

Q. And what information would the packing slip provide to us?

A. The packing slip has the customer number, the person that requested it, the date it was requested, the box numbers, the information requested, and yes or no whether it was found or not found.

Q. Would anything else be deleted from the computer records except for the order numbers after six months, everything else be kept?

A. Correct.

Q. In that particular letter I had sent to you in December, I had asked Iron Mountain not to delete, change, modify or change any records involving this particular litigation. Nothing has been deleted except in the normal practice which would be after six months, the order number and that request form will be deleted, correct?

A. Correct.

Q. OK. Besides those three patients that you told me about under this particular order number, can you tell me whether or not any other patients were included within that order number?

A. No. According to the history, there were only three patients on that order; otherwise, it would show their names on that list.

Q. So you are absolutely sure it just included those three patients and nobody else?

A. Yes.

Q. Let's talk about CT films, or CAT scan films, or radiological films. Does Iron Mountain actually keep hospital films?

A. We do for certain customers, yes.

Q. Have you ever kept hospital films for Carolina Pines?

A. No, sir.

Q. What do they do with their hospital films?
A. I have no idea what Carolina Pines does with those.
Q. Are you familiar with any statute that requires hospitals to maintain records for any length of time?
A. I know there are statutes. I do not know what those statutes are.
Q. That is something you don't feel familiar talking about?
A. I just know the Iron Mountain regulations is not to destroy anything unless the customer specifically asks for it to be destroyed, and then we have to have a report and a signature on that.
Q. For example, if the law says you must maintain them ten years, if the hospital wanted to destroy records after two years as long as they signed off and instructed you to do it, it would be done, correct?
A. Correct.
Q. OK. In other words, you don't -- you are not a gatekeeper, you don't --
A. No, sir.
Q. -- keep records for ten years even if the patient -- even if the hospital wants to destroy them. If they want to destroy the records, if they sign off on it, you destroy them?

A. Correct.

MR. CORBIN: If we could take a short break and give me a chance to go through some of these files here.

MR. SOUZA: OK. Sure.

MR. CORBIN: Want to take a fifteen-minute break?

MR. DRIGGERS: That sounds good.

OFF THE RECORD AT 2:50 P.M.

BACK ON THE RECORD AT 3:30 P.M.

MR. CORBIN CONTINUING:

Q. Ms. Parnell, do you know what that document is?

A. From what I can tell, it is a fax coversheet for Gavin or Brian.

Q. Who are Gavin and Brian?

A. Gavin -- there is a Gavin Brown that works in this office who is the Record Center coordinator and Brian Tapper, at that time, was the account rep who is no longer in this area.

Q. What is -- that request form is from who, please?

A. From Carolina Pines.

Q. What is the date of that request form?

A. The date is 11-10-06.

Q. May I see it, please?

A. Uh-huh.

Q. The document is from Jean Gainey, is that correct?
A. Yes, that is what it says.
Q. And it says "Have a good day, Brian. Please bring the records to me ASAP on...," and it lists Sandra Hanley, Timothy Wallace, David Dixon, Minh, M-I-N-H, Duong, D-U-O-N-G, and Virginia Lender. "We need these records this morning so we can begin copying the information needed. Thanks."
A. Um-hum.
Q. Did you comply with that request?
A. I have not seen that request, no.
Q. Would there be some kind of record at Iron Mountain to see if, in fact, you did comply with this request --
A. I can look --
Q. -- dated November the 10th --
A. -- in the system and see --
Q. -- dated -- let me finish, please.
A. I am sorry.
Q. Do you know of any way you can look at records at Iron Mountain and tell me whether or not Iron Mountain complied with this request dated November 10th, 2006?
A. Yes.
Q. When it says, "Please bring me the records ASAP," is

that unusual?

A. Yes.

Q. Especially when you are asking for one, two, three, four, five files?

A. That is not an unreasonable request, no.

Q. To bring records ASAP on five different people?

A. Correct.

Q. That is not unusual at Carolina Pines?

A. For Carolina Pines, yes. That is unusual for Carolina Pines.

Q. Have you ever seen any other request where they requested ASAP records to be delivered involving five separate patients?

A. Multiple patients, yes. I can't say if it was five or more, but I have had requests for multiple patients as a rush, yes.

Q. Do you know why Carolina Pines needed these particular files ASAP?

A. I do not.

Q. How long would it take you to look in your files to see if, in fact, these records were delivered to Carolina Pines?

A. Just a few minutes.

Q. OK. We will do that in a couple of minutes.

A. OK.

Q. The next -- I am sorry. The next record it appears to be a fax order form. Can you tell me, in general, what that document is?

A. This is the way we normally receive their faxes. As I said, I have never seen anything typed like that one before.

MR. DRIGGERS: That is another one? The earlier one marked?

MR. CORBIN: We can go ahead and mark it. That is the only copy I have.

MR. DRIGGERS: Oh. I have got another copy I brought.

MR. CORBIN: You have got another copy?

MR. DRIGGERS: Yeah.

MR. CORBIN: OK.

MR. DRIGGERS: I will take care of it.

A. Yes, this is a normal fax sheet. I have seen this one before.

MR. CORBIN CONTINUING:

Q. What is the date on that fax order sheet, please?

A. The date on this fax is 10-17-06.

Q. Again, that is from Carolina Pines to Iron Mountain?

A. Correct.

Q. Which files were they requesting?

A. There are seven files listed: Mingh Duong, Virginia

Moses, Sandra Hanley, Timothy Walbee spelled W-A-L-B-E-E, David Dixon, Virginia Lender, and Linda Caulder.

MR. CORBIN: And maybe we need to get copies of these records. Is there someplace you can get three -- three copies of these things?

MS. PARNELL: Absolutely.

COURT REPORTER NOTE: At this time, Ms. Parnell left the room.

Ms. Parnell returned to the room with copies.

MR. CORBIN: Thank you. Did you get a copy of these?

MS.PARNELL: I didn't hand them out.

MR. CORBIN: OK.

MS. PARNELL: Two of these I believe are the same out of the three.

MR. CORBIN: Look like it, don't it. Yeah.

PLAINTIFF'S EXHIBITS #4, #5 & #6 MARKED.

Q. Exhibit #5 which is a fax order form, the typical form that Iron Mountain is used to, --

A. Um-hum.

Q. -- do you know whether or not those actual records were delivered to Carolina Pines?

A. The first one was faxed.

Q. Which name is that, please, that was faxed?

A. Mingh Duong. Virginia Moses was delivered. Sandra Hanley was faxed. Timothy Walbee was faxed. David Dixon, two charts on him were delivered. And Virginia Lendler was faxed and delivered.

Q. On what date, please?

A. Delivered on 11-10-06 and faxed on 10-23-06. And 5245, Linda Caulder is not on this history sheet.

Q. Did you pull Ms. Caulder's file for us today?

A. No, I did not, There are no box numbers listed on this fax sheet, so these were researched and apparently we could not find anything to pull on Linda Caulder at that time anyway.

Q. The Hanley file, --

A. Um-hum.

Q. -- according to your records, when was that actually delivered to Carolina Pines?

A. I have a fax on 10-23 and delivered on 11-10.

Q. Does that indicate that the documents that were faxed on 10-23 are the same documents delivered on November 10th involving Ms. Hanley or would it be two separate orders?

A. They are two separate orders, the same chart coming out of the same box.

Q. So according to your records, Carolina Pines requested records of Ms. Hanley twice; they received

by fax the records on October 23rd of 2006, --

A. Uh-huh.

Q. -- and they had delivered to them the same record on Ms. Hanley on November 10th, 2006, --

A. Um-hum.

Q. -- correct?

A. Correct.

Q. Ms. Hanley's file was never returned to Carolina Pine -- I mean, Ms. Hanley's file was never returned to Iron Mountain, correct?

A. Correct.

Q. When you look at Exhibit B which we had provided to you trying to reduce down some of the searching, --

A. Um-hum.

Q. -- at the top there were two account numbers, --

A. Yes.

Q. -- and I believe you indicated just with the account number, because they are more than six months old, you really can't tell me what was requested, fair?

A. That is not an Iron Mountain account number. That is the account -- hospital account number that Carolina Pines provided.

Q. If you actually had some of that patient's medical records, for example, these two records, would that help you identify where that patient's chart would

be?

A. Yes.

Q. How so?

A. We do not house the records -- excuse me, Carolina Pines does not house their records by account number only. Even though that is within the chart, I would need a patient's name and/or medical record number.

Q. Do you see it on that document?

A. I do.

Q. What do you see?

A. I see there is no name. The medical record number is 34170.

Q. So with the medical record number 34170, you could pull that particular document for me?

A. Yes, this chart is on the table.

Q. Would it be contained within the charts on the table?

A. The 34170, I called this morning and got that information and was able to pull the file for you. It is here.

Q. The other patient involving the second account number, I believe those are the records that we have. Can you also look at that --

A. Yes.

Q. -- and -- and tell us what the medical record number

would be?

A. Medical Record 33051.

Q. Did you also produce that file for us to look at?

A. I did.

MR. CORBIN: Do you see them? (Directed to his paralegal)

Q. When you look at those two particular files, the first one 34170 --

A. Uh-huh.

Q. -- appears to be Ashton Byrd.

A. Correct.

Q. On the notes that you have taken, does that relate to Dr. Mincheff?

A. No.

Q. The other file number 33051, does that relate to Dr. Mincheff?

A. No, sir.

Q. Do either one of those files relate to Dr. Bannister?

A. No, sir. Sometimes, it would be listed that Dr. Mincheff was the patient's family physician, but none of the op notes or any of the treatment was actually done by the physician, by Dr. Mincheff or Dr. Bannister.

Q. Show me where it says that. For example, Patient

No. 34170, --

A. Uh-huh.

Q. -- which I -- what name was I -- was that that I just gave to you?

A. Ashton Byrd.

Q. Byrd, you say it has nothing to do with Dr. Mincheff?

A. Not in the file that I viewed this morning, no.

Q. The Operative Note indicates the assistant on that particular operation. Who was the assistant on that operation?

A. Thomas Mincheff.

Q. So it does involve Dr. Thomas Mincheff?

A. Um-hum.

Q. Are your notes in error?

A. I was looking at the signature. The signature does not have Dr. Mincheff's signature on it, so I would not have pulled that, no.

Q. The two folders that you did produce --

A. Uh-huh.

Q. -- were Byrd which you say has nothing to do with Mincheff, but he was the assistant surgeon, and Marion Thomas. The files that you produced are for the wrong hospitalizations for those two patients. Can you confirm that to the partial records we

received?

A. The date of procedure on the paperwork you handed me is 9-28-06.

Q. For which patient, please?

A. For patient 34170 which is Ashton Byrd and the chart contains January 16th of 1998 and February 6th of 1998.

Q. Where is the chart involving this particular operation?

A. Oh, I have no idea.

Q. You cannot look at that file, that particular record for Mr. Byrd --

A. Um-hum.

Q. -- that shows that Dr. Mincheff was the assistant surgeon --

MR. SOUZA: Objection. The -- the witness is only able to respond to what was requested of Iron Mountain and what was produced by I -- Iron Mountain. She is not in a position to speak to what the records contain. And just to be clear, I want on the record, too, the witness is appearing today pursuant to the subpoena that was served and dated on January 9th, 2007, including the scope of the production includes Exhibit A and -- and the paragraphs therein. As you stated on the record

today in referring to Exhibit B was delivered to us as a courtesy, a road map if you will, and that is not the scope of the subpoena that we are responding to today.

MR. CORBIN CONTINUING:

Q. Ms. Parnell, did you limit the scope when you were looking for those particular patients' names we have provided to you?

A. No. I received the document that you sent stating that there was an unknown name and an account number which there is no possible way I can find anything by that account number, so I phoned the Medical Record Department and asked for the name, the medical record number that matched, and which they gave me. I keyed both numbers into the system. Only one name came up. I cannot remember which name it was that was individually listed in the system. The other one, I went through the manual inventory list to find a box that contained that and pulled these of my own accord for this deposition.

Q. So when we gave you the list, Exhibit #B, did you research the entire system, for example, Mr. Holgate's files and Mr. Goodson's files or did you restrict what you were actually looking for the dates?

A. I looked for everything. There are files here that have been previously requested and files that were not. I did my search by medical record number and by last name, first name.

Q. So the Byrd file that apparently was delivered to Carolina Pines before by Iron Mountain, we had requested the Discharge Summary of this particular patient and we don't have that and you are saying -- are you saying you are not going to produce that for us, we just got a partial record?

A. I don't have a Byrd file that was requested by Carolina Pines.

Q. That is what I requested -- you said you needed more information about this one particular patient account number --

A. Um-hum.

Q. -- and Carolina Pines gave us partial records involving that particular patient.

A. OK.

Q. You were kind enough to look at it. You can identify who it was. You said you actually before this deposition pulled out this patient's file.

A. Correct.

Q. I didn't know who the patient was, apparently you did. You pulled out the file. I gave you the

records where it is a different hospitalization than the ones you produced, --

A. Correct.

Q. -- so the question was how much trouble would it be --

A. Um-hum.

Q. -- to produce the rest of these records?

A. I produced everything that I can find on this patient. I do not have that date of service.

Q. And Iron Mountain does not have it --

A. No.

Q. -- to your knowledge?

A. To my knowledge, no. If I remember correctly, that is a 2006, is that right?

Q. It is. Yes, ma'am.

A. That would be an in-house chart for Carolina Pines.

Q. And the other patient that we are talking about, the same question. Would it be difficult to find that particular patient's Discharge Summary?

A. On Thomas Marion, 33051?

Q. Yes, ma'am.

A. I have pulled everything that I have on that person as well.

Q. And the date of the surgical procedure we have is October 11, 2006. Again, that would be the same

response --

A. Correct.

Q. -- in-house file of Carolina Pines? Have you had any discussions with Mr. Driggers about the production besides the initial courtesy telephone call?

A. No, sir.

Q. Have you had any discussions with Ms. Gainey or anybody else affiliated with Carolina Pines about your deposition?

A. No, sir.

Q. Were you present for any meetings between Mr. Driggers and anybody else discussing this case?

A. No, sir.

MR. CORBIN: If we can take a five-minute break, I think we are done. We appreciate it, Ms. Parnell. If we could take a short break.

OFF THE RECORD AT 3:55 P.M.

BACK ON THE RECORD AT 4:00 P.M.

MR. CORBIN: Ms. Parnell, I appreciate your time. I would just like instead of you sitting here going through these two files here, if we may spend time after the deposition going through those things. It is the Waiters' file and the Rhodes' file. I just hadn't had a chance to go all the way

through it, but I have no more questions. If that is okay if I can spend thirty minutes going through those things.

MR. SOUZA: What, you need, Waiters?

MR. CORBIN: Waiters and Rhodes.

MR. DRIGGERS: I have got just a couple.

MR. CORBIN: OK.

MR. DRIGGERS: I promise. Let me see those exhibits. I just had a couple of questions about those.

MR. SOUZA: Sure.

CROSS-EXAMINATION BY MR. DRIGGERS:

Q. Ms. Parnell, again, my name is Martin Driggers. I am the attorney for Carolina Pines Regional Medical Center in this litigation and I just wanted to ask you a couple of questions about these exhibits that we have been discussing. First of all, Exhibit #1, and I know you have already been through that, but that is a chart that is generated based on dates, correct?

A. Correct.

Q. That has no -- no bearing necessarily to any particular patient, or doctor, or anything other than the dates, correct?

A. Correct.

Q. And tho -- that document is request made by Carolina Pines Regional Medical Center I think you said from 10-17-06 through 10-06, correct?

A. Correct.

Q. OK. So there may be documents pertinent to this case you are discussing; there may be documents that aren't pertinent to this case that we are discussing, right?

A. Correct.

Q. OK. All right. On Exhibits #4 and #5 -- first of all, Exhibit #5, if you don't mind --

A. Uh-huh.

Q. -- looking at that first. What is the date on that document?

A. 10-17-06.

Q. OK. And it doesn't say who actually received it, but I am assuming that just comes across a fax machine and the person that is here that can grab it and start working on it is who gets it, is that correct?

A. Correct.

Q. OK.

A. As you can see --

Q. You may not have -- go ahead.

A. As you can see there is a fax number on the top

which is an 800-number that goes to our Customer Service Center --

Q. Got 'cha.

A. -- but with no box numbers listed, the Customer Service Center cannot create an order off of this,--

Q. OK.

A. -- so then it in return is either rerouted to us or they call the customer and the customer sends it to us directly.

Q. OK. And Exhibit #4, the date on that one I think we have already established is November the 10th and that is a fax coversheet, correct, --

A. Correct.

Q. -- from Carolina Pines Regional Medical Center?

A. Correct.

Q. And on that fax coversheet, does it say how many pages are -- are included in that fax?

A. Yes, two.

Q. OK. And is -- is it your understanding that the same form is attached to that fax coversheet?

A. Yes, it was the same form.

Q. OK. All right. And this one in particular was sent to -- you mentioned to employees of Iron Mountain, to Gavin or Brian, is that correct?

A. Correct.
Q. OK. And in between these two dates, and I think I have heard you describe that procedure, it sounds like there would have been some kind of discussion between the folks here at Iron Mountain and the folks with Carolina Pines Medical Records, correct?
A. Correct.
Q. OK. And it sounds like it would have probably been more than one discussion, correct?
A. Correct.
Q. Is it fair to say that it would have been back and forth trying to -- trying to get down just like we have been doing today what records they are looking for, what records ya'll had, the box numbers, all that -- that goes back and forth with finding those records?
A. Correct. And according to the request and according to the history, --
Q. Um-hum.
A. -- the items that were faxed, --
Q. Um-hum.
A. -- in fact, were delivered on the 11-10 request.
Q. OK. And can you tell from that chart whether the whole chart was faxed, or certain items from the chart were faxed, or -- or can you say one way or

the other?
A. Not from the report, no. From the fax, --
Q. Um-hum.
A. -- it lists that they are requesting an op note only --
Q. OK.
A. -- for dates between these dates.
Q. OK. All right. And on the delivery date, would that have been the entire chart or would that just have been a particular note or do you know?
A. We do not deliver partial charts --
Q. OK.
A. -- to this particular customer.
Q. Got 'cha. All right. Let's see. And also just for the record, you have never seen me before today, have you?
A. No.
Q. OK. And you mentioned having a conversation with me. I think you dated it some point in time after receiving a subpoena from Mr. Corbin, correct?
Q. Correct.
Q. OK. Not during this time frame where you were getting requests for records from Carolina Pines and ya'll were finding records for Carolina Pines in November and October of 2006, correct?

A. Correct.

Q. OK. And the same goes for anybody else from my law office, correct?

A. Correct.

Q. In fact, I would be surprised you probably don't even know the name of the law firm I work for, am I right on that?

A. Correct.

MR. DRIGGERS: OK. Let me see those exhibits one more time. Is that all of them?

COURT REPORTER: Should be one through five.

MR. DRIGGERS: I have got one, four and five. You got two and three over there. Here we go. I found them. Just because I don't think it has been identified, the letter has but, this hasn't. This -- that is just a copy of the subpoena that accompanied that December '06 letter.

DEFENDANT CAROLINA PINES' EXHIBIT #1 MARKED.

Q. Ms. Parnell, can you or do you recognize what has been marked Defendant's Exhibit #1?

A. Yes, I do.

Q. OK. And what is that document?

A. This is the subpoena that is dated January 9th, 2007.

Q. OK. And it is your understanding that is what we

are here for today, your deposition is pertaining to that subpoena?

A. Correct.

MR. DRIGGERS: OK. That is all the questions I have.

MR. SOUZA: Just to go on the record about the -- I think you were asking about the transcript. We do want a copy and to read -- I think was it thirty days to --

COURT REPORTER: Yes, you have thirty days in which to read and sign.

MR. CORBIN: I just have a couple of more questions. Very brief.

RE-DIRECT EXAMINATION BY MR. CORBIN:

Q. Have you ever spoken with Lynn Blackmon?

A. No, I don't recognize that name.

Q. The deposition today, we also sent or hand-delivered to you and we did that because your Boston attorney refused to accept it by fax. He agreed one day, then the next day said no, so we had to hand-deliver it to you Friday.

A. Um-hum.

MR. CORBIN: And, I would like to just mark a clean copy. I have written all over this.

MR. SOUZA: Objection. I never agreed to

accept service.

MR. CORBIN: Well, that -- that is fine. I am going to introduce it as an exhibit. That is fine.

PLAINTIFF'S EXHIBIT #6 MARKED.

Q. Ms. Parnell, that is the August 24th letter and subpoena that you actually were hand-delivered, is that correct?

A. Yes.

Q. And attached to that is also what is called "Exhibit B." You see that?

A. Yes.

Q. And it appears that you fully complied with Exhibit B, isn't that correct?

A. Yes.

Q. OK. And based upon your testimony, it appeared as though with that information that it wouldn't take several days to gather those documents for me, correct?

MR. DRIGGERS: Object to the form.

MR. CORBIN CONTINUING:

Q. In other words, it -- it was not an undue burden on you to produce those records for me, correct?

MR. DRIGGERS: Object to the form.

MR. CORBIN: Please go ahead and answer.

A. For the two unknowns, no, it did not take a lot of

time.

Q. And the other documents that we had asked for, you have actually produced those as well?

A. The other documents had been requested in the past and when you key in the number, it automatically comes up so there was no research done on those at this time.

Q. OK. So if somebody complained that Exhibit B contained a whole lot more work for you to do, it really didn't, correct?

A. It would depend. If somebody requested that all of these documents be faxed, that is a lot of copying and faxing. You cannot fax a lot of these original documents because the paper is too thin, so it would be to copy and fax those entire forms as well as my other daily duties, because we do not have a customer service here in this office.

Q. And, I certainly didn't ask you to fax those to me, correct?

A. Correct.

Q. OK. So the bottom line is gathering those documents for me that had been requested before was not a major task?

A. No, --

Q. OK.

A. -- not at this time.

MR. CORBIN: OK. That's all I have. Thanks.

MR. DRIGGERS: I have no further questions.

AND FURTHER THIS DEPONENT SAITH NOT.

DEPOSITION WAS ENDED AT 4:15 P.M.

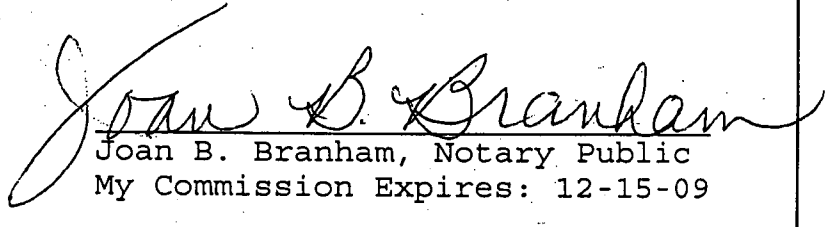
CERTIFICATE OF NOTARY PUBLIC

I, Joan B. Branham, do hereby certify that the foregoing deposition was taken by me, a duly authorized Notary Public, and the same transcribed as a correct transcription of the testimony taken at the time and place indicated therein;

That the witness was duly sworn by me to tell the truth, the whole truth, and nothing but the truth;

That I am not related to any of the parties or their counsel nor interested in the outcome of the foregoing litigation financially or otherwise.

Witness my official seal and signature at Florence, South Carolina this 29th day of August, 2007.



Joan B. Branham, Notary Public
My Commission Expires: 12-15-09

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
RUTH J. PERSON,	)	
	)	**VOLUME 1 OF 3**
Plaintiff	)	
	)	
versus	)	200R-CP-16-0322
	)	
CAROLINA PINES REGIONAL MEDICAL CENTER	)	NOVEMBER 06, 2006
	)	to
Defendant	)	NOVEMBER 14, 2006
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Daryl J. Corbin, Esquire
Attorney for the Plaintiff

Martin S. Driggers, Jr., Esquire
William O. Sweeney, III, Esquire
Attorneys for the Defendant

Pamela Ozment-Cartee
Circuit Court reporter

COURT REPORTER'S NOTATION:

THE JURY SELECTION WAS

NOT TRANSCRIBED.

THE STRIKE SHEET IS

ATTACHED TO THIS TRANSCRIPT.

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				Strikes	
Juror #	**Name**	**Race**	**Sex**	**Ptff.**	**Defd.**
063	Margaret A. Jackson	B	F		
003	Leslie A. Anderson	W	F		
023	Jeffrey A. Burkoff	W	M		
005	Linda A. Atkinson	W	F		
125	Latrice M. Zimmon	B	F		x
001	Barbara A. Addison	B	F	x	
074	Larry M. McAllister	W	M	x	
092	Rudy D. Robinson	W	M		
093	Kenneth Samuel	B	M		
045	Thornwell H. Gainey	W	M	x	
096	Yolanda M. Shaw	B	F		
078	Donovan D. McLendon (Court)	B	M		
054	Timothy L. Hickman	B	F		x
009	Robert C. Bailey	W	M		
012	Jonathan Belin	B	M		
139	Jason Watford	W	M		x
025	David A. Caldwell	W	M	x	
020	Timothy D. Myers	W	F	x	
029	Carl L. Caulder	W	M		
	Alternates Number 1				
075	Lori S. McCall	B	F		x
138	Donnie Smith	W	M		
071	Larry J. Kissiah	W	F	x	
	Alternate Number 2				
107	Tina M. Tedder	B	F		
098	Janie R. South	B	F		x
108	James B. Thomas, Jr.	W	M	x	

EXHIBITS

Number	Description	Admitted
	Court's Exhibits	
1	Letter dated October 5, 2006	0060 0120
2	Notice of Deposition	0119
3	JACHO 1997-206 Ratings on Credentialing	0292 0648
4	Letter dated November 5, 2006	0648
5	Objections through David Castleberry's Deposition Transcript	0649
6	Plaintiff's Supplemental Answers to Interrogatories	0658

Number	Description	Admitted
	Plaintiff's Exhibits	0245
1	Medical Records for Ruth J. Person Volume 1 and 2	0245 0374
2	Medical Expense Summary for Ruth J. Person	0323
3	Medical Bill from Carolina Pines Regional Medical Center	0315
4	Photograph	0315
5	Photograph	0315
6	Photograph	0315
7	Photograph	0315
8	Photograph	
9	Photograph	
10	Photograph	0315
11	Photograph	
12	Photograph	
13	Photograph	0315
14	Photograph	

15	Photograph	0315
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22	Photograph	0315
23	Photograph	0315
24	Photograph	
25	Photograph	
26	Photograph	0315
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28	Photograph	
29	Photograph	0315
30	Progress Notes dated 4/29/01	0211
31	Progress Notes dated 4/30/01	0212
32	Progress Notes dated 4/30/01	0212
33	Transfer/Discharge Summary dated 4/30/01	0213
34	Anesthesia Records dated 4/25/01	
35	Scan Report dated 4/25/01 (abdomen)	0344
36	CT Scan Report dated 5/1/01	
37	Ms. Voigt's Literature Binder	0299
38	Hospital ByLaws	0184
39	Clinical Privileges/White Papers	A
40	Monthly Expenses	0375
41	Deposition Summary by Oliver Wood, Ph.D.	0675
42	Finance Statement	0676
43	Box of Cepacol	0696

44	Consent Form	0792

Number	Description	Admitted
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1	Medical Credentials Consulting	0259
2	Medical Credentials Consulting Agreement	0264
3	Informed Consent for Surgery	0431
4	Curriculum Vitae, Gary Allen Barker, M.D.	0723
5	Application for Privileges in General Surgery	0758
6	1997 Byerly Hospital Performance Report	0743
7	2000 Carolina Pines Performance Report	0746
8	2003 Carolina Pines Performance Report	0747
9	2002 McLeod Health Performance Report	I.D. 0748
10	Emergency Department Summary	0760
11	Admission Records	0828
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13	Progress Notes	0764
14	Discharge Summary	0766
15	Consultation	0766
16	Curriculum Vitae of Thomas B. Mincheff, M.D.	0863

(Whereupon, this hearing began at 10:53 a.m. on Monday, November 06, 2006.)

DAY ONE OF TRIAL

MOTIONS

The Court: All right, ladies and gentlemen. Thank you for your patience while we discussed several scheduling issues. We are not going to start the case right now. The first thing we are going to do is let you have an extended lunch. There are several issues that I need to resolve, which will speed the trial, and actually prepare for the presentation of witnesses. It looks at this juncture that what we will do today is we will bring you back this afternoon, have opening statements from each side, which may take anywhere from thirty to thirty-five minutes per side, and conclude our business for the day, but come back tomorrow morning, and actually begin taking witnesses. I am going to ask you, with that understanding, I am going to ask you to be back in the jury room at 3:00. It is 12:00 now that is three hours, more than anyone needs for lunch, but that gives you some extra time to do whatever you need. I just don't want you sitting in the room back there, twiddling your thumbs, while we are doing some preparatory work. So, try to be as least abusive of your schedules, we are going to release you until three. Now, rather than coming back into the courtroom, I am going to let you walk

with our Bailiff, Mr. Medlin, and he will show you where the jury room is, and come back to the jury room at 3:00. Now, are there any questions from our jurors about when to be back.

Now, one or two other things. We don't know anything about this case. So, please, whomever you have lunch with, and lunch is on your own, if it is a fellow juror, or family member, please do not discuss the facts, we don't even know enough facts to have a discussion. But, throughout this case, until it is given to you for deliberation at the end, it will be inappropriate to have a factual discussion about the matter before us. So please tell whomever inquires that the judge has asked you not to do that until it is all over with. And, when it is over with, you can tell everyone completely whatever it is you wish to tell them. I am going to ask you not to take any kind of personal investigation, whether it be on the internet, in a medical book, or whatever, just whatever evidence that is produced is going to come right here from this witness stand. That will be sufficient for you. So, I want you to just keep an open mind, have a good lunch, and be back at 3:00. We normally operate the Court from about 9:00 to 9:30 in the morning until 5:00 in the afternoon, so that is generally what our schedule is. We take a lunch break every day, which if your loved ones ask you about what

your schedule will be this week that is pretty much what it will be, we expect, and we will probably be finished by five or so if we start at three.

Now, I want you to have a good lunch. We will see you back here at 3:00. Lets everyone else remain where we are while our jury departs the courtroom.

(Whereupon, the jury departs the courtroom at 12:02 p.m.)

The Court: All right. Ladies and gentlemen, I think the best thing to do is rather than plunging now, and having to stop in just a few minutes, let's take a lunch break and come back. I would suggest that we come back at 1:30. That gives us an hour and a half to have lunch, an hour and a half to argue the issues. If you think that is not enough time, let me hear from you now. What says the plaintiff?

Mr. Corbin: Plenty.

Mr. Driggers: That is plenty.

The Court: All right. Then we will be in recess until 1:30. Court is in recess until that time.

Mr. Driggers: Judge, could I mention this one thing, and maybe it will not be affected by our lunch time?

The Court: Yes, sir.

Mr. Driggers: My lady Ms. Persons will be here tomorrow morning, to have the jury come in late. I am going

to ask the judge to think about instead of doing that, instead of getting the experts --- some of my expert testimony out of the way, let them leave earlier tomorrow afternoon, I think I can get my expert done, and Ms. Person done by the time they leave or so, and stay until six or seven.

The Court: Let me tell you this, and unfortunately so much of what we do is driven by other peoples crises and demands. Some time ago I sat at 9:00 tomorrow morning a very complicated discovery non cooperative issue that involves the alleged wrongful termination oil distributorship franchise. I am going to have to from 9:00 to 10:00 tomorrow morning do all of that. So, I am going to let the jury come at 10:00, and we can't start until 10:00. And, there are multiple lawyers involved. I had to set that a couple of weeks ago.

Mr. Corbin: I understand, yes, sir.

The Court: That will give y'all some time. Now, court is in recess now until 1:30.

(Whereupon, a lunch recess was taken from 12:05 until 1:33 p.m.)

The Court: All right. We are now here in the matter of Persons versus Carolina Pines for Pretrial Arguments and Motions. Mr. Driggers, do you wish to go first?

Mr. Driggers: That's fine, Your Honor. Some were filed this morning, this is a book that I think has most everything. It is pretty simple. I apologize if it gets mixed up. I think it should flow right into --- It has our Motions. The first one, Your Honor, actually before we maybe begin is to clear up two things that we spoke about in conference last week. We have two issues for Summary Judgment that we have been waiting to get a final written order. And, secondly we have a Motion on our expert witness. To reconsider that decision also I am ready to argue it now, but we haven't gotten an actual order on that, so I wanted to maybe create some record on that, is that, in fact, the decision of the Court, if it is, we want to ask the Court to reconsider that.

The Court: Let me tell you, and first of all, as you will remember the Order from the previous hearings, and I will tell you has not yet been concluded by the Court. It was in excess of forty pages. You had comments that you made, and all of that received last week by me, and actually at the very first of last week. I simply in holding a term of Court in Marlboro County, and the magnitude of that Order, and the multiple issues addressed, and the complicated nature of it, I have not finalized it. I intend to significantly shorten it, and will have it for you at some point this week so that there will be a written

decision in the record for appellate purposes. So, I do not have that ready to give to you at this time. The best thing to do is for us to go ahead and re-discuss on the record the decision to exclude your expert which is a decision I made, and gave verbally over the telephone. If you wish to be heard on that, so the record will be complete in that regard, I will be glad to hear from you.

Mr. Driggers: There is one thing further before we move on. I did want to say that when that Summary Judgment was received, I would like at some point in time over the course of this week reserve the right to file a Motion to Reconsider, and have that, put on the record.

The Court: I will give you that option.

Mr. Driggers: Your Honor, on the Motion to Exclude, our expert witness, Dr. Kyle Henniford again we have filed a Motion for Your Honor to reconsider that decision. That should be the first tab there under your pretrial notebook.

Your Honor, the basis for our Motion is basically this. That the severity and extremity of that decision at any point in time in litigation, but especially if I have my dates right, I believe, somewhere in the neighborhood of October 2o, October 13, somewhere in the middle of this past month, number one just creates an extreme hardship on my client, and that is outlined in our brief before Your Honor.

And, there is case law throughout South Carolina that details exclusion of a witness particularly an expert witness in a medical malpractice case creates an tremendous burden, it should be a tremendously high standard for the court to make that decision. Our position is that from what transpired, prior to, during and even after the deposition testimony of Dr. Kyle Henniford, that that fell well short of that standard. I think the case law will tell you that even where you just name an expert, late in the game, that it is still a tremendously high bar, and in cases the standard on that show that --- discuss it in terms of not really having a deposition testimony, actual statements from the witness in question. It is more along the witness has been named, or eluded to, and presented on the eve of trial, and Your Honor, that is not the case we have here. To give the record a little bit of background again, this case has age on it. It is an 04 case, and of course, there were other parties involved throughout most of the life of the case. In those other parties the physicians settled and are no longer a part of the case. In May of this year, after going through discovery, after going through all manner of deposition and written material being exchanged, Your Honor, not in the form of a Scheduling Order, but Your Honor told us at a Roster Meeting, I believe, coming up for a term for that week, you said, look, I will set this for a hearing for

all Motions, September 4, put it down for trial November 6. Mr. Corbin said that sounds fine. We said it sounds fine. That will give us time to take outstanding experts' depositions, and will give us the time necessary to have important issues heard prior to trial. It will also give us time to prepare for trial if necessary. So, we proceeded through the summer months of going along those lines of proceeding with that expert testimony. Mr. Corbin had another separate expert witness specifically for credentialing, who is in St. Louis, Missouri, he wished to have deposed, that he named, and I said that is fine, and we would have one as well. On August the third, we got a date to take Mr. Corbin's expert witness, that was done by video. Mr. Corbin was there. I was in Florence, and we went for about two or three hours, until it came to the point in time and realized his expert, Mr. Corroway, had a tremendous amount of file material including notes, you could say even a report typed along with supported material that had not been provided prior to deposition. We did our best to at least go through the issues that we could there, and finally after two or three hours --- I had a plane to catch. I was not able to get through the material nearly as much as I needed to. I said, Daryl why don't we continue this deposition. You get me the material Mr. Voigt had, and we will reconvene as soon as we can. He said that's fine. He

needed to get home. I needed to see the material. So, that deposition was stopped on August 3. Before even getting the materials to this Court we named then named our expert, Dr. Henniford on August 11. Then we received around the middle of the month a lot of material, from Ms. Voigt, a substantial amount which is fine. We then reconvened her deposition on August 31, at the end of that month. All that transpired in that month, and it was completed. We got the material, we went through it, we were satisfied that we had completed her deposition. Then we turned to our expert, and we again calling the dates, and we came to the date of October 3. Then Mr. Corbin said that is late, we came to him too in the game, but that is the date we offered, that we could get in conjunction with all of our schedules, and there wasn't an objection to it at that point in time. He proceeded to go forward with that deposition. We put it on the calender, everybody scheduled it, and it was fine. Then on September 23, a Friday, I received a subpoena and that subpoena is attached as an exhibit to the Motion to Reconsider that we had before you, Your Honor. But, that subpoena listed nine different items, different categories of items that Mr. Corbin desired to have. I believe one --- Items one, two, three, six, and nine were simply materials he did not have. I responded to Mr. Corbin in a written response an objection that number one, Dr. Henniford had no

reports, he had no correspondence from any emails. What Dr. Henniford had was deposition transcripts from this case. That Daryl had in his possession already and I informed him already.

Number two, I did provide him with a copy of Dr. Henniford's Curriculum Vitae, which is substantial, sixty pages long, because I thought that was responsive to what he was asking. In that, there were certain articles that Mr. Corbin said, he did not mention at the time, because he had not had a chance to look at it, but responsive articles. And, Dr. Henniford's C.V. however when I received the subpoena it got delivered to me on that Friday. I did not actually have it in my hand to see it, to know to respond to it until the following Tuesday, which was the twenty-sixth. It got delivered after hours on Friday, I did not see it until the following Tuesday, and I told Dr. Henniford that it was there. He received it on that Thursday, and immediately called me and said I am getting ready to walk out of this office to go, I believe, to New York or a conference. He was not going to be back in Charlotte the following Monday morning, which is the day of the deposition, and said I simply cannot gather all of these articles, because I was busily going to be here. I let Daryl know that this is what we had responses, and that if he wanted to go forward with his deposition, and that his

deposition was scheduled. Mr. Corbin said that he wanted to come early, to review materials. I didn't have any idea what material he wanted to review. I had given him the material that was responsive that told him there was nothing else that we were going to be producing before hand, because we didn't have it. That Dr. Henniford couldn't physically produce it before hand. So, we went forward with his deposition. Dr. Henniford was deposed for about five hours, very thoroughly by Mr. Corbin. At the conclusion of the deposition, again, Mr. Corbin noted that there were certain items on his Curriculum Vitae articles that obviously he had written that obviously pertained to this case, and I said that I will do everything I can to give them to you as soon as I can. I went through, I stayed after the deposition to circle and identify the articles, and I got those to Mr. Corbin on October 12, a little over a week after the deposition. So, Your Honor, for that to have been the events that transpired prior to the actual testimony of this expert, and then after that Mr. Corbin on October 5, filed a Motion to Exclude, and in order for the Court to have that heard, the Status Conference again, I believe, October 13, or October 20, and for that circumstance scenario to strike that witness we believe creates a tremendous undue hardship on our client.

Once more, Your Honor, we believe the law not only

says that is a hardship in the general terms, but specifically the law in South Carolina requires that number one, if that is going to be a penalty for discovery sanction, which is Mr. Corbin's argument, there has to be a direct --- We have had to have violated a Court Order. And, there is no Court Order, for ordering us to produce any of this discovery that we have been battling over for the last two years, and, of course, this goes way beyond the specific deposition. With regards to discovery, we are here as the Court recognizes, on a novel issue that has never been addressed, and we have been protected, because we think the law provides that of the credentialing material, and items that Mr. Corbin has sought. So, we believe, that while Mr. Corbin has asked for a lot of material, we have objected to it, while we have taken depositions, instructed witnesses not to answer certain questions we thought were privileged. Never has Mr. Corbin brought that issue to a court to say this is what I am entitled to, and this is what they are not provided. The Court to say Mr. Corbin you are right, Carolina Pines produced this information, that has never happened. We have just floated along, yes, making objections. With us objecting to certain discovery, and no court has ever ordered otherwise. We think the law in South Carolina to take the drastic step of striking an expert witness requires that as a minimum to at least been a

violation of a direct court order. What's more Your Honor, we believe that, and especially in the case that we have here, that Your Honor is required under the law to go through certain factors and make certain determinations under the case of Jumper versus Hawkins, and in this case especially because we have a deposition? The Court requires the trial court to look at that testimony, and see how important it is, how complete it is, how thorough, what were the circumstances surrounding it, and that simply wasn't done, or at least it has not been done, I don't believe. So, we have actually attached a copy of Dr. Henniford's Deposition to the Motion that we have filed. Again, Your Honor, we believe that there is no hiding the ball in this case with Mr. Corbin. There is no trying to pull something over on him at the last minute. We were simply following the normal course that discovery had laid out, and that required us to name, identify and depose our experts after Mr. Corbin's were completed, and that is simply what happened. Mr. Corbin has had the opportunity to depose Dr. Henniford. He has had all of now the materials that we have been provided. There was even sufficiency in that procured long before the trial happened. So we believe that no prejudice that Ms. Person, Mr. Corbin has suffered by having Dr. Henniford, come and testify in this case.

The Court: All right. Thank you. Mr. Corbin.

Mr. Corbin: Your Honor, if you recall attached to my Motion, is what I felt was a comprehensive history that was proven through documents, the discovery, dilatory actions in this case. I would ask Your Honor to incorporate into any kind of ruling. But, in general, if Your Honor recalls for about two years we did play cat and mouse about their expert witness. They told me they had expert witnesses, but refused to tell me who they were. If you will recall, I was so frustrated the times they would not tell me who they were, this case was on the trial roster a long time ago. They would not tell me who their experts were. And, they said they had exerts with an "S." They refused to identify them under the rules, and refused to answer interrogatories about expert witnesses. And it got so frustrating to me that I served just a general deposition notice that if you won't tell who they are, I don't care, just produce them, and let me take their depositions. The response for that was I got a Motion to Quash, refused to produce them. I had to file another Deposition Notice, same thing, failed to produce them, and, Your Honor, it went on for a long time. My position was, I don't have a duty to pull teeth and make them tell me who it is. The duty rests with them to follow the rules, to tell me who it is. If Your Honor recalls, after you set this case for a date certain, all they did was disclose Dr. Henniford. In the

letter that I attached to the Motion indicated I was concerned at that point in time that they had withheld for about two years from me. I indicated to Martin as a wake up call, and Martin, I think your conduct was wrong, and you disclosing late. This case has been on the trial roster with a date certain for a long time. I wanted to take within the month of September, and they refused to do it. He said he was too busy, which is fine. They told me I could take him in October, pretty much take it or leave it. I said, if you do that, given your conduct in this case, with all the other witnesses, where it is cat and mouse if he doesn't fully respond to me, or if he doesn't answer, respond to a subpoena to produce documents, I will exclude him. I asked Martin to accept a subpoena for him, and he did in writing. The next thing is, I get a letter from Martin saying he is not going to produce anything. I don't think an attorney has a legal right, Your Honor, to tell a fellow attorney that somebody under subpoena of this Court who is not even his client can disembowel that subpoena.

Now, yes I did subpoena Dr. Henniford's records, which I don't think anything is unusual about that in this kind of case, and at the very least, I had a right to whatever documents he reviewed to render his opinion. I did establish and set up so that I go there ahead of time to review the records that were not produce. I get there, ---

And, Your Honor, if I don't need to go through all of this again, I won't.

The Court: Go ahead.

Mr. Corbin: I took time away, and went up there a day ahead of time, and agreed he could give his deposition testimony that afternoon, so I could review his documents that morning. I get up there, go to Dr. Henniford's office, he is not there, which is fine. Speak to his medical assistant. She said, oh, yes, he got the list, but we were told not to produce anything. Well, I get Mr. Driggers on the telephone. I said Martin, what is going on here? At the very least he has a duty that he, produces his file, please let me look at his file. Whatever, he looked at, I have a right to look at too. Martin refused to do that. I said Martin, when you disclosed him you said he is going to talk about standards. You know we have medical standards in this case, as well as credentialing standards. Please, at least tell me one or both. Can't do that either. I am not going to do that. So, I spent hours getting prepared to talk about medical issues as well as credentialing issues. Dr. Henniford does show up thirty, forty minutes late. He is very busy. I asked him about the subpoena. I don't know anything about that. Well, you got the list didn't you? Oh, yes, I didn't know anything about a subpoena. Well, you know what a subpoena is Dr. Henniford? No, not really.

Even if you had given it to me, I'm so sure I would know what to do with it. So, then we start going down the list. He indicated to me, number one, is that he could get these documents, but even if he had not been instructed by Mr. Driggers not to do it, he would not have time to do it, because he is very busy. He travels so much.

In addition, Dr. Henniford can you tell me what documents you reviewed, and he told me the documents he said he reviewed. And, I said on this list you are suppose to produce correspondence. You have that don't you? Well, he produced two innocuous pieces of correspondence later on in this case, and he was retained a couple of years ago. That morning he disclosed two letters about sending Ms. Voigt's deposition over to him, and maybe Ms. Voigt's Affidavit. Well, Doctor do you have any --- Do you know Mr. Driggers, do you know anybody who works for his staff? Do you know anything about Mr. Driggers at all? No, I don't know him at all. Well, when you got this package of documents, you had no cover letter? Do you have any kind of pay arrangements? No, sir. I don't. Didn't get a cover letter? Are these all the correspondences that you have? Well, I admit I might have gotten it in some other ones, but if I did I destroyed them. How about emails, did you get some of those? Well, if I did, I destroyed those. Can you testify about the medical standard of care? Well, I've got the

Operative Report, and maybe a document or two. Doctor can you testify under oath to a reasonable degree of medical certainty that Dr. Mincheff met or violated the standard of care? No, sir, I can't. So, I struck that off the list.

It was very frustrating for me to have to take the deposition ill prepared for. After we left, I said Martin, he is not going to testify about medical standards is he? Well, he might. I may send him some documents. I might see him in the courtroom. He may testify about medical standards too.

Your Honor, as I indicated to you, in twenty-years, I have never filed a Motion to Exclude anybodies' witnesses at all. And, in this case, given two years of what I think was intentional nondisclosure of an expert witness, and intentional, instructing a witness not to produce documents under a subpoena, I ask Your Honor to exclude. I submit in the documentation proving everything that I am saying is true. Your Honor did set a hearing date for my Motion to Exclude Dr. Henniford. I took time away from my schedule. You took time away from yours in Marlboro County. You indicated that you had sent the Bailiff or court personnel home, so Mr. Driggers could argue against my Motion to Exclude his witness. Well, it is my understanding Your Honor, that when you a hearing, and a party doesn't even show up, it has been my experience that the judge

almost always seeks --- That the Judge grants the relief sought. If you will recall, Mr. Driggers did not appear at that hearing. He said that he was busy in a deposition --- Too busy to attend this critical hearing in this case. I took time to show up. You were there. I think that is enough in and of itself, to exclude a witness. Your Honor, was decent enough, to given him a chance to argue, and we did that for an hour or so on the telephone. We argued this issue extensively. You reviewed the documents, and you made the correct decision.

The Court: Do you have a reply Mr. Driggers?

Mr. Driggers: Yes, Your Honor. Just a couple of points about what Mr. Corbin states.

The Court: Before you do that, let me ask you. Is the witness intended to testify on medical standards, or is it on credentialing?

Mr. Driggers: Your Honor, the discussion that Mr. Corbin has represented to you happened after the deposition was over. It happened as we were leaving Dr. Henniford's office. It is on the record, if you read Dr. Henniford's deposition, we are having this discussion while the deposition is taking place, and this is what I wrote to Mr. Corbin.

Dear Mr. Corbin:

I am defending credential

allegations against a hospital. If you are going to make allegations or try to present testimony or evidence about something else, I reserve my right to be able to defend that. But, as we are sitting here today, I don't have a medical malpractice case pending against my client. You have just alleged that they don't meet certain credentialing standards.

That is how we left it, and that is the deposition, and it went on. So, to say that I answered the questions, is to say I am still uncertain about what Daryl is going to prove and how he is going to prove it, and that is my response to that.

But, Your Honor, regardless of all that transpired during the course of the case, and about the hearing, Your Honor, I feel like I need to put on the record because it was brought up.

Number one, I did not truly have a clear understanding what was going to be discussed when any of these hearings or conferences that we had intermittently over the last month was scheduled. I got a call from either Mr. Corbin's office, or possibly your office trying to get

these things heard, which is understandable. We are coming up for trial. Do you have some free time on this week? I believe it was initially set for a Thursday initially in Marlboro County. Now, that was fine. Then I was given another call, again, I'm not sure by who, and I don't that it really matters, but can you move it back to another day that week, whatever day it ultimately happened on that Tuesday or Wednesday. I told again, whoever called, I have a Federal Court Ordered Deposition that morning, I will do everything I can to be there at 2:00 when it is scheduled, and I know we have had this discussion before, but I feel like I need to put it on the record. Unfortunately, what amounted to a tremendous misunderstanding on my part, or someone else's part, but I will say I should have gotten clear what was gotten clear what was going to be heard, and made clear the circumstances of my being able to be there, and I maybe did not do that as best as I could. But, that was not ignoring the Court setting a hearing, or something as grave as this. That was not a part of myself or the party at all.

The Court: Let me just stop you right there, so that our record will be complete.

Mr. Driggers: Yes, sir.

The Court: What actually happened there, and please understand that when I am somewhere else holding

court, I am tied up with the matters that are before me in that court, and I only offer to grant the hearing when lawyers are calling me, telling me it is needed. I had heard from both sides that there multiple issues that heeded to be resolved. I sat, a hearing and had my staff to call and tell both sides when that hearing would be. In order to accommodate the lawyers, I sent the jury home that afternoon, which is what eventually to caused a whole half of a day to be lost so that I could clear my schedule in order to set aside to hear these Motions, both Defense Motions and the Plaintiff Motions. I got back to the courtroom in Marlboro at 2:00 and had discovered that there had been a message from your office in Hartsville at about 1:20 and an email at about the same time to Mary Ashley my law clerk, advising that you could not attend, or would not attend, because you were in a deposition in a case, it was a Federal Case that was under a Scheduling Order. At that point I couldn't react to it. I simply walked out in the courtroom there, where Mr. Corbin was sitting there, and we simply lost the ability to have a hearing on the record, because of that, and that is the Court's view of what happened.

Mr. Driggers: And, Your Honor, I acknowledge that it was a misunderstanding. But, my point in saying that was, we were trying to set various times for these

issues to be heard during the month. Sometimes they worked and sometimes they didn't. If I had any understanding that you were clearing a courtroom, which I did not, it would have --- I would have done something differently. That is the explanation for that hearing not being had.

But, Your Honor, regardless of that, regardless of the timing of the hearing, regardless of what transpired prior to, I believe that South Carolina Law again requires for the exclusion of a witness number one be actual violation of a court order on that discovery of that witness, or at lest that is what has said repeatedly. And, number two, that the Court is required to go through, which is part of that, the jumper's factors, the five factors that must be looked at, which include the type of a witness, the content of the evidence emanating from the witness, the nature and failure and neglect to furnish a witness' name. The degree of surprise to a party, but prejudice this party. Our position is that simply was not done prior to the position to exclude the witness. So, our Motion to be Reconsidered is to ask the Court to go through those factors at a minimum, but ultimately to see that the law requires to be much more than what happened in this case.

The Court: Very good. Let's go into these factors, and I don't want to spend all of our time on this one issue. Mr. Corbin, let me come to you, sir. This is a

novel issue. It is obviously one highly contested. Your position is that Mr. Driggers, was playing hide the ball, and cat and house with you. That it was personally abusive of your schedule and your time. And, sitting that aside for a moment, let me ask you. What is the prejudice, what is the surprise and damage on the credentialing issue that you find in Dr. Henniford's deposition?

Mr. Corbin: Your Honor, the fact that the witness was not produced until extremely late, after almost two years of hiding him from me. When he finally did surface, he did not honor my subpoena to produce records, so I could not get prepared to depose him. I had to go up there cold. When I got there, he still couldn't produce records for me that were relevant to this case. I was blind sided. I still would not be in a position to get prepared for his trial testimony. There are lots of issues in this case that take a lot of time to get prepared for, and I just feel like I was blind sided. On purpose.

The Court: Let's say granting that agreeing with you, tell me what is in the deposition that changes the lay on the land in this case for which you are prejudiced, surprised, now and unable to respond to; and, again my thinking, the best way to resolve a lawsuit is get it all out on the table, let the jury hear it all, pro, con, whatever, and then let them make a decision. So, tell me

what it is in Dr. Henniford's deposition that you find volatile of that kind of theory of how to proceed in a lawsuit?

Mr. Corbin: Number one, he did not produce relevant records in this case. His publications, even he teaches this particular surgery. I asked him to produce for me the documents he uses to teach his students about this particular surgery, and he could not produce them.

Your Honor, they still haven't produced the stuff I think is relevant of Dr. Henniford, they still haven't done it.

The Court: Like what?

Mr. Corbin: Like for example his medical publications. I asked him to go through and ask me what was relevant. He did --- Say he did that, and I got that in the last couple of weeks or so, but since then I have found that there are other relevant records that he did not disclose. For example I found an article straight on point that he did not disclose that in my opinion hurts our case a bunch. Now, I don't think --

The Court: That hurts your case or their case?

Mr. Corbin: I think it hurts their case a bunch, but it hurt my ability, because I couldn't cross-examine him about it. I still don't think they have complied with the subpoena. I don't believe -- And, Your Honor, how could I

get back records that he has destroyed? How do I do that?

The Court: So what you are saying, is contained within those records may be something advantageous to you?

Mr. Corbin: Absolutely, absolutely.

The Court: What I am asking is a slightly differently position. Even realizing you may have lost some advantage by getting some material, what is in there, that damages you and prejudices you, that blind sided you, and you were unable to respond you?

Mr. Corbin: In terms of the documents that he produce or did not produce?

The Court: In terms of his testimony, deposition, what is it that hurts you, that he testified you that you feel blind sided or prejudiced by and unable to respond to?

Mr. Corbin: Your Honor, the biggest thing is, I think he had a duty to honor that subpoena, and produce the stuff before his deposition. He withheld that from me. The attorney instructed him not to give that to me, that was contentional conduct, I think in violation of a subpoena. He was instructed not to honor my subpoena, and he did not honor my subpoena. I was not prepared to ask him questions about his literature or relevant information that he knows and did not produce for me. They had a huge advantage, but by not disclosing the information under subpoena, and I

think that is why they did it.

The Court: Okay. All right. And, again, I am not arguing with you. I am granting you that argument. What I am saying is now that all of this smoke has cleared, and pushing that sort of personal umbrage out of the way, what is it that is in the deposition, in testimony now, in the record that damages you for which you claim prejudice, or blind side, what does he say to hurt you?

Mr. Corbin: Well, for one thing he says is he sits on the Board of SAGES, that publishes the National Guidelines about this surgery. I was unaware that he was going to say SAGES Guidelines be known. I think if I had had his teaching materials --- I think it was absolutely totally false statement that I could not respond to. I assumed when I got his C.V. and noticed that he sat on the Board of Directors of SAGES, which is the society that publishes the only society that publishes guidelines about Ms. Person's surgery, I assumed he would respect those guidelines. When I got there, he said they meant essentially nothing. That they hare not authoritative, they are not reliable, not even good. All he could say is, yeah, they are guidelines. That blind sided me, and I think if I had had his information and some of the stuff they sent me, in a few of the articles, then some of the articles I got later on, absolutely contradicted what he said.

The Court: All right.

Mr. Corbin: For example, one issue in this case is the learning case, Your Honor. In other words, when you do a surgery more times, you get better and better and make less and less mistakes. He denied that as a valid concept. That is now bad he got. He denied it, and said I don't like that term. You make it sound like Mr. Corbin like we experiment on patients, and I don't like that term. Well, his literature is filled with references to the learning curve. He cites learning curve stuff. And, I kinda wish he would have had the chance to have explored that further. In addition one article he did send to me in the last week or two talks about the learning curve that he did not disclose to me, which absolutely would have contradicted his testimony. So, yes I was blind sided. He was saying SAGES means nothing. I wish we would have had the articles to cross examine him on that. The medical issue is another whole issue itself. And, I felt taken advantage of.

The Court: Just one moment, gentlemen.

(Pause)

The Court: Mr. Corbin, do you believe that you have all of the information now, or are there still some articles, *Syllabi*, or whatever that might be out there that might be out there that maybe you do not yet have?

Mr. Corbin: I would be willing to state my life

on that.

The Court: What is missing?

Mr. Corbin: It is hard for me to qualify what is missing. I think there are lots of things that have still been hidden from me. And, I can spend hours and hours and hours searching, which I have done, because I did not give up, and I am pretty thorough. After he did not disclose something to me, I spent hours and hours researching until my eyes hurt. I can't get some stuff, but for example, I did find one that absolutely on purpose he hid from me. When I sent reference to Mr. Driggers I said, hey you sent me a few articles that in my opinion that are basically junk, but this article that I found in New Orleans, I can't get it, but the title says, it references an experienced surgeons hurting people doing this procedure. You don't think that is relevant? And, I still don't have that one. It was a gold metal paper somewhere in New Orleans. I am willing, I know there is stuff that has not been disclosed.

The Court: All right. This confronts the Court with a difficult decision. I believe, and Mr. Corbin, I think you have proven with your arguments that Mr. Driggers was less than forthcoming. I know that there were some explanations for how some of the things occurred, but it just does not appear there was a disclosure that needed to have been early on as there could have been. But, what

concerns me with the decision I made is, this is a novel case. This is the pivotal issue within the case. I stripped the defendant of this witness. It is definitely injurious of their case, and I am just not certain how it fits with the interest of justice, regardless of how concerned you may be about the conduct you perceived to have been inappropriate.

I am going to change my position. I am going to let the witness testify, however I will be glad to hear from you Mr. Corbin as to whether or not there needs to be certain information provided to you. And, whether or not there needs to be some limitation of issues, or some other relief that would be fair under the circumstances. I am simply trying to do what is fair.

Mr. Corbin: Your Honor, I understand.

The Court: And, trying to have a trial of fact that gives the full picture before they make a decision.

Mr. Corbin: Your Honor, I don't know how to correct some things. For example, after Your Honor made the decision to exclude, and I know Your Honor asked me do they have other people to that could testify to, and they listed seven or eight people, and, in fact, I went further and they can testify about the internal process, they can do whatever they want to do. But, at this point you know, when Your Honor indicated that, I have not sent my experts, Dr.

Henniford's deposition. One expert will testify in the morning. The next one the next day. It puts me in a grave disadvantage at this point to tell Ms. Voigt when I meet her tonight at 8:00, why you have to go through a five hour deposition until two or three in the morning, and then I want you to find me evidence to refute what Dr. Henniford said before 10:00 in the morning, I can't do that. With respect to Dr. DeMaria, who testified about credentialing and medical standards, he is a busy surgeon at Duke, and for me to tell him he is coming down tomorrow, and for me to tell oh, you need to spend five or six hours going through this deposition tonight, and give me proof to refute it, I can't do that. So, to me what they did served the purpose, and it worked.

You asked me what can I do to combat it? As I told Your Honor, it is not a money thing. I never asked for a dime, because money will not solve this. I don't see how --- And, Your Honor, could sanction Dr. Henniford and say you can't talk about the medical issues, and what kind of sanctions, is that, it is none.

The Court: But, ultimately doesn't whether or not a witness testimony is accepted by the jury --- I just think it rises and falls, with regard to the facts of the case, and the reasonableness of the expert's opinion. I know that you say that here again you are getting a double

injury, because now you have been stripped of your ability to have your experts research his position, and provide you with tact points.

Mr. Corbin: Big time, Your Honor, because they testified and reviewed it, but you know, why follow the rules, and I produced my people. I disclosed my people. They took depositions of my people, and gave it to theirs before I deposed them. I can't do the same. They can refute the best out of what my people said in deposition. I can't do that.

The Court: If I determine at the end of this that what has happened is just patently unfair to the plaintiff, and from observing the testimony, and what happened to Dr. Hanerford, then the Court still ultimately has the opportunity to correct it.

Mr. Corbin: May I still say one more thing?

The Court: Yes, sir, go ahead.

Mr. Corbin: I respect you as a judge, and as a human being. But, to tell me now in the midst of a trial, we are getting cranked up, I'm prepared, to tell me now oh by the way you have got to get prepared for Dr. Hanerford too, get your experts prepared for Dr. Hanerford too, and you have to get ready to do the stuff that I thought this case involved; is a huge disadvantage to me. Where is the consequence of the misconduct, nothing.

You know, I could have done the same thing, but I didn't. So, why should I be punished?

The Court: Counsel, do you want a continuance?

Mr. Corbin: If it won't give them an advantage. Your Honor, I think they filed a Motion for Continuance in this case to get around your order for one thing. They filed a Writ, I think, because they wanted to get around your order. Now they are around the order, and I am in the hot seat. You know, it has cost twenty or thirty thousand dollars to get prepared for this thing. I am abiding by the Court's notice giving us six or seven months. My people scheduled around your order. It might be tough to say you know Ms. Voigt, you came from St. Louis, you have got to go on back home, and we will have you come back the next time, and you will testify. Dr. DeMaria, you have cleared your schedule, but we are going to reschedule this. The next time you testify, and of course, I'll send you another $8,400. I don't know. Your Honor, I am perplexed. If you are going to let him testify, I would ask you to at least enforce the rules. I don't think there is no way in the world, even if you stretch as far as you can stretch that they comply with disclosure of Dr. Hanerford, about medical issues.

The Court: We will just have to meet in advance, it may have to be at night in parse through what the issues

are. I don't want to blind side you, but ultimately down the road, for whoever is reviewing this record, if that is ultimately what happens, it just seems to me to be the fairer review of the issue to put that out on the table, including Dr. Hanerford. One reason I feel this way, is that you have had this testimony in the deposition form already, so it is not like he can come out and totally shock you with something that is not yet heard, because it is already out there on the record.

Mr. Corbin: I did not mean to be flipped, Your Honor. But, if you are going to let him testify, I would assume Your Honor will put some sort of restriction on it, in fairness. And, my point was, when he said he wasn't prepared to testify about medical issues, when he sent those records, how in the world can the Court say he didn't even have the records, never sent the records, I couldn't ask him questions about it, but now let him testify about it? I would ask Your Honor to at least restrict him solely to credentialing issues.

The Court: I thought that was a given, because there are other physicians here, I assumed, who would testify about medical standards. Mr. Driggers told me a few minutes ago that this is a credentialing witness, and a credentialing case. So, I don't perceive medical standards will be an issue he will be testifying to; am I correct, Mr.

Driggers?

Mr. Driggers: Yes, sir.

Mr. Corbin: And, Your Honor, I would also prepare an order for you tonight for Your Honor to consider. I would like to at least restrict him that he cannot discuss anything about Ms. Person's medical care. He cannot render any opinions about her medical care, or her damages. He cannot render any opinions as to what caused her injuries medically. He has to solely discuss about his qualifications before he puts the blade to her.

The Court: Give me those factors again.

Mr. Corbin: I would ask that the Court not allow Dr. Hanerford to discuss any medical standards of care at all. In addition, I would ask the Court to disallow him from testifying about Ms. Person's medical care and treatment, or her damages. In other words, don't let him come in here and minimize her damages. In addition, I would ask the Court to not let him talk about the cost of her injuries.

The Court: Are you talking about proximate causes?

Mr. Corbin: Yes, sir. What caused her injuries, or anything about what Dr. Mincheff did. He can testify about what Dr. Mincheff did before her surgery. About when he put the blade to her belly, and it stops.

The Court: All right.

Mr. Corbin: In other words Your Honor, my expert will testify that Ms. Person's injury was due to the inexperience of Dr. Mincheff. I don't want Dr. Hanerford to go around any kind of sanction and say well I reviewed it, and I it does not have anything to do with his inexperience, and he is a great surgeon. I would ask for that restriction that he can't discuss anything about the medical issues, except strictly credentialing.

The Court: That seems fair to me, and let me consider that further. But are there other issues we need to move to? Tell me what else is on the plate out there? Mr. CORBIN, what issues do you have before the jury comes back at 3:00?

Mr. Corbin: Before three, I don't think so, Your Honor. We do have some other issues about your order disclosing information I still haven't got.

The Court: What else do we have?

Mr. Driggers: May it please the Court, we have a number of issues about references to HMA in this case. There have been attempts throughout discovery to differ, some the liability on behalf of the HMA. The HMA is not a party to this lawsuit. It is a stand-alone corporation. They rise or fall on the basis of their own actions. They are a separate legal entity. In South Carolina there are

no pleadings or anything else to talk about, corporate veils ---

The Court: So, HMA, are there any other issues?

Mr. Driggers: Yes, sir. Related to that had to do with any financial information regarding HMA, and any efforts to involve any shareholders with HMA. There is a shareholder who is a primary shareholder, and at one time counsel wrote a letter saying he wanted him here, and he was going to send some money to pay for him himself to be here, and that kind of evidence before the jury is completely irrelevant, and totally prejudicial. So, we would ask that the Court now allow any discussion, of any responsibility of HMA or shareholders, or anything of that nature. It certainly has nothing to do with this particular case.

The Court: All right. Any other issues?

Mr. Driggers: Yes, sir. We believe that punitive damages should be bifurcated. There is a case right on point. The Supreme Court says that it is in the discretion of the Court which we recognize, but it does in the same sentence say that it will be a good idea for that to be exercised in cases involving medical malpractice cases. And, oddly enough the same medical issue was before the Court when they decided --- When they wrote about it, it is the same operation, Nissen Fundoplication --- It is easy for me to say, but the same surgery was performed in that

case --- So, any evidence about that net worth of the client and things like that that comes only if the jury determines there was wilful, wonton behavior. We would ask that it be bifurcated.

The Court: All right, sir. Are there any other issues?

Mr. Driggers: Yes, sir. I want to advise the Court that we do believe that we have a set-off, and that set-off is a million dollars that was paid by Dr. Mincheff's insurance carrier. We believe that any payments paid by that carrier are also not fair game. That is not appropriate for introducing into evidence. And, the Court considers in the event there is a verdict in the case.

Additionally, Dr. DeMichele, a witness they plan to use, I have now attempted on three different occasions, and have deliveries to me on three separate occasions to get his records, I still do not have all of his records. Once more, he says in his deposition that he made a report in the last couple of weeks to Mr. Corbin, and I have not received that report. I just don't have any idea --- I need those records so that I can know what Dr. DeMichele has looked at, so I can know the basis of his opinions, and so I can know what his findings were, and I still have not had the complete records. We tried to depose him on Friday, and the Court reporter said that she would get those from him, and

deliver those to me. The ones that were delivered to me were very incomplete, and don't even contain the handwritten notes that Dr. DeMichele has in this case.

Also, Dr. DeMichele testified that certain damages he could not say were caused by the operative procedure done by Dr. Mincheff. So we will have Motions to exclude that testimony as to those things, by way of alerting the Court in advance that he could make a Limine Motion to save us having to arguing at the time. But she apparently has some trouble with some teeth. Those were not related to Dr. Mincheff's accident, so they shouldn't come in to talk about that level of damages. There was also --- Much of this ladies problems is she has an overlay of psychiatric problems in addition to physiological problems. And, Dr. DeMichele was unable to say what the difference --- quantify the difference between before this operation and after this operation. So basically on hold is his testimony is something to buttress her complaint, injury, that it is irrelevant, because he can't say it happened as a result of the incident itself.

The Court: Are there any other issues?

Mr. Sweeney: Yes sir, there are some pictures involved in this case. And those pictures are highly graphic. We would move to exclude those pictures. She really did have --- It is a bad situation in terms of what

the pictures show. I am not sure what the television set is there for. Certainly if the pictures were going to be put on the television screen, and all this kind of stuff, we object to that. I know this is a discretionary thing. It has to do with balancing prejudicial value. I guess the probative value, but there is plenty of case law that talks about having giant blow up pictures of bad injuries. That really is prejudicial. It is designed to tempt jurors not to follow the law, but instead follow their own compassions. I think that is it, and we appreciate the Court's indulgence. We thought that bringing this up to you now would actually make things go much smoother.

The Court: All right. Let me ask of you, Mr. Corbin. Do you intend to mention the previous million-dollar settlement in this case to the jury?

Mr. Corbin: No, sir. If you want to address that issue now, there is no case law that supports our position and I have done a Brief on it Your Honor.

The Court: Well that's all right. What I'm really trying to do is resolve what we need to do with the jury at 3:00, so that is not going to be an issue.

Mr. Corbin: No, sir.

The Court: What is your position on the bifurcation of punitive damages?

Mr. Corbin: Your Honor, I would rather do it at

one time, but I will follow the Court's instruction. I would rather try this case, get it done with, we just have one person, Dr. Wood, to talk about. The punitive damage aspect of it, and Your Honor, I really can't --- we can set aside the punitive damage aspect comes later, I really can't admit out my Credentialing Specialist will say they violated thirty-seven rules and regulations, that goes to actual damages and also punitive. My expert medical doctor, Dr. DeMaria from Duke will testify Dr. Mincheff committed malpractice, and there was no way in the world that Carolina Pines should have let him do it. That goes to punitive too, so I don't see how to restrict where I can't bring up anything that brings up the punitive value can do that.

The Court: All right. Mr. Sweeney, let me hear from you briefly in reply.

Mr. Sweeney: Sure, that was not the gist of my motion. I think he can bring up anything related to intentional, willful, wonton, reckless, those things that apply. What I wanted to exclude was part of the punitive damages review that has to do with the net worth of my company, and things of that nature. And provide a separate hearing in the event that the jury does conclude that there was reckless conduct. I think at the end of the trial if you ask the same questions that I'm used to hearing, it

will be, do you find the defendant was negligent, and then do you find they were reckless, willful, wonton, and if so, what is your verdict on the actual, and then there will be a hearing later on punitive.

The Court: When you say that are you talking about later in the day or some other time?

Mr. Sweeney: No, right after. We don't think Dr. Wood's testimony is competent, but assuming that it is that is when he would put in Dr. Wood. Actually, in terms of the Court's time and effort, I don't think it will make the thing go any faster to do it all together, quote, unquote. Simply because you might be excluding Dr. Wood. I don't think, we don't know whether the jury will conclude if they find, we don't know if they will come up with a defense verdict or a plaintiff's verdict. If they come up with a plaintiff's verdict, it is less likely that it will be to the standard of reckless, willful, wonton behavior. So we don't think it is necessary to hear all of the information in regard to net worth and so forth.

The Court: All right. Mr. Corbin, when do you plan to have Dr. Wood testify?

Mr. Corbin: Probably Wednesday afternoon or Thursday.

The Court: What is your position about, Mr. Sweeney saying financials only excluded and then have a

special interrogatory that would either lead to another hearing or if there is a stipulation of net worth, too simply at that point give it to the jury in paper document form?

Mr. Corbin: Your Honor, I would ask Your Honor not to do that. I would rather have the jury consider the issues all at one time. You can certainly give them appropriate instruction if you don't have actuals. No actuals, no punitive, no actuals, then you must consider whether or not the conduct was reckless. I would rather the jury do it at one time. If we break it up, Mr. Sweeney says it won't take any more time, I suspect we are looking at late Friday. And what do I do if I need --- when they bring up something in the punitive damages aspect of the trial, what do I do if I need somebody else to come back and testify. My witnesses are gone.

The Court: All right. Mr. Sweeney, I'm going to deny your Motion to Bifurcate for the following reasons.

Number One, this is Monday. The trial testimony is going to start on Tuesday. Friday is supposedly a holiday and I have a very bad feeling that there simply is not going to be time for us to lengthen this proceeding any at all.

Secondly, the plaintiff had to call Dr. Wood as a witness because it was the plaintiff's position that the

defendant was not forth coming with financial information and would not produce it in Discovery. Dr. Wood then hired and called for that reason to limit Dr. Wood once he had this procedure, had to be engaged in, I think it's somewhat unfair, but to put the plaintiff through the cost of bringing Dr. Wood back on another day to testify yet on another issue, I think it is not appropriate. So I will deny your Motion to Bifurcate. I don't find that there is sufficient prejudice here that would require bifurcation, and for these reasons, I'm going to deny your request. Now, the next issue is whether or not there is a reference to HMA, and Mr. Sweeney has already taken his position. What is your position, Mr. Corbin?

Mr. Corbin: I took the deposition of Mr. Castleberry, the CEO of Carolina Pines. Guess where he works, HMA. Every employee that works over there when I've deposed them I work for HMA, the CEO, the CFO, the COO. They don't work for Carolina Pines. They work for HMA. The Credentialing Specialist over there. She works for the HMA employer. Mr. Castleberry's deposition and that is why Dr. Wood is testifying about control issues. So everything that Dr. Wood asked me to ask him in the affirmative to show who in fact Carolina Pines is. It is our position that Carolina Pines is HMA. Mr. Castleberry testified they control on a daily basis, the billing, the finances. The

local hospital can't go to the bank and borrow a dime. It all goes through HMA. They control through the SEC filing, they indicate they control the patient care with their hospitals. They control everything over there.

The Court: Well counsel, why are they not named as a party?

Mr. Corbin: Well, this goes back again, Your Honor. I think this is something else, and I will be more wary next time. When I sent Interrogatories, does anybody else in the world have a financial interest or claim in this case, and their answer was no. They know better. They know who their client is. They know Mr. Castleberry even said HMA self-insured coverage insures his claim. There is no doubt in the world who Carolina Pines is. It is just a name that HMA uses.

Now to the point, Your Honor, and I've learned. I think Your Honor signed the Settlement recently where HMA itself in Florida paid for what Carolina Pines did, September 16, I think. I think it is almost to the point whether Your Honor, could take judicial notice that in fact it is HMA, the CEO, Mr. Castleberry says Carolina Pines is HMA.

The Court: Isn't that an issue of fact, Mr. Sweeney, for a jury to determine whether or not, for the evidence to determine whether or not HMA information comes

in?

Mr. Corbin: One more point, please.

The Court: Mr. Corbin, go ahead.

Mr. Corbin: When you look at Ms. Person's bill for this surgery where she was hurt, her bill came from Health Management Associates for $63,000.

The Court: Go ahead, Mr. Sweeney.

Mr. Sweeney: Actually, it is more than that, it is a due process argument. They are not party to this lawsuit. To involve them in this lawsuit in any way or point in terms of anything related to allegations against them in violation for their federal state due process rights. They are not named in the case, and Carolina Pines is a separate corporation that stands alone, the same as if you and I. I have had two or three corporations and I could still be the guy behind it, but they can only sue that corporation unless they name me as a party, and pierce the corporate veil, something like that. None of that has been done.

Mr. Corbin: It would have been better if they would have disclosed to me like it should have been done from the beginning. Their CEO talked about if they have a debt they cannot pay, HMA pays it. If they have a judgment they can't pay, HMA pays it. If they would have told me in the beginning that HMA owns this, and controls this, and

really HMA they would have been included, but I think the testimony from Dr. Wood that in his conclusion Carolina Pines is HMA is pretty impressive.

The Court: Just so our record will show, what is the financial worth of Carolina Pines?

Mr. Corbin: They wouldn't tell me. You know you ordered them, and you ordered them to give me stuff, they can't give me their tax returns, they can't give me financial statements. They gave me nada. I don't know.

Mr. Sweeney: He did not ask that question.

Mr. Driggers: Just to respond, he sat Mr. Castleberry down for the deposition that you ordered and Mr. Corbin took the opportunity to talk about HMA, and the relationship with the hospital. There was no questioning about what their income was, or net worth for Carolina Pines, because that was not his focus of questioning that day. So it wasn't given because it wasn't simply asked that day. We could find that and certainly Carolina Pines is a party and punitive Carolina Pines' financial information may be relevant to these questions, but that is why it is not correct what Mr. Corbin is saying, that we wouldn't tell him. That was not asked in Mr. Castleberry's deposition.

The Court: All right. For the purposes of opening argument, I will let you discuss HMA, but I cannot

tell you that the financials on HMA go to this jury. I am just not comfortable yet because I have not heard enough evidence. I've had people tell me what the evidence is, will be, or has been, but I haven't heard what goes to the jury, and I simply can't rule at this juncture. I will tell you, though, that HMA is not a party here and they do have certain due process rights, and this will be born out by the testimony. So in other words, do not put into your opening arguments what the financials are for HMA, simply because I don't know if we will get there or not. Simple, fair enough?

Mr. Corbin: Am I allowed to say that HMA owns and controls Carolina Pines?

The Court: You certainly may, but again, without giving financial information later considered on punitive damages, the Court will make a decision based on what the evidence is.

Mr. Corbin: Yes sir.

The Court: Again realizing even though you said that it may just be Carolina Pines information that goes into this jury.

Mr. Sweeney: Let me clarify that in terms of what we have to do. I generally don't like to interrupt anybody in their opening statement, but if you made that comment, I certainly have to defend my client and I have to

preserve my objections, so I have to ask that **The Court:**

A. Will, reserve my objection, and cover me on that so that subject, and any objection that I make that he refers to HMA that I don't have to interrupt, because I really don't want to have to if I don't have to?

The Court: My preference would be counsel that you object so that I will know that you believe something has been stated that is objectionable otherwise I will leave it open, and the record will never really show it. So if you wish to state your objections, the Court will rule at that time, but again, let's make sure we are on the same playing field whether or not HMA financials will get to this jury is yet to be determined. And they should not be provided or any discussion about their financials to the jury in the opening statement simply because that may not ultimately get to the jury. All right that leaves us the issues of Dr. DeMichele's records and I'm assuming that there is not a problem in providing whatever you have for Dr. DeMichele.

Mr. Corbin: No sir, and may I address that. He in fact disclosed Dr. DeMichele a couple years ago as a witness, and because I took the time to speak to Dr. DeMichele and they never have. I spoke to Dr. DeMichele and told Mr. Driggers you may want to depose him, but they disclosed him?

The Court: So what is your position about this?

Mr. Corbin: They have everything I have and Dr. DeMichele, I persuaded him to give his deposition. He was sick from his home. We sent the Court reporter, took his deposition by telephone because she didn't want to be around him. He has a virus. Mr. Sweeney took the deposition when he was sick at home, and I don't have any more records than he has.

The Court: So this report, was within the last couple of weeks and apparently was prepared just for you that Mr. Sweeney referred to, do you have such a document.

Mr. Corbin: No, sir. And the report he was talking about was, he said he was going to do some additional studies, and in fact he told Mr. Sweeney he didn't have the report back yet. Absolutely, I have never had that particular report, and don't know what the report will show.

The Court: Very good. The Court apparently has nothing further. I can address on that issue, Mr. Sweeney and I will deny request for further relief based on the argument I just heard from Mr. Corbin.

Now photographs. Do you have the pictures of which you complain, Mr. Sweeney?

Mr. Sweeney: Yes Sir.

The Court: All right. Let me take a look at

them please.

Mr. Corbin: Your Honor, these are photographs taken over a five-year period.

The Court: All right. While I'm thinking about it, let's go back to our argument about Dr. Hanerford, and you made a Motion where you set out the issues, Mr. Corbin, specifically complained about, let's make that Court's Exhibit 1, for whoever is reviewing whatever decision is made here.

Whereupon, Court's Exhibit Number 1 Was Marked Made a Part of the Record.

Mr. Corbin: Thank you Judge.

The Court: All right. Let me take a moment, and review 4-A through 4-J, which has just been handed to me.

(Pause)

The Court: Counsel do you intend to use these in your opening statements?

Mr. Corbin: Your Honor, I thought about using one, but I am not dead set to do that.

The Court: Well, let's do this just so we can be prepared for the jury. Can you pick the one you intend to use in the opening?

Mr. Corbin: Yes I can. It is 4-G Your Honor.

The Court: You have 4-G or do I have your copy?

Mr. Corbin: You have my copy.

The Court: Come take a look at 4-G. Mr. Sweeney, tell me what your position is with regard to 4-G.

Mr. Sweeney: Well I think picture 4-G is highly prejudicial. I think it is very inflammatory. It certainly does not represent her condition right now. This is about like right after the operation not long after the operation, and I don't --- I think the prejudicial value of a picture like this far outweighs the probative value. Other --

The Court: I'm sorry, go ahead.

Mr. Sweeney: I was fixing to say I don't know how he intends to introduce it, either through --- Show the picture, or if he is going to show something on the TV screen or something like that, but certainly the bigger the picture, the more media friendly the presentation the more I would be opposed to it.

The Court: All right. Clearly there hasn't been an agreement as to the exhibits.

Mr. Corbin: No, sir.

The Court: Counsel, if it is not in evidence, I will direct you not to show it to the jury in your opening. Now whether or not it comes in as evidence at a later time, well the Court will make that decision, but as far as it

being shown in opening, if it's not in agreement, I don't have a foundation, I don't know anything about the picture other than the fact that I see the picture. The Court will not allow you to use it.

Mr. Corbin: I understand.

The Court: It appears to me we have covered everything that we need to cover as far as opening arguments go. Is there anything further now from the plaintiff?

Mr. Sweeney: No, sir.

The Court: Anything from the defense?

Mr. Corbin: One other issue Your Honor. I don't think it pertains to openings, but we have been provided with some deposition transcripts that they intend to use during trial just today. And also intend to use some video depositions that we object to for a number of reasons. We may can, address these later. But, I did want to let the Court know that we do have those.

The Court: We will take an opportunity to look at those, if we need to stay this evening or at some other point, we will do that. Damages, the Court will not enter some preliminary rule on damages. As far as openings go, if the plaintiff wishes to state a certain position, then have at it, we will see whether or not the evidence supports whatever ultimate positions you take. The Court

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will now stand down until 3:00. The Court is in recess.

(Whereupon the Court takes a recess from 2:51 p.m. until 3:09 p.m.)

The Court: All right. Gentlemen and ladies, I am told that the jury is here. The Court has thought further about Dr. Hanerford, and I am going to allow him to testify, but I will grant the restrictions that are requested by Mr. Corbin, which is that he cannot testify about standards of care. He is a credentialing expert only. No testimony about Ms. Person's treatment or damages, and no testimony of proximate causation about what Dr. Mincheff did. I think that is fair.

Mr. Corbin: Thank you, Sir.

The Court: Yes sir. All right. Any response, from the defense. I'll let you place it on the record.

Mr. Sweeney: No sir, Your Honor.

The Court: Don't forget, we are going to mark Court's Exhibit 1, what you added to your Motion that you complained about on Dr. Mincheff for purposes of reviewing it before the end of the day. All right. I'm told the jury is here, please bring in the jury.

(Whereupon the jury enters the courtroom at 3:10 p.m.)

The Court: Ladies and gentlemen, I trust that you had a nice lengthy lunch and a pleasant afternoon. We

are now going to begin the trial of the case of Person vs. Carolina Pines and we are going to start this by you taking the oath as jurors in this specific case. Please follow our clerk's instructions.

(Whereupon, the jury was duly sworn at 3:12 p.m.)

Introduction by the Court

The Court: All right. And because all of our jurors are seated, then we know that everyone is appropriately sworn. Ladies and gentlemen, let me begin by talking with you, if I may, here at the beginning of the case and give you a few thoughts and comments about this process and some things that you will need to know here at the beginning of the case. I want to tell you, though, that these comments are not intended to supplant or take the place of a much more detailed charge on the law that I will give you at the end of the case. In fact the last person that you will here from before you retire to deliberate will be the Court giving you the detailed charge on the law, and then you will retire to deliberate. Now, again, just to make sure we are all on the same wave length. This is a term of civil court. No one goes to jail as a result of what happens here. That is the criminal court, but this is civil court. This is where to parties have a dispute or a disagreement between them, which is ultimately resolved by the jury. The plaintiff in

this case is seated closest to you and that is because the plaintiff has the burden of proof in this case, and that burden of proof is what we call by the greater weight of the evidence. I'll talk with you further about that at the final charge that I will give you at the end of the case. But again, one of the traditions in our court is that the parties seated closest to the jury is the party with the burden of proof. That is why the plaintiff will speak to you first an opening statement in a few moments, and will put up their testimony first, again because the plaintiff has the burden of proof.

Now, let's talk a little bit about this case. And I'm going to let the lawyers discuss with you in more detail in their opening statements what the allegations and the specifics of those allegations are, but what I want to talk with you about are some general things here at the beginning of the case. I want to say first, that I am the judge of the law in the courtroom meaning, that I am here to interpret the law, and explain the law to you, and be the presiding officer, but you are the judges of the facts. No one else in the courtroom other than you collectively will serve as the judges of the facts. Basically in a nutshell, what that means is that you will hear the testimony, you will decide what the facts are, you apply those facts to the law that I give you in greater detail in

my final charge to you, and from that is how we will reach a verdict in this case.

Now, let me just tell you in advance, that one of the things you are going to have to do in being the judges of the facts is, determine which of the witnesses are more credible and believable because sometimes in cases and I don't know what is going to happen here because just like you, I have not heard the evidence in the case. But sometimes in cases of this nature, we will have witnesses that will say things that seem to be inconsistent and sometimes witnesses will say things that are absolutely mutually exclusive. I'm not saying that someone is being dishonest with you; I think we've all had experiences in our lives where some event has occurred, people have observed it, you have heard different descriptions, and the descriptions will be so varied that you will wonder is this the same event that everyone is talking about, because people's perceptions are different. But I will tell you that in the event there is differing or inconsistent or mutually exclusive testimony, whether it comes from a lay witness or an expert witness in this case, you are going to have to decide which is the most believable and credible. And I will just tell you now, so you can think about this while you are listening to the evidence, you use what criteria you believe are appropriate in your everyday lives

and determinations as to what in your mind indicates credible and believable. Some of the things you may want to look to, though, are what is the demeanor of the witness when they testify. Is it hesitant? Is it straightforward? How did the witness come to know what it is they are testifying about? What was their ability to know what they are talking about? If it is an expert witness, what credentials and qualifications does that expert bring to the table? Is the witness' testimony consistent with itself? Is it strengthened or weakened by other evidence in the case? Finally, in light of the global evidence in the case as you determine that global evidence to be, how reasonable is what that witness is saying? And one other thing you might want to consider is, might a witness have a reason to help or hurt one side or the other in a case? Might that witness have a bias or prejudice? These are things you should be considering as you listen to the testimony in the case. Now, let me tell you how we are going to go forward. In just a moment, the lawyers are going to come before you with an opening statement. Opening statements is not some persuasive event really. What it is, is when the lawyers have an opportunity to come before you and tell you what they believe the evidence will or will not show you in the case. After the opening statements are concluded, and both sides have an

opportunity to open, and then the plaintiff calls their witnesses one after another. Every time the plaintiff calls a witness, that witness will be subject to direct examination by plaintiff's counsel and then cross-examination by defense counsel. After the plaintiff calls all their witnesses, then the plaintiff rests and we move to the defense side of the case. Then the same thing happens. The defense calls their witnesses, subject to direct examination by defense counsel and cross-examination by plaintiff's counsel. Then all the testimony closes. The lawyers come before you in closing statements, which is a persuasive and argumentative event. Then I will give you charge on the law, and you retire to deliberate. So just in a very shortened fashion, that is how we are going to proceed in this case. Now there are a couple of things I want to tell you as we get ready to start the opening statements and the testimony. We normally go about an hour and a half before we break during court proceedings, however, you are giving your time here and I don't want you to think somehow that you are pinned over there in the jury box. If you need to take a break before we reach an hour and a half, we can never stop right on the moment because it depends where we are in the testimony, what the status of the case is. Please, if you need to take a break before we reach a break point, raise your hand. I will understand

what that means; I will stop the proceedings immediately and we will take a break. For two reasons. Number one, I want you to be comfortable about what you are doing, because you are giving your time for this high civic duty and; Secondly, I don't want you worried about something else. I want you listening to the evidence and the testimony and deciding what the facts of the case are. Have your mind free of other problems. Those are the reasons for that.

Now, I also want to tell you that during the course of this trial, we operate on a system of rules, rules of civil procedure. And, there will be objections if one side or the other believes that the other side is either about to or is breaking the rules. Now, just like you, I don't know what the objections are before they come. I'm just sitting right here with you in the courtroom whenever they come. When I rule on an objection, I rule on it based on my training as a judge, my understanding of the law, both as a judge and my years of experience as an attorney, and I want you to understand that that is what the ruling is based on, but never do I make a ruling here in your presence in the courtroom to somehow send you a message about how I may feel about the facts. I don't have a position on the facts. If I did, I would be invading your province, I am a judge of the law, not the facts. The

facts are you province. So please take no inference from whatever rulings you may see me make here in the courtroom. And it may be from time to time that I might have to ask you to leave the courtroom while I resolve a matter of law that comes up in the form of an objection. Because just like when you are considering the facts, we won't be back there in the jury room with you, when we are considering matters of law, we may have to ask you to step from the courtroom.

Now, one other thing I want to tell you is that when the lawyers come before you in opening and then again in closing, what the lawyers tell you is their position either on what the evidence will be or in closing has been. Not what the evidence is. But what the lawyers tell you is not evidence in and of itself. The evidence is what the witnesses say and under sworn testimony subject to both direct and cross-examination, and whatever exhibits are put into the record during the course of the trial. Now any exhibits that come into evidence will be back with you when you retire too deliberate at the end of this case. But please understand that distinction, I'm not telling you lawyers are going to be dishonest with you; I'm simply saying they are advocates, they are here representing their clients, and what they say to you in opening and losing is not evidence, and it's up to you to determine what they say

in opening or closing is supported by the evidence, and that is your determination as the judges of the facts.

All right. Just one moment ladies and gentlemen. All right. That concludes the Court's introductory comments to you. I will tell you in advance, I look forward to working with you during the course of this trial. One other thing I did want to mention is if you wish to take notes, we will give you the opportunity, in fact, if someone wishes for a pad and paper then we will stop now and give you a pad and paper. I simply will say this to you about taking notes, two things.

Number one. Please be careful in being caught up in the taking of the notes that you don't somehow miss something that is going on, such as the nuance, the body language and other things that may be occurring around you that will help give you some insight into the case and;

Secondly, in deliberations, if you do take notes, please it would not be an appropriate use of your notes to say, well I remember ABC and this is what it was because this is what my notes say. The appropriate way to use notes, if you take notes, is to just refresh your own recollections so that you could then argue or deliberate during the course of your discussions in the jury room, that would be the appropriate use of your notes. Is there any member of the jury panel that would like to have pad

and pen? All right. Very good. Mr. Suggs do we have some available that we could do that? I did not tell them in advance we were going to do that, but let's see if we have some right here we can give to you. You are not required to take notes, but if you wish to we certainly want to make that available to you. Let me also say to you, if you do take notes, we are going to ask that you leave your notes here at the end of the day, and we will keep them safe for you, and then at the end of the trial, we will destroy the notes so that none remain, because the jury proceedings are secret. Is there anyone else? All right. Well, if you change your mind and decide that you feel like you need to take some notes, if you would let the bailiff know, we will make pen and paper available to you anytime during the course of the trial. All right. with that completed, the Court recognizes Mr. Corbin for plaintiff's opening statement.

Mr. Corbin: Thank you, Judge.

The Court: Yes sir.

Opening Statement by Mr. Corbin

Mr. Corbin: First of all I want to say I represent Ruthie Taylor Persons. Today the hospital is a locally owned facilities are gone. Lots of small hospitals these days are owned and operated by corporations in different places. Carolina Pines Regional Medical Center

is only controlled by a corporation with its primary office in Naples, Florida, which is called Health Management Associates, Inc. or HMA. HMA appoints or picks who the Chief Executive Officer of Carolina Pines is. HMA picks who the Chief Financial Officer is, the Chief Operations Officer its entity by the Naples Corporation. The Naples Corporation controls the day to day management and operations of Carolina Pines. Carolina Pines was a beautiful facility, a nice new building, lots of equipment inside of that building, bought and paid for by HMA. But you know, a building can be pretty on the outside, but sometimes horrible things happen inside.

During the next several days it is my duty to take you into the life, or the world of Ruthie, and I warn you, it is not a pleasant place to be.

What happens if a hospital does not properly evaluate surgeons who want to operate on patients? Carolina Pines owed Ms. Person a duty and a responsibility to properly evaluate the credentials and qualifications of her surgeon before they gave him permission to operate on her. A surgeon can do nothing at Carolina Pines unless the hospital gives him privileges or permission to do something.

If somebody owns a corporation and its operations and accepts money for those operations, if someone gets

hurt because the corporation did not do its job, do you think the corporation ought to step forward and say, we are not perfect, we tried our best, but we make a mistake, we accept responsibility for it. Isn't that the decent thing to do? Carolina Pines allowed Dr. Thomas Mincheff, you don't see him in the courtroom, yet, we hope to see him tomorrow, who was unqualified and inexperienced to do not a simple operation, but a complicated one on Ms. Person. An operation she really did not need to have anyway. Dr. Mincheff told Ms. Person, you have acid reflux, Gastroesophogeal Reflux Disease or GERDS, heartburn. I can surgically fix it. The operation is pretty simple. It is a sexy new kind of operation where you put four little holes in your stomach, sometimes five. It is called laparoscopic operations. Ms. Ruthie, no more do we have to slice down the middle and open up the belly the traditional way. Why don't you let me go ahead and do that for you. I'm experienced; I've gotten good results. I can make it better for you. Carolina Pines gave him permission to do it. Do you reckon he is qualified to do it? During Ms. Person's operation Dr. Mincheff put four or five tiny holes in her stomach. Her laparoscopic surgery is good, because if you have someone who knows how to do it, those little holes fill up pretty well and heal. You don't have the major incision. You're recovery time will be pretty

quick. You are out of the hospital in twenty-three hours or so. During that procedure, Dr. Mincheff very inexperienced, but given permission to do it by Carolina Pines went into Ms. Person's belly, and low and behold he encountered difficulties or complications. Whoops, he injured her pancreas, damaged the tail of it. My gosh, I sliced open her spleen in several places, three different sides. Didn't mean to perforate her, or punch a hole in her belly. You might have bowel troubles too, because I think I nicked that. Ms. Person almost died. If a surgeon knows what he is doing, he should lose about 50 cc's of blood or so. Dr. Mincheff at this operation at Carolina Pines, she lost about twenty times that much --- a little bleeding problem?

Ruthie's life now is the worst horror movie you can imagine. Ruthie is sitting in a wheel chair, she sees horrible things happening. She is so scared during that movie; she wants to get up and run, but she can't. She can't leave; she is never going to leave that theater. I've got to take you there during this trial, and I apologize, it is very graphic and troubled. Ms. Person can't control her bowels too well anymore, so you might have to see her leave the courtroom once in a while. She doesn't walk too well anymore, because when Ms. Person was transferred to Columbia where those doctors saved her life,

she had so much necrotic debris and tissue inside of her body from what happened to her at Carolina Pines. The doctors in Columbia had to scrape or cut away all the dead rotten meat. She developed what is called pancreatitis which is a horrible infection. Lots of people die from it. She got to Columbia after what they did to her at Carolina Pines in such bad condition, they had to induce a coma, because of her pain and suffering. They had to open her belly, do numerous operations to try and do what Dr. Mincheff had done at Carolina Pines. She had a few breathing problems; she couldn't breathe, they had to put her on a ventilator. She has some holes in her neck, where they had to cut holes in her neck so she could breathe; that is called a tracheotomy. Bless her heart, she did have for two years what is called a colostomy bag. No one ever wants a colostomy bag. She had one for two years because of what Carolina Pines let Dr. Mincheff do.

Well, how can a hospital really control what a doctor does there? That might be a defense you hear in this case from Carolina Pines. I don't think Carolina Pines will step forward or anyone from HMA will step forward and say, we made a mistake, Dr. Mincheff was not qualified, we shouldn't do it, we are responsible for it. What could HMA or Carolina Pines have done so Ruthie would not have been hurt? Hospitals have a powerful tool. It is

called credentialing and privileging of surgeons. In other words, the hospital has a duty to gather, verify and evaluate a doctor's education, training and most importantly, in this case, experience, to make certain that a doctor can do what he wants to do. In Miss Ruthie's case, which was an elective procedure, but he persuaded her to let him do it. Dr. Mincheff did the laparoscopic procedure. The hospital, before they let a doctor do the laparoscopic procedure must make certain that the doctor can also do the traditional or open procedure, because if a doctor gets in there during the fancy surgery and encounters complications like Dr. Mincheff did, then you have got to make certain he can do it the traditional way before you let him do it laparoscopically.

You will hear testimonies from expert witnesses in this case on behalf of both sides. Ms. Person has a Credentialing Specialist coming from Missouri who has the highest two certifications that the National Certification Society can give to anyone. Carolina Pines on the other hand, has a Credentialing Specialist who works for HMA at the hospital who doesn't even qualify to take the test to see if she could be certified. But you know what, Ms. Enoch and the hospital, you can see that Ms. Voigt, the expert with the highest certification the Nationals can award to somebody is more qualified than she is to tell you

what Dr. Mincheff qualifications should have been. Who are you going to believe? HMA's person who doesn't even qualify to take the test, who has done it for two years or Ms. Voigt, who is certified with the two highest designation one can receive.

Another expert witness in this case is Ms. Person's medical expert. Now if you will ask people if you really want to know the answer to a complicated medical question, and you want to get the most reliable source for that medical information, who would you ask, where would you go? And I suspect quite a few people would say The Medical University of South Carolina in Charleston, and a lot would say Duke University Medical Center in Durham, North Carolina. Dr. Mincheff, himself, might take the witness stand and testify to you that he was qualified to do Ms. Person's laparoscopic surgery, and qualified to do the open too. Dr. DeMichele will tell you he was not qualified to do the open procedure nor the laparoscopic procedure. Why? Dr. Mincheff, before he operated on Ms. Person, had not even done the open procedure for about nine years, but to Carolina Pines that is enough experience. Dr. Mincheff qualifications and experience to do the advanced laparoscopic procedure before Carolina Pines first let him do it in 1996, consisted of him going to a couple of one or two day courses at Duke where he would watch some

videos, listen to instructors teach him about it, and at the end of the day, they would let him operate on a pig. Yeah, he operated on two pigs. In 1996 he applied for privileges at Carolina Pines to do the laparoscopic procedure. I've operated on two pigs. Do you reckon Carolina Pines let him do it? Dr. Mincheff himself, either in person or through me reading his deposition to you if he doesn't come, admits that he took these short courses at Duke. His instructor warned him, you need to do twenty of these procedures, not by yourself, but with a qualified expert in doing these procedures before you do it. Did it make any difference to Carolina Pines?

Why is experience important for the hospital to know about Dr. Mincheff? How can you determine what the hospital should have done about Dr. Mincheff experience?

Number one is: Ask his instructor. We know what the instructor would have said, don't let him do it. Another source you can go to would be published or written national guidelines issued by the most prominent medical societies in the country about what your experience needs to be to safely do this procedure. That society is called SAGES, S-A-G-E-S the Society for American Gastrointestinal Esophageal Surgeons. SAGES published its written guidelines about the experience that you need to safely do this procedure in 1994, 1996, 1998. Those guidelines say

that before you do it on a human being by yourself after going to the short courses, you need to be Preceptored or proffered which means assisted by a real expert who actually participates in these surgeries, so an inexperienced doctor, if you have complications, he can step in and fix it. That is one purpose. The other purpose of requiring twenty supervised operations for inexperienced doctors like Dr. Mincheff is so that you can evaluate his competency. How can you evaluate whether or not a surgeon is qualified to do a surgery unless you see him do it? Carolina Pines did not have the benefit of abiding by the SAGES guidelines. Dr. Mincheff, if you believe, in his deposition that I took of him, said my experience before doing Ms. Person, I had done eight of the laparoscopic procedures before, she was patient number nine. Did Dr. Mincheff have any complication before Ms. Person? Well, there was a time when I perforated a man's stomach, poked a hole in it.

In this case, the Court allows attorneys to issue subpoenas to obtain documentation that is relevant for your consideration. I don't believe Dr. Mincheff even did eight and eight is horribly inaccurate. So I subpoenaed Carolina Pines to produce to me your records that prove how many times he has done it --- Not only the Operative Report, but also the Discharge Summary. Discharge Summaries wrap up

the case and tell you about complications. If the patient is transferred like Ms. Person to another facility that is in the discharge summary. We only have two or three. Another source that you can go to if you don't believe Dr. Mincheff's instructor, and you don't want to abide by the national published guidelines, you could hire and outside consulting firm that is a specialist in credentialing. There are some all over the country. Carolina Pines, in fact, uses one of the most prominent independent consulting firms in the country that is called the Greeley Company. And in fact, I think it is in Missouri, too. If you don't like what the instructor say, and you don't like what the national publication of SAGES about the guidelines reads, Carolina Pines did you get outside information from an expert. The local Credentialing Specialist for Carolina Pines, Ms. Enoch, either on the witness stand or maybe through a video deposition will admit to you that the Greeley Company has a written guideline, too. Carolina Pines had a seminar with Greeley and paid thousands of dollars for it.

Ms. Enoch, would you at least consider the information of Greeley to be advisable? Well I really can't say that.

Did you abide by Greeley's guidelines regarding Ms. Person's surgery? No. Greeley, their own consulting

outside firm, says you must do twenty-five. Now SAGES is the minimum, not the most rigid standards in the word. Their own consulting firm says you must do twenty-five supervised procedures before the hospital turns you loose. On top of that, did Greeley guidelines states if you do get the initial privilege to do it, you have got to maintain your current competency. In other words, you have got to do that procedure. You can't do it once every eight or nine years or a little bit. Greeley says you need to do it at least ten times every year to be qualified. It is either ten times every year or ten times every two years, but we will get that squared away. Was Dr. Mincheff qualified under the Greeley guidelines? No. Is Dr. Mincheff qualified under any written guidelines that we can show you so you can read it and gage what I am saying as truthful or not, any guidelines in the world is to support Carolina Pines position? No.

Ms. Voigt will testify that a Credentialing Specialist has a responsibility to read medical literature and journal articles to understand what is happening in the medical field. You don't assume a professional as a credentialing expert and be ignorant of what is in the literature. Ms. Voigt produced for us lots of journal articles talking about the learning curve for doing this procedure. What is a learning curve? A couple of ways to explain that.

Number one, imagine somebody who has a license to fly a little piper cub airplane. You don't turn him loose and put him behind the wheel of a passenger airline. Well he can fly can't he? You go through a process where your pilot is with you. He has his hands on the wheel, too. So as a student pilot is starting to mess-up, he can correct your mistake. As the flying gets more and more advanced, you have to go through advanced steps, more and more training and experience before he can do that. That is called a learning curve. In other words, the more you do the surgery, the less chance you will have a mistake. The less people will get hurt.

Another way to think about it is if they say, well, Dr. Mincheff was a surgeon, he is qualified to do it, is someone like a driver's license. You take your test, you do your studies, and the officer checks you out, rides with you and gives you a license to drive. Well, I don't want to drive a car. I want to drive an eighteen-wheeler. Drive one of those big rigs. I've got a driver's license; it doesn't work that way. You can't even drive a motorcycle with a driver's license.

The learning curve literature that Ms. Voigt will discuss with you is consistent. We are talking about articles that go back to 1990, 1994, all the way up to the current time. And if you do this particular laparoscopic

procedure, you must be a preceptor, somebody must assist you and you must do a lot before you do it on your own. Carolina Pines can produce nothing for you to read that supports their position. Carolina Pines will deny anything written that is authoritative. That is how far we are going in this case.

How has Ruthie's life been affected since Carolina Pines let Dr. Mincheff do the surgery? The most difficult part of the case that you will hear involves her injuries, and how the day in the life of Ruthie is. Ms. Person had some problems before Dr. Mincheff's surgery, and we are outright, honest, and open with you. He did not cause every problem in the world she has. Before the operation, Ms. Person had chronic fatigue, because she would get tired more easily than normal people would get. She had the acid reflux, and still has it after the surgery. She has a condition that is called capillary necrosis, which merely means that the cause of her genetic situation she has some damage to her kidney that does not require and never required dialysis. It is not a life-threatening condition. Ms. Person, also has what is called sickle cell trait. It means she is a carrier of sickle cell; it does not mean that she has full blown sickle cell disease which is bad. So if Carolina Pines tries to minimize her damages, we are laying that out for

you right now. How has her life changed? Ms. Person, when she got out of the hospital and she spent five days at Carolina Pines, and you will see during the testimony, information about sudden blood loses, and complications at Carolina Pines, but she was transferred to Palmetto Richland Memorial Hospital in Columbia, where those doctors saved her life. Ms. Person and her daughter Lori, will testify that the day that Dr. Mincheff transferred Ruthie to Columbia, he was partially honest with them and admitted during the surgery, I injured the tail of your pancreas, I caused some damage to your colon, I gave you pancreatitis. You might have to have your spleen taken out and you might have to have part of your pancreas taken out in Columbia. But he at least admitted that. He is not going to do it anymore. Ms. Person spent months in the Columbia hospital. The most troubling aspect of her treatment in Columbia involved the fact that they had to open Ms. Person's stomach, and the cause of all of the infection, and the damage to her internal organs that they had to clean out. When it came time to put her stomach back inside, they couldn't do it. They had to take Ruthie's stomach and take skin graphs off her legs and you will see those photographs, and put it over her stomach which had a gaping wound and cover it with a clear mesh to keep her intestines and stomach inside. Ms. Person had to live like that for

about twenty months with her stomach outside of her body. It is called an Incisional Hernia. You will hear testimony about it and see photographs of it. It is horrible. Every time they would try to put Ruthie's stomach back in the abdominal cavity, her lungs would shut down. She had a stroke and they could not do it. In 2003, a plastic surgeon in Columbia figured out a way to hold her stomach in. Because she had no stomach muscles, it was a gaping open wound. They decided the only way we could do this, because if we don't get it in she will die, is let's take the muscle out of her leg, starting around the hip and down through the groin and let's take that muscle all the way down to her knee, and actually remove it and wrap it around her stomach to hold it in. It worked as well as it could work, but now Ms. Ruthie has trouble walking. She doesn't need a wheel chair all the time, but if she has to sit for any length of time, or needs to go to the restroom any distance away, or go downstairs out to her vehicle, she needs a wheelchair.

At the conclusion of this case, if I have done my job well enough, and believe me, I take it seriously, I will ask you and I think you will award Ms. Person compensation for her unimaginable pain and suffering, disfigurement, instead of $10,000 in medical expenses they have $700,000. I am going to ask you, because of the

negligence of Carolina Pines, allowing an unqualified inexperienced surgeon operate on her to award her what you consider to be reasonable compensation for her pain and suffering, and disfigurement. That is one reason why we are here. That is all you can do for Ms. Ruthie.

Another thing that is very important to Ruthie and she has fought for four or five years now; she has thought about suicide. Her doctor will testify that she is disgusted with herself. She can't go on; she has no friends anymore. Even the grand babies are afraid of her. Especially when the stomach was exposed, she had thought about hurting herself. Ruthie has made it here, fighting the hospital and HMA, because she knows she will not be here a whole lot longer, but she wants to persuade you to help her. The only time in your life you can to save others so no one else at Carolina Pines or the sixty hospitals that HMA owns throughout the southeast and southwest or anybody in South Carolina will ever suffer like she has. Her time is almost finished. That is why she is here. Now you can make a lot of changes, not just in Darlington, or Hartsville, or South Carolina, but throughout the southeast. You have that power. All I can do and all Ruthie can do, is present the evidence to you and ask you to please do it. It would be nice if we could get compensation for Ruthie, but the second step is you

have got the power, and I think the responsibility to insure this does not happen to anybody else.

During this case, you will hear testimony from the witness stand, and you will also hear deposition testimony, and I just want to talk a little bit about some of the ways I will present evidence to you the best I know how.

Depositions are sworn statements that either side attorneys can take of the witness. I have deposed Mr. David Castleberry, the CEO employed by HMA that runs Carolina Pines. His deposition testimony is about two or three hours long. It is in a DVD format so you can watch the TV screen. Ms. Enoch's deposition testimony and I'm convinced when you see it, you will be shocked at the inexperience of the person charged with credentialing Carolina Pines, and how much the CEO and Ms. Enoch, who also works for HMA, spends their time protecting HMA. You need to protect the patients. I might have to publish certain parts of her medical records to you. The rules allow me publish Dr. Mincheff records, and I don't have to read them all to you, but we will put them on a screen and I will read to you. Back in 2001 when he did the surgery, he admitted then that he inadvertently caused a microgenic injury to Ms. Person's pancreas, medical mumble-jumble, I made a mistake, I did it, I am responsible. He has changed

his mind.

I appreciate your time this week. Believe me, my thoughts about the responsibilities I have involve every question that you want me to ask. If I can decide this case I would have done it a long time ago, but at the end of the case, the responsibility becomes yours. It doesn't matter what I want you to do or what I think about the facts in this case. The burden transfers from me to you. I know that you will pay attention in this case and make the right decision, and Ms. Ruthie and I just want to thank you.

The Court: Defense.

Mr. Sweeney: May it please the Court.

The Court: Sure, Mr. Sweeney.

Opening Statement by Mr. Sweeney

Mr. Sweeney: Good morning. It's easier to --- but good afternoon sounds kind of lawyery.

The Court: Mr. Sweeney, excuse me sir, you are facing away from our court reporter. Please speak up.

Mr. Sweeney: Let me reintroduce myself, I am Bill Sweeney and this is my law partner, Mark Driggers and his brother Vincent Driggers. I will mention that Vincent has just found out that he just passed the Bar exam, and so when y'all stood up to take the oath he was so anxious, I thought he was going to do it himself. We are proud to be

here on behalf of Carolina Pines Hospital. I say that because there are more than six hundred people who work there, men and women, who make up that company. A company is only a piece of paper in one sense, but it is more than that, it is the people, and that is six hundred of your friends and neighbors who work at Carolina Pines making it the kind of operation that it is. And it does have an impact on Darlington County because it is Darlington County's only hospital, and it is giving service to the people here. And the people, over six hundred and forty are trying to do the best that they can for the patients that come in to see them. And that is what Carolina Pines is all about. It is in Darlington County on purpose. It chose Darlington County because it is a non urban area, because it is an area where a hospital is needed. But a government is not going to be able to do that, and you will have to have a hospital come in and set up an operation that will serve people well. We believe that is what Carolina Pines Hospital has done.

I am glad the judge told you in the beginning there are two perspectives in every case and I am glad he also told you that the things that are said by the attorneys are not evidence, because you have heard, an awful lot so far. But you will hear from the witnesses in this case and you will have to decide from them what the

evidence is in the case. There are really two parts to this case that have to be proven by the plaintiff. That is a trial within a trial. Two questions, the first is this. Was the hospital derelict in its duties in authorizing Dr. Thomas Mincheff to perform the type of operation that he was doing at the time of this occurrence? Dr. Mincheff is not an employee of the hospital. He works for his own organization. He simply seeks a place in which to perform the operation, locally, for people that he seeks to serve, locally. And to do that he is privileged to work in a hospital he is credentialed in, and he is privileged to work here.

The second question that has to be answered is, did Dr. Mincheff fall below the generally accepted standard of care, in treating Ms. Person so negligently that he violated the standards of what a reasonable doctor would have done and injured her in the operation? Both of these things have to be proved for the hospital to be at fault. And the hospital is the only defendant in the case, not Dr. Mincheff. Let me mention to you the first issue and that is whether the hospital was negligent in permitting Dr. Mincheff to do the kind of operation that he did.

We think the evidence will be very clear on that point. The first part of that evidence is Dr. Mincheff, himself. Dr. Mincheff is a respected surgeon. He is not a

kid. He has a lot of experience. He is well regarded in the community. His peers, the other doctors who work at Darlington County and surrounding counties think a lot of Dr. Mincheff. He is highly respected; he is exactly the kind of person you would authorize to do this kind of operation. The second is that Dr. Mincheff is not only recognized locally, but he is recognized nationally. He is a fellow in the American College of Surgeons. He is board certified and always has been, which means that not only does he belong to the most prestigious organization in surgery, but that he must stand for exams and he must recertify with them all of the time, national organizations, not the hospital. So he is first well regarded by everyone with whom he works, everyone, every doctor in this community who knows him, who respects him.

Secondly, he is recognized nationally. So much so that he has even written articles that have been published in national publications, things that other doctors in other parts of this country read. So he is not some hack. Dr. Mincheff is a very fine physician, and he is Exhibit A, in this case.

Now additionally, Dr. Mincheff was not just chosen to do this operation by the hospital, Dr. Mincheff was selected to do this operation by Ms. Person herself. She asked him to do it. She was given a choice of doctors,

yet she asked him to do it. And the reason for that is not just because he is a good surgeon, the reason for that is because he is a caring person, because he cares about her. He called her Ruthie; he joked with her. He cared about this lady. She meant something to him. He meant something to her. She asked for him to do that operation. Now another reason Dr. Mincheff did that operation is that the doctor who found the condition that needed to be treated, which by the way was not just acid reflux, this woman had a life threatening condition. She had acid reflux all right, and it was in her lungs that was causing her pneumonia. It was eating away at the lining of her lungs. It is a potentially deathly illness and she was having what is called aspiration, which you will hear more about, but the doctors who discovered what was causing that, Dr. Barker, a local doctor, who was also well respected suggested Tom Mincheff to do the operation. So you begin with, Ms. Person herself requesting the operation from Tom Mincheff, and then you have Dr. Barker, her treating physician saying Dr. Mincheff is the guy. Actually, he gave her two choices, Dr. Mincheff or Dr. Harris, his partner and she chose Dr. Mincheff because she had confidence in him and because she knew he cared about her.

Finally, Dr. Mincheff wanted to do the operation himself. This is one he felt qualified to do. He wanted

to help Ms. Person, and he wanted to do the operation not because he is some gunslinger or something, but because he thought he could do her some good, because he thought he could help her because he knew what he was doing. Dr. Mincheff will tell you we think that he takes full responsibility himself with this operation and that is what he has said all along. He has not had to hide what has taken place, but he has done this operation before and he had done it without any significant complication. He was comfortable with it. Counsel said something about him operating on two pigs. Well, let me tell you something about that. His own Duke expert operated on two pigs also. And that was his experience. But like the Duke expert, Tom Mincheff also operated on other people as well, and also participated in all of the seminars, all of the other stuff that that same doctor did. His credentials, when he began were the same as this other doctor when he began. Once more, Dr. Mincheff did this operation at other locations as well, not just our hospital. So he had to be privileged at other hospitals in order to do it as well. So what do you have here? You have a situation where the lady wants him to do it, the doctor who referred wants him to do it, he wants to do it, he has the same experience as their Duke expert to do it. He has done it at other hospitals who have authorized him to do it. And that is hardly a

situation in which to deny somebody's privilege to perform an operation.

Now there is a process that a person has to go through in order to be privileged to do an operation. You don't do it each time you do the operation. What you do is you do it a certain time, and as the operation is coming, you are entitled to do it, and here is how the process works. In the first instance, the petition has to go to the Specialties Committee, that is, all the doctors in the area practice that that involves. And they have to approve the right to do that operation. If they don't, it stops right there. After that, it goes to the Credentialing Committee and that committee has to decide whether a person has the credentials in order to do that operation. And they have to make that decision based on what they know about the doctor, what they know about the operation, and other factors as well. If they don't, it stops right there. After the Credentialing Committee, it goes to a Medical Executive Committee and that committee is made up of chairmen of every hospital committee in the hospital. And they have to approve the person to perform this kind of operation as well. Finally, it goes to a board of directors and that board of directors has a number of doctors on that board. That board of directors then has to approve this person for having privileges to do this

operation, who is an outside doctor is permitted to come into the hospital and perform those kinds of operations. He's provided certain things from the hospital in order to do it, certain equipment, a room and things like that. And he is given the privilege of doing that himself. So one way or the other every one of these committees involved in this decision has to approve a doctor to do this kind of procedure and Dr. Mincheff was approved. Let me tell you something else about that approval process. It has to be unanimous.

So what do we have? We have a lady who requested the doctor. Her treating physician recommended the doctor. The doctor himself wanted to do the operation because he cared about her and wanted to help her. He had gone through a credentialing process involving every major committee in the hospital that did their best to look at his credentials to see if he was qualified to do the operation. And then he decided to do the operation. Now there is something important about this particular case and this particular alleged injury and that is this. The hospital did not approve this particular operation and approve Dr. Mincheff for doing similar operations, but he decides when to do the operation once he is given the credentialing privileges. Once he has privilege, he decides when to operate. You can't have every committee

meeting all these times, every time an operation is done. But, what you do is, you credential or privilege a person and they have a right to do it for a number of years and then those credentials are renewed. Each time Dr. Mincheff's were renewed and reviewed and he passed, unanimously. So Dr. Mincheff was not approved to do this operation; he is approved to do this type of operation. The hospital gives him the privilege to do it. They let him come into the facility. They provide the equipment and they provide the resources. The hospital had nothing to do with deciding whether this operation was necessary right now. That is done by the doctor. Whether it should be done or even acknowledge that it is done, that is done by the doctor who is privileged to do that. Dr. Mincheff is not an employee of the hospital, but he will tell you that the choices that were made were his choices and the only issue is whether he should be making those choices. I think that when you meet Tom Mincheff, you will decide that he should.

The hospital is only responsibility if they have one at all is in credentialing and privileging Dr. Mincheff to do operations that he has done for years and years and years in this community. Dr. Mincheff, by choice, serves Darlington County. He could go any place and get credentialed and privileged to do this operation. He chose

our location because that was convenient to him. It was convenient to Ms. Person. And it made sense to do it there. It was the location where the operation took place. He had been credentialed in other places long before he was credentialed with us.

The second part of the case is whether Dr. Mincheff made any mistakes at all in his treatment of Ms. Person but it is more than that because a doctor is not expected to be perfect. A doctor is not expected, not to make mistakes. He has a right to do that and we better hope he has a right to do that. We don't want doctors who are afraid to do anything. We want him to make his best judgment. What he has to do is he has to make a reasonable judgment. He has to make reasonable --- if he makes an unreasonable choice, then he is responsible for the injuries that he caused. Dr. Mincheff did not make any unreasonable choices. When operations occur there are complications that can result and unfortunately Ms. Person had one of those complications. I want to say this. We are sorry for Ms. Person. She is a real person who really got injured, but there is something more, and that is because the fact that Dr. Mincheff was getting authority to do an operation, Ms. Person didn't just have acid reflux before all of this event occurred. Ms. Person was totally disabled since 1991. The conditions that happened to her

as a result of these situations were two things. First, she had a disease called pancreatitis that showed up. Without the pancreatitis there wouldn't have been a problem. Unfortunately, pancreatitis is something that can just show up no matter how good the doctor is, and no matter what he does. Pancreatitis can show up under certain conditions and no one knows what causes it. No one knows why it's there. It's just there. That causes certain problems. Those problems were reasonably manageable when she was sent to Richland Memorial Hospital and there was some mention here about a bowel being damaged and nerve damage, and that took place at Richland Memorial Hospital. That wasn't done by Dr. Mincheff.

We have done our best to provide a medical service here that you can be safe in and proud of. We have done our best to pick quality people to serve a small community who will do the kind of job you want them to do. We have tried to provide a place where doctors like Dr. Mincheff can come, and do their operation, and accomplish for patients what they hope will happen. It doesn't always work out, but we are doing the best that we can. The process of approving Dr. Mincheff is an appropriate one. It was a proper one. He was qualified to do the operation. The operation itself unfortunately, did not turn out the way he would have liked or the way Ms. Person would have

liked, because there were complications that were beyond his control.

At the beginning of the case, the judge was talking about a grand jury and a Petit Jury using some Latin terms that he was talking about and there is one other Latin term that I would like to mention myself and that is the term veridicto. Veridicto is a Latin phrase that means: I speak the truth. From that word you get the English word, verdict. When you decide this case and you do speak the truth, I believe you will be satisfied that the hospital was not negligent. That they did not do anything wrong credentialing Dr. Mincheff to do the kind of surgery that he did. Thank you very much.

The Court: Counsel, let me get you to come up a moment and talk about scheduling please.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

The Court: All right. Ladies and gentlemen, we have reached probably the best stopping point for the day. We were not certain how long opening arguments would take, and also the first witness will run us beyond the 5:00 hour so we will stop for the day. Tomorrow we will have a full day though, and we will start at 9:00 in the morning. Now tomorrow is Election Day and of course, it is important

that each and every one of us exercise our option to vote. And I do not want the Court in any way to impede that. I wonder if we start at 9:00 tomorrow morning, will you be able to vote before you come? If we work from 9:00 until 5:00 tomorrow, will everyone have an opportunity to vote either before 9:00 when the polls open at 7:00 or after 5:00, between 5:00 and 7:00? Is that a problem for anyone? All right. Let's do this. Let's start at 9:00 and what I will ask you to do, as I discussed earlier today, when you go home and your loved ones say, what is the case about, and rather than discuss the facts with them, please tell them the judge has asked you not to do that. And again, here is the reason for that. Whatever decision you make should come from evidence which is subject to direct and cross-examination appropriate evidence here in the Court and not something said by a loved one who may be of extreme influence in your life, but who may not have the full understanding of the case because that little conversation, that snippet you are having, may not convey it to them. So please tell your loved ones you can discuss this fully with them, but only after the case is over and be back at 9:00 in the morning. Now just so we will know, will we have some coffee or donuts or any kind of refreshment for the jury in the morning?

Clerk of Court: Yes sir.

The Court: If you want to come a minute or two earlier and sip some coffee and have a donut with your friends or your new friends or perhaps some old friends on the jury, please do so and we will try to start promptly at 9:00 in the morning. Are there any questions from our jury about scheduling? Let me just tell you in advance, I will ask you in the morning if you have had a conversation with anyone about the facts of this case. I'll just tell you that in advance. Thank you for your compliance, in advance, with my request and we will see you tomorrow morning. Let's have everyone, remain where you are while our jury departs the courtroom. We will have pencil and pad in the morning for those of you who wish to have them.

(Whereupon the jury departs the courtroom at 4:26 p.m.)

The Court: Counsel will it help if we broke down for the day to give you an opportunity to mark exhibits. If anything can be agreed on, we could perhaps have some evidentiary agreements to speed this process. Or if there are some other issues I need to resolve, I will be glad to stay on and continue. What is your preference?

Mr. Corbin: As a matter of fact I would like to do that.

The Court: Okay, so we will stand down so you can do that. Is there anything from the Defense before we

break for the record for the day?

Mr. Driggers: There is one other thing I have to do, Your Honor. I need to make a copy, but there is an evidentiary matter that you needed to have in camera of some documents and maybe that is something we could do during the night, and let you take it or hear that now. I'd be happy to present it to the Court so we will know what we are talking about.

The Court: Can you make a copy, Mr. Clerk, so I can take the document with me, and we will come back and be ready to discuss it in the morning. Do I need to be here before nine, I will be glad to do so, but I don't want to start completely early as some of us are traveling and 9:00 is sufficient?

Mr. Corbin: May I raise one point, please?

The Court: Let me finish one thing on that. One thing I like to do with the jury is, treat them with the respect and dignity they are owed and when I tell them we will start at 9:00, we will start at 9:00. So, please if it is something I need to resolve, I will come before 9:00, but otherwise, we will start at 9:00.

Mr. Driggers: That matter with the in camera review will take fifteen or ten minutes.

The Court: Does it need to be resolved before we start tomorrow morning?

Mr. Driggers: I believe it might, depending upon who you are calling as your first witness. This will go to the Voigt's testimony.

Mr. Corbin: She will testify some time tomorrow.

Mr. Driggers: Okay, we need to resolve it before her testimony.

The Court: Is she first?

Mr. Corbin: She will be either first or second. And I wanted to raise an issue about that and I can do it after you decide on this.

The Court: All right. I will plan to be here tomorrow morning. We will probably be coming in here by 8:30. We will plan to go on the record fifteen minutes beforehand. Is there something else, we need to resolve?

Mr. Corbin: Your Honor, I would like to ask the Court to have no adverse effect of Dr. Hanerford's ruling that you made on Ms. Voigt. I do not want to have to ask her tonight to spend five hours until 2:00 or 3:00 in the morning reading Dr. Hanerford's deposition. I would ask, Your Honor, to consider restricted their cross where they can't ask her, did you review Dr. Hanerford's deposition. I just don't want them to use that as a sword against her.

The Court: May I ask that you all discuss that among yourselves that may be something that can be resolved

by agreement, if not, then I will be prepared to rule on that tomorrow morning, also, after arguments.

Mr. Sweeney: May it please the Court, may we get some idea of who the witnesses are tomorrow?

Mr. Corbin: It's going to be Ms. Voigt. It might be Dr. Mincheff. I would like to publish parts of their records, hospital records. I don't think that will be any evidentiary problem. Then it will be Ms. Person.

The Court: All right. I do believe that will take the day, what you've just given us.

Mr. Corbin: And I will also play the video deposition of Ms. Enoch.

Mr. Driggers: Your Honor, there is another Motion he brought to your attention, earlier. Ms. Enoch is available to testify. She was just deposed by video last week. There are objections all through it, and certainly wouldn't be in a format to present to the jury in our opinion, and once more, she can be here. She was made available to testify.

Mr. Sweeney: Your Honor, also this lady, was not a 30(b)(6) witness, she is just a witness. She is here; she can testify.

Mr. Driggers: Yes sir, that was my main point in that.

The Court: What say you after that; what right

do you have to publish that deposition?

Mr. Corbin: First of all under the rule, I think it is rule 37, I can use a deposition of any party for any reason that I choose to use it. She is the credentialing expert, specialist at the hospital. This case involves credentialing. I think that under that rule alone, I have a right to use it any way I want to.

Secondly, their issue about 30(b)(6), Your Honor, we went around about that and if you will recall I took Dr. Barker's deposition. He was supposed to be a 30(b)(6) person. He got there and said he wasn't. And Ms. Enoch is more knowledgeable than I am, and my understanding he did not produce her as a 30(b)(6) witness, but I don't think it makes any difference anyway.

Mr. Driggers: Rule 32 maybe 3, 32(a)(3) is the one referring to. The Court says you can use it for any purpose if the Court finds a witness that is of greater distance, unable to testify, the party offering the deposition is unable to procure the witness by in-person and conditions to that, and she is here.

Mr. Corbin: He is reading the wrong Rule.

The Court: I understand. Your position is she is a managing agent under 30(b)(6).

Mr. Corbin: Absolutely.

The Court: What authority was she, a managing

agent when she works in a position there at the hospital?

Mr. Corbin: She told me she is their Credentialing Specialist appointed by HMA for credentialing matters. She is --- Dr. Barker, who is Chief of Staff, identified her as the most knowledgeable person about credentialing matters at the hospital.

The Court: Do you intend to publish the entire deposition?

Mr. Corbin: Yes sir.

The Court: And what about the objections?

Mr. Corbin: Very few in there and they are objections of, for example: I ask her, do you as a Credentialing Specialist, do you read medical literature? Objection.

I don't think there is anything that would take any amount of time for Your Honor to rule tomorrow.

The Court: Is this before lunch or after lunch?

Mr. Corbin: Before lunch.

Mr. Sweeney: Your Honor, the only thing, this is about the equivalent of taking the head of maintenance, the maintenance director, and saying he is the spokesman for the hospital, and officer of record, because he manages maintenance and maybe that was because he trimmed the driveway.

The Court: Counsel, what prevents you from

using the deposition as a cross-examination tool? You've got the testimony.

Mr. Corbin: Your Honor, my intent is, and I think I have an absolute right to do that, to show the video tape deposition and let Ms. Enoch testify about the credentialing practices at Carolina Pines.

Mr. Driggers: Your Honor, I think that is unnecessary and will prolong the trial. It's already tight as it is.

The Court: I'm going to decline to let you do that Mr. Corbin. I don't believe she qualifies as a 30(b)(6) or managing agent, unless you can show me

Mr. Corbin: I will, and I would like the right to. I did not realize I had to pull that deposition testimony, but I will. We served the rule 30(b)(6) Deposition Notice on them. They produced Dr. Barker. Dr. Barker disavowed he is a 30(b)(6) witness, and agreed to produce Ms. Enoch. They filed a Motion to Quash when I tried to take it. Your Honor heard those arguments before. Let me take her testimony as a credentialing person.

The Court: Let's do this. We have had so much dissension today. I feel like we are probably maxed-out. I'm just thinking that perhaps we can probably take this up in the morning. Do you need to prepare this over the evening? Or is this something that can be taken up in the

morning?

Mr. Corbin: We can do it in the morning.

The Court: Let's do that. We will just start fresh again tomorrow morning. Please come in prepared with whatever. You have given me some argument, but I need to see some specifics of that, Mr. Corbin. Let's stand down for the day.

Gentlemen and ladies, again, I would ask you if you can look at some exhibits and agree. I realize, there are going to be some that there will be disagreement on, but if we can agree on some, let's go ahead and mark them and be prepared to treat them as if they are in evidence if there is agreement on them. All right. Is there anything further for the record?

Mr. Corbin: No, sir.

Mr. Driggers: No, sir.

The Court: The Court will stand down and be in recess until about 8:30 tomorrow morning.

(Whereupon, the first day of trial ends at 4:34 p.m. on Monday, November 6, 2006.)

(Whereupon, The Court comes to order at 8:35 a.m. on Tuesday, November 7, 2006.)

DAY TWO OF TRIAL

The Court: We've left some issues yesterday unresolved at the end of the day, and I said I would come back early.

One of these was a publication of a deposition by plaintiff, and the other were some photographs to be excluded that are prejudicial and the probative value. I don't know if there has been any discussions between the parties, or resolved on these issues. Is there anything resolved, Mr. Corbin?

Mr. Corbin: I do not believe they stipulated to any pictures, Your Honor.

The Court: All right. The first issue we have before us, is whether or not you can publish the deposition of, I believe, that is Ms. Enoch that you wish to publish?

Mr. Corbin: It is truth, Your Honor.

The Court: What further argument do you have on that this morning if any?

Mr. Corbin: Your Honor, may I inquire, first of all, and may make the argument much shorter. If the hospital does not believe that Ms. Enoch was the appropriate representative under rule 30(b)(6) Deposition Notice, stated they were to produce quote: The most

knowledgeable representative of defendant Carolina Pines to testify about credentialing and privileging matters. If it was not her who was it? May I ask that?

The Court: Well, before you do, my understanding that is in response to that they produced Dr. Barker. Dr. Barker took the stand and said it is not me.

Mr. Corbin: He says it is Ms. Enoch.

The Court: I understand. And then you deposed Ms. Enoch.

Mr. Corbin: Yes sir.

The Court: All right. Did you serve a (30(b)(6) Notice on Defendant, or on Ms. Enoch?

Mr. Corbin: I served a general 30(b)(6) Notice. They produced Dr. Barker. I took Dr. Barker's deposition. He identified who that person was, and then I took Ms. Enoch's deposition.

The Court: What is your response to that, do you have a response to counsel's question?

Mr. Driggers: Yes sir, Your Honor. First of all, Ms. Enoch's deposition was not taken in response to any 30(b)(6). It certainly could have been. That is the Rule they are trying to use to now play this deposition for the jury. Ms. Enoch, who was just named as a deponent. Sharmaine Enoch, by name and reproduced her --- She was deposed. That is the first objection we have, Your Honor,

is Rule 32, does not provide for this because of that fact. We are entitled like a lot of these issues been arguing about just to notice that is a possibility we were not provided with that notice prior to her deposition and had every opportunity to do that. Secondly Your Honor, we don't believe that it should be played to the Court at any time. Not this morning, because we have over a hundred objections during the deposition. We have close to thirty where we instructed her not to answer questions, Mr. Corbin is asking about privileged credentials, discussions with the committee that has been issued this whole case we have never had a ruling on. Mr. Corbin withdrew his request.

The Court: Let me get this right, you are instructing your witness not to answer in the deposition, counsel?

Mr. Driggers: Yes sir, for privileged reasons.

Mr. Corbin: Your Honor, and I do not mean to interrupt, we will skip those parts.

Mr. Driggers: It will take the rest of the day to go through her deposition, look at the objections we made that were not privileged materials, and take out the ones we had because like I said, outside of those there is another seventy where we have voiced objections.

The Court: Mr. Corbin, do you have a final comment? I will be glad to have an answer. I'll be glad

to give you final comment.

Mr. Corbin: Yes sir, Your Honor. Do I need to introduce Deposition Notices, and I'd like to also publish parts of depositions where when they were served the Rule 30(b)(6) Notice? They produced a person. They produced a wrong person who was the Chairman of the Department. I asked him, since you have been identified as a Rule 30(b)(6) witness according to my description are you the most knowledgeable person? He said, no it is not me, it is Ms. Enoch. I don't have, a better identification than that.

The Court: Let me look at that reference in the deposition, and let me look at your Notice, please.

(Pause)

Mr. Driggers: Your Honor, I would add Dr. Barker's deposition we have handed up the deposition, and I will give you the page number, but even his was taken pursuant to a personal notice. I sent a 30(b)(6) notice earlier, other depositions were taken and discoveries had, and it finally came time to take Dr. Barker's deposition. He was given notice for Gary Barker, so even that one wasn't taken pursuant to a 30(B)(6).

Mr. Corbin: Your Honor, I don't know mind reading the four or five different pages where the quotations are relevant. I don't mind doing that, or I

will hand up the deposition, Your Honor.

The Court: Let me just look at it please.

Mr. Corbin: That cites the pages and the line numbers.

The Court: All right. Thank you.

(Pause)

Mr. Corbin: There was a letter Mr. Driggers sent to me specifically identifying Dr. Barker as the Rule 30(b)(6) deponent, and that is why I took it, and Dr. Barker told me no it is not me, it's Ms. Enoch.

The Court: Just a moment, please.

(Pause)

The Court: All right. Anything further, now Mr. Corbin?

Mr. Corbin: No, sir.

The Court: All right. Counsel, I will respectfully not allow you to publish the witness' depositions in the fashion that you have proposed to do for several reasons.

Number one, we are in a short week with a long trial, and it's just not efficient to do it that way.

Secondly, I don't find that there is sufficient notice that this individual is a 30(b)(6) witness. What I see is Dr. Barker saying he thinks it is a secretary within that unit who is a credentialing person. The medical staff

secretary that he refers to in his deposition on page 10 on line 24 and 25, over on Page 11, there has not been some 30(b)(6) Notice served for Ms. Enoch, and for these reasons the Court will not allow you to publish her deposition as you propose to do.

Mr. Corbin: Your Honor, am at least entitled to know who that person would be?

The Court: Well --

Mr. Corbin: -- I deposed the people on the committee, they don't know much about anything. Dr. Barker doesn't know much about anything, being in charge for ten-years. And he said Ms. Enoch was the person I requested. I think I have a right to know who that person would be.

The Court: Counsel, if there is not such a person isn't that a factual issue for a jury to determine whether or not there is someone who knows about credentialing out there at the hospital?

Mr. Corbin: Well then I think I have a right to communicate that they didn't produce anybody according to that deposition notice.

The Court: All right. Mr. Driggers what is your position?

Mr. Driggers: Your Honor, we did produce Gary Barker. He did reference Ms. Enoch had additional knowledge in addition to his, but the confusion, Your

Honor, is confusion we will have throughout this case, and we will have to do our best to explain to the jury that when you say credentialing, some people believe you are talking about the whole process. Other people hear it and they hear the process of gathering the information that you present to the committee to be deposed. Dr. Barker is referencing that process. Ms. Enoch knows about the credentialing, but she is the one that gets all that stuff together. But as far as the whole process, Gary Barker is our designee. He is the Chief of Staff.

The Court: And by the same token, counsel, it would seem hard to believe that a secretary would be the expert on credentialing at the hospital. I don't mean to demean anyone in their position, but surely, that individual would not be making the credentialing decision. I would hope not. That it would be someone who is a qualified physician who looks into these matters and makes the decision.

Mr. Corbin: I know Your Honor, but when I deposed Dr. Barker, and while we might not believe him --- Okay --- But when I deposed him, he told me under oath that in fact the most knowledgeable person was Ms. Enoch. Now if Your Honor doesn't believe that, and I don't believe that, he believes it. Your Honor, after I took Dr. Barker's deposition, the stack that I gave to you, to me it

is cat and mouse again. I sent him another Deposition Notice for Rule 30(B)(6). Now, I don't have a right to know who that is?

The Court: All right. Counsel, I don't think I can go over and force them to tell you this. I just believe that is an issue for the jury. I believe that if there is not some person who comes forward that is the expert, well then again, I don't think that is something for this Court to make a rule that a person can testify and declare them to be the 30(b)(6) deponent, when the defendant's say they are not. These issues are really for the finders of fact to determine what if anything occurred in the credentialing process.

Mr. Corbin: So I know exactly what the hospital's position is so everybody understands it is their position, the correct person to depose would be Dr. Barker?

The Court: All right. Do you have a position?

Mr. Driggers: For the issue of credentialing and the whole process, yes. But again, those are things that will be cleared up in testimony as to what that word means to which people.

Mr. Corbin: Your Honor, for the record, I would like to hand up, after I took Dr. Barker's deposition he said he was not the right person under that Rule 30(b)(6) designation, and he swore to me under oath, it was Ms.

Enoch. I sent another deposition notice for a Rule 30(b)6) and deposed Ms. Enoch.

The Court: All right. But, again, counsel, I'm going to let you go into that with the jury, but I cannot let you, because I think it is a matter of fact, for the jury to hear, but I just simply on the ruling before me cannot allow you to publish the deposition of Ms. Enoch as if she is a 30(b)(6) witness and then call her to the stand, and for the reasons I stated previously. And if you wish to call her to the stand in your case, then that is up to you, but I could not let you publish the deposition. Your position is noted for the record. All right. Do you want us to mark what you just handed up as an Exhibit?

Mr. Corbin: I do.

The Court: That is Court's 2.

Mr. Corbin: And I would ask that Carolina Pines produce Ms. Enoch.

The Court: All right. Counsel.

Mr. Corbin: It will take us some time this morning to go through her testimony.

The Court: In other words, you intend to call her as a witness?

Mr. Corbin: Yes sir. It will be three or four hours.

Mr. Driggers: The subpoena notice I got said to

be on standby. Get in touch with her to get her over here and I did not know he intended to call her first up until he said that.

The Court: Very good.

Mr. Corbin: I don't have any subpoena issue.

The Court: Well, if you would just call her and ask her to come over, we'll do that. Now, let's go off the record while we mark this.

Whereupon, Court's Exhibit Number 2 Was Marked and Identified for the Record.

The Court: All right. Court's Number two is now marked.

Mr. Corbin: Your Honor, this is a letter that I wrote to you. This is the October 5, 2006, correspondence that I sent to you, attached to which were the exhibits that I asked you to consider during the motion hearing.

The Court: Mark that as Court's Number 1. Let me just look at that; that may be just one page. I am trying to pair the record as best we can.

Mr. Corbin: I don't recall having anything specific written, because you did not ask me until yesterday. What I want to cure the sanction besides --- I don't think I specifically asked for that in writing.

The Court: Let's go back to what we were just

talking about. It was my impression that you had attached to your Motion just an A, B, C, D listing of what you believed the defense had done to frustrate the naming of Dr. Hanerford, and the identification of Dr. Hanerford, is it set out in that way?

Mr. Corbin: No sir, I believe it is incorporated into that correspondence, and the documents are actually affixed to it.

The Court: Court's Exhibit 1. That entire package.

Whereupon, Court's Exhibit Number 1 Was Marked Identified for the Record.

The Court: All right. Now Mr. Corbin, what was it you just asked me a moment ago about something in writing? Were you referring to this document?

Mr. Corbin: You had asked me where was my listing of items, I asked you to consider yesterday when you changed your mind and indicated you would let Dr. Hanerford testify, and I asked you at least at that point in time to restrict him under the following things. I never asked you to do that before, because we discussed the exclusion, and you excluded Dr. Hanerford.

The Court: And, I stated on the record, it was

not placed in writing. His limitations which he will not be allowed to discuss, standards of care, no testimony on Ms. Person's treatment by Dr. Mincheff, or her damages, and no comment or testimony of approximate causation of what Dr. Mincheff did. Those are the limitations.

Mr. Corbin: Yes sir.

The Court: All right. No, what other issues -- - We have some photographs, I know, with prejudicial impact versus probative value. What other issues do I need to resolve this morning before we start with the testimony?

Mr. Corbin: I believe that is it.

The Court: From defense, Mr. Sweeney?

Mr. Sweeney: If I could get a clarification as far as this morning is concerned. Who are the witnesses this morning?

Mr. Corbin: It is going to be Ms. Enoch, Ms. Voigt, Ms. Person, and that will consume the day.

Mr. Sweeney: I think the only addition that I have --- I've just been handed today a list of her medical specialists in this case, and their needs. This is a medical malpractice case. There needs to be expert testimony if these are in fact incurred as a medical malpractice. So I will oppose introducing these into evidence, simply because I don't think Ms. Person is the proper person. She can't testify to that.

The Court: All right. What evidence do you have about the connection of special proximation?

Mr. Corbin: Proximal knowledge of Ms. Person, she had never had her belly open like that before. The operation at Carolina Pines. She's never had the troubles that she is having now before Dr. Mincheff operated on her. She is going to testify, Dr. Mincheff behind closed doors the day she was being transferred when she thought she was going to die, Dr. Mincheff said, this is what I did to you. I injured your pancreas, I sliced up your spleen, I injured your colon. You will have bad troubles when you get to Columbia and they will have to do lots of things to you. Cut part of your pancreas off and do other things. It is related to nothing else in the world.

The Court: Counsel response.

Mr. Sweeney: Simply that the medical specialists that resulted from this had to be tied into the medical malpractice itself, and to do that you required expert testimony and not somebody who just says, these are my bills.

The Court: Counsel, I will overrule your objection to this being placed into evidence. That really is a question of credibility for the jury and believability. There is some inference here that even a person of common knowledge may understand if something went

wrong and the person had to be transferred to another facility for treatment, post unfortunate event. In an initial surgery where that clearly would be connected, and I'm going to let those in, and let you argue that issue with the jury, if you believe it is inappropriately testified to.

Mr. Sweeney: Thank you.

The Court: Yes sir. All right. May I see the book of pictures that was handed up to me yesterday?

Mr. Corbin: Yes sir.

(Pause)

The Court: All right. Mr. Corbin. I am holding a book that has Exhibits Number 4, and it looks like A through Z and perhaps even beyond. When do you anticipate these coming in, is that through Ms. Person?

Mr. Corbin: Absolutely, Your Honor. Yes sir.

The Court: What I am going to do this morning is review these for prejudicial versus probative value for repetitiveness, and we will have an opportunity at some later point when we are off the record to rule and give you further comment at that time, if you wish.

Mr. Corbin: Your Honor, for the record, to accommodate the Court reporter, she asked me to number those serially and we have done that on the back. Photographs are 4-29.

The Court: I see. Four through twenty-nine, and the Court will review those tonight. We may have to, on the record on some of these, have you tell us exactly what you believe the probative value is, and exactly what you believe the prejudicial impact is Mr. Sweeney, but we will have to do that at a later time. I don't think we have time this morning right now to do that. Are there other issues I need to resolve before we begin, otherwise, we will stand down until 9:00, which is only moments away?

Mr. Driggers: I do have one, Your Honor. I addressed this with Mr. Corbin, yesterday and I haven't heard a response, but I have to bring it up. The expert witness, ours Dr. Todd Hanerford, the only day that we will have him at this point, he is in surgery actually in another state, Thursday, Friday and Wednesday. I have asked Mr. Corbin permission for him to be called out of turn, if that was necessary and Mr. Corbin said he will think that over. He is inclined not to consent to that, so he has not said he will consent to that. And so that is the only day, we have him, because the only day that he is here with the late notice and everything else that goes along with his testimony. So we ask the Court's permission to be able to call him on Wednesday. I actually think it is Mr. Corbin's advantage because probably before his surgical expert to be able to hear that testimony and

respond to it, but that is the position we are in.

The Court: What is your position, Mr. Corbin?

Mr. Corbin: Absolutely oppose it. My doctors have been busy, too. My doctors have cleared their schedules, too. I don't want them to interject into my case, affect the way I produce my evidence, because their witness is too busy. I absolutely oppose it.

The Court: Counsel, I would not require or force plaintiff to stop his case to put up your witness. I will allow you to call him. Of course, the reason he has late notice is, because of the difficulties as outlined yesterday in arguments in producing him and providing information about him, be forthcoming about him. I would not require Plaintiff to allow this witness to be called during the time of the Plaintiff's case. You will have to work that out with your expert.

Mr. Driggers: Would it be possible for us to ask permission to tape a deposition just for publication after hours tomorrow after Court is adjourned, and will publish his deposition?

Mr. Corbin: I absolutely oppose it. Your Honor, I have been shackled with your ruling at the start of the trial. I have not even read his initial five hour deposition. I did not believe I needed to read it. I had other things to do. I have got to read it probably

Wednesday night or Thursday. Absolutely, I oppose it. I have not had a chance to read his first deposition and I don't want to take time away from my case because they are ill-prepared to take his deposition.

The Court: I'm disinclined to do that simply because I'm allowing the witness and the witness is --- I realize everyone is busy, and he is just going to have to bend his schedule to our Court if he wishes to come and appear as a witness. So let me consider that further, but my initial response is that is unfair to the plaintiff at this juncture to rearrange his out of court schedule.

Mr. Driggers: I understand and again, Your Honor, it is not that he is even in his own office seeing patients, he is scheduled for surgical procedures out of state. That, I believe, is more than just an average hardship and I just wanted that to be clear, Your Honor.

The Court: By the same token, and I'm not arguing with you, but this morning right now I am supposed to be in an argument with Lawyers vs. Exxon Corporation on discovery of use and other issues, which have lawyers coming from all over the southeast. I cancelled it simply because of what we are confronted with here, so I would expect the same of your witness.

Mr. Driggers: I understand, Your Honor.

Mr. Sweeney: Sir, let me ask a question. Maybe

we can do it this way. If he cannot be here physically, maybe we could still take his telephone deposition, and do that at a time that is a little more convenient, and he would be --- assuming we move as quickly as we would like to. We need to get to him on Thursday, anyway. Maybe we could take his deposition during a break on Thursday and then publish it after that.

The Court: All right. Let me just consider that. Do you have a position on that Mr. Corbin?

Mr. Corbin: The same position. I have been shackled enough.

The Court: Very good. Gentlemen, let me think about that. Anything now further before we bring in the jury for the day? From the defendant?

Mr. Driggers: We had that one end camera, we set with Your Honor, the two page letter.

The Court: All right. Just one moment.

Mr. Driggers: I have another copy here.

The Court: Counsel, my law clerk went home to vote last night, into Horry County and she has that document with her. May I look at your copy?

Mr. Driggers: Certainly. What this is, is Ms. Voigt, one of the plaintiff's expert. There is discussion of events. Carolina Pines is accredited by JCAHO, a national accrediting corporation. There was some mention

of that accreditation in the year 2000, which is the one right before this incident. There were some issues in the bylaws which Ms. Voigt did not know the specific issue, but that she could implicate credentialing issues which are talked about here. All this is, is actual letters from JACO saying that the bylaw issue had nothing to do with her credentialing. It was about having a fair hearing procedures for nurse practitioners, and we just want to be able to use that to clear up that issue; so it is not just left up in the air. Mr. Corbin's position was that we produce that to the jury and that opens up all of the privileging file, which has nothing to do with Dr. Mincheff credentialing file, has nothing to do with credentialing at all, it is JCAHO.

The Court: With that understanding, let me review that this morning.

Mr. Corbin: Your Honor, may I please, gross hearsay. If they want to produce something from JACO, I would love to have someone from JACO get on that witness stand, so I can show them the relevant information in this case. Having them produce, hand select items that are clear hearsay that support their position and not be verified by the author of it, I just think is gross, gross hearsay.

The Court: All right. The objection is noted.

Is our jury here?

Clerk of Court: Missing Two.

The Court: Missing Two. All right. Just one moment. Let the record reflect while you were taping down a microphone, I had a discussion with Mr. Sweeney and advised all parties that I would not require the plaintiff to participate in some after court time deposition of Mr. Hanerford just to allow his testimony to be in the record. That is unfair given the magnitude of this case, and all of the issues simultaneously confronting both sides, and the pressure of the trial. But, that I would allow the witness to testify, but only in live fashion, and that ruling is told to him now so that he can, if possible, make arrangements with the witness to be here.

All right. We are waiting for I believe, perhaps one of our jurors to arrive.

(Pause)

Mr. Corbin: I would like to ask the Court's permission at the appropriate time to push her right in front of these steps.

The Court: Any objection to that? Hearing none then we will --

Mr. Driggers: I'm sorry, Your Honor.

The Court: The request was that Ms. Person, because there are two steps, and she obviously is in a

wheel chair to get from her seat to the witness stand that she just come right there, by the Court reporter stand and testify from there.

Mr. Sweeney: Oh no, that is fine, Your Honor.

The Court: Mr. Suggs, thank you, Mr. Sweeney. Is our sleeping juror here.

Clerk of Court: I will take a quick look.

The Court: Please figure out his name, please, thank you.

(Pause)

(Whereupon, a conversation took place between the Clerk of Court and the Court.)

The Court: Let's go on the record, here. Just a moment ago, I made a reference to the Clerk to ask if a sleeping juror was present yet? What happened yesterday and we were informed this morning, is that one of the jurors and possibly two felt that one of their colleagues on the jury, Mr. Donovan McLendon who is Juror Number 78, was resting yesterday and perhaps sleepy. The Court observed that. I could not tell whether, he did not appear to be in slumber; if he was sleepy, perhaps he was resting his eyes, and it appeared to me that his focus level was sufficient that I did not interrupt the proceedings to say anything about it. Mr. McLendon is not yet here this morning. It is 9:08. We were to start at 9:00. I would

propose to release him and seat an alternate juror. What says the plaintiff?

Mr. Corbin: Your Honor, I absolutely agree.

The Court: What says the defense?

Mr. Corbin: Let me ask you which alternate?

The Court: What is your position on which alternate should be chosen?

Mr. Sweeney: I think the first alternate, Your Honor.

The Court: Both sides agree, then, the first alternate.

Mr. Corbin: Your Honor, may I spend two minutes, and look to see?

The Court: You may.

(Pause)

Mr. Corbin: Your Honor, the juror being released, what was his name?

The Court: Juror Number 78, Mr. Donovan McLendon.

Mr. Corbin: Your Honor, if I have a preference, I would ask the Court to consider Alternate Number two.

The Court: Then that means we will have to stop and look at the Statute about alternate jurors. Just one moment, please.

(Pause)

Mr. Sweeney: May it, please the Court?

The Court: Yes, sir.

Mr. Sweeney: Sir, may I be excused for just a moment?

(Pause)

The Court: Yes you may. Counsel I'm looking in Title 14, Chapter 7 to determine the appropriate procedure when you have two alternate jurors, and you are faced with choosing one. Do you have access to these statutes, and you wish to look with me, please feel free to do so. Go ahead sir, if you wish to step out.

Mr. Sweeney: Yes, sir. Your Honor, thank you.

(Pause)

The Court: Counsel, I do not have any objection to leaving these two seated as alternates just unseat the one and then determine at some later point which of the two to be seated.

Mr. Corbin: I think that is a great solution.

The Court: I think we will go ahead and start. We will wait for Mr. Sweeney to come back. Please tell Mr. Driggers we are getting ready to start.

(Pause)

The Court: Are you ready? What we have decided to do is I am trying to determine the statute, but there is no reason for us to sit here and wait. I'm going to leave

the two alternates in the alternate seat and seat the appropriate one at the appropriate time when we make that determination.

Mr. Sweeney: Sir, other than that, we will be ready. The only thing we are waiting on is Ms. Enoch, and she is on her way.

The Court: Who is your first witness?

Mr. Corbin: We are going to show parts of Ms. Person's medical records in evidence. It should take less than ten minutes.

The Court: All right. any objection to that procedure, counsel?

Mr. Sweeney: If I could know what parts ---

The Court: Let me let y'all, off the record, have a discussion, while we get ready to start.

(Pause)

The Court: All right. Mr. Sweeney, you had something that you wanted.

Mr. Sweeney: Yes, Your Honor, I do, in regard to the documents and what is introduced into evidence. Those documents are fine when they are introduced to the witness who can I identify them and properly authenticate them and so forth. But, we would object to them simply being introduced into evidence.

Mr. Corbin: Your Honor, if I may. We spent

time after Your Honor left yesterday, after you left the courtroom, we were still here. We went over the exhibits and Mr. Driggers circled the exhibits to me which were no objections, introduced without objection including Carolina Pines medical records that they produced themselves. All we are going to do is publish short short parts of their own records to which they have no objection to the introduction of them.

The Court: Well, apparently your colleague has agreed to it Mr. Sweeney. Are you aware of that?

Mr. Sweeney: No I am not, really. I would have to ask him.

The Court: Where is Mr. Driggers?

Mr. Sweeney: Let me find him first, and we will clarify that.

The Court: All right. Let's do that, and if it's in agreement, fine, if not, we will just have to do it by the rules, but is there something that is going to come in anyway, it seems a little bit unnecessary to jump through the hoop, but if that's what the rules require, we will follow the rules if that is necessary. If you will check with Mr. Driggers about that.

Mr. Corbin: Your Honor, these are Dr. Mincheff's records, if they object to them Dr. Mincheff is under subpoena to be here, I don't see him in the

courtroom, but he is under subpoena to be here. I'd rather have a stipulation that I can use their own records, if not, I want Dr. Mincheff here under subpoena.

The Court: Mr. Driggers, is coming in behind you.

Mr. Driggers: Yes sir, Your Honor.

(Pause)

The Court: Mr. Sweeney, is there some clarification?

Mr. Sweeney: Yes sir, and there may be a medical thing. If it is, we are at fault, I apologize. We are just trying to help the Court out and move as expeditiously as possible. Dr. Mincheff is going to be called as a witness one way or another anyway in this case. We have agreed that the documents that he is talking about, we will not object to when and if they are introduced into evidence.

Mr. Driggers: What is asked Your Honor? Do we have to bring the Records Custodian here, Richland or other places to authenticate the records?

The Court: Very good. Mr. Corbin, I was not part of that discussion, but the rules would require you to have some foundation to let the record in, and I can't without an agreement. I can't just say, all right, bring it in.

Mr. Corbin: Okay. Your Honor, Dr. Mincheff, we can do this that way, he is under subpoena to be here at 9:00, he is not here, and I would like the Deputy Sheriff to go get him.

The Court: Gentlemen, please. I realize that this is a highly contested case, but my heavens, the tension in this courtroom is unnecessary.

Mr. Corbin: Your Honor, yesterday and they circled the documents, that they agreed would be introduced without objections, and I relied upon that, and now this morning, they changed their mind. Now, out of a precaution because I wanted to protect myself, I put Dr. Mincheff under subpoena to be here at 9:00 and now I can't get him unless Dr. Mincheff identifies them. If I have to do that, that is what I need to do.

The Court: Where is Dr. Mincheff? Do we know that?

Mr. Driggers: I can call and see. I guess he is at the hospital.

Mr. Sweeney: The only thing we need to know is who does he want to call as his next witness, and we will have that person available. If it's Ms. Enoch, we have her on her way. If it is Dr. Mincheff, we can call him and get him here.

Mr. Corbin: All I'm going to ask, Dr. Mincheff

to do is identify your four pages of record. Did you sign it? Are they truthful? And get him off the witness stand.

The Court: Do you need these for your expert to testify? Is this the reason we are doing this?

Mr. Corbin: The reason I am doing that is because I want to publish, to the jury, admissions of Dr. Mincheff that he injured Ms. Person's pancreas.

The Court: Okay. Go ahead.

Mr. Sweeney: It sounded like you were ready to rule, and I learned a long time ago you never --

The Court: That's Okay. Go ahead.

Mr. Sweeney: Well, it's just an issue of who the next witness is, and if it's Dr. Mincheff he can ask him whatever questions he wants to ask him, and we will ask him whatever questions on cross that we want to ask him.

The Court: Counsel, I'll summon Dr. Mincheff, I'm glad to do that, but I can't sit here and wait. I was here at 8:30, we started at 8:30, we start at 9:00, it is now 9:25. The jury is back in the back room, and I simply cannot delay anymore. I am going to call the jury out here, and I am going to start talking to them about the case, if we can't seem to get started with a witness. Who would be your alternate witness? Dr. Mincheff, even if I sent a deputy, it's probably twenty or thirty minutes away. What is next, who is next?

Mr. Corbin: It would be at that point Ms. Enoch, who is also under subpoena to be here at 9:00, and she is not here.

Mr. Driggers: She will be here any minute, Your Honor. Again, we got subpoenas and we talked yesterday to try to figure out who would be called when.

The Court: Well, you are --

Mr. Driggers: -- I think she will be here.

The Court: Your subpoenas said 9:00?

Mr. Corbin: Yes, sir.

The Court: Where are these people?

Mr. Driggers: Your Honor, she is here, they are. I tried to talk to Mr. Corbin yesterday afternoon about who he intended to call.

The Court: Mr. Driggers, are you controlling who comes in the courtroom when? And that is not your authority, sir.

Mr. Driggers: No. sir. That is Your Honors.

The Court: Well, where are these people?

Mr. Driggers: Your Honor, Ms. Enoch is here. She is in the building. She just told me she is walking in, so she is here. And I don't control --- I know where she works; she works for my client, so I can have some discretion with her. But again, she is here and we can start with Ms. Enoch.

The Court: All right. We will wait momentarily for her to come in then.

Mr. Sweeney: May it please the Court, the only thing that we need to know is, who does he want next and we will have that person here, and who does he want after that. That is not really a lot to ask for. That is all we are trying to do.

The Court: Mr. Corbin, I realize as Court is making various rulings, your witness numbering positions are changing, but if you could communicate with the other side it would sure help us all to be a little bit better to be ready.

Mr. Corbin: If I may for, the record.

The Court: Yes.

Mr. Corbin: I'm trying to do that. And I could not get a commitment that they would produce anybody for me in thirty minute notices. They told me that if I did not get them under subpoena, they could not guarantee they could be here. I hired a process server to spend the weekend to hunt these doctors down, to find Dr. Mincheff and he was actually served and instructed under the subpoena to be here today. Ms. Enoch was the same way. I went to the next necessary step because I could get no cooperation that they would produce these people when I needed them. I said if you will agree to produce them,

we'll put them on telephone standby to make it easy for everybody. I could not get that commitment, so I had to hire a process server, a private process server, and find them and serve them and they dishonored the subpoenas.

Mr. Sweeney: May it please the Court, your question to counsel was simply who is the next witness, so that we can have that person available so we can do those same things? I didn't hear a response that it helps us to comply.

The Court: I believe the response in that was that his first is Ms. Enoch and if his second witness was Dr. Mincheff, and if so, we will let them summon him. If I need to send a deputy, we will bring him.

Mr. Corbin: For the purpose, I would like Dr. Mincheff here this morning. And why I wanted to publish these first off; that's the way I want to try this case. He was under subpoena to be here. If they don't stipulate that I can publish parts of their own records, I would have Dr. Mincheff come here and just ask him, are these your records, yes they are, and get him off the witness stand and then publish it.

The Court: Then to save Dr. Mincheff the embarrassment of a deputy coming to take him into custody, Mr. Driggers may I ask that you call Dr. Mincheff to come on over to the courtroom?

Mr. Driggers: Yes, Your Honor. I will call whomever I can to get him here, at the hospital.

The Court: Thank you, and Ms. Enoch is present? Mr. Driggers, is this Ms. Enoch?

Mr. Driggers: This is Ms. Enoch.

The Court: Welcome to the courtroom. All right. Ms. Enoch, ma'am, let me speak with you directly. I am told that you had a subpoena to be here at 9:00 this morning. Is that correct?

Ms. Enoch: No sir, I wasn't told to be here at 9:00.

The Court: Did you have a subpoena a piece of paper served on you to be here?

Ms. Enoch: No, sir.

The Court: All right. How did you know to be here today?

Ms. Enoch: I was told that I probably would be called.

The Court: By whom?

Ms. Enoch: Mr. Driggers.

The Court: All right. So you don't have some subpoena, or some document that tells you to be here at 9:00 this morning?

Ms. Enoch: No, sir.

The Court: All right.

Mr. Corbin: Your Honor, if I may please. Mr. Driggers did accept her subpoena to have her here at 9:00. He wouldn't accept the doctors, but she did in fact have a subpoena accepted through Mr. Driggers to be here at 9:00.

The Court: All right. You never got that piece of paper, Ma'am?

Ms. Enoch: No, sir.

The Court: All right. Very good. Please bring in the jury.

(Whereupon, the jury enters the courtroom at 9:29 a.m.)

The Court: All right. Welcome back to the courtroom. Thank you for your patience this morning. I asked you to be here at 9:00. And you were here at 9:00, and it is now 9:30. There were some matters that the Court had to resolve that took longer than expected, and I appreciate your patience, and your forbearance with us, and I don't want you to think we were in here twiddling our thumbs while you were sitting back there waiting.

Let me first ask you if there is any member of the jury panel who has had any discussion about the facts of this case with anyone or have been contacted by anyone concerning this case? If that applies to you, please raise your hand. Let's let the record reflect that no one has raised their hands, and I appreciate your compliance with

the Court's request. I do not think that somebody would be contacting you, but if they did, I would certainly want to know that.

One of your jurors, Mr. Donovan McLendon, is not with you this morning. Mr. Donovan McLendon did not report for jury duty and we are going to remove him as a juror, and one of our alternates will be seated later this morning in the place of Mr. McLendon. I will tell you that so you will be aware of that. One of your colleagues is not present today.

You will also recall at the end of the day yesterday, we had concluded opening statements. We are now ready for the plaintiff to begin presentation of plaintiff's witnesses. Mr. Corbin, please call your first witness.

Mr. Corbin: At this time, we call Ms. Enoch, the Credentialing Specialist of Carolina Pines to the witness stand.

The Court: While she comes forward, let's take a moment, and we are going to swear the witness in, but before you testify we are going to make sure if there are any other jurors who want pads they will be provided for them.

Sharmaine Enoch

Being Duly Sworn Testifies as Follows

Clerk of Court: If you will have a seat up there for me, please.

The Court: Ma'am, please say your full name into the microphone, if you would so that we can hear you.

Ms. Enoch: Sharmaine Enoch.

The Court: Good thank you. If you wish to pull your seat a little closer you are welcome to. Now are there any other jurors who would like to have pads and pencils this morning.

All right. If you decide, if you wish, we are not keeping them from you, we will make them available to you.

Mr. Corbin, you may proceed.

Mr. Corbin: Thank you judge.

Direct Examination by Mr. Corbin

Q. Good morning Ms. Enoch.

A. Good Morning.

Q. I took your deposition a week or so ago, correct?

A. Yes.

Q. What is your position at Carolina Pines?

A. I am a Medical Staff Coordinator.

Q. For whom do you work?

A. Carolina Pines.

Q. Have you ever told me you work for HMA?

A. Oh yes, HMA owns Carolina Pines, sorry.

Q. So you work for HMA, correct?

A. Yes.

Q. HMA is that corporation out of Florida that owns the hospital, right?

A. Yes.

Q. What is a credentialing staff specialist?

A. It is a person that processes application for practitioners.

Q. What is credentialing?

A. The process of confirming a practitioner's credentials and privileges.

Q. Ms. Enoch, would you agree that the most important tool Carolina Pines has, is to protect patients from unqualified surgeons, is credentialing?

Mr. Driggers: Object to the form, Your Honor, it is argumentative.

The Court: All right. Restate your question again, counsel.

Q. (By Mr. Corbin) Would you agree, Ms. Enoch, that the most important tool Carolina Pines has --

Mr. Driggers: Object to the form, Your Honor. I think Mr. Corbin is asking her as a spokesman for the hospital. He has not identified her as a spokesman for the hospital. She is simply in the position she just stated.

The Court: All right. Gentlemen, let's do

this. When there is an objection, if you would just state the objection and rather than having a speaking objection, give me one or two words and I will understand what the objection is.

Mr. Driggers: Yes, sir, Your Honor.

The Court: Do you have a response, one or two word response, counsel?

Mr. Corbin: As a specialist, I asked her what the hospital is suppose to do.

The Court: I'm going to overrule your objection at this point. You may proceed.

Mr. Corbin: Thank you, Your Honor.

Q. (By Mr. Corbin) Ms. Enoch, would you agree that credentialing is the most important tool a hospital has to protect patients from unqualified surgeons?

A. It is an important tool.

Q. Anything more important?

A. Not that I can think of, sir.

Q. So if a hospital does not do credentialing correctly and use its tool, patients can be hurt by unqualified surgeons, right?

A. Can you repeat the question, please?

Q. If a hospital does not do its job properly regarding credentialing, if it does not use its tool to protect patients from unqualified surgeons, a patient could be

hurt, right?

A. Yes.

Q. If a hospital, lets a surgeon, without enough experience to do complicated laparoscopic surgery, his patient could be hurt, right?

A. Yes.

Q. Are you an expert in credentialing?

A. I have knowledge about credentialing.

Q. Ma'am, the question was, do you consider yourself to be an expert?

A. It is difficult for me to answer. I have knowledge about credentialing.

The Court: Ma'am, I know you are a little closed there, but can you pull a little bit closer to that microphone, or speak up a little more loudly. The acoustics are not the best in the courtroom.

Ms. Enoch: Okay.

The Court: Thank you.

Q. (By Mr. Corbin) Ms. Enoch would it be fair to say nobody in the world knows how much experience and knowledge you have about credentialing better than you? You know that information, don't you?

A. Yes, sir.

Q. Can you testify based upon the information that you know, in your knowledge and experience, do you

consider yourself to be an expert in credentialing?

A. I have knowledge about credentialing, sir.

Q. Do you have enough knowledge to be an expert?

A. I'm not really sure what you mean by an expert.

Q. Are you certified by any organization anywhere in the country involving credentialing to be a specialist?

A. I am not certified, no.

Q. Is certification any big deal?

A. It is important, yes sir.

Q. In fact, certification shows you have the training, education and experience, in fact, to be an expert, right?

A. Yes, sir. Certification shows that you passed a test, yes.

Q. You do belong to the National Certification Organization, don't you?

A. Yes. I am a member.

Q. NAMSS, what does that stand for, please?

A. National Association of Medical Staff Services.

Q. Would you at least agree that NAMSS is the best credentialing organization or group in the country?

A. Could you repeat that, I do not understand what you are saying, the best?

Q. Do you know of any more prominent group than NAMSS about credentialing?

A. NAMSS, is an organization, yes.
Q. Do you know of any more prominent organization than NAMSS involving credentialing?
A. No, sir.
Q. Okay. Would you agree that information of NAMSS as a Credentialing Specialist would be reasonably reliable?
A. It is reliable, yes.
Q. Is NAMSS a good source of credentialing information?
A. It is a good source, yes.
Q. Do you know of a better one?
A. It is difficult for me to say what is better. I know of other organizations --- SCAMSS, the South Carolina Association of Medical Staff Services, that is an organization. But to say something is better, I am unable to answer that.
Q. SCNAMSS, is affiliated with NAMSS, correct?
A. Yes.
Q. Okay. NAMSS is the national organization, SCNAMSS is the South Carolina organization, correct?
A. Yes.
Q. Ms. Enoch, isn't it true that your inexperience level absolutely prevents you from NAMSS even letting you take a test to see if in fact you would qualify to be certified, correct?
A. Repeat that question, sir.

Q. Your inexperience level prevents you, from letting NAMSS even give you a test to see if you would be certified as an expert, correct?

A. You don't qualify for the test unless you have had experience for three years. You are not qualified.

Q. And you don't qualify, do you?

A. I have not been doing it for three years, no.

Q. Do you qualify?

A. No.

Q. So if the national organization says that you would not even qualify to take the certification test, correct?

A. Yes.

Q. Because you are inexperienced right?

A. Because I don't have three years of experience.

Q. Okay. NAMSS does issue certifications involving experts in credentialing, correct?

A. Repeat that question, sir.

Q. NAMSS does issue certifications that people are experts in credentialing, correct?

A. When you pass the test, you get certified, yes, when you pass the test.

Q. Do you know what those certifications are?

A. Yes.

Q. What are they please?

A. Credentials Providers Specialist, excuse me. Certified Provider Credentials Specialist and Certified Professional Medical Staff Management.

Q. You have neither one of those certifications, correct?

A. No sir, I do not qualify, yet.

Q. You reviewed the deposition, affidavit and medical information that Ms. Laura Voigt, the expert of Ms. Person gave to you, did you?

A. I read that, yes sir.

Q. Ms. Voigt is actually in the courtroom, and can you tell the jury what her qualifications are through NAMSS?

A. She is certified according to what I read, sir.

Q. She has one or both of those certifications as an expert?

A. I believe she has both of them.

Q. Does she have more experience than you?

A. I am not sure.

Q. Would you at least concede, Ms. Enoch, to this jury, that Ms. Voigt who has the two highest certifications of the organization, and you are not qualified to even take the test, that she is more qualified than you about credentialing?

A. She passed the test because she qualified for the

test. It is difficult for me to answer that question, sir. The highest is a degree, they do offer a degree at NAMSS.

Q. You don't have that either?

A. No. I do have a bachelor's degree in management.

Q. Does that have anything in the world to do with medical staff credentialing?

A. It has a lot to do with management, yes.

Q. Does it have anything to do with medical credentialing?

A. It has something to do with my job as a Medical Staff Coordinator. That is a management position, sir.

Q. Does it have anything to do with your ability to assess whether or not a physician has the qualifications to safely do surgery?

Mr. Driggers: Object to the form. Irrelevant.

The Court: Overruled.

A. (Ms. Enoch) Repeat the question.

Q. You told me in your deposition that your degree had nothing to do with your job; do you recall that?

A. I said it had nothing to do with my job?

Q. Credentialing, yes Ma'am.

A. It is a business degree in management. No, it does not have anything to do with the credentialing.

Q. So we can take that degree out of the equation,

right?

A. I'm sorry, sir.

Q. We can take your management degree out of the equation involving your qualifications to credential physicians, correct?

A. No, sir.

Q. Okay. We will keep it in. Now, when you reviewed the medical literature Ms. Voigt provided to you, had you ever read those journal articles or guidelines before?

A. No.

Q. Those medical articles and guidelines specifically involve what Dr. Mincheff did to Ms. Person, right?

A. Yes.

Q. But you've never read those articles, correct?

A. No.

Q. Were those articles important to you when you read them in determining whether or not Dr. Mincheff was qualified?

Mr. Driggers: Objection Your Honor, she has not testified that she determined Dr. Mincheff is qualified.

The Court: I will sustain that, go ahead. You'll have to lay a foundation for that.

Mr. Corbin: Yes, sir.

Q. (By Mr. Corbin) Was Dr. Mincheff qualified under credentialing standards to safely do Ms. Person's

surgery.

A. It is difficult for me to answer that. Repeat that, sir.

Q. Are you going to testify that Dr. Mincheff on April 25, 2001 when he operated on Ms. Person with a Laparoscopic Nissen Fundoplication Procedure and had to convert to the open procedure was qualified to do that surgery?

Mr. Driggers: Objection, Your Honor. I believe she testified she didn't even work at Carolina Pines until two years ago.

The Court: All right.

Mr. Driggers: How can she even know what happened in 2001 is my question?

The Court: I understand, counsel. Do you have a response for that?

A. I wasn't there in 2001.

The Court: Actually, I'm asking Mr. Corbin.

Mr. Corbin: She has reviewed the entire credentialing records of Dr. Mincheff back to 1996 to current.

The Court: All right. With the understanding that the witness was not employed there at the time, I will allow you to ask questions whether you believe, if that is your question, that he was qualified.

The objection is sustained to that extent. You may proceed.

Q. (By Mr. Corbin) In 2001 when Dr. Mincheff operated on Ms. Person, he attempted the Laparoscopic Nissen Procedure. He encountered complications and converted to the open procedure. Can you tell this jury he was qualified to do it?

A. It is difficult for me to answer that question. That information is to a different area. It is a process. I can't say if he was or was not qualified.

Q. So it's fair enough you don't know if he is qualified, correct?

A. In 2001, I wasn't sure, no, sir.

Q. Is he qualified today?

A. Is he qualified? I don't understand your question.

Q. You said in 2001 you did not work there, but now you are in charge of the credentialing process. Can you tell this jury today if he is even qualified to do these surgeries?

A. I don't make that decision, sir.

Q. The literature that Ms. Voigt provided to you about this operation, did you find it useful to you?

A. I'm sorry, useful, in what way, sir?

Q. Being a Credentialing Specialist, was it useful to you?

A. All I did was read her deposition. I do not understand what do you mean by useful, sir.

Q. The exhibit that we are talking about would be Number 37 which, Your Honor, has been stipulated to be introduced into evidence without objection.

Mr. Driggers: Your Honor, we discussed earlier that it has been authenticated. I guess Ms. Enoch can look at that to see if she recognizes it, but --

The Court: Apparently there is not an agreement counsel, you will have to ask the witness to identify the exhibit.

Mr. Corbin: Ms. Enoch, you testified that Ms. Voigt had gathered some documents for you to review and in fact, you read her deposition into the document. Can you look at that packet and agree that is Ms. Voigt's document that she sent to you through a deposition?

A. I have not seen this before, sir, if you are talking about this entire book.

Q. What articles did you review that Ms. Voigt provided to Carolina Pines?

A. In her deposition that were small highlights of different articles, but I never read a book.

Q. Can you look at that document and tell us what articles you actually did read?

(Pause)

A. I believe the first article was in there or part of it, not the entire. I think this is about seven pages --- just some highlights from this, was in the deposition. Some parts of article two, this is all I can recall reading.

Q. Okay, at least you recall reading documents that Ms. Voigt provided from a national medical organization called SAGES, correct?

A. Yes sir.

Q. Would you consider SAGES to be a reliable source of information about the surgery Carolina Pines let Dr. Mincheff do?

A. It is a reliable source.

Q. Anything more reliable?

A. We have a credentialing of clinical white papers; I am familiar with that.

Q. Do you believe the white paper is more authoritative or reliable than SAGES?

A. It is difficult for me to say what is more authoritative. They are all resources.

Q. Can you the jury what SAGES is, please?

A. It is a Society of American Gastroendoscopy, I'm sorry, it is a Society of American Gastroendoscopy Surgeons.

Q. Is it a society of American Gastrointestinal and

Endoscopic Surgeons?

A. Okay, if you say so.

Q. Have you ever read their information before about Dr. Mincheff's type of surgery?

A. No sir, not prior to this.

Q. Had you ever read any literature about Dr. Mincheff's surgery that he did on Ms. Person?

Mr. Driggers: Your Honor, I need to voice objection and ask that we approach the bench.

The Court: All right. Counsel, you may approach.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

The Court: Please go back and restate your question, Mr. Corbin, and before you answer, Ma'am, let me make a response to that. Go ahead, Mr. Corbin.

Mr. Corbin: Ms. Enoch, I believe my question was, before you read the information Ms. Voigt provided to you, did you have or had you ever read medical journal articles like these before?

The Court: All right. Now, just a moment, is there an objection to that question?

Mr. Driggers: Your Honor. No sir, Your Honor.

The Court: All right. Very good, you may

answer, Ma'am.

A. (Ms. Sharmaine Enoch) Okay, you said had I read articles before, sir?

Q. (By Mr. Corbin) Articles like the ones Ms. Voigt provided you?

A. Yes sir.

Q. The reason you read the articles like Ms. Voigt provided to you is because you have a duty as a Credentialing Specialist to be familiar with medical literature, correct?

A. Repeat the question, sir.

Q. The reason you have read articles like the one Ms. Voigt provided to you is, because as a medical Credentialing Specialist you have a duty to be familiar with literature, correct?

A. I gather literature for guidance, yes sir.

Q. Do you have a duty?

A. A duty? Yes sir.

Q. The SAGES guideline involving Dr. Mincheff's surgery, he did not qualify to that guideline, did he?

A. I don't understand what you mean.

Q. You said you read the SAGES guideline.

A. I said that I read some of the information that Ms. Voigt sent in her deposition.

Q. Ms. Voigt indicated that Dr. Mincheff did not meet

SAGES Guideline, correct?

A. Okay.

Q. Correct?

A. Yes.

Q. Do you have any other opinion as to whether or not Dr. Mincheff was even qualified from 1996 until the present under SAGES guidelines?

Mr. Driggers: I am going to object again as being irrelevant. This is not part of her job to determine opinions on physicians. She gathers information --

The Court: -- Speaking, counsel, the objection is irrelevance. Just a moment. You are asking from the time of 1996 to present date?

Mr. Corbin: Yes, sir, I can restrict it. I can break it down a couple of parts.

The Court: I going to sustain it to the issue of whether or not, during her time of employment, she would be qualified.

Mr. Corbin: Yes, sir.

Q. (By Mr. Corbin) Ms. Enoch, would you agree that if the SAGES guidelines were followed at Carolina Pines, ever since the day you got there, Dr. Mincheff would not qualify to do Ms. Person's surgery, agree?

Mr. Driggers: Objection again, Your Honor. That is not her job to determine who is qualified to do

what physicians --- It's not relevant.

Mr. Corbin: -- Under the literature --

The Court: -- Excuse me, so your one word objection, then is relevance?

Mr. Driggers: Yes sir.

The Court: All right. Thank you then for objecting relevance. That would be the appropriate objection.

Counsel, let me get you to come back up if you would please. Just a moment, ladies and gentlemen of the jury.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

The Court: Counsel, please come back.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

The Court: Ladies and gentlemen, counsel wishes to discuss a matter outside of your presence, and I will grant them that opportunity. It's not that we are keeping things from you, but it is a matter of law. But before we do that, let me describe to you the procedure on how we choose our alternate juror. By statute they are not just chosen from among the two in the order in which they are