

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2014-001031
Case No. 2009-CP-19-0276

Cecelia Jackson, PR of the
Estate of William Peterson

Appellant

v.

Edgefield Medical Clinic or
Edgefield Medical Clinic, P.A.,

Respondent.

RECORD ON APPEAL (VOLUME 1)

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MAR 02 2015

SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)
)
Cecelia Jackson, as PR of Estate)
of William Peterson,)
)
Plaintiff,)
)
vs.)
)
Edgefield Medical Clinic, P.A.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-19-0276

VERDICT

FILED @ 2:00 pm
March 20 2014
Shirley F. Newby C.C.C.P.

FILED
20
C.C.C.P.
EDGEFIELD COUNTY
SHIRLEY F. NEWBY

We, the Jury, unanimously find for the Plaintiff against the Defendant, Edgefield Medical
Clinic, P.A. in the amount of: \$ 27,086

Shirley F. Newby
Foreperson

Date: 3/20/14

-OR-

We, the Jury, unanimously find for the Defendant.

Foreperson

Date: _____

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC

Shirley F. Newby
SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, S.C.C.P.
3-2014
DATED

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

FORM 4
EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY
JUDGMENT IN A CIVIL CASE
CASE NO. 2009- CP-19-0276

-2-

2014 APR 14 AM 11:00
Cecelia Jackson, PR of the Estate of William Peterson
Edgefield Medical Clinic or Edgefield Medical Clinic, PA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion for New Trial Nisi or Additur, New Trial Under Thirteenth Juror Doctrine, or New Trial Under SCRPC 59(a) is DENIED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

0136

Judge Code

Date

4/10/14

-3-

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS FOR

THE 11TH JUDICIAL CIRCUIT

Case No.: 2009-CP-19-00276

CECELIA JACKSON, a Personal Representative of)
the ESTATE OF WILLIAM PETERSON, Deceased)
for the benefit of his heirs at law WILLIAM)
PETERSON, JR., MARY RUTH PETERSON,)
MILDRED PETERSON, RAYMOND PETERSON,)
HATTIE ASHLEY, CELIA JACKSON AND)
PATRICIA PETERSON, MELINDA BUTLER,)

Plaintiffs,

vs.

TRINITY MISSION HEALTH AND REHAB OF)
EDGEFIELD, L.P., n/k/a Trinity Mission Health)
and Rehab of Edgefield, LLC; TAMI MASSEY,)
M.D., GEORGE RAINSFORD, M.D., ELEANOR)
LEAPHART, M.D. and BENJAMIN NICHOLSON,)
M.D., d/b/a EDGEFIELD MEDICAL CLINIC)
and/or EDGEFIELD MEDICAL CLINIC, P.A.)

Defendants.

SUMMONS
(Survival – S.C. Code Ann.
Sec. 15-5-90, et seq.)

TO THE DEFENDANTS ABOVE-NAMED AND THEIR LEGAL REPRESENTATIVES:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, the original of which will be filed with the Clerk of Court for Beaufort County, South Carolina, and to serve a copy of your Answer to the said Complaint on the subscriber(s) at P.O. Drawer 5706, Hilton Head Island, South Carolina 29938, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

(SIGNATURE ON FOLLOWING PAGE)

RUTH, MACNEILLE & KNUDSEN, P.A.

By: 

Douglas W. MacNeille, Esq.
Attorney for the Plaintiffs

P.O. Drawer 5706
Hilton Head Island, SC 29938
(843) 785-4251

Hilton Head Island, SC
August 26, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
COUNTY OF EDGEFIELD) THE 11TH JUDICIAL CIRCUIT

Case No.: 2009-CP-19- 00276

CECELIA JACKSON, a Personal Representative)
of the ESTATE OF WILLIAM PETERSON, for)
the benefit of the Estate of William Peterson,)

Plaintiff,)

vs.)

**COMPLAINT FOR CONSCIOUS
PAIN AND SUFFERING**

TRINITY MISSION HEALTH AND REHAB OF)
EDGEFIELD, L.P., n/k/a Trinity Mission Health)
and Rehab of Edgefield, LLC; TAMI MASSEY,)
M.D., GEORGE RAINSFORD, M.D., ELEANOR)
LEAPHART, M.D. and BENJAMIN)
NICHOLSON, M.D., d/b/a EDGEFIELD)
MEDICAL CLINIC and/or EDGEFIELD)
MEDICAL CLINIC, P.A.)

Defendants.)

TO THE DEFENDANTS ABOVE-NAMED AND THEIR LEGAL REPRESENTATIVES:

COMES NOW the Plaintiff above-named and for her Complaint against Defendants
alleges as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, CECELIA JACKSON, is the duly appointed Personal
Representative of the Estate of William Peterson, by Order of the Probate Court of Aiken
County, South Carolina.

2. The decedent, William Peterson, was at all relevant times a citizen and resident of
Aiken County, South Carolina.

3. This action is being brought for the and on behalf of the Estate William Peterson for all causes of action surviving pursuant to Sections 15-5-90, et seq. of the Code of Laws of the State of South Carolina, 1976, as amended.

4. Upon information and belief, the Defendant TRINITY MISSION HEALTH AND REHAB OF EDGEFIELD, L.P., n/k/a Trinity Mission Health and Rehab of Edgefield, LLC (herein "Defendant Trinity") at all relevant times is or was a for-profit limited liability company created under the laws of the State of South Carolina, and engaging in the business of providing healthcare services and in-patient medical, rehabilitation and nursing care in Edgefield County, South Carolina.

5. During the period February through May, 2006, and at all times mentioned, Defendant Trinity had in its employ or contracted with certain licensed and/or registered physicians, hospitalists, clinicians, nurses (RN, PRN and/or LPN), nursing aides, registered medical assistants and/or other employees, agents, contractors and servants, including JOHN DOE, JANE ROE and/or XYZ COMPANY. The true identities of these persons are not now known, and Plaintiff will amend his pleadings to provide their identities when the information becomes available.

6. Upon information and belief, the Defendants, TAMI MASSEY, M.D. (herein "Defendant Dr. Massey"), GEORGE RAINSFORD, M.D. (herein "Defendant Dr. Rainsford"), ELEANOR LEAPHART, M.D. (herein "Defendant Dr. Leaphart") and BENJAMIN NICHOLSON, M.D. (herein "Defendant Dr. Nicholson") are medical doctors specializing in family medicine and/or internal medicine and licensed as medical doctors by the State of South Carolina who, upon information and belief, are residents of Edgefield County, South Carolina, or adjoining counties, and whose principal place of medical practice is in Edgefield County, South

Carolina. Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson are health care providers (S.C. Code Ann. Sec. 15-79-110). Upon information and belief, Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson, at all relevant times were associated in and with the medical practice EDGEFIELD MEDICAL CLINIC and/or EDGEFIELD MEDICAL CLINIC, P.A.

7. On February 20, 2006, and prior to that date, until the death of William Peterson on August 1, 2006, Mr. Peterson was a patient of Edgefield Medical Clinic, Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson, all of whom were responsible for his medical care and treatment.

8. Upon information and belief, Defendant Dr. Massey was William Peterson's primary care physician; however, she and Defendant Dr. Rainsford, Defendant Dr. Leaphart all participated in and were responsible for Mr. Peterson's medical care during the period from his admission to Aiken Regional Medical Center on February 20, 2006 until his death on August 1, 2006.

9. During the period from February 26 to March 7, 2006, and March 21, 2006 to May 15, 2006, William Peterson was an in-patient of Defendant Trinity under the medical care and supervision of Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson. The following is a summary of the facts giving rise to this claim:

William Peterson, Sr. was found alone at home in bed on February 20, 2006 suffering from dehydration, ARF, Rhabdomyolysis, BPH, elevated PSA, and Hypothermia. He was found poorly responsive and was admitted to the medical floor for treatment at Aiken Regional Medical Center.

After treatment and good response, Mr. Peterson was admitted to Trinity Mission Health and Rehab of Edgefield, LP ("Trinity Mission") due to weakness and inability to take care of his ADL's and both physical/occupational therapy for gait retraining and muscle strengthening was ordered. He had no skin breakdown other than an abrasion on his right lower leg on admission.

Throughout his ensuing treatment, William Peterson was followed and treated by the physicians of the Edgefield Medical Clinic, which are Tami Massey, M.D., George Rainsford, M.D., Eleanor Leaphart, M.D. and Benjamin Nicholson, M.D. After a critical lab of potassium Dr. Rainsford ordered the patient to be treated at the ICU at Aiken Regional Medical Center on March 7, 2007. His admitting diagnosis was acute renal failure and hyperkalemia. Mr. Peterson had no redness or pressure areas visible to buttock but did have on his right posterior heel a closed dark blister. This blister was not mentioned in the nurses' notes at Trinity Mission.

On March 21, 2006, William Peterson was readmitted back to Trinity Mission after an extended stay at Aiken Regional Medical Center. On readmission it was noted by nurses at Trinity Mission that the heel wound was new but this is not correct; it had been discovered when he went into Aiken Regional on March 7, 2006 and was treated. There is no indication of any communication between the nurses and doctors concerning wound care orders and treatment.

On March 30, 2006 it is noted that Mr. Peterson had a darkened area to his left hip. There was no report to an MD of this decline in the patient's condition. On April 4, 2006, again there is documentation that the left hip continues to be dark and again there is no documentation present of Intervention or report to an MD. On April 6, 2006, a note is made "left hip skin peeled, area red 5x4x0m, stage 2." Orders were then obtained for wound care by the MD by notice that this breakdown began on March 30, 2006. On April 15, 2006 it is documented by nursing that "left hip area with eschar", indicating a decline in the healing process. Physicians were not notified. April 19, 2006 the nurses indicate that the wound to the left hip is now a stage 4, no documentation that MD was notified of patient's decline. There were wound care orders to stage 4 wound on left hip made on April 20, 2006. On May 2, 2006 there is an order to culture the wound to the left hip, however, there is no documentation to describe the wound appearance or the status of infection.

On May 4, 2006, a wound culture was finally obtained to the left hip and on May 2, 2006 wound results came back as: MRSA to wound culture, left hip. The records state that this lab result was faxed to the MD. No orders were ever received for the serious infection and no nurse intervention is present to indicate that follow-up by the nurses of the lab results to the MD. From May 10 -15, 2006, Mr. Peterson exhibited symptoms of decline in his condition with decreased vital signs, increased poor appetite, increased lethargy, increased shortness of breath.

On May 15, 2006 the patient's family was notified of his decline, and the family insisted that he be taken to the ER. Mr. Peterson was readmitted to Aiken Regional Medical Center and started on aggressive I.V. antibiotics for Urosepsis, Staph Aureus Septicemia Decubitus Ulcer. These antibiotics continued until July 30,

- c. the failure to follow the MD orders;
- d. the failure to report to MD when decline in pressure ulcers and s/sx of infection occurred;
- e. the failure to report critical labs to MD so that treatment orders for infection could be obtained;
- f. the failure to assess and monitor skin breakdown and report in a timely manner to MD so that plan of care decisions/changes could be made; and
- g. the failure to keep patient's family and next of kin up to date on decline in patient's condition and treatment orders.

FOR A SECOND CAUSE OF ACTION

(Medical Negligence vs. Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart, and Defendant Dr. Nicholson (d/b/a Edgefield Medical Clinic))

15. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 12 above as though set forth verbatim herein.

16. Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart, and Defendant Dr. Nicholson (d/b/a Edgefield Medical Clinic), individually and in concert, failed to exercise reasonable and ordinary care, skill and diligence, and departed from the generally accepted and recognized standard of skill and care of the medical community in the care, assistance, treatment, diagnosis, testing and referral of the decedent, William Peterson and, therefore, were negligent in one or more of the following respects:

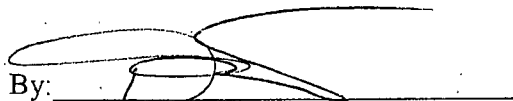
- a. The doctors, facility and staff were remiss in not adequately identifying and monitoring Mr. Peterson as someone with inadequate ability to handle activities of daily living. Therefore, he was at great risk for dehydration, malnutrition, poor hygiene-related conditions, and in particular, development of decubitus pressure ulcerations.
- b. From the patient's first admission to Trinity Mission, there was inadequate assessment of the patient, and extremely poor and conflicting documentation by the nursing staff and physicians. There were numerous breaches of usual and expected care in identifying his status of hydration, nutrition, skin care integrity and overall medical condition. There were

significant delays in identifying and treating the conditions of dehydration, obstipation with fecal impaction, urinary tract infections, wound development, severe wound infections, blood stream sepsis and overall decline in physical and mental status.

- c. These were all factors in the subsequent steady decline of Mrs. Peterson's health, and they were all materially responsible for what he had to endure over those months of treatment. The care offered, that included inadequate physical exam, evaluation and poor documentation, was not consistent with current standards of medical care.
- d. There appears to be a shared responsibility of all four parties to varying degrees. The poor communication record makes the distribution of responsibility difficult to assign. Ultimately, Dr. Massey holds the primary responsibility for accepting the role as the patient's primary care physician, and the related care from physicians covering her patients when she is not available.

WHEREFORE, Plaintiff prays for judgment against the Defendants for both actual and punitive damages in an amount to be proven at trial, and not less then \$950,000.00, and for such other and further relief as the Court may deem just and proper.

RUTH, MACNEILLE & KNUDSEN, PA

By: 

Douglas W. MacNeille, Esq.
Attorneys for Plaintiff
P.O. Drawer 5706
40 Pope Avenue
Hilton Head Island, South Carolina 29938
(843)785-4251

Hilton Head Island, SC
August 26, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
COUNTY OF EDGEFIELD 2009 SEP 15 AM 10:29) THE 11TH JUDICIAL CIRCUIT

Case No.: 2009-CP-19-0276

CECELIA JACKSON, a Personal Representative)
of the ESTATE OF WILLIAM PETERSON, for)
the benefit of the Estate of William Peterson,)

Plaintiff,)

vs.)

TRINITY MISSION HEALTH AND REHAB OF)
EDGEFIELD, L.P., n/k/a Trinity Mission Health)
and Rehab of Edgefield, LLC; TAMI MASSEY,)
M.D., GEORGE RAINSFORD, M.D., ELEANOR)
LEAPHART, M.D. and BENJAMIN)
NICHOLSON, M.D., d/b/a EDGEFIELD)
MEDICAL CLINIC and/or EDGEFIELD)
MEDICAL CLINIC, P.A.)

Defendants.)

**AMENDED
COMPLAINT FOR CONSCIOUS
PAIN AND SUFFERING**

TO THE DEFENDANTS ABOVE-NAMED AND THEIR LEGAL REPRESENTATIVES:

COMES NOW the Plaintiff above-named and for her Amended Complaint against Defendants alleges as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, CECELIA JACKSON, is the duly appointed Personal Representative of the Estate of William Peterson, by Order of the Probate Court of Aiken County, South Carolina.

2. The decedent, William Peterson, was at all relevant times a citizen and resident of Aiken County, South Carolina.

3. This action is being brought for and on behalf of the Estate William Peterson for all causes of action surviving pursuant to Sections 15-5-90, et seq. of the Code of Laws of the State of South Carolina, 1976, as amended.

4. Upon information and belief, the Defendant TRINITY MISSION HEALTH AND REHAB OF EDGEFIELD, L.P., n/k/a Trinity Mission Health and Rehab of Edgefield, LLC (herein "Defendant Trinity") at all relevant times is or was a for-profit limited liability company created under the laws of the State of South Carolina, and engaging in the business of providing healthcare services and in-patient medical, rehabilitation and nursing care in Edgefield County, South Carolina.

5. During the period February through May, 2006, and at all times mentioned, Defendant Trinity had in its employ or contracted with certain licensed and/or registered physicians, hospitalists, clinicians, nurses (RN, PRN and/or LPN), nursing aides, registered medical assistants and/or other employees, agents, contractors and servants, including JOHN DOE, JANE ROE and/or XYZ COMPANY. The true identities of these persons are not now known, and Plaintiff will amend his pleadings to provide their identities when the information becomes available.

6. Upon information and belief, the Defendants, TAMI MASSEY, M.D. (herein "Defendant Dr. Massey"), GEORGE RAINSFORD, M.D. (herein "Defendant Dr. Rainsford"), ELEANOR LEAPHART, M.D. (herein "Defendant Dr. Leaphart") and BENJAMIN NICHOLSON, M.D. (herein "Defendant Dr. Nicholson") are medical doctors specializing in family medicine and/or internal medicine and licensed as medical doctors by the State of South Carolina who, upon information and belief, are residents of Edgefield County, South Carolina, or adjoining counties, and whose principal place of medical practice is in Edgefield County, South

Carolina. Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson are health care providers (S.C. Code Ann. Sec. 15-79-110). Upon information and belief, Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson, at all relevant times were associated in and with the medical practice EDGEFIELD MEDICAL CLINIC and/or EDGEFIELD MEDICAL CLINIC, P.A.

7. On February 20, 2006, and prior to that date, until the death of William Peterson on August 1, 2006, Mr. Peterson was a patient of Edgefield Medical Clinic, Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson, all of whom were responsible for his medical care and treatment.

8. Upon information and belief, Defendant Dr. Massey was William Peterson's primary care physician; however, she and Defendant Dr. Rainsford, Defendant Dr. Leaphart all participated in and were responsible for Mr. Peterson's medical care during the period from his admission to Aiken Regional Medical Center on February 20, 2006 until his death on August 1, 2006.

9. During the period from February 26 to March 7, 2006, and March 21, 2006 to May 15, 2006, William Peterson was an in-patient of Defendant Trinity under the medical care and supervision of Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart and Defendant Dr. Nicholson. The following is a summary of the facts giving rise to this claim:

William Peterson, Sr. was found alone at home in bed on February 20, 2006 suffering from dehydration, ARF, Rhabdomyolysis, BPH, elevated PSA, and Hypothermia. He was found poorly responsive and was admitted to the medical floor for treatment at Aiken Regional Medical Center.

After treatment and good response, Mr. Peterson was admitted to Trinity Mission Health and Rehab of Edgefield, LP ("Trinity Mission") due to weakness and inability to take care of his ADL's and both physical/occupational therapy for gait retraining and muscle strengthening was ordered. He had no skin breakdown other than an abrasion on his right lower leg on admission.

Throughout his ensuing treatment, William Peterson was followed and treated by the physicians of the Edgefield Medical Clinic, which are Tami Massey, M.D., George Rainsford, M.D., Eleanor Leaphart, M.D. and Benjamin Nicholson, M.D. After a critical lab of potassium Dr. Rainsford ordered the patient to be treated at the ICU at Aiken Regional Medical Center on March 7, 2007. His admitting diagnosis was acute renal failure and hyperkalemia. Mr. Peterson had no redness or pressure areas visible to buttock but did have on his right posterior heel a closed dark blister. This blister was not mentioned in the nurses' notes at Trinity Mission.

On March 21, 2006, William Peterson was readmitted back to Trinity Mission after an extended stay at Aiken Regional Medical Center. On readmission it was noted by nurses at Trinity Mission that the heel wound was new but this is not correct; it had been discovered when he went into Aiken Regional on March 7, 2006 and was treated. There is no indication of any communication between the nurses and doctors concerning wound care orders and treatment.

On March 30, 2006 it is noted that Mr. Peterson had a darkened area to his left hip. There was no report to an MD of this decline in the patient's condition. On April 4, 2006, again there is documentation that the left hip continues to be dark and again there is no documentation present of Intervention or report to an MD. On April 6, 2006, a note is made "left hip skin peeled, area red 5x4x0m, stage 2." Orders were then obtained for wound care by the MD by notice that this breakdown began on March 30, 2006. On April 15, 2006 it is documented by nursing that "left hip area with eschar", indicating a decline in the healing process. Physicians were not notified. April 19, 2006 the nurses indicate that the wound to the left hip is now a stage 4, no documentation that MD was notified of patient's decline. There were wound care orders to stage 4 wound on left hip made on April 20, 2006. On May 2, 2006 there is an order to culture the wound to the left hip, however, there is no documentation to describe the wound appearance or the status of infection.

On May 4, 2006, a wound culture was finally obtained to the left hip and on May 2, 2006 wound results came back as: MRSA to wound culture, left hip. The records state that this lab result was faxed to the MD. No orders were ever received for the serious infection and no nurse intervention is present to indicate that follow-up by the nurses of the lab results to the MD. From May 10 -15, 2006, Mr. Peterson exhibited symptoms of decline in his condition with decreased vital signs, increased poor appetite, increased lethargy, increased shortness of breath.

On May 15, 2006 the patient's family was notified of his decline, and the family insisted that he be taken to the ER. Mr. Peterson was readmitted to Aiken Regional Medical Center and started on aggressive I.V. antibiotics for urosepsis, staph aureus septicemia decubitus ulcer. These antibiotics continued until July 30,

2006 while he was at Select Specialty Hospital for I.V. antibiotic therapy and wound care. William Peterson passed away on August 1, 2006.

10. As a direct and proximate result of the concurring and combined negligence, carelessness and gross negligence of Defendants, Plaintiff suffered painful, serious, debilitating and disabling, and fatal external and internal injuries and was required to undergo a course of additional medical, hospital, therapy and other care and treatment.

11. As a direct and proximate result of the concurring and combined negligence, carelessness and gross negligence of Defendants, and the injuries resulting there from, William Peterson suffered much conscious pain and suffering and physical and emotional distress.

FOR A FIRST CAUSE OF ACTION
**(Medical Negligence vs. Defendant Trinity Mission Health and Rehab
of Edgefield, L.P., n/k/a Trinity Mission, LLC)**

12. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 11 above as though set forth verbatim herein.

13. Defendant Trinity, through its agents, servants and employees, failed to exercise reasonable and ordinary care, skill and diligence, and departed from the generally accepted and recognized standard of skill more of the following respects:

- a. the failure to keep patient free from pain/suffering from the development of infections from both urinary tract and pressure ulcers;
- b. the failure to develop plan of care to prevent pressure ulcers developing on a known high risk patient for skin integrity impairment;
- c. the failure to follow the MD orders;
- d. the failure to report to MD when decline in pressure ulcers and s/sx of infection occurred;
- e. the failure to report critical labs to MD so that treatment orders for infection could be obtained;
- f. the failure to assess and monitor skin breakdown and report in a timely manner to

MD so that plan of care decisions/changes could be made; and

- g. the failure to keep patient's family and next of kin up to date on decline in patient's condition and treatment orders.

FOR A SECOND CAUSE OF ACTION

(Medical Negligence vs. Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart, and Defendant Dr. Nicholson (d/b/a Edgefield Medical Clinic))

14. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 11 above as though set forth verbatim herein.

15. Defendant Dr. Massey, Defendant Dr. Rainsford, Defendant Dr. Leaphart, and Defendant Dr. Nicholson (d/b/a Edgefield Medical Clinic), individually and in concert, failed to exercise reasonable and ordinary care, skill and diligence, and departed from the generally accepted and recognized standard of skill and care of the medical community in the care, assistance, treatment, diagnosis, testing and referral of the decedent, William Peterson and, therefore, were negligent in one or more of the following respects:

- a. The doctors, facility and staff were remiss in not adequately identifying and monitoring Mr. Peterson as someone with inadequate ability to handle activities of daily living. Therefore, he was at great risk for dehydration, malnutrition, poor hygiene-related conditions, and in particular, development of decubitus pressure ulcerations.
- b. From the patient's first admission to Trinity Mission, there was inadequate assessment of the patient, and extremely poor and conflicting documentation by the nursing staff and physicians. There were numerous breaches of usual and expected care in identifying his status of hydration, nutrition, skin care integrity and overall medical condition. There were significant delays in identifying and treating the conditions of dehydration, obstipation with fecal impaction, urinary tract infections, wound development, severe wound infections, blood stream sepsis and overall decline in physical and mental status.
- c. These were all factors in the subsequent steady decline of Mrs. Peterson's health, and they were all materially responsible for what he had to endure over those months of treatment. The care offered, that included inadequate physical exam, evaluation and poor documentation, was not consistent with current standards of medical care.

- d. There appears to be a shared responsibility of all four (4) physicians to varying degrees. The poor communication record makes the distribution of responsibility difficult to assign. Ultimately, Dr. Massey may hold the primary responsibility for accepting the role as the patient's primary care physician, and the related care from physicians covering her patients when she is not available.

WHEREFORE, Plaintiff prays for judgment against the Defendants for both actual and punitive damages in an amount to be proven at trial, and not less than \$1,250,000.00, and for such other and further relief as the Court may deem just and proper.

RUTH, MACNEILLE & KNUDSEN, PA

By: 

Douglas W. MacNeille, Esq.

Attorneys for Plaintiff

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Hilton Head Island, SC
September 14, 2009

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

**IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-19-072**

**Cecelia Jackson, Personal Representative
of the Estate of William Peterson, for the
benefit of his heirs at law, William
Peterson, Jr., Mary Ruth Peterson,
Mildred Peterson, Raymond Peterson,
Hattie Ashley, Cella Jackson, Patricia
Peterson and Melinda Butler**

Plaintiffs,

vs.

**Trinity Mission Health and Rehab of
Edgefield, LLC, Tami Massey, M.D.,
George Rainsford, M.D., Eleanor
Leapart, M.D. and Benjamin Nicholson,
M.D. d/b/a Edgefield Medical Clinic
and/or Edgefield Medical Clinic, P.A.,**

Defendants.

**AMENDED ANSWER OF
DEFENDANTS GEORGE RAINSFORD,
M.D., ELEANOR LEAPART, M.D. AND
BENJAMIN NICHOLSON, M.D. D/B/A
EDGEFIELD MEDICAL CLINIC
AND/OR EDGEFIELD MEDICAL
CLINIC, P.A., TO PLAINTIFF'S
AMENDED COMPLAINT**

The Defendants George Rainsford, M.D., Eleanor Leapt, M.D. and Benjamin Nicholson, M.D. d/b/a Edgefield Medical Clinic and/or Edgefield Medical Clinic, P.A., answering the Amended Complaint of the Plaintiff, allege:

FOR A FIRST DEFENSE

1. These Defendants have no information as to the allegations of Paragraphs 1, 2, 4 and 5 of the Amended Complaint and can neither admit nor deny same.
2. These Defendants admit the allegations of Paragraphs 3 and 6 of the Amended Complaint.

3. In answer to the allegations of Paragraphs 7 and 8 of the Amended Complaint, these Defendants would show that during the time frame from approximately February 27, 2006, through approximately May 15, 2006, William Peterson was a patient at Trinity Mission, although Mr. Peterson was hospitalized at Aiken Regional Medical Center at least once during this time period; when Mr. Peterson was a patient at Trinity Mission during this time period, these Defendants and Dr. Massey provided medical care to Mr. Peterson.

4. These Defendants deny the remaining allegations of the Amended Complaint and all allegations of the Amended Complaint not hereinabove specifically admitted.

FOR A SECOND DEFENSE

5. Mr. Peterson's ill health was due to and proximately caused by Mr. Peterson's underlying medical condition and advanced age and not by negligence or fault on the part of the Defendants, by reason of which the Plaintiff may not recover against the Defendants.

FOR A THIRD DEFENSE

6. Except as admitted, modified, or explained herein, each and every allegation of the Plaintiff's Amended Complaint is denied and strict proof thereof is demanded.

7. These Defendants incorporate by reference all allegations and denials of all other defenses contained herein.

8. These Defendants would allege and show unto the Court that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, and Fourteenth Amendments of the Constitution of the United States in the following particulars:

a. Plaintiff's claim for punitive damages violates the Fifth Amendment for the following reasons:

i. The double jeopardy clause is violated because multiple awards of

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punitive damages can be imposed upon these Defendants for the same act or omission.

- ii. The self-incrimination clause is violated because these Defendants can be compelled to give testimony against themselves;
 - iii. Plaintiff can receive double recovery for the same wrong because punitive damages can serve as a compensatory function.
- b. Plaintiff's claim for punitive damage violates the Sixth and Fourteenth Amendments because such claims may be imposed based upon the burden of proof applicable in civil cases where punitive damages are a fine and/or penalty and are quasi-criminal or punitive in nature.
- c. Plaintiff's claim for punitive damages violates these Defendants' right to access to the courts guaranteed by the Seventh and Fourteenth Amendment because of the threat of an award of unlimited punitive damages chills these Defendants' exercise of their rights.
- d. Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons:
- i. The standard or test of determining the requisite mental state of these Defendants for imposition of punitive damages is void for vagueness;
 - ii. There is a lack of objective guidelines on which a finder of fact might base its award and further the guidelines which do exist are arbitrary and void for vagueness;

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- iii. Insofar as punitive damages are not measured against actual injury to the Plaintiffs and are left to the discretion of the jury, there is objective standard that limits the amount of such damages that may be awarded, and the award of punitive damages that may be awarded is indeterminate at the time of these Defendants' egregious conduct;
- iv. In cases involving more than one defendant, the evidence of the net worth of each is admissible and a jury is permitted to award punitive damages in differing amounts based upon the affluence of a given defendant;
- v. The test for standards for the imposition of punitive damages differ from state to state such that a specific act or omission of a given defendant may or may not result in the imposition of punitive damages or may result in differing amounts of punitive damages, depending upon the state in which suit is filed, such that these Defendants are denied equal protection of the law;
- vi. Punitive damages may be imposed without a requisite showing of hatred, spite, ill will, or wrongful motive;
- vii. There is no reasonable standard by which the issue of punitive damages and any award thereof can be measured;
- viii. The scope of appellate review of punitive damages is limited.

FOR A FOURTH DEFENSE

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9. These Defendants are subject to and entitled to all rights, limitations, and restrictions of the Tort Reform Act of 2005, including but not limited to limitations on the amount of any recovery as provided in South Carolina Code §15-32-220, and these Defendants plead all rights,

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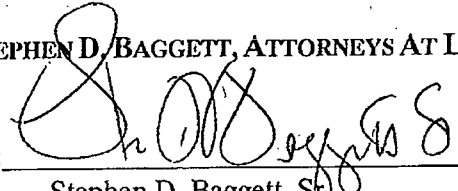
limitations, and restrictions of the Tort Reform Act of 2005 as a defense to this matter.

FOR A FIFTH DEFENSE

10. The amount of recovery against these Defendants is limited as provided by South Carolina Code §15-32-220.

WHEREFORE, having fully answered the Amended Complaint, the Defendants George Rainsford, M.D., Eleanor Leapt, M.D. and Benjamin Nicholson, M.D. d/b/a Edgefield Medical Clinic and/or Edgefield Medical Clinic, P.A., pray that same be dismissed.

STEPHEN D. BAGGETT, ATTORNEYS AT LAW, L.L.C.

By: 

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d/b/a Edgefield Medical Clinic and/or Edgefield
Medical Clinic, P.A.

October 2, 2012
Greenwood, South Carolina.

State of South Carolina

Court of Common Pleas

County of Edgefield

Cecelia Jackson,)
as Personal Representative))
of the Estate of)
William Peterson,)

Plaintiff,)

v.)

Edgefield Medical)
Clinic, PA,)

Defendant.)

Transcript of Record
2009-CP-190276

March 17-20, 2014
Edgefield, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a
jury.

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

James Stephen Welch, Esquire
Attorney for the Plaintiff

James D. Nance, Esquire
Attorney for the Defendant Edgefield
Medical Clinic, PA

Edwin Brown Parkinson, Esquire

Blair Massey, Esquire

Bethanie K. Creppon
Circuit Court Reporter

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1 (The following proceedings were held March
2 17-20, 2014.)

3 THE COURT: Any motions by the plaintiff in
4 connection with the selection of the jury.

5 MR. WELCH: If I could have just a moment,
6 Judge.

7 Nothing, Judge.

8 THE COURT: By the Defendant Massey?

9 MR. PARKINSON: No, Your Honor.

10 THE COURT: By the collective defendants
11 represented by Mr. Nance?

12 MR. NANCE: No, Your Honor.

13 THE COURT: Thank you.

14 All right. Ladies and gentlemen, those of you
15 who were not drawn, I'm going to release you for the
16 balance of the week. I thank you for your
17 attendance. Obviously we cannot run either civil or
18 General Sessions of court without jurors being able
19 and ready and willing to participate. It's messy
20 outside, please be careful. If anybody needs
21 assistance going down, let the bailiff know.

22 Everybody else remain seated. My jurors are
23 free to go. The clerk will send you a check. Don't
24 spend it all in one spot.

25 (Jury panel excused.)

1 THE COURT: All right. Ladies and gentlemen,
2 we're going to start at 2:00. I've got a 1:45
3 status conference that will last about 15 minutes.
4 I'll get a bite to eat, you get a bite to eat. We
5 will run until about 5:00 this afternoon. Is that
6 an imposition for anyone? And we'll regroup and see
7 where we are and make some decisions on tomorrow and
8 go from there.

9 If you will step out with the bailiff, she'll
10 show you how and where to return. Be ready to go at
11 2:00. Do not discuss the case with anyone and do
12 not let anyone discuss it with you. I look forward
13 to working with you. When you get back, here's what
14 we'll do: The first thing is I'll give you short
15 opening remarks followed by the plaintiff who will
16 do an opening statement, followed by the defendants
17 will do an opening statement. Once that is done
18 we'll start taking testimony and run up until 5:00,
19 and then we'll see where we are for tomorrow.

20 Having said that, have a pleasant lunch, stay
21 dry, it's nasty outside, and I'll see you back ready
22 to go at 2:00. Everybody else stay seated.

23 (The jury exits the courtroom at 12:38 PM.)

24 THE COURT: We'll stand at ease until 2:00.

25 (A luncheon recess transpired.)

1 THE COURT: Please be seated.

2 MR. WELCH: Yes, Judge. There are evidence
3 notebooks, the Court has copies. There's copies in
4 evidence here. All the counsel have copies. And in
5 those notebooks there's Exhibits 1 through 9 which
6 the court reporter has marked and we've admitted,
7 they're all the medical records. We're going to
8 stipulate for those records for authenticity.

9 THE COURT: Agreed upon by defense counsel?

10 MR. PARKINSON: 1 through 9, no objection.

11 THE COURT: Without objection, 1 through 9.

12 (Plaintiff's Exhibits 1-9 marked for
13 identification and admitted into evidence.)

14 THE COURT: All right. Bring the jury in,
15 please.

16 (The jury enters the courtroom at 2:14 PM.)

17 THE COURT: Okay. The first thing we have to
18 do to get started is raise your hand to be sworn in
19 for this particular case. Ms. Newby will swear you
20 in.

21 THE CLERK: Do you solemnly swear or affirm
22 that you will well and truly try the issues joined
23 in the case of Cecilia Jackson, personal
24 representative of the Estate of William Peterson,
25 plaintiff, versus Trinity Mission Rehab of -- Tami

1 Massey, MD, George Rainsford, MD, and Eleanor
2 Leaphart, MD, doing business as Edgefield Medical
3 Clinic and/or Edgefield Medical Clinic, P.A., that's
4 the defendants, in a true verdict render according
5 to the law and evidence; if you accept this so,
6 please say I will.

7 THE JURY (collectively): I will.

8 THE COURT: Ladies and gentlemen of the jury,
9 we're now going to the trial of the case. Let me
10 briefly tell you that this matter is a civil matter.
11 This is a medical negligence case. So the burden of
12 proof is on the plaintiff to prove her case to you
13 by the preponderance or greater weight of the
14 evidence. And very succinctly or very shortly
15 stated, in a medical negligence case Plaintiff has
16 the burden of proving what the standard of care is;
17 that in this particular case the doctors deviated or
18 fell below that standard, that that deviation
19 proximately caused the decedent's injuries, and
20 that's the burden that's on the plaintiff. And
21 Mr. Welch will explain in much, much more detail
22 when he tries this case and makes his opening
23 statement.

24 Now, as I told you when we selected the jury,
25 you and I have two different functions to perform.

1 I'll not go back over that, but you as the finders
2 or the judges of the facts, you have the duty of
3 determining what the true facts are in this case.
4 You will judge the believability or the credibility
5 of the witnesses who testify in the case. You will
6 make a determination as to what the true facts are.
7 So please use your everyday common sense in telling
8 if someone is telling the truth. You deal with
9 wives, husbands, children, employers and friends,
10 you know how to deal and judge the believability of
11 the witnesses who testify in a case.

12 The way the case will run is this: Since the
13 plaintiff has the burden of proof, they go first.
14 They will present their side of the story first,
15 their case first. Once they have completed their
16 testimony, then the defendants have the right to
17 present their defense, their side of the case. And
18 sometimes at the conclusion of the defendant's case,
19 the plaintiff may offer some reply testimony. So
20 the testimony will go plaintiff, defendant, and
21 perhaps plaintiff again on the reply.

22 Prior to taking testimony, both sides have an
23 opportunity to make an opening statement. That is
24 basically what the lawyers contend the issues are in
25 the case, what the defense is in the case, what

1 you're to look for in the case, what they intend to
2 show you. Please bear in mind that the opening
3 statements are not evidence in the case; that's
4 simply the lawyers' take on the case. The only way
5 you can make your decision is from the witnesses who
6 testify, the evidence in the case, and/or exhibits
7 that may be introduced in the trial of the case,
8 and/or deposition testimony. So that is where you
9 make your decision.

10 But we'll start off with the opening statements
11 followed by the testimony. At the conclusion of the
12 testimony, we will then have final arguments. That
13 too is not testimony; that's the lawyers arguing
14 their side of the case. And once we complete the
15 final argument, then we'll start with deliberations.
16 In other words, I will charge you what the law is
17 after their arguments and then you'll start your
18 deliberations.

19 I try to run an efficient courtroom. I try to
20 start within a reasonable time. We try to take
21 short breaks and we try to keep it moving in a very
22 orderly fashion. Notwithstanding that we're trying
23 to move along in an efficient manner, I'm not trying
24 to run a race up here. So if at any time during the
25 trial of the case you become uncomfortable, need to

1 use the bathroom, restroom break, need to stretch
2 your legs, glass of water or Coke or whatever,
3 snack, whatever, you just get tired of listening to
4 me, just raise your hand and I'll make sure any of
5 your needs are met.

6 Also, I will tell you each time you take a
7 break, each time we break for the evening, please do
8 not discuss the case with anyone, do not let anyone
9 discuss the case with you. Please do not go home
10 and do any type of research, whether it be on the
11 computer or textbooks or whatever dealing with
12 medicine. This case is only to be tried here in the
13 courtroom. Please do not use any type of social
14 media to discuss the case, Facebook, Twitter, or any
15 other social media that you may engage in. We're
16 going to try this case based solely on what you see
17 in the courtroom.

18 I'll ask when we take the afternoon break,
19 amongst the 12 regular jurors, I need a foreperson.
20 That's simply someone who advises me of any concerns
21 the jury may have that lead up to the deliberations
22 and the conclusion of the case and they will be the
23 person to sign the verdict form at the end. So
24 please select someone amongst the 12 of you. If you
25 can't, I will randomly select someone.

1 Like I said, please don't get uncomfortable.
2 If you need anything, raise your hand and I'll make
3 sure you're attended to. We'll go to 5:00 today.
4 We'll assess the situation at 5:00 and we'll talk
5 about tomorrow and then go from there.

6 So right now the next step is the lawyers will
7 make their opening statements. Please pay attention
8 to them and then we'll start with testimony.

9 Any objections to my opening remarks by the
10 plaintiff?

11 MR. WELCH: Not from the plaintiff, Judge.

12 THE COURT: By the defendants collectively?

13 MR. PARKINSON: I have none, Your Honor. Thank
14 you.

15 MR. WELCH: Thank you, Judge.

16 Ladies and gentlemen, we live in a world where
17 medical advances take place, people live longer, but
18 we all eventually end up in medical care, many of us
19 in nursing homes. In this case you'll find the
20 physicians, and the evidence is going to show that
21 the physicians involved, and you'll hear from some
22 other physicians, that when you agree to treat
23 patients in a nursing home, you agree there's some
24 basic rules that the physicians follow, and they're
25 very simple. If you agree to be the treating doctor

1 of a nursing home patient, you must have reasonable
2 face-to-face contact with that patient and the
3 medical decisions in the patient's best interest,
4 and if you do not personally examine the patient on
5 a reasonable basis, then the doctor is responsible
6 for problems from treatable conditions that could
7 have been treated if those problems develop.

8 Let me tell you what happened in this case.
9 The evidence is going to show that back in the '60s
10 Dr. Benjamin Nicholson came here, from here, went to
11 medical school, came back and started the Edgefield
12 Clinic here. Over a period of time, that clinic
13 grew. He took on other partners and other employees
14 which included Dr. Rainsford, Dr. Leaphart,
15 Dr. Massey, and that a nursing home was built here,
16 Trinity Nursing Home, and that an agreement was
17 reached that the doctors and Edgefield Clinic, one
18 would serve as the medical director for Trinity
19 Nursing Home. And those doctors would see patients
20 at the Trinity Nursing Home, and some of those
21 patients were actual patients of the Edgefield
22 practice or were seen by the doctors even before
23 they went into the nursing home.

24 You're going to hear from Dr. Nicholson who
25 will testify by video that we consider those

1 patients to belong to all of us at the medical
2 clinic, so we usually take a week at a time to make
3 calls and go to the nursing home when asked to. The
4 practice itself would pay a monthly stipend for
5 serving as medical director, and the doctors would
6 bill those patients directly when they'd see that
7 patient on a one-on-one basis.

8 On February 27th, 2006, the practice was
9 notified that there was a new patient that was
10 admitted to the nursing home. In fact, it's going
11 to show that it was a patient who had been treated
12 at the Edgefield Clinic before that. The gentleman,
13 who was 83 at the time -- in fact, the year before,
14 the evidence is going to show, had gone over to the
15 Edgefield emergency room and had what's called a TIA
16 or transient ischemic attack, which is a thing that
17 happens sometimes in the brain where you get
18 disoriented, but it clears up, and that he lived at
19 home alone. Next door to him was a daughter, a son,
20 had a lot of family around, and that Dr. Nicholson
21 went over to examine the patient. And what you're
22 going to see is that Dr. Nicholson on that day
23 examined the patient, took some history. And what
24 he found was that just a few days before, a woman by
25 the name of Carrie Kimble had seen Mr. Peterson at

1 the store here in town, that he bought some grocery
2 items, talked to her, told her he was headed home.
3 And when he got home, one daughter checked on him.
4 The next day, verbally, he said he was fine, didn't
5 hear from him the next day.

6 They went back the next day on February 20th
7 and he told her to go in the front, which meant come
8 to the front door, something's wrong. And she did,
9 that was Mary Ruth. Mary Ruth went in -- all this
10 information has been given to Dr. Nicholson -- found
11 him laying on the floor. She called some other
12 family members. They bathed him, put him in his
13 pajamas, took him to the Aiken Hospital.

14 They found at Aiken Hospital that he was having
15 problems with hypothermia, dehydration, kidney
16 failure, and something called random miosis, which
17 actually means when you lay there a while, your
18 muscles start to deteriorate. They treated him and
19 decided they'd send him over to the Edgefield
20 nursing home under the care of Dr. Nicholson,
21 Rainsford, Massey and Leaphart.

22 You're going to see that the doctors at Aiken
23 described him the day they saw him as able to move
24 his arms and legs purposeful but slowly, that his
25 speech was slow but in complete sentences, he had no

1 bed sores or pressure ulcers, no serious infections.
2 He was stabilized and treated over seven days, and
3 then admitted. And that's where Dr. Nicholson was
4 doing the exam. What you see here are the medical
5 records you're going to have before you, and they
6 show you what Dr. Nicholson will testify as to what
7 he found that day in the exam.

8 What he's written here, he says, Admitted here
9 for rehab after acute mental failure due to
10 dehydration. The vital signs are temp 97, pulse 79,
11 respirations 18, blood pressure 142 over 81, weight
12 180. Alert; he knows me. Oriented, which
13 Dr. Nicholson is going to tell by video means he
14 knew where he was, what time it was, those types of
15 things. Dr. Nicholson also wrote, He can
16 communicate. Vision/hearing are okay. He can feed
17 himself and no paralysis. That is what
18 Dr. Nicholson wrote on his examination on February
19 the 27th.

20 You're also going to see that Mary Ruth
21 Peterson that brought him in signed what is called a
22 do-not-resuscitate order. That, by its very terms,
23 and you're going to have a copy of it, you can look
24 at it and read it, it says, No resuscitative efforts
25 including artificial stimulation of the

1 cardiopulmonary system by electrical, mechanical, or
2 artificial means be made in the event of
3 cardiopulmonary arrest, which Dr. Nicholson will
4 tell you meant heart attack.

5 You're going to find that Mary Ruth's going to
6 tell you that she gave information to everybody
7 there at the nursing home, questions that were
8 asked, and that when this was given to her -- and
9 Dr. Nicholson's going to tell you in his deposition
10 that he didn't see Mary Ruth sign this or anybody
11 explain it to her. She's going to tell you she did
12 not understand do not treat my father. You're going
13 to hear Dr. Nicholson say that do not resuscitate
14 does not mean do not treat. It simply means if
15 something like that happens where he's dying that
16 you do not use those tubes or the paddles, things of
17 that nature, to resuscitate the patient that is in
18 that condition. Dr. Nicholson billed \$99 for this
19 examination that day in the nursing home.

20 Over the next few days you're going to see in
21 the record that Dr. Nicholson and the rest of the
22 doctors got information showing that Mr. Peterson
23 continued to have some issues with kidney function.
24 Dr. Rainsford, based upon some studies, had him
25 taken to Edgefield Hospital on March 7th. The

1 doctors at the Edgefield Hospital emergency room
2 wrote: The patient was alert, oriented, had low
3 hypokalemia, which is low potassium, and kidney
4 failure. He was taken to the Edgefield Hospital and
5 admitted to the Edgefield Hospital -- excuse me, the
6 Aiken Hospital.

7 What you're going to find in Aiken -- that
8 while he was at the Aiken Hospital, a consulting
9 doctor was brought in. You're going to have this in
10 front of you as well in the medical records and
11 you're going to see that they made some decisions
12 there based upon his condition and noted that a
13 cervical operation that may help him be able to have
14 better movement of his arms and legs could be done.
15 And so they stabilized his kidneys, they got all
16 those things worked out. And you're going to see
17 what actually says surgery was done, on discharge
18 the doctors noted his kidney issues had resolved,
19 were now okay, his low potassium issue resolved, was
20 now okay, and he was being sent to the nursing home
21 again for physical therapy and treatment.

22 It was noted in the chart for the doctors in
23 Edgefield to read that the patient was now unable to
24 feed himself due to some spinal issues and attention
25 needed to be taken to that intake since he was

1 having problems initially feeding himself. They
2 also noted he would need ongoing physical therapy to
3 promote strengthening and prevent contractions after
4 the surgery. The patient was brought back to the
5 nursing home, Trinity, on March 23rd, 2006, where
6 another DNR order was signed, very similar to the
7 first one. And you're going to hear Mary Ruth
8 testify that it was placed in front of her, she
9 signed it, and as to her understanding that what it
10 meant was, if Daddy is having a heart attack,
11 something of that nature, we don't necessarily want
12 to resuscitate him, but we want him treated. There
13 was never an understanding that he would not be
14 treated.

15 You're going to see that -- and in that
16 admission Dr. Gordineer who worked there at the
17 time, did another one of these interviews, another
18 one of those examinations of the patient. She
19 worked for Edgefield Clinic. And you're going to
20 see that what she wrote here -- and you'll have it
21 in front of you as testimony -- This 84-year-old
22 black male, readmitted from Aiken Regional after
23 renal failure secondary to BPH, hyperkalemia status
24 post, urgent spinal decompression secondary to
25 cervical stenosis with neurological changes.

1 Patient's real kidney failure returned to normal at
2 discharge, see medical list, vital signs stable,
3 patient alert and pleasant. She went on to note
4 that his rehab potential was fair. And that's what
5 she wrote at the bottom of the notes. She found no
6 pressure ulcers on his hip or backside, no known
7 infections. Practice billed \$154 for that visit.

8 The doctors went on to sign and treat the
9 patient, but it was done through a series -- and
10 you're to have the medical record to look at -- of
11 physician telephone orders. And that was the way
12 these doctors chose to treat the patient, by having
13 the nurse, for instance, write -- and you'll
14 actually see and hear from the nurse that wrote
15 this, where it's the recommendation the nurse is
16 making to the doctor on how to treat a wound that
17 was starting to develop. You're going to hear from
18 them testify that they wrote it and then it was then
19 taken over to the doctor to sign. If the doctor
20 agreed, the doctor would sign off.

21 This one by Jennifer Smoak says: Clean left
22 hip with wound cleanser. Apply Bactocin and
23 Optifoam daily, based on her observations, and the
24 doctors would sign the order. The next time a
25 doctor saw him was on April the 4th for a

1 respiratory infection. Patient had a normal chest
2 x-ray, was put on antibiotics. The patient was
3 billed \$75 by this visit by Dr. Nicholson.

4 Following this, the nurses and physical
5 therapists would continue to see the patient and
6 make these recommendations in the form of telephone
7 orders. They'd be carried to the doctor's office.

8 On the -- this page you see where Dr. Leaphart
9 examined the patient on the 14th. She found the
10 patient to be very pleasant and in no acute
11 distress. The patient told her he didn't have any
12 shortness of breath, chest or abdomen pain. She was
13 concerned about his poor food intake and weight
14 loss. He liked to drink large amounts of Boost,
15 which is a nutria supplement, and eat ice cream, but
16 nothing much else. She was also concerned about his
17 dark-colored urine and had some blood tests run.
18 And she'll tell you that could be a sign possibly of
19 infection. Prescribed the medication to stimulate
20 his appetite. The practice billed \$55 for this
21 exam.

22 From this point forward, the nurses and
23 physical therapists are seeing the patient and
24 writing more of these physical telephone orders that
25 the doctors are signing but not seeing the patient.

1 By the end of April, the patient had developed
2 a pressure ulcer on his hip. Mr. Peterson had
3 developed this hip ulcer. The nurses were writing
4 the orders and a culture of the wound was done early
5 May. That culture in early May came back showing a
6 MRSA infection, a bacterial infection of the wound.
7 The results of that were sent to the Edgefield
8 Clinic, specifically named on the lab report, you'll
9 see that, to Dr. Massey. This type of back and
10 forth writing of the orders, taking them to the
11 doctors to sign continued until May the 15th when
12 the family received a call from the nursing home
13 saying your father is ill. Mr. Peterson's children
14 and family all came to the nursing home. One of his
15 children is a nurse's aide, noticed he was
16 dehydrated. There were probably 12 to 15 of them
17 because they got the impression from the telephone
18 call that he was possibly dying and could pass.

19 Dr. Rainsford, you're going to hear testify
20 later, in fact, thought at the time that he probably
21 would pass away within the next 24 hours or the next
22 day. When they started to examine him they found
23 for the first time the ulcer on his hip. They
24 hadn't been told about it by anyone, they hadn't
25 seen it, had not examined it. They asked for ice

1 chips to give their father. They asked for the
2 doctor. They tried to call the doctor. They then
3 called the nurse. They told the nurse -- and you're
4 going to see at page 69 of the record and page 70,
5 the nurse is going to chart what the employee of
6 Edgefield Medical Clinic, that the nurse,
7 Dr. Rainsford's nurse told her, basically told them
8 that they wanted an ambulance.

9 According to the charting here, the nurse of
10 Dr. Rainsford said Dr. Rainsford did not advise the
11 family to send the patient to the hospital. The
12 patient had a do-not-resuscitate. The family
13 insisted anyway that an ambulance be called. The
14 nurse continued and charted that if they took the
15 patient to the Aiken Hospital it would be against
16 medical advice. You're going to see that actually
17 charted here, those words, against medical advice
18 but the family insisted anyway. In fact, the nurse
19 went on to write an order, telephone order, and
20 you're going to have that that says, transported to
21 Aiken Hospital via EMS per insistence of family
22 against medical advice. And you're going to see
23 where Dr. Rainsford came in and signed off on that
24 visit as his order, although he will tell you now
25 that really wasn't his intention. He's going to

1 tell you that what he said he signed was not really
2 what he intended, even though that's what he signed.
3 He's going to tell you that if he disagreed with it
4 at the time, he could have changed it. What you're
5 going to find, ladies and gentlemen, is that when
6 they did take their father to Aiken -- the Aiken
7 records you're going to have before you, and it's
8 going to show that as soon as he got to Aiken, that
9 is his hip. He had, and you're going to find in the
10 records, a urinary tract infection that tested
11 positive for MRSA bacteria, a sinus infection, the
12 blood culture, his blood had an infection called
13 sepsis. And that's a technical term, but it simply
14 means that the good things in your blood are being
15 replaced by bacteria. That blood culture grew out
16 the MRSA infection, the bacteria that had been
17 reported to the doctors at the Edgefield Medical
18 Clinic. The doctors at Aiken begin immediately to
19 give him the correct antibiotic to treat the MRSA.
20 The doctors noted it would have to be given to him
21 for 6 to 12 weeks. They also found an infected cyst
22 on his kidney, and after two weeks of antibiotics
23 and the IV antibiotics of the treatment, there's a
24 note in the record that the doctor states the
25 patient to be more alert and even started answering

1 questions to them verbally, but never was able to
2 recover.

3 He stayed in Select Specialty Hospital in
4 Augusta, from June the 1st through the end of July.
5 He did go downhill because of the overwhelming
6 infections and the pressure ulcers they tried to
7 treat. They also found at Aiken that -- one of the
8 doctors noted he found signs of gangrene in these
9 ulcers, more than one. He died on August the 2nd,
10 2006.

11 Now, we're not saying that this is what's
12 called a wrongful death case or that he died as a
13 result of this, but we're saying that he suffered
14 unnecessarily. Because what we had to do, ladies
15 and gentlemen, before we could bring this is look at
16 the evidence, and you're going to find from the
17 evidence that one of the things we had to figure out
18 is, was Mr. Peterson was so sick that he shouldn't
19 have been brought back to Edgefield in March of
20 2006, could he be helped medically there.

21 You're going to find the answer to that is he
22 could, and you're going to hear from Dr. Levine, who
23 is a physician specializing in treatment of patients
24 in nursing homes, and he's going to tell you,
25 especially in wounds, and he's going to tell you

1 that with the right treatment, once this bacterial
2 infection was identified, that it was very
3 treatable, and that the treatment should have
4 started long before he got to Aiken and that Aiken
5 on the 15th was way too late to start because by
6 that time it had become so overwhelming in the body
7 and had gotten into the bloodstream.

8 We also had to find out, ladies and gentlemen,
9 whether it was reasonable to do what -- you're going
10 to hear the testimony of what these physicians say,
11 that the nurses when they write these orders -- but
12 the doctor doesn't see the patient -- but the nurses
13 are writing that and then the doctors will write off
14 and approve it. They can do that because the nurses
15 are their eyes and ears. Is that reasonable?

16 Again, you're going to hear from Dr. Levine
17 that it is true that nurses and physical therapists
18 who actually do the debridement of the wounds and
19 that type of thing are extenders of medical care.
20 They can help provide certain care and make
21 observations and write notes that the doctor should
22 read, but they're not the brain. They may be the
23 eyes and ears in the sense that they give you
24 information, but they're not the medical
25 decisionmaker. That is only the doctor. And that

1 they did chart in the record what was going on
2 sufficiently for the doctors to make the decision.

3 What you're going to find, ladies and
4 gentlemen, is that after we reviewed everything,
5 that we know the burden of proof is on us as the
6 plaintiff. And as you heard the Judge say, that
7 burden of proof -- this is not a criminal case. A
8 criminal case is one where it's beyond a reasonable
9 doubt. This is a civil case; as he said, 51
10 percent. If you're on the 50-yard line and the
11 plaintiff moves that ball one yard to the 51-yard
12 line, we've carried the burden on each of the
13 issues. And we do believe that after you've heard
14 the evidence of the case and looked at the medical
15 records, you will agree.

16 You're also going to see, ladies and gentlemen,
17 all the physicians that are going to testify to you
18 are going to tell you that they did not see this
19 gentlemen in his last days. You're going to see
20 from the chart that there is no charting where they
21 charged for seeing this gentleman, when the wounds
22 were becoming so bad, when this MRSA infection was
23 starting to run rampant through his body to the
24 point where he had to go to Aiken. And they talked
25 about things like gangrene.

1 What you're going to find is that the testimony
2 is going to be that the standard of care is that as
3 soon as these are identified and this gentleman
4 starts to worsen, that sometimes this overwhelming
5 infection can even look like dementia. And we're
6 not going to dispute Mr. Peterson was having some
7 issues with memory, some issues with his neck, and
8 even some issues with moving his legs. But the
9 doctors knew that when they accepted him as a
10 patient. May 15th was too late. The family should
11 not have had to come in and demand he be moved.

12 DNR, do not resuscitate, does not mean do not
13 treat. And you'll see from the facts of this case
14 that the reason he was in the shape he was in on the
15 15th was because he was not being properly treated.
16 Thank you.

17 THE COURT: Mr. Parkinson.

18 MR. PARKINSON: Ladies and gentlemen of the
19 jury, I'm Brown Parkinson, and I'm a lawyer in
20 Greenville. And I represent Dr. Tami Massey in this
21 case. Dr. Massey, stand up one more time. That is
22 Dr. Massey. And she's one of the doctors at the
23 Edgefield Medical Clinic. She's 43 years old, she's
24 married, she has lives in Edgefield, and she's a
25 family practice doctor. All of the doctors at

1 Edgefield Family Practice are family doctors. They
2 take care of children, adults, people in nursing
3 homes. They take care of everybody, all kinds of
4 different medical problems; well visits, sick
5 visits. She actually used to deliver babies at the
6 Edgefield Hospital. So that's the nature of their
7 practice. She's in partnership with Dr. Rainsford
8 and formerly with Dr. Leaphart. Dr. Leaphart moved
9 because of her husband's job change. She's not
10 there anymore, but she's still practicing medicine.
11 Dr. Nicholson was in that group and, unfortunately,
12 he passed away a few months ago.

13 This case is a medical malpractice case. And
14 the Judge is going to tell you at the end of the
15 case what the law is, because you can't look it up
16 in a book like you've got your traffic manual and
17 you're studying to take your driver's test. Medical
18 malpractice law has been developed over the years.
19 The Judge is going to tell you what it is. But
20 because we've heard him give it before, and the
21 judges all give it basically the same way, we know a
22 little bit about what it says and the cases are
23 tried with this in mind. And one important thing
24 for you to understand is this: The doctors are to
25 be judged by something called the standard of care.

1 The standard of care means, under the law, that
2 a doctor has to do what a reasonable doctor in the
3 same or similar situation would do. There may be
4 more than one way to do things, more than one way to
5 skin a cat, but they have to do it in a way that is
6 reasonable. And if they do it in a way that's
7 reasonable as compared to the way the medical
8 community does it as whole, they've met the standard
9 of care, they've done what the law requires them to
10 do. And the fact that the patient does not get well
11 or the fact that the patient continues to be sick
12 and goes downhill is part of the patient's
13 condition, but you have to listen to what the
14 standard of care is.

15 The way to think about this is if a doctor does
16 not meet the standard of care, if there's a flat
17 line, say it's a swimming pool full of water, the
18 doctor has to do what would be above the line. If
19 it's below the line, if he's below the water, he's
20 done something no reasonable doctor would do. So he
21 has to do something that's within reason, and that
22 has to be established through expert testimony,
23 because you and I don't know how to practice
24 medicine, the Judge doesn't know, the lawyers don't
25 know, the witnesses don't know, except for the ones

1 who are medical doctors. And you'll hear testimony
2 in this case from not only the doctors who took care
3 of Mr. Peterson at Edgefield Medical Clinic, but
4 also expert witnesses. These are witnesses who were
5 not directly involved in patient care, but they've
6 been asked -- plaintiff has their expert witness,
7 defense has expert witnesses too -- to review the
8 records, to review depositions that have been taken,
9 testimony that's been taken, and to decide whether,
10 in their opinion, the standard of care was met or
11 not. You can give whatever weight you want to to
12 that testimony. We submit to you that at the end of
13 the case we will ask you to find a verdict in favor
14 of the defendants. In other words, find that these
15 doctors did not commit medical malpractice.

16 Now, I'm speaking for Dr. Massey. Mr. Nance
17 represents the other doctors, Dr. Rainsford,
18 Dr. Leaphart, and the clinic. But there's not any
19 kind of finger-pointing going on saying, I did it, I
20 didn't do it, he did it. There's just separate
21 lawyers because Dr. Massey asked me to be involved
22 and these doctors have Mr. Nance involved. So we're
23 basically working on the same team as far as that
24 goes.

25 But at the end, we're going to ask you to find

1 a verdict in favor of the doctors, that they did not
2 breach or violate the standard of care. They were
3 above the line of where they needed to be. Another
4 way to think about it is a big circle. There can be
5 different ways to treat patients. They're all
6 reasonable and may all be in that circle. You may
7 do it this way and I do it this way, it's reasonable
8 and within the circle of reason. To be negligent
9 under the law and violate the standard of care, you
10 have to be outside that circle. If you're outside
11 the circle of what a reasonable doctor would do or
12 you fail to do what a reasonable doctor should do --
13 you've maybe heard the preacher say in church there
14 are sins of omission and sins of commission, things
15 that you didn't do that you should have done, sins
16 that you did but you did wrong. In this case, we're
17 going to ask you to find a verdict in favor of the
18 doctors that they did not do anything wrong.

19 Now, Mr. Massey -- Mr. Peterson was born on
20 March 11th, 1922. He turned 84 during the spring of
21 2006 when these events were happening here in
22 Edgefield. He was a widower, he lived by himself.
23 He was found in his home on the floor by his
24 daughter. He had been on the floor for three days.
25 He had fallen and couldn't get up and laid their for

1 three days. Finally they broke into the house to
2 get him. They took him to Aiken because he was
3 dehydrated. His body temperature was like 87 and he
4 was in bad shape. He was in the Aiken Hospital for
5 a while. They brought him back to Edgefield and he
6 was in the Trinity Nursing Home, which is right
7 across the street from the doctor's office and right
8 there in the same parking lot in the hospital, on
9 the medical campus over there, and he was in Trinity
10 Nursing Home for a while and then he needed to go
11 back to the hospital. He was having medical issues
12 with his kidneys, with his body chemistry; he needed
13 to go back to the hospital because he had critical
14 values. He went to the emergency room at Edgefield
15 and then straight back to Aiken.

16 While he sat there in Aiken, at the hospital
17 again, they're trying to get him in better shape,
18 but he's got weakness, he can't walk, he can't move
19 his legs. He's got this bone spur, this thing
20 pressing on his neck, pressing on his spinal cord,
21 and so they did surgery on an 84-year-old man's neck
22 as sort of a last-ditch effort to try to restore
23 some sort of ambulation. It didn't work.

24 The doctor who operated on him said -- and
25 you'll see this in the records, that I didn't really

1 expect it to work but it was a last-ditch effort.
2 So he came back to Trinity the second time, which
3 was March 21st, he had lower -- he couldn't move his
4 legs. He was bedridden. He had leg contractures
5 which means because he can't move his legs, the
6 muscles in his legs start drawing up because he's
7 not moving them. He wouldn't eat, he had declining
8 nutritional status. He was paralyzed, he was
9 immobile, he had dementia, he was incontinent of
10 bowel and bladder, which means he had to have a
11 Foley catheter to drain his bladder, he had to wear
12 a diaper for his bowel movements. He had to be fed,
13 couldn't feed himself. He -- so he was the classic
14 patient that has to be in a nursing home. Couldn't
15 be cared for at home, none of the family could do
16 that, and he's not one of the ones who get their
17 cane, walk down to the nurse's station and say hello
18 to the nurses. He's requiring constant care.

19 They put booties on his heels to try to keep
20 his heels from getting pressure ulcers. They put
21 him on a pressure-relief mattress to keep pressure
22 off of his body. They were turning and
23 repositioning him every two hours. They were giving
24 him medicine, and I didn't even know they had this
25 until I got involved with this case, but there's

1 medicine they can give to try to increase his
2 appetite. As an age-declining person, he just
3 didn't have any appetite and they were giving him
4 meds to increase that. I told you about the Foley
5 catheter and diapers. They had nurses seeing him
6 daily, nursing assistants seeing him. The doctors'
7 office was right across the street. The doctors saw
8 him when he first came in. They saw him at
9 appropriate times along the way. The rest of the
10 time he's being cared for by the staff, and they had
11 physical therapists there, they had physical
12 therapists who were trained in wound care.

13 Some pressure ulcers, or bed sores as you've
14 heard them called, are unavoidable. All the doctors
15 will testify in this case there are some people who
16 you just can't keep that from happening; they're
17 just going downhill, their body doesn't have the
18 ability, their skin doesn't have the ability to
19 withstand it, despite all of the modalities that
20 they have. He did at some point in time develop a
21 pressure ulcer on his hip area there, and you'll
22 hear testimony about how you treat these kind of
23 things. You have to kind of let them run their
24 course. Once they've started, they're not going to
25 get better; they kind of run their course and you

1 have to treat them in a way that I won't tell you
2 about. I'll let the experts tell you about it. But
3 people on the staff there are keeping the doctors
4 advised about this. They write up what they think
5 needs to be done and the doctor gets papers, says
6 that's reasonable, treat this man this way, and they
7 will approve it in writing and come over if they're
8 asked to come over and need to come over. And they
9 are required to come over at certain intervals by
10 virtue of the way the nursing home program is set
11 up. This man is going downhill, unfortunately.
12 Unfortunately, he was in the end stages of his life.

13 I don't like to hear -- my father is 93 years
14 old, and I don't like to think about the fact that
15 my father is old too. And many of us have heard
16 that -- you know, have elderly relatives happen that
17 way. But this man was unfortunately going downhill
18 in a way that he was not going to get well.

19 And you heard Mr. Welch say they're not blaming
20 the fact that he ultimately died in August. All of
21 these events started in February; he died in August.
22 The main events are March 21st to May 15th. That's
23 the second Trinity Nursing Home admission. They're
24 not blaming his death, they're saying we allowed him
25 or caused him to suffer unnecessarily, and that we

1 caused some additional medical bills that would not
2 have been incurred had we treated him and gotten
3 better in the nursing home and he didn't have to go
4 to Aiken for all of this treatment. We're sorry
5 that happened, but this case is not about sympathy
6 or empathy, it's about the facts and the law. And
7 that's the oath that y'all swore to uphold as
8 jurors.

9 So at the end of the case I'm going to stand up
10 here again when it's my turn and remind you that I
11 ask you to return a verdict in favor of the doctors
12 in this case, and that's what I'll do several days
13 from now. I appreciate your attention in this case.
14 I'll say a couple other things: The doctors that
15 are sitting over there, some of the people sitting
16 over there are part of my office staff, and some are
17 Mr. Nance's staff. We're going to be using some of
18 this equipment here to project some things on the
19 screen, some of the paper records. Some of it will
20 be shot out of the computer like Mr. Welch was doing
21 in his opening statement. These black notebooks
22 here are all Mr. Peterson's medical records. We're
23 not going to try to read all these because it's a
24 heck of a lot, but we have to put them into evidence
25 so we can show the pieces we want to show to you.

1 That's what this is right here. And there will be
2 other evidence as we go along.

3 We appreciate your attention. This will
4 hopefully be an interesting case. But listen to the
5 facts, listen to the law, and come to a decision
6 that this unfortunate decline of Mr. Peterson was
7 not the fault of the doctors. Thank you.

8 MR. NANCE: Ladies and gentlemen, my name is
9 Jim Nance. I'm an attorney and I practice law in
10 Aiken. Shane Massey is the gentlemen seated with
11 me, and Blair Massey is the young lady sitting in
12 the front there and will probably be here tomorrow,
13 and Shane has other things he has to do. I have the
14 honor and privilege today to be here representing
15 Dr. George Rainsford and Dr. Eleanor Leaphart.

16 Dr. Leaphart doesn't practice here any longer.
17 She's in another practice. But Dr. Rainsford is
18 still here and hopefully will be here for a long
19 time to come. I tell you, I have the fortunate or
20 maybe unfortunate position of going third in this
21 case. I'm going last. I'll make a deal with you.
22 I don't talk just for the sake of hearing me talk.
23 I disagree with something Mr. Parkinson said,
24 otherwise I agree with everything he had to say and
25 everything he says. If I've got something in

1 addition that I think maybe you ought to know in the
2 defense of this case, I'll point it out, because
3 there's no reason for me to stand up here and
4 basically give you the same talk he just gave you
5 and talk about the same facts. But I do have a few
6 important things I'd like to say.

7 You heard his Honor tell you he's the judge of
8 the law in this case and he's going to tell you at
9 the end of the trial of this case what the law is
10 that applies to this case. I'd be willing to bet
11 you that at that point in time he's going to tell
12 you something to the effect that just because two
13 well-qualified doctors disagree as to what the
14 proper treatment or best treatment is in this case,
15 doesn't mean that one or the other didn't meet the
16 standard of care, because medicine is not an exact
17 science and people have different opinions about
18 things. You can have two doctors disagree and both
19 of them just as right as the other.

20 I think he's going to tell you that just
21 because treatment didn't bring about absolute
22 perfect results doesn't mean that the doctors who
23 did it did anything wrong because, again, medicine
24 is not an exact science. You've heard something
25 about the expert witnesses who are going to testify

1 in this matter. And the plaintiff has an expert
2 witness, Dr. Levine from Manhattan, and I guess he's
3 coming down here today and will be here today. But
4 I'll tell you what my doctors say and do when you
5 treat somebody with pressure ulcers. First off, you
6 look to see and make sure they have a
7 pressure-reducing device or mattress, something on
8 the heel that has a pad on the heel, because that's
9 what really gets these things going when they're
10 lying down they don't get blood to the skin.
11 They're put on a turning schedule, again, to relieve
12 pressure. You get speech therapy because often
13 people who have these things are older and they
14 can't swallow very well. And a speech therapist
15 doesn't teach them how to talk, but they help teach
16 them how to swallow their food.

17 You get a nutritionist to come in and look at
18 them and determine if they need supplements or have
19 the proper diet. You get a pharmacist to check and
20 be sure they're getting the right medicine. You get
21 an occupational therapist and a physical therapist
22 to make sure they're getting the right exercises,
23 trying to increase their strength so they can move
24 around.

25 If they are incontinent/ and Mr. Peterson was

1 incontinent, both bowel and bladder, you make sure
2 they're kept dry as possible, a Foley catheter is
3 used, and you clean them up as soon as you can.
4 Once, after doing all of these things in order to
5 prevent pressure ulcers, and you do get one, you
6 clean it, medicate it, dress it, and debride it in
7 an effort to get it to heal. Also, the other fact
8 is, is that all pressure sores are not a boil, they
9 just aren't. And I'm going to tell you, Dr. Levine,
10 when he was talked to before, indicated that doing
11 all those things I just listed is the proper way to
12 address a pressure sore. And he'll agree it was
13 done by these doctors, he's just going to say it
14 wasn't done enough. And people will agree that all
15 pressure sores are not a boil.

16 Again, like Mr. Parkinson, I'm going to ask you
17 to pay very, very close attention to all the
18 testimony in this matter. Analyze it in your mind,
19 decide what the facts are, and I'll ask you at the
20 end of the case to come back with a verdict for the
21 defense. Thank you very much.

22 THE COURT: You may call your first witness.

23 MR. WELCH: Judge, may we have just a brief
24 sidebar?

25 (Sidebar conference.)

1 THE COURT: Ladies and gentlemen of the jury,
2 the oath was given and perhaps during the opening
3 statement Trinity Nursing Home was mentioned and
4 Dr. Nicholson was mentioned. Neither Trinity
5 Nursing Home nor Dr. Nicholson is a party to this
6 lawsuit. It's simply Dr. Massey and Dr. Rainsford
7 and Dr. Leaphart. Okay? Is that good?

8 MR. WELCH: Yes, Judge.

9 THE COURT: You may call your first witness.

10 MR. WELCH: We call Ms. Carrie Kimble.

11 CARRIE KIMBLE

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes.

14 THE CLERK: Have a seat. State your full name
15 and spell your last name, please.

16 THE WITNESS: Carrie Kimble, K-I-M-B-L-E.

17 THE COURT: You'll need to speak up as loud as
18 you can.

19 THE WITNESS: Carrie Kimble.

20 DIRECT EXAMINATION

21 BY MR. WELCH:

22 Q. Ma'am, tell the jury -- there's been discussion
23 about Mr. William Peterson. Did you know him?

24 A. Yes, I know him.

25 Q. Tell the jury how you knew him.

1 A. I know him by -- you know, I'm in the family
2 with him.

3 THE COURT: Hold on a second. Let's get that
4 mic up to her.

5 MR. WELCH: There you go.

6 THE COURT: Speak into that.

7 THE WITNESS: I'm in the family with -- my
8 grandmother was a sister, daughter is married in the
9 Peterson family.

10 BY MR. WELCH:

11 Q. Okay. And how long did you know him?

12 A. Well, I been knowing him quite a few years,
13 long time.

14 Q. How long have you been living in Edgefield?

15 A. All my life.

16 Q. Have you known him since that time?

17 A. Yeah, ever since I was small, old enough to
18 know him.

19 Q. You knew his children?

20 A. Yes.

21 Q. Tell the jury, back in February of 2006, did
22 you have an opportunity to run into him in
23 Edgefield?

24 A. Yeah. I run into him there at Dodge's store.
25 He was in -- the day before, he was at Dodge's

1 store, in the store. And I asked him, Mr. Peterson,
2 what you doing in Edgefield? He said he been to pay
3 his car insurance, and he had a thing of milk and a
4 Debbie cake and a Three Time Lucky ticket.

5 Q. And did he appear to understand what you were
6 telling him?

7 A. Yeah. He didn't seem to be sick.

8 Q. And after that conversation, as far as you
9 could see, did he go out and get in his vehicle?

10 A. Yeah. When I went out of Dodge's he was
11 standing out there talking to another gentleman by
12 his car.

13 Q. But you recognized his car?

14 A. Yeah.

15 Q. Did you see anybody driving other than him?

16 A. Nobody was driving but him.

17 Q. And as far as you know, did he drive home that
18 day?

19 A. Yeah. He left out the parking lot and went on
20 home.

21 Q. Now, a few days after that did you become aware
22 that he was in the hospital?

23 A. No.

24 Q. How did you become aware he was in the
25 hospital?

1 A. His daughter called and told me that they had
2 put him in the Aiken Hospital.

3 Q. And did she tell you when it was?

4 MR. NANCE: Your Honor, I'm going to object to
5 what she said.

6 MR. WELCH: Let me rephrase it, Judge.

7 BY MR. WELCH:

8 Q. How long was that you were talking to her after
9 you had seen him?

10 A. I didn't talk to her after then. She called
11 and told me.

12 Q. How frequent would you talk to his daughter?
13 Which daughter was it?

14 A. Mary Ruth.

15 Q. How frequently do you guys talk?

16 A. I'd call and ask her, you know, and she would
17 call and tell me how he was doing.

18 Q. Do you have any idea how many days it was after
19 you saw him at the store that you talked to her
20 about him being in the hospital?

21 A. It was about two or three days after I had saw
22 him at Dodge's.

23 Q. And she told you he was at Aiken Hospital?

24 A. Yeah.

25 MR. WELCH: I don't have any further questions.

1 Answer any questions these gentlemen have for you.

2 THE COURT: Any questions?

3

4

CROSS-EXAMINATION

5

BY MR. PARKINSON:

6

Q. Ms. Kimble, did you say you were related to

7

Mr. Peterson?

8

A. My grandmama's sister -- my grandmama's sister

9

daughter married into the Peterson family.

10

Q. Okay. Okay. And you never saw him after he

11

went in the nursing home? You didn't go visit him,

12

did you?

13

A. No. No.

14

Q. And you didn't see him in the Aiken Hospital,

15

did you?

16

A. No.

17

Q. So you don't have any idea what his condition

18

was there?

19

A. No.

20

Q. You didn't see him paralyzed where he couldn't

21

move his legs?

22

A. No.

23

Q. Or wearing a diaper or having a catheter or

24

anything like that?

25

A. No.

1 MR. PARKINSON: Okay. That's all the questions
2 I have.

3 MR. NANCE: No questions, Your Honor.

4 THE COURT: All right. You may step down.
5 Call your next witness, please.

6 MR. WELCH: Mary Ruth Peterson.

7 THE COURT: Ms. Mary Ruth Peterson, please.

8 THE CLERK: Raise your right hand.

9 MARY RUTH PETERSON

10 being first duly sworn, testified as follows:

11 THE WITNESS: I do.

12 THE CLERK: Have a seat. State your full name,
13 spell your last name.

14 THE WITNESS: Mary Ruth Peterson.

15 MR. WELCH: Judge, it may be a good time to let
16 the clerk give those notebooks that have some of the
17 records in them.

18 THE COURT: She's not going to testify about
19 the medical records.

20 MR. WELCH: She's going to testify about
21 something she signed, Judge.

22 THE COURT: Ladies and gentlemen of the jury,
23 we're trying to make things easy for you. These are
24 notebooks that contain some records that have been
25 introduced into the trial of the case. The lawyers

1 will direct you to the appropriate page when they're
2 talking to the witnesses, that way we don't have to
3 pass records around. They're all the same thing.
4 But pay attention to the witnesses and we'll refer
5 you to the records when you need to. But by the
6 time it's over, you'll see a lot of it.

DIRECT EXAMINATION

7
8 BY MR. WELCH:

9 Q. Tell me your name again, please.

10 A. Mary Ruth Peterson.

11 Q. And tell the jury a little bit about yourself.

12 Where are you from?

13 A. Trident, South Carolina.

14 Q. Is that in Edgefield County?

15 A. No; Aiken County.

16 Q. How long have you lived there?

17 A. Ever since I was 18 years old. Now I'm 66.

18 Q. On that property -- tell the jury who all lived
19 on that property back in 2006.

20 A. 2006, me and my brother Raymond and his wife.

21 Q. And who else lived in a house on the property?

22 A. That's all. Everybody moved off.

23 Q. Did your father live in the house on that
24 property?

25 A. Yeah, my father did.

1 Q. And that's Mr. William Peterson?

2 A. Right.

3 Q. And explain to the jury a little about how
4 close you lived together. You have houses there
5 close together?

6 A. Well, my father and me lived about -- from
7 closer -- from me to you. And my brother -- but
8 closer from here to the gentleman behind you.

9 Q. All right. And, now, did your father live in
10 the house that he and your mother lived in?

11 A. Yes, sir.

12 Q. And you lived in a house that was added on
13 later close to that?

14 A. A trailer.

15 Q. And let's go back to 2006. Your mother passed
16 before your father; is that correct?

17 A. Yes, sir.

18 Q. Who lived there with your father?

19 A. By his self.

20 Q. And do you know how long he had been living by
21 himself?

22 A. Ever since my mother died.

23 Q. And do you know about what year she died?

24 A. Let's see. I think -- I can't recall right
25 now.

1 Q. Was it several years he was living by himself?

2 A. Yes, sir.

3 Q. And tell the jury, when he lived by himself,
4 even up to February 2006, did he take care of his
5 own needs, take care of his own groceries, that type
6 of thing?

7 A. We didn't have to do nothing for my father.

8 Q. What about his bills?

9 A. He paid his own bills, he paid his own finance
10 bill, he paid his car insurance, he paid his car
11 payment when he had one. The only thing I did for
12 my daddy -- he loved sweets and he couldn't cook.
13 He liked for me to cook him a peach pie. I'd cook
14 that peach pie for him, sometimes two times a week,
15 and the rest of it, he'd cook his own meals.

16 Q. Now, where did your father work most of his
17 life?

18 A. Beg your pardon?

19 Q. Where did your father work most of his life?

20 A. Graniteville Company. And he retired from
21 Graniteville and he didn't want to sit down. He
22 went to Kimberly-Clark.

23 Q. And he retired from both of those places?

24 A. Well, the company sold it out and then they had
25 to come home.

1 Q. But he worked until retirement age?

2 A. Yes, sir.

3 Q. Now, ma'am, I want you to go back with me to
4 February of 2006 and tell the jury -- you've heard
5 Ms. Carrie Kimble testify about seeing him at
6 Dodge's store?

7 A. Yes, sir.

8 Q. From there, tell the jury what contact you had
9 with your father that February. Who found your
10 father in his house?

11 A. Oh, I found my father.

12 Q. Tell the jury about that. How did that come
13 about?

14 A. I had -- I went down there three days and I
15 knocked on the door and. He'd ask me what do I
16 want, and I'll say, are you all right? And he said,
17 yeah, I'm all right, go back home. The second day I
18 did the same thing. And the third day he told me to
19 come to the front. And I went to the front and I
20 tried to get in, but I couldn't get in. So I called
21 my sister Melinda and we tried to get in. We
22 couldn't get in. I called Mr. Gary, he came in and
23 he broke the door down for us.

24 Q. And where was your father when you got in the
25 house?

1 A. On the floor.

2 Q. Was he talking to you?

3 A. Yes, sir.

4 Q. Was he having a conversation with you?

5 A. Oh, yes.

6 Q. Was he making sense to you?

7 A. Yes, sir.

8 Q. Tell the jury what you did after that. Did you
9 take him to the hospital?

10 A. Yeah. After we bathed him up and everything,
11 we took him to the hospital.

12 Q. Did you put clean clothes on him?

13 A. Yes, sir.

14 Q. Did you call the ambulance or did you take him?

15 A. My sister Melinda took him.

16 Q. Was it by car or ambulance?

17 A. By car.

18 Q. So at the Aiken Hospital -- and then I'm
19 going -- if you will --

20 MR. WELCH: Judge, if I could approach.

21 THE COURT: Yes, sir.

22 BY MR. WELCH:

23 Q. Ma'am, I'm going to ask you be careful, this
24 will fall, but to look at these pages. We'll start
25 with page 8 from that 2/27 admission. And in the

1 juror notebooks it will be -- you'll see at the
2 bottom of the page some numbers. We'll get to those
3 numbers. It's the same one that's on the --

4 THE COURT: What number is it?

5 MR. WELCH: It's Exhibit No. 2 Judge, page 8.

6 THE COURT: Thank you.

7 BY MR. WELCH:

8 Q. Ma'am, I want you to look at that. It says
9 South Carolina Emergency Medical Services, and then
10 it's got resuscitate and it says do not resuscitate.
11 Do you see that?

12 A. Yes, sir.

13 Q. Look down toward the bottom of that. Is that
14 your signature?

15 A. Yes, sir. Where it says daughter?

16 Q. Yes, ma'am.

17 A. Yes, sir, that's my signature.

18 Q. And did you sign it February 27th?

19 A. Yes, sir.

20 Q. Now, ma'am, did anyone explain to you exactly
21 what that meant on that form?

22 A. No, sir.

23 Q. Tell the jury how it came about, you signing
24 that form.

25 A. Because he always told me when he got sick --

1 MR. NANCE: I'm going to object.

2 BY MR. WELCH:

3 Q. Let me ask you this, ma'am: When you signed
4 the form, tell the jury not why you signed it, but
5 was the form placed in front of you? Exactly how
6 did it come about that you signed those forms?

7 A. Say that again.

8 Q. Explain to the jury, ma'am, did they bring you
9 some forms to sign that day from the nursing home?

10 A. Well, yeah.

11 Q. And was this in the forms they brought you to
12 sign?

13 A. Yes, sir.

14 Q. Now, ma'am --

15 A. It was the lady named Ms. Williams.

16 Q. And she brought you those forms?

17 A. Yes, sir.

18 Q. And did you ask her any questions about the
19 forms?

20 A. No, sir.

21 Q. Okay. And you signed that that day. Now, when
22 you signed that form, did they give you any
23 explanations of exactly what it meant?

24 A. No, sir.

25 Q. And so if you go to the page before that, page

1 7, just flip the page over to page 7, which is the
2 one that's up on the screen now. Let me make sure
3 you've got -- the one before that, ma'am, page 7.
4 This page here. And it's not going to be in the
5 jury notebooks.

6 But, ma'am, looking at yours and the one on the
7 screen, you were asked to initial several blanks on
8 that page. Do you see that?

9 A. Yes, sir.

10 Q. And asked to sign that right there. Do you see
11 where I'm pointing on the screen?

12 A. Yes, sir.

13 Q. Is that your signature?

14 A. Yes, sir.

15 Q. And you were asked to initial certain blanks?

16 A. Yes, sir.

17 Q. One says: I do not want to receive nasal or
18 gastric tubes. You initialed that?

19 A. Yes, sir.

20 Q. One below that says: I do not want to receive
21 gastric tubes. You initialed that?

22 A. Yes, sir.

23 Q. But one says: You do want to receive IV
24 fluids. You did want your father to receive IV
25 fluids?

1 A. Yes, sir.

2 Q. It also says that you did want him to receive
3 IV antibiotics; is that correct?

4 A. I don't remember.

5 Q. Right there where you initialed it says: I do
6 want him to receive IV antibiotics.

7 A. Yes, sir.

8 Q. Now, on the 27th, was that your decisions?

9 A. Yes, sir.

10 Q. And you did initial those?

11 A. Yes, sir.

12 Q. And so if he did have a need for antibiotics,
13 it was your understanding he was going to get them?

14 A. Yes.

15 Q. Now, tell the jury, while he was there that
16 first time, did you get some notification that they
17 were going to take him back to the hospital? Did
18 somebody call and tell you they were going to take
19 him back to the hospital?

20 A. Oh, yeah. One of the nurses called me, then I
21 called my sister Melinda.

22 Q. Okay. And when he came back from the hospital
23 to go back to the nursing home, did you take him
24 back the second time?

25 A. Yes, sir.

1 Q. Okay.

2 MR. WELCH: And, Judge, again, let me turn the
3 page to the next for her.

4 BY MR. WELCH:

5 Q. We'll look at page 7 in Exhibit 3, ma'am, the
6 March admission, and then again I'm going to ask you
7 about the page before that. You'll turn back to
8 this in just a second. Okay?

9 A. Okay.

10 Q. Now, ma'am, looking at this one, did you again
11 sign this? Is that your signature?

12 A. Yes, sir.

13 Q. And again, if you'll turn it back over to the
14 page before, the one before that, ma'am, this one,
15 this page right here. Looking at that page, ma'am,
16 again, you did expect him to receive IV antibiotics
17 and IV fluids, didn't you?

18 A. Yes, sir.

19 Q. During the time he was being treated, did
20 anyone ever from the doctors' office -- did you know
21 what doctors were treating him?

22 A. Well, we signed him in under Dr. Nicholson -- I
23 signed him in under Dr. Nicholson.

24 Q. And had he been a patient of that doctor
25 before?

1 A. Yes, sir.

2 Q. Did the doctors ever call and tell you that
3 your father needed some antibiotics?

4 A. No, sir.

5 Q. Did anybody ever call and tell you that your
6 father had these bad pressure ulcers?

7 A. No, sir.

8 Q. Did anyone ever show you those?

9 A. No, sir.

10 Q. Were you ever told by anyone he was losing
11 weight?

12 A. No, sir.

13 Q. Did the doctors inform you of that?

14 A. No, sir.

15 Q. You were making decisions for him medically; is
16 that correct?

17 A. Right.

18 Q. Did anyone ever ask you to make any decisions
19 about his treatment?

20 A. No, sir.

21 Q. Now, ma'am, go with me to the 15th of May. Did
22 you go to the room that day, the 15th of May, when
23 some of your family members went to see him?

24 A. I wasn't there that day.

25 Q. Who from your family went that day that you

1 know?

2 A. My sister Melinda, my sister Hattie, and
3 Patricia.

4 Q. And had you been to see your father while he
5 was at the nursing home?

6 A. Yes, sir, I went to see him.

7 Q. How frequently would you go see him?

8 A. About three times a week. But see, I don't
9 drive.

10 Q. During that time now, he had two admissions;
11 correct?

12 A. Yes, sir.

13 Q. During the time he was there, briefly there
14 that first time, we're talking about that one, but
15 the second time starting in March, would you say you
16 were seeing him about three times a week?

17 A. Yes, sir.

18 Q. Were there nurses, doctors, any other people
19 around? Did anyone talk to you about your dad's
20 condition?

21 A. No, sir.

22 Q. Did anyone ask you about a conference for your
23 dad?

24 A. No, sir.

25 Q. Did anybody inform you he was going downhill

1 rapidly?

2 A. No, sir.

3 Q. When you were there, did you observe him eat?

4 A. Yes, sir.

5 Q. Tell the jury what he liked to eat.

6 A. He loved his milk, and he loved his cookies,
7 and he loved his sweet potatoes, and he loved the
8 dessert.

9 Q. And while the family was there, did you ever
10 notice he had any problems eating anything you'd
11 bring him?

12 A. Oh, yeah. I used to carry him ice cream
13 sundaes and he'd eat that, and milkshakes.

14 Q. Did he ever have any problem eating the stuff
15 you brought him?

16 A. No, sir.

17 Q. Did anyone ever ask you to assist at feeding
18 time?

19 A. No, sir. He'd eat that.

20 Q. Did they ever tell you they'd like for you to
21 come back since he was eating for you guys and help
22 him at mealtimes?

23 A. No, sir.

24 Q. Doctors ever call you and talk about that?

25 A. No, sir.

1 MR. WELCH: I don't have any further questions.

2 Answer any questions they may have for you, ma'am.

3 THE COURT: Mr. Parkinson.

4 MR. PARKINSON: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. PARKINSON:

7 Q. Now, Ms. Peterson, you're the daughter of
8 William Peterson that we're here to talk about in
9 court this week; right?

10 A. Right.

11 Q. And you were his responsible party for his
12 admissions at Trinity Nursing Home?

13 A. Yes. I put him in.

14 Q. Okay. And I think the term they use is
15 responsible party. But you were the one the nursing
16 home was to contact if there was information that
17 needed to go back and forth about your father;
18 correct?

19 A. Yes, sir.

20 Q. And there were maybe some other siblings of
21 yours that were the second and third contact, but
22 you were the primary contact?

23 A. Right.

24 Q. And you've got an 11th grade education; right?

25 A. Yes, sir.

1 Q. And you worked for a number of years as a
2 nursing assistant in another nursing home, didn't
3 you?

4 A. I worked at one in front of that chain-gang
5 camp, they used to call it, in Reynolds. I worked
6 there 14 years, that home. I worked there 14, and I
7 worked at Trinity Mission one year, and I worked at
8 Mattie Hall 20 years.

9 Q. Okay. So over 30 years you worked in nursing
10 homes?

11 A. Thirty-six.

12 Q. Thirty-six. Okay. So you knew a little about
13 how nursing homes worked when you put your father at
14 Trinity; correct?

15 A. Yes, sir.

16 Q. In fact, you worked at Trinity back in the
17 1980s; correct?

18 A. Yes, sir, because I quit in 1980 and went to
19 Mattie Hall.

20 Q. And when you worked at the nursing homes,
21 different ones, I guess part of your job as a
22 nursing assistant was sometimes to go in and turn
23 and reposition patients in bed?

24 A. Right, and check them.

25 Q. And some of those patients couldn't do things

1 for themselves, could they?

2 A. Some couldn't do nothing.

3 Q. And your father couldn't do anything for
4 himself when he was in Trinity Nursing Home, could
5 he?

6 A. No, sir.

7 Q. And the way that Ms. Kimble saw him in the days
8 before he fell and had to go to the hospital in the
9 nursing home, he wasn't like the way Ms. Kimble saw
10 him when he got in the nursing home, was he?

11 A. No, sir.

12 Q. Okay. And I think you lived on the property,
13 sort of a bigger piece of property right there where
14 your father was.

15 A. Where he lived, yes, sir..

16 Q. Okay. And he fell in the house by himself and
17 laid on the floor for three days?

18 A. Yes, sir.

19 Q. Okay. And then y'all took him to the hospital
20 and he ended up in the hospital at Aiken?

21 A. Aiken.

22 Q. And you realized that when he was coming out of
23 the Aiken Hospital he couldn't go back home and take
24 care of himself, he had to go to a nursing home,
25 didn't he?

1 A. Right.

2 Q. So you put him in Trinity and he stayed there
3 for a few -- maybe a couple weeks and had to go back
4 to Aiken and be in the hospital again, didn't he?

5 A. Right.

6 Q. He had to have some surgery on his neck while
7 he was there; is that right?

8 A. They went through his neck.

9 Q. They went through his neck, but they were
10 operating on his cervical spine?

11 A. Right. Yeah.

12 Q. And he never walked after that, did he?

13 A. No.

14 Q. You never saw him walk in the hospital or in
15 the Trinity Nursing Home, did you?

16 A. No.

17 Q. He had to wear briefs or a diaper, didn't he?

18 A. Oh, yeah.

19 Q. And he had a catheter for urine?

20 A. Yes, sir.

21 Q. He had to be fed, didn't he? He couldn't feed
22 himself well, could he?

23 A. No.

24 Q. I'm sorry?

25 A. No, sir.

1 Q. And all of his bathing and oral care, brushing
2 his teeth, shaving him, everything that had to be
3 done, had to be done by the staff at the nursing
4 home?

5 A. Right.

6 Q. Okay. And you went -- during that second
7 admission, which was March 21st through May 15th,
8 you said you went to visit him about three times a
9 week.

10 A. Right, three times a week.

11 Q. He seemed to be fine to you, didn't he?

12 A. Fine to me.

13 Q. You never complained to the nursing staff about
14 anything you thought was going wrong, did you?

15 A. No, because I thought he was fine.

16 THE COURT: What did you say?

17 THE WITNESS: The reason I didn't complain is
18 because he looked fine.

19 BY MR. PARKINSON:

20 Q. And did you -- he looked to be fine to you, is
21 that what you said?

22 A. Right.

23 Q. You never asked to talk to any of his doctors
24 at Edgefield Medical Clinic during those nursing
25 home visits, did you?

1 A. No, sir.

2 Q. And you knew their office was right across the
3 street?

4 A. Oh, yeah. I know about that office.

5 Q. You didn't go over there and try to talk to
6 them or ask them to come to the nursing home and
7 talk to you there, did you?

8 A. No, sir.

9 Q. You don't even know Dr. Massey, do you?

10 A. No, because I left that -- left there in 1980.

11 Q. Okay. But you've never seen Dr. Massey?

12 A. No. Nobody else. It was Dr. Nicholson and
13 Dr. Rainsford.

14 Q. Dr. Rainsford, Dr. Nicholson and Dr. Turner --

15 A. Right.

16 Q. But you never met Dr. Massey. And whether she
17 was or was not taking care of your father --

18 A. I don't know nothing about that.

19 Q. Okay. Now, when your father went into -- and
20 we can get out this record and look at it if we need
21 to. When your father went into Trinity the first
22 time, you signed one of those DNR,
23 do-not-resuscitate orders at that time on his
24 behalf, didn't you?

25 A. Right.

1 Q. And then he went out and then he came back
2 weeks later for his second Trinity admission. You
3 signed another do-not-resuscitate order for that
4 admission; correct?

5 A. Right.

6 Q. And your father did not have any feeding tubes
7 in either going through his stomach or through his
8 nose to feed him?

9 A. No, sir.

10 Q. Okay. And those were the papers that Mr. Welch
11 went over with you where you signed saying you did
12 not want those things, correct?

13 A. No, sir.

14 Q. Did not want those?

15 A. But that didn't say I didn't want him to have
16 water and stuff and be -- not to be treated.

17 Q. Right.

18 A. I just didn't want any tubes in him.

19 Q. You wanted him to have IV fluids?

20 A. Right.

21 Q. And antibiotics if he needed those?

22 A. Right.

23 Q. But you didn't want artificial feeding through
24 tubes?

25 A. Right.

1 Q. Okay.

2 MR. PARKINSON: I don't think I have any other
3 questions, Your Honor. Thank you.

4 THE COURT: Mr. Nance?

5 CROSS-EXAMINATION

6 BY MR. NANCE:

7 Q. Ms. Peterson, I think you alluded to it,
8 pointed these things out a second ago, but they
9 aren't in those books over there. And I just want
10 you to look at this and tell me --

11 THE COURT: For the record, what is this?

12 MR. NANCE: This is pages 6 and 7 of Trinity,
13 Bates stamped 22706 through 31706.

14 MR. WELCH: It's Exhibit 2, Judge.

15 THE COURT: Thank you.

16 MR. NANCE: All right. I'd like to mark these
17 as an exhibit.

18 THE COURT: They're already in, aren't they?

19 MR. NANCE: They are, but they're not in these
20 books and they're pulled out and -- all right.

21 BY MR. NANCE:

22 Q. I want to show you this just a second. On page
23 7, this is your signature isn't it?

24 A. All of it.

25 Q. All of it.

1 A. That one, that one.

2 Q. Okay. And on this document it says:

3 Artificial forms of nutrition and hydration have
4 been explained and discussed with me to include
5 nasogastric tubes, gastric tubes and IVs; isn't that
6 what it says?

7 A. Yes.

8 Q. That was done, wasn't it?

9 A. Yes.

10 Q. What was it they didn't explain to you about
11 the DNR that you think they should have explained?

12 A. They didn't read it and explain anything.

13 Q. What should they have explained, do you think,
14 about that that you say they didn't? This is page 8
15 that you've alluded to on Exhibit 2.

16 That's the do-not-resuscitate order. You say
17 they didn't explain anything to you about it. What
18 do you think they should have explained?

19 A. Well --

20 THE COURT: I can't understand you.

21 THE WITNESS: Me?

22 MR. NANCE: He said he couldn't understand you,
23 not me.

24 BY MR. NANCE:

25 Q. What is it about this do-not-resuscitate order

1 that you say should have been explained to you that
2 wasn't? I mean, you knew what you were signing,
3 didn't you?

4 A. I was signing I didn't want tubes in him.

5 Q. You understood that -- and that's the one right
6 before page 7. You understood when you signed this
7 document that you were saying you didn't want to
8 have any nasogastric tubes, but you did want
9 antibiotics?

10 A. I didn't want nothing in him but -- I wanted --
11 him to have stuff to keep him alive, you know. The
12 antibiotics and stuff like that, I wanted him to
13 have that.

14 Q. That says to do that by IV, give him
15 antibiotics by IV, doesn't it?

16 A. Yeah.

17 Q. But you don't want nasogastric tubes?

18 A. No.

19 Q. You understood that's what that document meant?

20 A. Right.

21 Q. But what is it you did not understand about
22 this do-not-resuscitate document that you gave them
23 in February of 2006?

24 A. Explain that again.

25 Q. What was it you did not understand about this

1 do-not-resuscitate directive you signed in February
2 of 2006 that you think should have been explained to
3 you?

4 A. Well, when I signed it, I thought, you know,
5 that -- that they was not going -- you know, not
6 going to try to give him anything, no antibiotics or
7 nothing.

8 Q. You think they tried to do that?

9 A. I don't know.

10 Q. Okay. You wanted him to have antibiotics but
11 not a nasogastric tube, so you understood that?

12 A. I understood all of that.

13 MR. NANCE: Okay. I'd like to mark this, pages
14 6 and 7 of Exhibit 2.

15 MR. WELCH: No objection, Judge. I'm assuming
16 those were under defense exhibits.

17 (Defendants' Exhibit No. 1 marked for
18 identification and admitted into evidence.)

19 THE COURT: Couple more minutes and we'll take
20 a break.

21 BY MR. NANCE:

22 Q. All right. Let me show you the same documents
23 you talk about from the next admission, 3/21/2006,
24 pages 5 and 6. This is the same document, isn't it?

25 A. Uh-huh.

1 Q. And again you signed it again, and again marked
2 that you didn't want him to have nasogastric tube,
3 and that you did want IV antibiotics; correct?

4 THE COURT: You have to answer, ma'am. Is that
5 correct?

6 THE WITNESS: Yeah.

7 MR. NANCE: I'd like to mark that.

8 MR. WELCH: No objection.

9 (Defendants' Exhibit No. 2 marked for
10 identification and admitted into evidence.)

11 BY MR. NANCE:

12 Q. Now, this document in evidence --

13 MR. WELCH: What are you looking at?

14 MR. NANCE: Same admission, page 113.

15 MR. WELCH: Page what?

16 MR. NANCE: 113.

17 MR. WELCH: That's the Red Sheet?

18 MR. NANCE: Yeah.

19 MR. WELCH: Okay.

20 BY MR. NANCE:

21 Q. Now, this document, you were asked when he was
22 admitted the second time, what is going on currently
23 that leaves you to seek nursing home placement? And
24 you told him, dad had surgery, old age, need you
25 again?

1 A. No.

2 Q. Is that your writing?

3 A. No, sir.

4 Q. Okay.

5 A. None of that is my writing there.

6 Q. You didn't tell them that?

7 A. No, sir.

8 Q. And this says: What services you think would
9 be needed? And you put, all of them.

10 A. Right.

11 Q. And what is important to you about a nursing
12 home? And it says: He was here, I want him back,
13 y'all good to him here. Is that what you told them?

14 A. Yes.

15 Q. Okay.

16 MR. NANCE: I'd like to mark that.

17 MR. WELCH: No objection.

18 (Defendants' Exhibit No. 3 marked for
19 identification and admitted into evidence.)

20 MR. NANCE: That's all I have, Your Honor.

21 THE COURT: Redirect, if any?

22 MR. WELCH: Yes, please, Judge.

23 REDIRECT EXAMINATION

24 BY MR. WELCH:

25 Q. Ma'am, this is page 81 from the medical records

1 on the second admission there. And it shows on
2 5/4/06, the culture, wound culture taken, and on
3 5/7/06 it was sent attention Dr. Massey, faxed to
4 EMC, Edgefield Medical Clinic 5/7 --

5 MR. PARKINSON: First of all, he's leading and
6 testifying. And secondly, this is not responsive to
7 cross.

8 THE COURT: Sustained.

9 BY MR. WELCH:

10 Q. Ma'am, did they ever --, you said you wanted IV
11 antibiotics. You told the doctors that; right?

12 A. Right.

13 Q. Did they call to tell you that this culture
14 that came out that's in the medical here with two
15 different bacterias that was in your father, they
16 called to tell you he needed treatment and could
17 they give him antibiotics?

18 A. They didn't tell me anything.

19 MR. WELCH: Thank you.

20 THE COURT: Okay. Thank you. You may step
21 down.

22 Ladies and gentlemen, we're going to take our
23 afternoon break. It's quarter to 4:00. We'll break
24 till 4:00 and come back and go till 5:00. Don't
25 discuss the case and don't deliberate.

1 (The jury exits the courtroom at 3:45 PM.)

2 THE COURT: Anything for the record before we
3 break?

4 MR. WELCH: Yes, Judge, but we move to amend to
5 make sure Trinity is not in the records, not in the
6 case. We took care of it in some records. That's
7 it.

8 THE COURT: Mr. Parkinson, anything for the
9 record?

10 MR. PARKINSON: Nothing, Your Honor.

11 THE COURT: Mr. Nance?

12 MR. NANCE: Nothing, Your Honor.

13 THE COURT: We'll stand at ease till 4:00 and
14 go about 5:00 and we'll see where we stand for
15 tomorrow.

16 (Short break.)

17 THE COURT: Anything for the record before we
18 start?

19 MR. WELCH: No, sir.

20 MS. MASSEY: No, sir.

21 THE COURT: Bring the jury in, please.

22 (The jury returns to the courtroom at 4:06 PM.)

23 THE COURT: All right. Did y'all select me a
24 foreperson?

25 THE JURY: Yes.

1 THE COURT: Let me tell you what we're going to
2 do. We're going to run till 5:00, then we'll start
3 at 10:00 tomorrow. Later than I want to start, but
4 I've got a hearing that starts at 8:30 in the
5 morning. So we'll start our case at 10:00. 8:30
6 start on an hour and a half case, trying to do a lot
7 up here at a time. Probably tomorrow we'll see
8 where we stand and start a little earlier than that
9 the next day.

10 You may call your next witness.

11 MR. WELCH: I call Melinda Butler, please.

12 THE COURT: Ms. Butler.

13 THE CLERK: Raise your right hand, please.

14 MELINDA BUTLER

15 being first duly sworn, testified as follows:

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Have a seat, state your full name
18 and spell your last name.

19 THE WITNESS: Melinda Butler, B-U-T-L-E-R.

20 DIRECT EXAMINATION

21 BY MR. WELCH:

22 Q. Ma'am, explain to the jury about who you are.

23 Where do you live?

24 A. I live in Aiken at 136 Beaver Branch Road.

25 Q. What do you do?

1 A. I'm a machine operator at Shaw Industries of
2 Aiken.

3 Q. How long have you been doing that?

4 A. Eighteen years.

5 Q. Same company?

6 A. Yes, sir.

7 Q. Good for you.

8 Tell me about your family. Do you have
9 children?

10 A. I have one son, 14.

11 Q. And you've lived there in Aiken for how long,
12 the whole 18 years?

13 A. I've lived there all my life.

14 Q. And tell the jury the relationship to
15 Mr. Peterson.

16 A. He was my daddy.

17 Q. Okay. And now I want you to tell the jury, did
18 you, even though you lived in Aiken and in terms of
19 Edgefield -- we're downtown Edgefield. Where did
20 your daddy live between here and Aiken? If I was
21 going from here to Aiken, where would I turn to go?

22 A. You just keep straight if you're coming from
23 here.

24 Q. And is that where your father lived?

25 A. On Highway 19. Uh-huh.

1 Q. Tell the jury, how frequently would you see
2 your dad?

3 A. I'd see my dad about three times a week.

4 Q. Now, there's some testimony that your mother
5 passed away first.

6 A. Yes, sir.

7 Q. And do you recall about how long your dad lived
8 there at the home place -- that's the house that
9 your mother and dad had?

10 A. Yes, sir.

11 Q. Do you know about how many years he lived there
12 after your mother died?

13 A. About two.

14 Q. Okay. And during that two years, did anybody
15 have to take care of him?

16 A. No, sir.

17 Q. Did he do his own cooking?

18 A. Yes, sir.

19 Q. Drive himself around?

20 A. Yes, sir.

21 Q. Okay. Now I want you to tell the jury, in
22 February of 2006, did you receive word that your dad
23 was going to be taken to the hospital?

24 A. No, not that he was going to be taken to the
25 hospital.

1 Q. What did you -- did someone call and tell you
2 that they found your dad?

3 A. Oh, my sister, yes. Yes, sir. My sister.

4 Q. Which sister was that?

5 A. It was Mary Ruth.

6 Q. Did she tell you they were going to take him to
7 the hospital in Aiken?

8 A. She told me to come, that I needed to take him.

9 Q. So you went to take him?

10 A. Yes.

11 Q. You heard the testimony about bathing him, that
12 type of thing?

13 A. Yes.

14 Q. Did you assist your sister in the process?

15 A. I didn't go in the house.

16 Q. Okay. So you were there to drive?

17 A. Yes.

18 Q. When he came out, did he get in the car?

19 A. No. They had to put him in the back of my car.

20 Q. And when they put him in the car, you took him
21 in your car, not an ambulance?

22 A. Yes, sir.

23 Q. They took him out at Aiken Hospital. Did you
24 get to see him at the hospital?

25 A. Yes, sir.

1 Q. Did you talk to him?

2 A. Yes, sir.

3 Q. And he knew who you were?

4 A. Yes.

5 Q. Now, after that hospitalization was over, he

6 was taken over to Trinity Mission Nursing Home.

7 A. Yes.

8 Q. Did you see him there?

9 A. Yes, sir.

10 Q. Did he know who you were then?

11 A. Yes, sir.

12 Q. That first visit, how frequently would you see

13 him?

14 A. About three times a week.

15 Q. Tell me what shift you work at Shaw.

16 A. I work 12 hours a day.

17 Q. Like, did you work mornings? nights?

18 A. I work during the day. I work from 7:00 in the

19 morning to 7:00 in the evening.

20 Q. How did you work that so you could see your

21 father three times a week?

22 A. I would sometimes go after work and on my days

23 off.

24 Q. Okay. Now, at the first hospitalization, he

25 went to the nursing home. Then he had to go back to

1 the hospital in Aiken?

2 A. Yes, sir.

3 Q. Did you see him in the hospital then?

4 A. Yes.

5 Q. Were you aware of the fact that he was having
6 neck surgery?

7 A. Yes.

8 Q. Did you see him after that neck surgery?

9 A. Yes.

10 Q. Did he know who you were?

11 A. Yes.

12 Q. Did he talk to you?

13 A. Yes.

14 Q. There's been testimony about the fact that he
15 couldn't make use of his legs. Did he have problems
16 using his legs after the surgery and the second
17 hospitalization?

18 A. Yes.

19 Q. But could he use his arms?

20 A. Yes.

21 Q. And when you went back to Trinity there in
22 March of 2006, did you see him then?

23 A. Yes.

24 Q. How frequently?

25 A. Three times a week.

1 Q. Tell the jury, when you would go to see him,
2 describe how -- what he would be like. This was the
3 second Trinity admission.

4 A. He'd be fine, he'd look fine.

5 Q. Okay. Did -- would you bring him food?

6 A. I'd bring him ice cream from McDonald's.

7 Q. That's something he liked?

8 A. Yes.

9 Q. Did he eat it?

10 A. Yes.

11 Q. Were you ever asked to help him eat his other
12 food?

13 A. No, sir.

14 Q. Did he know where he was?

15 A. Yes, sir.

16 Q. Did you discuss anything other than just -- you
17 and him discuss other people and family and things
18 of that nature?

19 A. Yes.

20 Q. And at some point in time there in April or
21 first of May, were you ever made aware that there
22 was a wound culture done on a pressure sore?

23 A. No.

24 Q. In fact, ma'am, seeing him there in late March,
25 April, and first of May, were you ever told that he

1 had these pressure ulcers?

2 A. No, sir.

3 Q. Did anyone ever tell you that?

4 A. No, sir.

5 Q. The doctors ever tell you that?

6 A. No, sir.

7 Q. Did the doctors ever see or contact you?

8 A. No, sir.

9 Q. Did anyone ever tell you about the lab reports
10 that we put on the screen that showed the MRSA and
11 the other bacterial infection he had?

12 A. No, sir.

13 Q. Tell me, when is the first that you heard that
14 your father -- I'm going to use the term gone
15 downhill or he was declining. When is the first you
16 heard that?

17 A. When I got the call from the nurse and she
18 asked me -- I had worked that weekend --

19 Q. What nurse? Where was she calling from?

20 A. She was calling from Trinity. I had worked
21 that weekend and she called and asked me had I seen
22 my dad --

23 MR. NANCE: I'm going to object to what she
24 says.

25 MR. WELCH: Let me rephrase it.

1 BY MR. WELCH:

2 Q. I'm not asking you to tell me what she said.

3 A. Okay.

4 Q. But did you form any impressions as to whether
5 or not you should see your father?

6 A. Yes.

7 Q. What did you do in response to that call?

8 A. I called my other family.

9 Q. Who would that be?

10 A. I called Hattie and Patricia.

11 Q. And why did you call them?

12 A. Because it looked as though he was leaving me.

13 Q. Did you go then -- when the nurse called, did
14 you go to the nursing home?

15 A. Yes.

16 Q. And describe for me -- now, had you seen your
17 father, let's say, a week before that?

18 A. Yes.

19 Q. Was he talking to you then?

20 A. Yes.

21 Q. Now, you're going on the 15th. Tell your
22 father what you observed about your father on the
23 15th?

24 A. He just -- like he couldn't hardly breathe.
25 His mouth was dry and wide open and his eyes about

1 to bug out of his head. He looked lethargic and
2 scared.

3 Q. And when you were in that day, had you already
4 called your other sisters and siblings?

5 A. I called after I got there and saw him.

6 Q. So you called him. Did you make any attempts
7 to call any of the doctors?

8 A. No, I didn't.

9 Q. Who did?

10 A. My sister Hattie.

11 Q. Were you there when that happened?

12 A. Yes.

13 Q. Were you there for the discussions with the
14 nurse?

15 A. Yes.

16 Q. Now, ma'am, did you form an opinion as to what
17 you wanted to do with your father at that time?

18 A. Yes, sir.

19 Q. What was that?

20 A. Get him out of there.

21 Q. Why?

22 A. He was leaving me.

23 THE COURT: He was what?

24 THE WITNESS: He was leaving me.

25 BY MR. PARKINSON:

1 Q. What do you mean?

2 A. He looked like he was dying.

3 Q. Did you talk to your family about that?

4 A. Yes.

5 Q. Was everybody in agreement?

6 A. Oh, yes.

7 Q. Now, ma'am, on that day, did anyone, any
8 physician or anybody, show you those pressure
9 ulcers?

10 A. No, sir.

11 Q. They tell you about them?

12 A. No, sir.

13 Q. They tell you about the MRSA infection or the
14 other bacterial infection?

15 A. No, sir.

16 Q. Ever mention it to you?

17 A. No, sir.

18 Q. When is the first time you found out about this
19 pressure ulcer that your father had on his hip?

20 A. When we took him to the hospital that day.

21 Q. What hospital was that?

22 A. Aiken Hospital.

23 Q. And that's the first you ever heard of it?

24 A. Yes, sir.

25 Q. To the best of your knowledge had any of your

1 family heard about the pressure ulcer?

2 A. No, sir.

3 Q. Now, ma'am, y'all took your father to the
4 hospital that day. How did he go; by car or
5 ambulance?

6 A. He went by ambulance.

7 Q. Were there discussions about whether or not he
8 should leave the facility?

9 A. Yes.

10 Q. And who were those discussions with?

11 A. They were with Hattie and the nurse and
12 Dr. Rainsford.

13 Q. And did you overhear the conversations?

14 A. No. I only heard my sister.

15 Q. But at some point in the process, who called
16 the ambulance?

17 A. I believe the nurse called the ambulance.

18 Q. At whose request?

19 A. My sister.

20 Q. Okay. Now, ma'am, once you got your dad to
21 Aiken, how frequently did you see him then?

22 A. I saw him about three times a week.

23 Q. So this would be May the 15th?

24 A. Yes, sir.

25 Q. And he was in there until June the 1st. Did he

1 get better at Aiken?

2 A. Yes.

3 Q. Did he get to where he could talk to you again?

4 A. Yes, sir.

5 Q. Did he get to where he could answer your
6 questions again?

7 A. Yes, sir.

8 Q. Describe the difference between your father --
9 on the day you saw him there at Trinity on the 15th
10 and the day he was discharged from Aiken over to the
11 hospital in Augusta, what was the difference there?

12 A. He was a lot better.

13 Q. And I want you to tell me now, over at the --
14 it's called Select Specialty Hospital in Augusta?

15 A. Yes, sir.

16 Q. He was there, I think, in June and July; is
17 that correct?

18 A. Yes, sir.

19 Q. Tell the jury how frequently you'd see him
20 then.

21 A. The same time, about three times a week.

22 Q. And tell the jury how he did with the treatment
23 he was getting from that hospital.

24 A. He did pretty good.

25 Q. He had good days and bad days?

1 A. Yes, sir.

2 Q. And was he still on the IV antibiotics even
3 though he was transferred over to the Select
4 Hospital?

5 A. Yes.

6 Q. And that was, I think, the long course of
7 treatment with the antibiotics?

8 A. Yes.

9 Q. Did he ever fully overcome these infections he
10 had?

11 A. No, sir.

12 Q. Tell the jury, toward the end of July, what
13 happened to his health?

14 A. He went down pretty much. My son and I went to
15 see him the week before he passed and he was in a
16 lot of pain. And I asked him, I said, Daddy, how
17 are you feeling? And he looked over at my son --

18 MR. NANCE: I object.

19 BY MR. WELCH:

20 Q. Just what did you observe?

21 A. He wasn't feeling well.

22 THE COURT: What?

23 THE WITNESS: He wasn't feeling well. He was
24 in pain.

25 BY MR. WELCH:

1 Q. And then shortly after that, as a family, where
2 did you make a decision to move?

3 A. When they said they didn't have anywhere to put
4 him, we had to put him in Hospice.

5 Q. And you put him in Hospice, I believe, the 1st
6 of August?

7 A. Yes, sir.

8 Q. How many days was he in Hospice before he
9 passed?

10 A. He was in Hospice three days.

11 MR. WELCH: Ma'am, I don't have any more
12 questions. Answer any questions these attorneys may
13 have.

14 CROSS-EXAMINATION

15 BY MR. PARKINSON:

16 Q. Ms. Butler, you're the youngest, you're the
17 baby of the family?

18 A. Yes.

19 Q. And Mary Ruth that we heard from before is the
20 oldest; is that right?

21 A. Yes.

22 Q. How many -- that's two of you. How many kids
23 are there?

24 A. There were nine.

25 Q. Nine. Okay. And Mary Ruth, your oldest

1 sister, she's the one who was listed as the
2 responsible party in the Trinity records; correct?

3 A. Yes, sir.

4 Q. And she's the one that they would call for any
5 kind of medical issues, come to see him, things like
6 that?

7 A. Yes, sir.

8 Q. And you lived -- at that time, where did you
9 live?

10 A. At that time, I lived about a half mile from my
11 mother at 3132 Edgefield Highway.

12 Q. Okay. And you -- Mary Ruth really made the
13 decisions. She signed all the paperwork at the
14 nursing home; right?

15 A. Yes, sir.

16 Q. And you weren't involved in getting him
17 admitted to the nursing home?

18 A. No, sir.

19 Q. You don't know Dr. Massey, do you?

20 A. No, sir.

21 Q. You don't even know who she is, do you?

22 A. No, sir.

23 Q. Okay.

24 MR. PARKINSON: I don't think I have any other
25 questions. Thank you.

1 THE COURT: Mr. Nance?

2 CROSS-EXAMINATION

3 BY MR. NANCE:

4 Q. Ms. Butler?

5 A. Yes, sir.

6 Q. Isn't it true that under oath back in February
7 2012 that you said that you had no problems or
8 criticism of the treatment by any of the doctors in
9 this situation?

10 A. Yes, I did.

11 Q. Except on the 15th, you had a problem with what
12 Dr. Rainsford did?

13 A. Yes.

14 Q. And what you say he did is he disagreed -- he
15 might have disagreed with Mr. Nicholson, with being
16 taken out of the nursing home?

17 THE COURT: Wait a minute. Mr. Nicholson?

18 MR. NANCE: I'm sorry.

19 BY MR. NANCE:

20 Q. I'm sorry; Mr. Peterson being taken out of the
21 nursing home?

22 A. Yes.

23 Q. But he was taken out anyway?

24 A. Yes.

25 Q. And y'all were going to take him out

1 regardless?

2 A. Yes.

3 Q. And for all you know, had Dr. Rainsford been
4 allowed to come see him, that he would have ordered
5 him be taken out; isn't that true?

6 A. Yes.

7 MR. NANCE: Thank you.

8 THE COURT: Anything?

9 REDIRECT EXAMINATION

10 BY MR. WELCH:

11 Q. Ma'am, were you told Dr. Rainsford was on his
12 way to come see your daddy that day?

13 A. No.

14 Q. Did anybody ever tell you he was coming over to
15 see your daddy that day?

16 A. No.

17 Q. Did you have any idea he was coming over to see
18 your daddy that day?

19 A. No, sir.

20 Q. Because that was never told to you, was it?

21 A. No, sir.

22 MR. WELCH: Nothing further, Judge.

23 THE COURT: You may step down.

24 Next witness.

25 MR. WELCH: Judge, we would call Pamela

1 DecampLi.

2 THE CLERK: Raise your right hand.

3 PAMELA DECAMPLI

4 being first duly sworn, testified as follows:

5 THE WITNESS: Yes.

6 THE CLERK: Have a seat. State your full name
7 and spell your last name for the record, please.

8 THE WITNESS: Pamela DecampLi, D-E-C-A-M-P-L-I.

9 DIRECT EXAMINATION

10 BY MR. WELCH:

11 Q. Ma'am, again, being here today you've heard
12 some of the testimony. Ma'am, tell the jury a
13 little bit about your background, what you do for a
14 living, that type of thing, please.

15 A. I'm an LPN.

16 Q. And tell the jury what that is.

17 A. Licensed practical nurse.

18 Q. And how long have you been an LPN?

19 A. Since 1988.

20 Q. And tell me a little bit -- once you got your
21 LPN -- you took a test for that; correct?

22 A. Yes.

23 Q. And you got a license for that test?

24 A. Yes.

25 Q. And tell the jury what you've done in terms of

1 work. After 1988, where did you go to work?

2 A. I worked in a nursing home..

3 Q. Which one?

4 A. In Barnwell.

5 Q. And did you eventually come up and work in
6 nursing homes here in Edgefield?

7 A. Yes.

8 Q. Which one?

9 A. Trinity Mission.

10 Q. When did you first go to work at Trinity?

11 A. '94.

12 Q. And 1994, how long did you work there? How
13 many years?

14 A. I started working up until 2001, I believe.

15 Q. Okay. Now do you work full-time at Trinity?

16 A. Yes.

17 Q. And when you were there, did you ever serve as
18 a wound care nurse?

19 A. At one point, yes.

20 Q. And when was that?

21 A. 2007 through 2009, I believe.

22 Q. Okay. And I want you to tell the jury -- you
23 say you worked at Trinity from '97 to 2001. Did you
24 come back to work at Trinity in 2006?

25 A. Yes.

1 Q. And you were working there as an LPN in 2006?

2 A. Yes.

3 Q. Had you done any work as a wound care nurse at
4 that point in time?

5 A. No.

6 Q. Did you basically -- if patients had wounds,
7 did you observe the wound care nurses that would be
8 examining them at the time, talking to them?

9 A. Yes.

10 Q. Getting information from them?

11 A. Yes.

12 Q. And Dr. Nicholson, Rainsford, Leaphart and
13 Massey, do you know if in 2006 they were treating
14 patients in the nursing home?

15 A. Yes.

16 Q. Now, ma'am, I want you to go with me to -- and
17 I'm going to put it up on the screen here. It's in
18 the jury notebooks towards the very back. It's
19 about 12, 15 pages from the back. It says Nurses
20 Notes at the top. And that book you have there is
21 going to be Exhibit 3, page 68 -- excuse me, page 69
22 is the page we've got there. And it'll say 69 at
23 the bottom of the page in the notebooks. At the top
24 it says Nurses Notes. See that page?

25 A. Yes.

1 Q. Ma'am, tell the jury what nurses notes are.

2 A. It's where we document what we observe with the
3 residents.

4 Q. Okay. And I want you to tell me as you go
5 through, are you doing this, like, while you're on
6 your shift?

7 A. Yes.

8 Q. So basically when something is happening,
9 either at the time or shortly thereafter, you write
10 down what happened?

11 A. Yes.

12 Q. Did you do that on this day? You were there
13 working Mr. Peterson's shift; right?

14 A. Yes.

15 Q. Tell the jury, as an LPN, what would be your
16 responsibilities?

17 A. To watch over his care and take care of him and
18 give him his medicine and --

19 Q. Whatever medications the doctor ordered?

20 A. Yes.

21 Q. Okay. Now, on that day -- I'd like for you to
22 look -- first of all, if you'll go back one page
23 before -- and I'm not going to put it up on the
24 screen, but page 68. Just one page before that, it
25 says 68 on the bottom. You see that?

1 A. Yes.

2 Q. And down at the bottom of the page you've got
3 some observations of him, 5/15, 1:30 PM. Could you
4 read those for me, please.

5 A. Resident lying in bed with eyes open, fixed and
6 dilated. Resident found to be reaching in the air
7 at one time. Head of bed elevated. O2, two liters,
8 per milliliter by nasal cannula. Continues to have
9 periods of apnea two to three seconds. Foley
10 catheter patent and intact. Bedside drainage with
11 thick, dark, cloudy urine. No intake, unable to
12 accept PO meds or fluids. Upper and lower
13 extremities remain cold. Comfort measures provided.
14 Will continue to monitor.

15 Q. Okay. Let's go to the next page, page 69. And
16 I want to make sure that we're talking about a
17 continuation over -- this is on 5/15. And if you'll
18 start up there about 11:45 -- actually, start at the
19 top of the page. Is that your entry at 8:00 AM?

20 A. Yes.

21 Q. Tell me what kind of shift would you work;
22 12-hour or a 7-hour shift?

23 A. I believe I was working the 12-hour shift.

24 Q. And 12-hour shifts, they typically go from
25 7:00 AM to 7:00 PM?

1 A. Yes.

2 Q. So tell the jury what you charted there at the
3 top block there, your observations at 8:00 AM. You
4 can just read it.

5 A. Laying in bed on back. Sloped to the spine,
6 nonrolling. Opens eyes and responding to physical
7 stimuli. No shortness of breath noted. Head of bed
8 elevated. Oxygen at two liters per nasal cannula.
9 Foley to bedside drainage with dark, amber urine.
10 120 CCs per. Unable to drink, eat or swallow. Will
11 not open mouth. Skin cool to touch. No acute
12 distress noted at this time.

13 Q. Okay. Now, 11:45 -- and again we say -- your
14 initial P looks like Dunn. Have you had a name
15 change since then?

16 A. Yes.

17 Q. When we see P. Dunn, that's Pamela Dunn, that
18 would be you?

19 A. Right.

20 Q. Now tell me what you chart at 11:45.

21 A. Attempted to contact responsible party, Mary
22 Ruth Peterson. No answer at phone number given.
23 Also attempted to contact alternate family members
24 listed, Melinda Butler and Patricia Peterson, with
25 no answer. Will try at later time.

1 Q. Now, at 12:20, which is about 30 minutes after
2 that, tell the jury what you charted at 12:20 PM.

3 A. Received call from Mary Peterson and she was
4 informed of resident's current condition.

5 Q. Basically tell the jury, what did you inform
6 her about the resident?

7 A. What was going on with him as far as his
8 breathing and his urine and stuff.

9 Q. You note the urine was dark. What did that
10 mean to you?

11 A. He was dehydrated. His kidneys weren't
12 functioning correctly or --

13 Q. Dehydrated?

14 A. Could have been because he wasn't drinking.

15 Q. Possible infection; isn't that true, ma'am?

16 A. I wouldn't know --

17 MR. NANCE: Objection. Wouldn't know?

18 THE COURT: Hold on a second, ma'am. You're
19 giving a lot of opinions, fellows.

20 MR. WELCH: I've got something else, Judge.

21 BY MR. WELCH:

22 Q. Ma'am, you gave her that information. Then at
23 1:45 PM, read what you charted.

24 A. Resident anxious, restless, continuously
25 shuffling and moving extremities. Moans to touch.

1 Eyes open but no blinking noted. Called
2 Dr. Rainsford's office, spoke to Nurse Donna.
3 Requested med to manage anxiety. Awaiting return
4 call. Family present in room.

5 Q. So by that time the family members were showing
6 up?

7 A. Yes.

8 Q. And you say Dr. Rainsford. That's
9 Dr. Rainsford, and Nurse Donna would be the one that
10 works for him at Edgefield Medical Clinic?

11 MR. NANCE: Your Honor, I object. Leading the
12 witness.

13 THE COURT: Sustained..

14 BY MR. WELCH,

15 Q. Ma'am, who is Donna?

16 A. I wrote on here Nurse Donna.

17 Q. Who did you call? Whose office did you call?

18 A. Dr. Rainsford's office.

19 Q. And that person who called back, did they say
20 they worked at that clinic?

21 A. That's the clinic I called.

22 Q. Did she say she was calling in response to your
23 call?

24 A. Excuse me?

25 Q. Did she say she was returning the call that you

1 had put to the clinic about requesting the medicine
2 for anxiety? Was she responding to that call?

3 A. I called and left a message for her to give
4 Dr. Rainsford.

5 Q. Okay. And she was calling in response to that?

6 MR. NANCE: I object, Your Honor.

7 THE COURT: Sustained. That's leading and --

8 BY MR. WELCH:

9 Q. Ma'am, Donna called back. And what did she
10 tell you?

11 MR. NANCE: I object.

12 THE COURT: What's the objection?

13 MR. NANCE: He hasn't established any agency
14 relationship between this Donna and whoever.

15 THE COURT: Ma'am, do you know who Donna was?

16 THE WITNESS: At the time she worked at
17 Dr. Rainsford's office.

18 BY MR. WELCH:

19 Q. And what did she tell you when she called back?

20 A. I don't see where it says she called back.

21 Q. So did you ever get a return call on the
22 anxiety medication?

23 A. Not that I documented.

24 Q. Ma'am, let's look on down at 2:45 and read what
25 you charted there.

1 A. Family called Dr. Rainsford and stated to
2 Ms. Robert, the doctor said for you to send Daddy to
3 the ER at Aiken Hospital, the doctor will call you.
4 Did not receive call from Dr. Rainsford, called
5 Dr. Rainsford's office, spoke with Nurse Donna. Was
6 informed by Nurse Donna Dr. Rainsford did not advise
7 family to send resident to hospital. Instead told
8 family it was their -- if it was their desire, the
9 family could take him to the hospital.

10 Q. Okay. And you put that in quotes. Were you
11 trying to write it down as accurately as you could?

12 A. Yes.

13 Q. Ma'am, keep reading what you charted.

14 A. Resident is DNR status. Explained conversation
15 to family members, B. Butler, Patricia Peterson and
16 Mary Peterson regarding call to Dr. Rainsford's
17 office. All family members present, approximately
18 15. All insisted that resident be transferred to
19 Aiken ER. Ms. Peterson stated, you can call the
20 ambulance or we will.

21 THE COURT: Hold on a second.

22 Everybody okay back there?

23 MR. WELCH: I'm sorry, Judge.

24 Go ahead.

25 THE WITNESS: Continue?

1 MR. WELCH: Yes, ma'am.

2 THE WITNESS: Family again reminded transfer
3 was AMA. Continued to insist EMS be called.

4
5 BY MR. WELCH:

6 Q. What does AMA mean?

7 A. Against medical advice.

8 Q. And what were you telling the family -- what
9 information were you trying to give them that if
10 they took him to Aiken Hospital, whose medical
11 advice is it against?

12 A. It's a standard we use if the doctor did not
13 tell them because they did not allow -- if they
14 don't allow the doctor time to come over and see him
15 and recommend they go to the hospital. If they take
16 them out, it's against medical advice.

17 Q. And go to page 70 and read what you charted
18 there, please.

19 A. Insisted EMS be called. Ms. M. McCorkal, LPN,
20 contacted 911 for transport to Aiken Hospital ER per
21 insistence of family.

22 Q. And then at 3:45 what did you chart?

23 A. Resident transported by EMS to Aiken Hospital.
24 Transportation to hospital was not recommended by
25 Dr. Rainsford. Transported per family insistence

1 against medical advice.

2 Q. Okay. And then the last one down there at
3 9:00 PM, is that still your charting?

4 A. Called Aiken ER Hospital to contact facility
5 upon decision to admit or transfer back to facility.

6 Q. So by 9:00 on the 15th, he was already at the
7 Aiken Hospital?

8 A. Yes.

9 Q. Now, ma'am, I want you, if you could -- in that
10 same notebook, I want you to go to page 34, which is
11 in the jury notebooks. And it says Physician's
12 Telephone Orders at the top.

13 Now, ma'am, there's a copy of that on the
14 screen and it's in three sections. Did you chart
15 that top section?

16 A. I did.

17 Q. Read what you charted on 5/15/2006, please.

18 A. Transported to Aiken Hospital ER by EMS per
19 insistence of family against medical advice.

20 Q. Now, ma'am, when you wrote that, that's a
21 physician's order; correct?

22 A. Yes.

23 Q. And you understood that's what Dr. Rainsford
24 wanted to go in that order?

25 A. I didn't understand. That's the way we write

1 them if they go out when the doctor has not sent
2 them out.

3 Q. When you wrote that order -- and you'll see --

4 THE COURT: Hold on a second.

5 Please repeat that. What did you say?

6 THE WITNESS: This is the way he was
7 transported to Aiken Hospital, and it's against
8 medical advice.

9 BY MR. WELCH:

10 Q. Okay. And that's your handwriting; correct?

11 A. Yes.

12 Q. Now, in that bottom section there,
13 Dr. Rainsford came over on the 16th, the next day,
14 and signed off on that, didn't he?

15 A. Yes.

16 Q. Did he come to you ever and say, you
17 misunderstood what I was saying about them taking
18 him to the hospital in Aiken? Did he ever tell you
19 you wrote this incorrectly?

20 A. No.

21 Q. Now, the doctor's note and nurse's notes that
22 you read to us, the doctors have those available to
23 read so they know what's going on with the patient,
24 don't they?

25 A. Yes.

1 Q. Did Dr. Rainsford ever come to you on the 15th,
2 16th, or 17th and say that Nurse Donna was incorrect
3 in what she said?

4 A. No.

5 Q. Did anyone ever tell you before this lawsuit
6 was filed that any of that was done incorrectly?

7 A. No.

8 Q. Anyone dispute what you wrote?

9 A. No.

10 MR. WELCH: I don't have any further questions,
11 ma'am. Please answer the questions these attorneys
12 may have for you.

13 MR. PARKINSON: I don't have any questions for
14 this witness, Your Honor.

15 THE COURT: Mr. Nance, do you have any
16 questions?

17 CROSS-EXAMINATION

18 BY MR. NANCE:

19 Q. I'm going to stay over here. I want to be sure
20 you're looking at that document again, page 69.

21 THE COURT: Page what?

22 MR. NANCE: 69.

23 THE COURT: 69 is the nurses notes from
24 5/15/06.

25 MR. NANCE: Right.

1 BY MR. NANCE:

2 Q. At 2:45 PM.

3 A. Okay.

4 Q. And it says: Family called Dr. Rainsford and
5 stated to this writer, The doctor said for you to
6 send Daddy to the ER at Aiken Hospital, the doctor
7 will call you.

8 Now, you weren't there when they supposedly
9 called Dr. Rainsford, were you?

10 A. No.

11 Q. They just told you they called him; right?

12 A. Yes. That's correct.

13 Q. And they told you that he told them to tell you
14 he was going to call them and they were going to
15 send him to the ER in Aiken; correct?

16 A. That's correct.

17 Q. And you did not get a call from Dr. Rainsford,
18 did you?

19 A. No, I did not.

20 Q. In fact, you called Dr. Rainsford's office?

21 A. Correct.

22 Q. And you found out that was not true what they
23 told you?

24 A. Correct.

25 MR. NANCE: Thank you.

1 THE COURT: Redirect?

2 MR. WELCH: I don't have any further questions,
3 Your Honor.

4 THE COURT: You may step down.

5 Next witness.

6 MR. WELCH: Judge, we'd call Virginia Van Zant,
7 please.

8 THE COURT: Come up here, please, ma'am.

9 THE CLERK: Raise your right hand, please.

10 VIRGINIA VAN ZANT

11 being first duly sworn, testified as follows:

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Have a seat. State your full name
14 and spell your last name, please.

15 THE WITNESS: Virginia Van Zant, V-A-N,
16 Z-A-N-T.

17 DIRECT EXAMINATION

18 BY MR. WELCH:

19 Q. Ms. Van Zant, tell the jury about who you are
20 and what you do for a living, please.

21 A. I'm an occupational therapist and director of
22 rehab at Trinity Nursing Home in Edgefield.

23 Q. What does occupational therapy cover?

24 A. We work with patients, strengthen their upper
25 body, work with fine motor skills with their hands,

1 and working with ADLs which consists of working with
2 patients to teach them how to re-dress, with
3 grooming, dressing, feeding, toileting tasks
4 sometimes.

5 Q. When you say ADLs, activities of daily living?

6 A. Yes, sir.

7 Q. And were you working there in 2006?

8 A. Yes, sir.

9 Q. And how long had you been working there in
10 2006?

11 A. Five years.

12 Q. Okay. You still work there?

13 A. Yes, sir.

14 Q. Okay. And there's a notebook in front of you.
15 And I want you to go to Exhibit No. 3 and start --
16 I'm not putting anything up on the screen right now.
17 But in the jury's notebooks, start on page 27, it's
18 Physician's Telephone Orders -- excuse me, 28 --
19 actually, no, 27.

20 Tell me, did you supervise physical therapy at
21 the time?

22 A. Yes, sir.

23 Q. Did physical therapy do things like wound
24 debridement?

25 A. Yes, sir.

1 Q. Did you have conversations with the wound nurse
2 at the time? In other words, did you interact with
3 the wound nurse about what was going on in terms of
4 the physical therapists or did someone from your
5 department interact with the wound nurse?

6 A. Yes, sir. Mostly the physical therapist.

7 Q. Who was the physical therapist at the time?

8 A. John Melton.

9 Q. And did you have another physical therapist, a
10 Ms. Cooper maybe?

11 A. Physical therapist assistant.

12 Q. Okay. And tell the jury sort of what they
13 would do about wound debridement.

14 A. They would go in and debride or clean off the
15 area of the wound that was considered the, hate to
16 say bad tissue, but the dead tissue, so to speak,
17 and clean that off to where the good tissue would be
18 seen and given a chance to grow, and then put the
19 wound cleanser on it, if applicable, and then also
20 re-dress it.

21 Q. Now tell me how it would work sort of for
22 instance -- look on page 31 for me. And it should
23 have a 4/25 -- 4/24 would be the top blank, '06,
24 4/25/06, and then 5/01 after that. And the middle
25 one there, you see that page?

1 A. Yes, sir.

2 Q. And it should say something about Ms. Van Zant
3 there. Explain how that would come about. Whose
4 handwriting is that?

5 A. Mine.

6 Q. Is that your handwriting?

7 A. Yes, sir.

8 Q. Okay. Explain to the jury how that would come
9 about. Who made the decision that therapy should be
10 discontinued?

11 A. I did.

12 Q. But this says physician's orders?

13 A. Yes, sir.

14 Q. The physician signs off on that?

15 A. Yes, sir.

16 Q. But did you actually have a discussion with the
17 physician where you said I'm going to stop the
18 physical therapy or -- that's occupational therapy;
19 right?

20 A. Yes, sir.

21 Q. Did you ever have a discussion where you told
22 the physician, I'm going to stop physical therapy if
23 that's okay with you, I want you to order it, or
24 would you write it and then send it on to them to
25 look at?

1 A. With this particular case, I don't remember if
2 I had discussions. At times we do have discussions
3 with physicians, whether in the nursing homes or
4 over the phone, they do read our notes and if --
5 it's just case by case. So sometimes, yes, we do
6 have conversations, like I said, in the nursing home
7 or over the phone, but we use our clinical judgment.

8 If the patient is making progress, we'll
9 continue therapy. If they have plateaued and they
10 have either reached their probable function, which
11 is what they were before they came into the nursing
12 home, then we'll discharge their services, or if
13 they're not making any progress, then we'll
14 discharge. But a lot of times we use our clinical
15 judgment.

16 Q. But in the times, ma'am, when you chart
17 something like that without talking to the
18 physician, how does it work? Does the physician get
19 it, look at it, sign it and send it back?

20 A. They'd get it and look at it. If there were
21 questions, they'd call.

22 Q. If there are no questions, you'd assume they
23 approved it?

24 A. Yes, sir.

25 Q. So basically you're making the decision in

1 those instances, physician is looking at it, you
2 don't know if they're seeing the patient or not,
3 they're trusting your judgment --

4 MR. NANCE: Your Honor, I object.

5 THE COURT: Hold on. Hold on. Listen to me a
6 minute. Please quit asking leading questions.

7 MR. WELCH: Yes, sir.

8 BY MR. WELCH:

9 Q. Ma'am, on that page 31, do you know that the
10 physician actually saw the patient that day?

11 A. I have no way of knowing that.

12 Q. They chart it in the record, don't they?

13 A. Sir?

14 Q. They do chart in the record when they see the
15 patient, the physicians?

16 A. Yes.

17 Q. My point is --

18 THE COURT: Sir, Mr. Welch, I'm not going to
19 say it again. Please, sir.

20 BY MR. WELCH:

21 Q. Do you have any knowledge whether the physician
22 actually saw the patient that day?

23 A. Not this piece of paper, I don't.

24 Q. Have you looked through this record previously
25 when you had your deposition taken?

1 A. Two years ago.

2 Q. Are you aware of any knowledge that you had --

3 A. I did not look at any statement that was not
4 given to me when I gave my deposition. There were
5 just certain little flags that I had to look at
6 during my deposition. That was never asked of me,
7 to look to see if the physician had seen the patient
8 that day. That was never brought up during my
9 deposition.

10 Q. Do the physical therapists do debridement? Do
11 they also at times use their clinical judgment under
12 your supervision about what to do?

13 A. Treatment versus debridement?

14 Q. Debridement.

15 A. Debridement is usually discussed with the
16 doctor before it's done.

17 Q. Treatment, do they use their discretion about
18 what to do?

19 A. Yes, sir. It depends as far as they use their
20 clinical knowledge because they're physical
21 therapists.

22 Q. And do they at times also chart and send it
23 over for the doctor's signature?

24 A. They always chart.

25 Q. In these Physician Telephone Orders?

1 A. Yes, sir, they always chart.

2 MR. WELCH: I don't have any further questions,
3 ma'am. Answer any questions these lawyers may have
4 for you.

5 MR. PARKINSON: I don't have any questions of
6 this witness, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. NANCE:

9 Q. That notebook, would you turn to page 102.

10 A. Yes, sir.

11 Q. And that's an occupational therapy discharge
12 summary?

13 A. Yes, sir.

14 Q. And did you fill that out?

15 A. Yes, I did.

16 Q. And what was the reason for the discharge of
17 Mr. Peterson?

18 A. For reaching maximum potential.

19 Q. And what date was it signed?

20 A. 4/24/06.

21 Q. So as of April 24th, 2006, as far as
22 occupational therapy services, he'd reached maximum
23 improvement?

24 A. Well, yes, sir, he'd not made any improvement.

25 Q. Y'all had done what you could do?

1 A. Yes, we'd done what we could.

2 Q. And there wasn't really anything you could do?

3 A. No, sir.

4 MR. NANCE: No further questions.

5 THE COURT: You may step down.

6 Next witness.

7 MR. WELCH: The next witness is a video. It's
8 about 40 minutes.

9 THE COURT: Are you saying this is a good time
10 to stop?

11 MR. WELCH: It's 10 of, and I know you wanted
12 to stop at 5.

13 THE COURT: All right. A little change in
14 plans, ladies and gentlemen. My case at 8:30 just
15 settled. So instead of 10, we'll start at 9:30.

16 All right. Here's the deal: We'll have you
17 some hot coffee. We're going to start at 9:30. So
18 if you want some hot coffee, you need to be here
19 early.

20 Now, your clerk who is elected by the citizens
21 of Edgefield County is gracious enough to provide
22 the sausage biscuits or fruit tomorrow. What's your
23 pleasure or do you want it at all?

24 THE JURY: Sausage and biscuits.

25 THE COURT: All right. We'll have you some

1 biscuits from McDonald's, a combination of sausage
2 and eggs. And be here -- I can't let you bring them
3 in the courtroom, so if you want to partake, you got
4 to get here in plenty of time.

5 In all seriousness, do not talk to anyone about
6 the case, don't let anyone talk to you about it.
7 Please do not do any independent research on nursing
8 home care or anything like that. Have a pleasant
9 evening. We'll get started right at 9:30 tomorrow.
10 We're going to -- we're going to move along at an
11 efficient pace, go to about 1:00, quarter to 1:00,
12 and then assess everything. Everybody please remain
13 seated. The jury is free to go.

14 (The jury exits the courtroom at 4:54 PM.)

15 THE COURT: Anything for the record before we
16 break for the evening?

17 MR. WELCH: No, sir, Judge.

18 THE COURT: Gentlemen?

19 MR. PARKINSON: That's it.

20 MR. NANCE: Nothing, Your Honor.

21 THE COURT: All right. We'll stand at ease.
22 Start at 9:30 in the morning.

23 (Court in recess for the evening.)

24 THE COURT: Anything from the plaintiff before
25 we start?

1 MR. WELCH: Judge, we were originally going to
2 put our expert up at the start this morning. He got
3 stranded last night in D.C. in a snowstorm. He got
4 to Charlotte this morning, he got to Greenville this
5 morning, he's on the runway. We're going to play a
6 video to start until he gets here. He should be
7 here within an hour and a half.

8 THE COURT: Are you ready to proceed?

9 MR. WELCH: Yes, Judge.

10 THE COURT: Gentlemen, ready?

11 MS. MASSEY: Your Honor, we made some
12 designations in the video deposition as well, and
13 Plaintiff had an objection to one portion of that.

14 THE COURT: Plaintiff has objections?

15 MS. MASSEY: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, if you want
17 this on the record, you have to speak to my court
18 reporter. Hand me a copy of the deposition so I can
19 see what you're talking about.

20 All right, Ms. Massey.

21 MS. MASSEY: Your Honor, page 19, line 25
22 through page 20, line 10.

23 THE COURT: And you've asked to include that
24 and he's objected to it?

25 MS. MASSEY: We have. There's an objection on

1 the record as to leading and, in fact, leads into
2 the content of the next question. Without that, it
3 wouldn't make sense.

4 THE COURT: What's your objection, Mr. Welch?

5 Gentlemen, I said we're going to start at 9:30.

6 MR. WELCH: Judge, yesterday after we left I
7 actually looked up the letter. I thought we had an
8 agreement on it, and so we would have looked at it
9 overnight. We did. I thought we had an agreement.
10 I was not told yesterday that there was a
11 disagreement on this, so I apologize to the Court.

12 MS. MASSEY: Your Honor, if I may. When we
13 left the Court -- and again, we have the letter.
14 And he said the part that he redacted was the part
15 at the beginning and the part at the end. When I
16 got home and took a look at the letter, I actually
17 saw there was a portion in the middle to which we do
18 not agree.

19 MR. WELCH: Judge, they got the letter Friday.

20 THE COURT: Very well. Let's quit arguing.

21 What's your problem with page 19, line 25, page
22 20, line 11? What's your objection? You say it's
23 leading. The question was: All right. When you
24 wrote this note, did you feel that Mr. Peterson was
25 facing --

1 Objection; leading.

2 MR. WELCH: Yes, sir, Judge. I feel like it is
3 leading. He's asking if he was facing end-of-life
4 issues.

5 THE COURT: Well, Mr. Welch, if anybody ought
6 to know what leading is, you should, because you led
7 all day long yesterday.

8 All right. I will allow that to be played.

9 MR. WELCH: Judge, it's --

10 THE COURT: I approved it. Thank you.

11 MR. WELCH: If I may take that up midday,
12 Judge.

13 THE COURT: Thank you.

14 Anything else?

15 MR. WELCH: Not from the plaintiffs, Judge.

16 THE COURT: Ms. Massey, anything else?

17 MS. MASSEY: Not at this time, Your Honor.

18 THE COURT: All right. Bring in the jury.

19 MS. MASSEY: May I retrieve Dr. Nicholson's
20 deposition transcript?

21 MR. WELCH: Judge, he's trying to take the word
22 objection out. It may play, but he's trying to take
23 it out.

24 (The jury enters the courtroom at 9:37 AM.)

25 THE COURT: Good morning, Mr. Foreman.

1 THE FOREMAN: Good morning, how you?

2 THE COURT: Doing well. And you?

3 THE FOREMAN: Good.

4 THE COURT: And good morning to the rest of my
5 jury panel. Hope everyone had a pleasant evening.
6 Okay. We're going to start right in with the next
7 witness this morning.

8 Ladies and gentlemen, a lawsuit is filed -- was
9 filed by a Dr. McCauley [phonetic], a summons and
10 complaint, and it's served on the defendants. And
11 then the defendants had an opportunity to respond to
12 that lawsuit by filing a pleading or a document
13 called the answer to the complaints. And once the
14 answer has been filed, then both parties can engage
15 in what we call pretrial discovery, which means that
16 each side has to tell the other side who their
17 witnesses are. And once they've revealed the
18 identity of the witnesses, then both sides have the
19 right and/or the opportunity to take a deposition of
20 the parties and/or the witnesses. A deposition is
21 simply where the lawyers go and the witness appears
22 before them with a court reporter; the witness is
23 sworn to tell the truth, put under oath, and the
24 lawyers are able to ask them what they know about
25 the case, what they know about the facts. They'll

1 ask them the questions, the witness will answer.
2 The questions will later on be put into a
3 transcript, a booklet form, which is the deposition
4 transcript.

5 Our rules allow them to be used in the trial of
6 a case in a number of ways. As I understand, the
7 next witness the plaintiff will call this morning is
8 a witness who gave a deposition, and that deposition
9 testimony will played. So treat that as if the
10 witness was here testifying in the courtroom.

11 MR. WELCH: Thank you, Judge.

12 THE COURT: And oftentimes they will take the
13 actual deposition of the parties, such as the
14 doctors in this case, and they can use the
15 deposition of the doctors. And I think the first
16 one this morning is a doctor.

17 Who is the first witness?

18 MR. WELCH: Dr. Nicholson.

19 THE COURT: Of course he has -- since the
20 lawsuit was brought, he has passed, so obviously his
21 testimony was preserved by way of deposition. So
22 that's what this is about this morning.

23 All right. Mr. Welch?

24 (WHEREUPON, the video deposition of
25 Dr. Nicholson was played for His Honor and the

1 jury.)

2 THE COURT: Take it down.

3 Next witness, please.

4 MR. WELCH: Judge, we call Ms. Smoak to the
5 stand.

6 THE COURT: Come around, please, ma'am.

7 THE CLERK: Raise your right hand.

8 JENNIFER SMOAK

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Have a seat. State your full name
12 and spell your last name, please.

13 THE WITNESS: Jennifer Michelle Reid Smoak,
14 S-M-O-A-K.

15 DIRECT EXAMINATION

16 BY MR. WELCH:

17 Q. How are you this morning, Ms. Smoak?

18 A. Fine. Thank you.

19 Q. Give the jury a little background about
20 yourself. What do you do for a living?

21 A. I'm a nurse, an LPN.

22 Q. And how long have you been a nurse?

23 A. Twenty years.

24 Q. How long?

25 A. Twenty years.

1 Q. And in that period of time, did you work in the
2 Edgefield area?

3 A. Yes, I did.

4 Q. Where in the Edgefield area did you work?

5 A. Trinity Mission.

6 Q. Ma'am, when you worked at Trinity Mission, do
7 you recall what years you worked there?

8 A. 2002 to 2007.

9 Q. Okay. So in 2006 you were working at Trinity
10 Mission?

11 A. Yes, I was.

12 Q. Did you ever serve in the capacity as what's
13 called a wound care nurse?

14 A. Yes, sir.

15 Q. Tell the jury what that is.

16 A. I take care of all of the treatments that need
17 to be done on the residents. I evaluate the wounds,
18 give weekly reports.

19 Q. You might want to pull that microphone down to
20 you as close as you can because the acoustics aren't
21 really good in here.

22 A. All right.

23 Q. And, ma'am, let me hand you what's into the
24 record and ask you to start with Exhibit 2. Okay.

25 That's page 20 of Exhibit No. 2. If you could,

1 ma'am, explain to the jury -- it says Physician's
2 Telephone Order at the top.

3 A. Yes, sir.

4 Q. Tell them what that is.

5 A. We notify the physicians of an order that we
6 want written. We write it once he's approved it.

7 Q. You just heard Dr. Nicholson's testimony.

8 A. Yes, sir.

9 Q. Describe how that system works. You say you
10 notify the doctor of an order that you want written?

11 A. Yes, sir.

12 Q. How would you do that?

13 A. Either by telephone or by fax.

14 Q. Okay. And so you would fax over something that
15 says, here's what I'd like to do?

16 A. Yes, sir.

17 Q. Would that be based on your clinical
18 observation?

19 A. Yes, sir.

20 Q. How would the doctor respond back to you?

21 A. With an okay.

22 Q. Would you get that by fax, take something and
23 write okay on it?

24 A. Yes.

25 Q. And then based upon that, for instance, if we

1 look at, I think, the top one, read what you wrote
2 there on that top line.

3 A. Clean right lower leg abrasion with wound
4 cleanser, apply Bacitracin, and apply Band-Aid
5 daily.

6 Q. What's the date on that, please?

7 A. 3/2/06.

8 Q. And that's the first admission. And what were
9 you trying to convey to the doctor that needed to be
10 done?

11 A. He had an abrasion on his leg that needed to be
12 cleaned daily.

13 Q. And can you tell from this whether or not you
14 got a fax back or an okay?

15 A. No.

16 Q. Based upon what you got back -- is that your
17 handwriting?

18 A. Yes, it is.

19 Q. So you would write the order rather than the
20 doctor?

21 A. Yes, sir.

22 Q. And I see the doctor signed off on it. How
23 would that take place? How would the doctor sign
24 off?

25 A. Telephone orders are placed in a folder that

1 went over to them, taken to their office, or either
2 they signed them when they came for a visit.

3 Q. When you say taken over to their office, was
4 there an employee that had that responsibility?

5 A. Yes.

6 Q. Who would that be?

7 A. Catherine Crowe.

8 Q. What was her job title?

9 A. I don't remember what her job title was.

10 Q. But part of her responsibility was taking it
11 over there?

12 A. Yes.

13 Q. Would there be several patients in the folder?

14 A. Yes.

15 Q. So the doctor would have these telephone orders
16 for several patients and then sign them all at the
17 same time?

18 A. Yes.

19 Q. And then be brought back and put in the patient
20 record?

21 A. Yes.

22 Q. If you would, let's go to Exhibit No. 3 that
23 you've got there. And let's go to the telephone
24 orders in Exhibit No. 3, which I think start on or
25 about 25, maybe -- excuse me, look on page 24.

1 THE COURT: That's your Bates stamp number?

2 MR. WELCH: Yes, sir, Judge, at the bottom.

3 BY MR. WELCH:

4 Q. And that says: TMHR of Edgefield 3/21/2006,
5 page 024 at the bottom. Do you have any entries on
6 that page?

7 A. Yes.

8 Q. What entries do you have on that page?

9 A. Alternating pressure mattress to bed, clean
10 neck incision site with wound cleanser and apply dry
11 dressing daily. There's an order for a DC heel pads
12 and Vaseline to the penis BID.

13 Q. What does BID mean?

14 A. Twice a day.

15 Q. Is this another order where you send over your
16 recommendations and the doctor signed off on it?

17 A. Yes, sir.

18 Q. Is that all in your handwriting?

19 A. The top number 1 is in my handwriting and
20 number 3 is in my handwriting; number 2 is not.

21 Q. Okay. Now, when you got that back and wrote
22 stuff in your handwriting, do you recall whether or
23 not you had a personal conversation with the doctor?

24 A. No. You'd have to look in the nurse's notes
25 for that entry of whether I did a fax or whether I

1 spoke to him personally.

2 Q. Okay. Now, looking at that, tell me what you
3 were -- why did you make -- why did you request that
4 this order be written?

5 A. Normally when we order a pressure-relieving
6 mattress, it is due to the patient's condition at
7 the time. They may not be moving around or up, and
8 so we put a pressure-relieving mattress to relieve
9 the pressure from the bony prominences.

10 Q. When it says DC heel pads, what are those?

11 A. Heel pads are like -- almost like a little
12 small pillow that you put around the heel. It's
13 made specifically for the heel. You use those with
14 a regular mattress. When you have an air mattress,
15 you no longer need those.

16 Q. Look at the next page, 25 and 26, and see if
17 you have any entries on those.

18 A. No, sir.

19 Q. Let's go to 27, 28, see if you have any entries
20 on those.

21 A. On page 28.

22 Q. Okay.

23 A. The middle one. The middle order, 4/6/06.

24 Q. Tell me what that says.

25 A. Clean left hip with wound cleanser, apply

1 Bacitracin and Optifoam daily.

2 Q. Okay. Now, tell me in terms of wound cleanser,
3 what's the purpose of wound cleanser?

4 A. Clean the area, clean the skin.

5 Q. Antiseptic?

6 A. Yes.

7 Q. And apply that -- what's Bacitracin?

8 A. Bacitracin is an ointment that has a little bit
9 of antibacterial in it.

10 Q. And Optifoam?

11 A. It's just a covering.

12 Q. Again, why were you making this recommendation?

13 A. He had an open area on his left hip.

14 Q. That's the left hip. So April 6 of 2006, when
15 you say open area, what do you mean?

16 A. Could be caused from anything.

17 Q. Okay.

18 A. Like an abrasion or a pressure or -- you have
19 to evaluate each situation for each patient.

20 Q. Is this something that stages -- are there
21 stages for these areas?

22 A. Yes.

23 Q. What are the stages? Explain it to us, please.

24 A. In wound care you have four stages of wounds:
25 Your first is like a superficial wound, top layer of

1 skin; your second is the next layer of skin, your
2 subcutaneous layer; your third layer goes a little
3 deeper into muscle, and fourth goes to the bone.

4 Q. Okay. And then on these type of orders, you
5 wouldn't happen to discuss any type of staging,
6 would you?

7 A. You'd have to look and see if it was a pressure
8 area. I'd do a pressure sore sheet on the client or
9 the resident.

10 Q. Did you coordinate with physical therapy in
11 treatment of these type of wounds?

12 A. Yes, we did.

13 Q. And tell the jury, was there any certain
14 staging level that required a physical therapist's
15 involvement?

16 A. Anything over a three.

17 Q. When you say over a three, would that include a
18 three?

19 A. Yes.

20 Q. If it got to a three, would that include
21 physical therapy?

22 A. Yes.

23 Q. And four definitely would include physical
24 therapy?

25 A. Yes.

1 Q. And what type of service does physical therapy
2 perform?

3 A. Physical therapy could debride wounds.

4 Q. Tell the jury what that is.

5 A. Sometimes in a wound you get dead skin and
6 drainage, and they are able to go in and remove that
7 dead tissue.

8 Q. When you say drainage, what causes that
9 drainage?

10 A. Normally wounds will drain anyway. Drainage
11 could be different kinds. I mean, you have just
12 plain clear or you might have an infection where you
13 have a different color drainage in a wound.

14 Q. If somebody charted pure fluid, is that an
15 infection?

16 A. Yes, it is.

17 Q. Let's keep going and go on to page 29 to see if
18 you have any there.

19 A. Yes, sir.

20 Q. Which entry on 29 is yours?

21 A. The second one, 4/19/06.

22 Q. Okay. And tell me -- now, again, this is where
23 you had sent over and asked, this is what you'd
24 like, and they told you okay?

25 A. Yes, sir.

1 Q. Tell me how that worked. What was your thought
2 behind trying to discontinue the dry dressing to
3 neck incision site?

4 A. The area was closed and did not need further
5 treatment.

6 Q. Is that where he had the surgery?

7 A. Yes.

8 Q. Okay. Let's keep going and look at the next --
9 look on page 30.

10 A. The second entry is mine.

11 Q. Okay. What's the date of that?

12 A. 4/20/06.

13 Q. Okay. And read that for us, please.

14 A. Change order from Neosporin BID to Q shift.

15 Q. For those of us who aren't medical, what is
16 BID?

17 A. BID is twice a day and Q shift is three times a
18 day.

19 Q. Again, is this your clinical judgment that the
20 Neosporin needs to be increased?

21 A. Yes.

22 Q. And what's the purpose of Neosporin?

23 A. It's an antibacterial cream.

24 Q. What wounds were you putting this Neosporin on?

25 A. I believe -- it doesn't say here, so I cannot

1 say for certain.

2 Q. Were you still treating the left hip?

3 A. Yes.

4 Q. And what is -- why did you want to increase the
5 Neosporin?

6 A. Like I said, I don't know if this is -- was for
7 the hip or if it was for the penis area, because he
8 was getting both. So I can't tell you which one it
9 is.

10 Q. Okay.

11 A. Usually Q shift, if he's incontinent, you want
12 to put it on Q shift. If it was the hip, the wound
13 could have been changing. But I can't say for
14 certain because I don't have my notes.

15 Q. Go to page 90 in the record. I don't believe
16 that's in the jury notebook, but go to page 90 with
17 me.

18 THE COURT: Is that in the little black book?

19 MR. WELCH: It's not in the jury notebook, but
20 it's on the screen.

21 MS. MASSEY: What page?

22 MR. WELCH: 90.

23 THE WITNESS: The physical therapy log, is that
24 what you're looking at?

25 BY MR. WELCH:

1 Q. Yes. And then during the course of your job as
2 a wound care nurse, would you examine this log at
3 times or look at the log to see what's being done by
4 physical therapy?

5 A. No, sir.

6 Q. Is that something that you ever consult with
7 physical therapy on?

8 A. No, sir. Usually the physical therapy would
9 let me know what they were doing verbally.

10 Q. Can you look at the chart and tell the days
11 they were doing the wound debridement?

12 A. It says down at the bottom: Wound care,
13 debridement. So it shows the 21st, 24th, 25th,
14 26th, 27th and 28th.

15 Q. And that's in April 2006?

16 A. Yes.

17 Q. Okay. And so physical therapy was actually --
18 and again, describe how they do the wound
19 debridement. Do they use sharp instruments?

20 A. Yes.

21 Q. Does it involve cutting?

22 A. Yes, if necessary.

23 Q. And those days they'd do it -- go to page 91.
24 And I believe that's from May of 2006.

25 A. Yes.

1 Q. And can you tell me the days wound debridement
2 was done by physical therapy in May?

3 A. 1st, 2nd, 3rd, 4th, 5th, 8th 9th, 10th, 11th,
4 and 15th.

5 Q. Okay. So the wound debridement you discussed
6 was done on those days as well?

7 A. Yes, sir.

8 Q. Ma'am, in terms of that wound debridement, did
9 you ever observe any physician that was actually
10 supervising or assisting that wound debridement?

11 A. No, sir.

12 Q. Ma'am, in terms of this patient, your job as
13 wound care nurse, again, was to coordinate with
14 physical therapy and physicians.

15 MR. PARKINSON: Objection; leading.

16 MR. WELCH: Let me rephrase it, Judge.

17 BY MR. WELCH:

18 Q. Ma'am, in terms of this patient, Mr. Peterson,
19 did you become aware when the family came in and
20 took him to Aiken?

21 A. No, sir.

22 Q. Did anyone ever make you aware of what the
23 findings were in Aiken in terms of the wounds?

24 A. No, sir.

25 MR. WELCH: I don't have any other questions.

1 THE COURT: Mr. Parkinson, any questions?

2 MR. PARKINSON: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. PARKINSON:

5 Q. Nurse Smoak, you were trained in wound care?

6 A. Yes, sir.

7 Q. That's additional training beyond your regular
8 nursing training that you got to deal with wounds?

9 A. Yes, sir.

10 Q. You've done that a good many years?

11 A. Yes, sir.

12 Q. Is there anything about what Mr. Welch has been
13 going over as it relates to Mr. Peterson, the
14 resident in this case, that's significantly
15 different than the way you treat wounds on any other
16 nursing home patients?

17 A. No, sir.

18 Q. And in your experience or knowledge, how
19 many -- on a percentage basis, how many patients in
20 the nursing home have a DNR order in their chart?

21 A. A lot.

22 Q. Most of them?

23 A. Yes, sir.

24 Q. And you still treat those people, don't you?

25 A. Yes, sir.

1 Q. The fact that there's a DNR order in the chart
2 doesn't mean you don't treat them; does it?

3 A. No, sir.

4 Q. In fact, you wouldn't be treating the majority
5 of the patients if you failed to treat simply
6 because a DNR order was there.

7 A. That's correct.

8 Q. Okay. And the debridement being done by
9 physical therapists, that was done on other
10 patients, not just Mr. Peterson; correct?

11 A. Correct.

12 Q. And Mr. Peterson is not the only patient in
13 Trinity Nursing Home or any other nursing home that
14 has physical therapists debriding their decubitus
15 ulcers, was he?

16 A. No, sir.

17 Q. That's done all over the place, isn't it?

18 A. Yes, sir.

19 Q. They have wound care nurses and physical
20 therapists both dealing with wounds -- and when I
21 say wounds, I guess in this case we're talking about
22 pressure ulcer wounds. That's common and done every
23 day, isn't it?

24 A. Yes, sir.

25 Q. And the transmission of information between the

1 nursing home staff, nurses, physical therapists,
2 people like that, back and forth by faxing orders or
3 calling orders, communicating between the doctors'
4 office and the nursing home in that way, that's
5 commonly done too, isn't it?

6 A. Yes, sir.

7 Q. That's done with all of the patients at Trinity
8 Nursing Home, aren't they?

9 A. At that time, yes, sir.

10 Q. And the doctors' office is right across the
11 parking lot from the nursing home?

12 A. Yes, sir.

13 Q. In fact, the doctors wouldn't get in their car
14 if they were going to come over there, would they;
15 they actually walked?

16 A. No, sir, they walked.

17 Q. And they can walk to the hospital too, can't
18 they?

19 A. Yes, sir.

20 Q. Everybody shares the same parking lot, don't
21 they?

22 A. Yes, sir.

23 Q. If you needed the doctors, they'd come over,
24 wouldn't they?

25 A. Yes, sir.

1 THE COURT: Mr. Nance?

2 MR. NANCE: Just a couple questions, Your
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. NANCE:

6 Q. Nurse Smoak, if you could, Exhibit 3, I think
7 it is, turn to page 32.

8 A. Yes, sir.

9 Q. And the first order on that page, did you write
10 that?

11 A. Yes, sir.

12 Q. And it says: Discontinue treatment to the
13 right heel.

14 A. Yes, sir.

15 Q. Why did you order a request that the treatment
16 to the right heel be discontinued?

17 A. The area was closed.

18 Q. It got well?

19 A. It got better, yes, sir.

20 Q. Was it healed?

21 A. Yes, sir.

22 Q. Didn't need to be treated anymore?

23 A. That's correct.

24 Q. Progressed that far?

25 A. Yes, sir.

1 Q. While you were treating it?

2 A. Yes, sir.

3 Q. Thank you.

4 REDIRECT EXAMINATION

5 BY MR. WELCH:

6 Q. Ma'am, if a wound cultured out a bacteria,
7 depending upon the bacteria, would you expect the
8 doctors to treat that with antibiotics?

9 A. Yes, sir.

10 MR. WELCH: I don't have any other questions.

11 THE COURT: You may step down.

12 Next witness, please.

13 MR. WELCH: Judge, I think the witness is here,
14 if I could have a minute.

15 THE COURT: A minute.

16 Let's take a short bathroom break. Don't
17 discuss the case, don't deliberate. Everyone else
18 remain seated. Please don't hesitate to tell me
19 when you need a bathroom break.

20 (The jury exits the courtroom at 10:45 AM.)

21 THE COURT: All right. We'll stand at ease for
22 a few minutes.

23 (Short break.)

24 THE COURT: Anything for the record before we
25 start?

1 MR. WELCH: Nothing, Your Honor.

2 MS. MASSEY: Nothing, Your Honor.

3 MR. NANCE: Nothing, Your Honor.

4 THE COURT: Bring the jury in.

5 (The jury enters the courtroom at 11:04 AM.)

6 THE COURT: You may call your next witness.

7 MR. WELCH: We call Dr. Levine to the stand.

8 THE COURT: Come on up, sir.

9 THE CLERK: Raise your right hand.

10 JEFFREY LEVINE

11 being first duly sworn, testified as follows:

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Have a seat, state your name and
14 spell your last name for the record, please.

15 THE WITNESS: Dr. Jeffrey Levine, L-E-V-I-N-E.

16 DIRECT EXAMINATION

17 BY MR. WELCH:

18 Q. Dr. Levine, tell the jury about yourself. You
19 practice medicine?

20 A. Yes, sir.

21 Q. And where do you practice?

22 A. I practice in New York City.

23 Q. Where did you do your undergrad?

24 A. Undergraduate, part of my undergraduate career
25 was at Tulane University in New Orleans and part of

1 it was at Brandeis University in Waltham,
2 Massachusetts.

3 Q. And where did you go to medical school?

4 A. Medical school was in the home state of
5 New Jersey, UMDNJ, University of Medicine and
6 Dentistry of New Jersey.

7 Q. When did you graduate?

8 A. Graduated in 1981.

9 Q. And following that graduation, did you do any
10 internships, fellowships, residencies?

11 A. Yes, sir. I did an internship and residency in
12 internal medicine in Newark, New Jersey.

13 Q. And when was that?

14 A. Between '81 and '84.

15 Q. And did you do any further study after that?

16 A. Yes, sir.

17 Q. Tell the jury about that.

18 A. I moved to New York City to geriatric medicine.

19 Q. What is geriatric medicine?

20 A. Geriatric medicine is the study of care of --
21 taking care of the elderly. The fellowship rotated
22 through nursing homes, home care, and hospital.

23 Q. Now, are you board certified?

24 A. Yes, sir.

25 Q. Tell the jury what you're board certified in.

1 A. I'm board certified in geriatrics.

2 Q. Tell the jury, what is internal medicine?

3 A. Internal medicine is general care of an adult,
4 general medical care of an adult.

5 Q. As an internal medicine physician, do you look
6 at all the body systems?

7 A. Yes, sir.

8 Q. And what is the difference in internal medicine
9 and geriatrics?

10 A. Well, actually, some people claim it's not a
11 lot. But geriatrics specializes specifically in
12 older folks, specifically in their problems;
13 geriatric syndromes, such as dementia, pressure
14 ulcers, incontinence, which is not emphasized as
15 much in internal medicine, although it's there.

16 Q. Are you currently certified in both areas?

17 A. Yes, sir.

18 Q. Doctor, do you see patients?

19 A. Yes, sir.

20 Q. In the last 10, 15 years, tell the jury in
21 terms of when you see -- when I say clinically, what
22 do you mean by clinically?

23 A. I'm sorry. Could you repeat the question?

24 Q. If I ask you if you see the patients
25 clinically, what does that mean?

1 A. My guess would be taking care of the patients
2 at the bedside is what I understand clinically to
3 be.

4 Q. Do you currently see patients clinically?

5 A. Yes.

6 Q. Have you for the last 10 or 15 years?

7 A. Yes, sir.

8 Q. Doctor, in terms of research, do you do
9 research in these areas?

10 A. Yes, sir.

11 Q. Tell the jury about the research.

12 A. Well, I'm currently involved with several
13 research studies presenting some research this
14 coming May on the effect of hurricanes on older
15 folks, Hurricane Sandy on older folks in the New
16 York Metropolitan area. I'm also involved with
17 presenting case reports related to pressure ulcers.

18 Q. Doctor, in terms of teaching, do you teach
19 other physicians?

20 A. Yes, sir.

21 Q. Tell the jury the last 10 or 15 years what you
22 have been involved with teaching physicians.

23 A. Well, I'm currently involved with the teaching
24 of three different programs: I'm involved with
25 teaching the medical students who rotate through my

1 clinic, come with me on rounds; I'm teaching the
2 internal medicine residents who rotate through my
3 clinic, and I teach them also on rounds when I have
4 consults in the hospital; and the same with the
5 family practice residents. We have a substantial
6 family practice program and I do the same thing for
7 them; they come rotate through my clinic and I teach
8 them the bedside.

9 Q. Doctor, have you served as a medical director
10 at a nursing home?

11 A. Yes, sir.

12 Q. And over how many years did you serve in that
13 function as the medical director of a nursing home?

14 A. Well, I was in long-term care, which is nursing
15 homes, for a good 12 years, from 1990 to 2002. And
16 during that time I had various positions including
17 attending physician, researcher. I was assistant
18 medical director of one large nursing home in the
19 Bronx and I was medical director of another nursing
20 home during that time.

21 Q. Now, Doctor, since 2002 have you actually
22 served as a medical director of a nursing home?

23 A. No, sir. Last time I served as a medical
24 director was in 2002.

25 Q. Since 2002, do you teach those very skills?

1 A. Yes, sir.

2 Q. Tell the jury about that. How do you teach
3 that skill of being a medical director?

4 A. Well, even though I'm not practicing in the
5 long-term care industry, I'm involved in the medical
6 societies and professional organizations that teach
7 for medical directors. Specifically, the
8 organization is AMDA, American Medical Directors
9 Association, and I've been giving almost yearly
10 seminars on wound care for them for the last couple
11 of years.

12 I also give seminars through the -- upcoming
13 seminar through the McKnight's Long-Term Care News,
14 which is a news organization which promotes
15 education. And this is another webinar actually on
16 wound care for medical directors and administrators
17 in nursing homes.

18 Q. And this is to physicians?

19 A. Yes, it includes physicians.

20 Q. Doctor, in terms of the -- number one, tell me
21 who your current employer is in terms of wound care.

22 A. Mount Sinai Beth Israel. They just changed
23 their name; it used to be Beth Israel Medical
24 Center.

25 Q. And what is your position there?

1 A. I'm an attending physician. I see patients in
2 the clinic and I'm on the consult service.

3 Q. And what is your title in terms of your
4 teaching roles?

5 A. I have an appointment with the Albert Einstein
6 College of Medicine as wounds assistant, clinical
7 professor of medicine.

8 Q. And in that role, what do you teach?

9 A. As I stated, I teach medical students, interns,
10 residents in various programs.

11 Q. In terms of the subject matter, do you teach,
12 for instance, seeing patients in nursing homes, what
13 to look for in terms of their treatment, including
14 pressure ulcers?

15 A. Well, the way my clinic works is the nursing
16 home patients actually come to our clinic. Most of
17 them -- or many of them come in on stretchers, some
18 of them come in on wheelchairs, and they come in
19 directly to the homes to our outpatient center which
20 is across the street from the hospital.

21 Q. And, Doctor, in terms of your current area of
22 practice where you're in the hospital, is there any
23 difference in the standard of care in terms of
24 treating a patient that's in a nursing home bed
25 versus treating patients in a hospital bed?

1 A. Well, it's a different environment, and there's
2 different regulations that govern hospitals and
3 nursing homes. But patient care is basically the
4 same.

5 Q. So is it pretty much the same standard of care
6 in terms of treating those patients when it comes to,
7 the clinical, the pressure sores and that type of
8 thing?

9 A. Yes, sir.

10 Q. And, Doctor, for the last five years, have you
11 also done some consulting work?

12 A. Yes.

13 Q. Tell the jury what that is.

14 A. I've done and still do a substantial amount of
15 consulting. A couple of examples: I did -- was on
16 a survey for the Attorney General of the State of
17 Tennessee for -- that was a consulting job that
18 lasted about three years. I was inspecting their
19 nursing homes in Murfreesboro and another town near
20 Nashville as well.

21 I currently consult to the nearest state
22 department of health as a pressure ulcer --
23 statewide pressure ulcer reduction program that
24 covers acute care, long-term care, as well as home
25 care.

1 I also consult for defense attorneys and
2 plaintiff attorneys who are involved with various
3 aspects of litigation.

4 Q. Doctor, let's go to your -- when I say teaching
5 and clinical work, over the last couple of years,
6 how would you divide out what you do in terms of
7 your time versus teaching and clinical that would
8 include the students and course of teaching and all
9 of that versus the consulting that's got to do with
10 like the testimony?

11 A. Well, it basically is varied from year and year
12 and month to month. And the reason is -- well, it's
13 gotten -- actually, my clipboard has gotten more
14 voluminous and intense since the takeover, when my
15 hospital was taken over by a major medical center,
16 so my clinical work is actually increasing. But
17 about two or three years ago, it was 60 to 80
18 percent -- 60 to 80 percent clinical and 20 to 40
19 percent consulting -- no, wait; 60 to 80 percent
20 consulting and 20 to 40 percent clinical.

21 And it's approaching now, especially with my --
22 with the hospital takeover, it's approaching 50/50
23 in terms of the time spent on consulting work and
24 the time that I spend teaching and doing clinical
25 care.

1 Q. Doctor, do you charge for your services in
2 situations like this where you review medical
3 records?

4 A. Yes, sir.

5 Q. And how much do you charge?

6 A. \$375 per hour for chart reading.

7 Q. And when you, for instance, testify, do you
8 charge for your testimony here?

9 A. Yes.

10 Q. How do you charge that?

11 A. I charge by the half day that I'm needed
12 onsite.

13 Q. Do you actually charge for travel time?

14 A. No, sir.

15 MR. WELCH: Your Honor, we'd offer him as an
16 expert in internal medicine and geriatrics.

17 THE COURT: Any cross-examination on
18 qualifications?

19 MR. PARKINSON: I don't think I have any at
20 this time, Your Honor.

21 THE COURT: Thank you. Well, this is the time
22 to cross him on his qualifications.

23 MR. PARKINSON: I'm not going to do any voir
24 dire that relates to his qualifications for the
25 Court to declare him competent to testify.

1 THE COURT: Mr. Nance?

2 MR. NANCE: I just want a clarification: He's
3 being qualified as an expert in internal medicine?

4 MR. WELCH: And geriatrics.

5 THE COURT: Geriatrics.

6 MR. NANCE: In geriatrics?

7 THE COURT: That's what he said.

8 THE WITNESS: Wound care.

9 MR. WELCH: In internal medicine and
10 geriatrics, which he's testified involves taking
11 care of patients with --

12 THE COURT: Geriatrics is the care of older
13 people. Any objection to that?

14 MR. NANCE: No, sir.

15 THE COURT: Ladies and gentlemen of the jury
16 and Mr. Foreman, I will qualify this doctor as an
17 expert and I will explain to you later in the charge
18 how to handle an expert witness.

19 THE WITNESS: Thank you, Judge.

20 BY MR. WELCH:

21 Q. Doctor, tell the jury in this case, what did
22 you review in terms of Mr. Peterson?

23 A. I reviewed Mr. Peterson's medical records
24 beginning from February of 2006 to the time of his
25 death in August of 2006. That included some

1 hospital records and some nursing home records.

2 Q. Did you review the hospital admission -- or,
3 excuse me, Trinity Nursing Home admission in
4 February-March of 2006?

5 A. Yes, sir.

6 Q. Did you review the Aiken Hospital admission
7 there in March of 2006?

8 A. Yes, sir.

9 Q. Did you review the Trinity Nursing Home
10 admission that started in March and went to May
11 15th, 2006?

12 A. Yes, sir.

13 Q. Did you review the Aiken Hospital admission
14 beginning May 15th?

15 A. Yes, sir.

16 Q. Did you review the Select Specialty Hospital
17 admission there in June and July of 2006?

18 A. Yes, sir.

19 Q. And, Doctor, after you reviewed that, tell the
20 jury, have you reviewed any of the other depositions
21 and other discovery in this case?

22 A. Yes, sir.

23 Q. Did you review the testimony of the doctors and
24 their depositions?

25 A. Yes, sir.

1 Q. And do you recall which doctors you reviewed,
2 Dr. Levine?

3 A. Excuse me. I reviewed Dr. Leaphart,
4 Dr. Nicholson, and Dr. Rainsford.

5 Q. And, Doctor, based upon your review of those
6 records, again, in looking at the standard of care
7 and going over to examine the patients in the
8 nursing home, is there any difference in the
9 standard of care if you're a family practice doctor
10 versus an internist versus a geriatric physician if
11 you're going to examine those patients?

12 A. No, sir.

13 Q. Explain to the jury why that's true.

14 A. If someone is sick, if they have a changing
15 condition, you have to see them.

16 Q. And if you are taking on the role of that
17 patient's physician at a nursing home, is there any
18 difference in the standard of care in terms of how
19 you approach treating that patient in the nursing
20 home?

21 A. Well, in the nursing home you have a high level
22 of illness, you have -- over 60 percent of patients
23 have dementia, over 65 percent of patients are
24 severely immobile. And we often count on the staff
25 as their eyes and ears to tell us what's going on.

1 Nonetheless, if there's a clear change in the
2 patient's condition, it's the physician's
3 responsibility to examine that individual.

4 Q. Doctor, how frequently should a patient be
5 examined in a nursing home?

6 A. Well, the regs say within, I think, 48 hours of
7 coming in at first, and then at least every two
8 months afterwards with an intervening month by a
9 physician extender. They call it physician
10 extender; could be a nurse practitioner.

11 Q. So, Doctor, you're saying within 48 hours of
12 coming to the nursing home there should be an exam?

13 A. Yes, sir.

14 Q. And then 30 days after that, then every 60
15 days?

16 A. Yes, sir.

17 Q. If the patient's condition declines, does it
18 make a difference in how frequently the patient
19 should be seen?

20 A. Yes, sir.

21 Q. Explain that to the jury.

22 A. Well, if there's a change in condition, such as
23 a deterioration of condition, it's something that
24 needs an eye-to-eye, face-to-face examination by a
25 doctor.

1 Q. And a review of the medical records, Doctor,
2 there's been some testimony from Dr. Nicholson that
3 sometimes the nurses and physical therapists are the
4 doctor's eyes and ears?

5 A. Well, these people in nursing homes are sick
6 and, you know, they're sicker than the general
7 population, that's why they're there. And the
8 nurses and the physical therapists are there every
9 day at the bedside, so frequently doctors who work
10 with nursing homes rely on the nursing home staff to
11 let them know what's going on.

12 Q. Doctor, if they're the eyes and ears, are they
13 to be the brain or the decisionmaker should the
14 nurses and physical therapists be the brain making
15 the decisions?

16 A. Well, it depends on the decision. If it's a
17 medical thing, clearly that entails a face-to-face
18 examination and thoughtful process of a medical
19 doctor.

20 Q. By who?

21 A. By the medical doctor.

22 Q. Doctor, after reviewing those records and
23 depositions here, have you formed any opinions
24 within a reasonable degree of medical certainty as
25 to any breaches of the standard of care in this

1 case?

2 A. Yes, sir.

3 Q. Tell the jury what those are, please.

4 THE WITNESS: Excuse me. Can get a glass of
5 water, Judge?

6 THE COURT: You certainly can.

7 Repeat the question, or are you okay?

8 THE WITNESS: Could you repeat the question?

9 BY MR. WELCH:

10 Q. Tell me, Doctor, after review of the materials
11 that you reviewed in this case, have you reached any
12 decisions within a reasonable degree of medical
13 certainty as to whether or not there were any
14 breaches of the standard of care by any physicians
15 in this case?

16 A. Yes, sir, I did.

17 Q. Can you tell me, first of all, what those
18 breaches of the standard of care are?

19 A. Well, there was a failure to examine the
20 patient as he was getting worse, specifically with
21 regard to his wounds. There was a failure to
22 diagnose infection, a failure to treat that
23 infection, and a failure to appropriately transfer
24 the patient to a hospital where it could get more
25 intensive care -- not intensive care, so to speak,

1 such as in an intensive care unit, but in a more
2 medical type of environment to get treated.

3 Q. Okay. So a failure to examine the patient
4 getting worse, failure to diagnose the infection,
5 failure to treat that infection, and then failure to
6 transfer; is that correct?

7 A. Yes, sir.

8 Q. Now, Doctor, I'd like to go to each of those,
9 but I'd like to ask you, first of all, within a
10 reasonable degree of medical certainty, there are
11 three physicians that are named in this action,
12 Dr. Rainsford, Dr. Massey, and Dr. Leaphart. Based
13 upon the medical record, Doctor, do those breaches
14 in the standard of care apply that you've just given
15 me apply to each of those physicians?

16 A. Yes, sir.

17 Q. Can you tell the jury why.

18 A. Well, at the time this patient got the wound
19 and this wound became infected, there was no
20 examination, there was no treatment, and there was
21 no transfer.

22 Q. And in terms of looking at the record, Doctor,
23 can you actually tell from the charting specifically
24 which physicians were doing what I call work by the
25 week? In other words, it was their week to go over

1 there, can you tell that?

2 A. Well, I didn't have access to the actual
3 schedule. My understanding is the care was being
4 delivered by the group and the members of the group
5 rotated their call.

6 Q. But, Doctor, just because -- if it's not your
7 week to do rotation, that means you can ignore, for
8 instance, a lab result that comes in?

9 A. I don't know what their coverage agreement was,
10 but generally speaking, if there's an abnormal
11 laboratory result, that needs to be attended to.

12 Q. Doctor, let's talk about failure to examine the
13 patients. What do you base that on?

14 A. Well, I base that on the fact that this patient
15 came in with one wound to the neck from a recent
16 neck surgery, patient came in with another wound to
17 heel which was a pressure sore, it was full of
18 eschar which is dry, dead tissue, and, in the course
19 of his stay here, he lost weight, had very poor oral
20 intake, and developed another wound to the hip.

21 This wound required a treatment called debridement.

22 And the debridement was being delivered by a topical
23 treatment, which I think was Panafil initially,
24 which is a -- it's kind of like -- it's kind of
25 like -- it's similar to the substance that we use in

1 meat tenderizer because it mushes up the hard
2 substance and makes it soft and peels it off. So
3 this is a clear change in the wound because the
4 patient didn't have it when he came in, and then the
5 next thing, there was a wound that needed
6 debridement with Panafil.

7 So at this point, whenever you have a patient
8 who is losing weight, developing new wounds, this is
9 the time to get a physician's examination and it
10 wasn't done. This wound then became infected.
11 There was a call made to the doctor's office to get
12 a culture and that culture came back with two
13 organisms; one, methicillin-resistant staph aureus,
14 which is abbreviated MRSA -- and it actually said on
15 the sheet numerous colonies -- and the second
16 organism called enterococcus faecalis, which is one
17 of the organisms that normally resides in the
18 intestine. And these two organisms grew out of the
19 wounds.

20 And the report, I think the order was written
21 on May 2nd, the report was generated on -- that's
22 May 2nd, 2006, I believe. And the report was
23 generated on May 7th and was faxed to the doctors'
24 office. And there was no activity on it, it
25 basically went unattended. And, unfortunately, this

1 patient required transfer to the hospital. And when
2 the patient ended up in the hospital, the patient
3 had sepsis, which means he had organisms in his
4 blood, and that ended up being the same organism
5 that was in the wound, in the culture. So there was
6 something missing between the time of the ordering
7 of the culture, the culture coming back, and those
8 days -- excuse me. Just want to count the number of
9 days.

10 The culture came back on May 7th, the patient
11 was transferred on May 15th. That was about seven
12 or eight days later. And during that time, the
13 patient was not attended to by a doctor.

14 Q. Doctor, if you could, that notebook that's in
15 front of you, there should be an Exhibit 3 tab. And
16 I can look to make sure that's where you are.

17 I'm going to ask you to look at page 81,
18 Doctor. Is that the lab that you referred to?

19 A. Yes, sir.

20 Q. And if you could, explain to the jury exactly
21 what comes back in a lab like that.

22 A. Well, we've got the names of the organisms,
23 we've got some indication of how many there are, and
24 we've got the various sensitivities of each
25 organism, which antibiotics are suggested to use --

1 well, actually, from the sensitivities we can learn
2 which antibiotics we can use and which antibiotics
3 not to use.

4 Q. And you were talking about this section right
5 in there where I'm pointing. Are those the
6 antibiotics that are recommended and their
7 sensitivities?

8 A. Yes, sir.

9 Q. So all of those are available to the doctor
10 there on the date it's sent to them?

11 A. Yes, sir.

12 Q. Now, Doctor, in that same notebook, if you'd
13 flip over to page 91.

14 THE COURT: Do we have that in our little book?

15 MR. WELCH: Not in the little book, Judge.

16 It's Exhibit 3, page 91. It's going to be on the
17 screen.

18 THE WITNESS: Is that physical therapy?

19 BY MR. WELCH:

20 Q. Yes, sir, physical therapy date of regular
21 treatment. And if you look at that bottom line --
22 and there's been testimony about the debridements
23 done by the physical therapist.

24 A. Yes, sir.

25 Q. This is for May of 2006. There's been

1 testimony that debridements were done to that
2 patient on May 1st, 2nd, 3rd, 4th, 5th, 8th, 9th,
3 10th, 11th and 15th. Do you see that, Doctor?

4 A. Yes, sir.

5 Q. Now, Doctor, based upon that and knowing that
6 the culture was taken there on May the 2nd, I
7 believe, or the 3rd, which cultured out the MRSA, do
8 you have an opinion as to whether or not those
9 debridements should be taking place in that nursing
10 home setting by a physical therapist?

11 A. Well, the reason you debride is that there's
12 dead tissue. That's the indication for debridement.
13 And I haven't heard testimony or spoken to the
14 therapist who was doing this; however, in general,
15 when you have dead tissue in a wound, it usually
16 needs to come out. I mean, there are circumstances
17 when to leave it; but generally speaking, you want
18 to get it out. So this could have been justified,
19 yes, sir.

20 Q. Tell the jury what debridement is.

21 A. Debridement is basically removing dead tissue.
22 And I mentioned earlier that you can do that with a
23 chemical. You can do that with a chemical that
24 dissolves it away. That's called chemical
25 debridement or enzymatic debridement. You can also

1 do it mechanically by scraping it or using certain
2 types of dressings that peel it away. That's called
3 mechanical debridement. And then there's surgical
4 debridement where you actually use a sharp
5 instrument to actually remove some of the material.

6 Q. Sir, if it was done by sharp instruments,
7 should that be supervised by a physician at this
8 point in the process of Mr. Peterson?

9 A. Well, generally speaking, I mean, that's a
10 surgical procedure. I mean, there are some states
11 that allow physical therapists and other caregivers
12 to do sharp debridements, but generally it should be
13 done under physician supervision.

14 Q. Yes, sir. And in this case is there any
15 indication that it was actually done under -- by
16 supervision? Should the physician be actually
17 looking at the wound?

18 A. Well, I'm a wound care specialist that works at
19 a wound care clinic, and I'd say yes; however,
20 things are different in many nursing homes, and
21 doctors can't be there all the time. So there are
22 some nursing homes in some states -- in fact, many
23 states, that allow physical therapists to do the
24 sharp debridement without a doctor present.

25 Q. And, Doctor, I'm not referring to being present

1 at every single debridement, but should a physician
2 have at least looked at the wound to give the
3 instructions in terms of whether the physical
4 therapist should be doing the debridement?

5 A. Yes.

6 Q. Do you have any -- can you find any indication
7 in this case that the physician actually looked at
8 the wound to provide that guidance on the physical
9 therapy?

10 A. No, sir.

11 Q. Now, Doctor, let's go to your second failure to
12 diagnosis infection and tell me what you mean by
13 that.

14 A. Well, we looked at the culture report, and the
15 culture report shows heavy growth of both organisms.
16 It's reasonable to assume that that was an infected
17 wound with the heavy growth of those two organisms.
18 Even though, generally speaking, you don't usually
19 culture because wounds are contaminated with a lot
20 of different organisms, but there are some times
21 when it's very clear that there's an infection
22 there, so you've got to culture it. When you
23 culture it, you get the results and you make the
24 determination that this is an infection that needs
25 to be treated.

1 So we had a change in condition of a wound. We
2 had an indication for a doctor's order for a
3 culture, and we've got a culture that shows heavy
4 growth of two organisms, but there was a failure to
5 treat that.

6 Q. And, Doctor, do you have an opinion as to
7 approximately what time it would have been
8 reasonable for this treatment to take place and to
9 diagnose the infection?

10 A. Well, it's a clinical diagnosis so you don't
11 even need the culture if you visit the patient to
12 see them. But once you get the culture, you need to
13 institute a treatment pretty quick.

14 Q. So if the culture results come back on May 7th
15 and were sent to the doctor's office, do you have an
16 opinion as to when some type of treatment with
17 antibiotics should have been started?

18 A. Well, being as that culture on May 7th was
19 already five days old, it should have been done
20 pretty quick, within 24 hours, two days at the most.

21 Q. And, Doctor, do you have an opinion as to what
22 type of treatment with antibiotics would have been
23 appropriate in this case?

24 A. Well, we can look at the printout of the
25 sensitivities, but with MRSA, vancomycin is

1 generally the choice.

2 Q. And would you have prescribed antibiotics in
3 this case?

4 A. I would have, yes.

5 Q. And by the time the results came back
6 themselves?

7 A. I would have.

8 Q. Doctor, you say failure to treat. What do you
9 mean by failure to treat?

10 A. Well, as we stated there were no antibiotic
11 treatment for these heavy-growth organisms.

12 Q. And when it comes to failure to transfer -- you
13 say transfer -- would you have also called for a
14 consultation?

15 A. Well, you could do that, but it depends. If
16 the patient's condition is deteriorating and the
17 family is aware of it, and depending upon the
18 preferences of the patient and preferences of the
19 family, we talk to them and explain what's going on
20 and say, listen, well, we think the patient might
21 benefit from a hospitalization. And if everybody
22 decides together to do that, then you do that.

23 Q. Okay. Now, Doctor, on the 7th when these
24 antibiotics started, it seems to me that the
25 treatment regime you talked about was instituted on

1 the 7th. Do you have an opinion if proper
2 management that you just described -- there had been
3 the diagnosis, the treatment of the wound -- in
4 other words, the breach of the standard of care
5 you've talked about had taken place, but proper
6 management, do you have an opinion as to whether or
7 not there would have been a different clinical
8 outcome or result more probably than not for
9 Mr. Peterson?

10 A. Yes, I do.

11 Q. And what is that opinion?

12 A. Well, when he was transferred to Aiken Medical
13 Center on May 15th, this patient was in extremis; he
14 was acutely ill with sepsis. The sepsis was
15 manifested in hypothermia. Sometimes when, instead
16 of the temperature going up in sepsis, temperature
17 actually goes down. His temperature was 91; normal
18 in Fahrenheit is 98, usually 98.8, 98.6. And he
19 required debridement, he required surgical
20 debridement at the bedside; and he required
21 intravenous antibiotics and hydration because he was
22 hypotensive, his blood pressure was low.

23 Q. Doctor, within a reasonable degree of medical
24 certainty, if he had been treated as you advised,
25 would the transfer to the Aiken Hospital been

1 necessary?

2 A. Probably not.

3 Q. Is that more probable than not?

4 A. Yes, sir.

5 Q. And, Doctor, again, if he had been treated as
6 you advised, more probable than not, would it have
7 been necessary for him to eventually transfer once
8 he was stabilized to the Select Specialty Hospital
9 or he could he have probably stayed in the nursing
10 home?

11 A. Well, Select Specialty is -- they offer
12 advanced services with -- with regards to wounds.
13 So if his wounds weren't that bad, he probably
14 wouldn't have needed that.

15 Q. Is that more probable than not, Doctor?

16 A. Yes, sir.

17 Q. Doctor, again, if he had stayed in the nursing
18 home, obviously he'd have been charged certain
19 charges for nursing home care; correct?

20 A. Yes.

21 Q. Would it be fair to say, Doctor, that the
22 difference in what he's charged for these advanced
23 services at, like, Select and Aiken, over and above
24 the nursing home care, do you have an opinion, more
25 probable than not, that would have been incurred if

1 he'd been treated properly?

2 A. Yes, sir.

3 Q. What is your opinion?

4 A. Probably not.

5 Q. Doctor, I'd like to show you the exhibit
6 notebook. I don't think you have it in front of
7 you. I'll switch out with you to Exhibit 5. And,
8 Doctor, some of these pages are in the notebook, and
9 it says at the bottom ARMC 515-200612.

10 THE COURT: What page on 5, please?

11 MR. WELCH: 12.

12 THE COURT: I'm sorry, what?

13 MR. WELCH: 12.

14 THE COURT: Hold on one second. Let everybody
15 get to it. Is that in the little black book?

16 MR. WELCH: They are in the little black book
17 too, Judge.

18 THE COURT: They have that over there?

19 MR. WELCH: The jury has that.

20 THE COURT: It's towards the back of the book,
21 page 12. Is that correct, page 12?

22 MR. WELCH: Yes, sir.

23 BY MR. WELCH:

24 Q. Doctor, I'm going to ask you to look at 12, 13,
25 and 14, which is a discharge summary from the Aiken

1 Regional Medical Center from that 5/15 admission
2 that ran through June 1st. Do you see that?

3 A. Yes, sir.

4 Q. Tell the jury what a discharge summary is,
5 please.

6 A. Discharge summary is a required part of the
7 hospital chart that the physician completes, and
8 it's -- basically lists -- there's several
9 components of it, including the diagnosis, the
10 hospital course, and what's going to occur after
11 discharge.

12 Q. Okay. And if you look at that final diagnosis,
13 tell the jury, please, what he was diagnosed with
14 when he was brought to the hospital.

15 A. Well, number one is sepsis with
16 methicillin-resistant staphylococcus aureus, the
17 MRSA that we discussed earlier.

18 Q. And tell the jury a little more about what
19 sepsis is. Is the bacteria actually in the blood?

20 A. Yes. Sepsis is more of a syndrome that you
21 don't always have to demonstrate bacteria in the
22 blood. It's really a syndrome that entails mental
23 status changes; patient gets lethargic. There are
24 changes in vital signs; patient can get very fast
25 heartbeat. Patient can be breathing very quickly,

1 patient can be hypotensive, which is their blood
2 pressure is dropping.

3 Q. Okay. Then the next one, number 2.

4 A. Urinary tract infection with
5 methicillin-resistant staphylococcus aureus and
6 enterococcus.

7 Q. And that's, again, the MRSA?

8 A. Yes, sir.

9 Q. And then number 3.

10 A. Sacral decubitus ulcers, infected.

11 Q. And again, that's the same hip and back, sacral
12 being the back area here?

13 A. Yes, sir.

14 Q. Okay. And that was infected?

15 A. Yes, sir.

16 Q. Does infection mean -- it may be obvious, but
17 what does it mean?

18 A. Well, any time you have an open wound, bacteria
19 can get in, and it's looked at as a spectrum. When
20 it's just a small amount of bacteria, it's called
21 colonized in that you have bacteria just sitting
22 there living. And when it gets more bacteria in the
23 there, you then go from colonization to critical
24 colonization where you've got more bacteria living
25 in there. Then you've got infection, which is when

1 the host is actually -- has a big inflammatory
2 reaction. So that's infection.

3 And then infection can actually go further on
4 and lead to sepsis, which is with the whole body or
5 the whole organism. The whole body is reacting to
6 the presence of the bacteria and the bacteria can
7 get into the bloodstream.

8 Q. Doctor, there was some mention in the medical
9 records by the infectious disease doctor that's in
10 the record before us about some gangrenous changes
11 on the hip cubiti. What is that?

12 A. Gangrenous refers to dead tissue. So if you
13 look at photographs, you'll actually see a block of
14 dead tissue that the infectious disease doctor
15 referred to as gangrenous.

16 Q. Okay. And is the goal, Doctor, of treatment to
17 try to prevent the patient from progressing to this
18 stage?

19 A. Yes, sir.

20 Q. Now, Doctor, in terms of the gentleman,
21 Mr. Peterson, obviously ultimately he passed away
22 there in August. But within a reasonable degree of
23 medical certainty, if he had not been taken out of
24 the hospital on the 15th, do you have an opinion as
25 to whether or not he would have been alive even

1 later in the month of May?

2 A. Well, he lived for another couple of months
3 after he left the hospital -- I'm sorry, after the
4 nursing home. And I don't have an opinion,
5 actually.

6 Q. Well, look at the addendum on page 15 of that
7 same record..

8 A. Yes, sir.

9 Q. If you'll look at the second paragraph, it
10 says: The patient also discovered to be anemic down
11 to hemoglobin in the 7 range. Why is that
12 significant?

13 A. Well, because anemia means low blood count and
14 hemoglobin of 7 is about half. Actually, normal
15 hemoglobin in an adult male is about 13. So
16 hemoglobin of 7 is about almost half of what the
17 normal is, a bit more than half.

18 Q. It says he was given two units of packed RBCs.
19 What is that?

20 A. Patient was transfused.

21 Q. Okay. He also began to be a little more alert
22 and actually at times was responding to questions
23 verbally. You see that, Doctor?

24 A. Yes.

25 Q. So the patient with the treatment at Aiken did

1 improve significantly?

2 A. Yes.

3 MR. WELCH: Your Honor, if I could have just a
4 minute.

5 BY MR. WELCH:

6 Q. Doctor, have all your opinions been to a
7 reasonable degree of medical certainty?

8 A. Yes, sir.

9 Q. Please answer any questions the other attorneys
10 may have for you.

11 THE COURT: Thank you.

12 Mr. Parkinson?

13 MR. PARKINSON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. PARKINSON:

16 Q. Good morning, Dr. Levine.

17 A. Good morning, sir.

18 Q. Dr. Levine, you remember we came to New York
19 City and took your deposition about December of
20 2012, something like that?

21 A. Yes, sir.

22 Q. Okay. You've reread your deposition from that
23 time?

24 A. Yes, sir.

25 Q. Okay. And I think of the depositions that

1 you've reviewed in this case, you reviewed the
2 deposition of Dr. Nicholson.

3 A. Yes, sir.

4 Q. And the deposition of Dr. Rainsford?

5 A. Yes, sir.

6 Q. And the deposition of Dr. Leaphart?

7 A. Yes, sir.

8 Q. Did you read the deposition of Dr. Massey?

9 A. I don't believe so. It's not on my list.

10 Q. Okay. You had not read the deposition of
11 Dr. Massey when I got on an airplane and came to New
12 York to take your deposition in December of 2012.
13 And it's now March of 2014, but you still have not
14 read the deposition of Dr. Massey?

15 A. Well, it's not in my notes. If I'd read it, I
16 didn't update my notes. But I don't recall it.

17 Q. Okay. You didn't read it, did you?

18 A. I might have, but I don't recall it as I sit
19 here.

20 Q. You testified in December of 2012 that you had
21 not -- didn't have it and didn't read it, didn't
22 you?

23 A. Yes, sir.

24 Q. Okay. And you've not read the depositions of
25 the physical therapists who were involved in

1 treating the patient at Trinity Nursing Home, have
2 you?

3 A. No, sir.

4 Q. Okay. You've not read the depositions of the
5 nurses at the -- I guess you haven't read any
6 nursing home personnel depositions, have you?

7 A. I read the depositions that were supplied to
8 me, certainly.

9 Q. Okay. But they didn't send you any nursing
10 home -- Mr. Welch's office didn't send you any
11 nursing home personnel depositions, did he?

12 A. I don't recall seeing any.

13 Q. Okay. Now, Doctor, a significant -- you've
14 reviewed cases as -- to be an expert witness
15 previously for Mr. Welch's law firm, haven't you?

16 A. For his law firm, yes, sir.

17 Q. Not for him individually, but for members of
18 his firm; correct?

19 A. Yes, sir.

20 Q. And you spend a significant amount of your time
21 reviewing records and being involved as an expert
22 witness in litigation; correct?

23 A. Yes, sir.

24 Q. And most of that involves nursing home
25 litigation?

1 A. No, sir.

2 Q. It involves other issues unrelated to nursing
3 home patients?

4 A. Yes, sir -- well, excuse me, sir. I don't mean
5 to butt in.

6 Q. I'm sorry?

7 A. I didn't mean to interrupt you. I'm sorry.

8 Q. I'm sorry. I thought I interrupted you.

9 Does a significant portion of your testimonial
10 work involve nursing home patients?

11 A. Yes, it does. But I think the broader rubric
12 is wound care. So I review wound care cases in
13 hospitals, home care, and nursing homes.

14 Q. Wound -- pressure ulcers happen to hospital
15 patients too, don't they?

16 A. Yes, sir.

17 Q. They happen to patients that are in the
18 intensive care unit, don't they?

19 A. Yes, sir.

20 Q. Those patients are being attended to very
21 closely when they're in ICU, aren't they?

22 A. Yes, sir.

23 Q. Almost 90 -- well, over 95 percent of your work
24 outside of the state of New York is for plaintiffs
25 versus defendants; isn't that correct?

1 A. That's not true.

2 Q. Well, tell me what it is.

3 A. It's probably closer to -- it's probably
4 running between 50 and 60 percent plaintiff. But I
5 have a significant amount of defense work at the
6 moment.

7 Q. Okay. You don't take any plaintiffs' cases in
8 the state of New York, your home state of New York,
9 do you?

10 A. I try not to.

11 Q. Because you don't find it very comfortable to
12 testify against doctors that live in your community
13 versus doctors in Edgefield, South Carolina, where
14 you've never been?

15 A. Well, it's more of a matter of conflicts
16 because, for example, many of the doctors in my home
17 state and my neighborhood share the same insurance
18 that I have or the hospital has, so that's a problem
19 that I do that. So I don't take plaintiff work in
20 my backyard.

21 Q. You do do defense work in the state of New York
22 because you don't run into that problem in that
23 state; correct?

24 A. Yes, sir.

25 Q. But when you come to South Carolina, you don't

1 have any connections with anybody down here, so you
2 don't have a problem being a plaintiff's expert in
3 South Carolina?

4 A. Well, there's less of a problem with potential
5 conflicts.

6 Q. Okay. In fact, you've got your own corporation
7 with employees that help you in your consulting
8 work, don't you?

9 A. I have one employee.

10 Q. One employee. And you've organized a business.
11 What is it called?

12 A. Senior Health Consulting.

13 Q. Senior Health Consulting?

14 A. Yes.

15 Q. And that's where -- all of the income that you
16 derive from the litigation work comes through that;
17 correct?

18 A. Litigation, other consulting, as well as my
19 lecturing.

20 Q. And you actually have a secretary that helps
21 you run all that; correct?

22 A. Yes, sir.

23 Q. That doesn't have anything to do with clinical
24 care of patients, does it?

25 A. No, sir.

1 Q. You only see patients clinically about half a
2 day a week now; isn't that true?

3 A. No, sir.

4 Q. Well, you told me about that in deposition.
5 I'll go get it. Tell us now why that's not correct.

6 A. Well, since the deposition was done in 2012,
7 and since 2012 I was -- I'm now on the consult
8 service where I rotate two weeks out of the month
9 doing consults in the hospital. So as long as my
10 Wednesday morning clinic session, two weeks out of
11 the month I see all the wound care patients in the
12 hospital that get consulted upon.

13 Q. Okay. When we took your deposition in December
14 of 2012, the situation was different then and you
15 saw patients only on half a day on Wednesdays.

16 A. Yes, sir. Actually, I was doing consults, but
17 not on the same scale.

18 Q. And, Doctor, nursing home patients, just like
19 ICU patients and hospital patients, they can get
20 pressure ulcers or bed sores despite all of the
21 appropriate interventions being done; correct?

22 A. Yes, sir.

23 Q. In fact, you've written papers on that before
24 that despite the best clinical care, pressure ulcers
25 are sometimes unavoidable; correct?

1 A. Yes, sir.

2 Q. And so you are not criticizing the fact -- in
3 this case, the fact that this gentleman developed
4 pressure ulcers, but rather the response to that?

5 A. Yes, sir.

6 Q. Okay. Mr. Peterson had immobility. That's a
7 risk factor for developing pressure ulcers; correct?

8 A. Yes, sir.

9 Q. And it's a risk factor for treating pressure
10 ulcers to get them better too; correct?

11 A. Yes, sir.

12 Q. And he had a -- he was incontinent of bowel and
13 bladder; correct?

14 A. Yes, sir.

15 Q. And that's a risk factor for developing
16 pressure ulcers; correct?

17 A. Yes, sir.

18 Q. And it's a risk factor in dealing with how to
19 treat him and get him better?

20 A. I'm sorry. Could you repeat that?

21 Q. It's also a factor in how well you can treat
22 him and get him better, the outcome?

23 A. Yes, sir.

24 Q. Okay. And Mr. Peterson had some nutritional
25 problems, didn't he?

1 A. Yes, sir.

2 Q. And that's a factor in developing pressure
3 ulcers, isn't it?

4 A. Yes.

5 Q. And it's a factor in getting a patient with
6 pressure ulcers to heal and get better?

7 A. Yes, sir.

8 Q. And he was paralyzed at least in his lower
9 extremities; correct?

10 A. Yes, sir.

11 Q. And he had muscle contractures in his lower
12 extremities; correct?

13 A. Yes, sir.

14 Q. Tell the jury what that is.

15 A. A contracture is what occurs when you don't use
16 your limbs. And in nursing homes it frequently
17 results from neurologic disease. For example, if
18 it's a stroke or if it's endstage, very, very late
19 Alzheimer's disease, for example, in the upper
20 extremity, you can get contractures where the
21 muscles and tendons will shorten and you can't move
22 them.

23 Q. And Mr. Peterson had declining mental status,
24 didn't he?

25 A. Yes, sir.

1 Q. And I see in the records it's sometimes called
2 dementia?

3 A. Yes, sir.

4 Q. That's not uncommon in elderly nursing home
5 patients, is it?

6 A. It's not.

7 Q. And dementia is a risk factor for developing
8 pressure ulcers, isn't it?

9 A. Yes, sir.

10 Q. And it's a risk factor or factor in how well
11 you can treat and get a patient with a pressure
12 ulcer to heal and get better?

13 A. Yes, sir.

14 Q. Okay. You've said that, I believe, if I'm
15 understanding this correct, that you think that
16 Mr. Peterson could have stayed in the nursing home
17 at Trinity Nursing Home?

18 A. Excuse me.

19 (Pause in the proceedings.)

20 THE COURT: Doctor, are we ready to go?

21 THE WITNESS: Yes, sir. Thank you, Judge.

22 BY MR. PARKINSON:

23 Q. Is it your testimony that if treated
24 differently in the way that you've described, that
25 Mr. Peterson could have stayed at Trinity Nursing

1 Home and not have to go to Aiken Hospital or to the
2 Select hospital after that?

3 A. Well, sir, that's certainly a possibility;
4 however, that's a decision that could have been made
5 or should have been made in the process of the care,
6 where the family is informed of the problem. And
7 certainly he had some advanced directives: He was
8 DNR, do not resuscitate, and the family didn't want
9 him intubated at that time. And so when you have a
10 patient who is deteriorating, you basically inform
11 them this is what's happening, these are your
12 choices, what do you want us to do within the
13 constraints of what the patient wanted for himself.
14 So you can treat a person like this in the nursing
15 home or you have the option of transferring to the
16 hospital. It depends on the preference and team
17 decision-making of the family and the doctor.

18 Q. And wouldn't you agree that Mr. Peterson was
19 not in a state where he could effectively
20 participate in decision-making about that?

21 A. Yes, sir.

22 Q. His daughter, Mary Ruth Peterson, I believe
23 it's shown in the records as the decisionmaker?

24 A. Yes, sir.

25 Q. Did you read her deposition?

1 A. No, sir.

2 Q. Did you read any family member depositions?

3 A. I don't recall reading any.

4 Q. The -- you've looked at the records from Aiken
5 when he went from -- on May 15th from Trinity
6 Nursing Home to Aiken?

7 A. Yes, sir.

8 Q. Okay. Mr. Welch asked you about the discharge
9 summary. Also in your notebook there is a history
10 and physical report. Again, it's page 26. Can you
11 find that?

12 MR. WELCH: Is that Exhibit 5?

13 MR. PARKINSON: It's page 26.

14 MR. WELCH: Of Exhibit 5, the May 15th
15 admission.

16 BY MR. PARKINSON:

17 Q. Have you found that, Doctor?

18 A. Yes, sir.

19 Q. I'll put that up on the screen here. Do you
20 see where it says his urine was positive for
21 leucocytes?

22 A. Yes, sir.

23 Q. So he had a urinary tract infection?

24 A. Yes, sir.

25 Q. And he had an indwelling Foley catheter, didn't

1 he?

2 A. Yes, sir.

3 Q. And patients with Foley catheters in nursing
4 homes frequently get urinary tract infections, don't
5 they?

6 A. Yes, sir.

7 Q. And that means -- by seeing it was a positive
8 for leucocytes, that means there were white blood
9 cells in his urine?

10 A. Yes, sir.

11 Q. So he had a urinary infection?

12 A. Well, not necessarily. Nursing home patients
13 tend to have colonization of their catheters which
14 may not necessarily be an infection. So it would
15 depend on what grew out of the culture.

16 Q. Now, if you look at page 28, which is also part
17 of that history and physical, the last paragraph,
18 this doctor focused on, I believe it is, says: I
19 discussed with Mary Ruth Peterson, the daughter, on
20 the telephone the code status was reinstated to do
21 not resuscitate and DNI. Is that do not intubate?

22 A. Yes, sir.

23 Q. So that means they don't want him to be put on
24 a ventilator to assist his breathing?

25 A. Yes, sir.

1 Q. So do not resuscitate means if he has a
2 cardiopulmonary arrest, that means do not do CPR; is
3 that right?

4 A. Yes, sir.

5 Q. Let him go?

6 A. Well, it says do not do CPR.

7 Q. Okay. And then do not intubate is a pre-death
8 situation where you're just putting him on a
9 ventilator in advance to breathe for him. Doesn't
10 have anything to do with a cardiopulmonary arrest,
11 it's intubating him to maintain breathing; correct?

12 A. I'm not sure what you mean by pre-death. If
13 you could, explain that to me.

14 Q. Well, if somebody is do not intubate, is that
15 talking about do not put him on a ventilator?

16 A. Yes.

17 Q. Okay. That's good enough.

18 Now, if you would look at page 34 in that
19 record from Aiken, this is a consultation for renal
20 insufficiency. That's his kidney problems; correct?

21 A. Yes, sir.

22 Q. And this Dr. DeBona says: Given his profound
23 dementia -- he had that back at Trinity for awhile,
24 didn't he, dementia?

25 A. I want to find that. Is there any specific

1 line you're referring to, sir?

2 THE COURT: Under discussion.

3 BY MR. PARKINSON:

4 Q. Under discussion at the very bottom.

5 A. Okay. Thank you, sir.

6 Q. Sorry. Just above the doctor's signature down
7 here: Given his profound dementia and paralysis, I
8 do not feel like we should be very aggressive in
9 treating anything. That's what one of his doctors
10 at Aiken said?

11 A. Yes, sir.

12 Q. And the dementia and paralysis existed at
13 Trinity, independent of the pressure ulcer issues;
14 correct?

15 A. Yes, sir.

16 Q. If you'd look at page 90 in that record --

17 THE COURT: 90?

18 MR. PARKINSON: Nine, zero.

19 I don't know if you've got the big notebook.
20 This is not in the smaller notebooks that the jury
21 has, but in the big notebook. It's Aiken page 90.

22 BY MR. PARKINSON:

23 Q. Up here at the top it says: Urosepsis with
24 hypothermia and positive MRSA in his urine. So he
25 had MRSA in his urine, according to that doctor.

1 He's not talking about the hip, is he?

2 A. No, sir.

3 Q. And then under 5/18, another doctor writes:
4 Whatever the family wishes regarding a feeding tube
5 or debridement. At that point in time it's purely
6 being left up to the family about whether to put in
7 a feeding tube or debride the ulcers; correct?

8 A. Yes, sir.

9 Q. And that's three days after he got to Aiken;
10 correct?

11 A. That's correct.

12 Q. If you'll look at page 92, the note, this must
13 be 5/17 because the one below is 5/17 and it has a
14 cross across it. That's the 17th, not the 12th,
15 because he was not at Aiken on the 12th. Spoke to
16 the POA -- power of attorney -- daughter, and agrees
17 comfort measures, IV fluids, antibiotics and oxygen.
18 No mechanical ventilation. That's a ventilator;
19 correct?

20 A. Yes, sir.

21 Q. No CPR, no pressors. That's medicine to
22 maintain his blood pressure; correct?

23 A. Yes, sir.

24 Q. No procedures; correct?

25 A. Yes, sir.

1 Q. No surgical interventions; correct?

2 A. Yes, sir.

3 Q. Did you see in the records that -- one more
4 before we -- I think this is backtracking maybe a
5 little bit. This is page 94. Tell me when you're
6 at that page, Doctor.

7 A. Yes, sir.

8 Q. At the top note: Addendum. Spoke with family,
9 explained poor prognosis. Patient family agrees.
10 And again, it says give them some antibiotics and
11 fluids, no mechanical ventilation --

12 A. And morphine.

13 Q. And morphine. No CPR, no mechanical
14 ventilations, shock or pressors. Comfort measures
15 at this time.

16 A. Yes, sir.

17 Q. Okay. So looking at all of these records, it
18 looks like these doctors who were writing these
19 notes at Aiken were talking with the family. And it
20 appears that they were leaving it up to the family,
21 but were not suggesting any aggressive medical
22 treatment; correct?

23 A. I wasn't there at the conversations, but it
24 seems that they were discussing it with the family
25 and the family were discussing their preferences.

1 But it seems there was a little bit of confusion
2 because the family did decide or agree to surgical
3 debridement and tube feeding, which is not really
4 consistent with what's written here on the 17th.

5 Q. Pardon the interruption. That's what I was
6 going to ask you about. It looks like the family
7 kind of went back and forth on this, didn't they,
8 because they did end up doing some debridements,
9 didn't they?

10 A. Yes. But these are very difficult times for
11 families when a loved one gets sick and is
12 unexpectedly deteriorating from infections that
13 haven't been treated. So it's a time when there's a
14 lot of emotion and confusion and maybe mixed signals
15 between one doctor and another. So oftentimes you
16 see people backtracking on decisions. These are
17 decisions that, you know, regarding their loved one,
18 that involve medical care, possibly lifesaving
19 things.

20 Q. Do you know how many adult children of
21 Mr. Peterson -- or do you know how many adult
22 children he had?

23 A. Seven.

24 Q. And you got seven different adults kicking this
25 back and forth, so there can be some confusion among

1 family members too, can't there?

2 A. Certainly adds to it.

3 Q. And disagreements among family too?

4 A. Yes, sir.

5 Q. Did you see they did put in a feeding tube --
6 they did debridements when he was there in Aiken;
7 correct?

8 A. Yes, sir.

9 Q. They put in a feeding tube; correct?

10 A. Yes, sir.

11 Q. And he actually had a PEG tube, didn't he?

12 A. Yes, sir.

13 Q. That's where they cut a hole into his stomach
14 and put a hole in through the outside to put
15 nutrients directly into his stomach; correct?

16 A. Yes.

17 Q. And while he was at Trinity Nursing Home, it
18 was in the record that the family had said no
19 feeding tubes; correct?

20 A. Yes, sir.

21 Q. Okay. Did you see in the Aiken records also
22 that he was given a colonoscopy?

23 A. Yes, sir.

24 Q. Did you also see they also put a tube down
25 his -- down into his lungs to try to wash out

1 secretions in his lungs?

2 A. Yes, sir.

3 Q. Did you see that there were a number of other,
4 what I might call, invasive procedures done while he
5 was there?

6 A. Yes, sir.

7 Q. And all of that is what you might call
8 aggressive treatment rather than comfort measures
9 only for an elderly patient like this; correct?

10 A. Yes, sir.

11 Q. So that's quite a different type of care that
12 was going on at Aiken than was going on at Trinity
13 Nursing Home or that could have been done at the
14 nursing home?

15 A. Yes, sir. But again, when I read these
16 records, I was also confused about this. However,
17 I've seen this on numerous occasions at the end of
18 life when families are faced with this very
19 difficult decision-making.

20 Q. It can make it a little bit confusing for the
21 doctors among multiple specialties dealing with each
22 other and dealing with the families too?

23 A. Yes, sir.

24 Q. I guess you also did not read the deposition of
25 a Dr. Gordoneer who was another doctor at Edgefield

1 Medical Clinic?

2 A. I didn't bring it with me.

3 Q. Do you know if you even got it?

4 A. I don't have my list with me of the records
5 I've received. I didn't bring it with me.

6 Q. Okay. You mentioned that some states allow
7 physical therapists to perform debridements in
8 nursing home settings; correct?

9 A. Yes, sir.

10 Q. Are you aware of the fact that South Carolina
11 is one of the states where that is allowed?

12 A. Yes, sir.

13 Q. Okay. I believe you said that -- during your
14 direct testimony with Mr. Welch, that in your
15 opinion, if the lab culture came back on May the
16 7th, that then within 24 to 48 hours some treatment
17 should be initiated.

18 A. Well, you can -- usually you don't initiate
19 treatment without a physical examination. So at a
20 minimum, the patient should have been seen and then
21 a decision made.

22 Q. But you said 24 to 48 hours?

23 A. Yes, sir.

24 Q. Okay. So if we say 48 hours, that would be May
25 the 9th?

1 A. Well, 48 hours is kind of pushing it, but yeah.

2 Q. And by May 15th, six days later, he's gone to
3 Aiken; correct?

4 A. Yes, sir.

5 MR. PARKINSON: Bear with me just one moment,
6 Your Honor. I don't have any other questions right
7 now, Your Honor.

8 THE COURT: Mr. Nance, any questions --

9 MR. PARKINSON: Well, hold on just a minute. I
10 do have a couple other ones.

11 BY MR. PARKINSON:

12 Q. Doctor, when Mr. Peterson was admitted to Aiken
13 Hospital, his vital signs were normal, weren't they?

14 A. To Aiken Medical Center on May 15th?

15 Q. Yes, sir.

16 A. No, sir.

17 Q. What were they?

18 A. Well, his temperature was 91. And temperature
19 is a vital sign and that's --

20 Q. That's low?

21 A. Right.

22 Q. That's low. Okay.

23 Okay. And I saw that his white blood count was
24 7.2.

25 A. Yes, sir.

1 Q. That's not abnormally high?

2 A. In sepsis you sometimes don't see white counts
3 that are very high.

4 Q. When Mr. Peterson was at Aiken, he had anemia,
5 didn't he?

6 A. Yes, sir.

7 Q. And that was due to bleeding from the placement
8 of the tube?

9 A. I'm not sure that's the case, sir. I don't
10 think they ever established why he was anemic.

11 Q. Did you see in the record where they thought he
12 had a gastrointestinal bleeding noted possibly from
13 the feeding tube?

14 A. Yes, sir. But I think that he -- I think they
15 discovered he was heme positive. And if it's a
16 substantial bleeding from the PEG tube, then it
17 would have had a different characteristic in his
18 stool; it would have appeared black.

19 MR. PARKINSON: That's all, Your Honor.

20 Thanks.

21 THE COURT: Mr. Nance?

22 CROSS-EXAMINATION

23 BY MR. NANCE:

24 Q. Mr. Levine, how are you doing?

25 A. Good.

1 Q. We haven't had an opportunity to meet. I heard
2 you had a little trouble getting here.

3 MR. WELCH: Your Honor, I'm going to object.
4 He got snowed in at Washington, D.C.

5 THE COURT: It has nothing to do with this
6 case.

7 MR. WELCH: Agreed.

8 BY MR. NANCE:

9 Q. It's my understanding that you don't have a
10 problem with the treatment Mr. Peterson got at
11 Trinity Mission pertaining to the prevention and the
12 treatment of his pressure sores. Is that a fair
13 statement?

14 A. No, sir.

15 Q. Well, you haven't given an opinion that
16 anything was done wrong in regards to the treatment,
17 have you?

18 A. Well, I think in my earlier testimony I said
19 that was one of the departures, that he did not get
20 the infection treated.

21 Q. Well, it's my understanding, these are your
22 opinions, is failure to examine the wound at some
23 point in time?

24 A. Yes, sir.

25 Q. And failure to diagnose and treat the infection

1 at some point in time?

2 A. Right.

3 Q. And failure to transfer at some point in time?

4 A. Yes, sir.

5 Q. All right. Now, you will agree that not all
6 pressure sores or ulcers are avoidable, won't you?

7 A. Yes, sir.

8 Q. And you'll agree that in order to try to
9 prevent pressure sores, you put these people who are
10 at high risk on a special mattress?

11 A. Yes, sir.

12 Q. Put them on a turning program?

13 A. Yes, sir.

14 Q. You send in a nutritionist to assess them and
15 determine what type of diet they should have; pureed
16 or supplements or something along that line?

17 A. Yes, sir.

18 Q. And you saw in all of the records that
19 Mr. Peterson ate poorly?

20 A. Yes, sir.

21 Q. Even when he was fed, he wouldn't eat a lot of
22 times and he refused to eat at times; is that
23 correct?

24 A. Yes, sir.

25 Q. You get them -- well, you have a pharmacist

1 look at him to make sure they're getting the correct
2 medications that have been ordered for them;
3 correct?

4 A. Correct.

5 Q. You get occupational therapy and physical
6 therapy to assess them and try to help them with
7 mobility and strength?

8 A. Yes, sir.

9 Q. You get a speech therapist to take a look at
10 them and if they have a problem swallowing and that;
11 isn't that correct?

12 A. Yes, sir.

13 Q. And all these things were done at Trinity
14 Mission, weren't they?

15 A. Yes, sir.

16 Q. And regardless, he still developed those
17 pressure sores on his hip?

18 A. Yes, sir.

19 Q. And he also developed one on his heel, right
20 heel, which healed; correct?

21 A. I'm not sure it healed. I know the eschar
22 peeled off and then he had a stage two.

23 Q. Have you looked at that -- well, I won't go
24 into it.

25 It's a fact that it got to the point it didn't

1 need treatment any longer, did it?

2 A. I don't recall seeing the term healed used.

3 Q. But it didn't require treatment any longer,
4 didn't it?

5 A. Yes, sir.

6 Q. And the records from the physical therapist who
7 was treating that, the assistant physical therapist,
8 indicated it was gone, didn't he?

9 A. I don't recall specifically. Maybe show me
10 that record.

11 Q. Okay. Now, who was it that failed to examine
12 his wound?

13 A. Whatever doctor happened to be on call and
14 responsible at that time when the culture was
15 generated.

16 Q. Who was that?

17 A. Well, the culture was signed off, I believe, by
18 Dr. Massey. It was faxed to the attention of
19 Dr. Massey.

20 Q. If you could, take a look at page 32.

21 THE COURT: Which exhibit, please?

22 MR. NANCE: 3.

23 THE WITNESS: I'm sorry, this is Exhibit 5 in
24 front of me.

25 (Pause in the proceedings.)

1 THE WITNESS: I'm sorry, sir, that was page 32?

2 BY MR. NANCE:

3 Q. 32. It was Dr. Nicholson, wasn't it?

4 A. Dr. Nicholson ordered it; but it was faxed,
5 once it was completed, to Dr. Massey.

6 Q. Well, it's your testimony that Dr. Nicholson
7 should have diagnosed it when he saw it on the 2nd?

8 A. I don't think Dr. Nicholson saw it. I think
9 this is a telephone order that was signed off. I
10 don't believe there was anybody -- I don't believe
11 any doctor actually saw the wound as it --

12 Q. When he gave the order, he should have done
13 what?

14 A. Well, at this point it's not a bad idea to
15 culture a wound, you know, if they felt it had
16 purulent material coming out of it.

17 Q. Well, I'm just trying to figure it out because
18 you really don't say, you say whoever was there. I
19 want to know who was there. Who is the one not
20 doing what they're supposed to do, in your opinion?

21 A. Well, I believe there was a covering schedule
22 where everybody shared responsibility. And it's a
23 situation where if someone is getting worse, it's
24 not really a right thing if it falls through the
25 cracks.

1 Q. Didn't you learn in your review of the
2 information in this matter that Edgefield Medical
3 Clinic's practice was that each physician was on
4 call for the Trinity Mission Nursing Home for a week
5 at a time?

6 A. Yes, sir.

7 Q. With one physician assigned to that?

8 A. Yes, sir.

9 Q. And is it your testimony that whoever was on
10 call on May the 2nd when that order was given should
11 have diagnosed it?

12 A. No, sir. I think it came back that -- that the
13 culture actually was dated on May 7th, the results
14 when it was faxed.

15 Q. Okay. So it's May the 7th?

16 A. I mean, I think, if you don't mind, I need to
17 clarify the meaning of the term making the diagnosis
18 because sometimes making the diagnosis of a wound
19 infection is tricky. And in order to do so, you
20 need to look at it and assess the drainage, redness,
21 pain, warmth. And sometimes with chronic wounds,
22 those things may not be there. So diagnosis of an
23 infected wound is sometimes tricky and requires an
24 examination.

25 Q. Well, do you have an opinion and can you say

1 when it should have been diagnosed?

2 A. Should have been diagnosed at the time the
3 culture was generated on May 7th.

4 Q. On May 7th?

5 A. Yes, sir.

6 Q. So whoever was on the call on May 7th should
7 have diagnosed it?

8 A. Well, again, I just need to make myself clear,
9 sir, sorry, that diagnosis of a wound infection can
10 be done on a clinical basis just by looking at it
11 and examining it, examining it for drainage, warmth
12 and tenderness. So if someone had looked at it at
13 the time, it might have looked like it needed
14 treatment at that time on May 2nd without getting
15 the culture. But by the time the culture came on
16 May 7th, you have a diagnosis of a wound infection.

17 Q. Was it systemic?

18 A. I don't believe this was systemic at the time.
19 Systemic infection means sepsis, and he didn't get
20 sepsis until a couple days later.

21 Q. Well, when he gets septic and it becomes
22 sepsis, what happens then if untreated? Isn't that
23 true, they die pretty quick?

24 A. Not necessarily. I mean, in general, sepsis
25 from pressure sores in the elderly has a 50-percent

1 mortality. However, depending how you treat the
2 sepsis, you can avert that mortality figure. There
3 are different life-support measures.

4 Q. What's -- what are the signs and symptoms of an
5 infection becoming septic and systemic?

6 A. Well, I think I mentioned a few of them
7 earlier. You can get a very high temperature, you
8 can get a very low temperature, you can get a very
9 fast heartbeat, you can get altered mental status;
10 patient can become lethargic, you can get shaking,
11 chills, sweating, you can have low blood pressure or
12 hypotension, and that's when you have septic shock.

13 In the blood you can have certain changes such
14 as very high white count, low white count, you can
15 even have normal white count; you can have elevation
16 of a certain blood test called CRP and SED rates
17 which can be high. So there's several things you
18 can look at to make your diagnosis and assessment.

19 Q. What did Mr. Peterson have on the 15th of May,
20 2006?

21 A. He had altered mental status, hypothermia, and
22 hypotension.

23 Q. And when did they start?

24 A. Well, I believe they started in the nursing
25 home, sir.

1 Q. Excuse me?

2 A. I believe they started in the nursing home.

3 Q. I understand. Isn't it true they started on
4 the 15th?

5 A. Not all of them.

6 Q. Which ones didn't?

7 A. Well, in the days leading up to the 15th, this
8 patient did have episodes of low blood pressure that
9 were recorded by the nurses.

10 Q. That's it?

11 A. And I don't recall seeing a temperature on a
12 daily basis.

13 Q. That's it?

14 A. Yes.

15 Q. Okay. You'll agree during his stay at Trinity
16 Mission that he got speech therapy services;
17 correct?

18 A. Yes, sir.

19 Q. He got nutritional services?

20 A. Yes, sir..

21 Q. He got pressure-relief services?

22 A. Yes, sir.

23 Q. He had a Foley catheter?

24 A. Yes, sir.

25 Q. He was incontinent of the bowel?

1 A. Yes, sir.

2 Q. And bladder. And also incontinent of his
3 bowels as well?

4 A. Yes, sir.

5 Q. And that was addressed also; correct?

6 A. Yes, sir.

7 Q. He had a wedge at some point in time which is a
8 pressure-release method of his contractures?

9 A. Yes, sir.

10 Q. All right. And those are the things that need
11 to be done in order to help prevent and treat the
12 pressure ulcers?

13 A. Yes, sir.

14 Q. And they were done?

15 A. Yes, sir.

16 Q. And he got it anyway?

17 A. Yes, sir.

18 MR. NANCE: Thank you, that's all I've got.

19 THE COURT: Anything on redirect?

20 MR. WELCH: Yes, Judge.

21 THE COURT: All right, gentlemen, let's go.

22 REDIRECT EXAMINATION

23 BY MR. WELCH:

24 Q. Doctor, you were asked in your
25 cross-examination about what you reviewed and

1 referred to your deposition.

2 (Off-the-record discussion.)

3 BY MR. WELCH:

4 Q. Sir, you were asked what you reviewed that led
5 you to believe you did not review certain
6 depositions?

7 A. Yes, sir.

8 Q. Page 19 -- you were asked on page 19 at line 8:
9 And you've also reviewed the depositions of
10 Dr. Leaphart, Dr. Nicholson, and Dr. Rainsford? And
11 what was your answer at line 11?

12 A. Yes, sir.

13 Q. All right. Any other depositions?
14 And your answer, line 13?

15 A. I'm sorry. The clerk's screen is --

16 Q. It says: Yes, sir. I read most of those in
17 the stack over there to my left.

18 A. Yes, sir.

19 Q. And the question was: Well, tell us what
20 depositions there are. And then I said, I can call
21 out the name if you need me to. It's Pamela
22 Decampoli, Pam Alderton, Sue Smith, Eleanor Leaphart,
23 M.D., Vicki Gibbs, Jennifer Smoak, Mary Cheatham,
24 Julianne Slater, Kay Williams, Evangaline Bishop,
25 Connie Parker, Barbara Seay, Benjamin Nicholson,

1 M.D., George Rainsford, M.D.

2 Did I read that correctly, Doctor?

3 A. Yes, sir.

4 Q. And, in fact, you had reviewed those
5 depositions?

6 A. Yes, sir. Thank you for refreshing my memory.

7 Q. And it was in your deposition, wasn't it?

8 A. Yes, sir.

9 Q. Right below where he asked you, wasn't it?

10 A. Yes, sir.

11 Q. In fact, Doctor, let's talk about -- let me get
12 an exhibit in the notebook, please.

13 When you're asked questions about what this
14 gentleman had, when he should have been diagnosed,
15 things of that nature, we're not talking about the
16 standard of care in this case being whether or not
17 this man had a pressure ulcer?

18 A. No, sir.

19 Q. It's the treatment of that pressure ulcer,
20 isn't it?

21 A. Yes, sir.

22 Q. And, Doctor, you were asked about the sepsis,
23 was it systemic? Isn't it true that the goal is to
24 not get into sepsis?

25 A. Yes, sir.

1 MR. NANCE: He's leading the witness on and on
2 and on.

3 THE COURT: Is that an objection?

4 MR. NANCE: Yes, sir.

5 THE COURT: Sustained.

6 Rephrase the question.

7 BY MR. WELCH:

8 Q. Doctor, what's the goal in terms of treating
9 with antibiotics you described earlier or early on?

10 A. Well, when you have a patient who is -- has
11 advanced illness and gets a wound and you don't
12 expect that wound to heal as frequently, occurs at
13 the end of life, your goal is to avoid it to get
14 worse. And that's called a palliative wound. So if
15 it's a palliative wound, you just want to make sure
16 it doesn't get worse and doesn't lead to any other
17 wider complications.

18 Q. In fact, you asked about the urinary tract
19 infection. That was a MRSA infection, wasn't it?

20 A. Yes, sir.

21 Q. You asked about the other infections. They
22 were all MRSA infections, weren't they?

23 A. Yes, sir.

24 MR. NANCE: Your Honor, I object. He's leading
25 the witness.

1 THE COURT: Sustained.

2 Disregard that, ladies and gentlemen.

3 Rephrase your question.

4 BY MR. WELCH:

5 Q. What was the source of the urinary tract
6 infection you were asked about? What was the
7 pathogen?

8 A. The organism?

9 Q. Yes, sir.

10 A. Methicillin resistant staphylococcus aureus.

11 Q. Is that MRSA?

12 A. Yes, it is.

13 Q. In fact, Doctor, when we look at the admission
14 that we showed you earlier, page 12, which is in the
15 notebooks, the sepsis was MRSA; there were two
16 urinary tract infections with MRSA, sacral decubitus
17 ulcers, infect, and it goes down, Doctor, to talk
18 about the various infections.

19 Doctor, do you have an opinion related to the
20 MRSA that was cultured out of the wound in Edgefield
21 Nursing Home?

22 A. You're asking me about the remainder of those
23 diagnoses?

24 Q. Yes, sir, that MRSA infection.

25 A. Well, I believe this was discussed in the

1 discharge summary, and doctors felt that the kidney
2 infection was a result of the other infections where
3 it got seeded through the bloodstream.

4 Q. Explain how that works.

5 A. Well, every day in the course of a day, even
6 when we brush our teeth, our blood gets seeded with
7 organisms. So when we have a wound that's infected,
8 that infected wound can seed the blood with
9 organisms, and the organisms are just traveling and
10 can rest somewhere.

11 So in the case of -- in the case of this
12 patient, the doctors felt that the organisms in the
13 blood seeded the kidney and caused the kidney
14 infection.

15 Q. Doctor, you also ask about the development of
16 that wound, and you talked about how it's diagnosed
17 not necessarily just with a wound culture.

18 A. Yes, sir.

19 Q. Tell the jury again how it's diagnosed by
20 examination by the physician.

21 A. Well, when you evaluate for cellulitis or local
22 infection of the skin, you need to look at it and
23 see what color is it; is the surrounding area of the
24 skin red? If you touch it, is it warm? If it's
25 warm, those are infection. You look and if you have

1 drainage, if it's draining a lot, it goes more
2 toward infection. And you sniff it, and if it
3 smells bad, that can also go for infection.

4 The other thing is tenderness. If the patient
5 is complaining of pain or you touch it and it's
6 tender, this can also go for infection. That's
7 what's called examination before making a clinical
8 diagnosis. You can do that without a culture.

9 Q. Is there anything in the record from April the
10 14th to the following May the 15th that shows any
11 physician examining these wounds?

12 A. No, sir.

13 Q. Doctor, I'm going to show you what's in the
14 record as Exhibit No. 5, page 8. There's a copy in
15 the jury's notebooks, except it's not in color. I'd
16 ask you to look at this.

17 The description is: Old pressure ulcer. The
18 date of this picture, according to this, is
19 5/16/2006, which would be the day after the
20 afternoon admission on the 15th.

21 A. Yes, sir.

22 Q. Explain to the jury what they're seeing there.

23 A. Can that be blown up a little bit? All right.
24 Well, what you're looking at here is a -- most
25 likely a Stage IV pressure ulcer. If you can't see

1 the base of the wound, you got to call it
2 unstageable. So this is either unstageable or a
3 Stage IV pressure ulcer. The wound base is yellow,
4 and the wound base is not supposed to be yellow; so
5 it might be that this is pus causing an infection.
6 Because this patient has dark skin, darkly pigmented
7 skin, I can't really tell whether there's redness
8 around the outside of the wound; however, if you
9 take a look at the very periphery of the wound, I
10 can tell that there's very little healing going on
11 here.

12 Right inside of the periphery of the wound --
13 and I'm sorry I don't have a pointer, but you see
14 that white ring? That's what I'm calling the
15 periphery of the wound. If it's a healthy wound,
16 you would see redness, a bright red area here.

17 Q. You can approach.

18 A. Okay. This is the wound base, this is the base
19 of the wound, this is the wound margin, and this is
20 the periphery of the wound outside. This is the
21 wound margin. And it's pale, so I don't see a lot
22 of healing going on. And then there's a margin
23 which is black, and this could be everything that
24 needs debridement because it's necrotic or dead,
25 gangrenous, if you will.

1 And then we go into the middle of the wound
2 which is a yellow fibrous area. There's a little
3 red spot here which could be a speck of granulation
4 tissue, which is actually healthy healing tissue
5 there, but I'm not sure. But that's what we're
6 looking at. (Indicating)

7 Q. Doctor, is there any indication in the record
8 from the nursing home -- did any of the physicians
9 document anything like this in the nursing home?

10 A. No.

11 Q. In fact, can you tell from physician
12 documentation at the nursing home what the wound
13 looked like at all?

14 A. No, sir.

15 Q. Is there any documentation from a physician
16 there about what the wound looked like?

17 A. No, sir.

18 Q. Doctor, as we look at the admission on the
19 15th -- you've already testified in terms of what we
20 found there on the 15th -- but as we look from the
21 14th of April through the 15th --

22 THE COURT: 15th of what?

23 MR. WELCH: May 2006.

24 BY MR. WELCH:

25 Q. You've talked about the lab report that was

1 sent over to the attention of Dr. Massey.

2 A. Yes, sir.

3 Q. And then you talked about what happened on the
4 15th. There's been testimony that Dr. Rainsford was
5 called on the 15th.

6 A. Yes, sir.

7 Q. And had his nurse respond?

8 A. Yes, sir.

9 Q. Doctor, any point in time that those physicians
10 were on call from the 14th to the 15th, did each of
11 those individuals have responsibility to review this
12 man's symptomology?

13 A. Yes, sir.

14 Q. And is failure to do that part of the breach of
15 the standard of care that you've testified to?

16 A. Yes, sir.

17 MR. WELCH: I have no further questions.

18 MR. PARKINSON: Your Honor, I have a couple
19 questions.

20 THE COURT: I don't do recross. That's
21 discretionary with the Court. You may step down.

22 Ladies and gentleman, it's 20 minutes to 1:00.
23 We'll start back at 2:15. Please do not discuss the
24 case with anyone or allow anyone to discuss it with
25 you. We'll see you back at 2:15.

1 (The jury exits the courtroom at 12:45 PM.)

2 THE COURT: Anything for the record?

3 MR. WELCH: Nothing, Judge.

4 THE COURT: Mr. Parkinson?

5 MR. PARKINSON: No, sir.

6 THE COURT: All right. Let me see you in
7 chambers for just a second, please.

8 (A luncheon recess transpired.)

9 THE COURT: Anything for the record by the
10 plaintiff before we start?

11 MR. WELCH: Nothing from the plaintiff, Judge.

12 THE COURT: Mr. Nance?

13 MR. NANCE: Nothing, Your Honor.

14 THE COURT: Mr. Parkinson?

15 MR. WELCH: Judge, while Mr. Parkinson's coming
16 forth, we discussed over lunch what they want to add
17 to the depositions. We've worked out all of the
18 issues. It's going to take, with what they've
19 added, about three hours -- two hours and 50
20 minutes, roughly, to play the depositions. There's
21 three. And I've got one very short witness after
22 that today.

23 THE COURT: And that concludes your case?

24 MR. WELCH: Tomorrow morning my client will be
25 here for some brief testimony.

1 THE COURT: Mr. Parkinson, anything for the
2 record before we start?

3 MR. PARKINSON: No, sir.

4 THE COURT: Bring the jury in, please.

5 (The jury returns to the courtroom at 2:15 PM.)

6 MR. WELCH: I've got the originals of
7 Dr. Rainsford, Dr. Massey, and Dr. Leaphart's
8 depositions.

9 THE COURT: Hand them to me and I'll make them
10 part of the record.

11 You may call your next witness.

12 (Court's Exhibits 1-6 marked for identification
13 and admitted into evidence.)

14 MR. WELCH: Judge, by way of deposition
15 testimony, we're going to have the testimony of
16 Dr. Massey.

17 THE COURT: Dr. Massey. Thank you.

18 (WHEREUPON, the video deposition of Dr. Massey
19 was played for His Honor and the jury.)

20 MR. WELCH: That's all of that deposition,
21 Judge.

22 THE COURT: All right. Next witness.

23 MR. WELCH: We're now going to play the video
24 testimony of Dr. Rainsford.

25 THE COURT: Dr. Rainsford.

1 (WHEREUPON, the video deposition of
2 Dr. Rainsford was played for His Honor and the
3 jury.)

4 MS. MASSEY: Your Honor, may we pause the video
5 at this point and approach?

6 THE COURT: Yes.

7 (Sidebar discussion.)

8 (WHEREUPON, the video deposition of
9 Dr. Rainsford was resumed for His Honor and the
10 jury.)

11 THE COURT: I can't hear.

12 MR. ROBERTS: I apologize. That's how the
13 video is.

14 THE COURT: Ladies and gentlemen, can y'all
15 hear it?

16 THE JURY: I don't understand what they're
17 saying because the static over the top of it.

18 MR. WELCH: It's not the whole way, Judge. It
19 will stop in a second.

20 THE COURT: That's nice to know. Go ahead.

21 (WHEREUPON, the video deposition of
22 Dr. Rainsford was resumed for His Honor and the
23 jury.)

24 MR. WELCH: That's it, Judge.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

1 are you ready for a break?

2 THE JURY: Yes.

3 THE COURT: All right. I'll allow it. Don't
4 discuss the case, don't deliberate. About 15
5 minutes.

6 (Short break.)

7 THE COURT: Anything for the record, Mr. Welch?

8 MR. WELCH: Nothing from the plaintiff, Judge.

9 THE COURT: Anything from the defendants?

10 MR. PARKINSON: No, Your Honor.

11 MR. NANCE: Nothing.

12 THE COURT: We have one more deposition of
13 Dr. Leaphart?

14 MR. WELCH: Yes, Your Honor.

15 (The jury returns to the courtroom at 4:02 PM.)

16 MR. WELCH: Judge, we'll play one final video
17 of Dr. Leaphart.

18 THE COURT: Did you say final?

19 MR. WELCH: Yes. One. Last one.

20 (WHEREUPON, the video deposition of
21 Dr. Leaphart was played for His Honor and the jury.)

22 THE COURT: Call your next witness.

23 MR. WELCH: Yes, sir, Judge. I call
24 Ms. Ashley.

25 THE CLERK: Raise your right hand.

1

2

HATTIE ASHLEY

3

being first duly sworn, testified as follows:

4

THE WITNESS: I do.

5

THE CLERK: Have a seat, state your full name

6

and spell your last name, please.

7

THE WITNESS: My name is Hattie Ashley,

8,

A-S-H-L-E-Y.

9

DIRECT EXAMINATION

10

BY MR. WELCH:

11

Q. Tell the jury about yourself. Where do you

12

live?

13

A. In Greenwood.

14

Q. And how long have you lived there?

15

A. Thirty-two years.

16

Q. Tell the jury, do you work down there?

17

A. Yes, I do.

18

Q. What do you do?

19

A. I'm a cook.

20

Q. And are you married?

21

A. I'm married.

22

Q. Do you have children?

23

A. One.

24

Q. And how old is that child?

25

A. Thirty-two.

1 Q. And grandbabies?

2 A. I have two grandbabies.

3 Q. And tell the jury your relationship to
4 Mr. Peterson.

5 A. He was my father.

6 Q. And we've heard some testimony about the
7 family, about your father, about the house. When
8 your father -- before he went into the nursing home
9 at Trinity, how frequently would you see your dad?

10 A. I would see my father very often. You know, I
11 lived in Greenwood, but I'd go see him.

12 Q. And up until he was taken to Aiken Hospital the
13 first time, I understand Mary, your sister, and some
14 other people got him from the house and took him to
15 Aiken. Do you remember that?

16 A. Yeah. They got him up there, they told me he
17 was at Aiken.

18 Q. And then they took him over to Trinity after
19 that?

20 A. Uh-huh. Yes, sir.

21 Q. Did you see him during that visit?

22 A. When they took him the first time, yes, I did.
23 Yeah. Yes, sir.

24 Q. Did he know you?

25 A. Yes, sir.

1 Q. Did he talk with you?

2 A. Well, not a lot. But he knew me and he was
3 talking, yes.

4 Q. Did you bring him any food?

5 A. I always brought him ice cream. He was a sweet
6 person. He -- that's how I would get him to eat;
7 bring some ice cream, he'd eat.

8 Q. Did you see him during the second visit at
9 Trinity Nursing Home?

10 A. Yes, sir.

11 Q. How frequently?

12 A. The same time. Like I said, I'd try to go
13 there at least every other week. And my family
14 would keep me updated because I lived in Greenwood.

15 Q. Okay. Now I want you to go with me to the time
16 in May. There's been testimony about May the 15th,
17 when the family members got a call.

18 A. Yes, sir.

19 Q. Did you get a call to see your dad that day?

20 A. Yes, sir. I was at work and my sister called
21 me and told me to come see my father.

22 Q. Did you leave work and come to see your father?

23 A. Yes, sir, I did.

24 Q. So you left your job?

25 A. I did.

1 Q. Did you have an understanding of how he was
2 doing that day?

3 A. They said he wasn't doing well that day.

4 Q. Was that a surprise to you?

5 A. Yes, it was. To me, it was.

6 Q. You'd seen him before, you considered him to be
7 doing okay?

8 A. Uh-huh.

9 Q. Anyone prior to that date tell you about this
10 Stage IV decubital on his hip we heard described to
11 you?

12 A. Not to me, no, sir.

13 Q. Tell the jury, when you got there that day, who
14 was there? You walk into his room, who was there
15 when you got there?

16 A. My sisters and my brothers, sister-in-laws and
17 brother-in-laws.

18 Q. Quite a group?

19 A. Yes, sir.

20 Q. Tell me what you observed about your dad.

21 A. Well, when I got there, really, I -- they
22 thought he was passing. And so when I got there, he
23 was just like -- when I was looking at him -- it's
24 hard to describe. But when I was looking at him, he
25 was just laying there. And so me and my sister, you

1 know, we was trying to get some reaction from him.

2 And my sister Patricia, she went and got some ice

3 chips. And she started --

4 Q. Does she have any medical --

5 A. Yes, sir, she does.

6 Q. What does she do?

7 A. She works at the nursing home as a CNA. And

8 she started doing things with him and putting ice

9 chips on his mouth. And he started -- like he was
10 coming around, so we got excited at that particular

11 time because we thought maybe he's not dying and

12 what have you. So I went to the nurses station and

13 told the nurse to call the doctor.

14 And the nurse, she did, and then -- to come see

15 my father and see what was going on with him because

16 he wasn't as sick as, I guess, we thought he was.

17 And then the nurse told us --

18 MR. NANCE: Your Honor, I object to what the

19 nurse told them.

20 THE COURT: Sustained.

21 BY MR. WELCH:

22 Q. You can't say what the nurse told you. Now,

23 did you actually call the doctor yourself though?

24 A. No; she did..

25 Q. The nurse?

1 A. The nurse.

2 Q. Okay. Now, based on whatever was told to you,
3 what did you do next?

4 A. We called an ambulance to take our father to
5 Aiken Hospital.

6 Q. Did you go back to the room?

7 A. Well, with my sisters, we did. And then we
8 proceeded to go out to meet the ambulance so they...

9 Q. Do you know who actually called the ambulance?

10 A. I called the ambulance.

11 Q. Was any request made of the nursing staff to
12 call the ambulance?

13 A. No. I had to call the ambulance. She gave me
14 the phone and the number. But she would not call
15 them, I had to do that.

16 Q. Who is she?

17 A. She's the nurse working there. I don't know.

18 Q. So you called the ambulance and you waited on
19 the ambulance?

20 A. We waited, yes, sir.

21 Q. Now, you've heard testimony about conversations
22 that took place. Did you actually hear any of the
23 conversations that were had with the nurse from
24 Dr. Rainsford's office?

25 A. I can only say what she told me.

1 Q. This is the nurse from Dr. Rainsford's office?

2 A. Well, no. The nurse at the --, where my father
3 was at, I can only tell you what she repeated to me,
4 what the nurse said.

5 Q. Did you actually hear the nurse from
6 Dr. Rainsford's office?

7 A. No, I didn't.

8 Q. Did you actually personally talk with
9 Dr. Rainsford?

10 A. No, I did not.

11 Q. From the time that you made a request to call
12 the doctor, do you know how long it was before the
13 ambulance got there?

14 A. I'd say about five minutes, that ambulance was
15 there. It didn't take long at all.

16 Q. Okay. So when you made the call, when you went
17 to leave, what happened?

18 A. When I went to leave?

19 Q. Yes, ma'am, with your father.

20 A. Well, when we was walking out --

21 Q. Let me ask you this way, ma'am: Did the
22 ambulance attendants come in the nursing home to get
23 him?

24 A. Yes. Yes, sir, they did.

25 Q. They brought a gurney?

1 A. Yes, sir.

2 Q. Now tell the jury what happened as they were
3 leaving.

4 A. Well, as we was leaving out, me and my sisters,
5 a lady came out from the facility and she barred the
6 door, didn't want us to leave. And so we were going
7 to leave, and so finally, I don't know who said it,
8 but somebody said, let him go, let him go, let him
9 go. And we proceeded to take our father to Aiken
10 Hospital.

11 Q. Did you follow him to Aiken?

12 A. We did.

13 Q. Tell the jury, once you got the Aiken, what did
14 you find out about his condition.

15 A. Well, we found out about the sores. Nobody
16 ever told us anything about any sores.

17 Q. Did you know they were in that condition?

18 A. No. No.

19 Q. And now, did you visit him at the Aiken
20 Hospital? He was there for two weeks.

21 A. I did.

22 Q. Tell me, did he progress there at all?

23 A. Yes, sir, he did.

24 Q. Did he -- now, as a family, you had him
25 transferred to Select Hospital in Augusta?

1 A. Yes, sir.

2 Q. And he was there, I think the record reflects,
3 from June the 1st through August the 1st?

4 A. Yes, sir.

5 Q. Did he progress and make some progression at
6 Specialty Select that you personally observed?

7 A. I did, yes, sir. He did.

8 Q. Was he able to talk to you certain days?

9 A. He did. Every time I visited him, he talked to
10 me, yes.

11 Q. Did he know who you were?

12 A. He knew who I was.

13 Q. Did you bring him ice cream again, stuff like
14 that?

15 A. I didn't bring him the ice cream then when he
16 was in that hospital and, I didn't know if I could
17 feed him ice cream.

18 Q. But was he eating things there at that
19 hospital?

20 A. Yes.

21 Q. Now, the family did have a feeding tube placed;
22 is that correct?

23 A. I believe so, sir.

24 Q. And then at some point in time, he started to
25 decline?

1 A. He did. He did.

2 Q. But the day you were there at the hospital on
3 the 15th, you personally observed your father come
4 around with the ice chips?

5 A. Yes. That's why we got so excited.

6 MR. WELCH: I don't have any further questions.

7 THE COURT: Any questions, Mr. Parkinson?

8 CROSS-EXAMINATION

9 BY MR. PARKINSON:

10 Q. Ms. Ashley, you don't know Dr. Massey or who
11 that is, do you?

12 A. No.

13 Q. Okay. And anything that happened around this
14 day your father went out of the nursing home on May
15 15th, Dr. Massey's name was not mentioned in
16 connection with that, was it?

17 A. Not that I can recall.

18 Q. Okay. All right. You're not a personal
19 representative of the estate, are you?

20 A. No, sir.

21 Q. So you're just a witness from the family?

22 A. I'm his daughter.

23 Q. A daughter, but one of the family members?

24 A. Uh-huh.

25 Q. And it's your sister Cecilia who's the actual

1 plaintiff in this case?

2 A. Yes, sir.

3 Q. Is she here? I didn't notice her --

4 MR. WELCH: Your Honor, I object. It's obvious
5 she's not in the courtroom. That's totally
6 irrelevant.

7 THE COURT: Whoa, whoa. Hold on. Stand up and
8 calmly tell me your objection.

9 MR. WELCH: I object to relevancy.

10 THE COURT: Sustained. Please disregard that,
11 ladies and gentlemen of the jury.

12 MR. PARKINSON: I don't have any questions.

13 MR. WELCH: I don't have any other questions,
14 Judge. And that will be our last witness today.

15 MR. NANCE: If you don't mind, I do.

16 CROSS-EXAMINATION

17 BY MR. NANCE:

18 Q. How are you doing, Ms. Ashley? I think this is
19 the right book.

20 A. I have to get my glasses out.

21 Q. You may need them. That's it. You need some
22 glasses?

23 A. I do.

24 THE COURT: We'll get them for you. Where are
25 they?

1 THE WITNESS: In my pocketbook.

2 MR. WELCH: Is this it?

3 THE COURT: What exhibit number are we talking
4 about?

5 MR. NANCE: It's page 75 of Exhibit 1 -- 3.
6 Exhibit 3. Page 75.

7 BY MR. NANCE:

8 Q. Are you ready?

9 A. Sir, could you show me what you're talking
10 about right here?

11 Q. I am. Are you ready?

12 A. Yes.

13 Q. All right. Now, you were not the designated
14 responsible party for your father when he was at the
15 nursing home between March and May of 2006, were
16 you?

17 A. No, sir.

18 Q. Your sister Mary Ruth Peterson was, wasn't she?

19 A. Yes, sir.

20 Q. Now, you say that you never knew that your
21 father had a pressure sore.

22 A. I did not know, sir.

23 Q. Or know anything about the infection he had, a
24 MRSA condition?

25 A. No. Nobody never told me that.

1 Q. Okay. Well, I want you to look at that
2 document in front of you. Up at the top, you see
3 where the writing is?

4 A. This right here, PT dress?

5 Q. This says, correct me if I'm wrong, First
6 Monthly Summary Review. You see that typed part?

7 A. I do.

8 Q. Comments: (Address any new concerns or health
9 problems, plan of action and progress. New orders
10 of medications, abnormal labs, P-A-R meetings,
11 outcomes and interventions).

12 Do you see that? It's all the way at the top,
13 right there, the typed part.

14 A. Okay. Let me read this because I don't
15 understand what you're saying. You're saying first
16 month's summary review?

17 Q. Yeah.

18 A. And you're saying comments, address any new
19 concerns, health problems, plan or action and
20 progress, new orders of medication, abnormal labs,
21 meeting outcome and interventions. I don't
22 understand what you're talking about.

23 Q. That's what it says, that's all I'm asking.

24 A. Oh, I thought -- okay.

25 Q. And then the handwritten part says, down below

1 it: PT does Stage IV wound care. Isn't that what
2 it says?

3 A. I don't see that, what you're talking about.

4 Q. Right there below that PT. See that, PT?

5 A. Okay.

6 Q. PT does Stage IV wound care; isn't that what it
7 says?

8 A. Yes, sir. But I don't know what that means.

9 Q. Well, I understand it -- well, I don't
10 understand, but that's what it says.

11 A. Uh-huh.

12 Q. Right? Then it says: Culture grew --
13 M-R-S-A -- MRSA, doesn't it?

14 A. Uh-huh.

15 Q. And then down below that: Responsible party
16 contacted, and Mary Peterson's name is written in
17 there, isn't it?

18 A. That might not be her -- somebody else could
19 have wrote that. I'm not going to say that she knew
20 that or anything.

21 Q. I'm not asking you to say that. I'm just
22 asking you what the record says. This says she was
23 contacted, doesn't it?

24 A. I know what it says, sir. I don't know. I
25 can't --

1 Q. I didn't ask you if you knew. That's what it
2 says?

3 A. That's what it says.

4 Q. Then below that, it says date and time,
5 5/10/06, May 10th, 2006, doesn't it?

6 A. That's what it says.

7 Q. 2:00 PM?

8 A. Like I say, I can't say -- I can only say I
9 don't know anything about --

10 THE COURT: Ma'am, he's not asking you if you
11 know, he's just asking if that's what the record
12 says.

13 THE WITNESS: That's what the record says.

14 BY MR. NANCE:

15 Q. Then it has a nurse's signature, DeShea Smith,
16 LPN; right?

17 A. Yes, sir.

18 MR. NANCE: Thank you.

19 MR. WELCH: I don't have any further questions,
20 Judge.

21 THE COURT: Thank you. You may step down,
22 Ms. Ashley.

23 MR. WELCH: That would be our last witness,
24 Judge.

25 THE COURT: We'll start at 9:45 in the morning.

1 Ms. Newby is dying to cook some more biscuits.

2 What's your choice for tomorrow?

3 THE JURY: Same thing we had this morning.

4 THE COURT: All right. We're getting in the
5 short road with the plaintiff. We'll keep pushing
6 hard. I hope we'll finish the testimony tomorrow.
7 We're going to try.

8 And please enjoy your evening. Don't discuss
9 the case, don't let anybody discuss it with you.
10 We'll start at 9:45 sharp in the morning.

11 Everybody else remain seated. My jurors, have
12 a pleasant evening.

13 (The jury exits the courtroom at 5:04 PM.)

14 THE COURT: All right. Mr. Welch, as I
15 understand from general discussions, I think you've
16 got one more witness.

17 MR. WELCH: Yes, sir, Judge. Short witness in
18 the morning, I'd say no more than 30 minutes.

19 THE COURT: Last witness?

20 MR. WELCH: Yes, sir.

21 THE COURT: All right. You and Mr. Nance be
22 ready to go.

23 MR. PARKINSON: Yes, sir.

24 THE COURT: We'll move along as efficiently as
25 we can.

1 MR. WELCH: You did say 9:45?

2 THE COURT: I did. I suspect we'll finish the
3 testimony tomorrow.

4 Do you agree, Mr. Parkinson?

5 MR. PARKINSON: I'll finish mine.

6 THE COURT: Mr. Nance?

7 MR. NANCE: I hope I finish mine.

8 THE COURT: You will.

9 All right. Well, have a pleasant evening. See
10 y'all bright and early in the morning.

11 (Court in recess for the evening.)

12 (Plaintiff's Exhibit Nos. 10-14 marked for
13 identification.)

14 THE COURT: Anything for the record before we
15 start?

16 MR. WELCH: No, sir.

17 THE COURT: Mr. Parkinson?

18 MR. PARKINSON: No, sir, Your Honor.

19 THE COURT: Mr. Nance?

20 MR. NANCE: No, sir.

21 THE COURT: Bring the jury in, please.

22 (The jury enters the courtroom at 9:49 AM.)

23 THE COURT: Good morning, ladies and gentlemen.

24 THE JURY: Good morning.

25 THE COURT: Biscuits good?

1 THE JURY: Yes, sir.

2 THE COURT: Coffee good? Sorta.

3 You may call your next witness.

4 MR. WELCH: Thank you, Judge. We call

5 Ms. Cecilia Jackson to the stand.

6 THE CLERK: Raise your right hand, please.

7 CECILIA JACKSON

8 being first duly sworn, testified as follows:

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Have a seat. State your full name,
11 and spell your last name, please.

12 THE WITNESS: Cecilia Jackson, J-A-C-K-S-O-N.

13 MR. WELCH: Your Honor, if I could approach
14 just for the exhibit?

15 DIRECT EXAMINATION

16 BY MR. WELCH:

17 Q. Ms. Jackson, tell the jury a little about
18 yourself. Where do you live?

19 A. I stay in Augusta, Georgia.

20 Q. And where do you work?

21 A. I work at Help At Home, home health.

22 Q. What kind of work do you do at home health?

23 A. I go into a patient's home and I help them do
24 things that need to be done; take them shopping,
25 bathing, and stuff like that.

1 Q. Okay. And tell the jury your relationship to
2 Mr. Peterson.

3 A. He was my father.

4 Q. And are you the personal representative of the
5 estate?

6 A. Yes, sir.

7 Q. You were appointed by the probate Judge here in
8 Edgefield County?

9 A. Yes.

10 Q. And you still serve in that capacity?

11 A. Yes.

12 Q. Ma'am, I'm going to ask you some questions
13 about the exhibits that are in front of you. If you
14 go to number 10, please, which is 9 in the
15 notebooks.

16 THE COURT: Any objection to number 10,
17 gentlemen?

18 MR. PARKINSON: No objection, Your Honor.

19 MR. WELCH: Your Honor, we'd move to have
20 number 10 admitted as the invoices of Edgefield
21 Medical Clinic.

22 (Plaintiff's Exhibit No. 10 admitted into
23 evidence.)

24 BY MR. WELCH:

25 Q. Ma'am, the charges incurred there between

1 2/27/06 and May the 3rd, '06, were those incurred by
2 your father prior to his death?

3 A. Yes.

4 Q. And those were billed to the estate?

5 A. Yes.

6 THE COURT: What are they?

7 MR. WELCH: Edgefield Medical Clinic invoices.

8 THE COURT: Edgefield?

9 MR. WELCH: They're Edgefield Medical Clinic
10 invoices.

11 BY MR. WELCH:

12 Q. That was for services rendered by the doctors
13 to your father at the nursing home?

14 A. Yes.

15 Q. Ma'am, if you will, flip the page to number 11.
16 It's a one-page invoice for Aiken Regional Medical
17 Center for the 16 days he was in there from May 15th
18 to the 1st of June. Do you see that?

19 A. Yes.

20 MR. WELCH: Your Honor, we'd move to have that
21 invoice admitted.

22 THE COURT: Any objection?

23 MR. PARKINSON: No objection.

24 MR. NANCE: No objection.

25 (Plaintiff's Exhibit No. 11 admitted into

1 evidence.)

2 BY MR. WELCH:

3 Q. Ma'am, if you'll look at the bottom, \$57,220
4 for that 16 days. Did your father incur those bills
5 prior to his death?

6 A. Yes.

7 Q. Then, ma'am, if you will go to the next
8 exhibit --

9 THE COURT: Give me the amount again, please.

10 MR. WELCH: \$57,220.

11 THE COURT: How much was Exhibit 10?

12 MR. WELCH: Exhibit 10 comes to \$383, Judge.

13 THE COURT: Thank you.

14 BY MR. WELCH:

15 Q. Ma'am, if you will look at Exhibit 12 on the
16 last page, that is the invoice for Select Specialty
17 Hospital in Augusta?

18 A. Yes.

19 MR. WELCH: Your Honor, we'd move to have that
20 admitted.

21 THE COURT: Any objection to 12, Select
22 Specialty Hospital in Augusta?

23 MR. PARKINSON: No objection.

24 MR. NANCE: No objection, Your Honor.

25 (Plaintiff's Exhibit No. 12 admitted into

1 evidence.)

2 BY MR. WELCH:

3 Q. Ma'am, would you read that amount to the Court,
4 please. How much was incurred by your father in
5 June and July?

6 A. \$146,911.96.

7 Q. \$146,911.96. Now, ma'am, in terms of the
8 Select Specialty Hospital and the Aiken Regional
9 Hospital, are you asking for a judgment for all of
10 those bills?

11 A. No.

12 Q. And why, ma'am?

13 A. Because we would have to put him in nursing
14 home anyway for care.

15 Q. And, ma'am, if you look at the page that you
16 have there that I gave you -- open up that page --
17 his bill at the nursing home for the 64 days he was
18 in there is \$35,720.19. And what does that come to
19 a day?

20 A. \$558.

21 Q. And then, ma'am, at Aiken, if you take the 16
22 days he was in there, how much does that come to a
23 day? 3,576?

24 A. Yes. Yes.

25 Q. Ma'am, if you take away the daily charge for

1 the nursing home, does that come to \$318 per day?

2 A. Yes.

3 Q. And is that what you're asking per day for the
4 medical facility, the Aiken visit in May?

5 A. Yes.

6 Q. And if you go back to the 16 days, does that
7 come to \$48,288?

8 A. Yes.

9 Q. And is that what you're actually asking for for
10 that visit?

11 A. Yes.

12 Q. Now, ma'am, if you look at Select Specialty
13 Hospital, he was there 61 days?

14 A. Uh-huh.

15 Q. That bill was \$146,911.96?

16 A. Yes.

17 Q. How much does that come to per day?

18 A. \$1,850.

19 Q. Is that the \$2,408 per day?

20 A. Yes. Sorry.

21 Q. And you're asking -- if you take the \$558 per
22 day for the nursing home, is that \$1,850 per day?

23 A. Yes.

24 Q. Is that what you're asking in terms of the
25 record here?

1 A. Yes.

2 Q. Does that come to \$112,850 per day -- I mean,
3 for the total visit?

4 A. Yes.

5 MR. WELCH: Your Honor, I don't have any
6 further questions. Answer any questions these
7 gentlemen may have of you.

8 CROSS-EXAMINATION

9 BY MR. PARKINSON:

10 Q. Ms. Jackson, you were the personal
11 representative of the estate; correct?

12 A. Yes.

13 Q. So you're actually the plaintiff that brought
14 this lawsuit?

15 A. Yes.

16 Q. You -- you're a certified nursing assistant?

17 A. I used to be.

18 Q. And you've worked in nursing homes before?

19 A. Yes.

20 Q. And you do home health care now for people who
21 need in-home care?

22 A. Yes.

23 Q. And you've got a 12th grade education?

24 A. Yes.

25 Q. When -- after your father fell at home, he

1 never walked again after that, did he?

2 A. No.

3 Q. And when he went to Aiken and had that surgery.
4 on his neck, that didn't improve his ability to
5 walk, did it?

6 A. No.

7 Q. He never stood and walked after that, did he?

8 A. No.

9 Q. So when he was in the nursing home at Trinity,
10 he was immobile. He was not able to -- he was
11 immobilized in the bed?

12 A. He could move his hands and everything, but
13 walking, he couldn't.

14 Q. He could move his hands but not the lower part
15 of his body?

16 A. Yes.

17 Q. Okay. And when -- when he went to in to
18 Trinity, there was a DNR order signed and on his
19 chart; correct?

20 A. Yes.

21 Q. And that was discussed between all the children
22 and it was a unanimous decision to have the DNR,
23 wasn't it?

24 A. Yes.

25 Q. And that was -- was that ever revoked while he

1 was at Trinity?

2 A. I don't recall.

3 Q. Okay. But there was no conflict among the
4 brothers and sisters about that DNR order?

5 A. As far as I know, no.

6 Q. Okay. Now, you do not know Dr. Tami Massey, do
7 you?

8 A. No.

9 Q. You don't know anything about her involvement
10 at the Edgefield Clinic or anything about her and
11 your father, do you?

12 A. No, I don't.

13 Q. And you don't have any personal criticism of
14 Dr. Massey, do you?

15 A. No, I don't.

16 Q. And while he was at Trinity, you went up there
17 to visit him two or three times a week?

18 A. Yes, because I stay in Augusta.

19 Q. And then when he went to Aiken and was in the
20 hospital after he left Trinity, you went down there
21 to see him often, didn't you?

22 A. Every day.

23 Q. Every day. And when you went to -- and you
24 went every day to the Select Hospital too, didn't
25 you?

1 A. Yes, I did.

2 Q. And he seemed comfortable to you while he was
3 there, didn't he?

4 A. Yes, sir.

5 MR. PARKINSON: I don't have any other
6 questions, Your Honor.

7 THE COURT: Mr. Nance?

8 MR. NANCE: No questions, Your Honor.

9 MR. WELCH: No further questions, Your Honor.

10 THE COURT: You may step down.

11 Next witness.

12 MR. WELCH: Judge, the Plaintiff would rest at
13 this time.

14 THE COURT: Ladies and gentlemen, that
15 concludes the presentation of the Plaintiff's case.
16 I need to spend about 10 minutes with the lawyers.
17 I'm sorry you have to walk right back out as soon as
18 you walk in, but that's the way it is this morning.
19 Please don't discuss the case, don't deliberate.
20 I'll see you right back in just a few minutes.

21 (The jury exits the courtroom at 10:01 AM.)

22 MR. WELCH: Judge, \$161,696.

23 THE COURT: All right. Any motions by the
24 plaintiff?

25 MR. WELCH: Not at this time, Judge.

1 THE COURT: By the defendant Massey?

2 MR. PARKINSON: Yes, sir, Your Honor. First --
3 and this may just be housekeeping. I can't remember
4 if we talked about this on the record. I know we
5 did by the letter in chambers. The amended
6 complaint does have a prayer for punitive damages,
7 but --

8 THE COURT: We discussed in chambers that the
9 plaintiff was not seeking punitive damages.

10 MR. WELCH: That's correct, Your Honor.

11 THE COURT: That's out.

12 MR. PARKINSON: Thank you, Your Honor. And,
13 Your Honor, I'd make a directed verdict on behalf of
14 Dr. Massey. There's been no testimony from the
15 expert witness Dr. Levine -- he did not read
16 Dr. Massey's deposition, which he confirmed in court
17 and in his discovery deposition a year and a half
18 ago, and he didn't mention any direct personal
19 criticism of Dr. Massey. And for that reason, I'd
20 move for a directed verdict for dismissal of
21 Dr. Massey.

22 THE COURT: Well, he testified that standard of
23 care required that the doctors examine patients
24 within 48 hours of admission and then again in 30
25 days and then again in 60 days, unless the

1 conditions decline, and then they need an
2 eye-to-eye, face-to-face examination. He said there
3 were deviations here because these physicians failed
4 to examine and as the wound became worse, they
5 failed to diagnose the infection and treat it and
6 failed to transport. Then he said the deviations,
7 according to my notes, applied to all three doctors.
8 So his testimony, however slight, if the jury
9 believed that, then he's said that Dr. Massey
10 deviated from the standard of care. I respectfully
11 deny it.

12 MR. PARKINSON: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. PARKINSON: Nothing from me, Your Honor.

15 THE COURT: Mr. Nance?

16 MR. NANCE: Your Honor, I'd also move for a
17 directed verdict on behalf of Dr. Rainsford and
18 Leaphart, basically on the same grounds. But in
19 addition, Dr. Levine, although I asked him directly
20 who were the doctors who were doing these things, he
21 couldn't say it. He said who was there. All the
22 testimony is, in regard to Dr. Leaphart -- and in
23 her deposition, she went through the times that she
24 saw him. I don't think she saw him at all during
25 May and certainly not after this culture was taken.

1 Dr. Nicholson was the one who had the culture
2 taken. He's the doctor who it had gone to. He's
3 not a party to this action. If one of the doctors
4 had a duty and should have known about it and
5 diagnosed or not diagnosed or examined or whatever,
6 he's the person who did it.

7 Dr. Rainsford's participation in this matter is
8 nothing other than the final day, the 15th of May.
9 He was called and asked to come see him. When I say
10 him, Mr. Peterson. It was by his testimony he was
11 going to do that as soon as he could. But in any
12 event, they wanted him transferred to the Aiken
13 Regional Medical Center and they got him transferred
14 to the Aiken Regional Medical Center.

15 There's just no evidence there that any of
16 these doctors, either one of these physicians, had
17 any personal knowledge of this wound or any reason
18 to take any action. And I understand that's what
19 Dr. Levine just throws everybody in there.

20 THE COURT: He did.

21 MR. NANCE: It's just not there.

22 THE COURT: It's there in that he testified to
23 it. I don't know how the jury will rule with that.
24 This late in the game, I have to look at the
25 existence of the evidence and not the weight of it.

1 And he did testify to that. I took notes when he
2 started taking about the deviations, and he did say
3 it applied to all three. So at the present time,
4 I'm going to deny the motion. It may, depending on
5 how everything goes, may require a different look at
6 the end of the case. But right now, there's -- that
7 existence of evidence, by the slimmest of margins,
8 keeps it in.

9 MR. NANCE: Thank you.

10 THE COURT: Anything else, gentlemen?

11 MR. WELCH: Not from the plaintiff, Judge.

12 THE COURT: Let me ask y'all some questions.

13 Is there any evidence in the record on damages
14 or pain?

15 MR. WELCH: Judge, one of the things Ms. Butler
16 testified, that when she saw him at the Specialty
17 Selects Care, that at times he was in pain. And she
18 also testified that when she came in on the 15th, he
19 was grimacing. And then the medical records
20 themselves, there's numerous reflections in the
21 medical records, Judge, of, in fact, the very
22 existence of the decubiti, those types of things.
23 The medical record, if you go through, Judge, has
24 numerous references to skin grafts that were done,
25 to other things that he had to incur because of this

1 that clearly involve pain and suffering, Judge.

2 THE COURT: Does it? There's no evidence in
3 the record that he was suffering, other than just
4 they did a skin graft.

5 MR. WELCH: Judge, there was testimony he was
6 grimacing, which is by pain, and again, the medical
7 record itself is full of the descriptions of
8 everything from the procedures, the skin grafts, the
9 whole nine yards, that clearly involved pain to a
10 human being. There's -- you can't have the type of
11 treatment he had without suffering some pain.

12 THE COURT: That's -- but in trying a lawsuit,
13 don't you have to present that evidence to a jury
14 that he was in pain, that he was, in fact,
15 suffering?

16 MR. WELCH: Well, it's in evidence in the
17 medical records.

18 THE COURT: Mr. Parkinson?

19 MR. PARKINSON: Your Honor, I should have made
20 that motion too. I thought about it yesterday. A
21 motion to -- for a directed verdict on pain and
22 suffering, because I think the only thing in
23 evidence is the medical bills. But I do not think
24 that just because he had procedures -- if he had a
25 procedure removing dead tissue, who knows whether

1 that's painful or not. There's not any testimony,
2 expert testimony or medical testimony about that.

3 THE COURT: He might have been completely
4 anesthetized, I don't know.

5 Mr. Nance, do you join in?

6 MR. NANCE: Yes, I join in. And I'd like to
7 point out that the Aiken Regional Medical Center
8 records that are in evidence beginning on 5/15/06,
9 first paragraph of the nurse's notes, page 234,
10 says: Zero pain, and continually throughout.

11 THE COURT: But there was nothing presented.
12 The plaintiff has the burden to prove the claim of
13 pain and suffering, and there was no evidence
14 whatsoever by anybody that talked about the man
15 getting Demerol or any type of pain medications,
16 that he was rolling around in the bed suffering in
17 pain, screaming out.

18 In fact, everybody said he wasn't doing much of
19 anything except lying there. In fact, they thought
20 he was leaving on the 15th.

21 MR. WELCH: Judge, the medical record on page
22 69, Exhibit 3. The nurse testified -- and she read
23 the record: Anxious, restless, continually
24 shuffling and moving extremities, moans when
25 touched, eyes open. She read that in the record.

1 That's clearly evidence --

2 THE COURT: What is he moaning from? Is he
3 moaning from his overall condition? Is he moaning
4 from the decubitus ulcer? Where is the evidence
5 that he's moaning from these doctors failing to
6 treat this decubitus ulcer, this bedsore?

7 MR. WELCH: That's the day that he was so bad.
8 That's the day he was taken to Aiken. The testimony
9 was it was breach of standard of care to get him to
10 that point on that day, and that's what she
11 testified to. It's in the record. The record is
12 full of that type of --

13 THE COURT: It may be full, but it hasn't been
14 presented.

15 MR. WELCH: But, Judge, it's in evidence. It's
16 in evidence. Whether or not you read the entire
17 record, it's part of the evidentiary record.

18 And, in fact, he was awake by the end of the
19 Aiken visit and was talking with the doctors.
20 There's pain medications in the invoices in the
21 records, it's pain medications in the MAR. It's in
22 the records, Judge. Whether or not it's been read
23 to the jury yet, it's in the record.

24 THE COURT: Yeah. But you've said all along
25 you're not criticizing the fact that he got the

1 ulcer, that's something that happens in these
2 settings. And your expert even says on proximate
3 cause the outcome would have been different. You
4 would not have incurred additional medical expenses.
5 He didn't testify to that.

6 MR. WELCH: Didn't testify to what, Judge?

7 THE COURT: The outcome would have been
8 different. Your guy would not have incurred the
9 additional expenses; i.e., having to go to Aiken,
10 having to go to Augusta.

11 MR. WELCH: Right, if the breach hadn't
12 occurred.

13 THE COURT: Right.

14 MR. WELCH: Well, he testified he got morphine.

15 THE COURT: For what?

16 MR. WELCH: Morphine is a pain drug.

17 THE COURT: Morphine for what? Pain from what?

18 MR. WELCH: Judge, again --

19 THE COURT: I mean, you got a guy who goes to a
20 nursing home and is on death's doorstep, and while
21 there he develops a decubitus ulcer which you say is
22 not a breach of the standard of care. It's a
23 breach, you allege, because they didn't diagnose and
24 treat it. But where is the distinct evidence that
25 he was suffering from and then diagnosing it?

1 MR. WELCH: Judge, again, it's a scintilla of
2 evidence in your opinion, but it's there, it's in
3 the record. It's a jury question.

4 THE COURT: Well, if it's there, it's awfully
5 weak. And if I let it go to jury, I will have a
6 separate verdict form on economic loss, medical
7 expenses and noneconomic damages; i.e., pain and
8 suffering. I'll make deal with that at the end if I
9 have to.

10 MR. WELCH: Very good.

11 THE COURT: But I'm not saying I'm ruling on it
12 yet.

13 Mr. Nance?

14 MR. NANCE: I want to express my thoughts about
15 it. And Dr. Levine's testimony, all of that went to
16 the MRSA. It doesn't go to the sore itself because
17 of the MRSA. MRSA doesn't cause pain and suffering
18 at all.

19 THE COURT: Well, if it does, there's been no
20 testimony that it did. He was going to have pain
21 from the bedsores. The problem is when it became
22 septic or the MRSA manifested itself.

23 MR. NANCE: That's just presence of bacteria.
24 And at some point in time, it becomes systemic.
25 There's no testimony that because of that condition,

1 there's any pain and suffering. That's what this
2 case is all about. It's about pain and suffering.
3 To have a survival action, a viable survival action,
4 there's got to be proof that there was actual pain
5 and suffering.

6 THE COURT: Well, no, you could have medical
7 expenses that survive.

8 MR. WELCH: Judge, may --

9 MR. PARKINSON: Judge, could I speak?

10 THE COURT: You may, Mr. Parkinson.

11 MR. PARKINSON: He's talking about Dr. Levine
12 talked about an infection. He didn't say we should
13 have prevented the infection, but we didn't diagnose
14 it and treat it. The man did get diagnosed and
15 treated a little bit later, but where is the
16 causation on that --

17 THE COURT: For the pain and suffering.

18 MR. PARKINSON: Yes.

19 THE COURT: They wouldn't have prevented it,
20 they would have just recognized it earlier at the
21 same time as Aiken Regional Medical recognized it.

22 MR. PARKINSON: That's right. And to say
23 there's something in the Aiken record that they gave
24 him morphine, well, they put in a feeding tube.
25 That probably hurt to drill a hole in his stomach

1 and put in a feeding tube. There's no way to tease
2 that out, there's no evidence to support the
3 connection being made from the pain and suffering,
4 and the very specific breach of the standard of care
5 that Dr. Levine talked about. And he -- I was
6 surprised he didn't talk about that.

7 THE COURT: I was too. I thought about it last
8 night.

9 MR. WELCH: Judge, if I could.

10 THE COURT: You may.

11 MR. WELCH: The testimony was, was that at the
12 time the lab report was sent over, that -- and that
13 MRSA was recognized in the culture, it needed to be
14 treated before you got to the point where it became
15 literally effluent and took over the body, which it
16 did. It's an infection, it's a MRSA infection. A
17 lot of us carry MRSA on our skin and MRSA bacteria
18 is there. But when you get to the point of
19 infection and you get the picture that's in evidence
20 of how bad the decubiti got, that's what should have
21 been prevented was how bad it got, not the fact that
22 you prevent it altogether, but you can prevent it
23 from getting that bad on the 15th, and that's in
24 evidence. And the doctor testified that if --

25 THE COURT: Where's the evidence that he

1 suffered from that? Who testified that this man is
2 in the bed holding his side, screaming and needing
3 morphine, needing Lortab, needing whatever, like you
4 normally put in a case where you're talking about
5 pain and suffering? All of his daughters said that
6 up until the 15th, he was fairly calm and just sort
7 of lying there.

8 MR. WELCH: And, Judge, it's like the case,
9 Judge, that you have where someone suffers a
10 terrible injury and then goes eventually into some
11 type of coma and comes out of the coma. There's no
12 question of the fact that that person suffers from
13 pain at the time the injury occurred. There's not
14 question this man suffered from pain, some kind of
15 pain, due to how bad the infection got. The picture
16 is in evidence. The doctor actually testified that
17 it should not have become as bad as it was. It was
18 infected. It had gangrene. That's in evidence.

19 THE COURT: So we infer that it hurts?

20 MR. WELCH: I think it's a jury question,
21 because the doctor testified and the medical record
22 shows that they found evidence of gangrene.

23 MR. NANCE: It's too confusing for the jury.
24 How are they going to tease that out? They don't
25 have any guidance from a medical person about that.

1 MR. WELCH: Judge, again --

2 THE COURT: I'll reserve ruling on that.

3 That's not going to affect your case in chief, is
4 it, or could it?

5 MR. PARKINSON: No, sir, I guess not.

6 THE COURT: Well, you tell me. I'm going to go
7 back there and think about it, and I'll come back
8 out and rule.

9 We've just got to -- to let it go. We've got
10 to infer that a decubitus ulcer that progresses to
11 the stage this one did required intervention in
12 Aiken and required intervention for the MRSA. That
13 confers that's a painful condition. Nobody
14 testified about it. You just have to infer. Is
15 that enough?

16 MR. PARKINSON: And the jury is going to be
17 even more confused than all of us in this room now,
18 because we've been able to debate it and talk about
19 it. These 12 people don't have any medical guidance
20 about that. It would be completely random,
21 confusing, and with nothing to hang their hat on.

22 THE COURT: All right. I find that the
23 complete lack of evidence concerning any pain and
24 suffering by any of the family members, the
25 expert -- I don't remember him mentioning the word

1 pain and suffering. So I'm going to rule that pain
2 and suffering is not an improvement in this case.
3 That's my ruling.

4 All right. Anything else before we start your
5 side of the trial?

6 MR. PARKINSON: No, sir, Your Honor.

7 THE COURT: Well, what about the other lawyers?
8 Obviously loss of enjoyment of life. Loss of
9 earning is not, mental suffering is not.

10 All right. Anything else?

11 MR. PARKINSON: No, sir.

12 MR. WELCH: No, Judge.

13 MR. NANCE: No, sir.

14 THE COURT: All right. Y'all need a bathroom
15 break?

16 MR. PARKINSON: Might be useful since the jury
17 is not in here.

18 THE COURT: All right. We're going to take
19 five more.

20 (Short break.)

21 THE COURT: All right, gentlemen, on the ruling
22 on the pain and suffering, that is the ruling.
23 However, I'm going to do some research while I make
24 a revisit. It's not going to affect your case, is
25 it?

1 MR. PARKINSON: Well, the only thing is that I
2 would -- I mean, Mr. Welch may be motivated to try
3 to develop some things that he didn't put in his
4 case. And I'd ask the Court to rule that any
5 questions related to pain and suffering be improper
6 at this point in time that Mr. Welch may try to
7 elicit on cross-examination because his case is over
8 and the Court has ruled and that could affect how
9 the case goes; not necessarily how I present my
10 case, but perhaps across the aisle.

11 THE COURT: Would not be a relevant issue
12 anymore.

13 MR. WELCH: Judge, I think anything that's in
14 the record, in the medical record, would be
15 relevant. If it's there, I should be able to ask
16 about what's in the record itself.

17 THE COURT: Make your objection. The ruling
18 stands.

19 All right. Bring in the jury.

20 (The jury enters the courtroom at 10:27 AM.)

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 we'll now have the presentation by the defendants,
23 starting with Dr. Massey, followed by the balance of
24 the defendants.

25 Mr. Parkinson?

1 MR. PARKINSON: Thank you, Your Honor. We'd
2 call Dr. Massey to the stand.

3 THE COURT: Dr. Massey.

4 THE CLERK: Raise your right hand.

5 TAMI MASSEY

6 being first duly sworn, testified as follows:

7 THE CLERK: Have a seat, state your full name
8 and spell your last name, please.

9 THE WITNESS: Tami Yvonne Massey, M-A-S-S-E-Y.

10 DIRECT EXAMINATION

11 BY MR. PARKINSON:

12 Q. Dr. Massey, how are you this morning?

13 A. I'm okay.

14 Q. I was asking you that question so I could hear
15 your voice in the microphone. Could you maybe pull
16 the microphone -- there you go.

17 Tell the jury your name again.

18 A. Tami Massey.

19 Q. And you're a medical doctor?

20 A. Yes, sir.

21 Q. And, Tami, where do you practice?

22 A. Edgefield Medical Clinic primarily.

23 Q. And that's here in the town of Edgefield?

24 A. Yes, sir.

25 Q. Do you live in Edgefield?

1 A. We live between here and Johnston, but it's
2 Edgefield County.

3 Q. Are you married?

4 A. Married 14 years.

5 Q. Who is your husband?

6 A. Doug Massey.

7 Q. What does he do?

8 A. He teaches engineering at Piedmont Tech.

9 Q. Have any children?

10 A. Three children; Maggie, Matthew and Claire. We
11 have birthdays this weekend. They're ready to
12 celebrate turning nine and seven.

13 Q. And Maggie is how old?

14 A. She's 12.

15 Q. Where do they go to school?

16 A. Maggie goes to J.E.T. Middle School and my
17 little ones go to Parker.

18 Q. That's the elementary school?

19 A. Yes.

20 Q. And are you from Georgia?

21 A. Originally from Atlanta area, near Six Flags.

22 Q. Okay. Where did you go to college?

23 A. I went to Georgia Baptist College of Nursing in
24 Atlanta. Got my BSN degree in nursing. Went back
25 to school after working for a period of time to get

1 prerequisites for medical school from Georgia State
2 University, and then went to Medical College of
3 Georgia for medical school and did residency for
4 three years and worked at Self Regional Medical
5 Center in Greenwood.

6 Q. And you worked as a nurse for a period of years
7 before going to medical school?

8 A. I did. After graduation from Georgia Baptist,
9 I started working at the ICU doing anything from
10 trauma surgery to mostly cardiovascular surgery.

11 Q. You took care of patients in the intensive care
12 unit?

13 A. I did, for five years at Georgia Baptist and
14 then for two years in medical/surgical ICU at MCG
15 while I was in medical school.

16 Q. So your degree in nursing was a four-year
17 bachelor's degree?

18 A. Yes, sir. And then a registered nurse after
19 taking the licensing exam.

20 Q. Okay. And then medical school, that's a
21 four-year program?

22 A. Yes, sir.

23 Q. And after medical school I know doctors
24 sometimes do a residency in a particular specialty.
25 What was your specialty and training?

1 A. Family practice.

2 Q. And that was in the residency program at Self
3 Regional in Greenwood?

4 A. Yes, sir.

5 Q. And how long was that?

6 A. Three years.

7 Q. And then did you become board certified in
8 family medicine?

9 A. I did.

10 Q. Are you still board certified in family
11 medicine?

12 A. Yes, sir, I am.

13 Q. Tell the jury what board certified means.

14 A. After completing a residency program, you take
15 a board certification exam.

16 Q. And that's a national certification?

17 A. It is.

18 Q. And you have to take an examination
19 administered by a national body?

20 A. Yes. And then you have to continue with
21 continuous medical education, continuing medical
22 education with a certain number of hours per year,
23 and then retest every 10 to 12 years, 7 to 10 years.

24 Q. I know I'm not supposed to ask a lady this
25 question, but just so the jury knows, how old are

1 you?

2 A. Forty-three.

3 Q. Okay. And after you finished your residency in
4 Greenwood, where did you -- did you go to work as a
5 doctor in a medical practice?

6 A. Yes. After residency, I was accepted for a
7 position here in Edgefield at Edgefield Medical
8 Clinic. In addition to that, I worked during
9 residency in the Abbeville County ER and also in
10 Edgefield County emergency room.

11 Q. So when you came to Edgefield Medical Clinic,
12 you were -- came in as one of the younger doctors, I
13 suppose. Who were the other doctors in the group?

14 A. At the time I started, Dr. Nicholson was there,
15 Dr. Rainsford, Dr. Leaphart, and Dr. Beth Gordineer.

16 Q. And Dr. Nicholson, we've seen from the records,
17 was involved in practicing there at the time
18 Mr. Peterson was in the nursing home. But
19 Dr. Nicholson has passed away now?

20 A. He did.

21 Q. When did he pass away?

22 A. December was a year.

23 Q. I'm sorry?

24 A. December was a year ago.

25 Q. December of 2012?

1 A. Uh-huh.

2 Q. And that videotape that we saw of
3 Dr. Nicholson's testimony, was that taken to
4 preserve his testimony?

5 A. Yes. We had known he had cancer at the time.

6 Q. And Dr. Gordineer, Dr. Beth Gordineer, we've
7 seen her name in this record too. She was one of
8 the physicians that Edgefield Medical Clinic?

9 A. Yes, she was at the time.

10 Q. And she's no longer in that group?

11 A. No, sir.

12 Q. Now, in addition to working at Edgefield
13 Medical Clinic, do you have any responsibilities as
14 it relates to Edgefield County EMS?

15 A. I am the medical director for Edgefield County
16 EMS.

17 Q. And in addition to working at Edgefield Medical
18 Clinic, do you also work in the emergency department
19 at Edgefield County Hospital?

20 A. I do. Right now it's every other Thursday
21 night. That schedule has varied in the past. But I
22 do work in the emergency room.

23 Q. Okay. And your family is -- are you involved
24 in any community activities in Edgefield?

25 A. My daughter is very heavily involved in

1 softball, so we're involved in local sports. My
2 youngest played softball this year, soccer. We go
3 to church here in Edgefield at the united methodist
4 church.

5 Q. Okay. And tell the jury what the nature of the
6 practice is at Edgefield Medical Clinic. That's a
7 doctor's office as we know it?

8 A. It is. It's a private practice and we see
9 patients of all ages. Our practice used to deliver
10 babies back years ago before I came, but we no
11 longer do that. But otherwise, we take care of all
12 types of people.

13 Q. Are you a member of the American Medical
14 Association?

15 A. Yes, sir.

16 Q. Are you a member of the American Academy of
17 Family Physicians?

18 A. Yes, sir.

19 Q. What is the American Academy of Family
20 Physicians?

21 A. It's the -- I don't know how to explain it.
22 It's the academy for board certified family
23 physicians.

24 Q. So in other words, to be in the American
25 Academy, you have to be board certified?

1 A. Yes.

2 Q. Okay. And have you been on any mission trips?

3 A. I have. I went to Haiti on a couple of
4 occasions back when I was in nursing school. That
5 was quite interesting. Fortunately it was quite
6 some time before the recent devastations there.
7 I've also been to Ecuador during residency with Go
8 Forth.

9 Q. And when you graduated from nursing school, did
10 you have any particular academic distinction with
11 graduating?

12 A. I did. I graduated with a 4.0 grade point
13 average, summa cum laude from nursing school, and in
14 medical school I was Alpha Omega Alpha which is the
15 medical honor society which is a distinctive honor
16 society for those who have excelled academically.

17 Q. I'm not trying to get you to toot your own
18 horn, but I'm the only one that can get you to do
19 it.

20 Now, Doctor, you're licensed as a physician in
21 the state of South Carolina?

22 A. Yes, sir.

23 Q. Tell the jury how things operate at the
24 Edgefield Medical Clinic for the doctors and the
25 patients. Describe the practice a little bit.

1 A. On a typical day we start out making rounds at
2 the hospital. We have a fair amount of hospital
3 patients at the Edgefield County Hospital. And then
4 after making rounds, we go to the office to our
5 daily work of seeing patient visits throughout the
6 day.

7 Q. And the events in question here happened
8 essentially in the spring of 2006. Who were the
9 doctors actively practicing at the office during
10 that time?

11 A. At the office, Dr. Nicholson, Dr. Rainsford,
12 Dr. Leaphart, Dr. Beth Gordineer and myself.

13 Q. In addition to seeing patients in the office
14 and seeing your patients that happened to be in the
15 hospital at Edgefield Hospital, do you also -- are
16 you also involved with nursing home patients at
17 Trinity?

18 A. Yes. We saw the patients over at Trinity as
19 well.

20 Q. Okay. Tell the jury how --

21 THE COURT: All my jurors with me? That ain't
22 good. He's talking.

23 BY MR. PARKINSON:

24 Q. Tell the jury how it operated as far as how the
25 physicians at your office interacted with the

1 nursing home and treatment and following of the
2 patients there.

3 A. I think -- from previous presentations, I think
4 there may have been some confusion with that. It's
5 not as confusing as it seems. We would take nursing
6 home call by week starting on Friday afternoon.
7 We'd have the afternoon off to go and visit the
8 patients at the nursing home. We'd see those
9 individuals who are up for their routine monthly or
10 every 60-day visits for recertifications. We'd see
11 sick visits as well as prompted by the nurses, or if
12 they were to check out from the other physicians'
13 patients that we needed to check on, we'd do that
14 Friday afternoon.

15 The next week until the next Friday we'd take
16 what we call nursing home call which means that
17 during office hours we'd respond to calls from the
18 nursing home, either sick calls or needs that they
19 may have. Sometimes they needed something as simple
20 as a prescription written, sometimes they'd call in
21 and report patient conditions that we needed to
22 attend to. And being on nursing home call that
23 week, if the nurses had called to request us to come
24 see a patient for whatever need, then we'd do that
25 during lunch hour or before work, before rounds or

1 after regular business hours. Certainly if there
2 was anything urgent, we'd certainly leave the
3 practice and walk over if need be.

4 Q. And the -- who were the doctors now today who
5 practice at Edgefield Medical Clinic?

6 A. Dr. Rainsford and myself.

7 Q. And do you have some nurse practitioners or
8 physician assistants that work there too?

9 A. We do. We have two PAs.

10 Q. Is the -- do you and Dr. Rainsford -- does your
11 medical practice still follow the patients in
12 Trinity Nursing Home?

13 A. We do.

14 Q. Okay. The -- explain to the jury how it
15 worked. And I guess we should focus on 2006, that's
16 what the case relates to, and changes that have been
17 made today about how it works. But how it works
18 about the orders -- we've seen telephone orders in
19 evidence and some of them have been put up on the
20 screen. How are those order sheets utilized in the
21 communication and treatment of the patients?

22 A. The order sheets that are at the nursing home,
23 all of them say telephone orders whether they're
24 written by the nurses or by us. Typically what they
25 would do is call for a verbal order based on patient

1 condition, they'd write that verbal order, take the
2 top part off, send it over to us. As licensed
3 professionals themselves, if they see things that
4 they would recommend for the patients based on their
5 assessments as licensed professionals, they'd make
6 those recommendations within their scope of
7 specialty and send those over to us as well. We'd
8 review those. Certainly any questions, we'd call,
9 and certainly if they had any questions or concerns
10 regarding their assessments, they'd call us as well.

11 Q. And is the use of fax machines utilized in
12 communicating between the nursing home and your
13 office?

14 A. They would. They'd send us faxes as well for
15 things that weren't urgent, prescription refills or
16 nonurgent notifications.

17 Q. But if there was something more urgent or
18 pressing, would the telephone be utilized?

19 A. Yes. We'd expect them to call us if it was a
20 pressing matter or something that they had any great
21 concern about. And we were readily available to
22 come to the phone. Also, our nursing staff that
23 could put patients in rooms or take messages to get
24 to us more urgently than what a fax would be.

25 Q. Okay. Now, the -- your office building is

1 across the parking lot from the nursing home?

2 A. It is.

3 Q. And the hospital kind of sits on that same
4 parking lot as well; right?

5 A. It does.

6 Q. If you were going to go to the nursing home,
7 like, during your lunch hour, like something
8 occurred, would you just walk?

9 A. Generally, depending on the weather.

10 Q. If you're going to see patients in the nursing
11 home, would you just walk?

12 A. Absolutely. We're adjacent to the hospital by
13 a covered walkway.

14 Q. Okay. And do the nurses or the nursing staff
15 at the Trinity Nursing Home -- and again, I'm going
16 to focus on 2006 -- would there be times when a
17 nurse or somebody would call and say, I need you to
18 come over?

19 A. Absolutely.

20 Q. Okay. And other times they'd just communicate
21 by fax?

22 A. Right. For nonessential, nonurgent needs, yes.

23 Q. Okay. Let's talk about Mr. Peterson a little
24 bit now. And I'm going to put some things up on the
25 screen here. This is page 15 from the second

1 admission to Trinity, the one that culminated in his
2 leaving on May 15th.

3 A. Yes, sir. That would be the second admission.

4 Q. The second admission, okay. And this is called
5 a history and physical examination. The date is
6 March the 21st, 2003. Is that when Mr. Peterson was
7 admitted?

8 A. I don't believe it was 2003. I think that was
9 an error.

10 Q. You're right.

11 A. But I believe it was March 21st, 2006.

12 Q. Obviously I didn't even catch that until just
13 then. And what is this showing us here -- and what
14 actually is the history and physical exam that's
15 done on a nursing home patient like Mr. Peterson
16 when he's coming in?

17 A. A history and physical is done upon patient
18 admission. We generate their chief complaint which
19 is their reason for coming to the nursing home, the
20 history regarding the complaint, and the signs and
21 symptoms, what had been done for the patient
22 generally at the other facility as well as what
23 happened to him before going to that facility. So
24 we get a complete history.

25 We would assess their symptoms that they were

1 having at the time and do a complete physical exam
2 and then generate a problem list of the diagnoses
3 that we need to be attending to and then develop a
4 plan for those problems.

5 Q. Okay. And the signature down here, is that
6 Dr. Gordineer?

7 A. That is Dr. Beth Gordineer. She did his
8 admission history and physical on the 22nd.

9 Q. Okay. What is this up here where it says
10 doctor and then has some initials there?

11 A. That stands for Nicholson, Rainsford,
12 Gordineer, Leaphart, and Massey.

13 Q. So you're the M?

14 A. I'm the M.

15 Q. And that's just shorthand for your group?

16 A. Yes.

17 Q. Okay. All right. Now, when Mr. Peterson comes
18 in and is in the nursing home, in addition to
19 telephone orders, do the physicians occasionally
20 write progress notes themselves that are put in the
21 nursing home chart?

22 A. Yes. When we see the patient, we generate a
23 progress note based on the assessment for that day.

24 Q. Okay. There's been some talk about this
25 previously from other witnesses about seeing the

1 patient when they first come in. And then at some
2 intervals thereafter, 30 days and 30 days. Is that
3 how it works?

4 A. That's correct.

5 Q. So if Mr. Peterson came in around March 21st,
6 unless something urgent occurred, would he -- when
7 would he typically be next seen by a physician? 30
8 days after?

9 A. Well, he'd be seen originally within the first
10 one or two days unless there's something urgent.
11 We've had cases where we've seen them immediately
12 when they come in. But we usually see them for a
13 history and physical and then an initial exam in the
14 first 24 or 48 hours. And then the next regularly
15 scheduled exam according to Medicare/Medicaid
16 guidelines would be in 30 days, and then another
17 visit as per the guidelines in 30 days.

18 Q. Okay. Did you ever enter a progress note in
19 the nursing home chart indicating your bedside visit
20 with Mr. Peterson?

21 A. I did not have a bedside visit with
22 Mr. Peterson.

23 Q. Okay. I'm going to show you what is in that
24 same exhibit about the Trinity stay. That's page
25 36. Does that say Doctor's Progress Notes? I've

1 got some hole punches up there. Is that what it
2 says?

3 A. Yes, sir, it says Doctor's Progress Notes.

4 Q. Okay. And it looks like this is April 14th and
5 then maybe dictated on the 17th. But is this a
6 progress note that indicates a physician bedside
7 evaluation of the patient?

8 A. It does. That was an evaluation done by
9 Dr. Leaphart at approximately a 30-day interval.

10 Q. A little bit earlier than 30 days?

11 A. A little bit earlier. We try to keep a little
12 ahead of schedule.

13 Q. And Dr. Leaphart did that?

14 A. Yes, sir, she did.

15 Q. So if he was seen for a regular 30-day check on
16 April 14th, when would he be scheduled to be seen
17 for a regular check following that?

18 A. He'd be scheduled a month later, 5/14.

19 Q. Okay.

20 A. Or during that week, that Friday. It wouldn't
21 be exactly on the date.

22 Q. Okay. Because they were always on Fridays
23 closest to the scheduled time?

24 A. Yeah.

25 Q. So that sounds like it would be around May 14th

1 or 15th when he came out and went to Aiken?

2 A. Right. He would have been scheduled for around
3 that time.

4 Q. So the scheduled visit date hadn't really
5 occurred?

6 A. It hadn't occurred again yet.

7 Q. Okay. Now, during the course of his time,
8 Mr. Peterson's time at Trinity, were you ever called
9 by a member of the Trinity Nursing Home staff and
10 requested to come and see Mr. Peterson regarding
11 pressure ulcers?

12 A. Regarding pressure ulcers, no, I was not.

13 Q. Okay. Was there a time towards the end of
14 March where you did get a call about Mr. Peterson
15 related to some other medical condition?

16 A. Yes. There's a note in the nurse's note where
17 he had a fever and I was called regarding him having
18 that symptom. And based on conversation with the
19 nurse, anyone with a temperature we're concerned
20 about an infectious process, so I ordered the
21 appropriate labs including a CBC looking for a white
22 blood cell count or an infection count, a chest
23 x-ray because pneumonia is common in older
24 individuals, and a urinalysis because bladder
25 infections also are common, and then started

1 antibiotics awaiting those test results.

2 Q. Okay. So when they called you about a fever at
3 the end of March, you ordered a urinalysis, a lab
4 study of his urine?

5 A. Yes, sir.

6 Q. And you ordered a chest x-ray?

7 A. Yes, sir.

8 Q. And did you order anything else?

9 A. I think it would have been a blood test.

10 Q. Okay. And all those things --

11 A. I'd have to look to refresh but --

12 Q. Okay. I'll show you that in just a second.

13 Would that have been done at the hospital?

14 A. The chest x-ray would have been done at the
15 hospital. They may have collected the urinalysis
16 and drawn the blood at the nursing home. At this
17 time I'm not sure if they did it at the nursing home
18 or sent him to the hospital for all of those tests.

19 Q. I'm going to show you what I'm talking about in
20 the orders, page 26. Is this the order right here,
21 3/30, March 30th, that's regarding what we've been
22 just talking about?

23 A. Yes, sir. I'm sorry. I can't see the bottom.

24 Q. How about that?

25 A. Thank you.

1 Q. Okay. UA, urinalysis; CXR, chest x-ray. RCX
2 is blood?

3 A. Blood cultures.

4 Q. And then it looks like you ordered Levaquin
5 there. What is Levaquin?

6 A. Levaquin is an antibiotic.

7 Q. And then you also -- it looks like also there's
8 something called creat. What is creat?

9 A. When certain antibiotics are to be concerned
10 about, what we call renally dosing them or an
11 appropriate dose for their kidney function, and
12 creatinine is a marker for kidney function.

13 Q. So you wanted to just get a study on that?

14 A. Well, just wanted to make sure he's being
15 appropriately dosed for the antibiotic. It's not
16 uncommon for the first test to be 500 and then we
17 can increase or reduce that dose as needed based on
18 his kidney studies.

19 Q. And is this an interaction with the nursing
20 staff from a fax or did they actually phone you to
21 discuss this?

22 A. I talked with them on the phone, yes.

23 Q. Okay. I'm going to show you a couple things
24 from the nurse's notes. This is page 47. Can you
25 see that, Doctor? Have I got it high enough?

1 A. Yes, sir.

2 Q. And this is March 30th, March 30th, March 30th.
3 Are these the temperatures and the reference to
4 Dr. Massey being notified about him having an
5 elevated temperature?

6 A. It is. The 11:30 AM fever and then again at
7 1:00, and that's when they called me.

8 Q. Okay. And it says on here: MD notified and
9 then Dr. Massey ordered. Does that relate to the
10 telephone call that we just discussed?

11 A. Yes.

12 Q. And the same things that you mentioned
13 ordering, the Levaquin, urinalysis, chest x-ray,
14 blood culture, those things?

15 A. Yes.

16 Q. Okay. And then the next page, 48, the note in
17 the afternoon of March 30th: Transported to ECH,
18 that's the hospital, for the chest x-ray, urinalysis
19 collected, and then sent to the hospital lab. Then
20 it says: Urinalysis results received, Dr. Massey in
21 the facility informed of the results, and then
22 Dr. Massey -- says: Seen by Massey, no new orders.
23 Was that -- did you enter any progress note that is
24 connected with that March 30th?

25 A. I did not.

1 Q. And was this information conveyed to you simply
2 because you were onsite in the facility?

3 A. I had been there seeing other patients, but I
4 don't recall seeing him. It's my practice if I see
5 a patient to enter a progress note as a
6 communication record for other physicians as well as
7 for the nurses.

8 Q. After that Levaquin was started, his
9 temperature starts coming back down, as you were
10 hoping it would?

11 A. Absolutely. Yes, sir.

12 Q. Okay. Is that the only time that you were ever
13 called by the nursing staff about Mr. Peterson?

14 A. Yes, sir, as far as I remember.

15 Q. And did that situation, as it relates to what
16 you were seeing and what you were ordering to treat
17 him for, have anything to do with a pressure ulcer?

18 A. No, sir.

19 Q. Okay. Now I'm going to show you another
20 telephone order. Got to back up one to make any
21 sense. Hold on.

22 I'm going to show you page 28 from that record,
23 which is another telephone order. The -- on 4/6:
24 Clean left hip with wound cleanser, apply Bacitracin
25 and Optifoam daily. April the 6th, was that

1 Dr. Nicholson's order?

2 A. According to the note at the top, yes.

3 Q. Is that his signature, BEN there?

4 A. That's Dr. Nicholson's signature.

5 Q. He put BEN initials?

6 A. He did.

7 Q. And then on April 20th, this is page 30, a note
8 that says: Physical therapy is starting wound care
9 five times a week. Wound cleanser, Panafil,
10 Optifoam. That's approved by Dr. Leaphart; is that
11 correct?

12 A. Yes, it is.

13 Q. Dr. Massey, did any of the -- did any of your
14 medical partners ever ask you to go see Mr. Massey
15 or -- I mean, Mr. Peterson? I'm sorry.

16 Any of your medical partners ever ask you to go
17 see Mr. Peterson or to do anything regarding
18 Mr. Peterson as it related to pressure ulcers?

19 A. No, sir.

20 Q. Now I'm going to look at a couple of other
21 telephone orders to get into the first part of May.
22 This is page 32. The top order that I'm going to
23 point out here: Discontinue treatment to the right
24 heel, Massey's name, Massey signature, that is
25 something that Jennifer Smoak requested that you do?

1 A. Yes, she sent the order over.

2 Q. She requested your permission as the physician
3 to discontinue treating the right heel?

4 A. Yes.

5 Q. And you signed that?

6 A. I did.

7 Q. Okay. No mention of the hip in that?

8 A. No, sir.

9 Q. Okay. And then on that same day, the middle
10 order here: Change Panafil to Accuzyme for wound
11 care per physical therapy, John Melton. That's my
12 note right there because I was trying to remember
13 what that is. But what are those medicines there?

14 A. Those are creams that go on the bedsores or
15 decubitus ulcers to try to debride the dead tissue,
16 the dead skin cells, to keep the wound base clean
17 for proper healing.

18 Q. And did you hear Dr. Levine talk about that
19 yesterday?

20 A. I did.

21 Q. Is that a typical way that physical therapy and
22 wound care nurses treat those wounds?

23 A. It is.

24 Q. Is that just changing from one medicine to
25 another?

1 A. It is.

2 Q. So you saw no reason not to approve that?

3 A. No, I didn't.

4 Q. Now down below that there's an order that says:
5 Culture left hip wound. And whose name was written
6 in at the top as the physician for that?

7 A. Dr. Nicholson.

8 Q. And whose signature is on that?

9 A. I'm sorry. I can't see it. Dr. Nicholson.

10 Q. Okay. Now, see up here almost all the phone
11 orders, the author, the nurse who authored the note,
12 there's a name entered. Do you see any nurse
13 signing that one?

14 A. No.

15 Q. There's no nurse?

16 A. No.

17 Q. So we just don't know who that was, do we?

18 A. I don't.

19 Q. Did -- were you involved at all in that
20 ordering of a wound culture?

21 A. I was not.

22 Q. Look at one other one that goes over into May
23 3rd. This is page 33. At the top of the page:
24 Massey and Massey, patient to use anti-contracture
25 wedge to lower extremities while in bed,

1 occupational therapy. And did you approve that?

2 A. I did.

3 Q. Does that have anything to do with dealing with
4 a pressure ulcer?

5 A. No, it does not.

6 Q. Is that something they just put under his legs
7 to try to stretch out?

8 A. No --

9 MR. WELCH: Your Honor, I've given a lot of
10 leeway, but it's leading.

11 BY MR. PARKINSON:

12 Q. Okay. What is that?

13 A. The anti-contracture wedge is -- it's shaped
14 more like a triangle and it fits under your legs to
15 keep the legs from drawing up from contractures and
16 immobility.

17 Q. Let's look at the bottom of this page, the
18 middle one is Rainsford. Let's look at the bottom,
19 April 14th. And I think you and I looked at the
20 calendar and realized that it's --

21 MR. WELCH: Again, he's leading.

22 BY MR. PARKINSON:

23 Q. What day of the week was that, Doctor?

24 A. I believe we looked at the calendar and, as you
25 indicated there, as in our prior discussion, it was

1 on a Sunday.

2 Q. Okay. And at that point in time Nurse Overton
3 wrote an order. And what is that talking about
4 there?

5 A. The order reads: Oxygen at two liters per
6 minute due to periods of apnea. Then the following
7 orders are how to manage the oxygen; to clean the
8 filter every night, to change the humidifier every
9 three days, and to change the tubing for the oxygen
10 once a month.

11 Q. Did Nurse Overton or anyone else call you that
12 night? Looks like it says 11:00 PM on Sunday night.

13 A. Right. The order looks like it was written at
14 11 PM on Sunday night. I did not receive a call for
15 that order.

16 Q. Okay. Did you receive a call the next day
17 about it?

18 A. I did not.

19 Q. Did you ever receive a call?

20 A. I did not receive a call about the order.

21 Q. Did this order come over to you later?

22 A. That one came in later. As you see, I signed
23 it on the 20th of May. At that point Mr. Peterson
24 had already been transferred to the hospital.

25 Q. So you were never asked to see him about any

1 issue related to oxygen?

2 A. No, I was not.

3 Q. Doctor, I'm going to get out two pages, and one
4 of them is in this other notebook.

5 MR. PARKINSON: Mr. Welch, which of all these
6 notebooks has the Trinity -- this is it right here.
7 Okay.

8 BY MR. PARKINSON:

9 Q. This is page 81 in the Trinity record.. And it
10 also appears to -- I'm going to ask you about
11 another page. Page 81.

12 Now, we looked at before that a wound of the
13 left -- a culture of the left hip wound was ordered
14 by Dr. Nicholson on May the 2nd.

15 A. Yes, sir.

16 Q. I'm going to show you page 81 out of the
17 Trinity chart here. It was ordered on May the 2nd.
18 What does it show as the date that it was actually
19 resulted by the lab?

20 A. The resulted date is May 7th.

21 Q. May the 7th. Okay. And up at the top there's
22 a fax header that shows when it was faxed. It
23 appears -- what time of day on Sunday, May the 7th,
24 was that faxed out of the lab?

25 A. 5:38 PM.

1 Q. On a Sunday evening?

2 A. On a Sunday evening.

3 Q. And it's being faxed to Trinity Nursing Home;
4 correct?

5 A. I believe so, yes.

6 Q. Okay. Then I'm going to show you what is in
7 the Edgefield Clinic record. It's called Edgefield
8 Clinic, page 6. Is this a copy of the same document
9 that's actually in your office chart?

10 A. Yes.

11 Q. And when does it show that it was faxed to your
12 office?

13 A. On the line above, it says May 8th at 17:53.

14 Q. So does that mean military time? Is that 5:53?

15 A. Yes, sir, 5:53.

16 Q. In the afternoon. So would that be after
17 office hours on a Monday evening?

18 A. Yes, sir, after business hours.

19 Q. When would this fax have been seen by a member
20 of -- or be available to be seen by a member of your
21 staff?

22 A. If it was faxed Monday evening, it would have
23 been Tuesday.

24 Q. Tuesday, May the 9th?

25 A. Yes.

1 Q. And that's a full week after doctor --

2 MR. WELCH: Your Honor, again he's leading.

3 BY MR. PARKINSON:

4 Q. If it was ordered on May the 2nd and gets to
5 your office on May the 9th, how many days is that?

6 A. Seven days. That's a week.

7 Q. Is seven days the same thing as a week?

8 A. Yes.

9 Q. Okay. Were you working on Tuesday, May the
10 9th, 2006?

11 A. Tuesdays are my day off from the practice.

12 Q. Okay. And would you have returned to the
13 practice on the following day, Wednesday?

14 A. I would not have gotten it on Tuesday. It
15 would have been Wednesday in a stack of faxes that
16 would have been on my desk from Tuesday.

17 Q. Okay. And so we get our dates clear, that
18 would be Wednesday, May 10th?

19 A. That would have been Wednesday, May 10th.

20 Q. And how many days is that after the culture was
21 ordered by Dr. Nicholson?

22 A. That's eight days after that culture was
23 ordered.

24 Q. Okay. And down here it has -- where I've put
25 that yellow highlighting, what are those -- what is

1 that right there?

2 A. Those are my initials.

3 Q. TM?

4 A. Yes, sir.

5 Q. Does that indicate that you saw this?

6 A. That indicates that I saw the culture, yes.

7 Q. Okay. And what did you do with this once it
8 came to you or once you saw it?

9 A. Once I saw the culture, I would have determined
10 who had ordered it because it's not something that I
11 ordered or was expecting to see. So I would have
12 found out who ordered the culture and passed it
13 along to the ordering physician not knowing what the
14 culture was related to specifically.

15 Q. And in this case that would have been
16 Dr. Nicholson?

17 A. It would have been Dr. Nicholson.

18 Q. And did you take any action yourself as a
19 result of seeing this piece of paper?

20 A. I did not, not eight days after our culture.

21 Q. Okay. Did anyone speak to you, communicate
22 with you in any way about that culture or about
23 Mr. Peterson's condition on May the 10th when you
24 returned to the office after your day off?

25 A. No, sir.

1 Q. Did you ever hear anything about Mr. Peterson
2 on May 10th or afterwards as it relates to you
3 providing medical care?

4 A. I did not.

5 Q. Did Dr. Nicholson ask you to do anything as it
6 relates to the patient?

7 A. He did not.

8 MR. PARKINSON: Judge, I accidentally stole the
9 page out of the exhibit. I'll put it back.

10 THE COURT: All right.

11 BY MR. PARKINSON:

12 Q. Did any member of the family of Mr. Peterson
13 ever -- to your knowledge, ever seek to communicate
14 with you about Mr. Peterson?

15 A. Not to my knowledge, no.

16 Q. Did any member of Trinity Nursing Home ever
17 seek to communicate with you about Mr. Peterson as
18 it relates to his pressure ulcer?

19 A. I was never notified by them about a pressure
20 ulcer, no.

21 Q. Okay. And were you involved in any way with
22 the series of events on May 14th and 15th when
23 Mr. Peterson's family and Dr. Rainsford were talking
24 about whether he would go out to the emergency room?

25 A. I was not involved in that, no.

1 Q. Okay. Did Dr. Leaphart -- I asked you
2 generally, but I'll ask you specifically. Did
3 Dr. Leaphart ever ask you to do anything on behalf
4 of the medical practice to see and treat
5 Mr. Peterson?

6 A. No, sir, not that I recall.

7 Q. What about Dr. Rainsford? Same question.

8 A. No, sir, not that I recall.

9 Q. What about Dr. Gordineer?

10 A. No, sir, not that I recall.

11 Q. Okay. Was Dr. Gordineer seeing this patient
12 throughout this Trinity Mission stay as we see in
13 the records?

14 A. Dr. Gordineer was the admitting physician for
15 that second stay, so she should have been his
16 attending physician for that stay. And generally,
17 as the attending physician doing that history and
18 physical, we're more aware of the pertinent problems
19 in that patient, so she would have been mostly the
20 ringleader who knew the most about that individual,
21 yes.

22 Q. And is Dr. Gordineer a party to this case?

23 A. She's not.

24 Q. Is Dr. Nicholson a party to this case?

25 A. He is not.

1 Q. Were you involved in any of the discussions
2 with any family member, including Mary Ruth
3 Peterson, about DNR, feeding tubes, issues of that
4 nature?

5 A. I was not involved in any of those discussions.

6 Q. Okay. Bear with me just a minute.

7 And, Dr. Massey, do you have any criticisms of
8 your medical partners as it relates to Mr. Peterson?

9 A. I certainly do not. I chose to work with the
10 partners that I work with. Dr. Nicholson was a role
11 model, Dr. Rainsford as well. As a new physician in
12 the practice, I frequently went to them for
13 questions because they have great experience.

14 Dr. Leaphart and I became really close friends, have
15 children the same age, we were confidants as well.

16 They're excellent physicians. They've taken
17 care of my family. Most recently my son was in the
18 hospital for a couple weeks with pneumonia, cared
19 for by my partners. So absolutely.

20 MR. WELCH: Your Honor, I'd object to the
21 testimony.

22 THE WITNESS: I have --

23 THE COURT: Hold on, ma'am. I'll sustain that
24 objection.

25 BY MR. PARKINSON:

1 Q. As it relates to this case, Mr. Peterson, are
2 you critical of your medical partners in any way?

3 A. No, I'm not.

4 Q. And, Dr. Massey, do you feel like you acted
5 reasonably and appropriately and within the standard
6 of care based on your involvement with this patient?

7 A. Yes, I do.

8 MR. PARKINSON: That's all the questions I
9 have.

10 THE COURT: Mr. Nance?

11 MR. NANCE: No questions, Judge.

12 THE COURT: Mr. Welch.

13 MR. WELCH: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. WELCH:

16 Q. Dr. Massey, you heard Dr. Nicholson's testimony
17 in this case, didn't you?

18 A. I did.

19 Q. You already talked about the fact that at your
20 clinic, the patients that were at the nursing home
21 were the patients of all of the doctors in the
22 clinic.

23 A. Yes, sir. That's correct.

24 Q. In fact, in your deposition that we took
25 previously, you agreed with me that that was the

1 case. You understood that to be the case too,
2 didn't you?

3 A. Yes, sir.

4 Q. When it came time to see a patient that needed
5 care, the doctors of the clinic were all available
6 to see that patient; correct?

7 A. I'm not sure I'd say it that way exactly. We
8 went based on what -- who was on call for the week.
9 Like I had mentioned earlier, if there were problems
10 or conditions, they'd call whoever was on for the
11 week in the nursing home.

12 Q. But to give good care to a patient, don't you
13 agree with me that it's important for the doctor to
14 clinically be aware of what's going on with that
15 patient?

16 A. We were.

17 Q. You agree with me to give good care you need to
18 know what's going on with that particular patient,
19 don't you?

20 A. Yes.

21 Q. And you could be called on at any time when it
22 was you day, your week, to see that patient,
23 couldn't you?

24 A. Yes.

25 Q. So you needed to be aware with all of the

1 patients in the nursing home because you could be
2 called on to make critical decisions; isn't that
3 true?

4 A. I'm not sure I understand what you're saying.

5 Q. In other words, Doctor, during the time the
6 patients are there, you may get a call at 3:00 in
7 the morning sometimes when it's your turn to take
8 call and your week?

9 A. Yes, sir.

10 Q. So you need to know about that patient if
11 you're going to try to do things without seeing
12 them. In other words, if you're going to fill out
13 something and not go see the patient, then you do
14 that because you feel like you have sufficient
15 knowledge about that patient to make an informed
16 medical decision; is that true?

17 A. From the information that we get from the calls
18 from the nurses, in critical situations we can make
19 a reasonable medical judgment based on the report or
20 the situation that we're getting from the nurse.

21 Q. And -- but you need the information about the
22 patients to do it correctly, don't you? That you
23 know clinical information, that you know about that
24 patient?

25 A. Sometimes I get called about patients I'm not

1 familiar with and I'm able to make a reasonable
2 medical decision based on the information that I get
3 from the professionals that are seeing them at the
4 time; nurses, occupational therapy, physical
5 therapy, speech therapy.

6 Q. Let me ask you this, Doctor: Don't you agree
7 with me that the more information you have about the
8 patient that you've physically observed, the better
9 decision you can make?

10 A. I'm not sure that's necessarily true. It just
11 depends on what the situation is.

12 Q. So you don't think seeing the patient is
13 important in terms of making decisions?

14 A. I do think seeing patients is important in
15 terms of making good decisions. But unfortunately
16 at 3:00 in the morning, sometimes we get phone calls
17 about patients that we're not as familiar with as
18 others and we're able to make those decisions based
19 on the information we're given.

20 Q. I guess my real question is about -- to make
21 the best decision about the patient, the more you
22 know about the patient, the better off you are
23 making decisions; correct?

24 A. It may depend on what decision has to be made.

25 Q. Okay. Doctor, I want you to go with me to