

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2012-CP-07-03782

Rebecca Delaney, as Personal
Representative of the Estate of
Justin Nicholas Miller,

Appellant,

v.

CasePro, Inc.,

Respondent.

Record on Appeal: Volume III
PAGES 1001-1500

T. David Hoyle
South Carolina Bar # 74055
W. Christopher Swett
South Carolina Bar # 748251
Temitope O. Leyimu
South Carolina Bar # 101288
Motley Rice LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
(843) 216-9000
(843) 216-9440 (Facsimile)

Crystal Lynn Castleberry
South Carolina Bar # 78661
Castleberry Law Offices
3712 Swallowtail Dr.
Morgantown, WV 26508
(304) 594-2828
(304) 594-2899 (Facsimile)

Attorneys for Appellant

D. Gary Lovell, Jr.
South Carolina Bar # 69296
Douglas W. Mackelcan
South Carolina Bar # 76332
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

Attorneys for Respondent

RECEIVED

JUL 01 2016

SC Court of Appeals

Table of Contents

Order Granting Plaintiff's Motion for Remand (July 2, 2013)	1-8
Order Denying Defendant CasePro, Inc.'s Amended Motion to Dismiss.....	9-10
Order Granting Third-Party Defendant United States of America's Motion to Dismiss.....	11-14
Order Granting Defendant State Office of Veteran's Affairs Motion for Summary Judgment.....	15-23
Order Granting Plaintiff's Motion for Remand (April 23, 2014).....	24-29
Order Denying Defendant CasePro, Inc.'s Motion for Summary Judgment.....	30-31
Order Denying Defendant CasePro, Inc.'s Motion for Reconsideration.....	32-33
Form 4, Judgment in a Civil Case with Jury Verdict Form.....	34-36
Plaintiff's Complaint.....	37-60
Answer of Defendant CasePro, Inc.	61-84
Plaintiff's First Amended Complaint.....	85-102
Answer of Defendant CasePro, Inc. to Plaintiff's First Amended Complaint.....	103-115
Trial Transcript, (Whiddon, CR).....	116-324
Trial Transcript, (Rowe, CR).....	325-2037
Plaintiff's Requested Jury Instructions.....	2038-2060
Defendants Requested Jury Instructions.....	2061-2078
Plaintiff Exhibit 1 (DVD of 911 calls) (with Clerk of Court).....	2079
Plaintiff Exhibit 3 (Photos A-Z from Highway Patrol).....	2080-2105
Plaintiff Exhibit 19 (Saundra Smith note).....	2106-2107
Plaintiff Exhibit 20 (ER Records).....	2108-2119
Plaintiff Exhibit 23 (DVD of firetruck video) (with Clerk of Court).....	2120
Defendant Exhibit 1 Aerial View of Naval Hospital.....	2121
Defendant Exhibit 3 Signed Award Contract.....	2122-2253
Defendant Exhibit 23 Def of Abeyance.....	2254
Defendant Exhibit 29 Baker 9-24-15 Letter to Hoyle.....	2255-2260
Court Exhibit 1-Unredacted 911 calls copy of DVD(with Clerk of Court).....	2261
Court Exhibit 3 (Koren Pope transcript excerpts).....	2262-2272
Court Exhibit 3-A (Saundra Smith transcript excerpts).....	2273-2302
Court Exhibit 7 (Craig Martin transcripts excerpts).....	2303-2321

Court Exhibit 9 (Dr. Beverly Hendelman transcript excerpts).....	2322-2337
Court Exhibit 10 (Arthur Manning transcript excerpts).....	2338-2397
Court Exhibit 11 (Angela Brannon transcript excerpts).....	2398-2420
Court Exhibit 12 Un-Redacted Fire Truck DVD (with Clerk of Court).....	2421
Court Exhibit 14 (Deborah Meaut transcript excerpts).....	2422-2445

1 that were involved in the contract, so. It is not
2 specific. I mean, it is not just Beaufort.

3 Mr. Mackelcan referenced some bids. I don't see
4 any bids attached to this. I think we all learned in
5 first year of contracts, anyway, that there's got to be
6 a meeting of the minds in order for there to actually be
7 a contract. I don't know that bids really have much of
8 anything to do with whether or not this is the best
9 evidence of what the contract is.

10 THE COURT: Right. Okay.

11 MR. HOYLE: And my last argument on that, Judge, on
12 that point would be, if this were a breach of contract
13 action, I don't know that this could even be received in
14 evidence at that action, because there's no evidence
15 that there is a contract. There's no evidence that
16 there is a meeting of the minds, the most basic
17 foundational piece of information that you need, in
18 order to determine a contract is legal.

19 THE COURT: Well, you would have an offer and you
20 would have an oral acceptance. And then, the question
21 is where you go from there.

22 MR. MACKELCAN: And this isn't a breach of contract
23 action.

24 THE COURT: I know.

25 MR. MACKELCAN: This document is presented for the

1 purposes of --

2 THE COURT: I know, I know, I know, I know. Well,
3 here's the lovely part. The lovely part is that we are
4 at the weekend, and wouldn't it be just nice if, I don't
5 know, if somebody could, like, look in the -- I mean, he
6 says he hasn't even looked for it, other than maybe at
7 the beginning of the case three years ago.

8 So, here's where we are. Of course, and you know,
9 there's going to be suspicion if it happens to pop up
10 here Monday morning, too. So, that's going to be a
11 whole other sticky wick, so to speak. So, here's what I
12 think. I think that it's a matter for cross-
13 examination. And I think -- but I'm going to reserve
14 that for Monday morning. And the reason for that is, is
15 that, obviously, there are little issues like the
16 statute of frauds, for example. Secondly, I'm a little
17 bit concerned that it is a document that is not executed
18 pursuant to its own terms, or hadn't been. The document
19 itself dictates how the document itself is going to be
20 entered into. I'm a little bit concerned about that.

21 I'm a little bit concerned about the fact that it
22 appears to be a negotiated contract on the basis of what
23 is checked; yet, it also has some indicia that this was
24 a bid, because the box isn't checked. It obviously is a
25 contract; it has a bid number on it. That causes me

1 some concern. Obviously, I'm concerned, because this
2 witness can't testify that this document came from
3 within his documents.

4 I'm not really sure why he says it's a document.
5 It just says it's the contract. And he doesn't even say
6 why he says it's the contract, and that's a little
7 disconcerting. So, if it didn't come out of his
8 records, why does he think -- you know, that's all
9 disconcerting. So, I'm going to think about it.

10 It's going to be one of two things. I mean, I'm
11 not going to admit it, or I'm going to admit it, and it
12 will be subject to cross-examination, even with regards
13 to the issue of authenticity, which is interesting.

14 Okay. And that's enough for today. I'm going to
15 research it, and I encourage you guys to do the same. I
16 mean, I know it's basic contract terms, but what? You
17 need to say, well, that's an offer, and we got accepted.
18 How about the statute of frauds? And this isn't a
19 contract case. So, is this just an issue that goes to
20 truth and veracity, that goes to the -- not the
21 admissibility, but the weight of it? But I don't know
22 what's in it, and I don't know how relevant that's going
23 to be.

24 MR. MACKELCAN: Should we look for the document? I
25 mean, should we -- in Texas? Or are you saying that,

1 that --

2 THE COURT: What would I do if I was standing in
3 your shoes? I'd tell you what I would do if I was
4 standing in your shoes. I can't tell you what the
5 outcome would be.

6 MR. MACKELCAN: Okay. I couldn't tell --

7 THE COURT: You know.

8 MR. MACKELCAN: I couldn't tell, from what you were
9 saying, whether that was not --

10 THE COURT: Yeah, I would probably invite Gene
11 Autry to come up here. You know what I mean? And
12 testify, I just found it right there.

13 MR. LOVELL: One question.

14 THE COURT: Yeah.

15 MR. LOVELL: Since he's on the stand, obviously,
16 we're not going to talk to him about the case or his
17 testimony, but if we need to get information about who
18 to call to track down the original contract, he may be
19 the only person we've got here today we can ask that
20 question. I don't mind asking it in open court here,
21 and getting that info.

22 THE COURT: I hate to put him in that position.

23 MR. LOVELL: I know. But I just don't want to be
24 accused of doing something I'm not supposed to.

25 THE COURT: I know, exactly. And I think for your

1 protection, there's no question about it. Oh, I just --
2 this is gruesome. Do you know who he should call to
3 find out?

4 MR. MACKELCAN: I do, I just don't know if I can
5 reach him right now.

6 THE COURT: Because you don't know where he is.

7 MR. MACKELCAN: Well, I mean, I know, generally,
8 who to call. I just know that I have the number to get
9 him, if he's not at the office. And so, then, I don't
10 get him.

11 THE COURT: Yeah, like, a cell phone.

12 MR. LOVELL: We may not have his cell phone number.

13 MR. MACKELCAN: We may not have his cell phone
14 number.

15 MR. LOVELL: That's kind of a problem. The cell
16 phone number may be sitting up on the witness stand.

17 THE COURT: Okay. Cell phone number.

18 MR. MACKELCAN: Right.

19 THE COURT: Do you have the cell phone number?

20 MICHAEL MCCABE: It's in my phone, which they
21 wouldn't let me bring in. I have it.

22 THE COURT: Well, that's just a little bit of a
23 snarl, isn't it? Well, you can have his cell phone.
24 You know. I'm going to give you permission to have
25 possession.

1 MR. MACKELCAN: So everyone knows, it's John Hill
2 who we're talking about, when I make the call.

3 THE COURT: I'm not going to make you do that, but
4 I'm going to give you the phone.

5 MR. MACKELCAN: Okay.

6 THE COURT: He's going to get his phone. I'm going
7 to give you permission to look in his phone.

8 MR. LOVELL: I can ask him to turn it on, and show
9 us how to work it.

10 THE COURT: Oh, you know -- well, you don't know.

11 MR. LOVELL: I don't know, either.

12 THE COURT: But Mr. Mackelcan can work it better
13 than Mr. McCabe can. How about that? Because of his
14 age. I mean, you know, because he's, you know, he's a
15 lawyer, but he's also a wonk because of his age. You
16 are, too.

17 MR. MACKELCAN: I don't know. I'm sort of in
18 between.

19 MR. HOYLE: I don't know. I'm the one with the
20 messy desk over here, Judge. I don't know if I'm a wonk
21 or not.

22 THE COURT: Yeah, you're a wonk. Yeah. Okay?
23 Cool? Yes? You all, you certainly can have possession
24 of the cell phone.

25 MR. LOVELL: Judge, can I ask one sort of

1 logistical question?

2 THE COURT: Oh, of course.

3 MR. LOVELL: We passed back and forth some Dr.
4 Hendelman redactions last night. They had a couple of
5 questions about them. Are you going to want to rule on
6 -- I assume that's where we're going Monday, after we
7 finish with him? Oh, it's not? I don't know?

8 THE COURT: Oh, there's that poker face.

9 MR. LOVELL: Never mind, then. I'll get out of
10 here.

11 OFF-THE-RECORD DISCUSSION.

12 BACK ON THE RECORD.

13 THE COURT: All right. Mr. McCabe has just asked
14 me a very good question, and I appreciate him asking,
15 and not putting you all in the position of that, because
16 you all might not know the answer. And the question is,
17 is there anything wrong with me, myself, if I want to,
18 if I need to look at something, or if I want to look at
19 something, or I want to think about this case, I want to
20 go access whatever I want to access, on my own, to do
21 whatever I want to do on my own. And the answer to that
22 is absolutely not. Now, you all can ask him about it,
23 but there's no problem with him doing that. He's not
24 going to talk about his testimony with anyone. In other
25 words, you know, if, like, you know, on that cell phone,

1 Alan Dershowitz's number, no, you can't call another
2 lawyer. You can't talk to him. But if you think -- I'm
3 going to go -- there's something bothering me and I'm
4 going to go back and look at my deposition, or I'm going
5 to go back and look at somebody else's deposition, or
6 I'm going to do whatever, absolutely not a problem with
7 that at all. Feel free to do that. Okay? You're
8 welcome. Great. You just can't talk to anybody about
9 your testimony. Okay?

10 MR. HOYLE: And witnesses are still sequestered

11 THE COURT: Witnesses are -- oh, yeah, and
12 witnesses are still sequestered. So, here's what gets
13 me so uncomfortable is that, you know, if somebody you
14 see happens to say something, and this is what I want
15 you to be like, I've got to testify and so on. You've
16 just got to say, there's just a really hateful judge,
17 and she's told me not to talk about it. And so, I'll
18 tell you later. I'll tell you some other time, but I
19 can't talk to you right now. Okay? Got it. All right?
20 Good. All right.

21 MR. LOVELL: Thank you, your Honor.

22 THE COURT: Any objection to my instruction?

23 MR. HOYLE: None for the plaintiff, your Honor.

24 THE COURT: From the Defense?

25 MR. MACKELCAN: No, your Honor.

1 THE COURT: Come on down. Very well.

2 MR. HOYLE: You just have to come back. You just
3 have to come back.

4 THE COURT: Oh, yeah. All right. Let's see, that
5 would be like, I told them Monday at 10:00, so everybody
6 can come Monday and Tuesday.

7 MR. HOYLE: So, what time do we need to be here,
8 your Honor, on Monday?

9 THE COURT: 10:00.

10 MR. HOYLE: Okay.

11 THE COURT: 10:00 o'clock.

12 **END DAY FOUR, FRIDAY,**

13 **OCTOBER 9, 2015, 5:16 P.M.**

14 **BEGIN DAY FIVE, MONDAY,**

15 **OCTOBER 12, 2015, 10:30 A.M.**

16 BY THE COURT:

17 THE COURT: Thank you so much, and please be
18 seated, and good morning. And I hope your weekend was
19 good. All right. Is everybody ready to go? Yes? Yes?

20 MR. HOYLE: Yes, Judge. Perhaps, before we bring
21 the jury in, we should talk about the contract, because
22 I believe there were some documents that were circulated
23 this weekend by email.

24 THE COURT: Okay.

1 MR. MACKELCAN: And I sent those documents, just so
2 that everyone wouldn't be researching unnecessarily, if
3 that was the case.

4 THE COURT: Sure.

5 MR. MACKELCAN: But I obviously have hard copies,
6 as well. My thought was to mark a new -- this version,
7 which is actually the same as the other version, but it
8 just has the signature page of CasePro on the top of it.
9 Mark that for identification, and go from there. But
10 your Honor, however you want me to handle it.

11 THE COURT: Just mark it for identification, and go
12 from there.

13 MR. MACKELCAN: Okay.

14 THE COURT: You can cross-examine him. You can ask
15 him everything you can ask him.

16 MR. MACKELCAN: All right.

17 MR. HOYLE: And are --

18 THE COURT: Didn't you tell me this on Saturday;
19 didn't you tell me this in depo; and gee whiz, you found
20 it today; how about that? Okay?

21 MR. HOYLE: And while we made an objection on
22 Friday on authenticity grounds, I think we're now going
23 to have to have an objection on relevance grounds to the
24 contract, as well. So, I can make that at the
25 appropriate time, or we can discuss it now, before we

1 bring the jury out.

2 THE COURT: You need to go ahead and make it,
3 starting here, you know. Whatever, whatever. Okay.
4 Got it.

5 MR. HOYLE: Yes, ma'am.

6 THE COURT: Yes?

7 MR. HOYLE: Yes, your Honor.

8 THE COURT: All right. Jury, please.

9 BAILIFF: Your Honor, can I approach?

10 THE COURT: Yeah..

11 DISCUSSION, THE COURT AND BAILIFF.

12 THE COURT: All right. Juror Number 14 has a
13 stomach virus. He's gotten here today, but he doesn't
14 know if he can make it. He is Juror Number 14. He
15 is --

16 BAILIFF: Juror Number 141.

17 THE COURT: Juror Number what?

18 BAILIFF: 141.

19 THE COURT: 141. And he is an alternate. Any
20 objection to him being excused from Plaintiff?

21 MR. HOYLE: Just so I make sure I heard correctly,
22 Juror 141 is an alternate?

23 THE COURT: Juror 141 is an alternate. He is
24 Alternate Number 2. 141. He has the stomach flu. I
25 don't think we want a stomach flu going through our

1 jury.

2 MR. HOYLE: We absolutely do not, your Honor, and
3 we have no objection to him being excused, with thanks
4 for coming in today.

5 THE COURT: Very well.

6 MR. LOVELL: No objection.

7 THE COURT: Okay.

8 BAILIFF: Thank you.

9 THE COURT: Thank you. Tell him -- he probably,
10 rather than coming out and being thanked, would rather
11 visit the facilities and go home.

12 BAILIFF: Great.

13 THE COURT: Yes.

14 BAILIFF: Thank you.

15 THE COURT: With his book.

16 BAILIFF: You ready, your Honor?

17 THE COURT: Yes, we're so ready.

18 BAILIFF: Jury's entering the courtroom, your
19 Honor.

20 JURORS ENTER COURTROOM 10:36 A.M.

21 THE COURT: Good morning, ladies and gentlemen, and
22 I so hope you had a wonderful, wonderful weekend, and
23 welcome back. And at this time, we will continue with
24 the plaintiff's case. Yes, sir? Yes, sir, that's
25 right. Cross-examination. Thank you.

1 MICHAEL MCCABE, CONTINUE

2 CROSS-EXAMINATION, BY MR. MACKELCAN:

3 Q Good morning, Mr. McCabe.

4 A Good morning.

5 Q When we stopped on Friday, we were talking about
6 the process of obtaining a contract with the Navy.

7 A Correct.

8 Q Okay. Once the Navy accepts the bid from CasePro,
9 is the next step for CasePro to find people to fill the
10 positions?

11 A Correct. The first step, well, there's some
12 preliminary work about, you know, finding out what some
13 of the details of the award are, et cetera. So, under
14 this contract, they would say, here's your contract.
15 And then, they give you specifics about what positions
16 or particular things that you were supposed to perform
17 on.

18 So, then, once you confirm that, then, you're
19 responsible for recruiting the individuals. The primary
20 place that you would recruit from would be, and the
21 obvious place would be, the incumbents. From recruiting
22 to credentialing, the time might two to six months. So,
23 we would get awarded about maybe 30 days to 45 days
24 prior to the contract starting. So, the only way that
25 you would have continuity on the contract is to hire the

1 people that are in place.

2 Q Does the Navy have any input as to who CasePro
3 fills the positions with?

4 A Yes. Typically, the incumbents, we would get a
5 list. There would be two main ways you would get the
6 information on the incumbents. One, they might just
7 provide you a list. And if my memory is correct, that's
8 what they did here. They said --

9 Q Mr. McCabe, when you say, they, who is they,
10 providing you the list?

11 A The government, and specifically, the COR, which is
12 the contractors' officers' representative, would provide
13 us a list of providers, of incumbent providers.

14 Q On that list, do they designate one way or the
15 other if they want you to hire somebody, or if they
16 don't want to hire somebody?

17 A Yes. At that time, they would tell you if they did
18 not want to hire anybody. They would more than tell you
19 who they did want to hire. They would give you a list
20 and tell you don't hire these people, and they would
21 name them by name.

22 Q Okay. So, you've got a hire list from the Navy.
23 You've got a don't-hire list from the Navy.

24 A Correct.

25 Q Were Dr. Jansen, Joe McDonald, and Janice McDonald

1 on the hire list from the Navy?

2 A They were on the hire list.

3 Q Okay. And that's why you've been calling them
4 incumbents, right?

5 A Correct.

6 Q Okay. This may sound like a stupid question. Did
7 you hire anybody that was on the Navy's list of don't
8 hires?

9 A No.

10 Q Once CasePro has someone to fulfill all of the
11 positions under the contract, what happens next?

12 A So, once we have a list of who we would fill, we
13 would then go and the next step would be to make job
14 offers to the people that we're going to hire. The
15 other thing we would do is, we would initiate
16 recruiting, in case -- in case there were gaps, meaning,
17 there weren't enough incumbents to continue the
18 operations. We would then initiate recruiting for the
19 longer term, to get -- to get prepared, in case there's
20 a problem. At this point, we don't know whether there's
21 a gap or not, but we would just initiate that.

22 Q So, you're saying you would just have some extra
23 people available?

24 A Well, we would -- we would start the process of
25 recruiting, because it takes so long to recruit. So, it

1 might take -- between recruiting, it might take six
2 months.

3 Q Do you have to send -- does CasePro have to send
4 anything in to the Navy about the particular people that
5 you intend to place at the Naval Hospital?

6 A Yes. So, so, once the candidate's identified,
7 then, we're doing a credentialing process. And so, what
8 that is, is, per the contract, we gather certain
9 documents that are listed there. So, it would be things
10 like their licensing. It would be things like their --
11 any certifications. We would also perform the
12 background checks, and get past performance reviews from
13 their previous employers. So, we would gather all those
14 documents for the Navy.

15 Q And those are specified in the contract.

16 A Specified in the contract.

17 Q Okay. So, you gather up all the information. You
18 submit it to the government. What happens after that?

19 A So, then, we submit it to the government's
20 credentialing. We've prepare the documents. We do it
21 to there, and then, we just wait. We're just on hold,
22 basically, until they get the approval.

23 Q Mr. McCabe, I'm going to put a page from
24 Plaintiff's Exhibit 14, which has already been admitted
25 into evidence, up on the screen here. I believe we've

1 already looked at this exact page during your exam, but
2 do you recognize that page?

3 A Yes.

4 MR. MACKELCAN: Your Honor, I have a blowup of that
5 page. May I publish that to the jury?

6 THE COURT: All right. Will there be any
7 objection?

8 MR. HOYLE: No objection, your Honor.

9 THE COURT: Very well.

10 BY MR. MACKELCAN:

11 Q So, we're looking at the same thing, just so that
12 the jury doesn't have to crane their neck. But this is
13 a letter from Joe McDonald's employment file from
14 CasePro. Is that correct?

15 A That's correct.

16 Q All right. I want to draw your attention to this
17 first paragraph, where it says:

18 *This offer is contingent upon approval*
19 *by the U.S. Navy, to continue performing*
20 *healthcare services as an incumbent provider*
21 *under the new contract.*

22 Did I read that correctly?

23 A Correct.

24 Q Are all of the offers CasePro makes at this time,
25 when you're entering into a contract, contingent on

1 approval from the Navy?

2 A All job offers are contingent upon their approval.

3 Q There's nothing unusual about Joe McDonald's offer
4 here?

5 A Every offer would have that statement.

6 Q Does the Navy issue the actual hospital privileges
7 for the providers?

8 A That's correct, they -- the Navy issues the
9 privileging.

10 Q Does CasePro ever hire a worker that's not approved
11 by the Navy?

12 A No.

13 Q Mr. McCabe, I think on Friday, you used the term
14 *personal service contract*. Is there such a thing as a
15 non-personal services contract in your business?

16 A Yes. There -- there would be a non-personal
17 services contract.

18 Q Okay. What is the difference between a personal
19 service contract, like the one that CasePro had with the
20 Navy that placed workers at the Naval Hospital,
21 Beaufort, and a non-personal services contract?

22 A In a non-personal services contract, the contractor
23 would not only provide services, but they would provide
24 the management and supervision, as well. So, under a
25 non-personal services contract, you would be required to

1 have supervision, control of a facility. You would be
2 responsible, really, for all aspects of the operation.

3 In a personal services contract, it's created
4 because the -- in this case, the Navy maintains control
5 of their facilities and their operations. So, the
6 contractor just provides people to them that are
7 qualified, according to their scope of work, but CasePro
8 doesn't provide any supervision or guidance. No
9 policies and procedures to the facility. That all comes
10 from the government side, and CasePro doesn't do that.
11 In a non-personal services, we would provide policies,
12 procedures, et cetera.

13 Q To be clear, this was a personal services contract.

14 A This was a personal services contract.

15 Q Where CasePro provided people, to use your words.

16 A People, yes.

17 MR. MACKELCAN: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 BY MR. MACKELCAN:

21 Q Mr. McCabe, I'm handing you what's been marked for
22 identification Defendant's Exhibit 3.

23 A Okay.

24 Q Do you recognize that document?

25 A Yes.

1 Q And what is it?

2 A It is our contract with the Navy for -- that
3 covered the Beaufort hospital.

4 MR. MACKELCAN: Your Honor, at this time, I would
5 move to admit Defendant's Exhibit 3 into evidence.

6 MR. HOYLE: We object on the basis of relevance,
7 your Honor.

8 THE COURT: Okay. Okay. Overruled. You may
9 proceed.

10 ITEM IDENTIFIED AS ORIGINAL SIGNED
11 CONTRACT BETWEEN UNITED STATES NAVAL
12 MEDICAL LOGISTICS COMMAND AND CASEPRO
13 MARKED DEFENDANT'S EXHIBIT NUMBER 3
14 ADMITTED AS EVIDENCE.

15 BY MR. MACKELCAN:

16 Q Mr. McCabe, if you'd turn -- you can either turn to
17 21, or just look up at the screen. Okay. Are you
18 familiar with that Paragraph 2.3 that I have
19 highlighted?

20 A Yes.

21 Q Okay. And it says HCW. Does HCW stand for
22 healthcare workers?

23 A Healthcare workers.

24 Q All right. So, the healthcare workers in this
25 particular case are Dr. Jansen, Joe McDonald, and Janice

1 McDonald?

2 A Correct.

3 Q All right.

4 *HCWs providing services under this*
5 *contract shall be rendering personal*
6 *services to the government, and shall be*
7 *subject to day-to-day supervision and*
8 *control by government personnel.*
9 *Supervision and control is the process*
10 *by which the individual HCW receives*
11 *technical guidance, direction, and approval*
12 *with regard to a task within the*
13 *requirements of this contract.*

14 Did I read that correctly?

15 A Correct.

16 Q When we were talking before about a personal
17 services contract, is this the paragraph that you were
18 referring to that describes that personal services
19 contract?

20 A That's correct.

21 Q And does this actually -- accurately describe the
22 situation when the workers are at the -- were at the
23 Naval Hospital back in 2012?

24 A Yes, it does.

25 Q Does CasePro direct or supervise the way Dr.

1 Jansen, Joe McDonald, Janice McDonald practice medicine
2 at the Naval Hospital?

3 A No.

4 Q Does anyone from CasePro review their performance
5 from a medical standpoint?

6 A No.

7 Q Why not?

8 A Basically, it's an administrative and staffing
9 contract. And so, we don't have the resources to
10 evaluate them. We -- further, we don't have access to
11 the facilities, so we can't place personnel or
12 supervision there, so we don't.

13 Q And when you say *have access to the facilities*, are
14 you talking about access to medical records and files
15 and that sort of thing?

16 A Everything. Physical access or records. There's
17 no access at all granted to us.

18 Q So, who evaluates the performance of these workers
19 while they're at the Beaufort Naval Hospital?

20 A The government.

21 Q Does someone from the government or the Navy
22 contact CasePro if there's a concern about the
23 performance of one of these healthcare workers' medical
24 performance?

25 A They don't -- we don't give advice on them. If

1 they reach the point where they're, you know, alerting
2 us that there's a problem, they might alert us, but we
3 don't consult with them.

4 Q Did anyone from the Navy ever contact or alert
5 CasePro that there was a problem with the treatment of
6 Kalvin Hunt on February 24, 2012?

7 A No.

8 Q Let's take a look a couple pages from the task
9 order that was entered as Plaintiff's Exhibit 21. Mr.
10 McCabe, are you familiar with this part of the task
11 order?

12 A Yes.

13 Q All right. Here on the task order, it says:

14 *Site of Service: The contractor*
15 *shall provide personnel for service in the*
16 *emergency room at the Naval Hospital, Beaufort,*
17 *S.C. The Emergency Room Division operates*
18 *under the hospital's primary care department.*

19 Does CasePro have any involvement in the management
20 of the emergency room division?

21 A No.

22 Q Did CasePro have any involvement in the management
23 of the primary care department?

24 A No.

25 Q Further down on that page, it talks about staffing

1 and scheduling.

2 Contractor shall supplement active
3 duty Navy staff assigned to the emergency
4 room. The E.R. manager will provide
5 administrative supervision of all activities
6 within the division.

7 We've heard testimony about a Lieutenant Brannon
8 being the E.R. department head. Do you recall that?

9 A Yes.

10 Q Okay. Lieutenant Brannon wasn't a CasePro
11 employee, was she?

12 A No.

13 Q Reading on:

14 The emergency room will operate
15 under the clinical oversight of the E.R.
16 medical director, who does not provide
17 regular staff position service in the
18 emergency room.

19 Again, does CasePro employ the E.R. medical
20 director?

21 A No.

22 Q So, the clinical oversight of the healthcare
23 workers comes from the E.R. medical director, a non-
24 CasePro employee, correct?

25 A That's correct.

1 Q We heard a little bit about the commanding officer
2 and his involvement, or her involvement. On this same
3 page:

4 *Commanding officer will not privilege*
5 *more than ten physicians to cover the*
6 *required schedule.*

7 Was Dr. Jansen, on February 24, 2012, one of the
8 ten physicians that the commanding officer privileged to
9 perform healthcare services at the Beaufort Naval
10 Hospital?

11 A Yes, he was.

12 MR. MACKELCAN: I don't have any further questions.

13 THE COURT: All right. Re-direct.

14 MR. HOYLE: Yes, your Honor.

15 MICHAEL MCCABE

16 RE-DIRECT EXAMINATION, BY MR. HOYLE:

17 Q Good morning, Mr. McCabe.

18 A Good morning.

19 Q I hope you had a nice weekend here in Beaufort.
20 Prior counsel was showing you 131-page document that
21 they marked as Defendant's 3. Do you still have that
22 with you, sir?

23 A Yes.

24 Q Let me ask you a question. Does this big contract,
25 is this a contract that CasePro, Incorporated, sent to

1 Dr. Jansen, such that he would have had it prior to
2 February 24, 2012?

3 A Would we have sent the contract to Dr. Jansen? No.

4 Q What about Nurse Janice McDonald? Would she have
5 had this contract back on February 24, 2012?

6 A No.

7 Q Same question with respect to her husband, Nurse
8 Joe McDonald. Would he have had this contract on
9 February 24, 2012?

10 A No.

11 Q And in looking at the plain text of this contract,
12 I asked you some questions on my direct examination on
13 Friday about whether or not you saw Ms. Rebecca
14 Delaney's name anywhere on the contract. Now that
15 you've got a copy of this contract into evidence, do you
16 see Ms. Delaney's name anywhere on this contract?

17 A No.

18 Q And same question with respect to Justin Miller.

19 A No.

20 Q Fair to say this is solely a contract between your
21 company and the United States Naval Medical Logistics
22 Command, correct?

23 A Correct.

24 Q Okay. Let's go back in time to 2011. That's a
25 year before the incident involving Calvin Hunt, correct?

1 A Correct.

2 Q We looked at an email that was in Dr. Jansen's
3 personnel file on Friday. Do you recall that email?

4 A Is it the one written by Craig Martin?

5 Q Yes, sir.

6 A Yes.

7 Q Okay. And that's an email from Craig Martin. And
8 Craig Martin worked for you back in that time frame,
9 correct?

10 A Correct.

11 Q He worked out there in the corporate office of
12 CasePro, Incorporated, in San Antonio, Texas, correct?

13 A Correct.

14 Q And Mr. Martin, while fully within the scope of his
15 business as one of your subordinate CasePro employees,
16 typed up an email that got sent off to someone else,
17 correct?

18 A Correct.

19 Q And that email was specifically about the actions
20 and inactions of Dr. Christian Jansen, correct?

21 A Correct.

22 Q And we learned in that email that there was, (1) a
23 concern about Dr. Jansen, correct?

24 A Correct.

25 Q And that the concern, as expressed by the persons

1 here in Beaufort, South Carolina, was about the way Dr.
2 Jansen had done his work, correct?

3 A I don't think we had enough information to draw
4 that conclusion. Can I expand on that?

5 Q You can say whatever you want, sir.

6 A The -- what that email actually was, was, we had a
7 -- a verbal discussion between Craig Martin and the COR
8 that referenced the commanding officer, the C.O. So, he
9 then, -- Craig then, trying to find out what was going
10 on, and it referenced an event about six months prior or
11 so. The event that they were talking about occurred in
12 November. CasePro didn't have any knowledge of what
13 happened until then.

14 So, then, Dr. Moore has conversation, and he
15 understands a little bit more about what happened.
16 Then, the purpose of the email actually was to bring the
17 contracting officer, who has jurisdiction over our
18 contract, into the discussion. So, we're -- we're
19 summarizing, because we're concerned about what's
20 happened, to the contracting officer.

21 And then, the critical piece of it is, we asked for
22 documentation, and they won't give us any documentation.
23 So, at this point, we have some verbal conversations.
24 The government at Beaufort won't give us their
25 documentation. They hold it as privileged, I suppose.

1 I don't know what their term would be, but they won't
2 provide us documents, so we're summarizing it to the
3 contracting officer, so that the contracting officer can
4 take action. And they would make a determination,
5 because they would have access to the documents that we
6 don't.

7 And then, the contracting officer would come back
8 and say, please remove this person or not. They would
9 make that determination, because we don't have any
10 information. That's a overview of what was happening.

11 Q And I appreciate that long information, but let's
12 go back.

13 MR. HOYLE: And can we pull that email up, Mr.
14 Knowles? There we go. All right. Madam Clerk, can you
15 switch it, so we can have this on all three screens,
16 please, ma'am.

17 BY MR. HOYLE:

18 Q All right. Did I just hear you say that you didn't
19 have enough information at this time? Is that what you
20 told us, correct?

21 A I was referencing the statement in there where the
22 government wouldn't provide us with the information
23 about the incident.

24 Q Okay. Well, let's go over the information you did
25 have at that point in time. Okay? Will you agree with

1 me that, as of April of 2000 and -- April the 28th,
2 2010, that CasePro, Incorporated, had knowledge that
3 there was, (1) a dead United States Marine at the Naval
4 Hospital, and (2) that there were concerns about whether
5 or not Dr. Jansen had met the standard of care. Can we
6 agree on that?

7 A Correct.

8 Q Okay. So, you knew those two things, correct?

9 A Correct.

10 Q And we know that, by the plain text of this email,
11 that --

12 MR. HOYLE: go to Paragraph 5, Mr. Knowles.

13 BY MR. HOYLE:

14 Q You were defining some terms earlier with prior
15 counsel. COR, that's commanding officers'
16 representative.

17 A Correct. Contracting officers representative.

18 Q Contracting officers representative. That would
19 have something to do with this big 132-page document
20 that you all never sent to Dr. Jansen, Nurse McDonald,
21 and Nurse McDonald, correct?

22 A That would be the designated person from the
23 contracting office.

24 Q And that person, the contracting officers
25 representative, that was a lady by the name of Deb Mayo,

1 correct?

2 A I believe so, at that time.

3 Q And Ms. Mayo actually lives here in Beaufort
4 County, and works at the Naval Hospital, correct?

5 A Correct.

6 Q All right. We'll hear from Ms. Mayo later in this
7 trial. But Paragraph 5 tells us that the COR, the
8 contracting officers representative, asked CasePro
9 yesterday to terminate Dr. Jansen immediately, by
10 direction of the C.O. That's the commanding officer,
11 correct?

12 A Correct.

13 Q Short of President Obama or a member of the Joint
14 Chiefs of Staff, the commanding officer is going to be
15 the senior-most military official over there at the
16 Naval Hospital, correct?

17 A As far as I know.

18 Q Based on your understanding, since you never
19 served, that would be a fair summary, correct?

20 A I don't under -- he's in charge, I believe. I
21 don't know their structure.

22 Q Okay. He sounds pretty high up the food chain.
23 You'd agree with that.

24 A Sure.

25 Q Okay. So, the commanding officer told you he

1 wanted Dr. Jansen fired, correct?

2 A That's what the COR said.

3 Q And do you think the COR made that up?

4 A No.

5 Q Okay. No reason to doubt the veracity of the
6 information that you had back in April of 2010, that the
7 commanding officer of the Naval Hospital said get Dr.
8 Jansen gone. Do you agree with that?

9 A I don't agree that, that's what he said. I wasn't
10 privy to their conversation.

11 Q Do you pick up the telephone yourself and call the
12 commanding officer here in Beaufort?

13 A No.

14 Q Did you pick up the telephone and call anybody here
15 in South Carolina when you had this information, back in
16 2000 --

17 MR. HOYLE: gosh, what's the date again, Mr.
18 Knowles? Can we see the date?

19 BY MR. HOYLE:

20 Q Back in 2010, almost two years before Calvin Hunt
21 showed up at the Naval Hospital, did you pick up the
22 telephone and call anybody here in South Carolina about
23 this dead United States Marine?

24 A Me personally?

25 Q Yes, sir.

1 A No.

2 Q But you'll agree with me here today, the commanding
3 officer, at least by this email, wanted Dr. Jansen gone,
4 correct?

5 A I would assume that, that's accurate.

6 Q And when the commanding officer wanted this doctor
7 gone, he didn't go talk to the doctor himself and get
8 gone. He called you, out there in Texas, correct?

9 MR. MACKELCAN: Objection. Misstatement of the
10 facts.

11 BY MR. HOYLE:

12 A No, he did not call me.

13 Q He called one of your subordinates, correct?

14 A The commanding officer did -- never spoke to
15 CasePro.

16 Q The commanding officer had one of his civilian
17 employees, a C.O.R., call one of your subordinates,
18 correct?

19 A That's who spoke to our person, yes.

20 Q No dispute from you about that, correct?

21 A I don't dispute that, no.

22 Q And you weren't kept in the dark about this,
23 correct?

24 A That's correct.

25 Q People actually came into your office, in the

1 corporate headquarters, to talk to you about the
2 situation, correct?

3 A That's correct.

4 Q And you recall having those conversations, correct?

5 A Yes.

6 Q And you knew that there was a concern about a
7 specific doctor by the name of Chris Jansen right here
8 in Beaufort, South Carolina, correct?

9 A Correct.

10 Q And you knew, even if you knew nothing else, you
11 knew there was a dead United States Marine.

12 MR. MACKELCAN: Objection, your Honor. This is
13 argumentative.

14 THE COURT: Overruled. Cross-examination.

15 BY MR. HOYLE:

16 Q Do you remember my question, sir?

17 A No. Go ahead.

18 Q What we've been talking about, what you knew and
19 what you didn't know. But you at least knew that this
20 concern was about a dead United States Marine, correct?

21 A That's correct.

22 Q Did you ever make any inquiry as to how this United
23 States Marine came to pass away?

24 A What we did was, we -- because the -- we did make
25 an inquiry, and they would not give us the information.

1 So, we then took it to the contracting officer, who had
2 authority in this case.

3 Q All right. But going back to this concept of
4 authority, you think the commanding officer at the Naval
5 Hospital knows how to get rid of somebody?

6 A The -- the --

7 MR. MACKELCAN: Objection. Calls for speculation.

8 THE COURT: Sustained.

9 BY MR. HOYLE:

10 Q Mr. McCabe, let me ask you a question. The primary
11 point and purpose of your company's business in 2010 and
12 2011 and 2012 was making money off government contracts,
13 correct?

14 A We earned income off of them, yes.

15 Q Made more money doing that than you did other
16 things your business was doing, correct?

17 A That's correct.

18 Q Okay. So, you would have had to have interacted as
19 part of those sources of income with people in the
20 military, correct

21 A Me personally, or CasePro, the company?

22 Q CasePro, the company, sir.

23 A Representatives of CasePro would have interacted.

24 Q Okay. But did you personally have anything to do
25 with that?

1 A I personally didn't intervene down or -- I say
2 intervene. I didn't manage those contracts directly.

3 Q Do you think Craig Martin would be a better person
4 to talk to about some of these things than you?

5 A Not about the bigger contract issues, no.

6 Q But again, going back to April of 2010, you say
7 that your company made an inquiry. Was that an inquiry
8 for information, or merely an inquiry for documents?

9 A What we wanted to know, when we make the inquiry
10 is, we get a verbal, and something's happened, we try to
11 talk to, you know, the local people and say, okay, well,
12 tell us what happened. And then, we ask them for any
13 documents that are related to the -- the situation, so
14 that we can look at the documents and understand really
15 what's happened. We didn't receive any documents from
16 them.

17 Q Now, there's been some testimony about a fellow by
18 the name of Scott Moore. Do you recall that?

19 A Yes.

20 Q Scott Moore, did he get his paycheck from the
21 federal government, or did he get his check from
22 CasePro?

23 A CasePro.

24 Q He was a CasePro employee, correct?

25 A That's correct.

1 Q And if we were to go through his personnel file,
2 we'd see some of the same documents that we've seen with
3 respect to Nurse Joe and Nurse Janice and Dr. Jansen,
4 correct?

5 A That's correct.

6 Q Things like adherence to your company's policies,
7 correct?

8 A Correct.

9 Q Things like W-4s so that your company could
10 withhold income taxes, and then, remit them to
11 Washington, correct?

12 A Correct.

13 Q An acknowledgment of the receipt of the employee
14 handbook of your company, correct?

15 A Correct.

16 Q Okay. But Dr. Moore, your employee, completed, it
17 says here, a peer review in the January/February time
18 frame. His finding was that standard of care was not
19 met, correct?

20 A That's correct.

21 Q Did you yourself ever actually pick up the
22 telephone and call Dr. Scott Moore?

23 A No.

24 Q Do you know if any of your employees working for
25 you directly in the corporate office out in Texas, if

1 any of them actually talked to Dr. Moore?

2 A I believe that, that indicated that Craig Martin
3 spoke to Dr. Moore. That's where we received the
4 information from.

5 Q But with respect to this death, even though Dr.
6 Moore had apparently completed a peer review and found
7 that the standard of care was not met, you never formed
8 an understanding at that time as to how it is this
9 unfortunate death occurred. Is that fair?

10 A I did not know how that had occurred. Just that an
11 incident had occurred. But I didn't know the medical
12 details, if you will, of what happened.

13 Q Did you know this young man's age?

14 A No.

15 Q Do you know if he left behind a wife and children?

16 A No.

17 Q Didn't know anything, did you?

18 A No.

19 Q Other than there was a dead United States Marine,
20 and the finding of standard of care was not met, and the
21 commanding officer at the Naval Hospital here in
22 Beaufort wanted you to fire Dr. Jansen, correct?

23 A The problem with that statement is, is this
24 information is coming off a peer review that CasePro
25 doesn't have access to. So, CasePro shouldn't get a

1 peer review, and doesn't get peer reviews. So, what I
2 knew was very limited. And so, what we did was try to
3 enlist someone from the contracting office who had
4 authority over those contracts to look at those
5 documents and render an opinion on what we should do.

6 Q But going back to this, sir, you knew there was a
7 dead Marine that Dr. Jansen had either treated or not
8 treated --

9 MR. MACKELCAN: Objection. Asked and answered.

10 THE COURT: I need to hear it first. Okay.

11 BY MR. HOYLE:

12 Q Mr. McCabe, I'm just going to ask the question.
13 You didn't fire Dr. Jansen. Do you agree with me on
14 that?

15 A No.

16 Q Didn't fire him in 2010, and that you had the
17 information from Dr. Jansen's personnel file at the
18 fateful time frame, correct?

19 A Correct.

20 Q Had information that the commanding officer wanted
21 you to fire him, correct?

22 A My main answer to that is, the commanding officer
23 could have gone through the privileging board, removed
24 his privileges, and removed him from the hospital. The
25 avenue of going through the contractor, his avenue was

1 to go through the contracting officer, and have the
2 contracting officer tell us to remove the person. So,
3 he had avenues, if he wanted him removed, but CasePro
4 didn't have any information to do anything. And so, the
5 commander could have removed him, yes, I agree with
6 that, but not through the mechanism of the COR at the
7 site.

8 Q You didn't fire Dr. Jansen.

9 A No.

10 Q Why?

11 A Because we didn't have sufficient information or,
12 in the end, expertise to tell about a medical incident
13 that occurred in the E.R. room. If they would have
14 provided us those documents, we still would have gone to
15 the COR, or the K.O., the contracting officer, and said,
16 let's get together; we have a problem; and you know,
17 what do you want us to do; but they didn't give us the
18 information. But we don't have the expertise, anyway.

19 Q Well, let's talk about who might have that
20 expertise. Dr. Scott Moore worked for you, correct?

21 A Dr. Scott Moore was hired by us to do the peer
22 reviews. The peer reviews were privileged information
23 of the hospital, so he reported that information
24 directly to the hospital, not to CasePro.

25 Q But CasePro had knowledge of the conclusion of Dr.

1 Moore's work, correct?

2 A He probably shouldn't have given us that.

3 Q Taking that aside, that speculation that you just
4 offered us, do you agree with me unequivocally that, at
5 least by April of 2010, CasePro, Incorporated, and the
6 officers, directors, and employees, including yourself,
7 down here at the corporate headquarters, had information
8 that Dr. Moore completed this peer review in the
9 January/February time frame, and that his finding was
10 the standard of care not met, correct?

11 A That's correct.

12 Q And certainly, since you all were giving Dr. Moore
13 a paycheck to do those peer reviews, you had, on some
14 level, some level, had to believe that Dr. Moore had the
15 expertise to do those reviews. You'd agree with that,
16 correct?

17 A Dr. Moore was qualified to do those reviews.

18 Q And Dr. Moore looked at all that Dr. Jansen had
19 done, with respect to this United States Marine,
20 correct?

21 MR. MACKELCAN: Objection. Calls for speculation.
22 He doesn't know what Scott Moore looks at in a peer
23 review.

24 THE COURT: Sustained.

25 BY MR. HOYLE:

1 Q And when Dr. Moore completed his review, it was his
2 conclusion that Dr. Jansen fell below the appropriate
3 standard of care, correct?

4 A That was a verbal indication, so we don't have the
5 peer review to understand all the circumstances around
6 what occurred.

7 Q You just had the conclusion, correct?

8 A I don't even know if that's a conclusion on the
9 peer review or that's a line item on peer review.

10 Q Well, let's use a different word. Will you agree
11 with me that, by the plain text of this email, that the
12 finding of Dr. Moore's peer review was that the standard
13 of care was not met?

14 A Yes.

15 Q No dispute on that.

16 A No.

17 Q We looked on Friday, before you had the time to
18 gather your thoughts over the weekend, at the employee
19 handbook for your company. Do you recall that?

20 A Yes.

21 Q Sir, I'm going to --

22 MR. HOYLE: Permission to approach, your Honor?

23 THE COURT: Yes.

24 BY MR. HOYLE:

25 Q Sir, I'm approaching you with the employee handbook

1 that was moved into evidence on Friday. It's
2 Plaintiff's Exhibit Number 15, and there's a section in
3 this handbook called *Discipline*, and I'm going to direct
4 your attention to the second paragraph of that. Okay?

5 A Okay.

6 Q Can you read for the Court and jury, that second
7 paragraph that I just directed your attention to?

8 A *Employment compensation with CasePro is*
9 *at will, in that an employee can be*
10 *terminated with or without cause and*
11 *without notice at any time, at the option*
12 *of either CasePro or the employee, except*
13 *as otherwise provided by law.*

14 Q Thank you, sir. Is a dead United States Marine who
15 dies as a result of treatment that falls below the
16 standard of care, cause, in your mind, to fire an
17 employee? Yes or no.

18 A I'm not qualified to evaluate the E.R. physicians'
19 activities at the E.R. That's what the peer review is
20 for. That's what the credentialing -- or the -- the --
21 the -- what is it called -- the privileging committee at
22 the hospital. That's why they did an investigation.
23 They didn't provide us with the information.

24 So, my answer is, is I don't have sufficient
25 information to know what occurred, and we're relying on

1 the hospital to do it. They're in -- they're managing
2 the department. They would have the information. They
3 would have all of the information. CasePro has limited
4 information.

5 Q And as a result, Dr. Jansen was at the emergency
6 room on that fateful Friday, February 24, 2012, correct?

7 A Correct.

8 MR. HOYLE: I have no further questions at this
9 time.

10 THE COURT: All right. Re-cross.

11 MICHAEL MCCABE

12 RE-CROSS EXAMINATION, BY MR. MACKELCAN:

13 Q Mr. McCabe, to your knowledge, did the Navy remove
14 Dr. Jansen's privileges to provide services at the
15 hospital between the time of this Craig Martin email
16 that we've looked at and the incident involving in
17 Calvin Hunt?

18 A No.

19 Q Okay. Did CasePro ever receive any instruction
20 from the K.O., I think you referred to it as the proper
21 channels, to remove Dr. Jansen after the Craig Martin
22 email?

23 A No.

24 MR. MACKELCAN: Nothing further. Thank you.

25 THE COURT: All right. You may come back down.

1 All right. Call your next witness, please.

2 MR. HOYLE: Your Honor, at this time, the
3 Plaintiff's going to call the videotaped deposition of
4 Craig Martin.

5 THE COURT: All right.

6 MR. HOYLE: I believe we have three issues we need
7 to address with your Honor about that transcript.

8 THE COURT: Okay. All right. Let me have you all
9 approach.

10 OBJECTIONS TO CRAIG MARTIN VIDEOTAPED
11 DEPOSITION:

12 LOVELL, MR. MACKELCAN, AND MS. LEMIYU:

13 THE COURT: Okay. All right. This one, it was
14 impossible for me to deal with what looks like about one
15 -- looks like about 20 pages of deposition, and then,
16 one big, lumpy --

17 MR. MACKELCAN: We've broken it down further for
18 you.

19 THE COURT: All right. Great.

20 MR. MACKELCAN: And I think reached some agreement.

21 THE COURT: Okay. Good.

22 MR. MACKELCAN: So, we're moving in the right
23 direction.

24 THE COURT: I don't care about the agreement. Tell
25 me about where there's not an agreement. Okay.

1 MR. MACKELCAN: Okay. Our understanding is that,
2 the first part of it, so starting where it says, Craig
3 Martin, through the objection on this next -- well,
4 yeah. That full page, and then, the next page, you've
5 already ruled that in.

6 THE COURT: Okay. Yes.

7 MR. MACKELCAN: Because that's in, so that's in.

8 THE COURT: Yes. Yes.

9 MR. MACKELCAN: Okay.

10 MR. HOYLE: So, we're on what page?

11 MR. MACKELCAN: We're on the bottom of 12.

12 THE COURT: Okay. How long is this deposition
13 going to be?

14 MR. HOYLE: It's about an hour.

15 THE COURT: About an hour.

16 MR. HOYLE: Maybe a little less, depending upon
17 your rulings, maybe.

18 END BENCH CONFERENCE.

19 THE COURT: This next deposition is going to be
20 about an hour. It's not going to take me but about two
21 or three more minutes to rule on what I'm doing now.
22 Does anybody need to take a comfort break or going to
23 need one in an hour? Wonderful.

24 Ladies and gentlemen, step to your jury room. Do
25 not discuss this matter or allow anyone to discuss it

1 with you. Leave your notebooks in your seat, and when
2 you guys are ready to proceed, let me know. Just knock
3 on the door. Thank you.

4 JURORS LEAVE COURTROOM 10:25 A.M.

5 CONTINUE BENCH CONFERENCE REGARDING

6 OBJECTIONS:

7 THE COURT: Okay. Keep going.

8 MR. MACKELCAN: So, it actually -- that --

9 THE COURT: I see the next one goes -- then, it
10 just keeps going, like, forever. And then, that's when
11 we get the bulk. Tell me what the next objection is.

12 MR. MACKELCAN: Okay. First thing is, though,
13 could we have the same limited instruction that we've
14 had related to this email?

15 THE COURT: Yeah. Absolutely.

16 MR. MACKELCAN: Okay. Starting with where it says
17 Page 18, we've got additional objections, both -- I know
18 you've dealt with the peer review aspect of it, but both
19 on relevancy and the fact that this is an ordinary
20 negligence case, and talking about conversations with
21 Scott Moore about the standard of care.

22 THE COURT: Yeah.

23 MR. MACKELCAN: Hearsay as to -- and again, I've
24 broken it down further, but hearsay as to Craig Martin's
25 communications with Scott Moore. Scott Moore is a

1 Beaufort County resident within subpoena. We both have
2 him under subpoena, or had him, last week. So, you know

3 MR. HOYLE: In response to the hearsay, your Honor,
4 I would say that, that merely goes to notice. It's not
5 necessarily going to the truth of the matter asserted.
6 It's going to the notice that the company had about
7 their doctor.

8 THE COURT: Okay. All right.

9 MR. MACKELCAN: There's quite a bit of evidence of
10 notice, without getting into his conversations with
11 Scott Moore that's hearsay. I mean.

12 THE COURT: Notice of -- tell me, notice of what?

13 MR. HOYLE: Notice --

14 THE COURT: Notice.

15 MR. HOYLE: Notice of concerns about Dr. Jansen and
16 specific control of Dr. Jansen as to whether or not he
17 should be --

18 THE COURT: Well, now, control is different than
19 notice.

20 MR. HOYLE: I agree.

21 THE COURT: Okay.

22 MR. HOYLE: But I think these are interrelated,
23 your Honor.

24 THE COURT: Well, let me tell you what my concern
25 is about the notice. If it's going to be propensity

1 evidence, then, I don't think it's -- it would be -- it
2 would be excluded. However, I do think -- I do think
3 that it is admissible to show control, not even
4 necessarily for the truth of the matter asserted, but it
5 does and is relevant with regards to the issue of
6 control.

7 MR. HOYLE: Because there are a number of concerns
8 that Dr. Moore communicates to Craig Martin not just
9 this incident that involved the dead Marine, but
10 concerns about Dr. Jansen sleeping on the job; Dr.
11 Jansen not getting patients clear enough and all -- and
12 again, if Dr. Moore thinks that he should be talking to
13 somebody at the Navy, he could do that.

14 THE COURT: That's control.

15 MR. HOYLE: Exactly, your Honor.

16 THE COURT: That's the issue of control. That's
17 not the issue -- that's not propensity. That's the
18 issue of control.

19 MR. HOYLE: I agree with your Honor completely.

20 THE COURT: Okay.

21 MR. HOYLE: I think I may be just be
22 inarticulating, inarticulate this morning.

23 THE COURT: You're not inarticulate at all. I
24 think that you're a smart trial lawyer, and you're going
25 to put as much out there as you need to, so. But I do

1 think it's relevant on the issue of control. Talk to me
2 about control, because, remember, as I understand it,
3 there is a continuing position of the defendant that
4 these individuals do not work for CasePro. And so, --

5 MR. MACKELCAN: That's not exactly the position.

6 THE COURT: Okay. So, that's what I understood
7 last week that was the position, so what?

8 MR. MACKELCAN: The position is that they don't
9 have the authority to control the way that they practice
10 medicine at the Naval Hospital, and to the extent that
11 there were acts or omissions --

12 THE COURT: That's not what I was told last week.
13 Do I need to go get a transcript? Because I am quite
14 confident that it was the position last week of CasePro
15 that these individuals did not work for CasePro.

16 MR. MACKELCAN: That has never been our position.
17 I admitted in open court that they are employees. We've
18 been referring to them as employees. Our respondeat
19 superior argument is entirely based on the supervision
20 and control at the Naval Hospital.

21 THE COURT: Gotcha. Thank you. Thank you for
22 that, Mr. Mackelcan. Exactly.

23 MR. MACKELCAN: There's no debate that they're
24 employees.

25 THE COURT: Gotcha. Okay. In other words, it is

1 the position of CasePro that these individuals can be
2 employees of CasePro, just that respondent superior
3 doesn't apply. That theory doesn't apply.

4 MR. MACKELCAN: For their minimal performance.

5 THE COURT: Gotcha. Gotcha. Gotcha. Okay. Whew.
6 Thank you for clearing that up. Thank you for clearing
7 that up. Okay. You're exactly -- and I agree with you
8 completely. I was a little too simplistic on that
9 issue. I think you're exactly correct. And let this --
10 I want everyone to be clear that I think that is
11 absolutely correct; that the issue really is focused on
12 respondent superior and control with regards to
13 respondeat superior.

14 MR. MACKELCAN: Correct.

15 THE COURT: Okay. Very well. So, now. So, then,
16 the issue of control, talk to me about the issue of
17 control, respond superior, talk to me about that. Why
18 isn't this evidence on the issue of control vis a vis
19 medical performance and CasePro and respondeat superior,
20 why isn't this testimony very much on point?

21 MR. MACKELCAN: If it's for the same limiting
22 instruction, --

23 THE COURT: Yeah, of course.

24 MR. MACKELCAN: -- it's only for the purpose of
25 control, I think we run into, you know, an issue where

1 it's, I mean, Mr. Hoyle mentioned it, that he's now
2 talking about notice, and obviously, we're talking about
3 standard of care. And you know, again, a standard-of-
4 care finding in an ordinary negligence case, you know, I
5 think, again, we're now back into that issue where we
6 have a risk of confusing the jury about standard of
7 care, when that's not really what we're talking about in
8 this case.

9 THE COURT: You're absolutely entitled to a
10 limiting instruction. Again, and I'm happy to give it.
11 If you want to spice it up a little bit, let me know.
12 Or otherwise, I'll use the one that I had last week, the
13 same one. But if you want -- I'll hand it back to you.

14 MR. MACKELCAN: Yeah.

15 THE COURT: If you want to spice it up a little
16 bit.

17 MR. MACKELCAN: Probably my brain is working a
18 little better today than it was at the end of last week.

19 THE COURT: Your brain was magnificent last week,
20 as it is today, sir.

21 MR. MACKELCAN: All right. As we're moving down,
22 there are some opinion questions --

23 THE COURT: Okay.

24 MR. MACKELCAN: -- about whether or not Mr. Martin
25 would have terminated, and what he would have done with

1 Dr. Jansen, and whether he would have had health, you
2 know, provide services. But prior to that, he had told
3 -- testified that he had no authority to terminate
4 anybody. So, I think the combination there, you're
5 asking somebody who's already said that he can't
6 terminate them, you're asking him what he would have
7 done.

8 THE COURT: Again, it goes to control, because that
9 really -- that really -- it hones in on that subject,
10 because, if he says, at one point, you know, I have --
11 we have major problems with this individual; so I'm
12 trying to express to CasePro that we have major problems
13 with this individual; what would you have done; oh, I'd
14 have fired him on the spot, but I couldn't. I think
15 that very much -- that very much puts the spotlight on
16 the issue of control as it relates to respondent
17 superior.

18 One of the concerns that I have is the duration of,
19 you know, of this deposition. And you need to just
20 decide when you want to stop and stand, and have the
21 limited instruction. I'm much more than willing to do
22 it two or three times. You with me?

23 MR. MACKELCAN: Okay. I am.

24 THE COURT: And it's a good time to stop and stand,
25 over an hour deposition. You all let me know.

1 MR. HOYLE: And Judge, again, just for purposes of
2 the record, I'll talk slow. This includes both the
3 Defendant's and Plaintiff's page and line designations.

4 THE COURT: Yeah. You had some objection as to the
5 form of the question. Do you want to deal -- have you
6 looked back at those, because it looks like they were
7 corrected.

8 MR. MACKELCAN: That was what my preference was,
9 and I just re-asked the question after he objected to
10 the form. So, that was why I --

11 MR. HOYLE: I think he fixed it.

12 THE COURT: I think so, too. Have you all taken
13 out the --

14 MR. HOYLE: Mr. Knowles, have we taken out the
15 objecting improperly? Yes, we have. Mr. Knowles
16 indicates we have. He makes me look very good, Judge.

17 THE COURT: He's very proud of that.

18 MR. HOYLE: It's a full-time job.

19 THE COURT: He will be putting in for a raise as
20 soon as you all get back to Charleston.

21 MR. HOYLE: I can't control him.

22 THE COURT: He specifically isn't listening to
23 that. I don't blame him. Don't. Okay. What else we
24 got?

25 MR. HOYLE: Yeah. We withdrew --

1 THE COURT: I don't care.

2 MR. MACKELCAN: There's some testimony 8(a) stuff.
3 We're not letting -- we'll come back to and play that
4 later if we get a verdict.

5 THE COURT: You're like me, just the bottom line.
6 Give me some B.L. Great

7 All right. Now, remember, if you want to jazz that
8 one up, do it. You all just look at it, and -- and when
9 you are feeling a stop-and-stand and limiting
10 instruction, I want you to feel very free to stand up
11 and let me know.

12 MR. MACKELCAN: Okay.

13 THE COURT: That's not a problem, because it's
14 important that -- I think the testimony is important on
15 the issue of control. However, I'm very sensitive, and
16 I don't want the jury going into anything other than
17 control. Only the issue of control. Okay?

18 MR. MACKELCAN: Okay.

19 THE COURT: All right.

20 MR. HOYLE: Thank you, your Honor.

21 MR. MACKELCAN: Thank you.

22 THE COURT: Thank you all.

23 MR. HOYLE: And then, I anticipate, for planning
24 purposes, we'll have a live witness this afternoon.

25 END BENCH CONFERENCE.

1 OFF THE RECORD 11:28 A.M.

2 BACK ON THE RECORD 11:41 A.M.

3 BY THE COURT:

4 THE COURT: All right. Let's have the jury.

5 BAILIFF: Are you ready, your Honor?

6 THE COURT: We're ready.

7 BAILIFF: Jury is entering the courtroom, your
8 Honor.

9 JURORS ENTER COURTROOM 11:43 A.M.

10 THE COURT: Hello, hello. All right. Thank you so
11 much. Ladies and gentlemen, at this time, we will
12 continue with the Plaintiff's case. It is my
13 understanding that our next witness is being called by
14 deposition, as I mentioned beforehand. All right.

15 MR. HOYLE: Your Honor, at this time, we call, by
16 video deposition, Mr. Craig Martin.

17 THE COURT: Very well.

18 DVD OF VIDEOTAPED DEPOSITION OF
19 CRAIG MARTIN PLAYING.

20 END PLAYING DVD OF VIDEOTAPED
21 DEPOSITION OF CRAIG MARTIN.

22 MR. MACKELCAN: Your Honor, I think this would be a
23 good time to break.

24 THE COURT: Okay.

25 MR. MACKELCAN: May I approach?

1 THE COURT: Sure.

2 ON-THE-RECORD BENCH CONFERENCE, OUT
3 OF HEARING OF JURORS. PRESENT: THE
4 COURT, MR. HOYLE, AND MR. MACKELCAN:

5 THE COURT: This testimony is offered only on the
6 issue of control, on the issue of control over
7 employees, and not as evidence of Dr. Jansen's medical
8 performance, and certainly not for issue of any conduct
9 on a particular occasion being indicative of conduct on
10 any other occasion.

11 This testimony is offered only on the sole issue of
12 control over employees, and should be considered for
13 that purpose only, control over employees, and not as
14 evidence of Dr. Jansen's medical performance,
15 particularly as it might relate to any particular point
16 in time.

17 THE COURT: Okay. Got it. Very well.

18 END BENCH CONFERENCE.

19 THE COURT: Ladies and gentlemen, if you will
20 recall last week I gave you a limiting instruction, and
21 I'm going to give you, at this point, a limiting
22 instruction, and I'm going to give it to you a couple of
23 times, perhaps, during the course of this deposition.

24 Ladies and gentlemen, portions of Craig Martin's
25 testimony is offered only, only, on the issue of

1 control, over the issue of control over employees, and
2 not as evidence of Dr. Jansen's medical performance, and
3 certainly not for any issue of conduct on a particular
4 occasion being indicative of conduct on any other
5 occasion.

6 This testimony is offered on the sole issue of
7 control over employees, and should be considered for
8 that purpose only, control over employees, and not as
9 evidence of Dr. Jansen's medical performance,
10 particularly, as it might relate to any other particular
11 point in time.

12 Very well. Thank you, ladies and gentlemen.

13 You may continue, and I may come back and do it
14 again.

15 CONTINUE PLAYING CRAIG MARTIN

16 VIDEO DEPOSITION.

17 END PLAYING CRAIG MARTIN VIDEO

18 DEPOSITION.

19 THE COURT: That concludes the deposition?

20 MR. HOYLE: That concludes the deposition of Craig
21 Martin, your Honor.

22 THE COURT: Very well. Ladies and gentlemen,
23 because the next witness is anticipated to be a little
24 lengthier, we are going to take our lunch break. Ladies
25 and gentlemen, I'm going to ask you to please be back in

1 your jury room, ready to continue this matter at 2:00
2 o'clock. At 2:00 o'clock.

3 Please be mindful over the lunch break, do not
4 discuss this matter or allow anyone to discuss it with
5 you. Please do not read anything or listen to anything
6 about this matter. That is, the radio, the television,
7 the newspaper, or the Internet.

8 Please do not bring back with you any cell phone or
9 any other communication device. If you do, please let
10 our bailiffs know. We will keep care of it, until our
11 afternoon break or overnight break for the evening.

12 Please enjoy your break. Please leave your
13 notebooks in your seat, and we will secure them for you.

14 JURORS LEAVE COURTROOM 12:44 P.M.

15 BAILIFF: The jury is clear, your Honor.

16 THE COURT: Thank you so much. All right. Anything
17 before we take a break?

18 MR. HOYLE: Nothing from the plaintiff, your Honor.

19 MR. LOVELL: Nothing from the defendant, your
20 Honor.

21 THE COURT: Thank you, all. Have a good lunch.

22 MR. HOYLE: Thank you, your Honor.

23 OFF THE RECORD 12:44 P.M.

24 BACK ON THE RECORD 2:04 P.M.

25 THE COURT: We have a juror that needs some -- had

1 moved her medical appointment last week, and she moved
2 it to Thursday morning at 8:00 o'clock. And my only
3 comment was that we would accommodate at some point. If
4 you don't move it at this point, we will accommodate.
5 Okay? Cool. We're ready. We're so excited. We're
6 ready.

7 BAILIFF: Your Honor?

8 THE COURT: Yeah.

9 BAILIFF: Jury is entering the courtroom, your
10 Honor.

11 THE COURT: Great.

12 JURORS ENTER COURTROOM 2:04 P.M.

13 THE COURT: All right, ladies and gentlemen, at
14 this time, we will continue with the Plaintiff's case.
15 Call your next witness, please.

16 MR. HOYLE: Thank you, your Honor. At this time,
17 Plaintiff calls Dr. Christian Jansen to the stand.

18 THE COURT: All right. Sir, if you'd come along,
19 and be sworn.

20 DR. CHRISTIAN JANSEN: Oh, okay.

21 MADAM CLERK: Please place -- there you go. And
22 raise your right hand.

23 DR. CHRISTIAN JANSEN: Oh. Okay.

24 MADAM CLERK: Do you solemnly swear or affirm that
25 the testimony you give to the Court in this trial shall

1 be the truth, so help you God?

2 DR. CHRISTIAN JANSEN: I do.

3 MADAM CLERK: And please state and spell your last
4 name.

5 DOCTOR CHRISTIAN JANSEN: Jansen, J/a/n/s/e/n.

6 THE COURT: Your witness.

7 MR. HOYLE: Thank you, your Honor.

8 DR. CHRISTIAN JANSEN

9 DIRECT EXAMINATION, BY MR. HOYLE:

10 Q Good afternoon, Doctor.

11 A Good afternoon.

12 Q You are Dr. Christian Jansen, correct?

13 A Yes.

14 Q You were born May the 10th, 1955, in Warsaw,
15 Poland, correct?

16 A Yes.

17 Q And your birth name was not Christian Jansen,
18 correct?

19 A No.

20 Q What was your birth name, sir?

21 A I'll say it, if you can pronounce it. It was
22 Sheminiski. Can you pronounce it?

23 Q I cannot.

24 A That's why I changed it.

25 Q And you legally changed your name, I believe, back

1 in 1982, to your current name, correct?

2 A Yes.

3 Q Okay. Now, after you were born in Poland, I
4 understand that your family, understandably so, wanted
5 to escape communism, and that your family immigrated to
6 America from Canada, correct?

7 A Yes.

8 Q And all your schooling was either in Montreal or in
9 Ottawa, correct?

10 A Correct.

11 Q Are you a French speaker, sir?

12 A Partly.

13 Q Now, after two years of college, you were fast-
14 tracked into medical school, correct?

15 A That is correct.

16 Q And you never were awarded a bachelor's degree,
17 correct?

18 A No.

19 Q And you graduated from medical school at the
20 University of Ottawa in Canada on May 24, 1979.

21 A Yes.

22 Q You did an internship here from June of '79, until
23 June of 1980, correct?

24 A That sounds correct, yes.

25 Q And thereafter, you did a residency, correct?

1 A Yes.

2 Q Was that a four-year residency, Doctor?

3 A It was a two-year residency.

4 Q Do you consider the two years you spent in
5 residency to be a full residency or a partial residency?

6 A Partial.

7 Q And this partial residency, it was in general
8 surgery, not in emergency medicine, correct?

9 A Yes, that's correct.

10 Q And for purposes of a time line, that partial
11 residency in general surgery was from July of 1980 until
12 June of 1982, correct?

13 A Yes.

14 Q And that was also up in Canada, correct?

15 A Yes.

16 Q Thereafter, in 1982, you started working at
17 Queenway Carleton Hospital in Ottawa, also in Canada,
18 correct?

19 A Yes.

20 Q But just so we're all clear, that work that you
21 were doing on at Queensway Hospital, that wasn't in the
22 emergency room, was it?

23 A No, it was not.

24 Q And that internship year you did before your
25 partial residency, you did not focus or specialize on

1 any one branch of medicine, correct?

2 A Yes.

3 Q And that partial residency was in general surgery.

4 A Yes.

5 Q It looks like, from reviewing and from having
6 talked to you previously, that you worked up there in
7 Canada at the Queenway Carlelton Hospital until
8 September of 1985, correct?

9 A Something like that, yes.

10 Q And in that year, 1985, you decided to move to
11 South Carolina and start working in emergency rooms,
12 correct?

13 A Yes.

14 Q Now, prior to 1985, when you made the decision to
15 move to the Palmetto State, had you ever worked in an
16 emergency room before?

17 A No.

18 Q And in 1985, you became licensed to practice
19 medicine --

20 A I'm sorry. If I may correct you.

21 Q Sure.

22 A During my intern rotations, I did probably a few
23 months in an emergency room as a rotation. So, I did.

24 Q And by a few months, are we talking one month, two
25 months, three months?

1 A Probably one or two months.

2 Q One or two months in emergency rooms. When you
3 made the decision to move to South Carolina, what
4 motivated you to start wanting to work in emergency
5 rooms?

6 A I -- well, it -- it -- it's kind of hard to say. I
7 mean, that was kind of the natural progression. I was
8 interested in the whole patient, not specific, you know,
9 surgery or internal medicine or anything like that. And
10 that would expose me to a lot of pathology and a lot of
11 interesting cases, and that seemed like what I would fit
12 into the best.

13 Q Even though your residency, which you didn't
14 finish, was in surgery, correct?

15 A That's correct.

16 Q What was the first emergency room that you went to
17 work at here in South Carolina?

18 A Well, that -- the first practice that I did was at
19 the Florence General Hospital in Florence, South
20 Carolina.

21 Q And how long were you in the pride of the P.D. in
22 the city of Florence, working in an emergency room up
23 there?

24 A Approximately two years.

25 Q And at some point in time, did you make the

1 decision to leave Florence?

2 A Yes.

3 Q Where did you go thereafter?

4 A In Hilton Head.

5 Q And where were you working in Hilton Head?

6 A At Hilton Head Hospital.

7 Q And that work in the Hilton Head Hospital, was that
8 in the emergency room, or was it in some other part of
9 the Hilton Head Hospital?

10 A It was in the emergency room as an emergency
11 physician.

12 Q And that's what you had been doing up in Florence.

13 A Correct.

14 Q How long were you in the E.R. at Hilton Head?

15 A Two years.

16 Q Where did you decide to go after the two years at
17 Hilton Head Hospital?

18 A I was offered a position at the Naval Hospital in
19 Beaufort.

20 Q So, you start working at the Naval Hospital about
21 what year, Doctor?

22 A 1989.

23 Q 1989.

24 A I'm -- I'm sorry. 1987.

25 Q 1987.

1 A It was a long, long time ago.

2 Q A long, long time ago. When you started in 1987,
3 did you actually directly getting your paycheck from the
4 federal government, or were you working through a
5 contractor?

6 A I was -- I was an independent contractor, which
7 means that I'm introduced to the particular hospital by
8 a middleman, which is the -- whatever the company at
9 that time was. And I was working for the hospital, but
10 my paycheck was routed through the middleman and to me.

11 Q That's your understanding of how things worked back
12 in 1987?

13 A That's how things did work in 1987.

14 Q Okay. And at some point in time, you had to leave
15 the Naval Hospital because there were some concerns
16 about your citizenship, correct?

17 A Yes.

18 Q At some point in time, the various rules and
19 regulations and procedures and things changed, and
20 because you were not a U.S. citizen, you had to leave
21 the Naval Hospital, correct?

22 A Yes.

23 Q Okay. About what time did those concerns develop?

24 A You probably have that in your papers. I don't
25 remember exactly.

1 Q Was it prior to October the 1st, 2007?

2 A You know, I don't remember the exact date.

3 Q Okay. Doctor, let me ask you a different question.
4 When did you become a citizen of the United States of
5 America?

6 A It was towards the second half of two thousand --
7 the -- 2008, 2009, somewhere in that period. I don't --
8 I didn't put that to my memory, unfortunately.

9 Q Sir, we're putting up on the screen a document of
10 your personnel file that's already in evidence.

11 A Oh, my goodness.

12 Q And it looks like you became a citizen of this
13 country on May the 8th, 2008. Does that sound about
14 right?

15 A Well, it's there, so it must be right.

16 Q Not going to dispute that. Is that fair?

17 A I assume, unless you doctored the document, I
18 assume that's the right one.

19 Q Do you have any concerns that I doctored this
20 document?

21 A I wouldn't be surprised.

22 Q Oh, okay. Okay, Doctor. Well, then, we'll do it
23 this way.

24 A It's payback time.

25 MR. HOYLE: Permission to approach, your Honor?

1 THE COURT: Yes.

2 BY MR. HOYLE:

3 Q Sir, I'm handing you your personnel file.

4 A Um-hmm.

5 Q Which came from the corporate headquarters of
6 CasePro, Incorporated, out in San Antonio, Texas. Have
7 you ever been to San Antonio, Texas, sir?

8 A Never.

9 Q Never visited the corporate headquarters of
10 CasePro, Incorporated, then?

11 A Never.

12 Q All right. Turning to your personnel file. The
13 pages are Bates stamped in the lower, right-hand corner.
14 You have the hardcopy right in front of you.

15 A Um-hmm.

16 Q It has been marked as Exhibit Number 22 to this
17 trial. If you could turn, in the exhibit, to page --
18 it's Bate stamped 443 --

19 MR. LOVELL: Your Honor, we object to this. This
20 document's not in evidence yet, according to my
21 recollection of what's in and what's not.

22 MR. HOYLE: His personnel file was moved into
23 evidence on Friday with Mr. McCabe. We actually had a
24 series of objections about it, and we had to have a
25 conference at the Judge's bench about it.

1 THE COURT: Okay.

2 MR. HOYLE: It is in evidence, your Honor.

3 THE COURT: It is in. We will ask our court
4 reporter, just for confirmation.

5 COURT REPORTER: What number is it?

6 MR. HOYLE: 22.

7 COURT REPORTER: I have that it's in.

8 MR. LOVELL: My error.

9 THE COURT: That's okay.

10 MR. LOVELL: I'm just writing down the -- I'm
11 sorry.

12 THE COURT: Vigilance is good, even if it's
13 occasionally in error. It's not a problem at all.
14 Thank you for it. You may continue.

15 MR. HOYLE: Thank you.

16 BY MR. HOYLE:

17 Q Dr. Jansen, have you found that page and Exhibit
18 Number 22?

19 A Give me the page again, please.

20 A It's Bates stamped in the lower, right-hand corner,
21 433 -- 443. I apologize. That's two fours and a three.

22 A There we are.

23 Q All right, sir. First off, have you ever seen a
24 document substantially similar to the document found in
25 your personnel file from CasePro that is Bates stamped

1 in sequence ending 443? Have you ever seen something
2 that looks like that page?

3 A Well, but that certainly looks like my certificate
4 of naturalization.

5 Q Do you recall actually receiving a certificate of
6 naturalization from the government of the United States
7 of America?

8 A I do recall.

9 Q Do you recall having to go through a process in
10 which the Secretary of Homeland Security prescribed
11 certain things that you had to do in order to become a
12 citizen of this country?

13 A Most likely. That is the usual case. Yes,
14 probably. I don't recall specifics, though.

15 Q Well, how did you come to get a certificate of
16 naturalization, Doctor?

17 A I applied for it.

18 Q Okay. And what did you do after you made such an
19 application? Did you ever take a test? Did you have to
20 go somewhere? Did they just send you?

21 A You know, I don't recall exactly. I went through
22 the usual process that somebody applying for citizenship
23 would go through, but I cannot tell you the details.
24 That's minutia at this point, and I don't really put
25 that to my memory.

1 Q Well, previous to some point in time, it looks
2 like, to me, in 2008, you were not a citizen of this
3 country, correct?

4 A Correct.

5 Q Do you recall having to swear an oath of allegiance
6 to the *Constitution of the United States of America* at
7 any point in time?

8 A I don't believe so.

9 Q You don't believe you had to --

10 COURT REPORTER: I'm so sorry. I'm so sorry. I
11 don't believe so?

12 A I do not believe I had to swear allegiance to any
13 country at that time. It wasn't required, and I don't
14 think anybody asked me.

15 Q So, it's your testimony, as you sit here today,
16 sir, that, when you obtained the certificate of
17 naturalization, no judge or other officer of the United
18 States of America made you raise your right hand and
19 swear an oath of allegiance to this country?

20 A Now, I think I misunderstood you. You had asked me
21 the same question before I received the certificate.
22 After -- when I received the certificate, I did swear
23 allegiance.

24 Q To this country?

25 A Yes.

1 Q You actually remember that?

2 A Well, when I received the certificate, of course.
3 Not before, though.

4 Q But that's all minutia to you. Is that what you're
5 telling us?

6 A Well, I think the -- when you were -- when I said
7 minutia, I don't mean to be disrespectful. But the
8 exact -- knowing the exact dates when this happened, or
9 exactly what I -- what process I had to go through, what
10 documents I had to file, I don't remember that.

11 Q Do you remember having to take some sort of
12 examination, or test, as to your knowledge of certain
13 fundamentals of this country?

14 A Oh, yes, absolutely.

15 Q Okay. You remember that test. What were some of
16 the things covered on that test, Doctor?

17 A I don't recall. It would be usual things that they
18 feel most American citizens should know. When the
19 independence was declared, how much -- what congress
20 does, what the senate does, how long the president stays
21 in office, things that every American should know.

22 Q Is that minutia, too, Doctor?

23 A Oh, I never said that.

24 Q Okay.

25 A And I think implying that is very unfair.

1 Q You think I'm being unfair to you, Doctor?

2 A Well, with that question, I think you are. You're
3 trying to imply that I don't care about being an
4 American citizen and I think that's -- that it's
5 minutia, and that's absolutely not true.

6 Q Do you want to be here today, Doctor?

7 A Absolutely.

8 Q Good. Now, going back to the certificate of
9 naturalization, you suggested earlier that I doctored it
10 in some fashion, or wouldn't be surprised that I
11 doctored it in some fashion. Do you believe what we're
12 looking at in the courtroom on the screen is a fair and
13 accurate representation of your certificate of
14 naturalization?

15 A Yes, I -- I believe I do.

16 Q Okay. Don't have any concerns about me doctoring
17 it up, changing your date of birth, or how tall you are,
18 or whether you're married, or your country and former
19 nationality?

20 A Well, sir, it's just that, with my prior experience
21 with you, I did not have a pleasant experience, and I
22 was just communicating that.

23 Q You're referring to your deposition in this case.

24 A Of course. The nine-hour, prolonged interrogation
25 about a year ago, yes.

1 Q Okay. And Doctor, with respect to that what you've
2 described as a prolonged interrogation more than a year
3 ago, have you had the opportunity to see your answers
4 that you gave under oath, subject to the pains and
5 penalties of perjury, at that deposition, typed up into
6 a transcript.

7 A No, I did not.

8 Q You never read it?

9 A No.

10 Q Do you recall telling me at your deposition that
11 you believed it was a prudent -- would be a prudent
12 thing for you to do to contact the South Carolina State
13 Medical Board concerning some inaccuracies in your prior
14 statements made to that board?

15 A Yes.

16 MR. LOVELL: I object to the extent -- to the
17 extent he is trying to impeach the witness. This is the
18 improper method of doing so.

19 THE COURT: Let me see you all.

20 ON-THE-RECORD BENCH CONFERENCE, OUT
21 OF HEARING OF JURORS. PRESENT: THE
22 COURT, MR. HOYLE, MS. CASTLEBERRY,
23 MR. LOVELL, MR. MACKELCAN:

24 MR. LOVELL: He's doing with this witness what he's
25 done with the others. He's asking them questions about

1 what they said in their depositions, without showing
2 them the deposition. The proper manner is to ask the
3 question. If you get an answer that deviates from the
4 deposition, then, the proper method is to show the
5 witness the deposition, and walk through it in that
6 manner.

7 MR. HOYLE: I believe the witness opened the door
8 when he referred to it as a nine-hour grilling, and said
9 that --

10 THE COURT: No, he called it an interrogation.

11 MR. HOYLE: Oh, I apologize. I apologize.
12 Interrogation, not grilling. But I believe the witness
13 opened the door when he said that, based on his
14 experience with me, he had certain concerns. I'm not
15 trying to impeach with specific testimony at this point.

16 MR. LOVELL: That's exactly what the question
17 sought to do.

18 THE COURT: Well, two things. Two things. First
19 of all, if you're going to impeach him on his
20 deposition, did you say X, blah, blah, blah. And, and
21 interestingly enough, if you want him to be shown --
22 this was one of those little rules. It's not my
23 favorite. If you want him to be shown the document, you
24 actually have to ask. That's not one of my favorites.
25 Let me just put that out. Used to be -- it used to be

1 you had to do that. Not under the rules, unless they've
2 been amended, and I'll take a look. But if you're
3 asking that folks be shown the document, --

4 MR. LOVELL: I'll be glad to ask that question.

5 THE COURT: You don't have to do that. It's been
6 asked.

7 MR. LOVELL: Okay. Sorry.

8 THE COURT: So, we'll do that going forward.

9 MR. LOVELL: Okay. Sorry.

10 THE COURT: But, but, yeah, exactly. Now, I wasn't
11 as concerned with the, obviously, the prior witness,
12 because he, obviously, is a managing agent of the
13 company, so.

14 MR. HOYLE: Um-hmm. Okay.

15 THE COURT: And so, his rules are different. But
16 now, we're with a true witness, so, you ask him did he,
17 you know. Back to basics. Okay?

18 MR. HOYLE: We'll get back to basics, Judge.

19 THE COURT: So, sustained.

20 MR. LOVELL: Thank you, your Honor.

21 MR. HOYLE: Thank you, Judge.

22 THE COURT: Yes. Thank you.

23 END BENCH CONFERENCE.

24 ITEM IDENTIFIED AS DOCUMENTS FROM

25 THE SOUTH CAROLINA DEPARTMENT OF

1 LABOR, LICENSING AND REGULATION

2 REGARDING DR. CHRISTIAN JANSEN

3 MARKED PLAINTIFF'S EXHIBIT NUMBER 17

4 ADMITTED AS EVIDENCE.

5 MR. HOYLE: Permission to approach, your Honor.

6 THE COURT: Yes, please.

7 BY MR. HOYLE:

8 Q Sir, I'm handing you what's previously been moved
9 into evidence as Plaintiff's Number 17. It is a sealed
10 envelope from the South Carolina Department of Labor,
11 Licensing and Regulation. I'm going to hand that to
12 you, sir.

13 A Thank you.

14 Q If you'll please open what's previously been marked
15 and introduced into evidence as Exhibit Number 17 to
16 this trial. Little me know what you find when you pull
17 that stack of papers out of that envelope, sir.

18 A Well, I find a stack of papers.

19 Q All right. Let's look at the first page together,
20 sir, Doctor.

21 A All right.

22 Q We have a letter on the very first page dated
23 September the 30th, 2015, correct?

24 A Yes.

25 Q It is a letter addressed to myself and my colleague

1 at my office in Mount Pleasant, South Carolina, correct?

2 A Yes.

3 Q It is enclosing documents responsive to a subpoena
4 dated September the 22nd, 2015, correct?

5 A Yes.

6 Q And this appears to be on the letterhead of South
7 Carolina Department of Labor, Licensing, and Regulation,
8 correct?

9 A Yes.

10 Q All right. Let's turn the page.

11 A Um-hmm.

12 Q The second page of the document that's been moved
13 into evidence at the trial of this action is Exhibit
14 Number 17. We have something at the top of the page.
15 Says *South Carolina Board of Medical Examiners*. Do you
16 see that?

17 A Yes, sir.

18 Q And do you see anybody, any natural person's name,
19 contained within the second page of this document?

20 A Of course, it's my name.

21 Q Okay. So, this appears to be something from the
22 State Medical Board having to do with you, correct?

23 A Presumably..

24 Q All right. Let's turn the page, sir. And we have
25 here a page that says *License History*. Do you see that?

1 A Yes.

2 Q And it says a temporary license was issued to you
3 on or about August the 8th, 1985, correct?

4 A Yes.

5 Q Let's turn the page, sir. All right. Past that
6 blue sheet of paper, we've got an original application
7 for a license to practice medicine or osteopathic
8 through endorsement. Is that correct?

9 A Yes.

10 Q This is on the letterhead of the State Board of
11 Medical Examiners of South Carolina, with a street
12 address of 1350 Blanding Street, in capitol city of
13 South Carolina, correct?

14 A No argument there.

15 Q All right. And there's some handwriting on this
16 page, including a date of June 26, 1985. Do you
17 recognize the handwriting?

18 A It most likely is mine.

19 Q All right.

20 MR. HOYLE: Let's do map, Mr. Knowles, to that
21 whole page.

22 BY MR. HOYLE:

23 Q And you're looking at the original document that my
24 office was provided by the State Labor, Licensing and
25 Regulation Board. Sir, does this appear to be the

1 original application that you filled out back in 1985 in
2 order to obtain a license to practice medicine in this
3 state?

4 A It most likely is, yes.

5 Q All right. And in fact, if you turn to the next
6 page of this document. We've got a listing of
7 preliminary and pre-medical education, correct?

8 A Yes.

9 Q Does that appear to be your preliminary and pre-
10 medical education at Saint Monica's in Montreal; Lisgar
11 Collegiate in Ottawa?

12 A Yes.

13 Q And the University of Ottawa, where you did not
14 receive a bachelor's degree, correct?

15 A I don't dispute that.

16 Q All right. And you've got some information in
17 Section 3 of this document dealing with medical school
18 education that you received at the University of Ottawa,
19 correct?

20 A Yes.

21 Q And in the next section, we've got some information
22 about your credentials with respect to partial residency
23 you completed in surgery from 1980 to 1982, correct?

24 A Where is that? Yes.

25 Q Okay. And down at the bottom of the page, we have

1 an applicant's oath that the folks in Columbia were nice
2 enough to redact a signature on here. But I'll ask you
3 as a question, sir, do you have any reason to believe
4 that you would not have completed your original
5 application for a license to practice medicine in this
6 state back in 1985, in any fashion, other than in which
7 you would have signed it under oath, subject to the
8 pains and penalties of perjury?

9 A I have no reason to suspect I did not sign it.

10 Q Okay. Let's go forward a few pages. My
11 understanding, I believe you've told me this previously,
12 is that, in our state, medical licenses renew every two
13 years, correct?

14 A Yes.

15 Q And that's your understanding, as well, correct?

16 A Yes.

17 Q Okay. So, turn with me about mid-way through this
18 stack of documents, to a renewal application dated June
19 the 1st, 2011. Let me know when you find that document
20 and you and I are on the same page, sir.

21 A I would appreciate if you'd come up here and show
22 me where I'm supposed to be.

23 Q Certainly, sir.

24 MR. HOYLE: Permission to approach, your Honor?

25 THE COURT: Yeah.

1 BY MR. HOYLE:

2 Q All right, Doctor. I've approached the witness,
3 and made sure that we're all on the same page. Are we
4 not, sir?

5 A Yes.

6 Q All right. So, this is a document that, again,
7 bears the letterhead of South Carolina Department of
8 Labor, Licensing, and Regulation, correct?

9 A Yes.

10 Q LLR, correct?

11 A Yes.

12 Q And it has your full legal name at the top of the
13 document, correct?

14 A Yes, it does.

15 Q All right. And this says, *Final Review, June the*
16 *1st, 2011*, correct?

17 A Yes.

18 Q And if medical licenses renew in this state every
19 two years, the preceding 24 months, from June the 1st,
20 2011, would take us to roughly June the 1st of 2009,
21 correct?

22 A Yes.

23 Q Okay. So, there's going to be certain questions
24 asked on this that may relate to the prior two years.
25 Is that fair?

1 A Sure.

2 Q Okay. So, we've got a license number on here of
3 MMD12569. Is that your license to practice medicine?

4 A Yes, it is.

5 Q We've got a licensee name. And is that your full
6 legal name as it exists today?

7 A Yes, it is.

8 Q We've got a re-licensure fee of a stated dollar
9 amount, correct?

10 A Yes.

11 Q And did you actually pay the State Medical Board
12 \$160.00 --

13 A Yes.

14 Q -- when you renewed your license back in 2011.

15 A Yes, I did.

16 Q Okay. And there's some information as far as an
17 address, and a home address, and a mailing address. Do
18 you see all that?

19 A Yes.

20 Q Is that information correct? Or was it correct at
21 the time?

22 A Yes, it was.

23 Q All right. Turn with me to the next page.

24 A Yes.

25 Q Renewal app, Question 1.

1 A Yes.

2 Q Since your last renewal, has any order or
3 other disciplinary action been rendered
4 against you by any medical board, or have
5 you been denied licensure by any other
6 medical board?

7 And what was your answer?

8 A No.

9 Q Was that a truthful answer on this application?

10 A Yes, it was.

11 Q Okay. There's Renewal Application Number 2. Do
12 you see that, sir?

13 A Yes.

14 Q And it says, since your last renewal,
15 -- that, again, would be going back 24 months to,
16 oh, some time in 2009. You with me so far?

17 A Yes.

18 Q Since 2009, have any hospital privileges or
19 other privileges of any kind been revoked,
20 suspended, restricted, denied, voluntarily
21 surrendered, or relinquished? Include the
22 relinquishment of privileges while under
23 investigation or pending action for any
24 reason. Do not include the relinquishment
25 of privileges as a result of a personal

1 *decision.*

2 Did I read that correctly, sir?

3 A Yes.

4 Q And what was your answer with respect to Renewal
5 Application 2?

6 A No.

7 Q And was that a truthful answer?

8 A Absolutely.

9 Q It's your testimony, as you sit here today, that,
10 that was a truthful answer.

11 A Yes.

12 Q Okay. We'll come back to that later, sir. Direct
13 your attention to February of 2012. So, this would be
14 after this most recent renewal with the State Medical
15 Board. Okay.

16 A All right.

17 Q Let's focus solely --

18 MR. HOYLE: Take that down, Mr. Knowles.

19 BY MR. HOYLE:

20 Q Let's focus solely on what was going on in your
21 life in that time frame in 2012. Okay? February of
22 2012. When you were working at the Naval Hospital in
23 the emergency room in February of 2012, you would be the
24 only doctor present during a shift, correct?

25 A Yes.

1 Q This is what you have told me is a single-physician
2 coverage emergency, correct?

3 A Yes.

4 Q Is it fair to say that no one was physically
5 present in the emergency room who was employed by the
6 military or as a civilian DOD employee who was directing
7 your day-to-day medical services, which you provided in
8 the emergency room?

9 A There was nobody directing day-to-day services that
10 I provided or telling me what to do.

11 Q For example, no one told you what tests to run on
12 patients, correct?

13 A No.

14 Q For example, no one told you what differential
15 diagnosis to make with respect to patients, correct?

16 A No.

17 Q For example, no one told you what diagnosis to make
18 with respect to patients, correct?

19 A No. It's the physician's responsibility to make
20 those decisions, and that's why we're there.

21 Q For example, no one told you what treatment to
22 render to patients, correct?

23 A Correct.

24 Q For example, no one told you what medications to
25 prescribe to patients, correct?

1 A Correct.

2 Q Just so we're all clear, no one stood over you in
3 the emergency room at the Naval Hospital, Beaufort, in
4 February of 2012, and told you what to do with the
5 patient or what not to do with a particular patient,
6 correct?

7 A Generally, that's correct, yes.

8 Q In other words, despite the fact that you were
9 working at the Naval Hospital, you could independently
10 diagnose and treat, or alter treatment of patients that
11 came in that you were seeing, within the scope of your
12 being a licensed medical doctor, correct?

13 A And that's exactly what an emergency physician does
14 in every hospital in the country.

15 Q Including at the Naval Hospital in Beaufort,
16 correct?

17 A Yes.

18 Q Now, in February of 2012, when a shift would start,
19 is it fair to say that nobody came in from the
20 government, whether they wore a military uniform or
21 whether they were a DOD employee, to see to it that you
22 had clocked in?

23 A We did not clock in, at that time. At some point
24 during our work at the Naval Hospital, we did clock in,
25 but not in February of 2012.

1 Q So, in February of 2012, when you would come in to
2 start your shift, would you just come into the emergency
3 room and talk to the physician who had been on the prior
4 shift?

5 A Yes.

6 Q And you and the other physician, as professionals,
7 as licensed medical doctors, would make whatever handoff
8 was necessary, so that you were fully apprised as to the
9 patients who were then present in the emergency room..

10 A Yes.

11 Q And similarly, when it was time for you to go home,
12 the other physician who is coming in to work the next
13 shift, would the two of you confer as professionals and
14 discuss the patients that you had been treating in the
15 emergency room, and you'd make the appropriate handoff
16 to him or her at that time?

17 A Well, not exactly. We would not necessarily
18 discuss all the patients that I had seen during my
19 shift. But any patients that were still in the
20 emergency department or that may be thought to be coming
21 back, we would discuss those particular ones, but not
22 every patient that I had seen.

23 Q So, fair to say, this is a four-bed E.R. at
24 Beaufort Naval Hospital in February of 2012, correct?

25 A No.

1 Q How many beds were there in February 2012?

2 A One, two, three, four, five.

3 Q Okay. Five beds. So, regardless of how many beds
4 are in this emergency room, if you had one patient in
5 there or two patients in there, when your shift was
6 over, you would talk to the next physician coming on
7 shift about those one or two patients, correct?

8 A Yes.

9 Q Wouldn't necessarily talk to him or her about what
10 you had been doing the previous twelve hours, but you'd
11 at least make sure that those patients who were in there
12 got the appropriate transition as far as information for
13 the next physician?

14 A Yes.

15 Q Okay.

16 MR. HOYLE: Permission to approach, your Honor?

17 THE COURT: Yes.

18 BY MR. HOYLE:

19 Q Doctor, I'm showing you what has been marked as
20 Defendant's 3, and moved into evidence in the trial of
21 this action. Have you ever seen that document before?

22 A I don't believe so.

23 Q And for the record, you're looking at a contract
24 between the Navy Medical Logistics Command and CasePro,
25 Incorporated, correct?

1 A I assume so. I don't know. I've never seen this
2 document before.

3 Q That's not something that you were sent back when
4 you were doing work in the emergency room back in 2012?
5 Is that correct?

6 A I don't recall. I'm sorry. I just don't recall.

7 Q But back in February of 2012, would you agree with
8 me that you received your paycheck from CasePro,
9 Incorporated?

10 A Yes.

11 Q Will you agree with me that, back in February of
12 2012, you received your benefits, such as health
13 insurance, vacation, 401(k) with match, and continuing
14 medical education allowance from CasePro, Incorporated?

15 A No.

16 Q You disagree with that statement?

17 A I didn't have any vacation.

18 Q Okay. Well, we'll strike that one out. What about
19 health insurance? Did you get that from CasePro?

20 A I don't remember whether, at that point, whether I
21 was a independent contractor or an employee. I just
22 don't recall. And it depends on that, really.

23 Q Okay. What about the 401(k) with match. Do you
24 recall getting that?

25 A Well, again, I -- I don't remember whether I was an

1 employee or not at that point. You may have that in
2 your records. I just don't remember. Those are all IRS
3 issues, and I just don't remember.

4 Q Okay. Don't know one way or the other, without
5 looking at some documents?

6 A No.

7 Q Is that fair?

8 A That's very fair.

9 Q Would you defer to your personnel file that CasePro
10 maintained in the ordinary course of its business for
11 information about those kind of things?

12 A Of course.

13 Q Okay. What was the typical shift for an emergency
14 room physician working at the Naval Hospital in
15 Beaufort, South Carolina in February of 2012? How many
16 hours was the shift, Doctor?

17 A Twelve hours.

18 Q Okay. At what time would a shift start, and what
19 time would a shift end?

20 A The shifts ran at twelve hours, from 7:00 to 7:00.

21 Q So, 7:00 in the morning to 7:00 at night.

22 A Correct.

23 Q Then, 7:00 at night 'til 7:00 in the morning.

24 A Yes.

25 Q Okay. And again, during the shifts, I think we've

1 established, there'd just be one medical doctor present,
2 correct?

3 A Yes.

4 Q How many nurses would be present during those
5 twelve-hour shifts?

6 A Again, this varied sometimes. But usually, it
7 would be one or two R.N.'s in the day shift, and
8 probably one R.N. and a nursing assistant or corpsman,
9 or something like that, in the evenings.

10 Q Will you agree with me that, as the only licensed
11 medical doctor in the emergency department, that you
12 would have been in charge during that shift of what the
13 nurses did or did not do?

14 A Could you please repeat the question.

15 Q Sure. I'll ask this question a little bit slower.
16 Will you agree with me that, as the only licensed
17 medical doctor in the E.R. department, that you would
18 have been in charge during that shift of what the nurses
19 did or did not do?

20 A Now, I did not direct the nurses as to their
21 duties. They had their own duties, and they were
22 licensed nurses. So, they did things, what was
23 appropriate and was demanded of their occupation.

24 Now, I was not in charge of the nurses directly.
25 The nursing supervisor would be. I was, in no way,

1 firing or hiring, or actually even documenting their
2 care, or reviewing their care in any way, so. So, I
3 really did not direct what they're supposed to do. I
4 never told them, do this, do this, unless there was
5 something specific I wanted. So, it -- it's a question
6 that I can't answer directly yes or no.

7 Q All right. I'll ask a second question, Doctor..
8 Will you agree with me that, as the only licensed
9 medical doctor in the emergency department, that you
10 were the person in charge of the E.R. and responsible
11 for everything in the E.R.?

12 A Yes, that is true.

13 Q But just so we're all clear, during a shift, during
14 a twelve-hour shift, from 7:00 a.m. to 7:00 p.m., as the
15 only licensed medical doctor in the emergency
16 department, were you or were you not in charge during
17 that shift of what the nurses did or did not do?

18 A Again, the question is very difficult to answer. I
19 am responsible for the care of the patients, absolutely,
20 but I don't direct everything that the nurses do.

21 Q All right, sir. Do you recall giving a deposition
22 in this case?

23 A I did not -- I don't -- yes, of course. The -- the
24 -- the one we mentioned before, the interrogation, yes.

25 Q Yeah, you referred to it as an interrogation.

1 A Yes.

2 Q And do you have any reason to dispute that
3 deposition took place on August the 18th, 2014, here in
4 Beaufort, South Carolina?

5 A I believe that was the right time, yes.

6 Q And do you recall whether or not you were
7 administered an oath, an oath to tell the truth, the
8 whole truth, and nothing but the truth, prior to that
9 deposition commencing?

10 A Yes, I was.

11 Q Okay. And that's similar to the oath you took here
12 today in this very courthouse, correct?

13 A Yes.

14 Q And do you recall that there was a court reporter
15 who was typing up everything that was said, and she put
16 it into a booklet?

17 A And there was a video machine, too, yes.

18 Q Okay. Well, let's see if we can find the
19 stenographic record.

20 MR. HOYLE: May I have Dr. Jansen's sealed,
21 original deposition, please.

22 THE COURT: Please feel free to unseal it.

23 MR. HOYLE: Your Honor, I would ask that you unseal
24 this transcript.

25 THE COURT: No, sir.

1 MR. HOYLE: All right.

2 THE COURT: Because you know what? It is sealed.
3 I would, therefore, verify it. And counsel has always
4 been so kind, and they've been willing to take one for
5 me and get a paper cut.

6 MR. HOYLE: I will gladly take a paper cut for
7 your Honor.

8 THE COURT: Thank you so much, Mr. Hoyle.

9 MR. HOYLE: Although, I will ask that your Honor
10 verify.

11 THE COURT: I already have. I saw it when he
12 picked it up.

13 MR. HOYLE: That it was sealed.

14 THE COURT: Yes, sir, I can, and that is correct.

15 MR. HOYLE: So, I'm standing in the presence of
16 Defendant's counsel, and breaking the seal of this
17 transcript. And actually, Madam Clerk, I believe these
18 are the exhibits, so we get to do it a second time.

19 THE COURT: Yes. Thanks. And it is also sealed.
20 Let the record reflect I see it; that is a seal.

21 Thank you so much, Mr. Hoyle.

22 MR. HOYLE: Thank you, your Honor.

23 BY MR. HOYLE:

24 Q Dr. Jansen, you have seen me, in the presence of
25 these jurors and this judge, unseal the original

1 transcript taken of your deposition on August the 18th,
2 2014, correct?

3 A Yes. In this particular case, I will trust that,
4 that is correct from you.

5 Q All right, sir. If you will turn to the 94th page
6 of that transcript.

7 A Yes, I'm here.

8 Q All right. On Line 1 of Page 94, it has *that day,*
9 *question mark.* I just want to make sure we're on the
10 same page.

11 A Same page, yes.

12 Q All right. I'm going to direct your attention to
13 Page 94, Line 24 of your transcript. My question was as
14 follows:

15 *And would you agree with me that, as*
16 *the only licensed medical doctor in the*
17 *emergency department, that you would have*
18 *been in charge during that shift of what the*
19 *nurses did or did not do?*

20 And on Line 3 of Page 95, tell the jury what your
21 answer was.

22 A At that time, the answer was yes. And if I may
23 qualify. What you're trying to get at is, I listened to
24 the question a little more carefully this time, and I
25 had to disagree to some degree with that, so.

1 Q You disagree with your prior testimony?

2 A No, I disagree with your questioning now, and I'm
3 -- I'm -- I'm listening a little bit more into your
4 questioning. And I told you, it's not a very easy
5 answer, and I didn't say yes or no, but I said that I'm
6 not in charge of exactly what the nurses do, but I'm in
7 charge of the emergency room, so. It's -- at this
8 point, in answering the question, I wanted to answer it
9 more completely and more correctly.

10 Q And when you got to the emergency room that fateful
11 Friday, the Friday that brings us here, February 24,
12 2012, did you have to check in with anyone else within
13 the four walls of the hospital?

14 A Not directly, no.

15 Q And before a patient came in, and you needed to
16 treat that patient, did you have to obtain any type of
17 authorization form from a U.S. governmental employee
18 before you could first determine whether or not you
19 could perform a certain type of medical treatment on him
20 or her?

21 A No.

22 Q Doctor, if you were the only licensed medical
23 doctor present in this emergency room on any given day,
24 and you have two registered nurses present, will you
25 agree with me that the only person that the registered

1 nurses could be taking an order from, with respect to a
2 given patient, would be you as the medical doctor?

3 A Generally, yes. Although, they can sometimes in
4 hospitals take order -- verbal orders from other
5 physicians, if there's patients that are coming in that
6 are specific doctors.

7 Q But you've told us here today that you were the
8 person in charge of the E.R. and responsible for
9 everything in the E.R. during a given shift, correct?

10 A That is correct.

11 Q No dispute from you about that.

12 A No.

13 Q Let's talk about your general practices in the
14 emergency room, including, but not limited to, the
15 emergency room at the Naval Hospital, Beaufort. Do you
16 have a belief, as a physician who primarily does his or
17 her work in an emergency room setting, as to whether or
18 not, generally speaking, a patient in the emergency room
19 should be allowed to leave before he or she is either,
20 (1) admitted, or, (2) discharged? Do you have an
21 opinion on that, or no opinion at all?

22 A I can give you my opinion. It depends on the
23 circumstances, the patient, and what the -- what the
24 occasion is then. It varies.

25 Q It depends on the circumstances. Did I hear that?

1 A Yes.

2 Q Will you agree with me that your general rule is
3 that, until a person with psychiatric problems is fully
4 evaluated as to flight risk, and you know how seriously
5 ill they are, that they do not leave the department for
6 a smoke or anything, really? Will you agree with me
7 that, that's your general rule?

8 A That is my personal rule, and really, that's also
9 dependent on -- I don't like disruption of continuity
10 and care of a patient. I don't like people leaving, and
11 me -- and if I need to order some tests, I don't want to
12 go looking for them. So, as a general, it makes sense
13 to keep all patients in the E.R. until their care is
14 completed. This is a general statement. It just makes
15 things flow more easily, doesn't keep other people
16 waiting, and things like that.

17 Q In other words, a patient doesn't leave, period.

18 A No, that's not true. And I think you will find, in
19 a lot of E.R.'s, that patients sometimes, again,
20 depending on the circumstances, depending on the E.R.
21 physician, depending on their preferences, I've known
22 that people will leave for a smoke. Usually, they don't
23 go by themselves. They go with an escort. But that's
24 not unheard of. Again, that not my personal preference,
25 but it's not unheard of to do that.

1 Q But with respect to a psychiatric patient, your
2 general rule is that, that person doesn't leave,
3 correct?

4 A Again, it depends on the situation. I mean, there
5 are psychiatric patients, and there are psychiatric
6 patients. So, it's -- it just really depends on the
7 situation. And that's what doctors do; they make a
8 medical decision based on the circumstances, and they
9 act on that. And it's the doctor's decision whether
10 they can be allowed to leave with an escort or not.

11 Q Was it your expectation on February 24, 2012, that
12 Calvin Hunt, while he was in the emergency room in which
13 you were the only licensed physician, that Calvin Hunt
14 would be supervised and watched?

15 A I did not give that order.

16 Q All right. Sir, I'm going to direct you to Page
17 149 of your transcript, the original of which is in
18 front of you, the seal which has been broken here in
19 open court, before this Court and this jury. Please
20 turn your attention to Page 149. Specifically, we're at
21 Page 149, Line 3, of your deposition transcript, sir.

22 A Yes.

23 Q Can I dispense with formalities? You remember the
24 deposition? Is that fair?

25 A Well, I don't remember the entire deposition. I

1 mean, if you point to specific areas, I'll comment on
2 them, of course.

3 Q All right. Well, let me make sure we're all on the
4 same page, sir. Do you recall giving a deposition in
5 this case back in August of 2014?

6 A Yes.

7 Q Do you recall being administered an oath by the
8 court reporter, an oath to tell the truth, the whole
9 truth, and nothing but the truth, so help you God?

10 A Just like here, yes.

11 Q Okay. And you recall there was somebody typing up
12 everything that was said at that deposition into a
13 booklet, correct?

14 A Just like you said before.

15 Q Okay. On Page 149 of your deposition transcript,
16 we're going to begin at Line Number 3. My question to
17 you was:

18 *It was your expectation, on February*
19 *24, 2012, that Mr. Hunt, while he was in the*
20 *emergency room that you were supervising,*
21 *was being supervised and watched, correct?*

22 A Yes.

23 Q And that was your answer.

24 A Yes. And I have no dispute with that.

25 Q What would you have said, on February 24, 2012, if

1 you had been asked whether or not Mr. Hunt could go out
2 for a breath of fresh air?

3 A Again, this -- this never happened, so I can only
4 theorize in a theoretical situation. If they had asked
5 me, can he go for a smoke, I probably would have said I
6 prefer him not to, but that would be, again, my personal
7 preference.

8 Q Would that be a personal preference or a general
9 rule, Doctor?

10 A Personal preference.

11 Q Is there a distinction, in your mind, between a
12 personal preference and a general rule?

13 A You can, perhaps, explain to me what you mean.

14 Q If you'll look up a little further on the page in
15 your deposition, Page 148.

16 A Yes. I'm there.

17 Q Page 148, Line Number 8, sir.

18 A All right.

19 Q I asked you the question,

20 *What would you have said on that*
21 *day, on February 24, 2012, if you had been*
22 *asked whether or not Mr. Hunt could go get*
23 *a breath of fresh air?*

24 Do you see that question?

25 A Yes.

1 Q And do you see your response, beginning at Line
2 Number 12?

3 A Yes.

4 Q Can you read what your response was?

5 A *Knowing what I know now, and as my general*
6 *rule is that, until a person with psychiatric*
7 *problems is fully evaluated as a flight risk,*
8 *and you know how seriously ill they are, they*
9 *do not leave the department for a smoke or*
10 *anything, really.*

11 Q The question that followed was:

12 *They don't leave, period?*

13 And your answer was?

14 A Correct.

15 Q And you still agree with that testimony today?

16 A Yes. I mean, knowing what I know now, yes. And
17 that's what's we're talking about.

18 Q The population that you treated at the Beaufort
19 Naval Hospital, did it include active duty military
20 personnel?

21 A Yes.

22 Q Did it include active duty military personnel's
23 dependents?

24 A Yes.

25 Q Did it include any type of retirees or veterans?

1 A Yes.

2 Q Fair to say that you were serving a military
3 community while you were practicing medicine within the
4 emergency room at the Naval Hospital?

5 A Yes, and including Marine recruits.

6 Q Do you agree with me that Marines want to be tough?

7 A I believe they do want to be tough.

8 Q And what are Marines trained to do?

9 A Well, they're trained to serve their country.

10 Q You have previously described Marines as killing
11 machines, correct?

12 A I don't recall.

13 Q You don't recall saying that, or don't recall
14 making that generalization?

15 A Neither.

16 Q Sir, I'm going to direct your attention to Page 122
17 of your deposition transcript, the original of which the
18 seal has been broken in this courtroom, in the presence
19 of this Court and this jury.

20 A Yes.

21 Q Are we on the same page, sir, 122?

22 A Yes.

23 Q I'm going to direct your attention to a question
24 that begins on Line 25 of 122.

25 A Um-hmm. Yes.

1 Q My question to you was:

2 What about for an enlisted man in the
3 United States Marine Corp? Is that a good
4 thing?

5 Beginning on Line 2, at 123, what was your answer?

6 A Again, I think Marines want to be tough,
7 impulsive, and they're killing machines.
8 They're out to kill, so they have to be
9 impulsive. You can't be passive as a
10 Marine. Some people think it's a good thing.

11 And if I may add, the proof is there, I did state
12 that, but I didn't remember.

13 Q Is that your view of our men and women who served
14 in the Marine Corp?

15 A Not -- not really. I mean, I think, at this point,
16 I was probably trying to make a point. I don't recall
17 exactly the circumstances, but I think the military are
18 a wonderful asset, and I think they're very hard-working
19 people that are frequently, you know, not appreciated by
20 people, and I think they do a wonderful job, and it's a
21 very hard job.

22 A Judge, may I have a refill, please?

23 THE COURT: Absolutely.

24 A Thank you.

25 THE COURT: Absolutely. Will you get that, sir.

1 A Thanks... Thank you.

2 THE COURT: Thank you so much. Thank you for
3 bringing that to our attention.

4 A Oh, that's right. Sorry to bother you.

5 THE COURT: Not at all.

6 BY MR. HOYLE:

7 Q Are you ready to continue, Doctor?

8 A Absolutely.

9 Q Do you agree with me that, when someone presents to
10 a medical doctor, and the medical doctor feels the need
11 to record on some sort of medical record that the person
12 is exhibiting thoughts of hurting others, that those
13 thoughts are self-explanatory?

14 A No.

15 Q Do you agree with the statement that, when a
16 medical doctor records in the medical records that a
17 person is exhibiting thoughts of hurting others, you
18 don't need to go to medical school to understand what it
19 means that someone has thoughts of hurting others. Do
20 you agree with that statement?

21 A I disagree.

22 Q Do you agree with me that it's common sense what it
23 means when somebody expresses thoughts of hurting others
24 to a medical provider?

25 A No, it's not common sense.

1 Q All right, sir. Let's go to page 109 of your
2 original deposition, the seal of which has been broken
3 in this courtroom, in the presence of this Court and
4 this jury. I'm going to direct your attention to Line
5 25, at Page 109.

6 A All right.

7 Q Are we on the same page, sir?

8 A Yes, we are, sir.

9 Q My question to you, beginning at Line 25, Page 109,
10 was as follows:

11 *When someone presents to you as a*
12 *medical doctor, and you feel the need to*
13 *record on some type of record that the*
14 *person is exhibiting thoughts of hurting*
15 *others, what can that mean?*

16 Your answer in the next two lines, 4 and 5, was as
17 follows:

18 *Well, exactly what it says: thoughts*
19 *of hurting others. I think that's self-*
20 *explanatory.*

21 Was that your testimony, sir?

22 A That's what I said at that time, yes.

23 Q But you've changed your mind.

24 A Not really, no.

25 Q That deposition continued with this question:

1 You think that's self-explanatory; don't
2 need to go to medical school to understand what
3 it means that someone has thoughts of hurting
4 others.

5 And what was your answer?

6 A No. Really, no.

7 Q Question: That's common sense.

8 And your answer?

9 A I -- I answered, at that point, of course.

10 Q That was your prior testimony, but that's not your
11 testimony today.

12 A Well, again, if I may answer why I'm answering the
13 way I'm today is that, I think the -- the terms you're
14 using are legal terms, and you're trying to make a
15 certain point with that, that any person off the street,
16 any child, could obviously tell that a particular
17 patient is suicidal or is going to kill themselves, and
18 my answer is no. And if that's what you're trying to
19 get me to say, I mean, I can't say that.

20 You have to have some medical training to be able
21 to distinguish between serious suicidal ideations and
22 not serious ones. And a regular person, no matter how
23 intelligent they are, may not have the training to do
24 that. So, that's what I'm trying to explain.

25 You're trying to catch me on little phrases and

1 words I said, but I'm trying to explain the reason I'm
2 answering it the way I am right now.

3 Q Doctor, you think you got to go to law school to
4 know what common sense is?

5 A I don't know.

6 Q You don't know. But you told me I was trying to
7 use legal terms. You think common sense is a legal
8 term, Doctor?

9 A I don't know.

10 Q Is it a medical term? Only something that medical
11 doctors and doctors of dental science, and only health
12 professionals can use?

13 A Sir, I'm afraid I don't know what you're trying to
14 get at.

15 Q When you told us, or told me in a room full of
16 lawyers, that something was self-explanatory, what did
17 you mean by those two words, *self-explanatory*? What
18 does that mean to you, sir?

19 A Well, it can mean it's -- it's -- it can be
20 something self-explanatory to me as a medical physician.
21 I mean, perhaps that's what I meant.

22 Q You think that's why I followed up with the
23 question:

24 *Don't need to go to medical school to*
25 *understand what it means when someone has*

1 *thoughts of hurting others.*

2 And you answered:

3 *Not really, no.*

4 A Well, what it means -- if you ask people, what does
5 it mean if someone has thoughts of hurting others, they
6 may give you answers, but they won't tell you is it a
7 serious threat or not a serious threat. So, in that
8 sense, you do need to have medical training.

9 Q So, your testimony in front of this Court and this
10 jury is, that's not common sense anymore, correct?

11 A Well, it depends what you're trying to answer.

12 Q Doctor, will you agree with me that, if something
13 is obvious, that, that means, by definition, that thing
14 which is obvious is not hidden?

15 A If you're talking generalities. Again, it depends
16 on the person that's making the statement, making the
17 assumption. Again, you're going to generalities, and I
18 really don't know what you're trying to get me to say.

19 Q I'm not trying to get you to say anything, Doctor.
20 I'm just trying to get you to answer my questions. Will
21 you agree with me that the word *opposite* [sic], by
22 definition, means that something is not hidden?

23 A No, I don't think that *opposite* means that
24 something is not hidden.

25 Q I apologize, Doctor. I got myself confused there.

1 That happens. Will you agree with me that obvious
2 means, by definition, something is not hidden?

3 A I would defer that to a dictionary. But what
4 you're saying seems to make sense, but if you're trying
5 to get me to give you a definition, I'm -- I'm not an
6 English major. I never studied that, so I can't exactly
7 say what it is. You can't hold me at it.

8 Q Are you telling this Court and this jury you'd have
9 to look the word *obvious* up in a dictionary?

10 A Well, I think, in this situation, in a court of
11 law, when you're asking me a specific question, you're
12 trying to trip me up, I think it would be fair to look
13 up what the definition is, in such a serious case as
14 we're dealing with right now.

15 Q Have you ever used the word *obvious* or *obviously*,
16 in connection with Calvin Dante Hunt?

17 A I think it is in my notes, and you probably are
18 getting at that, that I did use that word, but it was
19 not my word. I was paraphrasing somebody else.

20 Q When you paraphrase somebody else with the word
21 *obvious* or *obviously*, do you go pick up a dictionary
22 before you put that in the medical records, Doctor?

23 A No.

24 Q So, when you put that in the medical records, you
25 didn't know what the word *obvious* or *obviously* meant.

1 Is that what you're telling this Court and jury?

2 A I generally knew what it meant, but I couldn't
3 probably sit down and give you a definition that's a
4 proper definition.

5 Q Were you just guessing?

6 A No.

7 Q You had some precision when you used that word in
8 the medical records. Is that fair?

9 A Well, I had precision in terms of repeating what
10 somebody else said, and I assume it meant what that
11 person was trying to convey.

12 Q When that person tried to convey something about
13 Calvin Dante Hunt that was obvious, did you ask him or
14 her for any type of clarification? saying, what do you
15 mean when you say this is obvious. Did you do that?

16 A I don't recall.

17 Q You don't recall doing it, or you just don't know
18 one way or the other?

19 A I don't recall doing it.

20 Q Which means you didn't do it.

21 A No, it's not -- it's not in my notes, and I don't
22 recall, because it was over three years ago.

23 Q Doctor, had you ever met Calvin Hunt prior to
24 February 24, 2012?

25 A I don't believe so.

1 Q Do you actually remember anything about February
2 24, 2012, as you sit here today?

3 A I -- recollections have come back when I -- when I
4 reviewed my medical record that I -- that I used or
5 wrote at that time.

6 Q Doctor, I am holding what's previously been moved
7 into evidence as Plaintiff's 20.

8 MR. HOYLE: Permission to approach, your Honor.

9 THE COURT: Yes.

10 BY MR. HOYLE:

11 A I think you're drowning me in paper, but I think
12 I'll try to survive.

13 Q Well, if you need to take a break, Doctor, you just
14 let us know.

15 A Oh, no.

16 Q Nobody wants you to drown here, considering that
17 there's no water. Are you okay to continue, sir?

18 A I'm fine. There is a little water here, but thank
19 you.

20 Q If we need to call a lifeguard, you just let me
21 know.

22 A I can swim.

23 Q All right. With respect to the medical records you
24 have in front of you, --

25 A Yes.

1 Q -- do those appear to be medical records with
2 respect to Calvin Hunt from February 24, 2012?

3 A They appear to be, yes.

4 Q You think I've doctored them in any way?

5 A I don't believe so.

6 Q Did you actually review a set of those medical
7 records that you're currently holding in your hand prior
8 to coming here today?

9 A Not today, but probably yesterday.

10 Q Okay. So, you've seen them in some proximity to
11 today's testimony.

12 A Yes. Yes, of course.

13 Q Okay. Let's start with the emergency physician
14 record towards the back of the document. Are we on the
15 same page?

16 A Let's see here. I'll get to it. There we are.
17 Yes.

18 Q And in case anybody wasn't paying attention, you
19 were the emergency physician in the Naval Hospital E.R.,
20 Beaufort, on February 24, 2012, correct?

21 A Pardon me. Yes, I was.

22 Q You and you alone were the emergency physician
23 attending to Calvin Hunt, correct?

24 A Yes. Correct.

25 Q All right. And is this emergency physician record

1 something that you, as the emergency physician, would
2 have completed and filled out?

3 A Yes. This is called a T-sheet, and that was the
4 standard they were using at that time at the Naval
5 Hospital.

6 Q Okay. So, we've got a lot of information on this
7 document that's handwritten. Will you agree with that?

8 A Yes.

9 Q And whose handwriting is it on this emergency
10 physician record?

11 A I recognize it as my handwriting.

12 Q Okay. All right, Doctor. We've got a date on
13 here. What's the date, sir?

14 A It's February 24, 2012.

15 Q All right. And what time is it that you began
16 charting the emergency physician record on February 24,
17 2012?

18 A It's 1450, military time, or 2:50 p.m.

19 Q Any reason, as you sit here today, to think that's
20 an inaccurate time, or a time that needs some sort of
21 explanation?

22 A There's no reason for me to think that.

23 Q And there's some handwriting up here that's kind of
24 hard to see. What's that handwriting up at the top of
25 the page say?

- 1 A Oh, it says: *brought by the aid worker from DSS.*
- 2 Q Okay. And that's your handwriting, sir?
- 3 A Yes.
- 4 Q Underneath the date and time, we've got something
- 5 that says *historian*. Do you see that?
- 6 A Yes.
- 7 Q And what information did you mark for the historian
- 8 from which this medical record came?
- 9 A Well, the historian was the patient and Mr. Ray.
- 10 Q Prior to February 24, 2012, had you ever met Mr.
- 11 Ray?
- 12 A I don't believe so, no.
- 13 Q Didn't know him one way or the other.
- 14 A I don't believe I met him.
- 15 Q And we've got something up here that says *HPI*. Do
- 16 you see that?
- 17 A Yes.
- 18 Q What is *HPI*?
- 19 A History of Present Illness.
- 20 Q And do we need to get the dictionary about that, or
- 21 can you tell us what the word *present* means?
- 22 A Now, you really don't have to act like that with
- 23 me, sir.
- 24 Q All right. Can you tell us, as you sit here today,
- 25 what the word *present* means?

1 A History of Present Illness. History of the current
2 illness.

3 Q So, in other words, what was going on at 1450, on
4 2/24/12.

5 A Well, or before that, or what led up to the patient
6 coming.

7 Q And what's the chief complaint that you thought was
8 then occurring, or having just occurred some small
9 period of time immediately before you laid eyes on this
10 man?

11 A Well, there were -- there were three complaints.
12 One was written by myself as a medication refill. Two
13 was depression, and three was suicidal thoughts.

14 Q And you actually circled suicidal thoughts and
15 depression.

16 A Yes.

17 Q And you believed that those were present illnesses
18 or reasons for Calvin Hunt to be in your emergency room,
19 correct?

20 A Well, that was what was stated as the problem, the
21 presenting problem.

22 Q And who stated that existing problem?

23 A That would have been -- how do I arrive at that
24 history of present illness? That would have been
25 probably a combination of nurses' notes, perhaps what

1 the patient said, perhaps what Mr. Ray said.

2 Q But that was your understanding when you first
3 started laying eyes on Calvin Hunt, that, that's why he
4 was there.

5 A Correct.

6 Q We've got suicidal thoughts, depression, and
7 medication refill, correct?

8 A Correct.

9 Q Are you able to tell this jury what specific
10 medications Calvin Hunt needed to have refilled?

11 A I would have probably looked at the nurse's note,
12 where they would have written what medications he is on.
13 And I would have then probably asked the patient which
14 pain medications he would like to have refilled, if that
15 was the sole purpose of his visit.

16 Q Was that the sole purpose of his visit, or do you
17 not recall?

18 A Well, I don't recall exactly, but from the nurse's
19 note and from the other information I have, it appears
20 that medication refill was one of the things that he
21 wanted. However, there was some suspicion that there
22 was suicidal thoughts and depression. And the first
23 duty of a physician is to insure safety of a patient.
24 So, I wasn't just going to write a prescription for him
25 and say, here's your medication; have a good day, sir.

1 I wanted to look into the other complaints that were
2 present.

3 Q You just weren't going to give him some pills and
4 send him home.

5 A No, no.

6 Q Is that what you're telling me?

7 A That would be very bad.

8 Q That would be very bad. Okay. And underneath
9 chief complaint, we have a time line. It says:
10 *started, backslash.* Do you see that?

11 A Yes.

12 Q And for the chief complaint of suicidal thoughts,
13 depression, and medication refill, when did those
14 complaints start or begin?

15 A Well, I wrote *several weeks ago*. Not more specific
16 than that, but *several weeks ago*.

17 Q As you understood it, when you filled out this
18 record on February the 24th, 2012, these suicidal
19 thoughts, the depression, and the need for medications
20 to be refilled had been going on for several weeks. Is
21 that what your record reflects?

22 A Yes. That's what I probably would have assumed,
23 reading this record.

24 Q And these concerns hadn't magically stopped when
25 Calvin Hunt came into the E.R., because you also put

1 that these complaints continued in the E.R., correct?

2 A Yes, yes.

3 Q You circled that.

4 A Yes, I did.

5 Q So, those complaints of Calvin Hunt, they've been
6 going on for several weeks, and they were going on while
7 Calvin Hunt was directly in front of you in the
8 emergency room at Naval Hospital, Beaufort, correct?

9 A That was from the history, and I was going to delve
10 more into that and to determine exactly what was going
11 on.

12 Q And there's a section of this record that says
13 severity. Do you see that? Immediately underneath.

14 A Yes. Yes, yes, yes, of course.

15 Q And we have three levels of severity. Kind of like
16 Sears Roebuck had the good, better, best. We've got a
17 severity of mild, moderate, and severe. Do you see
18 that?

19 A Yes, I do.

20 Q And of the mild, moderate, or severe, can you rank
21 in order those three levels of severity for us, as you
22 sit here today?

23 A Well, I circled severe, if that's what you're
24 trying to get me to say. And that's obvious.

25 Q Well, explain to us the difference between

1 something that's mild, something that's moderate, and
2 something that's severe.

3 A Well, mild is mild, and moderate is more than mild,
4 and severe is very much more than mild.

5 Q With respect to those three levels of severity that
6 you've explained to us today, would one of those three
7 concern you more than the other two?

8 A Well, severe is obviously more, how should I say,
9 would get your attention more than something that's
10 mild. But again, this was my writing, and I felt that
11 anybody that presents with any suicidal thoughts or
12 depression, it's probably severe. And in terms of that,
13 they need to be seen promptly, and treated promptly, and
14 in a safe manner.

15 Q There's a context that your medical record provides
16 under severity. Do you see that?

17 A Yes.

18 Q And what word or words did you circle, sir?

19 A Situational problems.

20 Q And what does that mean, situational problems?

21 A Well, situational problems can mean if there's
22 anything else that you want to add to what's leading up
23 to this particular complaint.

24 Q It's some context or background information --

25 A Yes.

1 Q -- to help you understand, perhaps, just how severe
2 these problems might be. Is that fair?

3 A Yes, that's fair.

4 Q All right. And what information did you feel the
5 need on February 24, 2012 to write down?

6 A Well, I wrote here, and it's -- the jury, perhaps
7 you can show it to the jury -- is:

8 *The patient dishonorably discharged*
9 *from USMC and is appealing the decision.*
10 *He is visiting with grandmother in Beaufort,*
11 *and she called Mr. Ray, concerned about his*
12 *depression.*

13 Q So, at this point in the medical records, you know
14 that there is a severe concern about suicidal thoughts,
15 depression, and the need for medication refill, and that
16 Mr. Hunt's own grandmother called someone, because she
17 was concerned about her grandson's depression.

18 A Yes.

19 Q And at that point in time, when you started filling
20 this record out, we have current associated complaints.
21 Do you see that?

22 A Yes, I do.

23 Q And there are one, two, three, four, five, six
24 options that you could have circled under current
25 associated complaints, correct?

1 A Yes.

2 Q And you circled two of them, correct?

3 A Correct.

4 Q Which two did you circle?

5 A Depressed and angry.

6 Q Now, Doctor, what does the word angry mean?

7 A Angry probably means expressing some degree of
8 hostility.

9 Q Is angry -- strike that. Does angry mean the same
10 thing as calm, or are those opposites?

11 A Those would be opposites, I would think.

12 Q Kind of like cats and dogs, apples and oranges?

13 A You can use that analogy, yes.

14 Q Thank you, Doctor. Now, on this medical record, we
15 have something circled. What two words did you circle?

16 A Circled is suicidal thoughts.

17 Q And then, there are some words in your handwriting
18 that follow underneath the circling of the words
19 *suicidal thoughts*, correct?

20 A Yes.

21 Q Read for the Court and this jury the words that
22 follow suicidal thoughts.

23 A *Suicidal thoughts and thoughts of*
24 *hurting others, but no specific plan.*

25 Q Let me stop you right there. We had some

1 discussion a few minutes ago about what thoughts of
2 hurting others means. Do you recall that?

3 A Yes.

4 Q And we had to look at your deposition in this case
5 to try to get an understanding of what that means. But
6 let me just ask you. Thoughts of hurting others. Do
7 you have to go to medical school to know what that
8 means? Yes or no.

9 A Well, if -- if -- if you did not go to medical
10 school, and you read thoughts of hurting others, I think
11 that would -- you could probably figure out what that
12 means.

13 Q And what does that mean, Doctor, when someone has
14 thoughts of hurting others? What do they have thoughts
15 of doing?

16 A Well, they have thoughts of hurting others, I think
17 that's what the words mean.

18 Q Do you think that's self-explanatory?

19 A Again, it's degrees. There can be serious thoughts
20 of hurting each [sic] other, which have -- carry no
21 consequences whatsoever. And as an example, I can give
22 you where it's probably not serious is, if you're
23 driving a car somewhere in town and somebody cuts you
24 off, you may say, goodness, gracious, I'd like to kill
25 that person for doing that. That's a thought of hurting

1 others, but probably after a day or so, you kind of calm
2 down, and you say, oh, my goodness; that's ridiculous;
3 that's like road rage; I better not think of that. So,
4 that's a non-serious thought of hurting others.

5 As an example of something serious being a thought
6 -- serious thought of hurting others would be somebody
7 that's, let's say, a postal worker, and hate -- I hope
8 nobody here works for the Post Office -- but is getting
9 fired at work; and goes out and threatens the supervisor
10 and says I'm going to kill you; and he goes out to
11 WalMart and purchases a weapon; gets some ammunition.
12 And in that case, I think that's a very serious
13 homicidal ideation.

14 So, there are degrees, and I think only a medical
15 professional can decide that. So, it's not obvious to a
16 layperson.

17 Q Um-hmm. There's a section on this medical record
18 that you filled out on February 24, 2012 that says *other*
19 *problems*. Do you see that?

20 A Yes, I do.

21 Q And by my count, there are one, two, three other
22 problems that you felt the need to record for
23 posterity's sake on this record. Is that correct?

24 A Well, for -- for information, yes.

25 Q All right. What's the first one, Doctor?

1 A Alcohol/drug abuse.

2 Q And the next one?

3 A Depression.

4 Q And the last one?

5 A Prior suicide gesture.

6 Q Now, Doctor, you told me earlier that you had
7 reviewed the nursing note prepared there in the
8 emergency room. Do you recall telling me that?

9 A I don't recall telling you that, but if I did say
10 that, then, probably, at that time, I had looked at the
11 records, and that probably did make sense, and that was
12 probably the correct answer.

13 Q If you'll look at the next page of your physician
14 record, there's some information on here that says
15 *Nursing Assessment Review*. Do you see that?

16 A Let me see here. Yes, yes.

17 Q All right. And there's a box that's next to those
18 words. You see that?

19 A Yes.

20 Q And is that box checked or not checked?

21 A Checked.

22 Q Okay. You think it's more likely than not that you
23 actually reviewed the nursing notes?

24 A Looking at the record right now, if I checked the
25 box, then, I did do it. Again, I have the benefit of

1 looking at the records and reminding myself.

2 Q Okay.

3 A That's why we have records.

4 Q That is why we have records. Thank you, Doctor.
5 All right. With respect to the nursing notes, can you
6 find those in that packet of materials?

7 A Well, let me look for them. All right. Yes. I
8 think it's Page 2, and it says, well: *Triage Record*.
9 *Emergency Department Triage Record*, on left, upper
10 corner.

11 Q All right. Who performed this assessment? Which
12 registered nurse?

13 A It looks -- it's signed by Janice McDonald.

14 Q All right. And to your recollection, was Janice
15 McDonald working on February 24, 2012?

16 A Again, I believe she was.

17 Q Okay. So, you would have actually reviewed this
18 information that Nurse Janice filled out that day,
19 correct?

20 A Yes.

21 Q All right. There's a list of medications that
22 Nurse Janice McDonald placed on the triage record. Do
23 you see that?

24 A Yes, I do.

25 Q Would you have reviewed that list of medications on

1 February the 24th, 2012?

2 A I would have looked at it and noted it, yes.

3 Q Okay. And what stands out to you with respect to
4 those four medications that are listed on Nurse Janice
5 McDonald's triage record?

6 A Well, I see two medications that are used for --
7 for psychiatric conditions. I use -- see one that's
8 used for urogenital conditions, and one for addiction.

9 Q All right. Well, let's focus our attention to the
10 two medications that are related to psychiatric
11 conditions, Doctor.

12 A Yes, of course.

13 Q Which of those two of those four listed,
14 medication-wise, have to do with psychiatric conditions?

15 A The first and the last one.

16 Q All right. And what is the first medication,
17 Doctor, that you would have reviewed on Nurse Janice
18 McDonald's list?

19 A Well, I would have seen Citalopram. That's the
20 first medication.

21 Q Tell the jury -- tell the jury what that's a
22 medication for.

23 A Well, it's a medicine that's most commonly used for
24 depression.

25 Q And the last medication that's on there, what's

1 that medication called?

2 A Well, it's called Quetiapine, or better known as
3 Seroquil.

4 Q All right. And tell the jury what Seroquil is
5 for.

6 A Well, Seroquil belongs to a class of anti-psychotic
7 medications. However, it's got a multi-factorial use.
8 One, it can be used for schizophrenics. Two, it can be
9 used as a mood stabilizer for manic depressive patient.
10 And three, and most commonly, it's used as adjunct for
11 depression. And when the medications for depression
12 don't work, often, Seroquil will be added to help the
13 depressed patient.

14 Q Now, let me stop you right there. When you saw
15 that Seroquil was one of the medicines that Calvin Hunt
16 was in need of, did you know for what reason he had been
17 prescribed that medication? Yes or no.

18 A No, I didn't.

19 Q What steps did you take, as the only physician in
20 the emergency room at the Naval Hospital, Beaufort, on
21 February 24, 2012, to determine why it was that Calvin
22 Hunt had been prescribed Seroquil?

23 A Well, I talked to the patient.

24 Q Okay. And was Mr. Hunt able to tell you why it was
25 he had been taking Seroquil? Yes or no.

1 A No.

2 Q All right. Did Mr. Ray know why it was that Calvin
3 Hunt had been taking Seroquil?

4 A I don't recall asking Mr. Hunt, although I may
5 have.

6 Q You mean, Mr. Ray?

7 A Mr. Ray. I'm sorry. Mr. Ray. But I may have. I
8 don't recall.

9 Q But you knew that one of the possibilities was it
10 could be used as an adjunct for treating depression,
11 correct?

12 A Yes.

13 Q That it could also be used to treat schizophrenia?

14 A Yes.

15 Q And you also knew it could also be used to treat
16 something -- I believe you called it manic disorder?

17 A Bipolar or manic depressive. We use bipolar now.

18 Q That's the better term.

19 A Well, it's the term commonly used right now.

20 Q Okay. But you didn't have a specific understanding
21 whether or not Calvin Hunt was bipolar, schizophrenic,
22 or just depressed.

23 A No.

24 Q We go back to your records from that day, to the
25 second page of your physician record.

1 A All right.

2 Q There's some handwriting in parentheses up at the
3 top of the page. Do you see that?

4 A Yes.

5 Q Whose handwriting is that?

6 A That's probably my handwriting.

7 Q Well, I don't want you --

8 A It's bad -- it'd bad enough to be mine.

9 Q Okay. You're going to take credit for it.

10 A I will.

11 Q Okay. What words did you write at the top of the
12 second page of your medical record?

13 A It says, in brackets: *see prior medical notes from*
14 *Mr. Ray.*

15 Q All right. So, that's something you wrote,
16 correct?

17 A Yes.

18 Q Did you actually look at any hard-copy medical
19 records that Calvin Hunt and/or Edward Ray brought into
20 the emergency room, or do you not recall?

21 A Now, to be honest, I don't recall. But I'm almost
22 quite certain that there were no medical records that
23 were available from Mr. Hunt or Mr. Ray.

24 Q Well, this note up here, this writing up here, --

25 A Um-hmm.

1 Q -- it says *see prior* -- what's that word?

2 A *Medical notes.*

3 Q *Medical notes. What's a medical note, Doctor?*

4 A What it says, a medical note. That does not
5 necessarily mean a record.

6 Q In your years at the Naval Hospital here in
7 Beaufort, South Carolina, did you ever see active-duty
8 personnel come into the emergency room with their hard
9 copy medical records?

10 A Yes.

11 Q Particularly if those persons were coming here to
12 Beaufort or Parris Island from another duty station, is
13 that something you commonly saw?

14 A Not commonly, but occasionally, I did.

15 Q It wasn't the first time -- strike that. But you
16 distin -- you distinguish, as you sit here today, in
17 this courthouse, under oath, the difference between a
18 medical note and a medical record, correct?

19 A Well, again, I don't recall exactly what it was.
20 It certainly wasn't this thick, which I would expect for
21 a patient that has had a lot of problems to be. And
22 it's -- it could have been notes from Mr. Ray from his
23 visit and in his personal notes. It could have been
24 some sort of letter of introduction or eligibility kind
25 of for Mr. Hunt. I don't recall exactly. It was

1 something pertaining to -- to Mr. Hunt probably, but I
2 -- I don't know whether they were actual medical records
3 that could be useful in any way for me to determine any
4 further treatment of the patient.

5 Q You don't know, and can't tell us what it is,
6 exactly, you looked at. Is that fair?

7 A Well, at the moment, I can't, no.

8 Q Okay. Just know that there were prior medical
9 notes that you felt the need to record on your medical
10 record about this visit on this day, correct?

11 A Yes.

12 Q Can't tell us whether or not you looked at them,
13 didn't look at them, or what might be in them, correct?

14 A I don't recall. It would sort of make sense that I
15 glanced at it, but unfortunately, I did not document
16 anything. It probably was not helpful to the case, if I
17 did not document it. But I -- I can't comment more on
18 that.

19 Q All right. We'll come back to that, Doctor. Going
20 back to the nursing note from Ms. Janice McDonald.

21 A Going back. Okay. Give me one minute, please, to
22 go back.

23 Q Yes, sir.

24 A You're jumping a little bit here. Go ahead.

25 Q All right. On her assessment, she writes, among

1 other things, *suicidal ideation and PTSD*. Is that
2 correct?

3 A Yes. Yes.

4 Q That's something that you would have reviewed in
5 the emergency room, on February 24, 2012, correct?

6 A I would have noted it, probably, in the nurses'
7 note, yes.

8 Q Okay. Now, I didn't see on your record that you
9 filled out any reference to PTSD.

10 A No, I did not.

11 Q You don't see that, either.

12 A I don't see that, no.

13 Q On February 24, 2012, did you decide that Ms.
14 Janice McDonald was incorrect in her assessment about
15 Calvin Hunt having PTSD, or did that just not enter into
16 your equation?

17 A Well, I probably did not -- for some reason, either
18 I forgot to put it in, or I was concerned about other
19 things and doing the rest of the physical. You know, I
20 also didn't put that he had a cyst removed. I didn't
21 put that in either. So, I'm not going to copy
22 everything from the nurse's note, necessarily.

23 Q Which would have more to do with a patient whose
24 chief complaint was suicidal ideation, having a cyst
25 removed or having PTSD?

1 A Well, PTSD probably would be more appropriate in
2 that situation.

3 Q Particularly somebody who was an enlisted man in
4 the United States Marine Corp. Is that fair?

5 A That's fair. And again, the reason I said that
6 was, I don't always transfer all the notes from the
7 nurse to my notes.

8 Q What was the source of Calvin Hunt's PTSD? Was it
9 combat related, or do you not know?

10 A I don't remember at the moment. I don't recall.

11 Q What steps, if any, did you take on February the
12 24th, 2012, to see why it was Calvin Hunt had PTSD,
13 according to Nurse Janice McDonald's nursing notes?

14 A Most likely, I did attempt to talk to the patient.

15 Q Did you do anything else, Doctor?

16 A Yes, I -- I referred him to a psychiatrist, because
17 I was really not getting anywhere with him to really
18 arrive at a good decision as to what's going on with
19 him. And I was hoping the specialist would be able to
20 delve more into it, perhaps research his medical
21 records, and really arrive at a better understanding of
22 what he's there for.

23 Q Did I hear correctly that you didn't think you were
24 getting good information out of Mr. Hunt? Is that what
25 you just told us?

1 A That's correct, yes.

2 Q He wasn't very forthcoming.

3 A Yes.

4 Q Was he withdrawn?

5 A I don't recall. If -- if I wrote it there, then,
6 it was. But I have to refer to the records, I'm afraid.

7 Q Certainly. Certainly. Well, let's look -- we'll
8 just go right back to Nurse Janice's record, which you
9 said you reviewed. And this is her nursing assessment,
10 which she performed the same day Calvin Hunt was in the
11 emergency room, correct?

12 A Right. Um-hmm. Yes.

13 Q That's a yes?

14 A Yes, yes. Of course.

15 Q And in *psycho social* in her nursing assessment,
16 what box did she check for the behavior which best
17 described Calvin Hunt?

18 A She checked off flat, depressed, withdrawn, and
19 suicidal.

20 Q And you believe that accurately described Calvin
21 Hunt that day, correct?

22 A That's -- that's what the nurse wrote, and you
23 probably have to question her about that. That's her
24 writing.

25 Q But on February 24th, when you reviewed this

1 record, --

2 A Um-hmm.

3 Q -- did you feel the need, in any of the records
4 that you, as his doctor, were filling out, taking issue
5 or disagreeing with any of those psycho social
6 assessments?

7 A I did not. I -- since I did not write anything or
8 disagree with the notes, I -- I would assume that I
9 agreed with the nursing assessment.

10 Q You didn't write on your record in big letters at
11 the top, I, Dr. Jansen, disagree with Nurse Janice, or
12 anything to that effect. Is that fair?

13 A No. No, I did not.

14 Q Okay. And when you said you reviewed the nursing
15 assessment on the second page of your record, you didn't
16 put out to the side, and I disagree with everything she
17 wrote, did you?

18 A No, I didn't.

19 Q Okay. In fact, we'll skip -- we'll come back to
20 this. Don't think we're going to skip anything.

21 Under, orientation, you have the opportunity to
22 circle some information yourself, didn't you?

23 A Let me see. We're on a different page now. Let's
24 see here. Orientation. Can you show me where we're at?

25 Q Certainly.

1 A There. Okay. Got it. Orientation. Yes.

2 Q You had the opportunity to circle a word, and tell
3 me what word you circled.

4 A Circled disoriented.

5 Q All right. Did this patient know or not know his
6 Social Security Number?

7 A From my notes, it says he doesn't recall his Social
8 Security Number.

9 Q Now, I've heard, from my own experience growing up
10 on a military bases and watching enough movies, that
11 line name, rank, and serial number. You've heard that?

12 A Yes, but serial number is not your Social Security
13 Number.

14 Q That's entirely fair, Doctor. How frequently, if
15 ever, have you ever had a patient in the Naval Hospital,
16 Beaufort Emergency Room, who did not know his or her
17 Social Security Number, if he or she had been an
18 enlisted man in the Service, or an enlisted woman in the
19 Service, or a commissioned officer?

20 A Well, again, most people would know it, and that's
21 why I noted it, that he didn't know it, because that
22 jumped out at you a little bit.

23 Q That's something that's surprising when you're
24 talking about somebody who enlisted in the Service. Is
25 that fair?

1 A And exactly. That's why I documented that.

2 Q Suggests that perhaps this man doesn't have all his
3 wits about him. Would you agree with that?

4 A Not necessarily. I think you can make a case for
5 somebody that's depressed or upset or angry, and he just
6 -- he has other thoughts going through his mind, and he
7 just either doesn't want to answer, or is being evasive,
8 or you know, things like that. So, I mean, there --
9 there's a lot of reasons why people would refuse to
10 answer questions or give information, so. He doesn't
11 necessarily have to be out of his wits.

12 Q Did you write that Calvin Hunt refused to give you
13 his Social Security Number or that he didn't recall his
14 Social Security Number? Which of those two did you
15 write, Doctor?

16 A Well, I wrote he doesn't recall Social Security
17 Number.

18 Q Would you agree with me that not remembering
19 something is completely different than a volunteering
20 and where you refuse to provide certain information?
21 Those are different concepts, aren't they, Doctor?

22 A Generally speaking, yes. I agree with that, and I
23 don't know if that particularly pertains to this case,
24 though.

25 Q But you, when you're filling this out, was your

1 goal to fill these records out accurately or
2 inaccurately?

3 A As accurately as possible.

4 Q So, you had a blank line there, correct?

5 A Yes.

6 Q You could have written whatever words you wanted to
7 with respect to Calvin Hunt's orientation, correct?

8 A Yes.

9 Q But you felt the need to write *doesn't recall SSN*,
10 correct?

11 A Yes.

12 Q Instead of refused to tell me SSN, or something
13 along those lines, correct?

14 A That's what I wrote, yes.

15 Q I just want to make sure. Your testimony here
16 today is that Calvin Hunt didn't remember what his
17 Social Security Number was.

18 A And that's what's written in the records.

19 Q All right. Let's go up here, back to the top. I
20 said we weren't going to skip this.

21 A I believe you.

22 Q I want to follow through that. Calvin Hunt's
23 general appearance. What word or words did you circle?

24 A I circled anxious. And above that, moderate.

25 Q Does the mild/moderate/severe distress, is that its

1 own line, or -- or --

2 A That's its own line.

3 Q Okay. So, those are two separate things we're
4 talking about here, correct?

5 A Yes.

6 Q All right. So, as far as Calvin Hunt's general
7 appearance, you could have said he had mild distress or
8 severe distress, but you picked moderate distress,
9 correct?

10 A Yes.

11 Q That's smack dab in the middle of those three
12 choices, correct?

13 A Yes.

14 Q All right. Help the Court and jury understand what
15 you meant by moderate distress, when you have the option
16 of mild, moderate, and severe.

17 A Well, I -- I -- I would suspect that, if he was
18 angry or depressed, his demeanor would show that, and I
19 certainly wouldn't say mild. And he wasn't flailing
20 about in the E.R. and running around and threatening
21 people, so it wasn't severe. So, I think, since we only
22 have three choices, that's the closest one that fits the
23 situation.

24 Q But it definitely wasn't mild, correct?

25 A I circled moderate. I felt it was moderate.

1 Q So, it wasn't mild, correct?

2 A Yes. By exclusion.

3 Q And going back to anxious.

4 A Yes.

5 Q What does it mean when somebody is anxious?

6 A It means that they're not calm.

7 Q Not calm. Okay. So, you've told us he's angry,
8 and you've told us he's not calm, correct?

9 A That he's anxious.

10 If I may, if it might please the Court, I did not
11 say that he was not calm. I said he was anxious. And
12 you're asking me, what does -- what does anxious mean.
13 I think anxious is the best definition of that, and I
14 don't know if --

15 Q Now, anxious. So, you just told us -- I want to
16 make sure my ears are hearing correctly --

17 A Yes.

18 Q -- that, if somebody is anxious, that means they're
19 not calm, correct?

20 A That's a -- that's a -- you can say that's a
21 descriptive, another word for anxious, but it may not
22 apply exactly to a patient, that he may be more anxious
23 than not calm. And I think, since my records say he was
24 anxious, I think we should leave it at that and not put
25 in not calm.

1 Q All right. Well, we'll just strike through the not
2 calm. But you agree with angry and anxious, correct?

3 A Yes, that's in the records.

4 Q That's in the record. Not going to quarrel with
5 the record. And while we're going through this, you
6 would agree with me that Calvin Hunt was disoriented and
7 didn't know his Social Security Number, correct?

8 A He was disoriented to his Social Security Number.
9 Only to that.

10 THE COURT: Oh, you've paused. Excellent time to
11 take a comfort break.

12 MR. HOYLE: I agree, your Honor.

13 THE COURT: Ladies and gentlemen, we're going to
14 take our afternoon break. Step to your jury room. Do
15 not discuss this case or allow anyone to discuss it with
16 you. Leave your notebooks in your seats, and we'll take
17 about 15 minutes. Thank you. Thank you.

18 JURORS LEAVE COURTROOM 3:43 P.M.

19 BAILIFF: Jury is clear, your Honor.

20 THE COURT: All right. Thank you. Dr. Jansen, you
21 also take a break, please.

22 A Okay.

23 THE COURT: Be mindful not to discuss your
24 testimony with anyone, and we'll get you fresh water
25 during the break.

1 A Even with the lawyers?

2 THE COURT: Even with the lawyers. Well, you can
3 talk to them about anything but your testimony.

4 A All right.

5 THE COURT: Now, you can talk about -- well, it's
6 too late to talk to them about the Yankees.

7 A Yes. Yes. All right. I understand.

8 THE COURT: Talk to them about Toronto, if you want
9 to.

10 A I understand. Thank you.

11 OFF THE RECORD 3:44 P.M.

12 BACK ON THE RECORD 4:03 P.M.

13 BY THE COURT:

14 BAILIFF: All rise. This court is now in session.

15 THE COURT: Everybody ready?

16 MR. HOYLE: Yes, your Honor. Plaintiff is ready.

17 THE COURT: Yes, sir, Doctor, come on back around.
18 Let's have the jury.

19 BAILIFF: Ready, your Honor?

20 THE COURT: Yes.

21 BAILIFF: Jury is entering the courtroom, your
22 Honor.

23 JURORS ENTER COURTROOM 4:04 P.M.

24 THE COURT: All right. You may continue.

25 MR. HOYLE: Thank you, your Honor.

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2012-CP-07-03782

REBECCA DELANEY, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JUSTIN NICHOLAS MILLER

PLAINTIFF

VOLUME THREE

ORIGINAL

VERSUS

CASEPRO, INCORPORATED

DEFENDANT

OCTOBER 7 THROUGH 16, 2015
PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL
BEAUFORT, SOUTH CAROLINA

INDEX TO VOLUMES:

Volume One - Pages 1 - 427
Volume Two - Pages 428 - 819
Volume Three - Pages 820 - 1232
Volume Four - Pages 1233 - 1575 & Keyword Index

Wanda H. Rowe, CVR-M
Official Court Reporter

1 THE COURT: Yes, sir.

2 DR. CHRISTIAN JANSEN, CONTINUE

3 DIRECT EXAMINATION, BY MR. HOYLE:

4 Q Dr. Jansen, I want to go back to the records that
5 you were filling out yourself on February 24, 2012 at
6 the Naval Hospital, Beaufort Emergency Room.

7 A Fine. Fine.

8 Q And we looked pretty healthily before we took a
9 break at the left-hand side of the first page of your
10 record. Let's look over here at the right-hand side.
11 We were talking earlier about medications, and you
12 actually circled *see nurse's note*, correct?

13 A Let's see here. Yes.

14 Q And I believe, as part of my examination, we
15 actually established that you did, in fact, look at
16 Nurse Janice McDonald's record and view the medications
17 of which Calvin Hunt was seeking a refill, correct?

18 A Presumed medications, I believe. I wasn't able to
19 get information from him. So, we can assume that's what
20 it was, but we can't be a hundred percent certain.

21 Q Okay. And we'll talk more about your dialogue with
22 Mr. Hunt in a moment. But at least according to the
23 record that you filled out, there are some words that
24 you wrote underneath the box with the word *medications*.
25 Do you see those words?

1 A Yes.

2 Q And what words are written?

3 A It says *ran out of meds*, or medications.

4 Q All right. And we had already established there
5 were some medications that were on the nurse's note,
6 including one for depression, another called Seroquil,
7 correct?

8 A Yes.

9 Q Did you know how long, in February 24, 2012, Calvin
10 Hunt had been out of his anti-psychotic medication?

11 A No. I never got a chance to go that far.

12 Q Okay. And you started interacting with Mr. Hunt at
13 1450. And for those of us who primarily live our lives
14 in the civilian world, what time is that?

15 A 2:50 p.m.

16 Q And on February the 24th, 2012, during the time
17 frame that Calvin Hunt was in your emergency room at the
18 Naval Hospital in Beaufort, was he the only patient
19 there?

20 A I'm not sure, but that probably is the case, from
21 what I've heard from the records or from the lawyers.

22 Q You don't dispute that Calvin Hunt was the only
23 patient in the emergency room during this 2:00 o'clock
24 to 4:00 o'clock time frame on February 24, 2012?

25 A I wouldn't particularly dispute that one way or the

1 other.

2 Q Okay. All right. All right. Let's go back to the
3 second page or your notes. And it looks like you're
4 completing a physical exam on Mr. Hunt. Is that
5 correct?

6 A Yes.

7 Q You're actually laying hands on him as a doctor and
8 a patient, correct?

9 A Yes.

10 Q Okay. Did you listen to his heart with a
11 stethoscope?

12 A Let's see here. From the records here, I don't
13 know whether I did that. But for a general patient that
14 comes in, I wouldn't usually listen to the heart and
15 lungs. I don't have anything recorded here that I did
16 that. I probably did, but I can't tell for certain.

17 Q Okay. Don't know one way or the other.

18 A No.

19 Q Okay. But regardless, you go through various
20 categories of things, with respect to his EMTIs, those
21 kind of things, correct?

22 A Yes.

23 Q All right. On here, with respect to neuro-
24 psychological, and you've got some words that reflect
25 this person's mental state, correct?

1 A Yes.

2 Q And what word or words did you yourself circle on
3 this record?

4 A Depressed affect.

5 Q Okay. What is a depressed affect? Or since I'm
6 from South Carolina, I'll call it an affect.

7 A I'd say a sad appearance. Affect is really what
8 the patient projects physically.

9 Q So, a sad appearance.

10 A Sad affect.

11 Q All right. We've got some words over here that you
12 wrote in your own handwriting. And what are those
13 words?

14 A It says *doesn't state*.

15 Q And what does that mean, *doesn't state*? Why are
16 those words written in your handwriting on this medical
17 record on February 24, 2012?

18 A Well, it's next to the box that's actually
19 specifically asking about suicidal ideation, and it says
20 he doesn't state.

21 Q Is that your recollection?

22 A Well, I would say that, most likely, when I asked
23 him do you have any thoughts of hurting yourself or
24 others, he didn't answer.

25 Q Well, earlier, in the record that we looked at, the

1 page before, you circled suicidal thoughts, correct?

2 A Yes.

3 Q And wrote *and thoughts of hurting others*, correct?

4 A Yes.

5 Q And *but no specific plan*, correct?

6 A Correct.

7 Q Did you obtain the information that you just told
8 us in the medical records from Calvin Hunt? Yes or no.

9 A I don't recall exactly who I got it from. But
10 again, the record is a continuing discussion with the
11 patient. And I believe he -- that's one of the reasons
12 I got the referral for psychiatry, because I really
13 couldn't get a good idea of his thought processes. One
14 time, looks like the nurses, he had stated the clerk,
15 she wrote that there was suicidal ideations. The nurse
16 wrote there was suicidal ideations. But to me, he -- he
17 didn't want to answer. So, it was kind of an
18 ambivalence, or he didn't want to tell me, or he refused
19 to communicate. So, this is what I wrote when I asked
20 him.

21 Q Okay. So, these words on the first page of your
22 record, did they just magically appear, Doctor?

23 A No, they -- they -- they were a compilation of the
24 nurse's notes, and perhaps what Mr. Hunt had said, or
25 even perhaps what Mr. -- I'm sorry -- what Mr. Ray had

1 said, or -- that's from the history, so I kind of may
2 have looked at that nurse's note and added that.

3 Q And *history of present* --

4 A Um-hmm.

5 Q -- meaning then occurring?

6 A Yes.

7 Q And what does the *I* stand for?

8 A Illness.

9 Q Okay. So, the history of present illness, you
10 have, and *thoughts of hurting others*, correct?

11 A Right, right.

12 Q What do we have in this box with the hash mark
13 surrounding it on four sides?

14 A Let me get over here. Well, I cross -- this hash
15 box, again, we have very little space on these T-sheets
16 to write things, so we do the best we can with the
17 information we have. I crossed out *for suicide*
18 *attempts*, because there was no suicide attempt in this
19 case. But I used that little box, really, it seems, I
20 was probably relating it to suicidal ideations. And it
21 says, *patient doesn't deny nor confirm ideations*. So,
22 to me, he didn't confirm or deny it when I asked him
23 specifically in my physically exam part.

24 Q In your physical exam part, you asked him a
25 question, and he just sat there and didn't answer you?

1 Is that what you're telling us?

2 A I don't recall exactly the situation, but what I
3 wrote, it probably means what -- what happened.

4 Q Clinical impression over here. You have a box that
5 is circled.

6 A Yes.

7 Q You also have a word that is circled. What word
8 did you circle, sir?

9 A I circled depression.

10 Q We'll get into what you did that day in a minute,
11 but while we're just going through the records, it looks
12 like, from the records, you typed up an addendum to your
13 chart, correct?

14 A Yes.

15 Q And you wrote this note at 1640 in the afternoon,
16 correct?

17 A It appears to be that, yes.

18 Q At 1640, for those of us that spend the majority of
19 our time in the civilian world, is what time, sir?

20 A 4:40 p.m.

21 Q On February 24, 2012?

22 A 2012, yes.

23 Q And you wrote this that day at that time?

24 A Yes.

25 Q Typed it up yourself, correct?

1 A Yes.

2 Q And had it printed out and placed in Calvin Hunt's
3 permanent medical records, correct?

4 A Well, in the emergency department records.

5 Q And these are your words, not you typing up the
6 dictation of somebody else, correct?

7 A Yes.

8 Q Patient was brought to the BNHTER about
9 1500 by V.A. worker Edward Ray, who wanted
10 patient assessed after seeing him in his
11 office today at DSS.

12 Did I read that correctly?

13 A Yes.

14 Q Patient was well-dressed and cooperative,
15 but poorly communicated.

16 Did I read that correctly?

17 A Yes.

18 Q Do you agree with that statement that Calvin Hunt
19 was poorly communicated?

20 A If I wrote it, then, I probably felt it. That's
21 all I can really say. I don't recall.

22 Q What does it mean when somebody is poorly
23 communicative?

24 A Does not verbalize adequately.

25 Q Doesn't verbalize adequately. Not able to answer

1 your questions?

2 A That could be part of it, yes.

3 Q Not able to tell you his Social Security Number?

4 A Yes.

5 Q Not able to tell you how long it was he'd been here
6 in Beaufort, South Carolina?

7 A That could be part of it, yes.

8 Q Might not know who the president is or what the day
9 of the week it is.

10 A That could be examples of that, yes.

11 Q Okay. Poorly communicative. You write:

12 *He did not appear agitated or psychotic.*

13 I read that correctly.

14 A Yes.

15 Q Okay. And you wrote this after Calvin had already
16 left, correct?

17 A Correct.

18 Q Okay.

19 I, --

20 meaning you, Dr. Jansen, --

21 -- was unable to get sufficient history
22 from him, except that he wanted to get his
23 medications refilled.

24 Did I read that correctly?

25 A Correct.

1 Q So, you'll agree with me that, on that day, you
2 were unable to get sufficient history from the patient,
3 correct?

4 A Correct.

5 Q And what does that mean to you as a doctor when you
6 can't get sufficient history from a patient?

7 A It's very self-explanatory. I mean, you're not
8 getting a complete story.

9 Q That's obvious, not able to get a complete story
10 from the patient?

11 A Well, to the -- to the medical provider, it's
12 obvious.

13 Q Self-explanatory, that's what you told me?

14 A To a doctor, yes.

15 Q But not able to get sufficient history. And I
16 believe you've already told us that, even though there's
17 this reference to some medical notes that, apparently,
18 though, were available in the emergency room, you didn't
19 go look at them, correct?

20 A Well, I told you earlier that I don't recall.

21 Q Okay.

22 A I may have looked at them, I may have not. If it
23 was something -- I would assume, from my normal ways of
24 dealing with this, if it were something that were
25 important that would be helpful, I probably would have

1 added it in my notes.

2 Q That's an assumption, though. That's not a
3 recollection.

4 A Of course, of course. That's what I normally do.

5 Q You're not able to tell us you actually looked at
6 this man's medical records and, for example, found out
7 why it was he had been prescribed Seroquil?

8 A No, I did not look at that, no.

9 Q Will you agree with me that, if you can't get a
10 sufficient history about a patient that the logical
11 place to look would be in that person's medical records?

12 A If they're available to you easily, yes. And
13 medical records were not easily available to E.R., and
14 they were not routinely ordered or looked at.

15 Q Now, you would agree with me that, if somebody
16 comes in with their medical records, that they're
17 available, correct?

18 A If they have the complete medical records, yes.

19 Q Well, even if they're the partial medical records,
20 Doctor, you would agree with me that there are
21 information contained therein that may or may not be
22 helpful.

23 A It may or may not be helpful. But you must
24 understand that psychiatric medical records usually
25 aren't in these. They're usually classified and

1 confidential, and they're usually not available in the
2 general medical records. So, you can't always get all
3 the information you want from, as you say, medical
4 records.

5 Q Sir, I am going to show you what has been marked
6 and moved into evidence previously as Plaintiff's
7 Exhibit Number 19.

8 A Very well.

9 MR. HOYLE: Permission to approach, your Honor?

10 THE COURT: Yes.

11 MR. HOYLE: Permission to approach, your Honor?

12 THE COURT: Yes.

13 BY MR. HOYLE:

14 Q And have you had an opportunity to review the
15 document I've already handed you, sir?

16 A Yes. I'm looking at the document.

17 Q Okay. And this is something that a lady by the
18 name of Sandra L. Smith completed, looks like to me, on
19 February 24, 2012. You know Ms. Smith?

20 A Yes.

21 Q She's a nurse who works upstairs in the Medical
22 Homeport Team at the Naval Hospital, correct?

23 A I assume so, yes.

24 Q Okay. But there's some information contained
25 herein, and since this is a medical record from that

1 very day, with a list of problems for Calvin Hunt, let's
2 just see what you knew or didn't know.

3 Did you know, on February 24, 2012, that one of
4 Calvin Hunt's problems in his then-existing medical
5 records was adjustment disorder, with disturbance of
6 emotions and conduct?

7 A No. I never -- I did not have a chance to see
8 these records.

9 Q All right. I think we've already figured this one
10 out. Do you know one way or the other as to whether or
11 not one of Mr. Hunt's problems was anxiety? You knew
12 that.

13 A Well, he was -- appeared anxious at the moment, but
14 whether that was a chronic condition, I don't know.

15 Q You don't know whether it was something that had
16 just started up that morning during breakfast, or
17 whether or not he suffered it for some period of time,
18 you didn't know, correct?

19 A Or whether he had too much coffee, or whether he
20 was needing a cigarette to smoke, or whether he was just
21 upset for waiting too long. I mean, it could be a
22 number of reasons.

23 Q What about a diagnosis of adjustment insomnia. Did
24 you know on February 24, 2012 as to whether or not Mr.
25 Hunt suffered from that ailment and condition?

1 A Well, again, I did not see this particular paper,
2 so, I would not have known that.

3 Q Same question, with respect to adjustment disorder
4 with anxious mood. Did you know about that?

5 A No.

6 Q What about anxiety disorder not otherwise
7 specified. Did you know about that?

8 A No.

9 Q What about delusional disorder, Doctor? Did you
10 know that, that was an active problem in Calvin Hunt's
11 medical records on February 24, 2012?

12 A No, I did not.

13 Q What is delusional disorder, Doctor?

14 A Well, it's -- it's delusions or untrue thoughts
15 that are really not happening.

16 Q Would an example of that be somebody who sees a
17 werewolf or a black cat that disappears all of the
18 sudden?

19 A Or what you can call delus -- delusions of
20 grandeur. You think you're somebody who you're not.

21 Q All right. Personality disorder. Did you know
22 that, that was one of Mr. Hunt's active medical problems
23 as reflected in his records on February 24, 2012?

24 A No. I did not look at the records. No.

25 Q Personality disorder. What is personality

1 disorder, Doctor?

2 A Oh, it's a -- it's a -- it's a vast condition that
3 includes schizo-affective disorders; includes
4 personality disorders, sociopath behavior. Again, I'm
5 not a psychiatrist, so I can't give you the whole
6 differential. But that's the gist of the answer.

7 Q Is that a diagnosis that concerns you as a board-
8 certified, emergency room physician?

9 A Again, depends on the situation.

10 Q Well, let's say you've got a situation involving
11 someone who suffers from PTSD, and who is prescribed
12 Seroquil for some reason that you don't know, but he's
13 not been taking that Seroquil for some period of time.
14 Would the fact that he's got delusional disorder and
15 personality disorder and adjustment disorder with
16 anxious mood, would those diagnoses give you more or
17 less of a concern than if you didn't have that
18 information?

19 A Well, in this hypothetical case that you're giving
20 me, but not in this particular case. Any of that
21 information would probably make me more concerned, and
22 that's the answer.

23 Q More concerned. Okay. But you didn't go look at
24 any of Calvin Hunt's medical records that day, either in
25 hard copy form or on the computer, or in any shape,

1 form, or fashion, correct?

2 A No. No, I did not. I was concerned about him at
3 the moment, exactly what was going on with him at the
4 moment.

5 Q But at the moment, you knew you were unable to get
6 a sufficient history from him, correct?

7 A Correct.

8 Q Except that he wanted to get his medications
9 refilled, correct?

10 A Correct.

11 Q And the only information you had about those
12 medications was what Nurse Janice had written in her
13 nursing assessment, correct?

14 A Correct.

15 Q With your own two eyes, you didn't go through
16 Calvin Hunt's past medical records and verify that, that
17 was all the medications that he was needing refilled,
18 correct?

19 A I did not have access to his past medical records,
20 and I did not ask for them.

21 Q But regardless of what records Mr. Hunt may have
22 brought with him, which you refer to in your own
23 records, you didn't go look at those, either, correct?

24 A Well, like I stated before, I don't recall whether
25 I looked at them. And again, if there was something

1 important, I usually would have written something about
2 it.

3 Q But you have no recollection of reading them one
4 way or the other, correct?

5 A I do not recall, no.

6 Q Okay. So, he wanted to get some medications
7 refilled. And you also wrote, after the fact that
8 Calvin Hunt's gone, that:

9 *His train of thought was delayed.*

10 *And then, we've got an and, circle the and.*

11 *And he was confused about his Social*
12 *Security Number.*

13 Did I read that correctly?

14 A Yes. We've gone into that already. Yes.

15 Q And I think *and* is important there, because we've
16 talked a little bit about how he didn't know his Social
17 Security Number, correct?

18 A Yes.

19 Q But his train of thought, that seems like a
20 separate clause in this sentence, Doctor. So, was his
21 train of thought delayed with respect to things other
22 than the Social Security Number?

23 A Well, his train of thought was delayed in the sense
24 that he was not communicative with me.

25 Q And when you've got someone seeking the refill of

1 anti-psychotic medications like Seroquil, and they'd
2 expressed to persons in the emergency room that they not
3 only have suicidal thoughts, but that they have thoughts
4 of hurting others, is that something that concerns you
5 as a doctor?

6 A Of course.

7 Q Of course. How much time did you yourself actually
8 spend with Calvin Hunt on February 24, 2012?

9 A Well, I'd have to really look at the medical
10 records and see from the time that I started the chart
11 probably to some time before he eloped.

12 Q Well, I don't disagree with that statement, but can
13 you be any more precise for me?

14 A I did not document exactly how much time I spent
15 with him.

16 Q Were you with Calvin Hunt the entire time,
17 beginning at 2:50 p.m., on February the 24th, 2012,
18 until he left?

19 A I was not physically with him all the time.

20 Q That's a no?

21 A That's a no.

22 Q Okay. But are you able, with any greater
23 specificity, to tell this Court and this jury how many
24 minutes you actually spent with Calvin Hunt that day?

25 A I can say with certainty, no.

1 Q After you completed your physical exam involving
2 Calvin Hunt, did you have any concerns about this young
3 United States Marine who was there in your emergency
4 room?

5 A Yes, I did have concerns.

6 Q Okay. And were those concerns based upon the
7 information that you had at that time?

8 A Yes, they were.

9 Q Can you tell this Court and this jury what your
10 concerns were?

11 A Well, my concerns were that I was not able to get a
12 good history from him, and to ascertain whether his
13 suicidal/homicidal thoughts were severe or not severe,
14 and really couldn't get a more of a history as to what
15 was going on with him and in his mind.

16 Q But earlier, on your own record, with respect to
17 the word *severity*, you have the choice of mild,
18 moderate, and severe, correct?

19 A Yes.

20 Q And you checked and circled severe.

21 A That was the closest to my feelings about the
22 matter.

23 Q So, this wasn't something to be taken lightly,
24 correct?

25 A No.

1 Q And you didn't take it lightly.

2 A No.

3 Q So, during the time frame that you spend with Mr.
4 Ray -- with Mr. Hunt, rather, you're not able to tell us
5 how long that lasts, correct?

6 A No.

7 Q Are you actually alone with Calvin Hunt at any
8 period of time in the emergency room?

9 A No.

10 Q Somebody else was always present?

11 A Mr. Ray was always present with him.

12 Q And with respect to Mr. Ray, I know you've never
13 seen him before, but how would you describe him in terms
14 of age and build and general appearance, if you recall
15 at all?

16 A I don't recall.

17 Q Did you have any expectation on February 24, 2012,
18 that Mr. Ray was supposed to somehow detain the patient,
19 meaning Calvin Hunt?

20 A I have no expectations.

21 Q Doctor, I'm going to ask you that question again.
22 Did you have any expectation on the day of treatment,
23 that being February 24, 2012, that Mr. Ray was supposed
24 to somehow detain the patient? Yes or no.

25 A No.

1 Q Similarly, you weren't expecting Mr. Ray to
2 restrain him or put him in restraints, or hold him down
3 or anything at all like that, correct?

4 A Yeah, there was no -- no thinking along those
5 lines, because Mr. Hunt was behaving without any outward
6 signs that he would do anything as outrageous as what he
7 did.

8 COURT REPORTER: I'm sorry. *Outward signs that he*
9 *would do anything as?*

10 A As outrageous as what he did.

11 Q And certainly, Doctor, if two people come into the
12 emergency room, if one person brings another person into
13 the emergency room, do you have any expectation that,
14 that person, the person accompanying the person seeking
15 treatment, is going to help you restrain or otherwise
16 detain the patient?

17 A Well, unless it's a police officer, then, I would
18 expect them to help out, but otherwise, no.

19 Q And Edward Ray wasn't a police officer, correct?

20 A No.

21 Q Okay. Do you believe that you had less than full
22 information about Mr. Hunt on February the 24th, 2012,
23 with which to make a medical diagnosis to a reasonable
24 degree of medical certainty?

25 A Yes, I do. That's why I got the consult to

1 psychiatry.

2 Q And when you refer to these consults, you're
3 specifically referring to folks we've not talked about
4 yet, that being Beverly Hendelman and an Arthur Manning,
5 correct?

6 A Yes.

7 Q You were relying on those two persons to be
8 consultants, correct?

9 A Well, really, the psychiatrist was the consultant,
10 and the other gentleman was, as they used to call them,
11 mental health, I guess, corpsman.

12 Q So, you were relying on Dr. Hendelman as a
13 consultant, correct?

14 A Yes.

15 Q But you were still relying on your best judgment,
16 since you were the physician, the only physician, there
17 in the emergency room, correct?

18 A Yes.

19 Q I just want to make sure, before we get into this
20 time frame -- time line a little bit, this record's
21 clear, and that this Court and this jury understands
22 your testimony. You never affirmatively took any
23 actions to discharge Calvin Hunt from the emergency room
24 on February 24, 2012, correct?

25 A Let's see if I can answer that correctly. While he

1 was there in the emergency department, I did not take
2 any actions to admit him.

3 Q My question was a little bit different, Doctor. I
4 want you to listen to it. You never affirmatively took
5 any acts to discharge Calvin Hunt, correct?

6 A Correct.

7 Q Referring to your consultant, that was Dr. Beverly
8 Hendelman, correct?

9 A Yes.

10 Q And you actually talked with Beverly Hendelman on
11 the telephone that afternoon, Friday, February 24, 2012,
12 correct?

13 A Correct.

14 Q And in the note you typed up after Calvin Hunt had
15 left, you typed up that Dr. Hendelman told you that the
16 patient obviously needed to be admitted, correct?

17 A That's what my note states.

18 Q Obviously needed to be admitted, correct?

19 A Correct. That were her words.

20 Q That's a quote.

21 A Well, yes.

22 Q You told me earlier, Doctor, that, if something is
23 obvious, it's obvious. It means it's not hidden,
24 correct?

25 A To a medical professional, yes.

1 Q And did you agree on that day with Dr. Hendelman
2 that it was obvious that Mr. Hunt needed to be admitted?

3 A I agreed with Dr. Hendelman that he needed to be
4 admitted, based on her consultation. I -- I believe
5 that she tried to get some information whatever way she
6 could, and arrived at a particular decision, and I
7 respected that decision.

8 Q But Dr. Hendelman never actually came down and
9 talked with Kalvin Hunt, correct?

10 A Correct.

11 Q But yet, she still believed it was obvious that
12 Kalvin Hunt needed to be admitted, correct?

13 A Correct.

14 Q In fact, you type in your notes, *I*, meaning Dr.
15 Jansen, *asked her*, meaning Dr. Hendelman, *to see*
16 *patient, but was told that it would not change her*
17 *opinion*. Those are words you wrote, correct?

18 A Correct.

19 Q And that was because it was obvious, right, Doctor?

20 A Well, no. The reason I asked her to see the
21 patient was because that's the way it normally works.
22 Unfortunately, at naval hospitals, it didn't always work
23 that way. If you consult a specialist, you normally
24 would expect the specialist to see the patient. I mean,
25 I think that's just obvious to everybody that's what

1 should be done. And I always prefer my consultant to at
2 least look at the patient, say hello, and have a
3 discussion with the patient.

4 In this case, Dr. Hendelman was relying on the
5 corpsman to provide all the information to her, a
6 corpsman who has four months of training in psychiatry,
7 which, you know, that's not the ideal situation, but
8 that's the way the Navy worked, so. That's fine. I
9 mean, it's always safer to admit a patient, if you're
10 not sure what's going on, rather than send him home on
11 medication or something like that. So, that's my
12 explanation.

13 Q And certainly, you would believe and expect that
14 you, as a board-certified, emergency room doctor, had
15 more education, training, and experience than an
16 enlisted man in the Service, who was a corpsman, like
17 Arthur Manning, correct?

18 A Yes.

19 Q Do you yourself as a board-certified, emergency
20 room physician, have training with respect to diagnosing
21 emergent mental health conditions?

22 A Yes.

23 Q That's something in your wheelhouse Doctor,
24 correct?

25 A Yes.

1 Q And have you actually signed papers right here in
2 Beaufort County through the Probate Court to commit
3 persons to a mental health institution against their
4 will?

5 A Yes.

6 Q Did you have to call somebody on the telephone and
7 ask them whether it was obvious or not before you did
8 that?

9 A I don't recall, but it certainly is helpful at
10 times, when you're not sure, to get a consultation from
11 a psychiatrist. And occasionally, they're sent home.
12 Occasionally, they're admitted. If it's very obvious to
13 a provider that there's no doubt about it that the
14 patient needs to be admitted, then, we do that. But
15 it's not always obvious. That's why we have
16 consultants.

17 Q But again, you were relying on Dr. Hendelman as a
18 consultant, not necessarily as the person who was going
19 to make the decision, correct?

20 A Correct.

21 Q You told us earlier that you were the person who
22 was in charge of the emergency room and everything
23 within the emergency room, correct?

24 A Correct.

25 Q You were the captain of this ship, the quarterback

1 of the team, correct?

2 MR. MACKELCAN: Objection, your Honor. That's not
3 the standard.

4 THE COURT: Can you rephrase that question, please.

5 MR. HOYLE: Certainly. Certainly, Judge.

6 BY MR. HOYLE:

7 Q As the person who was responsible for the emergency
8 room at the Naval Hospital, Beaufort, February 24, 2012,
9 you were responsible for everyone within the four walls
10 of that emergency room, including the nurses and the
11 patients, correct?

12 A Correct.

13 Q That would be analogous to being the captain of a
14 ship, correct?

15 A I've never been a captain of a ship, but I assume
16 that is a correct statement.

17 Q That's analogous to being the quarterback on a
18 football team, correct?

19 A I'll stick with to captain of the ship.

20 Q Now, on February the 24th, 2012, you didn't somehow
21 feel that you were unprepared to deal with someone
22 presenting to your emergency room with suicidal
23 ideations or thoughts of hurting others, correct?

24 A Correct.

25 Q When you filled out your medical records, the

1 emergency room physician records, on February 24, 2012,
2 and completed the information therein, did you make
3 sure that the treatment nurse, Joe McDonald, had access
4 to these pages of records that you'd filled out?

5 A Well, she [sic] would always have access to the
6 records.

7 Q And how is that, Doctor?

8 A Because the records are usually left on the desk.
9 The nurse usually collects it when the patient -- if a
10 patient is discharged, of course. I'm talking about the
11 general course of events. The nurse would probably take
12 it to the front desk, and put it in a slot, and it would
13 eventually make its way to the medical records. And so,
14 the nurse would have access to the records. Of course.

15 Q I must have asked an inartful question, Doctor,
16 because I didn't hear the answer to the question I was
17 looking for. With respect to that day, February 24,
18 2012, while Calvin Hunt was still there, while he was
19 still in the emergency room that you, by your own
20 testimony, were in charge of, did the treatment nurse
21 have access while Calvin Hunt was still there, to the
22 two pages of emergency physician records that you had
23 filled out? Yes or no, Doctor.

24 A Normally, yes. I don't know, in that particular
25 time, whether I had the record with me, and thus, the

1 nurse would not have access to it; or whether it was
2 lying on the nurse's desk. I don't recall exactly, so
3 my answer is, I don't know.

4 Q Now, with respect to the information that you wrote
5 down on this medical record, specifically the fact that
6 Calvin Hunt had thoughts of hurting others, is that
7 information that you yourself as the person in charge of
8 the emergency room and all the people and patients
9 therein, told the treatment nurse, on February 24, 2012?
10 Yes or no, Doctor.

11 A I don't recall. I don't recall specifically
12 telling the nurse.

13 Q That this man, a United States Marine, had thoughts
14 of hurting others.

15 A I may have, or I may not have. I don't recall.

16 Q As you sit here today in this courthouse under
17 oath, you do not have a specific recollection of telling
18 Nurse Joe McDonald that Calvin Hunt expressed to you
19 that he had thoughts of hurting others. Is that fair?

20 A Now, the nurse's note says he had suicidal
21 ideations. So, that's a moot point, really.

22 Q Doctor, will you agree with me that there is a
23 difference between thoughts of hurting yourself and
24 thoughts of hurting others?

25 A Yes.

1 Q What is that difference, Doctor?

2 A Well, it's obvious in the words. If you have
3 thoughts of hurting yourself or thoughts of hurting
4 others. I mean, that's self-explanatory, I think, isn't
5 it? I don't know what -- what you're trying to get at.
6 If you can -- a better definition or -- I just don't
7 understand what the question is.

8 Q Did you tell -- strike that. As you sit here
9 today, under oath, in front of this judge and this jury,
10 do you have a specific recollection of informing either
11 of the registered nurses then, there, present in the
12 emergency room, on February 24, 2012, that Calvin Hunt
13 had expressed thoughts of hurting others? Yes, no, or I
14 don't remember.

15 A I don't have a specific recollection.

16 Q Did you give any orders on February 24, 2012 to
17 either of the registered nurses that were there in your
18 emergency room to not let Calvin Hunt leave the
19 facility? Yes or no, Doctor.

20 A The correct answer is I don't remember, but the way
21 -- knowing the nurses, who are very professional, is a
22 very professional person and experienced nurse, if I had
23 told her [sic] to not let the patient leave, she would
24 have followed my orders. So, I don't have a specific
25 recollection, but knowing the nurse, if I told her [sic]

1 that, she [sic] would have not let the patient leave.

2 Q And I hear a -- strike that. Doctor, who are the
3 nurses, the registered nurses, working in the E.R. on
4 February 24, 2012, the day that brings us here to this
5 trial in this courthouse?

6 A Well, I know for sure that Nurse McDonald was
7 there, because we have her notes. And I don't recall
8 who else was there.

9 Q When you referenced giving an instruction or an
10 order to a registered nurse, and you expected that order
11 would have been followed, are you trying to tell us you
12 remember giving an instruction to Nurse Janice McDonald?

13 A No.

14 Q Do you specifically recall giving such an
15 instruction to anybody else there that day, perhaps
16 another registered nurse?

17 A I don't recall.

18 Q I'll be specific, Doctor. Did you tell Nurse Joe
19 McDonald -- you know who Nurse Joe McDonald is.

20 A Yes.

21 Q You've worked with him before, correct?

22 A Yes.

23 Q He's married to Nurse Janice, correct?

24 A Correct.

25 Q Did you tell Nurse Joe McDonald that Calvin Hunt

1 needed to stay within the emergency room and not be
2 allowed to leave? Yes or no.

3 A Again, the answer would be, no, and I will qualify
4 that answer. Again, if, knowing Joe McDonald, who is a
5 very professional person and a well-trained nurse and an
6 excellent nurse, if I had given that instruction, he
7 would have followed it. So, I am assuming that I did
8 not. However, I do not specifically recall giving that
9 order.

10 Q But it sounds like you're doing some deductive
11 reasoning and assuming that, because Nurse Joe McDonald
12 said yes when there was a request for Calvin Hunt to
13 leave, that you must not have given such an order. Is
14 that what you're telling this Court and jury?

15 A I don't know.

16 Q Don't know one way or the other?

17 A Well, I don't know one way or the other.

18 Q You mentioned a corpsman by the name of Arthur
19 Manning. Do you recall telling us that?

20 A Yes.

21 Q Were you physically present in the emergency room
22 when Arthur Manning came to see Calvin Hunt?

23 A Yes.

24 Q And Arthur Manning, I believe you told us he's a
25 corpsman, an enlisted man in the Service, that has a

1 couple of months of training in psychiatric issues.

2 A Well, that's the general definition of a
3 psychiatric corpsman. Whether he had more training or
4 not, I don't know exactly.

5 Q But you've already told us that you had more
6 education and training than that man, correct?

7 A I sure hope so.

8 Q Did you need doc -- strike that. Did you, as a
9 medical doctor in charge of this emergency room, need
10 Arthur Manning to tell you anything about this patient?

11 A Well, he was going to gather information for the
12 psychiatrist, so I was really waiting for the
13 psychiatrist to evaluate the patient.

14 Q So, in other words, I think I heard this correctly,
15 but I want to make sure. You yourself weren't going to
16 be dependent directly on any information from Mr.
17 Manning, correct?

18 A Well, if there was important information that he
19 got from the patient that I hadn't gotten, I would take
20 that into account, of course. If, somehow, he had
21 gotten some very important information from a patient
22 that he wanted to do something dangerous, I would
23 certainly take that into account, whether he was another
24 physician, or whether he was a corpsman.

25 Q Now, when Arthur Manning came down to the emergency

1 room and met with Calvin Hunt, were you aware that he
2 was there?

3 A Yes.

4 Q And where were you during that time frame?

5 A I don't recall exactly where I was. Usually, the
6 usual case of the matter is, when another provider --
7 I'm going to call the corpsman a provider -- comes to
8 evaluate a patient, I usually leave them -- leave the
9 area, and let him do his thing and not get -- not
10 hover over him and make him nervous or anything like
11 that. So, he would do his duties, gather the
12 information that he needed, and report back to the
13 psychiatrist.

14 Q I have heard some descriptions of this emergency
15 room there at the Naval Hospital. Is it a big emergency
16 room or a small emergency room? How would you describe
17 it?

18 A It's a small emergency room.

19 Q Is it itty-bitty?

20 A No.

21 Q About 800 square feet?

22 A You know, I can't -- I -- I don't know. I mean,
23 you may have the -- the floor plans. I don't know.

24 Q Okay.

25 A But there were, you know, one -- I think I

1 mentioned already, there were five or six beds, so.
2 That's generally speaking. That's usually a fairly
3 small E.R. Whereas, a lot of the larger E.R.s have 20,
4 30, 40 beds sometimes.

5 Q This wasn't like some cavernous facility you find
6 at the Medical University in Charleston or the big
7 hospital in Savannah. Is that fair?

8 A Yes. Yes.

9 Q Okay. So, in this E.R., is it an open-type place?
10 Or are there wooden walls and wooden doors between all
11 of the exam rooms?

12 A There are -- there are -- there's an open bay with
13 three cots, and there are two enclosed areas for more
14 privacy when it's required.

15 Q But again, based on all the information you know
16 and your recollection, Calvin Hunt was the only patient
17 there that day, correct?

18 A Correct.

19 Q So, no reason to expect that -- no reason to
20 believe you would have been in any of those exam rooms
21 that have a wooden wall and a wooden door, correct?

22 A Correct.

23 Q You would have either been at the open area, or
24 perhaps, at the nursing station, or perhaps in your
25 office, correct?

1 A Correct.

2 Q Any other place you think you might have been
3 during the time frame that Calvin Hunt was there in the
4 emergency room?

5 A Again, I don't recall, but probably not.

6 Q You didn't decide to just take off, and go get
7 coffee at Starbuck's. Is that fair?

8 A We didn't have Starbuck's then.

9 Q Okay. Didn't decide to go to Hardee's and get a
10 biscuit and a cup of coffee. Is that fair?

11 A Well, I wasn't really allowed off the base, so that
12 wouldn't have been a possibility. Although, the food
13 would have probably would be a little bit better.

14 Q Okay. But at least with respect to your
15 recollection, you have no reason to believe that you had
16 wandered off or that you were anywhere other than in
17 that, I think you called it a small emergency room,
18 while Calvin Hunt was there?

19 A Correct.

20 Q And when Mr. Manning is in there talking to Calvin
21 Hunt, are you able to tell that, that's what's going on?

22 A Well, again, like I said, I usually would leave the
23 person alone. So, I probably walked away and did some
24 other duties, catching up on charts or things like that.
25 So, he was -- I believe he was talking with him, but I

1 wasn't actually hovering over them.

2 Q You knew that there was a conversation going on,
3 but you might not know what those words that were being
4 said. Is that fair?

5 A Correct. Correct.

6 Q Okay. And were you aware, with any of your five
7 senses, at any point during that process, that Mr.
8 Manning left?

9 A I know he did leave, but I can't recall
10 specifically when or how or where he went.

11 Q Okay. Did you seek out Mr. Manning in any shape,
12 form, or fashion before he left to find out what it is
13 he had learned from visiting with Mr. Hunt?

14 A I don't have any specific recollection. Although,
15 I'm quite sure he didn't tell me to be very concerned
16 about the patient or to call security or to -- anything
17 to that effect.

18 Q Would you have needed somebody who was an enlisted
19 man in the Service and had a couple of months of
20 training as a corpsman, in order to recognize a
21 situation with a patient where you needed to call
22 security?

23 A Well, it's possible. I mean, even though a
24 corpsman doesn't have as much, perhaps, training or
25 education as a physician would, they are -- they are the

1 environment of mental health, and I think they're fairly
2 competent to identify very serious situations and not
3 serious situations.

4 Q Looking back on the second page of your note, we've
5 got a little bit of a time line. Is this a time line
6 that you yourself made?

7 A Yes.

8 Q And how did you go about figuring out -- well, let
9 me ask a foundational question, Doctor. Did you make
10 these progress notes in real time, or did you go back
11 after the fact and doctor this up?

12 A Well, I mean, that's not very fair, and I think
13 you're assuming that I'm doctoring it up. So, first of
14 all, I don't doctor any documents.

15 Q Okay.

16 A If you can make that clear to you.

17 Q So, this is a real-time product?

18 A This is probably as real-time as possible.

19 Q So, what's our first-time entry that you yourself
20 made?

21 A Looks like 1510.

22 Q All right. And what do you know happened at ten
23 minutes after the hour of 3:00?

24 A My notes say, *called mental health; asked for*
25 *psyche tech.*

1 Q Okay. And that would be the aforementioned Mr.
2 Manning, correct?

3 A Correct.

4 Q All right. And then, what happens next, according
5 to your progress report?

6 A It's noted as 1520, which is ten minutes later. I
7 called mental health again, and I was told that the tech
8 is coming.

9 Q All right. Do you have a recollection of there
10 being some delay in somebody from mental getting down to
11 the emergency room, or are we just relying on what it
12 says here in the record?

13 A I think we have to rely on what's written.

14 Q You have no independent recollection of either of
15 those phone calls. Is that a fair assumption?

16 A Yes.

17 Q All right. What happens next, according to this
18 progress sheet?

19 A Well, it says, 1540, *Mr. Manning present; evaluates*
20 *patient.*

21 Q All right. And then, what happens next, according
22 to your progress report?

23 A Well, we're jumping to 1610, and it says:

24 *Called Beaufort Memorial Hospital Psyche*
25 *Ward; talked with Marilyn.*

1 That would be Nurse Marilyn, an R.N. And that's --
2 that's -- that's it.

3 Q Okay. And Marilyn, she works over at the Beaufort
4 Memorial Hospital?

5 A Yes.

6 Q That's a separate facility than the Naval Hospital,
7 correct?

8 A Correct. Correct.

9 Q Okay. And did you yourself make that telephone
10 call to Nurse Marilyn, or did you direct one of your
11 nurses to do that?

12 A Well, I usually -- either the clerk or the nurse
13 would actually contact Beaufort Memorial Hospital, get
14 the nurse on the line, and then, get me to talk to her.

15 Q So, you didn't dial the digits yourself. You have
16 people do that.

17 A No, I didn't know -- I didn't know the digits.

18 Q Okay. I want to direct your attention in the
19 packet to the nursing notes that were filled out by the
20 treatment nurse that day.

21 A Um-hmm. Yes.

22 Q And there's a time line that the treatment nurse
23 made.

24 A Yes.

25 MR. HOYLE: Can we lay these side-by-side, this,

1 and the one we got from the doctor, Mr. Knowles? Can we
2 do that?

3 BY MR. HOYLE:

4 Q All right, sir. I'm going to direct your attention
5 to the first four entries from the nursing notes
6 prepared by -- do you recognize the signature at the
7 bottom of the page?

8 A I don't recognize it, but I assume it's Janice
9 McDonald, I assume. Am I correct?

10 Q Doctor, you're the one who was there. With respect
11 to the signature of the treatment nurse, it reflects
12 that he or she prepared the nursing notes above. Is
13 that fair?

14 A That would be a fair assumption, yes.

15 Q All right. So, starting at the beginning, we've
16 got a report from triage at 1430, correct?

17 A Yes.

18 Q Got a note at 1500 about the E.R. eval.

19 *E.R. empty. Eval in progress.*

20 Correct?

21 A Correct.

22 Q And then, at 1530, we've got a telephone call to --
23 is that BMH?

24 MR. MACKELCAN: Objection, your Honor. I think
25 he's mis-stating the testimony. 1510 is what Mr.

1 McDonald said that number is.

2 MR. HOYLE: I apologize, your Honor.

3 THE COURT: Okay.

4 MR. LOVELL: 1510.

5 BY MR. HOYLE:

6 Q With respect to 1510; what do we have happening at
7 1510, according to the nurse's notes?

8 A T.C. to BMH. I don't know what the -- the -- the
9 next word is. *To inquire bed availability; M.D. spoke*
10 *with Marilyn.*

11 Q All right. And so, Mr. Lovell was kind enough to
12 stand up and tell us that, that was, in this
13 handwriting, 1510. That's 1510 in the afternoon,
14 correct?

15 A Yes.

16 Q But your record has that call taking place when?

17 A Let's see. Let's see here. 1610.

18 Q Now, Doctor, even in military time, you'd have to
19 agree with me, that's a good 60 minutes apart, correct?

20 A Yes, of course, yes.

21 Q So, do you believe there was one call or two calls
22 to BMH, or do you think there's some discrepancy in
23 these time lines?

24 A There's some discrepancy, but I really cannot
25 explain it, exactly. I know I spoke to Nurse Marilyn,

1 and to the best of my knowledge, it's from the times
2 that I wrote. And again, I don't have a good
3 explanation for the -- for the other entry.

4 Q And the next entry, going back to the nurse's note,
5 the nurse's time line, is that at 1520? I believe
6 that'd be 3:25 in the afternoon in civilian world.
7 That's your understanding, Doctor?

8 A Yes.

9 Q *Psyche Tech Manning eval in progress.* Do you see
10 that on the nurse's notes?

11 A Yes.

12 Q And does that time match up or not match up with
13 the time that you put in your record?

14 A Let's see here. Well, it probably matches up. I
15 mean. It probably matches up. I mean, we're nitpicking
16 on times exactly when the patient arrived and when the
17 -- when I noticed Mr. Manning was present. It -- it,
18 more or less, lines up and makes sense.

19 Q Close enough, sir.

20 A Yes.

21 Q Okay. But with respect to the hour difference
22 between the phone call to Beaufort Memorial, don't have
23 an explanation for that one way or another. Is that
24 your testimony?

25 A Well, let me see here. I don't see a note, the

1 nurse's note saying -- above my other call, which would
2 certainly have been after I spoke with the psychiatrist,
3 which would make sense.

4 Q Well, that's --

5 A Because the decision was then made to admit the
6 patient, so.

7 Q Well, Doctor, that's what I want to make sure of.
8 If we are to believe the nursing note, you would have
9 made a telephone call to Beaufort Memorial and the
10 psyche ward at 3:10 in the afternoon to inquire about
11 bed availability, correct?

12 A According to the nurse's note, yes.

13 Q If we were to believe this document, that's what
14 time that call got made, correct?

15 A Well, that -- that's what it's -- what's written,
16 and that's all I can say. That's what's written.

17 Q And that's a full hour earlier than what you have
18 on the record that you maintain that fateful Friday,
19 correct?

20 A Correct.

21 Q A record that, by your testimony here today, you
22 don't know one way or the other whether or not you gave
23 access to the nurse to before Calvin Hunt left, correct?

24 A Could you repeat the questions?

25 Q Sure. You've already told us that you don't know

1 one way or the other whether or not the treatment nurse
2 had actually had access to the medical record you were
3 filling out before Calvin Hunt left, correct?

4 A Correct.

5 Q Okay. So, going back to the nursing note, if the
6 telephone call to Beaufort Memorial took place at 3:10
7 in the afternoon, as the treatment nurse's note
8 reflects, would that be before or after the evaluation
9 by Psyche Tech Manning?

10 A Well, I mean, since the times are off, I don't know
11 what's going on.

12 Q You don't have an explanation for us.

13 A No, no. And unfortunately, in a lot of medical
14 records, the times doctors and nurses times, don't,
15 sometimes, unfortunately don't agree, because sometimes,
16 the notes are written a little later, and the times will
17 be off a little bit, so it happens.

18 Q It happens.

19 A Yes.

20 Q Sixty minutes' discrepancy in medical records, is
21 that a little bit, a lot?

22 A That -- that's a --

23 Q Or minutia?

24 A That's a -- that's a fair amount.

25 Q Fair amount. Okay. Are you able to tell this

1 Court and this jury whether or not you, in your own
2 mind, had made the decision to admit Calvin Hunt to the
3 psyche ward at Beaufort Memorial before or after you
4 talked with Dr. Hendelman; or do you just not know?

5 A I'm fairly certain -- again, nothing's a hundred
6 percent, but I'm fairly certain that I would have waited
7 for the consultant, the psychiatrist, to render her
8 decision. Why would I consult her otherwise? I mean,
9 it was -- I needed help in deciding what to do with this
10 patient, because he wasn't very forthcoming. So, it
11 wouldn't make sense to make a decision to admit the
12 patient, and then, call for a consultation, because Dr.
13 Hendelman, I don't believe she practiced at Beaufort
14 Memorial, so it wouldn't make any sense.

15 Q And you raised a good point, Doctor. You didn't
16 practice at Beaufort Memorial, either, correct?

17 A No.

18 Q Neither you nor Dr. Hendelman had the ability to
19 directly admit a patient to Beaufort Memorial, correct?

20 A Correct.

21 Q The only thing you all could control with respect
22 to Calvin Hunt and Beaufort Memorial is whether or not
23 Calvin Hunt was safely going to get from the E.R. at the
24 Naval Hospital, over the Beaufort Memorial, so he could
25 be put in the psyche ward, correct?

1 A Correct.

2 Q There was no paperwork for you to fill out,
3 correct?

4 A Well, there would be paperwork to fill out, because
5 normally, you would have to -- and you know this, of
6 course. You would have to do a, probably, a voluntary
7 commitment; and that the patient would probably go
8 through the E.R. at Beaufort Memorial Hospital; and
9 then, from there, make his way to the floor.

10 Q Did you start filling out any of those commitment
11 papers for Calvin Hunt on February 24, 2012?

12 A No, he had eloped before I could do that.

13 Q Was it clear in your mind, on February 24, 2012,
14 that Calvin Hunt needed to be admitted, inpatient, to a
15 psyche ward?

16 A Yes.

17 Q That was something that was obvious, correct?

18 A Well, after consult -- consulting with the
19 specialist, that was the decision that was made.

20 Q And what information, specifically, did Dr.
21 Hendelman provide you, other than telling you it was
22 obvious?

23 A Well, that's the unfortunate thing, that she really
24 didn't provide any information, other than the fact that
25 she felt that he needed to be admitted. That was

1 another reason I wanted her to come down and see the
2 patient, because, you know, I'm in the situation of
3 having to talk with the other psychiatrist. And it's
4 very helpful to know what's going on. And sometimes, we
5 even get the psychiatrist in the Naval Hospital to speak
6 to the psychiatrist at the Beaufort Hospital to kind of
7 communicate a little better as to what's going on. I
8 didn't have all of the information, so it would have
9 been very, very helpful to have the psychiatrist talk to
10 the other psychiatrist. But unfortunately, that doesn't
11 always happen, so you have to do the best you can.

12 Q You think you were doing the best that you could on
13 that fateful Friday?

14 A I did the best I could.

15 Q What steps, if any, did you take to insure that
16 Calvin Hunt would remain in the emergency room until
17 such time as he could be admitted?

18 A Well, the only steps were that he was in the
19 emergency room, together with Mr. Ray, and he wasn't
20 demonstrating any indication that he was going to be
21 violent or running away or anything like that. So,
22 really, nothing else was done to prevent him or to
23 insure that he doesn't run off.

24 Q And with respect to what you just told us, did you
25 ever take it upon yourself to go tell Mr. Hunt, to warn

1 him, that he shouldn't just take off and leave, because
2 he had expressed these thoughts of suicidal thoughts and
3 thoughts of hurting others?

4 A Well, again, I wasn't expecting him to walk off.

5 Q Doctor, I think I'm entitled to answer to my
6 question. Did you warn Calvin Hunt, at any point in
7 time on February 24, 2012, while he was in your
8 emergency room, that he should not leave because he was
9 then experiencing suicidal thoughts and thoughts of
10 hurting others? Yes or no.

11 A No.

12 Q Did you ever inform Calvin Hunt or instruct Calvin
13 Hunt that he shouldn't leave the military medical
14 facility on that day, because he was out of his anti-
15 psychotic medication; he was angry, anxious, and
16 disoriented, and had a sad affect; and that the thoughts
17 of hurting others and the thoughts of hurting himself
18 made him a danger; and that he needed to stay in a
19 hospital environment. Did you tell him?

20 A I did not feel that was the case, so I did not tell
21 him.

22 Q That's a no, Doctor?

23 A That's a no.

24 Q We were talking earlier about all the things you
25 didn't know about this man on that fateful Friday, and

1 we were discussing a little bit about the medical
2 records. Is it your understanding that the E.R. nurses
3 had access to everything in something known as AHTLA?
4 Yes or no.

5 A My understanding was that they had access to AHTLA,
6 and they could use it at their discretion, or if asked
7 to -- to -- to access that.

8 Q And on that fateful Friday, you, when you were
9 getting the poor responses from Mr. Hunt, by your own
10 statement, felt like you couldn't get a complete history
11 on this man, did you direct any of the nurses in the
12 E.R. that you were responsible for to go search any type
13 of computer database, any hard copy file, to go get this
14 man's past medical record, so that you could learn more
15 about his history? Yes or no, Doctor?

16 A No.

17 Q Doctor, when we began this examination a few hours
18 ago, there was some testimony about who it is you worked
19 for and who it is -- well, just who it is you worked for
20 that fateful Friday. You have your employment file
21 handy up there in that stack of documents, Doctor?

22 A I have no idea.

23 MR. HOYLE: All right. Permission to approach,
24 your Honor?

25 THE COURT: Yes.

1 BY MR. HOYLE:

2 Q Sir, I'm handing you what has been previously
3 marked and moved into evidence as Plaintiff's 22.

4 A Yes.

5 Q Doctor, I'm going to direct your attention to the
6 page in your personnel file that's been Bates stamped
7 263.

8 A Very well.

9 Q Are we on the same page, Doctor?

10 A Yes.

11 Q This is an acceptance of a job offer reflecting
12 your signature on August the 10th, 2009, correct?

13 A Correct.

14 Q It's accepting an offer of full-time employment,
15 correct?

16 A Correct.

17 Q And you specifically add in benefits to include a
18 CMA expense reimbursement to \$2,000.00 per year, as
19 discussed, correct?

20 A Yes.

21 Q That's your handwriting, correct?

22 A Yes, it is. Yes, it is.

23 Q And that you believe that's a benefit with CasePro,
24 Incorporated, that you actually negotiated, correct?

25 A I believe so, yes.

1 Q Similarly, we've got this IRA matching contribution
2 after one year, correct?

3 A Yes.

4 Q That's something that you yourself negotiated,
5 correct?

6 A I believe so, yes.

7 Q All right. Let's go forward in time from August of
8 2010 to April of 2010. I direct your attention to Page
9 267 in your personnel file.

10 A All right.

11 Q Your previous offer of acceptance got faxed back to
12 someone by the name of Lin Keen, correct?

13 A Yes.

14 Q And now, we have a letter from Lin Keen out of
15 CasePro's corporate office in Texas, addressed to you,
16 right here in Beaufort County, correct?

17 A Yes.

18 Q This is a letter dated April the 12th, 2010,
19 correct?

20 A Yes.

21 Q And it says,

22 *Per your discussion with Mr. Martin --*
23 *That's referring to Craig Martin?*

24 A I believe so, yes.

25 Q You actually met Mr. Martin before, didn't you?

1 A Possibly, but I don't recall, specifically.

2 Q But regardless, you know Mr. Martin worked out in
3 Texas, at the corporate headquarters at CasePro?

4 A I believe so, yes.

5 Q *Per your discussions with Mr. Martin,*
6 *CasePro is pleased to offer you additional*
7 *full-time employment benefits for working*
8 *as an E.R. physician, at N.H. Beaufort, S.C.,*
9 *effective with the pay period beginning*
10 *3/28/10.*

11 Did I read that correctly?

12 A Yes.

13 Q And I believe you told the Court and this jury
14 earlier that you didn't have vacation. Do you recall
15 that?

16 A Yes.

17 Q What new benefit was conferred upon you as of
18 3/28/2010 by CasePro, Incorporated?

19 A Well, I was wrong, and I didn't remember. Looks
20 like I did have vacation leave.

21 Q And how many weeks of vacation did the nice folks
22 out in Texas at CasePro determine you could have?

23 A It looks like it says two weeks per year, accrued
24 based on hours worked.

25 Q That's 80 hours you got paid, even though you

1 weren't working, correct?

2 A Yes, I believe that's -- that's probably true.

3 Q That's what vacation is, correct?

4 A Correct.

5 Q And that got determined by somebody by the name of
6 Lin Keen out at CasePro, Incorporated, with the job
7 title of director of contract administration, correct?

8 A Most likely, yes.

9 Q And that was based on an arm's-length negotiation
10 or discussion that you yourself had, it appears, with
11 Craig Martin, correct?

12 A Yes.

13 Q And we've previously seen that you had this
14 benefit; that they confirm again that you got that
15 \$2,000.00 per year of continuing education, correct?

16 A Correct.

17 Q CasePro, Incorporated, wanted to make sure that you
18 kept your skills fresh and up to par, correct?

19 A Well, I wanted to keep my skills up and fresh.
20 Again, I have to negotiate this. So, what their motives
21 are, I don't know, but I certainly keep up with the date
22 on my CMEs.

23 Q But that's something that you wanted CasePro to pay
24 for, correct?

25 A That was part of the negotiations, yes.

1 Q And there's something on here called a 401(k) plan.

2 Do you see that?

3 A Yes.

4 Q Okay. And it looks like to me it says:

5 *The CasePro 401(k) plan matches one*
6 *hundred percent of the first three percent*
7 *of income, with eligibility after one year*
8 *of service and 1,000 hours of service.*

9 Did I read that correct?

10 A Yes, yes.

11 Q Do you actually have a recollection, as you sit
12 here today, of getting that match from CasePro,
13 Incorporated?

14 A I probably did, but I don't have an independent
15 recollection.

16 Q Certainly, if you got a match from CasePro, you
17 didn't send that money back, did you?

18 A No.

19 Q All right. While we're talking about money, let's
20 go to Page 341 in your personnel file. Doctor, it looks
21 like to me we're looking at some sort of pay stub from
22 February of 2011, correct?

23 A Yes.

24 Q And it's got your name on it, correct?

25 A Yes.

1 Q Your address here in Beaufort County, correct?

2 A Yes.

3 Q And it's showing that some funds got wired from
4 CasePro, Incorporated, into, presumably, your bank
5 account, correct?

6 A That appears to be the case, yes.

7 Q All right. We've got some things on here, like a
8 Social Security Number, an employee I.D., and some tax
9 information. Is that fair?

10 A Yes.

11 Q Okay. And will you agree with me that your
12 paycheck was coming from CasePro?

13 A Yes.

14 Q Will you agree with me that CasePro took money out
15 of your paycheck in order to pay something known as
16 federal withholding tax?

17 A That appears to be the case, yes.

18 Q They were actually taking money out of your check
19 and remitting it to Washington, correct?

20 A That's what's done, yes.

21 Q That's typical of any type of employee/employer
22 relationship when you're getting paid by one party or
23 entity to do work for, correct?

24 A Correct.

25 Q Probably your entire adult life here in South

1 Carolina, every time you've gotten a paycheck from your
2 employer, it looks substantially similar to the page
3 we're looking at here, Bates Page 341, correct?

4 A Probably very similar.

5 Q Not some foreign concept, getting a paycheck from
6 somebody, correct?

7 A No.

8 Q And it shows that you're getting paid an hourly
9 rate. This is in February of 2011, of \$118.35 an hour,
10 correct?

11 A Correct.

12 Q And then, the multiplication is done, based upon
13 the hours worked, which gets us to a total gross
14 compensation, correct?

15 A Correct.

16 Q And then, various deductions are done, and there's
17 a net deposit directly made into your checking account,
18 correct?

19 A Correct.

20 Q And we've even got on here that 401(k) showing that
21 there appears to be a match in this particular pay
22 period, correct?

23 A I have no reason to dispute that.

24 Q Certainly, if you got a match from CasePro,
25 Incorporated, you didn't send that money back, you've

1 already told us, correct?

2 A Correct.

3 Q And those things that we've been talking about, the
4 hourly rate and the benefits, those were all things that
5 got determined, as a result of negotiations between you
6 and people out in Texas, correct?

7 A Correct.

8 Q And in fact, we'll look at one more document. This
9 is Bates Page 253 in your personnel file, and this is
10 dated April the 27th, two thousand --

11 A What page is that again, please?

12 Q I apologize. 253.

13 A 267.

14 Q You've got to go backwards. I apologize.

15 A Okay. Hold on. All right. All right. I'm on
16 Page 253.

17 Q Are we on the same page, Doctor?

18 A Yes.

19 Q So, this is, oh, goodness, the year before Calvin
20 Hunt came into the emergency room at Beaufort. And it
21 looks like you sent an email to somebody by the name of
22 Craig Martin. Is that correct?

23 A Yes.

24 Q And it looks like you've got a concern, because you
25 don't know where your three percent matching

1 contribution is.

2 A Correct.

3 Q You wanted to make sure you got that match,
4 correct?

5 A Yes. That was agreed to, yes. Fair is fair.

6 Q Fair is fair, Doctor. You agree to go to work for
7 somebody, and they agree to offer you certain benefits,
8 you want to make sure you get those benefits, correct?

9 A Of course.

10 Q Whether that's two weeks of vacation or a match
11 your 401(k), or health insurance, or supplemental
12 disability.

13 A Yes.

14 Q And you weren't going to let these folks from Texas
15 pull a fast one on you. Is that fair?

16 A Well, you know, that's part of contract
17 negotiations, which you're probably familiar with. You
18 want to -- to have both parties honor the contract.

19 Q And in exchange for that contract of getting paid
20 money via a paycheck and getting those benefits, what is
21 it that you agreed to do in return?

22 A Well, I agreed to work for the Naval Hospital.

23 Q Providing single-coverage, emergency room physician
24 services during a twelve-hour shift, correct?

25 A Correct.

1 Q And during that time, you had the ability to
2 independently diagnose, treat, and medicate your
3 patients, correct?

4 A Yes, that's correct.

5 Q Didn't have somebody standing over your shoulder or
6 holding your hand, telling you how to do it, did you?

7 A No.

8 Q You were in charge of that E.R., and could do with
9 those patients what needed to be done. Is that fair?

10 A Correct. Correct.

11 Q On February 24, 2012, you'll agree with me that you
12 were not getting good answers from Calvin Hunt.

13 A Correct.

14 Q You thought that he might be in danger on that day,
15 correct?

16 A Well, I didn't know, but I mean, the patient's care
17 and protection is my primary role.

18 Q And when a patient comes in, and by their own
19 statements, by their own admissions, have expressed to
20 you that they have thoughts of hurting themselves or
21 hurting others, that should be a concern for a doctor
22 who has a concern for patient care, correct?

23 A Of course. But in this a situation, there was a
24 wavering. He -- he had thoughts, then, he didn't have
25 thoughts. And I mentioned that in my notes. So, it

1 wasn't clear-cut. And again, that's the reason for the
2 referral to the psychiatrist.

3 Q Doctor, let's go back to where we began, with the
4 records from the South Carolina State Medical.

5 MR. HOYLE: May I approach, your Honor?

6 THE COURT: You may.

7 BY MR. HOYLE:

8 Q Let's go back to your 2011 renewal application,
9 Doctor. Do you have that in front of you?

10 A Most likely. Go ahead.

11 Q There was a question that we read earlier in the
12 presence of this Court and this jury about whether or
13 not, in the preceding 24 months, any hospital privileges
14 of yours had been -- there was a long list of words, but
15 essentially, suspended. Do you recall that question?

16 A Yes.

17 Q And remind us how it is you answered that question
18 --

19 A No.

20 Q -- here today in open court.

21 A No.

22 Q And you told this Court and this jury that was a
23 truthful answer, correct?

24 A Correct.

25 Q In fact, though, Doctor, your privileges in the

1 preceding 24 months had been suspended, correct?

2 A Incorrect.

3 Q In the preceding 24 months -- we'll use a different
4 word -- your privileges had, in fact, been placed in
5 abeyance, correct?

6 A Yes.

7 Q And we were looking at a dictionary earlier, or, at
8 least, I was holding a dictionary. Will you agree with
9 me that an abeyance is a temporary suspension as of an
10 activity or ruling?

11 A All right.

12 Q You'll agree with that definition?

13 A Yes. I would prefer the definition that the Navy
14 puts out, because that's what we're talking about.

15 Q But going back to this question that you answered
16 to the South Carolina State Medical Board in the
17 negative:

18 *Since your last renewal, have any*
19 *hospital privileges or other privileges*
20 *of any kind been revoked, suspended, restricted,*
21 *denied, voluntarily surrendered, or relinquished?*
22 *Include the relinquishment of privileges while*
23 *under investigation or pending action for any*
24 *reason. Do not include the relinquishment of*
25 *privileges as a result of personal decisions.*

1 Did I read that correctly?

2 A Correct.

3 Q You will agree with me, sir, that, in the 24 months
4 preceding your answer to this question to the South
5 Carolina State Medical Board, you had, in fact, been
6 under investigation at the Naval Hospital, correct?

7 A Correct.

8 Q Specifically, you were under investigation about a
9 dead United States Marine who died of sepsis, correct?

10 A Correct.

11 Q There were concerns about that dead United States
12 Marine dying of sepsis because you hadn't diagnosed that
13 man with sepsis, correct?

14 A Those were the concerns, yes.

15 Q And those concerns included the fact that this
16 young man came into the Naval Hospital, and you actually
17 laid hands on him, correct?

18 A Correct.

19 Q And that you had neither diagnosed him with sepsis,
20 correct?

21 A Correct.

22 Q Nor prescribed him any antibiotics, correct?

23 A Correct.

24 Q And you told me, in your -- strike that. You would
25 agree with me, you would agree with me, Doctor, that the

1 standard course of treatment for someone with sepsis,
2 particularly bacterial sepsis, which can kill somebody,
3 is antibiotics, correct?

4 A That is correct. And once you make the diagnosis
5 of sepsis, that is the correct treatment.

6 Q But unfortunately, for this young man, for this
7 United States Marine, you didn't make that diagnosis,
8 correct?

9 A That diagnosis was in the process of being made,
10 and that is correct. This was not a typical sepsis
11 case. It was a very unusual case, and that's where the
12 delay in antibiotic treatment came up.

13 Q How soon after this young man had been in your
14 emergency room was it that he was dead?

15 A I don't recall exactly. It's a very unfortunate
16 event.

17 Q I think we can all agree on that, Doctor. But as a
18 result of that young man's death, you were under
19 investigation, correct?

20 A Correct. That is the usual course of events when
21 something like that happens. That's normal.

22 Q And did you actually have conversations, you
23 yourself, have conversations with Scott -- with -- with
24 -- strike that. Did you yourself actually have
25 conversations with Craig Martin out at the corporate

1 office of CasePro, Incorporated, concerning this young
2 United States Marine's tragic death?

3 A I don't believe I did.

4 Q Your answer is no, you didn't?

5 A To the best of my recollection, I don't recall
6 speaking wiht Craig Martin. There would be no
7 particular reason to speak with him. He's -- wasn't
8 involved in the credentialing process or having me work
9 in the hospital, or firing me, or anything like that.
10 He had nothing to do with that.

11 Q You are coming into this courthouse today saying
12 there's no reason for Craig Martin to know anything
13 about this or to talk to you? Is that your testimony?

14 A Well, I mean, he -- he can talk to me about it. I
15 just don't recall speaking to him about it.

16 Q Now, at that point in time that you were under
17 investigation over this dead United States Marine, Craig
18 Martin was the person at the corporate headquarters out
19 there in Texas who was actually making the schedule to
20 determine whether or not you, as a physician, came to
21 work on a Monday or a Thursday, correct?

22 A Probably to some degree, yes. But it was a
23 combination of the doctors making the schedule, and
24 sending it to headquarters for approval, and giving it
25 to the Navy. So, I don't know if he always -- he made

1 the schedules. I'm not particularly certain about that.

2 Q Are you certain one way or the other of whether or
3 not you ever met Craig Martin?

4 A I probably did meet him, but I don't recall the
5 exact time or day or when or when.

6 Q Do you know if you met him on more than one
7 occasion, or, I don't know, five or six occasions?

8 A Again, I do not have an exact recollection. I
9 can't truthfully say yes or no.

10 Q Okay. And I appreciate that answer, sir. But at
11 this period of time, there's a death of a United States
12 Marine, and you are under investigation, correct?

13 A Correct.

14 Q And at that period of time, is your employment
15 terminated or not terminated?

16 A No.

17 Q You're not fired?

18 A No.

19 Q Did you ever receive any information that the
20 commanding officer of the Naval Hospital here in
21 Beaufort wanted you fired?

22 A No.

23 Q That wasn't conveyed to you?

24 A No. Never.

25 Q Did you ever have an understanding as to whether or

1 not any type of review was done by one of your
2 colleagues by the name of Scott Moore?

3 A I believe there was a review done, but I don't
4 remember the specifics of it.

5 Q Do you remember the finding that Dr. Moore made or
6 did not make about you and your care of this United
7 States Marine who died from sepsis?

8 A You probably would have to refresh my memory. I
9 don't -- I don't recall.

10 Q You want me to refresh your memory, Doctor?

11 A If that's the way we're going, I guess that's the
12 want we got to do.

13 THE COURT: And this is a wonderful place to stop.

14 MR. HOYLE: I agree, your Honor.

15 THE COURT: And we will take up here in the
16 morning.

17 Ladies and gentlemen, that will conclude the work
18 that we will do this evening. It is my hope to begin in
19 the morning at 9:00 o'clock. Would that be a problem
20 for anyone? Can you all make it here by 9:00? If not,
21 raise your hands. All right. Wonderful. We will begin
22 in the morning at 9:00 o'clock.

23 Same admonition as last week. Do not discuss this
24 matter. Do not allow anyone to discuss it with you.
25 Please leave your notepads in your seat. We will

1 protect them and collect them over the evening.

2 Remember, don't read anything. Don't listen to
3 anything. You must receive all of the information from
4 which you will make up your mind here in court, while
5 court is in session. No going to the Internet, no
6 Columbo, no research. Don't read anything, radio,
7 television, Internet.

8 And I so look forward to seeing you in the morning
9 at 9:00 o'clock. Have a grand evening.

10 JURORS LEAVE COURTROOM 5:28 P.M.

11 BAILIFF: Jury is clear, your Honor.

12 THE COURT: Thank you so much. Dr. Jansen?

13 A Yes, ma'am?

14 THE COURT: Please be mindful, you cannot discuss
15 your testimony with anyone.

16 A Even in my sleep?

17 THE COURT: Even in your sleep.

18 A Oh, my goodness. That'll be hard.

19 THE COURT: Because you are still on the stand.
20 Doesn't mean you can't talk to people about any other
21 subject.

22 A I understand. I understand. I understand.

23 THE COURT: And if you have a copy of your own
24 deposition, you can certainly look at it, --

25 A Yeah.

1 THE COURT: -- if you already have it. But talk,
2 because you couldn't talk to your lawyers about your
3 testimony, again. So. But at any rate, we look forward
4 to seeing you in the morning, at 9:00 o'clock.

5 A Thank you.

6 THE COURT: Wonderful.

7 A I'll be here.

8 THE COURT: Maybe tomorrow morning, instead of a
9 little water, you might want a cup of coffee or
10 something, but we'll figure that out in the morning.
11 Have a good evening. Thank you, sir.

12 All right, Counsel, anything else before we take
13 our leisure?

14 MR. HOYLE: Nothing from the Plaintiff.

15 THE COURT: And I'm eyeballing my lawyers.
16 Defense?

17 MR. LOVELL: Nothing from the Defense.

18 THE COURT: Wonderful. You all have a grand
19 evening. I'll see you in the morning at 9:00.

20 MR. HOYLE: Thank you, Judge.

21 THE COURT: Thank you.

22 END DAY FIVE, MONDAY,

23 OCTOBER 12, 2015, 5:28 P.M.

24 BEGIN DAY SIX, TUESDAY,

25 OCTOBER 13, 2015, 9:26 A.M.

1 ON THE RECORD 9:24 A.M.

2 BY THE COURT:

3 BAILIFF: All rise. Court is now in session, Judge
4 Diane Goodstein presiding.

5 THE COURT: Still. Still. Good morning. How is
6 everyone doing? Uh-oh.

7 MR. MACKELCAN: Mr. Lovell just stepped out.

8 THE COURT: Oh, I thought Mr. Lovell left us.
9 That's just terrific. All right. All right.
10 Wonderful. Yay. Two thumbs up. Good morning, good
11 morning. Okay. Ready? Ready, ready? Need a witness.

12 MR. HOYLE: Your Honor, before we bring the jury
13 in, just a little bit of housekeeping. We have marked
14 as Court's Exhibit Number 7 the original DVD of the
15 testimony played in court yesterday of Craig Martin.

16 THE COURT: Okay.

17 ITEM IDENTIFIED AS DVD OF VIDEOTAPED

18 DEPOSITION OF CRAIG MARTIN

19 MARKED COURT'S EXHIBIT NUMBER 7

20 RECEIVED BY THE COURT.

21 MR. HOYLE: And we have marked as Court's Exhibit
22 Number 8 the original deposition transcript of Dr.
23 Christian Jansen, which the seal of which was broken
24 here in open court yesterday, that the witness has been
25 referring to.

1 THE COURT: Great.

2 MR. HOYLE: For portions of his examination.

3 ITEM IDENTIFIED AS ORIGINAL

4 HARDCOPY DEPOSITION OF DR.

5 CHRISTIAN JANSEN

6 MARKED COURT'S EXHIBIT NUMBER 8

7 RECEIVED BY THE COURT.

8 THE COURT: Okay. And do you want to tell me what
9 the numbers are, just so the record will reflect.

10 MR. HOYLE: Yes, Judge. 7 is the DVD of Craig
11 Martin.

12 THE COURT: Yes.

13 MR. HOYLE: 8 is the deposition transcript.

14 THE COURT: Perfect. Thank you, David, very much.
15 And good morning.

16 DR. CHRISTIAN JANSEN: Good morning, judge.

17 THE COURT: Do you have water this morning?

18 DR. CHRISTIAN JANSEN: Yes, I do.

19 THE COURT: Do you want coffee?

20 DR. CHRISTIAN JANSEN: No, I'm fine.

21 THE COURT: You okay?

22 DR. CHRISTIAN JANSEN: Unless it's Starbuck's.

23 THE COURT: Mmm. Yeah. Um-hmm. Oh, don't even go
24 -- love Starbuck's. Love it.

25 Okay. Let's have the jury. Thanks, thanks.

1 BAILIFF: The jury is entering the courtroom, your
2 Honor.

3 THE COURT: Yes. Thank you. Thank you so much.

4 JURORS ENTER COURTROOM 9:26 A.M.

5 THE COURT: Good morning.

6 RESPONSES FROM JURORS.

7 THE COURT: Ladies and gentlemen, at this time, we
8 will continue with the Plaintiff's case, and the direct
9 examination of Dr. Jansen. Mr. Hoyle.

10 MR. HOYLE: Thank you, your Honor.

11 THE COURT: Yes.

12 DR. CHRISTIAN JANSEN

13 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

14 Q Dr. Jansen, I believe I'm going to have the
15 pleasure of saying good morning to you.

16 A Good morning, Mr. Hoyle.

17 Q Nice to see you again. Thank you for coming back.

18 Yesterday, when we left, we were talking about
19 answers you provided to the South Carolina State Medical
20 Board back in June of 2011. Do you recall that?

21 A Yes.

22 Q Would you like to get that exhibit in front of you
23 for assistance, sir?

24 A Well, and if you can help me. Oh, here it is.

25 Q Okay.

1 A Right.

2 Q And you'll agree with me that, by the plain text of
3 the document, the South Carolina State Medical Board was
4 inquiring about the relinquish of privileges while under
5 investigation or pending action for any reason, correct?
6 That's what the document says.

7 A Yes.

8 Q And I believe that we've heard testimony in this
9 trial about a dead United States Marine who died from
10 sepsis, and learned that there was both an
11 investigation, correct?

12 A Yes.

13 Q And that your privileges at the Naval Hospital,
14 Beaufort were placed in abeyance, correct?

15 A Correct.

16 Q And we were having some discussion yesterday about
17 what an abeyance is. Do you recall that?

18 A Yes.

19 Q And I don't know if you saw on the news last night
20 about Will Grier, the quarterback at Florida, being
21 suspended for a year. Did you see that last night?

22 A No, I did not, no.

23 Q Do you recall a few weeks ago there was a young
24 man, a high school student in Texas, who got suspended
25 from school because he brought a clock to school that

1 some people thought looked like a bomb. Do you recall
2 that?

3 A I've heard of that, yes.

4 Q Okay. When that young man out there in Texas got
5 suspended from school, was he able to go to school for
6 some period of time, or was he prohibited from going to
7 school for some period of time?

8 A Mr. Hoyle, I really don't know.

9 Q Okay. Well, let me ask it this way, sir. When
10 your privileges at the Naval Hospital were in abeyance
11 for 28 days, involving the death of this United States
12 Marine for sepsis, were you able to go to the hospital,
13 or not able to go to the hospital for those 28 days?

14 A Probably not able to go.

15 Q Okay. But it's your testimony now, here, today, in
16 this courthouse, that, that abeyance for 28 days from
17 which you were prohibited from going to the Naval
18 Hospital was not, in your mind, tantamount to a
19 suspension? Did I hear that correctly?

20 A That is correct, Mr. Hoyle. And if I may clarify
21 this, I don't think you did your homework very well.
22 The Navy in BUMED did put out a definition of what an
23 abeyance is and what an adverse privileging action is,
24 and those are two separate items. Perhaps you have it
25 in your documents, the definition, BUMED's definition of

1 what an abeyance is. Do you have that? Perhaps I could
2 read it, so I don't make any mistakes when I regurgitate
3 this definition. Would you have that somewhere, sir?
4 This will clarify everything.

5 THE COURT: You just answer the question, sir, the
6 best you can.

7 A All right. Well, an abeyance is a temporary taking
8 off of the schedule for work, and it is absolutely not a
9 suspension or revocation of the clinical privileges.
10 Now, the next step up from an abeyance is an adverse
11 privileging action, which I never went through and I
12 never had. And that is the either temporary or
13 permanent suspension or holding of privileges.

14 And I think, Mr. Hoyle, that is the correct
15 definition. And by that definition, I was very
16 truthful, and the answer is, no.

17 Q Sir, did you seek any guidance from any person
18 affiliated with the South Carolina State Medical Board
19 or the South Carolina Department of Labor, Licensing,
20 and Regulation when you filled out this renewal
21 application for June the 1st, 2011, as to whether or not
22 the abeyance and investigation connected with the dead
23 United States Marine would trigger an appropriate yes or
24 no answer to Renewal Application Question Number 1?

25 A No, I did not, because, by the definition, it was

1 straightforward that there was -- the answer would be
2 no.

3 Q Sir, did you ask anybody whatsoever how you should
4 answer Renewal Application Number 2 back in June of
5 2011?

6 A No.

7 Q Did you tell me at your deposition on August 18,
8 2014, that you intended to notify the South Carolina
9 State Medical Board that there was an inaccurate
10 statement contained in your 2011 renewal application?

11 A That was my answer at that time. However, I went
12 home and checked the definition, and found out that,
13 actually, I was correct and you were wrong.

14 Q So, you sit here today, you've not called up
15 anybody in Columbia, or written a letter, or sent an
16 email, or told anybody at the South Carolina State
17 Medical Board that there was inaccurate information
18 contained in your 2011 renewal application?

19 A I think any communication like that is private and
20 confidential between myself and DHEC, the Department of
21 Health and Environmental Control, in South Carolina,
22 sir.

23 Q Well, sir, looking at that packet,

24 A Um-hmm.

25 Q -- does it have the DHEC logo on it, or does it

1 have the LLR logo on it?

2 A I don't know. Where is it? LLR.

3 Q But Doctor, going back to the question.

4 A Yes.

5 Q Since you and I last spoke in August of last year,
6 have you contacted the South Carolina State Medical
7 Board, or anybody affiliated with the South Carolina
8 Department of Labor, Licensing, or Regulation,
9 concerning your 2011 renewal application? Yes, no, or
10 you're refusing to answer?

11 A I'm not going to answer.

12 MR. HOYLE: Your Honor, I do not believe there is
13 any privilege between this doctor and the State Medical
14 Board concerning whether or not his answer on a renewal
15 application was truthful or not truthful.

16 THE COURT: All right. Ladies and gentlemen, I'm
17 going to ask you to step to your jury room. There is a
18 matter of law that I must consider. Do not discuss this
19 matter, and do not allow anyone, please, to discuss it
20 with you.

21 JURORS LEAVE COURTROOM 9:33 A.M.

22 BAILIFF: Jury is clear, your Honor.

23 THE COURT: Thank you so much.

24 ON-THE-RECORD BENCH CONFERENCE, OUT

25 OF THE PRESENCE OF JURORS. PRESENT:

1 THE COURT, MR. HOYLE, MS. CASTLEBERRY,
2 MR. MACKELCAN, MR. LOVELL:

3 THE COURT: All right. I just wanted to give us an
4 option to discuss for a moment. Yes.

5 MR. LOVELL: Your Honor, I think that the doctor
6 has testified that, after he was asked the questions and
7 made a comment that he would contact the whatever
8 authorities, he went back and looked up the definition
9 of abeyance and realized that the definition that
10 Plaintiff's counsel was using in the deposition was
11 inaccurate and wrong. And thus, he did not have a duty
12 to report anything to anybody.

13 So, I think this line of questioning is not only
14 irrelevant to the issues of the case, but probably
15 erroneous in terms of the duties the doctor owed. So,
16 whether he contacted anybody or not, it doesn't matter.

17 THE COURT: Well, that would have been fine, if
18 there had been an objection about three minutes ago, Mr.
19 Lovell. That is exactly what we would do. Asked and
20 answered would have been a place we could have been,
21 too, but that's not where we are now. Now, fast forward
22 with me.

23 MR. LOVELL: Any privileges a doctor may have as it
24 relates to communications with the licensing agencies
25 is, I think, one that's between him and them, not

1 necessarily CasePro, but I would argue that -- get my
2 thoughts in order.

3 THE COURT: I know. I know. It's -- it's jj

4 MR. LOVELL: I don't know the answer to the
5 question, so I'm trying to think of the --

6 THE COURT: We're in a sticky wicket only because
7 of where we are, not because of what it is,
8 unfortunately, at this moment. I think that, given
9 because where we are where we are, and now, we're
10 dealing with issues of credibility, I think I have to
11 allow it in your follow-up. Although, I think, you
12 know, --

13 MR. LOVELL: That's fine, your Honor.

14 THE COURT: -- there's an Equus. It is flawed.
15 This particular Equus.

16 MR. HOYLE: I hear you, Judge.

17 MR. LOVELL: I can certainly clean it up on cross-
18 exam.

19 THE COURT: Do you see the Equus?

20 MR. LOVELL: Oh, yeah.

21 THE COURT: Do you see it on the floor, flawed.
22 Okay.

23 Let me have the jury back.

24 Yeah, we're ready.

25 BAILIFF: Yes, ma'am. Jury's entering the

1 courtroom.

2 THE COURT: Ladies and gentlemen, thank you so
3 much. You may continue, Mr. Hoyle.

4 MR. HOYLE: Thank you, your Honor.

5 BY MR. HOYLE:

6 Q Doctor, before the jury left the room, there was a
7 question pending. Do you recall that question, or do I
8 need to re-ask it?

9 A Yes, I -- yes, I do. Yes, I do.

10 Q And what is your answer to the question as to
11 whether or not you contacted the State Medical Board?

12 A Well, I'll be glad to answer that, since the Court
13 requested me to do that. And I did not contact the
14 State Medical Board. And my reasoning is, the Navy, at
15 no time in my work had the Navy suspended or reduced or
16 in any way changed my privileges. So, once I confirmed
17 that by looking up the definition, there was really no
18 reason to contact the State Board. There was just no
19 reason why. The answer was obvious.

20 Q And you can recognize things that are obvious,
21 correct, Doctor?

22 A Because I'm a trained professional, yes.

23 Q Okay. Sir, we were looking yesterday at portions
24 of your personnel file, and we did not look directly at
25 your application that you filled out with CasePro, but

1 you had previously told CasePro on an application that
2 you had been doing some work at the hospital over in
3 Varnville, South Carolina, over in Hampton County, in
4 between the time period you were getting your
5 citizenship. Is that correct?

6 A Yes, that's correct.

7 Q And you actually did work over there at Varnville
8 over there at the hospital in Hampton, correct?

9 A Yes.

10 Q At any point in time, did anyone from CasePro,
11 Incorporated, ever ask you about a lawsuit filed in
12 Hampton County, about a gentleman by the name of Will
13 Solomon?

14 A I don't believe they did.

15 Q Nobody from CasePro ever inquired about that?

16 A I don't recall.

17 Q Did they ask you any questions about what happened
18 to Mr. Solomon?

19 A I don't believe they did.

20 Q Did they ask you any questions about your need to
21 take time off work to go give a deposition and testify
22 at trial?

23 A No.

24 Q Did they ask you any questions about a verdict that
25 a jury rendered in that case?

1 A No.

2 Q We were looking yesterday at some documents from
3 the medical records to try and figure out a time line
4 here. Do you recall that?

5 A Yes.

6 Q And there's an additional page of physician records
7 that you yourself filled out. Something called a
8 Physician Order Sheet. Do you recall that?

9 A Yes.

10 Q All right. You've got the marked exhibit right
11 here.

12 MR. HOYLE: Permission to approach, your Honor?

13 THE COURT: Yes.

14 BY MR. HOYLE:

15 A Thank you.

16 Q And tell the Court and jury what an order sheet is
17 that a physician fills out.

18 A Let's see where this is. Well, that's a page where
19 you would label any tests that you want to have
20 performed or any actions done.

21 Q All right. This physician order sheet, does it
22 have your handwriting on the page?

23 A Yes, it does.

24 Q And we've got some orders. I only really see one.
25 What order do you have down here on the page?

1 A It's not my handwriting, so that is not my
2 handwriting. It says, 1450: *psyche tech*.

3 Q And do you know whose handwriting that is, sir?

4 A I do not.

5 Q Okay. And 1450, does that match up with any of the
6 other records that we've looked at as to when the *psyche*
7 *tech* would have come to the emergency room?

8 MR. LOVELL: Objection, your Honor. I'm not sure
9 that indicates when the *psyche tech* came. It just says,
10 1450: *psyche tech*. That's a misstatement of the
11 testimony.

12 THE COURT: Maybe just rephrase your question.

13 MR. HOYLE: I'll rephrase the question.

14 THE COURT: For foundational purposes.

15 BY MR. HOYLE:

16 Q Doctor, --

17 A Yes.

18 Q -- we've looked at several other pages of Mr.
19 Hunt's medical records from that fateful Friday,
20 February 24, 2012, correct?

21 A Yes.

22 Q In any of those other pages of medical records, is
23 there a reference to anything having to do with the
24 *psyche tech* at 1450? Yes or no.

25 A There is no reference. And if I may answer that

1 question a little better, if you look at the original
2 emergency medical record that I wrote, it says the time
3 that I first met Mr. Hunt was 1450. So, I don't know
4 why somebody wrote 1450: psyche tech. It doesn't make
5 sense. I just -- that was the first time I met Mr.
6 Hunt, so why would the psyche tech be involved at that
7 point? It's -- it's probably some time frame error by
8 whoever wrote that.

9 Q And do you recognize the handwriting that says,
10 1450: psyche tech? Yes or no?

11 A No.

12 Q Okay. Underneath, down here, we've got some
13 discharge instructions. And I believe I heard
14 yesterday in your testimony that Calvin Hunt was never
15 actually discharged. Is that correct?

16 A That's correct.

17 Q All right. The handwriting underneath the words
18 discharge instructions, whose handwriting is that?

19 A That's my handwriting.

20 Q All right. And let's walk through what that says,
21 Doctor.

22 A Um-hmm. Correct.

23 Q What does this say right here on the first line?

24 A It says:

25 Patient left without completing care

1 with the V.A. worker, then, escaped before
2 was brought back to the E.R.

3 Q Doctor, where, within the four walls of the
4 emergency room, were you when Calvin Hunt walked out of
5 the door of the emergency room?

6 A Most likely I was in my office behind closed doors
7 conversing with the psychiatrist.

8 Q All right. And let's go back to that time line.
9 You believe that's most likely. Did I hear that
10 correctly?

11 A Yes.

12 Q All right. And according to your notes, what time
13 do you believe you were conversing with the
14 psychiatrist? Is that reflected on here?

15 A Well, it says, *discuss with Dr. Hendelman, time*
16 1605. So, that would be the approximate time.

17 Q And going back to what we talked about yesterday, I
18 just want to make sure we're clear on this. You have in
19 your record, and given the treatment nurse's record, did
20 you call Beaufort Memorial Hospital and the psyche ward
21 to inquire about bed availability while Calvin Hunt was
22 still there or after he was gone? Or do you not know?

23 A When? What time frame? I'm not sure. I just
24 don't know what -- you mean after I spoke with Dr.
25 Hendelman? We did contact the Beaufort Memorial

1 Hospital psyche ward. Any other time, I don't recall
2 contacting Beaufort Memorial Hospital. I don't recall.

3 Q You don't recall. Could the treatment nurse's note
4 be correct that a call was made to Beaufort Memorial
5 Hospital to inquire about bed availability on the psyche
6 ward at 1510, or 3:10 in the afternoon?

7 A I mean, -- I mean, it's possible. Nurses will
8 sometimes check on bed availability. They think
9 something will be required. I mean, that's -- that's
10 done normally in E.R. So, it's possible somebody did.
11 I have no quarrel with that. That's nothing wrong.

12 Q And if the treatment nurse's note says, *M.D. spoke*
13 *with Marilyn*, the only medical doctor in the emergency
14 room that day would have been you, correct?

15 A Yes.

16 Q So, if you called Marilyn at Beaufort Memorial
17 Hospital to inquire about bed availability in the psyche
18 ward at 3:10 in the afternoon, that would have been (1)
19 while Calvin Hunt was still there, correct?

20 A Yes.

21 Q And before you talked to Dr. Hendelman, correct?

22 A Yes.

23 MR. HOYLE: Those are all the questions I have at
24 this time. Thank you, your Honor.

25 THE COURT: All right. Cross-examination.

1 DR. CHRISTIAN JANSEN

2 CROSS-EXAMINATION, BY MR. LOVELL:

3 Q Doctor, I'm going to take things down a little bit,
4 and I'm going to ask you some questions that don't just
5 require a yes or no from the lawyer. So, please feel
6 free to explain any question I ask you.

7 A I'll do my best.

8 Q How long have you been a resident in Beaufort
9 County?

10 A Let me think. Probably close to 25, 26, 27 years.

11 Q You married? Got kids?

12 A Yes.

13 Q How many kids you got?

14 A Three.

15 Q They all grow up in this area?

16 A Yes, they have, yes.

17 Q I'm interested in the story of how you and your
18 family came to be here in the U.S. You mentioned
19 something earlier that you were born in Poland, but why
20 is it you all immigrated to Canada, and then, into the
21 U.S.

22 A Well, my parents immigrated to Canada in 1960,
23 approximately, and I did all my training in Canada. And
24 when I finished my -- my education, I wanted to just
25 explore America and come to the U.S. to see what the

1 medical field is like down here. The main reason is
2 really to escape the harsh winters in Canada. That was
3 my main reason. I enjoy outdoor living, and I enjoy the
4 South Carolina climate. So, those are the two reasons I
5 came down at first.

6 Initially, I wasn't planning on staying
7 permanently. I was just going to come for a couple of
8 years; see what it's like; get some experience; and
9 then, you know, I love the area, and decided to stay.

10 Q Let me ask you some questions on your education.
11 You mentioned that you started in college, but then, you
12 got -- and the term I thought I heard was fast-tracked
13 into medical school.

14 A Yes.

15 Q What did you mean by that? Does everybody get
16 fast-tracked to medical school?

17 A Well, usually you have -- like in the States,
18 usually you have to have four years of basic training
19 and a degree, or even a master's degree. But for --
20 there was a possibility to do it a little faster. If
21 you had the grades and you had the -- the abilities,
22 select people were allowed to enter medical school after
23 two years.

24 Q And were you one of those select people?

25 A Yes. Yes.

1 THE COURT: Let me stop you just a second.

2 MR. LOVELL: I'm sorry.

3 THE COURT: And I apologize, Mr. Lovell. Dr.
4 Jansen, I'm going to ask you to do something for me, and
5 let me explain to you why.

6 A Yes, ma'am.

7 THE COURT: When you get asked a question, towards
8 the end of that question, oftentimes you know what the
9 answer is, and so, you will respond. And you respond at
10 the end of the question that's being asked. In normal
11 conversation, that's the way people talk. But in Court,
12 because Ms. Rowe has to take down what Mr. Lovell is
13 saying and what you are saying, when people talk at the
14 same time, while that's normal, conversation happens, it
15 makes it very difficult for her.

16 She is extraordinarily talented, and she has not
17 even looked at me like what are you doing, the first
18 time, but I know it's coming. If you could do this for
19 me, just understand that is a normal conversation
20 pattern. Everybody does that, but in court, to
21 accommodate, really, Ms. Rowe, could you wait for Mr. --
22 you don't even realize. See, you don't even -- it's so
23 normal, you don't even realize that, that's happening.
24 But at the tail end of the answer, then, -- I mean, of
25 the question you're answering, it happened also with Mr.

1 Hoyle, but you all sort of get into a pattern where she
2 was able to keep up. Could you do that for me?

3 A Absolutely. Sure. I will try.

4 THE COURT: Wonderful. And I apologize to you, --

5 A Oh, no.

6 THE COURT: -- because it's not normal
7 conversation, but it would help us a whole lot.

8 A I will do the best I can.

9 THE COURT: And do you mind, if you forget, if we
10 remind you? We're right here with you.

11 A Hit me up with the gavel.

12 THE COURT: Never. Ever. I don't even know where
13 it is. Do we have one? I don't even think we have one.

14 BY MR. LOVELL:

15 Q And Doctor, I apologize. I talk slow, so, it's
16 easy to jump on what I say.

17 Now, let's walk forward. You are one of the select
18 few that gets into medical school on the fast track.
19 When you completed that, you were asked questions about
20 doing a surgical residency, which was -- it was called a
21 partial residency. Was that something that, because you
22 only did a partial one, you were unqualified to practice
23 surgery?

24 A Yes, that's correct.

25 Q Did you practice surgery after doing the two years

1 of residency?

2 A No, I did not.

3 Q When you came to the States, did you act as a
4 surgeon at any point?

5 A No, I did not.

6 Q All right. Why did you only do a partial residency
7 in surgery?

8 A Well, I -- I -- I found that surgery wasn't my --
9 my thing, and I just wanted to pursue a different
10 specialty.

11 Q When you were training in medical school, while you
12 did your surgical residency, and then, when you began
13 practicing after that, were you interacting with doctors
14 in the emergency department?

15 A Of course.

16 Q And nurses and other staff of emergency
17 departments?

18 A Yes.

19 Q When you were working at the Queensway Hospital up
20 in Canada for the years that you were up there, did you
21 interact with emergency room staff, doctors, nurses,
22 whoever else might be in that facility?

23 A Yes.

24 Q Did you become familiar with how things worked in
25 the E.R. while you were working up at Queensway?

1 A Yes.

2 Q Is that where your interest in emergency medicine
3 sort of got sparked?

4 A Yes.

5 Q All right. Let's fast forward to South Carolina.
6 You're now leaving here. You told us that you went to
7 work in the Florence Hospital up in Florence. I think
8 it was Florence General Hospital. Did I -- I'm not
9 getting it wrong.

10 A Yes.

11 Q What position were you invited to take when you
12 were brought into that facility?

13 A Medical director.

14 Q Of what department?

15 A The emergency department.

16 Q And how many physicians did you -- well, first,
17 I'll ask did you supervise physicians as the medical
18 director of the emergency department?

19 A Yes.

20 Q Let me finish, and then, you talk. We'll get it
21 right. And how many doctors did you supervise as the
22 E.R. director in Florence?

23 A There were probably four to five.

24 Q And in that period of time you were supervising the
25 four to five, did you also interact with and supervise

1 the nurses in the E.R.?

2 A Yes.

3 Q Would that be triage and treatment nurses?

4 A Yes.

5 Q Thank you. And how many years did you do that?

6 A I worked at the Florence General Hospital for about
7 two years.

8 Q All right. At some point in this time frame, did
9 you become a specialist in emergency medicine where
10 that's all you were doing?

11 A That was exclusively my work.

12 Q And we're talking in the 1980s here, correct?

13 A Yes.

14 Q Back in the eighties, I know things are different
15 now, but back in the eighties, did they have programs in
16 medical school where you could go in just to specialize
17 in emergency medicine?

18 A Yes, they did.

19 Q Okay. Did they have board certification for people
20 who were just specialized in emergency medicine way back
21 in the 1980s when you were first doing that practice?

22 A I think that was the very beginnings of the
23 specialty.

24 Q Did you, at some point, become board certified in
25 emergency medicine?

1 A Yes.

2 Q When was that?

3 A I believe that was in 1996.

4 Q All right. And to do that, what did you have to
5 do? Did you have to take tests and be tested on your
6 knowledge of emergency medicine?

7 A Well, you have to prove that you've seen a certain
8 amount of patients in the emergency department, number
9 1. And then, there was a written test. And once you
10 pass the written test, there was an oral examination.

11 Q So, the written test, I assume, is kind of like the
12 bar exam; you have a bunch of questions; you have to
13 pick which ones you think are right; and they grade it.

14 A Correct.

15 Q Did you pass that on your first go round?

16 A Yes.

17 Q This oral test, who's that in front of?

18 A Well, it's in front of a committee of probably
19 three physicians that question you on sample cases, and
20 how would you act, what would you do in certain
21 situations.

22 Q When you say cases, you mean patient sample
23 scenarios?

24 A Yes.

25 Q And are those doctors questioning you also

1 specialists in emergency medicine?

2 A Yes.

3 Q All right. Did you pass the oral exam?

4 A Yes.

5 Q All right. In board certification, do you have to
6 sit for re-certification periodically?

7 A Yes, every eight to ten years.

8 Q And when did you get -- first, did you get re-
9 certified?

10 A Yes.

11 Q When?

12 A First time in 2006. And since then, last year,
13 December 2014.

14 Q All right. Now, after you left the Florence
15 position as the director of that E.D., that's when you
16 came here to the Beaufort area?

17 A Correct.

18 Q And you were granted privileges at the Beaufort
19 Naval Hospital, right?

20 A Well, the first -- my first stop was the Hilton
21 Head Hospital.

22 Q I'm sorry. And you were granted privileges there.

23 A Yes.

24 Q To work in that emergency department, right?

25 A Yes.

1 Q And the people at that hospital that granted you
2 the privileges, did it consist of doctors who practiced
3 in the specialty of emergency medicine?

4 A Yes.

5 Q And I assume maybe other specialties, as well?

6 A Correct.

7 Q And you came after that. In your years in the E.R.
8 there, were you working with triage and treatment nurses
9 there at Hilton Head Hospital?

10 A Yes.

11 Q Every day?

12 A Every day.

13 Q And in your period there, were you also treating
14 patients who came in with all kinds of issues?

15 A Yes. That's the practice of emergency medicine.

16 Q Including psychiatric challenges.

17 A Yes.

18 Q When you came to the Beaufort Naval Hospital, for
19 the reasons you've already told us, were you given
20 privileges there?

21 A Yes.

22 Q And I think you told us that was in 19 -- what
23 year?

24 A It was 1989, I believe.

25 Q And every year that you were there, until you left

1 the Beaufort Naval Hospital, were your privileges
2 renewed for the next year?

3 A Yes. That's generally how it's done.

4 Q I understand there was a period of time when the
5 government changed the rules about people who worked
6 there had to be U.S. citizens, and you weren't working
7 there while you were getting your citizenship, right?

8 A Yes.

9 Q Other than that period, were your privileges
10 continually in place at Beaufort Naval Hospital?

11 A Yes.

12 Q Your privileges to work in the emergency
13 department.

14 A Yes.

15 Q Did you also work at other parts of that facility
16 during those many years you were there?

17 A In the very beginnings, the emergency department
18 was combined with an acute care clinic or an urgent care
19 clinic. So, the physicians that worked in the E.R.
20 sometimes rotated. We worked also in the urgent care.
21 We had different shifts, so we kind of went between one
22 and the other.

23 Q So, you might be an emergency clinic doctor at one
24 shift, and they may shift you over to the urgent care
25 clinic another.

1 A Yes. But it was the same department.

2 Q Still in the emergency department.

3 A Correct.

4 Q Same privileges apply regardless of whether you're
5 emergency care or urgent care.

6 A Yes.

7 Q You also told us earlier that you worked at the
8 Abbeville area medical center for some period of time in
9 the eighties, correct?

10 A No. The Abbeville work was probably more in the --
11 after 2012, probably.

12 Q How about Coastal Carolina? Was that a 2009 time?

13 A Coastal Carolina was that period of time where I
14 was getting my U.S. citizenship.

15 Q And did you have privileges at that facility to
16 work at the emergency department?

17 A Yes.

18 Q All right. I'm going to move forward a little bit,
19 and then, I'm going to move into the treatment. When
20 you were working at the Naval Hospital in the emergency
21 department, from the time you started, 'til you last
22 worked there, were there certain policies, protocols,
23 and things set forth by the Department of the Navy that
24 governed what you could do or should do in the E.R.
25 during certain situations?

1 A Yes, there were a scope of work that you were
2 allowed to perform, and you had to apply for that.

3 Q Was one of those, when a patient, a military
4 person, presented into the E.R. and expressed I have
5 thoughts of hurting myself or these suicidal ideations,
6 was one of those that you had to have them evaluated by
7 a psychiatric person to determine admission to the
8 hospital for whatever further evaluation might be
9 needed?

10 A I don't think that was a particular specification.
11 I -- I -- I would have to check that, but I believe
12 there was no requirement that you had to consult with a
13 specialist whatever the case were. So, this was on --
14 based on the doctor's decision and doctor's request and
15 his medical training whether he would consult with
16 someone or not.

17 Q But the hospital privileges were issued by the
18 Department of the Navy, not CasePro?

19 A Correct.

20 Q Did CasePro ever give you any input on how to do
21 whatever you did in the E.R. on a day-to-day basis?

22 A Never.

23 Q If you had day-to-day operational issues about the
24 E.R., who did you go talk to?

25 A I would probably go to probably the chief of staff,

1 who was really one of the Navy officers.

2 Q Now, there has been some testimony yesterday
3 elicited to imply that perhaps you aren't a good doctor.
4 I'll just put it out there. We heard a witness talk
5 about you supposedly sleeping too much in the hospital.
6 Were there beds provided for you as an E.R. doctor to
7 rest your eyes if you were working the night shift and
8 it was not busy?

9 A Well, there were -- there were cots or rooms where
10 the patients would be in. If the room was empty, and it
11 was the middle of the night where nothing was going on,
12 and you could only drink so much coffee to stay awake,
13 then, it was, you know, some people would put their feet
14 up and just rest a little bit. That was never
15 discouraged or not allowed.

16 Q That's something you did on occasion?

17 A Certainly.

18 Q And were you ever chastised or reprimanded by the
19 Department of the Navy or anybody else about that issue
20 of putting your feet up every once in a while?

21 A Never.

22 Q With regard to this patient, Mr. Hunt, once you
23 felt there was a need to have some additional input from
24 the psychiatric folks, did you immediately take steps to
25 get them involved?

1 A Yes, I did.

2 Q Lot of questions about the incident back in 2010
3 involving the Marine who allegedly had sepsis. First, I
4 want to ask a little more information. Were you in the
5 process of working up and diagnosing and testing on that
6 patient when he was transferred out to a different
7 facility?

8 A Yes.

9 Q After he left, were you ever advised what happened
10 to that patient?

11 A Yes.

12 Q All right. Were you, when there were
13 investigations done by the Navy, this peer review that
14 we've heard about, were you ever asked by the Navy to
15 come and give your version of what had happened in your
16 treatment?

17 A No, not directly, no.

18 Q Were you ever given an opportunity to gave your
19 version of what had happened in your treatment?

20 A No, not directly, no.

21 Q Were you ever given an opportunity to come in and
22 meet with the peer review people, whether it's Dr. Moore
23 or whoever it was, and say, hey, here's what I was
24 taking when I was seeing this patient; here's why I went
25 down this path, instead of that path; and here's why I

1 think maybe you're wrong about your finding that my care
2 didn't meet to whatever standard you think? Did you
3 ever get that opportunity?

4 A No, I never had any discussion.

5 Q You were asked questions about this abeyance issue,
6 and I'm going to show you a document that's marked
7 Defendant's 23. You mentioned that, after your
8 deposition, you got asked a bunch of questions by
9 Plaintiff's counsel about privileges and whether you had
10 them or didn't have them. You went and did some
11 research about the definition of abeyance. Did you tell
12 us that?

13 A Yes, I did.

14 Q I ask you, do you recognize what's in front of you
15 as Defendant's 23. Don't read it. Don't tell us what
16 it says, but do you recognize what that is?

17 A Yes.

18 Q All right. Is that what you found to be the
19 definition of abeyance as set forth by the Navy?

20 A Yes.

21 MR. LOVELL: Your Honor, we move to admit 23.

22 THE COURT: Any objection?

23 MR. HOYLE: No objection, for what it's worth, your
24 Honor.

25 THE COURT: Very well.

1 ITEM IDENTIFIED AS ABEYANCE DEFINITIONS
2 MARKED DEFENDANT'S EXHIBIT NUMBER 23,
3 ADMITTED AS EVIDENCE.

4 MR. LOVELL: Thank you.

5 BY MR. LOVELL:

6 Q Doctor, just to put this to rest, I'd asked you to
7 look at what I'm putting up here -- and we're going to
8 make it a little bigger, so we can read it.

9 THE COURT: Counsel, I got -- I'm going to stop
10 both of you, and I need to see you for just a moment. I
11 do apologize for interrupting.

12 OFF-THE-RECORD BENCH CONFERENCE, OUT
13 OF HEARING OF JURORS. PRESENT: THE
14 COURT, MR. HOYLE, MR. LOVELL.
15 END BENCH CONFERENCE.

16 BY MR. LOVELL:

17 Q Now, we're back to here the -- organize this a
18 little bit. All right, Doctor, I'm going to read this,
19 and you tell me if this is your reading of the
20 definition of an abeyance was.

21 Says, number 1, abeyance:

22 *The temporary removal of a healthcare*
23 *provider from clinical duties while an*
24 *inquiry into allegations of provider*
25 *impairment or misconduct is conducted.*

1 *Periods of abeyance provide privileging*
2 *authorities the opportunity to review*
3 *allegations while insuring patients safety*
4 *and protecting providers from unwarranted,*
5 *adverse privileging action.*

6 *An abeyance terminates upon a referral*
7 *to a peer review hearing or at the end of*
8 *28 days, whichever occurs sooner. An*
9 *abeyance is not an adverse action, and*
10 *it is non-commutative.*

11 Did I read that correctly, doctor?

12 A Yes.

13 Q Is that what led you to the decision that all of
14 those things that were listed on the LLR application did
15 not apply to you?

16 A Yes.

17 Q And I've written them up here, Doctor. I'm going
18 to put it where you can see it.

19 A Um-hmm.

20 Q I'm not going to make you go look through the
21 document. But the question:

22 *Have any hospital privileges been*
23 *revoked, suspended, restricted, denied,*
24 *voluntarily surrendered, relinquished,*
25 *or relinquished while under investigation*

1 or pending action?

2 Did you determine from all of your investigation
3 after your deposition that none of those applied in the
4 abeyance scenario?

5 A That's exactly what I determined.

6 Q I'll take this down. Since the issues involving
7 Mr. Hunt, have you been notified by the Naval
8 authorities that the actions of you and your E.R. staff
9 were appropriate?

10 A Yes.

11 Q There were questions asked you about your
12 resignation from CasePro in the latter part of 2012.
13 Did that have anything to do with the events involving
14 Mr. Hunt?

15 A It had nothing to do with it. You know, after the
16 determination was made that nothing was done wrong, you
17 know, the Navy asked me to come back to work.

18 Q Your privileges remained in place during that time?

19 A Of course.

20 Q All right. Now let's talk about your involvement
21 in this patient's treatment. We're going to move
22 relatively quickly through this.

23 You had worked with Mr. and Mrs. McDonald, the
24 triage and treatment nurses, on many occasions before
25 Mr. Hunt came in on the 14th, correct?

1 A Yes.

2 Q Good nurses?

3 A Very good.

4 Q When a patient comes into the emergency department
5 and you actually first see them, do you know that -- let
6 me back up. If it's a patient like Mr. Hunt, who's not
7 stationed in Beaufort; he's from some other place; and
8 he has now shown up here at Beaufort Naval Medical for
9 treatment; when he was in the door and the nurses say
10 here's a chart on Mr. Hunt, or whoever it might be; do
11 you have an assumption that they've already reviewed
12 whatever paperwork that he brought to make sure that he
13 is allowed to get treatment at that facility?

14 A Yes. I mean, the Navy is very strict about who can
15 be seen in the -- in the emergency department. And they
16 will always verify their eligibility to be seen there,
17 which, you know, as a physician, I'll see anybody that
18 comes in. I don't care what -- whether they're eligible
19 or not. But the Navy has strict requirements.

20 Q And I don't know that we've really talked about it,
21 but can you explain to the jury when -- do you have a
22 sort of pattern in practice when the patient has
23 presented; has come into the E.R.; nurse McDonald has
24 put them in triage or Treatment Room 4; and now you have
25 spoken with her a little bit about what the patient, you

1 know, is there for and what she's found, do you have a
2 procedure you go through, a standard operating
3 procedure, on how you look at things and what you do
4 before you actually go talk to the patient?

5 A Well, when the nurse notifies me that there's a
6 patient, or I find out that there's a patient waiting to
7 be seen, depending on the situation, I will usually --
8 the nurse will tell me generally what's going on with
9 the patient and if there's any concerns or not. And you
10 know, you'll usually know if it's something that's
11 emergent or non-emergent, whether you have to rush and
12 run -- run and see that patient immediately, or whether
13 you can see that patient after you've seen the other
14 patients. So, you get a general idea of what's going on
15 from the nurse. And then, I would probably look at the
16 chart.

17 Q And when you look at the chart, what's the next
18 step after you've looked at the chart in terms of a
19 patient like this who's presenting for mental health
20 challenges?

21 A Well, I -- I would -- normally, you would walk over
22 to the patient, introduce yourself. Sometimes I will
23 even shake hands. And I think that's a good way of
24 establishing a patient/provider rapport. And you know,
25 just to put the person at ease. Sometimes they're upset

1 because they've been waiting long. So, you try to be
2 professional and establish a rapport with the patient.

3 Q And when you're doing that, walking over,
4 introducing yourself to the patient, are you telling
5 them, hey, I'm Dr. Jansen; I'm the E.R. doctor; I'm here
6 to see you?

7 A Yes.

8 Q And why are you talking to them? And what is the
9 matter? Why don't you just go over and start doing
10 whatever you do?

11 A Well, I -- I mean, this is -- this is normal human
12 reaction. I mean, this is what normal people do. And
13 you want the person to understand that you're there to
14 help them. And you're who you are, you're a
15 professional, and to -- to get the conversation going.

16 Q And while you're doing all of this, are you also
17 looking and assessing the patient's reaction to you
18 coming into the room?

19 A Well, of course. That's part of the assessment.

20 Q Is that important in mental health-challenged
21 patients?

22 A It's very important.

23 Q Why?

24 A Well, I mean, the -- sometimes, patients may not
25 tell you what's wrong, but their actions can suggest

1 what's going on.

2 Q Did you do that with Mr. Hunt?

3 A Of course.

4 Q Now, I'm going to put up here what is Plaintiff's
5 Exhibit, I believe, 22, which is a compilation of the
6 various notes that you wrote. And I've got -- what's
7 the first page? Do you have it right there in front of
8 you, Doctor?

9 A I'm sure I do. Let me just look.

10 Q Oh, you do have it. All right. You had mentioned
11 that this sheet was called a T-sheet. Can you explain
12 to us what a T-sheet is.

13 A Well, T, stands for Treatment Sheet, and it's
14 various forms that are selected, depending on what the
15 complaint is. If it's a fever in a child or an injury,
16 or, in this case, a psychiatric problem, this sheet is
17 the one that we pull out and fill out.

18 Q And if we look up at the -- underneath the little
19 circled thing, it says, *emergency physician records,*
20 *psyche disorder, suicide attempt, overdose.* Is that the
21 guided sheet, one that's specific to the complaints that
22 might be seen in the patient with any of those
23 presentations?

24 A Yes. I'm sorry. I apologize.

25 Q That's all right.

1 A Yes.

2 Q And is that why you use that particular sheet, as
3 opposed to one with cold or flu or something else?

4 A Yes.

5 Q Now, before you ever got the T-sheet, is that
6 something you pick out or the nurses hands you?

7 A The nurse.

8 Q Okay. When Nurse McDonald hands you the T-sheet,
9 does she ever tell you anything to the effect that she
10 felt like this guy was a risk of injury to you or
11 anybody else, or was going to take off or run off, or
12 anything of that sort?

13 A No.

14 Q But the fact that she gives you a sheet that says,
15 *psyche disorder, suicide attempt, overdose*, does that
16 help you focus some on what you're going to be looking
17 at with this gentleman?

18 A Yes.

19 Q When you talk with the nurse and got the history
20 from her about his being there, to be seen, and to get
21 help, the fact that he's there with Mr. Ray, but there
22 voluntarily, does that tell you anything about his state
23 of mind initially?

24 A Well, it -- it tells you that he's there -- he
25 chose to come there, probably. I mean, he wasn't being

1 restrained in any way. He was, from what I remember, he
2 was sitting calmly next to Mr. Ray. So, that just tells
3 me that the patient wanted to come and be treated.

4 Q Was this the first time you had ever evaluated a
5 patient with mental health challenges like Mr. Hunt?

6 A No.

7 Q How many times do you think in your career you have
8 done that?

9 A Probably hundreds of times. And at the Naval
10 Hospital, we saw recruits with suicidal ideations
11 probably every day.

12 Q Now, when you walked into Bay 4, where Mr. Hunt was
13 sitting, was Mr. Ray in there with him?

14 A Yes.

15 Q And at that point, when you knew from the nurse's
16 notes that he had come for medication refills, but had
17 thoughts of hurting himself, suicidal ideations, and the
18 other things you had seen in the notes, did you think it
19 necessary at that point to get a guard or someone else
20 to secure him in place?

21 A No. There was no indication that was required.

22 Q Did you think, at that point, that it was necessary
23 to consider medicating him or physically restraining
24 him?

25 A No.

1 Q Why not?

2 A Well, there was really no need to do that. I mean,
3 you certainly don't restrain or medicate patients that
4 come in for anything, unless they give you reason to
5 suspect that. I think we would have a lot of lawsuits
6 if we restrained and medicated everybody.

7 Q All right. I want to walk through a few things on
8 your medical history on here, and I want to ask you some
9 general questions about how these forms are used. We
10 see some things are circled; some things have sort of a
11 backslash; and then, some things are left blank. What's
12 the significance of circling something on this T-sheet?

13 A Well, this is my own preference of doing it. Every
14 doctor has their own way of doing it. When you -- when
15 I circle somebody in a section, it means that, that's --
16 that particular item is correct or true. If I -- and if
17 I don't circle anything in that particular line, it
18 means it's not -- if -- if I happen to backslash, it
19 means those particular items are not happening.

20 Q So, like, up here, when you ask chief complaint
21 under the history and physical history of present
22 illness, the HPI, this is what Mr. Hunt was telling you
23 as you're talking to him.

24 A Yes. Or you know, it's probably that and a
25 combination of things with perhaps what I got from Mr.

1 Ray, perhaps what I got from the nurses.

2 Q Okay.

3 A It's a compilation of things.

4 Q So, you circled suicidal thoughts; you circled
5 depression. But I note here, agitated, hallucinating,
6 suicide attempt, and self-injury are not circled. Does
7 that mean those were not things that were existing at
8 the time he had come in or a short time before then?

9 A Yes, that's correct.

10 Q You write in *medication refill*. Is that another
11 thing that you were told by him he's there to get?

12 A Yes.

13 Q Now, the timing of this, you have gradual onset,
14 circled. Is that correct?

15 A Yes.

16 Q But it had been ongoing for several weeks, correct?

17 A Yes.

18 Q But you don't put in here anything. You don't
19 circle sudden onset, intermittent, or constant, right?

20 A That's correct.

21 Q When you're evaluating the patient who comes in
22 with suicidal thoughts and depression, looking for a
23 medication refill, but tells you it's been going on for
24 several weeks, but it came on gradually, does that give
25 you, as a doctor, any sense of the state of mind of the

1 patient at that point?

2 A Well, it suggests that things that have been going
3 on for a long time may be his normal state. And you
4 know, certain medications can cause suicidal ideations.
5 And certain conditions, such as schizophrenia, can make
6 you have suicidal ideations normally, so.

7 Q And when you see that it's been going on for
8 awhile, does that make you a little less concerned that
9 this patient is going to flip out on you or do something
10 other than the way he's been acting since he's arrived
11 at the hospital that day at 1:00 o'clock?

12 A Probably, yes.

13 Q All right. As we go down the form, you marked
14 severe, under severity. When a patient comes to the
15 E.D. and says I have suicidal thoughts or suicidal
16 ideations, does severe always get circled?

17 A I would -- I would think so.

18 Q You note some situational problems you've circled.
19 And there are a lot of things that's not circled, like
20 spouse, parent, son, daughter, significant other, work,
21 lost job, school, legal problems. None of those are
22 circled. But you wrote in specifically:

23 *The patient was dishonorably discharged*
24 *from the military, United States Marine*
25 *Corp, and is appealing that decision.*

1 That's what you were told by Mr. Hunt and/or Mr.
2 Ray?

3 A I believe so, yes.

4 Q All right.

5 *Visiting with grandmother at Beaufort.*
6 *She called Mr. Ray, concerned about his*
7 *depression.*

8 Is that, again, what you were told by one of the
9 two gents that were there?

10 A Yes.

11 Q Now, in your experience with Marines, in particular
12 like Mr. Hunt, when they're being dishonorably
13 discharged, is that something that makes them happy?

14 A Well, I would think they would be very unhappy.

15 Q Okay.

16 A It's very stressful.

17 Q Because right after that, as you were going down
18 this list, you've got current and associated complaints.
19 He's depressed, but he's also, you circled angry.

20 A Yes.

21 Q And would you have done that assessment right after
22 you talked to him and he told you, hey, I'm getting
23 dishonorably discharged, but I'm fighting it?

24 A Most likely.

25 Q All right. Would you expect someone to be a little

1 bit angry when they're talking about that to you?

2 A Yes.

3 Q What you didn't put as a current associated
4 complaint was that he was frustrated or agitated or
5 hostile or paranoid. Were those things you were looking
6 for as you were interacting with him that day?

7 A Yes.

8 Q Did you find any of those four?

9 A No.

10 Q And you backslashed confused and hallucinating.
11 And tell us why you backslashed those two.

12 A I didn't find any of that.

13 Q All right. And so, did you think at that point he
14 was hearing things or seeing things that weren't in
15 reality?

16 A I didn't document that, no.

17 Q In fact, you documented just the opposite, that
18 they're not there, correct?

19 A Yes.

20 Q And that's the backslashing, correct?

21 A Yes.

22 Q You go on to put the suicidal thoughts. And you
23 had a discussion with him about that, correct?

24 A Yes.

25 Q And that's when he also says, after you've had this

1 discussion with him about his dishonorable discharge and
2 how he's fighting that, that he does have thoughts of
3 hurting himself and the thought of hurting others. But
4 you put on here, *but no specific plans*, correct?

5 A Correct.

6 Q I want to ask you some questions about this issue.
7 I made a little chart, Doctor. Can you see that?

8 A Yes.

9 Q Everybody over here see that? I'll stand over
10 here. I want you to help us define some terms. When a
11 patient has what was called suicidal ideation, does that
12 mean they're having some general thoughts of hurting
13 themselves?

14 A Yes.

15 Q All right.

16 A That's true.

17 Q When a patient has thoughts of hurting others, is
18 that some general thoughts of hurting others?

19 A Yes.

20 Q Now, is that different than when someone comes in
21 and says those things, but says I have a plan to hurt
22 myself or a plan to hurt others.

23 A Well, that's the next step up in severity. If
24 somebody has actually a plan, it means it's more
25 dangerous.

1 Q With this gentleman -- and you were asked a lot of
2 questions by Plaintiff's counsel about your notes, and I
3 think you'll see, on the next page, that, at times, he
4 said he had thoughts of hurting himself, and at times he
5 kind of wavered on that. Am I right?

6 A Yes.

7 Q And he wavered to the point where he wouldn't say I
8 really have plans of doing that, correct?

9 A Yes.

10 Q Is that uncommon to see in depressed patients?

11 A It's very common.

12 Q Did he ever, at any point, in the whatever minutes
13 you were with him, or, to your knowledge, before or
14 after you were with him, ever state a plan, an idea of
15 something he had thought out about how he was going to
16 hurt himself?

17 A No.

18 Q Did he ever communicate to you or anybody else in
19 that E.R., to your knowledge, any ideas or plans that he
20 had formulated to hurt anybody else?

21 A No.

22 Q In your assessment of a patient who presents with
23 suicidal thoughts, and at some point during the
24 interview, after you've talk to him about things that
25 make him a little angry, talks about maybe hurting

1 others, at any point there, has he expressed an actual
2 physical manifestation that he's going to go hurt
3 himself or others, or a verbal, telling you, I'm going
4 to go hurt others?

5 A There was no indication of that, no.

6 Q So, I go back to something I wrote here called
7 patients' rights. When a patient comes to a facility
8 voluntarily, who's been cooperative by participating in
9 the process from when he walked in upstairs to the
10 triage and E.R., to the placement in Room 4, and now
11 you're talking with him and evaluating him, who, what
12 we've seen, was never aggressive, combative, hostile, or
13 whatever terms you want to use, does he have certain
14 rights, even though he's stated some suicidal ideations
15 or said I have thoughts of hurting others, but no plans,
16 does he have some rights that you have to honor as an
17 E.R. physician?

18 A Well, he has many rights to privacy, care,
19 compassion, and to, you know, to treat whatever
20 complaints he has. Those are the general rights of a
21 person.

22 Q And does a person in this situation, who's got
23 these things, also have the right to come and go as he
24 pleases in your E.R.?

25 A Yes.

1 Q I'm sorry. I talked over you that time. Is that a
2 yes or no?

3 A Well, I mean, to a certain degree, they do have a
4 right. They can sign -- certain patients can sign
5 themselves out and leave. So, I mean, if they're not
6 demonstrating any obvious risks of self-harm or harm to
7 others, people can sign themselves out and leave. I
8 mean, that's a -- that's a right that everybody has.

9 Q While I'm up here, I'm asking you to explain to us,
10 if you don't mind, we've heard the term, *admission to*
11 *the hospital*, but Dr. Hendelman said this gentleman
12 should be admitted to the hospital.

13 A Yes.

14 Q Can you explain what a voluntary admission to a
15 civil mental health facility like Beaufort Memorial
16 Hospital is, versus involuntary commitment to a military
17 medical facility that we heard earlier in this case
18 about? What's the difference in how that works?

19 A Well, voluntary admission is the patient actually
20 agrees to go to the hospital on their own. They don't
21 confront you. They don't resist you. They say, fine,
22 I'm here for help, I'll go to the hospital and stay
23 there. Involuntary usually applies to people that you
24 feel are -- are dangerous to themselves and to others,
25 and they need to be in the hospital, and for one reason

1 or another, they disagree with that or refuse to go.
2 So, that would be an involuntary commitment, where you
3 fill out paperwork, and legally they're not -- they
4 cannot leave the E.R., the facilities where you're at,
5 and they have to be admitted.

6 Q With regard to Mr. Hunt, when you were having
7 discussions with Dr. Hendelman about admitting him to
8 the Beaufort Memorial facility, and there were calls,
9 however many there were, about bed availability and
10 whether they could take him, was that always under the
11 assumption that this patient was going to continue to
12 cooperate in the evaluation and diagnostic process, and
13 go there voluntarily?

14 A Yes. I mean, the usual idea is that the patient
15 will go voluntarily. And if you feel the need that they
16 have to be in the hospital, and they're refusing to,
17 then, you consider involuntary admission.

18 Q We'll come to that in a second. But when you're
19 going to do a voluntary admission, let's assume, take
20 our time line for it, that, the patient had remained in
21 the hospital after you and Dr. Hendelman had talked, and
22 you walked in, and you said, Mr. Hunt, we think you need
23 to be seen at Beaufort Memorial, in the medical thing;
24 and he said, that's fine, would there still be things
25 you'd have to do in the E.R. at the Naval Hospital

1 before he could be transported over to Beaufort
2 Memorial?

3 A Yes. There's a lot of paperwork that has to be
4 filled out.

5 Q What about lab tests or checking to see if he's got
6 some other physical illness going on before you send him
7 over there?

8 A Now, that commonly is done, and it would really
9 depend on the accepting physician. Often, they require
10 a lot of blood work tests to make sure there's no other
11 medical condition going on.

12 Q If the same scenario had played out, but Mr. Hunt
13 says I'm not going to go, and you have to go through
14 involuntary commitment procedures first, would you ever
15 involuntarily commit a military person to a civilian
16 medical facility?

17 A That's -- it really doesn't matter whether it's
18 military or not. It's voluntary/involuntary goes with
19 civilian and military.

20 Q If you're going to send them to an involuntary
21 commitment, and they don't want to do it, do you have to
22 get some type of a legal process in order to do that?

23 A Yes.

24 Q Is that an order from a judge or somebody of that
25 sort, saying this person must go against their will?

1 A Usually, it's a doctor's decision. And they make
2 the approximate reasoning why this person needs to be
3 committed involuntarily. It's for a short period of
4 time. And I think probably some other people probably
5 need to get involved legally with that, but I don't
6 think it's a judge that initially gets involved.

7 Q But there's some legalities of doing so.

8 A Yes.

9 Q Thank you, sir. Are there degrees of suicidal
10 ideation?

11 A Yes, there are.

12 Q Tell us a little bit about that.

13 A Well, there's vague ideations where somebody says
14 -- can say that, you know, I don't want to live, or, I'm
15 not happy, and I just want to escape. And all the way
16 to, I'm so depressed; I have cancer; I don't want to
17 live; I'm going to kill myself.

18 Q And the same with homicidal ideations, are there
19 degrees of those?

20 A Of course there are.

21 Q Give some ideas of the examples of that.

22 A Well, I -- I gave an example yesterday where, you
23 know, somebody's cut off in traffic and says, I'd like
24 to kill that person, and you know, it's not a serious
25 threat, just angry at the moment. And you know, later

1 the person just kind of realizes the mistake of going to
2 road rage and laughs it off; versus somebody that
3 actually makes plans, and either is in the process of
4 hanging themselves, or purchases a weapon, or things
5 like that.

6 Q Is a plan the important part for you, whether it's
7 a suicidal thought or homicidal thought? The absence of
8 a plan versus the existence of a plan?

9 A That's a very important part of it.

10 Q Let me go back to your chart, Doctor, and ask a few
11 other things. As you did your continued evaluation of
12 this, when you were under the -- excuse me -- current
13 and continuing and associated complaints, you've
14 backslashed suicide attempts, wanted to escape inside,
15 and abraded risk. Why backslash those four areas in
16 there?

17 A Well, because they -- they -- they weren't
18 appearing in that situation.

19 Q So, it didn't appear to you he had other attempts
20 where he had left some physical evidence on his body of
21 having tried to hurt himself?

22 A Correct.

23 Q Over here on the right side, you have some other
24 areas that you looked at. A review of systems, where
25 you're looking at his lungs and his constitution and his

1 neurological and his eyes. Excuse me. Under neuro/
2 eyes, you have a backslash on headache, and nothing
3 checked for visual disturbance. Are those important
4 things to note, when you're looking at a patient with
5 mental health challenges like Mr. Hunt?

6 A Well, you have to really look at the whole patient,
7 but you want to concentrate on specifics problems. I
8 mean, you're not going to be looking at his toe for an
9 ingrown toenail when he's presenting with suicidal
10 ideations. So, you -- you examine the patient, but you
11 specifically look at certain areas that are relevant.

12 Q And if patients are extremely agitated, or in a
13 high mental state of mental distress or whatever, can
14 they experience headaches and visual disturbances that
15 are evident when you're examining them?

16 A It's possible.

17 Q You checked nausea and vomiting, backslash. Can
18 patients who are in a high state of agitation sometimes
19 feel nauseated or like they want to throw up?

20 A It's possible.

21 Q And those are things you look for?

22 A Yes.

23 Q You noted at the bottom that he has alcohol and
24 drug abuse, depression, prior suicide gesture. What's a
25 suicide gesture, as opposed to an attempt?

1 A A suicide gesture is considered a non-serious
2 attempt. It's usually a seeking out or looking for
3 help. For example, somebody that takes five aspirins,
4 and says, you know, I want to kill myself, and that's
5 usually a cry out for help. So, it's a gesture, looking
6 for somebody to help you. An attempt is actually an
7 attempt to kill yourself.

8 Q And the bottom, you were already asked about the
9 medication side, but under the social history, you've
10 got, he's a smoker of about a pack a day. Now, with
11 smokers, sometimes, they get -- if they sit too long in
12 an E.R., waiting for things to be done, and diagnoses,
13 do they like to go out and have a smoke?

14 A Yes.

15 Q And is that something that, absent some plan to
16 hurt themselves or others, you are not against allowing
17 to occur, as long as a patient remains cooperative?

18 A Again, a lot of physicians will allow patients to
19 go out for a smoke. Usually, they don't go by
20 themselves.

21 Q And this patient didn't go by himself, did he?

22 A No.

23 Q Now, I'm going to ask the last question on this
24 page. You've noted on alcohol use, you have he's not a
25 binge drinker. At least, you didn't circle it. But you

1 have alcoholism, and that he's divorced, with a child,
2 right?

3 A Yes.

4 Q The fact that he tells you he has an alcohol and
5 drug problem and alcoholism is something, but in your
6 assessment of him, did it appear that he had abstained
7 from those things for quite some time?

8 A I really couldn't tell.

9 Q He didn't come in with the odor of alcohol or
10 anything, right?

11 A I don't believe he did, no.

12 Q And if a person has got all these other mental
13 health challenges, is it a good thing if they're
14 abstaining from alcohol and not binge drinking? Does
15 that show you they're trying to help themselves?

16 A Well, that certainly is true.

17 Q And that's why you understood that he came there,
18 is he wanted some help getting medications refilled.

19 A Yes.

20 Q And was there anything during this time when you've
21 been talking with him and reviewing systems with him,
22 anything about your interactions with Mr. Hunt that
23 suggested he wasn't going to continue to stay and get
24 the help that he had come there for?

25 A No.

1 Q All right. Thank you, sir. Now, we're going to
2 move into that second page very briefly. Now, these
3 appear to be things where you're actually putting your
4 hands, eyes, stethoscope, some things on the patient,
5 doing a physical exam. Is that right?

6 A No. I'm afraid that's the nurse's assessment.

7 Q I picked up the wrong one. I'm sorry. Thank you
8 for correcting me, Doctor. Let me get the right one.
9 There we go. Is that --

10 THE COURT: Would you identify it. Would you just
11 identify it.

12 MR. LOVELL: Yeah. It's Plaintiff's 22.

13 THE COURT: Perfect. Thank you.

14 MR. LOVELL: And it's -- I don't know the page
15 number. I apologize.

16 BY MR. LOVELL:

17 Q This one, Doctor, that starts at physical exam, and
18 it has some handwriting in the upper right, that's your
19 second page of your note?

20 A Yes.

21 Q The physical exam, when you're dealing with mental
22 health patients, patients that come in with challenges
23 like Mr. Hunt, when you go to do a physical exam where
24 you're going to be touching their body, are there
25 occasions where, when you go to do that, they react to

1 those touches?

2 A Well, certainly. But I mean, as a -- as a
3 compassionate human being, you will tell them that
4 you're going to be examining them. So, they usually --
5 if they refuse to do it, then, that's a different
6 scenario. If they -- you prepare them for whatever
7 you're going to be doing. You don't suddenly draw blood
8 without telling them to do that, so you always prepare
9 patients.

10 Q And Dr. Jansen, I should have asked you this at the
11 beginning. But when you're interacting with a patient,
12 from the minute you walk in and introduce yourself to
13 the minute you leave, are you talking with him during
14 that whole time?

15 A Constantly.

16 Q Why do you talk to him the whole time?

17 A Well, that's the only way that human beings
18 communicate is by talking. And if they're talking, it
19 means they -- they -- they want to be there, probably.
20 I mean, that's an assumption you make.

21 Q And are you saying words to him, explaining to him
22 what you're doing, when you're doing it, and kind of why
23 you're doing it?

24 A Usually, yes.

25 Q And are you talking to Mr. Hunt, or did you talk

1 with Mr. Hunt, as you got to the end of the process to
2 explain to him sort of what to expect to happen next?

3 A Yes.

4 Q We'll come back to that in a second. But as you
5 were doing your physical exam, you did put that he was
6 in moderate distress and he was anxious, correct?

7 A Yes.

8 Q But you didn't put severely distressed or lethargic
9 or obtunded or uncooperative for exam, correct?

10 A Correct.

11 Q And had he been any of those things, you would have
12 circled them?

13 A Yes.

14 Q So, as you're talking to him, and you're telling
15 him what you're doing, and you're touching his body,
16 he's allowing you to do these things, right?

17 A Yes.

18 Q As we go down, you have his eyes, ears and nose,
19 and throat exam to be basically normal, right?

20 A Yes.

21 Q Nothing about looking in his eyes that suggested
22 something unusual or weird was going on?

23 A Nothing was documented to that effect, no.

24 Q I note over here there's something called
25 disconjugate gaze.

1 A Yes.

2 Q And that would be abnormal sometimes in patients
3 who are on medications or having something unusual going
4 on mentally?

5 A Yes.

6 Q All right. Explain to us what that means,
7 disconjugative gaze.

8 A Well, disconjugative gaze means your eyes aren't
9 equally focused. They're off like that, so that could
10 be anything from brain lesions, strokes, tumors, to
11 certain medications.

12 Q In the neurologic and psychological evaluation of
13 him, you noted the depressed affect, and you were asked
14 about it. But he wasn't tearful, hostile, or non-
15 communicative with you at that time, correct?

16 A Let's see here.

17 Q It's under the neuro-psyche exam.

18 A I circled only depressed affect.

19 Q Okay. And again, as you're talking to him, and
20 having this ongoing conversation, are you, again, asking
21 him, do you have suicidal thoughts, as you're going
22 through this, correct?

23 A Yes.

24 Q And you wrote here, he doesn't state them at that
25 time of this process, right?

1 A Correct.

2 Q And I assume this whole process takes a little bit
3 of time; it doesn't just happen like that.

4 A Yes.

5 Q And as you're talking to your patient, Mr. Hunt,
6 going through this process, you keep asking him some of
7 these questions over and over sort of, to judge the
8 validity of his responses?

9 A Yes, that's correct.

10 Q And one of those is, are you thinking of hurting
11 yourself; are you having ideas of suicide.

12 A Yes.

13 Q Just to see at different times what he says?

14 A Yes.

15 Q And in this case, this gentleman even wavered on
16 that, whether he was and he wasn't having those
17 thoughts. Did he not?

18 A That's what's written in the notes, so I believe
19 that's correct.

20 Q And again, when you note below, and you were asked
21 earlier where you wrote, patient doesn't deny nor
22 confirm ideations, right?

23 A Yes.

24 Q Under orientation, you put, he's disoriented to his
25 Social Security Number; doesn't recall it. But he was

1 oriented to where he was, what day of the week it was,
2 who he is, what he's doing, right?

3 A Yes. And I think that was documented in the
4 nursing note.

5 Q Okay. And he was, again, cooperative. He wasn't
6 uncooperative at all.

7 A Yes.

8 Q You did an exam of his sensory and motor nerves and
9 his respiratory system, correct?

10 A Yes.

11 Q All of those things relatively normal?

12 A Yes.

13 Q He wasn't breathing fast, was he?

14 A I don't believe he was, no. And but we can go back
15 to the vital signs, and I think they were -- sure that
16 he was breathing normally.

17 Q And was his blood pressure higher than you would
18 expect for a gentleman of his age?

19 A His blood pressure was normal.

20 Q Was his pulse rate faster than you would expect for
21 a man of his age?

22 A His pulse rate was just slightly above the upper
23 limit of normal.

24 Q Is that abnormal, to see a slight elevation of
25 blood pressure when somebody is sitting in the emergency

1 department being evaluated by a doctor?

2 A No, it's not abnormal at all.

3 Q If he had been in an extremely agitated state, but
4 not showing it, you know, talking to you or telling you
5 about it, would you expect those vital signs to look
6 like what Mr. Hunt's looked like?

7 A No. They would be probably -- but again, not in
8 all cases, but usually, they would be abnormal.

9 Q Much higher pulse rate, higher blood pressure?

10 A Higher pulse rate, maybe elevated blood pressure.
11 You get a release of catecholamines. Probably breathing
12 faster, pacing, you know, things like that.

13 Q And those are things that people can't consciously
14 control. Your body just does it.

15 A Yes.

16 Q And he didn't have any of that, other than a
17 slightly elevated heart rate that could be just
18 associated with things, either being talking to you.

19 A Or not having a cigarette.

20 Q Okay. Skin color look normal?

21 A Yes.

22 Q He wasn't flushed or sweaty or anything like that,
23 correct?

24 A Correct.

25 Q And those would be things, if someone who was in an

1 extremely agitated scenario, you might see a sweaty or
2 flushed appearance?

3 A Yes.

4 Q Is that right?

5 A Yes, that's -- that's correct.

6 Q All right. So, Doctor, you completed all of your
7 examination of him, and at that point, your decision was
8 I think I need to consult with the psychiatry group
9 about what to do with this gentleman, correct?

10 A Correct.

11 Q Was he ever -- was Mr. Hunt ever combative to you
12 at all?

13 A He never appeared to be, no.

14 Q Did he always cooperate with you when you were
15 talking with him, telling him what's going on?

16 A Yes, he did.

17 Q And as you sat there and made the decision you
18 needed to get psychiatric people to evaluate him, did
19 you talk to Mr. Hunt about the fact that, that was going
20 to occur?

21 A Yes.

22 Q Did he, in any way, resist that being the next step
23 of his voluntary participation in this evaluation?

24 A I don't recall him resisting at all.

25 Q If Mr. Hunt had resisted that, would you have made

1 a notation of it?

2 A Most likely.

3 Q Was the gentleman, at any point, exhibiting any
4 signs or symptoms of a delusional disorder while you
5 were in the room with him?

6 A No.

7 Q Active personality disorder while you were in the
8 room with him?

9 A No.

10 Q Psychosis of any sort?

11 A No.

12 Q Was he exhibiting any signs of schizophrenia?

13 A No.

14 Q All right. We're going to talk just briefly about
15 this time line, and I apologize for digging into this
16 one more time. This is something I started with Mr.
17 McDonald, and I've added some things to it, and I
18 apologize in advance for the really poor handwriting.
19 The things that you did, I kind of put in pink
20 underneath.

21 At 1520, your notes showed -- well, I'm sorry, at
22 1510, there was a call from you to Mental Health, asking
23 for a psychiatric tech to come down, correct?

24 A Yes. Correct.

25 Q And we saw from Mr. McDonald, that was also around

1 the time you charted a call to Beaufort Memorial to
2 check on bed availability. If you were thinking that
3 this man might need admitting to the hospital, is it bad
4 for you and the staff there to go ahead and check and
5 see if there's any beds available for him over there?

6 A No, it's not bad.

7 Q Does it save time if you check, and you find out
8 they don't have them, you can go look other places; or
9 if they do, you, perhaps, don't have to?

10 A That would be common sense.

11 Q It would be good patient care to try to expedite
12 the process?

13 A Of course.

14 Q Now, at 1520, you made a second call to the psyche
15 tech area asking where is he, correct?

16 A Yes.

17 Q All right. And Mr. McDonald told us, at 1525, he
18 indicated the psyche tech was evaluating Mr. Hunt. Your
19 note shows that, at 1540, Mr. Manning, the psyche tech,
20 was present, correct?

21 A Yes.

22 Q And then, shortly after that, we heard your
23 testimony yesterday that the psyche tech completed
24 whatever he was doing. Did you have a conversation with
25 the psychiatric tech?

1 A I don't think there was anything of any essence.
2 He was basically going to report to the psychiatrist,
3 and that I would get a call back probably.

4 Q Now, at any point -- I'm going to back up one step.
5 When you were in there creating these two documents that
6 we've looked at, your form, is that a front and back of
7 the same piece of paper?

8 A Yes.

9 Q So, it's not really two separate sheets. It's one,
10 front and back.

11 A Yes.

12 Q Do you have the entirety of the medical chart in
13 your hand when you're doing that?

14 A The only chart that's created in the emergency
15 department, yes.

16 Q So, you would have Nurse Janice's triage record and
17 whatever documents were with that, correct?

18 A Correct.

19 Q And you would have the T-sheet, correct?

20 A Yes.

21 Q Mr. McDonald's form that he's completing, is that
22 something that's at the nurse's desk with him?

23 A Let's see. You mean the nurse's evaluation?

24 Q No, the treatment nurse's chronological sequence of
25 notes that are there in your packet. Let me show it to

1 you here. Doctor, this one, I'll put it up over here.

2 A I see.

3 Q Joe McDonald's.

4 A That -- that -- I don't think that's, necessarily,
5 that's with me. I only have the T-sheet.

6 Q Okay.

7 A That's what I have.

8 Q So, with what you've got, when you go back and see
9 the patient, you complete your things. When Mr. Manning
10 comes to see the patient, do you then hand those to him?

11 A I usually don't hand my paperwork to the consultant
12 or the consulting technician. They have their own
13 paperwork.

14 Q Why wouldn't you let them have yours?

15 A Well, they can ask for it, if they want, but they
16 don't necessarily -- I don't necessarily hand them the
17 form.

18 Q Is it important for the psyche tech to get his own
19 independent gathering of information from the patient?

20 A That's exactly right.

21 Q Okay. So, when Mr. Manning is in there completing
22 his evaluation, when he comes out, does he give you a
23 form, say, hey, here's what I found with regard to the
24 patient?

25 A No. He would take that, whatever information he

1 has, to the psychiatrist.

2 Q And then, he left some time after 1540, but before
3 your phone call to Dr. Hendelman at 1605, correct?

4 A Yes.

5 Q At any point when Psychiatric Tech Manning was
6 there, did he come to you, or to your knowledge, did he
7 tell anyone else, hey, this gentleman doesn't need to be
8 escorted only by Mr. Hunt -- I mean, Mr. Ray; or hey,
9 don't let this guy out; or hey, do anything differently
10 than what you all were doing?

11 A No.

12 Q Even when he came out to go upstairs to see Dr.
13 Hendelman?

14 A No.

15 Q When you made the phone call to Dr. Hendelman,
16 which, according to your time frame, was at 1605, do you
17 remember the words that you all exchanged, as you sit
18 here today?

19 A Well, whatever words were there would be in the
20 notes that I made. I -- I don't recall, exactly.

21 Q At that point, she told you that this patient, it
22 was obvious to her that he needed to be admitted for
23 further work-up and evaluation, right?

24 A Yes.

25 Q Did she say he needs to be a voluntary or an

1 involuntary? Did she specify?

2 A No.

3 Q But at that point, did Dr. Hendelman say to you,
4 make sure this gentleman doesn't leave the E.R. or get
5 somebody down to restrain him; do anything other than
6 what you all had been doing with him?

7 A Nothing to that effect, no.

8 Q And at that point, did you ask Dr. Hendelman to
9 come down and see Mr. Hunt?

10 A Yes.

11 Q Why?

12 A Well, like I said yesterday, when you do a
13 consultation, you want the specialist to at least look
14 at the patient. That's -- that's the way I usually work
15 it, so. The Navy sometimes works it a little
16 differently, so it's -- I -- I think that's reasonable.

17 Q And you knew that you had a patient, at least from
18 your observation, that had had thoughts of hurting
19 himself that were sort of wavering to yes, I'm having;
20 no, I'm not?

21 A Yes.

22 Q So, in your mind, was there perhaps this gentleman
23 with wavering thoughts of suicidal or homicidal issues,
24 and no -- absolutely no plan, who was not combative, not
25 all the restless, agitated, all those things, where, you

1 know, not really giving you all a hard time, was there
2 some question in your mind whether an admission was
3 exactly what he needed?

4 A Well, of course. I mean, mental illness is a very
5 difficult condition to completely and well-diagnose
6 correctly. Even psychiatrists have trouble sometimes.
7 So, I mean, the more help you get in evaluating a
8 patient and his needs and his care and his safety, the
9 better.

10 Q But when she, Dr. Hendelman, tells you, forget all
11 of that; I'm not coming to see him; it's obvious he
12 needs to be admitted; at that point, you're going to do
13 whatever paperwork needs to be to have him admitted.

14 A Correct.

15 Q First, though, would you go down and go talk to Mr.
16 Hunt, and explain to him what had happened with the
17 psychiatric evaluation, and explain the process of
18 voluntary admission, and then, give him the option of
19 going that route? Is that what would have happened?

20 A Well, that's normally what's done, yes. And I
21 would have done that.

22 Q And when you walked out of your evaluation of Mr.
23 Hunt, when you finished, you know, right before you
24 walked out, did you tell him, hey, I'm going to have a
25 psychiatric tech come and see you, and it's possible you

1 may need to be -- go into the hospital, depending on
2 what we find?

3 A I -- I -- I'm pretty sure I said that there's going
4 to be a psyche tech come in to see you. And I don't
5 recall whether I said, you know, he may get admitted or
6 not.

7 Q Okay. But you don't know what Mr. Manning may have
8 said to Mr. Hunt at any point, right?

9 A No.

10 Q Did Mr. Ray, the gentleman who had been with Mr.
11 Hunt since 10:30 or so in the morning, and accompanied
12 him upstairs/downstairs, did he, at any point in time,
13 express to you that he was concerned that something
14 could change with Mr. Hunt, or that Mr. Hunt was acting
15 differently?

16 A No, he did not.

17 Q Do you have any knowledge of Mr. Ray making any
18 comments to that effect to any of the E.R. staff, the
19 Nurses McDonalds?

20 A No.

21 Q If Mr. Ray had said something to you to that
22 effect, would you have done something differently than
23 what was done?

24 A Most likely, that would change the scenario, to
25 some degree.

1 Q Doctor, given your medical evaluation of this
2 patient, including the information that was provided to
3 you by the emergency staff, and your interaction with
4 Mr. Hunt and his wavering on the ideation issue, do you
5 have -- did you have any medical thought or medical
6 reason to justify telling this patient, hey, you cannot
7 leave this E.R. for any reason whatsoever?

8 A No, I did not have an indication.

9 Q He wanted to go out and get fresh air. As far as
10 you were concerned, that was acceptable at the time.

11 A That would have been an option. But again, like I
12 said, in my practice, I -- I personally do not like
13 people leaving the E.R. until their -- their treatment
14 is completed. Although, some people do allow that, but
15 I personally do not like that.

16 Q And the reason you don't like people leaving the
17 E.R. before you've completed your evaluation and made
18 some decision about what happens next is because, if
19 they leave the E.R., and you decide, oh, I need to get
20 this test, or I need to re-evaluate this, you kind of
21 got to go chase them down, and there may be some time
22 wasted in the process. Is that one reason?

23 A Yes.

24 Q And if you happen to have other patients in the
25 E.R., and you know, you're having to stack who you see,

1 if you need to see Mr. Hunt, and he's gone outside for a
2 cigarette, it might delay the time you get to see the
3 other people, right?

4 A Yes.

5 Q But in this case, he's the only patient in the E.R.
6 that day, so we're not worried about other people having
7 to wait while you all track him down, right?

8 A Yes.

9 Q And as far as a need to do other tests or anything,
10 there were no tests that you were going to do, until the
11 decision had been made that he's going to be admitted or
12 not, correct?

13 A Correct.

14 Q And so, that really wasn't a factor in whether he
15 could go in or out to go have a smoke, or get fresh air,
16 or whatever he wanted to do with Mr. Ray.

17 A Correct.

18 Q When you were trying to make a decision, even if
19 it's early on, like when Mr. Ray -- I mean, sorry --
20 when Mr. Hunt was first seen by you, if you have to make
21 a decision whether to chemically restrain him by giving
22 him medication, does that decision have some risk to the
23 patient, if it's not necessary medically?

24 A There's always risk with -- with psychotropic
25 medications.

1 Q So, with most E.R. doctors, when faced with a
2 patient like this one, with the situation you saw when
3 you saw, would a medical restraint be something you
4 would shy away from under those conditions and
5 circumstances?

6 A Well, in this particular case, any restraint was
7 not indicated while I was, you know, seeing the patient.

8 Q And does that include medications that might calm
9 him down or whatever, and physical restraints, such as
10 somebody physically holding him or tying him down with
11 the straps you all can use?

12 A Yes.

13 Q Even though you knew this gentleman was a Marine
14 and capable or trained on how to defend our country
15 through the use of violence, was there anything about
16 his presentation to you that day, and the information
17 that you reviewed or looked in, that suggested to you
18 that he was going to use any of those propensities on
19 anybody that day?

20 A No.

21 Q It was obvious that he needed to be admitted,
22 according to the psychiatrist, and you would follow her
23 instruction, right?

24 A Yes.

25 Q And that would be admitted to have further work-up,

1 people asking those questions about his history, and
2 determining what course of treatment to do, right?

3 A Yes.

4 Q That kind of evaluation could not occur in your
5 emergency department on that day, correct?

6 A No.

7 Q He had to go somewhere, and it couldn't occur in
8 the military facility that day, either, correct?

9 A Correct.

10 Q Because this was a Friday afternoon, late, and
11 those folks all go home over the weekend.

12 A And usually, the patients in that particular
13 situation of Mr. Hunt's are not admitted to the Naval
14 Hospital.

15 Q So, they've got to go somewhere else for all of
16 this follow-up care.

17 A Correct.

18 Q Was it obvious to you that, at least during the
19 time you were with him, Mr. Hunt was going to continue
20 to cooperate with the medical care he was getting?

21 A That would have been the pattern, yes.

22 Q Nothing to suggest that he wasn't going to
23 continue. Is that right?

24 A Correct.

25 Q Was it obvious to you, from your interactions with

1 him, with Mr. Ray sitting in the room for those periods
2 of time, that he was going to continue to cooperate with
3 Mr. Ray in this process?

4 A Yes.

5 Q You weren't there, but we've heard that the
6 gentleman left and went to the restroom. Mr. Hunt did.
7 Came out of the restroom, spoke to Mr. McDonald, who
8 offered him something to drink. He politely said, no,
9 and then, went back to the bed, where Mr. Ray was still
10 in the room, and stayed there for some period. Is that
11 consistent with the pattern of cooperation and
12 participation in his healthcare that you had seen from
13 Mr. Hunt?

14 A Yes, that is.

15 Q Did you have, in your mind, Doctor, any thoughts
16 that, at any point in time, Mr. Hunt posed a serious
17 threat of danger or violence to other people?

18 A No, I did not.

19 Q To himself?

20 A No.

21 Q In your opinion, would any reasonably prudent
22 emergency physician such as yourself, trained in the --
23 competently trained in the practice of emergency
24 medicine, or a nurse working in that department, who's
25 competently trained, determine that, based on all the

1 information that was there with Mr. Hunt, that he posed
2 a serious danger of violence to himself or others that
3 day?

4 A No, he did not.

5 Q Did you have any suspicion that this gentleman, who
6 had been there since 10:30 that morning, had cooperated
7 with the Nurse Smith, and cooperated with Janice
8 McDonald, and had cooperated with you, and had
9 cooperated, presumably, with Mr. Manning and Mr. Ray,
10 and Joe McDonald, was going to run away from Mr. Ray,
11 after walking outside, strip down to his underwear and
12 his socks, run off the base, get in a fire truck and
13 cause harm to other people?

14 A That would have been very unexpected.

15 Q Did you have the benefit of hindsight, a crystal
16 ball, knowing what happened at the time you were
17 treating the patient, and assessing what might happen in
18 the future?

19 A No. I -- I cannot predict the future.

20 Q When you were asked questions yesterday, you know,
21 knowing what you know now, would you do things
22 differently, is that using a crystal ball or hindsight
23 that you didn't have when you were seeing the patient?

24 A Well, that's a very common question you're asked in
25 court, and that's being that Monday night quarterback.

1 And if you know what happened, then, you can start
2 guessing or second-guessing people.

3 Q But back when you were treating this patient,
4 Doctor, from your professional experience as a doctor,
5 treating patients like this before and evaluating them,
6 was there anything in your mind that made it suspicious
7 or made you think that this gentleman might do something
8 to cause serious danger to himself or others?

9 A There was nothing to that effect.

10 MR. LOVELL: Thank you. That's all the questions I
11 have.

12 BY THE COURT:

13 THE COURT: All right. Ladies and gentlemen, we
14 are going to take our morning break. I'm going to ask
15 you to please step to your jury room. Do not discuss
16 this matter or allow anyone to discuss it with you.
17 Remember that show Ally McBeal? Before long, you all
18 are going to be saying it with me. Leave your notebooks
19 and your pads, and we will take about 15.

20 A Judge, do I need to still stick around? Really?

21 THE COURT: We have more cups of water.

22 A As well.

23 THE COURT: You've got to drink them all before you
24 go.

25 A Water. This is like a prison, bread and water,

1 huh?

2 THE COURT: Oh, come on.

3 A But there's no bread.

4 THE COURT: I just warn you not to testify. Don't
5 talk about your testimony during the break. I know you
6 know that by this point. We'll take about 15. You be
7 at ease, too. You go take your break, Ms. Rowe.

8 JURY LEAVES COURTROOM AT 11:00 A.M.

9 BAILIFF: Jury's clear, your Honor.

10 THE COURT: Be at ease. Fifteen, guys, and ladies,
11 and folks.

12 OFF THE RECORD 11:00 A.M.

13 BACK ON THE RECORD 11:35 A.M.

14 BAILIFF: All rise. Court is back in session.

15 THE COURT: Thank you. Please be seated.

16 MR. HOYLE: Good morning, Judge. Just a little bit
17 of forward planning, because I don't think I'm going to
18 need that long with Dr. Jansen. Could we go ahead and
19 talk about the next deposition? We'd like to play Dr.
20 Hendelman, and we have two issues we need to address
21 with you.

22 THE COURT: Okay.

23 MR. HOYLE: It might be easier if we just approach.

24 THE COURT: Yeah, since the jury is coming in.

25 MR. HOYLE: Because it would be nice if we could

1 just hit play.

2 OFF-THE-RECORD BENCH CONFERENCE, OUT OF

3 PRESENCE OF JURY. PRESENT: THE COURT,

4 MR. HOYLE, MR. LOVELL.

5 END BENCH CONFERENCE.

6 BAILIFF: Jury is entering the courtroom, your
7 Honor.

8 JURORS ENTER COURTROOM 11:39 A.M.

9 THE COURT: Oh, I need my witness. There you are.
10 Come on. I'm sorry. Ladies and gentlemen, at this
11 time, we will continue with the Plaintiff's case and the
12 re-direct of Dr. Jansen, as soon as he's able to make
13 his way back. Does he have water? Wonderful. All
14 right. Your witness.

15 MR. HOYLE: Thank you, your Honor.

16 DR. CHRISTIAN JANSEN

17 RE-DIRECT EXAMINATION, BY MR. HOYLE:

18 Q Dr. Jansen, let's begin where prior counsel, Mr.
19 Lovell, began his examination. Do you have Exhibit --
20 Defendant's Exhibit 23 handy?

21 A Yes, I do.

22 Q Okay. And Exhibit Number 23, is this something
23 that you yourself actually obtained from some source and
24 printed onto a piece of paper?

25 A Well, I didn't get this exhibit. This is not mine.

1 Q Okay. Did you yourself actually go, subsequent to
2 your deposition that took place, oh, I think, back in
3 August of 2014, and obtain something substantially
4 similar to the document we have in front of us as
5 Defendant's Exhibit 23?

6 A I read this information. I didn't have actually
7 the paperwork. I just looked it up.

8 Q And where did you look it up, Doctor?

9 A Internet.

10 Q And did you just type in some terms in Google?

11 A Yes.

12 Q And I believe your testimony earlier here today was
13 that you did not believe that this definition contained
14 in Defendant's Exhibit 23 was provided to you back when
15 your deposition took place on August the 18th, 2014. Is
16 that correct?

17 A I don't remember.

18 Q Okay. Do you recall me asking you:

19 *Any reason for you to dispute that*
20 *the Navy defines an abeyance as the*
21 *temporary removal of a privileged*
22 *practitioner from clinical duties while*
23 *an inquiry into allegations that practitioner*
24 *misconduct or professional impairment is*
25 *conducted. Abeyances cannot exceed 28 days.*

1 Do you recall me asking you that?

2 A I don't recall.

3 Q Is there anything that you believe would refresh
4 your recollection as to whether or not I asked you that
5 question at your deposition?

6 A Well, I'll believe you, if you say you asked me, in
7 this situation, I'll believe you.

8 Q In this situation, about this particular question.

9 A Well.

10 Q Okay.

11 A I mean, I have no -- no reason --

12 Q So, if I were to have asked -- if I were to have
13 asked you in that deposition at Page 81 of your
14 deposition transcript, and then, followed up and said
15 that's your understanding of what an abeyance is, you
16 would have no reason to dispute that? Is that what I'm
17 hearing?

18 A No.

19 Q So, with respect to the document that we've been
20 looking at, it's the same definition that I gave you at
21 your deposition, contained within the Paragraph Number 1
22 of Defendant's Exhibit 23?

23 A I'll assume it is.

24 Q So, when I asked you at your deposition whether or
25 not you intended to notify the South Carolina State

1 Medical Board that there was an inaccurate statement
2 contained in your 2011 renewal application, and you
3 responded, yes, I think that would be a reasonable thing
4 to do, that would be with the full knowledge of the
5 definition of abeyance that has been brought forth into
6 this courtroom today as Defendant's Exhibit 23, correct?

7 A Not correct. I don't recall you having me read
8 this during the deposition. I just don't recall. So,
9 my understanding was that I did not know the definition.

10 Q Okay.

11 A And that's why I answered that question that way.

12 Q All right. Well, Doctor, I don't want to belabor
13 this point, but we just read through a definition that I
14 provided you back in your deposition. Do you recall
15 that testimony a few minutes ago?

16 A Yes. Go ahead.

17 Q And any reason to dispute that, just moments ago, I
18 reminded you that there had been a definition given at
19 your deposition of an abeyance as a temporary removal of
20 a privileged practitioner from clinical duties while an
21 inquiry into allegation that practitioner misconduct or
22 professional impairment is conducted; abeyances cannot
23 exceed 28 days?

24 A I agree with that statement. And Mr. Hoyle, we're
25 kind of going around in circles here. I mean, I may

1 have been wrong in answering that I will contact the
2 Board, because I probably misunderstood something. But
3 the fact of the matter is, my privileges were never
4 removed or reduced at any time, and I checked that.
5 Thus, I think I'm allowed to change my mind when I get
6 more information, and not contact the Board. I think
7 that's very reasonable.

8 Q All right, Doctor. And I think I heard some
9 testimony with respect to prior counsel, Mr. Lovell, as
10 well. Your privileges were in abeyance a second time at
11 the Naval Hospital, correct?

12 A I believe so, yes.

13 Q That was in 2012, after the incident involving
14 Calvin Hunt, correct?

15 A Yes.

16 Q Okay. Doctor, I want to go back to the medical
17 records from that fateful Friday. Can you pull those
18 out of your stack of information.

19 A Yes.

20 Q And Doctor, specifically, I want to direct your
21 attention back to the document you yourself typed up at
22 4:40 p.m., that afternoon. Okay? Let me know when
23 we're on the same page, sir.

24 A I'm here.

25 Q And you actually typed this document yourself,

1 correct?

2 A Yes.

3 Q You didn't dictate it into a Dictaphone, and have
4 someone else type it up; you typed it yourself.

5 A Yes.

6 Q Okay. And you told us that these were your present
7 impressions at 40 minutes past the hour of 4:00, on
8 February 24, 2012, correct?

9 MR. HOYLE: Madam Clerk, can you turn the screens
10 on, so -- all right.

11 BY MR. HOYLE:

12 Q And we looked at some of this earlier about your
13 recollection of a quote from Dr. Hendelman. But I want
14 to direct your attention to the last two sentences that
15 you wrote that day. Okay. Is that reasonable?

16 A Last two sentences, yes.

17 Q All right. We're going to work backwards.

18 Around 1620, --

19 that'd be 4:20 in the afternoon,

20 -- Mr. Ray came back and said patient ran
21 away from him and went out front gate.

22 Is that your understanding of the events of that
23 fateful Friday?

24 A Again, that's what's written by me.

25 Q Okay. So, before that happens, in the sentence

1 before, we have a sentence that says:

2 I --

3 which is presumably, you, Dr. Jansen,

4 -- asked nurses and psyche tech to
5 look for patient, and to notify security
6 and front desk.

7 Is that what's written in that sentence, sir?

8 A Yes.

9 Q So, I want to make sure I understand this
10 correctly. Before Mr. Ray comes back into the emergency
11 room, and makes whatever report that he makes about
12 Calvin Hunt running away and going out the front gate,
13 you'd already conducted or directed others to start
14 searching for this patient and to notify security and
15 the front desk. Is that correct?

16 A Again, I don't know the exact time frame of this.
17 This is a continuous note written by me. Again, you can
18 see that I asked nurses. I don't have the time exactly
19 when I did that, so I can't tell for certain which came
20 first. At this point, I can't tell you. There's no
21 time stamp there, so I'm -- I'm not sure.

22 Q Well, if Mr. Ray had come back and said that Calvin
23 Hunt had run off the property, he'd run off the base,
24 he'd gone out the front gate of the hospital, why would
25 you have a psyche tech and the nurses looking for him,

1 and notifying security and the front desk? He's done
2 gone, Doctor. Do you agree with that?

3 A I agree with that.

4 Q So, you will agree with me that, if we read your
5 note, which you typed up at 40 minutes after the hour of
6 4:00 that fateful Friday, that we start with the
7 beginning, with the patient coming into the E.R.,
8 correct?

9 A Yes.

10 Q And your note ends with Mr. Ray coming back into
11 the E.R., and saying that Mr. Hunt's gone, correct?

12 A Correct.

13 Q So, these are kind of in a sequence. Do you agree
14 with that?

15 A Well, it's written in a sequence, of course.

16 Q And so, this is my question, Doctor. If Calvin
17 Hunt was calm, cool, collected, and didn't pose any
18 danger to himself or didn't pose any danger to others,
19 why was it, when you found out that he wasn't within the
20 four walls of the emergency room, did you direct your
21 nurses and a psyche tech to go look for Mr. Hunt and to
22 notify security and the front desk?

23 A Well, if -- if that was exactly what you're
24 reading, it would make sense. If I'm about to do
25 something with a patient, whether to admit him or to do

1 tests, I need him there now. So, I think it would be
2 not unreasonable for somebody to go looking for him.

3 Q Well, what about notifying security? If somebody's
4 in there because they've got the flu, and you're worried
5 that they might need a strep test because they've got a
6 yucky-looking throat, and they go missing, --

7 A Um-hmm.

8 Q -- do you direct your nurses to call security?

9 A Well, if somebody's outside the confines of the
10 building, you're not going to have the nurses running
11 outside looking for them. Security is the one that
12 controls the outside environment of the hospital
13 building, so, that would make sense.

14 Q Now, at this point in time, Edward Ray hadn't come
15 back yet, correct?

16 A Again, that's very possible, but again, I don't
17 know the exact time frame here. I'm just not sure, but
18 let's say yes.

19 Q All right. At this point in time, when you're
20 directing the nurses and the psyche tech to look for a
21 patient and to notify security and front desk, fair to
22 say you don't know if Mr. Hunt's inside, outside, on the
23 base, off the base, or where he is, other than he's not
24 in front of you in the E.R.?

25 A Correct.

1 Q So, let's go back to my question, Doctor. If
2 Calvin Hunt is calm, cool, collected, and doesn't pose a
3 threat of harm to himself or to others, why do you ask
4 for security to go look for him?

5 A Well, several reasons for that. Number one is
6 because security is the only one that can look for him
7 outside the E.R. And number two is, while he was calm
8 and collected when I was seeing him, I don't know what
9 he was doing when he was outside, so I don't know what's
10 going on. So, it's just common sense to get somebody to
11 look for him. Security is the only one that can look
12 for him outside the confines of the E.R.

13 Q Well, then, why did you ask the nurses and psyche
14 tech to look for the patient? Did you think Mr. Hunt
15 was hiding somewhere in that 800-square-foot, itty-bitty
16 emergency room?

17 A Well, he could have been outside the emergency room
18 in the hospital somewhere. Been in the bathroom, in the
19 cafeteria. I mean, it's -- he can be somewhere else.

20 Q You didn't know where he was, did you?

21 A No, I didn't.

22 Q Now, there's been a lot of talk in your examination
23 with prior counsel about a plan. Did I hear some talk
24 about that?

25 A Yes.

1 Q Okay. And I believe you've already told us that,
2 even though Calvin Hunt had starch in his britches and
3 was well dressed and he was generally cooperative, he
4 was poorly communicative. Is that correct?

5 A Yes, that's correct.

6 Q If somebody's poorly communicative, does that mean
7 that they're telling you everything that's going on?

8 A That's exactly what it means, that they're not
9 telling you everything.

10 Q So, is it your testimony here today, before this
11 Court and this jury, that Calvin Hunt didn't have a
12 plan; or is it your testimony that Calvin Hunt never
13 told you that he had a plan?

14 A My notes say that he -- let's see what my notes
15 say. *Suicidal thoughts and thoughts of hurting others,*
16 *but no specific plan.*

17 Q So, what's your testimony, Doctor?

18 A What I said.

19 Q But you agree with me, by your own note, he's
20 poorly communicative, correct?

21 A Yes.

22 Q *I was unable to get sufficient history from him,*
23 *correct?*

24 A Correct.

25 Q *His train of thought was delayed, correct?*

1 A Correct.

2 Q So, we've got somebody with a delayed train of
3 thought who is poorly communicative. Do you agree with
4 that?

5 A Correct.

6 Q Somebody who is on anti-psychotic medications, and
7 hasn't been taking them for some period of time, if
8 they've got a delayed train of thought, and they're
9 poorly communicative, are you able to get the best
10 information about what's going on with that person from
11 that person himself?

12 A I can't get all the information from him, and thus,
13 I was going to consult the psychiatrist. However, from
14 all the indications that I had at the time, there was no
15 threat of danger to the patient or to others.

16 Q And that's why you notified security and the front
17 desk that he was no longer within your E.R., correct?

18 A Well, again, repeating what I said, security is the
19 only person that can check outside the confines of the
20 hospital building. The nurses, the techs, other people,
21 can check inside the building.

22 Q Doctor, there was some testimony earlier in
23 response to questions by prior counsel, Mr. Lovell,
24 about patients coming and going as they pleased. Do you
25 recall that?

1 A Yes. Somewhat.

2 Q And I believe there was some discussions with the
3 help of a flip chart about there being some sort of a
4 right that a patient has. Do you recall that?

5 A That is correct. With certain limitations.

6 Q If Calvin Hunt -- strike that. If it was a safe
7 thing to do, -- and I believe you told us yesterday that
8 your number one duty to a patient is to keep the patient
9 safe, correct?

10 A Yes.

11 Q That would be a patient right, correct? for that
12 patient to be kept safe.

13 A That's an expectation. I don't know if it's a
14 right.

15 Q And certainly, the expectation to keep a patient
16 safe who is expressing suicidal thoughts and homicidal
17 thoughts may require some type of observation or
18 instruction or warning. Wouldn't you agree with that?

19 A Of course.

20 Q And I think I heard this. You never actually told
21 Calvin Hunt that he needed to stay where he was,
22 correct?

23 A No, I did not.

24 Q You never directed any of your nurses to make sure
25 Calvin Hunt stayed where he was, correct?

1 A I don't believe I did, no.

2 Q You never warned Calvin Hunt that, if he left the
3 emergency room, he might act on these suicidal ideations
4 or these homicidal ideations or anything like that,
5 correct?

6 A There was no indication to believe that would
7 happen.

8 Q Okay. But if he has the right to come and go as he
9 pleased, why were you so concerned when you realized he
10 wasn't there?

11 A Well, again, right to come and please [sic],
12 really, we're talking about a person that knows what
13 they're doing exactly. In this case, the evaluation
14 hasn't been completed on this patient. So, I'm not -- I
15 don't know exactly what's going on, but to that -- to
16 that point of the examination, he was not a threat to
17 anyone.

18 Q At this moment in time, if we could freeze time,
19 when you're asking these nurses and the psyche tech to
20 go look for Calvin Hunt, and to notify security and the
21 front desk, at that moment in time, Doctor, did you
22 believe that Calvin Hunt should have been admitted?

23 A Yes, that was the discussion that I had before that
24 with the psychiatrist. So, a decision was made to admit
25 him.

1 Q No doubt in your mind about that.

2 A No doubt in my mind.

3 Q You agree with me that Calvin Hunt really wasn't
4 able to give you a good story as to what was going on;
5 and so, until that was resolved, the safe thing to do
6 was to keep Calvin Hunt under observation, correct?

7 A Yes. That -- that would be my general inclination,
8 correct.

9 Q And not let -- strike that. And not let Calvin
10 Hunt leave, correct?

11 A Correct. This is what I've been repeating over and
12 over to you, that it is my personal treatment and my
13 personal wish that patients do not leave the confines of
14 the emergency room while they're being evaluated. That
15 is my personal preference.

16 Q If you had had actual knowledge on February the
17 24th, 2012, of a question posed as follows: can we go
18 outside for a breath of fresh air, and the we included
19 Calvin Hunt, would your answer to that question have
20 been, yes, no, or something else?

21 A Again, we're theorizing something that never
22 happened. But if you're giving me a theoretical
23 situation, I would probably have talked to the patient,
24 and asked him if he wouldn't mind staying, because we
25 still have some things we need to do, and I'd really

1 prefer if he didn't.

2 Q It wouldn't have been a yes. Is that correct?

3 A Well, that's my -- that's my answer.

4 Q It wouldn't have been a yes, correct?

5 A Correct.

6 MR. HOYLE: Thank you, Doctor. Those are all the
7 questions I have.

8 THE COURT: All right. Yes. Re-cross.

9 MR. LOVELL: Very briefly. Could I get the ELMO
10 back up, please. Thank you.

11 DR. CHRISTIAN JANSEN

12 RE-CROSS EXAMINATION, BY MR. LOVELL:

13 Q Doctor, I'm going to ask you to help me read, in
14 context, this entire note. Not the whole note, but
15 pertinent parts of it. The typewritten one you have,
16 from what's up there on the screen.

17 A Yes. I'll look over there. Go ahead.

18 Q I'm going to back up a couple of sentences, prior
19 sentences, to what was read. And you wrote this sort of
20 at the day of this incident after the patient had left,
21 to kind of put your thoughts on the paper of what
22 occurred, and not necessarily exactly in time wise, but
23 the sequence of how things went. Is that fair?

24 A Yes, it is.

25 Q It says:

1 Dr. Hendelman called back (around 1605)
2 and told me the patient obviously needs to be
3 admitted. I asked her to see patient, but was
4 told it would not change her opinion.

5 I went out of the E.R. office to see
6 patient, and was told that he and Mr. Ray,
7 who appeared to have a good rapport with the
8 patient, stepped out to get some fresh air,
9 and would be right back.

10 In the meantime, I contacted BMH Psyche
11 Floor, and told Nurse Marilyn we had a potential
12 admission. I asked nurses and psyche tech to
13 look for patient, and to notify security and
14 front desk.

15 Around 1620, Mr. Ray came back and said
16 patient ran away from him and went out front
17 gate.

18 Did I read that correctly, Doctor?

19 A Yes, you did.

20 Q So, when you came after -- you came out of your
21 office from talking with Dr. Hendelman, you went and
22 talked to someone who told you that Mr. Ray and the
23 patient had gone out to get some fresh air and would be
24 right back. And then, you went and made a call over to
25 the hospital to tell them you've got somebody that's

1 coming over there, and will be sending him in a little
2 bit, correct?

3 A Let's see. That's, more or less, the sequence of
4 events, yes.

5 Q And after that is when you went and told your
6 nurses and psyche tech, Mr. Manning, who was there, hey,
7 go find my patient; we've got to get the paperwork going
8 to get him out the door, right?

9 A Correct.

10 Q And it wasn't until Mr. Ray came in some period
11 after that and said he took off on me, that the thought
12 ever crossed your mind this guy wasn't going to come
13 back and follow all the instructions that we've been
14 talking about and everything else, right?

15 A Correct.

16 MR. LOVELL: Good enough. Thank you, sir.

17 THE COURT: All right. Is this witness free to
18 leave?

19 MR. HOYLE: Yes, your Honor?

20 THE COURT: Any objection, Mr. Lovell?

21 MR. LOVELL: No objection.

22 THE COURT: You are free to go.

23 A I have a little objection. That picture of mine is
24 very unflattering.

25 THE COURT: Oh. All right. Thank you. We'll make

1 that note. Appreciate it.

2 A Thank you.

3 THE COURT: All right. Call your next witness,
4 please, sir.

5 MR. HOYLE: Your Honor, at this time, Plaintiff
6 calls, by videotaped deposition, Dr. Beverly Hendelman.

7 THE COURT: Very well.

8 DVD OF VIDEOTAPED DEPOSITION OF
9 DR. BEVERLY ELAINE HENDELMAN, COURT'S
10 EXHIBIT NUMBER 9, PLAYING.

11 PAUSE PLAYING DVD OF VIDEOTAPED
12 DEPOSITION, COURT'S EXHIBIT NUMBER 9,
13 OF DR. BEVERLY ELAINE HENDELMAN.

14 MR. HOYLE: Stop it. Stop it.

15 MR. MACKELCAN: Objection, your Honor. This
16 testimony, I don't think it's supposed to be in.

17 THE COURT: Okay. Okay.

18 MR. HOYLE: Clearly, for the purposes of the
19 record, we're just having technical issues, your Honor.

20 THE COURT: Okay. Well, can we repair them? Does
21 the jury need to leave to allow you to repair them?
22 Just let me know what you need to do.

23 MR. HOYLE: I'm informed by Mr. Knowles he can make
24 these additional changes as we sit here.

25 THE COURT: Okay.

1 BAILIFF: Your Honor, the jury would like to stand
2 up.

3 THE COURT: Terrific. Stand and stretch is a
4 wonderful thing, always. Stretch. Wonderful.

5 Are you ready?

6 MR. HOYLE: Yes, your Honor.

7 THE COURT: Go right ahead.

8 MR. HOYLE: Thank you, your Honor.

9 DVD OF VIDEOTAPED DEPOSITION OF

10 DR. BEVERLY ELAINE HENDELMAN

11 CONTINUES PLAY.

12 END PLAYING DVD OF VIDEOTAPED

13 DEPOSITION OF DR. BEVERLY ELAINE

14 HENDELMAN.

15 MR. HOYLE: That ends the deposition of Dr. Beverly
16 Hendelman, your Honor.

17 BY THE COURT:

18 THE COURT: Very well. Ladies and gentlemen, it is
19 now ten minutes until 1:00. It's a good time to take
20 our lunch break. I'm going to ask you to please be back
21 in your jury room and ready to continue with this matter
22 at 2:00 o'clock.

23 Please be mindful not to discuss this matter or
24 allow anyone to discuss it with you. Do not read
25 anything. Do not listen to anything about this matter.

1 That is, radio, television, newspaper, or the Internet.
2 Please do not do any investigation regarding this
3 matter. You must receive all of the information from
4 which you will makeup your minds while court is in
5 session.

6 Also, please be mindful to leave any communication
7 device, cell phone, tablet, or other communication
8 device away from the courthouse. I think I may follow
9 my own admonition. And have a very pleasant lunch. I
10 will see you all at 2:00 o'clock. You need to leave
11 your notes in your seat.

12 JURORS LEAVE COURTROOM 12:54 P.M.

13 BAILIFF: And the jury is clear, your Honor.

14 THE COURT: Anything before we take a break?

15 MR. HOYLE: Nothing from the Plaintiff, your Honor.

16 MR. LOVELL: No, your Honor.

17 THE COURT: Thank you. You all have a pleasant
18 lunch. I'll see you at 2:00.

19 OFF THE RECORD 12:54 P.M.

20 ON THE RECORD 2:09 P.M.

21 BY THE COURT:

22 BAILIFF: All rise. Court is back in session.

23 THE COURT: All right. Anything before we bring
24 the jury out?

25 MR. HOYLE: Nothing from the Plaintiff, your Honor.

1 MR. MACKELCAN: No, your Honor.

2 THE COURT: Jury. Oh, and is the next witness --
3 yes, you're here. Wonderful. Great, great, great,
4 great.

5 MR. HOYLE: Oh, your Honor, one point of
6 housekeeping.

7 THE COURT: Yes.

8 MR. HOYLE: Can you kind of instruct the jury that
9 Ms. Leyimu is going to be reading both questions by the
10 plaintiff and the defendant, just like we're doing on
11 the videotape.

12 THE COURT: Yeah, sure. That's not when that -- is
13 that what is next?

14 MR. HOYLE: That is what is next.

15 THE COURT: Okay. Very well.

16 BAILIFF: Jury is entering. Ready?

17 THE COURT: How are you doing? I'm ready. Come
18 on.

19 BAILIFF: Come on.

20 JURORS ENTER COURTROOM 2:09 P.M.

21 THE COURT: Ladies and gentlemen, it's my
22 understanding that the plaintiff's next witness will be
23 one, also, by deposition. What will be different is
24 that you have benefit of seeing the depositions that
25 have videotape. This one is going to be read. They all

1 have transcripts. Some have videotapes. Actually, most
2 probably do not. But this one is going to be read to
3 you, and it's a little bit like when you have a
4 substitute person in the theater, when they say, ladies
5 and gentlemen, the part of so-and-so this evening will
6 be played by so-and-so. And so, there will be folks who
7 will be reading the questions and the answers. And
8 again, just as in the videotapes, the lawyers have
9 cooperated, and they have put together the questions and
10 the answers that both sides would want from the
11 deposition. So, just know that, while one person will
12 be reading everything, some is from the Plaintiff, some
13 is from the Defendant. Okay? Very well. Come on.
14 You're going to do the reading?

15 WILLIAM TINCKLER: Yes, your Honor.

16 THE COURT: You're going to read the answers?

17 WILLIAM TINCKLER: That's correct.

18 THE COURT: And your name is?

19 WILLIAM TINCKLER: Is William Tinckler.

20 THE COURT: Hello, William Tinckler. How are you?

21 WILLIAM TINCKLER: I'm doing well. Sit up there?

22 THE COURT: Yeah, of course. And this afternoon,
23 you will be?

24 WILLIAM TINCKLER: I will be Arthur Gerard Manning.

25 THE COURT: You will be Arthur Gerard Manning. In

1 other words, that's the person who was deposed, and Mr.
2 Tinckler's going to be reading the answers.

3 You're going to be reading.

4 MS. LEYIMU: Yes, your Honor.

5 THE COURT: Wonderful. Ladies and gentlemen, I ask
6 while you are listening -- I have to plug this in so I'm
7 here. You may, for a moment, not see me, but I expect
8 because I'm plugging this in. Take your seat.

9 MS. LEYIMU: Your Honor, Plaintiffs call next
10 witness, Arthur Manning.

11 THE COURT: Thank you. Yes.

12 ITEM IDENTIFIED AS ORIGINAL HARDCOPY
13 OF DEPOSITION OF ARTHUR GERARD
14 MANNING TRANSCRIPT READ BY MS. LEYIMU
15 AND MR. WILLIAM TINCKLER.
16 END READING OF DEPOSITION OF ARTHUR
17 GERARD MANNING.

18 MS. LEYIMU: And your Honor, that concludes this
19 deposition.

20 THE COURT: Very well. All right. Call your next
21 witness, please.

22 MR. HOYLE: Your Honor, we have some page and line
23 issues that we need to address with your Honor before we
24 play the next deposition.

25 THE COURT: Okay. All right. Ladies and

1 gentlemen, please step to your jury room. We'll use
2 this as our afternoon break. Please do not discuss this
3 matter, or allow anyone to discuss it with you. We will
4 not be long. Kind of like what old Senator Warren and
5 Elizabeth Taylor, you will not be very long. Very well.

6 JURORS LEAVE COURTROOM 2:50 P.M.

7 BAILIFF: Jury is clear, your Honor.

8 OBJECTIONS TO THE VIDEOTAPED

9 DEPOSITION OF LIEUTENANT NURSE

10 ANGELINA DOLORES BRANNON:

11 THE COURT: Okay. I've got my list here. Who are
12 we talking about next?

13 MR. HOYLE: We're going to talk about Angelina
14 Brannon. She is the longest clip that we have left.
15 And it actually seems like the jury is fairly well
16 engaged, so.

17 THE COURT: Okay.

18 MR. HOYLE: I'm calling an audible, and suggest we
19 do her next. And I have a clip sheet, your Honor, with
20 the entire testimony that both sides have designated.

21 THE COURT: All right.

22 MR. HOYLE: In case you need anything in context.

23 THE COURT: Okay.

24 Okay. The first objection, I concur. I sustain
25 it. It's self-serving. I don't know what relevance it

1 has to what her -- or what personal preference has to
2 this litigation, so I respectfully sustain that
3 objection. The next one.

4 MR. MACKELCAN: And your Honor, are you looking at
5 the Defendant's objections first?

6 THE COURT: Yep.

7 MR. MACKELCAN: Okay. Thank you.

8 THE COURT: The second one is sustained. Which, I
9 probably should tell you all, it is Pages 133; 1 through
10 25; and 134, 1 through 23.

11 MR. HOYLE: And the first objection that you
12 sustained took out Page 115, Line 5 through 21. Just
13 trying to make sure we're on the same sheet of music,
14 Judge.

15 THE COURT: These are all out.

16 MR. HOYLE: Good.

17 THE COURT: Okay. So, all right, there's an
18 objection, but we've got a lot of just stuff about Dr.
19 Jansen. And I keep, you know, did you hear this, did
20 you hear that, different instances. Most of them she
21 says no. Some she said yes. And I keep looking for
22 that tie-in. So, did anybody complain to CasePro and
23 say, you must fire this fellow, or anything that
24 indicates that she did not believe, on behalf of the
25 Navy, that the Navy was capable of firing this

1 individual? Can you help me? Because I'm reading,
2 like, a lot of stuff, but it doesn't really have
3 anything to do with what this case is about. Because
4 what I think this information is being elicited for is
5 on the issue of respondeat superior.

6 MR. HOYLE: I don't dispute that, your Honor.

7 THE COURT: Okay. Now, the last -- we may get down
8 to it. Look on Page 63 of the submittal that Defense
9 gave me, Mr. Hoyle.

10 MR. HOYLE: Yes. Yes, your Honor.

11 THE COURT: Because it gets to this question,
12 finally, now:

13 *If the CasePro employees in question,*
14 *including, but not limited to Dr. Chris Jansen,*
15 *really were within the United States Navy*
16 *chain of command, could the commanding officer*
17 *of the Naval Hospital in Beaufort, South*
18 *Carolina, see to it, in 2010, that Dr. Chris*
19 *Jansen no longer treated patients?*

20 *If he was an active-duty medical officer?*

21 *Yes, ma'am.*

22 *Yeah, she could pretty -- she could do*
23 *pretty much anything.*

24 Question:

25 *Not the same story when you are dealing*

1 with a government contractor, correct?

2 No, it's completely different.

3 And you have testified to those
4 differences here today, correct?

5 Yes, that is correct.

6 So that would be --

7 MR. HOYLE: That's the tie-in to the control.

8 THE COURT: Yeah, that -- yes. Yes. Now, let's go
9 up. Okay. You go to Number 12.

10 Will you agree with me that, if CasePro,
11 Incorporated, had terminated the employer
12 of Dr. Chris Jansen back in 2010, when the
13 commanding officer of the United States Naval
14 Hospital of Beaufort made the request, then,
15 Dr. Jansen wouldn't have been working in
16 the E.R. hospital in Beaufort in February
17 24th of 2012?

18 Yes.

19 But is there a backup for that, that there was a
20 specific request made by the commanding officer?

21 MR. HOYLE: We already have the emails from Craig
22 Martin that is in evidence as part of Dr. Jansen's
23 personnel file as to the issue of control.

24 MR. MACKELCAN: Your Honor, Lieutenant Brannon
25 testified that she was not -- she didn't become the

1 department head of the --

2 THE COURT: Until '11.

3 MR. MACKELCAN: Until '11. So, I think, regardless
4 of when she started, it still calls for speculation.
5 But specifically, with regards to that email, she
6 certainly had no involvement with that.

7 MR. HOYLE: But there's testimony that's elicited
8 earlier, your Honor, that I think you reviewed in
9 Defendant's submission that, you know, when you get
10 there in the summer of 2011, what do you hear about Dr.
11 Jansen? Oh, people take me aside, and tell me about
12 this incident involving a dead Marine from sepsis, and
13 there's a dead Marine from meningitis.

14 She is certainly aware of the concerns that have
15 been expressed. She wasn't on that email to Craig
16 Martin sent to Amanda Rutten at Fort Detrick in
17 Maryland, but she knew these concerns, and she also knew
18 it was CasePro, and CasePro alone, that had the ability
19 to make Dr. Jansen get gone. And that's, I think, the
20 point and purpose of this testimony.

21 THE COURT: I'm not going to allow that, and will
22 sustain the objection that was made by Counsel, because
23 it really does call for speculation, really, on two
24 fronts. Number 1, she wasn't there at the time when
25 these events occurred, and the best evidence is what you

1 already have. You already have this gentleman
2 testifying to that.

3 Now, now, I do believe that the wrap-up below is
4 appropriate and admissible. Okay?

5 MR. HOYLE: Thank you, your Honor.

6 THE COURT: Now, take me, then, Mr. Hoyle, back
7 into all these other events. I surely don't want the
8 events where she says I doesn't know anything about
9 that. Those really don't need to come in.

10 MR. HOYLE: Um-hmm.

11 THE COURT: Let's do this. The one that she talks
12 about is the one that appears on Page 60. Look at Page
13 60 of the submittal.

14 MR. HOYLE: Yes, your Honor.

15 THE COURT: It's 154 of the deposition. It's in
16 the middle, beginning at 154, 10. Is that confusing
17 enough?

18 MR. HOYLE: It's confusing enough. This is about
19 the lady -- or, excuse me -- the man with the elevated
20 white blood count.

21 THE COURT: And she doesn't know about that.

22 MR. HOYLE: She doesn't know about that, but she
23 knows about the lady that --

24 THE COURT: And then, move on to 10, she does know
25 about that one. Now, and then, then, here's what

1 concerns me. It doesn't go on to say this occurred and
2 we move to have -- I couldn't fire him; I wanted to fire
3 him for these events; or I could have fired him for
4 these events. So, what we end up with is, we end up,
5 unless you can help me tie that somewhere else, it's
6 just propensity evidence, and it would, therefore, be
7 inadmissible, even under my limited instruction.

8 MR. HOYLE: Let me confer with my co-counsel on
9 that. I may agree with you.

10 THE COURT: Yeah. What I'm looking for is, I'm
11 looking for, this event occurred, and it goes on to say,
12 gee whiz, we wrote CasePro and said, please, whatever.

13 MR. MACKELCAN: Well, your Honor, I think it's
14 important that all of this that you are referring to
15 there happened after the incident involving Calvin Hunt.

16 THE COURT: Don't care. Goes to control. Well,
17 maybe I do care.

18 MR. MACKELCAN: But Lieutenant Brannon is not a
19 CasePro employee.

20 THE COURT: Yeah, maybe I do care. Maybe I --

21 MR. MACKELCAN: Well, she's not a CasePro employee,
22 and so, --

23 THE COURT: Yeah, exactly.

24 MR. MACKELCAN: -- there's no control, and there's
25 no notice to CasePro. It has nothing to do with it.

1 It's purely -- I mean, it's hearsay, really.

2 THE COURT: I absolutely get your point, and what I
3 don't know that I know is, that I think I only have
4 contracts up to the point of these events. I think you
5 are correct. I agree. You are correct that I must deal
6 with the relationship up to the time of these events.

7 MR. HOYLE: The contract between CasePro and the
8 Navy did continue --

9 THE COURT: Yeah.

10 MR. HOYLE: -- past the events involving Calvin
11 Hunt, as did Dr. Jansen's employment for some period of
12 time. I think -- okay, we'll withdraw that testimony,
13 your Honor. We concur with your analysis.

14 THE COURT: And I agree with that, too. I think
15 post -- while my first inclination is to say, well, it
16 goes -- it goes to the issue of control, I really -- I
17 think it does go to the issue of control that's
18 irrelevant, because it's post these events.

19 MR. HOYLE: Okay.

20 THE COURT: Yeah.

21 MR. HOYLE: All right. Your Honor, do you have
22 Plaintiff's objections, as well, up there? Okay?

23 THE COURT: This --

24 MR. HOYLE: Okay.

25 THE COURT: Come with, help me.

1 MR. HOYLE: I apologize.

2 THE COURT: Now, I've got my clips.

3 MR. HOYLE: I like clips. That gives you the
4 context.

5 THE COURT: Yeah.

6 MR. HOYLE: These are all our objections.

7 THE COURT: Wonderful.

8 MR. HOYLE: And we have another copy at our table.

9 THE COURT: No, I don't want to take yours. Just
10 stay here with me.

11 MR. HOYLE: Okay.

12 THE COURT: Tell me the first -- tell me what the
13 first one is.

14 MR. HOYLE: Page 41, Lines 10, through Page 42, 11.

15 OFF-THE-RECORD BENCH CONFERENCE, OUT
16 OF PRESENCE OF JURORS. PRESENT: THE
17 COURT, MR. HOYLE, MS. CASTLEBERRY,
18 MS. LEYIMU, MR. MACKELCAN, MR. LOVELL.
19 END BENCH CONFERENCE.

20 OFF THE RECORD 3:47 P.M.

21 NOTHING ON RECORD ON THIS AUDIO.

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

23 OBJECTIONS TO THE VIDEOTAPED
24 DEPOSITIONS OF DEBORAH MAYO AND
25 TRASIE BRASWELL:

1 THE COURT: Does Plaintiff have any objections on
2 the other two depos? Mayo and Braswell.

3 MR. HOYLE: I need to confer with my papers. Yes,
4 Judge, we do.

5 THE COURT: Okay.

6 MR. HOYLE: For Deb Mayo, there's going to be a
7 running objection to certain things dealing with legal
8 conclusions. The contract that's now in evidence
9 between CasePro -- I'll stand, your Honor. I'm sorry.

10 THE COURT: That's fine.

11 MR. HOYLE: The contract that is in evidence
12 between CasePro, Incorporated, and Navy Medical
13 Logistics Command, Ms. Mayo's what's known as the
14 contracting officers representative at the Naval
15 Hospital here in Beaufort, and there are a number of
16 questions where she's asked is this what the contract
17 says. And then, she's asked questions, that, by my
18 hearing, we're asking her to interpret that contract.

19 THE COURT: So, where are they written?

20 MR. HOYLE: They are written on Plaintiff's
21 Objections to Defendant's Designation of Deposition
22 Testimony. They are not on that sheet, Judge. I can
23 give you --

24 THE COURT: May I have a sheet? May I have one to
25 take with me this evening?

1 MR. HOYLE: I want to make sure I still have a
2 copy.

3 THE COURT: Because I know I've got -- I've got the
4 Defendant's.

5 MR. HOYLE: We should have handed this up the other
6 day. If we didn't, I apologize.

7 BAILIFF: Jury is ready when you're ready, your
8 Honor.

9 THE COURT: Perfect.

10 BAILIFF: Ready for them?

11 THE COURT: Yeah.

12 MR. HOYLE: Your Honor, I'm going to ask my
13 paralegal to go make us a copy of that.

14 THE COURT: Don't worry about it, if you don't.

15 JURORS ENTER COURTROOM 4:02 P.M.

16 THE COURT: Ladies and gentlemen, at this time,
17 we'll continue the Plaintiff's case. And I believe our
18 next witness is by deposition on video, correct?

19 MR. HOYLE: That is correct, your Honor. At this
20 time, Plaintiffs call, by videotaped deposition,
21 Lieutenant Nurse Angelina Brannon.

22 THE COURT: Thank you so much. Mr. Knowles?

23 DVD OF VIDEOTAPED DEPOSITION OF
24 LIEUTENANT NURSE ANGELINA DOLORES
25 BRANNON PLAYING.

1 PAUSE PLAYING OF DVD OF VIDEOTAPED
2 DEPOSITION OF LIEUTENANT NURSE ANGELINA
3 DOLORES BRANNON; TECHNICAL ISSUES.

4 MR. HOYLE: Technical issues, your Honor.

5 THE COURT: Good.

6 BAILIFF: Can they stretch a little bit?

7 THE COURT: Oh, yeah. That was easy. I thought
8 you were going to say, where's the hot fudge sundae, or
9 something like that.

10 MR. HOYLE: Okay. Your Honor, may we continue with
11 the videotaped deposition? I believe the technical
12 issues have been resolved.

13 THE COURT: Cool.

14 RESUME PLAYING VIDEOTAPED DEPOSITION
15 OF LIEUTENANT NURSE ANGELINA DOLORES
16 BRANNON.

17 PAUSE PLAYING OF VIDEOTAPED DEPOSITION
18 OF LIEUTENANT NURSE ANGELINA DOLORES
19 BRANNON; TECHNICAL PROBLEMS.

20 RESUME PLAYING OF VIDEOTAPED DEPOSITION
21 OF LIEUTENANT NURSE ANGELINA DOLORES
22 BRANNON.

23 PAUSE PLAYING OF VIDEOTAPED
24 DEPOSITION OF LIEUTENANT NURSE
25 ANGELINA DOLORES BRANNON.

1 BY THE COURT:

2 THE COURT: That's the end of the deposition, yes?

3 MR. HOYLE: Thus ends the deposition of Angelina
4 Brannon, your Honor.

5 THE COURT: Ladies and gentlemen, that concludes
6 the work we're going to do for today. And just in case
7 anyone forgot, please do not discuss this matter or
8 allow anyone to discuss it with you. Please, whoever is
9 curious about it at home, please don't let them get
10 upset with you. Let them get upset with the judge. Put
11 it on the judge. Do not do any Columbo. Do not do any
12 research. Do not do any sort of investigation,
13 particularly on the Internet. You must receive all of
14 the information from which you will make up your minds
15 here in court, while court is in session.

16 And also, do not read anything. Do not listen to
17 anything about this case; that is, the radio, the
18 television, newspaper, and, of course, the Internet.

19 Tomorrow morning, we will begin at nine bells.
20 Please leave your cell phone or other communication
21 device away from the courthouse. If you forget, let our
22 bailiffs know, and they will take great care of it until
23 we have our morning break or our lunch break, at which
24 time you can take it somewhere other than the
25 courthouse. And have a very lovely evening. See you in

1 the morning at 9:00.

2 JURORS LEAVE COURTROOM 5:30 P.M.

3 BAILIFF: Jury is clear, your Honor.

4 THE COURT: Very well. Thank you all. Anything
5 before we take our leave this evening?

6 MR. LOVELL: Judge, from a scheduling standpoint,
7 we've got two witnesses coming live, tomorrow. Dr.
8 Oberg and somebody else. We may have to take somebody
9 out of order, if it proceeds at the pace we're going.
10 Just to alert, we won't know until in the morning
11 exactly where we are, but.

12 THE COURT: And there was something in that. You
13 want me to, like, do something?

14 MR. LOVELL: Just to warn you, we may have a
15 schedule issue at the end of the day tomorrow. People
16 that can only come tomorrow afternoon.

17 THE COURT: Oh, my. I think we can probably handle
18 that.

19 MR. LOVELL: Okay. Thank you, Judge.

20 THE COURT: Put our heads together, and we'll
21 figure it out, yes?

22 MR. LOVELL: We're going to work on those
23 depositions tonight, and skim them down, if we can,
24 these videos.

25 THE COURT: Wonderful. I think that's a grand

1 idea. If you can, if you can, this is my position about
2 it, if you can, I know the jury will appreciate it. If
3 it's information that they need to receive, I have
4 absolutely no question that they're happy to receive it.
5 They will receive it.

6 This is one of the -- when you watch this jury
7 panel, they are just being so attentive, and their
8 attitude is wonderful. I am so appreciative that they
9 continue to appear that way and be that way. You need
10 to do what you need to do. If you can, that's great.
11 If you can't, that's okay. That's great, too. And I
12 just express my continued appreciation for all the work
13 that you continue to do, and work together as much as
14 you possibly can. I certainly appreciate it, and I'll
15 see you all in the morning at 9:00.

16 MR. HOYLE: Thank you, your Honor.

17 THE COURT: Yes.

18 END DAY SIX, TUESDAY,

19 OCTOBER 13, 2015, 5:32 P.M.

20 BEGIN DAY SEVEN, WEDNESDAY,

21 OCTOBER 14, 2015, 9:45 A.M.

22 OBJECTIONS AND RULINGS REGARDING

23 FIRE TRUCK DASHCAM VIDEO:

24 BAILIFF: All rise.

1 MR. HOYLE: So, our first witness the Plaintiff
2 will call this morning is Chief Sammy Negrón of the
3 Beaufort-Port Royal Fire Department. And --

4 THE COURT: Why do I sense there's something out
5 there?

6 MR. HOYLE: Oh, there's --

7 MR. LOVELL: There's something out there.

8 MR. HOYLE: There's a pregnant pause in the air,
9 your Honor. One of the documents, it's actually a video
10 --

11 THE COURT: Yeah.

12 MR. HOYLE: -- the Plaintiffs will seek to
13 introduce through this witness --

14 THE COURT: Yeah.

15 MR. HOYLE: -- is dashcam footage from Engine 5 of
16 the Beaufort-Port Royal Fire Department, which recorded
17 the events of February 24, 2012, from the time the fire
18 truck left the station, 'til the time it went to Laurel
19 Hill Apartments, 'til the time it was absconded with,
20 until the time it drove down Ribaut Road, before fatally
21 striking Justin Miller.

22 THE COURT: Okay. And?

23 MR. LOVELL: We have objections to the latter
24 portion of that, that shows the --

25 THE COURT: Impact..

1 MR. LOVELL: -- short period of time where the
2 decedent is seen visible in the video itself, and
3 obviously, the fire truck striking him, or inferentially
4 striking him, because he goes out of view. We think
5 that, that is highly prejudicial on the issues in this
6 case. And the testimony that we heard from the
7 pathologist, who is Mr. Caplan, early on, did not
8 establish that there was any conscious pain and
9 suffering.

10 So, any evidence pre-impact that the Plaintiffs
11 might use to show pre-impact fright and fear and shock
12 is not relevant. (1) pre-impact fright, fear, and
13 shock, is not recognized in our state; and secondly,
14 there's no evidence that this gentleman suffered any
15 conscious pain and suffering even post-impact. So, we
16 think that all of this video, especially the portion
17 relating the visibility to the decedent in that video,
18 is irrelevant to the issues in the case, and highly
19 prejudicial, if allowed.

20 THE COURT: Got it. Let me ask you this question.
21 Mr. Lovell, just to be sure I'm understanding the issue,
22 the concern is the point of impact, yes?

23 MR. LOVELL: Yes, your Honor. I think, in the
24 video -- and Doug can speak more to this. I think, in
25 the video, there is a short period of time where -- I

1 mean, the thing shows the fire truck, and the field of
2 view is relatively narrow. It's not a, you know, broad
3 thing. And there's a period of time, and I don't know
4 the exact number of seconds, where the decedent is seen
5 in the video, and, at one point sort of moving his head
6 this way, and then, he's out of the field of view. And
7 again, I don't know exactly how long that is.

8 THE COURT: Yeah. No, I guess my point is, is, I'm
9 trying to -- cause I got to look at it.

10 MR. LOVELL: Sure.

11 THE COURT: I can't rule on it unless I see it.

12 MR. LOVELL: Yes. Absolutely.

13 THE COURT: So, I'm trying to ascertain is the
14 objection just the conclusion of it? Because, if it is,
15 then, I'll just look at that. Or is it the whole thing?

16 MR. LOVELL: Well, the whole thing, we think, is
17 irrelevant to all the issues, which really are what
18 happened in the E.R. with regard to this patient. And
19 it just shows the things that happened after the E.R.
20 But in particular, we are -- on the issues where you see
21 the decedent in the video, we think, for the reasons I
22 previously stated, that, that is not relevant to any
23 issue, and highly, highly prejudicial.

24 THE COURT: May I ask this question. I want you to
25 do this for me. I want you to take out the end. Just

1 take out the impact. Take that out of it, for the
2 moment, for my question. Okay?

3 MR. LOVELL: Yes, ma'am.

4 THE COURT: Because I'll see that, and I'll
5 certainly hear from the Plaintiff. But let me tell you,
6 on first blush, I'm inclined to agree with you. Okay?
7 So, but let me just -- let me take that out for the
8 moment. Let me ask you to speak to this issue.

9 MR. LOVELL: Yes, ma'am.

10 THE COURT: And again, I may need to look at the
11 whole video. The relevance that it could have in this
12 case has to do with the proximity of time from the time
13 that he was in the emergency room, saying, yes, yes, I
14 have had thoughts of hurting myself and others; and
15 then, this immediately happens there. I mean, and it is
16 immediate. We all know -- I know that now.

17 The question gets to be, what, if any, relevance,
18 does his immediate conduct, after leaving the emergency
19 room, have on the issue for this jury? Was he calm?
20 Was he angry? Was he anxious? Was he somebody I'd love
21 to have come home to dinner? I think one of the
22 witnesses testified to that. In other words, what, if
23 any, relevance, meaning, meaning, what issue which is of
24 consequence would this make it more probable or less
25 probable, in that, it happened immediately after his

1 leaving the emergency room. Because his demeanor in
2 that emergency room, I think, is one of the issues in
3 this case, because we are everything from calm,
4 wonderful, love to have him come home to supper.
5 Everything to angry and agitated; and, I'm kind of
6 scared of him; I am scared of him. So, focus. Help me
7 with that.

8 MR. LOVELL: Your Honor, one flaw in the videotape
9 on the issue of relevancy is, it picks up at a point in
10 time when he's in the fire truck, you know, driving
11 away. There's a gap, a period of time, that, perhaps,
12 the 911 tapes help fill in a little between when he
13 walks out the door of the E.R. with Mr. Ray at whatever
14 time that is, around 4:00 something; walks outside;
15 disrobes partially; does whatever he does to escape from
16 Mr. Ray; and then, goes across the street, into the
17 apartment complex; somehow gets in this fire truck.

18 I agree with you, your Honor, I think there may be
19 some relevance on the time sequence of events. And
20 perhaps the video, up until the point where we were
21 talking about earlier shows how he drove the fire truck.
22 It's not audio, correct? There's no audio.

23 MR. HOYLE: There's no audio.

24 MR. LOVELL: So, we don't know what he's saying, if
25 anything. All we see is how he's operating the motor

1 vehicle.

2 THE COURT: Let me do that. Let me look at it, and
3 let me tell you what, address -- I'm just going to have
4 to see it. I'm going to have to see the --

5 MR. HOYLE: For purposes of the record, your Honor,
6 if I could briefly be heard. The video is seven minutes
7 and, I'm told, about 40 seconds.

8 MR. KNOWLES: No, 7:57.

9 MR. HOYLE: I apologize. I am wrong.

10 MR. KNOWLES: It's almost eight minutes.

11 THE COURT: Precision's a rule.

12 MR. HOYLE: Seven minutes, 57 seconds. In other
13 words, almost eight minutes. Okay.

14 THE COURT: Okay.

15 MR. HOYLE: The fire truck -- the video begins with
16 the crew from Engine Number 5 leaving the firehouse, and
17 then, ends with impact. If I could briefly be heard on
18 my views on why this tape, in its entirety, is relevant.

19 Defendant has asserted comparative fault, on the
20 part of the decedent. I think seeing where the decedent
21 was in relation to the fire truck is certainly relevant
22 to the jury's determination of that issue. I also think
23 the manner in which Calvin Hunt's driving this fire
24 truck, that it may appear that he is intentionally
25 striking certain vehicles and a person may go to his

1 state of mind. I think all of that, with that narrow
2 time frame of eight minutes, goes to the proximate cause
3 burden the Plaintiff must prove as part of her case in
4 chief.

5 But going back to where we begin, with respect to
6 the final moments, in addition to dealing with
7 comparative fault, --

8 THE COURT: Time out. Comparative negligence is in
9 this case?

10 MR. LOVELL: We'll withdraw comparative negligence,
11 your Honor.

12 THE COURT: Okay.

13 MR. HOYLE: I appreciate that.

14 MR. LOVELL: Based on the evidence that we have
15 seen to date, we withdraw it, and it's no longer --

16 MR. HOYLE: With prejudice.

17 MR. LOVELL: Withdrawn.

18 MR. HOYLE: Is it withdrawn with prejudice? I
19 don't want to --

20 THE COURT: Yes, it is.

21 MR. HOYLE: All right. Thank you, Mr. Lovell.
22 Thank you, your Honor.

23 With respect to the testimony from the pathologist,
24 there was testimony that Mr. Miller was conscious for a
25 very, very, very -- he said very three times -- short

1 period.

2 THE COURT: Millisecond.

3 MR. HOYLE: Correct. And at this point in time,
4 those complaints have not been addressed on a directed
5 verdict motion. We do have a survival claim as part of
6 our complaint. I would submit that I believe this is
7 some evidence that could go to whether or not Justin
8 Nicholas Miller was contemporaneously aware --

9 THE COURT: I understand.

10 MR. HOYLE: -- and experiencing neurological
11 activity such that this jury could find conscious pain
12 and suffering as part of a survival claim, if that claim
13 were to go to a jury.

14 THE COURT: I got it.

15 MR. MACKELCAN: Quickly, to respond to that. And
16 you can look. You'll see the video, but I don't believe
17 that the video shows anything after the impact. It
18 doesn't even really show the impact. It only shows him
19 prior to the impact, and of course, South Carolina
20 doesn't recognize pre-impact fear.

21 THE COURT: I'm with you. I got it. And there's
22 no way -- I've got to see it.

23 Would you just tell the jury there is a matter that
24 has --

25 BAILIFF: I already did.

1 THE COURT: You already did? You're so good.

2 MR. HOYLE: And your Honor, I have it on disc. Mr.
3 Knowles can play it. He can do it however your leisure
4 is. If you're going to play it in the courtroom, we
5 would ask our client --

6 THE COURT: Of course.

7 MR. HOYLE: -- to be excused.

8 THE COURT: It doesn't have video [sic].

9 MR. HOYLE: There's no sound.

10 THE COURT: Yeah. You all can just come on up
11 here.

12 THE COURT, MR. HOYLE, MS. CASTLEBERRY,
13 MR. MACKELCAN, MR. LOVELL VIEWING
14 FIRE TRUCK DASHCAM VIDEO AT BENCH.
15 END VIEWING FIRE TRUCK DASHCAM VIDEO.

16 THE COURT: All right. I'm ready to rule. And I
17 have reviewed the video which has been marked for
18 identification purposes as --

19 MR. HOYLE: This will be Plaintiff's --

20 THE COURT: Well, let's do this one as Court's,
21 because, what's going to be shown to the jury is going
22 to be redacted. Okay?

23 MR. HOYLE: Okay.

24 THE COURT: Court's Exhibit?

25 COURT REPORTER: 12.

1 ITEM IDENTIFIED AS UNREDACTED DVD
2 OF FIRE TRUCK DASHCAM VIDEO
3 MARKED COURT'S EXHIBIT NUMBER 12,
4 RECEIVED BY THE COURT.

5 THE COURT: 12. Now, I don't know what evidentiary
6 value there is to the tape in terms of the ride from the
7 firehouse to the apartment complex. I don't know. I
8 don't. I don't know what value there is to that. I do
9 think that to, perhaps, to give some context to it, it's
10 reasonable to have it begin when the firemen park it and
11 get out, just to give the jury some context.

12 They've heard the 911 tape. They understand about
13 being at the apartment complex, but I don't know what
14 evidentiary value it would have prior to that point.
15 But I think that, in fairness to the jury, I think they
16 need to have some context, and I think the way they can
17 get that is by seeing the firemen get out and go into
18 the apartment complex, because they've heard the 911
19 tape.

20 I do believe that there is evidentiary value,
21 because of the -- because these events happened
22 immediately after his leaving the emergency room, and
23 because the testimony at this point varies greatly
24 regarding his demeanor and what I believe a jury could
25 determine was his conduct in the emergency room. So, I

1 think it's relevant. I think it makes his conduct more
2 probable or less probable.

3 I have looked at the point of impact, and here's
4 what you see at the point of impact. Let me, just for
5 the record, say that my law clerk was able to stop it,
6 stop it, stop it, stop it, stop it, so that I was able
7 to see it slowly. I couldn't -- I could not discern as
8 much with it when it was playing at normal speed as I
9 could when he was able to stop it. And I've looked at
10 it twice, three times, and both ways.

11 At the point of impact, what you see is, you see a
12 young man whose face is not facing the fire truck. It
13 is facing directly, but it looks like he's -- he looks
14 like he's fixing to run. And you see his brother, who
15 is across the street, looking back at the events that
16 have occurred.

17 Doing the 403 analysis, when you consider the
18 evidentiary value with regards to survival action, as
19 opposed to what I believe the overwhelming prejudicial
20 effect would be, because you do not see the -- you know,
21 it's the point of impact, unquestionably, but you don't
22 see it. In other words, you can't see his face post-
23 impact to see if there's any evidence of conscious pain
24 and suffering, which is actually what I was looking for.
25 You do not even see the point of impact, but you know

1 it's the point of impact.

2 I think that what concerns me greatly, and what
3 this tape injects into this case, that may be implicitly
4 in this case, but I need Counsel to be very careful not
5 to inject it explicitly in this case, is the brother
6 witnessing this tragedy. And you see him, in this tape,
7 looking at his brother, and looking at this fire truck.
8 I think that would inject passion and prejudice for this
9 jury, and I think it would be difficult for them to
10 isolate that, because it is compelling. So, I believe -
11 - but, but, Counsel, I need you to come back up with our
12 -- who's going to be running it.

13 MR. HOYLE: Mr. Knowles.

14 THE COURT: Because I've got to determine where I'm
15 going to stop it, and because I also think that,
16 evidentiarily speaking, I think that -- I think that it
17 is important for the jury to see him go from the very
18 right-hand lane and turn, and that's where I want it to
19 stop.

20 MR. HOYLE: Your Honor, before -- and I certainly
21 respect your ruling.

22 THE COURT: Yeah.

23 MR. HOYLE: But for purposes of the record, if I
24 could --

25 THE COURT: Yes.

1 MR. HOYLE: -- make a few additional thoughts
2 heard. One of the issues in this case is whether or not
3 Calvin Hunt was, in fact, homicidal that day. The
4 testimony varies. We've had some nurses come into this
5 courthouse and testify that, although one nurse, Janice
6 McDonald, said she was afraid to have Calvin Hunt
7 between her and the door, she didn't think he was
8 homicidal. She thought he was just angry.

9 We've had other testimony here that he did express
10 thoughts of hurting others. I think that is an issue in
11 this case. And I do think the actual point of impact,
12 which shows the taking of a human life, which our
13 solicitor, when he viewed it, and it was after Duffie
14 Stone viewed that videotape, that he and Corporal Perry,
15 who testified earlier in this trial, made the decision
16 to seek an arrest warrant for murder.

17 The Grand Jury of this county saw that videotape
18 when they made the decision to indict Calvin Hunt for
19 murder. Judge Carmen Mullen, before she adjudicated
20 Calvin Hunt not guilty by reason of insanity, saw that
21 videotape, so, in its entirety, as your Honor has seen
22 it as a Court's exhibit here today.

23 So, I do think the actual impact, in addition to
24 perhaps having some evidence to make it more likely than
25 not, or have some evidence in the record of conscious

1 pain and suffering, directly goes to whether or not
2 Calvin Hunt was, indeed, homicidal on that day.

3 THE COURT: Okay. Come on. Thank you.

4 MR. HOYLE: Thank you, your Honor.

5 THE COURT: Okay. You all come and help me figure
6 out where to start it. Talk and -- walk and talk.

7 MR. HOYLE: I'll walk and talk.

8 THE COURT: Thanks.

9 MR. MACKELCAN: And just briefly, your Honor, I
10 don't know that the term *homicidal* has been used, and I
11 do think the document, that testimony has been that
12 there's a distinction between -- Mr. Hoyle used the word
13 *homicidal*; that Calvin Hunt was homicidal. I don't know
14 that there's any testimony thus far in this trial that
15 Calvin Hunt was homicidal. The only testimony is that
16 he had thoughts of hurting others, but no specific plan,
17 and that was only Dr. Jansen.

18 And there's been distinctions raised about the
19 difference between homicidal ideation or thoughts of
20 hurting others, and a plan to hurt others. So, I think
21 that, that is an important distinction in this case.
22 The term *homicidal* has not been used. It's only been in
23 the context of thoughts that Calvin Hunt had.

24 THE COURT: That makes, in my mind, that makes Mr.
25 Hoyle's argument for him. Because, if you maintain

1 that, that's an issue, whether or not this guy was
2 homicidal, then, maybe it needs to come all the way in.
3 Because it's -- it's not -- I mean, that's my concern.
4 When you say that, then, I think you make his argument
5 that I need to let this jury see him pointing this fire
6 truck at this guy and go nail him, go kill him. I mean,
7 that's what concerns me. Because, if you maintain that
8 this was fanciful and it wasn't real, or -- then, maybe
9 I think you've made his argument. Maybe they do need to
10 see it. Because there's no question, but when you look
11 at this video, you can tell that he turns this vehicle
12 from all the way on the right-hand side, to go get a
13 young man crossing the street in the middle.

14 MR. MACKELCAN: No question, your Honor, that,
15 that's what the video shows.

16 THE COURT: Yeah.

17 MR. MACKELCAN: And the testimony has already come
18 in from the trooper that, based on the tire tracks, that
19 the fire truck turned from, I believe he said, the
20 northbound lane to southbound lane, but whatever; but
21 that he had turned and crossed, and intentionally hit
22 him, so I think that, that's already come in.

23 THE COURT: But this is the best evidence of it,
24 Mr. Mackelcan. You know, when you tell me that he
25 really wasn't homicidal, maybe they do need to see it.

1 That's my concern.

2 MR. MACKELCAN: I didn't say that he wasn't
3 homicidal. I just said that, that word wasn't used.

4 THE COURT: I got you. Okay. Let's go back.
5 Let's go back and -- what do you think? You all come
6 look at it, and tell me where you think we need to
7 start.

8 LAW CLERK RYAN LOCKHART: This is turning into the
9 complex now.

10 THE COURT: Come and see what you all think. You
11 all, I need your -- I understand everybody objects. I'm
12 not taking your objection away from you and saying that
13 you've yielded your objection. I just need you to help
14 me decide where to start at. What makes sense?

15 COURT REPORTER: Do you want me to stop?

16 MR. HOYLE: No, no. I want it on the record.

17 THE COURT: Where to begin the tape. Does it make
18 sense to maybe show them pulling into the apartment
19 complex?

20 MS. CASTLEBERRY: Yeah, yeah.

21 THE COURT: I think so.

22 MR. HOYLE: I think so. And we can --

23 THE COURT: Because you can see that this is an
24 apartment complex.

25 MR. HOYLE: I would, also, for purposes of the

1 record, offer the thought that, seeing the fireman drive
2 the fire truck down Ribaut Road, the jury would have the
3 ability to see a different rate of speed that this fire
4 truck's being driven, an appropriate, safe rate of
5 speed, as opposed to be being driven by someone with
6 psychotic issues, who is homicidal.

7 THE COURT: Okay. All right. Okay. I concur.
8 I'll let that -- I'll let it in. And it's -- for what
9 that piece of it is worth, I think that is -- it may
10 have some evidentiary value for comparison purposes.

11 Okay. Now, where to stop. I'm sorry. I know
12 you're -- offensive lineman knees are tough.

13 MR. HOYLE: 7:55, is that what that is, or 7:56?

14 MR. LOVELL: Your Honor, at this point, you've
15 clearly shown his, Mr. Miller's, presence in the road,
16 and preceding this, you see the vehicle go over.

17 THE COURT: I think that's sufficient. I think
18 that's sufficient.

19 MR. MACKELCAN: And it establishes what the
20 Plaintiff says.

21 THE COURT: I want to be sure, though, that this
22 doesn't show the brother -- if we back it up, are we
23 showing the brother's face?

24 MR. LOVELL: I can't see it.

25 THE COURT: I'm very concerned about that for this

1 jury.

2 LAW CLERK RYAN LOCKHART: All right. Let's go back
3 just a little bit. I don't see the brother.

4 MR. MACKELCAN: I think he is in the scene on the
5 left at 7:56.

6 THE COURT: Okay.

7 MR. MACKELCAN: So, I think what we were talking
8 about was stopping it at 7:55.

9 THE COURT: Okay. Okay. Okay. I don't see the
10 brother. Does anybody see the brother?

11 MS. CASTLEBERRY: No, not there.

12 MR. MACKELCAN: No.

13 MR. LOVELL: No, ma'am.

14 THE COURT: Okay. Okay. That's it. That's it.
15 That's the point. What is this?

16 LAW CLERK RYAN LOCKHART: 16:03:27.

17 THE COURT: You don't get the brother?

18 MR. MACKELCAN: That can't be right, though. That
19 time at the top on the video can't be right, based on
20 everything else. But anyway, that's an aside.

21 MR. LOVELL: That's irrelevant.

22 MR. MACKELCAN: Doesn't matter.

23 MR. HOYLE: That's irrelevant at this point.

24 MR. MACKELCAN: It is irrelevant.

25 THE COURT: Yeah, I'm just using it for a point of

1 where to stop.

2 MR. MACKELCAN: I agree. I just noticed it, so.

3 THE COURT: Okay. Is that going to confuse this
4 jury? You all?

5 MR. HOYLE: Can we -- off the record?

6 OFF-THE-RECORD DISCUSSION.

7 BACK ON THE RECORD.

8 THE COURT: I don't think Mom needs to be there for
9 this.

10 MR. HOYLE: No. No, Judge, I concur with that.

11 THE COURT: I wouldn't keep her from being here if
12 she wants to be here, but.

13 LAW CLERK RYAN LOCKHART: It has stopped moving at
14 the bottom as I start and stop it, so I don't know that
15 the time at the bottom's right, but this time should be
16 correct.

17 MR. KNOWLES: Okay. I'll stop it there. So, where
18 are we starting it at?

19 MR. LOVELL: The very beginning.

20 MR. MACKELCAN: The very beginning.

21 MR. KNOWLES: The very beginning?

22 MR. HOYLE: And I just want to clarify, while we're
23 all up here at the Judge's Bench and we're looking at
24 this video on a laptop, --

25 THE COURT: And I'm passing out cough drops.

1 MR. HOYLE: -- is Defendant conceding the Calvin
2 Hunt was homicidal?

3 THE COURT: No. I'm sorry, I --

4 MR. LOVELL: No, no.

5 MR. MACKELCAN: Defendant --

6 MR. LOVELL: Just be quiet.

7 MR. MACKELCAN: Okay.

8 THE COURT: I did not hear that.

9 MR. LOVELL: Correct.

10 THE COURT: I did not hear that. I didn't hear
11 that.

12 MR. HOYLE: Okay.

13 THE COURT: I did not hear that. That's a good
14 question, but I did not hear that. And that's the
15 reason why it gets to this point.

16 MR. HOYLE: Is there a frame of the video that's
17 closer to the targeting that does not show the brother
18 in the field of vision?

19 THE COURT: I don't know, Mr. Hoyle, and I do love
20 good advocacy, but this is where we will stop.

21 MR. HOYLE: Thank you, your Honor. I respect your
22 ruling.

23 THE COURT: Yeah, I know you do. And the reason
24 for it is that this, as you look at it, at this point, I
25 don't -- while I know this jury is very mindful of the

1 absolute tragedy of these events, of all of these
2 events, any closer, I believe, would shift -- would
3 place this jury in a different place, and it becomes, I
4 think, to a point that I would be concerned about the
5 emotional effect on this jury. And I do not want this
6 jury to make its determination based on passion or
7 prejudice. As we know, that's inappropriate.

8 This is a good stopping point. I am satisfied,
9 having looked at the tape now several times, I am
10 convinced that this shows everything that is appropriate
11 and needs to be shown, based on my view of the evidence
12 in this record up to this point. The brother's excluded
13 from view. It is very clear from this vantage point at
14 16:03:27, on this tape, that you can tell that the fire
15 truck has absolutely left the lane of travel, and has
16 traveled over the lane next, and into the medians, and
17 is exiting the median, and going into incoming traffic
18 in order to strike Plaintiff's decedent.

19 So, I am very satisfied with what my ruling has
20 accomplished with the tape at this juncture, noting the
21 Defense's exception to any of it being played.

22 And for our record, Counsel has -- all Counsel, for
23 which I'm grateful, have assisted me in looking at this
24 and trying to fashion an appropriate amount to be shown.
25 But by doing that, the Defense, in no way, in my mind,

1 compromises or otherwise waives their objection to be
2 showing the tape at all. Okay? All right.

3 MR. MACKELCAN: Thank you, your Honor.

4 MR. LOVELL: Thank you, your Honor.

5 THE COURT: All right. Very well. Okay. Good.
6 Can we bring the jury out. Oh, I guess you're going to
7 have to do something with it.

8 MR. HOYLE: Yes, and your Honor, can we clarify the
9 Plaintiff's objections with respect to the truncation of
10 the video are also noted, as well.

11 THE COURT: Most assuredly.

12 MR. HOYLE: Thank you, Judge.

13 THE COURT: And I think they were well articulated
14 throughout.

15 MR. HOYLE: Thank you, your Honor.

16 THE COURT: Yeah.

17 MR. HOYLE: And Mr. Knowles needs some time to --

18 THE COURT: Well, let me just say, Ryan has noticed
19 that, that second where we referred to about where we're
20 stopping it, that second does encompass the actual
21 impact, because a thousand and one. So, you're going to
22 have to be really -- let me just -- are you editing it
23 now?

24 MR. KNOWLES: Yeah.

25 MS. CASTLEBERRY: We'll show it to you.

1 THE COURT: I'll come over there. I'll just come
2 over there. It's so much easier. And just to make
3 sure, let's everybody look and make sure it's stopping
4 where it needs to stop, because, thank you, Ryan,
5 because Ryan says that, in that second, the part we're
6 trying --

7 LAW CLERK RYAN LOCKHART: That's the beginning of
8 27?

9 THE COURT: Yeah.

10 LAW CLERK RYAN LOCKHART: And it's still 27. It's
11 still 27 after.

12 THE COURT: Oh. Yeah. It's the second of 27 where
13 it all occurs.

14 MS. CASTLEBERRY: So, it has to be stopped
15 somewhere before that.

16 THE COURT: The beginning of the 27th second. It's
17 16:03:27. It has to be stopped at the beginning of
18 16:03:27.

19 OFF-THE-RECORD DISCUSSION.

20 BACK ON THE RECORD.

21 THE COURT: Are you ready?

22 MR. HOYLE: Mr. Knowles is apologizing to me. He's
23 not ready. Your Honor, would you like for us to work on
24 some sort of instruction, or will you inform the jury
25 that the videotape ends before its natural conclusion,

1 or something like along those lines?

2 THE COURT: It is what it is.

3 MR. HOYLE: Okay.

4 THE COURT: I mean, it is what it is. And then, I
5 think I'm encouraging them to speculate. And I should
6 let you all speak to it. I mean, if they're not seeing
7 it all, then, I'm encouraging them to speculate.

8 MR. HOYLE: Okay. I'm not -- I guess I'm poorly
9 articulating my thought, your Honor, in that, what I
10 would not want this jury to think is that Kalvin Hunt
11 actually stopped and he didn't actually run over
12 anybody.

13 THE COURT: I don't think that's an issue.

14 MR. HOYLE: Okay. If you don't think that's a
15 concern, --

16 THE COURT: I don't think that's an issue.

17 MR. HOYLE: -- then, I will sit down and withdraw
18 that concern.

19 THE COURT: I don't think that's an issue.

20 MR. HOYLE: Okay.

21 THE COURT: So, and let me ask this question. Are
22 you going to be a couple more minutes?

23 MR. KNOWLES: Yes, ma'am.

24 THE COURT: I'm going to run out just and take a
25 comfort break. Wanda, you go ahead and take a comfort

1 break, too.

2 OFF THE RECORD 10:34 A.M.

3 BACK ON THE RECORD 10:47 A.M.

4 BY THE COURT:

5 BAILIFF: All rise. This court is back in session.

6 THE COURT: Okay. Now, we're ready?

7 MR. HOYLE: While we're waiting, why don't we do
8 some housekeeping? Your Honor, we have marked this
9 morning as Court's Exhibit Number 9 the DVD of Dr.
10 Hendelman's testimony, which was played yesterday. We
11 have marked as Court's Exhibit 10 a annotated hardcopy
12 of the deposition transcript of Arthur Manning, which
13 was read here in open court yesterday. And we've marked
14 as Court's Exhibit Number 11 the DVD of Angelina
15 Brannon's testimony, which was played here yesterday.
16 And we would ask that the Court receive all of those as
17 Court's Exhibits 9, 10, and 11.

18 THE COURT: Any objection to any of that?

19 MR. LOVELL: None.

20 MR. MACKELCAN: No objection.

21 ITEM IDENTIFIED AS DVD OF

22 VIDEOTAPED DEPOSITION OF DR.

23 BEVERLY ELAINE HENDELMAN

24 MARKED COURT'S EXHIBIT NUMBER 9

25 RECEIVED BY THE COURT.

1 ITEM IDENTIFIED AS ANNOTATED
2 HARDCOPY OF DEPOSITION TRANSCRIPT
3 OF ARTHUR GERARD MANNING
4 MARKED COURT'S EXHIBIT NUMBER 10
5 RECEIVED BY THE COURT.
6 ITEM IDENTIFIED AS DVD OF VIDEOTAPED
7 DEPOSITION OF LIEUTENANT NURSE
8 ANGELINA DOLORES BRANNON
9 MARKED COURT'S EXHIBIT NUMBER 11
10 RECEIVED BY THE COURT.

11 MR. HOYLE: Your Honor, I think we have up on the
12 screens in the courtroom the final edited version of
13 this video, which will be an exhibit. I believe that,
14 that comports with your Honor's rulings. It does not?

15 THE COURT: No.

16 MR. HOYLE: I'm sorry.

17 OFF-THE-RECORD BENCH CONFERENCE, OUT
18 OF PRESENCE OF JURORS. PRESENT: THE
19 COURT, MR. HOYLE, MS. CASTLEBERRY, MS.
20 LEYIMU, MR. MACKELCAN, MR. LOVELL,
21 MS. SABER.
22 END BENCH CONFERENCE.

23 MR. HOYLE: Your Honor, may I have permission to
24 not touch anything in the jury box, but at least go into
25 the jury box to see the view from this screen? Would

1 you mind?

2 THE COURT: Not at all.

3 MR. HOYLE: Okay. Thank you, your Honor.

4 OFF THE RECORD 10:49 A.M.

5 BACK ON THE RECORD 11:10 A.M.

6 THE COURT: Ready?

7 MR. HOYLE: Ready.

8 MR. MACKELCAN: Yes.

9 THE COURT: The jury, bring them in.

10 BAILIFF: You ready, your Honor?

11 THE COURT: Yes.

12 BAILIFF: Jury is entering the courtroom, your
13 Honor.

14 JURORS ENTER COURTROOM 11:15 A.M.

15 THE COURT: Ladies and gentlemen, ladies and
16 gentlemen, lots of apologies, and I, you know, I am --
17 all I can tell you is that I'm certainly mindful when
18 you are in your jury room. I want you to know that,
19 that is also a part of your jury service. That's why I
20 tell juries that. I have to remind them, because, when
21 we are out here like that, gosh, I try to keep it to a
22 minimum, but I can assure you, the work that we are
23 doing is absolutely necessary, and I certainly apologize
24 to you when you have to stay in your room, and
25 certainly, particularly, for as long a duration as this.

1 But I want you to know that I did hear about the snacks
2 that are in the room. That's all I'm saying. You know,
3 cookies, too. Sun Chips.

4 Without further ado, ladies and gentlemen, we now,
5 at this time, will continue with the Plaintiff's case.
6 Please call your next witness.

7 MR. HOYLE: Thank you, your Honor. At this time,
8 Plaintiff calls Fire Chief Sammy Negron.

9 THE COURT: All right. Yes, sir. Come on around,
10 please.

11 BAILIFF: Come forward to be sworn, please, sir.

12 MADAM CLERK: Do you solemnly swear or affirm that
13 the testimony you give to the Court in this trial shall
14 be the truth, so help you God?

15 FIRE CHIEF SAMMY NEGRON: I do.

16 MADAM CLERK: Thank you. If you'll state and spell
17 your name, for the record.

18 FIRE CHIEF SAMMY NEGRON: Sammy Negron, S/a/m/m/y,
19 N/e/g/r/o/n.

20 THE COURT: Your witness.

21 FIRE CHIEF SAMMY NEGRON

22 DIRECT EXAMINATION, BY MR. HOYLE:

23 Q Good morning, sir.

24 A Good morning.

25 Q I apologize for the delay this morning. We were

1 attending to some business that needed to be taken care
2 of.

3 Can you tell the Court and jury what you do for a
4 living.

5 A I am the fire chief of the City of Beaufort Fire
6 Department.

7 Q And the City of Beaufort Fire Department, does it
8 also provide the fire service to the municipality of
9 Port Royal?

10 A That's correct.

11 Q How long have you been the fire chief here in the
12 City of Beaufort?

13 A For six years, since 2009.

14 Q And how long have you been engaged in the
15 profession of fighting fires and helping people?

16 A Around 20 years.

17 Q And where did you begin that career, sir?

18 A With the City of Beaufort Fire Department.

19 Q So, your entire career as a firefighter, and now as
20 the fire chief, has been here in Beaufort?

21 A That's correct.

22 Q Tell us a little bit about your training. What did
23 you do in order to become a firefighter, and later, a
24 fire chief here in the City of Beaufort?

25 A I became a firefighter while I was in the Marine

1 Corp. During my time off, I would volunteer with the
2 fire department. I became certified through their
3 volunteer training program. And once I terminated my
4 enlistment in the Marine Corp, I was able to -- to get
5 hired by the City of Beaufort Fire Department. And
6 throughout the years, I've become certified in different
7 aspects of trainings in the fire service, from fire
8 suppression, to driving apparatus, to code enforcement,
9 fire marshall investigations. Just, there -- there's so
10 many.

11 Then, in 2009, I was one of five candidates to the
12 position as fire chief, and I was selected as the City's
13 fire chief at that time.

14 Q Now, with respect to being the fire chief, how many
15 men and women do you command with respect to the duties
16 that you've told us about with respect to the fire
17 service here in Beaufort?

18 A Currently, we have 37 firefighters. And 11, 33,
19 firefighters a shift. They work a 24/48 schedule, one
20 day on, two days off. And four senior staff officers,
21 plus, the Volunteer Reserve Corp.

22 Q And how many fire stations are those brave men and
23 women staffing under your command?

24 A Three fire stations.

25 Q And providing 24/7 coverage to this community.

1 A That's correct.

2 Q Okay. Now, those of us who may not have ever had
3 much experience with members of the fire service may
4 kind of think of the job of a firefighter as being
5 related to fighting fire. But in this community, do
6 firefighters do more than that?

7 A We do. We do emergency medical response, which is
8 also referred to as first responder. The basic life
9 support label, meaning we're EMT basics. And we do CPR.
10 We can use -- we can provide the basic first emergency
11 response.

12 Q So, it sounds like, if somebody were to call 911
13 for help here in this community, and they had some sort
14 of medical emergency, in addition to, perhaps, an
15 ambulance showing up, an actual fire truck may show up
16 first? Is that fair?

17 A That's correct. Because of the location of our
18 fire station, of our fire stations, in Port Royal
19 Island, which is where Beaufort is located, there are
20 eight fire stations within the City of Beaufort and the
21 Burton Fire District. Only two -- two ambulances. So,
22 there's a good chance, when someone calls 911, there's a
23 fire station nearby that can render the aid until the
24 paramedics get there.

25 Q And Chief, does the fact that the fire stations are

1 closer to the people suggest that folks may get that
2 emergency medical care quicker, if a fire truck is
3 actually dispatched?

4 A That's correct.

5 Q Okay. And back on February the 24th, 2012, you
6 were the fire chief?

7 A Correct.

8 Q Okay. Let's talk a little bit about how the fire
9 service here in Beaufort and Port Royal worked back in
10 February the 24th, 2012. I've never been inside a fire
11 truck. Not even as a little kid. I missed out on that.
12 How do you start up a fire truck here in Beaufort back
13 in 2012? Walk me through the process.

14 A The fire apparatus that we use today, and use --
15 were using at that time, they don't require a key to
16 start the engine. You simply turn -- there's a battery
17 switch that you rotate to turn. then, there's an
18 ignition switch that you also flip to the on position.
19 Then, you have two buttons that -- that, when you push
20 those, the engine will start at that time.

21 Q So, that sounds like a multi-step process, not as
22 simple as putting a key into a Ford F-150 and cranking
23 it. Is that fair?

24 A That's correct.

25 Q Okay. So, you've got the battery switch; you've

1 got to flip something to on; you've got some buttons
2 you've got to push. At that point in time, back in
3 February of 2012, were you aware of any standard, either
4 here in Beaufort, here in South Carolina, or anywhere in
5 the entire United States, that addressed the issue of
6 whether or not anything else needed to be done with
7 respect to starting up a fire truck?

8 A There were none at that time, and there are still
9 none at this time.

10 Q Okay. Let's talk a little bit about all the
11 systems that are involved in a fire truck. How many
12 different kind of systems did they have on a fire truck
13 back in 2012?

14 A Well, a fire truck will have a power plan, your
15 engine, that, of course, operates the apparatus. The
16 engine would also operate the pump. So, there's an
17 engine, there's a pump, there's a water tank in the case
18 of a -- of a pump or a fire engine. And then, you have
19 a hose, hose bed to carry an assortment of different
20 sizes of hose. Then, you have ladders. And in the
21 different compartments, you have all sorts of tools that
22 we use on -- on the fire scene.

23 Q Do a number of those systems that you just told us
24 about require a connection to some sort of power source?

25 A Yes. Most important, the lights and some of the

1 equipment that we carry have to be connected to a source
2 to -- to charge. For example, we have suction units
3 that we use on emergency call. There -- those are
4 plugged in all the time. We have flashlights. We have
5 radios. We have thermal imager that we use when we go
6 in a building that's on fire, so we can see if there's
7 smoke. And I'm pretty sure there's some others that
8 just don't come to my mind that also have to be
9 constantly provided with -- with a power source.

10 Q Now, if, with respect to the design and build of
11 fire trucks here in this community back in 2012, if the
12 fire truck got turned off, would some of those systems
13 that you just told us about that require a power source
14 continue to work?

15 A Correct.

16 Q Let me make sure I understand that. If the power
17 gets turned off to the fire truck, are some of those
18 systems you just told us about, are they going to work
19 or not work, if the power is cut off?

20 A They would not work. I'm sorry, I misunderstood
21 your question.

22 Q Now, in fact, we're talking about this fire truck,
23 and I can picture it in my mind driving down the street,
24 or maybe seeing it at a community event, but again,
25 never having been inside one, do they have locks on the

1 doors?

2 A No. Ours don't. And -- and the reason for that,
3 locks can be dangerous or detrimental to our operation,
4 either on the fire on ground or emergency scene. I
5 should remind you, the last thing you want to find
6 yourself in, as a firefighter, is locking yourself out
7 of the vehicle, the apparatus, and needing equipment and
8 so on. Therefore, the industry, while they might offer
9 that, it's not a common practice of fire departments to
10 have those in your apparatus. And if you do, you
11 usually don't use them for that purpose.

12 Q Back in 2012, was there any type of policy or
13 standard here, either locally or in South Carolina, or
14 anywhere in the United States, that you're aware of,
15 that said, when a fire truck has left the fire station,
16 and it's off responding to some sort of call, like a
17 medical emergency, that one of the fire service
18 personnel needed to stay with the fire truck at all
19 times?

20 A No, and what drives that is staffing. There's
21 departments throughout the nation, bigger department,
22 bigger cities, that have either some kind of chauffeur,
23 and he stays with the apparatus, because the other four
24 or six guys are out doing whatever. But your average
25 department in the United States, because of budgetary

1 reasons, you can't afford to have so many personnel on a
2 truck. Therefore, when you respond to the scene,
3 everyone on that apparatus, two or three, participate in
4 a medical call, vehicle accident, fire, whatever it is.

5 Q And back in February of 2012, here in Beaufort,
6 South Carolina, what was the typical staffing for, let's
7 just say, Engine Number 5? How many firefighters would
8 be with that rig during a given shift?

9 A There are three firefighters assigned to that
10 station at that time. And -- and that day, there were
11 only two. And the reason for that, someone might call
12 in sick and, or someone is in a class, or leave,
13 vacation, and so on. So, the minimum staffing for
14 Engine 5 at the Port Royal station was two.

15 Q And by that day, you're referring to that fateful
16 Friday in February, February 24, 2012.

17 A That's correct.

18 Q Okay. That's the day that brings us all here to
19 this courthouse.

20 A Correct.

21 Q Okay. And Engine Number 5 is the fire apparatus
22 that sits in the station in Port Royal. Did I hear
23 that?

24 A That's correct.

25 Q So, and you were fire chief that day.

1 A Yes, sir.

2 Q And so, persons working at the fire station in Port
3 Royal, working on Engine Number 5, they reported to you?

4 A Yes.

5 Q Okay. Now, can you tell the Court and jury whether
6 or not there is some sort of camera that is physically
7 mounted on the fire apparatus associated with Engine
8 Number 5?

9 A Yes.

10 Q And what type of camera is actually mounted on this
11 particular fire truck?

12 A The camera in question was installed on -- on this
13 apparatus, and it was a recording unit with cameras
14 inside the cabin, that, once the engineer or the driver
15 of the apparatus, that's what we call the engineer, will
16 turn the -- the apparatus on. It will start recording.
17 Therefore, by the time that the crew is ready to leave
18 the fire station, responding on a call, it will record
19 continuously, until the point that they return to the
20 fire station and turn the engine off, or the system off
21 in the fire truck.

22 Q And in February of 2012, was it the regular
23 practice of the City of Beaufort Fire Department, which
24 also provided fire service to the town of Port Royal, to
25 make these recordings for every run made with respect to

1 Engine Number 5 from the Port Royal station?

2 A Yes.

3 Q And what was the -- just out of curiosity, what was
4 the reason the fire service decided to install this
5 camera on this particular truck? Was it all the trucks
6 in the city?

7 A Yes.

8 Q Okay. So, it wasn't just this fire truck; it was
9 all the fire trucks in the city. Why did you all decide
10 to put these cameras and the recording units on the fire
11 trucks here in the city of Beaufort?

12 A Well, it -- it was my -- my decision that we needed
13 to have those, first of all, operationally. At the time
14 I took over the fire department, we had them in some
15 trucks, and some others didn't have them. And during my
16 career, I experience situations that the firefighters
17 was involved in an accident, or someone called the fire
18 department complaining about the driver driving
19 recklessly down the road. And so, it is a tool. It is
20 a tool to protect their station, the firefighters.

21 But also, it's a tool to protect the city, since
22 that was our -- from the moment that we respond, you're
23 being recorded, and our drivers know that. And we can
24 access that for the purpose of reviewing the footage of
25 how our drivers are responding to calls; are they being

1 cautious; are they slowing down intersections; they are
2 following our SRGs. And but the most importantly, as it
3 turned out, now that they, if an incident happened, we'd
4 have a video.

5 Q It essentially documents, for posterity's sake,
6 what actually happened with particular firefighters in
7 the course of their actual duties for the city of
8 Beaufort and Port Royal Fire Department.

9 A Yes, sir.

10 Q Okay. And can these recording units be tampered
11 with or altered with in any type of way, that you're
12 aware of?

13 A Well, as with any piece of equipment, electronics,
14 it could. But we have a system in place that only
15 personnel that I have designated have access to the --
16 to the data on those cameras.

17 Q And how many people within your fire department
18 have access to that data?

19 A Only one person.

20 Q Sir, I served you a subpoena requesting your
21 attendance at this trial. In response to that subpoena,
22 did you bring with you a disc containing video footage
23 from Engine Number 5, on February 24, 2012?

24 A Yes, I did.

25 Q Okay. And in a moment, we will see a portion of

1 that video that was brought. Chief, let me ask this.
2 We're obviously here today about an incident that took
3 place involving a fire truck. Is that fair?

4 A Correct. Yes, sir.

5 Q What were your firefighters doing when they were in
6 the minutes or immediately before the events that bring
7 us here today? What were they out doing?

8 A They were at the fire station. Just daily routine.
9 And they received a call for a medical emergency at the
10 Laurel Hill Apartments, which is just down from the fire
11 station. So, at the time, they -- they got on the
12 apparatus and responded to the -- to the emergency,
13 which, it's just a very short distance from the fire
14 station on Ribaut Road.

15 Q They were in the course of their official duties.
16 Is that fair?

17 A Correct.

18 Q Serving this community as firefighters on an
19 emergency call.

20 A Yes, sir.

21 Q Okay. And as the fire chief in this community, do
22 you believe that your firefighters associated with
23 Engine Number 5 on that day violated any type of policy,
24 rule, or regulation that exists within your fire
25 department?

1 A None.

2 Q And what about with respect to any type of standard
3 or protocol, or anything that you're aware of, either in
4 this community, in the state, or in the entire United
5 States?

6 A None.

7 Q You believe they were doing what they were supposed
8 to do.

9 A That's correct.

10 MR. HOYLE: At this time, your Honor, like our
11 prior conversations on the record, Plaintiffs would move
12 into evidence Plaintiff's Exhibit Number 23, over the
13 objection of the Defendant, and move to publish same to
14 the Court and jury at this time.

15 THE COURT: All right. At this time.

16 MR. MACKELCAN: I think he just covered that.

17 THE COURT: I think he did, too.

18 MR. MACKELCAN: Okay.

19 THE COURT: Yes. Very well. You may proceed.

20 ITEM IDENTIFIED AS REDACTED DVD
21 OF FIRE TRUCK DASHCAM VIDEO,
22 MARKED PLAINTIFF'S EXHIBIT NUMBER 23,
23 ADMITTED INTO EVIDENCE.

24 MR. HOYLE: And we'll direct the Court and jury to
25 the two monitors permanently affixed here in the

1 courtroom.

2 REDACTED DVD FROM FIRE TRUCK DASHCAM
3 VIDEO, PLAINTIFF'S EXHIBIT 23, PLAYING.
4 END PLAYING REDACTED DVD OF FIRE TRUCK
5 DASHCAM VIDEO.

6 BY MR. HOYLE:

7 Q Chief, we stopped the video that's contained within
8 Plaintiff's Exhibit Number 23. Have you seen the entire
9 video?

10 A Yes, sir.

11 Q After the scene that we just left with in the
12 playing of Exhibit Number 23, what happens?

13 A Then, -- then, on the video, the apparatus impact
14 one of the two pedestrians that were crossing the Ribalt
15 Road.

16 MR. HOYLE: Sir, I very much thank you for coming
17 here today. I thank you for your service to the
18 community. And at this time, I'll ask that you answer
19 any questions that Mr. Mackelcan has for you.

20 A You're welcome.

21 THE COURT: All right. Cross-examination.

22 FIRE CHIEF SAMMY NEGRON

23 CROSS-EXAMINATION, BY MR. MACKELCAN:

24 Q Good morning, Chief.

25 A Good morning.

1 Q Can I ask you a couple more questions about the
2 fire truck. Is it a manual transmission or an automatic
3 transmission?

4 A Automatic.

5 Q Automatic. When the firefighters leave the
6 apparatus, do they put it in park, just like you would
7 with a car?

8 A Correct.

9 Q Okay. And on this particular day, February 24,
10 2012, the apparatus was left running when they went for
11 a medical emergency?

12 A Correct.

13 Q And I believe you said that, that was the standard,
14 regardless of whether it was a fire call or a medical
15 call. Is that right?

16 A Correct.

17 Q When the battery -- I believe you said the first
18 step in the process was turning on the battery. When
19 the battery is turned on, what comes on, on the
20 apparatus?

21 A The apparatus today, contrary to 20, 30 years ago,
22 are -- have a computer on board that just manage all the
23 different systems and components. When you turn the
24 battery switch on, that energizes all those systems.
25 When you turn -- turn the engine switch on, the systems

1 come alive and start communicating. And at that time,
2 the apparatus makes some sorts of alarms or beeps that
3 allow the engineer or the driver to understand that the
4 system checks on the apparatus are complete, and he is
5 now ready to operate the fire truck.

6 Q Would you expect the average person off the street
7 to be able to get into a fire truck and drive it away,
8 the way Mr. Hunt did?

9 A No. And to my knowledge, never happened before.

10 Q So, prior to February 24, 2012, no city of Beaufort
11 or Port Royal fire truck had ever been used by an
12 unauthorized user?

13 A That's correct, and I'll take even that further.
14 There's no record of that ever happening in the nation
15 that result in the outcome we experienced that day.

16 Q That's not something that ever crossed your mind,
17 as the fire chief, that could possibly happen, right?

18 A Correct.

19 Q Clearly, if it was something that had crossed your
20 mind, you would have done something to prevent something
21 like this from happening, correct?

22 A Yes. In our training of fire service, the systems
23 and methods that we have are proven based on history.
24 And what we find quite often is, the way we operate is
25 because, either it happened before, or something failed

1 before. So, yes. Just the way we do things that way
2 that day.

3 MR. MACKELCAN: Thank you. Nothing further.

4 MR. HOYLE: Very briefly, your Honor.

5 THE COURT: Yes. Re-direct? Sure.

6 FIRE CHIEF SAMMY NEGRON

7 RE-DIRECT EXAMINATION, BY MR. HOYLE:

8 Q Chief, Mr. Mackelcan raised the concept of
9 prevention. Did the fire service here in the city of
10 Beaufort, on February 24, 2012, have any knowledge,
11 prior to your men going on that medical call that we saw
12 in the video, that Calvin Hunt had thoughts of hurting
13 others?

14 A No.

15 Q And this particular fire truck, the fire truck that
16 we saw in the video that is Plaintiff's 23, what
17 happened to this fire truck?

18 A You mean, after the fact?

19 Q Yes.

20 A Well, of course, because of the damage, severe
21 damage, it was totaled by the insurance company. And
22 today, it is sitting at the City of Beaufort Public
23 Works, and we just have it covered there. And because
24 we have another apparatus that is identical, we cut off
25 the used parts, and so on, to repair the other one.

1 Q Did I hear correctly that the fire truck was
2 damaged such that it was totaled?

3 A That's correct.

4 Q What was the economic value of that decision with
5 respect to totaling the fire truck?

6 A Well, that particular apparatus costs over
7 \$500,000.00. And at the time of the incident, the town
8 of Port Royal was still making payments. And the
9 insurance money was just enough to -- to pay off the --
10 the apparatus and close the account. And then, we had
11 to purchase a replacement fire truck.

12 Q Chief, I just want to make sure we're clear about
13 something. Did that fire truck have to stay on, on
14 February 24, 2012, when it was parked at the Laurel Hill
15 Apartments, in order for dispatch reasons?

16 A Yes. And if you notice, if the jury notice in the
17 video, when the personnel arrive at the apartment
18 complex, they kind of park to the side. That was (1) to
19 allow the ambulance room enough to park in front of the
20 building; and also, to stay away from traffic. And as
21 you notice in the video, the emergency lights were still
22 on throughout the -- the incident. And the purpose of
23 that was to warn citizens that we were on scene,
24 engaged, responding to an actual emergency, and that the
25 fire truck was there; and for drivers, specifically,

1 coming and trying to manage the parking lot that, be
2 careful.

3 Q You all were trying to keep people safe.

4 A Correct.

5 MR. HOYLE: Thank you, Chief. Those are all the
6 questions I have for you.

7 THE COURT: Re-cross?

8 MR. MACKELCAN: Nothing for this witness.

9 THE COURT: Is this witness free to leave?

10 MR. HOYLE: This witness is excused, with the
11 thanks of Ms. Delaney.

12 THE COURT: All right. Any objection?

13 MR. MACKELCAN: None from the Defendant, your
14 Honor.

15 THE COURT: Very well. Thank you, sir. You're
16 free to go. Please call our next witness.

17 A Thank you, your Honor.

18 MR. HOYLE: Your Honor, at this time, the Plaintiff
19 calls Dr. Terrence Baker to the stand.

20 THE COURT: Okay. Yes, sir.

21 MR. LOVELL: Your Honor, may approach on one brief
22 issue?

23 THE COURT: Sure.

24 BAILIFF: Come forward and be sworn, please, sir.

25 ON-THE-RECORD BENCH CONFERENCE, OUT

1 OF HEARING OF JURORS. PRESENT: THE
2 COURT, MR. HOYLE, MS. CASTLEBERRY,
3 MR. MACKELCAN, MR. LOVELL.

4 MR. LOVELL: It's an ordinary negligence case. we
5 would object under Rule 703 of this witness being called
6 to render expert testimony about standards of care and
7 such, as those are not relevant to the issues. Period.

8 THE COURT: Okay. I don't know what he's going to
9 testify to. So, just --

10 MR. LOVELL: Okay. I'll --

11 MR. HOYLE: And just briefly, for purposes,
12 obviously, we think this witness goes to the question of
13 duty, even in an ordinary negligence case. And I've
14 tried ordinary negligence cases before, and there's been
15 expert testimony elicited in those cases. So, I don't
16 believe that it has to necessarily be a professional
17 negligence case in order to obtain expert testimony.

18 There's also one other issue we need to raise with
19 your Honor. And I'm going to lean in and whisper. I
20 expect there will be some testimony likely elicited by
21 Mr. Lovell about opinions that this witness has about
22 actions and inactions of a party's employee that has
23 been granted summary judgment; that being Edward Ray,
24 the Veterans Affairs Officer. This Court has entered an
25 order granting summary judgment, saying it is a matter

1 of law. There is no liability for the actions and
2 inactions of Edward Ray.

3 When Mr. Baker prepared a report and gave his
4 deposition, for the first part of the deposition, he did
5 not have that information, that the Court had summary
6 judgmented the state Office of Veterans Affairs out. I
7 think it would confuse the jury and confuse the law of
8 the case to elicit testimony at this point in time from
9 this witness about a party that used to be a chair, but
10 is no longer a chair. They're a judicially adjudicated
11 chair.

12 THE COURT: My understanding is that there was no
13 evidence offered in the case one way or the other,
14 because the gentleman had passed away. Do I understand
15 that correctly?

16 MR. MACKELCAN: Yes.

17 MR. HOYLE: If you'll bear with me, Judge.

18 MR. MACKELCAN: That is correct. He passed away
19 before we started taking any depositions.

20 MR. HOYLE: And this is the order entered by Judge
21 Jeff Young. And Judge Young, he makes more conclusions
22 of law.

23 THE COURT: I'll work on this. I'll read this
24 while you all keep going.

25 MR. HOYLE: And my only request would be, if we

1 could get some guidance from the Court.

2 THE COURT: Before he starts.

3 MR. HOYLE: Not before he starts. Before I finish
4 my direct of him.

5 THE COURT: Okay.

6 MR. HOYLE: So, maybe we could take a comfort break
7 at some point --

8 THE COURT: Okay.

9 MR. HOYLE: -- to confer with your Honor. Is that
10 reasonable?

11 THE COURT: Sure.

12 MR. LOVELL: We think it's irrelevant on
13 intervening supervening cause, proximate cause, and the
14 actions of others.

15 THE COURT: Okay.

16 MR. LOVELL: And his opinions also go to
17 credibility as an expert.

18 THE COURT: Okay.

19 MR. MACKELCAN: And your Honor, we were not
20 involved in that particular motion.

21 THE COURT: I understand.

22 MR. MACKELCAN: I think that one of the issues I
23 think you'll read, I don't know, because I didn't
24 participate in preparing that order, is that, Edward
25 Ray, individually, could have been a Defendant. One of

1 the issues was whether he was acting in the scope of his
2 duties as the Veterans Affairs officer. The entity was
3 dismissed, but Edward Ray, there's no ruling on Edward
4 Ray individually.

5 THE COURT: Okay. I understand.

6 MR. HOYLE: I'll state for the record that my
7 understanding of the *Tort Claims Act* is that an
8 individual employee of the state of South Carolina, one
9 that's political subdivisions, cannot be named
10 individually. Period.

11 THE COURT: Okay. Go ahead and start.

12 MADAM CLERK: Do you solemnly swear or affirm that
13 the testimony you give in the trial in this court shall
14 be the truth, so help you God?

15 DR. TERRENCE L. BAKER: I do.

16 MADAM CLERK: Thank you. If you'll state and spell
17 your name, for the record.

18 DR. TERRENCE L. BAKER: Yes, Terrence L. Baker,
19 M.D.

20 DR. TERRENCE L. BAKER

21 DIRECT EXAMINATION, BY MR. HOYLE:

22 Q I think I still have the pleasure of saying good
23 morning to you, Doctor.

24 A Good morning, sir.

25 Q It is good to see you. You have introduced

1 yourself already to this Court and jury, but why don't
2 you tell the jury where you're from.

3 A Yes, I'm from Baltimore, Maryland.

4 Q And what do you do up there in Baltimore, Maryland,
5 Doctor?

6 A I'm a physician.

7 Q All right. How long have you practiced medicine as
8 a physician?

9 A I know I don't look that old, but it's almost 40
10 years.

11 Q I agree with you, sir. All right. So, you've been
12 a practicing physician for 40 years. Why don't you tell
13 the Court and jury about your education.

14 A Yes. My formal education started at Johns Hopkins
15 University in Baltimore, Maryland, at the Homewood
16 Campus. I obtained my bachelor's degree in natural
17 science, which was a pre-med program at Hopkins at the
18 time. Completed that program in '78. Stayed at Hopkins
19 in order to get my finances together for medical school,
20 and obtained a master's degree at Johns Hopkins in
21 developmental disabilities and special education.

22 And having then completed my master's degree and
23 got my funding together, I was able to be accepted to
24 George Washington University School of Medicine in D.C.
25 I completed my doctorate's degree in medicine in '84,

1 and then, was accepted by the Medical College of
2 Virginia, in Richmond, to do advanced training as a
3 resident physician.

4 Q Are you familiar with a term called board
5 certification?

6 A Yes, I am.

7 Q Okay. Tell the Court and jury what a board
8 certification is.

9 A Board certification is where a physician studies a
10 certain area of medicine, like the heart, cardiology, or
11 like emergency medicine or family medicine; and then,
12 sits for an examination. Sometimes it's a written
13 examination. Almost always a written examination, all-
14 day, eight-hour exam of written questions and answers,
15 followed by an oral examination in subspecialties like
16 emergency medicine. We have both emergency medicine
17 oral examination and written examination.

18 Q Do you hold any board certification or board
19 certifications?

20 A I do. I have successfully passed all of the
21 requirements for emergency medicine, family medicine.
22 Added certificate in geriatrics and forensic medicine.

23 Q Is that four of them?

24 A Yes.

25 Q Okay. And I think you told us a little bit about

1 how long ago it was that you became board certified.
2 You've actually done those things, with respect to
3 emergency medicine and family medicine. Did I hear
4 that?

5 A Correct.

6 Q Okay. And have you actually been involved in
7 giving the tests, so that other physicians can become
8 board certified?

9 A Yes. In emergency medicine, I'm actively involved
10 in writing written questions that become part of the
11 examination for the written test for physicians who are
12 looking to become board certified, that is, to take the
13 written test and to demonstrate that they have the
14 minimum necessary knowledge, education, training, and
15 experience to be able to say they are board certified in
16 emergency medicine. So, I actually help to write the
17 written examination.

18 I also am an oral board examiner. That is, I'm one
19 of the physicians who actually sits. And the way we set
20 it up, there's three of us sitting at a table, and a
21 physician who wants to be board certified in emergency
22 medicine will sit down, and we will ask the candidate
23 questions about how to take care of certain medical
24 conditions in the emergency room. And then, there are
25 certain answers that we expect to receive, and we go

1 through that process. It's about a four-hour testing
2 process of give and take between the candidate and the
3 examiners to understand that, that candidate is able to
4 handle common emergency problems.

5 Q All right. Doctor, are you a member of any
6 professional associations?

7 A I am.

8 Q What professional organizations are you involved
9 with?

10 A Well, I mean, I'm a member of the American Medical
11 Association, American Academy of Family Practice, the
12 American College of Geriatrics, the American Academy of
13 Emergency Medicine, and the American Association of
14 Physician Specialists.

15 Q That's a lot of anachronisms, Doctor.

16 A It's a few.

17 Q It's a few. Have you held any offices with any of
18 the professional organizations that you just told us
19 about?

20 A I have.

21 Q Okay. And what offices have you held?

22 A I'm currently the president of the American College
23 of Emergency Physicians, through the American
24 Association of Physician Specialists. I was elected
25 president last year, continued at the request of my

1 colleagues this year. Prior to that, I was president-
2 elect. And prior to that, I was vice president of the
3 Academy.

4 Q Have you held any teaching positions, Doctor?

5 A Yes.

6 Q Tell us about those.

7 A At the -- well, it started when I was at the
8 Medical College, Virginia, in Richmond. I was actively
9 involved in teaching interns and medical students. It
10 continued during the 20 years I practiced here in South
11 Carolina. Following my completion, I came to Conway,
12 South Carolina and Orangeburg, South Carolina, at the
13 request of the federal government. I practiced in
14 Conway and in Orangeburg for -- and some in Columbia for
15 nearly 20 years, prior to being invited to come back to
16 the Good Samaritan Hospital, where I am today.

17 Good Samaritan is a training center. We train
18 residents from a number of hospitals, University of
19 Maryland, Johns Hopkins, George Washington. Plus, we
20 have our own residents, internal medicine residents, in
21 the building, some actively involved in teaching
22 principles of family medicine and emergency medicine to
23 young physicians in training, medical students,
24 physicians' assistants, nurse practitioners from the
25 School of Nursing at University of Maryland, as well as

1 interns and residents from the facilities I mentioned.

2 Q How many hours in a given month do you actually
3 spend in a clinical practice in an emergency room or
4 some other setting, Doctor?

5 A Yes. My practice is -- has been, for quite a few
6 years, 70 to 100 hours a week, practicing in the areas
7 of my board certification.

8 Q Do you hold any privileges at any hospital?

9 A I do.

10 Q Which hospital or hospitals do you hold privileges
11 at?

12 A I currently have privileges at the Good Samaritan
13 Hospital, the Good Samaritan Nursing Center, and Good
14 Samaritan Transitional Care Center.

15 Q And those are all up in Baltimore?

16 A Yes, they're all part of the Good Samaritan campus.

17 Q Okay. And in that campus, how many beds does the
18 emergency room up there have?

19 A The emergency room currently -- we expanded several
20 years ago. We currently are up to 44 beds. We went
21 from 15 to 44 to meet the growing needs of the Baltimore
22 community.

23 Q And in what states are you currently licensed to
24 practice medicine?

25 A Currently licensed in South Carolina, North

1 Carolina, and Maryland.

2 Q Have you published any articles in what's known as
3 the peer review literature?

4 A No.

5 Q Have you ever been qualified to render opinions in
6 a court of law?

7 A Yes.

8 Q Okay. That includes courts in this state?

9 A Yes. Federal and state courts in South Carolina.

10 Q Okay. Have you been qualified to render opinions
11 elsewhere in the United States of America?

12 A Yes.

13 Q Okay. About how many states do you think that is,
14 Doctor?

15 A About 48.

16 Q Well, I'll just ask which two you haven't been to,
17 Doc.

18 A Hawaii and Alaska.

19 Q So, it sounds like, I don't want to foreshadow, but
20 it sounds like you testify a good bit. Is that fair?

21 A A part of my practice, somewhere between ten and
22 twenty percent of my practice, involves chart review and
23 answering questions, either written questions, or
24 questions in person, like today.

25 Q Okay. Now, when you've been here in South

1 Carolina, giving testimony in courtrooms like this one,
2 were those occasions in which you testified for the
3 Plaintiff, meaning the person who brought the lawsuit;
4 or the Defendant, meaning the person defending the
5 lawsuit; or some combination?

6 A Both. In South Carolina, when I have been asked to
7 come and answer questions in front of a jury, or in a
8 deposition setting, it has been both for defendants and
9 for plaintiffs.

10 Q Now, how is it that you came to be involved in
11 forensic work or testifying-type work?

12 A Soon after I arrived in the state back in '88,
13 seems like just yesterday, the South Carolina Board of
14 Medical Examiners put out a postcard, a letter, inviting
15 physicians like myself to become part of peer review.
16 That is, reviewing of medical records and charts in the
17 State of South Carolina for the purpose of looking at
18 complaints and problems that were alleged about
19 physicians practicing here. So, that started in '88.
20 And then, subsequently, some of the -- one or two of the
21 defense insurance -- one of the -- one or two of the
22 insurance companies here in South Carolina asked me to
23 start reviewing charts for them. And then, I think, in
24 '92, the first plaintiff's attorney asked me to actually
25 look at a case on behalf of a patient and a family.

1 Q And currently, today, what's the split of your
2 testifying work between plaintiffs, those bringing the
3 lawsuits, and defendants, those defending the lawsuits?

4 A Yes, it's approximately 60 to 70 percent on behalf
5 of Plaintiffs, that is, families and patients. Thirty
6 to 40 percent on behalf of physicians, facilities,
7 P.A.s, nurse practitioners.

8 Q Do you have any sense of why you tend to offer more
9 testimony on behalf of plaintiffs than it is defendants?

10 A Yes.

11 Q What is that?

12 A In my opinion, the reason I look at more
13 plaintiffs' cases on behalf of patients and families is
14 because I am asked to review cases in which it's not
15 known whether the standard of care was met or not. That
16 is, no one knows, and they're asking for a professional
17 opinion. And so, the attorneys or the patient
18 themselves will ask me to review their file and answer
19 questions. Out of those cases, a number of times,
20 there's actually no standard of care problems. That is
21 that patients and their families and lawyers will send
22 me a file, but the standard of care is met. That is, a
23 physician treated a patient like they should. And
24 there's a misunderstanding, sometimes an untimely death,
25 but not malpractice. And then, the other times that

1 there is malpractice, that is, the standard of care has
2 been violated, and I will explain to the patient, their
3 family, or to the attorney why that is.

4 With defense cases, when a defense firm calls me or
5 a physician calls me, and tells me that they've been
6 named in a suit and they would like me to be their
7 expert, the suit's already been filed, that is, a
8 complaint has already been filed, most of the time. And
9 so, in those cases, my job is to review the file; and
10 then, to answer questions about whether -- whether there
11 was a problem; and if there was a problem, what was it.
12 And if there was no problem, then, to explain to the
13 attorney why there was no problem and why this is a case
14 that should be, you know, vigorously defended.

15 Q Makes sense, Doctor. Can you tell the Court and
16 jury about your experience in dealing with psychiatric
17 patients in an emergency room setting.

18 A Yes. Since I started my training way back at
19 George Washington, evaluating and treating psychiatric
20 patients in an emergency room setting, has been an
21 important part of my work. In fact, the first clinical
22 rotation I did at George Washington actually was in
23 psychiatry. And one of the things that we would do as a
24 young medical student in my third year would be go down
25 to the George Washington emergency room to see patients

1 that were complaining of being upset or disturbed, or
2 having psychiatric complaints and symptoms that needed
3 treated. So, that was actually my first rotation.

4 But subsequently, what I found is, that virtually
5 every day of my clinical practice in the emergency room
6 I treat more -- one or more patients who are
7 experiencing -- they're upset, they're anxious, they're
8 having psychiatric symptoms of some sort that have
9 brought them to the emergency room. Sometimes they're
10 suicidal; sometimes they're not. Sometimes they're
11 homicidal, wanting to hurt somebody else; sometimes
12 they're not. Sometimes they're just upset and anxious.
13 Sometimes they just need their medication back. There's
14 a whole sort of, you know, there's a whole range of
15 signs and symptoms patients present with. To answer
16 Counsel's question is, that is an important part of my
17 emergency room practice, which has occurred virtually
18 every day of my emergency room career.

19 Q And that's something that continues today?

20 A Yes. I -- I believe, tomorrow, when I show up in
21 the emergency room, I believe that I will go through
22 that shift and see one or two or more psychiatric
23 patients.

24 Q So, tomorrow, you'll actually be treating patients
25 in the emergency room up there in Baltimore?

1 A Yes. I have a 15-hour shift tomorrow.

2 Q Okay. Well, we'll try to get you home at a good
3 hour, Doctor.

4 A Well, thank you.

5 Q Now, these folks, the psychiatric patients you've
6 been dealing with for, gosh, sounds about like 40 years,
7 have you dealt with folks who have been in the military
8 who have psychiatric issues?

9 A Yes, I have.

10 Q Tell us about that.

11 A Patients who are either active duty or who have
12 retired, or are on disability with the military come to
13 civilian hospitals, number one. A large number of our
14 patients have service records that are veterans. Some
15 are even active duty, and not able to make it to a
16 military facility. And so, they'll come to see us. So,
17 number one, in civilian life, I regularly see veterans
18 in civilian hospitals.

19 Number two is that, for a number of years, I was at
20 the Dorn Veterans Administration Hospital in Columbia,
21 South Carolina, and was an active member of the
22 emergency department there. I also helped the V.A. to
23 open up two facilities, one over in Sumter, and a 4,000-
24 square-foot facility in Orangeburg, to treat veterans
25 off-campus, so to speak, that is away from Dorn.

1 Q Doctor, are you familiar with the duties of
2 emergency room personnel regarding patients who present
3 with psychiatric problems?

4 A Yes, I am.

5 MR. HOYLE: Your Honor, at this time, Plaintiff
6 moves to qualify Dr. Baker as an expert, qualified to
7 render opinions as to emergency medicine.

8 THE COURT: All right. Is there any voir dire, or
9 is there any objection?

10 MR. LOVELL: Your Honor, we believe, under Rule
11 701, that these issues are irrelevant as it relates to
12 the professional duties owed. This is pled as an
13 ordinary negligence case.

14 THE COURT: Okay. All right. And?

15 MR. LOVELL: Be glad to voir dire him on those
16 issues, if you'd like, your Honor.

17 THE COURT: Go ahead and do your voir dire.

18 MR. LOVELL: Thank you.

19 DR. TERRENCE L. BAKER, VOIR DIRE

20 DIRECT EXAMINATION, BY MR. LOVELL:

21 Q Good morning, Dr. Baker.

22 A Good afternoon, at this point.

23 Q I'll ask you some questions about qualifications
24 and the opinions you've got here today. You would agree
25 with me, would you not, that any of your training,

1 education, and experience in the field of emergency
2 medicine is training, education, and experience you have
3 gained through medical school or professional education,
4 correct?

5 A Yes. And the application of that training, yes.

6 Q And application when you're acting as a
7 professional medical doctor, treating or diagnosing or
8 prescribing medications as a medical physician
9 professional, correct?

10 A Yes, in general. My training actually started as a
11 -- as a EMT was the first level of training I received
12 in medicine. EMT in the District of Columbia;
13 subsequently, medical school, residency; and then, now,
14 today, clinical practice and ongoing, continuing medical
15 education.

16 Q And EMTs are professionals, as well. They have to
17 have specialist training, right?

18 A Yes, they do.

19 Q Now, Doctor, you would agree that the diagnosis,
20 treatment, assessment of a patient who presents, as
21 you've talked about, in the emergency department, to
22 you, as an E.R. doctor, requires you to exercise
23 professional judgment in assessing that patient and
24 determining what level of mental challenge they are
25 suffering that has brought them to the emergency

1 department, correct?

2 A Yes. As a -- as a E.R. physician, correct.

3 Q And when you are looking at a patient who presents
4 for medication refills, and medications that include
5 medications that are of the type that are used to treat
6 psychiatric challenges, the only person that can assess
7 the need for those medications and/or refill them is
8 someone who has been trained and licensed by a state
9 licensing facility in the field of medicine, a doctor.

10 A Correct. Either the physician, nurse practitioner,
11 or P.A. That's correct.

12 Q Professional judgment has to be exercised by those
13 persons in determining whether the medications that have
14 been asked to be refilled are appropriate for the
15 patient, based on the professional assessment and
16 judgment of that medical provider, correct?

17 A Yes, in general, that's correct.

18 Q Average person off the street cannot do that,
19 correct?

20 A That's correct. A layperson from the street would
21 not be able to prescribe professional medications.

22 Q Additionally, when a patient presents and gives a
23 history to a medical provider, be it a nurse in a triage
24 situation, or a treatment nurse in the treatment floor
25 of an E.R., or emergency doctor, those persons

1 exercising or interacting with the patient must exercise
2 their judgment in assessing the patient and taking an
3 accurate medical history. Do they not?

4 A Yes. In general, that's true.

5 Q And that's professional judgment, not lay judgment,
6 right?

7 A That's correct. In that capacity, the individual
8 who is assessing the patient when they present to the
9 emergency room, the entrance, the triage nurse, the
10 first person you talk to, is -- is using professional
11 experience and judgment to ask questions about why
12 you're there. That's true.

13 Q And the treatment nurse in this case, you know Joe
14 McDonald, --

15 A Yes.

16 Q -- he has to exercise his professional training and
17 experience in assessing the patient as he's observing
18 him and making decisions about what to do or not to do
19 with a patient, correct?

20 A Yes, that's what he's been hired to do, and those
21 are the responsibilities he has. That's correct.

22 Q As a professional with medical training and medical
23 experience, right?

24 A Yes. He's a hired professional. That's correct.

25 Q And if there are any policies or protocols that the

1 medical department has set forth, he, as a professional,
2 has to exercise judgment on whether he follows them or
3 not, or whether they even apply to a given patient
4 presentation, correct?

5 A Yes. As someone hired to act in that capacity of a
6 treating nurse back at bedside, the -- the nurse is
7 responsible for understanding the policies and
8 procedures that are in play.

9 Q And all of the things that these nurses, triage and
10 treatment nurses, have to do in interacting with a
11 patient within the four walls of the E.R. require them
12 to exercise their experience, judgment, knowledge,
13 training, everything they've learned as a professional,
14 or any policies and procedures that may apply, as they
15 determine, apply as a professional, using their
16 professional judgment, right?

17 A Yes. That's -- that's the job responsibility, if
18 you will. It's the job assignment.

19 Q To a medical professional.

20 A To a medical professional who's been hired to
21 fulfill those duties.

22 Q And a layperson wouldn't know (a) what the duties
23 are; (b) how to perform them, correct?

24 A In the questions you're asking me today, that's
25 correct, as you would, in general, not want a layperson

1 at bedside when you get brought back to be treated, you
2 wouldn't want somebody off the street, in general, to be
3 there.

4 Q Making decisions, professional decisions, about
5 judgment or what to do with a patient or how to treat
6 them, right?

7 A That's correct. In general, you would not want a
8 layperson doing that.

9 Q And in terms of interacting with the patient and
10 determining what information the patient needs to know
11 about this process that's ongoing, whether it's from the
12 minute he walks in the door, to the history that's
13 taken, to the assessment by the E.R. triage or treatment
14 nurses, to the assessment by the E.R. doctors, to the
15 assessment by a psyche tech, to what's going to happen
16 next, those are all things that the professionals have
17 to use their judgment and skill and training in
18 determining what level of interaction to have with the
19 patient. Do you agree with that?

20 A That's correct. In your hypothetical, that's
21 generally correct.

22 Q And determining how to restrain a patient, if it's
23 even necessary, is something that only a medical
24 judgment can be used, whether it's a chemical restraint,
25 physical restraint, or no restraint at all. That's a

1 medical, professional judgment.

2 A Right. In your hypothetical case, that's generally
3 true.

4 Q Doctor, for the Court's purpose, I would like to
5 show you Exhibit 29, for identification only at this
6 point. Do you recognize that particular document,
7 Doctor?

8 A Thanks. Yes, these are some notes that I put
9 together on the morning prior to my deposition. That's
10 correct.

11 Q And just so it's clear, when you were retained in
12 this case, how long ago was that first, when you first
13 got hired by these folks to serve any function?

14 A Early this year.

15 Q And then, you were deposed. What's the date of
16 that?

17 A September 24, 2015.

18 Q So, ten or eleven months, plus or minus, after you
19 were retained, you were then offered this report the day
20 before my partner took your deposition with a bunch of
21 other people.

22 A Right. These are notes that I made in the morning,
23 as -- as I testified to in my deposition. Notes that I
24 made on the morning, so that I would have facts in front
25 of me, so that I could answer questions with less

1 looking and less error.

2 Q We'll get into all that stuff later on, but I want
3 to ask you to look at Page 2. When you were giving some
4 of the opinions you have, -- and I'm going to ask about
5 the opinions. I just want to ask you about some of the
6 terms you used in talking about the opinions.

7 This is, first, about other folks that are here,
8 but you talk about --

9 MR. HOYLE: Your Honor, I'm going to object. I
10 think we're exceeding the proper voir dire, the
11 qualifications of an expert who's been proffered to
12 offer expert testimony.

13 THE COURT: Let me hear the -- let me hear the
14 question. And please, sir, don't answer the question
15 until I've had a chance to rule on it, please.

16 A Okay.

17 BY MR. LOVELL:

18 Q Opinions you've indicated you put on this report,
19 serving as an expert retained by these folks, you talk
20 about applicable standards of care and duty to provide
21 care to this patient, right? Page 2, next to the last
22 paragraph.

23 THE COURT: I don't think that's for the jury. I
24 don't think that's appropriate voir dire.

25 MR. LOVELL: Okay.

1 BY MR. LOVELL:

2 Q Standards of care are, in your opinion,
3 professional standards of care? That's how you use them
4 in all -- you wrote in your report?

5 A Yes.

6 Q Okay. When you talk about the duty of care
7 required of practitioners under the same and similar
8 circumstances, you're talking about professional
9 standard of care, correct?

10 A Yes. That's one of the things I talked about in my
11 notes, that's correct.

12 Q And you even used the term *national standards of*
13 *care*. You're talking about national professional
14 standards of care, correct?

15 A And national duties, that's correct.

16 Q I'd like you to --

17 MR. LOVELL: Your Honor, that's probably
18 sufficient, for purposes of voir dire.

19 THE COURT: I understand.

20 MR. LOVELL: Thank you.

21 BY THE COURT:

22 THE COURT: All right. Ladies and gentlemen, there
23 is a matter that I must take up outside your presence.
24 I'm going to send you to lunch while I do the work that
25 I must do. And I'm going to ask you to be back in your

1 jury room -- we are going to be a little bit longer, but
2 we've got to get some lunch, too, after we finish our
3 work. I'm going to ask you to back in your jury room,
4 please, at 2:00 o'clock, ready to continue this matter.
5 Thank you so much.

6 Please be mindful, do not discuss this matter. Do
7 not allow anyone to discuss it with you. Don't read
8 anything or listen to anything about this matter, radio,
9 television, Internet. Do not do any investigation.

10 Remember to leave your cell phone or other
11 communication devices away from the courthouse. If you
12 forget, let us know, and our bailiffs will take good
13 care of it until you're able to take it away from the
14 courthouse. Have a good lunch. We'll see you at 2:00
15 o'clock.

16 JURORS LEAVE COURTROOM 12:24 P.M.

17 BAILIFF: Jury is clear, your Honor.

18 THE COURT: Thank you. Okay.

19 I just wanted -- I just took a moment to look again
20 at the Hardee case. Now, the concern is that this
21 witness may testify regarding the standard of care. And
22 the reason I excused the jury is, I think it is
23 appropriate that I just simply hear the testimony. I
24 mean, I think we're to that point in this case. And I
25 have, in our conversations, have had conversations with

1 you all both on and off the record regarding these
2 issues and whether or not there is any duty that flowed,
3 either directly or in the nature of the *Hardee* case, to
4 third parties, to the public, to their own public at
5 large, to Plaintiff's decedent. And I think this
6 particular witness is really -- puts a spotlight on
7 where we are in this case in terms of duty. And so, so,
8 I want to hear the testimony.

9 Let me say that, the mere fact that he is couching
10 the testimony as standard of care, he can say standard
11 of care; he can say carelessness, too. I don't think
12 there's any question in my mind that, contained in a
13 violation of the standard of care of a physician, that,
14 subsumed within that definition has got to be
15 carelessness. It's a lack of due care. And so, it is
16 more complicated to establish a standard of care, and
17 then, say that a doctor, a healthcare professional,
18 violated that standard duty of the standard of care, as
19 opposed to this person was careless. But I'm going to
20 hear the testimony. So, we'll do that now. Okay?

21 MR. HOYLE: Beg 30 seconds, your Honor.

22 THE COURT: Sure. If you all want to take a little
23 comfort break, if everybody needs to take a little
24 comfort break before we start, including our witness, we
25 can do that, too.

1 MR. HOYLE: I think that, that would be
2 appreciated, your Honor.

3 THE COURT: You want to do that, everybody? Let's
4 take a -- we'll take two or three minutes for a comfort
5 break.

6 You, too, but do not, sir, please do not discuss
7 your testimony with anyone.

8 A Thank you.

9 THE COURT: You can take a comfort break, too. All
10 right. We'll take about three.

11 OFF THE RECORD 12:32 P.M.

12 BACK ON THE RECORD 12:47 P.M.

13 BAILIFF: All rise.

14 THE COURT: Thank you.

15 DR. TERRENCE L. BAKER, PROFFER

16 DIRECT EXAMINATION, BY MR. HOYLE:

17 Q Doctor Baker; good afternoon.

18 A Hello. Good to see you, sir.

19 Q The jury has been excused, and at the Court's
20 request, I'm going to ask you a few questions. Before
21 we get into all of the opinions that you have formed
22 with respect to employees of CasePro, Incorporated, I
23 just want to ask you a simple hypothetical.

24 A Yes.

25 Q Okay. Let's assume we've got a man who comes into

1 an emergency room, and he is out of some anti-psychotic
2 medication that he's been previously prescribed. He's
3 not been taking those pills. He indicates that he is
4 both suicidal, and that he has thoughts of hurting
5 others. And the reason he is there in the emergency
6 room is because his family is concerned about him and
7 wanted him to be seen by a doctor.

8 If this hypothetical person were to request
9 permission to leave the emergency room for a breath of
10 fresh air, given your education, training, and
11 experience as a 40-year, emergency room, board-certified
12 physician, what would you tell that person?

13 A I would tell the person no. And then, I would warn
14 or advise the patient of the reason why; that is, the
15 need to keep the patient, the staff, and the community
16 safe until we were able to provide treatment.

17 Q And the duty that you've just articulated, that's
18 something that extends both to the patient and to
19 others. Did I hear that correctly?

20 A Yes. You would need to warn the patient, advise
21 the patient, as well as the staff that was assisting in
22 the care and treatment of the patient. And if there
23 were any family members available, to warn them, also,
24 and the need to advise them of the warning.

25 Q And there's been some talk here today about

1 standard of care and carelessness. Do you believe that
2 the applicable standard of care in your field requires
3 that warning to be made to the patient?

4 A Yes.

5 Q Do you also believe that a medical provider, in
6 breaching that duty to the patient, as well as others,
7 would be careless if he or she did not provide that
8 instruction and warning?

9 A Yes, they would.

10 Q Okay. Now, I know you've looked at medical records
11 in this case.

12 A Yes.

13 Q You've read deposition testimony in this case.

14 A Yes..

15 Q Okay. And focusing on your opinions with respect
16 to the three CasePro employees, Nurse Janice, Nurse Joe,
17 and Dr. Jansen, do you have opinions about these three
18 persons?

19 THE COURT: Let me interrupt you, and so that our
20 record is clear, that is Janice McDonald, Joe McDonald.

21 MR. HOYLE: Yes, your Honor.

22 THE COURT: All right.

23 MR. HOYLE: And Dr. Chris Jansen.

24 THE COURT: Yes.

25 MR. HOYLE: In a photo that he himself identified

1 here yesterday.

2 THE COURT: Yes.

3 BY MR. HOYLE:

4 Q Do you have opinions about these three persons?

5 A I do.

6 Q And what they did or did not do on February 24,
7 2012?

8 A Yes, I do.

9 Q Okay. Let's walk through this. What's your first
10 opinion?

11 A My first opinion is that there was a failure to
12 secure or place the patient, Mr. Hunt, in a secure
13 environment. And a secure environment would be a room
14 free of materials, hazards, things that Mr. Hunt could
15 use to harm himself or harm others. So, there was a
16 failure to secure. There was a failure to disrobe; that
17 is to remove the clothing from Mr. Hunt, so as to insure
18 that there was no weapons or any kind of material or
19 agents that could be used against himself, the staff, or
20 the community, in order to harm himself or harm others.

21 Number 3 is that there was failure to warn Mr.
22 Hunt, that is, to advise Hunt as to the need to keep him
23 safe; to warn him that he would need to be kept in a
24 safe room, that is, in the treatment area that's been
25 designated; to be disrobed; that he would need to be

1 accompanied to the bathroom; and that he would not be
2 allowed to leave the security of the emergency
3 department; for his own safety, the safety of the staff,
4 safety of the staff, and the safety of the community, he
5 would need to be provided with those warnings.

6 Q And let's just think by analogy, Doctor, are there
7 other analogous situations in which a healthcare
8 professional would need to provide a warning or an
9 instruction to a patient not to leave a medical
10 treatment facility that you can think of?

11 A Yes.

12 Q And what would one of those examples be?

13 A Well, the most recent example would be Ebola.
14 Ebola being a potentially life-ending, life-threatening
15 medical condition, readily spread by contact with
16 someone who is infected to somebody who's not, and the
17 patient, leaving the emergency room could readily,
18 quickly infect many others.

19 Q Okay. Are there any other analogous situations
20 that you can think of?

21 A Yes. Another one that occurred a year ago was
22 tuberculosis. A patient with known resistance to
23 tuberculosis, for which there is no cure, was identified
24 by physicians and was sequestered. That is, was warned
25 and sequestered in order to protect themselves, the

1 staff, and others in the community.

2 Q Any others that you can think of as you sit here
3 today?

4 A Yes. A patient under the influence of certain
5 medications, street drugs, alcohol, either alone alcohol
6 or in combination with street drugs. For example, we
7 recently had patients coming in who were under the
8 influence of bath salts, for example. Bath salts is a
9 substance purchased on the street that causes patients
10 to be cognitively impaired. That is, to so disrupt
11 their thinking, so as to be a danger to themselves.
12 They can be so violent as to throw -- literally throw
13 staff around, and they're certainly a danger to not only
14 to company, but any officer that approached them and
15 tried to, you know, secure them. Those patients must be
16 warned and restrained and kept safe.

17 Q And this warning that you believe should be given
18 to patients in the scenarios that you just articulated
19 for us, that's a warning that both benefits both the
20 patient and others? Did I hear that correctly?

21 A The patient, the staff, and the community as a
22 whole.

23 Q The folks within the zone of danger.

24 A Correct.

25 Q Okay. And you believe that medical personnel in

1 those scenarios you just articulated for us have an
2 affirmative obligation to make that warning. Did I hear
3 that correctly?

4 A Yes, they have an obligation or a duty to take
5 those measures, that is, to make the patient safe, and
6 to warn the patient as to what's happening and why it's
7 happening.

8 Q And by doing that, that also protects others.

9 A Correct.

10 Q Now, this duty that you just articulated, do you
11 believe that to be analogous to something referred to as
12 a standard of care that Mr. Lovell's been talking about?

13 A At times, it can be, yes.

14 Q Do you believe that, that duty, if not followed by
15 a registered nurse or an emergency room doctor, could be
16 evidence of carelessness?

17 A Correct, it would be carelessness, and it would be
18 grossly reckless or negligent.

19 Q And that's specifically if the medical provider
20 does not warn the person that they shouldn't leave?

21 A That is correct. That would be grossly negligent.
22 It would put the patient, the staff, and the community
23 at harm's, you know, in harm's way.

24 MR. HOYLE: Your Honor, at this time, I think
25 that's a sufficient examination.

1 THE COURT: I understand.

2 MR. HOYLE: I reserve the right to ask any
3 questions after my friend, Mr. Lovell, examines the
4 witness.

5 THE COURT: Well, I don't know who -- all right,
6 who's it going to be? Ah, Mr. Lovell.

7 DR. TERRENCE L. BAKER, PROFFER

8 CROSS-EXAMINATION, BY MR. LOVELL:

9 Q Doctor, looking at your three analogies that you
10 gave us of ebola, tuberculosis, and the under the
11 influence of street drugs, bath salts, alcohol,
12 whatever; ebola, when a patient presents with that, a
13 medical provider has to assess does this person have
14 signs of symptoms such that we think that they may have
15 ebola, unless a diagnosis has already been made,
16 correct?

17 A Yes, that's correct. Or the patient presents,
18 believing they've been exposed to it.

19 Q And the provider, in that scenario, may, having to
20 exercise their professional judgment, they would have to
21 do that before they ever go warn a patient of the
22 possibility they have this communicable disease that
23 they would potentially spread somewhere else, correct?

24 A Well, I would disagree. These medical conditions
25 are sufficient that warning the patient -- for example,

1 as you know, the news media was filled full of examples
2 of ebola where -- where patients with any exposure, any
3 possible exposure, were warned to stay isolated; and
4 they were either isolated by the community, or they
5 self-imposed isolation.

6 Q Warned to stay isolated. The warning part is what
7 a professional has to -- a doctor, nurse, in our
8 scenario, the McDonalds or Dr. Jansen, would have to
9 decide is this a condition that exists in this patient
10 that I must now warn the patient of something that he's
11 not already aware of, right?

12 A Well, I disagree. Some medical conditions, such as
13 the ones that I mentioned, and including suicide/
14 homicide thoughts, are so obvious, that even a
15 layperson, even a lay person, would recognize. For
16 example, anyone in this courtroom, I believe, would
17 recognize that someone exposed to ebola must be
18 isolated. It's so well-known, it's so well-published,
19 that even a layperson would recognize it.

20 Q You mentioned in your tuberculosis it was a known
21 resistant strain; that's what everybody's worried about
22 the warning preceding?

23 A Yes.

24 Q And the bath salt, obviously, it would be known
25 that they were under the influence of that because of

1 the things you said, it impairs the cognition such that
2 they're so violent as to throw things around. That's,
3 again, a known issue?

4 A It is a known issue, but the -- the risk and
5 symptoms are so well-known in the public that even a
6 layperson would recognize that a person under the
7 influence of bath salts needs to be protected.

8 Q And in this case, -- let me ask you, first, to
9 define something for me. Homicidal, what does that mean
10 as you're using it?

11 A Homicidal, in general, means that you have
12 thoughts, plans, ideas, about harming someone else.

13 Q Thoughts, plans, ideas about harming someone else,
14 that's the focus of homicidal as it relates to what
15 we're doing here in this courtroom and as you're using
16 the term, right?

17 A In general, that's true.

18 Q Suicidal, define that as you're using it in this
19 case.

20 MR. HOYLE: Your Honor, I'm going to object. I
21 don't think -- I think this might have exceeded the
22 bounds of what was permissible at this point in time,
23 asking the witness to define terms that don't
24 necessarily go to whether or not this witness is
25 qualified to offer opinions in the field of emergency

1 medicine.

2 THE COURT: Got you. Go ahead. Okay.

3 MR. LOVELL: Respond to the objection, or ask a
4 question?

5 THE COURT: Keep going.

6 BY MR. LOVELL:

7 Q Define that, suicidal.

8 A Yes. The general term would be suicidal, which is
9 where you have thoughts, plans, ideas to harm yourself.

10 Q And in the case, if the warning that would be
11 required by your testimony to be provided to this
12 patient, Mr. Hunt, would be related to homicidal
13 ideations, or suicidal, because he had both, right? Is
14 that what you're contending?

15 A Yes. The warning would be that -- that the reason
16 we're saying no to leaving the facility, and the reason
17 we're offering treatment is that, number 1, we believe
18 you're a danger to yourself. So, he should be warned
19 that he is a danger to himself. We're concerned that
20 you could be a danger to the staff, and we're concerned
21 -- you would be warned that you can be a danger to the
22 community if you were to leave.

23 Q But doesn't it require the exercise of
24 professional, medically-trained judgment by a nurse,
25 McDonalds plural, or Dr. Jansen, to determine if he

1 does, in fact, have thoughts, plans, and ideas to hurt
2 himself or others?

3 A Well, and in my deposition, I answered that
4 question yes and no. I said, yes, certainly, trained
5 professionals have that knowledge, education, training,
6 experience. But you recall, I also talked about going
7 out on the street and talking to a hundred laypersons
8 about somebody with same or similar symptoms, that is,
9 homicidal or suicidal thoughts. And it was my opinion
10 in my deposition testimony that, that most laypersons
11 would recognize the need to keep the duty, the
12 responsibility, to keep the person safe.

13 Q But you've done no scientific studies that did any
14 interviews of hundreds of people. That's speculation on
15 your part, is it not, Doctor?

16 A I disagree. It's based upon nearly 40 years of
17 treating patients, their families. For example, in this
18 case, Mr. Hunt is in the Naval Emergency Room, in large
19 part, because his grandmother recognized he needed -- he
20 needed assistance, and she's a layperson.

21 Q But not specifically that he had homicidal
22 ideations or suicidal ideations.

23 A But you recognize the need that he needed
24 assistance and to be kept safe.

25 MR. LOVELL: Judge, I think we've covered enough on

1 that.

2 THE COURT: Okay.

3 MR. LOVELL: Thank you.

4 THE COURT: Very well. All right.

5 MR. LOVELL: Thank you, Doctor. I'm sorry.

6 A You're welcome.

7 THE COURT: You go get yourself some lunch. Be
8 mindful, again, though, do not discuss your testimony
9 with anyone. And I'll see you at 2:00 o'clock, please,
10 sir.

11 A Thank you.

12 ARGUMENT AND RULING:

13 THE COURT: All right. Once the Doctor leaves, if
14 you all have any additional argument, I'd be happy to
15 hear from you.

16 MR. HOYLE: Doctor, before you leave, I think Mr.
17 Knowles will probably meet you at the parking lot with
18 your lunch that you requested.

19 A Oh, thank you. Thanks.

20 THE COURT: Oh, that is lovely.

21 MR. HOYLE: I wanted to say that in open court,
22 Judge, so there's no question.

23 THE COURT: Oh, great. What did we get him?

24 MR. HOYLE: Unfortunately -- unfortunately --

25 THE COURT: Stop, stop.

1 MR. HOYLE: Unfortunately, I believe it's Chick-
2 fil-A. We're a little bit tired of it after, I think,
3 about day six.

4 THE COURT: Okay. Yes.

5 MR. LOVELL: Judge, I would just reiterate our
6 argument I started making earlier, that, under Rules, I
7 think 701, 702, 703, in order for this gentleman to
8 testify, there must be some issue in question or fact at
9 issue that his expertise would shed some light upon.
10 He's only here to testify about professional negligence.
11 You can look, from the testimony he just gave us, that
12 all of these failure to warn and the things that he's
13 talking about require the exercise of professional
14 judgment, and this is not pled as a professional
15 judgment case. Otherwise, they would have had to have
16 expert affidavits and such; and thus, his testimony on
17 all these issues is just irrelevant.

18 And so, to allow him to testify would be, (1) an
19 injection into, in front of this jury, issues that have
20 not been pled, and are not relevant. (2) a waste of the
21 Court's time and judicial resources in doing so.

22 And as the doctor just stated that, at times, the
23 duty is analogous to standard of care. And that's the
24 time we're talking about is right now.

25 THE COURT: Okay.

1 MR. LOVELL: So, we think his testimony should be
2 excluded.

3 THE COURT: Got it. All right. Here is my view of
4 this witness's testimony in this case. And I
5 specifically cite two cases, the *Bishop* case and the
6 *Hardee* case. And when you read those two cases
7 together, our courts talk about the fact that a medical
8 malpractice case is a case that can only be brought by
9 the patient, except under extraordinary circumstances.
10 It then follows up with the *Hardee* case. And the *Hardee*
11 case says that, when there is, even in the medical
12 context, a duty to warn, that the duty to warn the
13 patient also flows to the community at large, motorists,
14 in the *Hardee* case.

15 When you look at those cases together, and you look
16 at the fact that South Carolina clearly allows a cause
17 of action under ordinary negligence, and it isn't
18 excluded simply because it arises in the medical
19 context, I believe that this is such a context.

20 This witness intends to, at the end of the day, say
21 that these healthcare professionals owed to this
22 gentleman, Mr. Hunt, a duty to warn him, a duty to warn
23 him. And it happens that this duty to warn does arise
24 within the medical context. Well, if I'm going to talk
25 about -- if I had a police officer, who Mr. Hoyle called

1 or Ms. Castleberry called to testify, and this doctor,
2 these nurses, had a duty to warn this guy when he walked
3 out, no doubt there would be -- there would be an
4 objection, because they do not -- the police officer
5 would not have the requisite knowledge, training, or
6 experience to know what a doctor ought to do and ought
7 not to do, or a nurse ought to do or ought not to do,
8 because it's their lack of knowledge, training,
9 experience.

10 So, when the ordinary negligence arises in the
11 medical context, there's got to be somebody that can
12 testify should that kind of testimony help the jury
13 understand the issues, the evidence, and I think that is
14 what is presented by this witness. He is somebody who
15 can simply say, by virtue of his knowledge, training,
16 and experience, because he's a doc, an emergency room
17 doctor, can just say, yes, this is a lack of due care;
18 this is careless. He doesn't have to say, standard of
19 care, but he can certainly say this is -- it is
20 negligent not to warn this gentleman, who has told these
21 people that he has had thoughts of injuring himself and
22 others. And I believe that no one else -- I don't
23 believe anyone else would be allowed to testify
24 regarding ordinary carelessness, because of the unique
25 environment where the warning should have existed,

1 should have occurred.

2 So, that's what gets us to medical experts.
3 There's nothing magical about them. It doesn't make it
4 a malpractice case because the person who can testify to
5 the carelessness happens to be somebody that's got the
6 knowledge to know whether or not, in this context, it's
7 negligent, it's careless. And it is the duty to warn,
8 not a treatment issue, it a duty to warn, which is
9 certainly what is reflected in the *Hardee* case. And at
10 the end of the day, I believe that, that is the only
11 duty that I am satisfied that our courts have recognized
12 does extend to third parties, and that is the duty to
13 warn. And the motoring public, the public at large, if
14 you will, obviously, are entitled, pedestrians crossing
15 the street are entitled, to the warning, much as the
16 language says in *Hardee*, a duty to warn the patient
17 benefits the community, as well.

18 Okey-dokey. Go get some lunch.

19 MR. LOVELL: We'll just take exception to the rule,
20 your Honor.

21 THE COURT: Oh, I know. I know, I know, I know.

22 MR. HOYLE: And as always, we respect your ruling,
23 your Honor.

24 MR. MACKELCAN: And just for clarification, your
25 Honor, he listed three different failures. And number

1 three was the failure to warn. The other two had to
2 deal with actions taken in their capacity as medical
3 providers. They're talking about removing his clothing
4 and putting him in a secure environment free from
5 hazards.

6 THE COURT: Failure to disrobe was to see if he had
7 any weapons on him, to keep, you know, for -- and you
8 know, failure to secure, as I recall, he certainly
9 interwove in all of them, the failure to warn, with the
10 failure to secure and failure to disrobe, so.

11 MR. MACKELCAN: Okay.

12 THE COURT: All right.

13 MR. LOVELL: Thank you, Judge.

14 THE COURT: You all go get some lunch.

15 MR. HOYLE: And your Honor, I hate to be a pest,
16 but we raised --

17 THE COURT: You are a pest.

18 MR. HOYLE: We raised earlier about the summary
19 judgment issue with respect to Edward Ray, and --

20 THE COURT: Oh, the cross-examination. What do you
21 all want to cross-examine him on?

22 MR. LOVELL: I'm sorry? What? I --

23 THE COURT: What do you want to cross-examine this
24 gentleman about?

25 MR. HOYLE: They just want to blame Mr. Ray.

1 MR. LOVELL: Well, he, in his report, has opinions
2 that Edward Ray was negligent in doing a whole laundry
3 list of things, supervising, not doing this, that, and
4 the other with the guy. I think the fact that Mr. Ray
5 -- or Mr. Ray's employer was dismissed because of
6 sovereign immunity. We pled there are supervening --
7 superceding and intervening --

8 THE COURT: I thought you were going to go
9 supercalafragalistic.

10 MR. LOVELL: We've alleged that other acts, both
11 subsequent to the alleged negligence act of our client's
12 intervening proximate cause, superceding intervening
13 cause, these events that led to this death of this young
14 man. And we think that the testimony from this witness,
15 who authored opinions critical of what those people did,
16 and who said those contributed to the events, especially
17 going outside without supervising this guy and all of
18 that, is clearly irrelevant to this case.

19 THE COURT: Go ahead.

20 MR. HOYLE: My two thoughts that are on the tip of
21 my tongue: (1) you made the comment about a police
22 officer can't come in here and say what a doctor or
23 nurse ought to do. While this man treated patients at
24 the Dorn V.A. Center, he's never been a county Veterans
25 Affairs officer. These are folks who, by statute, are

1 appointed solely by our legislative delegation to assist
2 veterans and work in that capacity. I don't know that a
3 medical doctor, even if he is the president of the
4 American Academy of Emergency Medical whatever, can come
5 in here, under our Watson standard and under our rules
6 of evidence, and offer an opinion about what Edward Ray
7 should do or should not do.

8 And specifically, going back to Hardee, as your
9 Honor has articulated, and I've heard it -- I've heard
10 it, Judge, as you have articulated, Hardee clearly says
11 there is at least a duty to warn. And with respect to
12 permitting testimony on that basis, what would Mr. Ray's
13 duty have been to warn? Certainly, under Hardee,
14 Hardee, again, the dialysis case rises in the medical
15 context. This is a medical doctor. I mean, if Mr.
16 Lovell wants to get him a Veterans Affairs expert and
17 lay that foundation, that might be proper for his
18 superceding intervening cause, but.

19 MR. LOVELL: Your Honor, the doctor, in his
20 affidavit, said that Mr. Ray knew, before Dr. Jansen
21 ever interacted with this patient, from conversations or
22 information that was made available to this expert, that
23 Mr. Hunt had told people he wanted to hurt others, and
24 that Mr. Hunt [sic], with that knowledge, should have
25 done something more to supervise, control, et cetera, et

1 cetera, et cetera. He's got experience. They're
2 bringing him in as an expert. I can put him up and ask
3 him about his opinions. Credibility and weight and all
4 is for the jury to decide. He's equally competent,
5 based on his --

6 THE COURT: Hold that thought just a second.

7 MR. LOVELL: I'm sorry, your Honor.

8 THE COURT: No, I understand where you're coming
9 from. Hold up. I've got to get my cheat sheet.

10 MR. LOVELL: Okay, your Honor.

11 THE COURT: Got to have my cheat sheet, so hold on
12 a minute. Hold on. Now, go with me to the summary
13 judgment order.

14 Now, I want you all to go with me to -- now, let me
15 ask, just ask this question. Tell me your theory, just
16 in general, your theory of liability regarding Mr. Ray.

17 MR. LOVELL: Well, the Plaintiffs alleged in the
18 original complaint, and their expert has testified, that
19 Mr. Ray had a duty to control, supervise, and otherwise
20 warn other people about this gentleman, Mr. Hunt.

21 THE COURT: And they lost that.

22 MR. LOVELL: But that's -- you're asking our
23 position -- that he had a duty to do something to
24 protect others that he assumed, on his own individually,
25 outside of the course and scope of whatever he's doing

1 with the V.A., and that he never did anything about it.

2 THE COURT: Outside the scope of the V.A. Come on.

3 MR. LOVELL: Right. The first thing in the order
4 the Defendants were arguing, hey, he's outside the scope
5 of the V.A.; Plaintiff hasn't proven anything. And so,
6 that whole issue is, he's acting as Mr. Ray, individual,
7 family friend. They allege that he was told by Mr. Hunt
8 at some point around 10:30 in the morning, according to
9 Dr. Baker's, by Mr. Hunt, hey, I got thoughts of hurting
10 myself and others. Again, according to the affidavit of
11 Dr. Baker, when he was interviewed by Nurse Smith, he
12 was told similar information. Never did anything to
13 protect anybody from this dangerous individual with whom
14 he has knowledge.

15 Now, it's for a jury to decide whether that's
16 carelessness or recklessness on his part, under the
17 ordinary care standard, which is what, at this point,
18 we're dealing with. We think that issue goes to
19 intervening proximate cause, because, when Mr. -- we
20 know, from the evidence in the courtroom, the first time
21 that Dr. Jansen had ever made -- that anybody in the
22 E.R. was made aware of thoughts of hurting others is
23 when Dr. Jansen's interviewing this gentleman. So, at
24 that point, Dr. Jansen has knowledge, but Mr. Hunt also
25 has the same knowledge. He's in the room when that

1 interview takes place. He's the one that goes up
2 knowing that, and talks to Nurse McDonald, under that
3 theory, and asks permission may we go outside. He
4 doesn't make any com --

5 And I ask Joe McDonald, anybody ever tell you -- or
6 they asked Joe McDonald, anybody ever tell you this guy
7 had thoughts of hurting himself? Joe says, no. Mr. Ray
8 doesn't say that to Mr. McDonald. And so, I think a
9 jury could determine that Mr. Ray's failure to give this
10 knowledge that he has to Mr. McDonald, before he asks
11 permission to go outside with a guy that he knows is
12 dangerous, or supposedly dangerous, is, in and of
13 itself, a failure to exercise ordinary care for the
14 safety of himself, the staff of the E.R., and the
15 motoring -- the public at large. That's our intervening
16 proximate cause argument, or superceding, whatever the
17 two terms you want to use.

18 So, take Dr. Jansens's interaction and work your
19 way forward, at that point, Mr. Hunt [sic] clearly has
20 the same knowledge that they're being critical -- I
21 mean, Mr. Ray has the same knowledge they're being
22 critical of my people for having, except for, obviously,
23 the McDonalds, who didn't. So, it's the same standard.
24 It's an ordinary negligence standard. Would a
25 reasonably prudent person like Mr. Ray, who has

1 knowledge that this gentleman has said I have thoughts
2 of hurting other people, allow him, escort him, and go
3 with him, outside of the E.R.? That's the question
4 they're saying that, you know, Dr. Jansen had the same -
5 - they're saying he had the same duty at that point
6 because he had the knowledge, that he should have warned
7 the patient. Well, perhaps Mr. Ray should have done the
8 same thing. It's an ordinary care standard. You've
9 said it's not a professional negligence standard, so Mr.
10 Ray is held to the same standard as Dr. Jansen, once he
11 has that knowledge.

12 MR. HOYLE: Your Honor, two brief thoughts. (1) I
13 hold elected leadership roles in both the South Carolina
14 Association for Justice and the American Association for
15 Justice. I'm a trial lawyer, plaintiff's lawyer. And
16 even under my expansive interpretation of *Hardee*, which
17 may be more expansive than other persons in this room, I
18 do not believe *Hardee* creates a duty on a friend to warn
19 them in certain situations that they pose a risk of harm
20 to themselves or others, and make sure that they stay
21 safe, and don't harm others in a foreseeable zone of
22 danger. I don't think that's what *Hardee* says.

23 But more importantly, I want to go back to
24 something that we briefly raised on the very first day,
25 when we all got here to Beaufort after the flooding.

1 And that's, following the entry of this order, actually,
2 within 48 hours of Judge Jeff Young signing his name to
3 this order, looks like on November 6, 2014, the
4 Defendant removed us to federal court. And this is a
5 second time we've went to the courthouse at the four
6 corners of law from here. And at that time, we were
7 removed, because the Defendants alleged that the
8 Plaintiff had fraudulently joined the state Office of
9 Veterans Affairs. The Defendant said, in papers filed
10 in federal court, and they clocked in a notice of
11 removal in this courthouse, they said that we
12 fraudulently joined these people, because we had --

13 THE COURT: That's in these pleadings?

14 MR. HOYLE: Yes. Yes, your Honor.

15 THE COURT: Okay. Go ahead.

16 MR. HOYLE: Said that there was no evidence
17 whatsoever, and that we were just a bunch of crooks,
18 essentially. And you know, we had no plausible basis to
19 get a recovery against the State Office of Veterans
20 Affairs, and we were just a bunch of charlatans, trying
21 to drag this poor company from Texas into the
22 jurisdiction of the State Court of Common Pleas here in
23 Beaufort.

24 And thankfully, Judge Norton, he didn't even hold a
25 hearing on it, but it took him awhile to read all the

1 papers, he said there's no evidence that the Plaintiff
2 and Plaintiff's counsel have engaged in fraud. There's
3 no evidence that anybody's been fraudulently joined, and
4 I'm not going to presume that the Plaintiffs -- or that
5 the Plaintiffs or the Plaintiff's counsel engaged in
6 that fraud, and he sent us right back here.

7 So, I think it's a little disingenuous, and I would
8 even go so far as to state, I think the Defendant is
9 estopped from now coming into this court during this
10 trial and somehow making Edward Ray and the State Office
11 of Veterans Affairs or Beaufort County or whoever the
12 heck it is he worked for, the boogeyman.

13 Either they were disingenuous under Federal Rule
14 11, in their pleadings that they filed in federal court
15 about what the situation was with respect to Judge
16 Young's order; or they're being, I hate to say this,
17 perhaps, less than genuine now, because I don't think
18 they can have it both ways, Judge.

19 And I'll be real honest, at the time, Ms.
20 Castleberry and I argued very vociferously about whether
21 or not we should seek a sanctions order in federal
22 court. We did not. We were content to get our order
23 from Judge Norton, and come right back here, because we
24 knew we'd have twelve people in a box from Beaufort
25 County. But I don't believe, that under our principles

1 of judicial estopped in this state, they're allowed to
2 do what they're trying to do right now.

3 MR. LOVELL: Judge, may I make one comment on that?
4 This judge's order was entered on November the 6th. The
5 affidavit of Dr. Baker, their expert that we're talking
6 about, was authored on September 20-something of this
7 year, a month before this trial, setting forth the
8 issues that he contended were issues that were relevant
9 to this matter, and it's in Defendant's 29, your Honor.

10 So, all of these issues are not issues. This is
11 their expert, writing a report to David Hoyle, saying,
12 here are the things that I think are evidence of
13 negligence in this case. Well, and this is offered by
14 their expert a year -- almost a year after the orders
15 were given. So, are we to now assume that this expert
16 is not coming into court to talk about these very
17 issues? This is the guy that they put up as the expert
18 talking about Mr. Ray.

19 MR. HOYLE: Well, Judge.

20 MR. LOVELL: If they weren't issues in the case,
21 why in the heck are they letting him testify about it?

22 MR. HOYLE: Well, Judge, because I don't write my
23 experts' reports; that's why. I mean, I didn't tell
24 this man what to say. I don't need to. I didn't have
25 to go find somebody who practices on the night shift in

1 North Charleston to be an expert in this case. Instead,
2 I hired Dr. Baker. We gave him the complaint, so he
3 knew who the parties were. We sent him a whole treasure
4 trove of documents, all the depositions, all the
5 documents that had been produced in discovery, so on and
6 so forth.

7 My good friend and colleague, Elizabeth Smith, went
8 up there to Baltimore to attend his deposition, and it
9 wasn't until that deposition that I knew he had some
10 thoughts about Edward Ray. I'll be completely candid
11 with this court and with opposing counsel. I didn't go
12 to that deposition. We were doing, I think, eight
13 depositions that week, and I couldn't be in two places
14 at once. So, Ms. Smith went and covered that
15 deposition. And she called and told me this, and I
16 said, well, huh, that's interesting; I've talked to this
17 man three or four times, and Edward Ray's never come up.

18
19 But regardless, I think that the law of this case
20 is that the State Office of Veterans Affairs is not a
21 party; they're not a proper chair. And I think the
22 Defendant has affirmatively placed, in statements filed
23 in court, and their notice, in removal and subsequent
24 briefs, because they vigorously contested our motion for
25 a remand that there wasn't even a scintilla of evidence;

1 we had no good-faith basis. They kept using that phrase
2 a bunch, no good-faith basis, and, you know, that we
3 should suffer the consequences, and be removed to
4 federal court. So, I don't know why we are hearing this
5 now.

6 THE COURT: I'm waiting from the order from Judge
7 Norton.

8 MR. HOYLE: Can you go print that, Ms. Saber. I'll
9 ask my paralegal to go print it. We don't have it in
10 hard copy box.

11 THE COURT: Okay.

12 MR. HOYLE: But it would have been transmitted back
13 to Ms. Roseneau in April? In late April.

14 THE COURT: Okay. Oh, that's very helpful.

15 MR. HOYLE: It could have been March, Ms.
16 Castleberry tells me. It was either March or April.

17 THE COURT: Okay.

18 MR. HOYLE: If I may be excused, to help my
19 paralegal find the document, that might help expedite
20 things.

21 THE COURT: And I'm worried about you all getting
22 lunch, too. Here's what we're going to do. I got it.
23 I got your positions. You all go get some lunch, and
24 you don't have very long. And then, I'll let you know,
25 too, what I'm going to do. Okay?

1 MR. HOYLE: Thank you, your Honor.

2 OFF THE RECORD 1:29 P.M.

3 BACK ON THE RECORD 2:25 P.M.

4 BY THE COURT:

5 THE COURT: Yes.

6 BAILIFF: Are you ready, your Honor.

7 THE COURT: I've been ready.

8 BAILIFF: Jury is entering the courtroom, your
9 Honor.

10 JURORS ENTER COURTROOM 2:26 P.M.

11 THE COURT: Ladies and gentlemen, just as we were
12 parting, there was a request to qualify this witness as
13 an expert, and he has been qualified as an expert in the
14 field of emergency room medicine. And I want to tell
15 you what that means. And I'm standing because -- I'm
16 just standing because, same reason as you all wanted to
17 stand this afternoon.

18 Ladies and gentlemen, under our rules of evidence,
19 ordinarily, witnesses are not allowed to testify
20 regarding their opinions, but there's an exception, and
21 that's when, by virtue of someone's knowledge or
22 education, profession, and experience, they become an
23 expert in some field, perhaps, or science, typically.
24 And those individuals are allowed to testify regarding
25 their opinions, and the reasons for those opinions, and

1 they can testify regarding their opinions within that
2 area of expertise. And this witness has now been
3 qualified as an expert.

4 I will tell you, in general, and I will certainly
5 give you instruction when I give you the concluding
6 instruction, that expert testimony is given for the
7 purposes of helping you understand the evidence, and not
8 for the purpose of controlling your judgment. And I
9 will give you more instruction, but that's the short
10 version of it. I'll give you the longer version when I
11 give you the concluding instruction on the law.

12 So, I'm now sitting down. Turning it over to you,
13 Mr. Hoyle.

14 MR. HOYLE: Thank you, your Honor. May it please
15 the Court?

16 THE COURT: Yes.

17 DR. TERRENCE L. BAKER

18 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

19 Q Doctor, I think I have the pleasure of saying, good
20 afternoon, now.

21 A Good afternoon, sir.

22 Q All right. Just to refresh people's recollection,
23 you've traveled all the way here today from Baltimore,
24 Maryland to offer testimony in this case. You're a
25 board-certified, emergency room doctor, correct?

1 A Yes.

2 Q Okay. Before we adjourned for the lunch hour, we
3 were going through a little bit of your qualifications
4 and your experience. And I just was looking over your
5 curriculum vitae, and I just want to make sure that this
6 Court and jury has the benefit of all of your
7 qualifications.

8 I see something on here that says you are a
9 certified medical director. What is that?

10 A Correct. Being a certified medical director means
11 that I have taken a course of -- an additional course of
12 study, particularly being a director for a long-term
13 care facility, nursing home, residential care, assisted-
14 living-type facilities, and have successfully completed
15 that course work.

16 Q Okay. And you told us earlier about how you will
17 actually be in a 40-something-bed emergency room
18 tomorrow, up there in Baltimore. But I've heard earlier
19 that you've got a number of board certifications,
20 including, I think you said, family practice.

21 A Yes.

22 Q Do you also maintain a private family practice
23 outside of the emergency room setting?

24 A I do.

25 Q Tell us about that, Doctor.

1 A Yes. I have a general family medicine practice.
2 We see several thousand patients a year. It started as
3 sort of an overflow from the emergency room. There were
4 homeless patients and patients without doctors in the
5 emergency room, and that didn't have anywhere to go. We
6 train a lot of physicians in Baltimore, but there
7 continues to be a shortage of primary care, even in
8 Baltimore. And so, it started as sort of a bridge
9 clinic or an overflow clinic. And out of that, it's
10 grown into several thousand patients that myself and my
11 nurse practitioner manage. We have several special-
12 interest patients sent us. For example, we have
13 specialty in wound care and wound healing, difficult-to-
14 heal wounds. We also have special knowledge and
15 training in -- in weight loss. In fact, back in 1998, I
16 started doing weight loss here in South Carolina in
17 Columbia, South Carolina with Physicians' Weight Loss.
18 It created a lot of interest in me, and I continue to
19 work with patients to lose weight today.

20 And we also do some pain management, that is, for
21 our patients who are experiencing pain from various
22 muscle and bone diseases, necks, backs, shoulders, hips,
23 we also use pain management. But just not with
24 medications or with physical or occupational therapy; we
25 also use medical therapeutic lasers to help people cure

1 medical conditions that they've suffered with for years,
2 but that didn't have good solutions.

3 Q Okay. Sounds like you do a lot in your private
4 practice. Is that fair?

5 A Yes. We are a busy private practice, yes.

6 Q All right. And one of things I noticed on your
7 C.V., it looks like you've done some work at the M&T
8 Stadium. What is that, Doctor?

9 A Yes. I've worked as a stadium physician for the
10 Baltimore Ravens, I guess, for about eight years. Also,
11 in Baltimore, we host a lot of big sporting kind of
12 events, Army versus Navy, those type of games, that I
13 also help to staff.

14 Q I asked you earlier today about peer-reviewed
15 articles. And I think you told us you haven't
16 necessarily done any peer-reviewed articles. But have
17 you engaged in professional peer review of other
18 physicians?

19 A Yes.

20 Q Tell us about that, Doctor.

21 A Well, I do that in several ways. (1) at the Good
22 Samaritan Hospital, I'm actually on the Credentials
23 Committee. I was chairman of that committee for many
24 years. And what the Credentials Committee does is, it
25 reviews the knowledge, training, education, of

1 physicians who want to be on staff at Good Samaritan
2 Hospital. So, I'm on the Credentials Committee, and
3 that involves peer review of other doctors, all
4 specialties, to make sure they have the knowledge,
5 education, training, experience to practice at our
6 hospital.

7 Number two is, within our hospital, I also do peer
8 review with the Risk Management Department, where I
9 review possible problems in our own facility with the
10 care we provided, and come up with solutions so that,
11 that doesn't happen again. Or, if nothing happened to
12 -- to verify that, in fact, nothing happened.

13 Next is, I work with State Board of
14 Medical Examiners, too. I did it here in South Carolina
15 for many years. Currently do it in Maryland, which is
16 to review medical records, and to answer questions that
17 the State Board may have.

18 And then, finally, with the American Association of
19 Physician Specialists, as the president of the Academy
20 of the Emergency Physicians, I regularly sit down and
21 review the files of young physicians who want to become
22 board certified in emergency medicine, to make sure that
23 their paperwork and their credentials are in order.

24 Q And on a personal, on an honorary-type basis, I
25 understand you're also an Eagle Scout.

1 A I am.

2 Q And in some of the conversations you and I have had
3 the past couple of days, I understand you recently had
4 the opportunity to meet the Pope.

5 A Yes.

6 Q Tell us about that.

7 A Yes. I had an opportunity to travel to New York to
8 the Madison Square Garden appearance, and to be part of
9 that celebration.

10 Q All right, Doctor. Can you please tell our jury
11 here in Beaufort what you have reviewed in connection
12 with the events that transpired on February the 24th,
13 2012.

14 A Yes. The documents that I've reviewed include all
15 the medical records concerning that day, February the
16 24th, 2014 [sic], in terms of Beaufort medical records.
17 Also, records from that day, February the 24th, 2012,
18 and past medical records of Mr. Hunt concerning multiple
19 visits that he had made throughout the healthcare system
20 prior to that day.

21 Also, looked at something called interrogatories,
22 which is the attorneys ask each other questions prior to
23 the trial. Those are called interrogatories. And so,
24 I've looked at answers from both parties, Defense and
25 Plaintiff's answers to questions they were asked before

1 the trial, called interrogatories.

2 I've also looked at a number of depositions. Dr.
3 Jansen, Craig Martin, Janice McDonald, Koren Pope,
4 Saundra Smith, Deborah Meaut.

5 Q Meaut.

6 A M/e/a/u/t. Sorry. Erik Oberg, who, I believe, is
7 an expert witness, also. Also, Michael Cole. Mr. Mann,
8 who is the psychiatric technician. Also, a motion for
9 summary judgment concerning the Office of Veteran
10 Affairs.

11 Q But did I hear correctly you actually reviewed
12 prior medical records of Calvin Hunt?

13 A I did.

14 Q Okay. And you said these were prior medical
15 records from some sort of system. What system were they
16 from, Doctor?

17 A They were from the -- the military, or the -- they
18 were from the military system of records. I can't think
19 of the -- the official name of that.

20 Q Okay. But something that had been printed off in
21 hard copy? Or you looked at them electronically?

22 A Both.

23 Q Okay. Now, based upon your review of all that
24 information you just told us about, have you formed
25 certain opinions related to Calvin Hunt's elopement from

1 the Naval Hospital Beaufort, which resulted in Justin
2 Nicholas Miller's unfortunate death?

3 A Yes.

4 Q We're going to go a little slowly. Okay? And
5 since you used to live in South Carolina, I know you
6 won't have any trouble with that. Let's walk through
7 those opinions. Okay?

8 A Yes.

9 Q Okay. Can you tell the jury what your first
10 opinion is about the events of that day.

11 A Yes. First, there was a careless disregard for Mr.
12 Hunt when he arrived in the emergency room to protect
13 Mr. Hunt from himself. He should have been placed in a
14 quiet room that was readily observable, and anything in
15 that room that could be used as a weapon to hurt himself
16 should have been removed. So, there was a careless
17 disregard for that responsibility or duty to do that.

18 Secondly, is that there was a second careless
19 disregard to disrobe Mr. Hunt, because, being a Marine,
20 he certainly had the possibility of knives and guns and
21 all sorts of various objects and items that can be used
22 to harm yourself. And when you have a depressed, sad
23 mind that's having thoughts about hurting yourself or
24 hurting others, literally, anything can become a weapon
25 against yourself. So, he was required to be disrobed

1 and put in a gown, a hospital gown, and his personal
2 effects put in bags, labeled properly, and removed from
3 the room.

4 Third, there was a careless regard for allowing Mr.
5 Hunt to wander, Calvin to wander, in the facility. He
6 wandered to the bathroom alone and unsupervised, still
7 fully clothed, unsupervised. Again, a careless
8 disregard for Mr. Hunt's safety, because in the
9 bathroom, many things in a bathroom can become a weapon
10 against yourself or against others. Okay? Everything
11 from the mirror can be broken, to the toilet can be
12 broken. You get the picture. I've even had patients
13 try to drown themselves in the toilet. So, he needed to
14 be supervised and gowned at all times. That supervision
15 could include a sitter, someone specifically assigned to
16 -- from the medical staff of the facility at the Naval
17 Hospital to supervise him at all times.

18 Finally, there was a careless disregard for
19 allowing him to go outside, because, in my opinion, Mr.
20 Hunt was testing the system. That is, testing the
21 healthcare providers, the physician, and Joe McDonald,
22 the nurse. Was testing them to see what they would
23 allow him to do. They allowed him to go to the bathroom
24 unsupervised, fully dressed. Now, he's asking to go out
25 and get a breath of fresh air. He's basically testing

1 the system, and -- and this is something that is well
2 known to physicians like myself; that patients like Mr.
3 Hunt, who are not thinking clearly, who are sad, who are
4 depressed, or having these kinds of thoughts, and when
5 you allow him to go outside, there's something that I
6 have labeled rabbit syndrome, which is that a
7 significant number of patients in this situation,
8 particularly when they've just been seen by someone from
9 the psychiatric department, will run. And that's
10 exactly what happened here. It was careless. It was
11 reckless to allow Mr. Hunt to go outside, essentially,
12 unsupervised, where he ran away, stripped naked, got
13 into the fire truck, and -- and created a death.

14 Q Well, with respect to that last opinion -- and let
15 me back up. All of your opinions that you're offering
16 here today, those are as to the actions and inactions of
17 CasePro, Incorporated, employees.

18 A Correct. Because this is not a malpractice case,
19 as I understand it.

20 Q Okay. And again, Justin Miller was never a patient
21 at the Naval Hospital. That's your understanding?

22 A Yes.

23 Q He was just somebody trying to cross the street
24 while he was out for a walk.

25 A That is correct. That's my understanding.

1 Q Okay. So, with respect to that last opinion you
2 told us about, about it being a careless disregard for
3 safety to allow Calvin Hunt to leave, --

4 A Yes.

5 Q -- what should Joe McDonald have said when the
6 question, can we go outside for a breath of fresh air,
7 was asked?

8 A What should have happened is that Nurse McDonald,
9 Nurse Joe McDonald, should have said, in a calm -- a
10 calm, quiet voice, no, you may not go outside; and then,
11 an explanation, a warning. The reason that I will not
12 allow you to go outside is because you're not feeling
13 well; you're having some thoughts about hurting yourself
14 or hurting someone else; and we're going to get you some
15 help; if you need something to eat or drink, we can
16 provide it; but we're going to get you some help. And
17 there should have been a warning that you need to stay
18 in the room we've prepared for you; we're having a
19 doctor to come and see you; and we will get you help.
20 And Mr. Hunt should have been warned that going outside
21 was -- would be dangerous to himself, the staff, and the
22 community.

23 Q That warning would be specific to the public at
24 large.

25 A Yes.

1 Q Folks walking down the street near the Naval
2 Hospital.

3 A Correct.

4 Q Okay. And the warning that you think, and are
5 testifying here today as an expert in the field of
6 emergency medicine, needed to be given to Calvin Hunt,
7 was that solely for Mr. Hunt's benefit, or solely -- or
8 also for the benefit of others?

9 A It was for the benefit of -- of all parties.
10 First, Mr. Hunt, because, if Mr. Hunt is kept safe by
11 securing him in a quiet room and providing his needs
12 while he waits to be treated, it protects the staff from
13 Mr. Hunt having thoughts and concerns about harming the
14 staff. And it protects the community as a whole, the
15 Beaufort community as a whole, by preventing Mr. Hunt
16 from leaving his quiet, safe environment in the
17 emergency room.

18 Q Do you believe that the failure on the part of
19 Nurse Joe McDonald to provide that warning, as you've
20 articulated in here today, violated a duty owed to Mr.
21 Hunt?

22 A Yes. It was careless, and it violated the duty,
23 the responsibility of Nurse Joe McDonald to keep Mr.
24 Hunt safe.

25 Q And this duty, would it also be an identical duty

1 that would be owed to persons in the general field of
2 danger, those persons walking down Ribaut Road in close
3 proximity to the Naval Hospital.

4 A Yes. Because, if Mr. Hunt is safe, then, the staff
5 is safe and the community is safe. And so, there was a
6 duty to keep Mr. Hunt safe at all times, against himself
7 and against the staff, and against the community at
8 large.

9 Q Now, you've referred to this as a duty, and a
10 failure to follow that duty was careless. I believe I
11 even heard you use the word *reckless*. I know that the
12 next lawyer standing up here at this podium asking
13 questions will ask you about something called the
14 standard of care.

15 A Yes.

16 Q What you're telling us, the carelessness and the
17 recklessness and the failure to provide Calvin Hunt a
18 warning that he shouldn't leave, did that also violate a
19 standard of care?

20 A Yes, it did.

21 Q And all of these opinions you told us about the
22 failure to provide a warning on the part of Nurse Joe
23 McDonald, are all of those opinions rendered to a
24 reasonable degree of certainty, based upon your field of
25 expertise?

1 A Yes, they are.

2 Q Let's talk about somebody else who was there that
3 day. Dr. Jansen. Do you know Dr. Jansen?

4 A Yes.

5 Q You've met him?

6 A Yes.

7 Q Where did you meet him, Doctor?

8 A Previous trial.

9 Q All right, Dr. Jansen. Do you have any opinions,
10 with respect to the failure of the staff at the
11 emergency room, the folks who were in the E.R. working
12 for CasePro, do you have an opinion about Dr. Jansen in
13 connection with the warning and instructions that
14 weren't given to Calvin Hunt?

15 A Yes, I do.

16 Q Tell the Court and jury about that, sir.

17 A First, there was a failure of Dr. Jansen when he
18 walked into the room to examine Calvin that day. There
19 was a failed duty to, number one, make sure that Calvin
20 Hunt was safe. And to do that, there needed to be
21 safety in the room, everything removed that wasn't
22 necessary for the care, which, there wasn't anything,
23 really, other than stretcher and chair that was needed
24 in the room while Mr. Hunt waited.

25 Number two is, Mr. Hunt needed to be disrobed,

1 because, as a physician, neither I nor Dr. Jansen can
2 examine a patient who's fully clothed. You can't
3 examine a patient who's dressed. And so, there was a
4 duty, a responsibility, for Dr. Jansen to instruct Joe
5 McDonald to get Mr. Hunt into a gown, so that he could
6 be examined.

7 There was a failure of Dr. Jansen to do the
8 necessary testing, to order the necessary testing, that
9 was required in order to make sure that drugs or alcohol
10 or something else, something medical, wasn't causing the
11 symptoms of wanting to harm himself or harm the
12 community.

13 There was a failure of duty, carelessness of duty,
14 to inform the staff, Joe McDonald and Janice McDonald,
15 the staff, of the seriousness of the symptoms. That is,
16 once Dr. Jansen went in and examined Mr. Hunt, he came
17 out and he wrote a note, and that, that note
18 demonstrated the seriousness of the signs and symptoms
19 that Mr. Hunt was demonstrating, that is, red flags.
20 They're like red flags, warning flags, flying after his
21 examination as documented in the medical record. And
22 Dr. Jansen should have warned the staff, Joe McDonald,
23 Janice McDonald, and -- and Mr. Mann, when he came down,
24 as to those red flags and the concerns that he had, and
25 the knowledge that he had that Mr. Hunt would be an

1 involuntary admission, that is, that Mr. Hunt would not
2 be allowed to leave the emergency room.

3 Physicians in the State of South Carolina, we have,
4 by law, by license, we have the right to certify a
5 patient like Mr. Hunt as incapable, as unable to make
6 decisions for themselves. And once Dr. Jansen came out
7 of the room, it was clear, because of the red flags,
8 because of the warning flags and signs and symptoms,
9 that Mr. Hunt would be an involuntary admission to a
10 psychiatric facility for mandatory inpatient evaluation
11 and treatment. And there was a requirement of Dr.
12 Jansen to inform his staff of what he was thinking. And
13 also, there was a duty, a responsibility, to warn Mr.
14 Hunt what he was thinking, and what he thought that Mr.
15 Hunt needed.

16 And patients, in my nearly 40 years' experience,
17 respond well to being kept in the loop, that is, being
18 warned as to what I'm thinking, why I'm thinking it, and
19 what it is I'm going to do for them to make them well.

20 Q And you told us a lot of information there about
21 Dr. Jansen, and we'll try and walk through most of that.
22 But let me make sure I understand this. The warning
23 that Calvin Hunt should have been given by Dr. Jansen
24 was that a warning to inform Mr. Hunt he was going to be
25 admitted to some sort of psyche ward, and he needed to

1 stay put?

2 A That would be one purpose of the warning. An
3 additional purpose of the warning would be to define
4 the treatment was going to be provided to Mr. Hunt, so
5 that he was in the loop, and that he knew what was going
6 on, and that he understood why the answer of going to
7 the bathroom alone was, no, you may go to the bathroom
8 with, you know, a sitter, or with -- we call them
9 sitters, but they're essentially someone who simply
10 moves from place to place with the patient to assist in
11 keeping the patient and staff safe, and to prevent
12 elopement. So, there needs to be a supervisor or sitter
13 when he went to the bathroom.

14 But also, it would be to let the staff know when he
15 was teaching Mr. Hunt, he would also be warning the
16 staff of Mr. Mann, Joe McDonald, what was happening and
17 what the plan was to be. And the purpose of that would
18 be to elicit the cooperation of Mr. Hunt. That is, to
19 explain to him why the answer is no, and the care and
20 treatment that we're going to provide to him to make him
21 better.

22 Q I've heard a phrase several times in the past
23 couple of days, something along the lines of patient
24 rights. Have you heard that term before?

25 A Correct. Yes, I have.

1 Q Okay. Is one of the rights of a patient in an
2 emergency room to know what treatment is going to be
3 provided to him or her?

4 A Yes, it is.

5 Q Okay. And following up on that train of thought,
6 Doctor, is it also a patient right for the patient to be
7 informed or warned by the healthcare professional what
8 actions need to be taken in order to keep the patient
9 safe?

10 A Yes. And the reason for those actions, which
11 allows the patients to have a peace of mind, even
12 patients confused, patients who are homicidal, suicidal,
13 want to kill themselves, hurt others, even those
14 patients understand the instruction. They understand a
15 plan that is put to them.

16 Q And I believe you told us that the first duty that
17 Dr. Jansen owed to Calvin Hunt was the duty to keep him
18 safe.

19 A Yes.

20 Q And there's been some testimony by Dr. Jansen here
21 in this very courtroom that, that is the number one duty
22 owed by an E.R. physician to a patient. Do you concur
23 with that?

24 A It is. All patients, but particularly patients
25 that can't look after themselves, that is, patients who

1 have a change in their thinking; they're not thinking
2 accurately; they're thinking of harming themselves;
3 they're thinking of hurting themselves; they can't make
4 good decisions for themselves. So, the team, the
5 healthcare team, the provider, the physician, needs to
6 assist in keeping that patient safe by making good
7 decisions for them.

8 Q And that duty to keep the patient safe, in this
9 case, Calvin Hunt, if Calvin Hunt had been kept safe
10 within the emergency room, would persons outside the
11 emergency room also have been kept safe?

12 A Yes. Staff and persons outside the E.R. would be
13 kept safe.

14 Q So, just like what we were talking about with Nurse
15 Joe McDonald, are all the duties and breaches thereof
16 that you've been telling us about here today by Dr.
17 Jansen, are those duties that he breached that flow not
18 only to Calvin Hunt, but also to persons within the
19 foreseeable zone of danger?

20 A Yes.

21 Q And do you believe that those duties existed on
22 February the 24th, 2012, with respect to Dr. Jansen and
23 this patient and the public at large?

24 A Yes.

25 Q Those opinions you've articulated, are all of those

1 to a reasonable degree of certainty within your field of
2 expertise?

3 A Yes, they are.

4 Q Now, you talked a little bit about some red flags,
5 and I've been making this little board as we've gone
6 along today. Thankfully, we only had three people that
7 were working for CasePro in the emergency room that day.
8 Otherwise, I would have had to have gotten a bigger
9 board. But can you see it, Doctor? I'm trying to
10 figure out the best way to do this.

11 A If the Judge will allow me to scoot back, I can see
12 it and the jury.

13 Q Okay.

14 THE COURT: Certainly. Certainly.

15 A Okay. Okay.

16 Q Let's talk about the red flags that you see, based
17 on the information that these persons who were working
18 for CasePro that day knew about Calvin Hunt. We'll
19 start with the first person in the emergency room that
20 saw Mr. Hunt, the triage nurse, Nurse Janice. What red
21 flags are there with respect to her?

22 A Well, first off is, the past medical history is
23 known to Janice McDonald at triage. Triage is the front
24 desk when you first come into the emergency room. The
25 first person you often meet is the triage nurse. Triage

1 nurse's responsibility is to take information about why
2 you're there and past medical information that's related
3 to why you're there.

4 And so, we know that Janice McDonald, that day,
5 documents for us that there is a significant -- that Mr.
6 Hunt, Calvin Hunt, has a significant past medical
7 history of depression; he has a past medical history of
8 post traumatic stress syndrome; he has a history of
9 anxiety; he has a history of suicidal thoughts and
10 attempts in the past. He is being court marshaled for
11 an altercation with superiors, and even, perhaps, an
12 assault of an officer, a superior officer.

13 And so, the history of drug use, history of
14 excessive alcohol use, all of which, trouble sleeping,
15 history of psychosis, that is, not thinking correctly,
16 that is having periods of times where his thoughts are
17 disturbed, and he's not thinking accurately, all of that
18 is past medical history for which Mr. Hunt has been
19 previously treated, and are part of those red flags that
20 I mentioned.

21 Q All right. So, we've got some red flags from the
22 past. And Doctor, do you know, from your review of
23 everything you told us about a few minutes ago, the
24 depositions and records and everything, do you know
25 whether or not the triage nurse, Nurse Janice McDonald,

1 reviewed Calvin Hunt's past medical records?

2 A It's my understanding that she had access to it,
3 and -- and reviewed it, at least in part.

4 Q In a cursory way.

5 A Yes.

6 Q Okay. Any other red flags with respect to Nurse
7 Janice you want to tell us about, or should we move on
8 to her husband?

9 A Well, with Nurse Janice, the only other thing
10 that's not on your board, but very important, is, if you
11 actually look at her note from that day, she found signs
12 and symptoms that were additional red flags. Past
13 medical history is wonderful, but that's the past.
14 Current, what are we looking at today, is very
15 important.

16 Q All right, Doctor. I hate to interrupt you, but I
17 want to get you back to Baltimore tonight.

18 A Thank you.

19 Q So, we're looking at a triage record filled out by
20 Nurse Janice.

21 A Yes.

22 Q And it's two pages. Do you want to talk about the
23 first page, the second page, or both pages?

24 A On the second page, at the -- the -- we can talk
25 about both pages, but what I'm talking about to the jury

1 right now is that left, lower corner. Yes, correct.

2 And what we have there, is we have what we call review
3 of systems, and there's certain systems that are checked
4 off. And the -- the patient is suicidal, the patient is
5 depressed. The patient is -- may I see this for just a
6 second?

7 Q Absolutely.

8 A The patient has flat affect and a depressed mood.

9 Q And those are red flags, Doctor?

10 A Yes.

11 Q All right, sir. And were there any other red flags
12 on the other page of the triage record that Nurse Janice
13 McDonald filled out?

14 A The other red flag is that the patient's heart rate
15 was elevated, and the patient had an elevation in
16 temperature. The heart rate above 100 is significant,
17 because that would go along with what -- with what was
18 seen later, which is some agitation, some
19 aggressiveness, some instability in behavior.

20 Q So, when we talked about what you knew from a
21 review of the past, the vital signs from, oh, looks like
22 about 17 minutes past the hour of 2:00, on February 24,
23 2012, those would be current, present red flags.

24 A Yes. Also, the medications on the page you're
25 looking at, the medications also correlate with the past

1 diagnosis. That is, these are medications used in
2 patients who are depressed, moody, anxious. These are
3 medications that go along with those diagnosis.

4 Q Okay. Depressed and moody.

5 A And he has not been on those medications recently.
6 He has run out, and he has not been on them.

7 Q Is it concerning that there's no quantification by
8 Nurse Janice McDonald as to how long it's been since Mr.
9 Hunt, or Calvin, was on his depressed and moody
10 medication?

11 A Yes. So, there's no indication of when he was on
12 his medication last. Also, there's no quantification of
13 many of the feelings that Mr. Hunt's having. When did
14 he start having these feelings, how long had that been
15 going on, when did they start, those type of basic facts
16 that just take a few seconds to elicit, to get from the
17 patient. But that type of information is not reported,
18 and we don't know.

19 Q And why would it be important to have those, what
20 you just called basic facts?

21 A The reason the basic facts are important is, it
22 gives you some idea of the longevity of the problem.
23 Did Mr. Hunt start having thoughts of hurting somebody
24 today, or has he been having these feelings for a week
25 or two? There's a big difference.

1 Q All right, sir. Let's talk about Nurse Joe
2 McDonald. Can you see that from where you are?

3 A Yes, I can. Yes, I can.

4 Q Okay. So, Nurse Joe McDonald knew a few things
5 about Calvin Hunt that day. What, if any of those,
6 would you tell us would be red flags for him as a
7 treatment nurse?

8 A Red flags, again, would be angry, Post Traumatic
9 Stress Disorder, alcohol and drug use, and dependency in
10 the past, perhaps even more recently.

11 Q Okay. And what's the significance of PTSD for
12 someone presenting with these kind of symptoms in an
13 emergency room?

14 A Patients with Post Traumatic Stress Disorder are
15 unpredictable in many ways, particularly when they're
16 not being managed. Their behavior is -- can be
17 unpredictable, and it can be sudden. I've seen patients
18 when I was at Dorn Veterans Administration who would go
19 from sitting calmly in a chair reading a newspaper, to
20 suddenly just agitated and out of control. And so,
21 literally, patients with Post Traumatic Stress Syndrome
22 can be unpredictable, but particularly when they're not
23 under active treatment.

24 Q In a period of time of less than two hours, could
25 those kind of changes happen in someone who's been

1 diagnosed with PTSD?

2 A Yes. And in fact, I think we do see them happen
3 over the course of the day. What we know about the
4 course of the day, I think we do see it happen from the
5 10:00 a.m. meeting with Mr. Ray to determine if there
6 was any benefit or eligibility for Veterans benefits,
7 which there's not, because he's still active-duty, as
8 you know, to the emergency room, where he's upstairs
9 with Nurse Smith. And at first, Ms. Nurse Smith thinks
10 he's calm. But then, he starts making noises, and he
11 starts rocking, and he starts acting in a way that is
12 very disturbing, concerning to Nurse Smith. She asks
13 additional screening questions, and finds out about
14 wanting to hurt himself or hurt somebody else.

15 Then, they come down to the emergency room, and at
16 first, we're sad, we're depressed, we're calm. But by
17 the time Mr. Mann sees him, Mr. Mann says he's
18 aggressive, agitated. There's another A word that Mr.
19 Mann used, aggressive, agitated, unsettled. He's
20 unsettled. He's not thinking clearly. You're seeing a
21 progression here. You're seeing a progression of
22 behavior, and then, you suddenly see this -- this
23 elopement, where Mr. Hunt goes out for, quote, a *breath*
24 *of fresh air*, runs away, strips naked, goes to the front
25 gate, steals a fire truck, and runs over a patient

1 [sic].

2 Q Now, you were telling us about a progression of
3 that day. What's the significance of the word used by
4 Mr. McDonald that Calvin Hunt was angry?

5 A Angry is -- is a very large red flag in a patient
6 who comes in, who is having thoughts of harming himself
7 or harming someone else. Because angry patients
8 frequently are preparing -- will -- will take action in
9 some way. They're either going to act out against
10 themselves; they're going to act out against the staff;
11 and they're going to -- or they're going to act out
12 against the community, if they elope. And so, when you
13 have an angry person who is having those types of
14 feelings, it is even more important, the duty to secure
15 the patient, make Mr. Hunt safe, safe room, disrobed,
16 clothes off, gown on, shoes and socks off, okay, make
17 him safe against himself, safe for the staff, and safe
18 for the community, becomes even more important, because
19 angry patients who are having these type of thoughts,
20 this type of thinking that's not clear, will often act
21 out quickly and suddenly and irrationally, with little
22 or no warning. And yes, you've prepared. And that's
23 where the duty becomes so important to prepare. Prepare
24 the room, prepare Mr. Hunt by having removed things he
25 can use to harm himself or your staff. And -- and the

1 answer is, no, you may not go out. And the warning, the
2 reason being is, we're concerned about you, Mr. Hunt,
3 and we need to keep you safe; we need to keep the staff
4 safe; we need to keep the community safe.

5 Q Now, first off, let me ask you this. I can wheel
6 it over there.

7 A I got it.

8 Q There was some concern yesterday -- is this a
9 picture of Dr. Jansen?

10 A Yes.

11 Q Okay. That's what he looks like. Dr. Jansen.
12 Were there any red flags in information that he had
13 about Calvin Hunt?

14 A Yes.

15 Q Okay. What red flags do you see on our
16 demonstrative?

17 A Well, first off is that Dr. Jansen had all the
18 information that preceded his visit. That is, he knew
19 what had happened upstairs with Nurse Smith. He knew,
20 or should have known, what happened in triage. He knew,
21 or should have known, what Joe McDonald, the treating
22 nurse, thought. What Joe McDonald's observations were.
23 So, when Dr. Jansen goes into the examination room, he
24 already has a lot of information. And then, he collects
25 his own information, which -- which agrees with, or

1 actually amplifies the information he already has from
2 -- from his staff.

3 Q Okay. So, with respect to the emergency room
4 record that Dr. Jansen filled out, are there any red
5 flags that you see on this record, Doctor?

6 A Yes.

7 Q Okay. I'll stand over here to the side. Tell us
8 what red flags you see on the record that Dr. Jansen
9 filled out himself.

10 A Well, first off, we have that there's severe --
11 that the symptoms which Mr. Hunt is presenting with are
12 severe.

13 Q And why is that a red flag here, Doctor?

14 A The choices are mild, moderate, and severe. Severe
15 being the most severe of symptoms. Severe also is a --
16 is a modifier that tells us that this is a patient who
17 is getting ready to explode. This is a patient who is
18 going to do something. He's tachycardic. He's
19 depressed. He's angry. He's sad. He's under a lot of
20 pressure. He's being discharged dishonorably from the
21 Marines. He's under a lot of pressure. And that also
22 is -- is being mentioned here next, he is being
23 dishonorably discharged from the Marines, losing his
24 rank of corporal. He's depressed, he's angry, under
25 current complaints. Again, all of this is severe. He's

1 having suicidal thoughts, and he's having thoughts of
2 hurting others.

3 If we go over to past medical history, there's a
4 history of drug and alcohol abuse, depression, and prior
5 suicide gestures or attempts. He's tried to hurt
6 himself before. And then, also ran out of his
7 medications. And we talked about the fact that Mr. Hunt
8 has been out of his medications for an unknown period of
9 time, which means that he is -- he has gone untreated
10 for some period of time.

11 Q But again, nobody working for CasePro that day knew
12 how long it had been?

13 A Correct.

14 Q Dr. Baker, in your opinion, based upon your
15 training, education, and experience, was there
16 sufficient information, with all three of these persons,
17 Nurse Janice McDonald, Nurse Joe McDonald, and Chris
18 Jansen, for all three of them to do what they should
19 have done that day?

20 A Yes. Individually and collectively, yes.

21 Q And talk to us a little bit about this collective
22 responsibility for these three persons.

23 A Yes. The collective responsibility, in the
24 emergency room, we are a team. The triage nurse, the
25 treating nurse, the treating physician, we are a team of

1 professionals who have the responsibility to evaluate
2 and treat patients who come in to see us. In this
3 particular case, you have each individual knew enough,
4 starting with Janice McDonald in triage; Joe McDonald,
5 when the patient came back to Room 4; and Dr. Jansen, by
6 the time he goes in to see the patient; there is more
7 than enough information individually for each of them to
8 understand their duty and their responsibility to keep
9 the patient safe. Safe room, take off the clothing,
10 gown him up, take off the shoes and socks. Give him a
11 pair of booties, if you have to, to keep the feet warm,
12 but keep the patient safe, and an escort. That is, to
13 not go anywhere without being escorted.

14 They each individually knew that, but collectively,
15 collectively, this team knew, or should have known, that
16 this was a patient who was at high risk, the highest of
17 risk, for doing something. And I use the word exploded.
18 Usually, I'm not a person, physician, I'm not a
19 physician who typically uses those type of words, but
20 what we have here is, we have a patient who's on the
21 edge who's going to do something. You have all the
22 signs and symptoms of a patient who is going to act.

23 Q And there's been some questioning by various
24 lawyers in this case about the difference between
25 thoughts and a plan. I'm going to walk over here

1 towards you, Doctor, and show you the note that Dr.
2 Jansen typed up that day. And Dr. Jansen notes that,
3 even though Calvin Hunt was well-dressed and
4 cooperative, he was poorly communicative.

5 A Correct.

6 Q What's the significance of a patient with all these
7 red flags you've been telling us about, all the past
8 history of PTSD, depression, prior suicide attempts, an
9 altercation with his superior, and the fact that he or
10 she is poorly communicative, what's the connection,
11 Doctor?

12 A The connection is that this is a patient who is
13 having thoughts, as they sit there, and failed to
14 communicate with you about those thoughts. It's not
15 that there's a lack of thinking going on with this
16 patient. This patient's having lots of thoughts; you
17 just don't know what they are. And again, that's part
18 of a dangerous situation. When patients come in with
19 these signs and symptoms to my emergency room, this is a
20 potentially dangerous patient, until I treat this
21 patient, and de-escalate, that is, calm down, de-
22 escalate the situation. And I do that by keeping the
23 patient safe in the ways that I've described, and by
24 warning the patient, that is, communicating with the
25 patient about the plan and what we're going to be doing;

1 and letting the patient know that, at any time they have
2 a need, they'll just tell the sitter or the person
3 that's with them and we will provide it, you know; we'll
4 provide all reasonable requests.

5 Q Now, that's the second or third time I've heard you
6 use the word *sitter*. In your hospital, who, typically,
7 if not exclusively, are the sitters for patients with
8 these kind of red flags?

9 A The sitters are one of the emergency department
10 staff, either one of my certified nursing assistants or
11 one of my R.N.s.

12 Q On this particular day, February 24, 2012, was
13 Edward Ray employed by CasePro, Incorporated, to your
14 understanding?

15 A To my understanding, he was not.

16 Q To your understanding, on February 24, 2012, did
17 Edward Ray earn his paycheck for anything whatsoever
18 having to do with the operations inside the four walls
19 of the hospital?

20 A No, not at all.

21 Q Was he a medical provider of any type, to your
22 knowledge?

23 A No, he was not.

24 Q Okay. And I think I can ask you this. What do you
25 know about Mr. Ray?

1 A I know that Mr. Ray was an agent, an employee of
2 the Veterans Administration Affairs Office here in
3 Beaufort. I think it was a one-man department, as I
4 understand it. His responsibility was to work with
5 veterans, that is, men and women who had been active
6 duty for at least 180 days, to insure that they receive
7 the benefits that they're entitled to, after completing
8 their active duty. And that was actually the initial
9 reason that Mr. Hunt went to see him, was to find out if
10 he would be eligible for benefits as a veteran.

11 Q You may have told us this, and I just didn't write
12 it, because I was so busy listening to you, but poorly
13 communicative, is that also a red flag, or is that just
14 something that helps us put the other red flags in
15 context?

16 A It's a very important, separate red flag.

17 Q Doctor, based on your review of these medical
18 records and the information that was available to Nurse
19 Janice McDonald, Nurse Joe McDonald, and Dr. Chris
20 Jansen, all three of whom were employed by CasePro,
21 Incorporated, on that fateful Friday, do you have an
22 opinion as to whether or not it was foreseeable that
23 Calvin Hunt would actually harm others?

24 A Yes, it was foreseeable.

25 Q All the information was there.

1 A All the information was there. If you did not
2 protect Mr. Hunt from himself, and protect the staff,
3 and protect the community, Mr. Hunt was going to take
4 action. All the information that you needed is -- is
5 right there on the medical record. It was known. And
6 Mr. Mann, in his deposition, even confirms that.

7 Q And with respect to the opinion that you just gave
8 us, is that opinion one that you are offering to a
9 reasonable degree of certainty within the field of your
10 expertise?

11 A Yes.

12 Q Doctor, I believe you told us one of the
13 transcripts you reviewed was a transcript of a gentleman
14 who is here in the courtroom, by the name of Dr. Erik
15 Oberg. Did I hear that correctly?

16 A Yes.

17 Q And remind us who Dr. Oberg is.

18 A Dr. Oberg is a physician who has been retained by
19 the Defense for CasePro to defend the actions of the
20 staff that day in the emergency room.

21 Q And do you have any criticisms or comments with
22 respect to Dr. Oberg's opinions?

23 A I do.

24 MR. LOVELL: Objection, your Honor. Calls for this
25 witness to comment upon the testimony of another.

1 THE COURT: Pitting witness?

2 MR. LOVELL: Pitting witnesses, yes.

3 THE COURT: Yes. Sustained.

4 BY MR. HOYLE:

5 Q I'll simply asked this question: do you agree with
6 Dr. Oberg's opinions, as you understand them?

7 MR. LOVELL: Same objection, your Honor.

8 THE COURT: Sustained.

9 BY MR. HOYLE:

10 Q Last question, Doctor, until I pass you to my
11 friend, Mr. Lovell. Do you believe that, if these three
12 persons, Nurse Janice, Nurse Joe, and Dr. Jansen, had
13 done what they should have done on that fateful Friday,
14 that this tragedy could have been avoided?

15 MR. LOVELL: Objection. Calls for speculation.

16 THE COURT: Sustained.

17 MR. HOYLE: Thank you, Doctor.

18 A You're welcome.

19 THE COURT: Cross-examination?

20 DR. TERRENCE L. BAKER

21 CROSS-EXAMINATION, BY MR. LOVELL:

22 Q Good afternoon, Dr. Baker.

23 A Good afternoon, sir. How are you?

24 Q We've talked twice in one day.

25 A That's good.

1 Q It won't take too long. Get my housekeeping done.
2 You mentioned a couple things in your qualifications
3 that you are board certified, correct?

4 A Yes, I am.

5 Q And you understand, Dr. Jansen also is board
6 certified, right?

7 A Yes, he is.

8 Q You mentioned board certification is given to
9 people who have shown that they have qualified
10 knowledge, education, and experience, in the field of
11 emergency medicine, right?

12 A Yes.

13 Q So, we can assume, from the fact that Dr. Jansen
14 passed the same boards that you did, that he was
15 qualified by knowledge, education, and experience in
16 internal -- external -- emergency medicine to do that,
17 right?

18 A Yes.

19 Q Couple other questions. You said you went to go
20 visit the Pope. Did you actually meet him?

21 A No.

22 Q Okay. Just wanted to check. I was going to be
23 nicer to you if you said yes.

24 A Oh, thank you.

25 Q You mentioned your clinical rotations included

1 psychiatry. That's common in medical school, that you
2 rotate through psychiatry and internal medicine and
3 different areas, right?

4 A Yes. It's an important part of training as a
5 medical student, as well as internship and residency,
6 particularly in family medicine.

7 Q So, we could assume that Dr. Jansen did the same
8 thing, rotated right through like you did?

9 A I haven't looked at his particulars, but in
10 general, I would expect him to have done that, yes.

11 Q You said, I thought, that you worked 70 to a 100
12 hours per week in the areas of your board
13 certifications. Did I get that right?

14 A Yes, you did.

15 Q Let's see. That's geriatrics board certification,
16 family medicine or family practice board certification,
17 forensic medicine board certification, and emergency
18 medicine, right?

19 A Yes.

20 Q So, and you also mentioned, in your family
21 practice, you see thousands of patients per year. Did I
22 hear that correctly?

23 A Several thousand patients per year, correct.

24 Q And that includes weight loss, this laser whatever
25 it is you said you do, pain management with pills and

1 the laser? So, I assume that takes up a whole lot of
2 that 70 to 100 hours a week, right?

3 A All areas of medicine, emergency medicine, family
4 medicine. I have patients in the nursing home, patients
5 in rehab. And yes, as part of the family practice, in
6 the office, we do help people lose weight, and help
7 people to make their pain better using medical
8 therapeutic lasers, correct.

9 Q I'm not saying there's anything wrong with that.
10 I'm just saying that, that family practice, which
11 includes all those things you just said, probably takes
12 up the bulk of your time, doesn't it?

13 A Well, I am a family doctor who also does emergency
14 room. I'm a full-time E.R. physician, and I'm one of
15 the directors in the emergency room, in terms of being
16 base station director, that is, supervising
17 communication with paramedics and fire fighters, and
18 also, director of education.

19 Q Never worked in a Naval hospital like Beaufort
20 Naval Hospital where you're treating active duty vets
21 and their families in an emergency department.

22 A That -- that is correct. I've never worked in a
23 Naval hospital. I did work at Dorn Veterans
24 Administration for quite a while.

25 Q And as a physician, you mentioned you were asked,

1 and the question was, you said you earn money doing all
2 these doctor things you do. But you also earn some
3 money doing what you're doing here today, being a paid
4 expert, correct?

5 A I do.

6 Q And it sounds like you've been doing that paid
7 expert work since the eighties?

8 A Yes, sir.

9 Q Would you agree with me that an expert who comes in
10 and submits himself in front of a jury to tell his
11 opinions should give those in an unbiased and truthful
12 way?

13 A Yes.

14 Q And that they should make sure that the evidence
15 upon which they base those opinions is true and
16 accurate, right?

17 A Yes. In general, that's true.

18 Q Because, if you come in and formulate an opinion
19 that you give to the lawyers that hire you or write
20 reports about, and that opinion is based on faulty facts
21 or assumptions that are wrong, then, the opinion might
22 not be so good, right?

23 A Yes, that's true. And that's what I think happened
24 with Dr. Oberg.

25 Q Okay. Well, let's see what happened with you in

1 just a minute on some of those, Doctor, as we go through
2 some of the information that you were --

3 A Okay.

4 Q But you'd agree, incorrect information in your
5 opinion means what's coming out when you express them is
6 also incorrect.

7 A Well, that's true. Discovery's ongoing, however.
8 And so, you have to look at when an expert gives their
9 opinion, at that point in time, what's been discovered.
10 There's times that depositions haven't been taken, or
11 information hasn't been provided to the expert yet. And
12 so, the expert's giving opinions based upon what they
13 know at that moment in time.

14 MR. LOVELL: Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. LOVELL:

17 Q I'm going to hand you Exhibit 27.

18 A Um-hmm.

19 Q I'm going to lay the foundation for this. In your
20 expert witness activities, did you use various services
21 to help connect you with some of the attorneys that may
22 hire you. Is that right?

23 A Yes. I'm listed in two expert witness directories
24 as a physician who is available to review charts for
25 either plaintiffs or defendants, to answer questions

1 that might be arising.

2 Q And one of those is entitled SEAK Expert Service.

3 A Yes. It's a service out of Falmouth,
4 Massachusetts, that's owned by an attorney, Steven
5 Babitsky.

6 Q And you advertise through that service using their
7 web page or Internet resources, all of the various
8 places -- or, I'm sorry, all of the various areas of
9 medicine that you're willing to hold yourself out as an
10 expert, correct?

11 A Well, I -- I disagree. What the directory has, the
12 directory chooses areas that are listed in the
13 directory, and they simply go through and identify the
14 areas where my credentials would allow me to give
15 opinions based upon my board certifications.

16 Q Well, I put in front of you Exhibit 27. Have you
17 seen that before today?

18 A I have not seen this recently, no.

19 Q But you've seen it? What they advertised for you,
20 or you allow them to advertise for you, at SEAK Expert
21 Witness, right?

22 A I have seen it at various times. I'm not sure I've
23 seen this exact copy.

24 Q Well, it has you listed, and you tell me if any of
25 these are wrong, and you don't want them holding you out

1 as an expert through the Internet to other people. Let
2 me back up one thing, Doc. Would you allow them to hold
3 you out as an expert in an area where you didn't feel
4 like you were?

5 A No. But -- but scanning these specialty focuses,
6 they're all within my boards.

7 Q So, it has you, emergency medicine, family
8 medicine, correct?

9 A Yes.

10 Q Nursing home care, home health, assisted living,
11 decubitus, falls, dementia?

12 A Yes.

13 Q Medicare. Have I misread any yet?

14 A No. I have patients in all those areas.

15 Q HMO, life care planning, pressure ulcers, pressure
16 sores, hospice, Alzheimer's Disease, hypertension, wound
17 care, pneumonia, weight loss, depression, osteoporosis,
18 diabetes, bed sores, laser medicine, laser safety. All
19 areas you hold yourself out as an expert?

20 A Yes. All areas that I practice in virtually every
21 day, yes.

22 Q What I didn't see on that list is E.R. medicine at
23 a Naval hospital facility, treating active-duty Naval
24 officers at a facility like Beaufort Naval. Did I miss
25 it?

1 A No. That's correct. I've already testified that
2 I've not practiced in a Naval Hospital.

3 Q Well, another way to make money -- oh, how much of
4 your income comes from just what SEAK or the other
5 service paid you in terms of expert witness testimony?
6 Just percentage. I don't need to know dollars.

7 A Yeah. I get one or two cases a year from this
8 directory.

9 Q All of them. I'm talking about all of your expert
10 work.

11 A Altogether? Altogether, this is somewhere between
12 15 to 20 percent of my total income.

13 Q And that's coming into court and testifying either
14 against doctors, nurses, or hospitals, 60 to 70 percent
15 of the time; or on behalf of them, 20 to 30 percent?

16 A It's from reviewing medical records and documents
17 and answering questions, sometimes in the courtroom.
18 Although, I'm not in court very often.

19 Q Do you hold yourself out as an expert in trying to
20 help doctors learn how to double their clinical income
21 by devoting one day a week to medical legal matters
22 serving as experts?

23 A I think that was an advertisement that was put out
24 by SEAK, the owner of SEAK, Steven Babitsky, at one
25 point, yes.

1 Q All right. Let's look at this one. I'm handing
2 you Exhibit 28. Now, let me ask, Doctor, you, in
3 addition to working with lawyers, apparently, you help
4 to train doctors on how to start, run -- start, build,
5 and run successful expert witness practices, right?

6 A Yes. I have done that from time to time. I work
7 either -- either alone. I teach a course alone, or
8 Judge David Lawson, who's a federal judge from Detroit.

9 Q I've given you Exhibit 28. Do you recognize that
10 document?

11 A Yes. I've -- I have seen this or something similar
12 in the past.

13 Q And in fact, this is from February of calendar year
14 2015, right?

15 A Yes, it is.

16 Q And you participated in a seminar that we talked
17 about, *How to Start, Build, and Run an Expert Witness*
18 *Practice*. Did you not?

19 A Yes, I did.

20 Q And you've done it every year for the last four,
21 five, six, seven, eight years, right?

22 A I don't know if it's been seven or eight years, but
23 it's been several years. That's true.

24 Q This year, last year, I know, for sure, because
25 those are there.

1 A Yes, last two years I know, for sure.

2 Q And you tell doctors that they can make -- they can
3 double their clinical income by doing what you're doing
4 here today and charging four hundred to a thousand bucks
5 an hour and working only a day a week?

6 A I don't tell them that. I don't write the
7 literature, that is, the -- the brochure that Counsel's
8 referring to. I don't write that. It's written by
9 Steven Babitsky, who is the owner of SEAK, who sends out
10 flyers to physicians who might be interested in serving
11 as expert witnesses, because there's a severe shortage
12 of experts around the country, and particularly in some
13 specialties. And so, there's a need to train physicians
14 who are interested in doing this type of work.

15 Q Did you ever call Mr. Babitsky and tell him, hey, I
16 don't want you writing that about what my seminar's
17 about; I don't think that's something --

18 A I have -- I have actually sat down with Mr.
19 Babitsky and -- and told him that he should, you know,
20 -- I know why he sends out those advertisements to get
21 physicians interested, but I have instructed Mr.
22 Babitsky that he should not send out things that are so
23 -- could be so inflammatory.

24 Q But year after year he uses the same language, and
25 you don't quit talking into things, do you, Doctor?

1 A Well, Judge David Lawson and I, we've had conver --
2 the Judge and I have had conversations about this. In
3 fact, just two weeks ago I spent two days with the
4 Judge. We've talked about the fact that Mr. Babitsky
5 does this, but we still believe that teaching physicians
6 the principles of being an expert is important.

7 Q Including how to write a good expert witness
8 report, correct?

9 A Certainly, because it's not something you learn in
10 medical school, how to write a report that meets legal
11 standards. You learn how to write a medical report, but
12 you don't write -- know how to write a report that means
13 something that can be used in this court.

14 Q How much of the \$1,295.00 per-participant tuition
15 goes to Dr. Baker from these seminars?

16 A Nothing. Judge Lawson and I neither one receive
17 any funds, other than we do get an airline ticket. We
18 do get a meal or two at the conference. They serve
19 lunch. We eat lunch. And we get a motel room for the
20 night of the conference.

21 Q Now, Doctor, let's talk a little bit about expert
22 reports and stuff. You'd agree that it's not fair for
23 you to judge what any of these healthcare providers did
24 by looking back in hindsight, knowing the outcome, and
25 second-guessing what they did on the days they were

1 involved, right?

2 A Alone, that's correct.

3 Q Because you, as an expert, come in and have a ton
4 of information that didn't exist at the time Nurse
5 Janice McDonald, Nurse Joe McDonald, or Dr. Jansen were
6 involved in the care and evaluation of Mr. Hunt,
7 correct?

8 A That's true. But the science of doing chart review
9 requires the expert to look at what the physician knew
10 or should have known at that point in time, not what was
11 known a week from now, or what was known from later in
12 the day, after the fire truck got stolen. But an
13 expert, like myself, is required to look at what was
14 known at that moment in time.

15 Q And then, I'll hand one of those -- and backing up
16 to that, though, you've given opinions here today where
17 you've talked about foreseeability and what you think
18 should have been foreseeable, but you have the benefit
19 of knowing what occurred from the time that Mr. Ray and
20 Mr. Hunt left the emergency room to go get a breath of
21 fresh air, up until the time of the pictures we saw
22 where the fire truck's crashed up into the woods, right?
23 You had all of that information --

24 A That's --

25 Q -- before you ever formed any of these opinions.

1 A That's correct. At the end of my review, I did
2 have all that information. Although, discovery's been
3 ongoing. And as I'm sure you're going to point out here
4 shortly is that I've been learning right up until today.
5 For example, I hadn't seen the video until today. I've
6 been learning right up until today the facts that are
7 important to the opinions that I've formed.

8 Q But when you authored your opinion, when you first
9 put something in writing or talked to somebody on a
10 deposition, we touched on it a little earlier today, I
11 mean, you had already made up your mind about a lot of
12 these issues from what you had reviewed; had you not?

13 A Based upon the facts that were in evidence, yes.

14 Q And once facts are told to you or represented to
15 you, or you reach a conclusion using those facts, those
16 faulty facts, if they're wrong, continue to stay in your
17 mind as you look at all of the rest of the facts and
18 information that's provided to you by whoever's giving
19 it to you, right?

20 A Well, that's true, but that's the science of chart
21 review, medical chart review. There's a science to
22 reviewing the chart. As additional facts come into
23 evidence, your opinions change. There's been times when
24 I've been right up here on this stand, and in a case in
25 Arkansas several years ago, where, right on the stand,

1 it became obvious that the facts that I had reviewed
2 were faulty, and that the opinions I was rendering were
3 wrong. And as soon as I recognized that, I said that.

4 Q Have you still got Defendant's 29, your report, up
5 there, Doctor?

6 A Yes.

7 Q I'm going to try to do this so you and I can look
8 at it together and the jury can look at it.

9 A Actually, it may have moved away from me.

10 Q I'm sorry. There it is.

11 A Thanks. Thanks.

12 Q I'll put these aside for now. September 24, 2015,
13 you authored Defendant's 29, as we talked about earlier,
14 a report you wrote, prior to your deposition, right?

15 MR. HOYLE: Your Honor, I'm going to object to this
16 document being published. I don't think it's been
17 moved into evidence.

18 MR. LOVELL: We'll move it into evidence, your
19 Honor, 29.

20 THE COURT: Very well. Any objection?

21 MR. HOYLE: Without objection.

22 THE COURT: Very well.

23 ITEM IDENTIFIED AS LETTER/REPORT

24 TO MR. HOYLE FROM DR. TERRENCE L.

25 BAKER, DATED SEPTEMBER 24, 2015,

1 MARKED DEFENDANT'S EXHIBIT NUMBER 29,
2 ADMITTED AS EVIDENCE.

3 BY MR. LOVELL:

4 Q I'm going to stick it over here, Doctor. And I
5 apologize. It's hard for you to see or anybody else.

6 A No problem.

7 Q But you've got it in front of you.

8 A I do.

9 Q You mentioned when you authored this, this was
10 written some time -- was it the same morning you gave
11 your deposition in discovery in this case to Doug over
12 there?

13 A Yes. Per my routine, I'll often write some notes
14 to help keep my thinking clear and accurate during the
15 course of my discovery. Discovery is often a stressful
16 time, with many questions, and it's good to have some
17 notes. And so, this is written in the form of a letter
18 report, but it's essentially notes to myself to remind
19 me of what I've reviewed, and the thoughts I have at
20 this time, and some of the facts that I believed to be
21 true at this time in discovery.

22 Q And you, as an expert, have the duty to yourself
23 and the people who are paying you for your opinions to
24 make sure your facts are accurate before you start
25 relying on them, correct?

1 A Well, at that point in discovery, that's -- that's
2 -- that's correct.

3 Q And this is a month ago. This isn't even -- not
4 even a month ago. So, you knew trial was on the heels,
5 coming up, right?

6 A Well, also understand that I've received quite a
7 few additional discovery documents since my deposition.

8 Q In here, you say that you reviewed the records from
9 this gentleman's admission to the Naval Hospital,
10 deposition testimony, and supportive exhibits and
11 documents, right?

12 A Yes.

13 Q And then, we go to the second page, where you kind
14 of outline some of these things that you've relied upon
15 in reaching your opinions.

16 A Yes. It's mostly, the things I read earlier.

17 Q Just to kind of flip through them, you read them
18 earlier. The one thing I noticed that was missing from
19 here was Arthur Manning's deposition, correct?

20 A Yes, and I acknowledged that, during the course of
21 my deposition, that I had not yet received a copy of Mr.
22 Manning's deposition. Counsel actually told me that it
23 existed, and Counsel actually recommended that I read
24 it, and I did read it.

25 Q But back when you were giving these opinions,

1 that's a pretty big piece of the puzzle, because that's
2 the psychiatric tech who had come down and interacted
3 with this patient, and hadn't generated a note of any
4 sort, correct?

5 A Well, I disagree. As you know, Mr. Manning did
6 create a document, an uncertified document summarizing
7 his memory of the events that day, and I did have that
8 document. And largely, his deposition doesn't dispute
9 what he told me, what he told any reader, in that
10 uncertified report that he wrote. He doesn't dispute
11 any of that. What he does add is -- is some timing,
12 that is, some timing issues of when he arrived. The
13 fact that the psychiatrist was upstairs in the building,
14 those type of details that largely did not change
15 opinions I had about the care and treatment of Mr. Hunt.

16 Q Some of the opinions that you've talked about in
17 here, and you've mentioned that, as healthcare becomes
18 increasingly complex, it's important for reviewers like
19 yourself to keep the documented interaction between the
20 patient, healthcare institution, and healthcare
21 providers at the heart of the review process, right?

22 A Correct.

23 Q And you rely upon deposition testimony, like that
24 of Ms. Janice -- Nurse Janice, Nurse Joe, and those
25 others that were deposed, to supplement your

1 understanding of what has occurred, right?

2 A Correct. They often have information that's not
3 recorded in the record.

4 Q And you would agree that, at least when you were
5 writing this report, you were evaluating the actions of
6 Dr. Jansen, the nurses, Mr. Ray, and others, using what
7 you call standard of care required of them to provide
8 care of this patient, right?

9 A Yes.

10 Q Now, you were looking at, not only the Jansen's
11 issues, and -- I mean, the McDonalds' issues and Dr.
12 Jansen's, but also, at what Mr. Ray did, correct?

13 A Yes. That is correct. What I believe Mr. Ray did.

14 Q And factually, go back to your note, now on Page
15 Number 3 or 4, where you're talking about some of the
16 facts that you felt were important enough to include
17 within your historical summary. You got that?

18 A Yes.

19 Q You may have to look there. Some facts you thought
20 were important were what I've highlighted here in the
21 second paragraph, that:

22 About 10:30, on 2/24/2012, Veterans
23 Affairs Officer Edward Ray met Calvin Hunt.
24 During this meeting, Calvin Hunt disclosed
25 to Edward Ray that he wanted to hurt himself

1 and others.

2 That's what you put here, right?

3 A Yes.

4 Q You went on to state that:

5 *Mr. Ray, serving as a Beaufort County*
6 *employee and Veterans Affairs officer had*
7 *knowledge that Calvin Hunt posed a specific*
8 *threat of harm to himself and others.*

9 Right?

10 A Yes.

11 Q Point me to any medical record that you've seen
12 that says that Calvin Hunt told Edward Ray, at 10:30 or
13 so that morning, before they ever went to the military
14 hospital, that Calvin Hunt wanted to or had thoughts of
15 harming other people. Show me any record where that's
16 in there.

17 A Yes. It was my belief at the time the patient and
18 Mr. Ray presented to the managed care intake that Mr.
19 Ray was aware that Mr. Hunt had thoughts of wanting to
20 harm himself and/or others.

21 Q It doesn't say and/or, Doctor. It says *himself and*
22 *others* in your note. And this is talking about at 10:30
23 in the morning.

24 A Yes.

25 Q That's a piece of information that you relied on as

1 an expert when you started formulating opinions about
2 the risks that Mr. Hunt posed to the staff, the hospital
3 people, society, and the community in general. That's
4 an important piece of information that you put into your
5 equation, correct?

6 A It was. And based upon the facts that -- that I
7 was aware of at the time, it appeared to be true.
8 Subsequently, I have received some additional documents.
9 Mr. Manning's deposition, also, a summary judgment on
10 behalf of the Veterans Administration that, for the
11 first time in my discovery, clarified some facts that I
12 was not -- that were different than the facts I believed
13 to be true.

14 Q But Mr. Manning never testified in his note that
15 you looked at, before you ever wrote this, or in his
16 deposition that you finally looked at, I guess, before
17 you came in here, that he had knowledge from any source,
18 Mr. Ray or otherwise, that Kalvin Hunt had told Mr. Ray
19 at 10:30 or in the morning or before they came to the
20 managed care area, that he had thoughts of hurting
21 others, right?

22 A Again, based upon the presentation to managed care,
23 it was my belief -- as you know, in the deposition
24 testimony, my deposition testimony, it was clarified.
25 It was my belief that Mr. Ray had met with Mr. Hunt

1 around 10:30, and that -- that Mr. Ray had indicated
2 that he needed medication refill, and that he was
3 feeling thoughts of wanting to harm himself and others.
4 It was my belief that Mr. Ray had actually brought Mr.
5 Hunt to managed care to be seen. And that was based
6 upon the facts that I was aware of or believed to be
7 true at the time that I wrote these notes. And these --
8 these are simply notes. These are simply notes of
9 things that I need to -- that I believed to be true at
10 the time of my deposition, understanding that additional
11 information would be provided to me in the weeks that
12 followed.

13 Q Well, sir, this was a note in a letter that you
14 wrote to your lawyer that you knew was going to be
15 provided to other people, right?

16 A These are notes, and I was clear in my deposition.
17 And again, in my deposition, from the very beginning.
18 This is -- happens to be in letter format. It's just
19 something I do to stay organized. I've been doing it
20 for over 30 years.

21 Q So, wrong assumption, number one, right here.

22 A Not a wrong assumption. Is was my belief, based
23 upon the facts that were known at the time. The facts
24 in this case, had been evolving with time. And even up
25 until just a couple of hours ago, when I watched the

1 video along with you, I was learning about the events of
2 the day; because even the newspaper reports were very
3 different. One report said the truck was --

4 MR. LOVELL: Your Honor, I object. He's about to
5 inject hearsay, and he's not responding to my question.

6 THE COURT: Okay. Hold on, hold on. Sustained, as
7 to the hearsay.

8 MR. LOVELL: Thank you, your Honor.

9 BY MR. LOVELL:

10 Q It'll go a lot quicker, Doctor, if you answer the
11 question.

12 A Thank you.

13 Q When I ask it, I'll ask yes or no. If you choose
14 to explain --

15 THE COURT: No, sir. Stop.

16 MR. LOVELL: I'm sorry, your Honor.

17 MR. HOYLE: Your Honor, may we approach?

18 THE COURT: Okay.

19 OFF-THE-RECORD BENCH CONFERENCE, OUT

20 OF HEARING OF JURORS. PRESENT: THE

21 COURT, MR. HOYLE, MR. LOVELL.

22 END BENCH CONFERENCE.

23 BAILIFF: Your Honor, can the jury stretch?

24 THE COURT: Oh, yes. Can we do it? Oh. Everybody
25 stand and -- you get to stand, too, if you would like to

1 stand. We have established that at this trial, and I am
2 forever going to take it with me. This is the Beaufort
3 County stretch. Come on, Wanda, do it. The Beaufort
4 County stretch. You know what, it is so fantastic. I
5 love it.

6 And early in my career as a judge, I will tell you
7 all that, that's where the comfort break comes from,
8 Beaufort County comfort break. Take it all over the
9 state. Ladies and gentlemen, they call this the
10 Beaufort County comfort break. I love it. I don't know
11 what we call it in Dillon, but we do not call it a
12 comfort break.

13 When you all are ready to be seated, be seated.

14 BY MR. LOVELL:

15 Q Dr. Baker, as I look at this, this appears to be
16 sort of a chronological sequence of your note taking.
17 Did I get that fairly right?

18 A Yes, sir. It's just an outline of the notes that I
19 took in order to -- to give my opinions, which, as you
20 know, in the deposition, were sometimes different than,
21 actually, what was in my notes, based upon the
22 information I had.

23 Q Deposition took place the same day as this was
24 written, right?

25 A Yes.

1 Q And you didn't get much information between typing
2 this thing up and printing it, and going to do the depo,
3 did you?

4 A Well, I actually did. The counsel who was deposing
5 me actually provided me with significant additional
6 information as we went through -- went through the
7 deposition that I wasn't aware of. Like, for example, I
8 wasn't aware that Mr. Manning's deposition was
9 published, for example.

10 Q You didn't have time to read it in between?

11 A I have read it.

12 Q No, no. After this, and before your depo, you
13 didn't have time to read Manning's deposition?

14 A The attorney that accompanied me to the deposition
15 did not have a copy.

16 Q So, let's go on. Back to this. Next thing you put
17 under here is that CasePro had a contract with Navy
18 Medical Logistics Command to provide personnel to the
19 managed care intake at NHB. Do you now know that to be
20 incorrect, that the managed care intake people were
21 employed by the military?

22 A I do now know that Nurse Smith and Ms. Pope are
23 Naval base employees.

24 Q So, erroneous assumption or conclusion number 2,
25 correct?