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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Honorable G. Thomas Cooper, Jr.
Circuit Court Case No.: 2007-CP-40-03365

RECEIVED
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SC Court of Appeals

Appellant Case No. 2014-001373

Estate of Edward James Mims,
Laura M. Cole, Personal Representative.....Appellant,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and Stan Butkus, ...Respondents.

Volume X

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND COURT OF COMMON PLEAS

3
4 EDWARD MIMS, BY AND THROUGH
5 HIS LEGAL GUARDIAN,
6 MARGARET MIMS,

7 Plaintiff,

Case No.: 07-CP-40-03365

8 vs

9 BABCOCK CENTER, JUDY JOHNSON,
10 SCDDSN, KATHI LACY,
11 STANLEY BUTKUS,

12 Defendants.

13 D E P O S I T I O N

14 WITNESS: STAN BUTKUS

15 DATE: Wednesday, June 10, 2009

16 TIME: 10:04 a.m.

17 LOCATION: Law Office of Patricia Harrison
18 611 Holly Street
19 Columbia, South Carolina

20 TAKEN BY: Attorneys for the Plaintiff

21 REPORTED BY: GINA M. SMITH
22 Certified Shorthand Reporter
23 Registered Professional Reporter

24 -----

25

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

Mims 1336

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF
3 EDWARD MIMS, BY AND THROUGH HIS LEGAL
GUARDIAN, MARGARET MIMS:

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13 SCDDSN, KATHI LACY AND STANLEY BUTKUS:

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15 BY: KENNETH P. WOODINGTON, ESQ.
16 1611 Devonshire Drive, Second Floor
P.O. Box 8568
Columbia, SC 29202-8568

17 ALSO PRESENT:

18 TANA G. VANDERBILT

19
20 (INDEX AT REAR OF TRANSCRIPT)

21

22

23

24

25

1 STIPULATION: It is stipulated by
2 and among Counsel that this deposition is being
3 taken in accordance with the South Carolina Rules
4 of Civil Procedure, and that the deponent does not
5 waive the right to read and sign the deposition
6 transcript.

7 - - - - -
8 STAN BUTKUS, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MS. HARRISON:

12 Q. Thank you for coming today.

13 A few ground rules. If you'll please
14 always make sure to voice your responses, because
15 the court reporter can't record nods or shrugs. As
16 I know, you've had your deposition taken because of
17 taking it before.

18 A. I'm nodding my head when you're telling me
19 this, and I'm saying no, I should be saying yes.

20 Q. So I know you know the ground rules. If I
21 ask a question and you don't understand it, I'll
22 ask you to repeat it. If you answer the question,
23 I'll assume you understood the question. Is that
24 acceptable?

25 A. Yes.

1 Q. Tell me -- Dr. Butkus, tell me something
2 about your educational background.

3 A. I'm a high school graduate, and a science
4 honors, I recently remembered as I saw my
5 graduation certificate someplace. But I have a
6 bachelor's of political science. I have a master's
7 degree in public administration. I have a master's
8 degree in educational psychology and special
9 education.

10 At one time had a special ed
11 certification, but that's lapsed since I haven't
12 been teaching. I have a master's of social work
13 degree, and I have a Ph.D. in social policy.

14 Q. And where's your Ph.D. in social policy
15 from?

16 A. Brandeis University School of Social
17 Policy and Management, Waltham, Massachusetts.

18 Q. Is Brandeis a Catholic school?

19 A. No.

20 Q. I believe you were schooled in Catholic
21 schools?

22 A. Uh-huh, yeah, several.

23 Q. High schools?

24 A. High school and undergraduate was a
25 faith-based. Actually Brandeis was founded by

1 Jewish folks.

2 Q. And how did you come -- where did you work
3 first after you got out of undergraduate school?

4 A. I worked in the state of Nebraska in the
5 Office of Mental Retardation.

6 Q. And I'm sorry, I'm having trouble hearing
7 you.

8 A. Okay.

9 Q. If you'll speak up.

10 A. I worked in the state of Nebraska in the
11 Office of Mental Retardation.

12 Q. Who was your boss there?

13 A. George Thomas.

14 Q. And what is he doing now?

15 A. I have no idea.

16 Q. After that, what did you do?

17 A. After that, I worked in Canada, for the
18 Province of Ontario, for two years as a unit
19 director of a large unit in an institution.

20 MR. WOODINGTON: Excuse me just a second.

21 BY MS. HARRISON:

22 Q. And who was your supervisor there?

23 A. John McHugh.

24 Q. And why did you leave there?

25 A. I had an opportunity to go to

1 New Hampshire and be the DD Council Executive
2 Director, so wanted to move back to New England
3 where I was from. Had one child and we had another
4 one on the way, so we wanted to be closer to family
5 and friends.

6 Q. And where's your family?

7 A. Maine.

8 Q. Who was your supervisor at the
9 New Hampshire job?

10 A. John Storer.

11 Q. Spell that for me, please.

12 A. S-T-O-R-E-R.

13 Q. How long were you there?

14 A. Six, almost seven years.

15 Q. And then where did you go from there?

16 A. I worked -- actually rehabbed a house for
17 the better part of a year, that I owned, and then I
18 worked for the University of Southern Maine doing
19 training for a director of staff, setting up
20 training programs, statewide -- it was a statewide
21 training program sponsored by the University of
22 Southern Maine, and the target group was people who
23 worked in Mental Retardation Services.

24 Q. Why did you leave the New Hampshire job?

25 A. It was an opportunity to move back to

1 Maine, and so I decided to move back to Maine.

2 Q. So it's an opportunity to move back to
3 Maine to rehab a house?

4 A. Uh-huh, and work on my dissertation.

5 Q. Were there any problems in the job at New
6 Hampshire?

7 A. No.

8 Q. Were you ever terminated from a job?

9 A. No.

10 Q. Did you ever resign under pressure?

11 A. No.

12 Q. So how long were you at the University of
13 Southern Maine?

14 A. That was a year. That was a Contract
15 Position Title 20.

16 Q. And then where did you go from there?

17 A. I worked for the Maine Bureau of Mental
18 Retardation for about seven years and directed a
19 regional office in central Maine.

20 Q. And who was your boss there?

21 A. I had several. The last one was a woman
22 named Betsy Davenport.

23 Q. And where is she now?

24 A. I think she's retired.

25 Q. And how long were you there?

1 A. About seven years.

2 Q. Where did you go from there?

3 A. I went to Virginia from there to become
4 the Director of the Office of Mental Retardation in
5 Richmond.

6 Q. And who was your supervisor there?

7 A. Jim Bumpas.

8 Q. Of Bumpas, Virginia?

9 A. His family is right from that area, right.
10 He shortened his name. He eliminated the second S
11 on the end of his name because he thought it was
12 embarrassing to his children. The correct spelling
13 of Bumpas in Virginia was with two Ss.

14 Q. And where is Jim Bumpas now?

15 A. He's retired.

16 Q. Where does he live?

17 A. Colonial Heights, Virginia.

18 Q. What was his last job?

19 A. His last job, I believe he was director of
20 Southside Virginia Training Center in Petersburg,
21 Virginia.

22 Q. And how long were you in the position in
23 Virginia?

24 A. I was there about four and a half years,
25 and then I was asked to be acting director of

1 Central Virginia Training Center in Lynchburg, so I
2 went up there. And I enjoyed that, so I ended up
3 becoming permanent there.

4 I was there about five years, not quite
5 five years probably, and then following I came back
6 and did a year as Social Commissioner for Community
7 and Facility Services back in Richmond. So I was
8 with the agency about ten years in all.

9 Q. The Lynchburg position, who was your
10 supervisor?

11 A. Jim Bumpas, and following that it was
12 Olivia Garland.

13 Q. And what was her job, Olivia Garland?

14 A. She was a Social Commissioner for
15 Community and Facility Services.

16 Q. And where is she now?

17 A. I believe she's still in Richmond and
18 she's doing private work as a payroll consultant.
19 I think she has a company of her own.

20 Q. So is she working in the MR/RD field?

21 A. No, more behavioral health.

22 Q. Does she have anything to do with First
23 Health?

24 A. She did. She worked for them for a number
25 of years.

1 Q. But she's not doing that anymore?

2 A. No.

3 Q. So after you worked for Olivia Garland,
4 then where did you go?

5 A. I went back to Richmond. And she had
6 moved on, and that's the job that I took back in
7 Richmond as a Social Commissioner for Community and
8 Facility Services.

9 Q. And who was your supervisor there?

10 A. Tim Kelly was the commissioner at that
11 time at the department. He was my supervisor.

12 Q. And where is he now?

13 A. Someplace in the wilds of northern
14 Virginia. He went back there after his commission.
15 I don't know what he's doing now.

16 Q. How long were you there?

17 A. I was with the agency a total of ten
18 years, and about a year as Social Commissioner for
19 Community and Facility Services. I came back and
20 was acting in that role and was made permanent
21 after a bit, and so --

22 Q. And who -- how did you learn of the job in
23 South Carolina?

24 A. A colleague mentioned it.

25 Q. Excuse me?

- 1 A. A colleague mentioned it to me.
- 2 Q. What colleague?
- 3 A. In Virginia.
- 4 Q. What colleague?
- 5 A. Oh, the name? Janet Hill.
- 6 Q. And who is she working for now?
- 7 A. I believe she's retired too.
- 8 Q. And so who did you interview with when you
- 9 came here?
- 10 A. The Commission.
- 11 Q. ~~And when did you begin your position here?~~
- 12 A. Mid-September '96.
- 13 Q. And what kind of shape was the agency in
- 14 in '96?
- 15 A. I think it was in pretty good shape
- 16 overall. I think that it was ready to be -- the
- 17 system was ready to really take the next step
- 18 forward in terms of approaching services for people
- 19 with disabilities, which is basically what the
- 20 Commission asked me to do.
- 21 Q. And what was the next step forward?
- 22 A. Move to person-centered services, that
- 23 sort of thing.
- 24 Q. Who were the senior staff when you first
- 25 arrived?

1 A. Bill Barfield was there. Brent Koyle,
2 since retired, was there. Tana there was, but then
3 she left. Now she came back.

4 I'm trying to think -- oh, Lonnie Bowman
5 was there. He was head of the -- sort of a -- over
6 an amalgam of things from computers to procurement
7 to capital errors. Those were the --

8 Q. And where is he now?

9 A. He's retired. I think I must be leaving
10 somebody out, but I --

11 Q. When did Kathi Lacy come into --

12 A. Oh, Kathi, I'm sorry, Kathi, she was
13 there. And she came -- she actually started just a
14 few weeks before I did, I think.

15 Q. Now, she left for a while, didn't she?

16 A. Yes, and I don't know when that was, but
17 her return was just before I got there.

18 Q. Did the Agency pay for her to get her
19 degree?

20 A. I don't know.

21 Q. Did she get a degree while she was --
22 while you were director?

23 A. I believe she had completed it by then.

24 Q. Now, tell me about your relationship with
25 Phil Massey.

1 A. Phil Massey was the predecessor in the job
2 of the state director. I think I might have met --
3 over the years I met him once or twice at national
4 meetings, so I didn't really know him at all.

5 When I came here, he had already left the
6 state, and he had begun working for Mentor, a
7 national association which he was with, I think,
8 for about five years, up in the Boston area.

9 Q. Does he have any association now with
10 Mentor?

11 A. I don't know.

12 Q. But your organization began contracting
13 with Mentor, did they not?

14 A. They had some contracts prior to my
15 arriving there, I believe, with Mentor, yes, on the
16 Mental Health side. State of South Carolina had an
17 arrangement with Mentor, but it was on the Mental
18 Health side. I don't think there was any stuff
19 related to mental retardation with Mentor at that
20 point.

21 Q. So once you arrived, did Mentor begin also
22 serving with --

23 A. No, my memory is that they didn't get
24 interested in doing services on the Mental
25 Retardation side until after we, you know, got

1 moving on person-centered, opened the system up for
2 everybody that wanted to participate, become a
3 provider and have consumers choose them, and they
4 became a qualified provider.

5 They may have in there, someplace along
6 the line, won a special solicitation to help deal
7 with people that had mental retardation and mental
8 illness, but I'm a little hazy on that. I think
9 they were in that ballpark with those kind of
10 things.

11 Q. Is that when Phil Massey depopped Crafts
12 Farrow?

13 A. I don't know. I don't believe that Phil
14 Massey depopped Crafts Farrow.

15 MR. WOODINGTON: I'm sorry, what was that
16 word?

17 MS. HARRISON: Depopped.

18 MR. WOODINGTON: D-E-P-O-P-P-E-D?

19 THE WITNESS: It's depopulation. That was
20 actually on my time at the agency, there was a
21 decision, mutual decision with the Department of
22 Mental Health, that would probably be good to move
23 away from that service delivery model.

24 BY MS. HARRISON:

25 Q. Now, did -- did at some point the Agency

1 enter into a quality assurance agreement with First
2 Health?

3 A. The Agency -- we were the second in the
4 country to put out a bid for a quality improvement
5 organization to do a large part of our quality
6 assurance. One of the agencies that bid on that
7 was First Health. They got the first one.

8 Actually Delmarva, who is now the
9 contractor, participated but didn't come in first
10 in the earlier solicitation. There was about --
11 probably about five entities that competed for that
12 first solicitation, is my memory.

13 Q. Did you, during that time, call Olivia
14 Garland --

15 A. No.

16 Q. Let me finish my question.

17 A. Please.

18 Q. So you had no telephone communication with
19 Olivia Garland during that time?

20 A. No. No.

21 Q. Did you call anybody at First Health and
22 suggest that they hire Phil Massey?

23 A. No. It was after they got the contract I
24 was called and asked who would be a good person
25 that might know something about mental retardation,

1 and they mentioned Phil Massey, and I said yeah,
2 he's somebody that knows.

3 Q. And who called you?

4 A. I think it was Olivia.

5 Q. So you're saying that call happened
6 after --

7 A. That's my memory.

8 Q. -- after they had been selected?

9 A. Yes.

10 Q. Is there any chance that call could have
11 happened before?

12 A. What I'm telling you is my recollection.
13 That was probably eight or nine years ago.

14 Q. But it could have?

15 A. Could have, yeah.

16 Q. Now, at about that time, didn't DDSN
17 somehow terminate the positions of 40, 50 people
18 who had been doing quality assurance?

19 A. No.

20 Q. Tell me about that. Tell me what happened
21 to those jobs.

22 A. Well, what happened, we decided to do
23 quality assurance through an independent entity,
24 you know, give us kind of an arm's length kind of
25 look at what we were seeing and what was being done

1 in terms of quality.

2 And the way we did that was by -- and I
3 remember specific conversations with Dr. Koyle, for
4 example, you know, the -- how many FTEs over time,
5 either vacancies -- full-time equivalent
6 positions -- private vacancies or people we could
7 reassign to come up with a target amount of money
8 that we would fund the QIO program with. So nobody
9 was laid off.

10 Q. Did they keep their jobs?

11 A. Some of them had reassignments, yeah, but
12 there was nobody laid off.

13 Q. There was nobody laid off?

14 A. That's what I'm saying, yes.

15 Q. So you just found other places?

16 A. Through attrition, people moved on and
17 there were vacancies. We didn't fill the
18 vacancies. We held vacancies. And others that
19 were in that role either were given different
20 assignments or whatever, but there wasn't anybody
21 laid off.

22 Q. So you've let this quality assurance out
23 to First Health, and tell me what they were
24 supposed to do.

25 A. Well, they would review files, review

1 cases, go on site, make sure that -- I think it was
2 something like 250 or 70 indicators that they would
3 look at. They would interview staff, they would
4 interview individuals, they would interview
5 families.

6 They did a 10 percent mail sampling of
7 families. They did structured interviews with
8 individual consumers. They --

9 Q. What was the purpose for all of this?

10 A. The purpose was to make sure that what we
11 thought we were doing we were in fact doing,
12 confirming that, you know, the investments we're
13 making in services were doing what they were
14 supposed to do.

15 Q. Was First Health supposed to assure that
16 Medicaid rules and regulations were being followed?

17 A. ~~Sure. Yeah.~~ And even as part of that, we
18 had occasionally -- after bid, we had them actually
19 test billings for Medicaid. In other words, they'd
20 look at -- they'd random pull some billings and see
21 if people were billing for what they were supposed
22 to to offer the service that happened.

23 Q. And what role did Dr. Massey play in that?

24 A. He was involved with First Health in
25 helping them, but I can't tell you exactly what he

1 did. That was between him and First Health.

2 Q. So you don't know what he did at --

3 A. No.

4 Q. -- First Health?

5 A. No.

6 Q. You never talked to him about it?

7 A. No, just he helped them get their feet set
8 up here in South Carolina, and that's about all I
9 know.

10 Q. Did he continue to be on their payroll?

11 A. I believe he had some sort of
12 relationship, but I never asked him what the
13 particulars were, nor did he tell me.

14 Q. And you couldn't tell from your
15 interactions with him?

16 A. It was none of my business. I didn't need
17 to ask him.

18 Q. So he's working for the agent -- how much
19 was the contract?

20 A. About a million.

21 Q. The total contract?

22 A. Yes.

23 Q. I seem to recall 4.2, 4.3. Why is --

24 A. I don't know where you get that
25 information, but it was about a million.

1 Q. So it's about a million dollars for how
2 many years?

3 A. A million a year for five years was the
4 initial contract. You're thinking of the term of
5 the contract.

6 Q. A million a year for five years?

7 A. Yes.

8 MR. WOODINGTON: Could I ask what five
9 years we're talking about?

10 THE WITNESS: Well, somewhere around --
11 let's see. Backing into it, I think Delmarva is,
12 say, in their second year now, so they would have
13 started, like, '07. So they had the previous
14 period of time, so go back to '02.

15 And, actually, the procurement section of
16 the Budget and Control Board was slow in getting a
17 solicitation out when the five-year term ran out,
18 so it rolled over another year. So it actually had
19 six years. So that gets us back to '01.

20 BY MS. HARRISON:

21 Q. Now, about this time that Phil Massey goes
22 with Delmarva -- I mean with First Health, I
23 believe you created a position for him at DDSN, did
24 you not?

25 A. I wouldn't call it a position. What we

1 had him doing was intermittent work on helping to
2 orient new executive directors to the system. It
3 was on an as-needed basis.

4 And, as you know, there's not a lot of
5 turnover in those positions, so just occasional
6 assistance. And we actually talked about would it
7 be easier to have him in that role to be casual
8 with us, a temp, or to go with, say, a university
9 contract or something like that. And he felt that
10 it was simpler for him just to be a temp, so I said
11 okay.

12 Q. Now, this time he's drawing retirement
13 benefits from your agency, is he not?

14 A. I think he's drawing it from the State
15 Retirement System.

16 Q. And he's getting a paycheck from First
17 Health and now he's working for your agency, then
18 training local directors?

19 A. Yeah, orientation for local directors,
20 that's right.

21 Q. Now, your agency -- according to Rip
22 Lender, your agency provided funds for him to
23 increase his CTH I program at the Babcock Center.
24 Can you tell me something about that?

25 A. Yeah. I can tell you that it would be

1 inaccurate to say money went there increased
2 fundwise to do that program. What I can tell you
3 is the CTH I program, enhanced, as it's called, was
4 used to provide options for people like at Pine
5 Lake, folks that needed to get out of that
6 situation, who didn't need the level of care at
7 Pine Lake and so forth.

8 So we were pleased that Babcock was
9 interested in doing that, because, as you may know,
10 it's a lot more cost effective to serve people in a
11 CTH I enhanced than an ICF/MR.

12 Q. Did your agency pay Phil Massey to do that
13 transition?

14 A. I believe that Mr. -- Dr. Massey had a
15 contract with Babcock, I think, probably -- it must
16 have been when you were there, right, as Chair or
17 board member?

18 Q. So it's your testimony that DDSN did not
19 provide funds for Dr. Massey to do that?

20 A. My memory is -- my memory is that there
21 was a contract between Babcock Center and Phil
22 Massey to assist in that.

23 Q. So the money came from Babcock?

24 A. That's my memory, yes.

25 Q. Now, is it not true that the boards that

1 contracted with Phil Massey received this enhanced
2 rate?

3 A. Is it not true? Really, outside of the
4 Babcock Center, I would be hard pressed to tell you
5 if Dr. Massey, in working with whichever other
6 boards, was persuasive in convincing them that they
7 should be doing more CTH I enhanced. I mean, I
8 don't know that to be the case.

9 Q. So as far as you know, Babcock Center was
10 the only board that did the enhanced CTH IIs?

11 A. Right, on the level that they were doing
12 it. There could have been some other boards here
13 and there.

14 I think my memory also is that we did some
15 presentations at provider meetings, maybe Phil
16 Massey did them, describing how the model works and
17 the various advantages, the pluses and minuses of
18 it.

19 He may have subsequently, unknown to me,
20 done some conversations or had some engagements
21 with local boards to do CTH I enhanced, but I just
22 don't recall that that was the case.

23 MR. WOODINGTON: I'm sorry. Off the
24 record a second.

25 (Off-the-record discussion.)

1 MS. HARRISON: If we can put that on the
2 record, I was talking about CTH I.

3 Thank you, Ken.

4 BY MS. HARRISON:

5 Q. So there was a lot of shifting around, was
6 there not, when Pine Lake closed? Did the Pine
7 Lake people go directly into a CTH I?

8 A. Probably for the most part. There might
9 have been some here and there that that wouldn't
10 have been a good fit for, but that was -- generally
11 that's where a lot of the folks would have gone.

12 Q. So you're saying most of the folks at Pine
13 Lake went directly into a CTH I?

14 A. That's my memory, yes. It could have been
15 that there were some served in other Babcock
16 programs for who it was more appropriate to go to a
17 CTH I enhanced, and then the position that they
18 left somebody from Pine Lake went into.

19 Q. Do you know how many people were in that
20 situation where there was a domino effect?

21 A. I don't, no. And you're asking me the
22 universal question did everybody go, and I'm saying
23 I don't know. And I'm giving you a hypothetical
24 that some could have gone to other options within
25 the Babcock system of services.

1 Q. Are you aware that at about that time
2 Edward Mims was beaten by an employee?

3 A. Yes, I recall that he had been abused,
4 that's right.

5 Q. Tell me what you're aware of.

6 A. Just that he had been abused, there was
7 staff -- I believe it was founded. It was at, if
8 I'm correct, at the Clusters Center at that point.

9 Q. That's right.

10 A. Pre-Kensington. That's my memory at that
11 point.

12 Q. So when did it come to your attention?

13 A. Typically, I'd be made aware if there was
14 an abuse that's occurred in a program someplace.
15 And typically what I'd do is I would contact the
16 Commission Chair and the relevant district
17 commission member to let them know that something
18 happened and that the investigation was underway,
19 that the families had been contacted. Stuff like
20 that would be typically what we would do.

21 Q. If you can speak up a little, I think it
22 may be hard --

23 A. It just started to slide at the end.
24 Sorry.

25 Q. So when Edward Mims was beaten by Carl

1 Anthony, the protocol would have been -- how does
2 the word get to you?

3 A. Typically, I'd be notified that there was
4 an abuse that had occurred in a local program and
5 it was being investigated, that sort of thing. And
6 if there was any, you know -- staff needed to be
7 suspended or stuff like that, that that was taken
8 care of and the investigation was underway.

9 Q. How promptly would the investigation occur
10 if it had been witnessed?

11 A. Usually fairly promptly. In the ICF/MR
12 program, this was the pre-SLED independent
13 investigation, but ICF/MR regulations called for a
14 preliminary assessment of the situation immediately
15 and a report out within five days, I believe it is.

16 So the ICF/MR had -- by federal rule had a
17 robust approach, timewise, to making sure that
18 incidents and allegations were carefully and
19 properly reviewed.

20 Q. So certainly within five days you would
21 know about it?

22 A. Yeah.

23 Q. Were you made aware that Edward Mims was
24 beaten with a belt and had lashes on his back?

25 A. I can't remember if I was told

1 specifically how he was abused, but that there was
2 an abuse that had occurred.

3 Q. So the second abuse by a consumer, would
4 that be brought to your attention?

5 A. Well, that may have. I'm not remembering
6 the belt incident. That probably would be -- if
7 it's consumer-on-consumer, as you know OAPA has a
8 different way that -- Omnibus Adult Protection
9 Act -- that treats that a little bit differently in
10 terms of whether it was staff-on-client versus
11 client-on-client or consumer-on-consumer.

12 Q. As far as you as the executive director
13 need to know if a person's severely beaten at a
14 facility, in terms of that message getting to
15 you --

16 A. Yeah.

17 Q. -- does it matter whether that individual
18 was beaten by an employee or by a consumer?

19 A. Yeah. Typically, something of that
20 severity, I probably would have been contacted on.
21 And from a human perspective -- forget the law for
22 a moment -- yes, I would very much want to know
23 that that had happened.

24 But there are different tracks, as you
25 know, for how they are then processed from a legal

1 perspective.

2 Q. Now, Clusters was closed, was it not, by
3 CMS in --

4 A. No, actually it wasn't closed by CMS.

5 Q. Tell me what happened at Clusters. It's
6 closed now, isn't it?

7 A. Yes, ma'am, it is.

8 Sometime, I believe it was in '04, the
9 Atlanta office of CMS came by and reviewed one of
10 the units and decertified it. A couple weeks
11 later, DHEC went into another unit. I always mix
12 it up. There are eight six-bed units or six
13 eight-bed units, one or the other, and they
14 decertified a second unit, is my memory.

15 And about that time as well, I had
16 conversations with Ms. Johnson, who was the new
17 executive director in that time frame, maybe been
18 on board maybe a year or so, and she told me that
19 she had concerns about whether the Agency could
20 maintain the quality of service needed at the
21 Clusters.

22 And she asked if we would take over, we
23 DDSN, would take over management. And I said we
24 would take it over under one condition, and that
25 condition was that we close it. And that's what we

1 did. We took it over and we closed it.

2 Q. What do you mean you took it over?

3 A. We managed it. We put one of our people
4 out there to manage the program.

5 Q. And there would be documentation of
6 when -- y'all had an agreement, I assume, a written
7 agreement?

8 A. A written agreement. Probably in the
9 files there's a letter to that effect, yeah, likely
10 would have formalized that, uh-huh.

11 Q. So --

12 A. So CMS -- it would be incorrect to
13 conclude that CMS closed it. DDSN closed it.

14 Q. What does it mean when CMS decertified one
15 of the units?

16 A. It means that some standards aren't being
17 met, ICF/MR standards aren't being met.

18 Q. So they just go in and decertify it or do
19 they not declare immediate jeopardy first?

20 A. There's several steps. There's a standard
21 could be out, there could be conditions of
22 participation, there could be immediate jeopardy,
23 there could be decertifications that, you know,
24 repeat offenses or anything like that.

25 But decertification, then, is a process

1 that agencies are allowed to make corrective --
2 take corrective steps within a certain time frame
3 to get the program back up to the quality that's
4 needed.

5 And then the recert is contingent on the
6 re-review by the Department of -- well, CMS in the
7 case of some of the instances or DHEC in other
8 instances.

9 Q. But CMS had found immediate jeopardy --

10 A. Right.

11 Q. -- had they not, at Clusters?

12 A. That doesn't mean that it's decertified.

13 Q. I understand that, but before the
14 decertification, they found immediate jeopardy, did
15 they not?

16 A. I'm not sure what the sequence was. My
17 memory is that they came in and said we're
18 decertifying this. They went right to the end and
19 decertified it. They didn't say, okay, there's
20 immediate jeopardy, something like this, try
21 harder, they just decertified it.

22 Q. And it has to be pretty serious --

23 MR. STEGMAIER: Y'all don't talk over each
24 other.

25 BY MS. HARRISON:

1 Q. Did they decertify a program for minor
2 offenses?

3 A. No.

4 Q. I believe it has to jeopardize the health
5 and safety and life of individuals?

6 A. No. I imagine there are instances where
7 there's just a pattern, not in South Carolina, but
8 a pattern of failure to meet basic standards that,
9 you know, just to repeat, death by a thousand cuts,
10 that this program just isn't meeting what needs to
11 be done, they could decertify it.

12 Q. So if you had an individual who had been
13 beaten there once by an employee and it was
14 witnessed, and then you had an individual who was
15 severely beaten with lashes on his belt with a
16 back -- on his back, big red lashes, and that
17 information came to you, what responsibility do you
18 have as state director?

19 A. Well, if we're talking about the same
20 case -- we're still with Edward Mims and the
21 Clusters situation?

22 Q. Any case.

23 A. Oh, any case.

24 Q. You've got a person who's been beaten
25 there twice.

1 A. It would have to be thoroughly
2 investigated. I think there's a responsibility
3 first to protect the consumers and users of
4 service.

5 Likewise, there's a responsibility to
6 ensure that staff are treated fairly in cases where
7 there's, you know, a very clear suggestion that a
8 staff, say, hit another individual, hit a consumer,
9 it was witnessed by another employee. The person
10 would be suspended immediately and an investigation
11 would begin.

12 Something of that severity under the old
13 rules probably would have gone to SLED. Now it
14 automatically goes to SLED.

15 Q. Would you be informed of this?

16 A. Yeah, something of that severity, sure.

17 Q. Now, tell me about the involuntary
18 admission process. Under what -- if you've got
19 someone in one of your programs, under what
20 circumstances would you involuntarily judicially
21 admit them?

22 A. Well, it's allowed in our code to
23 involuntary admit individuals. The situation in a
24 general sense would be one where we would, by
25 assessment of staff and so forth, people who knew

1 the individual, that the situation that they were
2 in was threatening to their health, safety, or
3 welfare, if there was somebody that was responsible
4 for them that wasn't acting in their interest.

5 Q. So --

6 A. Knowingly or unknowingly wasn't acting in
7 their interest.

8 Q. So whose assessment do you base that on
9 when you do an involuntary admission?

10 A. It would be the staff immediately involved
11 in the situation in all likelihood. Say it was a
12 health issue, we might want to have a nurse
13 familiar with the situation look at it. It would
14 be those types things.

15 Usually it's kind of a health/safety thing
16 more than -- it could be a behavior thing
17 occasionally. You might want to have a
18 psychologist look at it to see if anything can be
19 done in the home to deal with whatever the factors
20 were that were driving the behavior that was now
21 adaptive, that kind of thing.

22 Q. And what kind of paperwork would come to
23 you if this has happened?

24 A. Well, it would be an assessment of --
25 whether there's paperwork or a briefing that

1 there's going to be paperwork -- here's the status
2 of X situation, here's what the points of view in
3 thinking are of various trained professionals. We
4 think the best interest of this person is served in
5 not doing voluntary or -- involuntary or do an
6 involuntary. So it would be based on knowledgeable
7 people participating around the circumstances of
8 the situation.

9 Q. So who makes the final decision?

10 A. It would be a consensus, but I make
11 decisions on placement in the code. The executive
12 of the Agency's responsible for making placement
13 decisions.

14 Q. If you're responsible for making placement
15 decisions, is it also your responsibility to get
16 people out of the placement if they're in danger
17 there?

18 A. Well, that could be a separate
19 determination. I think that anytime there's an
20 event, you need to assess the circumstances
21 carefully to see if it was isolated or a pattern of
22 some type.

23 And if the mix of staff and mix of
24 behaviors just isn't what needs to happen -- I
25 could tell you in a previous job I held in

1 Virginia, when I was director of a facility, that
2 we thought that some staff had abused some folks,
3 but they weren't -- as we required under the code,
4 they weren't coming forward.

5 One was terminated and sustained on
6 appeal. The others I simply reassigned to other
7 units within the agency, and they protested, but I
8 said no, it's management prerogative to reassign
9 people where they can best fit.

10 Q. Where are you working now?

11 A. I'm a consultant, kind of a part-time
12 consultant situation.

13 Q. Who do you consult with?

14 MR. WOODINGTON: Before he answers that,
15 I'd like to let the record reflect that we had
16 objected to that and we had a little informal
17 off-the-record agreement with Judge Barber a few
18 weeks ago, and he advised -- Judge Barber thought
19 Dr. Butkus had to answer that question. So I just
20 wanted to put that on the record.

21 THE WITNESS: So repeat the question,
22 please.

23 BY MS. HARRISON:

24 Q. Who are you consulting?

25 A. State of Missouri.

1 Q. And how did you come to have that
2 connection?

3 A. I was contacted by the State of Missouri.

4 Q. And what kind of consult -- what's your
5 fee arrangement there?

6 A. My fee? I don't know what you mean by the
7 question.

8 Q. What's your fee arrangement there?

9 A. I have one with them.

10 Q. And what is that arrangement?

11 A. Are you asking me how much they're going
12 to pay me?

13 Q. Right.

14 A. They're going to pay me \$800 per day plus
15 expenses.

16 Q. So you'll be going out to Missouri?

17 A. That's right.

18 Q. And how many days a month do you plan to
19 be in Missouri?

20 A. Well, there's some initial work. We've
21 added some work along the way. I don't know if
22 they'll add some other activities beyond that, but
23 I think probably -- my commitment's probably only
24 going to be no more than three weeks, I imagine.

25 Q. So what are you doing there?

1 A. I'm helping them on some issues related to
2 how they're shifting the management of service
3 coordination from regional state offices to local
4 public entities.

5 Q. Is service coordination separate from
6 service delivery in Missouri?

7 A. No.

8 Q. And who is your -- how did you learn of
9 that job?

10 A. I was contacted by the state director
11 there.

12 Q. And that is?

13 A. His last name -- I'm blocking all of a
14 sudden his first name. Bernie Simons.

15 Q. Now, so you said that work will last three
16 weeks?

17 A. Something like that is my --

18 Q. Do you have any other job applications out
19 there?

20 A. No, no, no.

21 Q. So have you retired from the State of
22 South Carolina?

23 A. No, not yet.

24 Q. Do you have any intent of returning to a
25 position in the state of South Carolina?

1 A. I haven't decided that.

2 Q. What assets do you have?

3 A. I have my home and some modest savings,
4 two years current.

5 Q. And what is your home worth?

6 A. Not as much this year as it was a year
7 ago, I guess. I don't know, I would say -- my wife
8 and I always disagree. I'd say maybe 300,000. And
9 we owe a modest amount on it.

10 Q. And how much do you owe?

11 A. A modest amount. I don't know. I'll put
12 it this way, maybe a couple, two or three more
13 years to pay, something like that.

14 Q. And what other assets? Do you have any
15 other real estate?

16 A. Yes.

17 Q. And tell me about that.

18 A. I have no other real estate in South
19 Carolina. I have a home in Maine.

20 Q. Where is that?

21 A. In Portland, Maine.

22 Q. And what's it worth?

23 A. In the same neighborhood.

24 Q. Anyone living there now?

25 A. I rent it.

1 Q. What other assets do you have? Do you
2 understand that you've been sued in your individual
3 capacity?

4 A. Yes.

5 Q. And that you would be individually
6 responsible if a verdict is returned?

7 A. That I may be, yes.

8 Q. And what other assets do you have?

9 A. I already covered the cars, right?
10 They're not worth too much. That's about it.

11 I have some 401K, stuff like that.
12 Whatever's in my retirement system.

13 Q. Have you transferred any money out of your
14 name since this litigation began?

15 A. No.

16 Q. So you have a house in Maine, a home here,
17 a 401K. You have no stocks or bonds or
18 investments?

19 A. Other than through the 401K and whatever
20 they -- they also are going downhill too.

21 Q. So you have no savings?

22 A. We have savings, yeah, sure.

23 Q. Tell me about that.

24 A. What do you need to know? The amount?

25 Q. The amount, where, what's the investment

1 in.

2 A. In the bank. I don't know what my savings
3 account balance is. I don't check it.

4 Q. Approximately?

5 A. Ten.

6 Q. 10,000?

7 A. Yes.

8 Q. You have no other investments?

9 A. No.

10 Q. You were making about 154 a year. Is that
11 correct?

12 A. Yes.

13 Q. And so the only investments you have are
14 your home in Portland, your home here, your 401K,
15 and \$10,000 in the bank?

16 A. Something like that, yeah.

17 Q. So there's no stocks, there's no bonds?

18 A. That's what I'm saying, yes.

19 Q. And there's no money that you've
20 transferred into your wife's name?

21 A. I believe I said earlier no, there was not
22 any money transferred into my wife's name.

23 Q. I'm sorry.

24 A. I've already answered that question. I
25 said -- I'll repeat my answer -- I've transferred

1 nothing in my wife's name, no assets of any type.

2 Q. Have you transferred any money or anything
3 of value to anyone else?

4 A. No, nor have I transferred anything to
5 anybody else.

6 Q. And what do you have in the 401K?

7 A. I don't know what the balance is. I don't
8 check that. It's gone down. My wife kind of rides
9 herd on that stuff and she said you don't want to
10 know, but it's gone down kind of thing.

11 Q. Are you planning to move from South
12 Carolina anytime in the next six months?

13 A. I haven't really decided if I'm going to
14 do that. So it would be -- I guess you'd say no, I
15 don't have a plan.

16 Q. Tell me about -- let's get back to the
17 assessment and how information gets to you when
18 someone is abused. An incident like someone being
19 taken to the emergency room because their bed was
20 infested with ants, what would happen to a report
21 like that?

22 A. That would be -- that type of thing would
23 be a critical incident, and it would come into our
24 system. And the quality assurance people, under
25 Kathi Lacy, would track that and be aware of that,

1 and that might be something that she would, you
2 know, let me know if something odd like that
3 occurred some place.

4 Q. Have you ever been told that a consumer's
5 bed was infested with ants and they had to be taken
6 to the emergency room?

7 A. I may have in that particular instance,
8 because it's very -- it's never happened in
9 anyplace I've ever worked that something like
10 that's occurred. So that would be very unusual.

11 Q. Did that give you any concern?

12 A. Well, yes, I found that problematic.
13 Concern in terms of what does that mean for the
14 program, certainly they need to look into it in
15 terms of what measures need to be taken to correct
16 that from occurring again. But how it occurred,
17 stuff like that, how did they get in the bed, I
18 would have no idea.

19 Q. So tell me the process. A caregiver finds
20 an individual covered with ant bites, looks and
21 sees the bed's infested with ants. How does the
22 information flow go from the caregiver to you?

23 A. Just as I said a moment ago.

24 Q. Give me step by step, please.

25 A. I thought I did. I'll try again.

1 The staff that spot it would submit a
2 critical incident within 24 hours to our agency.
3 Mr. Sam Davis typically would get those critical
4 incidents, and he would let Kathi Lacy, through his
5 supervisor or directly, know that this circumstance
6 developed in this particular home. So that's the
7 notification side.

8 Follow-up side would be, well, what steps
9 have been taken to correct that.

10 Q. And then Kathi -- is it Kathi Lacy that
11 informs you?

12 A. Yes, if she in her judgment thinks this is
13 something that I would need to know about, or if
14 it's just an unexplained random event that doesn't
15 mean anything -- I'm not saying this didn't mean
16 anything, I'm saying it depends on the situation
17 whatever the circumstances.

18 Q. So she tells you about it. As state
19 director, what is your responsibility?

20 A. Well, my response was that what steps
21 are -- you know, how did it happen, who's going to
22 take care of it, how are we going to prevent it
23 from occurring again, who's going to do what to
24 deal with it.

25 Q. Would it give you concern as a state

1 director to know that there are a number of other
2 events at that same facility?

3 A. Could you be more specific?

4 Q. Rug burns on the back of an individual,
5 immediate jeopardy having been declared.

6 A. Rug burns would concern me as a situation.
7 It would concern me more if it hadn't been
8 investigated.

9 Since you're raising it as an issue, I'm
10 assuming that somebody reported it someplace as an
11 incident that needed to be investigated and found
12 out or determined what happened and what corrective
13 measures need to be taken.

14 Q. Would that bother you if there were
15 someone with rug burns?

16 A. Sure.

17 Q. What would you as --

18 A. I think I already said that.

19 Q. -- as the director do?

20 A. I think I already said that too. I'd want
21 to make sure it was thoroughly investigated, find
22 out how it happened, what corrective measures
23 needed to be taken to prevent it from occurring
24 again.

25 Q. And what kind of follow-up do you as

1 director have -- do you just say go and fix it or
2 do you come back and look and see if it was fixed?

3 A. The staff would go back and ensure a
4 number of days later to make sure that the
5 correction was put in, was fixed, and was going to
6 deal with the situation.

7 Now, if you're talking about -- which
8 situation are you talking about?

9 Q. Let's talk about a rug burn case.

10 A. Typically -- say -- my first question
11 would be was that somehow an abusive or neglectful
12 situation, and gather evidence to make a
13 determination on that.

14 If it wasn't that, if that was ruled out,
15 if it was something that the consumer individual
16 was doing themselves, I would have another series
17 of questions about, well, what does the program
18 call for, isn't there proper supervision, what kind
19 of activities does the person need to be engaged in
20 so that they're not hurting themselves in that way,
21 inadvertently or planned.

22 Q. Did you do any follow-up once these
23 situations were initially brought to your
24 attention?

25 A. The Agency would do the correct follow-up,

1 and I would learn by exception that there was a
2 problem in the implementation of the corrective
3 measures. In other words, if they aren't done.

4 Q. Now, what responsibility -- if you had an
5 individual with ant bites all over his body and had
6 to be taken to the ER, what responsibility did you
7 as director have to take that information about
8 that incident to your board?

9 A. Well, it would depend if it was isolated,
10 and I don't recall -- I'm telling you in the years
11 that I've been in this field that I never recall an
12 incident in three, four, fives states I've worked
13 in of that type.

14 To me, I assume it was an isolated
15 situation and probably one that I wouldn't need to
16 report to the board in terms of abuse or something
17 like that.

18 Q. Now, you're saying you never heard -- I
19 thought your testimony was that you were aware of
20 that incident.

21 A. Yes, that's what I'm saying.

22 Q. But you're saying in other places you'd
23 never seen that?

24 A. Yes, I said it's -- the incidents of
25 people in the field of disabilities being bitten by

1 ants in their beds is extremely low. That's the
2 first event in 40 years I've worked with
3 disabilities I've ever heard of it.

4 So I put it in a category of this is a
5 random event, how did it happen, let's correct it,
6 but not one that would rise to the level of there's
7 a major systemic problem of some type.

8 Q. If that same house had had an immediate
9 jeopardy finding for med errors and if an
10 individual had choked to death and a second
11 immediate jeopardy had occurred --

12 A. Which home are we in?

13 Q. We're in Kensington.

14 Would that rise to that level of systemic
15 concern?

16 A. Now, would you repeat the first part of
17 the question?

18 Q. If there's been a finding of immediate
19 jeopardy over a med error, and then there had been
20 someone to choke to death and CMS came in and
21 investigated and found the house was understaffed,
22 the staff was not trained and that death was not
23 properly investigated, and the ant incident had
24 also occurred, does that rise to the level of --

25 A. Which facility were the ants in?

1 Q. All of that was in one facility.

2 A. Okay. They're all separate events. The
3 choking, if you're referring to -- Mr. Cothran
4 actually wasn't a choking. It was aspiration.
5 There's a difference between choking and
6 aspiration. He aspirated on previously-digested
7 food.

8 Q. Is it true --

9 A. So --

10 Q. -- that Mr. Cothran aspirated on a chunk
11 of toast?

12 A. I've read the autopsy. The autopsy said
13 he aspirated.

14 Q. On a chunk of toast?

15 A. On predigested food is what the autopsy
16 said. A choke of food wouldn't have been
17 predigested.

18 Q. So it's your understanding that there was
19 no health or safety violations with the death of
20 Mr. Cothran?

21 A. No, I didn't say that. I said -- you
22 said -- I'm taking exception with your
23 characterizing it as choking. I'm saying it's not
24 choking.

25 In fact, the staff at the facility were

1 found to have been guilty of neglect for giving
2 him -- for munching up food. But on the following
3 day, assuming the following day, and they didn't
4 follow the procedure, that was neglect, and I made
5 sure that the facility terminated them for that.

6 Q. Now, are you familiar with the CMS report
7 at Kensington after that death?

8 A. In terms of the decertification?

9 Q. I'm talking about --

10 A. Immediate jeopardy?

11 Q. The report of immediate jeopardy where
12 they found that staff was not properly trained, the
13 house was not properly staffed, and the death was
14 not properly investigated, are you familiar with
15 that report by CMS?

16 A. I'm familiar with it, they came and that
17 there was an immediate jeopardy. It, however, was
18 not decertified, and there were corrective measures
19 put into place to deal with the various issues that
20 were cited.

21 Q. Soon, within a month or two after that,
22 there was another immediate jeopardy finding, was
23 there not?

24 A. From CMS or from --

25 Q. From DHEC.

1 A. Was it the medication error?

2 Q. On a different issue...

3 A. There may have been. If you'd be more
4 specific, might jog my memory.

5 Q. Are you aware that Kensington was
6 decertified during Ed Mims' tenure there?

7 A. During whose tenure?

8 Q. Ed Mims' tenure.

9 A. I don't believe it was decertified.
10 Decertified means, among other things, that you
11 stop getting the money, and there's no break in the
12 funding.

13 Q. There was not another finding and were not
14 families sent a letter saying that it had been
15 decertified?

16 A. I don't -- this is my memory: It was not
17 decertified, so I certainly don't know why families
18 would be getting a letter saying it is decertified.

19 Q. Now, you made the decision, did you not,
20 initially, not to release -- not to cooperate with
21 the judge's order to release Edward Mims?

22 A. No. I think that he was -- my memory is
23 that he was involuntarily committed to us, which
24 requires a court action. And I know the mother had
25 some wishes to take him home, and we felt that that

1 had to be routed back through the Court, that we
2 couldn't override a Court decision that placed him
3 in our care.

4 Q. Why did the Court get back involved in
5 Edward Mims?

6 A. I think the mom wanted to have some more
7 involvement in his life and have him at home, that
8 sort of thing, have visits if he was still in a
9 residential program, stuff like that.

10 Q. She just decided she loved him more and
11 she wanted him home more often?

12 A. Yes. And in between that, there was an
13 injury he sustained that I think maybe that raised
14 some concerns in her mind.

15 Q. And tell me about that injury.

16 A. He had a small wound on his penis.

17 Q. Describe the small wound.

18 A. That's the extent -- all I'm told is that
19 it was a small wound. I had Dr. Graeme Johnson
20 look at it and he said there's a small wound, and
21 that was it.

22 Q. So you were relying on Dr. Graeme's
23 assessment?

24 A. Yes.

25 Q. Graeme Johnson, I believe?

1 A. That's right.

2 Q. Who else did you receive information from
3 about this injury?

4 A. From within our agency, it would have been
5 reported and so forth through critical incident,
6 that kind of thing. So we'd get information that
7 way.

8 And when I was aware of it, I was the one
9 that asked Dr. Johnson to take a look at what was
10 involved with it and what his determination of the
11 situation was, was it, you know, abuse or something
12 like that, or how did it occur in his medical
13 judgment.

14 Q. Did you discuss this case at any point
15 with Kathi Lacy?

16 A. Probably did, yeah, because it would come
17 to her attention through the critical incident
18 reporting process.

19 Q. So this would come to the attention -- it
20 would go to, I believe your testimony was, Sam
21 Davis, Kathi Lacy, and then to you. Is that the
22 chain of command?

23 A. Yes.

24 Q. And you brought in Dr. Graeme Johnson?

25 A. That was my decision, yes.

1 Q. Who all was in the discussion when you
2 decided to bring in Graeme Johnson?

3 A. Well, I don't recall that we had a
4 meeting. Probably what likely occurred was Kathi
5 apprised me of the situation. I said, well, let's
6 have Dr. Johnson look at this and see what his
7 determination is of what happened and if there was
8 an explanation for it.

9 Q. Did you ever have anyone speak with Edward
10 Mims' treating physicians about this injury?

11 A. I'm not recalling that we did. Unless
12 somebody spoke with them in terms of an
13 investigation that I'm not -- that somebody else
14 did, the police did an investigation kind of thing,
15 I'm not recalling that I personally spoke with
16 them, no.

17 Q. Would it not be good to get the opinion of
18 the treating physician who knows a person if you're
19 doing an investigation of abuse or neglect?

20 A. I think you need information from a
21 variety of sources, and I can't tell you, for
22 example, if Dr. Johnson contacted the treating
23 physician or not.

24 But I would rely on Dr. Johnson in matters
25 like this. He's familiar with -- he's worked many,

1 many years in the disabilities field, formerly
2 worked as the medical director, for example, down
3 at Coastal Center, and he's really familiar with
4 situations with people with disabilities, injuries
5 that might occur and so forth, and how they might
6 have happened, that type of thing.

7 Q. I'm sure he's familiar with how they
8 occur.

9 Dr. Judy Johnson, did you have any
10 discussions with Dr. Johnson about what was going
11 on at Kensington?

12 A. On these different issues, I'm not
13 recalling that I had a specific -- that I had a
14 specific conversation with her. I could have.

15 Mostly the problem with the situation was
16 that we would look at what the circumstances were,
17 see what needed to be done, coordinate with her,
18 and her staff was to model that sort of thing
19 around what needed to be done and addressed in the
20 situation and circumstances.

21 Q. So you've got a facility that immediate
22 jeopardy has been declared at least twice in six
23 months, and you have the ant bite incident and you
24 have the injury to the penis, and you wouldn't
25 discuss this with Dr. Johnson?

1 A. Well, the ants, that was one thing; the
2 penis injury was a second thing. They were all
3 individual circumstances that occurred over time,
4 and the reviews and so forth came in at different
5 points of time as well. I don't recall a
6 conversation with her about that.

7 The responsibility that I would have is --
8 when these events come up is to make sure the right
9 people are talking to the right people and are
10 getting to the bottom of what needs to be looked
11 at.

12 Q. So you had no -- is it your testimony you
13 have no -- had no communication with Dr. Johnson
14 about Edward Mims?

15 A. Oh, well, you're asking me if I talked
16 with her about ants and all that. I'm not
17 recalling that I had a specific conversation with
18 Dr. Johnson about Edward Mims. I'm not recalling
19 that.

20 Q. So when you made the decision as state
21 director to involuntary -- judicially admit him,
22 you don't talk with the director of the agency?

23 A. We've got to come back and get some time
24 frames here. You're talking about an incident in
25 the '05 time frame. The involuntary was much

1 earlier than that.

2 And I don't think Ms. Johnson was director
3 then. I think that Mr. Lender probably was
4 director in '01, and you would have been Chair of
5 the Board.

6 Of course some of these things I've
7 wondered, you know, just parenthetically, how as a
8 governing body you would have been informed and
9 then what action you would have as the contract
10 entity, the governing body, would take any action
11 that would be remedial and deal with stuff that
12 way.

13 Q. Did you inform me as the chairman of this
14 involuntary admission?

15 A. I don't believe I did. I don't know if
16 you were chairman then. I can't --

17 Q. Did you involve -- did you inform the
18 chairman?

19 A. I would deal with the executive director,
20 and whatever -- if the executive director felt
21 there needed to be conversation with the chairman,
22 the executive director would have conversation with
23 the chairman.

24 Our relationship would be -- unless it got
25 to a contractual point, where the contract was

1 being violated, then I would call the Board Chair
2 to say we have a problem.

3 But where it's an operational situation
4 that we think we can resolve in some way, it would
5 be staff to staff dealing with what needed to be
6 dealt with.

7 Q. So you would have had communications about
8 this involuntary admission with the former director
9 Rip Lender?

10 A. Me or through my staff to him or through
11 his staff, yes.

12 Q. If you had the final say, are there people
13 who are judicially admitted that you don't review
14 the case?

15 A. You know, I was director 12 years. I
16 cannot tell you that I can recall another judicial
17 or involuntary admission. So they're very, very
18 rare. Most --

19 Q. So you're saying this is the only --

20 MR. WOODINGTON: You have to let him
21 finish his answers.

22 THE WITNESS: This is an extremely rare
23 situation. My memory is that while it was somewhat
24 involuntary in the sense of what the code says, is
25 that all the parties signed off and agreed to it.

1 BY MS. HARRISON:

2 Q. So you don't remember any other judicial
3 admissions during your time as director?

4 A. I do not recall them. There may be some
5 counsel who has been here and back and so forth
6 could remember some, but it's very, very rare that
7 that would occur.

8 Q. Once someone is judicially admitted, and I
9 think we all agree that the code says that --

10 A. Involuntarily admitted.

11 Q. -- that you have responsibility for making
12 that decision, what responsibility do you have
13 periodically thereafter to make sure that he's
14 being kept safe?

15 A. Well, the same responsibility that we'd
16 have towards anybody that we serve, that they're
17 safe, free from harm, getting the services they're
18 supposed to get when they're supposed to get it,
19 that kind of thing.

20 Q. And whose responsibility is that?

21 A. That's the Agency responsibility via
22 contractual arrangements with local agencies.

23 Q. And where does the buck stop with that?

24 A. Got to be more specific. I don't know
25 what you mean.

1 Q. You're saying the Agency has a
2 responsibility to assure the health --

3 A. Right.

4 Q. -- and welfare, and I believe that's a
5 federal requirement, is it not?

6 A. It's -- yeah, under various programs it's
7 a -- right -- stipulation.

8 Q. MR/RD waiver?

9 A. Yeah, it's in there. It's one of the
10 assurances.

11 Q. ICF/MR?

12 A. It's in the Home and Community Based
13 Waiver. That's an assurance we go with, and it
14 would be in the ICF/MR.

15 MR. STEGMAIER: Could you say that again?

16 THE WITNESS: Which part?

17 MR. STEGMAIER: It's in the what?

18 THE WITNESS: It's in the -- every state
19 that applies for a waiver has to agree to comply
20 with safeguards, six, seven, eight of them.
21 They're ranging from access through system
22 outcomes -- one of them is to provide the necessary
23 safeguards, which would be translated that you need
24 to deal with situations where people would be in
25 danger or possibly in danger to make sure that

1 they're safe.

2 BY MS. HARRISON:

3 Q. And so if the Agency has the duty to
4 assure the health and welfare of the people --

5 A. Yeah.

6 Q. -- who is responsible for assuring that
7 the Agency does that?

8 A. Well, the Agency director is responsible
9 for the agency and everything that goes on within
10 the agency in terms of what the code requires, what
11 our contractual commitments are under waivers or
12 ICF/MRs, state-funded programs.

13 I would then periodically report to our
14 governing authority on various things that they
15 would need to know about from their role as the
16 governing authority.

17 Q. And when an incident -- what's your
18 responsibility for reporting these incidents to the
19 commissioners?

20 A. Well, the typical situation, say if we
21 learn of an allegation of abuse someplace, what I
22 would do is contact the Chair and let them know,
23 and then I would contact the commission member
24 whose congressional district that it occurred in.

25 Q. Is there a written policy that requires

1 that?

2 A. No, I think it's just good practice. We
3 don't have a policy.

4 Q. So every time there was a serious
5 incident, did you contact --

6 A. Yeah.

7 Q. -- the chairman?

8 A. That's what I'm telling you, that's the
9 practice and that's what -- pretty much I can't
10 think of a situation that I didn't, that would
11 reach that level.

12 Q. And you also contacted the commissioner
13 for that district?

14 A. Yes. That's what I'm saying, yes.

15 Q. Now, when the incident occurred, do you
16 know how many stitches it took to repair the
17 laceration to Edward Mims' penis?

18 A. No, I don't.

19 Q. How long did it take before the Babcock
20 Center reported that injury? What are the Babcock
21 Center's responsibilities for reporting?

22 A. Well, they would need to report something
23 like that right off, within -- as soon as somebody
24 sees it, it would have to be reported, and then it
25 would be reviewed.

1 Q. And report it to whom?

2 A. Us. Within their own agency, they would
3 let those supervisors and so forth know that there
4 was a problem that occurred.

5 Q. Is there anyone else they had to report it
6 to?

7 A. Well, it would depend on the severity
8 thing. It might be reported to local law
9 enforcement if somebody assumed -- that it kind of
10 met that threshold.

11 But in a case like that, there's no --
12 wasn't any -- my memory is that there was no
13 immediate contact to think there was a criminal
14 investigation required of some type. But those
15 would be --

16 Q. What made you think there was no need for
17 criminal --

18 A. I didn't say there was no need. I said my
19 memory is I don't know if there was a
20 determination, and, if there was, to contact the
21 police on the laceration. I just don't know.

22 Q. Well, let's say that you are the director
23 of the agency, the providing agency, and there's an
24 individual who has a four-centimeter laceration on
25 his penis which is bleeding and oozing, and it

1 takes six stitches to repair, and no one knows how
2 it happens, and it's determined it wasn't
3 self-inflicted. Is that the kind of thing that law
4 enforcement needs to investigate the scene?

5 A. I don't recall if law enforcement was
6 notified or not. It's just -- I just don't have
7 that memory.

8 Q. I think you didn't understand my question.

9 A. I'm sorry. Please repeat it, then.

10 Q. You are the director of an agency, and an
11 individual -- comes to your attention that an
12 individual is found with a four-centimeter
13 laceration on his penis that is oozing blood and
14 requires six stitches to repair, and he was wearing
15 sweatpants and it wasn't self-inflicted. Is that
16 something you as the director would notify law
17 enforcement about?

18 A. I probably would, yeah.

19 Q. Who else would you as a director feel you
20 had the responsibility to notify and within what
21 time frame?

22 A. Right away, within a reasonable time, the
23 governing body, probably the Chair.

24 Q. Would it be important in your quest for
25 truth to preserve the bloody chair and the blood on

1 the floor?

2 A. That, as director of the agency, yeah, if
3 there was a suggestion that there was criminal
4 behavior, I think the responsibility of the
5 provider agency, which would rest in the CEO's hand
6 primarily, that you'd want to preserve the
7 evidence, that's correct.

8 Q. If the mess has been mopped up, would it
9 be harder to get DNA evidence?

10 A. I'm not an expert in DNA. I don't know.

11 Q. As director, what was your policy about
12 preserving evidence --

13 A. What, hypothetically, would be my policy
14 in an agency like that, I certainly would want to
15 have it preserved, sure.

16 Q. Do you have -- as a director of State
17 DDSN, what is your policy on an event like that, as
18 to the need for preserving evidence?

19 A. I think it needs to be preserved. And I
20 think when you make contact with the police, that
21 that would be the first question that the police
22 would say is make sure you preserve the evidence.

23 Q. How soon in an event like this should
24 police be called?

25 A. I'd say right off. If it warrants police

1 action, right off.

2 Q. So you were informed immediately about the
3 injury, and when Ms. Mims showed up with a Court
4 order, allowing her to take Edward home, your
5 agency refused to allow him to go home?

6 A. Yeah, I think there was another Court
7 order that we needed to reconcile whether or not,
8 you know -- which one we had to go by. I don't
9 think there's any interest on our part of denying,
10 you know, a properly developed legal process, or
11 follow the legal process, to let anybody go that
12 needed to go. I don't see that -- I don't know why
13 anybody would see that as an issue.

14 I mean, from my perspective, if we had a
15 preexisting responsibility of the Court, we needed
16 to make sure that that would be executed properly.

17 Q. You've got an individual that this injury
18 has occurred with. His mother shows up with an
19 order from the Court requiring his release, giving
20 her the authority to release him, signed by the
21 same Court that signed the judicial admission. Can
22 you tell me what involvement you personally had in
23 deciding not to release him?

24 A. Oh, I think I talked with our counsel at
25 the time, Mr. Hill.

1 MR. WOODINGTON: I would ask you not to go
2 into those conversations.

3 THE WITNESS: Who I have nothing further
4 to say about.

5 BY MS. HARRISON:

6 Q. Who else did you talk with?

7 A. Well, I would have talked with Dr. Lacy,
8 Kathi Lacy, about the situation.

9 Q. Did you talk with Dr. Johnson?

10 A. I don't recall that I did, no.

11 Q. So you talked with --

12 MR. STEGMAIER: I'm sorry, which
13 Dr. Johnson?

14 BY MS. HARRISON:

15 Q. Dr. Judy Johnson.

16 A. I talked with no Dr. Johnsons on that
17 topic.

18 Q. So you just talked with Dr. Lacy and your
19 lawyer. You didn't talk with anyone else?

20 A. Right.

21 Q. Did you talk with Sam Davis?

22 A. I don't recall if I did or didn't.

23 Q. Tell me about the conversation with
24 Dr. Lacy.

25 A. We had the conversation, and --

1 Q. How did it go?

2 MR. WOODINGTON: Excuse me just a minute.
3 If Mr. Hill was present, I would regard that as an
4 attorney-client conversation and I'd instruct him
5 not to answer.

6 But let me just voir dire with you.

7 Do you recall if Jim Hill was present at
8 the conversation?

9 THE WITNESS: I think he was.

10 MR. WOODINGTON: I'd instruct you not to
11 answer that.

12 BY MS. HARRISON:

13 Q. Did you have any discussions with Dr. Lacy
14 outside the presence of Jim Hill?

15 A. I don't think so.

16 Q. So Jim Hill was there for every
17 conversation you had with Kathi Lacy about this?

18 A. In reference to the Court action --

19 Q. Anything having to do with Edward Mims.

20 A. Oh, no. Certainly there are other things
21 I've certainly probably talked --

22 Q. Tell me about those conversations.

23 A. He would have talked about the event and
24 so forth, what needed to be done, that kind of
25 thing.

1 But a lot of it in this particular
2 circumstance, where I think we are in the
3 conversation, discussion here was around what
4 happened in the -- with the attorney there, with
5 Kathi, and what the decisions were. So I guess
6 I've been advised not to --

7 Q. What conversations did you have with Kathi
8 when Jim Hill was not present?

9 A. Just the general thing. She would have
10 informed me, as I think I testified earlier, that
11 this unusual occurrence happened.

12 Remember we talked about that, how it
13 would come in through Sam Davis and Sam Davis would
14 apprise her, she would apprise me.

15 Q. And what did she tell you about it?

16 A. That it occurred, it's very unusual, and
17 we're going to be looking into it.

18 Q. How long did you give her to get back with
19 you?

20 A. I didn't give her a time frame.

21 Dr. Lacy's a very polished professional
22 and she knows how to prioritize, and she would dig
23 into something right away if that was needed for a
24 day or two. It would depend.

25 Q. Your agency continued to be involved after

1 the Court issued the order, the temporary
2 guardianship order and the order that said that
3 Edward would be released, did it not?

4 A. Yes.

5 Q. Were you aware that Jim Hill went to the
6 Probate Court and appeared at those proceedings?

7 MR. WOODINGTON: You can answer whether
8 you were aware or not.

9 THE WITNESS: I was aware that he
10 participated in some proceedings, yes.

11 BY MS. HARRISON:

12 Q. And were you aware that he asked the judge
13 to use Edward's money to hire a lawyer for Edward's
14 sister?

15 A. You're asking me if I knew what Jim Hill
16 asked the judge, I don't know.

17 Q. What do you know -- other than your
18 individual conversations with Jim Hill, what do you
19 know about Jim Hill's participation in these
20 proceedings?

21 MR. STEGMAIER: Can we go off the record
22 for a second?

23 (Off-the-record discussion.)

24 MS. HARRISON: If you'd read my last
25 question, please.

1 (Question read.)

2 THE WITNESS: Only that he participated in
3 them.

4 BY MS. HARRISON:

5 Q. At whose direction?

6 A. Well, it would have been at my direction
7 that he needed to be participating in Court
8 activity.

9 Q. So did you direct him to oppose the
10 appointment of Margaret Mims as Edward's guardian?

11 MR. WOODINGTON: I would ask him not -- to
12 only answer whether or not he -- what position -- I
13 think it's all attorney-client. I instruct him not
14 to answer that.

15 BY MS. HARRISON:

16 Q. Did you make a decision that the
17 appointment of Margaret Mims should be opposed by
18 your agency?

19 A. No.

20 Q. Did someone at your agency make that
21 decision?

22 A. Getting into --

23 MR. WOODINGTON: If it's
24 attorney-client --

25 THE WITNESS: Yeah.

1 BY MS. HARRISON:

2 Q. So you did not make a decision to -- he
3 was not acting under your direction?

4 A. I don't recall -- without getting into
5 this attorney-client, what's attorney, what's not,
6 we would have had a discussion about what would be
7 a reasonable way to approach the situation, is the
8 extent of what I can remember.

9 I don't really remember saying, and, by
10 the way, it wouldn't be proper to have so-and-so or
11 anybody else to be the guardian. I mean, I
12 wouldn't get into that situation. I'm not sure
13 that that was -- well --

14 Q. Your agency in front of a number of people
15 opposed the appointment -- in fact, your agency
16 sent a brief -- filed a brief in opposition of the
17 appointment of Margaret Mims as guardian.

18 Now, did you as the state director make
19 that decision to have a brief filed opposing her
20 appointment?

21 A. Again, from my perspective, that would
22 have been something I would have discussed with
23 Attorney Hill.

24 Q. But who made the decision?

25 A. It would have come out of that discussion.

1 Q. But who made the decision?

2 A. I'm not --

3 MR. WOODINGTON: I think it's appropriate
4 to ask him what -- as a result of that discussion
5 what happened, but not necessarily what the --
6 well, not at all what the contents of the
7 discussion was.

8 MS. HARRISON: But his agency filed a
9 brief and decided to be a participant, an active
10 participant, in a probate proceeding opposing the
11 appointment of Margaret Mims as guardian, and I
12 think I have the right to know who at the agency
13 made that decision to participate and to file a
14 brief opposing her appointment. I think I have the
15 right to know that.

16 MR. WOODINGTON: You know, I have a right
17 to discuss that in the middle of the deposition
18 since it involves a discussion of privilege, and
19 what I'd like to do is take him outside for a
20 minute and discuss that with him.

21 MS. HARRISON: That's fine.

22 MR. STEGMAIER: Do we have a brief
23 available?

24 MS. HARRISON: And while y'all are
25 talking, I'll get the brief.

1 (A recess transpired.)

2 BY MS. HARRISON:

3 Q. So you've had an opportunity to look over
4 the objections your agency filed with the Court?

5 A. Uh-huh. Yes.

6 Q. Can you tell me who made the decision to
7 file these objections?

8 A. We would have had a discussion.

9 Q. Who is we?

10 A. Mr. Hill. Let me see if I cannot include
11 him in this. And I misinterpreted you earlier. I
12 thought you said that we were objecting to the
13 sister being the guardian. I must have misheard
14 you.

15 Q. No, you were promoting the sister at the
16 courthouse.

17 A. Going by this. What this is here,
18 basically what this says is that the role of the
19 Agency would be one that we were consistently
20 acting on the basis of what -- the original action
21 we took in terms of the involuntary admission.
22 That would be that the petitioner's capacity to do
23 the stuff she needed to do, we felt she wasn't
24 capable of doing. So that was our position. So
25 it's consistent. So it's not really --

1 Q. And your decision -- so you made that
2 decision?

3 A. Right. Ultimately, yes.

4 Q. What did you base the decision that
5 Ms. Mims -- excuse me, let me finish my question.

6 A. Please, please, sorry.

7 Q. What did you base your decision that the
8 Agency should object to her appointment based on
9 her inability to care for Edward? What was the
10 basis of that decision?

11 A. That the circumstances were still
12 operating that led to the original involuntary
13 admission. We hadn't seen a change in her
14 capacity.

15 Q. Had you sent anyone to her home?

16 A. There would have been somebody probably
17 taking a look at that, the situation, what his
18 needs were and that type of thing. My
19 determination, there wasn't --

20 Q. So did anyone from your agency do a home
21 study before these objections were filed?

22 A. I can't remember if there was a home study
23 done, but I'm pretty sure that there was an
24 assessment of some type regarding her capacity. It
25 may have involved a home visit, but I don't recall.

1 Q. Are you aware that when the
2 Court-appointed visitor went to Edward's residence
3 with a Court appointment that she was denied access
4 to Edward?

5 MR. WOODINGTON: Which residence? I'm
6 sorry.

7 BY MS. HARRISON:

8 Q. To the Kensington residence.

9 A. No, I wouldn't have been aware of that.
10 Ms. Bagnal? Ms. Miller?

11 Q. I believe when Ms. Mullis went and
12 Ms. Bagnal went, they refused to allow them in the
13 facility.

14 A. I'm not recalling that.

15 Q. So no one informed you that they weren't
16 allowed to see Edward?

17 A. I'm not recalling that it occurred nor
18 that anybody told me.

19 Q. So you didn't know that these
20 Court-appointed examiners were not allowed to see
21 him?

22 A. I was unaware of that.

23 Q. But you made the decision -- tell me what
24 the factual basis -- why did you not think that
25 Ms. Mims was capable of taking care of Edward?

1 A. Basically that the conditions still
2 existed, her ability, her resources to be able to
3 provide for Edward, we felt that the same situation
4 that was present when we went for involuntary
5 admission were still operating.

6 Q. And what were those things that would be
7 of danger to Edward?

8 A. We felt that she couldn't provide the
9 level of care that he needed in the home.

10 Q. And why was that?

11 A. That she was out of the home, she was
12 working, she didn't have a lot of resources, income
13 was limited, things of that nature.

14 Q. So is it your position as former state
15 director that when mothers work out of the home
16 they cannot care for their severely-disabled
17 individual at home?

18 A. It wasn't my position when I was state
19 director, what you just said, nor is it now. Each
20 circumstance has to be assessed on its own.

21 Q. So if working out of the home was not a
22 barrier, is it that mothers who do not have wealth
23 are unable to keep their children at home? Do you
24 have people that live on SSI and they keep their
25 severely-disabled children at home?

1 A. Sure. I'm sure there are.

2 Q. Is that a hindrance, not having money?

3 A. Money can be a factor. And you're asking
4 me a global question. A global question is some
5 people living in poor circumstances can provide
6 good care. Others might be assessed as otherwise.

7 In this circumstance, what our assessment
8 was was that he couldn't get the care he needed.

9 Q. Because --

10 A. Another case, it might have been
11 different.

12 Q. He couldn't get the care he needed because
13 mother worked out of the home and she was poor. Is
14 that correct?

15 A. The capacities, the resources, the
16 capacities, the -- my memory is that, you know,
17 that it was hard for her to keep everything -- she
18 would be fatigued, keep everything moving ahead.
19 There was a lot on her as an individual being able
20 to meet her own needs in terms of being able -- as
21 well as Edward's, but another situation could be
22 different.

23 Q. Isn't that what MR/RD waiver services are
24 designed to help with?

25 A. It can help in that. And I think,

1 subsequently, after the decision was made that,
2 okay, he can go home and the mother can provide the
3 care, that an application was made and he was found
4 eligible.

5 Q. Now, why didn't -- instead of filing
6 objections and trying to keep him in a facility
7 that had been decertified, why didn't your agency
8 offer those services, those MR/RD waiver services
9 from the get-go?

10 A. Well, he wasn't -- let me repeat this. He
11 wasn't in a decertified facility. Kensington was
12 not decertified.

13 Q. What was the status of Kensington?

14 A. If there's one thing I would like to be
15 clear today, it wasn't decertified.

16 Q. What was the status of Kensington at the
17 time?

18 A. They had some various issues, and they had
19 been working on plans of corrections to get it back
20 up to where it needed to be, where it had, you
21 know, not been doing what -- the way, you know,
22 things should have been done, that kind of stuff.
23 That's what I'd say on that.

24 The rest of the question, he was in that
25 facility, we felt that was best for him. He hadn't

1 gone to a status where he was going to be at home
2 because this hadn't been dealt with yet, and that
3 would be a separate process after that that he
4 would apply for the waiver, which in fact he did,
5 and which in fact he was approved for.

6 Q. What did you do to help with that? Did
7 you offer him Adult Nursing Services so that his
8 mom could keep him safely at home?

9 A. We offered him the -- after this
10 decision's made and, okay, he's going to go home,
11 fine, and the neighbors are going to do some
12 things, maybe, and so forth, and he was approved
13 for the waiver.

14 And the waiver has a mix of services,
15 respite, personal care, stuff like that. It does
16 not include adult day health as a service.

17 Q. Mr. Hill talked about a cat on the table
18 and the house being unkempt. Did y'all have any
19 discussions about that?

20 A. I can tell you with certainty that I don't
21 recall Mr. Hill telling me anything about a cat on
22 a table.

23 MR. WOODINGTON: Let's not talk about what
24 Mr. Hill talked about.

25 BY MS. HARRISON:

1 Q. Did anyone tell you that the house was
2 disorderly?

3 A. I don't remember anyone describing it in
4 those terms.

5 Q. So as far as you knew, the house was
6 perfectly acceptable?

7 A. I didn't say that.

8 Q. What did you know about the house?

9 A. You said it was disorderly. I don't know
10 if it was disorderly.

11 Q. What did you know about the house?

12 A. The main thing that I knew was that the
13 combination of the mom and the overall environment
14 wasn't something that we felt, based on our
15 professional assessment, was in his interests to be
16 in. So it would be a combination of things.

17 In other words, we can't go down the list
18 of, is it poor, is it single mom, is it the house.
19 It's a combination overall.

20 Q. And tell me all the negatives that did not
21 work.

22 A. We felt that she could not provide the
23 care that he needed because of her resources in the
24 broadest sense of that term, not just monetary,
25 psychological resources, certainly financial

1 resources where that's appropriate. We just didn't
2 think that she would be able to do that.

3 Q. So she didn't have the psychological
4 resources or the money. Give me specifics about
5 what she didn't have.

6 A. I did. We can go down a list and say,
7 well, was the house okay, kind of come up with
8 that. What we did was we do an overall assessment
9 of can this circumstance -- because it's not any
10 one of those things that's predictable, what's
11 going to work or what's not going to work.

12 The overall assessment was those
13 combination of things: Single mom, not a lot of
14 financial resources -- although that's not a
15 determiner -- her capacity being fatigued from
16 work. She had to work very hard to put food on the
17 table, that kind of thing.

18 The combination of physical, psychological
19 and other resources we felt was inadequate, which
20 is very different from, you know, ~~that the mom had~~
21 great affection and love for Edward and wanted to
22 act on -- these are all separate things. It was
23 our judgment that based on these circumstances at
24 that time for Edward, that it wasn't in his
25 interest.

1 Q. Why did your agency determine that the
2 sister should be appointed?

3 A. I don't recall that we made a decision. I
4 don't think we can make a decision who's guardian.

5 Q. But did you not press the Court to
6 consider the sister?

7 A. I'm not -- I think we're getting into the
8 legal realm here. I don't know that we did.

9 Q. And this is the copy with all the
10 attachments, and I'd like to mark this as
11 Exhibit 1.

12 MR. STEGMAIER: Hold on. Let's mark it as
13 plaintiff's next.

14 MS. HARRISON: Okay. Plaintiff's next.

15 (PLF. EXH. 20, Objections, was marked for
16 identification.)

17 MR. WOODINGTON: Since you just handed him
18 this, I would just point out that everything is '01
19 except for maybe the last document. Let me see if
20 I'm right about that. No, I'm sorry, there's
21 something else too.

22 MS. HARRISON: This is a 2005 document.
23 They attached '01 documents to it.

24 MR. WOODINGTON: There is some '05 stuff
25 at the back. So Tab G through the end. He can

1 take his time and review it if he wants. Let's
2 just see where we go.

3 BY MS. HARRISON:

4 Q. At the next-to-the-last document is a
5 letter from Edward's sister, Diane Theriot, to
6 Mr. Hill.

7 Are you aware of any meetings between
8 Ms. Theriot and Mr. Hill?

9 A. No, I'm not.

10 Q. Did you ever meet Ms. Theriot?

11 A. No, I didn't, to my memory.

12 Q. Can you tell me why the Agency would be
13 submitting to the Court the letter opposing
14 Ms. Mims' appointment that was sent by his sister?

15 A. That might be in the legal realm.
16 Mr. Hill must have felt it was important for the
17 Court to be aware of that.

18 Q. And can you tell me why Mr. Hill would
19 have been sitting at counsel table in the courtroom
20 with the sister?

21 A. I wasn't there. I have no idea.

22 Q. Was it your intention that he have any
23 kind of representation of the sister?

24 A. Who?

25 Q. Mr. Hill.

1 A. I'm sorry, I'm not understanding the
2 question. He would somehow represent the sister?

3 Q. The agency lawyer was not sitting in the
4 back. The agency lawyer was taking an active role.
5 And the agency lawyer asked the sister to come up
6 to counsel table in the courtroom and participate,
7 sitting beside him. Can you tell me why the agency
8 lawyer would take this kind of position between
9 family members?

10 A. I wasn't there and so I don't know why he
11 did that. It wasn't something that he discussed
12 with me, if I can say that.

13 Q. So you didn't know the sister would be at
14 the hearing?

15 A. No. Was that the one that was on a
16 Sunday?

17 Q. So what was your decision about the role
18 the Agency would take in this emergency proceeding
19 to get Edward out of Kensington?

20 A. The Agency's position would be to act on
21 what we thought -- based on the information we
22 thought that would be in the best interest of
23 Edward.

24 Q. And what was that?

25 A. To stay in the -- remain in the

1 involuntary status and stay where he was.

2 Q. Now, did you ever discuss this during this
3 time with Judy Johnson?

4 A. No, not that I recall. No.

5 Q. Did you discuss it with anyone at the
6 Babcock Center?

7 A. No, not that I recall.

8 Q. Now, a 2006 audit by HHS of your agency
9 said that the substantiated rate of abuse and
10 neglect was double the statewide average, I believe
11 it was in 2003, and was quadruple the statewide
12 average in 2004. Are you familiar with that audit?

13 A. Well, not only am I familiar with that,
14 it's stated that we provided them because we did
15 the analysis. Those are documents that we gave to
16 HHS, so we generated them.

17 Q. Now, you were the person who had the sole
18 decision-making authority about where to place
19 Edward Mims, were you not?

20 A. The state director is responsible for
21 making placement decisions, uh-huh.

22 Q. And you made the placement decision in
23 2001 when he was involuntarily admitted --

24 A. Right.

25 Q. -- to admit him to the Babcock Center, did

1 . you not?

2 A. I believe that's correct.

3 Q. In 2003, when your agency determined that
4 there was double the rate of substantiated abuse
5 and neglect, did it occur to you that you had any
6 duty to Edward Mims to remove him from that
7 facility?

8 A. We have a duty to everybody we serve, and
9 the duty that I acted on at that time, based on the
10 '03 data, was in March of '04, I got a commitment
11 from the Babcock agency, spoke with Ms. Johnson and
12 the Board, to reduce the capacity of the agency in
13 residential services by 25 percent over three
14 years, because I felt that they had too much on
15 their plate to manage. So that would affect,
16 obviously, Edward and anybody else in the
17 organization.

18 Q. So that was in '03?

19 A. No, that was in March '04, based on the
20 '03 data. Data runs a little bit behind.

21 Q. So you got 25 percent of them out to a
22 safer place?

23 A. No. We had the agreement to reduce it by
24 25 percent in March '04, and work began on that.
25 One of the big pieces of that was shifting the

1 Clusters to management, DDSN management, and then
2 working towards its closure.

3 I will tell you, because we may get to it
4 in a moment anyways, is that we continued to track
5 data. We did reviews of the program's periodic
6 indicators that Kathi Lacy oversaw, how they were
7 doing in different program areas.

8 And in the fall of '04, the trend line
9 still was not good for the agency as a whole on
10 quality. So what I did was I met with the Board
11 and said we have to reduce by 50 percent. We have
12 to go from 634 beds to 317 beds in 18 months, and
13 that's what we did. And so --

14 Q. So you did actually reduce by 50 percent?

15 A. Yeah, that's right.

16 Q. And you met that mark?

17 A. Yes.

18 Q. Would it surprise you to know that
19 Dr. Johnson testified in Federal Court that that
20 mark was not met and in fact you -- your agency was
21 giving her additional new people?

22 A. At the time I left the agency, the only
23 people that she got or the agency got was when
24 there were some vacancies. We didn't have -- if
25 you went back and looked at, for example, the 500

1 beds that were new development, none of those went
2 to Babcock.

3 Q. So Dr. Lacy's testimony was not accurate?

4 A. I don't know when she testified, and I
5 don't know what the question was that she was
6 asked.

7 MR. WOODINGTON: You mean Dr. Johnson.

8 MS. HARRISON: Dr. Johnson, I'm sorry.

9 THE WITNESS: Let me ask you, when did she
10 testify to that effect?

11 BY MS. HARRISON:

12 Q. She testified to that in '07, I believe it
13 was.

14 A. Yeah. No.

15 Q. That's not true?

16 A. It's not true that they got any beds --
17 that we were funding any new beds with them.

18 Q. Now, you said Dr. Lacy was the person who
19 was taking this data and analyzing it and giving
20 you advice?

21 A. On how they're doing and so forth, uh-huh.

22 Q. So when an entity is having problems, it's
23 her responsibility to go in and gather data and
24 figure it out and come to you. Is that correct?

25 A. Well, there's much more involved with it

1 than that. It's not Dr. Lacy -- and I know you
2 don't mean this -- riding around to every program
3 in the state seeing how they're doing.

4 We depend on the results from licensing.
5 We depend on the results from the quality
6 improvement organization data. We depend on
7 looking at -- we track -- they track incidents of
8 allegations of abuse, whose seem to be higher,
9 whose seems to be lower, to make a determination if
10 there's overreporting or underreporting.

11 Q. And who is doing this tracking?

12 A. The tracking would be in Kathi's office,
13 with her and her director of quality assurance and
14 that sort of thing, her staff.

15 Q. And you make your decisions based on what
16 she tells you?

17 A. I make the decisions based on the
18 information I have, which may be information that
19 she provides me. She doesn't tell me what I'm
20 going to do, no.

21 Q. Now, when this 2006 audit came out --

22 A. Yes.

23 Q. -- it also showed, did it not, that HHS
24 could not track Medicaid dollars once they were
25 paid?

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2 to Babcock.

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18 information I have, which may be information that
19 she provides me. She doesn't tell me what I'm
20 going to do, no.

21 Q. Now, when this 2006 audit came out --

22 A. Yes.

23 Q. -- it also showed, did it not, that HHS
24 could not track Medicaid dollars once they were
25 paid?

1 A. I think there was a finding in there by
2 Ms. Schneider to that effect, that they couldn't
3 track where the money went after the agency got it.

4 What it doesn't, of course, report is that
5 they didn't find that we were -- what was not
6 included in what you're commenting on was that they
7 found no problem with the way we managed our funds.

8 It's almost the same -- let me give you an
9 example. It's almost the same as like going to a
10 nursing home, which, say, has a hundred beds, has
11 some people functioning fairly well, stabilized,
12 some that might be having increased chronic
13 problems or acute problems. So the amount of
14 activity that anybody would be getting would vary
15 over time. They get reimbursed.

16 So what the nursing home would not be able
17 to tell you is where the money went for any
18 particular person. They're reimbursed on an
19 average.

20 And that's what the model for the funding
21 band system is, that it's an average, based on
22 people with like needs would get XYZ level of
23 service or funding.

24 In turn, each year the actual units of
25 services that are provided are captured, and that's

1 what's billed to Medicaid. So what Medicaid pays
2 for is only what's provided.

3 Q. I understand your theory. Don't agree
4 with your theory, but I understand your theory.

5 So is it not true that when the
6 Legislative Audit Council came in and released
7 their report in '08, that they also said that HHS
8 recommended an independent financial audit and we
9 still believe that -- we can't follow the money,
10 there needs to be an independent financial audit?

11 A. Well, they said something like that, but
12 what -- I think the main thing that I would tell
13 anybody who had any concern about this or that in
14 the LAC audit was that they state very clearly in
15 that audit that they found no material problems
16 with DDS funding, no material problems.

17 Now, I think what you're referencing
18 relates to an '04 recommendation by CMS that there
19 would be an independent audit of DDSN funding and
20 the relationship -- the funding relationship with
21 Medicaid.

22 Mr. Kerr, at that time, was director of
23 HHS. Mr. Kerr wrote back and said he doesn't think
24 it's necessary. In 2006, Mr. Kerr later said,
25 well, why don't we go ahead and do this. Let's do

1 an independent audit.

2 So in fact there was discussion. We can't
3 decide as an agency, nor can HHS, on an independent
4 audit. That goes through the state auditor. That
5 has to be negotiated and worked through and so
6 forth.

7 That was one of the things that was a
8 finding in the LAC report, that the response by the
9 Agency said in this calendar year there would be an
10 external audit of those findings as completed.

11 Q. Would it surprise you to know that
12 Mr. Kerr met with the head of the House Ways and
13 Means and another legislator in the spring of '07
14 and told him that he could not follow the money
15 once it's paid to your agency and an audit is
16 needed?

17 A. Nobody ever told us that, no.

18 Q. Would that surprise you?

19 A. It would because that's not what he was
20 telling us. I mean, I can tell you I've never
21 received anything from him that says right away we
22 need to do this audit, and this or that, to help
23 explain things. He in fact understands how our
24 funding is set up.

25 Q. Now, your agency paid him to do a study,

1 didn't you?

2 A. Uh-huh.

3 Q. And tell me how that came to be.

4 A. We asked him to -- after he left his job
5 as director of Health and Human Services, to look
6 at our funding mechanisms and stuff like that.
7 Based on his expertise in funding and knowledge of
8 our system, we thought it would be a good thing to
9 do because there were occasional questions about,
10 well, is this properly set up or not properly set
11 up, that type of thing.

12 Q. And how much did you pay him to do that?

13 A. I believe it was about \$2,500, something
14 in that range.

15 Q. And whose idea was that to hire Robbie
16 Kerr to do that?

17 A. Bill Barfield suggested it. I said that's
18 a terrific idea. We went ahead and did it.

19 Q. And I only have one of these, but I'm
20 going to pass this to your lawyers first and then I
21 want you to take a look at that and tell me if you
22 can tell me what that is.

23 A. It says it's a picture of Edward Mims.

24 MR. WOODINGTON: I'd like to get that
25 marked, by the way, as Plaintiff's next.

1 (PLF. EXH. 21, Photo with Attached Notes,
2 was marked for identification.)

3 MS. HARRISON: And I'm going to need the
4 original back. Can you make copies and get me the
5 original back?

6 THE WITNESS: So then it's statements by a
7 bunch of people that said they didn't notice any
8 marks on his face, referring to this picture?

9 BY MS. HARRISON:

10 Q. I'm asking you what it appears to be.

11 A. Well, it appears to be a picture of Edward
12 with a mark on his face, or he got into somebody's
13 makeup, a mark on his face, and then there are
14 statements -- this one's undated, didn't see any
15 marks. This one is the day after, when the picture
16 was identified as being taken. The next one's not
17 dated. The next one is the same day that the
18 pictures were taken, so I'm not sure what that
19 tells us.

20 Q. Does that appear, maybe, to be statements
21 taken by people who were working?

22 A. Yeah, that has the appearance of it. And
23 then there's one statement, says day before, that
24 he didn't see any red marks on his face.

25 Q. So would you have received this report?

1 A. We normally wouldn't get pictures of
2 somebody's injury. What we get is a report, a
3 critical incident, saying somebody had a mark on
4 his face and it's being reviewed.

5 Q. So you don't get the firsthand reports?

6 MS. HARRISON: I'd like to mark that,
7 please, as the next exhibit, and I will need the
8 original back when we take the deposition of
9 Dr. Johnson.

10 BY MS. HARRISON:

11 Q. So you don't get the original version,
12 it's rewritten or you get a different version that
13 you review. Is that true?

14 A. We normally wouldn't get a picture of
15 somebody. We might occasionally get a picture of
16 somebody. What we get is a cover sheet saying what
17 happened and so forth, witnesses and stuff like
18 that.

19 And we might get some personal statements,
20 but usually the statements would become more as the
21 process of investigation goes forward.

22 But this was '01, and I don't believe
23 Ms. Johnson was there in '01, December '01.

24 MS. HARRISON: If we can mark that as
25 next, please.

1 BY MS. HARRISON:

2 Q. Are you aware that the individual who beat
3 Edward with the belt later was moved to Ida Lane
4 and beat another individual with a belt a few
5 months later?

6 A. I don't have a memory of that, no. Could
7 have happened.

8 MR. STEGMAIER: Ms. Harrison, let me ask
9 you this, in reference to that particular event,
10 what was the year? What was the approximate year
11 of that?

12 MS. HARRISON: That would have been '01 or
13 '02.

14 MR. STEGMAIER: Was that before or after
15 Dr. Johnson came to Babcock?

16 MS. HARRISON: She came sometime in '02.

17 MR. STEGMAIER: Thank you.

18 BY MS. HARRISON:

19 Q. So are you aware of the rape -- alleged
20 rape of the 78-year-old individual at Ida Lane?

21 A. Yes. Alleged, I think, is the operative
22 word. There are two ER physicians that examined
23 them that said no rape occurred.

24 Q. Is that what the ER physicians said?

25 A. Yeah, there are statements to that effect

1 that I've seen that there was nothing that was
2 consistent with sexual assault.

3 Q. That's what the ER --

4 A. That's what I'm saying, that two -- I'm
5 saying that two physicians found that no sexual
6 assault occurred.

7 Q. Did CMS investigate?

8 A. They reviewed that.

9 Q. And what did CMS say?

10 A. The draft CMS said that maybe there was a
11 problem there. The final CMS report didn't
12 identify it as an issue, didn't see anything that
13 the Agency had to do different.

14 They would have -- and I called them on
15 that one, I believe. They said if we had had a
16 finding in anything on that regard, we would have
17 asked for a plan of correction, which we didn't.
18 And that's your answer, Dr. Butkus.

19 Q. But did you know it was the same
20 perpetrator that beat Edward and then later beat an
21 elderly man in another facility? Did anyone ever
22 tell you that?

23 A. I don't recall if they said it was the
24 same person.

25 You shifted a verb from "beat" -- from

1 "sexual assault" to "beat," and, you know, in
2 either case I don't know.

3 Q. Were you aware that before the alleged
4 sexual assault occurred at Ida Lane that the same
5 perpetrator beat JJ?

6 MR. STEGMAIER: Hold on. Was this the
7 same client?

8 MS. HARRISON: This is the elderly
9 gentleman.

10 MR. STEGMAIER: Is it the same person
11 we're talking about?

12 MS. HARRISON: The individual beat Edward
13 Mims, 16-year-old.

14 MR. STEGMAIER: We're not talking about
15 the perpetrator. We're talking about this --

16 MS. HARRISON: We're talking about the
17 perpetrator beat Edward Mims.

18 MR. STEGMAIER: Right.

19 MS. HARRISON: The perpetrator was moved
20 to Ida Lane, and the perpetrator beat J.J. and then
21 the perpetrator allegedly raped J.J.

22 MR. STEGMAIER: Okay. Thank you.

23 MR. WOODINGTON: J.J. is the 78-year-old?

24 MS. HARRISON: The 78-year-old.

25 MR. STEGMAIER: Thank you.

1 BY MS. HARRISON:

2 Q. Tell me what you know about the
3 investigation of the beating prior to the alleged
4 assault.

5 A. That's really going back. I would have
6 been apprised, of course, of a situation like that,
7 would be the extent of it, and my involvement would
8 be to make sure that people were doing what they
9 needed to do to investigate it thoroughly.

10 Q. Are you aware that Dr. Johnson has
11 testified that she talked to you about that alleged
12 rape and that you told her it was not necessary to
13 report that to the ombudsman?

14 A. I don't recall that. But I would remind
15 you that when he went to the ER room, that I
16 believe the police were notified. The police have
17 an obligation to report to the ombudsman if they
18 think something's needed.

19 So if she asked me the question, I would
20 have told her -- which I don't recall her asking
21 me -- I would have told her it's already been
22 reported by -- to the authorities it needed to be
23 reported to.

24 Q. Did you know at that point that the
25 police -- now, we're talking about J.J. now.

1 A. Uh-huh.

2 Q. So you're saying it was reported to the
3 police at the hospital?

4 A. I believe it was, and they consulted with
5 the physicians, and they didn't do anything further
6 based on what they knew from the medical
7 perspective.

8 Q. Do you know whether Dr. Johnson had a
9 police report?

10 A. I don't know if she had a police report.
11 I know that the police didn't do anything because
12 they didn't think there was any evidence to do
13 anything based on the medical report.

14 Q. So Dr. Johnson -- do you deny that she
15 called you and asked you whether she needed to
16 report the rape of the 78-year-old?

17 A. I don't recall. I don't recall if she did
18 or not. My position's always been if you think
19 something needs to be reported, report it. If it's
20 already been reported, there's a little bit of
21 redundancy in there, but I don't know the
22 circumstance of whether I told her that or not.

23 Q. So you're denying that you told her that
24 you don't have to report an alleged rape if it's
25 client on client?

1 A. I didn't say anything like that. I said
2 to your question, which I believe was something
3 like did you tell her not to report or did we
4 discuss it, I said I don't recall discussing it, so
5 I certainly don't recall if I told her to report or
6 not.

7 Q. Would you ever tell her not to report an
8 alleged rape because the perpetrator was a
9 consumer?

10 A. No.

11 Q. So you would never tell her that?

12 A. No. If she's -- I mean, it depends if she
13 posed the question, I don't know what to do about
14 this situation, if it was a consumer or if it was
15 neglect, what do you think? I'd say, if you're in
16 doubt, make sure you report it.

17 If it's something that's already occurred,
18 the police have looked at it, we've got information
19 about it, there wasn't any finding of anything
20 needed to be done, I'd say, well, I think it's
21 already been reported, but do what you need to do.

22 I think you had posed, Ms. Harrison, that
23 same of type of question to me in the past, and
24 that's always been my response too, that if it's
25 been reported, it's been reported. If you would

1 like to report it additionally to someone else,
2 feel free, but law enforcement has an obligation as
3 well to notify the ombudsman, under the old rules.

4 Q. Describe your relationship with
5 Dr. Johnson.

6 A. Dr. Johnson is executive director of
7 Babcock Center, one of 30-something organizations
8 DDSN contracts with.

9 Q. Do you think she does a good job of
10 managing that organization?

11 A. I think overall she has done a pretty darn
12 good job of pulling an agency out of a downward
13 quality situation.

14 There had been some neglect, I think,
15 under the previous governance, executive director.
16 Lots of senior staff left, and I think she ended up
17 inheriting an organization that was not in good
18 shape.

19 And I think that she did a pretty good job
20 all things considered. I'm not saying I won't
21 disagree with her at different times, whatever, but
22 all things considered, she did a pretty darn good
23 job pulling that agency back to a point of
24 respectability, back to a point where, for example,
25 if you want -- indicators of quality would be that

1 they're at the statewide average now on abuse,
2 neglect, and exploitation allegations.

3 Q. So the problems -- there were problems
4 with the former executive director? How did it --

5 A. Not so much him. I think after he left,
6 what happened was that the Agency kind of descended
7 for a while, and I think the Board was involved.
8 You were involved, I believe, is my memory in some
9 of the executive activities, and a lot of the
10 senior staff -- a number of the senior staff were
11 terminated.

12 And you may recall that I called you
13 around that time to register my concern to you as
14 the Chair, that if a lot of people were going to be
15 terminated, you need to have a basis for doing it,
16 otherwise there could be some consequences legally.
17 They might sue the agency.

18 And so we did set up -- I did schedule a
19 review, an audit of what went on there. And my
20 recollection is something like seven people brought
21 suit of wrongful termination, seven or eight, and
22 the Agency settled with most of them, found --

23 Q. Did you have anything to do --

24 MR. STEGMAIER: Hold on.

25 BY MS. HARRISON:

1 Q. Go ahead.

2 A. They found for the people that issued the
3 complaint against the Agency.

4 Q. Who found for the people?

5 A. The insurance companies agreed to pay the
6 people. They didn't contest it, the termination.

7 Q. What involvement did you have in those
8 lawsuits?

9 A. None. Those were actions that individual
10 former employees of Babcock Center took against the
11 Babcock Board.

12 Q. Were some of these people terminated based
13 on your agency's audit?

14 A. I don't think so.

15 Q. Ross Robinson, did your agency find that
16 he had failed to -- he had rehired someone with a
17 substantiated case of abuse?

18 A. I talked specifically with Steve Jeffcoat
19 about that, and he said -- he did the audit, as
20 you're well aware. He didn't think -- although
21 Ross had made some errors like that, he didn't
22 think the evidence substantiated or required that
23 he be terminated. That was what Steve said. He
24 thought it was over the top.

25 Q. But your audit found that he rehired

1 someone with a substantiated case of abuse?

2 A. Yes, that's right. That's right.

3 Q. And who made the decision to terminate
4 Ross Robinson?

5 A. I think it was probably the -- by that
6 time Mr. Christian -- Dr. Christian was the acting
7 director.

8 Q. It was Judy Johnson that terminated --

9 A. Okay.

10 Q. -- Ross Robinson, wasn't it?

11 A. Maybe it was later on. Okay.

12 Q. Did you give him a recommendation for the
13 job in Calhoun County?

14 A. No, ma'am.

15 Q. Did you have anything to do with that?

16 A. Absolutely nothing.

17 Q. The review of your agency by Dave Murday,
18 tell me about that. And I know you're going to --
19 what's your --

20 A. I can be brief.

21 MR. STEGMAIER: Let's go off the record.

22 (Off-the-record discussion.)

23 BY MS. HARRISON:

24 Q. Dr. Butkus, tell me about the study by
25 Dave Murday and the School of Public Health.

1 A. Yes. That was done, I think, a couple
2 years ago now, and it was asked to be done by
3 Robbie Kerr when Robbie was still director at
4 Health and Human Services.

5 We got the report. Our take on it was
6 that -- the simplest way I can say it is that the
7 methodology was inappropriate, as far as trying to
8 get the answers, I think, they were after. And
9 then the data collection was off, the data that was
10 collected to complete the methodological approach.

11 So usually if one of those things or the
12 other is off, you don't get what you're after.
13 When both of them are off, like inadequate or
14 flawed methodology and poor data, then the results
15 are predictable and it's not of any value.

16 So he went through the report. What I did
17 was when I got it, I read it, and I spoke with Emma
18 Forkner, who was probably then director of HHS, and
19 I said to her, I don't think that there's anything
20 in this report that we can act on because of these
21 various inaccuracies.

22 The additional thing I did was I asked an
23 expert from Syracuse University, that does a lot of
24 research, knows methodologies and so forth, to do a
25 review of the methodology and so forth. And his

1 answer was basically the same, is that there's
2 nothing there that you can utilize.

3 When I asked --

4 Q. What was his name?

5 A. Steve something. It will come to me. It
6 will come to me in a minute. Steve something.

7 Q. How did you find him?

8 A. Well, Syracuse is -- the Office of the
9 School of Human Development is a widely known mecca
10 for research and disability.

11 So we -- Steve Biklen. Steve Biklen, I
12 believe it was.

13 Q. Pickle?

14 A. Biklen, B-I-K-L-E-N.

15 Q. So Steve Biklen knows more about the South
16 Carolina Medicaid waiver than the --

17 A. He wasn't asked to look at the South
18 Carolina Medicaid waiver. He was asked to look at
19 the report that Dr. Murday and the School of Public
20 Health did.

21 Now, there were aspects that would relate
22 to the waiver.

23 Q. So you don't give the USC School of Public
24 Health study any credibility?

25 A. I think that report is fatally flawed to

1 the point -- let me finish -- to the point where
2 when I asked Dr. Forkner, Ms. Forkner, I said, I
3 don't think that there's anything we can take from
4 this, and she says nor do I. I said, can you
5 e-mail me a comment to that effect, and she did.

6 And she said, basically, other than for
7 information purposes, there's nothing that we'll
8 expect your agency to do based on this report.

9 Q. Tell me about the Carolina Medical Review.
10 They did a review at the request of Dr. --
11 Mr. Kerr, and they found that the Babcock Center
12 ICF/MRs were not meeting federal regulations, did
13 they not?

14 A. Right.

15 Q. Tell me about that.

16 A. It was completed in early '05, I think.

17 I had mentioned in earlier testimony that
18 the information that we were tracking told us that
19 we didn't think Babcock Center could function
20 effectively at 600 beds.

21 So on December 15th, thereabouts, in '04,
22 I made the decision, presented it to the Chair of
23 Babcock, the executive director, the Chair of
24 Richland-Lexington DSN, and the executive director,
25 that we were going to reduce the program by 50

1 percent. So the report really confirmed the action
2 we were taking.

3 There was some issues -- I don't agree
4 with necessarily everything the way they portrayed
5 it. They were not experts in ICF/MRs. To my
6 knowledge, they've never done any reviews of
7 ICF/MRs. Most of their experience is in ICFs.

8 Some of the same regulatory history
9 applies to both, but there was -- we already
10 knew -- in other words, we already knew that. It
11 didn't add great value to what we needed to do as
12 an organization with Babcock.

13 Q. So you already knew that Babcock ICF/MRs
14 were out of compliance with federal regs?

15 A. We knew that we were not satisfied with
16 the level of quality at Babcock Center as Babcock
17 Center. Any of the residential programs, we were
18 not satisfied in.

19 And I had -- on many public occasions with
20 family members that were frightfully scared that
21 their son or daughter was going to be someplace
22 other than Babcock Center, the issue for me is I
23 can't guarantee that your program, while it's going
24 to be good this week, is going to be good next
25 month, three months and so forth. So we have to

1 reduce the size.

2 Q. Now, we're getting a little --

3 A. We did that, and we actually got some
4 pushback, gentle pushback from some legislators and
5 also a person in the governor's office, do you
6 think maybe we ought to negotiate back to 35
7 percent?

8 And my answer in both instances was I
9 can't guarantee what's going to happen if the
10 Agency doesn't get down to a reasonable size that
11 they can say grace over it and get the results that
12 they want.

13 Q. So you knew ahead --

14 A. Let me add one more thing to that. Is it
15 okay? Is that Robbie Kerr's particular interest --
16 you may or may not be aware of -- is that during
17 that time, the contract for the Babcock ICF/MRs was
18 not with DDSN. We did not have a contract with
19 Babcock for that. That was a contract of some
20 historic nature that the Department of Health and
21 Human Services, Mr. Kerr's agency, had with
22 Babcock.

23 So I would periodically have to call up
24 Robbie Kerr and say there's an issue of this type
25 or that type at Babcock. And he actually, after a

1 period of time, said, you know, we would like to
2 put all these on your contract and we want to get
3 out of the oversight business.

4 So I think probably some of his interest
5 in CMR, during the review, was he had not only a
6 Medicaid State Authority responsibility, he had a
7 contract for those specific services at specific
8 locations.

9 Q. So you had no responsibility for the
10 Babcock Center ICF/MRs?

11 A. No, I didn't say that.

12 Q. Did you have -- what responsibility --

13 A. No. What I added to what I had to say in
14 why we took the decision prior to whatever CMR did
15 was, I, as a CEO, said this isn't working out.
16 We're going from 634 down to 317, which any way you
17 state it says in a pretty dramatic way that the
18 state director is taking action to correct a
19 situation that he didn't think is acceptable.

20 So for you to say to me that did I think I
21 didn't have any responsibility for Babcock is way
22 off from what the actual facts are.

23 Q. But you found the ICF/MR situation at
24 Babcock to be unacceptable?

25 A. We found the ICF -- no, I'm broader than

1 that.

2 Q. Did you find the ICF/MR --

3 A. Yes. Yes.

4 Q. Excuse me, did you find the ICF/MR
5 situation at the Babcock Center to be unacceptable,
6 yes or no?

7 A. Yes. In December, mid-December '04, that
8 was my conclusion.

9 And in -- I would add, in April of '04,
10 that my decision -- with their agreement that
11 they'd reduce by 25 percent was also a statement
12 that we're unsatisfied and that we would close the
13 Clusters, which was 48 ICF/MR beds, was further
14 evidence about how we felt things were going.

15 Q. Now, there had been a previous study your
16 agency did of the Babcock Center, the limited scope
17 audit, was there not?

18 A. Right. That's the one that I called you
19 about, I believe, and said we need to do an audit.

20 Q. And did that audit find problems?

21 A. The audit that we did, headed by Steve
22 Jeffcoat, found various issues. And in a
23 subsequent HHS audit, those findings were
24 reconfirmed.

25 There's a little bit of misunderstanding,

1 I think, from time to time about the audit that
2 DDSN did of Babcock with Steve leaving. And what
3 the misunderstanding is is that there was -- there
4 have been discussions that it didn't deal with
5 abuse, neglect, the quality issues.

6 You may recall that after I suggested that
7 we do this audit, that I invited you, Mr. Schmidt,
8 and I want to say Reggie, the CPA who used to be on
9 the board, to meet with me and Mr. Jeffcoat in the
10 executive suite to discuss exactly what we needed
11 to look at in a review of Babcock, an audit review.

12 And Mr. Jeffcoat -- I don't have it, but
13 Mr. Jeffcoat has a list of things. They're all
14 financial, contractual, and so forth. There wasn't
15 one item on that list that had anything at all to
16 do with health, safety, welfare, not one item.

17 Q. Thank you for your recollection of that.

18 Now --

19 A. That's what I'm here for.

20 Q. Did you call Mr. Robey, who was on the
21 Babcock Center Board, when Mr. Lender left and
22 insist that the agency pay \$120,000 to Mr. Lender?

23 A. No.

24 Let me go back to the beginning of that
25 story. You called me one day and wanted to meet.

1 I think we met here. And you informed me that
2 there was a decision by the Board to release
3 Mr. Lender.

4 And you further told me that you were
5 concerned that there would be some pushback, people
6 would be unhappy, and did I have any
7 recommendations.

8 And I asked you if the situation was
9 irreconcilable, and you said yes, it was
10 irreconcilable. And I said you might want to
11 consider giving him a separation payment of some
12 type. I said six months or a year.

13 Subsequently, parenthetically, I learned
14 that the attorney for the Babcock Board,
15 Mr. Savage, had recommended the same thing. So
16 that was my recommendation.

17 You said that there might be some concern
18 about that with some board members. So I knew Jim
19 Robey and I said -- so I called him and said, you
20 might want to consider this, it's up to you, it's
21 a -- something that's done in this field and other
22 businesses to give somebody a separation bonus,
23 that kind of thing.

24 You remember that Babcock as an agency had
25 been doing okay. In fact, to the point six months

1 before he stepped down and was terminated, you had
2 written our agency, as Chair, asking us to please
3 give Mr. -- allow Mr. Lender to get a raise beyond
4 the maximum that the Agency allowed in our
5 contract. And we didn't do that.

6 Q. Let's talk about salaries. You set the
7 salaries, do you not? Do you not limit the
8 salaries?

9 A. We do.

10 Q. And determine -- and is it not based on
11 the funding provided to that -- how do you base the
12 salaries?

13 A. Budget size.

14 Q. Budget size. Okay.

15 A. So there would be a range of -- might
16 be -- I don't know what the exact is. Might be
17 five or six. Like if the budget's under five
18 million, the pay range is this, if it's between 15
19 and 20, it would be this.

20 Q. So when you reduced the size of the
21 Babcock Center, did you reduce the salary?

22 A. It was still in the range of what the
23 higher-end boards, larger boards would get
24 budgetwise.

25 Q. Now, after Edward Mims went home, are you

1 aware that he repeatedly asked that the Babcock
2 Center have nothing to do with his funding or his
3 services?

4 A. I don't recall anybody ever mentioning
5 that to me.

6 Q. Can you explain to me why his band payment
7 continued to be paid to the Babcock Center?

8 A. Are you saying that they were responsible
9 for his care and he wasn't getting any services
10 from Babcock?

11 Q. That is true. At one point in time he was
12 receiving no services from the Babcock Center and
13 they were getting his band payment.

14 A. What was the length of -- do you recall?

15 Q. At least six months to a year. Can you
16 tell me why his money was still going to the
17 Babcock Center?

18 A. Was he getting service coordination?

19 Q. He was getting service coordination from
20 Rich/Lex.

21 A. Well, that would be one reason right
22 there, probably the main reason. He would have had
23 the reduced band because he wouldn't be in an
24 ICF/MR, and the ICF/MR probably -- they typically
25 were in the highest band at the time.

1 Q. If you'd speak up, please.

2 A. Okay. He would have got a reduced band
3 because the ICF/MRs -- you typically got the
4 highest band on the funding bands.

5 And in the home situation, where he would
6 just be getting service coordination, that would
7 tend to be part of the lowest band.

8 Q. Tell me about the money follows the
9 person.

10 A. The money follows the person was the
11 design that I promoted very hard in this state. As
12 we shifted to person-centered services, we wanted
13 the concept where people have a say in their life,
14 how they want their life to be and services to be
15 supportive of that direction they want their life
16 to go.

17 I felt that it was most important to be
18 able to separate the funding from the service
19 provider and link it more to the person. So we
20 created a funding band process that we implemented
21 over a three-year period to effect that, and that
22 the person -- the policy that we acted on was that
23 anybody could pick any qualified provider to do
24 services that are identified in their plan within
25 the dollars that are available for the person. So

1 it wasn't --

2 Q. If a person moves --

3 A. Excuse me.

4 So it was a design -- I might add one of
5 the first in the country -- that set up a way to
6 separate the money and let the money follow the
7 person. It's one aspect of a number of different
8 things that we've done, yes.

9 Q. When you left, was that the policy of the
10 agency, the money follows the person?

11 A. Sure, oh, yeah, absolutely. I think he,
12 you know -- I don't remember the exact dates he
13 left. We began implementing the money follows the
14 person phase-in, I believe, in the '98, '97, '98
15 time frame, phased in over three years. So I think
16 at least by 2000 that would have been the policy.

17 The contracts even reflected that with the
18 boards, said in so many words that they were
19 required via the contract, if somebody in their
20 care picked some other provider, that is, the
21 Board, that they had to make arrangements to
22 coordinate the person to go to the other service
23 that they wanted, and the money for that would be
24 taken out of the band.

25 Q. So the individual has the right to choose

1 for their money to go to another provider?

2 A. Yes. There are limitations and so forth,
3 but as a general statement, yes.

4 Q. How do you assure that that happens?

5 A. Well, that's kind of one of the things
6 you'd find out by exception. It's an expectation
7 it's in the contract and so forth. If somebody
8 said I wanted to go to this other program, but the
9 Board wouldn't assist me in doing that, I'm
10 appealing my situation based on the plan of care's
11 not being implemented the way me or my family
12 signed off on.

13 Q. Why did you leave DDSN?

14 A. Why did I leave DDSN? Well, the governor
15 was restructuring the Commission, some new members,
16 and I thought it would be a good time to move on.

17 Q. Did the governor ask you to leave?

18 A. I've had no -- the only conversation I
19 think I've ever had with the governor was in our
20 first budget presentation where he complimented us
21 on creating the money follows the person concept,
22 because I think he felt that it was an analog to
23 the voucher system for schools. He liked that.

24 Q. Did your Commission ask you to leave?

25 A. They apprised me of what the situation was

1 and where they thought the governor's sense that
2 things were going, and they said, you know, you may
3 want to consider this, and so -- but to say you've
4 got to leave, I never got a statement from them
5 saying we demand you leave or we're going to fire
6 you, something like that.

7 Q. Mr. Vaughn, Reverend Vaughn, does your
8 agency pay any money to his school directly or
9 indirectly?

10 A. No.

11 Q. What is his financial interest in DDSN?

12 A. Dr. Vaughn's financial interest in DDSN?

13 Q. Uh-huh.

14 A. As with any other commissioner that I know
15 of, he has none.

16 Q. Do children in his school receive waiver
17 services?

18 A. I don't believe any of them do. I mean,
19 it could be here and there. A lot of them are from
20 out of state. It's, as you said, school-age kids,
21 and most of it's private paid by families.

22 While I was on the Commission and so
23 forth, that topic never came up, and, to my
24 knowledge, nobody, say locally from South Carolina
25 who had a waiver and decided to go there was in his

1 school.

2 But I can tell you again, to my knowledge,
3 he's not an approved waiver provider, his school.
4 I believe he's no longer on the Commission anyways.

5 Q. I think that's all I have. Let me look at
6 my notes for a minute.

7 Have you ever had any disciplinary actions
8 taken against you at any position you've held?

9 A. No.

10 Q. Have you ever been asked to leave a
11 position?

12 A. One -- a summer job paving driveways,
13 somebody's friend of a friend needed a job and I
14 was let go, but it wasn't a particularly nice job.
15 We paved driveways by hand.

16 Q. Do you know where Paul Peterson is now?

17 A. The last I know he was in Maine.

18 Q. What was he doing there?

19 A. He was working for a local agency. That's
20 all I know.

21 Q. Do you know how he might be reached? Do
22 you have a contact number for him?

23 A. No, I don't.

24 Q. Do you know anyone else at the agency who
25 would have a contact number for him?

1 A. No.

2 Q. Is he working in the developmental
3 disabilities?

4 A. He was working in the mental health field
5 the last I knew.

6 Q. And what was that job?

7 A. He was working with adult -- folks with
8 adult mental health, I think, overseeing emergency
9 services.

10 Q. What was his job when he was here?

11 A. He was director of quality assurance.

12 Q. Did you have any disagreements -- did he
13 have any disagreements with you about how the
14 quality assurance was being handled?

15 A. No. No, I think he liked it.

16 Q. So he thought it was just fine the way the
17 Agency was handling the quality assurance?

18 A. He never told me if he had a problem with
19 it, and he was at the heart of designing a lot of
20 the approaches that we have.

21 Q. Why did he leave?

22 A. He wanted to go back to Maine. His wife
23 wanted to go back to Maine and they just decided to
24 do it. Their parents -- his parents and her
25 parents were becoming medically fragile and they

1 wanted to be closer to home.

2 Q. Where does he live in Maine?

3 A. I don't know.

4 Q. You don't have any idea what part of Maine
5 he's in?

6 A. I don't know where he lives in Maine.

7 Q. You don't know where the agency is where
8 he works, what town in Maine?

9 A. The last agency that I knew he worked for,
10 I believe, was in Biddeford, Maine.

11 Q. How do you spell that?

12 A. B-I-D-D-E-F-O-R-D.

13 MS. HARRISON: Ken, who was the other
14 person y'all were looking for? Will asked me
15 for --

16 MR. WOODINGTON: Oh, I don't know, to be
17 honest with you. I honestly don't know.

18 BY MS. HARRISON:

19 Q. How would you -- what kind of grade would
20 you give the agency now?

21 A. I don't know what they've done since I
22 left at the end of February; but, overall, I think
23 it's a very, very good agency, managing a system
24 that many states envy.

25 I think the leadership within the

1 agency -- any number of us folks would lead that
2 agency or many other state public human service
3 agencies in South Carolina.

4 I think we're way ahead by any benchmark
5 that folks who want to look at what's going on in
6 the Southeast. Nationally I think we've been
7 leaders in quality assurance, person-centered
8 services, and have been asked to present many times
9 around the country on different things of that
10 nature.

11 Q. One thing about the LAC audit, it said
12 that 20 some odd million was used to purchase real
13 estate and that that wasn't authorized by the
14 Commission.

15 A. I don't think that that's accurate.

16 Q. Did the commissioners -- what document
17 would I see where they authorized the purchase of
18 that real estate?

19 A. It's called the spending plan.

20 Q. Did it have in there 20 million dollars
21 for purchase of real estate?

22 A. Each year there will be a spending plan,
23 capital plan, and the amount will be identified in
24 there that we would spend on certain properties.
25 And then when the actual purchase came up, the date

1 and so forth, then that would be -- as an item
2 would be on the Commission and generally would be
3 reapproved typically.

4 Q. The purchase of the real estate at the
5 Emerald Center, now the Burton Center and the
6 Superfund site, was that discussed by the
7 Commission?

8 A. Yeah. All of the purchases and so forth
9 typically would be discussed by the Commission.

10 There's one thing related to that --
11 there's some, you know, just kind of noise about
12 how can we be spending this money on real estate --
13 is that we put up 500 new beds residentially.
14 Those people had to go someplace during the
15 daytime.

16 And the additional development thing that
17 we did, that people are forgetting because we did
18 it fairly quickly, is 1500 people went on the home
19 and community based waiver. All those folks had to
20 go someplace during the day.

21 When the van showed up, congratulations,
22 you're in the program. The van showed up at their
23 home, then they'd have to go someplace. 82 percent
24 of everybody that DDSN serves lives at home
25 compared to nationally it's only 60 percent. So we

1 have to have places for people to go.

2 Q. Why do those people not have the choice of
3 adult companion services?

4 A. Well, it's pretty straightforward. If
5 you're in the waiver, that's not a service you can
6 be in. It's very much if you're in the waiver, you
7 cannot be in an ICF/MR. They're mutually
8 exclusive.

9 Q. So why can't these people, instead of
10 going to workshops, choose to have adult companion
11 services?

12 A. Well, they could, but if there's no way to
13 pay for it, then it's not available to them.

14 Did you just shift from adult health,
15 adult companion?

16 Q. I'm talking about adult companion
17 services. You think that we've got these 500 new
18 people, therefore we had to have 500 new slots in
19 the workshop. Why --

20 A. Those people are in residential programs.
21 Why do we have 500 beds? Because we had 2,000
22 people on the waiting list for residential
23 services.

24 Q. So if you've got 350 new people in
25 residences, in the new residences, you're saying

1 you had to buy this real estate because you had to
2 have a place for them to go during the day?

3 A. No. I'm saying two things. We had that
4 development, those people had to be in programs.
5 And, additionally, you had 1500 people -- slots
6 available for people in the home and community
7 based waiver, and the vast majority of those would
8 have gone into a day program experience of some
9 type.

10 Q. Why did you not give them the option of
11 choosing to have adult companion services instead?

12 A. Just like we didn't give them the option
13 of an ICF/MR. If you're in one, you can't be in
14 the other.

15 Q. So you're saying if you're in the waiver,
16 you cannot get adult companion services?

17 A. That's exactly what I'm saying.

18 MS. HARRISON: That's all I have.

19 MR. WOODINGTON: Bear with me just one
20 second.

21 MR. STEGMAIER: I'm asking questions now.

22 MR. WOODINGTON: You want to ask a
23 question?

24 MR. STEGMAIER: Yeah. I only have a
25 couple.

1 EXAMINATION

2 BY MR. STEGMAIER:

3 Q. Dr. Butkus, thank you for being here
4 today.

5 A. Sure.

6 Q. You were asked a series of questions by
7 Ms. Harrison regarding the purported injury to
8 Mr. Mims involving his penis, and there was some
9 questions regarding protocols with regard to
10 involvement of law enforcement. Do you remember
11 that line of questioning?

12 A. Yes.

13 Q. The question I've got for you is this:
14 Based on what you found out contemporaneous with
15 this purported event, as well as thereafter, have
16 you ever arrived at any conclusion that anything
17 criminal or illegal or anything untoward occurred
18 to Mr. Mims at Babcock with regard to this
19 purported injury?

20 A. My conclusion was it's an unexplained
21 injury. I base that on the medical assessment of
22 the physician with decades of experience dealing
23 with people with severe disabilities.

24 Q. And that's Dr. Graeme Johnson?

25 A. Yes, it is, Dr. Graeme Johnson.

1 MR. STEGMAIER: Thank you, sir.

2 EXAMINATION

3 BY MR. WOODINGTON:

4 Q. I'd like to go back to that last line of
5 questions, being adult companion services -- adult
6 companion services. You testified --

7 A. There's a difference --

8 Q. I'm trying to figure out what's in the
9 waiver and what's not in the waiver that has the
10 word "adult" in it.

11 A. That's where I was mishearing her. I
12 might have been mishearing her. Adult day health
13 is not in the waiver. Now, in the waiver would be
14 personal care services, things of that nature, that
15 would be allowed.

16 But I think that Edward Mims now is
17 getting personal care services or had been --
18 sorry -- had been getting personal care services up
19 to eight hours a day, something like that. So that
20 would be -- in that nomenclature, companion
21 services is more on that personal care services
22 idea.

23 MR. STEGMAIER: What falls under the
24 gambit of adult day health, then?

25 THE WITNESS: Well, that would be in a

1 site that's been licensed and so forth, where you
2 would get -- a regimen of the services would be
3 more health related, fundamental life-skill
4 related, assistance in various things related as
5 opposed to -- it would be fairly dependent.

6 Most people would be -- these would be
7 individuals. Primarily they'd be living at home,
8 for example, to the extent that there's many of
9 them in that kind of service. I don't remember the
10 exact numbers.

11 MR. STEGMAIER: And that's what's not
12 contemplated under the waiver. Is that correct?

13 THE WITNESS: Day health is not a
14 reimbursable service under the waiver in my memory
15 unless something's change.

16 BY MR. WOODINGTON:

17 Q. Well, let me ask it this way: If the
18 terminology has gotten mixed up, as far as you were
19 aware, when you were director, was DDSN compliant
20 with the waiver document and the services that were
21 or were not in the waiver that were authorized?

22 A. You might be guilty of what I've been
23 accused of, mumbling.

24 Q. I'm familiar with the phenomenon.

25 If there's -- during your tenure, you were

1 familiar with the waiver document, correct?

2 A. Yes.

3 Q. And if the waiver document said one thing
4 was in the waiver and another thing -- or by
5 exclusion said another thing was not in the
6 waiver --

7 A. Right.

8 Q. -- were you consistent with what was and
9 was not in the waiver document?

10 A. Yes.

11 Q. That's what I'm trying to find out.

12 A. Okay.

13 MR. WOODINGTON: That's all I have.

14 (The deposition concluded at 1:00 p.m.)

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SIGNATURE OF DEPONENT

I, the undersigned, STAN BUTKUS, have read the foregoing deposition consisting of 131 pages which was reported by Gina M. Smith, Notary Public in and for the State of South Carolina on June 10, 2009.

I find the transcript of this deposition to be a true and accurate transcript according to my testimony on that date with the exception of the corrections as listed on the attached correction sheet, which was filled in by me.

STAN BUTKUS

_____, 2009

1	ERRATA PAGE		
2	PAGE	LINE	CHANGE AND/OR CORRECTION
3			(AND EXPLANATION)
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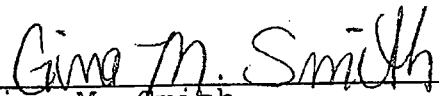
CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of June, 2009, at Columbia, Richland County, South Carolina.


Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
July 23, 2013.

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STATE OF SOUTH CAROLINA)

PROBATE COURT

COUNTY OF RICHLAND)

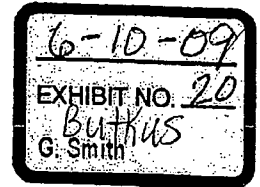
CASE NO.: 2003-GC40-00172

In the Matter of)
Guardianship of:)

OBJECTIONS

EDWARD J. MIMS)

TO: The Honorable Jacqueline D. Belton, Associate Judge, Probate Court
Ms. Patricia L. Harrison, Esq., Attorney for Ms. Margaret Mims
Mr. Edgar S. Kneece, Esq., Guardian Ad Litem for Edward J. Mims



The Objections of the South Carolina Department of Disabilities and Special Needs (SCDDSN) herein are filed with this Court pursuant to a Notice of Hearing, dated September 8, 2005. This matter began many years ago. Edward has been receiving SCDDSN services since October 1993. On October 5, 1999, Ms. Mims (the Petitioner herein) placed Edward with the Babcock Center because she was unable to care for him (Tab A). Subsequently, on/about April 3, 2001, the Petitioner requested Edward's discharge (Tab B). A Petition for Judicial Admission was filed with this Court (Tab C) and the required psychological report (S.C. Code Ann. §44-20-450 (C)) was filed as ordered by this Court (Tab D). A hearing was held on June 26, 2001. At that hearing it was agreed upon by SCDDSN, Edward's attorney, his guardian ad litem, and by the Petitioner with assistance of counsel, W.D. Morris, that Edward would be judicially admitted to SCDDSN. The Court's Order set out parameters for the Petitioner if she wanted to continue Edward's home visits (Tab E). The guardian ad litem testified at the hearing that the Petitioner does not drive; that she has a very modest home and has limited income due to her house cleaning jobs (see guardian ad litem's report; copy should be with Court's case file).

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Later, on November 13, 2001, the Petitioner wrote to the State Attorney General asking that her son, Edward, be returned to her. SCDDSN responded to her inquiry on December 27, 20001 (Tab F).

On Friday, June 10, 2005, at about 4:00 p.m. the Petitioner, with the assistance of her attorney, Ms. Patricia Harrison, attempted to discharge Edward from Babcock Center, Inc., a service provider of SCDDSN. At that time, Ms. Harrison was informed of the Judicial Admission Order; yet, in violation of the Order, Ms. Harrison called the police and The Honorable Judge Amy McCulloch creating a crisis, emphasis added, late that Friday afternoon at Edward's residence at Babcock Center, Inc. (Tab G). An informal meeting was held in Judge McCulloch's office the following Sunday afternoon, June 12th. It was learned at that time that the Petitioner had initiated a Petition for Guardianship of her son. Neither SCDDSN nor Edward's sister, Ms. Diane Theriot were notified of this action. Upon information, the appointed guardian ad litem, Edgar S. Kneece, made no attempt to get in touch with Ms. Theriot, nor did the Court's appointed Visitor, Ms. Mary Katherine B. Miller. It is unclear whether Edward has court appointed counsel; no one has appeared in this capacity at any hearing in this matter attended by the undersigned. After much discussion, it was decided that SCDDSN would not issue a pick-up order (S.C. Code Ann. §44-20-500) and that a Medicaid Waiver application would be expeditiously processed.

A hearing was held on June 24, 2005, before Judge McCulloch on the matter of continuation of temporary guardianship for Edward. Ms. Diane Theriot, Edward's sister, was present at this hearing and the undersigned presented her letter of June 15, 2005, to Judge McCulloch (Tab H). Dr. Kathi Lacy, Associate State Director-Policy, SCDDSN, was also present and presented a recording of events since the June 12, 2005 meeting (Tab I). It should be

noted that SCDDSN on June 21, 2005, obtained eligibility for Edward in the Medicaid Home and Community Based Waiver program, a funding for services for persons residing in the community. Testimony was taken from several individuals including Dr. Lacy and the Petitioner. As recalled by the undersigned, the Court ordered that both SCDDSN and Ms. Theriot would receive notice of any further hearings in this matter. A hearing has now been scheduled for September 29, 2005, before The Honorable Jacqueline D. Belton.

OBJECTIONS:

1. Edward Mims is not represented by an attorney as required by S.C. Code Ann. §62-5-303 (b). Mr. Edgar Kneece has been appointed as guardian ad litem and has limited his activities to this appointment.
2. Ms. Diane Theriot was not notified of this action as required by S.C. Code Ann. §62-5-309 (3). The undersigned was informed by Judge McCulloch that there was no legal duty to inform Ms. Theriot. Respectfully, Ms. Theriot falls into category 3 as Edward's sister. She was well known by the Petitioner, her mother. Since the Petitioner cannot notify herself, the statute requires that a close relative be notified. As a matter of fairness, the Court should make itself available to the information and requests from Ms. Theriot about the guardianship of her brother.
3. Ms. Diane Theriot has expressed serious problems in obtaining counsel so that she may be heard by the Court on these issues. She informed the undersigned that she has contacted four or five attorneys without success. This Court should inquire into whether Edward's trust account can be tapped to cover her attorney expenses. It is submitted that the Petitioner and Ms. Theriot may request that this Court authorize the

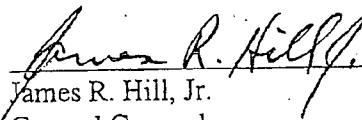
trust to pay for their attorney fees. Both Ms. Theriot and Ms. Mims have limited financial means.

4. This Court heard the matter concerning Judicial Admission and issued its Order on July 3, 2001. At that time, a key element for determining judicial admission was the Petitioner's inability to care for her son at her home. This issue goes not only to her financial capacity to have Edward living with her, but also to her capacity to manage his affairs and his estate. The Petitioner testified before Judge McCulloch that she knew Edward had a trust but she did not know how much was in the trust, and more importantly, where the trust was located. Soon after Edward's judicial admission, she wrote the Attorney General requesting his discharge. Additionally, after taking Edward home on June 10, 2005, she requested alternate residential placement with Mentor, Inc. These actions by the Petitioner raise a serious concern as to her capacity to care for or be a guardian for her son.
5. The Court is not limited to the Petitioner for appointment of guardian. S.C. Code Ann. §62-5-311 allows the Court to consider **any competent person**, emphasis added. The priority set out in this statute places the Petitioner before her daughter, Ms. Theriot, but this priority is clearly subject to the discretion of the Court. The Petitioner's actions regarding her apparent lack of understanding of the basis and significance of the prior Judicial Admission Order, her demand for discharge without appropriate and pre-arranged services, her age and poor health, her lack of knowledge of Edward's trust, it is submitted, make her a poor candidate for guardian, especially since Ms. Theriot having none of these problems stands ready, willing and able to assume this fiduciary duty.

6. There is ample evidence that Edward is an incapacitated person, but the question of his **need**, emphasis added, has not been addressed. There has been no showing that his mother or his sister are unavailable to provide consent for health care under the Adult Health Care Consent Act, S.C. Code Ann. §44-66-10. Guardianship is not needed. Guardianship in this case, it is submitted, was a way to move Edward out of Babcock Center, Inc., even in view of the Judicial Admission. But, as a Medicaid recipient, there are other ways to move Edward without resorting to guardianship. S.C. Code Ann. §62-5-304 allows the appointment of a guardian when the Court is satisfied that the appointment is necessary or desirable as a means of providing continuing care and supervision. There has been no showing that Edward has gone lacking for care and supervision by not having a guardian. Very few people with Edward's condition have a guardian. The Visitor's report failed to address any need of Edward requiring a guardian. It is not enough to want to be the guardian of an incapacitated person; there must also be a direct, realistic need for care and supervision that would otherwise be lacking without the appointment of a guardian.
7. Lastly, the Court should consider and address the possibility of conflict, in that, this Court has already ruled, in essence, on the Petitioner's capacity to care for Edward in the Court's Order of July 3, 2001. This Petition was initially heard by Judge McCulloch and no reason has been presented why the Petition has been switched to this Court. Respectfully, the Court may want to consider recusal due to actual or perceived conflict with the prior Court's Order of July 3, 2001.

WHEREFORE, SCDDSN has submitted its objections to this action, which are in essence, serious concerns that should be addressed by this Court. More specifically, SCDDSN questions the need for a guardian for Edward, the Petitioner's capacity to function as guardian, and suggests that if guardianship is needed, the Court consider the appointment of Edward's sister, Ms. Diane Theriot. SCDDSN suggests that this Court look beyond the desires of the Petitioner and examine what is in Edward's best interest.

Respectfully submitted,



James R. Hill, Jr.
General Counsel
South Carolina Department of Disabilities
and Special Needs
P.O. Box 4706
Columbia, SC 29240
Phone: (803) 898-9683

September 28, 2005
Columbia, South Carolina

Encls.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT

01 APR 23 PM 12:01
AMY H. BULLOCK
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)

PETITIONER,)

APPOINTMENT OF GUARDIAN
AD LITEM

IN THE MATTER OF:)

EDWARD JAMES MIMS)
(An alleged mentally retarded)
person))

A Petition having been filed in this Court praying for the judicial admission of EDWARD JAMES MIMS, who is alleged to be mentally retarded and is appealing to the Court that a guardian ad litem should be appointed to protect the interest of the said EDWARD JAMES MIMS in this matter.

IT IS ORDERED that Marsha Leigh Flynn, Esq. who is capable of understanding the rights of the alleged mentally retarded person, and who has no interest in conflict with or adverse to the rights of this individual, be and he/she hereby is, appointed guardian ad litem of EDWARD JAMES MIMS for the purpose of appearing for and acting on behalf of the said

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EDWARD JAMES MIMS in all the proceedings herein.

AND IT IS SO ORDERED.



Judge of Probate Court *Amde*

Dated this 23 day of
April, 2001

CONSENT TO APPOINTMENT

I do hereby consent to act as guardian ad litem for
EDWARD JAMES MIMS for the purposes of the entitled action..

Signature

Columbia, South Carolina

April _____, 2001

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

2001MI592
IN THE PROBATE COURT

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER)

NOTICE OF PETITION FOR
JUDICIAL ADMISSION AND
NOTICE OF RIGHT TO COUNSEL

IN THE MATTER OF:)
EDWARD JAMES MIMS)
(An alleged mentally retarded)
person))

TO: Margaret Mims, 3301 Rosewood Drive, Columbia, SC 29205
Diane Theriot, 2231 Atascadero Drive, Columbia, SC 29206
Edward James Mims, Babcock Center, Inc., The Clusters,
201 Duffie Drive Columbia, SC 29072
Mr. Risley Linder, Sr., Babcock Center, P.O. Box 3817,
Columbia, SC 29230
Dr. James G. Christian, Midlands Center, 8301 Farrow Road,
Columbia, SC 29203

YOU ARE HEREBY NOTICED that on the 16th day of April,
2001, a Petition was duly filed in the Probate Court for
Richland County, South Carolina, alleging that **EDWARD JAMES
MIMS** is mentally retarded and in need of services from the
South Carolina Department of Disabilities and Special Needs and
requiring admission to a facility or service program for the
mentally regarded, pursuant to the provisions of S.C. Code Ann.
§44-20-450 (Supp. 2000) as amended.

YOU ARE FURTHER NOTIFIED, that pursuant to the provisions
of S.C. Code Ann. § 44-20-450 (Supp. 2000), as amended, that
the above-named person alleged to be mentally retarded has the
right to be represented by an attorney at law in this case and
proceedings, and that an opportunity is hereby given and
afforded for you, or any one of you, to select, provide and
employ an attorney at law to represent said person in this
matter and proceedings for his judicial admission to a facility
for the mentally retarded.

FILED

01 APR 23 PM 12:00
AMY H. HUBBARD
PROBATE JUDGE
RICHLAND COUNTY, SC

Mims 1499

YOU ARE FURTHER NOTIFIED, that in the event an attorney at law to represent said person is not selected, employed and provided by either him, or any of you, within three (3) days after the Petition is filed, exclusive of Saturdays, Sundays and legal holidays, or if this Probate Court is not notified thereof with such time, then this Court shall appoint an attorney at law to represent him.

Dated this 23 day
April, 2001

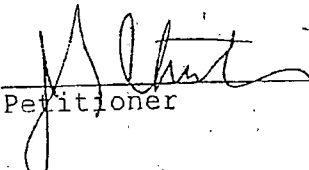

Judge of Probate Court, Asst.

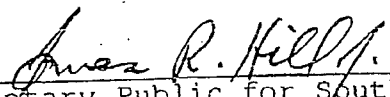
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

Personally appeared before me James G. Christian, Ed.D., who being duly sworn says that he is the Petitioner above named; that he has read the foregoing Petition, the allegations of which are true of his own knowledge, except those stated on information and belief, as to which deponent (Petitioner) believes them to be true.

Sworn to before me this 16th
day of April, 2001


Petitioner


Notary Public for South Carolina
My Commission Expires: Sept. 18, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

IN THE PROBATE COURT

James G. Christian, Ed.D.)
Director, Midlands Center,)
SC Dept. of Disabilities and)
Special Needs)
PETITIONER,)

APPOINTMENT OF COUNSEL

01 APR 23 PM 2:01
AMY H. JOHNSON
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

IN THE MATTER OF:

EDWARD JAMES MIMS)
(An alleged mentally retarded)
person))

An opportunity to be represented by Counsel in the above-captioned matter shall be afforded to EDWARD JAMES MIMS, a person alleged to be mentally retarded. It is made apparent to this Court, as of this date, that neither the said EDWARD JAMES MIMS nor others have engaged and provided Counsel for him, to represent him herein.

NOW, THEREFORE, pursuant to S.C. Code Ann. §44-20-450 (Supp. 2000), IT IS ORDERED that David Belding, attorney and member of the South Carolina Bar Association, is hereby appointed as Counsel of and for EDWARD JAMES MIMS, a person alleged to be mentally retarded, and is hereby charged with all duties, responsibilities, powers and privileges conferred and made incumbent upon an Attorney at Law in such cases.

AND IT IS SO ORDERED.

Jacqueline D. Belton
Judge of Probate Court

Dated 23 day of
April, 2001

COPIES OF THE FOREGOING WERE THIS DATE FORWARDED TO:

Mims 1502

BABCOCK CENTER, INC.
LEXINGTON CLUSTERS ICF/MR
SOCIAL HISTORY

I. IDENTIFYING INFORMATION:

NAME: Edward James Mims
DOB: December 9, 1971
DOA: October 5, 1999
SS #: 249-21-4001
MEDICAID #: 4409788401
MEDICARE #: Not Applicable
PRIMARY CONTACT: Mrs. Margaret Mims (Mother)
3301 Rosewood Drive
Columbia, South Carolina 29205
Phone: (803) 252-9962 (Home)

II. CURRENT SITUATION:

Edward James Mims is a twenty-seven year old Caucasian male, who was admitted to Babcock Center's, Lexington Clusters ICF/MR (House D) in Lexington, South Carolina on October 5, 1999. Prior to this Edward resided at home with his mother, Mrs. Margaret Mims of Columbia, South Carolina. Mrs. Mims is in poor health, therefore making it difficult to care for Edward who has his own medical concerns. He also wandered and did not sleep at night. Edward is currently functioning within the profound range of mental retardation. He also carries a diagnosis of Cerebral Palsy, seizures, hypertension, Esophagitis/Erosion disease. Edward is non-verbal, but communicates by using sounds, gestures and body movements. He is independently ambulatory. However, Edward uses a wheelchair for outings, because he tires easily and has difficulty keeping pace.

III. FAMILY BACKGROUND:

Edward James Mims is the youngest child born to Roy Edward Mims and Margaret Lee Gunter Mims. Mrs. Mims left Mr. Mims when Edward was one and a half years old as Mr. Mims was abusive towards her. Mr. and Mrs. Mims were divorced in 1975.

NOW THEREFORE, IT IS ORDERED that:

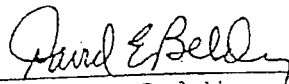
1. Because of his mental retardation and special medical needs, Edward James Mims is judicially admitted to the South Carolina Department of Disabilities and Special Needs.
2. To the extent feasible and in keeping with his treatment needs, Edward James Mims shall be allowed to have weekend visits with his mother, provided, that she maintains her home in a safe condition for her son's visitation.
3. Babcock Center and/or SCDDSN staff may visit in Ms. Margaret Mims home prior to her son's visit to advise and/or assist Ms. Mims in making her home safe for her son's visit. Ms. Mims will cooperate with such visits.
4. The parties to this matter have voluntarily agreed to this Order and placed their signatures below indicating their agreement.

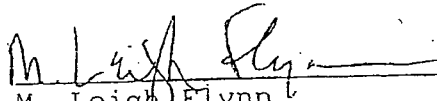
AND IT IS SO ORDERED.

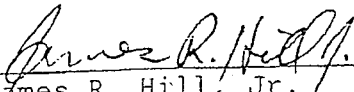
Signed this 3 day
of July, 2001
Columbia, South Carolina

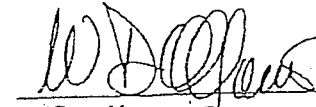

Jacqueline D. Belton
Associate Judge of Probate
Richland County

We Consent:


David E. Belding


M. Leigh Flynn


James R. Hill, Jr.


W.D. Morris

RECEIVED

DPEN

NOV 16 2001 11-13-2001

Referred to W. Teed

Answered _____

Dear Mr. Condon,

What happen to
Edward James Mims now,

Edward & my right
have been taking away
from Edward and I.

I want my son,
back home with me.
please Mr. Condon,
let my son come back
home.

I'm afraid what going
to happen to my son at
Balrock Center.

Edward, Can't talk
but I know my son

TAB F

Mims 1505

He know who cares about
him and who don't.

Went he comes home
Edward doesn't want to
go back with them to
Labcock Center.

Edward know that I love
him and that I will take
care of him.

Edward is some one
special to me.

because Edward gave
me strength to keep going!

I always let Edward
know that Jesus made
him some one special
and that he loves him.

I'm able to take care of
Edward at home

went Edward was here

at home,

Edward got to Doctor went
he was sick, and needed to
go.

Because I took Edward to
Doctor in a cab.

Also Edward and I went
to grocery store.

Is, I send him new
clothes and sock, Always come
home with some one else
Clothes. one sock of one kind
and one of other kind, they
are not his, just send 6
pairs of sock. Don't know
what happen to them.

I yes, I do furnish
his clothes to, that why
I don't understand why he
Can't come home with

Some one else Clother on
instead of his clothes,

I Don't understand
why he ~~com~~ come back
home.

He didn't look like he
does when at home.

Most of time he hasn't
been shave and they don't
keep his hair cut.

I kept his hair cut and shave.

He looks like he a throw
away rent he comes home.

they have a hard time getting
him to go back with them.

I have to make Edward go
and that hurts like hell.

also his clothes stay all tumble
up. the place could be clean.

So please help me to get
my son home. thank: Margout Mims



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 6, 2001

Ms. Margaret Mims
3301 Rosewood Drive
Columbia, S.C. 29205

Dear Ms. Mims,

Your letter to Attorney General Condon regarding your son, Edward James Mims, who is a client at the Babcock Center, has been referred to me for response.

The Attorney General's Office does not have any authority over the Babcock Center, or the procedures used in determining who receives services from Babcock or the Department of Disabilities and Special Needs. I can understand your concern for his well-being, however, and will forward your letter to the Department for their review.

I hope this will be helpful.

Sincerely,

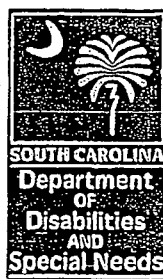
A handwritten signature in cursive script that reads "Lee Teed".

Lee Teed
Director, Constituent Services

cc: Department of Disabilities and Special Needs

h:\corresp\Dec01\Mims

Stanley J. Butkus, Ph.D.
Director
t W. Barfield
Deputy State Director
Administration
Brent H. Koyle, Ph.D.
Deputy State Director
Services and Supports



3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
V/TTY: 803/898-9600, FAX: 803/898-9653
Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

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Isaac B. Dickson, Jr.
Ronald Forrest

December 27, 2001

Ms. Margaret Mims
3301 Rosewood Drive
Columbia, SC 29205

Dear Ms. Mims:

Ms. Lee Teed of the Attorney General's office has forwarded your letter of November 13, 2001 to the Department of Disabilities and Special Needs. In order to assist you, I read your letter and then reviewed information regarding your son's current situation.

I understand that Edward has profound mental retardation, cerebral palsy and several other severe and complex medical conditions. He is medically fragile, takes a number of medications and requires close monitoring and assistance. At this time Edward lives in Lexington in a community residence operated by Babcock Center. Whether he should continue to live there or not was reviewed in June of this year by you, your attorney, a Guardian ad Litem assigned to help Edward, an attorney assigned to help Edward and several professional staff from DDSN. All parties agreed that Edward's significant special needs and complex medical conditions required more staffing and supervision than any one person could possibly provide. No one person can do it all to care for Edward.

It is obvious Ms. Mims, that you love your son very much and took care of him in your home for many years. We understand that you wish it were possible for him to live at home again. All of us agree that one single person is not enough people to provide care for Edward. It is impossible because of his conditions and the fact that several different people have to be awake and around him all the time. This is hard to accept because you love Edward so much and miss his company. We understand and appreciate a mother's love for her son.

COASTAL REGION
Field Office - Phone: 843/832-5562
9995 Jamison Rd., Summerville, SC 29485
Coastal Center - Phone: 843/873-5750

MIDLANDS REGION
Field Office - Phone: 803/935-7412
8301 Farrow Road, Columbia, SC 29203
Midlands Center - Phone: 803/935-7500

PEE DEE REGION
Field Office - Phone: 843/664-2655
PO Box 3209, Florence, SC 29502-3209
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

PIEDMONT REGION
Field Office - Phone: 864/938-3101
PO Box 239, Clinton, SC 29325
Whitten Center - Phone: 864/833-2733

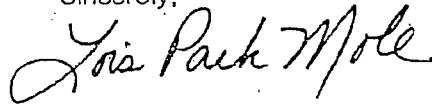
Mims 1510

Ms. Margaret Mims
December 27, 2001
Page 2

While Edward needs to stay at Babcock, we can help with your concerns regarding the clothes he is dressed in, his haircut, how his face is shaved and his overall appearance. By copy of this letter I am asking Ms. Tonya Flake, Consumer Advocate of Babcock Center to follow up with you personally to review your concerns and work with you and the residential staff to resolve them. You should hear from her soon.

Again, Ms. Mims, we know you love Edward very much and want the best for him. We want what's best for him too, and to work with you.

Sincerely,

A handwritten signature in black ink that reads "Lois Park Mole". The signature is written in a cursive, flowing style.

Lois Park Mole
Director
Government and Community Relations

LPM/vet

cc: Ms. Tonya Flake, Babcock Center.
Ms. Lee Teed, Office of the Attorney General

Mims 1511

Hill, Jim

From: Hill, Jim
Sent: Friday, June 10, 2005 6:30 PM
To: 'Patricia L. Harrison'; Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed
Cc: 'sbutkus@ddsn.sc.gov'; 'dgoodwin@babcockcenter.org'
Subject: RE: Edward Mims

Patricia, I called your office this afternoon, but missed you. I believe you were in a meeting and I left a message with your assistant.

I am in receipt of your email below concerning Edward. Please note that Edward was judicially admitted to the Department on July 3, 2001. Part of the Court Order for his admission indicated that he may visit his mother on weekends provided that she provide a safe environment and access for inspections of her home to ensure that it was safe for Edward. Your email indicates that Edward will not be returned to Kensington after visitation this coming weekend. This directly violates the Court Order. Because of your written intentions to violate the Court Order, we have asked Babcock to not allow Edward to visit his mother this weekend and we will attempt to review this matter next week or at the earliest convenient time for all involved.

In your email below, you mentioned that you sent Rivermont (Rich/Lex County DSN Board) a copy of the "Court's Order." This apparently is something new and pertains to Mrs. Mims efforts to seek guardianship of her son, Edward. Please fax me a copy of this Order. We are unaware of its contents. As mentioned, Edward was committed to DDSN, not Rivermont.

With regard to your request to have Edward discharged to his mother's care and admitted to a local daycare with access to other services provided from Rich/Lex, this must be presented and reviewed by Edward's team in accordance with normal procedures for individual habilitation plans and ICF/MR regulations. The items that you mentioned to me and in your email below constitute a significant transition for Edward. It is my understanding that these matters must be reviewed by the team and, therefore, we cannot comment on whether they are appropriate for Edward at this time.

The Babcock staff have appealed the de-certification and depopulation of Kensington and the matter has been deferred until the appeal has been heard. Any issue about alternate placement of individuals at this time based on de-certification is premature pending the appeal. As you know, alternative placements can be considered at anytime as long as it is planned and approved.

I trust this responds to your email below.

Jim Hill
General Counsel, SCDDSN

From: Patricia L. Harrison [mailto:plh.cola@worldnet.att.net]
Sent: Friday, June 10, 2005 4:55 PM
To: Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed; Hill, Jim
Subject: Edward Mims
Importance: High

6/12/2005

TAB. G
Mims 1512

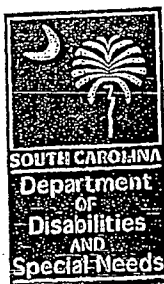
We notified Babcock Center that Edward would not be returning to Kensington on Sunday. I have sent Rivermont a copy of the Court's Order. Babcock called Mrs. Mims today to tell her that they will only send enough medicine home with him for five days. On Wednesday, I asked Mary Leitner that Carol King serve as Edward's service coordinator, but I have heard nothing back from RichLex. Carol has experience with these transitions and does a good job. We need her assistance.

Babcock Center is supposed to be transitioning people from a decertified facility into a placement of their choice. Who is going to handle matters like getting Edward's pharmacy changed (and I expect that we will not be able to get meds from a new pharmacy until next month), getting him into a day program, arranging for necessary transportation, etc?

Trisha Harrison

COPY

Autkus, Ph.D.
State Director
Robert W. Barfield
Deputy State Director,
Administration
Ronald G. Dozier
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy



3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
V/TTY: 803/898-9600, FAX: 803/898-9653
Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

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J. Lewis Stephens
Secretary
Isaac B. Dickson, Jr.
Ronald Forrest
W. Robert Harrell
Edythe C. Dove

June 22, 2005

Mr. Edgar S. Kneece, Esq.
455 St. Andrews Road
Bldg. D, Suite 3-A
Columbia, SC 29210

Re: Guardianship of Edward Mims

Dear Mr. Kneece:

As court appointed Guardian Ad Litem (GAL) for Mr. Mims in this matter, I wanted to bring to your attention a letter that was sent to me by Ms. Diane Theriot, Edward's older sister. She has expressed a desire to be involved in this case and she has information concerning the issues before the Court.

As GAL for Edward, I assume that you would want this information. It may be relevant to your position as GAL in protecting Edward's best interests.

By copy of this letter, I am informing Ms. Theriot that the Richland County Probate Court will be hearing this matter at 11:30 a.m. on June 24th in courtroom 2F and that she may contact you by phone at 750-3000.

Sincerely,

A handwritten signature in cursive script, appearing to read "James R. Hill, Jr.".

James R. Hill, Jr.
General Counsel

JRH/cch

Encl.

cc: The Honorable Amy McCulloch, Judge-Probate Court
Ms. Patricia Harrison, Esq., Attorney for the Petitioner
Mr. Chris Stegnaier, Attorney for Babcock Center, Inc.
Ms. Diane Theriot

DISTRICT I

8301 Farrow Road, Columbia, SC 29203
Phone: 803/935-7412

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

DISTRICT II

PO Box 3309, Florence, SC 29502-3209
Phone: 843/664-2655

TAB H
Mims 1514

June 15, 2005

RECEIVED

JUN 16 2005

LEGAL SERVICES

Mr. Jim Hill,
Attorney, DDSN
3440 Harden Street Ext. (29203)
PO Box 4706
Columbia, SC 29240

Re: Edward James Mims

Dear Mr. Hill:

I am writing in regards to my younger brother, Edward J. Mims, and his placement with the Babcock Center. I am of the understanding that our mother, Ms. Margaret Mims, wishes to have Edward discharged from the agency back to her home. This possibility deeply disturbs me, as I feel this could be detrimental to her health.

After speaking with Mother on Sunday, June 12, I am aware of the situation prompting her actions. I am also aware that she has retained the services of one Patricia Harrison. This concerns me. I fear for the well being of Mother as well as Edward, especially with Ms. Harrison's involvement. I fear her agenda, as I do not feel she has the family's best interest at heart. I also fear that, should an emergency situation arise Ms. Harrison will not be there in the long run. I am further concerned at the attempt on Ms. Harrison's part to keep me out of the loop. As a daughter and a sister, I feel I should be involved.

If memory serves, Edward was judicially admitted due to Mother's inability to care for him in the home. Over the past three years, she has been hospitalized several times due to emergency situations. She has heart trouble, which has been treated with two heart caths and three stints, requiring hospital stays and lengthy, painful recovery time. She has been transported via ambulance to the Providence Hospital and admitted due to dehydration from a case of gastroenteritis and had a long run of the Flu earlier this year, requiring several doctor's visits, and bed rest. If you were to subpoena her medical records, you would be able to verify this information. Her physicians' names are available upon request.

Mother is aware I am not in favor of Edward's potential discharge home. I have informed her that, if she really feels that he is in danger, and wishes him removed from Babcock Center care, to at least discharge Edward to another provider, and to continue placement as is until a new provider can be found. My concern with this will be that no one in Columbia will consider placement with Ms. Harrison aboard. That Edward would be placed outside the Columbia area, making visitation improbable. I have also informed Mother that, had I the means, I would seek legal guardianship of Edward, as I feel she is not making sound decisions regarding his welfare; that she is allowing herself to be manipulated to suit Ms. Harrison's purposes.

Mims 1515

I am making an appeal to your agency, as well as the Probate Court, to reconsider Mother's temporary guardianship of Edward and request that he remain in the care of Babcock Center. I am offering all assistance possible regarding Edward and his care. If there is anyway possible that I may be named guardian, I would gladly accept the responsibility. My contact numbers are (803) 799-1970, ext. 163 and (803) 782-1790. I may be contacted at any time.

I greatly appreciate all your assistance in this matter and look forward to hearing from you in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Diane Theriot". The signature is written in dark ink and is positioned above the printed name and title.

Diane Theriot
Sister, Edward J. Mims

cc: Margaret Mims, Mother
Patricia Harrison, Attorney
Dr. Judy Johnson, Executive Director
Dorothy Goodwin, Residential Director
Richland County Probate Court

Mims 1516

Aley J. Butkus, Ph.D.
Director
J. W. Barfield
Deputy State Director
Administration
Ronald G. Dozier
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy



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W. Robert Harrell
Edythe C. Dove

MEMORANDUM

TO: Memo for the Record
FROM: Kathi K. Lacy *Kathi*
Associate State Director for Policy
DATE: June 21, 2005
SUBJECT: Edward Mims

Recording of events since meeting with the Honorable Amy W. McCulloch, Richland County Judge of Probate, on Sunday, June 12, 2005.

Sunday, June 12, 2005:

(10:40 PM): Email from Patricia Harrison to Bill Alexander (DDSN Commission Chair) et. al refusing Midlands Center as an option and requesting MR/RD waiver services immediately.

Monday, June 13, 2005:

(10:30 AM): I learned from Dorothy Goodwin (Babcock Center) that Edward did not return to his Babcock residence named Kensington but remained in his mother's home.

(10:45 AM): I met with Jennifer Duell (DDSN) to ask her to initiate and coordinate the MR/RD waiver application for Edward. I communicated to her that our goal is to get services in the home as quickly as possible but not to bend or break any rules/laws.

DISTRICT I

8301 Farrow Road, Columbia, SC 29203
Phone: 803/935-7412

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/633-2733

DISTRICT II

PO Box 3209, Florence, SC 29502-3209
Phone: 843/664-2655

C
P
S
TAB I
Mims 1517

(11:37 AM): I sent an email to Deirdra Singleton and Sam Waldrep (DHHS) with an overview of events to keep the Medicaid agency current on events and involved in the process (see attached).

Wednesday, June 15, 2005:

Patricia Harrison calls Jennifer Duell (DDSN) to get an update on Edward's waiver status. Ms. Harrison inquired about Adult Day Health Care services for Edward. Ms. Duell e-mailed Adult Day Health Care forms to Ms. Harrison to be completed by Edward's doctor and returned to us for review against criteria for approval. Dot Goodwin (Babcock) arranges for Edward to get additional medications through June 20th (see letter).

Thursday, June 16, 2005:

(9:19 AM): Patricia Harrison faxes letter dated June 15, 2005 to Jennifer Duell (DDSN) requesting Midland's Center placement for Edward (see letter).

(11:00 AM): I receive an email from Dr. Michelle Ford (DDSN) that Ms. Lynn Morton Epps, Executive Director of Mentor, received a phone call from Patricia Harrison requesting their residential services. I call Ms. Epps to find out about her conversation with Ms. Harrison. She reported that Ms. Harrison indeed requested CTH II services from Mentor. Ms. Epps indicates she has a vacancy in one of their High Management Group Homes (which is higher level of care than needed by Edward) but she agreed to serve him at a Band E (his current funding level) pending an assessment of Edward to determine if he'd be a good match with the other men in the home.

(12:00 PM): At this time, I became concerned that things may not be working out at the Mims' home. It is difficult for me to ascertain from Ms. Harrison's actions what if anything has happened in the home (i.e., writing to DDSN's Commission Chair twice with 2 very different requests for services, writing to Jennifer Duell with requests for yet another set of services, the phone call to Mentor requesting residential services immediately, etc.).

(3:00 PM): I called the GAL, Edgar Kneece to find out what is going on at the Mims' home. He returns my call at 4:00 PM. He does not know anything at this time. I invite him to make a home visit with DDSN staff but I do not hear back from him.

(4:45 PM): I arrange for Vivian Koon, RN (DDSN) and Sonja Blyther (Mentor) to make a visit to the Mims' home pending Ms. Harrison's approval.

The purposes of the visit are to:

1. Obtain a valid assessment of the home environment, and the care and support provided to Edward, including if he is getting his medications and assistance with his activities of daily living;

2. To determine the urgency of moving Edward out of the home due to health and safety concerns.
3. To allow Mentor to assess Edward for possible temporary placement in a HMGH.
4. To provide and review MR/RD Waiver Information and provide Ms. Mims with a copy of the Mental Retardation/Related Disabilities (MR/RD) Waiver Information Sheet.
5. To review the MR/RD Waiver Freedom of Choice Form which includes an explanation of feasible alternatives under the Waiver, an opportunity to choose to receive services in the community or an institution, and appeals information regarding Edward's enrollment in the MR/RD Waiver.
6. To review the MR/RD Waiver Acknowledgement of Rights and Responsibilities

Friday, June 17, 2005:

(9:15 AM or there about): I called Patricia Harrison to get her perspective on the current status of Edward and to obtain her consent to send two people to the Mims' home. She reported that Mrs. Mims realized that she couldn't take care of Edward like she thought she could. She went on to say that Mrs. Mims would have always resented DDSN and Babcock Center if she had not gone through this experience to realize she just couldn't provide the care Edward required. She said Mrs. Mims observed some behaviors of Edward that Mrs. Mims had not observed in the past, such as pinching. Patricia informed me that Edward seemed anxious. She also reported that Mrs. Mims needed to work and that having Edward at home prevented her from doing so. I inquired about the supports discussed with Judge McCulloch but received no response.

I informed Ms. Harrison that I had arranged for DDSN and Mentor to make a home visit at 11:00 AM today. She gave me her consent. She asked me if Edward would move today or Monday so she could let Mrs. Mims know. I said if the assessment by Mentor indicates a good match and they feel they can assure his health and safety, that it would not be today, but Monday.

(11:00 AM): Home visit/assessment conducted.

(12:45 PM): I received a telephone call from Vivian Koon (DDSN) to provide a status report of the home visit. She reported to me that Edward was not in any type of danger or in any environment that would require immediate removal. She indicated that Mrs. Mims really loved her son but couldn't take care of him and keep up with her domestic work schedule to make ends meet. (See report dated June 17, 2005.)

At this time, I am concerned that Mrs. Mims has received no support as was indicated on Sunday, June 12th except for the additional medication that Babcock provided to her.

(4:12 PM): I emailed Mrs. Harrison about the visit (see email).

Monday, June 20, 2005:

(4:00 PM): I received a telephone call from Lynn Morton Epps (Mentor) informing me that Ms. Harrison had called her to see what time Mentor was picking up Edward from Mrs. Mims' house. Ms. Epps informed Ms. Harrison that Edward was not appropriate for the home where they had a vacancy. Ms. Epps told me that Edward was much too vulnerable for the home and that the other men in the home were too aggressive.

Ms. Epps said that they would continue to look for other homes for Edward but that it would take a minimum of 60-90 days at best.

(4:15 PM): I called Patricia Harrison based on my conversation with Ms Epps. Ms. Harrison was furious that Mentor could not take Edward and kept insisting that I told her that Edward would definitely move on Monday. She then kept asking me what I was going to do for Edward. Ms. Harrison raised her voice with me throughout the phone call (which can be attested by Ron Dozier, DDSN). I told her that we had given her several options on Sunday with Judge McCulloch. She asked me whether or not Midlands Center was still an option on the table. I asked her several times about the couple she had found that would help Mrs. Mims until MR/RD waiver services could be put into place. She told me that this option didn't work out.

After several attempts to get Ms. Harrison to calm down, I informed Ms. Harrison that I would call her tomorrow after I regroup with my team to get updates on activities to determine next steps. I informed her that I would have some options at that time.

June 21, 2005:

(10:00 AM): Opened email from Ms. Harrison dated 06/20/05 at 8:53 AM. She is requesting day services for Edward (likely through Babcock Center since they are the only provider in town) until residential services can be put into place.

(10:15 AM): Received update from Jennifer Duell on Edward's MR/RD waiver enrollment status. Everything was successfully completed and he is ready to be enrolled.

(11:15 AM): Received an email from Ms. Harrison via Bill Alexander (DDSN Commission Chair) requesting residential placement in a community setting (CTH I or CTH II) preferably in the Midlands area and MR/RD waiver services

until a safe residential setting is arranged and family support funding from DDSN for Adult Day Health Care services until the paperwork for Adult Day Health Care was completed and the service approved (or otherwise).

(11:20 AM): Called Mary Leitner (Richland/Lexington DSN Board) to inquire about service coordination for Edward. They have assigned Lynn Lugo.

(11:35 AM): Called Dot Goodwin (Babcock) to ascertain if Babcock would agree to provide day services to Edward. They agreed to serve him tomorrow.

(3:45 PM): I saw Ms. Harrison in person at DDSN and asked her if she desired for Edward to go to Babcock's Day Program tomorrow. She said "No" because she was going to place him in the Adult Day Health Care Program (Columbia Adult Care). I said the request for the service still requires DDSN's review of the doctor's assessment to determine if he meets the criteria. She said it will be approved by Thursday (June 23) and that she didn't want Babcock any longer.

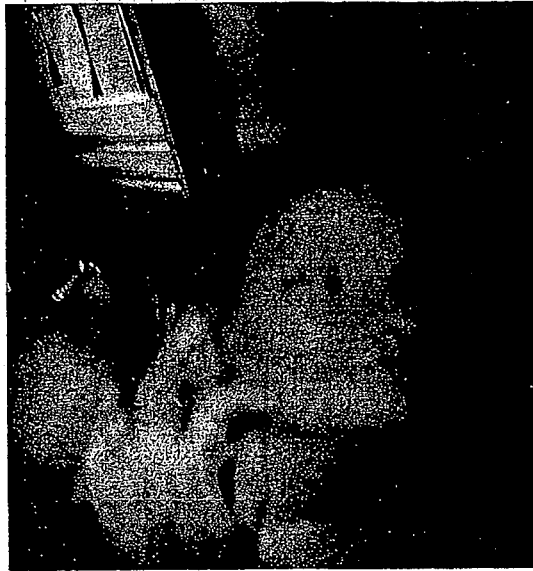
June 23, 2005:

(8:56 AM): I emailed Ms. Harrison to confirm her denial of Babcock services pending approval of Adult Day Health Care services (see email).

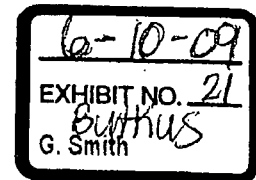
(9:19 AM): Ms. Harrison replied, "Edward will be attending Columbia Adult Care" and she attached the chronology of injuries to Edward while at Babcock (see email).

My overall assessment of this two week period follows:

1. None of Ms. Harrison's actions were instrumental in getting Edward his MR/RD waiver slot.
2. Ms. Harrison changed her mind so many times about what she wanted for Edward (without consulting Mrs. Mims) that it was very difficult to keep up or ascertain what was interference and what was fact.
3. Ms. Harrison contacted people in the organization needlessly and attempted to by-pass all policies and procedures. The system worked for Edward; it was not a result of Ms. Harrison's involvement.
4. Mrs. Mims has put her confidence in Ms. Harrison. Ms. Harrison advised her client to keep her son at home without a single support. In my opinion, Ms. Harrison set Mrs. Mims up to fail.
5. Mrs. Mims may still be able to support her son at home with the right supports in place. However, Ms. Harrison, as reported to me, said "I am the one encouraging Mrs. Mims to place him residentially. She had to go through this experience to know that she can't adequately care for him."



Edward Mims
12-3-01 Mims001637



Mims 1523

To: whom it may concern

I don't know about any marks, never
saw any marks.

Rebecca Middleton
Mrs I

Mims001638

Mims 1524

12-4-01

To Whom it may concern

I, Jemelah Franklin didn't notice any
(bruises) marks on Edward Mims at any time the
weekend of 12/30-12-2

Jemelah Franklin

Mims001639

Mims 1525

To whom it's concern,

I didn't notice anything
wrong with Edward's hands while on
duty.

J. Herman Knott

Mims001640

Mims 1526

Dec. 3, 2001

To whom it may concern, I

Natasha D. Wilson did not
noticed any scratches on Edward
Mims neck or his fingers
being hurt.

Natasha D. Wilson

Mims001641

Mims 1527

12-2-01

I Tonia James on 2nd shift gave E. Mims
a shower. I did not see no scratch on his neck
or a bruise on his finger on 12-2-01

Tonia James

Mims001642

Mims 1528

12/2/01

I MARY TYLER OF HOUSE C AT CLUSTERS
WAS UNAWARE OF ANY STRATCH OR RED
MARK ON EDWARD MIMS
NOVEMBER 30 ~~Also~~ DEC 2, 2001

Mary Tyler

Mims001643

Mims 1529

State of South Carolina)) In the Court of Common Pleas County of Richland) C/A No: 07-CP-40-3365 Edward Mims, by and through his legal guardian, Margaret Mims, Plaintiff(s), vs. Babcock Center, Inc., Judy Johnson, the South Carolina Department of Disabilities and Special Needs, Kathi Lacy and Stanley Butkus, Defendant(s), Deposition of MARGARET MIMS Deposition of MARGARET MIMS, taken before Jennifer L. Thompson, CVR, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 10:00 a.m. and commencing at the hour of 10:06 a.m., Tuesday, June 23, 2009, at the office of Davidson & Lindemann, P.A., Columbia, South Carolina. Reported by: Jennifer L. Thompson, CVR	Defendant's Exhibit No. 7: Letter 7/12/2005 (1 pg) Defendant's Exhibit No. 8: Order of Dismissal (1 pg) Defendant's Exhibit No. 9: Remittitur (1 pg)
APPEARANCES For the Plaintiff(s): Patricia L. Harrison, Esquire 611 Holly Street Columbia, SC 29205 For the Defendant(s): William H. Davidson, II, Esquire Davidson & Lindemann, P.A. 1611 Devonshire Drive, Second Floor Columbia, SC 29206 Christian Stegmaier, Esquire Collins and Lacy, P.C. 1330 Lady Street, 6th Floor Columbia, SC 29201 INDEX Stipulations 4 Direct Examination by Mr. Davidson 5 Examination by Mr. Stegmaier 93 Errata 112 Certificate 113 EXHIBITS Defendant's Exhibit No. 1: List of Exhibits (134 pgs) Defendant's Exhibit No. 2: Client Accident/Medical Problem Reporting Schedule (1 pg) Defendant's Exhibit No. 3: Client Accident/Medical Problem Reporting Schedule (1 pg) Defendant's Exhibit No. 4: Babcock Center Initial Report of Alleged Abuse, Neglect or . . . (1 pg) Defendant's Exhibit No. 5: Letter of October 28, 2003 (2 pgs) Defendant's Exhibit No. 6: Report of Dr. Graeme Johnson (3 pgs)	STIPULATIONS 1 This deposition is being taken pursuant to the 2 South Carolina Rules of Civil Procedure. 3 4 5 The reading and signing of this deposition is 6 reserved by the deponent and counsel for the 7 respective parties. 8 9 Whereupon, 10 MARGARET MIMS, being duly sworn and cautioned 11 to speak the truth, the whole truth, and 12 nothing but the truth, testified and deposed 13 as follows: 14 Court Reporter: State your full name for the 15 record, please. 16 Witness: Margaret L. Mims 17 18 19 MR. DAVIDSON: And just for the record, are we doing 20 this deposition pursuant to the Court's 21 directive regarding objections or do you want 22 to note objection and say as to the form of 23 the question? 24 MS. HARRISON: I believe we have the Court's -- 25 Wasn't the agreement that it would apply to

9 1 A Three. 2 Q And is that five days a week? 3 A No. 4 Q How many days a week is that? 5 A Well, usually on Tuesdays, I work two jobs on 6 Tuesday and one Wednesday and one on Thursday. 7 Q Is that all cleaning houses? 8 A Yes. 9 Q Can you tell me -- In reading the records, I saw 10 that several years ago you had had a heart attack 11 and had a stent put in, is that correct? 12 A Yes. 13 Q Do you regularly see a doctor for your health? 14 A Yes, I do. 15 Q Who do you see? 16 A Dr. Grainger. 17 Q Dr. Grainger. Where is Dr. Grainger? 18 A He's at the Heart Center on Laurel Street. 19 Q Is that Terry Grainger? 20 A Yes. 21 Q And have you had any other problems with your heart 22 since you had the stent? 23 A Yes. 24 Q When was that? 25 A The first of May of this year.	11 1 A Yes, heart medicine. 2 Q What type medicine, do you know? 3 A Well, I take -- I don't know the -- Topin [sic], 4 Plavix, and it's a heart vitamin. It starts with a 5 f-b-. Then I take Zocor for cholesterol. 6 Q And do you have a driver's license? 7 A Yes, I do. 8 Q Do you own a car? 9 A No. 10 Q Do you use public transportation? 11 A No. If I have to go at the doctor, I use a cab. 12 Q And to get to work - cab or bus? 13 A No, I walk. I have one job where a lady picks me 14 up on Wednesdays. 15 Q We're here today in regard to a lawsuit you have 16 brought on behalf of your son, Edward. What's 17 Edward's full name? 18 A Edward James Mims. 19 Q What's his date of birth? 20 A 12/9/71. 21 Q And I understand Edward has mental retardation? 22 A Right. 23 Q And has he had that since birth? 24 A Yes. 25 Q Does he have any trust account or assets?
10 1 Q The first of May of this year? 2 A Yes. 3 Q What happened? 4 A Well, the other stent that they had last -- in 5 2008, it didn't work,, so I ended up having to go 6 over to them. 7 Q Okay. So you've had how many stents now? 8 A I got three. 9 Q Three. And they one they did in '08 had to be 10 redone in '08? 11 A No, it had to be done this year. 12 Q Oh, it had to be done this year? 13 A Right. 14 Q And had to be redone this year also? 15 A Uh-huh. 16 Q Do you have angina? Do you know what I mean by 17 angina? When you exert yourself, do you feel chest 18 pain? 19 A No, I don't. 20 Q Any other health issues other than your heart? 21 A No. 22 Q Has the doctor, Dr. Grainger, placed you on any 23 restrictions as a result of your heart condition? 24 A No. 25 Q Are you presently today on any medication?	12 1 A Trust account? 2 Q Yes, ma'am. 3 A Yes. 4 Q And who is the trustee of that account? 5 A Babcock Center is. 6 Q And do you know how much money is in that account? 7 A Not right off. 8 Q Do you know who set that trust up? 9 A I did. 10 Q And did you use an attorney? 11 A No. I went through the Social Security office, 12 because it was left from his dad's death. 13 Q Where is Edward today? 14 A Edward? Oh, he's being took care of. 15 Q I understand that, but where is he being taken care 16 of? 17 A Being taken care of by a place. 18 Q What's the name of the place? 19 A Through Cerebral Palsy -- 20 Q You can't look at Ms. Harrison, so you're going to 21 have to answer my questions. Who runs where Edward 22 is today? 23 A Brad Bradford. 24 Q Excuse me. 25 A Brad Bradford.

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13 1 Q Brad Bradford, all right. And that's the 2 gentleman. 3 A Yeah. 4 Q And who does he work for? 5 A Cerebral Palsy. 6 Q Cerebral Palsy? 7 A Uh-huh. 8 Q And is Edward located in Richland County? 9 A Yes. 10 Q How long has he been at the United Cerebral Palsy 11 facility? 12 A About a month. 13 Q And prior to that, where was Edward? 14 A At home with me. 15 Q And what's that address? 16 A 3301 Rosewood Drive. 17 Q And does anyone live there other -- When Edward was 18 there, did anyone live there other than you? 19 A No. 20 Q When you were working, how many hours during a day 21 do you normally work? 22 A Probably over eight hours a day. 23 Q And that's on Tuesdays -- 24 A Yeah. 25 Q -- and Wednesdays?	15 1 A Well, sometimes she would. If I had to go take 2 Edward to the doctor, she would come and go with me 3 to take him. 4 Q If you had to go to the doctor, would she come and 5 keep Edward? 6 A No, she would go with me to take him when he had to 7 go. 8 Q Okay. What about when you had to go? 9 A Well, sometimes she would take me, but most the 10 time I go in a cab. 11 Q Did she come and stay with Edward at the house 12 while you went to the doctor? 13 A Well, sometime I have took him with me to the 14 doctor. 15 Q And was Ms. Rogers being paid through the respite 16 program? 17 A Yes. 18 Q Do you have a power of attorney for Edward? 19 A Yeah, I'm Edward's power of attorney. Ms. Harrison 20 has power of attorney. 21 Q Okay. So, both you and Ms. Harrison have power of 22 attorney? 23 A (Non-verbal response) 24 Q You have to answer yes or no. 25 A Yes.
14 1 A Usually, I get home about 6:30, a little after, on 2 Tuesdays. 3 Q Okay. 4 A Wednesday I get home about 6:30. On Thursdays, I 5 have a half a day. I get home probably about one. 6 Q What time do you leave in the morning? 7 A Eight o'clock. 8 Q Eight o'clock. And when Edward was living at home 9 with you, when you were gone from eight until six, 10 who took care of him? 11 A Carla Rogers. 12 Q Carl Rogers? 13 A Uh-huh. 14 Q Is that C-a- -- 15 A C-a-r-l-a. 16 Q Carla Rogers? 17 A Uh-huh. 18 Q And how many days a week did Carla Rogers come to 19 your house on Rosewood? 20 A The days I worked. 21 Q The days you worked. 22 A Uh-huh. 23 Q Did she ever come in on any of the days you did not 24 work to allow you to run errands or anything like 25 that?	16 1 Q And do you know how long you've had those powers of 2 attorney? 3 A Since last year. 4 Q Since when? 5 A Last year. 6 Q Last year. Prior to last year, did you have a 7 power of attorney? 8 A For Edward? 9 Q Yes, ma'am. 10 A No. 11 Q And do you know when last year y'all got the power 12 of attorney for Edward? 13 A No, I don't. 14 Q Do you have copies of them? 15 A Yes. 16 Q Okay. Could you make those available if we ask Ms. 17 Harrison for them? 18 A Yes. 19 Q Other than in Richland and maybe Lexington County, 20 has Edward ever lived in any other counties in 21 South Carolina? 22 A No. 23 Q He's never lived in Spartanburg County? 24 A No. 25 Q Or Sumter County?

21 1 Q Okay. Do you have those records at home that 2 you've reviewed from the Department of Disabilities 3 and Special Needs? 4 A Probably. 5 Q When did you first meet Ms. Harrison? 6 A In 2005. 7 Q And what were the circumstances of you meeting Ms. 8 Harrison in 2005? 9 A About Edward. 10 Q And what precipitated you going to see Ms. Harrison 11 in 2005? Don't want to know what y'all talked 12 about, but what precipitated you going to her in 13 2005? 14 A Well, because he came home - He was supposed to 15 come home like on a Friday, came home on a Saturday 16 - And I noticed that his little privates was hurt. 17 They had told me they had take him to the hospital, 18 and he was molested. That was why I got in touch 19 with her. 20 Q Do you recall who brought Edward home, or did you 21 go pick him up? 22 A I forgot the guy's name, but he brought Edward home 23 a lot in the van from Kensington. 24 Q And do you recall -- You indicated he had been 25 molested. Is that what you determined based on	23 1 A No. 2 Q Do you know anything about what Kathi Lacy's job is 3 at the Department of Disabilities and Special 4 Needs? 5 A No, I don't. 6 Q Do you know anything about the job of Dr. Butkus at 7 the Department of Disabilities and Special Needs? 8 A No, I don't. 9 Q Do you have any knowledge of your own self of 10 whether or not Kathi Lacy or Stan Butkus have had 11 any involvement with Babcock Center? 12 A I don't know. 13 Q Do you know whether or not Kathi Lacy or Stan 14 Butkus have had any involvement with Edward? 15 A I don't know. 16 Q In your Complaint, -- Have you read your lawsuit? 17 A (Non-verbal response) 18 Q You have to answer yes or no. 19 A Yes. 20 Q And you've read the one that was filed in 2008? 21 A (Non-verbal response) 22 Q You have to answer -- 23 A Yes. 24 Q Did you read the one filed in 2007? 25 A Yes.
22 1 your knowledge of the facts of this case? 2 A Well, he had a cut, a five inch centimeters cut on 3 his privates. 4 Q Okay. 5 A So that's the reason he was molested. 6 Q So the fact that he had a cut on his penis is what 7 made you believe that he had been molested, 8 correct? 9 A Right. 10 Q Did you ever review any of the records concerning 11 that incident? 12 A Yeah. I have the statements from the hospital. 13 Q Now, you filed the lawsuit in this case involving 14 Babcock Center, Ms. Johnson, Ms. Lacy, and Dr. 15 Butkus. 16 Have you ever talked with Kathi Lacy, to your 17 knowledge? 18 A No. 19 Q To your knowledge, have you ever talked with Stan 20 Butkus? 21 A No. 22 Q Have you ever written Kathi Lacy, to your 23 knowledge? 24 A No. 25 Q Have you ever written Stan Butkus?	24 1 Q And did you -- At the time you were reviewing the 2 Complaint, had they already been filed or were they 3 about to be filed, if you know? 4 A I don't know. 5 Q In the Complaint, you indicate that certain 6 employees of the Department of Disabilities and 7 Special Needs failed to report incidences of abuse, 8 neglect, and exploitation to appropriate 9 authorities and failed to take appropriate action 10 to investigate reports of abuse and neglect. 11 Do you know who those officials are? 12 A No, I don't. 13 Q And do you know what reports of abuse, neglect, and 14 exploitations were not reported? 15 A About Edward? 16 Q Yes, ma'am. 17 A I never did get any. They never did let me know 18 what happened to Edward about a lot of things. 19 Q Okay. My question is, do you know which reports of 20 abuse, neglect, and exploitations were not reported 21 to appropriate authorities? And if you don't know, 22 that's fine. 23 A No, I don't. 24 Q You also indicated that, at one point, employees of 25 Babcock Center and the Department accused you of

17 1 A No. 2 Q Or Clarendon? 3 A No. 4 Q Have you ever received services for Edward from 5 either the Spartanburg County Disability Board or - 6 7 A No. 8 Q -- Charles Lee Center? 9 A No. 10 Q Or from the Clarendon County Disability Board? 11 A No. 12 Q Or the Sumter County Disability Board? 13 A No. 14 Q Can you tell me a little bit about Edward's 15 condition. What problems does he have, other than 16 the fact I understand he's mentally retarded. Does 17 he have -- Like does he have seizures, those type 18 things? 19 A Yes, he has seizures. 20 Q Does he have any medical problems? 21 A Other than taking medicine for seizures, he has 22 acid reflux. 23 Q Anything else? 24 A He can't talk. He has a lot of ear infections. 25 Q Anything else?	19 1 A No. 2 Q So he had not received any services -- 3 A No. 4 Q -- from either the State -- 5 A No. 6 Q -- or from Babcock Center prior to 1999? 7 A No. 8 Q And how long were you in the hospital, do you 9 recall? 10 A Just a week. 11 Q And do you recall who you talked to about having 12 Edward kept at Babcock Center in '99? 13 A Not right off, I don't. 14 Q And do you recall, when you got out of the 15 hospital, did you go back and talk with anyone 16 about seeing if you could bring Edward home? 17 A They said no. 18 Q Who said no? 19 A I don't remember. It's been a long time, so I 20 don't remember. Only thing I know I could not get 21 him back home. That's the only thing I remember. 22 Q Do you recall what agency that individual worked 23 for? 24 A They worked for Babcock Center, I know that. 25 Q Prior to 2005, if Edward needed something, who made
18 1 A That's about all I can -- That's about it. 2 Q Okay. I saw somewhere in some of the records that 3 your lawyer provided that Edward's had a problem at 4 times with dry skin which, at points, has caused 5 dandruff. 6 A Yes. 7 Q Has he always had problems with dry skin? 8 A In his hair, yes. He has -- they use skin 9 conditioner to treat his hair with when you wash 10 it. It's a kind of shampoo. 11 Q Do you use lotions on him like hand cream or thing 12 to keep your skin soft and things like that? 13 A No. His skin stays soft. 14 Q Okay. In regard to Edward, when did he first go to 15 Babcock Center? 16 A October 5, 1999. 17 Q And what was the reason for that? 18 A What was the reason? 19 Q Yes, ma'am. 20 A I had got sick and I needed someone to keep him. I 21 had no one to keep him. So that's the reason he 22 was put at Babcock Center. But I was supposed to 23 get him back home when I got out of the hospital. 24 Q And at that point in time, had he been receiving 25 services?	20 1 the decisions regarding his care or treatment or 2 whatever he needed? 3 A You mean when he was at Babcock Center? 4 Q Before 2005 while he was at Babcock. 5 A Babcock Center made the decision. 6 Q Okay. Have you, since the filing of this lawsuit 7 or even prior to the filing of this lawsuit, 8 reviewed the entire Babcock Center record 9 concerning Edward? 10 A Yes, sir, I have. 11 Q Have you made any notes concerning it? 12 A I don't have to make notes. I know what happened 13 to Edward. That's the only thing I got to say. 14 Q My question is -- And I appreciate that, Ms. Mims. 15 I was just asking the question, while you were 16 reviewing the records, did you make any notes? 17 A No, I did not. 18 Q Have you reviewed any of the records from the State 19 Department of Disabilities and Special Needs 20 concerning Edward? 21 A Yes, I have. 22 Q And what have you reviewed from the state office? 23 A Just certain things. There's a lot of things I 24 don't understand. But a lot of things I know that 25 happened to Edward was true.

25 1 neglect and abusing Edward at home. 2 A Yes, they did. 3 Q Which employees of the Department of Disabilities 4 and Special Needs, do you know? 5 A No, I don't. 6 Q And are you aware if any individual with DDSN 7 reported such neglect or abuse? 8 A I don't know. 9 Q Other than your knowledge of Edward, do you have 10 any knowledge of any other families that have 11 received services from DDSN or the Babcock Center? 12 A No. 13 Q Have you ever talked with any other mothers, 14 fathers of children who have received services 15 through the Babcock Center? 16 A Not as I know of. 17 Q So I'd be correct that none -- no other mother, 18 father, or family member of an individual who has 19 received services from Babcock Center has 20 complained to you about services they have received 21 at Babcock Center, correct? 22 A Right. 23 Q Now, my understanding is that, in this case, you 24 gave an affidavit. Are you aware of that? 25 A Yes.	27 1 enforcement? 2 A Yes. 3 Q Okay. When you reported the matter concerning Mr. 4 Anthony, that was in what year, do you recall? 5 A 2001. 6 Q Now, it was shortly thereafter that a hearing was 7 held or a petition was filed to have Edward 8 judicially committed? 9 A Yes, it was. 10 Q Did you view that as retaliation for you reporting 11 the matter regarding Mr. Anthony to law 12 enforcement? 13 A Yes, I think so. 14 Q Now, did you have a lawyer at that hearing? 15 A Yes. 16 Q Okay. If you don't mind, if you would look at, I 17 believe it's your page 28, Exhibit 5. That's the 18 petition for judicial admission. If you don't mind 19 looking -- 20 A Yeah. I don't have to look at it. 21 Q And it indicates that at that time Edward had 22 cerebral palsy. He was in fragile health. He was 23 profoundly retarded. He had seizures, 24 hypertension, esophagitis erosion disease, that he 25 could be self abusive, non-verbal, and had pica-
26 1 2 (Whereupon, Itemization and copies of 3 exhibits to affidavit of Margaret Mims, 4 consisting of 134 pages, was marked 5 Exhibit No. 1 for identification.) 6 7 Q Ms. Mims, I'm going to hand you a list of exhibits 8 as well as the exhibits that were attached to your 9 affidavit and ask if you can identify what's been 10 marked as Defendant's Exhibit No. 1. 11 Are you familiar with those documents? 12 A Uh-huh. 13 Q Now, I assume you assisted in pulling together 14 these documents for your affidavit. 15 A Yes. 16 Q You felt that these were the important documents in 17 regard to Edward? 18 A Yes. 19 Q Now, you indicated in your Complaint that you 20 reported to law enforcement problems with Edward.. 21 I would assume would that be the time that he was 22 assaulted by Mr. Anthony? 23 A Yes. 24 Q Or was that the time in regard -- Did you ever 25 report the scratch on the penis incident to law	28 1 like behavior. What is pica-like behavior? Pica, 2 p-i-c-a, do you know? 3 A I don't know. 4 Q It says in parentheses eats non-food items. Did 5 Edward do that occasionally? 6 A Sometime he did. Not very often. 7 Q Okay. Indicated that at that point in 2001 that 8 you were in poor health, unable to take care of him 9 and you had limited means and resources. Do you 10 remember reading that? 11 A Yeah, I remember reading it. 12 Q Okay. Were you handling or having the same type 13 employment back in 2001 that you have now? 14 A Yes, I did. 15 Q Was it more or less than what -- 16 A Less. 17 Q And how much annually do you make, ballpark? 2000. 18 A I don't think this has any concern. 19 Q Do you know, in 2001, approximately how much you 20 would have made annually? 21 A Not right off. 22 Q Did you file income taxes? 23 A Yes, I did. 24 Q And I think there was actually a hearing set up in 25 this matter, and ultimately, an order was issued on

29 1 the 3rd of July, 2001. And that's Exhibit, I 2 believe, 7 on page 32. If you don't mind, flip to 3 that, please, ma'am. 4 A I don't have my glasses. I didn't know I was going 5 to need glasses to see. 6 Q Did you check your pocketbook to make sure they're 7 not in there? 8 A Yeah. I ain't got them. 9 Q Because you're going to need to read a little bit 10 for me. Do you need reading glasses, Ms. Mims? 11 A (No response) 12 Q Have you got the Order? 13 A Yeah, I've got it. 14 Q Indicates that Edward had an attorney, does it not, 15 a David Belding. 16 A Yeah. 17 Q It also indicates that there was a guardian ad 18 litem. 19 A Yes. 20 Q Okay. And that you had an attorney. 21 A Yes. 22 Q And that a psychologist was there from the 23 Department of Disabilities and Special Needs -- 24 A Yes. 25 Q -- who issued a report, right?	31 1 this order or did Mr. Morris send you this order to 2 review in 2001 once it was signed? 3 A He sent a copy of it to me. 4 Q And did you review it? 5 A Yes. 6 Q And did you have any questions for Mr. Morris? 7 A Yes. 8 Q And what question did you have for Mr. Morris? 9 A Well, with this, I didn't understand it because my 10 -- I was afraid that if I didn't sign this, I 11 wouldn't see Edward again. 12 Q Okay. And did you explain that to Mr. Morris? 13 A Yes. 14 Q And did you give him permission to sign his consent 15 to this order? 16 A He had to. 17 Q My question is did you give him your consent to 18 sign this order? 19 A Not as I know of, I didn't. 20 Q Did you ever petition the court to set aside this 21 order? 22 A No, I didn't. 23 Q Were you present in the court when the diagnostic 24 report of a Jane McCausland, a psychologist with 25 the Department, was introduced into evidence before
30 1 A Yeah. 2 Q Did you hire Mr. Morris as your attorney? 3 A Yes, I did. 4 Q And did you know Mr. Morris prior to him becoming 5 involved in this hearing? 6 A Yeah, I worked for him. 7 Q You worked for Mr. Morris. Was he the one -- Was 8 he one of the ones that you did his house? 9 A Uh-huh. 10 Q And were you comfortable with Mr. Morris as your 11 attorney? 12 A Yes. 13 Q Do you think he did a good job for you at this 14 hearing? 15 A Yes. 16 Q Did you have any complaints about the way he 17 handled matters that went before Judge Belton? I 18 believe Jacqueline D. Belton. Were you happy with 19 the way he presented your case before Judge Belton? 20 A Yes. 21 Q Did you have an opportunity to talk with Mr. Morris 22 and discuss with him any concerns you had about 23 Edward? 24 A Yes, I did. 25 Q And, to your knowledge -- it appears did you review	32 1 Judge Belton? 2 A Yes, I was. 3 Q At any time during the hearing, did you interpose 4 or advise Judge Belton of any concerns, criticisms, 5 or fears you had in regard to Edward? 6 A They didn't let me say a word. 7 Q Okay. Your lawyer did not let you say a word, 8 correct? 9 A Right. 10 Q To your knowledge, it appears that -- did you ever 11 speak with a Leigh Flynn, the guardian ad litem for 12 Edward? 13 A Yes. She was his -- supposed to come to the house 14 and check things out. 15 Q Did she ever come to the house and check things 16 out? 17 A Yes, she did. 18 Q Okay. And was that before or after the hearing? 19 A After the hearing. 20 Q Okay. And did prior to the hearing, to your 21 knowledge, did she ever talk with you or come to 22 the house and discuss with you Edward and your 23 ability or lack of ability to take care of Edward 24 at home, before the hearing? 25 A Not as I remember.

33 1 Q To your knowledge, did you talk with Mrs. Flynn 2 during the hearing before Judge Belton? 3 A No. 4 Q To your knowledge, was she in agreement with the 5 conditions of this order? 6 A Yes, she was. 7 Q Did you feel that she and your attorney and others 8 who were present were essentially getting together 9 to bamboozle you in regard to Edward? Do you know 10 what the word "bamboozle" means? 11 A I think so. 12 Q You think they got together to try to pull 13 something over on you? 14 A Oh, they did. 15 Q And you believe you Ms. Flynn was involved in that? 16 A (Non-verbal response) 17 Q You have to answer yes or no, please. 18 A Yes. 19 Q The report that -- Ms. Jane McCausland's report, I 20 think is Exhibit 6, right before the order. I 21 think it's page 30. It's like a two page letter, 22 Ms. Mims. 23 Obviously, you've read this letter because 24 you've included it in the packet or material with 25 your affidavit, is that correct?	35 1 can read the documents in question. So if you 2 don't think you can read them or you're going 3 to be at a disadvantage, you need to tell me 4 now and you can go get your glasses. 5 MS. MIMS: Well, see, I didn't know I was going to 6 have to do a lot of reading. 7 MR. DAVIDSON: Do you want to see if maybe you and 8 your lawyer could run to your house and get 9 your glasses? 10 MS. HARRISON: Do you want to try his reading 11 glasses and see if they work? 12 MS. MIMS: You have an extra pair? 13 MR. DAVIDSON: I've got an extra pair. 14 MS. MIMS: I'll try them. 15 16 (Off the Record) 17 18 Q You've read the report? 19 A Yes. 20 Q And is that a pretty accurate assessment of Edward? 21 A Yes. 22 Q Anything that you've reviewed in that report that 23 you would disagree with? 24 A No. 25 Q Now, you indicated that you were threatened that
34 1 A Yes. 2 Q Okay. And in reading this, did you have any 3 disagreements with any of Mrs. McCausland's 4 findings? Take a moment and just review it. 5 6 MS. HARRISON: Are you able to read it, Ms. Mims, 7 without your glasses? 8 MR. DAVIDSON: Do you need reading glasses? I have 9 an extra pair, Ms. Mims. 10 MS. MIMS: I thought I had mine in here. I must 11 have took them -- 12 MR. DAVIDSON: Where would they be? 13 MS. MIMS: I don't have them in here. 14 MR. DAVIDSON: Let's take a break and let me see if 15 I've got an extra pair that maybe will help 16 you. 17 MS. MIMS: I can kind of make it out. 18 MR. DAVIDSON: Can you make it out without any 19 problem? 20 MS. MIMS: Uh-huh. 21 MR. DAVIDSON: Ms. Mims, one thing I don't want to 22 have happen is later you come back and say you 23 weren't able to read it, because I'm going to 24 be asking you some questions about a lot of 25 documents. So I need to make sure that you	36 1 you wouldn't be able to see your son if you did not 2 sign or didn't agree to the voluntary commitment. 3 A Yes. 4 Q Who told you that? 5 A It just was my opinion. That's the way I felt. 6 Q Did Mr. Morris ever tell you that? 7 A No. 8 Q Did Ms. Flynn, the guardian ad litem? 9 A No. 10 Q Anybody with Babcock? 11 A That was my impression - If I didn't sign the 12 papers, I would not be able to see Edward again. 13 Q I appreciate that, and I understand your 14 impression, but what I'm trying to find out is did 15 anyone from Babcock Center tell you that directly? 16 A No. 17 Q Did anyone with the Department of Disabilities and 18 Special Needs tell you that directly? 19 A In a way. That's the impression I got is the way I 20 felt. If I didn't -- No. What I'm saying if I 21 didn't sign the papers, I would not be able to see 22 Edward again. 23 Q That was the impression you got from sitting in the 24 courtroom? 25 A Right.

37 1 Q Did anyone, either inside the courtroom or outside 2 the courtroom, tell you that directly? 3 A No. But I didn't get to see him. 4 Q That's my question, though. No one ever told you, 5 okay. Now -- 6 7 MS. HARRISON: Did she finish her response? 8 9 Q Did you finish, Ms. Mims? 10 A I guess. You said that's all you wanted to know. 11 Q So, your impression from hearing the conversation 12 in the courtroom is what made you feel that if you 13 didn't agree, you wouldn't be able to see Edward? 14 A That's right, that I would not be able to see 15 Edward again. 16 Q To your knowledge, did the judge ever prevent you 17 from speaking in that hearing? 18 A They would not let me say a word. All the people 19 that was there answered everything. I was not 20 given an opportunity to say anything, because 21 that's the reason I'm telling you now that's why 22 they didn't let me say anything because they knew 23 they was not going to let me see Edward again. 24 Q Did, at any point, the judge indicate to you that 25 you were not allowed to speak during the hearing?	39 1 because when he come home, he got where he didn't 2 want to go back. I would have to make him get on 3 the van and go back. 4 Q My question is, did you ever -- did anybody ever 5 tell you to write the AG's office? 6 A No. 7 Q In the letter to Mr. Condon, you do not mention 8 anything about the judicial commitment hearing and 9 the fact that you were forced to consent or felt 10 forced to consent. You didn't bring that up to 11 Attorney General Condon, correct, in your letter? 12 A Right. 13 Q You are aware, are you not, that if a lawyer, or 14 for that matter a judge, violates their oath and 15 does something like forces a client or a litigant 16 to do something against their will that that can be 17 reported to the attorney general's office? Were 18 you aware of that? 19 A Well, I didn't know that. 20 Q Okay. Your letter to the attorney general's office 21 was responded to by not only the attorney general's 22 office but also by the Department of Disabilities 23 and Special Needs, correct? 24 A (Non-verbal response) 25 Q Do you know if anyone looked into your complaints
38 1 A I was told I couldn't say anything. 2 Q And that was told to you by the judge? 3 A Because I was told to set there and not say a word. 4 Q Okay. Was that expressed to you by the judge? 5 A Not as I remember, but that's the impression that I 6 got. 7 Q Okay. And who did you get that impression from? 8 A My -- Like I told you. Everyone that was sitting 9 around the table. 10 Q Who did you get the impression that you were not 11 able to speak: your lawyer or the judge -- 12 A The judge. All of them that was sitting there. 13 Q Okay. This order was signed in July 2001. Is that 14 what the record reflects, that order? Right after 15 -- It's right after that letter. 16 A Yeah. 17 Q Now, in November of 2001, you wrote the attorney 18 general's office. That's the next exhibit, I think 19 Exhibit 8. And who told you to write the attorney 20 general's office about Edward? 21 A I did. 22 Q Did you talk with anyone prior to writing General 23 Condon about Edward? 24 A Yes, I did. I talked to the people at Babcock 25 Center, at Clusters, that Edward was being abused,	40 1 at Babcock Center one way or the other? 2 A I don't know. The only thing that I know that they 3 came out after the abuse. The attorney general's 4 office did to investigate. 5 Q And do you recall what their findings were and when 6 that was? 7 A I wrote about the abuse about Edward about him 8 being abused which I was cause of the abuse, which 9 I did not. Come to find out later that's when they 10 found out about Anthony, Carl Anthony. 11 That's the only reason that was brought up, 12 because I had wrote the attorney general about the 13 abuse, and they investigated it. And that's when 14 they found out about Carl Anthony. 15 Q And that was a result of your letter -- 16 A Right. 17 Q -- of November 2001? 18 A That's right. Yes. 19 Q So no action, nothing had been reported regarding 20 Carl Anthony prior to your November 2001 letter? 21 A No. Because no one believed me. They was blaming 22 everything on me. 23 Q All right. Listen to my question very carefully. 24 A I'm answering your question. 25 Q I understand. I just want to make sure we're --

41 1 I'm not confused. No action and no information 2 concerning Carl Anthony came to the forefront, came 3 to be known to anyone, until you wrote the attorney 4 general's office in November of '01. 5 A Right. I went to the hearing myself down in 6 Swansea when they had the hearing about Carl 7 Anthony. I was there. 8 Q When he pled guilty? 9 A Yes. 10 Q Did anybody go with you? 11 A Yes. My sister went with me. 12 Q And where does she live? 13 A My sister's passed -- My sister's deceased. 14 Q I'm sorry to hear that. 15 All right. You also indicate in your 16 Complaint that employees of Babcock and DDSN 17 falsely informed the probate court, and the court 18 appointed guardian that you were neglecting your 19 son. Who did that, do you know? 20 A I do not know. I never did neglect my son. I 21 always took care of him like we supposed to. 22 Q To your knowledge, was that during the hearing that 23 you basically were told that you couldn't speak up? 24 A Probably. 25 Q Do you type?	43 1 A Yes, I did. 2 Q Is that the first time you had indicated in writing 3 that you wanted Edward to come home? 4 A Yeah. 5 Q Now, Mr. Mims, your son Edward was, I believe, hit 6 by a Babcock employee. And I believe that was 7 sometime in 2000, is that correct? 8 A Yes. 9 Q And, at that point, do you know whether or not 10 there was or was not an investigation into that 11 matter? 12 A I don't know. 13 Q Were you advised that they were undertaking an 14 investigation as a result of Edward having some 15 scratches and bruising on him in 2000? 16 A After I got him home. 17 Q Okay. After you saw him when he came home? 18 A Yeah. 19 Q And, to your knowledge, who contacted law 20 enforcement to swear out a warrant on ... 21 A I did. 22 Q Okay. 23 A Because the attorney general's office came to my 24 house and they investigated. I had to sign papers. 25 They swore the warrant out for Carl Anthony.
42 1 A No. 2 Q In the exhibits, there is a chronology, which I 3 think is the first exhibit. Who prepared that, if 4 you know? 5 A I don't know. That was at Babcock Center. 6 Q Okay. My question is do you know who prepared this 7 document, -- 8 A No, I do not. 9 Q -- Exhibit 1 -- 10 A No. 11 Q -- Edward Mims chronology? 12 A I do not. 13 Q Okay. And can you vouch for its accuracy one way 14 or the other, since you didn't prepare it? 15 A Not really. 16 Q Prior to today, had you ever seen that chronology? 17 A About Edward? 18 Q Yes, ma'am. 19 A I think I have. 20 Q Prior to signing your affidavit, did you see it? 21 And if you don't know or don't recall -- 22 A I don't recall. 23 Q All right. In the exhibits, page 27, it's a note 24 from you, 4/3/2001, where you indicated that you 25 wanted Edward to come back home.	44 1 Q Do you know why it took the AG -- Did the AG's 2 office investigate this matter? 3 A Yes. 4 Q Do you know if the ombudsman's office investigated 5 -- 6 A I don't know. Only thing I know they attorney 7 general's office came and talked with me after they 8 got a letter. They investigated. That's when they 9 found out about Carl Anthony. 10 Q Okay. Were you aware that the state ombudsman's 11 office was advised of the incident, on August 14, 12 2000, a day after it occurred. Were you aware of 13 that? 14 A No, I wasn't. 15 Q If you don't mind looking at page 25. Now, you see 16 at the bottom of the page. This is a letter dated 17 July 28, 2003 from Health and Human Services. You 18 see that letter? 19 A August 13? 20 Q No, excuse me. July 28, 2003. 21 A Oh, I see it. 22 Q Okay. And you see under findings? 23 A Yeah, down at the bottom? 24 Q Yes, ma'am. I think Edward was attacked by Carl 25 Anthony on August 13, 2000. That sound about

45 1 right? 2 A Uh-huh. 3 Q Notice it says at the bottom, "Facility records 4 document that physical abuse incident occurred on 5 August 13, 2000, and was reported to the 6 ombudsman's program on August 14, 2000. Complaint 7 was reported to law enforcement. Perpetrator pled 8 guilty to simple assault." You see that? 9 A Uh-huh. 10 Q You weren't aware that the day after the incident 11 this matter was reported to the state ombudsman's 12 office? 13 A No, I was not. 14 Q Do you recall reading that when you prepared your 15 affidavit? 16 A (No response) 17 Q Do you, Ms. Mims? 18 A No. 19 Q Does that appear to be significant to you that it 20 was in fact reported to the state ombudsman's 21 office? 22 A I don't know. 23 Q You indicate that Edward was actually attacked by 24 another consumer while at Babcock. Were you aware 25 of that? Was hit with a belt.	47 1 2 Q Ms. Mims, I'll show you what's been marked as 3 Defendant's Exhibit No. 2, which is part of 4 Edward's Babcock file. And I think I've already 5 asked you - You've read his entire Babcock file, 6 haven't you? 7 A Uh-huh. 8 Q And do you recall seeing that form in the material 9 you read from Babcock? 10 A I don't know. I don't remember. 11 Q In your Complaint, you say that on December 16, 12 2001 that Edward was beaten at Babcock Center. 13 This appears to be on December 15, 2001. Is this 14 the incident you're referring to with Mr. Anderson, 15 to your knowledge? 16 A Yes. 17 Q And you see in the description of the incident 18 where Mr. Anderson admitted hitting Edward? 19 A Yes. 20 Q Okay. And having read this report -- Have you 21 taken a moment to look at this report? 22 A Yeah. 23 Q Anything on this report that you disagree with? 24 A No. I remember him being hit. 25
46 1 A Yes. 2 Q Okay. I think you indicate sometime around 3 December -- I'm going to show you. This is part of 4 the Babcock record. 5 6 (Whereupon, Client Accident/Medical 7 Problem Reporting Schedule for Charge 8 Person, consisting of 1 page, was marked 9 Exhibit No. 2 for identification.) 10 11 Q Ms. Mims, I'll show you an accident reporting 12 schedule regarding Edward. And in your Complaint, 13 you talk about a December 2001 where he was beaten. 14 15 MS. HARRISON: Do you have a copy of that? 16 MR. DAVIDSON: I'll have to make one, that's mine. 17 MS. HARRISON: Are you talking about ours? 18 MR. DAVIDSON: No, no, no. This is something... 19 MS. HARRISON: Are you going to make a copy for me 20 before you show it to my client? 21 MR. DAVIDSON: Sure. I just didn't have an extra. 22 Let's take a short break anyway. We've been 23 going about an hour. 24 25 (Short Break)	48 1 (Whereupon, Client Accident/Medical 2 Problem Reporting Schedule for Charge, 3 consisting of 1 page, was marked Exhibit 4 No. 3 for identification.) 5 6 Q Again, I'll show you Defendant's Exhibit No. 3. 7 Again, that is one of the documents from the 8 Babcock file. And I did not see that in the 9 materials you pulled out, or someone pulled out, 10 for you to do your affidavit. Do you recall seeing 11 that in the material, the exhibits? 12 A No. 13 Q Okay. This is a client accident medical problem 14 reporting schedule for charge person dated January 15 24, 2003. And actually, in your Complaint, 16 paragraph 27, you say that the Plaintiff was beaten 17 at Clusters by another individual with a belt, and 18 I'm paraphrasing. Does this appear to be that 19 incident? 20 A Yes. 21 Q And having reviewed this document, do you see 22 anything on the document that you disagree with 23 based on your knowledge of what happened back in 24 2002? 25 A See, I don't know about all these accident. I

49 1 didn't get no report on them. I mean, they didn't 2 keep up with me about everything that happened to 3 Edward. 4 Q You note on this form that it indicates that at 5 7:50 on the 24th, you were notified by Babcock. 6 See that Ms. Mims? 7 A If I was, I forgot. 8 Q Now, do you understand what the term "immediate 9 jeopardy" means? 10 A No. 11 Q You have made allegations in your Complaint that 12 Babcock -- And I think sometime after this incident 13 with the belt, that your son was moved to 14 Kensington, correct? 15 A Right. 16 Q So they took him out of the Clusters at that point 17 as a result of his problems with the individual who 18 was striking him, a Mr. Anderson, is that right? 19 A (Non-verbal response) 20 Q You have to answer yes or no. They took him out of 21 Clusters and moved him to Kensington, correct? 22 A Yes. 23 Q And that was result of the problems they were 24 having between Mr. Mims and the individual who was 25 striking him, correct?	51 1 Q Okay. You don't remember? 2 A No. 3 Q May have but you just don't remember? 4 A Right. 5 Q To your knowledge, in your Complaint, you refer to 6 several instances where Babcock was cited as a 7 result of violations of health and safety 8 standards. Do you have any personal knowledge of 9 any of those events? 10 A No. 11 Q Do you know whether or not Babcock appealed any 12 citations it received as a result of any citations 13 they may have received? 14 A I don't know. 15 Q In the file in the exhibits, you have placed 16 several medical records concerning Edward. Do you 17 remember doing that, and I'm going to start you on 18 page 45 if you want to look through them. There 19 are several medical records that you've actually 20 placed with your affidavit. You've looked at some 21 of these medicals? 22 A On page 45? 23 Q Yes, ma'am. In putting together your affidavit and 24 in reviewing the records from Babcock concerning 25 your son, did these appear to be the most
50 1 A (No response) 2 Q Correct, Ms. Mims? 3 A I don't know. 4 Q Okay. But they moved him, nonetheless? 5 A Yes. 6 Q Okay. How did you learn that he had had a problem 7 with ant bites or that there were ants in his room? 8 A Where are you talking about? 9 Q Do you know anything about an incident where Edward 10 was bitten by ants while at Kensington or at any of 11 the facilities at Babcock? 12 A I know about Clusters. 13 Q Okay. In Clusters he got bitten some ants at 14 Clusters? 15 A Yes. 16 Q Okay. Did he ever have any problems at Kensington 17 with being bit by ants, to your knowledge? 18 A Yes. 19 Q Do you know why that happened or how that happened? 20 A They was in his bed. 21 Q Do you know why they were in his bed? 22 A No, I do not. 23 Q And I assume it was reported to you that he had 24 been bitten by ants and had to go to the hospital? 25 A No, I don't remember.	52 1 significant medical records concerning Edward while 2 at Babcock? 3 A Yes. 4 Q The first one on page 45 has to do with the penis, 5 correct? 6 A Yes. 7 Q Now, let me back up before we get into this. I 8 just want to make sure. 9 10 (Whereupon, Initial Report of Alleged 11 Abuse, Neglect or . . . , consisting of 1 12 page, was marked Exhibit No. 4 for 13 identification.) 14 15 Q Ms. Mims, I'm going to show you Defendant's Exhibit 16 No. 4, which is an initial report of alleged abuse, 17 neglect. And it is for your son. It regards Carl 18 Anthony, the perpetrator, and it is dated October 19 13, 2003. This is when he was assaulted by Mr. 20 Anthony, correct? 21 A (Non-verbal response) 22 Q And on the document itself, it shows that you were 23 notified about incident on our about the same date, 24 correct? 25 A No, I was not.

53 1 Q You notice there is an indication that you were 2 notified. What time does it show, please, ma'am? 3 A Where you talking about, at the bottom? 4 Q It shows the date, excuse me. Third person down 5 beyond Tonya Flake. You see your name, 6 Parent/guardian? 7 A Yeah, I see it. 8 Q You notice that it shows notification August 14, 9 2000? 10 A They did not notify me. 11 Q My question is, on the form itself, it shows that 12 you were notified? 13 A Yeah, I see it. 14 Q Today sitting here do you recall being notified 15 sometime around August? 16 A No, I do not. 17 Q Now, the medical records, going back to that a 18 minute. You've got the page 45 exhibit - I'm not 19 sure which exhibit it is, but it's identified as 20 page 45 in the packet of material - It refers to 21 this as a chief complaint laceration to the penis, 22 you see that? 23 A Yeah, I see that. 24 Q Okay. You see where the doctors indicates that 25 they're uncertain how the wound occurred?	55 1 A Yes. 2 Q And he was discharged to your house, according to 3 the second page, correct? 4 A (No response) 5 Q Do you notice that at the very top? They indicate 6 "Would like to be discharged; for us to discharge 7 the patient and have him follow up tomorrow with 8 him in the morning. The patient is discharged home 9 in good condition with mother." You notice that? 10 A I don't remember that. 11 Q Looking at page 50. Appears he was seen at 12 Lexington Medical Center also in December of 2000 13 with a swelling of his right hand, correct? 14 A Yeah. 15 Q Okay. They actually x-rayed it? 16 A That's what it says. 17 Q Okay. Saw no fracture, correct? And they 18 diagnosed it as a minor right hand contusion, which 19 is a bruise, correct? 20 A (No response) 21 Q Correct, Ms. Mims? 22 A Yeah. 23 Q The next one is actually the January 24, 2002 belt 24 incident, on page 51. You see that? 25 A I see it.
54 1 A Yeah, I see it. 2 Q Do you also see under physical examination it shows 3 that the tear on the under surface measured 4 approximately four centimeters? 5 A Yes. 6 Q Okay. And it did not appear to be deep involving 7 the dermal tissue only. Do you know what the 8 dermal tissue is? 9 A They had stitches in it. 10 Q Okay. My question is, do you know what dermal 11 tissue is? 12 A No. 13 Q But you do see where it says it was not -- did not 14 appear to be deep? 15 A Yeah, I see that. 16 Q The next medical record that you found significant 17 was on page 47, correct? 18 A (No response) 19 Q See this document, Ms. Mims? 20 A Yeah, I see it. 21 Q Let me ask you a few questions about it. He was 22 actually, on July 19, 2000, taken to not only 23 urgent care facility earlier that day, but also to 24 the emergency room because of concerns that he 25 might be having an appendicitis, correct?	56 1 Q And they actually, the same day it occurred, took 2 him to the emergency room to be evaluated, did they 3 not? 4 A That's what it says. 5 Q And to document his injuries, correct? 6 A That's what it says. 7 Q Okay. And they actually, on page 2, got social 8 services from the hospital to be involved with DSS, 9 Department of Social Services, correct? 10 A (No response) 11 Q Correct, Ms. Mims? 12 A Yeah. 13 Q Anyone with DSS contact you? 14 A No. 15 Q On page 54, again, one of the records you pulled, 16 he was brought in again in February of '02 to the 17 urgent care with some discoloration and bruising of 18 his first and second fingers of right hand. Notice 19 that? 20 A Yeah. 21 Q Doesn't appear to be any fractures or any problems 22 with the hand; just a bruise, correct? 23 A Right. 24 Q And they indicate they're not sure how it happened, 25 if he was injured or if he hit his hand, correct?

57 1 A Right. 2 Q The next page, page 55, they actually in '03, 3 January 14, '03, were concerned enough about Edward 4 to take him to the emergency room because he had a 5 possible high blood pressure. See that, Ms. Mims? 6 A Yeah. 7 Q You would agree that would be an appropriate thing 8 to do, correct? 9 A Yeah. 10 Q And it appears in regard to during the hospital 11 course, on page two -- 12 13 MS. HARRISON: What page are you on? 14 MR. DAVIDSON: Page 56. 15 16 Q -- the emergency department course it says the 17 following: "Patient was observed in the ED, 18 emergency department, from 6:45 until 11:30 p.m. 19 Throughout that time he had no further symptoms." 20 You see that, Ms. Mims? 21 A Uh-huh. 22 Q "He was at baseline according to mom, as well as 23 staff members. We initially tried to get an 24 urinalysis, but patient could not give a sample. 25 At this time, we do not feel that we will	59 1 Q On the next one, page 58, November 30, 2003, he 2 again comes to Palmetto Richland Memorial Hospital. 3 Seen by doctors, and his chief complaint was pain, 4 correct? 5 A Yes. That's what it says. 6 Q And, at this instance, it appears, at least from my 7 reading of the record, Edward had been with you and 8 when he went back to Babcock, you insisted that 9 they take him to Palmetto Richland to be evaluated 10 for "pain," correct? 11 A (No response) 12 Q You see that, Ms. Mims? 13 A Yeah, I see it. 14 Q And they responded in a timely fashion to your 15 concerns, did they not? 16 A Yes. 17 Q And on page 60, the hospital emergency department 18 course, or how he did, appears to be uneventful 19 course, does it not? He didn't have any problems 20 while he was in the emergency room, correct? 21 A (No response) 22 Q Is that correct, Ms. Mims, it indicates his entire 23 course was very uneventful and encouraging while he 24 was in the emergency room? 25 A Yes.
58 1 traumatize the patient with a catheter. He can 2 have this follow up at Babcock. He is afebrile. 3 His white count is slightly elevated, but this may 4 be normal for the patient due to his Phenobarbital 5 therapy. At this time, he will be discharged 6 home." Which, at that point, was Babcock Center, 7 correct? 8 A Yes. 9 Q Okay. And it indicates the doctors, in fact, 10 checked with you about his baseline on blood 11 pressure, correct? 12 A (No response) 13 Q Correct, Ms. Mims? 14 A I don't remember. 15 Q You're not denying they didn't call; you just don't 16 remember one way or the other, correct? 17 A (No response) 18 Q Correct, Ms. Mims? 19 A They didn't call me. 20 Q So, what you're telling me is that Dr. Gillen, G-i- 21 l-l-e-n, basically falsified a medical record at 22 Lexington Medical Center -- or, excuse me, at 23 Richland Medical Center? This is at Richland. Is 24 that your testimony? 25 A If they called me, I don't remember.	60 1 Q Now, I'll show you a letter. When did you first 2 learn of UCP, do you know? Was it prior to 2008, 3 to your knowledge? 4 A I don't know. 5 6 (Whereupon, Letter dated 10/28/03, 7 consisting of 2 pages, was marked Exhibit 8 No. 5 for identification.) 9 10 Q I'll show you a letter that was written. Take your 11 time and read that, please, ma'am. 12 A I don't remember that. 13 Q This is Exhibit No. 5, and I've asked you to review 14 it. Is that your signature on that document, Ms. 15 Mims? 16 A Yes, it is. 17 Q Now, can you tell me where was this letter typed? 18 A I don't know. 19 Q Ms. Mims, do you remember earlier I cautioned you 20 about listening to my questions and being truthful 21 because we're under oath, remember that? 22 A Yes. 23 Q Okay. And I asked you when you first got involved 24 with Ms. Harrison or had any dealings with her, and 25 you indicated 2005. Remember that, Ms. Mims?

61 1 A Yes. 2 Q Okay. Ms. Mims, I'm going to show you this letter, 3 Defendant's Exhibit No. -- what's the number at the 4 bottom: five? It's dated what date, please, ma'am? 5 A October 28, 2003. 6 Q Okay. And on October 2003, you wrote, or someone 7 on your behalf, wrote to Ms. Johnson, correct? 8 A (No response) 9 Q Is that correct? 10 A Yes, they did. 11 Q And asked you to sign a letter, correct? 12 A I don't remember. I really don't. 13 Q Okay. Do you know who a Betty Lou Barclay is? 14 A No, I do not. 15 Q And do you happen to know who a Diane Wilush is or 16 a Robin Wheeler? Do you know who any of those 17 people are? 18 A No, I don't. 19 Q And you've already testified you don't know who 20 Stan Butkus is, correct? And he's identified on 21 this letter, is that right? 22 A He's with the Babcock Center? 23 Q That's fine. Is that what you believe? 24 Ms. Mims, going back to page one, you see the 25 third paragraph? You note you say, "Please have	63 1 Q Okay. Are you sure that is your handwriting? 2 A Yeah. Looks like it. 3 Q Okay. So at least as early as October 2003, Ms. 4 Harrison was involved with you in attempt to 5 protect Edward's rights in regard to services being 6 provided either through the Department of 7 Disability or through Babcock Center, correct? 8 A Yes. 9 Q And she had been involved earlier than that, 10 correct? 11 A Not as I know of. 12 Q So, on October 28, 2003, is the first time you met 13 Ms. Harrison? 14 A Yeah, I guess. 15 Q And as a result of that, she wrote a letter on your 16 behalf, which you signed, correct? 17 A Yeah. 18 Q Was she, to your knowledge, at that time assisting 19 you with Edward's affairs? Wasn't she, Ms. Mims? 20 A Yeah, I guess. 21 Q And if she -- If you or she -- If you had any 22 concerns about Edward and the way he was being 23 treated, you went to Ms. Harrison to obtain her 24 legal counsel, correct? 25 A Yes.
62 1 your staff coordinate this planning meeting with 2 Patricia Harrison. I would like to hold the 3 meeting at 611 Holly Street and request Betty Lou 4 Barclay facilitate this meeting." See that? 5 A Yes. 6 Q Okay. 611 Holly Street is Ms. Harrison's law 7 office, is it not? 8 A Yes. 9 Q Am I not correct that Ms. Harrison actually 10 prepared this letter and had you sign it, correct, 11 Ms. Mims? 12 A Yes. 13 Q Ms. Harrison was involved with you in regard to 14 Edward and your dealing with him in attempting to 15 protect his rights as early as 2003, correct? 16 October 28, 2003. 17 A Yes, I guess. 18 Q Did she, on October 28, 2003, have permission to 19 prepare this letter and ultimately get you to sign 20 it and send it on to Judy Johnson? 21 A Yes, I guess. 22 Q You guess. Do you know? Did you authorize her to 23 write this letter for your signature? 24 A I don't remember this letter. I really don't. I 25 might have signed it, but I don't remember it.	64 1 Q To your knowledge, in October 2003, did you sign 2 any formal fee agreement or any type document to 3 compensate Ms. Harrison for her legal work? 4 A No, I did not. 5 Q Have you ever signed such an agreement? 6 A No. 7 Q Either on your behalf or on Edward's behalf? 8 A (Non-verbal response) 9 Q You have to answer yes or no. 10 A No. 11 Q Ms. Mims, in your Complaint, you indicate that in 12 April of 2005, Kensington was decertified. Do you 13 know what you meant by that in your Complaint? 14 A Decertified? 15 Q Yes, ma'am. 16 A They wasn't up to date in what they -- taking care 17 of the kids. 18 Q Now, are you aware that Babcock Center actually 19 appealed that determination and that Kensington was 20 not decertified as a result of the April 29, 2005 21 issue? Were you aware of that, Ms. Mims? 22 A No. 23 Q If you don't mind, turn to page 109 of your 24 exhibits. Notice at page 109 at the very bottom, 25 this is an email from a Jim Hill, general counsel,

65 1 to Ms. Harrison. 2 A Uh-huh. 3 Q Prior to your affidavit, had you been shown a copy 4 of this email? 5 A Yes. 6 Q It indicates from Mr. Hill that Babcock had 7 appealed the decertification and the depopulation 8 of Kensington, and the matter has been deferred 9 until the appeal can be heard. 10 Do you know what that means, Ms. Mims? 11 A No, I don't. 12 Q To your knowledge, when the court issued its order 13 on June 14, 2005 giving you temporary guardianship 14 over Edward it was referenced that Babcock was 15 decertified in April of 2005. To your knowledge, 16 was the court -- From your memory of that hearing, 17 was the court advised that Babcock Center had 18 appealed that decertification and that it had been 19 deferred? 20 A I don't know. 21 Q Would you agree with me that if, in fact, it had 22 been appealed and the decision concerning 23 decertification was deferred or put off, that that 24 would be a matter to tell the court during a 25 hearing? Wouldn't you agree, Ms. Mims, to tell the	67 1 Q I'll show you a report from Dr. Graeme Johnson to 2 Ron Dozier. 3 4 MS. HARRISON: What exhibit number is this? 5 MR. DAVIDSON: This will be Exhibit No. 6. 6 7 (Whereupon, Dr. Graeme Johnson report, 8 consisting of 3 pages, was marked Exhibit 9 No. 6 for identification.) 10 11 Q No one's ever brought that to your attention? 12 A (No response) 13 Q Have you ever seen that report? 14 A (No response) 15 Q Have you ever seen that report, Ms. Mims? 16 A Yes, I think so. 17 Q It indicates that he was evaluated by Dr. Graeme 18 Johnson, does it not? 19 A That's what it says. 20 Q It indicates that he reviewed a fair amount of 21 documentation concerning the incident regarding 22 your son's laceration of his penis, correct? 23 A Yeah. 24 Q It indicates that he actually examined Edward, 25 correct?
66 1 court that? 2 A I don't know. 3 Q Now, in your Complaint, you talk about the -- I 4 think we already discussed this. -- You indicated 5 that you felt, based on the fact that your son had 6 had a laceration to his penis, that he had been 7 molested, correct? That was your assumption based 8 on the injury, correct? 9 A (Non-verbal response) 10 Q You have to answer yes or no. 11 A Yes. 12 Q No one ever told you that, correct? 13 A (Non-verbal response) 14 Q You have to answer yes or no. 15 A No. 16 Q Are you aware that the Department of Disability and 17 Special Needs, at a request of Babcock and the 18 ombudsman's office, sent a doctor over, a Dr. 19 Graeme, to try to determine how the laceration had 20 occurred. Are you aware of that? Graeme Johnson, 21 I believe, was his name. 22 A (No response) 23 Q Are you aware of that, Ms. Mims, because I did not 24 see that report in your affidavit. 25 A No.	68 1 A Yeah. 2 Q It indicates he looked at the environment where he 3 was living to try to determine a cause, correct? 4 A Yes. 5 Q He looked at various statements that were taken 6 concerning the incident, correct? 7 A Right. 8 Q And he made no determination as to what caused the 9 tear to your son's penis, did he? 10 A No. 11 Q And the emergency room doctors did not indicate a 12 reason for the tear to the tissue -- the 13 superficial tear to the tissue of the underside of 14 his penis, did they? 15 A No. 16 Q You're aware, are you not, that emergency room 17 doctors are required reporters if they feel there 18 is abuse and neglect? Are you aware of that? 19 A Yeah, I guess. 20 Q Were you ever provided the packet of investigative 21 material by your attorney or anyone, for that 22 matter, concerning the investigation into the tear, 23 the superficial tear to Edward's penis? Do you 24 remember seeing that in the documents? 25 A This?

69 1 Q Yes, ma'am. Or any of the investigative material 2 concerning Edward's lacerated or torn skin of his 3 penis? 4 A Yeah, I remember. I don't remember. 5 Q Well, are you aware that the ombudsman's office is 6 a mandated state reporter that you're to report 7 incidences of abuse and neglect for them to 8 examine? Are you aware of that? 9 A No, I'm not. 10 Q Are you aware that on -- 11 12 (Whereupon, Letter dated July 12, 2005, 13 consisting of 1 page, was marked Exhibit 14 No. 7 for identification.) 15 16 Q Exhibit No. 7 is a letter from the state 17 ombudsman's office. Their investigator, a Shirley 18 Thomas, that read, "On June 6, 2005, this office 19 received Tonya Bradford's investigative report on 20 behalf of Edward Mims as it relates to a laceration 21 on Mr. Mims' penis. This office conducted a 22 review, and concluded that the interviews with 23 staff, Tonya Bradford and Trelas Heatley, a review 24 of Dr. Graeme Johnson's documentation, and a review 25 of the Lexington Medical Center records dated May	71 1 at that one. It's page 107, I believe, of your 2 exhibits. 3 A (No response) 4 Q See this order? I think the hearing was on June -- 5 It may have been June 9th. The order is dated June 6 14th. Do you remember this hearing? 7 A Yes. 8 Q Okay. It does not appear, at least at this point, 9 that anyone from either Babcock Center or 10 Disabilities and Special Needs were present, 11 correct? 12 A No. 13 Q Now, you indicate in your Complaint that the 14 Defendants attempted to obstruct the proceedings 15 for appointment of guardian ad litem, okay. To 16 your knowledge, no one with either Babcock Center 17 or DDSN was at this June 2005 hearing, correct? 18 A I don't know. 19 Q Well, in the actual order it says who attended. 20 You don't see anybody referenced from the 21 Department or from Babcock being present, correct? 22 A Right. 23 Q I think the Department did, at some point, present 24 its position to the Court, did it not? 25 A (No response)
70 1 27, 2005. As a result of this review, abuse and/or 2 neglect is outlined in the Omnibus Adult Protection 3 Act could not be substantiated." Means they did 4 not make a finding that he had been abused and 5 neglected, correct? 6 7 MS. HARRISON: You're asking for a legal conclusion, 8 Will. 9 MR. DAVIDSON: I thought we had reserved objections. 10 11 Q Correct? That's what it says. Something's not 12 substantiated, it means it's not found, correct? 13 A I don't know. 14 Q You don't know what the word "substantiated" means? 15 A No, I don't. 16 Q Had you ever seen that before? 17 A No, I have not. 18 Q And I'm referring to Defendant's Exhibit No. 7 -- 19 or is it Exhibit No. 8. It's that document up 20 here. Exhibit No. 7. You've never seen that? 21 A I have not seen this. 22 Q Now, you also, in your Complaint, talked in terms 23 of the June 10th hearing before the probate judge 24 where you were made temporary guardian. You 25 remember that hearing? Ms. Harrison went with you	72 1 Q Correct? 2 A Yes. 3 Q And the Court considered that and decided to go 4 ahead and permanently make you guardian ad litem, 5 correct? 6 A Yes. 7 Q Do you know, other than presenting the position of 8 the Department of Disabilities and Special Needs in 9 regard to whether you should or should not be 10 guardian ad litem, in court, was there any other 11 action on the part of the Department or its 12 personnel to try to obstruct the court proceedings, 13 to your knowledge? 14 A I don't know. 15 16 MR. DAVIDSON: It's about another hour. You want to 17 take a short break? Does she need lunch? How 18 do you want to ... 19 MS. HARRISON: We've done two hours. 20 MR. DAVIDSON: That's fine. I don't care. 21 MS. HARRISON: I mean, that's what you've got, is 22 two hours. 23 MR. DAVIDSON: I've got as long as I need with the 24 Plaintiff. 25 MS. HARRISON: No, you don't. We're done at 12:30.

73 1 MR. DAVIDSON: Do you plan on walking out? 2 MS. HARRISON: We're planning on leaving at 12:30, 3 and we'll give you another 15 minutes, Will, 4 but the Judge said that it was two hours per 5 witness. 6 MR. DAVIDSON: No, ma'am. 7 MS. HARRISON: Okay. Well, we'll go till lunch and 8 then we're done. 9 MR. DAVIDSON: Ms. Harrison, if you walk out, I 10 think you might want to call the Judge before 11 you do that. 12 MS. HARRISON: Well, you can do whatever you need to 13 do. At lunch we're done. He said two hours. 14 I'll give you another 20 minutes. 15 MR. DAVIDSON: Let's just call him now. 16 MS. HARRISON: But two hours and we're done. 17 MR. DAVIDSON: Let's call him now. 18 MS. HARRISON: I want to put on the record, at 12:18 19 we went off the record. 20 21 (Off the Record) 22 23 MS. HARRISON: We had been informed previously by 24 the Judge that depositions would be limited to 25 two hours, and Ms. Mims has obligations at	75 1 MS. HARRISON: Okay, Ms. Mims, we'll talk about 2 that later. We'll be leaving at 1:30. 3 4 BY MR. DAVIDSON (Resuming): 5 Q Ms. Mims, in your lawsuit - and I'm referring to 6 basically page ten, paragraph 51 - you reference 7 that "The Defendants entered into a conspiracy to 8 deprive the Plaintiff his civil rights and his 9 rights to receive services." 10 What civil rights are you referring to, if you 11 know? 12 A Edward's civil rights? 13 Q What civil rights are you indicating? 14 A You mean Edward's rights? 15 Q Yes, ma'am. 16 A If I don't take up for Edward, who is? 17 Q Okay. 18 A You're not. 19 Q Do you know what rights you're claiming were 20 violated? 21 A Well, since Edward can't talk and take up for 22 himself, and if he's being abused, who's going to 23 take up for him if I don't try. 24 Q Do you know if anyone has conspired against Edward? 25 A I don't know.
74 1 work, and we have now been told by the Judge - 2 it's two and a half hours after we started - 3 that Mr. Davidson is being giving additional 4 time. 5 So Ms. Mims, to meet her obligations, we 6 will be leaving at 1:30, and if he needs to 7 reconvene, we'll do that. But Ms. Mims, based 8 on the Judge's former instructions that the 9 deposition would last only two hours, has work 10 obligations that she'll be leaving at 1:30 to 11 take care of. 12 MR. DAVIDSON: For the record, we made a phone call 13 to the Honorable James Barber, discussed with 14 Judge Barber the time limit in regard to our 15 deposing the Plaintiff. He indicated that 16 there was no time limit. 17 MR. STEGMAIER: For the record, for Babcock, we do 18 not concur with the -- We're not making any 19 sort of agreement as far as reconvening the 20 deposition after today. It's our mission, 21 it's our intention to take the entire 22 deposition today. 23 MS. HARRISON: She has obligations. We're leaving 24 at 1:30. We'll be leaving at 1:30. 25 MS. MIMS: Y'all going to pay for my day's work?	76 1 Q Do you know anyone that has conspired against 2 Edward and Edward's rights? 3 A Well, when I'm not told about things that happen to 4 him, you think that's Edward's rights if they don't 5 let me know everything that happened to him? 6 Q Okay. Now, you also indicate that you requested 7 adult day services and certain funding through 8 Medicaid, and that some of that was denied, are you 9 aware of that? 10 A It was. Yes. 11 Q You, I think, indicated that there was a 12 termination of adult day services, violation of the 13 service rights to give himself reasonably prompt 14 choice of service coordinator, -- 15 A Yes. 16 Q -- right of choice of adult companion. 17 A Yes. 18 Q Respite care, although I think he did get some 19 respite services. 20 A He finally did get some respite care. 21 Q You raise the issue that he had violated -- the 22 certain violation of federal laws by payment of 23 bands for the funding to Babcock Center. Do you 24 understand what bands are? 25 A (Non-verbal response)

77 1 Q What are they? 2 A Bands where he should get things that he needs if 3 he's asked for it. 4 Q And failing to give choice in regard to certain 5 providers he wanted, you're aware of that? 6 A Right. 7 Q Now, you've raised that in the lawsuit. Are you 8 aware that there was actually an appeal of those 9 issues to the Department of Health and Human 10 Services? 11 A (No response) 12 Q Were you aware of such an appeal? 13 A I don't know. 14 Q Did you authorize anyone to appear before the 15 Department of Health and Human Services and appeal 16 any denial of rights or denial of services on your 17 behalf back in 2006? 18 19 MS. HARRISON: What are you looking at? 20 21 A (No response) 22 Q Do you recall that, Ms. Mims? 23 24 MS. HARRISON: Are you looking at a particular page? 25 MR. DAVIDSON: No.	79 1 guardian for Edward, were you not? 2 A Yes. 3 Q Do you think you should have been consulted before 4 an appeal was brought before the Administrative Law 5 Court regarding Edward? 6 A Yes. 7 Q Do you recall, were you even aware that such an 8 appeal existed? 9 A I'm not sure. 10 Q You're not sure you knew there was or was not an 11 appeal. Were you aware that the appeal was 12 dismissed? The hearing officer's decision to 13 dismiss Mr. Mims' appeal was within the sound 14 discretion and authority, therefore, affirmed. 15 Were you aware that the administrative law judge 16 had dismissed the appeal of the ALJ's opinion? 17 A No, I was not. 18 Q Excuse me, HHS hearing officer's opinion? You were 19 not aware of that? 20 A (Non-verbal response) 21 Q Concerning of these very issues you've sued the 22 Department and some individuals on, you weren't 23 aware of that? 24 A Like I say, I'm not sure. 25 Q Were you aware that there was an appeal taken to
78 1 2 A (No response) 3 Q Are you aware of that? 4 A Aware of what? 5 Q That there was an appeal brought to the Department 6 of Health and Human Services regarding the denial 7 of the things I just went over with you? Were you 8 aware of that? 9 A No. 10 Q Were you aware that a Leonard -- a Mr. Robert E. 11 Leonard with Health and Human Services was a 12 hearing officer and basically dismissed the appeal? 13 A (No response) 14 Q Are you aware of that? 15 A No. 16 Q Were you aware that a notice of appeal was filed on 17 Edward's behalf regarding those issues that 18 essentially are alleged in your lawsuit concerning 19 funding and services and the issue concerning adult 20 day services and Babcock and the Department not 21 providing certain services? Were you aware that 22 that was appealed to the Administrative Law Court 23 in February of '07? Were you aware of that? 24 A I'm not sure. 25 Q Well, in February of '07, you were the permanent	80 1 the South Carolina Court of Appeals concerning 2 these issues that you've actually -- concerning the 3 band payment, concerning respite care, concerning 4 termination of adult day services, concerning the 5 way payments are handled? Were you aware of that, 6 that it was appealed to the South Carolina Court of 7 Appeals on behalf of Edward Mims? 8 A (No response) 9 10 (Whereupon, Order of Dismissal, 11 consisting of 1 page, was marked Exhibit 12 No. 8 for identification.) 13 (Whereupon, Remittitur, consisting of 1 14 page, was marked Exhibit No. 9 for 15 identification.) 16 17 Q I'll show you what's been marked as Exhibits No. 8 18 and 9. Ms. Mims, you see this document, which is 19 Exhibit No. 8, which is an Order of Dismissal from 20 the South Carolina Court of Appeals? 21 A Yeah, I see it. 22 Q Notice it indicates Edward Mims as the Appellant? 23 A Yes. 24 Q Okay. To your knowledge, you were guardian for 25 Edward on April 28, 2008?

81 1 A Yes. 2 Q Did you authorize an appeal to the South Carolina 3 Court of Appeals in regard to a claim against the 4 South Carolina Department of Health and Human 5 Services? 6 A Yes. 7 Q You did, but you don't know anything about it? 8 A (No response) 9 Q Ms. Mims, I'm going to ask you this again. You 10 have sued individuals in their individual capacity 11 as well as state agency and the Babcock Center. 12 And you have raised almost identical issues in this 13 lawsuit concerning funding and concerning adult 14 health services, day care services, respite care, 15 in this lawsuit. Were you aware that you had 16 appealed the denial of those services before the 17 ALJ and the Department of Health and Human 18 Services? 19 A I guess I did. I don't remember. 20 Q You don't remember, okay. Obviously your name is 21 not on the pleadings, correct? 22 A No. 23 Q Is today the first time you've ever heard of such 24 an appeal, to your knowledge? Isn't that right, 25 Ms. Mims?	83 1 that's ever been a problem with Edward getting 2 services in the home where they have paid them a 3 lower wage than other individuals? You don't know 4 anything about that, do you? 5 A I don't know. 6 Q Do you have any indication that anyone has been in 7 violation of the Americans with Disabilities Act in 8 regard to Edward? 9 A I don't know. 10 Q To your knowledge, other than staying at Babcock in 11 a -- Was it a group home with multiple people? 12 A Yes. 13 Q -- And at your home, has he been in any other 14 facilities? 15 A No. 16 Q And I think he's presently in a group home at 17 United Cerebral Palsy? 18 A Right now. 19 Q And how many people are in that facility? 20 A Four. 21 Q Four. Is it a similar type set up that he had at 22 Babcock, both at the Clusters and at Kensington? 23 A No. It's kind of different. 24 Q Kind of different. Same number of people, though? 25 A Uh-huh.
82 1 A (No response) 2 Q Today's the first time you've heard any of this, 3 correct? 4 A (No response) 5 Q Correct, Ms. Mims? 6 A I don't know. 7 Q You don't know. Are you aware that the appeal was 8 dismissed because counsel did not complete and file 9 the appropriate documents with the Court? Were you 10 aware of that, Ms. Mims? 11 A I don't know. 12 Q You don't know. Do you know anything about the way 13 the Department or Babcock Center pays FICA taxes to 14 any of its providers or employees? 15 A No, I don't. 16 Q Has, at any time, the Department ever been involved 17 with the denial of paying FICA taxes on behalf of 18 Edward? 19 A I don't know. 20 Q Do you know anything about whether or not the 21 Department pays in-home care givers lower wages and 22 requires those care givers to pay for background 23 checks? Do you know anything about that? 24 A No, I don't. 25 Q Do you know if that's ever happened to Edward, if	84 1 Q To your knowledge, has Edward or you ever been 2 charged for any services that you have been 3 provided for Edward -- that have been provided for 4 Edward? 5 A No. 6 Q Department of Disabilities never charged you 7 anything? 8 A Huh-uh. 9 10 MR. STEGMAIER: I'm sorry, is that a no? 11 12 Q No. Never been charged, or Edward's never been 13 charged for any of the services? 14 A No. 15 Q Do you know of any false or misleading information 16 that was ever provided to the probate court in 17 South Carolina in regard to Edward? 18 A What you mean? 19 Q Anything that you thought was false or shouldn't 20 have been said in open court? 21 A No, not as I know of. 22 23 MS. HARRISON: Are you asking her if she provided 24 false information or if there was false 25 information provided?

85 1 MR. DAVIDSON: I've asked her the question. 2 MS. HARRISON: You need to clarify that, Will. 3 MR. DAVIDSON: You can note your objection. Well, 4 you don't even get to object, so don't worry 5 about it. 6 7 Q To your knowledge, has Edward been maintained in 8 the least restrictive environment while he was 9 either at your house or at Babcock, either at 10 Clusters or Kensington or, for that matter, United 11 Cerebral Palsy? 12 A What you mean restrictive? 13 Q Least restrictive. In other words, as far as you 14 know, he's able to do things while he's there. 15 A Yeah. 16 Q Okay. Have you ever attempted to have him 17 institutionalized? 18 A No. 19 Q Do you believe that he is appropriate to be in a 20 house with four other consumers? 21 A If it's -- If there's enough of staff to look after 22 him. 23 Q Other than a question about adult day services and 24 some argument over respite care, have they ever -- 25 to your knowledge, has Edward ever been denied	87 1 A Yeah. 2 Q I believe you and Ms. Harrison showed up at Babcock 3 and demanded he be released. 4 A Yeah. 5 Q Do you recall telling Ms. Koon that you would like 6 Edward to be placed as soon as possible so you 7 could go back to work? 8 A No, I don't remember that. 9 Q Do you deny saying that? In June of 2005, after 10 you had gone and gotten Edward out of the Babcock 11 Center as result of this four centimeter tear of 12 the penis, do you recall telling Ms. Koon you 13 wanted him placed as soon as possible so you could 14 go back to work? 15 A No, I don't remember that. 16 Q Do you deny saying that? 17 A I could have said that. I don't remember that. 18 Q Just don't remember. Do you know a Patricia 19 Jennings, Ms. Mims? 20 A Patricia Jennings? 21 Q Yes, ma'am. 22 A No, I don't. 23 Q Ever talked to a Patricia Jennings? 24 A Not as I know of. Not as I remember. 25 Q Do you know of a Brenda Bryant? Ring any bells?
86 1 services other than those two areas: adult day 2 services and there was a period I think there was 3 some question about him getting respite? Any other 4 areas that he's been denied services, to your 5 knowledge? 6 A No. 7 Q And do you know who made the decision to not allow 8 him to have -- or to terminate adult day services? 9 A No. 10 Q Or to have some question about respite care? 11 Anybody you know who made any of those decisions? 12 A No. 13 14 MR. DAVIDSON: Let's take a short break. Let me 15 look at my notes. 16 17 (Short Break) 18 19 Q Ms. Mims, do you ever recall speaking with a Vivian 20 Koon? 21 A Not as I know of. 22 Q Do you recall telling her sometime in June of '05 23 after you brought -- I think you brought Edward 24 home sometime around the end of May, first of June, 25 '05, correct?	88 1 A No. 2 Q Do you know a Debra Brown from over in Pelion, 3 South Carolina? Do you know Ms. Brown? 4 A (No response) 5 Q You don't know Ms. Brown? 6 A No. 7 Q What about a Virginia Thomas? I'm going to read 8 you some names, and I'm just trying to find out if 9 you know of these individuals. 10 11 MS. HARRISON: Are you all right? 12 MR. DAVIDSON: Do you need to take a break? 13 MS. MIMS: No, I'm okay. I'm trying to think. 14 15 Q Ring any bells? 16 A No. 17 Q What about a Risley Lindler? Do you know a Mr. 18 Lindler? 19 A No, I don't. 20 Q What about a Tonya Bradford, does that ring any 21 bells? 22 A I've seen her before at Babcock Center. 23 Q What about a Tim Cuddington? C-u-d-d-i-n-g-t-o-n. 24 Do you know a Mr. Cuddington who used to be at 25 Babcock Center?

89 1 A No. 2 Q How about a Deborah Wofford? 3 A Huh-uh. 4 Q No. You know anything about that individual? 5 A No. 6 Q What about Anita McMahon. Know anybody by that 7 name? McMahon, excuse me. 8 A (No response) 9 Q Doesn't ring any bells? 10 A No. 11 Q What about a Tad Uno? U-n-o? 12 A No. 13 Q What about a Dorothy Moore with the Governor's 14 office? Ever talked to Ms. Moore at the Governor's 15 office? 16 A I might have. I don't know. 17 Q What about a Jim Christian? Do you know Dr. 18 Christian? 19 A No. 20 Q Do you recall ever talking with Dr. Christian? 21 A I don't know. 22 Q What about a Dale Watson with the ombudsman's 23 office? Know anything about Mr. Watson? 24 A No. 25 Q Or a Priscilla Moore?	91 1 Q Yes. 2 A That's the only one I know I talked to. 3 Q Okay. David Pointer, ring any bells? 4 A No. 5 Q How about a Deborah McPherson? Ever talked with 6 Ms. McPherson? 7 A I don't know. I don't remember all them names. 8 Q Ever talked with a Mary Katherine Bagnal of Senior 9 Matters Consulting, to your knowledge, or a Miller, 10 Mary Katherine Miller? Never talked with her? 11 A Not as I know of. 12 Q Okay. 13 A You see, it's a lot of names. I mean, I don't . . 14 . 15 Q What about a Cornell Rivers. Used to work at 16 Babcock. You know Mr. Rivers? 17 A No. 18 Q How about Yvonne Davis? You remember Ms. Davis 19 used to work at Babcock? 20 A Yvonne that worked at Kensington? 21 Q Yes, ma'am. 22 A Yeah, I remember her. 23 Q What kind of -- She a pretty good employee? Did 24 you like her? 25 A Yeah.
90 1 A No. 2 Q Never talked with her? What about a Curtis Loftis 3 at the Lieutenant Governor's office? Ever talked 4 to them? 5 A No, I don't. 6 Q What about a Ronald Reed from over Atlanta CMS? 7 A No. 8 Q What about a Gloria Prevost with the Protection and 9 Advocacy? Did you ever talk with her or anyone at 10 with Protection and Advocacy? 11 A No. 12 Q What about a Randolph Thomas who used to be with 13 the criminal justice academy? Ever talk with him? 14 A No. 15 Q What about a Steven Jeffcoat? You ever talk with a 16 Steve Jeffcoat? 17 A Not as I know of. 18 Q What about a Senator David Thomas? You ever talked 19 with Senator Thomas? 20 A No. 21 Q Lee Teed who used to be with the AG's office, he 22 wrote you a letter. Is that the only communication 23 you've had with him when you wrote the AG back in, 24 I think it was 2001? 25 A About Anthony?	92 1 Q Seemed to care about Edward? 2 A Yeah. 3 Q What about anybody -- You ever talked with anybody 4 at the Legislative Audit Counsel with the state 5 government? 6 A I don't know. 7 Q What about a Nancy Dixon over from over in 8 Leesville? Ever talked with anybody from over in 9 Leesville? 10 A Huh-uh. Not as I know of. 11 Q What about a Carolyn Henderson? 12 A No. 13 Q An Amy Davenport? 14 A No. 15 Q Never talked with Ms. Davenport about her daughter 16 or anything? 17 A Huh-uh. 18 Q Have you ever talked with a Nora Baladerian from 19 Los Angeles, California? 20 A Not as I know of. 21 Q Ever talked to anybody from California? 22 A No. 23 Q Ever authorized anybody to hire Ms. Baladerian to 24 be a witness in this case? You agree to pay any 25 money to compensate Ms. Baladerian to be a witness

93 1 in this case, to your knowledge? 2 A Not as -- I don't know. 3 Q Now, you think you might remember if you hired 4 somebody to come here from California to be a 5 witness? You think you might remember that? 6 A I guess. I don't know. I don't know them people. 7 8 MR. DAVIDSON: I think I'm through. I'll turn it 9 over to you. 10 11 ----- 12 EXAMINATION 13 BY MR. STEGMAIER: 14 Q Ms. Mims, I'm Christian Stegmaier. 15 16 MS. HARRISON: If we can make a note, please, that 17 it's -- What time do you have, Ms. Court 18 Reporter? 19 COURT REPORTER: It's 1:08. 20 21 Q Again, Ms. Mims, my name is Christian Stegmaier. 22 Our law firm, Collins & Lacy, we're general counsel 23 for the Babcock Center, and we also represent the 24 interest of Dr. Judy Johnson, who is the executive 25 director of Babcock Center.	95 1 wouldn't it? 2 A I guess. 3 Q Yes, ma'am. Any other abuse that you have filed 4 suit against Babcock Center and Dr. Johnson for? 5 A You know what? I'm tired of answering of answering 6 all these questions because I don't know what all 7 y'all talking about. 8 Q Let me ask you this question because your answer 9 right now just concerns me. Have you taken any 10 medication today? 11 A Who me? 12 Q Yes, ma'am. 13 A I take medicine for my heart. 14 Q Okay. The medication that you shared with Mr. 15 Davidson earlier in the deposition today? 16 A Yeah, my heart medicine. 17 Q Your heart vitamin, some of the other drugs that 18 you detailed for him. This is a very important 19 question. Does your taking those medications 20 impair or impact upon your ability to understand or 21 respond to the questions that we've asked you 22 today? 23 A I don't think so. 24 Q Okay. So you feel capable and competent to respond 25 to my questions, as well as the questions that have
94 1 Could you tell me in your own words, as best 2 you can, why you have elected to file suit in the 3 Court of Common Pleas for Richland County against 4 both Babcock Center and Dr. Johnson? 5 A Just because of all the abuse that Edward went 6 through. 7 Q Okay. When you say "all the abuse," what are you 8 talking about? 9 A I'm talking about the things that happened to him. 10 Q Like what things? 11 A Well, the abuse of the workers hitting him in the 12 eyes. 13 Q When was that? 14 A I don't remember what year it was, -- 15 Q I'm sorry, I cut you off. 16 A That's all right. Go ahead. 17 Q Do you know which year that was? 18 A No, I don't remember. 19 Q Was it at or around 2000 or 2001? 20 A Something like that. 21 Q Okay. So that was eight or nine years ago, is that 22 correct? 23 A (No response) 24 Q If today is 2009, and these events happened in 25 2000/2001, that would be eight or nine years ago,	96 1 been asked of you by Mr. Davidson, is that correct? 2 A (No response) 3 Q Is there anything keeping you from understanding 4 what I'm asking you and being able to respond to 5 it? 6 A Not really. I get tired of sitting and listening 7 to all this stuff. 8 Q Do you need to take a break? 9 A No. 10 Q You understand that because you are the Plaintiff 11 who has initiated this lawsuit in Richland County, 12 you bear the burden of proof in prosecuting your 13 claim against our clients? I'm sure that's been 14 explained to you. And you understand by virtue of 15 that, we have the right to defend ourselves by way 16 of discovery, which would include asking you 17 questions at these depositions? That's why this 18 deposition today is so important. 19 I asked you initially why you have filed suit 20 against Babcock Center and Dr. Johnson, and you 21 detailed to me or responded saying the abuse that 22 Mr. Mims, your son, has suffered. And you told me 23 about an incident occurring in either 2000 or 2001. 24 Are there any other incidents that have caused you 25 to file suit against Babcock Center and Dr. Johnson

97 1 in this lawsuit? 2 A Well, what happened to him in 2005. 3 Q Okay. And what happened to him in 2005? 4 A Of being molested. 5 Q Okay. And, again, as Mr. Davidson asked you, 6 that's your opinion, correct? 7 A I guess. 8 Q Okay. Has anybody, whether it's a doctor or any 9 other official or person, ever confirmed or 10 corroborated for you that Mr. Mims was in fact 11 molested while -- 12 A Well, they haven't denied it either. They don't 13 know what happened. 14 Q All right. Well, let me ask my entire question. 15 Has anybody, other than based on your suspicion or 16 belief, has anybody, whether it's a healthcare 17 professional, a mental retardation professional, 18 any other official with whom you have spoken, have 19 any of those persons either confirmed or 20 corroborated your belief or feeling that your son, 21 Mr. Mims, was in fact molested at Babcock Center in 22 May 2005? 23 A I don't know. 24 Q Okay. Do you have any proof of the fact that your 25 son, Mr. Mims, was molested as you have	99 1 made with this expert witness from California? 2 A No, I don't. 3 Q Have you agreed to incur those expenses related to 4 this expert witness? Have you agreed to do that? 5 A No. 6 Q Have you incurred any personal expense with regard 7 to the prosecution of this lawsuit? 8 A No. 9 Q Have you ever been sent a bill for services 10 rendered by Ms. Harrison? 11 A No. 12 Q Can you detail for me with specificity how Dr. 13 Johnson has been involved in a civil conspiracy in 14 this case as it has been alleged in your lawsuit? 15 A I don't know. 16 Q That's a no? 17 18 MS. HARRISON: I think she said I don't know. 19 20 A I don't know. 21 Q You don't know. Mr. Davidson showed you a letter 22 that has since been marked as Exhibit No. 5. A 23 letter that purportedly came from you dated October 24 28, 2003. I'll refer that to you again today. 25 This October 2003 letter to Dr. Johnson, is
98 1 characterized it at Babcock's facility in May 2005? 2 A I don't know. 3 Q Is that a yes or a no? Do you have any proof of 4 this? 5 A Only that he was -- had the centimeter cuts on his 6 penis. 7 Q Okay. That's the only basis for your belief that 8 your son, Mr. Mims, was molested -- 9 A That's right. 10 Q Let me ask the entire question for purposes of the 11 record. That's the only basis for your belief that 12 your son, Mr. Mims, was molested at Babcock's 13 facilities in May 2005? 14 A Right. 15 Q The fact that he had this injury? 16 A Yes. 17 Q This injury that was characterized in the Lexington 18 report as a superficial injury. Is that correct? 19 A Yes. 20 Q Mr. Davidson asked you about this expert witness 21 that has apparently been retained from Los Angeles, 22 California. Typically, as a matter of course in 23 litigation in the civil venue, an expert witness 24 charges an hourly rate. Do you know what the 25 hourly rate or other fee agreement that has been	100 1 that the only communication that you have ever had 2 with Dr. Johnson regarding your son, Mr. Mims? 3 A I don't know. 4 Q Are there any other instances where you have either 5 spoken with Dr. Johnson in person or by telephone? 6 A No, I haven't. 7 Q Or by letter? 8 A No. 9 Q Or by email? 10 A No. 11 Q Do you have email? 12 A No. 13 Q Okay. Have you ever had a conversation with a 14 member of the general assembly, either a senate 15 member or a house of representatives member, about 16 your son, Mr. Mims? 17 A No. 18 Q So there has never been a circumstance where you 19 have advised a member of the general assembly of 20 your concerns about abuse of Mr. Mims? 21 A No, I haven't. 22 Q With regard to Mr. Mims and his health condition 23 after 2005 once you took custody of him, has he 24 sustained any other injuries -- 25 A No, he has not.

101 1 Q Has he encountered any other circumstances or 2 conditions that required a doctor's attention? 3 A Not except for ear aches. 4 Q Ear aches? 5 A Uh-huh. 6 Q Okay. So he has seen a doctor since 2005? 7 A Yes, he has. 8 Q Who is his doctor that he sees on a routine or 9 regular basis? 10 A Dr. Stearn. 11 Q Dr. Stearn? 12 A Uh-huh. 13 Q And where is Dr. Stearn practicing? 14 A On Colonial Drive. 15 Q Do you know the name of his practice? 16 A It's one that, where Dr. Platt and all them ... 17 Q It's the same practice where Dr. Platt is? 18 A Yes. 19 Q Okay. So that's over by Columbia College, I think. 20 A Yes. It's behind Richland Memorial Hospital. 21 Q Who is Mr. Mims' current social security payee? 22 You are, is that correct? 23 A Social security. 24 Q Okay. So you receive his social security payments? 25 A Yes.	103 1 A She worked -- kept him at her house and then 2 brought him home when I got home from work. 3 Q Were there circumstances where or instances where 4 Ms. Rogers kept your son overnight? 5 A Yeah. 6 Q Multiple nights at a time? 7 A Sometime. 8 Q Okay. Within the last year, has Ms. Rogers 9 provided respite care services to your son? 10 A In the last year? 11 Q Yes, ma'am. 12 A Yes. 13 Q And he just went to the UCP facility within the 14 last month, is that right? 15 A (Non-verbal response) 16 Q What was the reason or the decision making behind 17 your son, Mr. Mims, leaving your home and going 18 into the UCP facility? 19 A (No response) 20 Q Why did he enter that facility? 21 A Why? 22 Q Yes, ma'am. 23 A He's not out there to stay. 24 Q I'm sorry? 25 A He's not out there to stay.
102 1 Q How much per month do you receive from social 2 security on behalf of Mr. Mims? 3 A I think it's 719. 4 Q \$719? Prior to you being the social security payee 5 who was the payee? Was it Babcock Center? 6 A Yeah. 7 Q Okay. When did it change from Babcock Center to 8 you? 9 A In 2005. 10 Q Now, Mr. Mims, he has obtained or received respite 11 services, has he not? 12 A Yes. 13 Q And you've already answered the question once for 14 Mr. Davidson, but to refresh my recollection, who 15 was his respite provider? 16 A Babcock Center. 17 Q Okay. Well, was there a person that primarily 18 provided respite services to your son from 2005 19 until very recently? Do you know the name of the 20 person? 21 A (No response) 22 Q Who was watching your son when he -- 23 A Carla Rogers. 24 Q Carla Rogers. Now, was Carla Rogers watching him 25 at her house or at your house?	104 1 Q Does he have all his possessions and belongings 2 there? 3 A No. 4 Q Does he stay overnight there? 5 A Yeah. 6 Q When was the last night he stayed with you at your 7 house? 8 A From Thursdays to Sunday nights. 9 Q Okay. So he stays with you on the weekends, 10 correct? 11 A Yeah. 12 Q And during the week, he stays at the UCP facility, 13 correct? 14 A Right. 15 Q And that's here in Columbia? 16 A Yeah. 17 Q I understand that he stays with you on the 18 weekends, but what was the decision or the reason 19 why you elected to have him live at the UCP 20 facility during the week? 21 A I don't know. 22 Q You don't know? Did you make that decision or did 23 somebody else make that decision? 24 A Yeah, I made the decision. 25 Q In the Complaint that you have filed with the Court

105 1 of Common Pleas of Richland County, you have 2 alleged that the Defendants in this case have 3 violated the Americans with Disabilities Act. I 4 will share with you that that is a vast and very 5 large piece of legislation. As we sit here today, 6 can you describe or detail for me the specific 7 provisions within the American with Disabilities 8 Act that you claim the Defendants have violated 9 with regard to your son, Mr. Mims? 10 A What you mean? 11 Q I mean it's a large piece of legislation, and you 12 have alleged just generally that there has been a 13 violation of the Americans with Disabilities Act. 14 What I would like to know is what are the specific 15 provisions which are alleged to have been violated 16 with regard to these Defendants? 17 A A lot of rights are being violated against people 18 with special needs. 19 Q Right. How about the Rehabilitation Act, the 20 Federal Rehabilitation Act? What specific 21 provisions are you alleging have been violated by 22 the Defendants in this case as it pertains to your 23 son, Mr. Mims? 24 A A lot of people with disability don't get the 25 things that they really need.	107 1 Services that was brought in the name Edward Mims 2 versus the South Carolina Department of 3 Disabilities and Special Needs. This appeal was 4 ultimately disposed of by order of Robert Leonard 5 on January 16, 2007. 6 Were you a participant or were you privy to 7 any of the proceedings before the hearing officer 8 at the Department of Health and Human Services at 9 any point in time leading up to the January 16, 10 2007 Order of Dismissal? 11 A I don't remember. 12 Q You weren't ever a participant on any telephone 13 call or any sort of face-to-face hearing before the 14 hearing officer? 15 A I don't know. 16 Q Did you receive any sort of correspondence or 17 copies of orders or copies of other pleadings 18 related to this appeal contemporaneous with it 19 going on in 2006 and 2007? 20 A I don't know. 21 Q Okay. This matter was ultimately appealed to the 22 Administrative Law Court, which is here in 23 Columbia. Paige Gossett, who is now a federal 24 magistrate, was the Administrative Law judge who 25 heard the matter. Were you a participant or privy
106 1 Q Well, when you say that, what do you mean? What 2 did your son not receive while in the care and 3 custody of both the Department and Babcock Center? 4 A Well, he wasn't taken care of like he should. He 5 shouldn't have been abused. 6 Q And when you say abused, are you referring to this 7 2005 incident with regard to the injury of his 8 penis, and are you referring to the 2000 incident 9 involving him being struck by an employee of 10 Babcock Center? 11 A I'm referring to all the things that happened to 12 all the kids; not just my son. It's all the other 13 kids in any world. 14 Q That makes no sense to me. Tell me more about what 15 you mean by that. Have you brought a lawsuit -- 16 Have you brought a class action on behalf of all 17 the consumers of Babcock Center and all of the 18 consumers of Department of Disabilities and Special 19 Needs? 20 A No. I wish I could if they been abused. I know I 21 can't do that. 22 Q I'm going to ask you some questions about a matter 23 that Mr. Davidson had inquired about, a September - 24 - Mr. Davidson asked you some questions regarding 25 an appeal to the Department of Health and Human	108 1 to any of the proceedings before the Administrative 2 Law judge at the Administrative Law Court here in 3 Columbia? 4 A I don't know. 5 Q Okay. Did you receive any sort of copies of 6 correspondence or orders or pleadings that were 7 filed in the appeal to the Administrative Law 8 Court? 9 A I don't know. 10 Q The matter was then appealed to the South Carolina 11 Court of Appeals, which is here in Columbia as 12 well. Briefs, from what I understand, were filed 13 by both the Appellant and the Respondent in this 14 case. Did you ever receive a copy of the briefs 15 that were filed by either the Appellant, which 16 would have been Mr. Mims, or the Respondent, which 17 would have been the South Carolina Department of 18 Disabilities and Special Needs? 19 A No. 20 Q Okay. Did you receive any other correspondence or 21 orders or pleadings contemporaneous with the events 22 at the South Carolina Court of Appeals? 23 A I don't know. 24 Q Mr. Davidson showed you a copy of the Order of 25 Dismissal based upon the violation or the failure

109 1 to follow the rules as annunciated by Rule 210 of 2 the South Carolina Appellate Court Rules. Did you 3 ever see that Order after it was issued by the 4 South Carolina Court of Appeals? 5 A I don't know. 6 Q Was today the first time you had ever seen that 7 Order of Dismissal issued by the South Carolina 8 Court of Appeals? 9 A Yes. 10 Q Is that a yes? Is that a yes? 11 A I don't know. 12 Q Okay. Was today the first time you had ever seen 13 the Order of Dismissal issued by the hearing 14 officer at the South Carolina Department of Health 15 and Human Services? 16 A I don't know. 17 Q Was today the first day that you had ever seen the 18 Order of Dismissal issued by Paige Gossett, 19 Administrative Law Judge, with regard to the appeal 20 from Department of Health and Human Services? 21 A I don't know. 22 Q Is there something that would help you remember or 23 know? Is there something that would refresh your 24 recollection? 25 A I don't know.	111 1 ----- 2 (Whereupon, at 1:36 p.m., the deposition 3 in the above-entitled matter was 4 concluded.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
110 1 Q Do you keep a file at home of all the 2 correspondence that you receive connected to the 3 legal proceedings involving Mr. Mims? 4 A I think so. 5 Q And where do you keep that file in your home? 6 A I got them in a box. 7 Q So if we were to forward to you a request to 8 produce all the documents in your possession 9 concerning the legal proceedings of Mr. Mims, of 10 course, not including attorney/client privileged 11 communication, would you be able to produce that to 12 your attorney? 13 A I think so. 14 Q Okay. 15 16 MR. STEGMAIER: Why don't we take a quick break? 17 MS. HARRISON: Are you about done? 18 MR. STEGMAIER: I'm going to ask Mr. Davidson. I'm 19 going to confer with Mr. Davidson quickly. 20 We're approaching it. 21 22 (Short Break) 23 24 MR. STEGMAIER: That's all the questions I have for 25 you. I appreciate your time.	112 1 [Errata page to be attached] 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

State of South Carolina)

) CERTIFICATE

County of Lexington)

Be it known that the foregoing Deposition of
MARGARET MIMS was taken by Jennifer L. Thompson, CVR;

That I was then and there a notary public in
and for the State of South Carolina-at-Large;

That by virtue thereof I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true,
accurate and complete transcription of the testimony so
given at the time and place aforesaid to the best of my
skill and ability;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

Witness my hand and seal 25 DAY OF JUNE, 2009

Jennifer L. Thompson, CVR

Notary Public for South Carolina
My Commission Expires: 9/7/2009

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3
4 EDWARD MIMS, BY AND THROUGH
5 HIS LEGAL GUARDIAN,
6 MARGARET MIMS,

Plaintiff,

Case No.: 07-CP-40-03365

7 vs

8 BABCOCK CENTER, JUDY JOHNSON,
9 SCDDSN, KATHI LACY,
STANLEY BUTKUS,

10 Defendants.

11 D E P O S I T I O N

12 WITNESS: SUE SLATER

13 DATE: Friday, June 12, 2009

14 TIME: 1:41 p.m.

15 LOCATION: Law Office of Patricia Harrison
16 611 Holly Street
Columbia, South Carolina

17 TAKEN BY: Attorneys for the Plaintiff

18 REPORTED BY: GINA M. SMITH
19 Certified Shorthand Reporter
20 Registered Professional Reporter

21 -----
22
23 Gina M. Smith, CSR, RPR
24 117 Harmon Creek Court
Lexington, SC 29072
25 803-359-5705

Mims 1561

1 APPEARANCES:

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8 Columbia, SC 29205

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22 Columbia, SC 29202-8568

23 ALSO PRESENT:

24 WILLIAM REESE

25 (INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION: It is stipulated by
2 and among Counsel that this deposition is being
3 taken in accordance with the South Carolina Rules
4 of Civil Procedure, and that the deponent does not
5 waive the right to read and sign the deposition
6 transcript..

7 - - - - -

8 SUE SLATER, being first duly sworn,
9 testified as follows:

10 EXAMINATION

11 BY MS. HARRISON:

12 Q. I'm Trisha Harrison, as you know, and I am
13 representing Edward Mims through his guardian in
14 this lawsuit.

15 Have you ever had your deposition taken
16 before?

17 A. Many, many years ago. It's been a long
18 time.

19 Q. And what was that in reference to?

20 A. I can't remember whether it was the Right
21 to Ed thing or testifying over Pennhurst. It was
22 one of the two.

23 Q. So you know how this works. I ask you
24 questions, you answer the questions. If you don't
25 understand a question or if something's unclear,

1 I'd ask for you to let me know and I'll try to
2 clarify or restate the question. If you answer the
3 question, I will assume you understood the
4 question. Is that fair?

5 A. That's fair.

6 Q. And if you would also please make sure you
7 speak up and that you answer verbally because our
8 wonderful court reporter here has trouble with nods
9 and shrugs and things that aren't verbal.

10 A. Okay.

11 Q. Tell me what you know about this lawsuit.

12 A. I met Edward once when he was at Clusters,
13 and at that time, I observed that he had -- he was
14 pretty severely involved and had some sort of a
15 skin problem that I asked about it because I wasn't
16 sure what it was.

17 I asked about the skin problem, and they
18 said that it was something that he had for a long
19 time. So that -- I just happened to ask about it
20 because I was meeting the people in that group and
21 his skin didn't look very good. And so I was told
22 that that was what it was.

23 Other than knowing him, I do not know him.
24 I do not know his mother. I just met him, as I
25 say, the one time when he lived at the Clusters. I

1 was there just visiting.

2 Q. Well, were you concerned about this skin
3 problem?

4 A. Yes.

5 Q. And what did you do to assure that your
6 concerns were taken care of?

7 A. I talked to the nurse, and she said he was
8 being treated.

9 Q. Which nurse did you talk with?

10 A. I have no idea, Trisha.

11 Q. But it was a nurse at Clusters?

12 A. Uh-huh.

13 MR. STEGMAIER: Yeses or nos.

14 THE WITNESS: I'm sorry.

15 BY MS. HARRISON:

16 Q. When was that?

17 A. Oh, dear, I have no idea. It was back
18 when I was chair.

19 Q. And when were you chair?

20 A. I don't know that for sure either. I
21 don't know -- was two terms, and I came after Rafe.
22 I have no idea what year it was. Remember, I'm 73
23 now. The mind is slowly going. Please make a note
24 of that.

25 Q. When you came on the Babcock Center board,

1 how would you describe the state of the
2 organization at that time? And when did you come
3 on the Babcock Center board?

4 A. When you approached me to come on the
5 Babcock Center board, and I can't remember what
6 year that was. It might have been 2002. You were
7 chair, weren't you? You were chair. I'm pretty
8 sure you were.

9 Q. When you came on the board, describe the
10 condition of the organization at that point.

11 A. At that time, they were in turmoil,
12 getting ready -- you had hired a new executive
13 director as chairman. She was coming on board.
14 People were being questioned about their integrity
15 and so forth. But as far as knowing about each of
16 those people, I did not because I was brand-new to
17 the board.

18 Q. Who hired the new director?

19 A. I don't know for sure, but I think it was
20 the executive committee.

21 Q. It was the executive committee?

22 A. I'm not sure. You were the chair. Who
23 did?

24 Q. And the way this works is that I can't
25 answer your questions.

1 A. Oh, I'm sorry. You can't help me.

2 Q. But you are required to answer my
3 questions, and I apologize for that.

4 A. That's all right. But I don't recall. I
5 think it was maybe 2002. I'm not sure.

6 Q. Were there any problems with abuse and
7 neglect when you came on the Babcock Center board?

8 A. I had been told that there was. I had not
9 witnessed any of it or really been that involved,
10 but I had been told that there had been abuse, but
11 I guess you'd have to call that hearsay.

12 Q. As a member of the governing board, did
13 you do anything to look into -- to determine for
14 yourself whether those concerns were legitimate?

15 A. We were able to go through the board and
16 set up so that board members could visit the
17 houses. They also worked with the parent group to
18 start looking at some of the houses and making them
19 better.

20 They were in really bad shape when I first
21 went on the board. I mean, I didn't have anything
22 to do with that, but the houses had been neglected,
23 and they weren't very homelike.

24 So the parent group started to visit these
25 homes and started putting together pictures and to

1 collect some things and decorated the houses up and
2 made them look better and also identified things
3 that needed to be done.

4 Q. Other than decorating -- excuse me. I'm
5 going to close this door. I apologize.

6 A. That's okay.

7 Q. Other than the cosmetics, were there any
8 problems when you first went on the board with
9 abuse and neglect and reporting of abuse and
10 neglect?

11 A. Were there problems? When I first went on
12 the board, I think there were, Trisha, but I can't
13 remember for sure. I think there were problems,
14 and some of the turmoil, according to hearsay, was
15 that there were problems of that sort.

16 But when I first went on there, I was
17 brand spanking new, had had some outside
18 information, but not really from the governing
19 point at that point other than, as I say, hearsay,
20 what people had told me.

21 Q. Did you have any -- what involvement in
22 the system had you had prior to going on the board?

23 A. In the -- what system are you talking
24 about?

25 Q. The DDSN system.

1 A. I have a daughter who has special needs
2 and has been served by DDSN. She has a service
3 coordinator, has had a job coach. She was
4 transported once a week to her job, which I paid
5 for or she paid for. What else?

6 I had served on the Arc board, had been
7 responsible and worked to get BabyNet together
8 through the Department of Health and Environmental
9 Control, had served on the board at Family
10 Connection and helped get that started in the
11 beginning. So I've been involved.

12 And before I came here, I was involved in
13 the Pennhurst trial and also in Park versus The
14 Commonwealth, which was the Right to Education law.
15 So I have quite a background in advocacy. I was
16 also an executive director of an Arc in
17 Pennsylvania. And I've seen abuse. I know abuse.

18 Q. So did you take an active role when you
19 came on the board?

20 A. An active role?

21 Q. In going out -- you mentioned you met
22 Edward. Was that unusual for you to go out to the
23 facilities?

24 A. No. As a matter of fact, I initiated that
25 board members should do that. Not many did, but I

1 initiated that we should go out and visit the
2 houses and know some of the people that we're
3 working with, that we were supporting.

4 Q. Did you have family members ever call you
5 about situations where neglect was or abuse was --

6 A. I had one that called me, and it was a
7 legal issue, and I couldn't discuss it with her.

8 Q. You mentioned -- you said your daughter
9 paid for transportation. So the Babcock Center was
10 providing that transportation?

11 A. That came about when my husband had had
12 his second open heart surgery, and at that time,
13 Medicaid was paying for people to be transported
14 two days a week.

15 Q. So Medicaid paid for your daughter to be
16 transported?

17 A. She pays herself, and then she gets it
18 back from somebody. Jack sends the stubs in to
19 SSI, I guess. I don't know. That's his
20 department.

21 Q. So Babcock Center wasn't paying for the
22 transportation?

23 A. No, no.

24 Q. Does your daughter receive any services
25 funded by DDSN?

1 A. Through Babcock.

2 Q. And what are those services?

3 A. She has service coordination -- that's
4 with the autism, the Arc. I'm sorry. And she has
5 a job coach and she has rehab and support.

6 Q. So she's receiving that through the MR/RD
7 waiver?

8 A. No, she's not on the waiver.

9 Q. So what -- is the Babcock Center paying
10 for that or is DDSN paying for that?

11 A. I guess funding -- whatever funding she
12 gets comes through -- would it be Medicaid? I
13 can't ask you. I don't know. I think it may be
14 Medicaid.

15 I'm not. Let's put it that way. It's
16 coming through the system, which would be, I guess,
17 DDSN funding through Babcock. I'm not sure.

18 Q. And she pays -- how much does she pay for
19 transportation?

20 A. Why is this -- what's this have to do with
21 Edward Mims? I don't understand.

22 Q. How much does she pay for transportation?

23 A. I'm sorry, do I have to answer that?

24 MR. STEGMAIER: You can answer the
25 question.

1 THE WITNESS: Pardon?

2 MR. STEGMAIER: You can answer the
3 question.

4 THE WITNESS: Okay. \$14 a month.

5 BY MS. HARRISON:

6 Q. And how many trips a month does she
7 receive?

8 A. One to three.

9 Q. One to three a month?

10 A. Uh-huh.

11 Q. Or a week?

12 A. One to three a month. She works one day a
13 week.

14 Q. Is this \$14-a-month deal available to
15 other individuals?

16 A. I don't know.

17 Q. Do you know if any other -- so you don't
18 know if any other individuals are --

19 A. There are some other individuals that are
20 transported, but I don't know -- I know they pay,
21 but I don't know what they pay.

22 Q. So these three trips a month, where are
23 they -- where do they go?

24 A. To DHEC, from Pitt's Apartments to DHEC.

25 Q. So your daughter lives at Pitt's?

1 A. No, she lives at home. Pitt's is three
2 minutes from my house.

3 Q. So only three times a month you take her
4 to Pitt's and then they take her to DHEC?

5 A. No. They come and get her.

6 Q. But just three times a month?

7 A. No, they have a route. They have a route.
8 Sometimes four times a month. Sometimes Jack takes
9 her both ways. It's not a steady, you know,
10 four-times-a-month thing.

11 Sometimes she doesn't work and she's off.
12 They have days when she doesn't work. But I'm
13 saying an average of three times a month. Can we
14 say that? I'm sorry. I keep asking questions.

15 Q. When you went on the DDSN -- I'm sorry --
16 the Babcock Center board, did you also have any
17 financial relationship with DDSN?

18 A. When I went on the board -- I don't
19 remember whether I was facilitating there or not.
20 I think I was.

21 Q. And --

22 A. I had a contract to facilitate.

23 Q. And were you paid by DDSN for that?

24 A. Through a contract, yes. That meant
25 either one of us could leave the other.

1 Q. And do you still do that?

2 A. No.

3 Q. When did that end?

4 A. Last -- when I had my thumb done, which
5 was last July, I guess.

6 Q. What do you know about the incidents where
7 Ed Mims was injured at Clusters?

8 A. Anything that I know about that came out
9 either in executive session at the board meeting or
10 executive session at critical incident committee.

11 Q. I don't believe the critical incident
12 committee --

13 MR. STEGMAIER: I'm going to instruct her
14 not to answer.

15 MS. HARRISON: We'll take that up with the
16 judge.

17 MR. STEGMAIER: Please.

18 BY MS. HARRISON:

19 Q. Who was on the critical incident
20 committee?

21 A. Janice Summers, Rhett Eleasor, Martha
22 McGowan. I sat on there ad hoc. Staff person was
23 Gene Marlow and Tonya -- what's her name now? Oh,
24 shoot. Was Flake. Bradford.

25 MS. HARRISON: Well, Christian, if you're

1 going to instruct her not to answer, we'll be
2 asking the judge for a ruling on that. I don't
3 think that those meetings are --

4 MR. STEGMAIER: Okay. I invite you to
5 make a motion.

6 MS. HARRISON: And we will ask for the
7 costs to be paid by the Babcock Center.

8 BY MS. HARRISON:

9 Q. What do you know about the beating of
10 Edward Mims by Carl Anthony?

11 A. I don't know who Carl Anthony is.

12 Q. Are you aware that Edward Mims was beaten
13 by a Babcock Center employee on August 13, 2000?

14 A. He was beaten? I'm sorry, I don't recall
15 that. Should I -- I'm sorry.

16 Q. So you weren't aware that he was beaten by
17 the Babcock Center employee?

18 A. I may have been at the time, but that's a
19 long time ago.

20 Q. Are you aware that no report was made to
21 law enforcement?

22 A. Well, if I'm not aware that he was beaten
23 for sure, I'm sure I'm not aware whether one was
24 made or not.

25 Q. Are you aware that in April of '01, DDSN

1 filed for judicial admission of Edward to the
2 Babcock Center?

3 A. If I did, I learned it in executive
4 session or at the critical incident committee.

5 MS. HARRISON: If this is where this is
6 going, Christian --

7 MR. STEGMAIER: Yes, ma'am.

8 MS. HARRISON: I mean, if she knows these
9 things, she has to answer my questions about them
10 and she can't hide behind if she didn't know where
11 this information occurred -- I don't think she can
12 hide behind the critical incident committee.

13 MR. STEGMAIER: We have a divergence of
14 opinion about that. Certainly if she's got
15 independent knowledge she can testify to that, but
16 if there are matters that you are inquiring about
17 that delve into the proceedings of the critical
18 incident committee, then I've instructed her not to
19 answer.

20 BY MS. HARRISON:

21 Q. Are you aware that Edward Mims was
22 judicially admitted?

23 A. I'm aware, but I think it was during
24 critical -- or during the executive session on the
25 board. That's how we were informed.

1 Q. So you never made any independent
2 investigation about what was going on with Ed Mims?

3 A. Not that I know of.

4 Q. Did you ever talk to Janice Summers about
5 Ed Mims?

6 A. If I did, it was in critical incident
7 committee. That was very, very confidential
8 because that was concerning the people that we
9 worked with and that we supported, and it was
10 information that we wanted to go through those
11 cases and look at them and to make sure and to
12 instruct that if other things should be done.

13 But we did not talk about them -- I didn't
14 go to your local Bugle or whatever that paper is in
15 Lexington or to the State to talk about that sort
16 of thing, nor did anyone else. That was
17 confidential information.

18 Q. What information do you know -- why was
19 Edward Mims judicially admitted? What were the
20 allegations that caused him to be judicially
21 admitted?

22 A. I don't know.

23 Q. So when someone's judicially admitted, you
24 didn't feel any need to inquire after he's been
25 beaten and then he's judicially admitted?

1 A. I'm not going to answer that.

2 Q. As the chairman, if this came to your
3 attention --

4 A. The chairman of the critical incident
5 committee?

6 Q. If you were chairman of the board of the
7 Babcock Center and this came to your attention that
8 Edward Mims was beaten by an employee and then DDSN
9 subsequently had him judicially admitted when his
10 mother complained about the beating, what would be
11 your responsibility?

12 A. If that's what happened, then I would
13 think that it would be handled through the Babcock
14 Center through the executive director and those who
15 are in charge to do that sort of thing.

16 The Babcock board, as you recall, is a
17 policy-making board and, yes, we're concerned about
18 those kind of things, but we don't handle them
19 personally, Trisha, other than to direct and make
20 sure it's taken care of.

21 Q. Have you read the CMS audit of Clusters,
22 any of the Clusters facilities?

23 A. I probably did. I've read every one of
24 those things including lots of e-mails and so
25 forth.

1 Q. Are you aware that CMS criticized the
2 Babcock Center because the governing board was not
3 fulfilling its responsibilities?

4 A. Ask that in a different way.

5 Q. Are you aware that that was one of the
6 criticisms of CMS when they surveyed Clusters, the
7 failure of the governing board to supervise what
8 was going on at Clusters?

9 A. That's a specific -- you mean specifically
10 what was going on?

11 Q. What did CMS find at Clusters?

12 A. I know that it was a mess, but I don't
13 remember exactly what it was. This has been, what,
14 five years ago? I'm sorry, I have to ask because I
15 don't remember.

16 Q. What kind of mess was going on at
17 Clusters?

18 A. There were some things that weren't being
19 covered, and they had been happening, from what I
20 understand, for quite some time. And it wasn't
21 just this governing board. I think it was also
22 going on when you were chair.

23 Q. And what did you as chair do about those
24 problems?

25 A. We put it to the right people to go and

1 look into it and to make sure that those
2 corrections were made. But it would be employees
3 doing that. It wouldn't be the board doing that.

4 Q. Who has ultimate responsibility to make
5 sure the employees do what they're supposed to do
6 to protect the health and welfare of the consumers?

7 A. I would say the executive director with
8 board knowledge.

9 Q. So the buck stops with the executive
10 director?

11 A. We hired her to turn things around at
12 Babcock -- well, you hired her, I didn't hire her,
13 but your group hired her before I came on the
14 board.

15 And with her background and
16 responsibility, it was my understanding that she
17 had done a good job at Coastal and that she could
18 turn this program around, which I feel she has.

19 Q. Have you seen the findings of the Office
20 of Civil Rights that discussed Dr. Johnson's -- the
21 complaints against Dr. Johnson when she was at
22 Whitten Center?

23 A. I don't think so. If I did, I don't
24 remember.

25 Q. So you've never gone on and Googled Judy

1 Johnson civil rights?

2 A. No. And I don't -- no, I don't remember
3 seeing anything negative about that.

4 Q. Would it surprise you if you knew that --
5 if someone told you that there were complaints that
6 she was covering up abuse and neglect at Whitten
7 Center?

8 A. Yes, that would surprise me.

9 Q. But the board isn't aware of that report
10 at Whitten, the investigations at Whitten?

11 A. Trisha, I truly do not remember. That's
12 been so long ago that, you know, many, many waters
13 have gone over the dam since then, and all that
14 stuff is jumbled up in my head because there was so
15 much going on at that time.

16 Q. Tell me what it means to be on one-on-one
17 supervision.

18 A. When a person has one person -- one staff
19 person who is responsible for them and them alone.

20 Q. And if I have a one-on-one, how close does
21 that one-on-one have to be to me?

22 A. Arm's length sometimes. It's according to
23 what's stated in the program, the plan, usually in
24 the behavior plan.

25 Q. So a one-on-one isn't responsible for

1 anyone but that person?

2 A. It doesn't mean they can't help out around
3 the house or, you know, that sort of thing, but
4 that's their primary responsibility.

5 Q. Where would I find the policies about
6 one-on-one?

7 A. Probably at DDSN.

8 Q. So you're required to follow DDSN's
9 policies about one-on-one supervision?

10 A. I would think so. We're required to
11 follow DDSN's policies.

12 Q. Now, when -- are you aware of the incident
13 wherein Edward Mims was beaten with a belt at
14 Clusters?

15 A. Again, that would have been discussed in
16 critical incident or in the closed session of the
17 board.

18 MR. STEGMAIER: Well, Ms. Slater, the
19 question is whether you're aware of it or not.

20 THE WITNESS: Oh, I was aware of it, yes.

21 BY MS. HARRISON:

22 Q. And what did the governing board -- when
23 did you become aware of it?

24 A. Whenever it happened.

25 Q. And what did you do?

1 A. What did I do? I don't know for sure, but
2 my standard would be to call and to see what was
3 happening with that and how it was being handled.

4 Q. And who would you call?

5 A. Probably the executive director. She's
6 our one employee.

7 Q. And did the executive director give you a
8 satisfactory response?

9 A. As far as I know, yes..

10 Q. Tell me about Clusters. I understand that
11 CMS came in and did some surveys at Clusters, did
12 they not? What did they find?

13 A. If I recall correctly, which I'm not sure
14 I am, there were some things that needed to be
15 corrected, but I can't tell you specifically what.

16 I remember that there were things to be
17 corrected and that were out of compliance. But
18 again, you know, Trisha, this is, what, five years
19 ago, six years ago.

20 Q. Was there any financial exploitation of
21 individuals at Clusters?

22 A. At Clusters? Not that I'm aware of.

23 Q. And what about the -- what did CMS find
24 about the conditions of the facilities at Clusters?

25 A. I really do not know. I do not remember.

1 Q. What problems do you remember there were
2 that CMS or DHEC found at Clusters?

3 A. What do I remember? Nothing specific. I
4 know they found things, but I don't remember what
5 it was specifically.

6 Q. Were they dust bunnies or did they find
7 serious things?

8 A. There were some serious things, but I
9 don't recall what they were. I remember that they
10 were not happy and that we had to -- that we had to
11 hurry and get these things corrected.

12 And it wasn't that, you know -- it wasn't
13 that they weren't being corrected. There was so
14 much to be done at that place, not just Clusters,
15 but the whole program, when this board took over,
16 and when you were there, there was so much to be
17 done.

18 Houses were in terrible condition, not
19 only Clusters, but lots of houses were in terrible
20 condition, broken windows, holes in the floor, all
21 those kind of things. So it's really difficult for
22 me to remember one place and specific things in
23 that place that were going on.

24 I don't think they had any holes in the
25 floor because I think those are concrete floors. I

1 don't remember any broken windows. I remember that
2 they were dark. But as far as specifics there, I
3 don't know.

4 But it's not that we didn't care about
5 those things, it's that there were so many things
6 that needed done, and you know that.

7 Q. Were there things other than the
8 facilities? Were there problems with the way
9 services were being delivered?

10 A. I don't know. I really don't know. As I
11 say, there was so much going on at that time that
12 it's very difficult to pull all that together.

13 Q. So you don't know whether it was just
14 cosmetics or whether there were problems --

15 A. Oh, some of it was cosmetic. I'm sure
16 there were some things that were going on with, you
17 know, meds and that kind of thing, but I can't
18 specifically remember what was in the report and
19 what was said, okay.

20 I know there were problems there, and at
21 that time, I probably knew those, but five years
22 later and at 73, I'm lucky if I know where I am.

23 Q. Do you recall that CMS found that the
24 Babcock Center was failing to protect the residents
25 at Clusters from assaults?

1 A. Was this client to client?

2 Q. Any kind of assault.

3 A. I can't ask her questions.

4 MR. STEGMAIER: You can ask for a more
5 specific question.

6 THE WITNESS: Okay, more specific.

7 BY MS. HARRISON:

8 Q. Did CMS express any concern about people
9 at Clusters being protected from assault?

10 A. Probably, but I don't know for sure. I
11 can't really witness to that.

12 Q. Were you aware that there were a lot of
13 allegations that there were -- people were being
14 assaulted there?

15 A. I'm aware that there were accusations of
16 people being assaulted there, yes.

17 Q. Did you look at those things on the
18 critical incident committee?

19 A. I'm sure we did.

20 Q. And did you see incidents coming through
21 where residents of Clusters were being assaulted?

22 A. I'm sure that that -- if that happened, it
23 came through the critical incident committee.

24 Q. Did it happen? Do you recall people being
25 assaulted at Clusters?

1 A. Vaguely. I can't tell you who -- other
2 than you've told me that Edward Mims was assaulted,
3 according to you, okay, but I can't tell you who
4 was written in that critical incident report that
5 we got.

6 Q. But do you remember other residents being
7 assaulted at Clusters?

8 A. No. I remember a resident assaulting a
9 staff, a couple of staff, but as far as -- other
10 than just the one incident that I can think of
11 right now.

12 Q. Why did Clusters close?

13 A. Because we felt it was not a good place to
14 give good care.

15 Q. Why was it not a good place to give good
16 care?

17 A. Because there were lots of changes that
18 needed to be made there. That building was built
19 many years ago, and it wasn't up to standards.

20 Q. DDSN gave Babcock Center about five or
21 \$600,000 to get up to standards, didn't they?

22 A. Uh-huh.

23 MR. STEGMAIER: Yes or no.

24 THE WITNESS: Oh, yes. Yes, if I recall
25 correctly. I'm not sure that's the exact figure,

1 but I know money was given to do that.

2 BY MS. HARRISON:

3 Q. And a year or more later when CMS and DHEC
4 closed Clusters, those improvements hadn't been
5 made, had they?

6 A. Trisha, I do not know. I know roofs were
7 put on. I know that air conditioners were stolen
8 and replaced, and some things like that, but as far
9 as whether they were done or not when CMS was over
10 there, I do not know. I'm sorry. But I just do
11 not know. I do not remember.

12 Q. How many times did you visit Clusters?

13 A. Enough to know what it was like, yes.

14 Q. Did you -- I mean, how many times? Two?
15 Ten?

16 A. Probably something like ten, maybe more.

17 Q. And you never heard of any allegations of
18 people being assaulted in those ten visits?

19 A. Through closed sessions and et cetera.

20 Q. You heard of people being assaulted?

21 A. Yes. If they were, it came through those
22 committees, okay, and if I was at the committee,
23 which I didn't miss a meeting, I'm sure I heard
24 that.

25 MS. HARRISON: Again, we'll be making our

1 motion, and I don't believe that information is
2 protected, Christian.

3 THE WITNESS: I don't think I can give you
4 much more than that anyway.

5 BY MS. HARRISON:

6 Q. Once Edward Mims was judicially admitted,
7 do you know -- well, do you know what the
8 allegations were about his mom?

9 A. I vaguely recall that there was
10 something -- that because he was -- he needed 24/7
11 care, that there was a question as to whether or
12 not he could receive that from one person. And I'm
13 guessing, okay.

14 Q. Are you aware that the guardian ad litem
15 who relied upon what she was told when Edward was
16 at Clusters later testified that she'd been lied
17 to?

18 A. No.

19 Q. Are you aware that she told the Court that
20 she'd represented Edward and over a dozen other
21 people who had been abused or neglected at the
22 Babcock Center?

23 A. No.

24 Q. Would that give you as a board member any
25 concern?

1 A. Yes.

2 Q. Is that something you think the board
3 needs to look into?

4 A. I think that would be up to the board,
5 yes.

6 Q. Are you on the board now?

7 A. I'm going off as secretary.

8 Q. You're going off the board or going off
9 the position of secretary?

10 A. Going off the position.

11 Q. But you'll stay on the board?

12 A. Yeah.

13 Q. Once Edward left Clusters, where did he
14 go?

15 A. I think to an ICF/MR. I'm not sure which
16 one, but I think that's where he went, because he
17 needed a lot of care.

18 Q. Did he have a one-on-one then?

19 A. I don't recall.

20 Q. Tell me about the one-on-one process. Who
21 determines whether someone has a one-on-one?

22 A. I don't really know who does. I know that
23 there's an assessment that they do to see if that's
24 needed, and I'm not sure whether it's DDSN or a
25 staff person at Babcock.

1 I know the assessment is done. I don't
2 really need to know that since I'm a policy maker
3 and I don't deal with staff and so forth, hiring.

4 Q. Are you aware that after Edward was beaten
5 with the belt at Clusters -- let me make sure I get
6 my dates right. Hold on just a minute. Let me
7 back up a minute.

8 Are you aware that after the employee beat
9 Edward, his mother tried to take him out?

10 A. Yes.

11 Q. If your child had been beaten by an
12 employee at a facility, what would you do?

13 A. We're not talking about my child, but I
14 would be very upset if it was proven to be true.

15 Q. If your child had been at Clusters and had
16 been beaten by an employee, would you take your
17 child out?

18 A. My child would not have been at Clusters.

19 Q. Why would your child not have been at
20 Clusters?

21 A. She's going to be with me and family as
22 set up, that they want to take her to live with
23 them. So she won't have to depend on the system
24 for that. So I wouldn't even look at that point.

25 Q. Is Babcock policy -- does it require the

1 Agency to inform a parent if an employee beats a
2 consumer?

3 A. It does now.

4 Q. So did Babcock policy require the Babcock
5 Center to inform Edward's mother when he was beaten
6 on October 3, 2001?

7 A. I don't know at that time. I know that
8 that policy has been structured strict -- to a more
9 strict -- no, I don't want to say strict -- to a
10 procedure of who should be called and who should be
11 told, and family and the parent is on there.

12 Q. So you don't know -- now, you were on the
13 critical incident committee?

14 A. And that policy came out of there and was
15 taken to the board to be voted on.

16 Q. So you don't know whether or not it was --
17 Babcock policy required the Babcock Center to
18 notify Ms. Mims on October 3, 2001, that her son
19 had been beaten by an employee?

20 A. I do not know that. I know that it is
21 now.

22 Q. Whose responsibility would it have been to
23 make sure that Ms. Mims was informed that it had
24 been investigated and that it was an employee that
25 beat him?

1 A. I think Tonya does that. I'm not sure.
2 Again, that's an employee identification -- what an
3 employee does, and I don't really know what their
4 job descriptions are.

5 Q. What responsibility does the agency
6 director have for notifying the parent if a
7 consumer is beaten by an employee?

8 A. She's always involved in any of those
9 discussions.

10 Q. Where does the buck stop?

11 A. With her.

12 MR. STEGMAIER: I'm sorry, the question
13 I've got, is this 2001 or 2009?

14 MS. HARRISON: This is 2001.

15 BY MS. HARRISON:

16 Q. Did the buck stop with the director in
17 2001?

18 A. I don't know who was in in 2001.

19 Q. Did the buck stop with the director,
20 whoever it was?

21 A. I would think so, but I don't know who was
22 it.

23 Q. And if your child had been involuntarily
24 admitted, what would you have done if after he was
25 beaten by the employee he was beaten with a belt?

1 A. What would I have done? We're talking
2 about my child again? Why are we talking about my
3 child?

4 Q. Because I can ask the questions and --

5 A. I don't see -- do I have to answer that?
6 I mean, it just --

7 MR. STEGMAIER: It's a hypothetical. It's
8 an objectionable question, but go ahead and answer
9 the question.

10 THE WITNESS: Well, it seems like it's
11 coming up a lot.

12 If my child -- what would I do? Well, she
13 wouldn't be there so I don't know what I would do.
14 If she was beaten outside by someone, I would be
15 very upset and go through the channels and make
16 sure that it didn't happen to her again. I would
17 probably take her out of there. I wouldn't ask. I
18 would just take her out of there.

19 BY MS. HARRISON:

20 Q. Are you aware that it wasn't the Babcock
21 Center, it was Ms. Mims that went to the Attorney
22 General to report the employee had beaten Edward?

23 A. No, I wasn't aware. I thought that it
24 probably went through the channel, but I don't know
25 what the channel was at that time. I don't know

1 what the policy was before I went on the board --
2 you know, when I first went on the board.

3 Q. Are you familiar with the review of the
4 Babcock Center ICF/MRs by Carolina Medical Review?

5 A. Yes.

6 Q. You're familiar, are you not, with the
7 fact that that entity found that Babcock Center was
8 not meeting federal Medicaid participation
9 requirements?

10 A. Yes.

11 Q. Tell me what you remember about the
12 Carolina Medical Review report.

13 A. I don't remember specifics, but I remember
14 that there were problems and there were things that
15 were in the process of being fixed, and I don't
16 mean fixed, being made better for the people we
17 represented.

18 There were lots of stuff that had to be
19 fixed, Trisha, lots of stuff that had to be fixed,
20 and that's --

21 Q. Other than --

22 MR. STEGMAIER: Hold on. She didn't
23 finish her answer.

24 THE WITNESS: And that's the reason that
25 I'm not familiar. We had a lot of those tests --

1 or not tests. What are they -- investigations run
2 at that time. They all run together.

3 BY MS. HARRISON:

4 Q. Are you familiar with the federal rules of
5 participation for the Medicaid program?

6 A. Some, yes.

7 Q. Are you familiar with the assurance that
8 the Agency protect the health and welfare of
9 individuals?

10 A. Yes.

11 Q. And did Carolina Medical Review find that
12 the Babcock Center was not meeting that assurance?

13 A. In some areas, yes.

14 Q. So they didn't find just problems with the
15 physical facilities, did they, they found health
16 and safety violations, did they not?

17 A. Yes, that had been there quite a while.

18 Q. So these weren't new problems?

19 A. No. They were problems that were given --
20 that were dumped in our lap that had been there.
21 You know.

22 Q. How long had those problems been going on?

23 A. My personal opinion? One heck of a long
24 time.

25 Q. And are you familiar with the incident on

1 July 27, 2004, when Edward was taken to the
2 emergency room with ant bites all over?

3 A. Not ant bites.

4 Q. What ER visits are you familiar with?

5 A. That's -- well, I guess from reading a
6 deposition that there was a cut on his penis or a
7 rip or a tear. I'm not sure what.

8 Q. What deposition have you read?

9 A. I don't remember.

10 Q. When did you read that?

11 A. Was it -- it wasn't the deposition. It
12 was whatever you file.

13 MR. STEGMAIER: The complaint.

14 THE WITNESS: Yeah. I'm sorry. It wasn't
15 a -- this is a deposition, right? Okay.

16 BY MS. HARRISON:

17 Q. So who have you talked to about Edward
18 Mims?

19 A. Nobody other than the people I was
20 supposed to talk to about it.

21 Q. And who are those people?

22 A. People on the critical incident committee
23 as well as the board of directors.

24 Q. Have you talked to Judy Johnson about
25 Edward Mims?

1 A. Of course.

2 Q. Have you talked to her about this lawsuit?

3 A. About this lawsuit?

4 Q. Right.

5 A. No, no, no.

6 Q. Tell me about your conversations with Judy
7 Johnson about Edward Mims.

8 A. I was concerned because it was -- and this
9 is -- again, I don't know whether I can talk about
10 this.

11 MR. STEGMAIER: Let me voir dire the
12 witness.

13 THE WITNESS: Pardon?

14 MR. STEGMAIER: I'm going to ask you some
15 questions.

16 Ms. Harrison just asked you a question
17 about your conversations with Dr. Johnson, and you
18 were about to make a response. In what capacity
19 was that conversation or in what instance or
20 circumstance was that conversation being had?

21 THE WITNESS: It was at the board meeting.

22 MR. STEGMAIER: Was it in executive
23 session?

24 THE WITNESS: Yes.

25 MR. STEGMAIER: I instruct you not to

1 answer that question.

2 MS. HARRISON: I'll file the appropriate
3 motion.

4 MR. STEGMAIER: Okay.

5 BY MS. HARRISON:

6 Q. So are you aware that on July 27, 2004,
7 Edward Mims' bed was infested with ants?

8 A. I don't recall that. I may have been
9 aware of it if it was written up as a critical
10 incident, but I don't remember that, and I'm sure I
11 would have.

12 Q. Would you consider that to be a critical
13 incident if an individual's bed is infested with
14 ants and he is taken to the emergency room with ant
15 bites all over?

16 A. Would I consider that a critical incident?
17 I'd consider it a medical problem.

18 Q. A medical problem, like the flu?

19 A. No, a medical problem like ant bites.

20 Q. So you don't consider that an abuse or
21 neglect issue?

22 A. Ants are very clever. They can go about
23 anyplace. They can kill air conditioners and they
24 can sneak in tiny cracks.

25 If it had gone on for a long time and it

1 kept going on, then it would be a critical
2 incident. But a one-time incident I would think
3 would be -- I mean, I've had fire ants in my house
4 and I certainly didn't invite them.

5 Q. Have you ever had your bed infested with
6 ants?

7 A. Not lately. No, I have not.

8 Q. Have you ever been taken to the emergency
9 room because you had them all over your body from
10 getting into your bed?

11 A. No, but my granddaughter did from
12 getting -- being outside.

13 Q. But was she in her bed when she was bitten
14 by all these ants?

15 A. No, but fire ants will go into homes. I'm
16 not defending that, but what I'm saying is it
17 didn't happen more than once, am I correct? Who do
18 I ask that to? Nobody. Okay.

19 Q. Are you aware that after the beating with
20 the belt, and I believe that was December -- let's
21 see when the beating with the belt was.

22 Are you aware of another incident where
23 Edward was taken to Lexington Medical Center with
24 contusions -- I'm sorry, the beating with the belt
25 was January 24, '02. January 24, '02, Edward Mims

1 is taken to the Lexington ER with having been
2 beaten.

3 Are you aware that one month later Edward
4 is taken back to Lexington Urgent Care with an
5 unexplained contusion to his right hand?

6 A. If it was reported as a critical incident,
7 I was aware of it. I do not remember that.

8 Q. Would that be -- if a person is taken to
9 the urgent care with a contusion that requires
10 medical treatment, is that something that should be
11 reported to the critical incident committee?

12 A. It's according to what the explanation for
13 it was.

14 Q. What if the staff says, oh, Edward was
15 swinging his hands and hit his hands on the door?

16 A. I don't know about Edward, but I've done
17 that.

18 Q. So you think if staff comes up with that
19 explanation, we don't need to look any further into
20 it?

21 A. If it continues to happen, then you do.
22 We keep track of all that now. If this -- if
23 there's an incident here that happens, we keep
24 track of does it happen again, is it the same
25 employee, dah, dah, dah, dah, dah, dah, and that's

1 all being taken into consideration now.

2 At that time, I'm not sure whether it was
3 or not, but I see it -- you know, it could have
4 been an accident, but if I saw it again, then I
5 would be very concerned.

6 Q. Have you ever gone to the emergency room
7 with contusions on your hand from hitting them on
8 the door -- hitting it on the door?

9 A. No, but I wasn't in a public center where
10 you might do that just to make sure that it was --
11 that it was looked at and there was record of it.
12 But I wouldn't do it -- if I didn't do it when I
13 was at home when I smashed it against the laundry
14 room door --

15 Q. I'm not quite sure -- was it serious
16 enough for you to go to the ER when you did that to
17 yourself?

18 A. Yeah. As a matter of fact, I broke my
19 little finger.

20 Q. So you went to the ER?

21 A. No. I taped it to the one next to it.
22 But in a public entity, you would have to do that,
23 I would think. And I'm pretty sure that we would
24 have.

25 Q. If there's these repeated incidents being

1 taken to the ER, unable to sleep, holding his hands
2 to his eyes, and a long red scratch mark extending
3 from the left side of his cheek, being pushed into
4 the wall, scrape on his left hand, if all these
5 things continue to happen, is that -- he falls out
6 of a chair and scrapes his back up against the air
7 conditioner and has a bruise on his back, if these
8 things continue to happen, is it possible that
9 staff's just coming up with explanations to cover
10 up the abuse?

11 A. They could be, but he also could have a
12 lack of balance. He also could be -- having poor
13 eyesight. There are both things, and I think it
14 should be looked at from the medical point of view,
15 and that's what I would recommend.

16 Q. Are you familiar -- are you aware that Ed
17 Mims was the roommate of William Cothran?

18 A. Yes.

19 Q. Are you aware that a few months before
20 William Cothran's death their housemate James --
21 Keith Jordan was found to have rug burns on his
22 back?

23 A. Yes.

24 Q. Tell me about that.

25 MR. STEGMAIER: Let me just interject.

1 For purposes of our protection, don't use any names
2 when relating this testimony.

3 THE WITNESS: Okay.

4 BY MS. HARRISON:

5 Q. Let's don't talk about names. Let's talk
6 about an individual who lived in that house who had
7 rug burns on his back.

8 MR. STEGMAIER: And you can use initials
9 if you want to, but no names.

10 THE WITNESS: Okay. You told me about it.

11 BY MS. HARRISON:

12 Q. And what did you -- what did you learn
13 about that?

14 A. What did I learn about it? I learned that
15 there was suspicion that there had been abuse.

16 Q. Were there any other concerns at that
17 house that you were aware of, any other allegations
18 of abuse or neglect at Kensington?

19 A. Yes, but those came through the critical
20 incident committee and the board.

21 MS. HARRISON: Here again --

22 THE WITNESS: You hate that. I'm sorry.

23 BY MS. HARRISON:

24 Q. We'll get back together and talk about
25 those after I file my motion.

1 Are you aware that when Edward Mims
2 attempted to move out, his outlier funds were taken
3 away from him?

4 A. No.

5 Q. Are you aware of the death of William
6 Cothran?

7 A. Yes.

8 Q. Are you aware of the investigation by CMS
9 which occurred after the death of William Cothran?

10 A. Somewhat.

11 Q. Are you aware that CMS declared immediate
12 jeopardy?

13 A. Yes.

14 Q. Tell me what that means.

15 A. That means that we have to leave -- I mean
16 that the place is closed down.

17 Q. What were the findings by CMS after
18 Mr. Cothran's death?

19 A. I don't recall. I know that staff was
20 instructed to straighten things out and that it was
21 done.

22 Q. Are you aware that CMS found that the
23 house was understaffed?

24 A. No.

25 Q. And you don't recall anything about CMS

1 finding that staff was not properly trained?

2 A. That was true of all staff, and that's
3 been taken care of.

4 Q. That at the time staff -- all staff was
5 not properly trained? Tell me what you meant.

6 A. Well, when people came in, they weren't
7 getting appropriate training, and that's been
8 changed. We looked at the training that was being
9 given under the previous administration, and new
10 training was developed and given, you know.

11 And now every employee receives that, and
12 other employees were brought back and trained, and
13 they received ongoing training.

14 Q. When did that change occur?

15 A. Pretty quickly after we started to look at
16 some of these things, but I don't know the date,
17 Trisha. I just do not know dates. I'm sorry.

18 Q. Was it after you came on the board?

19 A. I don't know whether you had started
20 something on this -- to this effect or not, but I
21 know that -- I know that it happened after I came
22 on the board, but it may have been started before I
23 did. I'm not sure.

24 Q. So you're not aware of the finding by the
25 federal Medicaid agency that staff was not properly

1 trained in 2004?

2 A. I could have been. I know that we changed
3 the training, okay, and I know it's because of some
4 of the reports, but I don't remember which one
5 because, as I told you, there were so many of them
6 that I can't remember which was which.

7 Q. There were so many of what?

8 A. Reports.

9 Q. What do you mean reports?

10 A. People coming in and looking at things and
11 various -- there were four or five different groups
12 that came in and looked. DDSN was in there. We
13 had -- I forget what the name of the -- I don't
14 remember the name of the groups. CMS was in there.
15 DHEC was in there. I don't know who else.

16 Q. Did all of these groups find problems with
17 health and safety?

18 A. They were looking pretty careful. You
19 know, it's one of those situations I felt where
20 somebody found some problems and then they decided
21 we better look closer, so, you know, when you're
22 looking for problems, you can find them.

23 Q. So what did you as a board do when
24 Carolina Medical Review found that -- it was
25 shortly after this, was it not, that Carolina

1 Medical Review found that in January of '05 that
2 Babcock was not meeting federal Medicaid
3 participation requirements? What did the board do
4 about that?

5 A. The board told staff and told the
6 executive director, and of course it filtered down
7 to staff that this had to be changed. And so
8 procedures were put in place for it to be changed.
9 And I think the last report we got from them was
10 very good, if it was them.

11 Q. In November -- so after CMS found
12 immediate jeopardy in October, are you aware that
13 in November of '04, a month later, DHEC cited
14 Kensington for a violation of a life safety code?

15 A. Probably.

16 Q. As a board, did that give you concern,
17 that there was immediate jeopardy in October and
18 then a violation of a life safety code in
19 November on a different matter?

20 A. Again, those things were being looked at
21 and new procedures were being put in place.

22 Q. Are you aware that in March of '05 DHEC
23 cited Kensington for failing to correct the
24 deficiencies?

25 A. I'm sure I was. Do I remember? No.

1 Q. Did this house just not stand out? Were
2 the other houses similar to this or was this worse
3 than other houses?

4 A. I think there were problems in many areas,
5 but not, you know -- I think that one stood out
6 because it was an ICF/MR.

7 Q. Were all the ICF/MRs having equal
8 problems?

9 A. I don't recall.

10 Q. Are you aware that in April of '05
11 Kensington was decertified?

12 A. Yes.

13 Q. And are you aware that a month later
14 Edward was discovered to have a four-centimeter
15 gaping laceration on his penis?

16 A. I read that in your complaint.

17 Q. Tell me what you know about Edward's
18 gaping laceration on his penis.

19 A. Well, as I mentioned earlier, he had a
20 severe skin problem, not just on his penis but on
21 other parts of his body. And if I recall
22 correctly, he was seen by three doctors, one DDSN,
23 one emergency room, and I think there was another
24 one.

25 And I think in your complaint you said

1 sexually -- I can't say is that correct, but I'm
2 pretty sure that's what I read in the complaint.
3 And it was said that it was not sexually.

4 Q. So your opinion is that this gaping
5 laceration was just because Edward had a
6 dermatology problem?

7 A. I think it's a sort of eczema, I'm not
8 sure, but the thing is there were no indications of
9 it being a sexual attack of any sort.

10 Q. So you think it was eczema that caused
11 this laceration?

12 A. Well, that's what three doctors said, so,
13 you know, you sometimes -- you have to take some
14 opinions, and they weren't really connected. I
15 mean, they weren't all from DDSN or Babcock or
16 anyplace like that.

17 Q. Have you ever known anyone to have six
18 stitches on their penis because they had eczema?

19 A. I'm not a doctor.

20 Q. But personally, you've worked in this
21 field for many years, have you not?

22 A. A long time ago, yeah.

23 Q. So have you ever known anyone to have
24 stitches on their penis because of eczema?

25 A. I've seen it in other areas. I don't

PRIVATE

1 think I've ever seen it on a penis, but that
2 doesn't --

3 Q. Stitches?

4 A. Yes, where the skin cracks and opens up.

5 Q. Now, if this had been your child at
6 Kensington and there had been several findings of
7 immediate jeopardy in the prior year and a resident
8 had gone to the hospital with rug burns on his back
9 and a resident had choked and died and CMS found
10 that staff was undertrained, the house was
11 inadequately staffed, the death was inadequately
12 investigated, and then there were subsequent
13 findings of immediate jeopardy on an unrelated
14 matter, would you have left your child in that
15 facility?

16 A. I would have investigated that house
17 before my child went in there, and I would have
18 made frequent visits to that house to make sure
19 things weren't happening that way.

20 I would also befriend some of the staff to
21 make sure that I got feedback, which I think you
22 did, and make sure that that -- she was safe if she
23 was ever going to be in a house like that, but
24 she's not.

25 I'm fortunate. I have kids that's going

1 to take her, and I don't know why we have to keep
2 talking about her. I've already told you this.

3 Q. Would you leave her there with all these
4 things happening?

5 A. No, because I would probably have seen
6 them and taken her out.

7 Q. What do you think Ms. Mims should have
8 done to protect her son?

9 A. What she should have done? I can't tell
10 you what Ms. Mims should have done. I just told
11 you what I would have done. But Ms. Mims, as far
12 as that -- you were advising her at that time, I
13 think.

14 Q. Are you aware that Ms. Mims went to the
15 Probate Court and got an order to remove her son
16 from Kensington?

17 A. I think -- I got an e-mail from somebody,
18 might have been you, telling me that, yes.

19 Q. Are you aware that the Babcock Center
20 attempted to prevent her from removing Edward from
21 Kensington?

22 A. Yes. I think you called me.

23 Q. And what did you do about that?

24 A. I made some calls to the appropriate
25 people.

1 Q. And what did you -- who did you call?

2 A. I called Judy Johnson.

3 Q. And tell me about that conversation.

4 A. I told her what was happening. She said
5 she'd take care of it.

6 Q. What did you tell her was happening?

7 A. I told her that the mother had -- you were
8 with the mother, I think, had a Court order to take
9 him out of there and that the staff wouldn't let
10 him go -- I don't remember who it was, but anyway,
11 that they wouldn't let -- staff would not let him
12 go because they felt that there was a -- that he
13 had been adjudicated into the program -- maybe I'm
14 using the wrong word -- and that they didn't have
15 anything that said they could release him.

16 Q. A Court order, does that not count?

17 MR. WOODINGTON: Has that ever been made
18 an exhibit in any deposition, this Court order?

19 MR. STEGMAIER: I would like to see that
20 Court order. Can we take a break and make it an
21 exhibit to the deposition?

22 MS. HARRISON: Sure.

23 MR. STEGMAIER: Thank you.

24 (A recess transpired.)

25 MS. HARRISON: I have here three documents

1 we'd like to put into the record, if they can be
2 plaintiff's next, next, and next.

3 There is first the order appointing a
4 temporary guardian. The second is an amended order
5 appointing temporary guardian, correcting a typo,
6 and the third is the order appointing a permanent
7 guardian. And I'll pass these around.

8 (PLF. EXH. 30, Order Appointing Temporary
9 Guardian, was marked for identification.)

10 (PLF. EXH. 31, Amended Order Appointing
11 Temporary Guardian, was marked for identification.)

12 (PLF. EXH. 32, Order Appointing Permanent
13 Guardian, was marked for identification.)

14 BY MS. HARRISON:

15 Q. Your attorneys have asked that we place
16 these orders in the record, and we have --
17 Plaintiff's Exhibit 30 is the order appointing
18 temporary guardian, which is dated June 10th; and
19 then we have an amended order appointing temporary
20 guardian, which is dated June 14th, which I believe
21 simply corrects a typo as to the date of the
22 emergency hearing; and then we have an order
23 appointing permanent guardian, which is dated
24 December 19, 2005. If we can get those marked,
25 please.

1 MR. STEGMAIER: They're marked.

2 MS. HARRISON: They're marked? Okay. I'm
3 sorry.

4 BY MS. HARRISON:

5 Q. Tell me what you know about the events
6 that preceded this order being granted by the
7 Court.

8 A. I don't know what I know before this. As
9 a matter of fact --

10 Q. No, what did you know about it, about what
11 happened prior to and on the day this order was
12 delivered.

13 A. Well, as we previously discussed, you said
14 that he was not allowed to go, not allowed to leave
15 the house, and that -- I know that he was -- had
16 been -- I don't want to say adjudicated or there
17 was some Court order that ordered him to DDSN and
18 he came to Babcock. I do know those things. And
19 then I assume that these came after that when he
20 was not allowed to leave Babcock.

21 Q. Do you agree that the judge that
22 judicially admits someone -- the Court that
23 judicially admits someone has the right to appoint
24 a guardian and remove an individual from a
25 facility?

1 A. Do I agree what? I'm sorry.

2 Q. Do you question whether the judge had the
3 authority to issue this order?

4 A. You're not talking about the orders I have
5 in front of me, you're talking about the one where
6 he could not leave the facility where he had
7 been --

8 Q. I'm talking about the orders in front of
9 you.

10 A. Okay. And you're asking me again? Say it
11 again.

12 Q. Is there any question in your mind as to
13 whether the judge had the authority to issue these
14 orders?

15 A. I don't know, because I'm not a judge, and
16 I'm not aware of what the law says about this.
17 That's not where I work. So -- but evidently a
18 judge can do about anything he wants to.

19 Q. So you had -- were you aware when the
20 Court-appointed visitor showed up at the house with
21 an order to examine Edward Mims the Court-appointed
22 visitor was not allowed in the residence?

23 A. I recall that something in that --
24 something like that happened, yes.

25 MR. STEGMAIER: Ms. Harrison, I'm sorry to

1 interrupt. For my edification, do you know the
2 approximate date of when that visit would have
3 occurred by the Court-appointed visitor?

4 MS. HARRISON: It would have occurred --
5 and it's in the Probate Court records, but it would
6 have occurred -- I think there's an affidavit in
7 the Probate Court records.

8 MR. STEGMAIER: I understand that, but
9 based on your knowledge --

10 MS. HARRISON: On or about June 10th,
11 somewhere a week before or after that, of '05.

12 MR. STEGMAIER: Thank you.

13 BY MS. HARRISON:

14 Q. So you were aware that the Court-appointed
15 visitor showed up at Kensington and was not allowed
16 to see Edward Mims?

17 A. I am aware that she showed up at the
18 facility, yes.

19 Q. Were you aware that she was not allowed to
20 see Edward Mims?

21 A. I understood that Edward Mims could not
22 leave there because of the adjudicated --
23 adjudication into DDSN's care.

24 Q. So how did you become aware that the
25 Court-appointed visitor had shown up to examine

1 Edward and the facility and she wasn't allowed to?
2 How did you learn of that?

3 A. I'm not sure, but I think you may have
4 called me.

5 Q. Did you ever discuss that with
6 Dr. Johnson?

7 A. I called her to tell her, yes.

8 Q. And what did she say about the
9 Court-appointed visitor not being allowed in the
10 residence?

11 A. I don't remember discussing the visitor
12 not being allowed. I remember discussing the fact
13 that he could not leave the facility because he was
14 adjudicated, or whatever the word is that I want
15 to -- Court-appointed or whatever word I want to
16 use there.

17 I don't remember the visitor not being
18 able to see him. Now, that doesn't mean it didn't
19 happen, it just means I don't remember it.

20 Q. So you don't remember talking to
21 Dr. Johnson -- or did she ever tell you that the
22 Court-appointed visitor was not allowed to visit
23 him?

24 A. Not that I recall. I remember that he was
25 not -- that was the reason I was given, there were

1 concern there, and I don't know who she had talked
2 to, but there was concern there that he was
3 Court-appointed, if I'm using the right words, to
4 the DDSN system and had been placed at Babcock.

5 Q. So what did you -- tell me about the
6 conversation with Dr. Johnson.

7 A. That's all I remember. I told her that
8 you had called me or I'd gotten an e-mail from you,
9 Trisha, I don't remember which, but I know we had
10 some contact over that.

11 And I called her to see what would be --
12 what needed to be done, and she was aware of it,
13 and also that because of the Court-appointed -- I
14 don't know what word to use, but anyway, because he
15 was Court-appointed to the DDS system and was
16 staying at Babcock, that we couldn't let him go.

17 Q. And that's what Judy Johnson told you?

18 A. I think so.

19 Q. Who else would have told you that?

20 A. Nobody.

21 Q. Did you --

22 A. But I'm not sure I have the wording
23 correct.

24 Q. Did you -- at the time of these
25 proceedings in June of 2005, did you discuss this

1 with any of the lawyers? Don't tell me what you
2 discussed, but was any -- were any of your
3 conversations about this with lawyers?

4 A. No.

5 Q. So it was not attorney-client protected,
6 any of your -- who else did you discuss it with,
7 anyone but Judy Johnson?

8 A. That's all.

9 Q. So you didn't say anything to Jani
10 Summers or anyone else?

11 A. Not unless it came through the critical
12 incident committee. Then it would have been
13 discussed openly after -- this would have been
14 after the fact.

15 Q. Was there an attorney present at the
16 critical incident committee when you discussed --

17 A. I'd have to look -- it would have to be
18 looked at the minutes to see if it's there.

19 MS. HARRISON: I think the critical
20 incident -- unless there's an attorney present,
21 there's no --

22 MR. STEGMAIER: You've made your position
23 abundantly clear. We have a divergence of opinion.
24 I invite your motion and we'll take it up.

25 MS. HARRISON: Are you instructing that --

1 MR. STEGMAIER: I'm instructing her not to
2 make any responses with regard to matters discussed
3 directly in a critical incident committee.

4 Plus, I don't believe the subject matter
5 of late May, early June has anything to do with a
6 critical incident, but I'll leave it at that.

7 BY MS. HARRISON:

8 Q. So I'm going to ask you again, and you can
9 take your lawyer's advice, who else did you discuss
10 this with?

11 A. Nobody unless it was -- as I say, unless
12 it went through the critical incident committee or
13 through the closed session of the board.

14 Q. And so it's my understanding --

15 A. Excuse me. And then I wouldn't have
16 discussed it with them. It would have been
17 reported, but it wouldn't have been discussed. I
18 wouldn't have discussed it. They may have
19 discussed it among themselves.

20 Q. Were there any lawyers at those sessions?

21 A. I don't remember. We had --

22 Q. So you're not answering my question?

23 A. What?

24 Q. Is that correct?

25 MR. STEGMAIER: I think she has answered

1 your question.

2 MS. HARRISON: I just want to get it on
3 the record that she's not answering.

4 MR. STEGMAIER: I think she's answering
5 the question.

6 BY MS. HARRISON:

7 Q. What are the names of the people you
8 discussed it with?

9 MR. STEGMAIER: And she's answered that
10 question, and she said Dr. Johnson and unless I had
11 a conversation in the critical incident committee
12 or the closed session of the board, that would have
13 been it. So she's answered the question.

14 BY MS. HARRISON:

15 Q. So is your answer that you are not going
16 to tell me about the critical incident committee or
17 the closed session of the board?

18 MR. STEGMAIER: In what -- in what
19 respect? This isn't a critical incident.

20 BY MS. HARRISON:

21 Q. Was this a critical incident?

22 A. I don't know, Trisha. I said if it became
23 a critical incident -- I don't know that it would
24 have been. I don't think so.

25 I think you called me as chairman of the

1 board, and I did what a chairman of the board
2 should do, and I went to the executive director.

3 Q. And who -- who else specifically did you
4 discuss this with in the executive committee or the
5 critical incident committee?

6 A. I don't know whether it went there. What
7 I'm telling you, that would be the only place that
8 it would have been discussed. It's confidential
9 information that we don't discuss outside of those
10 closed sessions.

11 Q. So just for the record, you're refusing to
12 answer my question. Is that correct?

13 MR. STEGMAIER: No, ma'am. She has
14 answered your question.

15 BY MS. HARRISON:

16 Q. What did the critical -- what did that
17 committee discuss in the spring and summer of 2005
18 about Edward Mims?

19 MR. STEGMAIER: I will instruct the
20 witness not to answer that question.

21 BY MS. HARRISON:

22 Q. Is your answer that you are not going to
23 answer the question?

24 A. Yes.

25 MR. STEGMAIER: I've instructed her, she's

1 not going to answer.

2 MS. HARRISON: I just want to get that
3 from her just for the record.

4 MR. STEGMAIER: The record has been made,
5 believe me.

6 BY MS. HARRISON:

7 Q. So you weren't aware that the visitor
8 wasn't allowed to visit with Edward.

9 Were you aware about whether the guardian
10 ad litem was allowed to see Edward?

11 A. If I was, I don't recall.

12 Q. Now, when this order --

13 MR. STEGMAIER: Ms. Harrison, I'm sorry to
14 stop you again. Again, for my edification, at this
15 juncture, who was the Court-appointed guardian ad
16 litem?

17 MS. HARRISON: The Court-appointed
18 guardian ad litem was Edward Neece.

19 MR. STEGMAIER: And the Court-appointed
20 visitor was who?

21 MS. HARRISON: Was Lennie Mullis, I
22 believe.

23 MR. STEGMAIER: Thank you, ma'am.

24 BY MS. HARRISON:

25 Q. So after the police officer communicated

1 with the judge and allowed Edward to leave, what
2 was your next recollection of what happened with
3 Edward Mims?

4 A. I was told that he left.

5 Q. Were you told about the Probate Court
6 proceedings?

7 A. No.

8 Q. So Dr. Johnson did not tell you that she
9 sent Mr. Reese and Diane Theriot to object to the
10 appointment of the guardian?

11 A. She may have. I remember that there was
12 some sort of an objection, again, pointing back to
13 the fact that there had been Court appointment of
14 Mr. Mims to the DDSN system and Babcock Center.

15 Q. What do you remember about -- what do you
16 remember about Diane Theriot?

17 A. I don't know who she is.

18 Q. Were you aware that Edward's sister worked
19 for the Babcock Center?

20 A. I'd heard that, yes.

21 Q. Were you aware that the Babcock Center
22 attempted to have her appointed as guardian?

23 A. No.

24 Q. What do you know about the -- any action
25 that the Babcock Center took to prevent Ms. Mims

1 from being appointed his guardian?

2 A. I think the concern -- and again, this is
3 what I remember. Whether it's right or not I don't
4 know.

5 But I think the concern was he is a
6 person -- Edward is a person that requires 24/7
7 care, and there was concern that the mother could
8 not give 24/7 care. I understand that she did have
9 a job and that it would be very difficult to work
10 and stay up all night and take care of somebody
11 that needed 24/7 care.

12 Q. So do you believe Edward's health and
13 safety would be more protected at Kensington or
14 with mom?

15 A. I don't think I have the right to make
16 that judgment.

17 Q. But it sounds like that's what you're
18 telling me is that the Agency felt that the mother
19 could not protect his health and safety. Is that
20 correct?

21 A. If I recall correctly, that was one of the
22 concerns, yes.

23 Q. Who gave -- who shared that concern with
24 you?

25 A. I don't know. I don't remember.

1 Q. Did Dr. Johnson talk with you about that?

2 A. I don't know whether it came up in a
3 meeting, one of the meetings, or whether it was
4 discussed personally. I don't know, Patricia.

5 Q. But do you remember talking with
6 Dr. Johnson about that?

7 A. I'm not sure it was even Dr. Johnson.

8 Q. Did she ever share her opinion with you
9 that mom couldn't take care of Edward?

10 A. I think opinions and what happened was
11 shared in both the closed session of the board
12 and -- but I don't recall it being in the critical
13 incident committee.

14 Q. So are you saying you're not going to tell
15 me about the discussions about who said what about
16 whether mom could --

17 A. Well, in the first place, I'm not sure I
18 can remember who said what, but I know that that
19 sort of subject would have been discussed in the
20 specific areas.

21 MS. HARRISON: Same objection about the
22 witness avoiding questions that there's no
23 attorney-client privilege for.

24 MR. STEGMAIER: I don't know what that
25 means. I will instruct her not to answer, but

1 she's not avoiding any questions. There are --

2 MS. HARRISON: Well, I have asked
3 questions --

4 MR. STEGMAIER: I understand.

5 MS. HARRISON: -- and you have instructed
6 her not to answer the question --

7 MR. STEGMAIER: That doesn't mean she's
8 avoiding it.

9 MS. HARRISON: -- about meetings where
10 there was no attorney present, and I will file the
11 appropriate motion.

12 MR. STEGMAIER: Please.

13 MS. HARRISON: And we'll deal with that
14 later.

15 THE WITNESS: Because I think you're a
16 stickler, as well as I am, of confidentiality, and
17 I think --

18 BY MS. HARRISON:

19 Q. Do you understand that there is no
20 confidentiality about Edward Mims because I
21 represent Edward Mims?

22 A. Do I understand that?

23 Q. Right.

24 MR. STEGMAIER: That's your pronouncement
25 of the law. That's not an appropriate question.

1 BY MS. HARRISON:

2 Q. Is there any confidentiality that would
3 keep --

4 MR. STEGMAIER: She's not a lawyer and
5 she's not going to answer questions about the
6 status of confidentiality as applied by our courts
7 in South Carolina.

8 BY MS. HARRISON:

9 Q. Do you believe that anyone has the right
10 to withhold information about your daughter because
11 of confidentiality from you?

12 A. From me?

13 Q. From you.

14 A. Probably. She's never been adjudicated
15 incompetent.

16 Q. But Edward Mims has, hasn't he?

17 A. I don't know.

18 Q. What knowledge do you have about how
19 Edward got along once he left Kensington?

20 A. None.

21 Q. So you haven't talked to anyone about how
22 he --

23 A. After he left, no.

24 Q. Are you familiar -- and I'm going to show
25 you something that is already in the record.

1 Are you familiar with the Unequal Justice
2 Report that was published by Protection and
3 Advocacy?

4 A. Yes.

5 Q. Have you read it?

6 A. Yes.

7 Q. The problems that P&A identified -- were
8 the problems at Babcock pretty indicative of the
9 problems that were discussed in that report?

10 A. Yes, but I felt unfairly because there
11 were things that were happening, there were places
12 where we knew there were problems that were
13 being -- I don't want to say fixed because I want
14 to say they were gotten rid of. They were problems
15 that we worked very diligently on to get those.
16 And yes, some of them showed up in here because
17 they'd been there a long, long time.

18 Q. And what were those problems?

19 A. Well, we talked earlier about the
20 training. That was changed. We talked about the
21 abuse reporting, and that was changed. I don't
22 recall the others.

23 Q. Now, this report came out, I believe, in
24 October of '05. Is that correct?

25 A. I don't know.

1 Q. What's the date on the letter?

2 A. October 27, '05.

3 Q. So you're saying that by then the Babcock
4 Center had fixed all those problems?

5 A. No, I'm saying they were in process of
6 fixing problems. You can't fix that many problems
7 in two, three years. We're still fixing, and we'll
8 continue to fix until we have the best program in
9 the state.

10 Q. So are you saying that you disagree that
11 the authors of that report -- are you saying
12 they -- those problems weren't in existence when
13 they did that report?

14 A. No, the problems were in existence, but
15 there was no credit given to what was being done to
16 correct those problems so that they were cited
17 strictly as problems, like, you know, we're going
18 around beating people and abuse is happening in
19 every house, and it was not.

20 Q. Are you familiar with the audit that the
21 South Carolina Department of Health and Human
22 Services issued in February of 2006?

23 A. Yes, I'm sure I am.

24 Q. And it specifically discussed the health
25 and safety problems of the Babcock Center, did it

1 not?

2 A. Yes.

3 Q. And that report issued by HHS specifically
4 said, did it not, that the Babcock Center
5 substantiated cases of abuse and neglect were three
6 times the statewide average in 2003, did it not?

7 A. Yes, and that's because at that time we
8 were turning in everything before it was even
9 investigated so that nobody could say that we were
10 covering up or hiding things.

11 Q. Now --

12 A. You know what it is now? We only have to
13 meet every other month because most of it is not
14 abuse or neglect. As a matter of fact, I don't
15 think there's been maybe one or two things on
16 there, and usually there's ten for a two-month
17 period, ten to 15.

18 And some of those I would say --
19 sometimes; much to my dismay, some of those are
20 more concerned with van backing up into a post than
21 it is with things that are happening to people.

22 Q. So is that a critical incident when a van
23 backs up into a post?

24 A. If it's over \$700 damage.

25 Q. But it's not a critical incident when a

1 person's taken to the emergency room with ant bites
2 all over his body?

3 A. I don't know how it would be handled now,
4 but I would think that that would be handled as a
5 critical incident medical problem that was looked
6 into.

7 Critical incident is something that has to
8 be done on purpose or is suspected to be done on
9 purpose. Those ants weren't put in that young
10 man's bed, for God's sakes.

11 If they were crawling around the room and
12 somebody saw it and didn't extinguish them, that's
13 one thing, but if those ants snuck into a crack and
14 nobody noticed, then you know -- and it was only
15 one time -- maybe it was the night they moved in.
16 I don't know. But the thing is, at that time it
17 was a medical problem. Fortunately he wasn't
18 allergic.

19 Q. You know that he wasn't allergic?

20 A. I assume that he wasn't since you said
21 that he was treated and sent home.

22 Q. So are you saying that there were -- how
23 many -- in 2005, 2003, four, five, how often did
24 your committee meet?

25 A. Once a month, and other times if it was

1 necessary.

2 Q. And how many cases would you review -- how
3 many critical incidents would you review at that
4 time?

5 A. Sometimes three pages.

6 Q. And how many on a page?

7 A. Well, it varies. It's according to how
8 much is written up on it, but I would say eight
9 average.

10 Q. So about 24 incidents of -- critical
11 incidents a month?

12 A. I can't -- you'd have to get those from
13 Tonya. I don't know the exact figures, but I know
14 that it's greatly reduced, substantial.

15 Q. And why -- to what do you attribute that
16 reduction?

17 A. The things that we've put in place to stop
18 what was happening, the training and the reporting
19 and all the things that Judy has done, and the
20 staff, to improve the things that were happening
21 there.

22 We're teaching people to be more -- to
23 understand -- the new people come in, we teach them
24 what to look for in abuse. We've put up signs
25 telling people if you don't report, you know,

1 that's a problem, and that sort of thing.

2 So there's all kinds of things. I can't
3 tell you everything that happened, but I know the
4 training and those things have been greatly
5 improved.

6 Q. So you're saying things are much better
7 now?

8 A. Yes, as far as abuse and neglect.

9 Q. Are you saying they're significantly
10 better now?

11 A. I would say so.

12 Q. What grade would you give them now?

13 A. Probably a B plus.

14 Q. What grade would you give them when you
15 came onto the board?

16 A. It was probably fail or close to it. It's
17 not that we haven't been sitting there -- we
18 haven't just been sitting there doing nothing, and
19 we've taken a lot of criticism, and we've been
20 beaten more than people at the Babcock facility,
21 but we didn't give up. We kept pushing forward to
22 make things better there, and it is better there.

23 We had a 94 percent satisfaction rate come
24 back from the people that we work with -- or the
25 people that we serve, and that wasn't there before.

1 Q. What was it before?

2 A. Pardon?

3 Q. What was it in -- when you came on the
4 board?

5 A. I don't know what it was because we
6 weren't doing any surveys. I know there was a lot
7 of complaints.

8 Q. The 2006 audit by HHS, it specifically
9 talked about the Babcock Center, did it not?

10 A. Yes.

11 Q. And it cited a number of health and safety
12 violations, did it not?

13 A. If I recall correctly, yes.

14 Q. I think it talked about med errors?

15 A. Yeah.

16 Q. And did it not talk about the failure to
17 report a sexual assault?

18 A. I don't remember. There were some
19 accusations that were never proven or that there
20 wasn't enough evidence.

21 Q. Tell me about the limited scope review of
22 financial ombudsman and programatic issues at the
23 Babcock Center from 2003. Were you there then?

24 A. I think so.

25 Q. Tell me about that report. What did HHS

1 find --

2 A. Trisha, that's five years ago or three,
3 four -- six years, thank you. I don't know. I
4 didn't memorize each one of those.

5 At the time they were discussed, at the
6 time we went through them, at the time we tried to
7 make changes and did make changes to improve the
8 citings in those things.

9 And it goes back so far that we're trying
10 to look forward, and I don't even look at this
11 stuff because we've gotten past it.

12 Q. In the 2006 report --

13 MR. STEGMAIER: I'm sorry, Ms. Harrison,
14 do you have all the audits together in one binder?

15 MS. HARRISON: Uh-huh.

16 MR. STEGMAIER: Okay. So that's not the
17 P&A?

18 MS. HARRISON: They're all in here.

19 MR. STEGMAIER: Okay. Thank you.

20 BY MS. HARRISON:

21 Q. In the P&A -- I'm sorry, in the 2006 HHS
22 audit, they found a number of licensing
23 deficiencies, did they not?

24 A. If you see it in there, they did. I don't
25 recall the exact licensing --

1 Q. This is already in the record, but let me
2 just get you to read some of these problems that
3 were cited. The ones with the -- if you'll read
4 those for us, please.

5 A. Oh, you want me to read them out loud?
6 Number of deficiencies cited by the DDSN state
7 licensing divisions is one. Two, deficiencies
8 found in multiple residential facilities, many of
9 which were repeat issues from prior licensing
10 surveys. Three, Babcock did not adequately address
11 or correct all the findings in its first corrective
12 action plan. Okay.

13 Q. And that first corrective action plan I
14 believe was around '03. Is that right?

15 A. During that time that there were so many
16 things to be taken care of, so many.

17 Q. So this was in 2006, and HHS found that
18 those still had not been corrected. Is that right?

19 A. Some of them. It doesn't say all of them.
20 I mean, God, we're human.

21 Q. So you don't recall in here the finding
22 about the failure to report a sexual abuse, sexual
23 assault?

24 A. I don't recall that failure, no. Which
25 audit was that in?

1 Q. This is the '06 audit.

2 A. By whom?

3 Q. By HHS.

4 A. No, I think I know which one that was that
5 was -- I don't think it was ever -- there was never
6 enough evidence to prove that it was -- if it's the
7 one I'm thinking of.

8 MR. STEGMAIER: I'm sorry, Ms. Harrison,
9 if you find that deficiency in that HHS audit, if
10 you'll just give the page number where that's
11 cited.

12 MS. HARRISON: I don't want to hold this
13 up. I'll get that to you.

14 MR. STEGMAIER: Do you know where it is?

15 MS. HARRISON: I'm looking for it. I'm
16 not finding it as we speak.

17 BY MS. HARRISON:

18 Q. But that was also an issue, was it not,
19 that was discussed in the Unequal Justice Report
20 about the failure -- at that time, is it not true
21 that the Babcock Center was not reporting sexual
22 assaults if the perpetrator was another consumer?
23 Is that true?

24 A. I think there was something in the law
25 that said client to client -- anyway, it wasn't

1 reported. I think it is now. I don't know.

2 Q. And there was a specific sexual assault,
3 was there not, that you had personal knowledge of
4 those allegations and Dr. Johnson did not report
5 that sexual assault to the ombudsman? Are you
6 familiar with the J.J. case?

7 A. Yes.

8 Q. And tell me about how that allegation of
9 sexual assault was handled by the Babcock Center.

10 A. I'm trying to think. Personal
11 involvement, but it was also through the -- while I
12 was on the board.

13 MR. STEGMAIER: You can answer that
14 question.

15 THE WITNESS: So I recall the case, but I
16 didn't really -- I think I had some discussions
17 with you. I can't remember whether you were still
18 on the board or not.

19 BY MS. HARRISON:

20 Q. Are you aware --

21 A. I'm foggy on that.

22 Q. Are you aware of whether Judy Johnson
23 reported that J.J. was allegedly sexually
24 assaulted?

25 A. That she reported it?

1 Q. Are you aware of whether she reported it?

2 A. I don't think it was reported because of
3 the medical report on it. Again, I'm foggy on that
4 because it goes back so far.

5 Q. Was the director instructed to report that
6 rape?

7 A. I don't know. I do not remember. I'm
8 sorry.

9 Q. Do you remember testifying on behalf of
10 Dr. Johnson at a trial?

11 A. Yes.

12 Q. About whether or not she reported that
13 rape?

14 A. Yes, but I don't remember whether she did
15 or not.

16 Q. So you don't remember testifying that it
17 wasn't necessary for her to report that rape?

18 A. I think because of the medical report.

19 Q. And you were on the board of directors at
20 that time, were you not?

21 A. When I testified?

22 Q. No -- well, when you testified and when
23 the alleged rape occurred.

24 A. Yes. And it was alleged.

25 Q. And do you remember there being

1 discussions about whether it should be reported or
2 not?

3 A. If it was, it was discussed, again, in
4 confidential situations such as closed session or
5 the critical incident committee. If it was
6 reported as suspected sexual abuse, it would have
7 been critical incident.

8 MR. STEGMAIER: Then I'll instruct you not
9 to answer.

10 MS. HARRISON: Same objection on my part.

11 BY MS. HARRISON:

12 Q. So you didn't have any discussions about
13 the rape of J.J. outside of the critical incident
14 committee?

15 A. Only, I think, with you.

16 Q. And you didn't have any discussions with
17 any other board members about that rape?

18 A. Not outside of the board.

19 Q. In meetings outside of the board room or
20 one on one with board members, you didn't discuss
21 it with anyone else?

22 A. Not outside of the room. I may have
23 discussed it one to one when sitting next to
24 somebody, but as far as -- it was in the critical
25 incident committee or at the board, as far as I

1 recall.

2 Q. So you testified on behalf of Dr. Johnson,
3 did you not, defending her failure to report that
4 alleged rape?

5 A. I answered that.

6 MR. STEGMAIER: I'm sorry, do you have
7 that testimony in a transcript? That's the proper
8 way to impeach a witness.

9 BY MS. HARRISON:

10 Q. Do you recall that?

11 A. I recall the idea that it was a medical
12 problem and not sexual abuse because of the medical
13 report from the hospital.

14 Q. Do you recall --

15 A. And that there were --

16 Q. -- your statement being read into the
17 record, what seems to be the problem of reporting
18 this incident? My God, I sure wouldn't want to
19 live with someone who raped me. Rape is a crime,
20 and I don't know of anyplace where it is written to
21 exclude persons with disabilities --

22 A. Did I say that?

23 Q. -- this has to be reported.

24 A. Did I say that?

25 Q. Do you remember that being put into the

1 record at that trial?

2 A. Did I say that?

3 Q. I said do you remember that?

4 A. No.

5 Q. So you don't remember writing that or
6 stating that?

7 MR. STEGMAIER: I'm sorry, from where did
8 this -- we'll mark this in a second.

9 MS. HARRISON: That statement was made.

10 MR. STEGMAIER: The question I've got is
11 from where does this emanate? Who created this
12 document?

13 MS. HARRISON: That statement came out of
14 a statement that was made.

15 MR. STEGMAIER: I understand. Who created
16 this document?

17 MS. HARRISON: That document is a copy of
18 a statement that Ms. Slater sent to several board
19 members.

20 MR. STEGMAIER: In what context?

21 MS. HARRISON: I was asking her if she
22 remembered it.

23 MR. STEGMAIER: This is just a typewritten
24 document that you're asking --

25 MS. HARRISON: I asked her if she

1 remembered saying that.

2 MR. STEGMAIER: Let's mark that, please.

3 THE WITNESS: The answer is I don't
4 remember saying that. I would agree with that, but
5 it doesn't appear to be in context.

6 BY MS. HARRISON:

7 Q. So you don't remember --

8 MR. STEGMAIER: Hold on. Before we get
9 going here, let's mark this.

10 (PLF. EXH. 33, Typed Statement, was marked
11 for identification.)

12 BY MS. HARRISON:

13 Q. You don't remember --

14 MR. STEGMAIER: I'm sorry. Let's take a
15 second. Let her read it and then she'll answer
16 your questions.

17 THE WITNESS: But the law says that that
18 does not have to be reported. I don't think that's
19 right, but that's the way the law is written client
20 to client.

21 But I also feel that when we talked about
22 this that we -- I don't know whether the medical
23 report was in context or -- in the context of this,
24 but the medical report did say there wasn't enough
25 evidence to prove rape, that it was more likely

1 that it would have been a hemorrhoid or there was
2 no semen present, blah, blah, blah.

3 So all the things that they would look for
4 in a sexual attack were not there. So it wasn't
5 that there was a rape, it was that there wasn't
6 enough evidence to prove it.

7 BY MS. HARRISON:

8 Q. Do you deny that you made that statement?

9 A. I don't know that I made it or not. I
10 probably did if you say I did.

11 Q. Was rape protocol performed on that
12 individual?

13 A. Was what?

14 MR. WOODINGTON: That individual is J.J.,
15 now, again, right?

16 THE WITNESS: J.J., yeah.

17 BY MS. HARRISON:

18 Q. Was rape protocol performed on J.J.?

19 A. As far as I know.

20 Q. But you don't remember whether rape
21 protocol was performed on him?

22 A. Well, there must have been something
23 because he said there was no semen present and it
24 appeared to be a hemorrhoid or something that had
25 ruptured, so --

1 Q. Have you read that medical report?

2 A. I did a long time ago, yes.

3 Q. So did you read the medical reports
4 related to Edward Mims?

5 A. I don't know.

6 Q. Have you read the Legislative Audit
7 Council audit?

8 A. Yes.

9 Q. Tell me -- it, again, found problems at
10 the Babcock Center, did it not?

11 A. Sure.

12 Q. And tell me what problems it found.

13 A. I don't know. I don't remember. They
14 were all mixed together. There were all kinds of
15 problems found in all those things that we knew
16 were there, okay.

17 I'll admit there's problems there. I'll
18 admit that they're in the process of being fixed.
19 But each one of those reports picked up from the
20 other report and it went back. There's
21 improvements there, Trisha. Come and see.

22 Q. So that report was released in December of
23 2008, right?

24 A. I don't know. I don't know dates.

25 Q. In the last year, Legislative Audit

1 Council?

2 A. Yeah, sometime in the last year, year and
3 a half.

4 Q. And did it not find that there continued
5 to be problems at the Babcock Center?

6 A. Sure. We're not perfect yet.

7 MS. HARRISON: I think that's all I have
8 for this witness.

9 MR. STEGMAIER: Mr. Woodington.

10 MR. WOODINGTON: Nothing from me.

11 MR. STEGMAIER: I believe we're finished.

12 (The deposition concluded at 3:34 p.m.)
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SIGNATURE OF DEPONENT

I, the undersigned, SUE SLATER, have read the foregoing deposition consisting of 88 pages which was reported by Gina M. Smith, Notary Public in and for the State of South Carolina on June 12, 2009.

I find the transcript of this deposition to be a true and accurate transcript according to my testimony on that date with the exception of the corrections as listed on the attached correction sheet, which was filled in by me.

SUE SLATER

, 2009

1	ERRATA PAGE		
2	PAGE	LINE	CHANGE AND/OR CORRECTION
3			(AND EXPLANATION)
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
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17	_____	_____	_____

18
19 THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA
20 PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF
21 DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA
22 PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO
23 ATTACH THIS PAGE AND MY VERIFICATION TO THE
24 ORIGINAL TRANSCRIPT.

25 DATED: _____

SUE SLATER

1 CERTIFICATE OF REPORTER

2 I, Gina M. Smith, Registered Professional
3 Reporter and Notary Public for the State of South
4 Carolina at Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and at the time and location
7 stated on page 1 of this transcript; that the
8 deponent was duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that the
10 testimony of the deponent and all objections made
11 at the time of the examination were recorded
12 stenographically by me and were thereafter
13 transcribed; that the foregoing deposition as typed
14 is a true, accurate and complete record of the
15 testimony of the deponent and of all objections
16 made at the time of the examination to the best of
17 my ability.

18 I further certify that I am neither related
19 to nor counsel for any party to the cause pending
20 or interested in the events thereof.

21 Witness my hand, I have hereunto affixed my
22 official seal this 24th day of June, 2009, at
23 Columbia, Richland County, South Carolina.

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Gina M. Smith
Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
July 23, 2013.

I N D E X

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Stipulation

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BY MS. HARRISON

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30 Order Appointing Temporary Guardian

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31 Amended Order Appointing Temporary
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32 Order Appointing Permanent Guardian

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT

Case Number: 2003-ES-40-172

IN THE MATTER OF GUARDIANSHIP OF)
EDWARD MIMS)

ORDER APPOINTING
TEMPORARY GUARDIAN

A TRUE COPY
ATTEST:

Amy W. McCulloch

PROBATE JUDGE

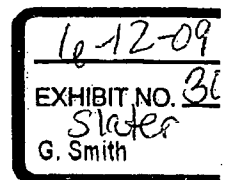
RICHLAND COUNTY, SC

This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the emergency hearing held on May 9, 2005 were Margaret Mims and her attorney, Patricia L. Harrison; the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece; and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

The court-appointed Visitor, Mary Katherine Miller, found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." In addition, evidence was presented of six emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Based on these findings, I find that Edward Mims is incapacitated and I find that no Guardian has been appointed previously. Evidence was presented that Edward Mims' current residence, Kensington ICF/MR, was decertified by the South Carolina Department of Health and Human Services in April of 2005. On May 27, 2005, Edward Mims was found in the facility to have a serious unexplained injury.

Based on the evidence presented to the Court, I find that the welfare of Edward Mims requires immediate action and that the emergency appointment of a temporary Guardian is appropriate pursuant to S. C. Code Ann. §62-5-310. The Guardian Ad Litem joins in the recommendation to the Court that a temporary Guardian be appointed. I find that Margaret



1 of 2 amc

Mims 1663

Mims has priority under S. C. Code Ann. §62-5-311 and that it is in the best interest of Edward Mims to appoint Margaret Mims as his temporary Guardian.

By order dated July 3, 2001, this Court found that Edward Mims was in need of services of the South Carolina Department of Disabilities and Special Needs. I find that services of the South Carolina Department of Disabilities and Special Needs are needed by Edward Mims and that Margaret Mims, as Guardian for Edward Mims, shall have the full authority to exercise all rights to these services which Edward Mims could exercise if he were competent to do so. These services shall be provided in the least restrictive environment as required by state and federal law.

Margaret Mims shall be entitled to the custody of the person of Edward Mims and shall have all statutory powers of a Guardian, including but not limited to the authority to establish his placement. The Guardian shall be authorized to give consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. In view of the emergency regarding placement, all medical providers shall provide medical records and information as requested by the Guardian.

The South Carolina Department of Disabilities and Special Needs shall be provided with notice of the hearing which has been scheduled in this Court for June 24, 2005. At that time, the Department shall provide the Court with copies of all treatment records of Edward Mims since the date of this Court's July 3, 2001 Order and shall provide the Court with notice of the appointment of a service coordinator and a treatment plan. At that hearing, the Court shall also rule on the Petitioner's request for a permanent Guardian.

IT IS SO ORDERED!

June 10, 2005
Columbia, South Carolina

Amy W. McCulloch
Honorable Amy W. McCulloch
Richland County Judge of Probate

AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

05 JUN 10 PM 2:18

FILED

Mims 1664

STATE OF SOUTH CAROLINA)

FILED

IN THE PROBATE COURT

COUNTY OF RICHLAND)

Case Number: 2003-ES-40-172

05 JUN 14 AM 11:16

IN THE MATTER OF GUARDIANSHIP OF
EDWARD MIMS

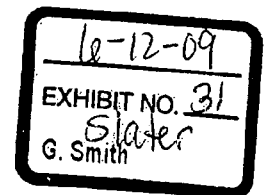
AMY R. JOHNSON
PROBATE JUDGE
RICHLAND COUNTY
AMENDED ORDER APPOINTING
TEMPORARY GUARDIAN

(This Order is amended to correct the incorrect hearing date in this paragraph, now changed to June in bold.) This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the emergency hearing held on **June 9**, 2005 were Margaret Mims and her attorney, Patricia L. Harrison; the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece; and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

The court-appointed Visitor, Mary Katherine Miller, found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tari Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." In addition, evidence was presented of six emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Based on these findings, I find that Edward Mims is incapacitated and I find that no Guardian has been appointed previously. Evidence was presented that Edward Mims' current residence, Kensington ICF/MR, was decertified by the South Carolina Department of Health and Human Services in April of 2005. On May 27, 2005, Edward Mims was found in the facility to have a serious unexplained injury.

Based on the evidence presented to the Court, I find that the welfare of Edward Mims requires immediate action and that the emergency appointment of a temporary Guardian is appropriate pursuant to S. C. Code Ann. §62-5-310. The Guardian Ad Litem joins in the



1 of 2 amc

Mims 1665
18-1

recommendation to the Court that a temporary Guardian be appointed. I find that Margaret Mims has priority under S. C. Code Ann. §62-5-311 and that it is in the best interest of Edward Mims to appoint Margaret Mims as his temporary Guardian.

By order dated July 3, 2001, this Court found that Edward Mims was in need of services of the South Carolina Department of Disabilities and Special Needs. I find that services of the South Carolina Department of Disabilities and Special Needs are needed by Edward Mims and that Margaret Mims, as Guardian for Edward Mims, shall have the full authority to exercise all rights to these services which Edward Mims could exercise if he were competent to do so. These services shall be provided in the least restrictive environment as required by state and federal law.

Margaret Mims shall be entitled to the custody of the person of Edward Mims and shall have all statutory powers of a Guardian, including but not limited to the authority to establish his placement. The Guardian shall be authorized to give consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. In view of the emergency regarding placement, all medical providers shall provide medical records and information as requested by the Guardian.

The South Carolina Department of Disabilities and Special Needs shall be provided with notice of the hearing which has been scheduled in this Court for June 24, 2005. At that time, the Department shall provide the Court with copies of all treatment records of Edward Mims since the date of this Court's July 3, 2001 Order and shall provide the Court with notice of the appointment of a service coordinator and a treatment plan. At that hearing, the Court shall also rule on the Petitioner's request for a permanent Guardian.

IT IS SO ORDERED!

June 14, 2005
Columbia, South Carolina

Amy W. McCulloch
Honorable Amy W. McCulloch
Richland County Judge of Probate

A TRUE COPY
ATTEST:

Amy W. McCulloch

PROBATE JUDGE
RICHLAND COUNTY, SC

Mims 1666
10-5

2002 AMC

STATE OF SOUTH CAROLINA
IN THE COUNTY OF RICHLAND

IN THE MATTER OF GUARDIANSHIP
OF EDWARD MIMS

MARGARET MIMS,
Petitioner

PROBATE COURT
CASE NUMBER 03 GC 40 00172

ORDER APPOINTING
PERMANENT GUARDIAN

AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

05 DEC 19 PM 5:37

FILED

This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the hearing held on September 29, 2005 were Margaret Mims and her attorney, Patricia L. Harrison, the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

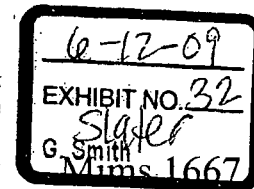
Lynn Lugo, who serves as Service Coordinator for Edward Mims at the Richland Lexington Disabilities and Special Needs Board attended the hearing. Also in attendance were James Hill, legal counsel for the South Carolina Department of Disabilities and Special Needs and Diane Theriot, who is the sister of Edward Mims.

The court-appointed Visitor previously found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." The second court-appointed examiner, Lennie Mullis confirmed that Edward Mims is incapacitated. In addition, evidence was presented of a number of emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Prior to the hearing, the South Carolina Department of Disabilities and Special Needs filed written objections to the appointment of Margaret Mims as guardian for Edward Mims. At the hearing, counsel for the Department objected to the appointment of Margaret Mims, arguing that no guardian should be appointed for Mr. Mims. Alternatively, the Department recommended that the Court instead appoint Diane Theriot as permanent guardian for Edward Mims. The Department also requested that the funds of Edward Mims be used

Page 1 of 4

Exhibit 29



to pay legal fees of Diane Theriot and requested that the Court consider recusal of Judge Belton.

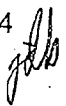
The Court determined that the Department of Disabilities and Special Needs was not a party to the guardianship proceedings. It was noted that Diane Theriot had not filed a written petition for appointment as guardian of Edward Mims, which she had ample opportunity to do. As for the request that this Court recuse itself, the Court declined to recuse itself, as adequate grounds had not been presented to require such action.

As Guardian Ad Litem for Edward Mims, Mr. Kneece requested that the hearing be closed pursuant to S.C. Code of Laws §62-5-303. All persons except the Guardian Ad Litem, Margaret Mims and Patricia Harrison were removed from the courtroom and asked to wait in the hallway outside the courtroom until their testimony was required by the Court.

Mr. Kneece reported that he had visited the adult day care program which Edward has attended on weekdays since June, 2005. He reported that the director of that program, Tammy Quarles, R.N., reported to him that Edward appears to be well cared for at home and that he is doing well in the day program. Mr. Kneece recommended that the Court appoint Margaret Mims as permanent guardian for Edward Mims.

Diane Theriot testified that she has not seen Edward Mims since June 2005 and had not seen him before then since the spring of 2004. Until recently, Ms. Theriot was employed by the Babcock Center, where Edward Mims resided between 1999 and 2005. She reported that Edward Mims has not visited in her home and that she has not visited her brother on holidays for many years. Ms. Theriot testified that if she was appointed as guardian, she would place her brother in a facility operated by the South Carolina Department of Disabilities and Special Needs. She testified that she has not been close to her brother and has not participated in his care in any way, but that she objected to the appointment of Margaret Mims as guardian for Edward Mims. However, Ms. Theriot could not site specific instances of problems that she felt would warrant Margaret Mims not being appointed as permanent guardian for Edward Mims.

Margaret Mims testified that she is capable of taking care of her son. She was able to describe the medications Edward Mims is taking and her understanding of his medical conditions. She testified that she



provided care for her son at home until he was twenty-eight years old and that he experienced episodes of abuse and neglect since he was placed in residential services at the Babcock Center in 1999. She testified that she would consider alternative residential placement if she felt that she was unable to provide continuing care in the home in the future.

Lynn Lugo provided testimony about the in-home services which are being provided to Edward Mims by the Richland Lexington Disabilities and Special Needs Board. She testified that she has visited in the home, that Mrs. Mims has done a very good job taking care of Edward, and that it would be in the best interest of Edward Mims for the Court to appoint his mother as permanent guardian. Ms. Lugo further testified that if Margaret Mims got sic, emergency respite would be provided, once Mrs. Mims called to request it.

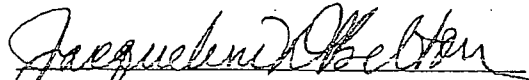
Based on the testimony and evidence presented, I find that this Court has jurisdiction, and venue is properly in Richland County. I also find that Edward Mims is incapacitated and in need of the appointment of a permanent guardian. I further find that Margaret Mims has priority for appointment as permanent guardian under South Carolina Code §62-5-311, and that she is the appropriate person to be appointed.

Margaret Mims shall have all statutory powers of a permanent guardian, including but not limited to the authority to make decisions about and establishing Edward's placement, including living at home with her. Further, given the termination of Edward Mims' judicial admission to the S.C. DDSN, Margaret Mims is to have custody of the person of Edward Mims. The guardian shall be authorized to give all consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. All medical providers are ordered to provide medical records and information as requested by the guardian.

The court-appointed guardian ad litem and attorney for Edward Mims, Edward Kneece Esq., has provided services in this matter and is entitled to a reasonable fee. Mr. Kneece has not been paid since he began his representation of Mr. Mims, and his fee statement of \$3,065.00 is reasonable given the complexity of the case and time devoted to representing Mr. Mims in this matter. Mr. Kneece's fees are to be paid in their entirety or in increments, as soon as funds become available.

The guardian shall submit a report to this Court and the Guardian Ad Litem six (6) months from the date of this Order, then again twelve (12) months from that date.

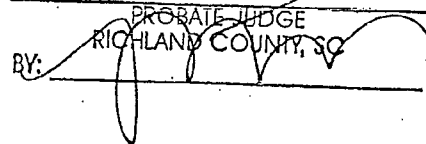
IT IS SO ORDERED.

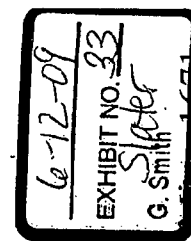

Honorable Jacqueline Davis Belton
Richland County Probate Court

December 19, 2005.
Columbia, South Carolina

A TRUE COPY
ATTEST:

Amy W. McCulloch

PROBATE JUDGE
RICHLAND COUNTY, SC
BY: 



What seems to be the problem of reporting this incident? My God, I sure wouldn't want to live with someone who raped me. Rape is a crime and I don't know of any place where it is written to exclude persons with disabilities. This has to be reported!!!!!!

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3
4 EDWARD MIMS, BY AND THROUGH
5 HIS LEGAL GUARDIAN,
6 MARGARET MIMS,

7 Plaintiff,

Case No.: 07-CP-40-03365

8 vs

9 BABCOCK CENTER, JUDY JOHNSON,
10 SCDDSN, KATHI LACY,
11 STANLEY BUTKUS,

12 Defendants.

13 D E P O S I T I O N

14 WITNESS: ANDY LAURENT

15 DATE: Wednesday, June 3, 2009

16 TIME: 2:06 p.m.

17 LOCATION: Law Office of Patricia Harrison
18 611 Holly Street
19 Columbia, South Carolina

20 TAKEN BY: Attorneys for the Plaintiff

21 REPORTED BY: GINA M. SMITH
22 Certified Shorthand Reporter
23 Registered Professional Reporter

24 -----
25 Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

Mims 1673

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF

3 EDWARD MIMS, BY AND THROUGH HIS LEGAL
GUARDIAN, MARGARET MIMS:

4 LAW OFFICE OF PATRICIA HARRISON

5 BY: PATRICIA HARRISON, ESQ.

6 611 Holly Street
Columbia, SC 29205

7 ATTORNEYS FOR DEFENDANT

8 BABCOCK CENTER AND JUDY JOHNSON:

9 COLLINS & LACY

10 BY: CHRISTIAN STEGMAIER, ESQ.

11 1330 Lady Street, Sixth Floor
P.O. Box 12487
Columbia, SC 29211

12 ATTORNEYS FOR DEFENDANT

13 SCDDSN, KATHI LACY AND STANLEY BUTKUS:

14 DAVIDSON & LINDEMANN, P.A.

15 BY: KENNETH P. WOODINGTON, ESQ.

16 1611 Devonshire Drive, Second Floor
P.O. Box 8568
Columbia, SC 29202-8568

17 ALSO PRESENT:

18 TANA G. VANDERBILT

19 KATHI LACY

20 (INDEX AT REAR OF TRANSCRIPT)

21

22

23

24

25

1 MS. HARRISON: I was here at ten o'clock.
2 The witness, John Vaughn, did not appear at
3 ten o'clock. We are holding for the judge. I
4 received an e-mail at -- a few minutes before the
5 eleven o'clock deposition was supposed to start
6 with a motion which Mr. Davidson and Mr. Stegmaier
7 are attempting to have heard today before I've had
8 an opportunity to read the motion. And it is now
9 11:15, and Dr. Laurent has appeared for the
10 eleven o'clock deposition.

11 (A recess was taken.)

12 MR. WOODINGTON: We did have a hearing
13 this morning or from about noon to one in front of
14 Judge Barber on depositions in this lawsuit, and it
15 lasted about an hour.

16 We had filed a motion for protective order
17 this morning, and we had several outcomes, one of
18 which was that Judge Barber imposed a suggested
19 guideline, to use his word, of no more than two
20 hours per deposition, not set in stone, but
21 suggested guideline of two hours per deposition in
22 this case by the plaintiff, and I assume by us as
23 well, although I don't know.

24 And secondly -- go ahead -- secondly, the
25 objections -- all objections are reserved until the

1 time of trial including objections as to the form
2 of the question. So what I'd like to do is just
3 make that statement at the beginning of
4 Dr. Laurent's deposition.

5 We have plenty more to come, and instead
6 of saying that same thing over and over again, just
7 incorporate this by reference into any future
8 depositions that are taken by plaintiff's counsel
9 in this case, and if I said something wrong, state
10 what it is.

11 MS. HARRISON: The two hours was a
12 guideline and was not a limit, and Judge Barber
13 made that clear. And my understanding was that all
14 the issues related to both -- to all three parties
15 in terms of any kind of suggestions for time
16 frames.

17 And Ken is correct, we all agreed that all
18 objections would be reserved until the time of
19 trial other than I believe privileged, Ken, wasn't
20 that --

21 MR. WOODINGTON: Yeah, that's not an
22 objection but rather an -- we reserve the right to
23 instruct him not to answer anything about
24 attorney-client privilege or executive session
25 matter or other privileges if they should come up,

1 and I hope they won't.

2 MR. STEGMAIER: Or any of the grounds
3 contemplated within Rule 24 C. The judge stated
4 that too as well.

5 MS. HARRISON: I left my rule book.

6 MR. STEGMAIER: That deals with matters
7 pertaining to embarrassment, things along those
8 lines, abusive discovery.

9 MS. HARRISON: I don't think anyone has
10 asked any questions that are -- would fall within
11 that, but I do agree with Ken's statement that all
12 objections are reserved, and if we get to that
13 issue, we can deal with it. And we'll see what his
14 order says when it comes out.

15 MR. STEGMAIER: I don't anticipate he's
16 going to issue an order.

17 MR. WOODINGTON: He's not going to issue
18 an order. I think that's it. We have a transcript
19 of that. And we have advised Ms. Harrison that
20 Mr. Vaughn -- we contacted Mr. Vaughn. He was not
21 able to make it down here this afternoon. And
22 we'll do him on the 10th along with others
23 presently scheduled for the 10th.

24 MS. HARRISON: And if we can at the end of
25 this make sure we're all on board about the --

1 perhaps set up the rest or additional witnesses,
2 that would be great. I understand you want to
3 depose Ms. Mims, and we'll see about getting a time
4 set on that.

5 MR. WOODINGTON: I think that concludes
6 the introduction from us unless Christian has
7 anything else.

8 MR. STEGMAIER: Nothing further.

9 STIPULATION: It is stipulated by
10 and among Counsel that this deposition is being
11 taken in accordance with the South Carolina Rules
12 of Civil Procedure, and that the deponent waives
13 the right to read and sign the deposition
14 transcript.

15 - - - - -

16 ANDY LAURENT, being first duly
17 sworn, testified as follows:

18 EXAMINATION

19 BY MS. HARRISON:

20 Q. If you'll please -- well, let me go over a
21 few preliminaries. I'm Trisha Harrison -- we met
22 before -- and I'm going to be taking your
23 deposition today.

24 I'll be asking you questions. If there's
25 anything that I'm not clear about, if you don't

1 understand the question, I'll ask you to have me
2 restate it or clarify anything you don't
3 understand. And if you answer the question, I'll
4 assume you understood it. Is that fair?

5 And the other thing I will ask you is to
6 verbally respond because she can't take nods and
7 shrugs and eye rolls or nonverbal gestures. So I
8 would ask that you respond --

9 A. Okay.

10 Q. So I'll be asking you questions about the
11 lawsuit that's been filed in the matter of Mims
12 versus DDSN and Babcock Center and various parties.

13 Have you ever had your deposition taken
14 before?

15 A. A long time ago.

16 Q. And tell me, what case was that taken in?

17 A. I truly don't know. I think it was
18 related to restructuring the state senate, but I
19 really don't remember.

20 Q. But it was in something you testified
21 in --

22 A. Yeah.

23 Q. -- in your past as a state employee?

24 And tell me something about yourself. Are
25 you married and do you have children?

1 A. I'm married and have two children.

2 Q. And tell me about your current position
3 and what your responsibilities are in that
4 position.

5 A. The -- since March 24th, I've been interim
6 state director of the Department of Developmental
7 Disabilities and Special Needs, which involves
8 overseeing a -- services to the mentally retarded,
9 disabled -- well, spinal cord, head injury, autism,
10 and so forth.

11 Q. And what are your -- what are your
12 responsibilities as director?

13 A. Well, essentially to oversee the operation
14 of the Department.

15 Q. Excuse me just a minute. I am sorry. I
16 closed that door and I don't know why.

17 (Off-the-record discussion.)

18 BY MS. HARRISON:

19 Q. Go ahead, Dr. Laurent.

20 A. Well, essentially it's an oversight of the
21 entire -- of the entire Department in terms of
22 budget, operation. I mean, I don't know -- can you
23 give me a little bit more?

24 Q. Now, your agency receives federal funds
25 and state funds to provide services to people who

1 are receiving Medicaid services?

2 A. Yes.

3 Q. And as a recipient of these funds, what --
4 do you have to provide certain assurances to the
5 federal government?

6 A. Yes.

7 Q. And tell me what those assurances are.

8 A. I do not remember them all.

9 Q. Is one assurance you are required to make
10 to the federal government to protect the health and
11 welfare of Medicaid participants?

12 A. I don't remember the specific assurances,
13 Ms. Harrison.

14 Q. So you don't remember whether there's a
15 requirement that you assure the health and welfare?

16 A. No, I don't.

17 Q. What are the assurances you have to make
18 to the federal government about expenditure of
19 funds?

20 A. I do not -- I mean, I really do not
21 remember specific assurances that you lay out in a
22 contract. Obviously you have to track funds well,
23 see they're spent properly, what have you. What
24 the specific assurances are I do not remember.

25 Q. Now, you were formerly the director of

1 South Carolina Health and Human Services, were you
2 not?

3 A. Yes, I was.

4 Q. And how long did you hold that position?

5 A. About eight and a half years.

6 Q. And now, tell me the way the Medicaid
7 funds work. Who is ultimately responsible to the
8 federal government to assure the federal government
9 that those -- that those assurances -- federal
10 assurances are met?

11 A. The same Medicaid agency, Health and Human
12 Services, they're the ones ultimately responsible
13 for the expenditure of Medicaid dollars.

14 Q. And you were the director of that agency?

15 A. That's correct.

16 Q. For eight and a half years?

17 A. That's correct.

18 Q. And you don't remember whether or not the
19 Medicaid Act and the regulations under the Medicaid
20 Act require that agency and DDSN to protect the
21 health and welfare of consumers?

22 A. Well, I know health and welfare is an
23 important component of what we do, but I don't
24 remember the -- what the assurances are.

25 Q. Tell me what your understanding is as to

1 your obligations to protect the health and welfare
2 of Medicaid participants.

3 A. That's a primary responsibility of anybody
4 in our care, not just Medicaid.

5 Q. And who has that responsibility?

6 A. Well, it's spread throughout the system.
7 I mean, it starts at the caregiver level and comes
8 on up to the State Department.

9 Q. So as director of the agency, do you have
10 any responsibilities to assure the safety of
11 individuals in the programs you oversee?

12 A. I have a responsibility to see that the
13 system we have out there takes care of the welfare
14 of the individuals.

15 Q. And what is your responsibility when it's
16 brought to your attention that there is -- there is
17 not just one incident of abuse or neglect but that
18 it's occurring like an epidemic in an entity?

19 A. Any instance of abuse and neglect that
20 comes to our attention would be investigated.

21 Q. And as state director, what responsibility
22 do you have to assure that it's promptly reported
23 to you?

24 A. The -- we try to build a system that does
25 that.

1 Q. And who's responsible for that?

2 A. Let me think on it. Who's responsible for
3 being sure it's reported?

4 Q. Well, who's responsible for assuring that
5 prompt reports of abuse and neglect are made to
6 your agency?

7 A. The -- well, the agency is created with a
8 set of policies that are supposed to be followed at
9 the various steps, and it's where that happened to
10 fall.

11 Q. As the director, if you were informed that
12 an individual has been sexually assaulted, for
13 example, what responsibilities would you
14 individually have to protect that person?

15 A. The -- well, I don't know that it's
16 individual. The system has that responsibility,
17 which I'm over.

18 Q. So does the buck stop with you?

19 A. Yes, ma'am.

20 Q. Where does it stop?

21 A. Well, if it comes to me, it stops right
22 there. It doesn't stop there, I put it somewhere,
23 but --

24 Q. But you're responsible for assuring that
25 it's taken care of?

1 A. That's right.

2 Q. And tell me about your responsibilities
3 versus the board's responsibilities when it becomes
4 evident that there's incidents of abuse and
5 neglect.

6 A. Well, the board's responsibilities, in
7 essence, involve how well I do my job and whether
8 they hire and fire me. It's my job -- and they set
9 the general policies that the agency operates
10 under. And it's my job to carry those out, and if
11 I'm not doing that, then they should be -- they
12 would deal with me.

13 Q. So basically the buck stops with you.
14 They aren't responsible for taking care of those
15 problems, they bring them to your attention, and
16 you handle them. Is that correct?

17 A. That's the way it should happen, yes.

18 Q. Is that the way it's happened over the
19 last seven years?

20 A. I can't answer that.

21 Q. Tell me, how long have you been in the
22 role as state director?

23 A. Well, since March 24th. So that would be
24 four, five -- working on six weeks. Is that right?
25 It's two months. Two months, yeah.

1 Q. Based on your two months there, what's
2 your assessment of the job the agency is doing to
3 protect the health and welfare of people it serves?

4 A. From what -- from my experience, the
5 agency is doing a pretty good job, and the policies
6 in place are extremely strict.

7 Q. Are those policies being followed?

8 A. To the best of my knowledge.

9 Q. Have you had the opportunity to review the
10 audit the Legislative Audit Council issued on the
11 agency?

12 A. Yes.

13 Q. They made some findings about the failure
14 of the agency to protect the health and welfare of
15 the individuals, didn't they?

16 A. I don't remember all the specific
17 findings. I do have a copy on my desk. When
18 something comes up, I look at it.

19 Q. Have you read the whole thing?

20 A. Yes. At one time I had read the whole
21 thing, yes.

22 Q. Well, tell me what their findings were
23 about their concerns about protecting the health
24 and safety of individuals.

25 A. I don't -- I do not remember the finding.

1 You'll have to help me a little bit.

2 Q. Were they concerned that maybe people's
3 health and safety was not protected?

4 A. That -- in going through everything we've
5 been working with, that did not stand out in my
6 mind.

7 Q. Have you met with Senator Thomas who held
8 hearings on those findings about abuse and neglect?

9 A. I talked to Senator Thomas, yes.

10 Q. And did he share with you any concerns
11 about the agency's failure to protect the health
12 and welfare, health and safety of individuals being
13 served?

14 A. If I remember, most of the -- I don't
15 remember him addressing the abuse issue. He talked
16 at that -- a lot about the management of the agency
17 and dollars.

18 Q. What did he tell you?

19 A. He had some concern that maybe everything
20 had not been handled as it should have.

21 Q. What kind of concerns did he have?

22 A. And he mentioned maybe contracts being
23 left and people getting some dollars on the side,
24 and there was just a general concern that
25 everything was not as it should be.

1 Q. Did he share with you about any of the
2 phone calls he had received about reprisals when
3 people report abuse and neglect?

4 A. He mentioned that a number of people have
5 come to talk with him, including some ex-employees,
6 and that some of those -- he'd indicate -- what's
7 the word? Reprisal's not the word, but same thing,
8 yes.

9 Q. And what did he share with you about
10 these --

11 A. He did not give me any specifics.

12 Q. Did you feel that that was something that
13 you as director needed to look into?

14 A. Well, that's one of those things you put
15 in the back of your mind, just kind of pay little
16 attention to as you do your day-to-day business.

17 Q. So whether there have been reprisals
18 against families is just something in the back of
19 your mind, it's not in --

20 A. No. I was talking about reprisals versus
21 employees, not families. I do not remember him
22 saying anything about reprisals of families.

23 Q. Would that give you a concern if families
24 have called him and talked about reprisals?

25 A. That would be a concern. That would be

1 something you'd have to check out.

2 Q. And did that concern you that employees
3 felt there were reprisals?

4 A. Of course.

5 Q. And what action did you take as state
6 director to address Senator Thomas' concerns?

7 A. The -- I asked some questions, looked
8 around, talked to some folks.

9 Q. Have you found any credence to the reports
10 that there might have been any reprisals against
11 employees or families?

12 A. No.

13 Q. So you haven't found any instances since
14 you've been there where there have been any
15 reprisals?

16 A. I have not.

17 Q. Have you talked to any family members that
18 believe there have been reprisals?

19 A. No family member has reported any such
20 thing to me.

21 Q. If they did, would you take that
22 seriously?

23 A. Yes, ma'am.

24 Q. And if they did, what would you do about
25 it as director?

1 A. It would depend on what the circumstances
2 were and what they gave me. I would start down the
3 chain of command and run down and see what the
4 story was.

5 Q. Let me give you an example. For example,
6 if a mother called you and said an employee beat my
7 child and I'm having trouble getting it
8 investigated, and when I reported it, they made
9 false allegations against me, what would you as
10 director do?

11 A. Well, if there is a report of abuse, I
12 would ask the staff to report that to SLED. That's
13 the rule. If it's a report of abuse, it's
14 investigated. I mean, SLED may not go further with
15 it, but we -- I believe that's --

16 Q. If eventually the employee was arrested
17 and confessed to beating that individual and the
18 mom was still saying they're accusing me of doing
19 things that are happening at that facility, what
20 would you as director do?

21 A. Well, if we had that allegation, it would
22 be the same process. I would ask staff to go find
23 out exactly what the story was and bring it back to
24 me.

25 Q. But you'd ask them to bring it back to you

1 and you'd make sure it was resolved?

2 A. I would hope so, yes, ma'am.

3 Q. Would you involuntarily commit this person
4 to a facility where he was being --

5 A. What do you mean -- I mean, who's the
6 person?

7 Q. Okay. An individual's being beaten by an
8 employee, and the mama says they're beating my son,
9 and would it be appropriate for you to
10 involuntarily commit that individual to the
11 facility where he's being beaten?

12 A. I think I -- I think you would have to
13 know the whole circumstances, what's going on, to
14 make that decision. As you framed the question, I
15 think the answer is no, but I think there's
16 probably more to it than that.

17 Q. Under what circumstances in a case like
18 that would it be appropriate to commit the
19 individual to the facility -- to the custody of
20 DDSN?

21 A. The -- I haven't had that much experience
22 with this system, but I have worked as a certified
23 guardian, and it would all -- when you get in --
24 using that experience, if there -- the relationship
25 between the mother, the child, what's going on

1 there, which I have no idea in the specific
2 instance you're talking about, and all that
3 circumstances would make it -- if there's a
4 question that leaving the person where they are
5 endangers them in some fashion, then a commitment
6 might be warranted. If not, then it would not be.

7 Q. Would it be warranted to commit the person
8 to the facility where he was being beaten?

9 A. Well, I would assume that the whole
10 facility did not beat the person. I mean, it would
11 be -- if in fact it happened, you know, it was
12 determined, as you say, I don't know what options
13 would be available.

14 Q. Let's say the Department bamboozled you
15 and let's say that this individual was committed
16 based on your good faith belief that mom was
17 neglecting him.

18 A. Okay.

19 Q. And he was committed to the same facility
20 where he was beaten the first time. And then you
21 get a report that he's been beaten with a belt at
22 the same facility again. What action would you
23 take as state director?

24 A. I think in that case it would be a --
25 something that we would really look into extremely

1 carefully.

2 Q. And once the individual was involuntarily
3 committed and in your agency's care, do you just
4 leave him at that facility and not have anything
5 else to do with him, or, if he's committed to DDSN
6 and the statute says it's the director who has the
7 authority to request the commitment, would you --
8 what would be -- from your perspective as the state
9 director, what would be the agency's responsibility
10 to see that his needs are being met, that he's not
11 being abused?

12 A. In essence you have the same
13 responsibility for anybody in your care to be sure
14 that their needs are being met and taken care of
15 and whatever -- the plan of care is carried out.

16 I mean, I -- if there's an instance, a
17 problem, and once that goes by, I mean, I think
18 that person is cared for like anyone else.

19 Q. Do you not have a higher duty if you're
20 the director and he's committed to your care to
21 have some kind of periodic evaluation of that
22 individual versus Gina's child who might be there
23 and she makes sure that his needs are met?

24 A. Ms. Harrison, I don't think so. I think
25 you've got a commitment across the board to see

1 that every consumer's taken care of.

2 Q. And so you have no greater duty to the
3 people who have been involuntarily committed to --
4 and can't leave than you have to people who are
5 voluntary admissions?

6 A. I had not thought about that question
7 until you just asked it per se. I think we have
8 the same responsibility to everybody in our care.

9 Q. So --

10 A. Now, if conditions of that person change,
11 that may change and come up, but still as long as
12 they're in our care, then they're our --

13 Q. So let's say -- I'm sorry.

14 A. I was going to say they're our
15 responsibility.

16 Q. Let's say that this individual's been
17 committed and he's committed to the custody of DDSN
18 and you're the director and the -- is it not true
19 that if something -- if there are any allegations
20 of abuse and neglect, every allegation of abuse and
21 neglect has to be made to your agency also, doesn't
22 it?

23 A. I believe so, yes, ma'am.

24 Q. And how promptly does it have to be made
25 to your agency if there's an allegation somebody's

1 beaten or neglected, or what do your policies
2 require?

3 A. I do not know what the protocol is, but
4 I'm sure it would happen very quickly.

5 Q. And does your agency maintain records
6 and -- so that you can tell if there's a trend at
7 any particular provider?

8 A. Yes, we do have records.

9 Q. So let's say that this individual is
10 committed to XYZ provider -- I'm sorry -- is
11 committed to you, but you exercising your authority
12 as director have placed him at XYZ, and your agency
13 gets reports that XYZ has double the statewide
14 average of substantiated cases of abuse and
15 neglect. What are your duties as director to this
16 individual who you have chosen to put at that
17 place?

18 A. I don't -- again, I don't think my
19 responsibility to that person is any different than
20 we have for everybody at that place.

21 And I know we have a -- I'm trying to
22 think. This comes from not being around long
23 enough, but I mean, again, I think the Department's
24 responsibility is the same across the board.

25 Q. And what is that responsibility?

1 A. To take care of the needs and welfare of
2 the people that we have in our care.

3 Q. And when it's brought to your attention
4 that someone's needs and safety is endangered, what
5 is your responsibility?

6 A. When it's brought to my attention
7 someone's needs and safety?

8 Q. Needs are not being met and his safety in
9 danger.

10 A. We would see it's taken care of.

11 Q. And how do you do that?

12 A. I would, again, ask staff to go see
13 exactly what was going on and bring that back to
14 me.

15 Q. And bring that back to you?

16 A. Uh-huh.

17 Q. Let's go a little further along the line.
18 You've committed this -- you exercising your
19 authority as director have put this person in XYZ
20 facility, and they've had doubled the substantiated
21 rate of abuse. And a year or two later, the rate
22 of substantiated abuse and neglect is four times
23 the statewide average, and your agency makes a
24 finding that that agency where there's no mama who
25 can pull that person out, mama -- you've taken away

1 mama's right to pull that person out, and you are
2 the only person, what is your responsibility then
3 when you know that agency has four times the
4 substantiated rate of abuse and neglect and mama is
5 writing to you saying he's being neglected and
6 abused at that facility?

7 A. Ms. Harrison, I can't tell you what the
8 exact Department protocols are, but there are
9 things in place where if a facility gets way out of
10 line, you deal with the facility.

11 Q. But do you have any responsibility to this
12 individual who he can't go anywhere, his mama can't
13 take him out, his mama's telling you that he
14 continues to be abused? You don't have any duty to
15 get him out of that unsafe --

16 A. If they're abused, we have a duty to take
17 care of that.

18 Q. And how -- if you tell your staff take
19 care of it and then you get another report that
20 that provider continues to have sexual assaults and
21 to fail to report instances of abuse and neglect
22 promptly, then what is your personal duty as a
23 state director?

24 A. I think if I were -- if we take this
25 purely hypothetically, because I have not been

1 through this exact -- this kind of circumstance,
2 but if you have a provider who's not living up to
3 the condition of the contract, then we as an agency
4 should deal with that provider.

5 Q. Has your agency done that?

6 A. I believe they have in several cases, but
7 I don't know. I mean, I was not here.

8 Q. Let's talk about your relationship, your
9 agency's relationship, with the boards. Explain to
10 me how the band funding process works.

11 A. The band funding, it's a mechanism -- it's
12 a reimbursement mechanism for getting money out.
13 The band is set -- there's a set of services, and a
14 provider gets so many dollars to provide those
15 services, and that's basically how it works. You
16 try to gear the band so you're hitting the average.
17 Some consumers may take more, some take less.

18 Q. If a person's in an ICF/MR, what does it
19 cost a year to provide for their care there? What
20 do you pay them per year?

21 A. I don't know.

22 Q. Do you have any idea?

23 A. No.

24 Q. Is it more than \$200 a day?

25 A. I would be surprised if it were not.

1 Q. What do you think it might be?

2 A. I don't want to guess. I really don't
3 know, Ms. Harrison.

4 Q. Tell me how the reimbursement mechanism
5 works for people in ICF/MRs.

6 A. The -- I've been away from this too long
7 to know the detail, but essentially, an ICF/MR
8 reimbursement -- I don't know the mechanism, the
9 dollar amount we're flowing through right now, but
10 that is a cost-settled reimbursement. So at the
11 end of the period, DDSN's reimbursed its costs for
12 that service.

13 Q. So is it not true that each provider, XYZ
14 board, has an ICF/MR -- is it not true that they
15 submit to you records of how much staff they had
16 and what the cost of operating that facility was
17 and that you reimburse that agency based on those
18 cost reports?

19 A. I would expect that was true. I don't
20 know. I know the agency turns that data in to be
21 reimbursed. Exactly how it works between us and
22 the provider I don't know.

23 Q. But you get reimbursed based on the cost
24 reports that show how much staff is -- if there's
25 three staff on this shift or two staff or --

1 A. Whatever the costs are.

2 Q. But they submit that to you, do they not?

3 A. Yes.

4 Q. And then you submit that to HHS and you
5 get paid based on that, don't you?

6 A. Yes.

7 Q. Now, if a provider is billing you for
8 three staff on a shift and if they're really
9 consistently only having two staff on that shift,
10 how do you find that out?

11 A. The -- I don't know all the answers.
12 There are mechanisms in place. There are minimums
13 that have to be met, and that's staffing ratios,
14 those kind of things.

15 DHEC does a review of that. There are
16 audits. And that would be the -- the details at
17 this point of what we red flag in the system I
18 don't know.

19 Q. Well, let's say you're the director and
20 somebody dies in one of these facilities and CMS
21 comes in, and they investigate and they --

22 A. Who comes in?

23 Q. CMS.

24 A. Okay.

25 Q. And they investigate and they tell you the

1 house was understaffed and somebody died as a
2 result and that the staff wasn't properly trained.
3 What's your responsibility as the director of the
4 state agency when you get that report from CMS
5 saying that the staffing they were billing you for
6 wasn't being provided and the staff that was there
7 was not trained to take care of the needs of those
8 individuals?

9 A. The -- again, that's one of those things
10 you have to find out exactly what the story is. I
11 assume if someone had overbilled us we would ask
12 for dollars back.

13 Q. Have you read the 2006 audit by HHS of
14 DDSN?

15 A. No, I haven't.

16 Q. I suggest that you read that because it
17 says that HHS and Robbie Kerr said that they
18 couldn't follow the dollars and they couldn't tell
19 whether the cost reports were accurate or not.

20 As state director, does that give you
21 heartburn?

22 A. I'd have to look at it and see exactly
23 what they meant by that.

24 Q. Have you talked to Robbie Kerr since
25 you've been here?

1 A. Yes, but not about that.

2 Q. So he hasn't told you about going to
3 legislators and telling them that he couldn't
4 follow the money?

5 A. No.

6 Q. What did you talk to Robbie Kerr about?

7 A. General things. I've known Robbie a long
8 time. He worked for me when I was HHS. Talking
9 about his new business and those kind of things.

10 Q. Did he share any concerns with you about
11 DDSN? When he was the agency director, he couldn't
12 follow the cost reports. He sent accountants out
13 and they couldn't tell where the money was going.
14 Did he share that?

15 A. No, he did not.

16 Q. Is that something as director you need to
17 know?

18 A. The -- if in fact we don't know where the
19 money's going, I would need to know, but I don't
20 know that.

21 Q. Would that be an important thing for you
22 as state director to read if that was the report
23 that says that this provider, the Babcock Center's,
24 rate of substantiated abuse and neglect was four
25 times the statewide average?

1 A. Abuse --

2 Q. The substantiated cases of abuse and
3 neglect are four times the statewide average, is
4 that something you as state director would need to
5 know?

6 A. I would hope that would come to me
7 internally.

8 Q. It's in the audit if would you like to
9 read that. February 28, 2006.

10 Now -- so let's assume -- since you
11 haven't read it, let's just hypothetically assume
12 that you get this report from CMS. And are you
13 familiar with the review that Carolina Medical --
14 that Robbie Kerr commissioned Carolina Medical
15 Review to do of ICF/MRs at the Babcock Center?

16 A. No, I have not seen the report.

17 Q. It came out in 2005.

18 A. No.

19 Q. Well, since you haven't seen it, let's do
20 a hypothetical here. You're the director of state
21 DDSN, and Robbie Kerr hire -- are you familiar with
22 Carolina Medical Review?

23 A. Who is it?

24 Q. It's a company that Robbie Kerr hired.

25 A. No.

1 Q. Do you have confidence in Robbie Kerr's
2 ability?

3 A. Yeah, I do.

4 Q. Do you think he knows what he's doing?

5 A. Generally I would say yes.

6 Q. Do you think that if he hired an entity to
7 review the ICF/MRs at the Babcock Center that it
8 would be a competent entity?

9 A. I would assume so.

10 Q. Well, then, hypothetically, then, if
11 Robbie Kerr has enough concerns that he hires this
12 private independent entity to review the ICF/MRs at
13 the Babcock Center and they send a letter -- they
14 send a report to Robbie Kerr saying the ICF/MRs are
15 not in compliance with Medicaid regs and, within a
16 few months of that report, you've got a finding of
17 immediate jeopardy by CMS at one of these and
18 you've got a death at one of these and, subsequent
19 to that finding by CMS, there's another immediate
20 jeopardy at the facility declared based on a
21 different problem -- let's put your guardian hat
22 on.

23 You're a guardian, okay, and this
24 individual who has been your ward for five years is
25 in this facility, and the red flags are that

1 immediate jeopardy has been declared two or three
2 times in a year, someone choked to death, CMS came
3 in and determined -- declared immediate jeopardy
4 because staff was not properly trained, the house
5 was understaffed, and the incident was not
6 thoroughly investigated. And you're a guardian for
7 this individual who is in this facility, and it's
8 decertified. What would you do as guardian?

9 A. The individual -- the facility is
10 decertified?

11 Q. The facility is decertified, two or three
12 immediate jeopardies have been declared at that
13 facility in the last six months, this individual
14 has been beaten by an employee who was convicted of
15 being beaten at another facility, he has been
16 beaten with a belt by a second person who's a
17 consumer, and now he's in this facility that's had
18 two or three findings of immediate jeopardy and has
19 been decertified. As a guardian, what would you
20 do?

21 A. All those things happened at that
22 facility?

23 Q. Well, the two beatings were at another
24 ICF/MR operated by the same entity, okay?

25 A. If in fact the facility the person was in

1 was decertified, I would move him.

2 Q. Let's say that that individual, his mother
3 came to you as guardian -- and, now, you're a
4 certified guardian. Tell me about that process.

5 A. Well, it's just -- in Florida, it's a much
6 more rigorous process to be a guardian. You have
7 to take a 40-hour course and you have to pass a
8 test which has both Florida and national and you're
9 certified national.

10 Q. And you're certified?

11 A. Uh-huh.

12 Q. So let's say you're the guardian of this
13 person and the guardian ad litem who previously
14 represented the individual comes to you and says
15 you were named the guardian because I was told
16 false information, and I was told that mother was
17 abusing him and now I know she wasn't, and now I
18 know that was false information that was provided
19 to me and that he was being beaten at the facility
20 that I as guardian ad litem helped get him
21 committed to. And all of that was lies, and that's
22 why you've been appointed his guardian, and his
23 mother cares for him and it would be safe for him
24 to return home and for her to be guardian. What
25 would you do then as guardian?

1 A. Well, as a guardian, if that were true --
2 I'd have to determine that was true.

3 Q. Right. And you look at it and you
4 determine the guardian ad litem's right. You're
5 Court-appointed guardian, and mom files a petition
6 to be appointed as guardian.

7 A. I would take no position on that.

8 Q. Would you go to the Court and fight her
9 being appointed as guardian?

10 A. No, but I would not take a position.

11 Q. Well, as guardian, you have a duty to
12 protect him, don't you?

13 A. That's right. But basically the
14 decision -- it would be a conflict of interest if I
15 am the guardian for me to oppose or really support.
16 I mean, that's -- there would be a hearing and the
17 Court would handle that.

18 Q. So are you saying it should be decided by
19 the Court?

20 A. Yes.

21 Q. And do you think the Court should give
22 weight to that guardian ad litem's testimony?

23 A. Well, they give weight to the truth. I
24 mean, again, I don't know that the guardian
25 ad litem was exactly right or what the original was

1 exactly right, but whatever the -- that's why you
2 have hearings.

3 Q. In any circumstances, would you force that
4 individual to remain in that facility that's been
5 decertified? What circumstances would you --

6 A. Well, if what you -- as you've laid it
7 out, if the individual had been beaten and what
8 have you, no, I would not keep him there.

9 Q. If you're guardian and that facility --
10 you find out that his bed was infested with ants
11 and he's been taken to the emergency room with ant
12 bites all over his body, what would you do as his
13 guardian?

14 A. I'd do something about it.

15 Q. What would you do about it?

16 A. I'd do something about it as state
17 director too if I knew about that.

18 Q. Tell me what you would do about that.

19 A. Essentially your role as guardian is to
20 protect the person and make sure they're in a safe
21 environment, and if they're not in a safe
22 environment, you do something about it.

23 Q. How much different is the role of guardian
24 from the role of state director if you're the only
25 one who can release him from that involuntary

1 commitment?

2 A. It's a different role. As a guardian,
3 that person -- I'm directly responsible for that
4 person. As state director, I'm responsible for
5 everybody in the system.

6 And what I tried to say earlier, that's
7 where you try to build systems that do the job that
8 you accomplish taking care of everybody because, I
9 mean, there could be lots of people all over the
10 state, and you don't have that kind -- the same
11 relationship with hundreds of people you do with
12 one person you're the guardian for.

13 Q. How many people are involuntarily
14 committed to DDSN?

15 A. I don't know.

16 Q. What do you think as state director --
17 when you're guardian for somebody, don't you have
18 to file periodic reports with the Court?

19 A. Yes.

20 Q. When somebody's involuntarily committed to
21 the Department, should there not be similar reports
22 filed with the Court, in your opinion?

23 A. Well, there could be, but there's a whole
24 set of laws and regulations that govern the
25 Department -- it's really a different deal --

1 whereas the guardian is an individual.

2 Q. But you -- okay. Let me rephrase that.

3 Have you read the Unequal Justice Report
4 that was issued by Protection and Advocacy?

5 A. No.

6 Q. Has anybody told you about that report?

7 A. No.

8 Q. If you were guardian for someone and this
9 report came out saying that sexual abuse and
10 physical abuse and there were cover-ups of all
11 these things and they weren't adequately
12 investigated, would you inquire about that and
13 determine whether your ward was one of the people
14 affected by that?

15 A. Yeah.

16 Q. I'd encourage you to read the 2005 Unequal
17 Justice Report.

18 So the limited scope audit of the Babcock
19 Center that was issued by HHS in 2003, are you
20 familiar with that document?

21 A. No, I'm not.

22 Q. And you're not familiar with the Carolina
23 Medical Review?

24 A. No.

25 Q. And you're not familiar with the 2006

1 audit by HHS of DDSN and the MR/RD waiver?

2 A. No. I did misstate one thing. Robbie did
3 say something to me about the Babcock thing and
4 restricting them.

5 Q. And what did he say?

6 A. I don't -- I mean, I can't quote him, but
7 it was just a -- that was, you know -- it was a
8 mess they had to get into and work their way
9 through.

10 Q. So are you familiar with the study that
11 the University of South Carolina did of the MR/RD
12 waiver program under Dave Murday?

13 A. I've heard reference to it, but I have not
14 read it.

15 Q. So what audits have you read of the agency
16 or of the Babcock Center?

17 A. The actual only audit I've read is the LAC
18 audit. That's not true. There are internal audits
19 they go through all the time that are internal
20 audits to us, but other than those, that's what
21 I've been through.

22 Q. Tell me about the freedom of choice
23 requirements of the Medicaid Act. Tell me about
24 what that requires.

25 A. People have a choice.

1 Q. And tell me about that choice. What
2 choices do they have?

3 A. Let's move this to a specific instance --
4 I mean a specific kind of service or what have you.

5 Q. Okay. People, are they not required to
6 have a choice between ICF/MR or waiver services?

7 A. I don't know about that particular case.
8 I can't answer that.

9 Q. Tell me what the Medicaid Act requires in
10 regard to choice.

11 A. I've been away from Medicaid a long time.
12 I wouldn't want to say.

13 Q. Tell me what the Medicaid Act says about
14 choice of providers.

15 A. I don't know what the Medicaid Act says
16 about choice of providers.

17 Q. Are you familiar with any of the Medicaid
18 requirements as to choice? What's your
19 understanding of choice? Is there any right that
20 DDSN consumers have to choice?

21 A. Yes, they have a choice.

22 Q. And tell me how that works.

23 A. As part of a service plan every year, they
24 should have an opportunity to choose whatever
25 environment they'd like to have.

1 Q. Are there things your agency can do to
2 make it more or less likely that choices will be
3 provided?

4 A. Yes.

5 Q. And what are those things?

6 A. Well, we've been working to equalize the
7 opportunity between private providers and the
8 county boards, and we have, again, a set of
9 policies, directives the county boards are supposed
10 to be following and pushing with respect to choice.

11 Q. Let's talk about the county boards. What
12 is a legal authority for the establishment of a
13 county board?

14 A. It's the same -- it's all built up in the
15 agency's authorizing legislation.

16 Q. And where is that found?

17 A. I don't know the site on it.

18 Q. But it's in the South Carolina code?

19 A. Yes, it's in the code.

20 Q. And the South Carolina code specifically
21 states that -- how county board members are to be
22 appointed, does it not?

23 A. Yes, ma'am.

24 Q. And the South Carolina code specifically
25 states, does it not, that county boards are public

1 entities, does it not?

2 A. I'm sure they are, but I do not
3 remember -- I can't say yes to that. I don't
4 remember.

5 Q. So DDSN takes the money it gets from HHS,
6 and it pays the band payments, does it not, to the
7 county board?

8 A. That's correct.

9 Q. And then the county board is responsible
10 for following the plan of care?

11 A. Well, there's a whole set of directives
12 the county board's responsible for carrying out.

13 Q. Now, is the Babcock Center board appointed
14 by the legislative delegation or county council?

15 A. The Babcock was made a county board, but
16 how -- whether they changed the way -- how the
17 board's appointed, I don't know.

18 Q. And who made them a county board?

19 A. It's in the legislation.

20 Q. It's in the legislation?

21 A. I believe so.

22 Q. Would you please --

23 A. No, again, I can't -- that's -- that's a
24 memory. I can't take you right where it is.

25 MS. HARRISON: Ken, I'd like for you to

1 get me a copy of that statute -- that statute
2 that the state director is relying upon to --

3 MR. WOODINGTON: Can you state exactly
4 what the statement was? I was sort of in and out
5 there.

6 MS. HARRISON: I can't believe you lost --
7 this is so interesting and exciting, I just can't
8 believe we lost you for a moment.

9 MR. WOODINGTON: As I understand it --

10 MS. HARRISON: I'm teasing you.

11 MR. WOODINGTON: I know. The question was
12 whether or not Babcock Center was a designated
13 county board. Is that the right --

14 MS. HARRISON: Right. Dr. Laurent just
15 said that it's in the statute. So I would like for
16 you to get me a copy of that statute.

17 BY MS. HARRISON:

18 Q. If it's not in the statute anywhere and
19 DDSN is paying band payments to a private company,
20 would that give you any heartburn?

21 A. We should not be paying band payments to a
22 private company.

23 Q. The recipients of the band payments, they
24 have a certain amount of control, don't they, over
25 how those funds are used?

1 A. Well, they -- yes..

2 Q. And they can affect, can they not, how
3 easy or difficult it is for people to get services,
4 can't they?

5 A. They can.

6 Q. Tell me how they can do that.

7 A. I don't know all the ways. I just know
8 that if they don't offer the alternatives, they
9 would affect how -- whether people had the choice
10 or not. But if they do that, then they're in
11 violation of the Department director.

12 Q. And what do you do about that?

13 A. We'd be sure they offered the services.

14 Q. Are you familiar with the Olmstead case?

15 A. Very broadly.

16 Q. Tell me what you know about the Olmstead
17 case.

18 A. Very little. Why don't you ask me the
19 question. It will come back.

20 Q. Tell me what the Olmstead case says about
21 a disabled person's right to receive services in
22 the least restrictive environment.

23 A. We are supposed to receive services in the
24 least restrictive environment.

25 Q. That case also, though -- the flip side of

1 that case, is it not, that the case specifically
2 says that individuals have the right to choose the
3 most restrictive setting, an institutional setting?
4 Is that not correct?

5 A. I don't know that, but I would assume that
6 would be true. That's a choice.

7 Q. It's kind of like my right to ride the
8 bus, I have the right to do that, but you can't
9 make me go on the bus. Is that correct?

10 A. I hate to say yes because I really don't
11 know.

12 Q. So are you aware of any -- anything in the
13 Olmstead case or any of the directives that have
14 come out from CMS pursuant to Olmstead that forces
15 someone to choose or that gives you the ability to
16 force someone to be in a less restrictive setting?

17 A. No.

18 Q. Now, would you agree that if you need a
19 service -- let's say you need your car washed, and
20 if the State is buying the car wash for a private
21 company, they're providing the facility, and
22 they're providing -- paying off the debts of that
23 facility. And Christian over here, he wants to get
24 in business to wash cars, but we have Ken over here
25 who is -- the State's bought his car wash for him,

1 and they're paying many of the bills of that car
2 wash. Would Christian be able to provide the car
3 wash as cheaply as Ken could?

4 A. If one had capital costs and one did not,
5 they probably could not.

6 Q. So would that affect which one you chose
7 if his rate -- if he can do it for less?

8 A. The -- I don't think we've got a bidding
9 process out there.

10 Q. Tell me about -- are you aware that if a
11 person wants to keep their family member at home,
12 that the respite caregiver has to pay for their own
13 SLED checks, driver's license checks, go through
14 the training without being paid, and they don't get
15 reimbursed for that, and that their FICA taxes
16 aren't paid if they want to be a respite --
17 individual respite caregiver? Are you aware of
18 that?

19 A. Uh-uh.

20 Q. Well, would it make it harder -- let me
21 back up a little bit.

22 Are you aware that if a person is
23 providing care in a CTH II, that the waiver funds
24 pay for the training for that person, for their
25 SLED check, for all the background that it takes

1 for them to work as a caregiver? Are you aware of
2 that?

3 A. I think that's true.

4 Q. Would it be an impediment to someone
5 wanting to keep their child at home if they have to
6 find the caregiver, pay for the background check,
7 and pay for the training that the State pays for if
8 they'll just put them in a facility?

9 A. I'm not sure those two things are
10 absolutely comparable.

11 Q. Explain that for me.

12 A. Well, I mean, you have -- one case you're
13 dealing with an employee in a structure, another
14 case you're dealing with a private individual.

15 Q. Are you aware that the band payments in
16 Richland and Lexington County are paid to the
17 Babcock Center?

18 A. That's the county board.

19 Q. What is Rich/Lex?

20 A. I don't know exactly how that's split. I
21 don't know that exact relationship.

22 Q. So it's your position that Babcock
23 Center's a county board so they would get the band
24 payment?

25 A. If they're a county board, they would.

1 Q. Are you aware that respite and adult
2 companion caregivers are required to sign a form
3 saying they're not employees of the Babcock Center
4 when they provide respite --

5 A. No.

6 Q. Are you aware that they have to pay for
7 their own SLED check, background checks, and
8 training?

9 A. You told me that.

10 Q. Did you know that before?

11 A. No.

12 Q. Are you aware that if the Babcock Center
13 makes it more difficult for a family member to get
14 that caregiver to help keep their family member at
15 home that they get to keep the money?

16 A. Give me -- come with that a little bit
17 more.

18 Q. Let me give you an example. Are you aware
19 of the allegations in this case, that Ed Mims was
20 sexually assaulted at a Babcock Center facility?

21 A. Yes.

22 Q. And are you aware that his mother
23 repeatedly asked that Babcock Center have nothing
24 to do with Ed Mims after that?

25 A. No.

1 Q. Are you aware that his band payments
2 continued to be made to the Babcock Center?

3 A. No.

4 Q. Are you aware that because his band
5 payments were made to the Babcock Center, if they
6 made it very difficult for mom to get an adult
7 companion or a respite provider, that they would
8 get to keep the band payments?

9 A. I mean, if he stayed at Babcock, they
10 would keep the band payment; if he went home, they
11 would not. Is that what you're --

12 Q. I'm talking about once Edward Mims was at
13 home --

14 A. Okay.

15 Q. -- and he's got the waiver and he's
16 getting --

17 A. I mean, they would continue to provide the
18 in-home services. Is that what you're asking me?

19 Q. He's getting diapers so he keeps the
20 waiver.

21 A. Okay.

22 Q. And in his plan of care, there's respite
23 services and adult companion services. Would you
24 agree with me that the local board that gets the
25 band payment has some control over how easy or hard

1 it is to find a respite caregiver and adult
2 companion?

3 A. I don't know how they would make it harder
4 to identify them.

5 Q. Tell me what your understanding is of the
6 process -- if an individual is living in the home
7 and they've got the waiver, tell me what your
8 understanding is of the process for that individual
9 to get adult companion or respite services.

10 A. Well, I haven't been through the whole
11 details. My understanding is that every year, if
12 you're on the waiver, you have to have a care plan
13 done, and that determines what services you get.

14 Q. So you've got a child who's being served
15 by the Babcock and your plan of care says 30 hours
16 a week of adult companion services.

17 A. Okay.

18 Q. How do you go about getting that? Does
19 that mean you'll get them?

20 A. I would hope.

21 Q. Have you heard from any family members
22 that are saying that the keepers of the band money
23 are preventing them from using those services
24 because they won't -- they make it difficult to
25 find adult companions?

1 A. No, I have not had any families complain.

2 Q. Have you heard that from anybody?

3 A. I've had concern about one family or two
4 families mentioned concern about providers having
5 to requalify every time they change counties, and
6 we've taken steps to handle that, but that's the
7 only direct thing that's come to me from families.

8 Q. Do the choice requirements require that an
9 individual have more than one choice of a service
10 coordination provider?

11 A. I don't know that it requires that you
12 have more than one. If there is more than one,
13 then you have a choice.

14 Q. Can the holder of the band payment prevent
15 or the Department prevent an individual from using
16 service coordination in another county if they
17 don't choose to use the service coordination
18 provided in their county?

19 A. I don't know.

20 Q. So if I have a child in Richland and
21 Lexington -- or Lexington County, is there any
22 legal impediment to my choosing to use an adjacent
23 county to provide service coordination?

24 A. Not that I'm aware of.

25 Q. As state director, would you support any

1 kind of impediment to using service coordination in
2 another county?

3 A. The -- it's kind of hard to think through
4 all the ramifications sitting right here right now.
5 If someone brought that as an issue, I'd be happy
6 to look at it.

7 Q. As state director, has it been brought to
8 your attention that there were multiple allegations
9 of sexual abuse in Sumter County at about the same
10 time that Edward Mims was being sexually assaulted?

11 A. I guess I'm going to have to say no. I
12 heard something about Sumter County, but I did not
13 get the details. I just heard there was an issue
14 in Sumter County.

15 Q. Do you know what that issue was?

16 A. No, I don't.

17 Q. So you don't know about the director of
18 the Sumter DSN board being arrested for sexually
19 abusing a client?

20 A. I think somebody did -- now that you say
21 that, I think somebody did, but no, I don't know
22 anything about it. I think I did hear that.

23 Q. Do you know about the lawsuit that was
24 filed by an attorney named John Miles representing
25 the employees who were fired when they tried to

1 report that --

2 A. No.

3 Q. -- to the local board?

4 A. No.

5 Q. As state director, if there's reprisals
6 taken against family members or employees when
7 consumers are being sexually abused, what is your
8 responsibility to protect those family members or
9 consumers from reprisals?

10 A. I missed a word in the first part of your
11 question.

12 Q. Okay. You're the state director.

13 A. Okay.

14 Q. And it's brought to your attention that
15 employees have been fired when they report that a
16 consumer is being sexually abused, and later the
17 director is arrested in connection with that.
18 What's your responsibility as state director?

19 A. My responsibility is to get in touch with
20 that board and be sure things are straightened up.

21 Q. And how would you go about doing that?

22 A. It really depends on the circumstances.
23 It could come, if it was something really serious,
24 to a direct contact with the board, asking internal
25 audit to take a look.

1 Q. Are you -- these are exhibits, and I don't
2 know if you have the list from yesterday. You
3 probably don't, do you? Okay.

4 These are some articles -- if you'll pass
5 those down. I provided those to y'all yesterday --
6 that were -- that came out in the various
7 newspapers about abuse and neglect at the Charles
8 Lea Center.

9 MR. STEGMAIER: Ms. Harrison, let me stop
10 you for a second because I just know from reading
11 hundreds of transcripts that this is going to
12 become very confusing.

13 MS. HARRISON: You're cutting into my two
14 hours, Christian.

15 MR. STEGMAIER: I know it. I understand.
16 You get credit. Let's go off the record for a
17 second.

18 (A recess transpired.)

19 MR. STEGMAIER: Just for purposes of
20 clarification with the record, we went ahead and
21 coordinated yesterday the marking of the exhibits
22 with what you've just handed out now, Exhibits 8
23 through 13 concerning Charles Lea Center.

24 What I've done for Dr. Laurent is just
25 marked at the top the numbers how they were marked

1 yesterday for just ease of reference. So if you're
2 asked a question, Dr. Laurent, just be sure to
3 reference the number.

4 THE WITNESS: Okay.

5 MS. HARRISON: And the Sumter numbers,
6 what were those?

7 MR. STEGMAIER: Three through seven.

8 BY MS. HARRISON:

9 Q. Dr. Laurent, I have provided you with some
10 articles about lawsuits related to abuse and
11 neglect of individuals at the Charles Lea Center.
12 Have any of these been brought to your attention?

13 A. No. Well, I haven't seen every one of
14 them. Give me just a minute. No.

15 Q. Were you aware of any lawsuits Charles Lea
16 Center settled in the last few years?

17 A. Excuse me?

18 Q. Were you aware of any lawsuits that the
19 Charles Lea Center settled in the last few years?

20 A. No, I was not.

21 MS. HARRISON: And I would just for the
22 record refer to Exhibits 8 through 13 from
23 yesterday's record.

24 BY MS. HARRISON:

25 Q. Mr. Laurent -- Dr. Laurent, these are

1 articles from the -- referring to the incidents in
2 Sumter County at the Sumter County DSN board there,
3 and I'd like for you to take a minute to look at
4 those.

5 A. Okay.

6 Q. Did your staff advise you of those
7 incidents?

8 A. No.

9 Q. Who would you be relying upon in your
10 staff to keep you apprised of things like this?

11 A. If this happened currently, the executive
12 staff would be the ones that would bring that to my
13 attention.

14 Q. What about do you expect them to tell you
15 about recent history, last few years?

16 A. If it directly relates to what we're
17 doing.

18 Q. And do you know if these lawsuits are
19 still pending?

20 A. No, I do not.

21 Q. Is that something you would expect -- who
22 in your staff would be responsible for telling you
23 about these things?

24 A. The -- are we part of this lawsuit?

25 Q. The Sumter DSN board, as I understand it,

1 has been sued.

2 A. If it related directly back to us, I would
3 assume whatever attorney is representing the State
4 or town would bring that to my attention.

5 Q. What if it's a county DSN board that's
6 being sued?

7 A. The -- I may or may not know about the
8 suit.

9 Q. So you don't feel that it's necessary for
10 you to know when a county DSN board director
11 sexually abuses consumers and the board gets sued?

12 A. You didn't ask me that. Yes, I do. But
13 that's -- we would be directly involved with the
14 patient care. The suit is another matter.

15 I mean -- you know, as a general
16 curiosity, you'd like to know, but that doesn't
17 affect us. Our job is to be sure that board's
18 doing what it's supposed to do.

19 Q. When somebody dies or is injured or is
20 sexually assaulted, is that not a quality indicator
21 that there's something wrong there?

22 A. There's something wrong.

23 Q. So is that something that you as director
24 would want to know about?

25 A. Yes.

1 Q. What responsibility do you as director
2 have to keep your commissioners informed about
3 things like this?

4 A. If it -- if it directly impacts the
5 Department, I have a responsibility to be sure they
6 know about it.

7 Q. What if a provider that's getting the band
8 payments is repeatedly sued, is that something you
9 should tell your commissioners about?

10 A. If it was something -- being sued does
11 not -- if you had confirmed allegations against a
12 provider and we have tried to correct it and had
13 real problems, that would be something to go to the
14 Commission because we'd be canceling the contract.

15 Q. How many contracts have you cancelled?

16 A. I don't know.

17 Q. Did DDSN cancel the contract to the
18 provider that had four times the substantiated rate
19 of abuse and neglect?

20 A. I don't know who the provider was.

21 Q. According to DDSN study, that was the
22 Babcock Center.

23 A. I think what they did was restrict the
24 number of -- I don't have any firsthand knowledge
25 there. I shouldn't comment.

1 Q. Have you had any communications with
2 Dr. Stan Butkus since you were hired for this
3 position?

4 A. I spoke to him one time.

5 Q. And when and where was that?

6 A. Well, I was in my office. We thought we
7 were going to have a dinner -- a luncheon for the
8 old commissioners, and I called him and invited
9 him, but it turned out it wasn't so.

10 Q. So did you have that dinner?

11 A. No.

12 Q. Do you know where Dr. Butkus is working
13 now?

14 A. No.

15 Q. So he hasn't called your agency and asked
16 for a recommendation?

17 A. He hasn't called me.

18 Q. Do you know if he's called anyone at your
19 agency --

20 A. No.

21 Q. -- and asked for a recommendation or does
22 anyone at your agency know where he is?

23 A. I can't answer that.

24 Q. But you haven't had any communications?

25 A. No, I have not.

1 Q. You don't know what he's doing?

2 A. No.

3 Q. Do you know if he's working in the field
4 of mental retardation --

5 A. No.

6 Q. -- developmental disabilities?

7 What do you know about the findings of the
8 South Carolina Supreme Court as they relate to the
9 duty of care in the Madison versus DDSN case?

10 A. Zero. I don't.

11 Q. Have you read that opinion?

12 A. No.

13 Q. Are you aware that that lawsuit is still
14 pending?

15 A. You'd have to tell me the nature of the
16 lawsuit.

17 Q. That is the lawsuit -- you may know it as
18 the Stephanie Bryant lawsuit.

19 A. I was briefed on the lawsuits generally.

20 Q. So tell me -- don't tell me what your
21 attorneys said, but tell me what you understand
22 about that lawsuit.

23 A. But I don't remember -- that one did not
24 stick.

25 Q. Which lawsuits are you familiar with that

1 are currently pending?

2 A. I really don't have any in-depth knowledge
3 of any of the lawsuits.

4 Q. But which ones do you know about?

5 A. Well, I know about the Mims suit
6 obviously, we're here. And I don't remember the
7 names on the other suits.

8 Q. What are the other lawsuits about?

9 A. I don't remember.

10 Q. Are there any other suits alleging abuse
11 and neglect?

12 A. I do not know.

13 Q. Tell me what you do know about the
14 lawsuits that are pending.

15 A. Again, I've had a general briefing. I did
16 not lock it in.

17 Q. What do you know?

18 A. Very little.

19 Q. How many of them are there?

20 A. I don't know.

21 Q. Have you discussed these lawsuits with
22 your commissioners?

23 A. I have not, no.

24 Q. Outside -- and don't tell me anything your
25 lawyers say, that's privileged, but I'm talking

1 about any communications when your lawyers aren't
2 there.

3 So you don't know how many lawsuits have
4 been filed against the Department?

5 A. No, I do not at this point.

6 Q. And you don't know whether any of those
7 are alleging abuse or neglect?

8 Other than the Bryant Madison lawsuit, are
9 there any lawsuits involving sexual abuse of
10 clients?

11 A. You're claiming in Mims it's sexual abuse,
12 are you not?

13 Q. Right. Any others?

14 A. Not that I know of.

15 Q. Tell me, how many hours is a family
16 allowed to have for respite now?

17 A. I do not -- I don't know. I think there's
18 not a limit on it directly. It's limited by need,
19 I believe.

20 Q. And I believe that your agency has
21 proposed some changes to that?

22 A. That's correct.

23 Q. And has your agency done any kind of cost
24 effectiveness analysis to determine what's going to
25 happen if those services are eliminated, the

1 other -- you know, for example, Edward Mims and
2 people like Edward Mims, if they're not able to get
3 the services they need in the home, they're going
4 to be costing the State because they're going to be
5 in facilities, or if somebody's not able to get
6 respite services they need or adult companion,
7 they're going to be -- you're not going to save
8 that money because they're going to be going to the
9 workshops.

10 Have you done any kind of cost analysis of
11 what the net effect is going to be if those
12 services are terminated?

13 A. There is a lot of ways of dealing with
14 services, and just limiting of those services will
15 not necessarily make someone be institutionalized.

16 Q. So if an individual like Edward Mims is
17 receiving eight hours a day of respite so that his
18 mom can work, do you think by eliminating respite
19 services there won't be any offsetting costs for
20 other services that he would be required to use?

21 A. There would be some.

22 Q. And what would those be?

23 A. I mean, it depends how he approached
24 dealing with the issue. If they used community
25 services, different things, yes, there are some

1 offsetting things.

2 Q. And has your agency performed a cost
3 analysis looking -- I know you've done an analysis
4 and you've said this many people receive these
5 services and if we don't provide these services
6 anymore, this is the amount that we won't pay for
7 those services. Is that true, y'all have done that
8 kind of analysis?

9 A. We've done that.

10 Q. What other cost -- what other analyses
11 have you done to come up with the decision to
12 recommend -- that you took to HHS to recommend
13 changes to the waiver?

14 A. We have an immediate budget problem, and
15 there are some changes to help toward that
16 immediate budget problem. There is a longer-term
17 budget problem.

18 Our waiver's the only waiver I'm familiar
19 with that are not going to have some sort of cap on
20 them because if your dollars are capped, then you
21 cannot have growing programs.

22 Q. I don't understand that.

23 A. If services continue to grow, the only way
24 you can pay for them is to cut slots and give
25 people nothing.

1 Q. Let's look at the budget issue. Isn't the
2 federal government going to increase the
3 reimbursement rate from 70ish to somewhere
4 79 percent?

5 A. You're talking about the stimulus.

6 Q. Stimulus money.

7 A. Yes. Yes.

8 Q. So you'll be getting more federal dollars
9 coming in for every dollar of State?

10 A. The State will, we won't.

11 Q. But that money -- you have X dollars of
12 State that's already been allocated?

13 A. That's correct.

14 Q. And when the federal money comes in, your
15 State dollars will be matched with more federal
16 dollars. Is that --

17 A. No. The way they're handling that is when
18 the federal dollars come in, they go to an account
19 at the comptroller general and then they're
20 appropriated back to the agency just like any other
21 State dollar.

22 Q. The Medicaid -- let's say that you have
23 100 million dollars.

24 A. Okay.

25 Q. Just for example. And is it not true that

1 if you have 100 million dollars, under the old
2 system, under the old reimbursement rate, that you
3 would be matched about 2.33 for one for that
4 hundred million dollars?

5 A. Okay.

6 Q. So you would get 233 million --

7 A. Close enough.

8 Q. -- to match it?

9 A. Okay.

10 Q. Now, as long as you have X State dollars,
11 HHS just submits the bill to Medicaid and they have
12 to pay it. Is that not correct?

13 A. We submit a bill and they pay it subject
14 to lots of checks and balances and those kinds of
15 things, yes.

16 Q. But if you've got a hundred million
17 dollars, there's no cap on what you can bill HHS,
18 you just get reimbursed for what you provide. Is
19 that not correct?

20 A. Yes, we get reimbursed for what we
21 provide. I don't know about limit on what we bill.
22 Our restriction on billing are the max dollars we
23 have.

24 Q. And those max dollars are set, the State's
25 allocated you X dollars?

1 A. That is correct.

2 Q. And then with the stimulus money, that
3 increased how much you'd have available, did it
4 not?

5 A. No, ma'am.

6 Q. It didn't?

7 A. Uh-uh.

8 Q. So you're not going to have any more money
9 prior to this increase in the stimulus than you had
10 before?

11 A. We're going to have 20 million less.

12 Q. So -- and that's based on -- who did that
13 analysis?

14 A. I mean, it's --

15 Q. Who's responsible for that analysis saying
16 that there will be 20 million less after the
17 stimulus money?

18 A. That's what's in the budget.

19 Q. And that considers all of those dollars
20 intended for Medicaid being spent for Medicaid
21 services?

22 A. Yes, ma'am.

23 Q. Now, if you've got -- so you're saying
24 you've got 20 million less than you had last year?

25 A. Yes. For the base, that's correct.

1 Q. 20 million of State dollars less or
2 20 million total less?

3 A. Okay. It's more complicated than that,
4 Ms. Harrison. That's the problem.

5 Q. I've got an MBA, I can understand the
6 numbers.

7 A. No, I'm talking State matched dollars.

8 Q. So you've got 20 million less --

9 A. Last year we were cut roughly 41 million
10 dollars. This legislature gave us back 21.

11 Q. So you're talking State dollars?

12 A. State dollars.

13 Q. You're 20 million short?

14 A. Uh-huh.

15 Q. And now, though, you can take those -- so
16 let's say we had a hundred million --

17 A. Which includes stimulus dollars.

18 Q. Let's say we had a hundred million last
19 year.

20 A. Okay.

21 Q. State dollars.

22 A. Okay.

23 Q. Right?

24 A. That's right.

25 Q. And they've cut you by 20.

1 A. Okay.

2 Q. Then we'd have -- we would have 80 million
3 of State dollars. Is that right?

4 A. That's correct.

5 Q. Now, previously, you were only getting a
6 70 percent match for that hundred million. Now you
7 get, what is it, 79 percent match?

8 A. Yes. That's what the State gets, but we
9 do not get those dollars.

10 Q. I'm sorry, I would like for you and I to
11 continue this discussion outside of Mims and not in
12 a deposition.

13 A. I can show it to you.

14 MS. HARRISON: Certainly I would love for
15 you to be there, Ken, and I am concerned from a
16 systemic standpoint about the money. I'm not
17 trying to talk to your client, but I don't want to
18 use up deposition time.

19 MR. WOODINGTON: It may be fine for me if
20 Tana's there for that and not me depending on what
21 Dr. Laurent wants.

22 BY MS. HARRISON:

23 Q. Well, can we continue this another time?

24 A. Anytime -- well, not anytime. Whenever we
25 can fit it in.

1 Q. I'll move on then.

2 How these changes are occurring, do you
3 know prior to Edward Mims going into a facility how
4 many hours of respite he was receiving?

5 A. No, I have no idea.

6 Q. So you don't know whether the amount of
7 services under this new plan would make that more
8 difficult for his mom to keep him at home?

9 A. I've got no idea. And --

10 Q. So tell me -- and I'm about to wrap up
11 here. Tell me again -- I want to get straight in
12 my mind -- you've got that analysis that says this
13 is how much we're paying for each of these
14 services. What other cost analysis do you have
15 that eliminating these services will save the State
16 of South Carolina any money?

17 A. The -- well, in essence, I don't have what
18 you're looking for because the actual cost of the
19 program is going to be determined by the
20 combination of services put together for that
21 person. Now, there's so much money that goes to
22 each person.

23 Q. Are you intending -- have you advised the
24 boards that their band rates will be reduced?

25 A. That's how you get the money for -- when

1 you reduce the services, you adjust the band rates
2 down, and that's how you recoup the cost.

3 Q. So do the local boards know by this change
4 in these services that their band rates will be
5 reduced by that amount?

6 A. I can't say that they all do, but I don't
7 know how they wouldn't. I've talked to them.

8 Q. How will these changes affect the ability
9 of people like Ed Mims to remain in the home?

10 A. I hope they wouldn't affect it a whole
11 lot. But I don't have enough knowledge of the --
12 all the services out there and how you put them
13 together to answer that question.

14 Q. And who does?

15 A. Dr. Lacy.

16 Q. So there's no cost analysis that's been
17 performed projecting the offsetting services people
18 will go to as a result of these proposed changes?

19 A. Well, we know that this waiver -- not in
20 that exact form, no.

21 Q. Has your agency done any study of how this
22 will affect people's ability to choose their
23 provider?

24 A. I don't know that that would have any
25 impact at all.

1 Q. Have you studied that?

2 A. I have not.

3 Q. Do you know if anyone has?

4 A. No.

5 Q. I might be through.

6 Do you have any opinion as to the validity
7 of the allegations that have been made in the Mims
8 case?

9 A. That would be hard for me to have an
10 opinion.

11 MS. HARRISON: That's all I have.

12 MR. WOODINGTON: I don't have any
13 questions.

14 MR. STEGMAIER: None for me.

15 (The deposition concluded at 3:53 p.m.)

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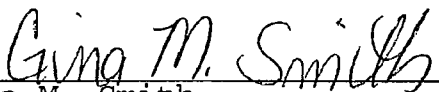
1 CERTIFICATE OF REPORTER

2
3 I, Gina M. Smith, Registered Professional
4 Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and at the time and location
7 stated on page 1 of this transcript; that the
8 deponent was duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that the
10 testimony of the deponent and all objections made
11 at the time of the examination were recorded
stenographically by me and were thereafter
transcribed; that the foregoing deposition as typed
is a true, accurate and complete record of the
testimony of the deponent and of all objections
made at the time of the examination to the best of
my ability.

12 I further certify that I am neither related
13 to nor counsel for any party to the cause pending
or interested in the events thereof.

14 Witness my hand, I have hereunto affixed my
15 official seal this 17th day of June, 2009, at
Columbia, Richland County, South Carolina.

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18
19 
20 Gina M. Smith
21 RPR, CSR, Notary Public,
22 State of South Carolina
23 at Large.
24 My Commission expires
25 July 23, 2013.

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(None was proffered.)

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