THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

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S.C. SUPREME COURT

Unpublished Opinion No. 2015-UP-209
Appellate Case No. 2013-002058

Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted], a minor.....Petitioner,

v.

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department Of Social Services and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County

Of whom

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center is..... Respondent.

Appendix

Volume of II of III

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EXHIBIT

"36"

[redacted] 000-545-02-19

DATE OF SERVICE: 02/17/2010.

ATTENDING PHYSICIAN: Dr. Colleen Wunderlich.

SUBJECTIVE: [redacted] was seen in the play gym this morning working with his physical therapist. His mother is present on the floor today but is currently in her room awaiting a phone call. She continued to stay with [redacted] last night and continues to do very well with him. [redacted]'s discharge is currently on hold secondary to DSS prohibiting him from going home with his mother with his grandmother present. His mother is currently working on clarifying what she needs to do to take [redacted] home with DSS and also working on finding alternative housing so she does not have to stay with her mother. [redacted] continues to be pleasant, interactive, and his therapist states that he is smiling more readily.

OBJECTIVE:

Vital signs: Temperature 98.3, heart rate 142, respiratory rate 32, blood pressure 142/76. In general, [redacted] is awake, alert, smiling, tracking in no acute distress. Lungs: Clear to auscultation bilaterally without adventitious sounds. Cardiovascular: Heart with regular rate and rhythm, no murmurs, rubs or gallops. Abdomen: Soft, nondistended, nontender, normoactive bowel sounds. PEG tube in place. Extremities: No clubbing, cyanosis or edema. He continues to exhibit volitional movement of all extremities.

LABORATORY: No new labs.

ASSESSMENT AND PLAN: [redacted] is a delightful 4-1/2-month-old infant boy with acute on chronic subdural hematoma status post nonaccidental trauma x2 with multiple functional impairments and cortical visual impairment as well as state dysregulation, seizure disorder and right-sided hemiparesis.

PLAN:

1. Continue comprehensive inpatient rehabilitation program with three hours of interdisciplinary care per day with physical, occupational and speech therapies. This level of care cannot be provided at a lower level. Continue 24/7 rehabilitation nursing for medication administration, family teaching. [redacted] also requires support of a specialty trained pediatric rehabilitation physician.
2. [redacted]'s mother did very well with her TLA stay yesterday with no issues. Discharge plan is currently on hold as above and will continue to follow with continued communication with DSS.
3. State dysregulation secondary to severe traumatic brain injury. Continue Klonopin 0.625 mg q.a.m. and noon with 0.5 mg q.h.s. He continues to be awake, comfortable and not sedated on this regimen. He continues to have improvement in his state regulation and is exhibiting volitional movement of all four extremities.
4. Seizure disorder. [redacted] will continue Keppra for at least two months with plans of repeat EEG on an outpatient basis. He will follow up with Dr. Parrott on an outpatient basis and we appreciate Dr. Parrott's continued assistance.
5. Nutrition. [redacted] continues to tolerate his tube feeds via the PEG tube. We appreciate nutrition's assistance. In addition, speech therapy would like to repeat a modified barium swallow tomorrow as they feel that he may have progressed since his last MBS.
6. Sleep/wake cycle. Continue Benadryl 2.5 mg q.h.s. p.r.n. as well as Klonopin q.h.s.
7. Social services. DSS continues to be highly involved as above. Visitation plan continues to involve supervised visits only for [redacted]s maternal grandparents.
8. Outpatient follow up with neurophthalmology as planned.

EXHIBIT 36

EXHIBIT

"37"

LEVINE CHILDREN'S SPECIALTY CENTER
HISTORY & PHYSICAL

Carduff, Owen Michael **000-545-02-19**

DATE OF ADMISSION TO CAROLINAS REHABILITATION AT LEVINE CHILDREN'S HOSPITAL: 01/25/2010.

DATE OF ADMISSION TO LEVINE CHILDREN'S HOSPITAL: 01/11/2010 through 01/20/2010.

DATE OF ADMISSION TO PATRICK HOSPICE HOUSE: 01/20/2010 through 01/25/2010.

PRIMARY CARE PHYSICIAN: Dr. Paxtor at Sunshine Pediatrics in Rock Hill.

PRIOR NEUROLOGIST: Dr. Parrott.

HISTORY OF PRESENT ILLNESS: [redacted] is an adorable 4-1/2 month old male baby who has had a rather complicated medical history with nonaccidental trauma and acute on chronic left frontal subdural hematoma. His first hospitalization to LCH was 12/09/2009 for an acute life-threatening event with a CT scan at that time showing a faux subdural hematoma as well as right convexity hematoma. Nonaccidental trauma survey done at that time was negative. DSS was involved early and advised parenting classes and a home evaluation upon discharge.

He returned to LCH on 01/11/2010 as an emergent transfer from Piedmont Medical Center with new subdural hematoma and status epilepticus. A new left subdural hematoma was found at that time as were bilateral retinal hemorrhages.

During this second hospitalization he continued to have seizures requiring Ativan, phenobarbital and fosphenytoin, as well as an EVD for elevated ICP, mannitol, hypertonic saline and Thiopental. Subsequent imaging showed left frontal subdural hygroma with abnormal signal in the basal ganglia bilaterally and splenium of the corpus callosum consistent with sequellae of anoxic brain injury, as well as abnormal subcortical white matter throughout the cerebral hemispheres, also consistent with anoxic brain injury.

Neuroradiology and ethics were consulted to help with long-term prognosis and decision making regarding withdrawal of care. It was decided that his long-term prognosis was very poor and support was withdrawn on 01/18/2010 with plans to transition to acute hospice care. Following extubation and discontinuation of sedation [redacted] was showing some spontaneous eye opening, active gag and cough, spontaneous breathing, withdrawal to pain and very little spontaneous movement. He was continued on IV phenobarbital for seizure prophylaxis, as well as p.r.n. morphine for perceived pain and comfort.

He was transferred to Patrick Hospice House on the 20th. Physicians there report that he was vacant and lethargic upon arrival, but quickly began showing improvement. He began rooting and started taking small p.o. feeds and advancing to formula via bottle. He has been showing some feeding behaviors and becoming more responsive. It still has not seemed that he is seeing or hearing. Given the significant improvements over the last several days, and in concordance with the family's wishes, [redacted] was reevaluated by physical medicine rehabilitation and is being transferred for comprehensive inpatient rehabilitation for his traumatic brain injury and associated neurological deficits.

Today [redacted] is accompanied by his maternal grandparents who must legally supervise his mother at all times, as well as his mother who has custody and may sign all consents (no other visitors are allowed). They report that he is doing much better than they anticipated, however, has been very fussy. When he is awake he seems to cry almost constantly with a very high-pitched cry. This has been alleviated by p.r.n. morphine intermittently.

Additionally, he has not been sleeping very well at all. They have not noticed any response to visual or auditory stimuli. They report that he is starting to use his left side more and more. They report that he is having several wet diapers a day and has had some regular bowel movements. They report that he has shown times of aggressive sucking on a pacifier and has been taking small amounts of formula and Pedialyte when offered at hospice.



EXHIBIT

"38"

1/4/10	Staffing with Supervisor Current Situation: Hospital cannot determine if hematomas are Accidental or non-accidental. Concerns for lack of supervision. Charlotte babysits [redacted] Baby is doing well. Crib and all baby s Supplies in home. Recs: Get all medical records; follow up with Law Enforcement. What is their status? Assess Grandmother's home-get Incident reports	Krista
1/11/10	Collateral Contact Telephone contact received telephone call stating that [redacted] was still actively seizing and Michael Carduff was Found guilty-He admitted to shaking the baby	Dirvondra
1/[redacted]1/10	Face to Face with child/client Safety Plan-[redacted] has acute bleed in the head; actively Seizing, multiple bruises chest, ar, thighs, and legs, actively Seizing not a good sign-2nd injury much more serious this time. Kayla and Michael will have no unsupervised contact with [redacted] will not go home with Kayla and Michael. Levine Children's Hospital will contact York County DSS when minor child to be released/discharged. Both parents Will comply with safety plan-failure will result in court Intervention. CM Hill will follow up ALL parties and request Records, etc. Parents never arrived back at the hospital-CM Spoke with Charlotte Williams regarding the safety plan and Hospital staff-A copy of Safety Plan was placed in [redacted]'s file.	Dirvondra
[redacted]1/10	Collateral Contact SW-Yvette: Case manager inquired about Medical Records for The minor child [redacted]-CM informed she would need a Release of Information form the parents and they would not be able To give medical records to her tonight-they stop giving medical Records at a certain time-CM would need to get in contact with the Hospital in the morning regarding receiving medical records.	Dirvondra

Information highlighted in Blue are documents, forms and etc. in the case record.

EXHIBIT 28 507

EXHIBIT

"39"

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT
Civil Action No: 11-CP-46-04508

ELIZABETH HOPE RAINEY, as the APPOINTED GUARDIAN ad LITEM to [redacted] a minor,

Plaintiff,

vs.

CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS MEDICAL CENTER, SOUTH CAROLINA DEPARTMENT of SOCIAL SERVICES, BRUCE BRYANT as the CONSTITUTIONAL OFFICER OF YORK COUNTY,

Defendants.

VIDEOTAPED DEPOSITION OF LAURA NEWMARK, MSW

T R A N S C R I P T of the deposition in the above-entitled matter by and before KAREN ANN KOCSIS, a Certified Court Reporter and Notary Public of the State of South Carolina, held at the CAROLINAS MEDICAL CENTER, 1000 Blythe Boulevard, Dining Room #4, Charlotte, North Carolina on Thursday, September 27, 2012 commencing at 10:23 a.m.

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ALSO PRESENT: Videographer, Brooks Oswald

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A Sure.
Q Okay. And after being admitted to -- I'm going to call it L -- LCH.
A That's fine, yes.
Q Levine Children's Hospital. If I use the term "LCH" or "Levine Children's Hospital" or "Levine," I'm talking all about the same entity.
A Right.
Q Okay. So after being admitted to LCH, the child was eventually discharged back to his parents; right?
A Yes.
Q And you're aware that approximately 30 days after that, the child came back to Levine Children's Hospital and was catastrophically brain injured?
A Yes.
Q And if he had never been put back with his parents, back to the abuser, the child -- it would have never happened, would it?
MS. BROOKS HOLMES: Objection.
MR. FRAWLEY: Object to form.
THE WITNESS: I can't answer that.
BY MR. HOOD:
Q Why can't you answer it?

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A Because I don't know what would have happened.
Q Okay. Let's -- let's -- let's break it down a little bit for you.
He doesn't go back to his parents on December the 8th, he goes into foster care; right?
MR. TODD: Objection.
BY MR. HOOD:
Q Or with another relative?
MR. TODD: Objection.
MR. FRAWLEY: Same objection.
MS. BROOKS HOLMES: Same objection.
BY MR. HOOD:
Q You can answer.
A I don't have any say as to where he goes upon discharge, as a hospital employee.
Q You work hand-in-hand with a state agency, you-all were retained to determine what happens with a child where there is suspected child abuse involved.
A I --
MR. TODD: Objection.
BY MR. HOOD:
Q You can answer.
A I am a liaison between the medical team

Page 11

and DSS.
Q Okay. As a liaison, you are the person that helps get whatever the medical discharge is going to be; right?
MR. TODD: Objection.
THE WITNESS: No.
BY MR. HOOD:
Q Okay. As the liaison, you work as a person between the state agency and the medical doctors?
A Yes.
Q And then you help those two people come together to determine what's in the best interest of the child?
MR. TODD: Objection.
THE WITNESS: No. I share information on the clinical status and what's going on with the patient with DSS, who has the ultimate discharge plan put in place.
BY MR. HOOD:
Q Okay. But I thought that you, according to your own algorithm, that you-all had to do it together?
A I give them information. I don't control the final decision.

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Q Who controls the final decision?
A DSS.
Q Okay. Let me look at your algorithm.
(Child Abuse and Neglect Algorithm marked as Plf's Exh 2 for identification.)
THE WITNESS: Could I get to look at it?
BY MR. HOOD:
Q You're now looking at Plaintiff's Exhibit 1, which are some -- looks like typewritten or some electronic-type of documentation about this baby and then -- that's Exhibit 1, and then Exhibit 2 is a Child Abuse and Neglect Algorithm from Levine Children's Hospital; right?
A Are you asking me? Yes.
Q Yes.
A Yes.
Q Okay. Now, I'm going to go through 2, and then we'll go to 1; okay?
A Okay.
Q Number 2, it says, "Medical team identifies child in whom abuse or neglect is suspected."
Do you see that?
A Yes.
Q And in this case they identified a child

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Q I'm inviting you to tell them who is more vulnerable than a baby under the age of six months? Tell us.

MR. TODD: Objection. This is all argument, this is not --

MR. HOOD: I can ask her any question I want to, brother.

MR. TODD: No, you can't, but you can ask that one.

MR. HOOD: Okay.

MR. TODD: But it's argument and it's really not appropriate.

MR. HOOD: Okay. Who is the most --

BY MR. HOOD:

Q Okay. Explain to me, what the question, who is the most vulnerable in society, tell me how that's argument?

MR. TODD: Look, you're misinterpreting the question. She said --

MR. HOOD: No, no, that's what you said.

MR. TODD: You said that a baby under six months is vulnerable.

MR. HOOD: No, she didn't. I said, "Who is the most vulnerable."

MR. TODD: Anyway, you can go ahead,

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answer if you want to waste our time.

MR. HOOD: Please answer.

THE WITNESS: I don't disagree that a baby under six months is vulnerable. I'm just not saying that they are perhaps the most vulnerable portion of our entire society.

BY MR. HOOD:

Q Okay. And my question is, if they are not the most vulnerable, tell this jury who is the most vulnerable other than a baby under the age of six months?

A I don't think, in my experience as a social worker, that I have the ability to say who's most vulnerable in our society. I'm not disagreeing that a baby under six months is vulnerable.

Q Okay. And is a baby under six months, which Owen Carduff was --

A Yes.

Q -- if you can't rule out that he was a victim of child abuse --

A Right.

Q -- how is he discharged back to his parents?

MR. FRAWLEY: Objection to form.

THE WITNESS: I -- I can't answer that,

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because I didn't make that decision. The workup couldn't say definitively that he was the victim of abuse.

BY MR. HOOD:

Q Have you ever heard of the term "err on the side of caution?"

A Yes.

Q Okay. And when you have a child who may or may not be a victim of child abuse --

A Mm-hmm.

Q -- what is the safest way to ensure they are safe?

MR. TODD: Objection.

MR. FRAWLEY: Objection to form.

THE WITNESS: The safest way to ensure that --

BY MR. HOOD:

Q That the baby is not going to be abused again.

A Part of the safety net and working on discharge, as far as the hospital social work piece, is to get DSS involved, because they can be involved in the home community, where we can't.

Q Okay. And then let's go back to this -- this algorithm that we looked at earlier, and I

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believe that was Exhibit 2, at the bottom.

A Yes.

Q At the bottom it says, "when medically cleared." Do you see that?

A I do.

Q Okay. And what is "medical clearance?"

A When the child would be medically stable enough to leave the hospital.

Q Okay. Does that mean that the child -- even if they are medically stable, does it mean that it's in the best interests of the child to go back into the care of their parents?

A The -- I don't -- I don't really understand what you're asking.

Q Sure. When you say they are medically cleared, that means the child is stable.

A Medically stable.

Q For whatever the reason -- excuse me, I apologize.

A Yes.

Q So they're stable from the standpoint of the reason they actually came into the hospital in the first place?

A Right.

Q Okay. And when they are medically stable

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for the reason they came into the hospital, "do not discharge until disposition has been determined by medical social worker and DSS."

That's what that says, right?

A I see that.

Q You have a joint responsibility, don't you?

MR. TODD: Objection.

THE WITNESS: My responsibility as the medical social worker is to communicate information to DSS from the team and back to the medical team from DSS.

BY MR. HOOD:

Q Okay. And where is that on the algorithm?

A I don't know.

Q Okay. Let's look at the policy, then. Let's look at your Child Maltreatment Guidelines, maybe we can find something there.

MR. HOOD: Can I have this marked as 5?

THE REPORTER: Here you go.

THE WITNESS: Thank you.

(Child Maltreatment Clinical Practice Guidelines received and marked as Plf's Exh 5 for identification.)

BY MR. HOOD:

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Q Have you ever seen this before?

A Probably. I can't say exactly when and where I would have.

Q Okay. At the top it says, "Child Maltreatment Clinical Practice Guidelines, Clinical Practice Guidelines, CHS inpatient units in emergency department, evaluation and management of the suspected child abuse or neglect."

Do you see that?

A Yes.

Q And do you see under the big Roman numeral I, it says, "Child physical abuse"?

A Yes.

Q And then under A it says "Identification." Do you see that?

A Yes.

Q And then it says, "Injuries, bruises, burns, fractures; This list is not inclusive (that should be considered suspicious for physical abuse:)" Do you see that?

A Yes.

Q "Number 1, age zero to six months: Any injury." You see that; right?

A Yes.

Q This child was about three and a half

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months old at the time he came in; right?

A If you say so.

Q I'll represent --

A It says two months on my note.

Q He was born in September.

A Okay.

Q I think it's like the middle of September, and then he came in the 1st of December. So he was between two or three months, something like that.

A Okay.

Q That would be between zero and six months though; right?

A Yes.

Q And then B, "Essential aspects caretaker history." Do you see that?

A Yes.

Q It says, "Does the parent, guardian or child give a logical explanation that is consistent with the age, pattern and severity of the injury."

Do you see that?

A Yes.

Q "This should be assessed by clinician familiar with normal pediatric development."

Do you see that?

A Yes.

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Q Now, as part of the social worker team at Levine Children's Hospital, did you have interaction with the parents in this particular case?

A Yes.

Q Okay. And did you attempt to assess or determine what was the cause of this subdural hematoma?

A I would have taken a history from the parents on had there been any recent trauma.

Q Okay. And in this case, the parents said they don't know how it occurred; right?

A They didn't have any history of a traumatic event.

Q So there would have been no explanation, a logical explanation, that was considered -- consistent with the age, pattern or severity of the injury, did they?

A They didn't have a history of trauma that would have explained an injury.

Q Okay. And according to your note, this -- this -- this one that we had looked at earlier, this Exhibit -- Exhibit 1.

Before you would have done your note on 12/7, you would have looked at the other person's note on 12/6; right?

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first about [redacted] on 12/4/09.
A Okay.
Q It has "D-C home," that's discharge home; right?
A Yes.
Q Okay. So my question is, there appears to be some type of -- someone who is tracking what's happening with those at-risk children in regard to their -- what's happening when they leave; right?
A It looks like Lynn has kept a database, yes.
Q Okay. And that some of these at-risk children are discharged home; right?
A Some of the kids that have had a workup or had DSS involvement, yes, they're discharged home.
Q And then some are discharged to a relative.
A Yes.
Q And then some may be discharged to a foster care situation.
A Yes.
Q And all of that is dependent upon the decisions by the hospital and the county social work state agency?
MR. TODD: Objection.

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MR. FRAWLEY: Same objection.
THE WITNESS: I -- no.
BY MR. HOOD:
Q Okay. And whose decision is it where the child goes?
A The county DSS agency.
THE REPORTER: I'm sorry?
THE WITNESS: The county DSS agency.
BY MR. HOOD:
Q Okay. And if -- so is it your -- and I'm not saying it is -- is it your testimony, that the hospital has no responsibility as far as the child being able to leave if they can't rule in or rule out non-accidental trauma?
MR. TODD: Objection.
THE WITNESS: That the hospital -- say that again.
BY MR. HOOD:
Q Sure, sure. And I apologize, it may have been inartful.
Do you have an opinion --
A Okay.
Q -- about whether the hospital has a responsibility to [redacted] to ensure his discharge back to a safe environment?

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MR. TODD: Objection.
MR. FRAWLEY: Objection to form.
THE WITNESS: In my opinion?
BY MR. HOOD:
Q Yes.
A I think that the medical team has a responsibility to do a workup on a child that comes in with an unexplained injury and part of that is calling DSS, working with them, making sure they have all the right information, doing everything we can to do a complete workup, as a way to help protect him. I --
Q Okay, okay. And so the medical workup in conjunction with the work of the state child welfare agency --
A Um-hmm.
Q -- would then determine his most likely placement?
A I would hope that a medical workup, being communicated well with the local DSS agency, would help in assuring a safe discharge.
Q Okay, okay, okay. And you would agree that a safe discharge would be appropriate for a vulnerable child?
MR. TODD: Objection.

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You go ahead and answer.
THE WITNESS: You know, I think certainly we hope that whatever happens would be medically safe and stable for the child.

BY MR. HOOD:
Q Okay. Now, you've been working in a hospital environment for -- for how long have you been at --
A I started in January of '03.
Q Okay. So at the time that this occurred, about six years; right?
A Part time.
Q Part time. And before that, had you ever worked for a county agency?
A Not a DSS, but a county mental health, yes, in the school system, yes.
Q So you had worked with children before you actually came to Levine?
A Yes.
Q Okay. And you had received training in regard to being able to spot child abuse; right?
A Yeah -- yes.
Q Okay. And you are aware that an unexplained subdural hematoma is not normal for a

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Q Back into the same environment; right?
A I don't know who's present before, during, after, but he was discharged home, yes.
Q Okay. With his mother and father?
A Yes.
Q The same people that had no explanation for the bruise or the subdural hematoma; right?
A Mm-hmm.
MR. TODD: Okay. You need to answer -- We've I think everybody is getting your answer, but the court reporter likes a verbal response.
THE WITNESS: Sorry, I'm sorry.
MR. TODD: And the videographer likes a -- to be able to pick it up on the microphone.
THE WITNESS: Okay.
MR. TODD: I think we all understood your answer.
MR. HOOD: And what we may do, if you-all want to, I don't know what we're going to -- from a housekeeping perspective, but if you want to take a break like every hour or so, and I don't care. I'm perfectly fine to keep going.
MR. FRAHLEY: How much time we've been going?

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THE VIDEOGRAPHER: 85 minutes.
MR. HOOD: We've been going 85?
THE VIDEOGRAPHER: No, that's how long the tapes are.
MR. HOOD: Okay. How long --
MR. TODD: You need a break?
THE WITNESS: Yeah, a break would be nice.
(Brief recess.)
EXAMINATION
BY MR. HOOD:
Q I want to go back to what your role is, if that's okay.
A Okay, sure.
Q And I know you've got a master's and -- and I believe -- and correct me if I'm wrong, please correct me if I'm wrong.
A Mm-hmm.
Q It's my understanding that you're a liaison between the medical team providing care for Owen in the hospital and the DSS worker from South Carolina.
A Yes.
Q Okay. Now, is it your testimony -- and I'm not saying you've testified this way, I'm just trying to find out.

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A Right, sure.
Q Is it your testimony that you have no decision-making ability in that regard?
MR. TODD: Objection.
THE WITNESS: Decision-making ability in what regard?
BY MR. HOOD:
Q If anything, all you are is just a messenger back and forth between the two of them.
A No, I can give my opinion to the doctors or -- and say that if there's anything in particular.
Q Okay. Well, in this particular case, what insight did you give to the doctors?
A I don't recall, off the top of my head, the conversation, I mean...
Q Let's look at this. The only thing that I can see that really has your stuff on there is this -- where you -- you had your notes.
A This one?
Q Yes. And I think that was Exhibit 1.
A Um-hmm.
Q And that actually has Laura Newmark at the bottom of it; right?
A Right. Yes, that's my signature.

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Q Right.
A '93 or '94?
Q Yes. '93.
A Okay.
Q And we'll get to the other.
But it says, "DSS to staff determine likely to allow discharge home with parents, child maltreatment coordinator has seen child as well, nursing following updated RN Tracy will follow."
A That's "neurosurg," not "nursing."
Q Okay, I'm sorry, neurosurgery.
And neurosurgery, in this case that was Dr. Scott McClanahan then; right?
A I think I saw his name, I don't remember.
Q Okay. Now, would you have spoken to neurosurgery?
A Not typically, no.
Q Is -- is -- and this is where I'm trying to get an understanding. What is the CHIPS team at LCH?
A That is the children's hospital inpatient services.
Q Okay.
A So it's the staff physicians, the staff pediatricians and the residents that are rotating

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accidental or non-accidental"?
A I don't recall specifics of the conversation.
Q What about the generalities of the conversation?
A I don't have any clear recollection.
Q In going through the medical records and looking at this and thinking back, do you have a general idea about what you would have determined whether it was accidental or non-accidental?
A I'm sorry, I didn't follow you.
Q Sure. In this particular case, I believe you testified earlier that you would have had some conversation with a doctor; right?
A Yes.
Q Krista Hinnant says -- she documents that she has spoken to you.
A Okay.
Q Now, I'm not saying you did or you didn't, but she's documented that?
A Sure.
Q And then I think you've documented that you did speak to Krista Hinnant; right?
A Right, sure.
Q And then in hers it says, "The hospital

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cannot determine whether injuries are accidental or non-accidental."
A Okay.
Q It appears that that information is coming from you; right?
A Right.
Q My question is, do you -- how did you get that information that they couldn't determine one way or the other?
A I would have reviewed his progress notes, the notes from the doctors --
Q Okay.
A -- specialists, subspecialists, and talked with the physician.
Q And when you talked to the physician, you're talking about somebody that is a member of the CHIPS team?
A Yes.
Q Okay. After that it says, "Owen's eye exam and skeletal survey were negative."
Do you see that?
A Yes, I do.
Q And now, you probably don't know this, but I'm going to ask, do you know if he was seen by a pediatric ophthalmologist?

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A I don't know. I know there are pediatric ophthalmologists on staff.
Q Okay.
A I don't know specifically who saw him.
Q Do you know if they did a direct eye exam or indirect eye exam?
A I wouldn't know.
Q Do you know if they used fluoroscopy or not?
A I would not know.
Q Okay. Says, "Going to repeat CT today, because Owen's head appears to be swollen. Family has no clear history of trauma; however, hospital cannot rule out trauma."
Do you see that?
A I do.
Q Now, if you can't rule out trauma, how can a child be medically discharged back to his parents?
MR. TODD: Objection.
THE WITNESS: I -- he was medically ready for discharge.
BY MR. HOOD:
Q "Medically ready" does not mean safe for the juvenile to the return to his parent, guardian, custodian or caretaker, though, does it?

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MR. TODD: Objection.
THE WITNESS: They're two different things, yes.
BY MR. HOOD:
Q Okay. And I understand "medically stable," that's like if he came in with a subdural hematoma, they could have some kind of sequelae or something -- a physical manifestation or some kind of something that caused a medical condition and they've got to treat that; right?
A Right.
Q And -- and he then becomes stable, his vitals were okay, subdural -- the repeat CT shows the subdural is being absorbed, and -- and he is, by all intents and purposes, okay to discharge from a medical standpoint.
A Yes.
Q Now, but as you said, it's different than safe to discharge to return to parent, guardian, custodian or caretaker, though; right?
A I don't think we can predict the future on what is or isn't going to happen in working with DSS.
Q And I agree, you don't have a crystal ball.

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A Yes.
Q That would be important to someone from DSS?
A Yes.
Q And if the safety plan was to follow the medical advice of the hospital and doctor recommendations not to remove child from hospital until medical discharge, if that was the safety plan, that they are not going to remove them from the hospital until the doctor says it's okay, is that okay with you?
MR. TODD: Objection.
MR. FRAWLEY: Objection to the form.
THE WITNESS: So I --
BY MR. HOOD:
Q Let me ask you a different question.
A Yeah, I don't understand.
Q Terrible question.
You see safety plan where it says "Follow medical advice of hospital and doctor recommendations" --
A Right.
Q -- "not to remove child from hospital until medical discharge." You see that; right?
A Yes. I read those as two different

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things.
Q Okay. How do you read those?
A I read that as "Follow medical advice of the hospital and doctor recommendations," which is pretty typical, whatever follow-up, medicines, appointments that the family has to comply with treatment herein before they leave.
Q Sure.
A And then I read "not to remove child from hospital until medical discharge" as what the parents -- the parents can't take the child out of the hospital until the doctor has said that the child is medically stable for discharge.
Q Now, is it -- and I see -- I -- I understand what you're saying, sure.
A Okay.
Q And I'm not -- I won't put words in your mouth. I want to know what you think.
A Right.
Q Now, we talked a little bit about that -- that there are -- a child can be medically stable, but it still may not be safe to discharge a child home if there are positive findings of child abuse?
MR. TODD: Objection.
THE WITNESS: I -- the child can be

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medically stable and ready for discharge.
BY MR. HOOD:
Q Sure.
A I think we would continue to work with community resources and make sure that there was going to be appropriate follow-up, if we were concerned that the follow-up wasn't going to happen.
Q Okay. And appropriate follow-up could be discharge home, discharge to relative, or discharge to foster care.
A Yes, disposition and discharge would be at the DSS discretion.
Q Okay. So it's your testimony under oath that the disposition or the discharge of the child from the hospital back into the parents' care is completely dependent upon DSS?
A In my experience, yes. DSS tells us, when there is an open investigation, where the child is going to be discharged to.
Q Okay. And it is your testimony under oath that as far as a hospital's role, it is simply to treat the child and make sure that they are medically stable to be able to be discharged.
A I -- we treat the child, if we have concerning findings, we have a duty to call DSS or

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other agencies, if we need to, and work with them and they tell us discharge disposition.
Q Okay. And you said that the disposition is the social -- is the state agency's responsibility?
A It is what -- yeah, it's DSS.
Q Okay.
A If they're going to take custody or not or where the child is going to be discharged to.
Q Okay. And if we look back at Exhibit 10.
A Which one is 10?
Q This is that one -- well, 10 is the policy on juveniles suspected of being abused or neglected.
A Okay, okay. Right.
Q Could you read number 9 for us?
A "When medically cleared, do not discharge child until disposition has been determined by medical social worker and DSS and a safety plan has been placed on the chart in writing, if applicable."
Q Okay. Where it does it say it is determined by the social worker -- by DSS only?
A Disposition has been determined by medical social worker and DSS -- the way that I could read that, back to me being a liaison, that I'm making sure that the team knows that DSS is involved in

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what they recommended.
Q Okay. So even though this says what it says, it's your testimony that it's DSS's responsibility and not the hospital's, the disposition?
A To determine place of discharge, yeah.
Q Okay, okay, okay.
If we go to B.
A Yeah.
MR. TODD: Are we still on 10?
MR. HOOD: Yes.
BY MR. HOOD:
Q It says, "When a physician determines that a juvenile should remain in the hospital for medical reason."
Do you see that?
A I do.
Q And that's about stability; right?
A Right.
Q "Or that it is unsafe for the juvenile to return to his or her parent, guardian or caretaker."
Do you see that?
A When a physician determines that it is unsafe, yes.
Q So they have two things they have to

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determine: One, the child is medically stable; and two, that it's safe to discharge him back to the parent or caretaker; right?
A The -- the physician has to -- so the physician has to determine that the child is medically stable.
Q Right.
A Yes. And then know what the discharge plan is for a child that is involved with DSS. Is that what you're asking?
Q I'm just reading the policy. "Or that it is unsafe for the juvenile to return to his or her parent, guardian or caretaker."
A Well -- okay. It seems like an "or." When a physician determines that they should remain in a hospital for medical reasons or that it is unsafe.
Q Right, one of the two.
A So they have to determine one of the two if they want to pursue the 12-hour custody.
Q Right. But -- but -- but let's say that in order for them to determine one of the two, they've got to consider both, though; right?
A If -- if they are pursuing the -- excuse me, the 12-hour emergent physical custody. I think

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that's what that paragraph is.
Q And why would they do the pursuit of the 12-hour physical custody?
(Intercom interruption.)
THE WITNESS: All right. Sorry. When -- when would -- I'm sorry, ask me again.

BY MR. HOOD:
Q Sure. And it may be we read the whole thing and it may be --
A Okay.
Q -- you answered the question, and that's my fault.
A Okay, okay.
Q Okay. It says, "When a physician determines that a juvenile should remain in the hospital for medical reasons or that it is unsafe for the juvenile to return to his or her parent, guardian or caretaker, the physician or administrator should first contact the Director of Department of Social Services to determine if DSS will take emergency custody and authorize the hospital to retain physical custody of the juvenile."
A Okay.
Q "In the event DSS is unwilling to take

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custody or cannot be contacted, the local district court has authorized the physician or administrator to retain physical custody of the juvenile whenever the physician determines that the juvenile should remain for medical treatment or, according to his or her medical evaluation, it is unsafe for the juvenile to return to the parent, guardian, custodian or caretaker."
Do you see that?
A I do.
Q Now, that second paragraph says, "If DSS is unwilling to take custody or cannot be contacted."
A Yes.
Q Before it puts that 12-hour administrative order in and talks about that other stuff, about "the juvenile should remain for medical treatment or according to his or her medical evaluation, it's unsafe for a juvenile to return to his parent"; right?
A Yes.
Q Okay. Now, my question to you is, okay, in order for them to determine that, whether a child is medically stab- -- you've agreed they've determined that the child was medically stable?

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discharge of any child would not be back into an abusive situation.
BY MR. HOOD:
Q And a hospital should make sure a baby is diag- -- diagnosed with a cause of a head injury before discharging back to parents?
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: No, I wouldn't agree with that, because you can't always say.
BY MR. HOOD:
Q If you can't say what was the cause of a head injury, you should err on the side of caution before discharging a three-month-old baby back to parents that had been suspected of child abuse?
MR. TODD: Objection.
MR. FRAWLEY: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I don't agree that the parents were suspected. A report was made, and in terms of erring on the side of caution, we'd rather make the report to DSS than not and hope that DSS can do a complete follow-up that we can't do here in the hospital.
BY MR. HOOD:

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Q Okay. Doctors in hospitals should err on the side of caution in cases of suspected child abuse?
MR. TODD: Objection.
MR. FRAWLEY: Is that a question?
MR. HOOD: Sure.
MR. FRAWLEY: Objection.
MS. BROOKS HOLMES: What was the question?
BY MR. HOOD:
Q Doctors in hospitals should err on the side of caution in cases of suspected child abuse, correct?
A Yes.
Q And doctors and hospital personnel should follow policies and procedures, right?
A Yes.
Q Okay. There was mention during this stuff that I read about the child maltreatment team, and I think it was a Miss Myers or something.
A Right.
Q Is the child maltreatment -- is it a team or is it just one person that's a coordinator?
A There is a nurse coordinator and a physician consultant that she works with, and then they might talk -- excuse me, they might talk to the

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social worker who is involved or the team.
It's a coordinator role with a physician consult piece to it.
Q Do you know who back in 2009 was the physician coordinator?
A In 2009 specifically? Dr. Morgan was here, Dr. Mackens might have been.
Q Okay.
A Maybe Dr. Rogers. I don't remember specifically.
Q You've heard of a Dr. Courtlandt?
A Yes.
Q You know Dr. Courtlandt?
A Yes.
Q Have you ever heard of -- I can't remember his name -- does a "Sheldon" ring a name?
A No.
Q I don't know what his name is.
A No, it doesn't.
Q It's somewhere in there. We'll figure it out in the next deposition.
MR. TODD: Maybe.
MR. HOOD: Hopefully. It's written somewhere, I just can't read it.
MR. TODD: Yeah, if you can give me the

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page number, not today, but later, I'll tell you who it is.
MR. HOOD: Hold on a second. I might even have it right here.
BY MR. HOOD:
Q Maybe Stephen Renfrow.
A I know Dr. Renfrow.
Q Yeah.
A But I think he would have been a resident then.
Q Okay.
A Is there an "R?
Q It's just in the -- the interrogatories.
A Oh, okay. Sorry.
THE REPORTER: How do you spell his name?
THE WITNESS: R-e-n-f-r-o-w, I think it is.
BY MR. HOOD:
Q Stephen Renfrow, yes.
A "/R"?
Q It has "MD/R."
A That means he was a resident at the time.
Q Okay.
BY MR. HOOD:
Q Okay, okay. And the CHIPS team, I think

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right?
A Right. And I think he was discharged the next day when I wasn't working on a Tuesday.
Q Okay.
-- "notified the South Carolina Department of Social Services of the potential of non-accidental trauma to [redacted]."
You agree with that?
A Potential, yes.
Q And that "The South Carolina Department of Social Services responded, conducted its own investigation in the matter, and determined that Owen Carduff could be discharged back into the custody of his parents."
Do you see that?
A I [illegible].
Q But you said you don't know when they finished their investigation; right?
A I know they started it and they have a certain period of time to finish it.
Q And you don't know if they actually determined that he should be discharged back into the custody of this parents, do you?
A No. They gave us permission to discharge him to his [illegible]nts.

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Q Because you-all medically discharged him; right?
A He was medically ready for discharge, and then we would need to work with DSS to make sure that they knew that he was medically ready, and then we would look to them for where he would actually be discharged to.
Q Medically ready would be medically stable and safe to discharge back into the home of his parents?
A Medically ready would be stable and then to look to DSS for the disposition.
Q Okay. It says 24, I'm sorry, Page 13. It says, "With the finding of non-accidental trauma in December of 2009, describe whether or not the hospital had a duty or responsibility to discharge the child into the hands of a person or entity who was not suspected of perpetrating abuse or trauma to the -- on the child."
And then response was, "The defendant CMC's duty was to notify the appropriate state agency of the potential of non-accidental trauma, which it did."
You-all did?
A Yes.

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Q "Carolinas Medical Center complied with that duty of notifying the South Carolina DSS of the potential of non-accidental trauma with [redacted]."
Do you see that?
A Yes.
Q And so, it is -- do you have -- do you have an opinion about whether the hospital had a duty, other than notifying South Carolina DSS of the potential of non-accidental trauma, in regard to the disposition of the discharge?
MR. TODD: Objection.
MR. FRAWLEY: I'll object as well.
THE WITNESS: Did the hospital have a duty to contact DSS?
BY MR. HOOD:
Q No, no, no. Did the hospital have a duty other than contacting DSS in regards to the disposition of the discharge of the child?
A No. I think the hospital fulfilled its duty in making the report to DSS and providing them with up-to-date information.
Q Okay. And it is your testimony that that is the responsibility of the hospital --
A I think --

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Q -- and that was their responsibility?
A I -- yes.
Q And the responsibility of whether it was safe to discharge him back into the home with his parents or not was not the responsibility of Carolinas Medical Center or Levine Children's Hospital or the team?
MR. TODD: Objection.
THE WITNESS: I --
MR. TODD: Go ahead and answer.
THE WITNESS: I think the responsibility was to do an appropriate medical workup with all the specialties and sub-specialties, make the initial report to DSS, and make sure they had all the current, up-to-date information about Owen so that they could direct the hospital on discharge.
BY MR. HOOD:
Q Okay, okay. Have you ever had your deposition taken before?
A A deposition, no.
Q Prior to this deposition, had you had an opportunity to review any of the medical records or policies?
A I had met with Mr. Todd, yes.

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Q God bless you for that, that's tough.
Do you know why you recommended parenting classes or why they recommended the parenting classes?
A I think it was primarily because of their young age.
Q Okay. Are you aware of any literature that the very young are at risk for being child abusers?
A I think -- not a specific literature site off the top of my head, no.
Q Sure. But you're aware, that there are -- because of what you do and because of your education and because of your experience, that there are certain risk factors for populations that are more [illegible] to being abusers than not.
A Right.
Q I mean, it can be -- I've read statistics [illegible]re it said people who were not married were more [illegible]ely to abuse rather than married parents.
A Right.
Q People under a poverty level of like [illegible],000 a year.
A Right.
Q Young parents under the age of 21.

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A Right.
Q People who complain about a child being fussy all the time because they don't -- they are almost naive about the care that a child is supposed to receive? Have you seen anything like that?
A I don't know about the last one, people that complain all the time, but I do think I would agree with the other ones.
Q That there are certain risk factors?
A Yes.
Q Okay. And -- and when you worked with DSS and you worked with the medical team as a liaison, you would have had to have taken those risk factors into consideration; right?
A It would be part of the workup, yes.
Q Okay. As a social worker, did you make any clinical assessments of either parent to determine if either were a risk of being or becoming abusers of their child?
A My interaction with them would have been more brief than Katie's was.
Q Okay.
A Just because their story about the admission would have already been told and DSS would have already been involved, so generally we don't

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continue to ask them to share the story over and over again.
Q Was there ever any recommendation by you, a physician, or any other representative of Carolina Healthcare System that DSS should not discharge Owen back to his parents?
A Not that I know of.
Q Okay. And you agree that it's within the scope of the physician's treatment to recommend that a child not be discharged back to his parents?
A I know that the physician can give their opinion.
Q Sure.
MR. HOOD: That's all I have.
MR. FRAWLEY: DSS has no questions.
MS. BROOKS HOLMES: No questions.
MR. TODD: No questions.
(Videographer's closing statement.)
(Off video.)
THE REPORTER: And we do waive; right?
MR. TODD: Do you want to read and sign this? You have a right to read it if she made an error.
MR. HOOD: Her face is like, no.
THE WITNESS: No, I'm done, I'm good.

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(Deposition concluded at 1:47 p.m.)
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(** Certificate accompanies sealed original only.)

EXHIBIT

"40"

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

Civil Action No: 11-CP-46-04508

ELIZABETH HOPE RAINEY, as the APPOINTED GUARDIAN ad LITEM to [redacted], a minor,

Plaintiff,

vs.

CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS MEDICAL CENTER, SOUTH CAROLINA DEPARTMENT of SOCIAL SERVICES, BRUCE BRYANT as the CONSTITUTIONAL OFFICER OF YORK COUNTY,

Defendants.

VIDEOTAPED DEPOSITION OF CHERYL COURTLANDT, M.D.

T R A N S C R I P T of the deposition in the above-entitled matter by and before KAREN GAGLIARDOTTO KOCSIS, a Certified Court Reporter and Notary Public of the State of South Carolina, held at the CAROLINAS MEDICAL CENTER, 1000 Blythe Boulevard, Dining Room #4, Charlotte, North Carolina on Thursday, September 27, 2012 commencing at 2:27 p.m.

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ALSO PRESENT: Videographer, Brooks Oswald

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determine it one way or the other.
A Right, right.
Q And in [redacted]s situation, it's your testimony you couldn't determine one way or the other?
A Right.
Q Okay. Now, before he was discharged, you're aware that there is documentation in the chart that the child had a bump on his head a week or two before this?
A Right.
Q And there is no explanation from anybody because of that bump?
A Right.
Q And you're aware that -- that in this particular situation, there was a CT showing two subdural bleeds, one a falx hematoma of which there was no explanation from the parents?
A Yes.
Q You're aware the parents were both under the age of 20?
A Yes.
Q You're both aware that -- that -- I mean, at least from the documentation, it appears that there were money problems in the home.

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A Not to my knowledge.
Q There is documentation about the child had been crying incessantly or had been for the week before that had been irritable.
A According to the documentation in the intake history and physical by the resident, the original reason why the father took the child for the -- to the first visit was that he was fussy.
Q And you're aware that there are risk factors for -- for people who may commit child abuse?
A Yes, sir, I am aware there are risk factors.
Q And -- and when you have those risk factors that you have in this case with an unexplained bump on his head a week before, an unexplained falx hematoma, an unexplained right convexity hematoma, and there is no explanation from the parents, how do you characterize that?
MR. TODD: Objection.
THE WITNESS: The bump on his head, that was referred to previously, was not present, he had absolutely no skin findings, no bruising whatsoever, the -- from my understanding, the bump on the head was something that was

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reported to the DSS worker and was not reported to us.
The subdural hematoma is a finding that we see that can have many different causes, one of which is accidental trauma; one of which is non-accidental trauma.
There was no story that went along with a cause for this, the cause was unknown.
Q Okay. And -- and you had an opportunity to review -- I mean, just because of you being a pediatrician, you've had the opportunity to review AAP documents and AAP literature and just literature in the medical field about child abuse; right?
A Yes.
Q And if -- if somebody is perpetrating child abuse, they don't necessarily always say, "Oh, yes, I committed abuse on my child," do they?
A That's true.
Q And when you have a situation like that and the parents don't have an explanation for this subdural hematoma, why was the child discharged without ruling it in or ruling it out?
A Well, we attempted to, by doing a retinal exam, which can be corroborating information, we attempted to, by doing a skeletal survey, which can

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be corroborating information, both of which were normal.
They were observed in a room 24 hours by a sitter. The nurse documented family check-ins to look at appropriate behavior, to assess what his interaction was with the family. They were appropriate when approached by us, good eye contact, really involved, they appeared to be loving.
There was no explanation that they gave that could have happened to this. It could have been accidental. He had numerous caretakers, his mother, his father, as well as his grandmother. Many of them -- any of them could have injured him accidentally and just are got giving a story, all of that is a possibility.
Q I have read the literature that said a fall from 4 feet or less usually doesn't result in an intracranial hemorrhage. Have you read that?
A It doesn't usually -- a skull fracture doesn't usually occur.
Q Okay. An intracranial hemorrhage isn't something that you just see that happens spontaneously in most three-month-old children; right?
A In most three-month-old children. There

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Q When you have a child who has these subdural hematomas and has some of the risk -- the parents have some of the risk factors, how do you err on the side of the caution if it's either accidental versus non-accidental?

MR. TODD: Objection.

THE WITNESS: By taking the steps that we did; by asking for a child maltreatment evaluation; for getting the child a maltreatment physician involved; from getting Department of Social Services and law enforcement involved. That's how you err on the side of caution.

BY MR. HOOD:

Q Okay. And so you would have gotten the pediatric ophthalmology consult?

A Yes.

Q And that came back negative?

A Negative.

Q Although you don't know how it was done?

A No.

Q Would you have gotten a pediatric neurosurgery consult --

A Yes.

Q -- with Dr. McClanahan?

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A Yes.

Q And he would have -- it appears that somebody with him would have ordered the CTs and they would have been looking at the CTs and they would be medically treating the effects of the subdural hematoma?

A Or evaluating if they need treatment.

Q Right, evaluating.

But the bottom line is that the CHIPS teams, of which you were the attending physician, would have been the responsible party for determining if the child was appropriate for discharge or not?

A I would be the appropriate person to determine if the child was medically cleared for discharge.

Q Okay. Now, there are two components of medical discharged, aren't there? I mean -- and when I had say that, what I'm asking is, you have to be medically stable; right?

You agree with that?

A Yes.

Q And then in regard to child -- either suspected or potential child abuse or trauma, you also have to determine that it is safe for the child

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to be discharged back into the home?

A That's not my determination.

Q Okay. Let's look at -- I'm going to ask you to look at -- yeah, I think it's in this stuff right here.

A Okay.

Q I think it's -- I think it's Exhibit 9 and Exhibit 8 and Exhibit 7.

Exhibit 8, Exhibit 9 and Exhibit 7.

Exhibit 7 is simply an administrative order for Retention of Custody for Juvenile Suspected of Being Abused Pursuant to North Carolina General Statutes; right, right?

A Yes. I don't know what this form means, but yes, I guess that's the heading of this form.

Q Okay. These are attachments to a Child Abuse and Evaluation Policy at Carolinas Healthcare System.

And Number 8 is the Certification of Necessity for Retention of Custody.

Do you see that form?

A Yes.

Q Okay. And then the next form is Examining Physician's Certification.

A Yes.

Q And under that it says, "The undersigned

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examining physician hereby certifies there is good cause to suspect that the juvenile was abused and should remain in blank, name of facility, for medical treatment or it is unsafe for the juvenile to return to his parent, guardian, custodian or caretaker."

Do you see that?

A Yes.

Q So do -- does the physician at Levine Children's Hospital have the ability to state that it's unsafe for a juvenile to return to his parent, guardian, custodian or caretaker?

A If the circumstances of a specific case do come that you can say without a doubt that child abuse has occurred, you could, then, I guess, feel comfortable signing this form.

Q Okay. I'm going to use the converse; okay? If you can say without a doubt that it did not occur, you could safely discharge him home; right?

A Again with the negatives, what?

Q Okay. If you can safely -- if you can say --

A Yes.

Q -- that unequivocally there was no child

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abuse, it is safe to discharge him?
A Yeah, I guess, yes.
Q It's the converse of what you said?
A Yes, yes.
Q You said "equivocally." If you said there was a child abuse, you could say it may not be safe to send him home?
A Yes.
Q But if you take the exact converse, if you can say unequivocally there was no child abuse, you can safely send him home; right?
A Yes.
Q Now, but [redacted] fell in between those two things?
A Yes. There was some elements of the workup that stated that there was concern for non-accidental trauma, but other elements of the workup of the evaluation which did not meet the criteria because they were negative and therefore, it could not be determined whether or whether not he had been the victim of child abuse.
Q Okay. And I think one of the things you said was the skeleton survey?
A Skeletal survey.
Q "Skeletal survey."

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A Right.
Q And the skeletal survey would have been where they do radiograph of both arms, both legs, and your core.
A Yes.
Q And your head?
A Yes, "and your head."
Q And they determine whether there's been any previous fractures or evidence of any kind of breaks or something that would indicate any kind of trauma; right?
A Yes.
Q Now, when you have abusive head trauma, would you agree with me that many times you do not see any other signs of symptomology on a skeletal exam?
MR. TODD: Objection.
THE WITNESS: It depends on the specifics of the case.
BY MR. HOOD:
Q It depends on the actual case itself?
A Yes.
Q And when you have someone who has an isolated incident of abusive head trauma, you may not see anything on a skeletal survey; right?

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A You may or may not.
Q Okay. And so in this particular case, because of the abusive head trauma -- excuse me.
In this case, because of the subdural hematomas, the skeletal survey may or may not help?
A May or -- it may or may not help, depending. You may also repeat it in two weeks to see if there were any injuries that were young and were fresh if you didn't see them on the first skeletal survey.
Q And -- and in doing that I know there's a huge, huge controversy over shaken-baby syndrome that is now called abusive head trauma.
A Yes.
Q And I know that -- there is a classic triad. I know there's a -- a -- you know, there are mimics that are written about in the literature. I know that they don't even use that nomenclature anymore --
A Sure.
Q -- in the medical field?
A Right.
Q It's now AHT --
A Right.
Q -- as opposed to SBS?

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A Right.
Q And when you have a situation and you've ruled everything out except for either accidental or non-accidental trauma, how do you ensure a baby is safe if you don't know that it's not non-accidental trauma?
A You put in place a safety plan and you report them to the Department of Social Services and you get law enforcement to involve -- to investigate if they can further get information to see if there is anything that corroborates for there to be accidental or non-accidental trauma.
Q Okay. And so when you get it to a point where you've ruled in or out everything except for accidental versus non-accidental trauma, then you work with DSS and law enforcement to determine whether it's one of the two; right?
A Or a combination of both or -- what -- or whatever.
Q Or a combination of the both --
A Yeah, whatever.
Q -- because you can have accidental trauma and non-accidental trauma?
A Yes, yes.
Q Okay. And -- and so in that case, you would be

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BY MR. HOOD:
Q And it says: "This policy statement relates to the issue of awareness detections and management of children at risk for abuse or neglect in the inpatient physician office and urgent care settings. It provides guidance on the procedure that should be followed in cases of suspected abuse or neglect."
You see on the summary statement, it's on the very first page?
A Okay.
Q And this is a policy at Carolinas Healthcare System of which Levine Children's Hospital is a part; right?
A Yes.
Q And then under "Definitions" it says, "Juvenile: Any person under 18 years of age who is not emancipated by marriage, court order, or a member of the Armed" Service -- or of the Armed "Forces." You see that; right?
A Yes.
Q And that be would be -- [redacted] would fall within that definition; right?
A Yes.
Q Then it has "Abused Juvenile: A juvenile

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whose parent, guardian, custodian or caretaker inflicts or allows to be inflicted serious physical injury which causes or creates a substantial risk of injury, death, disfigurement, impairment of physical health or loss of impairment of any bodily organ."
You see that definition; right?
A Yes, I see the definition.
Q But -- but you have said you couldn't rule in or out whether that occurred or not?
A True. I could not rule in or out whether Owen Carduff was abused.
Q Okay, okay. Then I go to the second page, which is "Procedure." And it says, "A. Clinical team identifies child abuse or neglect is suspected and initiates suspected child maltreatment inpatient order set followed by discharge order set if applicable."
A Yes.
Q Do you see that?
A Yes.
Q Now, that says, "Clinical team identifies child abuse or neglect is suspected."
A Yes.
Q You suspected it at one time, didn't you?
A Yes.

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Q And you initiated child maltreatment inpatient order set; right?
A Yes.
Q And a CHS clinical-care management social worker did aid in the assessment process; right?
A Yes.
Q And a -- and a child abuse and neglect form was filled out on this case; right?
A Actually, it wasn't completely filled it out because it wasn't -- that's a form that's used on admission. So all the information that is required to be put in that form had already been gathered before.
Q Okay. But -- but they had filled out part of it but not all of it; right?
A Yes.
Q And why wouldn't they have filled out the rest of it?
A That scan form is an admission set. The patient had already been admitted, and it wasn't until after admission the injury was identified.
Q Okay. Well, I was also looking for the scanned discharge order form. Was there a scanned discharge order form that was used?
A I am not sure if that was completed.

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Q Okay.
A I don't know.
Q It says, "All cases of suspected abuse or neglect should be reported to the Department of Social Services in the county where the child resides."
Do you see that?
A Yes.
Q And you-all called York County Department of Social Services; right?
A Yes.
Q And, in fact, law enforcement was involved as well?
A Yes.
Q And then under 6 it says, "If a parent, guardian or caretaker refuses to authorize necessary medical treatment refer to administrative policy."
You see that paragraph; right?
A That --
Q Number 6?
A Yes.
Q But that didn't apply in this case --
A Right.
Q -- because they didn't -- they consented to all of the statements?

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I was not able to determine whether it was accidental or non-accidental trauma.
BY MR. HOOD:
Q Right, and I get that.
But what I'm saying is hypothetically, and I'm not even saying [redacted], let's just say any child, if you had said with the same -- everything else that [redacted] had, but you said, it's my opinion that the child suffered subdural hematoma because of the non-accidental trauma, based on your experience, more than likely not, they wouldn't have discharged the child home with the parents?
MR. TODD: Objection.
MR. FRAWLEY: Objection.
THE WITNESS: But every case is different. The constellation of signs and symptoms and everything that puts together in the case is different. So I'm not quite sure I how I could answer your question honestly.
BY MR. HOOD:
Q Sure. And -- and -- and, listen, I appreciate that.
A Okay.
Q I'll -- I'll ask it this way: Your

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decision on what caused the subdural hematoma is going to be important information to determine the disposition of the child to be discharged home back to his parents?
MR. TODD: Objection.
THE WITNESS: I guess I ready said, but I guess maybe I'm not communicating well. I was unable to determine how the subdural hematoma occurred.
BY MR. HOOD:
Q Sure.
A And so therefore, could not make a determination of whether it was accidental or non-accidental, because I couldn't determine how it was caused.
Q Okay. Even though you couldn't determine it, you still suspected it at the time of discharge though; right?
MR. TODD: Objection.
MR. FRAWLEY: Object to the form.
THE WITNESS: I -- I suspected --
BY MR. HOOD:
Q Non-accidental trauma?
A That that was a possibility.
Q Okay. Well, this whole child maltreatment

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thing happens because of suspected child abuse?
A Because it's a possibility, yes.
Q Okay. It's not because -- okay. It's just because of possibility, not probability?
A No, not probability, possibility.
Q Okay. And it's a possibility, the reason you do that in the case of a possibility is for the safety of the child?
A Yes.
MR. TODD: Objection.
BY MR. HOOD:
Q And the safety of the child is the top priority; right?
MR. TODD: Objection.
THE WITNESS: The safety of the child is always the top priority.
BY MR. HOOD:
Q And by being the top priority, you don't discharge a child home not knowing whether it's non-accidental trauma or not?
MS. BROOKS HOLMES: Objection.
THE WITNESS: I would not say that that's a true statement, in that you cannot determine in this particular setting of whether it was non-accidental trauma or not.

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The information was not able to be -- it's not like you could do a test for this.
BY MR. HOOD:
Q Sure.
A The information was not able to be obtained, what we had available at that time.
Q Okay. And then on the accidental, when we talk about the difference between accidental and non-accidental, I believe one thing you said earlier is -- and there's different ways it would happen, a child could fall off of something, could roll off, a child could -- they could shake it if -- if they were trying to dislodge food --
A Right.
Q -- and everything. Okay. Nobody ever said anything about the child needing to have something dislodged; right?
A Not in the history, no.
Q And no one ever said any -- this child at three months of age was not able to roll, crawl or walk.
MS. BROOKS HOLMES: Objection.
THE WITNESS: Was not able to.
BY MR. HOOD:
Q And what other way of accidental trauma

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a child three-months old is not able to speak to you; right?
A Yes.
Q It's hard to measure a child's cognitive ability at the age of three months; right?
A Right. Yes, I would say.
Q I know even with a CT access, a lot of times they don't make the diagnosis until the child is one or two years old; right?
A Right.
Q And so then, since the child can't help, you've got to look at the caregiver's explanation and see if it's supported by the characteristics of the injury; right?
A Yes.
Q The characteristics of this injury are you have a falx subdural hematoma, that is an injury pattern consistent with AHT, a second subdural, and they have no explanation for that; right?
A Yes.
Q So there was no supported explanation of the subdural hematomas, was there?
A There was no -- no -- nothing in the history which would give an explanation for them occurring.

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Q Okay. It says the -- going down to the bottom, "Clinical Presentation Settings," second full paragraph, "The clinical approach to an infant or child with possible abusive injuries is not significantly different than from standard pediatric care."
Do you see that?
A Yes.
Q And you agree with that; right?
A Yes.
Q "As with all patients, a severely-injured child must be stabilized before further evaluation is undertaken;" right?
A A critically injured child, yes. This child was not critically injured.
Q Okay. But in a child who has suffered an ALTE, apparent life-threatening event, once they are stabilized, a careful and well-documented history is one of the most critical elements of the medical evaluation; right?
A Yes.
Q "And if possible, you should document description of the mechanisms of injury or injuries and stated prognosis and progression of symptoms in the child's development capabilities;" right?

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A Yes.
Q And in this particular case, there was no description of the mechanism of the injury or injuries; right?
A Well, at that point there was no documentation that there had been an injury. The parents came in requesting evaluation because of the fact that he had cold symptoms, he had been seen by the pediatrician, and they felt that he was getting worse. He then had that choking episode at home and then was brought into the emergency room.
So at that point there was no injury really to document what the explanation or the mechanism was at that point.
Q Now, the subdural was a significant injury; right?
A He had a small subdural hematoma. I can't say how significant that -- the injury was that caused it.
Q You don't have an opinion about whether a -- two different subdural hematomas in a three-month-old child is a significant injury or not?
A Well, I can't tell you whether the -- the -- it's a significant injury. I can't tell you what

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the mechanism -- what the description of the mechanism of injury was.
Q Right, right. That's all I was doing, it's a significant injury?
A Right, yes.
Q Now, going under the medical history, it says, "Explanations that are concerning for intentional trauma include: One, no explanation or vague explanation for a significant injury."
Do you see that?
A Yes.
Q And that's something you have to take into your differential diagnosis, right?
A Um-hmm.
Q If you can give me a verbal.
A Yes, I'm sorry.
Q And explanation that's inconsistent with the pattern, age, or severity of injuries.
You see that; right?
A There was no explanation.
Q Right, right, there was no explanation.
A "There was no explanation."
Q It says, "Information should be gathered in a non-accusatory but detailed manner. Other information that may be useful in a medical

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about discharge plan and check with department of DSS referral status.

Q Okay. Now, when you do that, do you defer or do you delegate the checking with DSS to the medical social worker?

A She would probably make the call to DSS and depending on what the situation is, DSS may want me to be patched in when she calls, or they may not, depending on what the situation is.

Q Okay. But would you depend on her to be a liaison between you and DSS?

A Yes.

Q Okay. And then she could go back and tell them any conversation she may have had with you, likewise she could have told you about conversations she would have had?

A Right, yes.

Q Okay. If you go to the next page. And the first page, this is your handwriting; right? The page before that, that's your handwriting?

A This one?

Q Yes. And -- and when it's signed at the bottom, C and that's your hand -- that's your signature; right?

A That's my signature.

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Q Okay. If you to go the next where it starts "Notes planned peds attending."

A Yes, sir.

Q If you could read that.

A "Peds attending note. Extensive conversation with Morgan-Glenn and master's of social work regarding case. No etiology of subdurals revealed. Non-accidental trauma workup is negative. Eye exam is negative. No story forthcoming in explanation."

At that point, his anterior fontanelle was soft and it had decreased. It wasn't bulging -- it wasn't bulging anymore. The head cumference was the same, but it wasn't bulging. His lungs were clear. His abdomen was benign.

My impression was that he had a subdural hematoma. There was a question mark etiology. His non-accidental trauma workup was negative at the time. The plan was for DSS to follow family with home visits supervision cleared by master's of social work. Repeat skeletal survey in two weeks and follow-up with his PCP.

Q And that's primary care physician?

A Right, right.

Q Okay. And this would have been at 12 noon on 12/8/09?

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A Or close to that.

Q Okay. And this would have been the discharge orders; right?

A No, this is my last note. This is my last note. The discharge summary is another document.

Q And it says, "Cleared by MSW."

A Right.

Q And when that says, "cleared by MSW," what does that mean?

A That means that we have a safety plan and the safety plan has been signed.

Q Okay. And is that supposed to be in the chart somewhere?

A It is in the chart, I think.

Q Okay.

A Usually. I don't place it in the chart, but it is usually -- that's usually where we find it.

Q Okay. If we go to Exhibit 23.

A Mm-hmm.

Q I can't read that on the top, what does that say "X-"

A Cross cover.

Q What is that?

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A That is the cross cover, which means that this person who wrote this, this was not their primary patient.

Q Okay. It says, "Patient with stable VSS, DSS/SW okay to discharge with mom and dad."

A Mm-hmm.

Q DSS/SW, they are talking about the medical social worker here; right?

A Yes.

Q Okay.

MR. HOOD: That is Exhibit 23.

Let's have this marked as 24.

(Carolinas Healthcare System, H&P, 12/5/09 marked as Plf's Exh 24 for identification.)

BY MR. HOOD:

Q Doctor, on that last one I asked you about that entry, do you know who the X-COP person is?

A I don't recognize the handwriting. It's something that can be determined by looking back in the log who was -- who cross-covered.

Q Okay. And then we're looking at Exhibit 24, this is just the H&P on 12/5/09. I was just going to ask you one question.

You would been aware of the information contained in this record, when you began

EXHIBIT

"41"

State of South Carolina)
)
County of York)

Elizabeth Hope Rainey, as the appointed Guardian ad Litem to [redacted] a minor,

Plaintiff,

vs.

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, South Carolina Department of Social Services, Bruce Bryant, as the Constitutional Office of York County,

Defendants.

11-CP-46-04508

Video Deposition
of
Dirvondra Hill

Video deposition of Dirvondra Hill, taken before Kathleen R. Tackett, CVR, a notary public in and for the State of South Carolina, commencing at the hour of 9:58 a.m., Monday, January 14, 2013, at the office of McGowan, Hood & Felder, LLC, 1539 Health Care Drive, Rock Hill, South Carolina.

Reported by
Kathleen R. Tackett, CVR

APPEARANCES

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Also Present: Brooks Oswald, Videographer

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EXHIBITS

Plaintiff's Exhibit Number 23, Handwritten notes. 79

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Dirvondra Hill, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. HARRILL:

Q Good morning, Ms. Hill.
A Good morning.
Q My name's Lara Harrill. We met right before this deposition. Have you ever given a deposition before?
A No, ma'am.
Q Okay. Let's talk a little bit about the ground rules. I'm going to ask you some questions today

that I'd like for you to answer to the best of your ability. We do have the court reporter here. And, even though it's on video, if you could have all your answers be verbal, yes or no instead of uh-huh or unh-unh, it will be easier for her to take that down.

I have a tendency sometimes to want to talk over your answer with my next question. If you'll let me finish my question, I'll try and let you finish your answer. If I interrupt you, please stop me, okay?

A (Nods head up and down.)
Q If you need to go back at any time to another question, you're more than welcome to do that. Once the deposition has started, if you have any questions, I'd ask that you would direct those towards me as opposed to your attorney. Once the deposition has begun, you-all cannot discuss the deposition. Y'all can talk about the weather or whatever else but not about your testimony.
A (Nods head up and down.)
Q If you need a break at any time, please let me know. If you need for me to repeat or rephrase a question, please say so. I'll be happy to do that. If you answer a question, I'm going to assume that

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A With the --
Q And, we discussed earlier that that safety plan would have been the safety plan that was in place until you did yours on the 17th of December; is that fair?
A Yes.
Q And can you tell me what the safety plan says? Or what it -- according to your notes?
A What my safety plan says?
Q No. What that safety plan--- the safety plan that was put in place at the hospital that was in place until your safety plan on the 17th?
A "Parents not to remove the child from hospital against medical advice and until DSS determines" --
Q Okay.
A I don't know if it's "any more information."
That's just --
Q Okay. I can pull that safety plan.
A Okay.
Q I can tell you it's not in these documents.
A Okay.
Q But, if you'll remind me on the next break, I'll pull it. We'll read the whole thing, okay?
A Okay.
Q But it is -- but is it fair to say that that's the

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safety plan that was in place for -- until your safety plan on the 17th of December?
A This is the safety plan that was in place, and, at that time, the agency got in contact with Levine's and informed them that it was okay to allow the parents to -- the parents and the baby to be discharged or to allow Owen to be discharged.
Q Okay. So whose decision was that: to -- to allow?
A The agency's.
Q The agency's, i.e., DSS?
A The agency decision.
Q Okay. So DSS's decision?
A Yes. DSS.
Q And what input does the hospital have into that decision? I mean, just in your experience.
A The hospital provided us the information regarding the parents' cooperation and what was going on with the baby at that time.
Q Okay.
A And any concerns that they might have had --
Q Okay.
A -- for us to address. And, at the time, could not determine if it was non-accidental or accidental.
Q You've been working for DSS since 2009, you said?
A 2007.

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Q I knew it was either '7 or '9. Have you had any other cases with children that had subdural hematomas?
A Not to my knowledge.
Q Okay. When you have cases where children are in the hospital, do you staff those cases with hospital staff?
A We do have a -- yes. We have -- it's a multidisciplinary agency meeting in which we do staff the cases now with the hospital staff, law enforcement detectives, anybody that's providing services to the family.
Q And when you said you do that "now," did you do that in 2009-2010?
A I cannot recall.
Q If you had, would it be in your dictation?
A It would be in the dictation if we did.
Q Okay. And would it be listed as a case staffing or what other actions might it be listed under?
A I do not know what action that would fall up under.
Q Well, if you do that now, what do you typically document that as?
A I cannot recall what that would be listed up under.
Q Okay.
A If that would be "collateral contact."

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Q Okay. Do you know whether or not -- or do you recall whether or not, related to this case, you were given any written warnings, reprimands, anything like that?
A I cannot recall.
Q Do you recall whether or not you had any discussions with your supervisor, either Krista Hinnant or Yvonne -- whose name escapes me. Her last name?
A Stewart.
Q Stewart. Yvonne Stewart. -- regarding timely referrals to law enforcement?
A I want to say yes.
Q Do you have any recollection of that conversation?
A I do not.
Q Okay. Do you know whether or not there was any documentation related to that?
A Documentation in regards to?
Q The -- whatever conversation you had about timely referrals or not-timely referrals to law enforcement?
A I cannot recall that information.
Q Okay. And do you know -- do you know how many other new cases you got that week, the week that the Owen Carduff case came in?

EXHIBIT

"42"

Page 1

State of South Carolina)
)
County of York)

Elizabeth Hope Rainey, as the appointed Guardian ad Litem to [redacted], a minor, Plaintiff, vs. Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, South Carolina Department of Social Services, Bruce Bryant, as the Constitutional Office of York County, Defendants.

11-CP-46-04508

Video Deposition of Krista M. Hinnant

Video deposition of Krista M. Hinnant, taken before Kathleen R. Tackett, CVR, a notary public in and for the State of South Carolina, commencing at the hour of 9:56 a.m., Thursday, January 10, 2013, at the office of McGowan, Hood & Felder, LLC, 1539 Health Care Drive, Rock Hill, South Carolina.

Reported by
Kathleen R. Tackett, CVR

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APPEARANCES

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EXHIBITS

Plaintiff's Exhibit Number 21, Handwritten notes. 59

Plaintiff's Exhibit Number 22, "Release of Information"; "Safety Plan"; "South Carolina Department of Social Services Acknowledgement." 81

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Krista M. Hinnant, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. HARRILL:

Q Good morning, Ms. Hinnant.
A Good morning.
Q My name's Lara Harrill. We met right before this deposition. Have you ever given a deposition before?
A No, ma'am.
Q I'm going to go over the rules with you.

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A Okay.
Q Although I know someone has probably done it. First thing is, since we have a court reporter here, she's trying to take down everything we say.
A Right.
Q I have a tendency to talk over people. If you'll let me finish my question, I'll try and let you finish your answer.
A Okay.
Q If I interrupt you, please stop me.
A Uh-huh.
Q I want to make it clear for her. Even with the videographer, it's harder for her to get everything on the record.
A Okay.
Q If you will say yes and no instead of nodding your head --
A Yeah.
Q -- or saying uh-huh or unh-unh, that'll make it much easier for her as well. If you have any questions during this deposition, I'd asked that you direct those questions to me rather than to your attorney.
A Okay.
Q If you do not understand my question, please ask me



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A Yes.
Q Typically, how long does that take?
A To receive medical records, once we have a release of information, it would depend on the facility. Some would copy them and give them to us right then. Some would make us do a formal request, and then send them to us.
Q And it takes a lot longer.
A Yeah.
Q Okay. Do you recall whether you or any of your caseworkers talked to doctors or nurses in this particular case?
A Yes. Dirvondra did speak with nurses, as well as Chandra -- Chandra Tyler spoke with a nurse and also the social worker. I believe Dirvondra had some contact with a doctor as well.
Q I may have already asked you this: Does the hospital typically -- and it may be either hospital. I -- it -- we could be talking about PMC, we could be talking about Levine's --
A Okay.
Q -- but, in your experience, if they have -- if they believe there's abuse, do they call you first, or do they call -- you being DSS?
A Yes.

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Q Or do they call law enforcement first?
A Typically, they would contact DSS first.
Q Okay. And what role did they have in DSS's investigation?
A Can you repeat that, please?
Q What role does the hospital have in your investigation?
A Well, we would certainly interview them and take into consideration any concerns that they have.
Q Do you look to them to help you make your case decisions?
A Yes. Absolutely.
Q And what happens when you have a case where the hospital is not sure whether there's abuse or neglect? Who makes the decision then?
A Then we would staff it as an agency and make it as a -- a group.
Q And, when you say "staff as an agency," who would be involved in a staffing like that?
A It would be, typically, our attorney, myself, Ms. Ward, and the caseworker. And maybe law enforcement, if they're involved, as well.
Q And would you have any of the medical personnel there?
A We -- typically, we didn't have them involved in

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our case decisions, but we would have their notes that we would use.
Q Okay. And do you rely on the medical experts -- or the medical expertise of doctors and nurses to help you make the decision whether or not a child has been abused?
A Yes.
Q Related to the first injury in this case, which was in -- which was, like, December 9th, 2009, was there ever a case decision made related to that injury?
A This --
MR. FRAWLEY: Lara, I think it was December 5th when he was hospitalized, December 6th when we got the call in.
MS. HARRILL: I apologize. You're right.
THE DEPONENT: That's correct.
Q Was there ever a case decision made related to that injury?
A Well, there was an ongoing investigation at that time. We made our case decision based off of both incidents.
Q Because you had, still, the 45-day window --
A And it was --
Q -- is that fair?

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A -- still an open investigation during the second incident. Correct.
Q Okay.
MS. HARRILL: I don't know if everybody knows how I do this. I know Monty does. The tab numbers are the exhibit numbers. And then I'll also give a Bates number. There's only one document in here that has not been Bates numbered, to my knowledge. But it has page numbers. Okay?
MR. FRAWLEY: Okay. Thank you.
Q I want to look a little bit at the dictation in this case, which is Tab No. -- Exhibit No. 4. How often do you print these to put in the file?
A Typically, they're not printed until they're transferred.
Q Okay. So when the case leaves your -- I'm -- I call it a "unit," but that's just for my experience --
A Yeah.
Q -- but when it leaves your office, it -- you would print the dictation to send the file down to --
A Down to treatment or foster care, wherever it would go, yes.
Q Understand. And, in this particular case, there

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A Uh-huh.
Q Yes. -- to your deposition. On the second page of those notes, it says, "Nurse thought DSS was called to release sitter."
A Yeah. That's in --
Q Would you tell me what that's about?
A I'm sorry. That's in Chandra Tyler's dictation.
Q Okay.
A A nurse told her that they were not supposed -- she was under the assumption that there weren't any concerns of abuse or neglect and that they were primarily contacting DSS in order to release the sitter that was in the room. And I guess that's something that North Carolina does; that's not something that South Carolina DSS does.
Q That was my next question.
A Yeah.
Q Your DSS wouldn't typically go and --
A We wouldn't have --
Q -- be a sitter?
A -- done that anyhow, no.
Q Okay. But that was Chandra Tyler?
A Yes. That would've been in her dictation.
Q And these notes are just notes that you took as --
A Yeah. As I read through the dictation, and things

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that I remembered, yes.
Q Okay. I want to look at them. Turn to page -- Tab 17, for me, please. And this conversation is actually -- appears to be January the 12th, also transcribed conversation between you and Lieutenant Miller --
A Correct.
Q -- is that fair?
A Uh-huh.
Q If you look at -- this one is a little harder to read because you-all were doing what I do and you were talking over each other. But -- so feel free to read this as I'm on Page 3. I'm looking specifically at Line 17, where you said, "They -- they wouldn't make a -- they wouldn't make a statement whether or not it was accidental or non-accidamtal." If you want to read that whole page to put that in context, I'm fine with that.
A I'm familiar with it.
Q Okay.
A Uh-huh.
Q Who -- and I may have asked you this before, who decides whether or not you indicate your cases at DSS?
A We do it as a group. This particular case would've

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been an attorney staffing case decision.
Q Why this particular case?
A Because we -- based off of the second incident.
Q Okay. But, with the first incident, would it have been an attorney decision?
A Probably -- maybe not. Phyllis could've been present for that. It would've depended on who was available: either Phyllis or Adrian or the other attorney that we had.
Q As a supervisor at DSS, how much difference does it make to you whether the hospital decides it was accidental or non-accidental in indicating your case?
A Can you rephrase that for me, please?
Q Rephrase it or repeat it?
A Repeat it. That'll be fine. Let's see if I can. . .
Q As a -- as a social worker --
A Uh-huh.
Q -- as a supervisor --
A Right.
Q -- how much difference does it make to you what the hospital's decision is in whether or not you indicate your case?
A Oh. We would -- if they had concerns that it was

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non-accidental, we would've indicated our case.
Q And if they have -- if they don't have concerns that it's non-accidental, does that mean you would not indicate your case?
A Not necessarily. If there had been something else that was of concern, we may have still indicated our case.
Q Do you -- excuse me. Do you know whether or not there was anything else that was of concern?
A Well, there were concerns that the parents were young and that they were immature and, maybe, concerns of lack -- lack of supervision.
Q What all can you indicate your cases for?
A Neglect, physical abuse, and sexual abuse.
Q What about threat of harm?
A You can do that, too. Threat of harm of each.
Q Okay. But, in this particular case, the second incident happened before your original case was determined, correct?
A Yes.
Q Turn to Page 4 for me, please, on your -- in Tab 17, Line 24. And if you'll read over to the next page --
A Uh-huh.
Q -- to Line 3. And you say, "We've got some

Dirvondra?

THE DEPONENT: That's the one for Dirvondra, and Chandra Tyler is 0464.

MR. FRAWLEY: And the Chandra Tyler was the initial one?

THE DEPONENT: Correct.

MR. FRAWLEY: I'm sorry, Monty.

MR. TODD: Okay. That's okay.

THE DEPONENT: (To Mr. Todd) Do you want this?

MR. TODD: Now, that will be the exhibit -- we'll get that to the court reporter.

Plaintiff's Exhibit Number 22, "Release of Information"; "Safety Plan"; "South Carolina Department of Social Services Acknowledgement."

Q Now, is -- am I correct that DSS made the decision that the child should be discharged on -- in December 2009, from Carolina's Medical Center back into the custody of -- of his parents?

A Based off of the information that we had at the time, yes.

Q And the information you got from the hospital -- and I know there was a number of discussions, but to -- to summarize it, what they told you was -- is

that, "There's a concern for non-accidental trauma because of some of the findings, but we cannot make a definitive statement whether it is or whether it is not accidental or non-accidental"?

A That's correct.

MR. TODD: That's all I have. Thank you.

THE DEPONENT: Okay.

MR. FRAWLEY: Okay. I've got a few questions.

THE DEPONENT: Okay.

EXAMINATION

BY MR. FRAWLEY:

Q If you could refer to Number 16 -- Exhibit Number 16 --

A Uh-huh.

Q -- which I believe is the transcript of the December 17th conversation with Lieutenant Miller. Are you there?

A Yes.

Q Okay. December -- or Exhibit 16, of course, is -- are some excerpts from that conversation, and then Ms. Harrill has provided us with full copies of -- of those transcripts. And Exhibit 16 begins with this cover page, and then the first transcript page is actually Page 6; is that correct?

A Yes.

Q All right. I'm handing you a copy of the full transcript of the December 17, 2009 conversation. Beginning on Page 5, Line 20, if -- I guess, for the record, if you'll read the Krista statements and then I'll read Lieutenant Miller. Maybe we can make it go --

A Okay.

Q -- more quickly that way. Starting with Line 20 on Page 5, can you tell me what that says?

A Yes. "The hospital is not going to make a statement whether or not they feel as if that -- those injuries are accidental or non-accidental, period."

Q "Okay."

A "I staffed it with our attorney, and we let the child go home because the hospital's not making" --

Q Okay. Then go to Page 6 on Exhibit --

A -- "any determination."

Q -- 16, please. Okay.

Lieutenant Miller then says, "Right."

A "And they're saying they don't know what happened, and the hospital says mostly they have concern for lack of supervision."

Q "Uh-huh."

A "They think that maybe nobody was supervising him

and he bumped his head or they were holding him and walking him around the door and banged his head or something. But they're -- they're really not giving us a whole lot. You know how they won't make statements."

Q "Uh-huh."

A "Because that was the first thing I asked him. And what happened is the social worker made the report on this, and the doctor did not advise the social worker --"

Q "Right."

A "-- to make the report. They feel -- real clear to me that I caught -- they feel -- they made that real clear to me when I called and spoke with them at the hospital, but I should have dictation on where, you know, I spoke with them. I can, you know, certainly send you that."

Q Okay. And Ms. Harrill asked you questions about Page 6 -- about some context questions, because it wasn't clear from Page 6 what that was. But what you're telling Lieutenant Miller on Page 6 and the portion of Page 5 which we just covered is you're basically telling him what the feedback was that y'all had gotten from the hospital social worker when you spoke with them --

EXHIBIT

"43"

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

ELIZABETH HOPE RAINEY,)
AS THE APPOINTED GUARDIAN)
AD LITEM TO [redacted]
A MINOR,)
)
PLAINTIFF,)
)
-VS-) CA NO. 2011-CP-46-04508
)
CHARLOTTE MECKLENBURG)
HOSPITAL AUTHORITY D/B/A)
CAROLINAS MEDICAL CENTER,)
SOUTH CAROLINA DEPARTMENT)
OF SOCIAL SERVICES,)
BRUCE BRYANT AS THE)
CONSTITUTIONAL OFFICER OF)
THE SHERIFF OF YORK)
COUNTY, THE YORK COUNTY)
SHERIFF'S DEPARTMENT AND)
YORK COUNTY,)
)
DEFENDANTS.)
_____)

DEPOSITION OF REV. LARRY WILLIAMS
ROCK HILL, SOUTH CAROLINA
OCTOBER 25, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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Further Examination by Mr. Todd Page 156

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Deposition of Rev. Larry Williams, taken before me, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, in the law offices of the Shaw Law Firm, Rock Hill, South Carolina, commencing at 10:05 a.m. on October 25, 2012 in accordance with the South Carolina Rules of Civil Procedure.

It was stipulated by and between Counsel for the Plaintiff(s) and Counsel for the Defendant(s) that this deposition is taken for any purpose allowed under the South Carolina Rules of Civil Procedure.

That the signing of the transcript of deposition by the witness is waived.

*****

Rev. Larry Williams, first being duly sworn, deposes and says as follows:

EXAMINATION - (By Mr. Todd)

Q **Your name, please?**

A Larry Williams.

Q **Mr. Williams, my name is Monty Todd, and I represent the Charlotte Mecklenburg Hospital Authority in a lawsuit that's been filed against them on behalf [redacted] You've been listed as a witness in the case, and I understand you're married to [redacted]'s grandmother.**

A That's correct.

EXHIBIT
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A But we went once a week, maybe once a week, something like that.
Q And it'd be short visits - - -
A Short visits, correct.
Q - - - for you? And your wife was keeping [redacted] - -
A Right. Right.
Q - - - during some parts of the week?
A Right.
Q But with you it'd be a short visit?
A Correct.
Q But would there be times when [redacted] and Kayla and Michael would come to your house and stay for awhile?
A Sure. Sure, they would come and we would have dinner together and play board games together and, yeah, hang out.
Q When you were observing Michael and Kayla around [redacted] did you ever see anything that made you suspect that either one of them might cause some harm to [redacted]?
A Never.
Q Did your wife, Charlotte, did she ever confide in you that she had some concerns that Michael might somehow harm [redacted] either intentionally or

unintentionally?
A No.
Q Did you ever have any concerns about Kayla or Michael's parenting skills?
A No.
Q Now, did you ever go to any of [redacted]'s doctor visits?
A No.
Q Do you know who his doctors were in December? I think December the 4th of 2009 he went to the ER at Piedmont and then was transferred to Levine's in Charlotte. Did you go to any visits to Sunshine Pediatrics or to Riverview when [redacted] went in November?
A No.
Q Did you get any information about those visits or how [redacted] was doing?
A Yeah. Yeah, I got some information from those.
Q Do you remember anything about what you learned?
A Well, I think one time they said that he had strep throat or something like that and that they were treating it. And I knew that [redacted] was crying a lot. I don't know if he had colic or what, you know, at that time but he did cry a lot at that time. But not a whole lot of information.

Q Now, when [redacted] was taken to Piedmont on December the 4th 2009, did you go to Piedmont with your wife? I understand she was there.
A No, I didn't go.
Q Sometime during the night or early morning of December 5th did you learn that [redacted] had been transferred to Levine's in Charlotte?
A Yes, sir.
Q What did you learn?
A I learned that they had transported him by ambulance to Levine Hospital, that Charlotte had said that they had found some - - - some blood behind his eyes or something and that they really didn't know what was going on. And then I prepared to go to Levine to the hospital.
Q Do you know what time you got that call?
A From Charlotte? It was probably late in the evening, later on towards late evening probably.
Q And I could be wrong. I only to get to ask questions, I don't get to testify. My understanding is they went to - - - and this may, may not be right or not. But my understanding is on the 4th, like the late afternoon of the 4th or evening of the 4th, they went to Piedmont.
A I recall that, you know, it was probably somewhere

around 4:30, 5 o'clock maybe because - - - or right at getting dark because I remember I was putting Christmas lights up on the house at that particular time when we got the phone call, and I had to get my stuff together. And I had my kids so I had to make sure my kids were taken care of and all that before I even could make a move to go. So, yeah, it was probably late evening.
Q Did you go to Levine's - - -
A I did.
Q - - - on the 5th?
A I did.
Q Do you know what time you got there?
A It could have been somewhere around 10:00 or 11:00 maybe. Yeah, it had to be late because I know when you go - - - I know when you go to Piedmont you're going to be there three or four hours or better.
Q So we're going to put that down as a guess - - -
A Yes, it would be - - -
Q - - - to what time.
A - - - it would be the evening, - - -
Q All right.
A - - - late evening.
Q Where was [redacted] when you got there? Was he in a room, was he in the ER, or do you know where [redacted]

A Correct.
Q And so how often would she be keeping [redacted]?
A Sometimes it was like every other day. It even got to the point at one time I told Charlotte that she needs to tell Michael no, that he needs to be a responsible dad and take on responsibility himself. And then we - - - she did that. And then after the second incident, I felt really bad because I felt like I pushed him - - - pushed her into that, making that decision. And it was - - - so if I had any inclination at all that Michael was harming that child I would have never ever told her to make him take care of that child. So I have to live with that.
Q Do you know how long he was gone before Kayla let him come back or allowed him to come back?
A He may have been gone a week maybe.
Q And did your wife keep [redacted] that entire week?
A Pretty much while Kayla worked. Yeah. Yeah.
Q Do you know whether or not your wife had any action with DSS between the December hospitalization and the January hospitalization at Levine's?
A The December and the January?
Q Yes, after the - - - What I'm trying to find out is after [redacted] was discharged on, I believe it's

December the 8th, did your wife have any kind of contact or interaction with anyone at DSS?
A If she did, I don't recall it.
Q When did you learn that [redacted] was going back to the hospital in January of 2010?
A I was headed to - - - Charlotte and I were going to Columbia, I had to do a funeral, and just before we got on the interstate, on 77 south, he - - - I got a phone call and it was Michael on the phone and he was - - - I could tell he was very upset and he stated it's [redacted], he's having seizures and I don't know what's happened and we're headed to the hospital. And I immediately turned around and went back to the house and Charlotte got her car and Charlotte went to the hospital. And I had obligations to this family to do this funeral, and I couldn't last minute just try to pull something together so I went on to Columbia and did the funeral. And then after the funeral was over with, I went to Levine.
Q Do you know what day of the week it was? It's was January - - -
A I don't - - - I don't recall.
Q Is January 10th - - -
A Okay.

Q When you got to Levine's what did you learn?
A When I had got to Levine, [redacted] was in intensive care, and he was hooked up to all these machines. And Charlotte was there. Kayla had already gone. I don't know if - - - I don't know if Michael and Kayla drove themselves to the jail, but I know that they were gone when I got there. And I knew that this was very, very serious.
Q I guess in the days of cell phones you probably had telephone calls from Charlotte as you were headed - -
A Right. Right.
Q - - - and did you learn that there was a concern about abuse?
A Yeah, I learned that they had airlifted him. The time before, he went by ambulance but this time he was airlifted to Levine. And, yeah, I realized it was very, very serious.
Q When did you learn that there was a concern about somebody having abused [redacted]?
A The second time.
Q Did you learn it when you were driving - - -
A Well, after - - -
Q - - - from the funeral, or did you learn it when you got there that night or was it the next day?

That's just what I'm trying to find out.
A No, I learned - - - I learned it when I was - - - When I was driving to the funeral, Charlotte had called me and told me they were airlifting him. And she said it was bad. She said it was bad. And I really couldn't - - - I wanted to get this funeral over with as quickly as possible to get back to the hospital.
Q I'm not making my question clear.
A Right.
Q I understand you learned that [redacted] was in serious condition. But what I'm trying to find out, when did you learn that there was a concern that somebody had intentionally harmed him?
A After the second incidence.
Q Okay. When? Was it that first day?
A It was - - - it was that first day.
Q How did you learn about that?
A When I got to the hospital really and when I found out that they were taking - - - they had asked Michael and Kayla to come to the - - - to come to the Moss Justice Center. And then it was shortly after that, I think a few hours after that, they had a confession from Michael. And that's - - - that's when I knew definite that he was - - - he

was shaken.
Q Before that time, before you learned that Michael had confessed, did you suspect that Michael or Kayla or - - - Well, did you suspect that Michael had intentionally harmed [redacted]?
A Up until - - - up until the - - - until law enforcement had taken - - - till he had got a confession, I didn't know who had harmed [redacted] at that time. I didn't know, not until we got the confession. Once we got the confession then, yeah. And then on - - - on hindsight over here after the second incident, then looking back, looking back, there was some probably some signs there but we were just so involved in it, you know, so connected - to it that we probably just missed those signs. I don't know. But on hindsight, after over here, you know, you realize then when you're over here, your grandchild has lost 75 percent of his brain activity, and his brain's swelling, and they've got tubes in him and got all this in him, then - - - then you're saying oh, my God, what - - - did I miss something, you know. But - - -
Q Well, in hindsight did you - - -
A - - - it was too late.
Q In looking back, was there something you think you

missed, even in hindsight?
A No. No, not really. Because - - - because the thing is is that - - - that we had - - - they showed no evidence. They showed no signs of physical abuse whatsoever, Kayla or him. If they - - - all of this stuff was done behind the scene to where - - - to where they just showed no signs. If they had showed some signs, if we'd have had - - - If we'd have had domestic violence or we'd have had - - - if he'd had showed some type of anger that he was capable of doing something like that, yeah, sure, but he didn't show any of that.
Q Do you know whether or not Michael had ever done anything to harm Kayla?
A No. No, she'd probably whip him. No, there was never any evidence of any kind of abuse on Michael whatsoever. Michael's more of a laid back person, and he was kind of quiet. Now, when we did have game nights and stuff he would open up and, you know, we would have fun and he would interact and stuff, you know. But Michael was more of a - - - he was more of a conservative type, you know. But, no, if we had any kind of knowledge that he was abusing his child in any kind of way, any kind of way.

Q So even in hindsight, you looking back, - - -
A Right.
Q - - - you couldn't even hindsight, - - -
A No.
Q - - - see anything that would - - -
A No.
Q - - - lead you to suspect that he would harm [redacted]?
A No. No. But truly feel bad about it afterwards, you know.
Q What about did [redacted] did he have any - - - I'm sorry, did Michael, did you ever see anything that make you think that he might be doing drugs or alcohol?
A No, Michael never did drugs and never drank. Never. Never seen him do any of that. No.
Q Now, in January did you have any discussions with any of the doctors or staff about what had happened to [redacted], about how his injury had occurred?
A Yes.
Q Who did you talk to?
A We were in the intensive care unit at that time and Dr. Bailey was there and there was probably a whole team of nurses and doctors and it was just - - - the room was just filled up with people. I remember Dr. Bailey being very, very angry at us.

all of us, like we had done something. You know, that - - - I don't know if he - - - I don't know if he was mad because [redacted] had returned to the hospital or he was mad because he missed it, the diagnosis. I don't know. But - - -
Q Did you talk to him?
A Yeah, but he was very gruff. He was very - - - we talked to him and he was very, very gruff with us with his answers and stuff. And they were really busy, really busy at that time trying to give [redacted] the best care that they could give him at that time and it was a lot of trauma. And it was just - - - it was a horrible, horrible thing to have to go through.
Q Do you remember anything Dr. Bailey said? You told me about his demeanor.
A Yeah. Yeah, he talked about his brain swelling. He talked about that it would swell to 75 percent. And he said if the brain did not begin to shrink that they would have to drill into his skull to relieve pressure which they had to do. And they had to go into his spine to relieve pressure there also. He talked about the condition of [redacted] that he may not make it through this. It was - - - it was just a very, very horrific time.

EXHIBIT

"44"

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

ELIZABETH HOPE RAINEY,)
AS THE APPOINTED GUARDIAN)
AD LITEM TO [redacted]
A MINOR,)
)
PLAINTIFF,)
)
-VS-) CA NO. 2011-CP-46-04508
)
CHARLOTTE MECKLENBURG)
HOSPITAL AUTHORITY D/B/A)
CAROLINAS MEDICAL CENTER,)
SOUTH CAROLINA DEPARTMENT)
OF SOCIAL SERVICES,)
BRUCE BRYANT AS THE)
CONSTITUTIONAL OFFICER OF)
THE SHERIFF OF YORK)
COUNTY, THE YORK COUNTY)
SHERIFF'S DEPARTMENT AND)
YORK COUNTY,)
)
DEFENDANTS.)
_____)

DEPOSITION OF CHARLOTTE WILLIAMS
ROCK HILL, SOUTH CAROLINA
JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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803-328-9640/TOLL FREE 1-877-871-6363

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Deposition of Charlotte Williams taken before me, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, in the law offices of McGowan, Hood and Felder, Rock Hill, South Carolina, commencing at 2:30 p.m. on July 20, 2012, in accordance with the South Carolina Rules of Civil Procedure.

It was stipulated by and between Counsel for the Plaintiff(s) and Counsel for the Defendant(s) that this deposition is taken for any purpose allowed under the South Carolina Rules of Civil Procedure.

That the signing of the transcript of deposition by the witness is reserved.

* * * * *

Charlotte Williams, first being duly sworn, deposes and says as follows:

EXAMINATION - (By Mr. Todd)

Q Your name, please?

A Charlotte Williams.

Q Ms. Williams, my name's Monty Todd and we met about a minute ago, and I represent Charlotte Mecklenburg Hospital Authority. It's Carolinas Medical Center, Levine's Children's Hospital. And this is my opportunity today to ask you some questions about a case that's been brought on behalf of [redacted]f.

A Yes, sir.

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abbott

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you're related by blood or by marriage?
A No.
Q Now, I understand Mr. Williams does and we'll get that with Mr. Williams.
A Okay.
Q Had you had a chance to see Michael care for [redacted] before December 4th, 2009, before that first injury?
A Yes.
Q Tell me your impressions of Michael as a father.
A My impressions were fairly normal. He was a good father. He was there when he was supposed to be there other than financially.
Q Financially he's not working - - -
A Correct.
Q - - - well and not supporting financially.
A Correct.
Q I think Mr. Todd asked you did it appear that Michael loved him, and I think you said he was learning to love him.
A Correct.
Q Him would be [redacted]. As far as when he cared for [redacted], did it appear to you that he was interested in caring for his child?
A I think that he cared for him when he had to.

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Q I think Kayla mentioned he wasn't real big on changing diapers initially - - -
A Right.
Q - - - but, I mean, if diapers needed to be changed he could do that?
A Yes.
Q Did you have any concerns with how roughly he may have handled him? In other words, when the child was small, did you have concerns with Michael in the manner in which he would pick up [redacted], maybe not hold his head properly when the head's not as strong as it might be?
A I remember telling him a couple of times remember to pick up his head, you know, because he's an infant.
Q Do you remember hearing Kayla correcting him on that sometimes?
A Yes.
Q Did you ever have to correct Kayla on that?
A Not that I recall.
Q Now, I think it was mentioned that you saw a bruise on [redacted] in November of 2009?
A Yes, sir.
Q And that was the dime-sized bruise? I think your best recollection was that it was on the left side

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of his head?
A Yes, sir.
Q Did you ask Kayla and Michael about that bruise?
A I asked Michael because he was with him that day.
Q Okay.
A Kayla was at work. And he explained that he had dropped the X-Box remote on - - - he dropped it out of his hands. [redacted] was apparently in the baby seat next to him.
Q And I think Mr. Todd asked you, you know, how is [redacted] otherwise, you know, the fact that he's got a bruise there that you saw and had concern about. [redacted] was acting appropriately at that point?
A Yes, sir.
Q Did you have any concern about the fact that [redacted] had a bruise on his head that was apparently inflicted when Michael was there? Did you have concern about [redacted]'s safety when Michael cared for him because of that?
A No.
Q Were you concerned about [redacted]'s safety before the first injury, December 4th of 2009?
A No.
Q While both of his parents may have been young and may have been in the process of learning

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parenthood, you felt, before December 4th, 2009, that [redacted] was well cared for with the caveat that these were young parents?
A Correct.
Q Now, after the December 4th, 2009 injury and Mr. Todd went into and I think you answered how you found out about it and what your experience was with it. You understand that DSS was called into the case December 6th?
A Yes.
Q I mean, do you have an independent recollection of the date other than me suggesting it to you?
A No, sir.
Q But you know that some time after December 4th while [redacted] was still in the hospital DSS was called into the case, correct?
A Yes, sir.
Q How did you find out that DSS was called into the case? What was the first thing you found that DSS was involved?
A They came into the room.
Q At the hospital?
A Yes.
Q Do you remember the young lady who did that?
A I don't remember.

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Q You weren't shown any signs but did you have concerns?
A No.
Q You didn't have any gut feelings as a grandmother that the child was in peril?
A At that time I can't say I did. I know now - - - now, everything I know - - -
Q Right.
A - - - it's harder to answer that but at that time, no.
Q Now you've got a different prism that you look at those things now, - - -
A Exactly.
Q - - - that hindsight's 20/20 but - - -
A Exactly.
Q - - - but if the question is what you knew and when you knew it, as of the December 4th injury and before the January 11th injury, you had no reason to question that [redacted] was in good care with his parents, correct?
A Correct.
Q So you never relayed to DSS that you had any reservations about it, correct?
A Correct.
Q You do remember talking to Detective Amanda Carter

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after the second injury; in fact, it was the same day as the second injury, correct?
A Yes, sir.
Q And you were truthful with Detective Carter when you spoke with her, correct?
A Yes, sir.
Q Let's talk about stressors in Kayla's home at that time. Michael was not working after about October or November of 2009, correct?
A Yes.
Q And that was beginning to get to a point of stress for Kayla wasn't it?
A Yes.
Q Now, and you were very gracious with it, but you had reservations about Michael being your daughter's mate didn't you?
A Yes.
Q You thought that Kayla could do better than him, correct?
A Yes.
Q He played video games 24/7, and he wasn't working?
A Correct.
Q He was not a good provider?
A Correct.
Q So you had understandable reservations about that.

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That was a little bit of a stressor with Kayla because you, maybe were trying to be as discrete as possible, but a mother sometimes has to pass that on to her child whether intentionally or unintentionally, correct?
A Yes.
Q And at some point when you would raise an issue with Kayla, however discretely you were trying to raise it, Kayla at some point would say don't start, don't get into this now. She'd do that, right?
A Occasionally.
Q Not all the time because y'all had a close relationship.
A Correct.
Q But at some point she didn't want to hear anymore because that's her mate, and she's going to be protective of him, correct?
A Right.
Q But at some point the fact that this guy's just flat not working, she's working B shift every day at Walgreens, coming home and he's taking care of the kid while she's out working, at some point that because a stressor for her, correct?
A Yes.

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Q And it became a stressor for Michael too didn't it?
A I don't know.
Q Well, she kicked him out of the house New Year's Eve of 2009 didn't she?
A Yes.
Q So at least it got his attention as he's in the car on the way up to Concord.
A Right.
Q If you'd had a concern about [redacted]'s well-being with Michael and with Kayla, did you know where the York County Offices of DSS were?
A No.
Q Did you know where the York County phone number was to call SC DSS?
A I would have found it.
Q If you'd had a concern, you would have lit up their switchboard; isn't that correct?
A Yes.
Q You talked to Mr. Todd about how you found out about the second injury, the January 11th injury, and what you did. And I think Mr. Todd asked you this, but I'll ask it again. After [redacted] was discharged back to Kayla and Michael December 8th, you had occasion to care for him some time after that didn't you?

Q Does that help now refresh your recollection about what you may have discussed with Ms. Carter?
Mr. Frawley - Object to the form. Answer it if you can.
Q What does this help you do?
A It helps me understand more what happened or what I thought happened.
Q Now, they had each asked you about whether you had concerns at that time about whether Michael had hurt this child or you had suspicions about it and all this other stuff and you gave answers to them. And then you've also discussed that with Amanda Carter, right?
A Yes.
Q Now, how do you explain any type of concerns or suspicions that you had back in - - - Let me ask it a different way. I'm just looking at the top of this and it says the date of the interview was 1-11-10, right?
A Correct.
Q And on 1-11-10 he had come to the hospital, and he had seizures and was in bad shape, right?
A Correct.
Q And when he was in that kind of shape, what was your emotional state like at that particular time?

A I wasn't even coherent. It - - - It was scary.
Q And in that emotional state when she spoke to you, do you recall saying, and I'm looking from just reading from this, I knew this was coming?
A I don't recall saying that. Clearly, I did.
Q Do you know why you would have said that at that specific time?
A Anger.
Q And why were you angry?
A I think this was taken the day that [redacted] was put back in ICU and I know - - - I remember just being angry, very angry that he was there and scared.
Q Now, when Mr. Todd asked you about whether you had concerns or suspicions, do you recall telling him no, I don't think I did?
A I know that I didn't have suspicions the week - - - or several - - - couple of weeks between the first incident and the second incident. I wasn't feeling it at - - - in the moment.
Q Was it only after he went to the hospital on January 11th, '10 that you began to have those suspicions?
A It all made sense then.
Q You used the term before all the pieces came together.

A Exactly.
Q So when you were talking with Mr. Todd and these people about concerns and suspicions before, you were not talking about suspicions or concerns you had prior to January 11th, 2010 were you?
Mr. Todd - Objection.
Mr. Frawley - Object to the form. Answer the question.
Q You were only talking about suspicions you held from January 11th, 2010 on?
A Correct.
Q When you gave this particular response to Amanda Carter, right?
Mr. Todd - Objection.
Mr. Frawley - Same objection. Go ahead.
A I gave this response to Amanda Carter in complete emotional disarray. I remember that now. I remember that clearly.
Q Okay. And so on January the 10th, 2010, and January 9th, 2010, and January 8th, 2010, back to December 4th, 2010, did you know it was coming?
A I did not know it was coming. Nobody could have known that was coming.
Q Now what about somebody - - I believe that Mr. Todd asked you do you hold Michael responsible for

harming this child and you said yes, right; you recall that?
A I do.
Q Now, who were the professionals in this particular case?
A Meaning DSS and the hospital? Who do you mean?
Q Who were the people that are supposed to know that a child has been abused?
Mr. Todd - Objection.
Mr. Frawley - Object to the form. Answer the question.
Mr. Settana - Object to the form.
A It was my understanding that the doctors at Levine were indicating that there was possible abuse. They're the professionals. I'm just the grandmother. I know that I did not have concerns of anyone possibly abusing [redacted] during that time.
Q And then who were the people that were doing investigations, not CMC, but was it DSS and York County Sheriff's Department?
A My understanding, when we were released from the hospital December 8th, was DSS was going to follow up, meaning investigate, find out what happened to my grandson.
Q And if CMC and DSS and the York County Sheriff's

EXHIBIT

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

ELIZABETH HOPE RAINEY,)
AS THE APPOINTED GUARDIAN)
AD LITEM TO [redacted],)
A MINOR,)
)
PLAINTIFF,)
)
-VS-) CA NO. 2011-CP-86-04508
)
CHARLOTTE MECKLENBURG)
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THE SHERIFF OF YORK)
COUNTY, THE YORK COUNTY)
SHERIFF'S DEPARTMENT AND)
YORK COUNTY,)
)
DEFENDANTS.)
_____)

DEPOSITION OF KAYLA LYTHGOE
ROCK HILL, SOUTH CAROLINA
JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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Deposition of Kayla Lythgoe, taken before me, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, in the law offices of McGowan Hood and Felder, Rock Hill, South Carolina, commencing at 9:53 a.m. on July 20, 2012 in accordance with the South Carolina Rules of Civil Procedure.

It was stipulated by and between Counsel for the Plaintiff(s) and Counsel for the Defendant(s) that this deposition is taken for any purpose allowed under the South Carolina Rules of Civil Procedure.

That the signing of the transcript of deposition by the witness is reserved.

* * * * *

Kayle Lythgoe, first being duly sworn, deposes and says as follows:

EXAMINATION - (By Mr. Frawley)

Q Ms. Lythgoe, will you state your name and address for the record, please?

A Kayle Lythgoe. You said address?

Q Yes, ma'am.

A 2799 Whiskey Road, Aiken, South Carolina.

Q Have you ever had your deposition taken before?

A No.

Q Let's go over some preliminaries. I introduced myself to you a moment ago. My name is Pat

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how he was tolerating the formula?
A No. No change.
Q So he adapted pretty well from breast milk to formula?
A Yes.
Q Describe Michael as a father for me in those first few weeks. Was he attentive, was he kind of worried about holding the child; how did he appear to you to be?
A He seemed pretty confident with holding him.
Q Okay.
A Like any typical man, he never wanted to change diapers.
Q I used to like changing diapers, but go ahead.
A That's rare. He was comfortable with him. He did get nervous when he had to be alone with him, but I found that to be normal.
Q Would he get spooked if he's alone with him holding the child and the child suddenly gets fussy or starts crying?
A No. He would burp him or - - - and after he burped him and couldn't figure it out, he'd usually just bring him to me.
Q Okay.
A But for the most part he seemed fine with him.

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Q And how did [redacted] appear to react or respond to Michael when Michael held him?
A Natural.
Q [redacted] made eye contact with him?
A Yes.
Q Now, I read somewhere where your mother never really warmed up to Michael, would that be an accurate statement?
A Yes.
Q She thought you could do better?
A Yes.
Q And at some point Michael lost his job, correct?
A Yes.
Q When did he lose his job?
A It was after [redacted] was born. I would say probably around October-ish.
Q It would have been certainly before the December 4th first hospitalization, first injury, correct?
A Yes.
Q So at the time of the December 4th first injury - - - and I'll refer to them as the first injury which would be that December 4th through December 8th hospitalization, then the second injury which is the January 11th injury, all right?
A Yes.

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Q Michael had lost his job before the first injury, correct?
A Yes.
Q Was your mother's attitude toward Michael, did that create any stress between you and Michael?
A A little.
Q I mean, did Michael know that your mother did not hold him in high regard?
A Yes.
Q Did they get along okay when they were together?
A Yes.
Q Now, you mentioned a moment ago how Michael was with [redacted] Did you notice on occasion that he would be rough with [redacted] or not as gentle as you would have thought he should have been in picking him up?
A Yes.
Q Describe that for me.
A It was non-aggressive, no anger in it, just he would sometimes maybe forget to support his head or he would swoop him up super fast instead of slowly. He would just stand upright. And then when he got a little older like two-ish, three months old, he would, you know, kind of do the up and down and that scared me.

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Q Okay.
A But other than that, it was nothing else.
Q Initially, it would have been from your perspective just that he wasn't aware of how fragile a child could be?
A Right.
Q And didn't always support his head as much?
A Right.
Q And later on you said he would maybe, I mean fathers do this, bounce the kid on their knee or something but a little bit more than you thought maybe would have been appropriate - - -
A Right.
Q - - - or at least you were worried about it?
A I was worried about it, yeah.
Q Okay.
A It just scared me.
Q On those occasions when he would, and I think you used the gesture of your hands - - -
A Yeah.
Q - - - as if they're holding a baby going up and down, - - -
A Right.
Q - - - how would [redacted] appear to be responding to that?

A Oh, he loved it.
Q The kid looks like he likes it - - -
A Yeah.
Q - - - but you're thinking well, maybe this isn't the best thing?
A Yes.
Q Did you ever see Michael drop [redacted]?
A No.
Q Did you ever see - - - well, between his September birth and the December 4th first hospitalization, [redacted] wasn't even standing up in the crib yet was he?
A No.
Q I mean, could he even turn over?
A Yes.
Q Did you ever see an occasion when he would turn over and hit the side of the crib?
A No, he wasn't that advanced.
Q Okay.
A We just have it on camera once him rolling over.
Q When you put him on the floor, would he crawl; was he to that point yet?
A He did the back and forth thing.
Q Back and forth.
A He wouldn't go anywhere, but he'd like get up and

then down.
Q Kind of rock - - -
A Yeah.
Q - - - forward and backward, okay, - - -
A It's very cute.
Q - - - which is a precursor to crawling. You mentioned you had him on the camera. Tell me about that. What kind of camera did you have?
A Michael's mother gave us her video recorder. It did it on the little mini DVDs and we recorded everything, absolutely everything.
Q Do you still have those videos of [redacted]?
A I do.
Q And do any of those videos show Michael with [redacted]?
A Yes.
Q And those would be obviously from some time in September up through - - - would you have videos that were taken prior to the first injury?
A Yes, we have him coming home, and we have just random things that would be boring to everybody else, and then we have him rolling over and Christmas and all.
Q Had he ever gotten to where he could sit up if you put him in a couch where he could sit up?
A No, not unsupported.

Q No? Okay. Where he sits up and then you watch him in the video and he just sort of, okay, - - -
A Yeah.
Q Did you and Michael - - - I guess once he lost his job and as we're getting into December, was the fact that he was not working and you were working, did that become a source of stress for the two of you?
A Yes.
Q Was he out looking for other jobs?
A No.
Q With Food Lion, why did he leave that job?
A I remember there was something to do with it like he asked off for a day to go up to Concord to see his parents and then he like never went back. I don't really remember what had happened. I'm trying to remember if it was because of Thanksgiving, did we take off for Thanksgiving and then he just never went back, but I'm not okay with the dates there.
Q Okay.
A But something like that happened, he just slacked off.
Q And I think I asked a moment ago, and I'm not holding you to this, but I think a moment ago you

mentioned that he may have left his employment some time in October but it may have been as late as November when that happened, - - -
A Yes.
Q - - - at or around Thanksgiving possibly?
A Yes.
Q Did he ever tell you why he left the job, whether he was fired or he just stopped showing up or - - -
A He just - - - well, he didn't like his manager and he would always complain about how he hated him and how the manager hated Michael.
Q Do you know who the manager was; do you remember his name?
A I think it - - - it was an M definitely. I think it was Mark or Mike.
Q Mark or Mike.
A Yes.
Q Was he an older guy or - - -
A No, younger.
Q - - - younger guy?
A And nobody liked Michael professionally because he refused to cut his hair, another just defiant thing about him.
Q How long was his hair?
A Long. It was to his shoulders, a little past.

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Q Not as long as yours?
A No.
Q Okay.
A No, I wouldn't have that.
Q When he would go to work would he tie it back or - - -
A Yes.
Q Okay.
A He always had it back, bottom was shaved off kind of thing.
Q Now, I know he had a tattoo on his leg?
A Yes.
Q Did he have any tattoos on his arms or anything that would be visible?
A No. That was very recent too.
Q When he left Food Lion for whatever reason - - - do you know if he was fired or if he just left?
A I'm pretty sure they fired him by not showing up.
Q But he never told you that?
A No.
Q And he never had a day where he went to work and they said you're fired, go home?
A I don't believe so.
Q As far as you know he just stopped showing up and they just took him off the payroll?

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A Yes.
Q Okay.
A I believe that's how it went down.
Q After he left Food Lion, did he go, to your knowledge, for any other jobs?
A No.
Q So he never even applied for another job after that?
A He got very lazy.
Q Did he tell you why he wasn't applying for jobs when he's the man in the house, he's got not yet a wife but the mother of his child and a young child, did he tell you why he's not out there trying to earn some money when you're working B shift 40 hours a week?
A No, he just would say, you know, well, I - - - I watch the baby and you go to work, that kind of thing, so.
Q And what did you say when that happened?
A I mean, we had conflict because of it. I would just - - - I would yell all the time, and he'd yell at me for being a nag and so it was just those - - -
Q Did he ever hit you?
A No.

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Q Did he ever threaten to hit you or ever get physical right in your face?
A No.
Q You weren't afraid of him?
A No.
Q Let me ask you this, this happens frequently when couples get together, they live together for awhile, then they have a child, and then afterwards their intimacy gets affected. I'm not - - - I don't want to go into any detail, and I apologize for any embarrassment, but did your relationship with Michael change after the child came?
A No.
Q So you were as intimate after the child came as you had been before?
A Yes.
Q And I apologize for getting into that.
A That's okay.
Q Were there occasions, we mentioned earlier about Michael possibly being a little rougher when he would pick the child up when he was [redacted], did you have occasion sometimes to tell Michael you need to be more careful?
A Yes.
Q And what was Michael's response to that?

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A Usually - - - well, it depended on what it was on. If it was because he was playing with him because like well, he likes it or if it was because he'd picked him he'd say sorry and - - -
Q I'll try to do better next time?
A Yeah.
Q Did you ever see his brother pick up [redacted] at any time when Brian was there and y'all were there?
A Yes. Brian showed a lot of love towards him.
Q How old was Brian?
A He was older than me. I think he was 20.
Q So he was Michael's older brother?
A Yes.
Q But was Brian working at that time?
A No.
Q Had Brian completed high school, do you know?
A Yes. Well, no. No, I don't think he did. I'm sorry.
Q Now, had you noticed that Michael would sometimes be rough in picking up [redacted] before that December 4th first injury?
A Yes.
Q And when you would see it you'd correct him on it?
A Yes.
Q And by that December 4th first injury was [redacted] of

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Q Did Michael have any kind of temper?
A No.
Q Did he ever get frustrated over stuff?
A Yes.
Q Did he get frustrated over the fact that he wasn't working?
A No, he got frustrated over the fact that I nagged him for not working.
Q He enjoyed not working?
A Yes.
Q When he didn't work and he stayed home, I mean, obviously, I guess he's saying he's watching the kid, but what else is he doing?
A He would go to Concord some times or - - - that's about it really.
Q When you wouldn't be working what's he doing?
A He's usually at home. He was a gamer, - - -
Q Games.
A - - - always playing games or shopping.
Q Okay, video games?
A Yes.
Q Okay. Or shopping?
A Yes, his parents gave him money a lot.
Q What did his parents do? Were his parents affluent?

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A I'm sorry, what is that?
Q I mean, were they well off?
A Yes, to my knowledge.
Q Do you know what Mr. Carduff did?
A They were both in the Walgreens' business. I believe he was high up, you know, and - - -
Q And that's how they could assist you getting the job?
A Yes.
Q When you worked for Walgreens, what did you do for them?
A I started off as a cashier, and I transferred three times total. And when I found out I was pregnant, I left the Concord one because we left to go to my parents - - -
Q Right.
A - - - or closer to them - - -
Q Right.
A - - - and that's when I transferred to Rock Hill. When I was in Rock Hill, I got promoted to go do the photos, and I was head photo specialist and I made the photos and all that. Then we transferred again - - - Oh, well, yes, we transferred again to Aiken and there I was promoted to pharmacy.
Q When you were in pharmacy in Aiken, what did you do?
A I did the filling, counting pills, patient interaction. I called for authorizations and billing.
Q When you left Walgreens and went to your first non-Walgreens' job, I mean, were you dissatisfied with Walgreens or just looking for more pay?
A No, I was extremely happy with Walgreens. I was let go because when I got hired, when I was 17 when I first got the job, I marked that I had a GED when I did not and they found that out three years later.
Q Oh, okay.
A Very upsetting.
Q Now, in the interim, did you get your GED?
A Yes. Not while I was with Walgreens, it was afterwards.
Q So you basically got fired because you had on your application from when you were 17 that you had a GED when you really didn't - - -
A Yeah.
Q - - - and they didn't like that so they terminated you and then you subsequently did get your GED?
A Yes.
Q Tell me about what led up to the December 4th hospitalization and the first injury. Now, I understand you - - - that [redacted] was acting oddly, was, I think, sleeping all the time but when he was awake he was screaming a lot, correct?
A Yes.
Q Tell me how that came about, how you discovered that. I mean, did that just happen one day or was it something that developed? Was he sick and then that resulted; how did that come about? When did you begin taking him to healthcare providers?
Mr. Frawley - And I'm going to let you do a - - -
Mr. Todd - Objection.
Mr. Frawley - No, what I was going to say, I'm setting the stage and I'm going to ask specific questions.
Mr. Hood - Sure. Sure.
Mr. Frawley - I mean, that question, as I put it, it's easily objectionable. But what I'm telling you - - -
Mr. Todd - You should object to your own question.
Mr. Frawley - Yes, well, that's kind of where I want to go with this.
A Okay.

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Q Where do we start? When did you first notice it? And those are the questions that I'll ask.
A Okay.
Q And then I'm going to open the floor to you to do that. Now, at or around that time - - -
Mr. Settana - When you say that time, you're talking about December 4th?
Q I'm talking about between, say, Thanksgiving - - -
Mr. Settana - Okay.
Q - - - and December 4th, late November early December, was there a time in there where [redacted] had a cold, the flu, was sick, where that began where he went from a well baby to a baby that's got a runny nose and is cranky?
A Yes.
Q And tell me about that.
A He was fine during Thanksgiving and then he started to get the sniffles which I figured came with the season. But we checked him out for the sniffles and that's what we were told it was and not to worry.
Q And who told you that?
A Paxton.
Q Now, when you say Paxton, so he got the sniffles and what you did in response to that was instead of

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just, you know, hoping he sleeps through it, you took him to a healthcare provider, Sunshine Pediatrics, correct?
A Yes.
Q And the Paxton you talk about is Dr. Paxton, correct?
A Yes.
Q And Dr. Paxton told you what again?
A It's just a case of the normal sniffles.
Q And what was [redacted] doing at that time that led you to the conclusion that he's sick enough that you need to take him to Sunshine; what was he doing?
A He was just really runny and red in the nose, and that was it.
Q As far as his disposition, how was he acting?
A Fine.
Q Okay. I mean, happy or was he - - -
A Oh, yes.
Q Okay.
A Yes, happy.
Q All right.
A It was not until after that, a couple like about week now before the 4th, that is when he started to act really weird.
Q Okay. Well, let's talk about that.

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A Okay.
Q What was he doing that lead you to tag that today as being really weird?
A He would not - - - When he was up, it was constant crying.
Q Okay.
A Again, I'm a first-time mom. I don't - - - I've heard about colic so I just figured it was that so I let it go a little bit until, you know, the feeding got odd. He didn't never want to eat. We had to make him eat, not, you know, force or anything, but we had - - - it was a job to make him eat.
Q Okay.
A And we had to wake him up to eat. He wouldn't wake up to eat anymore. And I knew that was odd because I was told babies wake up, and he was - - - ror, like every three hours to eat, and he wasn't.
Q Okay.
A So I got really concerned there. At one point he had a fever and so I took him - - - his pediatrician was closed so I took him to Riverview
Q Riverview, okay.
A - - - I think it was called. It's like a 24-hour

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clinic.
Q Do you remember what day of the week this was?
A I do not.
Q It doesn't matter.
A And it was nighttime because it was after I got off work so we went up there. And I told the doctor, and they didn't make fun of me but, you know, calling me a first-time mom, and I'm worrying too much, and it's okay but to follow up with his pediatrician which I did. And he told me that it could be a throat infection and so I said okay. And he put him on some antibiotic.
Q Let's stop there a second. You went to Riverview and they didn't really make fun of you but they said first-time mom.
A Yes, which is fine.
Q Were they being dismissive of you or did you get the impression they're actually looking at him and trying to analyze what the problem is?
A I mean, well, he was crying, crying, crying when I brought him and of course, we went back, he was happy.
Q Okay.
A He was laughing.
Q Okay.

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the driveway as you're on your way out to work, did you tell her at that time that [redacted] was with his grandmother, in other words, his grandmother was caring for him that day?

A Yes. I had forgotten about that until you brought it up.

Q But with me having brought it up, that prompts a recollection, correct?

A Yes.

Q I mean, it did happen, right?

A Correct.

Q Now, the grandmother, was it your mom or was it Ms. Carduff with whom you were staying?

A My mother.

Q With Charlotte Williams?

A Yes.

Q And do you recall Ms. Hill asking you for a contact phone number so she could contact Ms. Williams and you were not able to give that phone number to Ms. Hill; do you remember that?

A Yes, sort of. I remember her asking me. I don't remember not giving it to her. I don't know why I would not be able to.

Q Where would Michael have been then that day?

A I don't know.

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Q In other words, why was your mom caring for the child instead of Michael?

A Michael - - - if it was morning he was probably asleep, but I'm not positive.

Q [redacted] would have been better cared for with your mother than with Michael anyway on that day wouldn't he?

A Yes.

Q Are you still good to go?

A Yes.

Q Give me a second. Some of these questions I've already asked. We don't have to go over them again. Okay. That takes us up to December 21st just before Christmas. Did y'all have a normal Christmas?

A Yes.

Q Now, within ten days after this December 21st home visit the issue with Michael and his not working, his not getting a job, reaches a head and you essentially kick him out of the house New Year's Eve; isn't that correct?

A Yes.

Q Was it on New Year's Eve, was it a day before, a day after?

A It was New Year's Eve.

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Q New Year's Eve. All right. Tell me how that conversation went.

A It was not good. His friends were there.

Q At your home?

A Yes. Another thing that upset me so much. I mean, that's what broke me to kick him out. Because I could tell he just didn't - - - [redacted] was more of a bother than a good thing when his friends were over. So I just - - - I went in there, my mom was with me, and I brought him to our room. I told him to come with me in the back and I said, you know, this is hard for me but you need to go, you know, you're not showing any incentive of being a man.

Q You need something to drink; you okay?

A Yeah, I'm fine.

Q All right.

A And I said you're being lazy, your friends are always here, this is not a party house, and blah, blah, blah, and just kicked him out. I said you need to go, you need to take your friends with you, and you need to go back to your mom's house because apparently that's where you need to be. And so he did. I mean, he didn't really fight it, but he just did it. He didn't say anything. And I just stood there while he packed all his stuff up and he

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left, and that was that.

Q You said that his friends were there on New Year's Eve. I mean, a lot of people are out partying New Year's Eve. He's got his friends over there. How many friends were there?

A Two.

Q Two.

A His brother Brian and his best friend Aaron.

Q And you said in your explanation there that his friends were always there. When you say - - - I know that's probably and overstatement - - -

A Yes.

Q - - - but, I mean, how frequently would you come back from working your shift, and he would be there with either his brother or his brother and others?

A It was always either just his brother or his friend or both of them. They didn't - - - It wasn't as - - - I should say they didn't come often. When they did come, they stayed so long. I'll state it like that.

Q Didn't know when to leave?

A Yes. So they would come like once a month for like a week or a whole weekend and it just bugged me because Michael would always stay up till like 4:00 in the morning and all that. It was just annoying.

March 18, 2013: Expert Opinion: J. Kevin Moore: Hospital Administrative Issues and Concerns
Case: Carduff v. Carolinas Medical Center. Client: McGowan, Hood & Felder, Rock Hill, SC 29732

FACTS

[redacted] a three month old boy, became ill on December 4, 2009 while in the care of his father. He was taken to the emergency department at Piedmont Medical Center (PMC) by his parents, admitted near 5pm, stabilized, and transferred to the Levine Children's Hospital (LCH) near 2:30 am on December 5, 2009. The first documented entries raising suspicions of child abuse appear in [redacted] record near 8:30 am on December 5th. Implementation of LCH child abuse policies and protocols immediately followed. Applicable policies required coordinated efforts by medical, clinical and social worker staff at LCH, and notice to the Department of Social Services in South Carolina (DSS), where [redacted] resided, to evaluate and assess potential child abuse.

From December 5th- 8th, 2009 LCH conducted medical examinations and tests finding 2 subdural hematomas, one of which was unexplained and potentially resulted from child abuse or non-accidental trauma. During the same time, LCH social workers provided medical findings and psychosocial assessments of the parents to DSS, discussed disposition issues including custody or supervision, and the requirement that a safety plan be developed and in place before discharge. Medical findings were insufficient to determine whether or not [redacted] injuries resulted from child abuse. On December 8, 2009 at 12:45 pm [redacted] was discharged to his parents. On January 11, 2010 [redacted] returned to LCH with severe traumatic brain injuries. LCH records indicate [redacted]'s injuries were severe, resulted from child abuse, and will likely result in significant lifelong disability.

ANALYSIS

For purposes of this analysis, Levine Children's Hospital (LCH), Carolinas Healthcare System (CHS), and Charlotte-Mecklenburg Hospital Authority are considered as the defendants and referenced as LCH.

The question presented is whether LCH abrogated a duty or responsibility to [redacted] and deviated from laws, standards, rules, regulations or its own policies thereby violating the standard of care by discharging [redacted] into the care of his parents, allowing for further injury. Based on a review of the court filings, patient records, LCH policies and procedures, and other documents my conclusion is in the affirmative.

LCH abrogated its duty to [redacted] and violated the standard of care.

The standard of care for patients who are suspected victims of abuse is broadly addressed by Joint Commission (JCAHO) 2006 hospital accreditation standards on Provision of Care, Treatment, and Services (PC). PC 3.10 requires victims of abuse be assessed, specific criteria be developed for Child Abuse cases and that appropriate staff is educated on how to address abuse cases. The JCAHO requires the Hospital develop and implement specific policies to carry out these standards. Those policies are the primary basis of my analysis and the standard of care the Hospital set for itself.

LCH Policy and Procedure require that any child age 0-6 months with **any** injury be designated as a patient "suspicious for child abuse". *(PR 110.03: Child Maltreatment Clinical Practice Guidelines: Evaluation and Management of Suspected Child Abuse or Neglect: Section I, Child Physical Abuse, Part A. Identification (1).002642)* Owen met these standards.

ANALYSIS (cont.)

Once so designated, a series of mandated LCH policies, procedures, protocols and practices are triggered purposed to "...provide guidance on the procedure that **should** be followed in cases of suspected abuse or neglect" ... *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Summary Statement 002636).* Critical among those actions required by LCH policies are:

1. Notice to the Department of Social Services in the county where the patient resides. *(P.R. 110.03: Juveniles suspected of Being Abused or Neglected: Procedure (Procedure (A) (5) 002638.)*

2. Completion of the CHS Suspected Abuse and Neglect (SCAN) form. The SCAN form is primarily a medical evaluation tasked to identify any physical or clinical signs, symptoms, or injuries which could indicate or confirm child abuse through medical tests, evaluations, and consultation among physician specialists and clinicians. SCAN is designed to identify clinical manifestations of child abuse and determine if medical clearance can be attained **before** patient discharge can occur. *(P.R. 110.03: Juveniles suspected of Being Abused or Neglected: Procedure (A) (3) Complete CHS SCAN form: 002637)*

3. A psychosocial assessment of the parents and/or caretaker and environment in suspected child abuse cases evaluating if:

    a. The infliction or **allowing** the infliction of serious physical injury occurred while in the care of the parent, caretaker or guardian. *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Definitions (B) (1) (a) 002636*
    b. The parent/guardian has logical explanation that is consistent with the age, pattern, and severity of the injury. *(PR 110.03: Child Maltreatment Clinical Practice Guidelines: Evaluation and Management of Suspected Child Abuse or Neglect: Section I, Part B. Essential Aspects-Caretaker History (1). 002642)*
    c. Any concerns regarding any inappropriate statements made or behaviors by the parent/caretakers and/or their level of knowledge regarding the circumstances resulting in child's need for medical care and/or why a physical injury exists, and if so assuring those concerns are documented. *(PR 110.03: Child Maltreatment Clinical Practice Guidelines: Evaluation and Management of Suspected Child Abuse or Neglect: Section III, Child Neglect :Part C Evaluation and Treatment (10). 002647*
    d. It is unsafe for the juvenile to return to or be discharged to his or her parent, guardian or caretaker. *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Procedure (B) 0002636)*
    e. The child lives in an injurious environment, or a home where another child has died or been subjected to abuse, or where an abusive parent or caretaker lives. *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Neglected Juvenile (1) (D) and (2) 0002636)*

    Required actions include:

    f. Assuring the child is not discharged after medical clearance has occurred, until :
        i. Disposition by LCH social workers and DSS has been determined
        ii. A safety plan has been placed on the patients chart. *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Procedure(A) (9) (0002638)*

g. If it is potentially unsafe for the child to return to his parents or caregivers:
   i. First contacting DSS to determine if DSS will assume emergency custody and authorize LCH to retain physical custody of the child; ....and if not.
   ii. Exercising or invoking the authority under the standing Judicial Court Administrative Order granted to LCH under N.C.G.S., Sec. 7B-308, to retain custody of any child **suspected** of abuse. (*P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Attachment C (0002654)*

Items (1) and (2) listed above were accomplished with the following results.

1. DSS in South Carolina was notified and promptly sent representatives to meet with the parents/caretakers at LCH on Dec 6th, (*DEF PROD 00163*); and to the home to better evaluate the caregivers and the environment. Unfortunately it appears that the DSS visit to the home on Dec 7th was unsuccessful because it occurred while [redacted] was still hospitalized and the parents remained with him at LCH. *(DEF PROD 00164)*
2. The Child Maltreatment Physician and Clinical Team members at LCH were unable to identify medical or clinical findings sufficient to convert a suspicion of child abuse into a medically substantiated case of child abuse. *(Many references to this conclusion ... DEF PROD 00165)* LCH staff initially followed upon policy requirements that any child age 0-6 months be treated as a suspected child abuse victim, and acted upon clear suspicions of abuse by placing a sitter [redacted]'s room to assure parental supervision immediately following admission.
   Number (3) listed above is where the preponderance of errors and violations of LCH policy occurred. However, certain assumptions or uncertainties presented in LCH records and testimony by LCH staff must first be addressed. Although treated as such in LCH testimony, medical clearance is not synonymous with "ready for discharge" and cannot be treated as such under LCH policy. The assessment of the circumstances under which the injury occurred; parent/caregiver capacity; home environment; the potential need for supervision or parental education; custody at discharge; and development of a safety plan are not medical matters. All of these requirements must still be met even if medical clearance is obtained, and policy requires they be addressed prior to discharge. *(See 3. (a-e) above).* The purpose of these requirements are to assure no child suspected of abuse is discharged into any circumstance where abuse might continue of be perpetuated.

<u>Suspicion of Child Abuse Supposedly Not Confirmed</u>

Laura Newmark asserts, in contradiction to the Child Abuse and Neglect Algorithm (CANA) (*P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: CANA, Attachment F (0002658,)* that "the suspicion was not confirmed, because there had not been a full work up yet". *(Deposition Laura Newmark, MSW, LCH pg. 14.)* . This assertion is noteworthy because it appears to be offered to justify not having taken further action to protect [redacted]. This conclusion is not supported by LCH policy, actions taken by LCH staff, the facts of this case or common definition. Suspicion was established by policy and acted upon.

- LCH Policy and Procedure specifies that any child age 0-6 months with **any** injury be designated as "**suspicious** for child abuse". *(PR 110.03: Child Maltreatment Clinical Practice Guidelines: Evaluation and Management of Suspected Child Abuse or Neglect: Section I, Child Physical Abuse, Part A. Identification (1).002642)* [redacted] clearly met this definition.

ANALYSIS (cont.)

- According to the Child Abuse and Neglect Algorithm, contact and consultation of the Clinical Care Management Social Worker (MSW) is triggered by suspicion of abuse by the medical staff. The contact and involvement of MSW, their subsequent notice to DSS, and initiation of the SCAN form triggered by policy supports a suspicion of child abuse was broadly shared by all staff. *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: CANA, Attachment F (0002658,)*

- LCH placed a sitter with [redacted] immediately following admission. "Sitter in room until cleared by DSS/Child Maltreatment Team" Sarah Gall 12/5/09, 1:50 PM. *(CMC (12.05.09) 0065.)* "Hospital has a sitter; parents are having supervised contact with baby" *(DEF PROD 001356)*; and the assignment of a Child Maltreatment Coordinator, Lynn Myers, R.N. (?), represent actions taken to protect [redacted] confirming a suspicion of abuse by the parents.

- Perhaps purely semantics but a "confirmed suspicion" is typically considered a fact.

The preceding clearly indicates LCH suspected abuse and acted in a manner demonstrating a need to protect [redacted] from his parents during his hospital stay.

It appears that the hospital seems to be relying on medical substantiation of documented abuse to categorize its actions or inactions as reasonable. This is not correct. Medical substantiation is but one element to be factored into the final decision of whether to discharge or not. In this case, LCH staff clearly failed to exercise their authority to seek protective custody by DSS, or assume involuntary custody under judicial powers granted by statue and court order to retain custody and defer discharge.

Role of the MSW at LCH in Suspected Child Abuse Cases

In deposition Laura Newmark, MSW., describes her role as "serving as liaison between the LCH medical team and DSS", and "sharing information on the clinical status and what is going on with the patient with DSS". Ms. Newmark concludes the final decision regarding [redacted] discharge and, getting the discharge plan right, is the sole province of DSS. *(Deposition Laura Newmark, MSW, LCH pgs. 10-12)* These conclusions are not supported by LCH policy or the facts of this case.

LCH policy describes the MSW role in suspected child abuse cases as one of active consultation providing aid and assistance in the assessment process, *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Procedure (A) (2), 002637, and Attachment F (0002658).* Specific MSW duties ascribed by policy include: assuring assignment of a Child Maltreatment Coordinator to cases of suspected child abuse; determining disposition of a child suspected of abuse before discharge with DSS, and assuring the safety plan has been placed on the chart in writing prior to discharge. *(P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Procedure (A) (9) (0002638).* [redacted] was discharged with no safety plan on the chart, and without a consensus decision by MSW and DSS on discharge disposition, after medical clearance, as required.

FINDINGS and CONCLUSIONS

The MSW has primary responsibility, and was the best or only party in a position to assess items 3 (b, c, f (ii) and g (i)) above, and shares responsibility for 3 (a, d, f (i) and g (ii)) above. By not carrying out these

duties, or assuring they were performed, MSW violated the standard of care and abrogated their duties to protect [redacted]. The only items listed above which might be considered the exclusive or sole province of DSS are 3(e), review of the home and prior history of child abuse, and authorship of the safety plan in f (ii). I see no liability on the part of the LCH medical staff having relied on the MSW to determine disposition at discharge, seek a safety plan, and having noting in the record that [redacted] should be discharged with supervision. (See B below). Although supervised and protected from the parents during his hospital stay, [redacted] was discharged into the parents care without supervision. Those most acquainted with [redacted] injuries, LCH staff and medical team findings and suspicions, the parents and caregivers demeanor during his stay from Dec. 5-8, 2009 were the MSW staff at LCH.

ADDITIONAL FACTORS

In addition, the MSW was aware, or should have been aware, of several facts and events relevant to child abuse which may have proven critical to DSS. It is not apparent that these facts or events were conveyed to DSS.

A. A member of the LCH nursing staff (RN [redacted], conveyed information to MSW regarding a **"private"** conversation with the maternal grandmother. The conversation disclosed the [redacted] had sustained a previous bruise to the head in November while in the care of his father and uncle that could not be explained. *(CMC 12.05.09, 0096)*

B. The consulting LCH Neurosurgeon, Dr. McGanahan charted that [redacted] should only be discharged **under supervision**, in a medical record entry at 6:45 pm on 12/7/2009 the night before Owen was discharged. *(CMC 12.05.09 0039)*. It appears from this entry a member of the medical team felt it necessary to assure [redacted] was not discharged to the singular care of his 19 and 18 year old parents without supervision. The MSW was responsible for conveying this information to DSS and assuring it was in the discharge safety plan. It is not clear this specific medical direction regarding supervision was conveyed or acted upon by MSW.

C. The Maltreatment Clinical Coordinator, Lynne Myers, R.N., charted the safety plan from DSS had **not** been received at 10:32 am on 12/8/2009. Despite the requirement that this plan be on the chart **before** discharge, [redacted] was discharged to his parents at 12:43 that afternoon. *(Nursing Misc. Inpatient Documentation: Exhibit 31, 000155)* As previously established it was the responsibility of the MSW to assure the safety plan was on [redacted] chart **prior** to discharge.

D. Both the maternal grandmother Charlotte Williams and Rev. Larry Williams the maternal step-grandfather testified that a Neurologist "Dr. Bailey", assigned to [redacted] at LCH clearly indicated that [redacted] was possibly or likely a victim of "shaken baby" child abuse through verbal and graphic physical communication . (Deposition Charlotte Williams, pg. 133, and Deposition of Rev. Larry Williams, pgs. 39-40). As the party responsible for conveying findings and assessments by the medical team at LCH to DSS, Ms. Newmark should have consulted or obtained findings from the attending neurologist and conveyed those finding to DSS. There is no evidence that this medical suspicion or concern was captured on the chart or conveyed to DSS.

Answers filed by SCDSS on January 9, 2012 and February 6, 2012 state that LCH conveyed information to DSS without mentioning a suspect, and that medical findings of abuse were inconclusive, and there were "no concerns of non-accidental trauma". DSS asserts that it received insufficient information from LCH to understand the depth and existence of observations and information which would be needed to

retain custody of [redacted]. If there was a failure to assess and communicate all medical findings from physician staff, and/or psychosocial observations or concerns to DSS or among LCH staff, Joint Commission Standards PI 5.10, 5.50, and 5.60. In regards to coordination of care and timeliness of sharing relevant patient information may also have been violated.

Finally, the defendant asserts in a motion of summary judgment that, "the decision regarding the discharge of a child into the custody of his parents ...is not a decision which can be made by a hospital or physician". This assertion is not true. (*P.R. 110.03: Juveniles Suspected of Being Abused or Neglected: Attachment C, Exhibit 7, (0002654)* indicates that even if DSS decides to grant the discharge of a child back to the custody of a parent, the Hospital is authorized to retain custody of any child suspected of abuse under a standing Judicial Administrative Order and NCGS 78-308, and convey that decision to DSS and the parents regardless of agreement or consensus.

The decision to either retain custody of the child by LHS or ensure the child is put into some type of emergency custody ensures a proper investigation is done by DSS since it requires court action before placement back to the family. This would seemingly ensure a safe placement for the child since he has been in the custody of his paternal grandparents for years and there has not been any type of indication of trauma since that time.

OUTCOME

By discharging [redacted] back into the custody of his parents, after all standards of suspected abuse were established under LCH policy and by the actions of LCH staff, LCH violated both its duty to [redacted] and the standard of care. In doing so LCH failed to take actions which would or could have averted subject exposure to and possibilities for ongoing child abuse. [redacted] subsequent readmission less than 6 weeks later and the devastating injuries he has now sustained by virtue of child abuse are present day facts which all policies violated by LCH outlined above are designed to prevent. It is my opinion that the negligent actions or failure to act in contravention of clear suspicions of abuse and policy requirements caused and/or contributed to the injuries of [redacted] in January 2010.

I wish to reserve the right to modify, correct or amend any findings listed above upon receipt of further information, facts discovered or documents not yet reviewed related to this case.

J. KEVIN MOORE

Sworn to and signed before me
this 3 day of April, 2013

Ashley F. Wilson
Notary Public

My Commission expires: April 29 2017

ASHLEY F. WILSON NOTARY PUBLIC WAKE COUNTY, NC Comm. Exp. April 29 2017

Index for Moore Exhibits

1. J. Kevin Moore, M.H.A. Curriculum Vitae
2. Joint Commission Hospital Accreditation Standards 2006
3. Juveniles Suspected of being Abused or Neglected PR 110.03
4. DSS DEF PROD 00163
5. DSS DEF PROD 00164
6. DSS DEF PROD 00165
7. Laura Newmark, MSW deposition 14:1-5
8. CMC (12.05.09) 0065
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10. Laura Newmark, MSW deposition 10-12
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12. CMC (12.05.09) 0039
13. Misc Inpatient Documentation 000155
14. Charlotte Williams deposition 133:13-18
15. Rev. Larry Williams deposition 39-40

J. KEVIN MOORE, M.H.A., J.D.

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EXECUTIVE SUMMARY

Health care executive with 25 years experience managing university teaching and research hospitals and clinics, including Duke Univ., Univ. Of Minn., and Carolinas Health Care System. Consultant advising medical device, pharmaceutical and other health care companies on business models and strategic initiatives, while serving as faculty in medical/legal disciplines. Strong practical and academic experience with M.H.A. and J.D. providing experience and skills for management of complex medical, business and legal issues within a cross-functional environment. Served as Director of Guidant Corporation, on Compliance and Audit Committees, a medical and cardiovascular device company, for 11 years until its acquisition by Boston Scientific.

PROFESSIONAL & BUSINESS EXPERIENCE

- **HHM Consulting Group: President. Raleigh, North Carolina. 2005 – Present**

  Healthcare consultant and management adviser to academic medical centers, physician practices, health systems, medical clinics and hospitals; medical device and pharmaceutical companies; law firms and medical justice services. Experience includes negotiation and authorship of purchase contracts and agreements; construction and interpretation of medical staff bylaws, hospital policies and procedures, regulatory and accreditation requirements and professional compliance; negotiation of contracts for physician services and concierge medicine; evaluation of clinic system and patient flow, assessment of malpractice /legal risk; and review and evaluation of continuing medical and legal education. Clients include: start-ups, law firms, health care insurance companies, health systems, start-ups, international health travel companies, and the Institute for Public Health at UNC. Served as contract COO to American Housecall Physicians, Inc. 2006- 2007. Currently teaching health law and ethics requirements for N.C. Board of Examiners licensure in Long Term Care.

- **Arbor Group LLC: Vice President. Carrboro, North Carolina. 2003 – 2005**

  Consulting and strategic planning to biotech and pharmaceutical start-ups, executive medicine companies, governmental and private partnerships. Licensing and acquisition opportunity evaluation; due diligence; interim management; university and government relations; and venture capital solicitations and fundraising strategies. Prepared health care agenda for North Carolina Institute for Emerging Issues Health Care Leadership Forum 2005. Corporate Audit Committee Preceptor, National Association of Corporate Directors.

- **Advanced Medical Productions: Vice President for Strategic Planning and Business Development. Chapel Hill, North Carolina. 2001 – 2003.**

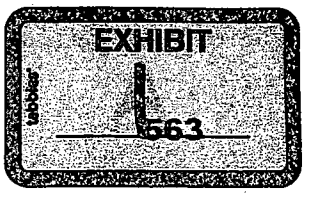
  Served as Senior Business Development officer in this media development company specializing in medical education, healthcare documentaries and educational programs with national broadcasts on Discovery Channel, The Learning Channel and Discovery Health. Broadcast programs include "The Operation" and "Hospital."

- **Carolinas Medical Center: Senior Vice President and Chief Operating Officer. Charlotte, North Carolina. 1997 – 2001**

  Chief Operating Officer and Senior Administrator for Carolinas Medical Center (CMC), the 777-bed level one trauma center, teaching and referral hospital in Carolinas Health Care System. Direct reports included 8 VPs and administrators including OR, Pharmacy, Emergency Department, Nursing Services, Heart Center, Anesthesiology, Neurosurgery, Clinical Labs and Pathology. Total scope of operations included more than 5,000 employees and four facilities. Selected accomplishments include: consolidation of formulary and pharmacy administration at 4 hospitals in Charlotte; CMC 2000 JCAHO accreditation awarded with distinction; centralized dietary services in 7 hospitals in private joint venture achieving $1.9 MM savings in year 1; exceeded financial targets and goals in 4 successive years with increases in clinical volumes, reimbursement margins and market share.

- **Guidant Corporation: Board of Directors. Indianapolis, Indiana. 1995- 2006**

  Served as Director for Guidant Corporation for 11 years including member of Audit, Finance and Compliance Committees for this Fortune 500 medical and cardiovascular device company. Acquired by Boston Scientific in 2006 for over $27 billion. Review and understanding of new technology, emerging companies, supply chain requisites, reimbursement strategies, patent and IP protection and competitive medical solutions in medical device industry required.



- **Duke University Medical Center (DUMC). Durham, North Carolina. 1984 – 1997**

  Associate Chief Operating Officer, Duke Hospital, 1993 – 1997, responsible for Departments and Services, including Pharmacy, Radiology, Life Flight Air Ambulance, Emergency Department, Clinical Laboratories, Community and Family Medicine, at this 890-bed teaching and referral hospital. Responsible for design, construction and operations of Duke Ambulatory Surgery Center.

  Assistant Director, 1990-1993 Surgical Private Diagnostic Clinic with over 300 physicians and 500,000 annual visits.;

  Director Management Services, 1984-1990 for Medical Center Administration, responsible for Risk Management, Grants and Contracts, Research and Laboratory Administration, Environmental Safety, Malpractice Claims Analysis and Hyperbaric Medicine.

- **Robbins, Zelle, Larson & Kaplan Law Firm: Associate/Law Clerk. Minneapolis, Minnesota. 1983 – 1984**

  Performed legal research and case analysis for corporate clients for this 400-person law firm with 8 US and 3 international offices, specializing in insurance subrogation defense, corporate law, personal injury claims, and trusts and estates.

- **University of Minnesota Hospitals and Clinics: Assistant Director. Minneapolis, Minnesota. 1980 – 1983**

  Responsible for 300 bed inpatient med/surg units and ancillary operations in this 720-bed teaching hospital. Chief Planning Officer for new inpatient replacement facility. Recruited to competitive fellowship in premier teaching and research health system in the birthplace of Managed Care Organizations.

EDUCATION

- University of Minnesota, School of Law, Minneapolis, MN. Juris Doctor (J.D.), 1984.
- Duke University, Graduate School of Health Administration, Durham, NC. Masters of Health Administration (M.H.A.), 1979.
- Duke University, Trinity College of Arts and Sciences, Durham, NC. Bachelor of Science (B.S.), 1976.

TEACHING

- **University of North Carolina School of Public Health: Clinical Lecturer. Chapel Hill, North Carolina. 2002 – 2006.**

  Lecturer on legal and ethical issues in Long Term Care, medical products, patent protection, technology procurement and applications, conflict of interest rules and prohibited transactions in hospital/physician relations. Specific focus on Federal rules and regulations, reimbursement approval, and Group Purchasing Organizations (GPOs). Graduate students learn hospital operations, governing rules and regulations, and ethical issues facing health care in today's competitive market and heavily regulated environment.

- **Wake Forest School of Law, Continuing Legal Education: Lecturer. Winston-Salem, North Carolina. 1998 – 2002.**

  Lecturer, panelist and speaker on end-of-life and patient care issues including advanced directives, living wills, "do not resuscitate" orders, right to refuse treatment orders, AMA discharges, confidentiality and durable power of attorney.

- **Graduate School of Health Administration/Fuqua School of Business, Duke University: Adjunct Associate Professor. Durham, North Carolina. 1990 – 1998.**

  Chief lecturer on health law, risk management, federal healthcare regulation and reimbursement. State Certificate of Need Laws, Health Planning Agencies, applications for new or expanded clinical service programs. Hospital policies, procedures and accreditation.

- **North Central Legal Assistance Program: Volunteer Attorney. Durham, North Carolina. 1989 – 1998.**

  Pro bono attorney and senior counsel to Durham and Person County, a publicly funded legal assistance program. Senior Counsel before the North Carolina State Supreme Court on behalf of NC Legal Services clients in Stachlowski v. Stach, NC Sup Ct (1991).

PROFESSIONAL ACTIVITIES AND PUBLIC SERVICE

- National Association of Corporate Directors: Member, 2004 – Present.
- Panelist on Audit and Governance (May 2005) Speaker on Mergers and Acquisitions (Oct 2006).
- Society for Innovative Medical Practice Design. 2006 to 2009.
- Public School Foundation Board, Chapel Hill-Carrboro City Schools. 2004 – Present.
- Duke University Nasher Museum of Art, Board of Directors. 2004 – 2009.
- Guidant Corporation, Board of Directors: Audit, Finance and Compliance Committees. 1995 – 2006.
- Duke University, Fuqua School, Global Capital Markets, Directors Institute. 2004.
- Harvard School of Public Health, Graduate: Hospital Trustees Certification Program. 1980
- Arts and Science Council of Charlotte, NC: Board of Directors, Executive Committee. 1997 – 2000.
- American Red Cross, Charlotte, NC and Durham, NC: Board of Directors. 1987 – 1999.
- MEDIC, Mecklenburg County Emergency Medical Services, Charlotte, NC: Board of Directors. 1997 – 2000.
- Durham Arts Council, Durham, NC: Chairman of the Board, Finance Committee, Director. 1989 – 1997.
- North Central Legal Aid Program, Durham, NC: Volunteer Attorney and Senior Counsel. 1989 – 1997.
- Duke University, Durham, NC: Board of Trustees : 1976 – 1980.
- North Carolina Bar Association: Member. 1985 – Present.

PROFESSIONAL MEMBERSHIPS (Past and Present)

- American Hospital Association
- American College of Health Care Executives
- American Academy of Hospital Attorneys
- North Carolina Bar Association
- Medical Group Managers Association
- American Bar Association: Health Law Section
- National Association of Corporate Directors

EXHIBIT

"2"

Joint Commission
on Accreditation of Healthcare Organizations
Setting the Standard for Quality in Health Care

Hospital Accreditation Standards

2006 HAS

Accreditation Policies

Standards

Elements of Performance

Scoring



Standard PC.2.150

Patients are reassessed* as needed.

Rationale for PC.2.150

Each patient may be reassessed for many reasons including the following:

- To evaluate his or her response to care, treatment, and services
- To respond to a significant change in status and/or diagnosis or condition
- To satisfy legal or regulatory requirements
- To meet time intervals specified by the hospital
- To meet time intervals determined by the course of the care, treatment, and services for the patient

Element of Performance for PC.2.150

C M 1. Each patient is reassessed as needed.

Additional Standard for Victims of Abuse

Standard PC.3.10

PC

Patients who may be victims of abuse or neglect are assessed. (*See* standard RI.2.150.)

Rationale for PC.3.10

Victims of abuse or neglect may come to a hospital in a variety of ways. The patient may be unable or may be reluctant to speak of the abuse, and it may not be obvious to the casual observer. Staff needs to be able to identify abuse or neglect as well as the extent and circumstances of the abuse or neglect to give the patient appropriate care.

Criteria for identifying and assessing victims of abuse, neglect, or exploitation should be used throughout the hospital. The assessment of the patient must be conducted within the context of the requirements of the law to preserve evidentiary materials and support future legal actions.

Elements of Performance for PC.3.10

A 1. The hospital develops or adopts criteria[1] for identifying victims in each of the following situations:

- Physical assault
- Rape
- Sexual molestation
- Domestic abuse
- Elder neglect or abuse
- Child neglect or abuse

* The scope and intensity of any further assessments are based on the patient's diagnosis; the setting; the patient's desire for care, treatment, and services; and the patient's response to any previous care, treatment, and services.

[1] The Family Violence Prevention Fund is one resource that can be contacted for further information at http://www.fvpf.org.

B 2. Appropriate staff* is educated about abuse or neglect and how to refer as appropriate.

A 3. A list of private and public community agencies that provide or arrange for assessment and care of abuse victims is maintained to facilitate appropriate referrals.

B 4. Victims of abuse or neglect are identified using the criteria developed or adopted by the hospital at entry into the system and on an ongoing basis.

B 5. The hospital's staff refers appropriately or conducts the assessment of victims of abuse or neglect.

A 6. All cases of possible abuse or neglect are reported to appropriate agencies according to hospital policy and law and regulation.

A 7. All cases of possible abuse or neglect are immediately reported in the hospital.

PC

Standards PC.3.20 Through PC.3.110

Not applicable

Additional Standard for Patients Being Treated for Addictions

Obtaining and interpreting information about substance abuse, dependence, or other addictive behaviors is necessary to develop treatment plans. By gathering the data and information on the items listed in the standards, the clinician can assess the relationship of the physical state of each patient to the dependence; assess the nature of the patient's compulsion to use alcohol, drugs, or other addictive behaviors; assess the intensity of the patient's mental preoccupation with alcohol, drugs, or other addictive behaviors such as gambling; and distinguish between alcohol-related symptoms, drug-related symptoms, and symptoms of other addictive behaviors and other preexisting physical problems or pathologic behaviors.

Standard PC.3.120

The needs of patients receiving psychosocial services to treat alcoholism or other substance use disorders are assessed.

Elements of Performance for PC.3.120

A 1. The content of the assessment and reassessment of patients receiving psychosocial services to treat alcoholism includes at least the following:
- The patient's history of alcohol, nicotine, and other drug use, including age of onset, duration, intensity, patterns of use (for example, loss of control over amounts or frequencies of consumption, inability to consistently abstain from use, relapse), and consequences of use

* Staff should be able to screen for abuse and neglect as indicated by the patient's needs or conditions. The organization may define who conducts the full assessment for alleged or suspected abuse or neglect or refer to another organization.

Diagnostic Services

Standard PC.3.230

Diagnostic testing* necessary for determining the patient's health care needs is performed.

Elements of Performance for PC.3.230

C M 1. Diagnostic testing and procedures are performed as ordered.

C M 2. Diagnostic testing and procedures are performed in a timely manner as defined by the hospital.

C M 3. When a test report requires clinical interpretation, relevant information is provided with the request.

Planning Care, Treatment, and Services

PC

Planning includes creating an initial plan for care, treatment, and services appropriate to the patient's specific assessed needs, and then revising or maintaining the plan based on the patient's response. Planning for care, treatment, and services is individualized to meet the patient's unique needs and circumstances. Performed by qualified individuals, planning for care, treatment, and services involves using an interdisciplinary approach when warranted and involving the patient to the extent possible.

The plan may be modified or terminated based on reassessment, the patient's need for further care, treatment, and services, or the achievement of plan of care goals. This modification may result in planning for the patient's transfer to another setting or service or discharge from the hospital.

Standard PC.4.10

Development of a plan for care, treatment, and services is individualized and appropriate to the patient's needs, strengths, limitations, and goals.

Rationale for PC.4.10

Planning care, treatment, and services is not limited to developing a written plan. Rather, planning is a dynamic process that addresses the execution of care, treatment, and services. The plan for care, treatment, and services must be consistently re-evaluated to ensure that the patient's needs are met. Planning for care, treatment, and services includes the following:

- Integrating assessment findings in the care-planning process

* Diagnostic testing includes laboratory, radiologic, electrodiagnostic, and other functional tests and imaging technologies.

- Developing a plan for care, treatment, and services that includes patient care goals that are reasonable and measurable
- Regularly reviewing and revising the plan for care, treatment, and services
- Determining how the planned care, treatment, and services will be provided
- Documenting the plan for care, treatment, and services
- Monitoring the effectiveness of care planning and the provision of care, treatment, and services
- Involving patients and/or families in care planning

Elements of Performance for PC.4.10

B 1. Care, treatment, and services are planned to ensure that they are individualized to the patient's needs.

B 2. Development of a plan for care, treatment, and services is based on the data from assessments.

3. Not applicable

4. Not applicable

5. Not applicable

B 6. Patient needs, goals, time frames, settings, and services required to meet the patient needs and/or goals determine the plan for care, treatment, and services.

7. Through 11. Not applicable

C (M) 12. Evaluation of the patient is based on the patient care goals and the patient's plan for care, treatment, and services.

C (M) 13. The goals of care, treatment, and services are revised when necessary.

B 14. Plans for care, treatment, and services are revised when necessary.

15. Not applicable

16. Not applicable

B 17. The plan for care, treatment, and services considers strategies to limit the use of restraints or seclusion as appropriate.

Providing Care, Treatment, and Services

Caring for patients involves providing individualized, planned, and appropriate interventions in settings responsive to specific individual needs. "Care" includes care, treatment, services, rehabilitation, habilitation, or another intervention provided to the patient by the hospital.

The goal of providing effective care, treatment, and services is met when the following are performed well:

- Intervening in a collaborative manner (in light of assessed patient needs)
- Educating the patient
- Promoting health and providing appropriate preventive care
- Providing supportive care, treating a disease or condition, and/or treating symptoms (such as pain, nausea, or dyspnea) using accepted professional standards of practice
- Meeting the patient's nourishment needs, if appropriate to the setting
- Helping patients with appropriate restorative services, including assistance with activities of daily living, such as eating, dressing, grooming, bathing, oral hygiene, ambulation, and toilet activities
- Rehabilitating physical, communicative, or psychosocial impairment or maintaining the patient's level of functioning
- Coordinating the care, treatment, and services provided to a patient
- Optimizing comfort and dignity during end-of-life care
- Involving families as indicated and acceptable to the patient

All interventions should respect and encourage the patient's ability to make choices, to develop and maintain a sense of achievement about attaining their personal health goals, and to choose to continue or modify participation in the care process.

The activities comprising care, treatment, and services may be performed by a variety of staff whose roles and responsibilities are determined by the component of care, treatment, and service being provided; relevant licensure; law and regulation; registration; certification; scope of practice; job description; or privileges.

Standard PC.5.10

The hospital provides care, treatment, and services for each patient according to the plan for care, treatment, and services.

Elements of Performance for PC.5.10

A M 1. The hospital provides care, treatment, and services for each patient according to the plan for care, treatment, and services.

2. Not applicable

3. Not applicable

4. Use at least two patient identifiers (neither to be the patient's room number) whenever administering medications or blood products; taking blood samples and other specimens for clinical testing, or providing any other treatments or procedures.

Note: *The preceding requirement is not scored here. It is scored at National Patient Safety Goal 1, Requirement 1A.*

Standard PC.5.20

Not applicable

Standard PC.5.30

Not applicable

Standard PC.5.40

Not applicable

Standard PC.5.50

Care, treatment, and services are provided in an interdisciplinary, collaborative manner.

Rationale for PC.5.50

A collaborative, interdisciplinary approach to meeting the patient's needs and goals helps to coordinate care, treatment, and services and achieve optimal outcomes. The mix of disciplines involved and the intensity of the collaboration will vary as appropriate to each patient and the scope of services provided by the hospital (*see* standards MS.2.10 and MS.2.20). An interdisciplinary approach should not be interpreted as a requirement for an interdisciplinary care plan or the signing of other individual's notes. While an interdisciplinary care plan may be one method of accomplishing this goal, it is not required.

PC

Element of Performance for PC.5.50

B 1. Care, treatment, and services are provided in an interdisciplinary, collaborative manner as appropriate to the needs of the patient and the hospital's scope of services.

Standard PC.5.60

The hospital coordinates the care, treatment, and services provided to a patient as part of the plan for care, treatment, and services and consistent with the hospital's scope of care, treatment, and services.

Rationale for PC.5.60

Throughout the provision of care, treatment, and services, patients should be matched with appropriate internal and external resources to meet their ongoing needs in a timely manner. Care, treatment, and services should be coordinated between providers and between settings, independent of whether they are provided directly or through written agreement.

Elements of Performance for PC.5.60

B 1. The hospital coordinates the care, treatment, and services provided through internal resources to a patient.

B 2. When external resources are needed, the hospital participates in coordinating care, treatment, and services with these resources.

B 3. The hospital has a process to receive or share relevant patient information to facilitate appropriate coordination and continuity when patients are referred to other care, treatment, and service providers.

B 4. There is a process to resolve duplication or conflict with either internal or external resources.

B 5. The activities detailed in the plan of care, treatment, and services is designed to occur in a time frame that meets the patient's health needs.

Education

Standard PC.6.10

The patient receives education and training specific to the patient's needs and as appropriate to the care, treatment, and services provided.

PC

Rationale for PC.6.10

Patients must be given sufficient information to make decisions and to take responsibility for self-management activities related to their needs. Patients and, as appropriate, their families are educated to improve individual outcomes by promoting healthy behavior and appropriately involving patients in their care, treatment, and service decisions.

Elements of Performance for PC.6.10

B 1. Education provided is appropriate to the patient's needs.

C M 2. The assessment of learning needs addresses cultural and religious beliefs, emotional barriers, desire and motivation to learn, physical or cognitive limitations, and barriers to communication as appropriate.

B 3. As appropriate to the patient's condition and assessed needs and the hospital's scope of services, the patient is educated about the following:

- The plan for care, treatment, and services
- Basic health practices and safety
- The safe and effective use of medications
- Nutrition interventions, modified diets, or oral health
- Safe and effective use of medical equipment or supplies when provided by the hospital
- Understanding pain, the risk for pain, the importance of effective pain management, the pain assessment process, and methods for pain management
- Habilitation or rehabilitation techniques to help them reach the maximum independence possible

EXHIBIT

"3"

CAROLINAS HEALTHCARE SYSTEM

Category: Patient Rights
Policy: Abuse
Number: PR 110.03
Date of Issue: 08/91 Reviewed / Revised: 05/11

JUVENILES SUSPECTED OF BEING ABUSED OR NEGLECTED

SUMMARY STATEMENT

This policy statement relates to the issue of awareness, detections and management of children at risk for abuse or neglect in the inpatient, physician office, and urgent care settings. It provides guidance on the procedure that should be followed in cases of suspected abuse or neglect.

DEFINITIONS

A. **Juvenile**

Any person under 18 years of age who is not emancipated by marriage or court order, or a member of the armed forces.

B. **Abused Juvenile**

1. A juvenile whose parent, guardian, custodian or caretaker

   a. inflicts or allows to be inflicted serious physical injury, which causes or creates a substantial risk of injury, death, disfigurement, impairment of physical health or loss or impairment of a function of any bodily organ;

   b. uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

   c. creates or allows serious emotional damage;

   d. commits or permits illegal sexual activity with or by the juvenile; or

   e. encourages or approves the juvenile's commission of delinquent acts.

C. **Neglected Juvenile**

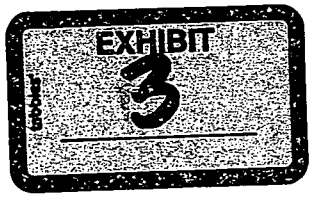
1. A juvenile who:

   a. is receiving improper care, supervision, or discipline;

   b. has been abandoned; (See abandoned infant/child policy)

   c. is not provided necessary medical or remedial care;

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Rainey-Carduff v. Carolinas Med. Ctr.
002636



d. lives in an injurious environment or has been placed illegally in care or for adoption.

2. A special needs infant who:

   a. is being denied appropriate nutrition, hydration, or medication; or

   b. has medically indicated treatment withheld unless, in the treating physician's judgement, one of several conditions is met.

It is relevant to consider whether the juvenile lives in a home where another juvenile has died as a result of abuse or neglect or in a home where another juvenile has been subjected to physical abuse by an adult who regularly lives in the home.

D. **Dependent Juvenile**

1. A juvenile who:

   a. is in need of assistance or placement because there is no parent, guardian or custodian responsible for the juvenile's care or supervision; or

   b. has a parent, guardian, or custodian, due to physical or mental incapacity and in the absence of an appropriate alternative child care arrangement, who is unable to provide for care or supervision.

E. **Caretaker**

1. Any person other than a parent, guardian or custodian, or adult member of the juvenile's home, who has care of a juvenile, including any blood relative, stepparent, foster parent, or house parent, cottage parent, or other person supervising a juvenile in a residential child care facility; or

2. Any adult person with the approval of the care provider in a day care facility.

PROCEDURE

A.

1. Clinical team identifies child in whom abuse or neglect is suspected and initiates suspected child maltreatment inpatient order set followed by discharge order set if applicable.

2. Consult CHS Clinical Care Management Social Worker to aid in the assessment process.

   CPN/Urgent Cares: page 704-355-4088 pager 1436.

   CHS Hospitals: utilize your hospital MSWs during regular business hours (8:00am - 4:30pm) and page 704-355-4088 pager 1436 for after hour concerns. Refer to NC Statute 90-21.20 (b) for indications for law enforcement involvement (Attachment A).

3. Complete CHS Suspected Child Abuse and Neglect (SCAN) form available on Care

Line. Use SCAN admission and discharge order forms for admission to LCH.

4. Document all positive exam findings on SCAN form including completion of diagrams. If evidentiary photography is requested by outside agency they are responsible for securing such photography and maintaining chain of custody. Contact SCAN on call team or Child Maltreatment Coordinator for assistance with photography documentation needed for child's medical management.

5. All cases of suspected abuse or neglect should be reported to the Department of Social Services (DSS) in the County where the child resides. The call to DSS may be initiated by the staff member identifying the abuse/neglect, the medical social worker or any other member of the healthcare team involved in the case. Have readily available as much of the following information as possible:

   - the facts of the case
   - the child's and parents' home address, telephone numbers, dates of birth and social security numbers
   - siblings names, ages and whereabouts

6. If the parent, guardian, custodian or caretaker refuses to authorize necessary medical treatment for the juvenile, refer to administrative policy *PR 120.06 Consent for Treatment.*

7. Consider consult to CMC Pediatrics (CHIPS Team; Children's Hospital Inpatient Service) for assistance with medical management. For patients with evidence of acute, multi-system injury consult CMC Trauma Service.

8. Refer to Child Maltreatment Clinical Practice Guidelines to assist with medical management. (Attachment B, B1-3)

9. **When medically cleared, do not discharge child until disposition has been determined by medical social worker and DSS and the safety plan has been placed on the chart in writing, if applicable.**

B. When a physician determines that a juvenile should remain in the hospital for medical reasons, or that it is unsafe for the juvenile to return to his or her parent, guardian, or caretaker, the physician or administrator should first contact the director of the Department of Social Services (or representative on call) to determine if the Department of Social Services will take emergency custody and authorize the hospital to retain physical custody of the juvenile.

   In the event the Department of Social Services is unwilling to take custody or cannot be contacted, the local District Court has authorized the physician or administrator to retain physical custody of the juvenile whenever the physician determines that (1) the juvenile should remain for medical treatment or (2) according to his or her medical evaluation, it is unsafe for the juvenile to return to his parent, guardian, custodian, or caretaker. (See *Administrative Order, Attachment C)*

To retain physical custody under court order, the physician who examines the juvenile must certify the applicable circumstances in writing on the *Certification of Necessity for Retention of Custody, Attachment D.* A copy of the written certification must be provided to the juvenile's parent, guardian, custodian, or caretaker and the director of the Department of Social Services. A copy of the completed certification must be placed in the juvenile's medical record.

The Administrative Order allows the hospital to keep physical custody of the juvenile for a period not to exceed twelve hours from the time and date of the written certification. Before the twelve hours expire, either the Department of Social Services must have assumed custody or the Juvenile Court must issue an additional order permitting continued custody beyond twelve hours.

C. Any person making a report of suspected juvenile abuse, neglect, or dependency, or who testifies in a later court proceeding resulting from a report, is immune from civil or criminal liability so long as the person acted in good faith.

D. If it is suspected the juvenile has been the victim of a crime but does not come under the definition of "abused juvenile" or "neglected juvenile", the juvenile's parent, guardian, custodian, or caretaker and/or law enforcement officials should be notified. **If a juvenile seeks treatment for a sexually related assault then reporting is based on the juvenile's consent (NC Statue 90-21.5).** See (Attachment E).

E. Any questions concerning this procedure should be directed to the facility administrator or the Carolinas HealthCare System office of Risk Management.

REFERENCES

See Attachment A: Involvement of Law Enforcement (NC Statute 90-21.20 (b)).
See Attachment B: Child Maltreatment Clinical Practice Guidelines
See Attachment C: Administrative Order Retention of Custody of Juvenile Suspected to be Abused
See Attachment D: Certification of Necessity for Retention of Custody
See Attachment E: Situations in which minors may consent to treatment (NC Statute 90-21.5)
See Attachment F: Child Abuse and Neglect Algorithm

APPROVALS

Policy Coordinator	Glenda Wooten, Assistant Vice President, Patient Care Services, LCH
Policy Approvers	Martha Whitecotton, Vice President, Administrator, LCH
	Suzanne Freeman, Senior Vice President, Carolinas HealthCare System
	Dennis Phillips, Executive Vice President, Metro Group

Attachment A
INVOLVEMENT OF LAW ENFORCEMENT

Article 1C

Physicians and Hospital Reports

§90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above the sheriff of the respective county or to the one of his deputies.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury, or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(c1) In addition to the reporting requirements of subsection (b) of this section, cases involving recurrent illness or serious physical injury to any child under the age of 18 years where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma shall be reported by the physician as soon as it becomes practicable before, during, or after completion of treatment. If the case is treated in a hospital, sanitarium, or other medical institution or facility, the report shall be made by the Director, Administrator, or other person designated by the Director or Administrator of the medical institution or facility, or if the case is treated elsewhere, the report shall be made by the physician or surgeon treating the case to the chief of police or the police authorities of the city or town in this State in which the hospital or other institution or place of treatment is located. If the hospital

or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of the sheriff's deputies. This reporting requirement is in addition to the duty set forth in G.S. 7B-301 to report child abuse, neglect, dependence, or the death of any juvenile as the result of maltreatment to the director of the department of social services in the county where the juvenile resides or is found.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report. (1971, c.4; 1977, c. 31; c. 843, s.2.)

Attachment B
CHILD MALTREATMENT CLINICAL PRACTICE GUIDELINES

Clinical Practice Guidelines
CHS Inpatient Units and Emergency Department

Evaluation and Management of Suspected Child Abuse or Neglect

I. CHILD PHYSICAL ABUSE

A. Identification

Injuries (bruises, burns, fractures; this list is not inclusive) that should be considered suspicious for physical abuse:

1. Age 0-6 months: Any injury.

2. Age 6 months or older:

   a. Bruises, lacerations, or burns to protected, fleshy, or flexor surfaces— for example, inner thighs, abdomen, neck, face (other than frontal prominence), pinna, and genitalia.
   b. Bruises, lacerations, or burns showing an object pattern—for example, belt loop, cigarette burn, and curling iron.
   c. Full thickness burns, especially scald burns.
   d. Fractures, especially metaphyseal fractures, complex or wide skull fractures, rib fractures, sternal fractures, spinous process fractures or scapula fractures.
   e. Significant head injury, especially subdural hematoma, retinal hemorrhage, subgaleal hematoma, avulsed hair, complex or wide skull fracture. Head injury should be considered whenever a child presents with vomiting or altered consciousness, or bloody spinal fluid is found on lumbar puncture, but an infectious process cannot be readily diagnosed.
   f. Intraabdominal injury, especially rupture or hematoma of internal organ.

3. Age 0-10 years (or older based on clinical evaluation): Positive urine or blood screen for alcohol or drugs of abuse. Injuries that are not consistent with history.

B. Essential Aspects - Caretaker History

1. Does the parent/guardian or child give a logical explanation that is consistent with the age, pattern, and severity of the injury? This should be assessed by clinician familiar with normal pediatric development.

   a. Consider developmental level of child. Is the child capable of the reported action? For example—a 6-month-old cannot unbuckle a car seat.

b. Consider biomechanics of injury. For example--a fall from less than 4 feet rarely causes a fracture and almost never causes intracranial hemorrhage; a child who cannot crawl or walk should not have a bruise, fracture, burn, or laceration.

C. Evaluation & Treatment

1. Refer to CHS policy *PR 110.03* for policies regarding reporting of *Juveniles Suspected of Being Abused or Neglected.*

2. Complete physical examination

3. Complete SCAN form (available on Care Line) and SCAN Admission Order Set.

4. Age 0-2 years: Non-accidental Trauma (NAT) series should be considered in all cases (not long bone series or "babygram"). **Pediatric radiologist to do official reading.**

5. Age 2-4 years: NAT series should be considered (not long bone series or "babygram"). **Pediatric radiologist to do official reading.**

6. Nuclear medicine bone scan (or repeat NAT series in 2 weeks) if index of suspicion for skeletal injury remains high despite negative initial NAT series (for example-- in cases of Abusive Head Trauma (formerly known as "Shaken Baby Syndrome").

7. A screening panel to rule-out bleeding disorder should be considered (refer to SCAN Admission Order set).
   a. CBC with platelets & peripheral smear
   b. PT/PTT
   c. PFA-100 (platelet function assay)
   d. Fibrinogen
   e. Thrombin time

8. Liver enzymes (AST/ALT), amylase, and lipase levels should be considered if abdominal trauma is suspected or present.

9. CT scan of head if suspected acute intracranial injury or other injuries that indicate need to assess for non-accidental injuries; consider MRI scan of head if subacute (older than 5 to 7 days) or chronic intracranial injury after 2-3 days and patient is stable.

10. CT scan of abdomen if suspected blunt thoracoabdominal trauma or abdominal bruising present.

11. Pediatric Ophthalmology consult for thorough fundoscopy in cases of:
    a. Suspected intracranial injury;
    b. Suspected Abusive Head Trauma (metaphyseal fractures, subdural/subarachnoid

hemorrhage, and/or posterior rib fractures).

c. Spiral fracture, metaphyseal fracture, or other injury in child under age 2 suggestive of shaking or twisting injury.
d. Fracture in infant under age 6 months or any other highly specific fracture for abuse under 1 year.

II. CHILD SEXUAL ABUSE

A. Identification

Findings that should be considered suspicious for sexual abuse (this list is not inclusive):

1. Any injury to the genitalia (especially to the hymen or vestibule in girls) or anus.
2. Identification of an STD: Chlamydia, gonorrhea, HSV, HPV, HIV, HBV, HCV, Trichomonas, syphilis.
3. Positive pregnancy test (especially if < 14 y/o).
4. Any history or statement or witnessed incident consistent with sexual abuse.

B. Essential Aspects - Caretaker History

1. Does the parent/guardian or child give a logical explanation that is consistent with the examination findings? For example, in a child under 3 with genital warts, is there a history of maternal HPV infection during pregnancy or delivery?

C. Evaluation & Treatment

1. Refer to CHS policy *PR 110.03 Juveniles Suspected of Being Abused or Neglected* for policies regarding reporting.
2. Complete physical examination
3. Use SCAN form for documentation.
4. Age 0-2 years: skeletal survey in all cases with visible acute injuries.
5. Age 2-4 years: skeletal survey should be considered if visible acute injuries.
6. For non-acute sexual abuse allegations in an otherwise healthy child without continued access to an alleged perpetrator: after reporting to the appropriate investigating agencies, a child may be referred to their primary care provider or Pat's Place Child Advocacy Center in lieu of receiving a detailed sexual abuse examination in the Emergency Department.
7. Careful inspection of external genitalia and anus for evidence of trauma, in exam

setting with adequate lighting, positioning, and magnification. Never force a child to be examined.

a. Position child in a supine frog-leg position; adolescent male in supine position for genitalia and decubitus position for anus exam; adolescent female supine in heelrests (dorsal lithotomy).
b. In girls, use gentle labial traction technique to visualize vestibule and hymen. Also inspect labia majora, perineum, inner thighs, and lower abdomen.
c. In girls, position in the prone knee-chest position to confirm suspected abnormal hymenal or vestibular findings.
d. In boys, careful inspection of penis, scrotum, perineum, inner thighs, lower abdomen.
e. In both sexes, careful inspection of anus and perianal area for evidence of trauma. Use gentle gluteal separation to inspect anal rugae and outer canal.

8. Testing for sexually transmitted infection may be obtained if the history suggests the child had genital/anal/oral contact with the perpetrator's genitalia, there is evidence of genital/anal/oral trauma, or if there is genital/anal discharge:

- Gonorrhea cultures (Thayer Martin media, NOT DNA PROBES) of: throat; vagina (in prepubertal or young teen girls), cervix (in postpubertal girls), or male urethra, and anus.
- May consider use of urine PCR (urine NAAT) testing for Gonorrhea or Chlamydia, but is not considered legal gold standard. Positive urine PCR should be confirmed with culture. Obtain culture if giving prophylaxis in prepubertal patients
- Chlamydia cultures (pink viral culture media, NOT DNA PROBES) of: vagina (in prepubertal or young teen girls), cervix (in postpubertal girls) or male urethra, and anus.
  Note: to cause minimal discomfort while culturing the vagina in prepubertal girls, the examiner should use labial traction technique to identify the hymenal introitus. An assistant should gently insert a mini-tip (urethral-size) Dacron swab moistened with nonbacteriostatic saline or water through the introitus without contacting the hymen, and gently swab the distal vagina.
- Blood should be drawn for syphilis and HIV. Evaluate the patient's hepatitis B immunization status.
- Wet prep of discharge for trichomonas, clue cells, or leukorrhea (>10WBC/HPF).
- Culture of vesicles or ulcers for HSV.
- HIV and RPR should be obtained if indicated by history.

9. If acute sexual assault (penetrating genital injury and/or contact with perpetrator's genitalia within the past 72 hours):

a. A forensic evidence collection kit (SBI rape kit) should be utilized. Contact the relevant law enforcement agency for retrieval of evidence and maintain appropriate chain of custody.

b. Cultures and blood for STD's should generally not be obtained unless there is an additional clinical indication (prior abuse or symptoms).
c. DNA probes may be obtained (see above) as screening. However cultures remain the gold standard.
d. Prophylactic antibiotic therapy against gonorrhea and chlamydia infection should be given if requested by patient or family in case of child sexual assault. Consider prophylaxis against trichinosis and pregnancy. Prophylactic therapy should be administered in cases of adolescent sexual assault. Refer to Centers for Disease Control or American Academy of Pediatrics guidelines for current recommendations. See Attachment # B-1.
e. Prophylactic antiretroviral therapy should be offered to the victim and/or family whenever contact with potentially infectious bodily fluids may have occurred, and must be offered if the alleged perpetrator is known to be at high risk for HIV infection. If the perpetrator is unknown, the decision for therapy should be based on the local HIV epidemiological rate. Consultation with on-call pediatric infectious disease physician and SCAN on call physician is recommended. See Attachments # B-2.
f. Emergency contraception (Plan B) should be offered to all pubertal or postpubertal female victims. See Attachment # B-3.
g. Consult appropriate surgical subspecialist (Gynecology, Pediatric Surgery, or Pediatric Urology) in cases of severe anogenital injury.

10. Whenever possible, arrange medical follow-up according to the following schedule:

a. ~~In 1-2 days with PCP or Pat's Place Child Advocacy Center for further~~ examination and photodocumentation of injuries;
b. In 1 month, 3 months, and 6 months with PCP, or appropriate specialist or caregiver for follow-up examination and testing for STD's, especially HIV.

11. Discuss and assist with referral for psychological counseling through Victim's Assistance, community mental health resources, and/or family's medical health plan. Crisis counseling for child and family is often necessary.

III. CHILD NEGLECT

A. Identification

Growth parameters below expected for age.

1. Lack of medical care for a significant health problem—for example, no medications for asthma, diabetes; no care of severe dental caries.

2. Lack of normal bonding with parent/guardian.

3. Disregard of one or more basic child care needs—for example, not feeding infant/child, child found in street, failure to place child in auto safety seat or belt.

Note: A child may have findings suggesting more than one form of abuse or neglect.

B. Essential Aspects - Caretaker History

1. Does the parent/guardian give a reasonable explanation that is consistent with the pattern and severity of the findings suggesting neglect (and can he/she provide documentation)? For example—has a child who is small for age been worked up for medical or familial causes of short stature/failure to thrive?

C. Evaluation & Treatment

1. Age 0-2 years: skeletal survey should be considered.
2. Nuclear medicine bone scan (or repeat skeletal survey in 2 weeks) if index of suspicion for skeletal injury remains high despite negative initial skeletal survey.
3. MRI scan of head if there is a suspicion for subacute or chronic intracranial injury.
4. Complete physical examination, including inspection of genitalia and search for dysmorphic features.
5. Developmental assessment.
6. Laboratory evaluation: CBC, electrolytes, glucose, urinalysis, urine C&S. Other labs as indicated clinically (e.g., lead level).
7. Nutrition consult/assessment with caloric quantification if possible.
8. Other consults as indicated clinically.
9. Document child's caloric intake, weight gain, and response to hospital staff.
10. Document level of parental involvement and any concerns regarding inappropriate parental behaviors, attachment, statements, or level of knowledge regarding the child, his/her care, or his/her condition.

ATTACHMENTS:

B-1. Presumptive Treatment of STDs in Sexual Assault Victims
B-2. HIV Prophylaxis
B-3. Guidelines for Emergency Contraception

Attachment # B-1

Presumptive Treatment of STD's in Sexual Assault Victims (adapted from CDC Guidelines, 2006)

Children: The risk of a child acquiring an STD as a result of sexual abuse or assault has not been determined. Presumptive treatment for children who have been sexually assaulted or abused is not recommended because: a) the prevalence of most STDs is low following abuse/assault, b) pre-pubertal girls appear to be at lower risk for ascending infection than adolescent or adult women, and c) regular follow-up of children usually can be ensured. However, some children or their parent(s) or guardian(s) may be concerned about the possibility of infection with an STD, even if the risk is perceived to be low by the health-care provider. Such concerns may be an appropriate indication for presumptive treatment in some settings and may be considered after all specimens for diagnostic tests relevant to the investigation have been collected.

Adolescents: Many specialists recommend routine preventive therapy after a sexual assault because follow-up of survivors of sexual assault can be difficult and because these persons may be reassured if offered treatment or prophylaxis for possible infection. The following prophylactic regimen is suggested as preventive therapy.

- Postexposure hepatitis B vaccination, without HBIG, should adequately protect against HBV. Hepatitis B vaccine should be administered to sexual assault victims at the time of the initial examination if they have not been previously vaccinated. Follow-up doses of vaccine should be administered 1--2 and 4--6 months after the first dose.
- An empiric antimicrobial regimen for chlamydia, gonorrhea, trichomonas, and BV may be administered.

Recommended Regimen:

Follow 206 CDC guidelines (refer to www.cdc.gov)

NOTE: For patients requiring alternative treatments, see the sections in this report that specifically address the appropriate agent. The efficacy of these regimens in preventing gonorrhea, trichomoniasis, BV, and *C. trachomatis* genitourinary infections after sexual assault has not been evaluated. Clinicians should counsel patients regarding the possible benefits, as well as the possible toxicity, associated with these treatment regimens; gastrointestinal side effects can occur with this combination. Providers may also consider anti-emetic medications if prophylaxis is administered, particularly if emergency contraception is also provided.

Other Management Considerations

At the initial examination and, if indicated, at follow-up examinations, patients should be counseled regarding the following:

- symptoms of STDs and the need for immediate examination if symptoms occur and abstinence from sexual intercourse until STD prophylactic treatment is completed.

Attachment # B-2

HIV prophylaxis *(Nonoccupational Postexposure Prophylaxis = nPEP)*[1]

HIV infection has been reported in children whose only known risk factor was sexual abuse. Serologic testing for HIV infection should be considered for abused children. The decision to test for HIV infection should be made on a case-by-case basis, depending on the likelihood of infection among assailant(s). Data are insufficient concerning the efficacy and safety of postexposure prophylaxis among both children and adults. However, antiretroviral treatment (*a 28-day course of highly active antiretroviral therapy –HAART),* is well tolerated by infants and children with and without HIV infection; in addition, children who receive such treatment have a minimal risk for serious adverse reactions because of the short period of time recommended for prophylaxis.

In those cases in which a child presents to a health-care provider shortly after a sexual exposure (i.e., within 72 hours), the assailant(s) are likely to be at risk for HIV infection, and likelihood of compliance with treatment regimens is high, the potential benefit of treating a sexually abused child should be weighed against the risk for adverse reactions. **If antiretroviral postexposure prophylaxis is being considered, a professional specializing in HIV-infected children should be consulted.** If treatment is started, then medication should be given for the full 28 day course of therapy.

Recommendations for Postexposure Assessment of Children within 72 Hours of Sexual Assault

- Review HIV/AIDS local epidemiology and assess risk for HIV infection in the assailant.
- Evaluate circumstances of assault that may affect risk for HIV transmission.
- Consult with a specialist in treating HIV-infected children if postexposure prophylaxis is considered.
- If the child appears to be at risk for HIV transmission from the assault, discuss postexposure prophylaxis with the caregiver(s), including its toxicity and its unknown efficacy.
- If caregivers choose for the child to receive antiretroviral postexposure prophylaxis, provide enough medication until the return visit at 3--7 days after initial assessment to reevaluate child and to assess tolerance of medication; dosages should not exceed those for adults.
- Perform HIV antibody test at original assessment, 6 weeks, 3 months, and 6 months.

Recommendations for Postexposure Assessment of Adolescent and Adult Survivors within 72 hours of Sexual Assault

- Review HIV/AIDS local epidemiology and assess risk for HIV infection in assailant.
- Evaluate circumstances of assault that may affect risk for HIV transmission.
- Consult with a specialist in HIV treatment if postexposure prophylaxis is considered.

- If the survivor appears to be at risk for HIV transmission from the assault, discuss antiretroviral prophylaxis, including toxicity and unknown efficacy.
- If the survivor chooses to receive antiretroviral postexposure prophylaxis, provide enough medication to last until the next return visit; reevaluate survivor 3--7 days after initial assessment and assess tolerance of medications.
- Perform HIV antibody test at original assessment; repeat at 6 weeks, 3 months, and 6 months.

Assistance with postexposure prophylaxis decisions can be obtained by calling the National HIV Telephone Consultation Service (tel: 800-933-3413)

1. U.S. Department of Health and Human Services. Antiretroviral Postexposure Prophylaxis After Sexual, Injection-Drug Use, or Other Nonoccupational Exposure to HIV in the United States. *MMWR.* January 21, 2005 / 54(RR02);1-20.

Attachment # B-3 Emergency Contraception

Plan B is an emergency contraceptive that can be used to prevent pregnancy following unprotected intercourse. Each Plan B packet includes a single course of treatment and consists of two tablets; each tablet contains 0.75 mg levonorgestrel.

To obtain optimal efficacy, the first tablet should be taken as soon as possible within 72 hours of intercourse. The second tablet must be taken 12 hours later.

Taken within 72 hours of unprotected intercourse, Plan B can, when used correctly, reduce the risk of pregnancy by 89 percent after a single act of unprotected sex. Effectiveness declines as the interval between intercourse and the start of treatment increases

When used as directed, Plan B is safe for most women. There have been no serious complications associated with Plan B. Common side effects include nausea, abdominal pain, fatigue, headache, and menstrual changes. Women who are pregnant, have undiagnosed vaginal bleeding, or have an allergy to the product should not use Plan B. Plan B cannot terminate an established pregnancy.

Use of Yuzpe Regimen using other oral contraceptives is acceptable Emergency Contraception if plan B is not available.

Patient should be advised to obtain pregnancy test if no vaginal bleeding in 28 days after completing Emergency Contraception.

NORTH CAROLINA AND SOUTH CAROLINA DSS AGENCIES

You must call the Department of Social Services in the county that the child is a permanent resident of. Numbers for each county are listed below.

COUNTY	PHONE	ADDRESS
Anson	(704) 694-9351 CPS Intake	118 N. Washington St Wadesboro, NC 28170
Burke	(828) 439-2003	700 East Parker Rd. Morganton, NC 28680
Cabarrus	(704) 920-1400	1303 S. Cannon Blvd. Kannapolis, NC 28083
Caldwell	(828) 426-8200	1966-H Morganton Blvd. SW Lenoir, NC 28645
Catawba	(828) 324-9111	3030 Eleventh Ave. Dr., S.E. Hickc NC
Chester	(803) 377-8131 ext. 0	115 Reedy Street Chester, SC 29706
Chesterfield	(843) 623-2147 ext. 1	201 N. Page Street Chesterfield, SC 29709
Gaston	(704) 862-7500 ext. 1	330 N. Marietta Street Gastonia, NC 28052
Iredell	(704) 873-5631	PO Box 1146 Statesville, NC 28687
Lancaster	(803) 286-6914	1837 Pageland Highway Human Services Complex Lancaster, SC 29721
Lincoln	(704) 732-0738	PO Box 130, Lincolnton, NC 28093
Mecklenburg	(704) 336-3150	Wallace H. Kuralt Centre, 301 Billingsley Rd. Charlotte, NC 28211
Richmond	(910) 997-8415	125 Caroline St., Rockingham, NC 28379
Rowan	(704) 638-3175	1236 West Innes Street, Salisbury, NC 28144
Stanly	(704) 982-6100	1000 North First Street, Suite 2, Albemarle, NC 28001
Union	(704) 296-4300	1212 West Roosevelt Blvd. Monroe, NC 28111
York	(803) 684-2315 Dial 0 and ask for CPS Intake	P O Box 261 York, SC 29745

North Carolina and South Carolina Law Enforcement Agencies

Anson County
Sheriff's Office
119 N Washington St
Wadesboro, North Carolina 28170
(704)694-4188

Burke County
Sheriff's Office
150 Government Dr
Morganton, North Carolina 28655
(828)438-5500

Cabarrus County
Sheriff's Office
25 Corban Ave SE
Concord, North Carolina 28025
(704) 920-3000

Caldwell County
Sheriff's Office
2351 Morgantown Blvd. SW
Lenoir, North Carolina 28645
(828) 758-2324

Catawba County
Sheriff's Office
100 B Southwest Blvd
Newton, North Carolina 28658
(828) 464-5241

Cleveland County
Sheriff's Office
100 Justice Place
Shelby, North Carolina 28150
(704)484-4888

Gaston County
Sheriff's Office
PO Box 1578
Gastonia, North Carolina 28054
(704)866-3160

Guilford County
Sheriff's Office
400 W Washington St
Greensboro, North Carolina 27401
(336) 641-3690

Iredell County
Sheriff's Office
PO Box 287
Statesville, North Carolina 28687
(704)878-3180

Lincoln County
Sheriff's Office
700 John Howell Memorial Dr.
Lincolnton, North Carolina 28092
(704)732-9050

Mecklenburg County
Sheriff's Office
700 E 4th St
Charlotte, North Carolina 28202
(704)336-2543

OR Charlotte Mecklenburg Police Department
704-353-1000 or 911

Richmond County
Sheriff's Office
#1 Court St
Rockingham, North Carolina 28379
(910)997-8283

Rockingham County
Sheriff's Office
1088 NC 65
Wentworth, North Carolina 27375
(336)634-3232

Rowan County
Sheriff's Office
232 N Main St
Salisbury, North Carolina 28144
(704)636-1011

Rutherford County
Sheriff's Office
198 N Washington St
Rutherfordton, North Carolina 28139

Union County
Sheriff's Office
3344 Presson Rd
Monroe, North Carolina 28112

Stanly County
Sheriff's Office
201 S. Second Street
Albemarle, North Carolina 28001
(704) 283-3844

Union County
Sheriff's Office
3344 Presson Road
Monroe, North Carolina 28607
(704) 283-3844

Watauga County
Sheriff's Office
330 Queen St
Boone, North Carolina 28607

South Carolina Agencies

Chester County
P.O. Box 727
Chester, SC 29706-0727
(803) 581-5131

Chesterfield County
Courthouse, 200 W. Main St
Chesterfield, SC 29709
(843) 623-2101

Lancaster County
P.O. Box 908
Lancaster, SC 29721-0908
(803) 283-4186

York County
1675-2A York Highway
York, SC 29745
(803) 628-3059

Attachment C
PR 110.03, Juveniles Suspected of Being Abused or Neglected

STATE OF NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE

COUNTY OF MECKLENBURG — DISTRICT COURT DIVISION

ADMINISTRATIVE ORDER

RETENTION OF CUSTODY OF JUVENILE SUSPECTED TO BE ABUSED PURSUANT TO NCGS §7B-308

BY _____

Pursuant to North Carolina General Statutes §7B-308, it is hereby ordered that Carolinas Medical Center, Presbyterian Hospital, Mercy Hospital, Mercy Hospital South, University Hospital and Presbyterian Matthews Hospital are authorized to retain custody of a juvenile (anyone under the age of 18) when the examining physician certifies in writing that the juvenile is suspected of being abused and: (a) that the juvenile should remain for medical treatment; or (b) that according to the juvenile's medical evaluation, it is unsafe for the juvenile to return to his parent, guardian, custodian, or caretaker.

Custody assumed by this authority may not exceed twelve hours from the time and date contained in the Examining Physician's Certification without an additional Court Order.

When this action is taken, the physician or administrator of the hospital shall immediately notify the parent, guardian, custodian or caretaker of the juvenile and the Director of the Department of Social Services or his designee.

The purpose of this order is to allow for the legal retention of custody in emergency cases long enough for the Department of Social Services to investigate the case and, if appropriate, seek a Court Order for custody in accordance with North Carolina law.

Examining physicians shall utilize the Examining Physician's Certification form on the reverse side of this page whenever a juvenile is retained under the authority of this Order.

A copy of the Examining Physicaan's Certification must be given to the juvenile's parent, guardian, custodian or caretaker; the Department of Social Services; and the Chief District Court Judge (700 E. 4th Street, Suite 3304, Charlotte, North Carolina 28202), for placement in the juvenile's judicial records.

A copy of this Administrative Order must also be given to the parent(s), guardian, custodian or caretaker.

Each hospital shall maintain a file containing copies of all Examining Physician's Certifications executed under the authority of this Order at that hospital.

This Order replaces the Letter of Authorization issued October 5, 1993, by then Chief District Court Judge James E. Lanning.

This the 18 day of October, 2000.

William G. Jones
Chief District Court Judge

5273/1528
Rainey-Carduff v. Carolinas Med. Ctr.
002654

EXAMINING PHYSICIAN'S CERTIFICATION

Name of Juvenile: _____ Date of Birth: _____

Address: _____

_____

Name of Parent, Guardian, Custodian or Caretaker: _____

_____

Address: _____

_____

The undersigned examining physician hereby certifies that there is good cause to suspect that this juvenile is abused, and:

☐ should remain in _____ (name of facility) for medical treatment;

OR

☐ it is unsafe for the juvenile to return to his parent, guardian, custodian, or caretaker.

The basis for this determination is:

_____

_____

_____

Date: _____ _____
Examining Physician

Time: _____

The juvenile's parent, guardian, custodian or caretaker was given an executed copy of this certification at _____ a.m./p.m. on _____.
(date)

DSS was notified of the execution of this certificate at _____ a.m./p.m. on _____.
(date)

An executed copy of this certificate was mailed to the Chief District Court Judge at 700 E. 4th Street, Suite 3304, Charlotte, NC 28202 on _____.
(date)

Attachment D
PR 110.03, Juveniles Suspected of Being Abused or Neglected

CERTIFICATION OF NECESSITY FOR RETENTION OF CUSTODY

Name of Juvenile: _____ Age: _____

Address of Juvenile: _____

_____

Name of Parent, Guarding, or Custodian: _____

Address: _____

_____

The undersigned physician has examined this juvenile and that examination reveals the following injuries / illness.

_____

_____

_____

_____

Based on the foregoing and additional facts set out below, the undersigned physician hereby certifies that:

☐ This juvenile should remain in _____ (name of facility) for medical treatment.

☐ In my medical evaluation, it is unsafe for the juvenile to return to his parent, guardian, custodian, or caretaker.

Additional reasons (if any) for retention of custody:

_____

_____

_____

_____

Date: _____

Time: _____ Signature: _____

Carolinas HealthCare System

CERTIFICATION OF NECESSITY FOR RETENTION OF CUSTODY

PR 110.03, revised 05/11

ADDRESSOGRAPH PLATE

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002656

Attachment E

CHAPTER 90. MEDICINE AND ALLIED OCCUPATIONS
ARTICLE 1A. TREATMENT OF MINORS
PART 1. GENERAL PROVISIONS

Go to the North Carolina Code Archive Directory

N.C. Gen. Stat. § 90-21.5 (2010)

§ 90-21.5. Minor's consent sufficient for certain medical health services

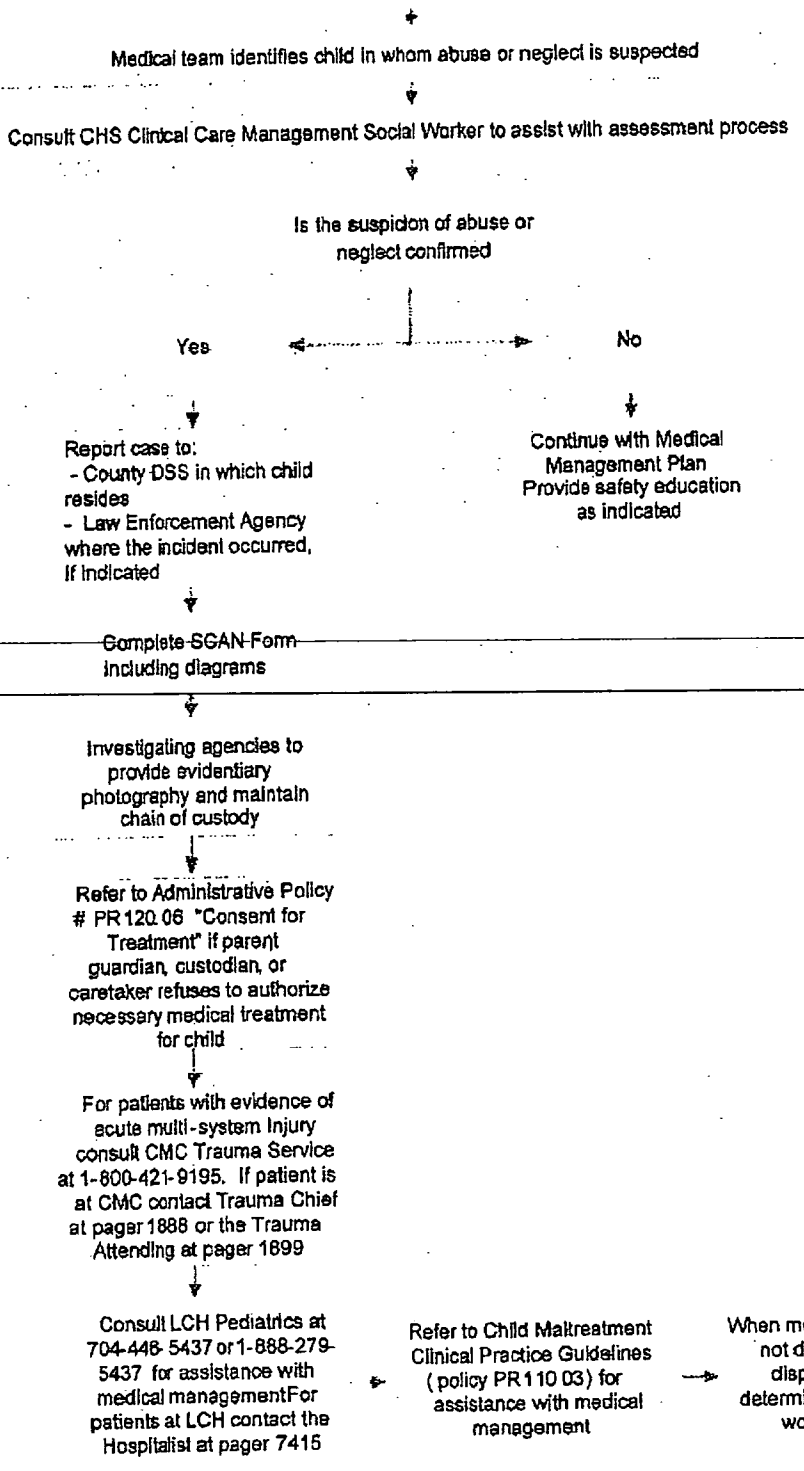
(a) Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in G.S. 122C-223. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by G.S. 122C-223.

(b) Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child.

HISTORY: 1971, c. 35; 1977, c. 582, s. 2; 1983, c. 302, s. 2; 1985, c. 589, s. 31; 1985 (Reg. Sess., 1986), c. 863, s. 4; 2009-570, s. 10.

Attachment F

Child Abuse and Neglect Algorithm



EXHIBIT

"4"

Kayla Lythgoe
Michael Carduff
Case Review

Child: [redacted] DOB [redacted]
Grandmother: Charlotte Williams
Step Grandfather: Larry Williams

12/6/09 Intake: 17:01 p.m. (On Call)
Malreatment:
R/S 2 month old baby has subdural hematoma (size 3 mm and 2mm); There is a Fatx Subdural Hematoma which raises the possibility of Non accidental trauma; parents behavior has been appropriate with Child.
Client Characteristics
[redacted] was initially admitted to PMC on 12/4/09 and was transferred To CMC – Levine Children Hospital; CT scan show 2 Subdural Hematomas (sizes 3 mm and 2mm) there is a fatx subdural hematoma
Caretaker Characteristics
Parents observed to be appropriate/concerned, parents took baby for Medical treatment on 11/28/09, 12/2/09 and 12/4/09, no mental, Physical, spouse abuse known, no known prior CPS, parents reside With maternal grandmother
Social/Economic Factors
Both parents are employed and live together, no known marital, Financial problems noted
Reporter:
Carol Smith – Levine Children's Hospital

12/6/09 Face-to-Face 7:45 p.m. at Levine Children's Hospital
On Call Worker: Chandra Tyler/Supervisor: Lola Sutherland
Present: Kayla, Michael, Jennifer Carduff, PGM and Brian Carduff Paternal uncle; CMC Sitter
Interview: Kayla Lythgoe
11/28/09: noted change in behavior; sleep a lot/scream when awake Nonstop; took him to Riverview 24 hour clinic; doctor said nothing Wrong with him; behavior continued
12/1/09 went all day without urinating; (Michael
appt scheduled for 12/2/09
Sunshine Pediatrics, Dr. Paxor; diagnosis throat infection and minor Cold; no meds prescribed
12/4/09: Kayla stated pulling in driveway and Michael came out of House said [redacted] just went limp but still breathing; rushed to PMC
12/5/09: Kayla stated transferred to CMC – Levine
Charlotte Williams, her mother watch [redacted]; sleep in back-n-play In their room; state no when asked if [redacted] had hit his head/fell;

EXHIBIT 4

EXHIBIT

"5"

Notice in November he had a small flat brownish bruise on left side
Of head, asked Michael if he knew where it came from, stated no
Stated [redacted]'s head turns and jerks around during tummy time on
The floor;

Interview: Michael Carduff
Stated Owen's behavior has been different since 11/28/09; he was
Watching [redacted] on 12/4/09 by himself; he was sleeping a lot, then
Stretched out, turning red and went limp; no knowledge of any injury

Interview: Jennifer Lythgoe
State she and her husband has watched [redacted] briefly when parents
Ran an errand; Brian has never watched [redacted] but has been in the
Home with both parent and watch [redacted] when they did things
Around the house;

Interview: CMC Nurse
Worked asked if she relieved the Sitter; nurse thought the reason
Worker called was to relieve Sitter; because DSS make the decision
Of whether to relieve the Sitter. Worker explained called because of
Concern the reports showed a fatx subdural hematoma and raises
The possibility of non accidental trauma. Nurse stated SW was
Not suppose to be calling for that reason;

12/6/09 Safety Plan: Follow medical advice of hospital and doctor
Recommendations, not to remove child from hospital until
Medical discharge
Signed by Kayla and Michael and DSS worker Chandra Tyler

12/6/10 Acknowledgement: Signed by Kayla and Michael
Dirvondra Hill signature and dated 12/709

12/7/09 Face to Face with child/client attempted Dirvondra Hill
[redacted] 2 men outside talking; informed family
Not home; knocked at mobile home; no sound from inside; called
Phone number [redacted]; voice mail of Charlotte Williams
Left message to call Case Manager

12/7/09 Staffing with Supervisor Krista Hinnant
See DSS 3062 Case staffed with Legal

12/7/09 Staffing with Supervisor Krista Hinnant
Current Situation: Owen has two subdural hematomas; one would
Indicate non accident trauma; SW has concerns because CT scan
Shows non-accidental trauma; no doctor is saying injuries are non



EXHIBIT

"6"

Accidental, Hospital has Sitter; parents contact supervised; Nurse Said it is non-accidental; grandmother saw a bump on baby's head A few days ago; baby with dad and uncle; [redacted] is ready for Discharge; Recommendations:. Get medical records; Review records; Refer to Law Enforcement; Law Enforcement incident Public Index; Follow up talk with doctor; meet with grandmother (assess); go to Home and assess home; talk to Grandmother separately; any Concerns talk to Laura McDowell, does doctor think trauma is Non-accidental (Get Release of Info signed.

Krista — Collateral Contact: Laura McDowell, SW at Levine
Krista informed Laura that DSS would need to speak with doctor Or hospital SW could speak with doctor to determine if [redacted]'s Hematomas were accidental or nor. Laura will follow up with Doctor

Krista — 11:50 a.m. Received a phone call from Laura Newmark, she talked With Pediatric staff at this time the hospital cannot determine Whether the injuries are accidental or non accidental, [redacted]'s eye Exam and Skeletal Survey were negative; going to repeat CT scan Today because [redacted]'s head appear to be swollen, family has no Clear history of trauma; however hospital cannot rule out trauma Parents are young and hospital mostly has concerns for lack of Supervision, unknown if [redacted] discharged today or tomorrow and That will be determined by results of [redacted]'s CT scan; at this point There are no obvious finding of abuse/neglect; family will need to Follow up with skeletal in 2 weeks; parents will be able to do that Back home and will not need to come back to Charlotte; doctor Assigned is Dr. Cheryl Courtlandt; Dr Courtlandt stated she cannot Determine if the injuries are an accident or not at this point; Krista advised Laura that she would staff the case with legal Department and get back with her asap with a discharge plan for The baby.

3:30 p.m.Krista talked with Laura Newmark, SW at Levine, advised Laura the case had been staffed with legal and [redacted] should be discharged to parents and DSS will follow up with a home assessment, Laura stated [redacted]'s second CT scan was stable; Laura will notify Krista when [redacted] is discharged

3:34 p.m. Krista received message from Laura McDowell that [redacted] Will be discharged today is going home with the parents

12/08/09 — Face to Face with child/client attempted Dirvondra
No vehicle in yard, no answer at the home, called family from car Number listed on intake; left message to contact case manager



EXHIBIT

"7"

Page 13

whom abuse or neglect is suspected; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: Yes.
BY MR. HOOD:
Q Then it says, "Consult CHS clinical care management social worker to assist with assessment process." Do you see that?
A Yes.
Q And you were part of that CHS clinical care of management social worker team, weren't you?
A Yes.
Q And then it says, "Is the suspicion of abuse or neglect confirmed?" Do you see that?
A Yes.
Q And then there's a -- there's a fork in the road, under "no" it says what to do and under "yes" it give some other things; right?
A Yes.
Q And under "yes," could you read what it says under "Report case to"?
A "Report case to county DSS in which child resides, law enforcement agency where the incident occurred if implicated."
Q Okay. And DSS was notified, weren't they?
A Yes.

Page 14

Q And so suspicion of abuse or neglect was confirmed; right?
A I wouldn't disagree with that. I know the algorithm says something, but -- the suspicion was not confirmed, there had not been a full workup yet.
Q Okay. Why did you report it to DSS?
A Any concerning injury that validates a workup gets reported to DSS.
Q Where is that in the algorithm?
A I don't know. I did not write this algorithm.
Q Okay. This is written for the safety of children; right?
A That would be my assumption.
Q And it was written by Levine Children's Hospital or somebody there; right?
A I don't know who wrote it.
Q Let's go over the other stuff that doesn't -- doesn't really come within the algorithm that was done in this case.
Was there a complete scan form including diagrams done?
A I don't know.
Q Okay. Are any of these things done?
A During the admission?

Page 15

Q For -- for the child in December of 2009.
A I don't know, off the top of my head. I would either have to go through the chart or --
Q I'll represent to you, and I'll show it to you, that -- that a lady by the name of Myers, who was the child maltreatment coordinator for this hospital was involved in the care of this case.
A She is the nurse, yes.
Q And you're not going to have somebody involved in that if you didn't suspect child maltreatment; right?
A If there is a workup because they're concerned about abuse, she would be involved.
Q Let me show you something from DSS.
(Discussion off the record)
(Case review marked as Plf's Exh 3 for identification.)
BY MR. HOOD:
Q I'll represent to you that this is what was given to us by DSS. These were documents produced to us by DSS; okay?
A Mm-hmm.
MR. HOOD: And then let's mark as 4 something else from DSS.
(Case Transfer and/or Case Staffing marked

Page 16

as Plf's Exh 4 for identification.)
MR. HOOD: Look at the second page of this.
MR. TODD: Which one?
MR. HOOD: Exhibit 4.
BY MR. HOOD:
Q This is something that was provided to us by DSS. It says, "Owen has two subdural hematomas, one would indicate non-accidental trauma, parents appropriate." Do you see that?
A Yes.
Q And then that, the one below it gives some history. It says, "Parents took baby to PNC. PNC sent child to Levine's. She has concerns because CT scans shows non-accidental trauma, no" -- and I think that's "no problem in saying it is non-accidental." I don't know what --
A I think that says "no doctor."
Q "No doctor is saying it's non-accidental."
Now, I know you're not a medical person. This is a social worker from DSS.
A Sure.
Q As a social worker from DSS, is there a standard when you have two subdural hematomas that it is consistent with non-accidental trauma?

EXHIBIT 7

EXHIBIT

"8"

LCH PEDIAT CS
INPATIENT INITIAL ASSESSMENT

Medical Decision Making

LABS:

135 | 106 | 11 (157
4.7 | 22 | 0.2

tProt: 5.8 ALP: 283
Albumin: 3.9 AST: 55
Calcium: 9.9 ALT: 32
TBili: 0.2

CULTURES: ☐ Blood ☐ Urine ☐ CSF ☐ Other

CSF
WBC 3144
RBC 2,500,000
Segs: 11.7%
Lymph: 57%
glucose: 104

5.6 (76/225) (418

RADIOGRAPHIC IMAGES:

CXR: wnl

UA: Leuk ⊖ RBCs (1+)
nitrite ⊖ Leuk (trace)

ASSESSMENT/PLAN:

2mo old ♂ w/ no Sig PMH here w/ a Chief ALTE

(1) Neuro: Concern for possible sz with bad tap already w/ what appears to be a traumatic tap. Nothing on exam to low suspicion meningitis. Low concern for intracranial hemorrhage. No CT @ this time.

(2) CV: Stable currently. Hx heart murmur hypokalemia / briefly noted.

(3) Pulm: Stable - nasopharyngeal ✓viral DFA.

(4) FEN/GI: ?GERD. May have been back-arching w/ reflux. Will institute reflux precautions. Diet - breast low suspicion for intussusception.

(5) Renal: Low UOP over last 24h. Will IV bolus & maintenance NF

(6) Heme/ID: DFA (P); low concern meningitis; infection unlikely. Anemia, normocytic, will follow trend in labs.

☐ Discussed impression and plan with patient/family; questions answered and understanding of plan demonstrated.

SIGN / PRINT NAME: Erin Scheufeld PAGER: 6732

ATTENDING Assessment/Plan (Key Elements): ☐ see separate documentation

☒ I have examined and discussed this patient with Drs. Scheufeld Please see their notes for details.

Pertinent findings from my evaluation include

2mo ♂ c ALTE + head bleeds on head CT. Retinal hemorrhages. Hx trauma according to mother + father. PE: ⊖ slightly bulging fontanelle, remainder PE WNL. A/P: 2mo ♂ ALTE, RD NAT dip sepsis w/u as well. Initiate NAT protocol. Flu bld, urine, CSF cxts. Flu Optho + Neurosurg rec's. Sibs in room until cleared by DSS/Child Maltreatment Team.

SIGN NAME: Sarah Stack DATE: 12/5/09
PRINT NAME: SARAH STACK TIME: 1:50P

09339-00393
C000545-02-19
ATT PHY: 66247 CHIPS, TEAM A
12/05/09 DOB [redacted]

EXHIBIT 8

EXHIBIT

"9"

GM saw baby a few days ago - Baby was with GM said baby is ready for discharge → Follow doctors

Follow up on previous Recommendations:
Hospital has a sitter. Parents are having supervised contact w/ baby. Parents also took child to Riverview. Parents said they noticed a bruise on baby's head in November - neither of them knew what happened. Parents have witnessed no injury to baby. Nurse said it is non accidental

Recommendations from Staffing:
- Get medical - Levines, pmc, Riverview & Sunshine Peds
- [redacted] (requested)
- [redacted]
- Follow up and talk w/ doctor.
- Meet w/ GM (assess)
- Go to home and assess home.
- Talk w/ GM separately - any concerns?
- [redacted] Dr. [redacted] pmc trauma (704) 355-5281 Release of info. non accidental

For Child Welfare Cases: Date of Diligent Search for Absent Parent or Other Relative and Outcome Search: _____

Case Manager 12/7/09 Date | Supervisor Kristen M. Date 12/17/09

Transfer case to _____ from _____

Sending Worker's Signature Date 12/7/09 | Sending Supervisor's Signature and Date 12.17.09

Receiving Worker's Signature Date | Receiving Supervisor's Signature Date

DSS Form 3062 (Oct 04) Edition of APR 91 is obsolete.

SCDSS 0996

EXHIBIT 9 Stabler

EXHIBIT

"10"

Page 9

A Sure.
Q Okay. And after being admitted to -- I'm going to call it L -- LCH.
A That's fine, yes.
Q Levine Children's Hospital. If I use the term "LCH" or "Levine Children's Hospital" or "Levine," I'm talking all about the same entity.
A Right.
Q Okay. So after being admitted to LCH, the child was eventually discharged back to his parents; right?
A Yes.
Q And you're aware that approximately 30 days after that, the child came back to Levine Children's Hospital and was catastrophically brain injured?
A Yes.
Q And if he had never been put back with his parents, back to the abuser, the child -- it would have never happened, would it?
MS. BROOKS HOLMES: Objection.
MR. FRAWLEY: Object to form.
THE WITNESS: I can't answer that.
BY MR. HOOD:
Q Why can't you answer it?

Page 10

A Because I don't know what would have happened.
Q Okay. Let's -- let's -- let's break it down a little bit for you.
He doesn't go back to his parents on December the 8th, he goes into foster care; right?
MR. TODD: Objection.
BY MR. HOOD:
Q Or with another relative?
MR. TODD: Objection.
MR. FRAWLEY: Same objection.
MS. BROOKS HOLMES: Same objection.
BY MR. HOOD:
Q You can answer.
A I don't have any say as to where he goes upon discharge, as a hospital employee.
Q You work hand-in-hand with a state agency, you-all were retained to determine what happens with a child where there is suspected child abuse involved.
A I --
MR. TODD: Objection.
BY MR. HOOD:
Q You can answer.
A I am a liaison between the medical team

Page 11

and DSS.
Q Okay. As a liaison, you are the person that helps get whatever the medical discharge is going to be; right?
MR. TODD: Objection.
THE WITNESS: No.
BY MR. HOOD:
Q Okay. As the liaison, you work as a person between the state agency and the medical doctors?
A Yes.
Q And then you help those two people come together to determine what's in the best interest of the child?
MR. TODD: Objection.
THE WITNESS: No, I share information on the clinical status and what's going on with the patient with DSS, who has the ultimate discharge plan put in place.
BY MR. HOOD:
Q Okay. But I thought that you, according to your own algorithm, that you-all had to do it together?
A I give them information. I don't control the final decision.

Page 12

Q Who controls the final decision?
A DSS.
Q Okay. Let me look at your algorithm.
(Child Abuse and Neglect Algorithm marked as Plf's Exh 2 for identification.)
THE WITNESS: Could I get to look at it?
BY MR. HOOD:
Q You're now looking at Plaintiff's Exhibit 1, which are some -- looks like typewritten or some electronic-type of documentation about this baby and then -- that's Exhibit 1, and then Exhibit 2 is a Child Abuse and Neglect Algorithm from Levine Children's Hospital; right?
A Are you asking me? Yes.
Q Yes.
A Yes.
Q Okay. Now, I'm going to go through 2, and then we'll go to 1; okay?
A Okay.
Q Number 2, it says, "Medical team identifies child in whom abuse or neglect is suspected."
Do you see that?
A Yes.
Q And in this case they identified a child

EXHIBIT 10

EXHIBIT

"11"

Carolinas Patient Care Discharge Planning Processor

Sun Dec 06, 2009 05:41 pm

Account No	Name	Unit Number	Birthdate
09339-00393	[redacted]	000545-02-09	[redacted]

(1)Date : 12/06/09
(2)Init : KAH
(3)Planning Code : CPSI-CPSI-CHILD PROT SVC INITIAL REFER
(4)Referred From : LCH

```
        1         2         3         4         5         6         7
   12345678901234567890123456789012345678901234567890123456789012345678901234
01 12/06/2009 MSW note continued... after she staffs the case c her supervisor
02 Baby is not for d/c today, possibly will be d/ced tomorrow. Baby does have
03 SC Medicaid, WIC, mom has foodstamps. Both parents work, MGM watches baby
04 when parents are working. Pt's bedside RN Sara did report that MGM did
05 tell her privately that when she had picked baby up from dad and uncle
06 that she noticed baby had a bump on his head, She asked dad and uncle
07 about this and dad and uncle stated that they had no idea why this
08 happened.  MSW will leave note for weekday MSW.
09
10 Katie Harrison, MSW p 2537
11
12
Edit Notes (Y/N)?--
```

EXHIBIT

11

CMC (12.05.09) 0096

EXHIBIT

"12"

DATE	TIME	RECORD PROGRESS OF CASE, CHANGE IN DIAGNOSIS, CONDITION ON DISCHARGE, AND INSTRUCTIONS TO PATIENT.	ABBREVIATIONS	
12/7/09		NEURO	USE	DO NOT USE
	1000	Family reports he is back to baseline. Chronic reflux issues. Parents have noticed decreased eye contact. Will follow if persists from baseline.	Units	u or U
		Happy active infant. On-going Design of Delivery Plan. HC - 43.5 cm - will obtain HC Trajectories Dr. Baxter (803-930-7337) D/C PENDING	International units	IU
			X mg (Never use a trailing zero)	X.0 mg
		1-2-10 1115	0.X mg (Always use a leading zero)	X mg
12-3-09		Neurosurg	daily	QD
1845		Alert. During well overall. Repeat CT shows stable extra-axial collections. Decrease from ①. OK to discharge under supervision — will need to see in f/u 2-3 weeks. Should be instructed prior to discharge re. signs of ↑ICP.	every other day	QOD
			Morphine	MS or MSO_4
			Magnesium Sulfate	$MgSO_4$

Carolinas HealthCare System
PROGRESS RECORD
(3/07)





09339-00393
[redacted]
ATT PHY: 66247
12/05/09 DOB: [redacted]

EXHIBIT
tabular 12

EXHIBIT

"13"

Nursing Miscellaneous Inpatient Documentation

DOCUMENT NAME: Suspected Child Abuse/Neglect Form-Text
SERVICE DATE/TIME: 12/8/2009 10:02 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: MYERS ,LYNNE RN (12/8/2009 10:32 EST)
SIGN INFORMATION: MYERS ,LYNNE RN (12/8/2009 10:32 EST)

SCAN (Suspected Child Abuse/Neglect) Entered On: 12/8/2009 10:33 EST
Performed On: 12/8/2009 10:02 EST by MYERS , LYNNE RN

SCAN Documentation
SCAN Related Visits: Child Maltreatment Coordinator
Document Reportable Interaction: Yes
Reportable Interaction Detail: Awaiting safety plan from DSS.

MYERS , LYNNE RN - 12/8/2009 10:32 EST

DOCUMENT NAME: Suspected Child Abuse/Neglect Form-Text
SERVICE DATE/TIME: 12/7/2009 10:00 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: MYERS ,LYNNE RN (12/7/2009 10:00 EST)
SIGN INFORMATION: MYERS ,LYNNE RN (12/7/2009 10:00 EST)

SCAN (Suspected Child Abuse/Neglect) Entered On: 12/7/2009 10:01 EST
Performed On: 12/7/2009 10:00 EST by MYERS , LYNNE RN

SCAN Documentation
SCAN Related Visits: Child Maltreatment Coordinator
Document Reportable Interaction: Yes
Reportable Interaction Detail: Pt sleeping w/ mom in chair. Mom states staff discussed safe sleeping & she understands the danger of her behavior.

MYERS , LYNNE RN - 12/7/2009 10:00 EST

DOCUMENT NAME: Pediatric Frequent Checks Form - Text
SERVICE DATE/TIME: 12/8/2009 12:20 EST
RESULT STATUS: Auth (Verified)
PERFORM INFORMATION: MILLER ,SARAH E RN (12/8/2009 14:39 EST)
SIGN INFORMATION: MILLER ,SARAH E RN (12/8/2009 14:39 EST)

Pediatric Hourly Checks Entered On: 12/8/2009 14:42 EST
Performed On: 12/8/2009 12:20 EST by MILLER , SARAH E RN

Hourly Checks
Pediatric Hourly Checks: Reassess, no change from previous assessment, Family at bedside, Other: Patient continues to be held per mom in NAD. Discharge instructions gone over and given to parents with questions asked/answered and understanding verbalized. No further needs stated @ this time.

MILLER , SARAH E RN - 12/8/2009 14:39 EST



EXHIBIT

"14"

A No.
Q You're going to get somebody who's qualified to do that, correct? And I'm not going into what your attorneys told you. But are you going to get someone with a little more spurs medically than you to interpret those records?
A I would do that if - - - yes.
Q That would be a reasonable thing to do, correct?
A Yes.
Q And at that point, you would defer to that expert's opinion as to what Levine's was saying, correct?
A Yes.
Q Dr. Bailey told you that there were only two ways you could have a situation like this. One was trauma at birth and the other was the shaken baby. And he's actually giving you a gesture - - -
A Yes.
Q - - - for shaken baby. Did he define for you what trauma at birth he was talking about?
A He did not.
Q Did he tell you that with a child, a newborn's, the malleableness of the head and the fact that sometimes they come out with cone heads for the first few hours, that a normal vaginal delivery could have a traumatic impact on a child's head,

that that could take a couple of months to resolve?
A He did not tell me that.
Q Okay. I mean, I'm not sure that's the case but is that a possibility based on what he told you?
A Based on what he told me, I was reading into what he was implying.
Q And based on what he told you and the fact that you've got a child who is about three months old then and is three months removed from that normal vaginal delivery, you were pretty much discounting the possibility of trauma at birth and you were considering more a shaken baby syndrome issue at that point, correct?
A Because of what Dr. Bailey told us, yes.
Q He didn't tell you trauma at birth was being excluded did he?
A He did not.
Q Have you spoken with anyone from SC DSS about this case other than Shaundra Tyler, that first night, and Ms. Hill?
A We have spoken to several more people because of the prior when we went to civil court for Kayla.
Q For Kayla. Tell me about that.
A Well, maybe I have my dates mixed up. Can you repeat the question?

Q Sure. With regard to the December 4th first injury up to the January 11 second injury, when these two injuries were bracketed, have you spoken with anybody from DSS other than Shaundra Tyler and Divandra Hill?
A No.
Q Now, I understand you had some other connection with DSS thereafter, one - - -
A After that.
Q - - - was the rocking chair thing - - -
A Right.
Q - - - and maybe the custody issue later on.
A Right.
Q But have you spoken with anybody from DSS with regard to what they should or should not have done in the time period between December 6th when they were called in and the January 11, 2010, second injury?
A No, sir.
Q Do you know if Mr. Williams has?
A I don't believe he has.
Q And I'll be asking Mr. Williams that same question. But you all are husband and wife in a situation involving your grandson - - -
A Right.

Q - - - and would it be expected from you that had he spoken with somebody from DSS he would have told you that he'd done that?
A Yes.
Q And he's not told you that he's done that?
A Correct.
Q Mr. Todd asked you a question. I think he led with do you have videos of Owen, I guess, from his birth up through the first injury. And my recollection, and I don't mean to mischaracterize, is that you looked a little confused and then he threw in pictures and you said oh, yes, we have that. Now, there could be two things there. It could be videos and there could be pictures or there could be both. Do you have videos of [redacted] from his birth up through that second injury?
A Yes.
Q And are these videos that you would have taken or these the videos that Kayla had made mention of when we took her deposition? She indicated there may be some videos. Are the videos you're speaking of your own videos or are those the ones that she would maybe talking about?
A They were Kayla and Michael's videos.
Q So if we were to send a request to produce those

EXHIBIT 14

EXHIBIT

"15"

was?
A [redacted] was on the – I think the intensive care unit at Levine. He was in a room.
Q Was there a sitter in the room?
A I don't recall. Everything was just happening so fast, and I don't recall whether there was one or not.
Q How long did you stay when you went to Levine's your first visit?
A Probably stayed through the night.
Q Did you learn what [redacted]'s condition was?
A Not at that point, not on that first - - - no, not on that first day.
Q All right.
A No.
Q The first day, was it a Saturday?
A I think it was.
Q And I guess you were going to have to preach the next morning?
A On Sunday, yes.
Q According to the record [redacted] was admitted to Levine's at 4:45 in the morning on December the 5th. I got a calendar here and see if I can - - - I think the 5th was Saturday.
A Saturday, yeah.

Q So you got to Levine some time on Saturday, - - -
A Probably.
Q - - - you think late Saturday afternoon?
A Late Saturday.
Q When you got there do you remember what the concerns were about [redacted]?
A Yeah, we had concerns. We were just trying to figure out what had happened to [redacted]. We didn't know really exactly what was going on at that time.
Q At that time had he been diagnosed with having the small subdural hematomas?
A Yes. Well, I remember the - - - I remember a physician being in there that had some type of light or something that was trying to look behind his eyes at that time. I do remember that.
Q Do you know what kind of doctor that was? Was he a neurosurgeon, or neurologist, or ophthalmologist, or do you know?
A Probably an ophthalmologist I would think is checking behind the eyes.
Q Are you guessing because he was looking in the eyes? Do you remember him saying I'm Doctor so-and-so, I'm an ophthalmologist?
A No, I don't remember.
Q So you're just making an assumption that he's an

ophthalmologist because he's looking in the eyes?
A Correct.
Q Did you have any discussions with that doctor?
A It seems like the doctor was telling us that, at that time, that they had seen some blood behind the eyes.
Q And this was at Levine's?
A Right.
Q Do you remember any discussions about any concerns about some kind of abuse to [redacted]?
A Well, Dr. Bailey came in, I don't remember what Dr. Bailey's first name was, but Dr. Bailey was in the - - - came in the room and we questioned him what had taken place with [redacted]. And he said that it could be one of the two things. He said it could have happened at birth but pretty much ruled that out. And then he threw his hands up like - - - like a shaking motion and said shaking. I remember that very well.
Q And what day was that?
A That was probably - - - that may have been Saturday. It may have been later Saturday.
Q Do you know what kind of doctor Dr. Bailey was, his specialty?
A A neurologist.

Q When Dr. Bailey said that did that cause any concern to you that someone had abused [redacted]?
A Well, I didn't know at the time whether - - - whether someone had abused him or what because he never determined - - - he never gave us specifically what had happened to [redacted]. He never said anything - - - he never gave us any specifics on what happened to [redacted] at that time.
Q So you think that Dr. Bailey, who's name you remember, came in - - -
A Right.
Q - - - while you were there - - -
A Right.
Q - - - and you think it was that Saturday?
A Yes.
Q And he said something about there being blood behind his eyes?
A He didn't say that.
Q Oh, okay.
A The other doctor said that.
Q Did you observe Dr. Bailey doing in exam of [redacted]
A At that time, yes, he was - - - I don't recall exactly what he did but he had - - - I'd assume he was doing an exam on him. I'm not sure.
Q And after he did the exam, he had a discussion with

EXHIBIT
15
622

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Q When you have a child who has these subdural hematomas and has some of the risk -- the parents have some of the risk factors, how do you err on the side of the caution if it's either accidental versus non-accidental?

MR. TODD: Objection.

THE WITNESS: By taking the steps that we did; by asking for a child maltreatment evaluation; for getting the child a maltreatment physician involved; from getting Department of Social Services and law enforcement involved. That's how you err on the side of caution.

BY MR. HOOD:

Q Okay. And so you would have gotten the pediatric ophthalmology consult?

A Yes.

Q And that came back negative?

A Negative.

Q Although you don't know how it was done?

A No.

Q Would you have gotten a pediatric neurosurgery consult --

A Yes.

Q -- with Dr. McClanahan?

Page 42

A Yes.

Q And he would have -- it appears that somebody with him would have ordered the CTs and they would have been looking at the CTs and they would be medically treating the effects of the subdural hematoma?

A Or evaluating if they need treatment.

Q Right, evaluating.

But the bottom line is that the CHIPS teams, of which you were the attending physician, would have been the responsible party for determining if the child was appropriate for discharge or not?

A I would be the appropriate person to determine if the child was medically cleared for discharge.

Q Okay. Now, there are two components of medical discharged, aren't there? I mean -- and when I had say that, what I'm asking is, you have to be medically stable; right?

You agree with that?

A Yes.

Q And then in regard to child -- either suspected or potential child abuse or trauma, you also have to determine that it is safe for the child

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to be discharged back into the home?

A That's not my determination.

Q Okay. Let's look at -- I'm going to ask you to look at -- yeah, I think it's in this stuff right here.

A Okay.

Q I think it's -- I think it's Exhibit 9 and Exhibit 8 and Exhibit 7.

Exhibit 8, Exhibit 9 and Exhibit 7.

Exhibit 7 is simply an administrative order for Retention of Custody for Juvenile Suspected of Being Abused Pursuant to North Carolina General Statutes; right, right?

A Yes. I don't know what this form means, but yes, I guess that's the heading of this form.

Q Okay. These are attachments to a Child Abuse and Evaluation Policy at Carolinas Healthcare System.

And Number 8 is the Certification of Necessity for Retention of Custody.

Do you see that form?

A Yes.

Q Okay. And then the next form is Examining Physician's Certification.

A Yes.

Q And under that it says, "The undersigned

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examining physician hereby certifies there is good cause to suspect that the juvenile was abused and should remain in blank, name of facility, for medical treatment or it is unsafe for the juvenile to return to his parent, guardian, custodian or caretaker."

Do you see that?

A Yes.

Q So do -- does the physician at Levine Children's Hospital have the ability to state that it's unsafe for a juvenile to return to his parent, guardian, custodian or caretaker?

A If the circumstances of a specific case do come that you can say without a doubt that child abuse has occurred, you could, then, I guess, feel comfortable signing this form.

Q Okay. I'm going to use the converse; okay? If you can say without doubt that it did not occur, you could safely discharge him home; right?

A Again with the negatives, what?

Q Okay. If you can safely -- if you can say --

A Yes.

Q -- that unequivocally there was no child

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abuse, it is safe to discharge him?
A Yeah, I guess, yes.
Q It's the converse of what you said?
A Yes, yes.
Q You said "equivocally." If you said there was a child abuse, you could say it may not be safe to send him home?
A Yes.
Q But if you take the exact converse, if you can say unequivocally there was no child abuse, you can safely send him home; right?
A Yes.
Q Now, but Owen Carduff fell in between those two things?
A Yes. There was some elements of the workup that stated that there was concern for non-accidental trauma, but other elements of the workup of the evaluation which did not meet the criteria because they were negative and therefore, it could not be determined whether or whether not he had been the victim of child abuse.
Q Okay. And I think one of the things you said was the skeleton survey?
A Skeletal survey.
Q "Skeletal survey."

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A Right.
Q And the skeletal survey would have been where they do radiograph of both arms, both legs, and your core.
A Yes.
Q And your head?
A Yes, "and your head."
Q And they determine whether there's been any previous fractures or evidence of any kind of breaks or something that would indicate any kind of trauma; right?
A Yes.
Q Now, when you have abusive head trauma, would you agree with me that many times you do not see any other signs of symptomology on a skeletal exam?
MR. TODD: Objection.
THE WITNESS: It depends on the specifics of the case.
BY MR. HOOD:
Q It depends on the actual case itself?
A Yes.
Q And when you have someone who has an isolated incident of abusive head trauma, you may not see anything on a skeletal survey; right?

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A You may or may not.
Q Okay. And so in this particular case, because of the abusive head trauma -- excuse me.
In this case, because of the subdural hematomas, the skeletal survey may or may not help?
A May or -- it may or may not help, depending. You may also repeat it in two weeks to see if there were any injuries that were young and were fresh if you didn't see them on the first skeletal survey.
Q And -- and in doing that I know there's a huge, huge controversy over shaken-baby syndrome that is now called abusive head trauma.
A Yes.
Q And I know that -- there is a classic triad. I know there's -- a -- you know, there are mimics that are written about in the literature. I know that they don't even use that nomenclature anymore --
A Sure.
Q -- in the medical field?
A Right.
Q It's now AHT --
A Right.
Q -- as opposed to SBS?

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A Right.
Q And when you have a situation and you've ruled everything out except for either accidental or non-accidental trauma, how do you ensure a baby is safe if you don't know that it's not non-accidental trauma?
A You put in place a safety plan and you report them to the Department of Social Services and you get law enforcement to involve -- to investigate if they can further get information to see if there is anything that corroborates for there to be accidental or non-accidental trauma.
Q Okay. And so when you get it to a point where you've ruled in or out everything except for accidental versus non-accidental trauma, then you work with DSS and law enforcement to determine whether it's one of the two; right?
A Or a combination of both or -- what -- or whatever.
Q Or a combination of the both --
A Yeah, whatever.
Q -- because you can have accidental trauma and non-accidental trauma?
A Yes, yes.
Q Okay. And -- and so in that case, you would be

DATE	TIME	RECORD PROGRESS OF CASE, CHANGE IN DIAGNOSIS, CONDITION ON DISCHARGE, AND INSTRUCTIONS TO PATIENT.	ABBREVIATIONS	
12/7/09		NSURG	USE	DO NOT USE
	1000	Family reports hx of lacerations to
		Chronic reflux symptoms.
		Parents have noticed drainage of pus
		uncertain if present from birth.
		Happy active. MAE=
		In private room at Levine Children's Hosp.
		HC- 43.5cm
		- will obtain MR scan from Peds office
		Dr. Poskitt (803-980-7337)
		Left message
		-Julie Smithap
		[signature]
		1-2-10 1115
12-7-09		Neurosurg
1845		Alert. Doing well overall. Repeat
		CT shows stable extra-axial collections,
		(R) denser than (L). OK to discharge
		under supervision — will need to
		see in f/u 2-3 weeks. Should be
		instructed prior to discharge re: s/s of
		TCP.
		[signature]

Units	u or U
International units	IU
X mg (Never use a trailing zero)	X.0 mg
0.X mg (Always use a leading zero)	.X mg
daily	QD
every other day	QOD
Morphine	MS or MSO_4
Magnesium Sulfate	$MgSO_4$

Carolinas HealthCare System
PROGRESS RECORD
(3/07)





09339-00393

[redacted]

ATT PHY: 6624/ CHILD'S LAWYER
12/05/09 DOB: [redacted]

STATE OF SOUTH CAROLINA COUNTY OF YORK Elizabeth Hope Rainey, as the Appointed Guardian Ad Litem to [redacted] a minor Plaintiff, vs. Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, South Carolina Department of Social Services, and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County, Defendant.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-46-4508 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

FILED-RECEIVED
2013 MAY 22 AM 11:50
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Plaintiff's Attorney:	Defendant's Attorney:
S. Randall Hood, Bar No. 65360 Address: 1539 Health Care Drive, Rock Hill, SC 29732 Phone: 803-327-7800Fax 803-328-5656 E-mail: rhood@mcgowanhood.comOther: ____	See attached Bar No. ____ Address: ____ Phone: ____Fax____ E-mail: ____Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Reconsideration and Memorandum of Law in Support of Motion

Estimated Time Needed: ____ Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant — Date submitted: 5/22/2013

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: Leigh Ann Alexander Date Filed: 5-22-13

☑ MOTION FEE COLLECTED: $ 25.00

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted], a minor ..... Appellant

v.

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County

Of whom

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center is the ..... Respondent.

RECORD ON APPEAL (VOLUME 3)

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January 7, 2014
Rock Hill, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted] a minor)	Civil Action No.: 2011-CP-46-4508
Plaintiff,)	**PLAINTIFF'S MOTION FOR RECONSIDERATION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION**
v.)	
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services, and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County,)	
Defendants,)	

FILED-RECEIVED
2013 MAY 22 AM 11:51
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Plaintiff Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted] a minor, moves for reconsideration of the Court's May 13, 2013, Order for Summary Judgment in favor of Defendant Charlotte-Mecklenburg Hospital d/b/a Carolina Medical Center.

FACTS

On December 4, 2009, three-month old [redacted] suffered an unexplained injury while alone with his father Michael Carduff. Owen was hospitalized for several days Carolinas Medical Center's Levine Children's Hospital ("LCH") in Charlotte, North Carolina. [redacted] was admitted to LCH during the morning hours of December 5th and medical tests were performed to determine the cause of his physiological symptoms. A CT scan revealed a subdural hematoma, i.e. bleeding on his brain.

LCH notified the York County division of the South Carolina Department of Social Services ("DSS") of a suspected child abuse incident and also activated procedures for care of a suspected child abuse victim. These procedures included a consult its on-staff medical social workers. LCH policy required the social workers to conduct a thorough psychosocial assessment of [redacted]'s home environment, communicate this information to [redacted]'s doctors and DSS, and intervene if necessary to protect [redacted] from an unsafe environment. Plaintiff's experts, licensed social worker Dr. George Savarese and hospital administrator Kevin Moore submitted affidavits demonstrating serious departures from LCH policies by hospital social workers. According to these experts, the social workers did not properly assess, communicate, or intervene on [redacted]'s behalf as required by policy and the standard of care applicable to medical social workers. These responsibilities were left undone when hospital social workers participated in the decision to discharge [redacted] to the unsupervised custody of his parents.

A few weeks later, Michael was again left alone with [redacted] and the infant suffered nearly fatal neurological injuries. As a result of these injuries, [redacted] has suffered irreparable harm and limitations with which he must deal for the rest of his life. Michael Carduff, pled guilty to child abuse and is currently in prison.

PROCEDURAL HISTORY

Plaintiff filed this negligence suit on December 1, 2011, naming LCH, DSS, the York County Sheriff, the Sheriff's Department, and the County. Defendant LCH filed a motion for summary judgment on February 26, 2013, and Plaintiff filed a memorandum of law in opposition. The Honorable S. Jackson Kimball heard oral arguments on April 18, 2013. In his May 13th order, Judge Kimball denied summary judgment on LCH's claim to immunity under the South Carolina Children's Code. However, the Order granted summary judgment by finding

LCH complied with all legal duties to [redacted] by reporting suspected child abuse to DSS. The Court concluded Plaintiff could not show LCH owed any additional duty to [redacted] The Order portrayed the duty Plaintiff sought to apply as "a duty not to place [redacted] back into an abusive and dangerous environment." Order at 2.

ARGUMENT

After reviewing the oral argument transcript and Order, Plaintiff believes the Court misunderstood Plaintiff's assertion of LCH's duty and the application of South Carolina negligence principles to that duty. Plaintiff's claim against LCH is based on the following points: (1) LCH owed [redacted] an intra-admission social work duty; (2) LCH's duty required its social workers to perform a psychosocial assessment of [redacted]'s home environment and communicate its results to DSS; (3) LCH breached its assessment and communication duties in multiple ways; and (4) LCH's breach of its intra-admission social work duty proximately caused the damages Plaintiff claims in this suit. Accordingly, Plaintiff respectfully requests the Court reconsider its earlier ruling and permit a trier of fact to resolve the disputed issues of material fact regarding LCH's interaction with [redacted]

1. LCH owed [redacted] an intra-admission social work duty.

A negligence cause of action requires proof of a duty breached by the defendant proximately resulting in damages to the plaintiff. Plaintiff bears the burden of establishing that a duty of care is owed to him by the defendant. Trask v. Beaufort County, 392 S.C. 560, 566-67, 709 S.E.2d 536, 539 (Ct. App. 2011). A legal duty may arise from a number of different sources including a "statute, a contractual relationship, status, property interest, or some other special circumstance." Jensen v. Anderson County Dep't of Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991). A treatment facility providing care for a vulnerable person has a "special

relationship" with the person and owes an affirmative duty to act in the person's best interest. Madison v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006); see also Salley v. Heartland-Charleston of Hanahan, SC, LLC, 2011 WL 2728051 (D.S.C. 2011)(citing Madison and concluding plaintiff had "sufficiently demonstrated there is a genuine issue of material fact regarding whether there was a relationship sufficient to establish a general duty of care" by nursing home to provide its resident assistance with activities of daily living).[1] In this case, LCH owed to [redacted] a social work duty during [redacted]s December 2009 hospitalization. Plaintiff's claim is primarily based on LCH's breach of this intra-admission duty.

Alternatively, Plaintiff based her assertion of LCH's legal duty on the hospital's voluntary assumption of duty.[2] On multiple occasions, South Carolina courts have applied Restatement (Second) of Torts § 323, a section indicating that a party with no underlying duty who "undertakes...to render services to another" may be liable for "physical harm resulting from his failure to exercise reasonable care" in performing the voluntarily assumed duty. See Johnson v. Robert E. Lee Acad., Inc., 401 S.C. 500, 737 S.E.2d 512, 514 (Ct. App. 2012)(noting "recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in" § 323).

Even if the Court reaffirms its claim that Plaintiff has failed to establish LCH owed a duty based on South Carolina statutory or common law, LCH's conduct toward [redacted] was sufficient to apply § 323's voluntarily assumed duty doctrine. LCH personnel acknowledge efforts they undertook to assess [redacted]s condition and the potential danger posed by his surroundings. LCH social worker Laura Newmark testified that she tried to determine the social conditions surrounding [redacted]s subdural hematoma. L. Newmark Dep. 36:5-9. Newmark later

[1] The Court appears to agree that LCH owed Owen a "special relationship" duty during his December 2009 hospitalization. See Tr. of Record at 34, L. 1-3 ("I will grant you that [Levine] had a duty while they had the care, custody, and control of the child when [he] was there for evaluation and treatment").

[2] It does not appear that Plaintiff's voluntary assumption of duty argument was specifically addressed in the Court's order.

acknowledged that she and social worker Katie Harrison aided in LCH's psychosocial assessment for [redacted] L. Newmark Dep. 99:5-11. LCH acknowledges undertaking a duty to assess [redacted]s situation and communicate that assessment to DSS. With the support of LCH's policies and expert testimony discussed below, Plaintiff claims LCH failed to exercise reasonable care in performing this voluntarily assumed duty.

2. LCH's duty required its social workers to perform a psychosocial assessment of [redacted]s home environment and report its results to DSS.

Once the existence of LCH's duty to [redacted] is established, the contours of that duty must be outlined to determine the standard of care LCH was required to meet in performing its duty. This is not the legal question regarding a duty's existence but a factual inquiry into the scope of duty. The content of a party's legal duty, i.e. the standard of care, "may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." Madison, 371 S.C. at 140, 638 S.E.2d at 659. Also, unlike the legal question of duty, the factual standard of care issue may be addressed by expert testimony. See Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue...").

In her opposition to LCH's summary judgment motion, Plaintiff submitted two expert affidavits and LCH's own policies as evidence on the standard of care for LCH in discharging its social work duty to patients like [redacted] CMC policy PR 110.03 sets the standard of care for LCH personnel treating "Juveniles Suspected of Being Abused or Neglected." CMC Policy PR 110.03, ("Juvenile Abuse Policy"). The Juvenile Abuse Policy imposes several obligations on LCH doctors, social workers and other personnel in the treatment of suspected child abuse victims. First, the DSS office in the child's home county must receive notice of the hospitalization. Second, LCH staff must "Complete CHS Suspected Child Abuse and Neglect

form (SCAN)" for the patient and document all positive exam findings on a SCAN form. Third, there must be a consult with a "CHS Clinical Care Management Social Worker" for the purpose of conducting an "assessment process."

The psychosocial assessment must explore certain specific issues to meet the standard of care imposed by the Juvenile Abuse Policy. A LCH social worker must determine whether (1) a child's parents have caused or allowed infliction of a serious physical injury—i.e. whether the suspected victim meets the policy's definition of an "abused juvenile"; (2) parents offer a "logical explanation...consistent with the age, pattern, and severity of the injury"; (3) parents are guilty of any "inappropriate parental behaviors" during the child's hospitalization; and (4) whether it is safe for the child to be discharged back to the parents' care. The Policy further defines LCH's intra-admission social work duty to require LCH social workers to take certain actions after completing a psychosocial assessment including communication with DSS of the assessment's results and collaboration with DSS on the child's potential discharge. See Juvenile Abuse Policy, at 3 of 23 ("**When medically cleared, do not discharge child until disposition has been determined by medical social worker and DSS and the safety plan has been placed on the chart in writing, if applicable.**")(emphasis in original).

Plaintiff's social work expert also provides evidence on the standard of care applicable to LCH's intra-admission social work duty. According to Dr. Savarese's evaluation of the Policy, LCH had a duty "to conduct a comprehensive independent psychosocial assessment." G. Savarese Aff. at 9. Additionally, there are certain "basic elements" of a psychosocial assessment performed by any competent social worker. G. Savarese Aff. at 8. These basic elements include a child's developmental history and temperament as well as characteristics of the parents including social/financial stressors, demographic risk factors (e.g. age/maturity level, educational history,

and socioeconomic status), attitude toward parenting, and any relational issues between mother and father. In Dr. Savarese's opinion, a psychosocial assessment failing to investigate these issues does not meet the hospital's assessment duty. Also, failing to communicate the results of a properly conducted assessment violates LCH's duty.

3. LCH breached its assessment and communication duties in multiple ways.

LCH did not comply with the Juvenile Abuse Policy requirements for the psychosocial assessment of [redacted] and his family. The Policy required LCH to determine whether [redacted]s parents or caretakers caused or "allow[ed] to be inflicted" serious bodily injury to the infant. Juvenile Abuse Policy at 1 of 23; K. Moore Aff. at 2. LCH social workers did not adequately investigate this issue. Between the two social workers who cared for [redacted] during his December 2009 admission, the psychosocial assessment totals just six quarter-page entries in Owen's medical record. See CMC 0092-0097. Ms. Newmark described her investigation as limited to "tak[ing] a history from the parents on [whether] there [had] been any recent trauma." L. Newmark Dep. 36:5-9. The tough yet vital questions were not asked of [redacted]s parents. For those instances where questions were asked, the social workers were overly deferential to the parents' answers. Ms. Newmark viewed her assessment duty as nothing more than obtaining the parents' "story" regarding the source of the injury and the child's history. See L. Newmark Dep. 162:16-163:2. According to Dr. Savarese, a competent social worker would interview parents and then investigate their claims rather than simply acquiring and accepting a parent's explanation. G. Savarese Aff. at 7.

Additionally, LCH's assessment was insufficiently thorough to accomplish the Policy's essential purpose. The Policy is intended for "detection[]" of suspected child abuse and "management" of children who are suspected victims of abuse. Juvenile Abuse Policy at 1 of 23.

LCH's assessment of [redacted]s history and environment was insufficient to either detect suspected abuse or manage [redacted]s care in light of the suspected abuse. By omitting the basic elements of a competent assessment listed above, LCH "did not address the necessary areas" to detect suspected abuse or manage the situation. G. Savarese Aff. at 9. In its efforts to detect suspected abuse, LCH made no attempt to contact many of [redacted]s relatives who had opportunity to interact with [redacted] or his parents. [redacted]s paternal grandparents, uncle, and unidentified babysitter were never interviewed. LCH's failure to probe these "collateral sources" of information is another violation of the Policy and another departure from the conduct of a reasonable social worker.

The assessment breaches contributed to the social workers' failure to comply with their communication duties. The other participants in [redacted]s case (DSS and law enforcement) "depend upon the hospital's assessment of risk, which is based on a combination of both medical and psychosocial data." Id. at 29. DSS would have considered input from hospital sources in making DSS case decisions including "any concerns that they have." K. Hinnant Dep. 26:6-12. Ms. Newmark acknowledges CMC had a duty to "report to DSS" and "provid[e] them with up-to-date information." L. Newmark Dep. 35:20. However, by conducting an incomplete, surface level psychosocial assessment, the CMC social workers were not in a position to make the required communications. G. Savarese Aff. at 23. In sum, the social workers were required to "communicate accurately the potential risk of harm to the child" posed by the parents or parental home environment. Ms. Harrison and Ms. Newmark did not make the required communications on this "family risk profile." Id. at 23.

4. LCH's breaches of its intra-admission social work duty proximately caused the damages Plaintiff claims in this suit.

There are two parts of a proximate cause analysis: (1) causation in fact; and (2) legal cause. Bramlette v. Charter-Medical-Columbia, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). Causation in fact requires proof that an injury would not have occurred "but for" the defendant's negligent act. Id. Legal cause is a foreseeability analysis, requiring only that the plaintiff's injury was "a natural and probable consequence" of the defendant's negligence. Id. In reviewing the hearing transcript, it appears the Court dismissed the proposition that LCH may be liable for breach of its intra-admission social work duty if the damages proximately flowing from that breach were not felt until after LCH discharged [redacted]. See Tr. of Proceedings at 35, L. 24 – 36, L. 7.

However, proximate cause does not require that a negligent act precisely coincide with the damage it causes. In fact, a negligent act may "remain active" for liability purposes even if a third party's negligent act occurs in the interim. Mellen v. Lane, 377 S.C. 261, 282, 659 S.E.2d 236, 247 (Ct. App. 2008)(citing State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990)). The trier of fact must only determine whether the type of injury the plaintiff ultimately suffered was foreseeable to the defendant "at the time of the alleged breach." Parks v. Characters Night Club, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001). Plaintiff's claim is based on the proposition that LCH's failure to properly perform its social work duty (i.e. assessment and communication) during [redacted]s admission proximately caused the serious brain injury and permanent damages he suffered after his discharge. The foreseeability inquiry asks only whether LCH could foresee that its failure to properly perform its suspected child abuse assessment and communication duties could result in [redacted] suffering a physical injury at the hands of a child abuser.

As the courts have recognized and as juries have been instructed, "the law recognizes further there may be more than one proximate cause." Mellen v. Lane, 377 S.C. 261, 281, 659 S.E.2d 236, 247 (Ct. App. 2008)(quoting State v. Burton, 302 S.C. 494, 496-97, 397 S.E.2d 90, 91 (1990)).[3] It is "well recognized that an act or omission need not be the sole cause" since "[a] given injury may result from multiple causes." McPherson v. Michigan Mut. Ins. Co., 306 S.C. 456, 461, 412 S.E.2d 445, 448 (Ct. App. 1991). Courts often refrain from referring to "the proximate cause" of an injury recognizing that "[w]hen we speak of proximate cause, we are not referring to the 'sole cause.'" Hughes v. Children's Clinic, P.A., 269 S.C. 389, 398, 269 S.E.2d 753, 757 (1977). For purposes of pursuing a claim against a particular defendant and to prevail against a defendant on a negligence claim, "[i]t is enough if the negligent act complained of is at least one of the causes without which the injury would not have occurred." Shepard v. S.C. Dep't of Corrections, 299 S.C. 370, 374, 385 S.E.2d 35, 37 (Ct. App. 1989).

Plaintiff has submitted expert affidavits on this proximate cause issue. Expert testimony is an appropriate means of providing evidence on proximate cause. See e.g., Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326, 335 (Ct. App. 2003). LCH's was responsible for initiating "a causal chain of dangerously inaccurate information [to be] communicated, beginning with the hospital social worker's deficient assessment of the psychosocial risk factors and her lack of comprehension of the resulting inherently high-risk of potential harm to the child." Savarese Aff. at 30. The inadequately performed assessment was so poorly communicated that it "distort[ed]" and "diminish[ed]" DSS's overall understanding of the true nature of the inherent danger [redacted] faced. Id. Dr. Savarese ultimately concluded that "but for the hospital social workers' deficient assessment," Owen's January 2010 injuries would have been

[3] Judge Kimball appeared to acknowledge this point at oral argument. When Ms. Orlowski's attorney argued "Dr. Creagh can be completely at fault" even when Dr. Taylor was alleged to have been at fault, Judge Kimball replied, "I don't disagree with that...as a general principal of law." (R. p. 285, lines 8-15).

avoided. Id. Plaintiff's hospital administration expert Kevin Moore also provided an opinion on proximate cause. Based on the multiple policy violations and other breaches in the standard of care identified in his affidavit, Mr. Moore concluded LCH failed to take the actions required of it to avoid exposure to ongoing child abuse. K. Moore Aff. at 6. In sum, "the negligent actions or failure to act in contravention of clear suspicions of abuse and policy requirements caused an/or contributed to the injuries of [redacted] in January 2010." Id.

For summary judgment purposes, these affidavits create an issue of fact on proximate cause and the issue should be resolved by a jury. In fact, "[a]s a general rule, the question of proximate cause is one of fact for the jury." Trivelas v. S.C. Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). It is a "rare or exceptional case" where proximate cause may be decided as a matter of law. Ballou v. Sigma Nu Gen. Fraternity, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986).

CONCLUSION

Based on the arguments stated above, Plaintiff respectfully requests an order denying Defendant LCH's Motion for Summary Judgment. Plaintiff has presented evidence that LCH had an intra-admission social work duty to [redacted] and breached that duty to assess and communicate in a number of ways by violating hospital policy. Plaintiff has also presented evidence that this breach of duty was a direct and proximate cause of [redacted]'s January 2010 injuries. When the elements of Plaintiff's claim are properly understood, it is clear that Plaintiff has made a prima facie showing on all required elements of her negligence claim against LCH.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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May 22, 2013
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted] a minor,	)	Civil Action No. 11-CP-46-4508
Plaintiff,	)	
vs.	)	**DEFENDANT, THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY D/B/A CAROLINAS MEDICAL CENTER'S, MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**
The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services, and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, The York County Sheriff's Department, and York County,	)	
Defendants.	)	

The Defendant The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center ("CMHA") submits this Memorandum in response to the Plaintiff's Motion to Reconsider. Because the Court did not misapprehend the law or the facts in this case, the Defendant CMHA respectfully submits the Motion to Reconsider should be denied.

The Court properly analyzed the case as one of duty, the determination of the existence of which is a matter of law for the court. See Doe ex rel Doe v. Wal-mart Stores, Inc., 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011) (a "court must determine, as a matter of law, whether the law recognizes a particular duty"). Nothing about the Plaintiff's Motion to Reconsider demonstrates that the Defendant owed the Plaintiff a duty to prevent the harmed complained of or that the Court erred in granting summary judgment.

The Plaintiff argues that the Defendant CMHA owed him an "intra-admission social work duty." The source of this duty is unknown, however, as a review of the case law does not reveal the existence of any such duty, and the Plaintiff cites to none. Additionally, under the facts of this case such a duty cannot exist in light of South Carolina's comprehensive statutory scheme vesting the power to protect children suspected of being abused or neglected to the Department of Social Services. The Plaintiff's argument fails to acknowledge the fact that no entity in the State of South Carolina other than DSS has the obligation or the authority to investigate child abuse or neglect cases and deprive a parent of custody of his or her child. As the Court correctly held, the only duty imposed upon persons relating to abuse or neglect claims is the duty to report—which CMHA did pursuant to the statute. Once reported, the duty to investigate possible child abuse fell to the Department of Social Services who has the ability to conduct an investigation and handle it in accordance with its statutorily-derived authority, which DSS did.

The Court correctly concluded there was no statutory or common law authority for CMHA to remove a child from the custody of his parents and no power to refuse to discharge a child to his parents when the child is ready to be discharged with the approval of DSS to his parents. An "intra-admission social work" evaluation could not create a duty upon the hospital to place the child in foster care, prevent the child from being returned to his parents, or even perform an investigation into the Plaintiff's home life—all of which the Plaintiff alleges should have been done.

The Plaintiff also attempts to argue that CMHA owed the Plaintiff a duty because it voluntarily assumed one, citing Restatement (Second) Torts §323. The Plaintiff's reliance on Restatement §323 overlooks the fact that Department of Social Services and law enforcement,

not CMHA, are the only entities in South Carolina given the power to investigate allegations of abuse and withhold a child from his parent's custody. *See* S.C.Code Ann. § 63–7–660 (2010) (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred). The Court correctly held there is no statutory or common law authority for a hospital to remove a child from the custody of his parents or to refuse discharge of a child to his parents when the child is ready to be medically discharged from a medical care facility. The Restatement cannot override the statutory scheme enacted by the South Carolina Legislature giving DSS the authority to investigate suspected abuse.

Moreover, Restatement §323 is inapplicable in this case in any event. Though the Plaintiff cites the rule as one who "undertakes . . . to render services to another may be liable for physical harm resulting from the failure to exercise reasonable care," the Restatement is much more limited in its scope and application. Under Restatement §323, a duty only arises if one undertakes to render services which one should recognize as necessary for the protection of the other's person and (a) his failure to exercise such care increases the risk of such harm or (b) the harm is suffered because of the other's reliance upon the undertaking. The elements of Restatement §323 cannot be met under the facts of this case, and the Plaintiff has not cited a single case that would support such an application of the rule.

Restatement §323 cannot impose a duty on CMHA because DSS is the entity granted the authority to protect children from abuse or neglect. *See South Carolina Dept. of Social Services v. Randy S.*, 390 S.C. 100, 700 S.E.2d 250 (Ct. App. 2010) (noting that Section 63–7–1660(A) grants DSS, and only DSS, the authority to petition the family court to remove a child from custody of a parent if DSS "determines by a preponderance of evidence that the child is an

abused or neglected child"). CMHA had no right or duty to remove the Plaintiff from his father's custody or refuse to return the Plaintiff to his parents after DSS ordered it to do so. Restatement §323 is also inapplicable because nothing CMHA did increased the risk of harm to the Plaintiff, and the Plaintiff could not have relied upon CMHA to protect him by removing him from his parents because CMHA had no authority to remove him from the custody of his parents.[1]

Additionally, the Court properly concluded that the Plaintiff could not create a duty using expert testimony, as the issue of duty is one for the courts. The remainder of the Plaintiff's Motion to Reconsider addresses the issues of standard of care and a breach. However, those issues need not be addressed by the Court in the absence of a duty, because without the presence of a duty, there can be no breach of the standard of care. Because those issues were not addressed by the Court and are immaterial to the Court's decision to grant CMHA summary judgment, the Defendant CMHA does not address them here.

In conclusion, while the Plaintiff claims that CMHA breached a duty of care to the Plaintiff, the Court correctly found that the hospital had neither the right nor the duty to refuse to discharge Owen to his parents. The Defendant CMHA complied with its statutorily-imposed duties by reporting its suspicion of a non-accidental trauma to the South Carolina Department of Social Services, which performed its own investigation and advised CMHA to discharge the Plaintiff to his parents. Therefore, the Court should deny Plaintiff's Motion for Reconsideration.

---

[1] Moreover, as noted by the Court in *Underwood v. Coponen*, 367 S.C. 214, 219 n.3, 625 S.E.2d 236, 239 n.3 (Ct. App. 2006), Restatement §323 should not be contorted in a way to create ill-advised precedent that may have a chilling effect on cooperation with the authorities or other conduct that inures to the public good. *See also Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (declining to impose duty on defendant to inspect property under circumstances as doing so "would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land").

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Columbia, South Carolina

May 30, 2013

Page 1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT

Civil Action No: 11-CP-46-04508

ELIZABETH HOPE RAINEY, as the APPOINTED GUARDIAN ad LITEM to [redacted], a minor,

Plaintiff,

vs.

CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS MEDICAL CENTER, SOUTH CAROLINA DEPARTMENT of SOCIAL SERVICES, BRUCE BRYANT as the CONSTITUTIONAL OFFICER OF YORK COUNTY,

Defendants.

VIDEOTAPED DEPOSITION OF CHERYL COURTLANDT, M.D.

T R A N S C R I P T of the deposition in the above-entitled matter by and before KAREN GAGLIARDOTTO KOCSIS, a Certified Court Reporter and Notary Public of the State of South Carolina, held at the CAROLINAS MEDICAL CENTER, 1000 Blythe Boulevard, Dining Room #4, Charlotte, North Carolina on Thursday, September 27, 2012 commencing at 2:27 p.m.

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(Articles from AAP, Abusive Head Trauma in Infants and Children and Evaluation of Suspected Child Physical Abuse and Dr. Courtlandt's CV received and marked as Plf's Exhs 13, 14 and 15 for identification.)

(Videographer's opening remarks.)

CHERYL COURTLANDT, M.D., having been duly sworn, by the officer, testified as follows:

EXAMINATION

BY MR. HOOD:

Q Dr. Courtlandt, my name is Randy Hood, and I represent the family of [redacted] a personal -- Guardian Ad Litem of [redacted], who is standing in a representative capacity for Owen and we represent him in a case against Charlotte-Mecklenburg Hospital Authority of Carolinas Healthcare System and then against DSS and against the York County Sheriff's Department.

And I'm going to be taken being your deposition in this particular case, and before I begin, I just want to go over a couple ground rules; okay?

A Yes.

Q Good one. I need a verbal response

"yes" --

A Okay.

Q -- "no" or whatever it maybe, as long as it's a verbal response; okay?

A Yes (indicating.)

Q Okay. That head shake is so easy.

A Okay.

Q And then if will just -- if you have a question about something, if you'll direct it to me, I want to make sure you understand, and so if there is something I ask, because I'm not a medical professional like yourself and sometimes I'm a little thick when it comes to some of the vagaries of -- of medical terms and literature and stuff. So if that happens and you don't understand because I'm asking a stupid question, please let me know; okay?

A Okay.

Q And we've got -- it's not a memory test today. And so if you need to look at any document, between all of us, we will find it somewhere, to be able to -- to help you answer it, to refresh your recollection, whatever reason you need it for, I will try to find it or Monte or somebody will try to find it -- to be able to you assist you in answering a question; okay?

A Yes.

Q And lastly, if -- I want you to understand the question when I ask it. If I ask you something that you don't understand, will you let me know?

A Yes.

Q And so is it fair that if you give me a response to a question, that you understood it and answered it to the best of your ability?

A Yes.

Q If you need to take a break for any reason, just let me know. We usua - -- the last deposition, we took one about every hour just to give everybody a chance to get on their feet a little bit. And we're probably going to be here for a while, it may be three or four hours. So if there is a something that that -- you know, if you need to take a break for any reason and, obviously, if you get a page for any reason, that comes before any of the stuff that we're doing.

A Okay.

Q I mean, you know, patient care is way more important that what we're doing today. So if there's something you need to take a break for at any reason, you just let us know and we will facilitate that; okay?

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A Okay.
Q Can you please tell us your full name.
A Cheryl D. Courtlandt.
Q Okay. And, Ms. Courtlandt, in 2009 were you working at Carolinas Healthcare System?
A Yes.
Q And were you working within a part of that at Levine Children's Hospital?
A Yes.
Q And at Levine Children's Hospital, were you a member of something called the CHIPS team?
A Yes.
Q And is that the Children's Hospital Inpatient Service?
A Yes.
Q And as a member of that CHIPS team, did you help provides care for a young man by the name of Owen Carduff?
A Yes.
Q And did [redacted] come into the hospital with an apparent life-threatening event and then have a CT scan of his head?
A Yes.
Q And when the CT scan of his head occurred, it was determined that he had a subdural hematoma.

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A Yes.
Q And a subdural hematoma is not just some spontaneous event that occurs in a three-month-old child usually; correct?
A Usually, yes.
Q And they -- as a result of the finding of subdural hematoma, the child's -- the -- the maltreatment team at Carolinas Hospital System was activated?
A Yes.
Q And then approximately four days later, Owen Carduff was discharged from Levine Children's Hospital.
A Yes.
Q And then about 30 days after that, he was readmitted to the Levine Children's Hospital; right?
A Yes.
Q And that time he had -- he was -- he had suffered a catastrophic brain injury.
A I'm not aware of that. I -- I guess if you say that's true, yes.
Q Okay. And he's now permanently blind and has very reduced cognitive ability; right?
A I would guess so. That's really not the scope of what I took care of him for though.

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Q Okay. And your scope, was it mostly within that -- that first hospitalization?
A Yes. I had nothing really to do with the second hospitalization.
Q It was basically just that December hospitalization?
A Just that December hospitalization.
Q And -- and -- and why was the care at that hospitalization -- why did you provide care in that first one but not the second one?
A Because I'm a member of CHIPS, which is an inpatient hospitalization team and that team has certain responsibilities, only a small portion of which are inpatient at any one time.
So I usually do a week of inpatient and then I'm assigned to other hospital responsibilities, and so the person who is rotating at that particular time takes an admission.
Q Okay. And in the -- in the CHIPS team -- what is the CHIPS team?
A Okay. The CHIPS team is a group of physicians, mid-level providers, that provide inpatient general pediatric care here at the Levine Children's Hospital.
Q When you say "mid-level practitioner," are

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you talking about a nurse practitioner or a physician's assistant?
A Yes.
Q Okay. And how many members -- you have CHIPS A, CHIPS B, CHIPS C, CHIPS D; correct?
A Yes.
Q Now, CHIPS A, that was the member of the team that took care of [redacted].
A Right, which is a resident team. So there is usually one attending and several doctors in training.
Q Okay. And so would you have been the training physician and everybody else would have been the resident?
A Yeah, I'm the supervisor. I'm the supervising physician.
Q Okay.
A So I'm the attending.
Q Okay. And so you were the attending physician for the care of [redacted] --
A Yes.
Q -- in December 2009?
A Yes.
Q Okay. And during that time, when he first came, I know that he -- he went to Piedmont Medical

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Center and then he was transported to the Children Levine Hospital's Emergency Department which then transferred him inpatient; right?
A Yes.
Q Then there -- we talked about the CT of the head on December the 5th?
A Yes.
Q And it found two different bleeds; right?
A Two small subdural hematomas.
Q I think one was 2-millimeter thickness, one was 3-millimeter thickness?
A Yes.
Q One was a valve hemorrhage?
A Yes.
Q And then one of the things that you do or at least I -- and please correct me if I'm wrong -- in me reading the literature, one of the things that you do to determine whether a subdural hematoma may possibly be related to non-accidental trauma is to do some type of -- to determine if there is a retinal hemorrhage or not?
A Yes.
Q And when you do a retinal hemorrhage, it's my understanding that they use -- a lot of times they will use a pediatric ophthalmologist.

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A Yes.
Q Do you know, in this particular case, whether there was a pediatric ophthalmologist that was used?
A It is my understanding that there was a pediatric ophthalmologist.
Q And I have read further that when you have a baby it's -- it's tough to get them to hold still, but it's still -- you're going to be able to visualize better with indirect eye exam using fluoroscopy and dilated pupil.
A That would be outside of my purview of knowing.
Q Okay. And -- and -- my question is this -- and let me just pull this real quick.
Here's the ophthalmology records that I've been able to find.
MR. HOOD: Let's have these marked as 16.
MR. TODD: Bates stamp?
MR. HOOD: Yes, Bates stamp 16.
(Intercom interruption.)
(Progress record marked as Plf's Exh 16 for identification.)
BY MR. HOOD:
Q I -- I didn't see his consultative report,

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but I saw a physician's --
A Yes.
Q This looks like a physician's report.
A Yes.
Q And the top it said "optho."
A Right. And I believe -- yes, this is the ophthalmology exam.
Q Okay. And it looks like they are trying -- I can't read all of it, but it's to rule out retinal hemorrhage.
A Yes.
Q And -- the -- and -- and if you can't read it, that's perfectly fine, but sometimes doctors seem to be able to read other doctors' handwriting.
A Right.
Q Under "optho" it has what says something to rule out retinal hemorrhage. Underneath that starts with an E, do you know what that is? Is that exam?
A Yes, that says "exam."
Q Okay. And then it says -- do you know what the rest of it --
A I think that it is indicating that it was a dilated exam. And I think in the orders, can confirm if eye drops were given to dilate. I think

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that is the sign for a dilated exam.
Q Okay. And do you know if they used a fluoroscope or not or --
A I -- that would not be something I would have knowledge to. The resident was called by the ophthalmologist and told that there was no evidence of retinal hemorrhage.
I don't know what was the technique or what other methods were used to make that determination, but they felt relatively confident and he gave that report.
Q Okay. And then underneath that, does it say "AP"?
A His impression and plan.
Q Okay.
A And he's ruling out non-accidental trauma, but what he's commenting on is no signs of retinal hemorrhage --
Q Okay.
A -- of any kind.
Q Okay. And then I looked at the other thing is where...
A This is the CMC neurosurgical pediatric service.
Q Right. And then at the bottom under

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"Plan," it says, "Child currently stable NAT workup" -- I can't read that but, it says --

A That says, "underway."

Q Okay. "Underway." This says, "optho" with an arrow, "no apparent retinal hemorrhages."

A Right.

Q Do you know -- I mean, in -- in -- in -- in -- in medicine I know a lot of times they will use "apparent" or "obvious," meaning it's something that wasn't -- it wouldn't stand out, but are there -- does that mean that sometimes that there are subtle signs that there may be?

A My understanding is that is not the case. They use an "absent" or "present."

Q Okay.

A That's my understanding.

Q Okay. And are you aware, other than this -- this ophthalmological exam that's on the first page of 16, do you know if there was any other ophthalmology exams that were performed?

A Not to my knowledge.

Q Okay. And in regard to this ophthalmology exam that was performed, do you know the pediatric ophthalmologist that would have done that?

A We have a list of rotating pediatric

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ophthalmologists. That particular sche- -- signature, I don't recognize. I think it may be Glen Grayson, but I'm not sure.

Q Okay. I apologize, I know that in the orders you said that there would've been some kind of order for dilatation --

A Okay.

(Cell phone ringing.)

THE WITNESS: I don't think that's mine. That's not mine.

MR. TODD: It's not mine either. Whose pocketbook is this?

THE WITNESS: That's my pocketbook. Is that --

MS. BROOKS HOLMES: It's coming from that pocketbook.

THE WITNESS: Oh.

MS. BROOKS HOLMES: That's why I was pointing to it.

THE WITNESS: I'm sorry. Let me just turn it off. It's the hospital -- yeah, it's the hospital phone. That's why I don't recognize the ring. I'm sorry, it's the hospital phone. I signed out -- yeah, I signed out and I -- didn't -- so I wasn't expecting it to ring.

BY MR. HOOD:

Q Doctor, here is -- it's -- I think it's Page 0028, is the Bates stamp number. I'm going

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to hand it to you. And I don't have copies for everybody. I'm just going to hand it to you and ask you.

And it says, "Consult opth- -- I'm going to give it to you to look at, but it says, "Consult ophthalmology, child maltreatment, Dr. Briggs, 1 percent Cyclogyl to bedside, STAT. Place one drop in each eye times 3, spread five minutes apart," and then it has somebody's signature under that.

A Okay. Yes. That's what it says.

Q Okay.

A That's what it says.

Q Okay, yes. And does that indicate whether direct or indirect eye exam?

A That does not indicate. It indicates that a dilated exam was done.

Q Okay. Do you know if a fluoroscope was used?

A I cannot make a judgment by looking at this. That would be something that the ophthalmologist would have to say what his method of examination was.

Q Sure. And do you know off of that, does it say -- can you -- it looks like that the doctor

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scribbled his name, but then it looks like somebody wrote it out underneath.

A Well, the -- the ophthalmologist consult was obtained by Melissa Monterono, who is one of the CHIPS residents at the time. But Dr. Briggs, I believe, is the ophthalmologist that she spoke to.

Q Okay. Do you know, do sometimes the members of the CHIPS team that are residents, do they perform the -- the eye exams or is it --

A That is not on our standard of care.

Q Okay. Standard of care would be to have the pediatric ophthalmologist do it?

A Or a board-certified ophthalmologist with pediatric experience, because pediatric ophthalmologists are not always available.

Q Sure, sure. Okay. And when the child comes in, the child comes in and they do the -- the -- the exam for the retinal hemorrhage and the retinal hemorrhage is not present.

Now, you have a subdural and --

MR. HOOD: Let's just mark these as 17 and 18. I just want to make sure we get it right. That's 17 and then 18.

MR. TODD: CT scans?

MR. HOOD: Yeah. It's 12/5 and 12/7.

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MR. FRAWLEY: It's 17 and 18?
MR. HOOD: 12/5 is 17 and 12/7 is 18.
(CT reports, 12/5/09 and 12/7/09 marked as Plf's Exh 17 and 18 for identification.)
BY MR. HOOD:
Q Exhibit 17 looks like a head CT from -- from 12/5, 2009. You see that, right?
A Yes.
Q And it says, "There's a falx subdural which measures about 3 millimeters in maximal thickness, largest posteriorly," right?
A Mm-hmm -- yes.
Q That means towards the back of the head?
A That the -- the maximum thickness is going towards the back --
Q The back of the head?
A -- of the head, yes.
Q And there's also a thin right convexity subdural hematoma approximately 2 millimeters in maximal thickness. That means it's on the right side of the head and it's kind of convex at the -- where your head kind of shapes?
A Right, yes.
Q Okay. And it says, "There is mild prominence of the subarachnoid space over the

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frontal convexities."
Do you see that?
A Yes.
Q Says, "The ventricles are normal in size, and correlation with head circumference may be of use."
Do you see that?
A Yes.
Q Now, there was some -- some records, and I can pull them if we need to, but I saw something where somebody referred to it looked like child, the fontanels were bulging.
A It was -- I think that's how it was described is the fontanel was full.
Q Was full?
A Yeah.
Q And because of that, somebody had said something about "there needs to be some kind of correlation with head circumference."
A Right.
Q And do you know if that was ever done?
A Well, looking at the records from the primary care provider, as far as I understood, what we got from a verbal report from the primary care provider was that the head circumference was the

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same, pretty much from what we measured and what had been measured in the office.
Q Okay. And -- and so what would that indicate to you?
A Well, the fullness of the fontanel is something that we look for for things like meningitis or any kind of process that goes on within the brain, and that's the reason why he got the CT.
THE REPORTER: That's the reason why?
THE WITNESS: "He got the CT." I'm sorry.
BY MR. HOOD:
Q Okay. He had also had a -- a bloody tap at Piedmont Medical Center.
A Right.
Q And a bloody tap can be anything from a subdural hematoma to spinal meningitis.
A Spinal meningitis, or it can be just operator unable to perform a spinal tap on a small baby and you get a bloody tap because you had numerous attempts.
Q Sure, sure. But when you -- when you do find that this child has this -- as on Exhibit 17 says, it has this -- this "two small bleeds," in your words "two small bleeds." You have two bleeds

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and then you ordered a second CT to be performed two days later, right?
A Yes.
Q And then in the second CTs, it says, "CT without enhancement, sections cover from the base to the high convexity region, studies degraded by patient motion."
It just means that -- it's a three-month-old baby.
A Mm-hmm.
Q The baby is going to move.
A Mm-hmm -- yes.
Q That's why they have to medicate him to do an MRI, right?
A Yes.
Q And it says, "The scans compared to the prior CT from 12/5 2009. The prior scan showed a small acute right inner hemisphere and right convex subdural hematoma. On the current study, the blood is present but less conspicuous."
Do you see that?
A Yes.
Q My understanding is that when you see blood on a CT, that it shows up as a stark white, are you aware of that?

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A More -- it can appear more white than the brain parenchyma, yes.
Q And have you had an opportunity to review these particular studies yourself?
A At that time, I reviewed them. I haven't reviewed them since.
Q Do you know if -- if this particular person, Gary DeFilipp, is a pediatric neuroradiologist?
A I know he is a neuroradiologist. I'm not aware of what his speciality, characteristics, or qualifications are.
Q Okay. Now, up at the top, on the one on the 7th, it says, "Requesting provider, Julie Smith."
Do you see that?
A Right.
Q Who is Julie Smith?
A The pediatric nurse practitioner to Scott McClanahan, who's the head pediatric neurosurgeon.
Q Okay. And Scott McClanahan would be a subspecialist who is working in conjunction with CHIPS; right?
A Yes --
Q Just --

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A Yeah.
Q I'm sorry. Just like a pediatric ophthalmologist was a consultative expert --
A Yes.
Q -- so was Dr. McClanahan?
A Yes.
Q Okay. And when you got these particular results and you knew that this child had this particular thing, would you agree with me that you had to rule in or rule out non-accidental trauma?
MR. TODD: Objection.
THE WITNESS: The findings of the CT scan initially, the one on 12/5, was our impetus of looking for possibilities of non-accidental trauma, yes.
BY MR. HOOD:
Q Okay. And the term "non-accidental trauma," is that consistent with -- with other people using the term "child abuse"?
A It is -- non-accidental trauma is a subset of child abuse.
Q Okay. And what subset is it?
A Well, child abuse could be physical abuse, sexual abuse, emotional abuse, all of those.
Q And I've heard, and in my review of the

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literature --
A And neglect.
Q -- in my review of the literature, there was a term in the lexicon, they used "shaken-baby syndrome" and now it's called "abusive head trauma," AHT.
A Yes, yes.
Q Now, would AHT be -- that's child abuse; right?
A Abusive head trauma --
Q Right.
A -- would be a form of child abuse, yes.
Q Okay. And so if a -- and I'm not saying Owen Carduff, I'm saying that if a child suffered subdural hematomas as a result of AHT, that would be significant?
A If a hypothetical child -- if that did happen to a hypothetical child, then yes, if they suffered abusive head trauma and there was evidence of subdural hematomas, then one of the conclusions you could possibly make would be that they had abusive head trauma.
Q And when you have someone -- if a child suffers subdural hematomas as a result of someone shaking him, is it always going to be abusive head

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trauma if it's caused by a physical injury from an adult?
MR. TODD: Objection.
THE WITNESS: I think it would depend on the circumstances.

BY MR. HOOD:
Q Okay. And when you say that, can you explain that?
(Intercom interruption.)
A You could be shaking somebody because they are choking on something and be -- you know, trying to help them and assist them, and you could, in a little baby, cause significant trauma, but that would be accidental.
Q Sure. But non-accidental is different; right?
A Than accidental?
Q Yes.
A Yes. Non-accidental is different than accidental.
Q And non-accidental trauma is considered to be something that is child maltreatment?
A Non-accidental trauma would be child maltreatment, yes.

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Q An abusive head trauma would be a form of child maltreatment?
A Abusive head trauma would be a form of child maltreatment, yes.
Q Okay. Now, in [redacted]'s situation --
A Yes.
Q -- would you agree that you had to rule in or rule out abusive head trauma to determine whether it was safe to discharge him home to his parents?
MR. TODD: Objection.
MR. FRAWLEY: Object to form.
THE WITNESS: The -- can -- can you restate the question?
BY MR. HOOD:
Q Sure, sure.
A I believe there were a few too many negatives in that one.
Q And I apologize. That's my bad questioning.
Through our questioning, I think we agreed on certain things, and that is that -- that Owen Carduff -- he had the -- the radiological findings of 12/5 and 12/7 --
A Yes, right.
Q -- that we've looked and we've seen.

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A Right.
Q We've agreed that he came in with ALT, or an apparent life-threatening event; right?
A Yes.
Q And that we've agreed that he was discharged on 12/8?
A Yes.
Q And so obviously the CHIPS team would have known of the radiological findings prior to his discharge?
A Yes.
Q And my question is, knowing this finding on 12/7 -- 12/5 and 12/7?
A Yes.
Q Wouldn't you -- would you have to rule in or rule out abusive head trauma before discharging him back to the home?
MR. TODD: Objection.
THE WITNESS: I would have to rule in or attempt to rule out or try to get more corroborating evidence of non-accidental trauma.
BY MR. HOOD:
Q Okay. Now, were you able to rule in or rule out abusive head trauma in this case?

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A I was not.
Q Okay. And so you weren't able to do either, rule in or rule it out?
A Right. There was conflicting evidence. There's the evidence of something occurred causing a subdural hematoma.
Q Now, you -- obviously you -- I mean you went to Princeton, I mean your C.V. is thick, and obviously you've had lot of experience and you've been doing pediatric work for a long time.
A Yes.
Q And you've had continuing medical education during that time?
A Yes.
Q Have you looked at the cognitive impairment of children?
A Yes.
Q Sometimes in regard to lead but in regard to other things as well; right?
A Yes.
Q And you've even written on some of that?
A Not to my recollection.
Q I thought you had something with cognitive impairment on the wab, or something, but I may be mistaken.

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A Okay.
Q But regardless, you're aware that in a pediatric hospital, like Levine Children's Hospital, that there are going to be kids that come through here who are the victims of child abuse?
A Yes, I acknowledge that.
Q It's just a unfortunate thing in society; right?
A Yes.
Q And as such, when you -- when a child comes under the care of Levine Children's Hospital, it is going to be the responsibility of the medical providers of the hospital to try to determine if the child was a victim of child abuse?
MR. TODD: Objection.
You can go ahead and answer.
THE WITNESS: It is our responsibility to gather information and attempt to make a determination either to say that the patient was a victim of child abuse, was not a victim of child abuse, or you could not determine if they -- they were a victim of child abuse.
BY MR. HOOD:
Q Basically there's three things: You either are you or you're not, or you just can't

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determine it one way or the other.
A Right, right.
Q And in [redacted]'s situation, it's your testimony you couldn't determine one way or the other?
A Right.
Q Okay. Now, before he was discharged, you're aware that there is documentation in the chart that the child had a bump on his head a week or two before this?
A Right.
Q And there is no explanation from anybody because of that bump?
A Right.
Q And you're aware that -- that in this particular situation, there was a CT showing two subdural bleeds, one a falx hematoma of which there was no explanation from the parents?
A Yes.
Q You're aware the parents were both under the age of 20?
A Yes.
Q You're both aware that -- that -- I mean, at least from the documentation, it appears that there were money problems in the home.

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A Not to my knowledge.
Q There is documentation about the child had been crying incessantly or had been for the week before that had been irritable.
A According to the documentation in the intake history and physical by the resident, the original reason why the father took the child for the -- to the first visit was that he was fussy.
Q And you're aware that there are risk factors for -- for people who may commit child abuse?
A Yes, sir, I am aware there are risk factors.
Q And -- and when you have those risk factors that you have in this case with an unexplained bump on his head a week before, an unexplained falx hematoma, an unexplained right convexity hematoma, and there is no explanation from the parents, how do you characterize that?
MR. TODD: Objection.
THE WITNESS: The bump on his head, that was referred to previously, was not present, he had absolutely no skin findings, no bruising whatsoever, the -- from my understanding, the bump on the head was something that was

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reported to the DSS worker and was not reported to us.
The subdural hematoma is a finding that we see that can have many different causes, one of which is accidental trauma; one of which is non-accidental trauma.
There was no story that went along with a cause for this, the cause was unknown.
Q Okay. And -- and you had an opportunity to review -- I mean, just because of you being a pediatrician, you've had the opportunity to review AAP documents and AAP literature and just literature in the medical field about child abuse; right?
A Yes.
Q And if -- if somebody is perpetrating child abuse, they don't necessarily always say, "Oh, yes, I committed abuse on my child," do they?
A That's true.
Q And when you have a situation like that and the parents don't have an explanation for this subdural hematoma, why was the child discharged without ruling it in or ruling it out?
A Well, we attempted to, by doing a retinal exam, which can be corroborating information, we attempted to, by doing a skeletal survey, which can

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be corroborating information, both of which were normal.
They were observed in a room 24 hours by a sitter. The nurse documented family check-ins to look at appropriate behavior, to assess what his interaction was with the family. They were appropriate when approached by us, good eye contact, really involved, they appeared to be loving.
There was no explanation that they gave that could have happened to this. It could have been accidental. He had numerous caretakers, his mother, his father, as well as his grandmother. Many of them -- any of them could have injured him accidentally and just are got giving a story, all of that is a possibility.
Q I have read the literature that said a fall from 4 feet or less usually doesn't result in an intracranial hemorrhage. Have you read that?
A It doesn't usually -- a skull fracture doesn't usually occur.
Q Okay. An intracranial hemorrhage isn't something that you just see that happens spontaneously in most three-month-old children; right?
A In most three-month-old children. There

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are rare exceptions.
Q "There are rare exceptions."
But where there is a rare exception, a lot of times there is some co-morbidity, like a bleeding disorder; right?
A Yes.
Q And in this particular child, you haven't seen any evidence of a bleeding disorder?
A No evidence of a bleeding disorder.
Q And sometimes you'll see a subdural hematoma that can be caused by some type of infectious process?
A Yes.
Q In this particular child, I believe, and please correct me if I am wrong, the first CBC, he had a white blood cell count of 16, two days later, he had a white blood cell count that was about ten, both considered to be within normal limits for a three-month-old child; right?
A I would say that both of those white counts would be within normal limits.
Q And even if you have a white count, if you have a left shift, it could indicate an impending infection; right?
A Perhaps, yes.

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Q But there was no -- there was -- there didn't even appear to be a white -- I mean a -- a shift that would indicate there was an impending infection, was there?
A No.
Q And so would you agree with me that you could rule out infection as a cause of this subdural hematoma?
MR. TODD: Objection.
You go ahead and answer.
THE WITNESS: Okay. I would say in this particular case, one would probably rule out the infection as the cause for this subdural hematoma.
BY MR. HOOD:
Q Okay. You said another was -- another potential cause was accidental trauma.
A Right.
Q Accidental trauma, as you said, could be like if you're trying to -- if the child had been choking, you would pop them in the back or you shake them to try to dislodge food; right?
A Or a car accident.
Q "Or a car accident." There didn't appear to be any history of a car accident?
A No history.

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Q And there didn't appear to be any history of anybody that said anything that could have caused this from an accidental source; right?
A According to our questioning of the family, no one was coming forth with a story that would be consistent with this injury.
Q Okay. And accidental trauma, infection and non-accidental trauma, what are the -- for [redacted], what are -- what can you say from a different -- you've heard the term "differential diagnosis"?
A Yes.
Q And differential diagnosis is where you look at the totality of circumstances with some -- a patient and you give the most likely cause and then the next most likely, and then you try to rule in or out to give the most likely cause or the etiology of a particular condition; right?
A Yes.
Q And the differential diagnosis in this particular case, would you say the top would be -- maybe co-tops would be accidental or non-accidental trauma?
A Yes.
Q And then the next would probably be --

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would it be infection?
A Infection, I would say that.
Q And then underneath that would be some co-morbidity like a bleeding disorder?
A Right.
Q -- or some medical condition, whether it's genetic or not, that could cause something like this?
A Right.
Q And are you able to say that you basically ruled out everything except for accidental or non-accidental trauma?
A Those would the two most common things that we would be working with in this particular case.
Q Okay. In this particular case.
A Yes.
Q So it came down to it was either accidental or non-accidental trauma?
A Yes.
Q Okay. Now, have you ever -- have you ever heard -- I know you have, have you ever heard -- I know you've heard the term "err on the side of caution"?
A Yes.

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Q When you have a child who has these subdural hematomas and has some of the risk -- the parents have some of the risk factors, how do you err on the side of the caution if it's either accidental versus non-accidental?

MR. TODD: Objection.

THE WITNESS: By taking the steps that we did; by asking for a child maltreatment evaluation; for getting the child a maltreatment physician involved; from getting Department of Social Services and law enforcement involved. That's how you err on the side of caution.

BY MR. HOOD:

Q Okay. And so you would have gotten the pediatric ophthalmology consult?

A Yes.

Q And that came back negative?

A Negative.

Q Although you don't know how it was done?

A No.

Q Would you have gotten a pediatric neurosurgery consult --

A Yes.

Q -- with Dr. McClanahan?

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A Yes.

Q And he would have -- it appears that somebody with him would have ordered the CTs and they would have been looking at the CTs and they would be medically treating the effects of the subdural hematoma?

A Or evaluating if they need treatment.

Q Right, evaluating.

But the bottom line is that the CHIPS teams, of which you were the attending physician, would have been the responsible party for determining if the child was appropriate for discharge or not?

A I would be the appropriate person to determine if the child was medically cleared for discharge.

Q Okay. Now, there are two components of medical discharged, aren't there? I mean -- and when I had say that, what I'm asking is, you have to be medically stable; right?

You agree with that?

A Yes.

Q And then in regard to child -- either suspected or potential child abuse or trauma, you also have to determine that it is safe for the child

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to be discharged back into the home?

A That's not my determination.

Q Okay. Let's look at -- I'm going to ask you to look at -- yeah, I think it's in this stuff right here.

A Okay.

Q I think it's -- I think it's Exhibit 9 and Exhibit 8 and Exhibit 7.

Exhibit 8, Exhibit 9 and Exhibit 7.

Exhibit 7 is simply an administrative order for Retention of Custody for Juvenile Suspected of Being Abused Pursuant to North Carolina General Statutes; right, right?

A Yes. I don't know what this form means, but yes, I guess that's the heading of this form.

Q Okay. These are attachments to a Child Abuse and Evaluation Policy at Carolinas Healthcare System.

And Number 8 is the Certification of Necessity for Retention of Custody.

Do you see that form?

A Yes.

Q Okay. And then the next form is Examining Physician's Certification.

A Yes.

Q And under that it says, "The undersigned

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examining physician hereby certifies there is good cause to suspect that the juvenile was abused and should remain in [blank], name of facility, for medical treatment or it is unsafe for the juvenile to return to his parent, guardian, custodian or caretaker."

Do you see that?

A Yes.

Q So do -- does the physician at Levine Children's Hospital have the ability to state that it's unsafe for a juvenile to return to his parent, guardian, custodian or caretaker?

A If the circumstances of a specific case do come that you can say without a doubt that child abuse has occurred, you could, then, I guess, feel comfortable signing this form.

Q Okay. I'm going to use the converse; okay? If you can say without a doubt that it did not occur, you could safely discharge him home; right?

A Again with the negatives, what?

Q Okay. If you can safely -- if you can say --

A Yes.

Q -- that unequivocally there was no child

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abuse, it is safe to discharge him?
A Yeah, I guess, yes.
Q It's the converse of what you said?
A Yes, yes.
Q You said "equivocally." If you said there was a child abuse, you could say it may not be safe to send him home?
A Yes.
Q But if you take the exact converse, if you can say unequivocally there was no child abuse, you can safely send him home; right?
A Yes.
Q Now, but Owen Carduff fell in between those two things?
A Yes. There was some elements of the workup that stated that there was concern for nonaccidental trauma, but other elements of the workup of the evaluation which did not meet the criteria because they were negative and therefore, it could not be determined whether or whether not he had been the victim of child abuse.
Q Okay. And I think one of the things you said was the skeleton survey?
A Skeletal survey.
Q "Skeletal survey."

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A Right.
Q And the skeletal survey would have been where they do radiograph of both arms, both legs, and your core.
A Yes.
Q And your head?
A Yes, "and your head."
Q And they determine whether there's been any previous fractures or evidence of any kind of breaks or something that would indicate any kind of trauma; right?
A Yes.
Q Now, when you have abusive head trauma, would you agree with me that many times you do not see any other signs of symptomology on a skeletal exam?
MR. TODD: Objection.
THE WITNESS: It depends on the specifics of the case.
BY MR. HOOD:
Q It depends on the actual case itself?
A Yes.
Q And when you have someone who has an isolated incident of abusive head trauma, you may not see anything on a skeletal survey; right?

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A You may or may not.
Q Okay. And so in this particular case, because of the abusive head trauma -- excuse me.
In this case, because of the subdural hematomas, the skeletal survey may or may not help?
A May or -- it may or may not help, depending. You may also repeat it in two weeks to see if there were any injuries that were young and were fresh if you didn't see them on the first skeletal survey.
Q And -- and in doing that I know there's a huge, huge controversy over shaken-baby syndrome that is now called abusive head trauma.
A Yes.
Q And I know that -- there is a classic triad. I know there's a -- a -- you know, there are mimics that are written about in the literature. I know that they don't even use that nomenclature anymore --
A Sure.
Q -- in the medical field?
A Right.
Q It's now AHT --
A Right.
Q -- as opposed to SBS?

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A Right.
Q And when you have a situation and you've ruled everything out except for either accidental or non-accidental trauma, how do you ensure a baby is safe if you don't know that it's not non-accidental trauma?
A You put in place a safety plan and you report them to the Department of Social Services and you get law enforcement to involve -- to investigate if they can further get information to see if there is anything that corroborates for there to be accidental or non-accidental trauma.
Q Okay. And so when you get it to a point where you've ruled in or out everything except for accidental versus non-accidental trauma, then you work with DSS and law enforcement to determine whether it's one of the two; right?
A Or a combination of both or -- what -- or whatever.
Q Or a combination of the both --
A Yeah, whatever.
Q -- because you can have accidental trauma and non-accidental trauma?
A Yes, yes.
Q Okay. And -- and so in that case, you would be

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depending on DSS to do a proper job?
MR. FRAWLEY: Object to form.
BY MR. HOOD:
Q Right? You can answer.
A Yes.
Q And if DSS didn't do a proper job, it could result in harm to the child; right?
A I would guess, yes.
Q Okay. And if law enforcement didn't do a proper job, it could result in harm to the child?
MS. BROOKS HOLMES: Objection.
BY MR. HOOD:
Q You can answer.
A Yes.
Q Okay. Now, if you relied on -- if -- if Levine Children's Hospital relied on DSS and law enforcement to do their job, you agree, after having done this for a long period of time, it takes them some period of time to do their job once the child is discharged, to do an investigation?
A I don't have the particulars of that. I wouldn't know.
Q Okay. Since you didn't have the particulars of that and you don't know how long it takes, how do you know it's safe to discharge a

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child under the care of someone that hurt him in the first ten minutes he's back home?
MR. TODD: Objection.
MR. FRAWLEY: Object to form.
MS. BROOKS HOLMES: Objection.
THE WITNESS: My understanding was that both of the parents were -- were interviewed. They were supervised here at the hospital. They signed a protection safety plan. They appeared, as did DSS to feel, that this was a safe discharge.
BY MR. HOOD:
Q Okay, okay. Now, if DSS had said -- excuse me, let me withdraw.
If -- have you ever had a situation where you felt like there was non-accidental trauma and DSS still felt that it would be a safe discharge back to the home?
A Has there ever been a case that I felt was not accidental trauma and DSS felt it was?
Q It was a safe discharge back to the home, even with a finding of NAT?
A In my particular experience, no.
Q That would seem to be incongruent; right?
MS. BROOKS HOLMES: Objection.

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BY MR. HOOD:
Q Or that would be seem to be an opposite of one another?
MR. TODD: Objection.
THE WITNESS: In my particular experience, that hasn't happened with -- every case is different.

BY MR. HOOD:
Q Sure, sure.
A Every case is different. So I can't make a sweeping judgment about what would be right or wrong.
In my particular situation, I've never had a case that I felt that there was non-accidental trauma and DSS has said we are going to put the child back with the family.
Q Okay, okay. And -- and is part of that because you have made a determination it's non-accidental trauma and then DSS has that in -- in their information source to help them make a determination about where to discharge the child?
A I would assume that would be their rationale.
Q And in this case, if you had said to DSS,

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I don't know whether this is non-accidental trauma or accidental trauma, but erring on the side of caution, we have to assume it's non-accidental trauma, do you know what DSS would have done?
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I cannot read anybody's mind. I don't know.
BY MR. HOOD:
Q Sure.
A I can only make the investigation I can make, make the determination, decide if, based on the evidence, if a determination can be made, and then present that.
Q Okay. Okay. I'm looking at Exhibit 10. And this is "Juveniles Suspected of Being Abused or Neglected."
MR. TODD: Is this one of the ones you sent me?
MR. HOOD: Yes, well, this is the one that we did earlier.
MR. TODD: Okay. Oh, this is the policy?
MR. HOOD: Yes.
MR. TODD: Okay.
THE WITNESS: Okay.

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BY MR. HOOD:
Q And it says: "This policy statement relates to the issue of awareness detections and management of children at risk for abuse or neglect in the inpatient physician office and urgent care settings. It provides guidance on the procedure that should be followed in cases of suspected abuse or neglect."
You see on the summary statement, it's on the very first page?
A Okay.
Q And this is a policy at Carolinas Healthcare System of which Levine Children's Hospital is a part; right?
A Yes.
Q And then under "Definitions" it says, "Juvenile: Any person under 18 years of age who is not emancipated by marriage, court order, or a member of the Armed" Service -- or of the Armed "Forces." You see that; right?
A Yes.
Q And that be would be -- Owen Carduff would fall within that definition; right?
A Yes.
Q Then it has "Abused Juvenile: A juvenile

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whose parent, guardian, custodian or caretaker inflicts or allows to be inflicted serious physical injury which causes or creates a substantial risk of injury, death, disfigurement, impairment of physical health or loss of impairment of any bodily organ."
You see that definition; right?
A Yes, I see the definition.
Q But -- but you have said you couldn't rule in or out whether that occurred or not?
A True. I could not rule in or out whether Owen Carduff was abused.
Q Okay, okay. Then I go to the second page, which is "Procedure." And it says, "A. Clinical team identifies child abuse or neglect is suspected and initiates suspected child maltreatment inpatient order set followed by discharge order set if applicable."
A Yes.
Q Do you see that?
A Yes.
Q Now, that says, "Clinical team identifies child abuse or neglect is suspected."
A Yes.
Q You suspected it at one time, didn't you?
A Yes.

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Q And you initiated child maltreatment inpatient order set; right?
A Yes.
Q And a CHS clinical care management social worker did aid in the assessment process; right?
A Yes.
Q And a -- and a child abuse and neglect form was filled out on this case; right?
A Actually, it wasn't completely filled it out because it wasn't -- that's a form that's used on admission. So all the information that is required to be put in that form had already been gathered before.
Q Okay. But -- but they had filled out part of it but not all of it; right?
A Yes.
Q And why wouldn't they have filled out the rest of it?
A That scan form is an admission set. The patient had already been admitted, and it wasn't until after admission the injury was identified.
Q Okay. Well, I was also looking for the scanned discharge order form. Was there a scanned discharge order form that was used?
A I am not sure if that was completed.

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Q Okay.
A I don't know.
Q It says, "All cases of suspected abuse or neglect should be reported to the Department of Social Services in the county where the child resides."
Do you see that?
A Yes.
Q And you-all called York County Department of Social Services; right?
A Yes.
Q And, in fact, law enforcement was involved as well?
A Yes.
Q And then under 6 it says, "If a parent, guardian or caretaker refuses to authorize necessary medical treatment refer to administrative policy."
You see that paragraph; right?
A That --
Q Number 6?
A Yes.
Q But that didn't apply in this case --
A Right.
Q -- because they didn't -- they consented to all of the statements?

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A Yes, yes.
Q And then 7 says, "Consider consult with CMC Pediatrics for assistance with medical management."
You see that?
A Yes.
Q And that says, "CHIPS Team Children's Hospital Inpatient Service"; right?
A Yes.
Q And that's you, CHIPS Team A?
A Yes.
Q Then number 8, "Refer a child maltreatment clinical practice guidelines to assist with medical management."
You see that; right?
A Yes.
Q And then under 9, it says -- and it's in bold -- it says, "when medically cleared"?
A Yes.
Q "When medically cleared" would mean when the child is medically stable."
A Yes.
Q Right?
A Yes.
Q "Medically cleared" would also mean,

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wouldn't it, if you had determined, if you had ruled out everything else, and you had determined that it was non-accidental trauma, that isn't medical clearance, is it?
MR. TODD: Objection.
THE WITNESS: Medical -- me- -- I guess I'm not understanding your question.

BY MR. HOOD:
Q Let -- let me ask it differently. Let me ask it differently.
A I don't understand your question.
Q Sure, sure.
This says, "When medically cleared" --
A Right.
Q -- "do not discharge child until disposition has been determined by the medical social worker and DSS and the safety plan is in place on the chart in writing, if applicable."
You see that; right?
A Yes.
Q Okay. "When medically cleared," you said, is when they're medically stable?
A Right. Period.

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Q "Period."
A "Period."
Q So when Owen Carduff was medically stable --
A Yes.
Q -- that was when you said, okay, he's stable, his vitals are okay --
A Right, yes.
Q -- and there is no problems, he's okay to go home?
A Yes.
Q "Medically cleared;" right?
A Yes.
Q So when Owen Carduff was medically cleared, "do not discharge child until disposition has been determined by medical social worker and DSS"?
A Yes.
Q You see that; right?
A Yes.
Q Medical social worker works for Levine Children's Hospital; right?
A Yes.
Q And the disposition -- you would agree that disposition of whether the child should be

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discharged home or not is going to be -- part of that is going to involve whether there was non-accidental trauma or not?
A Whether they are going to be discharged home to their parents?
Q To their parents.
A Yes, yes.
Q And you've said that there's never been a time in -- in -- how long have you been at the Levine Children's Hospital?
A This is my 16th year.
Q In the 16 years you've been here, you cannot recall a time when you've said there's non-accidental trauma and then DSS put the child back with the abusers.
You can't recall that; right?
A No, I cannot recall that.
Q And would you -- would it be fair to say in your opinion, if you had said the subdural hematomas were more likely than not caused by non-accidental trauma, the child probably would've not gone home with the parents?
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: With the information I had,

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I was not able to determine whether it was accidental or non-accidental trauma.
BY MR. HOOD:
Q Right, and I get that.
But what I'm saying is hypothetically, and I'm not even saying [redacted] let's just say any child, if you had said with the same -- everything else that [redacted] had, but you said, it's my opinion that the child suffered subdural hematoma because of the non-accidental trauma, based on your experience, more than likely not, they wouldn't have discharged the child home with the parents?
MR. TODD: Objection.
MR. FRAWLEY: Objection.
THE WITNESS: But every case is different. The constellation of signs and symptoms and everything that puts together in the case is different. So I'm not quite sure I how I could answer your question honestly.
BY MR. HOOD:
Q Sure. And -- and -- and, listen, I appreciate that.
A Okay.
Q I'll -- I'll ask it this way: Your

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decision on what caused the subdural hematoma is going to be important information to determine the disposition of the child to be discharged home back to his parents?
MR. TODD: Objection.
THE WITNESS: I guess I ready said, but I guess maybe I'm not communicating well. I was unable to determine how the subdural hematoma occurred.
BY MR. HOOD:
Q Sure.
A And so therefore, could not make a determination of whether it was accidental or non-accidental, because I couldn't determine how it was caused.
Q Okay. Even though you couldn't determine it, you still suspected it at the time of discharge though; right?
MR. TODD: Objection.
MR. FRAWLEY: Object to the form.
THE WITNESS: I -- I suspected --
BY MR. HOOD:
Q Non-accidental trauma?
A That that was a possibility.
Q Okay. Well, this whole child maltreatment

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thing happens because of suspected child abuse?
A Because it's a possibility, yes.
Q Okay. It's not because -- okay. It's just because of possibility, not probability?
A No, not probability, possibility.
Q Okay. And it's a possibility, the reason you do that in the case of a possibility is for the safety of the child?
A Yes.
MR. TODD: Objection.
BY MR. HOOD:
Q And the safety of the child is the top priority; right?
MR. TODD: Objection.
THE WITNESS: The safety of the child is always the top priority.
BY MR. HOOD:
Q And by being the top priority, you don't discharge a child home not knowing whether it's non-accidental trauma or not?
MS. BROOKS HOLMES: Objection.
THE WITNESS: I would not say that that's a true statement, in that you cannot determine in this particular setting of whether it was non-accidental trauma or not.

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The information was not able to be -- it's not like you could do a test for this.
BY MR. HOOD:
Q Sure.
A The information was not able to be obtained, what we had available at that time.
Q Okay. And then on the accidental, when we talk about the difference between accidental and non-accidental, I believe one thing you said earlier is -- and there's different ways it would happen, a child could fall off of something, could roll off, a child could -- they could shake it if -- if they were trying to dislodge food --
A Right.
Q -- and everything. Okay. Nobody ever said anything about the child needing to have something dislodged; right?
A Not in the history, no.
Q And no one ever said any -- this child at three months of age was not able to roll, crawl or walk.
MS. BROOKS HOLMES: Objection.
THE WITNESS: Was not able to.
BY MR. HOOD:
Q And what other way of accidental trauma

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could have caused this other than those two things?
A What could have caused the subdural?
Q With an accidental trauma other than someone shaking a child to dislodge something or popping him to dislodge something or rolling off a couch or something like that, what could have caused it? I mean, what have you seen in the field of accidental trauma that could cause two separate subdural hematomas?
A In my experience --
Q In your experience.
A Right. In my experience, accidents do happen, kids have developed subdural hematomas from accidents happening to them. Some of these accidents -- it can be unknown how this occurs.
I can't specifically say what could have happened. They have subdural hematomas and there's not a explanation.
Q Sure.
A Something clearly happened, but there's not an explanation. It's unknown.
Q Sure. But your job -- you would agree with me that your job is to track, to rule in or rule out, either accidental versus non-accidental trauma?

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A Yes.
Q And when you attempt to rule in or rule out accidental trauma, one thing you do is you ask the parents?
A Yes.
Q And there was no explanation from the parents; right?
A No explanation.
Q There was no explanation from the maternal grandmother; right?
A No explanation.
Q The maternal grandmother did give a history of a week before there was a bump on the head.
A Yes.
Q But the parents had no explanation for that either; right?
A Yes.
Q And there was no history of a car accident?
A No.
Q There was no history of mom or dad falling down with the baby?
A Not that they gave a history of.
Q Okay. There was no history of the child

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choking and someone trying to dislodge something from his throat?
A No.
Q There was no history of the child having rolled off or fallen off a couch or any other instrumentality in the home.
A Not -- no history forthcoming.
Q Okay.
MR. HOOD: Let's take -- it's been going for a while. Let's take a break.
How far do we have, Brooks?
THE VIDEOGRAPHER: We've been going for an hour and eight minutes.
MR. HOOD: Okay. And I think he had a thing he held up.
Is it okay if we take about five minutes?
THE WITNESS: Sure.
(Brief recess.)
BY MR. HOOD:
Q I'm going to ask you just a couple more questions, and then I'm going to go to these articles. Go through these articles.
A Okay.
Q Is the CHIPS team responsible for determining the most likely cause of subdural

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hematoma?
A The most likely cause?
Q Yes.
A I would say that in some cases you can determine what a likely -- I'm responsible for trying to make a diagnosis.
Q Sure.
A In all cases, I can't make a diagnosis.
Q Okay. In the -- in the case of a child -- never mind.
So if it's possible the CHIPS team is responsible for determining the most likely cause of subdural hematoma?
A If it's possible to determine.
Q Okay. And does CHS require the classic triad before they say something is child abuse or non-accidental trauma?
MR. TODD: CHS, Carolinas Healthcare System?
MR. HOOD: Carolinas Healthcare System.
MR. TODD: We have a lot of CMCs.
MR. HOOD: I know I apologize.
MR. TODD: I just want to make sure -- Carolinas Medical Center, okay.
THE WITNESS: Right.

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BY MR. HOOD:
Q Does Carolinas Medical Center or Carolinas Healthcare System require the classic triad before they will diagnosis non-accidental trauma or child abuse?
A No, there is no -- no requirement for the classic triad.
Q Okay. Now, have you ever heard of a subset of pediatrics called "child abuse pediatrics" or "child abuse pediatricians?
A Yes.
Q And is somebody on the CHIPS A team that you were a part, a child abuse pediatrician?
A No. Well -- well, we have a child abuse consultative service, which is the child maltreatment team, which has on it a child abuse expert, pediatrician, and that was Dr. Morgan, the one who I alluded to in my notes.
Q Okay. And so did you have conversations with Dr. Morgan about this case?
A As I documented, yes.
Q And what did Dr. Morgan -- and I probably got it in the records somewhere, but do you recall, or do we need to pull that note?
A To what?

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Q To the discussions you had with Dr. Morgan.
A I -- I documented that I had a discussion with her, and she felt that based on the findings, the history, the physical exam findings, the subdural retinal hemorrhages and her experience, that we could not determine whether this was a accidental injury or non-accidental injury.
Q Okay. And what was her name?
A Dr. Morgan. She was Dr. Morgan-Glenn at the time, but she is now Dr. Morgan.
Q Do you know what her first name is?
A Patricia.
Q Patricia, okay.
Did you ever personally interview the parents?
A I interviewed the mother twice. The father was present when I interviewed the mom, I -- I believe the father was present, but most of my questions were primarily addressed to her.
He asked me several questions during I think the first time -- that was the first time I met them.
Q Do you recall the questions he asked you?
A He just asked me, how was the baby doing,

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what does this mean, does the baby need surgery? Were things that he wanted to know.
Q Okay.
A Because we had talked about the blood being on the brain and was that going to need surgery.
Q Okay. And I know that right before we broke, I had said had you ruled in or ruled out certain things on accidental trauma.
Do you recall that?
A Yes.
Q Okay. If you had ruled those things out -- you're aware -- you're aware the child came back 30 days later, right --
A Yes.
Q -- as a victim of child abuse?
A Yes.
Q So what do you think caused the child's subdural hematoma in December?
MR. TODD: Objection.
MR. FRAWLEY: Object to form.
THE WITNESS: I have no idea what caused it. Still it is undetermined. There is no one who has come forward to say that they did anything to cause them. And there's nothing in

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the history to make me know what exactly caused them.
BY MR. HOOD:
Q And even knowing what you knew in January, you still don't know, more likely than not, this child was abused in December?
A I cannnot make that determination.
MS. BROOKS HOLMES: Objection.
MR. FRAWLEY: Object to form.
BY MR. HOOD:
Q Okay, okay.
MR. HOOD: I'm -- I'm going to go -- let's have these marked. What are we on?
THE REPORTER: 19?
MR. HOOD: 19 and 20. No, we already marked them, I think the articles.
THE REPORTER: 17 and 18.
(Discussion off the record.)
(CT, 12/5/09 and CT, 12/7/09 marked Plf's Exhs 17 and 18 for identification.)
BY MR. HOOD:
Q Have you ever been to any -- any symposiums or seminars where Cindy Christian spoke?
A No, I have not.
Q Okay. Let's start with Exhibit 13, Abusive

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Head Trauma in Infants and Children.
A Yes.
Q That first full paragraph, it says, "The American Academy of Pediatrics recommends that pediatricians develop skills in the recognition of the signs and symptoms on abusive head injury, including those caused by both shaking and blunt impact. Consult with pediatric subspecialist when necessary and embrace a less mechanistic term of use of 'head trauma' when describing an inflicted injury to the head in this context."
You see that; right?
A Yes.
Q And you agree with that; right?
A Yes.
Q And this pediatric subspecialist when necessary would be a pediatric ophthalmologist and a pediatric neurosurgeon?
A Yes, a pediatric radiologist.
Q "A pediatric radiologist." And in this case was it a pediatric neuroradiologist?
A A pediatric neuroradiologist as well.
Q Okay. I'm going to the second page -- I'm- sorry, I'm going to the third page where it says "The Role of the Pediatrician."

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It says, "As mandated reporters of suspected child abuse and neglect, pediatricians carry of the burden of recognizing and responding to medical manifestations of AHT."
Do you see that?
A Yes.
Q Do you agree with that?
A Yes.
Q Says, "The diagnosis is sometimes obvious, but injuries in many symptomatic infa- -- infants are unrecognized by unsuspecting physicians."
Do you see that?
A Yes.
Q And you agree with that; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: That the injuries are unrecognized by unsuspecting physicians, is that what I'm agreeing to?
BY MR. HOOD:
Q At times?
A Yes.
Q "And to protect abused infants and prevent future severe neurologic injury, pediatricians must remain cognizant of the possibility of the AHT in infants who present with both subtle and overt

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neurologic symptoms and take seriously the ethical and legal mandates to report suspected child abuse to governmental agencies for investigation."
You agree with that; right?
A Yes.
Q And you-all reported it to DSS and law enforcement; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: Yes.
BY MR. HOOD:
Q "Pediatricians also have a responsibility to consider alternative hypotheses when presented with a patient with findings suggestive of AHT"; right?
A Yes.
Q "And a medical diagnosis of AHT is made only after consideration of all clinical data"; right?
A Yes.
Q And if you go down a couple sentences, it says: "However, as physicians, we have an obligation to make a working diagnosis, as we do with many other diagnoses, and take the legally mandated steps for further investigation when indicated."

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You agree with that; right?
A Yes.
Q What further investigation could be done to determine whether it was NAT versus accidental trauma?
MR. TODD: Objection.
THE WITNESS: In this particular case, none, other than investigation of, I guess, the family, the home situation, talking further with the parents, I guess.
BY MR. HOOD:
Q And that would be DSS and law enforcement; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: Yes.
BY MR. HOOD:
Q Okay. "Pediatricians often find it helpful to consult a subspecialist in the field of child abuse pediatrics to ensure that the medical evaluation is being complete and the diagnosis is accurate."
You see that; right?
A Yes.
Q You said that you consulted with Dr. Morgan; right?

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A Yes.
Q And did Dr. Morgan agree with you that it was not possible to determine NAT versus accidental trauma?
A She did.
Q Down below it says, about three sentences below that, "The role of the pediatrician is not to apportion blame or investigate potential criminal activity but to identify the medical problem, treat the child's injuries, and offer honest medical information to parents and families."
You see that; right?
A Yes.
Q And you agree with that?
A Yes.
Q It says, the second to the last sentence, "AHT commonly results in permanent neurologic damage and carries tremendous family and societal cost."
Do you see that?
A Yes.
Q And you agree with that?
A Yes.
Q It says under the very first recommendation, "Pediatricians should be alert to the signs, symptoms, and head injury patterns

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associated with AHT."
You see that; right?
A Yes.
Q What are the head injury patterns associated with AHT?
A There are numerous patterns, only one of which is subdural hematoma.
Q And would this, when you have the right convexity and you have the falx hematoma, was the falx on the -- I know it got maximal thickness towards the back, but was it on the back -- the right side or the left side?
A I don't know. I'd have to the look at the record.
Q Okay. Do you know if it was bilateral or not?
A No.
Q Would -- would that make any difference?
A In the diagnosis of subdural hematoma?
Q No. In the diagnosis of whether the head injury pattern was associated with AHT or not?
A To my understanding, no.
Q Okay.
A That would be something for a neuroradiologist to answer.

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Q Okay. Does the neuroradiologist say in his report that this is consistent with non-accidental trauma or not?
A I don't think he said the word "consistent." He said he would investigate the possibility of non-accidental trauma.
Q Okay. Let me look at the -- I think it was -- I can't remember what exhibit it was. Let me look at it real quick. I may or may not have a question, I just want to look at it.
MR. TODD: I can help out there.
THE WITNESS: The presence of a falx subdural hematoma raises the possibility.
BY MR. HOOD:
Q Okay. On 17, which was the 12/5, at the top it says, "Clinical information ALTE" and then below that; "R/O bleed."
Do you see that?
A Yes.
Q And so that's just apparent life-threatening event; right?
A Yes.
Q And then it's to rule out a bleed?
A Yes.
Q And then they found the thin falx subdural

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hematoma and right convexity subdural hematoma; right?
A Yes.
Q Now, it didn't rule out a bleed, it actually ruled in a bleed; right?
A Yes.
Q And then the 12/7 it has, "Clinical information, ALTE; follow-up."
Do you see that?
MR. TODD: Are we going to a different one?
MR. HOOD: Number 18, I'm sorry, 12/7.
THE WITNESS: Um-hmm.
BY MR. HOOD:
Q And the requesting provider in that case was Julie Smith; right?
A Yes.
Q Who was with Dr. McClanahan's office?
A Yes.
Q The first one, 12/5, that says "Requesting Provider" is Stephen Renfrow.
A Yes.
Q And he was on the CHIPS team?
A Yes.
Q So the CHIPS team would have been

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requesting it to rule out the bleed; right?
A Right.
Q And then when the bleed was determined, it would have -- that's something that would have been then referred out to be followed by Carolinas neurosurgery; right?
A Pediatric neurosurgeon.
Q "Pediatric neurosurgeon."
And then the pediatric neurosurgeon would have been responsible for requesting the 12/7 CT?
A Yes.
Q And when you have those two, does this specific pattern, does it have a higher association or lower association with AHT?
A These are two identical reports with the finding of the possibility of non-accidental trauma.
Q Okay.
A They are not different in looking at the category of non-accidental trauma. The blood had shifted, but it doesn't make it any more less likely that accidental trauma or non-accidental trauma has taken place.
Q Okay. Now, on here -- and I've looked at both of them, under that 12/5, it says, there's --

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"The presence of the falx subdural hematoma raises the possibility of NAT."
A Right.
Q Do you see that?
A Yes.
Q Now, why does the falx subdural raise a possibility of NAT?
A I think because of just the location of where the blood and the -- and the veins have -- where the blood has settled, I think. It's a location.
Q So that would be a head injury pattern that would be associated with AHT?
A Yes.
Q Okay. Now, go to the -- I want to go to the next, which is Exhibit 14. This is from the American Academy of Pediatrics.
At the bottom of the first part of the abstract, it just says, "Accurate and timely diagnosis of children who are suspected victims of abuse can ensure appropriate evaluation, investigation, outcomes for these children and their families."
Do you see that?
A Yes.

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Q And you agree with that?
A Yes.
Q Going to under "Prevalence," third or fourth paragraph, first sentence says, "Child abuse has significant long-term medical and mental health morbidity."
Do you see that?
A Yes.
Q You agree with that; right?
A Yes.
Q Going to the next: Characteristics of victims and risk factors.
A Yes.
Q It says, "Although the risk of physical" -- in the middle part of that says, "Although the risk of physical abuse increases with age, fatal abuse and serious abuse of injuries are more common among children and infants younger than two years."
Do you see that?
A Yes.
Q And that's true; right?
A If the article is making that citation, I suppose they have corroborating information to say that.

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Q Okay. Under the "Role of Pediatrician: The role of the pediatrician encompasses prevention of abuse and detection and medical management of the victims of abuse."
Do you agree with that?
A Yes.
Q It says, "Accurate identification of children who are suspected victims of abuse can facilitate appropriate evaluation, referral, investigation and outcomes for these children and their families."
Do you see that?
A Yes.
Q And you agree with that?
A Yes.
Q "Children usually sustain abuse at the hands of a caregiver who misinterprets and responds inappropriately to the child's behavior."
Do you see that?
A That's a little bit of a sweeping statement, so...
Q Okay.
A It's a little sweeping for me.
Q Sure. But I know we had talked earlier about how they said the child was fussy the week

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before, you remember that?
(Intercom interruption.)
BY MR. HOOD:
Q You remember that; right?
A Yes.
Q And -- and sometimes people can respond to an impetus in an inappropriate way; right?
A I would guess in some situations that would be true.
Q Okay. And then next sentence says, "For example, caregivers who had smothered, shook, or slapped their infants within the first six months of life were more likely to be worried about crying and to believe that their infants cried excessively."
Do you see that?
A Yes.
Q Do you agree with that?
A If that's being cited, I guess that they have evidence --
Q Okay.
A -- or some study to corroborate that statement.
Q Says, "There is close correlation between the age specific incidents that occur with infants hospitalized with abusive head trauma and age

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specific normal crying behavior of infants up to 36 weeks of age," six months.
A Okay.
Q Do you agree with that?
A Yes.
Q Okay. Going down to the last full paragraph, it's about two-thirds of the way down. It says, "Once a suspected victim is identified and further assessment and management is required."
Do you see that; right? It's the second to the last -- last full sentence.
A Okay.
Q Now, in this case, Owen Carduff, when he -- after the -- after the 12/05 CT, he was a suspected victim; right?
A Well, I think that our determination was it was not possible for us to tell one that child abuse was definitely a possibility.
Q Okay. But he was a possible victim?
A "He was a possible victim."
Q And so further assessment and management was required for him?
A Right.
Q And then this says, "Using a child pediatric child abuse consultant, if available,

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early in the process may obviate the need for invasive or expensive testing and can help direct the pediatrician towards appropriate evaluation."
You see that; right?
A Yes.
Q And -- and you reached out to Dr. Morgan to assist in this; right?
A Yes.
Q It says, "The detection and diagnosis of child physical abuse depends on the clinician's ability to recognize suspicious injuries, conduct" -- con -- "careful and complete physical examination" --
I'm sorry, I apologize.
It says, "The detection and diagnosis of child physical abuse depends on the clinician's ability" --
MR. TODD: Do we need to take a break?
MR. HOOD: I got a -- I got a frog in my throat, man.
MR. TODD: I think Deborah has got to do the Heimlich maneuver over there.
MR. HOOD: I want Dr. Courtlandt doing it if anybody does it.
MS. CASEY: I don't want to shake you

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too hard.
MR. HOOD: Yeah. She -- I always tell people I practice in Rock Hill, don't take me to Piedmont, get me to CMC. I don't care what it takes.
MS. BROOKS HOLMES: Is this all on the record?
THE VIDEOGRAPHER: (Nods.)
MR. HOOD: Get me to CMC.
MR. TODD: All right, you seem to have recovered now.
MR. HOOD: I'm okay.
Man, I apologize.
BY MR. HOOD:
Q This says, "The detection and diagnosis of child physical abuse depends on the clinician's ability to recognize suspicious injuries, conduct a careful and complete physical examination with judicious use of auxillary tests, and consider whether the caregiver's explanation is supported by the characteristics of the injury or injury and the child's development capabilities."
You see that; right?
A Yes.
Q Now, the child's development capabilities,

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a child three-months old is not able to speak to you; right?
A Yes.
Q It's hard to measure a child's cognitive ability at the age of three months; right?
A Right. Yes, I would say.
Q I know even with a CT access, a lot of times they don't make the diagnosis until the child is one or two years old; right?
A Right.
Q And so then, since the child can't help, you've got to look at the caregiver's explanation and see if it's supported by the characteristics of the injury; right?
A Yes.
Q The characteristics of this injury are you have a falx subdural hematoma, that is an injury pattern consistent with AHT, a second subdural, and they have no explanation for that; right?
A Yes.
Q So there was no supported explanation of the subdural hematomas, was there?
A There was no -- no -- nothing in the history which would give an explanation for them occurring.

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Q Okay. It says the -- going down to the bottom, "Clinical Presentation Settings," second full paragraph, "The clinical approach to an infant or child with possible abusive injuries is not significantly different than from standard pediatric care."
Do you see that?
A Yes.
Q And you agree with that; right?
A Yes.
Q "As with all patients, a severely-injured child must be stabilized before further evaluation is undertaken;" right?
A A critically injured child, yes. This child was not critically injured.
Q Okay. But in a child who has suffered an ALTE, apparent life-threatening event, once they are stabilized, a careful and well-documented history is one of the most critical elements of the medical evaluation; right?
A Yes.
Q "And if possible, you should document description of the mechanisms of injury or injuries and stated prognosis and progression of symptoms in the child's development capabilities;" right?

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A Yes.
Q And in this particular case, there was no description of the mechanism of the injury or injuries; right?
A Well, at that point there was no documentation that there had been an injury. The parents came in requesting evaluation because of the fact that he had cold symptoms, he had been seen by the pediatrician, and they felt that he was getting worse. He then had that choking episode at home and then was brought into the emergency room.
So at that point there was no injury really to document what the explanation or the mechanism was at that point.
Q Now, the subdural was a significant injury; right?
A He had a small subdural hematoma. I can't say how significant that -- the injury was that caused it.
Q You don't have an opinion about whether a -- two different subdural hematomas in a three-month-old child is a significant injury or not?
A Well, I can't tell you whether the -- the -- it's a significant injury. I can't tell you what

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the mechanism -- what the description of the mechanism of injury was.
Q Right, right. That's all I was doing, it's a significant injury?
A Right, yes.
Q Now, going under the medical history, it says, "Explanations that are concerning for intentional trauma include: One, no explanation or vague explanation for a significant injury."
Do you see that?
A Yes.
Q And that's something you have to take into your differential diagnosis, right?
A Um-hmm.
Q If you can give me a verbal.
A Yes, I'm sorry.
Q And explanation that's inconsistent with the pattern, age, or severity of injuries.
You see that; right?
A There was no explanation.
Q Right, right, there was no explanation.
A "There was no explanation."
Q It says, "Information should be gathered in a non-accusatory but detailed manner. Other information that may be useful in a medical

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assessment of suspected physical abuse includes past medical history."

You agree with that; right?

A Yes.

Q "Family history, especially a bleeding, bone disorder and metabolic or genetic disorders."

Right?

A Yes.

Q I mean, that just helps if there is some kind of genetic or hereditary component; right?

"Pregnancy history: Wanted, unwanted, planned, unplanned, prenatal care, postnatal complications, postpartum depression, delivery in nonhospital settings."

That's important; right?

A That would be information that I would want to obtain.

Q "Familiar patterns of discipline." That would be important; right?

"Child temperament," which I think there's documentation he was fussy --

A That's right.

Q -- for a week before this; right?

"A history of past abuse to child, siblings, or parents."

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That would be important; right?

A Yes.

Q I apologize.

A Yes.

Q Okay. "Developmental history of child." Obviously, he's three-months-old, so there isn't a whole lot.

"Substance abuse by caregiver or any people living in the home." Right?

A Yes.

Q "Social and financial stressors and resources." Right?

A Yes.

Q "And violent interactions among family members"?

A Yes.

Q And all of those things would -- would play a part in things that -- that may be important to you in determining whether it's accidental or non-accidental trauma?

A They may be factors, yes.

Q Sure, "they may be factors."

Under physical examination and general assessment. It says, "When the child has a high weight and a frontal occipital circumference

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being carefully measured and plotted on a growth chart previous measurements have been obtained from past medical records to gauge whether growth velocity has been appropriate."

And I believe you said that that had been done.

A Right.

Q And it was appropriate?

A Right.

Q Under cranial injuries, it's on Page 6 of 14, head trauma is the leading cause of child abuse fatalities; do you see that?

A Yes.

Q And you agree with that; right?

A Yes.

Q "The inflicted injuries tend to occur in younger patients," you see that; right?

A Yes.

Q You agree with that; right?

A Yes.

Q Now if we go to the next under the last full paragraph under that heading. It says," A funduscopic examination for retinal hemorrhages should be considered for any infant or a young child who is a suspected victim of child abuse. Under

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optimal conditions, an opthalmologist with pediatric experience should conduct an examination of dilated pupils-by using indirect ophthalmoscopic."

Do you see that?

A Yes.

Q And I believe you said that you think that there was dilated pupils.

A There was a -- there was evidence of a dilated exam, based on the fact that drugs were given to dilate the eyes.

Q Sure. And an ophthalmologist is usually somebody who has some pediatric experience; right?

A Right.

Q And you just don't know if there was direct or indirect?

A Right. I don't know what the technique of examination was.

Q Okay, okay.

MR. TODD: Are you done?

THE WITNESS: Oh, yeah.

MR. HOOD: No, no, no.

THE WITNESS: No.

MR. TODD: No, no, no, no. Are you done with this article?

MR. HOOD: Yes, yes, yes.

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MR. TODD: Do you need it back?
THE WITNESS: No, no.
MR. TODD: Okay.
MR. HOOD: No, no, no. I'm done with that, yes.
Let's have this marked as -- what are we at?
THE REPORTER: 19 this would be.
MR. TODD: I have 14, you better take it from me before I put it into my file and it gets lost.
(Patient record, ER documentation marked as Plf's Exhs 19 and 20 for identification.)
BY MR. HOOD:
Q Doctor, this appears to be like the MedCenter ER history.
A Yes.
Q This would have been something that would have been in the medical chart; right?
A Yes.
Q Okay. And it says, "History of present illness: two-month old patient brought to Piedmont Medical Center Emergency Department by the parents in a personal vehicle after an eight-minute period of unresponsiveness post meeting reported by the

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father. The father states patient was not blue or jerking. Mother states she did not witness event. She was just arriving home from work. Per the ED report, when patient arrived, he was alert and active, irritable stimulation. Patient has had a several day history of increased sleeping periods and increased crying episodes. Wednesday, patient was seen by pediatrician and diagnosed with a viral throat infection. Patient is on no medications at home and no allergies. Patient reportedly had an uncomplicated labor term at Piedmont Medical Center. Patient received IV, IV fluids, chest x-ray, labs, urinalysis, an LP. MedCenter air-dispatched patient to Levine's Children Hospital for further evaluation at a higher-level care facility."
Do you see that?
A Yes.
Q And you are aware of all this -- I mean this history is something you would have been aware of at the time that you began treating the child; right?
A Yes.
MR. HOOD: Okay. This is number 19?
THE REPORTER: Yes.
BY MR. HOOD:
Q This is simply just an emergency

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department documentation, before he was transferred to inpatient. Go on that first page, it says, Mode of arrival, isolette stretcher.
You see that; right?
A Yes.
Q And then diagnosis unresponsive for ten minutes; do you see that?
A Yes.
Q And it looks like it's 12/5/09 at just about midnight, do you see that?
A Yes.
Q "D&P generic code and tracking acquity 3-urgent." Do you see that?
A Yes.
Q What does "urgent" mean?
A I'm not sure what they mean in there, in that code?
Q Sure.
A I can't answer that question.
Q I've seen some where they use a -- a one to three and others where they use one to five, but you don't know what --
A Right, what their tracking system and documentation system is.
Q Okay. But once the child came under your

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care, you would have had access to this itself as well as the stuff that we went over before, the unresponsiveness for ten minutes?
A Yes.
Q Okay.
MR. HOOD: Okay. Let's have this marked as -- okay -- okay, let's have this marked as --
THE REPORTER: 21.
MR. HOOD: 21. This is that --
MR. TODD: Multiple pages.
MR. HOOD: -- pediatric notes as one. And then I'm going to have the next one marked as Exhibit 22. Then this would be 22. Then the next would be 23. This will be 23.
(Physicians orders, 12/5/09, physicians orders, 12/5/09 and progress record, 12/7/09 marked as Plf's Exhs 21, 22 and 23 for identification.)
BY MR. HOOD:
Q Doctor, I just had this marked as Exhibit 21 and 22 -- this is just exhibit 21, 21 are some orders. 22 is just maybe some orders or some something that a doctor made notes about and then 23 is just a doctor's report, written doctor report.
A That's my handwriting.

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Q Excuse me?
A That's my handwriting, this one?
MR. TODD: Is that a question or is that a statement?
MR. HOOD: Yes, that's the one. That one is --
THE WITNESS: Yes.
MR. HOOD: --yes, yes. But I-was just going to go over just -- just this just because it's almost chronological.
THE WITNESS: Okay.
BY MR. HOOD:
Q Exhibit 21 -- remember we had gone over before the stuff about the dilated pupil and everything. This would have been the order where they said consult opthalmology maltreatment Dr. Briggs; right?
A Yes -- no, no. Child maltreatment, that's one order and ophthalmology, Dr. Briggs, that is a separate order.
Q Okay, okay. And then -- okay. And that's 12/5/09 at about 8:45 in the morning; right? At least that's what the documentation is on this.
A Right, yes.
Q Okay. Then, we'll go to Exhibit 22. This is a little earlier in the morning on 12/5/09.

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It says, "Admit to CHIPS A Attg: Gall."
A Right.
Q Who is --
A Actually Dr. Gall was actually the admitting attending and she signed out to me. Like I said, the CHIPS attendings, we work a week at the time, and I guess I must have taken over the service.
The first note I wrote was on the 7th and, so I took over from her, she -- I think if you look at the record, she has notes written on the 5th the 6th and then I took over for her on, I believe the 7th.
Q Yeah, I think it was -- that starts on a Monday.
A Yeah.
Q 12/7 is a Monday.
A Right.
Q And so there's that person that I saw, Schoenfeld. Do you know who Dr. Shoenfeld is?
A Shoenfeld, yes, he is an intern.
Q Okay. And so that's -- that's not a resident, that's actually -- is that a medical student?
A No. That's a -- a resident, the hierarchy goes, intern is the lowest level, then resident PGY2 and then resident PGY3.

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Q Okay.
A So it's the low man on the totem pole, but it is a position.
Q It is like a first year resident?
A It's a first year.
Q Okay. And then it has, "Diagnosis LTE condition good." You do see that; right?
A Um-hmm.
Q And then at about an hour, hour and a half later, it looks like there was a STAT CT of the head to rule out a bleed; right?
A Um-hmm.
Q And then we've seen the -- the CT scan where they did it and they found the falx hematoma and the other hematoma.
A Yes.
Q Go to the next page. This says, "Peds attending note." Do you see that?
A Yes.
Q At the top it says Owen Michael Carduff, do you see that; right?
A Yes.
Q Now this is you that wrote this; right?

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A Yes.
Q Okay. Just because I can't read everybody's handwriting --
A Okay.
Q -- can you just kind of start at the top and read down for us.
A Okay. "Peds attending note. Patient clinically stable, but AF," which is anterior fontanelle bulging slightly." And there's a question of, is this an increase in his head circumference. His mental status is unchanged. His eye exam was negative and his non-accidental trauma series was pending.
The child coordinator -- the child maltreatment coordinator and master's of social work were involved and the parents were updated at the bedside. So then I do a physical exam.
I said that his head was large but he had great head control, but his anterior fontanelle was full. His lungs were clear, heart, regular rhythm. Abdomen was benign.
My impression was subdural hematoma. He had normal mental status at this time. We were planning to repeat the CT. His anterior fontanelle was going to check with the master's of social work

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about discharge plan and check with department of DSS referral status.

Q Okay. Now, when you do that, do you defer or do you delegate the checking with DSS to the medical social worker?

A She would probably make the call to DSS and depending on what the situation is, DSS may want me to be patched in when she calls, or they may not, depending on what the situation is.

Q Okay. But would you depend on her to be a liaison between you and DSS?

A Yes.

Q Okay. And then she could go back and tell them any conversation she may have had with you, likewise she could have told you about conversations she would have had?

A Right, yes.

Q Okay. If you go to the next page. And the first page, this is your handwriting; right? The page before that, that's your handwriting?

A This one?

Q Yes. And -- and when it's signed at the bottom, C and that's your hand -- that's your signature; right?

A That is my signature.

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Q Okay. If you to go the next where it starts "Notes planned peds attending."

A Yes, sir.

Q If you could read that.

A "Peds attending note. Extensive conversation with Morgan-Glenn and master's of social work regarding case. No etiology of subdurals revealed. Non-accidental trauma workup is negative. Eye exam is negative. No story forthcoming in explanation."

At that point, his anterior fontanelle was soft and it had decreased. It wasn't bulging -- it wasn't bulging anymore. The head cumference was the same, but it wasn't bulging. His lungs were clear. His abdomen was benign.

My impression was that he had a subdural hematoma. There was a question mark etiology. His non-accidental trauma workup was negative at the time. The plan was for DSS to follow family with home visits supervision cleared by master's of social work. Repeat skeletal survey in two weeks and follow-up with his PCP.

Q And that's primary care physician?

A Right, right.

Q Okay. And this would have been at 12 noon on 12/8/09?

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A Or close to that.

Q Okay. And this would have been the discharge orders; right?

A No, this is my last note. This is my last note. The discharge summary is another document.

Q And it says, "Cleared by MSW."

A Right.

Q And when that says, "cleared by MSW," what does that mean?

A That means that we have a safety plan and the safety plan has been signed.

Q Okay. And is that supposed to be in the chart somewhere?

A It is in the chart, I think.

Q Okay.

A Usually. I don't place it in the chart, but it is usually -- that's usually where we find it.

Q Okay. If we go to Exhibit 23.

A Mm-hmm.

Q I can't read that on the top, what does that say "X-"

A Cross cover.

Q What is that?

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A That is the cross cover, which means that this person who wrote this, this was not their primary patient.

Q Okay. It says, "Patient with stable CT, DSS/SW okay to discharge with mom and dad."

A Mm-hmm.

Q DSS/SW, they are talking about the medical social worker here; right?

A Yes.

Q Okay.

MR. HOOD: That is Exhibit 23.

Let's have this marked as 24.

(Carolinas Healthcare System, H&P, 12/5/09 marked as Plf's Exh 24 for identification.)

BY MR. HOOD:

Q Doctor, on that last one I asked you about that entry, do you know who the X-COP person is?

A I don't recognize the handwriting. It's something that can be determined by looking back in the log who was -- who cross-covered.

Q Okay. And then we're looking at Exhibit 24, this is just the H&P on 12/5/09. I was just going to ask you one question.

You would been aware of the information contained in this record, when you began

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treating the child on 12/7; right?
A Yes.
Q Okay.
MR. HOOD: Next is Exhibit 25.
(Medical Decision Making form received and marked as Plf's Exh 25 for identification.)
BY MR. HOOD:
Q You know this is just an inpatient initial assessment for Levine Children's Hospital for a CHIPS team; right?
A Yes.
Q And it has the labs and it has what the labs are; right?
A Yes.
Q And then it has, "Assessment plan, two-month old with" -- boy with no --
A "With an ALTE and a head bleeds on CT."
Q Okay.
A "No hemorrhages. No history of trauma from mother and father."
Q Right. And this was Dr. Schoenfeld?
A Yes.
Q And then the attending which was Dr. Gall --
A Sara Gall.

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Q -- would have over seen his care; right?
A Yes.
Q And then she actually made her own note; right?
A Um-hmm.
Q And then you would have been made aware of all of this information when you began -- began treating this child on 12/7?
A Yes.
Q Okay.
MR. HOOD: Okay. Now we got 26, 27, 28 and 29.
THE REPORTER: 29?
(Coagulation, 12/5/09, microbiology report, 12/5/09, microbiology report 12/5/09 and hematology report, 12/7/09 marked as Plf's Exhs 26, 27, 28 and 29 for identification.)
BY MR. HOOD:
Q Doctor, 26 says coagulation, this just has something about PT, INR.
A Um-hmm.
Q And thromboplastin time.
A Yeah.
Q All were within normal limits except for the -- the last, the part with thromboplastin time.

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A Right.
Q But it was still close to within normal limits; right?
A Yes.
Q And so you did not -- you didn't see any type of bleeding disorder in this child; did you?
A No. There was no bleeding disorder.
Q 27 and 28 are just microbiology. It looks like there was a respiratory panel. And it didn't look like there was any type of a problem for microbiology. Do you see that?
A Yes.
Q And it's your opinion there was no problem with any type of an infectitious process in regard to microbiology; right? It would be indicated by the microbiology?
A It says that there were too few cells to make a determination.
Q Right. And if you-all were worried about it, there were too few cells seen, it says new specimen indicated.
A Right.
Q And you -- you began treating this child on 12/7 and 12/8, if you had seen that's was concerning to you, you would not have discharged the

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child; right?
A Regarding this?
Q Yes.
A I mean this specific report is just looking for viruses, this -- you don't make a decision based on -- you don't make a decision to discharge someone or not discharge someone based on this type of virus test.
Q Right.
A This is just seeing if you can name the particular virus that a child has.
Q And it's your opinion though that at the time of discharge, this child did not have any virus?
MS. BROOKS HOLMES: Objection.
THE WITNESS: One that we could not test for. I mean --
BY MR. HOOD:
Q Sure.
A -- this only tests for a few viruses.
Q Right.
A There are hundreds of them.
Q But of the ones you tested for, you didn't see anything that was positive; right?
A Correct, yes.

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Q Okay. And then on hematology it -- the hematology you saw the white blood cells, and the things -- most of the things were in normal limits except for the hemoglobin and hematocrit; right?
A Yes.
Q And would hemoglobin and hematocrit being low would be consistent with a subdural hematoma; wouldn't it?
MS. BROOKS HOLMES: Objection.
THE WITNESS: I mean it's possible. This is also the time where the blood count is the lowest and Dr. Gall is a hematologist so I don't think that this would necessarily be as concerning to me for a two-month old.
Q Right. But all I'm saying is, part of the reason its low may be associated with a subdural hematoma?
A I don't know if you can make that connection necessarily.
Q Okay. But regardless, you did not see a coagulopathy or a bleeding disorder at the time?
A No.
MR. HOOD: Okay. Exhibit 30.
(Progress record, 12/7/09 received and marked as Plf's Exh 30 for identification.)

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BY MR. HOOD:
Q Exhibit 30, I'm looking just at the bottom notice. It says 12/7/09, 1845; do you see that?
A Yes.
Q Under the neurosurgery note it says, "Alert, doing well overall. Repeat CT, shows stable. Extra-axial collections right" -- something.
"Okay to discharge under supervision. You need to see to follow-up in two or three weeks. Should be instructed prior to discharge about symptoms of increased intra-cranial pressure."
Do you see that?
A Yes.
Q Now my question to you is, "Okay to discharge under supervision."
What does he mean -- do you know what he means by that?
A I cannot comment on what --
Q That's Dr. McClanahan?
A That's McClanahan.
Q Sure. Okay, okay.
MR. HOOD: This is 31.
(Nursing Miscellaneous Inpatient document marked as Plf's Exh 31 for identification.)
BY MR. HOOD:

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Q This is Nursing Miscellaneous Inpatient Documentation. At the top, at the top it says, "Suspected Child Abuse Neglect Form Text."
(Witness sneezes.)
MR. HOOD: Bless you, bless you.
THE WITNESS: Thank you.
BY MR. HOOD:
Q And then it says, "Service date and time, 12/8/09, 10:02 eastern standard time." Do you see that?
A Yes.
Q And then it says, "More information, Lynn Meyers 12/8 2009, 10:32 Eastern Standard Time and then sign information, Lynn Meyers 12/8 2009, 10:32 EST." You see that; right?
A Yes.
Q Then it says, "Scan suspected child abuse neglect entered on 12/8 2009 10:33 Eastern Standard Time, performed on 12/8 2009 10:02 Eastern Standard Time by Lynn Myers, RN."
You see that; right?
A Yes.
Q Now Lynn Myers is the nursing maltreatment team coordinator?
A Yes.

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Q And then underneath that it says, "Scan documentation." Right?
A Yes.
Q It says, "Scan doc- -- scan related visits, child maltreatment coordinator." Do you see that?
A Yes.
Q And it says, "Reportable interaction detail, awaiting safety plan from DSS." Do you see that?
A Yes.
Q So as of 10:33 Eastern Standard Time on 12/8 2009 there's documentation in this file that indicates that you still haven't received the safety plan from DSS; right?
MR. TODD: Objection.
MR. FRAWLEY: Object to the form.
THE WITNESS: I would assume.
BY MR. HOOD:
Q Okay. Now let's look at the bottom. It says, "Document name pediatric frequent check form text."
A Yes.
Q Do you see that?
A Yes.

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Q "Service date time 12/8 2009, 12:20 Eastern Standard time." Do you see that?
A Yes.
Q And then it says, "Results status all verified information Sara Miller." And then "Sign information Sara Miller, 14:39 Eastern Standard Time."
A Yes.
Q It says, "Pediatric hour- -- hourly checks entered on 12/8 2009, 1442, but performed on 12/8 2009 at 1220, by Sara Miller." Do you see that?
A Yes.
Q It says, under pediatric hourly checks, "Reassess. No change from previous assessment. Family at the bedside of the patient. Patient continues to be held per her mom and no apparent distress. Discharge instructions gone over and given to parents with questions asked, answered and understanding verbalized. No further needs stated at this time."
Do you see that?
A Yes.
Q So would you assume that they got the safety plan between 10 o'clock and 12:30 on that day?

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MR. TODD: Objection.
THE WITNESS: I guess that would be my assumption, although I'm not clear, this nursing miscellaneous documentation is not documentation that I look at every day. So I would -- I would have to -- there may be some pieces missing from it.
BY MR. HOOD:
Q Okay. But it looks like at least it's documented that as of -- 10 -- 10 o'clock that they --
A Right.
Q -- were awaiting a safety plan.
A Awaiting a safety plan.
MR. HOOD: Okay. Let's have this marked as 32.
(Discharge summary, 12/8/09 Levine Children's Hospital and discharge summary and 12/8/09 Carolinas Healthcare System marked as Plf's Exh 32 and 33 for identification.)
BY MR. HOOD:
Q Okay. This is a discharge summary?
A Yes.
Q And on the back it looks like it's dictated by Eric Schoenfeld.
A Yes.
Q First year resident; right?

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A Um-hmm.
Q And -- but you would have then come back and over signed that at some point; right?
A Yeah, I thought there was one.
Q And I will give you Exhibit 33. And Exhibit 32 and 33 and they are the same, it's just one.
A Right.
Q Right. 33 is electronically signed. The first one says it was dictated by Eric Schoenfeld and looks like transcribed 12/8 2009 at 3:18 p.m.
Do you see that on Exhibit 32?
A Yeah.
Q And then on Exhibit 33, it looks like it's reviewed by Eric Schoenfeld at 12/10 2009, 1440 and it's electronically signed by you on 1/25 2010 at 1410.
A Yes.
Q Okay. Now, this says the principal diagnosis is subdural hemorrhage; right?
A Yes.
Q Under that on the second page it has pertinent test results. CT scan head, and it gives a finding for 12/5 and CT scan head 12/7 and then skeletal survey.

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You see that; right?
A Yes.
Q Now on the second -- on the last page it says number two. "Please pay close attention to baby and do not leave him alone or unattended."
Who was that -- was that to the parents?
A To the family.
Q Okay. And that's the same instruction you'd give to any family with a two or three-month old child; right?
A Right.
Q Is there any mention in this about the safety plan at the time of discharge?
A No. In this particular document, there is no mention to the safety plan. Although it says in the document, it was determined that the family would attend parenting classes and the Department of Social Services would evaluate the home situation and those are elements of the safety plan.
Q Okay.
MR. HOOD: I'm going to mark as Exhibit 34 and Exhibit 35.
This will be 34. This will be 35.
(Physicians orders, 12/7/09 and Progress

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note, Children's Hospital Inpatient Service marked as Plf's Exhs 34 and 35 for identification.)

BY MR. HOOD:

Q Okay. Exhibit 34 looks like orders.

A Yes.

Q Okay. And on the right side it looks like -- is that your handwriting again?

A No, neither one of these pages is my handwriting. Except, now actually 35, I've signed Eric's note, on 35.

Q But on 34 --

A Yes.

Q Its 0930, 12/8 2009. It says, "Discharge home with parents with MSW approval." That means with medical social worker approval; right?

A Yes.

Q And that would be the social worker with Levine Children's Hospital?

A Yes.

Q Two, Activity is tolerated. Three, meds, see medical record. Four, Follow-up with schedule. Follow-up with Sunshine Pediatrics 12/10 and 12/12 and with radiology in two weeks for NAT from admission 12/4/09."

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Do you see that?

A Yes.

Q And then five, Discontinue IV.

A Yes.

Q And then it looks like they give an appointment time for pediatrics and a time for Levine Children's Hospital; right?

A Yes.

Q Now its signed off by a --

A Whitney Nugent.

Q Okay. And who is Whitney Nugent?

A She's one of the residents.

Q Okay, okay. And so is this a physician's discharge order?

A This a discharge order, yes.

Q Okay. So as of 9:30 --

A No, not necessarily. That's when we wrote the order.

Q Okay.

A But it may not necessarily been carried out at the time. The patient is discharged actually when all of the conditions are filled. So it may take them a while to get the appointments, it maybe several hours, it depending on what the situation is.

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Q Okay.

A Whether they -- you know, what time they actually leave is when they are physically taken out of the system.

Q But as of 0930 on 12/8 2009 they had conditionally discharged the patient with everything else being followed up?

A I would say that that would probably be a true statement.

Q Okay. Now I'm looking at the next page.

A Okay.

Q I didn't know what this was, although it looks like a -- it's consistent with the discharge order.

A No. This is a piec- -- a piece of progress note paper. This might have been his kind of cheat sheet for his discharge summary.

Q Okay

A Because it doesn't have all the elements of a daily note note. It doesn't have the all the elements of anything. So it should either have another sheet if it were a daily note.

Q Okay. At bottom it just says though, "This is Eric Schoenfeld."

A Right, Schoenfeld, right.

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Q Then you signed over the top of him; right?

A Um-hmm.

Q And I'm just looking at, it says, "Three social" -- something, "SW."

A "Pending social work okay."

Q "Patient okay to discharge."

A Yeah. So again, this was not timed so I don't know what time.

Q So -- but what this seems to say is that the patient is okay to discharge from a medical stability standpoint; right?

A Yes.

Q But has not received the okay yet from social work whether to discharge or not?

A Right. Probably because we didn't have the signed plan yet.

Q Okay. And this says, "Follow-up in two weeks, NAT," and this actually has parenting class.

A Right.

Q And home visit.

A Right. So some elements were at least discussed of what would be in the safety plan. Maybe the safety plan was on the chart but not signed yet.

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Q Okay, okay.
A That's all possibilities. I -- I really can't say exactly what transpired.
Q Okay.
MR. HOOD: I'm going to hand you, what 33.
MR. TODD: You have five minutes.
THE REPORTER: 36.
MR. HOOD: Let's go on and just stop 'cause I'm close, I'm just -- I'm almost -- I'm almost through with my documents.
(Brief recess.)
(Patient Medical Discharge Instruction Form and CHS Pediatric NICU Discharge Instructions marked as Plf's Exh 36 and 37 for identification.)
BY MR. HOOD:
Q Doctor, I'm looking specifically at 36 and 37. 36 is just a Patient Medication Discharge Instruction Form.
This is something you just give to any patient where a child got some medication; right?
A Yes.
Q And this would have been the one that was consistent with the one for Michael Carduff -- Michael Owen Carduff; right?

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A It appears so, although I don't know why digoxin is on -- oh, okay. That's an example. I saw digoxin on the form and --
Q Poor child.
A Right. But I see, they are just showing you an example, yes.
Q Okay. And on the bottom it actually says [redacted]. Do you see that?
A Yes.
Q Then number two, this -- 37, it says this is CHS Pediatric NICU Discharge Instructions.
A Yes.
Q And this is the instructions that is usually given to anybody that's discharged?
A Yes.
Q From the -- the --
A Inpatient service.
Q Inpatient. And on the second page of that it says, Best number to reach you," and it has a number and it has a nurse "S. Miller, RN."
Do you see that?
A Yes.
Q And then "12/8 2009, 12:15." Do you see that?
A Yes.

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Q Okay. And these would have been the things that would have been given to the parents in regard to the discharge of them from the unit; right?
A Right.
Q Okay.
A There might be other information given to them as well, but that's what I know.
Q Okay. Okay. I'm looking at Exhibit 5, I think it's going to be in this stuff. Now, I may as well just look at Exhibit 2 at the same time, Exhibit 2 and 5, let me see if there's any other one.
A Five.
Q I'll tell you what, I'm going to do Exhibit 2 and 5 and then after that, I'm going to ask you about Exhibit 1 and then Exhibit 11, and that should be just about it.
A I'm sorry, Exhibit "
Q No, no. It wouldn't go -- I'll just do it. I was just --
A Okay.
Q Exhibit 2. Do you see Exhibit 2 or Exhibit 5, either one, it doesn't matter? I'm going to go one after the other one at a time.
One is the Child Abuse and Neglict

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Algorithm and one is the Evaluation of Suspected Child Abuse and Neglect.
That's the algorithm.
A Okay.
Q Okay, that's Exhibit 2.
A Okay.
Q Have you ever seen the Child Abuse and Neglect Algorithm?
A Yes.
Q Okay. At the top is says, "Medical team identifies child, neither abuse or neglect is suspected." Do you see that?
A Yes.
Q And then it says, "Consult CHS clinical care management social worker to assist with assessment process."
A Yes.
Q And that was done;" right?
A Um-hmm.
Q It says, "Is suspicion of abuse or neglect confirmed"? Do you see that?
A Yes.
Q Then it has a yes or no, do you see that?
A Yes.
Q And under the yes, it says, "Report case

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to county DSS in which child resides"?
A Yes.
Q So according to this algorithm, the suspicion of abuse or neglect is confirmed?
A Yes. That -- that we suspect it, yes.
Q Do you know what the word "confirmed" means?
A It means that you -- that's something that you think is a possibility.
Q I'll come back to that. I just want to be pull it on up Webster's Dictionary and see what "confirm" says and I want to see if you agree with the definition.
And then underneath that it says, "Complete scan form including diagrams;" right?
A Yes.
Q And then when you go all the way down, it says, "When medically cleared, do not discharge child until disposition has been determined by medical social-worker and DSS."
Do you see that?
A Yes.
Q And I think we went over a note where it said --
A Yes, yes.
Q When medically cleared --

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A Right, yes.
Q -- and the child had been medically cleared.
A Yes.
Q Do not discharge until -- and I think there was actually something almost exactly like this.
A Yes.
Q Do not until --
A Yes.
Q -- it's been medically --
A Yes.
Q -- until disposition's been determined by medical social worker and DSS.
A Yes.
Q And so you would agree with me that DSS and the medical social worker worked in tandem to determine the disposition of the child?
MR. TODD: Objection.
BY MR. HOOD:
Q According to the algorithm?
A Yes.
Q I'm just showing you, and I'm going to ask you if you agree with these definitions of "confirmed."

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One of them seems to suggest that it's something that is expected to continue. And you said -- you said something when I asked you what does the term mean to you "confirmed," you said -- I --I can't remember what you said.
A Oh, I mis -- I mis -- I misunderstood the question, I'm sorry.
Q Okay. Under this algorithm --
A I thought you were talking about suspicion.
Q Okay. This says, "Is the suspicion of abuse or neglect confirmed."
Do you see that on the algorithm?
A Yes, I do.
Q And [illegible] you see it has a yes and a no?
A Yes.
Q And you see where it says, "Yes," and then it goes down to report cases to county DSS in which child resides"?
A Yes.
Q And that was done; right?
A Yes.
Q And so the -- my question was, was the suspicion of abuse or neglect confirmed according to the algorithm?

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MR. TODD: Objection.
MR. FRAWLEY: Same objection.
THE WITNESS: Yes.
MR. HOOD: Okay.
BY MR. HOOD:
Q I'm going to Exhibit 5, which is the --
A Yes.
Q Exhibit 5 says, Child physical -- this says, "Evaluation management of suspected child abuse or neglect and child physical abuse identification," and then it says "injuries that should be considered suspicious for physical abuse. Number one, age zero to six months any injury."
Do you see that?
A Yes.
Q Under B, "Essential aspects care taker history."
A Uh-huh.
Q It says, "Does the parent, guardian or child give a logical explanation as consistent with the age, pattern and severity of the injury. This should be assessed by clinician familiar with normal pediatric development."
Do you see that?
A Yes.

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Q And you would agree they didn't give any explanation --
A No.
Q -- whether logical or illogical, they just didn't give one.
A Right, no explanation.
Q And then under B it says, "Consider the biomechanics of the injury."
Remember earlier when I said did a fall rarely cause an intra-cranial hemorrhage from less than four feet, this is where I got it from.
A Right.
Q I just couldn't remember where.
It says, "A fall from less than four feet rarely causes a fracture and almost never causes intra-cranial hemorrhage. A child who can not crawl or walk should not have a bruse, fracture, burn or laceration."
Do you see that?
A Yes.
Q Okay. And so when you look at something like a subdural hematoma and a falx hematoma, you have to consider the biomechanics of the injury, in regard to whether its accidental or NAT; right?
A Yes.

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Q And you agree that a fall from less from four feet -- at least according to this policy from Carolinas Hospital or Carolinas Medical Center that a fall from less than four feet almost never causes an intra-cranial hemorrhage?
MS. BROOKS HOLMES: Objection
MR. TODD: Objection.
THE WITNESS: According to the policy, yes.
BY MR. HOOD:
Q Okay. And you agree with that; right?
MS. BROOKS HOLMES: Objection
THE WITNESS: Rarely, yes.

BY MR. HOOD:
Q And then under evaluation. And so to determine NAT or AT, you have to consider the biomechanics of the injury, according to the policy; right?
A Right. But this is talking about if somebody tells you there is injury and how to evaluate whether it is possible to occur the way they explained it. But when there is no explanation, you can't determine whether -- exactly what happened.

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Q Because you can't even consider the biomechanics of the injury because there is no explanation at all.
A Because there's no explanation.
Q Okay. Do you consider -- okay. And I'm not talking about Owen Carduff, I'm talking about if someone comes in and a child has a laceration on his scalp and a -- and a subdural hematoma and the parents say I don't know what happened and but it's just suspicious.
Do you still have to the consider the biomechanics even if they don't give you an explanation?
MR. TODD: Objection.
THE WITNESS: I'd -- I'd -- I'd have to have a concrete case, that's not --
BY MR. HOOD:
Q Okay.
A Yeah. That -- I -- I can't say what I would do, because I don't have the specifics.
Q It would just depend on the case itself?
A Yes.
Q Okay. Under evaluation and treatment. It says, "Refer to CHS policy, reporting -- report of juvenile suspected of being abused or neglected."

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And you-all did report it; right?
A Yes.
Q Two, "Complete a physical examination." You did that.
A Yes.
Q "Complete scan form and scan admission order set," you began that --
A Right.
Q -- right? "Age zero to two years, non-accidental trauma series should be considered in all cases not a long series but baby gram, a pediatric radiologist to do an official reading." And you-all did that; right?
A Yes.
Q Six, "Nuclear medicine bone scan for repeat NAT series in two weeks if index of suspicion for skeletal injury remains high despite initial negative NAT series. For example, in cases of abusal -- abusive head trauma formerly known as shaken baby syndrome."
You see that; right?
A Yes.
Q And you did a repeat NAT series in two weeks; right?
A Yes.

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Q Because there was index of suspicion and it remained high despite initial negative NAT series?
MR. FRAWLEY: Object to form.
MR. HOOD: Right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: There was a -- there was a suspicion that there might still possibly be an injury so to be complete, we did a repeat series.
BY MR. HOOD:
Q Okay. And they used -- when it remains high, for example, in cases of abusive head trauma formerly known as shaken baby syndrome; right, right?
A Right, I guess that's what it says, yes.
Q In this particular case whether this child suffered abusive head trauma or an accidental trauma, you can't rule in or out one way or the other?
A Yes.
Q Okay. It says, number nine, "CT scan of head of suspected acute intra-cranial injury or other injuries that indicate need to assist for non-accidental injuries." And that was done?
A Yes.

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Q It says, "Consider MRI scan of head of subacute older than five to seven days or chronic intra-cranial injury after two to three days and patient is stable."
You see that; right?
A Yes.
Q Now, when they did this repeat CT, two days later on 12/7, even though it was beginning to dissipate, it was still there.
A Yes.
Q So why wasn't an MRI done?
A That's something to ask the pediatric neurosurgeon. That's his area of expertise.
Q Okay. So that would be -- that would be up to him?
A Right, to make that --
Q Okay.
A -- that call.
Q Number 11 says, "Pediatric opthalmology consult preferred fundoscopy in cases of suspected intra-cranial injury, suspected abusive head trauma, metaphysical fractures, subdural subarachnoid hemorhage and a posterior rib fracture," and in this case there was a pediatric ophthalmology consult.

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A Yes.
Q I believe you said you don't know what the specifics of the actual --
A The exam. What the exact -- I do know the exam occurred, but I don't know the specifics.
Q Sure. Okay. Did you participate in the formulation of the child maltreatment clinical practice guidelines?
A I did not.
Q Do you know who created them?
A I do not.
Q And do you know if this is the -- these -- these appear to be guidelines and at the bottom it says, "Revised, 05/11."
Were these basically the same guidelines that were in effect in December of 2009?
A I have no idea.
Q Okay. And do you know if -- what the source of the guidelines were?
A I don't know.
Q Okay. I am looking at Exhibit 1. This is stuff where they did the social work.
Yes, that is it. On Page 2 of that it says, "MSW spoke with co-worker Krista Hinnant." And then the next two sentences later it

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says, "MWS spoke with attending Dr. Courtlandt about likely inability to confirm NAT due to limited findings. Would like to have on going DSS involvement with investigation. Home visit, parenting education, follow-up NAT series in two weeks as outpatient."
Do you see that?
A Yes.
Q Now, do you recall speaking with her?
A With the social worker?
Q Yeah.
A Yes.
Q And it -- it says, "About the likely inability to confirm NAT due to limited findings."
Do you see that?
A Yes.
Q Is that once again the -- you can't rule in or out?
A Because you don't have anything to go along with. I mean you have the subdural hemorrhage, you have no story, no retinal hemorrhage, no fractures.
Q Okay. And then it says, "Would like to have on going DSS involvement with investigation."
Was that you or was that the social

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worker that was saying that?
A I think we -- we discussed the case and that was one of the things that Dr. Morgan felt, would be, you know, what we needed to get more meat on the bones, so to speak.
Q Was your -- was your conversation with the social worker after your conversation with Dr. Morgan?
A I don't recall which preceded.
Q Okay.
A Which was before or after. This is on the 7th.
Q At about noon.
A At about noon. I really can't say.
Q Okay.
A It could have been either before or after.
Q Okay. If it was before --
A It was -- it was probably after -- I would say most likely it was after.
Q And that's because it would have included the stuff about the investigation, home visit, parenting education?
A Right. That would be -- that would be my suspicion.
Q And that would have been stuff that you

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did discuss that type of stuff with Dr. Morgan?
A Yes.
Q Okay. I don't think you're anywhere else in here.
Exhibit 11, I think that was something before as well. It was that suspected child abuse and neglect form.
A Right.
MR. TODD: We talked about that early on, are we going back there?
MR. HOOD: Yeah, I'm just -- just finding out why something wasn't filled out.
MR. TODD: Okay. I don't think we did.
BY MR. HOOD:
Q Before we go there, do you know if Dr. Morgan ever actually assessed the patient and met with the parents?
A I don't know that. I know that Lynn Myers, the child protection nurse put a note in the chart that she would discuss the case with Dr. Morgan. I don't know what their -- their discussion was and if Dr. Morgan saw the case.
I know that she said -- I know that she looked at the films, because we looked at the films together.

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Q Sure. But you don't know if Dr. Morgan ever met with the family?
A I don't know that --
Q Okay.
A -- one way or the other.
Q Okay. This is this -- this here --
A The scan form.
Q The scan form. It looks like the --
A I lost it now.
Q I think this is it right here.
A Oh, okay.
Q The snake that bit you.
I know that it looks like the first part is filled out and then a little bit on the second page.
A Right.
Q But then after that it doesn't look like there's a whole lot filled out.
A Right.
Q And I why is that?
A I'm not sure. I really just have to say I'm not sure. All of the information that would be included in this form, is already documented elsewhere. In general, this form gets filled out immediately on admission, that's the usual process.

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Q Okay.
A So I think the dissertations contained a lot of the information and therefore, I think probably that's the reason I why it wasn't filled out, but I can't say for sure.
Q This would have been on 12/5 or 12/4 and you weren't there.
A Right.
Q You didn't take over care until 12/7.
A Right, and it's not signed or dated for me to know -- it's not signed or dated for me to even to put a perspective on who might have started it. So what might have been the reasons for it not to be finished.
Q I noted on the front is does say "History from caretaker must be obtained separately from patient."
Do you see that?
A Right, right.
Q And there's nothing there; right?
A Right. But you couldn't obtain a history from of the patient.
Q Right. Well, actually it says it must be obtained separately from patient; right?
A Right. But you couldn't obtain a history

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from the patient.
Q This is says history from caretaker.
A Yeah, but what they are saying is that you should get a history from the patient if they can talk to tell you what --
Q Right.
A -- went on separate from the caretaker. That if there's a patient that can talk --
Q Right.
A -- you separate them.
Q Right.
A You take a history from the patient that can talk and you take a history from the caretaker.
Q Right, but the history from the caretaker it was not filled out; was it?
A It's not filled out here on this but it's documented in the history and physical --
Q Okay.
A -- admission history and physical.
MR. HOOD: Now, I don't know what we've marked her CV as? 15?
THE REPORTER: Yes, 15.
BY MR. HOOD:
Q Now did you or any of the other physicians or medical staff or any of the nurses or medical

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providers or social workers that you're aware of ever discuss with the parents that Owen's injuries were suspicious or could be suspicious for child abuse?
A Yes.
Q And what was that conversation like?
A I said frankly to the mother, that this type of injury is an injury that we see when children may or may not have had some kind of shaking or been in some sort of accident or is there anything that she can think of that may explain how this bleeding could have occurred.
Q Okay. And she answered in the negative?
A She said, no. She said that he's always either with myself, with the father or -- myself, or the father or her mother. She said are the only three people who ever take care of her child.
Q Did you have that same conversation with the father and then with the maternal grandmother?
A I had it with -- I did not personally have it with either one of those, but the resident had it with both the grandmother and -- the resident had it with the grandmother and Laura Newmark, the social worker, had it with all three.
Q Okay. And Laura Newmark would have been

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the only one that would have had it with the father specifically?
A Right, right.
Q Okay. And do you remember which resident would have had it with the grandmother?
A I assume that was the resident taking care of him, which was Stephen Renfrow.
Q Okay.
A That's my assumption.
Q Okay. It appears that you went to Princeton from '75 to '79.
A Yes.
Q Did you -- were you one of those people that got -- were you one of those smart people that got like a Rhodes Scholar to Oxford?
A I was not a Rhodes Scholar, it's another type of scholarship, yes.
Q Okay. Wow. That's -- that's impressive. And then from '79 to '83, you got your MD at Rutgers.
A Um-hmm.
Q And then from '83 to '89, what did you do?
A From '83 to '89?
Q Yes.
A I was in residency training.
Q Okay.

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A Here is -- here. Residency training.
Q Okay.
A That's education. Residency training isn't considered education and then I decided I wanted to do some additional work so I went to N.Y.U. and New England School of Epidemiology.
Q Okay. So you were up at Albert Einstein from '83 to '87.
A Yes.
Q Was Rick Abbott up there then?
A Um-hmm.
Q I spoke to him about two weeks ago.
A Oh.
Q And then you are at the -- since 2006 to present, at least, you were with the Department of Pediatrics at Levine; right?
A Right.
Q And then from '98 to 2006 you were Department of Pediatrics at Carolinas Medical --
A Carolinas. Levine didn't exist then.
Q I know. There was a big push.
A Yeah, so '98.
Q And then the Family Dollar money came in handy. I mean --
A Yes.

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Q And then you were up at Bellevue from '88 to '96?
A Yes.
Q And then from 2007 to present you were the codirector for the Center for Pediatric Excellence at Levine?
A Yes.
Q What is the Center for Pediatric Excellence?
A It's a quality improvement and a process improvement division.
Q Okay. Do you-all have like policies and procedures and stuff?
A No. It's really about making improvements in kind of all aspects in the care that we deliver. It's not really a policies and procedures kind of thing, it's more working on different things to make the system better.
Q Okay. Do you-all have like written material that you-all put out or --
A Not like a policies and procedures kind of thing. It's more scholastic, and, you know, more articles and, you know, we did, X, Y and Z to improve the process, you know, that is what we did. So it's more of demonstration of things that can

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make things work easier. It's kind of more.
Q Did you-all -- have you ever done anything in regard to child abuse?
A I personally have not.
Q Do you know if the Center for Excellence ever addressed that issue?
A Probably not.
Q Okay.
A That would be an individual faculty member to come up with that project.
Q Okay. And from 2000 to present, you've been on the faculty of the Department of Pediatrics at Carolinas Medical Center?
A Yes.
Q And people round with you? I mean you have residents R1, R2 and R3 that --
A Yes.
Q -- that -- that -- work under you?
A Yeah, medical students occasionally as well --
Q Okay.
A -- depending on the season.
Q Okay. And you're licensed in North Carolina and New York State; right?
A Yes. Well, actually I'm no longer

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licensed in New York State, I need to remove that, I just let it lapse.
Q You just let it lapse?
A I just let it lapse, just recently.
Q You've not had -- you haven't lost your license due to anything other than just letting it lapse?
A Yeah.
Q Are you board certified?
A Yes, and recertified.
Q And did you pass them on the first try?
A Yes.
Q Okay. Are you a been member of AAP?
A I'm a member of AAP and APA.
Q Okay. And the APA is the American Pediatric Association?
A There's the American Pediatric Association and then there is the Academic Pediatric Association.
Q Okay. Which one are you a member of?
A Both.
Q Both. Why was CHIPS formed?
A CHIPS was formed because as the environment in Charlotte changed that primary care doctors were not able to come to the hospital, we

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needed somebody to -- it wasn't -- it wasn't either economically feasible or medically appropriate as care got more complex to not have physicians in the hospital to make decisions.
So people refer us patients, we take care of them as inpatients and then we refer them back to their primary care providers. So very few doctor -- pediatricians in this community now come to the hospital, so we're kind of like the hospital service.
Q Okay. Now in regard to this particular child, I've seen different stuff about the discharge. I've seen different names on there, but -- but, as far as the discharge, is it fair to say that the child would have been under the care of the CHIPS team until December 8, 2009?
A Is the -- December 9th, that was the discharge date.
Q December 8th, I'm sorry.
A December 8th.
Q 2009. And that you were the attending physican for the CHIPS team on December 7th and December 8th?
A Yes.
Q And there may have been residents on that

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team, but you were the licensed practicioner --
A Yes.
Q -- medical doctor?
A Yes.
Q And that as far as the discharge goes, that you would have been the person that would have been responsible for the medical discharge of the patient?
A Yes.
Q And that you would have also depended on the team of the medical social worker and DSS in doing their appropriate part in the discharge of this child?
A Yes. Getting the safety plan.
Q Okay. Have you ever had your deposition taken before?
A Not like -- not a deposition like this, this is my first time like this.
Q Okay. And as regard to getting ready for this, did you review some of the medical records before?
A I did review a book of medical records that was given to me by the attorney.
Q Okay. And did you review any of the depositions?

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A No, no depositions.
Q Okay. Other than Mr. Todd or the people that you spoke to at the time that this occurred, like December 8th, December 7th, have you spoken to anybody since that time about this case or this child?
A Only the risk management person who called me and asked me, did I remember the case and what I met with her and Mr. Todd.
MR. TODD: Done. Stop there.
MR. HOOD: That's enough. That's enough. Oh, I'd love for you to tell me, but I'm not entitled to that.
THE WITNESS: Okay.
BY MR. HOOD:
Q What books do you -- or does Levine get or do you get or periodicals that you get in the field of pediatrics?
MR. TODD: Objection.
BY MR. HOOD:
Q What -- what periodicals does -- do you receive in regard to the field of pediatrics?
You can answer.
A Oh, okay. The -- there are a couple of things that I subscribe to. The pediatrics is one of

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them.
Q And you've actually written an article for them or a few articles for them?
A Yes.
Q Okay. Is there any other periodical?
A There are a couple of quality improvement journals. I'm an asthmatologist so a lot of pediatric lung, other pediatric -- general pediatric journals.
Q Anything in regards specifically to child abuse or child --
A Nothing that would be specific.
Q Okay.
A Only that, and covered under general pediatrics.
Q Okay. Your name address and telephone, it's on your C.V.
A Yes.
Q What is your date and place of birth?
A New York City, [redacted]
Q A Christmas baby.
A Yes.
Q I was born 12/27. I like to think we are special.
A We are.

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Q When you get pecan pie down here for your birthday, I mean for Christmas -- for your birthday, it gets old after awhile.
Are you currently married?
A I am.
Q And the reason I'm asking these is because we have to find out stuff about jury stuff down in York County and that's the only reason I'm asking.
What's your husband's name?
A William Alleyn.
Q Doggone. Bill Alleyn is your --
A My husband, yes.
Q You know, we were in -- I got to tell you this -- 30 seconds.
MR. HOOD: You realize he was --
THE WITNESS: I know, I know.
MR. HOOD: He was our expert --
THE WITNESS: As soon as I --
MR. HOOD: --in the case --
THE WITNESS: -- as soon as I saw you, I said --
MR. HOOD: -- that we argued -- when we argued that case in front of Judge Anderson yesterday, he is our expert in that case, and we've got like 10,000 clients.

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THE WITNESS: Yeah. I -- as soon as I saw your name, he didn't tell me who it was going to be and as soon as I saw your name, I said, oh, okay.
MR. HOOD: So you know Ann Mickle then?
THE WITNESS: Very well.
MR. HOOD: I was -- I met -- I was staying at her house and I met --
MR. TODD: This is all on the record.
MR. HOOD: -- Ty Corbin -- Ty Corbin who is the coach of the Utah Jazz.
MR. TODD: Do you want to go off the record?
THE WITNESS: We were at the same party.
MR. HOOD: Were you there?
THE WITNESS: Yes, yes.
MR. HOOD: Wow.
THE WITNESS: We were at the same party.
MR. HOOD: Because I met Coach Vogler and -- okay. Okay. Got you. I'm sorry. I digress, I digress.
THE WITNESS: I was kind of hoping you wouldn't ask me, but he told me you would, so...
MR. HOOD: Well, at least I know now, you do have a connection to Rock Hill.

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THE WITNESS: I do have a big connection to Rock Hill.
MR. HOOD: Okay. So Dr. Alleyn is your husband.
THE WITNESS: Yes.
MR. HOOD: Okay.
THE WITNESS: Yeah, let's move on.
MR. HOOD: Do you-all go to church or anything down in Rock Hill?
THE WITNESS: Not in Rock Hill, we go to church in Charlotte.
MR. HOOD: Okay.
BY MR. HOOD:
Q **Have you ever been sued before?**
A No, I have not.
MR. HOOD: And I'm assuming you have -- you're going to plan for her to testify live at trial, in case it comes to trial?
MR. TODD: Good Lord willing, she and I will both be there.
MR. HOOD: Yeah. And -- and if you do testify at trial, do you anticipate that your testimony will be the same or similar to the way it is today?
THE WITNESS: Yes.

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MR. HOOD: Is there anything that you want to change about your testimony at this time?
THE WITNESS: No.
MR. TODD: Okay. Give me about 30 seconds.
(Pause.)
BY MR. HOOD:
Q **Now, I have just have one last question. With respect to child abuse, would you agree that you and the staff and collegues at Levine would be in the best position to assess and determine a case of child abuse?**
MR. TODD: Objection.
THE WITNESS: I would say in consultation with the child maltreatment team and the help of my pediatric colleague, yes.
BY MR. HOOD:
Q **Okay. And the child maltreatment team is the maltreatment team at Levine Children's Hospital?**
THE WITNESS: Yes.
MR. HOOD: That's all I have.
MR. FRAWLEY: DSS has no questions.
MR. TODD: No questions.
(Deposition concluded at 5:50 p.m.)
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A With the --
Q And, we discussed earlier that that safety plan would have been the safety plan that was in place until you did yours on the 17th of December; is that fair?
A Yes.
Q And can you tell me what the safety plan says? Or what it -- according to your notes?
A What my safety plan says?
Q No. What that safety plan -- the safety plan that was put in place at the hospital that was in place until your safety plan on the 17th?
A "Parents not to remove the child from hospital against medical advice and until DSS determines" --
Q Okay.
A I don't know if it's "any more information." That's just --
Q Okay. I can pull that safety plan.
A Okay.
Q I can tell you it's not in these documents.
A Okay.
Q But, if you'll remind me on the next break, I'll pull it. We'll read the whole thing, okay?
A Okay.
Q But it is -- but is it fair to say that that's the

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safety plan that was in place for -- until your safety plan on the 17th of December?
A This is the safety plan that was in place, and, at that time, the agency got in contact with Levine's and informed them that it was okay to allow the parents to -- the parents and the baby to be discharged or to allow Owen to be discharged.
Q Okay. So whose decision was that: to -- to allow?
A The agency's.
Q The agency's, i.e., DSS?
A The agency decision.
Q Okay. So DSS's decision?
A Yes. DSS.
Q And what input does the hospital have into that decision? I mean, just in your experience.
A The hospital provided us the information regarding the parents' cooperation and what was going on with the baby at that time.
Q Okay.
A And any concerns that they might have had --
Q Okay.
A -- for us to address. And, at the time, could not determine if it was non-accidental or accidental.
Q You've been working for DSS since 2009, you said?
A 2007.

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Q I knew it was either '7 or '9. Have you had any other cases with children that had subdural hematomas?
A Not to my knowledge.
Q Okay. When you have cases where children are in the hospital, do you staff those cases with hospital staff?
A We do have a -- yes. We have -- it's a multidisciplinary agency meeting in which we do staff the cases now with the hospital staff, law enforcement detectives, anybody that's providing services to the family.
Q And when you said you do that "now," did you do that in 2009-2010?
A I cannot recall.
Q If you had, would it be in your dictation?
A It would be in the dictation if we did.
Q Okay. And would it be listed as a case staffing or what other actions might it be listed under?
A I do not know what action that would fall up under.
Q Well, if you do that now, what do you typically document that as?
A I cannot recall what that would be listed up under.
Q Okay.
A If that would be "collateral contact."

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Q Okay. Do you know whether or not -- or do you recall whether or not, related to this case, you were given any written warnings, reprimands, anything like that?
A I cannot recall.
Q Do you recall whether or not you had any discussions with your supervisor, either Krista Hinnant or Yvonne -- whose name escapes me. Her last name?
A Stewart.
Q Stewart. Yvonne Stewart. -- regarding timely referrals to law enforcement?
A I want to say yes.
Q Do you have any recollection of that conversation?
A I do not.
Q Okay. Do you know whether or not there was any documentation related to that?
A Documentation in regards to?
Q The -- whatever conversation you had about timely referrals or not-timely referrals to law enforcement?
A I cannot recall that information.
Q Okay. And do you know -- do you know how many other new cases you got that week, the week that the Owen Carduff case came in?

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Q Okay. So let me just make sure I understand you, that sometimes the hospitals would call dispatch of law enforcement?
A Yes.
Q And sometimes the hospital would call straight to DSS?
A Well, it was -- it was a number that they have to call. And, once they call that number, sometimes it connects them to dispatch, and the dispatch contact the on-call worker, and the on-call worker contacts the supervisor to let the supervisor know of the report. And then the on-call worker calls the hospital back or maybe the school back or maybe law enforcement back to get the information to see exactly what's going on.
Q Okay.
A And then that on-call worker calls the supervisor back to give them all the information and what the recommendation is and to see if they need to go out and to assess the situation.
Q Oh, okay. And, when you have a -- a case that the hospital is involved in, as a caseworker, how do you typically communicate with the hospital?
First -- strike that. Let's back up one. As a caseworker, I -- who do you usually communicate

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with at the hospital?
A Make contact with the reporter.
Q Okay.
A Or any -- or anybody that's involved or know of any information regarding the child. And make contact with the family.
Q Okay. Do you talk to nurses?
A If they're any nurses that's there and have the information.
Q Okay. Do you talk with doctors?
A If they're available.
Q Do you talk with social workers or discharge planners at the hospital?
A We talk to anybody that you can get information from regarding the allegation.
Q Related to the Owen Carduff case, do you recall talking to any nurses or doctors?
A The second incident, I do recall speaking with someone at the time of that visit to the hospital.
Q Do you recall speaking to any nurses or doctors related to the first incident?
A No.
Q Do you recall speaking with a caseworker -- I don't know what they call them there -- discharge planners or social workers at the hospital related

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to the first incident?
A Regarding that, I was doing the ground work for the case and my supervisor was helping me make contact with the hospital staff to make sure that we were on the same page.
Q And when you say you were "doing the ground work," what does that mean?
A Attempting to go out to the home to assess the follow-up with the family. Along with working the other cases as well. So -- so she was working -- working the case basically to see exactly what was going on with the case and what was going on with Owen at the time.
Q Krista was doing that?
A Yes.
Q Okay. Do you recall whether or not you ever made the recommendation or a referral for parenting classes prior to the second incident?
A I cannot recall that information.
Q Do you take photographs of the children that you have cases of -- on -- with?
A Yes.
Q Do you recall whether or not you took any photographs of Owen?
A I -- I cannot -- I cannot recall that information.

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Q Would they be in the file if you had?
A They would not be in the file.
Q Where would they be?
A They would be on that camera if pictures were taken.
Q What do you take -- why would you take pictures of the children?
A Take pictures of the children that we did see the children; if they had any marks or bruises on them; to assess the home; living arrangements; see if they had any food in the home; what the living arrangement looked like.
Q And then you said those -- if there were photos, they would be on "that" camera. What camera?
A The camera that I was using at the time.
Q Do you have any idea where that is?
A No.
Q And you don't print the pictures and put them in the file?
A We usually put them on the G drive.
Q What's the G drive?
A G drive is the system that we use to put our case pictures on -- case file pictures on.
Q And is it separate from where the CAPPS information is?

State of South Carolina)
)
County of York)

Elizabeth Hope Rainey, as the appointed Guardian ad Litem to [redacted], a minor,)
Plaintiff,)
vs.)
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, South Carolina Department of Social Services, Bruce Bryant, as the Constitutional Office of York County,)
Defendants.)

11-CP-46-04508

Video Deposition
of
Krista M. Hinnant

Video deposition of Krista M. Hinnant, taken before Kathleen R. Tackett, CVR, a notary public in and for the State of South Carolina, commencing at the hour of 9:56 a.m., Thursday, January 10, 2013, at the office of McGowan, Hood & Felder, LLC, 1539 Health Care Drive, Rock Hill, South Carolina.

Reported by
Kathleen R. Tackett, CVR

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EXHIBITS

Plaintiff's Exhibit Number 21, Handwritten notes. 59

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Krista M. Hinnant, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. HARRILL:

Q Good morning, Ms. Hinnant.

A Good morning.

Q My name's Lara Harrill. We met right before this deposition. Have you ever given a deposition before?

A No, ma'am.

Q I'm going to go over the rules with you.

A Okay.
Q Although I know someone has probably done it. First thing is, since we have a court reporter here, she's trying to take down everything we say.
A Right.
Q I have a tendency to talk over people. If you'll let me finish my question, I'll try and let you finish your answer.
A Okay.
Q If I interrupt you, please stop me.
A Uh-huh.
Q I want to make it clear for her. Even with the videographer, it's harder for her to get everything on the record.
A Okay.
Q If you will say yes and no instead of nodding your head --
A Yeah.
Q -- or saying uh-huh or unh-unh, that'll make it much easier for her as well. If you have any questions during this deposition, I'd asked that you direct those questions to me rather than to your attorney.
A Okay.
Q If you do not understand my question, please ask me

to repeat or rephrase it. I'll be glad to do that.
A Okay.
Q If you answer a question, I'm going to assume that you understood it; is that fair?
A Yes.
Q Okay. If you need a break at any time, please let me know.
A Okay.
Q This is not an endurance contest. I don't know exactly how long we'll be here, but we will play it by ear.
A Okay.
Q Could you state your name for the record, please?
A Krista M. Hinnant.
Q And what's your current address?
A 776 Old Mill Road, Richburg, South Carolina 29729.
Q And how long have you lived there?
A Four years.
Q And who lives there with you?
A Me and my husband.
Q What's your husband's name?
A Christopher Hinnant.
Q Okay. When and where were you born?
A Chester, South Carolina. January 13th, 1984.
Q And what does your husband do?

A He is in industrial sales.
Q Okay. Who does he work for?
A Bryant Supply.
Q And tell me a little bit about your education, starting with high school.
A I went to Lewisville High School in Richburg, South Carolina, and then I went to college at University of South Carolina. I graduated with a bachelor's degree in criminology and criminal justice in 2006.
Q Okay. And what was -- what did you do after college workwise?
A I worked for Columbia Police Department for about a year, and then I moved back home, and then I started working at Department of Social Services in 2007.
Q And what was your position when you started with DSS?
A Initially, when I started with DSS, I was hired to do assessment, and then I did intake for a little while. And then in October of 2008, I was a supervisor, all the way up until March of 2010. I'm sorry, that was May of 2010.
Q And what did you start -- what -- what did you change to in May of 2010?
A I started working at Williams & Fudge Incorporated,

here in Rock Hill, South Carolina.
Q And what do you do there?
A I do student loan collections.
Q Okay. When you were a supervisor at DSS, was it always over the same unit?
A The same individuals, you mean, or?
Q Well, you said you did assessment for a little while.
A Yes, assessment.
Q Are they --
A I was -- it was always assessment and investigations.
Q Okay.
A Yes, ma'am.
Q So tell me a little bit about what you do in assessment and investigations.
A You have 45 days. You have an allegation that comes in. You have 45 days to address the allegation. And you can either indicate the case, and it may go to treatment, or it can be unfounded, meaning there's no abuse or neglect, and then the case is closed.
Q So does -- would you call that -- what would you call, like, your office in terms of if you're supervising other people. Will you -- do you call

that a unit? Do you call it: "assessment and investigations"? What do you call it?

A Yes. Assessment and investigations. Yes.

Q Okay. So in -- in assessment and investigations, you all, -- is it fair to say, you don't deal with children in foster care?

A No. That's correct.

Q Okay.

A We do bring them into foster care, but we don't typically deal with it once it comes into foster care. There's a foster care worker that starts working on it.

Q So if you brought a kid into foster care, that case would be transferred to foster care --

A Yes.

Q -- treatment?

A Once a case decision is made, correct.

Q Okay. So, typically, how many caseworkers would you supervise?

A Four. And sometimes I would have interns from Winthrop, as well.

Q And about how many cases on average would you have at any given time? Do you have any sense of that?

A Fifteen to twenty would be between each worker.

Q Okay. And what would your job responsibilities

have been?
A Staffing the case with a worker and, kind of, giving them guidance as to what they should do in terms of putting in safety plans and investigating the case.
Q Did you carry any cases of your own?
A Yes. Initially, when I was an assessment worker, I did.
Q As a supervisor, did you carry any cases?
A No.
Q Okay. And are you a licensed social worker?
A No.
Q When you went to work for DSS, did they give you any specific social work training?
A Yes.
Q And about how long did that take?
A Initially, we went to Columbia. I believe, it was for a two-week training, and then we had a lot of of courses and other training that we had to -- had to attend, as well.
Q Did you have, like, continuing training?
A Yes. Uh-huh.
Q Okay. Have you discussed this case with anyone other than your lawyer?
A No, ma'am.

Q Did you review anything in preparation for your deposition today?
A Yes.
Q Can you tell me what that was?
A I reviewed the, primarily, the case dictation, the intake, and the staffing sheets for the case.
Q And did you bring any of those documents with you?
A Yes, ma'am. I did.
Q Do you mind if I look at them real quick?
A Sure.

MS. HARRILL: Deborah, do you mind looking over just to see if you see anything that we don't already have? That way we can keep going.

MS. CASEY: Sure.

MS. HARRILL: Okay.

MR. FRAWLEY: Excuse me, Lara. Could I look at that first to make sure that there's no e-mails or anything from me?

MS. HARRILL: Certainly.

MR. FRAWLEY: Don't know that there are. But we'll -- I'll look through this quickly and give it back to Deborah. You can go ahead while I'm --

MS. HARRILL: Go ahead. Okay.

THE DEPONENT: There's not.
MR. FRAWLEY: Okay. Well, that's good enough for me.
THE DEPONENT: There's nothing in there besides the case dictation and the staffing sheets.
Q Okay. So you had -- at any time you had four caseworkers with 15 to 20 cases per worker?
A That's correct. Yes, ma'am.
Q And you said your -- your job, sort of, was to staff the cases with the caseworkers and to guide them?
A As to what they should do in each individual case.
Q And how do you follow up to see what they are doing?
A We had staffings four and five times throughout the duration of the case.
Q And how long would your duration -- would the duration of a case typically be in York?
A Forty-five days.
Q Forty-five days?
A Yes, ma'am.
Q So is it fair to say you have 45 days to make the case decision?
A You can have longer if you need it, but typically

it's 45 days.
Q Okay. Do you recall Owen Carduff or his family?
A Yes, ma'am. I do.
Q What do you recall about him, specifically?
A That it was a case that we had in 2009, that came in with a child who had subdural hematomas.
Q Did you ever meet Owen?
A No. I did not.
Q Did you meet anybody in his family?
A No. I did not.
Q Do you know if you had any contact with them?
A Yes. I did. Telephone.
Q Do you remember who you talked to?
A I spoke with Charlotte Williams on the telephone, and I think that's the only party that I spoke with directly myself.
Q So you don't think you ever spoke to Kayla?
A No, ma'am. I don't recall.
Q Okay. If you had, would that be documented somewhere?
A Yes. It would.
Q In the dictation?
A Yes.
Q Okay. Who -- when you were a supervisor, who was your supervisor?

A Phyllis Moore Ward.
Q And what is her title?
A Program coordinator.
Q Program coordinator of?
A York County Department of Social Services.
Q So for the county?
A For treatment. Yeah, for -- for treatment and for assessment.
Q Is there a difference in your offices between treatment, assessment, and intake?
A No. Treatment, assessment, and intake were all caballed into one.
Q Okay.
A Foster care was the only thing that was separate.
Q So when a case comes in, is it fair to say -- not if it comes in in the middle of the night -- but if a case comes in, does it come in to your workers?
A In comes into intake and then a decision is made whether or not to accept it for an investigation or to not accept it. And, if it's accepted, then it's assigned to a worker.
Q Okay. So it's fair to say that your workers aren't manning the phones?
A Correct.
Q And that those -- the people that are manning the

phones are considered intake?
A Intake workers, yes, ma'am.
Q So they make a decision about whether or not the allegations are credible?
A They don't make the decision. The supervisor makes the decision after they review the report.
Q Awesome. Okay. And then, once they've made that decision, it comes to your unit; is that fair?
A It's dispersed throughout the workers. So, yes, it would either have come to me or one of the other two supervisors.
Q Okay. So are there three intake -- or assessment supervisors?
A Supervisors. That's correct, yes.
Q How --
A When I was there.
Q Sorry. How are the cases then -- how are the cases divided out?
A They are dispersed. There's a list of workers. It's primarily by supervisor. So that a supervisor wouldn't be getting two cases back to back, it would rotate through the supervisors; so that's, typically, how we try to do it.
Q Let me just make sure I understand. There's three supervisors.

A Yes.
Q In this treatment and assessment.
A Assessment only. Treatment's separate.
Q Okay. That's where I was getting confused. So three assessment supervisors.
A Correct. And then there's treatment supervisors.
Q And then is it fair to say that each one of the assessment supervisors has about four caseworkers?
A Yes. That's correct.
Q Okay.
A Uh-huh.
Q All right. And, when the cases come in, it just goes by list as to who?
A There's a list of individuals, yes.
Q Okay. As to who gets what?
A Yes. So no one would get one back to back.
Q No one supervisor or no one case manager?
A No one case manager and no one supervisor is how we tried to do it.
Q Either one.
A Yes.
Q So, when the [redacted] case came in, it was just y'alls turn to take it?
A That's correct.
Q Okay. Got it. Now, we -- I got a little off

track. Phyllis Moore Ward?
A Uh-huh.
Q She's the supervisor for York County DSS treatment and assessment?
A She's the program coordinator for intake, assessment and treatment for York County DSS.
Q Okay.
A There's a separate program coordinator for foster care and APS.
Q So foster care is entirely separate?
A Yes. Correct.
Q So we don't need to talk about foster care.
All right. Who is Phyllis Moore Ward's supervisor?
A Yvonne Stewart, the county director.
Q Okay. Phyllis Moore Ward still work there?
A Yes. To my knowledge, yes.
Q Who are the other two supervisors for treatment and assessment below -- you know, equal to you?
A Assessment. It would assessment only. It's Lola Sutherland and --
Q I'm sorry.
A It's okay. -- Lola Sutherland and Diane Stevenson.
Q Okay. And I understand that you-all have caseworkers that are on call. How do you decide

who's on call?

A Everyone is on call, whether you be a foster care worker, an assessment worker, or a treatment worker. It's placed on a calendar, and I think they did alphabetically, but -- so that most workers would only be on call maybe one time in a month.

Q Okay. So out of all three of the groups --

A Yes.

Q -- any one person would be on call?

A Foster care, treatment, or assessment, and the supervisor on call could be in -- anyone from assessment, treatment, or foster care as well.

Q So much like how you-all got your cases, when this -- when [redacted]'s case came in, that was just Chandra Taylor's . . .

A It was just her turn. She was a foster care worker. Uh-huh.

Q Okay. How do you-all -- and, of course, this is all for that time frame: December 2009/January 2010.

A Right.

Q How would you communicate between workers? Would you talk to each other? Would you e-mail each other?

A Talk and staff.
Q And staff.
A Yeah.
Q So the staffing sheets too?
A Yes. Sometimes over the phone if they were out in the field, but, primarily, it would be face-to-face contact with them.
Q Okay. We talked a little bit -- a little bit about your responsibilities related to your caseworkers. What are the responsibilities of your caseworkers?
A Their responsibility is to go out and make contact on their individual cases and to staff it with a supervisor.
Q And you said how often do you staff these cases?
A Typically, we would staff it four and five times throughout the duration of the case.
Q Are you always staffing with the same people?
A Yes. Unless we're making case decision and then we staff in a group. So I, as supervisor, would not make a case decision on my own.
Q Okay. So, if you're doing case staffings, those could be between just you and the caseworker, correct?
A That's correct.
Q And then there are times when you would have a

staffing with the county attorney, as well?
A Yes.
Q And who else would be involved in a staffing for a case decision?
A Typically, it would be me, Lola, and Diane. All three of us would be there. If it were something -- well, sometimes Phyllis Ward would sit in, but that would not be every single case. The high-risk cases she would sit in for case decision.
Q Okay. And did you have your DSS attorneys for the case decision? Would they be on staffings?
A Not all of them, but yes, some.
Q Okay. Do you or does -- did anyone one in your office ever have to conduct audits of charts or -- I guess files is the better phrase?
A Well, I would in terms of reviewing a file before it was transferred to the next department.
Q Okay.
A And then Phyllis would sometimes do audits as well.
Q And how often would Phyllis audit files?
A It just -- it would just depend.
Q Did you know --
A She stayed pretty involved. I mean, it wasn't always -- typically, it was in those high-risk cases that she would review the case files.

Q And, if she reviewed case files, did she give you any report on what needed to be fixed and files or --
A Absolutely. Yes, ma'am.
Q Was it a written report?
A Typically, there was a staffing, and it would've been a staffing sheet. Sometimes there would have just been conversations that she and I had.
Q Okay. Do you recall -- during this time frame or really during your employment there, do you recall the state office ever coming in and doing any audits?
A Yeah. We had an audit before. They had a group of individuals that would come in and audit case files.
Q About how often?
A The time that I was there, was only one time, that I can recall.
Q Okay. Do you have any idea when that was?
A No, ma'am. I do not.
Q And did you get any written feedback regarding their audit?
A Not specifically that I remember.
Q Okay. Is it fair to say that the case files -- your client case files -- that, like, the dictation

and stuff, is that all on the computer?
A Yes. It is in the computer.
Q And are there ever any case notes that are not in the computer?
A Well, I guess when the caseworker's out there, and they're taking notes on a notepad, when they're interviewing individuals. Then they're placed into dictation.
Q And I'm assuming they don't keep those handwritten notes?
A No. Unh-unh.
Q And how often do you -- or if there -- is there a rule as to how often the dictation needs to be updated?
A No. Not typically. The initial contact would have to be in as soon as possible.
Q And how do you define "as soon as possible"?
A Typically, by the five-day staffing.
Q And is there any information that goes into the computer file that doesn't end up in the paper file?
A Typically, no. I mean, besides health records and stuff. Those would be in the file and not necessarily summarized and documented into CAPPS dictation.

Q Okay. So like medical records?
A Yeah. Medical records, law enforcement reports. If there were anything that was of concern, it would be in there, but not completely documented, no.
Q But that would be in the paper file? So if I --
A You would have -- yeah. It would be available --
Q Right.
A -- to you.
Q You would have access to it if you needed it?
A Correct.
Q Okay. Is it fair to say that DSS, and specifically Child Protective Services, is mandated to protect children from abuse and neglect?
A Correct.
Q And, if you have an open case, who is the primary client?
A The child.
Q Okay. And is it fair to say that the position of DSS is that all children have the right to live in an environment free of -- free from abuse and neglect?
A Yes.
Q And is it fair, also, to say that the safety of children is the primary concern that guides child

protection efforts?
A Yes.
Q Do you routinely involve law enforcement in your cases?
A It -- typically, we do not. It just depends on if it's an allegation of physical abuse or sexual abuse, typically.
Q So, if it's a neglect case, you wouldn't call -- call law enforcement?
A It would depend on the situation. Everything's dealt with on a case-by-case basis.
Q Okay. What sort of -- well, strike that.
So if you have a -- an allegation of physical abuse, would you typically involve law enforcement?
A Yes.
Q Would you always involve law enforcement?
A No.
Q When would you not?
A If it were -- let's say it were an instance of a child being spanked on the bottom. Usually, when it's just -- they're using punishment -- using corporal punishment. That's not always involved. Unless they use -- leave marks and bruises. Then it would be of concern.
Q Do you know, related to [redacted], if there was

a recommendation to contact law enforcement?
A Yes.
Q And do you know if that was done?
A It was done. Yes.
Q Do you know when it was done?
A I believe it was December the 16th.
Q And is it DSS's responsibility -- in a case like [redacted]'s, is it a -- is it DSS's responsibility to contact law enforcement, or does the hospital have that responsibility as well?
A I'm not sure if it's their responsibility, but it's absolutely our responsibility.
Q When you have a case where the hospital is involved, how do you-all communicate with the hospital? Who do you typically talk to?
A The social worker.
Q And do you e-mail with that person? Do you call that person on the phone? How does that work?
A Talk to them on the phone.
Q Do you ever interview doctors?
A Typically, no. Usually, that's nurses that we would interview. If the doctors are available, we would most certainly interview them.
Q Do you get their -- do you get medical records of your clients?

A Yes.
Q Typically, how long does that take?
A To receive medical records, once we have a release of information, it would depend on the facility. Some would copy them and give them to us right then. Some would make us do a formal request, and then send them to us.
Q And it takes a lot longer.
A Yeah.
Q Okay. Do you recall whether you or any of your caseworkers talked to doctors or nurses in this particular case?
A Yes. Dirvondra did speak with nurses, as well as Chandra -- Chandra Tyler spoke with a nurse and also the social worker. I believe Dirvondra had some contact with a doctor as well.
Q I may have already asked you this: Does the hospital typically -- and it may be either hospital. I -- it -- we could be talking about PNC, we could be talking about Levine's --
A Okay.
Q -- but, in your experience, if they have -- if they believe there's abuse, do they call you first, or do they call -- you being DSS?
A Yes.

Q Or do they call law enforcement first?
A Typically, they would contact DSS first.
Q Okay. And what role did they have in DSS's investigation?
A Can you repeat that, please?
Q What role does the hospital have in your investigation?
A Well, we would certainly interview them and take into consideration any concerns that they have.
Q Do you look to them to help you make your case decisions?
A Yes. Absolutely.
Q And what happens when you have a case where the hospital is not sure whether there's abuse or neglect? Who makes the decision then?
A Then we would staff it as an agency and make it as a -- a group.
Q And, when you say "staff as an agency," who would be involved in a staffing like that?
A It would be, typically, our attorney, myself, Ms. Ward, and the caseworker. And maybe law enforcement, if they're involved, as well.
Q And would you have any of the medical personnel there?
A We -- typically, we didn't have them involved in

our case decisions, but we would have their notes that we would use.

Q Okay. And do you rely on the medical experts -- or the medical expertise of doctors and nurses to help you make the decision whether or not a child has been abused?

A Yes.

Q Related to the first injury in this case, which was in -- which was, like, December 9th, 2009, was there ever a case decision made related to that injury?

A This --

MR. FRAWLEY: Lara, I think it was December 5th when he was hospitalized, December 6th when we got the call in.

MS. HARRILL: I apologize. You're right.

THE DEPONENT: That's correct.

Q Was there ever a case decision made related to that injury?

A Well, there was an ongoing investigation at that time. We made our case decision based off of both incidents.

Q Because you had, still, the 45-day window --

A And it was --

Q -- is that fair?

A -- still an open investigation during the second incident. Correct.
Q Okay.
MS. HARRILL: I don't know if everybody knows how I do this. I know Monty does. The tab numbers are the exhibit numbers. And then I'll also give a Bates number. There's only one document in here that has not been Bates numbered, to my knowledge. But it has page numbers. Okay?
MR. FRAWLEY: Okay. Thank you.
Q I want to look a little bit at the dictation in this case, which is Tab No. -- Exhibit No. 4. How often do you print these to put in the file?
A Typically, they're not printed until they're transferred.
Q Okay. So when the case leaves your -- I'm -- I call it a "unit," but that's just for my experience --
A Yeah.
Q -- but when it leaves your office, it -- you would print the dictation to send the file down to --
A Down to treatment or foster care, wherever it would go, yes.
Q Understand. And, in this particular case, there

appears to be documentation from you as well. Do you usually document?

A Yes.

Q If you'll look, please, down at the bottom. We talked about the Bates numbers on here.

A Uh-huh.

Q Defense-produced 00244?

A Uh-huh.

Q You have done a -- what appears to me to be your dictation for a staffing?

A Uh-huh.

Q And I guess -- talk to me a little bit about what this is. You have a staffing, but are these the recommendations related to the staffing just underneath there?

A Yes. That is correct.

Q Okay. It says there -- one of the things it says, "Get all medical records. Follow up with law enforcement." How long do you have to complete those tasks like that?

A Well, it would depend on the case. You would get the medical records as soon as possible. If you're at the hospital and you can get them then, you would get them then. If you needed to do a formal request, you would do that. And law enforcement,

there are a lot of records that you can obtain online. And then we would request incident reports, and typically that would just take four or five days to get those.

Q Okay. So these would be -- have been the recommendations from your staffing on 1/4?

A Correct.

Q Okay.

MR. FRAWLEY: (To Ms. Harrill) Okay. Again, could you -- I'm sorry. Go ahead.

MS. HARRILL: You sure?

MR. FRAWLEY: Yeah. I -- I misread it. I'm sorry.

MS. HARRILL: Okay.

MR. SETTANA: (To Ms. Harrill) Where is the law enforcement reference?

MS. HARRILL: Okay. If you look -- there. He'll -- he can show you.

MR. FRAWLEY: Down there.

MR. SETTANA: All right. Oh, I see it. Thank you. Sorry.

Q And it says, "Follow up with law enforcement. What is their status?" What do you mean by that, "What is their status?"

A What is their current status of their investigation

in regards to Michael Carduff.
Q Okay. So on 1 -- on 1/4 they were investigating --
A Yes.
Q -- already?
A Uh-huh.
Q Okay. 12/5. I remember these go backwards.
A Yes. Yeah.
Q Let's start at the back. Apologize. I'm getting myself tangled up and turned around. Go to Defense-produced 002 --
A -- 54, but it actually --
Q -- 54.
A -- starts on 253.
Q I would like for you to go to 25 -- hang on. I would like for you to go to 250, please. There's a note there -- a dictation note done by you?
A Uh-huh.
Q And is it fair to say that it was -- you actually inputted on 12/7, but it also was for 12/7; is that fair?
A Yes.
Q Okay. And this appears to have been a conversation that you had with the social worker at Levine's.
A Correct.
Q And it says that you talked -- let's see, you were

going to staff the case with the legal department?
A Correct.
Q Do you know who all you staffed this case with?
A Me, Dirvondra, and our attorney at the time, Adrienne Woods.
Q Is Adrienne still with DSS?
A She's not with York County DSS.
Q Okay.
A I'm not sure if she's with the state office or not.
Q And it says, "We'll get back with her ASAP and with a discharge plan for the baby."
A Correct.
Q Do you recall what your decision was?
A To release the baby to the parents, based off of the information provided.
Q Provided by whom?
A The social worker.
Q At --
A At Levine's Children's Hospital.
Q Okay. Let me ask you this: Would they have discharged the baby if you-all did not recommend it? Do you know?
A I'm not sure.
Q Have you ever had that come up before?
A Not that I recall.

Q Okay.
A We're typically on the same page.
Q Go to the next page forward, 249. There's two notes on here. I'm looking at the bottom one. "Supervisor contacted Laura Newmark, social worker with Levine's."
A Uh-huh.
Q "Supervisor advised Laura that the case had been staffed with the legal department, and that Owen should be discharged to his parents, and that DSS will follow up with a home assessment." When should -- if you're following -- if your people are following up with a home assessment, when should that be completed?
A Typically, the same day.
Q Do you know what day he was discharged?
A I believe it was on 12/7.
Q If it were after hours, would there be somebody to complete that home assessment?
A Dirvondra would've completed it, yes.
Q Okay. Do you know whether or not she saw them on the 7th?
A She did not.
Q Do you know why?
A She went to the home and attempted to make contact,

but there was no one at the house.
Q Do you know whether or not the baby had been discharged already?
A Yes. The baby had been discharged.
Q Go to page 246 for me, please. Again, there's two entries on this page as well.
A Uh-huh.
Q You'll have to -- I was just going to tell you to do that.
A Yeah.
Q It appears that your documentation on this page is for 12/17 --
A Uh-huh.
Q -- 2009?
A Correct.
Q This is what we were talking about earlier, about the referral to law enforcement?
A Yes, ma'am.
Q Says that Lieutenant Miller stated that he needed additional information. Do you recall what additional information he needed?
A He wanted the notes from us, from my conversation with the social worker.
Q From which social -- your conversation with which social worker?

A Laura Newmark.
Q Okay.
A Levine's.
Q What -- when you do a referral, what do you typically send to law enforcement?
A The allegations, typically, and then any notes that we would have as well.
Q Where would the allegations be written down?
A On the intake report.
Q Okay. So --
A They would receive a faxed copy of the intake report.
Q So you'd send them the intake report, whatever dictation you had done?
A Correct.
Q What else?
A And have a conversation with them as well as to any concerns that we would have.
Q Okay. And -- so is it fair to say that Lieutenant Miller had not talked to Dirvondra at this time?
A That is correct, yes.
Q Did you have a conversation with Dirvondra about when that referral was made?
A Yes. I did.
Q And was she reprimanded?

A I don't know if it was formal, but, verbally, yes. I did speak with her regarding this.
Q Okay. Did she have any reason why it hadn't been done for ten days?
A She stated that she was working on other cases, and it's something that she overlooked.
Q Okay. Turn back one more page. 245 for me, please. This is -- I realize this is Dirvondra's note. And you see the action date is 2/21.
A You mean December 21st?
Q I'm sorry. 12/21.
A Correct.
Q I left off a "1."
A Okay.
Q Do you know, as you sit here today, if this is the first time that she met with the family?
A She had brief contact on the 17th, where she showed up at the home to try to do a home visit, and Kayla was there, but Kayla was getting ready to go to work. So then she scheduled this visit with her on the 21st.
Q Okay. And do you know if she scheduled that -- I mean, if they had a conversation about scheduling that or how she got that scheduled?
A She -- they had a conversation about it, as well as

she had sent a letter to the home because she had been unable to make contact.

Q Uh-huh.

A So she had sent the mom a letter and made some phone calls.

Q Any idea when the letter was sent?

A I do not recall what date she sent it on.

Q Okay. Turn to 9 for me, please. Tab 9.

MS. HARRILL: Oh, goodness. Can we take a break please?

MR. FRAWLEY: Uh-huh.

(Off the record from 10:33 a.m. until 10:35 a.m.)

THE EXAMINATION BY MS. HARRILL CONTINUES

Q Okay. Let's go to Tab No. 6, please.

A Okay.

Q Talk to me about what these are -- these case reviews.

A I'm not necessarily familiar with this particular case review in a case.

Q Do you -- do you-all do case reviews? Have you seen documents like this?

A No, ma'am.

Q So you don't know who does this?

A No. I'm not sure. Unh-unh.

Q Do you have any idea what they're for?
A I -- no. I really don't -- I don't have --
Q Never seen one before?
A No. Not like this, no.
Q Okay. Is there another document that's a case review that's similar to this?
A The staffing sheet would be --
Q Okay.
A -- what we'd refer to.
Q And I'm curious because, to me -- and you may not be able to tell, but, if you look through this, it appears to be sort of a summary of the dictation of the case; is that fair?
A Yeah. That's what it appears to be. Yes. That's correct.

MR. FRAWLEY: Lara --
MS. HARRILL: Lara.
MR. FRAWLEY: Lara, the -- the lower right-hand corner Bates number for the DSSPMW --
MS. HARRILL: Yes.
MR. FRAWLEY: -- that indicates it's from Phyllis Moore Ward's material.
MS. HARRILL: Oh.
MR. FRAWLEY: And if you look at -- I think it's Number 8. It's another case review.

MS. HARRILL: Yes. There's three of them.
MR. FRAWLEY: Right. That's DSSYS. The "YS" would be from Yvonne Stewart's material. In other words, we asked them for the official DSS file, and we also asked if Yvonne Stewart and Phyllis Moore Ward had material, and we produced those as well, but we marked them differently.
MS. HARRILL: Okay.
MR. FRAWLEY: So if it has a "YS," it's from Yvonne Stewart's material. If it has a "PMW," it's from Phyllis Moore Ward's material.
MS. HARRILL: Okay.

Q All right. Let's then -- that will be questions for someone else. Look at 9 for me, please. And then look at page 1356.
A Okay.
Q I'm sorry. 1340 -- 1354. Go back. And then we'll go back to 1356. We talked a little bit about staffing this case with Adrienne Woods. How many times -- it appears to me this case was staffed several times on the 7th; is that --
A Twice, yes.
Q Twice.
A Uh-huh.

Q Once with -- is it fair, once with a worker, and once with the legal staff?
A Once with Lola, Chandra, myself, and Dirvondra, and then myself, Adrienne, and Dirvondra --
Q Okay.
A -- separately.
Q All right. So, at this time, would these recommendations on this staffing be recommendations for Dirvondra?
A Yes. All of the recommendations would've been for Dirvondra.
Q Okay. We talked a little bit -- a little go -- a little bit ago about discharging the baby home.
A Uh-huh.
Q That that was a staffing that you had had with your attorney?
A Right.
Q Would this staffing sheet on 12/7 with Adrienne Woods recommend that -- or represent that staffing --
A Yes.
Q -- to your knowledge?
A Yes.
Q Okay. And there's also a referral-to-law-enforcement recommendation?

A Correct.
Q And, if you turn to the next staffing sheet, which is dated the same day. I'm sorry, 1355. Go the other way.
A So this way? Okay.
Q This appears to have been a staffing with you, Dirvondra, and Lola?
A And Chandra. Uh-huh.
Q Okay. So that's what that is.
A This would've been the first staffing, and the legal staffing would've been second.
Q And it's Chandra Tyler, right?
A Yes. That's correct.
Q And, again, would these recommendations have been recommendations for Dirvondra?
A Yes.
Q Okay. And, again, it says -- and I -- you may not can read it. It's better on my copies. "Refer to law enforcement"?
A Yes, ma'am.
Q "Go to home and assess home"?
A Correct.
Q And is it fair to say -- you said that she went that day to see the home?
A She did. She went on the 7th.

Q If you'll turn to the next tab for me, please. Tab 10. It's Defense Produced 00401. This is -- appears to be a letter from Dirvondra to Michael Carduff and Kayla --
A Uh-huh.
Q -- Lythgoe? Do you have any idea when this was written?
A I have no idea. No, ma'am.
Q I'll ask her.

Turn to Tab 11 for me, please. This appears to be a staffing done on January 4th?
A Uh-huh.
Q Is that fair?
A Correct.
Q Between you and Dirvondra?
A Uh-huh.
Q Do you see there where it says "Follow up with law enforcement. What is their status?"
A Yes.
Q At this time, did you have any idea whether or not they had been notified?
A On the 4th? Yes. I knew that she had referred them, but it was late. But, yeah. She did it on the 16th.
Q And when did you find out that it was late?

A On this -- I believe it was the staffing. It would've been the next time that I staffed the case with her.
Q Okay. Turn to Tab 12 for me, please. Do you know whose handwriting this is?
A No. I do not. Unless it -- it would have to be Phyllis or Yvonne's handwriting.
Q Yvonne, I bet.
A Yeah.
Q It has the "YS" on it. Have you ever seen this before?
A No.
Q Would you turn to Defense Produced 00200 in this section, please? The -- you see how these are sort of blocked off in lines? The second section, can you read that for me?
A Which section are you referring to?
Q This --
A This?
Q Yes, ma'am.
A "Krista had called Dirvondra and talked about her timeliness, and put her on" -- I don't know what that says. "To do timely contacts. Did written" -- I'm not sure. It's hard to read her handwriting.

Q It is.
A Uh-huh.
Q And I -- okay. Let me see if it makes sense if I read it like this: "Did written warning in April. Numerous individual conference sheets." I don't know what that is. "-- in July. She started" --
A Started --
Q -- "doing timely contacts. Has lots of documentation of working with her until August when she started getting timely."
A Yes.
Q Does that -- is that fair?
A Yeah. I mean --
Q It's hard to read, isn't it?
A It's very hard to read.
Q All right. Let me ask you this: Talk to me a little bit about what this is about. Did you have a conversation with Yvonne Stewart about Dirvondra?
A Not to my knowledge. A conversation was had between myself and Phyllis Ward.
Q And can you tell me about that conversation?
A We did have a conversation in regards to her not making a law enforcement referral until the 16th.
Q Had you ever had that problem before that you were aware of?

A No. Not that I'm aware of.
Q Okay. And had you ever had any problems with her making timely contacts with her family -- families? clients?
A Not specifically that I recall. There may've been some individual conference sheets, but that's been quite some time ago.
Q Do you recall, then, why there was a written warning done in April?
A I do not recall.
Q Would you be responsible for doing a warning for Dirvondra, or would that been -- be someone else?
A Yes. Typically, it would've been myself or Phyllis Ward.
Q Okay. Just below that it says -- it has something about "Adrienne was told," but then the next one says, "How many reports did she get that week?" Do you have any idea how many reports Dirvondra got that week?
A No.
Q Do you know anyone that would know?
A They should have record of it at DSS.
Q Okay.
A There would be intake logs.
Q And those say who the worker was?

A Yeah. It will tell you who the worker was, the name of the report, and the date that it came in.
Q Okay. Let me ask you this: Talk to me about what a safety plan is.
A A safety plan is an agreement between us and the parents in regards to the child's wellbeing. It would be recommendations that we would make for them.
Q For the family?
A Right. That they would need to follow.
Q And what happens if there's a violation of a safety plan?
A Typically, the child is removed from the home.
Q And who has the authority to remove the children from the home?
A In terms of bringing them into foster care?
Q Yes.
A That would be law enforcement or a judge.
Q Okay. So DSS can't independently remove a child?
A Unless it's a relative placement, but the family would have to agree to that.
Q Let me make sure I understand you. Is it fair to say that DSS can remove a child if they have placed that child in a home?
A DSS can never remove a child in place of a child in

foster care. Any removal that we did, the parents would have to agree upon, and the removals that we would primarily do would be relative placements.

Q Okay. So how does DSS remove a child from the home? If you'd detail that for me, please. Okay. Let me --

A In terms of foster care?

Q -- rephrase that. How would DSS get a child in foster care?

A Call law enforcement would be the easiest way.

Q Okay. And if law enforcement will not remove a child, then how would you?

A Staff it with the attorney for an ex parte.

Q To take to the judge?

A Correct.

Q Look at --

MS. HARRILL: Oh, it's going to be a different number for you. No. It's not.

Q -- 14 for me, please. Have you seen a document like this before?

A Yes.

Q Have you seen this one before?

A Not this particular one. I don't recall it, but it would've been in the case file.

Q Can you tell me what it is?

A It's a referral to law enforcement that was made on the 16th of December.
Q I see at the bottom of that page it says, "We are requesting an investigation be made into this matter." Do you know whether or not law enforcement investigated?
A Initially, for this incident, they did not.
Q Okay. And if you would turn, then, to Defense Produced 00284.
A Yes.
Q Is this a safety plan?
A No.
Q What is this?
A This is a request for incident report. And specifically this one would've been for York County Sheriff's Department. And I know that just because of the handwriting that's written on there.
Q I'm sorry. 284.
A Oh, I'm sorry.
Q I probably gave you the wrong number.
A Yes. This is a safety plan.
Q Okay. And whose signature is that at the bottom?
A Dirvondra.
Q And who else -- I don't see any other signatures. Is there anyone else that should've signed this?

A The parents.
Q And how often do you do -- how often do you do a safety plan?
A Any time you have concerns. Not always in every case.
Q If the child went home on the 7th --
A Yes.
Q -- then I'm curious why there would be another safety plan -- hang on. Never mind. That's the second injury.
A Yes. This is the -- I'm -- I'm assuming this is the initial safety plan where she went out to the home and she saw her briefly that day.
Q Okay. Look at 285 for me, please.
A Yes.
Q That's the one you're looking at?
A Yes.
Q That's the first one?
A Uh-huh.
Q And did she see Michael that day?
A I believe that she only saw Kayla that day.
Q Do you see where it says, "Start date: today, Tuesday, December 8th"?
A Yes.
Q If the start date was Tuesday, December 8th, how

was it signed by Kayla on the -- December 7th? Do you know?

A That I do not know. That would be something you would have to ask her.

Q Do you know what day it was when this case came into DSS?

A December the 6th.

Q Do you know what day that was?

A I do not know. It would've been a weekend. Probably a Sunday.

Q Do you know whether or not Dirvondra saw Owen -- saw [redacted] on December 8th?

A I do not think that she did.

Q I will ask her. Look at Tab 16 for me, please. Have you ever seen these before? These recorded statement -- or their recorded transcripts?

A I haven't seen the recorded transcripts, but I have listened to the calls.

Q Okay. These are just the written-down versions?

A Right. Uh-huh.

Q Is it fair to say -- let me tell you how I did this.

A Uh-huh.

Q I didn't put the whole thing in here. I just put the pages I wanted to talk about, okay?

A Uh-huh.
Q Is it fair to say that this is a record of your conversation with Lieutenant Miller on 12/12/2009?
MR. FRAWLEY: (To the deponent) Okay. You need to look through it to make sure it is since you hadn't seen that transcript yet.
MS. HARRILL: (To the deponent) And I can provide you with the entire thing if you want to look at it. These are just excerpts.
MR. SETTANA: Lara, have you given us copies of the entire transcripts?
MS. HARRILL: They were produced to us by --
MR. SETTANA: We gave you the -- I represent the sheriff. We gave you the tape. We didn't transcribe it.
MS. HARRILL: You did not transcribe them?
MR. SETTANA: No.
MS. HARRILL: I did not understand that, so I apologize. I can give you copies of them transcribed.
MR. SETTANA: I appreciate it. Thanks.
MS. HARRILL: I have them here, but these are my copies. But I will get them to you before --
MR. SETTANA: I appreciate. Thanks.

MS. HARRILL: Uh-huh.
MR. FRAWLEY: Lara, the beginning -- from the beginning of this to the end of it, this is the -- the full conversation that Krista had with Lieutenant Miller, so there's -- there's nothing deleted in the -- in the middle, correct?
MS. HARRILL: No. That's not right.
MR. FRAWLEY: In other words, I understand, on the two disks, there were several different calls, most of which didn't include Krista, but what you've got of Krista's in here is her full conversation at this time, correct?
MS. HARRILL: That is not correct. Hang on. It may not -- it may be on one of those, but it is not on all of them. Particularly -- let's go off the record for a minute, Brooks.
(Off the record from 10:53 a.m. until 11:22 a.m.)
THE EXAMINATION BY MS. HARRILL CONTINUES.
Q Okay. You are on Tab 16 for me, please. And we were looking at the transcripts of the recordings of the conversations that you had with W.J. Miller.
A Correct.
Q Okay. I am going to do these by page number, so if

you'll turn to what is the next page, and it's Page 6.

A Okay.

Q Okay. What's -- let me ask this question before we get started on that. It appears to me -- correct me if I'm wrong -- that you had a conversation with W.J. Miller about his receiving the law enforcement referral?

A Yes.

Q And if you want to look at the entire transcript of this, I have it, but I understand that you have reviewed the audio recordings?

A Yes.

Q Okay. If you will look, please, at Line 14, and read from Lines 14 to Lines 23 for me, please. And you don't have -- you can read it into the record, that's fine.

A Okay. "Because that was the first thing I asked them. And what happened is -- what happened is the social worker made the report on this, and the doctor did not advise the social worker --

"Lieutenant Miller: 'Right.'

And I said, " -- to make the report. They made the -- they made that real clear to me that when I called and spoke with them at the hospital.

But I have -- I should have dictation on where I, you know, spoke with them. Can you -- can -- can, you know, certainly send that."

Q What -- can you tell me what that means? because it doesn't make any sense to me, about that part of your conversation.

A I was basically telling him that I spoke with them in regards to that and I have dictation and I can send it over to him.

Q You spoke to whom in -- with regards to what?

A I spoke with the social worker at the hospital in regards to their opinion on this and that I would send him over the notes.

Q And what do you believe the hospital's opinion was on this?

A They basically were stating that these -- the scans and the surveys that they did were negative, and that they could not determine if it was accidental or non-accidental.

Q Okay. Look at Page 10 for me, please, and again these are not -- not all the pages are in there so. There you go. If you look at your comment on Line 8, it says, "But she advised us" and she being, "We staffed with it our attorney" it says above.

A Right.

Q Which, I'm assuming, is Adrienne Woods?
A Correct.
Q "But she advised us we would need to make a referral, and you guys would make that determination whether or not you're going to investigate."
Talk to me a little bit about how you work with law enforcement. Do -- what does law enforcement do that DSS does not do, in terms of investigations?
A They investigate the criminal side if there are any criminal actions that have taken place in our case.
Q And then do they share their investigation with you?
A Yes, ma'am.
Q Do you share their -- do you share your investigation with them?
A Yes.
Q And do -- would you make your case decisions based in part on what law enforcement finds?
A Yes.
Q Okay. And do you know whether or not law enforcement investigated related to the first incident?
A They did not investigate.

Q Okay. Do -- do you have any sense of why they did not investigate?
A I mean, the information that I gave to them. He said there wasn't any additional concerns that he had.
Q And when you say the information that you gave to him, would that --
A The information that we received from Laura Newmark, the social worker at the hospital.
Q Okay. So would it be fair to say that it would be documents from the hospital and your conversation with the hospital?
A Correct.
Q And then your -- the documents that you faxed to him?
A Correct.
Q Okay. Turn to Page 13 for me, please, Line 5. Actually, I want to look at Line 9 through 11, but you might want to read through that whole thing. What I'm interested in is it says, ". . . they're not there or either the grandmother's there and she's says they're not there."

You can read that whole thing so you have a sense of where I am.

MR. FRAWLEY: What page are you on, again?

MS. HARRILL: Thirteen.
A Okay.
Q Do you recall a time when -- and I'll ask Dirvondra this too, but, independently, as you sit here today, do you recall a time when Dirvondra went to meet with the family and the grandmother was there but the family was not?
A No. Not to my knowledge. I know that she had went out there and left a message. She had called the inside of the home and it was actually Charlotte's voice mail and she left a message for her, but I -- I don't recall Charlotte being present.
Q Okay. You keep looking at -- have you got notes over there?
A Yeah. I just have notes that --
Q Can I?
A -- basically, the times that she went out there.
Q Do you mind if I look at them?
A Yeah. Sure.
(Sotto voce discussion between Ms. Casey and Ms. Harrill.)
MS. HARRILL: (To Mr. Frawley) Do you mind if we make these an exhibit?
MR. FRAWLEY: Let me look at them. No.
MS. CASEY: Do you want to make that Exhibit

21?
MS. HARRILL: Yeah.
MS. CASEY: Do you mind if we tear them out of the -- you want --
THE DEPONENT: That's fine.
MS. CASEY: -- to leave them on the pad?
MS. HARRILL: You probably want to leave them on the pad, don't you? Or do you care?
THE DEPONENT: I'd prefer, but it --
MR. FRAWLEY: Just -- yeah, just -- just do it and flip them over.
THE DEPONENT: If you need to --
MS. HARRILL: Yeah. We'll just copy it --
MR. FRAWLEY: You'll be able to do it that way.
MS. CASEY: Okay. Well, we'll just mark this as Exhibit 21.
MR. FRAWLEY: Well, why don't you make a copy and then make the copy an exhibit?
MS. HARRILL: Copy first.
MS. CASEY: Okay.
MS. HARRILL: Brooks?
MS. CASEY: Okay. I'll do that.
(Off the record from 11:28 a.m. until 11:34 a.m.)

Plaintiff's Exhibit Number 21,
Handwritten notes.
THE EXAMINATION BY MS. HARRILL CONTINUES.

Q Okay. We were looking at your transcripts.
A Uh-huh.
Q Well, not your transcripts. The transcripts of your conversation with Lieutenant -- with Lieutenant Miller. We're on Page 13. We are down at the bottom -- I'm going down to the bottom, Line 19. You say, "Yeah. I know. Well, I'm going to talk to her about it. She's pretty bad about doing that, and I figured that she had. I had mentioned it to her earlier this week, you know, asked her if she had sent it over to you guys."

Is it fair to say that "she" and "her" is Dirvondra?

A Yes.
Q And when do you -- do you know when you asked her if she had sent the -- I'm assuming that you're talking about her sending the referral.
A Yes.
Q Is that fair?
A Uh-huh.
Q When did you ask her about that? Do you remember?
A No. I do not.

Q Do you know -- did you have any -- you obviously had a conversation with her. Did you -- can you tell me a little bit about that?
A I -- I don't recall the specific conversation, honestly, that I had with her.
Q Okay. And you don't recall whether or not she was reprimanded verbally or --
A Yeah.
Q -- or in a written fashion, I mean.
A I don't remember exactly what -- I mean, I know that I had a discussion with her. I don't recall all that was said during that discussion, and I don't recall if we did any type of formal reprimand in regards to that.
Q And when it said, "She's pretty bad about doing that," she's pretty bad about doing what?
A I'm assuming it -- I'm talking about not making timely referrals.
Q Was there anything else that she was pretty bad about not doing, that you recall?
A Not that I recall. No.
Q Okay. We were talking a little bit about your handwritten notes just to yourself.
A Yeah. Sure.
Q And we have made those Exhibit Number 21 --

A Uh-huh.
Q Yes. -- to your deposition. On the second page of those notes, it says, "Nurse thought DSS was called to release sitter."
A Yeah. That's in --
Q Would you tell me what that's about?
A I'm sorry. That's in Chandra Tyler's dictation.
Q Okay.
A A nurse told her that they were not supposed -- she was under the assumption that there weren't any concerns of abuse or neglect and that they were primarily contacting DSS in order to release the sitter that was in the room. And I guess that's something that North Carolina does; that's not something that South Carolina DSS does.
Q That was my next question.
A Yeah.
Q Your DSS wouldn't typically go and --
A We wouldn't have --
Q -- be a sitter?
A -- done that anyhow, no.
Q Okay. But that was Chandra Tyler?
A Yes. That would've been in her dictation.
Q And these notes are just notes that you took as --
A Yeah. As I read through the dictation, and things

that I remembered, yes.
Q Okay. I want to look at them. Turn to page -- Tab 17, for me, please. And this conversation is actually -- appears to be January the 12th, also transcribed conversation between you and Lieutenant Miller --
A Correct.
Q -- is that fair?
A Uh-huh.
Q If you look at -- this one is a little harder to read because you-all were doing what I do and you were talking over each other. But -- so feel free to read this as I'm on Page 3. I'm looking specifically at Line 17, where you said, "They -- they wouldn't make a -- they wouldn't make a statement whether or not it was accidental or non-accidental." If you want to read that whole page to put that in context, I'm fine with that.
A I'm familiar with it.
Q Okay.
A Uh-huh.
Q Who -- and I may have asked you this before, who decides whether or not you indicate your cases at DSS?
A We do it as a group. This particular case would've

been an attorney staffing case decision.
Q Why this particular case?
A Because we -- based off of the second incident.
Q Okay. But, with the first incident, would it have been an attorney decision?
A Probably -- maybe not. Phyllis could've been present for that. It would've depended on who was available: either Phyllis or Adrian or the other attorney that we had.
Q As a supervisor at DSS, how much difference does it make to you whether the hospital decides it was accidental or non-accidental in indicating your case?
A Can you rephrase that for me, please?
Q Rephrase it or repeat it?
A Repeat it. That'll be fine. Let's see if I can. . .
Q As a -- as a social worker --
A Uh-huh.
Q -- as a supervisor --
A Right.
Q -- how much difference does it make to you what the hospital's decision is in whether or not you indicate your case?
A Oh. We would -- if they had concerns that it was

non-accidental, we would've indicated our case.
Q And if they have -- if they don't have concerns that it's non-accidental, does that mean you would not indicate your case?
A Not necessarily. If there had been something else that was of concern, we may have still indicated our case.
Q Do you -- excuse me. Do you know whether or not there was anything else that was of concern?
A Well, there were concerns that the parents were young and that they were immature and, maybe, concerns of lack -- lack of supervision.
Q What all can you indicate your cases for?
A Neglect, physical abuse, and sexual abuse.
Q What about threat of harm?
A You can do that, too. Threat of harm of each.
Q Okay. But, in this particular case, the second incident happened before your original case was determined, correct?
A Yes.
Q Turn to Page 4 for me, please, on your -- in Tab 17, Line 24. And if you'll read over to the next page --
A Uh-huh.
Q -- to Line 3. And you say, "We've got some

problems with that worker." What does that mean?
A In regards to making the law enforcement referral timely. That's, specifically, what I was referring to.
Q So is it fair to say that that was something --
A I had concerns of; I must've had previous concerns on, maybe, another case.
Q Okay. And, again, you don't recall whether or not there was a written warning or a reprimand?
A No. I don't recall.
Q Do you recall when you say, "We've got some problems with that worker," if it's related to anything else besides referring to law enforcement?
A That would be the only concern that I had at that time.
Q Did you ever have any concerns about her seeing her clients in a timely manner?
A No. Not that I recall.
Q Turn to the next page for me, please, which is -- is, in fact, Page 6. Okay. If you look at Lines 12 through 16 for me, please.

"That wasn't the first" -- this is Lieutenant Miller, "That wasn't the first -- you know, that hasn't been the first problem there, too."

And then you say, "I know. And I've already

addressed that with her, so I just wanted to make sure."

And then, "All right. Well, keep -- "

A Yeah.

Q I'm -- I'm wondering if we're still talking about this law enforcement referral, or if there's some other issue that you-all are discussing.

A As far as I know, only the law enforcement referral.

Q And I think I just asked you this, but I'm going to ask you again. Is this the only time that you recall that she had not referred to law enforcement?

A That I recall. That's the -- this is the only time that I can recall. Yes. That's correct.

Q Would you turn to Page 8 for me, please. If you'll read what you said from Line 7 to 12.

A "And we appreciate it that you help us so much. And it's typical if we could get everybody here on board with making those referrals and calling you and letting you know when we get -- when we got an issue. I think we're just -- the issue here is I'm telling her and she's not doing it."

Q And is that just related to this case or any other cases?

A No. That was related, in general, to the workers just faxing over information and not necessarily calling before faxing.
Q So that's sort of what we talked about earlier, where you said y'all would contact law enforcement with a physical referral --
A Right.
Q -- the fax cover sheet.
A Uh-huh.
Q And then call them and talk to them about it, as well --
A Yes.
Q -- is that fair?
A That is correct. That's what we -- that's what should be done.
Q And is there a time -- is there a deadline by which they're supposed to do that?
A To do which? To make the law enforcement referral?
Q Yes.
A Typically, it's within 24 hours.
Q Typically or is that the rule?
A At that the time that was the rule; that's policy, yes.
Q Okay.
MS. HARRILL: All right. We're going to take

about a five-minute break again.

(Off the record from 11:45 am to 11:58 a.m.)

THE EXAMINATION BY MS. HARRILL CONTINUES.

Q Okay. During the time that -- between the first injury and the second injury, when Dirvondra was investigating what had happened related to the first injury --

A Uh-huh.

Q -- would you have been the person who had the most contact with Dirvondra, related to the case?

A Yes.

Q And when y'all staff cases -- I recognize that you put recommendations on a staffing sheet, but do you also talk about what her impressions are related to the family?

A Yes.

Q And do you recall any of those conversations with her about what she thought about the family?

A Not to my knowledge, other than what I've read in her dictation --

Q Okay.

A -- from her contact.

Q And did you-all, at that time, first injury, consider this a serious case?

A We considered it a serious case because it was a baby, but at that time we didn't have any concerns -- specific concerns.
Q What other information did you need -- well, let me ask you this: We talked about you have 45 days to make a case decision.
A Correct.
Q Do you always take 45 days to make a case decision?
A No. Not always.
Q What -- as you sit here today, having reviewed the dictation that was done and the staffing sheets that were done prior to the second injury, what other information do you think that y'all needed to make a case decision?
A No other information. As long as we had all the medical records, we could've made a case decision.
Q Do you have any -- any sense of what that decision would've been?
A Unfounded.
Q Okay. And, in your experience, have you had any other infants with subdural hematomas referred to you or to your caseworkers?
A Yes.
Q And how many of those children were sent home?
A I don't recall an exact number. I only remember

one specific child.
Q Do you remember whether or not that child was in -- was put in foster care or was sent home?
A It was put in foster care initially -- from the start.
Q Okay. And do you recall what sort of subdurals he had? Whether he -- may have been a she, I'm not sure -- did he have --
A He.
Q Was it a he?
A Uh-huh.
Q Okay. Did he have one subdural?
A I don't recall. This was a case specifically I had as a caseworker, so I don't recall the -- all the --
Q Okay.
A -- specifics.
Q Do you recall who -- would it have been your decision related to that case to place that child in foster care?
A No.
Q Okay. Do you have any idea whether that child was placed by a court order or by law enforcement?
A I -- I don't recall.
Q Okay. Do you see anywhere at -- by memory -- and

feel free to look, because I would represent to you that I have all the staffing sheets in here that were done prior to the second injury --

A Uh-huh.

Q -- okay. Do you see anywhere in there where there was a recommendation for parenting classes?

A No. Not to my --

Q Okay.

A -- knowledge, no.

Q Do you recall whether or not the hospital had recommended that?

A They stated that they had concerns of lack of supervision, but in terms of specifically recommending parenting classes, I don't recall that.

Q Okay. Would you agree with me that the hospital did not say that this was an accidental trauma?

A They wouldn't make a statement as to -- either way, whether it was accidental or non-accidental.

MS. HARRILL: (To Ms. Casey) What else you got?

Q Look at your notes --

A You want to know what that --

Q -- the last page.

A -- that is?

Q I want to know who those --
A Yeah.
Q -- last three people are.
A He --
Q -- on Exhibit 21.
A He told me that you may ask me if I have any family in York County, and I have very select members, so I wrote down the last names of my family in York County --
Q Okay.
A -- for you. So there you go.

MR. FRAWLEY: Sort of a post-hoc attorney-client privilege objection --

THE DEPONENT: Yeah.

MR. FRAWLEY: -- but go ahead.

MS. HARRILL: I understand. I also caught that at the same time probably you did. Okay.

THE DEPONENT: Yeah. I knew you were going to ask what that was.

(Sotto voce discussion between Ms. Harrill and Ms. Casey.)

Q Okay. Look at Tab 18. You're on 18, Page 4. You're in the right place.
A Page 4?
Q I thought you were in the right place.

A No. Right here. Okay.
Q Okay. Look at -- and --
A Tab 18, you said?
Q Yes, ma'am.
A Yeah. I'm in the wrong place. Page 4, there you go.
Q I'm looking specifically at Lines 16 through 19, but you may want to read the whole page to sort of place that. It says, "So we can -- okay, so we can come over there. Also, did you ever check into that file to see the date on that info I faxed you? Do you remember when I faxed you that dictation?" I'm interested in -- it appears to me that there was going to be a staffing at law enforcement. Is that -- is that fair to say?
A Yes.
Q And is this after the second injury?
A Yes.
Q And do you recall what you-all discussed at that meeting?
A I don't specifically recall. I can recall the parties that were -- some of the parties that were present.
Q Who was there?
A Myself, Dirvondra, Phyllis Ward, and our attorney,

I believe. I don't recall whether it was David Simpson or Adrienne Woods.

Q And do you recall why you had that meeting?

A Just to make sure that they had all the information that we had, and we had all the information that they had before we -- either of us proceeded any further.

Q And, again, this is after the second injury? Is --

A Correct.

Q -- that fair?

A Yes.

MS. HARRILL: I don't have anything further. Who wants to go first?

MR. SETTANA: Monty, you got anything?

MR. TODD: I have no questions.

MR. SETTANA: All right.

EXAMINATION

BY MR. SETTANA:

Q Ms. Hinnant, I'm Dan Settana. I represent the sheriff's department. I've just got a few questions, and I'm -- maybe cut these down.

You know what, let me just ask you a quick -- look at Exhibit 14 and then at Page 282.

A Uh-huh.

Q You originally asked what that was, and then you

guys moved on to -- to another page --
A Yeah.
Q -- but I -- I do want to know, what -- what was that?
A This is where we fax edover a request for incident reports, specifically for Michael and Kayla. And --
Q Okay.
A -- that handwriting that -- what they do is, once they receive it, there's a lady there --
Q Uh-huh.
A -- at the sheriff's department named Ann --
Q Uh-huh.
A -- and what Ann did is, if they have no incident reports, she'll write, "No reports," and fax it back to you.
Q Okay.
A So there were no incident reports for either of the parents.
Q Okay. And that was the one that went over on the night of December 16th?
A Yes.
Q Okay. All right. At one point you said, talking about your transcript in Exhibit 16, that Lieutenant Miller had no additional concerns. Do

you recall that?
A He -- the only information that Lieutenant Miller had was the information that I provided to me --
Q Okay.
A -- he felt the same way about the information that I did.
Q And what was that, to your knowledge?
A That there was nothing specifically that would indicate abuse or neglect, based off -- based off of the information from the hospital.
Q And -- and, you know, we know what happened in the January incident, okay --
A Right.
Q -- but going back to December, do you, even to this day, have any -- any evidence or know of any evidence that the child was abused or neglected and that was the cause that he was in the hospital in December?
A No.
Q Okay. Has anybody told you that that was the -- anybody made a diagnosis or given you evidence or any grandparents given you testimony or -- or statements saying the child was shaken or abused or dropped in December?
A Well, after the second incident, the grandmother

did come forward and stated --

Q Uh-huh.

A -- that she had seen a bruise on the child and expressed concerns, but that was after the second incident. So, prior to that incident, there was no information, no.

Q Okay. And was the grandmother interviewed before the -- the -- the second incident?

A She was present. So, yes, she would've been interviewed.

Q Okay. And she never expressed concern before the -- she had -- did she have the opportunity before the second incident to express concern?

A Absolutely yes.

Q And did she express concern?

A No.

Q Okay. And do you know if the -- if the sheriff has the discretion to investigate or not investigate when you -- DSS made the complaint?

A Yes. They have the discretion to make a determination of whether or not they want to investigate or not, yes.

Q Okay.

MR. SETTANA: That's all I have. Thanks.

MR. TODD: I'm -- I do have one.

MR. FRAWLEY: Go ahead.

MR. TODD: I'm just going -- I don't know if I've got extra copies or -- let's see.

EXAMINATION

BY MR. TODD:

Q I'm just going to ask you what this document -- these documents are that --

A Yeah. This is a release-of-information --

Q Okay.

A -- specifically for hospital records and, if the child were in school, school records as well.

Q Okay.

A This is a safety plan.

Q And what's the -- the third page?

A This page right here?

Q Yes.

A A safety plan as well -- same exact. And this is an acknowledgement that we're -- by policy, we have these brochures that we give to the parents -- these specific brochures, and they are acknowledging that they received them and reviewed them.

Q All right. And do you know who would've -- let me -- let's go back to -- it's Bates-stamped 0463.

A Uh-huh.

Q Do you know whose handwriting that is?
A Dirvondra Hill.
Q Okay. And this is the mother's signature?
A That is correct.
Q And whose -- that's Dirvondra's signature?
A Yes. Correct.
Q And then, on the third page, it's signed by the mother?
A Yes. Kayla Lythgoe, and I'm assuming that's Michael Carduff's signature as well.
Q Okay. And that's --
A So this would've been Chandra Tyler's safety plan.
Q Okay. And that is dated --
A -- 12/6 -- December the 6th.

MR. FRAWLEY: Could you read the Bates number on the lower right-hand corner for the record?

MR. TODD: Okay. And I'll go ahead and make this an exhibit. I'll -- I'll leave that. And I'm not clear on the record, but -- but there's -- it's a four-page document that will be Exhibit --

THE COURT REPORTER: -- 22.

MR. TODD: -- 22.

THE DEPONENT: You want the number --

Q And the second and third pages are safety plans --

MS. HARRILL: Unless you want it to be your 1.

MR. TODD: No. Twenty-two's fine.

Q -- is that correct?

A Yes.

Q So are they -- are they different safety plans, or is it -- or how -- why are there -- there two different safety plans? Well, let me -- first off, are they -- are they different safety plans?

A Yes, sir. They are.

Q Why are there two different safety plans?

A The initial safety plan was completed when the on-call worker went out and made initial contact. We didn't have any information at that time, so this is the safety plan that she put in place.

Q Okay.

A Basically, that the child would not be discharged until there was a further investigation.

This would've been the safety plan that Dirvondra put in place after we had all the information from the social worker.

MS. HARRILL: Would you read that Bates number, please, just so we're clear?

THE DEFENDANT: 0463.

MS. HARRILL: Thank you.

MR. FRAWLEY: And that's the one for

Dirvondra?

THE DEPONENT: That's the one for Dirvondra, and Chandra Tyler is 0464.

MR. FRAWLEY: And the Chandra Tyler was the initial one?

THE DEPONENT: Correct.

MR. FRAWLEY: I'm sorry, Monty.

MR. TODD: Okay. That's okay.

THE DEPONENT: (To Mr. Todd) Do you want this?

MR. TODD: Now, that will be the exhibit -- we'll get that to the court reporter.

Plaintiff's Exhibit Number 22, "Release of Information"; "Safety Plan"; "South Carolina Department of Social Services Acknowledgement."

Q Now, is -- am I correct that DSS made the decision that the child should be discharged on -- in December 2009, from Carolina's Medical Center back into the custody of -- of his parents?

A Based off of the information that we had at the time, yes.

Q And the information you got from the hospital -- and I know there was a number of discussions, but to -- to summarize it, what they told you was -- is

that, "There's a concern for non-accidental trauma because of some of the findings, but we cannot make a definitive statement whether it is or whether it is not accidental or non-accidental"?

A That's correct.

MR. TODD: That's all I have. Thank you.

THE DEPONENT: Okay.

MR. FRAWLEY: Okay. I've got a few questions.

THE DEPONENT: Okay.

EXAMINATION

BY MR. FRAWLEY:

Q If you could refer to Number 16 -- Exhibit Number 16 --

A Uh-huh.

Q -- which I believe is the transcript of the December 17th conversation with Lieutenant Miller. Are you there?

A Yes.

Q Okay. December -- or Exhibit 16, of course, is -- are some excerpts from that conversation, and then Ms. Harrill has provided us with full copies of -- of those transcripts. And Exhibit 16 begins with this cover page, and then the first transcript page is actually Page 6; is that correct?

A Yes.

Q All right. I'm handing you a copy of the full transcript of the December 17, 2009 conversation. Beginning on Page 5, Line 20, if -- I guess, for the record, if you'll read the Krista statements and then I'll read Lieutenant Miller. Maybe we can make it go --

A Okay.

Q -- more quickly that way. Starting with Line 20 on Page 5, can you tell me what that says?

A Yes. "The hospital is not going to make a statement whether or not they feel as if that -- those injuries are accidental or non-accidental, period."

Q "Okay."

A "I staffed it with our attorney, and we let the child go home because the hospital's not making" --

Q Okay. Then go to Page 6 on Exhibit --

A -- "any determination."

Q -- 16, please. Okay.

Lieutenant Miller then says, "Right."

A "And they're saying they don't know what happened, and the hospital says mostly they have concern for lack of supervision."

Q "Uh-huh."

A "They think that maybe nobody was supervising him

and he bumped his head or they were holding him and walking him around the door and banged his head or something. But they're -- they're really not giving us a whole lot. You know how they won't make statements."

Q "Uh-huh."

A "Because that was the first thing I asked him. And what happened is the social worker made the report on this, and the doctor did not advise the social worker --"

Q "Right."

A "-- to make the report. They feel -- real clear to me that I caught -- they feel -- they made that real clear to me when I called and spoke with them at the hospital, but I should have dictation on where, you know, I spoke with them. I can, you know, certainly send you that."

Q Okay. And Ms. Harrill asked you questions about Page 6 -- about some context questions, because it wasn't clear from Page 6 what that was. But what you're telling Lieutenant Miller on Page 6 and the portion of Page 5 which we just covered is you're basically telling him what the feedback was that y'all had gotten from the hospital social worker when you spoke with them --

A Correct.
Q -- correct?
A Uh-huh.
Q Ms. Newmark was her name --
A Right.
Q -- correct?
And the information you were getting was that they - they couldn't make a determination whether it's non-accidental trauma or accidental --
A Correct.
Q -- correct?
Now, at -- at that last statement there, where you tell him you've got some dictation, you're going to forward that to him, did you, in fact, forward that --
A Yes. I faxed --
Q -- to Lieutenant Miller?
A -- it over to him.
Q Okay.
A Yes, sir.
Q Do you have a Page 13 in there? Again, referring to Exhibit --
A Yes.
Q -- 16.
All right. If you could look on Page 5 and

read that for me, please.
A You mean Number 5 on Page --
Q I'm sorry --
A -- 13?
Q -- yeah.
A Okay.
Q Page 13, Lines 5 - 11, if you could --
A Okay.
Q -- read that, please.
A "Yeah. Yeah. And, shoot, I know Dirvondra kept going out there. We -- I mean, she was out there. I don't know if she made contact with them again yet or not, but she's been having a hard time every time she goes out, they're not -- they're not there, or either the grandmother's there and says they're not there."
Q Okay. And what -- what is -- what -- what are you talking about there?
A She kept -- when she staffed with me, she was stating that she kept going out, and I'm -- by this, she was making contact with the grandmother and not the parents.
Q Okay. And --
A They weren't available.
Q And this was a period after the child was -- was

released from the hospital?
A Yes.
Q All right. And I think you had mentioned one time she went up there on the 17th, met Kayla in the -- in the driveway as Kayla's on her way out, but was not able to effect a home visit at that time?
A Yes. That's correct.
Q Okay. And, eventually, did get a home visit on the 20th or the 21st?
A Twenty-first.
Q Okay.
A Yes. The 21st.
Q Okay. Could you look at Exhibit 17, please?
A Okay.
Q And I understand Exhibit 17 is excerpts from the January 12 conversation.
A Okay.
Q And if you could look on Page 4, please.
A Okay.
Q Line 4.
A Uh-huh. Want me to read it for you?
Q If you would, please. Then I'll cover Lieutenant Miller.
A Sure.
Q Let's go to Line 23.

A Okay.
Q Start at Line 4, and then we'll go through Line 23.
A "They, of course, are making all the statements that we need now . . . because there was no serious injury last time."
Q "Uh-huh."
A "They told me that basically their concern was for lack of supervision, and that possibly someone wasn't watching the baby or was carrying the baby and the baby got his -- somehow his head could've been possibly bumped, but they -- they wouldn't say that. But they -- I mean, you know, they wouldn't go on record as saying that I -- that it was either accidental or non-accidental either way. They weren't going to tell me."
Q "Right. Because that's what we discussed."
A "Oh, gosh, do you --"
Q "And y'all were going to do the safety plan, you know --"
A "Yeah. Can you --"
Q "-- with -- with the supervision."
A Do you want me to continue?
Q Okay.
A Okay.
Q No. We're good there. Now, what -- what are you

and Lieutenant Miller -- well, let me ask you this: This exchange is from a January 12, 2010 conversation, correct?

A Correct.

Q That's the day after the second injury, correct?

A Right.

Q All right. And -- and what -- what is this exchange with Lieutenant Miller? What are you talking about?

A We're just reviewing the facts of the case. This is the first time that I had spoken with him, I believe, after the incident took place. We're discussing what we had previously discussed in regards to the first allegation.

Q Okay. And -- and when you say, on Page 4 between Lines 4 through 6, "They, of course, are making all the statements that we need now, but because there was no serious injury last time," the "they" you're talking about is the hospital, correct?

A Yes. That's correct.

Q And the statements they're making now are relating to the second injury, which was a much more serious injury, correct?

A Correct. Yes.

Q So they're telling you, after the second injury,

that it is non-accidental trauma, and we -- we got a serious issue right now, correct?

A Yes.

Q But they weren't making those statements before, with regard to the January -- I'm sorry -- the December 5th injury/December 6th intake, because at that time they were not able to determine if there was non-accidental trauma --

A Yes.

Q -- correct?

MR. TODD: Objection.

Q Now, is it -- is it your understanding that the second injury was a much more serious injury than the first injury?

A Yes.

Q Now, one of the questions that has come up is the date of the referral to law enforcement. When -- Ms. Hill faxed the referrals to law enforcement December 16th in the evening -- seven o'clock or something like --

A Yes.

Q -- that, and I think Lieutenant Miller said in his -- his conversation with you that he wouldn't have gotten those actually till the morning of the 17th. Is that your understanding?

A Yes.
Q And I think you said that, pursuant to policy, law enforcement inquiries are supposed to be sent within 24 hours of -- of us having gotten our intake. Was that your policy?
A Yes.
Q Okay. So that would've been -- if the intake comes in December 6th, essentially they should've been sent December 6th, but they weren't sent for ten days later, correct?
A Correct.
Q All right. Now, is it your understanding that this child was injured again before December 16th?
A Can you repeat that, please?
Q Yeah. Or let --
A I'm sorry.
Q -- me ask it a different way.
A Yeah.
Q We -- we got our initial intake December 6th, correct?
A Yes.
Q For an injury that occurred on or before December 5th?
A Yes.
Q All right. By December 16th -- maybe the law

enforcement inquiry wasn't sent in for ten days, but the child hadn't been injured again between December 6th and December 16th, had he?

A That's correct.

Q All right.

A Yes.

Q He wasn't injured between December 16th and January 10th, was he?

A No.

Q Okay. Not that we know.

A Not that we know of --

Q All right.

A -- correct.

Q Do you know the -- the law enforcement inquiry -- when -- when they did the law enforcement inquiry that was sent in, it was sent in to -- for law enforcement to inquire into whether there's any kind of criminal history for Kayla Lythgoe, the mom, correct?

A Correct.

Q And for Michael Carduff, the dad, correct?

A Correct.

Q And also Charlotte Williams, correct?

A Correct.

Q All right. How about Larry Williams, the step-

granddad on the maternal side? Was -- was anything sent in for him?

A I believe so, yes, sir.

Q Okay. Whether it was or wasn't, we know for sure it's sent in for Kayla Lythgoe, for Michael Carduff, and for --

A -- Charlotte --

Q -- Charlotte Williams, correct?

A Yes.

Q Now, as to those three, do you know if the law enforcement inquiry came back with any kind of criminal history for Kayla Lythgoe?

A It had no criminal history for her.

Q No -- no criminal history for the mama, correct?

A Correct.

Q How about for Michael Carduff, the guy who eventually admitted to injuring the child for the second injury -- January 11th? Was -- was there any criminal history for Michael Carduff?

A No. There was not.

Q So whether this law enforcement inquiry was sent in December 6th or December 16th or at any time before he pled guilty to injuring this child, there would've been no criminal history for Michael Carduff, correct?

A Correct.
Q How about Charlotte Williams? Was there any criminal history that came back for her?
A Yes. I believe there was some criminal history for her.
Q She had a CDV in her history, didn't she?
A Yes.
Q So, if the criminal history inquiry did go in in a timely manner, all we would've found out was that the maternal grandma --
A Uh-huh.
Q -- who still has access to the kid, had a CDV history, correct?
A Correct.
Q But mama and daddy had no history, correct?
A Correct.
Q I'm sorry. I can't read my handwriting on my notes. Okay.

There was a question that was asked about whether there was a recommendation for parenting classes, which is a relevant question because the issue had come up that there was concern about these being young, possibly immature, parents, who maybe had supervision issues.

A Correct.

Q All right. And I think the question was: In one of the staffing sheets, was there a recommendation for parenting classes? And I think the response was there was not, correct?
A Correct.
Q Let me ask you this: As far as the way things work with DSS, there's an intake, there's an assessment originally, correct?
A Yes.
Q And -- and assessment is the investigation, isn't it?
A Correct.
Q And at some point -- I think we have 45 days with that assessment -- more time if we have to request it, but essentially 45 days to complete the assessment and determine if a case is founded or unfounded, correct?
A Correct.
Q All right. When does treatment kick in?
A Treatment only kicks in if there is an -- if there is abuse or neglect that's been found during the case, and the case --
Q Okay.
A -- was indicated.
Q In other words: The -- the assessment process was

still ongoing --
A Correct.
Q -- when this staffing doesn't mention parental supervision classes, correct?
A Correct.
Q Parenting classes, is that a treatment function or an assessment function?
A Treatment.
Q So, in order for parenting classes to have kicked in and have been provided, would there not have had to have been a completion of the assessment and a finding?
A Correct.
Q Which we didn't have at the time of that staffing?
A Correct.
Q We didn't have at the time of the second injury?
A Correct.
Q If you could look at Exhibit 18, which I believe is the conversation of January 19th.
A Uh-huh.
Q All right. Let me make sure you've got that page in there. All right. You do not. It goes between Page 7 and Page 11. So I want to show you Page 19 on the copy of the transcript I have, from January 19th, 2010, transcript of recording labeled

"Christa DSS," dated 1/19/2010, which Ms. Harrill has provided us with today. And, again, if you'll read the Christa parts, and I'll read the Lieutenant Miller parts.

MS. HARRILL: I'm sorry.

MR. FRAWLEY: Starting on Page 9 --

MS. HARRILL: Thank you.

MR. FRAWLEY: -- Line 24. Okay.

MS. HARRILL: Okay.

A Okay.

Q All right. I'm trying -- try to keep this out of the camera line, so they can see you while we're talking.

A "Yeah. And did he ever admit to shaking the baby in December?"

Q "No. He -- he said that he didn't. There wasn't anything -- nothing like that done, because I went back and talked to him. And he said that he didn't do -- there was nothing and nobody could figure out what was wrong with him, other than him having a cold and a sore throat."

A "But he didn't -- he didn't indicate that he had done anything --"

Q "Unh-unh. No."

A "-- to the baby in December? Did y'all -- did

y'all give him a polygraph?" Oh, I'm sorry. "Did y'all give -- y'all gave him a polygraph, didn't you?"

Q "Yeah." Okay. Let's stop there. That ends on Page 10 on Line 13.

A Uh-huh. And I have that page.

Q All right. What is that -- what is that conversation about? Who's the "he" that you're talking about?

A Michael Carduff.

Q Michael Carduff. That's the dad who pled guilty to the second injury, January 11, correct?

A Correct.

Q All right. And Lieutenant Miller says that they gave him a -- a polygraph?

A Correct.

Q And with that polygraph, he -- he -- following the polygraph he admitted that he'd injured the child, and he pled guilty and was convicted and has spent some time -- maybe is still in prison, for all you know, correct?

A Yes.

Q But that conversation -- in that conversation, Lieutenant Miller told you that Michael Carduff never admitted to having done anything to the child

that caused the December 5th injury, which resulted in the December 6th call in to SCDSS, correct?
A Correct.
Q Even with the polygraph, correct?
A Correct.
Q To this day, do you know if there's been any definitive finding as to what caused the December 5th injury to this child, which led to the December 6th intake to DSS?
A To my knowledge, there has not.
Q Mr. Carduff hasn't admitted to it?
A Correct.

MR. FRAWLEY: Okay. That's all I've got. Please answer any -- any other questions Ms. Harrill may have for you.

MS. HARRILL: I just have a couple, and I'm probably going to go backwards --

THE DEPONENT: That's fine.

MS. HARRILL: -- from where we were.

REEXAMINATION

BY MS. HARRILL:
Q He just asked you about the polygraph and -- and the -- the -- whether or not Michael Carduff had said he had shaken the baby or any of that -- injured the baby during the first injury?

A Yes.
Q As you sit here today, do you know whether or not law enforcement asked any questions related to the first injury to Michael Carduff or anybody else?
A He said that he -- he did ask him about that.
Q Can you show me that?
A It was in the one that he had, I don't know if it was on the page that I had.
MR. FRAWLEY: Yeah. I'll -- I'll show her my copy of it.
MR. SETTANA: The 19th hearing -- transcript?
MR. FRAWLEY: Yes.
MS. HARRILL: Yes.
THE DEPONENT: Is it in here?
MR. FRAWLEY: It should be on that page. It's -- Page 9 is not on there. Look at Page 9 and 10.
A And, see, I asked him, "Did he ever admit to shaking the baby" --
MS. HARRILL: (To the deponent) Hold on. What page --
A -- "in December?"
MS. HARRILL: What page are you on?
THE DEPONENT: Page 9.
MS. HARRILL: Okay.

MR. FRAWLEY: And let her know what -- what line.

THE DEPONENT: Number 24 and 25.

MS. HARRILL: Okay.

A I asked him "Did he ever admit to shaking the baby in December?"

Then Page 10, Line 1 through Line 6, "No. He said that he didn't. There wasn't anything -- nothing like that done, because I went back and talked to him. He said that he didn't do -- there was nothing, and nobody could figure out what was wrong with him, other than him having a cold and a sore throat."

Q Okay. So when you go to -- since we're --

A Uh-huh.

Q -- reading from this transcript, if you'll go to Page 11 --

A Uh-huh.

Q -- Line Number 5 is your -- and I'll be Lieutenant Miller this time. If you'll read -- we'll go from Lines 5 through 22.

A "So the polygraph indicated that he was --"

Q "-- deceptive."

A "Okay."

MR. SETTANA: Object to the form. (To the

deponent) Go ahead.

MS. HARRILL: Go ahead, Krista.

A "Yeah. Okay."

Q "But we didn't -- we didn't bring up any -- there was nothing done about the December stuff. Again, because -- see that -- even then, that had not figured into my -- that had not even come back to -- in my realm of thinking --"

A "Oh, I know."

Q " -- as far as the December stuff, because as -- talking with y'all, I had cleared that out of my -- my head as far as -- because Lola even said, 'Oh, this is the one that we had the report on back in December.' She had to ring my bell on it, because I did not remember it because, once I had talked to y'all, that was said and done. That was -- that was a problem that was being, you know, taken care of. So I didn't even --"

A "Yeah. I didn't either. I mean, it's kind of a shock that any of this really happened, because I never had any -- any indication" --

Q Okay. You can -- we can stop there. Otherwise we'll be reading this whole thing into the record.

A Okay.

Q I'm -- I guess I go back to my question: Do you

know, during the polygraph, whether or not there was ever any questions asked about the December incident?

A I don't know.

Q Do you know whether or not Lieutenant Miller, when he interviewed Michael Carduff, or anybody else for that matter, asked about what happened in December?

A I don't know. He made two contradictory statements.

Q Okay. Now, the other question -- there was a couple other questions that you were asked about assessment, intake, and treatment.

A Uh-huh.

Q Is it fair to say that, even if a treatment case has not begun, if you-all are investigating, that you-all have a duty to protect the child while you are investigating?

A Yes.

MR. FRAWLEY: Object to the form. (To the deponent) Answer the question.

A Yes.

Q Would you look, please, at Exhibit Number 2 for me, please? Have you ever seen this before?

A Yes.

Q This is -- for -- this is the policy and procedure

manual from South Carolina DSS. This is Chapter 7. I'm looking specifically at 7.19, where it says, "The Purpose: To outline the procedures. (1) To identify safety concerns and ensure the immediate safety and safety throughout the investigation/assessment, of all children in the household and under the control of the alleged perpetrator." Have you seen that before?

A Uh-huh.

Q Is that the policy of DSS?

A Yes.

Q And it goes on to say, "To make a determination whether or not the children were abused or neglected, to make a decision regarding the risk of maltreatment -- regarding future risk of maltreatment." And "(4) To plan for agency service intervention." Is that the policy of --

A Yes.

Q -- of the agency?

A Yes.

Q Let's -- hang on just a second. Go ahead. Let me ask you this: As a supervisor, in discussing this case with your caseworker, did you, in December, consider Owen to be a child that was at risk of maltreatment?

A No.
Q And if not, then why do you continue to investigate?
A Because we didn't have all the information. We needed to have all the -- we had the statements, but we didn't have all the medical records to make a case decision.
Q Do you have any idea when you got the medical records?
A I don't recall that.
Q Do you --
A We had to do a formal request for them. I'm sorry.
Q That's okay. Do you know how I would know -- who could I ask to tell me when you-all received the medical records?
A It may be on the records that are in the file. Maybe if they were faxed copies or if there was an envelope that we received them in.
Q Well, let me ask you this: If you don't have all the information you need to make a case determination, how can you determine, as you sit here today, that the child was not at risk?
A Because based off the information that we had at the time, the verbal information that the hospital was giving us, they were negative surveys, and they

-- they couldn't determine whether it was accidental or non-accidental.

Q Okay.

MS. HARRILL: No further questions.

MR. TODD: Just -- just a follow-up.

REEXAMINATION

BY MR. TODD:

Q I want to -- if you would turn to -- it's Tab 9.

A Yes.

Q And on -- on -- and it looks like it's Defendants' -- the bottom Bates stamp's 1353.

A Uh-huh.

MR. FRAWLEY: I think Tab 9 was the one that was --

MS. HARRILL: Yeah. But only for me.

MR. FRAWLEY: Okay. Okay. You're good. You're good.

Q Does -- does your Tab 9 say 1353 at the --

A Yes. It does.

Q -- bottom?

A Yes, sir.

Q Whose handwriting is that?

A That's my handwriting.

Q Okay. And what would -- when -- what's the date that you would've created that document? Would it

be 12/7/09?
A Yes. Correct.
Q And -- and -- and "Baby in hospital. Two subdural hematomas. Unknown how baby received." Do you know where that information would've come from?
A That would've been the allegations on the report.
Q But it was -- it was reported to you that there were two subdural hematomas and nobody could say how they occurred?
A Yes.
Q And that either came from the hospital or the parents or both?
A Yes. Correct.
Q And it says, "Hospital cannot determine if accidental or non-accidental."
A Correct.
Q But were you aware at that time the -- the hospital had a sitter in the room?
A Yes.
Q And do you know why they had a sitter?
A I do not know.
Q If you turn on -- it's the same tab, 1355, is that your handwriting as well?
A Yes, sir. It is.
Q And that's -- this document, again, created

12/7/09?

A Yes. This document was prior to the previous document.

Q Okay. It says, "Owen has two subdural hematomas. One would indicate non-accidental trauma."

A Yes.

Q Did that information come from the social worker?

A That was just the allegations of the report. I mean, that was the concern.

Q Did you ever talk to the social worker yourself?

A Yes. I did.

Q Okay. Do you know which one you talked to?

A Laura Newmark.

Q All right. Is this -- did you have notes regarding that conversation --

A Yeah. It's in --

Q -- or did you --

A -- the -- it would be in the dictation.

Q Uh-huh. It says, "Social worker has concerns because CT scan shows non-accidental trauma." Do you see at the bottom of the -- of 1355?

A Yes. And then it's cut off.

Q Okay. No doctor is saying it is non-accidental. Is that what -- is that -- is it --

A I --

Q You can't say whether --
A I don't --
Q -- it's caused --
A -- and I can't -- yeah. I can't say that, as well as the other page that's --
Q Yeah.
A -- a lot of the information is cut off on it.
Q But -- but, you know, it's fair to say the hospital had concerns about it being accidental trauma?
A They stated that they had -- they couldn't determine whether it was accidental or non-accidental.
Q I -- I know, but because they had concerns that it was non-accidental, they reported it to DSS? You'd agree with that, wouldn't you?
A Yes.
Q And -- but it -- they couldn't make a definitive statement that it was either accidental or non-accidental?
A Correct.
Q Now, there's -- I'm -- I'm going now to Tab 6. And -- and it's like a case review.
A I -- yeah. It's just the same thing.
Q How is that -- how is that created? Is --
A I have -- this Tab 7 information --

Q Well, actually it was Tab 6, but Tab 7 --
A Six and --
Q -- Tab 7's a case review, so my question --
A These --
Q -- would apply to either one of them.
A These two documents I am not familiar with. This is the first time I've seen either one of them.
Q All right. So you don't know who prepared them or when or --
A I mean, I know who prepared them based off of the initials on the bottom, but when they were prepared and -- I don't know.
Q Who prepared them, based on the initials on the bottom?
A Well, based on -- Tab 6, that would've been Phyllis Moore Ward, and -- let's see. Tab 7 it still shows her as well. And then --

MR. FRAWLEY: (To the deponent) Tab 8's the next one.

A -- Tab 8 would be for Yvonne Stewart. So 6 and 7, Phyllis, and then 8 would be Yvonne.
Q Okay.

MR. FRAWLEY: Monty, if you look at the lower right-hand corner, those are our Bates numbers, and the initials --

THE DEPONENT: Yeah.
MR. FRAWLEY: -- indicate that's -- those are the files we got them from.
MR. TODD: I gotcha.
Q All right. So I see --
A Yeah.
Q -- DSS PMW would be --
A -- Phyllis Moore Ward. And YS, Yvonne Stewart.
Q Who was Phyllis Moore -- Warren?
A Ward.
Q Ward.
A The program coordinator at York County DSS.
MR. TODD: All right. Thank you.
THE DEPONENT: Okay.
MR. SETTANA: I've got some follow-up questions.

REEXAMINATION

BY MR. SETTANA:
Q Let me go back to this transcript of 1/19/2010. Okay.
A What tab is that?
Q I'm not sure if everything was in the tab or was in --
MR. FRAWLEY: I'll give her my copy.
THE DEPONENT: Okay.

A All right.
Q Okay. And there is an Exhibit in Tab 18. I don't know if it's all there, but on Page 5 -- well, excuse me -- Page 9, okay, you read from the bottom of Page 9 onto Page 10 --
A Yes.
Q -- with your attorney and also with counsel for the plaintiff, okay.
A Uh-huh.
Q And then later you read some parts about the polygraph --
A Right.
Q -- okay. And you recall that you said that -- that -- that the polygraph -- that -- you made a reference that Lieutenant Miller made some inconsistent statements.
A Yes. He did.
Q Okay. Let me go back and actually go through that with you, and maybe --
A Okay.
Q -- clear that up --
A Okay. Sure.
Q -- see if they are inconsistent.
A Sure.
Q Starting in chronological order -- and -- and you

would concede that sometimes in conversations in -- in real life, when we're not here in deposition, go out of chronological order?

A Yes.

Q Yeah. You would -- you'd be talking to Lieutenant Miller and you may talk about the interview and then you may go back to the December incident and then you may jump forward to the January incident --

A Yes.

Q -- correct?

A Uh-huh.

Q Okay. So let's start on Page 9 there at the bottom, and -- and you asked him, "Did you -- did he ever admit to shaking the baby in December?"

A And he says, "No."

Q And Lieutenant Miller says, "No. He said that he didn't. There wasn't anything -- nothing like that done, because I went back and talked to him."

A Okay.

Q Okay. Would that indicate to you -- then he goes on and you ask him about the polygraph and did you ask him -- did you ask him on the polygraph about the December incident and he says no --

A Right.

Q -- correct? I'm paraphrasing.
A Correct. Yes.
Q Could it be there, when he's answering your first question, that, "No. I didn't ask him about the -- on the polygraph about December, but I went back and asked about it afterwards"?
A Correct. Yes. That could be the --
Q Okay.
A -- case.
Q That -- that's not inconsistent, is it?
A No. It's not.
Q Okay. So did -- anywhere did he say, "Yeah. I asked him about it on the polygraph," and later said, "No. I didn't ask him about it on the polygraph"?
A No. He did not.
Q Okay. Would this -- reading that transcript from Page 9 onto Page 10 indicate that Lieutenant Miller did not ask it on the polygraph, but later went back and talked to Mr. Carduff about that?
A Yes. That's what it would indicate, yes.
Q Okay. And it would indicate that Mr. Carduff told Lieutenant Miller, "No. There was nothing with the baby back in the December incident"?
A Correct.

Q Okay. And to your knowledge, they've never re-polygraphed Mr. --
A Not --
Q -- Carduff?
A -- to my knowledge, no, sir.
Q Okay.

MR. SETTANA: That's all I have. Thank you.

MR. FRAWLEY: I've got nothing further.

MS. HARRILL: Me neither.

MR. TODD: Did -- did y'all ask her what her address is --

MS. HARRILL: I did.

THE DEPONENT: Yes.

MR. TODD: -- in the beginning? I wasn't paying attention like I was supposed to. Okay.

FURTHER DEPONENT SAITH NOT.

Signing waived.

(Whereupon, there being no further questions, the deposition was concluded at 12:44 p.m.)

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
ELIZABETH HOPE RAINEY,)	
AS THE APPOINTED GUARDIAN)	
AD LITEM TO [redacted],)	
A MINOR,)	
)	
PLAINTIFF,)	
)	
-VS-)	CA NO. 2011-CP-86-04508
)	
CHARLOTTE MECKLENBURG)	
HOSPITAL AUTHORITY D/B/A)	
CAROLINAS MEDICAL CENTER,)	
SOUTH CAROLINA DEPARTMENT)	
OF SOCIAL SERVICES,)	
BRUCE BRYANT AS THE)	
CONSTITUTIONAL OFFICER OF)	
THE SHERIFF OF YORK)	
COUNTY, THE YORK COUNTY)	
SHERIFF'S DEPARTMENT AND)	
YORK COUNTY,)	
)	
DEFENDANTS.)	
)	



DEPOSITION OF KAYLA LYTHGOE

ROCK HILL, SOUTH CAROLINA

JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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) IN THE COURT OF COMMON PLEAS
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Deposition of Kayla Lythgoe, taken before me, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, in the law offices of McGowan Hood and Felder, Rock Hill, South Carolina, commencing at 9:53 a.m. on July 20, 2012 in accordance with the South Carolina Rules of Civil Procedure.

It was stipulated by and between Counsel for the Plaintiff(s) and Counsel for the Defendant(s) that this deposition is taken for any purpose allowed under the South Carolina Rules of Civil Procedure.

That the signing of the transcript of deposition by the witness is reserved.

* * * * *

Kayle Lythgoe, first being duly sworn, deposes and says as follows:

EXAMINATION - (By Mr. Frawley)

Q Ms. Lythgoe, will you state your name and address for the record, please?

A Kayle Lythgoe. You said address?

Q Yes, ma'am.

A 2799 Whiskey Road, Aiken, South Carolina.

Q Have you ever had your deposition taken before?

A No.

Q Let's go over some preliminaries. I introduced myself to you a moment ago. My name is Pat

Frawley. I'm an attorney with the Davis Law Firm in Lexington, and I'm representing the South Carolina Department of Social Services in this lawsuit. The gentleman to my left is Mr. Monty Todd from Columbia, and Mr. Todd represents Carolinas Medical Center, and they've got a longer name that, but basically he represents the hospital. The gentleman to his left is Mr. Dan Settana, and Dan represents York County and the York County Sheriff's Department, and we're defendants in this lawsuit. Do you understand that?

A Yes.

Q I say we're defendants, our clients are defendants in this lawsuit. To your right is Mr. Hood and Mr. Shaw. They're your attorneys; do you understand that?

A Yes.

Q I'm going to ask you some questions and the other attorneys after I'm done will ask some other questions in the event that I miss anything. I'm going to ask you what you know about this case. I'm going to ask you a little bit about yourself, about Mr. Carduff, with whom you have a child, about the circumstances surrounding it. I may have

a little broader scope and ask questions like, you know, do you know people in York County, are you related to anyone in York County by blood or by marriage. And that may sound like I'm going to do a background check on you. I'm not. I just want to make sure that if we get to the point that we have a jury here, I don't have your brother-in-law or something on the jury.

A Right.

Q All right. Let me go over some ground rules. If you have any questions about my questions, you need to direct those questions to me. I'll be glad to answer those. I want to make sure that any questions I ask you, you understand before you answer. So if I ask a question and you don't understand that question, ask me to rephrase it. I don't want you to be shy about that because I butcher a lot of questions in a deposition. I have a script, but I'm going by my script, I'm listening to your last answer, I'm thinking of another question, and I have a bad habit of having run-on sentences or switching direction mid-sentence. So if I ask a question and you just flat don't know what it is, ask me to rephrase it, all right?

A Okay.

Q You need to direct those questions to me, all right?

A Yes.

Q If I ask you any questions and you don't know the answer, I don't expect you to know everything. I just want to find out what you do know. So if I ask a question and you don't know, tell me you don't know. That's an acceptable answer. Don't speculate and don't guess. So I'll assume that if I've asked you a question and you've given me an answer, you understood the question and you know the answer, all right. Now, if you give me an answer and you say you don't know, I may ask that question in another manner to see if I've inartfully asked the question. But if your answer remains that you don't know, I'll stick with that and move on. Don't assume because I'm asking you a question you should know the answer.

A Yeah.

Q There may be things that I ask you that you just flat don't know, all right. By the same token, if I ask you a question and today you don't remember the answer, I don't remember is an acceptable answer, although I will again go back and probably ask that in another manner. A classic example of

that is what were you wearing last Tuesday. Last Tuesday you could look down and you could tell me what you were wearing, today you may not know. I had a deposition where this fellow wore the same thing every Monday, every Tuesday, every Wednesday so he could tell, you know, if it was a Tuesday he was wearing the green shirt, but few people do that. So if I ask you a question and you don't remember, stick with that and we'll move on. Don't speculate and don't guess. Try to make sure that all of your answers are verbal, avoid head shakes and head nods for the affirmative, which we've been doing now.

A Yeah.

Q If that happens in the deposition, I'll probably follow up with was that a yes or was that a no, so we'll catch that. But if you can, try to make sure that you answer verbally so the court reporter can get that. You'll notice while she's speaking, she's looking at you so she'll likely get it anyway, but I want to make sure we have a clear record.

A Yeah.

Q By the same token, if I ask you a question that elicits a yes or no answer, try to avoid uh-huh and

huh-uh for the affirmative and negative because phonetically they may sound the same.

A Yes.

Q I want to make sure that when you say yes it comes out as a yes, all right. If you need a break at any time, let me know. I tend to work fairly fast. We've got a little bit of ground to cover here. But there's going to be other gentlemen going behind me asking questions, so if you think you need a break, if we get into parts of this case that are upsetting to you and we need to take a break, let me know and we'll take a brief break, all right?

A Okay.

Q If Mr. Hood or Mr. Shaw or the other attorneys voice an objection, if I ask any objectionable questions and they voice an objection, stop talking, let them voice their objection for the record, and then depending on what we do at that point, we'll move on. But try not to talk at the same time someone else is talking. You and I will need to make sure that you let me finish my question before you begin your answer. I need to let you finish your answer before I begin my next question, or the court reporter over here will be

stroking out if she's trying to get both of us at the same time. All right. You've given me your name and address, what is your date of birth?

A June 12, 1990.

Mr. Frawley - Let's go off the record, please.

(OFF THE RECORD)

Q The address in Whisky Road, how long have you lived in Aiken?

A Since June 2000 - - - I was 20. I turned 20, two years ago.

Q We're in 2012 - - -

A 2010.

Q - - - that would be 2010?

A Yes.

Q Since June of 2010 you've lived in Aiken, correct?

A Yes.

Q At the same Whiskey Road address?

A Yes.

Q Is that a home or is that an apartment?

A It's a home.

Q A house, rather.

A Yeah.

Q Who lives at that address with you?

A My step-father, Larry Williams, my mom, Charlotte Williams, my son, Owen Carduff and my step-brother

now, Caleb Williams.

Q How old is Caleb?

A Eighteen.

Q And Caleb is Larry Williams' son?

A Yes.

Q Who has custody of your son, Owen?

A Charlotte and Larry.

Q Do you pay child support to them?

A No.

Q Now, you're at 2799 Whiskey Road now, was that the address you moved into when you moved to Aiken in June of 2010?

A Yes.

Q So since June of 2010, you've lived at that same address?

A Yes.

Q Where did you live before that, your immediate address before that?

A I do not remember the address. It's on Truman Street. I don't remember the numbers. I lived with my parents.

Q And when you say your parents, that would be Charlotte Williams and your step-dad?

A Yes.

Q When were Larry Williams and Charlotte Williams

married?

A It was after [redacted] was born. It was September '09.

Q [redacted] was born [redacted]?

A Yes, so he was about 20 days old.

Q How long did you live with them then?

A That was briefly because before that I lived with Michael.

Q And the address you lived with Michael was [redacted]?

A [redacted], yeah.

Q It's spelled oddly, [redacted]?

A Yes.

Q How long did you and Michael live at [redacted]?

A About a little under a year.

Q Where had you lived before you and Michael lived together at [redacted]?

A With his parents in Concord.

Q They lived in Concord, North Carolina?

A Yes.

Q Do you ever go to the mall up there?

A Yes.

Q How long had you lived with his parents?

A Since April '08.

Q Now, so in January of 2009 you would have been

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living with his parents and with Michael in Conway?
Mr. Todd - Concord.
A Concord.
Q Concord. I've been going to Conway for the last five years.
A That's okay.
Q My son played baseball down there, and I had Conway on the brain. Okay, Concord. So again, my question is, in January of 2009 you would have lived with Michael with his parents up in Concord, correct?
A Yes.
Q All right. Are you employed right now?
A Yes, I am.
Q Where do you work?
A I'm in between jobs actually. I just put in my two-weeks notice at TLC Medical, and I am to start at Verison Wireless the beginning of the month.
Q TLC Medical, how long have you been with them?
A Not very long, about four months.
Q And what's your job title there?
A I was considered DME representative.
Q DME, what does that stand for?
A Durable Medical Equipment.
Q What were your duties; what did you do?

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A I measured people for braces, compression hoses, wheelchairs. I fixed them. I put them together and explained them.
Q You've been with them for about four months and you're in the midst of your two-weeks notice?
A Yes.
Q And you're going to Verizon Wireless and what are you going to do with Verizon?
A Just sell phones.
Q So you'll be in sales?
A Yes.
Q When do you start with them?
A It's not confirmed yet.
Q Okay.
A I have to do a training program first.
Q Where did you work before TLC Medical?
A Hobby Lobby.
Q Hobby Lobby?
A Yes.
Q And where is that located?
A It's in Aiken.
Q And what did you do for Hobby Lobby?
A Just a cashier.
Q How long have you been with them or had you been with them?

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A They were through - - - I probably got the job in September-ish.
Q September of last year?
A Yes.
Q Okay.
A So, again, about four or five months.
Q And why did you leave Hobby Lobby?
A It was horrible, and I thought the medical would be better but - - - It was over work, under pay.
Q Where did you work before Hobby Lobby?
A I worked at Walgreens.
Q Okay.
A I originally got the job in Concord by Michael's mother.
Q And have you been with Walgreens consistently since you've got that job in Concord?
A Yes.
Q So you would have worked with Walgreens in Concord when you lived with Michael's mom, correct?
A (Indicating yes)
Q When you and Michael moved in at the [redacted] address, did you continue to work at the same Walgreens?
A I transferred.
Q Transferred. So you transferred to a Walgreens

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closer to where you and Michael lived at that time?
A Yes.
Q Was it in Rock Hill?
A Yes.
Q How far was that Walgreens from where you and Michael lived?
A Just a few minutes. It was on Celanese and we were on - - - off of Mount Gallant.
Q So how many months did you work at the Walgreens in Rock Hill?
A I'm not positive of the dates, but it had to have been around February we moved in 2009 so and then I lost the job in 2011.
Q Okay. Now, - - -
A Oh, wait. Well, not the - - - that's not in Concord. I mean Rock Hill though.
Q Well, the one in Rock Hill, you began at the Walgreens in Rock Hill in February of 2009 approximately?
A And then until I moved here in June of '10.
Q Now, your child was born early the second week of September. Did you work right up to the time that you delivered?
A I did.
Q And after you delivered, how much time did you take

off for?
A I believe I only took two or so weeks.
Q **Two or so weeks. When you went back to work, I noticed around the time [redacted] was injured you were working basically second shift; isn't that right?**
A Yes.
Q **You'd go in about 2:30 or 3 o'clock and get home about 10:30 or 11 o'clock?**
A Yes.
Q **Had you always worked second shift with the Rock Hill Walgreens?**
A It was very typical, yes.
Q **I mean, would they work you on a rotating shift or did you pretty much know that you're always going to go in in the afternoon?**
A It was rotating, yes.
Q **Okay.**
A It was usually week on week off.
Q **Now, in February of 2009 was Michael working?**
A February 2009, yes.
Q **And what was he doing?**
A He worked at Food Lion.
Q **And what did he do at Food Lion?**
A Bagging and stocking.
Q **Did he work at Food Lion consistently from February**

of 2009 when y'all moved to the Rock Hill area up through the delivery of the baby?
A Yes.
Q **How many hours a week was he getting; full-time, was he working 20 hours a week?**
A It was like 20 to 30.
Q **So he wasn't getting full-time work in?**
A No.
Q **Was he looking elsewhere for a job?**
A No.
Q **Let's talk about your education. Where did you go to high school?**
A I went to two high schools.
Q **Okay.**
A Ninth grade year was in Tennessee, Sullivan South High School.
Q **Sullivan South.**
Mr. Todd - Was that in Tennessee?
Witness - Tennessee, Kingsport.
Q **Sullivan South. Okay. And that was for your ninth grade year?**
A Yes.
Q **Okay, you passed everything in ninth grade?**
A Yes.
Q **So you were fixing to pass into tenth grade,**

correct?
A Yes.
Q **And then what, you moved.**
A We moved, yes, to Rock Hill and I started my tenth grade year at South Point.
Q **South Point?**
A Yes.
Q **Now, you say we moved, who was the we? Who lived in your household at that point?**
A My mom, Charlotte Williams, and my younger brother, Aaron Lythgoe.
Q **Is Aaron your only sibling?**
A Blood, yes.
Q **How old was Aaron? How old is Aaron now?**
A Now he is 14.
Q **Now, was your mother - - - this was before your mother had married Mr. Williams, correct?**
A Yes.
Q **Did she know Mr. Williams at that point?**
A No.
Q **Was she married at that point?**
A No.
Q **And what was her last name at that point?**
A Lythgoe.
Q **Lythgoe?**

A Yes.
Q **When you went to South Point, you went there for your tenth grade year, correct?**
A Yes.
Q **Did you complete tenth grade?**
A Yes.
Q **Did you pass into eleventh grade?**
A Yes.
Q **Did you attend South Point for your eleventh grade year?**
A Yes.
Q **Did you complete eleventh grade?**
A No.
Q **When did you quit?**
A April when I moved to Michael's.
Q **Why did you drop out?**
A Michael talked me into it. Dumb teenager. And said that we would be able to see each other more and that it probably wouldn't work out if I didn't move to where he was.
Q **Now, how did you meet Michael?**
A We both had a seasonal job at Scarowinds over Halloween time and that's where we met.
Q **And that would have been Halloween what year?**
A 2007.

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Q Now, was he living up in Concord with his folks at that time?
A Yes.
Q Had he dropped out of school already by then?
A No.
Q So he was still attending high school?
A Yes.
Q When he talked you into dropping out of school and moving to Concord, did he drop out of school then?
A He was on the edge of it.
Q How did you get along with his parents?
A Very well.
Q When I say his parents, I know his mother's name was Jennifer?
A (Indicating yes)
Q And what was his dad's name?
A Danny.
Q Did Jennifer and Danny still live together?
A Yes.
Q Do you know if they still live together?
A As far as my knowledge.
Q When have you last had any contact with Danny and Jennifer Lythgoe - - - I'm sorry, - - -
A Carduff.
Q - - - Jennifer and Danny Carduff?

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A Oh, It's been a long time, before Owen's first birthday.
Q Do they exercise any kind of visitation with Owen?
A Not any more.
Q Have they asked?
A No.
Q Have you made any attempts to check into getting a GED or completing your high school education?
A I have a GED.
Q Oh, you do? Okay. When did you get that?
A I got that last year. It was before I worked at Hobby Lobby, and I got fired and so it was '11, 2011.
Q Okay.
A It must have been July or August.
Q Where did you get that?
A Through Christ Central. It's a place in Aiken. It's a church facility who gives you free educational help.
Q It's called Christ Central?
A Yes.
Q Since you've gotten your GED, have you taken any kind of post high school or post GED courses?
A No.
Q Do you plan to?

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A I plan on going to college.
Q Have you looked at colleges yet?
A Yes.
Q Any particular college?
A Aiken Tech.
Q Any particular field or curriculum?
A Yes, I want to go into either law enforcement or medical.
Q And what got you interested in those two areas?
A Well, really, actually I should say psychology, law psychology. I'm really interested in that. I took a psychology class in high school and I loved it.
Q You're unmarried, correct?
A Yes.
Q What's your father's name? Now, I know Mr. Williams is your step-dad.
A My birth father?
Q Yes, your birth father.
A Robert Omohundro.
Mr. Todd - Sorry, say again.
Witness - Omohundro, it's O-m-o-h-u-n-d-r-o.
Q I noticed in some documents Omohundro is with your mother's name. Did she ever assume his name?
A Yes. They were married when I was little.
Q Okay.

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A I believe she changed all three of our names, my brother, her and myself. I don't know, I was ten or 11.
Q When have you last seen Robert Omohundro?
A When I was 11.
Q Did he ever try to maintain a relationship with y'all, with you and your brother?
A Not really. Mostly me, never my brother.
Q Okay.
A And no more than random internet things, and I'd just ignore him.
Q Have his parental rights been terminated to you before you turned 18 and now to Aaron?
A I'm not positive.
Q Does he still live in the state of South Carolina; do you know?
A He never lived in South Carolina.
Q Where was he from?
A Texas.
Q Texas.
A And as far as I know, that's where he lives.
Q And you hadn't really seen him since you were 11?
A Right.
Q And you were born in 1990 so you're - - - just turned 22, right?

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A Yes.
Q Do you have any children other than Owen?
A No.
Q Have you had any pregnancies other than Owen?
A No.
Q Do you attend a church regularly in Aiken County?
A Yes.
Q And what's the name of that church?
A Fountain of Life Fellowship.
Q What denomination is that?
A Pentecostal.
Q Are you a member there?
A I do not believe so, no.
Q But you attend regularly?
A I attend, yeah. It's my father's church.
Q Okay. Is he the - - -
A Pastor.
Q - - - pastor there? How about Ms. Williams, does she attend regularly?
A Yes.
Q I guess if you're the wife of a pastor you pretty much have to attend regularly don't you?
A Yes.
Q Did you attend a church when you lived in Rock Hill?

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A Yes.
Q And what was that church?
A What was that called? Faith Family Christian Center and again, that was Larry's church.
Q Was it also Pentecostal?
A Yes.
Q Okay.
A I'm not Pentecostal so ---
Q I'm Catholic - - -
A Me too.
Q - - - but sometimes I go to a Lutheran church.
A Yeah. I'm a Christian Catholic.
Q Where is Faith Family Christian Center located, what street, if you remember?
A I do not, but it's behind the airport.
Q Were you a member there?
A No.
Q While you were attending Faith Family Christian Center, about how many years did you attend there?
A From when we moved down there we went, because we wanted Owen to be raised in a church, to when we moved here.
Q When you moved here, you mean to Aiken?
A To Aiken, I'm sorry.
Q Did Michael attend that church?

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A Yes.
Q Regularly along with you?
A Yes.
Q Were you and Michael in any young adult groups or youth groups while you were attending that church?
A No, we didn't really have one there at the church. Did they have Sunday School?
A Yes. And we would some - - - that was not as regular.
Q Okay.
A We always went Sundays and Wednesdays.
Q Now, Michael was born [redacted]?
A Yes.
Q Do you know if he ever - - - Well, you mentioned he worked at a Food Lion. Did he work at a Food Lion in York County?
A Yes.
Q And where was that located?
A It was the one - - - I don't remember the street names here any more.
Q Okay.
A I think it was called - - - It was across the street from Jack-in-the-Box.
Q Jack - - - near a - - - okay, Jack-in-the-Box shopping - - - a strip mall or - - -

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A No, it was just a restaurant.
Q Okay.
A I think it was - - - was it Herlong; is that right?
Q I don't know. I'm from Lexington.
A I'm sorry, I can't remember.
Q Now, a Jack-in-the-Box, that's one of the hamburger outfits?
A Yes.
Q So he worked at a Food Lion near a Jack-in-the-Box?
A Yes.
Q And worked there for several months apparently?
A Yes.
Q Did he ever work anywhere else in York County?
A No.
Q When did you have your last contact with Michael Carduff?
A January 11th when Owen was shaken.
Q Okay. So on the days following that while [redacted] was hospitalized, you didn't see Michael at the hospital.
A No.
Q And we've discussed when you've met with Michael and how far he went in school. He's about a year younger than you?
A (Indicating yes)

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Q So was he a year behind you in school?
Mr. Hood - Give him a verbal response.
That was one of those head shakes.
A I'm sorry.
Q I'm sorry. That's right and I didn't catch it. And the answer to that was yes, correct, - - -
A Yes.
Q - - - he's about a year behind you?
A Yes.
Q Was he a year behind you in school as well, if you recall?
A Yes.
Q Did you ever attend the same school as Michael?
A No.
Q And you told me that you stopped attending school somewhere in your eleventh grade year, correct?
A Yes.
Q Would it be accurate to say that he stopped attending school somewhere in his tenth grade year?
A Yes.
Q And he had a brother, Brian?
A Yes.
Q Did Brian sometimes live with y'all when you lived here in Rock Hill?
A No, he would come down for weekends.

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Q But he'd stay for weekends periodically?
A Right.
Q When he was here after Owen was born between September 9th and December 4th when he was hospitalized for the first time, would Brian sometimes care for the child?
A Not by himself.
Q So any time Brian was with the child there was always either you or Michael with him, correct?
A Yes.
Q But there were times when the child had Michael and Brian caring for him, and you wouldn't have been there?
A Yes.
Q Have you been involved in any prior lawsuits besides this one? Now, this one you're not actually a party in it. Have you ever been involved in a lawsuit as a plaintiff or a defendant?
A Does [redacted] custody hearing count?
Q That can be one. That's a family court action - - -
A Yes.
Q - - - and you were a party in that. Okay. Mr. and Ms. Williams were awarded custody o[redacted]t the

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conclusion of that, correct?
A Yes.
Q But you still had your parental rights with regard to [redacted] correct?
A Yes.
Q You still have visitation if you need to, correct?
A Yes.
Q Was there any kind of court order, any component of the court order, requiring you to pay child support - - -
A No.
Q - - - to the Williams'?
A (Indicating no)

Mr. Hood - Once again, give me a - - -
A No.
Mr. [redacted]awley - I think actually she double-[redacted]d me on that one. She said no and then [redacted]h so that was good.
Mr. [redacted]ood - Okay.
Q I apologize in advance for asking this question but I ask it in all depositions. Have you ever pled guilty to or been convicted of a crime other than a traffic offense?
A No.

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Q And again, I apologize for that. I may or may not have asked you this earlier, but do you have any relatives to whom you're related by blood or by marriage who are York County residents?
A No.
Q Okay.
A Marriage, actually. I'm sorry.
Q Marriage, okay.
A Larry has family everywhere here.
Q Okay.
A It could be hard to find someone who's not.
Q Well, we'll remember to ask Mr. Williams that when we talk to him.
A You can ask him.
Q Was [redacted] full-term baby?
A Yes.
Q And was it a normal delivery, or was there a C-section, or was it induced?
A It was - - - It was induced.
Q Okay.
A He was a little late.
Q But it was a normal vaginal delivery?
A Yes.
Q What was his birth weight?
A Seven pounds three ounces.

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Q When you were carrying [redacted] did you go for periodic doctor visits to have the pregnancy checked on to check how his development is and so forth?
A Yes.
Q Did you ever get a - - - it's been 23 years since my last son was born, but the - - - I don't know what they can do now to show you what the baby looks like, but did you have any of those ultrasounds?
A Ultrasounds, yes.
Q When you had your doctor visits, would Michael go with you?
A Yes.
Q Would your mom go with you?
A Not as often.
Q And you were relatively young then. You're 18, 19 years old at that time?
A Yes.
Q Now, at the time or around the time - - - Well, let's say September of 2009, not the day that [redacted] was born but around the time that [redacted] was born, was Michael still working then?
A Yes.
Q And when [redacted] was born, was Michael able to come to

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the hospital for the birth?
A Yes.
Q After [redacted] was born, was he a healthy baby in the weeks following the birth?
A Yes. He did stay two days after for a procedure. They had to give him antibiotics because I carried a virus.
Q Okay.
A I do not remember the name.
Q Was he jaundiced at all or anything like that?
A No.
Q Did he have any special bilirubin issues or anything like that with regard to jaundice, anything other than the virus that you had that they had to get rid of?
A No.
Q After he was born, did you take him for well-baby visits to a pediatrician?
A Yes.
Q Who was your pediatrician then?
A Sunshine Pediatrics. I believe his name is Dr. Paxton.
Q And you stayed with Sunshine Pediatrics pretty much up till at least December, right?
A Yes.

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Q Did you take him to any other pediatricians besides Dr. Paxton at Sunshine Pediatrics?
A No.
Q When you had the well-baby visits, would you typically take him, or would Michael take him sometimes, or your mom; how was that done?
A I believe the first few, Michael came and then mom - - - me and mom went to one. But for the most part, I was always with mom or Michael.
Q When you had the well-baby visits, did you always take him and maybe sometimes someone else came with you?
A Yes.
Q And you said you began working again, you thought it was maybe two weeks?
A Yes.
Q Okay.
A I'm not 100 percent on that, but it wasn't long - - - not long.
Q I think typical maternal leave is usually up to six weeks. Could it have been more than two weeks?
A Yeah, well, it was definitely not six weeks.
Q Okay.
A I know I didn't get the full privileges.
Q Do they have privileges for you; were you able to -

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- - did they have maternity leave where you could take some time off and - - -
A Yes. I messed it up though somehow on accident by taking a vacation instead, so I messed up my length of maternity leave.
Q Who was your supervisor at Walgreens then if you remember?
A The one here in - - -
Q Yes, the one when you worked in Rock Hill at or around the time when [redacted] was born.
A His name is Mr. Murphy, John Murphy, I believe.
Q And I may have asked you this already, but which Walgreens was that and what road was it located on?
A On Celanese.
Q Celanese. Could you spell Celanese for me?
A No.
Q Okay.
A C-e-l-e-a-s.
Q Okay.
A I don't know, I'm not sure. I'm sorry.
Q And you didn't always work second shift, sometimes you'd work day shift?
A Yes.
Q Is that Walgreens a 24-hour Walgreens?
A No, they close at 10:00.

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Q So they would have had an A shift and a B shift and then they closed at 10:00? The answer to that is yes?
A Yes.
Q When Michael worked, what hours did he typically work?
A Mornings.
Q And when you say mornings, what time would he typically go in?
A Early, around 7:00 or 8:00.
Q Did they sometimes get trucks in where he had to go in earlier?
A Yes.
Q When they had trucks, did he unload the trucks?
A Yes.
Q Now, he's fairly tall. What, he's six foot-but fairly thin, correct?
A He was thin and probably around - - - right at six.
Q Did Michael smoke cigarettes?
A No.
Q Do you smoke?
A No.
Q Did his brother, Brian, smoke?
A No.
Q Now, when you worked - - - and you went back to

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work two weeks after [redacted] was born which is pretty quick after you've just given birth to a child. When you first went back, and we've got this two-year-old little boy, who's taking care of him when you go to work?
Mr. Todd: Two month old.
A Two month old, yeah. Typically, my mother because Michael still had his job at the time.
Q All right. Let me back up a minute. Was I mistaken, and maybe I misinterpreted something, but you said you took two weeks off or two months off before you went back to work?
A Weeks. Oh, yes.
Q Okay. So after the birth - - -
A Two weeks old.
Q - - - when you're two weeks post-delivery, you're going back to work, correct?
A Yes.
Q Who's taking care of your two-week old child when you're going back to work?
A My mother.
Q And that's understandable.
A Right.
Q I mean, she's had a two-week old child of her own, at least two, and Michael hasn't before, correct?

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A Correct.
Q Did you and Michael attend any kind of Lamaze classes, or parenting classes, or anything about parenting a young child during the last weeks of your pregnancy?
A No.
Q Were those offered? Do you know if they are out there?
A Yes.
Q Why did y'all not attend them?
A Just work. It was - - - we both worked too much.
Q As you're in the last weeks of your pregnancy, did you have some concerns about what's involved when this baby comes? I mean, the pregnancy itself is going to be hard but once that baby comes, did you have any questions or concerns about your ability and your husband's - - - or your significant other's ability, the father of the child's ability, to care for this child?
A Not to care for. I was just worried about the actual birth.
Q So it didn't occur to you that there may be significant challenges after the child was born?
A Well, it occurred to me, but I was ready to take them.

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Q In those first weeks, describe how [redacted] was as a baby. Did he - - - I mean, babies never sleep through the night at first. You're getting up. Did you breast feed or was he bottle fed?
A I breast fed until I went back to work.
Q When you breast fed, did you get up every time he had to be fed or did Michael get up, get the child and bring the child to you? How was that done?
A Typically I got up.
Q And Michael would be sleeping while you're getting up, correct?
A Yes.
Q In the first weeks after you got him home, how many hours over the night would he typically sleep before you had to get him up and feed again?
A Probably a good four.
Q So you'd get a good four hours sleep?
A He was a good baby.
Q And when you were at work for feedings, how did you accommodate that?
A Well, I tried the pump. It was a hassle, and it was uncomfortable so we just changed to formula once I started working full time again.
Q When you changed to formula, did that have any impact on how he was eating, what his appetite was,

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how he was tolerating the formula?
A No. No change.
Q So he adapted pretty well from breast milk to formula?
A Yes.
Q Describe Michael as a father for me in those first few weeks. Was he attentive, was he kind of worried about holding the child; how did he appear to you to be?
A He seemed pretty confident with holding him.
Q Okay.
A Like any typical man, he never wanted to change diapers.
Q I used to like changing diapers, but go ahead.
A That's rare. He was comfortable with him. He did get nervous when he had to be alone with him, but I found that to be normal.
Q Would he get spooked if he's alone with him holding the child and the child suddenly gets fussy or starts crying?
A No. He would burp him or - - - and after he burped him and couldn't figure it out, he'd usually just bring him to me.
Q Okay.
A But for the most part he seemed fine with him.

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Q And how did [redacted] appear to react or respond to Michael when Michael held him?
A Natural.
Q Owen made eye contact with him?
A Yes.
Q Now, I read somewhere where your mother never really warmed up to Michael, would that be an accurate statement?
A Yes.
Q She thought you could do better?
A Yes.
Q And at some point Michael lost his job, correct?
A Yes.
Q When did he lose his job?
A It was after [redacted] was born. I would say probably around October-ish.
Q It would have been certainly before the December 4th first hospitalization, first injury, correct?
A Yes.
Q So at the time of the December 4th first injury - - - and I'll refer to them as the first injury which would be that December 4th through December 8th hospitalization, then the second injury which is the January 11th injury, all right?
A Yes.

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Q Michael had lost his job before the first injury, correct?
A Yes.
Q Was your mother's attitude toward Michael, did that create any stress between you and Michael?
A A little.
Q I mean, did Michael know that your mother did not hold him in high regard?
A Yes.
Q Did they get along okay when they were together?
A Yes.
Q Now, you mentioned a moment ago how Michael was with [redacted] Did you notice on occasion that he would be rough with [redacted] or not as gentle as you would have thought he should have been in picking him up?
A Yes.
Q Describe that for me.
A It was non-aggressive, no anger in it, just he would sometimes maybe forget to support his head or he would scoop him up super fast instead of slowly. He would just stand upright. And then when he got a little older, like two-ish, three months old, he would, you know, kind of do the up and down and that scared me.

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Q Okay.
A But other than that, it was nothing else.
Q Initially, it would have been from your perspective just that he wasn't aware of how fragile a child could be?
A Right.
Q And didn't always support his head as much?
A Right.
Q And later on you said he would maybe, I mean fathers do this, bounce the kid on their knee or something but a little bit more than you thought maybe would have been appropriate - - -
A Right.
Q - - - or at least you were worried about it?
A I was worried about it, yeah.
Q Okay.
A It just scared me.
Q On those occasions when he would, and I think you used the gesture of your hands - - -
A Yeah.
Q - - - as if they're holding a baby going up and down, - - -
A Right.
Q - - - how would [redacted] appear to be responding to that?

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A Oh, he loved it.
Q The kid looks like he likes it - - -
A Yeah.
Q - - - but you're thinking well, maybe this isn't the best thing?
A Yes.
Q Did you ever see Michael drop [redacted]?
A No.
Q Did you ever see - - - well, between his September birth and the December 4th first hospitalization, [redacted] wasn't even standing up in the crib yet was he?
A No.
Q I mean, could he even turn over?
A Yes.
Q Did you ever see an occasion when he would turn over and hit the side of the crib?
A No, he wasn't that advanced.
Q Okay.
A We just have it on camera once him rolling over.
Q When you put him on the floor, would he crawl; was he to that point yet?
A He did the back and forth thing.
Q Back and forth.
A He wouldn't go anywhere, but he'd like get up and

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then down.
Q Kind of rock - - -
A Yeah.
Q - - - forward and backward, okay, - - -
A It's very cute.
Q - - - which is a precursor to crawling. You mentioned you had him on the camera. Tell me about that. What kind of camera did you have?
A Michael's mother gave us her video recorder. It did it on the little mini DVDs and we recorded everything, absolutely everything.
Q Do you still have those videos of [redacted]?
A I do.
Q And do any of those videos show Michael with [redacted]
A Yes.
Q And those would be obviously from some time in September up through - - - would you have videos that were taken prior to the first injury?
A Yes, we have him coming home, and we have just random things that would be boring to everybody else, and then we have him rolling over and Christmas and all.
Q Had he ever gotten to where he could sit up if you put him in a couch where he could sit up?
A No, not unsupported.

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Q No? Okay. Where he sits up and then you watch him in the video and he just sort of, okay, - - -
A Yeah.
Q Did you and Michael - - - I guess once he lost his job and as we're getting into December, was the fact that he was not working and you were working, did that become a source of stress for the two of you?
A Yes.
Q Was he out looking for other jobs?
A No.
Q With Food Lion, why did he leave that job?
A I remember there was something to do with it like he asked off for a day to go up to Concord to see his parents and then he like never went back. I don't really remember what had happened. I'm trying to remember if it was because of Thanksgiving, did we take off for Thanksgiving and then he just never went back, but I'm not okay with the dates there.
Q Okay.
A But something like that happened, he just slacked off.
Q And I think I asked a moment ago, and I'm not holding you to this, but I think a moment ago you

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mentioned that he may have left his employment some time in October but it may have been as late as November when that happened, - - -
A Yes.
Q - - - at or around Thanksgiving possibly?
A Yes.
Q Did he ever tell you why he left the job, whether he was fired or he just stopped showing up or - - -
A He just - - - well, he didn't like his manager and he would always complain about how he hated him and how the manager hated Michael.
Q Do you know who the manager was; do you remember his name?
A I think it - - - it was an M definitely. I think it was Mark or Mike.
Q Mark or Mike.
A Yes.
Q Was he an older guy or - - -
A No, younger.
Q - - - younger guy?
A And nobody liked Michael professionally because he refused to cut his hair, another just defiant thing about him.
Q How long was his hair?
A Long. It was to his shoulders, a little past.

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Q Not as long as yours?
A No.
Q Okay.
A No, I wouldn't have that.
Q When he would go to work would he tie it back or - - -
A Yes.
Q Okay.
A He always had it back, bottom was shaved off kind of thing.
Q Now, I know he had a tattoo on his leg?
A Yes.
Q Did he have any tattoos on his arms or anything that would be visible?
A No. That was very recent too.
Q When he left Food Lion for whatever reason - - - do you know if he was fired or if he just left?
A I'm pretty sure they fired him by not showing up.
Q But he never told you that?
A No.
Q And he never had a day where he went to work and they said you're fired, go home?
A I don't believe so.
Q As far as you know he just stopped showing up and they just took him off the payroll?

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A Yes.
Q Okay.
A I believe that's how it went down.
Q After he left Food Lion, did he go, to your knowledge, for any other jobs?
A No.
Q So he never even applied for another job after that?
A He got very lazy.
Q Did he tell you why he wasn't applying for jobs when he's the man in the house, he's got not yet a wife but the mother of his child and a young child, did he tell you why he's not out there trying to earn some money when you're working B shift 40 hours a week?
A No, he just would say, you know, well, I - - - I watch the baby and you go to work, that kind of thing, so.
Q And what did you say when that happened?
A I mean, we had conflict because of it. I would just - - - I would yell all the time, and he'd yell at me for being a nag and so it was just those - - -
Q Did he ever hit you?
A No.

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Q Did he ever threaten to hit you or ever get physical right in your face?
A No.
Q You weren't afraid of him?
A No.
Q Let me ask you this, this happens frequently when couples get together, they live together for awhile, then they have a child, and then afterwards their intimacy gets affected. I'm not - - - I don't want to go into any detail, and I apologize for any embarrassment, but did your relationship with Michael change after the child came?
A No.
Q So you were as intimate after the child came as you had been before?
A Yes.
Q And I apologize for getting into that.
A That's okay.
Q Were there occasions, we mentioned earlier about Michael possibly being a little rougher when he would pick the child up when he was little, did you have occasion sometimes to tell Michael you need to be more careful?
A Yes.
Q And what was Michael's response to that?

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A Usually - - - well, it depended on what it was on. If it was because he was playing with him he'd be like well, he likes it or if it was because he'd picked him he'd say sorry and - - -
Q I'll try to do better next time?
A Yeah.
Q Did you ever see his brother pick up [redacted] at any time when Brian was there and y'all were there?
A Yes. Brian showed a lot of love towards him.
Q How old was Brian?
A He was older than me. I think he was 20.
Q So he was Michael's older brother?
A Yes.
Q But was Brian working at that time?
A No.
Q Had Brian completed high school, do you know?
A Yes. Well, no. No, I don't think he did. I'm sorry.
Q Now, had you noticed that Michael would sometimes be rough in picking up [redacted] before that December 4th first injury?
A Yes.
Q And when you would see it you'd correct him on it?
A Yes.
Q And by that December 4th first injury was [redacted]n of

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an age where Michael would sometimes bounce him, - - -

A Yes.

Q - - - okay, play with him?

A Yes.

Q Did you notice a bruise on the left side of [redacted]s head in November?

A Yes.

Q Explain to me when you first saw that bruise and how it appeared.

A When I came home from work, Michael and Brian were watching the baby and the baby was in his little bouncy seat next to them, they were playing video games, and he just cooing and being cute, and I picked him up to hug him and greet him. And I said hey to Brian and Michael, and then I noticed it and I asked what is this, what happened? And they both just said yeah, we noticed that. I think that I - - - when I dropped the controller on his head that it left a bruise. And I said you dropped the controller on the baby's head? Like it was an accident. I'm sorry. And he was just in the seat, and they said he dropped the controller, so I kind of let it go.

Q Okay.

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A I was like you need to be more careful and more attentive. You know, like I'm sorry. I knew you'd freak out about that and - - - and they went on.

Q And you'd worked essentially an eight-hour shift that day?

A Yes.

Q Do you remember when you came home had you worked B shift or was it the day shift?

A It was - - - it was the B shift.

Q So you'd come home kind of late in the evening about 11 o'clock?

A It was - - - yeah, I was - - - it was probably a little earlier then because it - - - I got off at - - - I believe I got earlier that day. It was still light outside so I'd probably did mid-shift. Yeah.

Q Tell me about a mid-shift. What would that be? Where you'd start mid-way through day shift - - -

A Typically 12 to 8.

Q So instead of an 8:00 to 5:00 or a 4:00 to 11:00, you'd work like 12:00 to 8:00 or something like that?

A 12:00 to 8:00, 12:00 to 6:00, yeah.

Q And when you saw [redacted] he had a bruise on the left side of his head, but he was still in good spirits?

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A Yes.

Q And he was in you said his bouncer. That's a seat where they can push the feet on the floor and the seat bounces?

A Yeah, but he couldn't do that. We usually had to do it on the bouncer.

Q Describe the bruise for me. Where about - - - I mean, anything from mid-line in the forehead over to the left side, was it on his temple, was it up near the forehead; where was it?

A That one was more on the side of the temple.

Q And you're indicating just above your eyebrow?

A Of the eyebrow, yes.

Q Although you're pointing on the right side of your head?

A Looking at the baby, it was on his - - - yeah. Okay.

Mr. Hood - And just so the record will reflect, she pointed to the left side of her head.

A Left side, yeah.

Mr. Frawley - Yeah, the second time she did.

A Sorry, yeah.

Q And the reason you may have done that is because

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I'm pointing on the left side of my head, you may have been mirroring where I had my hand - - -

A I am.

Q - - - and that's fine. But the point is that you've indicated on the left side of your head just above the outside of the eyebrow, correct?

A (Indicating yes)

Q The answer to that is yes?

A Yes.

Q About how big was it?

A Very little.

Q Okay.

A Probably about a dime.

Q About a dime? Was that the only bruise that you would have seen on his head in November prior to the December 4th first injury?

A Yes, that's the first bruise on him his whole life.

Q Did your mother get a chance to see that bruise?

A Yes.

Q Did she ever talk to you about that bruise?

A She just asked me what had happened.

Q And what did she say?

A Same as me, you know, well, what do you expect when two boys watch a baby and all they do is play video games.

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Q Did Michael have any kind of temper?
A No.
Q Did he ever get frustrated over stuff?
A Yes.
Q Did he get frustrated over the fact that he wasn't working?
A No, he got frustrated over the fact that I nagged him for not working.
Q He enjoyed not working?
A Yes.
Q When he didn't work and he stayed home, I mean, obviously, I guess he's saying he's watching the kid, but what else is he doing?
A He would go to Concord some times or - - - that's about it really.
Q When you wouldn't be working what's he doing?
A He's usually at home. He was a gamer, - - -
Q Games.
A - - - always playing games or shopping.
Q Okay, video games?
A Yes.
Q Okay. Or shopping?
A Yes, his parents gave him money a lot.
Q What did his parents do? Were his parents affluent?

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A I'm sorry, what is that?
Q I mean, were they well off?
A Yes, to my knowledge.
Q Do you know what Mr. Carduff did?
A They were both in a Walgreens' business. I believe he was high up, you know, and - - -
Q And that's how they could assist you getting the job?
A Yes.
Q When you worked for Walgreens, what did you do for them?
A I started off as a cashier, and I transferred three times total. And when I found out I was pregnant, I left the Concord one because we left to go to my parents - - -
Q Right.
A - - - or closer to them - - -
Q Right.
A - - - and that's when I transferred to Rock Hill. When I was in Rock Hill, I got promoted to go do the photos, and I was head photo specialist and I made the photos and all that. Then we transferred again - - - Oh, well, yes, we transferred again to Aiken and there I was promoted to pharmacy.
Q When you were in pharmacy in Aiken, what did you do?
A I did the filling, counting pills, patient interaction. I called for authorizations and billing.
Q When you left Walgreens and went to your first non-Walgreens' job, I mean, were you dissatisfied with Walgreens or just looking for more pay?
A No, I was extremely happy with Walgreens. I was let go because when I got hired, when I was 17 when I first got the job, I marked that I had a GED when I did not and they found that out three years later.
Q Oh, okay.
A Very upsetting.
Q Now, in the interim, did you get your GED?
A Yes. Not while I was with Walgreens, it was afterwards.
Q So you basically got fired because you had on your application from when you were 17 that you had a GED when you really didn't - - -
A Yeah.
Q - - - and they didn't like that so they terminated you and then you subsequently did get your GED?
A Yes.
Q Tell me about what led up to the December 4th hospitalization and the first injury. Now, I understand you - - - that [redacted] was acting oddly, was, I think, sleeping all the time but when he was awake he was screaming a lot, correct?
A Yes.
Q Tell me how that came about, how you discovered that. I mean, did that just happen one day or was it something that developed? Was he sick and then that resulted; how did that come about? When did you begin taking him to healthcare providers?
Mr. Frawley - And I'm going to let you do a - - -
Mr. Todd - Objection.
Mr. Frawley - No, what I was going to say, I'm setting the stage and I'm going to ask specific questions.
Mr. Hood - Sure. Sure.
Mr. Frawley - I mean, that question, as I put it, it's easily objectionable. But what I'm telling you - - -
Mr. Todd - You should object to your own question.
Mr. Frawley - Yes, well, that's kind of where I want to go with this.
A Okay.

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Q Where do we start? When did you first notice it? And those are the questions that I'll ask.
A Okay.
Q And then I'm going to open the floor to you to do that. Now, at or around that time - - -
Mr. Settana - When you say that time, you're talking about December 4th?
Q I'm talking about between, say, Thanksgiving - - -
Mr. Settana - Okay.
Q - - - and December 4th, late November early December, was there a time in there where [redacted] had a cold, the flu, was sick, where that began where he went from a well baby to a baby that's got a runny nose and is cranky?
A Yes.
Q And tell me about that.
A He was fine during Thanksgiving and then he started to get the sniffles which I figured came with the season. But we checked him out for the sniffles and that's what we were told it was and not to worry.
Q And who told you that?
A Paxton.
Q Now, when you say Paxton, so he got the sniffles and what you did in response to that was instead of

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just, you know, hoping he sleeps through it, you took him to a healthcare provider, Sunshine Pediatrics, correct?
A Yes.
Q And the Paxton you talk about is Dr. Paxton, correct?
A Yes.
Q And Dr. Paxton told you what again?
A It's just a case of the normal sniffles.
Q And what was [redacted] doing at that time that led you to the conclusion that he's sick enough that you need to take him to Sunshine; what was he doing?
A He was just really runny and red in the nose, and that was it.
Q As far as his disposition, how was he acting?
A Fine.
Q Okay. I mean, happy or was he - - -
A Oh, yes.
Q Okay.
A Yes, happy.
Q All right.
A It was not until after that, a couple like about week now before the 4th, that is when he started to act really weird.
Q Okay. Well, let's talk about that.

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A Okay.
Q What was he doing that lead you to tag that today as being really weird?
A He would not - - - When he was up, it was constant crying.
Q Okay.
A Again, I'm a first-time mom. I don't - - - I've heard about colic so I just figured it was that so I let it go a little bit until, you know, the feeding got odd. He didn't never want to eat. We had to make him eat, not, you know, force or anything, but we had - - - it was a job to make him eat.
Q Okay.
A And we had to wake him up to eat. He wouldn't wake up to eat anymore. And I knew that was odd because I was told babies wake up, and he was prior, like every three hours to eat, and he wasn't.
Q Okay.
A So I got really concerned there. At one point he had a fever and so I took him - - - his pediatrician was closed so I took him to Riverview - - -
Q Riverview, okay.
A - - - I think it was called. It's like a 24-hour

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clinic.
Q Do you remember what day of the week this was?
A I do not.
Q It doesn't matter.
A And it was nighttime because it was after I got off work so we went up there. And I told the doctor, and they didn't make fun of me but, you know, calling me a first-time mom, and I'm worrying too much, and it's okay but to follow up with his pediatrician which I did. And he told me that it could be a throat infection and so I said okay. And he put him on some antibiotic.
Q Let's stop there a second. You went to Riverview and they didn't really make fun of you but they said first-time mom.
A Yes, which is fine.
Q Were they being dismissive of you or did you get the impression they're actually looking at him and trying to analyze what the problem is?
A I mean, well, he was crying, crying, crying when I brought him and of course, we went back, he was happy.
Q Okay.
A He was laughing.
Q Okay.

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A And so they looked at me like well, what's wrong. I was like I swear he wasn't like this. He was crying. And so they kind of were dismissive. I mean, they checked him out, did, you know, the ear and then looked at the mouth and heart and all that but for the most part they just - - - that was it.
Q And they told you to take him to see his pediatrician?
A Yes.
Q Then a second after that you said he told me it may have been a throat infection. Did you take him to Dr. Paxton?
A Yes, the pediatrician.
Q And then Dr. Paxton told you what?
A It may be a throat infection.
Q Okay.
A I heard the word thrust. I'm still to this day not sure what that is.
Q It is thrust or thrush?
A Thrush, sorry, the tongue thing.
Q Yes.
A And we were supposed to follow up again but that - - - and that's when the 4th happened.
Q So you went to Sunshine Pediatrics, saw Dr. Paxton, he says it's a little bit of a cold, got a little

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bit of a problem. Within the next day or so you go to Riverview and they examine him and say go see your pediatrician. You go back to Dr. Paxton and he says maybe a throat infection, uses the term thrush. Do you know today what thrush is?
A No.
Q But he used that term and gave you some medication at that point.
A (Indicating yes)
Q Then what next happened?
A And then we were supposed to follow up the 7th so that had to have been about the 1st or so.
Q Okay.
A But we ended up in the hospital before through the 8th, so.
Q Okay. Tell me what happened on the 4th.
A The 4th, I went into work. It was a morning shift because I'd got off around 4:35. When I came home I was unloading all the stuff, because I bought Christmas stuff, and Michael came running out of the house with Owen in his arms and he was panicky. And he said I don't know what's wrong. I don't know what's wrong. And I looked at Owen and he was completely limp and not breathing right. He - - -
Q Were his eyes open?

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A They were like half.
Q Okay.
A And he looked - - - Well, he looked like he like had the wind knocked out of him. But he wasn't breathing correctly, and he was completely limp so I freaked out. We threw him in the car seat, and we headed towards the hospital. We got to the hospital and the whole time I was tapping on his chest to try and stimulate breathing. And then we got to the hospital. He dropped me off right at the front door of the ER. I ran in there with the whole car seat, and I found the first lady and I told her, you know, my baby's not breathing and so she started calling people back. And the second I pulled him out of the car seat, he let out a big, huge yell and just screamed the whole rest of the time.
Q Okay. Let's back up a second. You said you were tapping on him. On the way to the hospital you're tapping on his chest you said to stimulate breathing. Did it appear to you he wasn't breathing?
A Yes. He was very bluish.
Q Did you check for a pulse?
A No, I didn't know how.

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Q So he was bluish. It appeared to you enough that he wasn't breathing that you're tapping his chest and hopefully stimulate breathing, correct?
A Yes.
Q You said you went to the hospital. This would be Piedmont Medical Center?
A Yes.
Q And you've carried the whole seat in there with you?
A Yes.
Q And then you said that he let out a yell?
A Yes.
Q And tell me what next happened.
A After that he was breathing finally so I - - - I was a little calmer there. And we went back and we did the vitals, what they do when you go in the ER, check the blood pressure and the temperature and all that. We were taken immediately back. And my mom had shown up because one of us called her.
Q So Ms. Williams did come to Piedmont Medical Center when you were there?
A Yes. And then I'm kind of iffy on the facts of what had happened. They did some tests, blood work. Nobody really knew. We were in there for a really long time. And then mom - - - They were

going to let us go and mom brought up the fact that he was in the hospital an extra two days when he was born for that virus that I had, so they were like oh, well, let's do one more thing. And I think they did a spinal tap and that's when they found the bleeding in the brain.

Q Okay.

A And that's when we were ambulanced over to Levine for further care.

Q Now, what time would you have gotten to Piedmont Medical? You went to Piedmont Medical on the 4th didn't you?

A Yes.

Q Was it late in the day, late in the evening?

A It was right after I got off because I didn't even get fully out of the car so it was around 4:35.

Q And when you were transferred to Levine, that would have been early, early, early in the morning, just after midnight?

A Yeah, it was - - - it was late or early, however you look at it.

Q So you went to Piedmont on the 4th and then early the 5th you wound up going to Levine?

A Yes.

Q Now, what explanation did Michael give you for him

suddenly - - - you know, you're coming home with Christmas presents, and he's running out with a limp child who may not be breathing? Was there a disconnect there? Did he explain it to you? What happened?

A Yes, he explained it. I was asking frantically and he said just like normal, he would not wake up to eat. He said that he was going to wake him up because it's been a few hours since he ate last and try and feed him. And he said when he picked him up out of his little thing he was sleeping in that he did that what he did in the hospital, he let out a big breath and screamed and then went limp. And that's when I pulled up and he ran out. Because he was - - - he said he was like running to his car so - - - but I was out there and that's when I - - -

Q Did Michael mention that he'd dropped a controller on his head again or that anything had happened to him that might have injured the baby?

A No.

Q Well, the last time you've seen Michael was the 11th. Has Michael ever told you that he did anything that led to an injury of your child on December 4th?

A No.

Q Was there a day in that period between Thanksgiving when you're going to the doctors and to Dr. Paxton and to Riverview where you had some concern because [redacted] had gone almost an entire day without urinating?

A Yes.

Q Was that in and around that time?

A It was a while ago. I believe that was because of the lack of eating.

Q Right.

A I do remember that. I think that's something I brought up to Riverview.

Q And did they appear to be concerned about the fact that this child has gone an entire day without urinating?

A No.

Q You went to Levine and what did you find out at Levine, that, you know, they've examined him, they are examining him, and what did they find out that they told you was wrong with him?

A We didn't really get a clear answer on that.

Q Did you not get a clear answer because they didn't appear to know yet what the problem was?

A Correct.

Q They can't give you an answer if they don't know

yet, correct?

A Right.

Q All right.

A We were there for about four days. We, me and Michael, both stayed there morning and night and my parents -- well, my mom did too at least.

Mr. Todd - I'm sorry. Your mom stayed there how long?

Witness - The whole time.

Mr. Todd - Okay.

Q Ms. Carduff came in as well?

A I don't believe so.

Q Okay.

A No.

Q Were you there when the DSS case worker first got there the early evening of the - - - of December 6th?

A Yes.

Q Was Ms. Carduff there then if you remember?

A I don't remember. If she was I've voided it out, yeah.

Q There's a lot going on at that time. All right. When you got to Levine's, did they ask you - - - I mean, did they ask you and ask Michael had anything happened to the child, had the child been dropped,

had the child been injured? Were they asking you what the possible cause could have been?
A Was who asking?
Q The nurses and the healthcare workers at Levine's?
A They just asked us what could have led up to it. And again, Michael gave them his story and that was about it.
Q Did you give them your story?
A Yes, I told them about the doctor cares and - - -
Q All right. Did you tell them that in the past you'd seen Michael handling the child roughly?
A No. I didn't find that as a concern.
Q Did you tell them that there were occasions when Michael would kind of bounce him to the extent that you thought that was maybe a little excessive whether it was or was not? Did you tell that to them?
A Again, it wasn't concerned.
Q Did you tell any of them that you'd seen a bruise on his head in November after Michael and his brother had been caring for him?
A I don't believe so.
Q Do you remember when the lady from DSS showed up on December 6th?
A (Indicating yes)

Q You do? Yes?
A Yes. Yes.
Q And that lady was named Shaundra Tyler; do you remember her?
A I don't remember the name.
Q But a 30-year-old black lady?
A Yes.
Q Were you at the hospital when she got there?
A Yes.
Q Did you understand she was a DSS case worker?
A Yes.
Q Was Michael also at the hospital then?
A Yes.
Q And she met with both of you?
A Yes.
Q When she met with you, did she tell you - - - did she introduce herself?
A Yes.
Q Did she tell you who she worked for?
A Yes.
Q Did she tell you why she was there?
A Yes.
Q What did she tell you?
A That it was standard procedure when there's a child involved in any kind of hospitalization that they

are to come in.
Q And did she tell you that DSS would be conducting an investigation?
A I don't think I quite understood that at that point.
Q What did you think she was there for? I know you said she told you that she was there for standard procedure when a child's injured. What did you think a DSS case worker was supposed to be doing in the hospital talking with you and Michael about this injured child? What did you think she was doing?
A I believed she was just there to eliminate the idea of it being abuse.
Q Trying to looking into to whether it's abuse?
A Yes. Yes.
Q Which broadly the term can be an investigation?
A Right.
Q Did she give you some paperwork saying, you know, as parents of a child who is the subject of DSS coming here you've got certain rights and they gave you a pamphlet; do you remember that?
A Yes.
Q And I think you had to sign something for that brochure, correct?

A Yes.
Q Did you ever read that brochure?
A I think so.
Q Okay. Do you remember that it said something in there about you've got the right to an attorney and - - -
A Yes.
Q - - - here's what's going to happen and so forth, correct?
A Yes.
Q Basically telling you what's involved when DSS walks in the door on an injured child, correct?
A Yes.
Q Did you have any questions about it then?
A No.
Q Did you ask her any questions while she was there?
A No.
Q Now, did you have to leave early before she left? Was she still there when you left the hospital that night?
A I don't remember.
Q Did she talk to the others who were in the room with Owen?
A Like the other adults?
Q Other people who were there. I think you just said

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you don't remember if Jennifer Carduff was there. But if Jennifer Carduff was there, would she have spoken with Jennifer Carduff?

A Yeah, I'm not sure.

Q You don't remember? Okay. That's fine. Did she talk with Michael?

A Yes.

Q Do you remember his brother being there?

A Being in the hospital?

Q Being in the hospital room?

A No.

Q Do you know that he wasn't there or do you just not remember that he was or was not there?

A I do not remember.

Q Were there medical people there, nurses, doctors?

A Yes.

Q Do you remember the DSS lady? And again, her name is Shaundra Tyler. I'll call her Ms. Tyler.

A Okay.

Q Do you remember Ms. Tyler speaking with any medical personnel that were there?

A Not that I was aware of.

Q I mean, you would know when she talked to you, - - -

A Right.

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Q - - - but if she's was talking to other people you may not have known that?

A Correct.

Q Do you remember her filling out a form and giving it to you for you and Michael to sign that was called a safety plan; do you remember that?

A Yes.

Q Do you remember that it basically said follow the medical advice and don't try to leave with the child unless he's discharged?

A Yes.

Q And you agreed with that, correct?

A Yes.

Q I mean, you got concerns about your son being injured and you want the medical people to take care of him?

A Absolutely.

Q So you weren't going anywhere with him until he was discharged anyway were you?

A Correct.

Q What else, if anything, do you recall her doing that first night?

A Other than speaking with us, giving us the paperwork you spoke about, and then asking us what had happened that day, that was it.

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Q Was she taking notes when she's talking to you?

A I believe so.

Q Do you recall her saying anything else to you that comes to your mind as we sit here today?

A She asked who was in the care of the baby, what I was doing and that's about it.

Q You told her you were working?

A Yes.

Q Basically she asked you, you know, how did we get from a well baby, smiling baby to here in a Charlotte hospital?

A I mean, she didn't - - - Yeah, well, she didn't state it like that. She just simply asked what the events were of the day.

Q Did you tell her that there had been occasions in the past where Michael had handled the child more roughly than you would have liked?

A No.

Q Did you tell her that there were occasions when Michael would bounce the child and you didn't think that was a particularly good thing for Michael to do?

A No.

Q Did you tell her that you had seen a bruise on the child's left side of his head in November after

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Michael and his brother had cared for the child?

A No, I did not.

Q Do you recall a Dr. Cheryl Courtland working on your son?

A I don't know the names.

Q Do you remember any of the names of the - - -

A The only names that stuck with me were Dr. Bailey and Dr. Wunderlund (phonetic)

Q Okay. Do you remember any of the nurses or hospital social worker's names?

A No. I remember my social worker. I think her name is Diva, I believe.

Q Now, after that first night, did you ever see Ms. Tyler again, that first case worker for DSS?

A Not - - - I can't remember. I just - - -

Q There was another case worker that you met with named Dirvondra Hill, correct?

A Dirvondra, that's who I might think as Diva.

Q Okay.

A Yes.

Q And Dirvondra, that's spelled D-i-r-v-o-n-d-r-a, correct?

A Yes. I - - - I remember Hill.

Q And she met with you the next day didn't she?

A In the hospital?

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Q Yes.
A I believe.
Q Did she attempt to met with you at your home to do a home visit?
A She came one time, yes.
Q Isn't it true that on December 17th she met you in your driveway as you were on your way out to work for a home visit, and you couldn't really meet with her then, correct?
A Correct.
Q All right. And at that time she told you that she needed to meet with you and Michael and the baby for a home visit and y'all tentatively set up a meeting for December 21st, within three or four days after that, correct?
A Yes.
Q And that meeting was to be in the morning, correct?
A Yes.
Q And, in fact, she did come out and she was able to visit with you and Michael and [redacted] in your home, correct?
A Yes.
Q And she had another safety plan for you to sign didn't she?
A I don't remember.

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Q That's fine.
A I'm sorry
Q Now, tell me what you recall about that home visit when she came in the morning and met with you and Michael and [redacted] Tell me what you recall of it.
A She came in. She had a - - - She wanted us to show her the room so we showed - - -
Q The room where he lives or where your son stayed?
A Yeah, [redacted] bedroom.
Q Okay.
A So we did. And we showed him - - - We showed her everything, you know, the - - - where he would stay throughout the day, meaning, you know, the swing and the changing table. And then she took a picture of [redacted] and a picture of his room. And then just asked us how he's been, any alarms or anything and we said no, everything was normal, and that was it.
Q Now, you knew in advance that she was coming. You kind of had an idea of when she would be there, correct?
A Yes.
Q So you were able to straighten up your home. Nobody likes somebody coming to their home surprised - - -

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A Right.
Q - - - so you were able to straighten up the home, make sure there's no dishes on the sink and so forth, correct?
A I don't think I did.
Q Okay.
A But, yes. I mean, we weren't messy but we were lazy so - - -
Q And your home was presentable that day, correct?
A Yes.
Q And when she was there observing y'all interact, Michael and [redacted] were on the floor on a blanket weren't they - - -
A Yes.
Q - - - playing? And [redacted] was in a good mood and reacting, kicking his feet and responding to Michael, correct?
A Yes.
Q Now, when you met with Ms. Hill that day, did you tell Ms. Hill that in the past Michael had sometimes handled [redacted] rougher than you would have liked?
A No.
Q Did you tell her that in the past Michael would sometimes bounce him or - - - I'm overstating it

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when I'm saying bouncing. I don't mean to do that.
A Right.
Q You used your hands kind of going up and down a little bit as if it was playing with the child in a little rougher manner than you would have liked. Is that an accurate assessment of what you said earlier?
A Yes.
Q Did you tell her that?
A No.
Q Did you tell her that in November you had seen a bruise on [redacted]s head after Michael and his brother had been caring for the child?
A No.
Q Did you tell her at that time while she's there seeing you interact, that there was some stressers between you and Michael because Michael wasn't going out to get a job and that was becoming an issue; did you tell her that?
A No.
Q How long was that visit? How long did she stay if you remember? And I don't need it to the minute but just estimate it.
A Probably 20 minutes if that.
Q When Ms. Hill had earlier met you on the 17th in

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the driveway as you're on your way out to work, did you tell her at that time that [redacted] was with his grandmother, in other words, his grandmother was caring for him that day?

A Yes. I had forgotten about that until you brought it up.

Q But with me having brought it up, that prompts a recollection, correct?

A Yes.

Q I mean, it did happen, right?

A Correct.

Q Now, the grandmother, was it your mom or was it Ms. Carduff with whom you were staying?

A My mother.

Q With Charlotte Williams?

A Yes.

Q And do you recall Ms. Hill asking you for a contact phone number so she could contact Ms. Williams and you were not able to give that phone number to Ms. Hill; do you remember that?

A Yes, sort of. I remember her asking me. I don't remember not giving it to her. I don't know why I would not be able to.

Q Where would Michael have been then that day?

A I don't know.

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Q In other words, why was your mom caring for the child instead of Michael?

A Michael - - - if it was morning he was probably asleep, but I'm not positive.

Q Owen would have been better cared for with your mother than with Michael anyway on that day wouldn't he?

A Yes.

Q Are you still good to go?

A Yes.

Q Give me a second. Some of these questions I've already asked. We don't have to go over them again. Okay. That takes us up to December 21st just before Christmas. Did y'all have a normal Christmas?

A Yes.

Q Now, within ten days after this December 21st home visit the issue with Michael and his not working, his not getting a job, reaches a head and you essentially kick him out of the house New Year's Eve; isn't that correct?

A Yes.

Q Was it on New Year's Eve, was it a day before, a day after?

A It was New Year's Eve.

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Q New Year's Eve. All right. Tell me how that conversation went.

A It was not good. His friends were there.

Q At your home?

A Yes. Another thing that upset me so much. I mean, that's what broke me to kick him out. Because I could tell he just didn't - - - [redacted] was more of a bother than a good thing when his friends were over. So I just - - - I went in there, my mom was with me, and I brought him to our room. I told him to come with me in the back and I said, you know, this is hard for me but you need to go, you know, you're not showing any incentive of being a man.

Q You need something to drink; you okay?

A Yeah, I'm fine.

Q All right.

A And I said you're being lazy, your friends are always here, this is not a party house, and blah, blah, blah, and just kicked him out. I said you need to go, you need to take your friends with you, and you need to go back to your mom's house because apparently that's where you need to be. And so he did. I mean, he didn't really fight it, but he just did it. He didn't say anything. And I just stood there while he packed all his stuff up and he

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left, and that was that.

Q You said that his friends were there on New Year's Eve. I mean, a lot of people are out partying New Year's Eve. He's got his friends over there. How many friends were there?

A Two.

Q Two.

A His brother Brian and his best friend Aaron.

Q And you said in your explanation there that his friends were always there. When you say - - - I know that's probably and overstatement - - -

A Yes.

Q - - - but, I mean, how frequently would you come back from working your shift, and he would be there with either his brother or his brother and others?

A It was always either just his brother or his friend or both of them. They didn't - - - It wasn't as - - - I should say they didn't come often. When they did come, they stayed so long. I'll state it like that.

Q Didn't know when to leave?

A Yes. So they would come like once a month for like a week or a whole weekend and it just bugged me because Michael would always stay up till like 4:00 in the morning and all that. It was just annoying.

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Q So he's out of the house New Year's Eve. Now, you know at that point DSS is conducting an investigation into what's going on with the December 4th injury; you know that, right?
A It wasn't really apparent to me because I had only seen - - - I thought basically it was kind of done after she came and looked at the house. That was my understanding. It could have been my - - - you know, I was naive about it.
Q Do you recall her telling you, you know, the house looks nice, we're finished here?
A For the day. I mean, she said I would have to follow up with parenting classes but I was never - - it was never brought to me - - -
Q Let's talk about that. As far as parenting classes - - - I mean, you can see that you and Michael were young parents at that time that could have used some parenting classes?
A Yes, probably.
Q I mean, do you think you were a good mom?
A Yes.
Q So do you think you needed parenting classes?
A As far as classes, not really. I could have used guidance in which I used my mother as.
Q I mean, you're mom was a mom - - -

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A Yes.
Q - - - and your mom's giving you some guidance, correct?
A Yes.
Q And you're learning from your mom, correct?
A Yes.
Q And as far as being a good mom and knowing how to properly care for a child, you were knowledgeable enough in that area that you knew when, on those occasions when it appeared to you that Michael was maybe picking him up a little cavalierly, a little more roughly than you liked, you knew enough to correct him on that, correct?
A Yes.
Q But on the parenting classes, did you exercise any initiative to call Ms. Hill and say, you know, these parenting classes you guys mentioned, when are those going to start? Did you do anything proactive to get that going?
A Other than the day she was there, I asked her well, when will that be and she said she would contact me, and so she never did. I don't want to say I blew it off, but I - - - I didn't find concerns. I didn't think we would benefit much from them anyways, so I just never took the - - - you know,

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to do it.
Q She comes on the 21st to visit, get a home visit, have a face-to-face with you and Michael and your child, everything looks great, and then ten days later Michael is on I-77 heading back toward Concord and y'all have a split family at that point. Did you call Ms. Hill and tell her that, - - -
A No.
Q - - - tell her that the family you saw on the 21st is different from the family we got here right now; did you tell her that?
A No.
Q Why not?
A Again, it wasn't apparent to me that it was still a open case. I didn't consider it a case because - - -
Q And in your mind [redacted]'s safe when you care for him, correct?
A Yes.
Q And [redacted]s safe if your mom cares for him, correct?
A Yes. I thought he was safe with anybody.
Q Would it be accurate to say that you had - - - Well, let me ask you this. You lived with Michael, correct?

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A Yes.
Q Michael was the father of your child, your lover, your friend, your mate at that point. You're not married yet but basically you guys are a couple, correct?
A Yes.
Q Was there anybody in the world who knew Michael better than you at that time?
A Other than his family, no.
Q And you saw no indication with Michael that Michael would have done something intentionally, or because he's got poor impulse control, to your son that would have injured him; you never suspected that, did you?
A No, I did not.
Q Even though you'd seen sometimes where he would have picked him up a little more roughly because maybe he just doesn't know how to pick up a child yet, you never had any indication to suspect that he would have done something to have injured your child?
A Correct.
Q And you didn't injure your child?
A No.
Q You never dropped your kid did you?

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A No.
Q After Michael left New Year's Eve, at some point thereafter within the next three or four days - - - Well, let me ask you this. Over the next three or four days, Michael's up in Concord, did y'all still speak to each other?
A Yes.
Q You still called. And that's not unusual is it?
A No.
Q Would you call him and he called you?
A Back and forth.
Q And the subject of your calling is - - -
A Him - - -
Q - - - from his standpoint, what can I do to get back?
A Yeah. Yes.
Q And that's understandable. At some point in the next three or four days you do relent and he does come back, correct?
A Yes.
Q Had he given you any assurances that I'll try to do better?
A He told me that he has already applied to places while being kicked out.
Q Okay. He recognized the error of his ways and when

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mama says get a job, he needs to go out and look for a job, correct?
A Yes.
Q And he said he would and he did do that, correct?
A Yes.
Q Tell me about the second injury. How did you find out about that?
Mr. Settana - Before we do that, do you mind if we take a break.
Mr. Frawley - No, I'm good. I'm good.
Q You're good with taking a break?
A Yeah.
Whereupon - A recess was taken.
(Mr. Frawley - Resuming)
Q Ms. Lythgoe, we've taken a short break so I've got some questions. I'm going to go through these and wrap it up and then we'll turn it over to the other attorneys for their questions.
A Okay.
Q I think when we left off we'd gotten up to the first or second week of January in 2010. Tell me at that time, before the second injury, describe for me how [redacted] is appearing, you know, his health, how he responds, is he playful, is he crawling yet. What's he doing?

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A Yes. All the concerns that were prior to the first one were not there anymore. He was happy. He was - - - the video I have of him rolling was after the first incident.
Q Okay.
A He was normal.
Q Okay. And the issues that had led up to your taking him for medical treatment on or around December 4th, those had resolved, correct?
A Yes.
Q And when you went to work on January 11th was he in that condition? January 11th, was he the alert, happy kid when you went to work January 11th?
A Yes.
Q And tell me what happened when you came back.
A It was late, around 10:30, 11:00 or so and Michael and [redacted] were not at the house. So I called Michael and I asked him where are you, and he said the baby wouldn't go to sleep so we had to put him in the car because he always fell asleep in the car. So I said okay, well, I'm here now to help you and just bring him home. and I'll take care of him. He said okay. So I got on the couch and I was just on my phone and - - -
Q And tell me, what time of day is this?

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A About 11:00 p.m.
Q 11:00 p.m. Okay.
A And I was waiting for him and I fell asleep. I woke up just out of naturalness and it was around 12:00 and he still wasn't home. So I called him again, and I said what are you doing. And he said oh, I stopped by McDonald's to eat. And I said well, please come home and so he did. He came right home after that, a matter of minutes. And [redacted] - - - he had [redacted] in the car seat and he looked fine. I kissed him.
Q Was he awake?
A No. The baby was asleep. And I was going to - - - I was starting - - - I was going to unbuckle him and he said I'll just put him in bed. You go to bed because you're already half asleep, and I was working the next day. So I went to bed. He put him to bed. He came in and we fell asleep. Some time in the middle of the night, I'm not sure of the time, probably about 3:00 a.m., 4:00, [redacted] woke up crying. So I was getting up to go do that. I went and checked on him, covered him up and went to go make the bottle. And Michael met me in the kitchen and was like, again, you're - - - you're awake, have to work tomorrow, just go back to bed,

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I'll take over. Which didn't alarm me in any way because I had just kicked him out so he had been milking up to me lately.

Q Okay.

A So I was like okay, great, so I went to bed. [redacted] was fine. And woke up in the morning to get ready for work. Michael was already out of bed. I guess he was in the bathroom doing something. And I went to go check on [redacted]. I heard a noise like a squeaking noise. I thought he was playing around. And I went in there and looked at him in his crib, and he was having a seizure. He was twitchy, making a squeaky noises, his tongue's - - - his eyes were stuck to the left and his tongue was sticking out. And - - -

Q So his eyes were - - - and I think I read that somewhere, where they're extremely to the left?

A Yeah.

Q Okay.

A Yes.

Q But they are open?

A They are open but there was no life in them.

Q All right.

A Scared me to death. I screamed for Michael. He came running in. We immediately put on his little

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winter jacket thing, zipped him up and put him in the car seat and, again, ran to the hospital.

Q Now, let's stop there a second. You described he's having a seizure, and you said we immediately put his jacket on. Is he dressed at that time? Is he wearing pajamas; what's he wearing?

A He's in a diaper.

Q Just a diaper?

A Yes.

Q Did you notice a bruise on the upper left side of his chest?

A Not at that time.

Q Had you noticed a bruise on his chest the day before, or there was a day when you went to church, did you notice a bruise then?

A Not on his chest.

Q Go on. I'm sorry.

A Okay. Yes, I zipped him up. It was - - - it was not just a jacket, it was a little outfit, a little bunny suit thing. And I zipped him up in it, put him in the car seat, and went to Piedmont again, the ER, and ran in there, same ordeal, but we were taken straight to the back. I'm - - - I'm sorry. I'm very vivid on what happened.

Q Take your time.

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A We were airlifted to Levine. He went through helicopter. We drove. And we met up at Levine Hospital where I was - - - we went into the room with him, with [redacted] and at that point - - - I mean, that's - - - I'm sorry. I'll go back a little bit, at Piedmont still. I was with the nurse to do vitals at one point and we took off - - - we took off his little suit he was wearing and that is when I noticed the chest bruise.

Q And the bruise was in the upper left hand side of his chest?

A Yes. Okay. And I had not seen it before. I explained that to her because she asked me what is this, and I said I have no idea. Again, I was crying and shaking and freaking out.

Q It was a pretty significant bruise wasn't it?

A It was big, yes, and dark. And again, okay, we're back at Levine. He went back to the room and I was - - - me and Michael were kind of pushed aside. Doctors were everywhere. My mom was in there. She was frantic, panicking. I was frantic and panicking. Michael, at one point, pulled me to the side and said, - - - you know, because this is second bruise. Are you aware of that?

Q Tell me about the second bruise.

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A There was a second bruise on his head, again, a little more towards the middle high on his forehead. Again, I has asked Michael previously what it was about, and he told me he was playing with keys, his little toy key things, and they slapped in the face.

Q Hit him with the toy keys?

A Yes. And so it, again, raised no concern to me. Well, concern, but no threat.

Q Now, with the toy keys bruise, was that on the 11th or was that a day prior to the 11th?

A Day prior.

Q Okay.

A Yes. And so fast forward again. Michael pulled me to the side in Levine and said the bruise that I told you he got with his keys really, I was holding him and his head was in the rocking thing and his head was under it when I got up. His head hit on the rocker. And to me, looking back now, you know, I should have like well, why did you lie. But at the moment I was - - - didn't even care. I was too concerned about what was happening so I kind of brushed that off. And then we were kicked out of the room, me and Michael, and - - - Well, and my mom because just family, they needed to assess the

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child. And that is when we went to the waiting room. And then I don't know the time periods but we ended up talking to Amanda I think her name - -

Q Amanda Carter was a - - -

A Yes.

Q - - - detective with the sheriff's department?

A Correct.

Q Okay.

A Ended up talking to her. She did speak with us separately. At this point I was very shocked. I didn't know what was going on.

Q Did you wonder why a sheriff's department detective is talking to you about this case?

A Again, I just figured that's what they do to everybody. I've never been in a situation like this of whatsoever. And they did tell me, you know, Michael's story is odd to us. We want to take him down to the sheriff's department for a polygraph test, I believe, or interrogation, further interrogation. And so - - -

Q Let me ask you this. When they told you that Michael's story sounds odd to them, and they're going to take him downtown for a polygraph, did you tell them then what he'd told you about the - - -

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that he'd misrepresented what the problem was with the bruise; did you tell them that?

A I don't remember if I did or not. I believe I mentioned that in my own interrogation when they were talking to me, and I think that's probably what raised concerns to them.

Q All right.

A But I did go with him and his mother to go to the polygraph test because I think that I just needed to hear for myself. My mother stayed there. We still weren't allowed in the room anyways.

Q Your mother stayed at the hospital?

A Yes, she stayed at the hospital and I went down to do the polygraph with him or, you know, wait. It took forever, like four hours. And that's when Amanda came out to me and told me that he confessed to shaking the child. And then his mother, Michael's mother, Jennifer, took me back to the hospital and that's when, you know, I told my mom. And we just sat there in the room and everything played out.

Q Okay.

A I don't know how in depth you want me to go here.

Q All right. And you haven't talked to Michael since then?

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A Correct. I've seen him in court, but we did not speak.

Q Has he made any attempts to contact you?

A Yes. He has sent some letters like, I think, one or two maybe, and then we blocked that from the prison. We called the prison and said have him not send mail to me.

Q I mean, did you read the letters?

A I don't think so. I - - - so I don't even remember what they said. I probably glanced at them and opened it.

Q I mean, the guy who injured your son to the point that he almost died sent you letters, and you don't remember if you read them or not?

A They - - - no, I did not.

Q No, you did not read them?

A Correct, not fully. I skimmed. I didn't - - -

Q Okay. Do you still have them?

A Oh, no.

Q What did you do with them?

A Threw them out. I know one of them was a Mother's Day thing he made me, and I was just disgusted, so.

Q Okay.

A I know that there was no - - - nothing in there about the child. It was all I'm sorry, I'm sorry,

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and - - -

Q Now, he has never told you or confessed that he injured Owen on December 4th or prior to December 4th has he?

A No.

Q Has he actually ever admitted to you that he injured the child December 11th - - - or January 11th?

A I never spoke with him, so.

Q But he did at the sheriff's department and that's a done deal?

A Yes.

Q You were there when he pled guilty?

A Yes.

Q Now, in February of 2010 your mother, while rocking [redacted] at the hospital, tipped the rocker over backwards, correct?

A Yes.

Q Were you in the room when that happened?

A I was asleep.

Q You were in the room but you were asleep and didn't really see what happened?

A Correct.

Q Okay. When were you first made aware that she had fallen over with the child?

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A I was woken up by the crash there.
Q Did she go straight over backwards or to the side, or how did that work?
A I'm not positive. When I woke up, I helped her up. I think it went over backwards.
Q When you helped her up did it appear that the rocking chair was completely over backwards or - - -
A Yes.
Q - - - was it on its side?
A It was - - - I don't remember.
Q Okay.
A Yeah, it was on the floor. And I helped her and [redacted] was crying so I ran out and got the nurse, and she wasn't even at the station yet.
Q That would be a Ms. Bryant?
A Oh, I have no idea. She - - - I remember she was just in the room. I was in and out. I was asleep but in and out. I knew she was taking vitals.
Q Okay.
A And then I went out and got her. She hadn't even made it to the nurse's station yet. And I waved her over, and they took [redacted] for more scans. He was fine.
Q Did he hit his head when she fell over?

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A I believe he did, yes, but it left no marks.
Q But he wasn't unconscious, I mean he was crying.
A Right. Right.
Q He was injured - - - not injured, he was crying?
A Correct.
Q Okay.
A Startled, scared, whatever you want to say.
Q Now, [redacted] is not yet three years old, correct, he'll turn three this September?
A Yes.
Q Now, you're living with your folks and you get to see him on a daily basis, correct?
A Yes.
Q Do you still care for him?
A Yes.
Q I mean, at some point do you anticipate getting to the situation where you can have custody of your son?
A Very much I want to.
Q And do you have a time frame on that?
A No. I don't have the money right now to hire lawyers for that because I was told that's something I would need to do, hire lawyers and I believe go through an extensive amount of therapy and I just - - - I don't have money for that right

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now.
Q The lawyers you'd need to hire, I mean, do you anticipate that your getting custody of your son from your parents or your mother and your step-dad would be contested by them?
A No. I just figured I would have to have a lawyer. I haven't looked in depth into it.
Q I mean, it's not something that's on the near horizon so you're not looking that deeply into it just yet, correct?
A Correct.
Q But it's something you'd like to do one day?
A Yes. Not in the complete future but - - -
Q Describe for me how he appears now. When you go home after this deposition, y'all would drive back to Aiken and you'll see him. Tell me what you'll see.
A Well, he's actually here in Rock Hill. He's with my aunt. He's always happy. He is blind. He cannot see. He cannot talk. He babbles. He sounds like a three-month-old so he does the typical ba, ba, ba sounds. He cannot sit up by himself. His spine - - -
Q Can he crawl?
A No. His spine's damaged from not being able to sit

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up - - - He cannot feed himself. He has a feeding tube. We work with him and he goes through therapy and all that.
Q Well, let me get this. He cannot feed himself. I mean, can y'all feed him or does he have to be fed through a feeding tube?
A It's a feeding tube and he has shown signs of - - - he can eat spoon food but it is for therapeutic use only. It's not for life support. I mean, that's not his sense of nutrition.
Q Can he swallow?
A That is what he's in therapy for. He can. It takes him a really long time to figure out how so that's one of his therapies he is in. He's not very adequate with it though. He's like two good bites maybe in a 30-minute session.
Q Does he appear to know who you are, recognize you?
A He - - -
Q Obviously he can't see you - - -
A Right.
Q - - - but can he sense that you're there and know you from someone else?
A I'm not so sure about that.
Q From what you can see.
A Yes. I believe he absolutely knows when he's in a

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room with people who are with him every day. I think he recognizes Larry, me and mom. Probably not separately, especially me and mom. He knows - - - he loves Larry's voice. It's very cute.

Q That was going to be my next question. Can he hear - - -

A Yes.

Q - - - does he recognize a voice?

A Oh, yes, he can hear, the louder the better. So I don't know if that's a damage ear thing or what. He took a hearing test not long ago and passed with flying colors, so. He is easily startled just like any other - - - Well, actually, probably a little more. Any all of a sudden noises or touches, because he is blind, he gets startled from that. I'm trying to remember which side's more dominant on him. I believe it's his left side that he moves more, yes. His left side is more mobile. He's constantly chewing on his hand.

Q Is that because he's left-side dominant or is his right side impaired?

A It's a little impaired, yes. He has a stroller that supports him in his trunk and his head. He doesn't have very good head control. If you want to explain him, he is a three-month-old in and

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three-year-old's body. You still have to support the head, hold him, burp him, can't walk, can't crawl.

Q Who is his pediatrician now?

A Dr. Kinsey at Palmetto Peds.

Q And do you know the names of other doctors that he's seen on a regular basis?

A He has Dr. Strickland.

Q Who's Strickland with?

A Strickland is his neuro.

Q Okay.

A Bebitisto. I do not know how to spell that.

Q Okay.

A Dr. Bebitisto, she is with development.

Q Okay.

A Dr. Nigh, and it's spelled with an N. It's like N-i-g-h, Nigh, something like that. That's his gastro, his tummy tube. We have Strickland, Bebitisto, Nigh, tummy, head, development. I believe that's it.

Q When he goes to visit these doctors, do you go with him?

A Yes. I believe there's been like only one that I - - - I didn't make it to the hearing test. But, yes, typically I do go. It's me and my mother.

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Mr. Hood - I don't know if y'all want to do this or not because I don't know what you're scheduling's like. But after Charlotte's deposition, would she be able to - - - did y'all want to see the child and just to visualize? Because he is here in Rock Hill.

Mr. Frawley - I'd like that.

Mr. Todd - That's fine.

A Yeah, I can go get him.

Mr. Hood - We can do that after Charlotte's deposition - - -

Mr. Frawley - That would be good.

Mr. Hood - That way y'all could at least kind of see it for yourself. She can describe it all day long - - -

Mr. Frawley - Yeah.

Mr. Hood - but until you see it, it's just going to be hard to - - -

Mr. Todd - It sounds like she's got video tapes.

Mr. Frawley - Yeah, that's true.

A I have videos here.

Mr. Frawley - I'd like to see him if that's not going to inconvenience anybody.

Mr. Hood - Yes, we can do that. We can do

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that.

Mr. Frawley - All right.

(Mr. Frawley - Resuming)

Q Your mom, do you know if your mom has a criminal record? And that's not necessarily something that a mom will share with her kid and so you may not know.

A I am aware that she has some criminal history on there.

Q Do you recall she had a CDV at one point?

A Yes. I couldn't think of the wording.

Q How about your step-dad, Mr. Williams?

A I know like forever ago he was in jail for a robbery or something.

Q Was it a prison sentence or was it like a county jail?

A Prison.

Q I know the DSS case was still open after the January 11th injury. Whom do you recall having spoken with with DSS other than Ms. Tyler who was there the first night, Dirvondra Hill who was the main assessment case worker? Do you remember having spoken with a Krista Hinnant?

A Seems the last name's familiar. The one that I know well is Dye, something Dye.

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Q That could be Dirvondra Hill?
A No, her last name was Dye, D-y-e.
Q And what did you speak with that person about?
A I spoke with her a lot. I think she was foster care.
Q Foster care?
A Yes. That's why I know her. I cannot remember her first name.
Q And what do you recall speaking with her about?
A Nothing in particular. She's just - - - she was just my case worker.
Q Being able to visit with your son while he was at foster care?
A Yes.
Q Anybody else with DSS that you recall having spoken with?
A Other than the two you mentioned, no.
Q Okay.
A Oh, wait. Simpkins.
Q Simpkins?
A Yes.
Q And tell me what Simpkins told you?
A I believe he was just the main guy for DSS in the cases like the DSS against me and Michael.
Q Is it David Simpson?

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A David Simpson, yes.
Q He's an attorney?
A Yes.
Mr. Frawley - Ms. Lythgoe, I appreciate your patience. Please answer any questions these other gentlemen have for you.
A Okay.
EXAMINATION - (By Mr. Todd)
Q Ms. Lythgoe, my name's Monty Todd and I represent Carolinas Medical Center, Levine Children's Hospital. A lawsuit's been filed against them.
A Okay.
Q If I ask you a question and you don't hear me or understand me or you - - - you know, tell me I have an accent.
A Okay.
Q If my accent gives you a problem, for any reason you're not sure about the question, if you let me know I'll try to ask it again so that you do understand it.
A Okay.
Q And if you need to take a break for any reason, let me know. I'd called for one earlier but I tend to go on, but if you need to take a break, let me know.

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A Okay.
Q Who is Elizabeth Hope Rainey?
A Elizabeth Hope Rainey sounds very familiar. I think she did my mom's divorce.
Q Do you know an Elizabeth Hope Rainey?
A I know the name very well. As to what, I'm not positive.
Q How do you know the name?
A Like I said, I think she did my mother's divorce but I'm - - -
Q Have you ever had any discussions with Elizabeth Hope Rainey about this case?
A Not to my knowledge.
Q Now, have you retained an attorney as a result of this case?
A This one right here?
Q Yes, ma'am.
A No.
Q Have you had any discussions with anybody about your deposition today?
A Yes.
Q Who have you talked to?
A Mr. Hood and Dwight - I cannot remember - - - Mr. Hood - Dwayne.
A Dwayne. I'm sorry.

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Q What kind of discussions did you have?
A I just was asking about what would happen in here, and they explained to me how it would go down and that's - - - that was about it.
Q Did you look at any records to prepare for your deposition today?
A I'd never had any sent over to me personally. My parents have. Glanced at them, not really sure what they were.
Q All right.
A So in depth, no.
Q Well, let me ask you this. What records did you look at?
A I'm not positive. They could have been - - - They looked like they were maybe discharge papers, you know, court hearing papers.
Q Discharge papers from the hospital?
A Yes.
Q What hospital?
A I'm not sure. I'm sorry. I didn't read it read it, so.
Q Who provided them to you?
A Nobody provided them to me.
Q Where did you get them from?
A They were provided to my parents.

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Q By whom?
A I'm assuming their lawyers.
Q And who are your parents' lawyers?
A To my understanding it is Shaw and Hood.
Q Now, other than you had the meeting with attorneys who told you what to expect today, correct? How did they do? Did they give a good description of what was going to happen?
A So far it's been pretty accurate, yes.
Q Now, have you discussed this case with anyone else?
A No.
Q Did you do anything else other than you said you were given some records to look at?
Mr. Hood - Objection to form, but go ahead.
Q Were you given records to look at to get ready for this deposition by your parents?
A No.
Q Well, what were these given records for?
A What were they - - -
Mr. Hood - Objection to the form, a misrepresentation of testimony.
Q You told me you were supplied with some records.
A Yes.
Q And they were supplied to you by your parents?
A Let me clarify this. Not necessarily given to me.

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They were like on the counter and I was curious.
Q The counter where?
A My kitchen.
Q At your house in Aiken?
A Yes.
Q And you said you looked at them and you remember there were some discharge records?
A That's what it presumed to look like. I'm - - - I don't know terms. Well, it's too big to read, too much to read, so I did not take the full initiative to do so.
Q So other than those records, - - -
A Yeah.
Q - - - have you looked at anything else?
A No.
Q Did you keep any kind of a calendar or diary - - -
A Like a personal one?
Q - - - back in 2009, 2010?
A No. I've never been a diary person.
Q Have you got a calendar that would set forth, you know, what kind of activities you were doing?
A Other than a phone, cell phone calendar, no.
Q Now, you told us who your birth father was. Your mother was married to your birth father?
A Yes.

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Q Did you ever live with your birth father?
A Yes.
Q And how long did you live with him?
A From birth to probably about ten years old.
Q And where did you live with him?
A In Texas.
Q Where in Texas?
A San Antonio and Austin.
Q And you left Texas when you were ten years old?
A Correction, nine. I remember now it was on my ninth birthday. Yes, I moved to Alabama with my mother's mom and step-dad.
Q What's your mother's maiden name?
A Lavadan.
Q Can you spell that for us?
A L-a-v-a-d-a-n.
Q And how long did you stay in Alabama?
A Till I was 12, so nine to 12.
Q And who did you live with in Alabama?
A My mother and my grandparents for awhile, and then my mom got her own place, so it was just my mother and myself and my brother. I'm sorry.
Q And where in Alabama did you live?
A Anniston.
Q And you left Alabama when you were 12?

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A Yes.
Q Where did you go?
A Alabama to Tennessee.
Q Why did you move from Alabama to Tennessee?
A I do not know. It was my mother's call. I'm not sure as to why. Well, my grandparents had both died. Why she picked Tennessee, I was not sure.
Q Your mother was married to your birth father. I can't pretend to pronounce your birth father's name. And she's married now to Mr. Williams.
A Yes.
Q Any other marriages?
A One in between. She got divorced from my father, Robert Omohundro. The date, I'm not sure of. I was young. And she did re-marry a Thomas Jaeggi. That's J-a-e-g-g-i, I think.
Q How long was she married to Mr. Jaeggi?
A I was 16, so about a year and a half-ish.
Q Is that why you moved to Tennessee, was Mr. - - -
A No.
Q All right.
A No, we moved to Rock Hill because of him.
Q How did she meet Mr. Jaeggi?
A Online.
Q And how long did that marriage last?

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A That was about a year or so.
Q Now, did you live with your mother and Mr. Jaeggi?
A Yes, I did.
Q And did you have any problems with Mr. Jaeggi?
A No.
Q Did your mother have problems with Mr. Jaeggi?
A Not until the end of their marriage.
Q What happened at the end of the marriage?
A I had moved out at this point. This is going on April 2008. And to be honest, I'm not too sure on the personals, something about - - - he was very - - - I remember her telling me he was very controlling, and what was the other word she used, not - - - not narcotic.
Q Narcissistic?
A No, when they make you do - - - controlling and - - - I can't think of the word. But very, you know, if shoes were in the hallway he'd get mad, that kind of thing, had to put them back, had to have everything right.
Q Did your moving out and moving in with Michael's parents have anything to do with Mr. Jaeggi?
A No.
Q Now, were you ever abused as a child?
A No.

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Q Were you in love? Obviously I understand that your relationship with Michael has ended, but when you were living with him in 2009, were you in love with him?
A Yes.
Q What was it about him that made you fall in love with him?
A Mostly how he was raised. We had the same morals and views. He was a really good guy actually. I know it's kind of gross to think of that now, but he was brought up well. He was - - - he had goals, ambitions, all that. And he treated me amazingly. He was a good man. I just - - - charm I guess.
Q And I was going to ask you, did Michael do anything - - - did he ever do anything to hurt you physically?
A Absolutely not.
Q Was there any indication that he had anything in him that he might hurt you physically?
A No. I never for a second thought he would ever hit me or anything.
Q Prior to January 11th, 2010, did you ever have any indication that he might have done anything to hurt Owen physically?
A No.

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Q You were talking about Michael's brother Brian, he is Brian Carduff as well?
A Yes.
Q And how much older is he than Michael?
A Probably about two and a half years.
Q And you said Brian really loved and was really sweet with [redacted]?
A Yes.
Q Did Michael really love [redacted]?
A Yes.
Q And was he sweet with [redacted]?
A Yes.
Q Now, I'm going back to like November and December of 2009 and who would be taking care of [redacted]? You'd be at work, who would be taking care of [redacted]
A It was typically Michael or my mother, they alternated.
Q And when they alternated, would one one day and one the next or, you know, one in the morning and one in the afternoon, or can you say?
A Yeah, it was different all the time. Sometimes my mom would just come get him because she was being a grandma, couldn't stand to not see him. She saw him every day. So she would volunteer or Michael would ask, you know, I want to go hang out with

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some friends, do you mind watching him, or sometimes he would just watch him. So it was different.
Q So she would see [redacted] just about every day?
A Yes.
Q So if she didn't see him it would be unusual?
A Yes.
Q Would there be times when [redacted] would stay overnight at your parent's house?
A Not when we were both home. He would only do that if we wanted to go, you know, like a date night kind of thing.
Q Well, that's what I mean.
A Oh, well, yes. Yes.
Q So there would be times you would have dates nights and [redacted] would stay with your mother and step-father?
A Yes. It wasn't very often though.
Q About how often, - - -
A Maybe like - - -
Q - - - once a month?
A - - - maybe if that, yeah.
Q Now, you gave the address where you lived which is - - - help remind me.
A 2799 Whiskey Road.

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Q That was exactly the question I asked. But where did you live in December of 2009 here in Rock Hill?
A We lived at - - - what was the street? You had the number.
Q Like Gaulden.
A Gaulden - - - it was [redacted] I don't remember the numbers.
Q What part of Rock Hill is that?
A Here right off of Mount Gallant. It's York County.
Q How close did your mother live to you when you were on [redacted]?
A Walking distance.
Q Oh, so she was - - - when you say walking, like - - -
A Like - - - well, I walked it once. It's probably about four or five streets away.
Q So you would walk it in like five minutes it sounds like?
A More like 20.
Q A twenty minute walk?
A Yeah, twenty minute walk.
Q What kind of drive?
A Four minutes, not even. Not even. Like a two-minute drive.
Q So if I were to say your mother lived close by,

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that would be a fair characterization?
A Correct.
Q Now, like Thanksgiving, where did you spend Thanksgiving?
A Thanksgiving, we were - - - We split the holidays. One part of it we were with my family and then we left the party and went to his family.
Q Did you spend any time in Concord, overnight visits to Concord - - -
A Yes.
Q - - - over Thanksgiving?
A Yes, I believe we probably stayed that night.
Q Would there be times when Michael's parents would take care of [redacted]?
A I can only recall one time they kept him overnight by themselves, and we actually came back later that night in the middle of the night. We went to a wrestling match. We got tickets for Christmas, and they kept him.
Q All right. Was that December of 2009?
A Yes.
Q What about November of 2009?
A They never kept him without us there other than that one time.
Q But there would be times when you and Michael would

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spend the night in Concord?
A Yes.
Q Did Michael's mother or father ever come down and care for [redacted] during the days in November and December of 2009?
A Yes.
Q How often would they do that?
A They came about once every couple of weeks, maybe three times a month. Especially towards the beginning, they came to help me get sleep and stuff. And I remember them cooking and stuff, so - - - so they would come often as well.
Q Did you get any kind of financial support from Michael's parents?
A Financial as in they would buy things, not necessarily give us money. They would buy things we needed. Like every now and then she would volunteer to buy the diapers and stuff, and I got a lot of things from them at the shower, but never money just straight up.
Q Like diapers and maybe a stroller or something like that?
A Yeah.
Q When I say your parents, have you been adopted by Mr. Williams?

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A No, but I consider him - -
Q So if I said your parents, that would be Mr. and Ms. Williams?
A Correct, to me.
Q Or your mother and Mr. Williams?
A Yes.
Q Did you ever have any concerns about your mother's parenting skills?
A No.
Q Did you ever have any concerns about Michael's parenting skills?
A No.
Q Did you ever have any concerns about Michael's parents' parenting skills?
A No. I only got nervous because I felt more comfortable with my mom which I figure to be natural.
Q Did you ever get nervous about leaving [redacted] with Michael's parents?
A Nervous as to the fact that I was just nervous, not that they would harm him or anything.
Q Just that you weren't there keeping an eye on him yourself?
A Yes. Yeah, that kind of nervous, right.
Q And I think you said you never had any concern

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prior to January 2010 that anybody had ever done anything intentionally to harm [redacted]?
A Correct.
Q Now, there was a discussion, and this was some time I think late November early December 2009, where you saw a bruise on [redacted] is that correct?
A Yes.
Q And I think you said it was the size of a dime?
A Yes.
Q And when you first saw that, was [redacted] - - - I think you said he was cooing and happy?
A Yes.
Q And what was the explanation? Did you get an explanation as to how that bruise got there?
A Yes, that was when they told me they accidentally dropped the controller on him.
Q Was Brian there when you got that explanation?
A Yes.
Q And did they both say that, both Brian and Michael, say that's what happened?
A Yes.
Q Now, when that happened, did you see anything at all unusual about [redacted]'s behavior when you saw that dime-size bruise?
A No.

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Q You said that Owen starting acting different at some point prior to December 4th. How long was it after you first saw the bruise that [redacted] started acting different?
A The bruise was already gone so it had to have been about a week or so.
Q So it was about a week later that [redacted]'s behavior became different, a week after you saw the - - - I'll have to object to my own question again. All right. You saw this dime-size bruise some time in November of 2009?
A Yes.
Q And then it was a week later after that that [redacted] first started acting differently?
A Yes, give or take a week or two, yeah.
Q Now, during that week-long period, did [redacted] seem happy and normal?
A Yes.
Q And then you said that, I guess, some time around the end of November first of December [redacted] got a runny nose and his nose got red?
A Yes.
Q And that's when he started acting different?
A Yes.
Q And you took him to Sunshine Pediatrics.

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A Yes.
Q And did you wait a few days after he got the runny nose and the red nose to take him to Sunshine Pediatrics or did you take him immediately?
A I waited a couple of days to see if it would clear up.
Q And so you took him to Sunshine Pediatrics?
A Yes.
Q And do you know what day you took him?
A No, I don't.
Q But they will have records, and we can look at that record and say well, it was just a couple of days earlier when he first got the runny nose?
A Right.
Q Now, you said that he was sort of - - - other than being fussy, having the running nose, was he having any other symptoms?
A He wasn't wanting to eat properly like he had been and he slept a lot.
Q And when you went to Sunshine Pediatrics, do you remember what doctor you saw?
A Dr. Paxton.
Q Is that the doctor that you normally saw?
A Yes, every time.
Q Did you ever see any other doctors at Sunshine

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other than Paxton?
A No, not to my knowledge.
Q Well, I guess when you saw Dr. Paxton, did you give him a history of the runny nose?
A Yes.
Q Did you say anything to him about a bruise?
A No.
Q Did you even think the bruise was any kind of issue at all?
A No.
Q Even looking back now, do you think that that dime-size bruise was anything other than what Brian and Michael told you?
A That's hard to say. I don't know.
Q Now, when you took [redacted] to Sunshine Pediatrics for the first time, did he have any kind of bruises or anything on him?
Mr. Hood - Just when you say first time, are you talking about the first time - - -
Mr. Todd - Yes,
Mr. Hood - after birth or - - -
Mr. Todd - No, that's a good - - - thank you for clarifying.
Q When you took him when he had the sniffles some time the end of November first of December - - -

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A There was no bruise present.
Q If he had had any bruises, would you have noticed them?
A Yes.
Q Did you ever drop at any time - - - I think you said you never dropped [redacted]?
A I did not, no.
Q Do you know whether your mother or Michael or Brian ever dropped him?
A Not that I was aware of that they told me of.
Q All right. So you went to Sunshine. What kind of treatment or prescriptions or anything did you get when you went to Sunshine when you took [redacted] when he had the sniffles?
A The first time when I was first concerned, there was nothing. He - - - he pacified it, told me to ride it out and let him know if it gets worse. And that's - - - I was going to but they were closed and that's why I ended up at Riverview.
Q And Riverview's a walk-in clinic?
A Yes.
Q Had you ever been there before?
A I think for myself.
Q What was the time period between you went to Sunshine when you had the sniffles and when you went to Riverside?

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A Days, a couple of days.
Q So a couple of days later?
A Yes.
Q And did [redacted]'s symptoms change any? Still the same - - -
A The same. Yeah.
Q So the runny nose, the loss of appetite, - - -
A Yes.
Q - - - and he's sleepy?
A Yes, and constant crying.
Q Now, you went to Sunshine. You went to Riverside. Did I understand you went back to Sunshine Pediatrics before you went to Piedmont?
A Yes. We did a follow-up because Riverside said to follow up with your pediatrician which we did that. I don't remember if it was the next day. I don't remember if I went to Riverview because it was the weekend and they were closed or because it was night and they were closed but I went the exact - - - next time I could to the pediatrician.
Q Would that have been a day or two later?
A I believe it was probably the next day I think.
Q Did anything happen in that visit? Did you see Dr. Paxton again?

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A At the pediatrician?
Q At Sunshine Pediatrics.
A Yes. We saw Paxton again.
Q And who was with you; was your mother with you?
A With that one, I believe she was with me. Yes. Michael was at work I believe.
Q Like Michael was working in December of 2009?
A December. No. Well, Michael wasn't there so I don't know what his deal was. But right, you're right, he did not have a job then.
Q Do you know whether your mother went with you on the first visit in end of November first of —December to Sunshine?
A I do not believe she was present.
Q Michael probably?
A Yes.
Q When you went to Riverside, who went with you?
A It was - - -
Mr. Hood - Riverview.
A Riverview.
Q Riverview.
A It was just me.
Q And then when you went to Sunshine you think it was you and your mother?
A Yes.

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Q During those three visits, did [redacted] have any bruises on him?
A No.
Q Did he have anything that made you suspicious that there had been some kind of trauma?
A No.
Q Did your mother say anything to you that she was suspicious that there had been some kind of trauma?
A No.
Q Now, December 4th you took him to Piedmont?
A (Indicating yes)
Q And when you took him to Piedmont, was there anything - - - Well, let me back up. Let me see if I can ask this question better. When you took your child, [redacted] to Piedmont on December the 4th, 2009, did you have any suspicion that there had been any kind of trauma?
A No.
Q Did you ask Michael if there had been any kind of trauma?
A Not in that sense.
Q What did you ask him?
A I just asked him, you know, what had happened. Why - - - why was he - - - what led up to it. And he gave me the excuse of him - - - to wake him up to

feed him and that's when he let out a big cry and went limp.

Q Now, when you got to Piedmont, my understanding was is that once you got there [redacted] let out a big yelp and after he let out that yelp, he got better.

A Well, not better but he started breathing and crying.

Q Do you remember the doctor you saw at Piedmont?

A No.

Q Do you remember how long you were at Piedmont before you went to - - - transferred to Levine?

A It was hours because we got to Levine in the middle of the night, like early morning.

Q Do you know what day of the week it was?

A No, you can probably figure that out on the calendar.

Q Well, I tell you what, I got a calendar so if you don't mind - - -

A No, not at all. I know it was my - - - my brother's birthday is the 4th so we were going to go to dinner with my family for it.

Q It looks like, and I'll let you look, but it looks like December the 4th was a Friday.

A Yes. Okay.

Q All right. And I guess my question is, by the time

you got to Levine, was it after midnight?

A It was Saturday.

Q So it was Saturday?

A Yes.

Q How did [redacted] do when he was at Piedmont?

A He did calm down eventually. Other than being fussy and uncomfortable where he was, he was fine.

Q And did you call your mother on the way or when you got there?

A Yes.

Q And she came?

A Yes.

Q How soon did she get there?

A Probably 30 minutes or so.

Q So she was there for pretty much the entire time?

A Yes.

Q I've looked at the Piedmont records and I don't get to testify, but let me see if I can - - - what I can't understand is why [redacted] was transferred from Piedmont. Did you get an understanding of why [redacted] was transferred from Piedmont to Levine?

A They just told me they wanted to send him up there for further care, for CAT scans and whatnot. As to why Piedmont couldn't do it, I don't know.

Q Did you ask for a transfer - - -

A No.

Q - - - to Levine? Did your mother ask for a transfer to Levine?

A Not that I'm aware of.

Q Did Michael ask for a transfer to Levine?

A No.

Q So the decision to send Michael to Levine was made by - - -

Mr. Hood - You said Michael.

Mr. Todd - I'm sorry.

A To send Owen?

Mr. Todd - Thanks.

Q The decision to send [redacted] to Levine was made by one of the doctors at Piedmont?

A To my understanding.

Q And you said that there was a lumbar puncture done?

A (Indicating yes)

Q Do you know what the results of that puncture were?

A No. I just know that's how they found out about the brain, the bleeding in it.

Q How did you know that?

A I was - - - that's what I was told.

Q By whom?

A A doctor. I don't remember the name.

Q At Piedmont?

A I don't - - - I'm not sure. I keep mixing up the visits so I'm not positive. I believe it was Piedmont though, yes, and that is why he explained to us that we're going to be taken to Levine.

Q Now, did you ride in the ambulance with [redacted] to Levine?

A No. No, we followed.

Q We is who?

A Me and Michael.

Q What about your mother?

A She came later. She went home to get clothes and stuff.

Q Did your step-father come to Piedmont that night, the 4th?

A No, he was taking care of his other children. He has - - - at that time there was four children, other children, at home.

Q How old are they?

A At that time like 10 and 11 and then my brother was 12.

Q Were there any calls made to Dr. Paxton or any other doctors at Sunshine that you're aware of?

A Not on our part.

Q When you got to Levine, do you remember - - - I understand there's two hospitalizations. If they

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run together, let me know. But what I want to do right now is talk about this December hospitalization.

A Okay.

Q So you were there from just after midnight on the 5th until December the 8th?

A Yes.

Q Do you remember the names of any of the doctors that you talked with during that visit?

A I believe I spoke to Dr. Bailey.

Q Bailey?

A Yes.

Q What kind of doctor is Dr. Bailey?

A A neuro, pediatric neuro, and that's all I remember. I remember him in being both cases. That's the only reason his name stuck with me.

Q Do you remember any of the specifics of the conversations with Dr. Bailey? And right now I still I want to talk about the December hospitalization.

A Just December, right. No.

Q Do you remember in December that when [redacted] got to Levine he was diagnosed as having a subdural hematoma?

A Yes.

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Q Do you know what a subdural hematoma is?

A I did not at that time. Now, I do.

Q Did you know what it was in December of - - - Well, did you understand what a subdural hematoma was when you were in Levine during the December hospitalization?

A No.

Q Did you ask anybody what a subdural hematoma was?

A Yes.

Q And who did you ask?

A I believe a nurse and that she explained bleeding in the brain.

Q So during that hospitalization a nurse explained to you that a subdural hematoma was bleeding in the brain?

A Yes.

Q And do you have any different understanding today of what a subdural hematoma is?

A No.

Q Now, once the subdural hematoma was discovered at Levine, was a sitter placed in your child's room?

A Yes.

Q And did you know why a sitter was placed in [redacted]s room?

A I figured it was, again, procedure in a case with a child. I believe that's what I was told as well.

Q And did that sitter stay in the room during that entire hospitalization?

A Yes. They did switch out eventually.

Q Well, I'm sorry, I didn't mean the same sitter.

A Yeah, right. Yes. But, yes, someone was always in there.

Q There was a sitter in the room the entire time [redacted] was in the hospital, in Levine during December?

A Yes.

Q And didn't you know that wasn't normal to have a sitter in the room?

A I did not separate it. Because, again, like I said, I thought it was procedure so I did figure that every kid that came in with problems had a sitter.

Q When you say problems, what do you mean by problems?

A Any reason for being in the hospital. I figured it was procedure. And again, I've never been in a situation like this before so it was - - - everything was normal. I didn't find anything out un-normal because I've never dealt with it, if that makes sense.

Q You thought it was normal to have a sitter in the

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room the entire time?

A Yes.

Q Did you ask your mother about having a sitter in the room?

A Yes.

Q And what did she say?

A She just kept saying that's just what they have to do.

Q You didn't think that the sitter was in the room because of a suspicion of some intentional injury to [redacted]?

A No, because nobody brought that to my attention.

Q And that didn't cross your mind?

A No.

Q Do you know whether that crossed your mother's mind?

A I don't believe so. We had no reason to believe that at the moment.

Q Now, there was a sitter in the room and DSS showed up. And did you think that DSS showed up - - - why did you think DSS showed up?

A Because, again, they were supposed to.

Q And why was DSS supposed to show up?

A That's what you do - - - I mean, you know, I figured that's what you do in any case when a child

is injured.
Q You didn't think that DSS showed up because there was a concern about an intentional injury to [redacted]?
A I believe they were probably there to find out if that was a cause. I'd figured they would find it to not be.
Q Now, I may have done a poor job of asking my question. But you did understand that there was a concern that there might be - - - might have been an intentional injury to [redacted]?
A From their point of view, yes.
Q And they felt like that that was something - - - because there was a concern, that's why the sitter was in the room?
A Yes.
Q So you understood that?
A Yes.
Q The reason the sitter was in the room because there was a possibility of an intentional injury?
A Yes, a possibility.
Q And DSS was called in because there was a concern about the possibility of an intentional injury?
A Yes.
Q All right. But in your mind you didn't even think that an intentional injury was even a possibility?

A Correct.
Q And so if anybody had asked you did you have any concerns, you would have said no?
A Correct.
Q And if somebody had asked you, you would have said there's no possibility that there was an intentional injury; is that correct?
A Yes.
Q Now, do you know whether or not your mother provided any information on whether or not there was some possibility of an intentional injury either to anybody at the hospital or DSS?
A Not to my knowledge, no.
Q Did your mother ever express any concerns to you that there might have been some intentional injury during that December hospitalization?
A No.
Q Did y'all ever have any discussions about whether or not there was the possibility of an intentional injury during that December hospitalization?
A No.
Q What about before January 10th of 2010, was there ever any discussion between you and your mother about the possibility of some kind of intentional injury to [redacted]?

A No.
Q Do you remember what Dr. Bailey - - -
A Excuse me. I'm sorry.
Q Dr. Bailey, you said you remember talking with him. He's a pediatric neurologist. Do you remember talking with him in the December hospitalization?
A Not speaking with him. I just know he was the doctor on the case.
Q And what I was just saying, do you remember what he might have said or did you ask any questions? I'm just trying to find out what you remember about any discussion you might have had with him.
A No. I don't remember anything in particular. No.
Q Now, do you remember that there was some question about [redacted]'s discharge, about when he would be discharged and to whom he would be discharged?
A A question - - -
Q Do you remember anything like that during the December hospitalization?
A A question from who?
Q From anyone.
A Rephrase your question.
Q Was there ever some question about whether or not [redacted] would be discharged back to your care and custody?

A No.
Q When you talked with the people from DSS, did they say whether or not they were trying to decide whether or not [redacted] would be discharged back into your custody?
A No, they just put him back to us.
Whereupon - A recess was taken.
Q Ms. Lythgoe?
A Yes.
Q Are you in any kind of current relationship with any of the opposite sex?
A No.
Q Now, when [redacted] was discharged from Levine's in December, you understand that there was going to be a follow-up visit for another scan?
A Yes.
Q And do you understand that DSS was going to stay involved in looking in on you and Michael?
A Yes.
Q And did you understand that you were required to do parenting classes?
A Yes.
Q And DSS was going to schedule those parenting classes for you?
A Yes.

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Q Now, did you follow up to have that scan, that scan that was required?
A I did.
Q And where was that scan done?
A It was back at Levine.
Q Now, before the event in January where [redacted] had the seizures - - - Well, let me ask you this. Did [redacted] have any seizures in November or December?
A No.
Q Nothing seizure-like - - -
A No.
Q - - - nothing or no shaking, no seizures, no rolling of the eyes, - - -
A No.
Q - - - nothing like that?
Mr. Hood - Objection to the form. Compound question.
Mr. Todd - Okay.
A No.
Q December, other than going back for the scan, do you remember what the scan was?
A To see if it was clear or not.
Q Okay. But do you remember what - - - was it like a full body scan?
A Oh, I believe it was just his head.

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Q Just his head?
A (Indicating yes)
Q That's a yes?
A Yes. Yes, I'm sorry.
Q Had it resolved, - - -
A It was - - -
Q - - - the subdural hematomas?
A - - - It was clearing up very well. Yes.
Q Now, when [redacted] was discharged, was he back to his normal self when he was discharged - - -
A Yes.
Q - - - in December from Levine's?
A Yes.
Q And the rest of December, did [redacted] have any problems health-wise?
A No.
Q Other than taking him back to Levine - - - was it Levine's where he had the scan?
A Yes.
Q Other than that, did you take him back to the pediatricians?
A Yes, we also had a follow-up with them.
Q And that was Dr. Paxton?
A Yes.
Q Did you have any discussions with Dr. Paxton about

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what had happened that led to the hospitalization at Levine?
A Other than telling him the whole events over again.
Q Well, I would say that would qualify as a discussion with him.
A Oh, well, yes.
Q Did he make any comments?
A No.
Q Did he have any kind of follow-up as a result of what happened in the hospitalization, what led to the hospitalization? Did he prescribe any medicine? Did he make any recommendations?
A No.
Q Now, before, when you had the child, where was [redacted] born? At Piedmont?
A Yes.
Q Before he was discharged, was there discussions there about the dangers of shaking a baby?
A No.
Q There was no discussion at Piedmont before you were discharged that shaking a baby is a bad thing?
A No.
Q See, I ask that because I - - - Mr. Hood and I, we both have reached the elevated status of grandparents.

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A Yes.
Q And I was there when the social worker or the nurse came around and talked to my daughter and says - - - and talked about you can't shake babies. But there wasn't any kind of discussion like that?
A Not that I remember, no.
Q Did you know that you can't shake babies?
A Yes.
Q And did Michael know you can't shake babies - - -
A Yes.
Q - - - as far as you knew?
A Yes.
Q Because that was not something that you - - - I'll go on with the next question.
A Yeah.
Mr. Hood - Common sense.
A Yeah, common sense. I didn't want to say it but you did so - - -
Q Before January 10th, 2010, did your mother ever do anything to try to get custody of [redacted]?
A No.
Q Now, of course if she wanted to take care of [redacted] then that was - - - you know, she had the time and inclination, that was generally fine with you and Michael?

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A Yes.
Q And Christmas, where did y'all spend Christmas? And, I mean, Christmas, I don't mean just - - - I'm talking about the Christmas holidays.
A We stayed at his parents up in Concord and went down later. Because we stayed over Christmas Eve at his parents and then came down Christmas Day to my parents.
Q Was [redacted] back to his normal self Christmas?
A Yes.
Q Other than Mr. Frawley asked you about the December 21st home visit by DSS, other than that, did you have any other contact with DSS after you'd been discharged from Levine's on December the 8th, 2009?
A No.
Q Were there phone calls? And I don't mean just limited to face-to-face but was there a phone call to set up that December 21st home visit?
A Not that I remember.
Q So the DSS worker just showed up one day?
A Well, she showed up, like he said, I believe you said the 17th, but I could not have - - - I was on my way to work and did not want to be late so that's when we set it up for the 21st.
Q So you had contact on the 17th?

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A Yes.
Q And you had contact on the 21st?
A Yes.
Q Any other contact you had with DSS?
A No.
Q When you had the contact on either the 17th or the 21st, did you ask why DSS was doing a home visit?
A No.
Q Were you curious as to why they were doing a home visit?
A No. I mean, I don't want to sound dumb here. I just figured it was procedure.
Q Did you ask your mother about why DSS was involved?
A We talked about it but we, again, just both figured procedure.
Q Do you know whether or not your mother talked with DSS in December of 2009?
A I only know what she has told me.
Q What did she tell you?
A They questioned her just like they did me and Michael.
Q And where did that questioning take place?
A At the hospital.
Q And that was the December hospitalization?
A Yes.

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Q So DSS questioned in December of 2009, DSS questioned you?
A Yes.
Q And they questioned Michael?
A Yes.
Q They questioned your mother?
A Yes.
Q Do you know who else they questioned, or do you know of anybody else they questioned?
A Well, and Larry. Other than that, not to my knowledge.
Q So they interviewed Larry as well?
A Yes.
Q And do you know whether or not they interviewed Michael's parents?
A I do not know.
Q Now, I'm moving on to January, January 10. Was it 10th or 11th?
A It happened - - - we went the 11th morning.
Q Now, let me back up and ask you about January the 9th. We'll see if we can find that schedule and get our - - - I'm just looking. It looks like January the 10th was a Sunday?
A Yes. Yes, it was.
Q So I want to ask you about Saturday the 9th,

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January the 9th of 2010.
A Okay.
Q Was there anything at all unusual about [redacted] on that Saturday, January the 9th, 2010 that you remember?
A Not as far as behavior. We did find a bruise.
Q And the bruise was where?
A In the middle of his forehead.
Q And that's the one he said he dropped a play key on?
A He was swatting and it swat himself. Yes.
Q Okay. So Michael said that - - -
A The baby swatted - - -
Q - - - [redacted] had hit himself with his toy?
A Yes.
Q Now, was anything unusual about [redacted]'s behavior?
A No.
Q Happy? It sounds like he was a happy baby.
A Very, yes.
Q On that Saturday was he happy and his normal self?
A Yes.
Q Anything about his health that caused you any concern?
A No.
Q Sunday the 11th - - - I'm sorry. Sunday, January

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10th - - -
A Yes.
Q - - - did you go to church?
A Yes.
Q Did [redacted] stay in the nursery?
A Yes.
Q Any concerns about [redacted]'s health on that Sunday?
A No.
Q Did you go to work that day?
A Yes.
Q What time did you work?
A I did attend church so it was an evening shift so I believe I went in at 4:00.
Q When you left to go to work, how was [redacted]?
A Fine.
Q And what time did you get home?
A 10:30, 11 o'clock.
Q When you got home was [redacted] asleep or was that when you came home and - - -
A That's when he wasn't there.
Q There was a phone call and nobody answered the phone? Did I remember that? Am I getting confused?
A No. I can tell you again. Yeah, I came home from work and nobody was home, and I called Michael to

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ask him where he was. Yeah.
Q So when you got home, nobody was home?
A Correct.
Q So you called - - - y'all didn't have a land line?
A Right, just cell phones.
Q So you called his cell phone and he was out riding around?
A Yes, trying to put [redacted] to sleep in the car.
Q So when he came back, how long was it before he came back?
A He did not come back by himself. It was about 11:00 then when I called him, and I fell asleep on the couch waiting for him to come back. And I woke up at 12:00, around 12-ish, and he still was not home and that's when I called him again and he came home within minutes.
Q Was it just Michael and [redacted]?
A Yes.
Q And how was [redacted] when he got home that - - - I don't know, it might have been Monday morning, - - -
A Yeah.
Q - - - but late Sunday night, early, early Monday morning - - -
A Yes.

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Q - - - how was [redacted]?
A He was fine. He was asleep.
Q Did you wake him up?
A No. I just looked at him, and I was going to take him out of the car seat, but Michael said he'll put him to sleep and for me to just go to bed, so I did.
Q Did you hold him?
A No.
Q Did you take his clothes off and put him in his pajamas?
A No.
Q Was [redacted] crying?
A No, he was asleep.
Q Now, what time did you wake up on Monday morning the 11th; do you remember?
A I did wake up in the middle of the night because of Owen. And then the initial morning was - - - no, I don't know what time that was.
Q Okay.
A I'm not sure.
Q You woke up in the middle of the night because of Owen. Why did you wake up, to feed him?
A Yeah, he was crying so I figured he was hungry. It was some time in the early morning, 3:00, 4:00

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a.m., and I went to - - - I went in his room, and I covered him up, and I checked on him. He was fine, just fussy, so I went to go make a bottle. And that's when Michael met me in the kitchen and said he'll do it, and so I went back to bed and he did it. But, again, the baby seemed fine to me.
Q Was it unusual for him to wake up during the night and want a bottle?
A [redacted]?
Q [redacted]
A No, that was normal.
Q So when he woke up and he was fussy, that didn't set off any alarm?
A No, not at all.
Q That was sort of usual behavior?
A Correct.
Q And was it usual behavior for Michael to get up and offer to give him the bottle?
A No, but yes at the time because I had just kicked him out. So that whole week he had been doing that for me and so I was sucking it up.
Q He was on his best behavior - - -
A Yes.
Q - - - trying to get back in your good graces?
A Correct.

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Q Now, had anybody else cared for [redacted] during that Sunday the 10th?
A My mom watched him that Saturday. Sunday he was with Michael and I was at work. I mean, we both had him at church, then I went to work and left him with Michael.
Q So you wake up some time that Monday morning and that's when [redacted] has what you described as a seizure?
A Yes.
Q And you and Michael drive him to Piedmont?
A Correct.
Q And did you call anyone, did you call to tell them you were coming? Did you call 911? Did you do anything like that?
A No, I did not because I wanted to just get there. I didn't want to sit and wait for an ambulance.
Q And I'm just asking you.
A Yeah. No, that would have scared me too much so I did not call. I didn't know about prepping so I just went.
Q Did you call your mother on the way?
A I believe I called her when we got there or - - - yeah, I think we were already there when I called her.

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Q When did you learn that there had been an intentional, some type of - - - Well, when did you learn that [redacted]'s injury was a result of trauma?
A When I went to - - - when Michael did the polygraph and confessed to it. That's when it was absolutely, positively that.
Q When you got to Levine's in January, were you allowed to be with [redacted] unsupervised?
A Yes.
Q When?
A After I came back from the police department for his confession, I came back and my - - - my mom was already in the room with [redacted] and we were in there.
Q Were there nurses present when you were there?
A Not in the room.
Q Now, was there a time in January where no one could be in the room with [redacted], no family members, without supervision?
A Yes.
Q And so that was the case until Michael confessed; is that correct?
A Say that again.
Q What I'm trying to find out is when Michael and you and [redacted] first got to Levine's in January, were you or any family members allowed to be with [redacted]

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unsupervised?
A I don't really know how to answer that because we weren't allowed in the room at all because they pushed everybody out to take care of [redacted]. So then nobody was allowed back there for awhile and that's when I left to go do the interrogation with Michael. And then when I came back I was allowed in the room.
Q And it's your testimony that y'all were allowed in the room unsupervised?
A Yes. I don't remember anybody else being in the room but my mom.
Q Was [redacted] still in ICU?
A Yes.
Q Did your mother ever complain because she couldn't stay with [redacted] without supervision while she was in Levine's in January?
A Later on, yes.
Q When did that happen?
A I don't remember. I might be mixing it up with rehabilitation too. After Hospice and all that, I know we were supervised so I might be mixing it up with that.
Q In this lawsuit - - - you're aware this is a lawsuit?

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A Yes.
Q Do you expect to receive anything from this lawsuit?
A Like if - - - if they win?
Q Yes, ma'am.
A Not me particularly, no. [redacted], yes. I plan on him being able - - - or being able to buy, you know, a van and whatnot for him but no money just for me, no. It'd be strictly for the care of [redacted]
Q Is [redacted] or your parents getting any kind of financial assistance for their caring for [redacted]
A I believe my mother gets disability checks for him. Yes.
Q And that comes from where, the government?
A I think so.
Q It comes from an insurance company, or the government - - -
A No.
Q - - - or do you know?
A I'm not positive. I don't know how many people can give out disability checks so I don't know where it comes from though.
Q Do you know how much it is?
A I don't know the exact amount. I think it's in the 600 area.

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Q Six hundred dollars?
A Dollars, yes.
Q A week, a month?
A A month.
Q Do you know whether or not they're getting any other kind of assistance other than disability from the government most likely?
A Other than Medicaid, no.
Q Are you on Medicaid?
A I am not.
Q You have health insurance?
A I do not.
Q So I guess that leaves you uninsured?
A Correct. Unfortunately.
Q Now, the rocking chair incident, had there been any problems with that rocking chair? You were in Levine's from January until - - - or you, I say [redacted] was in Levine from January until some time in when, February?
A I would say so because then we ended up in Hospice and the rocking chair thing happened after Hospice.
Q So your kid went from Hospice back to Levine's?
A Yes.
Q Had there ever been any problems with the rocking chair prior to that time?

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A Not that I'm aware of.
Q Were you concerned about your mother saying the rocking chair flipped over; did that cause any concerns for you?
A No.
Q I think the doctors did not expect [redacted] to live; is that correct?
A Correct.
Q And he was at the Hospice and actually did better than they expected?
A Yes.
Q And there was a recommendation that he be put on a feeding tube?
A Once we - - - not from Hospice. That was later in rehabilitation, yes.
Q And did you and your mother and step-father not want him to be put on a feeding tube?
A Correct.
Q Why did you not want him to be put on a feeding tube?
A Because when we took him off of life support from Levine before Hospice, the whole reason we took him off life support is because we didn't want any artificial life on him. And that is - - - this is my religion, that's what I believe, and that's what

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I want for myself as well. So a feeding tube is artificial life support and that's just how I saw it. And that was the only reason. It wasn't because I didn't want him alive or anything.
Q Did the hospital or DSS go to court to have the feeding tube ordered or placed?
A I think so. Yes.
Q Do you think that that's something that they shouldn't have done?
A I think that that was ripping our rights away. I mean, it's - - - it's really hard to say now because of course I'm extremely glad he's here. But it is because the feeding tube, so it's an iffy subject.
Q So if you could go back in time, which we can't do, - - -
A Right.
Q - - - you would still be opposed to the feeding tube being placed?
A I probably would still be, yes. Because I was - - - my uncle is a doctor and he has explained - - - he explained to me and my mother, you know, the difficulties and problems that come with a feeding tube. And the feeding tube is usually what is the cause of death to most disabled children so it was

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still a main concern. It still is a concern. I'm scared of that thing all the time.
Q Well, [redacted]s on a feeding tube now?
A Yes.
Q And you think that's a bad thing?
A Not necessarily. But again, that's my - - - it's a trick question kind of. I don't really prefer it but I'm - - - it makes me sound bad. I'm very glad he's here, yes. What was your question?
Q Well, I think the question was is him being on a feeding tube a bad thing and, of course, you - - - I understand it'd be better if he didn't have to have it.
A Yes.
Q But since he has to have it, are you in favor of him having it?
A I don't think so because, like I said, it is, again, artificial life support.
Q If it were up to you the feeding tube would be removed?
A At this point in time?
Q Yes, ma'am.
A No. God, no. I guess not. No.
Q So then you're for it?
A Yes.

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Q You're either for it or against it or somewhere in between.
A I was against it ever in the beginning. Now, yes, I'm for it.
Q Now, Palmetto Pediatrics, is that in Aiken or is that in Columbia?
A Aiken.
Q There's a Palmetto Pediatrics in Columbia and I'm thinking - - - the pediatricians are in Aiken?
A Right.
Q Now, has [redacted] had any kind of mental testing? I know he's only three.
A Yeah.
Q Will he be - - -
A He'll be three.
Q He'll be three in September. But no kind of cognitive, mental testing?
A They do some things through his therapy that he's in right now as far as behavioral. They can tell behaviorally what he's at which I believe they did three to six months old.
Q Who's his primary caretaker?
A Dr. Kinsey.
Q No. No. No. You, Charlotte, - - -
A Oh, I'm sorry.

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Q - - - Larry, or somebody else?
A My mother.
Q You answered my question. I didn't make it clear. But your mother is the primary caretaker?
A Yes.
Q How much time do you spend with [redacted]?
A Every day but I work. My schedule is 10:00 a.m. to 4:00 p.m. at this job I currently have so I'm with him any around time.
Q You told me what he couldn't do. Can [redacted] crawl?
A No.
Q Does he have any purposeful use of his arms?
A No.
Q What about his hands?
A No.
Q Does anybody give any prognosis as to whether he'll get better, worse?
A The doctors say it'll just stay like that, how he is now.
Q And how he is now is - - - but he's happy?
A Yes, he's happy. We find it lucky that he's not incoherent like most disabled children. He doesn't zone off and drool. He's aware of his surroundings, and he interacts, and he giggles, and he's not a zombie.

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Q Now, you answered Mr. Frawley's questions about the feeding tube and said that - - - I didn't really quite understand it. There were some questions about feeding him with a spoon. And what do you feed him with a spoon?
A Baby food.
Q Is he able to get any nutrition through his mouth?
A Not only for nutrition. He's able to swallow a few bites, yes. But I wouldn't - - - I wouldn't think he could only live off of only mouth food, no.
Q He can swallow limited amounts of food - - -
A Yes.
Q - - - if it's pureed?
A Yeah, and if he likes it. He knows if he doesn't like it. He spits it right back out.
Q I guess he's like all children.
A Yes, he's got that down.
Q But to survive, he requires the feeding tube?
A Correct.
Q Who does the care of the feeding tube?
A Me. I have - - - I have changed it out, and I clean it, so - - - I mean, mom has. It grosses her out to change it out so I do it, but we both know how.
Q Since, say, 2011, 2012, has [redacted] had any seizures?

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A Not full blown. He has seizure activity. He's on medication for it. But he has had EEGs, EKGs, whatever they're called. I think he's had - - -
Q EEGs I think.
A Yeah. He's had two of them I believe since then to test whether or not he needs medication still and he does still need it. He has seizure activity. He has never had a full-on seizure though.
Q He's had, I don't know, they call them petit mal seizures?
A (Indicating yes)
Q That's a yes?
A Yes. Yes, I'm sorry.
Q Did you witness them?
A No.
Q Who witnessed them?
A I'm not sure. How do you know that he had those?
Q I just asked you and you said he had.
A Oh, I thought you told me.
Q No, that was the question.
A Oh, okay, I'm sorry.
Q I don't get to tell things. I just get to ask questions.
A No, actually then, not to my knowledge, he has not.
Q Okay.

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A No, just - - - he's never had, that I am aware of, little seizures. The doctor, his Dr. Strickland, has said that he probably has that we have not noticed. Yes.
Q Which leads to my question. You're not aware of anybody observing him having seizures?
A Correct.
Q Where is Strickland?
A MCG in Augusta.
Q Now, you said you signed - - - how many safety plans did you sign with DSS?
A First or second time or altogether?
Q You signed two?
A Well, yes.
Q Do you still have those safety plans?
A Somewhere. I believe I do.
Q Have you provided them to your lawyers? You're not represented by lawyers.
A I don't have any.
Q Have you provided to the lawyers who are representing [redacted]?
A No.
Q Do you remember what was in those safety plans?
A No.
Q The doctors [redacted]'s now seeing are Palmetto Peds in

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Aiken, - - -
A Yes.
Q - - - Dr. Strickland at the Medical College of Georgia, correct, - - -
A Yes.
Q - - - and he's seeing a therapist for swallowing?
A Yes.
Q And where is that therapist?
A That is at Hitchcock in Aiken. He sees three therapists at that place.
Q Therapists for - - - one for swallowing.
A One for speech therapy, which is swallowing, occupational therapy and physical therapy.
Q Does he see any specialists?
A He sees his - - - Dr. Strickland, his neuro specialist, Bebitisto, his behavioral specialist, and Dr. Nigh, his gastro specialist.
Q Where is Bebitisto?
A They're all at MCG.
Q Medical College?
A (Indicating yes)
Q Do you know whether or not you're getting any assistance from the March of Dimes or any organization like that?
A We do not.

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Q Did you give any kind of recorded statement to the York County Sheriff's Department?
A Not that I am aware of.
Q Were you asked to submit to a polygraph exam?
A Yes.
Q Do you have any criticism of the care that was provided to [redacted] at Levine's Children's Hospital in any visit?
A While he was in rehabilitation?
Q Any time.
A Any time. Yes. I believe that we were treated kind of rudely at some points, yes.
Q And how were you treated rudely?
A Like we were the ones who did it. I didn't think that that was right.
Q And what hospitalization was that?
A Kind of through all of them. Like, I understand immediate concerns. They didn't know who did it. But after Michael had confessed, I still was not treated fairly I don't believe.
Q Did you feel like you were treated rudely in the December hospitalization?
A No.
Q Do you have any criticism of anything that happened in the December hospitalization at Levine's?

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A No.
Q And then your criticism of the January hospitalization is you felt like you were treated rudely?
A Yes.
Q Any other criticism of Levine's?
A Other than unnecessary removement of my parents, no.
Q And when was that?
A Well, again, I think that was in rehabilitation.
Q That was after the rocking chair incident?
A Yes.
Q Any other criticism?
A No.
Q Have you been back to Levine's since 2011, 2012?
A I have not been back to Levine since we moved to Aiken.
Q And when was that move?
A 2010, June.
Q Do you remember talking to any social workers at Levine's?
A There was a blonde lady. I do not know her name. I'm sorry. But she recognized herself as - - - introduced herself as the social worker.
Q And do you remember anything about the specifics of

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the conversations with the blonde lady who was the social worker?
A No.
Q Do you remember any specific conversations with any doctors or nurses at Levine's?
A Only for rehabilitation, not before.
Q No discussion about what happened to [redacted] or how it happened or - - -
A No.
Q Did you ever go to parenting classes?
A No, they were never supplied to me.
Q How was it determined that your mother and step-father got custody; who made that determination?
A I believe we settled that in court. It was a settlement agreement, and I accepted because I was scared to lose him to anybody else.
Q You agreed on it?
A Yes.
Q Was DSS involved in that?
A Yes. And to go back on your parenting class thing, I did not the first time. I did after the second time go to parenting classes, yes.
Q But you have been to parenting classes?
A Yes. I apologize.
Q In Aiken or in Rock Hill - - -

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A Rock Hill.
Q Have you had any contact with Michael's parents since Michael confessed?
A The last time I had contact with him was - - - or them, sorry, was before he pled guilty and was sentenced. That was the last time I spoke with them.
Q Since you've moved to Aiken, have Michael's parents had any contact at all with [redacted]?
A Yes.
Q What contact have they had?
A They came and saw [redacted] after we got him back from foster care. They did come see him once. They came - - -
Q I'm sorry. I launched into my next question before you had finished.
A You're good. I'm done.
Q Okay. Any other visits?
A No.
Mr. Todd - I appreciate you answering my questions. Mr. Settana my have some and while he's doing it I might think of some more.
EXAMINATION - (By Mr. Settana)
Q Ms. Lythgoe, - - -
A Yes.

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Q - - - my name's Dan Settana. I represent the sheriff's department or the York County Sheriff, also York County in this case. I did have a bunch of questions. They've asked most of them so I'm going to cut this way down. If seems like things are out of order, that's not intentional, it's because you've been asked a lot.
A Okay.
Q Also if I go back through some of your testimony and I may restate it incorrectly, let me know. That's not intentional either, okay?
A Okay.
Q I'm just trying to get to the point so we can get out of here. We've been here almost four hours now I think.
A Yes.
Q Some questions came up that I wrote down as you were testifying earlier. Where does Aaron Lythgoe live?
A Right now?
Q Yes.
A He actually just went to boarding school.
Q Okay. What grade is he in?
A That's a technical question. He went to the boarding school because he failed and so I think

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they're going to start him off on eighth grade.
Q Okay. That's fine. And when was the last time you saw Michael Carduff?
A At his sentencing.
Q Okay. And between the time he gave the polygraph test and the sentencing, did you talk to him any time in that time period?
A No.
Q That was about a year between when he confessed and when he was sentenced?
A Yes. Right when he confessed, that was my last verbal encounter.
Q Now, Michael had a brother Brian, correct?
A Yes.
Q Older brother?
A Yes.
Q Did Brian ever live with you and Michael?
A Not live with, he stayed long periods of times but - - -
Q Weeks at a time?
A No more than a week.
Q And otherwise, was he living at home with Michael's parents?
A Correct. Yes.
Q Have you had contact with Brian since Michael

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confessed?
A No.
Q Has Brian ever come to see [redacted] since Michael confessed?
A No.
Q At one point you said that your step-father, Mr. Williams, has some family in Rock Hill; is that correct?
A Yes.
Q Another time you mentioned that you had an aunt here in Rock Hill. Who is that?
A An aunt through him.
Q Oh, okay.
A Yeah, it's his sister.
Q And what's her name?
A Charlene Blackwelder. She's actually a cop.
Q Yes. With what agency?
A I think she's with Tega Cay right now.
Q And did you know her before this incident?
A Yes.
Q Did you know her before you gave birth to [redacted]?
A Yes.
Q So did she ever see [redacted]?
A Yes, not often, - - -
Q Okay.

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A - - - but she had seen him.
Q Did she see [redacted] after the December incident we've been talking about?
A After the December incident.
Q Yes.
A I don't believe so. We went to her - - - was her house for Thanksgiving I know that - - -
Q Okay.
A - - - so that was before. And I don't think so because she didn't - - - she wasn't an often visitor.
Q You saw her at Thanksgiving just before the December incident?
A Yes.
Q Did she see [redacted] before the January incident?
A I don't believe so. No.
Q Did you ever discuss with her or did anyone ever discuss with her the fact that DSS was speaking to you about the December incident?
A I did not, not to my knowledge. I'm not sure if my parents discussed. They usually ask her a lot of law questions, so.
Q Did you ever discuss with her the involvement of my client, the York County Sheriff's Department; was that ever discussed with Ms. Blackwelder?

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A Not to my knowledge.
Q Do you know if your mother or your step-father spoke with Ms. Blackwell about either DSS or - you've already answered these - about the York County Sheriff's Department?
A I don't believe they - - - I believe they did on the second encounter, not the December.
Q After the second encounter?
A Yes.
Q Okay.
A And again, that's just to my knowledge.
Q Did you call anyone after the December incident to inquire why is DSS looking into this, why are the police looking into this?
A After the second incident?
Q The first, the December.
A Oh, I'm sorry. No.
Q You didn't make any inquiries to learn why DSS was coming to your house and why different people were checking into Owen's welfare?
A No.
Q Okay. Do you know anyone who works for DSS in York County personally?
A No.
Q Okay. Do you know anyone personally who works for

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the York County Sheriff's Department?
A Only Charlene who used to.
Q She used to work for York County Sheriff's Department?
A Yes, I believe she was a deputy or whatever they're called.
Q Where did you get that information from? I'm sorry.
A From her. I believe - - - I mean, I could be wrong but I thought she worked for York County for many years, and she just transferred over to Tega Cay.
Q Did she ever work for Rock Hill Police Department; do you know.
A I don't know. I'm not positive.
Q That's fine. Other than Ms. Blackwell, do you know anyone else who's ever worked for the York County Sheriff's Department?
A No.
Q I'm just skipping through a lot of these you've answered so - - -
A That's fine.
Q - - - maybe we'll skip through them. Did you ever call the police or law enforcement about Owen's well-being?
A No.

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Q Did you ever call the police or law enforcement saying I think someone's abusing my child or someone's harming my child?
A No.
Q And just to be clear on the DSS visits, I was a little confused after the first incident in December. What was the first time you actually met with a DSS employee? And that may be at the hospital. Let me start with at the hospital. When was the first time you met a DSS employee?
A It was at the hospital I believe a day after admission.
Q So that would be about December 6?
A Yes.
Q And the second time was when?
A Second encounter with the DSS worker?
Q Yes.
A Well, other than throughout the hospital, they came - - - he brought to my memory the 17th, we did meet but I had to go.
Q And then the next time?
A The 21st.
Q And any other meetings between the first incident in December and the second incident in January?
A No.

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Q Let me now change that a little bit. While you were at the hospital on the first incident in December, okay, did any sheriff's department officers or detectives or anybody employed by the sheriff's department come to the hospital in December and talk to you?
A Yes.
Q And who was that?
A They were just - - - I just know they were cops. There was two men. I'm sorry, I don't know names. But they just took our story down of what happened.
Q They were at the hospital after the first incident?
A Piedmont, yes.
Q At Piedmont Hospital?
A Yes.
Q Do you know if they were Rock Hill Police Department officers or York County Sheriff's Department deputies?
A I don't know the difference. I'm sorry.
Q And you don't know the names of them?
A They were two gentlemen. That's all I know.
Q Two gentlemen?
A Yes.
Q Can you describe them for me?
A I can't.

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Q I mean, were they young, old?
A Oh, they were - - - I believe they were younger.
Q Let me take them one at a time since I can't - - - can you picture them in your head right now?
A I'm trying to remember what their uniform colors were for you. That might tell you where they're from. I want to say they were in brown.
Q Wearing brown uniforms?
A Yeah, is that - - - is that a color here?
Q The first one, the first officer, take it that way, was he young, old, 20s, 30s, 40s; how would you characterize him?
A Oh, it's very vivid. They're probably 30s.
Q And was he white or black?
A White.
Q Brown hair, black hair, blonde?
A Brown.
Q And did they come and see you in the room?
A Hallway.
Q The hallway?
A Yeah.
Q Let me back up and go to the second officer. How would you describe him in age?
A Him, I don't really remember at all. I remember the main guy who was talking which is who I

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described to you earlier.
Q The second guy, was he white or black?
A They were both white.
Q Brown hair, blonde hair, black hair?
A I can't recall.
Q And you said they talked to you in the hallway?
A Yes.
Q Did you stop them or did they stop you?
A We were asked to step out.
Q By the police officers?
A By a nurse.
Q And were they waiting outside for you?
A Yes.
Q And this was before he ever got to Levine that day or the next day?
A Yes.
Q And did they initiate the conversation when you stepped our or did you?
A They did.
Q Was Michael with you when you stepped out?
A Yes.
Q So it was both of you?
A Correct.
Q And who was in the room with [redacted] at the time?
A Probably my mother - - -

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Q Okay.
A - - - because I don't believe [redacted] was ever without somebody.
Q And did your mother ever speak to these police officers at Piedmont?
A Not to my knowledge.
Q So you stepped out with Michael to talk them. What did they say to you or what did they ask you?
A They asked us to go over the events of the day. And if any of us had any concerns of Owen's well-being like his health-wise, - - -
Q Okay.
A - - - if he was sick or something, and we said no. And we just described to them what had happened. Michael gave them what he said happened and that was about it.
Q Okay. So did you tell them - - - I know you've been through with us today what happened that day of that first incident, okay, did you say - - - give them a similar story when you saw them in the hall, these two police officers?
A Yes.
Q And did Michael describe to them similar fact patterns you've told us today also?
A Yes.

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Q Did Michael at that point in time ever indicate that he had done anything that first December incident to harm Owen?
A No.
Q When you spoke with the police officers, did you or Michael say anything that should have triggered to the police officers that [redacted] was in some kind of trouble or danger?
A No.
Q In your own opinion did you get anything out of that conversation that [redacted] was in danger of harm?
A I did not.
Q Did you get out of that conversation that [redacted] had been already harmed by somebody?
A No.
Q Did the police officers take any notes?
A Yes.
Q Did they give you a card identifying who they were?
A Yes.
Q Do you know where that card is?
A No.
Q Would you have thrown it out?
A No. It's probably with all my other records.
Q Can you look for that for us?
A I can. Yes.

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Q How long did you talk to the police officers for?
A Maybe ten minutes.
Q Do you know why the police officers were there?
A No, just, again, procedure.
Q Did they tell you who called them to be there, if anyone?
A No.
Q And this was all at the Piedmont Medical Center?
A Yes.
Q And later that day [redacted] went to Levine?
A Yes.
Q And how did he get there, by ambulance?
A Yes.
Q And did you ever see or talk with any law enforcement or police officers while at Levine?
A Not that I remember.
Q And this is any of those days in December where he was up in Charlotte.
A Yes, not that I remember.
Q Between the December and January incident, did any police officers or law enforcement come to your house?
A No.
Q Did any police officers or law enforcement make contact with you at all following after you left

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Piedmont Medical Center?
A No.
Q right. Other than I know in the January incident you met Detective Amanda Carter, correct?
A Correct.
Q And what was the date of that, January the 11th, around?
A Yes.
Q So between December 6 and January 11 did you talk to any law enforcement at all about Owen?
A No.
Q And was Detective Carter wearing a uniform?
A I think so, yes.
Q Do you remember what her uniform was?
A It's casual looking. I think it was navy.
Q Okay.
A It was like a shirt with a badge on it.
Q It wasn't the full blown police officer like you'd see standing in a traffic intersection?
A Not that I remember that, no.
Q Not the uniform. All right. Between December and January 11, did you ever call the law enforcement?
A No.
Q Did you ever have any reason to call law enforcement - - -

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A No.
Q - - - in your mind?
A I did not.
Q If you had felt [redacted] was in danger would you have called law enforcement?
A Absolutely.
Q If you felt someone was harming your child would you have called law enforcement?
A Yes.
Q If you had felt someone was unintentionally harming your child, would you have put a stop to it?
A Yes.
Q Between December 6 and January 11, at any point did you feel that anyone was harming [redacted] whether intentionally or unintentionally?
A No.
Q Between December 6 and January 11, was your mother - - - did she see [redacted] either every day or every other day?
A Yes.
Q Did she ever tell you between December 6 and January 11 that [redacted] was being harmed by somebody?
A She didn't say that. She was alarmed by the second bruise.
Q And when was the second bruise?

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A January 9th.
Q Two days before?
A Yes.
Q And was that a Saturday?
A Yes.
Q And did anybody call law enforcement on January 9th?
A No.
Q Did she notice that bruise when you had [redacted] at her house?
A Yes.
Q Did she ever try to keep you or Michael from taking [redacted] away from her house that day?
A Not to my knowledge.
Q Did she ever say hey, I need to take care of this child at this time?
A No.
Q Okay. Almost done. Let me make sure I got everything. Let me ask you about January 11th. You talked to Detective Carter, correct?
A Yes.
Q And following the discussion, did she tell you that she had some suspicions about Michael Carduff?
A After - - - the only time she ever said that was when - - - before she took him downtown.

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Q And that was January 11th?
A It was - - - yeah, I believe that was the same day. It was dark at that point, nighttime.
Q And did they take Michael directly to be polygraphed in York?
A Yes.
Q Okay.
A We - - - he - - - he - - - not by a cop or anything, we took him, me and his mother.
Q So the three of you drove to the sheriff's department on your own?
A And his friend was in the back, yes.
Q And were you present when Michael was polygraphed?
A No, I was in the waiting room.
Q Were you polygraphed the same night or later?
A Later, a while later.
Q But that night they came out and told you that Michael admitted to shaking [redacted]?
A Yes.
Q And did they arrest him that night?
A Yes.
Q So he didn't drive back with you?
A No.
Q And all that happened on January 11th, correct?
A Yes.

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Q And did the police follow up and get statements from you and your parents?
A Yes.
Q And they followed up and took a polygraph from you?
A It wasn't very - - - it wasn't recent. I cannot remember when I did the polygraph. It was a couple - - - I want to say like a month or so - - -
Q Okay.
A - - - before I ever did a polygraph.
Q But you took one some time within two months after this incident, you took a polygraph; - - -
A Correct.
Q - - - would that be a correct statement?
A Yes.
Q And did you pass?
A I did.
Q Before Michael took the polygraph, did you tell the police that you did not - - - or the law enforcement that you did not believe Michael would harm [redacted]?
A Yes.
Q And was that your sincere belief at the time?
A It was.
Q And you were there, you saw them every day, correct?

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A Correct, yeah.
Q Except for when you were at work, correct?
A Right. Yes.
Q I got a few questions where [redacted]'s lawyers punted on my discovery requests and told me to ask you so I'm going to ask you right now.
A Okay.
Q All right. Just to be clear, in December of 2009 the only time law enforcement spoke to you was at Piedmont Medical Center, correct?
A Correct.
Q And you don't know if that's the sheriff's department or the Rock Hill Police Department, correct?
A Correct.
Q Do you have any knowledge about communications between DSS and the sheriff's department following the December incident?
A I do not.
Q Do you know when the sheriff's department was first contacted by DSS?
A I do not.
Q Do you know what was discussed between - - - or what information was provided by DSS to the sheriff's department?

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A No.
Q Did Michael Carduff, do you know if he ever finished high school or got a GED?
A He did not finish high school. I don't know if he got his GED, no.
Q Was Michael Carduff, to your knowledge, ever treated for alcohol or drug abuse?
A He was never - - - used.
Q Did he ever have any kind of mental health treatment?
A No.
Q Prior to the January incident, where did you get Owen's prescriptions filled, at your Walgreens?
A Yes.
Q Down in Aiken where do you get them filled?
A My pharmacy, TLC Medical.
Q Say again.
A TLC Medical Center where I work.
Q Do you take any regular medications yourself?
A No.
Q Other than Detective Carter, do you know the names of any other York County Sheriff's Department employees who were involved in this investigation?
A I'm not sure if they were with the county. In the second incident, I had grievance ladies come. They

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told me all about being a victim of a crime and paying for a funeral and all that. I'm not - - -
Q Victim's assistance?
A Yes.
Q Okay.
A I'm not sure if that was with the sheriff's or not.
Q Did you ever meet or talk to a Lieutenant Miller?
A I don't - - - the name's not familiar to me.
Mr. Settana - I want to make sure I've got everything but I think that's it. Thank you.
A You're welcome.
Mr. Todd - Can I have some follow-up? I'll be brief.
Mr. Hood - Absolutely. I'm going to ask - - - do you want me to ask - - - I've got like five questions, two minutes - - -
Mr. Todd - Go ahead.
Mr. Hood - and it may spur questions - - -
Mr. Todd - Okay. Go ahead.
Mr. Hood - Okay.
EXAMINATION - (By Mr. Hood)
Q You've had three people ask you questions today, and through these three people asking you questions, they - - - and I want to basically just talk about the December hospitalization. You've

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had them ask you questions about who you spoke to. Do you recall them asking those questions?
A Yes.
Q When they asked you questions, did you speak to a lot of people during that hospitalization?
A Yes.
Q Did a lot of people speak to you?
A Yes.
Q Did you hear the term non-accidental trauma?
A Yes.
Q Did you know what it meant in December of 2009?
A No.
Q Do you know what it means today?
A Yes.
Q And what is your understanding of what it means today?
A Purposeful abuse.
Q Okay. Now, do you remember when you were asked about, I think it was Mr. Todd asked you about criticisms. Knowing what you know today what that term means, do you think that somebody at the hospital should have done something differently in December of 2009?
A I do.
Mr. Todd - Objection.

Q What do you think somebody should have done in December of 2009 at the hospital?
A I think they should have been more extensive as how they were the second time. I was questioned a lot more the second time, and I had a lot more involvement with everybody.
Whereupon - A discussion was held off the record.
FURTHER EXAMINATION - (By Mr. Todd)
Q You said that your uncle is a doctor?
A Yes.
Q Now, is that your mother's brother?
A Yes.
Q What's his name?
A Pierre Lavadan.
Q And where does he practice?
A He's in Omaha, Nebraska.
Q Do you know what kind of doctor he is?
A He's a Hospice care.
Q Hospice?
A Yes.
Q Is he family practice, internal medicine; do you know anything other than Hospice care?
A He has not always been in Hospice. He used to be in pediatrics I believe. That's as far as I am

aware.
Q Did he come to Charlotte?
A No.
Q So he never came to Charlotte. Has he ever seen [redacted]
A No. We're very distance with my mother's family.
Q Did he ever provide any care to [redacted]**?**
A No.
Q But, was somehow providing some advice during January of 2010?
A Yes.
Q Now, you said you were going to look at all your - - - you've got a set of records.
A Yes.
Q What do those records consist of?
A They consist of the safety plans and the court hearing things, the papers they send you when you're about to go to court, mostly it's all those.
Q What we'd like to do, we can send you a subpoena. We'd like to get a copy of all of those records.
A Right.
Q Would you agree to preserve them and either get them to Mr. Hood to get them to us?
A Yes, if I can find them. I believe I know where they are though.

Q And that will have the card of the policeman or law enforcement officer who questioned you at Piedmont in December of 2009?
A It might have the card. It's a card though. I could have lost it.
Q When you were at Piedmont, was there any discussion about non-accidental trauma?
A No.
Q You said at Levine's you heard the term non-accidental trauma?
A Yes.
Q You don't know who you heard it from?
A No.
Q Do you know if you heard it from somebody at Levine's or did you hear it from somebody with DSS?
A I know it was on the discharge papers.
Q So you read it?
A Yes.
Q Did you ask anybody any questions about that?
A No.
Q Well, you said that you wish somebody would have asked you more questions. What questions do you wish they would have asked you?
A I just wish they would have been more aggressive as they were the second time.

Q In asking you questions?
A Yes, as - - - as drilling me and Michael separately, not just together.
Q Well, if you would have been questioned, would you have - - - I think you told me that you had no suspicions that Michael had harmed your child in December.
A I did not. And I did not the second time either, and they still figured it out so I believe that if it would have been as extensive something would have slipped from him.
Q But it wouldn't have been any different from you?
A Right.
Q You wouldn't have said anything because you had no suspicions?
A Right.
Q So whether or not what Michael would have said is just speculation on your part?
A Correct.
Q And you were aware that when [redacted] **was admitted the second time he had different symptoms, a different presentation?**
A Yes.
Q And you were aware that there was a definitive diagnosis was made the second time of non-

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accidental trauma?
A Yes.
Q Were you aware of that?
A I was.
Q They didn't have to have Michael to confess to know that it was non-accidental trauma. You were aware of that then weren't you?
A The second time?
Q Yes.
A Rephrase that question.
Q I'll go on to the next one.
A Okay.
Q As far as you're aware, Michael has never said that he did anything in November or December to cause that December hospitalization.
A Correct.
Q And he confessed to the incident in January but he did not admit to anything, to doing anything to [redacted] in November or December, correct?
A Correct.
Q And are you aware even today whether or not he has said whether or not he did anything to cause harm to [redacted] in November or December of 2009?
A Right. He still has not said anything.
Q Now, when you were questioned by law enforcement at

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Piedmont, did they ask you anything about child abuse or trauma?
A No.
Q What did they ask you about?
A They just asked me to say what happened.
Q And you thought that was standard procedure for the police to show up?
A Correct. I mean, - - -
Q Did they show up when you were in the hospital for the birth of [redacted]?
A No, but it was - - - that was normal. That was a normal thing to do, give birth. It's not something that is scary.
Q You don't think taking your child to the ER, you don't think that that's - - - you think that's abnormal, people taking their child to the ER?
A Yes, it's abnormal. That's why I found it normal for the cops to be there.
Mr. Todd - No more questions.
FURTHER EXAMINATION - (By Mr. Frawley)
Q He's covered a couple of mine so my list is going to be a little shorter, although it wasn't a long list anyway. I was going to ask about your mother's brother but you've responded to that. You mentioned the name Charlene Blackwell or

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Blackwelder. What's the last name on that?
A Blackwelder.
Q Blackwelder, B-l-a-c-k-w-e-l-d-e-r?
A Yes.
Q And what was her position?
A She's a cop.
Q She's a former police officer?
A Yes.
Q And you think she may have been with York County Sheriff's Department or it may have been Rock Hill Police Department, you're just not sure?
A Right.
Q Okay. The gastro doctor, Dr. - - - it's pronounced Winn. Is that a Vietnamese name where it's N-g-u-y-n, something like that?
A Yes.
Q Okay.
A I think my mother knows the correct spelling.
Q Is the doctor Oriental?
A Yes.
Q You mentioned all the other records and Mr. Todd has covered that. On the polygraph, Michael was polygraphed that very day, January 11, correct?
A Yes.
Q And your polygraph was January 28 about three weeks

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or so later, correct?
A I'm not sure of the date.
Q But it wasn't that day. It was - - -
A Right.
Q - - - a couple weeks, maybe three weeks later. All right. In your polygraph you were given several set-up questions and essentially asked two relevant questions. And those two questions were: did you do anything to cause [redacted]'s injury. That was one of the questions wasn't it?
A Yes.
Q And you passed that, right?
A Right.
Q And your response was no, I didn't, correct?
A Right.
Q And the other one was: did you do anything to cause [redacted]'s injuries while he was in your care. That was the second question, correct?
A Yes.
Q And you answered no, you didn't, correct?
A Right.
Q And that was a correct response, right?
A Yes.
Q They didn't ask you anything about did you suspect Michael of having injured your son before January

11. They didn't ask anything like that on the polygraph did they?
A Right.
Q Right they did or right they didn't?
A They did not.
Q And, in fact, your testimony is that you had no reason to suspect Michael of having injured your son before the 11th, correct - - -
A Correct.
Q - - - before he admitted that he'd done it?
A Right.
Q Now, even when he admitted that he'd done it, did he say that he intentionally acted with the intent of injuring your son or that he had shook him and as a result of what he'd done your son had been injured? Do you understand the distinction there?
A Yes, I do.
Q I mean, was it your understanding that he did something with the intent of injuring his son and your son?
A I'm not positive.
Q So as far as you know he got frustrated or impatient with the boy crying or interrupting his game on TV or something, and he may have shaken the boy and that may have been how he was injured?

A Correct.
Q And there's a possibility that while the act was an intentional act, that the result was not necessarily intended, in other words, there was not an intention to injure, correct?
A Right. Correct.
Q Now, as far as you know DSS was called into this case on December 6th and that's when Shaundra Tyler met with you up at the hospital, correct?
A Yes.
Q Michael never admitted having injured your son in that December 4 first injury, correct?
A Yes. Right.
Q Never has to this day as far as you know?
A Right.
Q As far as you know to this day, nobody knows how the boy was injured that day, correct?
A Correct.
Q Owen was not injured between December 6 and December 16th was he?
A No.
Q In fact, [redacted] was not injured between December 16th and January 9th was he?
A No.
Q This term non-accidental trauma that Mr. Hood asked

you about, your understanding is that's an indication of purposeful abuse, correct?
A It's my understanding now.
Q Now, your understanding now is that the hospital went through a battery of tests for Owen to determine if there was indication of non-accidental trauma in December, early December, for that first injury; is that your understanding?
A Yes.
Q Okay. I mean, they were looking for it, and they tested him for it didn't they?
A Yes.
Q And your understanding is that they did not come up with anything conclusive about whether there was or was not non-accidental trauma based on that battery of tests that they ran in early December, correct?
A I - - - I guess not.
Q All right. Is that something you know or you don't know? You may not know.
A I - - - I don't really know.
Q Okay.
A Yeah.
Q So while you may know what non-accidental trauma means, and you may know that the hospital ran a battery of tests to determine if there was

indication of non-accidental trauma, you don't know what the results of those tests were do you?
A No, I do not.
Q And you don't know what they passed on to the South Carolina Department of Social Services do you?
A No, I do not.
Q Now, you mentioned with regard to the hospital what they could have done, what they should have done, is they could have questioned a lot more the second time than they did the first time, correct?
A Right.
Q But when they questioned you the first time, your responses were uniformly that you don't know what happened and there was no reason to suspect you or Michael of having injured your son, correct?
A Right.
Q The fact that you periodically thought that Michael may have handled your son a little more roughly than he could have and would have bounced him when he was playing with him, while that caused you some concern as a mama, you never passed those concerns on to the hospital or to DSS in early December did you?
A No, because I did not find them to be a threat of harm, - - -

Q Right.
A - - - just carelessness.
Q Right. But you concede that there's a possibility if you're bouncing a child and the child's neck, which is a tenuous base for his head, if that somehow gets bounced the wrong way, that that could cause a child an injury?
A Yes.
Q All right. You would concede that your mother rocking the boy two months after that and the rocking chair going over, that could have injured the son, the boy?
A It could have.
Q I mean, as far as we know it didn't but - - -
A Right. Right.
Q - - - it could have. So something as innocuous as a grandmama rocking her grandchild could have caused injury?
A Yes.
Q So while it didn't occur to you in early December that your concerns about Michael possibly being too rough with the boy unintentionally, that didn't rise to the level of your thinking it was important enough to tell them. Had you told them that, maybe that would have changed their investigation in

December; would you agree with that statement?
A I do.
Q And at no time in early December did you pass on to the hospital, to law enforcement, or to DSS that you had on occasion some concerns with Michael in the way he handled your son; you never passed that on to anybody did you?
A No, not until the second time.
Q And the second time we had a far more serious injury than the first time?
A Yes. And the second time I didn't bring it to their attention, they asked me, so.
Q Right. Because they've got a kid in there basically on life support then at that point, right?
A Yes.
Q So there it wasn't just whether there's indicia out there of a potential problem, it's a child on life support fixing to die - - -
A Yes.
Q - - - that got their attention, correct?
A Yes.
Q When earlier had you brought these concerns up, maybe they could have done something earlier, correct?

A Correct. That's what my statement meant, if they would have gone in depth with their questions.
Q Or if you would have on you own as a mama voicing concerns, if you'd brought that to their attention, maybe they would have looked a little harder, correct?
A Yes.
Mr. Frawley - Thank you, ma'am.
FURTHER EXAMINATION - (By Mr. Settana)
Q Just a few. Getting back to the police officers you saw at Piedmont, - - -
A Yes.
Q - - - I know you said they had on brown uniforms. Were the shirts dark or were they light? I'm trying to identify who this might be.
A I know. I want to say the colors were brown, like a brownish and a yellowish, maybe like a tan uniform with beige.
Q Okay.
A I know I'm not help there. I'm sorry.
Q That's all right. You can look for the card though, correct?
A I can look for it.
Q Okay. All right. And you said these officers interviewed you in December?

A Correct.
Q And you didn't feel there was anything that - - - anybody intentional or unintentionally was causing [redacted] harm at that time, correct?
A Right.
Q And to this day you don't know if that December incident was the result of Michael causing any harm to [redacted] do you?
A I do not.
Mr. Settana - That's all I have.
Whereupon - Deposition was concluded at 2:05 P.M.

Signing of Transcript Shirley Dallas-Gerrald, CVR-CM
Notary Public/Court Reporter
of Deposition By
Witness Reserved
(Recorded deposition tapes retained fifteen days from date of certification or until transcript has been signed in cases when signature is not waived.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 20th day of August, 2012, in the City of Rock Hill, County of York, State of South Carolina.

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:
8-18-2021

SUBSCRIPTION OF DEPONENT

State of _____)
)
County of _____)

I, Kayla Lythgoe, do hereby certify that I have this day read the foregoing deposition and do hereby declare that the same is a true and accurate transcript of the proceedings had at the time and place herein designated (except for the notations as indicated on the attached errata sheet, if any).

Dated: _____

_____
Kayla Lythgoe

Sworn to and subscribed before me

this ___ day of _____, 2012.

_____
Notary Public

My Commission Expires:_____

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT
Civil Action No: 11-CP-46-04508

ELIZABETH HOPE RAINEY, as the APPOINTED GUARDIAN ad LITEM to [redacted], a minor,

Plaintiff,

vs.

CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS MEDICAL CENTER, SOUTH CAROLINA DEPARTMENT of SOCIAL SERVICES, BRUCE BRYANT as the CONSTITUTIONAL OFFICER OF YORK COUNTY,

Defendants.

VIDEOTAPED DEPOSITION OF LAURA NEWMARK, MSW

T R A N S C R I P T of the deposition in the above-entitled matter by and before KAREN ANN KOCSIS, a Certified Court Reporter and Notary Public of the State of South Carolina, held at the CAROLINAS MEDICAL CENTER, 1000 Blythe Boulevard, Dining Room #4, Charlotte, North Carolina on Thursday, September 27, 2012 commencing at 10:23 a.m.

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(Patient Care Discharge Planning Process marked as Plf's Exh 1 for identification.)

(Videographer's opening statement.)

MS. BROOKS HOLMES: One thing I wanted -- I don't know if this should be on the record or not, but there's York County Sheriff's Department as an entity -- it's not an entity --

MR. HOOD: It's not an entity?

MS. BROOKS HOLMES: -- that is not part of the caption.

MR. HOOD: That is not part of the caption?

MS. BROOKS HOLMES: Right, so...

MR. HOOD: Of course we can make it part of the case.

MS. BROOKS HOLMES: No, no, no, you can't change your mind.

L A U R A N E W M A R K, MSW, having been duly sworn according to law by the Officer, testified as follows:

EXAMINATION

BY MR. HOOD:

Q Miss Newmark, my name is Randy Hood. I'm -- I represent the -- [redacted] through some representatives, and I'm going to be asking you some

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questions today; okay?

A Okay.

Q It's -- I expect it to take two, three hours, somewhere in that time frame, a little more or little less, but somewhere in that time frame.

A Okay.

Q Because of that, it's not a memory test, and there is a bunch of paper in this room by a bunch of different people, and if I ask you a question, you feel like you need to look at something or to -- to see a document to refresh your recollection, all you got to do is ask, and between somebody here, we'll find that piece of paper.

A All right.

Q Okay? So -- and -- and another thing, if I ask you a question and you don't understand it, will you let me know?

A Uh-huh.

Q And that brings me to the third. You got to give me a verbal response.

A Yes.

Q A "yes" or a "no" or "maybe," whatever you want to give me.

A Right.

Q It's just got to be verbal; okay?

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A Okay.

Q And if you give me a verbal response to a question I ask you, it is fair for me to assume that you understood the question and gave me your best answer?

A Yes.

Q Okay. If you need to take a break for any reason, all you need to do is just let me know.

A Okay.

Q I'm a nice guy.

A Okay, great.

Q Okay. Can you please tell us your full name.

A Laura Holman Newmark.

Q Where did you work in December of 2009, Miss Newmark?

A CMC, Levine Children's Hospital.

Q Okay. And that's Carolinas Medical Center?

A Yes.

Q And that's located in Charlotte, North Carolina.

A Yes.

Q And you work at CMC main?

A Yes. And assigned primarily to Levine

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Children's Hospital.

Q Okay. And CMC Main is the hospital that's on Blythe Boulevard near Center Charlotte; right?

A Yes.

Q And then there is a -- there's a hospital within a hospital which is a children's hospital within CMC main; right?

A Yes. Levine Children's Hospital is a standalone as part of Carolinas Hospital system.

Q Okay.

A But they're separate.

Q Okay. But you primarily do work with Levine Children's Hospital?

A At that time, yes.

Q "At that time," okay.

And at that time in December of 2009, a baby by the name of Owen Carduff came under the care of Levine Children's Hospital.

A Yes.

Q And at the time of admission to Levine Children's Hospital, there was a workup for this child for non-accidental trauma; right?

A Yes.

Q And another name for non-accidental trauma is child abuse; right?

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A Sure.
Q Okay. And after being admitted to -- I'm going to call it L -- LCH.
A That's fine, yes.
Q Levine Children's Hospital. If I use the term "LCH" or "Levine Children's Hospital" or "Levine," I'm talking all about the same entity.
A Right.
Q Okay. So after being admitted to LCH, the child was eventually discharged back to his parents; right?
A Yes.
Q And you're aware that approximately 30 days after that, the child came back to Levine Children's Hospital and was catastrophically brain injured?
A Yes.
Q And if he had never been put back with his parents, back to the abuser, the child -- it would have never happened, would it?
MS. BROOKS HOLMES: Objection.
MR. FRAWLEY: Object to form.
THE WITNESS: I can't answer that.
BY MR. HOOD:
Q Why can't you answer it?

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A Because I don't know what would have happened.
Q Okay. Let's -- let's -- let's break it down a little bit for you.
He doesn't go back to his parents on December the 8th, he goes into foster care; right?
MR. TODD: Objection.
BY MR. HOOD:
Q Or with another relative?
MR. TODD: Objection.
MR. FRAWLEY: Same objection.
MS. BROOKS HOLMES: Same objection.
BY MR. HOOD:
Q You can answer.
A I don't have any say as to where he goes upon discharge, as a hospital employee.
Q You work hand-in-hand with a state agency, you-all were retained to determine what happens with a child where there is suspected child abuse involved.
A I --
MR. TODD: Objection.
BY MR. HOOD:
Q You can answer.
A I am a liaison between the medical team

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and DSS.
Q Okay. As a liaison, you are the person that helps get whatever the medical discharge is going to be; right?
MR. TODD: Objection.
THE WITNESS: No.
BY MR. HOOD:
Q Okay. As the liaison, you work as a person between the state agency and the medical doctors?
A Yes.
Q And then you help those two people come together to determine what's in the best interest of the child?
MR. TODD: Objection.
THE WITNESS: No. I share information on the clinical status and what's going on with the patient with DSS, who has the ultimate discharge plan put in place.
BY MR. HOOD:
Q Okay. But I thought that you, according to your own algorithm, that you-all had to do it together?
A I give them information. I don't control the final decision.

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Q Who controls the final decision?
A DSS.
Q Okay. Let me look at your algorithm.
(Child Abuse and Neglect Algorithm marked as Plf's Exh 2 for identification.)
THE WITNESS: Could I get to look at it?
BY MR. HOOD:
Q You're now looking at Plaintiff's Exhibit 1, which are some -- looks like typewritten or some electronic-type of documentation about this baby and then -- that's Exhibit 1, and then Exhibit 2 is a Child Abuse and Neglect Algorithm from Levine Children's Hospital; right?
A Are you asking me? Yes.
Q Yes.
A Yes.
Q Okay. Now, I'm going to go through 2, and then we'll go to 1; okay?
A Okay.
Q Number 2, it says, "Medical team identifies child in whom abuse or neglect is suspected."
Do you see that?
A Yes.
Q And in this case they identified a child

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whom abuse or neglect is suspected; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: Yes.
BY MR. HOOD:
Q Then it says, "Consult CHS clinical care management social worker to assist with assessment process." Do you see that?
A Yes.
Q And you were part of that CHS clinical care of management social worker team, weren't you?
A Yes.
Q And then it says, "Is the suspicion of abuse or neglect confirmed?" Do you see that?
A Yes.
Q And then there's a -- there's a fork in the road, under "no" it says what to do and under "yes" it give some other things; right?
A Yes.
Q And under "yes," could you read what it says under "Report case to"?
A "Report case to county DSS in which child resides, law enforcement agency where the incident occurred if implicated."
Q Okay. And DSS was notified, weren't they?
A Yes.

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Q And so suspicion of abuse or neglect was confirmed; right?
A I wouldn't disagree with that. I know the algorithm says something, but -- the suspicion was not confirmed, there had not been a full workup yet.
Q Okay. Why did you report it to DSS?
A Any concerning injury that validates a workup gets reported to DSS.
Q Where is that in the algorithm?
A I don't know. I did not write this algorithm.
Q Okay. This is written for the safety of children; right?
A That would be my assumption.
Q And it was written by Levine Children's Hospital or somebody there; right?
A I don't know who wrote it.
Q Let's go over the other stuff that doesn't -- doesn't really come within the algorithm that was done in this case.
Was there a complete scan form including diagrams done?
A I don't know.
Q Okay. Are any of these things done?
A During the admission?

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Q For -- for the child in December of 2009.
A I don't know, off the top of my head. I would either have to go through the chart or --
Q I'll represent to you, and I'll show it to you, that -- that a lady by the name of Myers, who was the child maltreatment coordinator for this hospital was involved in the care of this case.
A She is the nurse, yes.
Q And you're not going to have somebody involved in that if you didn't suspect child maltreatment; right?
A If there is a workup because they're concerned about abuse, she would be involved.
Q Let me show you something from DSS.
(Discussion off the record)
(Case review marked as Plf's Exh 3 for identification.)
BY MR. HOOD:
Q I'll represent to you that this is what was given to us by DSS. These were documents produced to us by DSS; okay?
A Mm-hmm.
MR. HOOD: And then let's mark as 4 something else from DSS.
(Case Transfer and/or Case Staffing marked

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as Plf's Exh 4 for identification.)
MR. HOOD: Look at the second page of this.
MR. TODD: Which one?
MR. HOOD: Exhibit 4.
BY MR. HOOD:
Q This is something that was provided to us by DSS. It says, "[redacted] has two subdural hematomas, one would indicate non-accidental trauma, parents appropriate." Do you see that?
A Yes.
Q And then that, the one below it gives some history. It says, "Parents took baby to PNC. PNC sent child to Levine's. She has concerns because CT scans shows non-accidental trauma, no" -- and I think that's "no problem in saying it is non-accidental." I don't know what --
A I think that says "no doctor."
Q "No doctor is saying it's non-accidental."
Now, I know you're not a medical person. This is a social worker from DSS.
A Sure.
Q As a social worker from DSS, is there a standard when you have two subdural hematomas that it is consistent with non-accidental trauma?

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MR. TODD: Objection.
THE WITNESS: I'm not a social worker with DSS.
MR. HOOD: You can --
MR. TODD: You said, "as a social worker from DSS," but she answered it.
MR. HOOD: I'm sorry.
MR. TODD: You misspoke, but she corrected you, I think.
MR. HOOD: Okay.
THE WITNESS: No.
BY MR. HOOD:
Q As a social worker from Levine, do you know what a subdural hematoma is?
A Yes.
Q And in fact, you've seen children that come through Levine that have a subdural hematoma; right?
A Yes.
Q And this child had a subdural hematoma.
A Yes.
Q And you're aware of some of the literature concerning babies under six months who have a subdural hematoma?
A Yes.

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Q Now they call it abusive head trauma.
MR. TODD: Objection.
MR. HOOD: Right?
MR. FRAWLEY: Objection.
THE WITNESS: There is a term in the literature, "abusive head trauma." I don't know who "they" is or what the common term is.
BY MR. HOOD:
Q Sure. Just talking about the social worker community.
A That would be more medical literature that would discuss abusive head trauma. Not a lot of social worker literature, probably.
Q Okay. Now, but as a social worker, you have to be aware of this terminology?
A Yes.
Q And abusive head trauma is something that is -- in the past was referred to as "shaken baby syndrome" and the nomenclature has now been changed to "abusive head trauma"?
MR. TODD: Objection.
Go ahead and answer.
MS. HOLMES: Objection.
MR. FRAWLEY: Objection.
THE WITNESS: I think that's -- yeah.

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BY MR. HOOD:
Q And just so you know, you can answer anytime he makes an objection. You don't have to wait for him to tell you. You can answer anything unless he tells you not to answer.
A Okay.
Q Okay? And if you got a question, you've got to direct it to me instead of to him; okay?
A Okay.
Q Now, in this particular case -- can we go to the third page?
MR. FRAWLEY: Which exhibit?
THE WITNESS: The same.
MR. HOOD: This is Exhibit 4.
BY MR. HOOD:
Q Now, this is part of something that was signed off on 12/7/09, obviously by DSS in South Carolina.
A Right.
Q But they, in part of this it says that "parent said they noticed a bruise in baby's head in November." Do you see that?
A Yes.
Q And you're aware that that is also documented in some of the medical records of Levine

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Children's Hospital; right?
A I don't -- if you say so. I don't --
Q I'll represent to you that it is, and we'll get to that.
A Okay.
Q And then under that it says, "Nurse said it is non-accidental." Do you see that?
A I do.
Q Now, I want you to assume for me that a nurse said it was non-accidental and the baby had a bruise in November and the baby had a subdural hematoma.
Under a hypothetical like that, what is your role as a social worker at Levine Children's Hospital?
MR. TODD: Objection.
THE WITNESS: Well, my role would be to work off my physician team, their recommendations, the specialists and their progress notes. This isn't something that I see.
BY MR. HOOD:
Q I understand that.
A So I can't -- I can't answer what my role would be if this is a DSS piece of paper.

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Q Sure. Well, let's assume that the nurse told you that it was non-accidental and let's assume that you were aware that the baby had had a bruise before it came and you were aware that the baby had a subdural hematoma, what is your role?
MR. TODD: Objection.
THE WITNESS: My role is to talk to the physicians and discuss with them what their impression is, what the studies show, and what's happening with this particular child at the time of admission.
BY MR. HOOD:
Q Okay. And then what do you do when you get the information that they give you?
A When I get the information from the physician, what do I do?
Q Yes.
A Well, it depends on what's going on with the patient at the time as of day of admission, has a report been made? Do they need me to make a report?
I can't answer that without knowing at what point we're talking about during the admission.
Q Sure. Now, let's go to Number 1; okay?

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A Okay. Sorry.
Q Okay. These -- it was done in a way that 1, the very first page, goes to the last.
A Right.
Q It's not in order, and I apologize for that.
MR. TODD: Probably not. That's how they came to us, so we just ...
MR. HOOD: Right. They are trying to confuse us.
(Laughter.)
MR. HOOD: But we figured it out.
BY MR. HOOD:
Q Anyway, this looks like the very first page, and please correct me -- if I'm wrong on anything or if you see something where I'm wrong, please correct me, because I need to know then, if possible. So if I do something or say something that's wrong, please correct me.
A Okay.
Q This appears to be the first page, appears to be a note that was done by the social worker team at Levine Children's Hospital in regard to [redacted] on Sunday, December 6, 2009, at approximately 5:30 p.m; right?

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A It's part of a note.
Q It's part of a note.
Okay. At 1500 at the top where it says "12/6/2009, 1500," that's military time; right?
A Yes.
Q And 1500 would be 3:00 p.m.?
A Yes.
Q Okay. It says, "MSW received page about rule out NAT, workup is negative for NAT, but patient does have a small subdural hematoma."
Do you see that?
A I do.
Q What workup was negative for NAT?
A I don't know.
Q Who would know?
A I don't know. This is not my note.
Q Okay. This continues, and I think it's the fourth over -- excuse me, fourth page -- excuse me, last page, second to last page.
It says, "MSW note continued, dad noted the patient was sleeping more than usual, woke up crying."
Do you see that?
A Yes.
Q It then says, "Parents denied any trauma

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that anyone dropped the baby. Patient's birth was normal, full term."
Do you see that?
A Yes.
Q Okay. And then at the bottom it says, "MSW note continued."
Do you see that?
A Yes.
Q If you go to the next -- the page before that.
A Right.
MR. TODD: What Bates number are you on?
MR. HOOD: Okay. It's 96.
MR. TODD: Okay.
BY MR. HOOD:
Q Before it talked about a lady named Shandra Tyler who is a DSS worker from South Carolina." It says, "After she staffs the case with her supervisor, baby is not for discharge today, possibly will be discharged tomorrow."
Do you see that?
A Yes.
Q Then it says, "RN Sara did report that MGM."
A That's maternal grandmother.

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Q. "Maternal grandmother did -- did say that she noticed baby had a bump on his head. She asked dad and uncle about this, and dad and uncle stated that they had no idea why this happened. MSW will leave note for weekday MWS."

Do you see that?

A Yes.

Q Now, you're the weekday MSW, or you were at that time.

A Yes.

Q Right? And so this would have been the note that was left for you.

A Yes.

Q Then if we go to the second page, which is Bates stamped 0093 it says, "MSW" -- that is you?

A Yes.

Q -- "spoke with worker Christa Hinnant at 803.684.8514," which is South Carolina DSS; right?

A Yes.

Q -- "about patient condition NAT workup."

A Yes.

Q And that was you; right?

A Yes.

Q And you had that conversation with Christa Hinnant?

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A I did.

Q And then if we go to -- remember that -- okay, I'm going to Page 3, which is this exhibit, Number 3, and it has "Defense produced 00165 at the bottom."

A Yes.

Q Okay. And it says, "Christa" --

A Yes.

Q -- in the midway, and it says 11:50 a.m.; right?

A Yes.

Q And then this note was done, it appears at the top, at about 12:07 p.m.

A That's when it was printed.

Q That's when it was printed.

A Yes.

Q So you would have had to have done something, spoke with her, and then you would have had to have typed it up; right?

A If I -- yeah, we are supposed to do the date and time. So 12:00 o'clock is about when I did the note.

Q Okay. So that would have been after you had actually talked with Christa; right?

A Yes.

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Q Okay. Well, here's this, this is on this third page, it says, "Christa 11:50 a.m." It says, "received a phone call from Laura Newmark." That would be you; right?

A Yes.

Q "She talked with pediatric staff at this time. The hospital cannot determine whether the injuries are non -- are accidental or non-accidental."

Do you see that?

A Yes.

Q Is that the truth?

A Yes.

Q And [redacted]s eye exam and skeletal survey were negative; right?

A Yes.

Q "Going to repeat CT scan [illegible]; because Owen's head appears to be swollen." [illegible] see that?

A I do.

Q You don't know of anywhere [illegible] would have gotten that information other than [illegible]; right?

A I -- I don't know.

Q Okay. "Family has no clear history of trauma." Right?

A Yes.

Q "However, hospital cannot rule out

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trauma."

A Yes.

Q So you're a social worker; right?

A Yes.

Q You got a master's of social work; right?

A Yes.

Q So you've had some extended education with regard to social work; right?

A Yes.

Q And you've been employed as a social worker at this hospital for a long time, haven't you?

A For a while.

Q And you've seen children that were abused before, haven't you?

A Yes.

Q And you're aware that the most vulnerable people in society are babies under the age of six months?

A I wouldn't say "the most vulnerable people in society are babies under the age of six months."

Q Tell this jury, then, who is more vulnerable than a baby under the age of six months?

A I'm not saying they are not vulnerable. I'm just --

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Q I'm inviting you to tell them who is more vulnerable than a baby under the age of six months? Tell us.

MR. TODD: Objection. This is all argument, this is not --

MR. HOOD: I can ask her any question I want to, brother.

MR. TODD: No, you can't, but you can ask that one.

MR. HOOD: Okay.

MR. TODD: But it's argument and it's really not appropriate.

MR. HOOD: Okay. Who is the most --

BY MR. HOOD:

Q Okay. Explain to me, what the question, who is the most vulnerable in society, tell me how that's argument?

MR. TODD: Look, you're misinterpreting the question. She said --

MR. HOOD: No, no, that's what you said.

MR. TODD: You said that a baby under six months is vulnerable.

MR. HOOD: No, she didn't. I said, "Who is the most vulnerable."

MR. TODD: Anyway, you can go ahead,

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answer if you want to waste our time.

MR. HOOD: Please answer.

THE WITNESS: I don't disagree that a baby under six months is vulnerable. I'm just not saying that they are perhaps the most vulnerable portion of our entire society.

BY MR. HOOD:

Q Okay. And my question is, if they are not the most vulnerable, tell this jury who is the most vulnerable other than a baby under the age of six months?

A I don't think, in my experience as a social worker, that I have the ability to say who's most vulnerable in our society. I'm not disagreeing that a baby under six months is vulnerable.

Q Okay. And is a baby under six months, which [redacted] was --

A Yes.

Q -- if you can't rule out that he was a victim of child abuse --

A Right.

Q -- how is he discharged back to his parents?

MR. FRAWLEY: Objection to form.

THE WITNESS: I -- I can't answer that,

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because I didn't make that decision. The workup couldn't say definitively that he was the victim of abuse.

BY MR. HOOD:

Q Have you ever heard of the term "err on the side of caution?"

A Yes.

Q Okay. And when you have a child who may or may not be a victim of child abuse --

A Mm-hmm.

Q -- what is the safest way to ensure they are safe?

MR. TODD: Objection.

MR. FRAWLEY: Objection to form.

THE WITNESS: The safest way to ensure that --

BY MR. HOOD:

Q That the baby is not going to be abused again.

A Part of the safety net and working on discharge, as far as the hospital social work piece, is to get DSS involved, because they can be involved in the home community, where we can't.

Q Okay. And then let's go back to this -- this algorithm that we looked at earlier, and I

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believe that was Exhibit 2, at the bottom.

A Yes.

Q At the bottom it says, "when medically cleared." Do you see that?

A I do.

Q Okay. And what is "medical clearance?"

A When the child would be medically stable enough to leave the hospital.

Q Okay. Does that mean that the child -- even if they are medically stable, does it mean that it's in the best interests of the child to go back into the care of their parents?

A The -- I don't -- I don't really understand what you're asking.

Q Sure. When you say they are medically cleared, that means the child is stable.

A Medically stable.

Q For whatever the reason -- excuse me, I apologize.

A Yes.

Q So they're stable from the standpoint of the reason they actually came into the hospital in the first place?

A Right.

Q Okay. And when they are medically stable

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for the reason they came into the hospital, "do not discharge until disposition has been determined by medical social worker and DSS."

That's what that says; right?

A I see that.

Q You have a joint responsibility, don't you?

MR. TODD: Objection.

THE WITNESS: My responsibility as the medical social worker is to communicate information to DSS from the team and back to the medical team from DSS.

BY MR. HOOD:

Q Okay. And where is that on the algorithm?

A I don't know.

Q Okay. Let's look at the policy, then. Let's look at your Child Maltreatment Guidelines, maybe we can find something there.

MR. HOOD: Can I have this marked as 5?

THE REPORTER: Here you go.

THE WITNESS: Thank you.

(Child Maltreatment Clinical Practice Guidelines received and marked as Plf's Exh 5 for identification.)

BY MR. HOOD:

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Q Have you ever seen this before?

A Probably. I can't say exactly when and where I would have.

Q Okay. At the top it says, "Child Maltreatment Clinical Practice Guidelines, Clinical Practice Guidelines, CHS inpatient units in— emergency department, evaluation and management of the suspected child abuse or neglect."

Do you see that?

A Yes.

Q And do you see under the big Roman numeral I, it says, "Child physical abuse"?

A Yes.

Q And then under A it says "Identification." Do you see that?

A Yes.

Q And then it says, "Injuries, bruises, burns, fractures; This list is not inclusive (that should be considered suspicious for physical abuse:)" Do you see that?

A Yes.

Q "Number 1, age zero to six months: Any injury." You see that; right?

A Yes.

Q This child was about three and a half

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months old at the time he came in; right?

A If you say so.

Q I'll represent --

A It says two months on my note.

Q He was born in September.

A Okay.

Q I think it's like the middle of September, and then he came in the 1st of December. So he was between two or three months, something like that.

A Okay.

Q That would be between zero and six months though; right?

A Yes.

Q And then B, "Essential aspects caretaker history." Do you see that?

A Yes.

Q It says, "Does the parent, guardian or child give a logical explanation that is consistent with the age, pattern and severity of the injury."

Do you see that?

A Yes.

Q "This should be assessed by clinician familiar with normal pediatric development."

Do you see that?

A Yes.

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Q Now, as part of the social worker team at Levine Children's Hospital, did you have interaction with the parents in this particular case?

A Yes.

Q Okay. And did you attempt to assess or determine what was the cause of this subdural hematoma?

A I would have taken a history from the parents on had there been any recent trauma.

Q Okay. And in this case, the parents said they don't know how it occurred; right?

A They didn't have any history of a traumatic event.

Q So there would have been no explanation, a logical explanation, that was considered -- consistent with the age, pattern or severity of the injury, did they?

A They didn't have a history of trauma that would have explained an injury.

Q Okay. And according to your note, this -- this -- this one that we had looked at earlier, this Exhibit -- Exhibit 1.

Before you would have done your note on 12/7, you would have looked at the other person's note on 12/6; right?

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A Yes.
Q And so you would have been aware that the child had had a bump on his head before this particular hospitalization; right?
A I would have read the note, yes.
Q You would have read the note. And you would have been aware that the parents didn't have an explanation for either the bruise or the subdural hematoma; right?
A Sure.
Q Okay. And so as a social worker for Levine Children's Hospital, when you're aware of that information, and you're working with DSS --
A Mm-hmm.
Q -- in regard to the [redacted] case --
A Mm-hmm.
Q -- and you would have done interaction with the medical doctors --
A Right.
Q -- what is your role upon knowing that information?
A My role would be to make sure that information that's in the chart about this admission with [redacted] be communicated back to DSS and then any information that DSS shared with me about

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disposition and discharge be shared back with the medical team.
Q Okay. And so did Christa Hinnant or anyone you spoke to at South Carolina DSS, what did they tell you about this particular case?
A I don't remember specifics.
Q Okay. Now, I'm going back to your note; okay?
A Umm-hmm.
Q And it says -- and this is 0093 at the bottom --
A Right.
Q It says, "MWS spoke with attending Dr. Courtlandt --
A Right.
Q -- about likely inability to confirm NAT due to limited findings."
A Yes.
Q "Would like to have ongoing DSS involvement with investigation, home visit, parenting education, follow-up NAT series in two weeks as outpatient."
Do you see that?
A Yes.
Q And that was you that -- that made what

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you would like to see; right?
MR. TODD: Objection.
BY MR. HOOD:
Q Or -- or on behalf of the medical team in Levine Children's Hospital?
A Right. In reading my note, I don't remember the conversation, but I would have spoken with Dr. Courtlandt about the team not being able to say for sure this is non-accidental trauma because of the small subdural and no other positive findings on the workup. But we had already made the report to DSS and thought it was would be helpful to have them continue to investigate follow-up, do their home investigation, do their DSS piece that we can't do here in the hospital.
Q Sure. Like you meet them in the home and that kind of stuff?
A Right. Follow-up, supervision, we talked about parenting classes because they were young --
Q Okay. What happens if you put them into the -- if you put a child back into an abusive situation, they could do all of that and the child still be abused; right?
MR. TODD: Objection. Go ahead and answer.

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MR. FRAWLEY: Objection to form.
THE WITNESS: I can't say what would or wouldn't happen in the home, I'm not there --
BY MR. HOOD:
Q I know you can't say what would or wouldn't. Isn't it foreseeable that a child could be abused if he had been abused before?
MR. FRAWLEY: Objection to form.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I can't predict the future.
BY MR. HOOD:
Q I understand you can't predict the future, but you-all have policies where the hospital has forms that medical doctors can say, we're keeping this child because there's suspicion of abuse; right?
A There can be an emergency custody for a very limited amount of time.
Q Up to 12 hours --
A Right.
Q -- to determine whether someone needs to go with foster care or not.
A No. That's not really my understanding of the emergency custody.
Q Okay. What is your understanding of the

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emergency custody?
A That if there were a concern about that eminent discharge, that they would take emergent custody for those 12 hours and work with whatever local agency to determine the disposition.
Q Okay. And so I guess my question is, who is supposed to protect this child? If the parents aren't, who is supposed to protect this child?
MR. TODD: Objection.
MR. FRAWLEY: Objection to the form.
THE WITNESS: I don't have an answer to that question. I think --
BY MR. HOOD:
Q You say it's not the hospital; right?
MS. BROOKS HOLMES: Objection.
MR. TODD: Objection.
THE WITNESS: I don't -- I understand what you're asking. I don't think I'm going to have an -- I really don't understand your question and how that relates to the workup and the things that we did with [redacted] here to make sure that he was taken care of and stabilized.
BY MR. HOOD:
Q Sure. You-all actually keep a registry of children that you discharged back to the home and

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children you discharge to foster care and children you discharge to relatives, don't you?
A I think there is an informal one. I don't have access to it.
Q Well, let me show it to you.
A Okay.
MR. TODD: This is 5 or 6 rather?
MR. HOOD: Six. I took off the first page.
MR. TODD: That's just my cover letter?
MR. HOOD: Yes.
(Admit Diagnosis marked as Plf's Exh 6 for identification.)
BY MR. HOOD:
Q I'll represent to you that this is something that was produced to us by the hospital, that it was not a hospital document, but is Ms. Lynn Myers own personal list of cases of which showed some knowledge.
A Okay.
Q Okay. And it says -- and it just has a lot of different stuff about an admitting diagnosis, doesn't tell us who it is, what their age is, doesn't give us a lot of critical information, just gives us some very basic information about children

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that may have been potentially at risk.
A Mm-hmm.
Q Okay. Now, Lynn Myers is the child maltreatment coordinator at Levine Children's Hospital, or was at that time; right?
A Yes.
Q And she was a nurse?
A Yes.
Q And it appears that on Page -- at the bottom it has a number here, it'd be 2664.
A Yes.
Q And it has 9/9/09, which I guess is the date of birth, and then the name, which is [redacted], and the MR number, and then 12/4/09 ALTE, and it has CHIPS A, and that's just the CHIPS A-Team; right?
A Right, that's the attending team that rotates through.
Q Okay. Then where it says "ALTE," that's "apparent life-threatening injury"; right?
A "Event."
Q "Event," I'm sorry, you're right, "apparent life-threatening event;" right?
A Yes.
Q In this case, it was a subdural hematoma.

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A No. The admitting diagnosis, when it says an "apparent life-threatening event," usually means the child, came in, whoever it was, not -- as an apnea, stopped breathing, something else is going on.
So that would have been the working diagnosis that came from either the outside hospital or a reporting physician.
Q Okay. And then when they did the CT, they would have the subdural hematoma.
A Yes.
Q Okay. And then if you go to, three pages after that at 266.
A Yes.
Q It has NAT seizures. Do you see that?
A I do.
Q Okay. And at the end -- at the end over there it says, "foster, findings foster." Do you see that?
A I do.
Q That means it was discharged to foster care; right?
A Yes, I guess.
Q And then if you go to the first one, the first page, not the first page, but the one -- the

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first about [redacted] on 12/4/09.
A Okay.
Q It has "D-C home," that's discharge home; right?
A Yes.
Q Okay. So my question is, there appears to be some type of -- someone who is tracking what's happening with those at-risk children in regard to their -- what's happening when they leave; right?
A It looks like Lynn has kept a database, yes.
Q Okay. And that some of these at-risk children are discharged home; right?
A Some of the kids that have had a workup or had DSS involvement, yes, they're discharged home.
Q And then some are discharged to a relative.
A Yes.
Q And then some may be discharged to a foster care situation.
A Yes.
Q And all of that is dependant upon the decisions by the hospital and the county social work state agency?
MR. TODD: Objection.

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MR. FRAWLEY: Same objection.
THE WITNESS: I -- no.
BY MR. HOOD:
Q Okay. And whose decision is it where the child goes?
A The county DSS agency.
THE REPORTER: I'm sorry?
THE WITNESS: The county DSS agency.
BY MR. HOOD:
Q Okay. And if -- so is it your -- and I'm not saying it is -- is it your testimony, that the hospital has no responsibility as far as the child being able to leave if they can't rule in or rule out non-accidental trauma?
MR. TODD: Objection.
THE WITNESS: That the hospital -- say that again.
BY MR. HOOD:
Q Sure, sure. And I apologize, it may have been inartful.
Do you have an opinion --
A Okay.
Q -- about whether the hospital has a responsibility to [redacted] to ensure his discharge back to a safe environment?

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MR. TODD: Objection.
MR. FRAWLEY: Objection to form.
THE WITNESS: In my opinion?
BY MR. HOOD:
Q Yes.
A I think that the medical team has a responsibility to do a workup on a child that comes in with an unexplained injury and part of that is calling DSS, working with them, making sure they have all the right information, doing everything we can to do a complete workup, as a way to help protect him. I --
Q Okay, okay. And so the medical workup in conjunction with the work of the state child welfare agency --
A Um-hmm.
Q -- would then determine his most likely placement?
A I would hope that a medical workup, being communicated well with the local DSS agency, would help in assuring a safe discharge.
Q Okay, okay, okay. And you would agree that a safe discharge would be appropriate for a vulnerable child?
MR. TODD: Objection.

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You go ahead and answer.
THE WITNESS: You know, I think certainly we hope that whatever happens would be medically safe and stable for the child.

BY MR. HOOD:
Q Okay. Now, you've been working in a hospital environment for -- for how long have you been at --
A I started in January of '03.
Q Okay. So at the time that this occurred, about six years; right?
A Part time.
Q Part time. And before that, had you ever worked for a county agency?
A Not a DSS, but a county mental health, yes, in the school system, yes.
Q So you had worked with children before you actually came to Levine?
A Yes.
Q Okay. And you had received training in regard to being able to spot child abuse; right?
A Yeah -- yes.
Q Okay. And you are aware that an unexplained subdural hematoma is not normal for a

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three-month-old child?
A Yes, it wouldn't be normal.
Q Okay. And that in order for there -- in order for there to be a safe discharge, you have to know the etiology of that subdural hematoma to know whether it's non-accidental trauma or some type of medical condition?
MR. TODD: Objection.
MR. FRAWLEY: Objection to form.
THE WITNESS: No, I don't -- I don't think an etiology is always able to be found.
BY MR. HOOD:
Q Okay. If a child comes in and it is a bleeding disorder as a opposed to child abuse, when the child is discharged, they need to know there's a bleeding disorder to be able to treat it in case it crops up again; right?
A Yes.
Q And so if you are aware of the cause of the subdural hematoma, you could help ensure a safe discharge?
A Yes.
Q And if the subdural hematoma is caused by child abuse and you put it back -- you put the child back with the abuser, it's likely to happen again,

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isn't it?
MR. TODD: Objection.
MR. FRAWLEY: Form.
THE WITNESS: I don't know.

BY MR. HOOD:
Q Okay. Do you read literature?
A On occasion.
Q And you've been through four years and got your bachelor's degree?
A Yes.
Q And you got your master's degree?
A Yes.
Q And you received your education over -- at least you got a six-year degree; right?
A Mm-hmm.
Q Where did you get your bachelor's at?
A College of William and Mary.
Q Okay. Up in Virginia?
A Yes.
Q Very good college; right?
A I like to think so.
Q Division II football, but, you know ...
A No, no. 1-AA.
Q 1-AA. You're right, you're right, you're

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right. Well, now they call it the FBS or something.
And where did you get your master's at?
A University of Georgia.
Q Oh, we're South Carolina fans.
A Sorry.
Q Be that as it may.
So you got your bachelor's from William and Mary and you got your master's from Georgia.
A Yes.
Q And when did you finish your masters?
A '95.
Q Okay. And then from '95 to 2002, you worked either at a school or with a mental hospital -- or a mental health facility; right?
A I had other jobs as well.
Q There's other jobs. But -- but some of that time was spent with children --
A Mm-hmm.
Q -- right?
A Yes.
Q And then you came to work in 2003 with Levine Children's Hospital, or CHS?
A Yes.

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Q Right. And part of that time was with Levine Children's Hospital?
A Yes.
Q And that was working with children while you were with Levine; right?
A Yes.
Q And so with all of that education and training and experience and reading literature, you've heard the term "recidivism" before, haven't you?
A Yes.
Q And "recidivism" just means if it happened once, it will probably happen again; right?
A Yes.
Q Now, my question to you is, haven't you also seen literature that if someone abuses a child and you put the child back into that home or back into that situation, it's likely that the recidivism will occur?
A I think there would be a concern about the same environment, yes.
Q Okay. And in this particular situation, this child was discharged back into the same environment, wasn't he?
A He was discharged home, yes.

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Q Back into the same environment; right?
A I don't know who's present before, during, after, but he was discharged home, yes.
Q Okay. With his mother and father?
A Yes.
Q The same people that had no explanation for the bruise or the subdural hematoma; right?
A Mm-hmm.
MR. TODD: Okay. You need to answer -- We've I think everybody is getting your answer, but the court reporter likes a verbal response.
THE WITNESS: Sorry, I'm sorry.
MR. TODD: And the videographer likes a -- to be able to pick it up on the microphone.
THE WITNESS: Okay.
MR. TODD: I think we all understood your answer.
MR. HOOD: And what we may do, if you-all want to, I don't know what we're going to do from a housekeeping perspective, but if you want to take a break like every hour or so, and I don't care. I'm perfectly fine to keep going.
MR. FRANLEY: How much time we've been going?

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THE VIDEOGRAPHER: 85 minutes.
MR. HOOD: We've been going 85?
THE VIDEOGRAPHER: No, that's how long the tapes are.
MR. HOOD: Okay. How long --
MR. TODD: You need a break?
THE WITNESS: Yeah, a break would be nice.
(Brief recess.)
EXAMINATION
BY MR. HOOD:
Q I want to go back to what your role is, if that's okay.
A Okay, sure.
Q And I know you've got a master's and -- and I believe -- and correct me if I'm wrong, please correct me if I'm wrong.
A Mm-hmm.
Q It's my understanding that you're a liaison between the medical team providing care for Owen in the hospital and the DSS workers from South Carolina.
A Yes.
Q Okay. Now, is it your testimony -- and I'm not saying you've testified this way, I'm just trying to find out.

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A Right, sure.
Q Is it your testimony that you have no decision-making ability in that regard?
MR. TODD: Objection.
THE WITNESS: Decision-making ability in what regard?
BY MR. HOOD:
Q If anything, all you are is just a messenger back and forth between the two of them.
A No, I can give my opinion to the doctors or -- and say that if there's anything in particular.
Q Okay. Well, in this particular case, what insight did you give to the doctors?
A I don't recall, off the top of my head, the conversation, I mean...
Q Let's look at this. The only thing that I can see that really has your stuff on there is this -- where you -- you had your notes.
A This one?
Q Yes. And I think that was Exhibit 1.
A Um-hmm.
Q And that actually has Laura Newmark at the bottom of it; right?
A Right. Yes, that's my signature.

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Q Right.
A '93 or '94?
Q Yes. '93.
A Okay.
Q And we'll get to the other.
But it says, "DSS to staff determine likely to allow discharge home with parents, child maltreatment coordinator has seen child as well, nursing following updated RN Tracy will follow."
A That's "neurosurg," not "nursing."
Q Okay, I'm sorry, neurosurgery.
And neurosurgery, in this case that was Dr. Scott McClanahan then; right?
A I think I saw his name, I don't remember.
Q Okay. Now, would you have spoken to neurosurgery?
A Not typically, no.
Q Is -- is -- and this is where I'm trying to get an understanding. What is the CHIPS team at LCH?
A That is the children's hospital inpatient services.
Q Okay.
A So it's the staff physicians, the staff pediatricians and the residents that are rotating

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through that week or month.
Q Okay. And when you say "staff pediatricians," are they basically pediatric hospitalists?
A No, they're not hospitalists. They're inpatient physicians. There are also hospitalists that are different. They are like another team.
Q But the CHIPS team, that would be pediatricians.
A Yes.
Q Okay.
A The attendings. There might be some family practice residents.
Q Okay.
A At times.
Q Because I've seen a Mr. Nugent, but I think he was a resident.
A Whitney? It's a she.
Q A Whitney?
A I think she was a resident at the time. I don't know if she's here anymore.
Q And then I've seen Dr. Courtlandt and then --
A She would have been the attending.
Q Right. Then there was a -- it looks like Sheldon Edelman or something.

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A I don't know.
Q But they were all from the CHIPS team.
A Okay.
Q And it's your testimony that most of the CHIPS team, it was either residents who could be pediatricians or family practice residents.
A Right.
Q Or pediatricians who were employees of the hospital.
A Yes.
Q Okay. And as far as a -- if -- if -- if a -- if you're the liaison and you're talking to DSS and they are like, okay, we are going to discharge home, and then you've got the CHIPS saying, you can't discharge them home.
A Right.
Q You can actually override DSS.
A No.
Q So it's your testimony under oath that you-all have nothing available to you to -- to keep them from being discharged home if DSS has to discharge them home?
A There is that 12-hour emergent custody order that can be used.
Q Sure.

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A I don't believe that I've never seen that used in my time here.
Q Okay. And let me -- let me --
A But that's only for those -- that short period of time.
Q Sure.
MR. HOOD: Okay. Let's have the Administrative Order -- let's have that marked as Exhibit 7, I believe.
THE WITNESS: Thank you.
(Administrative Order marked as Plf's Exh 7 for identification.)
MR. HOOD: And then Exhibit 8 is the Certification for Re -- Retention of Custody, that's number 8.
(Certification for Retention of Custody marked as Plf's Exh 8 for identification.)
MR. HOOD: Let's have Number 9 -- the Examining Physician's Certification.
(Examining Physician's Certification marked as Plf's Exh 9 for identification.)
BY MR. HOOD:
Q Okay. Now, this is an administrative order from the County of Mecklenburg, and it is -- it was an attachment to the Policy of Juvenile

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Suspected of Being Abused or Neglected. And it says, "Administrative order, retention of custody of juvenile suspected to be abused pursuant North Carolina General Statute Section 7B-308."
Do you see that?
A I do.
Q It says, "Pursuant to this statute, it is hereby ordered that Carolinas Medical Center, Presbyterian Hospital, Mercy Hospital, Mercy Hospital South, University Hospital, and Presbyterian Matthews Hospital are authorized to retain custody of a juvenile, anyone under the age of 18 when the examining physician certifies in writing that the juvenile suspected of being abused and that the juvenile should remain in for medical treatment, or that according to the juvenile's medical evaluation, it is unsafe for the juvenile to return to the parent, guardian, custodian or caretaker."
Do you see that?
A I do.
Q So under this administrative order, if the CHIPS teams or someone on the CHIPS team doesn't think that is it safe for the child to be put back into the custody of the parents, they can invoke

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this, can't they?
A I --
MR. TODD: Objection.
THE WITNESS: I guess so.
MR. HOOD: Okay.
MR. TODD: When you say "invoke this," you mean invoke this procedure?
MR. HOOD: Sure.
MR. TODD: The question is, it's just they can't answer the order.
MR. HOOD: Right, right, right. I'm sorry. I apologize.
Invoke the procedure, I apologize; okay?
THE WITNESS: Sure.
BY MR. HOOD:
Q And this is I think what you're talking about, "Custody assumed by this authority may not exceed 12 hours from the time of day contained in the examining physicians certification without an additional court order."
Do you see that?
A I do.
Q And you had said earlier that you thought there was a short period of time.
A Right.

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Q This appears to say that it should be 12 hours.
A Yes.
Q Is that what you were talking about?
A Yes.
Q Okay. And it says "without an additional court order"; right?
A Yes.
Q You can get additional court orders, can't you?
MR. TODD: Objection.
THE WITNESS: I don't -- I don't know. I guess so.
BY MR. HOOD:
Q Two paragraphs later it says, "The purpose of this order is to allow for the legal retention of custody in emergency cases long enough for the Department of Social Services to investigate the case and, if appropriate, seek a court order for custody in accordance with North Carolina law."
Do you see that?
A I do.
Q So, this was a South Carolina case; right?
A Yes.

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MR. TODD: [redacted] was a South Carolina case.
MR. HOOD: I'm sorry, I'm sorry. I apologize.
MR. TODD: I think you --
MR. HOOD: I'm just trying to straight -- you're right, though.
BY MR. HOOD:
Q [redacted] was a South Carolina resident; right?
A Yes.
Q You were working with South Carolina DSS?
A Yes.
Q Did the fact that he was a resident of South Carolina and you were working with South Carolina DSS play any part in the administrative order not being used?
A No.
Q So you could have used it -- or someone could have used the things that are contained in the administrative order, even though he was a resident of South Carolina and you were dealing with South Carolina DSS?
MR. TODD: Objection.
THE WITNESS: I -- I guess so.

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BY MR. HOOD:
Q Okay. Is it -- would it be a more appropriate answer, you're not sure one way or the other?
A Yes.
Q Okay. And who would be the person that would know?
A I would assume if a physician wanted to get this procedure and invoke it, they would probably talk to somebody in the legal department, but I don't ...
Q Okay.
A But it's not my ...
Q Okay. Underneath that it says, "Examining physician should utilize the examination physician's certification form on the reverse side of this page whenever a juvenile is retained under the authority of this order; right?
I mean, that's what it says.
A Sure.
Q And then it says, "A copy of the examining physician's certification must be given to the juvenile's parent, guardian, custodian or caretaker, the Department of Social Services, and the chief district judge for placement in the juvenile's

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judicial record."
Do you see that?
A I do.
Q Now, if you go to Exhibit 9, there's also an Exhibit 8, but if you look at Exhibit 9, it says, "examining physician's certification."
A Right.
Q And it has on there the name of the juvenile address, and then it has, "The undersigned examining physician hereby certifies that there's good cause to suspect that the juvenile was abused and either should remain for medical treatment for it's unsafe for the juvenile to return to his parent, guardian, custodian or caretaker."
Do you see that?
A I see that.
Q Now, is it fair to say that you work with the medical team to determine whether it's unsafe for a juvenile to return to his parent, guardian, custodian or caretaker?
A I -- yeah, probably.
Q And so you have input because you speak to the parents; right?
A Mm-hmm.
Q And you ask them whether -- I mean, you

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knew that there was this bump on his head for which there was no explanation; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: That was in the note. I didn't see one. I wouldn't have necessarily asked about it or had a discussion about it --
MR. HOOD: Well --
THE WITNESS: -- because it was not on his head at the time of admission.
BY MR. HOOD:
Q Sure. Children who are abused, the first time it may not be caught, but maybe the second time; right?
MS. BROOKS HOLMES: Objection.
THE WITNESS: I think you could find it -- yeah, I don't ...
BY MR. HOOD:
Q Okay. And so if you have an unexplained bump on the head and a week later an unexplained subdural hematoma, that was something that you would have known about before this child was discharged; right?
MR. TODD: Objection.
THE WITNESS: No, it didn't -- there was no week ahead of time, there was no

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visualization, it was a comment about a bump. It sounds like the report was made about the bump.
BY MR. HOOD:
Q You had read Katie Harrison's note from Sunday when you came on to work when you were staffing patients on Monday; right?
A I would have read the note, yes.
Q And so you would have been aware that the maternal grandmother had reported she had picked baby up from dad and uncle and dad said they had no idea why the child had a bump on his head; right?
A It would have been in the note, yes. I --
Q Which you would have read?
A Probably.
Q And that you would have been aware that the child had a subdural hematoma.
A Um-hmm.
Q And you would have been aware that there was not an explanation for the bump or the subdural hematoma?
A I would have been aware that they couldn't determine the cause of the subdural and I would have read the note about the bump.
Q Okay. But when you have those two things

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and then you're working with the medical team, you would have had input into whether it was unsafe for the juvenile to return to his parent, guardian, custodian or caretaker; right?
A I would have had the information and the team would have had the information.
Q Okay. And -- and -- as you said, you got a master's in social worker, you're not just a bump on the log, you're a valuable member of the team, aren't you?
A I am part of the team, yes.
Q And the team helps determine whether it's safe for the juvenile to return to his parent, guardian, custodian or caretaker; right?
A I think --
(Intercom interruption.)
THE WITNESS: I think we do the medical workup, share the information with DSS, and work with them if we have grave concerns about safety, yes, I suppose so.
BY MR. HOOD:
Q Okay. So what's the difference between "grave concerns" and the fact that you don't know whether it was child abuse or not?
MR. TODD: Objection.

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MR. FRAWLEY: Objection to form.
THE WITNESS: I -- I don't know.
BY MR. HOOD:
Q Okay. And so if you don't know, once again, why not err on the side of caution and make sure this child is put into the safest environment possible?
MR. TODD: Objection.
MR. FRAWLEY: Form.
THE WITNESS: I think in completing the workup and sharing information with DSS --
(Intercom interruption.)
THE WITNESS: -- that will happen a couple more times.
MR. HOOD: Okay.
THE REPORTER: I think in completing the workup and --
THE WITNESS: And sharing the information with DSS, is what I think is what I said.
That we would have to trust and work with DSS to complete the investigation and the home assessment that we can't do because we're not there.
BY MR. HOOD:
Q Right. And then the medical -- the team

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at LCH works in conjunction with DSS to ensure that there is a safe discharge for the juvenile to return to his parent, guardian, custodian or caretaker?
A I think it's fair to say we look to them for ultimate discharge and disposition when the child is medically stable to leave the hospital.
Q And if you look to them for the ultimate, if you don't agree with them, you can invoke the administrative order?
A I suppose so.
Q Okay. I'm looking at the next note, which is CMC0094 at the bottom.
A Okay.
Q I think before we begin this one, it appears that it says "Laura Newmark, MSW" at the bottom.
Do you see that?
A I do.
Q And it says, "Met with parents at bedside to confirm DSS visit, met with worker from York County 12/6 and signed safety plan, anticipate discharge hopefully this date."
Do you see that?
A I do.
Q And that's on Monday, December 7th, 2009?

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A Yes.
Q Now, I believe you said earlier that -- that Miss Harrison was a weekend worker.
Did you also come in on 12/6 in addition to 12/7?
A No, I wouldn't have been here on a Sunday.
Q Okay. Well, then who met with the worker from York County on 12/6 and signed the safety plan?
A The parents. My note, it says, "Met with parents at bedside to confirm DSS visit. Met with worker from York County 12/6 and signed safety plan."
That's me reporting that they met with DSS and signed the safety plan.
Q Okay.
A It's just not as clear as it could be.
Q Sure.
A We have not a lot of room to write all of our notes.
Q Sure. Absolutely. So I'm assuming that the hospital would then, to ensure that it was done and to ensure that the parents were accurate historians, they would that obtained that safety plan; right?
A We normally don't get a copy of the safety

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plan.
Q Why not?
A Some counties don't share them with us. Sometimes we just want to make sure the parents plan that they show us a copy. But some counties say it's their stuff and their property, so they don't allow the hospital to have copies. Every county seems to be a little different.
Q You've heard the term "leaving the fox in charge of the henhouse" before, haven't you?
A Yes, I have.
Q So if an abuser is the person that you're going to find out whether things are done --
A Um-hmm.
Q -- how do you know that it's accurate or not?
MR. TODD: Objection to form.
MR. FRAWLEY: Form.
THE WITNESS: In a typical case, I don't remember off the top of my head, I either have the family show it to us --
BY MR. HOOD:
Q Okay.
A -- so we actually see it, or when I follow up with DSS the next morning and find out whoever

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the assigned worker is, they're very clear with me that they've signed a safety plan. And I also think that --

Q Sure.

A -- they came the day before and there is a social worker note that somebody else accompanied them upstairs.

Q Okay, and we'll go through all of it.

A Okay.

Q And please point that out when we get there.

A I guess I'm just saying, Fox and Henhouse, I would have confirmed it with DSS.

Q Because you-all do confirm it one way or the other --

A Sure.

Q -- to make sure that there's an independent verification that it was done?

A Sure.

Q Okay. It says, "[redacted] lives with parents, no other children. Does have Medicaid, WIC, transportation, frequent babysitting with maternal grandmother. Both parents employed. Father finished tenth grade. MSW discussed safe sleeping. Other parenting education available for parents

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prior to discharge. Parents with questions about DSS investigation." And it says, "MSW explained." That's you; right?

A That's me.

Q You explained that DSS will complete home visits upon discharge, will assist with medical follow-up if needed, no other questions will follow for safe discharge plan.

A Yes.

Q Okay. When you say "no other questions," then it says "will follow for safe discharge plan."

A Um-hmm.

Q What is "safe discharge plan?"

A That's generally --

THE WITNESS: Excuse me, I just kicked someone.

That would be me working with DSS to ensure that DSS has approved a discharge plan for this child.

BY MR. HOOD:

Q Okay. Then it says, "updated RN, MD."

Do you see that?

A Yes.

Q And so you would have then spoken to a nurse, then would you have spoken to a medical

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doctor?

A Yes.

Q And would the medical doctor have been somebody on the CHIPS team?

A Probably so, yes.

Q Okay.

A Since they are the attending team.

Q Okay. If we go to the next sheet, this is -- this at the top says, "Sunday, December 6, 2009, 6:44 p.m."

A Right.

Q This is once again Katie Harrison and I believe this was on the Sunday before you came in on a Monday; right?

A Yes.

Q And it says, "1830 MSW received phone call from the Shandra Tyler, DSS York County."

Do you see that?

A Yes.

Q "Miss Tyler will be coming to the hospital to do an assessment." Do you see that?

A Yes.

Q "MSW will notify Sherry Deedrick, MSW, EDSW."

A Right.

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Q Sherry, does she work for LCH?

A Sherry?

Q Yeah.

A She works in the emergency department here at CMC.

Q Okay. "MSW discussed with Sara, RN, who has the patient. Sara does not feel parents are a flight risk and will let parents know that the DSS worker is coming out to meet with the parents. MSW will follow as needed. For any questions this evening, please contact Sherry Deedrick."

Do you see that?

A I do.

Q Is there anything about a safety plan being done there or reference to a safety plan?

A No.

Q Okay.

A It just says that DSS is coming.

Q Sure.

Then we go to the one at the bottom, it says 98 at the bottom.

A Okay.

Q Because we have not gone over this one.

A Okay.

Q And this is December 6th at 5:30 p.m.

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MR. TODD: I think that's when it was printed.
THE WITNESS: That's when it was printed.
MR. HOOD: That's when it was printed? You're right, it's 12/6/2009 at 1500.
THE WITNESS: Right.
BY MR. HOOD:
Q And I think this one, it may even be a copy of another one, but my thing is you had talked earlier about this safety plan --
A Um-hmm.
Q -- that was done by DSS -- and you would have done -- or somebody would have done an independent verification that it was done.
A I -- I would think so, yeah.
Q Okay.
A I don't recall having the exact conversation but it's pretty standard.
Q Where's the independent verification that the safety plan is done?
A I don't have it written down about the safety plan, but I did work with Christa who would have been the assigned worker, whoever I talked with Monday morning.
Q Okay. I'm looking at Exhibit 3 again.

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A Okay.
Q Okay? I'm just going -- it's 12/7/09. It would be on the second page. This is what we got from DSS.
A Okay.
Q It says, "Face-to-face with child client attempted, Dirvondra Hill outside talking, informed family, not home, knocked at mobile home, no sound from inside, called phone number, voice mail of Charlotte Williams left message to call case manager."
Do you see that?
A I do.
Q 12/7/09, "Staffing with supervisor Christa Hinnant, CDSS 3062 case staff with legal."
Do you see that?
A I do.
Q Then 12/7/09, "Staffing with supervisor; Krista Hinnant. Current situation, owen has two subdural hematomas. One would indicate non-accidental trauma, social worker has concern CT shows non-accidental trauma, no doctor is saying injuries are non-accidental, hospital has sitter."
Do you see that?
A I do.

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Q Now, the hospital has a sitter for a reason; right?
A It's -- yes.
Q In cases of potential or suspected child abuse, they have a sitter in the room with the baby; right?
A When they are getting a non-accidental trauma workup, yes, we generally have a sitter in the room.
Q The sitter was there the whole time that Owen was there; right?
A I -- I don't know the specifics, but generally we would have a sitter in the room.
Q Okay. It says, "Parent contact supervise, nurse said it is non-accidental." Do you see that?
A I do.
Q You don't know what nurse she was speaking to that said it was non-accidental?
A No.
Q "Grandmother saw a bump on baby's head a few days ago, baby with uncle and dad, Owen is ready for discharge. Recommendations: Get medical record, records to refer to the law enforcement, law enforcement incident, public index, follow up with doctor, meet with grandmother, go to home and assess

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home, talk to grandmother separately, any concerns talk to Laura McDowell, does doctor think trauma is non-accidental."
Do you see that?
A Yes.
Q Now, who is Laura McDowell?
A Laura McDowell was another social worker that used to be here.
Q "Laura McDowell, social worker over at Levine, Krista informed Laura that DSS would need to speak with doctor or hospital social worker could speak with doctor to determine if [redacted]'s hematomas were accidental or not, Laura will follow up with doctor."
Do you see that?
A I do.
Q At 11:50 she documents, "Received a phone call from Laura Newmark." That's you; right?
A Yes.
Q "She talked with pediatric staff at this time, the hospital cannot determine whether injuries are accidental or non-accidental." Do you see that?
A Yes. I do.
Q Now, do you recall having those conversations and them saying "we don't know if it's

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accidental or non-accidental"?
A I don't recall specifics of the conversation.
Q What about the generalities of the conversation?
A I don't have any clear recollection.
Q In going through the medical records and looking at this and thinking back, do you have a general idea about what you would have determined whether it was accidental or non-accidental?
A I'm sorry, I didn't follow you.
Q Sure. In this particular case, I believe you testified earlier that you would have had some conversation with a doctor; right?
A Yes.
Q Krista Hinnant says -- she documents that she has spoken to you.
A Okay.
Q Now, I'm not saying you did or you didn't, but she's documented that?
A Sure.
Q And then I think you've documented that you did speak to Krista Hinnant; right?
A Right, sure.
Q And then in hers it says, "The hospital

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cannot determine whether injuries are accidental or non-accidental."
A Okay.
Q It appears that that information is coming from you; right?
A Right.
Q My question is, do you -- how did you get that information that they couldn't determine one way or the other?
A I would have reviewed his progress notes, the notes from the doctors --
Q Okay.
A -- specialists, subspecialists, and talked with the physician.
Q And when you talked to the physician, you're talking about somebody that is a member of the CHIPS team?
A Yes.
Q Okay. After that it says, "[redacted]'s eye exam and skeletal survey were negative."
Do you see that?
A Yes, I do.
Q And now, you probably don't know this, but I'm going to ask, do you know if he was seen by a pediatric ophthalmologist?

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A I don't know. I know there are pediatric ophthalmologists on staff.
Q Okay.
A I don't know specifically who saw him.
Q Do you know if they did a direct eye exam or indirect eye exam?
A I wouldn't know.
Q Do you know if they used fluoroscopy or not?
A I would not know.
Q Okay. Says, "Going to repeat CT today, because [redacted]'s head appears to be swollen. Family has no clear history of trauma; however, hospital cannot rule out trauma."
Do you see that?
A I do.
Q Now, if you can't rule out trauma, how can a child be medically discharged back to his parents?
MR. TODD: Objection.
THE WITNESS: I -- he was medically ready for discharge.
BY MR. HOOD:
Q "Medically ready" does not mean safe for the juvenile to the return to his parent, guardian, custodian or caretaker, though, does it?

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MR. TODD: Objection.
THE WITNESS: They're two different things, yes.
BY MR. HOOD:
Q Okay. And I understand "medically stable," that's like if he came in with a subdural hematoma, they could have some kind of sequelae or something -- a physical manifestation or some kind of something that caused a medical condition and they've got to treat that; right?
A Right.
Q And -- and he then becomes stable, his vitals were okay, subdural -- the repeat CT shows the subdural is being absorbed, and -- and he is, by all intents and purposes, okay to discharge from a medical standpoint.
A Yes.
Q Now, but as you said, it's different than safe to discharge to return to parent, guardian, custodian or caretaker, though; right?
A I don't think we can predict the future on what is or isn't going to happen in working with DSS.
Q And I agree, you don't have a crystal ball.

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A Right.
Q **There is no way to say something is going to happen tomorrow or 30 days from now or six months from now; right?**
A Um-hmm.
Q **You just got to look at things that -- that are going to be safest for the child; right?**
MR. TODD: Objection.
MR. FRAWLEY: Object to the form.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I think we do our best.
BY MR. HOOD:
Q **And I know you do your best, and your best is doing your best to ensure the safety of the child; right?**
MR. TODD: Objection.
THE WITNESS: I think we work with DSS and the resources and the communities that we have available for that child.
BY MR. HOOD:
Q **To safely discharge the child?**
A As -- I -- we hope so.
Q **Okay. But in this case didn't happen, did it?**
MR. TODD: Objection.

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MR. FRAWLEY: Object to form.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I don't know.
BY MR. HOOD:
Q **The child came back 30 days later and is now blind and catastrophically brain-injured; right?**
MS. BROOKS HOLMES: Objection.
THE WITNESS: I don't know how [redacted] is today.
MR. HOOD: I'll represent to you that he's blind and catastrophically brain-injured.
MR. FRAWLEY: Is that a question?
MR. HOOD: I will represent to her that -- that -- that he is -- and you can obviously object --
MR. TODD: No, I mean, we're not contesting that [redacted] is in bad shape today. My objection is it's an argumentative question.
I mean, we'll stipulate that he came back in January, but -- I mean -- what is -- if that's your question, you know, then there's no question about that.
MR. HOOD: And I was just going to represent to her that that's what happened.
MR. TODD: Yeah.

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MR. HOOD: And I didn't want it to be something that I was saying that it was going to be something that was some kind of a lie or that she thought I was making something up. I wanted to make sure that she understood and I would represent to her as an officer of the court that that is the way that it is.
MR. TODD: Yeah.
MR. HOOD: And then I was going to ask her questions based -- and this is my question, and feel free to say what you're going to say.
BY MR. HOOD:
Q **Based on the fact that he did come back in this shape and his father has pled guilty to doing that from shaking him 30 days later, wouldn't you agree that it wasn't safe to discharge him home to his parents in December 2009?**
MR. TODD: Object to the question.
MR. HOOD: Okay.
MS. BROOKS HOLMES: Objection.
MS. HOLMES: Objection.
MR. TODD: All right. We'll stipulate all those things we said, but the question --
MR. HOOD: Sure.
MR. TODD: -- is still objectionable for

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other reasons.
MR. HOOD: Sure.
THE WITNESS: Right.
MR. TODD: Okay.
THE WITNESS: You know, in hindsight, but at the time of discharge in December, we were working with DSS and the community resources and the workup as best we could.
BY MR. HOOD:
Q **Okay. And so is it your testimony that the best that you could is not ruling out child abuse?**
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I think part of the medical workup is to rule out or rule in, and the findings were limited, then non-accidental trauma couldn't be proven one way or the other.
BY MR. HOOD:
Q **Okay. And if it isn't proven one way or the other, how do you work with DSS to ensure a safe discharge back to the home?**
MR. TODD: Objection.
THE WITNESS: We --
MR. TODD: You go ahead and answer.
THE WITNESS: We share with them the

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information that we have on his medical condition.
BY MR. HOOD:
Q And what you would have shared is that we can't rule it in one way or the other, so discharge him, it's our opinion -- medical opinion you can safely discharge him?
A No.
MR. FRAWLEY: Objection to form.
THE WITNESS: What we would have said was we can't rule it out one way or the other, the report was made, we would like to see you-all continue your investigation and do the home assessment.
MR. HOOD: Okay. As you said before, there is no crystal ball here; right?
MS. BROOKS HOLMES: Objection.
MR. TODD: No, we agree with that one. We -- we -- we agree with that question one hundred percent.
THE WITNESS: I don't know that a "crystal ball" was my words, but ...
MR. HOOD: You would agree that there's --
THE WITNESS: I would agree that we can't accurately predict the future.

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BY MR. HOOD:
Q Right. And what you have to do is, you have to look at a lot of different factors, including history, statistics, literature, training, and your experience in the hospital; right?
A Me personally?
Q And the team.
A I think we would do the full workup, yeah, experience, history for this admission, those things.
Q And because you can't always predict what's going to happen, you don't know whether the child could have been abused 30 minutes after discharge, 30 days after discharge, or never being abused?
MR. TODD: Objection.
THE WITNESS: I'm sorry --
MR. HOOD: Sure.
THE WITNESS: I didn't follow you.
MR. HOOD: It's my fault, I'm thick, and I apologize for that.
BY MR. HOOD:
Q You don't know whether the child -- we've stipulated or I think we've all agreed that the child came back within about 30 days, somewhere in

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that time frame.
A Okay.
Q But whether it was 30 days or 30 minutes, three months or three years, there is no predicting if someone is going to be abused again; right?
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
MR. FRAWLEY: Object to the form.
THE WITNESS: I do not believe we could accurately predict that, no.
BY MR. HOOD:
Q And so what you have to do is then you have to -- you as a social worker are aware of -- I'm going to use the nomenclature again, or terminology, the best interests of the child --
MR. TODD: Objection.
BY MR. HOOD:
Q -- you've heard that before; right?
A I have heard "in the best interests of the child."
Q Okay. And you would agree that when you discharged this child, that in the opinion of the team, including you and the medical doctors, that it was safe for the juvenile to return to his parent, guardian, custodian or caretaker?

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MR. TODD: Objection.
You can go ahead and answer.
THE WITNESS: I think we believed that he was medically stable and able to go home with DSS follow-up to complete the investigation, yes.

BY MR. HOOD:
Q And -- and because you knew that this DSS follow-up was going to take some time, the child was going to be in the custody of his parents for some length of time before this investigation could be completed; right?
A DSS has certain time limits, yes, on completing an investigation.
Q And because there is no crystal ba- -- or there is no way to predict or foreshadow what's going to occur, you don't know whether the child could be abused immediately or never again; right?
MR. FRAWLEY: Object to the form.
THE WITNESS: Right.
BY MR. HOOD:
Q And so if knowing that information, you've got to assume that it is safe for the juvenile to return since you don't know whether he

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could be abused immediately or not?
MR. TODD: Objection.
MR. FRAWLEY: Object to the form.
THE WITNESS: Yes.
BY MR. HOOD:
Q Okay, okay. Good. Thank you.
[redacted] was to return for follow-up, I think, for the skeletal survey.
A Mm-hmm.
Q Who would have been the person from Levine who would have followed up?
A We -- I don't know. Generally, if DSS is involved, we ask to make sure that the child gets the medical follow-up he's supposed to.
Q Okay.
A I don't know of any particular point person who would have verified that.
Q Okay. I've -- I've gotten this, which appears to be some documentation from the social worker department or the --
A Yes.
Q -- but I haven't seen it after like 12/6, 12/7, that kind of thing, and I don't know if there was any follow-up in the month of December that would have been documented.

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A We are in-patient social workers.
Q Okay.
A So once a child is discharged, we don't generally have any contact with the family or patient.
MR. FRAWLEY: "This" you're referring to, for the record, is Exhibit 1?
MR. HOOD: Yes. Exhibit 1, I apologize.
And just for the record, Exhibit 1 is -- I think it's Bates stamp our numbers, CMC92 through 97.
BY MR. HOOD:
Q So do you-all have -- you've heard the term "continuum of care"?
A Um-hmm.
Q Do you have someone in the social worker department with Levine that will ensure continuum of care post-discharge?
A We are -- clinical care management social workers in-patient social workers only.
Q Okay. And so is it fair to say you don't know whether there is somebody that does outpatient social work to follow someone that's discharged?
A There are outpatient social workers in clinics, if the particular patient goes to one of

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the CMC clinics. I don't know about places in South Carolina, I don't -- but there are other social workers -- outpatient social workers.
Q Okay, okay.
(Pause.)
MR. HOOD: Let's have this marked as -- what exhibit are we up to, 10?
THE REPORTER: 10.
MR. HOOD: Let's have this marked as 10.
(Discussion off the record.)
(Carolina Healthcare System Policy Statement marked as Plf's Exh 10 for identification.)
BY MR. HOOD:
Q I'll represent to you that there was some stuff that we looked at earlier and it talked about some kind of a policy, 110.03. This is Page 1 through 4 of it. There were other attachments to it, but I was going to ask you about this specific, because there's a lot of attachments didn't apply because it was about sex abuse and stuff.
A Sure.
Q And I just wanted to ask you about this particular policy.
A Okay.

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Q At the top it says, "Juvenile suspected of being abused or neglected." Okay, do you see the summary statement?
A Yes.
Q Could you read that summary statement for me out loud.
A "This policy statement relates to the issue of awareness, detections and management of children at risk for abuse or neglect in the in-patient physician office and urgent care settings. It provides guidance on the procedure that should be followed in cases of suspected abuse or neglect."
Q Okay. So this policy would actually provide guidance on the procedure that should be followed in the cases of suspected abuse or neglect at Levine Children's Hospital, right?
A Yes.
Q Okay. And it has definitions, right?
A Yes.
Q Under "juvenile" it says, "Any person under 18 years of age who is not emancipated by marriage or court order or a member of the armed services."
Do you see that?

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A Yes.
Q And that would include Owen Carduff, right?
A Yes.
Q "Abused juvenile: A juvenile whose parent, guardian, custodian or caretaker inflicts or allows to be inflicted serious physical injury which causes or creates a substantial risk of injury, death, disfigurement, impairment of physical health" loss -- "or loss or impairment of a function of any bodily organ." You see that; right?
A Yes.
Q And it's your testimony -- or at least it's my understanding your testimony is, you-all weren't able to say one way the other whether he was a victim of child abuse?
A Yes.
Q Okay. And if we go to the next page, it says, "caretaker;" okay?
A Um-hmm.
Q And it says, "Any person other than a parent, guardian or custodian or adult member of the juvenile's home who has care of a juvenile, including any blood relative, stepparent, foster parent or houseparent, cottage parent or any person

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supervising a juvenile in a resident child care facility."
You see that definition of a caretaker; right?
A Yes.
Q Now, if we go down to procedure under A, if you could read number one for me.
A "Clinical team identifies child in whom abuse or neglect is suspected and initiates suspected child maltreatment inpatient order set followed by discharged order set, if applicable."
Q Okay. Do you agree with that?
A Yes.
Q Okay. And it says "Clinical team identifies child in whom abuse or neglect is suspected"; right?
A Yes.
Q When this child came in and you-all saw the subdural hematoma, you at least suspected child abuse --
MS. BROOKS HOLMES: Objection.
BY MR. HOOD:
Q -- right?
A There was a -- it was concerning with no history.

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Q And, in fact, you-all then put the procedure in place; right?
A I -- it -- it was done. I don't know who initiated the order set.
Q Okay. If you could read 2 for us.
A "Consult CHS clinical care management social worker to aid in DSS assessment process."
Q Okay. And the CHS clinical care management social worker, and that was you and Katie Harrison, did aid in the assessment process; right?
A Yes.
Q Okay. Could you read 3 for us.
A "Complete CHS suspected child abuse and neglect scan form available on Carolinas. Use scan admission and discharge order forms for admission to LCH."
Q Okay. Do you know if a scan form was used in this particular case?
A I do not know for sure.
Q Okay.
(Pause.)
MR. HOOD: Let's have this as 11.
(Suspected Child Abuse and Neglect form marked as Plf's Exh 11 for identification.)
BY MR. HOOD:

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Q Okay. It says "Complete CHS Suspected Child Abuse and Neglect form available on Carolinas Scan Admission and Discharge Order forms for admission to LCH."
Do you see that?
A I do.
Q Okay. Now, I've handed you Exhibit 11; right?
A Yes.
Q Would you read what that document says at the top.
A "Suspected child abuse and neglect form."
Q And does that coincide with this juvenile suspected of being abused or neglected policy?
A It's the form and not the orders, yeah.
Q Okay. It's the form?
A It's The form. They are different.
Q Okay. And do you know if there are also orders under scan?
A I don't know.
Q Okay.
A I'd have to look at the chart.
Q It says, "Then document on positive exam findings on scan form including the completion of diagrams and other things."

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Do you see that?
A I do.
Q And under Number 5 --
A Yes.
Q -- it says, "All cases of suspected abuse or neglect should be reported to the Department of Social Services in the county where the child resides."
Do you see that?
A Yes.
Q It says, "The call to DSS may be initiated by the staff member identifying the abuse/neglect, the medical social worker or any other member of the healthcare team involved in the case. Have readily available as much of the following information as possible."
And then it gives certain bullet points. Do you see that?
A Yes.
Q Now, that was done in this case; right?
A Number 5?
Q Yes.
A Yes.
Q Number 6. "If the parent or guardian, custodian or caretaker refuses to authorize

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necessary medical treatment for the juvenile, refer to administrative policy consent for treatment."
You see that; right?
A Yes.
Q But there wasn't any problem with the parents consenting to treatment, was there?
A Not that I -- I am aware of.
Q Okay. It says, 7, "Consider consult to CMC Pediatric for assistance with medical management." Do you see that?
A I do.
Q And then in the paren it says "CHIPS team Children's Hospital inpatient service."
Do you see that?
A Yes.
Q In fact, this child was -- the attending physician became the CHIPS team, didn't it?
A I -- I think it was the whole time, yes.
Q Okay. Right, "Refer to child maltreatment practice guidelines to assist with medical management."
Do you see that?
A I do.
Q And then under 9, it says, "When medically cleared, do not discharge child until disposition

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has been determined by the medical social worker and DSS and the safety plan has been placed on the chart in writing, if applicable."
Do you see that?
A I do.
Q It says, "Until disposition has been determined by the medical social worker and DSS."
Do you see that; right?
A I do.
Q You are the medical social worker?
A Yes.
Q And so when did you determine the disposition between you and DSS and where was safety pan- -- plan placed on the chart in writing?
MR. TODD: Objection.
THE WITNESS: I -- when I talked with DSS, I have in my notes, they would have told me whether they were taking custody or not, where the child would be discharged to.
BY MR. HOOD:
Q Okay.
A And the safety plan was not on the chart, and like I said before, some counties don't provide it, not all counties do. I didn't write this policy.

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Q Sure. Did you ask someone from DSS for the safety plan?
A I don't remember whether I would have asked. I knew somebody had come the night before, and standard practice for DSS is in their initial contact with families that they would have the family sign a safety plan.
Q How often have you worked with South Carolina DSS before this particular case?
A I can't quantify that.
Q You would have worked with them before this case, though?
A Yes.
Q And you would have known at least what their piccadilloes or peculiarity's or idiosyncrasies are about their safety plans, wouldn't you?
A I don't know --
MR. FRAWLEY: I'm not sure if I want to --
THE WITNESS: Yeah. I don't --
BY MR. HOOD:
Q The particulars of --
MR. TODD: I was going to object to it, but you pronounced those strange words so well, I thought well, you know...

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MR. HOOD: I was channeling -- what's our guy? -- Judge Ralph -- whatever.
MR. FRAWLEY: Cainnes.
MR. HOOD: Ralph Cainnes.
THE WITNESS: I -- I don't have every county memorized in what they do or don't do. There are dozens of counties that might have children come here.
BY MR. HOOD:
Q But -- but according to this, the safety plan is supposed to be placed on the chart in writing, "if applicable."
A That's what it says, yes.
Q When is it applicable?
A If it is shared by DSS in writing with the hospital.
Q Okay. And you would have to ask for that to be shared in writing with the hospital for it to be shared; right?
A I guess I would have to specifically ask for it, yes.
Q That didn't happen, did it?
A I don't recall the specific conversation.
Q Okay. If you don't recall the specific conversation, then would you defer to Krista Hinnant

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about the specific conversation?
MR. TODD: Objection.
THE WITNESS: No. I have my notes and she has hers. I didn't ...
BY MR. HOOD:
Q Okay. Well, where does your notes talk about putting the safety plan or having any indication of the safety plan?
A I think my note says, I confirmed the visit, that DSS had come the night before, and that they had planned a safety plan.
I don't recall the specific conversation with Krista about that.
Q But when you did that -- and let's go back, cause I really want to make sure we got this right.
I believe, we went over this -- I thought I remembered this.
You, I believe, and it's 0094, said, "Met with parents at bedside to confirm DSS visit."
A Yes.
Q And then when it said, "Met with worker from York County 6/12 and signed safety plan anticipate discharge home hopefully this date" --
A Yes.

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Q -- that would have been from the parents?
A They -- they would have confirmed that a worker came out. I would have absolutely confirmed that with DSS, and that they had accepted the investigation and who the assigned worker was.
Q And you put "and signed safety plan" and that was from the parents; right?
A That's what my note looks like, yes.
Q And you remember about an hour ago we talked about this chicken-in-the-henhouse thing and you said, "Yes, I would have independently verified from the parents the safety plan was signed"?
A My normal practice, I don't recall the specifics, it was a long time ago, but my normal practice would either be to have them show me a copy or talk to DSS.
But in all of my dealings with DSS, I don't recall ever having a case be accepted, initiated and assigned, without the safety plan being done at the first meeting.
Q If it did not get independently verified, would that be a violation?
A Of what?
Q Of what you're supposed to do by independent verification.

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MR. TODD: Objection.
THE WITNESS: I don't -- I don't understand what you're asking.
BY MR. HOOD:
Q Sure. You said that you would always independently verify; right?
A My general practice was, I would.
Q That would be a violation of your general practice, then, if you did not independently verify this; right?
A It would be unusual.
MS. BROOKS HOLMES: Objection.
BY MR. HOOD:
Q And, in fact, would have been outside the norm of your general practice?
A It would have been unusual.
Q Okay. And when you use the term "unusual," what is your definition of "unusual" in the terms of not doing an independent verification?
A I guess -- I don't recall not doing it. In general, I would have done it.
Q And if you didn't, you said that would be unusual?
A Right. I -- like I said, in all of my years with DSS and practice, once they respond and

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have initiated their investigation, it's my understanding that DSS has to initiate that safety plan at their first contact with the family.
Q Okay.
A So I would have trusted that it had been done by the worker that I know came to visit.
Q Okay.
MR. TODD: Can we go off the record for about a minute?
MR. HOOD: Yes.
(Videographer closing video.)
(Brief recess.)
(Answers to Interrogatories marked as Plf's Exh 12 for identification.)
EXAMINATION
BY MR. HOOD:
Q I think we left, and I was looking at a document, it was marked as Exhibit 10. I wanted to go back and I wanted to read it in conjunction with this Exhibit 3, this is that DSS stuff.
A Okay.
MR. TODD: Exhibit 3 is the DSS stuff?
MR. HOOD: Yeah.
BY MR. HOOD:
Q On that -- and on that, on 12/6/09, it

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does talk about a safety plan, it's on the second page.
A Okay.
Q It says, "12/6/09," it has "safety plan" --
A Yes.
Q -- which is what we were talking about.
A Right.
Q And it says, "Safety plan, follow medical advice of hospital and doctor recommendations" --
A Right.
Q -- "not to remove child from hospital until medical discharge."
Do you see that?
A I do.
Q Now, even though you're not a clinician, pediatrician or a medical doctor, you're aware of the term "subdural hematoma"?
A Yes.
Q You're aware that a subdural hematoma in a three-month-old child can be caused by things other than child abuse?
A Yes.
Q But they it can be caused by child abuse --

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A Excuse me. Yes.
Q -- right?
And so in order to ensure that the child is stable and to ensure that the child -- "that it is safe for the juvenile to return to the parent, guardian, custodian or caretaker, the child has to be medically discharged."
A I think I understand what you're asking. The child has to be medically stable and ready for discharge and then be discharged by a physician, is that you're asking?
Q Right. Because I was looking at this examining physician certification.
A Right, right.
Q And we had talked about there are two things: One is medically stable, and then the other is it's safe to return to the parent, guardian, custodian or caretaker.
A Well, that's if they are invoking the custody.
Q Sure. But the doctor is the one -- you're a social worker; right?
A Yes.
Q DSS is a social worker?
A Yes.

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MR. TODD: Not DSS.
BY MR. HOOD:
Q I'm sorry. Excuse me. DSS employees are social workers, some of them?
A Some of them, yes.
Q And you-all rely on a doctor to say whether something is caused by child abuse or not.
MR. TODD: Objection.
THE WITNESS: We -- the social worker like me?
BY MR. HOOD:
Q Right.
A I would work with the medical team and the specialist on what their findings are about accidental or non-accidental trauma, yes.
Q Right. And -- so -- and when you say "accidental or non-accidental trauma," non-accidental trauma is also called child abuse?
A It can be, yes.
Q And if a doctor thinks that a subdural hematoma is caused by child abuse, that's important information; right?
A Yeah.
Q That would be important to you as the medical social worker?

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A Yes.
Q That would be important to someone from DSS?
A Yes.
Q And if the safety plan was to follow the medical advice of the hospital and doctor recommendations not to remove child from hospital until medical discharge, if that was the safety plan, that they are not going to remove them from the hospital until the doctor says it's okay, is that okay with you?
MR. TODD: Objection.
MR. FRAWLEY: Objection to the form.
THE WITNESS: So I --
BY MR. HOOD:
Q Let me ask you a different question.
A Yeah, I don't understand.
Q Terrible question.
You see safety plan where it says "Follow medical advice of hospital and doctor recommendations" --
A Right.
Q -- "not to remove child from hospital until medical discharge." You see that, right?
A Yes. I read those as two different

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things.
Q Okay. How do you read those?
A I read that as "Follow medical advice of the hospital and doctor recommendations," which is pretty typical, whatever follow-up, medicines, appointments that the family has to comply with treatment herein before they leave.
Q Sure.
A And then I read "not to remove child from hospital until medical discharge" as what the parents -- the parents can't take the child out of the hospital until the doctor has said that the child is medically stable for discharge.
Q Now, is it -- and I see -- I -- I understand what you're saying, sure.
A Okay.
Q And I'm not -- I won't put words in your mouth. I want to know what you think.
A Right.
Q Now, we talked a little bit about that -- that there are -- a child can be medically stable, but it still may not be safe to discharge a child home if there are positive findings of child abuse?
MR. TODD: Objection.
THE WITNESS: I -- the child can be

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medically stable and ready for discharge.
BY MR. HOOD:
Q Sure.
A I think we would continue to work with community resources and make sure that there was going to be appropriate follow-up, if we were concerned that the follow-up wasn't going to happen.
Q Okay. And appropriate follow-up could be discharge home, discharge to relative, or discharge to foster care.
A Yes, disposition and discharge would be at the DSS discretion.
Q Okay. So it's your testimony under oath that the disposition or the discharge of the child from the hospital back into the parents' care is completely dependent upon DSS?
A In my experience, yes. DSS tells us, when there is an open investigation, where the child is going to be discharged to.
Q Okay. And it is your testimony under oath that as far as a hospital's role, it is simply to treat the child and make sure that they are medically stable to be able to be discharged.
A I -- we treat the child, if we have concerning findings, we have a duty to call DSS or

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other agencies, if we need to, and work with them and they tell us discharge disposition.
Q Okay. And you said that the disposition is the social -- is the state agency's responsibility?
A It is what -- yeah, it's DSS.
Q Okay.
A If they're going to take custody or not or where the child is going to be discharged to.
Q Okay. And if we look back at Exhibit 10.
A Which one is 10?
Q This is that one -- well, 10 is the policy on juveniles suspected of being abused or neglected.
A Okay, okay. Right.
Q Could you read number 9 for us?
A "When medically cleared, do not discharge child until disposition has been determined by the medical social worker and DSS and a safety plan has been placed on the chart in writing, if applicable."
Q Okay. Where it does it say it is determined by the social worker -- by DSS only?
A Disposition has been determined by medical social worker and DSS -- the way that I could read that, back to me being a liaison, that I'm making sure that the team knows that DSS is involved in

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what they recommended.
Q Okay. So even though this says what it says, it's your testimony that it's DSS's responsibility and not the hospital's, the disposition?
A To determine place of discharge, yeah.
Q Okay, okay, okay.
If we go to B.
A Yeah.
MR. TODD: Are we still on 10?
MR. HOOD: Yes.
BY MR. HOOD:
Q It says, "When a physician determines that a juvenile should remain in the hospital for medical reason."
Do you see that?
A I do.
Q And that's about stability; right?
A Right.
Q "Or that it is unsafe for the juvenile to return to his or her parent, guardian or caretaker."
Do you see that?
A When a physician determines that it is unsafe, yes.
Q So they have two things they have to

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determine: One, the child is medically stable; and two, that it's safe to discharge him back to the parent or caretaker; right?
A The -- the physician has to -- so the physician has to determine that the child is medically stable.
Q Right.
A Yes. And then know what the discharge plan is for a child that is involved with DSS. Is that what you're asking?
Q I'm just reading the policy. "Or that it is unsafe for the juvenile to return to his or her parent, guardian or caretaker."
A Well -- okay. It seems like an "or." When a physician determines that they should remain in a hospital for medical reasons or that it is unsafe.
Q Right, one of the two.
A So they have to determine one of the two if they want to pursue the 12-hour custody.
Q Right. But -- but -- but let's say that in order for them to determine one of the two, they've got to consider both, though; right?
A If -- if they are pursuing the -- excuse me, the 12-hour emergent physical custody. I think

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that's what that paragraph is.
Q And why would they do the pursuit of the 12-hour physical custody?
(Intercom interruption.)
THE WITNESS: All right. Sorry. When -- when would -- I'm sorry, ask me again.

BY MR. HOOD:
Q Sure. And it may be we read the whole thing and it may be --
A Okay.
Q -- you answered the question, and that's my fault.
A Okay, okay.
Q Okay. It says, "When a physician determines that a juvenile should remain in the hospital for medical reasons or that it is unsafe for the juvenile to return to his or her parent, guardian or caretaker, the physician or administrator should first contact the Director of Department of Social Services to determine if DSS will take emergency custody and authorize the hospital to retain physical custody of the juvenile."
A Okay.
Q "In the event DSS is unwilling to take

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custody or cannot be contacted, the local district court has authorized the physician or administrator to retain physical custody of the juvenile whenever the physician determines that the juvenile should remain for medical treatment or, according to his or her medical evaluation, it is unsafe for the juvenile to return to the parent, guardian, custodian or caretaker."
Do you see that?
A I do.
Q Now, that second paragraph says, "If DSS is unwilling to take custody or cannot be contacted."
A Yes.
Q Before it puts that 12-hour administrative order in and talks about that other stuff, about "the juvenile should remain for medical treatment or according to his or her medical evaluation, it's unsafe for a juvenile to return to his parent"; right?
A Yes.
Q Okay. Now, my question to you is, okay, in order for them to determine that, whether a child is medically stab- -- you've agreed they've determined that the child was medically stable?

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A Right.
Q Okay. It appears that the child has got -- vital signs are okay and the child is medically stable to go home?
A Right.
Q Okay. And what this really comes down to, at least according to me, is whether the child should have been sent home back to his parents or whether he should have been placed somewhere else.
A Okay.
Q My question: Does a physician possess the knowledge to determine whether the type of injury that put this child in the hospital for suspected child abuse, do they have superior knowledge to determine whether it's safe to return this child to the parent or guardian?
MR. TODD: Objection.
MR. FRAWLEY: Object to form.
THE WITNESS: Yeah, I can't answer for the physician and their knowledge.
BY MR. HOOD:
Q Sure, sure. Okay, that's fair.
You would agree that you are the liaison to the physician and DSS?
A I do help facilitate communication, yes.

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Q And you would agree, at least according to the communication from DSS, and I know you weren't there, but just according to their documentation, that their safety plan was that they followed the doctor's recommendations?
A Right.
Q And that they are not to --
MR. TODD: "They" being the parents?
MR. HOOD: No, DSS.
BY MR. HOOD:
Q That DSS and the parents are not to remove the child from hospital until medical discharge?
MR. TODD: Objection.
You can go ahead and answer.
THE WITNESS: Are we back on the safety plan?
BY MR. HOOD:
Q Yes.
A The safety plan was for the parents to follow medical advice of hospital and doctor recommendation and also not to remove the child from hospital until medical discharge.
Q Okay.
A That's the way I read that.
Q Okay. And the medical discharge that

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you're -- is talked about here, you said it was your understanding or -- it -- it was your thought process that that was talking about just the medical stability of the child?
A Yes.
Q And that did not have anything to do with whether the child should go back into the home of the parent because he had come to the hospital four days before with a subdural hematoma?
MR. TODD: Objection.
THE WITNESS: The physician determines that the child is medically stable from whatever brought the child in.
BY MR. HOOD:
Q Right.
A And then if DSS is involved, the physician and the team takes guidance from DSS on discharge and where the child goes. So the child stays here in the hospital until DSS says where the child is going to go cleared for discharge from the DSS side.
Q And you would agree that the physicians are the ones that determine the most likely cause of the subdural hematoma?
A I would -- I would agree that the physicians treat the child and try to determine an

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etiology.
Q Okay. And from a social worker and your experience working with Levine Children's Hospital and having other children that have subdural hematoma and children who have had abusive head trauma, would you agree with me that if a doctor determines there is abusive head trauma, that is certainly something that plays into whether to have the child medically discharged back to his family -- back home or not?
A I think when there is a determination of abusive head trauma and DSS is involved, yes, I would think that the physician would help DSS determine their discharge plan.
Q Okay, okay. You would agree that the -- the first priority of your job as a medical social worker is to try to ensure the safety of a patient?
MR. TODD: Objection.
THE WITNESS: "Try," yes.
BY MR. HOOD:
Q A hospital shouldn't discharge a baby back to abusive parents, should they?
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: One would hope that any

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discharge of any child would not be back into an abusive situation.
BY MR. HOOD:
Q And a hospital should make sure a baby is diag- -- diagnosed with a cause of a head injury before discharging back to parents?
MR. TODD: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: No, I wouldn't agree with that, because you can't always say.
BY MR. HOOD:
Q If you can't say what was the cause of a head injury, you should err on the side of caution before discharging a three-month-old baby back to parents that had been suspected of child abuse?
MR. TODD: Objection.
MR. FRAWLEY: Objection.
MS. BROOKS HOLMES: Objection.
THE WITNESS: I don't agree that the parents were suspected. A report was made, and in terms of erring on the side of caution, we'd rather make the report to DSS than not and hope that DSS can do a complete follow-up that we can't do here in the hospital.
BY MR. HOOD:

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Q Okay. Doctors in hospitals should err on the side of caution in cases of suspected child abuse?
MR. TODD: Objection.
MR. FRAWLEY: Is that a question?
MR. HOOD: Sure.
MR. FRAWLEY: Objection.
MS. BROOKS HOLMES: What was the question?
BY MR. HOOD:
Q Doctors in hospitals should err on the side of caution in cases of suspected child abuse; correct?
A Yes.
Q And doctors and hospital personnel should follow policies and procedures; right?
A Yes.
Q Okay. There was mention during this stuff that I read about the child maltreatment team, and I think it was a Miss Myers or something.
A Right.
Q Is the child maltreatment -- is it a team or is it just one person that's a coordinator?
A There is a nurse coordinator and a physician consultant that she works with, and then they might talk -- excuse me, they might talk to the

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social worker who is involved or the team.
It's a coordinator role with a physician consult piece to it.
Q Do you know who back in 2009 was the physician coordinator?
A In 2009 specifically? Dr. Morgan was here, Dr. Mackens might have been.
Q Okay.
A Maybe Dr. Rogers. I don't remember specifically.
Q You've heard of a Dr. Courtlandt?
A Yes.
Q You know Dr. Courtlandt?
A Yes.
Q Have you ever heard of -- I can't remember his name -- does a "Sheldon" ring a name?
A No.
Q I don't know what his name is.
A No, it doesn't.
Q It's somewhere in there. We'll figure it out in the next deposition.
MR. TODD: Maybe.
MR. HOOD: Hopefully. It's written somewhere. I just can't read it.
MR. TODD: Yeah, if you can give me the

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page number, not today, but later, I'll tell you who it is.
MR. HOOD: Hold on a second. I might even have it right here.
BY MR. HOOD:
Q Maybe Stephen Renfrow.
A I know Dr. Renfrow.
Q Yeah.
A But I think he would have been a resident then.
Q Okay.
A Is there an "R?
Q It's just in the -- the interrogatories.
A Oh, okay. Sorry.
THE REPORTER: How do you spell his name?
THE WITNESS: R-e-n-f-r-o-w, I think it is.
BY MR. HOOD:
Q Stephen Renfrow, yes.
A "/R"?
Q It has "MD/R."
A That means he was a resident at the time.
Q Okay.
BY MR. HOOD:
Q Okay, okay. And the CHIPS team, I think

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you already said, is just the pediatricians.
A The in-patient team, the staff pediatricians.
Q The staff pediatricians.
A And their residents.
Q And would you describe the interaction between CHIPS and the maltreatment team?
A That would -- every case is unique.
Q Okay.
A It's a physician-to-physician consult. I don't -- I don't know how the physicians interact necessarily.
Q Sure, sure.
When you have a child who comes in with a subdural and I'm not talking about [redacted] -- just generally a kid comes in, a baby, three-months old, a subdural hematoma, don't know where came from, how it happened, there's no explanation for how it happened, and a CHIPS team is involved, the maltreatment team is involved, how does everybody work together in a cohesive unit to determine what's going to be in the best interest of the child?
A Well, the physician team rounds, the social worker would -- if not round with the

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physicians, would be available for consultation, and then there is the chart, everybody -- you have progress notes in the chart, so you would see other physicians who maybe weren't primary.
Q Okay. You would agree that it would be important to consult with the chart?
A Yes.
Q To be able to determine the people before you, what they may have done or not done in regard to the treatment of the child?
A Yes.
Q Okay.
MR. HOOD: Are we up to 11 now?
THE WITNESS: 12.
(Discussion off the record.)
BY MR. HOOD:
Q I'm just going to ask you just a few questions about this.
A Okay.
Q Dr. Cheryl Courtlandt, she was actually a staff pediatrician at this time, right?
A Yes, she would have been the attending.
Q And Dr. Renfrow more likely, I mean may have been a resident, right?
A If it said "R" on the note, then he would

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have been a resident, yes.
Q Okay. And then Dr. McClanahan, he was just a neurosurgeon in town, he was a consulting physician, right?
A Yes.
Q Dr. Dwyer, he was a neurosurgeon?
A Yes.
Q And I don't see -- that you would have been one of the social workers involved and Katie Harrison would have been involved.
A Right.
Q It's going to be hard, I think -- Monte told us, it's going to be hard to depose her. She's in Venezuela.
MR. TODD: No, I think, Brazil.
THE WITNESS: I think she's in Brazil.
MR. HOOD: Or Brazil. Okay.
MR. TODD: I found out it's Brazil. I narrowed it down.
MR. HOOD: Hey. If it's Rio, let's just go down during Carnivale, you know. Twist my arm.
(Background noise.)
BY MR. HOOD:
Q I'm going to go to Page 7.
THE WITNESS: Oh, I'm sorry. Was that the

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mic?
BY MR. HOOD:
Q These are -- these are answers that -- that Monte worked with somebody on the hospital. This may not be yours. I'm just asking whether you have opinions about something or not.
A Sure.
Q And I'm not saying you are or you don't or whatever. Just asking the question.
A Okay.
Q I -- I had said -- I had asked him, who do you hold responsible -- or please identify the person to whom you allege contributed to an injury or damage to [redacted]
And he said, the defendant understands that [redacted]'s father, Michael Carduff has pled guilty to causing the injuries in January 2010 to Owen.
A Right.
Q I believe you testified before that you don't know what really happened after the child was discharged, right?
A Right.
Q Okay. And do you hold any person at fault in this case other than his father?

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A For which --
Q For the --
A -- admission?
Q For the injuries to --to [redacted]
A That brought him in the second time?
Q Yes.
A No, I would agree with what that says.
Q Okay. You've heard of, like, if, what about if he had not been discharged back into the care of Michael Carduff?
A I --
MS. BROOKS HOLMES: Objection.
THE WITNESS: I can't answer that. I don't know.
BY MR. HOOD:
Q Okay. You don't know, okay.
Going to Page 11. I said, identify what you can -- this was not to you, when I say "[redacted]" I'm talking about Carolinas Hospital System.
A Okay. Sure.
Q Okay. It says, "Identify what you contend the specific policy and procedure on statute which was used by the employer defendant to discharge [redacted] back in the hands of his parents in Decem[redacted] 2009 after a finding [redacted] accidental trauma."

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Said, "The defendant notified the South Carolina Department Social Services pursuant to South Carolina Code 637310 or NC Code 7B301-[redacted] complying with the directions of the South Carolina Department of Social Services regarding the discharge of [redacted]."
Do you see that?
A I do.
Q Do you agree with that?
A Yes. We made the DSS report.
Q Okay. And then on 19, I said, "Describe the steps that the social worker and any employee of the defendant undertook in December 2009 to attempt to ensure that Owen Carduff was discharged in the hands of persons who would not abuse him again."
It says, "The South Carolina Department of Social Services responded, conducted an investigation of the matter and directed Levine Children's Hospital to discharge Owen Carduff to his parents and that DSS would follow up with a home assessment and a safety plan." And it gives statutory provisions.
You see that; right?
A I do.
Q Now, this is the South Carolina Department

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of Social Services responded, conducted an investigation of the matter, and directed Levine Children's Hospital to discharge him back to his parents.
You see that; right?
A I do.
Q But you don't know when they conducted an investigation of the matter; do you?
A I know they began the investigation before he was discharged.
Q Okay. But you don't know when it was completed, do you?
A No.
Q And who directed -- who from DSS directed Levine Children's Hospital to discharge Owen to his parents? Was it Krista Hinnant?
A I mean, in looking at my notes, it said that Krista was who I talked to. Said, "Would likely allow discharge home with parents."
Q Okay. Said, "Would likely allow discharge home."
Does that mean that she directed you?
A Yes. She would have approved him being discharged home with his parents, yes.
Q Okay. And do you consider that to be

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directing you to do that?
A I would interpret that as her giving permission for the hospital, that while DSS is doing their investigation that he could be discharged to his parents, yes.
Q Okay, okay. And you agree that if people at Levine did not feel that was appropriate, they could have taken other steps?
A I think if people at the hospital don't feel it's appropriate or don't agree with the recommendation, you can have ongoing conversations about that.
Q Okay. But that was not done?
A Not to my knowledge.
Q Okay. Under 20 it says, "Describe the specific person responsible for ensuring -- ensuring that [redacted] was being discharged back in the custody of a responsible adult or a state agency and the social worker who was actually responsible for approving the discharge of [redacted] back to his parents."
And it says, "The defendant states that the social workers at Levine Children's Hospital" --
That would be you and Katie Harrison;

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right?
A Right. And I think he was discharged the next day when I wasn't working on a Tuesday.
Q Okay.
-- "notified the South Carolina Department of Social Services of the potential of non-accidental trauma to [redacted]."
You agree with that?
A Potential, yes.
Q And that "The South Carolina Department of Social Services responded, conducted its own investigation in the matter, and determined that [redacted] could be discharged back into the custody of his parents."
Do you see that?
A I do.
Q But you said you don't know when they finished their investigation; right?
A I know they started it and they have a certain period of time to finish it.
Q And you don't know if they actually determined that he should be discharged back into the custody of this parents, do you?
A No. They gave us permission to discharge him to his parents.

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Q Because you-all medically discharged him; right?
A He was medically ready for discharge, and then we would need to work with DSS to make sure that they knew that he was medically ready, and then we would look to them for where he would actually be discharged to.
Q Medically ready would be medically stable and safe to discharge back into the home of his parents?
A Medically ready would be stable and then to look to DSS for the disposition.
Q Okay. It says 24, I'm sorry, Page 13. It says, "With the finding of non-accidental trauma in December of 2009, describe whether or not the hospital had a duty or responsibility to discharge the child into the hands of a person or entity who was not suspected of perpetrating abuse or trauma to the -- on the child."
And then response was, "The defendant CMC's duty was to notify the appropriate state agency of the potential of non-accidental trauma, which it did."
You-all did?
A Yes.

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Q "Carolinas Medical Center complied with that duty of notifying the South Carolina DSS of the potential of non-accidental trauma with Owen Carduff."
Do you see that?
A Yes.
Q And so, it is -- do you have -- do you have an opinion about whether the hospital had a duty, other than notifying South Carolina DSS of the potential of non-accidental trauma, in regard to the disposition of the discharge?
MR. TODD: Objection.
MR. FRAWLEY: I'll object as well.
THE WITNESS: Did the hospital have a duty to contact DSS?
BY MR. HOOD:
Q No, no, no. Did the hospital have a duty other than contacting DSS in regards to the disposition of the discharge of the child?
A No. I think the hospital fulfilled its duty in making the report to DSS and providing them with up-to-date information.
Q Okay. And it is your testimony that that is the responsibility of the hospital --
A I think --

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Q -- and that was their responsibility?
A I -- yes.
Q And the responsibility of whether it was safe to discharge him back into the home with his parents or not was not the responsibility of Carolinas Medical Center or Levine Children's Hospital or the team?
MR. TODD: Objection.
THE WITNESS: I --
MR. TODD: Go ahead and answer.
THE WITNESS: I think the responsibility was to do an appropriate medical workup with all the specialties and sub-specialties, make the initial report to DSS, and make sure they had all the current, up-to-date information about Owen so that they could direct the hospital on discharge.
BY MR. HOOD:
Q Okay, okay. Have you ever had your deposition taken before?
A A deposition, no.
Q Prior to this deposition, had you had an opportunity to review any of the medical records or policies?
A I had met with Mr. Todd, yes.

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Q Okay. Did you read any depositions?
A Did I read any depositions?
Q Yes.
A No.
Q Okay. Have you discussed the case with anybody other than Mr. Todd?
A No.
MR. TODD: Since the lawsuit has been filed --
MR. HOOD: Yes.
MR. TODD: -- or at any time?
BY MR. HOOD:
Q Any time -- and I'm not talking about the stuff we talked about today --
A Right.
Q -- but I mean, have you talked about the child being injured or what may have been done or what could have been done with somebody other than Mr. Todd?
A No. You mean since the -- since we met the first time?
Q Since you became aware that the child became injured.
A I talked about it during his admission.
Q Sure.

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A And I talked about it during the second admission. But since I met with Mr. Todd, no.
Q During the second admission, do you recall anything specifically about the case after the second admission?
A After the second admission?
Q Yes.
A No, nothing specific.
Q Okay. Do you recall if you had any thoughts about this child as being admitted for the second time in 30 days and this time the child is badly injured?
MR. TODD: Objection.
THE WITNESS: Do I remember that I had thoughts about that?
BY MR. HOOD:
Q Yes.
A I remember being involved, yes.
Q Okay. Did you ever have thoughts about what could have been done to prevent this from occurring?
A No.
Q Okay. What is your date and place of birth?
A 5/29/71. Atlanta, Georgia.

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Q Okay. And I'm going to ask you some questions, and it's really not trying to get into your business, but we have juries that we have to pick --
A Sure.
Q -- and so we have to get information about people so we can find out.
A Sure.
Q Are you currently married?
A Yes.
Q And what is your husband's name?
A Steve Newmark.
Q And do either of you-all live -- or do you have relatives that live in York County, South Carolina?
A No.
Q Do you-all have children?
A Yes.
Q How old are your children?
A Eight and 12.
Q Do they have any kind of schooling or belong to any social activities, baseball, Scouts, or anything that involve people in York County, South Carolina?
A No.

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Q Can you briefly just tell me, I believe you said you went that William and Mary and then you went to Georgia and you got your master's.
A Yes.
Q And then you went to work. When did you graduate from Georgia?
A '95.
Q Okay. And after you graduated from Georgia, where did you go to work?
A I worked at a Children's Emergency Shelter in Marionette, Georgia.
Q And how long did you do that?
A Just under a year probably.
Q And at the Children's Emergency Shelter, what do you?
A I was an intake social worker.
Q As an intake social worker, what did you do?
A I would help get the kids settled into the emergency, it was like a 72-hour up to a two-week shelter.
Q Okay. Was it children that were either abused or at risk for abuse?
A Yes.
Q Okay. And after a year there, what did

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you do?
A I got married and moved to Raleigh and started working up there.
Q Okay. And where did you work in Raleigh?
A I worked at Holly Hills Psychiatric Hospital for about six months.
Q Okay. And what did you do at Holly Hills Psychiatric Hospital?
A I ran a latency unit for children under 13 that were hospitalized inpatient in the psych hospital.
Q Okay. Were those children -- were some of those victims of abuse?
A I don't recall.
Q Okay. And then what did you do after that?
A I worked at Orange-Person-Chatham County Mental Health.
Q Okay. And how long did you work there?
A Eighteen months, I think.
Q Okay. And what was your job there?
A I was an intensive case manager for chronologically mentally-ill children.
Q Okay. And then after that, what did you do?
A I moved to Charlotte, and then I worked in

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an alternative high school as a drug and alcohol prevention social worker.
Q Okay.
A School social worker.
Q And how long did you do that?
A I'm trying to think. Year, year and a half.
Q Okay.
A And then I was on disability for about six months and then quit, so technically held the job but didn't practice.
Q And why were you on disability?
A I was pregnant, had a complicated pregnancy.
Q Okay. And then after that, did you go to work for Levine's?
A Not until my son was two-and-a-half. I stayed home for two-and-half years.
Q Okay.
A And then I came to Levine -- or CMC first.
Q And then when you came to CMC, was that about 2003?
A January of 2003, yes.
Q And in January of 2003, what did you -- where did you begin or what department did you begin?

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A I was in clinical care management as one of the pediatric social workers.
Q Okay. And what does a pediatric social worker do?
A Lots of things. We do financial counseling, we help with resources, community things, crisis management, money. We do child abuse and neglect reports and assessments and liaison with DSS, grief counseling. It kind of runs the gamut.
Q Jack-of-all-trades when it talks about pediatric social work.
A We do a lot of inpatient work with the families and the children, yes.
Q Okay. And is that sometimes like -- people -- children on the cancer ward and stuff like that?
A The cancer patients have their own social workers, actually.
Q Okay.
A Cancer, renal, HIV, maybe one other. They have their own, they see them outpatient and inpatient.
Q Right.
A So inpatient gets everything else.
Q Okay.

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A We get all the catch-all.
Q Okay. And then how long did you do that?
A I worked part time up until 2010, March of 2010.
Q Okay.
A And then went PRN, as needed.
Q Okay.
A So I'm still technically in the department.
Q Okay. Now, when you were working in this case, were you a -- in that job that you started in 2003?
A Yes.
Q So that job, this jack-of-all-trades, it -- it encompassed dealing with a situation similar to [redacted]?
A I'm sorry?
Q Or it dealt with [redacted]?
A Right. [redacted] would have been one of my patients and I would have had other patients as well.
Q Did you get assigned -- like how did -- how many people were in the social work department?
A In our department?
Q Yes.
A There is like 70. There's 30-some social

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workers.
Q Okay. A lot?
A Yeah. Well, there's only two for pediatrics.
Q Okay.
A So --
Q And was that you and Miss Harrison?
A No. That was me and Laura McDowell. Katie Harrison was a weekender.
Q So you and Laura McDowell were the pediatric social workers?
A Yes.
Q And you-all would have been the ones that would have been dealing with all the cases of child abuse or suspected child abuse or potential child abuse?
A Not the only ones, but we would have been the primary weekday people, yes.
Q Okay. And then the primary weekend, would that have been Miss Harrison?
A If Katie was on. There were different social workers.
Q Okay.
A She was on that weekend. I don't know what the scheduling would have been.

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Q I know you said that you were not on the next day, like December the 8th; right?
A Right. I think I was on a Monday, Wednesday, Friday schedule at that time.
Q And so would -- the other lady was --
A Laura McDowell.
Q -- Laura McDowell.
A Yes.
Q Would that have been the person that would have been on that day?
A Probably, but I don't know.
Q Okay. What is the volume of -- I mean, when you say there were only two of you, what would be the -- like on a weekly basis, I mean the volume of cases you have that dealt with a situation like Owen Carduff?
A Of -- of rule out a non-accidental trauma case?
Q Yes.
A I would have to look. Head traumas, I can't quantify.
Q Sure.
A We also would have kids with fractures or other injuries.
Q I mean, would you -- would you carry a

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case load of five to ten, ten to 15?
A Oh. Just like an abusive head trauma or everything else?
Q Anything that is child-abuse oriented.
A I would say like per social worker, maybe two or three a month. Not just head traumas, other fractures.
Q Sure.
A But I mean, it's hard.
Q It could be a burn, a kid that had gotten beat bad, it could be a lot of different stuff.
A Sometimes there is a lot and sometimes there aren't any. It just really depends.
Q Okay. Have you ever been part of a situation where a kid had a subdural hematoma and they did not discharge the kid back home?
A Yes.
Q Why would that have happened?
A If DSS took custody or the family agreed to an out-of-home placement.
Q Okay.
A Depending on the finding if there was an accidental trauma or not.
Q Okay. Have you ever seen that 12-hour thing? I believe you said before you've never seen

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that actually activated.
A Not to my recollection. I have seen the forms before, but I don't think I've ever seen it done.
Q Okay. Are you licensed?
A No, I do not have my license.
Q Okay. And can you become a licensed social worker?
A Yes.
Q Why do you not have a license?
A A variety of reasons. Usually it's helpful for private practice, independent third party billing, which I don't have any interest in doing, but also there's supervision group and individual and things like that, and I've never really been supervised by a LCSW in some of my previous jobs, and so here it's not required.
Q Is a -- is a -- is a LCSW usually somebody that a lot of times they provide counseling to people and --
A A lot of times they'll do -- they're able to do third party billing and they can do more private practice.
Q Okay. Do you have any board certifications?

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A No.
Q Do you belong to any social work organizations?
A Yes. I think I'm an NASW member.
Q An ASW member, what is that?
A National Association of Social Workers. And I'm also a member of the Social Workers for Hospice and Palliative Care Network.
Q Okay. Do you belong to any type of -- or -- or are you associated with any group that helps abused children?
A Outside of the hospital, you mean?
Q Yes.
A Not any formal group, no.
Q Are you aware of any magazines or treatises or periodicals that the hospital gets or has access to in regard to child abuse?
A Yes. We could get articles and things through our library.
Q Okay. And do you know what periodicals they would come in, like is there a magazine or something?
A There's so many that would come to the hospital. If there was something specific, you would work the library. I don't know what specific

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titles the hospital has in its disposal.
Q Sure. Is it usually through like AAP, American Association of Pediatrics, or something like that?
A That would be a medical journal.
Q Okay. And so you're talking about something that -- are there social worker journals that you're aware of?
A Yes.
Q And do some of those deal with child abuse situations involving a hospital?
A Probably. I can't think of any off the top.
Q Do you recall reading any, or is there anything that you've seen that would indicate the proper steps you're supposed to take in a situation like [redacted]?
A I'm sure there are recommendations and algorithms out there.
Q Okay.
A I don't, again, know any specific ones specifically.
Q Okay. What type of training were you required to undertake after you were employed?
A We have yearly ACE modules. We have

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computer-training modules. We have other activities at our disposal. Conferences. We get educational reimbursement, things that would apply to our --
Q Do you -- do you -- is it like continuing -- we have CLEs, continuing legal education.
A Right. There are no -- there is no requirements that I have to fulfill in terms of CLEs and things like that.
Q Okay.
A CUs -- CEUs -- CEUs. Sorry, I'm tired.
Q Do you still go to CEUs at times?
A Yes.
Q Okay. And have you ever gone to CEUs for situations concerning child abuse?
A Yes.
Q Okay. And do you recall them or do you have certificates or do you have materials from those?
A Yes.
Q Okay. I'm going to ask you -- I'm going to write a letter to Mr. Todd, of course, but I'm going to ask that you provide that material to Mr. Todd so he could get it to me.
A Okay. I'll see what I have.

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Q The policies that we've gone over today, we went over an algorithm and one or two policies, are there any other policies you're aware of that you have to follow or abide by in regard to a situation like [redacted]?
A I have a general social work job description that talks about my job responsibilities and then in acting in an ethical -- acting in an ethical manner.
Q Okay. You've heard the term "peer review" before; right?
A Yes.
Q Do you know if there was ever a peer review conducted on this specific case?
A Not to my knowledge, but --
Q Okay.
A -- I wouldn't.
Q Okay. Have you ever had any professional honors, like been honored as the Social Worker of the Year for the hospital or anything --
A I've gotten some action awards and other things like that.
Q Okay, okay. Do you carry your own professional insurance?
A No.

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Q I apologize for the next couple questions. Do you have any felony or misdemeanor convictions other than a traffic ticket?
A No.
Q Have you been in any drug or alcohol rehabilitation?
A No.
Q Are you under any psychiatric care?
A No.
Q Have you ever been sued before?
A No.
Q Do you plan to testify live at trial in this case if it goes to court?
A If I'm subpoenaed.
Q Okay. Well, we are in North Carolina, so it's a weird thing but --
A Okay.
MR. HOOD: I'm --
MR. TODD: I'm planning for her to.
MR. HOOD: Okay. That's what I -- that's what I was trying to --
MR. TODD: Well, she probably hadn't -- she's probably hoping not to.
MR. HOOD: Okay.
THE WITNESS: I was hoping this might be

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it.
BY MR. HOOD:
Q Would you agree that the testimony you've given us today is as accurate as you know and that it will probably -- similar -- be similar to what you would testify to at trial?
A Yes.
Q Okay.
MR. HOOD: Give me about one minute.
MR. TODD: It's your deposition.
MR. HOOD: I know.
MR. TODD: If I could -- if I could -- you know, stop you at 30, I would, but, you know, that's not within my power.
MR. HOOD: It ain't going to do any good. Give me --
(Videographer going off record.)
(Brief recess.)
THE VIDEOGRAPHER: Back on the record at 1:42 p.m.
EXAMINATION
BY MR. HOOD:
Q I know you said you've never testi- -- never given a deposition before. Have you ever testified in court?

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A In family court, yes.
Q And when you testified in family court, have you given sworn testimony in child abuse cases?
A Yes.
Q And do you know how many times you've done that?
A Over my career?
Q Just since you've been at Levine.
A Since at Levine, maybe three or four.
Q Okay. And when you gave that, what kind of --
A Two or three.
Q What kind of -- why would you have been giving testimony in court?
A Usually if I'm called into court, it's the sixth-month custody review that DSS has taken custody. And so they have their six-month review about continuing custody or placement for the child.
Q Do you ever give opinions about what may be best for the child?
A No. Usually if I'm testifying, it's about the medical record and what happens with the child.
Q Okay. And do you recall any of the cases where you have -- the name of the case where you may have testified?

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A No.
Q Okay.
A If I racked my brain, I might, but not as I sit here.
Q Okay. Now, your badge says "palliative care."
A Yes.
Q When did you leave pediatrics?
A Well, I didn't.
Q Oh.
A That's my extra badge. I'm still part of the clinical care management department --
Q Right.
A -- as a PRN social worker --
Q Right.
A -- for Levine's, but I'm also working PRN for the adult palliative care.
Q Is -- is that somebody like in hospice or something?
A It's -- palliative care is pre-hospice, so we -- quality of life, relieving suffering, things like that. So that's primarily an adult population that I'm working with.
Q Okay.
A But I'm still in my regular department.

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Q God bless you for that, that's tough.
Do you know why you recommended parenting classes or why they recommended the parenting classes?
A I think it was primarily because of their young age.
Q Okay. Are you aware of any literature that the very young are at risk for being child abusers?
A I think -- not a specific literature site off the top of my head, no.
Q Sure. But you're aware, that there are -- because of what you do and because of your education and because of your experience, that there are certain risk factors for populations that are more subject to being abusers than not.
A Right.
Q I mean, it can be -- I've read statistics where it said people who were not married were more likely to abuse rather than married parents.
A Right.
Q People under a poverty level of like $15,000 a year.
A Right.
Q Young parents under the age of 21.

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A Right.
Q People who complain about a child being fussy all the time because they don't -- they are almost naive about the care that a child is supposed to receive? Have you seen anything like that?
A I don't know about the last one, people that complain all the time, but I do think I would agree with the other ones.
Q That there are certain risk factors?
A Yes.
Q Okay. And -- and when you worked with DSS and you worked with the medical team as a liaison, you would have had to have taken those risk factors into consideration; right?
A It would be part of the workup, yes.
Q Okay. As a social worker, did you make any clinical assessments of either parent to determine if either were a risk of being or becoming abusers of their child?
A My interaction with them would have been more brief than Katie's was.
Q Okay.
A Just because their story about the admission would have already been told and DSS would have already been involved, so generally we don't continue to ask them to share the story over and over again.
Q Was there ever any recommendation by you, a physician, or any other representative of Carolina Healthcare System that DSS should not discharge Owen back to his parents?
A Not that I know of.
Q Okay. And you agree that it's within the scope of the physician's treatment to recommend that a child not be discharged back to his parents?
A I know that the physician can give their opinion.
Q Sure.
MR. HOOD: That's all I have.
MR. FRAWLEY: DSS has no questions.
MS. BROOKS HOLMES: No questions.
MR. TODD: No questions.
(Videographer's closing statement.)
(Off video.)
THE REPORTER: And we do waive; right?
MR. TODD: Do you want to read and sign this? You have a right to read it if she made an error.
MR. HOOD: Her face is like, no.
THE WITNESS: No, I'm done, I'm good.

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(Deposition concluded at 1:47 p.m.)
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(** Certificate accompanies sealed original only.)

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS
ELIZABETH HOPE RAINEY, AS THE APPOINTED GUARDIAN AD LITEM TO [redacted], A MINOR, PLAINTIFF, -VS- CHARLOTTE MECKLENBURG HOSPITAL AUTHORITY D/B/A CAROLINAS MEDICAL CENTER, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, BRUCE BRYANT AS THE CONSTITUTIONAL OFFICER OF THE SHERIFF OF YORK COUNTY, THE YORK COUNTY SHERIFF'S DEPARTMENT AND YORK COUNTY, DEFENDANTS.	CA NO. 2011-CP-86-04508



DEPOSITION OF CHARLOTTE WILLIAMS

ROCK HILL, SOUTH CAROLINA

JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

ELIZABETH HOPE RAINEY,)
AS THE APPOINTED GUARDIAN)
AD LITEM TO [redacted])
A MINOR,)
)
PLAINTIFF,)
)
-VS-) CA NO. 2011-CP-86-04508
)
CHARLOTTE MECKLENBURG)
HOSPITAL AUTHORITY D/B/A)
CAROLINAS MEDICAL CENTER,)
SOUTH CAROLINA DEPARTMENT)
OF SOCIAL SERVICES,)
BRUCE BRYANT AS THE)
CONSTITUTIONAL OFFICER OF)
THE SHERIFF OF YORK)
COUNTY, THE YORK COUNTY)
SHERIFF'S DEPARTMENT AND)
YORK COUNTY,)
)
DEFENDANTS.)
_____)

DEPOSITION OF CHARLOTTE WILLIAMS
ROCK HILL, SOUTH CAROLINA
JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

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Deposition of Charlotte Williams taken before me, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, in the law offices of McGowan, Hood and Felder, Rock Hill, South Carolina, commencing at 2:30 p.m. on July 20, 2012, in accordance with the South Carolina Rules of Civil Procedure.

It was stipulated by and between Counsel for the Plaintiff(s) and Counsel for the Defendant(s) that this deposition is taken for any purpose allowed under the South Carolina Rules of Civil Procedure.

That the signing of the transcript of deposition by the witness is reserved.

* * * * *

Charlotte Williams, first being duly sworn, deposes and says as follows:

EXAMINATION - (By Mr. Todd)

Q Your name, please?

A Charlotte Williams.

Q Ms. Williams, my name's Monty Todd and we met about a minute ago, and I represent Charlotte Mecklenburg Hospital Authority. It's Carolinas Medical Center, Levine's Children's Hospital. And this is my opportunity today to ask you some questions about a case that's been brought on behalf of [redacted]

A Yes, sir.

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Q **Have you ever given a deposition before?**
A No, sir.
Q **Well, let me tell you what's going to happen is I'm going to ask you some questions about yourself, about your daughter, and about your grandchild, and about the issues raised in this lawsuit. You've been sworn to tell the truth by the court reporter so you're under oath just as you would be before a judge and a jury; do you understand that?**
A Yes, sir.
Q **Now, we're across the table and if you shake your head up and down I'll understand you but the court reporters do not like to interpret so we need you to answer with words.**
A Okay.
Q **If you need to take a break for any reason, you let me know. You're entitled to take a break.**
A Okay.
Q **If I ask you a question, you don't understand it, you didn't hear it, for any reason you're not sure about the question, you have to let me know, and I will try to ask it in a way that it is understandable.**
A Okay.
Q **If I ask you a question you don't know the answer,**

you don't remember, then the truthful answer is you don't know or you don't remember.
A Correct.
Q **If you're giving me an answer that's an approximation or an estimate, if you'd let me know so the record will reflect it's an approximation or an estimate.**
A Okay.
Q **Your birthday?**
A March 1st, 1969.
Q **Where were you born?**
A Yonkers, New York.
Q **Where did you grow up?**
A Houston, Texas.
Q **What's your education?**
A I made it to eleventh grade, and I got a GED later.
Q **Where were you when you dropped out of high school?**
A Houston, Texas.
Q **Why did you drop out?**
A I just wasn't getting it. I just wasn't a good student.
Q **Did you not go back to the twelfth grade or at some time during the eleventh grade you said I'm tired of this, I'm out of here?**
A I kind of just left school.

Q **What, fall? Spring?**
A Probably the middle of the year, the middle of the school year.
Q **Now, when did you get your GED?**
A When I was 30.
Q **Where did you get that?**
A In Alabama.
Q **Any education since you dropped out of high school, meaning and I should say, any formal education?**
A Correct. No, sir.
Q **Have you ever been convicted of a crime?**
A Yes, sir.
Q **And what crimes have you been convicted of?**
A I had a CDV charge four years ago approximately. I think if a DUI is a conviction, I've had one DUI, also four years ago.
Q **One DUI?**
A Yes, sir.
Q **And the CDV, is that criminal domestic violence?**
A Yes, sir.
Q **When was that?**
A Approximately 2008.
Q **And where was that?**
A In Rock Hill.-Rock Hill, South Carolina.
Q **And where was the DUI?**

A Also in Rock Hill.
Q **Any other criminal convictions?**
A No, sir.
Q **Any other arrests?**
A No, sir.
Q **What were the circumstances of the criminal domestic violence?**
A It was, I guess you could say, the last day of my second marriage, just it didn't end well.
Q **I assume there was some type of a assault against somebody else?**
A Yes, sir. We had an argument. It resulted into a physical fight and when the police arrived they took me in.
Q **Was your husband charged, - - -**
A No, sir.
Q **- - - or I should say ex-husband?**
A Correct. No, sir.
Q **Have you ever filed any lawsuits?**
A No, sir.
Q **Have you retained an attorney in this case?**
A Yes, sir.
Q **And who have you retained?**
A Well, for [redacted], correct?
Q **With this case.**

A For this case, Mr. Hood and Mr. Shaw.
Q I'm going to ask you this because it makes a difference in what I can ask you or it may.
A Okay.
Q Do you consider Mr. Hood or Mr. Shaw to be your attorneys?
A Yes, or - - - I mean - - - I understand - - -
Mr. Hood - She's on retainer with us.
A Yes.
Q Okay.
A I'm sorry, I didn't understand if it's - - - they're representing Owen so I didn't know if they're technically his lawyer, but we've retained them. I retained them.
Q Who is Elizabeth Hope Rainey?
A Well, I think now she's the Guardian ad Litem for [redacted]. I know she's an attorney.
Q Do you know her?
A Yes, sir.
Q How do you know her?
A Coincidentally, she did my divorce to my second husband and my husband's divorce, my current husband, to his first wife.
Q Have you had any discussions with her about this case?

A No, sir.
Q Do you know how it was that she became the guardian for [redacted]?
A I do not know that.
Q Did you have any input into the decision to have her named guardian?
A No, sir.
Q Do you know who made the decision to have her named guardian?
A No, I don't.
Q Do you know whether she has any knowledge, first-hand knowledge, about this case?
A I do not know what she knows.
Q What's your maiden name?
A Charlotte Lythgoe Lavedan.
Q You might have to spell that for them, the last one for me.
A The last one is French, L-a-v-e-d-a-n.
Q What other names have you gone by?
A My first husband, my children's father, is Omohundro which is O-m-o-h-u-n-d-r-o, and I later dropped that name and took on just Charlotte Lythgoe. And my second husband's name was Thomas Jaeggi, J-a-e-g-g-i.
Q Where's Mr. Jaeggi - - - how do you pronounce it,

- - -
A Jaeggi.
Q - - - Jaeggi live?
A Yes, Rock Hill.
Q Does he still live here?
A I have no idea.
Q How long were you married to Mr. Jaeggi?
A Two years.
Q What about to Mr. - - - You were married to Mr. Omohundro?
A Yes, sir.
Q And how long were you married to him?
A Approximately 11 years.
Q And what was the reason for that divorce?
A He was abusive.
Q Physically?
A Yes, sir.
Q Where was that divorce granted?
A Texas, probably Austin.
Q And the grounds was that he phy[redacted]ly abused you?
A Yes, sir.
Q Any other grounds?
A He, at the time, was incarcerated for check fraud, I think, so he wasn't there anyway.
Q Did he go to jail for abusing you?

A No, sir.
Q Did you ever have any criminal charges brought against him?
A No, sir.
Q What about Mr. Jaeggi, what was the basis for that divorce?
A Irreconcilable differences.
Q Was there any charge made against you for physical abuse? Although you told me about you were arrested and convicted.
A Just that. It wasn't a physical marriage - - - abusive marriage.
Q Now, did you actually hit him; is that what the criminal domestic violence charge was?
A As I was told by the police, he made the call, Mr. Jaeggi made the call, so I was - - - I was the - - - he was the victim.
Q Did you plead guilty?
A Yes, sir.
Q And you pled guilty to criminal domestic violence in Rock Hill or York?
A Yes, York.
Q And what kind of sentence did you get for that?
A I was told to take criminal domestic violence classes, but I had no means to get to those classes

at that time, and I later had to go back in front of a judge and I served 15 days in jail.

Q Did that satisfy the sentence?

A Yes, sir.

Q Do you know what judge it was?

A No, sir.

Q Do you have brothers and sisters?

A I have a brother.

Q A brother?

A Yes, sir.

Q And his name?

A Pierre Lavedan.

Q Is he a physician?

A He is.

Q He lives in Omaha?

A He does.

Q Does he have any specialty as a physician?

A He was family practice for several years, and I believe internal medicine, and he now works either for or with Hospice.

Q Did he come to South Carolina in 2009/2010?

A He came to my wedding in 2007 to Tom Jaeggi.

Q Is that the last time you've seen him?

A Yes, sir.

Q So I think that answers my question. And really

what I was getting at, has he ever seen [redacted]?

A No, sir.

Q Did he come to the hospital? And then I think I can figure that out myself. He didn't come Levine's Children's Hospital in 2009/2010?

A No, sir.

Q Any other siblings?

A No, sir.

Q Are your parents still alive?

A My father and my step-mother are alive.

Q Where do they live?

A Idaho, Pocatello.

Q When's the last time you've seen them?

A They came to visit me with my current husband in Rock Hill, but [redacted] was in foster care.

Q To your knowledge, have they ever seen [redacted]?

A They have not.

Q They don't have any knowledge about any of the issues in this lawsuit, if they did it'd be secondhand?

A Correct.

Q Do you have children? I know you have one because she was with us earlier today.

A I have two children. Yes. I have Kayla Lythgoe, and my son is Aaron Lythgoe.

Q And your current husband - - -

A He has four children.

Q Now, Aaron's how old? Aaron is a - - -

A Fourteen.

Q - - - man - - - boy?

A Yes. I'm sorry. A man/boy he is.

Q He's 14?

A Yes, sir.

Q And he's at boarding school now?

A Yes, sir.

Q Why is he in boarding school?

A He got lazy in seventh grade and eventually was expelled for minor things like tardies and detentions. Once you're expelled in Aiken County, you can't go back to that county for - - - until the following year, so we found a boarding school that would catch him up to the current year he belongs in.

Q What boarding school is that?

A Thornwell.

Q Oh, in Clinton?

A (Indicating yes)

Q And what school was he going to that he got expelled from?

A Kennedy Middle School.

Q Is that a public school in Aiken?

A Yes, sir.

Q Will he start Thornwell in August?

A Yes - - - Where are we? He went last Tuesday.

Q And that was his first day was last week?

A Yes, sir.

Q Do they have school there now?

A No. They advised that he would be able to settle in there and get used to their routine and structure. And they start tutoring next week and so they tutor them before school starts to catch them up.

Q Would DSS have any involvement in him going? So it's - - -

A No, sir.

Q When did you marry Mr. Williams - - -

A September 26, 2008.

Q When did you meet Mr. Williams?

A - - - I'm sorry, 2009.

Q Wait, more important for him to get it right than you is my experience.

A Yes. 2009.

Q When did you meet Mr. Williams?

A August 2008.

Q How did you meet him?

A We met through mutual friends. Through mutual friends.
Q Who are your friends or friend?
A I was staying with a family and their neighbors next door to them, their son was killed. And my husband's a pastor and he was doing - - - he was friends of that family. And he was coming and going a lot and that family knew the family I was living with, and we met sort of over the fence talking and continued to talk.
Q Where was he, he being your current husband, Mr. Williams, where was - - - did he have a church?
A Yes, sir.
Q And what was the name of his church?
A Faith Family Christian Center.
Q And where is that located?
A I can't think of the street name. It's just behind the - - - where am I, Rock Hill airport.
Q Do you know long he had been the pastor there?
A I believe about 16 years.
Q Was it a church he founded himself?
A Yes.
Q Were there like any associate pastors or - - -
A No.
Q Do you know why he left that church to go to Aiken?

A Yes, better opportunities.
Q Is the Faith Family Christian Center still an on-going church?
A Yes, sir.
Q Tell me about your employment history. Is that going to take us a while to go through your employment history?
A Well, since my first job?
Q Yes, I've just got to get an idea of - - -
A I've had several jobs since I was 16. When I got a car, I got a job. And as an adult I got into advertising with The Herald in Rock Hill.
Q Well, let me just back up. You dropped out of high school in the eleventh grade. When you dropped out, did you have a job when you dropped out?
A I've been through a lot of fast-food jobs and receptionists jobs, customer service.
Q So you were living in Texas until you were how old?
A Thirty.
Q And those jobs were fast food, cashier type jobs?
A Well, as I got older I got office, secretarial, jobs.
Q And when you left Texas, you moved to Alabama?
A Yes, sir.
Q And your parents were in Alabama?

A Yes, sir, my mom and step-dad.
Q And did you have jobs in Alabama?
A I worked a seasonal job at a racetrack. I don't recall working in Alabama because I wasn't there very long. My parents passed away.
Q You worked Talladega?
A (Indicating yes)
Q That's a yes?
A Yes. I'm sorry.
Q You would work, I guess, in preparation and for the race?
A I sold tickets.
Q Any other jobs while you were in Alabama?
A Yes, I worked for a clothing store in human resources.
Q And that was in Anniston?
A Yes, sir.
Q Then you moved to Tennessee?
A Yes, sir.
Q Any jobs in Tennessee?
A Yes. I worked at a knife company. I can't remember the name, and I ended up at that company in customer service.
Q Like a company that manufactured knives?
A Knives, yes. I was in shipping at first, and they

moved me into the office.
Q Why did you move from Alabama to Tennessee?
A I didn't want to be in Alabama.
Q And you moved to Kingsport?
A Yes, sir.
Q Why did you pick Kingsport?
A I had a friend that lived there.
Q And then from Kingsport you came to Rock Hill?
A Correct.
Q How did you end up in Rock Hill?
A I met my second husband online, and he lived in Rock Hill.
Q Did he work?
A Yes, sir.
Q What was his job?
A He does maintenance at - - - the name escapes me. Atotech?
Q That sounds like you're not sure about that.
A No.
Q We'll put that down as a guess or is that - - -
A No, it's Atotech.
Q It's Atotech?
A Yes, sir, in Rock Hill.
Q And have you had any contact with him in the last two or three years?

A No, sir.
Q So you don't know whether he's still around or not?
A No, sir.
Q Did he have any children that lived in your home?
A He had a son, Patrick, who was a teenager.
Q Did Patrick live in the home?
A He lived with us for a little while.
Q And who was living in the home, you, Kayla, Aaron and Patrick?
A Yes.
Q What about Patrick, do you have any contact with Patrick?
A I have no contact with any of that family.
Q Now, Owen was born September the 9th, 2009?
A That's correct.
Q That's your first grandchild?
A Yes, it is.
Q I'm assuming it was.
A Yes, it is.
Q Were you there for the birth?
A Absolutely.
Q And the birth was at Piedmont?
A Yes, sir.
Q Were you there when [redacted] was discharged?
A Yes, sir.

Q Because I've also reached the elevated status of being a grandparent and when my daughter was in the hospital, the hospital came and had a discussion about don't shake your baby.
A Okay.
Q And I was wondering was there any similar thing that happened at Piedmont about somebody comes and has a discussion about - - -
A No, they should.
Q Even without somebody coming and having that conversation, you were aware that that's not something you should do to a baby?
A Correct.
Q Did you have any discussions with either Michael or Kayla about parenting and - - -
A No, sir.
Q Did you ever tell them, you know, you shouldn't shake [redacted]?
A I don't believe it came out. No.
Q Were you ever concerned that prior to January of 2010 that something like that might have been taking place?
A No, sir.
Q I guess if you had, then you would have had the conversation?

A Yes, sir.
Q Now, when [redacted] was born, say, the first from - - - This is a broad question, you give a broad answer. But from September, October, November, how was he physically and to the extent you can tell with an infant mentally?
A He was what I would call perfect. He had no problems, no disabilities, nothing.
Q Did you have any concerns about Kayla's parenting skills?
A No, sir.
Q Did you have any concerns about Michael Carduff's parenting skills?
A No, sir.
Q When Kayla would take [redacted] to the pediatrician, would you go with them?
A Yes, sir.
Q Do you know how many visits there were between September 9th and December 4th, 2009 to the pediatrician?
A I mean, I don't know how many. I know that we did all of the normal baby checkups and immunizations and things like that. Prior to December, we went maybe three or four times to the pediatrician. We were concerned about excessive crying.

Q And how old was [redacted] when you were concerned about the excessive crying?
A Three months.
Q And I may get to that. But what about September or October, were your any concerns about excessive crying?
A No.
Q Prior to Thanksgiving, any concerns about excessive crying?
A No, sir.
Q Who was the pediatrician that you went to?
A Sunshine Pediatrics, I want to say Dr. Patel.
Q Did you see the same doctor every time?
A Yes, sir.
Q So it was Dr. Patel that you saw each time?
A I believe so.
Q Well, you live in Aiken now.
A Yes, sir.
Q When you were living in Rock Hill back in 2009 and early 2010, where were you living? What was the address?
A Shuman Road, just off of Museum Road. I don't recall the street number, the house number.
Q Now, how close or how far was that from where your daughter was living?

A Approximately two blocks.
Q Would you drive down to their house, or walk, or some of both?
A I drove. I drove. It would take two minutes depending on the light.
Q So there was a light?
A There was a light.
Q Okay.
A It was around the corner.
Q So if you caught it, and it was green it was two minutes?
A Yes.
Q And I guess if it was red, it was three?
A Three to four. It was a long light.
Q So I think it'd be fair to say you lived close by?
A Very close.
Q Now, were they living in a trailer park?
A Yes, sir.
Q What about you, was yours a stand-alone house or - - -
A It was a brick house.
Q What part of Rock Hill? Was there like a section of Rock Hill that that would considered?
A Mount Gallant area is just - - - It was also just in the same neighborhood as the airport because we

were close to the church.
Q In October and November, how often you would have interaction with [redacted].
A I tried every day. He was my joy - - -
Q So would there - - -
A - - - and is.
Q I'm sorry. If I interrupt you - - -
A No, you're fine. I'm sorry.
Q I'm starting to think about my next question.
A Okay.
Q It's not my intent to interrupt you but if I do, let me know. When you would visit, would you - - - I guess, you spent a lot of time with [redacted]?
A Yes.
Q And so you had the opportunity to observe [redacted] and you had an opportunity to observe Michael and Kayla interacting with [redacted]?
A Yes.
Q Would there be times when you would keep [redacted] just yourself?
A Yes.
Q How often was that?
A Quite often. Kayla and Michael both worked for a little while and, you know, I would keep him when they would work. If Michael wasn't working, he

would keep them - - - him or vice versa, if Kayla was working.
Q Do you have a good relationship with Kayla?
A Very good.
Q Kayla dropped out of school in the eleventh grade as well?
A Yes, sir.
Q Did you have discussions with her and encourage her not to?
A I did.
Q And what caused her to drop out of school in the eleventh grade?
A I mean, she would have to answer that.
Q She has.
A Correct.
Q But you as a mother may have a different perspective.
A In my assumption, she - - - She too didn't - - - She was a very smart student, a straight-A honor role for a long time. She got into the eleventh grade and took some college-type courses, sociology or psychology, and it blew her out of the water. She didn't understand it and that's where she started to decline and just quit.
Q When she quit, did she continue to live with you?

A Shortly after that she met Michael in October, maybe September, and eventually she asked if she could go live with him and his parents.
Q When Kayla dropped out in the eleventh grade, where were you living? Or really what I want to ask you, who were you living with then? Were you by - - -
A Mr. Jaeggi.
Q Did that have anything to do with her dropping out, the relationship with Mr. Jaeggi?
A I mean, again, you'd have to ask her that. I think she was more in having a - - - relationship was starting.
Q The relationship with Michael?
A With Michael.
Q Did Kayla have any trouble with drugs or alcohol?
A None.
Q Did you ever see anything to make you think that Michael had issues with drugs or alcohol?
A No.
Q I'm going back to October/November 2009, you would keep Owen several days a week?
A Yes.
Q And then you'd be visiting just about every day?
A Yes.
Q For two or three or four hours?

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A No, not always. I would definitely check in all the time, not checking for anything, just to be with him.
Q Was there anything during those visits or when you were keeping [redacted] by yourself that made you suspicious that there was some harm coming to [redacted], either intentionally or unintentionally?
A No.
Q Kayla and [redacted] moved into the house on Gaulden Park?
A Yes.
Q When did they move into that house?
A Well, we can count back nine months from September. She found out she was pregnant, she was living in Concord, and she moved to Rock Hill approximately maybe two months after that.
Q It sounds like March 2009, give or take a month?
A Yes, sir.
Q Were you or your husband providing any kind of financial support to them?
A Not that I remember, no. Kayla never lost a job. She worked at Walgreens in Concord and was transferred to Walgreens in Rock Hill.
Q How was the relationship between Kayla and Michael?
A It seemed fine.

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Q Was there any discussion about the two of them - - - were they having discussions about getting married? They were living together and had a child.
A No.
Q Did you ever have any discussions with Kayla about whether she should marry Michael or not marry Michael?
A No.
Q Other than you and Kayla and Michael, was anybody else involved in caring for [redacted] during the 2009?
A No.
Q What about Brian, Michael's brother, did you ever observe him in the house?
A He was there sometimes. He definitely wouldn't be considered someone that cared for [redacted].
Q Right. Did you - - -
A I mean, take care of him.
Q Did you have any concerns about Brian being around [redacted]?
A No, not - - - no.
Q Now, [redacted] was taken to Piedmont Medical Center December the 4th of 2009.
A Yes, sir.
Q What I want to back up is, had [redacted] had any problems the ten days prior to that visit?
A Well, as I said earlier, we had - - - He seemed to be crying more than usual and not eating properly is what Kayla - - - how Kayla sort of described it, and so we took him to the pediatrician I think two or three times.
Q Thanksgiving, did your families get together for Thanksgiving?
A Yes.
Q Was [redacted] having any troubles Thanksgiving?
A No.
Q There was a time you took - - - Kayla took Owen to Sunshine Pediatrics.
A Yes.
Q And that was because there was concerns - - - As I understand he had a runny nose and a red nose, and his appetite wasn't as good?
A Yes.
Q Did you go on that visit to Sunshine Pediatrics?
A Yes.
Q Do you remember who the doctor you saw there was?
A Dr. Patel.
Q And do you remember what Dr. Patel's impression was of what was going on with [redacted]?
A If I remember correctly, the first time we went he

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mentioned possibly allergies, which was kind of vague, but that would - - - that made sense because of the runny nose. And the second or third time we went, he mentioned a throat infection.
Q I want to try to keep it in order. So you went to Sunshine Pediatrics and you saw Dr. Patel. Do you remember what his instructions were or recommendations?
A I don't remember.
Q But you were there with Kayla?
A Yes.
Q Do you know if Michael was there?
A He was not.
Q And then as I understand it, some time, a day or two or three after that, Kayla took [redacted] to, I can't remember, Riverview?
A Riverview or Riverchase, something like that.
Q I called it Riverside but River something.
A Yes, an emergency clinic.
Q Did you go on that visit?
A No.
Q Do you know why Kayla took [redacted] to Riverview or side or chase?
A I believe she told me it was the same symptoms. He was crying and not eating.

Q **Do you know whether or not they came up with any kind of diagnosis or - - -**
A I don't know what their diagnosis was.
Q **And then there was another visit back to Sonshine Pediatrics.**
A Yes.
Q **Did you go to that second visit?**
A Yes.
Q **Was Michael with you?**
A No.
Q **Tell me what was going on with him in that, it'd be the second visit to Sunshine, but - - -**
A The same symptoms, crying and not eating well.
Q **Now, during any of these three visits, did you see any kind of bruises or marks on him?**
A No.
Q **So what was unusual was he had a runny nose, and he was crying more than usual, and his appetite wasn't as good?**
A Correct.
Q **Anything else?**
A No, sir.
Q **No marks, no scratches, nothing else?**
A No, sir.
Q **Do you remember what the - - - I say the third**

visit to the doctor, what recommendations or treatments were given?
A I really don't know the details, but I do know that that's when he said he had a throat infection.
Q **Was it Dr. Patel again?**
A Yes. It's possible he gave him an antibiotic, but I really don't remember.
Q **And we'll go back, and I've got my calendar here. December 4th, 2009, according to my calendar that was a Friday.**
A Correct.
Q **Did you have any contact with [redacted] that Friday, December the 4th, 2009?**
A I want to say no because it was my son's birthday, and we were putting up Christmas lights all day so I don't believe that day I had seen him yet, that morning.
Q **But you don't remember seeing him any time that day? Did you see him at the hospital?**
A I was called when they were - - - Kayla and Michael were driving to the hospital, she called me and I dropped the lights and got in my car.
Q **Do you remember seeing him any time that day before you got to the hospital?**
A No, sir.

Q **Had you seen [redacted] the day before, which would have been Thursday the 3rd?**
A Probably.
Q **Do you remember anything about how [redacted] was doing on the 3rd?**
A I remember he was fine. I remember he was fine.
Q **Had he gotten over his fussiness or his crying and his - - -**
A Maybe it didn't seem alarming from what I recall.
Q **Do you remember whether he was getting better, or do you remember?**
A I think that he had given him some sort of antibiotic, and so I would have to say he was appearing to be better, getting better.
Q **Some times you're giving me answers and I hear in your voice you're not sure.**
A Correct.
Q **So I don't want you to guess.**
A Okay.
Q **So what I want to do is, is do you remember seeing [redacted] on Thursday, December the 3rd; do you have any recollection of seeing him and knowing how he was doing?**
A I don't remember.
Q **Now, when you got the call on December 4th, you**

hadn't see him that day, but were you surprised that they were going to the hospital?
A Yes, I was shocked.
Q **And why were you shocked?**
A Well, I was - - - I was scared for [redacted] I didn't know what was happening.
Q **And I guess that was a very poor question. What I'm trying to find out is, did you have any indication that he might be having some kind of problems that would require him to go to the hospital?**
A No, sir.
Q **When you last saw him, did you have any concerns that he was getting worse?**
A No, sir.
Q **Do you remember if the last time you saw him you had any concerns at all about his health?**
A No, sir.
Q **Now, when you got to the hospital, were Michael and Kayla already there with [redacted]?**
A Yes, sir.
Q **And where was [redacted]?**
A He was - - - he was back in the ER in one of the trauma rooms.
Q **Were you allowed to go back and see him?**

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A I didn't ask, I just went.

Q I guess the question is, I shouldn't asked you if you were allowed, but - - -

A I went back there, yes.

Q So you saw him?

A I saw Michael in the waiting room with the car seat, and I went to him first and the car seat was empty, and I said where are they. And he just pointed back to the doors and so I went through the doors and found Kayla and [redacted].

Q [redacted] was with Kayla?

A Yes.

Q How was [redacted]?

A When I got there, [redacted] was crying and the doctor was examining him.

Q Did you notice any bruises?

A I did not notice any bruises.

Q Did you look for bruises?

A I didn't consciously look for bruises.

Q Were you looking at [redacted] to see if, you know, as a mother, you could notice whether if he was red or warm or - - - I say a mother, as a grandmother - - -

A Right. Right. I was looking at him with concern.

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I - - - bruises weren't in my mind. I wasn't looking for anything weird. I was just seeing - - - I was just looking at him.

Q Did you see anything unusual about him? He was crying, which I think you said, I understand, he was normally - - -

A Correct.

Q - - - not a fussy baby. But other than crying, anything out of the ordinary?

A No, sir.

Q How long was he at Piedmont?

A That December 4th he was - - -

Q December 4th. Yeah, - - -

A - - - he was fine.

Q My questions are December the 4th, 2009.

A He was in the emergency room approximately three to four hours maybe, maybe less.

Q Did he get better while he was in there?

A No, sir.

Q Did he get worse?

A Yes, sir.

Q How did he get worse?

A As I recall, they were examining him. According to what Michael and Kayla told me, how he was when Kayla got home from work and the transport to the

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hospital, I didn't see any of that. By the time I got to the hospital, [redacted] just seemed like he was irritated and they were examining him. And if I recall correctly, they were going to eventually discharge him. And I remember mentioning to the doctor that he was born with - - - When he was born Kayla had staph or a strep infection that is normal, and they were treated when he was born with antibiotics and there was no side effects to that. But as soon as I mentioned that, the ER doctor sort of freaked out and said oh, my gosh, I wish you would have told me that sooner, and they ordered a spinal tap.

Q And the spinal tap - - -

A It showed blood in his spine.

Q And did the blood in the spine lead to the transfer to Levine's Children's Hospital?

A Yes, sir.

Q Do you know who made the decision for [redacted] to go to Levine's?

A The ER doctor. I do not know.

Q It wasn't anything that you or Michael or Kayla had any input into?

A About him being transferred?

Q About him going, yes.

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A No, they just said he was - - - they ordered an ambulance.

Q Do you know whether you or Kayla or Michael said we want him to go to Levine's?

A No, sir.

Q Okay.

A I didn't know Levine.

Q You didn't know anything about it?

A No, sir.

Q Had you even heard about it?

A No, sir.

Q Never seen anything about it?

A No, sir.

Q So that decision was made by somebody at Piedmont Medical Center?

A Correct.

Q Did you go to Levine's that night?

A Yes, sir.

Q How did you get there?

A In my car.

Q Owen was taken in an ambulance?

A Correct.

Q And did Michael and Kayla ride in the ambulance or did they go in their car?

A I don't know. I think they followed the ambulance.

Kayla might have gone in the ambulance. I don't know.

Q Do you know what time [redacted] arrived at Levine's?

A No, sir.

Q Would it have been like after midnight on Friday?

A No, sir. I recall it was in the afternoon, maybe in the evening.

Q So he got there some time late on Friday night the 4th?

A Okay. Kayla got off work that day at 4:00 and then we ended up at the - - - at the Piedmont. So after all the work-up at Piedmont, it could have been late in the evening.

Q So it could have been Saturday morning if it was after midnight? It could have been after midnight when you got to Levine's?

A I don't recall it being that late, but it was in the night.

Q The records from Piedmont would show when he left and I guess from Levine's would show when he got there?

A Yes. I don't remember it was - - - I was - - -

Q You wouldn't disagree with the times on those?

A No. No. No. I just don't remember.

Q Do you remember the police coming to Piedmont

Medical Center during December the 4th visit?

A I do not remember them being there. No.

Q Because your daughter testified that the police came and questioned her during that December 4th visit to Piedmont.

A That's possible. They didn't question me. I don't remember seeing them. I was in the emergency room the whole time.

Q When you were at Piedmont December the 4th, did anybody say anything about non-accidental trauma or a concern that there had been some kind of trauma to Owen?

A No, sir.

Q What happened when you got to Levine's?

A By the time I got to Levine, I believe [redacted] was already in ICU. I don't really recall events step by step.

Q When [redacted] left Piedmont, did you go back home before you went to Levine's?

A No.

Q You went straight to Levine's?

A Yes.

Q And do you remember whether or not there had been any diagnoses made about what was going on with [redacted]?

A Not at - - - not that day, no.

Q Do you remember there was a diagnosis made of subdural hematoma?

A Yes.

Q Do you know what a subdural hematoma is?

A I know hematoma means blood of some sort. That's - - -

Q Did you ask when - - -

A I asked questions and they explained it. He had cranial bleeding.

Q Do you remember any of the doctors or nurses or social workers you talked with at Levine's during that December hospitalization?

A I remember Dr. Bailey.

Q What's his first name?

A I do not know.

Q And his specialty?

A Neuro surgical - - - pediatric neurosurgeon perhaps.

Q She's going to put that down as a guess, okay?

A Okay. Well, I know he's in neurology - - -

Q Okay.

A - - - and I know he's in pediatrics.

Q So you think he's a pediatric neurologist - - -

A I'm guessing, yes.

Q - - - or could be a pediatric neurosurgeon?

A I believe he's a neurosurgeon.

Q What do you remember about that discussion?

A I don't remember what day it took place. I do remember there was a day that my husband and I questioned Dr. Bailey in the corner of the room up by the front door and asked him what happened, how did this happen, how does this happen. And I remember clearly at that time Dr. Bailey told us it can be only a couple of things that could cause cranial bleeding. And he explained at that time it could be trauma at birth or it could be shaken baby, and he shook his hands physically to show that.

Q And that was in December?

A Yes, sir.

Q Anything else? Any other discussions you remember with anybody at - - -

A I remember we talked a lot about his eye - - - [redacted]'s eyes.

Q Who is we?

A Well, I remember I talked a lot with doctors concerned about [redacted]'s eyes because they kept saying he had blood behind his eyes.

Q Now, was that in the December hospitalization?

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A Yes.
Q Now, when did you first learn that [redacted] had the subdural hematoma?
A When we were told - - -
Q That was my question. When were you told is what I guess I was trying to ask?
A Again, it was just a really emotional time, but I'm guessing the second day, maybe December 5th or possibly - - - it had to be December 5th.
Q So if he got there early in the morning - - - so some time that first day you learned?
A Correct.
Q Now, when you got there, was there a sitter in [redacted]'s room when you first got there?
A I don't think so. No.
Q Do you remember there being a sitter in [redacted]'s room when he was at Levine's in December of 2009?
A Not in December.
Q There was no sitter there in December to your recollection?
A I don't remember then.
Q Do you remember any discussion about non-accidental trauma during December of 2009?
A Yes.
Q Tell me about that, what you remember about that.

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A To be honest, I remember I only heard of it in paper - - - or read it. I don't remember it ever being verbally told to me as a diagnosis. It was - - - it didn't come up, that phrase.
Q And what phrase came up?
A Well, when we talked to Dr. Bailey about what it could have been, and he said it could have been one of two things. But I don't believe we were ever told verbally that that's what it was. I think that I read it first on the discharge papers.
Q Did you have any involvement with DSS during that December hospitalization?
A They spoke to me briefly.
Q Now, did you stay at the hospital during - - -
A Every day and every night.
Q - - - December? You were there the whole time?
A Yes.
Q Did you sleep on the couch?
A Yes.
Q How about your daughter?
A She stayed as well.
Q How about Michael?
A He stayed as well.
Q So the three of you stayed the entire time?
A And my husband came and went.

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Q How many times did DSS come to the hospital in December of 2009?
A Possibly twice.
Q Possibly twice?
A Yes, sir.
Q Did you know why DSS came to the hospital?
A At that time I did not know.
Q Did you think it was unusual that DSS was coming to the hospital?
A I remember thinking because it's an infant, I think it's procedure. I've never been involved with DSS or anything to this magnitude that we went through.
Q So you thought it was usual for DSS to come to the hospital when an infant's in the hospital?
A I thought it was procedure.
Q What kind of procedure?
A When you have an infant who's bleeding from the brain.
Q Was it the same person or a different person that came from DSS?
A I don't remember that.
Q Did you give any information to that person from DSS?
A There was a day that a lady from DSS, I don't remember her name, she sat on the couch with me and

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asked me if I would be willing to take [redacted] into my custody and I said yes, of course, if need be. She said if need be. And I remember I signed a piece of paper.
Q That was in December?
A Yes.
Q Were you curious as to why they were asking you about taking custody of [redacted]?
A Again, I didn't know what all was happening. We were still sort of in - - - We were in the hospital in shock. But at that point I was - - - I figured - - - When they asked me to take [redacted], if I would - - - if I would take [redacted], I knew something wasn't right somewhere.
Q And did you ask them why they were making that inquiry?
A I don't recall.
Q And when you said you knew something wasn't right, what did you think wasn't right?
A Well, I knew that if they were asking me if I would be willing to take [redacted] home from that hospital stay, that they were - - - they must have been thinking something.
Q And what was it you thought they were thinking?
A Honestly, at that time I didn't think this through

like I can now.
Q In December of 2009, did you have any concern that Michael might be harming [redacted]?
A I did not.
Q Did you have any concern that Kayla might be harming [redacted]?
A I did not.
Q Did you have any concern that anybody might be harming [redacted], either intentionally or unintentionally?
A No.
Q Now, when [redacted] was in Levine's, how was he?
A When he was where?
Q When he was in Levine's Children's Hospital, how was he?
A In December?
Q Yes, ma'am. I'm sorry. Thank you for clarifying.
A Well, he seemed to recover quickly the four or five days he was there. I remember he was sort of back to himself.
Q How soon did he get back to his normal self?
A Maybe two days, three days later.
Q When he was discharged, was he having any kind of physical or mental problem that you could see?
A None.

Q Do you know what kind of work-ups, do you know what kind of scans, do you know anything about what kind of treatments and diagnostics were done at Levine's?
A No, sir.
Q Did you call your brother and ask him?
A Not in December.
Q Did you call Dr. Patel?
A No, sir. I was informed that the hospital was going to contact his pediatrician.
Q Well, when you said there was some concerns when you got the inquiry from - - - somebody from DSS said will you take custody. Did you contact Dr. Patel to ask him about anything that he might have seen or heard or observed?
A No, sir.
Q Did you ever make any efforts before January of 2010 to get permanent custody or full custody of [redacted]?
A I did not make any attempts to do that. I was with him every day.
Q And then I think you told me, you didn't have concerns about leaving [redacted] with Michael?
A I didn't have any reason to. I never saw anything out of the ordinary.

Q Did you ever encourage Michael or Kayla to go to some kind of parenting class before December 2009?
A Before December?
Q Yes, ma'am.
A No, sir.
Q Were you giving them any - - - as a grandmother to mother, were you providing any assistance, instructions?
A Of course. I mean, as a regular - - - I was very overprotective and Michael was very overprotective.
Q Michael was overprotective as well?
A Of [redacted] yes.
Q How as that?
A We sort of - - - I always wanted to hold [redacted], and he always wanted to hold [redacted]. But I gave regular grandmother tips: hold his head, you know, when you pick him up. He seemed fine with him.
Q Do you think Michael loved [redacted]?
A You'd have to ask Michael that.
Q What did you think? You saw him.
A I think he was learning to love him. I think Michael was young.
Q Did Kayla love Michael?
A Michael? Yes.
Q Did Kayla love Michael? That's a - - -

A Yes.
Q What about you, what were your feelings about Michael?
A He didn't give me reason to hate him but he was my daughter's boyfriend. I don't know how many mothers like any of their daughter's boyfriends, but he seemed okay to me.
Q I guess you might have been a little concerned because he didn't have a job and wasn't looking for a job.
A That was concerning, yes.
Q Any other concerns that you had?
A No.
Q Do you think he loved your daughter?
A I do.
Q Do you think he would have done anything to hurt your daughter; did you ever have those concerns?
A I don't. No, sir.
Q And I guess until January of 2010 you had no concerns that he'd do anything to hurt your grandchild.
A I never would have thought it.
Q You never saw anything that made you think that he would hurt your grandchild either intentionally or unintentionally?

A Not to harm him, no.
Q And you don't have any recollection of a sitter being in [redacted]'s room at Levine's in December of 2009?
A I don't.
Q Now, did anybody with DSS question you about whether or not they thought that there had been - - - somebody might have harmed [redacted] intentionally or unintentionally?
A They did not.
Q If you had been asked that question, what would you have answered?
A I wouldn't have known who could have hurt him.
Q That answer was no?
A No.
Q When's the last time you had any contact with Michael?
A January 11th.
Q Were you present when he pled guilty?
A In the courtroom.
Q Did you ask for - - -
A Yes, I was there but, I mean, you said contact with him.
Q No. No. No. I think you answered my - - - You had had any discussions with him since he pled

guilty or you learned that he confessed?
A Correct.
Q You were present when he confessed?
A No.
Q You were not?
A No.
Mr. Hood - Pled guilty.
Q I'm sorry. You answered my question, but I didn't ask it right.
A I know what you're - - -
Q You weren't present when he was sentenced?
A I was.
Q Wait a minute.
A I was present when he was sentenced.
Mr. Hood - Take your time. Take your time.
A I was not - - -
Q Yes, that's what I was trying - - - you were there?
A Yes, sir.
Q Did you make any kind of statement to the judge?
A Yes, sir.
Q Did you ask for leniency or did you ask for the maximum or what did you ask for?
A Somehow I felt he was going to get probation because it was his first offense and he was young, and so I felt if I didn't speak up, that could

happen. And I asked for a sentence, something that would teach him what he did was wrong.
Q And what was the sentence?
A He got eight years, I believe.
Q Where is he doing his time?
A He's been moved around. I want to say McCormick right now. I could be wrong. They moved him.
Q How about his parents, do you have any contact with his parents?
A Not since he was sentenced.
Q Do they have any involvement with [redacted]?
A Not since he was sentenced.
Q So they haven't seen [redacted] since January of 2010 to your knowledge?
A Correct. Well, they were in the hospital January 11th.
Q Have they had any contact with [redacted] since you moved to Aiken?
A Yes.
Q Oh, they have?
A Yes.
Q What contact was that?
A I apologize. They asked for a visit and we said - - - They came to our home, and they basically held [redacted] for hours and sat in the living room and

then we - - - Do you need who we all are? My family, my husband, Kayla, and Michael's parents and [redacted] went out to eat and then they left, and we haven't seen them since.
Q Were any tears shed in that?
A No.
Q No tears?
A (Indicating no) Not on their part.
Q Did you ever contact anyone with law enforcement about any concerns with Michael or Kayla?
A No.
Q Did you ever contact anyone with DSS about any concerns that somebody might harm [redacted] prior to December 2010?
A No.
Q Did you ever try to reach out to DSS, you knew DSS was involved in the case, to talk with them about what was going on?
A No, sir.
Q And I think you said you had no concerns that anybody was either intentionally or unintentionally harming [redacted]?
A Correct.
Q So you certainly had no reason to reach out to law enforcement or DSS?

A Correct.
Q And if you'd been questioned you would have told them you didn't think anybody would do anything to harm [redacted]?
A Correct.
Q Now, I know Michael has confessed to what happened in 2010. Has he ever confessed to harming [redacted] in December or November of 2009?
A No, sir.
Q Do you have any idea what happened? Do you know whether anything happened to [redacted] during that time?
A I don't think we'll ever know.
Q Did you see anything other than, you know, the runny nose and the loss of appetite that caused you to be concerned?
A No.
Q So you don't know what happened that caused the bleeding in the brain?
A I do not know.
Q And I don't want you to be offended by this. I've asked some questions that are pretty personal but this one is - - - because I know with my children there were times when I dropped them. When you had your two children, did you ever drop them?
A No.

Q Well, good for you. When you had [redacted] did you - - -
A I've never dropped a baby.
Q You never dropped a baby?
A No, sir.
Q I guess I'm just a bad daddy.
A It happens.
Q I haven't dropped my grandchild. I'll tell you that. I'm better with them. Did you ever bump into anything when you were holding him or - - -
A No, sir.
Q Do you know the names of the people who were involved with [redacted] with DSS in December?
A No.
Q Were you present at Kayla's house when DSS came and did a home visit?
A No.
Q Do you remember what the conditions were on [redacted]'s discharge from Levine in December of 2009?
A What the conditions were.
Q Yes, ma'am. Do you remember what the conditions were?
A I believe I read that the conditions were that Kayla keep an eye on [redacted]'s - - - make sure he doesn't get nauseous or fatigued or any signs of

discomfort.
Q Do you remember her having to sign a safety plan with DSS?
A I believe, yes.
Q Did you ever look at that safety plan?
A I have seen it since.
Q When you say since, was that like once this lawsuit was filed?
A No. I saw it - - - I mean, I - - - I probably - - - I probably read it at that time.
Q At that time being December?
A Yes, sir.
Q Do you remember what was in that safety plan?
A What I just mentioned. To the best of my knowledge, it was simple orders for Kayla to watch [redacted]'s demeanor.
Q Do you remember anything about the discharge was that DSS was going to continue to stay involved in - - -
A I remember that.
Q - - - with [redacted]?
A Yes.
Q And do you remember how DSS was going to continue to stay involved?
A I believe they told Kayla in the hospital that they

were going to follow up with several visits and, you know, discuss whatever they were going to discuss. And that they were going to have them take parenting classes.
Q And do you remember that they were required to have another scan of [redacted] either at Levine's or at Piedmont - - -
A Yes, sir.
Q - - - you remember that?
A Yes, and they did that.
Q Did you go with [redacted] when he had that repeat scan?
A Yes.
Q Where was it done?
A At Levine.
Q And was it a full body, or a head, or do you remember?
A I do not remember.
Q Do you remember it was normal?
A Yes. I remember it showed blood clots meaning it was drying up and healing up.
Q And when you realized that DSS was going to stay involved in the care, did that raise any suspicions with you about what was going on?
A Again, I sound naive but I think it - - - I'd thought it was still procedure because it was a

child involved.
Q So it didn't raise any concerns?
A At that time, there was nothing going through my mind of abuse.
Q Now, do you have any relatives who live in York County?
A No.
Q Does your husband?
A Yes.
Q Does he have a sister who's in law enforcement?
A Yes, he does.
Q And what's her name?
A Charlene Blackwelder.
Q And what is her role? What does she do as a law enforcement officer?
A I know she's a police officer in Tega Cay.
Q How long has she been in Tega Cay?
A She just went to Tega Cay. I want to say maybe a year ago approximately. She was in Rock Hill for 20-something years.
Q She was with the Rock Hill Police Department?
A Yes, sir.
Q Was she a detective, was she a - - -
A She was a detective at one time.
Q Homicide? Narcotics?

A I do not know.
Q Do you know?
A I don't know.
Q Have you ever talked with her about what happened to [redacted]?
A Yes.
Q When did you talk with her?
A I don't recall talking to her until after January 11th incident. That's when all the pieces of the puzzle came together.
Q So I guess if you'd had some concerns that some harm might come to [redacted] either intentionally or unintentionally that was somebody you could contact?
A Absolutely.
Q But there was nothing that made you think there was any reason to call her?
A Correct.
Q Do you know whether or not she ever observed [redacted] in November or December of 2009?
A No.
Q Did you see her at Christmas or Thanksgiving? I don't know what the family dynamics are like, but did y'all get together Thanksgiving and Christmas and - - -

A We do. We did not that year. I remember we had Thanksgiving and Christmas at my house.
Q I'm just wondering if during December of 2009 you just happened to run into her for some family gathering.
A I don't recall.
Q Would you have any kind of regular contact with her?
A Not - - - not so much. No.
Q What about your husband?
A They'd talk a lot. They're close.
Q And when [redacted] was discharged from Levine's, he was in good health and back to his normal self?
A Yes.
Q Did you observe anything the rest of December that caused you to have any concern at all for [redacted]?
A No, sir.
Q Did you see anything in that December that caused you to have any concern about Michael being around [redacted]?
A No, sir.
Q Did you observe Michael on a regular basis, you know, treating [redacted] very carefully, I think to use your words?
A Yes.

Q And Kayla, I'm assuming Kayla was a good mother?
A Yes.
Q And if Kayla had had any kind of suspicions that anybody was going to do any harm intentionally or unintentionally to [redacted], would she have contacted you? Do y'all have that kind of relationship?
A I would be the first.
Q And then you would have contacted - - -
A I would have done what I - - -
Q You would have done something?
A - - - something. Yes. We had no concerns yet at that point
Q Now, Dr. Bailey told you that the blood clots were either the baby being shaken or trauma at birth. Did that cause you any concerns?
A Yes.
Q And what did you do about those concerns?
A We couldn't do anything. We were basically letting the hospital - - - the doctors do their work.
Q Did you ask if there had been trauma at birth?
A I asked - - - Well, I mean, I knew there was no trauma at birth because I was at the birth.
Q Was it a vaginal delivery?
A Yes.
Q Well, there's some women who'll say that's

traumatic. I couldn't say. I've never been through it.

A Right. It was a normal birth.

Q Okay.

A Yes.

Q Did you ask Dr. Bailey about what he meant by trauma at birth?

A I did not ask for a specific explanation of that, no.

Q I've been told that getting a baby out of a small birth canal is traumatic. And do you know whether or not - - -

A I think I took it as trauma at birth meant something medically harmful happened, something went wrong.

Q Okay.

A What I witnessed at the birth of my grandson, there was nothing wrong with the delivery.

Q But did you follow up with Dr. Bailey about what do you think it is, which is it? Did you ask him that?

A Again, what I remember is when we - - - my husband and I asked him what could have caused this, how does a baby get bleeding in the brain, and when he - - - Dr. Bailey said it could be possibly one of

two things: trauma at birth or shaking. And at that point I possibly went into shock mode. I don't - - - I don't recall. But that was what we were told by Dr. Bailey.

Q What day of the hospitalization was that, 5th, 6th, 7th?

A Earlier on like 2nd or 3rd.

Q Let me back up. As I understand the hospitalization on the 4th, as I understand, he got to Levine's either like just before or some time after midnight on either the 4th or the 5th and was discharged on the 8th. So what I'm trying to find out is you have this conversation. I'm assuming it would be December 5th, 6th, 7th or 8th. That's what I'm trying - - - which of those days - - -

A I don't recall the date.

Q So you couldn't say whether it was just before discharge or early in the admission?

A It was in the middle, more in the middle.

Q All right, so 6th or 7th?

A Yes.

Q Did you ask any other doctors about what could have caused it?

A No, sir.

Q Do you remember any of the doctors involved other

than Dr. Bailey in [redacted]'s care?

A I do not recall other than the - - - the eye doctor. I don't know his specialty, and I don't know his name.

Q Were they looking for some kind of retinal changes in that December hospitalization? Do you remember - - -

A I think they were looking - - - I believe they were looking for bleeding which I learned you see through the eyes.

Q And there was no bleeding in the retinas; is that - - - in the first hospital - - -

A Correct. There was no damage to the retinas.

Q Do you remember that they did a full body scan?

A I don't recall what they did, everything.

Q When [redacted] was in there in December, did he have any bruises?

A No.

Q Had you seen him have any bruises prior to him going to Levine's in December of 2009?

A I do recall a small bruise on his forehead some time in November I think.

Q Was that before Thanksgiving?

A Probably.

Q And when you saw the bruise, what size was it?

A A teeny, tiny. I mean, I can't - - - I don't know how - - -

Q Your daughter said it was the size of a dime. Would you agree or disagree? Bigger, smaller than a dime.

A It was I'd say a dime.

Q A dime?

A Yeah.

Q And it was on his forehead?

A On his forehead.

Q Side? Middle?

A Off to the side.

Q And I guess, right side?

A I think left side. I don't remember.

Q You don't remember?

A No.

Q And when you saw it, how was [redacted]?

A He was perfectly fine.

Q And had the bruise resolved by the time [redacted] started becoming - - - getting, you say fussy?

A Yes.

Q So you didn't make any connection between the bruise and that - - -

A No.

Q And when you were taking him to the hospital and

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the doctors, you didn't observe any bruises?
A Correct.
Q Now, there was a time when I understand your daughter asked and Michael left the house.
A Yes.
Q And that was New Year's Eve?
A I believe so.
Q Did you witness anything that caused your daughter to ask him to leave?
A Just her complaining that he wouldn't look for a job.
Q And did he leave?
A Yes.
Q Did he come back?
A Yes.
Q When did he come back?
A He was probably gone five or six days. I don't - -
-
Q So if he left on New Year's Eve the 31st, he was back around the 5th or 6th of January?
A Yes.
Q And where did [redacted] stay? Did he stay with his mother?
A Yes.
Q And if Kayla went to work you would keep [redacted]?

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A Yes.
Q How was he during those days? How was [redacted]?
A He was fine. He seemed fine.
Q Do you know whether or not your daughter and Michael had been to the parenting classes?
A I know Kayla had mentioned that she hadn't received anything yet. Apparently DSS told her they would mail her the information she needed to sign up.
Q When Michael came back, did he have a job or do you know whether he'd gotten a job?
A He did not have a job.
Q When he came back it was like - - - I don't want to hold you to it, around the 5th or 6th of January?
A (Indicating yes)
Q And that's a yes?
A Yes.
Q Were you still seeing [redacted] on a daily basis?
A Yes.
Q And I pulled my calendar up. [redacted] went back to Piedmont on Monday, January 11th. I'm just looking. If you want to look at my calendar to - -
-
A Yes.
Q - - - help you with the days of the week.
A Yes.

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Q Did you see [redacted] on the 9th or the 10th of January, 2010?
A Yes.
Q When did you see him?
A I saw him on the 9th and the 10th.
Q How was he on the 9th?
A Well, he was fine.
Q No bruises?
A There was a small bruise.
Q There was a bruise?
A Yes.
Q Where was the bruise?
A On the top of his forehead.
Q Right in the middle?
A Pretty much.
Q Underneath the hairline?
A Yes, sir.
Q And, I don't know, did he have hair?
A Yes, he had hair.
Q What size bruise?
A It was a very faint bruise but it was slightly larger than a dime.
Q Quarter? Size of a quarter?
A A nickel.
Q A nickel. Okay.

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A Yeah.
Q Size of a nickel. Did it seem to be causing [redacted] any discomfort?
A No.
Q Owen's his normal, happy self?
A Yes.
Q And did you see [redacted] on Sunday?
A Yes.
Q Did you see him at church?
A Yes.
Q Did [redacted] go to like a Sunday School?
A No.
Q At that age you go to nursery?
A Right, but he never went to nursery.
Q He didn't go?
A (Indicating no)
Q He had the pastor's wife and daughter there to take care of him?
A The whole front pew took care of him.
Q And how was he doing that Sunday morning?
A He was fine.
Q Did you see him any after church?
A (No response)
Q That's a no?
A No.

Q You got a call some time Sunday night, Monday that they were going back to the hospital?
A Monday morning.
Q Monday morning? What time?
A Approximately 10:00 a.m. I really - - - I don't recall.
Q Who called you?
A Michael called my husband's phone.
Q And what did he say?
A He was screaming it's [redacted].
Q Did you get any more information?
A They were going to the hospital.
Q Did you go to Piedmont?
A We were in our car. My husband and I were going to a funeral of his sister-in-law. And I was driving because my husband was going to go over his notes for the funeral, and I did a u-turn in the middle of the road and went back to the house and got my own car.
Q Your husband was going to preside over the funeral?
A He had to.
Q I'm thinking that he's got an obligation. He's got to - - -
A Correct.
Q So did you go to Piedmont or did you go to

Levine's?
A Piedmont.
Q And [redacted]s still there?
A He was there.
Q How long did he stay there?
A Not too long from what I recall. He was not in good shape.
Q Was he having seizures?
A Yes.
Q Did he have bruises?
A Yes.
Q Where were the bruises?
A The first one I noticed was a very large bruise on his left chest, and I noticed another one on his leg. There were more that I didn't see until later.
Q Had those bruises been there on Saturday?
A No.
Q If they had been you would have seen them?
A I looked at him Saturday night.
Q And then, I was going to say, Sunday, I don't know what he was wearing or whether or not - - -
A He was fine in church.
Q Okay.
A He was - - -

Q Now, if he had bruises Sunday morning would you have seen them?
A Yes.
Q So there were no bruises Sunday morning?
A Correct.
Q Do you know who had [redacted] that Sunday afternoon?
A Michael.
Q Was anybody else around him?
A Not that I'm aware of.
Q When you were in Piedmont did you learn what had happened to [redacted]?
A Ironically, another - - - a nurse, the ER nurse, also did the shaking motion with her hands.
Q So if somebody at Piedmont told you that - - -
A They'd - - - nobody told me. I just remember the nurse making the shaking motion.
Q Is that in response to a question or - - -
A No.
Q Just something you saw?
A I think she saw concern in my face and she just showed me that. I don't know why.
Q Did you talk with any doctors at Piedmont?
A The ER doctor.
Q What did he say?
A Well, I mean, actually I may not have talked to - -

- I remember it was chaos so I may not have talked to him. I remember I was in there and they were working on [redacted]
Q At some point did the doctor say [redacted] has been a victim of some non-accidental trauma?
A No, sir.
Q What about when you got to Levine's? January now.
A Yes. I mean, not when we first arrived but it was shortly thereafter when he was in ICU Dr. Bailey made it clear he was not - - - I never heard the word abuse until later.
Q And you say later. I mean, later is a relative term. Was it within two or three hours, or two to three days or - - -
A No, because the same day he was - - - [redacted] was admitted in ICU. It was a very long day. And eventually in the afternoon or evening Amanda Carter from York County came and questioned all of us separately.
Q Did you give a written statement to Amanda Carter?
A I didn't write anything.
Q Did she write something down and have you sign it?
A She might have written down what I was saying. I don't recall.
Q The sheriff's department from Rock Hill, I say

sheriff's, the York County Sheriff's Department showed up on January the 11th at Levine's?

A I believe it was the same day.

Q So you believe it was that Monday, January 11th?

A Yes, sir.

Q Now, when they showed up, were you aware by the time they showed up that [redacted] had probably been the victim of non-accidental trauma or what was your understanding?

A I think at that point it was becoming clearer.

Q And that was based on what the doctors had told you at Levine?

A I was never told he was abused by doctors.

Q Well, what was it that made it clear?

A Just the events taking place.

Q What events?

A Being in ICU and [redacted] being hooked up and - - - I just - - - I guess that's - - - I start getting bad feelings about what happened.

Q Do you remember what you told Amanda Carter?

A No.

Q Before January had you ever seen Michael being rough with [redacted]?

A No.

Q You had no suspicion whatsoever that Michael would

ever harm [redacted]?

A I wasn't thinking in those terms. No.

Q You didn't have any suspicions?

A No.

Q Did your daughter ever express any concern about Michael?

A No.

Q When did you learn that Michael confessed to shaking or harming [redacted]?

A I assume it was that night January 11th. Kayla called me on her ride home - - - her ride back to the hospital.

Q Were you allowed to be in the room with [redacted] unsupervised in that January visit?

A I know that we had sitters. I don't know what day that started.

Q Do you remember sitters in January?

A Yes.

Q But you don't remember sitters in December?

A I do not remember sitters in December.

Q How long were the sitters?

A How long were they there?

Q How long did they stay there? Were they there the entire time - - -

A In January, yes.

Q - - - in the January hospitalization?

A Yes.

Q Now, Kayla was interviewed and you were interviewed.

A Yes.

Q Michael was interviewed.

A Yes.

Q Was anybody else interviewed?

A Not that I recall. I know my husband was not there. He hadn't come back from Columbia yet. I don't know if they interviewed Michael's parents. I don't remember.

Q And I know at some point there was a time where they didn't expect [redacted] to live, and you were sent to Hospice.

A Correct.

Q Actually and he was unhooked and he did better than anybody expected.

A Correct.

Q And so a decision had to be made about a feeding tube?

A Correct.

Q Were you involved in the decision to either have or not have a feeding tube?

A Yes.

Q And how were you involved?

A I think as a family, the three of us, myself, my husband and Kayla, talked about it, what we should do. I vaguely remember the chaplain at Levine coming in and talking to us about it. And I remember being pressured by the doctors at Levine to do that, to put in a feeding tube.

Q And you and Kayla and your husband elected not to have a feeding tube placed?

A We elected to do the feeding tube after the doctors kept telling us he has to have it. And I believe Kayla signed to have it. I later called my brother in Nebraska and told him what was going on. He advised me not to have a feeding tube put in if possible because most people, patients, with feeding tubes get infection which is how most of them die is results from a feeding tube problem. So when he told me that, I went back to Kayla and said we shouldn't do this because we didn't want to do it to begin with. And that was mainly our spiritual beliefs that if God didn't want [redacted] to survive on his own, then we didn't - - - we didn't want him to survive artificially in any way. Most families have that right to make that decision. We weren't given that right. So when we went back and

changed the orders to stop the feeding tube procedure, they cancelled the order in the morning to do the feeding tube and that day me and Kayla left to take a break. My husband stayed. And he called me an hour later and said you need to come back. They're kicking us out. And I went back to Levine, and I yelled at the police, and we were escorted out and DSS decided to put a feeding tube in [redacted] against our wishes.

Q Did they go to court and get a court proceeding or do you know?

A I guess so. Yeah, they must have.

Q Did Kayla still have custody, parental rights, of Owen?

A Apparently not. I thought she did which is why they asked her to begin with but ultimately DSS had the last say.

Q Did DSS have to go to court and get a judge to - - -

A I don't know the details. I have to assume they did. I don't know how that took place.

Q Do you know whether or not [redacted] would have survived without a feeding tube or not?

A I believe he would have, but I don't know medically speaking.

Q You don't. Do you still have a feeding tube today?

A Yes.

Q Would he be able to survive without a feeding tube today?

A No, not today.

Q There was another incident that I've read about in some DSS records about an incident with a rocking chair?

A Yes.

Q Tell me what happened there.

A Well, as you probably read, I was in the rocking chair. I don't know the date at all. I was rocking [redacted] and - - - very gently. Kayla was asleep on the couch. I was burping him sort of up on my shoulder and as I was rocking back I pushed him up, and it just tipped backwards. It was very slow motion. It was very - - - I didn't fall out. I didn't let go of [redacted]. He did bump his forehead on the wall behind me when the chair hit the floor. And immediately Kayla jumped up, said oh, my God are you okay, and helped me up. And I said go get a nurse. The nurse had just left. I read the record. She said 15 to 20 minutes. It was like three minutes she had just left the room. Kayla went and got the nurse. She came back in. I was

holding [redacted]. I don't even remember seeing someone remove the chair from the room. And I explained what happened and I ordered - - - or I asked if they could order a CT scan to make sure he was okay. And he was.

Q Was this after [redacted] had been to Hospice and had the feeding tube or was this before?

A I really can't remember. I can't remember.

Q Now, you said you read the records. What have you done to prepare for the deposition today?

Mr. Hood - Objection to the form on the basis of anything that I've told you to do. I don't want you to tell him anything you and I've discussed or anything I've asked you to do. You can ask anything that doesn't have anything to do with that.

Q I'm assuming you met with your attorneys and they gave you - - -

A I've had records from DSS, you know, prior to all of this.

Q Did you review records outside the presence of your attorney to prepare for this deposition?

Mr. Hood - And if it's been outside my presence, but I advised you to do it, I don't want you to tell him. I'm going to object,

and I'm going to advise you not to answer that question. If it's something that you have looked at that I've not asked you to look at, that has not been directed by me, or that you have not discussed with me, and you talked about some DSS records, please feel free to answer his question.

A I have read records prior to ever meeting Mr. Hood.

Q Did you review any records to refresh your memory for this deposition?

Mr. Hood - Objection to the form on the basis of anything I've asked you to look at or anything that we have talked about. And I would advise you not to answer that question if it falls within those particular parameters.

Q Do you want me to repeat it?

A You can repeat it.

Q Did you review any records to refresh your recollection for this deposition?

Mr. Hood - Same objection.

A Like I said, I've read - - - Since December and January everything [redacted]'s gone through, I've read everything.

Q Okay. Tell me what you've read.

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A Can you repeat the question prior to this question?
Q The question that was objected to, did you review any records - - -
A No.
Q - - - to refresh your recollection to prepare for this deposition? That was the question that got an objection.
A I'm sorry. The question I was asking about would you repeat was about the - - - the bump on - - - or when I tipped over in the rocking chair. I read records from DSS about that back when it happened.
Q Okay.
A That's what I was referring to. I apologize.
Q And then I think you said I read records - - - I've read all the records about this. And what I was trying to find out, what are all the records? Are you talking about - - -
A I am not talking about anything that has to do with this case.
Q Okay.
A I'm talking about when [redacted] was hospitalized, I tried to do my best to read everything I was given.
Q When you said all the records, were you talking about all the records for the rocking chair incident?

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A Yes.
Q Have you reviewed any hospital records?
A Not other than what I was given in the hospital.
Q Discharge documents?
A I read - - - yes. Correct.
Q Did you read the safety plan - - -
A Correct.
Q - - - from DSS that your daughter was given?
A Yes.
Q Do you know how many safety plans she was given?
A I do not know.
Q Do you have like a set of records that you gathered for this matter?
A No, sir. The rocking chair incident went to court. I have records from that, and it was dismissed as an accident.
Q Who filed charges?
A DSS.
Q What were the charges?
A Neglect or I don't know the formal term. Possible harm to a child.
Q Was it family court, criminal court?
A Family court.
Q What kind of court proceeding? What were they trying to do, DSS, through this court proceeding?

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A I think they were trying to imply that I was neglectful.
Q Do you have any medical training?
A No.
Q Have you reviewed any of the records from Piedmont for the December visit to Piedmont?
A Just what we were given in the hospital.
Q Okay. That would be - - -
A Regular papers.
Q You haven't gone and gotten the hospital chart from Piedmont to read?
A No, sir.
Q Have you tried to get the hospital chart from Levine's for December and read it?
A No, sir.
Q Now, have you gotten records from DSS to read the DSS file?
A No, sir.
Q Now, do you keep a diary or a calendar of where you are from day to day and what you - - -
A I wish I did now but, no.
Q Now, I understand there's some videos of - - - Did you take any videos of [redacted] back in 2009 or pictures?
A Oh, sure. Yes.

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Q Going back to the January hospitalization, do you remember talking with any of the doctors at Levine's Children's Hospital about what had happened to [redacted]?
A Just Dr. Balley.
Q And we've talked about that?
A Yes.
Q Do you remember talking with any social workers?
A Not in December.
Q And you talked to Amanda Carter?
A Yes, in January.
Q I understand. That's what I meant to say. I didn't make my question clear. But January 11th she came to the hospital and interviewed you that day or night?
A Yes.
Q Any other law enforcement officers that have interviewed you?
A No.
Q Well, when this was going on, did your husband's sister, who's in law enforcement, have any involvement?
A No. The day we were escorted out of the hospital, we called her just to ask if this is legal. And she said if they have a court warrant to do so,

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then yes.
Q Have you gone back and looked at the records from Levine's for December or January other than what you were given?
A No, sir.
Q Now, currently you have custody of [redacted] pursuant to a family court order?
A Yes, sir.
Q York County Family Court?
A Yes.
Q How long have you had custody?
A Well, a year, maybe longer.
Q I'll put that down as an estimate.
A Yes.
Q You now live in Aiken?
A Yes.
Q And your husband took a different church?
A Yes.
Q Did he found a church or did he go to an existing church?
A He went to an existing church.
Q It's Pentecostal?
A Yes.
Q They're not like Methodist. They used to make a move about every four or five years.

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A No.
Q But he's not like after - - -
A No, they stay put if they can.
Q How is Kayla doing currently?
A How is Kayla doing now?
Q Yes, has she - - -
A Very well.
Q - - - got a job?
A She's never lost a job.
Q Does she take care of [redacted]?
A Yes, we share duties.
Q So the two of you are the primary caregivers?
A Yes.
Q Now, [redacted], I understand, has some limitations.
A Yes.
Q How is [redacted] doing?
A Well, I mean, other than his disabilities which are, he's blind, has a feeding tube, can't sit up, can't roll over, can't talk, other than all that, he's perfect.
Q Kayla said that he's happy.
A Yes.
Q Is he happy?
A He's always happy.
Q Is he able to laugh or - - -

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A That's all he does is laugh.
Q Does he have any use of his arms, purposeful use?
A None.
Q Does he move them at all?
A Yes.
Q But no control?
A Correct.
Q What about his legs?
A The same.
Q Does he crawl; can he crawl?
A No.
Q Can't sit up?
A No.
Q Is he having any seizures - - - had any seizures?
A He's been on seizure medicine since he was in the hospital so I say no, he hasn't had seizures but I think it's because he's on medicine. If he weren't on that medicine, yes, he would have seizures.
Q What medicines is he on?
A He's blessed. He's only on one seizure medicine, Keppra and Prilosec.
Q What's Prilosec for?
A For indigestion. Whatever, because the feeding tube causes problems.
Q Has his feeding tube been in since it was placed in

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the hospital?
A Yes.
Q Looking back, are you glad that a feeding tube was placed in the hospital?
A I mean, I'm glad [redacted]'s still with us today. I don't - - - I don't know that that has anything to do with the feeding tube. I'm - - - I'm still pretty disappointed that we weren't allowed as a family to make that decision.
Q Who's decision now is it to whether or not to keep the feeding tube in place?
A Mine.
Q Have you made any efforts to have the feeding tube withdrawn?
A It can't be withdrawn now to sustain life. He's lost his ability to eat.
Q When he was in Levine's in January did he have the ability to eat?
A Yes, he started eating in Hospice.
Q Does he take anything by mouth now?
A He can therapeutically. We can feed him baby food but no more than probably three to five bites.
Q So he has difficulty swallowing?
A Yes.
Q Would he be able to take enough by mouth to

survive?
A No.
Q So he has to have the feeding tube to survive?
A Yes.
Q What's the address you live at now?
A 2799 Whiskey Road.
Q Is that a house - - -
A Yes.
Q Who's the current minister at your husband's former church?
A Craig Ray.
Q You say that like you're not quite sure.
A It's Craig Ray.
Q What doctors does [redacted] see now?
A Dr. Strickland, Susan Strickland is a neurologist. Dr. Nyungen which is like Chinese.
Q A Vietnamese Dr. Nyungen?
A N-y-u-n-g-e-n, something. That is his gastro. That's primarily who - - - and then Dr. Kinsey is his pediatrician.
Q Kinsey's - - - Dr. Kinsey's in Aiken?
A Yes.
Q The other two are in Augusta?
A Specialists in Augusta.
Q And he's seeing therapists?

A Yes. He goes to Hitchcock Therapy once a week.
Q And I think I asked you this. He's on seizure medication but have you seen [redacted] have any seizures since you've moved to Aiken?
A No.
Q Has he had EEGs to look for seizure activity?
A Yes. He went in to get a test because they want - - - the doctors wanted us to recognize a seizure if he had one. Because it was explained to us a lot of times they - - - you know, people can have silent seizures or even a major seizure that we wouldn't recognize so he had testing done but they didn't - - - there were no major seizures.
Q What about has any of these doctors given you any prognosis as to how they expect [redacted] to do in the future?
A Most of the specialists, the prognosis is always the term not good.
Q I understand. I understand what not good means. But does that mean he's not going to get better, they don't expect him to have - - - to live very long, or do you know what that means?
A I don't know technically what they mean. I know it means, you know, - - - I don't know his life span. I know his quality of life was taken from him.

Q So when they say not good you hadn't asked for any kind of what do you mean?
A I can figure that one out. I didn't ask. It's either good or it's not good.
Q In the last year, has he gotten better, worse, stayed the same?
A Well, I mean, he's growing. He's huge for his age so he's stronger. But we have seen no improvement in vision or, you know, sitting up. He had a goal to sit up at three-years-old, and he's not going to reach that goal.
Q So you see no improvement in the last year - - -
A No.
Q - - - other than he's growing?
A Correct.
Q Have you seen any regression; has anything gotten worse?
A No.
Q Has your daughter made any efforts to regain custody?
A Not at this time, no.
Q Is there anything in the plans for her to eventually take custody?
A She would like to, yes.
Q Is that something that you encouraged or resisting

or - - -
A I'm open to it. It's just we've gotten back to life as usual.
Q Do you get any kind of assistance for having custody of [redacted]?
A I get his disability checks.
Q What is that?
A 672 approximately. I could be off. It's the maximum, I was told, allowance for disability.
Q Is that a month?
A Yes, sir.
Q What about his medical expenses, who pays for his medical expenses?
A Medicaid.
Q Are you getting any kind of assistance from March of Dimes or any kind of program like that?
A No, sir.
Q Anything like from the Commission of the Blind or any kind of private or governmental assistance other than the disability check and Medicaid?
A Correct.
Q So Medicaid and disability is all there is?
A Yes.
Q Do you expect to get anything yourself out of this lawsuit?

A I'm just looking for justice so this doesn't happen to another baby. And, obviously, I don't know how we're going to care for [redacted].
Q Well, are you looking to get anything momentarily out of this lawsuit?
A Yes.
Q What are you looking for momentarily?
A I don't know.
Q Have you been harmed momentarily?
A Have I been harmed momentarily?
Q Yes.
A Can you put that in another way?
Q Have you had any financial loss?
A Yes.
Q What is your financial loss?
A I'm not sure I understand the question other than I can't work because I - - -
Q Can't work.
A - - - take care of [redacted].
Q When's the last time you worked?
A In Rock Hill - - -
Q Anywhere.
A The last time, three years ago.
Q Where were you working three years ago?
A At SDL Atlas.

Q And what was your job with them?
A Billing/collections.
Q And when did you leave them?
A I want to say March of - - -
Q Of what year?
A - - - '09.
Q Before [redacted] was born?
A Yes.
Q Why did you leave them?
A The people there were not people I choose to associate with.
Q Were you fired or did you - - -
A I quit.
Q Did you quit because you were going to get fired or did you just quit?
A I quit because the people there lived a lifestyle I didn't agree with.
Q Tell me about that.
A I didn't approve of the language I was hearing every day and a Christmas party that everybody drank. I just wasn't comfortable there.
Q And tell me the name of that company again.
A SDL Atlas.
Q What do they do?
A It was a warehouse for - - - they tested material

for things - - - companies like Tide and Ford Motor Company for - - - for fabrics.
Q They tested materials for fabric that goes in cars?
A And other products, yes.
Q How long did you work there?
A Not long. I don't recall. Possibly six months.
Q And before that job, where had you worked?
A I worked at The Herald for a year.
Q When did you work at The Herald?
A I want to say just a year in between '07 and '08.
Q Did you leave The Herald to go straight to - - - is it SBL?
A D like dog.
Q Oh, SDL?
A Yes, sir.
Q Did you leave The Herald and go straight to SDL Atlas?
A No, sir. I didn't work between The Herald and SDL. I didn't work for about a year.
Q So you worked for about a year, were off a year, worked for about six months, and then the last time you worked was March of 2009?
A Yes.
Q How much money were you making at SDL Atlas?
A $9.00 an hour.

Q How many hours a week were you working?
A Forty.
Q Forty?
A Yes, sir.
Q And at The Herald you were selling ads?
A Classified ads.
Q And I guess you get paid on what you sell?
A No, I think I was 8.50 an hour.
Q You got paid an hour?
A Yes, sir.
Q Hourly?
A Yes.
Q And how many hours a week were you working?
A Forty.
Q Did you leave The Herald voluntarily or - - -
A Yes.
Q Any other monetary or financial loss you're claiming?
A No.
Q Now you told me, is it your mother or father still alive?
A My father's still alive.
Q Does he have any contact at all with [redacted]?
A No.
Q Where does he live?

A Idaho.
Q You told me that. Who have you discussed this case with other than your attorneys?
A My husband and Kayla.
Q Anybody else?
A No.
Q Other than Dr. Bailey, do you remember having any discussions with anybody at Levine's Children's Hospital in either December or January of 2009 and 2010 that you can talk about the specifics of the conversation?
A No.
Q Do you believe your daughter has any responsibility for what happened to Owen?
A For physically inflicting harm upon him?
Q Do you think your daughter has any responsibility for what happened to [redacted]?
A No.
Q You think Michael's the one responsible?
A Yes.
Mr. Todd - I don't have any more questions at this time.
Mr. Frawley - Can we take a brief break?
Whereupon - A recess was taken.
FURTHER EXAMINATION - (By Mr. Todd)

Q Do you feel like you have any responsibility for what happened to [redacted]?
A No.
Mr. Todd - That's all I have.
EXAMINATION - (By Mr. Frawley)
Q Ms. Williams, I'm going to talk fast so we can get everybody out of here, and Mr. Settana will go after I do and Mr. Hood may have some questions. My name's Pat Frawley. I'm an attorney with the Davis Law Firm in Lexington, and I have the South Carolina Department of Social Services in this case. Much of what I would have asked, Mr. Todd's already asked so I'll try to truncate this as best I can. I may be crossing some of these questions out as I get to them. Mr. Todd's gone through your employment history in York County which I was going to ask. One of the things I'll ask now also is what churches or what church had you attended regularly in York County. And I understand your husband's a pastor.
A (Indicating yes)
Q What church did he have in York County?
A Faith Family Christian Center.
Q And that's the one that's behind the airport?
A Yes.

Q Prior to the time that you and your husband were married, did you attend church at any other church?
A In York County?
Q In York County.
A No, sir.
Q Now, the Jaeggi family, and I may be butchering that name. I've got it as J-a-e-g-g-i, something like that?
A Yes.
Q And it's pronounced Jaeggi?
A Yes, sir.
Q When you and Mr. Jaeggi were married, did y'all reside in York County?
A Yes.
Q Are there any people to whom you are related by blood or by marriage when you were married to Mr. Jaeggi that are York County residents?
A No.
Q Was he originally from somewhere other than York County?
A I believe he was from New York.
Q Jaeggi's not a name I'm familiar with in South Carolina.
A Well, his parents were German.
Q German?

A Yes.
Q How about social organizations in York County, when you lived here were you a member of any kind of social organizations?
A At what time?
Q At any time that you lived in York County.
A I mean that - - - the answer would be no unless the YMCA counts.
Q It counts to me.
A I've been a member of the YMCA now for just recently.
Q So just recently?
A Yes, sir.
Q But when you lived in York County, were you a member of the YMCA here?
A Oh, no.
Q You're a member in Aiken County?
A Yes.
Q Okay.
A Sorry.
Q And do you have any - - - I guess Mr. Williams has family members who are York County residents. But other than your connection with Mr. Williams, do you on your side of the family have any relatives in York County who are over the age of 18 to whom

you're related by blood or by marriage?
A No.
Q Now, I understand Mr. Williams does and we'll get that with Mr. Williams.
A Okay.
Q Had you had a chance to see Michael care for [redacted] before December 4th, 2009, before that first injury?
A Yes.
Q Tell me your impressions of Michael as a father.
A My impressions were fairly normal. He was a good father. He was there when he was supposed to be there other than financially.
Q Financially he's not working - - -
A Correct.
Q - - - well and not supporting financially.
A Correct.
Q I think Mr. Todd asked you did it appear that Michael loved him, and I think you said he was learning to love him.
A Correct.
Q Him would be [redacted]. As far as when he cared for Owen, did it appear to you that he was interested in caring for his child?
A I think that he cared for him when he had to.

Q I think Kayla mentioned he wasn't real big on changing diapers initially - - -
A Right.
Q - - - but, I mean, if diapers needed to be changed he could do that?
A Yes.
Q Did you have any concerns with how roughly he may have handled him? In other words, when the child was small, did you have concerns with Michael in the manner in which he would pick up [redacted], maybe not hold his head properly when the head's not as strong as it might be?
A I remember telling him a couple of times remember to pick up his head, you know, because he's an infant.
Q Do you remember hearing Kayla correcting him on that sometimes?
A Yes.
Q Did you ever have to correct Kayla on that?
A Not that I recall.
Q Now, I think it was mentioned that you saw a bruise on [redacted] in November of 2009?
A Yes, sir.
Q And that was the dime-sized bruise? I think your best recollection was that it was on the left side

of his head?
A Yes, sir.
Q Did you ask Kayla and Michael about that bruise?
A I asked Michael because he was with him that day.
Q Okay.
A Kayla was at work. And he explained that he had dropped the X-Box remote on - - - he dropped it out of his hands. [redacted] was apparently in the baby seat next to him.
Q And I think Mr. Todd asked you, you know, how is [redacted] otherwise, you know, the fact that he's got a bruise there that you saw and had concern about. [redacted] was acting appropriately at that point?
A Yes, sir.
Q Did you have any concern about the fact that [redacted] had a bruise on his head that was apparently inflicted when Michael was there? Did you have concern about [redacted]'s safety when Michael cared for him because of that?
A No.
Q Were you concerned about [redacted]'s safety before the first injury, December 4th of 2009?
A No.
Q While both of his parents may have been young and may have been in the process of learning

parenthood, you felt, before December 4th, 2009, that [redacted] was well cared for with the caveat that these were young parents?
A Correct.
Q Now, after the December 4th, 2009 injury and Mr. Todd went into and I think you answered how you found out about it and what your experience was with it. You understand that DSS was called into the case December 6th?
A Yes.
Q I mean, do you have an independent recollection of the date other than me suggesting it to you?
A No, sir.
Q But you know that some time after December 4th while [redacted] was still in the hospital DSS was called into the case, correct?
A Yes, sir.
Q How did you find out that DSS was called into the case? What was the first thing you found that DSS was involved?
A They came into the room.
Q At the hospital?
A Yes.
Q Do you remember the young lady who did that?
A I don't remember.

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Q Does the name Shaundra Tyler sound familiar?
A Yes.
Q A young black lady maybe in her early 30s?
A Yes.
Q Did she speak with you that day?
A I believe, yes.
Q Did she speak with several other people in the room including Kayla and Michael?
A Yes.
Q Did you see her speak with any medical care professionals?
A I don't recall.
Q When she came in that day, was it your understanding that DSS would be investigating a report that called them into the case?
A Yes.
Q Now, is that the day - - - you mentioned that the DSS caseworker sat down on a couch with you and asked, you know, would you be willing to take custody?
A I believe so.
Q Have you ever been involved in a DSS child protective services case before this one?
A No, sir.
Q And I assumed that answer when I asked the question

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but I wanted to ask the question. Do you know that it's standard practice for DSS to get involved in a case when there's a child protective services claim that initially one of the things they're supposed to look for is relative placement in the event they have to remove that child; do you know that?
A Yes.
Q That's a good idea isn't it to try and place the child if it has to be removed with relatives, correct?
A Yes.
Q You'd agree with me on that?
A Yes.
Q I mean, isn't that why she was asking you would you be willing to take custody of this child?
A I assumed so, yes.
Q Do you recognize the name Dirvondra Hill?
A Yes.
Q Now, Shaundra Tyler, this was the first lady you met. You never saw her again after that first day did you?
A I don't recall.
Q Do you recall meeting with Dirvondra Hill, a second young black lady in her late 20s, early 30s?
A I don't know when I first met with her. I do know

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that she was involved.
Q Did you have a face-to-face with Ms. Hill at some point?
A I could be wrong, but I think I met her, Ms. Hill, after the January incident.
Q After the second injury?
A Yes.
Q Because I know you did have some period where DSS was involved long after the second injury.
A Correct.
Q But the time period I'm mostly looking at is between the December 4th first injury and the January 11th second injury.
A I don't remember. I don't recall meeting her.
Q You remember meeting her and it may have been in that period, but you don't have a specific recollection of it, correct?
A I remember Ms. Hill is the lady that dealt with my case with the rocking chair - - -
Q Okay.
A - - - so that would have been later.
Q Do you recall getting any phone messages from Ms. Hill between the first injury and the second injury where she was attempting to get in contact with you for purposes of talking with you and interviewing

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you?
A I don't recall that.
Q Do you recall that it didn't happen or do you not recall that it did or didn't happen?
A I don't think it happened.
Q Did you tell DSS, either Ms. Tyler or Ms. Hill or anybody else from DSS, between the December 4th first injury and the January 11th second injury that you had concerns about [redacted]'s well-being while he was in either Michael's care or Kayla's care?
A I don't recall.
Q It's possible you did?
A To DSS?
Q Yes.
A No. I didn't have any - - - never mind.
Q You didn't have any concerns that you could have passed on to DSS?
A No, I didn't have any communication with DSS the way they were - - - DSS was talking to Kayla and Michael.
Q Well, did you have concerns about [redacted]'s well-being while he was with Michael or with Kayla following the December 4th first injury?
A I wasn't shown any signs to be concerned after that point.

Q You weren't shown any signs but did you have concerns?
A No.
Q You didn't have any gut feelings as a grandmother that the child was in peril?
A At that time I can't say I did. I know now - - - now, everything I know - - -
Q Right.
A - - - it's harder to answer that but at that time, no.
Q Now you've got a different prism that you look at those things now, - - -
A Exactly.
Q - - - that hindsight's 20/20 but - - -
A Exactly.
Q - - - but if the question is what you knew and when you knew it, as of the December 4th injury and before the January 11th injury, you had no reason to question that [redacted] was in good care with his parents, correct?
A Correct.
Q So you never relayed to DSS that you had any reservations about it, correct?
A Correct.
Q You do remember talking to Detective Amanda Carter

after the second injury; in fact, it was the same day as the second injury, correct?
A Yes, sir.
Q And you were truthful with Detective Carter when you spoke with her, correct?
A Yes, sir.
Q Let's talk about stressors in Kayla's home at that time. Michael was not working after about October or November of 2009, correct?
A Yes.
Q And that was beginning to get to a point of stress for Kayla wasn't it?
A Yes.
Q Now, and you were very gracious with it, but you had reservations about Michael being your daughter's mate didn't you?
A Yes.
Q You thought that Kayla could do better than him, correct?
A Yes.
Q He played video games 24/7, and he wasn't working?
A Correct.
Q He was not a good provider?
A Correct.
Q So you had understandable reservations about that.

That was a little bit of a stressor with Kayla because you, maybe were trying to be as discrete as possible, but a mother sometimes has to pass that on to her child whether intentionally or unintentionally, correct?
A Yes.
Q And at some point when you would raise an issue with Kayla, however discretely you were trying to raise it, Kayla at some point would say don't start, don't get into this now. She'd do that, right?
A Occasionally.
Q Not all the time because y'all had a close relationship.
A Correct.
Q But at some point she didn't want to hear anymore because that's her mate, and she's going to be protective of him, correct?
A Right.
Q But at some point the fact that this guy's just flat not working, she's working B shift every day at Walgreens, coming home and he's taking care of the kid while she's out working, at some point that because a stressor for her, correct?
A Yes.

Q And it became a stressor for Michael too didn't it?
A I don't know.
Q Well, she kicked him out of the house New Year's Eve of 2009 didn't she?
A Yes.
Q So at least it got his attention as he's in the car on the way up to Concord.
A Right.
Q If you'd had a concern about [redacted]s well-being with Michael and with Kayla, did you know where the York County Offices of DSS were?
A No.
Q Did you know where the York County phone number was to call SC DSS?
A I would have found it.
Q If you'd had a concern, you would have lit up their switchboard; isn't that correct?
A Yes.
Q You talked to Mr. Todd about how you found out about the second injury, the January 11th injury, and what you did. And I think Mr. Todd asked you this, but I'll ask it again. After Owen was discharged back to Kayla and Michael December 8th, you had occasion to care for him some time after that didn't you?

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A Yes.
Q Did he appear to be fully recovered from the December 4th injury as far as you could tell?
A Yes.
Q Did you see anything out of the ordinary in the times that you kept him after December 8th but before January 10th?
A No.
Q This NAT or non-accidental trauma, did you understand that Levine's ran a battery of tests to check for non-accidental trauma when [redacted] was in the hospital between December 4th and December 8th?
A I didn't know what - - - I didn't know what they did medically.
Q Okay.
A I mean, I didn't - - - I don't know what they did.
Q But do you know that they - - - I think you'd heard the term or you've since heard the term, but do you know that they were checking to see if - - - what put him in the hospital was non-accidental trauma? Do you know if they were specifically looking for that?
A I don't know if they were.
Q Okay.
A They didn't ask me.

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Q So you don't if they were, you don't know if they weren't?
A Correct. I didn't see much in the - - - in the sense of asking people to find out what happened.
Q As far as asking people versus doing CAT scans and tests on the boy, do you know if they were doing the tests on the boy to see if what he had had indicia of non-accidental trauma; do you know that?
A I did not know that at that time.
Q Do you know it now?
A Yes.
Q Have you reviewed records?
A No. I just know from what the doctors told us the second incident.
Q And do you know that when they did those battery of tests between December 4th and December 8th that they did not conclusively find non-accidental trauma; do you know that?
A No, I thought - - - it was my understanding that that was the diagnosis.
Q And where do you get that understanding?
A On his discharge papers.
Q Have you read the Levine's records with regard to the results of the tests for non-accidental trauma from the hospital records?

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A I read the papers that were given with [redacted] at discharge.
Q And your recollection of having reviewed the medical records is that there was a conclusion by Levine's that it was non-accidental trauma?
A Yes.
Q Now, [redacted] was hospitalized for an unexplained injury December 4th through the 8th and DSS was called in December 6th as far as you know, correct?
A Yes.
Q [redacted] was discharged December 8th and you had him at some point, and you saw nothing out of the ordinary about him after his discharge, correct?
A Correct.
Q [redacted] was not injured as far as you know between December 8th and December 16th was he?
A December 8th and December 16th.
Q And December 16th.
A Not that I - - - correct.
Q In the first week he was out of the hospital.
A I'm sorry. Yes.
Q Did you see him some time after December 16th?
A Yes.
Q And when you saw him after December 16th, he was fine, right?

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A Yes.
Q He was not injured between December 16th and January 9th was he?
A January 9th I saw that bruise on his head.
Q Well, January 9th you saw the bruise on his head?
A Yes.
Q And there was some discussion about the Sunday before he was hospitalized, which would have been January 10th. Y'all attended church January 10th, correct?
A Yes.
Q And I think you'd said that he was fine in church. I've read somewhere where he had vomited in church and his clothes had to be changed and that was probably the last time that Kayla would have seen him with his clothes off before he was injured. Do you have any independent recollection today about him having vomited in church and his clothes have to be changed?
A No.
Q But you never saw any bruises, the big bruise to the upper left chest area, you never saw that before January 11 did you?
A No.
Q On January 9th you would have seen a kind of a

small head bruise. I think you said it was about nickel-sized?
A Yes.
Q But when you saw that bruise, was he still behaving in his normal manner?
A Yes.
Q You said at one point that Michael was overprotective with the boy?
A In a funny kind of way with me.
Q Okay.
A He knew I was wanting the baby all the time.
Q So he would kind of - - -
A Sort of silly like.
Q Instead of the term - - -
A Right.
Q - - - bogarting that joint, he's bogarting the baby from the grandma?
A Yes, we were both baby bogarts.
Q Would you agree with me that it's possible to harm a child without intending to harm the child?
A Yes.
Q I mean, we've kind of joked around about dropping babies and so forth. In fact, you had a situation where that rocking chair went over, and you had absolutely no intention of harming your grandchild

at that point, correct?
A Absolutely.
Q But given what happened, he did hit his head and it is possible that things going bad when he hit his forehead on the wall, that could have been much worse than it was, you agree with that?
A Yes.
Q And I think the statement you gave at the sentencing, that was your, I guess, victim impact statement. You're able to tell the judge we're victims because this child is a victim and here's what we want in regard to the sentencing?
A Yes.
Q And the judge listened you on that, correct?
A Yes.
Q And you and Mr. Williams have custody at this point, correct?
A I have custody.
Q You have custody?
A Yes.
Q Have Michael's parental rights to the child been terminated? Has there been a TPR for Michael?
A No.
Q Was that considered or discussed at the family court hearing?

A No.
Q I think you said the Carduffs came and visited basically one time, had a pretty long visit.
A Yes.
Q They had called you and asked if they could do it, and you allowed them to do that, correct?
A Yes.
Q But they've not come back to do it again?
A No.
Q In the complaint starting this action, there is, I believe, it's a fourth cause of action. And in there the plaintiff, Ms. Rainey, asks for necessaries for the custodians of the child, which I guess would be you. Do you understand what the term necessaries is?
A No, sir.
Q The costs, the necessary costs and expenses of raising any child, and then, of course, if you've got a child that has impairments where there may be additional costs involved. When Mr. Todd asked if you had been financially damaged or injured in this case, and you went back and forth with a couple of responses and a couple other questions, with regard to necessaries, what kind of necessaries do you incur on a monthly basis for the care and upkeep of

Owen?
A The typical - - - you know, the basic, diapers and wipes and clothes and baby food for his therapy.
Q Okay.
A The bigger items are becoming - - - you know, additional car seats, we're having to figure out now how to expand that because they only go up to a certain, you know, limit for a regular child.
Q And when you say expand, he's a fairly big child for a three-year-old, right?
A Yes.
Q And he's a couple months away from being three-years-old yet?
A Yes.
Q So you're talking about upgrading as far as size for things like that. Of course, he's at three now, when he's 10 or 12 or 15, other issues will come in, correct?
A We have upgraded one car already from a luxury sedan to a SUV and that was for his purposes.
Q All right. And he can't crawl, can't walk.
A No.
Q So when he gets to a certain size you'll have to have a wheelchair?
A Yes.

Q Have you consulted with a life-care plan specialist?
A Yes.
Q And who is the name of that life-care plan specialist?
A Right now he's still with Baby Net until he's three and then that transfers over. We haven't gotten there yet. There's a lot of back and forth right now.
Q Have they given you any kind of estimate as to what it's going to cost on an annual basis for the necessaries for this child?
A No.
Q Do you plan on getting that from them?
A Yes.
Q So you're with Baby Net now and at some point that's got to be transferred to somebody who's got a plan - - -
A Long care - - - long term care.
Q - - - for caring for someone other than babies? All right. Do you have that successor life-care plan specialist picked out yet?
A No, sir.
Q I think Mr. Todd's already asked you are you getting disability payments, and I think you've

given your best estimate on that.
A Yes.
Q Mr. Todd asked a question about DSS staying involved in the care. Was it your understanding that after December 6th - - - Well, after December 8th when [redacted] was discharged that DSS was still investigating the case?
A It was my understanding that they were supposed to, yes.
Q Do you understand that from the time an intake comes in that under the statutes and regulations, DSS has 45 days to complete an investigation?
A Yes.
Q And that they can request an additional 15 days if they need more time?
A Yes.
Q And all of this occurred within the 45 days? The first injury and second injury occurred within 45 days of each other?
A Yes. But it was my understanding that DSS was going to follow up on Michael and Kayla - - -
Q Like parenting classes?
A - - - with parenting classes, and I was hoping questions.
Q Did you know that when DSS gets involved in a case

they first have assessment, then they have treatment? Assessment is determining if there was or was not abuse and neglect; do you understand that?
A Yes.
Q And once they do that then they get in to treatment which can include parenting classes and other services that are provided; did you know that?
A I understand that now, yes.
Q I mean, you've never been involved with DSS before - - -
A No.
Q - - - this have you? Okay. As far as parenting classes, was there a time frame when those parenting classes were going to be provided? That was never put in a - - - bad question. I've got two questions there. Let me back that up a minute. As far as when the parenting classes were going to be provided, was there a date that was put in there or some time frame within which the parenting classes were going to be provided for Kayla and Michael?
A No, they said they would notify - - - DSS told Kayla they would notify her by mail.
Q Okay.

A However, it's also my understanding that if DSS is called because of a possible injury to a child, within that 45-day period the child should be removed from the home while that investigation takes place.
Q Where do you get that?
A Completely after all of this, after the fact.
Q From what source?
A Just reading information.
Q Do you know what a safety plan is?
A Yes, I do.
Q I mean, we've heard the term - - -
A Yes.
Q - - - that safety plans were signed. Are you aware that when Shaundra Tyler first got to the hospital she gave brochures and written material to Kayla and to Michael letting them know what their rights were as parents with regard to a DSS investigation? Did you know that they were given those brochures?
A I did not know.
Q Did you know that when they were presented with a safety plan, if they chose not to sign that safety plan, for whatever reason, that DSS would have had to get law enforcement to remove that child or would have had to go and get a court order in order

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for that child to be removed; did you know that?
A No.
Q Did you know that by signing a safety plan, that the parents are saying okay, we'll go with what DSS is proposing at this time and then they don't have to go with to the route of a contested hearing; did you know that?
A No.
Q And there's no reason for you to have known that because you'd had no experience with DSS before, correct?
A Correct.
Q If DSS had come to you after the December 4th injury, after they got called in on December 6th and before the child was discharged December 8th, even up to January 9th, and asked you, Ms. Williams, we want to talk to you about the fitness of your daughter and her mate in caring for this child, you'd have told them that you have no reservations about their parenting skills; isn't that correct?
A Yes.
Q In fact, nobody who was close to Michael and knew Michael, would have been able to tell any nuances in Michael's personality, was able to forecast that

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he was going to injure his son before Michael confessed on January 11th; isn't that right?
A We were trusting DSS to figure that out.
Q And why would DSS be able to figure that out if the people who were closest to him would have told DSS we don't think our grandson's in jeopardy with Michael?
A I think we were basing it on the diagnosis of non-accidental trauma in the hospital.
Q The diagnosis which you are now thinking was diagnosed as non-accidental trauma. If it was not diagnosed conclusively as non-diagnostic trauma, would you change that response you just made?
A If it was - - - If they had, in the hospital, given it a different diagnosis, yes.
Q And I'll defer to the hospital records, whatever the hospital records say. But part of your opinion or what you're saying right now is based on your assumption that the hospital diagnosed [redacted]'s injury as non-accidental trauma; would you agree with that?
Mr. Hood - Objection to the form.
Q You can still answer the question.
A (No response.)
Q Part of your feeling the way you do about this is

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your assumption that the hospital diagnosed non-accidental trauma for the December 4th injury, correct?
A I read the paperwork that stated non-accident trauma.
Q And I've read paperwork too, but isn't it true that part of the reason you feel the way you do and you have the impressions you do right now is your assumption, your understanding of having read those documents, that it was diagnosed as non-accidental trauma, correct?
Mr. Hood - Objection to the form, asked and answered.
Q You can still answer the question.
A I don't understand the question.
Q Don't you believe, in responding to my question, that the hospital diagnosed non-accidental trauma conclusively?
A Yes.
Q And if you're wrong about that, if they didn't conclusively diagnose non-accidental trauma and didn't take a definitive position with regard to whether it was non-accidental or accidental, then your assumption would be different; isn't that correct?

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Mr. Hood - Objection to the form.
Q Still answer the question.
A I don't understand the question.
Q Isn't it possible you're mistaken in your own interpretation of having read those hospital records?
A No.
Q So are you all going to, and again, this is an attorney issue so this is going to probably elicit an objection, but are you going to get a medical expert who's going to read those documents and say this is what Levine's diagnose with regard to accidental or non-accidental trauma, or are you going to go into court and rely on your having read those documents?
Mr. Hood - I would only object to anything that we've discussed or that we have had conversations about.
Mr. Frawley - Okay. And I don't mean to infer that I'm even looking for that.
Mr. Hood - Sure.
A Can you repeat the question?
Q Right. Are you going to go into court in this case and offer your own opinion as to what those Levine medical records mean?

A No.
Q You're going to get somebody who's qualified to do that, correct? And I'm not going into what your attorneys told you. But are you going to get someone with a little more spurs medically than you to interpret those records?
A I would do that if - - - yes.
Q That would be a reasonable thing to do, correct?
A Yes.
Q And at that point, you would defer to that expert's opinion as to what Levine's was saying, correct?
A Yes.
Q Dr. Bailey told you that there were only two ways you could have a situation like this. One was trauma at birth and the other was the shaken baby. And he's actually giving you a gesture - - -
A Yes.
Q - - - for shaken baby. Did he define for you what trauma at birth he was talking about?
A He did not.
Q Did he tell you that with a child's newborn's, the malleableness of the head and the fact that sometimes they come out with cone heads for the first few hours, that a normal vaginal delivery could have a traumatic impact on a child's head,

that that could take a couple of months to resolve?
A He did not tell me that.
Q Okay. I mean, I'm not sure that's the case but is that a possibility based on what he told you?
A Based on what he told me, I was reading into what he was implying.
Q And based on what he told you and the fact that you've got a child who is about three months old then and is three months removed from that normal vaginal delivery, you were pretty much discounting the possibility of trauma at birth and you were considering more a shaken baby syndrome issue at that point, correct?
A Because of what Dr. Bailey told us, yes.
Q He didn't tell you trauma at birth was being excluded did he?
A He did not.
Q Have you spoken with anyone from SC DSS about this case other than Shaundra Tyler that first night, and Ms. Hill?
A We have spoken to several more people because of the prior when we went to civil court for Kayla.
Q For Kayla. Tell me about that.
A Well, maybe I have my dates mixed up. Can you repeat the question?

Q Sure. With regard to the December 4th first injury up to the January 11 second injury, when these two injuries were bracketed, have you spoken with anybody from DSS other than Shaundra Tyler and Divandra Hill?
A No.
Q Now, I understand you had some other connection with DSS thereafter, one - - -
A After that.
Q - - - was the rocking chair thing - - -
A Right.
Q - - - and maybe the custody issue later on.
A Right.
Q But have you spoken with anybody from DSS with regard to what they should or should not have done in the time period between December 6th when they were called in and the January 11, 2010, second injury?
A No, sir.
Q Do you know if Mr. Williams has?
A I don't believe he has.
Q And I'll be asking Mr. Williams that same question. But you all are husband and wife in a situation involving your grandson - - -
A Right.

Q - - - and would it be expected from you that had he spoken with somebody from DSS he would have told you that he'd done that?
A Yes.
Q And he's not told you that he's done that?
A Correct.
Q Mr. Todd asked you a question. I think he led with do you have videos of [redacted], I guess, from his birth up through the first injury. And my recollection, and I don't mean to mischaracterize, is that you looked a little confused and then he threw in pictures and you said oh, yes, we have that. Now, there could be two things there. It could be videos and there could be pictures or there could be both. Do you have videos of [redacted] from his birth up through that second injury?
A Yes.
Q And are these videos that you would have taken or these the videos that Kayla had made mention of when we took her deposition? She indicated there may be some videos. Are the videos you're speaking of your own videos or are those the ones that she would maybe talking about?
A They were Kayla and Michael's videos.
Q So if we were to send a request to produce those

videos, you'd be able to get those - - -
A Yes.
Q - - - to your attorney? Okay.
Mr. Hood - In fact, I'll do that because - - -
Mr. Frawley - Okay.
Mr. Hood - you're probably going to want them anyway.
Mr. Frawley - Okay. Ms. Williams, that's all I've got. I'm sorry to meet you under these circumstances, but I appreciate your patience.
A Thank you.
EXAMINATION - (By Mr. Settana)
Q Ms. Williams, my name is Dan Settana. I represent the York County Sheriff and also York County in this case.
A Yes, sir.
Q I'm going to try not to ask - we've been here a long time - the same stuff. If I do, I apologize.
A That's okay.
Q Or if I mischaracterize any of your testimony from earlier, correct me, okay?
A Okay.
Q Let me go back to before the December incident. Before December 4, had you ever called any law enforcement about [redacted]

A No.
Q During the three or four days of the December incident when he was up in Charlotte, at any point in time there did you speak to any law enforcement?
A At the December 4th incident?
Q Yes.
A No.
Q Following the December 4th incident, between December 4 and January 10th, any point in time there did you speak to any law enforcement?
A No.
Q Okay. January 11th - - -
A Yes.
Q - - - did you speak to law enforcement that day?
A Yes.
Q And I'm going to come back to that. And then I assume after January 11th you probably spoke to law enforcement a couple of times; would that be correct?
A Yes.
Q And the word couple I'm using loosely. You might have spoke to them five or six times. We'll get back to that, okay?
A Okay.
Q So before December 4 you had no reason to call law enforcement did you?
A No, sir.
Q At one point in November did you see any bruises on Owen?
A Yes.
Q Did you call law enforcement then?
A No.
Q Let me ask you a quick question. Your sister-in-law, she's in law enforcement in this area, correct?
A Yes.
Q At the time of this incident, was she at Rock Hill or Tega Cay?
A I think Rock Hill.
Q Rock Hill Police Department.
A I'm not positive.
Q And did you spend that Thanksgiving in part with Ms. Blackwell? Is that her name?
A Blackwelder?
Q Blackwelder?
A We did not.
Q Did you spend any of Thanksgiving with Ms. Blackwelder?
A No.
Q And did you spend any of Christmas with Ms.

Blackwelder?
A No.
Q Did you speak to her all during the month of December?
A I don't think so. No.
Q Were you and your husband, were you getting along with his sister?
A Yes.
Q So there was no family squabbles or anything that sometimes happen - - -
A No.
Q - - - to keep you from calling her?
A I don't talk to her as often as they talk to each other.
Q But you get along well?
A Yes, very well.
Q And you were getting along at the time?
A Yes.
Q In the December 4 incident, was there anything that made you want to call the police during the December 4 incident?
A No, to my - - - no.
Q Let me back up a little bit. During that December 4 incident, did you go to Piedmont Medical Center before - - - this is before [redacted] ended up in

Charlotte, did you go to the Piedmont Medical Center?
A Yes.
Q Did you speak to any police officers at the Piedmont Medical Center?
A No.
Q Did you see Michael or Kayla speak to any police officers at the Piedmont Medical Center?
A Yes.
Q Were you present where you could hear their conversation?
A No.
Q Tell me about that. What happened, in your words, how were the police involved there at the Piedmont Medical Center?
A The best of - - - that I can recall, there were two, I believe two, officers there. And I was over with [redacted] and they were in the hall, Kayla and Michael.
Q Who else was with you in the room with [redacted], anybody?
A I mean, other than the doctors, I don't think so.
Q Okay.
A And I just remember Kayla later telling me that the police officers only asked their basic information:

where do you live and your phone numbers and that sort of thing.
Q Did the police officers ask them what happened that day?
A I don't recall.
Q Did the police officers ask them what happened to [redacted] that day?
A I don't know.
Q Do you know who called the police officers to be there at the hospital?
A I don't know who called them.
Q Do you know if those were York County Sheriff deputies or Rock Hill police officers?
A I don't know the difference. No, sir.
Q Did you actually see them?
A Yes, sir.
Q Can you describe them for me?
A I really can't.
Q Can you describe the uniforms?
A Like I said, I was more focused on [redacted]. They didn't come to me. The police officers didn't address me. I really just saw them out in the hall so I don't remember.
Q All right. And if you don't remember, that's fine, but I still need to ask. Were the uniforms blue,

or grey, or brown, or tan, or green?
A I don't remember.
Q Okay.
A I'm sorry.
Q At any point in time while they were there did you feel the need to go up and tell them you had a fear for [redacted]'s safety?
A No, sir.
Q Were you afraid for [redacted]'s safety at that point in time?
A No, sir.
Q [redacted] then went from Piedmont up to Levine, correct?
A Yes.
Q And did you go up there at that time yourself?
A Yes.
Q Did you call any law enforcement yourself when he was at Levine?
A No.
Q Did you ask anyone to call any law enforcement - - -
A No.
Q - - - while he was at Levine?
A No.
Q Did you ask your husband to call his sister with any questions about [redacted]'s injuries or any safety

to [redacted]?
A No.
Q It was at Levine that you spoke to Dr. Bailey, correct?
A Yes.
Q And you said that Dr. Bailey told you basically it was one of two things. It was either something from birth or shaken baby, correct?
A Correct.
Q Now, if you rule out the injury from birth, the shaken baby means somebody shook your grandson, correct?
A That is what they implied.
Q And did you call law enforcement at that point in time?
A No.
Q Did you call anybody at that point in time?
A No, I was concerned with [redacted].
Q Did you call your sister-in-law, the police officer, at that point in time?
A No.
Q Do you know if your husband called his sister about that?
A I don't know.
Q And DSS showed up at the hospital, correct?

A What date are you referring to?
Q In December and I'm not sure whether it was the 5th, the 6th.
A Okay.
Q I think it was the 6th. But do you know what day it was?
A I don't recall seeing any police involved in the first incident at Levine.
Q You might of - - - it's been a long day.
A Yes.
Q I actually asked about DSS.
A Oh, I'm sorry.
Q DSS showed up, I think, on December 6th; would that be correct?
A Yes.
Q Were you there when they came?
A Yes.
Q Did you ask them to notify law enforcement?
A I did not ask them to. No.
Q Did you ask anybody in the hospital to notify law enforcement?
A No.
Q Did you tell anyone, law enforcement, DSS or whatever, this baby can't go home with my daughter and/or her boyfriend?

A I didn't tell anyone that. I thought that's what was going to - - - I thought that was what was going to happen. After I was approached by a DSS worker to sign the paper that I would take him home, I thought that's what was going to take place.
Q And when that didn't take place, when they allowed [redacted] to go home, did you say this is a mistake?
A No, we just wanted to leave. We just went home.
Q Now, your grandson's safety, even then, forget hindsight, even then your grandson's safety was most important to you I bet?
A Yes.
Q And probably a long day longer than even we're having here today, but if you felt he was unsafe going home, you would have said something to somebody wouldn't you?
A Yes.
Q During that month between the two incidents, once again, you never called law enforcement you said, correct?
A Correct.
Q You never called your sister-in-law, correct?
A Correct.
Q You had an opportunity to speak to DSS, correct?

A Correct.
Q When the second incident occurred, who was at the hospital at Levine that same day? Was there - - - Let me rephrase that. On January 11th did Detective Carter appear at the hospital?
A Yes.
Q And did she immediately start questioning every member of the family?
A Yes.
Q And did they take Michael Carduff that day or ask him to come down to York to take a polygraph exam?
A Yes.
Q And did you have a problem with the police giving Michael a polygraph exam?
A No.
Q Did they give your daughter a polygraph exam?
A Not that day.
Q Some time later?
A Yes.
Q Within a month or two?
A Yes.
Q Did you have a problem with them giving your daughter, Kayla, a polygraph exam?
A No.
Q Do you know any members of the York County

Sheriff's Department?
A No.
Q I mean, socially from just living in this area.
A No.
Q Have you spoken with any members of the York County Sheriff's Department about what happened?
A No.
Q Have you spoken with any members of the York County Sheriff's Department about any investigation into this matter?
A No.
Q And we're kind of overlooking York County itself. Have you spoken with anyone from York County about this incident?
A No.
Q Have you spoken with anyone from York County about [redacted] or the injuries he sustained?
A No.
Q Do you have any family or friends who work for York County?
A Besides my sister-in-law?
Q Yes.
A No.
Q Does your husband have any other siblings?
A Yes.

Q And what are their names and where do they live? I don't need street addresses, just - - -
A He has six brothers and sisters - - - five brothers and sisters.
Q Okay.
A You want all the names?
Q Yes.
A Charlene Blackwelder.
Q Okay.
A Billy Williams, Carl Williams. Did you say in York County?
Q No. Do those three live in York County?
A Yes.
Q Okay. Who are the others and - - -
A Elbert Williams lives in Columbia and Regina. I don't know her last name, I've never met her, lives in Aiken.
Q You said Carl lives in York?
A Yes.
Q You have two children, biological children?
A Yes.
Q Did either one of them have to ever go to the ER while they were growing up?
A Yes.
Q And when you took them to the ER, did the police

question you?
A No.
Q And which ERs, if you remember, did you take them to? Just tell me the towns or the cities.
A It would have been - - - I've only taken my son once and that was in Tennessee.
Q Okay.
A And I took Kayla once when she drank hot chocolate and that was in Texas.
Q You told, or you testified earlier, or maybe I read into it, that when this happened you took the time to look at the medical records, correct? You wanted to see what happened to [redacted]?
A Yes.
Q Did you look at any DSS records?
A I have seen some.
Q Have you looked at any records from the York County Sheriff's Department?
A No.
Q I might not have asked this, did you speak to Detective Carter?
A Yes.
Q Besides Detective Carter, who else from the York County Sheriff's Department have you spoken with?
A None.

Q She was your only point of contact during this episode?
A Yes.
Q Did you give a statement to her?
A Yes.
Q Where did that occur?
A At Levine.
Q Is that the only time you spoke to her?
A No, but formally.
Q At Levine the day of January 11th?
A Yes.
Q In the days after that, did they ever have you come down to the sheriff's department in York? No?
A Not - - - no, not for questioning of any kind.
Q Did you go down there for any reason?
A I went with Kayla when she did her polygraph.
Q Were you questioned at that time?
A No.
Mr. Settana - That's all I have.
Mr. Hood - I've got a few.
EXAMINATION - (By Mr. Hood)
Q Okay, Charlotte, in regard to Mr. Todd, he asked you some questions, and you used a doctor, you referred to a doctor as Dr. Patel. Was it Dr. Patel or Dr. Paxton with Sunshine Pediatrics?

A I don't remember the name. It could be Dr. Paxton. I meant to verify that. I don't recall.
Q Okay.
A I know it's a P.
Q Now, they've all asked you about who you spoke to on January 11th. Do you recall those questions?
A Yes.
Q And I believe in regard to each of them you said you spoke to Amanda Carter?
A Yes.
Q And they asked you questions about what you may have said to Amanda Carter?
A Yes.
Q Do you recall today specifically what you said to Amanda Carter?
A No.
Q I want to show you the interview report that you had with Amanda Carter.
A Okay.
Q And I want you to read the whole thing and then I'm going to ask you about these and then some of the questions that they asked you.
A (Witness complies)
Q Have you had an opportunity to read that?
A Yes.

Q Does that help now refresh your recollection about what you may have discussed with Ms. Carter?
Mr. Frawley - Object to the form. Answer it if you can.
Q What does this help you do?
A It helps me understand more what happened or what I thought happened.
Q Now, they had each asked you about whether you had concerns at that time about whether Michael had hurt this child or you had suspicions about it and all this other stuff and you gave answers to them. And then you've also discussed that with Amanda Carter, right?
A Yes.
Q Now, how do you explain any type of concerns or suspicions that you had back in - - - Let me ask it a different way. I'm just looking at the top of this and it says the date of the interview was 1-11-10, right?
A Correct.
Q And on 1-11-10 he had come to the hospital, and he had seizures and was in bad shape, right?
A Correct.
Q And when he was in that kind of shape, what was your emotional state like at that particular time?

A I wasn't even coherent. It - - - It was scary.
Q And in that emotional state when she spoke to you, do you recall saying, and I'm looking from just reading from this, I knew this was coming?
A I don't recall saying that. Clearly, I did.
Q Do you know why you would have said that at that specific time?
A Anger.
Q And why were you angry?
A I think this was taken the day that [redacted] was put back in ICU and I know - - - I remember just being angry, very angry that he was there and scared.
Q Now, when Mr. Todd asked you about whether you had concerns or suspicions, do you recall telling him no, I don't think I did?
A I know that I didn't have suspicions the week - - - or several - - - couple of weeks between the first incident and the second incident. I wasn't feeling it at - - - in the moment.
Q Was it only after he went to the hospital on January 11th, '10 that you began to have those suspicions?
A It all made sense then.
Q You used the term before all the pieces came together.

A Exactly.
Q So when you were talking with Mr. Todd and these people about concerns and suspicions before, you were not talking about suspicions or concerns you had prior to January 11th, 2010 were you?
Mr. Todd - Objection.
Mr. Frawley - Object to the form. Answer the question.
Q You were only talking about suspicions you held from January 11th, 2010 on?
A Correct.
Q When you gave this particular response to Amanda Carter, right?
Mr. Todd - Objection.
Mr. Frawley - Same objection. Go ahead.
A I gave this response to Amanda Carter in complete emotional disarray. I remember that now. I remember that clearly.
Q Okay. And so on January the 10th, 2010, and January 9th, 2010, [illegible] January 8th, 2010, back to December 4th, 2010, did you know it was coming?
A I did not know it was coming. Nobody could have known that was coming.
Q Now, what about somebody - - I believe that Mr. Todd asked you do you hold Michael responsible for

harming this child and you said yes, right; you recall that?
A I do.
Q Now, who were the professionals in this particular case?
A Meaning DSS and the hospital? Who do you mean?
Q Who were the people that are supposed to know that a child has been abused?
Mr. Todd - Objection.
Mr. Frawley - Object to the form. Answer the question.
Mr. Settana - Object to the form.
A It was my understanding that the doctors at Levine were indicating that there was possible abuse. They're the professionals. I'm just the grandmother. I know that I did not have concerns of anyone possibly abusing Owen during that time.
Q And then who were the people that were doing investigations, not CMC, but was it DSS and York County Sheriff's Department?
A My understanding, when we were released from the hospital December 8th, was DSS was going to follow up, meaning investigate, find out what happened to my grandson.
Q And if CMC and DSS and the York County Sheriff's

Department had erred on the side of caution, it would have prevented this wouldn't it?
Mr. Todd - Objection.
Mr. Settana - Object to the form.
Mr. Frawley - Same objection.
Q What do you think would have happened if Carolinas Medical Center had done what they were supposed to do?
Mr. Todd - Objection.
Mr. Frawley - Object to the form of the question. Answer the question.
Mr. Settana - Object to the form.
Q Tell them.
A Am I allowed to answer?
Q Yes, you can answer. Tell them who's responsible.
Mr. Todd - That's only because we don't have a judge to object to you answering it.
Q Tell them who's responsible.
A I'll tell a judge too my opinion, and it's just my opinion.
Mr. Todd - Yes, you can answer. There's no judge here.
A I feel in my opinion with three organizations that were involved, my grandson should not have gone to the hospital twice. The first time, nothing was

done. The second time, so much was done by all of your organizations, the second time when he was critical, when he was almost dead. The first time with cranial bleeding, nothing was done. I do take responsibility for not seeing things that I should have seen, but I didn't see them. I'm not trained to see them. I'm not trying to put the blame on any one organization, but when you have three, someone's not communicating with someone. The doctor didn't communicate to DSS what he'd thought, possible non-accidental trauma. I didn't know that then. I know that now. We're almost three years past. I know a lot of things now.

Mr. Hood - I have nothing further.

Mr. Todd - I have no more questions.

Mr. Frawley - I appreciate your patience.

Whereupon - Deposition was concluded at 5:43 P.M.

Signing of Transcript Shirley Dallas-Gerrald, CVR-CM

Notary Public/Court Reporter

of Deposition By

Witness Reserved

(Recorded deposition tapes retained fifteen days from date of certification or until transcript has been signed in cases when signature is not waived.)

SUBSCRIPTION OF DEPONENT

State of _____)
)
County of _____)

I, Charlotte Williams, do hereby certify that I have this day read the foregoing deposition and do hereby declare that the same is a true and accurate transcript of the proceedings had at the time and place herein designated (except for the notations as indicated on the attached errata sheet, if any).

Dated: _____

_____
Charlotte Williams

Sworn to and subscribed before me

this ___ day of _____, 2012.

_____
Notary Public

My Commission Expires:_____

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 20th day of August, 2012, in the City of Rock Hill, County of York, State of South Carolina.

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:
8-18-2021

Deposition of Charlotte Williams

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted] a minor ..... Appellant

v.

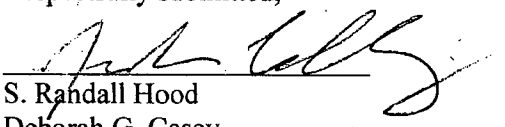
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County ... Respondents.

[AMENDED] NOTICE OF APPEAL

Appellant Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted], a minor, appeals from an order of the Honorable S. Jackson Kimball granting Respondent Charlotte-Mecklenburg Hospital Authority d/b/a/ Carolinas Medical Center summary judgment on May 13, 2013. Appellant filed a timely motion to alter or amend judgment on May 22, 2013. Appellant also appeals Judge Kimball's order denying the motion to alter or amend judgment that Appellant received written notice of on August 14, 2013.

[Signature Page to Follow]

Respectfully submitted,



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October 28, 2013
Rock Hill, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-46-4508

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SEP 13 2013
SC Court of Appeals

Elizabeth Hope Rainey, as GAL for [redacted]

PLAINTIFF(S)

The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, et al.

DEFENDANT(S)

Submitted by: Monteith P. Todd	Attorney for: ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

FILED-RECEIVED
2013 MAY 15 P 2:24
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, S.C.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Ends case as to The Charlotte Mecklenburg Hospital Authority d/b/a Carolinas Medical Center Only

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Lyon, Circuit Court Judge — 3063 Judge Code — 5/13/13 Date

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of May 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of May 2013 to attorneys of record or to parties (when appearing pro se) as follows:

S. Randall Hood
1539 Health Care Dr.
Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

Motion for Summary Judgment on behalf of The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center, heard on April 18, 2013 in York County, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted] a minor Plaintiff, v. Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services, and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, The York County Sheriff's Department, and York County, Defendants.	)	Case No.: 2011-CP-46-4508 **ORDER FOR SUMMARY JUDGMENT**

FILED-RECEIVED
2013 MAY 15 PM 2:24
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, S.C.

This matter came before me on April 18, 2013, upon the Motion for Summary Judgment of Defendant Charlotte-Mecklenburg Hospital Authority ("CMHA"). Representing Plaintiff was S. Randall Hood, and representing CMHA was Monteith P. Todd. Based on the record presented, I make the following findings and conclusions.

FACTUAL BACKGROUND

This case arises out of physical abuse of a minor child, [redacted] by his father, Michael Carduff. The essential facts of the case are undisputed, and the critical issue presented is whether there was a duty of care imposed on CMHA to refuse to release the child back to his parents after a thorough medical examination was inconclusive of child abuse, and after reporting its findings to the South Carolina Department of Social Services ("DSS"), as required by statute.

On December 4, 2009, [redacted]s parents brought him to Piedmont Medical Center ("PMC") in Rock Hill for medical attention. On December 5, 2009, the physicians at PMC transferred [redacted] to Levine Children's Hospital ("Levine") at CMHA in Charlotte for further care. The following day, a CT scan by CMHA staff revealed a subdural hematoma, which raised a suspicion of a non-accidental injury to [redacted]. At that time, Levine notified DSS of its

suspicion that [redacted] may have been a victim of a non-accidental trauma.

Upon notification of this suspicion, DSS began an investigation into [redacted] and his injuries. While DSS conducted its investigation, the physicians at Levine performed additional tests and studies on [redacted]. The results of these tests were essentially normal. Levine advised DSS that it could neither rule in, nor rule out non-accidental trauma as the cause of [redacted]s injury. They also advised DSS that [redacted] was medically stable, and otherwise ready for discharge. DSS advised Levine that [redacted] should be discharged to his parents, that DSS had entered into a safety plan with [redacted]s parents, and that DSS would conduct a home investigation. Pursuant to those instructions, Levine discharged [redacted] to his parents on December 8, 2009, having maintained control over [redacted]s care for four days.

On January 11, 2010, five weeks after discharge, [redacted] was returned to Levine with severe, permanent brain injury caused by abuse by his father. Michael Carduff subsequently pled guilty to abusing [redacted] and causing his catastrophic injuries.

PLEADINGS AND DISCOVERY

Plaintiff commenced this action on December 1, 2011, naming CMHA, DSS and the York County Sheriff's Department as Defendants. Plaintiff alleges that CMHA owed [redacted] a duty not to place him back into an abusive and dangerous environment, and that it breached that duty by discharging [redacted] back to the custody of his parents. Plaintiff further alleges that [redacted] suffered catastrophic injuries as a result of CMHA's negligence. CMHA has denied the allegations of Plaintiff's claims, and asserted certain affirmative defenses, including immunity under S.C. Code Ann. § 63-7-390 (1976, as amended).

The parties subsequently engaged in discovery. By motion dated March 19, 2013, CMHA moved for summary judgment. The basis the motion is twofold: (1) that CMHA did not have, and that Plaintiff could not demonstrate, that CMHA owed [redacted] a duty of care that would prevent the harm complained of; and, (2) that it is granted immunity from liability under S.C. Code Ann. § 63-7-390 (1976, as amended). CMHA and Plaintiff submitted memoranda of law and exhibits in support of their position. After full consideration of the entire record presented, I make the following findings and conclusions.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston*

County, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997).

In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial, and I have done so. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994).

Within this framework, summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law. It is not, however, sufficient that the nonmoving party seeks to create an inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary judgment. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991).

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); Main v. Corley, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see, also, Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment "mirrors" standard for directed verdict).

"[I]nterpretation of a statute is a question of law for the court." *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); *Bostic v. American Home Mortgage Servicing, Inc.*, 375 S.C. 143, 147, 650 S.E.2d 479, 481 (Ct.App. 2007). Thus, where there are no issues of fact to be dealt with, summary judgment is the appropriate disposition of the issue.

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011). "If a statute's language is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another

meaning.'" *Id.*, *quoting Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000). When interpreting a statute, the court "must read the language 'in a sense that harmonizes with its subject matter and accords with its general purpose.'" *Ranucci v. Crain*, 397 S.C. 168, 172, 723 S.E.2d 242, 244 (Ct. App. 2012), *quoting Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

It is a question of law for the court to determine the existence of a duty of care, and the scope of that duty. *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011); *Madison ex rel. Bryant v. Babcock Center, Inc.*, 370 S.C. 42, 634 S.E.2d 275 (2006); *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (Ct.App. 1997).

DISCUSSION

1. **Duty of care.**

CMHA moved for summary judgment on the basis that it did not owe a duty to Owen to refuse or prevent his discharge back to the custody of his parents. CMHA asserts that once DSS has been notified of the possibility of abuse, and after DSS had ordered the child released to the care of his parents, it had fulfilled its legal responsibility. I agree.

In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). If there is no duty, then the defendant in a negligence action is entitled to a directed verdict. *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007), *citing Steinke*, 336 S.C. at 387, 520 S.E.2d at 149.

"A legal duty can be created by statute, a contractual relationship, status, property interest, or some other special circumstance." *Madison ex rel Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656-57 (2006) (citations omitted.). The determination of the existence of a duty is one of law for the court. *See Doe ex rel Doe v. Wal-mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011) (a "court must determine, as a matter of law, whether the law recognizes a particular duty"). In this state, ". . . there is no general duty to control the conduct of another or to warn a third person or potential victim of danger . . . ." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).

The crux of the plaintiff's claim against Charlotte-Mecklenburg Hospital Authority is that

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Levine had a legal duty not to discharge [redacted] to his parents on December 8, 2009, or a duty to prevent [redacted] from being discharged into the custody of his parents, despite being medically cleared for discharge. Plaintiff asserts that, despite DSS's instruction to discharge [redacted] to his parents, CMHA had a duty to refuse to do so, while CMHA conducted a separate investigation of its own into the possibility of abuse. Plaintiff asserts that if CMHA had done such an investigation, it could have concluded that [redacted] was abused, resulting in [redacted] not being discharged into the custody of his parents. Plaintiff asserts that this would have prevented the catastrophic injury that occurred five weeks later on January 11, 2010.

South Carolina has enacted a comprehensive statutory scheme designed to deal with children suspected child abuse or neglect. Under South Carolina law, DSS, with the assistance of law enforcement and the family court system, is charged with investigating, prosecuting, and adjudicating issues related to the safety of children in their homes, removal from the custody of parents, placement in foster homes, and the ultimate issue of retention of custody for a child's welfare. *See* S.C. Code Ann. § 63-7-10 *et seq.* (1976, as amended). Other than in connection with obvious criminal acts, no other agency of the State has the duty, obligation, or authority to investigate child abuse or neglect cases. Moreover, DSS is the agency given the authority deny or deprive a parent of custody of a child.

Thus, CMHA had no legal right, and no legal duty, to withhold custody of [redacted] from his parents. It fulfilled its statutory duty by properly reporting its findings to DSS.

By statute, certain persons are required to report suspected child abuse or neglect. Physicians, nurses, healthcare professionals, and other designated people are required to report suspected child abuse or neglect to the county DSS, or to a law enforcement agency in the county where the child resides. *See* S.C. Code Ann. § 63-7-310. This section states, in relevant part:

> A physician, nurse, . . . or any other ... health professional . . . **must report** in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.
>
> * * * * *
>
> (D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found. (Emphasis added.)

It is uncontested that Levine complied with this statutory requirement by reporting to DSS that [redacted] may have been a victim of non-accidental trauma. Once this report was made, the DSS became responsible for implementing the child welfare process for [redacted]s protection, including any decision to withhold custody from the parents. *See* S.C. Code Ann. § 63-7-660 (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred); *see also South Carolina Dept. of Social Services v. Randy S.*, 390 S.C. 100, 700 S.E.2d 250 (Ct. App. 2010) (noting that Section 63-7-1660(A) grants to DSS alone the authority to petition the family court to remove a child from custody of a parent if DSS "determines by a preponderance of evidence that the child is an abused or neglected child"); *South Carolina Department of Social Services v. Pritchard*, 329 S.C. 242, 246, 495 S.E.2d 242, 244 (Ct. App. 1997) (same); *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (same).

There is no statutory or common law authority in South Carolina that would grant CMHA the authority to remove a child from the custody of his parents, or to refuse discharge of a child to his parents when the child is medically ready for discharge. The reporting statute does not enhance the duty of a reporting entity to require it to prevent a child from being returned to its parents after DSS has instructed that the child should be returned. In *Doe v. Marion, supra*, the Supreme Court held that even the failure to report under the statute does not create a private right of action. On the other hand, had CMA attempted to retain this child in its custody absent a court order or directive from DSS, it would have been potentially liable for false imprisonment or kidnapping.

Plaintiff also argues that Levine had a statutory duty and right to refuse to discharge [redacted] to his parents under S.C. Code Ann. § 63-7-750, which reads as follows:

> § 63-7-750. Doctor or hospital may detain child; civil immunity.
>
> (A) A physician or hospital to which a child has been brought for treatment may detain the child for up to twenty-four hours without the consent of the person responsible for the child's welfare if the physician or hospital:
>
> (1) has reason to believe that the child has been abused or neglected;
>
> (2) has made a report to a law enforcement agency and the department pursuant to Section 63-7-310, stating the time the physician notified the agency or department that the child was being detained until a law enforcement officer could arrive to determine whether the officer should take emergency physical

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> custody of the child pursuant to Subarticle 3; and
>
> (3) has reason to believe that release of the child to the child's parent, guardian, custodian, or caretaker presents an imminent danger to the child's life, health, or physical safety. A hospital must designate a qualified person or persons within the hospital who shall have sole authority to detain a child on behalf of the hospital.
>
> (B) A physician or hospital that detains a child in good faith as provided in this section is immune from civil or criminal liability for detaining the child. (Emphasis added.)

I disagree with Plaintiff's construction. I find and conclude that the ability to retain a child under this section is limited to a twenty-four hour period to afford the hospital opportunity to contact law enforcement or DSS in order that such agency may investigate the hospital's concern. This was accomplished, and DSS had already directed that [redacted] be discharged to his parents. In any event, CMHA retained [redacted] well beyond the authorized twenty-four hours in the course of its own further investigation of its concern of child abuse. Further, and in any event, the right to retain the child is permissive and not mandatory. *See* § 63-7-750(A).

In summary, I find and conclude that the entity obligated to retain custody over a child in derogation of a parent's rights is DSS, or temporarily, a law enforcement agency, and then only if these entities meet the statutory requirements to do so. In this case, [redacted] remained in Levine from December 5 until December 8, 2009. Levine notified DSS of the possibility of abuse on December 6, 2009, and DSS began investigating the matter that same day. Under the statute, any authority the hospital had to retain the child for up to twenty-four expired, and the decision as to whom [redacted] would be discharged belonged to DSS, not CMHA.

Notwithstanding these findings and conclusions, Plaintiff attempts to create a duty by expanding the scope of CMHA's duty through the submission of an expert's affidavit which asserts that Levine "abrogated a duty or responsibility to [redacted]." The expert's opinions are based on this expert's interpretation of hospital accreditation standards and internal hospital policies. I find and conclude that these expert opinions do not create a duty at law, or expand the statutory scheme promulgated by the legislature.

The existence of a duty is a legal question for determination by the court. Because the determination of the existence of a duty is a legal question, the plaintiff cannot create a duty through expert testimony or internal policies and procedures, where the duty does not otherwise exist at law. *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 480, 377 S.E.2d 343, 351

(1988) (opinion testimony cannot create a duty that does not exist at law); *see also, Citizens and Southern National Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994)

Further, Plaintiff's effort to create a common law duty, or a duty that reaches beyond the plain language of the statutes at issue, ignores basic rules of statutory construction. The court ". . . must presume that the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2003) (*citing TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). If a common law duty to report and prevent child abuse existed without the need for §§ 63-7-310 and 63-7-750, the action of the General Assembly in promulgating these statutes would have been unnecessary. These statutes create a duty where there was none at common law, and the duty created is more narrow than that asserted by Plaintiff.

I find and conclude that there is no duty or obligation for a hospital to refuse to discharge a child, who is medically stable, when DSS has directed that the child be discharged to the parents. The applicable statutes in this case provide only a limited right to retain the child in derogation of a parents' custodial rights. This limited right permits such retention for only twenty-four hours, and only in order that law enforcement or DSS can be contacted and conduct an investigation.

Thus, I find and conclude that CMHA had neither the right, nor the duty to refuse discharge of [redacted] to his parents under the circumstances. CMHA met its duties in this case by reporting its suspicion of a non-accidental trauma to DSS. Further, it fulfilled its legal duty in returning [redacted] to the custody of his parents upon being advised by DSS to do so. The decision as to whether [redacted] should be discharged to his parents was a decision for DSS, not for CMHA.

2. **Immunity regarding reporting of abuse.**

CMHA also argued statutory immunity from liability pursuant to S.C. Code Ann. § 63-7-390, which provides:

> A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this action extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or

welfare had been or might be adversely affected by abuse or neglect.

Plaintiff's claim in this case is not premised on the fact that CMHA reported its suspicion of abuse. No issue is raised concerning the fact that Levine reported [redacted]'s condition to DSS, as required by 63-7-310. Rather, Plaintiff's claim is premised on the assertion of a further duty to retain custody of [redacted], and to refuse to return him to his parents' custody. Thus, § 63-7-390 has no application to the facts of this case, and I so find and conclude.

CONCLUSION

Therefore, based on the discussion herein, the motion for summary judgment of the Defendant Charlotte-Mecklenburg Hospital Authority is granted.

AND IT IS SO ORDERED.

May 13, 2013

S. Jackson Kimball
Special Circuit Court Judge
York County

#9

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4604508

PLAINTIFF(S)	DEFENDANT(S)
Elizabeth Hope Rainey [redacted]	Charlotte Mecklenburg Hospital Authority Department of Social Services South Carolina York County Sheriffs Department Carolinas Medical Center Bruce Bryant York County
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on August 14, 2013, upon Plaintiff's motion pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the Court's Order filed May 15, 2013. Representing the parties were: Deborah Casey for Plaintiff, Monteith Todd for Defendant Charlotte-Mecklenberg Hospital Authority, and Patrick Frawlely for Defendant S.C. Dept. of Social Services.

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order. Plaintiff's case is tragic, but Plaintiff's position asks the court to make inferences, suppositions, and conclusions that are not supported by the extensive discovery in this case, and, in my judgment, go beyond the scope of existing precedent on the issues presented.

Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Special Circuit Court Judge	3063 Judge Code	8/14/2013 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

S. Randall Hood and Deborah Casey 1539 Health Care Dr. Rock Hill, SC 29732
Duane Michael Shaw PO Box 36250 Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick John Frawley PO Box 489 Lexington, SC 290710489
Monteith Powell Todd PO Box 11449 Columbia, SC 29211
Janet Brooks Holmes PO Box 7217 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Susan Wyatt

David Hamilton - Clerk of Court

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

#2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JAN 2 4 2014
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen C., a minor ..... Appellant

v.

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County

Of whom

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center is the ..... Respondent.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210, SCACR, counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

S. Randall Hood
Deborah G. Casey

Lara Pettiss Harrill
Jordan C. Calloway
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
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Rock Hill, SC 29732
(803) 329-4200

Attorneys for Appellant Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen C.

January 8, 2014
Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JAN 2 4 2014
SC Court of Appeals

APPEAL FROM YORK COUNTY
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S. Jackson Kimball, Special Circuit Court Judge

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Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen C., a minor ..... Appellant-

v.

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County

Of whom

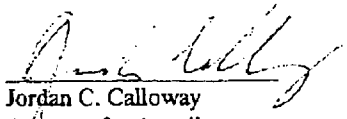
Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center is the ..... Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on this 8th day of January, 2014, he served counsel for the Defendants with copies of the Record on Appeal in this matter by mailing a copy of the same by mail to the following address:

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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to [redacted], a minor ..... Appellant

v.

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center; South Carolina Department of Social Services and Bruce Bryant, as the Constitutional Office of the Sheriff of York County, the York County Sheriff's Department, and York County

Of whom

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center is the ..... Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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August __, 2014
Rock Hill, South Carolina

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