

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-38-0845

RECEIVED

APR 09 2018

SC Court of Appeals

Ralph C. Williams, Sr., and Linda Williams, ... Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC Respondents.

RECORD ON APPEAL - VOLUME 1

Robert P. Foster, # 2093
Foster Law Firm, LLC
601 E. Mcbee Ave., Ste. 104
Greenville, SC 29601
rfoster@fosterfoster.com
(864) 242-6200

Jason E. Bring, # 100275
Arnall Golden Gregory, LLP
171 17th St., NW, Ste. 2100
Atlanta, GA 30363
jason.bring@agg.com
(404) 873-8162

Javá O. Warren, pro hac vice
The Law Offices of Javá O. Warren
4919 Albemarle Rd., Suite 106
Charlotte, NC 28205
warr2131@bellsouth.net
(704) 568-8439

Tyler L. Arnold, # 80221
PruittHealth
1626 Jeurgens Ct
Norcross, GA 30093
tarnold@pruitthealth.com
(678) 533-6457

Attorneys for Appellants

Attorneys for Respondents

INDEX

VOLUME 1

Orders

Order Denying Summary Judgment	1
Verdict Form	3
Order of January 22, 2016	6
Order Denying Motion to Reconsider	12

Pleadings and Motions

UniHealth's Answer to Complaint	14
Patricia Johnson's Answer to Complaint	44
Josette Peppers' Answer to Complaint	74
UniHealth's Memo in Support of Motion for Summary Judgement	104
Plaintiffs' Memo in Opposition to UniHealth's Motion for Summary Judgment	118
Amended Complaint	143
Plaintiffs' Post-Trial Motions	178
Defendants' Post-Trial Motions	188
Response to Plaintiffs' Post-Trial Motions	202
Plaintiffs' Reply Brief	214
Response to Plaintiff's Post-Trial Memo on Issue of Stipulation	226
Plaintiffs' Motion for Reconsideration	233
Response to Motion for Reconsideration	235
Plaintiffs' Supplemental Brief on Motion for Reconsideration	242

Response to Supplemental Brief on Motion for Reconsideration	245
Plaintiffs' Reply	255

Transcripts and Exhibits

Trial Transcript Excerpts	261
Patricia Johnson	
Direct	272
Cross	298
Redirect	326
Josette Davis	
Direct	335
Cross	340
Redirect	355
Robert Warrington	
Direct	363
Cross	378
Redirect	379
Stephanie Scott	
Direct	380
Cross	393
Redirect	395
Jamie Smoak	
Direct	396
Cross	404
Brian Queen	
Direct	406
Redirect	413
Recross	413
Carl Shultz	
Direct	414
Cross	422
Redirect	423

Lilly Gallman	
Direct	425
Cross	436
Terry Rivers	
Direct	439
Cross	443
Cynthia Mack	
Direct	445
Cross	466
Ralph Williams, Jr.	
Direct	471
Earline Sabb	
Direct	475
Connie Jackson	
Direct	482

VOLUME 2

Ralph Williams, Sr.	
Direct	487
Cross	533
Redirect	562
Linda Williams	
Direct	565
Redirect	594
Mary Rogers	
Direct	598
Redirect	600
Debbie Pigott	
Direct	601
Motions	605
Plaintiff Close	610
Defendant Close	618

Charge	620
Verdict	642
Poll	644

Plaintiffs' Trial Exhibits

Exhibit 2A - Property Report	648
Exhibit 2B - Property Report	649
Exhibit 2C - Property Report	650
Exhibit 3 - SLED Lab Reports	651
Exhibit 3A - Chain of Custody Report	655
Exhibit 4 - Building Diagram UPAC	666
Exhibit 8 - Johnson's Hand-written Report	667
Exhibit 9 - Statement of Johnson	668
Exhibit 11 - Perineal Policy	669
Exhibit 12 - Peppers' Voluntary Statement	672
Exhibit 15A - T and D Article	673
Exhibit 15B - T and D Article	675
Exhibit 15C - T and D Article	677
Exhibit 20 - Certificate of Completion	679
Exhibit 21 - Ralph Williams' CV	680
Exhibit 25 - Search Results	681
Exhibit 28 - Ralph Williams' Employment Application	683
Exhibit 29 - Patricia Johnson's Employment Application	687
Exhibit 35A - CNA Assignment Sheet	691
Exhibit 39 - Search Warrant	692
Exhibit 50 - Hand-drawn diagram	696

Defendant's Trial Exhibits

Exhibit 2A - Medical Record	697

Exhibits to Plaintiffs' Post-trial Motions

Exhibit 1 - Complaint and Excerpts from Answers	704
Exhibit 2 - Excerpt Defendant UPAC's Brief in Supp. of Summary Judgment	717
Exhibit 3 - Excerpt Plaintiffs' Brief in Opp. to Summary Judgment	727
Exhibit 4 - Excerpt Motion in Limine	732
Exhibit 5 - Request to Charge # 12	737
Exhibit 6 - Proposed Verdict Form	741

Certificate of Counsel	744

Ralph Williams, et al

UniHealth, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert P. Foster, Esq.

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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2112

Judge Code

1/6/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

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.

UniHealth's Motion For Summary Judgment is denied. Triable Issues of fact exist for resolution

by a jury as to whether the rebuttable presumption of good faith under the Omnibus Adult

Protection Act has been overcome.

Triable Issues of fact exist for resolution by a jury as to whether Defendants Johnson and

Peppers acted outside their scope of employment with UniHealth.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and
LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-
ACUTE CARE – ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

VERDICT FORM

We, the jury, by unanimous consent, find:

1. Patricia Johnson acted in good faith when she reported her suspicions about Ralph Williams, Sr.'s actions on June 21, 2010?

____ YES
~~____~~ ✓ NO

2. Josette Davis acted in good faith when she reported her suspicions about Ralph Williams, Sr.'s actions on June 21, 2010?

____ YES
✓ ____ NO

**If your answers to Question Nos. 1 and 2 are YES,
STOP, DO NOT DELIBERATE FURTHER, AND DO NOT ANSWER ANY
ADDITIONAL QUESTIONS. GO TO THE END AND SIGN THE VERDICT FORM.**

**If your answer to Question Nos. 1 or 2 is NO,
PROCEED TO QUESTIONS 3-6.**

3. If your answer to Question No. 1 is NO, then answer the following question: Do you find that Patricia Johnson acted outside the scope of employment when she made her reports regarding Ralph Williams, Sr. on June 21, 2010?

✓ YES
 NO

4. If your answer to Question No. 2 is NO, then answer the following question: Do you find that Josette Davis acted outside the scope of employment when she made her reports regarding Ralph Williams, Sr. on June 21, 2010?

✓ YES
 NO

5. Please state the total amount of actual damages, if any, sustained by Plaintiff Ralph Williams, Sr.

\$ 102,500
~~\$ 750,000~~

6. Please state the total amount of actual damages, if any, sustained by Plaintiff Linda Williams.

\$ 0
~~\$ 250,000~~

7. If you entered an amount in response to Question Number 5 and/or 6, do you find by clear and convincing evidence that any harm done to the Plaintiff was the result of the willful, wanton, or reckless conduct of:

a. Patricia Johnson:

✓ YES NO

b. Josette Davis:

✓ YES NO

c. Unihealth Post-Acute Care – Orangeburg, LLC

✓ YES NO

8. If you responded YES to question 7a, 7b, or 7c, enter the amount of punitive damages, if any, that should be imposed to punish one or more of the defendants.

a. Patricia Johnson:

\$300,000

b. Josette Davis:

\$97,500

c. Unihealth Post-Acute Care – Orangeburg, LLC

\$600,000


FOREPERSON

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

RALPH C. WILLIAMS, SR., and)
LINDA WILLIAMS,)

Plaintiffs,)

v.)

PATRICIA A. JOHNSON, JOSETTE)
PEPPERS, and UNIHEALTH POST-)
ACUTE CARE – ORANGEBURG,)
LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

ORDER

CLERK OF COURT
ORANGEBURG, SC

2016 JAN 22 A 10:11

FILED FOR RECORD
WINNIE B. CLARK

hm

This matter is before the Court on the Parties' Post-Trial Motions, to include the following: Defendants' Motion for Judgment Notwithstanding the Jury Verdict, or in the Alternative, Motion for a New Trial; Defendant UniHealth Post-Acute Care – Orangeburg, LLC's Motion for Judgment Consistent with Special Interrogatory Answers, Judgment Notwithstanding the Jury Verdict, or in the Alternative, Motion for a New Trial Absolute; Defendants' Motion to Reduce Punitive Damages; and Plaintiffs' Post-Trial Motions. Plaintiffs filed a single document on September 18, 2014 entitled "Plaintiffs' Post-Trial Motions" that included: a Motion Judgment Notwithstanding the Verdict; a Motion to Conform the Evidence to the Proof Present at Trial; a Motion in the Alternative for a New Trial Against UniHealth Post-Acute Care – Orangeburg, LLC Only; and, a Motion to Set Aside Verdict Form Questions No. 3 and 4, and for Judgment Notwithstanding the Jury Verdict on the Scope of Employment Issue.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC (“UniHealth”) in June 2010.¹ Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter “Ralph Williams”) when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs’ allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.’ Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams’s supply cart sitting outside of Room 39 in the facility.² When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.³ The proper procedure for a CNA changing a resident’s adult brief does not require a CNA to be on a resident’s bed.⁴ Johnson confronted Ralph Williams by stating, “What are you doing!?”⁵ Ralph Williams responded, “Will you please shut the door.”⁶ Johnson left the door open,⁷ and she ran

¹ (See Pls.’ Am. Compl.)

² (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)

³ (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)

⁴ (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)

⁵ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)

⁶ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)

⁷ (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)

to get another nurse, Davis.⁸ The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.⁹ Thereafter, Ralph Williams was escorted out of the room without objection,¹⁰ and Davis went to alert the facility's Director of Nursing and the local authorities.¹¹ The Orangeburg County police arrived at the facility and investigated the incident.¹² The police determined that there was sufficient cause to arrest Ralph Williams.¹³

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed \$102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling \$897,500.00 (\$200,000 against Johnson; \$97,500 against Davis; and \$600,000 against UniHealth).

II. LEGAL AUTHORITY AND ANALYSIS

A. Standard of Review

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial

⁸ (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)

⁹ (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)

¹⁰ (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)

¹¹ (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

¹² (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

¹³ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); see also *Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses "veto power to the Nth degree." *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina's Omnibus Adult Protection Act

South Carolina's Omnibus Adult Protection Act requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses "*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall* report the incident in accordance with this section." S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, "in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately." S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has "reason to believe" or who "suspect[s]" sexual assault has no discretion in the matter—she "must" report the incident and notify law enforcement "immediately." "A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial

proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption." S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

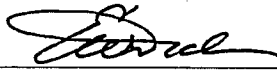
From the testimony of the witnesses and the evidence presented at trial, the Court exercises its discretion as the thirteenth juror and grants a new trial.¹⁴ The Court finds that the evidence did not justify the verdict. Ralph Williams, by his own testimony, was on a female resident's bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident's bed. The recitation of facts and evidence herein are not intended to be and are not exhaustive, as there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict. The facts of the case and the interests of justice persuade the Court that a new trial is warranted.

¹⁴ Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforces the Court's view that a new trial is warranted.

III. CONCLUSION

For the reasons set forth above, the Court hereby exercises its authority under the thirteenth juror doctrine and **GRANTS** Defendants' Motion for a New Trial and **DISMISSES AS MOOT** the remaining Post-Trial Motions of Defendants and Plaintiffs. The Court further **ORDERS** the entire jury verdict from the initial trial be discarded and the case be set for re-trial. Given that the jury verdict no longer stands, the Parties shall be permitted to file any appropriate pretrial motions, regardless if they were previously ruled upon.

This 14th day of January, 2016


Honorable Edgar W. Dickson
Circuit Court Judge, First Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Ralph C. Williams Sr., and Linda Williams,)

Plaintiffs,)

vs.)

Patricia Johnson, Josette Peppers, and)
Unihealth Post-Acute Care-Orangeburg,)
LLC,)

Defendants.)

**ORDER DENYING PLAINTIFFS'
MOTIONS TO RECONSIDER AND
TO ALTER OR AMEND THE JUDGMENT**

This matter came before the court on Plaintiffs' Motions to Reconsider and to Amend or Alter the Judgment of this court, acting as the thirteenth juror, ordering that the entire verdict from the initial trial be discarded and the case be retried.

The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts of the case. Graham v. Whitaker, 282 S.C. 393, 401 (1984). Under the thirteenth juror doctrine, the trial court may grant a new trial if it finds that the verdict is unsupported by the evidence. Folkens v. Hunt, 300 S.C. 251, 254 (1990). "This ruling has also been termed granting a new trial upon the facts[.]" and, basically, the court, "as the thirteenth juror[,] 'hangs' the jury." Id. The court is not required to give reasons for this outcome and, similarly, "because the result of the 'thirteenth juror' vote by the [court] is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial [court] to make factual findings." Id. When acting as the thirteenth juror, the trial court "possess[es] veto power to the Nth degree" and is presumed to appreciate and exercise its discretion with fairness and impartiality. Worrell v. S.C. Power Co., 186 S.C. 306, 31314 (1938).

1/2 

After due deliberation and review of the case law and motions of counsel, this court finds that there is nothing warranting reconsideration, and, therefore, Plaintiffs' motions are denied. Upon further reflection of the trial and the evidence presented to the jury, the court finds that the evidence did not justify the verdict. This court is concerned that the jury improperly handled the issue of the Defendant nurse's immunity under South Carolina's Omnibus Adult Protection Act. See S.C. Code Ann. §§ 43-35-25(A) & (G). The facts of the case and the interests of justice persuade the court, sitting as the thirteenth juror, that a new trial is warranted.

THEREFORE, for the reasons stated above, Plaintiffs' Motions to Reconsider and to Amend or Alter the Judgment of this court should be, and hereby are, DENIED.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, First Judicial Circuit

March
February 10, 2017
Orangeburg, South Carolina

2/2 

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and
LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-
ACUTE CARE – ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

DEFENDANT UNIHEALTH POST-ACUTE
CARE – ORANGEBURG, LLC'S
ANSWER TO PLAINTIFFS' COMPLAINT

Defendant UniHealth Post-Acute Care – Orangeburg, LLC (hereinafter referred to as “Defendant”) files this Answer and Defenses to Plaintiffs’ Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs’ Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

RECEIVED
BY *RW* / DATE *8/6/12*

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

7. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof. Further, to the extent that the allegations contain a legal conclusion regarding jurisdiction, Defendant maintains that no response is necessary.

FACTUAL ALLEGATIONS

10. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through nine (9) by reference as if specifically restated verbatim herein.

11. Responding to the allegations contained in Paragraph 10 of the Complaint, Defendant admits Plaintiff Ralph Williams was employed as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina from on or about February 9, 2010 until on or about June 21, 2010.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same and demands strict proof thereof.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixteen (16) by reference as if specifically restated verbatim herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendants is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and therefore denies the same and demands strict proof thereof.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies the same and demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies the same and demands strict proof thereof.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies the same and demands strict proof thereof.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

28. Defendant admits the allegations contained in Paragraph 27 of the Complaint.

29. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

30. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through twenty-nine (29) by reference as if specifically restated verbatim herein.

31. Responding to the allegations contained in Paragraph 30 of the Complaint, Defendant admits that Plaintiff Ralph Williams was hired as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina on or about February 9, 2010.

32. Responding to the allegations contained in Paragraph 31 of the Complaint, Defendant admits Plaintiff Ralph Williams always worked the "11:00 p.m. until 7:00 a.m." shift and was assigned to the United Rehab Services (URS) unit.

33. Responding to the allegations contained in Paragraph 32 of the Complaint, Defendant admits that part of Plaintiff Ralph Williams' duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina included assisting the Registered Nurses and Licensed Practical Nurses with residents care by taking vitals signs, providing residents with water, bathing residents, and changing resident briefs or adult diapers. Defendant denies that the identified duties in Paragraph 32 of the Complaint were Plaintiff Ralph Williams' only duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

34. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendant admits that Plaintiff Ralph Williams was supervised by Licensed Practical Nurses while employed as as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

35. Responding to the allegations contained in Paragraph 34 of the Complaint, Defendant admits that some of the residents that Plaintiff Ralph Williams cared for were

bedridden and that one of his duties as a CAN was to change resident briefs or adult diapers. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.

36. Defendant admits the allegations contained in Paragraph 35 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 36 of the Complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and therefore denies the same and demands strict proof thereof.

39. Responding to the allegations contained in Paragraph 38 of the Complaint, Defendant admits Plaintiff Ralph Williams was regularly assigned to work on the United Rehab Services (URS) unit.

40. Defendant admits the allegations contained in Paragraph 39 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 40 of the Complaint.

42. Defendant admits the allegations contained in Paragraph 41 of the Complaint.

43. Defendant admits the allegations contained in Paragraph 42 of the Complaint.

44. Defendant admits the allegations contained in Paragraph 43 of the Complaint.

45. Defendant admits the allegations contained in Paragraph 44 of the Complaint.

46. Defendant admits the allegations contained in Paragraph 45 of the Complaint.

47. Responding to the allegations contained in Paragraph 46 of the Complaint, Defendant admits that there is a "call button" beside each resident's bed that sounds an alert on the unit of the facility in which the resident's room is located and also activates a light outside of

the resident's room. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 47 of the Complaint as stated.

49. Defendant denies the allegations contained in Paragraph 48 of the Complaint as stated.

50. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through forty-nine (49) by reference as if specifically restated verbatim herein.

51. Responding to the allegations contained in Paragraph 50 of the Complaint, Defendant admits that Plaintiff Ralph Williams, as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina, reported to Defendant Patricia Johnson and other Licensed Practical Nurses at the facility.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

54. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through fifty-three (53) by reference as if specifically restated verbatim herein.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and therefore denies the same and demands strict proof thereof.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and therefore denies the same and demands strict proof thereof.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and therefore denies the same and demands strict proof thereof.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and therefore denies the same and demands strict proof thereof.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and therefore denies the same and demands strict proof thereof.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies the same and demands strict proof thereof.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies the same and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint and therefore denies the same and demands strict proof thereof.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint and therefore denies the same and demands strict proof thereof.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint and therefore denies the same and demands strict proof thereof.

65. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixty-four (64) by reference as if specifically restated verbatim herein.

66. Responding the allegations contained in Paragraph 65 of the complaint, Defendant states that no incident is identified in Paragraph 49 of the Complaint. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 65 of the Complaint and therefore denies the same and demands strict proof thereof.

67. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint and therefore denies the same and demands strict proof thereof.

68. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint and therefore denies the same and demands strict proof thereof.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint and therefore denies the same and demands strict proof thereof.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies the same and demands strict proof thereof.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint and therefore denies the same and demands strict proof thereof.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint and therefore denies the same and demands strict proof thereof.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint and therefore denies the same and demands strict proof thereof.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint and therefore denies the same and demands strict proof thereof.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint and therefore denies the same and demands strict proof thereof.

76. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through seventy-five (75) by reference as if specifically restated verbatim herein.

77. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies the same and demands strict proof thereof.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and therefore denies the same and demands strict proof thereof.

79. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and therefore denies the same and demands strict proof thereof.

80. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies the same and demands strict proof thereof.

81. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and therefore denies the same and demands strict proof thereof.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and therefore denies the same and demands strict proof thereof.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and therefore denies the same and demands strict proof thereof.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and therefore denies the same and demands strict proof thereof.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint and therefore denies the same and demands strict proof thereof.

86. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint and therefore denies the same and demands strict proof thereof.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint and therefore denies the same and demands strict proof thereof.

88. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and therefore denies the same and demands strict proof thereof.

89. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and therefore denies the same and demands strict proof thereof.

90. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through eighty-nine (89) by reference as if specifically restated verbatim herein.

91. Denied. Responding to the allegations contained in Paragraph 90 of the Complaint, Defendant admits that Ralph Williams reported to work on the evening of June 20,

2010, not June 21, 2012, and worked on the United Rehab Services (URS) unit at Defendant's skilled nursing facility in Orangeburg, South Carolina.

92. Responding to the allegations contained in Paragraph 91 of the Complaint, Defendant admits that Plaintiff Ralph Williams was assigned to provided services to certain residents on Defendant Patricia Johnson's unit, and thus, Defendant Patricia Johnson was one of Plaintiff Ralph Williams' supervisors.

93. Defendant admits the allegations contained in Paragraph 92 of the Complaint.

94. Denied. Responding to the allegations contained in Paragraph 93 of the Complaint, Defendant admits there were two residents residing in Room 39 of Defendant's skilled nursing facility on June 21, 2010.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint and therefore denies the same and demands strict proof thereof.

96. Responding to the allegations contained in Paragraph 95 of the Complaint, Defendant admits that there is only one nursing station on the United Rehab Services (URS) unit of the Defendant's skilled nursing facility in Orangerburg, South Carolina. Denies denies the remaining allegations contained in Paragraph 95 as stated.

97. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint and therefore denies the same and demands strict proof thereof.

98. Defendant denies the allegations contained in Paragraph 97 of the Complaint as stated.

99. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint and therefore denies the same and demands strict proof thereof.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint and therefore denies the same and demands strict proof thereof.

101. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint and therefore denies the same and demands strict proof thereof.

102. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint and therefore denies the same and demands strict proof thereof.

103. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint and therefore denies the same and demands strict proof thereof.

104. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint and therefore denies the same and demands strict proof thereof.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint and therefore denies the same and demands strict proof thereof.

106. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint and therefore denies the same and demands strict proof thereof.

107. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint and therefore denies the same and demands strict proof thereof.

108. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint and therefore denies the same and demands strict proof thereof.

109. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint and therefore denies the same and demands strict proof thereof.

110. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint and therefore denies the same and demands strict proof thereof.

111. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint and therefore denies the same and demands strict proof thereof.

112. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint and therefore denies the same and demands strict proof thereof.

113. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint and therefore denies the same and demands strict proof thereof.

114. Defendant denies the allegations contained in Paragraph 113 of the Complaint as stated.

115. Responding to the allegations contained in Paragraph 114 of the Complaint, Defendant admits that Defendant Johnson did not push an audible alarm located in Room 39 of the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 114 as stated.

116. Responding to the allegations contained in Paragraph 115 of the Complaint, Defendant admits that Defendant Johnson did not push an alarm that would activate a light that flashes at the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 115 as stated.

117. Defendant denies the allegations contained in Paragraph 116 of the Complaint as stated.

118. Defendant denies the allegations contained in Paragraph 117 of the Complaint as stated.

119. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint and therefore denies the same and demands strict proof thereof.

120. Responding to the allegations contained in Paragraph 119 of the Complaint, Defendant admits that Defendant Johnson rushed to get Defendant Josette Peppers' attention

during the early morning hours of June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 119 of the Complaint as stated.

121. Denied. Responding to the allegations contained in Paragraph 121 of the Complaint, Defendant admits that its staff members timely called the police on June 21, 2010.

122. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred twenty-one (121) by reference as if specifically restated verbatim herein.

123. Responding to the allegations contained in Paragraph 122 of the Complaint, Defendant admits that Defendant Johnson made an entry on June 21, 2010, into the nurses' notes for the Resident occupying Bed A in Room 29 of the Defendant's skilled nursing facility in Orangeburg, South Carolina. Defendant further states that Defendant Johnson's entry speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 122 of the Complaint and therefore denies the same and demands strict proof thereof.

124. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint and therefore denies the same and demands strict proof thereof.

125. Responding to the allegations contained in Paragraph 124 of the Complaint, Defendant admits Defendant Patricia Johnson provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Johnson's statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124 of the Complaint and therefore denies the same and demands strict proof thereof.

126. Defendant admits the allegations contained in Paragraph 125 of the Complaint.

127. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint and therefore denies the same and demands strict proof thereof.

128. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint and therefore denies the same and demands strict proof thereof.

129. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint and therefore denies the same and demands strict proof thereof.

130. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint and therefore denies the same and demands strict proof thereof.

131. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

132. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred thirty-one (131) by reference as if specifically restated verbatim herein.

133. Responding to the allegations contained in Paragraph 132 of the Complaint, Defendant admits Defendant Josette Peppers provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Peppers' statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 132 of the Complaint and therefore denies the same and demands strict proof thereof.

134. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

135. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint and therefore denies the same and demands strict proof thereof.

136. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint and therefore denies the same and demands strict proof thereof.

137. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 of the Complaint and therefore denies the same and demands strict proof thereof.

138. Defendant denies the allegations contained in Paragraph 137 of the Complaint.

139. Defendant denies the allegations contained in Paragraph 138 of the Complaint.

140. Defendant denies the allegations contained in Paragraph 139 of the Complaint.

141. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred forty (140) by reference as if specifically restated verbatim herein.

142. Defendant denies the allegations contained in Paragraph 141 of the Complaint.

143. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

144. Defendant denies the allegations contained in Paragraph 143 of the Complaint.

145. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and therefore denies the same and demands strict proof thereof.

146. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 145 of the Complaint and therefore denies the same and demands strict proof thereof.

147. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 146 of the Complaint and therefore denies the same and demands strict proof thereof.

148. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Complaint and therefore denies the same and demands strict proof thereof.

149. In responding to the allegations contained in Paragraph 148 of the Complaint, Defendant admits that a jury returned a non-guilty verdict in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390). Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 148 of the Complaint and therefore denies the same and demands strict proof thereof.

150. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

151. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint and therefore denies the same and demands strict proof thereof.

152. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151 of the Complaint and therefore denies the same and demands strict proof thereof.

153. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

155. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

156. Defendant denies the allegations contained in Paragraph 155 of the Complaint.

157. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint and therefore denies the same and demands strict proof thereof.

158. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Complaint and therefore denies the same and demands strict proof thereof.

159. Defendant denies the allegations contained in Paragraph 158 of the Complaint.

160. Defendant denies the allegations contained in Paragraph 159 of the Complaint.

161. Defendant denies the allegations contained in Paragraph 160 of the Complaint.

162. Defendant denies the allegations contained in Paragraph 161 of the Complaint.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

163. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred sixty-two (162) by reference as if specifically restated verbatim herein.

164. Defendant admits the allegations contained in Paragraph 163 of the Complaint.

165. Defendant denies the allegations contained in Paragraph 164 of the Complaint.

166. Defendant denies the allegations contained in Paragraph 165 of the Complaint.

167. Responding to the allegations contained in Paragraph 166 of the Complaint, Defendant admits that Defendant Patricia Johnson made an entry into the nursing notes for the

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

- 168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.
- 169. Defendant denies the allegations contained in Paragraph 168 of the Complaint.
- 170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.
- 171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.
- 172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.
- 173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.
- 174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.
- 175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.
- 176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.
- 177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.
- 178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.
- 179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

- 181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.
- 182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.
- 183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.
- 184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.
- 185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

186. Defendant denies the allegations contained in Paragraph 185 of the Complaint.

187. Defendant denies the allegations contained in Paragraph 186 of the Complaint.

188. Defendant denies the allegations contained in Paragraph 187 of the Complaint.

189. Defendant denies the allegations contained in Paragraph 188 of the Complaint.

190. Defendant denies the allegations contained in Paragraph 189 of the Complaint.

191. Defendant denies the allegations contained in Paragraph 190 of the Complaint.

192. Defendant denies the allegations contained in Paragraph 191 of the Complaint.

193. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 192 of the Complaint and therefore denies the same and demands strict proof thereof.

194. Defendant denies the allegations contained in Paragraph 193 of the Complaint.

195. Defendant denies the allegations contained in Paragraph 194 of the Complaint.

196. Defendant denies the allegations contained in Paragraph 195 of the Complaint.

197. Defendant denies the allegations contained in Paragraph 196 of the Complaint.

FOR A THIRD CAUSE OF ACTION

198. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred ninety-six (196) by reference as if specifically restated verbatim herein.

199. Defendant admits the allegations contained in Paragraph 198 of the Complaint.

200. Defendant denies the allegations contained in Paragraph 199 of the Complaint.

201. Defendant denies the allegations contained in Paragraph 200 of the Complaint.

202. Responding to the allegations contained in Paragraph 201 of the Complaint, Defendant admits that Defendant Patricia Johnson provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 201 of the Complaint.

203. Defendant denies the allegations contained in Paragraph 202 of the Complaint.

204. Defendant denies the allegations contained in Paragraph 203 of the Complaint.

205. Defendant denies the allegations contained in Paragraph 204 of the Complaint.

206. Defendant denies the allegations contained in Paragraph 205 of the Complaint.

207. Defendant denies the allegations contained in Paragraph 206 of the Complaint.

208. Defendant denies the allegations contained in Paragraph 207 of the Complaint.

209. Defendant denies the allegations contained in Paragraph 208 of the Complaint.

210. Defendant denies the allegations contained in Paragraph 209 of the Complaint.

211. Defendant denies the allegations contained in Paragraph 210 of the Complaint.

212. Defendant denies the allegations contained in Paragraph 211 of the Complaint.

213. Defendant denies the allegations contained in Paragraph 212 of the Complaint.

214. Defendant denies the allegations contained in Paragraph 213 of the Complaint.

FOR A FOURTH CAUSE OF ACTION

215. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fourteen (214) by reference as if specifically restated verbatim herein.

216. Defendant admits the allegations contained in Paragraph 215 of the Complaint.

217. Defendant denies the allegations contained in Paragraph 216 of the Complaint.

218. Defendant denies the allegations contained in Paragraph 217 of the Complaint.

219. Responding to the allegations contained in Paragraph 218 of the Complaint, Defendant admits that Defendant Josette Peppers provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 218 of the Complaint.

- 220. Defendant denies the allegations contained in Paragraph 219 of the Complaint.
- 221. Defendant denies the allegations contained in Paragraph 220 of the Complaint.
- 222. Defendant denies the allegations contained in Paragraph 221 of the Complaint.
- 223. Defendant denies the allegations contained in Paragraph 222 of the Complaint.
- 224. Defendant denies the allegations contained in Paragraph 223 of the Complaint.
- 225. Defendant denies the allegations contained in Paragraph 224 of the Complaint.
- 226. Defendant denies the allegations contained in Paragraph 225 of the Complaint.
- 227. Defendant denies the allegations contained in Paragraph 226 of the Complaint.
- 228. Defendant denies the allegations contained in Paragraph 227 of the Complaint.
- 229. Defendant denies the allegations contained in Paragraph 228 of the Complaint.
- 230. Defendant denies the allegations contained in Paragraph 229 of the Complaint.
- 231. Defendant denies the allegations contained in Paragraph 230 of the Complaint.

FOR A FIFTH CAUSE OF ACTION

232. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred thirty-one (231) by reference as if specifically restated verbatim herein.

- 233. Defendant admits the allegations contained in Paragraph 232 of the Complaint.
- 234. Defendant denies the allegations contained in Paragraph 233 of the Complaint.
- 235. Defendant denies the allegations contained in Paragraph 234 of the Complaint.
- 236. Defendant denies the allegations contained in Paragraph 235 of the Complaint.
- 237. Defendant denies the allegations contained in Paragraph 236 of the Complaint.

238. Defendant denies the allegations contained in Paragraph 237 of the Complaint.

239. Defendant denies the allegations contained in Paragraph 238 of the Complaint.

240. Defendant denies the allegations contained in Paragraph 239 of the Complaint.

FOR A SIXTH CAUSE OF ACTION

241. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred forty (240) by reference as if specifically restated verbatim herein.

242. Defendant admits the allegations contained in Paragraph 241 of the Complaint.

243. Defendant denies the allegations contained in Paragraph 242 of the Complaint.

244. Defendant denies the allegations contained in Paragraph 243 of the Complaint.

245. Defendant denies the allegations contained in Paragraph 244 of the Complaint.

246. Defendant denies the allegations contained in Paragraph 245 of the Complaint.

247. Defendant denies the allegations contained in Paragraph 246 of the Complaint.

248. Defendant denies the allegations contained in Paragraph 247 of the Complaint.

249. Defendant denies the allegations contained in Paragraph 248 of the Complaint.

250. Defendant denies the allegations contained in Paragraph 249 of the Complaint.

251. Defendant denies the allegations contained in Paragraph 250 of the Complaint.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

252. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fifty-one (251) by reference as if specifically restated verbatim herein.

253. Defendant admits the allegations contained in Paragraph 252 of the Complaint.

254. Defendant denies the allegations contained in Paragraph 253 of the Complaint.

255. Defendant denies the allegations contained in Paragraph 254 of the Complaint.

256. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255 of the Complaint and therefore denies the same and demands strict proof thereof.

257. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and therefore denies the same and demands strict proof thereof.

258. Defendant denies the allegations contained in Paragraph 257 of the Complaint.

259. Defendant denies the allegations contained in Paragraph 258 of the Complaint.

260. Defendant denies the allegations contained in Paragraph 259 of the Complaint.

261. Defendant denies the allegations contained in Paragraph 260 of the Complaint.

262. Defendant denies the allegations contained in Paragraph 261 of the Complaint.

263. Defendant denies the allegations contained in Paragraph 262 of the Complaint.

264. Defendant denies the allegations contained in Paragraph 263 of the Complaint.

FOR A SECOND CAUSE OF ACTION

265. Defendant hereby incorporate and reasserts and reasserts its responses in the above-stated paragraphs one (1) through two-hundred sixty-four (264) by reference as if specifically restated verbatim herein.

266. Defendant admits the allegations contained in Paragraph 265 of the Complaint.

267. Defendant admits the allegations contained in Paragraph 266 of the Complaint.

268. Defendant denies the allegations contained in Paragraph 267 of the Complaint.

269. Defendant denies the allegations contained in Paragraph 268 of the Complaint.

270. Defendant denies the allegations contained in Paragraph 269 of the Complaint.
271. Defendant denies the allegations contained in Paragraph 270 of the Complaint.
272. Defendant denies the allegations contained in Paragraph 271 of the Complaint.
273. Defendant denies the allegations contained in Paragraph 272 of the Complaint.
274. Defendant denies the allegations contained in Paragraph 273 of the Complaint.
275. Defendant denies the allegations contained in Paragraph 274 of the Complaint.
276. Defendant denies the allegations contained in Paragraph 275 of the Complaint.
277. Defendant denies the allegations contained in the unnumbered, "Prayer for Relief" paragraph immediately following Paragraph 275 on page 37 of the Complaint.

FOR A THIRD DEFENSE

278. Plaintiffs' Complaint fails to state a claims against Defendant upon which relief may be granted.

FOR A FOURTH DEFENSE

279. Defendant denies that it is liable to Plaintiffs for any sum or in any manner.

FOR A FIFTH DEFENSE

280. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiffs were caused by the actions or inactions of themselves or others.

FOR AN SIXTH DEFENSE

281. The Complaint is barred because Plaintiffs have not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A SEVENTH DEFENSE

282. Plaintiffs' claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR AN EIGHTH DEFENSE

283. Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

FOR A NINTH DEFENSE

284. Plaintiffs' claims are barred, in whole or in part, because Defendant is not liable for the intentional acts of employees that fall outside the scope of the employee's employment.

FOR A TENTH DEFENSE

285. Plaintiffs' claims are barred, in whole or in part, because Defendant is not liable for the actions of employees that are not in furtherance of Defendant's business.

FOR AN ELEVENTH DEFENSE

286. Plaintiffs' claims are barred, in whole or in part, because truth is an absolute defense to any and all claims of defamation.

FOR A TWELEFTH DEFENSE

287. Plaintiffs' claims are barred, in whole or in part, because of qualified immunity.

FOR A THIRTEENTH DEFENSE

288. Plaintiffs' claims are barred, in whole or in part, because of absolute immunity.

FOR A FOURTEENTH DEFENSE

289. Plaintiffs have failed to state specific allegations sufficient to justify the award of punitive damages.

FOR A FIFTEENTH DEFENSE

290. Plaintiffs' claims for punitive damages are barred to the extent that they are excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A SIXTEENTH DEFENSE

291. Plaintiffs' claims for punitive damages are barred to the extent that they violate

Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A SEVENTEENTH DEFENSE

292. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR AN EIGHTEENTH DEFENSE

293. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.



Jason G. Bring
South Carolina Bar No.
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
tyler.arnold@agg.com

*Attorney for Defendant Unihealth Post-Acute
Care - Orangeburg, LLC*

Atlanta, Georgia
August 2, 2012

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and
LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-
ACUTE CARE – ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**DEFENDANT PATRICIA A. JOHNSON'S
ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Patricia A. Johnson (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.
5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.
6. Defendant admits the allegations contained in Paragraph 5 of the Complaint.
7. Defendant admits the allegations contained in Paragraph 6 of the Complaint.
8. Defendant admits the allegations contained in Paragraph 7 of the Complaint.
9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof. Further, to the extent that the allegations contain a legal conclusion regarding jurisdiction, Defendant maintains that no response is necessary.

FACTUAL ALLEGATIONS

10. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through nine (9) by reference as if specifically restated verbatim herein.
11. Responding to the allegations contained in Paragraph 10 of the Complaint, Defendant admits Plaintiff Ralph Williams was employed as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina from on or about February 9, 2010 until on or about June 21, 2010.
12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same and demands strict proof thereof.
13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixteen (16) by reference as if specifically restated verbatim herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendants is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and therefore denies the same and demands strict proof thereof.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies the same and demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies the same and demands strict proof thereof.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies the same and demands strict proof thereof.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

28. Defendant admits the allegations contained in Paragraph 27 of the Complaint.

29. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

30. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through twenty-nine (29) by reference as if specifically restated verbatim herein.

31. Responding to the allegations contained in Paragraph 30 of the Complaint, Defendant admits that Plaintiff Ralph Williams was hired as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina on or about February 9, 2010.

32. Responding to the allegations contained in Paragraph 31 of the Complaint, Defendant admits Plaintiff Ralph Williams always worked the "11:00 p.m. until 7:00 a.m." shift and was assigned to the United Rehab Services (URS) unit.

33. Responding to the allegations contained in Paragraph 32 of the Complaint, Defendant admits that part of Plaintiff Ralph Williams' duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina included assisting the Registered Nurses and Licensed Practical Nurses with residents care by taking vitals signs, providing residents with water, bathing residents, and changing resident briefs or adult diapers. Defendant denies that the identified duties in Paragraph 32 of the Complaint were Plaintiff Ralph Williams' only duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

34. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendant admits that Plaintiff Ralph Williams was supervised by Licensed Practical Nurses while employed as as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

35. Responding to the allegations contained in Paragraph 34 of the Complaint, Defendant admits that some of the residents that Plaintiff Ralph Williams cared for were bedridden and that one of his duties as a CAN was to change resident briefs or adult diapers. Defendant is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.

36. Defendant admits the allegations contained in Paragraph 35 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 36 of the Complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and therefore denies the same and demands strict proof thereof.

39. Responding to the allegations contained in Paragraph 38 of the Complaint, Defendant admits Plaintiff Ralph Williams was regularly assigned to work on the United Rehab Services (URS) unit.

40. Defendant admits the allegations contained in Paragraph 39 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 40 of the Complaint.

42. Defendant admits the allegations contained in Paragraph 41 of the Complaint.

43. Defendant admits the allegations contained in Paragraph 42 of the Complaint.

44. Defendant admits the allegations contained in Paragraph 43 of the Complaint.

45. Defendant admits the allegations contained in Paragraph 44 of the Complaint.

46. Defendant admits the allegations contained in Paragraph 45 of the Complaint.

47. Responding to the allegations contained in Paragraph 46 of the Complaint, Defendant admits that there is a "call button" beside each resident's bed that sounds an alert on the unit of the facility in which the resident's room is located and also activates a light outside of the resident's room. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 47 of the Complaint as stated.

49. Defendant denies the allegations contained in Paragraph 48 of the Complaint as stated.

50. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through forty-nine (49) by reference as if specifically restated verbatim herein.

51. Responding to the allegations contained in Paragraph 50 of the Complaint, Defendant admits that Plaintiff Ralph Williams, as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina, reported to Defendant Patricia Johnson and other Licensed Practical Nurses at the facility.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

54. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through fifty-three (53) by reference as if specifically restated verbatim herein.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and therefore denies the same and demands strict proof thereof.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and therefore denies the same and demands strict proof thereof.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and therefore denies the same and demands strict proof thereof.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and therefore denies the same and demands strict proof thereof.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and therefore denies the same and demands strict proof thereof.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies the same and demands strict proof thereof.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies the same and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint and therefore denies the same and demands strict proof thereof.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint and therefore denies the same and demands strict proof thereof.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint and therefore denies the same and demands strict proof thereof.

65. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixty-four (64) by reference as if specifically restated verbatim herein.

66. Responding the allegations contained in Paragraph 65 of the complaint, Defendant states that no incident is identified in Paragraph 49 of the Complaint. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 65 of the Complaint and therefore denies the same and demands strict proof thereof.

67. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint and therefore denies the same and demands strict proof thereof.

68. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint and therefore denies the same and demands strict proof thereof.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint and therefore denies the same and demands strict proof thereof.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies the same and demands strict proof thereof.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint and therefore denies the same and demands strict proof thereof.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint and therefore denies the same and demands strict proof thereof.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint and therefore denies the same and demands strict proof thereof.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint and therefore denies the same and demands strict proof thereof.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint and therefore denies the same and demands strict proof thereof.

76. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through seventy-five (75) by reference as if specifically restated verbatim herein.

77. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies the same and demands strict proof thereof.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and therefore denies the same and demands strict proof thereof.

79. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and therefore denies the same and demands strict proof thereof.

80. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies the same and demands strict proof thereof.

81. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and therefore denies the same and demands strict proof thereof.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and therefore denies the same and demands strict proof thereof.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and therefore denies the same and demands strict proof thereof.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and therefore denies the same and demands strict proof thereof.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint and therefore denies the same and demands strict proof thereof.

86. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint and therefore denies the same and demands strict proof thereof.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint and therefore denies the same and demands strict proof thereof.

88. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and therefore denies the same and demands strict proof thereof.

89. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and therefore denies the same and demands strict proof thereof.

90. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through eighty-nine (89) by reference as if specifically restated verbatim herein.

91. Denied. Responding to the allegations contained in Paragraph 90 of the Complaint, Defendant admits that Ralph Williams reported to work on the evening of June 20,

2010, not June 21, 2012, and worked on the United Rehab Services (URS) unit at Defendant's skilled nursing facility in Orangeburg, South Carolina.

92. Responding to the allegations contained in Paragraph 91 of the Complaint, Defendant admits that Plaintiff Ralph Williams was assigned to provided services to certain residents on Defendant Patricia Johnson's unit, and thus, Defendant Patricia Johnson was one of Plaintiff Ralph Williams' supervisors.

93. Defendant admits the allegations contained in Paragraph 92 of the Complaint.

94. Denied. Responding to the allegations contained in Paragraph 93 of the Complaint, Defendant admits there were two residents residing in Room 39 of Defendant's skilled nursing facility on June 21, 2010.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint and therefore denies the same and demands strict proof thereof.

96. Responding to the allegations contained in Paragraph 95 of the Complaint, Defendant admits that there is only one nursing station on the United Rehab Services (URS) unit of the Defendant's skilled nursing facility in Orangerburg, South Carolina. Denies denies the remaining allegations contained in Paragraph 95 as stated.

97. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint and therefore denies the same and demands strict proof thereof.

98. Defendant denies the allegations contained in Paragraph 97 of the Complaint as stated.

99. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint and therefore denies the same and demands strict proof thereof.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint and therefore denies the same and demands strict proof thereof.

101. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint and therefore denies the same and demands strict proof thereof.

102. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint and therefore denies the same and demands strict proof thereof.

103. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint and therefore denies the same and demands strict proof thereof.

104. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint and therefore denies the same and demands strict proof thereof.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint and therefore denies the same and demands strict proof thereof.

106. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint and therefore denies the same and demands strict proof thereof.

107. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint and therefore denies the same and demands strict proof thereof.

108. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint and therefore denies the same and demands strict proof thereof.

109. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint and therefore denies the same and demands strict proof thereof.

110. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint and therefore denies the same and demands strict proof thereof.

111. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint and therefore denies the same and demands strict proof thereof.

112. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint and therefore denies the same and demands strict proof thereof.

113. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint and therefore denies the same and demands strict proof thereof.

114. Defendant denies the allegations contained in Paragraph 113 of the Complaint as stated.

115. Responding to the allegations contained in Paragraph 114 of the Complaint, Defendant admits that Defendant Johnson did not push an audible alarm located in Room 39 of the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 114 as stated.

116. Responding to the allegations contained in Paragraph 115 of the Complaint, Defendant admits that Defendant Johnson did not push an alarm that would activate a light that flashes at the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 115 as stated.

117. Defendant denies the allegations contained in Paragraph 116 of the Complaint as stated.

118. Defendant denies the allegations contained in Paragraph 117 of the Complaint as stated.

119. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint and therefore denies the same and demands strict proof thereof.

120. Responding to the allegations contained in Paragraph 119 of the Complaint, Defendant admits that Defendant Johnson rushed to get Defendant Josette Peppers' attention

during the early morning hours of June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 119 of the Complaint as stated.

121. Denied. Responding to the allegations contained in Paragraph 121 of the Complaint, Defendant admits that its staff members timely called the police on June 21, 2010.

122. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred twenty-one (121) by reference as if specifically restated verbatim herein.

123. Responding to the allegations contained in Paragraph 122 of the Complaint, Defendant admits that Defendant Johnson made an entry on June 21, 2010, into the nurses' notes for the Resident occupying Bed A in Room 29 of the Defendant's skilled nursing facility in Orangeburg, South Carolina. Defendant further states that Defendant Johnson's entry speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 122 of the Complaint and therefore denies the same and demands strict proof thereof.

124. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint and therefore denies the same and demands strict proof thereof.

125. Responding to the allegations contained in Paragraph 124 of the Complaint, Defendant admits Defendant Patricia Johnson provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Johnson's statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124 of the Complaint and therefore denies the same and demands strict proof thereof.

126. Defendant admits the allegations contained in Paragraph 125 of the Complaint.

127. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint and therefore denies the same and demands strict proof thereof.

128. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint and therefore denies the same and demands strict proof thereof.

129. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint and therefore denies the same and demands strict proof thereof.

130. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint and therefore denies the same and demands strict proof thereof.

131. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

132. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred thirty-one (131) by reference as if specifically restated verbatim herein.

133. Responding to the allegations contained in Paragraph 132 of the Complaint, Defendant admits Defendant Josette Peppers provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Peppers' statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 132 of the Complaint and therefore denies the same and demands strict proof thereof.

134. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

135. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint and therefore denies the same and demands strict proof thereof.

136. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint and therefore denies the same and demands strict proof thereof.

137. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 of the Complaint and therefore denies the same and demands strict proof thereof.

138. Defendant denies the allegations contained in Paragraph 137 of the Complaint.

139. Defendant denies the allegations contained in Paragraph 138 of the Complaint.

140. Defendant denies the allegations contained in Paragraph 139 of the Complaint.

141. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred forty (140) by reference as if specifically restated verbatim herein.

142. Defendant denies the allegations contained in Paragraph 141 of the Complaint.

143. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

144. Defendant denies the allegations contained in Paragraph 143 of the Complaint.

145. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and therefore denies the same and demands strict proof thereof.

146. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 145 of the Complaint and therefore denies the same and demands strict proof thereof.

147. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 146 of the Complaint and therefore denies the same and demands strict proof thereof.

148. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Complaint and therefore denies the same and demands strict proof thereof.

149. In responding to the allegations contained in Paragraph 148 of the Complaint, Defendant admits that a jury returned a non-guilty verdict in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390). Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 148 of the Complaint and therefore denies the same and demands strict proof thereof.

150. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

151. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint and therefore denies the same and demands strict proof thereof.

152. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151 of the Complaint and therefore denies the same and demands strict proof thereof.

153. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

155. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

156. Defendant denies the allegations contained in Paragraph 155 of the Complaint.

157. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint and therefore denies the same and demands strict proof thereof.

158. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Complaint and therefore denies the same and demands strict proof thereof.

159. Defendant denies the allegations contained in Paragraph 158 of the Complaint.

160. Defendant denies the allegations contained in Paragraph 159 of the Complaint.

161. Defendant denies the allegations contained in Paragraph 160 of the Complaint.

162. Defendant denies the allegations contained in Paragraph 161 of the Complaint.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

163. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred sixty-two (162) by reference as if specifically restated verbatim herein.

164. Defendant admits the allegations contained in Paragraph 163 of the Complaint.

165. Defendant denies the allegations contained in Paragraph 164 of the Complaint.

166. Defendant denies the allegations contained in Paragraph 165 of the Complaint.

167. Responding to the allegations contained in Paragraph 166 of the Complaint, Defendant admits that Defendant Patricia Johnson made an entry into the nursing notes for the

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

- 168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.
- 169. Defendant denies the allegations contained in Paragraph 168 of the Complaint.
- 170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.
- 171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.
- 172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.
- 173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.
- 174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.
- 175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.
- 176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.
- 177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.
- 178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.
- 179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

- 181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.
- 182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.
- 183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.
- 184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.
- 185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

186. Defendant denies the allegations contained in Paragraph 185 of the Complaint.

187. Defendant denies the allegations contained in Paragraph 186 of the Complaint.

188. Defendant denies the allegations contained in Paragraph 187 of the Complaint.

189. Defendant denies the allegations contained in Paragraph 188 of the Complaint.

190. Defendant denies the allegations contained in Paragraph 189 of the Complaint.

191. Defendant denies the allegations contained in Paragraph 190 of the Complaint.

192. Defendant denies the allegations contained in Paragraph 191 of the Complaint.

193. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 192 of the Complaint and therefore denies the same and demands strict proof thereof.

194. Defendant denies the allegations contained in Paragraph 193 of the Complaint.

195. Defendant denies the allegations contained in Paragraph 194 of the Complaint.

196. Defendant denies the allegations contained in Paragraph 195 of the Complaint.

197. Defendant denies the allegations contained in Paragraph 196 of the Complaint.

FOR A THIRD CAUSE OF ACTION

198. Defendants hereby incorporate and reasserts its responses in the above-stated paragraphs one (1) through one-hundred ninety-six (196) by reference as if specifically restated verbatim herein.

199. Defendant admits the allegations contained in Paragraph 198 of the Complaint.

200. Defendant denies the allegations contained in Paragraph 199 of the Complaint.

201. Defendant denies the allegations contained in Paragraph 200 of the Complaint.

202. Responding to the allegations contained in Paragraph 201 of the Complaint, Defendant admits that Defendant Patricia Johnson provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 201 of the Complaint.

- 203. Defendant denies the allegations contained in Paragraph 202 of the Complaint.
- 204. Defendant denies the allegations contained in Paragraph 203 of the Complaint.
- 205. Defendant denies the allegations contained in Paragraph 204 of the Complaint.
- 206. Defendant denies the allegations contained in Paragraph 205 of the Complaint.
- 207. Defendant denies the allegations contained in Paragraph 206 of the Complaint.
- 208. Defendant denies the allegations contained in Paragraph 207 of the Complaint.
- 209. Defendant denies the allegations contained in Paragraph 208 of the Complaint.
- 210. Defendant denies the allegations contained in Paragraph 209 of the Complaint.
- 211. Defendant denies the allegations contained in Paragraph 210 of the Complaint.
- 212. Defendant denies the allegations contained in Paragraph 211 of the Complaint.
- 213. Defendant denies the allegations contained in Paragraph 212 of the Complaint.
- 214. Defendant denies the allegations contained in Paragraph 213 of the Complaint.

FOR A FOURTH CAUSE OF ACTION

215. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fourteen (214) by reference as if specifically restated verbatim herein.

- 216. Defendant admits the allegations contained in Paragraph 215 of the Complaint.
- 217. Defendant denies the allegations contained in Paragraph 216 of the Complaint.
- 218. Defendant denies the allegations contained in Paragraph 217 of the Complaint.
- 219. Responding to the allegations contained in Paragraph 218 of the Complaint, Defendant admits that Defendant Josette Peppers provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 218 of the Complaint.

- 220. Defendant denies the allegations contained in Paragraph 219 of the Complaint.
- 221. Defendant denies the allegations contained in Paragraph 220 of the Complaint.
- 222. Defendant denies the allegations contained in Paragraph 221 of the Complaint.
- 223. Defendant denies the allegations contained in Paragraph 222 of the Complaint.
- 224. Defendant denies the allegations contained in Paragraph 223 of the Complaint.
- 225. Defendant denies the allegations contained in Paragraph 224 of the Complaint.
- 226. Defendant denies the allegations contained in Paragraph 225 of the Complaint.
- 227. Defendant denies the allegations contained in Paragraph 226 of the Complaint.
- 228. Defendant denies the allegations contained in Paragraph 227 of the Complaint.
- 229. Defendant denies the allegations contained in Paragraph 228 of the Complaint.
- 230. Defendant denies the allegations contained in Paragraph 229 of the Complaint.
- 231. Defendant denies the allegations contained in Paragraph 230 of the Complaint.

FOR A FIFTH CAUSE OF ACTION

232. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred thirty-one (231) by reference as if specifically restated verbatim herein.

- 233. Defendant admits the allegations contained in Paragraph 232 of the Complaint.
- 234. Defendant denies the allegations contained in Paragraph 233 of the Complaint.
- 235. Defendant denies the allegations contained in Paragraph 234 of the Complaint.
- 236. Defendant denies the allegations contained in Paragraph 235 of the Complaint.
- 237. Defendant denies the allegations contained in Paragraph 236 of the Complaint.

238. Defendant denies the allegations contained in Paragraph 237 of the Complaint.
239. Defendant denies the allegations contained in Paragraph 238 of the Complaint.
240. Defendant denies the allegations contained in Paragraph 239 of the Complaint.

FOR A SIXTH CAUSE OF ACTION

241. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred forty (240) by reference as if specifically restated verbatim herein.

242. Defendant admits the allegations contained in Paragraph 241 of the Complaint.
243. Defendant denies the allegations contained in Paragraph 242 of the Complaint.
244. Defendant denies the allegations contained in Paragraph 243 of the Complaint.
245. Defendant denies the allegations contained in Paragraph 244 of the Complaint.
246. Defendant denies the allegations contained in Paragraph 245 of the Complaint.
247. Defendant denies the allegations contained in Paragraph 246 of the Complaint.
248. Defendant denies the allegations contained in Paragraph 247 of the Complaint.
249. Defendant denies the allegations contained in Paragraph 248 of the Complaint.
250. Defendant denies the allegations contained in Paragraph 249 of the Complaint.
251. Defendant denies the allegations contained in Paragraph 250 of the Complaint.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

252. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fifty-one (251) by reference as if specifically restated verbatim herein.

253. Defendant admits the allegations contained in Paragraph 252 of the Complaint.

254. Defendant denies the allegations contained in Paragraph 253 of the Complaint.

255. Defendant denies the allegations contained in Paragraph 254 of the Complaint.

256. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255 of the Complaint and therefore denies the same and demands strict proof thereof.

257. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and therefore denies the same and demands strict proof thereof.

258. Defendant denies the allegations contained in Paragraph 257 of the Complaint.

259. Defendant denies the allegations contained in Paragraph 258 of the Complaint.

260. Defendant denies the allegations contained in Paragraph 259 of the Complaint.

261. Defendant denies the allegations contained in Paragraph 260 of the Complaint.

262. Defendant denies the allegations contained in Paragraph 261 of the Complaint.

263. Defendant denies the allegations contained in Paragraph 262 of the Complaint.

264. Defendant denies the allegations contained in Paragraph 263 of the Complaint.

FOR A SECOND CAUSE OF ACTION

265. Defendant hereby incorporate and reasserts and reasserts its responses in the above-stated paragraphs one (1) through two-hundred sixty-four (264) by reference as if specifically restated verbatim herein.

266. Defendant admits the allegations contained in Paragraph 265 of the Complaint.

267. Defendant admits the allegations contained in Paragraph 266 of the Complaint.

268. Defendant denies the allegations contained in Paragraph 267 of the Complaint.

269. Defendant denies the allegations contained in Paragraph 268 of the Complaint.

270. Defendant denies the allegations contained in Paragraph 269 of the Complaint.
271. Defendant denies the allegations contained in Paragraph 270 of the Complaint.
272. Defendant denies the allegations contained in Paragraph 271 of the Complaint.
273. Defendant denies the allegations contained in Paragraph 272 of the Complaint.
274. Defendant denies the allegations contained in Paragraph 273 of the Complaint.
275. Defendant denies the allegations contained in Paragraph 274 of the Complaint.
276. Defendant denies the allegations contained in Paragraph 275 of the Complaint.
277. Defendant denies the allegations contained in the unnumbered, "Prayer for Relief" paragraph immediately following Paragraph 275 on page 37 of the Complaint.

FOR A THIRD DEFENSE

278. Plaintiffs' Complaint fails to state a claims against Defendant upon which relief may be granted.

FOR A FOURTH DEFENSE

279. Defendant denies that it is liable to Plaintiffs for any sum or in any manner.

FOR A FIFTH DEFENSE

280. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiffs were caused by the actions or inactions of themselves or others.

FOR AN SIXTH DEFENSE

281. The Complaint is barred because Plaintiffs have not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A SEVENTH DEFENSE

282. Plaintiffs' claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR AN EIGHTH DEFENSE

283. Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

FOR A NINTH DEFENSE

284. Plaintiffs' claims are barred, in whole or in part, because truth is an absolute defense to any and all claims of defamation.

FOR A TENTH DEFENSE

285. Plaintiffs' claims are barred, in whole or in part, because of qualified immunity.

FOR AN ELEVENTH DEFENSE

286. Plaintiffs' claims are barred, in whole or in part, because of absolute immunity.

FOR A TWELFTH DEFENSE

287. Plaintiffs have failed to state specific allegations sufficient to justify the award of punitive damages.

FOR A THIRTEENTH DEFENSE

288. Plaintiffs' claims for punitive damages are barred to the extent that they are excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A FOURTEENTH DEFENSE

289. Plaintiffs' claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

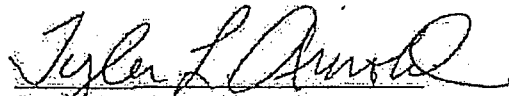
FOR A FIFTEENTH DEFENSE

290. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A SIXTEENTH DEFENSE

291. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.



Jason E. Bring
South Carolina Bar No.
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
tyler.arnold@agg.com

Attorney for Defendant Josette Peppers

Atlanta, Georgia
August 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and
LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-
ACUTE CARE – ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**DEFENDANT JOSETTER PEPPERS'
ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant Josette Peppers (hereinafter referred to as "Defendant") files this Answer and Defenses to Plaintiffs' Complaint, respectfully showing the Court as follows:

FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not specifically admitted herein and demands strict proof of same.

SECOND DEFENSE

Answering the specifically enumerated paragraphs of Plaintiffs' Complaint, Defendant pleads as follows:

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies the same and demands strict proof thereof.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.
5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.
6. Defendant admits the allegations contained in Paragraph 5 of the Complaint.
7. Defendant admits the allegations contained in Paragraph 6 of the Complaint.
8. Defendant admits the allegations contained in Paragraph 7 of the Complaint.
9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same and demands strict proof thereof. Further, to the extent that the allegations contain a legal conclusion regarding jurisdiction, Defendant maintains that no response is necessary.

FACTUAL ALLEGATIONS

10. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through nine (9) by reference as if specifically restated verbatim herein.

11. Responding to the allegations contained in Paragraph 10 of the Complaint, Defendant admits Plaintiff Ralph Williams was employed as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina from on or about February 9, 2010 until on or about June 21, 2010.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same and demands strict proof thereof.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixteen (16) by reference as if specifically restated verbatim herein.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendants is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and therefore denies the same and demands strict proof thereof.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies the same and demands strict proof thereof.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies the same and demands strict proof thereof.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and therefore denies the same and demands strict proof thereof.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

28. Defendant admits the allegations contained in Paragraph 27 of the Complaint.

29. Defendant admits the allegations contained in Paragraph 28 of the Complaint.

30. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through twenty-nine (29) by reference as if specifically restated verbatim herein.

31. Responding to the allegations contained in Paragraph 30 of the Complaint, Defendant admits that Plaintiff Ralph Williams was hired as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangerbug, South Carolina on or about February 9, 2010.

32. Responding to the allegations contained in Paragraph 31 of the Complaint, Defendant admits Plaintiff Ralph Williams always worked the "11:00 p.m. until 7:00 a.m." shift and was assigned to the United Rehab Services (URS) unit.

33. Responding to the allegations contained in Paragraph 32 of the Complaint, Defendant admits that part of Plaintiff Ralph Williams' duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina included assisting the Registered Nurses and Licensed Practical Nurses with residents care by taking vitals signs, providing residents with water, bathing residents, and changing resident briefs or adult diapers. Defendant denies that the identified duties in Paragraph 32 of the Complaint were Plaintiff Ralph Williams' only duties as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

34. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendant admits that Plaintiff Ralph Williams was supervised by Licensed Practical Nurses while employed as as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina.

35. Responding to the allegations contained in Paragraph 34 of the Complaint, Defendant admits that some of the residents that Plaintiff Ralph Williams cared for were bedridden and that one of his duties as a CAN was to change resident briefs or adult diapers. Defendant is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.

36. Defendant admits the allegations contained in Paragraph 35 of the Complaint.

37. Defendant admits the allegations contained in Paragraph 36 of the Complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and therefore denies the same and demands strict proof thereof.

39. Responding to the allegations contained in Paragraph 38 of the Complaint, Defendant admits Plaintiff Ralph Williams was regularly assigned to work on the United Rehab Services (URS) unit.

40. Defendant admits the allegations contained in Paragraph 39 of the Complaint.

41. Defendant admits the allegations contained in Paragraph 40 of the Complaint.

42. Defendant admits the allegations contained in Paragraph 41 of the Complaint.

43. Defendant admits the allegations contained in Paragraph 42 of the Complaint.

44. Defendant admits the allegations contained in Paragraph 43 of the Complaint.

45. Defendant admits the allegations contained in Paragraph 44 of the Complaint.

46. Defendant admits the allegations contained in Paragraph 45 of the Complaint.

47. Responding to the allegations contained in Paragraph 46 of the Complaint, Defendant admits that there is a "call button" beside each resident's bed that sounds an alert on the unit of the facility in which the resident's room is located and also activates a light outside of the resident's room. Defendant denies the remaining allegations contained in Paragraph 46 of the Complaint.

48. Defendant denies the allegations contained in Paragraph 47 of the Complaint as stated.

49. Defendant denies the allegations contained in Paragraph 48 of the Complaint as stated.

50. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through forty-nine (49) by reference as if specifically restated verbatim herein.

51. Responding to the allegations contained in Paragraph 50 of the Complaint, Defendant admits that Plaintiff Ralph Williams, as a Certified Nursing Assistance at Defendant's skilled nursing facility in Orangeburg, South Carolina, reported to Defendant Patricia Johnson and other Licensed Practical Nurses at the facility.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.

53. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

54. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through fifty-three (53) by reference as if specifically restated verbatim herein.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint and therefore denies the same and demands strict proof thereof.

56. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint and therefore denies the same and demands strict proof thereof.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint and therefore denies the same and demands strict proof thereof.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint and therefore denies the same and demands strict proof thereof.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and therefore denies the same and demands strict proof thereof.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint and therefore denies the same and demands strict proof thereof.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint and therefore denies the same and demands strict proof thereof.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint and therefore denies the same and demands strict proof thereof.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint and therefore denies the same and demands strict proof thereof.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint and therefore denies the same and demands strict proof thereof.

65. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through sixty-four (64) by reference as if specifically restated verbatim herein.

66. Responding the allegations contained in Paragraph 65 of the complaint, Defendant states that no incident is identified in Paragraph 49 of the Complaint. Further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 65 of the Complaint and therefore denies the same and demands strict proof thereof.

67. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint and therefore denies the same and demands strict proof thereof.

68. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint and therefore denies the same and demands strict proof thereof.

69. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint and therefore denies the same and demands strict proof thereof.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint and therefore denies the same and demands strict proof thereof.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint and therefore denies the same and demands strict proof thereof.

72. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint and therefore denies the same and demands strict proof thereof.

73. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint and therefore denies the same and demands strict proof thereof.

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint and therefore denies the same and demands strict proof thereof.

75. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint and therefore denies the same and demands strict proof thereof.

76. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through seventy-five (75) by reference as if specifically restated verbatim herein.

77. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint and therefore denies the same and demands strict proof thereof.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and therefore denies the same and demands strict proof thereof.

79. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and therefore denies the same and demands strict proof thereof.

80. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint and therefore denies the same and demands strict proof thereof.

81. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and therefore denies the same and demands strict proof thereof.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and therefore denies the same and demands strict proof thereof.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint and therefore denies the same and demands strict proof thereof.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and therefore denies the same and demands strict proof thereof.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint and therefore denies the same and demands strict proof thereof.

86. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint and therefore denies the same and demands strict proof thereof.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint and therefore denies the same and demands strict proof thereof.

88. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and therefore denies the same and demands strict proof thereof.

89. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and therefore denies the same and demands strict proof thereof.

90. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through eighty-nine (89) by reference as if specifically restated verbatim herein.

91. Denied. Responding to the allegations contained in Paragraph 90 of the Complaint, Defendant admits that Ralph Williams reported to work on the evening of June 20,

2010, not June 21, 2012, and worked on the United Rehab Services (URS) unit at Defendant's skilled nursing facility in Orangeburg, South Carolina.

92. Responding to the allegations contained in Paragraph 91 of the Complaint, Defendant admits that Plaintiff Ralph Williams was assigned to provided services to certain residents on Defendant Patricia Johnson's unit, and thus, Defendant Patricia Johnson was one of Plaintiff Ralph Williams' supervisors.

93. Defendant admits the allegations contained in Paragraph 92 of the Complaint.

94. Denied. Responding to the allegations contained in Paragraph 93 of the Complaint, Defendant admits there were two residents residing in Room 39 of Defendant's skilled nursing facility on June 21, 2010.

95. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint and therefore denies the same and demands strict proof thereof.

96. Responding to the allegations contained in Paragraph 95 of the Complaint, Defendant admits that there is only one nursing station on the United Rehab Services (URS) unit of the Defendant's skilled nursing facility in Orangerburg, South Carolina. Denies denies the remaining allegations contained in Paragraph 95 as stated.

97. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint and therefore denies the same and demands strict proof thereof.

98. Defendant denies the allegations contained in Paragraph 97 of the Complaint as stated.

99. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint and therefore denies the same and demands strict proof thereof.

100. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint and therefore denies the same and demands strict proof thereof.

101. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint and therefore denies the same and demands strict proof thereof.

102. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint and therefore denies the same and demands strict proof thereof.

103. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint and therefore denies the same and demands strict proof thereof.

104. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint and therefore denies the same and demands strict proof thereof.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint and therefore denies the same and demands strict proof thereof.

106. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint and therefore denies the same and demands strict proof thereof.

107. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint and therefore denies the same and demands strict proof thereof.

108. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint and therefore denies the same and demands strict proof thereof.

109. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint and therefore denies the same and demands strict proof thereof.

110. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint and therefore denies the same and demands strict proof thereof.

111. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint and therefore denies the same and demands strict proof thereof.

112. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint and therefore denies the same and demands strict proof thereof.

113. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint and therefore denies the same and demands strict proof thereof.

114. Defendant denies the allegations contained in Paragraph 113 of the Complaint as stated.

115. Responding to the allegations contained in Paragraph 114 of the Complaint, Defendant admits that Defendant Johnson did not push an audible alarm located in Room 39 of the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 114 as stated.

116. Responding to the allegations contained in Paragraph 115 of the Complaint, Defendant admits that Defendant Johnson did not push an alarm that would activate a light that flashes at the Defendant's skilled nursing facility on June 21, 2010. Defendant denies the remaining allegations contain in Paragraph 115 as stated.

117. Defendant denies the allegations contained in Paragraph 116 of the Complaint as stated.

118. Defendant denies the allegations contained in Paragraph 117 of the Complaint as stated.

119. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint and therefore denies the same and demands strict proof thereof.

120. Responding to the allegations contained in Paragraph 119 of the Complaint, Defendant admits that Defendant Johnson rushed to get Defendant Josette Peppers' attention

during the early morning hours of June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 119 of the Complaint as stated.

121. Denied. Responding to the allegations contained in Paragraph 121 of the Complaint, Defendant admits that its staff members timely called the police on June 21, 2010.

122. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred twenty-one (121) by reference as if specifically restated verbatim herein.

123. Responding to the allegations contained in Paragraph 122 of the Complaint, Defendant admits that Defendant Johnson made an entry on June 21, 2010, into the nurses' notes for the Resident occupying Bed A in Room 29 of the Defendant's skilled nursing facility in Orangeburg, South Carolina. Defendant further states that Defendant Johnson's entry speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 122 of the Complaint and therefore denies the same and demands strict proof thereof.

124. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint and therefore denies the same and demands strict proof thereof.

125. Responding to the allegations contained in Paragraph 124 of the Complaint, Defendant admits Defendant Patricia Johnson provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Johnson's statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124 of the Complaint and therefore denies the same and demands strict proof thereof.

126. Defendant admits the allegations contained in Paragraph 125 of the Complaint.

127. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint and therefore denies the same and demands strict proof thereof.

128. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint and therefore denies the same and demands strict proof thereof.

129. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 128 of the Complaint and therefore denies the same and demands strict proof thereof.

130. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 129 of the Complaint and therefore denies the same and demands strict proof thereof.

131. Defendant denies the allegations contained in Paragraph 130 of the Complaint.

132. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred thirty-one (131) by reference as if specifically restated verbatim herein.

133. Responding to the allegations contained in Paragraph 132 of the Complaint, Defendant admits Defendant Josette Peppers provided a statement to the Orangeburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant further states that Defendant Peppers' statement speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 132 of the Complaint and therefore denies the same and demands strict proof thereof.

134. Defendant admits the allegations contained in Paragraph 133 of the Complaint.

135. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint and therefore denies the same and demands strict proof thereof.

136. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint and therefore denies the same and demands strict proof thereof.

137. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 136 of the Complaint and therefore denies the same and demands strict proof thereof.

138. Defendant denies the allegations contained in Paragraph 137 of the Complaint.

139. Defendant denies the allegations contained in Paragraph 138 of the Complaint.

140. Defendant denies the allegations contained in Paragraph 139 of the Complaint.

141. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred forty (140) by reference as if specifically restated verbatim herein.

142. Defendant denies the allegations contained in Paragraph 141 of the Complaint.

143. Defendant denies the allegations contained in Paragraph 142 of the Complaint.

144. Defendant denies the allegations contained in Paragraph 143 of the Complaint.

145. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Complaint and therefore denies the same and demands strict proof thereof.

146. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 145 of the Complaint and therefore denies the same and demands strict proof thereof.

147. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 146 of the Complaint and therefore denies the same and demands strict proof thereof.

148. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Complaint and therefore denies the same and demands strict proof thereof.

149. In responding to the allegations contained in Paragraph 148 of the Complaint, Defendant admits that a jury returned a non-guilty verdict in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390). Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 148 of the Complaint and therefore denies the same and demands strict proof thereof.

150. Defendant denies the allegations contained in Paragraph 149 of the Complaint.

151. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint and therefore denies the same and demands strict proof thereof.

152. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 151 of the Complaint and therefore denies the same and demands strict proof thereof.

153. Defendant denies the allegations contained in Paragraph 152 of the Complaint.

154. Defendant denies the allegations contained in Paragraph 153 of the Complaint.

155. Defendant denies the allegations contained in Paragraph 154 of the Complaint.

156. Defendant denies the allegations contained in Paragraph 155 of the Complaint.

157. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint and therefore denies the same and demands strict proof thereof.

158. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Complaint and therefore denies the same and demands strict proof thereof.

159. Defendant denies the allegations contained in Paragraph 158 of the Complaint.

160. Defendant denies the allegations contained in Paragraph 159 of the Complaint.

161. Defendant denies the allegations contained in Paragraph 160 of the Complaint.

162. Defendant denies the allegations contained in Paragraph 161 of the Complaint.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

163. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred sixty-two (162) by reference as if specifically restated verbatim herein.

164. Defendant admits the allegations contained in Paragraph 163 of the Complaint.

165. Defendant denies the allegations contained in Paragraph 164 of the Complaint.

166. Defendant denies the allegations contained in Paragraph 165 of the Complaint.

167. Responding to the allegations contained in Paragraph 166 of the Complaint, Defendant admits that Defendant Patricia Johnson made an entry into the nursing notes for the

Resident residing in Bed A in Room 39 on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 166.

- 168. Defendant denies the allegations contained in Paragraph 167 of the Complaint.
- 169. Defendant denies the allegations contained in Paragraph 168 of the Complaint.
- 170. Defendant denies the allegations contained in Paragraph 169 of the Complaint.
- 171. Defendant denies the allegations contained in Paragraph 170 of the Complaint.
- 172. Defendant denies the allegations contained in Paragraph 171 of the Complaint.
- 173. Defendant denies the allegations contained in Paragraph 172 of the Complaint.
- 174. Defendant denies the allegations contained in Paragraph 173 of the Complaint.
- 175. Defendant denies the allegations contained in Paragraph 174 of the Complaint.
- 176. Defendant denies the allegations contained in Paragraph 175 of the Complaint.
- 177. Defendant denies the allegations contained in Paragraph 176 of the Complaint.
- 178. Defendant denies the allegations contained in Paragraph 177 of the Complaint.
- 179. Defendant denies the allegations contained in Paragraph 178 of the Complaint.

FOR A SECOND CAUSE OF ACTION

180. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred seventy-nine (179) by reference as if specifically restated verbatim herein.

- 181. Defendant admits the allegations contained in Paragraph 180 of the Complaint.
- 182. Defendant denies the allegations contained in Paragraph 181 of the Complaint.
- 183. Defendant denies the allegations contained in Paragraph 182 of the Complaint.
- 184. Defendant denies the allegations contained in Paragraph 183 of the Complaint.
- 185. Defendant denies the allegations contained in Paragraph 184 of the Complaint.

186. Defendant denies the allegations contained in Paragraph 185 of the Complaint.
187. Defendant denies the allegations contained in Paragraph 186 of the Complaint.
188. Defendant denies the allegations contained in Paragraph 187 of the Complaint.
189. Defendant denies the allegations contained in Paragraph 188 of the Complaint.
190. Defendant denies the allegations contained in Paragraph 189 of the Complaint.
191. Defendant denies the allegations contained in Paragraph 190 of the Complaint.
192. Defendant denies the allegations contained in Paragraph 191 of the Complaint.
193. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 192 of the Complaint and therefore denies the same and demands strict proof thereof.

194. Defendant denies the allegations contained in Paragraph 193 of the Complaint.
195. Defendant denies the allegations contained in Paragraph 194 of the Complaint.
196. Defendant denies the allegations contained in Paragraph 195 of the Complaint.
197. Defendant denies the allegations contained in Paragraph 196 of the Complaint.

FOR A THIRD CAUSE OF ACTION

198. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through one-hundred ninety-six (196) by reference as if specifically restated verbatim herein.

199. Defendant admits the allegations contained in Paragraph 198 of the Complaint.
200. Defendant denies the allegations contained in Paragraph 199 of the Complaint.
201. Defendant denies the allegations contained in Paragraph 200 of the Complaint.
202. Responding to the allegations contained in Paragraph 201 of the Complaint, Defendant admits that Defendant Patricia Johnson provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 201 of the Complaint.

- 203. Defendant denies the allegations contained in Paragraph 202 of the Complaint.
- 204. Defendant denies the allegations contained in Paragraph 203 of the Complaint.
- 205. Defendant denies the allegations contained in Paragraph 204 of the Complaint.
- 206. Defendant denies the allegations contained in Paragraph 205 of the Complaint.
- 207. Defendant denies the allegations contained in Paragraph 206 of the Complaint.
- 208. Defendant denies the allegations contained in Paragraph 207 of the Complaint.
- 209. Defendant denies the allegations contained in Paragraph 208 of the Complaint.
- 210. Defendant denies the allegations contained in Paragraph 209 of the Complaint.
- 211. Defendant denies the allegations contained in Paragraph 210 of the Complaint.
- 212. Defendant denies the allegations contained in Paragraph 211 of the Complaint.
- 213. Defendant denies the allegations contained in Paragraph 212 of the Complaint.
- 214. Defendant denies the allegations contained in Paragraph 213 of the Complaint.

FOR A FOURTH CAUSE OF ACTION

215. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fourteen (214) by reference as if specifically restated verbatim herein.

- 216. Defendant admits the allegations contained in Paragraph 215 of the Complaint.
- 217. Defendant denies the allegations contained in Paragraph 216 of the Complaint.
- 218. Defendant denies the allegations contained in Paragraph 217 of the Complaint.
- 219. Responding to the allegations contained in Paragraph 218 of the Complaint, Defendant admits that Defendant Josette Peppers provided a voluntary statement to the

Orangburg, South Carolina Department of Public Safety on or about June 21, 2010. Defendant denies the remaining allegations contained in Paragraph 218 of the Complaint.

- 220. Defendant denies the allegations contained in Paragraph 219 of the Complaint.
- 221. Defendant denies the allegations contained in Paragraph 220 of the Complaint.
- 222. Defendant denies the allegations contained in Paragraph 221 of the Complaint.
- 223. Defendant denies the allegations contained in Paragraph 222 of the Complaint.
- 224. Defendant denies the allegations contained in Paragraph 223 of the Complaint.
- 225. Defendant denies the allegations contained in Paragraph 224 of the Complaint.
- 226. Defendant denies the allegations contained in Paragraph 225 of the Complaint.
- 227. Defendant denies the allegations contained in Paragraph 226 of the Complaint.
- 228. Defendant denies the allegations contained in Paragraph 227 of the Complaint.
- 229. Defendant denies the allegations contained in Paragraph 228 of the Complaint.
- 230. Defendant denies the allegations contained in Paragraph 229 of the Complaint.
- 231. Defendant denies the allegations contained in Paragraph 230 of the Complaint.

FOR A FIFTH CAUSE OF ACTION

232. Defendants hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred thirty-one (231) by reference as if specifically restated verbatim herein.

- 233. Defendant admits the allegations contained in Paragraph 232 of the Complaint.
- 234. Defendant denies the allegations contained in Paragraph 233 of the Complaint.
- 235. Defendant denies the allegations contained in Paragraph 234 of the Complaint.
- 236. Defendant denies the allegations contained in Paragraph 235 of the Complaint.
- 237. Defendant denies the allegations contained in Paragraph 236 of the Complaint.

238. Defendant denies the allegations contained in Paragraph 237 of the Complaint.
239. Defendant denies the allegations contained in Paragraph 238 of the Complaint.
240. Defendant denies the allegations contained in Paragraph 239 of the Complaint.

FOR A SIXTH CAUSE OF ACTION

241. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred forty (240) by reference as if specifically restated verbatim herein.

242. Defendant admits the allegations contained in Paragraph 241 of the Complaint.
243. Defendant denies the allegations contained in Paragraph 242 of the Complaint.
244. Defendant denies the allegations contained in Paragraph 243 of the Complaint.
245. Defendant denies the allegations contained in Paragraph 244 of the Complaint.
246. Defendant denies the allegations contained in Paragraph 245 of the Complaint.
247. Defendant denies the allegations contained in Paragraph 246 of the Complaint.
248. Defendant denies the allegations contained in Paragraph 247 of the Complaint.
249. Defendant denies the allegations contained in Paragraph 248 of the Complaint.
250. Defendant denies the allegations contained in Paragraph 249 of the Complaint.
251. Defendant denies the allegations contained in Paragraph 250 of the Complaint.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

252. Defendant hereby incorporates and reasserts its responses in the above-stated paragraphs one (1) through two-hundred fifty-one (251) by reference as if specifically restated verbatim herein.

253. Defendant admits the allegations contained in Paragraph 252 of the Complaint.

254. Defendant denies the allegations contained in Paragraph 253 of the Complaint.

255. Defendant denies the allegations contained in Paragraph 254 of the Complaint.

256. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 255 of the Complaint and therefore denies the same and demands strict proof thereof.

257. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 256 of the Complaint and therefore denies the same and demands strict proof thereof.

258. Defendant denies the allegations contained in Paragraph 257 of the Complaint.

259. Defendant denies the allegations contained in Paragraph 258 of the Complaint.

260. Defendant denies the allegations contained in Paragraph 259 of the Complaint.

261. Defendant denies the allegations contained in Paragraph 260 of the Complaint.

262. Defendant denies the allegations contained in Paragraph 261 of the Complaint.

263. Defendant denies the allegations contained in Paragraph 262 of the Complaint.

264. Defendant denies the allegations contained in Paragraph 263 of the Complaint.

FOR A SECOND CAUSE OF ACTION

265. Defendant hereby incorporate and reasserts and reasserts its responses in the above-stated paragraphs one (1) through two-hundred sixty-four (264) by reference as if specifically restated verbatim herein.

266. Defendant admits the allegations contained in Paragraph 265 of the Complaint.

267. Defendant admits the allegations contained in Paragraph 266 of the Complaint.

268. Defendant denies the allegations contained in Paragraph 267 of the Complaint.

269. Defendant denies the allegations contained in Paragraph 268 of the Complaint.

270. Defendant denies the allegations contained in Paragraph 269 of the Complaint.

271. Defendant denies the allegations contained in Paragraph 270 of the Complaint.

272. Defendant denies the allegations contained in Paragraph 271 of the Complaint.

273. Defendant denies the allegations contained in Paragraph 272 of the Complaint.

274. Defendant denies the allegations contained in Paragraph 273 of the Complaint.

275. Defendant denies the allegations contained in Paragraph 274 of the Complaint.

276. Defendant denies the allegations contained in Paragraph 275 of the Complaint.

277. Defendant denies the allegations contained in the unnumbered, "Prayer for Relief" paragraph immediately following Paragraph 275 on page 37 of the Complaint.

FOR A THIRD DEFENSE

278. Plaintiffs' Complaint fails to state a claims against Defendant upon which relief may be granted.

FOR A FOURTH DEFENSE

279. Defendant denies that it is liable to Plaintiffs for any sum or in any manner.

FOR A FIFTH DEFENSE

280. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiffs were caused by the actions or inactions of themselves or others.

FOR AN SIXTH DEFENSE

281. The Complaint is barred because Plaintiffs have not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A SEVENTH DEFENSE

282. Plaintiffs' claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR AN EIGHTH DEFENSE

283. Plaintiffs' claims are barred, in whole or in part, for failure to mitigate damages.

FOR A NINTH DEFENSE

284. Plaintiffs' claims are barred, in whole or in part, because truth is an absolute defense to any and all claims of defamation.

FOR A TENTH DEFENSE

285. Plaintiffs' claims are barred, in whole or in part, because of qualified immunity.

FOR AN ELEVENTH DEFENSE

286. Plaintiffs' claims are barred, in whole or in part, because of absolute immunity.

FOR A TWELFTH DEFENSE

287. Plaintiffs have failed to state specific allegations sufficient to justify the award of punitive damages.

FOR A THIRTEENTH DEFENSE

288. Plaintiffs' claims for punitive damages are barred to the extent that they are excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A FOURTEENTH DEFENSE

289. Plaintiffs' claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A FIFTEENTH DEFENSE

290. Plaintiffs' claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A SIXTEENTH DEFENSE

291. Defendant specifically, reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Defendant requests a twelve-person jury.



Jason E. Bring
South Carolina Bar No.
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
tyler.arnold@agg.com

Attorney for Defendant Josette Peppers

Atlanta, Georgia
August 30, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
	)	
RALPH C. WILLIAMS, SR., and	)	
LINDA WILLIAMS,	)	
	)	DEFENDANT UNIHEALTH POST-ACUTE
Plaintiffs,	)	CARE – ORANGEBURG, LLC’S
	)	MEMORADMUM OF LAW IN SUPPORT
V.	)	OF ITS MOTION FOR SUMMARY
	)	JUDGMENT
PATRICIA A. JOHNSON, JOSETTE	)	
PEPPERS, and UNIHEALTH POST-	)	
ACUTE CARE – ORANGEBURG,	)	
LLC,	)	
	)	
Defendants.	)	

Defendant Unihealth Post-Acute Care – Orangeburg, LLC (“UPAC-Orangeburg”) hereby submits its Memorandum of Law in Support of its Motion for Summary Judgment, showing the Court as follows:

I. INTRODUCTION

Plaintiffs’ Complaint alleges that UPAC-Orangeburg is vicariously liable for the acts of two nurse employees, Ms. Patricia Johnson and Ms. Josette Peppers (“Johnson and Peppers”), who Plaintiffs claim intentionally made false written and oral reports that Plaintiff Ralph Williams, Sr. attempted to sexually assault a resident at a nursing home. South Carolina’s Omnibus Adult Protection Act provides immunity for nurses who, in good faith, report sexual abuse, and there is a rebuttable presumption that reporting nurses act in good faith. S.C. Code Ann. § 43-35-75(A). Plaintiffs must therefore overcome the good faith presumption by showing that Johnson and Peppers intentionally and in bad faith made false reports regarding Plaintiff Ralph Williams, Sr. Even if there is sufficient evidence to rebut this statutory presumption, Plaintiffs’ claims still fail because under South Carolina law, employers are not liable for the

intentional acts of their employees which fall outside the scope of employment. As shown herein, malicious and bad faith reports of sexual assault clearly fall outside the scope of employment for a nurse at a nursing home. Accordingly, UPAC-Orangeburg cannot be held liable for the alleged intentional acts of Johnson and Peppers and is entitled to judgment as a matter of law in this case.

II. FACTUAL AND PROCEDURAL BACKGROUND

The undisputed facts in this case provide that Plaintiff Ralph C. Williams, Sr. ("Williams"), Defendant Patricia A. Johnson, and Defendant Josette Peppers were all employees at UPAC-Orangeburg, a skilled nursing facility in Orangeburg, South Carolina on June 21, 2010. Williams was employed as a Certified Nursing Assistant ("CNA"), and Johnson and Peppers were both employed as Licensed Practical Nurses. All three employees were working at the facility on June 21, 2010.

According to her voluntary written statement, Johnson went looking for Williams during the early morning hours of June 21, 2010 and found his CNA supply cart sitting outside of Room 39 in the facility. (See Voluntary Statement of Patricia Johnson, a copy of which is attached hereto as Exhibit 1.) When she opened the door to Room 39, Johnson saw Williams with his pants down and climbing on top of the resident lying in the bed closest to the door.¹ (See id.) Johnson immediately asked Williams what he was doing. (See id.) Williams responded, "Please shut the door." (See id.) Johnson then went to get another nurse, Peppers, and reported her observations. (See id.) Johnson and Peppers returned to Room 39 and found Williams still in

¹ The resident lying in the bed closest to the door was a 43-year-old female who lacked the mental capacity to consent to sex and was dependent upon others to care for her. She was "vulnerable adult" as defined under South Carolina's Omnibus Adult Protection Act. S.C. Code Ann. § 43-35-10

the room. (See id.; see also Voluntary Statement of Josette Peppers, a copy of which is attached hereto as Exhibit 2.)

A facility representative alerted Orangeburg Department of Public Safety (the "ODPS"), and shortly thereafter multiple representatives of law enforcement arrived at the facility. (See Affidavit of Latisha Walker, a copy of which is attached hereto as Exhibit 3.) At some point, both Johnson and Peppers were interviewed, and both provided voluntary written statements to the ODPS. (See id.) The investigating officer, Ms. Latisha Walker, believed that both Johnson and Peppers were acting in good faith when they made their reports. (See id.) After conducting an investigation, the ODPS arrested Williams, and upon review by a neutral and detached Municipal Judge of the voluntary written statements, charges were filed against Williams. (See id.)

On February 7-8, 2012, the Orangeburg County Solicitor attempted to prosecute Williams at trial for (1) Assault with Intent to Commit Third-Degree Criminal Sexual Conduct and (2) Abuse of a Vulnerable Adult. (See Affidavit of Donald N. Sorenson, a copy of which is attached hereto as Exhibit 4.) During the trial, both Johnson and Peppers testified, under oath, about their observations and voluntary statements to the ODPS. (See id.) The prosecuting attorney, Mr. Donald N. Sorenson, believed that both Johnson and Peppers were acting in good faith when they made their reports. (See id.) At the end of the trial, the jury returned a not guilty verdict as to both counts. (See id.)

On June 21, 2012, Plaintiffs Ralph C. Williams, Sr. and Linda Williams filed a Complaint against UPAC-Orangeburg, Patricia A. Johnson, and Josette Peppers alleging the defendants were liable for multiple claims of defamation, abuse of process, and loss of consortium. (See generally, Plaintiffs' Complaint.) These claims are based on Plaintiffs'

allegations that Johnson and Peppers acted “intentionally,” “willfully,” with “actual malice,” and with an “ulterior purpose” when they made and published statements “which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.” (Pl.’s Complaint, ¶¶ 166, 169, 170-172, 188, 190, 205, 207, 222, 224, 235, 236, 245, 246, 257, 269.) Plaintiffs allege that UPAC-Orangeburg is liable based solely on “inform[ation] and belie[f] that [Johnson and Peppers] [were] acting within the course and scope of [their] employment with actual and/or apparent authority and in furtherance of [UPAC-Orangeburg’s] business when [they made or wrote their statements].” (Pl.’s Complaint, ¶¶ 164, 181, 199, 216, 233, 242, 253, 267.)

III. STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. Brockbank v. Best Capital Corp., 341 S.C. 372(2000). Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Quail Hill, L.L.C. v. County of Richland, 387 S.C. 223, 234 (2010) (citing Rule 56(c), SCRPC). It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. Evans v. Stewart, 370 S.C. 522, 526 (Ct. App. 2006).

IV. LEGAL AUTHORITY AND ARGUMENT

A. Pursuant to the Omnibus Adult Protection Act, Plaintiffs must prove that Johnson and Peppers acted intentionally and in bad faith.

In 1993, South Carolina's General Assembly enacted the Omnibus Adult Protection Act ("the Act") to protect vulnerable adults from abuse, neglect, and exploitation. 1993 Act No. 110, § 1, codified as S.C. Code Ann. §§ 43-35-5 to -595. The purpose of the Act was to address the continuing needs of vulnerable adults; define abuse, neglect, and exploitation in a uniform manner, without regard to setting; clarify reporting requirements; provide victims with emergency protective custody; define the court's role in adult protection; and provide civil and criminal penalties to perpetrators of the abuse, neglect, or exploitation of vulnerable adults. S.C. Code Ann. § 43-35-5. The Act defines a "vulnerable adult" as:

[A] person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

S.C. Code Ann. § 43-35-10.²

The Act imposes a duty on certain individuals to report if they have "reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited." S.C. Code Ann. § 43-35-25(A). Individuals designated as "mandated reporters" under the Act include physicians, nurses, dentists, optometrists, medical examiners, coroners, and other medical, mental health or allied health professionals, Christian Science practitioners, religious healers, school teachers, counselors, psychologists, mental health or mental retardation specialists, social

² Under the Act, a "facility" includes a nursing care, community residential care, or psychiatric facility, as well as any other "residential program operated or contracted for operation by the Department of Mental Health or [DDSN]." S.C. Code Ann. § 43-35-10(4).

or public assistance workers, caregivers, staff or volunteers of an adult day care center or facilities, and law enforcement officers. Id. The Act also requires reporting by "any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited." Id. Reporting the suspected conduct within twenty-four hours or the following working day is the mandated reporter's individual responsibility. S.C. Code Ann. § 43-35-25(C)-(D).

Provided the Act's mandatory reporting requirements are met, the reporter may also report suspected abuse, neglect, or exploitation directly to law enforcement; "and in cases of emergency, serious injury, or suspected sexual assault, law enforcement must be contacted immediately." S.C. Code Ann. § 43-35-25(G). The Act shields reporters from civil and criminal liability that could otherwise arise from the act of reporting.

A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.

S.C. Code Ann. § 43-35-75(A). On the other hand, a "mandated reporter" who has actual knowledge that abuse, neglect, or exploitation of a vulnerable adult has occurred, and who knowingly and willfully fails to report this knowledge is guilty of a misdemeanor, and upon conviction, the person must be fined in an amount up to \$2,500 or imprisoned up to one year. S.C. Code Ann. § 43-35-85(A). Furthermore, a mandated reporter with reason to believe that abuse, neglect, or exploitation of a vulnerable adult has occurred, or is likely to occur, and who knowingly and willfully fails to report is subject to disciplinary action by the appropriate licensing board. Id.

In this case, it is undisputed that the alleged victim was a "vulnerable adult" under the Act because she was over eighteen years old, unable to provide for her own care or protection,

and a resident of a facility. It is also undisputed that Johnson and Peppers were "mandated reporters" under the Act and had a duty to report to proper authorities if they had "reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited." S.C. Code Ann. § 43-35-25. Johnson and Peppers are therefore immune from civil liability as long as they were reporting in good faith, which is presumed under the law. S.C. Code Ann. § 43-35-75(A). In order to prevail on their claims, Plaintiffs must overcome the Act's good faith presumption by proving that Johnson and Peppers acted in bad faith and intentionally made false reports regarding Plaintiff Ralph Williams, Sr.

B. Under the Doctrine of *Respondeat Superior*, employers are not liable for an employee's intentional acts that fall outside the scope of employment.

In Jones v. Elbert, 211 S.C. 553 (1945), the South Carolina Supreme Court held:

Under the doctrine of *respondeat superior*, it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business.

Id. at 559. More specifically, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A plaintiff seeking recovery from the master for injuries must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment. Id. at 301. An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business. Id. at 305; Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006).

The act of a servant done to affect some independent purpose of his own and not with reference to the service in which he is employed is not within the scope of his employment so as to render the master liable therefor. Lane, 244 S.C. at 305; see also Crittenden v. Thompson-

Walker Co., Inc., 288 S.C. 112, 116 (Ct. App. 1986) (holding "if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.") Under these circumstances the servant alone is liable for the injuries inflicted. Lane, 244 S.C. at 305. If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended. Id. at 306. Accordingly, actions during even a short detour from the master's business for the purpose of purely individual interests fall outside the scope of employment. Armstrong, 371 S.C. at 276.

South Carolina Appellate Courts have reviewed multiple cases wherein an employee, while on duty, abandons the employer's business for some purpose wholly disconnected with his employment. In Lane, the South Carolina Supreme Court held that an employer was not liable for injuries to a customer arising out of employee's horseplay, which involved use of a cage – approximately two feet long and a foot high, one-half of the top being covered with wire and the other half being solid, and on which was painted the words, "Snake Killer", "Danger", "Mongoose" – to play a practical joke on a customer. Lane, 244 S.C. at 303. Similarly, in Armstrong, the South Carolina Supreme Court upheld a directed verdict in favor of the employer in a case involving an assault with box cutters by two grocery store employees on a customer where "the only reasonable inference . . . was that [the employees] attacked [the customer] for their own personal reasons and not for any reason related to their employment." Id. at 276-77. In Kase v. Ebert, 392 S.C. 57, 62 (Ct. App. 2011), the Court of Appeals held that Ebert, an on-duty truck driver, was acting outside the course and scope of his employment when he assaulted Kase, a truck driver for a competitor, after Kase wrecked into Ebert's truck.³ Finally, in

³ Ebert even testified at his deposition that forceful action was necessary at times to protect

Hamilton v. J.D. Davis, 300 S.C. 411 (Ct. App. 1990), the Court of Appeals held that a rental property manager was not acting within the scope of his employment, even though present at the rental property to perform a job, when he engaged in a "dumb stunt" that "smeared" the renter along the side of a car. Id. at 417.

Three older South Carolina cases specifically examined the *respondeat superior* doctrine in the context of claims for defamation. Each of these cases held that the alleged defamation fell outside the scope of employment because the statements at issue were not made with any purpose to serve the employer, even though some were made during the work day while the employee was otherwise performing work. See Johnson v. Life Insurance Co. of Georgia, 227 S.C. 351 (1955) (finding insurance agent's comment to one insured about why another insured's claim was denied was made outside the scope of his employment); Bosdell v. Dixie Stores Co., 168 S.C. 520 (1933) (finding employee was not acting within the scope of his authority in making a defamatory statement); Courtney v. American Ry. Express Co., 120 S.C. 511 (1922) (finding casual comment by one railroad employee to another about why an employee was "let go" fell outside the scope of employment because the employee was not "engaged in the discharge of any duty committed to him" by the employer when the allegedly defamatory comment was made).

C. Intentional false reports of sexual assault made in bad faith do not serve a business purpose and are not within the scope of employment for a nurse in a nursing facility.

Plaintiffs' claims against UPAC-Orangeburg are based entirely upon a *respondeat superior* theory that the employer is liable for the actions of Johnson and Peppers. (See Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 232-234, 241-243, 252-254, 265-268.)

company property. Kase, 392 S.C. at 62.

However, as explained above, Johnson and Peppers are presumed to have acted in good faith and have civil immunity from all of Plaintiffs' claims. This immunity is defeated only if Plaintiffs allege and then prove that Johnson and Peppers acted intentionally and in bad faith. Plaintiffs recognize and concede as much in each one of their causes of action in the Complaint.

- In the First Cause of Action (*Defamation (Nursing Notes) against Johnson and UPAC-Orangeburg*), Plaintiffs allege that Johnson's written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they were **not made in good faith**," and were "published . . . with **actual malice**." (Complaint, ¶¶ 169 and 172 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "**intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act** upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint, ¶ 170 (emphasis added).)
- In the Second Cause of Action (*Defamation (Slander-Verbal Statement) against Johnson and UPAC-Orangeburg*),⁴ Plaintiffs allege that Johnson's oral statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they **were not made in good faith**," and were "published . . . with **actual malice**." (Complaint, ¶¶ 187 and 190 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "**intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act** upon a resident and/or abuse upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person." (Complaint, ¶ 188 (emphasis added).)

⁴ Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 179.)

- In the Third Cause of Action (*Defamation (Voluntary Statement) against Johnson and UPAC-Orangeburg*),⁵ Plaintiffs allege Johnson's written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they *were not made in good faith*," and were "published . . . with *actual malice*." (Complaint, ¶¶ 204 and 207 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "*intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act* upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person." (Complaint, ¶ 205 (emphasis added).)
- In the Fourth Cause of Action (*Defamation (Voluntary Statement) against Peppers and UPAC-Orangeburg*),⁶ Plaintiffs allege Peppers' written statements that Ralph Williams was attempting to sexually assault a resident "were not subject to conditional or qualified privilege because they *were not made in good faith*," and were "published . . . with *actual malice*." (Complaint, ¶¶ 221 and 224 (emphasis added).) Further, Plaintiffs allege Johnson made the statements "*intending to charge the Plaintiff Ralph Williams had committed a criminal sexual act* upon a resident and/or abuse upon a resident, and that Plaintiff was a sexually deviant and dishonest person." (Complaint, ¶ 222 (emphasis added).)
- In the Fifth Cause of Action (*Defamation (Abuse of Process) against Johnson and UPAC-Orangeburg*),⁷ Plaintiffs allege Johnson's written statements that Ralph

⁵ Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 197.)

⁶ Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein." (Complaint, ¶ 214.)

⁷ Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim

Williams were actions “primarily *taken for an ulterior purpose to injure Plaintiff Ralph Williams* and to ensure the dismissal of Plaintiff Ralph Williams from his employment with Defendant [UPAC-Orangeburg].” (Complaint, ¶ 236 (emphasis added).) Plaintiffs allege Johnson was “*willful*” in making her statements that “*caused the initiation of criminal proceedings against Plaintiff Ralph Williams* on the charges of third degree criminal sexual conduct and abuse of a vulnerable adult.” (Complaint, ¶ 235 (emphasis added).)

In the Sixth Cause of Action (*Abuse of Process against Pepper and UPAC-Orangeburg*),⁸ Plaintiffs allege Peppers’ statements that Ralph Williams were “*willful*” actions “with an *ulterior purpose*” and were “*improperly aimed at the primary illegitimate or collateral effort of securing the dismissal of Plaintiff Ralph Williams* from his employment with Defendant [UPAC-Orangeburg].” (Complaint, ¶¶ 245-247 (emphasis added).)

In the Seventh⁹ Cause of Action (*Loss of Consortium against Johnson and UPAC-Orangeburg*),¹⁰ Plaintiff alleges Johnson “*intentionally and tortuously violated* Plaintiff Linda Williams’ right to companionship . . . by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct.” (Complaint, ¶ 257 (emphasis added).)

herein.” (Complaint, ¶ 231.)

⁸ Plaintiffs incorporated “all allegations of the above-stated paragraphs as if stated verbatim herein.” (Complaint, ¶ 240.)

⁹ Plaintiffs label this claim as Plaintiff Linda Williams’ First Cause of Action.

¹⁰ Plaintiffs incorporated “all allegations of the above-stated paragraphs as if stated verbatim herein.” (Complaint, ¶ 251.)

- In the Eighth¹¹ Cause of Action (*Loss of Consortium against Peppers and UPAC-Orangeburg*),¹² Plaintiff alleges Peppers “*intentionally and tortuously violated* Plaintiff Linda Williams’ right to companionship . . . by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct.” (Complaint, ¶ 269 (emphasis added).)

Plaintiffs’ efforts to circumvent the civil immunity provided under the Act necessitate these allegations and will also require proof that Johnson and Peppers were in fact acting intentionally and with malice. Assuming *arguendo* that all of Plaintiffs’ factual allegations are true,¹³ the facts show Johnson and Peppers clearly abandoned UPAC-Orangeburg’s business purpose and interests to pursue strictly individual interests when they made reports that Ralph Williams attempted to sexually assault a resident. (See *Id.*, ¶ 170 (“intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act”), ¶ 188 (same), ¶ 205 (same), ¶ 222 (same), ¶ 235 (“cause[] the initiation of criminal proceedings against Plaintiff Ralph Williams”), ¶ 245 (“ulterior purpose”), ¶ 247 (“aimed at the primary illegitimate or collateral objective”), ¶ 257 (“intentionally and tortiously”), ¶ 269 (same).) Such false reports of sexual abuse and malicious efforts to have criminal charges filed are not in furtherance of UPAC-Orangeburg’s business purpose and interests and are wholly disconnected from employment as a nurse at a nursing facility. Moreover, the alleged defamatory statements which Johnson and Peppers allegedly made fall outside the scope of employment under South Carolina law. See

¹¹ Plaintiffs label this claim as Plaintiff Linda Williams’ Second Cause of Action.

¹² Plaintiffs incorporated “all allegations of the above-stated paragraphs as if stated verbatim herein.” (Complaint, ¶ 264.)

¹³ This assumption obviously excludes Plaintiffs’ legal conclusion that UPAC-Orangeburg is vicariously liable for the acts of Johnson and Peppers. (See Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 232-234, 241-243, 252-254, 265-268.)

supra Johnson; Bosdell; Courtney. Accordingly, Johnson and Peppers' intentional acts fall outside the scope of their employment with UPAC-Orangeburg.

V. CONCLUSION

For the reasons set forth above, UPAC-Orangeburg is entitled to judgment as a matter of law because it cannot be held liable for the alleged intentional acts of Johnson and Peppers. Accordingly, the Court should grant UPAC-Orangeburg's Motion for Summary Judgment.



Jason E. Bring
South Carolina Bar No. 100275
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
tyler.arnold@agg.com

*Attorney for Defendant Unihealth Post-Acute
Care – Orangeburg, LLC*

August 21st 2013

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR, and
LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS and UNIHEALTH POST-
ACUTE CARE-ORANGEBURG,
LLC,

Defendants

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT
UNIHEALTH POST-ACUTE
CARE LLC'S MOTION FOR
SUMMARY JUDGMENT**

INDEX

INTRODUCTION & FACTUAL & PROCEDURAL BACKGROUND	p. 1-3
STANDARD OF REVIEW	p. 4
LEGAL AUTHORITY AND ARGUMENT	
A. The Omnibus Adult Protection Act provides a Qualified Privilege to the Tort of Defamation that can be overcome by evidence of Actual Malice and/or Abuse of the Privilege	p. 5
B. The Privilege in §43-35-75(A) is a Qualified One	p. 5
C. Further Evidence of Malice	p. 8
D. Defendants' assertion of privilege should be evaluated by a jury	p. 10
E. The Affidavits attached to Defendants' Summary Judgment Brief should not be considered by the Court	p. 14
F. Defamatory statements made by employees while in performance of duties of Employment create employer liability for the statements when they touch and Concern the subject matter of the slander	p. 15
G. Plaintiffs' Complaint Alleges Malice/Recklessness as Defined by the Law of Defamation	p. 18

CONCLUSION

EXHIBITS

p. 25

CITATIONS OF AUTHORITY

p. 26 - 28

The Plaintiffs, Ralph Williams and Linda Williams, by and through counsel, respectfully submit this Memorandum of Law in Opposition to Defendant UniHealth Post-Acute Care LLC's Motion for Summary Judgment.

INTRODUCTION

Plaintiffs Ralph Williams, Sr. (*hereinafter* Mr. Williams) and Linda Williams' (*hereinafter* Mrs. Williams) Complaint alleges six counts of Defamation, Abuse of Process and Loss of Consortium against Defendants Josette Peppers (*hereinafter* Peppers), Patricia Johnson (*hereinafter* Johnson), and UniHealth (*hereinafter* UniHealth). The Abuse of Process claim only, has or will be dismissed by motion and amendment of the complaint. Plaintiffs' claims are based on written and oral defamatory statements that Plaintiff Ralph Williams attempted to sexually assault a resident at UniHealth's nursing home facility. The Plaintiffs contend that the statements were made with a reckless indifference to the Plaintiffs' rights. The Defendants are all represented by the same attorney. However, UniHealth brings its motion for summary judgment based on defenses in direct conflict with the interests of Defendants Johnson and Peppers. Specifically, UniHealth asserts that the South Carolina Omnibus Adult Protection Act codified at 43-35-5, et. seq. provides a basis for immunity in that statements were made in good faith. In the alternative, UniHealth asserts interests in conflict with the individual Defendants in asserting that those Defendants acted intentionally and allegedly were outside the scope of their employment such that UniHealth should be excluded from vicarious liability. Plaintiffs assert that the Omnibus statute relied upon by Defendants expressly states the good faith presumption is rebuttable. Accordingly, Plaintiffs offer criminal trial transcript, document evidence and deposition testimony on raising the inference of malice intended to rebut said presumption. Plaintiffs also assert that the individual Defendants were acting squarely within the course and scope of their employment because they were acting furtherance of the employer's interests pursuant to company policies and the defamatory statements complained of touch

the subject matter of the employment. All parties were employees: workers and/or supervisors. Plaintiff offers documentary evidence to this effect.

I. FACTUAL & PROCEDURAL BACKGROUND

The facts established through discovery in this case provide that Mr. Williams was a Certified Nursing Assistant who was employed at UniHealth's Orangeburg facility from February of 2010 until June of 2010. (**R. Williams Aff.**)(attached at tab 4). Mr. Williams has been married to his wife Linda Williams for over 20 years. (**R. Williams Aff.**)(attached at tab 4). Mr. Williams and his wife attend State Holy Temple, a local church in Orangeburg, South Carolina, for over twenty years. (**R. Williams Aff.**)(attached at tab 4). Mr. Williams also catered and was sought out as a caterer by churches, local social clubs and for family and class reunions. (**R. Williams Aff.**)(attached at tab 4). Mr. Williams passed the state exam to receive his Certified Nursing Assistant license on November 10, 2009. (**Complaint ¶ 28; Peppers, UniHealth and Johnson Answers ¶ 28**). Mr. Williams was hired as a CNA by UniHealth on or about February 9, 2010. (**Peppers, Johnson, and UniHealth Answer ¶ 30**). Mr. Williams worked the 11 p.m. to 7:00 a.m. shift in the UniHealth facility. (**Complaint ¶ 31; Peppers, Johnson, UniHealth Answers ¶ 32**). UniHealth assigned Mr. Williams to care for both male and female residents. (**Complaint ¶ 35; Peppers, Johnson, UniHealth Answers ¶ 36**) Mr. Williams' Job Description included duties of changing resident diapers which contain urine and feces. On June 20, 2010, Mr. Williams was assigned to care for Ms. Henrietta Mays (hereinafter referred to as "Resident Number 39A"). (**Complaint ¶ 92; Peppers, Johnson, UniHealth Answers ¶ 93**). . There were two residents in Room 39 on the night of the incident. (**Complaint ¶ 93; Johnson, Peppers, UniHealth Answers ¶ 94**.) Johnson was assigned to work as Mr. Williams' supervisor the night of June 20, 2010. (**Complaint ¶ 91; Peppers, Johnson, UniHealth Answers ¶ 92**). Peppers was assigned to work as an LPN (Licensed Practical Nurse) in another part of the UniHealth facility the night of June 21, 2010. Johnson's and Peppers' duties as stated in their UniHealth job description included reporting conduct deemed injurious to the residents. (**UPAC-Orangeburg at 00008**)(attached at tab 6). There was no lock on resident's room doors (**Complaint ¶ 45; Peppers, Johnson, UniHealth Answers**) There is a

button right beside the resident's bed that activates an audible alarm that sounds throughout the building and that activates a flashing emergency light outside that resident's door. (**Complaint ¶ 46, R. Williams Deposition Trans. at 198; Crim. Trial Trans. J. Peppers cross at 108 lines 1-24**)(attached at tab 5)

In the early morning hours of June 21, 2010, Defendants Johnson and Peppers published defamatory statements to various third parties verbally and in writing alleging that Mr. Williams had sexually assaulted and/or abused Resident 39A. As a direct consequence, Mr. Williams was arrested on June 21, 2010 and charged with assault with intent to commit third degree criminal sexual conduct and abuse of a vulnerable adult. Mr. Williams' criminal case went to trial on February 7, 2012. The solicitor nol prossed the charge of assault with intent to commit third degree criminal sexual conduct before the case went to the jury, after which a unanimous jury rendered a verdict of not guilty on the charge of abuse of a vulnerable adult. (Case Nos. 2010-GS-38-1389 and 2010-GS-1390). (**Complaint ¶ 148; Unihealth Answer ¶ 149; Crim, Discovery Docs at R. Williams 00018**(attached at tab 6); **R. Williams Crim. Trial Trans.- P. Johnson at 224 lines 24-25; and P. Johnson direct at 225 lines 1-13, p. 324**)(attached at tab 5)

STANDARD OF REVIEW

"Under Rule 56(c) the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Boone v. Sunbelt Newspapers, Inc., 556 S.E.2d 732, 736, 347 S.C. 571, 579 (Ct. App. 2001). "A "motion for summary judgment shall [only] be granted if pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law." Bruce v. Durney, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000). "In general, if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented." Murray v. Holnam, Inc., 542 S.E.2d 743, 747, 344 S.C. 129, 138 (2001). "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.” Id. at 747. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” Id. “Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.” Id.

LEGAL AUTHORITY AND ARGUMENT

A. The Omnibus Adult Protection Act provides a Qualified Privilege to the Tort of Defamation that can be overcome by evidence of Actual Malice and/or Abuse of the Privilege.

Enacted in 1993 by the South Carolina General Assembly to protect vulnerable adults from abuse, neglect, and exploitation, Mandated Reporters, which include “nurses, caregivers, staff or volunteers of an adult day care center or facilities,” must “report suspected conduct within twenty-four hours or the following work day.” S.C. Code Ann. §43-35-10 *et seq.* (attached at tab 1) The Omnibus Act further provides that persons making such reports in good faith are immune from criminal or civil prosecution. However, the statute expressly provides that this presumption of good faith is rebuttable. S.C. Code Ann. §43-35-75(A) (attached at tab 1)

The terms “good faith” and “rebuttable presumption” are not defined by the statute. A comprehensive search of South Carolina case law only revealed one case construing the statute. Williams v. Watkins, 665 S.E.2d 243, 379 S.C. 530 (S.C. Ct. App. 2008). Unfortunately, this case does not explain what is needed to rebut the presumption of good faith. Similarly, there is no guidance offered on the breadth of protection afforded by the state. Plaintiffs contend that this statute only provides a qualified privilege as evidenced by the language of the statute.

B. The Privilege in §43-35-75(A) is a Qualified One

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d. 203 (Ct. App 2002) citing State v. Baucom, 340 S.C. 339, 351 S.E.2d 922 (2000). The legislature’s intent should be ascertained primarily from the plain language of the statute. Morgan, *supra*. Words must be given their plain and ordinary

meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. When faced with an undefined statutory term, the term must be interpreted with its usual and customary meaning. Id. In interpreting the statute, the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law should be considered. Whitner v. State 328 S.C. 1, 492 S.E.2d. 777 (1997). "If legislative intent is clear as reflected in the statutory language, any public policy as promulgated by this Court must give way." Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d. 296, 301 (2012). With due notice of the absence of direct statutory or direct case law guidance on the Omnibus Act immunity provision, Plaintiffs direct the Court's attention to Hainer v. American Medical International, Inc., 328 S.C. 128, 492 S.E.2d 103 (1997). Like the Omnibus Act, Hainer involved a statutorily mandated duty to report abandoning a patient. The Court noted that S.C. Code Ann. §40-33-970 (attached at tab 1) required employers of nurses to report any instances of misconduct. Consequently, further provisions provided that such a communication made in the course of an investigation into a nursing licensee's conduct was privileged except upon proof that such communication was made with actual malice, Id. p. 134. In addressing the duty to report, the Court in Hainer indicated "we are unpersuaded by Hospital's claim that, because it had a statutory duty to report misconduct, malice is precluded". Id. The Court, citing Adkins v. Varn, 312 S.C. 188, 439 S.E. 2nd 822 (1933) stated "[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning." The Court in Hainer indicated that it "cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope."citing Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993); see also Estate of Guide v. Spooner, 318 S.C. 335, 457 S.E.2d 623 (Ct. App. 1995) (if legislature had intended certain result in statute, it would have said so).

As a final point, the Hainer court stated that "[p]rivileged communications are either absolute or qualified. When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published . . . [w]hen qualified however, the plaintiff may recover if he shows the communication was actuated by malice." Hainer at 133-134. In consideration of

the foregoing, the Hainer court concluded that “[n]othing in §40-33-936(attached at tab 1) evinces a Legislative intent to exempt truthful communications from a finding of malice. If the fact of the duty negated malice, the Legislature would have granted an absolute privilege.” *Id.* at 134.

With Hainer and related statutes in view, the Omnibus Adult Protection Act with its inclusion of a provision for a rebuttable presumption of good faith, evinces a clear legislative intent to provide for a qualified privilege defense to communications reported under the Omnibus Act. Otherwise, these words have no meaning. If the privilege was absolute the legislature would have said so. Good Faith

Significantly, in Watkins supra, the South Carolina Supreme Court looked to the guidance of the Minnesota Court of Appeals in In re Kleven, 736 N.W.2d 707 (Minn. Ct. App. 2007), which construed a similar statute under Minnesota law, the Vulnerable Adults Act (attached at tab 2), to determine the “perspective from which a mandated reporter should view the vulnerable adult’s allegations.” While the issue of the vulnerable adult’s perspective is not at issue in this case, other cases interpreting this same Minnesota Vulnerable Adults Act statute are instructive. For example, in J.E.B.v. Danks, 785 N.W.2d 741, 749 (Minn. 2010)(attached at tab 3), the Minnesota Supreme Court considered the meaning of the term “good faith” under the Minnesota statute in the absence of a statutory definition. In that case, the Court determined that “although there may not be a statutory definition setting forth exactly what a reporter must show to establish his or her good faith, it is clear that, at the very least, **filing a report that is knowingly or recklessly false will defeat a showing of good faith.**” (Emphasis added) *Id.* at 749. Recall that the gravamen of Plaintiffs’ claim is that Defendants made statement with a reckless indifference to the Plaintiffs’ rights. Consequently, in Danks the court found a material issue of fact existed as to whether a reporter made a statement in good faith when there was evidence presented by the Plaintiff to suggest that the reporter used “exaggerated language, stating that ‘ABUSE OCCURRED,’ despite the fact that [the reporter] had no personal knowledge of the abuse.” *Id.* at 750-51. In this case, the Defendant Unihealth states in its brief: “[i]n order to prevail on their claims Plaintiffs must overcome the Act’s good faith presumption by proving that Johnson and Peppers acted in bad faith and intentionally

made false reports regarding Plaintiff Ralph Williams, Sr.” (see Defendant UniHealth’s brief at page 4).

The Defendant UniHealth adds “intentional” and “bad” faith language not found in the statute. Moreover, Defendant UniHealth fails to cite to any statute or case law as a basis for the terms it uses to interpret the statute. As previously stated “[t]he legislature’s intent should be ascertained primarily from the plain language of the statute. Morgan, *supra*. The terms “intentional” or “bad faith” are not mentioned in the Omnibus Act. The Defendant UniHealth inserts these terms to force the construction of the statute for its own purposes and intent contrary to the well settled law of this state.

C. Further Evidence of Malice

In cases of defamation, the presumption of immunity created by a common law qualified privilege can be rebutted upon proof of “actual malice or that the scope of the privilege has been exceeded.” Swinton Creek Nursery v. Edisto Farm Credit ACA, 334 S.C. 469,484, 514 S.E.2d 126, 134 (1999). See also McBride v Greenville County School District, 2013-UP- 430, Nov. 20, 2013 (S.C. App). A speaker may exceed the scope of the qualified privilege by making a communication that “goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of plaintiff.” Murray v. Holnam, 344 S.C. 129, 1401, 542 S.E.2d 743, 749 (Ct. App. 2001). Actual Malice can be established upon a showing of ill will, recklessness, or a “conscious disregard of the Plaintiff’s rights.” (emphasis added) Constant v. Spartanburg Steel Products, 316 S.C. 86, 447 S.E.2d 194 (1994); See also Hainer, *supra*., (quoting Jones v. Garner, 250 S.C. 479, 488,158 S.E.2d 909 (1968)).

Our courts have also made it clear that the truth of the statements do not negate malice as a matter of law. Hainer, at p.106. It is not necessary to show ill will to prove that a speaker acted with actual malice: “That the appellant believed the charges to be true did not justify it in publishing them in an improper and unjustified manner or with improper and unjustified motives. Proof that they were published in such manner and with such motives would constitute sufficient proof of malice, or malice in fact. It is not necessary that evidence must be offered of malignity or ill-will, nor that those facts should be found. The time, place, and other circumstances of the preparation and publication of defamatory

charges, as well as the language of the publication itself, are admissible evidence to show that the false charges were made with malice.” Fulton v. Atlantic Coast Line R. Co., 220 S.C. 287, 296, 67 S.E.2d 425, 429 (1951).

Malice may be proved by direct or circumstantial evidence. Smith v. Smith, 194 S.C. 247, 9 S.E.2d 584 (1940) “Proof that statements were published in an improper and unjustified manner is sufficient evidence to submit the issue of actual malice to a jury.” Murray v. Holnam, 344 S.C. 129, 140, 144, 542 S.E.2d 743, 751 (Ct. App. 2001). The question of whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. Swinton Creek, at 485. “However, the question of whether the privilege has been abused is one for the jury.” Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused.” Holnam, at 140, (*quoting Swinton Creek*, at 485). Furthermore, “[w]hether malice is the incentive for a publication is ordinarily for the jury to decide.” Holnam at, 144.

In Holnam, Murray worked at a cement plant (Holnam, Inc.) and was the acting supervisor when his supervisor was not present. Murray was accused of stealing fuel from the company by a supervisor. Id. Approximately one year prior to Murray’s termination for stealing, he accused a fellow employee (Barnes) of absenteeism for six hours. Id. Subsequent to Murray’s allegations against Barnes, Barnes accused Murray of stealing fuel from the company. Id. During the course of the next year Barnes and Murray had several altercations where Barnes accused Murray of theft. Id. at 134-35. The evidence presented in Holnam revealed conflicting testimony from employees who provided testimony about the alleged theft that contradicted their previous written statements. Id. at 135-36. Murray was falsely informed that the Orangeburg County Sheriff’s Department was investigating him for theft and statements accusing him of theft were published to other employees. Murray was subsequently terminated. Id.

The Court in Holnam held that a principal may be held liable for defamatory statements made by an agent acting within the scope of his employment, and that there were genuine issues of material fact on

the issue of whether the qualified privileged had been exceeded, and on the issue of common law actual malice. Id. at 141,145.

D. Defendants' assertions of privilege should be evaluated by a jury

Turning to the facts in this case, Johnson never informed Plaintiff Ralph Williams that she suspected him of attempting to sexually assault the patient in 39A, nor did she inform him of any emergency situation involving him or Resident No. 39A on the night in question. (Complaint ¶ 111; R. Williams Aff. ¶ 34 R. Williams Deposition at 179 line 25, at 180 lines 1-10, at 201 lines 5-25, at 202 lines 1-25 , at 203 lines 1-25, and at 204 lines 1-125)(attached at tab 5) Johnson did not yell or scream for help when she allegedly became aware that Resident 39 A, who was physically and mentally incompetent, had a naked man on top of her (R. Williams Aff.(attached at tab 4) ¶ 34, R. Williams Crim. Trial Trans – P. Johnson Direct at 70 lines 15-2; at 71 lines 1-18; at 71 lines 21-25; at 78 lines 17-25; at 80 lines 1-14)(attached at tab 5) Johnson left the room and did not push an audible alarm located in Room 39 (Complaint ¶ 114; Peppers, Johnson, UniHealth Answers ¶ 115) Johnson did not push the alarm that would activate an light that flashes outside the door at the Defendant's skilled nursing facility. (Complaint ¶ 115; Johnson, Peppers, UniHealth Answers ¶ 116) Clearly, a competent medical professional would have done these things required by facility policy, as well as common sense, if what she saw was actually occurring. In her criminal trial testimony Defendant Johnson further added for the first time that Plaintiff Ralph Williams was naked and on top of Resident No. 39A. (R. Williams Crim. Trial Trans. P. Johnson direct at 78 lines 24-25, at 79 lines 22-25 and at 88 lines 1-25)(attached at tab 5) Johnson stated in her nursing notes and incident report that she saw the Plaintiff with his pants down and climbing on top of Resident 39A (UPAC Orangeburg at 249, 261)(attached at tab 6). In her subsequent criminal trial testimony she stated he was "completely naked" and was on top of the alleged victim. (Crim. Trial Trans. at 78, 88; UPAC Orangeburg at 249-251)(attached at tab 5). Defendant Johnson also communicated this statement to UPAC Orangeburg as evidenced by the accident report, 24 hour and five day and incident reports (UPAC Orangeburg at 251-253)(attached at tab 6). Johnson also indicated the same on her voluntary statement to the Orangeburg Department of Public Safety but added

that "there is no doubt in my mind that if I had not walked in room he would have had sex with 1 (UPAC Orangeburg at 249)(attached at tab 6). Defendant Johnson uses exaggerated language in that as stated earlier, Defendant Johnson left a helpless patient in the room, did not scream or yell for help, and did not press any emergency audible or visual alarm. (Crim. Trial Trans.- P. Johnson cross at 79 line 2; at 97 lines 24-25; and at 88 line 4)(attached at tab 5). In fact, instead of getting help from the closest staff member, she passed by other staff who were in close proximity to the patient's room (Crim. Discovery Docs at R. Williams Supplemental 562(attached at tab 6); R Williams Dep. p. 201)(attached at tab 5), said nothing, and went to find Defendant Peppers at a snack machine near the break room. (Crim Trial Trans P. Johnson at p.79, 97 and 88; Crim. Trial Trans. J. Peppers at p. 109).(attached at tab 5)

Moreover, for the first time in Defendant Johnson's criminal trial testimony she testified that Resident 39A's breasts were exposed. (Crim. Trial Trans. P. Johnson cross at 87 lines 14-23; lines 21-22 and lines 23-25)(attached at tab 5) Defendant Johnson also added for the first time in her criminal trial testimony that the Plaintiff Ralph Williams had told her "get out of the room" rather than merely to shut the door. (Crim. Trial Trans.- P. Johnson cross at 79 line 2; at 97 lines 24-25; and at 88 line 4).(attached at tab 5)

The evidence collected evidence in room, included but not limited to, Resident 39A's gown, blanket, sheet, cover, fitted sheet, as well as Plaintiff's scrubs tops, bottoms, and a red shirt that was found on Resident 39A's bed (Crim. Discovery Docs. at R. Williams Supplemental 000354-357(attached at tab 6); and 437-439 (search warrant)(attached at tab 6); Crim. Trial Trans. Robert Warrington direct at 118 lines 1-25; at 120 lines 14-25; at 121 lines 1-25(attached at tab 5); at Linda Small cross 189 lines 10-16)(attached at tab 5). There was no DNA evidence on any of these items, even though Defendant Johnson gave conflicting testimony indicating Resident 39A may have had feces or urine on her. (Crim. Trial Trans. P. Johnson direct at 85 lines 1-8(attached at tab 5); and at P. Johnson cross 88 lines 10-17)(attached at tab 5). While Resident 39A was at the hospital, doctors and nurses conducted rape kit test, which were negative. (Criminal Trial Trans. J. Smoak direct at 139

lines 10-13(attached at tab 5); and at L. Smalls cross at 189 lines 10-16(attached at tab 5); **Crim. Discovery Docs at R. Williams Supplemental 423, 424, 427, and 428**(attached at tab 6) . Members of the Orangeburg Department of Public Safety also tested vaginal swabs from Resident 39A. No DNA evidence from Ralph Williams was positively identified. (**Crim. Trial Trans. at 89**)(attached at tab 5). Moreover, there were no fingernail scrapings under the victim's nails, or pubic hair. (Crim. Trial Trans. at 164,165,188)(attached at tab 5). Defendant Johnson has stated that she had no prior problems with Plaintiff (**Crim. Trial Trans. at P. Johnson direct at 88 lines 220-224**)(attached at tab 5). However, Plaintiff Ralph Williams has consistently asserted that there were prior incidents between them. (**R. Williams Aff. ¶¶ 22, 24, 27**(attached at tab 4); **Crim. Trial Trans. R. Williams direct at 220-224**(attached at tab 5); **R. Williams deposition at 212-221**(attached at tab 5); and at **L. Williams deposition at 60 lines 1-25**)(attached at tab 5).

Defendant Peppers' testified she was at or near the snack machine near the break-room during the alleged assault. (**Crim. Trial Trans. J. Peppers direct at 109 lines 5, 8**)(attached at tab 5) Other nursing staff were on duty closer to Room 39A but were never notified (**Crim. Discovery docs. at R Williams Supplemental 00562**)(attached at tab 6); **R. Williams Deposition Trans. at 201 lines 7-25; at 202 lines 1-25**)(attached at tab 5). Plaintiff was in the middle of changing Resident 39A, who had urine and feces on her. (**R. Williams Aff. ¶ 32**(attached at tab 4); **Crim. Trial Trans. R. Williams direct at 215**(attached at tab 5); **R. Williams Deposition Trans. at 180 at lines 11-16**)(attached at tab 5). Johnson gave contradictory statements as to when she finished changing Resident 39A. She initially stated that she finished changing her and "got all that mess off her" and later stated that did not change her brief prior to the police coming (**Crim. Trial Trans. P. Johnson direct at 85 lines 1-7**(attached at tab 5); **P. Johnson cross at 88 lines 10-14; 16-18**(attached at tab 5); at **R. Williams direct at 225 lines 1-13**)(attached at tab 5). Based on Defendant Johnson's trial testimony, there is a fact issue here in that if the patient had not been changed, one would expect Plaintiff Ralph Williams would have had feces or urine on his scrubs. He did not.

Defendant Peppers stated that she did not actually see the Plaintiff in an undressed state or in contact with Resident 39A. (**Crim. Trial Trans. J. Peppers cross at 110 lines 23-24**) (attached at tab 5) However, Defendant Peppers proclaimed that Ralph (Plaintiff) was going to have sex with the resident if he did not get caught in her voluntary statement to the Orangeburg Department of Public Safety (**UPAC Orangeburg at 250**)(attached at tab 6). She further admitted that the basis of her knowledge was that Johnson merely told her secondhand that Ralph (Plaintiff) was having sex and that she only saw him adjusting his pants (**Crim. Trial Trans. J. Peppers cross at 110 and at 118**). Defendant Peppers made an improper inference based on seeing Plaintiff Ralph Williams adjust his scrubs. (see **Peppers Voluntary Statement and Criminal Trial Transcript UPAC-Orangeburg 000250**(attached at tab 6); **Crim. Trial Trans. J. Peppers cross at 110-111**(attached at tab 5); **J. Peppers direct at 96 lines 1-25 and at 98 lines 1-4**)(attached at tab 5). After approximately one (1) hour of deliberations, a unanimous jury rendered a verdict of not guilty April 9 2012 on the charge of abuse of a vulnerable adult. The solicitor nol prossed the charge of assault with intent to commit third degree criminal sexual conduct before the case was submitted to the jury in the matter of State of South Carolina v. Ralph C. Williams, Sr. (Case Nos. 2010-GS-38-1389 and 2010-GS-1390). (Complaint ¶ 148; UniHealth Answer ¶ 149; **Crim. Trial Transcript p.323, 324**(attached at tab 5); **R Williams p. 018**)(attached at tab 5).

On two separate occasions in the months leading up to June 20, 2010, the Plaintiff presented evidence that Defendant Johnson refused to assist him with residents in emergency situations at the facility. (**R. Williams Aff.**(attached at tab 4); **R. Williams Deposition Trans. at 212-221**(attached at tab 5); **Crim. Trial Trans. at.233-237**)(attached at tab 5) Additionally, on another occasion, Plaintiff also produces evidence that Defendant Johnson telephoned the Plaintiff's wife from the facility at 2:30 a.m. to cause dissension in his marriage. (**R. Williams Deposition Trans. at 221, 222**(attached at tab 5); **Crim. Trial Trans. R. Williams direct at 220; at 221 at 222-224**)(attached at tab 5). Johnson has also testified that she had no prior incidents with Mr. Williams. (**Crim. Trial Trans.- P. Johnson direct at 88 lines 21-25**).(attached at tab 5).

“Recklessness implies the doing of a negligent act knowingly”; it is a conscious failure to exercise due care. If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning – the conscious failure to exercise due care...the test by which a tort is to be characterized as reckless...is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff’s rights.” Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 697 (S.C. 2011)(internal cites omitted). In light of the forgoing recited facts of this case, the Defendants’ credibility, actions, and conduct are clearly issues for the jury.

Opposing counsel’s arguments merely assume, without case law or statutory basis, that *only* evidence of “bad faith” and an intention to publish false statements must be established to rebut the presumption of good faith. (See **Defendant’s Summary Judgment Brief p. 1, 5-7**). As set out above, case law holds that the truthfulness of the statements is not dispositive of this issue. Furthermore, opposing counsel does not explain the basis for its premise why the rebuttable presumption can only be overcome by counsel’s “requirements”, or explain what either of these terms mean in the context of defamation. **Nor does Defendant cite to any supporting case law in Section IV A of its brief on this point.** Its argument is merely that because a statutory duty to report misconduct existed, actual malice is negated; a proposition soundly rejected by the Hainer Court.

As shown in this brief, Plaintiffs have documentary evidence, deposition testimony, criminal trial testimony and affidavits which under the cited applicable law are sufficient to establish that the Defendants are not entitled to claim the protection of qualified privilege and therefore also sufficient to establish an issue of material fact for the jury in this case as to whether the Act’s presumption of good faith is rebutted.

E. The Affidavits attached to Defendant’s Summary Judgment Brief should not be considered by the Court

Pursuant to S.C. Rule of Civil Procedure 56(e), "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

Witnesses Donald Sorensen (solicitor prosecuting Williams) and Latisha Walker (investigating sergeant for Orangeburg Dept. of Public Safety) executed affidavits that Defendant UniHealth submitted in support of its Summary Judgment motion. Each of them stated in their affidavit that they reviewed both Johnson and Pepper's voluntary statements to police, interviewed them and listened to their trial testimony. Each of them then stated: "In my opinion, Patricia Johnson and Josette Peppers acted in good faith when they reported their observations and provided their voluntary statements to the ODPS." Their opinions were based entirely on hearsay rather than as to facts they had personal knowledge of. This court should not consider them in connection with the motion.

Neither witness was listed as an expert witness in responses to discovery. Neither has set forth any qualifications as expert in any area where "... scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence, or to determine a fact at issue..." Rule 702, SCRE. Yet, each give affidavit opinions about the state of mind of both Johnson and Peppers on the critical and ultimate jury issue of good faith in the case. Each will be a testifying lay witness in the case. They are not qualified as experts in any specialized area that might give them a basis to testify about their opinions of Johnson and Peppers' mental state of "good faith" in reporting the relevant events.

The opinions they seek to give do not fit the non-expert witness opinion exceptions in Rule 702 SCRE including those: a) rationally based on the perception of the witness, b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) which do not require special knowledge, skill, experience or training. Each of these witnesses seek to opine as to both reporter's "good faith" state of mind as they discharged their obligations to report. None of the exceptions to the general rule against lay opinions are met to allow this evidence.

The statements in the Affidavits that Johnson and Pepper's acted in good faith are also subjective statements as to a conclusion of an ultimate fact or matter of law. American Indemnity Company v.

Richland Oil Company, 273 F. Supp. 702, 707n.3 (D.S.C. 1967) (noting that “ordinarily a witness would not be allowed to testify as to his conclusion of ultimate fact or matters of law” and finding that since the affidavit submitted in this case was based on a subjective opinion as to who owned a tractor, the affidavit was not “conclusive as to the legal status of the tractor”). They are improper for consideration.

Both witnesses lack personal knowledge to the matters stated in the affidavits, (contrary to Rule 56(e) SRCP) which are based entirely on hearsay. Such conclusory affidavits based upon hearsay should not be considered by the court. Yarborough & Co. v. Schoolfield Furniture Industries, Inc., 268 S.E.2d 42, 275 S.C. 151 (1980) (holding that affidavits which were “conclusory in nature and based almost entirely on hearsay should have been excluded from the trial court’s consideration”).

F. Defamatory statements made by employees while in performance of duties of employment create employer liability for the statements when they touch and concern the subject matter of the slander

“It is established that corporations, as well as natural persons, are liable for the willful tort of an agent acting within the general scope of his employment without previous express authority or subsequent ratification.” Hypes v. Southern R. Co., 82 S.C. 315, 64 S.E. 395, 396 (1909). *See also* Holnam, at 139 (“a principal may be held liable for defamatory statements made by an agent acting within the scope of his employment or within the scope of his apparent authority.”); Murphy v. Jefferson Pilot Communications Co., 613 S.E.2d 808 (Ct. App. 2005) “It is well settled in South Carolina that in order to hold a corporation liable for a slander spoken by one alleged to be its agent, it must appear that the alleged agent was acting within the scope of his employment and in the actual performance of the duties of the corporation touching the matter in question.” Johnson v. Life Ins. Co. of Georgia, 227 S.C. 351, 88 S.E.2d 260 (1955). The phrase “touching the matter in question” means “concerning the subject-matter of the slander.” *Id.* “If there is doubt as to whether the servant was acting within the scope of his employment, the doubt will be resolved against the master at least to the extent of requiring the question to go to the jury.” Murphy v. Jefferson Pilot Communications Co., WCSC, 613 S.E.2d 808, 811, 364

S.C. 453, 462 (2005). Employees who make allegedly defamatory statements may in fact be acting within the course and scope of employment and in the furtherance of employer's business where the comments relate to duties that the employee performs on behalf of the employer. Eady v. Koon, No. 3:12cv1671CMC, 2013 WL 652722, at *5-6 (D.S.C. Feb. 21, 2013) (finding that statements made by a surgeon for the purpose of challenging the suspension of his surgical privileges and related investigations, statements related to malpractice claims, and statements relating to resident's rotations at his employer's hospital "b[ore] a sufficient connection to [his] responsibilities as Chief of the Orthopedic Service at Dorn VAMC to fall within the scope of his employment" even when the Court assumed that the doctor "went beyond what was strictly necessary (or subject to any applicable privilege)."

The cases that the Defendant UniHealth cites in Section IVB of its brief are all distinguishable either because they (1) do not involve the tort of defamation; (2) involve acts by employees which were clearly personal in nature; (3) do not involve defamatory statements made while an agent was in discharge of duties assigned by the corporate defendant; or (4) do not involve acts in furtherance of the master's business or interests.

Lane v. Modern Music, Inc., 244 S.C. 299, 136 S.E. 2nd 713 (1964) is distinguishable because this case involved an employee, whose only job duties were to repair, change records in, and remove coin boxes from piccolos, who caused injury to Plaintiff, who was a customer of a restaurant that used a piccolo machine, when he threw what appeared to be a mongoose in the direction of the Plaintiff. There the Court held that the employee used the mongoose device for his own "personal or private amusement" and therefore was not acting within the scope of his employment when the Plaintiff was injured.

Armstrong v. Food Lion, Inc., 271 S.C. 271, 639 S.E. 2nd 50 (2006) is also distinguishable because it involves a case in which three grocery store employees who were stocking shelves stepped away from their job and attacked a grocery store customer with a box cutter.

Kase v. Ebert, 3707 S.E.2d 456, 457, 458, 92 S.C. 57, 59, 62 (Ct. App. 2011) is also distinguishable because it involves a case in which a trucking company employee physically assaulted a

third party, who was not employed by the trucking company, following a minor car accident and a perceived threat from the third party having nothing to do with the employer's business.

Hamilton v. J.D. Davis, 389 S.E.2d 297, 299-300, 300 S.C. 411, 412, 416-17 (Ct. App. 1990) is distinguishable because it involves a manager for a rental property who assaulted another employee as a result of mischief or horseplay. In that case, the court found that the "assault" upon the Plaintiff was "clearly of a personal nature, indulged in [by the Resident Manager] for his own personal amusement.

Bosdell v. Dixie Stores Co., 168 S.C. 520, 167 S.E.2nd 834 (1933), held that there was no publication of the statements at issue, and noted other cases holding a jury question as to whether the privilege was rebutted by malice.

Defendants actually mistakenly cite Johnson as authority for the proposition that the Court found "insurance agent's comment to one insured about why another insured's claim was denied was made outside the scope of his employment. (See Defendant's Summary Judgment Brief at 9.) Contrary to Defendant's citation, in Johnson, the South Carolina Supreme Court actually *reversed* the Order of the trial court setting aside a jury verdict in favor of the Corporate Defendant, which was based upon the trial court's erroneous finding that "there was no evidence from which the jury could have reasonably concluded that [the individual defendant, an insurance agent], in making the slanderous statement attributed to him, was acting within the scope of his employment." Johnson at 369. In this case, an insurance agent, whose job duties included collecting insurance premiums and soliciting insurance, allegedly made a slanderous statement regarding the reason why Plaintiff's insurance claim had been denied to third party customers of the insurance company. Even though the insurance agent had no official job duties relating to the investigation of Plaintiff's claim, the South Carolina Supreme Court held that "whether or not [the individual defendant, who was an agent of the defendant life insurance company] in uttering the alleged slander was acting 'within the scope of his employment and in the actual performance of the duties thereof touching the matter in question' was, under the evidence, a jury question; and the jury having resolved it in favor of the plaintiff, the order of the trial court setting the verdict aside as to the corporate defendant must therefore be reversed." Id. 277 S.C. at 369.

The only case Defendants cite that involve a defamatory statement made by one employee against another employee is distinguishable because the individual defendant in that case was not engaged in discharge of any duty given to him when the statement was made. Courtney v. American Ry Express Co., 113 S.E. 332, 333, 120 S.C. 511 (1922). The Court there held that the Defendant's motion for a directed verdict should have been sustained because (1) at the time the statement was made, the former coworker was not "engaged in any business whatever for the company", instead "he was at the station waiting for a train, and struck up a casual conversation with another employee employed by the common master;" and (2) the former coworker was not "engaged in the discharge of any duty committed to him by the company" in connection with the Plaintiff's termination from the company and "it could not be said that the company had entrusted [sic] him with any duty in connection with it." Id.

By way of contrast, several South Carolina defamation cases hold that there was a sufficient issue of material fact for the jury to determine whether employees acted within the scope of employment under facts very similar to those of the present case. Foremost is Murray v. Holnam, Inc. 344 S.C. 129, 542 S.E. 2d 743 (Ct. App. 2001), (also cited herein with respect to the issue of qualified privilege) whereby the court held a jury question existed where one employee who allegedly made defamatory statements against another to other employees regarding his alleged criminal conduct while on duty at the defendant employer's facility may be held liable under those circumstances. Hypes v. Southern R. Co., 82 S.C. 315, 64 S.E. 395, 396 (1909) (denying Defendant's motion to dismiss plaintiff's complaint alleging slander against his former employer on grounds of respondeat superior where plaintiff was engaged as an employee for the company and meeting with his superintendent seeking payment for unpaid time worked when the superintendent called him a thief several times in the presence of his coworkers because "the complaint shows a contract relation between the corporation and the person slandered, and that the slander was in reference to a matter growing out of such relation, a dispute as to the correctness of plaintiff's claim for wages, a matter within the duty of the [superintendent] to adjust."). Mann v. Life & Casualty Ins. Co. of Tennessee, 129 S.E. 79, 132 S.C. 193 (1925) (holding that the trial court acted in error when it granted a defendant company's motion to set aside a verdict in favor of Plaintiff on his claim of

slander because the alleged slanderous statement regarding a former employee of the company, who was still in the process of settling his accounts with the company, was made by the superintendent of the company, whose job was to supervise the work of 17 or 18 agents, while he was conducting a meeting on behalf of the company attended by 12 agents who were employed by the company. *See also Tucker v. Pure Oil Co. of the Carolinas*, 191 S.C. 60, 3 S.E.2d 547 (1939).

Contrary to Unihealth's assertion, even employees' intentional acts such as assault have been held to give rise to vicarious liability of the corporation if committed in furtherance of the business of the master. *Jamison v. Howard*, 275 S.C. 344, 271 S.E.2nd 116 (1980)(Master's employee shot a debtor when he went to debtor's home to collect the company's debt. Whether act was in scope of employment a jury question). *See also Crittenden v. Thompson Walker*, 288 S.C. 112, 341 S.E.2nd 385 (1986)(company held liable for employee's assault of third person in collection of company debt). Even if the nurses acts are "intentional" UniHealth can still be liable, as those were in furtherance of the master's business.

In this case, all three individual parties involved were employees of Defendant UniHealth. (UniHealth Answer ¶¶ 51, 120, 164) Defendant UniHealth was a nursing home with a business purpose of caring for resident 39A (Complaint ¶ 92; UniHealth Answer ¶ 93; UPAC Orangeburg at 197). Mr. Williams, Johnson and Peppers were all on duty the night of June 20/21, 2010 when the alleged incident occurred. (UniHealth Answer ¶¶ 91, 92, 120; UPAC Orangeburg at 202, 203), Peppers and Johnson were Ralph Williams' supervisor, both were assigned to work and supervise Ralph Williams on June 20, 2010 (Complaint ¶ 91; UniHealth Answer ¶ 92; UPAC Orangeburg at 202, 203). Johnson's and Peppers' duties as stated in their UniHealth job description included reporting conduct deemed injurious to the residents. (UPAC Orangeburg at 8)(attached at tab 6). Plaintiff Ralph Williams was assigned to care for Resident 39A during the 11:00 p.m. to 7:00 a.m. shift on June 20, 2010. (UPAC Orangeburg at 202, 203)(attached at tab 6). One of Plaintiff Ralph Williams' job duties was to change resident diapers. (Complaint ¶ 39; UPAC Orangeburg 2)(attached at tab 6). Plaintiff Ralph Williams was changing Resident 39A's diaper in accordance with UniHealth Policies by drawing curtain around her bed

and closing the room's door. (UPAC Orangeburg at 2, 347-350)(attached at tab 6). Defendants Johnson and Peppers made statements alleging as to whether Plaintiff was changing Resident 39 A's diaper (Plaintiff's job duty) or instead abusing Resident 39A. Both Defendants made statements of resident abuse while on duty working 11:00 p.m. to 7:00 a.m. shift with Plaintiff. (UPAC Orangeburg at 202, 203, 249, 250)(attached at tab 6); Their employer had a legal obligation to comply with federal and state laws governing suspected abuse, including the Omnibus Act. Their Employer had policy that governed reporting alleged incidents of resident abuse. (UPAC Orangeburg at 2, 8, 305, 306)(attached to tab 6).

As in the cases cited favorable to Plaintiff's case, the Plaintiff and Defendant all worked for the same Defendant Employer, at the same facility, at the same time, dealing with same matter, the care of resident 39A, when the Defendants Johnson and Peppers made the defamatory statements against Plaintiff to other employees and third parties. It is not denied that the care of Resident 39A was in the furtherance of Defendant Employer's business or that all parties were its agents in this regard. From the forecast of evidence presented by the Plaintiff and analogous case law, it is clear that there is sufficient evidence that Defendants Johnson and Peppers were acting within the scope of their employment and in the actual performance of their duties of the corporation touching the matter in question (reporting suspected resident abuse) to raise an issue of material fact for the jury to decide this issue. Furthermore, applicable law requires any doubt of this issue to be resolved against the master (Defendant UniHealth) in this fashion.

G. Plaintiffs' Complaint Alleges Malice/Recklessness as Defined by the Law of Defamation

In Section IV C of its brief, Defendant UniHealth discusses Plaintiffs complaint and goes to great lengths to try to demonstrate that Plaintiffs' complaint alleges that Defendant Johnson and Peppers acted "intentionally" or in "bad faith" when they published the statements at issue. To the contrary, the allegations in the complaint go to show that Defendant Johnson and Peppers acted recklessly and/or in a manner that exceeded the scope of the qualified privilege afforded by the Omnibus Adult Protection Act.

Indeed, in the Complaint Plaintiffs allege several allegations of Johnson's reckless conduct (Complaint ¶ 104, 111-119) and Peppers reckless conduct (Complaint ¶ 104, 119, 138, 139). Moreover, the plaintiff's remind the Court that Defendant UniHealth is represented by the same counsel as the individual Defendant Johnson and Defendant Peppers (see signatures on back of Defendant's Answer to Plaintiff's Complaint) In light of this, despite Defendant Johnson and Defendant Peppers specifically denying any intentional conduct, same is now being asserted by the same counsel on behalf of counsel's corporate client UniHealth in an attempt to extract the corporation from responsibility of its employees discharging their job duties in this matter. (¶ 171 Defendant Johnson's Answer to Plaintiff's Complaint and ¶ 171 Defendant Pepper's Answer to Plaintiff's Complaint.)

Furthermore, in the Complaint Plaintiffs specifically allege that Johnson and Peppers "acted in a manner to rebut the presumption of good faith afforded by the Omnibus Adult Protection Act with numerous allegations that allege that each of the actionable statements "were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege." (Complaint ¶¶ 169, 172, 187, 190, 204, 207, 221, 224). Defendant's statements that Plaintiffs' claims allege that Johnson and Peppers acted with an "ulterior purpose" when published statements that asserted that R. Williams was in the process of committing a sexual act. Note that the only paragraphs that actually reference "willful" or "intentionally" are as follows: (Complaint ¶¶ 235, 246, 257, 269) which fall under the abuse of process and loss of consortium claims. The abuse of process claims have, or are being dismissed, leaving defamation and consortium claims for trial. Motion to remove the word "intentionally" from the consortium cause is pending.

With regard to Plaintiff's defamation and consortium causes of action, the Defendant UniHealth cites to the Plaintiff's complaint, specifically (Complaint, ¶¶ 169 and 172, 187, 190, 204, 207, 221, 224), indicating that the statements "were not subject to conditional or qualified privilege because they were not made in good faith," and "published . . . with actual malice." However, in quoting the Plaintiff's

complaint the Defendant UniHealth, inserts elliptical (. . .) in the place of Plaintiffs allegation in the same paragraph that Defendant Johnson acted with “reckless disregard toward Plaintiff Ralph Williams’ rights, thus abusing any conditional or qualified privilege.” The Defendant UniHealth does reference Plaintiffs’ claim of “actual malice” in the (Complaint ¶172, 190, 207, 224), and as indicated earlier, and in other cases, “actual malice” is required to rebut a qualified privilege. Plaintiffs have sufficiently alleged the actual malice sufficient to deny the motion on these grounds. Again, however, Defendant cites to no case law or statutory authority in support of its argument in this section of its brief.

In construing a complaint or responsive pleading, the court must review the entire pleading, Doe ex rel. Legal Guardian v. Barnwell School District 45, 369 S.C. 659, 663, 633 S.E.2d 518, 520 (S.C. App. 2006), with all allegations, not only those that Defendant emphasizes on “intentional” conduct, to the exclusion of allegations of “recklessness” elsewhere. To ensure substantial justice to the parties, the pleadings must be liberally construed. Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App 2000). In fact, party may plead alternative or inconsistent claims or defenses. Inman v. Imperial Chrysler, 303 S.C. 10,397 S.E.2nd 774 (SC App. 1990); Fogel v McDonald, 159 S.C. 506, 157 S.E. 830 (1931). The complaint must be read as a whole.

In construing the aforementioned cases, Defendant UniHealth erroneously takes paragraphs in Plaintiffs Complaint out of context ‘quoting “Plaintiffs allege Johnson made statements “intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff was a sexually deviant and dishonest person.” (Complaint ¶170, 188,205,222, emphasis added).

The Plaintiff Ralph Williams complaint (Complaint ¶170, 188, 205, 222), establishes and describes the act of Defendant Johnson filing a criminal report. However, the previous enumerated paragraphs in their entirety establish the manner in which Defendant Johnson exercised her duty to report as a reckless disregard for the rights of the Plaintiff Ralph Williams. Moreover, in Defendant UniHealth’s brief, footnotes 4, 5 and 6, quotes (Complaint ¶ 162, 179, 197, 214) Plaintiff Ralph Williams’ complaint stating: “Plaintiffs incorporated “all allegations of the above-stated paragraphs as if stated verbatim herein.”” However as indicated above, Defendant UniHealth did not cite paragraphs in Plaintiff Ralph

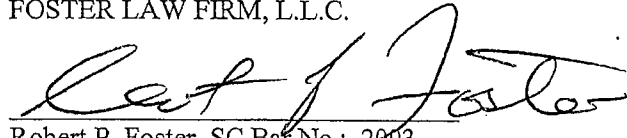
Williams complaint verbatim. Instead, Defendant UniHealth “added emphasis” and used ellipsals (. . .) while omitting key allegations in the aforementioned paragraphs which is sufficient, if proven with evidence, to rebut the “good faith” presumption. The complaint as a whole is sufficient to state proper claims for relief which survive UniHealth’s motion on the pleadings.

Plaintiff Linda Williams’ First and Second Causes of Action are for loss of consortium. (Complaint ¶¶ 251-275). A loss of consortium claim is a separate and independent action, not derivative. Preer v. Mims, 323 S.C. 516, 521, 476 S.E.2d 472, (1996). Similarly, as above, Johnson’s and Peppers’ tortious violation of Linda Williams’ right to companionship, aid, society and services of her spouse by virtue of their defamatory statements were made within the course and scope the Johnson and Peppers employment. As above, Plaintiffs allegations in all prior paragraphs are incorporated into her consortium causes Complaint 251, 264), including the “reckless indifference” required to show actual malice and rebut the presumption. Defendant’s motion relative to her pleadings should also fail against Plaintiff Linda Williams for the same reasons as for Ralph Williams set forth above in this brief.

CONCLUSION

Plaintiffs have forecast sufficient evidence of actual malice of Defendants as to “reckless indifference” to their rights, and the exaggeration of what they witnessed exceeding any qualified privilege. Therefore, a jury question exists as to whether the presumption has been rebutted and summary judgment should be denied. Peppers and Johnson were acting in the scope of their employment and in accordance with company policy in reporting what they saw. The defamation touched the subject matter of their jobs. UniHealth is therefore liable for their acts. Witnesses Sorenson and Walker are no better than the jurors as to Peppers and Johnsons’ state of mind as to good faith. They are not experts and cannot give opinions. The affidavits should not be considered. Defendants cannot “cherry pick” words from the Plaintiffs’ complaint to support their argument to the exclusion of words relevant to actual malice such as “recklessness” and “reckless disregard to Plaintiffs’ rights”. The complaint must be considered as a whole. Defendant UniHealth’s motion should be denied.

FOSTER LAW FIRM, L.L.C.



Robert P. Foster, SC Bar No.: 2093
Post Office Box 2123
601 East McBee Avenue
Greenville, South Carolina 29602
Phone: (864) 242-6200 Fax: (864) 233-0290

and

Richard W. Turner, Jr., SC Bar No.: 73593
919 Albemarle Rd., Ste 106
Charlotte, North Carolina 28205
Phone: (704) 568-8439 Fax: (704) 568-8499

December 30 2013
Greenville, South Carolina

SUMMARY JUDGEMENT EXHIBITS

1. South Carolina Statutes

S.C. Code Ann. §42-35-10	p. 5
S.C. Code Ann. §43-35-75(A)	p. 5
S.C. Code Ann. §40-33-936	p. 6
S.C. Code Ann. §43-33-970	p. 5
S.C. Code Ann. §43-35-5	p. 5

2. Minnesota Vulnerable Adults Act
MINN. STAT. § 626.556 (2013)

3. Minnesota Supreme Court

J.E.B.v Danks, 785 N.W.2d 741, (2010)

4. Affidavits

Ralph Williams Affidavit
Linda Williams Affidavit

5. Transcript Excerpts

Ralph Williams Criminal Trial Transcript

Ralph Williams Deposition Transcript

Linda Williams Deposition Transcript

6. UniHealth Policies/Job Descriptions/Nursing Perennial Care

Bates Stamp Nos. UPAC-ORANGEBURG- (Job Description)-000002, 000008

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Ralph C. Williams, Sr., and)

Linda Williams,)

Plaintiffs,)

vs.)

Patricia A. Johnson,)

Josette Peppers, and)

UniHealth Post-Acute Care-Orangeburg,)
LLC)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2012-CP-38-0845

AMENDED COMPLAINT
(Jury Trial Demanded)

2014 JAN 13 PM 1:11
FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams, complaining of Defendants Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care-Orangeburg, LLC named above would allege and show unto this Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Ralph C. Williams, Sr. (hereinafter referred to as "Plaintiff Ralph Williams") is a citizen and resident of the City and County of Orangeburg, State of South Carolina.

2. Plaintiff Linda Williams (hereinafter referred to as "Plaintiff Linda Williams") is a citizen and resident of the City and County of Orangeburg, State of South Carolina.

ATTEST: TRUE COPY

Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

3. Upon information and belief, Defendant Patricia A. Johnson (hereinafter referred to as "Defendant Johnson") is a citizen and resident of the State of South Carolina, County of Orangeburg.

4. Defendant Johnson was employed by Defendant UniHealth Post-Acute Care – Orangeburg, LLC as a Licensed Practical Nurse At all times relevant to this Action.

5. Upon information and belief, Defendant Josette Peppers (hereinafter referred to as "Defendant Peppers") is a citizen and resident of the State of South Carolina, County of Orangeburg.

~~6. Defendant Peppers was employed by Defendant UniHealth Post-Acute Care – Orangeburg, LLC as a Licensed Practical Nurse At all times relevant to this Action.~~

7. Upon information and belief, Defendant UniHealth Post-Acute Care – Orangeburg, LLC (hereinafter referred to as "Defendant UniHealth") is a domestic limited liability corporation with its principal place of business located at 755 Whitman Street Se Orangeburg, SC 29115 in the City and County of Orangeburg, South Carolina.

8. This proceeding concerns events which transpired in the County of Orangeburg, South Carolina and all parties are domiciled in the County of Orangeburg, South Carolina. Therefore, Plaintiffs are informed and believe that this Court has jurisdiction over the subject matter, over the parties, and that venue in the County of Orangeburg is proper pursuant to South Carolina Code Ann. § 15-7-30 (A)(3).

FACTUAL ALLEGATIONS

Background Facts regarding Plaintiff Ralph Williams and Plaintiff Linda Williams

9. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

10. Plaintiff Ralph Williams is a Certified Nursing Assistant who was employed at Defendant UniHealth's Orangeburg facility from February of 2010 until June of 2010.

11. Plaintiff Ralph Williams has been married to his wife Plaintiff Linda Williams for approximately twenty five (25) years.

12. Prior to June of 2010, Plaintiff Ralph Williams and Plaintiff Linda Williams had a loving relationship and had never been separated.

13. Plaintiff Ralph Williams and his wife Plaintiff Linda Williams attend a local church in Orangeburg, South Carolina, State Holy Temple for twenty five (25) years.

~~14. Plaintiff Ralph Williams regularly volunteers at his local church cooking meals~~
for the Pastor's Anniversary and Baptisms at State Holy Temple, and ushers during funerals.

15. Plaintiff Ralph Williams and Plaintiff Linda Williams have three children and four grand children.

Additional Background Facts about Plaintiff Ralph Williams

16. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

17. Plaintiff Ralph Williams graduated from high school.

18. Upon graduation from high school, Plaintiff Ralph Williams honorably served in the United States Navy for two years upon graduation of high school and was honorably discharged on April 22, 1977.

19. After his honorable discharge from the U.S. Navy, Plaintiff Ralph Williams worked for many years as a Chef in St. Louis Missouri and in Orangeburg, South Carolina.

20. Plaintiff Ralph Williams was a very well liked and regarded Chef in the city of Orangeburg.

21. Plaintiff Ralph Williams was featured in a Local Orangeburg Newspaper for helping welcome foreign students by cooking their cultural dishes.

22. Plaintiff cooked for the President of South Carolina University, his wife, and other professors and teachers at The Walnut Room.

23. Plaintiff Ralph Williams also organized a fundraiser to help pay the medical bills of a co-worker's daughter who suffered from bone marrow cancer. The Plaintiff Ralph Williams was able to raise over five thousand (\$5,000.00) by selling barbeque plates.

24. Plaintiff Ralph Williams had a side catering business and was sought out as a ~~caterer by churches, local social clubs and for family and class reunions.~~

25. Significantly, a majority of Plaintiff Ralph Williams catering clients were elderly people.

26. In addition to his side catering business, Plaintiff Ralph Williams decided to study to become a Certified Nursing Assistant ("CNA") so that he could provide a better financial future for his family by working as a CNA at night and doing catering jobs during the day.

27. Plaintiff Ralph Williams received a certificate of completion from Orangeburg Calhoun Technical College for the Nurse Aide Training program on September 18, 2009.

28. Plaintiff Ralph Williams passed the state exam to receive his Certified Nursing Assistant license on November 10, 2009.

Plaintiff Ralph Williams' Employment with Defendant UniHealth

29. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

30. Plaintiff Ralph Williams was hired as a CNA by Defendant UniHealth on or about February of 2010.

31. At all times relevant to this Action, Plaintiff Ralph Williams was assigned to work in the Rehabilitation Section from 11:00 p.m. until 7:00 a.m.

32. As a CNA, for UniHealth, Plaintiff Ralph Williams' duties were to assist the Registered Nurses and Licensed Practical Nurses with resident care by taking vital signs, providing residents with water, bathing residents, and changing resident briefs or pampers.

33. At all times relevant to this Action, Plaintiff Ralph Williams was supervised by Licensed Practical Nurses (hereinafter referred to as "LPNs").

34. A significant number of the residents that Plaintiff Ralph Williams cared for were ~~bedridden. Thus, one of Plaintiff Ralph Williams' primary duties as a CNA was to change~~ resident briefs or pampers.

35. UniHealth assigned Plaintiff Ralph Williams to care for both male and female residents.

36. Upon information and belief, UniHealth instructed Plaintiff Ralph Williams to knock on the door before he entered a resident's room and to inform the resident that he was the CNA assigned to care for him or her that night.

37. At all times relevant to this Action, Plaintiff Ralph Williams followed and complied with UniHealth's policies and procedures with regard to the care of residents, including policies and procedures regarding the bathing and changing of briefs for residents.

38. Plaintiff Ralph Williams was regularly assigned to work in the Rehabilitation Section of the UniHealth facility.

39. One of Plaintiff Ralph Williams' primary duties was to keep residents clean and dry by checking resident briefs to determine if they needed to be changed and changing resident briefs when they became soiled with urine and/or feces.

40. Upon information and belief, many of the UniHealth residents wore briefs under their gowns because they were bedridden and unable to use the toilet on their own.

41. Upon information and belief, the UniHealth residents wore gowns that were opaque or not transparent.

42. Consequently, to carry out his assigned duty of checking and changing resident briefs, Plaintiff Ralph Williams was required to lift the gown of each resident to which he was assigned to determine whether the soil indicator on the brief was white or blue.

43. Upon information and belief, if the indicator was white then Plaintiff Ralph ~~Williams was trained by UniHealth to know that the patient's brief was clean and dry.~~

44. Upon information and belief, if the indicator was blue, however, then Plaintiff Ralph Williams was trained by UniHealth to know that the brief was soiled with either urine and/or feces and needed to be changed.

45. Upon information and belief, there is no lock on resident's doors.

46. Upon information and belief, there is one button right beside the resident's bed that is an audible alarm that sounds throughout the building and that activates an emergency light outside each resident's room that flashes.

47. When that alarm is activated every available staff member is required to respond to the emergency.

48. Upon information and belief, UniHealth staff members are instructed to activate alarms in event of an emergency involving a resident.

Prior Relations between Plaintiff Ralph Williams and Defendant Johnson

49. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

50. As a CNA employed by Defendant UniHealth, Plaintiff Ralph Williams reported to Defendant Johnson, a LPN employed by Defendant UniHealth.

51. Upon information and belief Defendant Johnson and Defendant Peppers, another LPN employed by Defendant UniHealth, went to school together and therefore knew each other outside of their employment at Defendant UniHealth.

52. Upon information and belief, Defendant Johnson harbored malignity towards Plaintiff Ralph Williams as evidenced by three altercations between Defendant Johnson and Plaintiff Ralph Williams.

~~*1. First Altercation Between Plaintiff Ralph Williams and Defendant*~~

Johnson

53. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

54. A short period of time prior to June 21, 2010, Plaintiff Williams was checking the vital signs of a female resident and determined that the resident's blood pressure was abnormally high.

55. Plaintiff then went to Defendant Johnson, who was his Supervisor, and informed Defendant Johnson that the resident had an abnormal blood pressure and asked Defendant Johnson to come with him to check on the resident.

56. Defendant Johnson refused to go to check on the resident and instead told Plaintiff Ralph Williams to go and check the resident's vital signs again.

57. When Plaintiff Ralph Williams went back to check the resident's blood pressure again, he discovered that the resident's lips and tongue were turning blue, so Plaintiff Ralph

Williams ran back to ask Defendant Johnson if Defendant Johnson would come and help him care for the resident.

58. Defendant Johnson again refused to assist Plaintiff Ralph Williams with the resident's care.

59. Since Defendant Johnson was unwilling to assist him with the resident's care, Plaintiff Ralph Williams went to find Ms. Irons, another LPN employed by Defendant UniHealth and asked her to assist him with the resident.

60. Ms. Irons helped Plaintiff Ralph Williams get the resident stabilized and the resident was later taken to a local hospital.

61. After the incident, Plaintiff Ralph Williams told Defendant Johnson that she should be written up and fired because she was negligent in doing her job.

62. Defendant Johnson responded to Plaintiff Ralph Williams with a malignant look.

63. Upon information and belief, Defendant Johnson had ill will towards Plaintiff Ralph Williams, whom she viewed as a subordinate CNA, for telling her what to do.

2. Second Altercation between Plaintiff Ralph Williams and Defendant Johnson

64. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

65. Following the incident identified in Paragraph No. 49 and prior to June 21, 2010, Plaintiff Ralph Williams had an argument with his wife Plaintiff Linda Williams prior to going to work.

66. That same night at approximately 2:30 a.m., Plaintiff Ralph Williams asked for permission to call his Plaintiff Linda Williams wife using the work phone while on his break so that he could apologize and make up with his wife Plaintiff Linda Williams.

67. Upon information and belief, Defendant Johnson saw Plaintiff Ralph Williams on the phone and heard him tell his wife that he was sorry that he loved her and that he would see her when he got home.

68. Upon information and belief, Defendant Johnson waited for Plaintiff Ralph Williams to hang up the phone and walk away.

69. Then, upon information and belief, Defendant Johnson proceeded to redial the number Plaintiff Ralph Williams had just dialed.

70. When Plaintiff Linda Williams answered the phone, Defendant Johnson breathed
~~in the phone without saying anything and then abruptly hung up the phone.~~

71. Wondering why someone had just dialed her phone number and then abruptly hung up the phone, Plaintiff Linda Williams used caller ID and redialed the UniHealth telephone number.

72. When Defendant Johnson picked up the phone, Plaintiff Linda Williams asked who had just called her telephone number and hung up the phone.

73. Defendant Johnson then said "my name is Patricia Johnson" and again abruptly hung up the phone.

74. Defendant Johnson's actions caused dissension in the marriage of Plaintiff Ralph Williams and Plaintiff Linda Williams. Plaintiff Linda Williams wanted to know why another woman was calling her home and acting in such an unusual manner at 2:30 a.m. in the morning.

3. *Third Altercation between Plaintiff Ralph Williams and Defendant Johnson*

75. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

76. Approximately one week prior to June 21, 2010, Plaintiff Ralph Williams was giving a male resident, who weighed approximately over 300 pounds, a bath.

77. Since Plaintiff was only 5 ft. 6 inches only weighted approximately 160 lbs., Plaintiff normally used a hydraulic lift to lift the resident when he gave him a bath.

78. That particular morning, however, the hydraulic lift was not available, so Plaintiff Ralph Williams had to use a sliding board to lift the patient.

79. While Plaintiff Ralph Williams was using the sliding board to lift the resident, the resident lost his footing and was leaning the full force of his approximately 300 pound weight on

~~Plaintiff Ralph Williams.~~

80. Unable to support the resident without assistance, Plaintiff Ralph Williams screamed for help.

81. Upon information and belief, Defendant Johnson was in the hallway outside the resident's room within close proximity of the resident's door.

82. Upon information and belief, Defendant Johnson heard Plaintiff Ralph Williams scream for help, but refused to go into the resident's room to assist Plaintiff Ralph Williams.

83. Another CNA and a member of the janitorial staff heard Plaintiff Ralph Williams' pleas for assistance and came to his aid.

84. While Plaintiff Ralph Williams and his aforementioned co-workers struggled to get the 300 lb resident back in his wheel chair, Defendant Johnson stood in the door way of the resident's room and looked at them without offering any form of assistance.

85. Plaintiff Ralph Williams looked at Defendant Johnson and said "Why didn't you help me dammit."

86. Defendant Johnson just looked at Plaintiff Ralph Williams again with a malignant look.

87. With the assistance of another CNA and a member of the janitorial staff, Plaintiff Ralph Williams was able to stabilize the resident and to get the resident back to his wheel chair.

88. On numerous previous occasions when Plaintiff Ralph Williams asked Defendant Johnson for assistance, she told him "I have been a CNA before. I don't change dirty diapers anymore."

Incident that was the Subject of Defendants' Defamatory Statements

~~89. Plaintiff Ralph Williams incorporates all allegations of the above-stated~~
paragraphs as if restated verbatim herein.

90. On or about June 21, 2010, Plaintiff Ralph Williams reported to work at Defendant's UniHealth's Orangeburg facility for work in the Rehabilitation Section.

91. Upon information and belief, on or about June 21, 2010, Defendant Johnson was assigned to serve as Plaintiff Ralph Williams supervisor.

92. On or about June 21, 2010, Plaintiff Ralph Williams was assigned to care for a female resident in 39A, who was the alleged victim of the crimes of third degree criminal sexual conduct and abuse of a vulnerable adult in the matter of the *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390) (hereinafter referred to as "Resident No. 39A").

93. There were two (2) residents in 39A on June 21, 2010.

94. On or about June 21, 2010 at approximately 2:00 a.m., Plaintiff Ralph Williams pushed his cart to Room No. 39A and left it right outside the door.

95. Upon information and belief, Room No. 39A was within close proximity of the one and only nursing station on the Rehabilitation Wing of Defendant UniHealth's Orangeburg facility.

96. On or about June 21, 2010 at approximately 2:00 a.m., Plaintiff Ralph Williams knocked on the door of 39A and informed Resident No. 39A that he was the CNA on duty to care for her.

97. Upon information and belief, Resident No. 39A was incompetent and largely immobile.

~~98. Upon information and belief, Resident No. 39A weighed approximately one~~
hundred and ninety pounds (190 lb).

99. Upon entering 39A at some time after 2:00 a.m., Plaintiff Ralph Williams turned on the light over the bed rather than the room light so as not to disturb the other resident in 39A.

100. Resident No. 39A was lying in the bed with covers over her and was wearing a gown and a brief.

101. In accordance with the Nursing Assistant's Handbook, Plaintiff Ralph Williams attempted to maintain the resident's right to privacy while he changed Resident No. 39A brief by closing the door behind him and pulling the curtain around Resident No. 39A bed.

102. Plaintiff Ralph Williams pulled back the covers on Resident No. 39A bed and pulled up her gown to check the indicator on the brief.

103. Upon discovering that the indicator on Resident No. 39A's brief was blue, Plaintiff Ralph Williams went to his cart to get a brief, towel, wipes, gloves, and a pad so that he could change Resident No. 39A's brief.

104. Resident No. 39A's brief was soiled with urine and feces.

105. In accordance with the Nursing Assistant's Handbook, Plaintiff Ralph Williams placed a clean protective pad under Resident No. 39A's buttocks to keep Resident No. 39A's bed linen.

106. Then, Plaintiff Ralph Williams proceeded to change the brief of Resident No. 39A in accordance with The Nursing Assistant's Handbook and Defendant UniHealth's policies and procedures.

107. While Plaintiff Ralph Williams was in the process of changing Resident No. 39A's diaper, Defendant Johnson came in to 39A without knocking.

~~108. Defendant Johnson asked Plaintiff Ralph Williams what he was doing.~~

109. Plaintiff Ralph Williams asked Defendant Johnson to "Please Shut the Door" since he was in the middle of changing Resident No. 39A brief and wanted to ensure her privacy.

110. In response, Defendant Johnson gave Plaintiff Ralph Williams a malignant stare and walked out the door.

111. Defendant Johnson never informed Plaintiff Ralph Williams that she suspected him of attempting to rape Resident No. 39A nor did she inform him of any emergency situation involving him or Resident No. 39A.

112. Plaintiff Ralph Williams was fully dressed when Defendant Johnson came in 39A.

113. Upon entering 39A, Defendant Johnson did not yell or scream for help.

114. Upon entering 39A, Defendant Johnson did not push the audible alarm located in 39A to alert others of resident emergencies.

115. Upon entering 39A, Defendant Johnson did not push the alarm that would activate a light that flashes.

116. Upon entering 39A, Defendant Johnson did not immediately call the police.

117. In fact, Defendant Johnson did not call the police.

118. There were two other employees, a female LPN and a male CNA, in the Rehabilitation Wing of the building at the time of the alleged incident.

119. Rather than contact one of the other employees in the Rehabilitation Wing of Defendant's UniHealth Orangeburg facility, Defendant Johnson walked to the Residential Wing on another side of the Defendant's UniHealth Orangeburg facility into a break room to get a friend of hers, Defendant Josette Peppers.

120. Defendant Johnson and Defendant Peppers called the police at approximately

~~3:25 a.m. approximately thirty minutes after the alleged incident occurred~~

Defendant Johnson's Defamatory Statements

121. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

122. On or about June 21, 2010 at approximately 2:50 a.m., Defendant Johnson published the following statements in her Nurses Notes:

This Nurse was making rounds and was looking for (CNA) Ralph C. Williams to check on another Res. I checked all the rooms on the back hall, and couldn't find him. This Nurse then started checking the rooms on the middle hall. When I walked into Henrietta Mays room I observed CNA Ralph Williams w/ his pants down climbing on top of Res. I stated, "What are you doing?" CNA Ralph C. Williams, Sr. stated "Please shut the door." At this point I went to get the other Nurse Josette Pepper to witness. When we walked back in the room, he was fixing up his clothes. The room was dark and cover was messed up on bed. At 3:00 A management notified. 3:25A police dept. notified. @ 4:00 A Rp Bertha Tyler (sister) notified. "stated she will be in facility this a.m. @ 4:30 a.m. Dr. Smoak notified. "stated send to TRMC for evaluation.

123. Upon information and belief, Defendant Johnson published this statement to other persons employed by Defendant UniHealth.

124. On or about June 21, 2010, Defendant Johnson published the following statements in her Voluntary Statement to the Orangeburg, South Carolina Department of Public Safety which she made while she was not under arrest and without being accused of or questioned about any criminal offenses regarding the facts and voluntarily made the following statements on her own free will:

This Nurse was making rounds, and was looking for CNA Ralph Williams to check on another Res. I checked all the rooms on the back hall and couldn't find him. This Nurse then started checking the rooms on the middle Hall. When I walked in Henrietta Mays room, I observed CNA Ralph William w/ his pants down climbing on top of Res. I stated "What are you doing?" CNA Ralph C. Williams, Sr. stated, "Please shut the door." At this point I went to go get another Nurse Josette Pepper to witness. ~~When we walked back in the room, he was fixing~~ up his clothes. The room was dark and covers was messed up on Bed. There is no doubt in my mind If I had not walk in room he would have had sex with Res. Nothing else follows.

125. Defendant Johnson's Voluntary Statement was not notarized.

126. Defendant Johnson did not make her June 21, 2010 Voluntary Statement under penalty of perjury.

127. Upon information and belief, Defendant Johnson verbally told Bertha Tyler that she saw Plaintiff Ralph Williams "w/ his pants down climbing on top of Res."

128. Upon information and belief, Defendant Johnson verbally told Defendant Peppers she saw Plaintiff Ralph Williams "w/ his pants down."

129. Upon information and belief, Defendant Johnson verbally told an officer with the Orangeburg Department of Public Safety that she saw Plaintiff Ralph Williams "w/ his pants down" and that if she "hadnot [sic] walk in room [Plaintiff Ralph Williams] would have had sex with Res."

130. Defendant Johnson's statements asserted that Plaintiff Ralph Williams was in the act of committing a crime of moral turpitude, adultery, and asserted impropriety on the part of

Plaintiff Ralph Williams in the conduct of his occupation and profession. Defendant's Johnson's statements and assertions are patently false.

Defendant Peppers' Defamatory Statements

131. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

132. On or about June 21, 2010, Defendant Peppers published the following statements in her Voluntary Statement to the Orangeburg, South Carolina Department of Public Safety which she made while she was not under arrest and without being accused of or questioned about

~~any criminal offenses regarding the facts and voluntarily made the following statements on her~~
own free will:

I was called to a resident room by another nurse Patricia Johnson. She stated that an employee, Ralph was in a room with his pants down. This nurse observed resident fixing up his clothes then he sat in a chair and started talking to her. Curtain was pulled around bed, covers was thrown sloppy on bed, and room was dark. Ralph was going to have sex with resident if he didn't get caught. Nothing else follows.

133. Defendant Peppers' Voluntary Statement was not notarized.

134. Defendant Pepper did not make her June 21, 2010 Voluntary Statement under penalty of perjury.

135. Upon information and belief, Defendant Johnson published this statement to other persons employed by Defendant UniHealth.

136. Upon information and belief, Defendant Peppers verbally told the Orangeburg Department of Public Safety that she saw Plaintiff Ralph Williams "was going to have sex with resident if he didn't get caught."

137. Defendant Peppers' statements asserted that Plaintiff Ralph Williams was going to commit a crime of moral turpitude, adultery, and asserted impropriety on the part of Plaintiff

Ralph Williams in the conduct of his occupation and profession. Defendant's Peppers' statements and assertions are patently false.

138. Defendant Peppers and Defendant Johnson wrote identical statements containing false assertions about what they alleged Plaintiff Ralph Williams was about to do to Resident No. 39A with malignant intent.

139. Defendant Peppers inferred a false fact that Plaintiff Ralph Williams was going to have sex with the Resident No. 39A even though she never personally observed him with his pants down.

~~The Consequences of Defendant Johnson and Defendant Peppers' Defamatory Statements~~

140. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

141. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff was arrested on June 22, 2010.

142. Based on Defendant Johnson and Defendant Peppers aforementioned defamatory statements, Plaintiff was charged with assault with intent to commit third degree criminal sexual conduct and abuse of a vulnerable adult.

143. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Defendant UniHealth informed Plaintiff that he was suspended from his CNA position until the charges against him were resolved.

144. Resident No. 39A had a sexual assault examination performed on her at the Orangeburg Regional Medical Center and there was no evidence of trauma found.

145. Members of the Orangeburg Department of Public Safety also tested vaginal swabs taken from Resident No. 39A no DNA evidence from Plaintiff Ralph Williams.

146. The Orangeburg Department of Public Safety collected all of the evidence in Room 39A, including Resident No. 39A's gown, blanket, sheet, cover, fitted sheet as well as Plaintiff's scrubs, tops and bottoms, and a red shirt that was found under Resident No. 39A.

147. The Orangeburg Department of Public Safety found no conclusive DNA evidence that would suggest that Plaintiff Ralph Williams sexually assaulted Resident No. 39A.

148. Defendant Johnson made several inconsistent statements during her testimony in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390).

~~149. Defendant Peppers made several inconsistent statements during her testimony in~~
the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390).

150. A unanimous Jury rendered a verdict of not guilty in less than one (1) hour on the charge of assault with intent to commit third degree criminal sexual conduct and the charge of abuse of a vulnerable adult in the matter of *State of South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-38-1390).

151. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams, his wife Plaintiff Linda Williams and their family were forced to endure two years of public criminal proceedings that were widely discussed in local Newspapers, News programs, and on the Internet.

152. Indeed when you google Ralph Williams on the Internet today it still shows that Plaintiff Ralph Williams was charged with third degree criminal sexual conduct and abuse of a vulnerable adult with no mention of the fact that Plaintiff Ralph Williams was acquitted of both charges.

153. Plaintiff Ralph Williams family members as far away as Chicago, Illinois read about the charges against Plaintiff Ralph Williams on the internet.

154. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams was placed on the S.C. Nurse Aide abuse registry for the South Carolina Department of Health and Environmental Control (hereinafter referred to as "SC DHEC"), which prohibits him from working as a Certified Nursing Assistant.

155. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams was unable to secure catering jobs.

~~156. As a direct consequence of Defendant Johnson and Defendant Peppers~~
defamatory remarks, Plaintiff Ralph Williams and his wife Plaintiff Linda Williams were ostracized by members of the community.

157. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Ralph Williams experienced great difficulty finding employment.

158. When Plaintiff Ralph Williams did secure employment at the Crab Pit Seafood Restaurant, a co-worker printed an article about the charges of third degree criminal sexual conduct and abuse of a vulnerable adult and gave it to the owner of the restaurant.

159. When the owner of the restaurant read the aforementioned article, he told Plaintiff Ralph Williams that he did not want him working there around his female employees because he was accused of rape.

160. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, members of the Orangeburg community repeatedly asked Plaintiff Linda Williams why she stayed married to a rapist.

161. As a direct consequence of Defendant Johnson and Defendant Peppers defamatory remarks, Plaintiff Linda Williams witnessed a member of the community who had a relative that was a resident at Defendant UniHealth's Orangeburg facility tried to physically assault Plaintiff Ralph Williams.

PLAINTIFF RALPH WILLIAMS' CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(DEFAMATION (NURSING NOTES) AGAINST DEFENDANT JOHNSON AND
DEFENDANT UNIHEALTH JOINTLY AND SEVERALLY)

162. Plaintiff Ralph Williams incorporates all allegations of the above-stated

~~paragraphs as if restated verbatim herein.~~

163. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

164. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Nursing Notes.

165. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint

166. On or about June 21, 2010, Defendant Johnson wrote and published her Nursing Notes statements, individually and/or collectively, which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.

167. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

168. Defendant Johnson published the defamatory statements in her Nursing Notes to other persons employed by Defendant UniHealth. Upon information and belief, the statements were read by Defendant UniHealth employees, including Defendant Peppers and Defendant Johnson's superiors at Defendant's UniHealth facility in Orangeburg.

169. Defendant Johnson's statements in the Nursing Notes were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any ~~conditional or qualified privilege.~~

170. Defendant Johnson made the statements in the Nursing Notes, individually and/or collectively, intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff was a sexually deviant and dishonest person.

171. The defamatory statements made by Defendant Johnson in her Nursing Notes, individually and/or collectively, about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

172. Defendant Johnson published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

173. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Johnson's malice is implied.

174. Defendant Johnson's statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Johnson's Nursing Notes would certainly know that Defendant Johnson was alleging that Defendant Johnson was writing about Plaintiff Ralph Williams in that she used his first and last name and alleging that he committed a crime of moral turpitude, adultery, and unfitness in his profession.

175. As a direct and proximate result of Defendant Johnson's defamatory statements, Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material

~~economic losses, such as loss of catering business, loss of his job, and medical expenses as a~~
result of Defendant Johnson's defamation.

176. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

177. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

178. Based on the foregoing, Plaintiff Ralph C. Williams, Sr. is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

FOR A SECOND CAUSE OF ACTION
(DEFAMATION (SLANDER-VERBAL STATEMENT) AGAINST DEFENDANT
JOHNSON AND DEFENDANT UNIHEALTH JOINTLY AND SEVERALLY)

179. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

180. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

181. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when on or about June 21, 2010 she verbally told Defendant Peppers that "Ralph was in a room with his pants down."

182. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint

~~183. This statement was a false insinuation that Plaintiff Ralph Williams was in the~~
process of committing a crime of moral turpitude, adultery, and unfitness in his trade or profession.

184. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

185. On or about June 21, 2010, Defendant Johnson verbally published the defamatory statement to Defendant Peppers.

186. Defendant Johnson's statements to Defendant Peppers were not subject to conditional or qualified privilege because Defendant Peppers was not a proper party.

187. Furthermore, Defendant Johnson's statements to Defendant Peppers were not subject to conditional or qualified privilege because the statements were not made in good faith, were not properly limited in scope, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights.

188. Defendant Johnson made the statements to Defendant Peppers intending to charge that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident and/or abuse upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person.

189. The defamatory statement made by Defendant Johnson to Defendant Peppers about Plaintiff Ralph Williams is absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

190. Defendant Johnson published the defamatory statements with actual malice, ~~knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or~~ their truth.

191. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams.

192. Defendant Johnson's statements to Defendant Peppers concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams was identified by first name.

193. As a direct and proximate result of Defendant Johnson's defamatory statements to Defendant Peppers, Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses such as loss of catering business, loss of his job, medical expenses, and loss of job opportunities due to Plaintiff Ralph Williams' listing on the SC DHEC abuse registry as a result of Defendant Johnson's defamation.

194. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

195. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

196. Based on the foregoing, Plaintiff Ralph Williams is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

FOR A THIRD CAUSE OF ACTION
(DEFAMATION (VOLUNTARY STATEMENT) AGAINST DEFENDANT JOHNSON
AND DEFENDANT UNI HEALTH JOINTLY AND SEVERALLY)

197. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

~~198. Defendant Johnson was an employee of Defendant UniHealth at all times relevant~~
to the allegations alleged in this Complaint.

199. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Voluntary Statement on or about June 21, 2010.

200. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint

201. On or about June 21, 2010, Defendant Johnson wrote and published her Voluntary Statement which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.

202. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

203. Upon information and belief, Defendant Johnson published the defamatory statements in her Voluntary Statement to the Defendant UniHealth employees and two persons listed as witnesses on her Voluntary Statement and to the Orangeburg Department of Public Safety. Upon information and belief, the statements were read by Defendant UniHealth employees.

204. Defendant Johnson's statements in her Voluntary Statement were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual

~~malice and reckless disregard toward Plaintiff Ralph Williams' rights and reckless disregard~~
toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege.

205. Defendant Johnson made the statements in her Voluntary Statement intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person.

206. The defamatory statements made by Defendant Johnson in her Voluntary Statement, individually and/or collectively, about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Johnson's conduct.

207. Defendant Johnson published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

208. Defendant Johnson's malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral

turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Johnson's malice is implied.

209. Defendant Johnson's statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Johnson's Nursing Notes would certainly know that Defendant Johnson was alleging that Defendant Johnson was writing about Plaintiff Ralph Williams and alleging that he committed a crime of moral turpitude, was unfit in his profession, and committed adultery.

210. As a direct and proximate result of Defendant Johnson's defamatory statements, ~~Plaintiff Ralph Williams has sustained significant damages, Plaintiff Ralph Williams has been~~ injured in his occupation or profession, and suffered Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses such as loss of catering business, loss of his job, and medical expenses and loss of job opportunities due to Plaintiff Ralph Williams' listing on the SC DHEC abuse registry as a result of Defendant Johnson's defamation.

211. Further, Plaintiff Ralph Williams' general damages for his embarrassment, humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

212. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

213. Based on the foregoing, Plaintiff Ralph Williams is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

FOR A FOURTH CAUSE OF ACTION
(DEFAMATION (VOLUNTARY STATEMENT) AGAINST DEFENDANT JOSETTE PEPPERS AND DEFENDANT UNIHEALTH JOINTLY AND SEVERALLY)

214. Plaintiff Ralph Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

215. Defendant Peppers was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

216. Plaintiff Ralph Williams is informed and believes that Defendant Peppers was acting within the course and scope of her employment with actual and/or apparent authority and

~~in furtherance of Defendant UniHealth's business when she prepared her Voluntary Statement on~~
or about June 21, 2010.

217. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Peppers as alleged in this Complaint

218. On or about June 21, 2010, Defendant Peppers wrote and published her Voluntary Statement which asserted that Plaintiff Ralph Williams was in the process of committing a criminal sexual act upon a resident.

219. Said communication was defamatory and injurious to Plaintiff Ralph Williams' reputation thereby causing harm to Plaintiff Ralph Williams' reputation and exposing him to public contempt, ridicule, and injury in his occupation and profession.

220. Upon information and belief, Defendant Peppers published the defamatory statements in her Voluntary Statement to the Defendant UniHealth employees and two persons listed as witnesses on her Voluntary Statement. Upon information and belief, the statements were read by Defendant UniHealth employees, including Defendant Johnson, Defendant Peppers' superiors, and the Orangeburg Department of Public Safety.

221. Defendant Peppers' statements in her Voluntary Statement were not subject to conditional or qualified privilege because they were not made in good faith, were not properly limited in scope, were sent to parties other than the proper parties, and were made with actual malice and reckless disregard toward Plaintiff Ralph Williams' rights, thus abusing any conditional or qualified privilege.

222. Defendant Peppers made the statements in her Voluntary Statement intending to charge that Plaintiff Ralph Williams had committed a criminal sexual act upon a resident, and that Plaintiff Ralph Williams was a sexually deviant and dishonest person.

~~223. The defamatory statements, individually and/or collectively, made by Defendant~~
Peppers in her Voluntary Statement about Plaintiff Ralph Williams are absolutely false and truth cannot be established as a defense to Defendant Peppers' conduct.

224. Defendant Peppers published the defamatory statements with actual malice, knowing the falsity and/or with reckless disregard of the rights of Plaintiff Ralph Williams or their truth.

225. Defendant Peppers' malice in publishing the statements can be implied from Defendant Johnson's previous altercations with Plaintiff Ralph Williams. The statements are actionable per se based on three grounds because the statements allege: (a) a crime of moral turpitude, (b) adultery, and (c) impropriety and inadequacy in Plaintiff Ralph Williams' performance of his trade and profession. Therefore, Defendant Peppers malice is implied.

226. Defendant Peppers' statements concern Plaintiff Ralph Williams and, indeed, Plaintiff Ralph Williams is identified by first and last name. Those reading Defendant Peppers' Nursing Notes would certainly know that Defendant Peppers was writing about Plaintiff Ralph

Williams and alleging that he committed a crime of moral turpitude, was unfit in his profession, and committed adultery.

227. As a direct and proximate result of Defendant Peppers' defamatory statements, Plaintiff Ralph Williams has sustained significant damages. Plaintiff Ralph Williams has been injured in his occupation or profession, and suffered special damages, which include material economic losses such as loss of catering business, loss of his job, and medical expenses and loss of job opportunities due to Plaintiff Ralph Williams' listing on the SC DHEC abuse registry as a result of Defendant Peppers' defamation.

~~228. Further, Plaintiff Ralph Williams' general damages for his embarrassment,~~
humiliation and mental suffering as a result of the injury to his reputation are legally presumed.

229. Defendant Peppers and Defendant UniHealth are jointly and severally liable.

230. Based on the foregoing, Plaintiff Ralph Williams is entitled to judgment, jointly and severally, against Defendant Peppers and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Peppers and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

PLAINTIFF LINDA WILLIAMS' CAUSES OF ACTION

FIRST CAUSE OF ACTION

(LOSS OF CONSORTIUM AGAINST DEFENDANT JOHNSON AND DEFENDANT UNIHEALTH- JOINTLY AND SEVERALLY)

251. Plaintiff Linda Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

252. Defendant Johnson was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

253. Plaintiff Ralph Williams is informed and believes that Defendant Johnson was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Nursing Notes, Voluntary Statement, and made verbal defamatory statements to Defendant Peppers that are the subject of the cause of action specifically alleged in Paragraph Nos. 179-196.

254. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Johnson as alleged in this Complaint.

255. At all times relevant hereto, Plaintiff Linda Williams and Plaintiff Ralph Williams ~~were husband and wife and were legally married and living together.~~

256. Prior to June 21, 2010, Plaintiff Linda Williams and Plaintiff Ralph Williams had a marital relationship that included marital services, society, affection, companionship, and sexual relations among its aspects.

257. Defendant Johnson tortiously violated Plaintiff Linda Williams' right to the companionship, aid, society and services of her spouse by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct.

258. Plaintiff Linda Williams was deprived of the aid of her husband earning an income and social status.

259. Defendant Johnson and Defendant UniHealth jointly and severally tortiously violated the societal status in the community of a twenty (20) year plus marriage in the Orangeburg community.

260. Defendant Johnson and Defendant UniHealth jointly and severally tortiously violated the companionship of a loving husband and wife who have been married over twenty (20) years.

261. As a direct and proximate result of Defendant Johnson's defamatory statements, Plaintiff Linda Williams suffered damages, including loss of companionship, aid, society and services of her spouse Plaintiff Ralph Williams.

262. Defendant Johnson and Defendant UniHealth are jointly and severally liable.

263. Based on the foregoing, Plaintiff Linda Williams is entitled to judgment, jointly and severally, against Defendant Johnson and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Johnson and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

~~SECOND CAUSE OF ACTION~~
**(LOSS OF CONSORTIUM AGAINST DEFENDANT PEPPERS AND DEFENDANT
UNIHEALTH- JOINTLY AND SEVERALLY)**

264. Plaintiff Linda Williams incorporates all allegations of the above-stated paragraphs as if restated verbatim herein.

265. Defendant Peppers was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

266. Defendant Peppers was an employee of Defendant UniHealth at all times relevant to the allegations alleged in this Complaint.

267. Plaintiff Ralph Williams is informed and believes that Defendant Peppers was acting within the course and scope of her employment with actual and/or apparent authority and in furtherance of Defendant UniHealth's business when she prepared her Voluntary Statement on or about June 21, 2010.

268. Defendant UniHealth is responsible in respondeat superior for the actions of Defendant Peppers as alleged in this Complaint

269. Defendant Peppers tortiously violated Plaintiff Linda Williams' right to the companionship, aid, society and services of her spouse by falsely accusing Plaintiff Ralph Williams of adultery and criminal sexual conduct.

270. Plaintiff Linda Williams was deprived of the aide of her husband earning an income and social status.

271. Defendant Peppers and Defendant UniHealth jointly and severally tortiously violated the societal status in the community of a twenty (20) year plus marriage in the Orangeburg community.

~~272. Defendant Peppers and Defendant UniHealth jointly and severally tortiously~~
violated the companionship of a loving husband and wife who have been married over twenty (20) years.

273. As a direct and proximate result of Defendant Peppers defamatory statements, Plaintiff Linda Williams suffered damages, including loss of companionship, aid, society and services of her spouse Plaintiff Ralph Williams.

274. Defendant Peppers and Defendant UniHealth are jointly and severally liable. /

275. Based on the foregoing, Plaintiff Linda Williams is entitled to judgment, jointly and severally, against Defendant Peppers and Defendant UniHealth for actual, punitive, and future damages in an amount as determined by this Court sufficient to punish Defendant Peppers and her employer Defendant UniHealth jointly and severally to deter such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams respectfully pray of this Court as follows:

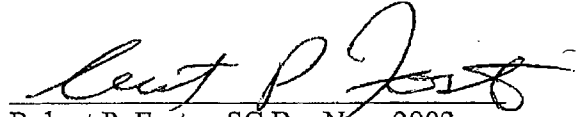
That the Court enter a judgment in favor of Plaintiff Ralph C. Williams, Sr. and Plaintiff Linda Williams and against Defendant Patricia A. Johnson, Defendant Josette Peppers, and Defendant UniHealth Post-Acute Care-Orangeburg, LLC

- A. In accordance with the above-stated causes of action, and award general and special damages in amounts to be proven at trial, including attorney fees and punitive damages;
- B. And for such other and further relief as this Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Submitted this 8th day of ~~December~~, 2013.
January, 2014

FOSTER LAW FIRM, L.L.C.



Robert P. Foster, SC Bar No.: 2093
Post Office Box 2123
601 East McBee Avenue
Greenville, South Carolina 29602
Phone: (864) 242-6200 Fax: (864) 233-0290

and

Richard W. Turner, Jr., SC Bar No.: 73593
919 Albemarle Rd., Ste 106

~~Charlotte, North Carolina 28205~~
Phone: (704) 568-8439 Fax: (704) 568-8499

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Ralph C. Williams, Sr., and
Linda Williams,

Plaintiffs,

vs.

Patricia A. Johnson, Josette Peppers and
UniHealth Post-Acute Care-Orangeburg,
LLC,

Defendants.

Civil Action Number: 2012-CP-38-0845

PLAINTIFFS' POST TRIAL MOTIONS

ATTEST: TRUE COPY

Wingia B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SC

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG COUNTY, SC

2014 SEP 22 PM 12:00

Plaintiffs Make the Following Post – Trial Motions:

A. Plaintiffs' Motion for Judgment Notwithstanding the Verdict - Rule 50 (b) SCRPC

Plaintiffs made motions for directed verdict at the close of the Defendants' case on the issue of the scope of employment of the two nurse Defendants, seeking a ruling that no material question of fact existed for the jury's consideration of the issue because all of the evidence presented should have required the court to direct a verdict for the Plaintiffs on the issue, and hold as a matter of law that the two individual nurses were in the course and scope of their employment when the reports at issue were made. The court, however, denied the motion.

The Plaintiffs hereby move for an order of the court for JNOV on the same issue, setting aside Questions 3 and 4 of the Verdict Form, and holding that nurse Defendant Johnson and/or nurse Defendant Peppers (now Davis) were as a matter of law, acting within the scope of their employment at the time the reports were made. Further, the trial court erred in charging the jury with Defendants' request to charge #12 setting forth law inviting the jury to find to the contrary.

Under the doctrine of *respondeat superior*, it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is

adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business. *Lazar v. Great Atlantic & Pacific Tea Company*, 197 S.C. 74, 14 S.E.2d 560; *Holder v. Haynes*, 193 S.C. 176, 7 S.E.2d 833. Not only were the reporting acts of the nurses at issue "reasonably necessary to accomplish the purpose of their employment", but rather they were instead absolutely mandated by the employer, and clearly in furtherance of the master's business. (relating to the care of the resident in room 39-A).

In defamation cases an agent of a corporation the employer is liable if the agent is acting within the scope of employment and in the actual performance of the duties of the corporation touching the matter in question. *Johnson v. Life of Ga.*, 227 S.C. 351, 88 S.E. 2nd 260 (1955). There is no question but that the statements made touch the matter in question, because it means concerning the subject matter of the slander the nurses were required to report. *Id.* (statements as to whether Plaintiff was changing diapers per facility policy vs. abusing resident).

Even slight deviations from employment by an agent have been held by our courts to be within the scope of employment as a matter of law. The following is quoted from *Adams v. South Carolina Power Co.*, 200 S.C. 438, 21 S.E.2d 17, 18: The terms 'course of employment' and 'scope of authority,' are not susceptible of accurate definition. What acts are within the scope of employment can be determined by no fixed rule. The authority from the master is generally to be gathered from all the surrounding and attendant circumstances. In cases where the deviation is slight and not unusual the Court may, and often will, as matter of law, determine that the servant was still executing his master's business.

In *Miller v. C.P. Chems* 808 F. Supp. 1238 (DSC 1993), the court found instructive the law as expressed in Section 228 of the Restatement. The key principle is that a servant's conduct is within the scope of employment "only if: (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; [and] (c) it is actuated, at least in part, by a purpose to serve the master." Also that the *Restatement (Second) of Agency* § 236 cmt. b; *id.* § 235 (act falls beyond scope of employment if "done with *no* intention" to serve master) (emphasis added).

The evidence presented at trial included Defendant/Employer UniHealth's uncontroverted policy that all of its employees were mandated to report possible abuse or neglect of a resident immediately. The uncontroverted facts are that both nurses testified they were aware of such policy and were carrying out the employer's policy directives at the time of the reporting events, and as to the consequences of failing to report, including being fired from their jobs with UniHealth. The nurses were both on duty at the employer's facility on the 11:00 p. m. to 7:00 a. m. shift, performing their jobs and were being paid for that work at the time of the relevant events of June 21, 2010. They were furthering the interests of the master in making these reports, and were attempting to follow the Omnibus reporting law of South Carolina, but just went about it in a reckless manner. At the very least, while Plaintiffs do not agree that there was evidence of any personal motive by either nurse to intentionally injure Plaintiff Ralph Williams, the Restatement standard cited above holds the conduct at issue inside the scope of employment if the conduct "... is actuated, at least in part, by a purpose to serve the master." And only falls outside the scope of employment if "...done with *no* intention to serve the master." Clearly that standard is met in the instant case. The fact that both nurses were serving a business purpose of UniHealth at the time of reporting cannot be denied. Both were acting within the scope of employment under any reasonable view of the evidence.

There was also no evidence presented by Defendants that either of the two nurses were somehow outside their employment when making these reports, nor was there any argument or suggestion or request by either of the defense attorneys during any portion of the trial while in the presence of the jury that either nurse was not working for the facility nor acting outside the course and scope of their employment at the time the statements at issue were made; or that they should find the nurses acted outside the scope of their jobs.

Indeed, Plaintiffs' counsel maintained in arguments to the jury that the nurses were indeed doing their jobs at the time the statements were made, and that the employer would thus be liable for those acts. The Plaintiffs maintained the contentions of reckless indifference by the nurse Defendants during the trial, not intentional conduct outside the scope of employment.

While it was not even contended by the Defendant UniHealth during the trial that nurse Johnson and her prior "run ins" with Plaintiff Ralph Williams created some personal vendetta or motive on her part to intentionally hurt Mr. Williams, there is absolutely no evidence upon which to base this claim, but instead only pure speculation. There was no basis for the court to invite the jury to entertain this speculation, particularly when none of the Defendants even addressed the subject in examination of witnesses or in addressing the jury directly. There was no basis for submission of it to the jury. While these prior "run-ins" with nurse Johnson may have motivated the court to charge Defendants' Request To Charge #12 on scope of employment, the same may not be said about the decision to submit the charge on scope of employment as to nurse Defendant Davis. There was no prior history between Josette Davis and Ralph Williams, other than the friendship and respect they had for each other, according to the testimony. While the Plaintiffs firmly believe both nurses were clearly within their scope of employment when reporting based on the failure of any proof to the contrary, at the very least, the court should hold that nurse Defendant Peppers (now Davis) was acting within the scope of employment as a matter of law, and set aside question #4 on the Verdict Form, and enter judgments accordingly.

B. Plaintiffs' Motion to Conform the Evidence to the Proof Presented at Trial- Rule 15 (b) SCRCF

Rule 15 (b) provides that when issues not raised by the pleadings are tried by the parties with express or implied consent, they shall be treated as if they had been raised in the pleadings, and the court may treat them as being so raised and tried, allowing amendments to conform to the evidence at trial.

Defendants did not object to evidence about UniHealth's policy and requirement that Ralph Williams change the diapers of female residents of the facility, a policy and practice the Plaintiffs were critical of during the entire trial, offering testimony from the Plaintiff Ralph Williams on the subject matter. The job description for CNA's does not preclude the changing the opposite sex. Ralph was expected to do both sexes, and without a member of the resident's sex present. These points were stressed by Plaintiffs' counsel in both opening and closing arguments to the jury-a person of the opposite sex together in a setting where close contact is required in the genital area of the opposite sex. Here,

nurse Johnson saw something innocent, but perceived it in a different way, and then recklessly reported it. This policy by the facility certainly sets up for and contributed to the type of disaster which occurred in this case. We believe the jury was sensitive to this evidence, and more importantly, that it forms part of the basis of their finding of reckless conduct on the part of the facility in answer to question #7 on the Verdict Form.

This court should grant Plaintiffs' motion and allow amendment of the pleadings and entry of judgment in accordance with this evidence and finding by the jury in favor of the Plaintiffs in answer to question #7.

**C. Plaintiffs' Motion in the Alternative for a New Trial Against UniHealth Only (with trial to be held at the conclusion of the appeals taken from this trial and post-trial motions).
Rule 59 (a) SCRCP.**

Rule 59 (a) provides that a new trial may be granted in cases tried before a jury "...to all or any of the parties and on all or a part of the issues... for any of the reasons for which new trials have been granted in actions at law in the courts of this state."

The grounds for this alternative relief are sought only if the primary motions filed by the Plaintiffs which allow the jury verdict against UniHealth to remain, as well as any appeals from this trial, end unsuccessfully.

The Verdict Form completed by the jury in this case shows an intent by the jury to hold all three Defendants liable to the Plaintiffs, with the jury believing the Defendant UniHealth being the most culpable of the three Defendants in terms of the relative awards punitive damages. Plaintiffs have argued above that the overall intent to hold the facility responsible should convince the court to conform the Verdict Form in questions #3 and #4 to reflect their intent. If the court does not conform the Verdict Form, or otherwise grant other relief sought herein, then the Plaintiff would urge the granting of a new trial against UniHealth only because the jury apparently did not understand the courts instructions on the law. (unless the court finds that UniHealth's opposite sex perineal care policy to be the basis of its answer to question #7 (c)) This misunderstanding resulted in an inconsistent verdict and forms the basis

of this request in the alternative for a new trial to UniHealth only which is within the court's power under Rule 59 (a).

South Carolina courts have granted new trials in cases where verdict forms are inconsistent. *Epps v. Freeman*, 261 S.C. 375, 200 S.E. 2nd 235 (1973); *Rhodes v. Winn-Dixie Greenville Inc.*, 249 S.C. 526, 155S.E. 2nd 308 (1967); *Daves v. Clearly*, 355 S.C. 216, 584 S.E.2nd 423 (S.C. App. 2003). Plaintiffs request this relief here in the alternative.

D. Plaintiffs' Motion to Set Aside Verdict Form Questions #3 and #4, and for a JNOV on the Scope of Employment Issue on the Grounds that the Court Erred in Submitting an Issue to the Jury Which was not by Raised by the Pleadings nor Tried by the Express or Implied Consent of the Parties. – Rule 15(b)

Plaintiffs' initial Complaint had allegations of both reckless and intentional conduct on the part of the nurse Defendants. See para. 170 of Complaint attached hereto for an example of same. All three Defendants answered denying these allegations. See Answer of Defendant Johnson at para. 171, Answer of UniHealth at para. 171, and Answer of Defendant Peppers at para. 171. (See Exh. 1). Based upon the position taken by the Defendants during the pendency of the case, and arguments for summary judgment for UniHealth that the nurses' conduct was outside their employment, Plaintiffs moved the court and obtained an order allowing amendment to remove allegations of intentional conduct on the part of the nurses. The Complaint was amended and the case proceeded to trial on same. Defendants' position on the issue remained the same and the Defendants presented no evidence of intentional conduct on the part of the nurse Defendants during any time in the trial.

The pleadings did not frame issues that encompassed the allegations of intentional conduct as the case went to trial. Yet the defense did not present argument or evidence of the nurse Defendants' intentional conduct to bring the nurses reporting acts outside their scope of employment. The issue upon which the Defendants now rely to extract the corporate Defendant from liability at the expense of the nurse Defendants was neither raised by the pleadings nor presented at trial by the Defendants by testimony or argument. And because the defense attorneys presenting the case at trial could not sacrifice their nurse Defendants to exonerate the corporate employer Defendant UniHealth because of the conflict

of interest in their representation of all three Defendants, the matter was not properly before the jury for them to consider the issue. The Plaintiffs certainly did not consent to the trial of the issue by express or implied consent under Rule 15 SCRPC, but objected. Defendants should therefore have been prevented from submitting an issue to the jury not allowed under the South Carolina Rules of Civil Procedure in the state. The Verdict Form should be corrected to reflect the error and the jury's intent to hold all three Defendants liable should be carried out.

E. The Conflict of Interest of the Attorneys Representing the Three Defendants' Conflicting Interests should Estop or Prevent Defendants from Claiming the Nurse Defendants Acted Outside their Scope of Employment at the Time the Conduct Occurred

The nurse Defendants have the same attorneys as the corporate employer UniHealth. An attorney cannot represent clients with conflicting interests unless the attorney gets written consent after full disclosure. We do not know whether that has been obtained. Regardless, the Defendants' attorneys cannot sacrifice the liability of some clients over other clients in the litigation. The defense attorneys did during the two plus years of the litigation, take legal positions adverse to the nurse Defendants which would have benefited the corporate Defendant UniHealth by asserting that the nurses acted outside the employment intentionally to cause Plaintiff Ralph Williams harm, which may exonerate the same attorneys' corporate client UniHealth. See brief of Defendant UPAC submitted in support of its summary judgment motion at pages 7-14 attached as Exh. 2). These pages specifically argue the company should be dismissed because the acts of the nurses allegedly were outside the scope of employment. It concludes with:

"For the reasons above, UPAC-Orangeburg is entitled to judgment as a matter of law because it cannot be held liable for the alleged intentional acts of Johnson and Peppers...."

The nurse Defendants did not move for summary judgment.

The Plaintiffs raised the conflict to the court in their brief opposing summary judgment. (See excerpt of Plaintiffs' Brief In Opposition To Summary Judgment, Exh. 3)

These Defendants cannot take such positions in this litigation as to sacrifice as lambs the nurse Defendants they represent, to suffer judgments to exonerate their corporate client Defendant UniHealth.

The defense attorneys cannot do indirectly what they cannot do directly, and still comply with the ethics rules in the State of South Carolina. While the attorneys continued to assert that the nurses acted outside the scope of their employment during the pretrial process as evidenced by their motions for summary judgment, after filing a pre-trial motion in limine to prevent the Plaintiffs from bringing to the jury's attention the conflict and the lawyers' treatment of their own client nurses (See Defendants' motion excerpts attached as Exh. 4) the Defendants attorneys agreed not to assert during the trial such conflicting positions, thereby exposing the corporate Defendant UniHealth to liability. They did, however, send to the court by way of email of 9-4-14 at 9:10 am (during the trial), with copy to Plaintiffs' counsel, request for jury charges on behalf of all three Defendants, a charge which Plaintiffs objected to at the appropriate time, which charge invited the jury to find the nurse Defendants acted outside their scope of employment. See attached email transmission and Defendants proposed Request To Charge # 12 (Exh. 5) suggesting that the nurse Defendants were on a personal vendetta or motive as opposed to a business purpose. Also, at 2:01 pm the same day (9-4-14), the Defendants proposed verdict form was transmitted by email to the court and Plaintiffs' counsel (during trial). (See Exh. 6) The proposed verdict form, questions #3 and #4 asked the jury "Do you find that [nurse's name] acted for her own personal reasons rather than within her scope of employment when she made her reports..." The Plaintiffs also objected to these at the appropriate time of the proceedings. The court accepted the defense request for charge and verdict form scope of employment questions over the Plaintiffs' objection, even with the conflict expressed to the court. The jury found in one part of the verdict form that the conduct of the nurses was outside the employment, but as to another verdict form question (#7), also submitted on Defendants proposed verdict form question (See Exh. 6), that the conduct on the part of the employer UniHealth was reckless, indicating a finding of conduct within the scope of employment, or in the alternative, the reckless conduct discussed in part B. above. They should be estopped from the advantage gained by their unexpected change of position on the subject at the trial.

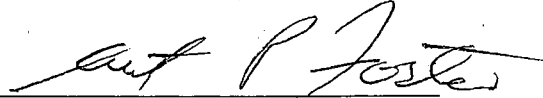
In *Strickland v Strickland*, 375 S.C. at 84, 650 S.E.2d at 470, the Court outlined the various elements of the estoppel claim as follows:

The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped. Id. at 84-85, 650 S.E.2d at 470. See also *Auto-Owners v. Rhodes*, 405 S.C. 584, 748 S.E.2nd 781(2013) (judicial estoppel); *State v. Blakney*, 2014 S.C. App. Lexis 215 (judicial estoppel); See *New Hampshire v. Maine*, 532 U. S. 742, 749, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) “ '[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him' ”)

The court should rely on equitable or judicial estoppel because the Defendants took the position and stated to the court they would not present anything touching the issue of the nurses' scope of employment, and kept their word during the trial until 9:10 a. m. on September 4, 2014, whereupon they asked for a charge on scope of employment in direct contravention of their agreement not to address the issue. Plaintiffs relied on their statements to the court not to offer evidence nor otherwise address the scope of employment issue. Otherwise, Plaintiffs would have been arguing the defense attorneys' breach of their loyalty to their two individual clients in an attempt to get the deep pocket corporate facility out of the case. After such reliance by the Plaintiffs, the Defendants acted to the contrary and offered the charge and Verdict Form questions to the court which were accepted. Plaintiffs were prejudiced severely by the Defendants "about face" on the agreement not to address the scope of employment issue. They should be estopped from reaping the benefit of the about face on their agreement not to address the issue, under principles of South Carolina law set forth above.

Respectfully submitted,

FOSTER LAW FIRM, L.L.C.



Robert P. Foster, Esq. SC Bar No.: 2093
Post Office Box 2123
601 East McBee Avenue
Greenville, South Carolina 29602
Phone: (864) 242-6200 Fax: (864) 233-0290

and

Javá O. Warren, Esq.
The Law Office of Javá O. Warren
4919 Albemarle Rd., Suite 106
Charlotte, North Carolina 28205
Phone: (704) 568-8439 Fax: (704) 568-8499

September 18, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and
LINDA WILLIAMS,

Plaintiffs,

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-
ACUTE CARE – ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**DEFENDANTS' POST-TRIAL MOTIONS
FOR JUDGMENT NOTWITHSTANDING
THE JURY VERDICT, OR IN THE
ALTERNATIVE, FOR A NEW TRIAL
ABSOLUTE**

TO: ROBIN FOSTER AND JAVA O. WARREN, ATTORNEYS FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendants Patricia A. Johnson, Josette Davis (formerly Josette Peppers), and Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter collectively “Defendants” or individually identified as “Johnson” or “Davis” or “Unihealth”), by and through their undersigned attorneys, hereby move the Court pursuant to Rules 50(b) and 59(a), S.C.R.C.P., for a judgment notwithstanding the jury verdict rendered on September 8, 2014, or in the alternative, for a new trial absolute on the grounds stated below. Defendants will request to have a hearing and oral arguments on the motion which may be scheduled at such time and place as set by the Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

For the reasons previously asserted in their oral motion for directed verdict at trial, Defendants maintain that Plaintiffs’ defamation claims never should have been presented to the jury for consideration because there was no competent, probative evidence presented at trial from which the jury could have reasonably found that Johnson and Davis did not act in “good faith” when they

reported their suspicions about Plaintiff Ralph C. Williams, Sr.'s actions on June 21, 2010. South Carolina's Omnibus Adult Protection Act require nurses to "immediately" report "suspected" sexual abuse and provides qualified immunity for nurses who do so in good faith. S.C. Code Ann. § 43-35-75(A). To encourage the "immediate" reporting of "suspected" sexual abuse, the Act presumes the good faith of reporting nurses. Plaintiffs bear a heavier burden to overcome this good faith presumption. A review of the testimony and evidence presented at trial yields only one inference – Johnson and Peppers acted in "good faith" and Plaintiffs failed to meet their heavy burden of proof on that issue. Further, allowing liability on the evidence presented in this case would eviscerate the qualified immunity and undermine the Act's purpose of protecting vulnerable adults from suspected abuse. The jury's verdict to the contrary clearly shows that it was actuated by considerations not founded on the evidence and was the result of inflammatory remarks made by Plaintiffs' counsel in closing argument which were calculated to appeal to the passions or prejudices of the jury. Therefore, the Court should exercise its power and duty to set aside the verdict.

I. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at Unihealth Post-Acute Care – Orangeburg, LLC's skilled nursing facility in June 2010. More specifically, Plaintiffs filed this lawsuit alleging that Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they orally reported and provided written statements that Ralph Williams appeared to be attempting to have sex with a facility resident. Plaintiffs' allegations and theory of liability against Unihealth were limited strictly to the *respondeat superior* doctrine. (See Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

In their Amended Complaint, Plaintiffs alleged Johnson and Davis defamed Plaintiff Ralph Williams when they orally reported and provided written statements that Ralph Williams appeared to be attempting to have sex with a facility resident. Plaintiffs also alleged that Johnson and Peppers were not entitled to the qualified immunity provided under South Carolina's Omnibus Adult Protection Act, S.C. Code Ann. § 43-35-75(A), because the nurses did not act in good faith when they made their written and oral reports to their supervisors and local authorities.

The undisputed facts from trial show that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's CNA supply cart sitting outside of Room 39 in the facility.¹ When she opened the door to Room 39, Johnson saw Ralph Williams on the bed with the resident closest to the door.² Johnson screamed, "What are you doing!?"³ Ralph Williams responded, "Will you please shut the door."⁴ Johnson left the door open,⁵ and she ran to get another nurse, Davis.⁶ The two nurses immediately returned to Room 39 and found Ralph Williams in the corner of the room with the overhead lights off, at a minimum, and adjusting his pants.⁷ Thereafter, Ralph Williams was escorted out of the room without objection,⁸ and Davis went to alert the facility's Director of Nursing and the local authorities.⁹ Ralph Williams never

¹ (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also, Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)

² The resident lying in the bed closest to the door was a 42-year-old female who lacked the mental capacity to consent to sex and was dependent upon others to care for all of her needs. She was a "vulnerable adult" as defined under South Carolina's Omnibus Adult Protection Act. S.C. Code Ann. § 43-35-10.

³ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)

⁴ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)

⁵ (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)

⁶ (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)

⁷ (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6.)

⁸ (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)

⁹ (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

questions why he was escorted out of the room, and he did not, at this time, offer explanation to anyone at the facility what he was doing in the resident's room on her bed.

The Orangeburg County Department of Public Safety ("ODPS") arrived at the facility and investigated the incident.¹⁰ ODPS determined that there was sufficient cause to arrest Ralph Williams.¹¹ The arresting officer, Officer Warrington, testified that he explained to Ralph Williams why they were at the facility,¹² and Ralph Williams did not protest while being arrested or offer any explanation for why he was in the room with the resident up on the bed. He did not suggest that there was misunderstanding or that there was a history between Johnson and/or Davis that might affect the credibility of their reports. He simply put his head down and said, "I'm sorry."¹³

An OPDS detective investigated the matter and through the solicitor sought an indictment. Shortly after his arrest, Ralph Williams admitted himself to the Dorn VA Medical Center in Columbia, South Carolina.¹⁴ During his stay, he explained to a member of the staff, Ms. Mary Rogers, what transpired on the night of June 21, 2010.¹⁵ More specifically, he stated that he was in Room 39, the resident had "already ripped off her diaper – which she was known to do," and that he was on the resident's bed in an effort to change the padding under the resident.¹⁶ Ralph Williams's statement to Mary Rogers completely contradicted his trial

¹⁰ (See generally, Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

¹¹ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

¹² (See Trial Transcript, Testimony of Officer Robert Warrington, p. 274, lines 6-8.)

¹³ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 287, lines 2-9.)

¹⁴ (See Defendants' Exhibit No. 2A – *copy of relevant portion of Williams's Dorn VA Medical Records*.)

¹⁵ (See Trial Transcript, Testimony of Mary Rogers, p. 733, line 19 through p. 735, line 4; see also Defendants' Exhibit No. 2A.)

¹⁶ (See Defendants' Exhibit No. 2A; see also Trial Transcript, Testimony of Mary Rogers, p. 734, lines 2-5.)

testimony that the diaper was on the resident when he entered the room, that the resident was covered in urine and feces, and that he meticulously attempted to remove the diaper.¹⁷

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in "good faith" when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed \$102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling \$897,500.00 (\$200,000 against Johnson; \$97,500 against Davis; and \$600,000 against Unihealth).

II. LEGAL AUTHORITY AND ARGUMENT

A. Standard of Review

Rule 50(b), SCRPC provides that "[a] party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for directed verdict; . . . [and] the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed." In ruling on a directed verdict or judgment notwithstanding the verdict motions, "the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

In deciding on the motion, "[i]f more than one inference can be drawn from the evidence, the case must be submitted to the jury [or verdict must stand]. However, if the evidence does not

¹⁷ (See Trial Transcript, Testimony of Ralph Williams, p. 566, line 20 through p. 570, line 7; contra Defendants' Exhibit No. 2A.)

yield more than one inference, a directed verdict [or judgment notwithstanding of the verdict] in favor of the moving party is proper.” American Fire and Casualty Co. v. Johnson, 332 S.C. 307 (Ct. App. 1998). The test that guides the Court in reviewing the evidence and considering whether to exercise “its power and duty to set aside a verdict on the ground of inadequacy is whether the verdict is so shocking and outrageous ‘as to manifestly show that the jury was actuated by considerations not founded on the evidence and/or the instructions of the court.’” Ravan v. Greenville County, 315 S.C. 447 (Ct. App. 1993).

B. This Court improperly denied Defendants’ Motion for Directed Verdict.

The evidence presented at trial in this case yields only one inference – Johnson and Peppers acted in “good faith” when they reported their suspicions regarding Ralph Williams on June 21, 2010 as they were required to do so by statute. Plaintiffs failed to present sufficient evidence to rebut the statutory presumption that the nurses acted in “good faith” when they made their reports. Therefore, the nurses were entitled to immunity under South Carolina’s Omnibus Adult Protection Act (“the Act”), and the jury’s failure to reach the same conclusion can only be explained on the basis that was influenced by considerations not founded on the evidence. Therefore, the Court should grant judgment in favor of Defendants notwithstanding the jury’s verdict.

1. South Carolina’s Omnibus Adult Protection mandated reporting.

In an effort to protect vulnerable adults, South Carolina enacted the Omnibus Adult Protection Act, which requires nurses to “immediately” contact law enforcement in connection with “suspected sexual assault,” and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses, including Johnson and Davis, “*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall* report

the incident in accordance with this section.” S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, “in cases of *suspected* sexual assault law enforcement *must* be contacted immediately.” S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has “reason to believe” or who “suspect[s]” sexual assault has no discretion in the matter—she “*must*” report the incident and notify law enforcement “immediately.” “A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.” S.C. Code Ann. § 43-35-75(A).

2. The only inference from the trial testimony and evidence was that Johnson and Davis reported in good faith.

The uncontradicted and undisputed evidence at trial established that Johnson and Davis acted in good faith in reporting what they perceived to be an attempted sexual assault on a defenseless and vulnerable adult resident as they were required to do under the Omnibus Adult Protection Act. By Ralph Williams’s own admission, he was in a resident’s room (Room 39) at approximately 3:00 a.m. on the morning of June 21, 2010, with the door closed and at least some of the lights out.¹⁸ Johnson found Ralph Williams in Room 39, and he admitted that he was climbing onto the bed in which a vulnerable resident was lying. Johnson screamed, “What are you doing!?” and Ralph Williams’s only response was, “Please shut the door!” Johnson then rushed to get Davis, and when the two immediately returned to the room, Ralph Williams was adjusting his pants in the near corner of the room and the lights were still off. Ralph Williams did not, at this time, offer any explanation of the situation. Immediately thereafter, Ralph Williams did not object or protest as he

¹⁸ Ralph Williams admitted that overhead lights were out but contended that light near the resident’s bed was on. (See Trial Transcript, Testimony of Ralph Williams, p. 516, lines 7-15; *contra* Trial Transcript, Testimony of Josette Davis, p. 248, lines 12-20.)

was escorted out of the room, and Davis called the facility's director of nursing and 911 - the Orangeburg County Department of Public Safety ("ODPS") - to report what she and Johnson had seen. Meanwhile, Johnson contacted the resident's responsible party at approximately 4:00 a.m. to report her observations.

Another staff member remained with Ralph Williams until ODPS Officer Robert Warrington arrived around 3:24 a.m. Officer Warrington investigated the report, called for a female officer to come to take pictures of the resident and then determined that there was sufficient reason to arrest Ralph Williams. Officer Warrington testified that Plaintiff did not protest his arrest and said "I'm sorry." At no point, from the time that Johnson walked into Room 39 and screamed "What are you doing!?" up to and including the time of his arrest, did Ralph Williams ever indicate to Davis, Johnson, Officer Warrington, or anyone else what he was doing in Room 39 on the bed or otherwise suggest that there had been some sort of misunderstanding. By any objectively reasonable standard, these undisputed facts are a "reason to believe that a vulnerable adult ha[d] been ... abused, neglected, or exploited" and gave Johnson and Davis reason to "suspect[] sexual assault" had occurred. S.C. Code Ann. § 43-35-25(A), (G). At that point, Johnson and Davis had no choice in the matter; they were required by law to report what they had seen and to contact law enforcement "immediately." *Id.*

There was no competent, probative evidence presented at trial from which the jury could have reasonably found that Plaintiffs overcame the statutory presumption that Johnson and Davis acted in "good faith" when they reported their suspicions about Ralph Williams's actions on June 21, 2010 as they were required to do under South Carolina's Omnibus Adult Protection Act. Rather than rely on any actual evidence that either Johnson or Davis did not act in good faith, Plaintiffs' counsel induced the jury to employ prejudice against Johnson and Davis based on the

fact that they are women and are, therefore, by nature “calculating.” To be clear, Plaintiffs’ counsel did not limit his remarks to state that Johnson and Davis are “calculating” women – which would have been bad enough itself. Plaintiffs’ counsel argued that all women and girls, by nature – his wife and daughters included and cited as examples – are “calculating.”

I’m married for 15 years, married my high school sweetheart and two daughters and myself. And I got a son. And I can tell you, women and girls[,] they think a little bit on another level than us guys. They can be more calculating, a lot more calculating.

(Trial Transcript, p. 791, lines 15-19.)

In light of the undisputed evidence that Johnson or Davis had a clear fact-based “reason to believe that a vulnerable adult ha[d] been ... abused, neglected, or exploited” and to “suspect[] sexual assault,” and further in light of the patent issues with Ralph Williams (including his admission to perjury during the course of the trial),¹⁹ it is clear that the jury accepted Plaintiffs’ counsel’s request to rely on prejudice and stereotypes and found against Johnson or Davis based solely on the fact that they are women and, therefore, by nature “calculating.”

The jury obviously ignored testimony and evidentiary facts introduced during the trial which show that Johnson and Peppers acted in “good faith” at the time they reported their suspicions regarding Ralph Williams on June 21, 2010. More specifically, the jury ignored the following:

1. The perjury and discrepancies revealed in Ralph Williams’s trial testimony proved that he was not a credible witness. Among multiple topics, Ralph Williams perjured himself in testifying about his extra-marital affairs²⁰ and was not truthful his

¹⁹ (See Trial Transcript, Testimony of Ralph Williams, pp. 601-603; see also Testimony of Ralph Williams, p. 611, lines 18-25.)

²⁰ (See Trial Transcript, Testimony of Ralph Williams, pp. 601-603.)

employment history,²¹ the location of the panic button inside Room 39,²² alleged incidents involving Defendant Johnson,²³ and details regarding his conduct on June 21, 2010.²⁴

2. As shown through the nursing facility's Perineal Care policy and procedure (Plaintiffs' Ex. 11), the CNA textbook from Orangeburg-Calhoun Technical School (Defendants' Ex. 25A), and the testimony of multiple witnesses – including Johnson,²⁵ Davis,²⁶ April Bowman,²⁷ and Deborah Pigott²⁸ – that all served as CNAs or supervised the same, there was absolutely no reason for Ralph Williams to be on the resident's bed at approximately 3:00 a.m. on June 21, 2010.
3. Ralph Williams never responded, protested or otherwise objected when Defendant Johnson and Davis required that he depart Room 39 at approximately 3:00 a.m. on June 21, 2010.²⁹
4. The first known words Ralph Williams stated after departing Room 39 were those spoken in response to Officer Robert Warrington putting handcuffs on him as the officer making an arrest. Officer Warrington testified that Ralph Williams responded to the arrest by putting his head down and stating, "I'm sorry."³⁰

²¹ (See generally Trial Transcript, Testimony of Ralph Williams, pp. 545-554.)

²² (See Trial Transcript, Testimony of Ralph Williams, p. 519, lines 1-5; *contra* Defendants' Exhibit No. 26H – *picture of the wall closest to the door*; Trial Transcript, Testimony of Patricia Johnson, p. 202, lines 2-13; Trial Transcript, Testimony of Josette Davis, p. 253, lines 5-24.)

²³ (See Trial Transcript, Testimony of Ralph Williams, p. 501, line 17 through p. 503, line 1; *contra* Trial Transcript, Testimony of April Bowman, p. 727, line 12 through p. 730, line 8.)

²⁴ (See Trial Transcript, Testimony of Ralph Williams, p. 566, line 20 through p. 570, line 7; *contra* Defendants' Exhibit No. 2A.)

²⁵ (See Trial Transcript, Testimony of Patricia Johnson, p. 216, lines 15-25 and p. 217, lines 1-5.)

²⁶ (See Trial Transcript, Testimony of Josette Davis, p. 254, lines 15-23 and p. 255, lines 4-13.)

²⁷ (See Trial Transcript, Testimony of April Bowman, p. 725, line 24 through p. 727, line 11.)

²⁸ (See Trial Transcript, Testimony of Deborah Pigott, p. 742, line 10 through p. 745, line 2.)

²⁹ (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; *see also*, Trial Transcript, Testimony of Josette Davis, p. 250, lines 3-10.)

³⁰ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 287, lines 2-9.)

5. Defendant Johnson's good faith actions were supported by the call she made to the Representative Party of the resident, Ms. Bertha Tyler, at 4:00 a.m. on June 21, 2010 to notify Ms. Tyler of her observations.³¹

In summary, there is no competent evidence to support the jury's verdict, and it manifestly shows that "the jury was actuated by considerations not founded on the evidence and/or the instructions of the court." Ravan, 315 S.C. at _____. Johnson and Davis were mandated by law to report their suspicions regarding Ralph Williams, and the evidence and testimony from trial yields only one inference: that the nurses acted in good faith when they followed their legal obligations and reported those suspicions. The Court should therefore grant judgment in favor of the Defendants notwithstanding the verdict, in accordance with their directed verdict motion made at the close of all the evidence pursuant to Rule 50(b). Alternatively, because the verdict was the result of prejudice caused by Plaintiffs' counsel's direct appeal to prejudice regarding the "calculating" nature of all women during closing arguments, Defendants are entitled to a new trial. See Toyota of Florence, Inc. v. Lynch, 314 S.C. 257 (S.C. 1994) (holding the use of racial prejudice in counsel's closing argument resulted in clear prejudice such that the appellant was entitled to a new trial); South Carolina Highway Dept. v. Nasim, 255 S.C. 406 (1977) (finding counsel's use of epithets against an adverse witness warranted the grant of a new trial).

MOTION FOR A NEW TRIAL ABSOLUTE

Should the Court decline to enter judgment notwithstanding the verdict, Defendants contend, alternatively, that they are entitled to a new trial. "In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or *nisi* in a law case upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated

³¹ (See Trial Transcript, Testimony of Patricia Johnson, p. 157, lines 10-11.)

as the 'thirteenth juror.' Such discretion is 'founded upon the facts, the evidence, the witnesses, the total circumstances, the verdict and the judge's view of them.'" Vinson v. Hartley, 324 S.C. 389 (Ct. App. 1996). "Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge believes the verdict is unsupported by the evidence." Johnson v. Hoechst Celanese Corp., 317 S.C. 415 (Ct. App. 1995). When acting as the thirteenth juror, "[t]he decision of whether to grant a new trial is left to the sound discretion of the trial judge." Id.

The Court should grant the motion for new trial on the following grounds:

1. The jury's verdict is against the greater weight or the fair preponderance of the evidence. Defendants Johnson and Peppers incorporate by reference the list of facts that the jury ignored in Section (II.)(B.)(2.) above.
2. The Court erred in its evidentiary rulings by denying Defendants' objection to the introduction into evidence of DNA expert, Ms. Lilly Smalls Gallman of the S.C. Law Enforcement Division, on the grounds that:
 - a. the Plaintiffs failed to properly and timely identify their expert pursuant to Rule 33(b)(6), SCRPC;
 - b. the Plaintiffs' excuse of "my bad" was an insufficient explanation for their failure to name the witness in their answer to the interrogatory regarding the same and the Defendants were surprised by the witness given the irrelevance of her testimony;
 - c. this information was irrelevant under Rule 401 of the SCRE; and,
 - d. this information was unduly prejudicial, misleading and confusing under Rule 403 of the SCRE.

3. The jury was required to make its decision dutifully, fairly, impartially, without passion, without prejudice, and without excessive emotion. However, Plaintiffs' Counsel repeatedly intended to arouse prejudice or passion by eliciting testimony and trying to introduce evidence regarding God and the Bible in a blatant attempt to appeal to the emotions, passion and prejudice of the jury in the following ways:
 - a. Plaintiffs' Counsel needlessly kept a copy of the Bible on Plaintiffs' table in plain view throughout the trial. The Plaintiffs' table was less than 10 feet from the jury box and in plain sight of the jurors.
 - b. Ralph Williams had an additional copy of the Bible in his hands throughout the trial, and he routinely had it open and acted as if he was reading it throughout the trial.
 - c. Plaintiffs called two character witnesses – Ms. Cynthia Mack and Dr. Earline Sabb – who were self-proclaimed pastors and repeatedly talked about biblical scriptures, stories from the Bible, and insinuated how God would help Plaintiffs prevail in this matter.³²
 - d. Plaintiffs' Counsel attempted to have Ralph Williams read from scripture from the Bible while on the witness because his counsel contended that the scripture was part of the evidence in this case.³³
4. Any other errors the record may show were timely preserved.

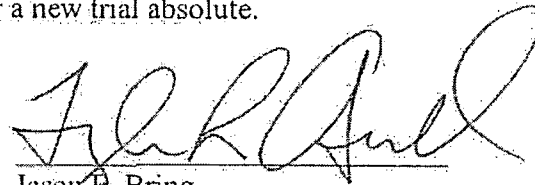
³² (See Trial Transcript, Testimony of Cynthia Mack, p. 387, lines 13-24 and p. 417, line 15 through p. 419, line 18; see also Trial Transcript, Testimony of Dr. Earline Sabb, p. 450, lines 16-25 and p. 454, line 8 through p. 456, line 2.)

³³ (See Trial Transcript, Testimony of Ralph Williams, p. 533, line 4 through p. 534, line 11.)

5. In addition, Defendants request that the Court view the evidence, independent of the jury's findings, and grant a new trial in the exercise of its discretion as the thirteenth juror on the ground that the evidence does not justify the jury's verdict.

CONCLUSION

For the reasons set forth above, Defendants are entitled to judgment notwithstanding the verdict because the Plaintiffs failed to introduce evidence that would allow a jury to determine that Defendants Johnson and Davis did not act in good faith. The jury's verdict to the contrary clearly shows that it was actuated by considerations not founded on the evidence. Alternatively, the Court should grant Defendants' motion for a new trial absolute.



Jason B. Bring
South Carolina Bar No. 100275
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
jason.bring@agg.com
tyler.arnold@agg.com

Attorneys for Defendants

April 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and LINDA
WILLIAMS,

Plaintiffs;

v.

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-ACUTE
CARE – ORANGEBURG, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**DEFENDANTS UNIHEALTH POST-
ACUTE CARE – ORANGEBURG, LLC’S
RESPONSE TO PLAINTIFFS’
POST-TRIAL MOTIONS**

TO: ROBIN FOSTER AND JAVA O. WARREN, ATTORNEYS FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendant Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter “Defendant” or “Unihealth”), by and through its undersigned attorneys, hereby responds to Plaintiffs’ Motion for Judgment Notwithstanding the Verdict (Rule 50(b)); Plaintiffs’ Motion to Conform the Evidence to the Proof Presented at Trial (Rule 15(b)); and, Plaintiffs’ Motion for a New Trial Against Unihealth Only (Rule 59(a)) (collectively “Post-Trial Motions”).

**SUMMARY OF PLAINTIFFS’ ARGUMENTS AND
UNIHEALTH’S RESPONSE**

In the brief in support of their Post-Trial Motions and subsequent filings, Plaintiffs make a swarm of arguments – *over 50 pages worth* – which basically contend that the evidence presented at trial and their arguments to the jury showed: (a) Defendants Patricia A. Johnson and Josette Davis (*formerly Josette Peppers*) (hereinafter “Nurse Employees”) did not act in good faith when they made oral and written statements regarding the actions of Plaintiff Ralph C.

Williams, Sr. on June 21, 2010;¹ and (b) the two nurses acted recklessly – *not intentionally* – when they made those oral and written reports and therefore were acting within the scope of their employment. However, Plaintiffs’ arguments ignore South Carolina law and the burden of proof when attempting to show whether an employee’s conduct falls within the scope of employment and whether the employer is therefore liable. Plaintiffs’ arguments also ignore their own Counsel’s opening statements and closing arguments to the jury regarding the alleged actions of the Nurse Employees. In addition, Plaintiffs’ arguments disregard the answers to interrogatories on the verdict form and factual findings of the jury that the actions of the Nurse Employees fell outside the scope of their employment. Finally, Plaintiffs completely ignore SCRCR Rule 49(b) which specifically addresses the Court’s three options when the answers to interrogatories on the verdict form are consistent with each other but one or more is inconsistent with the general verdict. For these reasons, the Court should deny Plaintiffs’ Post-Trial Motions and, pursuant to SCRCR Rules 49(b) and 58, exercise its power to enter judgment in accordance with the jury’s interrogatory answers and set aside the punitive damages award in the verdict against Defendant Unihealth.

I. PROCEDURAL AND FACTUAL BACKGROUND

Defendant Unihealth incorporates by reference the “Procedural and Factual Background” provided in its updated Motion for Judgment Consistent with Interrogatory Answers and Motion for Judgment Notwithstanding the Verdict, previously filed on May 1, 2015.

¹ For the reasons set forth in Defendants’ Joint Motion for Judgment Notwithstanding the Verdict, Defendant Unihealth adopts and maintains the arguments that the Nurse Employees acted in “good faith” in making their reports and the Court should enter judgment in accordance with the same.

II. LEGAL AUTHORITY AND ARGUMENT

At the conclusion of the trial, the jury specifically found that the Nurse Employees acted outside the scope of their employment when they made their statements and reports regarding the actions of Plaintiff Ralph C. Williams, Sr. on June 21, 2010. (See Answers to Interrogatory Nos. 3 and 4 of the Verdict Form, attached hereto as Exhibit 1.) Accordingly, the jury determined that Plaintiffs failed to establish that the Nurse Employees were acting within the scope of their employment and were about the facility's business at the time they made their statements. The jury's consideration of the evidence, witness testimony, arguments of Plaintiffs' Counsel regarding the same, and ultimate factual determination on the scope of employment issue was consistent with applicable South Carolina law and should not be disturbed.

A. Plaintiffs had the burden of showing the actions of the Nurse Employees fell within the scope of their employment at the Unihealth.

Plaintiffs' Post-Trial Motions set forth a host of arguments regarding who made (or failed to make)-a *prima facie* case and which party had the burden of proof (or production) on various issues, including whether the conduct of the Nurse Employees fell within the scope of their employment. However, Plaintiffs' arguments are without merit. South Carolina law clearly provides that in asserting a *respondeat superior* claim, the burden of proof is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer's business.

In Jones v. Elbert, 211 S.C. 553 (1945), the South Carolina Supreme Court held:

Under the doctrine of *respondeat superior*, it is generally held that the master is liable for the wrongful acts of his servant while acting as such within the scope of his employment. The principle is adhered to that an act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business.

Id. at 559. “The modern doctrine of respondeat superior makes a master liable to a third party for injuries caused by the tort of his servant committed within the scope of the servant’s employment.” S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 179 (Ct. App. 1986). “An act falls within the scope of the servant’s employment if it was reasonably necessary to accomplish the purpose of the servant’s employment, and it was done in furtherance of the master’s business.” Wade v. Berkeley County, 330 S.C. 311, 319 (Ct. App. 1998).

The doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A *plaintiff seeking recovery* from the master for injuries *must establish* that the relationship existed at the time of the injuries, *and also that the servant was then about his master’s business* and acting within the scope of his employment. Id. at 301 (emphasis added). An act is within the scope of a servant’s employment where reasonably necessary to accomplish the purpose of his employment and *in furtherance of the master’s business*. Id. at 305; Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006) (emphasis added).

The act of a servant done to affect some independent purpose of his own and not with reference to the service in which he is employed is not within the scope of his employment so as to render the master liable therefor. Lane, 244 S.C. at 305; see also Crittenden v. Thompson-Walker Co., Inc., 288 S.C. 112, 116 (Ct. App. 1986) (holding “if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master’s business, his conduct falls outside the scope of his employment”). Under these circumstances the servant alone is liable for the injuries inflicted. Lane, 244 S.C. at 305. If a servant steps aside from the master’s business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended. Id. at 306. Accordingly, actions

during even a short detour from the master's business for the purpose of purely individual interests fall outside the scope of employment. Armstrong, 371 S.C. at 276.

B. Plaintiffs failed to meet their burden of proof, and the jury's findings that the acts of the Nurse Employees fell outside the scope of their employment were consistent with the Plaintiffs' allegations, case theme and arguments.

Plaintiffs argue that their case theory and *prima facie* evidence showed that Unihealth was liable because of the acts of the Employee Nurses. However, in reality, the Plaintiffs' allegations in the Amended Complaint, the testimony of witnesses and evidence at trial, and the statements and arguments of Counsel to the jury supported just the opposite – the jury's finding that the Nurse Employees acted outside the scope of their employment.

The claims against Unihealth in the Amended Complaint were based entirely upon a *respondeat superior* theory that the employer is liable for the actions of the Nurse Employees. (See Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.) However, Plaintiffs repeatedly alleged in their Amended Complaint that the Nurse Employees *did not act in good faith*, acted with *actual malice*,² and intended to injure and charge Mr. Williams. (See Am. Complaint, ¶¶ 52, 53-88, 169, 170, 172, 187, 188, 190, 204-207, 221-224, 257, 269.)³

Through witness testimony during trial, Plaintiffs' Counsel continued the theme that the Nurse Employees acted intentionally, with personal motive and with actual malice. Specifically, Plaintiffs elicited testimony from Ralph and Linda Williams regarding an alleged rift between Ralph Williams and Johnson and suggested that alleged altercations created a motive for Johnson to falsely report that Ralph Williams was attempting to have sex with a resident.⁴

² In South Carolina, common law "actual malice" has been defined as meaning "the defendant was *actuated by ill will* in what he did, *with the design to causelessly and wantonly injure* the plaintiff, or that the statements were published with such recklessness as to show a *conscious* indifference towards plaintiff's rights." Jones v. Garner, 250 S.C. 479, 488 (1968) (emphasis added).

³ Plaintiffs incorporated "all allegations of the above-stated paragraphs as if stated verbatim herein" with each cause of action.

⁴ (See Trial Transcript, Testimony of Ralph Williams, pp. 500-506); see also Am. Complaint ¶¶ 53-88.)

During opening argument, Plaintiffs' Counsel Java O. Warren told the jury "[t]his case, ladies and gentlemen, is about a false statement that was made by Ms. Patricia Johnson, as well as, Ms. Josette Peppers against my client."⁵ He went on to argue that Ms. Johnson's statements were made by design and with an intentional purpose by stating the following:

- "We believe her *statements were made so that people would get the impression* he's somewhere he's not supposed to be."⁶
- "No, this is the police station and there's a -- pay close attention, there's a very important *deliberate statement that was inserted* into this police report."⁷

Incredibly, while explaining South Carolina's Omnibus Adult Protection Act, Mr. Warren stated, "Now, what is not good faith? *Intentionally asserting false information.*"⁸

During Plaintiffs' closing arguments, Mr. Warren hammered his theme and argument that the actions of the Nurse Employees were intentional through use of terms such as "deliberate," "deliberately," "destroy," "destruction" or "calculating" over 20 separate times. He specifically argued, among other things, the following:

- "The statements made [are] not privileged. ... *Destruction of critical material is what we'll show. Deliberate alterations.*"⁹
- "However, statements made while at the defendant Unihealth's facility are qualified privileged and subject to this Omnibus Act and if they're not made in good faith and as reckless, *destruction of critical material, deliberate alterations*, stating opinions as facts and internal inconsistencies."¹⁰
- "And I said, Ms. Johnson -- I didn't want to confront him with his pants to his ankles. He's climbing up -- I mean, this is climbing on the bed with his pants to his ankles or her testimony is in the bed. *That's deliberate alterations.*"¹¹

⁵ (Trial Transcript, p. 110, lines 17-19.)

⁶ (Trial Transcript, p. 112, lines 23-24.)

⁷ (Trial Transcript, p. 115, lines 19-21.)

⁸ (Trial Transcript, p. 123, lines 14-15.)

⁹ (Trial Transcript, p. 761, lines 13-23.)

¹⁰ (Trial Transcript, p. 762, lines 4-9.)

¹¹ (Trial Transcript, p. 766, lines 14-18.)

- "Shut the door, shut the door. Not one of them said, please -- *that is deliberate alteration, omission of the facts*. If you're following the law why do you have to omit anything?"¹²
- "She's moving her story. Moving her story. All she had to do was say that's what happened. She doesn't want -- *she knows the deliberate intention for which she wrote this*. She can't stand on her own words."¹³
- "Problem is, Ms. Peppers didn't see anything. How do you make the exact same statement -- *that is a deliberate alteration. You're stating things deliberately. She didn't even see them*. Just like when we're talking about Ms. Johnson, how she's saying I'm looking for him on that back hallway, I'm trying to find him."¹⁴
- "Look for the presence of bodily fluids. But I have one that's real special. *It's called destruction of critical material*."¹⁵
- "Now, where in this list does it state there's a diaper in there? Where? Remember Mr. Williams was required to go immediately go outside the room. What I'm getting at is, *the destruction of critical material*."¹⁶
- "The first thing you're going to do is -- where is that cart at. I'm looking for his cart. I'm not going through checking for all the rooms. *That statement was made with a deliberate purpose*."¹⁷
- "It takes a sick and demented person to even call that sex. That's rape. Prior run-ins with a lady turning blue, calling breathing on the phone to his wife. Hanging up. Ms. Patricia Johnson. *Wickedness*. That's the only way you have these allegations made. *Just wickedness*."¹⁸
- "Then on top of it you hide the diaper. The only thing to protect me. So when I tell people I was doing my job changing feces and urine the only thing that I have to protect my side of the story when all these people are investigating me and I'm locked in the jail cell, and officers and Unihealth employees have investigated it and don't take my statement, so I can say there's a dirty diaper with feces and urine on her. That's the only thing that I have to protect me. *You're going to destroy it*, and I'm all over the news at dinner time."¹⁹
- "Changing diapers for a living to try to do a catering business in the day. That's why he's fighting. There was a dirty diaper in there. I didn't finish changing her. I know

¹² (Trial Transcript, p. 766, lines 22-25.)

¹³ (Trial Transcript, p. 768, lines 1-5.)

¹⁴ (Trial Transcript, p. 772, lines 10-18.)

¹⁵ (Trial Transcript, p. 773, lines 10-11.)

¹⁶ (Trial Transcript, p. 774, line 24 through p. 775, line 2.)

¹⁷ (Trial Transcript, p. 778, lines 11-14.)

¹⁸ (Trial Transcript, p. 785, lines 2-6.) Wicked is defined by Webster's as "morally bad; having or showing slightly bad thoughts in a way that is funny or not serious."

¹⁹ (Trial Transcript, p. 786, lines 2-11.)

that's going to be in there. *Destruction of evidence. It's not good faith. It's not good -- it's worthlessness. It's malice, it's actual malice.*"²⁰

- "I'm married for 15 years, married my high school sweetheart and two daughters and myself. And I got a son. *And I can tell you, women and girls they think a little bit on another level than us guys. They can be a lot more calculating, a lot more calculating.*"²¹
- "*Then you set a person up to be in this position,* charged a caseworker accused of trying to rape a woman."²²

In summary, Plaintiffs assert that their case showed the acts of the Nurse Employees fell within the scope of their employment; but upon complete review of the pleadings, the elicited testimony and evidence, and Plaintiffs' Counsel arguments to the jury, Plaintiffs' case theory and arguments led the jury to the opposite conclusion – that the conduct of the Nurse Employees was intentional and fell outside the scope of employment. Stated differently, wickedness, making “deliberate” false statements and “destroying” evidence, bearing “false witness against thy neighbor,” being a “calculating” woman, and trying to “set a person up” do not further any business purpose of a nursing home facility. See Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006).

C. The trial court properly submitted the “scope of employment” issue to the jury and provided adequate explanation and instruction necessary to enable the jury both to make answers to the interrogatories and to render a general verdict.²³

Despite Plaintiffs' arguments to the contrary,²⁴ there was an issue of fact as to whether the Nurse Employees acted within the scope of their employment and that issue was properly

²⁰ (Trial Transcript, p. 790, lines 9-15.)

²¹ (Trial Transcript, p. 791, line 15-19.)

²² (Trial Transcript, p. 793, lines 14-19.)

²³ To be clear, Defendant Unihealth's position that the scope of employment issue was properly submitted to the jury is based strictly upon the Trial Court's denial of Defendants' Motion for Directed Verdict. For the reasons set forth during trial and reiterated in Defendants' Joint Motion for JNOV, Defendant Unihealth maintains that all of the defendants were entitled to a directed verdict and are now entitled to judgment notwithstanding the jury's verdict. Moreover, the Act provides a “presumption” of good faith, and the trial court should therefore act as a gatekeeper regarding the same. Only after the Trial Court's denial of the Motion for Directed Verdict did Defendant Unihealth take the position that the factual question regarding scope of employment was properly explained and submitted to the jury.

explained in the jury instructions and later submitted on the verdict form for the jury to determine. Plaintiffs recognized as much in their Pre-trial Brief submitted to the Court, specifically stating that there was a question of fact as to whether “[Nurse Employees] were acting in the course and scope of their employment with Defendant Unihealth.” (Plaintiffs’ Pre-Trial Brief and Memorandum of Law, pg. 2.) Furthermore, for the reasons set forth in Section (II).(B.) above and as the Trial Court concluded while ruling on Plaintiffs’ Motion for Directed Verdict, “the way the case has been tried[,] there is inherently an issue about whether or not [the Nurse Employees] were acting inside or outside the scope of their employment, and that’s a question of fact, ..., for the jury to determine.” (Trial Transcript, p. 754, lines 3-6.)

After closing arguments, the Trial Court properly charged the jurors as to the applicable law in South Carolina and provided specific instructions regarding the *respondeat superior* doctrine and the definition of scope of employment. (See Trial Transcript, Jury Instructions, pp. 827-828.) Thereafter, the Court provided a verdict form that allowed the jury to make multiple factual findings – first, a factual finding regarding whether the nurses acted in good faith and, if not, a second factual determination as to whether the nurses acted outside the scope of their employment at Unihealth. (See Exhibit 1.)

After deliberating for nearly six hours, the jurors decided that (1) both of the nurses did not act in good faith and (2) that they both acted outside the scope of their employment in reporting their suspicions regarding Ralph Williams on June 21, 2010. (See Exhibit 1.) In other words, the jurors resolved the two questions of fact and determined that the alleged false reports

²⁴ Defendant Unihealth takes exception to Plaintiffs’ Counsels’ attempt to selectively extract quotes and misrepresent the arguments of Defendants’ Counsel in support of their Motion in Limine to Exclude Legal Arguments Made on Behalf of Defendant Unihealth’s Motion for Summary Judgment. Defendants’ Counsel specifically denied that they would *not* want a jury on charge on intentional conduct or that it was *not* an issue of fact. (See Trial Transcript, p. 91, lines 21-25; see also p. 92, lines 7-21.) Furthermore, as stated by Judge Dickson in addressing the arguments, “until I find out what the testimony is[,] I’m not going to be able to tell you what the charge is going to be.” (Trial Transcript, p. 92, lines 1-3; see also p. 93, lines 11-14.)

of sexual abuse and malicious efforts to have criminal charges filed were outside the scope of the nurses' employment and therefore not in furtherance of Unihealth's business purpose and interests.²⁵ Accordingly, as a matter of law, Unihealth cannot be held liable for damages in this case. See Armstrong, 371 S.C. at 276.

D. The Parties did not try, by express or implied consent, the issue of whether Defendant Unihealth was reckless for having a policy that allowed an employee to provide care to a patient of the opposite sex.

In what can only be described as a desperate, shot-in-the-dark argument, Plaintiffs contend that, pursuant to Rule 15(b), the Court should uphold the punitive damages award against Defendant Unihealth because the facility was reckless for having a policy that allowed male CNAs to attend to female patients and therefore set up and "contributed to the type of disaster which occurred in this case." Not only did Plaintiffs fail to raise this argument at trial, it has no merit and should not be considered by the Court.

Under SCRCP Rule 15(b), when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleading. "Express consent may be demonstrated by a stipulation but implied consent depends on whether the parties recognized an issue not raised by the pleadings entered the case *during trial*." Dunbar v. Carlson, 341 S.C. 261 (Ct. App. 2000) (emphasis added). Moreover, "implied consent *will not* be found if all the parties did not recognize it as an issue *at trial*, even if evidence in the record exists to support the amendment." Armstrong v. Collins, 366 S.C. 204, 227-228 (Ct. App. 2005) (emphasis added). In this case, Plaintiffs' Amended Complaint only alleged that Defendant Unihealth was liable strictly based on the actions of the Nurse Employees under a *respondeat superior* theory. (See Plaintiffs' Am. Complaint.) The issue of whether Defendant Unihealth was reckless for its policy was not tried by express or implied consent.

²⁵ While Unihealth and the Nurse Employee defendants disagree with these findings, if no new trial is entered, then the jury's interrogatory responses are controlling.

There was no stipulation by the parties, and the parties did not raise the issue during or at trial. Moreover, there was no testimony or evidence to support a finding that Defendant Unihealth was reckless for having a policy that allowed a care provider to care for patient of the opposite sex. Accordingly, Plaintiffs' Rule 15(b) motion should be denied.

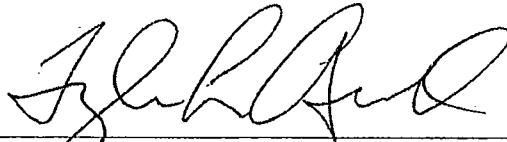
E. The trial court should enter judgment in favor of Defendant Unihealth.

Given the jury's finding that the nurse employees both acted outside the scope of their employment, the trial court should enter judgment in favor of Unihealth and in accordance with the answers, notwithstanding the general verdict. See Rule 49(b), SCRCF; see also Elston v. Morgan, 440 F. 2d 47 (7th Cir. 1971) (holding that trial court did not abuse its discretion in entering judgment for defendants in accordance with the answer to the interrogatory).²⁶ The jury's award of \$600,000.00 in punitive damages against Unihealth should be disregarded because of the jury affirmatively found that the Nurse Employees acted outside the scope of their employment when they made oral and written statements regarding the actions of Plaintiff Ralph C. Williams, Sr. on June 21, 2010.

²⁶ Defendant Unihealth notes that it could not identify a decision from a South Carolina Appellate Court directly on point; however, South Carolina modeled its rules of civil procedure on the Federal Rules. Rule 49(b) of both the SCRCF and FRCP provide that when the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict.

CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Post-Trial Motions and, pursuant to SCRCR Rules 49(b) and 58, exercise its power to enter judgment in accordance with the jury's answers and set aside the punitive damages awarded in the verdict against Defendant Unihealth Post-Acute Care – Orangeburg, LLC. Defendant Unihealth is entitled to have a judgment entered consistent with the jury's interrogatory answers because the jury determined that the Nurse Employees acted outside the scope of their employment and Unihealth cannot be held liable for the nurses' alleged actions or any punitive damages as a result of the same.



Jason E. Bring
South Carolina Bar No. 100275
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
jason.bring@agg.com
tyler.arnold@agg.com

*Attorneys for Defendant Unihealth Post-Acute
Care – Orangeburg, LLC*

May 14, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Ralph C. Williams, Sr., and
Linda Williams,

Civil Action Number: 2012-CP-38-0845

Plaintiffs,

vs.

Patricia A. Johnson, Josette Peppers and
UniHealth Post-Acute Care-Orangeburg,
LLC,

Defendants.

PLAINTIFFS' REPLY BRIEF TO
DENY DEFENDANTS' POST TRIAL
MOTION FOR JUDGMENT
NOTWITHSTANDING THE JURY
VERDICT, OR DENY IN THE
ALTERNATIVE, FOR A NEW
TRIAL ABSOLUTE

ATTEST: TRUE COPY

Wingyi B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

FILED
MAY 26
U
11:41
AM

CLERK OF COURT
ORANGEBURG, SC

**DEFENDANT'S POST TRIAL MOTIONS FOR JUDGEMENT NOT
WITHSTANDING THE VERDICT AND NEW TRIAL SOULD BE DENIED**

The Facts established through the trial were that Mr. Ralph Williams was a Certified Nursing Assistant who was employed by UniHealth from February 10, 2010 until June 2010. Mr. Williams became a licensed CNA on November 10, 2009; was hired by UniHealth on February 9, 2010; and falsely accused of abusing a vulnerable adult on June 21, 2010 - His Birthday. Mr. Williams has been married for over 20 years to Linda Williams.

Patricia Johnson was Mr. Williams Supervisor who assigned him to care for male and female patients on the night of June 21, 2010. Mr. Williams had previously stated he did not want to perform UniHealth's required Perineal Care on Females. However, Ms. Patricia Johnson assigned him to care for female patients. Mr. Williams was assigned to care for Ms. Henrietta Mays (Resident Number "39A"). UniHealth requires male and females to perform their

Perennial Policy. Moreover, UniHealth does not require a member of the opposite sex to be present.

UniHealth's Perineal Care Policy is as follows:

"For females separate the labia, the clean downward from front to back with one stroke. Repeat using the clean side of the wash cloth wipe with each stroke. More than one wash cloth may be needed to be used. Rinse with clean wash cloth if applicable. Pat area dry with towel. Position patient on resident on side. Clean vagina area from anus to rectum with one stroke. Repeat until area is clean using clean part of the wash cloth. Wipe with each stroke. More than one washcloth wipe may be needed to use and pat dry with a towel" (see Civil Trial Transcript at pg. 230 line 11-20).

The facts established at trial are that Plaintiff R. Williams worked the 11 p.m. to 7:00 a.m. shift at the United Rehab Services (URS) unit and was assigned to care for both male and female residents. The Plaintiff Ralph Williams Job Description included duties of changing resident diapers which contain urine and feces. The Plaintiff Ralph Williams was assigned to care for Ms. Henrietta Mays (hereinafter referred to as "Resident Number 39A"). There were two residents in Room 39A on June 21, 2010. There was an overhead light which lit the entire room and a light over each patient's bed. As it was 3am in the morning Mr. Williams lit the light over Resident Number 39A's bed. (see Civil Trial Transcript at pgs. 464-544).

Additionally, the Defendant Johnson was assigned to work as Ralph Williams' Supervisor the night of June 21, 2010. Defendant Peppers was assigned to work as an LPN (Licensed Practical Nurse) the night of June 21, 2010. Defendant's Johnson's and Peppers' duties, as stated in their UniHealth job description, included reporting conduct deemed injurious

to the residents. (There is one button right beside the resident's bed that activates an audible alarm that sounds throughout the building. There is also a button that activates a flashing emergency light outside each resident's door.

Additional facts which are not in dispute are that on June 21, 2010, shortly after the alleged abuse of a vulnerable adult conduct by Plaintiff Ralph Williams, are that both Defendants Johnson and Peppers published statements to various third parties verbally and in writing alleging that the Plaintiff had sexually assaulted and/or abused Resident 39A.

Plaintiff was arrested on June 21, 2010 and charged with assault with intent to commit third degree criminal sexual conduct and abuse of a vulnerable adult. The Plaintiff's criminal case went to trial on February 7, 2012. The criminal charge of assault with intent to commit third degree criminal sexual conduct was nol prossed by the Solicitor and a unanimous jury rendered a verdict of not guilty on the charge of abuse of a vulnerable adult in the matter of State of *South Carolina v. Ralph C. Williams, Sr.* (Case Nos. 2010-GS-38-1389 and 2010-GS-1390).

**PLAINTIFF'S REBUTTTED THE PRESUMPTION OF GOOD FAITH - Under
Omnibus Adult Protection Care ACT (OMPA)**

Under The OMPA, § 43-35-75(A), there is a presumption that those persons who "report pursuant to the act or who participate in an investigation or judicial proceeding resulting from a report" acts in good faith and therefore is immune from civil or criminal proceeding. (*see attached statute S.C. Code Ann. 43-35-75(A)*). Significantly however, the OMPA provides that "[i]n a civil or criminal proceeding good faith is a rebuttable presumption.

Under South Carolina law, the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d. 203 (Ct. App 2002) *citing* State v. Baucom, 340 S.C. 339, 351 S.E.2d 922 (2000). The legislature's intent should be ascertained primarily from the plain language of the statute. Morgan, supra. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. When faced with an undefined statutory term, the term must be interpreted with its usual and customary meaning. Id. In interpreting the statute, the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law should be considered. Whitner v. State 328 S.C. 1, 492 S.E.2d. 777 (1997). "If legislative intent is clear as reflected in the statutory language, any public policy as promulgated by this Court must give way." Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d. 296, 301 (2012).

to Hainer v. American Medical International, Inc., a case involving similar facts and similar statute. 328 S.C. 128, 492 S.E.2d 103 (1997). Similar to the OMPA in this case, Hainer involved a statutorily mandated duty to report misconduct involving a patient. In addressing the statutory duty to report the Court in Hainer, indicated that "we are unpersuaded by Hospital's claim that, because it had a statutory duty to report misconduct, malice is precluded. Id.

The Court in Hainer, provided a statutory construction analysis for its findings. Id. At 133-34. The Court *citing* Adkins v. Varn, stated "[w]here the terms of the statute are clear, the court must apply those terms according to their literal meaning." The Court in Hainer indicated that it "cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. *citing* Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993), *see also* Estate of Guide v. Spooner,

318 S.C. 335, 457 S.E.2d 623 (Ct. App. 1995) (*emphasis added* if Legislature had intended certain result in statute, it would have said so). The South Carolina Supreme Court in Hainer indicated that “[i]f the fact of the duty negated malice, the Legislature would have granted an absolute privilege . . .”. Id. at 134.

The statute in Hainer, involved a similar statute with the same purpose, of protecting individuals under nursing care, and mandatory provisions to encourage reporting of abuse or misconduct. The South Carolina Supreme Court has held that it should not “construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute’s scope.” Berkebile v. Outen, 426 S.E.2d 760 (1993). As previously stated “[t]he legislature’s intent should be ascertained primarily from the plain language of the statute.” Morgan, *supra*.

ACTUAL MALICE REBUTS THE PRESUMPTION OF GOOD FAITH

The South Carolina Supreme Court in Hainer stated that “[p]rivileged communications are either absolute or qualified. When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published . . . [w]hen qualified however, the plaintiff may recover if he shows the communication was actuated by malice.” Hainer at 133-134.

The speaker may exceed the scope of the qualified privilege by making a communication that “goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of plaintiff.” Murray v. Holnam, 344 S.C. 129, 1401, 542 S.E.2d 743, 749 (Ct. App. 2001). Actual Malice can be established upon a showing of ill will, recklessness, or a “conscious disregard of the Plaintiff’s rights.” Constant v. Spartanburg Steel Products, 316 S.C. 86, 447

S.E.2d 194 (1994); *See also Hainer*, 492 S.E.2d 103, 492 S.E.2d 103 (S.C. 1997) (*quoting Jones v. Garner*, 250 S.C. 479, 488, 158 S.E.2d 909 (1968)).

The Courts in South Carolina, have held that, it is not necessary that evidence must be offered of malignity or ill-will, nor that those facts should be found. Fulton v. Atlantic Coast Line R. Co., 220 S.C. 287, 296, 67 S.E.2d 425, 429 (1951). The time, place, and other circumstances of the preparation and publication of defamatory charges, as well as the language of the publication itself, are admissible evidence to show that the false charges were made with malice. Id. at 296.

Defendant Johnson made reckless inconsistent statements. Defendant Johnson stated in her nursing notes and incident report that she saw the Plaintiff with his pants down and climbing on top of Resident 39A (However, in her trial testimony Defendant Johnson added for the first time that the Plaintiff Ralph Williams was naked, on top of, and actually in the bed with Resident No. 39A). Moreover, for the first time at Plaintiff Ralph Williams criminal trial, Defendant Johnson testified that Resident 39A's breasts were exposed. At no time almost 5 (five) years earlier did Defendant Johnson report this in her nursing notes or to the Police as a basis for her suspicion. Defendant Johnson acknowledges she had a duty to be accurate in her notes. (see **Civil Trial Transcript at pgs. 149-180**).

Defendant Johnson never informed Plaintiff Ralph Williams that she suspected him of attempting to sexually assault Resident 39A, nor did she inform him of any emergency situation involving him or Resident No. 39A. Plaintiff Ralph Williams never even knew what he was being accused of until the Orangeburg Police Department arrived. The Defendants acknowledge this in their brief:

Defendant Johnson did not yell or scream for help, where she was aware that resident 39A was physically and mentally handicapped, even though she witnessed a naked man on top of Resident No. 39A attempting to sexually assault her.

Defendant Johnson walked out the room and did not push an audible alarm located in Room 39A. Defendant Johnson did not push the alarm that would activate a light that flashes at the Defendant's skilled nursing facility. Defendant Johnson passed other nurses who were in close proximity to get to Josette Peppers, who was in the break room. Pursuant to Defendant Peppers' testimony, she was at or near the snack machine near the break-room during the alleged assault. Other nursing staff was on duty closer to Room 39A but was never notified prior to Defendant Peppers, even though there were about 5 other people on the wing of the building where the alleged rape occurred.

THE PHYSICALL EVIDENCE DEMONSTRATES RECKLESSNESS

The evidence collected evidence in room, included but not limited to, Resident 39A's gown, briefs, blanket, sheet, cover, fitted sheet, as well as Plaintiff's scrubs tops, scrub bottoms, his underwear and a red shirt that was found on Resident 39A's bed. (see Civil Trial Transcript at pg. 280).

There was no DNA evidence on any of these items. Plaintiff Ralph Williams was in the middle of changing Resident 39A, who still had urine and feces on her.

In particular, Defendant Patricia Johnson testified to Defendant UniHealth's Perineal Care policy for changing the diapers of female patients which testimony is as follows:

“For females separate the labia, the clean downward from front to back with one stroke. Repeat using the clean side of the wash cloth wipe with each stroke. More than one wash cloth may be needed to be used. Rinse with clean wash cloth if applicable. Pat area dry with towel. Position patient on resident on side. Clean vagina area from anus to rectum with one stroke. Repeat until area is clean using clean part of the wash cloth. Wipe with each stroke. More than one washcloth wipe may be needed to use and pat dry with a towel” (see Civil Trial Transcript at pg. 230 line 11-20).

Johnson gave contradictory testimony as to when she finished changing Resident 39A’s briefs. Defendant Johnson initially testified that she finished changing her and “got all that mess of her” and later testified that she did not change resident 39A’s brief prior to the police arriving.

Defendant Johnson’s, testimony at trial is inconsistent on whether or not Resident 39A had been changed. IF Plaintiff Ralph Williams was in the bed with Resident 39A as Defendant Johnson testified, he would have had feces or urine on his scrubs (see Civil Trial Transcript at pgs. 149-180)..

Additionally, while Resident 39A was at the hospital, doctors and nurses conducted rape kit test, which were negative. Members of the Orangeburg Department of Public Safety also tested vaginal swabs from Resident 39A.

Moreover, the arresting officer, Officer Warrington, wrote a detailed report in June of 2010, and two years later testified in the criminal proceeding, indicating that Mr. Williams was cooperative and never tried to run. During the Civil Trial Officer Warrington had to have his recollection refreshed and testified from his previous notes. Incredibly despite Officer Warrington’s inability to remember the events surrounding Mr. Williams’ arrest from 4 (four)

years ago, he testified that Mr. Williams put his head down and said, "I'm sorry." This would have clearly been evidence that would have been in Officer Warrington's investigative notes or prior sworn testimony. (see **Civil Trial Transcript at pgs. 270-285**).

There was no DNA evidence from Ralph Williams identified on Resident 39A's genitalia, even though Defendant Johnson testified that he was naked and in the bed with Resident 39A. Moreover, there were no finger nail scrapings under Resident 39A's nails, or pubic hair.

The Defendant's offered testimony from Ms. Mary Rogers, a staff member at Dorn VA Medical Center in Columbia, South Carolina, who interviewed Mr. Williams while he was contemplating suicide for being on the news and in the newspapers for allegations of rape. During Ms. Rogers testimony she recorded that they had "already ripped off her diaper- which she was known to do." However, the evidence was clear that Ms. Mayes (Resident 39A) had a stroke, was partially paralyzed and could not use her hands and arms. Moreover, Ms. Rogers during her testimony acknowledged that her notes contained errors and that Ms. Rogers was communicating with Mr. Williams while he was under the cloud of being admitted for suicide. Mr. Williams denied ever stating Resident 39A ripped off her own diaper. Mr. Williams contended that it was impossible for Resident 39A to do so. Moreover, Johnson and Peppers also testified that Resident 39A was physically incapacitated. Mr. Williams testified that he did not finish changing Resident 39A's diaper, and that the patient still had feces and urine on her. Significantly, Defendant Johnson testified that "we changed her and got all that stuff off of her" Defendant Johnson testified the "stuff" she was talking about was water from a wet gown. Mr. Williams contended that "stuff was feces and urine. (see **Civil Trial Transcript at pgs. 731-734; see Civil Trial Transcript at pgs. 149-180**).

Defendant Johnson indicated in her voluntary statement to the Orangeburg Department of Public Safety that "there is no doubt in my mind that if I had not walked in room he would have had sex with her" The Courts in South Carolina have held that "[a] mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain. Holman citing Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898 (1987); Tyler v. Macks Stores, 275 S.C. 456, 272 S.E.2d 633 (1980). (see **Civil Trial Transcript at pgs. 149-180**).

In this case, Defendants Johnson and Peppers use exaggerated language. Defendant Johnson left a helpless patient in the room with Plaintiff Ralph Williams, did not scream or yell and did not press any emergency audible or visual alarm, despite testifying that Plaintiff Ralph Williams was naked and in bed with a physically and mentally handicapped Resident.

THE USE OF EXAGGERATED LANGUAGE WAS RECKLESS

Defendant Peppers made the same conclusory allegation as Defendant Johnson's Voluntary statement even though they did not see the same thing, at the same time. In addition, Defendant Peppers testimony at the criminal trial she testified that she did not actually see the Plaintiff in an undressed state or in contact with Resident 39A. (see **Civil Trial Transcript at pgs. 233-237**).

Despite the aforementioned facts, Defendant Peppers proclaimed that Ralph (Plaintiff) was going to have sex with the resident if he did not get caught in her voluntary statement to the Orangeburg Department of Public. Defendant Pepper also testified that Defendant Johnson told her that Plaintiff Ralph Williams was actually having sex with Resident. (see **Civil Trial Transcript at pgs. 233-237**).

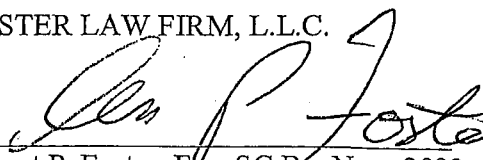
As the Court held in Fulton, “[t]he time, place, and other circumstances of the preparation and publication of defamatory charges, as well as the language of the publication itself, are admissible evidence to show that the false charges were made with malice”. Id. at 296. After almost two (2) years and approximately one (1) hour of jury deliberations, a unanimous jury rendered a verdict of not guilty on the charges of abuse of a vulnerable adult and the charge of assault with intent to commit third degree criminal sexual conduct in the matter of State of *South Carolina v. Ralph C. Williams, Sr.*

PLANTIFFS PRESENTED CIRCUMSTANTIAL EVIDENCE OF MALICE

Defendant Johnson testified that she had no prior run- ins with Plaintiff Williams. Ralph Williams has consistently asserted just the opposite, that there was prior run- ins between them. On two separate occasions in the months leading up to June 20, 2010, the Plaintiff Ralph Williams testified that Defendant Johnson refused to assist him with residents in emergency situations at the facility. Mr. Williams told his Supervisor Ms. Johnson that she should be fired, because she almost let a patient die. Mrs. Linda Williams also testified about how upset Mr. Williams was when she picked him up from work because a patient had almost died. Additionally, on another occasion, Plaintiffs Ralph and Linda Williams testified that Defendant Johnson telephoned the Plaintiff's wife from the facility at 2:30 a. m., and was breathing on the phone, causing dissension in his marriage. Mrs. Williams testified that someone picked the phone up when she called back and said “My Name is Patricia Johnson” and slammed the phone down. Mrs. Williams never knew of Mrs. Patricia Johnson prior to this event. (see Civil Trial Transcript at pgs. 731-734; see Civil Trial Transcript at pgs. 649-701).

Respectfully submitted,

FOSTER LAW FIRM, L.L.C.



Robert P. Foster, Esq. SC Bar No.: 2093

Post Office Box 2123

601 East McBee Avenue

Greenville, South Carolina 29602

Phone: (864) 242-6200 Fax: (864) 233-0290

and

Javá O. Warren, Esq.

The Law Office of Javá O. Warren

4919 Albemarle Rd., Suite 106

Charlotte, North Carolina 28205

Phone: (704) 568-8439 Fax: (704) 568-8499

May 14, 2015

Greenville, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

CIVIL ACTION NO. 2012-CP-38-845

RALPH C. WILLIAMS, SR., and LINDA)
WILLIAMS,)

Plaintiffs,)

**RESPONSE TO PLAINTIFFS'
POST-TRIAL MEMORANDUM ON
ISSUE OF STIPULATION**

v.)

PATRICIA A. JOHNSON, JOSETTE)
PEPPERS, and UNIHEALTH POST-ACUTE)
CARE – ORANGEBURG, LLC,)

Defendants.)

During the May 29, 2015 hearing on the Post-Trial Motions, Plaintiffs distributed a Memorandum On Issue of Stipulation by Defendants (the “New Motion”). Having been submitted far beyond the deadline for submitting post-trial motions, not only was the New Motion untimely, it was also ungrounded in fact, and Plaintiffs had repeatedly waived the arguments therein.

INTRODUCTION

In the New Motion, Plaintiffs allege that the Parties had stipulated that Plaintiffs would be relieved of their burden of proof of establishing all elements of their *respondeat superior* claim. Not only is this allegation completely false, Plaintiffs now claim that Defendants violated the alleged “stipulation” and somehow prejudiced the Plaintiffs’ case. Despite having never made this argument at any point in the trial, Plaintiffs then ask for the extraordinary remedy of having the Court disregard verdict form questions 3 and 4, or in the alternative, grant the Plaintiffs’ Motion for Judgment Notwithstanding the Verdict on the issues of the scope of the nurses’ employment in Plaintiffs’ favor. Plaintiffs’ arguments are without merit because there was no agreement or stipulation, and any arguments regarding the same have been repeatedly waived by Plaintiffs.

- The Parties never had an agreement or stipulation that Plaintiffs would somehow be relieved of establishing all elements of their prima facie case. In fact, the trial court specifically addressed the issue by explaining that the jury charges and instructions will be based on anything that the facts and evidence have, or arguably could have, proven. (See Trial Transcript, p. 93, lines 11-14.)
- Plaintiffs' arguments ignore South Carolina law regarding the burden of proof when alleging that an employee's conduct falls within the scope of employment and whether the employer is therefore liable. Plaintiffs' arguments also ignore their own Counsel's arguments to the jury regarding the alleged actions of Defendants Patricia Johnson and Josette Davis (hereinafter "Nurse Employees").
- Plaintiffs' arguments in the New Motion were waived. Prior to May 29, 2015, Plaintiffs never previously asserted on the trial record or in any briefings in support of post-trial motions that the Parties had an agreement or stipulation regarding scope of employment arguments or evidence. Accordingly, Plaintiffs waived any objections regarding the same.

For these reasons, the Court should disregard Plaintiffs' arguments in the New Motion.

AUTHORITY AND ARGUMENTS

A. The Trial Transcript shows that the Parties never entered a stipulation relieving Plaintiffs of their burden to prove all elements of their claims.

Plaintiffs' New Motion contains intentionally vague references to the Trial Transcript in support of their contention that the Parties had stipulated that Plaintiffs did not need to prove every single element of each of their claims. It is telling that Plaintiffs' New Motion does not provide a single specific quote or citation because there simply was no such agreement or stipulation between the Parties.

The relevant portion of the Trial Transcript that Plaintiffs generically reference in their New Motion starts at page 89, line 22 and ends at pg. 93, line 15 (hereinafter "Relevant Trial Transcript" and attached hereto as Exhibit 1). As indicated therein, Defendants' Counsel was making arguments in support of Defendants' final Motion in Limine, which sought to prevent Plaintiffs' counsel from manipulating arguments made *arguendo* in Unihealth's Motion for Summary Judgment and thereby "exclude the plaintiffs from alleging that the facility has taken the position that these two nurses acted intentionally and had a desire to do something harmful to Ralph Williams." (Ex. 1, p. 90, lines 4-13) At one point during the back and forth arguments between Counsel, Plaintiffs' Counsel specifically asked about jury charges and intentional conduct.

Mr. Foster: So is Unihealth and Peppers and Johnson saying that they don't want to make any arguments about any intentional conduct, they don't want to ask for a jury charge on intentional conduct and how it may affect the case?

Mr. Arnold: That is not.

(Ex. 1, p. 91, lines 21-25.) Immediately thereafter, the trial court explained, "I don't know what – until I find out what the testimony is I'm not going to be able to tell you what the charge is going to be." (Ex. 1, p. 92, lines 1-3.) The trial court later explained that "[the court will] be charging anything that the facts have – could arguably prove and like that. We'll go through and charge that. We'll deal with that at the end of the case, okay." (Trial Transcript, p. 93, lines 11-14.) Notably, the words "agree," "agreement," "stipulate" or "stipulation" do not appear anywhere within the five pages of Relevant Trial Transcript. (See Ex. 1.) Plaintiffs did not argue at that time or at any time during the trial that there was any agreement that would relieve them of their burden of proving all the elements of their case. Moreover, when the jury was charged on the issue of *respondeat superior* and provided the verdict form, Plaintiffs made no

objections regarding the *respondeat superior* charges and certainly did not assert that there was any type of agreement or stipulation making the charges or verdict form improper. These “stipulation” arguments are entirely manufactured after the fact.

In summary, the record citations referenced by Plaintiffs were taken out of context, there was no agreement or stipulation between the Parties, and it was abundantly clear that the trial court would issue jury instructions and provide a verdict form based upon the evidence and arguments presented during the trial.

B. Plaintiffs failed to meet their burden of proof, and Plaintiffs’ own arguments were that the Nurse Employees acted outside the scope of the employment.

Under South Carolina law, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A *plaintiff seeking recovery* from the master for injuries *must establish* that the relationship existed at the time of the injuries, *and also that the servant was then about his master’s business* and acting within the scope of his employment. *Id.* at 301 (emphasis added). Moreover, the burden of proof is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer’s business. See Vereen v. Liberty Life Insurance Co., 306 S.C. 423, 427 (1991) (holding that burden of production and persuasion are with plaintiff and defendant “was free to leave the burden of proof on the [plaintiffs] and simply rely for its defense on the cross examination of their witnesses”).

During the trial, Plaintiffs’ Counsel declined to argue that the Nurse Employees’ conduct “was then about [their] master’s business,” but instead made arguments to the contrary. More specifically, as pointed out in Unihealth’s Post-Trial Motions, Plaintiffs’ Counsel elicited testimony and argued to the jury that the conduct of the Employee Nurses was intentional and fell outside the scope of employment because wicked conduct, making “deliberate” false

statements and “destroying” evidence, bearing “false witness against thy neighbor,” being a calculating woman, and trying to “set a person up” do not further the business purpose of a nursing home facility. See Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006). The Plaintiffs had the burden to prove that the Nurse Employees acted within the scope of their employment, and their failure to meet that burden was direct result of their own arguments and presentation to the jury.

C. Plaintiffs waived the arguments asserted in the New Motion.

As noted in detail above, Plaintiffs’ New Motion claims that the Parties reached an agreement or stipulation prior to the trial; however, this argument was not raised until the day of the post-trial motions hearing on May 29, 2015 – nearly 10 months after the jury reached a verdict – and was therefore waived. Moreover, at no time during trial did the Plaintiffs assert that there was any stipulation whatsoever. Plaintiffs also failed to raise any alleged stipulation as a basis for objecting to the proposed jury instructions or the proposed verdict form that the Trial Court presented to the Parties. More specifically, Plaintiffs only had two objections to the Trial Court’s jury charges: (1) an objection to a portion of the Omnibus Act that was to be read related to criminal penalties; and (2) an objection to the Trial Court’s failure to provide instruction regarding the continuing publication doctrine. (See Trial Transcript, p. 756; attached hereto as Exhibit 2.)

Regarding the Trial Court’s proposed verdict form, Plaintiffs did not make any objection based on an alleged agreement as grounds for excluding verdict Interrogatories 3 and 4. Instead, Plaintiffs responded to the Trial Court’s presentation of the verdict form by moving for Directed Verdict on the issue course and scope of the nurses’ employment but at no point contended that the Parties stipulated or had an agreement as to that issue. (See Trial Transcript, pp. 751-754; attached hereto as Exhibit 3.) Thus, even assuming *arguendo* that there had been any conceivable agreement or stipulation for arguments and evidence regarding scope of employment (which there was not),

Plaintiffs clearly waived any arguments regarding the same when they failed to raise an objection when the Trial Court reviewed the jury instructions and verdict form.

After the trial, the deadline for submitting post-trial motions in this case was September 18, 2014. Plaintiffs submitted their post-trial motions with briefs in support and did not assert any argument regarding an alleged "agreement" or "stipulation" between the Parties. Thereafter, upon receipt of Trial Transcript in March 2015, the Trial Court permitted the Parties to have additional time for the *limited* purpose of updating their arguments in their initial briefs with specific quotations and citations no later than May 1, 2015. This additional time period was not an opportunity to re-draft post-trial motions or create new arguments.

In summary, at trial Plaintiffs failed to assert any arguments regarding an alleged stipulation. Plaintiffs likewise failed to object to the verdict form on the basis of an alleged stipulation. Plaintiffs failed to object to the Court's charges on *respondeat superior*. Finally, Plaintiffs failed to assert an argument regarding an alleged stipulation in their post-trial motions and therefore waived any such argument. There was no stipulation.

CONCLUSION

For the reasons set forth above, the Court should disregard the arguments presented in Plaintiffs' New Motion. Plaintiffs were never relieved of their burden to prove every element of their case.

[signature on following page]



Jason E. Bring
South Carolina Bar No. 100275
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
jason.bring@agg.com
tyler.arnold@agg.com

Attorneys for Defendants

June 10, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Ralph C. Williams, Sr., and Linda Williams,

Plaintiffs,

v.)

Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care – Orangeburg, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CA No. 2012-CP-38-845

**PLAINTIFFS' MOTION FOR
RECONSIDERATION
AND TO ALTER OR
AMEND THE JUDGMENT**

FILED FOR RECORD
WINNIE B. CLARK
JAN 23 - 9 A 11:17
CLERK OF COURT
ORANGEBURG COUNTY, SC

TO: Tyler Arnold and Jason Bring, Arnall, Golden Gregory, LLP, attorneys for the Defendants.

YOU WILL PLEASE TAKE NOTICE:

That the undersigned attorneys for the Plaintiffs do hereby move, pursuant to Rule 59, SCRPC, for the court to reconsider its ruling and for an order altering or amending the Order and Judgment of the Court dated January 14, 2016, granting a new trial in this matter. Plaintiffs also request that the court hear and rule upon Plaintiffs' post-trial motions timely filed following the jury's verdict in this case.

This motion is timely filed inasmuch as the undersigned received notice of the Order being transmitted to the Orangeburg Clerk of Court by letter of January 20, 2016, from Defendant's law firm, Arnall Golden Gregory, LLP and received by the undersigned January 25, 2016. This matter is requested to be heard no sooner than 10 days from the date hereof, and after a briefing schedule has been established by the Court.

The Plaintiffs assert that the trial court abused its discretion because the court's decision to invoke the thirteenth juror doctrine and grant a new trial absolute was controlled by an error of law and was wholly unsupported by the evidence. *Folkens v. Hays*, 300 S.C. 251, 387 S.E.2d

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

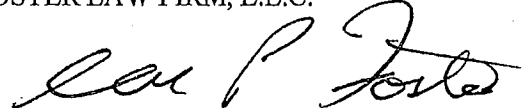
265 (1990); *Youmans v. S.C. Dep't of Transp.*, 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008); *Trivelas v. S.C. Dep't of Transp.*, 357 S.C. 545, 551-52, 593 S.E.2d 504, 508 (2004). *See also* *RFT Mgmt. Co., LLC v. Tinsley*, 399 S.C. 322, 732 S.E.2d 166 (2012) (a trial court's decision on a motion for a new trial upon the facts is measured by whether the court abused its discretion).

Plaintiffs incorporate the email transmission of the trial court to the parties of November 23, 2015 with instructions to counsel for Defendants to draw an Order and setting forth the trial court's statements upon which the court granted the new trial pursuant to the thirteenth juror doctrine. *See* Exhibit "A" attached. Plaintiffs assert that the court's statements indicate the court's decision is controlled by an error of law and lacks any support in the testimony and evidence at trial.

The order also finds that the remaining pending motions were denied as "moot." Pursuant to Rule 59, SCRCP, Plaintiffs further request that the court amend the judgment to rule on each of Plaintiffs' post-trial motions timely filed following the jury's verdict, which motions are incorporated herein by reference.

Respectfully submitted,

FOSTER LAW FIRM, L.L.C.



Robert P. Foster, Esq. SC Bar No.: 2093
Post Office Box 2123
601 East McBee Avenue
Greenville, South Carolina 29602
Phone: (864) 242-6200 Fax: (864) 233-0290

and

Javá O. Warren, Esq.
The Law Office of Javá O. Warren
4919 Albemarle Rd., Suite 106
Charlotte, North Carolina 28205
Phone: (704) 568-8439 Fax: (704) 568-8499

February 2, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO. 2012-CP-38-845
	)	
RALPH C. WILLIAMS, SR., and	)	
LINDA WILLIAMS,	)	
	)	
Plaintiffs,	)	DEFENDANTS' RESPONSE TO
	)	PLAINTIFFS'
	)	MOTION FOR RECONSIDERATION
v.	)	
	)	
PATRICIA A. JOHNSON, JOSETTE	)	
PEPPERS, and UNIHEALTH POST-	)	
ACUTE CARE – ORANGEBURG,	)	
LLC,	)	
	)	
Defendants.	)	

Defendants Patricia A. Johnson, Josette Davis (*formerly Josette Peppers*), and Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter collectively “Defendants” or individually identified as “Johnson” or “Davis” or “Unihealth”), by and through their undersigned attorneys, hereby respond to Plaintiffs’ Motion for Reconsideration.

**SUMMARY OF PLAINTIFFS’ ARGUMENTS AND
DEFENDANTS’ RESPONSE TO THE SAME**

In their two-page Motion for Reconsideration, Plaintiffs provide a procedural history, cite to a string of four cases regarding abuse of discretion in granting a new trial,¹ and then summarily argue in a single sentence that the Court “abused its discretion” by granting the Defendants’ Motion for New Trial, referencing only the trial court’s email transmission requesting that Defendants’ draft a proposed order.² Notably absent from the Plaintiffs’ Motion

¹ Of the four cases cited, only one case, *Youmans v. S.C. Dept. of Transportation*, 380 S.C. 263 (Ct. App. 2008), overturned the trial court’s use of the thirteenth juror doctrine in the granting of a new trial. More specifically, the *Youmans* court found that the trial court abused its discretion in granting a new trial “based upon length of time of deliberations.” *Youmans*, 380 S.C. at 288.

² To the extent that Plaintiffs’ reference to the Court’s email transmission requesting a proposed order somehow constituted an error or abuse of discretion, Defendants note that S.C.R.C.P. Rule 5(b)(3) specifically contemplates the submission and service of proposed orders to the Court for consideration. Accordingly, any argument that a request for a proposed order constitutes error or abuse is without merit.

for Reconsideration is: (1) any analysis or explanation regarding how the trial court potentially made an error of law, or (2) why the decision to grant the new trial was unsupported by the evidence. In summary, Plaintiffs' Motion for Reconsideration is a form motion requesting that the Court reconsider its Order granting the Defendants' Motion for New Trial ("the Order") without providing any explanation or basis for the same. In response to the Motion for Reconsideration, Defendants maintain that the Court's decision was not controlled by an error of law. Further, as set forth in the Order, the Court reviewed of the evidence and trial testimony and specifically "[f]ound] that the evidence did not justify the verdict." Under South Carolina law, it was clearly within the Court's discretion "to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." Lane v. Gilbert Constr. Co., 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). The Court applied the correct legal standard for granting a new trial, and when conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable. *See Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-14 (1938) (holding a "judge . . . [, sitting as] the thirteenth juror, possesses the veto power to the Nth degree . . ."). For these reasons, the Court should deny Plaintiffs' Motion for Reconsideration.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC ("UniHealth") in June

2010.³ Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs' allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.' Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's supply cart sitting outside of Room 39 in the facility.⁴ When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.⁵ The proper procedure for a CNA changing a resident's adult brief does not require a CNA to be on a resident's bed.⁶ Johnson confronted Ralph Williams by stating, "What are you doing!"⁷ Ralph Williams responded, "Will you please shut the door."⁸ Johnson left the door open,⁹ and she ran to get another nurse, Davis.¹⁰ The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.¹¹ Thereafter, Ralph Williams was escorted out of the room without objection,¹² and Davis went to alert the facility's Director of Nursing and the local

³ (See Pls.' Am. Compl.)

⁴ (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)

⁵ (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)

⁶ (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)

⁷ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)

⁸ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)

⁹ (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)

¹⁰ (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)

¹¹ (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)

¹² (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of

authorities.¹³ The Orangeburg County police arrived at the facility and investigated the incident.¹⁴ The police determined that there was sufficient cause to arrest Ralph Williams.¹⁵

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed \$102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling \$897,500.00 (\$200,000 against Johnson; \$97,500 against Davis; and \$600,000 against UniHealth).

D. Granting of Motion for New Trial

The Parties filed timely post-trial motions after the jury's verdict was rendered. Upon review and consideration of the motions, the Court initially requested in August that the Parties' submit supplemental citations to the record and then, in November, requested that Defendants submit a proposed order granting their Motion for New Trial Absolute. The proposed order was submitted via email, with all parties copied, on December 9, 2015. The Order was signed on January 14, 2016 and entered by the clerk on January 22, 2016.

II. LEGAL AUTHORITY AND ARGUMENT

For the reasons set forth below and as previously explained in their own Post-Trial Motions, the Court properly granted the Defendants' Motion for New Trial Absolute, and Plaintiffs' Motion for Reconsideration of the same should be denied.

Josette Davis, p. 250, lines 3-10.)

¹³ (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

¹⁴ (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

¹⁵ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

A. South Carolina's Thirteenth Juror Doctrine

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); *see also* *Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses "veto power to the Nth degree." *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina's Omnibus Adult Protection Act

South Carolina's Omnibus Adult Protection Act requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses "having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall

report the incident in accordance with this section.” S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, “in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately.” S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has “reason to believe” or who “suspect[s]” sexual assault has no discretion in the matter—she “must” report the incident and notify law enforcement “immediately.” “A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.” S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

As set forth in the Order, based on the testimony of the witnesses and the evidence presented at trial, the Court exercised its discretion as the thirteenth juror and granted a new trial.¹⁶ The Court found that the evidence showed that Ralph Williams, by his own testimony, was on a female resident’s bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident’s bed.¹⁷ In the end, the Court found that the evidence did not justify the verdict, and the facts of the case and the interests of justice persuaded the Court that a new trial was warranted.

¹⁶ Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforced the Court’s view that a new trial was warranted.

¹⁷ The Court’s Order, which cited specific testimony and evidence, was not intended to be nor was it exhaustive. The Order specifically provided that there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict.

III. CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiffs' Motion for Reconsideration.



Jason E. Bring
South Carolina Bar No. 100275
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8746
Fax: (404) 873-8747
jason.bring@agg.com
tyler.arnold@agg.com

Attorneys for Defendants

March 16, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR, and
LINDA WILLIAMS,

Plaintiffs,

v.

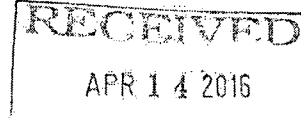
PATRICIA A. JOHNSON, JOSETTE
PEPPERS and UNIHEALTH POST-
ACUTE CARE-ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**PLAINTIFFS' SUPPLEMENTAL
BRIEF ON MOTION TO RECONSIDER
AND TO AMEND OR ALTER
THE JUDGMENT**



An error of law controlled the thirteenth juror decision because the trial judge related to the parties that he may have made a mistake in charging the immunity statute. Incorrect charges given to the jury are errors of law. Fairchild v. SC DOT, 385 S.C. 344, 683 S.E.2nd 818 (2009); State v. Bryant, 391 S.C. 225, 705 S.E.2nd 465 (2010). Because the charge was incorrect, given the court's view of the evidence, the post-trial decision made was therefore controlled by this error, and Plaintiffs' requested relief it its post-trial motions should be ruled upon and the thirteenth juror decision set aside by the trial court.

The court's decision is controlled by an error of law because the trial judge erred in charging the jury on the scope of employment, when the Defendants did not raise or discuss or offer evidence on the issue before the jury, and stated to the court that: "we do not want it stated that the facility has taken the position that that the ladies – acted intentionally. That is not our position." Tr. p. 90. After, the court responds, "if they were acting intentionally then the health care facility would not be liable." Tr. p. 91. Counsel then continues: "It would not be, but we're not going to be arguing that in this case, your honor." Tr. p. 91. Plaintiffs' counsel then states "... are they later going to do an about face and then ask you for a charge on intentional conduct that relieves UniHealth..." Id. Defense counsel responds "We're not

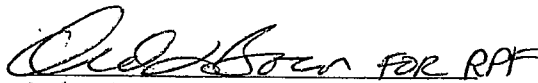
ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SC

The Defense attorneys proceed to ask that two of their individual clients (nurses) be put on the chopping block in the face of a direct conflict of interest. This was wrong under our ethics rules. Despite their representations that the defense was not going to be divided, upon which Plaintiffs relied to their detriment, they should be equitably estopped, and the wrong should be righted and the verdict form questions #3 and #4 should be set aside. Further, as stated in more detail in Plaintiffs' post-trial motions brief, it was an issue neither raised by the Pleadings nor tried by the express or implied consent of the parties (brief p. 6-9 dated 9-18-14 incorporated herein). This charge on scope of employment and verdict questions #3 and #4 were errors of law which created the inconsistency in the verdict. The remedy should have been to set questions #3 and #4 aside.

2

Respectfully submitted,

FOSTER LAW FIRM, L.L.C.

A handwritten signature in cursive script, appearing to read "Robert P. Foster for RPF".

Robert P. Foster, Esq. SC Bar No.: 2093
Post Office Box 2123
601 East McBee Avenue
Greenville, South Carolina 29602
Phone: (864) 242-6200 Fax: (864) 233-0290

and

Javá O. Warren, Esq.
The Law Office of Javá O. Warren
4919 Albemarle Rd., Suite 106
Charlotte, North Carolina 28205
Phone: (704) 568-8439 Fax: (704) 568-8499

April 7, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

RALPH C. WILLIAMS, SR., and
LINDA WILLIAMS,

Plaintiffs,

v.,

PATRICIA A. JOHNSON, JOSETTE
PEPPERS, and UNIHEALTH POST-
ACUTE CARE – ORANGEBURG,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2012-CP-38-845

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' SUPPLEMENTAL BRIEF
TO THEIR MOTION FOR
RECONSIDERATION**

Defendants Patricia A. Johnson, Josette Davis (*formerly Josette Peppers*), and Unihealth Post-Acute Care – Orangeburg, LLC (hereinafter collectively “Defendants” or individually identified as “Johnson” or “Davis” or “Unihealth”), by and through their undersigned attorneys, hereby respond to Plaintiffs’ Supplemental Brief to their Motion for Reconsideration.

**SUMMARY OF ARGUMENTS IN OPPOSITION TO BOTH
THE FILING OF THE SUPPLEMENTAL BRIEF
AND THE MOTION FOR RECONSIDERATION**

As an initial point, Plaintiffs’ Supplemental Brief should be stricken from the record and not considered by the Court. SCRPC Rule 7(b)(1) clearly mandates that motions “shall state with particularity the grounds therefor, ...” Accordingly, the Court should not allow Plaintiffs to file a shell, two-page motion on February 1, 2016 in an effort to comply with a filing deadline,¹ and then, 67 days later, file a supplemental brief wherein they *attempt* to “state with particularity the grounds” for granting the reconsideration motion. In summary, Plaintiffs’

¹ Plaintiffs’ initial motion provided a brief procedural history, cited to a string of four cases regarding abuse of discretion in granting a new trial, and then summarily argue in a single sentence that the Court “abused its discretion” by granting the Defendants’ Motion for New Trial, referencing only the trial court’s email transmission requesting that Defendants’ draft a proposed order. Notably absent from the Plaintiffs’ Motion for Reconsideration is: (1) any analysis or explanation regarding how the trial court potentially made an error of law, or (2) why the decision to grant the new trial was unsupported by the evidence.

Motion for Reconsideration filed on February 1 was a form motion lacking any explanation or particularity, and the Supplement Brief is an attempt to remedy the initial motion's inadequacies and should not be considered by the Court.

Notwithstanding the filing a sham motion to satisfy a filing deadline and over two months later attempting to supplement the same, Defendants maintain that the Court's decision to grant a new trial was not controlled by an error of law. As set forth in the Order, the Court reviewed of the evidence and trial testimony and specifically "f[ound] that the evidence did not justify the verdict." Under South Carolina law, it was clearly within the Court's discretion "to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." Lane v. Gilbert Constr. Co., 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). The Court applied the correct legal standard for granting a new trial, and when conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable. *See* Worrell v. South Carolina Power Co., 186 S.C. 306, 313-14 (1938) (holding a "judge . . . [, sitting as] the thirteenth juror, possesses the veto power to the Nth degree . . ."). Furthermore, Plaintiffs' argument about the jury charges on scope of employment are without merit, and the arguments regarding statements by Defendants' counsel while presenting their Motion in Limine prior to the trial are taking completely out of context. For these reasons, the Court should deny Plaintiffs' Motion for Reconsideration.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiffs' Claims and Allegations in the Amended Complaint

In this case, Plaintiffs asserted causes of action against Defendants for (1) defamation (both libel and slander) and (2) loss of consortium regarding events that occurred at the nursing home operated by Defendant UniHealth Post-Acute Care – Orangeburg, LLC ("UniHealth") in June

2010.² Plaintiffs alleged that Defendants Johnson and Davis defamed Plaintiff Ralph C. Williams, Sr. (hereinafter "Ralph Williams") when they reported their suspicions that Ralph Williams was attempting to have sex with a female nursing home resident. Plaintiffs' allegations and theory of liability against UniHealth were based on the *respondeat superior* doctrine. (See Pls.' Am. Complaint, ¶¶ 163-165, 180-182, 198-200, 215-217, 252-254, 265-268.)

B. Trial Testimony and Undisputed Facts

After jury selection, the trial in this case began on Wednesday, September 3, 2014 and concluded on Monday, September 8, 2014. The evidence showed that during the early morning hours of June 21, 2010 Johnson found Ralph Williams's supply cart sitting outside of Room 39 in the facility.³ When she opened the door to Room 39, Johnson saw Ralph Williams with his pants at least partially down and on the bed with the resident, a vulnerable adult.⁴ The proper procedure for a CNA changing a resident's adult brief does not require a CNA to be on a resident's bed.⁵ Johnson confronted Ralph Williams by stating, "What are you doing!?"⁶ Ralph Williams responded, "Will you please shut the door."⁷ Johnson left the door open,⁸ and she ran to get another nurse, Davis.⁹ The two nurses returned to Room 39 and found Mr. Williams in the corner of the room adjusting his pants.¹⁰ Thereafter, Ralph Williams was escorted out of the room without objection,¹¹ and Davis went to alert the facility's Director of Nursing and the local

² (See Pls.' Am. Compl.)

³ (See Trial Transcript, Testimony of Patricia Johnson, p. 158, lines 12-14 and pg. 188, line 18; see also Trial Transcript, Testimony of Ralph Williams, p. 507, line 15.)

⁴ (See Trial Transcript, Testimony of Ralph Williams, pg. 508, lines 1-3.)

⁵ (See Trial Transcript, Testimony of Patricia Johnson, pg. 216, line 6 through pg. 218, line 1; Testimony of Josette Peppers, pg. 254, lines 18-23; Testimony of Deborah Pigott, pg. 742, line 10 through pg. 745, line 2; Testimony of Ralph Williams, pg. 564, line 18 through pg. 565, line 186.)

⁶ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 21-22.)

⁷ (See Trial Transcript, Testimony of Ralph Williams, p. 508, lines 22.)

⁸ (See Trial Transcript, Testimony of Ralph Williams, p. 509, lines 1-3.)

⁹ (See Trial Transcript, Testimony of Patricia Johnson, p. 178, lines 9-10 and pg. 203, lines 19-25.)

¹⁰ (See Trial Transcript, Testimony of Josette Davis, p. 245, lines 1-7; see also Trial Transcript, Testimony of Patricia Johnson, p. 172, lines 2-4 and p. 197, lines 4-6; Trial Transcript, Testimony of Ralph Williams, pg. 509, lines 9-14.)

¹¹ (See Trial Transcript, Testimony of Patricia Johnson, p. 209, lines 9-22; see also, Trial Transcript, Testimony of

authorities.¹² The Orangeburg County police arrived at the facility and investigated the incident.¹³ The police determined that there was sufficient cause to arrest Ralph Williams.¹⁴

C. The Jury's Verdict

At the conclusion of the trial, the jury returned a special verdict form with interrogatory responses finding that Johnson and Peppers did not act in good faith when they reported their suspicions about Ralph Williams's actions on June 21, 2010. The jury also returned special verdict interrogatory responses indicating that the two nurses acted outside the scope of their employment when they made their reports. Regarding damages, the verdict form listed \$102,500.00 in actual damages to Ralph Williams, nothing to Plaintiff Linda Williams, and punitive damages totaling \$897,500.00 (\$200,000 against Johnson; \$97,500 against Davis; and \$600,000 against UniHealth).

D. Granting of Motion for New Trial

The Parties filed timely post-trial motions after the jury's verdict was rendered. Upon review and consideration of the motions, the Court initially requested in August that the Parties' submit supplemental citations to the record and then, in November, requested that Defendants submit a proposed order granting their Motion for New Trial Absolute. The proposed order was submitted via email, with all parties copied, on December 9, 2015. The Order was signed on January 14, 2016 and entered by the clerk on January 22, 2016.

II. LEGAL AUTHORITY AND ARGUMENT

For the reasons set forth below and as previously explained in their own Post-Trial Motions, the Court properly granted the Defendants' Motion for New Trial Absolute, and Plaintiffs' Motion for Reconsideration of the same should be denied.

Josette Davis, p. 250, lines 3-10.)

¹² (See Trial Transcript, Testimony of Josette Davis, p. 250, lines 22-25 and p. 251, lines 1-25.)

¹³ (See generally Trial Transcript, Testimony of ODPS Officer Robert Warrington, pp. 271-284 and ODPS Officer Stephanie Scott, pp. 289-301.)

¹⁴ (See Trial Transcript, Testimony of Officer Robert Warrington, p. 286, lines 23-25 and p. 287, line 1.)

A. South Carolina's Thirteenth Juror Doctrine

"In South Carolina, a trial judge may grant a new trial following a jury verdict under the Thirteenth Juror doctrine. The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts," *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks and citations omitted). Under the thirteenth juror doctrine, the trial court may grant a new trial based on its view of the facts. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). The Supreme Court reviewed the doctrine in *Folkens*, stating:

This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror "hangs" the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the "thirteenth juror" vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. (internal citation omitted); see also *Rivera v. Newton*, 401 S.C. 402, 413-415 (S.C. Ct. App. 2012); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). Thus, when acting as thirteenth juror, the trial court possesses "veto power to the Nth degree." *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 313-314, 195 S.E. 638, 641 (1938).

B. South Carolina's Omnibus Adult Protection Act

South Carolina's Omnibus Adult Protection Act requires nurses to "immediately" contact law enforcement in connection with "suspected sexual assault," and encourages liberal reporting by granting nurses qualified immunity for making such reports. By statute, all nurses "*having reason to believe* that a vulnerable adult has been or is likely to be abused, neglected, or exploited *shall*

report the incident in accordance with this section.” S.C. Code Ann. § 43-35-25(A) (emphasis added). Additionally, “in cases of ... *suspected* sexual assault law enforcement *must* be contacted immediately.” S.C. Code Ann. § 43-35-25(G) (emphasis added). A nurse who has “reason to believe” or who “suspect[s]” sexual assault has no discretion in the matter—she “must” report the incident and notify law enforcement “immediately.” “A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.” S.C. Code Ann. § 43-35-75(A).

C. The Evidence Did Not Support The Verdict

As set forth in the Court’s Order, based on the testimony of the witnesses and the evidence presented at trial, the Court properly exercised its discretion as the thirteenth juror and granted a new trial.¹⁵ The Court found that the evidence showed that Ralph Williams, by his own testimony, was on a female resident’s bed with the door closed in the middle of the night and his pants had at least somewhat fallen down. The evidence further showed that nurses are not supposed to get on a resident’s bed.¹⁶ In the end, the Court found that the evidence did not justify the verdict, and the facts of the case and the interests of justice persuaded the Court that a new trial was warranted.

¹⁵ Albeit for different reasons, both the Plaintiffs and the Defendants have moved to set aside or otherwise modify the verdict, which reinforced the Court’s view that a new trial was warranted.

¹⁶ The Court’s Order, which cited specific testimony and evidence, was not intended to be nor was it exhaustive. The Order specifically provided that there was other substantial evidence admitted at trial which causes the Court to conclude that the evidence did not justify the verdict.

D. The Trial Transcript shows that the Plaintiffs never objected to the jury charged or verdict form and were never relieved from their burden to prove all elements of their claims.

Plaintiffs' Supplemental Brief contains intentionally vague references to the Trial Transcript in support of their argument that the Court erred by charging the jury on scope of employment and including interrogatories regarding the same on the verdict form. However, Plaintiffs blatantly fail to cite the relevant portion of the transcript that shows: (a) Plaintiffs' counsel did not object to the jury charges; (b) Plaintiffs' counsel did not object to the verdict form; and (c) Plaintiffs' counsel actually argued that the nurse employees outside the scope of their employment in closing arguments.

The relevant portion of the Trial Transcript that Plaintiffs generically reference in their Supplemental Brief starts at page 89, line 22 and ends at pg. 93, line 15 (hereinafter "Relevant Trial Transcript" and attached hereto as Exhibit 1). As indicated therein, Defendants' Counsel was making arguments in support of Defendants' final Motion in Limine, which sought to prevent Plaintiffs' counsel from manipulating arguments made *arguendo* in Unihealth's Motion for Summary Judgment and thereby "exclude the plaintiffs from alleging that the facility has taken the position that these two nurses acted intentionally and had a desire to do something harmful to Ralph Williams." (Ex. 1, p. 90, lines 4-13) At one point during the back and forth arguments between Counsel, Plaintiffs' Counsel specifically asked about jury charges and intentional conduct.

Mr. Foster: So is Unihealth and Peppers and Johnson saying that they don't want to make any arguments about any intentional conduct, they don't want to ask for a jury charge on intentional conduct and how it may affect the case?

Mr. Arnold: That is not.

(Ex. 1, p. 91, lines 21-25.) Immediately thereafter, the trial court explained, “I don’t know what – until I find out what the testimony is I’m not going to be able to tell you what the charge is going to be.” (Ex. 1, p. 92, lines 1-3.) The trial court later explained that “[the court will] be *charging anything that the facts have – could arguably prove and like that.* We’ll go through and charge that. We’ll deal with that at the end of the case, okay.” (Trial Transcript, p. 93, lines 11-14 (emphasis added).) Notably, the words “agree,” “agreement,” “stipulate” or “stipulation” do not appear anywhere within the five pages of Relevant Trial Transcript. (See Ex. 1.) Plaintiffs did not argue at that time or at any time during the trial that there was any agreement that would relieve them of their burden of proving all the elements of their case. In summary, the record citations referenced by Plaintiffs were taken out of context, there was no agreement or stipulation between the Parties, and it was abundantly clear that the trial court would issue jury instructions and provide a verdict form based upon the evidence and arguments presented during the trial.

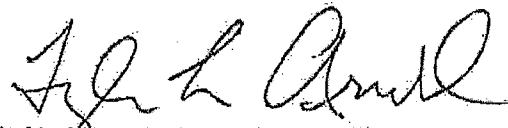
Next, when the Court set forth the jury charges on the issue of *respondeat superior* and provided the verdict form, Plaintiffs’ Counsel made no objections to the *respondeat superior* charges or regarding the verdict form – they merely responded, “No reply” and proceeded to make a Motion for Directed Verdict. Furthermore, Counsel certainly did not assert that there was any type of agreement or stipulation making the charges or verdict form improper. These arguments in the Supplemental Brief are entirely manufactured after the fact.

Finally, under South Carolina law, the doctrine of *respondeat superior* rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299 (1964). A *plaintiff seeking recovery* from the master for injuries *must establish* that the relationship existed at the time of the injuries, *and also that the servant was then about his master’s business* and acting within the scope of his employment. Id. at 301 (emphasis added). Moreover, the burden of proof

is with the plaintiff to show that the conduct of the employee fell within the scope of his or her employment at the employer's business. See Vereen v. Liberty Life Insurance Co., 306 S.C. 423, 427 (1991) (holding that burden of production and persuasion are with plaintiff and defendant "was free to leave the burden of proof on the [plaintiffs] and simply rely for its defense on the cross examination of their witnesses"). During the trial, Plaintiffs' Counsel declined to argue that the Nurse Employees' conduct "was then about [their] master's business," but instead made arguments to the contrary. More specifically, as pointed out in Unihealth's Post-Trial Motions, Plaintiffs' Counsel elicited testimony and argued to the jury that the conduct of the Employee Nurses was intentional and fell outside the scope of employment because wicked conduct, making "deliberate" false statements and "destroying" evidence, bearing "false witness against thy neighbor," being a calculating woman, and trying to "set a person up" do not further the business purpose of a nursing home facility. See Armstrong v. Food Lion, Inc., 371 S.C. 271, 276 (2006). The Plaintiffs had the burden to prove that the Nurse Employees acted within the scope of their employment, and their failure to meet that burden was direct result of their own arguments and presentation to the jury.

III. CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiffs' Motion for Reconsideration.



Jason E. Bring
South Carolina Bar No. 100275
Tyler L. Arnold
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363

Ph: (404) 873-8746
Fax: (404) 873-8747
jason.bring@agg.com
tyler.arnold@agg.com

Attorneys for Defendants

August 1, 2016

)

)

)

5

)

)

)

)

)

)

)

)

)

255

opposing party knew or had notice of the particular grounds being relied upon. *Id.* By requiring notice to the court and the opposing party of the basis for the motion, Rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly. *Id.*

Therefore, when a motion is challenged for a lack of particularity, the court should ask whether any party is prejudiced by a lack of particularity or whether the court can comprehend the basis for the motion and deal with it fairly. *Id.* The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized. *Id.* When neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, applying an overly technical reading of the rules does not serve the purpose of Rule 7(b)(1). *Id.* See, also, *Lucey v. Meyer*, 401 S.C. 122, 132, 736 S.E.2d 274, 279 (Ct. App. 2012) (when the trial court is able to discern the relief requested, “[i]t is the substance of the requested relief that matters ‘regardless of the form in which the request for relief was framed.’”).

Defendants’ argument here demonstrates a fundamental misunderstanding of the South Carolina Rules of Civil Procedure and how they operate. Adopting the strict rule the Defendants advocate would not only violate *Camp* and its progeny, such an application of Rule 7(b)(1) would offend the policies underlying the rules of civil procedure. Compare *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (noting civil procedure rules should not be written or interpreted to create a trap for the unwary lawyer or party, citing to Rule 1, SCRCP (civil procedure rules “shall be construed to secure the just, speedy, and inexpensive determination of every action”)).

The motion Plaintiffs filed averred to the grounds Plaintiffs asserted in support of their

motion. This Court and the Defendants were able to discern the relief requested from the motion. In fact, Rule 7(b)(1) acknowledges that “[t]he requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.”

As to whether the motion was a “sham” as Defendants contend, there is nothing false or misleading about the motion. *See, e.g., Germofert Mfg. Co. v. Castles*, 97 S.C. 389, 393, 81 S.E. 665, 666 (1914) (“The word ‘sham’ is synonymous with ‘false’ and applicable to all pleadings which fall within its terms, whether good or bad in substance”; it indicates a pleading that is “manifestly false, and interposed to delay” and a pleading is not a “sham” merely because it may be “legally insufficient”). Defendants accuse Plaintiffs of filing a “sham motion” but do not aver that the motion is “false” or interposed for delay. The Court should reject this characterization of Plaintiffs’ motion and the subsequent memorandum in support.

The Court should deny the Defendants’ request to strike the memorandum in support of the motion and should consider the arguments contained therein.

II. Plaintiffs’ Contentions Have Merit

Defendants assert that the contentions contained in Plaintiffs’ memorandum are “without merit” and the arguments are “[taken] completely out of context.” (Response, p. 2). Again, the Court should not be persuaded by these arguments. This Court, and not the Defendants, will be the judge of whether the arguments Plaintiffs tendered have merit.

As for the context, Plaintiffs adhere to their contentions that Defendants sandbagged them and did so to avoid the obvious conflict of interest for defense counsel that arose once Defendant UniHealth contended its own employees acted on their own, that is, outside the scope of their employment. By suddenly changing positions and contending the nurses were acting

outside the scope of their employment with UniHealth, the nurses' own lawyer began casting blame on them to the benefit of their employer, whom the lawyer also represents. Counsel did this after assuring the Court, and Plaintiffs, that Defendants would not "divide the defense."

Defendants go to great pains to relate the testimony in a light most favorable to them. (Response, pp. 3-4, 6). Of course, the jury heard that evidence together with the other evidence outlined in Plaintiffs' memorandum of August 17, 2015. And while it is within this Court's discretion to grant a new trial under the "thirteenth juror" doctrine, the Court should *not* do so where a fair preponderance of the evidence supports the jury's verdict. *RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012).

What is fascinating here is that the same counsel represented and continues to represent both the employer, UniHealth, and its employee nurses whom UniHealth is claiming acted on their own, that is, outside the scope of their employment. To avoid this obvious concurrent conflict of interest prohibited by Rule 1.7, RPC, Rule 407, SCACR, UniHealth did not offer evidence on the scope of employment issue or argue the issue to the jury, and its counsel stated, "we do not want it stated that the facility has taken the position that the ladies – acted intentionally. That is not our position." (Tr. p. 90). The Court remarked "if they were acting intentionally then the health care facility would not be liable," (Tr. p. 91) to which Defendants' counsel responded, "it would not be, but we're not going to be arguing that in this case, Your Honor." (Tr. p. 91).

When Plaintiffs' counsel sought to verify that Defendants would not later on "do an about-face" and ask the Court "for a charge on intentional conduct that relieves UniHealth," Defendants' counsel replied "we're not going to be, you know, dividing the defense in that sense." (Tr. p. 92). Despite these assurances and Plaintiffs' reliance upon them, and despite the

lack of any evidence or argument on the point, the Defendants' counsel requested a jury instruction and two special verdict questions (#3 and #4) on scope of employment, over Plaintiffs' objections. (Tr. pp. 752, 753).

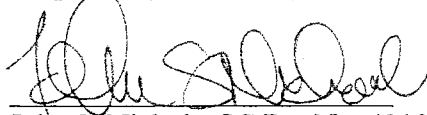
In the Defendants' response, purportedly filed on behalf of *all* the Defendants, counsel argues strenuously that the evidence showed the nurses were furthering their own agenda, they acted intentionally and outside the scope of their employment, they made "deliberate" false statements and "destroy[ed]" evidence, and are at best on their own in the fault found by the jury. (Response, p. 9). This argument is seriously detrimental to these nurses, and will be on retrial, yet the same counsel is purporting to represent their interests while trying to exonerate their employer by placing all blame on those employees. Such is offensive not only to the spirit of Rule 1.7 but to the letter of the Rule as well. Had Defendants stuck to their word and faced the jury in a united front, such a concurrent conflict would not have arisen or would have, at best, been waivable.

The Court should not permit the Defendants to whipsaw the Plaintiffs in this manner. The jury heard the evidence, heard the arguments, and rendered their verdict, even in the face of UniHealth's attempt to deflect undetached blame onto its own employees. The Defendants then asked this Court to use their change of position to undercut that verdict. What's rewarded will be repeated. The Court should hold the Defendants to their word, and prevent their lawyers from eviscerating the rules regarding concurrent conflicts of interest.

CONCLUSION

For the reasons stated in this and previous filings, Plaintiffs request that the Court reconsider its decision to grant the Defendants' motion for new trial, withdraw the prior order, and permit the jury's decision to stand.

Respectfully submitted,



John S. Nichols, SC Bar No. 4210
BLUESTEIN NICHOLS THOMPSON &
DELGADO, LLC
PO Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 771-8097 fax

Robert P. Foster, SC Bar No. 2093
FOSTER LAW FIRM, LLC
PO Box 2123
601 East McBee Avenue
Greenville, South Carolina 29602
Phone (864) 242-6200
Fax (864) 233-0290

Javá O. Warren
The Law Offices of Javá O. Warren
4919 Albemarle Rd., Suite 106
Charlotte, North Carolina 28205
Phone (704) 568-8439
Fax (704) 568-8499

August 11, 2016
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2012-CP-38-00845

Ralph Williams, Sr., and Linda Williams,
Plaintiffs,
v.
Patricia A. Johnson, Josette Peppers and UniHealth Post-Acute Care Orangeburg, LLC
Defendants.

September 2, 3, 4, 5 and 8, 2014
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge, and a jury

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

Robert Foster, Esquire
Jova Warren, Esquire
Attorney for the Plaintiff

Tyler Arnold, Esquire
Jason Bring, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

1	Jury Selection	20
2	Pretrial Conference	31
3	Jury sworn	106
4	Court's Opening	106
5	Plaintiff's Opening	110
6	Defendant's Opening	131
7	Plaintiff Rest	704
8	Motions	704
9	Defendant Rest	746
10	Motions	746
11	Plaintiff Close	760
12	Defendant Close	796
13	Plaintiff Reply	811
14	Charge	821
15	Verdict	845
16	Poll	849

17	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
18	Patricia Johnson direct.....	149
19	Patricia Johnson cross.....	182
20	Patricia Johnson redirect.....	220
21	Josette Peppers Davis .direct.....	233
22	Josette Peppers Davis .cross.....	238
23	Josette Peppers Davis .redirect.....	257
24	Josette Peppers Davis .recross.....	267
25		

	Williams v. UniHealth et al 9/2/14 - 9/5/14 & 9/8/14	3
1	Robert Warrington direct.....	270
2	Robert Warrington cross.....	286
3	Robert Warrington redirect.....	287
4	Stephanie Scott direct.....	288
5	Stephanie Scott cross.....	301
6	Stephanie Scott redirect.....	303
7	Jamie Smoak direct.....	304
8	Jamie Smoak cross.....	312
9	Brian Queen direct.....	323
10	Brian Queen cross.....	332
11	Brian Queen redirect.....	335
12	Brian Queen recross.....	335
13	Carl Shultz direct.....	340
14	Carl Shultz cross.....	350
15	Carl Shultz redirect.....	352
16	Lilly Gallman direct.....	354
17	Lilly Gallman cross.....	371
18	Terry Rivers direct.....	376
19	Terry Rivers cross.....	383
20	Cynthia Mack direct.....	386
21	Cynthia Mack cross.....	429
22	Cynthia Mack redirect.....	434
23	Ralph Williams, Jr direct.....	436
24	Earline Sabb direct.....	445
25	Connie Jackson direct.....	458

1	Ralph Williams Sr direct.....	464
2	Ralph Williams Sr cross.....	545
3	Ralph Williams Sr redirect.....	609
4	Ralph Williams Sr recross.....	631
5	Linda Williams direct.....	649
6	Linda Williams cross.....	684
7	Linda Williams redirect.....	703
8	April Bowman direct.....	720
9	April Bowman cross.....	730
10	Mary Rogers direct.....	731
11	Mary Rogers cross.....	735
12	Debbie Pigott direct.....	738
13	EXHIBITS:	
14	Plaintiff's Exhibit No. 1	102
15	Plaintiff's Exhibit No. 2	102
16	Plaintiff's Exhibit No. 2A	102
17	Plaintiff's Exhibit No. 2B	102
18	Plaintiff's Exhibit No. 2C	102
19	Plaintiff's Exhibit No. 2D	103
20	Plaintiff's Exhibit No. 3	103
21	Plaintiff's Exhibit No. 3A	103
22	Plaintiff's Exhibit No. 4	103
23	Plaintiff's Exhibit No. 6	103
24	Plaintiff's Exhibit No. 8	103
25	Plaintiff's Exhibit No. 9	103

1	Plaintiff's Exhibit No. 11	103
2	Plaintiff's Exhibit No. 12	103
3	Plaintiff's Exhibit No. 14A	329
4	Plaintiff's Exhibit No. 14B	331
5	Plaintiff's Exhibit No. 15A	103
6	Plaintiff's Exhibit No. 15B	103
7	Plaintiff's Exhibit No. 15C	103
8	Plaintiff's Exhibit No. 15D	103
9	Plaintiff's Exhibit No. 16	104
10	Plaintiff's Exhibit No. 19	104
11	Plaintiff's Exhibit No. 20	104
12	Plaintiff's Exhibit No. 21	104
13	Plaintiff's Exhibit No. 25	104
14	Plaintiff's Exhibit No. 28	104
15	Plaintiff's Exhibit No. 29	104
16	Plaintiff's Exhibit No. 35	104
17	Plaintiff's Exhibit No. 35A	104
18	Plaintiff's Exhibit No. 39	104
19	Plaintiff's Exhibit No. 40	104
20	Plaintiff's Exhibit No. 46	104
21	Plaintiff's Exhibit No. 50	618
22	Defendant's Exhibit No. 2A	584
23	Defendant's Exhibit No. 25	745
24	Defendant's Exhibit No. 25A	744
25	Defendant's Exhibit No. 25B	742

1	Defendant's Exhibit No. 26B.....	194
2	Defendant's Exhibit No. 26C	208
3	Defendant's Exhibit No. 26H	201
4	Defendant's Exhibit No. 26M	205
5	Defendant's Exhibit No. 28	725
6	Court's Exhibit No. 1	28
7	Court's Exhibit No. 2	30
8	Court's Exhibit No. 3	80
9	Court's Exhibit No. 4	80
10	Court's Exhibit No. 5	710

11

12

13

14	Certificate of Court Reporter	855

15

16

17

18

19

20

21

22

23

24

25

1 moved for summary judgment in this case and during the course
2 of oral arguments the arguments made regarding the status or
3 what the state of the law was in the state of South Carolina
4 and whether or not the facility could be held liable. The
5 facility remains supportive and 100 percent behind these two
6 nurses, but in the pleadings and in our briefing we said
7 assuming -- which for the sake of argument, these two acted
8 intentionally, we contended to the Court that that would not
9 be within the scope of employment and therefore the facility
10 could not be held liable. We merely want to exclude the
11 plaintiffs from alleging that the facility has taken the
12 position that these two nurses acted intentionally and had a
13 desire to do something harmful to Ralph Williams.

14 So basically, Your Honor, we're trying to exclude any
15 legal arguments regarding the status of South Carolina law to
16 be presented the jury in opening or otherwise in this case,
17 and I think -- I'm sorry, you look confused.

18 THE COURT: Yeah. I'm sorry, because you usually can make
19 arguments about whatever South Carolina law is.

20 MR. ARNOLD: Your Honor, we don't want it to be stated
21 that the facility has taken the position that these ladies --

22 THE COURT: Uh-huh. (Affirmative response.)

23 MR. ARNOLD: -- acted intentionally. That is not our
24 position. We only made that argument for purposes of the sake
25 of argument at summary judgment.

1 THE COURT: Okay, but intentionality, if they were acting
2 intentionally then would the health care facility be liable?

3 MR. BRING: It would not, but we're not going to be
4 arguing that in this case, Your Honor.

5 THE COURT: I thought that's what y'all talked about in
6 chambers. So why would they argue -- I thought they were
7 arguing recklessness and not intentionality; is that what
8 y'all --

9 MR. WARREN: Yes.

10 THE COURT: -- And I realize that there's some discussion
11 about whether reckless and intentional are the same thing
12 under South Carolina law.

13 MR. WARREN: Yes, sir.

14 THE COURT: But -- but they want to keep the health care
15 facility in?

16 MR. ARNOLD: Yes, Your Honor.

17 THE COURT: They don't want to get into intentional, is my
18 understanding.

19 MR. ARNOLD: Yes, sir.

20 THE COURT: Okay. All right.

21 MR. FOSTER: So is UniHealth and Peppers and Johnson
22 saying that they don't want to make any arguments about any
23 intentional conduct, they don't want to ask for a jury charge
24 on intentional conduct and how it may effect the case?

25 MR. ARNOLD: That is not --

1 THE COURT: I don't know what -- until I find out what the
2 testimony is I'm not going to be able to tell you what the
3 charge is going to be.

4 MR. FOSTER: Well, are they later going to do an about
5 face and then ask you for a charge on intentional conduct that
6 relieves the UniHealth but puts Peppers and Johnson --

7 MR. BRING: We're not going to be, you know, dividing the
8 defense here in that sense. Now, as we've talked about in
9 chambers and throughout these pleadings, Your Honor, the
10 element for them to overcome our statutory immunity is to show
11 that the defense did not act in good faith, that is the
12 equivalent, in our minds at least and we think under the law,
13 bad faith and bad faith would imply some kind of
14 intentionality and so there are going to be, we think, charges
15 on the fact that whether we acted without good faith and
16 that's for the jury to determine and you to charge them on,
17 but we're well in advance of that, but for them to argue that
18 the facility's saying that these folks did it intentionally,
19 we've not said that, never said that and we don't want them
20 arguing that to this jury especially until you've charged
21 them, Your Honor.

22 MR. FOSTER: In the pre-trial brief there's a sentence
23 under the legal issues section that reads if the jury find
24 that they did not act in good faith, that would be the two
25 nurses, the jury must also determine whether the two nurses

1 you should not hold an attorney's objection against his or her
2 client, nor should you conclude from my ruling on the
3 objection that I favor one side over the other.

4 Again, I would ask you to pay close attention to all of
5 the evidence presented to you. It is you, the jury, who will
6 determine the facts in this case and as a result you will have
7 to evaluate the credibility, which simply means the
8 believability of each witness who testifies in this case.
9 After doing so, I am assured that you will be prepared to
10 render a fair and just verdict in this case.

11 All right. Mr. Warren.

12 PLAINTIFF'S OPENING - MR. WARREN:

13 Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. WARREN: Good morning, Madam Clerk. Good morning,
16 ladies and gentlemen.

17 This case, ladies and gentlemen is about a false
18 statement that was made by Ms. Patricia Johnson, as well as,
19 Ms. Josette Peppers against my client. It was one of the most
20 horrific false statements that you can make against a person.
21 They accused Mr. Williams, a CNA of raping an incompetent,
22 incapacitated patient with feces and urine on her.

23 Now, there were run-ins in the past between Ms. Johnson
24 and my clients, but to begin with on June 21, 2010, about 2:50
25 a.m. in the morning. Ms. Johnson knock on the door to the

1 part of defamation when you accuse someone of committing a
2 crime. That's what -- that's why -- the First Amendment has
3 many protection but they do not protect false speech.

4 Now, the defense, there's going to be evidence about the
5 Omnibus Act, and the Omnibus Act, which is their defense is
6 that they are required by law, which they are, to report any
7 suspicion of sexual assault. And if they don't report it
8 there will be -- they can be charged or fine -- with a fine or
9 crime, however the statute has a very important exception that
10 it does not protect. If you make this statement that is not
11 in good faith. It only protects good faith statements for
12 situation just like this. So if you make a statement that you
13 are required by law to make and you make that statement and
14 it's not in good faith you can be held liable.

15 Now, what is not good faith? Intentionally asserting
16 false information. This information about I'm trying to find
17 him, I'm looking down this hallway. I'm looking down another
18 hall. I'm looking down a back hall. I'm checking rooms,
19 plural, on this hallway. Then in the midst of that before you
20 put the defamatory statement on what you stated, you saw by
21 Mr. Williams was changing the diapers.

22 Now, there is a perineal policy, what it is a policy
23 about changing a residents diapers. So they have a policy
24 and, you know, forgive the graphics of the policy, but the
25 policy requires a CNA, when he's changing a female patient, to

1 we hope, okay.

2 All right. Mr. Warren, is plaintiff ready to call it's
3 first witness?

4 MR. WARREN: Yes, sir, Your Honor. Plaintiff calls
5 Patricia Johnson to the stand.

6 THE COURT: All right. Ms. Johnson, put your left hand on
7 the Bible and raise your right hand and the clerk is going to
8 swear you in.

9 THE CLERK: Just state your name for the record, please?

10 MS. JOHNSON: Patricia Johnson.

11 (WHEREUPON, Patricia Johnson was
12 sworn to tell the truth.)

13 THE CLERK: Thank you. You may be seated.

14 THE COURT: Tell me when you're comfortable, okay.

15 MS. JOHNSON: Okay.

16 THE COURT: You ready?

17 MS. JOHNSON: Yes.

18 THE COURT: All right, Mr. Warren.

19 PATRICIA JOHNSON - DIRECT EXAMINATION

20 BY MR. WARREN:

21 Q Ms. Johnson, would you please state your full name for
22 the record, please?

23 A Patricia Johnson.

24 Q And Ms. Johnson, where are you currently employed?

25 A UniHealth Post-Acute Care of Orangeburg. 755 Whitman

1 Street.

2 Q Okay, and how long have you been there?

3 A Since 2005.

4 Q Okay. And what is your job there?

5 A I'm a Licenced Practical Nurse.

6 Q How long have you been a licenced practical nurse there?

7 A Five years.

8 Q And prior to working as a licensed practical nurse what
9 did you do?

10 A I was a Certified Nursing Assistant.

11 Q Okay, and you were actually terminated from UniHealth at
12 some point in time; is that correct?

13 A Yes. I was removed from the roster and the reason why I
14 was removed from the roster was I was going to school to get
15 my nursing degree and I worked as needed and as needed we had
16 to work at least one time within that month and if I didn't
17 work that one time we would be removed from the roster. I
18 talked to the administrator and I told her that now I was in
19 school I wasn't able to work, and she say well I have to
20 remove you from the roster and when you finish school you can
21 come back and you've got a job.

22 Q Okay.

23 A And that's what happened.

24 Q Okay. So your statement was that you weren't discharged
25 or terminated; is that correct?

1 MR. WARREN: This is Plaintiff's Exhibit No. 4.

2 MR. BRING: When you show something new if you could just
3 let us know. Thank you.

4 THE COURT: Okay.

5 BY MR. WARREN:

6 Q Showing --

7 MR. WARREN: Plaintiff is showing Ms. Patricia Johnson
8 Exhibit No. 4, map of the facility.

9 BY MR. WARREN:

10 Q Now, Ms. Johnson, is this your nurses station at the
11 nursing home; is that correct?

12 A Yes.

13 THE COURT: Now, if you want her to step down.

14 Ms. Johnson, you can step down and you can point out
15 anything you need to point out.

16 BY MR. WARREN:

17 Q This is the nurses station; is that correct?

18 A This is the nurses station.

19 Q Okay, and what is this hall, this hall is called what?

20 A This is the rehab hall.

21 Q Is this the back hallway?

22 A This is the back hall.

23 Q Okay, and this is the middle hall?

24 A This is the middle hall.

25 Q Thank you.

1 MR. WARREN: Plaintiffs offer Exhibit No. 4.

2 MR. ARNOLD: Your Honor, I believe we've already --

3 THE COURT: Yes. I think -- ladies and gentlemen, part of
4 the time that we were doing things, organizing things, the
5 plaintiff and the defendant agreed that certain exhibits were
6 already in evidence and so you can just remind those that it
7 is in evidence.

8 Exhibit No. 4 is already in evidence without objection.
9 Okay. Thank you, sir.

10 BY MR. WARREN:

11 Q Now, do you recall the persons that were working the
12 third shift on September 20, 2010?

13 A Well, Ralph Williams was working and Pat Bruce. I can't
14 remember who was on the other side. So it was Pat Bruce and
15 Ralph Williams.

16 Q Okay. You all had the CNA assignment sheet that night;
17 is that correct?

18 A Yes.

19 Q The CNA assignment sheet will list the person there; is
20 that correct?

21 MR. ARNOLD: What exhibit is that?

22 MR. WARREN: Plaintiff is showing the witness Exhibit No.
23 35A.

24 BY MR. WARREN:

25 Q Could you read those names?

1 A Yes, I can read the names.

2 Q And read it into the record?

3 A It has Alicia, Brady, Patricia and they have Ralph, but
4 they have a line drawn through his name, but he was at work.

5 Q Okay. Now, the CNAs were assigned to rooms; correct?

6 A Yes.

7 Q And their rooms were assigned -- Ralph was assigned to
8 Rooms 39 through 64; is that correct?

9 A Yes.

10 Q So 39 through 64 would be -- could you stand up, please.
11 Ralph had all of these rooms on these hallways.

12 MR. WARREN: Plaintiff is showing witness Exhibit No. 35A.

13 BY MR. WARREN:

14 Q So Ralph had this section of the building; correct?

15 A Yes.

16 Q And on this sheet Alicia had Rooms 1 through 10?

17 A Yes.

18 Q Which is down here, near the residents lobby; correct?

19 A I don't know what rooms she had. That's what that said,
20 that's what she had.

21 Q She had one through 10?

22 A If that's what that paper said that's what she had.

23 Q Okay, and Brady had 11 through 28?

24 A Yes.

25 Q And Patricia had 29 through 38?

1 A Yes.

2 Q And Ralph had all these; is that correct?

3 A He had all these rooms, but all these rooms were not
4 filled. Some of them were working -- you need to realize he
5 didn't have no more patients than anybody else. The patients
6 were divided evenly. It look like he had the majority of the
7 residents, but he didn't.

8 Q Okay, and do you know the rooms that were empty?

9 A I can't recall at this time.

10 Q Now, you stated that -- isn't it true you wrote a
11 statement in the nursing notes alleging Ralph was sexually
12 assaulting the resident in 39A?

13 A I wrote a statement --

14 Q Uh-huh. (Affirmative response.)

15 A -- that statement that --

16 Q Could you read --

17 A Could I stand, Your Honor -- and describe --

18 THE COURT: Hold on a second. I know he's got it blown
19 up. I think they've got a statement right there.

20 MR. WARREN: This is plaintiff showing the witness Exhibit
21 No. 8.

22 BY MR. WARREN:

23 Q Could you read that for the jury?

24 A This nurse making rounds and looking for CNA Ralph
25 Williams to check on another resident and I checked all the

1 rooms on the back hall and couldn't find him. This nurse then
2 started checking the rooms on the middle hall and when I
3 walked into Ms. Mayes room I see CNA Ralph Williams with his
4 pants down climbing up on the resident. I stated, what are
5 you doing. CNA Ralph Williams stated, please shut the door.
6 At this point, I went to get the other nurse, Josette Peppers
7 to witness. When we walked back in the room he was fixing up
8 his clothes and the room was dark and the covers was messed up
9 on the bed. And I got at 3:00 a.m. manager notified and at
10 3:25 police department notified. At 4:00 a.m. responsible
11 party, Bertha Tyler, sister, was notified.

12 Q Thank you. So at 3:25 the police were notified?

13 A That's what I got on my statement. Those are estimated
14 times. I didn't call the police. Josette calls the police.

15 Q Right. You didn't call them; correct?

16 A No, I didn't call them.

17 Q Okay. Now, Ms. Johnson, I'm showing you photographs,
18 Plaintiff's Exhibit No. 6. Plaintiff's No. 6 is a grouping of
19 three photographs. That last photograph -- this is a
20 photograph of resident 39A bed; is that correct?

21 A It looks like her bed.

22 Q This next picture is a photograph looking into the room;
23 is that correct?

24 A Yes.

25 Q This next photograph is a photograph of a view of the

1 hallway; is that correct?

2 A Yes.

3 Q So we have a picture of the room, a picture looking into
4 the room, a picture of the hallway, picture of the rest of the
5 hallway.

6 Now, Mr. Williams used to push a cart around; is that
7 correct?

8 A Yes.

9 Q And CNAs have a cart that supposed to be outside the
10 room; right?

11 A Yes.

12 Q And Ralph was in Room 39A with the cart outside the room;
13 is that correct?

14 A Yes, he was.

15 Q You stated in your nurse's statement that you were
16 looking up and down these rooms. How many rooms did you go
17 in?

18 Q When I started looking for Ralph Williams I didn't count
19 how many rooms I went in. I went in all the rooms in the back
20 hall. I heard an alarm, a bed alarm was ringing. I was near
21 the nurses station, heard the bell alarm ringing and it was
22 coming from the rehab direction. I ran down that way and I
23 saw -- and one of the residents was getting out the bed and I
24 assisted her back to her bed. Then I started checking -- I
25 didn't look down that way towards 39A, I looked to the rehab

1 MR. WARREN: Plaintiff's Exhibit No. 8.

2 THE COURT: Okay. That's the one she just read?

3 MR. WARREN: And I asked her to read two sentences.

4 THE COURT: Okay.

5 MR. WARREN: Just to read the sentences.

6 THE COURT: Okay.

7 MR. WARREN: Her testimony is that she didn't check the
8 middle room on the --

9 THE COURT: I understand.

10 MS. JOHNSON: No --

11 THE COURT: Ms. Johnson, here's the sad truth about the
12 way the trial goes is he gets to ask questions and once he
13 asks a question you need to respond and then you can explain
14 it.

15 MS. JOHNSON: Yes, Your Honor.

16 THE COURT: Yes, ma'am.

17 MR. WARREN: Thank you, Your Honor.

18 BY MR. WARREN:

19 Q Would you just read this sentence to here?

20 A This nurse making rounds and was looking for CNA Ralph
21 Williams to check on another resident I checked all the rooms
22 on the back hall and couldn't find him. This nurse then
23 started checking rooms on the middle hall.

24 Q Stop. Now, let me see that. So you started checking
25 rooms, rooms, plural, on the middle hall. His cart's right

1 here outside of Room 39A and you start checking the rooms
2 looking for Ralph correct?

3 A Yes.

4 Q Now --

5 MR. WARREN: Your Honor, I'm showing the witness
6 Plaintiff's Exhibit No. 11, which is the perineal policy.

7 THE COURT: the what policy?

8 MR. WARREN: The perineal policy, Plaintiff's Exhibit No.
9 11.

10 THE COURT: Okay.

11 BY MR. WARREN:

12 Q Okay. Now, could you just read the number one on the
13 perineal policy. Number one, what does it state?

14 A It state provide for privacy.

15 Q All right. Thank you. Could you read, just read number
16 two?

17 A Perineal care is given during the daily bath and after
18 voiding or bowel movement.

19 Q Now, would you read the procedure, what are you required
20 to do, starting with number one?

21 A Wash hands.

22 Q Now, read number two?

23 A Assemble necessary equipment and take the patient --

24 Q Now, that equipment that we just talked about is on --
25 that equipment, isn't it true, the equipment is on the cart

1 right outside the room, isn't that correct?

2 A (No response.)

3 Q On Ralph Williams cart he keeps his equipment --

4 A It should have been on the cart, yes.

5 Q -- is that correct?

6 A Yes.

7 Q Now, read number three.

8 THE COURT: Is that the same thing?

9 MR. WARREN: The same exhibit.

10 THE COURT: The same exhibit?

11 MR. WARREN: Yes, Your Honor.

12 A Before entering the room identify yourself and explain to
13 the patient what you are going to do.

14 BY MR. WARREN:

15 Q Now, could you read number four?

16 A Provide privacy by closing the door to the room and
17 pulling the cubicle curtain all the way around the bed.

18 Q Okay. Now, can you stand up. Is this the curtain that
19 is required to be pulled around the bed?

20 A Yes.

21 Q Okay. Thank you. So this curtain -- now, read number
22 three?

23 A Knock before entering the room. Identify yourself and
24 explain to the patient resident what you are going to do.

25 Q Okay. And if you have to change a diaper you have to

1 tell them you have to change a diaper, right?

2 A Yes.

3 Q Now, read number four?

4 A Provide privacy by closing the door to the room and then
5 pulling the cubicle curtain all the way around the bed.

6 Q So when -- so isn't it truth that when Ralph is in this
7 room to have the door closed; isn't that true?

8 A He's required --

9 Q Just answer the question yes or no?

10 A Yes. But --

11 MR. ARNOLD: Your Honor, if he'll allow her to respond.

12 THE COURT: I understand. And you know she needs to
13 answer it, she needs to answer it yes or no but she can
14 explain it.

15 MR. WARREN: Okay.

16 THE COURT: Okay. So Ms. Johnson go ahead.

17 A Yes, he's required to close the door. He's required to
18 provide privacy, but the lights have to be on. He not
19 supposed to have the lights off.

20 BY MR. WARREN:

21 Q Now, stop right there. There's two sets of lights.
22 There's a light right over the bed, isn't that right?

23 A The switch --

24 Q And there's also a light switch --

25 A Yes.

1 Q -- and so if it's night time and he doesn't want to
2 disturb this other patient he can cut the patient's light on
3 the room; isn't that correct?

4 A Yes, he could, but the lights were off.

5 Q And the curtain was wide open?

6 A The curtain was pulled, but it was some space where I
7 could see when I opened that door.

8 Q Okay. Where in this statement does it say there was
9 space where you could see?

10 A Nobody ever told me I had to write every detail --

11 Q All right. Now, --

12 A -- in my statement.

13 Q -- Okay, well, let's take your statement. Isn't there an
14 alarm in this room?

15 A It's an alarm in the room.

16 Q Okay. Did you press the alarm?

17 A No, I didn't. I didn't press the alarm because the alarm
18 is at the head of the bed in between the two bed, and I would
19 have had to reach over, climb over Henrietta Mayes or either
20 go around and confront Ralph Williams and I was -- I didn't do
21 that.

22 Q Okay. Isn't it -- so you stated there was no doubt in
23 your mind he was going to rape her, isn't that right?

24 A No doubt in my mind if I had not walked in that room. I
25 believe that. Nobody can't tell me nothing different. I

1 believe he would have had sex with her.

2 Q And you went down the hallway, you didn't press the alarm

3 --

4 A No.

5 Q -- because you didn't want to confront Ralph --

6 A No. I didn't want to climb over -- I wasn't going to
7 climb over the resident and try to reach this panic button or
8 go around and confronting him putting me and the patient, I
9 was not going to do that.

10 Q So you left the patient when there was no doubt in your
11 mind he was going to have sex with her, you left her?

12 A I didn't abandon the patient. I didn't abandon the
13 patient. When he yelled at me, he said, please shut the door.
14 He wanted me out of that room. He knew he was busted. He
15 wasn't me out of that room. I looked to the right. I looked
16 to the left and Josette was the only person I saw.

17 Q And so you stated that you saw Josette Peppers; is that
18 correct?

19 A I saw Josette Peppers.

20 Q Did you yell to her?

21 A No, I didn't yell.

22 Q Did you shout?

23 A No, I didn't shout.

24 Q But you saw her?

25 A I saw her.

1 Q Now, the police came and you made a statement; is that
2 correct?

3 A Yes, I did.

4 Q And --

5 MR. WARREN: I'm showing the witness Plaintiff's Exhibit
6 No. 9. Voluntary statement.

7 BY MR. WARREN:

8 Q Now, the last sentence on this statement, could you read
9 that sentence?

10 A There is no doubt in my mind if I had not walked in the
11 room he would have had sex with resident.

12 Q Thank you. Now, Ms. Johnson, did you -- you gave a prior
13 statement, sworn testimony in this case; isn't that correct?

14 A Yes.

15 Q Now, in that testimony didn't you state that you changed
16 her and got all that mess off of her --

17 MR. BRING: Your Honor, this has is not impeachment..

18 MR. WARREN: I'm move on.

19 MR. BRING: He can use it for impeachment purposes but not
20 beyond that.

21 THE COURT: Okay. If she testified the same way earlier
22 we don't go over it again.

23 MR. WARREN: Okay.

24 THE COURT: Thank you, sir.

25 MR. WARREN: Thank Your Honor.

1 BY MR. WARREN:

2 Q Now, prior to the police coming to the scene, did you
3 change the resident?

4 A No, I did not change the resident.

5 Q Now, I'm showing you a copy of your former testimony and
6 you was asked --

7 THE COURT: Okay. Before -- if you don't mind, Mr.
8 Warren, if you'd let us know the page and the line number?

9 MR. WARREN: Page 85. The question --

10 THE COURT: What line?

11 MR. WARREN: Line 1 and her answer is at Line 7. I'll
12 read --

13 THE COURT: And give her a chance to look it over and --

14 MR. WARREN: Okay.

15 THE COURT: And ask her if she recalls the testimony.

16 MR. WARREN: All right.

17 THE COURT: Okay.

18 BY MR. WARREN:

19 Q Ms. Johnson would you look over that testimony. Now, the
20 question is when you got Mr. Williams out of the room until
21 law enforcement showed up and y'all went back in with law
22 enforcement did you or anybody in your presence go in and do
23 anything with the resident as far as clothing or anything of
24 that nature while waiting for law enforcement. Did you read
25 your answer starting at Line No. 7?

1 A At Line No. 7 it said, no, we had -- we changed her, we
2 got all that stuff off of her, put a clean diaper on her. But
3 this was after the law enforcement came. When they came
4 that's when we changed her diaper.

5 Q So the diaper had feces and urine?

6 A No, it did not.

7 Q Your statement, your statement just stated that you
8 changed her and got all that mess off of her?

9 A No. The mess I was replying to was her gown. It was no
10 feces. No feces.

11 Q What's mess?

12 A The gown. She wet and then we got this t-shirt off of
13 her and the gown, and we gave it to the law enforcement. The
14 DON was in the room. The CNA was in the room. We change here
15 while they was there. We did not touch her until they came
16 to the facility.

17 Q Now, you stated that you didn't do anything until law
18 enforcement got there. I'd like for you to review your former
19 testimony, Lines 11 through 16 where you stated that --

20 MR. BRING: What page, Your Honor?

21 MR. WARREN: I'm on same page, Page 85, just further down
22 at Line 11 where she's asked did you do anything before law
23 enforcement got there and you said, no.

24 MR. BRING: Can you read the question?

25 MR. WARREN: I'll read the question.

1 BY MR. WARREN:

2 Q I'll read the question. Okay. So my question was when
3 y'all left the room and got Mr. Williams out of the room until
4 law enforcement got there did y'all do anything as far as
5 changing her diaper or changing her clothing or doing anything
6 with her bedding? No, no -- and your answer is at Line No.
7 16?

8 A (No response.)

9 Q Read those three words.

10 A I did not change her, really not touch her until law
11 enforcement came.

12 Q Could you please read your answer? It's three words.

13 A Did y'all do anything as far as changing her diaper or
14 changing her clothing or doing anything with the bedding? No.
15 Nothing. And that was referring to the resident. I didn't do
16 anything to the resident.

17 Q You didn't do anything to the resident?

18 A I did not change her until the officers arrived.

19 Q This -- your statement, your testimony was that you
20 didn't change her or do anything until law enforcement
21 arrived?

22 A I did not change her until the officers arrived.

23 Q Now, you also stated in your prior testimony that Mr.
24 Williams had his buttocks exposed --

25 MR. BRING: Your Honor, this is a complete -- do you want

1 to handle this?

2 THE COURT: Okay. Mr. Warren, if you don't mind ask her
3 any of the questions that you want to ask her about what
4 happened.

5 MR. WARREN: Yes, sir.

6 THE COURT: Okay?

7 MR. WARREN: Okay.

8 THE COURT: If you believe that her answers are different
9 you may then cross-examine -- you may ask her to review the
10 deposition testimony.

11 MR. WARREN: Yes, sir.

12 THE COURT: If you just go through and let her testify,
13 okay?

14 MR. WARREN: Okay.

15 BY MR. WARREN:

16 Q Now, Ms. Johnson, you gave this prior to the police
17 statement; is that correct?

18 A Yes, it is.

19 Q Where in that statement does it state -- did you make
20 testimony -- first let me ask you this. Was Ms. Mayes breast
21 exposed when you saw her through the curtain?

22 A Yes.

23 Q Okay. Now, where in any one of these statements did you
24 say that her breast was exposed?

25 A I don't have -- I didn't put any details, no details in

1 my statement --

2 Q Okay.

3 A -- that her breast were exposed.

4 Q Right.

5 A It's no where in my statement that I saw his naked butt.

6 Q Right.

7 A But I saw it. Nobody said I had to put every detail in
8 my statement.

9 Q Now, did you tell Josette Peppers that he was having sex?

10 A No, I did not.

11 Q Okay. So her testimony would be incorrect?

12 A I did not tell Josette that he was having sex.

13 Q Now, rather than pressing the alarm -- your testimony was
14 rather than pressing the alarm, climbing over top of Mr.

15 Williams you went and got Josette Peppers; is that correct?

16 A I did not press the panic button. The panic button was
17 at the head of the bed in between the two residents. I would
18 have had to climb over Ms. Mayes or go around and confront
19 Ralph.

20 Q Now, in your statement that you wrote to the Orangeburg
21 Police Department, you walked -- did you run into the room or
22 did you walk back into the room?

23 A We went into the room.

24 Q Did you walk or did you run back into the room?

25 A We entered the room.

1 Q Did you walk or did you run?

2 A We entered the room. When we hurried back to the room.
3 When we entered the room he was fixing his pants and he sat
4 down in the chair and put his head down.

5 Q Isn't it true that your statement says when we walked
6 back into the room --

7 A When I said when we walked back into the room we entered
8 that room. That's what we observed, we observed him tying,
9 fixing up his clothes and he sat in the chair and put his head
10 down.

11 Q So he didn't run?

12 A No, he didn't run.

13 Q And he waited until the police came?

14 A Yes, he did.

15 Q And you stated that you knew he was busted?

16 A He knew he was busted.

17 Q Uh-huh. (Affirmative response.) And that's why he just
18 stayed there. Isn't it true that he didn't even know that you
19 were making this allegation against him?

20 A Call it however you want to call it, but he knew he was
21 busted.

22 Q And that's why he just stayed there?

23 A He knew he was busted.

24 Q Did he try to jump off the bed?

25 A He knew he busted.

1 Q I asked you a question. Did he try to jump off the bed?

2 A He froze. I stopped him from committing this act. I
3 stopped him and he froze. He yell at me please shut the door.
4 He didn't ask me to help him. He didn't ask me, Ms. Johnson,
5 can you help me with this resident.

6 Q He said --

7 A He yelled, please shut the door.

8 Q Didn't he say please shut the door because the curtain
9 was back?

10 A No. He said please shut the door. He meant for me to
11 get out. He knew he was busted and he froze. He froze.

12 Q And isn't it true, you just read from your policy what
13 the policy states that he's required to have a curtain pulled
14 around the bed; isn't it true that you pulled the curtain
15 back?

16 A I didn't pull nothing back.

17 Q You didn't -- did you walk into the room?

18 A I entered the room. I was still in the door. I never
19 went all the way in.

20 Q So you see the curtain in the doorway.

21 MR. WARREN: I'm just showing the plaintiff -- the witness
22 has identified photograph that's Exhibit No. 6.

23 THE COURT: And if you'd hand that to her. It would be
24 easier if you want to hand her the stuff.

25 MR. WARREN: Yes, sir.

1 person at the time.

2 BY MR. WARREN:

3 Q You state in those documents that you knocked on the
4 door?

5 A (No response.)

6 Q And those documents that you are reading are Plaintiff's
7 Exhibit No. 8 and Plaintiff's Exhibit No. 9. Do you state in
8 any one of those exhibits where you knocked on the door?

9 A Like I said before, I didn't write every detail. Nobody
10 said I had to write every detail. I knocked on the door and I
11 went in.

12 Q Now, you stated you didn't write every detail, but on the
13 voluntary statement, which is Plaintiff's Exhibit No. 9, could
14 you read the last sentence on that statement?

15 A If I had not walked in the room he would have had sex
16 with Ms. Mayes.

17 Q Now, on the nursing notes, did you include that statement
18 on the nursing notes on Plaintiff's Exhibit No. 8?

19 A No.

20 Q Now, at your prior criminal trial testimony, didn't you
21 state that Mr. Williams was totally naked and in the bed with
22 Ms. --

23 THE COURT: Mr. Warren. Mr. Warren. Ask her just what
24 did, what she saw and like that.

25 MR. WARREN: Let me back up a bit.

1 BY MR. WARREN:

2 Q Ms. Johnson, you indicated you walked in to this room,
3 resident 39A; is that correct?

4 A Yes.

5 Q Isn't it true that you gave prior testimony that Mr.
6 Williams was totally naked and on top of her?

7 A I didn't say totally naked. I saw his naked butt.

8 Q You said he was butt naked and in the bed?

9 A I saw his naked butt. His naked butt was exposed to me.
10 I saw his naked butt, all of this.

11 Q Uh-huh. (Affirmative response.) Now, in looking at
12 Plaintiff's Exhibit No. 8 and Plaintiff's Exhibit No. 9, where
13 do you state that you saw Mr. Williams naked butt?

14 A His pants was down. I didn't put naked butt, but that's
15 what I saw, his naked butt. He was in the bed, he was climbed
16 over her and he was climbing over her like he was about to
17 have sex with a woman. Climbing over the bottom of the bed
18 over her, lights out, in the dark. No business in the bed.
19 No business with the lights out.

20 Q Now, your statement -- now, your statement that you gave
21 to the OP, the Orangeburg Police Department, your statement
22 states that his pants were down to his ankles?

23 A I did not say that.

24 Q What did you say?

25 A I said his pants was down and he was climbing on top of

1 the resident.

2 Q Wouldn't it be an important fact that he's about to have
3 sex that you put his naked butt exposed?

4 A Just what I said I put. His pants was down. He was
5 climbing on top of the resident. I saw his naked butt.
6 That's what I put. I didn't put every detail --

7 Q So he --

8 A -- in my statement.

9 Q -- was --

10 A His naked butt.

11 Q So he was naked and in the bed?

12 A His naked butt. That's what I saw.

13 Q So he --

14 A Whether he had his shirt, I don't know, but he had his
15 pants -- his naked butt was exposed to me. I was in shock. He
16 froze. He yell at me. Please shut the door. Please shut the
17 door.

18 Q And you obeyed?

19 A I didn't shut the door.

20 Q Now, was he in the bed?

21 A He was in the bed climbing on top of the resident.

22 Q And her breast were exposed but you don't indicate that
23 in any of your previous statements?

24 A I didn't put any details in my statement about Mr.
25 Williams.

1 Q Don't you think it would have been important to put in
2 there if he was totally naked?

3 A I didn't say he was totally naked.

4 Q Okay. And now in light of Mr. Williams trying to have
5 sex with her you run down the hallway, you don't try to stop
6 it; is that correct?

7 A I stopped it when I opened the door.

8 Q Uh-huh. (Affirmative response.)

9 A I stopped it. He froze. I backed out the room. I saw
10 Josette. I needed to get help with Mr. Williams.

11 Q And how many people were in the facility that night, you
12 testified earlier, was eight people in the facility; is that
13 correct?

14 A Two CNAs on my hall. I can't remember the exact number,
15 but it was a nurse supervisor --

16 Q Now, when you pressed the alarm isn't everybody in the
17 facility required to come to the room?

18 A Yes.

19 Q The room -- it is a flashing light, is that correct?

20 A Yes, it is.

21 Q And also the alarm, when you hit the button it sounds the
22 alarm, isn't that true?

23 A You hit that button that light flash outside the door.

24 MR. WARREN: No further questions at this time.

25 THE COURT: You want to take a break now?

1 A At UniHealth Post-Acute Care, Orangeburg.

2 Q And you're an LPN there?

3 A LPN, yes.

4 Q And how long have you been an LPN?

5 A Five years.

6 Q Just to remind the jury, have you always been an LPN?

7 A No. I used to be a Certified Nurses Assistant.

8 Q And that's a CNA?

9 A Yes.

10 Q And so did you get a promotion from CNA to LPN?

11 A Yes.

12 Q And did you have to go to school to become an LPN?

13 A Yes.

14 Q Why don't you tell the jury a little bit about your
15 schooling and your educational background?

16 A I graduate from Orangeburg Wilkinson High in 1982. I
17 attended Calhoun County High School Certification in CNA in
18 1997. I went to back to school at OC Tech in 2009.

19 Q So when you went back to school did you go during the
20 day?

21 A I went during the day.

22 Q And after you became an LPN you went back to UniHealth of
23 Orangeburg?

24 A Yes.

25 Q What are the job duties of a CNA?

1 A Midnight shift.

2 Q And what are your duties and responsibilities during that
3 shift?

4 A My duties and responsibilities is to take care of the
5 residents, monitor the CNAs. I pass out medicines, and I also
6 did some treatments at night.

7 Q Are most of the residents asleep at that time?

8 A Most of them sleeps.

9 Q Are there many visitors?

10 A No.

11 Q Doctors coming in and out?

12 A No doctors.

13 Q Basically just the staff, the patients, that's who is at
14 the facility at that time?

15 A Yes.

16 Q Not much going on between midnight and 5:00 a.m.?

17 A No.

18 Q What about the duties and responsibilities of the CNA
19 during that midnight shift?

20 A CNAs are required to answer the call light, required to
21 make their rounds every two hours and when I say make rounds,
22 they check on the patient, turn and reposition, change their
23 diapers, just basic patient needs.

24 Q So it's relatively quiet during that time period?

25 A Yes.

1 Q I want to talk about the events of June 21, 2010. Why
2 don't you tell the jury in your own words what happened?

3 A I was near the nurses station and I heard a bed alarm
4 ringing and it was coming from the rehab side, which is the
5 back hall. So I ran down that hall to see who alarm it was,
6 because we has patients that has bed alarm is because they're
7 a fall risk. So the resident in Room 50, she was getting out
8 the bed. So I assisted her back to the bed. She was wet and
9 then I start looking for Ralph Williams because he was
10 assigned to that patient. So I went in all the room on the
11 back hall. Then I came back up. I went to the middle hall.
12 I looked in those -- I looked in those rooms and I saw his
13 cart parked at Room 39 and I went -- I said, well, he's in
14 that room. So I went there and knock on the door and when I
15 pushed the door open I saw him climbing on top of Ms. Mayes,
16 his pants was down, the lights were out and he yelled at me,
17 please shut the door, and I backed out. He didn't ask me, can
18 you help me. I backed up. I looked to the right. There was
19 nobody at the nurses station, looked to the left. Josette was
20 the only person I saw. I said to her, hurry, come on. I
21 said, Ralph is trying to have sex with Ms. Henrietta, and we
22 hurried back, and when we got back to the room he was fixing
23 up his clothes and he sat in the chair and he put his head
24 down.

25 Q Before he said please shut the door, did you say anything

1 to him?

2 A I said what are you doing. That's when he yelled and
3 told me to please shut the door. And that's when I backed out
4 the room.

5 Q I'm going to grab the facility map that's right there.
6 When you the resident -- you said the bed alarm that was going
7 off was in Room 50; is that correct?

8 A Yes.

9 Q Okay. And what's it mean when the bed alarm is going
10 off?

11 A That means the resident is trying to get out the bed and
12 their bed alarm is going off and you need to go and see.

13 Q Why would a resident have a bed alarm on that bed.

14 A It's for fall and we puts alarms on them so we can hear
15 if they try and get out the bed.

16 Q And that resident in Room 50, was she at risk for falls?

17 A Yes.

18 Q And did you put her back in the bed?

19 A Put her back in the bed.

20 Q And when you put her back in the bed did you notice that
21 her briefs were soiled?

22 A Correct.

23 Q And so that is why you went on this back hall looking --

24 A That's why I was on the back hall, because I saw him down
25 there earlier that night, so I started looking in the rooms on

1 the back hall first.

2 Q And when you went to Room 50 had you come from the nurses
3 station?

4 A I came from the nurses station.

5 Q And was anyone at the nurses station with you at that
6 time?

7 A I was by myself.

8 Q Had you seen anybody before you went to Room 50 on the
9 hallway?

10 A Nobody on the hallway.

11 Q So you checked these rooms that you've already
12 explained were not completely all occupied, right?

13 A No, some of them were empty.

14 Q So when you came back around you were going to check
15 this middle hall, correct?

16 A Yes.

17 Q And you went to Room 39 because --

18 A I saw the cart.

19 Q -- the cart was there, right?

20 A Yes.

21 Q Okay. Thank you. Now, did Ms. Mayes reside in Bed
22 39A?

23 A Yes.

24 Q Was she in that room alone?

25 A No, there's another resident there?

1 Q What is the condition of her roommate or resident?

2 A Her roommate is a dementia patient and she was not
3 aware of her surroundings.

4 Q When you say not aware of her surroundings?

5 A She was not aware of what was going on.

6 Q So she was not very responsive and probably wouldn't
7 have been able to respond to anything?

8 A Would you expect a CNA who cares for the residents in
9 Room 39 to know about the status of those residents?

10 A Yes.

11 Q Did Ralph Williams routinely care for the residents in
12 Room 39?

13 A Yes.

14 Q And now the cart outside the room, just because the
15 cart is outside the room doesn't necessarily mean that the
16 resident is in that room, does it?

17 A No. They have the cart outside the room and they can
18 be in another room helping somebody else.

19 Q So if it's in the middle of the hall they can be in any
20 room?

21 A Yes.

22 Q Now, I want to go back to your description of Mr.
23 Williams position on the bed when you went in that door?

24 A Okay.

25 Q Tell me about it?

1 A When I opened the door he was climbing on top of --
2 climbing on top of Ms. Mayes, his -- his naked butt was
3 showing, the lights were out and he was climbing on top of
4 her like he was getting ready to have sex with her, like a
5 man getting ready to have sex with a woman.

6 Q Was he fully clothed?

7 A I saw his naked butt.

8 Q Have you ever said he was completely naked?

9 A No.

10 Q And when you've used the term naked you use that to
11 mean his naked butt?

12 A His naked butt.

13 Q Naked from the waist down?

14 A His naked butt.

15 Q Okay. Describe for me the position in the status of the
16 resident in Bed 39A?

17 A The resident laying on her back. Her eyes open and she
18 was just looking.

19 Q Did she yell out to you?

20 A I don't think she know what was happening to her.

21 Q Was she clothed?

22 A Her gown was pushed up over her breast. Her breast was
23 exposed.

24 Q Any other body parts exposed?

25 A I couldn't see anything else because he was over her.

1 Q Could you see anything from the waist down?

2 A I couldn't -- he was over her. I couldn't see anything
3 but her breast.

4 Q Do you know if the diaper was on or off?

5 A No.

6 Q Could you see her vagina?

7 A No.

8 Q Mr. Warren asked you about your sworn statement, that
9 you never stated or wrote that her breast were exposed?

10 A I didn't write any details in my statement about
11 Henrietta Mayes.

12 Q So you didn't write any details about what body parts
13 you saw?

14 A Right.

15 Q Were you interviewed by the police officers?

16 A I was interviewed by officers and I told them
17 everything.

18 Q Did you provide any details about the body parts that
19 you could see?

20 A Yes.

21 Q When the officers asked you to do the voluntary
22 statement, did they ask you to put every single detail on
23 that?

24 A No one asked me to put every single detail.

25 Q Did you provide some of the additional information

1 Q And were the light on in the hallway?

2 A Lights were on in the hallway?

3 Q So that depicts what you were able to see, your view?

4 A Yes.

5 Q And you're 100 percent sure the lights were off in the
6 room on June 21, 2010?

7 A Yes.

8 Q And then how were you able to see?

9 A The light from the hallway shining into that room, that
10 was how I was able to see.

11 Q When you opened the door you saw Mr. Williams on top of
12 Ms. Mayes, what did you do?

13 A I yelled at him. I say, what are you doing? And
14 that's when he yelled back at me, please shut the door. He
15 didn't ask me to come help me. I'm trying to change the
16 resident. He just yelled at me.

17 Q And so it wasn't a casual, hey, what are you up to?

18 A No.

19 Q It wasn't a hey, what are you doing?

20 A No.

21 Q It was a what are you doing, something's wrong?

22 A Yes.

23 Q What did Mr. Williams say in response?

24 A He yell at me. He say, please shut the door, and he
25 froze. I stopped him from climbing any further on Ms.

1 Mayes. I backed out the room, and Josette was the first
2 person, the only person that I saw. Nobody else was there.
3 Nobody was in the hallway. Nobody was at the nurses
4 station. Josette was the only person that I saw and I
5 hurried to her.

6 Q Now, after he shouted back at you, did he kind of
7 freeze?

8 A He froze.

9 Q Like he'd been caught, literally, with his pants down?

10 A Yes.

11 Q In your opinion, did you stop him from what he was
12 doing?

13 A Yes, I did.

14 Q You stopped him from climbing further up on Ms. Mayes?

15 A Yes, I did.

16 MR. FOSTER: Objection. Leading.

17 THE COURT: If you don't mind just asking her --

18 MR. ARNOLD: Under Rule 11©, Your Honor, I thought I was
19 allowed to ask leading questions.

20 THE COURT: You mean, because she is being cross-
21 examined.

22 MR. ARNOLD: Yes, Your Honor.

23 THE COURT: Normally that would be the case, but -- it's
24 so much more effect if you just ask her the question. She
25 can tell it that way.

1 MR. ARNOLD: Yes, sir.

2 BY MR. ARNOLD:

3 Q And what did you do next?

4 A I backed out the room. I saw Josette. We hurried back
5 to the room. When we got to the room he was fixing his
6 pants. He sat down in the chair and he put his head down.

7 Q I believe you said you looked up and down the hall?

8 A Yes, I did. I looked up and down the hall.

9 Q You looked to the left?

10 A I looked to the left, I looked to the right. Josette
11 was the person I saw. I got her. I told her to come on. I
12 said, Ralph is trying to have sex with Henrietta, and she
13 came. We hurried back. We went in the room, and he was
14 fixing his clothes, tying his pants.

15 Q You said earlier when you went and looked in all these
16 rooms you came around here and that's when you saw -- how
17 long did it take you to come around here and then go to that
18 room, Room 39?

19 A It didn't take long.

20 Q It didn't take long. Was anybody at the nurses station
21 when you

22 A Nobody was at the nurses station.

23 Q Was anybody at the nurses station when you backed out
24 of the room?

25 A No.

- 1 Q First person you saw was --
- 2 A Josette.
- 3 Q About how far down the hall was she?
- 4 A She was about eight to 10 rooms.
- 5 Q So about right here?
- 6 A About right here.
- 7 Q And was she facing you?
- 8 A She was walking across.
- 9 Q So walking across?
- 10 A Uh-huh. (Affirmative response.)
- 11 Q Okay, and that's -- you ran towards her?
- 12 A Yes.
- 13 Q Ms. Davis was the very first person you saw on that
- 14 night?
- 15 A Yes.
- 16 Q Did you see anyone else?
- 17 A No.
- 18 Q If someone was at the nurses station would you have
- 19 gone there?
- 20 A I would have gone there.
- 21 Q Did you bypass anyone else?
- 22 A No.
- 23 Q You didn't seek out Josette for some other reason did
- 24 you?
- 25 A No.

1 Q Why did you run to her?

2 A She was the only person I saw.

3 Q Did you scream to her?

4 A No.

5 Q Did you hit the alarm?

6 A No.

7 Q Where is -- looking at 26B -- why don't you stand up
8 for a second. Where's the alarm in that room?

9 A This is the alarm.

10 Q Why didn't you go hit that alarm?

11 A Because I would have to climb across Ms. Mayes and try
12 to get to this alarm or go around and confront Ralph
13 Williams.

14 Q Okay. You can sit back down. You were here in the
15 opening arguments when Mr. Warren said that there was an
16 alarm just two feet away and you could hit it like that. Is
17 that true?

18 A That's not true.

19 Q Why is that not true?

20 A Because the alarms in all the room is in that position.

21 Q I'm going to hand you what is marked Defendant's
22 Exhibit No 26H. I've provided you with a copy of 26H, as
23 well. What does this picture depict?

24 A This is the picture in the first incident room to the
25 right is the sharps container where you put the sharps and

1 A This is another socket.

2 Q Is there any alarm device on this wall in this room?

3 A No.

4 Q So you couldn't have stepped two feet and just hit an
5 alarm?

6 A No, because I never went all the way in the room. I
7 was in the doorway.

8 Q There isn't an alarm here for you to hit?

9 A There isn't an alarm. No.

10 Q The only alarm in that room is between the two bed,
11 correct?

12 A This is the alarm, this is how the alarm in every room
13 in the facility, every bed.

14 Q Okay. Thank you very much. So you were startled by
15 what you saw?

16 A I was shocked.

17 Q The first person you saw was Josette?

18 A First person I saw was Josette.

19 Q And what did you do?

20 A I told Josette, I said, hurry, come, Ralph is trying to
21 have sex with Henrietta.

22 Q Did you rush to Josette?

23 A I rush to Josette.

24 Q And when you left did you close the door?

25 A I did not close the door.

1 Q Did you ever turn on the lights?

2 A Never turn on the lights.

3 Q So you left the door open?

4 A I left the door open.

5 Q Plaintiff's counsel, Mr. Warren, suggested you
6 abandoned the patient; is that true?

7 A I didn't abandon the patient. I stopped him from what
8 he was trying to do. He froze. I went to get help. Ms.
9 Mayes needed help. I went to get help.

10 Q So in your assessment, you confronted him, stopped the
11 danger --

12 A I stopped him.

13 Q And you needed additional help to take care of the
14 situation?

15 A Yes.

16 Q Now, when you went up to Ms. Davis, did you have an in-
17 depth conversation?

18 A No.

19 Q How old could it have been?

20 A 30 seconds. It wasn't a minute. 30 seconds, no more
21 than 30 seconds.

22 Q If that?

23 A If that.

24 Q And your message was hurry, come on?

25 A Hurry come on.

1 Q And how did Josette react?

2 A We hurried. We hurried back down there together.

3 Q Did y'all just walk back to Room 39?

4 A We hurried. We rushed.

5 Q Rushed. How much time do you think passed between the
6 time you were standing in the doorway, went and got Josette
7 and returned?

8 A 30 seconds.

9 Q Okay.

10 A 30 seconds.

11 Q I'm going to hand you what has been marked as
12 Defendant's Exhibit No. 26M.

13 Mr. Arnold: I've provided you all a copy of
14 Defendant's 26M.

15 BY MR. ARNOLD:

16 Q What is that picture depict?

17 A This is a picture of the outside of 39.

18 Q And is the door closed?

19 A The door is closed.

20 Q Is that an accurate depiction of the door at the time
21 you and Josette returned to Room 39 on June 21, 2010?

22 A Yes.

23 Q Were you present when this picture was taken?

24 A Yes.

25 MR. ARNOLD: Your Honor, Defendants would move to admit

1 Q The lights were still off?

2 A The lights was still off. He didn't even turn the
3 lights on.

4 Q Was Ralph still on the bed with Ms. Mayes?

5 A No, he was standing up fixing his clothes and he sat in
6 the chair.

7 Q Where was the resident in Bed 39A?

8 A She was in bed, still on her back and the covers were
9 strowed over here.

10 Q Could you see any of her body parts at that time?

11 A No.

12 Q So you couldn't see whether her gown was still pushed
13 up?

14 A No.

15 Q When you say the bedding was thrown sloppily over her,
16 what do you mean by that?

17 A It was just like strowed over her. It wasn't neat. It
18 was just throwed across her.

19 Q I'm going to hand you a copy of what I've marked as
20 Exhibit 26C.

21 MR. ARNOLD: You all have a copy of that.

22 BY MR. ARNOLD:

23 Q What does 26C depict?

24 A This is a picture of Ms. Mayes room.

25 Q It was room -- this is a picture that was taken inside

1 that she indicated that the curtain would have been there on
2 the 26 --

3 MR. ARNOLD: On June 21, 2010.

4 THE COURT: -- on June 21. Okay. So the jury should
5 understand that there should be a curtain in that picture as
6 well. Okay. Thanks.

7 (Defendant's Exhibit No. 26C,
8 photograph, was marked and entered.)

9 BY MR. ARNOLD:

10 Q And is this blown up picture of 26C?

11 A Yes.

12 Q And if you'll step down. Show us where Ralph Williams
13 was when you came back in the room?

14 A He was standing in his area fixing his pants and he sat
15 in the chair and he didn't say anything.

16 Q What kind of pants did he have on?

17 A Nursing uniform. It had a drawstring.

18 Q Where was the resident in Room 39?

19 A She was on the other side of this curtain.

20 Q The other resident?

21 A 39B.

22 Q What about Ms. Mayes?

23 A Ms. Mayes was laying on her back, covering just throwed
24 over her.

25 Q Did she say anything to you when you entered the room?

1 A She didn't say anything. She couldn't. I don't think
2 she know what to say.

3 Q Is she able to communicate?

4 A She has difficulty talking because of the stroke and
5 she only say yes, no.

6 Q If you'll return to the chair. So he sat in the chair,
7 and that chair is depicted in 26C?

8 A Yes.

9 Q And did he say anything?

10 A He say, what?

11 Q What did you and Josette do in response?

12 A Josette asked him to come out the room.

13 Q So Josette asked him to leave the room.

14 A Josette asked him to leave the room.

15 Q Did he leave the room?

16 A He came out the room.

17 Q He didn't say, like, why?

18 A No.

19 Q He didn't say I'm not done changing her?

20 A No.

21 Q No protest about --

22 A No protest.

23 Q -- leaving the room? So what happened when Mr.
24 Williams was asked to leave?

25 A I asked Josette to call the DON and then I went and

1 looked for the policy and then I star the RN Supervisor and
2 I told her not to let Mr. Williams go into any resident
3 room.

4 Q Did someone stay with Ms. Mayes?

5 A One of the other CNAs.

6 Q Do remember who the other CNA was?

7 A Pat. Her name was Pat Bruce.

8 Q Pat Bruce. She was the CNA that was under you that
9 night?

10 A Yes.

11 Q And Josette called 911?

12 A Josette called the DON and the DON told her to call
13 911.

14 Q Did you know the exact times she placed those calls?

15 A No, I didn't know the exact times. When we document in
16 our notes our times are estimated times, but if they wanted
17 to know the exact time they could review the 911 call, they
18 can review the call, you know call the officers. They can
19 look at that report and it will give them the exact times.
20 Those are just estimated times when I documented. And that
21 document almost at the end of the shift.

22 Q So you told the RN supervisor not to let him Williams
23 in any other rooms?

24 A Yes.

25 Q Did you touch Ms. Mayes or provide any care to her

1 while y'all waited for the police?

2 A No, I did not. When the police arrived that's when I
3 changed Ms. Mayes. Me and another CNA and also the DON was
4 present after the police arrived. I did not touch her until
5 after the police arrived.

6 Q And Mr. Warren asked you some questions about that
7 earlier, didn't he?

8 A Yes.

9 Q And he read from the trial transcript; correct?

10 A Yes.

11 Q I'm going to hand that -- a copy of it to you. I gave
12 you the wrong copy. I'm sorry.

13 THE COURT: Can I see y'all one second.

14 (Off the record bench conference with counsel and the
15 Court.)

16 THE COURT: Please continue. I'm sorry to interrupt
17 you.

18 BY MR. ARNOLD:

19 Q I've provided you a copy of some sworn testimony that
20 he had you read from earlier, Page 85; correct?

21 A Yes.

22 Q And he had you read from Lines 1 through 8; correct?

23 A Yes.

24 Q And then he skipped over Lines 9 and 10, and had you
25 read Lines 11 through 16; is that correct?

1 A Yes.

2 Q I'm going to read aloud and you just confirm what I'm
3 reading is correct. Starting on Line 1. Question: Now,
4 from the time that you all got Mr. Williams out of the room
5 until law enforcement showed up and you all went back in
6 with law enforcement, did you or anybody in your presence go
7 in and do anything with Ms. Mayes as far as her clothing or
8 anything of that nature while waiting for law enforcement.
9 Your answer: No, we had -- we had changed her. We got all
10 that stuff off of her, put her a clean diaper on her. And
11 here at Line 9, which he didn't allow you to read --

12 A He didn't allow me to read that.

13 MR. WARREN: Objection, Your Honor, because I gave her
14 the transcript and I do believe that I had her read that
15 line. That's my interpretation, but that's fine. In terms
16 of her characterization of me skipping over the transcript.

17 THE COURT: I understand. You can go ahead and read it.
18 Regardless of the characterization --

19 MR. WARREN: Yeah, right. It speaks for itself.

20 THE COURT: -- you can go ahead and read it. Okay.

21 BY MR. ARNOLD:

22 Q And the question was, was that before or after the
23 police got there, and what was your answer? You read that?

24 A It was after the police got there.

25 Q Question: Okay -- and then you went on to read, but you

1 weren't able to read Lines 9 and 10 earlier where you
2 clarified that it was after?

3 A It was after.

4 Q Thank you very much. Now, when you went in the room
5 did you smell any feces?

6 A No, I didn't smell any feces.

7 Q Mr. Williams is going to claim that the diaper was full
8 of feces and it was still on her. You're certain you didn't
9 smell any feces?

10 A Didn't smell any feces.

11 Q If a resident were to have feces in her diaper would
12 you expect to smell it?

13 A I would expect to smell it. Sometimes you can smell it
14 in the hallway. There was no smell of feces.

15 Q You're certain you didn't touch or otherwise change Ms.
16 Mayes prior to the arrival of the authorities?

17 A I did not touch Ms. Mayes.

18 Q You waited until they did their investigation --

19 A Yes.

20 Q And at their direction you changed her?

21 A Yes.

22 Q At any time did you see feces on Ms. Mayes?

23 A No.

24 Q Were you in the room when the authorities arrived?

25 A We went in the room together.

1 Q And that was after the police told you to?

2 A After the police told me to.

3 Q After they took photos?

4 A Yes.

5 Q After they collected their evidence?

6 A Yes.

7 Q And why did you need to change her briefs?

8 A Because they took everything. They took her gown, they
9 took all that, and I put a clean fresh gown on her and her
10 diaper.

11 Q Because she was going to the hospital, right?

12 A She was going to the hospital.

13 Q A few more questions. Please remind me again, when did
14 you first become a CNA?

15 A In 1997.

16 Q And how long did you serve as a CNA?

17 A From 1997 to 2009.

18 Q Okay. Any other facilities besides UPAC of Orangeburg?

19 A Orangeburg Nursing Home.

20 Q Okay. Was Orangeburg -- was UPAC Orangeburg, was it
21 formerly know as Orangeburg Nursing Home?

22 A Yes.

23 Q As a CNA you had the same responsibilities that Mr.
24 Williams had in 2010, correct?

25 A Yes.

1 Q And you attended to residents routinely, correct?

2 A Yes.

3 Q And I want to talk about specifically changing the
4 residents, their briefs, do you ever do that?

5 A Yes.

6 Q Regarding the briefs, are their procedures on how to do
7 that?

8 A Yes.

9 Q Is there training on how to do that?

10 A Yes.

11 Q And where do you get that?

12 A CNA school.

13 Q CNA school and do you receive on the job training?

14 A You receive on the job training also.

15 Q In any of the training that you ever received does it
16 require the CNA or the care-giver to be up on the bed?

17 A No.

18 Q If you had to guess, how many diapers, briefs have you
19 had to change?

20 A Thousands.

21 Q In the thousands of briefs that you've changed, have
22 you ever gotten in or on a residents bed?

23 A Never.

24 Q Other than Ralph Williams, who claims he was up on the
25 bed changing the resident, have you ever observed any other

1 CNA or care-giver up on the bed with a resident?

2 A No.

3 Q Other than Ralph Williams have you ever seen someone
4 naked up on a bed with a resident?

5 A No.

6 Q Now, earlier plaintiffs handed you what they marked as
7 Exhibit No. 11. Are you familiar with that document?

8 A Yes.

9 Q It's the Nursing Care on how to change the resident,
10 correct?

11 A Yes.

12 Q And he had you read certain numbers, one, two, three
13 and four, correct?

14 A Yes.

15 Q Anywhere in this document does it say get up on the bed
16 to change a resident?

17 A No.

18 Q Put a knee up on the bed?

19 A No.

20 Q And why wouldn't you want to be up on the bed with the
21 resident?

22 A You're not supposed to be up on the bed with the
23 resident. You're supposed to stand beside the bed.

24 Q And if you can't handle the resident on your own what
25 are you supposed to do?

1 A You get help. You ask someone to help you.

2 Q Okay. Thank you very much. Ms. Johnson, as a nurse at
3 UPAC Orangeburg, do you have legal obligations regarding
4 reporting abuse or suspected abuse?

5 A Yes, I do.

6 Q And what are those?

7 A It's the Adult Protection Act.

8 Q And that was the Adult Protection Act that Mr. Bring
9 referred to in his opening, right?

10 A Yes.

11 Q And that requires you to report even a suspicion of an
12 abuse?

13 A A suspicion.

14 Q And what if you fail to report?

15 A I could go to jail for not reporting. I can -- they
16 can fine me up to so many hundreds of dollars. I can be
17 reported to the State Board of Nursing, termination.

18 Q So if you don't report --

19 A If I don't report.

20 Q -- you could lose your job?

21 A Yes.

22 Q Does the facility have any reporting requirements or
23 rules?

24 A Yes.

25 Q And what would happen if you fail to report suspected

1 abuse at the facility?

2 A Termination.

3 Q So you could face up to a year in jail, you could face
4 up to a \$2500 fine?

5 MR. WARREN: Judge --

6 THE COURT: I'll let him finish that. Go ahead.

7 BY MR. ARNOLD:

8 Q And you could have your license revoked?

9 A Yes.

10 Q When you saw Mr. Williams up on the bed with Ms. Mayes,
11 did you suspect abuse was occurring?

12 A Yes, I did.

13 Q And is that why you reported it?

14 A Yes.

15 Q Did you make up these allegations in some sort of
16 effort to get Ralph Williams in trouble?

17 A I did not.

18 Q Did you ever tell Ms. Davis, hey, let's take down Ralph
19 by claiming he was trying to have sex with a resident?

20 A No.

21 Q Is there any doubt in your mind about what you saw when
22 you opened the room, the door, to Room 39 at the nursing
23 facility during the early morning hours of June 21, 2010?

24 A No doubt.

25 Q Does what you witnessed still affect you today?

1 Q I'm just saying it changes.

2 A I didn't have any detail. I did not write every detail
3 on my statement.

4 Q Did you read -- on Plaintiff's Exhibit No. 8, you state
5 that you walked into --

6 A I entered the room.

7 Q Okay, but previously you said you were standing in the
8 hallway.

9 A I did not say I was standing in the hallway. I entered
10 the room.

11 Q You also stated you could stand in the hallway you
12 could see through the curtains?

13 A I said the lights in the hallway shined in the room.

14 Q So you didn't say that you were standing in the hallway
15 and looked through the curtains?

16 A The lights in the hallway, when I opened the door, I
17 walked in the room, but I was still in the doorway. I
18 wasn't all the way in the room like he's trying to say. I
19 was in the door.

20 Q I'm not saying it.

21 A I was in the door.

22 Q Would you read Plaintiff's Exhibit No. 8, would you
23 read what you wrote -- first of all, let me back up. When
24 you write nursing reports are you required to be accurate in
25 these reports?

1 MR. WARREN: That's Plaintiff's No. 9.

2 THE COURT: Oh, 9. Sorry. Excuse me.

3 BY MR. WARREN:

4 Q -- and on Plaintiff's Exhibit No. 9, you stated when I
5 walked in Henrietta Mayes room, isn't that correct?

6 A Yes.

7 Q And aren't there two alarms in the room. Isn't it true
8 that this is a call button for the patient, isn't that
9 correct?

10 A The panic button is on that wall, also.

11 Q Okay. So you've got two buttons. You did state in
12 your testimony there's actually two buttons in that room, is
13 that correct?

14 A There's a panic button and they have a call bell. That
15 is the panic button. This --

16 Q So there's a call button. Do you feel free --

17 A Yes, it is.

18 Q So there's a call button and a panic button?

19 A Yes, it is. All of it is in this area. All of this
20 here. There's a panic button and there's a call button.

21 Q Where? Where is it at?

22 A On this wall.

23 Q Okay.

24 A On this picture.

25 Q Can you show me the panic button?

1 A One of these button is the panic button. I can't tell
2 you exactly which one, but one of them is the panic button.

3 Q And -- Mr. Williams -- excuse me, is that not a panic
4 button on this side of the wall?

5 A No.

6 Q And this furniture, are you saying that this furniture
7 was in that same position that night?

8 A This chair was here.

9 Q So this -- so five years later, almost, the furniture
10 is in the exact -- everything is the same?

11 A This chair was here.

12 Q And --

13 MR. WARREN: If I may get these exhibits, Your Honor?

14 THE COURT: Sure.

15 MR. WARREN: I can go get the photos.

16 THE COURT: Which photos --

17 MR. WARREN: This --

18 THE COURT: -- that's what?

19 MR. WARREN: I believe it's Plaintiff's No. 6.

20 THE COURT: Okay. All right. That's enlarged
21 Plaintiff's No. 6. And if you don't mind, do you mind --
22 yeah, hold it.

23 MR. WARREN: Plaintiff's Exhibit No. 6.

24 BY MR. WARREN:

25 Q Now, in looking at Plaintiff's No. 6. Just stand up --

1 THE COURT: Oh, you want her to step back down there.

2 MR. WARREN: Yeah.

3 BY MR. WARREN:

4 Q You can step back down, please. Now, you're saying that
5 this is the same room as that night. You're saying that
6 this headboard is the same as that headboard, is that what
7 you're saying?

8 A This is the room. I didn't say this was the exact bed,
9 but this was the room. This is the exact position her bed
10 was in.

11 Q And you were --

12 A There was a chair by that wall.

13 Q Okay.

14 A He's standing right here in this spot. He was fixing
15 his pants, and he sat -- in that chair there. He sat in
16 that chair by the wall.

17 Q Right. Didn't take off running?

18 A No, he didn't.

19 Q And you didn't yell?

20 A No, I didn't yell.

21 Q And you didn't scream?

22 A No.

23 Q And this curtain -- now, let me ask you this question.
24 Did you look -- because your testimony previously was you
25 were looking through the curtain in the hall. Was you

1 A He was over her.

2 BY MR. WARREN:

3 Q Okay. So her top was up, her breast was exposed, is
4 that correct?

5 A I could see her breast.

6 Q Okay. So you his skin contacting her skin, is that
7 correct?

8 A He was climbing on the resident. He was climbing on
9 the resident.

10 Q Well, you just stated that he was naked and in the bed?

11 A I said several times that his -- I saw his naked butt,
12 several times.

13 Q You stated he was naked and in the bed?

14 A I saw his naked butt.

15 Q Which one is it, Ms. --

16 A I saw his naked butt.

17 Q You said --

18 A I saw his naked butt.

19 MR. ARNOLD: Your Honor --

20 THE COURT: Hold on.

21 A You're trying to make me change what I said.

22 THE COURT: Ms. Jackson.

23 A I know what I saw, sir.

24 THE COURT: Whoa. Whoa. Okay. We've gone over this.

25 We have beaten this horse --

1 MR. WARREN: Yes, Your Honor.

2 THE COURT: -- absolutely to death.

3 MR. WARREN: Okay. I'm going to go to the next issue.

4 THE COURT: Good.

5 MR. WARREN: Okay, Your Honor -- excuse me.

6 BY MR. WARREN:

7 Q Now, Mr. Williams was a CNA as you stated, correct?

8 A Yes.

9 Q And he was required to care for these residents,
10 correct?

11 A Yes, he was.

12 Q And you had this policy, which we have as Plaintiff
13 Exhibit No. 11, where it tells how he's supposed to change
14 the resident, is that correct?

15 A Yes.

16 Q And you have a female, a policy for females, is that
17 correct?

18 A We have a policy for how CNAs is supposed to.

19 Q And you also have a policy for males, is that correct?

20 A It's a policy.

21 Q Now, rather than try to read this whole document I'm
22 going to ask you to read the specific parts that's relevant
23 to the testimony.

24 Now, could you read Item No. 10, so you won't think I'm
25 trying to skip over anything.

1 MR. ARNOLD: Which one is that, Your Honor.

2 MR. WARREN: 11 as I stated previously, Your Honor.

3 THE COURT: I'm sorry. Which one was it?

4 MR. WARREN: 11.

5 THE COURT: Plaintiff's 11.

6 BY MR. WARREN:

7 Q Could you read to the ladies and gentlemen of the jury
8 Item No. 10 for females, what he's supposed to be doing when
9 he's changing a resident.. Could you read that for me,
10 please?

11 A For females, separate the labia, then clean downward
12 from front to back with one stroke. Repeat using the clean
13 part of the washcloth. Wipe with each stroke. More than
14 one washcloth may be needed to be used. Rinse with clean
15 washcloth if applicable. Pat area dry with towel. Position
16 patient and resident on side. Clean rectal area from vagina
17 to anus with one stroke. Repeat until area is clean using
18 clean part of the washcloth. Wipe with each stroke. More
19 than one washcloth wipe may be needed to use and pat dry
20 with a towel.

21 This is our policy, but it don't say turn the light
22 off, get in the bed. He had no business in the bed.

23 THE COURT: Ms. Johnson. Ms. Johnson, just answer his
24 questions, okay.

25 BY MR. WARREN:

1 Q Now, Ms. Johnson, is there a policy for men caring for
2 an changing the diapers for women?

3 A It's a policy.

4 Q And did Ralph have a right to be where he was in that
5 room?

6 A He had a right to be in the room.

7 Q Okay, and -- and -- and he changing her in that room?

8 A He was changing her, but not with the lights off and in
9 the bed.

10 Q Uh-huh. (Affirmative response.)

11 A Climbing on top of her. He doesn't have a right to go
12 in the room, turn the light off, climb on top of her, naked
13 butt exposed.

14 Q Now, aren't there two lights in that room?

15 A It's two light switches in the room, yes, it is, but
16 the lights were off.

17 Q Can I finish my question? There is a light above or
18 overhead light, is that correct?

19 A Yes.

20 Q That would light the whole room, is that correct?

21 A Yes.

22 Q And there is another light where you can go and just
23 turn on the light for that bed, is that correct?

24 A Yes.

25 Q Wasn't that the light that was on, over the bed?

1 A There was no light on in the room.

2 Q So it's 3:00 o'clock in the morning, is that correct?

3 A Whatever the time say.

4 Q And you can see her breast exposed, is that correct?

5 A Yes.

6 Q And you can see his naked butt in the bed, is that
7 correct?

8 A Yes.

9 Q Now, -- and in the face of seeing this -- you didn't go
10 in the room you just saw it from the hall because you didn't
11 go in the room.

12 A I knocked on the door and I entered the room. When I
13 say entered the room I was in the doorway not exactly all
14 the way in the room. You know how you step in a room, but
15 you're not all the way in the room. That's how I was.

16 Q Okay. You didn't pull the curtains back?

17 A No.

18 MR. WARREN: No further questions.

19 THE COURT: All right. Anything on re-cross limited to
20 his redirect?

21 MR. ARNOLD: Nothing, Your Honor.

22 THE COURT: Pardon me?

23 MR. ARNOLD: No, sir, no further questions.

24 THE COURT: Okay. You may step down Ms. Johnson. Thank
25 you, ma'am.

1 All right. Is the plaintiff ready to call it's next
2 witness?

3 MR. WARREN: At this time we call Ms. Peppers to the
4 stand.

5 THE COURT: Okay. All right, Ms. Davis, if you'd put
6 your left hand on the Bible, please ma'am, raise your right
7 hand and the clerk is going to swear you in.

8 THE CLERK: Could you state your name for the record,
9 please?

10 MS. DAVIS: I'm Josette Davis.

11 (WHEREUPON, Josette Davis was sworn
12 to tell the truth.)

13 THE CLERK: You may be seated.

14 JOSETTE PEPPERS DAVIS - DIRECT EXAMINATION

15 BY MR. WARREN:

16 Q Good afternoon, Ms. Peppers.

17 A Good afternoon.

18 Q Now, Ms. Peppers could you please state your name for
19 the record?

20 A Josette Derita (sp) Davis.

21 Q Okay, and at the time of the incident what was your
22 name?

23 A Josette Derita Peppers.

24 Q Okay. And back in 2010, where did you work?

25 A At UniHealth Post-Acute Care of Orangeburg.

1 Q Okay. What was your duty at that time?

2 A I was a Licensed Practical Nurse.

3 Q Okay. And as a licensed practical nurse what was your
4 duty?

5 A I was to provide medicine, pass out -- well, pass out
6 medicine, doing treatments and also supervise the CNAs.

7 Q Okay, and what shift did you work?

8 A 11:00 to 7:00.

9 Q Okay. And were you working on June 21, 2010?

10 A Yes.

11 Q What rooms were your responsibility?

12 A I was on the other side on another unit.

13 Q Could you stand up and look at this diagram?

14 A Sure.

15 Q Okay.

16 MR. WARREN: Plaintiff counsel is showing the witness
17 Exhibit No. 4.

18 THE COURT: Okay.

19 BY MR. WARREN:

20 Q Now, could you point out to where you were at in the
21 building?

22 A (Indicating.)

23 Q Where is the nurses station at you would go to

24 A Here.

25 Q This is the nurses station, correct?

1 A Yes.

2 Q And at the time you were going to break room, is that
3 correct -- well, first of all, June 21, 2010, you worked the
4 11:00 to 7:00 shift, correct?

5 A Correct.

6 Q Okay. And approximately what time did Ms. Johnson come
7 to get you?

8 A I'm not sure of the time, but as I know I was walking
9 to the snack machine to get me a snack.

10 Q So the snack machine is in the break room, is that
11 correct?

12 A It's an area where they have a snack machine there,
13 yeah.

14 Q Okay. And she had a conversation with you when she
15 came to get you, correct?

16 A It was not a conversation, you know, she did told me
17 what she had to tell me.

18 Q Okay. And she told you that Ralph was having sex,
19 wasn't that correct?

20 A She told me that -- she came to me, rushing up to me
21 and then she said to me, come on, something about Ralph is
22 in Ms. Mayes room with his pants down, and she said
23 something -- I don't recall all the details, but I -- she
24 said something with sex.

25 Q Okay. Now, do you believe that Ms. Johnson told you

1 that Ralph was having sex?

2 A Like I say, I don't recall all the details when, you
3 know, she was saying what --

4 THE COURT: Ms. Davis, go ahead and sit back down, okay.

5 A -- Like I said, I don't recall all the details when she
6 came up to me but I remember she was telling me to come on.
7 Like she was anxious, nervous, something just happened. She
8 said Ralph is in Ms. Mayes room with his pants down and she
9 was saying something about, you know, with sex, but I don't
10 recall the details because it was four or five years ago.

11 Q Uh-huh. (Affirmative response.) Now, if you would,
12 Ms. Peppers, would you read the the relevant portions of the
13 testimony, I guess, from Line --

14 THE COURT: Is that different from what she's testified
15 to?

16 MR. WARREN: It is, Your Honor.

17 THE COURT: Okay.

18 BY MR. WARREN:

19 Q And the question asked in this testimony was Ms.
20 Peppers so you kind of lay a foundation of how Ms. Johnson
21 was acting when she came up to you. What did she say to you
22 when she encountered you in the hallway there?

23 THE COURT: You're going to give her the Page --

24 MR. WARREN: Former testimony, I'm on Page 95.

25 THE COURT: Okay. What line?

1 MR. WARREN: Line 12.

2 THE COURT: Do you have a second copy that you can give
3 her so she can look at it.

4 MR. WARREN: I got one.

5 THE COURT: Oh, she's got it right there. Okay. So --

6 BY MR. WARREN:

7 Q Okay. Now, -- just take your time to review it right
8 quick. Okay.

9 A Uh-huh. (Affirmative response.)

10 Q Now, isn't it true -- former testimony where you put
11 your hand on the Bible -- and swore, is that correct?

12 A Correct.

13 Q Now, when you did that former testimony which was
14 several years ago.

15 A Uh-huh. (Affirmative response.)

16 Q You stated, she told me to come -- to come with her and
17 she said Ralph was having sex with Ms. Mayes, isn't that
18 correct?

19 A Well, what this says --

20 Q Is that your testimony?

21 A Yes, I see what this says. Yes.

22 Q All right. Now, you were asked a second time --

23 A Uh-huh. (Affirmative response.)

24 Q -- right there on Line 14, right next under it. All
25 right, did you know who she was talking about, Ralph, did

1 BY MR. ARNOLD:

2 Q Josette, I'm just going to ask you some questions as
3 well.

4 A Uh-huh. (Affirmative response.)

5 Q Has your name always been Josette Davis?

6 A No.

7 Q What was your full name?

8 A Josette Derita Peppers.

9 Q Okay, and why did it change?

10 A I got married in 2010 to my husband, Jonathan Davis.

11 Q And where do you and Jonathan live?

12 A We now live in Cordova, South Carolina.

13 Q Are you from Cordova originally?

14 A No, I'm from St. George, South Carolina.

15 Q And you said you were married, do you and your husband
16 have any children?

17 A Yes, we have a six-year-old boy.

18 Q So in 2010 he was two-years-old?

19 A Yes.

20 Q And are you currently employed?

21 A Yes, I am.

22 Q And what's your position -- where do you work?

23 A I work at UniHealth Post-Acute Care of Orangeburg.

24 Q And what's your position there?

25 A I'm a Licensed Practical Nurse.

1 Q And do you work anywhere else?

2 A Yes, I do. I work at Calhoun Convalescence Center.

3 Q And are you full-time at both?

4 A Full-time at UniHealth Post-Acute Care and I'm, like,
5 part-time at Calhoun Convalescence.

6 Q And how long have you been an LPN?

7 A Seven years.

8 Q And have you always been a LPN?

9 A No.

10 Q What were you before you were an LPN?

11 A I was a Certified Nurses Assistant.

12 Q And that's a CNA that we talked about?

13 A Yes.

14 Q And sort of similar to Ms. Johnson you went from CNA
15 and became an LPN?

16 A Yes.

17 Q And that was sort of a promotion?

18 A Yes.

19 Q And did you have to go to school?

20 A Yes, I did. I went to OC Tech in Orangeburg County
21 Technical College.

22 Q Why don't you give the jury a little bit of background
23 about your education?

24 A I graduated from Woodland High School in 2004 is when I
25 got my CNA certification. I went to Claflin University

1 here and during that time I was working as a nursing
2 assistant and then I went to OC Tech. I transferred to OC
3 Tech and that's how I got my nursing license. I got my LPN.

4 Q And you've done some classes to become an RN, right?

5 A I did. I went to -- I also went to South Carolina State
6 University for some classes but I didn't finish.

7 Q So you haven't finished that program?

8 A Huh-uh. (Negative response.)

9 Q And we heard Ms. Johnson earlier, but why don't you
10 describe in your own words the job responsibility of a CNA?

11 A Certified Nursing Assistant, they provide care for
12 residents that cannot do for themselves. Like they wash,
13 change, feed. Basically, whatever you can't do for yourself
14 they basically do for them.

15 Q So it's fair to say CNAs have the most interaction with
16 the residents?

17 A Yes.

18 Q And what about your job responsibilities as an LPN?

19 A As LPN, I supervise CNAs, I pass out medicine, do wound
20 care and whatever the doctors say. I carry out the doctor's
21 orders.

22 Q And what kind of facility is UPAC of Orangeburg?

23 A It's a skilled nursing home. We have long-term care.

24 Q And the residents that are there?

25 A They got like dementia, although there's a mixture of

1 A Yes.

2 Q And that's where --

3 A Pat -- yeah.

4 Q And were y'all the only two LPNs on shift that night?

5 A Yes.

6 Q One LPN at this nurses station and one at this station?

7 A Yes.

8 Q And then there were two CNAs assigned to Ms. Johnson?

9 A Yes.

10 Q Okay. Thank you. I want you to tell the jury about
11 the events of June 21, 2010 in your own words.

12 A Okay. I was walking down the hallway going to the
13 snack machine and all of a sudden, you know, Patricia
14 Johnson come rushing up to me. And then she was telling me
15 to come on, come on, Ralph was in the room with his pants
16 down, in Ms. Mayes room with his pants down. And then she
17 was saying, you know, something about sex, you know, but I
18 can't remember all the words. So we quickly rushed down the
19 hallway, you know, to Room 39 and that's when I went up to
20 the room, the door was closed or whatever. So I didn't
21 knock, I went in the room. The lights was off and, you
22 know, I kind of peeked through the curtain, because the
23 curtain was like closed. So I kind of peeked through the
24 curtain and the lights was still off and the hallway had a
25 light on so I could see inside the room when I opened the

1 door, and that's when I see him. He was standing like in
2 the corner area beside the bed and he was adjusting his
3 pants. He was like tying his pants and he just, you know,
4 sat in the chair. He was saying something to Ms. Mayes,
5 like mumbling. I don't know what he was saying. Then he
6 just hold his head down. Then he looked at me and said
7 what? And --

8 Q And did you ask him to leave the room?

9 A Yes. I asked him to leave the room.

10 Q And did she -- did Ms. Mayes live in Room 39?

11 A Yes, she did.

12 Q Did she live there alone?

13 A No, she had a roommate.

14 Q What was the status of her roommate?

15 A She had dementia, meaning that she's not aware of
16 person, place and time.

17 Q Would she have been able to respond to anything going
18 on in the room?

19 A No.

20 Q Would you expect to see a CNA who cares for her
21 routinely to know about their abilities to respond?

22 A Of course, yeah.

23 Q You mentioned that Pat Johnson came rushing up to you.

24 A Uh-huh. (Affirmative response.)

25 Q What did she look like, what was she acting like?

1 A She was nervous, anxious like. It was clear like she
2 wanted to cry and at that time I knew something was going
3 on, that something had happened. It was obvious that
4 something happened.

5 Q Have you ever seen her like that before?

6 A No.

7 Q And what did she say to you?

8 A She just came up to me, telling me to come on, you
9 know, Ralph was in the room with his pants down.

10 Q And how long was that conversation?

11 A I mean, it didn't last long, less than 15 -- 30
12 minutes, I mean, 30 seconds, I mean. It wasn't long.

13 Q Did you have an in-depth conversation?

14 A No.

15 Q It was like hurry, come on?

16 A Yes.

17 Q And how did you react?

18 A I respond, like we rushed down the hall and rushed --
19 rush walked. It wasn't like we ran, it was rush walking.
20 Speed walking.

21 Q So how far would you estimate how far you were from
22 Room 39?

23 A I'd say about eight to 10 rooms down.

24 Q And so each one of these are rooms?

25 A Yes.

1 A No.

2 Q So you rushed to the room.

3 A I rushed to the room.

4 Q Door was closed.

5 A Door was closed.

6 Q And you opened it?

7 A I opened it.

8 Q Did you knock?

9 A No, I didn't.

10 Q You just opened it.

11 A I opened it.

12 Q Were the lights on in the room?

13 A The lights was off.

14 Q The lights were off?

15 A Off.

16 Q They've talked about two different lights. There was a
17 light that was just above Ms. Mayes bed that was on?

18 A There was no lights on.

19 Q So neither one of the two lights was on?

20 A No lights.

21 Q If the lights were off how did you see him?

22 A The light in the hallway is on and bright. Soon as you
23 open the door you can see right in there.

24 Q It says Exhibit 26C, does this reflect what you saw for
25 the most part in the room?

1 A Yes.

2 Q And there was a curtain that is no longer there that
3 was there?

4 A Uh-huh. (Affirmative response.)

5 Q And where was Mr. Williams in the room?

6 A He was right up in this area here, up in here adjusting
7 his pants, adjusting his pants right there.

8 Q What about Ms. Mayes?

9 A She was like laying in the bed, laying flat in the bed.

10 Q Could you see anything -- well, describe her?

11 A She was just -- it was just the covers were messy all
12 over her, just throwed up on her. I didn't see anything.
13 All I see was this cover just sloppy on her like somebody
14 just rush and put something on her.

15 Q Is that normal?

16 A No.

17 Q Does Exhibit 26C accurately reflect the kind of
18 lighting that you saw on that night in question?

19 A Yes.

20 Q And you said he was adjusting his tie on his scrub
21 pants?

22 A The drawstring, yes.

23 Q And he sat in the chair?

24 A Uh-huh. (Affirmative response.)

25 Q And he put his head down?

1 A He mumbled something and put his head down. I don't
2 know what he said. He look at me and he say, what?

3 Q And what did you say in response.

4 A I said, I told him to leave the room.

5 Q And did he say anything in protest?

6 A No, he did not.

7 Q Did he ask you why he needed to leave the room?

8 A Nope.

9 Q Did he say I'm not done changing her diaper?

10 A No.

11 Q Josette, Mr. Williams alleged that there was a diaper
12 full of feces; did you smell any feces in the room?

13 A No.

14 Q Have you ever smelled an adult diaper that was full of
15 feces?

16 A Yes, I did..

17 Q If there was a diaper full of feces on that night would
18 you have smelled it?

19 A I would have smelled it, but I didn't smell it.

20 Q What about cleaning supplies for changing a resident?

21 A I didn't see that either.

22 Q What happened after you asked Mr. Williams to leave?

23 A Pat told me to call, you know DO -- you know, Director
24 of Nursing because she -- she was all a mess. She was
25 anxious. So I went ahead and called the DON and the DON

1 instructed me to call 911.

2 Q And who was -- Director of Nursing, is that the head
3 nurse?

4 A Yes. That's my supervisor.

5 Q And was she at the facility at that time?

6 A No, she was home.

7 Q So you called her at approximately 3:00 a.m. and woke
8 her up in the middle of the night?

9 A Yes, I did.

10 Q How long after you left the room did you call the
11 director of nursing?

12 A Immediately, right after I left the room.

13 Q What did she say?

14 A She told me, you know, to call 911.

15 Q Did the Director of Nursing end up coming to the
16 facility?

17 A She did.

18 Q Okay. And did you call 911?

19 A I did.

20 Q And how long after you hung up with the DON did you
21 call 911?

22 A Immediately, right after.

23 Q And what did you tell the 911 dispatcher?

24 A I told them that we suspect the abuse and that, you
25 know, we need somebody here and they came.

1 Q And did you provide any other details?

2 A No, I didn't.

3 Q Did you ever touch Ms. Mayes or otherwise provide care
4 for her after you saw her on that night, June 21, 2010?

5 A No, I didn't.

6 Q And you're certain of that?

7 A Positive.

8 Q Were you in the room when the police arrived?

9 A No, I wasn't.

10 Q Were you present when the covers were pulled back?

11 A No, I wasn't.

12 Q Do you know if the police collected evidence?

13 A No.

14 Q Did you speak to the police?

15 A Right after, yeah.

16 Q So you provided a written statement?

17 A Yeah.

18 Q And did they question you?

19 A Yes.

20 Q And did those statements differ from what you're
21 testifying to today?

22 A No.

23 Q Were you telling the truth when you spoke to the
24 authorities on June 21, 2010?

25 A Yes, I was.

1 Q And you're telling the truth today?

2 A Yes, I am. I have no reason to lie on him. I mean, I
3 have nothing against him. Nothing back then, I still today
4 don't have nothing against him.

5 Q And there's been some talk of the call button and the
6 emergency panic button? If you'll stand up for one moment.
7 I'm directing to you what I've -- we've marked as Exhibit
8 26B, which is blown up. Point to me in the room where these
9 two buttons are?

10 A The emergency button is some -- it's over here. One of
11 them buttons. I can't make out which one.

12 Q And as far as on this wall next to the door, and I'm
13 pointing you directly to Exhibit No. 26H, is there any
14 button or panic button on that wall?

15 A No.

16 Q And you were here when Mr. Warren said, just two feet
17 away I could just go in and hit the alarm. In 2010, June
18 2010, was there any panic button or anything on this wall?

19 A No.

20 Q Is there one today?

21 A Nope.

22 Q so for the last five years there's not been a panic
23 button on this wall?

24 A No.

25 Q Thank you. There's been talk about a rift between

1 Ralph Williams and Pat Johnson. Did you ever hear anything
2 about a rift between those two?

3 A No.

4 Q From Ms. Johnson?

5 A No.

6 Q What about from Ralph Williams?

7 A No.

8 Q I have a few more questions. You first became a CNA
9 when?

10 A In high school in 2004.

11 Q And where do you -- what other facilities did you work
12 at besides UPAC of Orangeburg?

13 A St. George Nursing Home and also in Orangeburg Nursing
14 Home which changed to UniHealth.

15 Q And your responsibilities as a CNA were they similar to
16 what Mr. Williams' were on that night?

17 A Yes,

18 Q And when you change a diaper, do you ever have to get
19 up on the bed?

20 A No.

21 Q Any training that you've ever received that says get up
22 on the bed?

23 A No.

24 Q If there's a resident you can't handle by yourself what
25 are you supposed to do?

1 A You're supposed to get assistance. You're always
2 taught not to, you know, change somebody that is too heavy
3 for you by yourself, to always get help.

4 Q How many diapers would you say you've changed?

5 A Thousands.

6 Q In the thousands that you've changed have you ever
7 gotten up on the bed?

8 A No. Never.

9 Q And have you changed residents that were much larger
10 than you?

11 A I did.

12 Q How tall are you?

13 A About what, five-one. Never had to get up on the bed.

14 Q Ms. Davis, as a nurse, do you have an obligation to
15 report suspected abuse?

16 A Yes.

17 Q And what happens if you don't?

18 A I can get in trouble. I can get, you know, fired,
19 terminated, go to jail.

20 Q Does the facility have any reporting requirements?

21 A Yes, they do.

22 Q What could happen if you fail to report in accordance
23 with the facilities policies?

24 A You can get terminated.

25 Q After Pat Johnson came rushing up to you and you went

1 to the room I believe you testified the door was shut, the
2 lights were off, the bedding was sloppy on Ms. Mayes --

3 A Uh-huh. (Affirmative response.)

4 Q -- and Ralph Williams was adjusting the string on his
5 scrub pants --

6 A Uh-huh. (Affirmative response.)

7 Q -- did you suspect that abuse had occurred?

8 A Yes.

9 Q Is that why you reported it?

10 A Yes.

11 Q Is that why you called 911?

12 A Yes.

13 Q Did you make up any allegations in some sort of effort
14 to get Ralph Williams in trouble?

15 A I wouldn't never make up false statements against
16 somebody so they can lose they job or even cause me my job,
17 and you know, risk losing my job over a false statement.

18 Q Did you ever come up with some sort of plan with Pat
19 Johnson?

20 A No. Like I said, I never did have nothing against
21 Ralph, as of today. I don't have nothing against him. I
22 would not make up nothing against him.

23 Q Is there any doubt in your mind about what you saw when
24 you opened the door of Room 39 at the nursing facility in
25 the early morning hours of June 21, 2010?

1 A No doubt.

2 MR. ARNOLD: No further questions, Your Honor.

3 THE COURT: All right, Mr. Warren, whenever you're
4 ready?

5 JOSETTE PEPPERS DAVIS - REDIRECT EXAMINATION

6 BY MR. WARREN:

7 Q Now, Ms. Peppers --

8 A Uh-huh. (Affirmative response.)

9 Q -- you indicated you were working that evening, is that
10 correct?

11 A Yes.

12 Q And Ms. Johnson came to you stating that, from your
13 previous testimony, that Mr. Williams was having sex,
14 correct?

15 A I stated -- like I stated, she came rushing up to me,
16 telling me to come on to the room, he had his pants down and
17 she was saying something about sex, but she was all anxious
18 and incoherent. She said something.

19 Q I understand that. I understand that. I appreciate
20 that, but didn't you testify that she told you he was having
21 sex? I can get your testimony if you want?

22 A I know what that says, but, you know, like I said, you
23 know, that's how she came up to me.

24 Q So your recollection is better now than it was almost
25 five years ago?

1 A Like I said, I know that that says. So, I mean, it
2 maybe not the exact words, but, you know --

3 Q Here's the exact words. Now, did you also give a
4 statement, Plaintiff's Exhibit No. 12, Ms. Peppers. Could
5 you please read that?

6 A I was called to the resident room by another nurse --

7 MR. ARNOLD: Your Honor, I'm going to object. I didn't
8 bring up Exhibit 12. That's going outside the scope of my
9 examination of her.

10 THE COURT: Okay.

11 MR. WARREN: She indicated that the police questioned
12 her, she indicated what she did -- we covered the whole
13 subject area. He talked about when the police went in the
14 room. He talked about what did she do, what did she see
15 when she was in the room. He talked about the fact that the
16 covers were sloppily thrown on the bed in the room.

17 THE COURT: Okay. I'm going to note your objection on
18 the record. Thank you.

19 MR. ARNOLD: Thank Your Honor.

20 BY MR. WARREN:

21 Q Could you read that statement please?

22 A Yes. I was called to resident room by another nurse,
23 Patricia Johnson. She stated that employee Ralph was in the
24 room with his pants down. I rushed to the room, he was
25 fixing up his clothes. He sat in the chair and started

1 talking to her. Curtain was pulled around bed, covers were
2 thrown sloppily on bed and room was dark. Ralph was going
3 to have sex with the resident if we didn't come.

4 Q Now, didn't you just testify you didn't see anything
5 when you got to the room, back to the room? Did you testify
6 that you came back to the room and you opened the door, is
7 that correct?

8 A Yes. I opened the door.

9 Q And you testified that -- did you pull the curtain
10 back?

11 A The curtain was kind of pulled and so I kind of peeked.
12 It was, like I said, the room was dark. And then when the
13 light came in the room from the hallway shine in the room,
14 and, you know, I can see inside the room by the light
15 shining.

16 Q And you're saying Mr. Williams was back in this corner,
17 though, right?

18 A He was -- he was in this area, here. He was like in
19 this area.

20 Q So you contend this is the same room -- you contend
21 this is the same room?

22 A It's the same set-up. It's the same set-up.

23 Q It's the same set-up. So the curtain --

24 A The curtain is not there, that's the only difference.

25 Q And the headboard is the same?

1 Q So this photograph here in 2014 is a new photograph,
2 because -- you're saying this is the same room?

3 A This is the same room. Same room.

4 Q Now, your statement, you stated that -- you stated that
5 Ralph was going to have sex when the resident if he didn't
6 got caught?

7 A Yes.

8 Q But you stated you didn't see anything?

9 A According to her statement and according to what I
10 observed, just like if you was to tell me it's raining
11 outside and my windows down, 30 seconds later I go outside I
12 don't see no rain, but it's evident that it rained because
13 my window is down. I see water in the car. It's water all
14 over the car, so it rained. It's the same scenario.

15 Q Uh-huh. (Affirmative response.) Same scenario, it's
16 raining. So you don't --

17 A I had evidence -- when I came to the room the evidence
18 -- it's obvious that something happened. He adjusting his
19 pants, the room is dark. There's no reason for that. I
20 mean --

21 Q So he's in this room, Exhibit 6. He's in this room
22 with the curtains drawn in total darkness?

23 A In the room in the dark with the door closed.

24 Q Now, you're saying that you immediately went and
25 contacted the police, correct?

1 A I notified my supervisor --

2 Q Uh-huh. (Affirmative response.)

3 A -- which told me to, you know, call 911.

4 Q And Ms. Johnson stayed in that room, isn't that
5 correct?

6 A Well, we told him to come out the room.

7 Q I understand Mr. Williams went out the room --

8 A Uh-huh. (Affirmative response.)

9 Q -- but Ms. Johnson stayed in that room, is that
10 correct?

11 A I don't know what she did. I don't recall what -- if
12 she stayed in the room, but I know when I told him to leave
13 the room, I went immediately to the nurses station.

14 Q Yeah, you immediately called 911, didn't you?

15 A I call my supervisor which told me to call 911.

16 Q Right.

17 A Yes.

18 Q And that's what you immediately did, that was the first
19 thing that you did when you came in the room?

20 A We reported the abuse, suspected abuse, we reported.
21 That's what I did.

22 Q And, Ms. Johnson, while you did that, she stayed in
23 that room, isn't that correct?

24 A Like I said, I went to the nurses station to call. I'm
25 not sure where Johnson was, but I was at the nurses station.

1 Q So because you walked in this room and you pulled this
2 curtain back and you had to look this way, didn't you. You
3 didn't just walk in the room. Isn't that correct, wouldn't
4 you have to --

5 A When I walked in the room, like I said --

6 Q -- wouldn't you have to look around the corner?

7 A -- the curtain was pulled, so I -- like with this
8 curtain pulled, I had to look right here.

9 Q Uh-huh. (Affirmative response.)

10 A That's where I looked and that's where he was.

11 Q Right.

12 A And I seen him up in this area.

13 Q So you went in the room and looked in the corner, is
14 that correct?

15 A I said, when I came in I was in the doorway and the
16 door was open. I peeped around the curtain and then that's
17 when I seen him up in this area.

18 Q And abased on that, you state that Mr. Williams would
19 have sex if he didn't get caught?

20 A Thank God that Patricia was there, because she stopped
21 it from happening.

22 Q But you didn't see anything, isn't that correct?

23 A Like I said, according to, you know, what Pat told in
24 my statement and what I seen for myself --

25 Q Right. Ms. Johnson told you he was actually having

1 sex, isn't that correct?

2 A Like I said, in my statement, when Pat told me to --
3 come to the room that he's down there with his pants down.
4 She's anxious, -- something happened. When I come back to
5 the room, lights off and he adjusting his pants, it was
6 obvious something had occurred.

7 Q And that's something that occurred is he would have sex
8 but he caught correct?

9 A If he didn't got caught.

10 Q Now, you indicated that you were down here going to the
11 break, to the snack machine?

12 A Uh-huh. (Affirmative response.)

13 Q And resident's Room No. 39A is all the way down here?

14 A Uh-huh. (Affirmative response.)

15 Q So Ms. Johnson came down here and got you at the snack
16 machine?

17 A Uh-huh. (Affirmative response.)

18 Q She didn't go down here. She went up here to the break
19 room where the snack machine is and got you and you came
20 back, and based on her telling you he was having sex that's
21 what you expected to have found when you got to the room, is
22 that correct?

23 MR. ARNOLD: Objection, Your Honor. Argumentative.

24 She's already stated once her testimony -

25 MR. WARREN: It's a fair question, though.

1 THE COURT: I'm -- let him finish. Okay. I understand
2 it's argumentative. I'm going to let her answer the
3 question. She's been doing it fine.

4 BY MR. WARREN:

5 Q Based on what Ms. Johnson told you, you're in the break
6 room at the snack machine. She left Room 39A. She's came
7 all the way to the break room and how many employees on that
8 night, approximately eight?

9 A Probably.

10 Q And she comes from this room, comes down here to the
11 snack machine and your testimony was she said Ralph is
12 having sex, come here. My question is, when she told you
13 that you expected somebody to be having sex or finishing
14 having sex when you walked in the room even though you
15 didn't see it, isn't that correct?

16 A I expected to see something happen.

17 Q Right. Because that's what she told you?

18 A Like I said, I seen him adjusting his pants in the room
19 in the dark. He should never be in the dark in the room.

20 Q And you state -- based on that you can just make a
21 statement that accuses somebody of having sex without seeing
22 them?

23 A Like the statement with the rain. I don't have to see
24 the rain to know that it was raining. I mean, same case
25 scenario. I mean --

1 BY MR. FOSTER:

2 Q Officer Warrington, good afternoon.

3 A Good afternoon.

4 Q Where are you employed?

5 A Orangeburg Department of Public Safety.

6 Q And how long have you been there?

7 A Seven years.

8 Q Okay. What's your current rank?

9 A PSO2.

10 Q Okay. How is that -- what does that stand for in your
11 hierarchy?

12 A It's right towards the bottom, second --

13 Q Are you on patrol?

14 A No, I'm in special operations.

15 Q Were you working on June 21, 2010?

16 A Yes, sir.

17 Q What shift were you working?

18 A I was on the night shift. I was working Bravo shift.

19 Q And that's what to what?

20 A It was 8:00 p.m. to 8:00 a.m.

21 Q All right. Did you get a call or a dispatch to go to
22 UniHealth facility in Orangeburg?

23 A I did.

24 Q And do you have with you your notes or your report from
25 that visit?

1 A I have a report that I took or a copy of a report that
2 I took.

3 Q What time did you arrive at the facility?

4 A 0320.

5 Q 3:20 a.m.?

6 A I actually arrived at 3:24, I got dispatched at 3:20.

7 Q Okay, and were there any other officers on the scene?

8 A According to the report there was a PSO Scott, O'Cain
9 and Corporeal Hanes.

10 Q So who got there first?

11 A I did.

12 Q So when you arrived you were first?

13 A Yes, sir.

14 Q And Officer Scott came after you then, right?

15 A Yes, sir.

16 Q That's a female, Stephanie Scott, on patrol?

17 A Yes, sir.

18 Q She was working the same shift that night?

19 A Yes.

20 Q Okay. Who did you talk to when you arrived?

21 A Initially, I met with -- I spoke with the complainant,
22 Ms. Johnson. She was the one who called me. She met me
23 outside.

24 Q Patricia Johnson?

25 A Yes.

1 Q And what did you do when you were there, as a result of
2 that conversation what did you do?

3 A Well, we were there for a complaint of criminal sexual
4 conduct. So we identified who was the complaint, who was
5 the suspect and who was the victim and then we did an
6 investigation into complaint.

7 Q Okay. Were you alone in your cruiser, you didn't have
8 a partner with you when you responded?

9 A We don't have partners.

10 Q Okay. So did you -- where did you go first?

11 A Well, when we met them outside and then there's like a
12 small waiting area --

13 Q Ms. Johnson?

14 A The two complainants, Ms. Johnson and Ms. --

15 Q Peppers, at the time?

16 A Yes. We met with them outside and then they took us
17 inside where Mr. Williams was. He was right inside the
18 door. There's a little area, I guess, right inside the door.

19 Q When you go in the front door?

20 A Yeah.

21 Q Like a lobby area?

22 A Somewhat like a sitting area. I can't really remember
23 what it looked like, I just remember that it was separate
24 from the facility.

25 Q Was he sitting down?

1 A He was in a chain inside there.

2 Q Was he by himself?

3 A Yeah, I guess. I don't know anybody else was in there.

4 Q Did you approach him and begin to speak to him about
5 what had happened?

6 A I asked him initially what -- why he felt we were there
7 and I told him why we were there. I informed him that we
8 would be placing him in investigative detention.

9 Q Okay. So the first time you met him you explained that
10 to him. Did you restrain him with handcuffs or whatnot?

11 A We actually did. I actually restrained him behind his
12 back and Mirandized him just in case.

13 Q Okay. Where did you put him?

14 A By that time we had more officers on the scene, I don't
15 remember exactly who got there or what order, but we had an
16 officer standby him to keep him separate from both the
17 complainants and the victim.

18 Q So he stayed on the property --

19 A Yeah, he --

20 Q -- but was --

21 A -- was somewhere else out of my field of vision.

22 Q Where'd you go next?

23 A Let's see. I went back to try to speak -- well, I was
24 speaking with both of the nurses at the time.

25 Q That would be Peppers and Johnson?

1 A Yes. And we moved around the facility to where the
2 victim's room was.

3 Q Okay. What did they tell you about what happened?

4 A Well, according to them, it was Ms. Johnson that said
5 she couldn't find Mr. Williams and she went into Ms. Mayes
6 room, who is the victim. She said she saw him on top of Ms.
7 Mayes and Ms. Mayes was laying down on the bed on her back,
8 had her gown pulled up and Mr. Williams was on top of her
9 with his uniform scrubs down around his lower area, around
10 his feet. It appeared to her that he was trying to initiate
11 sex with her.

12 Q And what did Ms. Peppers tell you when you first talked
13 to her about what had happened?

14 A Well, I talked to her after I got that, and then she
15 said that Ms. Johnson came to get her and that when she came
16 back in with Ms. Johnson that he was in the room pulling up,
17 you know, getting his -- kind of fixing, she said he was
18 fixing his clothes and told them to shut the door and get
19 out.

20 Q Did she say anything about when they came back to the
21 room whether it was dark in there or whether the light was
22 on?

23 A I can't recall.

24 Q So where did you go from there?

25 A From there it was explained to me that --

1 Q By who, by who?

2 A By Ms. Johnson and Ms. Peppers.

3 Q Okay.

4 A That the gown was pulled up over the victim, but the
5 victim had been covered up by the nurses. So at that point,
6 we have a thing in public safety where if there's going to
7 be a questionable area where a male should not view a female
8 unless it's dire circumstances, males will exit the room and
9 let a female officer see what's going on.

10 Q So did the nurses tell you that they had covered Ms.
11 Mayes up?

12 A She was covered up. I don't recall who said they
13 covered her up.

14 Q Okay. Somebody at UniHealth covered her up?

15 A Somebody had to, yes. She was covered up the first
16 time I saw her.

17 Q From a previous time when she was exposed?

18 A She -- when I first saw the victim she was covered up.
19 I never saw the victim uncovered, like, out from under the
20 bed sheet.

21 Q Did Peppers or Johnson or anybody at the facility tell
22 you they had covered her up?

23 A I can't tell, that's not on my report.

24 Q Okay. When you walked into the room, Room 39 where Ms.
25 Mayes was --

1 A Uh-huh. (Affirmative response.)

2 Q -- when you walked in there for the first time, had any
3 other officer already been in there?

4 A I can't recall. We were moving about.

5 Q Was Stephanie Scott with you when you entered Room 39?

6 A She had to be with me, at least one time when I went in
7 there. As for the first time I don't know, but she was with
8 me whenever I entered the room to go talk to her.

9 Q The first time did you walk in there alone, alone
10 officer in there or was somebody else already in there?

11 A I can't recall.

12 Q The first time you walked in there you saw her covered
13 up?

14 A Yes.

15 Q And there after did Stephanie Scott come into the room?

16 A She did.

17 Q Was that because she was the female officer who should
18 tend to these kinds of things?

19 A Yes, sir.

20 Q Okay. Did you then leave the room or did you stay in
21 there?

22 A I'm required to leave the room if there's going to be a
23 female exposed or something like that.

24 Q So did you leave the room?

25 A Yes.

1 Q And did Stephanie Scott stay in there?

2 A Yes.

3 Q Were you observing anything about what happened?

4 A She went in with the express purpose of speaking with
5 and checking on the state of the victim, and when she's
6 required to take pictures or do anything like that, we're
7 not allowed to observe.

8 Q Okay.

9 A We will observe the photographs later to ensure what
10 they are but we're not allowed to observe that process.

11 Q Okay. So did you go in there when Stephanie Scott was
12 attempting to communicate with Ms. Mayes?

13 A Yes.

14 Q And how did that go?

15 A Not very well. The victim has a mental incapacity.

16 Q Okay. So then somebody wanted to get the state of
17 dress and picture of it underneath the covers?

18 A Yes.

19 Q And so you left the room?

20 A Yes.

21 Q And she took care of that?

22 A Yes.

23 Q And then what happens from there?

24 A After that --

25 Q Are you finished in the room yet or you've got to do

1 some more stuff?

2 A Well, let me see. After they took the picture I went
3 out and talked, again, with the two complainants, Ms.
4 Peppers and Ms. Johnson, and asked them if they would be
5 willing to provide a written statement.

6 Q They said yes?

7 A They did, and they gave a statement.

8 Q To you or was it to somebody else?

9 A There was -- If you have a chain of custody form, maybe
10 that will tell me if I dropped the two statements in
11 evidence.

12 Q I do have that. I'll get to that in a minute.

13 A Okay.

14 Q I'm showing you a copy of the original Patricia Johnson
15 voluntary statement, Exhibit No 9. Is that the kind of
16 statement you're talking about?

17 A Yes. Actually, I would not have received this
18 statement as it was written. PSO2 O'Cain would -- Corporal
19 Hanes would have witnessed this statement. So it was given
20 to them.

21 Q Okay.

22 A And they were later given to me and I dropped them in
23 the chain of custody.

24 Q Likewise, here's the statement, Exhibit 12, for Josette
25 Peppers. Is that what that is?

1 A Yeah. Yeah.

2 Q Same two people took these --

3 A Yeah.

4 Q Okay. Did they tell you anything, verbally, any
5 different than what you had been told before by the two
6 complainants?

7 A Huh-uh. (Negative response.)

8 Q Did you have some obligations to collect some evidence?

9 A We did.

10 Q Let me stop -- Did Stephanie Scott tell you what the
11 state of dress or undress at the time?

12 A She told me what the picture was and when I dropped the
13 evidence and printed it out to be able to drop it, it
14 confirmed what she was telling me.

15 Q Okay. What other work did you have to do in the room?

16 A All we did was we collected items that were on the bed.
17 According to the report I collected the gown that Ms. Mayes
18 was wearing, the blanket, the sheet, the mattress cover, the
19 fitted sheet, as well as, a red shirt that was found under
20 Ms. Mayes public (sic) area on the bed.

21 Q Okay. Did Ms. Mayes leave the facility by EMS with
22 Stephanie Scott while you were still there?

23 A I believe Ms. Mayes was transported. I don't remember
24 when in that process it was, but she was transported to the
25 hospital.

1 Q When you collected all this evidence that --

2 A That was before she was transported. We collected all
3 of that stuff --

4 Q What about the clothing she was swearing, did you
5 collect that before she left?

6 A I can't recall.

7 Q Do you have -- I'm going to show you what has been
8 introduced as Plaintiff's Exhibit 2A. Is that your signature
9 on the document?

10 A That's my handwriting.

11 Q Did you observe chain of custody as you collected that
12 evidence and took it to the evidence lockers?

13 A Yeah. I had all the evidence in my possession. They
14 would have been in bags.

15 Q There's not a mention of a brief or diapers in there,
16 is it?

17 A Let me see -- scrub top -- a diaper you said?

18 Q A diaper or briefs. I believe Ms. Mayes was
19 incontinent.

20 A No. I don't see that in here.

21 Q Did Ms. Johnson or Ms. Peppers, either one of them tell
22 you that they had changed Ms. Mayes that you can recall?

23 A As far as I knew, as the reporting officer, we got
24 there Ms. Mayes was in the same state she was in before they
25 called us and she left to go to the hospital -- Ms. Mayes

1 left to go to the hospital. As far as I know, nobody
2 changed or did anything to anybody. We had four officers
3 there. I'm pretty sure that would have come up.

4 Q Did you see the evidence before it was put in bags?

5 A I had to physically check to see it was in the bags.
6 Yes.

7 Q Somebody else put it in the bags?

8 A It was put in the bags by the officer that collected it
9 and since we were all in the same area, it was all collected
10 and stored and one officer -- I was the reporting officer
11 was charged with chain of custody of all that evidence, and
12 then I had the responsibility, I dropped it.

13 Q Okay. Did the nurses or anybody at the center change
14 Ms. Mayes before she went to the hospital or change her gown
15 or her brief or anything else?

16 A I can't say that they didn't but I didn't see them do
17 it.

18 Q Do you see a gown -- yeah, you see a medical gown worn
19 by victim. What does that mean?

20 A It was actually like one of those hospital gowns that
21 has the tie in the back where you can get it off easy.

22 Q Okay. Do you don't know why the briefs are not
23 mentioned in here?

24 A I'm pretty sure if we could have gotten DNA off of it
25 would have collected it.

1 Q I mean, you haven't gotten that far yet, it's just not
2 on the -- what was turned in at this point.

3 A I collected everything I thought was important and
4 obviously that wasn't there, I didn't collect it.

5 Q Okay. Did you check the trash cans from the disposal
6 areas for diapers?

7 A I can say that I didn't.

8 Q Did you smell any odor of feces or urine in the room at
9 any point in time that you were there?

10 A No. I was actually thankful for that.

11 Q Did you take part in the removal of the sheets, the
12 mattress protector from the bed?

13 A Yeah. I actually collected the stuff out of the room,
14 that was out of the room, like the sheets and the bedspread
15 and all that.

16 Q And the red shirt you identified on here, do you
17 remember a red shirt being around or what it has to do with
18 this, it was not what she was wearing?

19 A It -- all I remember is it was placed right up under
20 where her pelvic area would have been on the bed. That's
21 where I remember it being.

22 Q You saw it there?

23 A Yeah, it was there when I walked in.

24 Q When you walked in wasn't she covered up?

25 A No, I mean, like when she's up and moving around.

1 Q She being Ms. Mayes?

2 A Yes.

3 Q Somebody moved her, though, right?

4 A Yes. I had to collect what was laying on the bed, in
5 the middle of the bed.

6 Q Okay.

7 A When there was nobody in the bed.

8 Q She's not able to get up and walk around, is she?

9 A No. She had to be helped out to the ambulance.

10 Q And when you turned in this evidence, what's the
11 process at the police department for doing that; you've got
12 some forms that are filled out?

13 A Yes. You're holding that.

14 Q That's your part --

15 A Yeah. We -- when we get all our evidence together we
16 itemize it, try to explain what the best description of it
17 is. We put it all -- if there are things that need to be
18 separated, different articles of clothing, different items,
19 different size and weight or if too many or something like
20 that they have to be in separate packages and they have to
21 be all marked by items number, quantity and we seal them and
22 we take them to the evidence locker, which is a secure area
23 in our department --

24 Q Right.

25 A -- and we log that into a log book and then we fill out

1 this form, leave a copy with the evidence technician. If
2 she's not on duty we put it in there with the evidence and
3 then we secure the locker and then it can't be opened or
4 tampered with until the evidence technician arrives.

5 Q All of you officers at the police department trained to
6 these procedures?

7 A Every single one of us, yeah.

8 Q Okay. I'm showing you what has been placed into
9 evidence as Plaintiff's Exhibit 4A (sic) it's a booking
10 report. It's got your name on it. What role did you have in
11 this?

12 A I was the reporting officer and therefore I decided
13 there was enough to effect an arrest, so I was also the
14 arresting officer.

15 Q Okay. And so did Mr. Williams then ride in your
16 cruiser downtown?

17 A I did not actually transport him. He was transported.

18 Q And booked and arrested --

19 A Yes.

20 Q -- and placed in the detention center?

21 A Yes.

22 Q Thank you.

23 THE COURT: All right, Mr. Arnold?

24 MR. ARNOLD: Thank you, Your Honor.

25 THE COURT: Yes, sir.

ROBERT WARRINGTON - CROSS-EXAMINATION

BY MR. ARNOLD:

Q Thank you for coming here today, officer.

A No problem.

Q I believe you testified Ms. Johnson was the one who met you outside?

A Yes.

Q So she wasn't in the room when you arrived?

A No. The complainant was actually standing outside waiting on us when we got there.

Q And it is your believe that she was in the same state from the time that 911 was called until you arrived?

MR. FOSTER: Objection. Leading, Your Honor. Oh, it's cross.

THE COURT: That's okay. I understand. That's okay. Thank you, sir.

Go ahead, Mr. Arnold.

A It's my understanding from the sequence of events that I was told by the complainant and the other witness, that after they witnessed what happened, left, came back in and it was over, they called us and everybody was where they were when we got there. I didn't hear anything else.

Q And so from individuals that you spoke with and evidence that you gathered you thought there was proper grounds to arrest him?

1 A Yes.

2 Q Did Ralph Williams say anything to you while you put
3 the handcuffs on him?

4 A Well, when we first met and I asked him why he thought
5 we were here and why -- what he thought was going on, he
6 kept saying I'm sorry. He was sitting and had his head down
7 and kept -- you know, saying I'm sorry.

8 Q So he said I'm sorry?

9 A At least once, yeah.

10 MR. ARNOLD: No further questions, Your Honor.

11 THE COURT: Anything on redirect?

12 ROBERT WARRINGTON - REDIRECT EXAMINATION

13 BY MR. FOSTER:

14 Q Was the statement made by Mr. Williams placed in your
15 report?

16 A No, it was not.

17 Q Do you have an independent recollection of it today?

18 A It's one of the few things I can actually remember him
19 saying to me, because he didn't talk to me hardly at all.

20 Q Okay. Thank you.

21 MR. ARNOLD: Nothing further, Your Honor.

22 THE COURT: Okay. Thank you, sir. You may step down.

23 MR. WARRINGTON: Thank you, Your Honor.

24 MR. FOSTER: Our next witness will be Stephanie Scott.

25 THE COURT: All right. Ms. Scott.

1 Officer Scott, if you'll come there and put your left
2 hand on the Bible, raise your right hand, please ma'am. The
3 clerk is going to swear you in right now.

4 THE CLERK: Could you state your name for the record,
5 please.

6 MS. SCOTT: Stephanie Scott.

7 (WHEREUPON, Stephanie Scott was sworn to
8 tell the truth.)

9 THE CLERK: Thank you. You may be seated.

10 STEPHANIE SCOTT - DIRECT EXAMINATION

11 BY MR. FORSTER:

12 Q Good afternoon, officer. You're Stephanie Scott?

13 A Yes, I am.

14 Q You work for the Orangeburg Department of Public
15 Safety?

16 A Yes, I do.

17 Q What's your position there?

18 A Right now I'm a criminal domestic violence and sexual
19 assault investigator, as well as the victim's advocate.

20 Q How long have you held that position?

21 A Altogether, about four years.

22 Q Okay. What was your position June 2010?

23 A At that point I was an officer assigned to road patrol.

24 Q Okay. Did you happen to be on duty June 21, 2010?

25 A Yes, I did.

1 Q Were you the only female officer at the police
2 department at that time on patrol?

3 A Not of the police department but that shift, yes.

4 Q That time.

5 A On duty at that time, yes.

6 Q Right. Right. Did you get a call to go over there
7 because you were the only female officer on patrol?

8 A That is correct.

9 Q What time do you think you arrived there --

10 A It was --

11 Q -- approximately?

12 A -- about 10 minutes after the call came out. I was
13 clearing up from a traffic stop. So I was a little delayed.

14 Q You were delayed by a traffic --

15 A Yes. I conducted a traffic stop and I had to finish
16 that up before I could respond.

17 Q Okay. Would that call have come at the same time that
18 Warrington was called?

19 A I think as soon as he arrived on scene he called for
20 me, but like I said, I had stopped a car and I had to finish
21 up with that first.

22 Q So he says he got there at 3:24, then it would have
23 been after 3:24 that he called you and whatever your finish
24 time added to your drive time you got there?

25 A Yes.

1 Q Okay. Were there any other officers on the scene when
2 you got there?

3 A When I arrived I do think Officer Brooks was on scene,
4 but I did not see him. I saw his car.

5 Q When you were in the facility, when you were there you
6 didn't see him?

7 A I did not see Officer Brooks, no. I saw Sgt. Murdaugh
8 (sp) and I saw Officer Warrington.

9 Q Those were the only officers that you saw on the scene
10 there?

11 A Yes, and me Sgt. Hane (sp) arrived at the same time.

12 Q Okay. And was your main duty and responsibility to
13 come there because of the fact that the female was at issue
14 here and you needed to respond to her and take care of that
15 investigation?

16 A Yes. To talk with the female.

17 Q Okay. Who did you talk to first when you got there?

18 A I was met by Officer Warrington and Sgt. Murdaugh in
19 the hallway as I arrived. They gave me a brief rundown of
20 what they wanted me to do.

21 Q And did you do any of your own investigation and
22 discussing anything with Peppers or Johnson, the
23 complainants?

24 A No.

25 Q Okay. Did you do any -- have any discussions with

1 Ralph Williams?

2 A No.

3 Q Okay. Did you see Ralph Williams there?

4 A No, I never did see him.

5 Q After you were briefed did you go straight to Room 39
6 where Ms. Mayes resided?

7 A Yes. I was briefed outside of the room, probably three
8 or four doors down. So then I went right to the room?

9 Q Were there any officers in the room when you were being
10 briefed outside?

11 A No. There was an officer standing at the door, but
12 there was nobody --

13 Q Nobody coming in or out?

14 A No.

15 Q No nurses or anybody like that?

16 A No.

17 Q So when you went into the room, did you go in by
18 yourself?

19 A I think it was me and Sgt. Hane that went in together.
20 You know, the task that given was just for me.

21 Q Okay. And so lights on in the room?

22 A Yes.

23 Q Did you see the resident in the bed, Ms. Mayes?

24 A Yes.

25 Q And was she covered up?

1 A The covers were over her, yes.

2 Q Okay. What was the state of the covers on her?

3 A They were pulled up over her.

4 Q Pulled up like you would expect for someone who resides
5 in a nursing home and has covers over them?

6 A Yes.

7 Q Did you try to speak with her?

8 A I did introduce myself, as I do with all victims that
9 I'm dealing with. So I did introduce myself, but they did
10 advise me that, you know, she was --

11 Q Mentally incapacitated?

12 A -- mentally -- yes.

13 Q And did you believe that to be the case after your
14 interactions with her?

15 A Yeah. She told me she was five.

16 Q Okay. So you didn't try to get much of a history from
17 her?

18 A No, I did not. I explained to her what I was going to
19 do and that was it.

20 Q Okay. Were any of the nurses in and about the room
21 when you were, employees of UniHealth?

22 A I think one came in to assist me and that was it, but
23 the room was -- the door was closed to protect the privacy
24 of the victim.

25 Q Uh-huh. (Affirmative response.) So do you know the

1 name of the one nurse that was there?

2 A No, I don't. We never spoke.

3 Q Do you see her in the courtroom sitting over on that
4 side?

5 A I couldn't recall.

6 Q Would you recognize her if she was sitting here?

7 A No, I wouldn't.

8 Q Okay.

9 A It was that brief.

10 Q All right. Was there another resident in the room at
11 the time?

12 A I believe there was because the TV on the other side
13 was on.

14 Q Yeah.

15 A But there was never said anything, we never heard
16 anything.

17 Q The curtain was drawn was drawn between the two?

18 A Yes, there was a curtain between the two.

19 Q But her curtain, her privacy curtain was open or not?

20 A You couldn't see her.

21 Q If you looked from the hall could you look in there and
22 see her?

23 A No.

24 Q If the door was open?

25 A No.

1 MR. BRING: Your Honor, just for clarification purposes
2 I think they're talking about two different residents.

3 THE COURT: Yes.

4 MR. FOSTER: I'm talking about Ms. Mayes now. I'm back
5 to Ms. Mayes.

6 THE COURT: Yeah, I know, and I think she is still on
7 whether you can see the other resident.

8 A I can see Ms. Mayes, but not the other.

9 BY MR. FOSTER:

10 Q Okay. Right, but if someone standing out in the
11 hallway, the door is open, can they see Ms. Mayes?

12 A You can see her feet.

13 Q Does that mean the privacy curtain was partially pulled
14 around her, Ms. Mayes.

15 A It was partially but you could still see her feet --

16 Q Okay.

17 A -- because of the way it was wrapped around --

18 Q Okay.

19 A -- was from her right side.

20 Q Did you have any discussions with the nurse there in
21 the room about any history that had happened since the
22 allegations were discovered?

23 A No.

24 Q And before y'all got there?

25 A No. I was never privy to any of that information. I

1 was just there for the -- to gather --

2 Q Did anybody discuss in your presence whether or not Ms.
3 Mayes had been changed, that is, you know, she is
4 incontinent and wears a brief. Any discussion with anybody
5 about whether she had been changed?

6 A No. She was still in the same clothes that -- you
7 know, that whatever happened we got the call.

8 Q How did you gather that information that she was in the
9 same clothes, did somebody tell you that?

10 A As soon as the officers arrived we were more secure.

11 Q Well before the officers arrived is the time period I'm
12 inquiring about?

13 A No, I was not -- I was not aware of any -- nobody told
14 me about her being changed. So no.

15 Q Were you aware that one of the nurses was in the room
16 alone with the --

17 MR. BRING: Objection, Your Honor. Facts not in
18 evidence. No evidence of that.

19 BY MR. FOSTER:

20 Q Do you know whether or not a nurse was in the room
21 alone with Ms. Mayes after the incident --

22 A I'm not aware --

23 Q -- let me finish the question. After the incident had
24 been discovered.

25 A I am not aware, but I do not think it would be likely

1 because the officers secured the room.

2 Q And before the officers got there?

3 A No, I would not know that.

4 Q Who in your department might know that?

5 A I don't think anybody would know if anybody was in
6 there before our arrival.

7 Q But no discussions about anybody being in the room
8 after it was discovered?

9 A Not to me.

10 Q Okay. Okay. So -- and no discussions ever about
11 changing her at all?

12 A The only discussion about changing her is when the
13 supervisor advised me to gather the clothes she was wearing
14 and the bed linens --

15 Q Uh-huh. (Affirmative response.)

16 A -- and they were going to put fresh lines because she
17 was going to be transported to the hospital.

18 Q Okay, and so did you take a picture of her state of
19 dress underneath the covers?

20 A Yes, I did.

21 Q And how did you go about setting up to take the
22 pictures. What did you do?

23 A I explained to her what I was going to do. I untucked
24 the blanket and the sheet from the end of the bed where it
25 was tucked under. I lifted it up and I took a picture.

1 Q A digital picture?

2 A Yes.

3 Q On cell phone or camera?

4 A No, it was on a camera.

5 Q And was anybody else in the room when you took the
6 picture and lifted the sheet up?

7 A There was a nurse, I believe, but I do not recall
8 exactly, but I believe there was a nurse standing at the
9 head of the bed.

10 Q Okay. Did you remain in the room for the collection of
11 the evidence?

12 A Yes, absolutely.

13 Q And did you collect the evidence constituting her
14 clothing, that being her brief and her gown?

15 A Yes, as well as a red t-shirt that was under her and
16 the bed linens.

17 Q That would be the -- Okay. And you're saying the brief
18 would be one of those?

19 A Yes.

20 Q This is Plaintiff's Exhibit 2A. It was entered into
21 evidence. Items that Officer Warrington impounded in the
22 jail, evidence locker?

23 A Yes.

24 Q Do you see a listing of Ms. Mayes brief on that
25 document?

1 A No, I don't.

2 Q Would you expect to find it there?

3 A I would expect that it would be listed, but it may have
4 been in the bag of the clothing that she was wearing at the
5 time, along with the gown. There was two bags and one was a
6 large bag for the bed linens. One was a large bag for the
7 bed linens --

8 Q Uh-huh. (Affirmative response.)

9 A -- and another was a bag with what she was wearing when
10 I collected it.

11 Q And did you also collect the green scrub top and green
12 scrub bottom from the victim?

13 A No that was --

14 Q I'm sorry, that was the defendant. From the suspect.

15 A From the suspect.

16 Q All of these different items are listed individually,
17 the shirt, the gown, the sheet, the mattress protector, the
18 fitted sheet, the -- there's no mention of the brief.

19 A Like I say, it may have been in the same bag as the
20 nightgown.

21 Q Okay. Was there a disposal container in the room for
22 soiled diapers, soiled briefs?

23 A I did not see one.

24 Q Did you ask anyone at the facility about whether she
25 had been changed?

1 A No.

2 Q And did you smell any urine or feces when you lifted
3 the sheets up to take the picture?

4 A No.

5 Q Did you accompany or did you get Ms. Mayes, help her
6 out of the facility into an EMS vehicle for transport to the
7 hospital?

8 A No.

9 Q How did she get out there; the facility?

10 A The facility. They have their own contract with an
11 ambulance service out there.

12 Q Oh, the hospital bed?

13 A Not -- they don't transport beds. They use --

14 Q And then you either followed or met them at the
15 hospital?

16 A I met them at the hospital because I stopped at our
17 headquarters and got the CSC kit?

18 Q What does CSC stand for?

19 A Criminal sexual conduct.

20 Q And what's the purpose of getting that kit?

21 A The hospital doesn't carry them. We carry them for
22 evidence collection.

23 Q Is that for purposes of testing for DNA?

24 A Yes.

25 Q Okay. So you dropped by, got that, went to the

1 hospital and met Ms. Mayes there?

2 A Yes.

3 Q And she was seen in the ER?

4 A Yes.

5 Q And that's the -- is that the standard protocol before
6 they get seen by an SAME nurse?

7 A Yes. We arrive, I request the SAME nurse and we stand
8 by until the SAME nurse arrives.

9 Q Okay. And so you have the kit with you. You release
10 her to the SAME nurse and she goes into another area of the
11 hospital?

12 A Usually the same room. It's a certain room in the
13 hospital.

14 Q Okay, and then you give the kit to them. In this case
15 was that Jamie Smoak?

16 A Yes, it was.

17 Q And do you stay in for the evaluation and collection or
18 do you --

19 A No I did not. Not that particular day, I did not.

20 Q Okay.

21 A Because one of the nurses from the home had arrived.

22 Q So were you -- had you completed your duties at that
23 time.

24 A At that time, yes. I contact -- the detectives
25 contacted me as well as the victim's advocate who was on

1 call at that time and contacted me and they said, you know,
2 one the SAME nurse arrived that I was free to go and the
3 SAME nurse would call for somebody to pick it up.

4 Q What time do you think EMS got her to the hospital?

5 A I'm not sure.

6 Q What time did she see the SAME nurse?

7 A I'm not sure.

8 Q Okay. Thanks.

9 THE COURT: Okay. Mr. Arnold.

10 MR. ARNOLD: Thank Your Honor.

11 STEPHANIE SCOTT - CROSS-EXAMINATION

12 BY MR. ARNOLD:

13 Q Ms. Scott, you testified that when you went into the
14 room, did you smell any feces?

15 A No.

16 Q Have you smelt human children before?

17 A I have two children. Yes.

18 Q Adult feces?

19 A Yes.

20 Q You testified you pulled the sheet up from the bottom
21 of the bed, correct?

22 A Yes, I untucked it and pulled it up.

23 Q And did you see a diaper?

24 A Yes, I did.

25 Q Did that diaper have feces?

1 A No, it did not.

2 Q Did she have feces on her at all?

3 A No.

4 Q As far as this Exhibit 2A that they pointed out to you,
5 and I'll hand that to you. He pointed out there wasn't a
6 diaper listed. Did anyone from the facility have anything
7 to do with collecting and putting down things that are on
8 that list?

9 A No. The items were collected by me. They were
10 packaged by me and Officer Warrington took the bags from the
11 room and filled out this.

12 Q And when you saw the diaper, where was the diaper?

13 A It was pulled down to about mid-thigh on her.

14 Q So was it on her properly?

15 A It was on her properly, but it was not pulled all the
16 way up. I mean, both legs were through the hole as was
17 intended.

18 Q No feces on her?

19 A No.

20 Q Was there any feces in the diaper?

21 A No.

22 Q And would you have put a feces diaper in the clothes
23 bag that had feces in it?

24 A No. It would have required separate handling in a bio-
25 hazard --

1 Q And as far as changing Ms. Mayes prior to departure to
2 the hospital, that was necessary wasn't it?

3 A Yes, it was because her -- the things she was wearing
4 was being entered -- taken as evidence.

5 Q So the workers at the facilities had to change her at
6 that point so that she didn't go to the hospital naked?

7 A That's correct.

8 Q And you directed them to do that?

9 A Yes.

10 MR. ARNOLD: No further questions, Your Honor.

11 MR. FOSTER: One final question, Your Honor, about the
12 evidence collected.

13 THE COURT: Okay.

14 STEPHANIE SCOTT - REDIRECT EXAMINATION

15 BY MR. FOSTER:

16 Q Was the -- let me see Exhibit 2 again. Was this
17 medical gown that you list -- that you listed here, that you
18 took part in collecting, that's what I wanted to ask about.

19 A Are you asking about the medical gown?

20 Q It says medical gown, but there was some kind of top
21 that she had on.

22 A I don't remember exactly. I'd call it a nightgown.

23 Q Okay. Was that nightgown wet?

24 A No. It would have been collected separately if it was
25 wet. It would have been handled differently. It would have

1 been put in a bag with a bio-hazard sticker so the evidence
2 technician would know.

3 Q Did it have any stuff on it?

4 A No.

5 Q Thank you.

6 THE COURT: Anything on re-cross?

7 MR. ARNOLD: No, sir.

8 THE COURT: All right. Thank you. You may step down.

9 Is plaintiff prepared to call its next witness?

10 MR. FOSTER: We're going to call Jamie Smoak.

11 THE CLERK: Mr. Smoak, would you place your left hand on
12 the Bible and raise your right. Raise your right.

13 THE COURT: Raise your right hand.

14 THE CLERK: Set your papers down.

15 MS. SMOAK: I'm sorry.

16 THE COURT: Could you state your name for the record,
17 please?

18 MS. SMOAK: Jamie Smoak.

19 (WHEREUPON, Jamie Smoak was sworn
20 to tell the truth.)

21 THE CLERK: Thank you. You may be seated.

22 THE COURT: All right. Your witness, Mr. Foster.

23 MR. FOSTER: Please the Court.

24 JAMIE SMOAK - DIRECT EXAMINATION

25 BY MR. FOSTER:

1 Q Your name?

2 A Jamie Smoak.

3 Q You live here in Orangeburg?

4 A Yes.

5 Q What do you do for a living?

6 A I'm the Nurse Manager of the Emergency Room at TRMC and
7 I'm also the coordinator of the Nurses Sexual Assault
8 Examiner Program.

9 Q At the Regional Medical Center?

10 A Yes.

11 Q How long have you been with the hospital?

12 A Since 2002.

13 Q Now, how long have you been the sexual assault
14 coordinator?

15 A Since 2006.

16 Q Okay. Is that your full time job?

17 A Nurse Manager and SAME, yes.

18 Q Are you also a nurse --

19 A Yes.

20 Q -- by trade?

21 A Yes.

22 Q How long have you been a nurse?

23 A Since 2001.

24 Q That's an RN?

25 A Yes.

1 Q Did you have an occasion to be called in to the work on
2 June 21, 2010?

3 A Yes.

4 Q To the hospital?

5 A Yes.

6 Q And did you arrive for purposes of forensic exam?

7 A Yes.

8 Q Was that on a lady by the name of Henrietta Mayes?

9 A Yes.

10 Q Did you perform that exam?

11 A Yes.

12 Q Did you begin your examination about 7:45 a.m. that
13 morning?

14 A I believe so. That's what's documented on the notes.

15 Q Do you have your notes with you if you need them to
16 refresh your memory on all this? I think 7:43 is what you
17 have on the first page?

18 A 7:43.

19 Q Okay. And was there also another officer that
20 accompanied Ms. Mayes to the examining room with the police
21 department?

22 A Was an officer in the room with me during the exam?

23 Q No. Did you meet an officer there that was with Ms.
24 Mayes in the room?

25 A Yes, I believe so.

1 Q Do you know which one it was?

2 A I don't.

3 Q Okay. Did that officer then leave the room and you,
4 then, performed your examination?

5 A Yes, the officer does not stay in the room.

6 Q Did you find Ms. Mayes to be mentally incapacitated?

7 A She has some mental deficits, yes.

8 Q Okay. Did the officer leave a CSC kit for you to use?

9 A Yes.

10 Q And what is the purpose of that kit?

11 A To collect evidence from the person.

12 Q For purposes of what?

13 A For forensic evidence, for DNA purposes.

14 Q And you're aware, familiar with those kits and how to
15 use them?

16 A Yes.

17 Q And you're familiar with how to keep chains of custody
18 on them?

19 A Yes.

20 Q And trained in those policies?

21 A Yes.

22 Q And do you always follow those policies?

23 A Yes.

24 Q And did you on this occasion?

25 A Yes.

1 Q Did you examine the totality of Ms. Mayes's skin?

2 A Yes.

3 Q Did you examine her genitalia?

4 A Yes.

5 Q Her vaginal area?

6 A Yes.

7 Q Did you perform a procedure whereby you were able to
8 access her vagina and take swabs where you thought
9 appropriate?

10 A Yes.

11 Q And did you collect such and put them in evidence
12 sealed packages, labeled?

13 A Yes.

14 Q Did you find any evidence of any physical trauma to any
15 part of Ms. Mayes body?

16 A No.

17 Q Did you find any area of Ms. Mayes body where she was
18 bleeding or it appeared she had been bleeding?

19 A No.

20 Q Did you find some fluid that you collected a swab on in
21 the area between her vagina and her anus?

22 A Yes.

23 Q And that area is called what?

24 A Perineum.

25 Q Would you describe what that fluid looked like?

1 A Milky colored fluid.

2 Q Okay. Swab it, put it in the same kind of evidence
3 envelop --

4 A I dry it first.

5 Q -- label it -- what?

6 A I dry it first.

7 Q And then go through that procedure?

8 A Uh-huh. (Affirmative response.)

9 Q Did you also take an oral swab from her, inside of her
10 cheeks?

11 A Uh-huh. (Affirmative response.)

12 Q That was a yes?

13 A Yes. I'm sorry.

14 Q And was that for purposes of getting a DNA standard for
15 her?

16 A Yes.

17 Q And you allowed that to dry, put it in an envelop and
18 seal it?

19 A Yes.

20 Q Label it, put it with the kit?

21 A Uh-huh. (Affirmative response.)

22 Q Is that a yes?

23 A Yes.

24 Q Did you also take scrapings of her fingernails?

25 A Underneath her fingernails, yes.

1 Q Underneath her fingernails. You collected whatever was
2 under there?

3 A Yes.

4 Q What purpose does that serve?

5 A If someone scratches someone they can get skin
6 underneath their nails.

7 Q Skin cells underneath there?

8 A Uh-huh. (Affirmative response.)

9 Q And you collect those in the same way, except they
10 probably don't have to dry out?

11 A They don't have to dry.

12 Q Put them in with the kit?

13 A Yes.

14 Q Label it?

15 A Yes.

16 Q Seal it?

17 A Yes.

18 Q Did you also obtain a swab on her facial area of what
19 you thought might be some kind of saliva on a portion of her
20 cheek or mouth area?

21 A Yes.

22 Q And would that be dried and put in the envelopes, seal
23 it, label it?

24 A Yes.

25 Q Put it with the kit?

1 A Uh-huh. (Affirmative response.)

2 Q What was the time you collected this evidence; do you
3 have a place on your notes where you recorded that?

4 A I know on the individual envelops in the actual kit it
5 has a place where I have to document the time that I put
6 each piece of evidence in that envelop. I started the exam
7 around 8:00 a.m. and finished the exam around 9:00. That's
8 the actual physical exam part.

9 Q Okay. Did you observe any trauma to her vaginal or
10 genital area, anywhere?

11 A No.

12 Q Do you, then, when this is complete, allow her to be
13 discharged to where the hospital sends her?

14 A Yes.

15 Q And you close your kit up and what do you do with it?

16 A I seal my kit and I notify law enforcement that it's
17 ready to be picked up.

18 Q And do you hold it somewhere until they get it?

19 A It does not leave me until somebody picks it up.

20 Q Okay, and did someone come to pick it up that day?

21 A Yes.

22 Q Do you know who it was?

23 A No.

24 Q Was it someone from the Orangeburg Police Department?

25 A Yes.

1 Q Okay. Were there any changes made to it, --

2 A No.

3 Q -- did you open any of the envelopes, tamper with it in
4 any way?

5 A Each envelop has to be initialed and sealed, and I
6 can't open it once it's sealed.

7 Q If somebody attempts to get into one of the envelopes
8 would it be evident?

9 A Yes.

10 Q Not like the Ziplock bags?

11 A No.

12 MR. FOSTER: Just a moment, Judge.

13 Thank you. Answer any questions Mr. Arnold may have.

14 THE COURT: Anything on cross?

15 MR. ARNOLD: Yes, Your Honor. Briefly.

16 THE COURT: Okay.

17 JAMIE SMOAK - CROSS-EXAMINATION

18 BY MR. ARNOLD:

19 Q Ms. Smoak, is it normal for the police to bring a
20 victim to you to clean her up before they come?

21 A For the police to --

22 Q Clean up the victim?

23 A I've never heard of such. They take their clothing for
24 evidence, but to actually clean them up, I haven't heard of
25 that.

1 Q So you would expect them to arrive the way they were
2 when they come to you?

3 A Yes.

4 Q Did you see any sign of feces anywhere on Ms. Mayes?

5 A No.

6 Q And why did you take the swab from the face?

7 A Because she pointed to that area --

8 MR. FOSTER: Objection, Your Honor. We have a standing
9 ruling from you from yesterday.

10 THE COURT: Okay. I'm going to excuse y'all for a
11 second. You can't talk about anything. I've got to be
12 reminded. Y'all can leave for one second. We'll be right
13 back in here. Remember you can't talk about anything you've
14 heard so far.

15 (Jury out at 4:42 p.m.)

16 THE COURT: All right, Mr. Foster, you're going to have
17 to remind me. I don't remember --

18 MR. FOSTER: We made a written Motion in Limine on any
19 communications whether by oral or by gesturing from Ms.
20 Mayes based upon her incompetency. It was found by Judge
21 Harrington in the criminal trial and my recollection
22 yesterday was that you also found similarly and I think they
23 may have even conceded on it.

24 THE COURT: Okay. I remember had a note on the first
25 day we talked about Judge Harrington trying it. I'm trying

1 A Hi.

2 Q Your name?

3 A Brian Queen.

4 Q Where do you live, Mr. Queen?

5 A Columbia, South Carolina.

6 Q And what do you do for a living?

7 A I'm the News Director at Wis TV.

8 Q And where is that located?

9 A Columbia.

10 Q All right. What is your job there, your title there?

11 A I'm the News Director, Manager of the News Department.

12 Q Okay. Tell me a little bit about WIS, does the signal
13 reach Orangeburg, South Carolina?

14 A It does. We serve a 10 county DMA.

15 Q What does DMA stand for?

16 A Demographic audience. So we serve about 407,000
17 households in the Columbia and the Midlands.

18 Q Okay. Have I asked you to come here today to discuss
19 the June 21, incident insofar as WIS is concerned in
20 connection with its broadcasting?

21 A Yes.

22 Q Are you prepared to do that?

23 A I am.

24 Q On June 22, 2010, did WIS run a news story on
25 television about the incident here in Orangeburg involving

1 Ralph Williams and UniHealth?

2 A We did. We aired something in our 5:00 o'clock newscast
3 that day.

4 Q Okay. And who was the anchor person that delivered the
5 broadcast about that story?

6 A Judi Gatson, our main anchor.

7 Q Judi who?

8 A Gatson.

9 Q Gatson?

10 A Uh-huh. (Affirmative response.)

11 Q And did you look up the archives for that broadcast?

12 A I did.

13 Q Could you find -- what did you find when you looked up
14 the archives for that broadcast?

15 A I found the script that Judi read on the air at 5:00
16 o'clock. It was maybe 20 seconds, 25 seconds in length.

17 Q Okay. What did Judi say, according to your records?

18 A This is verbatim from the script. An Orangeburg man is
19 behind bars this afternoon after police say he tried to rape
20 a handicapped woman. Police have charged 54-year-old Ralph
21 Williams, Sr., with assault with the intent to commit
22 criminal sexual assault. Investigators say several
23 employees at UniHealth on Whitman Street saw Williams trying
24 to have sex with a 42-year-old disabled woman early Monday
25 morning. A judge issued a bond, police say more charges are

1 pending.

2 Q And during the time that Judi was reading the script,
3 what you just said, what were people seeing on the
4 television screen?

5 A That would have been two things. There would have been
6 Mr. Williams picture, his mug-shot, and then there would
7 have been a map of the facility in question.

8 Q In Orangeburg?

9 A In Orangeburg.

10 Q Would that mug-shot have been obtained from the jail,
11 detention center?

12 A They would have sent us in press release. I'm not sure
13 who the agency was.

14 Q Okay. And you said there about 2010, you gave me the
15 demographics, I think, already?

16 A I gave you the whole demographics. I'm not sure who
17 many people were watching that particular newscast that day.

18 Q Okay. Did you have the opportunity to run a Google
19 search on Ralph Williams of Orangeburg?

20 A I have, and it still comes up going to her web story.

21 Q Her web story?

22 A Yeah, it would be a separate story than a broadcast
23 which would be on WISTV.com.

24 Q And that's on the internet?

25 A It is.

1 Q And can I get you to demonstrate that for me on this
2 tablet?

3 A Sure.

4 Q Is this the familiar Google screen?

5 A It is.

6 Q Do you mind if I demonstrate this for the jury?

7 A No, that's all right.

8 MR. BRING: Can we see that first?

9 MR. FOSTER: Sure. Sorry.

10 MR. BRING: You just have the Google screen?

11 MR. FOSTER: Yes.

12 MR. BRING: Let me see it before you -- I mean, if you
13 put something in there let us see it first.

14 MR. FOSTER: Okay.

15 BY MR. FOSTER:

16 Q When you type Ralph Williams, Orangeburg, South
17 Carolina or Orangeburg, SC?

18 A (Witness complies.)

19 Q And hit enter, search?

20 THE COURT: Before -- are you doing that?

21 MR. FOSTER: Again, we're redoing it. Do you want me to
22 verify that?

23 THE COURT: He just typed in Ralph Williams, Orangeburg.

24 MR. BRING: I think I should be able to see the search.

25 THE COURT: Yeah. If you go back and retype it in.

1 MR. FOSTER: Yeah.

2 BY MR. FOSTER:

3 Q Just go back and retype it in.

4 A (Witness complies.)

5 Q Okay. Do you have your hits there?

6 A Yes. I have her --

7 Q What's the number one hit? Can you read the heading?

8 A The story is entitled, Assisted living employee charged
9 with attempted rape at the facility.

10 Q And when would this internet story have been posted on
11 the WIS website?

12 A It would have been that same day.

13 Q So June 22, 2010, and would it have been there
14 consistently since then up until the time you just searched
15 it today?

16 A Well, it's still active. It's part of our archives.

17 Q Okay. Is what I'm showing you, Exhibit 14A the same as
18 what you're looking at on that Google screen?

19 A It appears to be.

20 MR. FOSTER: Your Honor, I would like to show the jury
21 the screen search.

22 THE COURT: 14A is in without objection; isn't that
23 correct?

24 MR. FOSTER: No, it isn't.

25 COURT REPORTER: No.

1 THE COURT: And you need to contribute to it.

2 MR. FOSTER: Who appropriates money for such?

3 THE COURT: I'm not sure.

4 MR. FOSTER: Jason, do you want to be over here when he
5 hits the top hit?

6 THE COURT: Yes.

7 BY MR. FOSTER:

8 Q Okay. Please put your finger on the top hit and scroll
9 up just a bit. Is what I'm looking at the actual internet
10 article on the WIS website?

11 A It is.

12 Q And is there a picture of Mr. Williams shown?

13 A It says Ralph Williams, source Orangeburg Corrections.

14 Q Okay, and what's the date on this article?

15 A June 22, 2010.

16 Q Okay. And what I am showing you is Exhibit 14B. Have
17 you had a chance to compare 14B to this article on the WIS
18 website that we just pulled up?

19 A Yes, it is printed from our website.

20 Q And is it the same, although the quality is not as good
21 as the resolution?

22 A It is.

23 MR. FOSTER: Your Honor, we would ask that 14B be
24 entered.

25 THE COURT: Any objection?

1 MR. BRING: No objection, Your Honor.

2 THE COURT: All right. 14B is in evidence without
3 objection.

4 (Plaintiff's Exhibit No. 14B, WIS
5 website screen shot was marked and entered.)

6 MR. FOSTER: Permission to pass around for the jury?

7 THE COURT: You just want to pass around 14B?

8 MR. FOSTER: No, I want to -- this the quality is not as
9 good.

10 THE COURT: Okay.

11 BY MR. FOSTER:

12 Q So what the jury is looking at now has been on the
13 internet and available with the Google search since June 22,
14 2010?

15 A It has.

16 THE COURT: Anything else with this witness?

17 MR. FOSTER: I'm don't have any other questions.

18 THE COURT: All right, Mr. Bring, I think he's through
19 with any questions.

20 MR. BRING: Yes, Your Honor. Just a few.

21 THE COURT: Yes, sir.

22 MR. BRING: Then we can get everybody out of here.

23 THE COURT: Yes, sir. And I don't know if you want to
24 wait while they're passing it around. I wanted to let you
25 know he was through.

1 Q Your newspaper -- excuse me, you television program and
2 your website you enjoy certain immunities for what you
3 publish, correct?

4 A Yes.

5 Q Okay. Immunities mean immunity under the law for
6 things you publish in good faith, correct?

7 A No response.

8 Q No further questions, Mr. Queen.

9 MR. FOSTER: Redirect, Your Honor.

10 THE COURT: Anything on redirect?

11 MR. FOSTER: Yes.

12 BRIAN QUEEN - REDIRECT EXAMINATION

13 BY MR. FOSTER:

14 Q Has anyone from UniHealth contacted you or anyone else
15 you know of at WIS to ask you to run a story to apologize
16 for what happened or to retract what happened? Anybody
17 contacted you?

18 A Nobody's contacted me... I'm unaware of any connection.

19 Q Thank you.

20 THE COURT: Anything on recross?

21 MR. BRING: Yes, Your Honor.

22 BRIAN QUEEN - RE-CROSS EXAMINATION

23 BY MR. BRING:

24 Q Has Mr. Williams or his attorneys, have they contacted
25 you and demanded a retraction or a correction of the story?

1 Q Good morning, Captain.

2 A Good morning.

3 Q What's your name?

4 A Carl Shultz.

5 Q You live in Orangeburg?

6 A St. Matthews.

7 Q Okay. What do you do for a living?

8 A I'm a Captain with the Orangeburg Department of Public
9 Safety. I supervise investigations, forensics, which
10 includes evidence.

11 Q You're over the evidence collection?

12 A I am. Correct.

13 Q Okay. How long have you been such?

14 A Seven years.

15 Q Okay. You have prior years in law enforcement as well?

16 A 21 years.

17 Q Okay. What exactly is your job as a forensic head
18 entail?

19 A Now I'm a supervisor, but at the time I was a crime
20 scene investigator. I collected evidence. I supervised
21 evidence intake, distribution. The forensic analysis of
22 evidence.

23 Q Uh-huh. (Affirmative response.) Have you been trained
24 in policies that relate to chains of custody?

25 A I have. I'm also an Internationally Certified Property

1 and Evidence Room Specialist through the International
2 Association of Property and Evidence.

3 Q Okay. And does the Orangeburg Department of Public
4 Safety have and implement and follow such chain of custody
5 policies and dealing with evidence --

6 A We do.

7 Q -- under those rules?

8 A We do.

9 Q Is how evidence is stored in your cases vitally
10 important to the police department?

11 A It's essential.

12 Q And do you train your underlings to comply with those?

13 A We do.

14 Q What did you do in connection with this case?

15 A My part of this incident was picking up the criminal
16 sexual assault kit from the Regional Medical Center.

17 Q You remember the date you picked it up?

18 A Can I refer to my notes, please?

19 Q You may.

20 A It was May 21 -- I'm sorry, June 21, 2010.

21 Q Okay. And did you personally pick it up from the nurse
22 at the hospital?

23 A I did. Myself and another crime scene investigator met
24 with Jessica Smoak, the nurse at the --

25 Q Jamie Smoak.

1 A -- Jamie Smoak.

2 Q Did it appear that the kit was not tampered with in any
3 way?

4 A Everything was sealed up when I got the kit.

5 Q If the kit is tampered with or sealed or opened is it
6 very obvious?

7 A It's obvious. It is.

8 Q Okay. What did you do with the kit?

9 A I brought the kit back. It's already sealed so there's
10 no additional packaging that needs to be done. I brought it
11 back, put it in our -- we have an evidence locker system
12 with a cooler, keeps the kit cool. I filed out an evidence
13 property sheet, submitted that with the kit and logged it
14 into evidence.

15 Q Okay. Did you bring anything else back from the
16 hospital other than the kit?

17 A The clothing, I believe -- again, if I can refer to my
18 notes. Yeah, it was the clothing. Yes, the clothing from
19 the victim from the kit and the 12 page forensic
20 examination.

21 Q Can I look at the piece of paper you're looking at?

22 A Okay.

23 Q What you're looking at is a carbon --

24 A Of that.

25 Q -- verses what's been marked and entered into evidence

1 as Plaintiff's Exhibit No 2B. Is that the same document?

2 A It is the same document. This is a carbon of a multi-
3 page document. This is the copy for my records.

4 Q So it says victim's brief, removed by TRMC nurse in
5 parentheses?

6 A Correct. I put that there to indicate that I did not
7 physically take it because my capacity as crime scene
8 investigator a lot of times means I took it myself, but the
9 nurse actually took it, packaged it, sealed it up and I
10 never actually see the briefs inside the bag.

11 Q Which nurse would have done that, would it have been
12 Ms. Smoak or some other nurse?

13 A That I can't answer.

14 Q Do you know which brief this was?

15 A I do not.

16 Q Do you know anything about whether she was changed
17 before she went to the hospital?

18 A I do not. I was not at the scene.

19 Q Okay. On the Exhibit 2B, there's also mentioned of box
20 with two buccal swabs from suspect. Correct?

21 A Correct, sir.

22 Q Let me back up for a minute on that. In addition to
23 picking up the sexual CSC kit from the hospital on June 21,
24 did you perform another activity that related to Mr.
25 Williams?

1 A I did. On the way back from the hospital I was
2 contacted by one of the investigators who said they had a
3 search warrant to obtain a buccal swab from the suspect. I
4 met with the investigators and the suspect at the Orangeburg
5 County Detention Center.

6 Q I'm handing you what's been marked as Plaintiff's
7 Exhibit No. 39, the search warrant. Will you look at that
8 document, please?

9 A Yes, sir. And I have a copy of that. That is the
10 search warrant that was given.

11 Q Is it signed by a judge?

12 A It is signed by a judge. It is signed by our Municipal
13 Court Judge, Barney Howser.

14 Q Okay.

15 A By the investigator and then by myself after I received
16 it.

17 Q What does it authorize to be searched and for what?

18 A This authorizes that essentially all we're trying to
19 get is the DNA or a buccal swab from the inside of the
20 individuals mouth.

21 Q Nothing else?

22 A Nothing else.

23 MR. FOSTER: Your Honor, this has not been previously
24 introduced and we move to have it introduced.

25 THE COURT: Have you seen that?

1 MR. ARNOLD: We have, Your Honor. No objection.

2 THE COURT: No objection. Okay. Plaintiff's 39 is in
3 evidence without objection.

4 BY MR. FOSTER:

5 Q And so how did you go about accomplishing that
6 execution of the search warrant?

7 A We have individual kits that we've come up with. What
8 they are, they're sterile kits. We open them up, basically
9 we take a Q-tip. We stick it inside the cheek, swirl it,
10 around, get the saliva, take it out, put it in the box, seal
11 it with evidence tape and put it in evidence with the same
12 procedure we did with the CSC kit. The buccal swabs are
13 less intrusive. It takes 15 seconds to get them.

14 Q Okay. Did you go to the detention center or the jail
15 to do that?

16 A I did.

17 Q And you met with Mr. Williams?

18 A I did.

19 Q You told him you had a search warrant?

20 A We did. Investigators were already there with him at
21 the time.

22 Q And you said you put it, along with the other items, in
23 the evidence locker on 2B?

24 A Correct, sir.

25 Q Okay. And what did you do with the CSC kit?

1 A Once it's logged into our evidence locker, it is
2 submitted to the State Law Enforcement Division, SLED, for
3 additional analysis. We do not do that here at this time.
4 I filled out the proper paper work electronically with the
5 chain of custody to submit it to their lab. Then it is hand-
6 carried, I don't know if I did it or if our evidence
7 technician did it, but it is then hand-carried to the State
8 Law Enforcement Division.

9 Q Somebody drives it down there?

10 A Yes, sir.

11 Q Is this the Chain of Custody form, Exhibit 2D?

12 A It is. This is the electronic version of what they
13 call I Lab. This is the chain of custody to submit it and to
14 follow it.

15 Q Okay. So in addition to the CSC kit, what else would
16 have been sent to SLED?

17 A The buccal swab, I know, and -- I'd have to look at it
18 to see, but probably the brief --

19 Q Do you want to look at it?

20 A Yes, sir. Thank you. Actually, everything -- the CSC
21 kit, the clothing, the briefs and the buccal swabs were all
22 sent to SLED.

23 Q Okay. Up to this -- it was sent to SLED. Let's get
24 the date on that; can you give us that?

25 A On June 23, 2010.

1 right.

2 MR. FOSTER: All right.

3 BY MR. FOSTER:

4 Q Up until that point had you taken any buccal swab
5 samples from any other person such as employees of
6 UniHealth?

7 A No. No, I had not.

8 Q Okay. Did the items that you sent to SLED, did they
9 come back?

10 A They did.

11 Q And did you receive a report --

12 A Yes --

13 Q -- from SLED when they came back?

14 A Yes, sir, we did.

15 Q Did they come back on April 12, 2001 (sic)? I'm
16 handing you Exhibit 3, which is in evidence?

17 A That's correct. April 12, 2011.

18 Q And did you put these items then back into the evidence
19 locker?

20 A They were logged back in, just the reverse process that
21 they went out. The chain of custody, sign them out from
22 SLED to us.

23 Q So chain of custody was preserved?

24 A Yes.

25 Q As a result of the test, as a result of your receipt of

1 this Exhibit 3, the results of the DNA analysis, did you
2 take any additional buccal swabs from any UniHealth employee
3 or any other person?

4 A No.

5 Q Was that ever considered?

6 A I don't know. I was not the investigator on the case.

7 Q Please answer any questions one of these gentlemen may
8 have for you.

9 THE COURT: Mr. Arnold?

10 MR. ARNOLD: Just a few.

11 THE COURT: I just wanted to know who it was.

12 CARL SHULTZ - CROSS-EXAMINATION

13 BY MR. ARNOLD:

14 Q Good morning, Capt. Shultz.

15 A Good morning.

16 Q Capt. Shultz, did you actually take the kit to SLED?

17 A I don't know if I took it or if our evidence clerk. I
18 would have to look at the paper work.

19 Q Okay. I'm going to hand you what previously was
20 identified as Exhibit 2B.

21 A This particular copy doesn't -- this was the original.
22 This doesn't have the subsequent chain of custody on it.

23 Q Well, that name below you?

24 A That's Debra Byrd. That is our evidence technician.

25 That is when she took it, removed it from the locker and put

1 MR. FOSTER: I'm pretty sure it's on the table up there.

2 THE COURT: Well, I'll see.

3 BY MR. ARNOLD:

4 Q So Debra Byrd --

5 THE COURT: It's right here.

6 BY MR. ARNOLD:

7 Q -- the last person to have the DNA evidence --

8 THE COURT: It's already in.

9 BY MR. ARNOLD:

10 Q -- or the kit before it went to SLED?

11 A Correct.

12 MR. ARNOLD: No further questions, Your Honor.

13 MR. FOSTER: I have some.

14 THE COURT: Okay. Anything on redirect?

15 MR. FOSTER: Yes.

16 CARL SHULTZ - REDIRECT EXAMINATION

17 BY MR. FOSTER:

18 Q When did you say the kit came back, was it April --

19 A It was April of 2011.

20 Q This Exhibit 2C that counsel referred to that was
21 signed by Debbie Byrd, would you take a look at it?

22 A Yes. It's an evidence form filled out which would have
23 been the contents that were removed from the CSC kit by
24 SLED. So when she brought the kit back there was additional
25 evidence and she signed it in. That's what this is.

1 Q So the kit came back before the April report -- I'm
2 sorry, the April report came before the May 5 --

3 A Possibly what happens is they send the report to us and
4 they store the evidence and we usually go pick it up in bulk
5 because we have so much at one time.

6 Q But there's only one item listed on here, on 2C. It
7 reads Item No. 14, Quantity 1, Sealed envelope containing
8 hair collected from victim's briefs. Parenthesis, collected
9 at SLED, end parenthesis. Would there have been anything
10 else that accompanied that?

11 A These items would have come back with that, however --
12 and if you'll allow me to explain. These copies were
13 probably made as the case jacket was prepared, so it would
14 have been some time before the additional chains of custody
15 would be showing. So the current forms as they are now
16 would have the chains of custody on them.

17 Q Do you know which briefs --

18 A I do not.

19 Q -- this is talking about?

20 A I do not.

21 MR. FOSTER: No further questions.

22 THE COURT: Anything on recross?

23 MR. ARNOLD: No further questions, Your Honor.

24 THE COURT: All right. Thank you, Capt. Shultz.

25 MR. SHULTZ; Thank you.

1 A Yes, I did.

2 Q So did our court reporter. Glad you could make it.
3 What do you do for a living?

4 A I'm employed by the South Carolina Law Enforcement
5 Division as a DNA Analyst.

6 Q Okay. How long have you been doing that for SLED?

7 A Since January of 1990, so it's 24 and a half years.

8 Q Okay. What education do you have?

9 A I have a degree in biology from the University of South
10 Carolina. Once I received my --

11 Q When did you get that?

12 A 1980.

13 Q What after that, if anything?

14 A After that I continued working in the area of molecular
15 genetics where I did sequencing and cloning of DNA, and then
16 I began to work with the South Carolina Law Enforcement
17 Division in January of 1990 as a -- I was hired as a DNA
18 Analyst and that time I attended the FBI DNA Typing Schools.

19 Q The what?

20 A The FBI DNA Typing Schools. I was also trained in the
21 area of serology to be able to identify body fluids. I've
22 done crime scenes and I've also attended the South Carolina
23 Law Enforcement --

24 Q The Criminal Justice Academy?

25 A Yes, I have. I'm a Certified Police Officer.

1 rules.

2 THE COURT: Any objection?

3 MR. ARNOLD: Your Honor, we just want to renew our prior
4 objections stated regarding the delay in timeliness of their
5 --

6 THE COURT: And that is preserved and noted on the
7 record regarding her being an expert, though, that --

8 MR. ARNOLD: We do not challenge.

9 THE COURT: Okay. We'll preserve the earlier objection
10 about going into this area, but she is qualified as an
11 expert and can give her expert opinion on DNA.

12 MR. FOSTER: Thank Your Honor.

13 THE COURT: Thank you.

14 BY MR. FOSTER:

15 Q Let me go into another area, general area. Do you know
16 of the term, chain of custody means?

17 A Yes, I do.

18 Q How long have you known what that means?

19 A It was since I've been working at SLED.

20 Q Okay. Is it very important at SLED?

21 A Yes.

22 Q And what kind of policies and procedures does SLED have
23 with regard to chain of custody?

24 A There's so many. Once evidence is submitted our
25 protocol states we need to keep our chain of custody intact

1 so we're able to tell the flow of a particular piece of
2 evidence and if there's any discrepancy in the packaging,
3 who handled the evidence last can be detected.

4 Q Okay. I'm going to hand you Exhibit 3A that's already
5 in evidence. Is this a copy of the computer generated chain
6 of custody at SLED for this case, the items?

7 A Yes, this is an example of the chain of custody.

8 Q It's for this case, isn't it?

9 A Yes, it is.

10 Q In connection with your work in this case, did you and
11 your fellow comrades at SLED follow proper police and chain
12 of custody with respect to this evidence?

13 A Yes, we did.

14 Q Do you have your notes with you on this case?

15 A I have my report?

16 Q Do you have the same thing I'm showing you on Exhibit
17 3?

18 A Yes, it is.

19 Q When did the items come down to SLED?

20 A They were submitted to SLED, based on the information I
21 have, on June 23, 2010.

22 Q Okay. And did all the evidence that you have here in
23 your report come down at one time or were there different
24 shipments?

25 A The paper work that I have indicate that the CSC kit,

1 the briefs and the buccal swabs from Mr. Williams came at
2 the same time.

3 Q Nothing else came later?

4 A Nothing that I received -- was given to me.

5 Q Now, there's something on Page 2 of your report. It
6 says briefs from victim and debris from briefs?

7 A Yes.

8 Q I can't remember whether you included that in what you
9 said came down?

10 A I said briefs.

11 Q Okay. And then there's an enclosed evidence bag with
12 what's called debris from briefs?

13 A No, the --

14 Q The report is what it says.

15 A Yes, but you had the briefs and the briefs are checked
16 for whether there's any hair or anything in there is any
17 hair or anything in there. If there's any debris then it's
18 taken off the item and sub-itemizes is what we call it.
19 That's it's 2.1 and put in a separate envelope.

20 Q So is that something that you or your department does
21 or is that something that came to you like that?

22 A That's what I did.

23 Q Okay. And what are you looking for in the briefs to do
24 a DNA analysis?

25 A I'm looking for an indication of any body fluids in the

1 briefs and also I'm looking for hairs that could come from
2 the victim.

3 Q Okay. Would you know anything about the origin of
4 these briefs?

5 A No.

6 Q Would you tell the jury what DNA is?

7 A DNA stands for Deoxyribonucleic acid. So we use the
8 short term DNA. It's considered to be the blueprint of the
9 body. Everyone's DNA is different except for identical
10 twins. The vast majority of DNA, I would say, is pretty
11 similar in that you have to make two eyes and two legs and
12 two arms, but the portion that we look at is different than
13 what you would consider those particular parts of the DNA.
14 We compare a person's DNA profile to evidence that's
15 submitted in a case to determine whether you have a match or
16 you do not have a match between the evidence and the person
17 DNA standard. So I'm going -- when I receive evidence, I
18 analyze it, develop a DNA profile from that. I receive the
19 person's standard. It could be blood or buccal swab, which
20 is a cheek swab, and develop a DNA profile from that. And
21 then I do a comparison between those items and then generate
22 a report from my findings.

23 Q And this case, did you have a buccal swab from the
24 suspect Ralph Williams?

25 A Yes, I did.

1 Q Did you have a buccal swab from Henrietta Mayes?

2 A Yes, I did.

3 Q Are those also called a standard?

4 A Yes.

5 Q Did you receive, also, some fingernail scrapings of Ms.
6 Mayes right and left hands?

7 A When the sexual assault kit is done these items are
8 collected during the examination. So within that kit were
9 her fingernail scrapings from the left and right hand.

10 Q Okay. Was there a sample of vagina swabs and a vaginal
11 smear submitted to you?

12 A Yes.

13 Q What's the difference between those two things?

14 A The vaginal swab is a Q-tip inserted into the vaginal
15 area and swabbed. That same swab is taken and make a smear
16 on a microscope slide, which is a piece of glass that is
17 about this long, approximately two inches long, and you take
18 that swab and you smear it on and you let it dry.

19 Q Okay, what additional benefit or information do you get
20 from the slide with a smear verses the swab?

21 A Well, I would take the swab and I would do -- the
22 analysis I would do to check for the presence of semen or
23 check for the presence of body fluids on that particular
24 swab. The smear is made so I can go back to it and check
25 and see if there's any sperm, which is different from semen,

1 on that smear.

2 Q And did you make a determination, in your opinion, as
3 to whether or not the vaginal swab contained any evidence of
4 semen?

5 A No.. Based on my report there was no semen identified on
6 the vaginal swab and on the vaginal smear there was no
7 spermatozoa, which is sperm.

8 Q There was no sperm on what?

9 A On that slide.

10 Q Okay. You also had an item, suspected body fluid swabs

11 --

12 A Yes, I did.

13 Q -- Item 1.5?

14 A Yes.

15 Q And what did you find that fluid to be, if anything?

16 A No semen identified.

17 Q Is that what you were looking for or testing for?

18 A Yes.

19 Q Did you do any further analysis to determine what it
20 was?

21 A No. I only checked it for the presence of semen.

22 Q What did you determine with respect to whether or not
23 Ralph Williams could be -- was excluded as not matching the
24 DNA on the fingernail scrapings?

25 A I'm reading from my report and it states that no DNA

1 profile foreign to the victim, Henrietta Mayes, was
2 developed from Items 1.6.1 and 1.6.2, which are the right
3 and left hand and fingernail scrapings.

4 Q Would you then rule out Ralph Williams DNA as a result
5 of that finding?

6 A There was on one there -- no one's DNA was detected but
7 for hers on the fingernail scrapings.

8 Q What else did you conduct the DNA analysis on?

9 A I also did the DNA on suspected saliva swabs and I
10 reported my results from that.

11 Q Did you do any DNA analysis on the vaginal swabs or
12 smears?

13 A No, I did not.

14 Q Is that standard protocol?

15 A No body fluid detected on those items. Then the
16 analysis stopped there.

17 Q There's nothing to identify with Ralph Williams in any
18 of these items, the 1.2, the vaginal swabs or 1.3, the
19 vaginal smear?

20 A No.

21 Q Can you absolutely rule him out as being involved with
22 that?

23 A I did not do an DNA analysis on those two items.

24 Q Okay. What else did you do DNA analysis on that we did
25 not discuss?

1 A Well, I did DNA analysis on 1.4, which was suspected
2 saliva swabs.

3 Q Okay.

4 A I was able to generate an analysis from that particular
5 item.

6 Q Is there an X and a Y chromosome as part of our makeup
7 as humans?

8 A Yes. What he's referring to is the sex chromosome. A
9 female would be X and a male would be XY.

10 Q Okay. So I'm an XY and you're an X?

11 A Yes.

12 Q Okay. With respect to the saliva swab or fluid, was
13 there any Y chromosome associated with that?

14 A I was not able to pick up any Y on that particular item
15 --

16 Q So that's the Y?

17 A -- I need to clarify that, please. That item?

18 Q Sure.

19 A Okay. Item No. 1.4 is the suspected saliva swab. I
20 was able to obtain DNA from it and it was a mixture. I'm
21 reading from my report that the DNA obtain from Item 1.4 is
22 a mixture of at least two individuals and the DNA profile,
23 the major contributor to this mixture is consistent with the
24 DNA profile of Ms. Mayes. And then the last statement is
25 that Ralph Williams cannot be excluded as a possible minor

1 contributor to this mixture.

2 When we're looking at a person's DNA profile we're
3 looking at 16 different areas on the chromosome and that
4 would be including the sex chromosome. The first part is
5 just your regular DNA and not your sex chromosome, and
6 within that mixture I could not exclude Mr. Williams from
7 that. And what he's referring to is the sex chromosome. I
8 was not able to pick out the Y and based on my years of
9 experience since the minor contributor was so low that I see
10 why you couldn't pick out the Y because it would go below
11 the threshold that would allow detection.

12 Q Or there may not be any male chromosome?

13 A There's a possibility of that and also the fact that I
14 was not able to pick it out.

15 Q You really don't know, do you, for sure?

16 A Well, when I look at my electro-sphereogram there is an
17 indication, but as to the law of thresholds, I can't testify
18 to that.

19 Q Okay. And did you conclude the saliva swab was a
20 saliva fluid as opposed some other kind of fluid?

21 A I tested it for that. It was saliva indicated.

22 Q Okay. Now, you said it was a mixture of at least two
23 individuals, could it be three, five -- how many could it
24 possible be --

25 A Based on --

1 Q Would it be in your file, your report?

2 A It was just taken, given to me as a suspected saliva
3 swab -- I'm looking at the protocol that was done at the
4 time of the examination to see if they have it there or not,
5 but I don't know exactly where they collected it from.

6 Q The lady that did the examination testified yesterday
7 it was from around the mouth and cheek.

8 A Okay.

9 Q Just a moment.

10 Did you receive as items of evidence for consideration
11 any medical gown worn by the victim?

12 A No, I did not.

13 Q Any red shirt from the bed under the victim?

14 A No, I did not.

15 Q Any green blanket from the victim's bed?

16 A I did not.

17 Q Any white sheet from the victim's bed?

18 A I did not. I didn't receive any clothing or bed linens
19 from the victim.

20 Q Then you didn't receive a pink mattress protector from
21 the victim's bed?

22 A I did not.

23 Q One white fitted sheet from the victim's bed?

24 A No.

25 Q When you had the briefs that you had you said you shook

1 them out and checked them carefully?

2 A Yes. Whatever I could visually see on the briefs I
3 removed --

4 Q I'm sorry. I interrupted you. Go ahead. Say that
5 again.

6 A The debris that I stated was what was -- what I saw on
7 the briefs.

8 Q And what kind of testing do you do?

9 A You do a visual inspection of the brief. You look for
10 bodily fluids or any kind of debris, as I stated. There was
11 some debris but it was not hair.

12 Q It was not hair?

13 A It was not hair.

14 Q Was there anything from which you could do a DNA
15 analysis?

16 A I didn't see anything, no.

17 Q Okay. Thank you. No further questions. Please answer
18 any my friend has.

19 THE COURT: Mr. Arnold.

20 MR. ARNOLD: Yes, sir.

21 LILY GALLMAN - CROSS-EXAMINATION

22 BY MR. ARNOLD:

23 Q Good morning.

24 A Good morning.

25 Q Couple of questions in follow-up. I think I was

1 tracking six items you tested. The first one was a vaginal
2 swab, correct?

3 A Yes.

4 Q And you were checking for sperm?

5 A I was checking for semen.

6 Q And if Mr. Ralph Williams didn't have sex with the
7 victim would you expect to find semen?

8 A No.

9 Q And this was the vaginal smear, correct?

10 A Yes.

11 Q If Ralph Williams didn't have sex would you expect to
12 find semen there?

13 A No, I wouldn't. I would not expect to find semen or
14 spermatozoa.

15 Q Okay. The buccal swab in the cheek, were you checking
16 those to see if there was a kiss or anything?

17 A Evidently, during the time of the examination the nurse
18 noticed something there. So a suspected saliva swab was
19 taken, as I was told, from the cheek of the victim, and so I
20 tested that for saliva.

21 Q Okay. And then the fingernails, this was from the
22 victim's right and left hands, right?

23 A Right.

24 Q And this particular victim, are you aware of her
25 abilities of her right hand?

1 dependant upon CNAs to provide all care to her, would you
2 expect to find DNA under her fingernails?

3 MR. FOSTER: Same objection.

4 THE COURT: And I'll do the same ruling. Go ahead.

5 A If the victim is not able to pull, scratch or do
6 anything to an individual who is there with them you
7 wouldn't expect to see DNA but there's a possibility of
8 anything happening.

9 BY MR. ARNOLD:

10 Q And you mentioned the underwear or the briefs that you
11 looked at, was there any feces or were there any dirty items
12 in there?

13 A I didn't document anything.

14 Q And you said there were no hairs?

15 A No.

16 Q And not even potentially the victim's hairs?

17 A No. The brief that was there was fibrous and I checked
18 them under the microscope and there were not hairs, based on
19 my examination.

20 Q The plaintiff called you here today, correct, put you
21 under subpoena?

22 A Yes.

23 Q Did they ask you to do any of the statistical analysis
24 that he was questioning you about?

25 A No.

1 Q And what did you do --

2 THE COURT: Mr. Warren, I had to get Mr. Foster to talk
3 up.

4 MR. WARREN: Okay.

5 THE COURT: If you don't mind doing that as well.

6 MR. WARREN: Okay.

7 THE COURT: I'd appreciate it. Thank you, sir.

8 MR. WARREN: Yes, sir.

9 BY MR. WARREN:

10 Q You said that Haligmeyer prior to Sarah Lee?

11 A Yes, sir.

12 Q And approximately how long did you work at Haligmeyers?

13 A About 12 years.

14 Q Okay. All right. Now, you stated your were disabled.
15 What's the, I guess, the basis of your disability?

16 A I had a stroke.

17 Q Okay. And how long ago was that stroke you had?

18 A Three years ago.

19 Q Okay. Now, Mr. Rivers, are you familiar with Mr. Ralph
20 Williams?

21 A Yes.

22 Q Okay. How did you know Mr. Ralph Williams?

23 A He's my cousin, I mean, my wife cousin husband. He's a
24 good fellow.

25 Q How long have you know Mr. Williams?

1 A Oh, about 20-something years.

2 Q Okay. Are you familiar with the events that occurred
3 on June 21, 2010?

4 A Yes.

5 Q Okay. How are you familiar with those events?

6 A Well, couple of days afterwards we was sitting on the
7 porch, sitting there talking, me and the Rev. We was
8 sitting there talking and this fellow we call the meat man
9 came from around the house and came up and grabbed Ralph and
10 said, --

11 MR. BRING: Objection, Your Honor.

12 THE COURT: Hold on. I'm going to sustain that
13 objection. He can't go into what somebody else said.

14 MR. WARREN: Well, what he's doing is stating the mind
15 of the hearer, he can state what he observed.

16 MR. BRING: That --

17 THE COURT: He can say what he saw.

18 MR. WARREN: Right. That's what I'm saying, observed.

19 THE COURT: But he was just getting ready to say what
20 somebody else said who is not in court, like that. He can
21 say that they had a conversation, he can say he saw him, but
22 he cannot say what somebody else said to Mr. Williams.

23 BY MR. WARREN:

24 Q What I'm asking from you, Mr. Rivers, is what did you
25 see and observe Mr. -- this person the meat man, what did

1 MR. RIVERS: Okay.

2 THE COURT: Okay. All right, sir.

3 BY MR. WARREN:

4 Q Okay, continue to state what you observed and what you
5 saw?

6 A I seen this man grab Ralph and jacked him up and I
7 don't know if he had some brass knuckles or either knife on
8 the side.

9 Q Now, do you have your own person opinion why he jacked
10 him up and had those brass knuckles, and you can state your
11 opinion as to why you believe he did that?

12 A But it was because of, I guess, what they said Ralph
13 did.

14 Q Okay. And in saying what they say Ralph did are you
15 talking about the allegations that were in the newspaper?

16 A Yes, sir.

17 Q Okay. And you're familiar with the allegations that
18 was in the newspaper?

19 A Some of them.

20 Q Okay. If I hand you this Exhibit 15B, are you familiar
21 with that? You can read the headlines.

22 A Yeah.

23 Q Is that the article, is that what you're referring to
24 what happened, June 21, 2010?

25 A Yes.

1 Q Okay. And when you read that publication could you
2 basically -- go ahead and read that headline so the jury can
3 understand what you're looking at?

4 A Assault charge against care worker.

5 Q Go ahead speak up?

6 A Okay. Assault charge against care worker.

7 Q Okay. Now, did this particular -- did you also see
8 this particular article?

9 THE COURT: Which one is that?

10 MR. WARREN: This is 15A.

11 BY MR. WARREN:

12 Q Would you read that?

13 MR. BRING: I don't think he ever said if he saw the
14 first article, he hasn't said he saw the second article.

15 MR. WARREN: Yeah, he stated he saw the first article.

16 THE COURT: Yeah. I think he did say he saw the first
17 one.

18 MR. BRING: Okay.

19 THE COURT: But he -- did you see that article, Mr.
20 Rivers?

21 MR. RIVERS: No, sir, not this one.

22 THE COURT: You did not see it. Okay.

23 BY MR. WARREN:

24 Q This is Exhibit 15C, would you identify that, can you
25 identify what that is?

1 A (No response.)

2 Q The document?

3 A Yes.

4 Q Okay. Newspaper?

5 A Yes.

6 Q What's the article, is this the newspaper you saw on
7 June 21, 2010, June 22?

8 A Yes.

9 Q Does that look like the article that you saw?

10 A Yes.

11 Q Could you read the top of the article?

12 A Care worker accused of trying to rape a woman.

13 Q Okay. Now, in your opinion, is that the basis of why
14 the meat man jacked Ralph up?

15 A Yes.

16 Q All right. Thank you.

17 THE COURT: No other questions?

18 MR. WARREN: No further questions.

19 THE COURT: Anything on cross?

20 MR. BRING: Yes, Your Honor.

21 THE COURT: Okay. Mr. Bring, your witness.

22 TERRY RIVERS - CROSS-EXAMINATION

23 BY MR. BRING:

24 Q Mr. Rivers, good morning.

25 A Good morning.

1 Q My name is Jason Bring. I represent the defendants
2 here today. I just have a few quick questions here for you.
3 You said you are a cousin of Mr. Williams; is that right?

4 A Yes.

5 Q And this --

6 MR. FOSTER: Jason.

7 THE COURT: I think he wanted to explain that somehow.

8 A That's my wife cousin husband.

9 BY MR. BRING:

10 Q Okay. Cousins by marriage?

11 A Uh-huh. (Affirmative response.)

12 Q Okay. And this event y'all were talking about that was
13 at the rooming house wasn't it?

14 A Yes.

15 Q And y'all were all sitting on the front porch, right?

16 A Yes, sir.

17 Q Doing a lot of drinking, right?

18 A No.

19 Q You were drinking beer, right?

20 A No.

21 Q No. So if Mr. Williams said y'all were all drinking
22 beer you're going to disagree with that, right?

23 A Well, I don't think we was.

24 Q Okay. Who all stays at that rooming house?

25 A It was quite a few people.

1 THE CLERK: State your name, please.

2 MS. MACK: Cynthia Mack.

3 (WHEREUPON, Cynthia Mack was sworn
4 to tell the truth.)

5 THE COURT: You may be seated.

6 MS. MACK: Thank you.

7 THE COURT: All right, Mr. Warren.

8 MR. WARREN: Yes, sir.

9 CYNTHIA MACK - DIRECT EXAMINATION

10 BY MR. WARREN:

11 Q Good morning, Ms. Mack, how are you?

12 A Good morning.

13 Q Would you please state your name for the record,
14 please?

15 A My name is Cynthia K. Mack.

16 Q And Ms. Mack where do you reside?

17 A I reside in Orangeburg at 498 Armstrong Terrace.

18 Q Okay, and how long have you lived at that location?

19 A I have lived at this location, the particular location
20 with this one property for the house I'm living in is
21 probably 8 months. The property that I live on, I've been
22 living there probably like 25 years.

23 Q Okay. What do you do for a living?

24 A I work at the Department of Health and Human Services.
25 I'm a Medicaid worker. My particular area is Medicaid

1 nursing home eligibility.

2 Q Okay. Now, did you go to school to get some education
3 prior to getting that job?

4 A I have a degree in Counseling Education. I have a
5 degree in Theology and I have a Master's Degree in
6 Nutritional Science.

7 Q Okay, and as your job as a case worker, could you
8 describe your job?

9 A What I do is when you have somebody who financially do
10 not have the ability to pay for medicaid nursing home we do
11 the paperwork that will help them get assistance through
12 Medicaid through the State of South Carolina.

13 Q Okay, and do you have any other occupations?

14 A I'm also the minister of State Holy Temple.

15 Q Okay, could you describe what State Holy Temple is?

16 A State Holy Temple is a Coleman -- it is a church on
17 Coleman Avenue.

18 Q Okay. How long have been the pastor of that church?

19 A I've been the pastor probably about 14 or 15 years, I
20 think.

21 Q When did you take over as pastor of that church?

22 A I took over after the death of my father.

23 Q Okay. So he founded the church?

24 A He founded the church.

25 Q And how is it you know Mr. Williams?

1 A I know Mr. Williams through my sister. He is married
2 to my sister Linda Williams.

3 Q Okay. How long have you known him?

4 A Probably about 25, 27 -- 27 years, probably.

5 Q Okay. Talk to the ladies and gentlemen about Mr.
6 Williams.

7 A Okay. When I first met Ralph it was not the best
8 relationship in the world. I dislike Ralph. I did not want
9 my sister to marry Ralph at all. And so with that
10 relationship through time we learned to be able to get along
11 with each other.

12 Q Uh-huh. (Affirmative response.)

13 A We learned as Ralph -- and being honest when they got
14 married I did not go to the wedding ceremony. But last
15 year, I was the one who actually did their vow renewal.

16 Q And why is it that you came to be so endeared with
17 Ralph?

18 A It is through the process of where you get to know
19 someone and you be around them. You be able to learn their
20 heart. And when I first met him, I was much more younger,
21 much more judgmental of him, and so as you develop you're
22 able to realize you've got to know the heart of someone to
23 understand who they are.

24 Q Okay. All right. And you say the heart of someone,
25 what do you mean by that?

1 A What I'm saying is I could not have where -- me and
2 Ralph butt heads quite often.

3 Q Well, --

4 A We look at some things from different points of view.

5 Q What type of things?

6 A Ralph is the type of person who if he believes
7 something he's going to fight for whatever he believes for
8 whatever he believe, whatever thought he has.

9 Q Uh-huh. (Affirmative response.)

10 A I'm the type of person whatever I believe I'm going to
11 fight for whatever I believe in.

12 Q Uh-huh. (Affirmative response.)

13 A So sometimes we have different conflicts of
14 interpreting certain things and so we have disagreements.

15 Q And certain things, such as scripture, what type of
16 things?

17 A Well, some things about scripture. Both of us like
18 cooking.

19 Q Okay.

20 A So some things about how it should be done. How you
21 can decorate. Where it is cooked and how it should be
22 cooked will cause this disagreements.

23 Q So y'all both are cooks?

24 A We -- he's the main cook for our church. I'm the
25 baker. And I'm going to always continue to maintain the

1 fact that he might be the main cooker, but I am the baker.

2 Q So what is his reputation as a cook?

3 A Ralph is an excellent cook. Ralph, in his cooking
4 process, one of the things that benefitted a lot of people
5 at one time wanted to have Ralph come and cook and stuff.
6 Ralph came and cooked, Ralph did the job real fine. He know
7 how to prepare that food real fast. He have knowledge about
8 cooking. He's going to go back and study and research and do
9 a recipe and find out how to do that recipe.

10 Q Okay.

11 A So he's a very experienced good and he's a great cook.

12 Q Okay. Is that based on the community or is that based
13 on your opinion?

14 A That is based on the community and a lot of people
15 would hire Ralph for the purpose that he was a good cook and
16 him being in a good cook they knew he was not going to just
17 hang around that and like try to just loaf around and meet
18 the clock. My sister, sometimes, I wish Ralph would just
19 slow down so that we can get more money, because he was like
20 sometimes going different places and he was the prep cook.
21 You know, he cook for other people. There were times they
22 would do different things for different people for different
23 type of jobs that somebody was having something. Ralph
24 would help prepare the menu or he was actually the main cook
25 in getting the food there and available.

1 Q What do you know about the events that occurred on June
2 21, 2010?

3 A On June 21, 2010, my sister called and my sister call
4 me and she said --

5 MR. BRING: Objection, Your Honor. Hearsay.

6 THE COURT: All right. I'll sustain that objection.

7 BY MR. WARREN:

8 Q You can't say what a person said.

9 A What a person said, okay.

10 Q Did you see anything or observe --

11 A On that day I met my sister at the -- at my sister to a
12 bond hearing to go get the money to bail Ralph out.

13 Q Okay. Who provided that money?

14 A I did.

15 Q And why did you provide the money for Mr. Williams?

16 A Because they were not financially strong and one of the
17 things that we did was actually help them at certain times
18 and at that particular time they were just getting where
19 they were finally because of the job that he had, that he
20 had at the nursing home, they were just beginning to get
21 financially strong because you were having income coming in.
22 So at that point I provided the funding for -- to do the
23 bail.

24 Q What was the bond hearing for, what was the --

25 A It was -- the first charge was, if I may not say

1 exactly what, but it was attempted sexual assault against, I
2 think, somebody who was not capable of caring for themself.
3 I don't know the exact terminology of it, but that was the
4 first charge.

5 Q Outside is there anywhere else you saw about these
6 charges?

7 A I saw it in the paper the next day. I saw it in the
8 paper, but before that having seen it in the paper, I saw --
9 we went and did the bond to prepare to bail him out. The
10 bond was sent to the Court and so my sister went to actually
11 go and pay the bail and she was waiting for Ralph to get
12 out. Later she found out, I got a call from my sister and
13 my sister said to me --

14 MR. BRING: Objection, Your Honor.

15 BY MR. WARREN:

16 Q You can't say what she said.

17 A Okay. Well, at that particular time I found out --

18 Q What was it you said -- the day after -- was it -- I'm
19 showing the witness Exhibit 15C.

20 A Okay. That particular conversation happened that
21 Monday7.

22 Q Now, you said the next day, I guess you saw the paper
23 or whatnot. Could you explain that?

24 A Right.. That next day I read in the paper that Ralph
25 was charged and at that particular time it was that he had

1 just attempted, and I'll say, to rape someone. Attempted to
2 rape someone. But understand that I already knew that they
3 were taking up the level of the charge.

4 Q Okay.

5 A When I said what it said --

6 Q When you said they were taking up the level of the
7 charge, can you explain that?

8 A What happened was, on that Monday, Latisha, (sp) I
9 think Latisha Coakley --

10 Q Okay.

11 A -- took up the charges from attempted rape to rape.

12 Q All right. And is that the bond hearing that you
13 attended?

14 A The bond hearing that I attended happened on that
15 Tuesday.

16 Q Why did they took the charges up?

17 A The reason why they took up the charges was because the
18 Latisha Cackle indicated that she actually (inaudible).

19 Q Okay. Now, and did you come to know something different
20 later on?

21 A Yes.

22 Q Okay. Now, could you describe to me about after this
23 event in terms of Ralph and what did you do?

24 A Okay. When I heard the information, the first thing I
25 was like, I can't believe Ralph would do that. I was

1 extremely upset that that was going to be something that
2 Ralph would have done. There's no way in my mind I could
3 imagine that that would have been something that Ralph did.

4 Q Uh-huh. (Affirmative response.)

5 A But understand that that came to my knowledge because I
6 heard somebody in law enforcement who I would have said
7 would not have just go and say to a wife that we found
8 semen.

9 Q Uh-huh. (Affirmative response.)

10 A And when I heard that they found semen, that even more
11 brought anger because at that point I was saying they found
12 semen. So my point was, to my sister, I said, well, you're
13 going to divorce him. And before just meditating, I read
14 the paper, what was in the paper on that Tuesday --

15 Q Could you -- I'm having you look at 15C. Could you
16 read the title of that article and tell me what you read in
17 the paper?

18 A Case care worker accused of trying to rape a woman. At
19 that particular point I read in the fact that there was a
20 worker, workers at the nursing home -- I don't call it
21 UniHealth. It was named something else in the past. There
22 was a worker at Unihome (sic) UniHealth that saw Ralph
23 actually -- in the bed, beside the bed or because it's two
24 different articles that I actually read. One was in the
25 bed, standing by the bed. Then another one was in the bed,

1 actually with him. The first article was something like in
2 the bed or beside the bed.

3 Q Now, after those articles, people -- did you come --was
4 your opinion of him, did it change? What was your opinion?

5 A When I read the article I was at work. I was extremely
6 upset. I was extremely upset and I was then -- I said to my
7 sister, are you going to divorce him? But in the time that
8 same day before I got to the bond hearing --

9 Q What length of time was that?

10 A That was probably, I think probably before 1:00
11 o'clock. I can't remember. My heart said, my spirit said
12 to me, Cynthia, Ralph is going to have to do his time, but
13 we're still going to support him, and you're going to go and
14 stand by your sister and be there as she stood by her
15 husband.

16 Q Uh-huh. (Affirmative response.)

17 A Okay? So we went to the hearing and -- for the bond
18 hearing, and at that particular hearing where they did the
19 procedure to increase it to where it was a rape charge, not
20 attempted, but a rape charge.

21 Q When did your opinion change, what time? A What
22 happened was my sister -- it came to my knowledge that I
23 needed to speak to Ralph.

24 Q Okay.

25 A It came to my knowledge that I need to speak to Ralph.

1 want to let them know your --

2 THE COURT: Oh, yeah. No, I think that would be good.
3 That would be good. So we don't have any objection, but
4 let's see how much longer she's going to be and then we'll
5 go from there.

6 MR. WARREN: Okay.

7 THE COURT: All right.

8 (Jury in at 11:55 a.m.)

9 THE COURT: Some conversations take longer than others.
10 That was my fault. Okay.

11 All right, ladies and gentlemen, we're going to
12 continue with the direct examination of Ms. Mack.

13 Mr. Warren.

14 MR. WARREN: Yes, sir, Your Honor.

15 THE COURT: Yes, sir.

16 BY MR. WARREN:

17 Q Ms. Mack, you were talking about the reputation that's
18 part of this case that we have to establish of Mr. Williams
19 before and after the events on September 21, 2010.

20 Now, you indicated previously when you first met Ralph
21 25 years ago that, you know, -- let's just talk briefly
22 about how that changed and then we'll talk about after, and
23 go ahead. So 25 years ago you met Ralph and let's talk
24 about how that changed over the years that changed and you
25 grew to love him. Go ahead.

1 A In my opinion, when I first, when we first met Ralph we
2 had a hostile relationship. After getting to know Ralph in
3 his heart I was able to say that Ralph had a good heart even
4 though he may have where there were things that I disagree
5 with.

6 Q Uh-huh. (Affirmative response.)

7 A One of the things I said when I first met him I was
8 younger. I was more judgmental. I was not where I had the
9 understanding of true Christian values within my heart, as
10 well. One of the things that I learned is when we come in
11 contact with people we cannot look at their past and make a
12 decision about what they have done in their past and judge
13 them.

14 Q What do you mean by that?

15 A What I'm saying is that the Christian point of view is
16 everybody have flaws, it would not necessarily determine if
17 somebody drinks that there is a bad person because their
18 heart can still be a good person, and as the Bible says, it
19 is not what goes into a man that defiles him, it is what
20 comes out of him. And over time I saw that Ralph was the
21 type of person, if it was somebody hungry, he was going to
22 be the first person to say when we're having these events
23 we're going to take these plates and we're going to serve
24 these people. Ralph was the person if anybody was walking
25 the street where our church is, it is a drug area. Ralph

1 was always taking plates and just giving to people in the
2 community. So he was very concerned about the homeless with
3 the understanding about 27 years ago Ralph also was
4 homeless.

5 Q Okay.

6 A So within time I was able to learn the type of person
7 that Ralph was. What was really down into his heart. I
8 could not be where I'm going to say I'm going to judge him
9 on the fact that we may argue and have different opinions
10 about certain things. I cannot judge and say this man is a
11 bad man because he have the flaws just like all of us. All
12 of us with have a time when we argue, and I had to be able
13 to realize that also my life-style that I had was somewhat
14 protected. I never had where I was a person who used drugs
15 or drank, but it took me years to be able to understand and
16 that was a failure on my part.

17 Q Okay.

18 A But it was a failure on my part to be able to learn
19 that you cannot judge somebody because they were somebody
20 who drank. You cannot judge somebody and say that they used
21 drugs and say that is a bad person. We all come from
22 different circumstances and different situations. So I had
23 to learn and took the opportunity to say, I got to get to
24 know Ralph as a person and in the mist of time I will tell
25 Ralph, say Ralph I love you and I will stand by you. And I

1 had to be able to say this person might have a problem with
2 drinking, may have a problem with using drugs, but that is
3 what the church is for. We're not called to judge someone,
4 and one of the things of going through that is that the
5 Bible says that you must try the spirit, and through this
6 whole ordeal I have tried the spirit of Ralph.

7 Q And after June 21, 2010, in trying that spirit, what
8 did you come to an understanding?

9 A One of the things in trying Ralph's spirit, I watched
10 and I observed. I watch and I observe what happened. Never
11 once did I ever see Ralph say I did this, even during the
12 time that he was drunk. Never once did he have any
13 indication, and there is something about people that when
14 they do something that because of the guilt that you carry,
15 the guilt that you carry, you have a way of letting people
16 know, you know, I'm not saying that I did it, but I did do
17 it. I never one has the inkling of Ralph saying that he did
18 this here.

19 Q And when you say this here?

20 A I'm talking about as for Ralph -- because I couldn't
21 remember the abuse of a vulnerable adult or attempting rape
22 or when the charge went up to actually raping a vulnerable
23 adult. I never once had him indicated that he was guilty of
24 that.

25 Q Now, just talk to me about your beliefs and opinions

1 not -- specifically regarding to how the reputation of Ralph
2 may have been diminished after September 22, (sic) from your
3 observations, not statements that people made.

4 A Okay. From my observation, I find that in life, as I
5 had problems of being able to look at things from a
6 perspective. You can imagine that if your picture was
7 placed in the paper. If your face was placed on television
8 that people will judge you as being guilty of what the
9 charge is.

10 Q Now, I'm just handing you -- just talk to me
11 specifically about people's opinions as it relate to his --
12 the effect on his reputation and how they looked at him
13 different. Just limit your testimony to that.

14 A Okay.

15 Q I'll show you Exhibit No. 15B --

16 A And -- 15B. In my opinion people felt that Ralph raped
17 this person. It changed their perspective of who Ralph was.
18 They did not want to be around them, and I don't have any
19 problem with that because I understand that is normal. They
20 did not want to have Ralph come and cook. They didn't not
21 want him to be in their business, because to have a rapist
22 in your business, that can be bad business for you.

23 Q So are you saying, was he publically hated during this
24 time?

25 A In my opinion, he was publically hated.

1 Q Okay.

2 A Because he had been charged with being a rapist.

3 Q Okay. And it's your understanding that it was not just
4 actual rape but also an attempted --

5 A Yes. It was where it was attempted rape against -- not
6 only just rape but you're talking about a vulnerable adult.

7 Q And do you understand the facts of what was alleged to
8 have happened, you read that in the paper?

9 A Yes. I have where of having the understanding of what
10 occurred and how it occurred.

11 Q It's right there in the paper where you can read it --

12 A Right.

13 Q -- right quick so you can familiarize yourself with it?

14 A If I can see it. Read the whole charges?

15 Q Just read it to familiarize yourself with it.

16 A Charges was amended to --

17 Q You don't have to read it --

18 A I don't have to read it out loud?

19 Q -- just familiarize yourself with it.

20 A Okay.

21 Q Once you familiarize yourself you can give an opinion
22 on the allegation.

23 A Okay.

24 Q And also I'm showing the witness Exhibit 15C, an
25 article, and after reading -- you stated you read these in

1 the paper?

2 A Right.

3 Q Could you --

4 A I read it on the Internet.

5 Q Okay.

6 A And I saw copies being pulled down. Okay.

7 Q Okay. Now, let me show you these Internet articles,
8 Exhibit 15A and 15B; is that what you --

9 A Right. This is what I read.

10 Q Okay. Now, just give the jury your opinions based on
11 how they changed, based on these articles, your opinions on
12 what happened?

13 A Okay. On -- am I to say how -- just talk about the
14 articles?

15 Q Just give your opinion as to --

16 A Okay.

17 Q -- your belief in the truthfulness of those articles.

18 A Okay. In my opinion when I got an understanding of
19 what I read that --

20 Q And your conversations with Ralph --

21 A Right.

22 MR. BRING: Your Honor, I want to clarify. It is her
23 opinion about whether this occurred or was it --

24 MR. WARREN: Her opinion as to whether it occurred.

25 MR. BRING: Your Honor, we object to that. She has no

1 foundation for that.

2 MR. WARREN: Well, based on her --

3 MR. BRING: She can't read the newspaper and --

4 THE COURT: Hold on a second. The issue about this in
5 this case is his reputation.

6 MR. WARREN: Yes, Your Honor.

7 THE COURT: She can testify as to what she -- whether
8 she believes it damaged his reputation or not. Whether she
9 believes he did it or not --

10 MR. WARREN: Okay.

11 THE COURT: -- she can't go into that.

12 MR. WARREN: Okay.

13 THE COURT: Okay?

14 MR. WARREN: All right.

15 THE COURT: She can testify as to whether she believes
16 she damaged his reputation or not.

17 MR. WARREN: Okay.

18 MS. MACK: Okay.

19 BY MR. WARREN:

20 Q Just talk about how it damages his reputation?

21 A That once people had where you have rapist over your
22 name, over your head, you are called a rapist, people will
23 never want you around. They are going to be questioning,
24 are you a rapist. When you have been someone -- someone
25 said you are a rapist nobody going to trust you. People

1 will say you are the worst person in the world. People are
2 going to question how could you do that to your wife.
3 People are going to question if we have this person ever
4 rape somebody else. So when you are called or someone has
5 said you raped somebody you are forever labeled no matter
6 what happened... You are forever labeled as a rapist and
7 there will be some people who will always say you are a
8 rapist no matter what. They will always say because that
9 charge have been placed on you, you are a rapist. They will
10 not try to look for the opportunity to see there was two
11 sides to a story. So when you are called a rapist that name
12 will be carried with you and one of the things that --

13 MR. BRING: Your Honor, I'm trying to give leeway, but
14 this goes far beyond your ruling on her opinion of his
15 reputation in the community.

16 BY MR. WARREN:

17 Q Could you just --

18 MR. BRING: She's giving her own --

19 MS. MACK: To the jury?

20 THE COURT: No ma'am. No, ma'am.

21 MS. MACK: Okay.

22 THE COURT: The question that Mr. Warren asked you, I
23 believe, you know.

24 MS. MACK: Is --

25 THE COURT: No, no. Let me finish. The question, do

1 you believe his reputation in the community has been damaged
2 by these charges. Yes or no.

3 MS. MACK: Yes.

4 THE COURT: Okay.

5 BY MR. WARREN:

6 Q And then lastly, could you talk about the effect on the
7 marriage?

8 A In my opinion --

9 Q And your sister.

10 A -- to have for to go almost two years or a year and a
11 half without knowing --

12 Q Let me caution you --

13 A Okay.

14 Q -- to speak specifically --

15 A Okay.

16 Q -- to how it effected the marriage. So --

17 A I --

18 Q -- and your observation of how it effected the marriage
19 and your sister.

20 A Okay.

21 Q Specifically that.

22 A How it effect the marriage?

23 Q Yeah. Your observations of how it effected the
24 marriage and your sister?

25 A Yes. The marriage was effected. It is my opinion that

1 their marriage was effected by this event.

2 Q What did you observe?

3 A I observed that my sister was very stressed. I
4 observed that there was more arguments.

5 Q What do you mean by stressed?

6 A She was stressed because she was carrying a load that
7 -- not knowing exactly what was the results of certain
8 things. Not being having where --

9 Q And do you mean by certain things --

10 A I'm talking about not knowing what the results of the
11 DNA.

12 MR. BRING: Your Honor, he's been cautioned.

13 THE COURT: I understand. We're going to straighten it
14 out. Okay.

15 Ladies and gentlemen, we need to take one more quick
16 break, okay, and then we'll bring you back in here. I
17 promise you it will only be about five minutes. Okay. Than
18 y'all. You can't talk about what we've heard so far.

19 (Jury out at 12:11 p.m.)

20 MR. WARREN: I'm done.

21 MR. BRING: I'm not.

22 THE COURT: Just wait. Everybody wait.

23 All right. Now, Mr. Bring, I'm going to let you put --

24 MR. BRING: We've had an entire pattern of contempt for
25 the Court's directions in this case, Your Honor. Not only

1 THE COURT: All right. Are you ready to go?

2 MR. WARREN: Yes, sir.

3 THE COURT: Are you ready, Mr. Bring?

4 MR. BRING: Yes, Your Honor.

5 THE COURT: Okay.

6 If you'll bring the jury back in.

7 (Jury in at 12:15 p.m.)

8 THE COURT: All right. See, I told you it wouldn't be
9 long, okay. So one time I was right.

10 Now, we're going to resume with the questioning of Ms.
11 Mack at this point.

12 MR. WARREN: No further questions.

13 THE COURT: All right. Mr. Bring, any questions?

14 MR. BRING: Yes, Your Honor.

15 THE COURT: All right. Your witness.

16 MR. BRING: Thank Your Honor.

17 THE COURT: Yes, sir.

18 CYNTHIA MACK - CROSS-EXAMINATION

19 BY MR. BRING:

20 Q Ms. Mack, I just want to cover a few things. We
21 haven't deposed you before; correct?

22 A No.

23 Q Okay. I understand from your testimony this morning,
24 you said you work at the Department of Health and Human
25 Services?

1 A Correct.

2 Q And you handle nursing home eligibility issues?

3 A Yes. Correct.

4 Q And that's to get coverage in nursing home for folks
5 that need payment for --

6 A Correct.

7 Q A lot of that is done by Medicaid; is that correct?

8 A Correct.

9 Q Okay. And in your experience with that, it's not
10 entirely uncommon for a 42 year old to be in a nursing home;
11 is that correct?

12 A It is not uncommon.

13 Q It is not?

14 A It is not uncommon.

15 Q Okay. The majority of patients in nursing homes are
16 elderly; correct?

17 A The majority are. Usually somebody who is probably
18 over the age of 65.

19 Q Right, because that's when Medicaid kicks in with the
20 majority of folks; correct?

21 A Medicaid will pay for nursing home payment if they're
22 eligible regardless of the age.

23 Q Okay. And to be eligible you need to be fairly
24 incapacitated; correct?

25 A You must meet the level of care for Medicaid benefits.

1 Q Right, and in order to be in a nursing home you have to
2 have some type of issue that needs on-going care; correct?

3 A When it is Medicaid client, you have -- they have to be
4 intermediate or skilled.

5 Q Uh-huh. (Affirmative response.) You mentioned earlier
6 that you and Ralph started with a hostile relationship;
7 right?

8 A Yes.

9 Q Is that the word you used?

10 A I probably did. Yes.

11 Q And why was that?

12 A It is because I didn't like Ralph. Ralph was homeless,
13 he was on drugs. That's my perspective. So I did not like
14 Ralph.

15 Q And you are Mr. Williams' pastor but you're also his
16 sister-in-law; correct?

17 A Correct. Yes.

18 Q Now, when this first happened your initial reaction was
19 to tell your sister that she needed to leave Ralph; correct?

20 A Correct.

21 Q And part of that was based on your understanding that
22 he had prior infidelities with his wife; correct?

23 A No. That was not -- that was not my reason for that.
24 It was what I read in the paper --

25 Q Okay.

1 A -- that made me say that he needed to leave, because to
2 have where someone accuse someone of something, I'm just
3 going to say, oh, what about what I read in the paper I was
4 saying she needed to leave.

5 Q So you were willing to, based on what you read in the
6 paper to advise your wife -- I mean advise your sister that
7 she needed to leave her husband; right?

8 A No. I didn't advise her that. I asked her that.

9 Q Okay. You asked her to leave him?

10 A No. I asked her was she going to leave him, because my
11 perspective, my opinion was there is no way this person when
12 I saw in the paper there were two employees that said this
13 person did that. I was thinking there were two employees
14 that actually saw the event.

15 Q And you're aware that the initial paper article said
16 that it was allegations of attempting to have sex; right?

17 A Right.

18 Q They used the word attempting; correct?

19 A It was, it was initially attempted.

20 Q Okay.

21 A And later that afternoon it went to actually committing
22 the act because semen was supposed to have been found.

23 Q And that upgrading, as you called it, was -- and the
24 semen allegations, those came from the police officers;
25 correct?

1 A Correct.

2 Q They didn't come from the nursing home employees;
3 correct?

4 A No.

5 Q And so the allegations, and you understand that, the
6 allegations from the nursing home folks was that they
7 suspected that Mr. Williams was attempting to have sex with
8 this resident; correct?

9 A It is what the initial charge was that it was attempt.
10 That was my understanding of the initial wording at that
11 particular point. That was my understanding that that was
12 coming from the police department. That was my
13 understanding at that time.

14 Q And since you kind of work in this area of getting
15 folks into nursing homes you would agree that if you have an
16 elderly or someone who is disabled in a nursing home and if
17 workers there suspect that there's sexual abuse going on
18 they should let the police know about that shouldn't they?

19 A I believe that they should let the police know about
20 that instance. Matter of fact, I would consider it to be
21 mandatory to let the police know about that incident.

22 Q And you -- are you aware now of Mr. Williams's prior
23 infidelities with his wife?

24 A Yes, I do know there were?

25 Q Were you aware prior to this coming out?

1 A Yes, sir.

2 Q Still a lot of college friends in the community?

3 A Yes, sir.

4 Q Do you still talk them?

5 A Quite frequently. Yes, sir.

6 Q Okay, and that's both high school and college friends?

7 A Yes, sir.

8 Q Okay. Now, sometime in the -- what do you know about
9 the events that happened on June 21, 2010?

10 A Unfortunately, I received a call from my dad, which he
11 told me --

12 Q I instructed you before you can't say anything that
13 somebody told you. Remember we talked about that?

14 A Correct.

15 Q So you can only talk about your understandings?

16 A Due to my understanding the event occurred on June 21,
17 2010, and due to my understanding it was very disturbing, I
18 was shocked and apparently I was pretty much disgusted,
19 because all those things, knowing my father, was not
20 subjective to my father due to his character.

21 Q Now, did you look somewhere to get information on this?

22 A Yes, sir. I actually looked on-line and I looked at --
23 I looked at the Internet, read the story for myself.

24 Q Showing the witness Plaintiff's Exhibit 14B. Could you
25 state what that headline states?

1 A Assisted living employee charged with attempted rape at
2 facility.

3 Q And just look at that, familiarize yourself with it?

4 A Sir?

5 Q Just look at that, familiarize yourself with it and
6 just give me your opinions.

7 A (Witness complies.)

8 Q And is this what you looked up?

9 A Yes, sir.

10 Q And this is WIS, that's the website you looked up?

11 A Yes, sir.

12 Q And you're familiar with this news station?

13 A Yes, sir.

14 Q Because you lived in Orangeburg?

15 A Yes, sir.

16 Q Okay. Now, when you -- what was your reaction when you
17 read this article?

18 A Again, I was shocked. For the most part disgusted,
19 because I know my dad is not perfect, but in no ways time my
20 dad did not do this. It wouldn't have mattered if the
21 entire country came and told me that as a whole, but I know
22 my dad. People may have opinions about my dad, but I know my
23 dad. Again, my dad is not perfect, but my dad has a heart
24 of gold and with that heart of gold he has a gift from God
25 that would benefit each and everyone in this room. And he

1 does that by culinary, what you call in some words, cooking.

2 Q Okay.

3 A And he's -- I have not heard not one complaint of no
4 one not liking his cooking.

5 Q Uh-huh. (Affirmative response.)

6 A So --

7 Q And so you indicate he had a known reputation for being
8 a top cook here in Orangeburg?

9 A Yes, sir.

10 Q And it's your understanding that people sought after
11 him?

12 A Yes, sir.

13 Q Now, prior -- after June 21, 2010, what was your
14 understanding of his reputation?

15 A In complete shutdown.

16 Q Okay. Could you elaborate?

17 A Well, due to my understanding and my knowledge of
18 Orangeburg, South Carolina his reputation took a major hit.
19 He was unable to obtain employment and more so than
20 anything, it effected his way of being physically as well as
21 psychologically, his mental state. I know this because I've
22 dealt with my dad daily.

23 Q So while he was going through this you talked to him
24 daily?

25 A Daily.

1 Q Okay. And you tried to offer support to him?

2 A Yes, sir.

3 Q And your understanding and pressures of his feeling is
4 what -- did he cry or what type of --

5 A He had a multitude of emotions. He cried, depression,
6 disappointed, felt less than a man. You name it, he felt
7 it. The times that he cracked a smile or joked around was
8 because of who I am as a person, because I tend to try to
9 lift people up. That's what I've been taught in terms
10 according to God. We not supposed to lift -- if we can't
11 lift them up we're not supposed to deal with it at all. So
12 if anything I wanted to lift my dad's spirits up, because
13 his spirits was at an all-time low.

14 Q Uh-huh. (Affirmative response.) Okay.

15 MR. WARREN: I believe at this time, no further
16 questions.

17 THE COURT: All right. Thank you.

18 Anything on cross?

19 MR. ARNOLD: No questions, Your Honor.

20 THE COURT: You may step down. Thank you, sir.

21 All right. Is plaintiff prepared to call their next
22 witness?

23 MR. WARREN: Yes. Dr. Earline Sabb.

24 THE COURT: Dr. Sabb, do you mind putting your left hand
25 on the Bible and raising your right hand. Clerk's going to

1 Q Uh-huh. (Affirmative response.)

2 A And I got a church on October 7 -- 27, I'm sorry.

3 Q Okay.

4 A It's like ordained a day apart.

5 Q Now, how -- are you familiar with Mr. Williams, Mr.
6 Ralph Williams?

7 A Yes.

8 Q Okay. Tell me how you're familiar with Mr. Williams?

9 A I met Ralph about 27 years ago.

10 Q Okay.

11 A When he was courting his wife Linda, in my yard.

12 Q Okay. And did you introduce her or how did you --

13 A Linda introduced Ralph to me.

14 Q Okay. So you --

15 A And my little boy. So yes.

16 Q And your little boy. Okay. So you're good friends
17 with Linda?

18 A I'm good friends with the entire Mack family.

19 Q Okay. Okay. Over the years how have you come to know
20 Ralph in this community?

21 A We're neighbors. We live like a street over from each
22 other now, and that's been about 14 years.

23 Q 14 years. In your opinion, your understanding, what
24 was Ralph's reputation in this community among the people
25 who knew him?

1 A Well, he's well-known in the community. My opinion is
2 he's a good man and a respectable man. Ralph loves his loud
3 music. So when we hear it we know to call Ralph and tell him
4 to turn the music down. He likes oldies but goodies.

5 Q Okay. And you know of any other activities in the
6 community like his jobs and types of things he's done in the
7 community?

8 A Yes.

9 Q Can you talk about that?

10 A He was caterer with my sisters, in fact, at Mr. J's.
11 They all worked there and they did catering.

12 Q Do you know anything about his cooking as a caterer?

13 A Yes. Ralph feed me quite often.

14 Q Okay. So did he have a good opinion, a good reputation
15 in the community in regards to his cooking?

16 A He had a good -- at one time he had a good reputation
17 in the community as a good caterer.

18 Q Now, you stated you were familiar with the events that
19 happened on June 21, 2010. How did it come to your
20 understanding about the events that was happening involving
21 Mr. Williams?

22 A It's my understanding that I heard through the
23 community and then on the Internet.

24 Q Okay. I'm showing you Plaintiff's Exhibit 14B. One
25 exhibit, it's 14A and 14B, one is a search and one is the

1 actual -- could you read the top of that?

2 A Assisted living employee charged with attempted rape at
3 facility.

4 Q And is that how you became familiar with what happened
5 on June 21, 2010?

6 A More so, like I said, it was my understanding because I
7 heard it in the community.

8 Q Okay.

9 A But then I went to Google it.

10 Q And you read that article?

11 A Yes.

12 Q When you first read that article about Mr. Williams
13 attempted rape, what was your opinion?

14 A I felt in my heart it was not true.

15 Q And why did you think that?

16 A Because I know Ralph Williams. I know Ralph Williams.

17 Q The last 27 years?

18 A I know Ralph Williams. Yes.

19 Q And after this article how do you feel his reputation
20 has changed?

21 A Oh, it has changed. He does not have a job, cannot find
22 a job.

23 Q Uh-huh. (Affirmative response.)

24 A And the people that he used to cater for, my sisters,
25 all of them worked together for years, but not now he can't,

1 because of the article.

2 Q Uh-huh. (Affirmative response.) Did you talk to Ralph
3 during this time, did you see Ralph or observe Ralph during
4 this time frame?

5 A Because of my Sabb Consulting business --

6 Q And don't enter any statements he may have told you,
7 but you can talk about observations that you saw?

8 A Yes. My observation when he came to my house, he and
9 his wife. I saw tears. I knew it was time to pray. So I
10 began calling on the name of Jesus and binding the devil
11 because God would prevail and I wanted him to believe that.
12 If you are not guilty, the truth will prevail. The Bible
13 says it.

14 Q And did you give him any type of scripture?

15 A Yes. I asked him to go in the Bible and read about
16 Daniel and he was in the lion's den. And I told him, Daniel
17 was in the lion's den. You've got to remember he prayed
18 seven times a day. So you're not better. Pray. Pray until
19 something happens. We talked about Paul and Silas. Go read
20 about it.

21 Q Talk to me about Paul and Silas. Tell me --

22 A They were in jail, locked up, but one day through pray
23 the gates opened. They was happy, they was free. Miracle.
24 Miracles do happen.

25 Q Any other type of scriptures that you counseled him on?

1 A Yeah. We talked about David.

2 Q Talk to me specifically about David?

3 A To let the Lord be his shepherd. If you just let the
4 Lord be your shepherd, even when your cup run over. I say,
5 Ralph when your cup runs over ask God for a refill. That's
6 all you got to do. Just ask the Lord and he'll give it to
7 you. It might not come in your time, and that's what I told
8 him, but it will come.

9 Q How many times did you counsel Ralph?

10 A I talked to he and his wife numerous times. When he
11 gets burdened, he finds Earline Sabb. He'll come around the
12 corner. She'll come around the corner.

13 Q You've been kind of a spiritual --

14 A Oh, yes.

15 Q Now, there was one particular occasion that he may have
16 been really down?

17 A Yes.

18 Q Certain scriptures that you may have talked to him
19 about when he was having a particular difficult day?

20 A Yes.

21 Q Could you tell us about any particular difficult day he
22 had and the scripture you may have counseled him --

23 A After he got out of the hospital after the attempted
24 suicide we talked about James and the truth. You don't have
25 to take your life to prove a point. Just believe, believe

1 in the great I Am. Believe in the comfort that he sent for
2 us, because Jesus Christ is our comforter. Just believe.,

3 Q Thank you, Dr. Sabb.

4 MR. WARREN: No further questions.

5 MR. ARNOLD: No questions, Your Honor.

6 THE COURT: Okay. You may step down.

7 MR. WARREN: I have one more question, Your Honor.

8 MR. FOSTER: I didn't communicate well --

9 MR. WARREN: My co-counsel has advised me of something.

10 THE COURT: Hold on one second. Okay. Go ahead. If
11 you've finished getting advice you can ask.

12 MR. WARREN: Okay.

13 THE COURT: Go ahead.

14 BY MR. WARREN:

15 Q One last question, well, couple in this line of
16 questions. Did you see or observe the impact on Mr.
17 Williams wife, Linda?

18 A Yes, I did.

19 Q First of all, how do you know Linda?

20 A We lived in the same yard, their house was here, my
21 house was here on Goff Avenue.

22 Q Did you grow up with Linda; how long have you know
23 them?

24 A I've known them for 27 years.

25 Q And Ralph introduced her to you?

1 A Linda introduced me to Ralph.

2 Q Okay. Now, talk to me about what you witnessed in
3 terms of Linda's -- what went on with Linda in terms of what
4 you observed?

5 A I observed her being very upset because he was upset.
6 Because they had to go through this. She was trying to get
7 him to understand it would be all right even though, his
8 thing was he's a man, she shouldn't have to pay all the
9 bills and this and that. You know, things like that. She's
10 strong. She supported him anyway. She stood right by him.
11 That was my statement to her. You be there for him, because
12 if things were reversed he would be there for her, and I
13 know that.

14 Q And did you witness her, you know, emotions?

15 A Yeah. She was crying. When they came to me she was
16 crying. Both of them were.

17 Q And was it a long period of time that they endured
18 this, did you feel it was over a long period of time that
19 they endured this?

20 A I think they're still enduring it.

21 Q Thank you.

22 THE COURT: All right. Now, Mr. Arnold, any questions?

23 MR. ARNOLD: No questions, Your Honor.

24 THE COURT: All right. Thank you, sir.

25 You may step down.

1 A I'm from North, South Carolina.

2 Q Okay. How far is that from Orangeburg?

3 A Approximately 30 miles from Orangeburg?

4 Q And how long have you lived in North, South Carolina?

5 A About -- over 20 years.

6 Q Over 20 years. Okay. What do you do for a living?

7 A I'm employed with the Orangeburg County Department of
8 Social Services as a Human Services Specialist II.

9 Q And how long have you worked there?

10 A I've been there 26 years.

11 Q Okay. What job do you do there at the facility?

12 A I work with economic services, food stamps and FI.

13 Q Okay. Who all do you work with?

14 A I work with Linda Williams.

15 Q And how long have you worked there with Linda?

16 A 26 years.

17 Q 26 years. And how -- do you know her husband?

18 A Yes.

19 Q Okay, and how long have you know Mr. Williams?

20 A I've know Ralph for over 20 years.

21 Q Now, in terms of their marriage, what do you know in
22 terms of your observations of the last 26 years of their
23 marriage?

24 A I guess they're just like anyone else, they have ups
25 and downs.

1 Q Okay, and what do you know about her feelings towards
2 Mr. Williams?

3 A She loves her husband. She loves her husband.

4 Q And what is your opinion in terms of Mr. Williams?

5 A He loves Linda.

6 Q And as a -- now, what do you know about the events that
7 happened on June 21, 2010?

8 A I know what I read in the paper, what it allèges. He
9 allegedly molested a vulnerable adult.

10 Q Okay. Times and Democrat?

11 A Yes.

12 Q I'm showing the witness Exhibit 15C. Is that the
13 article?

14 A Yes.

15 Q Now, could you read the title of that article?

16 A Caseworker accused of trying to rape woman.

17 Q Just familiarize yourself with the contents briefly.

18 Now, what was your reaction when you read that article?

19 A I didn't believe that he did it.

20 Q And why?

21 A From what I know of Ralph. It was my opinion, I just
22 felt in my heart that he didn't do it.

23 Q Now, this article says trying to.

24 A Right. Uh-huh. (Affirmative response.)

25 Q You still didn't believe it?

1 A Still didn't believe it.

2 Q Why?

3 A It was my gut feeling, it was in my heart. I didn't
4 fell like Ralph would do that.

5 Q And talk to me about what do you know of Ralph to have
6 that opinion in the community, what is he know for, why you
7 have that -- hold that belief.

8 A Ralph, he is a loving person. He has his ways like
9 anybody else, but overall he's a good person. And I just
10 didn't feel like he would do something of that nature.

11 Q Not attempt to sexually --

12 A I don't believe he attempted to do that.

13 Q Now, what is your understandings of how his reputation
14 has changed in the community since then. Now, don't talk
15 about what people specifically told you, but talk to me
16 about his understandings of how his reputation has changed?

17 A Well, I have worked with Ralph on a catering job, so I
18 know what he is capable of doing, but since this has
19 happened, all of that is kind of squashed. He's not as
20 popular as he used to be. Because I know what he's capable
21 of doing as far as his catering business and everything.

22 Q Talk to me about his catering business, is that
23 something he did well?

24 A Oh, very well.

25 Q Talk to me about that?

1 A He's done weddings, he's done picnics, he's done
2 parties or cooked for churches. I know he's done all this.

3 Q He hired you to work for him on some of these --

4 A Not necessarily hired me, but I volunteered to help on
5 occasion.

6 Q Okay. Now, talk to me about since -- after June 21,
7 2010, has he had the same opportunity?

8 A Not as much. He may cook for a church every now and
9 then, but other than that, he hasn't been doing too much
10 catering.

11 Q Now, what do you know of him, his desire to work?

12 A As far as I know he wants to work. That's all I know.
13 I'm assuming he wants to work.

14 Q Based on what you're known over the years?

15 A He's been a working man, a hard working man.

16 Q Had multiple jobs?

17 A Yes.

18 Q Two jobs at a time?

19 A He has. At one point, he has.

20 Q And you're aware that he went back to school?

21 A Yes. He worked for his CNA license.

22 Q And did he also try to work while getting his license?

23 A I think he was working.

24 Q And talk to me a little bit about your observations of
25 Linda and how it effected their marriage, this occurrence,

1 this alleged, attempted rape on June 21, 2010.

2 A Well, when she came by the office -- even though we'd
3 already seen it, you know, when she came by the office to
4 tell us about it, she was devastated. I can only imagine
5 how she felt. Of course, she cried, we cried with her
6 because that's what family do. We were there for her,
7 whatever capacity, she needed us.

8 Q Are you family?

9 A Yeah, I consider myself family. We may not be blood
10 but we're family.

11 Q And y'all cried with her?

12 A Yes. We cried with her. I told her, you know, he's
13 innocent until proven guilty and I just felt that he didn't
14 do it and I tried to comfort her the best way I knew how.

15 MR. WARREN: No further questions.

16 THE COURT: Okay. I'm going to make sure this time. No
17 further questions?

18 MR. WARREN: No further questions.

19 THE COURT: All right. Anything?

20 MR. ARNOLD: No questions, Your Honor.

21 THE COURT: All right. You may step down. Thank you,
22 ma'am.

23 Is plaintiff ready to call the next witness?

24 MR. WARREN: Yes, sir, Your Honor.

25 THE COURT: All right.