

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
Owen C., a minor

Appellant

v.

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

Defendants

Of whom

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

Respondent.

RECORD ON APPEAL (VOLUME 3)

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
Owen C. [REDACTED] a minor

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-46-4508

**PLAINTIFF'S MOTION FOR
RECONSIDERATION AND
MEMORANDUM OF LAW IN
SUPPORT OF MOTION**

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DAVID HAMILTON
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YORK COUNTY, SC

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

FACTS

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

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

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

PROCEDURAL HISTORY

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

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

ARGUMENT

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

1. LCH owed Owen C [REDACTED] an intra-admission social work duty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,



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May 22, 2013

Rock Hill, South Carolina

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

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

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

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

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

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

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

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

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

abused or neglected child"). CMHA had no right or duty to remove the Plaintiff from his father's custody or refuse to return the Plaintiff to his parents after DSS ordered it to do so. Restatement §323 is also inapplicable because nothing CMHA did increased the risk of harm to the Plaintiff, and the Plaintiff could not have relied upon CMHA to protect him by removing him from his parents because CMHA had no authority to remove him from the custody of his parents.¹

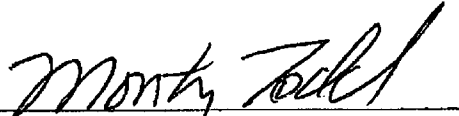
Additionally, the Court properly concluded that the Plaintiff could not create a duty using expert testimony, as the issue of duty is one for the courts. The remainder of the Plaintiff's Motion to Reconsider addresses the issues of standard of care and a breach. However, those issues need not be addressed by the Court in the absence of a duty, because without the presence of a duty, there can be no breach of the standard of care. Because those issues were not addressed by the Court and are immaterial to the Court's decision to grant CMHA summary judgment, the Defendant CMHA does not address them here.

In conclusion, while the Plaintiff claims that CMHA breached a duty of care to the Plaintiff, the Court correctly found that the hospital had neither the right nor the duty to refuse to discharge Owen to his parents. The Defendant CMHA complied with its statutorily-imposed duties by reporting its suspicion of a non-accidental trauma to the South Carolina Department of Social Services, which performed its own investigation and advised CMHA to discharge the Plaintiff to his parents. Therefore, the Court should deny Plaintiff's Motion for Reconsideration.

¹ Moreover, as noted by the Court in *Underwood v. Coponen*, 367 S.C. 214, 219 n.3, 625 S.E.2d 236, 239 n.3 (Ct. App. 2006), Restatement §323 should not be contorted in a way to create ill-advised precedent that may have a chilling effect on cooperation with the authorities or other conduct that inures to the public good. *See also Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (declining to impose duty on defendant to inspect property under circumstances as doing so "would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land").

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May 30, 2013

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS 2 COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT 3 Civil Action No: 11-CP-46-04508 4 ELIZABETH HOPE RAINEY, as the 5 APPOINTED GUARDIAN ad LITEM 6 to OWEN C. RAINEY, a minor, VIDEOTAPED 7 Plaintiff, DEPOSITION 8 OF 9 CHERYL COURTLANDT, M.D. 10 vs. 11 CHARLOTTE-MECKLENBURG HOSPITAL 12 AUTHORITY d/b/a CAROLINAS 13 MEDICAL CENTER, SOUTH CAROLINA 14 DEPARTMENT of SOCIAL SERVICES, 15 BRUCE BRYANT as the CONSTITUTIONAL 16 OFFICER OF YORK COUNTY, 17 Defendants. 18 19 T R A N S C R I P T of the deposition in the 20 above-entitled matter by and before KAREN 21 GAGLIARDOTTO KOCSIS, a Certified Court Reporter and 22 Notary Public of the State of South Carolina, held 23 at the CAROLINAS MEDICAL CENTER, 1000 Blythe 24 Boulevard, Dining Room #4, Charlotte, North Carolina 25 on Thursday, September 27, 2012 commencing at 2:27 p.m.	1 A P P E A R A N C E S: (Cont'd) 2 ATTORNEYS FOR DEFENDANT 3 BRUCE BRYANT AS THE CONSTITUTIONAL 4 OFFICER OF YORK COUNTY 5 McCAY, CAUTHEN, SETTANA & STUBLEY, PA 6 BY: JANET BROOKS HOLMES, ESQUIRE 7 1303 Blanding Street 8 Columbia, South Carolina 29201 9 janetholmes1@mac.com 10 803.256.4645 11 ALSO PRESENT: Videographer, Brooks Oswald 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 A P P E A R A N C E S: 2 ATTORNEYS FOR PLAINTIFF 3 MCGOWAN, HOOD & FELDER, LLC 4 BY: S. RANDALL HOOD, ESQUIRE and 5 DEBORAH CASEY, ESQUIRE 6 1539 Health Care Drive 7 Rock Hill, South Carolina 29732 8 rhood@mcgowanhood.com 9 dcasey@mcgowanhood.com 10 803.327.7800 11 12 SHAW LAW FIRM 13 BY: DUANE M. SHAW, ESQUIRE 14 1169 Ebenezer Road 15 Rock Hill, South Carolina 29732 16 shaw@shawlawfirm.net 17 803.329.4200 18 19 ATTORNEYS FOR DEFENDANTS 20 CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY 21 d/b/a CAROLINAS MEDICAL CENTER 22 23 SOWELL GRAY STEPP & LAFFITTE, LLC 24 BY: MONTEITH P. TODD, ESQUIRE 25 1310 Gadsden Street 26 Columbia, South Carolina 29211 27 mtodd@sowellgray.com 28 803.231.7837 29 30 ATTORNEYS FOR DEFENDANT 31 SOUTH CAROLINA DEPARTMENT 32 OF SOCIAL SERVICES 33 DAVIS, FRAWLEY, ANDERSON, McCAULEY, 34 AYER, FISHER & SMITH, LLC 35 BY: PATRICK J. FRAWLEY, ESQUIRE 36 140 East Main Street 37 Lexington, South Carolina 29072 38 pat@oldcourthouse.com 39 803.359.2512	1 I N D E X 2 EXAMINATION BY MR. HOOD PAGE 3 6 4 E X H I B I T S 5 PLAINTIFF'S 6 13 Abusive Head Trauma in 6 7 Infants and Children 8 14 Evaluation of Suspected 6 9 Child Physican Abuse 10 15 C.V. 6 11 16 Progress record, 12/5/09 14 12 17 CT, 12/5/09 72 13 18 CT, 12/7/09 72 14 19 Patient record 97 15 20 ER documentation, 12/5/09 97 16 21 Physicians orders 100 17 22 Physicians orders 100 18 23 Progress record 100 19 24 Carolinas Healthcare System H&P 108 20 25 Medical decision making form 108 21 26 Coagulation, 12/5/09 110 22 27 Microbiology, 12/5/09 110 23 28 Microbiology, 12/5/09 110

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1	EXHIBITS (Cont'd)	110	1	"yes" --	
2	Hematology report, 12/7/09	113	2	A Okay.	
3	Progress record, 12/7/09	114	3	Q -- "no" or whatever it maybe, as long as	
4	Nursing miscellaneous inpatient, Lynn Myers, RN	118	4	it's a verbal response; okay?	
5	Discharge summary, 12/8/09 Levine Children's Hospital	118	5	A Yes (indicating.)	
6	Discharge summary, 12/8/09 Carolinas Healthcare System	118	6	Q Okay. That head shake is so easy.	
7	Physicians orders, 12/7/09	120	7	A Okay.	
8	Progress note, Children's Hospital Inpatient Service	120	8	Q And then if will just -- if you have a	
9	Patient medical discharge instruction form	125	9	question about something, if you'll direct it to me,	
10	CHS Pediatric NICU Discharge Instructions	125	10	I want to make sure you understand, and so if there	
11			11	is something I ask, because I'm not a medical	
12			12	professional like yourself and sometimes I'm a	
13			13	little thick when it comes to some of the vagaries	
14			14	of -- of medical terms and literature and stuff. So	
15			15	if that happens and you don't understand because I'm	
16			16	asking a stupid question, please let me know; okay?	
17			17	A Okay.	
18			18	Q And we've got -- it's not a memory test	
19			19	today. And so if you need to look at any document,	
20			20	between all of us, we will find it somewhere, to be	
21			21	able to -- to help you answer it, to refresh your	
22			22	recollection, whatever reason you need it for, I	
23			23	will try to find it or Monte or somebody will try to	
24			24	find it to -- to be able to you assist you in	
25			25	answering a question; okay?	
Page 6			Page 8		
1	(Articles from AAP, Abusive		1	A Yes.	
2	Head Trauma in Infants and Children and		2	Q And lastly, if -- I want you to understand	
3	Evaluation of Suspected Child Physical Abuse		3	the question when I ask it. If I ask you something	
4	and Dr. Courtlandt's CV received and marked as		4	that you don't understand, will you let me know?	
5	Plf's Exhs 13, 14 and 15 for identification.)		5	A Yes.	
6	(Videographer's opening remarks.)		6	Q And so is it fair that if you give me a	
7	C H E R Y L C O U R T L A N D T, M.D.,		7	response to a question, that you understood it and	
8	having been duly sworn, by the officer, testified as		8	answered it to the best of your ability?	
9	follows:		9	A Yes.	
10	EXAMINATION		10	Q If you need to take a break for any	
11	BY MR. HOOD:		11	reason, just let me know. We usual -- the last	
12	Q Dr. Courtlandt, my name is Randy Hood, and		12	deposition, we took one about every hour just to	
13	I represent the family of Owen C. [REDACTED] a personal --		13	give everybody a chance to get on their feet a	
14	Guardian Ad Litem of Owen C. [REDACTED], who is standing		14	little bit. And we're probably going to be here for	
15	in a representative capacity for Owen and we		15	a while, it may be three or four hours. So if there	
16	represent him in a case against		16	is a something that that -- you know, if you need to	
17	Charlotte-Mecklenburg Hospital Authority of		17	take a break for any reason and, obviously, if you	
18	Carolinas Healthcare System and then against DSS and		18	get a page for any reason, that comes before any of	
19	against the York County Sheriff's Department.		19	the stuff that we're doing.	
20	And I'm going to be taken being your		20	A Okay.	
21	deposition in this particular case, and before I		21	Q I mean, you know, patient care is way more	
22	begin, I just want to go over a couple ground rules;		22	important that what we're doing today. So if	
23	okay?		23	there's something you need to take a break for	
24	A Yes.		24	at any reason, you just let us know and we	
25	Q Good one. I need a verbal response		25	will facilitate that; okay?	

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1 A Okay.

2 Q Can you please tell us your full name.

3 A Cheryl D. Courtlandt.

4 Q Okay. And, Ms. Courtlandt, in 2009 were

5 you working at Carolinas Healthcare System?

6 A Yes.

7 Q And were you working within a part of that

8 at Levine Children's Hospital?

9 A Yes.

10 Q And at Levine Children's Hospital, were

11 you a member of something called the CHIPS team?

12 A Yes.

13 Q And is that the Children's Hospital

14 Inpatient Service?

15 A Yes.

16 Q And as a member of that CHIPS team, did

17 you help provide care for a young man by the name of

18 Owen Carduff?

19 A Yes.

20 Q And did Owen C[REDACTED] come into the

21 hospital with an apparent life-threatening event and

22 then have a CT scan of his head?

23 A Yes.

24 Q And when the CT scan of his head occurred,

25 it was determined that he a subdural hematoma.

Page 10

1 A Yes.

2 Q And a subdural hematoma is not just some

3 spontaneous event that occurs in a three-month-old

4 child usually; correct?

5 A Usually, yes.

6 Q And they -- as a result of the finding of

7 subdural hematoma, the child's -- the -- the

8 maltreatment team at Carolinas Hospital System was

9 activated?

10 A Yes.

11 Q And then approximately four days later,

12 Owen Carduff was discharged from Levine Children's

13 Hospital.

14 A Yes.

15 Q And then about 30 days after that, he was

16 readmitted to the Levine Children's Hospital, right?

17 A Yes.

18 Q And that time he had -- he was -- he had

19 suffered a catastrophic brain injury.

20 A I'm not aware of that. I -- I guess if

21 you say that's true, yes.

22 Q Okay. And he's now permanently blind and

23 has very reduced cognitive ability; right?

24 A I would guess so. That's really not the

25 scope of what I took care of him for though.

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1 Q Okay. And your scope, was it mostly

2 within that -- that first hospitalization?

3 A Yes. I had nothing really to do with the

4 second hospitalization.

5 Q It was basically just that December

6 hospitalization?

7 A Just that December hospitalization.

8 Q And -- and -- and why was the care at that

9 hospitalization -- why did you provide care in that

10 first one but not the second one?

11 A Because I'm a member of CHIPS, which is an

12 inpatient hospitalization team and that team has

13 certain responsibilities, only a small portion of

14 which are inpatient at any one time.

15 So I usually do a week of inpatient

16 and then I'm assigned to other hospital

17 responsibilities, and so the person who is rotating

18 at that particular time takes an admission.

19 Q Okay. And in the -- in the CHIPS team --

20 what is the CHIPS team?

21 A Okay. The CHIPS team is a group of

22 physicians, mid-level providers, that provide

23 inpatient general pediatric care here at the Levine

24 Children's Hospital.

25 Q When you say "mid-level practitioner," are

Page 12

1 you talking about a nurse practitioner or a

2 physician's assistant?

3 A Yes.

4 Q Okay. And how many members -- you have

5 CHIPS A, CHIPS B, CHIPS C, CHIPS D; correct?

6 A Yes.

7 Q Now, CHIPS A, that was the member of the

8 team that took care of Owen C[REDACTED].

9 A Right, which is a resident team. So there

10 is usually one attending and several doctors in

11 training.

12 Q Okay. And so would you have been the

13 training physician and everybody else would have

14 been the resident?

15 A Yeah, I'm the supervisor. I'm the

16 supervising physician.

17 Q Okay.

18 A So I'm the attending.

19 Q Okay. And so you were the attending

20 physician for the care of Owen C[REDACTED] --

21 A Yes.

22 Q -- in December 2009?

23 A Yes.

24 Q Okay. And during that time, when he first

25 came, I know that he -- he went to Piedmont Medical

Page 13

1 Center and then he was transported to the Children
 2 Levine Hospital's Emergency Department which then
 3 transferred him inpatient, right?
 4 A Yes.
 5 Q Then there -- we talked about the CT of
 6 the head on December the 5th?
 7 A Yes.
 8 Q And it found two different bleeds, right?
 9 A Two small subdural hematomas.
 10 Q I think one was 2-millimeter thickness,
 11 one was 3-millimeter thickness?
 12 A Yes.
 13 Q One was a valve hemorrhage?
 14 A Yes.
 15 Q And then one of the things that you do or
 16 at least I -- and please correct me if I'm wrong --
 17 in me reading the literature, one of the things that
 18 you do to determine whether a subdural hematoma may
 19 possibly be related to non-accidental trauma is to
 20 do some type of -- to determine if there is a
 21 retinal hemorrhage or not?
 22 A Yes.
 23 Q And when you do a retinal hemorrhage, it's
 24 my understanding that they use -- a lot of times
 25 they will use a pediatric ophthalmologist.

Page 14

1 A Yes.
 2 Q Do you know, in this particular case,
 3 whether there was a pediatric ophthalmologist that
 4 was used?
 5 A It is my understanding that there was a
 6 pediatric ophthalmologist.
 7 Q And I have read further that when you have
 8 a baby it's -- it's tough to get them to hold still,
 9 but it's still -- you're going to be able to
 10 visualize better with indirect eye exam using
 11 fluoroscopy and dilated pupil.
 12 A That would be outside of my purview of
 13 knowing.
 14 Q Okay. And -- and -- my question is this --
 15 and let me just pull this real quick.
 16 Here's the ophthalmology records that
 17 I've been able to find.
 18 MR. HOOD: Let's have these marked as 16.
 19 MR. TODD: Bates stamp?
 20 MR. HOOD: Yes, Bates stamp 16.
 21 (Intercom interruption.)
 22 (Progress record marked as Plf's Exh 16
 23 for identification.)
 24 BY MR. HOOD:
 25 Q I -- I didn't see his consultative report,

Page 15

1 but I saw a physician's --
 2 A Yes.
 3 Q This looks like a physician's report.
 4 A Yes.
 5 Q And the top it said "ophtho."
 6 A Right. And I believe -- yes, this is the
 7 ophthalmology exam.
 8 Q Okay. And it looks like they are
 9 trying -- I can't read all of it, but it's to rule
 10 out retinal hemorrhage.
 11 A Yes.
 12 Q And -- the -- and -- and if you can't read
 13 it, that's perfectly fine, but sometimes doctors seem
 14 to be able to read other doctors' handwriting.
 15 A Right.
 16 Q Under "ophtho" it has what says something
 17 to rule out retinal hemorrhage. Underneath that
 18 starts with an E, do you know what that is? Is that
 19 exam?
 20 A Yes, that says "exam."
 21 Q Okay. And then it says -- do you know what
 22 the rest of it --
 23 A I think that it is indicating that it was
 24 a dilated exam. And I think in the orders, can
 25 confirm if eye drops were given to dilate. I think

Page 16

1 that is the sign for a dilated exam.
 2 Q Okay. And do you know if they used a
 3 fluoroscope or not or --
 4 A I -- that would not be something I would
 5 have knowledge to. The resident was called by the
 6 ophthalmologist and told that there was no evidence
 7 of retinal hemorrhage.
 8 I don't know what was the technique
 9 or what other methods were used to make that
 10 determination, but they felt relatively confident
 11 and he gave that report.
 12 Q Okay. And then underneath that, does it
 13 say "AP"?
 14 A His impression and plan.
 15 Q Okay.
 16 A And he's ruling out non-accidental trauma,
 17 but what he's commenting on is no signs of retinal
 18 hemorrhage --
 19 Q Okay.
 20 A -- of any kind.
 21 Q Okay. And then I looked at the other thing is
 22 where...
 23 A This is the CMC neurosurgical pediatric
 24 service.
 25 Q Right. And then at the bottom under

Page 17

1 "Plan," it says, "Child currently stable NAT
2 workup" -- I can't read that but, it says --
3 A That says, "underway."
4 Q Okay. "Underway." This says, "optho" with
5 an arrow, "no apparent retinal hemorrhages."
6 A Right.
7 Q Do you know -- I mean, in -- in -- in --
8 in -- in medicine I know a lot of times they will use
9 "apparent" or "obvious," meaning it's something that
10 wasn't -- it wouldn't stand out, but are there --
11 does that mean that sometimes that there are subtle
12 signs that there may be?
13 A My understanding is that is not the case.
14 They use an "absent" or "present."
15 Q Okay.
16 A That's my understanding.
17 Q Okay. And are you aware, other than this
18 -- this ophthalmological exam that's on the first
19 page of 16, do you know if there was any other
20 ophthalmology exams that were performed?
21 A Not to my knowledge.
22 Q Okay. And in regard to this ophthalmology
23 exam that was performed, do you know the pediatric
24 ophthalmologist that would have done that?
25 A We have a list of rotating pediatric

Page 18

1 ophthalmologists. That particular sche- --
2 signature, I don't recognize. I think it may be
3 Glen Grayson, but I'm not sure.
4 Q Okay. I apologise, I know that in the
5 orders you said that there would've been some kind of
6 order for dilatation.
7 A Okay.
8 (Cell phone ringing.)
9 THE WITNESS: I don't think that's mine.
10 That's not mine.
11 MR. TODD: It's not mine either.
12 Whose pocketbook is this?
13 THE WITNESS: That's my pocketbook. Is that --
14 MS. BROOKS HOLMES: It's coming from that pocketbook.
15 THE WITNESS: Oh.
16 MS. BROOKS HOLMES: That's why I was pointing to
17 it.
18 THE WITNESS: I'm sorry. Let me just turn it off.
19 It's the hospital -- yeah, it's the hospital phone.
20 That's why I don't recognize the ring. I'm sorry,
21 it's the hospital phone. I signed out -- yeah, I signed out
22 and I -- didn't -- so I wasn't expecting it to ring.
23 BY MR. HOOD:
24 Q Doctor, here is -- it's -- I think it's
25 Page 0028, is the Bates stamp number. I'm going

Page 19

1 to hand it to you. And I don't have copies for
2 everybody. I'm just going to hand it to you and
3 ask you.
4 And it says, "Consult opth- -- I'm
5 going to give it to you to look at, but it says,
6 "Consult ophthalmology, child maltreatment,
7 Dr. Briggs, 1 percent Cyclogyl to bedside, STAT.
8 Place one drop in each eye times 3, spread five
9 minutes apart," and then it has somebody's signature
10 under that.
11 A Okay. Yes. That's what it says.
12 Q Okay.
13 A That's what it says.
14 Q Okay, yes. And does that indicate whether
15 direct or indirect eye exam?
16 A That does not indicate. It indicates that
17 a dilated exam was done.
18 Q Okay. Do you know if a flucroscop was
19 used?
20 A I cannot make a judgment by looking at
21 this. That would be something that the
22 ophthalmologist would have to say what his method of
23 examination was.
24 Q Sure. And do you know off of that, does
25 it say -- can you -- it looks like that the doctor

Page 20

1 scribbled his name, but then it looks like somebody
2 wrote it out underneath.
3 A Well, the -- the ophthalmologist consult
4 was obtained by Melissa Monterono, who is one of the
5 CHIPS residents at the time. But Dr. Briggs, I
6 believe, is the ophthalmologist that she spoke to.
7 Q Okay. Do you know, do sometimes the
8 members of the CHIPS team that are residents, do
9 they perform the -- the eye exams or is it --
10 A That is not on our standard of care.
11 Q Okay. Standard of care would be to have
12 the pediatric ophthalmologist do it?
13 A Or a board-certified ophthalmologist with
14 pediatric experience, because pediatric
15 ophthalmologists are not always available.
16 Q Sure, sure. Okay. And when the child
17 comes in, the child comes in and they do the -- the
18 -- the exam for the retinal hemorrhage and the
19 retinal hemorrhage is not present.
20 Now, you have a subdural and --
21 MR. HOOD: Let's just mark these as 17 and
22 18. I just want to make sure we get it right.
23 That's 17 and then 18.
24 MR. TODD: CT scans?
25 MR. HOOD: Yeah. It's 12/5 and 12/7.

Page 21	Page 23
1 MR. FRAWLEY: It's 17 and 18? 2 MR. HOOD: 12/5 is 17 and 12/7 is 18. 3 (CT reports, 12/5/09 and 12/7/09 marked as 4 Plf's Exh 17 and 18 for identification.) 5 BY MR. HOOD: 6 Q Exhibit 17 looks like a head CT from -- from 7 12/5, 2009. You see that, right? 8 A Yes. 9 Q And it says, "There's a falx subdural 10 which measures about 3 millimeters in maximal 11 thickness, largest posteriorly," right? 12 A Mm-hmm -- yes. 13 Q That means towards the back of the head? 14 A That the -- the maximum thickness is going 15 towards the back -- 16 Q The back of the head? 17 A -- of the head, yes. 18 Q And there's also a thin right convexity 19 subdural hematoma approximately 2 millimeters in 20 maximal thickness. That means it's on the right 21 side of the head and it's kind of convex at the -- 22 where your head kind of shapes? 23 A Right, yes. 24 Q Okay. And it says, "There is mild 25 prominence of the subarachnoid space over the	1 same, pretty much from what we measured and what had 2 been measured in the office. 3 Q Okay. And -- and so what would that 4 indicate to you? 5 A Well, the fullness of the fontanel is 6 something that we look for for things like 7 meningitis or any kind of process that goes on 8 within the brain, and that's the reason why he got 9 the CT. 10 THE REPORTER: That's the reason why? 11 THE WITNESS: "He got the CT." I'm sorry. 12 BY MR. HOOD: 13 Q Okay. He had also had a -- a bloody tap 14 at Piedmont Medical Center. 15 A Right. 16 Q And a bloody tap can be anything from a 17 subdural hematoma to spinal meningitis. 18 A Spinal meningitis, or it can be just 19 operator unable to perform a spinal tap on a small 20 baby and you get a bloody tap because you had 21 numerous attempts. 22 Q Sure, sure. But when you -- when you do 23 find that this child has this -- as on Exhibit 17 24 says, it has this -- this "two small bleeds," in 25 your words "two small bleeds." You have two bleeds
Page 22	Page 24
1 frontal convexities." 2 Do you see that? 3 A Yes. 4 Q Says, "The ventricles are normal in size, 5 and correlation with head circumference may be of 6 use." 7 Do you see that? 8 A Yes. 9 Q Now, there was some -- some records, and I 10 can pull them if we need to, but I saw something 11 where somebody referred to it looked like child, the 12 fontanels were bulging. 13 A It was -- I think that's how it was 14 described is the fontanel was full. 15 Q Was full? 16 A Yeah. 17 Q And because of that, somebody had said 18 something about "there needs to be some kind of 19 correlation with head circumference." 20 A Right. 21 Q And do you know if that was ever done? 22 A Well, looking at the records from the 23 primary care provider, as far as I understood, what 24 we got from a verbal report from the primary care 25 provider was that the head circumference was the	1 and then you ordered a second CT to be performed two 2 days later, right? 3 A Yes. 4 Q And then in the second CTs, it says, "CT 5 without enhancement, sections cover from the base to 6 the high convexity region, studies degraded by 7 patient motion." 8 It just means that -- it's a 9 three-month-old baby. 10 A Mm-hmm. 11 Q The baby is going to move. 12 A Mm-hmm -- yes. 13 Q That's why they have to medicate him to do 14 an MRI, right? 15 A Yes. 16 Q And it says, "The scans compared to the 17 prior CT from 12/5 2009. The prior scan showed a 18 small acute right inner hemisphere and right convex 19 subdural hematoma. On the current study, the blood 20 is present but less conspicuous." 21 Do you see that? 22 A Yes. 23 Q My understanding is that when you see 24 blood on a CT, that it shows up as a stark white, 25 are you aware of that?

Page 25

1 A More -- it can appear more white than the
2 brain parenchyma, yes.
3 Q And have you had an opportunity to review
4 these particular studies yourself?
5 A At that time, I reviewed them. I haven't
6 reviewed them since.
7 Q Do you know if -- if this particular
8 person, Gary DeFilipp, is a pediatric
9 neuroradiologist?
10 A I know he is a neuroradiologist. I'm not
11 aware of what his speciality, characteristics, or
12 qualifications are.
13 Q Okay. Now, up at the top, on the one on
14 the 7th, it says, "Requesting provider, Julie
15 Smith."
16 Do you see that?
17 A Right.
18 Q Who is Julie Smith?
19 A The pediatric nurse practitioner to Scott
20 McClanahan, who's the head pediatric neurosurgeon.
21 Q Okay. And Scott McClanahan would be a
22 subspecialist who is working in conjunction with
23 CHIPS, right?
24 A Yes --
25 Q Just --

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1 A Yeah.
2 Q I'm sorry. Just like a pediatric
3 ophthalmologist was a consultative expert --
4 A Yes.
5 Q -- so was Dr. McClanahan?
6 A Yes.
7 Q Okay. And when you got these particular
8 results and you knew that this child had this
9 particular thing, would you agree with me that you
10 had to rule in or rule out non-accidental trauma?
11 MR. TODD: Objection.
12 THE WITNESS: The findings of the CT scan
13 initially, the one on 12/5, was our impetus of
14 looking for possibilities of non-accidental
15 trauma, yes.
16 BY MR. HOOD:
17 Q Okay. And the term "non-accidental
18 trauma," is that consistent with -- with other
19 people using the term "child abuse"?
20 A It is -- non-accidental trauma is a subset
21 of child abuse.
22 Q Okay. And what subset is it?
23 A Well, child abuse could be physical abuse,
24 sexual abuse, emotional abuse, all of those.
25 Q And I've heard, and in my review of the

Page 27

1 literature --
2 A And neglect.
3 Q -- in my review of the literature, there
4 was a term in the lexicon, they used "shaken-baby
5 syndrome" and now it's called "abusive head trauma,"
6 AHT.
7 A Yes, yes.
8 Q Now, would AHT be -- that's child abuse,
9 right?
10 A Abusive head trauma --
11 Q Right.
12 A -- would be a form of child abuse, yes.
13 Q Okay. And so if a -- and I'm not saying
14 Owen Carduff, I'm saying that if a child suffered
15 subdural hematomas as a result of AHT, that would be
16 significant?
17 A If a hypothetical child -- if that did
18 happen to a hypothetical child, then yes, if they
19 suffered abusive head trauma and there was evidence
20 of subdural hematomas, then one of the conclusions
21 you could possibly make would be that they had
22 abusive head trauma.
23 Q And when you have someone -- if a child
24 suffers subdural hematomas as a result of someone
25 shaking him, is it always going to be abusive head

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1 trauma if it's caused by a physical injury from an
2 adult?
3 MR. TODD: Objection.
4 THE WITNESS: I think it would depend on
5 the circumstances.
6
7 BY MR. HOOD:
8 Q Okay. And when you say that, can you
9 explain that?
10 (Intercom interruption.)
11 A You could be shaking somebody because they
12 are choking on something and be -- you know, trying
13 to help them and assist them, and you could, in a
14 little baby, cause significant trauma, but that
15 would be accidental.
16 Q Sure. But non-accidental is different;
17 right?
18 A Than accidental?
19 Q Yes.
20 A Yes. Non-accidental is different than
21 accidental.
22 Q And non-accidental trauma is considered to
23 be something that is child maltreatment?
24 A Non-accidental trauma would be child
25 maltreatment, yes.

Page 29

1 Q An abusive head trauma would be a form of
2 child maltreatment?
3 A Abusive head trauma would be a form of
4 child maltreatment, yes.
5 Q Okay. Now, in Owen C. [REDACTED]'s situation --
6 A Yes.
7 Q -- would you agree that you had to rule in
8 or rule out abusive head trauma to determine whether
9 it was safe to discharge him home to his parents?
10 MR. TODD: Objection.
11 MR. FRAWLEY: Object to form.
12 THE WITNESS: The -- can -- can you restate
13 the question?
14 BY MR. HOOD:
15 Q Sure, sure.
16 A I believe there were a few too many
17 negatives in that one.
18 Q And I apologize. That's my bad
19 questioning.
20 Through our questioning, I think we
21 agreed on certain things, and that is that -- that Owen
22 Carduff -- he had the -- the radiological findings
23 of 12/5 and 12/7 --
24 A Yes, right.
25 Q -- that we've looked and we've seen.

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1 A Right.
2 Q We've agreed that he came in with ALT, or
3 an apparent life-threatening event, right?
4 A Yes.
5 Q And that we've agreed that he was discharged
6 on 12/8?
7 A Yes.
8 Q And so obviously the CHIPS team would have
9 known of the radiological findings prior to his
10 discharge?
11 A Yes.
12 Q And my question is, knowing this finding
13 on 12/7 -- 12/5 and 12/7?
14 A Yes.
15 Q Wouldn't you -- would you have to rule in
16 or rule out abusive head trauma before discharging
17 him back to the home?
18 MR. TODD: Objection.
19 THE WITNESS: I would have to rule in or
20 attempt to rule out or try to get more
21 corroborating evidence of non-accidental
22 trauma.
23 BY MR. HOOD:
24 Q Okay. Now, were you able to rule in or
25 rule out abusive head trauma in this case?

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1 A I was not.
2 Q Okay. And so you weren't able to do
3 either, rule in or rule it out?
4 A Right. There was conflicting evidence.
5 There's the evidence of something occurred causing a
6 subdural hematoma.
7 Q Now, you -- obviously you -- I mean you
8 went to Princeton, I mean your C.V. is thick, and
9 obviously you've had lot of experience and you've
10 been doing pediatric work for a long time.
11 A Yes.
12 Q And you've had continuing medical
13 education during that time?
14 A Yes.
15 Q Have you looked at the cognitive
16 impairment of children?
17 A Yes.
18 Q Sometimes in regard to lead but in regard
19 to other things as well, right?
20 A Yes.
21 Q And you've even written on some of that?
22 A Not to my recollection.
23 Q I thought you had something with cognitive
24 impairment on the web, or something, but I may be
25 mistaken.

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1 A Okay.
2 Q But regardless, you're aware that in a
3 pediatric hospital, like Levine Children's Hospital,
4 that there are going to be kids that come through
5 here who are the victims of child abuse?
6 A Yes, I acknowledge that.
7 Q It's just a unfortunate thing in society,
8 right?
9 A Yes.
10 Q And as such, when you -- when a child
11 comes under the care of Levine Children's Hospital,
12 it is going to be the responsibility of the medical
13 providers of the hospital to try to determine if the
14 child was a victim of child abuse?
15 MR. TODD: Objection.
16 You can go ahead and answer.
17 THE WITNESS: It is our responsibility to
18 gather information and attempt to make a
19 determination either to say that the patient
20 was a victim of child abuse, was not a victim
21 of child abuse, or you could not determine if
22 they -- they were a victim of child abuse.
23 BY MR. HOOD:
24 Q Basically there's three things: You
25 either are you or you're not, or you just can't

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1 determine it one way or the other.
 2 A Right, right.
 3 Q And in Owen C's situation, it's your
 4 testimony you couldn't determine one way or the
 5 other?
 6 A Right.
 7 Q Okay. Now, before he was discharged,
 8 you're aware that there is documentation in the
 9 chart that the child had a bump on his head a week
 10 or two before this?
 11 A Right.
 12 Q And there is no explanation from anybody
 13 because of that bump?
 14 A Right.
 15 Q And you're aware that -- that in this
 16 particular situation, there was a CT showing two
 17 subdural bleeds, one a falx hematoma of which there
 18 was no explanation from the parents?
 19 A Yes.
 20 Q You're aware the parents were both under
 21 the age of 20?
 22 A Yes.
 23 Q You're both aware that -- that -- I mean,
 24 at least from the documentation, it appears that
 25 there were money problems in the home.

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

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

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

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1 are rare exceptions.
 2 Q "There are rare exceptions."
 3 But where there is a rare exception,
 4 a lot of times there is some co-morbidity, like a
 5 bleeding disorder; right?
 6 A Yes.
 7 Q And in this particular child, you haven't
 8 seen any evidence of a bleeding disorder?
 9 A No evidence of a bleeding disorder.
 10 Q And sometimes you'll see a subdural
 11 hematoma that can be caused by some type of
 12 infectious process?
 13 A Yes.
 14 Q In this particular child, I believe, and
 15 please correct me if I am wrong, the first CBC, he
 16 had a white blood cell count of 16, two days later,
 17 he had a white blood cell count that was about
 18 ten, both considered to be within normal limits for
 19 a three-month-old child; right?
 20 A I would say that both of those white
 21 counts would be within normal limits.
 22 Q And even if you have a white count, if you
 23 have a left shift, it could indicate an impending
 24 infection; right?
 25 A Perhaps, yes.

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1 Q But there was no -- there was -- there didn't
 2 even appear to be a white -- I mean a -- a shift that would
 3 indicate there was an impending infection, was there?
 4 A No.
 5 Q And so would you agree with me that you
 6 could rule out infection as a cause of this subdural
 7 hematoma?
 8 MR. TODD: Objection.
 9 You go ahead and answer.
 10 THE WITNESS: Okay. I would say in this
 11 particular case, one would probably rule out
 12 the infection as the cause for this subdural
 13 hematoma.
 14 BY MR. HOOD:
 15 Q Okay. You said another was -- another
 16 potential cause was accidental trauma.
 17 A Right.
 18 Q Accidental trauma, as you said, could be
 19 like if you're trying to -- if the child had been
 20 choking, you would pop them in the back or you shake
 21 them to try to dislodge food; right?
 22 A Or a car accident.
 23 Q "Or a car accident." There didn't appear to
 24 be any history of a car accident?
 25 A No history.

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1 Q And there didn't appear to be any history
 2 of anybody that said anything that could have caused
 3 this from an accidental source; right?
 4 A According to our questioning of the
 5 family, no one was coming forth with a story that
 6 would be consistent with this injury.
 7 Q Okay. And accidental trauma, infection
 8 and non-accidental trauma, what are the -- for Owen
 9 C -- SW, what are -- what can you say from a
 10 different -- you've heard the term "differential
 11 diagnosis"?
 12 A Yes.
 13 Q And differential diagnosis is where you
 14 look at the totality of circumstances with some -- a
 15 patient and you give the most likely cause and then
 16 the next most likely, and then you try to rule in or
 17 out to give the most likely cause or the etiology of
 18 a particular condition; right?
 19 A Yes.
 20 Q And the differential diagnosis in this
 21 particular case, would you say the top would be --
 22 maybe co-tops would be accidental or non-accidental
 23 trauma?
 24 A Yes.
 25 Q And then the next would probably be --

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1 would it be infection?
 2 A Infection, I would say that.
 3 Q And then underneath that would be some
 4 co-morbidity like a bleeding disorder?
 5 A Right.
 6 Q -- or some medical condition, whether it's
 7 genetic or not, that could cause something like
 8 this?
 9 A Right.
 10 Q And are you able to say that you basically
 11 ruled out everything except for accidental or
 12 non-accidental trauma?
 13 A Those would be the two most common things
 14 that we would be working with in this particular
 15 case.
 16 Q Okay. In this particular case.
 17 A Yes.
 18 Q So it came down to it was either
 19 accidental or non-accidental trauma?
 20 A Yes.
 21 Q Okay. Now, have you ever -- have
 22 you ever heard -- I know you have, have you ever
 23 heard -- I know you've heard the term "err on the
 24 side of caution"?
 25 A Yes.

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1 Q When you have a child who has these
2 subdural hematomas and has some of the risk -- the
3 parents have some of the risk factors, how do you
4 err on the side of the caution if it's either
5 accidental versus non-accidental?
6 MR. TODD: Objection.
7 THE WITNESS: By taking the steps that we
8 did; by asking for a child maltreatment
9 evaluation; for getting the child a
10 maltreatment physician involved; from getting
11 Department of Social Services and law
12 enforcement involved. That's how you err on
13 the side of caution.
14 BY MR. HOOD:
15 Q Okay. And so you would have gotten the
16 pediatric ophthalmology consult?
17 A Yes.
18 Q And that came back negative?
19 A Negative.
20 Q Although you don't know how it was done?
21 A No.
22 Q Would you have gotten a pediatric
23 neurosurgery consult --
24 A Yes.
25 Q -- with Dr. McClanahan?

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1 A Yes.
2 Q And he would have -- it appears that
3 somebody with him would have ordered the CTs and
4 they would have been looking at the CTs and they
5 would be medically treating the effects of the
6 subdural hematoma?
7 A Or evaluating if they need treatment.
8 Q Right, evaluating.
9 But the bottom line is that the CHIPS
10 teams, of which you were the attending physician,
11 would have been the responsible party for
12 determining if the child was appropriate for
13 discharge or not?
14 A I would be the appropriate person to
15 determine if the child was medically cleared for
16 discharge.
17 Q Okay. Now, there are two components of
18 medical discharged, aren't there? I mean -- and
19 when I had say that, what I'm asking is, you have to
20 be medically stable; right?
21 You agree with that?
22 A Yes.
23 Q And then in regard to child -- either
24 suspected or potential child abuse or trauma, you
25 also have to determine that it is safe for the child

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1 to be discharged back into the home?
2 A That's not my determination.
3 Q Okay. Let's look at -- I'm going to ask you
4 to look at -- yeah, I think it's in this stuff right here.
5 A Okay.
6 Q I think it's -- I think it's Exhibit 9 and
7 Exhibit 8 and Exhibit 7.
8 Exhibit 8, Exhibit 9 and Exhibit 7.
9 Exhibit 7 is simply an administrative
10 order for Retention of Custody for Juvenile
11 Suspected of Being Abused Pursuant to North Carolina
12 General Statutes; right, right?
13 A Yes. I don't know what this form means,
14 but yes, I guess that's the heading of this form.
15 Q Okay. These are attachments to a Child
16 Abuse and Evaluation Policy at Carolinas Healthcare
17 System.
18 And Number 8 is the Certification of
19 Necessity for Retention of Custody.
20 Do you see that form?
21 A Yes.
22 Q Okay. And then the next form is Examining
23 Physician's Certification.
24 A Yes.
25 Q And under that it says, "The undersigned

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1 examining physician hereby certifies there is good
2 cause to suspect that the juvenile was abused and
3 should remain in blank, name of facility, for
4 medical treatment or it is unsafe for the juvenile
5 to return to his parent, guardian, custodian or
6 caretaker."
7 Do you see that?
8 A Yes.
9 Q So do -- does the physician at Levine
10 Children's Hospital have the ability to state that
11 it's unsafe for a juvenile to return to his parent,
12 guardian, custodian or caretaker?
13 A If the circumstances of a specific case do
14 come that you can say without a doubt that child
15 abuse has occurred, you could, then, I guess, feel
16 comfortable signing this form.
17 Q Okay. I'm going to use the converse;
18 okay? If you can say without a doubt that it did
19 not occur, you could safely discharge him home;
20 right?
21 A Again with the negatives, what?
22 Q Okay. If you can safely -- if you can
23 say --
24 A Yes.
25 Q -- that unequivocally there was no child

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1 abuse, it is safe to discharge him?

2 A Yeah, I guess, yes.

3 Q It's the converse of what you said?

4 A Yes, yes.

5 Q You said "equivocally." If you said there

6 was a child abuse, you could say it may not be safe

7 to send him home?

8 A Yes.

9 Q But if you take the exact converse, if you

10 can say unequivocally there was no child abuse, you

11 can safely send him home, right?

12 A Yes.

13 Q Now, but Owen Carduff fell in between

14 those two things?

15 A Yes. There was some elements of the

16 workup that stated that there was concern for

17 non-accidental trauma, but other elements of the

18 workup of the evaluation which did not meet the

19 criteria because they were negative and therefore,

20 it could not be determined whether or whether not he

21 had been the victim of child abuse.

22 Q Okay. And I think one of the things you

23 said was the skeleton survey?

24 A Skeletal survey.

25 Q "Skeletal survey."

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1 A Right.

2 Q And the skeletal survey would have been

3 where they do radiograph of both arms, both legs,

4 and your core.

5 A Yes.

6 Q And your head?

7 A Yes, "and your head."

8 Q And they determine whether there's been

9 any previous fractures or evidence of any kind of

10 breaks or something that would indicate any kind of

11 trauma, right?

12 A Yes.

13 Q Now, when you have abusive head trauma,

14 would you agree with me that many times you do not

15 see any other signs of symptomology on a skeletal

16 exam?

17 MR. TODD: Objection.

18 THE WITNESS: It depends on the specifics

19 of the case.

20 BY MR. HOOD:

21 Q It depends on the actual case itself?

22 A Yes.

23 Q And when you have someone who has an

24 isolated incident of abusive head trauma, you may

25 not see anything on a skeletal survey, right?

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1 A You may or may not.

2 Q Okay. And so in this particular case,

3 because of the abusive head trauma -- excuse me.

4 In this case, because of the subdural

5 hematomas, the skeletal survey may or may not help?

6 A May or -- it may or may not help,

7 depending. You may also repeat it in two weeks to

8 see if there were any injuries that were young and

9 were fresh if you didn't see them on the first

10 skeletal survey.

11 Q And -- and in doing that I know there's a

12 huge, huge controversy over shaken-baby syndrome

13 that is now called abusive head trauma.

14 A Yes.

15 Q And I know that -- there is a classic

16 triad. I know there's a -- a -- you know, there are

17 mimics that are written about in the literature. I

18 know that they don't even use that nomenclature

19 anymore --

20 A Sure.

21 Q -- in the medical field?

22 A Right.

23 Q It's now AHT --

24 A Right.

25 Q -- as opposed to SBS?

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1 A Right.

2 Q And when you have a situation and you've

3 ruled everything out except for either accidental or

4 non-accidental trauma, how do you ensure a baby is

5 safe if you don't know that it's not non-accidental

6 trauma?

7 A You put in place a safety plan and you

8 report them to the Department of Social Services and

9 you get law enforcement to involve -- to investigate

10 if they can further get information to see if there

11 is anything that corroborates for there to be

12 accidental or non-accidental trauma.

13 Q Okay. And so when you get it to a point

14 where you've ruled in or out everything except for

15 accidental versus non-accidental trauma, then you

16 work with DSS and law enforcement to determine

17 whether it's one of the two, right?

18 A Or a combination of both or -- what -- or

19 whatever.

20 Q Or a combination of the both --

21 A Yeah, whatever.

22 Q -- because you can have accidental trauma

23 and non-accidental trauma?

24 A Yes, yes.

25 Q Okay. And -- and so in that case, you would be

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1 depending on DSS to do a proper job?
2 MR. FRAWLEY: Object to form.
3 BY MR. HOOD:
4 Q Right? You can answer.
5 A Yes.
6 Q And if DSS didn't do a proper job, it
7 could result in harm to the child; right?
8 A I would guess, yes.
9 Q Okay. And if law enforcement didn't do a
10 proper job, it could result in harm to the child?
11 MS. BROOKS HOLMES: Objection.
12 BY MR. HOOD:
13 Q You can answer.
14 A Yes.
15 Q Okay. Now, if you relied on -- if -- if
16 Levine Children's Hospital relied on DSS and law
17 enforcement to do their job, you agree, after having
18 done this for a long period of time, it takes them
19 some period of time to do their job once the child
20 is discharged, to do an investigation?
21 A I don't have the particulars of that. I
22 wouldn't know.
23 Q Okay. Since you didn't have the
24 particulars of that and you don't know how long it
25 takes, how do you know it's safe to discharge a

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1 child under the care of someone that hurt him in the
2 first ten minutes he's back home?
3 MR. TODD: Objection.
4 MR. FRAWLEY: Object to form.
5 MS. BROOKS HOLMES: Objection.
6 THE WITNESS: My understanding was that
7 both of the parents were -- were interviewed.
8 They were supervised here at the hospital.
9 They signed a protection safety plan. They
10 appeared, as did DSS to feel, that this was a
11 safe discharge.
12 BY MR. HOOD:
13 Q Okay, okay. Now, if DSS had said --
14 excuse me, let me withdraw.
15 If -- have you ever had a situation
16 where you felt like there was non-accidental trauma
17 and DSS still felt that it would be a safe discharge
18 back to the home?
19 A Has there ever been a case that I felt was
20 not accidental trauma and DSS felt it was?
21 Q It was a safe discharge back to the home,
22 even with a finding of NAT?
23 A In my particular experience, no.
24 Q That would seem to be incongruent; right?
25 MS. BROOKS HOLMES: Objection.

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1 BY MR. HOOD:
2 Q Or that would be seem to be an opposite of
3 one another?
4 MR. TODD: Objection.
5 THE WITNESS: In my particular experience,
6 that hasn't happened with -- every case is
7 different.
8
9 BY MR. HOOD:
10 Q Sure, sure.
11 A Every case is different. So I can't make
12 a sweeping judgment about what would be right or
13 wrong.
14 In my particular situation, I've
15 never had a case that I felt that there was
16 non-accidental trauma and DSS has said we are going
17 to put the child back with the family.
18 Q Okay, okay. And -- and is part of that
19 because you have made a determination it's
20 non-accidental trauma and then DSS has that in -- in
21 their information source to help them make a
22 determination about where to discharge the child?
23 A I would assume that would be their
24 rationale.
25 Q And in this case, if you had said to DSS,

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1 I don't know whether this is non-accidental trauma
2 or accidental trauma, but erring on the side of
3 caution, we have to assume it's non-accidental
4 trauma, do you know what DSS would have done?
5 MR. TODD: Objection.
6 MS. BROOKS HOLMES: Objection.
7 THE WITNESS: I cannot read anybody's
8 mind. I don't know.
9 BY MR. HOOD:
10 Q Sure.
11 A I can only make the investigation I can
12 make, make the determination, decide if, based on
13 the evidence, if a determination can be made, and
14 then present that.
15 Q Okay. Okay. I'm looking at Exhibit 10.
16 And this is "Juveniles Suspected of Being Abused or
17 Neglected."
18 MR. TODD: Is this one of the ones you
19 sent me?
20 MR. HOOD: Yes, well, this is the one that
21 we did earlier.
22 MR. TODD: Okay. Oh, this is the policy?
23 MR. HOOD: Yes.
24 MR. TODD: Okay.
25 THE WITNESS: Okay.

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1 BY MR. HOOD:
 2 Q And it says: "This policy statement
 3 relates to the issue of awareness detections and
 4 management of children at risk for abuse or neglect
 5 in the inpatient physician office and urgent care
 6 settings. It provides guidance on the procedure
 7 that should be followed in cases of suspected abuse
 8 or neglect."
 9 You see on the summary statement,
 10 it's on the very first page?
 11 A Okay.
 12 Q And this is a policy at Carolinas
 13 Healthcare System of which Levine Children's
 14 Hospital is a part, right?
 15 A Yes.
 16 Q And then under "Definitions" it says,
 17 "Juvenile: Any person under 18 years of age who is
 18 not emancipated by marriage, court order, or a
 19 member of the Armed Service -- or of the Armed
 20 Forces." You see that, right?
 21 A Yes.
 22 Q And that he would be -- Owen Carduff would
 23 fall within that definition, right?
 24 A Yes.
 25 Q Then it has "Abused Juvenile: A juvenile

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1 whose parent, guardian, custodian or caretaker
 2 inflicts or allows to be inflicted serious physical
 3 injury which causes or creates a substantial risk of
 4 injury, death, disfigurement, impairment of physical
 5 health or loss of impairment of any bodily organ."
 6 You see that definition, right?
 7 A Yes, I see the definition.
 8 Q But -- but you have said you couldn't rule
 9 in or out whether that occurred or not?
 10 A True. I could not rule in or out whether
 11 Owen Carduff was abused.
 12 Q Okay, okay. Then I go to the second page,
 13 which is "Procedure." And it says, "A. Clinical
 14 team identifies child abuse or neglect is suspected
 15 and initiates suspected child maltreatment inpatient
 16 order set followed by discharge order set if
 17 applicable."
 18 A Yes.
 19 Q Do you see that?
 20 A Yes.
 21 Q Now, that says, "Clinical team identifies
 22 child abuse or neglect is suspected."
 23 A Yes.
 24 Q You suspected it at one time, didn't you?
 25 A Yes.

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1 Q And you initiated child maltreatment
 2 inpatient order set, right?
 3 A Yes.
 4 Q And a CHS clinical care management social
 5 worker did aid in the assessment process, right?
 6 A Yes.
 7 Q And a -- and a child abuse and neglect
 8 form was filled out on this case, right?
 9 A Actually, it wasn't completely filled it
 10 out because it wasn't -- that's a form that's used
 11 on admission. So all the information that is
 12 required to be put in that form had already been
 13 gathered before.
 14 Q Okay. But -- but they had filled out part
 15 of it but not all of it, right?
 16 A Yes.
 17 Q And why wouldn't they have filled out the
 18 rest of it?
 19 A That scan form is an admission set. The
 20 patient had already been admitted, and it wasn't
 21 until after admission the injury was identified.
 22 Q Okay. Well, I was also looking for the
 23 scanned discharge order form. Was there a scanned
 24 discharge order form that was used?
 25 A I am not sure if that was completed.

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1 Q Okay.
 2 A I don't know.
 3 Q It says, "All cases of suspected abuse or
 4 neglect should be reported to the Department of
 5 Social Services in the county where the child
 6 resides."
 7 Do you see that?
 8 A Yes.
 9 Q And you all called York County Department
 10 of Social Services, right?
 11 A Yes.
 12 Q And, in fact, law enforcement was involved
 13 as well?
 14 A Yes.
 15 Q And then under f it says, "If a parent,
 16 guardian or caretaker refuses to authorize necessary
 17 medical treatment refer to administrative policy."
 18 You see that paragraph, right?
 19 A That --
 20 Q Number 6?
 21 A Yes.
 22 Q But that didn't apply in this case --
 23 A Right.
 24 Q -- because they didn't -- they consented
 25 to all of the statements?

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1 A Yes, yes.

2 Q And then 7 says, "Consider consult with

3 CMC Pediatrics for assistance with medical

4 management."

5 You see that?

6 A Yes.

7 Q And that says, "CHIPS Team Children's

8 Hospital Inpatient Service"; right?

9 A Yes.

10 Q And that's you, CHIPS Team A?

11 A Yes.

12 Q Then number 8, "Refer a child maltreatment

13 clinical practice guidelines to assist with medical

14 management."

15 You see that; right?

16 A Yes.

17 Q And then under 9, it says -- and it's in

18 bold -- it says, "when medically cleared"?

19 A Yes.

20 Q "When medically cleared" would mean when

21 the child is medically stable."

22 A Yes.

23 Q Right?

24 A Yes.

25 Q "Medically cleared" would also mean,

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1 wouldn't it, if you had determined, if you had ruled

2 out everything else, and you had determined that it

3 was non-accidental trauma, that isn't medical

4 clearance, is it?

5 MR. TODD: Objection.

6 THE WITNESS: Medical -- me -- I guess

7 I'm not understanding your question.

8

9 BY MR. HOOD:

10 Q Let -- let me ask it differently. Let me

11 ask it differently.

12 A I don't understand your question.

13 Q Sure, sure.

14 This says, "When medically cleared"

15 --

16 A Right.

17 Q -- "do not discharge child until

18 disposition has been determined by the medical

19 social worker and DSS and the safety plan is in

20 place on the chart in writing, if applicable."

21 You see that; right?

22 A Yes.

23 Q Okay. "When medically cleared," you said,

24 is when they're medically stable?

25 A Right. Period.

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1 Q "Period."

2 A "Period."

3 Q So when Owen Carduff was medically

4 stable --

5 A Yes.

6 Q -- that was when you said, okay, he's

7 stable, his vitals are okay --

8 A Right, yes.

9 Q -- and there is no problems, he's okay to

10 go home?

11 A Yes.

12 Q "Medically cleared;" right?

13 A Yes.

14 Q So when Owen Carduff was medically

15 cleared, "do not discharge child until disposition

16 has been determined by medical social worker and

17 DSS"?

18 A Yes.

19 Q You see that; right?

20 A Yes.

21 Q Medical social worker works for Levine

22 Children's Hospital; right?

23 A Yes.

24 Q And the disposition -- you would agree

25 that disposition of whether the child should be

Page 60

1 discharged home or not is going to be -- part of

2 that is going to involve whether there was

3 non-accidental trauma or not?

4 A Whether they are going to be discharged

5 home to their parents?

6 Q To their parents.

7 A Yes, yes.

8 Q And you've said that there's never been a

9 time in -- in -- how long have you been at the

10 Levine Children's Hospital?

11 A This is my 16th year.

12 Q In the 16 years you've been here, you

13 cannot recall a time when you've said there's

14 non-accidental trauma and then DSS put the child

15 back with the abusers.

16 You can't recall that; right?

17 A No, I cannot recall that.

18 Q And would you -- would it be fair to say

19 in your opinion, if you had said the subdural

20 hematomas were more likely than not caused by

21 non-accidental trauma, the child probably would've not

22 gone home with the parents?

23 MR. TODD: Objection.

24 MS. BROOKS HOLMES: Objection.

25 THE WITNESS: With the information I had,

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1 I was not able to determine whether it was
2 accidental or non-accidental trauma.
3 BY MR. HOOD:
4 Q Right, and I get that.
5 But what I'm saying is
6 hypothetically, and I'm not even saying Owen
7 Carduff, let's just say any child, if you had said
8 with the same -- everything else that Owen Carduff
9 had, but you said, it's my opinion that the child
10 suffered subdural hematoma because of the
11 non-accidental trauma, based on your experience,
12 more than likely not, they wouldn't have discharged
13 the child home with the parents?
14 MR. TODD: Objection.
15 MR. FRAWLEY: Objection.
16 THE WITNESS: But every case is different.
17 The constellation of signs and symptoms and
18 everything that puts together in the case is
19 different. So I'm not quite sure I how I could
20 answer your question honestly.
21 BY MR. HOOD:
22 Q Sure. And -- and -- and, listen, I
23 appreciate that.
24 A Okay.
25 Q I'll -- I'll ask it this way: Your

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1 decision on what caused the subdural hematoma is
2 going to be important information to determine the
3 disposition of the child to be discharged home back
4 to his parents?
5 MR. TODD: Objection.
6 THE WITNESS: I guess I ready said, but I
7 guess maybe I'm not communicating well. I was
8 unable to determine how the subdural hematoma
9 occurred.
10 BY MR. HOOD:
11 Q Sure.
12 A And so therefore, could not make a
13 determination of whether it was accidental or
14 non-accidental, because I couldn't determine how it
15 was caused.
16 Q Okay. Even though you couldn't determine
17 it, you still suspected it at the time of discharge
18 though, right?
19 MR. TODD: Objection.
20 MR. FRAWLEY: Object to the form.
21 THE WITNESS: I -- I suspected --
22 BY MR. HOOD:
23 Q Non-accidental trauma?
24 A That that was a possibility.
25 Q Okay. Well, this whole child maltreatment

Page 63

1 thing happens because of suspected child abuse?
2 A Because it's a possibility, yes.
3 Q Okay. It's not because -- okay. It's
4 just because of possibility, not probability?
5 A No, not probability, possibility.
6 Q Okay. And it's a possibility, the reason
7 you do that in the case of a possibility is for the
8 safety of the child?
9 A Yes.
10 MR. TODD: Objection.
11 BY MR. HOOD:
12 Q And the safety of the child is the top
13 priority, right?
14 MR. TODD: Objection.
15 THE WITNESS: The safety of the child is
16 always the top priority.
17 BY MR. HOOD:
18 Q And by being the top priority, you don't
19 discharge a child home not knowing whether it's
20 non-accidental trauma or not?
21 MS. BROOKS HOLMES: Objection.
22 THE WITNESS: I would not say that that's
23 a true statement, in that you cannot determine
24 in this particular setting of whether it was
25 non-accidental trauma or not.

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

Page 65	Page 67
1 could have caused this other than those two things? 2 A What could have caused the subdural? 3 Q With an accidental trauma other than 4 someone shaking a child to dislodge something or 5 popping him to dislodge something or rolling off a 6 couch or something like that, what could have caused 7 it? I mean, what have you seen in the field of 8 accidental trauma that could cause two separate 9 subdural hematomas? 10 A In my experience -- 11 Q In your experience. 12 A Right. In my experience, accidents do 13 happen, kids have developed subdural hematomas from 14 accidents happening to them. Some of these 15 accidents -- it can be unknown how this occurs. 16 I can't specifically say what could 17 have happened. They have subdural hematomas and 18 there's not a explanation. 19 Q Sure. 20 A Something clearly happened, but there's 21 not an explanation. It's unknown. 22 Q Sure. But your job -- you would agree 23 with me that your job is to track, to rule in or 24 rule out, either accidental versus non-accidental 25 trauma?	1 choking and someone trying to dislodge something 2 from his throat? 3 A No. 4 Q There was no history of the child having 5 rolled off or fallen off a couch or any other 6 instrumentality in the home. 7 A Not -- no history forthcoming. 8 Q Okay. 9 MR. HOOD: Let's take -- it's been going 10 for a while. Let's take a break. 11 How far do we have, Brooks? 12 THE VIDEOGRAPHER: We've been going for an 13 hour and eight minutes. 14 MR. HOOD: Okay. And I think he had a 15 thing he held up. 16 Is it okay if we take about five minutes? 17 THE WITNESS: Sure. 18 (Brief recess.) 19 BY MR. HOOD: 20 Q I'm going to ask you just a couple more 21 questions, and then I'm going to go to these articles. 22 Go through these articles. 23 A Okay. 24 Q Is the CHIPS team responsible for 25 determining the most likely cause of subdural
Page 66	Page 68
1 A Yes. 2 Q And when you attempt to rule in or rule 3 out accidental trauma, one thing you do is you ask 4 the parents? 5 A Yes. 6 Q And there was no explanation from the 7 parents, right? 8 A No explanation. 9 Q There was no explanation from the maternal 10 grandmother, right? 11 A No explanation. 12 Q The maternal grandmother did give a 13 history of a week before there was a bump on the 14 head. 15 A Yes. 16 Q But the parents had no explanation for 17 that either, right? 18 A Yes. 19 Q And there was no history of a car 20 accident? 21 A No. 22 Q There was no history of mom or dad falling 23 down with the baby? 24 A Not that they gave a history of. 25 Q Okay. There was no history of the child	1 hematoma? 2 A The most likely cause? 3 Q Yes. 4 A I would say that in some cases you can 5 determine what a likely -- I'm responsible for 6 trying to make a diagnosis. 7 Q Sure. 8 A In all cases, I can't make a diagnosis. 9 Q Okay. In the -- in the case of a child -- 10 never mind. 11 So if it's possible the CHIPS team is 12 responsible for determining the most likely cause of 13 subdural hematoma? 14 A If it's possible to determine. 15 Q Okay. And does CHS require the classic 16 triad before they say something is child abuse or 17 non-accidental trauma? 18 MR. TODD: CHS, Carolinas Healthcare 19 System? 20 MR. HOOD: Carolinas Healthcare System. 21 MR. TODD: We have a lot of CMCs. 22 MR. HOOD: I know I apologize. 23 MR. TODD: I just want to make sure -- 24 Carolinas Medical Center, okay. 25 THE WITNESS: Right.

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1 BY MR. HOOD:
 2 Q Does Carolinas Medical Center or Carolinas
 3 Healthcare System require the classic triad before
 4 they will diagnosis non-accidental trauma or child
 5 abuse?
 6 A No, there is no -- no requirement for
 7 the classic triad.
 8 Q Okay. Now, have you ever heard of a
 9 subset of pediatrics called "child abuse pediatrics"
 10 or "child abuse pediatricians?"
 11 A Yes.
 12 Q And is somebody on the CHIPS A team that
 13 you were a part, a child abuse pediatrician?
 14 A No. Well -- well, we have a child abuse
 15 consultative service, which is the child
 16 maltreatment team, which has on it a child abuse
 17 expert, pediatrician, and that was Dr. Morgan, the
 18 one who I alluded to in my notes.
 19 Q Okay. And so did you have conversations
 20 with Dr. Morgan about this case?
 21 A As I documented, yes.
 22 Q And what did Dr. Morgan -- and I probably
 23 got it in the records somewhere, but do you recall,
 24 or do we need to pull that note?
 25 A To what?

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1 Q To the discussions you had with
 2 Dr. Morgan.
 3 A I -- I documented that I had a discussion
 4 with her, and she felt that based on the findings,
 5 the history, the physical exam findings, the
 6 subdural retinal hemorrhages and her experience,
 7 that we could not determine whether this was a
 8 accidental injury or non-accidental injury.
 9 Q Okay. And what was her name?
 10 A Dr. Morgan. She was Dr. Morgan-Glenn at
 11 the time, but she is now Dr. Morgan.
 12 Q Do you know what her first name is?
 13 A Patricia.
 14 Q Patricia, okay.
 15 Did you ever personally interview the
 16 parents?
 17 A I interviewed the mother twice. The
 18 father was present when I interviewed the mom, I --
 19 I believe the father was present, but most of my
 20 questions were primarily addressed to her.
 21 He asked me several questions during
 22 I think the first time -- that was the first time I
 23 met them.
 24 Q Do you recall the questions he asked you?
 25 A He just asked me, how was the baby doing,

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1 what does this mean, does the baby need surgery?
 2 Were things that he wanted to know.
 3 Q Okay.
 4 A Because we had talked about the blood
 5 being on the brain and was that going to need
 6 surgery.
 7 Q Okay. And I know that right before we
 8 broke, I had said had you ruled in or ruled out
 9 certain things on accidental trauma.
 10 Do you recall that?
 11 A Yes.
 12 Q Okay. If you had ruled those things
 13 out -- you're aware -- you're aware the child came
 14 back 30 days later, right --
 15 A Yes.
 16 Q -- as a victim of child abuse?
 17 A Yes.
 18 Q So what do you think caused the child's
 19 subdural hematoma in December?
 20 MR. TODD: Objection.
 21 MR. FRAWLEY: Object to form.
 22 THE WITNESS: I have no idea what caused
 23 it. Still it is undetermined. There is no one
 24 who has come forward to say that they did
 25 anything to cause them. And there's nothing in

Page 72

1 the history to make me know what exactly caused
 2 them.
 3 BY MR. HOOD:
 4 Q And even knowing what you knew in January,
 5 you still don't know, more likely than not, this
 6 child was abused in December?
 7 A I cannot make that determination.
 8 MS. BROOKS HOLMES: Objection.
 9 MR. FRAWLEY: Object to form.
 10 BY MR. HOOD:
 11 Q Okay, okay.
 12 MR. HOOD: I'm -- I'm going to go -- let's
 13 have these marked. What are we on?
 14 THE REPORTER: 19?
 15 MR. HOOD: 19 and 20. No, we already
 16 marked them, I think the articles.
 17 THE REPORTER: 17 and 18.
 18 (Discussion off the record.)
 19 (CT, 12/5/09 and CT, 12/7/09 marked Plf's
 20 Exhs 17 and 18 for identification.)
 21 BY MR. HOOD:
 22 Q Have you ever been to any -- any symposiums or
 23 seminars where Cindy Christian spoke?
 24 A No, I have not.
 25 Q Okay. Let's start with Exhibit 13, Abusive

Page 73 1 Head Trauma in Infants and Children. 2 A Yes. 3 Q That first full paragraph, it says, "The 4 American Academy of Pediatrics recommends that 5 pediatricians develop skills in the recognition of 6 the signs and symptoms on abusive head injury, 7 including those caused by both shaking and blunt 8 impact. Consult with pediatric subspecialist when 9 necessary and embrace a less mechanistic term of use 10 of 'head trauma' when describing an inflicted injury 11 to the head in this context." 12 You see that; right? 13 A Yes. 14 Q And you agree with that; right? 15 A Yes. 16 Q And this pediatric subspecialist when 17 necessary would be a pediatric ophthalmologist and a 18 pediatric neurosurgeon? 19 A Yes, a pediatric radiologist. 20 Q "A pediatric radiologist." And in this case 21 was it a pediatric neuroradiologist? 22 A A pediatric neuroradiologist as well. 23 Q Okay. I'm going to the second page -- I'm 24 sorry, I'm going to the third page where it says 25 "The Role of the Pediatrician."	Page 75 1 neurologic symptoms and take seriously the ethical 2 and legal mandates to report suspected child abuse 3 to governmental agencies for investigation." 4 You agree with that; right? 5 A Yes. 6 Q And you-all reported it to DSS and law 7 enforcement; right? 8 MS. BROOKS HOLMES: Objection. 9 THE WITNESS: Yes. 10 BY MR. HOOD: 11 Q "Pediatricians also have a responsibility 12 to consider alternative hypotheses when presented 13 with a patient with findings suggestive of AHT"; 14 right? 15 A Yes. 16 Q "And a medical diagnosis of AHT is made 17 only after consideration of all clinical data"; 18 right? 19 A Yes. 20 Q And if you go down a couple sentences, it 21 says: "However, as physicians, we have an 22 obligation to make a working diagnosis, as we do 23 with many other diagnoses, and take the legally 24 mandated steps for further investigation when 25 indicated."
Page 74 1 It says, "As mandated reporters of 2 suspected child abuse and neglect, pediatricians 3 carry of the burden of recognizing and responding to 4 medical manifestations of AHT." 5 Do you see that? 6 A Yes. 7 Q Do you agree with that? 8 A Yes. 9 Q Says, "The diagnosis is sometimes obvious, 10 but injuries in many symptomatic infa- -- infants 11 are unrecognized by unsuspecting physicians." 12 Do you see that? 13 A Yes. 14 Q And you agree with that; right? 15 MS. BROOKS HOLMES: Objection. 16 THE WITNESS: That the injuries are 17 unrecognized by unsuspecting physicians, is 18 that what I'm agreeing to? 19 BY MR. HOOD: 20 Q At times? 21 A Yes. 22 Q "And to protect abused infants and prevent 23 future severe neurologic injury, pediatricians must 24 remain cognizant of the possibility of the AHT in 25 infants who present with both subtle and overt	Page 76 1 You agree with that; right? 2 A Yes. 3 Q What further investigation could be done 4 to determine whether it was NAT versus accidental 5 trauma? 6 MR. TODD: Objection. 7 THE WITNESS: In this particular case, 8 none, other than investigation of, I guess, the 9 family, the home situation, talking further 10 with the parents, I guess. 11 BY MR. HOOD: 12 Q And that would be DSS and law enforcement; 13 right? 14 MS. BROOKS HOLMES: Objection. 15 THE WITNESS: Yes. 16 BY MR. HOOD: 17 Q Okay. "Pediatricians often find it helpful 18 to consult a subspecialist in the field of child 19 abuse pediatrics to ensure that the medical 20 evaluation is being complete and the diagnosis is 21 accurate." 22 You see that; right? 23 A Yes. 24 Q You said that you consulted with 25 Dr. Morgan; right?

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1 A Yes.

2 Q And did Dr. Morgan agree with you that it

3 was not possible to determine NAT versus accidental

4 trauma?

5 A She did.

6 Q Down below it says, about three sentences

7 below that, "The role of the pediatrician is not to

8 apportion blame or investigate potential criminal

9 activity but to identify the medical problem,

10 treat the child's injuries, and offer honest

11 medical information to parents and families."

12 You see that; right?

13 A Yes.

14 Q And you agree with that?

15 A Yes.

16 Q It says, the second to the last sentence,

17 "AHT commonly results in permanent neurologic damage

18 and carries tremendous family and societal cost."

19 Do you see that?

20 A Yes.

21 Q And you agree with that?

22 A Yes.

23 Q It says under the very first

24 recommendation, "Pediatricians should be alert to

25 the signs, symptoms, and head injury patterns

Page 78

1 associated with AHT."

2 You see that; right?

3 A Yes.

4 Q What are the head injury patterns

5 associated with AHT?

6 A There are numerous patterns, only one of

7 which is subdural hematoma.

8 Q And would this, when you have the right

9 convexity and you have the falx hematoma, was the

10 falx on the -- I know it got maximal thickness

11 towards the back, but was it on the back -- the

12 right side or the left side?

13 A I don't know. I'd have to look at the

14 record.

15 Q Okay. Do you know if it was bilateral or

16 not?

17 A No.

18 Q Would -- would that make any difference?

19 A In the diagnosis of subdural hematoma?

20 Q No. In the diagnosis of whether the head

21 injury pattern was associated with AHT or not?

22 A To my understanding, no.

23 Q Okay.

24 A That would be something for a

25 neuroradiologist to answer.

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1 Q Okay. Does the neuroradiologist say in his

2 report that this is consistent with non-accidental

3 trauma or not?

4 A I don't think he said the word

5 "consistent." He said he would investigate the

6 possibility of non-accidental trauma.

7 Q Okay. Let me look at the -- I think it was -- I

8 can't remember what exhibit it was. Let me look at

9 it real quick. I may or may not have a question, I

10 just want to look at it.

11 MR. TODD: I can help out there.

12 THE WITNESS: The presence of a falx

13 subdural hematoma raises the possibility.

14 BY MR. HOOD:

15 Q Okay. On 17, which was the 12/5, at the

16 top it says, "Clinical information ALTE" and then

17 below that; "R/O bleed."

18 Do you see that?

19 A Yes.

20 Q And so that's just apparent life-threatening

21 event; right?

22 A Yes.

23 Q And then it's to rule out a bleed?

24 A Yes.

25 Q And then they found the thin falx subdural

Page 80

1 hematoma and right convexity subdural hematoma;

2 right?

3 A Yes.

4 Q Now, it didn't rule out a bleed, it

5 actually ruled in a bleed; right?

6 A Yes.

7 Q And then the 12/7 it has, "Clinical

8 information, ALTE; follow-up."

9 Do you see that?

10 MR. TODD: Are we going to a different

11 one?

12 MR. HOOD: Number 18, I'm sorry, 12/7.

13 THE WITNESS: Um-hmm.

14 BY MR. HOOD:

15 Q And the requesting provider in that case

16 was Julie Smith; right?

17 A Yes.

18 Q Who was with Dr. McClanahan's office?

19 A Yes.

20 Q The first one, 12/5, that says "Requesting

21 Provider" is Stephen Renfrow.

22 A Yes.

23 Q And he was on the CHIPS team?

24 A Yes.

25 Q So the CHIPS team would have been

Page 81

1 requesting it to rule out the bleed, right?

2 A Right.

3 Q And then when the bleed was determined, it

4 would have -- that's something that would have been

5 then referred out to be followed by Carolinas

6 neurosurgery, right?

7 A Pediatric neurosurgeon.

8 Q "Pediatric neurosurgeon."

9 And then the pediatric neurosurgeon

10 would have been responsible for requesting the 12/7

11 CT?

12 A Yes.

13 Q And when you have those two, does this

14 specific pattern, does it have a higher association

15 or lower association with AHT?

16 A These are two identical reports with the

17 finding of the possibility of non-accidental trauma.

18 Q Okay.

19 A They are not different in looking at the

20 category of non-accidental trauma. The blood had

21 shifted, but it doesn't make it any more less likely

22 that accidental trauma or non-accidental trauma has

23 taken place.

24 Q Okay. Now, on here -- and I've looked at

25 both of them, under that 12/5, it says, there's --

Page 82

1 "The presence of the falx subdural hematoma raises

2 the possibility of NAT."

3 A Right.

4 Q Do you see that?

5 A Yes.

6 Q Now, why does the falx subdural raise a

7 possibility of NAT?

8 A I think because of just the location of

9 where the blood and the -- and the veins have --

10 where the blood has settled, I think. It's a

11 location.

12 Q So that would be a head injury pattern

13 that would be associated with AHT?

14 A Yes.

15 Q Okay. Now, go to the -- I want to go to

16 the next, which is Exhibit 14. This is from the

17 American Academy of Pediatrics.

18 At the bottom of the first part of

19 the abstract, it just says, "Accurate and timely

20 diagnosis of children who are suspected victims of

21 abuse can ensure appropriate evaluation,

22 investigation, outcomes for these children and their

23 families."

24 Do you see that?

25 A Yes.

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1 Q And you agree with that?

2 A Yes.

3 Q Going to under "Prevalence," third or

4 fourth paragraph, first sentence says, "Child abuse

5 has significant long-term medical and mental health

6 morbidity."

7 Do you see that?

8 A Yes.

9 Q You agree with that, right?

10 A Yes.

11 Q Going to the next: Characteristics of

12 victims and risk factors.

13 A Yes.

14 Q It says, "Although the risk of

15 physical" -- in the middle part of that says,

16 "Although the risk of physical abuse increases with

17 age, fatal abuse and serious abuse of injuries are

18 more common among children and infants younger than

19 two years."

20 Do you see that?

21 A Yes.

22 Q And that's true, right?

23 A If the article is making that citation, I

24 suppose they have corroborating information to say

25 that.

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1 Q Okay. Under the "Role of Pediatrician:

2 The role of the pediatrician encompasses prevention

3 of abuse and detection and medical management of the

4 victims of abuse."

5 Do you agree with that?

6 A Yes.

7 Q It says, "Accurate identification of

8 children who are suspected victims of abuse can

9 facilitate appropriate evaluation, referral,

10 investigation and outcomes for these children and

11 their families."

12 Do you see that?

13 A Yes.

14 Q And you agree with that?

15 A Yes.

16 Q "Children usually sustain abuse at the

17 hands of a caregiver who misinterprets and responds

18 inappropriately to the child's behavior."

19 Do you see that?

20 A That's a little bit of a sweeping

21 statement, so...

22 Q Okay.

23 A It's a little sweeping for me.

24 Q Sure. But I know we had talked earlier

25 about how they said the child was fussy the week

Page 85

1 before, you remember that?
 2 (Intercom interruption.)
 3 BY MR. HOOD:
 4 Q You remember that; right?
 5 A Yes.
 6 Q And -- and sometimes people can respond to
 7 an impetus in an inappropriate way; right?
 8 A I would guess in some situations that
 9 would be true.
 10 Q Okay. And then next sentence says, "For
 11 example, caregivers who had smothered, shook, or
 12 slapped their infants within the first six months of
 13 life were more likely to be worried about crying and
 14 to believe that their infants cried excessively."
 15 Do you see that?
 16 A Yes.
 17 Q Do you agree with that?
 18 A If that's being cited, I guess that they
 19 have evidence --
 20 Q Okay.
 21 A -- or some study to corroborate that
 22 statement.
 23 Q Says, "There is close correlation between
 24 the age specific incidents that occur with infants
 25 hospitalized with abusive head trauma and age

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1 specific normal crying behavior of infants up to 36
 2 weeks of age," six months.
 3 A Okay.
 4 Q Do you agree with that?
 5 A Yes.
 6 Q Okay. Going down to the last full
 7 paragraph, it's about two-thirds of the way down.
 8 It says, "Once a suspected victim is identified and
 9 further assessment and management is required."
 10 Do you see that; right? It's the
 11 second to the last -- last full sentence.
 12 A Okay.
 13 Q Now, in this case, Owen Carduff, when
 14 he -- after the -- after the 12/05 CT, he was a
 15 suspected victim; right?
 16 A Well, I think that our determination was
 17 it was not possible for us to tell one that child
 18 abuse was definitely a possibility.
 19 Q Okay. But he was a possible victim?
 20 A "He was a possible victim."
 21 Q And so further assessment and management
 22 was required for him?
 23 A Right.
 24 Q And then this says, "Using a child
 25 pediatric child abuse consultant, if available,

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1 early in the process may obviate the need for
 2 invasive or expensive testing and can help direct
 3 the pediatrician towards appropriate evaluation."
 4 You see that; right?
 5 A Yes.
 6 Q And -- and you reached out to Dr. Morgan
 7 to assist in this; right?
 8 A Yes.
 9 Q It says, "The detection and diagnosis of
 10 child physical abuse depends on the clinician's
 11 ability to recognize suspicious injuries, conduct"
 12 -- con -- "careful and complete physical
 13 examination" --
 14 I'm sorry, I apologise.
 15 It says, "The detection and diagnosis
 16 of child physical abuse depends on the clinician's
 17 ability" --
 18 MR. TODD: Do we need to take a break?
 19 MR. HOOD: I got a -- I got a frog in my
 20 throat, man.
 21 MR. TODD: I think Deborah has got to do the
 22 Heimlich maneuver over there.
 23 MR. HOOD: I want Dr. Courtlandt doing it
 24 if anybody does it.
 25 MS. CASEY: I don't want to shake you

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1 too hard.
 2 MR. HOOD: Yeah. She -- I always tell
 3 people I practice in Rock Hill, don't take me
 4 to Piedmont, get me to CMC. I don't care what
 5 it takes.
 6 MS. BROOKS HOLMES: Is this all on the
 7 record?
 8 THE VIDEOGRAPHER: (Nods.)
 9 MR. HOOD: Get me to CMC.
 10 MR. TODD: All right, you seem to have
 11 recovered now.
 12 MR. HOOD: I'm okay.
 13 Man, I apologize.
 14 BY MR. HOOD:
 15 Q This says, "The detection and diagnosis of
 16 child physical abuse depends on the clinician's
 17 ability to recognize suspicious injuries, conduct a
 18 careful and complete physical examination with
 19 judicious use of auxiliary tests, and consider
 20 whether the caregiver's explanation is supported by
 21 the characteristics of the injury or injury and the
 22 child's development capabilities."
 23 You see that; right?
 24 A Yes.
 25 Q Now, the child's development capabilities,

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1 a child three-months old is not able to speak to
 2 you, right?
 3 A Yes.
 4 Q It's hard to measure a child's cognitive
 5 ability at the age of three months; right?
 6 A Right. Yes, I would say.
 7 Q I know even with a CT access, a lot of
 8 times they don't make the diagnosis until the child
 9 is one or two years old; right?
 10 A Right.
 11 Q And so then, since the child can't help,
 12 you've got to look at the caregiver's explanation
 13 and see if it's supported by the characteristics of
 14 the injury; right?
 15 A Yes.
 16 Q The characteristics of this injury are you
 17 have a falx subdural hematoma, that is an injury
 18 pattern consistent with AHT, a second subdural, and
 19 they have no explanation for that; right?
 20 A Yes.
 21 Q So there was no supported explanation of
 22 the subdural hematomas, was there?
 23 A There was no -- no -- nothing in the
 24 history which would give an explanation for them
 25 occurring.

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

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1 A Yes.
 2 Q And in this particular case, there was no
 3 description of the mechanism of the injury or
 4 injuries; right?
 5 A Well, at that point there was no
 6 documentation that there had been an injury. The
 7 parents came in requesting evaluation because of the
 8 fact that he had cold symptoms, he had been seen by
 9 the pediatrician, and they felt that he was getting
 10 worse. He then had that choking episode at home and
 11 then was brought into the emergency room.
 12 So at that point there was no injury
 13 really to document what the explanation or the
 14 mechanism was at that point.
 15 Q Now, the subdural was a significant
 16 injury; right?
 17 A He had a small subdural hematoma. I can't
 18 say how significant that -- the injury was that
 19 caused it.
 20 Q You don't have an opinion about whether a
 21 -- two different subdural hematomas in a
 22 three-month-old child is a significant injury or
 23 not?
 24 A Well, I can't tell you whether the -- the
 25 -- it's a significant injury. I can't tell you what

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1 the mechanism -- what the description of the
 2 mechanism of injury was.
 3 Q Right, right. That's all I was doing,
 4 it's a significant injury?
 5 A Right, yes.
 6 Q Now, going under the medical history, it
 7 says, "Explanations that are concerning for
 8 intentional trauma include: One, no explanation or
 9 vague explanation for a significant injury."
 10 Do you see that?
 11 A Yes.
 12 Q And that's something you have to take into
 13 your differential diagnosis; right?
 14 A Um-hmm.
 15 Q If you can give me a verbal.
 16 A Yes, I'm sorry.
 17 Q And explanation that's inconsistent with
 18 the pattern, age, or severity of injuries.
 19 You see that; right?
 20 A There was no explanation.
 21 Q Right, right, there was no explanation.
 22 A "There was no explanation."
 23 Q It says, "Information should be gathered
 24 in a non-accusatory but detailed manner. Other
 25 information that may be useful in a medical

Page 93	Page 95
1 assessment of suspected physical abuse includes past 2 medical history." 3 You agree with that; right? 4 A Yes. 5 Q "Family history, especially a bleeding, 6 bone disorder and metabolic or genetic disorders." 7 Right? 8 A Yes. 9 Q I mean, that just helps if there is some 10 kind of genetic or hereditary component; right? 11 "Pregnancy history: Wanted, 12 unwanted, planned, unplanned, prenatal care, 13 postnatal complications, postpartum depression, 14 delivery in nonhospital settings." 15 That's important; right? 16 A That would be information that I would 17 want to obtain. 18 Q "Familiar patterns of discipline." That 19 would be important; right? 20 "Child temperament," which I think 21 there's documentation he was fussy -- 22 A That's right. 23 Q -- for a week before this; right? 24 "A history of past abuse to child, 25 siblings, or parents."	1 being carefully measured and plotted on a growth 2 chart previous measurements have been obtained from 3 past medical records to gauge whether growth 4 velocity has been appropriate." 5 And I believe you said that that had 6 been done. 7 A Right. 8 Q And it was appropriate? 9 A Right. 10 Q Under cranial injuries, it's on Page 6 of 14, 11 head trauma is the leading cause of child abuse 12 fatalities; do you see that? 13 A Yes. 14 Q And you agree with that; right? 15 A Yes. 16 Q "The inflicted injuries tend to occur in 17 younger patients," you see that; right? 18 A Yes. 19 Q You agree with that; right? 20 A Yes. 21 Q Now if we go to the next under the last 22 full paragraph under that heading. It says, "A 23 funduscopic examination for retinal hemorrhages 24 should be considered for any infant or a young child 25 who is a suspected victim of child abuse. Under
Page 94	Page 96
1 That would be important; right? 2 A Yes. 3 Q I apologize. 4 A Yes. 5 Q Okay. "Developmental history of 6 child." Obviously, he's three-months old, so there 7 isn't a whole lot. 8 "Substance abuse by caregiver or 9 any people living in the home." Right? 10 A Yes. 11 Q "Social and financial stressors and 12 resources." Right? 13 A Yes. 14 Q "And violent interactions among family 15 members"? 16 A Yes. 17 Q And all of those things would -- would 18 play a part in things that -- that may be important 19 to you in determining whether it's accidental or 20 non-accidental trauma? 21 A They may be factors, yes. 22 Q Sure, "they may be factors." 23 Under physical examination and 24 general assessment. It says, "When the child has a 25 high weight and a frontal occipital circumference	1 optimal conditions, an ophthalmologist with pediatric 2 experience should conduct an examination of dilated 3 pupils by using indirect ophthalmoscopic." 4 Do you see that? 5 A Yes. 6 Q And I believe you said that you think that 7 there was dilated pupils. 8 A There was a -- there was evidence of a 9 dilated exam, based on the fact that drugs were 10 given to dilate the eyes. 11 Q Sure. And an ophthalmologist is usually 12 somebody who has some pediatric experience; right? 13 A Right. 14 Q And you just don't know if there was 15 direct or indirect? 16 A Right. I don't know what the technique of 17 examination was. 18 Q Okay, okay. 19 MR. TODD: Are you done? 20 THE WITNESS: Oh, yeah. 21 MR. HOOD: No, no, no. 22 THE WITNESS: No. 23 MR. TODD: No, no, no, no. Are you done 24 with this article? 25 MR. HOOD: Yes, yes, yes.

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1 MR. TODD: Do you need it back?
 2 THE WITNESS: No, no.
 3 MR. TODD: Okay.
 4 MR. HOOD: No, no, no. I'm done with
 5 that, yes.
 6 Let's have this marked as -- what are we
 7 at?
 8 THE REPORTER: 19 this would be.
 9 MR. TODD: I have 14, you better take it
 10 from me before I put it into my file and it
 11 gets lost.
 12 (Patient record, ER documentation marked
 13 as Plf's Exhs 19 and 20 for identification.)
 14 BY MR. HOOD:
 15 Q Doctor, this appears to be like the
 16 MedCenter ER history.
 17 A Yes.
 18 Q This would have been something that would
 19 have been in the medical chart, right?
 20 A Yes.
 21 Q Okay. And it says, "History of present
 22 illness: two-month old patient brought to Piedmont
 23 Medical Center Emergency Department by the parents
 24 in a personal vehicle after an eight-minute period
 25 of unresponsiveness post meeting reported by the

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1 father. The father states patient was not blue or
 2 jerking. Mother states she did not witness event.
 3 She was just arriving home from work. Per the ED
 4 report, when patient arrived, he was alert and
 5 active, irritable stimulation. Patient has had a
 6 several day history of increased sleeping periods
 7 and increased crying episodes. Wednesday, patient
 8 was seen by pediatrician and diagnosed with a viral
 9 throat infection. Patient is on no medications at
 10 home and no allergies. Patient reportedly had an
 11 uncomplicated labor term at Piedmont Medical Center.
 12 Patient received IV, IV fluids, chest x-ray, labs,
 13 urinalysis, an LP. MedCenter air-dispatched patient
 14 to Levine's Children Hospital for further evaluation
 15 at a higher-level care facility."
 16 Do you see that?
 17 A Yes.
 18 Q And you are aware of all this -- I mean
 19 this history is something you would have been aware
 20 of at the time that you began treating the child, right?
 21 A Yes.
 22 MR. HOOD: Okay. This is number 19?
 23 THE REPORTER: Yes.
 24 BY MR. HOOD:
 25 Q This is simply just an emergency

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1 department documentation, before he was transferred
 2 to inpatient. Go on that first page, it says, Mode
 3 of arrival, isolette stretcher.
 4 You see that, right?
 5 A Yes.
 6 Q And then diagnosis unresponsive for ten
 7 minutes, do you see that?
 8 A Yes.
 9 Q And it looks like it's 12/5/09 at just
 10 about midnight, do you see that?
 11 A Yes.
 12 Q "D&P generic code and tracking acquity
 13 3-urgent." Do you see that?
 14 A Yes.
 15 Q What does "urgent" mean?
 16 A I'm not sure what they mean in there, in
 17 that code?
 18 Q Sure.
 19 A I can't answer that question.
 20 Q I've seen some where they use a -- a one
 21 to thres and others where they use one to five, but
 22 you don't know what --
 23 A Right, what their tracking system and
 24 documentation system is.
 25 Q Okay. But once the child came under your

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1 care, you would have had access to this itself as
 2 well as the stuff that we went over before, the
 3 unresponsiveness for ten minutes?
 4 A Yes.
 5 Q Okay.
 6 MR. HOOD: Okay. Let's have this marked
 7 as -- okay -- okay, let's have this marked as --
 8 THE REPORTER: 21.
 9 MR. HOOD: 21. This is that --
 10 MR. TODD: Multiple pages.
 11 MR. HOOD: -- pediatric notes as one. And then
 12 I'm going to have the next one marked as Exhibit 22.
 13 Then this would be 22. Then the next would be 23.
 14 This will be 23.
 15 (Physicians orders, 12/5/09, physicians
 16 orders, 12/5/09 and progress record, 12/7/09
 17 marked as Plf's Exhs 21, 22 and 23 for
 18 identification.)
 19 BY MR. HOOD:
 20 Q Doctor, I just had this marked as Exhibit
 21 21 and 22 -- this is just exhibit 21, 21 are some
 22 orders. 22 is just maybe some orders or some
 23 something that a doctor made notes about and then 23
 24 is just a doctor's report, written doctor report.
 25 A That's my handwriting.

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1 Q Excuse me?

2 A That's my handwriting, this one?

3 MR. TODD: Is that a question or is that a

4 statement?

5 MR. HOOD: Yes, that's the one. That one is --

6 THE WITNESS: Yes.

7 MR. HOOD: --yes, yes. But I was just going to

8 go over just -- just this just because it's almost

9 chronological.

10 THE WITNESS: Okay.

11 BY MR. HOOD:

12 Q Exhibit 21 -- remember we had gone over

13 before the stuff about the dilated pupil and

14 everything. This would have been the order where

15 they said consult ophthalmology maltreatment

16 Dr. Briggs, right?

17 A Yes -- no, no. Child maltreatment, that's

18 one order and ophthalmology, Dr. Briggs, that is a

19 separate order.

20 Q Okay, okay. And then -- okay. And that's

21 12/5/09 at about 8:45 in the morning, right? At

22 least that's what the documentation is on this.

23 A Right, yes.

24 Q Okay. Then, we'll go to Exhibit 22. This is a

25 little earlier in the morning on 12/5/09.

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1 It says, "Admit to CHIPS A Attg:

2 Gall."

3 A Right.

4 Q Who is --

5 A Actually Dr. Gall was actually the

6 admitting attending and she signed out to me. Like

7 I said, the CHIPS attendings, we work a week at the

8 time, and I guess I must have taken over the

9 service.

10 The first note I wrote was on the 7th

11 and, so I took over from her, she -- I think if you

12 look at the record, she has notes written on the 5th

13 the 6th and then I took over for her on, I believe

14 the 7th.

15 Q Yeah, I think it was -- that starts on a Monday.

16 A Yeah.

17 Q 12/7 is a Monday.

18 A Right.

19 Q And so there's that person that I saw,

20 Schoenfeld. Do you know who Dr. Schoenfeld is?

21 A Schoenfeld, yes, he is an intern.

22 Q Okay. And so that's -- that's not a

23 resident, that's actually -- is that a medical

24 student?

25 A No. That's a -- a resident, the hierarchy

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1 goes, intern is the lowest level, then resident PGY2

2 and then resident PGY3.

3 Q Okay.

4 A So it's the low man on the totem pole, but

5 it is a position.

6 Q It is like a first year resident?

7 A It's a first year.

8 Q Okay. And then it has, "Diagnosis LTE

9 condition good." You do see that, right?

10 A Um-hmm.

11 Q And then at about an hour, hour and a

12 half later, it looks like there was a STAT CT of the

13 head to rule out a bleed, right?

14 A Um-hmm.

15 Q And then we've seen the -- the CT scan

16 where they did it and they found the falx hematoma and

17 the other hematoma.

18 A Yes.

19 Q Go to the next page. This says, "Peds

20 attending note." Do you see that?

21 A Yes.

22 Q At the top it says Owen Michael Carduff,

23 do you see that, right?

24 A Yes.

25 Q Now this is you that wrote this, right?

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1 A Yes.

2 Q Okay. Just because I can't read

3 everybody's handwriting --

4 A Okay.

5 Q -- can you just kind of start at the top

6 and read down for us.

7 A Okay. "Peds attending note. Patient

8 clinically stable, but AF," which is anterior

9 fontanelle bulging slightly." And there's a

10 question of, is this an increase in his head

11 circumference. His mental status is unchanged. His

12 eye exam was negative and his non-accidental trauma

13 series was pending.

14 The child coordinator -- the child

15 maltreatment coordinator and master's of social work

16 were involved and the parents were updated at the

17 bedside. So then I do a physical exam.

18 I said that his head was large but he

19 had great head control, but his anterior fontanelle

20 was full. His lungs were clear, heart, regular

21 rhythm. Abdomen was benign.

22 My impression was subdural hematoma.

23 He had normal mental status at this time. We were

24 planning to repeat the CT. His anterior fontanelle

25 was going to check with the master's of social work

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1 about discharge plan and check with department of
2 DSS referral status.
3 Q Okay. Now, when you do that, do you defer
4 or do you delegate the checking with DSS to the
5 medical social worker?
6 A She would probably make the call to DSS
7 and depending on what the situation is, DSS may want
8 me to be patched in when she calls, or they may not,
9 depending on what the situation is.
10 Q Okay. But would you depend on her to be a
11 liaison between you and DSS?
12 A Yes.
13 Q Okay. And then she could go back and tell
14 them any conversation she may have had with you,
15 likewise she could have told you about conversations
16 she would have had?
17 A Right, yes.
18 Q Okay. If you go to the next page. And
19 the first page, this is your handwriting; right?
20 The page before that, that's your handwriting?
21 A This one?
22 Q Yes. And -- and when it's signed at the
23 bottom, C and that's your hand -- that's your
24 signature; right?
25 A That's my signature.

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1 Q Okay. If you go to the next where it
2 starts "Notes planned peds attending."
3 A Yes, sir.
4 Q If you could read that.
5 A "Peds attending note. Extensive
6 conversation with Morgan-Glenn and master's of
7 social work regarding case. No etiology of
8 subdurals revealed. Non-accidental trauma workup is
9 negative. Eye exam is negative. No story
10 forthcoming in explanation."
11 At that point, his anterior
12 fontanelle was soft and it had decreased. It wasn't
13 bulging -- it wasn't bulging anymore. The head
14 circumference was the same, but it wasn't bulging. His
15 lungs were clear. His abdomen was benign.
16 My impression was that he had a
17 subdural hematoma. There was a question mark
18 etiology. His non-accidental trauma workup was
19 negative at the time. The plan was for DSS to
20 follow family with home visits supervision cleared
21 by master's of social work. Repeat skeletal survey
22 in two weeks and follow-up with his PCP.
23 Q And that's primary care physician?
24 A Right, right.
25 Q Okay. And this would have been at 12 noon

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1 on 12/8/09?
2 A Or close to that.
3 Q Okay. And this would have been the
4 discharge orders; right?
5 A No, this is my last note. This is my last
6 note. The discharge summary is another document.
7 Q And it says, "Cleared by MSW."
8 A Right.
9 Q And when that says, "cleared by MSW," what
10 does that mean?
11 A That means that we have a safety plan and
12 the safety plan has been signed.
13 Q Okay. And is that supposed to be in the
14 chart somewhere?
15 A It is in the chart, I think.
16 Q Okay.
17 A Usually. I don't place it in the chart,
18 but it is usually -- that's usually where we find
19 it.
20 Q Okay. If we go to Exhibit 23.
21 A Mm-hmm.
22 Q I can't read that on the top, what does
23 that say "X-"
24 A Cross cover.
25 Q What is that?

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1 A That is the cross cover, which means that
2 this person who wrote this, this was not their
3 primary patient.
4 Q Okay. It says, "Patient with stable CT,
5 DSS/SW okay to discharge with mom and dad."
6 A Mm-hmm.
7 Q DSS/SW, they are talking about the medical
8 social worker here; right?
9 A Yes.
10 Q Okay.
11 MR. HOOD: That is Exhibit 23.
12 Let's have this marked as 24.
13 (Carolinas Healthcare System, H&P, 12/5/09
14 marked as Plf's Exh 24 for identification.)
15 BY MR. HOOD:
16 Q Doctor, on that last one I asked you about
17 that entry, do you know who the X-COP person is?
18 A I don't recognize the handwriting. It's
19 something that can be determined by looking back in
20 the log who was -- who cross-covered.
21 Q Okay. And then we're looking at Exhibit
22 24, this is just the H&P on 12/5/09. I was just
23 going to ask you one question.
24 You would been aware of the
25 information contained in this record, when you began

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1 treating the child on 12/7; right?
 2 A Yes.
 3 Q Okay.
 4 MR. HOOD: Next is Exhibit 25.
 5 (Medical Decision Making form received and
 6 marked as Plf's Exh 25 for identification.)
 7 BY MR. HOOD:
 8 Q You know this is just an inpatient initial
 9 assessment for Levine Children's Hospital for a
 10 CHIPS team; right?
 11 A Yes.
 12 Q And it has the labs and it has what the
 13 labs are; right?
 14 A Yes.
 15 Q And then it has, "Assessment plan,
 16 two-month old with" -- boy with no --
 17 A "With an ALTE and a head bleeds on CT."
 18 Q Okay.
 19 A "No hemorrhages. No history of trauma
 20 from mother and father."
 21 Q Right. And this was Dr. Schoenfeld?
 22 A Yes.
 23 Q And then the attending which was
 24 Dr. Gall --
 25 A Sara Gall.

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1 Q -- would have over seen his care; right?
 2 A Yes.
 3 Q And then she actually made her own note;
 4 right?
 5 A Um-hmm.
 6 Q And then you would have been made aware of
 7 all of this information when you began -- began
 8 treating this child on 12/7?
 9 A Yes.
 10 Q Okay.
 11 MR. HOOD: Okay. Now we got 26, 27, 28 and
 12 29.
 13 THE REPORTER: 29?
 14 (Coagulation, 12/5/09, microbiology
 15 report, 12/5/09, microbiology report 12/5/09
 16 and hematology report, 12/7/09 marked as Plf's
 17 Exhs 26, 27, 28 and 29 for identification.)
 18 BY MR. HOOD:
 19 Q Doctor, 26 says coagulation, this just has
 20 something about PT, INR.
 21 A Um-hmm.
 22 Q And thromboplastin time.
 23 A Yeah.
 24 Q All were within normal limits except for
 25 the -- the last, the part with thromboplastin time.

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1 A Right.
 2 Q But it was still close to within normal
 3 limits; right?
 4 A Yes.
 5 Q And so you did not -- you didn't see any
 6 type of bleeding disorder in this child; did you?
 7 A No. There was no bleeding disorder.
 8 Q 27 and 28 are just microbiology. It looks
 9 like there was a respiratory panel. And it didn't
 10 look like there was any type of a problem for
 11 microbiology. Do you see that?
 12 A Yes.
 13 Q And it's your opinion there was no problem
 14 with any type of an infectitious process in regard
 15 to microbiology; right? It would be indicated by
 16 the microbiology?
 17 A It says that there were too few cells to
 18 make a determination.
 19 Q Right. And if you-all were worried about
 20 it, there were too few cells seen, it says new
 21 specimen indicated.
 22 A Right.
 23 Q And you -- you began treating this child
 24 on 12/7 and 12/8, if you had seen that's was
 25 concerning to you, you would not have discharged the

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1 child; right?
 2 A Regarding this?
 3 Q Yes.
 4 A I mean this specific report is just
 5 looking for viruses, this -- you don't make a
 6 decision based on -- you don't make a decision to
 7 discharge someone or not discharge someone based on
 8 this type of virus test.
 9 Q Right.
 10 A This is just seeing if you can name the
 11 particular virus that a child has.
 12 Q And it's your opinion though that at the
 13 time of discharge, this child did not have any
 14 virus?
 15 MS. BROOKS HOLMES: Objection.
 16 THE WITNESS: One that we could not test
 17 for. I mean --
 18 BY MR. HOOD:
 19 Q Sure.
 20 A -- this only tests for a few viruses.
 21 Q Right.
 22 A There are hundreds of them.
 23 Q But of the ones you tested for, you didn't
 24 see anything that was positive; right?
 25 A Correct, yes.

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1 Q Okay. And then on hematology it -- the
2 hematology you saw the white blood cells, and the
3 things -- most of the things were in normal limits
4 except for the hemoglobin and hematocrit; right?
5 A Yes.
6 Q And would hemoglobin and hematocrit being
7 low would be consistent with a subdural hematoma;
8 wouldn't it?
9 MS. BROOKS HOLMES: Objection.
10 THE WITNESS: I mean it's possible. This
11 is also the time where the blood count is the
12 lowest and Dr. Gall is a hematologist so I
13 don't think that this would necessarily be as
14 concerning to me for a two-month old.
15 Q Right. But all I'm saying is, part of the
16 reason its low may be associated with a subdural
17 hematoma?
18 A I don't know if you can make that
19 connection necessarily.
20 Q Okay. But regardless, you did not see a
21 coagulopathy or a bleeding disorder at the time?
22 A No.
23 MR. HOOD: Okay. Exhibit 30.
24 (Progress record, 12/7/09 received and
25 marked as Plf's Exh 30 for identification.)

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1 BY MR. HOOD:
2 Q Exhibit 30, I'm looking just at the bottom
3 notice. It says 12/7/09, 1845; do you see that?
4 A Yes.
5 Q Under the neurosurgery note it says,
6 "Alert doing well overall. Repeat CT, shows stable.
7 Extra-axial collections right" -- something.
8 "Okay to discharge under supervision.
9 You need to see to follow-up in two or three weeks.
10 Should be instructed prior to discharge about
11 symptoms of increased intra-cranial pressure."
12 Do you see that?
13 A Yes.
14 Q Now my question to you is, "Okay to
15 discharge under supervision."
16 What does he mean -- do you know what
17 he means by that?
18 A I cannot comment on what --
19 Q That's Dr. McClanahan?
20 A That's McClanahan.
21 Q Sure. Okay, okay.
22 MR. HOOD: This is 31.
23 (Nursing Miscellaneous Inpatient document
24 marked as Plf's Exh 31 for identification.)
25 BY MR. HOOD:

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1 Q This is Nursing Miscellaneous Inpatient
2 Documentation. At the top, at the top it says, "Suspected
3 Child Abuse Neglect Form Text."
4 (Witness sneezes.)
5 MR. HOOD: Bless you, bless you.
6 THE WITNESS: Thank you.
7 BY MR. HOOD:
8 Q And then it says, "Service date and time,
9 12/8/09, 10:02 eastern standard time." Do you see
10 that?
11 A Yes.
12 Q And then it says, "More information, Lynn
13 Meyers 12/8 2009, 10:32 Eastern Standard Time and
14 then sign information, Lynn Meyers 12/8 2009, 10:32
15 EST." You see that; right?
16 A Yes.
17 Q Then it says, "Scan suspected child abuse
18 neglect entered on 12/8 2009 10:33 Eastern Standard
19 Time, performed on 12/8 2009 10:02 Eastern Standard
20 Time by Lynn Myers, RN."
21 You see that; right?
22 A Yes.
23 Q Now Lynn Myers is the nursing maltreatment
24 team coordinator?
25 A Yes.

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1 Q And then underneath that it says, "Scan
2 documentation." Right?
3 A Yes.
4 Q It says, "Scan doc- -- scan related
5 visits, child maltreatment coordinator." Do you see
6 that?
7 A Yes.
8 Q And it says, "Reportable interaction
9 detail, awaiting safety plan from DSS." Do you see
10 that?
11 A Yes.
12 Q So as of 10:33 Eastern Standard Time on
13 12/8 2009 there's documentation in this file that
14 indicates that you still haven't received the safety
15 plan from DSS; right?
16 MR. TODD: Objection.
17 MR. FRAWLEY: Object to the form.
18 THE WITNESS: I would assume.
19 BY MR. HOOD:
20 Q Okay. Now let's look at the bottom. It
21 says, "Document name pediatric frequent check form
22 text."
23 A Yes.
24 Q Do you see that?
25 A Yes.

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1 Q "Service date time 12/8 2009, 12:20
2 Eastern Standard time." Do you see that?
3 A Yes.
4 Q And then it says, "Results status all
5 verified information Sara Miller." And then "Sign
6 information Sara Miller, 14:39 Eastern Standard
7 Time."
8 A Yes.
9 Q It says, "Pediatric hour- -- hourly checks
10 entered on 12/8 2009, 1442, but performed on 12/8
11 2009 at 1220, by Sara Miller." Do you see that?
12 A Yes.
13 Q It says, under pediatric hourly checks.
14 "Reassess. No change from previous assessment.
15 Family at the bedside of the patient. Patient
16 continues to be held per her mom and no apparent
17 distress. Discharge instructions gone over and
18 given to parents with questions asked, answered and
19 understanding verbalized. No further needs stated
20 at this time."
21 Do you see that?
22 A Yes.
23 Q So would you assume that they got the
24 safety plan between 10 o'clock and 12:30 on that
25 day?

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1 MR. TODD: Objection.
2 THE WITNESS: I guess that would be my
3 assumption, although I'm not clear, this
4 nursing miscellaneous documentation is not
5 documentation that I look at every day. So I
6 would -- I would have to -- there may be some
7 pieces missing from it.
8 BY MR. HOOD:
9 Q Okay. But it looks like at least it's
10 documented that as of -- 10 -- 10 o'clock that they --
11 A Right.
12 Q -- were awaiting a safety plan.
13 A Awaiting a safety plan.
14 MR. HOOD: Okay. Let's have this marked as 32.
15 (Discharge summary, 12/8/09 Levine
16 Children's Hospital and discharge summary and
17 12/8/09 Carolinas Healthcare System marked as
18 Plf's Exh 32 and 33 for identification.)
19 BY MR. HOOD:
20 Q Okay. This is a discharge summary?
21 A Yes.
22 Q And on the back it looks like it's
23 dictated by Eric Schoenfeld.
24 A Yes.
25 Q First year resident; right?

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1 A Um-hmm.
2 Q And -- but you would have then come back
3 and over signed that at some point; right?
4 A Yeah, I thought there was one.
5 Q And I will give you Exhibit 33. And
6 Exhibit 32 and 33 and they are the same, it's just
7 one.
8 A Right.
9 Q Right. 33 is electronically signed. The
10 first one says it was dictated by Eric Schoenfeld
11 and looks like transcribed 12/8 2009 at 3:18 p.m.
12 Do you see that on Exhibit 32?
13 A Yeah.
14 Q And then on Exhibit 33, it looks like it's
15 reviewed by Eric Schoenfeld at 12/10 2009, 1440 and
16 it's electronically signed by you on 1/25 2010 at
17 1410.
18 A Yes.
19 Q Okay. Now, this says the principal
20 diagnosis is subdural hemorrhage; right?
21 A Yes.
22 Q Under that on the second page it has
23 pertinent test results. CT scan head, and it gives
24 a finding for 12/5 and CT scan head 12/7 and then
25 skeletal survey.

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1 You see that; right?
2 A Yes.
3 Q Now on the second -- on the last page it
4 says number two. "Please pay close attention to
5 baby and do not leave him alone or unattended."
6 Who was that -- was that to the
7 parents?
8 A To the family.
9 Q Okay. And that's the same instruction
10 you'd give to any family with a two or three-month
11 old child; right?
12 A Right.
13 Q Is there any mention in this about the
14 safety plan at the time of discharge?
15 A No. In this particular document, there is
16 no mention to the safety plan. Although it says in
17 the document, it was determined that the family
18 would attend parenting classes and the Department of
19 Social Services would evaluate the home situation
20 and those are elements of the safety plan.
21 Q Okay.
22 MR. HOOD: I'm going to mark as Exhibit 34
23 and Exhibit 35.
24 This will be 34. This will be 35.
25 (Physicians orders, 12/7/09 and Progress

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1 note, Children's Hospital Inpatient Service
 2 marked as Plf's Exhs 34 and 35 for
 3 identification.)
 4 BY MR. HOOD:
 5 Q Okay. Exhibit 34 looks like orders.
 6 A Yes.
 7 Q Okay. And on the right side it looks like --
 8 is that your handwriting again?
 9 A No, neither one of these pages is my
 10 handwriting. Except, now actually 35, I've signed
 11 Eric's note, on 35.
 12 Q But on 34 --
 13 A Yes.
 14 Q Its 0930, 12/8 2009. It says, "Discharge
 15 home with parents with MSW approval." That means
 16 with medical social worker approval, right?
 17 A Yes.
 18 Q And that would be the social worker with
 19 Levine Children's Hospital?
 20 A Yes.
 21 Q Two, Activity is tolerated. Three, meds,
 22 see medical record. Four, Follow-up with schedule.
 23 Follow-up with Sunshine Pediatrics 12/10 and 12/12
 24 and with radiology in two weeks for NAT from
 25 admission 12/4/09."

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1 Do you see that?
 2 A Yes.
 3 Q And then five, Discontinue IV.
 4 A Yes.
 5 Q And then it looks like they give an
 6 appointment time for pediatrics and a time for
 7 Levine Children's Hospital, right?
 8 A Yes.
 9 Q Now its signed off by a --
 10 A Whitney Nugent.
 11 Q Okay. And who is Whitney Nugent?
 12 A She's one of the residents.
 13 Q Okay, okay. And so is this a physician's
 14 discharge order?
 15 A This a discharge order, yes.
 16 Q Okay. So as of 9:30 --
 17 A No, not necessarily. That's when we wrote
 18 the order.
 19 Q Okay.
 20 A But it may not necessarily been carried
 21 out at the time. The patient is discharged actually
 22 when all of the conditions are filled. So it may
 23 take them a while to get the appointments, it maybe
 24 several hours, it depending on what the situation
 25 is.

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1 Q Okay.
 2 A Whether they -- you know, what time they
 3 actually leave is when they are physically taken out
 4 of the system.
 5 Q But as of 0930 on 12/8 2009 they had
 6 conditionally discharged the patient with everything
 7 else being followed up?
 8 A I would say that that would probably be a
 9 true statement.
 10 Q Okay. Now I'm looking at the next page.
 11 A Okay.
 12 Q I didn't know what this was, although it
 13 looks like a -- it's consistent with the discharge
 14 order.
 15 A No. This is a piec- -- a piece of
 16 progress note paper. This might have been his kind
 17 of cheat sheet for his discharge summary.
 18 Q Okay
 19 A Because it doesn't have all the elements of a
 20 daily note note. It doesn't have the all the
 21 elements of anything. So it should either have
 22 another sheet if it were a daily note.
 23 Q Okay. At bottom it just says though,
 24 "This is Eric Schoenfeld."
 25 A Right, Schoenfeld, right.

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1 Q Then you signed over the top of him;
 2 right?
 3 A Um-hmm.
 4 Q And I'm just looking at, it says, "Three
 5 social" -- something, "SW."
 6 A "Pending social work okay."
 7 Q "Patient okay to discharge."
 8 A Yeah. So again, this was not timed so I
 9 don't know what time.
 10 Q So -- but what this seems to say is that
 11 the patient is okay to discharge from a medical
 12 stability standpoint, right?
 13 A Yes.
 14 Q But has not received the okay yet from
 15 social work whether to discharge or not?
 16 A Right. Probably because we didn't have
 17 the signed plan yet.
 18 Q Okay. And this says, "Follow-up in two
 19 weeks, NAT," and this actually has parenting class.
 20 A Right.
 21 Q And home visit.
 22 A Right. So some elements were at least
 23 discussed of what would be in the safety plan.
 24 Maybe the safety plan was on the chart but not
 25 signed yet.

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1 Q Okay, okay.
 2 A That's all possibilities. I -- I really
 3 can't say exactly what transpired.
 4 Q Okay.
 5 MR. HOOD: I'm going to hand you, what 33.
 6 MR. TODD: You have five minutes.
 7 THE REPORTER: 36.
 8 MR. HOOD: Let's go on and just stop 'cause I'm
 9 close, I'm just -- I'm almost -- I'm almost through with
 10 my documents.
 11 (Brief recess.)
 12 (Patient Medical Discharge Instruction
 13 Form and CHS Pediatric NICU Discharge
 14 Instructions marked as Plf's Exh 36 and 37 for
 15 identification.)
 16 BY MR. HOOD:
 17 Q Doctor, I'm looking specifically at 36 and
 18 37. 36 is just a Patient Medication Discharge
 19 Instruction Form.
 20 This is something you just give
 21 to any patient where a child got some medication, right?
 22 A Yes.
 23 Q And this would have been the one that was
 24 consistent with the one for Michael Carduff --
 25 Michael Owen Carduff, right?

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1 A It appears so, although I don't know why
 2 digoxin is on -- oh, okay. That's an example. I saw
 3 digoxin on the form and --
 4 Q Poor child.
 5 A Right. But I see, they are just showing
 6 you an example, yes.
 7 Q Okay. And on the bottom it actually says
 8 Owen [REDACTED] Do you see that?
 9 A Yes.
 10 Q Then number two, this -- 37, it says this
 11 is CHS Pediatric NICU Discharge Instructions.
 12 A Yes.
 13 Q And this is the instructions that is
 14 usually given to anybody that's discharged?
 15 A Yes.
 16 Q From the -- the --
 17 A Inpatient service.
 18 Q Inpatient. And on the second page of that
 19 it says, "Best number to reach you," and it has a
 20 number and it has a nurse "S. Miller, RN."
 21 Do you see that?
 22 A Yes.
 23 Q And then "12/8 2009, 12:15." Do you see
 24 that?
 25 A Yes.

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1 Q Okay. And these would have been the
 2 things that would have been given to the parents in
 3 regard to the discharge of them from the unit;
 4 right?
 5 A Right.
 6 Q Okay.
 7 A There might be other information given to
 8 them as well, but that's what I know.
 9 Q Okay. Okay. I'm looking at Exhibit 5, I
 10 think it's going to be in this stuff. Now, I may as well
 11 just look at Exhibit 2 at the same time, Exhibit 2 and 5,
 12 let me see if there's any other one.
 13 A Five.
 14 Q I'll tell you what, I'm going to do
 15 Exhibit 2 and 5 and then after that, I'm going to ask you
 16 about Exhibit 1 and then Exhibit 11, and that should
 17 be just about it.
 18 A I'm sorry, Exhibit 5?
 19 Q No, no. It wouldn't go -- I'll just do
 20 it. I was just --
 21 A Okay.
 22 Q Exhibit 2. Do you see Exhibit 2 or
 23 Exhibit 5, either one, it doesn't matter? I'm going
 24 to go one after the other on those.
 25 One is the Child Abuse and Neglect

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1 Algorithm and one is the Evaluation of Suspected
 2 Child Abuse and Neglect.
 3 That's the algorithm.
 4 A Okay.
 5 Q Okay, that's Exhibit 2.
 6 A Okay.
 7 Q Have you ever seen the Child Abuse and
 8 Neglect Algorithm?
 9 A Yes.
 10 Q Okay. At the top it says, "Medical team
 11 identifies child, neither abuse or neglect is
 12 suspected." Do you see that?
 13 A Yes.
 14 Q And then it says, "Consult CHS clinical
 15 care management social worker to assist with
 16 assessment process."
 17 A Yes.
 18 Q And that was done," right?
 19 A Um-hmm.
 20 Q It says, "Is suspicion of abuse or neglect
 21 confirmed?" Do you see that?
 22 A Yes.
 23 Q Then it has a yes or no, do you see that?
 24 A Yes.
 25 Q And under the yes, it says, "Report case

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1 to county DSS in which child resides"?

2 A Yes.

3 Q So according to this algorithm, the

4 suspicion of abuse or neglect is confirmed?

5 A Yes. That -- that we suspect it, yes.

6 Q Do you know what the word "confirmed"

7 means?

8 A It means that you -- that's something that

9 you think is a possibility.

10 Q I'll come back to that. I just want to be

11 pull it on up Webster's Dictionary and see what

12 "confirm" says and I want to see if you agree with

13 the definition.

14 And then underneath that it says,

15 "Complete scan form including diagrams," right?

16 A Yes.

17 Q And then when you go all the way down, it

18 says, "When medically cleared, do not discharge

19 child until disposition has been determined by

20 medical social worker and DSS."

21 Do you see that?

22 A Yes.

23 Q And I think we went over a note where it said --

24 A Yes, yes.

25 Q When medically cleared --

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1 A Right, yes.

2 Q -- and the child had been medically

3 cleared.

4 A Yes.

5 Q Do not discharge until -- and I think

6 there was actually something almost exactly like

7 this.

8 A Yes.

9 Q Do not until --

10 A Yes.

11 Q -- it's been medically --

12 A Yes.

13 Q -- until disposition's been determined by

14 medical social worker and DSS.

15 A Yes.

16 Q And so you would agree with me that DSS

17 and the medical social worker worked in tandem to

18 determine the disposition of the child?

19 MR. TODD: Objection.

20 BY MR. HOOD:

21 Q According to the algorithm?

22 A Yes.

23 Q I'm just showing you, and I'm going to ask

24 you if you agree with these definitions of

25 "confirmed."

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1 One of them seems to suggest that

2 it's something that is expected to continue. And

3 you said -- you said something when I asked you what

4 does the term mean to you "confirmed," you said -- I

5 --I can't remember what you said.

6 A Oh, I mis -- I mis -- I misunderstood the

7 question, I'm sorry.

8 Q Okay. Under this algorithm --

9 A I thought you were talking about

10 suspicion.

11 Q Okay. This says, "Is the suspicion of

12 abuse or neglect confirmed."

13 Do you see that on the algorithm?

14 A Yes, I do.

15 Q And then you see it has a yes and a no?

16 A Yes.

17 Q And you see where it says, "Yes," and then

18 it goes down to "report cases to county DSS in which

19 child resides"?

20 A Yes.

21 Q And that was done, right?

22 A Yes.

23 Q And so the -- my question was, was the

24 suspicion of abuse or neglect confirmed according to

25 the algorithm?

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1 MR. TODD: Objection.

2 MR. FRAWLEY: Same objection.

3 THE WITNESS: Yes.

4 MR. HOOD: Okay.

5 BY MR. HOOD:

6 Q I'm going to Exhibit 5, which is the --

7 A Yes.

8 Q Exhibit 5 says, Child physical -- this

9 says, "Evaluation management of suspected child

10 abuse or neglect and child physical abuse

11 identification," and then it says "injuries that

12 should be considered suspicious for physical abuse.

13 Number one, age zero to six months any injury."

14 Do you see that?

15 A Yes.

16 Q Under B, "Essential aspects care taker

17 history."

18 A Um-hmm.

19 Q It says, "Does the parent, guardian or

20 child give a logical explanation as consistent with

21 the age, pattern and severity of the injury. This

22 should be assessed by clinician familiar with normal

23 pediatric development."

24 Do you see that?

25 A Yes.

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1 Q And you would agree they didn't give any
2 explanation --
3 A No.
4 Q -- whether logical or illogical, they just
5 didn't give one.
6 A Right, no explanation.
7 Q And then under B it says, "Consider the
8 biomechanics of the injury."
9 Remember earlier when I said did a
10 fall rarely cause an intra-cranial hemorrhage from
11 less than four feet, this is where I got it from.
12 A Right.
13 Q I just couldn't remember where.
14 It says, "A fall from less than four
15 feet rarely causes a fracture and almost never
16 causes intra-cranial hemorrhage. A child who can
17 cannot crawl or walk should not have a bruise,
18 fracture, burn or laceration."
19 Do you see that?
20 A Yes.
21 Q Okay. And so when you look at something
22 like a subdural hematoma and a falx hematoma, you
23 have to consider the biomechanics of the injury, in
24 regard to whether its accidental or NAT, right?
25 A Yes.

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1 Q And you agree that a fall from less from
2 four feet -- at least according to this policy from
3 Carolinas Hospital or Carolinas Medical Center that
4 a fall from less than four feet almost never causes
5 an intra-cranial hemorrhage?
6 MS. BROOKS HOLMES: Objection
7 MR. TODD: Objection.
8 THE WITNESS: According to the policy,
9 yes.
10 BY MR. HOOD:
11 Q Okay. And you agree with that, right?
12 MS. BROOKS HOLMES: Objection
13 THE WITNESS: Rarely, yes.
14
15 BY MR. HOOD:
16 Q And then under evaluation. And so to
17 determine NAT or AT, you have to consider the
18 biomechanics of the injury, according to the policy,
19 right?
20 A Right. But this is talking about if
21 somebody tells you there is injury and how to
22 evaluate whether it is possible to occur the way
23 they explained it. But when there is no
24 explanation, you can't determine whether -- exactly
25 what happened.

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1 Q Because you can't even consider the
2 biomechanics of the injury because there is no
3 explanation at all.
4 A Because there's no explanation.
5 Q Okay. Do you consider -- okay. And I'm
6 not talking about Owen Carduff, I'm talking about if
7 someone comes in and a child has a laceration on his
8 scalp and a -- and a subdural hematoma and the
9 parents say I don't know what happened and but it's
10 just suspicious.
11 Do you still have to consider the
12 biomechanics even if they don't give you an
13 explanation?
14 MR. TODD: Objection.
15 THE WITNESS: I'd -- I'd -- I'd have to
16 have a concrete case, that's not --
17 BY MR. HOOD:
18 Q Okay.
19 A Yeah. That -- I -- I can't say what
20 I would do, because I don't have the specifics.
21 Q It would just depend on the case itself?
22 A Yes.
23 Q Okay. Under evaluation and treatment. It
24 says, "Refer to CHS policy, reporting -- report of
25 juvenile suspected of being abused or neglected."

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1 And you-all did report it, right?
2 A Yes.
3 Q Two, "Complete a physical examination."
4 You did that.
5 A Yes.
6 Q "Complete scan form and scan admission order
7 set," you began that --
8 A Right.
9 Q -- right? "Age zero to two years,
10 non-accidental trauma series should be considered in
11 all cases not a long series but baby gram, a
12 pediatric radiologist to do an official reading."
13 And you-all did that, right?
14 A Yes.
15 Q Six, "Nuclear medicine bone scan for
16 repeat NAT series in two weeks if index of suspicion
17 for skeletal injury remains high despite initial
18 negative NAT series. For example, in cases of
19 abuse -- abusive head trauma formerly known as
20 shaken baby syndrome."
21 You see that, right?
22 A Yes.
23 Q And you did a repeat NAT series in two
24 weeks, right?
25 A Yes.

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1 Q Because there was index of suspicion and
2 it remained high despite initial negative NAT
3 series?
4 MR. FRAWLEY: Object to form.
5 MR. HOOD: Right?
6 MS. BROOKS HOLMES: Objection.
7 THE WITNESS: There was a -- there was a
8 suspicion that there might still possibly be an
9 injury so to be complete, we did a repeat series.
10 BY MR. HOOD:
11 Q Okay. And they used -- when it remains
12 high, for example, in cases of abusive head trauma
13 formerly known as shaken baby syndrome, right,
14 right?
15 A Right, I guess that's what it says, yes.
16 Q In this particular case whether this child
17 suffered abusive head trauma or an accidental
18 trauma, you can't rule in or out one way or the
19 other?
20 A Yes.
21 Q Okay. It says, number nine, "CT scan of
22 head of suspected acute intra-cranial injury or
23 other injuries that indicate need to assist for
24 non-accidental injuries." And that was done?
25 A Yes.

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1 Q It says, "Consider MRI scan of head of
2 subacute older than five to seven days or chronic
3 intra-cranial injury after two to three days and
4 patient is stable."
5 You see that, right?
6 A Yes.
7 Q Now, when they did this repeat CT, two
8 days later on 12/7, even though it was beginning to
9 dissipate, it was still there.
10 A Yes.
11 Q So why wasn't an MRI done?
12 A That's something to ask the pediatric
13 neurosurgeon. That's his area of expertise.
14 Q Okay. So that would be -- that would be
15 up to him?
16 A Right, to make that --
17 Q Okay.
18 A -- that call.
19 Q Number 11 says, "Pediatric
20 ophthalmology consult preferred fundoscopy in cases
21 of suspected intra-cranial injury, suspected abusive
22 head trauma, metaphysical fractures, subdural
23 subarachnoid hemorrhage and a posterior rib
24 fracture," and in this case there was a pediatric
25 ophthalmology consult.

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1 A Yes.
2 Q I believe you said you don't know what the
3 specifics of the actual --
4 A The exam. What the exact -- I do know the
5 exam occurred, but I don't know the specifics.
6 Q Sure. Okay. Did you participate in the
7 formulation of the child maltreatment clinical
8 practice guidelines?
9 A I did not.
10 Q Do you know who created them?
11 A I do not.
12 Q And do you know if this is the -- these --
13 these appear to be guidelines and at the bottom it
14 says, "Revised, 05/11."
15 Were these basically the same
16 guidelines that were in effect in December of 2009?
17 A I have no idea.
18 Q Okay. And do you know if -- what the
19 source of the guidelines were?
20 A I don't know.
21 Q Okay. I am looking at Exhibit 1. This is
22 stuff where they did the social work.
23 Yes, that is it. On Page 2 of that
24 it just says, "MSW spoke with co-worker Krista
25 Hinnant." And then the next two sentences later it

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1 says, "MSW spoke with attending Dr. Courtlandt about
2 likely inability to confirm NAT due to limited
3 findings. Would like to have on going DSS
4 involvement with investigation. Home visit,
5 parenting education, follow-up NAT series in two
6 weeks as outpatient."
7 Do you see that?
8 A Yes.
9 Q Now, do you recall speaking with her?
10 A With the social worker?
11 Q Yeah.
12 A Yes.
13 Q And it -- it says, "About the likely
14 inability to confirm NAT due to limited findings."
15 Do you see that?
16 A Yes.
17 Q Is that once again the -- you can't rule
18 in or out?
19 A Because you don't have anything to go
20 along with. I mean you have the subdural
21 hemorrhage, you have no story, no retinal
22 hemorrhage, no fractures.
23 Q Okay. And then it says, "Would like to
24 have on going DSS involvement with investigation."
25 Was that you or was that the social

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1 worker that was saying that?

2 A I think we -- we discussed the case and

3 that was one of the things that Dr. Morgan felt,

4 would be, you know, what we needed to get more

5 meat on the bones, so to speak.

6 Q Was your -- was your conversation with the

7 social worker after your conversation with

8 Dr. Morgan?

9 A I don't recall which preceded.

10 Q Okay.

11 A Which was before or after. This is on the

12 7th.

13 Q At about noon.

14 A At about noon. I really can't say.

15 Q Okay.

16 A It could have been either before or after.

17 Q Okay. If it was before --

18 A It was -- it was probably after -- I would

19 say most likely it was after.

20 Q And that's because it would have included

21 the stuff about the investigation, home visit,

22 parenting education?

23 A Right. That would be -- that would be my

24 suspicion.

25 Q And that would have been stuff that you

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1 did discuss that type of stuff with Dr. Morgan?

2 A Yes.

3 Q Okay. I don't think you're anywhere else

4 in here.

5 Exhibit 11, I think that was

6 something before as well. It was that suspected

7 child abuse and neglect form.

8 A Right.

9 MR. TODD: We talked about that early on,

10 are we going back there?

11 MR. HOOD: Yeah, I'm just -- just finding out

12 why something wasn't filled out.

13 MR. TODD: Okay. I don't think we did.

14 BY MR. HOOD:

15 Q Before we go there, do you know if

16 Dr. Morgan ever actually assessed the patient and

17 met with the parents?

18 A I don't know that. I know that Lynn

19 Myers, the child protection nurse put a note in the

20 chart that she would discuss the case with

21 Dr. Morgan. I don't know what their -- their

22 discussion was and if Dr. Morgan saw the case.

23 I know that she said -- I know that

24 she looked at the films, because we looked at the

25 films together.

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1 Q Sure. But you don't know if Dr. Morgan

2 ever met with the family?

3 A I don't know that --

4 Q Okay.

5 A -- one way or the other.

6 Q Okay. This is this -- this here --

7 A The scan form.

8 Q The scan form. It looks like the --

9 A I lost it now.

10 Q I think this is it right here.

11 A Oh, okay.

12 Q The snake that bit you.

13 I know that it looks like the first

14 part is filled out and then a little bit on the

15 second page.

16 A Right.

17 Q But then after that it doesn't look like

18 there's a whole lot filled out.

19 A Right.

20 Q And I why is that?

21 A I'm not sure. I really just have to say

22 I'm not sure. All of the information that would be

23 included in this form, is already documented

24 elsewhere. In general, this form gets filled out

25 immediately on admission, that's the usual process.

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1 Q Okay.

2 A So I think the dissertations contained a

3 lot of the information and therefore, I think

4 probably that's the reason I why it wasn't filled

5 out, but I can't say for sure.

6 Q This would have been on 12/5 or 12/4 and

7 you weren't there.

8 A Right.

9 Q You didn't take over care until 12/7.

10 A Right, and it's not signed or dated for me

11 to know -- it's not signed or dated for me to even

12 to put a perspective on who might have started it.

13 So what might have been the reasons for it not to be

14 finished.

15 Q I noted on the front it does say "History

16 from caretaker must be obtained separately from

17 patient."

18 Do you see that?

19 A Right, right.

20 Q And there's nothing there, right?

21 A Right. But you couldn't obtain a history

22 from of the patient.

23 Q Right. Well, actually it says it must be

24 obtained separately from patient, right?

25 A Right. But you couldn't obtain a history

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1 from the patient.
 2 Q This is says history from caretaker.
 3 A Yeah, but what they are saying is that you
 4 should get a history from the patient if they can
 5 talk to tell you what --
 6 Q Right.
 7 A -- went on separate from the caretaker.
 8 That if there's a patient that can talk --
 9 Q Right.
 10 A -- you separate them.
 11 Q Right.
 12 A You take a history from the patient that
 13 can talk and you take a history from the caretaker.
 14 Q Right, but the history from the caretaker
 15 it was not filled out, was it?
 16 A It's not filled out here on this but it's
 17 documented in the history and physical --
 18 Q Okay.
 19 A -- admission history and physical.
 20 MR. HOOD: Now, I don't know what we've
 21 marked her CV as? 15?
 22 THE REPORTER: Yes, 15.
 23 BY MR. HOOD:
 24 Q Now did you or any of the other physicians
 25 or medical staff or any of the nurses or medical

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1 providers or social workers that you're aware of
 2 ever discuss with the parents that Owen's injuries
 3 were suspicious or could be suspicious for child
 4 abuse?
 5 A Yes.
 6 Q And what was that conversation like?
 7 A I said frankly to the mother, that this
 8 type of injury is an injury that we see when
 9 children may or may not have had some kind of
 10 shaking or been in some sort of accident or is there
 11 anything that she can think of that may explain how
 12 this bleeding could have occurred.
 13 Q Okay. And she answered in the negative?
 14 A She said, no. She said that he's always
 15 either with myself, with the father or -- myself, or
 16 the father or her mother. She said are the only
 17 three people who ever take care of her child.
 18 Q Did you have that same conversation with
 19 the father and then with the maternal grandmother?
 20 A I had it with -- I did not personally have
 21 it with either one of those, but the resident had it
 22 with both the grandmother and -- the resident had it
 23 with the grandmother and Laura Newmark, the social
 24 worker, had it with all three.
 25 Q Okay. And Laura Newmark would have been

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1 the only one that would have had it with the father
 2 specifically?
 3 A Right, right.
 4 Q Okay. And do you remember which resident
 5 would have had it with the grandmother?
 6 A I assume that was the resident taking care
 7 of him, which was Stephen Renfrow.
 8 Q Okay.
 9 A That's my assumption.
 10 Q Okay. It appears that you went to
 11 Princeton from '75 to '79.
 12 A Yes.
 13 Q Did you -- were you one of those people
 14 that got -- were you one of those smart people that
 15 got like a Rhodes Scholar to Oxford?
 16 A I was not a Rhodes Scholar, it's another
 17 type of scholarship, yes.
 18 Q Okay. Wow. That's -- that's impressive.
 19 And then from '79 to '83, you got your MD at Rutgers.
 20 A Um-hmm.
 21 Q And then from '83 to '89, what did you do?
 22 A From '83 to '89?
 23 Q Yes.
 24 A I was in residency training.
 25 Q Okay.

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1 A Here is -- here. Residency training.
 2 Q Okay.
 3 A That's education. Residency training
 4 isn't considered education and then I decided I
 5 wanted to do some additional work so I went to N.Y.U.
 6 and New England School of Epidemiology.
 7 Q Okay. So you were up at Albert Einstein
 8 from '83 to '87.
 9 A Yes.
 10 Q Was Rick Abbott up there then?
 11 A Um-hmm.
 12 Q I spoke to him about two weeks ago.
 13 A Oh.
 14 Q And then you are at the -- since 2006 to
 15 present, at least, you were with the Department of
 16 Pediatrics at Levine, right?
 17 A Right.
 18 Q And then from '98 to 2006 you were
 19 Department of Pediatrics at Carolinas Medical --
 20 A Carolinas. Levine didn't exist then.
 21 Q I know. There was a big push.
 22 A Yeah, so '98.
 23 Q And then the Family Dollar money came in
 24 handy. I mean --
 25 A Yes.

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1 Q And then you were up at Bellevue from '88
2 to '96?
3 A Yes.
4 Q And then from 2007 to present you were the
5 codirector for the Center for Pediatric Excellence
6 at Levine?
7 A Yes.
8 Q What is the Center for Pediatric
9 Excellence?
10 A It's a quality improvement and a process
11 improvement division.
12 Q Okay. Do you-all have like policies and
13 procedures and stuff?
14 A No. It's really about making improvements
15 in kind of all aspects in the care that we deliver.
16 It's not really a policies and procedures kind of
17 thing, it's more working on different things to make
18 the system better.
19 Q Okay. Do you-all have like written
20 material that you-all put out or --
21 A Not like a policies and procedures kind of
22 thing. It's more scholastic, and, you know, more
23 articles and, you know, we did, X, Y and Z to
24 improve the process, you know, that is what we did.
25 So it's more of demonstration of things that can

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1 make things work easier. It's kind of more.
2 Q Did you-all -- have you ever done anything
3 in regard to child abuse?
4 A I personally have not.
5 Q Do you know if the Center for Excellence
6 ever addressed that issue?
7 A Probably not.
8 Q Okay.
9 A That would be an individual faculty member
10 to come up with that project.
11 Q Okay. And from 2000 to present, you've
12 been on the faculty of the Department of Pediatrics
13 at Carolinas Medical Center?
14 A Yes.
15 Q And people round with you? I mean you have
16 residents R1, R2 and R3 that --
17 A Yes.
18 Q -- that -- that -- work under you?
19 A Yeah, medical students occasionally as
20 well --
21 Q Okay.
22 A -- depending on the season.
23 Q Okay. And you're licensed in North
24 Carolina and New York State; right?
25 A Yes. Well, actually I'm no longer

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1 licensed in New York State, I need to remove that, I
2 just let it lapse.
3 Q You just let it lapse?
4 A I just let it lapse, just recently.
5 Q You've not had -- you haven't lost your
6 license due to anything other than just letting it
7 lapse?
8 A Yeah.
9 Q Are you board certified?
10 A Yes, and recertified.
11 Q And did you pass them on the first try?
12 A Yes.
13 Q Okay. Are you a been member of AAP?
14 A I'm a member of AAP and APA.
15 Q Okay. And the APA is the American
16 Pediatric Association?
17 A There's the American Pediatric Association
18 and then there is the Academic Pediatric
19 Association.
20 Q Okay. Which one are you a member of?
21 A Both.
22 Q Both. Why was CHIPS formed?
23 A CHIPS was formed because as the
24 environment in Charlotte changed that primary care
25 doctors were not able to come to the hospital, we

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1 needed somebody to -- it wasn't -- it wasn't either
2 economically feasible or medically appropriate as
3 care got more complex to not have physicians in the
4 hospital to make decisions.
5 So people refer us patients, we take
6 care of them as inpatients and then we refer them
7 back to their primary care providers. So very few
8 doctor -- pediatricians in this community now come
9 to the hospital, so we're kind of like the hospital
10 service.
11 Q Okay. Now in regard to this particular
12 child, I've seen different stuff about the
13 discharge. I've seen different names on there, but
14 -- but, as far as the discharge, is it fair to say
15 that the child would have been under the care of the
16 CHIPS team until December 8, 2009?
17 A Is the -- December 9th, that was the
18 discharge date.
19 Q December 8th, I'm sorry.
20 A December 8th.
21 Q 2009. And that you were the attending
22 physician for the CHIPS team on December 7th and
23 December 8th?
24 A Yes.
25 Q And there may have been residents on that

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1 team, but you were the licensed practitioner --
2 A Yes.
3 Q -- medical doctor?
4 A Yes.
5 Q And that as far as the discharge goes,
6 that you would have been the person that would have
7 been responsible for the medical discharge of the
8 patient?
9 A Yes.
10 Q And that you would have also depended on
11 the team of the medical social worker and DSS in
12 doing their appropriate part in the discharge of
13 this child?
14 A Yes. Getting the safety plan.
15 Q Okay. Have you ever had your deposition
16 taken before?
17 A Not like -- not a deposition like this,
18 this is my first time like this.
19 Q Okay. And as regard to getting
20 ready for this, did you review some of the medical
21 records before?
22 A I did review a book of medical records
23 that was given to me by the attorney.
24 Q Okay. And did you review any of the
25 depositions?

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1 A No, no depositions.
2 Q Okay. Other than Mr. Todd or the people
3 that you spoke to at the time that this occurred,
4 like December 8th, December 7th, have you spoken to
5 anybody since that time about this case or this
6 child?
7 A Only the risk management person who called
8 me and asked me, did I remember the case and what I
9 met with her and Mr. Todd.
10 MR. TODD: Done. Stop there.
11 MR. HOOD: That's enough. That's enough.
12 Oh, I'd love for you to tell me, but I'm not
13 entitled to that.
14 THE WITNESS: Okay.
15 BY MR. HOOD:
16 Q What books do you -- or does Levine get or
17 do you get or periodicals that you get in the field
18 of pediatrics?
19 MR. TODD: Objection.
20 BY MR. HOOD:
21 Q What -- what periodicals does -- do you
22 receive in regard to the field of pediatrics?
23 You can answer.
24 A Oh, okay. The -- there are a couple of
25 things that I subscribe to. The pediatrics is one of

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1 them.
2 Q And you've actually written an article for
3 them or a few articles for them?
4 A Yes.
5 Q Okay. Is there any other periodical?
6 A There are a couple of quality improvement
7 journals. I'm an asthmatoologist so a lot of
8 pediatric lung, other pediatric -- general pediatric
9 journals.
10 Q Anything in regards specifically to child
11 abuse or child --
12 A Nothing that would be specific.
13 Q Okay.
14 A Only that, and covered under general
15 pediatrics.
16 Q Okay. Your name address and telephone,
17 it's on your C.V.
18 A Yes.
19 Q What is your date and place of birth?
20 A New York City, [REDACTED]
21 Q A Christmas baby.
22 A Yes.
23 Q I was born 12/27. I like to think we are
24 special.
25 A We are.

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1 Q When you get pecan pie down here for your
2 birthday, I mean for Christmas -- for your birthday,
3 it gets old after awhile.
4 Are you currently married?
5 A I am.
6 Q And the reason I'm asking these is because
7 we have to find out stuff about jury stuff down in
8 York County and that's the only reason I'm asking.
9 What's your husband's name?
10 A William Alleyn.
11 Q Doggone. Bill Alleyn is your --
12 A My husband, yes.
13 Q You know, we were in -- I got to tell you
14 this -- 30 seconds.
15 MR. HOOD: You realize he was --
16 THE WITNESS: I know, I know.
17 MR. HOOD: He was our expert --
18 THE WITNESS: As soon as I --
19 MR. HOOD: --in the case --
20 THE WITNESS: -- as soon as I saw you, I
21 said --
22 MR. HOOD: -- that we argued -- when we
23 argued that case in front of Judge Anderson
24 yesterday, he is our expert in that case,
25 and we've got like 10,000 clients.

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1 THE WITNESS: Yeah. I -- as soon as I saw
2 your name, he didn't tell me who it was going
3 to be and as soon as I saw your name, I said,
4 oh, okay.
5 MR. HOOD: So you know Ann Mickle then?
6 THE WITNESS: Very well.
7 MR. HOOD: I was -- I met -- I was staying
8 at her house and I met --
9 MR. TODD: This is all on the record.
10 MR. HOOD: -- Ty Corbin -- Ty Corbin who is the
11 coach of the Utah Jazz.
12 MR. TODD: Do you want to go off the record?
13 THE WITNESS: We were at the same party.
14 MR. HOOD: Were you there?
15 THE WITNESS: Yes, yes.
16 MR. HOOD: Now.
17 THE WITNESS: We were at the same party.
18 MR. HOOD: Because I met Coach Vogler and --
19 okay. Okay. Got you. I'm sorry. I digress,
20 I digress.
21 THE WITNESS: I was kind of hoping you
22 wouldn't ask me, but he told me you would,
23 so...
24 MR. HOOD: Well, at least I know now, you do have a
25 connection to Rock Hill.

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1 THE WITNESS: I do have a big connection
2 to Rock Hill.
3 MR. HOOD: Okay. So Dr. Alleyn is your
4 husband.
5 THE WITNESS: Yes.
6 MR. HOOD: Okay.
7 THE WITNESS: Yeah, let's move on.
8 MR. HOOD: Do you-all go to church or
9 anything down in Rock Hill?
10 THE WITNESS: Not in Rock Hill, we go to
11 church in Charlotte.
12 MR. HOOD: Okay.
13 BY MR. HOOD:
14 Q Have you ever been sued before?
15 A No, I have not.
16 MR. HOOD: And I'm assuming you have --
17 you're going to plan for her to testify live at
18 trial, in case it comes to trial?
19 MR. TODD: Good Lord willing, she and I
20 will both be there.
21 MR. HOOD: Yeah. And -- and if you do testify
22 at trial, do you anticipate that your testimony
23 will be the same or similar to the way it is
24 today?
25 THE WITNESS: Yes.

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1 MR. HOOD: Is there anything that you want
2 to change about your testimony at this time?
3 THE WITNESS: No.
4 MR. TODD: Okay. Give me about 30
5 seconds.
6 (Pause.)
7 BY MR. HOOD:
8 Q Now, I have just have one last question.
9 With respect to child abuse, would
10 you agree that you and the staff and colleagues at
11 Levine would be in the best position to assess and
12 determine a case of child abuse?
13 MR. TODD: Objection.
14 THE WITNESS: I would say in consultation
15 with the child maltreatment team and the help
16 of my pediatric colleague, yes.
17 BY MR. HOOD:
18 Q Okay. And the child maltreatment team is
19 the maltreatment team at Levine Children's Hospital?
20 THE WITNESS: Yes.
21 MR. HOOD: That's all I have.
22 MR. FRAWLEY: DSS has no questions.
23 MR. TODD: No questions.
24 (Deposition concluded at 5:50 p.m.)
25 (* This transcript may contain quoted

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1 material. Such material is reproduced as read
2 or quoted by the speaker.)
3 (** Certificate accompanies sealed
4 original only.)
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1 A With the -- 2 Q And, we discussed earlier that that safety plan 3 would have been the safety plan that was in place 4 until you did yours on the 17th of December; is 5 that fair? 6 A Yes. 7 Q And can you tell me what the safety plan says? Or 8 what it -- according to your notes? 9 A What my safety plan says? 10 Q No. What that safety plan -- the safety plan that 11 was put in place at the hospital that was in place 12 until your safety plan on the 17th? 13 A "Parents not to remove the child from hospital 14 against medical advice and until DSS determines" -- 15 Q Okay. 16 A I don't know if it's "any more information." 17 That's just -- 18 Q Okay. I can pull that safety plan. 19 A Okay. 20 Q I can tell you it's not in these documents. 21 A Okay. 22 Q But, if you'll remind me on the next break, I'll 23 pull it. We'll read the whole thing, okay? 24 A Okay. 25 Q But it is -- but is it fair to say that that's the	1 Q I knew it was either '7 or '9. Have you had any 2 other cases with children that had subdural 3 hematomas? 4 A Not to my knowledge. 5 Q Okay. When you have cases where children are in 6 the hospital, do you staff those cases with 7 hospital staff? 8 A We do have a -- yes. We have -- it's a 9 multidisciplinary agency meeting in which we do 10 staff the cases now with the hospital staff, law 11 enforcement detectives, anybody that's providing 12 services to the family. 13 Q And when you said you do that "now," did you do 14 that in 2009-2010? 15 A I cannot recall. 16 Q If you had, would it be in your dictation? 17 A It would be in the dictation if we did. 18 Q Okay. And would it be listed as a case staffing or 19 what other actions might it be listed under? 20 A I do not know what action that would fall up under. 21 Q Well, if you do that now, what do you typically 22 document that as? 23 A I cannot recall what that would be listed up under. 24 Q Okay. 25 A If that would be "collateral contact."
Page 42	Page 44
1 safety plan that was in place for -- until your 2 safety plan on the 17th of December? 3 A This is the safety plan that was in place, and, at 4 that time, the agency got in contact with Levine's 5 and informed them that it was okay to allow the 6 parents to -- the parents and the baby to be 7 discharged or to allow Owen to be discharged. 8 Q Okay. So whose decision was that: to -- to allow? 9 A The agency's. 10 Q The agency's, i.e., DSS? 11 A The agency decision. 12 Q Okay. So DSS's decision? 13 A Yes. DSS. 14 Q And what input does the hospital have into that 15 decision? I mean, just in your experience. 16 A The hospital provided us the information regarding 17 the parents' cooperation and what was going on with 18 the baby at that time. 19 Q Okay. 20 A And any concerns that they might have had -- 21 Q Okay. 22 A -- for us to address. And, at the time, could not 23 determine if it was non-accidental or accidental. 24 Q You've been working for DSS since 2009, you said? 25 A 2007.	1 Q Okay. Do you know whether or not -- or do you 2 recall whether or not, related to this case, you 3 were given any written warnings, reprimands, 4 anything like that? 5 A I cannot recall. 6 Q Do you recall whether or not you had any 7 discussions with your supervisor, either Krista 8 Hinnant or Yvonne -- whose name escapes me. Her 9 last name? 10 A Stewart. 11 Q Stewart. Yvonne Stewart. -- regarding timely 12 referrals to law enforcement? 13 A I want to say yes. 14 Q Do you have any recollection of that conversation? 15 A I do not. 16 Q Okay. Do you know whether or not there was any 17 documentation related to that? 18 A Documentation in regards to? 19 Q The -- whatever conversation you had about timely 20 referrals or not-timely referrals to law 21 enforcement? 22 A I cannot recall that information. 23 Q Okay. And do you know -- do you know how many 24 other new cases you got that week, the week that 25 the Owen Carduff case came in?

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1 Q Okay. So let me just make sure I understand you, 2 that sometimes the hospitals would call dispatch of 3 law enforcement? 4 A Yes. 5 Q And sometimes the hospital would call straight to 6 D98? 7 A Well, it was -- it was a number that they have to 8 call. And, once they call that number, sometimes 9 it connects them to dispatch, and the dispatch 10 contact the on-call worker, and the on-call worker 11 contacts the supervisor to let the supervisor know 12 of the report. And then the on-call worker calls 13 the hospital back or maybe the school back or maybe 14 law enforcement back to get the information to see 15 exactly what's going on. 16 Q Okay. 17 A And then that on-call worker calls the supervisor 18 back to give them all the information and what the 19 recommendation is and to see if they need to go out 20 and to assess the situation. 21 Q Oh, okay. And, when you have a -- a case that the 22 hospital is involved in, as a caseworker, how do 23 you typically communicate with the hospital? 24 First -- strike that. Let's back up one. As 25 a caseworker, how -- who do you usually communicate	1 to the first incident? 2 A Regarding that, I was doing the ground work for the 3 case and my supervisor was helping me make contact 4 with the hospital staff to make sure that we were 5 on the same page. 6 Q And when you say you were "doing the ground work," 7 what does that mean? 8 A Attempting to go out to the home to assess the 9 follow-up with the family. Along with working the 10 other cases as well. So -- so she was working -- 11 working the case basically to see exactly what was 12 going on with the case and what was going on with 13 Owen at the time. 14 Q Krista was doing that? 15 A Yes. 16 Q Okay. Do you recall whether or not you ever made 17 the recommendation or a referral for parenting 18 classes prior to the second incident? 19 A I cannot recall that information. 20 Q Do you take photographs of the children that you 21 have cases of -- on -- with? 22 A Yes. 23 Q Do you recall whether or not you took any 24 photographs of Owen? 25 A I -- I cannot -- I cannot recall that information.
Page 50	Page 52
1 with at the hospital? 2 A Make contact with the reporter. 3 Q Okay. 4 A Or any -- or anybody that's involved or know of any 5 information regarding the child. And make contact 6 with the family. 7 Q Okay. Do you talk to nurses? 8 A If they're any nurses that's there and have the 9 information. 10 Q Okay. Do you talk with doctors? 11 A If they're available. 12 Q Do you talk with social workers or discharge 13 planners at the hospital? 14 A We talk to anybody that you can get information 15 from regarding the allegation. 16 Q Related to the Owen Carduff case, do you recall 17 talking to any nurses or doctors? 18 A The second incident, I do recall speaking with 19 someone at the time of that visit to the hospital. 20 Q Do you recall speaking to any nurses or doctors 21 related to the first incident? 22 A No. 23 Q Do you recall speaking with a caseworker -- I don't 24 know what they call them there -- discharge 25 planners or social workers at the hospital related	1 Q Would they be in the file if you had? 2 A They would not be in the file. 3 Q Where would they be? 4 A They would be on that camera if pictures were 5 taken. 6 Q What do you take -- why would you take pictures of 7 the children? 8 A Take pictures of the children that we did see the 9 children; if they had any marks or bruises on them; 10 to assess the home; living arrangements; see if 11 they had any food in the home; what the living 12 arrangement looked like. 13 Q And then you said those -- if there were photos, 14 they would be on "that" camera. What camera? 15 A The camera that I was using at the time. 16 Q Do you have any idea where that is? 17 A No. 18 Q And you don't print the pictures and put them in 19 the file? 20 A We usually put them on the G drive. 21 Q What's the G drive? 22 A G drive is the system that we use to put our case 23 pictures on -- case file pictures on. 24 Q And is it separate from where the CAPPS information 25 is?

State of South Carolina	)	
	)	
County of York	)	
Elizabeth Hope Rainey,	)	11-CP-46-04508
as the appointed	)	
Guardian ad Litem to	)	
Owen C [REDACTED], a minor,	)	
	)	Video Deposition
Plaintiff,	)	
	)	of
vs.	)	
	)	Krista M. Hinnant
Charlotte-Mecklenburg	)	
Hospital Authority d/b/a	)	
Carolinas Medical Center,	)	
South Carolina Department	)	
of Social Services, Bruce	)	
Bryant, as the	)	
Constitutional Office of	)	
York County,	)	
	)	
Defendants.	)	

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

Reported by
Kathleen R. Tackett, CVR

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EXHIBITS

Plaintiff's Exhibit Number 21, Handwritten notes.	59
Plaintiff's Exhibit Number 22, "Release of Information"; "Safety Plan"; "South Carolina Department of Social Services Acknowledgement."	81

1

STIPULATIONS

2

It is stipulated by and between counsel for

3

the respective parties that all objections are

4

reserved until the time of trial, except as to

5

the form of the questions.

6

This deposition is being taken pursuant to the

7

South Carolina Rules of Civil Procedure.

8

- - - -

9

The reading and signing of this deposition is

10

waived by the deponent and counsel for the

11

respective parties.

12

Whereupon,

13

Krista M. Hinnant, being duly sworn and

14

cautioned to speak the truth, the whole truth,

15

and nothing but the truth, testified as

16

follows:

17

EXAMINATION

18

BY MS. HARRILL:

19

Q Good morning, Ms. Hinnant.

20

A Good morning.

21

Q My name's Lara Harrill. We met right before this

22

deposition. Have you ever given a deposition

23

before?

24

A No, ma'am.

25

Q I'm going to go over the rules with you.

1 A Okay.

2 Q Although I know someone has probably done it.
3 First thing is, since we have a court reporter
4 here, she's trying to take down everything we say.

5 A Right.

6 Q I have a tendency to talk over people. If you'll
7 let me finish my question, I'll try and let you
8 finish your answer.

9 A Okay.

10 Q If I interrupt you, please stop me.

11 A Uh-huh.

12 Q I want to make it clear for her. Even with the
13 videographer, it's harder for her to get everything
14 on the record.

15 A Okay.

16 Q If you will say yes and no instead of nodding your
17 head --

18 A Yeah.

19 Q -- or saying uh-huh or unh-unh, that'll make it
20 much easier for her as well. If you have any
21 questions during this deposition, I'd asked that
22 you direct those questions to me rather than to
23 your attorney.

24 A Okay.

25 Q If you do not understand my question, please ask me

1 to repeat or rephrase it. I'll be glad to do that.

2 A Okay.

3 Q If you answer a question, I'm going to assume that
4 you understood it; is that fair?

5 A Yes.

6 Q Okay. If you need a break at any time, please let
7 me know.

8 A Okay.

9 Q This is not an endurance contest. I don't know
10 exactly how long we'll be here, but we will play it
11 by ear.

12 A Okay.

13 Q Could you state your name for the record, please?

14 A Krista M. Hinnant.

15 Q And what's your current address?

16 A 776 Old Mill Road, Richburg, South Carolina 29729.

17 Q And how long have you lived there?

18 A Four years.

19 Q And who lives there with you?

20 A Me and my husband.

21 Q What's your husband's name?

22 A Christopher Hinnant.

23 Q Okay. When and where were you born?

24 A Chester, South Carolina. January 13th, 1984.

25 Q And what does your husband do?

1 A He is in industrial sales.

2 Q Okay. Who does he work for?

3 A Bryant Supply.

4 Q And tell me a little bit about your education,
5 starting with high school.

6 A I went to Lewisville High School in Richburg, South
7 Carolina, and then I went to college at University
8 of South Carolina. I graduated with a bachelor's
9 degree in criminology and criminal justice in 2006.

10 Q Okay. And what was -- what did you do after
11 college workwise?

12 A I worked for Columbia Police Department for about a
13 year, and then I moved back home, and then I
14 started working at Department of Social Services in
15 2007.

16 Q And what was your position when you started with
17 DSS?

18 A Initially, when I started with DSS, I was hired to
19 do assessment, and then I did intake for a little
20 while. And then in October of 2008, I was a
21 supervisor, all the way up until March of 2010.
22 I'm sorry, that was May of 2010.

23 Q And what did you start -- what -- what did you
24 change to in May of 2010?

25 A I started working at Williams & Fudge Incorporated,

1 here in Rock Hill, South Carolina.

2 Q And what do you do there?

3 A I do student loan collections.

4 Q Okay. When you were a supervisor at DSS, was it
5 always over the same unit?

6 A The same individuals, you mean, or?

7 Q Well, you said you did assessment for a little
8 while.

9 A Yes, assessment.

10 Q Are they --

11 A I was -- it was always assessment and
12 investigations.

13 Q Okay.

14 A Yes, ma'am.

15 Q So tell me a little bit about what you do in
16 assessment and investigations.

17 A You have 45 days. You have an allegation that
18 comes in. You have 45 days to address the
19 allegation. And you can either indicate the case,
20 and it may go to treatment, or it can be unfounded,
21 meaning there's no abuse or neglect, and then the
22 case is closed.

23 Q So does -- would you call that -- what would you
24 call, like, your office in terms of if you're
25 supervising other people. Will you -- do you call

1 that a unit? Do you call it: "assessment and
2 investigations"? What do you call it?

3 A Yes. Assessment and investigations. Yes.

4 Q Okay. So in -- in assessment and investigations,
5 you all, -- is it fair to say, you don't deal with
6 children in foster care?

7 A No. That's correct.

8 Q Okay.

9 A We do bring them into foster care, but we don't
10 typically deal with it once it comes into foster
11 care. There's a foster care worker that starts
12 working on it.

13 Q So if you brought a kid into foster care, that case
14 would be transferred to foster care --

15 A Yes.

16 Q -- treatment?

17 A Once a case decision is made, correct.

18 Q Okay. So, typically, how many caseworkers would
19 you supervise?

20 A Four. And sometimes I would have interns from
21 Winthrop, as well.

22 Q And about how many cases on average would you have
23 at any given time? Do you have any sense of that?

24 A Fifteen to twenty would be between each worker.

25 Q Okay. And what would your job responsibilities

1 have been?

2 A Staffing the case with a worker and, kind of,
3 giving them guidance as to what they should do in
4 terms of putting in safety plans and investigating
5 the case.

6 Q Did you carry any cases of your own?

7 A Yes. Initially, when I was an assessment worker, I
8 did.

9 Q As a supervisor, did you carry any cases?

10 A No.

11 Q Okay. And are you a licensed social worker?

12 A No.

13 Q When you went to work for DSS, did they give you
14 any specific social work training?

15 A Yes.

16 Q And about how long did that take?

17 A Initially, we went to Columbia. I believe, it was
18 for a two-week training, and then we had a lot of
19 of courses and other training that we had to -- had
20 to attend, as well.

21 Q Did you have, like, continuing training?

22 A Yes. Uh-huh.

23 Q Okay. Have you discussed this case with anyone
24 other than your lawyer?

25 A No, ma'am.

1 Q Did you review anything in preparation for your
2 deposition today?

3 A Yes.

4 Q Can you tell me what that was?

5 A I reviewed the, primarily, the case dictation, the
6 intake, and the staffing sheets for the case.

7 Q And did you bring any of those documents with you?

8 A Yes, ma'am. I did.

9 Q Do you mind if I look at them real quick?

10 A Sure.

11 MS. HARRILL: Deborah, do you mind looking
12 over just to see if you see anything that we
13 don't already have? That way we can keep
14 going.

15 MS. CASEY: Sure.

16 MS. HARRILL: Okay.

17 MR. FRAWLEY: Excuse me, Lara. Could I look
18 at that first to make sure that there's no e-
19 mails or anything from me?

20 MS. HARRILL: Certainly.

21 MR. FRAWLEY: Don't know that there are. But
22 we'll -- I'll look through this quickly and
23 give it back to Deborah. You can go ahead
24 while I'm --

25 MS. HARRILL: Go ahead. Okay.

1 THE DEPONENT: There's not.

2 MR. FRAWLEY: Okay. Well, that's good enough
3 for me.

4 THE DEPONENT: There's nothing in there
5 besides the case dictation and the staffing
6 sheets.

7 Q Okay. So you had -- at any time you had four
8 caseworkers with 15 to 20 cases per worker?

9 A That's correct. Yes, ma'am.

10 Q And you said your -- your job, sort of, was to
11 staff the cases with the caseworkers and to guide
12 them?

13 A As to what they should do in each individual case.

14 Q And how do you follow up to see what they are
15 doing?

16 A We had staffings four and five times throughout the
17 duration of the case.

18 Q And how long would your duration -- would the
19 duration of a case typically be in York?

20 A Forty-five days.

21 Q Forty-five days?

22 A Yes, ma'am.

23 Q So is it fair to say you have 45 days to make the
24 case decision?

25 A You can have longer if you need it, but typically

1 it's 45 days.

2 Q Okay. Do you recall Owen Carduff or his family?

3 A Yes, ma'am. I do.

4 Q What do you recall about him, specifically?

5 A That it was a case that we had in 2009, that came
6 in with a child who had subdural hematomas.

7 Q Did you ever meet Owen?

8 A No. I did not.

9 Q Did you meet anybody in his family?

10 A No. I did not.

11 Q Do you know if you had any contact with them?

12 A Yes. I did. Telephone.

13 Q Do you remember who you talked to?

14 A I spoke with Charlotte Williams on the telephone,
15 and I think that's the only party that I spoke with
16 directly myself.

17 Q So you don't think you ever spoke to Kayla?

18 A No, ma'am. I don't recall.

19 Q Okay. If you had, would that be documented
20 somewhere?

21 A Yes. It would.

22 Q In the dictation?

23 A Yes.

24 Q Okay. Who -- when you were a supervisor, who was
25 your supervisor?

1 A Phyllis Moore Ward.

2 Q And what is her title?

3 A Program coordinator.

4 Q Program coordinator of?

5 A York County Department of Social Services.

6 Q So for the county?

7 A For treatment. Yeah, for -- for treatment and for
8 assessment.

9 Q Is there a difference in your offices between
10 treatment, assessment, and intake?

11 A No. Treatment, assessment, and intake were all
12 caballed into one.

13 Q Okay.

14 A Foster care was the only thing that was separate.

15 Q So when a case comes in, is it fair to say -- not
16 if it comes in in the middle of the night -- but if
17 a case comes in, does it come in to your workers?

18 A In comes into intake and then a decision is made
19 whether or not to accept it for an investigation or
20 to not accept it. And, if it's accepted, then it's
21 assigned to a worker.

22 Q Okay. So it's fair to say that your workers aren't
23 manning the phones?

24 A Correct.

25 Q And that those -- the people that are manning the

1 phones are considered intake?

2 A Intake workers, yes, ma'am.

3 Q So they make a decision about whether or not the
4 allegations are credible?

5 A They don't make the decision. The supervisor makes
6 the decision after they review the report.

7 Q Awesome. Okay. And then, once they've made that
8 decision, it comes to your unit; is that fair?

9 A It's dispersed throughout the workers. So, yes, it
10 would either have come to me or one of the other
11 two supervisors.

12 Q Okay. So are there three intake -- or assessment
13 supervisors?

14 A Supervisors. That's correct, yes.

15 Q How --

16 A When I was there.

17 Q Sorry. How are the cases then -- how are the cases
18 divided out?

19 A They are dispersed. There's a list of workers.
20 It's primarily by supervisor. So that a supervisor
21 wouldn't be getting two cases back to back, it
22 would rotate through the supervisors; so that's,
23 typically, how we try to do it.

24 Q Let me just make sure I understand. There's three
25 supervisors.

1 A Yes.

2 Q In this treatment and assessment.

3 A Assessment only. Treatment's separate.

4 Q Okay. That's where I was getting confused. So

5 three assessment supervisors.

6 A Correct. And then there's treatment supervisors.

7 Q And then is it fair to say that each one of the

8 assessment supervisors has about four caseworkers?

9 A Yes. That's correct.

10 Q Okay.

11 A Uh-huh.

12 Q All right. And, when the cases come in, it just

13 goes by list as to who?

14 A There's a list of individuals, yes.

15 Q Okay. As to who gets what?

16 A Yes. So no one would get one back to back.

17 Q No one supervisor or no one case manager?

18 A No one case manager and no one supervisor is how we

19 tried to do it.

20 Q Either one.

21 A Yes.

22 Q So, when the Owen C [REDACTED] case came in, it was just

23 y'all's turn to take it?

24 A That's correct.

25 Q Okay. Got it. Now, we -- I got a little off

1 track. Phyllis Moore Ward?

2 A Uh-huh.

3 Q She's the supervisor for York County DSS treatment
4 and assessment?

5 A She's the program coordinator for intake,
6 assessment and treatment for York County DSS.

7 Q Okay.

8 A There's a separate program coordinator for foster
9 care and APS.

10 Q So foster care is entirely separate?

11 A Yes. Correct.

12 Q So we don't need to talk about foster care.

13 All right. Who is Phyllis Moore Ward's
14 supervisor?

15 A Yvonne Stewart, the county director.

16 Q Okay. Phyllis Moore Ward still work there?

17 A Yes. To my knowledge, yes.

18 Q Who are the other two supervisors for treatment and
19 assessment below -- you know, equal to you?

20 A Assessment. It would assessment only. It's Lola
21 Sutherland and --

22 Q I'm sorry.

23 A It's okay. -- Lola Sutherland and Diane Stevenson.

24 Q Okay. And I understand that you-all have
25 caseworkers that are on call. How do you decide

1 who's on call?

2 A Everyone is on call, whether you be a foster care
3 worker, an assessment worker, or a treatment
4 worker. It's placed on a calendar, and I think
5 they did alphabetically, but -- so that most
6 workers would only be on call maybe one time in a
7 month.

8 Q Okay. So out of all three of the groups --

9 A Yes.

10 Q -- any one person would be on call?

11 A Foster care, treatment, or assessment, and the
12 supervisor on call could be in -- anyone from
13 assessment, treatment, or foster care as well.

14 Q So much like how you-all got your cases, when this
15 -- when Owen C[REDACTED]'s case came in, that was just
16 Chandra Taylor's . . .

17 A It was just her turn. She was a foster care
18 worker. Uh-huh.

19 Q Okay. How do you-all -- and, of course, this is
20 all for that time frame: December 2009/January
21 2010.

22 A Right.

23 Q How would you communicate between workers? Would
24 you talk to each other? Would you e-mail each
25 other?

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1 A Talk and staff.

2 Q And staff.

3 A Yeah.

4 Q So the staffing sheets too?

5 A Yes. Sometimes over the phone if they were out in
6 the field, but, primarily, it would be face-to-face
7 contact with them.

8 Q Okay. We talked a little bit -- a little bit about
9 your responsibilities related to your caseworkers.
10 What are the responsibilities of your caseworkers?

11 A Their responsibility is to go out and make contact
12 on their individual cases and to staff it with a
13 supervisor.

14 Q And you said how often do you staff these cases?

15 A Typically, we would staff it four and five times
16 throughout the duration of the case.

17 Q Are you always staffing with the same people?

18 A Yes. Unless we're making case decision and then we
19 staff in a group. So I, as supervisor, would not
20 make a case decision on my own.

21 Q Okay. So, if you're doing case staffings, those
22 could be between just you and the caseworker,
23 correct?

24 A That's correct.

25 Q And then there are times when you would have a

1 staffing with the county attorney, as well?

2 A Yes.

3 Q And who else would be involved in a staffing for a
4 case decision?

5 A Typically, it would be me, Lola, and Diane. All
6 three of us would be there. If it were something
7 -- well, sometimes Phyllis Ward would sit in, but
8 that would not be every single case. The high-risk
9 cases she would sit in for case decision.

10 Q Okay. And did you have your DSS attorneys for the
11 case decision? Would they be on staffings?

12 A Not all of them, but yes, some.

13 Q Okay. Do you or does -- did anyone one in your
14 office ever have to conduct audits of charts or --
15 I guess files is the better phrase?

16 A Well, I would in terms of reviewing a file before
17 it was transferred to the next department.

18 Q Okay.

19 A And then Phyllis would sometimes do audits as well.

20 Q And how often would Phyllis audit files?

21 A It just -- it would just depend.

22 Q Did you know --

23 A She stayed pretty involved. I mean, it wasn't
24 always -- typically, it was in those high-risk
25 cases that she would review the case files.

1 Q And, if she reviewed case files, did she give you
2 any report on what needed to be fixed and files
3 or --

4 A Absolutely. Yes, ma'am.

5 Q Was it a written report?

6 A Typically, there was a staffing, and it would've
7 been a staffing sheet. Sometimes there would have
8 just been conversations that she and I had.

9 Q Okay. Do you recall -- during this time frame or
10 really during your employment there, do you recall
11 the state office ever coming in and doing any
12 audits?

13 A Yeah. We had an audit before. They had a group of
14 individuals that would come in and audit case
15 files.

16 Q About how often?

17 A The time that I was there, was only one time, that
18 I can recall.

19 Q Okay. Do you have any idea when that was?

20 A No, ma'am. I do not.

21 Q And did you get any written feedback regarding
22 their audit?

23 A Not specifically that I remember.

24 Q Okay. Is it fair to say that the case files --
25 your client case files -- that, like, the dictation

1 and stuff, is that all on the computer?

2 A Yes. It is in the computer.

3 Q And are there ever any case notes that are not in
4 the computer?

5 A Well, I guess when the caseworker's out there, and
6 they're taking notes on a notepad, when they're
7 interviewing individuals. Then they're placed into
8 dictation.

9 Q And I'm assuming they don't keep those handwritten
10 notes?

11 A No. Unh-unh.

12 Q And how often do you -- or if there -- is there a
13 rule as to how often the dictation needs to be
14 updated?

15 A No. Not typically. The initial contact would have
16 to be in as soon as possible.

17 Q And how do you define "as soon as possible"?

18 A Typically, by the five-day staffing.

19 Q And is there any information that goes into the
20 computer file that doesn't end up in the paper
21 file?

22 A Typically, no. I mean, besides health records and
23 stuff. Those would be in the file and not
24 necessarily summarized and documented into CAPPS
25 dictation.

1 Q Okay. So like medical records?

2 A Yeah. Medical records, law enforcement reports.

3 If there were anything that was of concern, it
4 would be in there, but not completely documented,
5 no.

6 Q But that would be in the paper file? So if I --

7 A You would have -- yeah. It would be available --

8 Q Right.

9 A -- to you.

10 Q You would have access to it if you needed it?

11 A Correct.

12 Q Okay. Is it fair to say that DSS, and specifically
13 Child Protective Services, is mandated to protect
14 children from abuse and neglect?

15 A Correct.

16 Q And, if you have an open case, who is the primary
17 client?

18 A The child.

19 Q Okay. And is it fair to say that the position of
20 DSS is that all children have the right to live in
21 an environment free of -- free from abuse and
22 neglect?

23 A Yes.

24 Q And is it fair, also, to say that the safety of
25 children is the primary concern that guides child

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1 protection efforts?

2 A Yes.

3 Q Do you routinely involve law enforcement in your
4 cases?

5 A It -- typically, we do not. It just depends on if
6 it's an allegation of physical abuse or sexual
7 abuse, typically.

8 Q So, if it's a neglect case, you wouldn't call --
9 call law enforcement?

10 A It would depend on the situation. Everything's
11 dealt with on a case-by-case basis.

12 Q Okay. What sort of -- well, strike that.

13 So if you have a -- an allegation of physical
14 abuse, would you typically involve law enforcement?

15 A Yes.

16 Q Would you always involve law enforcement?

17 A No.

18 Q When would you not?

19 A If it were -- let's say it were an instance of a
20 child being spanked on the bottom. Usually, when
21 it's just -- they're using punishment -- using
22 corporal punishment. That's not always involved.
23 Unless they use -- leave marks and bruises. Then
24 it would be of concern.

25 Q Do you know, related to Owen C [REDACTED], if there was

1 a recommendation to contact law enforcement?

2 A Yes.

3 Q And do you know if that was done?

4 A It was done. Yes.

5 Q Do you know when it was done?

6 A I believe it was December the 16th.

7 Q And is it DSS's responsibility -- in a case like

8 Owen C [REDACTED]'s, is it a -- is it DSS's

9 responsibility to contact law enforcement, or does

10 the hospital have that responsibility as well?

11 A I'm not sure if it's their responsibility, but it's

12 absolutely our responsibility.

13 Q When you have a case where the hospital is

14 involved, how do you-all communicate with the

15 hospital? Who do you typically talk to?

16 A The social worker.

17 Q And do you e-mail with that person? Do you call

18 that person on the phone? How does that work?

19 A Talk to them on the phone.

20 Q Do you ever interview doctors?

21 A Typically, no. Usually, that's nurses that we

22 would interview. If the doctors are available, we

23 would most certainly interview them.

24 Q Do you get their -- do you get medical records of

25 your clients?

1 A Yes.

2 Q Typically, how long does that take?

3 A To receive medical records, once we have a release
4 of information, it would depend on the facility.
5 Some would copy them and give them to us right
6 then. Some would make us do a formal request, and
7 then send them to us.

8 Q And it takes a lot longer.

9 A Yeah.

10 Q Okay. Do you recall whether you or any of your
11 caseworkers talked to doctors or nurses in this
12 particular case?

13 A Yes. Dirvondra did speak with nurses, as well as
14 Chandra -- Chandra Tyler spoke with a nurse and
15 also the social worker. I believe Dirvondra had
16 some contact with a doctor as well.

17 Q I may have already asked you this: Does the
18 hospital typically -- and it may be either
19 hospital. I -- it -- we could be talking about
20 PNC, we could be talking about Levine's --

21 A Okay.

22 Q -- but, in your experience, if they have -- if they
23 believe there's abuse, do they call you first, or
24 do they call -- you being DSS?

25 A Yes.

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

1 our case decisions, but we would have their notes
2 that we would use.

3 Q Okay. And do you rely on the medical experts -- or
4 the medical expertise of doctors and nurses to help
5 you make the decision whether or not a child has
6 been abused?

7 A Yes.

8 Q Related to the first injury in this case, which was
9 in -- which was, like, December 9th, 2009, was
10 there ever a case decision made related to that
11 injury?

12 A This --

13 MR. FRAWLEY: Lara, I think it was December
14 5th when he was hospitalized, December 6th
15 when we got the call in.

16 MS. HARRILL: I apologize. You're right.

17 THE DEPONENT: That's correct.

18 Q Was there ever a case decision made related to that
19 injury?

20 A Well, there was an ongoing investigation at that
21 time. We made our case decision based off of both
22 incidents.

23 Q Because you had, still, the 45-day window --

24 A And it was --

25 Q -- is that fair?

1 A -- still an open investigation during the second
2 incident. Correct.

3 Q Okay.

4 MS. HARRILL: I don't know if everybody knows
5 how I do this. I know Monty does. The tab
6 numbers are the exhibit numbers. And then
7 I'll also give a Bates number. There's only
8 one document in here that has not been Bates
9 numbered, to my knowledge. But it has page
10 numbers. Okay?

11 MR. FRAWLEY: Okay. Thank you.

12 Q I want to look a little bit at the dictation in
13 this case, which is Tab No. -- Exhibit No. 4. How
14 often do you print these to put in the file?

15 A Typically, they're not printed until they're
16 transferred.

17 Q Okay. So when the case leaves your -- I'm -- I
18 call it a "unit," but that's just for my
19 experience --

20 A Yeah.

21 Q -- but when it leaves your office, it -- you would
22 print the dictation to send the file down to --

23 A Down to treatment or foster care, wherever it would
24 go, yes.

25 Q Understand. And, in this particular case, there

1 appears to be documentation from you as well. Do
2 you usually document?

3 A Yes.

4 Q If you'll look, please, down at the bottom. We
5 talked about the Bates numbers on here.

6 A Uh-huh.

7 Q Defense-produced 00244?

8 A Uh-huh.

9 Q You have done a -- what appears to me to be your
10 dictation for a staffing?

11 A Uh-huh.

12 Q And I guess -- talk to me a little bit about what
13 this is. You have a staffing, but are these the
14 recommendations related to the staffing just
15 underneath there?

16 A Yes. That is correct.

17 Q Okay. It says there -- one of the things it says,
18 "Get all medical records. Follow up with law
19 enforcement." How long do you have to complete
20 those tasks like that?

21 A Well, it would depend on the case. You would get
22 the medical records as soon as possible. If you're
23 at the hospital and you can get them then, you
24 would get them then. If you needed to do a formal
25 request, you would do that. And law enforcement,

1 there are a lot of records that you can obtain
2 online. And then we would request incident
3 reports, and typically that would just take four or
4 five days to get those.

5 Q Okay. So these would be -- have been the
6 recommendations from your staffing on 1/4?

7 A Correct.

8 Q Okay.

9 MR. FRAWLEY: (To Ms. Harrill) Okay. Again,
10 could you -- I'm sorry. Go ahead.

11 MS. HARRILL: You sure?

12 MR. FRAWLEY: Yeah. I -- I misread it. I'm
13 sorry.

14 MS. HARRILL: Okay.

15 MR. SETTANA: (To Ms. Harrill) Where is the
16 law enforcement reference?

17 MS. HARRILL: Okay. If you look -- there.
18 He'll -- he can show you.

19 MR. FRAWLEY: Down there.

20 MR. SETTANA: All right. Oh, I see it. Thank
21 you. Sorry.

22 Q And it says, "Follow up with law enforcement. What
23 is their status?" What do you mean by that, "What
24 is their status?"

25 A What is their current status of their investigation

1 in regards to Michael Carduff.

2 Q Okay. So on 1 -- on 1/4 they were investigating --

3 A Yes.

4 Q -- already?

5 A Uh-huh.

6 Q Okay. 12/5. I remember these go backwards.

7 A Yes. Yeah.

8 Q Let's start at the back. Apologize. I'm getting
9 myself tangled up and turned around. Go to
10 Defense-produced 002 --

11 A -- 54, but it actually --

12 Q -- 54.

13 A -- starts on 253.

14 Q I would like for you to go to 25 -- hang on. I
15 would like for you to go to 250, please. There's a
16 note there -- a dictation note done by you?

17 A Uh-huh.

18 Q And is it fair to say that it was -- you actually
19 inputted on 12/7, but it also was for 12/7; is that
20 fair?

21 A Yes.

22 Q Okay. And this appears to have been a conversation
23 that you had with the social worker at Levine's.

24 A Correct.

25 Q And it says that you talked -- let's see, you were

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1 going to staff the case with the legal department?

2 A Correct.

3 Q Do you know who all you staffed this case with?

4 A Me, Dirvondra, and our attorney at the time,
5 Adrienne Woods.

6 Q Is Adrienne still with DSS?

7 A She's not with York County DSS.

8 Q Okay.

9 A I'm not sure if she's with the state office or not.

10 Q And it says, "We'll get back with her ASAP and with
11 a discharge plan for the baby."

12 A Correct.

13 Q Do you recall what your decision was?

14 A To release the baby to the parents, based off of
15 the information provided.

16 Q Provided by whom?

17 A The social worker.

18 Q At --

19 A At Levine's Children's Hospital.

20 Q Okay. Let me ask you this: Would they have
21 discharged the baby if you-all did not recommend
22 it? Do you know?

23 A I'm not sure.

24 Q Have you ever had that come up before?

25 A Not that I recall.

1 Q Okay.

2 A We're typically on the same page.

3 Q Go to the next page forward, 249. There's two
4 notes on here. I'm looking at the bottom one.

5 "Supervisor contacted Laura Newmark, social worker
6 with Levine's."

7 A Uh-huh.

8 Q "Supervisor advised Laura that the case had been
9 staffed with the legal department, and that Owen
10 should be discharged to his parents, and that DSS
11 will follow up with a home assessment." When
12 should -- if you're following -- if your people are
13 following up with a home assessment, when should
14 that be completed?

15 A Typically, the same day.

16 Q Do you know what day he was discharged?

17 A I believe it was on 12/7.

18 Q If it were after hours, would there be somebody to
19 complete that home assessment?

20 A Dirvondra would've completed it, yes.

21 Q Okay. Do you know whether or not she saw them on
22 the 7th?

23 A She did not.

24 Q Do you know why?

25 A She went to the home and attempted to make contact,

1 but there was no one at the house.

2 Q Do you know whether or not the baby had been
3 discharged already?

4 A Yes. The baby had been discharged.

5 Q Go to page 246 for me, please. Again, there's two
6 entries on this page as well.

7 A Uh-huh.

8 Q You'll have to -- I was just going to tell you to
9 do that.

10 A Yeah.

11 Q It appears that your documentation on this page is
12 for 12/17 --

13 A Uh-huh.

14 Q -- 2009?

15 A Correct.

16 Q This is what we were talking about earlier, about
17 the referral to law enforcement?

18 A Yes, ma'am.

19 Q Says that Lieutenant Miller stated that he needed
20 additional information. Do you recall what
21 additional information he needed?

22 A He wanted the notes from us, from my conversation
23 with the social worker.

24 Q From which social -- your conversation with which
25 social worker?

1 A Laura Newmark.

2 Q Okay.

3 A Levine's.

4 Q What -- when you do a referral, what do you

5 typically send to law enforcement?

6 A The allegations, typically, and then any notes that

7 we would have as well.

8 Q Where would the allegations be written down?

9 A On the intake report.

10 Q Okay. So --

11 A They would receive a faxed copy of the intake

12 report.

13 Q So you'd send them the intake report, whatever

14 dictation you had done?

15 A Correct.

16 Q What else?

17 A And have a conversation with them as well as to any

18 concerns that we would have.

19 Q Okay. And -- so is it fair to say that Lieutenant

20 Miller had not talked to Dirvondra at this time?

21 A That is correct, yes.

22 Q Did you have a conversation with Dirvondra about

23 when that referral was made?

24 A Yes. I did.

25 Q And was she reprimanded?

1 A I don't know if it was formal, but, verbally, yes.
2 I did speak with her regarding this.

3 Q Okay. Did she have any reason why it hadn't been
4 done for ten days?

5 A She stated that she was working on other cases, and
6 it's something that she overlooked.

7 Q Okay. Turn back one more page. 245 for me,
8 please. This is -- I realize this is Dirvondra's
9 note. And you see the action date is 2/21.

10 A You mean December 21st?

11 Q I'm sorry. 12/21.

12 A Correct.

13 Q I left off a "1."

14 A Okay.

15 Q Do you know, as you sit here today, if this is the
16 first time that she met with the family?

17 A She had brief contact on the 17th, where she showed
18 up at the home to try to do a home visit, and Kayla
19 was there, but Kayla was getting ready to go to
20 work. So then she scheduled this visit with her on
21 the 21st.

22 Q Okay. And do you know if she scheduled that -- I
23 mean, if they had a conversation about scheduling
24 that or how she got that scheduled?

25 A She -- they had a conversation about it, as well as

1 she had sent a letter to the home because she had
2 been unable to make contact.

3 Q Uh-huh.

4 A So she had sent the mom a letter and made some
5 phone calls.

6 Q Any idea when the letter was sent?

7 A I do not recall what date she sent it on.

8 Q Okay. Turn to 9 for me, please. Tab 9.

9 MS. HARRILL: Oh, goodness. Can we take a
10 break please?

11 MR. FRAWLEY: Uh-huh.

12 (Off the record from 10:33 a.m.
13 until 10:35 a.m.)

14 THE EXAMINATION BY MS. HARRILL CONTINUES

15 Q Okay. Let's go to Tab No. 6, please.

16 A Okay.

17 Q Talk to me about what these are -- these case
18 reviews.

19 A I'm not necessarily familiar with this particular
20 case review in a case.

21 Q Do you -- do you-all do case reviews? Have you
22 seen documents like this?

23 A No, ma'am.

24 Q So you don't know who does this?

25 A No. I'm not sure. Unh-unh.

1 Q Do you have any idea what they're for?

2 A I -- no. I really don't -- I don't have --

3 Q Never seen one before?

4 A No. Not like this, no.

5 Q Okay. Is there another document that's a case
6 review that's similar to this?

7 A The staffing sheet would be --

8 Q Okay.

9 A -- what we'd refer to.

10 Q And I'm curious because, to me -- and you may not
11 be able to tell, but, if you look through this, it
12 appears to be sort of a summary of the dictation of
13 the case; is that fair?

14 A Yeah. That's what it appears to be. Yes. That's
15 correct.

16 MR. FRAWLEY: Lara --

17 MS. HARRILL: Lara.

18 MR. FRAWLEY: Lara, the -- the lower right-
19 hand corner Bates number for the DSSPMW --

20 MS. HARRILL: Yes.

21 MR. FRAWLEY: -- that indicates it's from
22 Phyllis Moore Ward's material.

23 MS. HARRILL: Oh.

24 MR. FRAWLEY: And if you look at -- I think
25 it's Number 8. It's another case review.

1 MS. HARRILL: Yes. There's three of them.

2 MR. FRAWLEY: Right. That's DSSYS. The "YS"
3 would be from Yvonne Stewart's material. In
4 other words, we asked them for the official
5 DSS file, and we also asked if Yvonne Stewart
6 and Phyllis Moore Ward had material, and we
7 produced those as well, but we marked them
8 differently.

9 MS. HARRILL: Okay.

10 MR. FRAWLEY: So if it has a "YS," it's from
11 Yvonne Stewart's material. If it has a "PMW,"
12 it's from Phyllis Moore Ward's material.

13 MS. HARRILL: Okay.

14 Q All right. Let's then -- that will be questions
15 for someone else. Look at 9 for me, please. And
16 then look at page 1356.

17 A Okay.

18 Q I'm sorry. 1340 -- 1354. Go back. And then we'll
19 go back to 1356. We talked a little bit about
20 staffing this case with Adrienne Woods. How many
21 times -- it appears to me this case was staffed
22 several times on the 7th; is that --

23 A Twice, yes.

24 Q Twice.

25 A Uh-huh.

1 Q Once with -- is it fair, once with a worker, and
2 once with the legal staff?

3 A Once with Lola, Chandra, myself, and Dirvondra, and
4 then myself, Adrienne, and Dirvondra --

5 Q Okay.

6 A -- separately.

7 Q All right. So, at this time, would these
8 recommendations on this staffing be recommendations
9 for Dirvondra?

10 A Yes. All of the recommendations would've been for
11 Dirvondra.

12 Q Okay. We talked a little bit -- a little go -- a
13 little bit ago about discharging the baby home.

14 A Uh-huh.

15 Q That that was a staffing that you had had with your
16 attorney?

17 A Right.

18 Q Would this staffing sheet on 12/7 with Adrienne
19 Woods recommend that -- or represent that
20 staffing --

21 A Yes.

22 Q -- to your knowledge?

23 A Yes.

24 Q Okay. And there's also a referral-to-law-
25 enforcement recommendation?

1 A Correct.

2 Q And, if you turn to the next staffing sheet, which

3 is dated the same day. I'm sorry, 1355. Go the

4 other way.

5 A So this way? Okay.

6 Q This appears to have been a staffing with you,

7 Dirvondra, and Lola?

8 A And Chandra. Uh-huh.

9 Q Okay. So that's what that is.

10 A This would've been the first staffing, and the

11 legal staffing would've been second.

12 Q And it's Chandra Tyler, right?

13 A Yes. That's correct.

14 Q And, again, would these recommendations have been

15 recommendations for Dirvondra?

16 A Yes.

17 Q Okay. And, again, it says -- and I -- you may not

18 can read it. It's better on my copies. "Refer to

19 law enforcement"?

20 A Yes, ma'am.

21 Q "Go to home and assess home"?

22 A Correct.

23 Q And is it fair to say -- you said that she went

24 that day to see the home?

25 A She did. She went on the 7th.

1 Q If you'll turn to the next tab for me, please. Tab
2 10. It's Defense Produced 00401. This is --
3 appears to be a letter from Dirvondra to Michael
4 Carduff and Kayla --

5 A Uh-huh.

6 Q -- Lythgoe? Do you have any idea when this was
7 written?

8 A I have no idea. No, ma'am.

9 Q I'll ask her.

10 Turn to Tab 11 for me, please. This appears
11 to be a staffing done on January 4th?

12 A Uh-huh.

13 Q Is that fair?

14 A Correct.

15 Q Between you and Dirvondra?

16 A Uh-huh.

17 Q Do you see there where it says "Follow up with law
18 enforcement. What is their status?"

19 A Yes.

20 Q At this time, did you have any idea whether or not
21 they had been notified?

22 A On the 4th? Yes. I knew that she had referred
23 them, but it was late. But, yeah. She did it on
24 the 16th.

25 Q And when did you find out that it was late?

1 A On this -- I believe it was the staffing. It
2 would've been the next time that I staffed the case
3 with her.

4 Q Okay. Turn to Tab 12 for me, please. Do you know
5 whose handwriting this is?

6 A No. I do not. Unless it -- it would have to be
7 Phyllis or Yvonne's handwriting.

8 Q Yvonne, I bet.

9 A Yeah.

10 Q It has the "YS" on it. Have you ever seen this
11 before?

12 A No.

13 Q Would you turn to Defense Produced 00200 in this
14 section, please? The -- you see how these are sort
15 of blocked off in lines? The second section, can
16 you read that for me?

17 A Which section are you referring to?

18 Q This --

19 A This?

20 Q Yes, ma'am.

21 A "Krista had called Dirvondra and talked about her
22 timeliness, and put her on" -- I don't know what
23 that says. "To do timely contacts. Did written"
24 -- I'm not sure. It's hard to read her
25 handwriting.

1 Q It is.

2 A Uh-huh.

3 Q And I -- okay. Let me see if it makes sense if I
4 read it like this: "Did written warning in April.
5 Numerous individual conference sheets." I don't
6 know what that is. "-- in July. She started" --

7 A Started --

8 Q -- "doing timely contacts. Has lots of
9 documentation of working with her until August when
10 she started getting timely."

11 A Yes.

12 Q Does that -- is that fair?

13 A Yeah. I mean --

14 Q It's hard to read, isn't it?

15 A It's very hard to read.

16 Q All right. Let me ask you this: Talk to me a
17 little bit about what this is about. Did you have
18 a conversation with Yvonne Stewart about Dirvondra?

19 A Not to my knowledge. A conversation was had
20 between myself and Phyllis Ward.

21 Q And can you tell me about that conversation?

22 A We did have a conversation in regards to her not
23 making a law enforcement referral until the 16th.

24 Q Had you ever had that problem before that you were
25 aware of?

1 A No. Not that I'm aware of.

2 Q Okay. And had you ever had any problems with her
3 making timely contacts with her family -- families?
4 clients?

5 A Not specifically that I recall. There may've been
6 some individual conference sheets, but that's been
7 quite some time ago.

8 Q Do you recall, then, why there was a written
9 warning done in April?

10 A I do not recall.

11 Q Would you be responsible for doing a warning for
12 Dirvondra, or would that been -- be someone else?

13 A Yes. Typically, it would've been myself or Phyllis
14 Ward.

15 Q Okay. Just below that it says -- it has something
16 about "Adrienne was told," but then the next one
17 says, "How many reports did she get that week?" Do
18 you have any idea how many reports Dirvondra got
19 that week?

20 A No.

21 Q Do you know anyone that would know?

22 A They should have record of it at DSS.

23 Q Okay.

24 A There would be intake logs.

25 Q And those say who the worker was?

1 A Yeah. It will tell you who the worker was, the
2 name of the report, and the date that it came in.

3 Q Okay. Let me ask you this: Talk to me about what
4 a safety plan is.

5 A A safety plan is an agreement between us and the
6 parents in regards to the child's wellbeing. It
7 would be recommendations that we would make for
8 them.

9 Q For the family?

10 A Right. That they would need to follow.

11 Q And what happens if there's a violation of a safety
12 plan?

13 A Typically, the child is removed from the home.

14 Q And who has the authority to remove the children
15 from the home?

16 A In terms of bringing them into foster care?

17 Q Yes.

18 A That would be law enforcement or a judge.

19 Q Okay. So DSS can't independently remove a child?

20 A Unless it's a relative placement, but the family
21 would have to agree to that.

22 Q Let me make sure I understand you. Is it fair to
23 say that DSS can remove a child if they have placed
24 that child in a home?

25 A DSS can never remove a child in place of a child in

1 foster care. Any removal that we did, the parents
2 would have to agree upon, and the removals that we
3 would primarily do would be relative placements.

4 Q Okay. So how does DSS remove a child from the
5 home? If you'd detail that for me, please. Okay.
6 Let me --

7 A In terms of foster care?

8 Q -- rephrase that. How would DSS get a child in
9 foster care?

10 A Call law enforcement would be the easiest way.

11 Q Okay. And if law enforcement will not remove a
12 child, then how would you?

13 A Staff it with the attorney for an ex parte.

14 Q To take to the judge?

15 A Correct.

16 Q Look at --

17 MS. HARRILL: Oh, it's going to be a different
18 number for you. No. It's not.

19 Q -- 14 for me, please. Have you seen a document
20 like this before?

21 A Yes.

22 Q Have you seen this one before?

23 A Not this particular one. I don't recall it, but it
24 would've been in the case file.

25 Q Can you tell me what it is?

1 A It's a referral to law enforcement that was made on
2 the 16th of December.

3 Q I see at the bottom of that page it says, "We are
4 requesting an investigation be made into this
5 matter." Do you know whether or not law
6 enforcement investigated?

7 A Initially, for this incident, they did not.

8 Q Okay. And if you would turn, then, to Defense
9 Produced 00284.

10 A Yes.

11 Q Is this a safety plan?

12 A No.

13 Q What is this?

14 A This is a request for incident report. And
15 specifically this one would've been for York County
16 Sheriff's Department. And I know that just because
17 of the handwriting that's written on there.

18 Q I'm sorry. 284.

19 A Oh, I'm sorry.

20 Q I probably gave you the wrong number.

21 A Yes. This is a safety plan.

22 Q Okay. And whose signature is that at the bottom?

23 A Dirvondra.

24 Q And who else -- I don't see any other signatures.
25 Is there anyone else that should've signed this?

1 A The parents.

2 Q And how often do you do -- how often do you do a
3 safety plan?

4 A Any time you have concerns. Not always in every
5 case.

6 Q If the child went home on the 7th --

7 A Yes.

8 Q -- then I'm curious why there would be another
9 safety plan -- hang on. Never mind. That's the
10 second injury.

11 A Yes. This is the -- I'm -- I'm assuming this is
12 the initial safety plan where she went out to the
13 home and she saw her briefly that day.

14 Q Okay. Look at 285 for me, please.

15 A Yes.

16 Q That's the one you're looking at?

17 A Yes.

18 Q That's the first one?

19 A Uh-huh.

20 Q And did she see Michael that day?

21 A I believe that she only saw Kayla that day.

22 Q Do you see where it says, "Start date: today,
23 Tuesday, December 8th"?

24 A Yes.

25 Q If the start date was Tuesday, December 8th, how

Krista M. Hinnant

1 was it signed by Kayla on the -- December 7th? Do
2 you know?

3 A That I do not know. That would be something you
4 would have to ask her.

5 Q Do you know what day it was when this case came
6 into DSS?

7 A December the 6th.

8 Q Do you know what day that was?

9 A I do not know. It would've been a weekend.
10 Probably a Sunday.

11 Q Do you know whether or not Dirvondra saw Owen --
12 saw Owen C[REDACTED] on December 8th?

13 A I do not think that she did.

14 Q I will ask her. Look at Tab 16 for me, please.
15 Have you ever seen these before? These recorded
16 statement -- or their recorded transcripts?

17 A I haven't seen the recorded transcripts, but I have
18 listened to the calls.

19 Q Okay. These are just the written-down versions?

20 A Right. Uh-huh.

21 Q Is it fair to say -- let me tell you how I did
22 this.

23 A Uh-huh.

24 Q I didn't put the whole thing in here. I just put
25 the pages I wanted to talk about, okay?

1 A Uh-huh.

2 Q Is it fair to say that this is a record of your
3 conversation with Lieutenant Miller on 12/12/2009?

4 MR. FRAWLEY: (To the deponent) Okay. You
5 need to look through it to make sure it is
6 since you hadn't seen that transcript yet.

7 MS. HARRILL: (To the deponent) And I can
8 provide you with the entire thing if you want
9 to look at it. These are just excerpts.

10 MR. SETTANA: Lara, have you given us copies
11 of the entire transcripts?

12 MS. HARRILL: They were produced to us by --

13 MR. SETTANA: We gave you the -- I represent
14 the sheriff. We gave you the tape. We didn't
15 transcribe it.

16 MS. HARRILL: You did not transcribe them?

17 MR. SETTANA: No.

18 MS. HARRILL: I did not understand that, so I
19 apologize. I can give you copies of them
20 transcribed.

21 MR. SETTANA: I appreciate it. Thanks.

22 MS. HARRILL: I have them here, but these are
23 my copies. But I will get them to you
24 before --

25 MR. SETTANA: I appreciate. Thanks.

1 MS. HARRILL: Uh-huh.

2 MR. FRAWLEY: Lara, the beginning -- from the
3 beginning of this to the end of it, this is
4 the -- the full conversation that Krista had
5 with Lieutenant Miller, so there's -- there's
6 nothing deleted in the -- in the middle,
7 correct?

8 MS. HARRILL: No. That's not right.

9 MR. FRAWLEY: In other words, I understand, on
10 the two disks, there were several different
11 calls, most of which didn't include Krista,
12 but what you've got of Krista's in here is her
13 full conversation at this time, correct?

14 MS. HARRILL: That is not correct. Hang on.
15 It may not -- it may be on one of those, but
16 it is not on all of them. Particularly --
17 let's go off the record for a minute, Brooks.

18 (Off the record from 10:53 a.m.
19 until 11:22 a.m.)

20 THE EXAMINATION BY MS. HARRILL CONTINUES.

21 Q Okay. You are on Tab 16 for me, please. And we
22 were looking at the transcripts of the recordings
23 of the conversations that you had with W.J. Miller.

24 A Correct.

25 Q Okay. I am going to do these by page number, so if

1 you'll turn to what is the next page, and it's Page
2 6.

3 A Okay.

4 Q Okay. What's -- let me ask this question before we
5 get started on that. It appears to me -- correct
6 me if I'm wrong -- that you had a conversation with
7 W.J. Miller about his receiving the law enforcement
8 referral?

9 A Yes.

10 Q And if you want to look at the entire transcript of
11 this, I have it, but I understand that you have
12 reviewed the audio recordings?

13 A Yes.

14 Q Okay. If you will look, please, at Line 14, and
15 read from Lines 14 to Lines 23 for me, please. And
16 you don't have -- you can read it into the record,
17 that's fine.

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

22 "Lieutenant Miller: 'Right.'

23 And I said, " -- to make the report. They
24 made the -- they made that real clear to me that
25 when I called and spoke with them at the hospital.

1 But I have -- I should have dictation on where I,
2 you know, spoke with them. Can you -- can -- can,
3 you know, certainly send that."

4 Q What -- can you tell me what that means? because it
5 doesn't make any sense to me, about that part of
6 your conversation.

7 A I was basically telling him that I spoke with them
8 in regards to that and I have dictation and I can
9 send it over to him.

10 Q You spoke to whom in -- with regards to what?

11 A I spoke with the social worker at the hospital in
12 regards to their opinion on this and that I would
13 send him over the notes.

14 Q And what do you believe the hospital's opinion was
15 on this?

16 A They basically were stating that these -- the scans
17 and the surveys that they did were negative, and
18 that they could not determine if it was accidental
19 or non-accidental.

20 Q Okay. Look at Page 10 for me, please, and again
21 these are not -- not all the pages are in there so.
22 There you go. If you look at your comment on Line
23 8, it says, "But she advised us" and she being, "We
24 staffed with it our attorney" it says above.

25 A Right.

1 Q Which, I'm assuming, is Adrienne Woods?

2 A Correct.

3 Q "But she advised us we would need to make a
4 referral, and you guys would make that
5 determination whether or not you're going to
6 investigate."

7 Talk to me a little bit about how you work
8 with law enforcement. Do -- what does law
9 enforcement do that DSS does not do, in terms of
10 investigations?

11 A They investigate the criminal side if there are any
12 criminal actions that have taken place in our case.

13 Q And then do they share their investigation with
14 you?

15 A Yes, ma'am.

16 Q Do you share their -- do you share your
17 investigation with them?

18 A Yes.

19 Q And do -- would you make your case decisions based
20 in part on what law enforcement finds?

21 A Yes.

22 Q Okay. And do you know whether or not law
23 enforcement investigated related to the first
24 incident?

25 A They did not investigate.

1 Q Okay. Do -- do you have any sense of why they did
2 not investigate?

3 A I mean, the information that I gave to them. He
4 said there wasn't any additional concerns that he
5 had.

6 Q And when you say the information that you gave to
7 him, would that --

8 A The information that we received from Laura
9 Newmark, the social worker at the hospital.

10 Q Okay. So would it be fair to say that it would be
11 documents from the hospital and your conversation
12 with the hospital?

13 A Correct.

14 Q And then your -- the documents that you faxed to
15 him?

16 A Correct.

17 Q Okay. Turn to Page 13 for me, please, Line 5.
18 Actually, I want to look at Line 9 through 11, but
19 you might want to read through that whole thing.
20 What I'm interested in is it says, ". . . they're
21 not there or either the grandmother's there and
22 she's says they're not there."

23 You can read that whole thing so you have a
24 sense of where I am.

25 MR. FRAWLEY: What page are you on, again?

1 MS. HARRILL: Thirteen.

2 A Okay.

3 Q Do you recall a time when -- and I'll ask Dirvondra
4 this too, but, independently, as you sit here
5 today, do you recall a time when Dirvondra went to
6 meet with the family and the grandmother was there
7 but the family was not?

8 A No. Not to my knowledge. I know that she had went
9 out there and left a message. She had called the
10 inside of the home and it was actually Charlotte's
11 voice mail and she left a message for her, but I --
12 I don't recall Charlotte being present.

13 Q Okay. You keep looking at -- have you got notes
14 over there?

15 A Yeah. I just have notes that --

16 Q Can I?

17 A -- basically, the times that she went out there.

18 Q Do you mind if I look at them?

19 A Yeah. Sure.

20 (Sotto voce discussion between
21 Ms. Casey and Ms. Harrill.)

22 MS. HARRILL: (To Mr. Frawley) Do you mind if
23 we make these an exhibit?

24 MR. FRAWLEY: Let me look at them. No.

25 MS. CASEY: Do you want to make that Exhibit

1 21?

2 MS. HARRILL: Yeah.

3 MS. CASEY: Do you mind if we tear them out of
4 the -- you want --

5 THE DEPONENT: That's fine.

6 MS. CASEY: -- to leave them on the pad?

7 MS. HARRILL: You probably want to leave them
8 on the pad, don't you? Or do you care?

9 THE DEPONENT: I'd prefer, but it --

10 MR. FRAWLEY: Just -- yeah, just -- just do
11 it and flip them over.

12 THE DEPONENT: If you need to --

13 MS. HARRILL: Yeah. We'll just copy it --

14 MR. FRAWLEY: You'll be able to do it that
15 way.

16 MS. CASEY: Okay. Well, we'll just mark this
17 as Exhibit 21.

18 MR. FRAWLEY: Well, why don't you make a copy
19 and then make the copy an exhibit?

20 MS. HARRILL: Copy first.

21 MS. CASEY: Okay.

22 MS. HARRILL: Brooks?

23 MS. CASEY: Okay. I'll do that.

24 (Off the record from 11:28 a.m.
25 until 11:34 a.m.)

1 Plaintiff's Exhibit Number 21,
2 Handwritten notes.

3 THE EXAMINATION BY MS. HARRILL CONTINUES.

4 Q Okay. We were looking at your transcripts.

5 A Uh-huh.

6 Q Well, not your transcripts. The transcripts of
7 your conversation with Lieutenant -- with
8 Lieutenant Miller. We're on Page 13. We are down
9 at the bottom -- I'm going down to the bottom, Line
10 19. You say, "Yeah. I know. Well, I'm going to
11 talk to her about it. She's pretty bad about doing
12 that, and I figured that she had. I had mentioned
13 it to her earlier this week, you know, asked her if
14 she had sent it over to you guys."

15 Is it fair to say that "she" and "her" is
16 Dirvondra?

17 A Yes.

18 Q And when do you -- do you know when you asked her
19 if she had sent the -- I'm assuming that you're
20 talking about her sending the referral.

21 A Yes.

22 Q Is that fair?

23 A Uh-huh.

24 Q When did you ask her about that? Do you remember?

25 A No. I do not.

1 Q Do you know -- did you have any -- you obviously
2 had a conversation with her. Did you -- can you
3 tell me a little bit about that?

4 A I -- I don't recall the specific conversation,
5 honestly, that I had with her.

6 Q Okay. And you don't recall whether or not she was
7 reprimanded verbally or --

8 A Yeah.

9 Q -- or in a written fashion, I mean.

10 A I don't remember exactly what -- I mean, I know
11 that I had a discussion with her. I don't recall
12 all that was said during that discussion, and I
13 don't recall if we did any type of formal reprimand
14 in regards to that.

15 Q And when it said, "She's pretty bad about doing
16 that," she's pretty bad about doing what?

17 A I'm assuming it -- I'm talking about not making
18 timely referrals.

19 Q Was there anything else that she was pretty bad
20 about not doing, that you recall?

21 A Not that I recall. No.

22 Q Okay. We were talking a little bit about your
23 handwritten notes just to yourself.

24 A Yeah. Sure.

25 Q And we have made those Exhibit Number 21 --

1 A Uh-huh.

2 Q Yes. -- to your deposition. On the second page of
3 those notes, it says, "Nurse thought DSS was called
4 to release sitter."

5 A Yeah. That's in --

6 Q Would you tell me what that's about?

7 A I'm sorry. That's in Chandra Tyler's dictation.

8 Q Okay.

9 A A nurse told her that they were not supposed -- she
10 was under the assumption that there weren't any
11 concerns of abuse or neglect and that they were
12 primarily contacting DSS in order to release the
13 sitter that was in the room. And I guess that's
14 something that North Carolina does; that's not
15 something that South Carolina DSS does.

16 Q That was my next question.

17 A Yeah.

18 Q Your DSS wouldn't typically go and --

19 A We wouldn't have --

20 Q -- be a sitter?

21 A -- done that anyhow, no.

22 Q Okay. But that was Chandra Tyler?

23 A Yes. That would've been in her dictation.

24 Q And these notes are just notes that you took as --

25 A Yeah. As I read through the dictation, and things

1 that I remembered, yes.

2 Q Okay. I want to look at them. Turn to page -- Tab
3 17, for me, please. And this conversation is
4 actually -- appears to be January the 12th, also
5 transcribed conversation between you and Lieutenant
6 Miller --

7 A Correct.

8 Q -- is that fair?

9 A Uh-huh.

10 Q If you look at -- this one is a little harder to
11 read because you-all were doing what I do and you
12 were talking over each other. But -- so feel free
13 to read this as I'm on Page 3. I'm looking
14 specifically at Line 17, where you said, "They --
15 they wouldn't make a -- they wouldn't make a
16 statement whether or not it was accidental or non-
17 accidental." If you want to read that whole page
18 to put that in context, I'm fine with that.

19 A I'm familiar with it.

20 Q Okay.

21 A Uh-huh.

22 Q Who -- and I may have asked you this before, who
23 decides whether or not you indicate your cases at
24 DSS?

25 A We do it as a group. This particular case would've

1 been an attorney staffing case decision.

2 Q Why this particular case?

3 A Because we -- based off of the second incident.

4 Q Okay. But, with the first incident, would it have
5 been an attorney decision?

6 A Probably -- maybe not. Phyllis could've been
7 present for that. It would've depended on who was
8 available: either Phyllis or Adrian or the other
9 attorney that we had.

10 Q As a supervisor at DSS, how much difference does it
11 make to you whether the hospital decides it was
12 accidental or non-accidental in indicating your
13 case?

14 A Can you rephrase that for me, please?

15 Q Rephrase it or repeat it?

16 A Repeat it. That'll be fine. Let's see if I
17 can. . .

18 Q As a -- as a social worker --

19 A Uh-huh.

20 Q -- as a supervisor --

21 A Right.

22 Q -- how much difference does it make to you what the
23 hospital's decision is in whether or not you
24 indicate your case?

25 A Oh. We would -- if they had concerns that it was

1 non-accidental, we would've indicated our case.

2 Q And if they have -- if they don't have concerns
3 that it's non-accidental, does that mean you would
4 not indicate your case?

5 A Not necessarily. If there had been something else
6 that was of concern, we may have still indicated
7 our case.

8 Q Do you -- excuse me. Do you know whether or not
9 there was anything else that was of concern?

10 A Well, there were concerns that the parents were
11 young and that they were immature and, maybe,
12 concerns of lack -- lack of supervision.

13 Q What all can you indicate your cases for?

14 A Neglect, physical abuse, and sexual abuse.

15 Q What about threat of harm?

16 A You can do that, too. Threat of harm of each.

17 Q Okay. But, in this particular case, the second
18 incident happened before your original case was
19 determined, correct?

20 A Yes.

21 Q Turn to Page 4 for me, please, on your -- in Tab
22 17, Line 24. And if you'll read over to the next
23 page --

24 A Uh-huh.

25 Q -- to Line 3. And you say, "We've got some

1 problems with that worker." What does that mean?

2 A In regards to making the law enforcement referral
3 timely. That's, specifically, what I was referring
4 to.

5 Q So is it fair to say that that was something --

6 A I had concerns of; I must've had previous concerns
7 on, maybe, another case.

8 Q Okay. And, again, you don't recall whether or not
9 there was a written warning or a reprimand?

10 A No. I don't recall.

11 Q Do you recall when you say, "We've got some
12 problems with that worker," if it's related to
13 anything else besides referring to law enforcement?

14 A That would be the only concern that I had at that
15 time.

16 Q Did you ever have any concerns about her seeing her
17 clients in a timely manner?

18 A No. Not that I recall.

19 Q Turn to the next page for me, please, which is --
20 is, in fact, Page 6. Okay. If you look at Lines
21 12 through 16 for me, please.

22 "That wasn't the first" -- this is Lieutenant
23 Miller, "That wasn't the first -- you know, that
24 hasn't been the first problem there, too."

25 And then you say, "I know. And I've already

1 addressed that with her, so I just wanted to make
2 sure."

3 And then, "All right. Well, keep -- "

4 A Yeah.

5 Q I'm -- I'm wondering if we're still talking about
6 this law enforcement referral, or if there's some
7 other issue that you-all are discussing.

8 A As far as I know, only the law enforcement
9 referral.

10 Q And I think I just asked you this, but I'm going to
11 ask you again. Is this the only time that you
12 recall that she had not referred to law
13 enforcement?

14 A That I recall. That's the -- this is the only time
15 that I can recall. Yes. That's correct.

16 Q Would you turn to Page 8 for me, please. If you'll
17 read what you said from Line 7 to 12.

18 A "And we appreciate it that you help us so much.
19 And it's typical if we could get everybody here on
20 board with making those referrals and calling you
21 and letting you know when we get -- when we got an
22 issue. I think we're just -- the issue here is
23 I'm telling her and she's not doing it."

24 Q And is that just related to this case or any other
25 cases?

1 A No. That was related, in general, to the workers
2 just faxing over information and not necessarily
3 calling before faxing.

4 Q So that's sort of what we talked about earlier,
5 where you said y'all would contact law enforcement
6 with a physical referral --

7 A Right.

8 Q -- the fax cover sheet.

9 A Uh-huh.

10 Q And then call them and talk to them about it, as
11 well --

12 A Yes.

13 Q -- is that fair?

14 A That is correct. That's what we -- that's what
15 should be done.

16 Q And is there a time -- is there a deadline by which
17 they're supposed to do that?

18 A To do which? To make the law enforcement referral?

19 Q Yes.

20 A Typically, it's within 24 hours.

21 Q Typically or is that the rule?

22 A At that the time that was the rule; that's policy,
23 yes.

24 Q Okay.

25 MS. HARRILL: All right. We're going to take

1 about a five-minute break again.

2 (Off the record from 11:45 am to
3 11:58 a.m.)

4 THE EXAMINATION BY MS. HARRILL CONTINUES.

5 Q Okay. During the time that -- between the first
6 injury and the second injury, when Dirvondra was
7 investigating what had happened related to the
8 first injury --

9 A Uh-huh.

10 Q -- would you have been the person who had the most
11 contact with Dirvondra, related to the case?

12 A Yes.

13 Q And when y'all staff cases -- I recognize that you
14 put recommendations on a staffing sheet, but do you
15 also talk about what her impressions are related to
16 the family?

17 A Yes.

18 Q And do you recall any of those conversations with
19 her about what she thought about the family?

20 A Not to my knowledge, other than what I've read in
21 her dictation --

22 Q Okay.

23 A -- from her contact.

24 Q And did you-all, at that time, first injury,
25 consider this a serious case?

1 A We considered it a serious case because it was a
2 baby, but at that time we didn't have any concerns
3 -- specific concerns.

4 Q What other information did you need -- well, let me
5 ask you this: We talked about you have 45 days to
6 make a case decision.

7 A Correct.

8 Q Do you always take 45 days to make a case decision?

9 A No. Not always.

10 Q What -- as you sit here today, having reviewed the
11 dictation that was done and the staffing sheets
12 that were done prior to the second injury, what
13 other information do you think that y'all needed to
14 make a case decision?

15 A No other information. As long as we had all the
16 medical records, we could've made a case decision.

17 Q Do you have any -- any sense of what that decision
18 would've been?

19 A Unfounded.

20 Q Okay. And, in your experience, have you had any
21 other infants with subdural hematomas referred to
22 you or to your caseworkers?

23 A Yes.

24 Q And how many of those children were sent home?

25 A I don't recall an exact number. I only remember

1 one specific child.

2 Q Do you remember whether or not that child was in --
3 was put in foster care or was sent home?

4 A It was put in foster care initially -- from the
5 start.

6 Q Okay. And do you recall what sort of subdurals he
7 had? Whether he -- may have been a she, I'm not
8 sure -- did he have --

9 A He.

10 Q Was it a he?

11 A Uh-huh.

12 Q Okay. Did he have one subdural?

13 A I don't recall. This was a case specifically I had
14 as a caseworker, so I don't recall the -- all
15 the --

16 Q Okay.

17 A -- specifics.

18 Q Do you recall who -- would it have been your
19 decision related to that case to place that child
20 in foster care?

21 A No.

22 Q Okay. Do you have any idea whether that child was
23 placed by a court order or by law enforcement?

24 A I -- I don't recall.

25 Q Okay. Do you see anywhere at -- by memory -- and

1 feel free to look, because I would represent to you
2 that I have all the staffing sheets in here that
3 were done prior to the second injury --

4 A Uh-huh.

5 Q -- okay. Do you see anywhere in there where there
6 was a recommendation for parenting classes?

7 A No. Not to my --

8 Q Okay.

9 A -- knowledge, no.

10 Q Do you recall whether or not the hospital had
11 recommended that?

12 A They stated that they had concerns of lack of
13 supervision, but in terms of specifically
14 recommending parenting classes, I don't recall
15 that.

16 Q Okay. Would you agree with me that the hospital
17 did not say that this was an accidental trauma?

18 A They wouldn't make a statement as to -- either way,
19 whether it was accidental or non-accidental.

20 MS. HARRILL: (To Ms. Casey) What else you
21 got?

22 Q Look at your notes --

23 A You want to know what that --

24 Q -- the last page.

25 A -- that is?

1 Q I want to know who those --

2 A Yeah.

3 Q -- last three people are.

4 A He --

5 Q -- on Exhibit 21.

6 A He told me that you may ask me if I have any family
7 in York County, and I have very select members, so
8 I wrote down the last names of my family in York
9 County --

10 Q Okay.

11 A -- for you. So there you go.

12 MR. FRAWLEY: Sort of a post-hoc attorney-
13 client privilege objection --

14 THE DEPONENT: Yeah.

15 MR. FRAWLEY: -- but go ahead.

16 MS. HARRILL: I understand. I also caught
17 that at the same time probably you did. Okay.

18 THE DEPONENT: Yeah. I knew you were going to
19 ask what that was.

20 (Sotto voce discussion between
21 Ms. Harrill and Ms. Casey.)

22 Q Okay. Look at Tab 18. You're on 18, Page 4.
23 You're in the right place.

24 A Page 4?

25 Q I thought you were in the right place.

1 A No. Right here. Okay.

2 Q Okay. Look at -- and --

3 A Tab 18, you said?

4 Q Yes, ma'am.

5 A Yeah. I'm in the wrong place. Page 4, there you
6 go.

7 Q I'm looking specifically at Lines 16 through 19,
8 but you may want to read the whole page to sort of
9 place that. It says, "So we can -- okay, so we can
10 come over there. Also, did you ever check into
11 that file to see the date on that info I faxed you?
12 Do you remember when I faxed you that dictation?"
13 I'm interested in -- it appears to me that there
14 was going to be a staffing at law enforcement. Is
15 that -- is that fair to say?

16 A Yes.

17 Q And is this after the second injury?

18 A Yes.

19 Q And do you recall what you-all discussed at that
20 meeting?

21 A I don't specifically recall. I can recall the
22 parties that were -- some of the parties that were
23 present.

24 Q Who was there?

25 A Myself, Dirvondra, Phyllis Ward, and our attorney,

1 I believe. I don't recall whether it was David
2 Simpson or Adrienne Woods.

3 Q And do you recall why you had that meeting?

4 A Just to make sure that they had all the information
5 that we had, and we had all the information that
6 they had before we -- either of us proceeded any
7 further.

8 Q And, again, this is after the second injury? Is --

9 A Correct.

10 Q -- that fair?

11 A Yes.

12 MS. HARRILL: I don't have anything further.
13 Who wants to go first?

14 MR. SETTANA: Monty, you got anything?

15 MR. TODD: I have no questions.

16 MR. SETTANA: All right.

17 EXAMINATION

18 BY MR. SETTANA:

19 Q Ms. Hinnant, I'm Dan Settana. I represent the
20 sheriff's department. I've just got a few
21 questions, and I'm -- maybe cut these down.

22 You know what, let me just ask you a quick --
23 look at Exhibit 14 and then at Page 282.

24 A Uh-huh.

25 Q You originally asked what that was, and then you

1 guys moved on to -- to another page --

2 A Yeah.

3 Q -- but I -- I do want to know, what -- what was
4 that?

5 A This is where we fax edover a request for incident
6 reports, specifically for Michael and Kayla.

7 And --

8 Q Okay.

9 A -- that handwriting that -- what they do is, once
10 they receive it, there's a lady there --

11 Q Uh-huh.

12 A -- at the sheriff's department named Ann --

13 Q Uh-huh.

14 A -- and what Ann did is, if they have no incident
15 reports, she'll write, "No reports," and fax it
16 back to you.

17 Q Okay.

18 A So there were no incident reports for either of the
19 parents.

20 Q Okay. And that was the one that went over on the
21 night of December 16th?

22 A Yes.

23 Q Okay. All right. At one point you said, talking
24 about your transcript in Exhibit 16, that
25 Lieutenant Miller had no additional concerns. Do

1 you recall that?

2 A He -- the only information that Lieutenant Miller
3 had was the information that I provided to me --

4 Q Okay.

5 A -- he felt the same way about the information that
6 I did.

7 Q And what was that, to your knowledge?

8 A That there was nothing specifically that would
9 indicate abuse or neglect, based off -- based off
10 of the information from the hospital.

11 Q And -- and, you know, we know what happened in the
12 January incident, okay --

13 A Right.

14 Q -- but going back to December, do you, even to this
15 day, have any -- any evidence or know of any
16 evidence that the child was abused or neglected and
17 that was the cause that he was in the hospital in
18 December?

19 A No.

20 Q Okay. Has anybody told you that that was the --
21 anybody made a diagnosis or given you evidence or
22 any grandparents given you testimony or -- or
23 statements saying the child was shaken or abused or
24 dropped in December?

25 A Well, after the second incident, the grandmother

1 did come forward and stated --

2 Q Uh-huh.

3 A -- that she had seen a bruise on the child and
4 expressed concerns, but that was after the second
5 incident. So, prior to that incident, there was no
6 information, no.

7 Q Okay. And was the grandmother interviewed before
8 the -- the -- the second incident?

9 A She was present. So, yes, she would've been
10 interviewed.

11 Q Okay. And she never expressed concern before the
12 -- she had -- did she have the opportunity before
13 the second incident to express concern?

14 A Absolutely yes..

15 Q And did she express concern?

16 A No.

17 Q Okay. And do you know if the -- if the sheriff has
18 the discretion to investigate or not investigate
19 when you -- DSS made the complaint?

20 A Yes. They have the discretion to make a
21 determination of whether or not they want to
22 investigate or not, yes.

23 Q Okay.

24 MR. SETTANA: That's all I have. Thanks.

25 MR. TODD: I'm -- I do have one.

1 MR. FRAWLEY: Go ahead.

2 MR. TODD: I'm just going -- I don't know if
3 I've got extra copies or -- let's see.

4 EXAMINATION

5 BY MR. TODD:

6 Q I'm just going to ask you what this document --
7 these documents are that --

8 A Yeah. This is a release-of-information --

9 Q Okay.

10 A -- specifically for hospital records and, if the
11 child were in school, school records as well.

12 Q Okay.

13 A This is a safety plan.

14 Q And what's the -- the third page?

15 A This page right here?

16 Q Yes.

17 A A safety plan as well -- same exact. And this is
18 an acknowledgement that we're -- by policy, we have
19 these brochures that we give to the parents --
20 these specific brochures, and they are
21 acknowledging that they received them and reviewed
22 them.

23 Q All right. And do you know who would've -- let me
24 -- let's go back to -- it's Bates-stamped 0463.

25 A Uh-huh.

1 Q Do you know whose handwriting that is?

2 A Dirvondra Hill.

3 Q Okay. And this is the mother's signature?

4 A That is correct.

5 Q And whose -- that's Dirvondra's signature?

6 A Yes. Correct.

7 Q And then, on the third page, it's signed by the
8 mother?

9 A Yes. Kayla Lythgoe, and I'm assuming that's
10 Michael Carduff's signature as well.

11 Q Okay. And that's --

12 A So this would've been Chandra Tyler's safety plan.

13 Q Okay. And that is dated --

14 A -- 12/6 -- December the 6th.

15 MR. FRAWLEY: Could you read the Bates number
16 on the lower right-hand corner for the record?

17 MR. TODD: Okay. And I'll go ahead and make
18 this an exhibit. I'll -- I'll leave that.
19 And I'm not clear on the record, but -- but
20 there's -- it's a four-page document that will
21 be Exhibit --

22 THE COURT REPORTER: -- 22.

23 MR. TODD: -- 22.

24 THE DEPONENT: You want the number --

25 Q And the second and third pages are safety plans --

1 MS. HARRILL: Unless you want it to be your 1.

2 MR. TODD: No. Twenty-two's fine.

3 Q -- is that correct?

4 A Yes.

5 Q So are they -- are they different safety plans, or
6 is it -- or how -- why are there -- there two
7 different safety plans? Well, let me -- first off,
8 are they -- are they different safety plans?

9 A Yes, sir. They are.

10 Q Why are there two different safety plans?

11 A The initial safety plan was completed when the on-
12 call worker went out and made initial contact. We
13 didn't have any information at that time, so this
14 is the safety plan that she put in place.

15 Q Okay.

16 A Basically, that the child would not be discharged
17 until there was a further investigation.

18 This would've been the safety plan that
19 Dirvondra put in place after we had all the
20 information from the social worker.

21 MS. HARRILL: Would you read that Bates
22 number, please, just so we're clear?

23 THE DEFENDANT: 0463.

24 MS. HARRILL: Thank you.

25 MR. FRAWLEY: And that's the one for

1 Dirvondra?

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

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

6 THE DEPONENT: Correct.

7 MR. FRAWLEY: I'm sorry, Monty.

8 MR. TODD: Okay. That's okay.

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

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

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

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

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

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

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

5 A That's correct.

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

7 THE DEPONENT: Okay.

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

9 THE DEPONENT: Okay.

10 EXAMINATION

11 BY MR. FRAWLEY:

12 Q If you could refer to Number 16 -- Exhibit Number
13 16 --

14 A Uh-huh.

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

18 A Yes.

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

25 A Yes.

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

7 A Okay.

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

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

14 Q "Okay."

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

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

18 A -- "any determination."

19 Q -- 16, please. Okay.

20 Lieutenant Miller then says, "Right."

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

24 Q "Uh-huh."

25 A "They think that maybe nobody was supervising him

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

6 Q "Uh-huh."

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

11 Q "Right."

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

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

1 A Correct.

2 Q -- correct?

3 A Uh-huh.

4 Q Ms. Newmark was her name --

5 A Right.

6 Q -- correct?

7 And the information you were getting was that
8 they - they couldn't make a determination whether
9 it's non-accidental trauma or accidental --

10 A Correct.

11 Q -- correct?

12 Now, at -- at that last statement there, where
13 you tell him you've got some dictation, you're
14 going to forward that to him, did you, in fact,
15 forward that --

16 A Yes. I faxed --

17 Q -- to Lieutenant Miller?

18 A -- it over to him.

19 Q Okay.

20 A Yes, sir.

21 Q Do you have a Page 13 in there? Again, referring
22 to Exhibit --

23 A Yes.

24 Q -- 16.

25 All right. If you could look on Page 5 and

1 read that for me, please.

2 A You mean Number 5 on Page --

3 Q I'm sorry --

4 A -- 13?

5 Q -- yeah.

6 A Okay.

7 Q Page 13, Lines 5 - 11, if you could --

8 A Okay.

9 Q -- read that, please.

10 A "Yeah. Yeah. And, shoot, I know Dirvondra kept

11 going out there. We -- I mean, she was out there.

12 I don't know if she made contact with them again

13 yet or not, but she's been having a hard time every

14 time she goes out, they're not -- they're not

15 there, or either the grandmother's there and says

16 they're not there."

17 Q Okay. And what -- what is -- what -- what are you

18 talking about there?

19 A She kept -- when she staffed with me, she was

20 stating that she kept going out, and I'm -- by

21 this, she was making contact with the grandmother

22 and not the parents.

23 Q Okay. And --

24 A They weren't available.

25 Q And this was a period after the child was -- was

1 released from the hospital?

2 A Yes.

3 Q All right. And I think you had mentioned one time
4 she went up there on the 17th, met Kayla in the --
5 in the driveway as Kayla's on her way out, but was
6 not able to effect a home visit at that time?

7 A Yes. That's correct.

8 Q Okay. And, eventually, did get a home visit on the
9 20th or the 21st?

10 A Twenty-first.

11 Q Okay.

12 A Yes. The 21st.

13 Q Okay. Could you look at Exhibit 17, please?

14 A Okay.

15 Q And I understand Exhibit 17 is excerpts from the
16 January 12 conversation.

17 A Okay.

18 Q And if you could look on Page 4, please.

19 A Okay.

20 Q Line 4.

21 A Uh-huh. Want me to read it for you?

22 Q If you would, please. Then I'll cover Lieutenant
23 Miller.

24 A Sure.

25 Q Let's go to Line 23.

1 A Okay.

2 Q Start at Line 4, and then we'll go through Line 23.

3 A "They, of course, are making all the statements
4 that we need now . . . because there was no serious
5 injury last time."

6 Q "Uh-huh."

7 A "They told me that basically their concern was for
8 lack of supervision, and that possibly someone
9 wasn't watching the baby or was carrying the baby
10 and the baby got his -- somehow his head could've
11 been possibly bumped, but they -- they wouldn't say
12 that. But they -- I mean, you know, they wouldn't
13 go on record as saying that I -- that it was either
14 accidental or non-accidental either way. They
15 weren't going to tell me."

16 Q "Right. Because that's what we discussed."

17 A "Oh, gosh, do you --"

18 Q "And y'all were going to do the safety plan, you
19 know --"

20 A "Yeah. Can you --"

21 Q "-- with -- with the supervision."

22 A Do you want me to continue?

23 Q Okay.

24 A Okay.

25 Q No. We're good there. Now, what -- what are you

1 and Lieutenant Miller -- well, let me ask you this:
2 This exchange is from a January 12, 2010
3 conversation, correct?

4 A Correct.

5 Q That's the day after the second injury, correct?

6 A Right.

7 Q All right. And -- and what -- what is this
8 exchange with Lieutenant Miller? What are you
9 talking about?

10 A We're just reviewing the facts of the case. This
11 is the first time that I had spoken with him, I
12 believe, after the incident took place. We're
13 discussing what we had previously discussed in
14 regards to the first allegation.

15 Q Okay. And -- and when you say, on Page 4 between
16 Lines 4 through 6, "They, of course, are making all
17 the statements that we need now, but because there
18 was no serious injury last time," the "they" you're
19 talking about is the hospital, correct?

20 A Yes. That's correct.

21 Q And the statements they're making now are relating
22 to the second injury, which was a much more serious
23 injury, correct?

24 A Correct. Yes.

25 Q So they're telling you, after the second injury,

1 that it is non-accidental trauma, and we -- we got
2 a serious issue right now, correct?

3 A Yes.

4 Q But they weren't making those statements before,
5 with regard to the January -- I'm sorry -- the
6 December 5th injury/December 6th intake, because at
7 that time they were not able to determine if there
8 was non-accidental trauma --

9 A Yes.

10 Q -- correct?

11 MR. TODD: Objection.

12 Q Now, is it -- is it your understanding that the
13 second injury was a much more serious injury than
14 the first injury?

15 A Yes.

16 Q Now, one of the questions that has come up is the
17 date of the referral to law enforcement. When --
18 Ms. Hill faxed the referrals to law enforcement
19 December 16th in the evening -- seven o'clock or
20 something like --

21 A Yes.

22 Q -- that, and I think Lieutenant Miller said in his
23 -- his conversation with you that he wouldn't have
24 gotten those actually till the morning of the 17th.
25 Is that your understanding?

1 A Yes.

2 Q And I think you said that, pursuant to policy, law
3 enforcement inquiries are supposed to be sent
4 within 24 hours of -- of us having gotten our
5 intake. Was that your policy?

6 A Yes.

7 Q Okay. So that would've been -- if the intake comes
8 in December 6th, essentially they should've been
9 sent December 6th, but they weren't sent for ten
10 days later, correct?

11 A Correct.

12 Q All right. Now, is it your understanding that this
13 child was injured again before December 16th?

14 A Can you repeat that, please?

15 Q Yeah. Or let --

16 A I'm sorry.

17 Q -- me ask it a different way.

18 A Yeah.

19 Q We -- we got our initial intake December 6th,
20 correct?

21 A Yes.

22 Q For an injury that occurred on or before December
23 5th?

24 A Yes.

25 Q All right. By December 16th -- maybe the law

1 enforcement inquiry wasn't sent in for ten days,
2 but the child hadn't been injured again between
3 December 6th and December 16th, had he?

4 A That's correct.

5 Q All right.

6 A Yes.

7 Q He wasn't injured between December 16th and January
8 10th, was he?

9 A No.

10 Q Okay. Not that we know.

11 A Not that we know of --

12 Q All right.

13 A -- correct.

14 Q Do you know the -- the law enforcement inquiry --
15 when -- when they did the law enforcement inquiry
16 that was sent in, it was sent in to -- for law
17 enforcement to inquire into whether there's any
18 kind of criminal history for Kayla Lythgoe, the
19 mom, correct?

20 A Correct.

21 Q And for Michael Carduff, the dad, correct?

22 A Correct.

23 Q And also Charlotte Williams, correct?

24 A Correct.

25 Q All right. How about Larry Williams, the step-

1 granddad on the maternal side? Was -- was anything
2 sent in for him?

3 A I believe so, yes, sir.

4 Q Okay. Whether it was or wasn't, we know for sure
5 it's sent in for Kayla Lythgoe, for Michael
6 Carduff, and for --

7 A -- Charlotte --

8 Q -- Charlotte Williams, correct?

9 A Yes.

10 Q Now, as to those three, do you know if the law
11 enforcement inquiry came back with any kind of
12 criminal history for Kayla Lythgoe?

13 A It had no criminal history for her.

14 Q No -- no criminal history for the mama, correct?

15 A Correct.

16 Q How about for Michael Carduff, the guy who
17 eventually admitted to injuring the child for the
18 second injury -- January 11th? Was -- was there
19 any criminal history for Michael Carduff?

20 A No. There was not.

21 Q So whether this law enforcement inquiry was sent in
22 December 6th or December 16th or at any time before
23 he pled guilty to injuring this child, there
24 would've been no criminal history for Michael
25 Carduff, correct?

1 A Correct.

2 Q How about Charlotte Williams? Was there any
3 criminal history that came back for her?

4 A Yes. I believe there was some criminal history for
5 her.

6 Q She had a CDV in her history, didn't she?

7 A Yes.

8 Q So, if the criminal history inquiry did go in in a
9 timely manner, all we would've found out was that
10 the maternal grandma --

11 A Uh-huh.

12 Q -- who still has access to the kid, had a CDV
13 history, correct?

14 A Correct.

15 Q But mama and daddy had no history, correct?

16 A Correct.

17 Q I'm sorry. I can't read my handwriting on my
18 notes. Okay.

19 There was a question that was asked about
20 whether there was a recommendation for parenting
21 classes, which is a relevant question because the
22 issue had come up that there was concern about
23 these being young, possibly immature, parents, who
24 maybe had supervision issues.

25 A Correct.

Krista M. Hinnant

1 Q All right. And I think the question was: In one
2 of the staffing sheets, was there a recommendation
3 for parenting classes? And I think the response
4 was there was not, correct?

5 A Correct.

6 Q Let me ask you this: As far as the way things work
7 with DSS, there's an intake, there's an assessment
8 originally, correct?

9 A Yes.

10 Q And -- and assessment is the investigation, isn't
11 it?

12 A Correct.

13 Q And at some point -- I think we have 45 days with
14 that assessment -- more time if we have to request
15 it, but essentially 45 days to complete the
16 assessment and determine if a case is founded or
17 unfounded, correct?

18 A Correct.

19 Q All right. When does treatment kick in?

20 A Treatment only kicks in if there is an -- if there
21 is abuse or neglect that's been found during the
22 case, and the case --

23 Q Okay.

24 A -- was indicated.

25 Q In other words: The -- the assessment process was

1 still ongoing --

2 A Correct.

3 Q -- when this staffing doesn't mention parental
4 supervision classes, correct?

5 A Correct.

6 Q Parenting classes, is that a treatment function or
7 an assessment function?

8 A Treatment.

9 Q So, in order for parenting classes to have kicked
10 in and have been provided, would there not have had
11 to have been a completion of the assessment and a
12 finding?

13 A Correct.

14 Q Which we didn't have at the time of that staffing?

15 A Correct.

16 Q We didn't have at the time of the second injury?

17 A Correct.

18 Q If you could look at Exhibit 18, which I believe is
19 the conversation of January 19th.

20 A Uh-huh.

21 Q All right. Let me make sure you've got that page
22 in there. All right. You do not. It goes between
23 Page 7 and Page 11. So I want to show you Page 19
24 on the copy of the transcript I have, from January
25 19th, 2010, transcript of recording labeled

1 "Christa DSS," dated 1/19/2010, which Ms. Harrill
2 has provided us with today. And, again, if you'll
3 read the Christa parts, and I'll read the
4 Lieutenant Miller parts.

5 MS. HARRILL: I'm sorry.

6 MR. FRAWLEY: Starting on Page 9 --

7 MS. HARRILL: Thank you.

8 MR. FRAWLEY: -- Line 24. Okay.

9 MS. HARRILL: Okay.

10 A Okay.

11 Q All right. I'm trying -- try to keep this out of
12 the camera line, so they can see you while we're
13 talking.

14 A "Yeah. And did he ever admit to shaking the baby
15 in December?"

16 Q "No. He -- he said that he didn't. There wasn't
17 anything -- nothing like that done, because I went
18 back and talked to him. And he said that he didn't
19 do -- there was nothing and nobody could figure out
20 what was wrong with him, other than him having a
21 cold and a sore throat."

22 A "But he didn't -- he didn't indicate that he had
23 done anything --"

24 Q "Unh-unh. No."

25 A "-- to the baby in December? Did y'all -- did

1 y'all give him a polygraph?" Oh, I'm sorry. "Did
2 y'all give -- y'all gave him a polygraph, didn't
3 you?"

4 Q "Yeah." Okay. Let's stop there. That ends on
5 Page 10 on Line 13.

6 A Uh-huh. And I have that page.

7 Q All right. What is that -- what is that
8 conversation about? Who's the "he" that you're
9 talking about?

10 A Michael Carduff.

11 Q Michael Carduff. That's the dad who pled guilty to
12 the second injury, January 11, correct?

13 A Correct.

14 Q All right. And Lieutenant Miller says that they
15 gave him a -- a polygraph?

16 A Correct.

17 Q And with that polygraph, he -- he -- following the
18 polygraph he admitted that he'd injured the child,
19 and he pled guilty and was convicted and has spent
20 some time -- maybe is still in prison, for all you
21 know, correct?

22 A Yes.

23 Q But that conversation -- in that conversation,
24 Lieutenant Miller told you that Michael Carduff
25 never admitted to having done anything to the child

1 that caused the December 5th injury, which resulted
2 in the December 6th call in to SCDSS, correct?

3 A Correct.

4 Q Even with the polygraph, correct?

5 A Correct.

6 Q To this day, do you know if there's been any
7 definitive finding as to what caused the December
8 5th injury to this child, which led to the December
9 6th intake to DSS?

10 A To my knowledge, there has not.

11 Q Mr. Carduff hasn't admitted to it?

12 A Correct.

13 MR. FRAWLEY: Okay. That's all I've got.

14 Please answer any -- any other questions Ms.
15 Harrill may have for you.

16 MS. HARRILL: I just have a couple, and I'm
17 probably going to go backwards --

18 THE DEPONENT: That's fine.

19 MS. HARRILL: -- from where we were.

20 REEXAMINATION

21 BY MS. HARRILL:

22 Q He just asked you about the polygraph and -- and
23 the -- the -- whether or not Michael Carduff had
24 said he had shaken the baby or any of that --
25 injured the baby during the first injury?

1 A Yes.

2 Q As you sit here today, do you know whether or not
3 law enforcement asked any questions related to the
4 first injury to Michael Carduff or anybody else?

5 A He said that he -- he did ask him about that.

6 Q Can you show me that?

7 A It was in the one that he had, I don't know if it
8 was on the page that I had.

9 MR. FRAWLEY: Yeah. I'll -- I'll show her my
10 copy of it.

11 MR. SETTANA: The 19th hearing -- transcript?

12 MR. FRAWLEY: Yes.

13 MS. HARRILL: Yes.

14 THE DEPONENT: Is it in here?

15 MR. FRAWLEY: It should be on that page. It's
16 -- Page 9 is not on there. Look at Page 9 and
17 10.

18 A And, see, I asked him, "Did he ever admit to
19 shaking the baby" --

20 MS. HARRILL: (To the deponent) Hold on.

21 What page --

22 A -- "in December?"

23 MS. HARRILL: What page are you on?

24 THE DEPONENT: Page 9.

25 MS. HARRILL: Okay.

1 MR. FRAWLEY: And let her know what -- what
2 line.

3 THE DEPONENT: Number 24 and 25.

4 MS. HARRILL: Okay.

5 A I asked him "Did he ever admit to shaking the baby
6 in December?"

7 Then Page 10, Line 1 through Line 6, "No. He
8 said that he didn't. There wasn't anything --
9 nothing like that done, because I went back and
10 talked to him. He said that he didn't do -- there
11 was nothing, and nobody could figure out what was
12 wrong with him, other than him having a cold and a
13 sore throat."

14 Q Okay. So when you go to -- since we're --

15 A Uh-huh.

16 Q -- reading from this transcript, if you'll go to
17 Page 11 --

18 A Uh-huh.

19 Q -- Line Number 5 is your -- and I'll be Lieutenant
20 Miller this time. If you'll read -- we'll go from
21 Lines 5 through 22.

22 A "So the polygraph indicated that he was --"

23 Q "-- deceptive."

24 A "Okay."

25 MR. SETTANA: Object to the form. (To the

1 deponent) Go ahead.

2 MS. HARRILL: Go ahead, Krista.

3 A "Yeah. Okay."

4 Q "But we didn't -- we didn't bring up any -- there
5 was nothing done about the December stuff. Again,
6 because -- see that -- even then, that had not
7 figured into my -- that had not even come back to
8 -- in my realm of thinking --"

9 A "Oh, I know."

10 Q " -- as far as the December stuff, because as --
11 talking with y'all, I had cleared that out of my --
12 my head as far as -- because Lola even said, 'Oh,
13 this is the one that we had the report on back in
14 December.' She had to ring my bell on it, because
15 I did not remember it because, once I had talked to
16 y'all, that was said and done. That was -- that
17 was a problem that was being, you know, taken care
18 of. So I didn't even --"

19 A "Yeah. I didn't either. I mean, it's kind of a
20 shock that any of this really happened, because I
21 never had any -- any indication" --

22 Q Okay. You can -- we can stop there. Otherwise
23 we'll be reading this whole thing into the record.

24 A Okay.

25 Q I'm -- I guess I go back to my question: Do you

1 know, during the polygraph, whether or not there
2 was ever any questions asked about the December
3 incident?

4 A I don't know.

5 Q Do you know whether or not Lieutenant Miller, when
6 he interviewed Michael Carduff, or anybody else for
7 that matter, asked about what happened in December?

8 A I don't know. He made two contradictory
9 statements.

10 Q Okay. Now, the other question -- there was a
11 couple other questions that you were asked about
12 assessment, intake, and treatment.

13 A Uh-huh.

14 Q Is it fair to say that, even if a treatment case
15 has not begun, if you-all are investigating, that
16 you-all have a duty to protect the child while you
17 are investigating?

18 A Yes.

19 MR. FRAWLEY: Object to the form. (To the
20 deponent) Answer the question.

21 A Yes.

22 Q Would you look, please, at Exhibit Number 2 for me,
23 please? Have you ever seen this before?

24 A Yes.

25 Q This is -- for -- this is the policy and procedure

1 manual from South Carolina DSS. This is Chapter 7.
2 I'm looking specifically at 7.19, where it says,
3 "The Purpose: To outline the procedures. (1) To
4 identify safety concerns and ensure the immediate
5 safety and safety throughout the
6 investigation/assessment, of all children in the
7 household and under the control of the alleged
8 perpetrator." Have you seen that before?

9 A Uh-huh.

10 Q Is that the policy of DSS?

11 A Yes.

12 Q And it goes on to say, "To make a determination
13 whether or not the children were abused or
14 neglected, to make a decision regarding the risk of
15 maltreatment -- regarding future risk of
16 maltreatment." And "(4) To plan for agency service
17 intervention." Is that the policy of --

18 A Yes.

19 Q -- of the agency?

20 A Yes.

21 Q Let's -- hang on just a second. Go ahead. Let me
22 ask you this: As a supervisor, in discussing this
23 case with your caseworker, did you, in December,
24 consider Owen to be a child that was at risk of
25 maltreatment?

1 A No.

2 Q And if not, then why do you continue to
3 investigate?

4 A Because we didn't have all the information. We
5 needed to have all the -- we had the statements,
6 but we didn't have all the medical records to make
7 a case decision.

8 Q Do you have any idea when you got the medical
9 records?

10 A I don't recall that.

11 Q Do you --

12 A We had to do a formal request for them. I'm sorry.

13 Q That's okay. Do you know how I would know -- who
14 could I ask to tell me when you-all received the
15 medical records?

16 A It may be on the records that are in the file.
17 Maybe if they were faxed copies or if there was an
18 envelope that we received them in.

19 Q Well, let me ask you this: If you don't have all
20 the information you need to make a case
21 determination, how can you determine, as you sit
22 here today, that the child was not at risk?

23 A Because based off the information that we had at
24 the time, the verbal information that the hospital
25 was giving us, they were negative surveys, and they

1 -- they couldn't determine whether it was
2 accidental or non-accidental.

3 Q Okay.

4 MS. HARRILL: No further questions.

5 MR. TODD: Just -- just a follow-up.

6 REEXAMINATION

7 BY MR. TODD:

8 Q I want to -- if you would turn to -- it's Tab 9.

9 A Yes.

10 Q And on -- on -- and it looks like it's Defendants',
11 -- the bottom Bates stamp's 1353.

12 A Uh-huh.

13 MR. FRAWLEY: I think Tab 9 was the one that
14 was --

15 MS. HARRILL: Yeah. But only for me.

16 MR. FRAWLEY: Okay. Okay. You're good.
17 You're good.

18 Q Does -- does your Tab 9 say 1353 at the --

19 A Yes. It does.

20 Q -- bottom?

21 A Yes, sir.

22 Q Whose handwriting is that?

23 A That's my handwriting.

24 Q Okay. And what would -- when -- what's the date
25 that you would've created that document? Would it

1 be 12/7/09?

2 A Yes. Correct.

3 Q And -- and -- and "Baby in hospital. Two subdural
4 hematomas. Unknown how baby received." Do you
5 know where that information would've come from?

6 A That would've been the allegations on the report.

7 Q But it was -- it was reported to you that there
8 were two subdural hematomas and nobody could say
9 how they occurred?

10 A Yes.

11 Q And that either came from the hospital or the
12 parents or both?

13 A Yes. Correct.

14 Q And it says, "Hospital cannot determine if
15 accidental or non-accidental."

16 A Correct.

17 Q But were you aware at that time the -- the hospital
18 had a sitter in the room?

19 A Yes.

20 Q And do you know why they had a sitter?

21 A I do not know.

22 Q If you turn on -- it's the same tab, 1355, is that
23 your handwriting as well?

24 A Yes, sir. It is.

25 Q And that's -- this document, again, created

1 12/7/09?

2 A Yes. This document was prior to the previous
3 document.

4 Q Okay. It says, "Owen has two subdural hematomas.
5 One would indicate non-accidental trauma."

6 A Yes.

7 Q Did that information come from the social worker?

8 A That was just the allegations of the report. I
9 mean, that was the concern.

10 Q Did you ever talk to the social worker yourself?

11 A Yes. I did.

12 Q Okay. Do you know which one you talked to?

13 A Laura Newmark.

14 Q All right. Is this -- did you have notes regarding
15 that conversation --

16 A Yeah. It's in --

17 Q -- or did you --

18 A -- the -- it would be in the dictation.

19 Q Uh-huh. It says, "Social worker has concerns
20 because CT scan shows non-accidental trauma." Do
21 you see at the bottom of the -- of 1355?

22 A Yes. And then it's cut off.

23 Q Okay. No doctor is saying it is non-accidental.
24 Is that what -- is that -- is it --

25 A I --

1 Q You can't say whether --

2 A I don't --

3 Q -- it's caused --

4 A -- and I can't -- yeah. I can't say that, as well
5 as the other page that's --

6 Q Yeah.

7 A -- a lot of the information is cut off on it.

8 Q But -- but, you know, it's fair to say the hospital
9 had concerns about it being accidental trauma?

10 A They stated that they had -- they couldn't
11 determine whether it was accidental or non-
12 accidental.

13 Q I -- I know, but because they had concerns that it
14 was non-accidental, they reported it to DSS? You'd
15 agree with that, wouldn't you?

16 A Yes.

17 Q And -- but it -- they couldn't make a definitive
18 statement that it was either accidental or non-
19 accidental?

20 A Correct.

21 Q Now, there's -- I'm -- I'm going now to Tab 6. And
22 -- and it's like a case review.

23 A I -- yeah. It's just the same thing.

24 Q How is that -- how is that created? Is --

25 A I have -- this Tab 7 information --

1 Q Well, actually it was Tab 6, but Tab 7 --

2 A Six and --

3 Q -- Tab 7's a case review, so my question --

4 A These --

5 Q -- would apply to either one of them.

6 A These two documents I am not familiar with. This
7 is the first time I've seen either one of them.

8 Q All right. So you don't know who prepared them or
9 when or --

10 A I mean, I know who prepared them based off of the
11 initials on the bottom, but when they were prepared
12 and -- I don't know.

13 Q Who prepared them, based on the initials on the
14 bottom?

15 A Well, based on -- Tab 6, that would've been Phyllis
16 Moore Ward, and -- let's see. Tab 7 it still shows
17 her as well. And then --

18 MR. FRAWLEY: (To the deponent) Tab 8's the
19 next one.

20 A -- Tab 8 would be for Yvonne Stewart. So 6 and 7,
21 Phyllis, and then 8 would be Yvonne.

22 Q Okay.

23 MR. FRAWLEY: Monty, if you look at the lower
24 right-hand corner, those are our Bates
25 numbers, and the initials --

1 THE DEPONENT: Yeah.

2 MR. FRAWLEY: -- indicate that's -- those are
3 the files we got them from.

4 MR. TODD: I gotcha.

5 Q All right. So I see --

6 A Yeah.

7 Q -- DSS PMW would be --

8 A -- Phyllis Moore Ward. And YS, Yvonne Stewart.

9 Q Who was Phyllis Moore -- Warren?

10 A Ward.

11 Q Ward.

12 A The program coordinator at York County DSS.

13 MR. TODD: All right. Thank you.

14 THE DEPONENT: Okay.

15 MR. SETTANA: I've got some follow-up
16 questions.

17 REEXAMINATION

18 BY MR. SETTANA:

19 Q Let me go back to this transcript of 1/19/2010.
20 Okay.

21 A What tab is that?

22 Q I'm not sure if everything was in the tab or was
23 in --

24 MR. FRAWLEY: I'll give her my copy.

25 THE DEPONENT: Okay.

1 A All right.

2 Q Okay. And there is an Exhibit in Tab 18. I don't
3 know if it's all there, but on Page 5 -- well,
4 excuse me -- Page 9, okay, you read from the bottom
5 of Page 9 onto Page 10 --

6 A Yes.

7 Q -- with your attorney and also with counsel for the
8 plaintiff, okay.

9 A Uh-huh.

10 Q And then later you read some parts about the
11 polygraph --

12 A Right.

13 Q -- okay. And you recall that you said that -- that
14 -- that the polygraph -- that -- you made a
15 reference that Lieutenant Miller made some
16 inconsistent statements.

17 A Yes. He did.

18 Q Okay. Let me go back and actually go through that
19 with you, and maybe --

20 A Okay.

21 Q -- clear that up --

22 A Okay. Sure.

23 Q -- see if they are inconsistent.

24 A Sure.

25 Q Starting in chronological order -- and -- and you

Krista M. Hinnant

1 would concede that sometimes in conversations in --
2 in real life, when we're not here in deposition, go
3 out of chronological order?

4 A Yes.

5 Q Yeah. You would -- you'd be talking to Lieutenant
6 Miller and you may talk about the interview and
7 then you may go back to the December incident and
8 then you may jump forward to the January
9 incident --

10 A Yes.

11 Q -- correct?

12 A Uh-huh.

13 Q Okay. So let's start on Page 9 there at the
14 bottom, and -- and you asked him, "Did you -- did
15 he ever admit to shaking the baby in December?"

16 A And he says, "No."

17 Q And Lieutenant Miller says, "No. He said that he
18 didn't. There wasn't anything -- nothing like that
19 done, because I went back and talked to him."

20 A Okay.

21 Q Okay. Would that indicate to you -- then he goes
22 on and you ask him about the polygraph and did you
23 ask him -- did you ask him on the polygraph about
24 the December incident and he says no --

25 A Right.

1 Q -- correct? I'm paraphrasing.

2 A Correct. Yes.

3 Q Could it be there, when he's answering your first
4 question, that, "No. I didn't ask him about the --
5 on the polygraph about December, but I went back
6 and asked about it afterwards"?

7 A Correct. Yes. That could be the --

8 Q Okay.

9 A -- case.

10 Q That -- that's not inconsistent, is it?

11 A No. It's not.

12 Q Okay. So did -- anywhere did he say, "Yeah. I
13 asked him about it on the polygraph," and later
14 said, "No. I didn't ask him about it on the
15 polygraph"?

16 A No. He did not.

17 Q Okay. Would this -- reading that transcript from
18 Page 9 onto Page 10 indicate that Lieutenant Miller
19 did not ask it on the polygraph, but later went
20 back and talked to Mr. Carduff about that?

21 A Yes. That's what it would indicate, yes.

22 Q Okay. And it would indicate that Mr. Carduff told
23 Lieutenant Miller, "No. There was nothing with the
24 baby back in the December incident"?

25 A Correct.

1 Q Okay. And to your knowledge, they've never re-
2 polygraphed Mr. --

3 A Not --

4 Q -- Carduff?

5 A -- to my knowledge, no, sir.

6 Q Okay.

7 MR. SETTANA: That's all I have. Thank you.

8 MR. FRAWLEY: I've got nothing further.

9 MS. HARRILL: Me neither.

10 MR. TODD: Did -- did y'all ask her what her
11 address is --

12 MS. HARRILL: I did.

13 THE DEPONENT: Yes.

14 MR. TODD: -- in the beginning? I wasn't
15 paying attention like I was supposed to.

16 Okay.

17 FURTHER DEPONENT SAITH NOT.

18 Signing waived.

19 (Whereupon, there being no further
20 questions, the deposition was
21 concluded at 12:44 p.m.)

22 (*This transcript may contain quoted material.
23 Such material is reproduced as read or quoted
24 by the speaker.)

25 (**Certificate accompanies sealed original only.)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

ELIZABETH HOPE RAINEY,
AS THE APPOINTED GUARDIAN
AD LITEM TO OWEN C. [REDACTED],
A MINOR,

PLAINTIFF,

-VS-

CA NO. 2011-CP-86-04508

CHARLOTTE MECKLENBURG
HOSPITAL AUTHORITY D/B/A
CAROLINAS MEDICAL CENTER,
SOUTH CAROLINA DEPARTMENT
OF SOCIAL SERVICES,
BRUCE BRYANT AS THE
CONSTITUTIONAL OFFICER OF
THE SHERIFF OF YORK
COUNTY, THE YORK COUNTY
SHERIFF'S DEPARTMENT AND
YORK COUNTY,

DEFENDANTS.

 COPY

DEPOSITION OF KAYLA LYTHGOE

ROCK HILL, SOUTH CAROLINA

JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

DALLAS REPORTING
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
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AS THE APPOINTED GUARDIAN)
AD LITEM TO OWEN C.)
A MINOR,)

PLAINTIFF,)

-VS-) CA NO. 2011-CP-86-04508

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HOSPITAL AUTHORITY D/B/A)
CAROLINAS MEDICAL CENTER,)
SOUTH CAROLINA DEPARTMENT)
OF SOCIAL SERVICES,)
BRUCE BRYANT AS THE)
CONSTITUTIONAL OFFICER OF)
THE SHERIFF OF YORK)
COUNTY, THE YORK COUNTY)
SHERIFF'S DEPARTMENT AND)
YORK COUNTY,)

DEFENDANTS.)

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Page 4

1 Deposition of Kayla Lythgoe, taken before me,
2 Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the
3 State of South Carolina, in the law offices of McGowan
4 Hood and Felder, Rock Hill, South Carolina, commencing
5 at 9:53 a.m. on July 20, 2012 in accordance with the
6 South Carolina Rules of Civil Procedure.
7 It was stipulated by and between Counsel for the
8 Plaintiff(s) and Counsel for the Defendant(s) that this
9 deposition is taken for any purpose allowed under the
10 South Carolina Rules of Civil Procedure.
11 That the signing of the transcript of deposition
12 by the witness is reserved.
13 * * * * *
14 Kayla Lythgoe, first being duly sworn, deposes and says
15 as follows:
16 EXAMINATION - (By Mr. Frawley)
17 Q Ms. Lythgoe, will you state your name and address
18 for the record, please?
19 A Kayla Lythgoe. You said address?
20 Q Yes, ma'am.
21 A 2799 Whiskey Road, Aiken, South Carolina.
22 Q Have you ever had your deposition taken before?
23 A No.
24 Q Let's go over some preliminaries. I introduced
25 myself to you a moment ago. My name is Pat

Page 5

1 Frawley. I'm an attorney with the Davis Law Firm
 2 in Lexington, and I'm representing the South
 3 Carolina Department of Social Services in this
 4 lawsuit. The gentleman to my left is Mr. Monty
 5 Todd from Columbia, and Mr. Todd represents
 6 Carolinas Medical Center, and they've got a longer
 7 name that, but basically he represents the
 8 hospital. The gentleman to his left is Mr. Dan
 9 Settana, and Dan represents York County and the
 10 York County Sheriff's Department, and we're
 11 defendants in this lawsuit. Do you understand
 12 that?
 13 A Yes.
 14 Q I say we're defendants, our clients are defendants
 15 in this lawsuit. To your right is Mr. Hood and Mr.
 16 Shaw. They're your attorneys; do you understand
 17 that?
 18 A Yes.
 19 Q I'm going to ask you some questions and the other
 20 attorneys after I'm done will ask some other
 21 questions in the event that I miss anything. I'm
 22 going to ask you what you know about this case.
 23 I'm going to ask you a little bit about yourself,
 24 about Mr. Carduff, with whom you have a child,
 25 about the circumstances surrounding it. I may have

Page 6

1 a little broader scope and ask questions like, you
 2 know, do you know people in York County, are you
 3 related to anyone in York County by blood or by
 4 marriage. And that may sound like I'm going to do
 5 a background check on you. I'm not. I just want
 6 to make sure that if we get to the point that we
 7 have a jury here, I don't have your brother-in-law
 8 or something on the jury.
 9 A Right.
 10 Q All right. Let me go over some ground rules. If
 11 you have any questions about my questions, you need
 12 to direct those questions to me. I'll be glad to
 13 answer those. I want to make sure that any
 14 questions I ask you, you understand before you
 15 answer. So if I ask a question and you don't
 16 understand that question, ask me to rephrase it.
 17 I don't want you to be shy about that because I
 18 butcher a lot of questions in a deposition. I have
 19 a script, but I'm going by my script, I'm listening
 20 to your last answer, I'm thinking of another
 21 question, and I have a bad habit of having run-on
 22 sentences or switching direction mid-sentence. So
 23 if I ask a question and you just flat don't know
 24 what it is, ask me to rephrase it, all right?
 25 A Okay.

Page 7

1 Q You need to direct those questions to me, all
 2 right?
 3 A Yes.
 4 Q If I ask you any questions and you don't know the
 5 answer, I don't expect you to know everything. I
 6 just want to find out what you do know. So if I
 7 ask a question and you don't know, tell me you
 8 don't know. That's an acceptable answer. Don't
 9 speculate and don't guess. So I'll assume that if
 10 I've asked you a question and you've given me an
 11 answer, you understood the question and you know
 12 the answer, all right. Now, if you give me an
 13 answer and you say you don't know, I may ask that
 14 question in another manner to see if I've
 15 inartfully asked the question. But if your answer
 16 remains that you don't know, I'll stick with that
 17 and move on. Don't assume because I'm asking you a
 18 question you should know the answer.
 19 A Yeah.
 20 Q There may be things that I ask you that you just
 21 flat don't know, all right. By the same token, if
 22 I ask you a question and today you don't remember
 23 the answer, I don't remember is an acceptable
 24 answer, although I will again go back and probably
 25 ask that in another manner. A classic example of

Page 8

1 that is what were you wearing last Tuesday. Last
 2 Tuesday you could look down and you could tell me
 3 what you were wearing, today you may not know. I
 4 had a deposition where this fellow wore the same
 5 thing every Monday, every Tuesday, every Wednesday
 6 so he could tell, you know, if it was a Tuesday he
 7 was wearing the green shirt, but few people do
 8 that. So if I ask you a question and you don't
 9 remember, stick with that and we'll move on. Don't
 10 speculate and don't guess. Try to make sure that
 11 all of your answers are verbal, avoid head shakes
 12 and head nods for the affirmative, which we've been
 13 doing now.
 14 A Yeah.
 15 Q If that happens in the deposition, I'll probably
 16 follow up with was that a yes or was that a no, so
 17 we'll catch that. But if you can, try to make sure
 18 that you answer verbally so the court reporter can
 19 get that. You'll notice while she's speaking,
 20 she's looking at you so she'll likely get it
 21 anyway, but I want to make sure we have a clear
 22 record.
 23 A Yeah.
 24 Q By the same token, if I ask you a question that
 25 elicits a yes or no answer, try to avoid uh-huh and

Page 9

1 huh-uh for the affirmative and negative because
 2 phonetically they may sound the same.
 3 A Yes.
 4 Q I want to make sure that when you say yes it comes
 5 out as a yes, all right. If you need a break at
 6 any time, let me know. I tend to work fairly fast.
 7 We've got a little bit of ground to cover here.
 8 But there's going to be other gentlemen going
 9 behind me asking questions, so if you think you
 10 need a break, if we get into parts of this case
 11 that are upsetting to you and we need to take a
 12 break, let me know and we'll take a brief break,
 13 all right?
 14 A Okay.
 15 Q If Mr. Hood or Mr. Shaw or the other attorneys
 16 voice an objection, if I ask any objectionable
 17 questions and they voice an objection, stop
 18 talking, let them voice their objection for the
 19 record, and then depending on what we do at that
 20 point, we'll move on. But try not to talk at the
 21 same time someone else is talking. You and I will
 22 need to make sure that you let me finish my
 23 question before you begin your answer. I need to
 24 let you finish your answer before I begin my next
 25 question, or the court reporter over here will be

Page 10

1 stroking out if she's trying to get both of us at
 2 the same time. All right. You've given me your
 3 name and address, what is your date of birth?
 4 A June 12, 1990.
 5 Mr. Frawley - Let's go off the record, please.
 6 (OFF THE RECORD)
 7 Q The address in Whiskey Road, how long have you lived
 8 in Aiken?
 9 A Since June 2000 --- I was 20. I turned 20, two
 10 years ago.
 11 Q We're in 2012 ---
 12 A 2010.
 13 Q --- that would be 2010?
 14 A Yes.
 15 Q Since June of 2010 you've lived in Aiken, correct?
 16 A Yes.
 17 Q At the same Whiskey Road address?
 18 A Yes.
 19 Q Is that a home or is that an apartment?
 20 A It's a home.
 21 Q A house, rather.
 22 A Yeah.
 23 Q Who lives at that address with you?
 24 A My step-father, Larry Williams, my mom, Charlotte
 25 Williams, my son, Owen Carduff and my step-brother

Page 11

1 now, Caleb Williams.
 2 Q How old is Caleb?
 3 A Eighteen.
 4 Q And Caleb is Larry Williams' son?
 5 A Yes.
 6 Q Who has custody of your son, Owen?
 7 A Charlotte and Larry.
 8 Q Do you pay child support to them?
 9 A No.
 10 Q Now, you're at 2799 Whiskey Road now, was that the
 11 address you moved into when you moved to Aiken in
 12 June of 2010?
 13 A Yes.
 14 Q So since June of 2010, you've lived at that same
 15 address?
 16 A Yes.
 17 Q Where did you live before that, your immediate
 18 address before that?
 19 A I do not remember the address. It's on Truman
 20 Street. I don't remember the numbers. I lived
 21 with my parents.
 22 Q And when you say your parents, that would be
 23 Charlotte Williams and your step-dad?
 24 A Yes.
 25 Q When were Larry Williams and Charlotte Williams

Page 12

1 married?
 2 A It was after Owen was born. It was September '09.
 3 Q Owen was born [REDACTED]
 4 A Yes, so he was about 20 days old.
 5 Q How long did you live with them then?
 6 A That was briefly because before that I lived with
 7 Michael.
 8 Q And the address you lived with Michael was [REDACTED]
 9 [REDACTED]
 10 A [REDACTED], yeah.
 11 Q It's spelled oddly, [REDACTED]?
 12 A Yes.
 13 Q How long did you and Michael live at [REDACTED]
 14 [REDACTED]
 15 A About a little under a year.
 16 Q Where had you lived before you and Michael lived
 17 together at [REDACTED]?
 18 A With his parents in Concord.
 19 Q They lived in Concord, North Carolina?
 20 A Yes.
 21 Q Do you ever go to the mall up there?
 22 A Yes.
 23 Q How long had you lived with his parents?
 24 A Since April '08.
 25 Q Now, so in January of 2009 you would have been

Page 13

1 living with his parents and with Michael in Conway?
 2 Mr. Todd - Concord.
 3 A Concord.
 4 Q Concord. I've been going to Conway for the last
 5 five years.
 6 A That's okay.
 7 Q My son played baseball down there, and I had Conway
 8 on the brain. Okay, Concord. So again, my
 9 question is, in January of 2009 you would have
 10 lived with Michael with his parents up in Concord,
 11 correct?
 12 A Yes.
 13 Q All right. Are you employed right now?
 14 A Yes, I am.
 15 Q Where do you work?
 16 A I'm in between jobs actually. I just put in my
 17 two-weeks notice at TLC Medical, and I am to start
 18 at Verizon Wireless the beginning of the month.
 19 Q TLC Medical, how long have you been with them?
 20 A Not very long, about four months.
 21 Q And what's your job title there?
 22 A I was considered DME representative.
 23 Q DME, what does that stand for?
 24 A Durable Medical Equipment.
 25 Q What were your duties; what did you do?

Page 14

1 A I measured people for braces, compression hoses,
 2 wheelchairs. I fixed them. I put them together
 3 and explained them.
 4 Q You've been with them for about four months and
 5 you're in the midst of your two-weeks notice?
 6 A Yes.
 7 Q And you're going to Verizon Wireless and what are
 8 you going to do with Verizon?
 9 A Just sell phones.
 10 Q So you'll be in sales?
 11 A Yes.
 12 Q When do you start with them?
 13 A It's not confirmed yet.
 14 Q Okay.
 15 A I have to do a training program first.
 16 Q Where did you work before TLC Medical?
 17 A Hobby Lobby.
 18 Q Hobby Lobby?
 19 A Yes.
 20 Q And where is that located?
 21 A It's in Aiken.
 22 Q And what did you do for Hobby Lobby?
 23 A Just a cashier.
 24 Q How long have you been with them or had you been
 25 with them?

Page 15

1 A They were through - - - I probably got the job in
 2 September-ish.
 3 Q September of last year?
 4 A Yes.
 5 Q Okay.
 6 A So, again, about four or five months.
 7 Q And why did you leave Hobby Lobby?
 8 A It was horrible, and I thought the medical would be
 9 better but - - - It was over work, under pay.
 10 Q Where did you work before Hobby Lobby?
 11 A I worked at Walgreens.
 12 Q Okay.
 13 A I originally got the job in Concord by Michael's
 14 mother.
 15 Q And have you been with Walgreens consistently since
 16 you've got that job in Concord?
 17 A Yes.
 18 Q So you would have worked with Walgreens in Concord
 19 when you lived with Michael's mom, correct?
 20 A (Indicating yes)
 21 Q When you and Michael moved in at the [REDACTED]
 22 [REDACTED] address, did you continue to work at the same
 23 Walgreens?
 24 A I transferred.
 25 Q Transferred. So you transferred to a Walgreens

Page 16

1 closer to where you and Michael lived at that time?
 2 A Yes.
 3 Q Was it in Rock Hill?
 4 A Yes.
 5 Q How far was that Walgreens from where you and
 6 Michael lived?
 7 A Just a few minutes. It was on Celanese and we were
 8 on - - - off of Mount Gallant.
 9 Q So how many months did you work at the Walgreens in
 10 Rock Hill?
 11 A I'm not positive of the dates, but it had to have
 12 been around February we moved in 2009 so and then I
 13 lost the job in 2011.
 14 Q Okay. Now, - - -
 15 A Oh, wait. Well, not the - - - that's not in
 16 Concord. I mean Rock Hill though.
 17 Q Well, the one in Rock Hill, you began at the
 18 Walgreens in Rock Hill in February of 2009
 19 approximately?
 20 A And then until I moved here in June of '10.
 21 Q Now, your child was born early the second week of
 22 September. Did you work right up to the time that
 23 you delivered?
 24 A I did.
 25 Q And after you delivered, how much time did you take

Page 17

1 off for?

2 A I believe I only took two or so weeks.

3 Q Two or so weeks. When you went back to work, I

4 noticed around the time Owen was injured you were

5 working basically second shift; isn't that right?

6 A Yes.

7 Q You'd go in about 2:30 or 3 o'clock and get home

8 about 10:30 or 11 o'clock?

9 A Yes.

10 Q Had you always worked second shift with the Rock

11 Hill Walgreens?

12 A It was very typical, yes.

13 Q I mean, would they work you on a rotating shift or

14 did you pretty much know that you're always going

15 to go in in the afternoon?

16 A It was rotating, yes.

17 Q Okay.

18 A It was usually week on week off.

19 Q Now, in February of 2009 was Michael working?

20 A February 2009, yes.

21 Q And what was he doing?

22 A He worked at Food Lion.

23 Q And what did he do at Food Lion?

24 A Bagging and stocking.

25 Q Did he work at Food Lion consistently from February

Page 18

1 of 2009 when y'all moved to the Rock Hill area up

2 through the delivery of the baby?

3 A Yes.

4 Q How many hours a week was he getting; full-time,

5 was he working 20 hours a week?

6 A It was like 20 to 30.

7 Q So he wasn't getting full-time work in?

8 A No.

9 Q Was he looking elsewhere for a job?

10 A No.

11 Q Let's talk about your education. Where did you go

12 to high school?

13 A I went to two high schools.

14 Q Okay.

15 A Ninth grade year was in Tennessee, Sullivan South

16 High School.

17 Q Sullivan South.

18 Mr. Todd - Was that in Tennessee?

19 Witness - Tennessee, Kingsport.

20 Q Sullivan South. Okay. And that was for your ninth

21 grade year?

22 A Yes.

23 Q Okay, you passed everything in ninth grade?

24 A Yes.

25 Q So you were fixing to pass into tenth grade,

Page 19

1 correct?

2 A Yes.

3 Q And then what, you moved.

4 A We moved, yes, to Rock Hill and I started my tenth

5 grade year at South Point.

6 Q South Point?

7 A Yes.

8 Q Now, you say we moved, who was the we? Who lived

9 in your household at that point?

10 A My mom, Charlotte Williams, and my younger brother,

11 Aaron Lythgoe.

12 Q Is Aaron your only sibling?

13 A Blood, yes.

14 Q How old was Aaron? How old is Aaron now?

15 A Now he is 14.

16 Q Now, was your mother - - - this was before your

17 mother had married Mr. Williams, correct?

18 A Yes.

19 Q Did she know Mr. Williams at that point?

20 A No.

21 Q Was she married at that point?

22 A No.

23 Q And what was her last name at that point?

24 A Lythgoe.

25 Q Lythgoe?

Page 20

1 A Yes.

2 Q When you went to South Point, you went there for

3 your tenth grade year, correct?

4 A Yes.

5 Q Did you complete tenth grade?

6 A Yes.

7 Q Did you pass into eleventh grade?

8 A Yes.

9 Q Did you attend South Point for your eleventh grade

10 year?

11 A Yes.

12 Q Did you complete eleventh grade?

13 A No.

14 Q When did you quit?

15 A April when I moved to Michael's.

16 Q Why did you drop out?

17 A Michael talked me into it. Dumb teenager.

18 And said that we would be able to see each other

19 more and that it probably wouldn't work out if I

20 didn't move to where he was.

21 Q Now, how did you meet Michael?

22 A We both had a seasonal job at Scarowinds over

23 Halloween time and that's where we met.

24 Q And that would have been Halloween what year?

25 A 2007.

Page 21

1 Q Now, was he living up in Concord with his folks at
2 that time?
3 A Yes.
4 Q Had he dropped out of school already by then?
5 A No.
6 Q So he was still attending high school?
7 A Yes.
8 Q When he talked you into dropping out of school and
9 moving to Concord, did he drop out of school then?
10 A He was on the edge of it.
11 Q How did you get along with his parents?
12 A Very well.
13 Q When I say his parents, I know his mother's name
14 was Jennifer?
15 A (Indicating yes)
16 Q And what was his dad's name?
17 A Danny.
18 Q Did Jennifer and Danny still live together?
19 A Yes.
20 Q Do you know if they still live together?
21 A As far as my knowledge.
22 Q When have you last had any contact with Danny and
23 Jennifer Lythgoe --- I'm sorry, ---
24 A Carduff.
25 Q --- Jennifer and Danny Carduff?

Page 22

1 A Oh, it's been a long time, before Owen's first
2 birthday.
3 Q Do they exercise any kind of visitation with Owen?
4 A Not any more.
5 Q Have they asked?
6 A No.
7 Q Have you made any attempts to check into getting a
8 GED or completing your high school education?
9 A I have a GED.
10 Q Oh, you do? Okay. When did you get that?
11 A I got that last year. It was before I worked at
12 Hobby Lobby, and I got fired and so it was '11,
13 2011.
14 Q Okay.
15 A It must have been July or August.
16 Q Where did you get that?
17 A Through Christ Central. It's a place in Alken.
18 It's a church facility who gives you free
19 educational help.
20 Q It's called Christ Central?
21 A Yes.
22 Q Since you've gotten your GED, have you taken any
23 kind of post high school or post GED courses?
24 A No.
25 Q Do you plan to?

Page 23

1 A I plan on going to college.
2 Q Have you looked at colleges yet?
3 A Yes.
4 Q Any particular college?
5 A Alken Tech.
6 Q Any particular field or curriculum?
7 A Yes, I want to go into either law enforcement or
8 medical.
9 Q And what got you interested in those two areas?
10 A Well, really, actually I should say psychology, law
11 psychology. I'm really interested in that. I took
12 a psychology class in high school and I loved it.
13 Q You're unmarried, correct?
14 A Yes.
15 Q What's your father's name? Now, I know Mr.
16 Williams is your step-dad.
17 A My birth father?
18 Q Yes, your birth father.
19 A Robert Omohundro.
20 Mr. Todd - Sorry, say again.
21 Witness - Omohundro, it's O-m-o-h-u-n-d-r-o.
22 Q I noticed in some documents Omohundro is with your
23 mother's name. Did she ever assume his name?
24 A Yes. They were married when I was little.
25 Q Okay.

Page 24

1 A I believe she changed all three of our names, my
2 brother, her and myself. I don't know, I was ten
3 or 11.
4 Q When have you last seen Robert Omohundro?
5 A When I was 11.
6 Q Did he ever try to maintain a relationship with
7 y'all, with you and your brother?
8 A Not really. Mostly me, never my brother.
9 Q Okay.
10 A And no more than random internet things, and I'd
11 just ignore him.
12 Q Have his parental rights been terminated to you
13 before you turned 18 and now to Aaron?
14 A I'm not positive.
15 Q Does he still live in the state of South Carolina;
16 do you know?
17 A He never lived in South Carolina.
18 Q Where was he from?
19 A Texas.
20 Q Texas.
21 A And as far as I know, that's where he lives.
22 Q And you hadn't really seen him since you were 11?
23 A Right.
24 Q And you were born in 1990 so you're --- just
25 turned 22, right?

Page 25

1 A Yes.

2 Q Do you have any children other than Owen?

3 A No.

4 Q Have you had any pregnancies other than Owen?

5 A No.

6 Q Do you attend a church regularly in Aiken County?

7 A Yes.

8 Q And what's the name of that church?

9 A Fountain of Life Fellowship.

10 Q What denomination is that?

11 A Pentecostal.

12 Q Are you a member there?

13 A I do not believe so, no.

14 Q But you attend regularly?

15 A I attend, yeah. It's my father's church.

16 Q Okay. Is he the ---

17 A Pastor,

18 Q --- pastor there? How about Ms. Williams, does

19 she attend regularly?

20 A Yes.

21 Q I guess if you're the wife of a pastor you pretty

22 much have to attend regularly don't you?

23 A Yes.

24 Q Did you attend a church when you lived in Rock

25 Hill?

Page 26

1 A Yes.

2 Q And what was that church?

3 A What was that called? Faith Family Christian

4 Center and again, that was Larry's church.

5 Q Was it also Pentecostal?

6 A Yes.

7 Q Okay.

8 A I'm not Pentecostal so ---

9 Q I'm Catholic ---

10 A Me too.

11 Q --- but sometimes I go to a Lutheran church.

12 A Yeah. I'm a Christian Catholic.

13 Q Where is Faith Family Christian Center located,

14 what street, if you remember?

15 A I do not, but it's behind the airport.

16 Q Were you a member there?

17 A No.

18 Q While you were attending Faith Family Christian

19 Center, about how many years did you attend there?

20 A From when we moved down there we went, because we

21 wanted Owen to be raised in a church, to when we

22 moved here.

23 Q When you moved here, you mean to Aiken?

24 A To Aiken, I'm sorry.

25 Q Did Michael attend that church?

Page 27

1 A Yes.

2 Q Regularly along with you?

3 A Yes.

4 Q Were you and Michael in any young adult groups or

5 youth groups while you were attending that church?

6 A No, we didn't really have one there at the church.

7 Did they have Sunday School?

8 A Yes. And we would some --- that was not as

9 regular.

10 Q Okay.

11 A We always went Sundays and Wednesdays.

12 Q Now, Michael was born [REDACTED]?

13 A Yes.

14 Q Do you know if he ever --- Well, you mentioned he

15 worked at a Food Lion. Did he work at a Food Lion

16 in York County?

17 A Yes.

18 Q And where was that located?

19 A It was the one --- I don't remember the street

20 names here any more.

21 Q Okay.

22 A I think it was called --- It was across the

23 street from Jack-In-the-Box.

24 Q Jack --- near a --- okay, Jack-In-the-Box

25 shopping --- a strip mall or ---

Page 28

1 A No, it was just a restaurant.

2 Q Okay.

3 A I think it was --- was it Herlong; is that right?

4 Q I don't know. I'm from Lexington.

5 A I'm sorry, I can't remember.

6 Q Now, a Jack-In-the-Box, that's one of the hamburger

7 outfits?

8 A Yes.

9 Q So he worked at a Food Lion near a Jack-In-the-Box?

10 A Yes.

11 Q And worked there for several months apparently?

12 A Yes.

13 Q Did he ever work anywhere else in York County?

14 A No.

15 Q When did you have your last contact with Michael

16 Carduff?

17 A January 11th when Owen was shaken.

18 Q Okay. So on the days following that while Owen was

19 hospitalized, you didn't see Michael at the

20 hospital.

21 A No.

22 Q And we've discussed when you've met with Michael

23 and how far he went in school. He's about a year

24 younger than you?

25 A (Indicating yes)

Page 29

1 Q So was he a year behind you in school?

2 Mr. Hood - Give him a verbal response.

3 That was one of those head shakes.

4 A I'm sorry.

5 Q I'm sorry. That's right and I didn't catch it.

6 And the answer to that was yes, correct, ---

7 A Yes.

8 Q --- he's about a year behind you?

9 A Yes.

10 Q Was he a year behind you in school as well, if you

11 recall?

12 A Yes.

13 Q Did you ever attend the same school as Michael?

14 A No.

15 Q And you told me that you stopped attending school

16 somewhere in your eleventh grade year, correct?

17 A Yes.

18 Q Would it be accurate to say that he stopped

19 attending school somewhere in his tenth grade year?

20 A Yes.

21 Q And he had a brother, Brian?

22 A Yes.

23 Q Did Brian sometimes live with y'all when you lived

24 here in Rock Hill?

25 A No, he would come down for weekends.

Page 30

1 Q But he'd stay for weekends periodically?

2 A Right.

3 Q When he was here after Owen was born between

4 September 9th and December 4th when he was

5 hospitalized for the first time, would Brian

6 sometimes care for the child?

7 A Not by himself.

8 Q So any time Brian was with the child there was

9 always either you or Michael with him, correct?

10 A Yes.

11 Q But there were times when the child had Michael and

12 Brian caring for him, and you wouldn't have been

13 there?

14 A Yes.

15 Q Have you been involved in any prior lawsuits

16 besides this one? Now, this one you're not

17 actually a party in it. Have you ever been

18 involved in a lawsuit as a plaintiff or a

19 defendant?

20 A Does Owen's custody hearing count?

21 Q That can be one. That's a family court action

22 ---

23 A Yes.

24 Q --- and you were a party in that. Okay. Mr. and

25 Ms. Williams were awarded custody of Owen at the

Page 31

1 conclusion of that, correct?

2 A Yes.

3 Q But you still had your parental rights with regard

4 to Owen, correct?

5 A Yes.

6 Q You still have visitation if you need to, correct?

7 A Yes.

8 Q Was there any kind of court order, any component of

9 the court order, requiring you to pay child support

10 ---

11 A No.

12 Q --- to the Williams'?

13 A (Indicating no)

14

15 Mr. Hood - Once again, give me a ---

16 A No.

17 Mr. Frawley - I think actually she double-

18 dipped me on that one. She said no and then

19 uh-huh so that was good.

20 Mr. Hood - Okay.

21 Q I apologize in advance for asking this question but

22 I ask it in all depositions. Have you ever pled

23 guilty to or been convicted of a crime other than a

24 traffic offense?

25 A No.

Page 32

1 Q And again, I apologize for that. I may or may not

2 have asked you this earlier, but do you have any

3 relatives to whom you're related by blood or by

4 marriage who are York County residents?

5 A No.

6 Q Okay.

7 A Marriage, actually. I'm sorry.

8 Q Marriage, okay.

9 A Larry has family everywhere here.

10 Q Okay.

11 A It could be hard to find someone who's not.

12 Q Well, we'll remember to ask Mr. Williams that when

13 we talk to him.

14 A You can ask him.

15 Q Was Owen a full-term baby?

16 A Yes.

17 Q And was it a normal delivery, or was there a C-

18 section, or was it induced?

19 A It was --- It was induced.

20 Q Okay.

21 A He was a little late.

22 Q But it was a normal vaginal delivery?

23 A Yes.

24 Q What was his birth weight?

25 A Seven pounds three ounces.

Page 33

1 Q When you were carrying Owen, did you go for
 2 periodic doctor visits to have the pregnancy
 3 checked on to check how his development is and so
 4 forth?
 5 A Yes.
 6 Q Did you ever get a --- It's been 23 years since
 7 my last son was born, but the --- I don't know
 8 what they can do now to show you what the baby
 9 looks like, but did you have any of those
 10 ultrasounds?
 11 A Ultrasounds, yes.
 12 Q When you had your doctor visits, would Michael go
 13 with you?
 14 A Yes.
 15 Q Would your mom go with you?
 16 A Not as often.
 17 Q And you were relatively young then. You're 18, 19
 18 years old at that time?
 19 A Yes.
 20 Q Now, at the time or around the time --- Well,
 21 let's say September of 2009, not the day that Owen
 22 was born but around the time that Owen was born,
 23 was Michael still working then?
 24 A Yes.
 25 Q And when Owen was born, was Michael able to come to

Page 34

1 the hospital for the birth?
 2 A Yes.
 3 Q After Owen was born, was he a healthy baby in the
 4 weeks following the birth?
 5 A Yes. He did stay two days after for a procedure.
 6 They had to give him antibiotics because I carried
 7 a virus.
 8 Q Okay.
 9 A I do not remember the name.
 10 Q Was he jaundiced at all or anything like that?
 11 A No.
 12 Q Did he have any special bilirubin issues or
 13 anything like that with regard to jaundice,
 14 anything other than the virus that you had that
 15 they had to get rid of?
 16 A No.
 17 Q After he was born, did you take him for well-baby
 18 visits to a pediatrician?
 19 A Yes.
 20 Q Who was your pediatrician then?
 21 A Sunshine Pediatrics. I believe his name is Dr.
 22 Paxton.
 23 Q And you stayed with Sunshine Pediatrics pretty much
 24 up till at least December, right?
 25 A Yes.

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1 Q Did you take him to any other pediatricians besides
 2 Dr. Paxton at Sunshine Pediatrics?
 3 A No.
 4 Q When you had the well-baby visits, would you
 5 typically take him, or would Michael take him
 6 sometimes, or your mom; how was that done?
 7 A I believe the first few, Michael came and then mom
 8 --- me and mom went to one. But for the most
 9 part, I was always with mom or Michael.
 10 Q When you had the well-baby visits, did you always
 11 take him and maybe sometimes someone else came with
 12 you?
 13 A Yes.
 14 Q And you said you began working again, you thought
 15 it was maybe two weeks?
 16 A Yes.
 17 Q Okay.
 18 A I'm not 100 percent on that, but it wasn't long
 19 --- not long.
 20 Q I think typical maternal leave is usually up to six
 21 weeks. Could it have been more than two weeks?
 22 A Yeah, well, it was definitely not six weeks.
 23 Q Okay.
 24 A I know I didn't get the full privileges.
 25 Q Do they have privileges for you; were you able to -

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1 -- did they have maternity leave where you could
 2 take some time off and ---
 3 A Yes. I messed it up though somehow on accident by
 4 taking a vacation instead, so I messed up my length
 5 of maternity leave.
 6 Q Who was your supervisor at Walgreens then if you
 7 remember?
 8 A The one here in ---
 9 Q Yes, the one when you worked in Rock Hill at or
 10 around the time when Owen was born.
 11 A His name is Mr. Murphy, John Murphy, I believe.
 12 Q And I may have asked you this already, but which
 13 Walgreens was that and what road was it located on?
 14 A On Celanese.
 15 Q Celanese. Could you spell Celanese for me?
 16 A No.
 17 Q Okay.
 18 A C-e-l-e-a-s.
 19 Q Okay.
 20 A I don't know, I'm not sure. I'm sorry.
 21 Q And you didn't always work second shift, sometimes
 22 you'd work day shift?
 23 A Yes.
 24 Q Is that Walgreens a 24-hour Walgreens?
 25 A No, they close at 10:00.

1 Q So they would have had an A shift and a B shift and
2 then they closed at 10:00? The answer to that is
3 yes?
4 A Yes.
5 Q When Michael worked, what hours did he typically
6 work?
7 A Mornings.
8 Q And when you say mornings, what time would he
9 typically go in?
10 A Early, around 7:00 or 8:00.
11 Q Did they sometimes get trucks in where he had to go
12 in earlier?
13 A Yes.
14 Q When they had trucks, did he unload the trucks?
15 A Yes.
16 Q Now, he's fairly tall. What, he's six foot but
17 fairly thin, correct?
18 A He was thin and probably around --- right at six.
19 Q Did Michael smoke cigarettes?
20 A No.
21 Q Do you smoke?
22 A No.
23 Q Did his brother, Brian, smoke?
24 A No.
25 Q Now, when you worked --- and you went back to

1 A Correct.
2 Q Did you and Michael attend any kind of Lamaze
3 classes, or parenting classes, or anything about
4 parenting a young child during the last weeks of
5 your pregnancy?
6 A No.
7 Q Were those offered? Do you know if they are out
8 there?
9 A Yes.
10 Q Why did y'all not attend them?
11 A Just work. It was --- we both worked too much.
12 Q As you're in the last weeks of your pregnancy, did
13 you have some concerns about what's involved when
14 this baby comes? I mean, the pregnancy itself is
15 going to be hard but once that baby comes, did you
16 have any questions or concerns about your ability
17 and your husband's --- or your significant
18 other's ability, the father of the child's ability,
19 to care for this child?
20 A Not to care for. I was just worried about the
21 actual birth.
22 Q So it didn't occur to you that there may be
23 significant challenges after the child was born?
24 A Well, it occurred to me, but I was ready to take
25 them.

1 work two weeks after Owen was born which is pretty
2 quick after you've just given birth to a child.
3 When you first went back, and we've got this two-
4 year-old little boy, who's taking care of him when
5 you go to work?
6 Mr. Todd - Two month old.
7 A Two month old, yeah. Typically, my mother because
8 Michael still had his job at the time.
9 Q All right. Let me back up a minute. Was I
10 mistaken, and maybe I misinterpreted something, but
11 you said you took two weeks off or two months off
12 before you went back to work?
13 A Weeks. Oh, yes.
14 Q Okay. So after the birth ---
15 A Two weeks old.
16 Q --- when you're two weeks post-delivery, you're
17 going back to work, correct?
18 A Yes.
19 Q Who's taking care of your two-week old child when
20 you're going back to work?
21 A My mother.
22 Q And that's understandable.
23 A Right.
24 Q I mean, she's had a two-week old child of her own,
25 at least two, and Michael hasn't before, correct?

1 Q In those first weeks, describe how Owen was as a
2 baby. Did he --- I mean, babies never sleep
3 through the night at first. You're getting up.
4 Did you breast feed or was he bottle fed?
5 A I breast fed until I went back to work.
6 Q When you breast fed, did you get up every time he
7 had to be fed or did Michael get up, get the child
8 and bring the child to you? How was that done?
9 A Typically I got up.
10 Q And Michael would be sleeping while you're getting
11 up, correct?
12 A Yes.
13 Q In the first weeks after you got him home, how many
14 hours over the night would he typically sleep
15 before you had to get him up and feed again?
16 A Probably a good four.
17 Q So you'd get a good four hours sleep?
18 A He was a good baby.
19 Q And when you were at work for feedings, how did you
20 accommodate that?
21 A Well, I tried the pump. It was a hassle, and it
22 was uncomfortable so we just changed to formula
23 once I started working full time again.
24 Q When you changed to formula, did that have any
25 impact on how he was eating, what his appetite was,

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1 how he was tolerating the formula?

2 A No. No change.

3 Q So he adapted pretty well from breast milk to

4 formula?

5 A Yes.

6 Q Describe Michael as a father for me in those first

7 few weeks. Was he attentive, was he kind of

8 worried about holding the child; how did he appear

9 to you to be?

10 A He seemed pretty confident with holding him.

11 Q Okay.

12 A Like any typical man, he never wanted to change

13 diapers.

14 Q I used to like changing diapers, but go ahead.

15 A That's rare. He was comfortable with him. He did

16 get nervous when he had to be alone with him, but I

17 found that to be normal.

18 Q Would he get spooked if he's alone with him holding

19 the child and the child suddenly gets fussy or

20 starts crying?

21 A No. He would burp him or - - - and after he burped

22 him and couldn't figure it out, he'd usually just

23 bring him to me.

24 Q Okay.

25 A But for the most part he seemed fine with him.

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1 Q And how did Owen appear to react or respond to

2 Michael when Michael held him?

3 A Natural.

4 Q Owen made eye contact with him?

5 A Yes.

6 Q Now, I read somewhere where your mother never

7 really warmed up to Michael, would that be an

8 accurate statement?

9 A Yes.

10 Q She thought you could do better?

11 A Yes.

12 Q And at some point Michael lost his job, correct?

13 A Yes.

14 Q When did he lose his job?

15 A It was after Owen was born. I would say probably

16 around October-ish.

17 Q It would have been certainly before the December

18 4th first hospitalization, first injury, correct?

19 A Yes.

20 Q So at the time of the December 4th first injury - -

21 - and I'll refer to them as the first injury which

22 would be that December 4th through December 8th

23 hospitalization, then the second injury which is

24 the January 11th injury, all right?

25 A Yes.

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1 Q Michael had lost his job before the first injury,

2 correct?

3 A Yes.

4 Q Was your mother's attitude toward Michael, did that

5 create any stress between you and Michael?

6 A A little.

7 Q I mean, did Michael know that your mother did not

8 hold him in high regard?

9 A Yes.

10 Q Did they get along okay when they were together?

11 A Yes.

12 Q Now, you mentioned a moment ago how Michael was

13 with Owen. Did you notice on occasion that he

14 would be rough with Owen or not as gentle as you

15 would have thought he should have been in picking

16 him up?

17 A Yes.

18 Q Describe that for me.

19 A It was non-aggressive, no anger in it, just he

20 would sometimes maybe forget to support his head or

21 he would swoop him up super fast instead of slowly.

22 He would just stand upright. And then when he got

23 a little older like two-ish, three months old, he

24 would, you know, kind of do the up and down and

25 that scared me.

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1 Q Okay.

2 A But other than that, it was nothing else.

3 Q Initially, it would have been from your perspective

4 just that he wasn't aware of how fragile a child

5 could be?

6 A Right.

7 Q And didn't always support his head as much?

8 A Right.

9 Q And later on you said he would maybe, I mean

10 fathers do this, bounce the kid on their knee or

11 something but a little bit more than you thought

12 maybe would have been appropriate - - -

13 A Right.

14 Q - - - or at least you were worried about it?

15 A I was worried about it, yeah.

16 Q Okay.

17 A It just scared me.

18 Q On those occasions when he would, and I think you

19 used the gesture of your hands - - -

20 A Yeah.

21 Q - - - as if they're holding a baby going up and

22 down, - - -

23 A Right.

24 Q - - - how would Owen appear to be responding to

25 that?

1 A Oh, he loved it.
 2 Q The kid looks like he likes it - - -
 3 A Yeah.
 4 Q - - - but you're thinking well, maybe this isn't
 5 the best thing?
 6 A Yes.
 7 Q Did you ever see Michael drop Owen?
 8 A No.
 9 Q Did you ever see - - - well, between his September
 10 birth and the December 4th first hospitalization,
 11 Owen wasn't even standing up in the crib yet was
 12 he?
 13 A No.
 14 Q I mean, could he even turn over?
 15 A Yes.
 16 Q Did you ever see an occasion when he would turn
 17 over and hit the side of the crib?
 18 A No, he wasn't that advanced.
 19 Q Okay.
 20 A We just have it on camera once him rolling over.
 21 Q When you put him on the floor, would he crawl; was
 22 he to that point yet?
 23 A He did the back and forth thing.
 24 Q Back and forth.
 25 A He wouldn't go anywhere, but he'd like get up and

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

1 then down.
 2 Q Kind of rock - - -
 3 A Yeah.
 4 Q - - - forward and backward, okay, - - -
 5 A It's very cute.
 6 Q - - - which is a precursor to crawling. You
 7 mentioned you had him on the camera. Tell me about
 8 that. What kind of camera did you have?
 9 A Michael's mother gave us her video recorder. It
 10 did it on the little mini DVDs and we recorded
 11 everything, absolutely everything.
 12 Q Do you still have those videos of Owen?
 13 A I do.
 14 Q And do any of those videos show Michael with Owen?
 15 A Yes.
 16 Q And those would be obviously from some time in
 17 September up through - - - would you have videos
 18 that were taken prior to the first injury?
 19 A Yes, we have him coming home, and we have just
 20 random things that would be boring to everybody
 21 else, and then we have him rolling over and
 22 Christmas and all.
 23 Q Had he ever gotten to where he could sit up if you
 24 put him in a couch where he could sit up?
 25 A No, not unsupported.

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

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1 Q Not as long as yours?

2 A No.

3 Q Okay.

4 A No, I wouldn't have that.

5 Q When he would go to work would he tie it back or

6 ---

7 A Yes.

8 Q Okay.

9 A He always had it back, bottom was shaved off kind

10 of thing.

11 Q Now, I know he had a tattoo on his leg?

12 A Yes.

13 Q Did he have any tattoos on his arms or anything

14 that would be visible?

15 A No. That was very recent too.

16 Q When he left Food Lion for whatever reason --- do

17 you know if he was fired or if he just left?

18 A I'm pretty sure they fired him by not showing up.

19 Q But he never told you that?

20 A No.

21 Q And he never had a day where he went to work and

22 they said you're fired, go home?

23 A I don't believe so.

24 Q As far as you know he just stopped showing up and

25 they just took him off the payroll?

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1 A Yes.

2 Q Okay.

3 A I believe that's how it went down.

4 Q After he left Food Lion, did he go, to your

5 knowledge, for any other jobs?

6 A No.

7 Q So he never even applied for another job after

8 that?

9 A He got very lazy.

10 Q Did he tell you why he wasn't applying for jobs

11 when he's the man in the house, he's got not yet a

12 wife but the mother of his child and a young child,

13 did he tell you why he's not out there trying to

14 earn some money when you're working B shift 40

15 hours a week?

16 A No, he just would say, you know, well, I --- I

17 watch the baby and you go to work, that kind of

18 thing, so.

19 Q And what did you say when that happened?

20 A I mean, we had conflict because of it. I would

21 just --- I would yell all the time, and he'd yell

22 at me for being a nag and so it was just those --

23 -

24 Q Did he ever hit you?

25 A No.

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1 Q Did he ever threaten to hit you or ever get

2 physical right in your face?

3 A No.

4 Q You weren't afraid of him?

5 A No.

6 Q Let me ask you this, this happens frequently when

7 couples get together, they live together for

8 awhile, then they have a child, and then afterwards

9 their intimacy gets affected. I'm not --- I

10 don't want to go into any detail, and I apologize

11 for any embarrassment, but did your relationship

12 with Michael change after the child came?

13 A No.

14 Q So you were as intimate after the child came as you

15 had been before?

16 A Yes.

17 Q And I apologize for getting into that.

18 A That's okay.

19 Q Were there occasions, we mentioned earlier about

20 Michael possibly being a little rougher when he

21 would pick the child up when he was little, did you

22 have occasion sometimes to tell Michael you need to

23 be more careful?

24 A Yes.

25 Q And what was Michael's response to that?

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1 A Usually --- well, it depended on what it was on.

2 If it was because he was playing with him he'd be

3 like well, he likes it or if it was because he'd

4 picked him he'd say sorry and ---

5 Q I'll try to do better next time?

6 A Yeah.

7 Q Did you ever see his brother pick up Owen at any

8 time when Brian was there and y'all were there?

9 A Yes. Brian showed a lot of love towards him.

10 Q How old was Brian?

11 A He was older than me. I think he was 20.

12 Q So he was Michael's older brother?

13 A Yes.

14 Q But was Brian working at that time?

15 A No.

16 Q Had Brian completed high school, do you know?

17 A Yes. Well, no. No, I don't think he did. I'm

18 sorry.

19 Q Now, had you noticed that Michael would sometimes

20 be rough in picking up Owen before that December

21 4th first injury?

22 A Yes.

23 Q And when you would see it you'd correct him on it?

24 A Yes.

25 Q And by that December 4th first injury was Owen of

1 an age where Michael would sometimes bounce him, -
 2 --
 3 A Yes.
 4 Q --- okay, play with him?
 5 A Yes.
 6 Q Did you notice a bruise on the left side of Owen's
 7 head in November?
 8 A Yes.
 9 Q Explain to me when you first saw that bruise and
 10 how it appeared.
 11 A When I came home from work, Michael and Brian were
 12 watching the baby and the baby was in his little
 13 bouncy seat next to them, they were playing video
 14 games, and he just cooing and being cute, and I
 15 picked him up to hug him and greet him. And I said
 16 hey to Brian and Michael, and then I noticed it and
 17 I asked what is this, what happened? And they both
 18 just said yeah, we noticed that. I think that I
 19 --- when I dropped the controller on his head
 20 that it left a bruise. And I said you dropped the
 21 controller on the baby's head? Like it was an
 22 accident. I'm sorry. And he was just in the seat,
 23 and they said he dropped the controller, so I kind
 24 of let it go.
 25 Q Okay.

1 A Yes.
 2 Q And he was in you said his bouncer. That's a seat
 3 where they can push the feet on the floor and the
 4 seat bounces?
 5 A Yeah, but he couldn't do that. We usually had to
 6 do it on the bouncer.
 7 Q Describe the bruise for me. Where about --- I
 8 mean, anything from mid-line in the forehead over
 9 to the left side, was it on his temple, was it up
 10 near the forehead; where was it?
 11 A That one was more on the side of the temple.
 12 Q And you're indicating just above your eyebrow?
 13 A Of the eyebrow, yes.
 14 Q Although you're pointing on the right side of your
 15 head?
 16 A Looking at the baby, it was on his --- yeah.
 17 Okay.
 18
 19 Mr. Hood - And just so the record will
 20 reflect, she pointed to the left side of her
 21 head.
 22 A Left side, yeah.
 23 Mr. Frawley - Yeah, the second time she did.
 24 A Sorry, yeah.
 25 Q And the reason you may have done that is because

1 A I was like you need to be more careful and more
 2 attentive. You know, like I'm sorry. I knew you'd
 3 freak out about that and --- and they went on.
 4 Q And you'd worked essentially an eight-hour shift
 5 that day?
 6 A Yes.
 7 Q Do you remember when you came home had you worked B
 8 shift or was it the day shift?
 9 A It was --- it was the B shift.
 10 Q So you'd come home kind of late in the evening
 11 about 11 o'clock?
 12 A It was --- yeah, I was --- it was probably a
 13 little earlier then because it --- I got off at
 14 --- I believe I got earlier that day. It was
 15 still light outside so I'd probably did mid-shift.
 16 Yeah.
 17 Q Tell me about a mid-shift. What would that be?
 18 Where you'd start mid-way through day shift ---
 19 A Typically 12 to 8.
 20 Q So instead of an 8:00 to 5:00 or a 4:00 to 11:00,
 21 you'd work like 12:00 to 8:00 or something like
 22 that?
 23 A 12:00 to 8:00, 12:00 to 6:00, yeah.
 24 Q And when you saw Owen, he had a bruise on the left
 25 side of his head, but he was still in good spirits?

1 I'm pointing on the left side of my head, you may
 2 have been mirroring where I had my hand ---
 3 A I am.
 4 Q --- and that's fine. But the point is that
 5 you've indicated on the left side of your head just
 6 above the outside of the eyebrow, correct?
 7 A (Indicating yes)
 8 Q The answer to that is yes?
 9 A Yes.
 10 Q About how big was it?
 11 A Very little.
 12 Q Okay.
 13 A Probably about a dime.
 14 Q About a dime? Was that the only bruise that you
 15 would have seen on his head in November prior to
 16 the December 4th first injury?
 17 A Yes, that's the first bruise on him his whole life.
 18 Q Did your mother get a chance to see that bruise?
 19 A Yes.
 20 Q Did she ever talk to you about that bruise?
 21 A She just asked me what had happened.
 22 Q And what did she say?
 23 A Same as me, you know, well, what do you expect when
 24 two boys watch a baby and all they do is play video
 25 games.

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1 Q Did Michael have any kind of temper?

2 A No.

3 Q Did he ever get frustrated over stuff?

4 A Yes.

5 Q Did he get frustrated over the fact that he wasn't

6 working?

7 A No, he got frustrated over the fact that I nagged

8 him for not working.

9 Q He enjoyed not working?

10 A Yes.

11 Q When he didn't work and he stayed home, I mean,

12 obviously, I guess he's saying he's watching the

13 kid, but what else is he doing?

14 A He would go to Concord some times or --- that's

15 about it really.

16 Q When you wouldn't be working what's he doing?

17 A He's usually at home. He was a gamer, ---

18 Q Games.

19 A --- always playing games or shopping.

20 Q Okay, video games?

21 A Yes.

22 Q Okay. Or shopping?

23 A Yes, his parents gave him money a lot.

24 Q What did his parents do? Were his parents

25 affluent?

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1 A I'm sorry, what is that?

2 Q I mean, were they well off?

3 A Yes, to my knowledge.

4 Q Do you know what Mr. Carduff did?

5 A They were both in a Walgreens' business. I believe

6 he was high up, you know, and ---

7 Q And that's how they could assist you getting the

8 job?

9 A Yes.

10 Q When you worked for Walgreens, what did you do for

11 them?

12 A I started off as a cashier, and I transferred three

13 times total. And when I found out I was pregnant,

14 I left the Concord one because we left to go to my

15 parents ---

16 Q Right.

17 A --- or closer to them ---

18 Q Right.

19 A --- and that's when I transferred to Rock Hill.

20 When I was in Rock Hill, I got promoted to go do

21 the photos, and I was head photo specialist and I

22 made the photos and all that. Then we transferred

23 again --- Oh, well, yes, we transferred again to

24 Aiken and there I was promoted to pharmacy.

25 Q When you were in pharmacy in Aiken, what did you

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1 do?

2 A I did the filling, counting pills, patient

3 interaction. I called for authorizations and

4 billing.

5 Q When you left Walgreens and went to your first non-

6 Walgreens' job, I mean, were you dissatisfied with

7 Walgreens or just looking for more pay?

8 A No, I was extremely happy with Walgreens. I was

9 let go because when I got hired, when I was 17 when

10 I first got the job, I marked that I had a GED when

11 I did not and they found that out three years

12 later.

13 Q Oh, okay.

14 A Very upsetting.

15 Q Now, in the interim, did you get your GED?

16 A Yes. Not while I was with Walgreens, it was

17 afterwards.

18 Q So you basically got fired because you had on your

19 application from when you were 17 that you had a

20 GED when you really didn't - -

21 A Yeah.

22 Q --- and they didn't like that so they terminated

23 you and then you subsequently did get your GED?

24 A Yes.

25 Q Tell me about what led up to the December 4th

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1 hospitalization and the first injury. Now, I

2 understand you --- that Owen was acting oddly,

3 was, I think, sleeping all the time but when he was

4 awake he was screaming a lot, correct?

5 A Yes.

6 Q Tell me how that came about, how you discovered

7 that. I mean, did that just happen one day or was

8 it something that developed? Was he sick and then

9 that resulted; how did that come about? When did

10 you begin taking him to healthcare providers?

11 Mr. Frawley - And I'm going to let you do a

12 ---

13 Mr. Todd - Objection.

14 Mr. Frawley - No, what I was going to say, I'm

15 setting the stage and I'm going to ask

16 specific questions.

17 Mr. Hood - Sure, Sure.

18 Mr. Frawley - I mean, that question, as I put

19 it, it's easily objectionable. But what I'm

20 telling you ---

21 Mr. Todd - You should object to your own

22 question.

23 Mr. Frawley - Yes, well, that's kind of where

24 I want to go with this.

25 A Okay.

1 Q Where do we start? When did you first notice it?
 2 And those are the questions that I'll ask.
 3 A Okay.
 4 Q And then I'm going to open the floor to you to do
 5 that. Now, at or around that time - - -
 6 Mr. Settana - When you say that time, you're
 7 talking about December 4th?
 8 Q I'm talking about between, say, Thanksgiving - - -
 9 Mr. Settana - Okay.
 10 Q - - - and December 4th, late November early
 11 December, was there a time in there where Owen had
 12 a cold, the flu, was sick, where that began where
 13 he went from a well baby to a baby that's got a
 14 runny nose and is cranky?
 15 A Yes.
 16 Q And tell me about that.
 17 A He was fine during Thanksgiving and then he started
 18 to get the sniffles which I figured came with the
 19 season. But we checked him out for the sniffles
 20 and that's what we were told it was and not to
 21 worry.
 22 Q And who told you that?
 23 A Paxton.
 24 Q Now, when you say Paxton, so he got the sniffles
 25 and what you did in response to that was instead of

1 A Okay.
 2 Q What was he doing that lead you to tag that today
 3 as being really weird?
 4 A He would not - - - When he was up, it was constant
 5 crying.
 6 Q Okay.
 7 A Again, I'm a first-time mom. I don't - - - I've
 8 heard about colic so I just figured it was that so
 9 I let it go a little bit until, you know, the
 10 feeding got odd. He didn't never want to eat. We
 11 had to make him eat, not, you know, force or
 12 anything, but we had - - - It was a job to make him
 13 eat.
 14 Q Okay.
 15 A And we had to wake him up to eat. He wouldn't wake
 16 up to eat anymore. And I knew that was odd because
 17 I was told babies wake up, and he was prior, like
 18 every three hours to eat, and he wasn't.
 19 Q Okay.
 20 A So I got really concerned there. At one point he
 21 had a fever and so I took him - - - his
 22 pediatrician was closed so I took him to Riverview
 23 - - -
 24 Q Riverview, okay.
 25 A - - - I think it was called. It's like a 24-hour

1 just, you know, hoping he sleeps through it, you
 2 took him to a healthcare provider, Sunshine
 3 Pediatrics, correct?
 4 A Yes.
 5 Q And the Paxton you talk about is Dr. Paxton,
 6 correct?
 7 A Yes.
 8 Q And Dr. Paxton told you what again?
 9 A It's just a case of the normal sniffles.
 10 Q And what was Owen doing at that time that led you
 11 to the conclusion that he's sick enough that you
 12 need to take him to Sunshine; what was he doing?
 13 A He was just really runny and red in the nose, and
 14 that was it.
 15 Q As far as his disposition, how was he acting?
 16 A Fine.
 17 Q Okay. I mean, happy or was he - - -
 18 A Oh, yes.
 19 Q Okay.
 20 A Yes, happy.
 21 Q All right.
 22 A It was not until after that, a couple like about
 23 week now before the 4th, that is when he started to
 24 act really weird.
 25 Q Okay. Well, let's talk about that.

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

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1 A And so they looked at me like well, what's wrong.
 2 I was like I swear he wasn't like this. He was
 3 crying. And so they kind of were dismissive. I
 4 mean, they checked him out, did, you know, the ear
 5 and then looked at the mouth and heart and all that
 6 but for the most part they just - - - that was it.
 7 **Q And they told you to take him to see his**
 8 **pediatrician?**
 9 A Yes.
 10 **Q Then a second after that you said he told me it may**
 11 **have been a throat infection. Did you take him to**
 12 **Dr. Paxton?**
 13 A Yes, the pediatrician.
 14 **Q And then Dr. Paxton told you what?**
 15 A It may be a throat infection.
 16 **Q Okay.**
 17 A I heard the word thrust. I'm still to this day not
 18 sure what that is.
 19 **Q It is thrust or thrush?**
 20 A Thrush, sorry, the tongue thing.
 21 **Q Yes.**
 22 A And we were supposed to follow up again but that
 23 - - - and that's when the 4th happened.
 24 **Q So you went to Sunshine Pediatrics, saw Dr. Paxton,**
 25 **he says it's a little bit of a cold, got a little**

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1 **bit of a problem. Within the next day or so you go**
 2 **to Riverview and they examine him and say go see**
 3 **your pediatrician. You go back to Dr. Paxton and**
 4 **he says maybe a throat infection, uses the term**
 5 **thrush. Do you know today what thrush is?**
 6 A No.
 7 **Q But he used that term and gave you some medication**
 8 **at that point.**
 9 A (Indicating yes)
 10 **Q Then what next happened?**
 11 A And then we were supposed to follow up the 7th so
 12 that had to have been about the 1st or so.
 13 **Q Okay.**
 14 A But we ended up in the hospital before through the
 15 8th, so.
 16 **Q Okay. Tell me what happened on the 4th.**
 17 A The 4th, I went into work. It was a morning shift
 18 because I'd got off around 4:35. When I came home
 19 I was unloading all the stuff, because I bought
 20 Christmas stuff, and Michael came running out of
 21 the house with Owen in his arms and he was panicky.
 22 And he said I don't know what's wrong. I don't
 23 know what's wrong. And I looked at Owen and he was
 24 completely limp and not breathing right. He - - -
 25 **Q Were his eyes open?**

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1 A They were like half.
 2 **Q Okay.**
 3 A And he looked - - - Well, he looked like he like
 4 had the wind knocked out of him. But he wasn't
 5 breathing correctly, and he was completely limp so
 6 I freaked out. We threw him in the car seat, and
 7 we headed towards the hospital. We got to the
 8 hospital and the whole time I was tapping on his
 9 chest to try and stimulate breathing. And then we
 10 got to the hospital. He dropped me off right at
 11 the front door of the ER. I ran in there with the
 12 whole car seat, and I found the first lady and I
 13 told her, you know, my baby's not breathing and so
 14 she started calling people back. And the second I
 15 pulled him out of the car seat, he let out a big,
 16 huge yell and just screamed the whole rest of the
 17 time.
 18 **Q Okay. Let's back up a second. You said you were**
 19 **tapping on him. On the way to the hospital you're**
 20 **tapping on his chest you said to stimulate**
 21 **breathing. Did it appear to you he wasn't**
 22 **breathing?**
 23 A Yes. He was very bluish.
 24 **Q Did you check for a pulse?**
 25 A No, I didn't know how.

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1 **Q So he was bluish. It appeared to you enough that**
 2 **he wasn't breathing that you're tapping his chest**
 3 **and hopefully stimulate breathing, correct?**
 4 A Yes.
 5 **Q You said you went to the hospital. This would be**
 6 **Piedmont Medical Center?**
 7 A Yes.
 8 **Q And you've carried the whole seat in there with**
 9 **you?**
 10 A Yes.
 11 **Q And then you said that he let out a yell?**
 12 A Yes.
 13 **Q And tell me what next happened.**
 14 A After that he was breathing finally so I - - - I
 15 was a little calmer there. And we went back and we
 16 did the vitals, what they do when you go in the ER,
 17 check the blood pressure and the temperature and
 18 all that. We were taken immediately back. And my
 19 mom had shown up because one of us called her.
 20 **Q So Ms. Williams did come to Piedmont Medical Center**
 21 **when you were there?**
 22 A Yes. And then I'm kind of iffy on the facts of
 23 what had happened. They did some tests, blood
 24 work. Nobody really knew. We were in there for a
 25 really long time. And then mom - - - They were

1 going to let us go and mom brought up the fact that
 2 he was in the hospital an extra two days when he
 3 was born for that virus that I had, so they were
 4 like oh, well, let's do one more thing. And I
 5 think they did a spinal tap and that's when they
 6 found the bleeding in the brain.
 7 **Q Okay.**
 8 **A** And that's when we were ambulated over to Levine
 9 for further care.
 10 **Q Now, what time would you have gotten to Piedmont**
 11 **Medical? You went to Piedmont Medical on the 4th**
 12 **didn't you?**
 13 **A** Yes.
 14 **Q Was it late in the day, late in the evening?**
 15 **A** It was right after I got off because I didn't even
 16 get fully out of the car so it was around 4:35.
 17 **Q And when you were transferred to Levine, that would**
 18 **have been early, early, early in the morning, just**
 19 **after midnight?**
 20 **A** Yeah, it was - - - it was late or early, however
 21 you look at it.
 22 **Q So you went to Piedmont on the 4th and then early**
 23 **the 5th you wound up going to Levine?**
 24 **A** Yes.
 25 **Q Now, what explanation did Michael give you for him**

1 **Q Was there a day in that period between Thanksgiving**
 2 **when you're going to the doctors and to Dr. Paxton**
 3 **and to Riverview where you had some concern because**
 4 **Owen had gone almost an entire day without**
 5 **urinating?**
 6 **A** Yes.
 7 **Q Was that in and around that time?**
 8 **A** It was a while ago. I believe that was because of
 9 the lack of eating.
 10 **Q Right.**
 11 **A** I do remember that. I think that's something I
 12 brought up to Riverview.
 13 **Q And did they appear to be concerned about the fact**
 14 **that this child has gone an entire day without**
 15 **urinating?**
 16 **A** No.
 17 **Q You went to Levine and what did you find out at**
 18 **Levine, that, you know, they've examined him, they**
 19 **are examining him, and what did they find out that**
 20 **they told you was wrong with him?**
 21 **A** We didn't really get a clear answer on that.
 22 **Q Did you not get a clear answer because they didn't**
 23 **appear to know yet what the problem was?**
 24 **A** Correct.
 25 **Q They can't give you an answer if they don't know**

1 suddenly - - - you know, you're coming home with
 2 Christmas presents, and he's running out with a
 3 limp child who may not be breathing? Was there a
 4 disconnect there? Did he explain it to you? What
 5 happened?
 6 **A** Yes, he explained it. I was asking frantically and
 7 he said just like normal, he would not wake up to
 8 eat. He said that he was going to wake him up
 9 because it's been a few hours since he ate last and
 10 try and feed him. And he said when he picked him
 11 up out of his little thing he was sleeping in that
 12 he did that what he did in the hospital, he let out
 13 a big breath and screamed and then went limp. And
 14 that's when I pulled up and he ran out. Because he
 15 was - - - he said he was like running to his car so
 16 - - - but I was out there and that's when I - - -
 17 **Q Did Michael mention that he'd dropped a controller**
 18 **on his head again or that anything had happened to**
 19 **him that might have injured the baby?**
 20 **A** No.
 21 **Q Well, the last time you've seen Michael was the**
 22 **11th. Has Michael ever told you that he did**
 23 **anything that led to an injury of your child on**
 24 **December 4th?**
 25 **A** No.

1 yet, correct?
 2 **A** Right.
 3 **Q All right.**
 4 **A** We were there for about four days. We, me and
 5 Michael, both stayed there morning and night and my
 6 parents -- well, my mom did too at least.
 7 **Mr. Todd - I'm sorry. Your mom stayed there**
 8 **how long?**
 9 **Witness - The whole time.**
 10 **Mr. Todd - Okay.**
 11 **Q Ms. Carduff came in as well?**
 12 **A** I don't believe so.
 13 **Q Okay.**
 14 **A** No.
 15 **Q Were you there when the DSS case worker first got**
 16 **there the early evening of the - - - of December**
 17 **6th?**
 18 **A** Yes.
 19 **Q Was Ms. Carduff there then if you remember?**
 20 **A** I don't remember. If she was I've voided it out,
 21 yeah.
 22 **Q There's a lot going on at that time. All right.**
 23 **When you got to Levine's, did they ask you - - - I**
 24 **mean, did they ask you and ask Michael had anything**
 25 **happened to the child, had the child been dropped,**

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1 had the child been injured? Were they asking you

2 what the possible cause could have been?

3 A Was who asking?

4 Q The nurses and the healthcare workers at Levine's?

5 A They just asked us what could have led up to it.

6 And again, Michael gave them his story and that was

7 about it.

8 Q Did you give them your story?

9 A Yes, I told them about the doctor cares and - - -

10 Q All right. Did you tell them that in the past

11 you'd seen Michael handling the child roughly?

12 A No. I didn't find that as a concern.

13 Q Did you tell them that there were occasions when

14 Michael would kind of bounce him to the extent that

15 you thought that was maybe a little excessive

16 whether it was or was not? Did you tell that to

17 them?

18 A Again, it wasn't concerned.

19 Q Did you tell any of them that you'd seen a bruise

20 on his head in November after Michael and his

21 brother had been caring for him?

22 A I don't believe so.

23 Q Do you remember when the lady from DSS showed up on

24 December 6th?

25 A (Indicating yes)

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1 Q You do? Yes?

2 A Yes. Yes.

3 Q And that lady was named Shaundra Tyler; do you

4 remember her?

5 A I don't remember the name.

6 Q But a 30-year-old black lady?

7 A Yes.

8 Q Were you at the hospital when she got there?

9 A Yes.

10 Q Did you understand she was a DSS case worker?

11 A Yes.

12 Q Was Michael also at the hospital then?

13 A Yes.

14 Q And she met with both of you?

15 A Yes.

16 Q When she met with you, did she tell you - - - did

17 she introduce herself?

18 A Yes.

19 Q Did she tell you who she worked for?

20 A Yes.

21 Q Did she tell you why she was there?

22 A Yes.

23 Q What did she tell you?

24 A That it was standard procedure when there's a child

25 involved in any kind of hospitalization that they

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1 are to come in.

2 Q And did she tell you that DSS would be conducting

3 an investigation?

4 A I don't think I quite understood that at that

5 point.

6 Q What did you think she was there for? I know you

7 said she told you that she was there for standard

8 procedure when a child's injured. What did you

9 think a DSS case worker was supposed to be doing in

10 the hospital talking with you and Michael about

11 this injured child? What did you think she was

12 doing?

13 A I believed she was just there to eliminate the idea

14 of it being abuse.

15 Q Trying to look into to whether it's abuse?

16 A Yes. Yes.

17 Q Which broadly the term can be an investigation?

18 A Right.

19 Q Did she give you some paperwork saying, you know,

20 as parents of a child who is the subject of DSS

21 coming here you've got certain rights and they gave

22 you a pamphlet; do you remember that?

23 A Yes.

24 Q And I think you had to sign something for that

25 brochure, correct?

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1 A Yes.

2 Q Did you ever read that brochure?

3 A I think so.

4 Q Okay. Do you remember that it said something in

5 there about you've got the right to an attorney and

6 - - -

7 A Yes.

8 Q - - - here's what's going to happen and so forth,

9 correct?

10 A Yes.

11 Q Basically telling you what's involved when DSS

12 walks in the door on an injured child, correct?

13 A Yes.

14 Q Did you have any questions about it then?

15 A No.

16 Q Did you ask her any questions while she was there?

17 A No.

18 Q Now, did you have to leave early before she left?

19 Was she still there when you left the hospital that

20 night?

21 A I don't remember.

22 Q Did she talk to the others who were in the room

23 with Owen?

24 A Like the other adults?

25 Q Other people who were there. I think you just said

1 you don't remember if Jennifer Carduff was there.
 2 But if Jennifer Carduff was there, would she have
 3 spoken with Jennifer Carduff?
 4 A Yeah, I'm not sure.
 5 Q You don't remember? Okay. That's fine. Did she
 6 talk with Michael?
 7 A Yes.
 8 Q Do you remember his brother being there?
 9 A Being in the hospital?
 10 Q Being in the hospital room?
 11 A No.
 12 Q Do you know that he wasn't there or do you just not
 13 remember that he was or was not there?
 14 A I do not remember.
 15 Q Were there medical people there, nurses, doctors?
 16 A Yes.
 17 Q Do you remember the DSS lady? And again, her name
 18 is Shaundra Tyler. I'll call her Ms. Tyler.
 19 A Okay.
 20 Q Do you remember Ms. Tyler speaking with any medical
 21 personnel that were there?
 22 A Not that I was aware of.
 23 Q I mean, you would know when she talked to you, --
 24 --
 25 A Right.

1 Q --- but if she's was talking to other people you
 2 may not have known that?
 3 A Correct.
 4 Q Do you remember her filling out a form and giving
 5 it to you for you and Michael to sign that was
 6 called a safety plan; do you remember that?
 7 A Yes.
 8 Q Do you remember that it basically said follow the
 9 medical advice and don't try to leave with the
 10 child unless he's discharged?
 11 A Yes.
 12 Q And you agreed with that, correct?
 13 A Yes.
 14 Q I mean, you got concerns about your son being
 15 injured and you want the medical people to take
 16 care of him?
 17 A Absolutely.
 18 Q So you weren't going anywhere with him until he was
 19 discharged anyway were you?
 20 A Correct.
 21 Q What else, if anything, do you recall her doing
 22 that first night?
 23 A Other than speaking with us, giving us the
 24 paperwork you spoke about, and then asking us what
 25 had happened that day, that was it.

1 Q Was she taking notes when she's talking to you?
 2 A I believe so.
 3 Q Do you recall her saying anything else to you that
 4 comes to your mind as we sit here today?
 5 A She asked who was in the care of the baby, what I
 6 was doing and that's about it.
 7 Q You told her you were working?
 8 A Yes.
 9 Q Basically she asked you, you know, how did we get
 10 from a well baby, smiling baby to here in a
 11 Charlotte hospital?
 12 A I mean, she didn't --- Yeah, well, she didn't
 13 state it like that. She just simply asked what the
 14 events were of the day.
 15 Q Did you tell her that there had been occasions in
 16 the past where Michael had handled the child more
 17 roughly than you would have liked?
 18 A No.
 19 Q Did you tell her that there were occasions when
 20 Michael would bounce the child and you didn't think
 21 that was a particularly good thing for Michael to
 22 do?
 23 A No.
 24 Q Did you tell her that you had seen a bruise on the
 25 child's left side of his head in November after

1 Michael and his brother had cared for the child?
 2 A No, I did not.
 3 Q Do you recall a Dr. Cheryl Courtland working on
 4 your son?
 5 A I don't know the names.
 6 Q Do you remember any of the names of the ---
 7 A The only names that stuck with me were Dr. Bailey
 8 and Dr. Wunderlund (phonetic)
 9 Q Okay. Do you remember any of the nurses or
 10 hospital social worker's names?
 11 A No. I remember my social worker. I think her name
 12 is Diva, I believe.
 13 Q Now, after that first night, did you ever see Ms.
 14 Tyler again, that first case worker for DSS?
 15 A Not --- I can't remember. I just ---
 16 Q There was another case worker that you met with
 17 named Dirvondra Hill, correct?
 18 A Dirvondra, that's who I might think as Diva.
 19 Q Okay.
 20 A Yes.
 21 Q And Dirvondra, that's spelled D-I-r-v-o-n-d-r-a,
 22 correct?
 23 A Yes. I --- I remember Hill.
 24 Q And she met with you the next day didn't she?
 25 A In the hospital?

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1 Q Yes.

2 A I believe.

3 Q Did she attempt to met with you at your home to do

4 a home visit?

5 A She came one time, yes.

6 Q Isn't it true that on December 17th she met you in

7 your driveway as you were on your way out to work

8 for a home visit, and you couldn't really meet with

9 her then, correct?

10 A Correct.

11 Q All right. And at that time she told you that she

12 needed to meet with you and Michael and the baby

13 for a home visit and y'all tentatively set up a

14 meeting for December 21st, within three or four

15 days after that, correct?

16 A Yes.

17 Q And that meeting was to be in the morning, correct?

18 A Yes.

19 Q And, in fact, she did come out and she was able to

20 visit with you and Michael and Owen in your home,

21 correct?

22 A Yes.

23 Q And she had another safety plan for you to sign

24 didn't she?

25 A I don't remember.

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1 Q That's fine.

2 A I'm sorry

3 Q Now, tell me what you recall about that home visit

4 when she came in the morning and met with you and

5 Michael and Owen. Tell me what you recall of it.

6 A She came in. She had a --- She wanted us to show

7 her the room so we showed ---

8 Q The room where he lives or where your son stayed?

9 A Yeah, Owen's bedroom.

10 Q Okay.

11 A So we did. And we showed him --- We showed her

12 everything, you know, the --- where he would stay

13 throughout the day, meaning, you know, the swing

14 and the changing table. And then she took a

15 picture of Owen and a picture of his room. And

16 then just asked us how he's been, any alarms or

17 anything and we said no, everything was normal, and

18 that was it.

19 Q Now, you knew in advance that she was coming. You

20 kind of had an idea of when she would be there,

21 correct?

22 A Yes.

23 Q So you were able to straighten up your home.

24 Nobody likes somebody coming to their home

25 surprised ---

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1 A Right.

2 Q --- so you were able to straighten up the home,

3 make sure there's no dishes on the sink and so

4 forth, correct?

5 A I don't think I did.

6 Q Okay.

7 A But, yes. I mean, we weren't messy but we were

8 lazy so ---

9 Q And your home was presentable that day, correct?

10 A Yes.

11 Q And when she was there observing y'all interact,

12 Michael and Owen were on the floor on a blanket

13 weren't they ---

14 A Yes.

15 Q --- playing? And Owen was in a good mood and

16 reacting, kicking his feet and responding to

17 Michael, correct?

18 A Yes.

19 Q Now, when you met with Ms. Hill that day, did you

20 tell Ms. Hill that in the past Michael had

21 sometimes handled Owen rougher than you would have

22 liked?

23 A No.

24 Q Did you tell her that in the past Michael would

25 sometimes bounce him or --- I'm overstating it

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1 when I'm saying bouncing. I don't mean to do that.

2 A Right.

3 Q You used your hands kind of going up and down a

4 little bit as if it was playing with the child in a

5 little rougher manner than you would have liked.

6 Is that an accurate assessment of what you said

7 earlier?

8 A Yes.

9 Q Did you tell her that?

10 A No.

11 Q Did you tell her that in November you had seen a

12 bruise on Owen's head after Michael and his brother

13 had been caring for the child?

14 A No.

15 Q Did you tell her at that time while she's there

16 seeing you interact, that there was some stressers

17 between you and Michael because Michael wasn't

18 going out to get a job and that was becoming an

19 issue; did you tell her that?

20 A No.

21 Q How long was that visit? How long did she stay if

22 you remember? And I don't need it to the minute

23 but just estimate it.

24 A Probably 20 minutes if that.

25 Q When Ms. Hill had earlier met you on the 17th in

1 the driveway as you're on your way out to work, did
 2 you tell her at that time that Owen was with his
 3 grandmother, in other words, his grandmother was
 4 caring for him that day?
 5 A Yes. I had forgotten about that until you brought
 6 it up.
 7 Q But with me having brought it up, that prompts a
 8 recollection, correct?
 9 A Yes.
 10 Q I mean, it did happen, right?
 11 A Correct.
 12 Q Now, the grandmother, was it your mom or was it Ms.
 13 Carduff with whom you were staying?
 14 A My mother.
 15 Q With Charlotte Williams?
 16 A Yes.
 17 Q And do you recall Ms. Hill asking you for a contact
 18 phone number so she could contact Ms. Williams and
 19 you were not able to give that phone number to Ms.
 20 Hill; do you remember that?
 21 A Yes, sort of. I remember her asking me. I don't
 22 remember not giving it to her. I don't know why I
 23 would not be able to.
 24 Q Where would Michael have been then that day?
 25 A I don't know.

1 Q In other words, why was your mom caring for the
 2 child instead of Michael?
 3 A Michael - - - If it was morning he was probably
 4 asleep, but I'm not positive.
 5 Q Owen would have been better cared for with your
 6 mother than with Michael anyway on that day
 7 wouldn't he?
 8 A Yes.
 9 Q Are you still good to go?
 10 A Yes.
 11 Q Give me a second. Some of these questions I've
 12 already asked. We don't have to go over them
 13 again. Okay. That takes us up to December 21st
 14 just before Christmas. Did y'all have a normal
 15 Christmas?
 16 A Yes.
 17 Q Now, within ten days after this December 21st home
 18 visit the issue with Michael and his not working,
 19 his not getting a job, reaches a head and you
 20 essentially kick him out of the house New Year's
 21 Eve; isn't that correct?
 22 A Yes.
 23 Q Was it on New Year's Eve, was it a day before, a
 24 day after?
 25 A It was New Year's Eve.

1 Q New Year's Eve. All right. Tell me how that
 2 conversation went.
 3 A It was not good. His friends were there.
 4 Q At your home?
 5 A Yes. Another thing that upset me so much. I mean,
 6 that's what broke me to kick him out. Because I
 7 could tell he just didn't - - - Owen was more of a
 8 bother than a good thing when his friends were
 9 over. So I just - - - I went in there, my mom was
 10 with me, and I brought him to our room. I told him
 11 to come with me in the back and I said, you know,
 12 this is hard for me but you need to go, you know,
 13 you're not showing any incentive of being a man.
 14 Q You need something to drink; you okay?
 15 A Yeah, I'm fine.
 16 Q All right.
 17 A And I said you're being lazy, your friends are
 18 always here, this is not a party house, and blah,
 19 blah, blah, and just kicked him out. I said you
 20 need to go, you need to take your friends with you,
 21 and you need to go back to your mom's house because
 22 apparently that's where you need to be. And so he
 23 did. I mean, he didn't really fight it, but he
 24 just did it. He didn't say anything. And I just
 25 stood there while he packed all his stuff up and he

1 left, and that was that.
 2 Q You said that his friends were there on New Year's
 3 Eve. I mean, a lot of people are out partying New
 4 Year's Eve. He's got his friends over there. How
 5 many friends were there?
 6 A Two.
 7 Q Two.
 8 A His brother Brian and his best friend Aaron.
 9 Q And you said in your explanation there that his
 10 friends were always there. When you say - - - I
 11 know that's probably and overstatement - - -
 12 A Yes.
 13 Q - - - but, I mean, how frequently would you come
 14 back from working your shift, and he would be there
 15 with either his brother or his brother and others?
 16 A It was always either just his brother or his friend
 17 or both of them. They didn't - - - It wasn't as -
 18 - - I should say they didn't come often. When they
 19 did come, they stayed so long. I'll state it like
 20 that.
 21 Q Didn't know when to leave?
 22 A Yes. So they would come like once a month for like
 23 a week or a whole weekend and it just bugged me
 24 because Michael would always stay up till like 4:00
 25 in the morning and all that. It was just annoying.

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1 Q So he's out of the house New Year's Eve. Now, you
 2 know at that point DSS is conducting an
 3 investigation into what's going on with the
 4 December 4th injury; you know that, right?
 5 A It wasn't really apparent to me because I had only
 6 seen --- I thought basically it was kind of done
 7 after she came and looked at the house.
 8 That was my understanding. It could have been my
 9 --- you know, I was naive about it.
 10 Q Do you recall her telling you, you know, the house
 11 looks nice, we're finished here?
 12 A For the day. I mean, she said I would have to
 13 follow up with parenting classes but I was never -
 14 -- it was never brought to me ---
 15 Q Let's talk about that. As far as parenting classes
 16 --- I mean, you can see that you and Michael were
 17 young parents at that time that could have used
 18 some parenting classes?
 19 A Yes, probably.
 20 Q I mean, do you think you were a good mom?
 21 A Yes.
 22 Q So do you think you needed parenting classes?
 23 A As far as classes, not really. I could have used
 24 guidance in which I used my mother as.
 25 Q I mean, you're mom was a mom ---

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1 A Yes.
 2 Q --- and your mom's giving you some guidance,
 3 correct?
 4 A Yes.
 5 Q And you're learning from your mom, correct?
 6 A Yes.
 7 Q And as far as being a good mom and knowing how to
 8 properly care for a child, you were knowledgeable
 9 enough in that area that you knew when, on those
 10 occasions when it appeared to you that Michael was
 11 maybe picking him up a little cavalierly, a little
 12 more roughly than you liked, you knew enough to
 13 correct him on that, correct?
 14 A Yes.
 15 Q But on the parenting classes, did you exercise any
 16 initiative to call Ms. Hill and say, you know,
 17 these parenting classes you guys mentioned, when
 18 are those going to start? Did you do anything
 19 proactive to get that going?
 20 A Other than the day she was there, I asked her well,
 21 when will that be and she said she would contact
 22 me, and so she never did. I don't want to say I
 23 blew it off, but I --- I didn't find concerns. I
 24 didn't think we would benefit much from them
 25 anyways, so I just never took the --- you know,

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1 to do it.
 2 Q She comes on the 21st to visit, get a home visit,
 3 have a face-to-face with you and Michael and your
 4 child, everything looks great, and then ten days
 5 later Michael is on I-77 heading back toward
 6 Concord and y'all have a split family at that
 7 point. Did you call Ms. Hill and tell her that, -
 8 --
 9 A No.
 10 Q --- tell her that the family you saw on the 21st
 11 is different from the family we got here right now;
 12 did you tell her that?
 13 A No.
 14 Q Why not?
 15 A Again, it wasn't apparent to me that it was still a
 16 open case. I didn't consider it a case because --
 17 -
 18 Q And in your mind Owen's safe when you care for him,
 19 correct?
 20 A Yes.
 21 Q And Owen's safe if your mom cares for him, correct?
 22 A Yes. I thought he was safe with anybody.
 23 Q Would it be accurate to say that you had ---
 24 Well, let me ask you this. You lived with Michael,
 25 correct?

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1 A Yes.
 2 Q Michael was the father of your child, your lover,
 3 your friend, your mate at that point. You're not
 4 married yet but basically you guys are a couple,
 5 correct?
 6 A Yes.
 7 Q Was there anybody in the world who knew Michael
 8 better than you at that time?
 9 A Other than his family, no.
 10 Q And you saw no indication with Michael that Michael
 11 would have done something intentionally, or because
 12 he's got poor impulse control, to your son that
 13 would have injured him; you never suspected that,
 14 did you?
 15 A No, I did not.
 16 Q Even though you'd seen sometimes where he would
 17 have picked him up a little more roughly because
 18 maybe he just doesn't know how to pick up a child
 19 yet, you never had any indication to suspect that
 20 he would have done something to have injured your
 21 child?
 22 A Correct.
 23 Q And you didn't injure your child?
 24 A No.
 25 Q You never dropped your kid did you?

1 A No.
 2 Q After Michael left New Year's Eve, at some point
 3 thereafter within the next three or four days - - -
 4 Well, let me ask you this. Over the next three or
 5 four days, Michael's up in Concord, did y'all still
 6 speak to each other?
 7 A Yes.
 8 Q You still called. And that's not unusual is it?
 9 A No.
 10 Q Would you call him and he called you?
 11 A Back and forth.
 12 Q And the subject of your calling is - - -
 13 A Him - - -
 14 Q - - - from his standpoint, what can I do to get
 15 back?
 16 A Yeah. Yes.
 17 Q And that's understandable. At some point in the
 18 next three or four days you do relent and he does
 19 come back, correct?
 20 A Yes.
 21 Q Had he given you any assurances that I'll try to do
 22 better?
 23 A He told me that he has already applied to places
 24 while being kicked out.
 25 Q Okay. He recognized the error of his ways and when

1 A Yes. All the concerns that were prior to the first
 2 one were not there anymore. He was happy. He was
 3 - - - the video I have of him rolling was after the
 4 first incident.
 5 Q Okay.
 6 A He was normal.
 7 Q Okay. And the issues that had led up to your
 8 taking him for medical treatment on or around
 9 December 4th, those had resolved, correct?
 10 A Yes.
 11 Q And when you went to work on January 11th was he in
 12 that condition? January 11th, was he the alert,
 13 happy kid when you went to work January 11th?
 14 A Yes.
 15 Q And tell me what happened when you came back.
 16 A It was late, around 10:30, 11:00 or so and Michael
 17 and Owen were not at the house. So I called
 18 Michael and I asked him where are you, and he said
 19 the baby wouldn't go to sleep so we had to put him
 20 in the car because he always fell asleep in the
 21 car. So I said okay, well, I'm here now to help
 22 you and just bring him home, and I'll take care of
 23 him. He said okay. So I got on the couch and I
 24 was just on my phone and - - -
 25 Q And tell me, what time of day is this?

1 mama says get a job, he needs to go out and look
 2 for a job, correct?
 3 A Yes.
 4 Q And he said he would and he did do that, correct?
 5 A Yes.
 6 Q Tell me about the second injury. How did you find
 7 out about that?
 8 Mr. Settana - Before we do that, do you mind
 9 if we take a break.
 10 Mr. Frawley - No, I'm good. I'm good.
 11 Q You're good with taking a break?
 12 A Yeah.
 13 Whereupon - A recess was taken.
 14 (Mr. Frawley - Resuming)
 15 Q Ms. Lythgoe, we've taken a short break so I've got
 16 some questions. I'm going to go through these and
 17 wrap it up and then we'll turn it over to the other
 18 attorneys for their questions.
 19 A Okay.
 20 Q I think when we left off we'd gotten up to the
 21 first or second week of January in 2010. Tell me
 22 at that time, before the second injury, describe
 23 for me how Owen is appearing, you know, his health,
 24 how he responds, is he playful, is he crawling yet.
 25 What's he doing?

1 A About 11:00 p.m.
 2 Q 11:00 p.m. Okay.
 3 A And I was waiting for him and I fell asleep. I
 4 woke up just out of naturalness and it was around
 5 12:00 and he still wasn't home. So I called him
 6 again, and I said what are you doing. And he said
 7 oh, I stopped by McDonald's to eat. And I said
 8 well, please come home and so he did. He came
 9 right home after that, a matter of minutes. And
 10 Owen - - - he had Owen in the car seat and he
 11 looked fine. I kissed him.
 12 Q Was he awake?
 13 A No. The baby was asleep. And I was going to - - -
 14 I was starting - - - I was going to unbuckle him
 15 and he said I'll just put him in bed. You go to
 16 bed because you're already half asleep, and I was
 17 working the next day. So I went to bed. He put
 18 him to bed. He came in and we fell asleep. Some
 19 time in the middle of the night, I'm not sure of
 20 the time, probably about 3:00 a.m., 4:00, Owen woke
 21 up crying. So I was getting up to go do that. I
 22 went and checked on him, covered him up and went to
 23 go make the bottle. And Michael met me in the
 24 kitchen and was like, again, you're - - - you're
 25 awake, have to work tomorrow, just go back to bed,

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1 I'll take over. Which didn't alarm me in any way
 2 because I had just kicked him out so he had been
 3 milking up to me lately.
 4 **Q Okay.**
 5 A So I was like okay, great, so I went to bed. Owen
 6 was fine. And woke up in the morning to get ready
 7 for work. Michael was already out of bed. I guess
 8 he was in the bathroom doing something. And I went
 9 to go check on Owen. I heard a noise like a
 10 squeaking noise. I thought he was playing around.
 11 And I went in there and looked at him in his crib,
 12 and he was having a seizure. He was twitchy,
 13 making a squeaky noises, his tongue's --- his
 14 eyes were stuck to the left and his tongue was
 15 sticking out. And ---
 16 **Q So his eyes were --- and I think I read that**
 17 **somewhere, where they're extremely to the left?**
 18 A Yeah.
 19 **Q Okay.**
 20 A Yes.
 21 **Q But they are open?**
 22 A They are open but there was no life in them.
 23 **Q All right.**
 24 A Scared me to death. I screamed for Michael. He
 25 came running in. We immediately put on his little

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1 winter jacket thing, zipped him up and put him in
 2 the car seat and, again, ran to the hospital.
 3 **Q Now, let's stop there a second. You described he's**
 4 **having a seizure, and you said we immediately put**
 5 **his jacket on. Is he dressed at that time? Is he**
 6 **wearing pajamas; what's he wearing?**
 7 A He's in a diaper.
 8 **Q Just a diaper?**
 9 A Yes.
 10 **Q Did you notice a bruise on the upper left side of**
 11 **his chest?**
 12 A Not at that time.
 13 **Q Had you noticed a bruise on his chest the day**
 14 **before, or there was a day when you went to church,**
 15 **did you notice a bruise then?**
 16 A Not on his chest.
 17 **Q Go on. I'm sorry.**
 18 A Okay. Yes, I zipped him up. It was --- it was
 19 not just a jacket, it was a little outfit, a little
 20 bunny suit thing. And I zipped him up in it, put
 21 him in the car seat, and went to Piedmont again,
 22 the ER, and ran in there, same ordeal, but we were
 23 taken straight to the back. I'm --- I'm sorry.
 24 I'm very vivid on what happened.
 25 **Q Take your time.**

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1 A We were airlifted to Levine. He went through
 2 helicopter. We drove. And we met up at Levine
 3 Hospital where I was --- we went into the room
 4 with him, with Owen, and at that point --- I
 5 mean, that's --- I'm sorry. I'll go back a
 6 little bit, at Piedmont still. I was with the
 7 nurse to do vitals at one point and we took off
 8 --- we took off his little suit he was wearing
 9 and that is when I noticed the chest bruise.
 10 **Q And the bruise was in the upper left hand side of**
 11 **his chest?**
 12 A Yes. Okay. And I had not seen it before. I
 13 explained that to her because she asked me what is
 14 this, and I said I have no idea. Again, I was
 15 crying and shaking and freaking out.
 16 **Q It was a pretty significant bruise wasn't it?**
 17 A It was big, yes, and dark. And again, okay, we're
 18 back at Levine. He went back to the room and I was
 19 --- me and Michael were kind of pushed aside.
 20 Doctors were everywhere. My mom was in there. She
 21 was frantic, panicking. I was frantic and
 22 panicking. Michael, at one point, pulled me to the
 23 side and said, --- you know, because this is
 24 second bruise. Are you aware of that?
 25 **Q Tell me about the second bruise.**

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1 A There was a second bruise on his head, again, a
 2 little more towards the middle high on his
 3 forehead. Again, I has asked Michael previously
 4 what it was about, and he told me he was playing
 5 with keys, his little toy key things, and they
 6 slapped in the face.
 7 **Q Hit him with the toy keys?**
 8 A Yes. And so it, again, raised no concern to me.
 9 Well, concern, but no threat.
 10 **Q Now, with the toy keys bruise, was that on the 11th**
 11 **or was that a day prior to the 11th?**
 12 A Day prior.
 13 **Q Okay.**
 14 A Yes. And so fast forward again. Michael pulled me
 15 to the side in Levine and said the bruise that I
 16 told you he got with his keys really, I was holding
 17 him and his head was in the rocking thing and his
 18 head was under it when I got up. His head hit on
 19 the rocker. And to me, looking back now, you know,
 20 I should have like well, why did you lie. But at
 21 the moment I was --- didn't even care. I was too
 22 concerned about what was happening so I kind of
 23 brushed that off. And then we were kicked out of
 24 the room, me and Michael, and --- Well, and my
 25 mom because just family, they needed to assess the

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1 child. And that is when we went to the waiting
 2 room. And then I don't know the time periods but
 3 we ended up talking to Amanda I think her name - -
 4
 5 **Q Amanda Carter was a - - -**
 6 A Yes.
 7 **Q - - - detective with the sheriff's department?**
 8 A Correct.
 9 **Q Okay.**
 10 A Ended up talking to her. She did speak with us
 11 separately. At this point I was very shocked. I
 12 didn't know what was going on.
 13 **Q Did you wonder why a sheriff's department detective**
 14 **is talking to you about this case?**
 15 A Again, I just figured that's what they do to
 16 everybody. I've never been in a situation like
 17 this of whatsoever. And they did tell me, you
 18 know, Michael's story is odd to us. We want to
 19 take him down to the sheriff's department for a
 20 polygraph test, I believe, or interrogation,
 21 further interrogation. And so - - -
 22 **Q Let me ask you this. When they told you that**
 23 **Michael's story sounds odd to them, and they're**
 24 **going to take him downtown for a polygraph, did you**
 25 **tell them then what he'd told you about the - - -**

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1 that he'd misrepresented what the problem was with
 2 the bruise; did you tell them that?
 3 A I don't remember if I did or not. I believe I
 4 mentioned that in my own interrogation when they
 5 were talking to me, and I think that's probably
 6 what raised concerns to them.
 7 **Q All right.**
 8 A But I did go with him and his mother to go to the
 9 polygraph test because I think that I just needed
 10 to hear for myself. My mother stayed there. We
 11 still weren't allowed in the room anyways.
 12 **Q Your mother stayed at the hospital?**
 13 A Yes, she stayed at the hospital and I went down to
 14 do the polygraph with him or, you know, wait. It
 15 took forever, like four hours. And that's when
 16 Amanda came out to me and told me that he confessed
 17 to shaking the child. And then his mother,
 18 Michael's mother, Jennifer, took me back to the
 19 hospital and that's when, you know, I told my mom.
 20 And we just sat there in the room and everything
 21 played out.
 22 **Q Okay.**
 23 A I don't know how in depth you want me to go here.
 24 **Q All right. And you haven't talked to Michael since**
 25 **then?**

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1 A Correct. I've seen him in court, but we did not
 2 speak.
 3 **Q Has he made any attempts to contact you?**
 4 A Yes. He has sent some letters like, I think, one
 5 or two maybe, and then we blocked that from the
 6 prison. We called the prison and said have him not
 7 send mail to me.
 8 **Q I mean, did you read the letters?**
 9 A I don't think so. I - - - so I don't even remember
 10 what they said. I probably glanced at them and
 11 opened it.
 12 **Q I mean, the guy who injured your son to the point**
 13 **that he almost died sent you letters, and you don't**
 14 **remember if you read them or not?**
 15 A They - - - no, I did not.
 16 **Q No, you did not read them?**
 17 A Correct, not fully. I skimmed. I didn't - - -
 18 **Q Okay. Do you still have them?**
 19 A Oh, no.
 20 **Q What did you do with them?**
 21 A Threw them out. I know one of them was a Mother's
 22 Day thing he made me, and I was just disgusted, so.
 23 **Q Okay.**
 24 A I know that there was no - - - nothing in there
 25 about the child. It was all I'm sorry, I'm sorry,

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1 and - - -
 2 **Q Now, he has never told you or confessed that he**
 3 **injured Owen on December 4th or prior to December**
 4 **4th has he?**
 5 A No.
 6 **Q Has he actually ever admitted to you that he**
 7 **injured the child December 11th - - - or January**
 8 **11th?**
 9 A I never spoke with him, so.
 10 **Q But he did at the sheriff's department and that's a**
 11 **done deal?**
 12 A Yes.
 13 **Q You were there when he pled guilty?**
 14 A Yes.
 15 **Q Now, in February of 2010 your mother, while rocking**
 16 **Owen at the hospital, tipped the rocker over**
 17 **backwards, correct?**
 18 A Yes.
 19 **Q Were you in the room when that happened?**
 20 A I was asleep.
 21 **Q You were in the room but you were asleep and didn't**
 22 **really see what happened?**
 23 A Correct.
 24 **Q Okay. When were you first made aware that she had**
 25 **fallen over with the child?**

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1 A I was woken up by the crash there.

2 Q Did she go straight over backwards or to the side,
3 or how did that work?

4 A I'm not positive. When I woke up, I helped her up.
5 I think it went over backwards.

6 Q When you helped her up did it appear that the
7 rocking chair was completely over backwards or --
8 -

9 A Yes.

10 Q --- was it on its side?

11 A It was --- I don't remember.

12 Q Okay.

13 A Yeah, it was on the floor. And I helped her and
14 Owen up. Owen was crying so I ran out and got the
15 nurse, and she wasn't even at the station yet.

16 Q That would be a Ms. Bryant?

17 A Oh, I have no idea. She --- I remember she was
18 just in the room. I was in and out. I was asleep
19 but in and out. I knew she was taking vitals.

20 Q Okay.

21 A And then I went out and got her. She hadn't even
22 made it to the nurse's station yet. And I waved
23 her over, and they took Owen for more scans. He
24 was fine.

25 Q Did he hit his head when she fell over?

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1 A I believe he did, yes, but it left no marks.

2 Q But he wasn't unconscious, I mean he was crying.

3 A Right. Right.

4 Q He was injured --- not injured, he was crying?

5 A Correct.

6 Q Okay.

7 A Startled, scared, whatever you want to say.

8 Q Now, Owen is not yet three years old, correct,
9 he'll turn three this September?

10 A Yes.

11 Q Now, you're living with your folks and you get to
12 see him on a daily basis, correct?

13 A Yes.

14 Q Do you still care for him?

15 A Yes.

16 Q I mean, at some point do you anticipate getting to
17 the situation where you can have custody of your
18 son?

19 A Very much I want to.

20 Q And do you have a time frame on that?

21 A No. I don't have the money right now to hire
22 lawyers for that because I was told that's
23 something I would need to do, hire lawyers and I
24 believe go through an extensive amount of therapy
25 and I just --- I don't have money for that right

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1 now.

2 Q The lawyers you'd need to hire, I mean, do you
3 anticipate that your getting custody of your son
4 from your parents or your mother and your step-dad
5 would be contested by them?

6 A No. I just figured I would have to have a lawyer.
7 I haven't looked in depth into it.

8 Q I mean, it's not something that's on the near
9 horizon so you're not looking that deeply into it
10 just yet, correct?

11 A Correct.

12 Q But it's something you'd like to do one day?

13 A Yes. Not in the complete future but ---

14 Q Describe for me how he appears now. When you go
15 home after this deposition, y'all would drive back
16 to Alken and you'll see him. Tell me what you'll
17 see.

18 A Well, he's actually here in Rock Hill. He's with
19 my aunt. He's always happy. He is blind. He
20 cannot see. He cannot talk. He babbles.
21 He sounds like a three-month-old so he does the
22 typical ba, ba, ba sounds. He cannot sit up by
23 himself. His spine ---

24 Q Can he crawl?

25 A No. His spine's damaged from not being able to sit

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1 up --- He cannot feed himself. He has a feeding
2 tube. We work with him and he goes through therapy
3 and all that.

4 Q Well, let me get this. He cannot feed himself. I
5 mean, can y'all feed him or does he have to be fed
6 through a feeding tube?

7 A It's a feeding tube and he has shown signs of ---
8 he can eat spoon food but it is for therapeutic use
9 only. It's not for life support. I mean, that's
10 not his sense of nutrition.

11 Q Can he swallow?

12 A That is what he's in therapy for. He can. It
13 takes him a really long time to figure out how so
14 that's one of his therapies he is in. He's not
15 very adequate with it though. He's like two good
16 bites maybe in a 30-minute session.

17 Q Does he appear to know who you are, recognize you?

18 A He ---

19 Q Obviously he can't see you ---

20 A Right.

21 Q --- but can he sense that you're there and know
22 you from someone else?

23 A I'm not so sure about that.

24 Q From what you can see.

25 A Yes. I believe he absolutely knows when he's in a

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1 room with people who are with him every day.
 2 I think he recognizes Larry, me and mom. Probably
 3 not separately, especially me and mom. He knows
 4 --- he loves Larry's voice. It's very cute.
 5 **Q That was going to be my next question. Can he hear**
 6 ---
 7 A Yes.
 8 **Q --- does he recognize a voice?**
 9 A Oh, yes, he can hear, the louder the better. So I
 10 don't know if that's a damage ear thing or what.
 11 He took a hearing test not long ago and passed with
 12 flying colors, so. He is easily startled just like
 13 any other --- Well, actually, probably a little
 14 more. Any all of a sudden noises or touches,
 15 because he is blind, he gets startled from that.
 16 I'm trying to remember which side's more dominant
 17 on him. I believe it's his left side that he moves
 18 more, yes. His left side is more mobile. He's
 19 constantly chewing on his hand.
 20 **Q Is that because he's left-side dominant or is his**
 21 **right side impaired?**
 22 A It's a little impaired, yes. He has a stroller
 23 that supports him in his trunk and his head. He
 24 doesn't have very good head control. If you want
 25 to explain him, he is a three-month-old in and

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1 three-year-old's body. You still have to support
 2 the head, hold him, burp him, can't walk, can't
 3 crawl.
 4 **Q Who is his pediatrician now?**
 5 A Dr. Kinsey at Palmetto Peds.
 6 **Q And do you know the names of other doctors that**
 7 **he's seen on a regular basis?**
 8 A He has Dr. Strickland.
 9 **Q Who's Strickland with?**
 10 A Strickland is his neuro.
 11 **Q Okay.**
 12 A Bebitisto. I do not know how to spell that.
 13 **Q Okay.**
 14 A Dr. Bebitisto, she is with development.
 15 **Q Okay.**
 16 A Dr. Ngh, and it's spelled with an N. It's like N-
 17 l-g-h, Ngh, something like that. That's his
 18 gastro, his tummy tube. We have Strickland,
 19 Bebitisto, Ngh, tummy, head, development. I
 20 believe that's it.
 21 **Q When he goes to visit these doctors, do you go with**
 22 **him?**
 23 A Yes. I believe there's been like only one that I
 24 --- I didn't make it to the hearing test. But,
 25 yes, typically I do go. It's me and my mother.

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1 Mr. Hood - I don't know if y'all want to do
 2 this or not because I don't know what you're
 3 scheduling's like. But after Charlotte's
 4 deposition, would she be able to --- did
 5 y'all want to see the child and just to
 6 visualize? Because he is here in Rock Hill.
 7 Mr. Frawley - I'd like that.
 8 Mr. Todd - That's fine.
 9 A Yeah, I can go get him.
 10 Mr. Hood - We can do that after Charlotte's
 11 deposition ---
 12 Mr. Frawley - That would be good.
 13 Mr. Hood - That way y'all could at least kind
 14 of see it for yourself. She can describe it
 15 all day long ---
 16 Mr. Frawley - Yeah.
 17 Mr. Hood - but until you see it, it's just
 18 going to be hard to ---
 19 Mr. Todd - It sounds like she's got video
 20 tapes.
 21 Mr. Frawley - Yeah, that's true.
 22 A I have videos here.
 23 Mr. Frawley - I'd like to see him if that's
 24 not going to inconvenience anybody.
 25 Mr. Hood - Yes, we can do that. We can do

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1 that.
 2 Mr. Frawley - All right.
 3 (Mr. Frawley - Resuming)
 4 **Q Your mom, do you know if your mom has a criminal**
 5 **record? And that's not necessarily something that**
 6 **a mom will share with her kid and so you may not**
 7 **know.**
 8 A I am aware that she has some criminal history on
 9 there.
 10 **Q Do you recall she had a CDV at one point?**
 11 A Yes. I couldn't think of the wording.
 12 **Q How about your step-dad, Mr. Williams?**
 13 A I know like forever ago he was in jail for a
 14 robbery or something.
 15 **Q Was it a prison sentence or was it like a county**
 16 **jail?**
 17 A Prison.
 18 **Q I know the DSS case was still open after the**
 19 **January 11th injury. Whom do you recall having**
 20 **spoken with with DSS other than Ms. Tyler who was**
 21 **there the first night, Dirvondra Hill who was the**
 22 **main assessment case worker? Do you remember**
 23 **having spoken with a Krista Hinnant?**
 24 A Seems the last name's familiar. The one that I
 25 know well is Dye, something Dye.

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1 Q That could be Dirvondra Hill?

2 A No, her last name was Dye, D-y-e.

3 Q And what did you speak with that person about?

4 A I spoke with her a lot. I think she was foster

5 care.

6 Q Foster care?

7 A Yes. That's why I know her. I cannot remember her

8 first name.

9 Q And what do you recall speaking with her about?

10 A Nothing in particular. She's just - - - she was

11 just my case worker.

12 Q Being able to visit with your son while he was at

13 foster care?

14 A Yes.

15 Q Anybody else with DSS that you recall having spoken

16 with?

17 A Other than the two you mentioned, no.

18 Q Okay.

19 A Oh, wait. Simpkins.

20 Q Simpkins?

21 A Yes.

22 Q And tell me what Simpkins told you?

23 A I believe he was just the main guy for DSS in the

24 cases like the DSS against me and Michael.

25 Q Is it David Simpson?

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1 A David Simpson, yes.

2 Q He's an attorney?

3 A Yes.

4 Mr. Frawley - Ms. Lythgoe, I appreciate your

5 patience. Please answer any questions these

6 other gentlemen have for you.

7 A Okay.

8 EXAMINATION - (By Mr. Todd).

9 Q Ms. Lythgoe, my name's Monty Todd and I represent

10 Carolinas Medical Center, Levine Children's

11 Hospital. A lawsuit's been filed against them.

12 A Okay.

13 Q If I ask you a question and you don't hear me or

14 understand me or you - - - you know, tell me I have

15 an accent.

16 A Okay.

17 Q If my accent gives you a problem, for any reason

18 you're not sure about the question, if you let me

19 know I'll try to ask it again so that you do

20 understand it.

21 A Okay.

22 Q And if you need to take a break for any reason, let

23 me know. I'd called for one earlier but I tend to

24 go on, but if you need to take a break, let me

25 know.

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1 A Okay.

2 Q Who is Elizabeth Hope Rainey?

3 A Elizabeth Hope Rainey sounds very familiar. I

4 think she did my mom's divorce.

5 Q Do you know an Elizabeth Hope Rainey?

6 A I know the name very well. As to what, I'm not

7 positive.

8 Q How do you know the name?

9 A Like I said, I think she did my mother's divorce

10 but I'm - - -

11 Q Have you ever had any discussions with Elizabeth

12 Hope Rainey about this case?

13 A Not to my knowledge.

14 Q Now, have you retained an attorney as a result of

15 this case?

16 A This one right here?

17 Q Yes, ma'am.

18 A No.

19 Q Have you had any discussions with anybody about

20 your deposition today?

21 A Yes.

22 Q Who have you talked to?

23 A Mr. Hood and Dwight. I cannot remember - - -

24 Mr. Hood - Dwayne.

25 A Dwayne. I'm sorry.

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1 Q What kind of discussions did you have?

2 A I just was asking about what would happen in here,

3 and they explained to me how it would go down and

4 that's - - - that was about it.

5 Q Did you look at any records to prepare for your

6 deposition today?

7 A I'd never had any sent over to me personally. My

8 parents have. Glanced at them, not really sure

9 what they were.

10 Q All right.

11 A So in depth, no.

12 Q Well, let me ask you this. What records did you

13 look at?

14 A I'm not positive. They could have been - - - They

15 looked like they were maybe discharge papers, you

16 know, court hearing papers.

17 Q Discharge papers from the hospital?

18 A Yes.

19 Q What hospital?

20 A I'm not sure. I'm sorry. I didn't read it read

21 it, so.

22 Q Who provided them to you?

23 A Nobody provided them to me.

24 Q Where did you get them from?

25 A They were provided to my parents.

1 Q By whom?
 2 A I'm assuming their lawyers.
 3 Q And who are your parents' lawyers?
 4 A To my understanding it is Shaw and Hood.
 5 Q Now, other than you had the meeting with attorneys
 6 who told you what to expect today, correct? How
 7 did they do? Did they give a good description of
 8 what was going to happen?
 9 A So far it's been pretty accurate, yes.
 10 Q Now, have you discussed this case with anyone else?
 11 A No.
 12 Q Did you do anything else other than you said you
 13 were given some records to look at?
 14 Mr. Hood - Objection to form, but go ahead.
 15 Q Were you given records to look at to get ready for
 16 this deposition by your parents?
 17 A No.
 18 Q Well, what were these given records for?
 19 A What were they - - -
 20 Mr. Hood - Objection to the form, a
 21 misrepresentation of testimony.
 22 Q You told me you were supplied with some records.
 23 A Yes.
 24 Q And they were supplied to you by your parents?
 25 A Let me clarify this. Not necessarily given to me.

1 They were like on the counter and I was curious.
 2 Q The counter where?
 3 A My kitchen.
 4 Q At your house in Alken?
 5 A Yes.
 6 Q And you said you looked at them and you remember
 7 there were some discharge records?
 8 A That's what it presumed to look like. I'm - - - I
 9 don't know terms. Well, it's too big to read, too
 10 much to read, so I did not take the full initiative
 11 to do so.
 12 Q So other than those records, - - -
 13 A Yeah.
 14 Q - - - have you looked at anything else?
 15 A No.
 16 Q Did you keep any kind of a calendar or diary - - -
 17 A Like a personal one?
 18 Q - - - back in 2009, 2010?
 19 A No. I've never been a diary person.
 20 Q Have you got a calendar that would set forth, you
 21 know, what kind of activities you were doing?
 22 A Other than a phone, cell phone calendar, no.
 23 Q Now, you told us who your birth father was. Your
 24 mother was married to your birth father?
 25 A Yes.

1 Q Did you ever live with your birth father?
 2 A Yes.
 3 Q And how long did you live with him?
 4 A From birth to probably about ten years old.
 5 Q And where did you live with him?
 6 A In Texas.
 7 Q Where in Texas?
 8 A San Antonio and Austin.
 9 Q And you left Texas when you were ten years old?
 10 A Correction, nine. I remember now it was on my
 11 ninth birthday. Yes, I moved to Alabama with my
 12 mother's mom and step-dad.
 13 Q What's your mother's maiden name?
 14 A Lavadan.
 15 Q Can you spell that for us?
 16 A L-a-v-a-d-a-n.
 17 Q And how long did you stay in Alabama?
 18 A Till I was 12, so nine to 12.
 19 Q And who did you live with in Alabama?
 20 A My mother and my grandparents for awhile, and then
 21 my mom got her own place, so it was just my mother
 22 and myself and my brother. I'm sorry.
 23 Q And where in Alabama did you live?
 24 A Anniston.
 25 Q And you left Alabama when you were 12?

1 A Yes.
 2 Q Where did you go?
 3 A Alabama to Tennessee.
 4 Q Why did you move from Alabama to Tennessee?
 5 A I do not know. It was my mother's call. I'm not
 6 sure as to why. Well, my grandparents had both
 7 died. Why she picked Tennessee, I was not sure.
 8 Q Your mother was married to your birth father. I
 9 can't pretend to pronounce your birth father's
 10 name. And she's married now to Mr. Williams.
 11 A Yes.
 12 Q Any other marriages?
 13 A One in between. She got divorced from my father,
 14 Robert Omohundro. The date, I'm not sure of. I
 15 was young. And she did re-marry a Thomas Jaeggi.
 16 That's J-a-e-g-g-i, I think.
 17 Q How long was she married to Mr. Jaeggi?
 18 A I was 16, so about a year and a half-ish.
 19 Q Is that why you moved to Tennessee, was Mr. - - -
 20 A No.
 21 Q All right.
 22 A No, we moved to Rock Hill because of him.
 23 Q How did she meet Mr. Jaeggi?
 24 A Online.
 25 Q And how long did that marriage last?

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1 A That was about a year or so.

2 Q Now, did you live with your mother and Mr. Jaeggi?

3 A Yes, I did.

4 Q And did you have any problems with Mr. Jaeggi?

5 A No.

6 Q Did your mother have problems with Mr. Jaeggi?

7 A Not until the end of their marriage.

8 Q What happened at the end of the marriage?

9 A I had moved out at this point. This is going on

10 April 2008. And to be honest, I'm not too sure on

11 the personals, something about --- he was very

12 --- I remember her telling me he was very

13 controlling, and what was the other word she used,

14 not --- not narcotic.

15 Q Narcissistic?

16 A No, when they make you do --- controlling and --

17 - I can't think of the word. But very, you know,

18 if shoes were in the hallway he'd get mad, that

19 kind of thing, had to put them back, had to have

20 everything right.

21 Q Did your moving out and moving in with Michael's

22 parents have anything to do with Mr. Jaeggi?

23 A No.

24 Q Now, were you ever abused as a child?

25 A No.

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1 Q Were you in love? Obviously I understand that your

2 relationship with Michael has ended, but when you

3 were living with him in 2009, were you in love with

4 him?

5 A Yes.

6 Q What was it about him that made you fall in love

7 with him?

8 A Mostly how he was raised. We had the same morals

9 and views. He was a really good guy actually. I

10 know it's kind of gross to think of that now, but

11 he was brought up well. He was --- he had goals,

12 ambitions, all that. And he treated me amazingly.

13 He was a good man. I just --- charm I guess.

14 Q And I was going to ask you, did Michael do anything

15 --- did he ever do anything to hurt you

16 physically?

17 A Absolutely not.

18 Q Was there any indication that he had anything in

19 him that he might hurt you physically?

20 A No. I never for a second thought he would ever hit

21 me or anything.

22 Q Prior to January 11th, 2010, did you ever have any

23 indication that he might have done anything to hurt

24 Owen physically?

25 A No.

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1 Q You were talking about Michael's brother Brian, he

2 is Brian Carduff as well?

3 A Yes.

4 Q And how much older is he than Michael?

5 A Probably about two and a half years.

6 Q And you said Brian really loved and was really

7 sweet with Owen?

8 A Yes.

9 Q Did Michael really love Owen?

10 A Yes.

11 Q And was he sweet with Owen?

12 A Yes.

13 Q Now, I'm going back to like November and December

14 of 2009 and who would be taking care of Owen?

15 You'd be at work, who would be taking care of Owen?

16 A It was typically Michael or my mother, they

17 alternated.

18 Q And when they alternated, would one one day and one

19 the next or, you know, one in the morning and one

20 in the afternoon, or can you say?

21 A Yeah, it was different all the time. Sometimes my

22 mom would just come get him because she was being a

23 grandma, couldn't stand to not see him. She saw

24 him every day. So she would volunteer or Michael

25 would ask, you know, I want to go hang out with

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1 some friends, do you mind watching him, or

2 sometimes he would just watch him. So it was

3 different.

4 Q So she would see Owen just about every day?

5 A Yes.

6 Q So if she didn't see him it would be unusual?

7 A Yes.

8 Q Would there be times when Owen would stay overnight

9 at your parent's house?

10 A Not when we were both home. He would only do that

11 if we wanted to go, you know, like a date night

12 kind of thing.

13 Q Well, that's what I mean.

14 A Oh, well, yes. Yes.

15 Q So there would be times you would have dates nights

16 and Owen would stay with your mother and step-

17 father?

18 A Yes. It wasn't very often though.

19 Q About how often, ---

20 A Maybe like ---

21 Q --- once a month?

22 A --- maybe if that, yeah.

23 Q Now, you gave the address where you lived which is

24 --- help remind me.

25 A 2799 Whiskey Road.

1 Q That was exactly the question I asked. But where
 2 did you live in December of 2009 here in Rock Hill?
 3 A We lived at --- what was the street? You had the
 4 number.
 5 Q Like Gaulden.
 6 A Gaulden --- It was [REDACTED] I don't
 7 remember the numbers.
 8 Q What part of Rock Hill is that?
 9 A Here right off of Mount Gallant. It's York County.
 10 Q How close did your mother live to you when you were
 11 on [REDACTED]
 12 A Walking distance.
 13 Q Oh, so she was --- when you say walking, like --
 14 --
 15 A Like --- well, I walked it once. It's probably
 16 about four or five streets away.
 17 Q So you could walk it in like five minutes it sounds
 18 like?
 19 A More like 20.
 20 Q A twenty minute walk?
 21 A Yeah, twenty minute walk.
 22 Q What kind of drive?
 23 A Four minutes, not even. Not even. Like a two-
 24 minute drive.
 25 Q So if I were to say your mother lived close by,

1 spend the night in Concord?
 2 A Yes.
 3 Q Did Michael's mother or father ever come down and
 4 care for Owen during the days in November and
 5 December of 2009?
 6 A Yes.
 7 Q How often would they do that?
 8 A They came about once every couple of weeks, maybe
 9 three times a month. Especially towards the
 10 beginning, they came to help me get sleep and
 11 stuff. And I remember them cooking and stuff, so
 12 --- so they would come often as well.
 13 Q Did you get any kind of financial support from
 14 Michael's parents?
 15 A Financial as in they would buy things, not
 16 necessarily give us money. They would buy things
 17 we needed. Like every now and then she would
 18 volunteer to buy the diapers and stuff, and I got a
 19 lot of things from them at the shower, but never
 20 money just straight up.
 21 Q Like diapers and maybe a stroller or something like
 22 that?
 23 A Yeah.
 24 Q When I say your parents, have you been adopted by
 25 Mr. Williams?

1 that would be a fair characterization?
 2 A Correct.
 3 Q Now, like Thanksgiving, where did you spend
 4 Thanksgiving?
 5 A Thanksgiving, we were --- We split the holidays.
 6 One part of it we were with my family and then we
 7 left the party and went to his family.
 8 Q Did you spend any time in Concord, overnight visits
 9 to Concord ---
 10 A Yes.
 11 Q --- over Thanksgiving?
 12 A Yes, I believe we probably stayed that night.
 13 Q Would there be times when Michael's parents would
 14 take care of Owen?
 15 A I can only recall one time they kept him overnight
 16 by themselves, and we actually came back later that
 17 night in the middle of the night. We went to a
 18 wrestling match. We got tickets for Christmas, and
 19 they kept him.
 20 Q All right. Was that December of 2009?
 21 A Yes.
 22 Q What about November of 2009?
 23 A They never kept him without us there other than
 24 that one time.
 25 Q But there would be times when you and Michael would

1 A No, but I consider him --
 2 Q So if I said your parents, that would be Mr. and
 3 Ms. Williams?
 4 A Correct, to me.
 5 Q Or your mother and Mr. Williams?
 6 A Yes.
 7 Q Did you ever have any concerns about your mother's
 8 parenting skills?
 9 A No.
 10 Q Did you ever have any concerns about Michael's
 11 parenting skills?
 12 A No.
 13 Q Did you ever have any concerns about Michael's
 14 parents' parenting skills?
 15 A No. I only got nervous because I felt more
 16 comfortable with my mom which I figure to be
 17 natural.
 18 Q Did you ever get nervous about leaving Owen with
 19 Michael's parents?
 20 A Nervous as to the fact that I was just nervous, not
 21 that they would harm him or anything.
 22 Q Just that you weren't there keeping an eye on him
 23 yourself?
 24 A Yes. Yeah, that kind of nervous, right.
 25 Q And I think you said you never had any concern

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1 prior to January 2010 that anybody had ever done.

2 anything intentionally to harm Owen?

3 A Correct.

4 Q Now, there was a discussion, and this was some time

5 I think late November early December 2009, where

6 you saw a bruise on Owen; is that correct?

7 A Yes.

8 Q And I think you said it was the size of a dime?

9 A Yes.

10 Q And when you first saw that, was Owen - - - I think

11 you said he was cooling and happy?

12 A Yes.

13 Q And what was the explanation? Did you get an

14 explanation as to how that bruise got there?

15 A Yes, that was when they told me they accidentally

16 dropped the controller on him.

17 Q Was Brian there when you got that explanation?

18 A Yes.

19 Q And did they both say that, both Brian and Michael,

20 say that's what happened?

21 A Yes.

22 Q Now, when that happened, did you see anything at

23 all unusual about Owen's behavior when you saw that

24 dime-size bruise?

25 A No.

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1 Q You said that Owen started acting different at

2 some point prior to December 4th. How long was it

3 after you first saw the bruise that Owen started

4 acting different?

5 A The bruise was already gone so it had to have been

6 about a week or so.

7 Q So it was about a week later that Owen's behavior

8 became different, a week after you saw the - - -

9 I'll have to object to my own question again. All

10 right. You saw this dime-size bruise some time in

11 November of 2009?

12 A Yes.

13 Q And then it was a week later after that that Owen

14 first started acting differently?

15 A Yes, give or take a week or two, yeah.

16 Q Now, during that week-long period, did Owen seem

17 happy and normal?

18 A Yes.

19 Q And then you said that, I guess, some time around

20 the end of November first of December Owen got a

21 runny nose and his nose got red?

22 A Yes.

23 Q And that's when he started acting different?

24 A Yes.

25 Q And you took him to Sunshine Pediatrics.

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1 A Yes.

2 Q And did you wait a few days after he got the runny

3 nose and the red nose to take him to Sunshine

4 Pediatrics or did you take him immediately?

5 A I waited a couple of days to see if it would clear

6 up.

7 Q And so you took him to Sunshine Pediatrics?

8 A Yes.

9 Q And do you know what day you took him?

10 A No, I don't.

11 Q But they will have records, and we can look at that

12 record and say well, it was just a couple of days

13 earlier when he first got the runny nose?

14 A Right.

15 Q Now, you said that he was sort of - - - other than

16 being fussy, having the running nose, was he having

17 any other symptoms?

18 A He wasn't wanting to eat properly like he had been

19 and he slept a lot.

20 Q And when you went to Sunshine Pediatrics, do you

21 remember what doctor you saw?

22 A Dr. Paxton.

23 Q Is that the doctor that you normally saw?

24 A Yes, every time.

25 Q Did you ever see any other doctors at Sunshine

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1 other than Paxton?

2 A No, not to my knowledge.

3 Q Well, I guess when you saw Dr. Paxton, did you give

4 him a history of the runny nose?

5 A Yes.

6 Q Did you say anything to him about a bruise?

7 A No.

8 Q Did you even think the bruise was any kind of issue

9 at all?

10 A No.

11 Q Even looking back now, do you think that that dime-

12 size bruise was anything other than what Brian and

13 Michael told you?

14 A That's hard to say. I don't know.

15 Q Now, when you took Owen to Sunshine Pediatrics for

16 the first time, did he have any kind of bruises or

17 anything on him?

18 Mr. Hood - Just when you say first time, are

19 you talking about the first time - - -

20 Mr. Todd - Yes.

21 Mr. Hood - after birth or - - -

22 Mr. Todd - No, that's a good - - - thank you

23 for clarifying.

24 Q When you took him when he had the sniffles some

25 time the end of November first of December - - -

1 A There was no bruise present.
 2 Q If he had had any bruises, would you have noticed
 3 them?
 4 A Yes.
 5 Q Did you ever drop at any time --- I think you
 6 said you never dropped Owen?
 7 A I did not, no.
 8 Q Do you know whether your mother or Michael or Brian
 9 ever dropped him?
 10 A Not that I was aware of that they told me of.
 11 Q All right. So you went to Sunshine. What kind of
 12 treatment or prescriptions or anything did you get
 13 when you went to Sunshine when you took Owen when
 14 he had the sniffles?
 15 A The first time when I was first concerned, there
 16 was nothing. He --- he pacified it, told me to
 17 ride it out and let him know if it gets worse. And
 18 that's --- I was going to but they were closed
 19 and that's why I ended up at Riverview.
 20 Q And Riverview's a walk-in clinic?
 21 A Yes.
 22 Q Had you ever been there before?
 23 A I think for myself.
 24 Q What was the time period between you went to
 25 Sunshine when you had the sniffles and when you

1 A At the pediatrician?
 2 Q At Sunshine Pediatrics.
 3 A Yes. We saw Paxton again.
 4 Q And who was with you; was your mother with you?
 5 A With that one, I believe she was with me. Yes.
 6 Michael was at work I believe.
 7 Q Like Michael was working in December of 2009?
 8 A December. No. Well, Michael wasn't there so I
 9 don't know what his deal was. But right, you're
 10 right, he did not have a job then.
 11 Q Do you know whether your mother went with you on
 12 the first visit in end of November first of
 13 December to Sunshine?
 14 A I do not believe she was present.
 15 Q Michael probably?
 16 A Yes.
 17 Q When you went to Riverside, who went with you?
 18 A It was ---
 19 Mr. Hood - Riverview.
 20 A Riverview.
 21 Q Riverview.
 22 A It was just me.
 23 Q And then when you went to Sunshine you think it was
 24 you and your mother?
 25 A Yes.

1 went to Riverside?
 2 A Days, a couple of days.
 3 Q So a couple of days later?
 4 A Yes.
 5 Q And did Owen's symptoms change any? Still the same
 6 ---
 7 A The same. Yeah.
 8 Q So the runny nose, the loss of appetite, ---
 9 A Yes.
 10 Q --- and he's sleepy?
 11 A Yes, and constant crying.
 12 Q Now, you went to Sunshine. You went to Riverside.
 13 Did I understand you went back to Sunshine
 14 Pediatrics before you went to Piedmont?
 15 A Yes. We did a follow-up because Riverside said to
 16 follow up with your pediatrician which we did that.
 17 I don't remember if it was the next day. I don't
 18 remember if I went to Riverview because it was the
 19 weekend and they were closed or because it was
 20 night and they were closed but I went the exact ---
 21 --- next time I could to the pediatrician.
 22 Q Would that have been a day or two later?
 23 A I believe it was probably the next day I think.
 24 Q Did anything happen in that visit? Did you see Dr.
 25 Paxton again?

1 Q During those three visits, did Owen have any
 2 bruises on him?
 3 A No.
 4 Q Did he have anything that made you suspicious that
 5 there had been some kind of trauma?
 6 A No.
 7 Q Did your mother say anything to you that she was
 8 suspicious that there had been some kind of trauma?
 9 A No.
 10 Q Now, December 4th you took him to Piedmont?
 11 A (Indicating yes)
 12 Q And when you took him to Piedmont, was there
 13 anything --- Well, let me back up. Let me see if
 14 I can ask this question better. When you took your
 15 child, Owen, to Piedmont on December the 4th, 2009,
 16 did you have any suspicion that there had been any
 17 kind of trauma?
 18 A No.
 19 Q Did you ask Michael if there had been any kind of
 20 trauma?
 21 A Not in that sense.
 22 Q What did you ask him?
 23 A I just asked him, you know, what had happened. Why
 24 --- why was he --- what led up to it. And he
 25 gave me the excuse of him --- to wake him up to

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1 feed him and that's when he let out a big cry and
 2 went limp.
 3 **Q Now, when you got to Piedmont, my understanding was**
 4 **is that once you got there Owen let out a big yelp**
 5 **and after he let out that yelp, he got better.**
 6 A Well, not better but he started breathing and
 7 crying.
 8 **Q Do you remember the doctor you saw at Piedmont?**
 9 A No.
 10 **Q Do you remember how long you were at Piedmont**
 11 **before you went to - - - transferred to Levine?**
 12 A It was hours because we got to Levine in the middle
 13 of the night, like early morning.
 14 **Q Do you know what day of the week it was?**
 15 A No, you can probably figure that out on the
 16 calendar.
 17 **Q Well, I tell you what, I got a calendar so if you**
 18 **don't mind - - -**
 19 A No, not at all. I know it was my - - - my
 20 brother's birthday is the 4th so we were going to
 21 go to dinner with my family for it.
 22 **Q It looks like, and I'll let you look, but it looks**
 23 **like December the 4th was a Friday.**
 24 A Yes. Okay.
 25 **Q All right. And I guess my question is, by the time**

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1 **you got to Levine, was it after midnight?**
 2 A It was Saturday.
 3 **Q So it was Saturday?**
 4 A Yes.
 5 **Q How did Owen do when he was at Piedmont?**
 6 A He did calm down eventually. Other than being
 7 fussy and uncomfortable where he was, he was fine.
 8 **Q And did you call your mother on the way or when you**
 9 **got there?**
 10 A Yes.
 11 **Q And she came?**
 12 A Yes.
 13 **Q How soon did she get there?**
 14 A Probably 30 minutes or so.
 15 **Q So she was there for pretty much the entire time?**
 16 A Yes.
 17 **Q I've looked at the Piedmont records and I don't get**
 18 **to testify, but let me see if I can - - - what I**
 19 **can't understand is why Owen was transferred from**
 20 **Piedmont. Did you get an understanding of why Owen**
 21 **was transferred from Piedmont to Levine?**
 22 A They just told me they wanted to send him up there
 23 for further care, for CAT scans and whatnot. As to
 24 why Piedmont couldn't do it, I don't know.
 25 **Q Did you ask for a transfer - - -**

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1 A No.
 2 **Q - - - to Levine? Did your mother ask for a**
 3 **transfer to Levine?**
 4 A Not that I'm aware of.
 5 **Q Did Michael ask for a transfer to Levine?**
 6 A No.
 7 **Q So the decision to send Michael to Levine was made**
 8 **by - - -**
 9 **Mr. Hood - You said Michael.**
 10 **Mr. Todd - I'm sorry.**
 11 A To send Owen?
 12 Mr. Todd - Thanks.
 13 **Q The decision to send Owen to Levine was made by one**
 14 **of the doctors at Piedmont?**
 15 A To my understanding.
 16 **Q And you said that there was a lumbar puncture done?**
 17 A (Indicating yes)
 18 **Q Do you know what the results of that puncture were?**
 19 A No. I just know that's how they found out about
 20 the brain, the bleeding in it.
 21 **Q How did you know that?**
 22 A I was - - - that's what I was told.
 23 **Q By whom?**
 24 A A doctor. I don't remember the name.
 25 **Q At Piedmont?**

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1 A I don't - - - I'm not sure. I keep mixing up the
 2 visits so I'm not positive. I believe it was
 3 Piedmont though, yes, and that is why he explained
 4 to us that we're going to be taken to Levine.
 5 **Q Now, did you ride in the ambulance with Owen to**
 6 **Levine?**
 7 A No. No, we followed.
 8 **Q We is who?**
 9 A Me and Michael.
 10 **Q What about your mother?**
 11 A She came later. She went home to get clothes and
 12 stuff.
 13 **Q Did your step-father come to Piedmont that night,**
 14 **the 4th?**
 15 A No, he was taking care of his other children. He
 16 has - - - at that time there was four children,
 17 other children, at home.
 18 **Q How old are they?**
 19 A At that time like 10 and 11 and then my brother was
 20 12.
 21 **Q Were there any calls made to Dr. Paxton or any**
 22 **other doctors at Sunshine that you're aware of?**
 23 A Not on our part.
 24 **Q When you got to Levine, do you remember - - - I**
 25 **understand there's two hospitalizations. If they**

1 run together, let me know. But what I want to do
 2 right now is talk about this December
 3 hospitalization.
 4 A Okay.
 5 Q So you were there from just after midnight on the
 6 5th until December the 8th?
 7 A Yes.
 8 Q Do you remember the names of any of the doctors
 9 that you talked with during that visit?
 10 A I believe I spoke to Dr. Bailey.
 11 Q Bailey?
 12 A Yes.
 13 Q What kind of doctor is Dr. Bailey?
 14 A A neuro, pediatric neuro, and that's all I
 15 remember. I remember him in being both cases.
 16 That's the only reason his name stuck with me.
 17 Q Do you remember any of the specifics of the
 18 conversations with Dr. Bailey? And right now I
 19 still I want to talk about the December
 20 hospitalization.
 21 A Just December, right. No.
 22 Q Do you remember in December that when Owen got to
 23 Levine he was diagnosed as having a subdural
 24 hematoma?
 25 A Yes.

1 child. I believe that's what I was told as well.
 2 Q And did that sitter stay in the room during that
 3 entire hospitalization?
 4 A Yes. They did switch out eventually.
 5 Q Well, I'm sorry, I didn't mean the same sitter.
 6 A Yeah, right. Yes. But, yes, someone was always in
 7 there.
 8 Q There was a sitter in the room the entire time Owen
 9 was in the hospital, in Levine during December?
 10 A Yes.
 11 Q And didn't you know that wasn't normal to have a
 12 sitter in the room?
 13 A I did not separate it. Because, again, like I
 14 said, I thought it was procedure so I did figure
 15 that every kid that came in with problems had a
 16 sitter.
 17 Q When you say problems, what do you mean by
 18 problems?
 19 A Any reason for being in the hospital. I figured it
 20 was procedure. And again, I've never been in a
 21 situation like this before so it was ---
 22 everything was normal. I didn't find anything out
 23 un-normal because I've never dealt with it, if that
 24 makes sense.
 25 Q You thought it was normal to have a sitter in the

1 Q Do you know what a subdural hematoma is?
 2 A I did not at that time. Now, I do.
 3 Q Did you know what it was in December of --- Well,
 4 did you understand what a subdural hematoma was
 5 when you were in Levine during the December
 6 hospitalization?
 7 A No.
 8 Q Did you ask anybody what a subdural hematoma was?
 9 A Yes.
 10 Q And who did you ask?
 11 A I believe a nurse and that she explained bleeding
 12 in the brain.
 13 Q So during that hospitalization a nurse explained to
 14 you that a subdural hematoma was bleeding in the
 15 brain?
 16 A Yes.
 17 Q And do you have any different understanding today
 18 of what a subdural hematoma is?
 19 A No.
 20 Q Now, once the subdural hematoma was discovered at
 21 Levine, was a sitter placed in your child's room?
 22 A Yes.
 23 Q And did you know why a sitter was placed in Owen's
 24 room?
 25 A I figured it was, again, procedure in a case with a

1 room the entire time?
 2 A Yes.
 3 Q Did you ask your mother about having a sitter in
 4 the room?
 5 A Yes.
 6 Q And what did she say?
 7 A She just kept saying that's just what they have to
 8 do.
 9 Q You didn't think that the sitter was in the room
 10 because of a suspicion of some intentional injury
 11 to Owen?
 12 A No, because nobody brought that to my attention.
 13 Q And that didn't cross your mind?
 14 A No.
 15 Q Do you know whether that crossed your mother's
 16 mind?
 17 A I don't believe so. We had no reason to believe
 18 that at the moment.
 19 Q Now, there was a sitter in the room and DSS showed
 20 up. And did you think that DSS showed up --- why
 21 did you think DSS showed up?
 22 A Because, again, they were supposed to.
 23 Q And why was DSS supposed to show up?
 24 A That's what you do --- I mean, you know, I
 25 figured that's what you do in any case when a child

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1 Is injured.

2 **Q** You didn't think that DSS showed up because there

3 was a concern about an intentional injury to Owen?

4 **A** I believe they were probably there to find out if

5 that was a cause. I'd figured they would find it

6 to not be.

7 **Q** Now, I may have done a poor job of asking my

8 question. But you did understand that there was a

9 concern that there might be - - - might have been

10 an intentional injury to Owen?

11 **A** From their point of view, yes.

12 **Q** And they felt like that that was something - - -

13 because there was a concern, that's why the sitter

14 was in the room?

15 **A** Yes.

16 **Q** So you understood that?

17 **A** Yes.

18 **Q** The reason the sitter was in the room because there

19 was a possibility of an intentional injury?

20 **A** Yes, a possibility.

21 **Q** And DSS was called in because there was a concern

22 about the possibility of an intentional injury?

23 **A** Yes.

24 **Q** All right. But in your mind you didn't even think

25 that an intentional injury was even a possibility?

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1 **A** Correct.

2 **Q** And so if anybody had asked you did you have any

3 concerns, you would have said no?

4 **A** Correct.

5 **Q** And if somebody had asked you, you would have said

6 there's no possibility that there was an

7 intentional injury; is that correct?

8 **A** Yes.

9 **Q** Now, do you know whether or not your mother

10 provided any information on whether or not there

11 was some possibility of an intentional injury

12 either to anybody at the hospital or DSS?

13 **A** Not to my knowledge, no.

14 **Q** Did your mother ever express any concerns to you

15 that there might have been some intentional injury

16 during that December hospitalization?

17 **A** No.

18 **Q** Did y'all ever have any discussions about whether

19 or not there was the possibility of an intentional

20 injury during that December hospitalization?

21 **A** No.

22 **Q** What about before January 10th of 2010, was there

23 ever any discussion between you and your mother

24 about the possibility of some kind of intentional

25 injury to Owen?

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1 **A** No.

2 **Q** Do you remember what Dr. Bailey - - -

3 **A** Excuse me. I'm sorry.

4 **Q** Dr. Bailey, you said you remember talking with him.

5 He's a pediatric neurologist. Do you remember

6 talking with him in the December hospitalization?

7 **A** Not speaking with him. I just know he was the

8 doctor on the case.

9 **Q** And what I was just saying, do you remember what he

10 might have said or did you ask any questions? I'm

11 just trying to find out what you remember about any

12 discussion you might have had with him.

13 **A** No. I don't remember anything in particular. No.

14 **Q** Now, do you remember that there was some question

15 about Owen's discharge, about when he would be

16 discharged and to whom he would be discharged?

17 **A** A question - - -

18 **Q** Do you remember anything like that during the

19 December hospitalization?

20 **A** A question from who?

21 **Q** From anyone.

22 **A** Rephrase your question.

23 **Q** Was there ever some question about whether or not

24 Owen would be discharged back to your care and

25 custody?

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1 **A** No.

2 **Q** When you talked with the people from DSS, did they

3 say whether or not they were trying to decide

4 whether or not Owen would be discharged back into

5 your custody?

6 **A** No, they just put him back to us.

7 Whereupon - A recess was taken.

8 **Q** Ms. Lythgoe?

9 **A** Yes.

10 **Q** Are you in any kind of current relationship with

11 any of the opposite sex?

12 **A** No.

13 **Q** Now, when Owen was discharged from Levine's in

14 December, you understand that there was going to be

15 a follow-up visit for another scan?

16 **A** Yes.

17 **Q** And do you understand that DSS was going to stay

18 involved in looking in on you and Michael?

19 **A** Yes.

20 **Q** And did you understand that you were required to do

21 parenting classes?

22 **A** Yes.

23 **Q** And DSS was going to schedule those parenting

24 classes for you?

25 **A** Yes.

1 Q Now, did you follow up to have that scan, that scan
2 that was required?
3 A I did.
4 Q And where was that scan done?
5 A It was back at Levine.
6 Q Now, before the event in January where Owen had the
7 seizures - - - Well, let me ask you this. Did Owen
8 have any seizures in November or December?
9 A No.
10 Q Nothing seizure-like - - -
11 A No.
12 Q - - - nothing or no shaking, no seizures, no
13 rolling of the eyes, - - -
14 A No.
15 Q - - - nothing like that?
16 Mr. Hood - Objection to the form. Compound
17 question.
18 Mr. Todd - Okay.
19 A No.
20 Q December, other than going back for the scan, do
21 you remember what the scan was?
22 A To see if it was clear or not.
23 Q Okay. But do you remember what - - - was it like a
24 full body scan?
25 A Oh, I believe it was just his head.

1 what had happened that led to the hospitalization
2 at Levine?
3 A Other than telling him the whole events over again.
4 Q Well, I would say that would qualify as a
5 discussion with him.
6 A Oh, well, yes.
7 Q Did he make any comments?
8 A No.
9 Q Did he have any kind of follow-up as a result of
10 what happened in the hospitalization, what led to
11 the hospitalization? Did he prescribe any
12 medicine? Did he make any recommendations?
13 A No.
14 Q Now, before, when you had the child, where was Owen
15 born? At Piedmont?
16 A Yes.
17 Q Before he was discharged, was there discussions
18 there about the dangers of shaking a baby?
19 A No.
20 Q There was no discussion at Piedmont before you were
21 discharged that shaking a baby is a bad thing?
22 A No.
23 Q See, I ask that because I - - - Mr. Hood and I, we
24 both have reached the elevated status of
25 grandparents.

1 Q Just his head?
2 A (Indicating yes)
3 Q That's a yes?
4 A Yes. Yes, I'm sorry.
5 Q Had it resolved, - - -
6 A It was - - -
7 Q - - - the subdural hematomas?
8 A - - - It was clearing up very well. Yes.
9 Q Now, when Owen was discharged, was he back to his
10 normal self when he was discharged - - -
11 A Yes.
12 Q - - - in December from Levine's?
13 A Yes.
14 Q And the rest of December, did Owen have any
15 problems health-wise?
16 A No.
17 Q Other than taking him back to Levine - - - was it
18 Levine's where he had the scan?
19 A Yes.
20 Q Other than that, did you take him back to the
21 pediatricians?
22 A Yes, we also had a follow-up with them.
23 Q And that was Dr. Paxton?
24 A Yes.
25 Q Did you have any discussions with Dr. Paxton about

1 A Yes.
2 Q And I was there when the social worker or the nurse
3 came around and talked to my daughter and says - -
4 - and talked about you can't shake babies. But
5 there wasn't any kind of discussion like that?
6 A Not that I remember, no.
7 Q Did you know that you can't shake babies?
8 A Yes.
9 Q And did Michael know you can't shake babies - - -
10 A Yes.
11 Q - - - as far as you knew?
12 A Yes.
13 Q Because that was not something that you - - - I'll
14 go on with the next question.
15 A Yeah.
16 Mr. Hood - Common sense.
17 A Yeah, common sense. I didn't want to say it but
18 you did so - - -
19 Q Before January 10th, 2010, did your mother ever do
20 anything to try to get custody of Owen?
21 A No.
22 Q Now, of course if she wanted to take care of Owen,
23 then that was - - - you know, she had the time and
24 inclination, that was generally fine with you and
25 Michael?

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1 A Yes.

2 Q And Christmas, where did y'all spend Christmas?

3 And, I mean, Christmas, I don't mean just --- I'm

4 talking about the Christmas holidays.

5 A We stayed at his parents up in Concord and went

6 down later. Because we stayed over Christmas Eve

7 at his parents and then came down Christmas Day to

8 my parents.

9 Q Was Owen back to his normal self Christmas?

10 A Yes.

11 Q Other than Mr. Frawley asked you about the December

12 21st home visit by DSS, other than that, did you

13 have any other contact with DSS after you'd been

14 discharged from Levine's on December the 8th, 2009?

15 A No.

16 Q Were there phone calls? And I don't mean just

17 limited to face-to-face but was there a phone call

18 to set up that December 21st home visit?

19 A Not that I remember.

20 Q So the DSS worker just showed up one day?

21 A Well, she showed up, like he said, I believe you

22 said the 17th, but I could not have --- I was on

23 my way to work and did not want to be late so

24 that's when we set it up for the 21st.

25 Q So you had contact on the 17th?

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1 A Yes.

2 Q And you had contact on the 21st?

3 A Yes.

4 Q Any other contact you had with DSS?

5 A No.

6 Q When you had the contact on either the 17th or the

7 21st, did you ask why DSS was doing a home visit?

8 A No.

9 Q Were you curious as to why they were doing a home

10 visit?

11 A No. I mean, I don't want to sound dumb here. I

12 just figured it was procedure.

13 Q Did you ask your mother about why DSS was involved?

14 A We talked about it but we, again, just both figured

15 procedure.

16 Q Do you know whether or not your mother talked with

17 DSS in December of 2009?

18 A I only know what she has told me.

19 Q What did she tell you?

20 A They questioned her just like they did me and

21 Michael.

22 Q And where did that questioning take place?

23 A At the hospital.

24 Q And that was the December hospitalization?

25 A Yes.

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1 Q So DSS questioned in December of 2009, DSS

2 questioned you?

3 A Yes.

4 Q And they questioned Michael?

5 A Yes.

6 Q They questioned your mother?

7 A Yes.

8 Q Do you know who else they questioned, or do you

9 know of anybody else they questioned?

10 A Well, and Larry. Other than that, not to my

11 knowledge.

12 Q So they interviewed Larry as well?

13 A Yes.

14 Q And do you know whether or not they interviewed

15 Michael's parents?

16 A I do not know.

17 Q Now, I'm moving on to January, January 10. Was it

18 10th or 11th?

19 A It happened --- we went the 11th morning.

20 Q Now, let me back up and ask you about January the

21 9th. We'll see if we can find that schedule and

22 get our --- I'm just looking. It looks like

23 January the 10th was a Sunday?

24 A Yes. Yes, it was.

25 Q So I want to ask you about Saturday the 9th,

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1 January the 9th of 2010.

2 A Okay.

3 Q Was there anything at all unusual about Owen on

4 that Saturday, January the 9th, 2010 that you

5 remember?

6 A Not as far as behavior. We did find a bruise.

7 Q And the bruise was where?

8 A In the middle of his forehead.

9 Q And that's the one he said he dropped a play key

10 on?

11 A He was swatting and it swat himself. Yes.

12 Q Okay. So Michael said that ---

13 A The baby swatted ---

14 Q --- Owen had hit himself with his toy?

15 A Yes.

16 Q Now, was anything unusual about Owen's behavior?

17 A No.

18 Q Happy? It sounds like he was a happy baby.

19 A Very, yes.

20 Q On that Saturday was he happy and his normal self?

21 A Yes.

22 Q Anything about his health that caused you any

23 concern?

24 A No.

25 Q Sunday the 11th --- I'm sorry. Sunday, January

1 10th - - -

2 A Yes.

3 Q - - - did you go to church?

4 A Yes.

5 Q Did Owen stay in the nursery?

6 A Yes.

7 Q Any concerns about Owen's health on that Sunday?

8 A No.

9 Q Did you go to work that day?

10 A Yes.

11 Q What time did you work?

12 A I did attend church so it was an evening shift so I

13 believe I went in at 4:00.

14 Q When you left to go to work, how was Owen?

15 A Fine.

16 Q And what time did you get home?

17 A 10:30, 11 o'clock.

18 Q When you got home was Owen asleep or was that when

19 you came home and - - -

20 A That's when he wasn't there.

21 Q There was a phone call and nobody answered the

22 phone? Did I remember that? Am I getting

23 confused?

24 A No. I can tell you again. Yeah, I came home from

25 work and nobody was home, and I called Michael to

1 Q - - - how was Owen?

2 A He was fine. He was asleep.

3 Q Did you wake him up?

4 A No. I just looked at him, and I was going to take

5 him out of the car seat, but Michael said he'll put

6 him to sleep and for me to just go to bed, so I

7 did.

8 Q Did you hold him?

9 A No.

10 Q Did you take his clothes off and put him in his

11 pajamas?

12 A No.

13 Q Was Owen crying?

14 A No, he was asleep.

15 Q Now, what time did you wake up on Monday morning

16 the 11th; do you remember?

17 A I did wake up in the middle of the night because of

18 Owen. And then the initial morning was - - - no, I

19 don't know what time that was.

20 Q Okay.

21 A I'm not sure.

22 Q You woke up in the middle of the night because of

23 Owen. Why did you wake up, to feed him?

24 A Yeah, he was crying so I figured he was hungry. It

25 was some time in the early morning, 3:00, 4:00

1 ask him where he was. Yeah.

2 Q So when you got home, nobody was home?

3 A Correct.

4 Q So you called - - - y'all didn't have a land line?

5 A Right, just cell phones.

6 Q So you called his cell phone and he was out riding

7 around?

8 A Yes, trying to put Owen to sleep in the car.

9 Q So when he came back, how long was it before he

10 came back?

11 A He did not come back by himself. It was about

12 11:00 then when I called him, and I fell asleep on

13 the couch waiting for him to come back. And I woke

14 up at 12:00, around 12-ish, and he still was not

15 home and that's when I called him again and he came

16 home within minutes.

17 Q Was it just Michael and Owen?

18 A Yes.

19 Q And how was Owen when he got home that - - - I

20 don't know, it might have been Monday morning, - -

21 -

22 A Yeah.

23 Q - - - but late Sunday night, early, early Monday

24 morning - - -

25 A Yes.

1 a.m., and I went to - - - I went in his room, and I

2 covered him up, and I checked on him. He was fine,

3 just fussy, so I went to go make a bottle. And

4 that's when Michael met me in the kitchen and said

5 he'll do it, and so I went back to bed and he did

6 it. But, again, the baby seemed fine to me.

7 Q Was it unusual for him to wake up during the night

8 and want a bottle?

9 A Owen?

10 Q Owen.

11 A No, that was normal.

12 Q So when he woke up and he was fussy, that didn't

13 set off any alarm?

14 A No, not at all.

15 Q That was sort of usual behavior?

16 A Correct.

17 Q And was it usual behavior for Michael to get up and

18 offer to give him the bottle?

19 A No, but yes at the time because I had just kicked

20 him out. So that whole week he had been doing that

21 for me and so I was sucking it up.

22 Q He was on his best behavior - - -

23 A Yes.

24 Q - - - trying to get back in your good graces?

25 A Correct.

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1 **Q Now, had anybody else cared for Owen during that**
2 **Sunday the 10th?**
3 A My mom watched him that Saturday. Sunday he was
4 with Michael and I was at work. I mean, we both
5 had him at church, then I went to work and left him
6 with Michael.
7 **Q So you wake up some time that Monday morning and**
8 **that's when Owen has what you described as a**
9 **seizure?**
10 A Yes.
11 **Q And you and Michael drive him to Piedmont?**
12 A Correct.
13 **Q And did you call anyone, did you call to tell them**
14 **you were coming? Did you call 911? Did you do**
15 **anything like that?**
16 A No, I did not because I wanted to just get there.
17 I didn't want to sit and wait for an ambulance.
18 **Q And I'm just asking you.**
19 A Yeah. No, that would have scared me too much so I
20 did not call. I didn't know about prepping so I
21 just went.
22 **Q Did you call your mother on the way?**
23 A I believe I called her when we got there or - - -
24 yeah, I think we were already there when I called
25 her.

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1 **Q When did you learn that there had been an**
2 **intentional, some type of - - - Well, when did you**
3 **learn that Owen's injury was a result of trauma?**
4 A When I went to - - - when Michael did the polygraph
5 and confessed to it. That's when it was
6 absolutely, positively that.
7 **Q When you got to Levine's in January, were you**
8 **allowed to be with Owen unsupervised?**
9 A Yes.
10 **Q When?**
11 A After I came back from the police department for
12 his confession, I came back and my - - - my mom was
13 already in the room with Owen and we were in there.
14 **Q Were there nurses present when you were there?**
15 A Not in the room.
16 **Q Now, was there a time in January where no one could**
17 **be in the room with Owen, no family members,**
18 **without supervision?**
19 A Yes.
20 **Q And so that was the case until Michael confessed;**
21 **is that correct?**
22 A Say that again.
23 **Q What I'm trying to find out is when Michael and you**
24 **and Owen first got to Levine's in January, were you**
25 **or any family members allowed to be with Owen**

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1 **unsupervised?**
2 A I don't really know how to answer that because we
3 weren't allowed in the room at all because they
4 pushed everybody out to take care of Owen. So then
5 nobody was allowed back there for awhile and that's
6 when I left to go do the interrogation with
7 Michael. And then when I came back I was allowed
8 in the room.
9 **Q And it's your testimony that y'all were allowed in**
10 **the room unsupervised?**
11 A Yes. I don't remember anybody else being in the
12 room but my mom.
13 **Q Was Owen still in ICU?**
14 A Yes.
15 **Q Did your mother ever complain because she couldn't**
16 **stay with Owen without supervision while she was in**
17 **Levine's in January?**
18 A Later on, yes.
19 **Q When did that happen?**
20 A I don't remember. I might be mixing it up with
21 rehabilitation too. After Hospice and all that, I
22 know we were supervised so I might be mixing it up
23 with that.
24 **Q In this lawsuit - - - you're aware this is a**
25 **lawsuit?**

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1 A Yes.
2 **Q Do you expect to receive anything from this**
3 **lawsuit?**
4 A Like if - - - if they win?
5 **Q Yes, ma'am.**
6 A Not me particularly, no. Owen, yes. I plan on him
7 being able - - - or being able to buy, you know, a
8 van and whatnot for him but no money just for me,
9 no. It'd be strictly for the care of Owen.
10 **Q Is Owen or your parents getting any kind of**
11 **financial assistance for their caring for Owen?**
12 A I believe my mother gets disability checks for him.
13 Yes.
14 **Q And that comes from where, the government?**
15 A I think so.
16 **Q It comes from an insurance company, or the**
17 **government - - -**
18 A No.
19 **Q - - - or do you know?**
20 A I'm not positive. I don't know how many people can
21 give out disability checks so I don't know where it
22 comes from though.
23 **Q Do you know how much it is?**
24 A I don't know the exact amount. I think it's in the
25 600 area.

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1 Q Six hundred dollars?

2 A Dollars, yes.

3 Q A week, a month?

4 A A month.

5 Q Do you know whether or not they're getting any

6 other kind of assistance other than disability from

7 the government most likely?

8 A Other than Medicaid, no.

9 Q Are you on Medicaid?

10 A I am not.

11 Q You have health insurance?

12 A I do not.

13 Q So I guess that leaves you uninsured?

14 A Correct. Unfortunately.

15 Q Now, the rocking chair incident, had there been any

16 problems with that rocking chair? You were in

17 Levine's from January until - - - or you, I say

18 Owen was in Levine from January until some time in

19 when, February?

20 A I would say so because then we ended up in Hospice

21 and the rocking chair thing happened after Hospice.

22 Q So your kid went from Hospice back to Levine's?

23 A Yes.

24 Q Had there ever been any problems with the rocking

25 chair prior to that time?

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1 A Not that I'm aware of.

2 Q Were you concerned about your mother saying the

3 rocking chair flipped over; did that cause any

4 concerns for you?

5 A No.

6 Q I think the doctors did not expect Owen to live; is

7 that correct?

8 A Correct.

9 Q And he was at the Hospice and actually did better

10 than they expected?

11 A Yes.

12 Q And there was a recommendation that he be put on a

13 feeding tube?

14 A Once we - - - not from Hospice. That was later in

15 rehabilitation, yes.

16 Q And did you and your mother and step-father not

17 want him to be put on a feeding tube?

18 A Correct.

19 Q Why did you not want him to be put on a feeding

20 tube?

21 A Because when we took him off of life support from

22 Levine before Hospice, the whole reason we took him

23 off life support is because we didn't want any

24 artificial life on him. And that is - - - this is

25 my religion, that's what I believe, and that's what

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1 I want for myself as well. So a feeding tube is

2 artificial life support and that's just how I saw

3 it. And that was the only reason. It wasn't

4 because I didn't want him alive or anything.

5 Q Did the hospital or DSS go to court to have the

6 feeding tube ordered or placed?

7 A I think so. Yes.

8 Q Do you think that that's something that they

9 shouldn't have done?

10 A I think that that was ripping our rights away. I

11 mean, it's - - - it's really hard to say now

12 because of course I'm extremely glad he's here.

13 But it is because the feeding tube, so it's an iffy

14 subject.

15 Q So if you could go back in time, which we can't do,

16 - - -

17 A Right.

18 Q - - - you would still be opposed to the feeding

19 tube being placed?

20 A I probably would still be, yes. Because I was - -

21 - my uncle is a doctor and he has explained - - -

22 he explained to me and my mother, you know, the

23 difficulties and problems that come with a feeding

24 tube. And the feeding tube is usually what is the

25 cause of death to most disabled children so it was

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1 still a main concern. It still is a concern. I'm

2 scared of that thing all the time.

3 Q Well, Owen's on a feeding tube now?

4 A Yes.

5 Q And you think that's a bad thing?

6 A Not necessarily. But, again, that's my - - - it's

7 a trick question kind of. I don't really prefer it

8 but I'm - - - it makes me sound bad. I'm very glad

9 he's here, yes. What was your question?

10 Q Well, I think the question was is him being on a

11 feeding tube a bad thing and, of course, you - - -

12 I understand it'd be better if he didn't have to

13 have it.

14 A Yes.

15 Q But since he has to have it, are you in favor of

16 him having it?

17 A I don't think so because, like I said, it is,

18 again, artificial life support.

19 Q If it were up to you the feeding tube would be

20 removed?

21 A At this point in time?

22 Q Yes, ma'am.

23 A No. God, no. I guess not. No.

24 Q So then you're for it?

25 A Yes.

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1 **Q** You're either for it or against it or somewhere in
 2 between.
 3 **A** I was against it ever in the beginning. Now, yes,
 4 I'm for it.
 5 **Q** Now, Palmetto Pediatrics, is that in Alken or is
 6 that in Columbia?
 7 **A** Alken,
 8 **Q** There's a Palmetto Pediatrics in Columbia and I'm
 9 thinking --- the pediatricians are in Alken?
 10 **A** Right.
 11 **Q** Now, has Owen had any kind of mental testing? I
 12 know he's only three.
 13 **A** Yeah.
 14 **Q** Will he be ---
 15 **A** He'll be three.
 16 **Q** He'll be three in September. But no kind of
 17 cognitive, mental testing?
 18 **A** They do some things through his therapy that he's
 19 in right now as far as behavioral. They can tell
 20 behaviorally what he's at which I believe they did
 21 three to six months old.
 22 **Q** Who's his primary caretaker?
 23 **A** Dr. Kinsey.
 24 **Q** No. No. No. You, Charlotte, ---
 25 **A** Oh, I'm sorry.

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1 **Q** --- Larry, or somebody else?
 2 **A** My mother.
 3 **Q** You answered my question. I didn't make it clear.
 4 But your mother is the primary caretaker?
 5 **A** Yes.
 6 **Q** How much time do you spend with Owen?
 7 **A** Every day but I work. My schedule is 10:00 a.m. to
 8 4:00 p.m. at this job I currently have so I'm with
 9 him any around time.
 10 **Q** You told me what he couldn't do. Can Owen crawl?
 11 **A** No.
 12 **Q** Does he have any purposeful use of his arms?
 13 **A** No.
 14 **Q** What about his hands?
 15 **A** No.
 16 **Q** Does anybody give any prognosis as to whether he'll
 17 get better, worse?
 18 **A** The doctors say it'll just stay like that, how he
 19 is now.
 20 **Q** And how he is now is --- but he's happy?
 21 **A** Yes, he's happy. We find it lucky that he's not
 22 incoherent like most disabled children. He doesn't
 23 zone off and drool. He's aware of his
 24 surroundings, and he interacts, and he giggles, and
 25 he's not a zombie.

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1 **Q** Now, you answered Mr. Frawley's questions about the
 2 feeding tube and said that --- I didn't really
 3 quite understand it. There were some questions
 4 about feeding him with a spoon. And what do you
 5 feed him with a spoon?
 6 **A** Baby food.
 7 **Q** Is he able to get any nutrition through his mouth?
 8 **A** Not only for nutrition. He's able to swallow a few
 9 bites, yes. But I wouldn't --- I wouldn't think
 10 he could only live off of only mouth food, no.
 11 **Q** He can swallow limited amounts of food ---
 12 **A** Yes.
 13 **Q** --- if it's pureed?
 14 **A** Yeah, and if he likes it. He knows if he doesn't
 15 like it. He spits it right back out.
 16 **Q** I guess he's like all children.
 17 **A** Yes, he's got that down.
 18 **Q** But to survive, he requires the feeding tube?
 19 **A** Correct.
 20 **Q** Who does the care of the feeding tube?
 21 **A** Me. I have --- I have changed it out, and I
 22 clean it, so --- I mean, mom has. It grosses her
 23 out to change it out so I do it, but we both know
 24 how.
 25 **Q** Since, say, 2011, 2012, has Owen had any seizures?

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1 **A** Not full blown. He has seizure activity. He's on
 2 medication for it. But he has had EEGs, EKGs,
 3 whatever they're called. I think he's had ---
 4 **Q** EEGs I think.
 5 **A** Yeah. He's had two of them I believe since then to
 6 test whether or not he needs medication still and
 7 he does still need it. He has seizure activity.
 8 He has never had a full-on seizure though.
 9 **Q** He's had, I don't know, they call them petit mal
 10 seizures?
 11 **A** (Indicating yes)
 12 **Q** That's a yes?
 13 **A** Yes. Yes, I'm sorry.
 14 **Q** Did you witness them?
 15 **A** No.
 16 **Q** Who witnessed them?
 17 **A** I'm not sure. How do you know that he had those?
 18 **Q** I just asked you and you said he had.
 19 **A** Oh, I thought you told me.
 20 **Q** No, that was the question.
 21 **A** Oh, okay, I'm sorry.
 22 **Q** I don't get to tell things. I just get to ask
 23 questions.
 24 **A** No, actually then, not to my knowledge, he has not.
 25 **Q** Okay.

1 A No, just --- he's never had, that I am aware of,
 2 little seizures. The doctor, his Dr. Strickland,
 3 has said that he probably has that we have not
 4 noticed. Yes.
 5 Q Which leads to my question. You're not aware of
 6 anybody observing him having seizures?
 7 A Correct.
 8 Q Where is Strickland?
 9 A MCG in Augusta.
 10 Q Now, you said you signed --- how many safety
 11 plans did you sign with DSS?
 12 A First or second time or altogether?
 13 Q You signed two?
 14 A Well, yes.
 15 Q Do you still have those safety plans?
 16 A Somewhere. I believe I do.
 17 Q Have you provided them to your lawyers? You're not
 18 represented by lawyers.
 19 A I don't have any.
 20 Q Have you provided to the lawyers who are
 21 representing Owen?
 22 A No.
 23 Q Do you remember what was in those safety plans?
 24 A No.
 25 Q The doctors Owen's now seeing are Palmetto Peds in

1 Q Did you give any kind of recorded statement to the
 2 York County Sheriff's Department?
 3 A Not that I am aware of.
 4 Q Were you asked to submit to a polygraph exam?
 5 A Yes.
 6 Q Do you have any criticism of the care that was
 7 provided to Owen at Levine's Children's Hospital in
 8 any visit?
 9 A While he was in rehabilitation?
 10 Q Any time.
 11 A Any time. Yes. I believe that we were treated
 12 kind of rudely at some points, yes.
 13 Q And how were you treated rudely?
 14 A Like we were the ones who did it. I didn't think
 15 that that was right.
 16 Q And what hospitalization was that?
 17 A Kind of through all of them. I mean, I understand
 18 immediate concerns. They didn't know who did it.
 19 But after Michael had confessed, I still was not
 20 treated fairly I don't believe.
 21 Q Did you feel like you were treated rudely in the
 22 December hospitalization?
 23 A No.
 24 Q Do you have any criticism of anything that happened
 25 in the December hospitalization at Levine's?

1 Aiken, ---
 2 A Yes.
 3 Q --- Dr. Strickland at the Medical College of
 4 Georgia, correct, ---
 5 A Yes.
 6 Q --- and he's seeing a therapist for swallowing?
 7 A Yes.
 8 Q And where is that therapist?
 9 A That is at Hitchcock in Aiken. He sees three
 10 therapists at that place.
 11 Q Therapists for --- one for swallowing.
 12 A One for speech therapy, which is swallowing,
 13 occupational therapy and physical therapy.
 14 Q Does he see any specialists?
 15 A He sees his --- Dr. Strickland, his neuro
 16 specialist, Bebitisto, his behavioral specialist,
 17 and Dr. Nigh, his gastro specialist.
 18 Q Where is Bebitisto?
 19 A They're all at MCG.
 20 Q Medical College?
 21 A (Indicating yes)
 22 Q Do you know whether or not you're getting any
 23 assistance from the March of Dimes or any
 24 organization like that?
 25 A We do not.

1 A No.
 2 Q And then your criticism of the January
 3 hospitalization is you felt like you were treated
 4 rudely?
 5 A Yes.
 6 Q Any other criticism of Levine's?
 7 A Other than unnecessary removal of my parents,
 8 no.
 9 Q And when was that?
 10 A Well, again, I think that was in rehabilitation.
 11 Q That was after the rocking chair incident?
 12 A Yes.
 13 Q Any other criticism?
 14 A No.
 15 Q Have you been back to Levine's since 2011, 2012?
 16 A I have not been back to Levine since we moved to
 17 Aiken.
 18 Q And when was that move?
 19 A 2010, June.
 20 Q Do you remember talking to any social workers at
 21 Levine's?
 22 A There was a blonde lady. I do not know her name.
 23 I'm sorry. But she recognized herself as ---
 24 introduced herself as the social worker.
 25 Q And do you remember anything about the specifics of

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1 the conversations with the blonde lady who was the
2 social worker?

3 A No.

4 Q Do you remember any specific conversations with any
5 doctors or nurses at Levine's?

6 A Only for rehabilitation, not before.

7 Q No discussion about what happened to Owen or how it
8 happened or - - -

9 A No.

10 Q Did you ever go to parenting classes?

11 A No, they were never supplied to me.

12 Q How was it determined that your mother and step-
13 father got custody; who made that determination?

14 A I believe we settled that in court. It was a
15 settlement agreement, and I accepted because I was
16 scared to lose him to anybody else.

17 Q You agreed on it?

18 A Yes.

19 Q Was DSS involved in that?

20 A Yes. And to go back on your parenting class thing,
21 I did not the first time. I did after the second
22 time go to parenting classes, yes.

23 Q But you have been to parenting classes?

24 A Yes. I apologize.

25 Q In Aiken or in Rock Hill - - -

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1 A Rock Hill.

2 Q Have you had any contact with Michael's parents
3 since Michael confessed?

4 A The last time I had contact with him was - - - or
5 them, sorry, was before he pled guilty and was
6 sentenced. That was the last time I spoke with
7 them.

8 Q Since you've moved to Aiken, have Michael's parents
9 had any contact at all with Owen?

10 A Yes.

11 Q What contact have they had?

12 A They came and saw Owen after we got him back from
13 foster care. They did come see him once. They
14 came - - -

15 Q I'm sorry. I launched into my next question before
16 you had finished.

17 A You're good. I'm done.

18 Q Okay. Any other visits?

19 A No.

20 Mr. Todd - I appreciate you answering my
21 questions. Mr. Settana may have some and while
22 he's doing it I might think of some more.

23 EXAMINATION - (By Mr. Settana)

24 Q Ms. Lythgoe, - - -

25 A Yes.

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1 Q - - - my name's Dan Settana. I represent the
2 sheriff's department or the York County Sheriff,
3 also York County in this case. I did have a bunch
4 of questions. They've asked most of them so I'm
5 going to cut this way down. It seems like things
6 are out of order, that's not intentional, it's
7 because you've been asked a lot.

8 A Okay.

9 Q Also if I go back through some of your testimony
10 and I may restate it incorrectly, let me know.
11 That's not intentional either, okay?

12 A Okay.

13 Q I'm just trying to get to the point so we can get
14 out of here. We've been here almost four hours now.
15 I think.

16 A Yes.

17 Q Some questions came up that I wrote down as you
18 were testifying earlier. Where does Aaron Lythgoe
19 live?

20 A Right now?

21 Q Yes.

22 A He actually just went to boarding school.

23 Q Okay. What grade is he in?

24 A That's a technical question. He went to the
25 boarding school because he failed and so I think

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1 they're going to start him off on eighth grade.

2 Q Okay. That's fine. And when was the last time you
3 saw Michael Carduff?

4 A At his sentencing.

5 Q Okay. And between the time he gave the polygraph
6 test and the sentencing, did you talk to him any
7 time in that time period?

8 A No.

9 Q That was about a year between when he confessed and
10 when he was sentenced?

11 A Yes. Right when he confessed, that was my last
12 verbal encounter.

13 Q Now, Michael had a brother Brian, correct?

14 A Yes.

15 Q Older brother?

16 A Yes.

17 Q Did Brian ever live with you and Michael?

18 A Not live with, he stayed long periods of times but
19 - - -

20 Q Weeks at a time?

21 A No more than a week.

22 Q And otherwise, was he living at home with Michael's
23 parents?

24 A Correct. Yes.

25 Q Have you had contact with Brian since Michael

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1 confessed?

2 A No.

3 Q Has Brian ever come to see Owen since Michael

4 confessed?

5 A No.

6 Q At one point you said that your step-father, Mr.

7 Williams, has some family in Rock Hill; is that

8 correct?

9 A Yes.

10 Q Another time you mentioned that you had an aunt

11 here in Rock Hill. Who is that?

12 A An aunt through him.

13 Q Oh, okay.

14 A Yeah, it's his sister.

15 Q And what's her name?

16 A Charlene Blackwelder. She's actually a cop.

17 Q Yes. With what agency?

18 A I think she's with Tega Cay right now.

19 Q And did you know her before this incident?

20 A Yes.

21 Q Did you know her before you gave birth to Owen?

22 A Yes.

23 Q So did she ever see Owen?

24 A Yes, not often, ---

25 Q Okay.

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1 A --- but she had seen him.

2 Q Did she see Owen after the December incident we've

3 been talking about?

4 A After the December incident.

5 Q Yes.

6 A I don't believe so. We went to her --- It was

7 her house for Thanksgiving I know that ---

8 Q Okay.

9 A --- so that was before. And I don't think so

10 because she didn't --- she wasn't an often

11 visitor.

12 Q You saw her at Thanksgiving just before the

13 December incident?

14 A Yes.

15 Q Did she see Owen before the January incident?

16 A I don't believe so. No.

17 Q Did you ever discuss with her or did anyone ever

18 discuss with her the fact that DSS was speaking to

19 you about the December incident?

20 A I did not, not to my knowledge. I'm not sure if my

21 parents discussed. They usually ask her a lot of

22 law questions, so.

23 Q Did you ever discuss with her the involvement of my

24 client, the York County Sheriff's Department; was

25 that ever discussed with Ms. Blackwelder?

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1 A Not to my knowledge.

2 Q Do you know if your mother or your step-father

3 spoke with Ms. Blackwell about either DSS or -

4 you've already answered these - about the York

5 County Sheriff's Department?

6 A I don't believe they --- I believe they did on

7 the second encounter, not the December.

8 Q After the second encounter?

9 A Yes.

10 Q Okay.

11 A And again, that's just to my knowledge.

12 Q Did you call anyone after the December incident to

13 inquire why is DSS looking into this, why are the

14 police looking into this?

15 A After the second incident?

16 Q The first, the December.

17 A Oh, I'm sorry. No.

18 Q You didn't make any inquiries to learn why DSS was

19 coming to your house and why different people were

20 checking into Owen's welfare?

21 A No.

22 Q Okay. Do you know anyone who works for DSS in York

23 County personally?

24 A No.

25 Q Okay. Do you know anyone personally who works for

Page 184

1 the York County Sheriff's Department?

2 A Only Charlene who used to.

3 Q She used to work for York County Sheriff's

4 Department?

5 A Yes, I believe she was a deputy or whatever they're

6 called.

7 Q Where did you get that information from? I'm

8 sorry.

9 A From her. I believe --- I mean, I could be wrong

10 but I thought she worked for York County for many

11 years, and she just transferred over to Tega Cay.

12 Q Did she ever work for Rock Hill Police Department;

13 do you know?

14 A I don't know. I'm not positive.

15 Q That's fine. Other than Ms. Blackwell, do you know

16 anyone else who's ever worked for the York County

17 Sheriff's Department?

18 A No.

19 Q I'm just skipping through a lot of these you've

20 answered so ---

21 A That's fine.

22 Q --- maybe we'll skip through them. Did you ever

23 call the police or law enforcement about Owen's

24 well-being?

25 A No.

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1 Q Did you ever call the police or law enforcement
 2 saying I think someone's abusing my child or
 3 someone's harming my child?
 4 A No.
 5 Q And just to be clear on the DSS visits, I was a
 6 little confused after the first incident in
 7 December. What was the first time you actually met
 8 with a DSS employee? And that may be at the
 9 hospital. Let me start with at the hospital. When
 10 was the first time you met a DSS employee?
 11 A It was at the hospital I believe a day after
 12 admission.
 13 Q So that would be about December 6?
 14 A Yes.
 15 Q And the second time was when?
 16 A Second encounter with the DSS worker?
 17 Q Yes.
 18 A Well, other than throughout the hospital, they came
 19 --- he brought to my memory the 17th, we did meet
 20 but I had to go.
 21 Q And then the next time?
 22 A The 21st.
 23 Q And any other meetings between the first incident
 24 in December and the second incident in January?
 25 A No.

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1 Q Let me now change that a little bit. While you
 2 were at the hospital on the first incident in
 3 December, okay, did any sheriff's department
 4 officers or detectives or anybody employed by the
 5 sheriff's department come to the hospital in
 6 December and talk to you?
 7 A Yes.
 8 Q And who was that?
 9 A They were just --- I just know they were cops.
 10 There was two men. I'm sorry, I don't know names.
 11 But they just took our story down of what happened.
 12 Q They were at the hospital after the first incident?
 13 A Piedmont, yes.
 14 Q At Piedmont Hospital?
 15 A Yes.
 16 Q Do you know if they were Rock Hill Police
 17 Department officers or York County Sheriff's
 18 Department deputies?
 19 A I don't know the difference. I'm sorry.
 20 Q And you don't know the names of them?
 21 A They were two gentlemen. That's all I know.
 22 Q Two gentlemen?
 23 A Yes.
 24 Q Can you describe them for me?
 25 A I can't.

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1 Q I mean, were they young, old?
 2 A Oh, they were --- I believe they were younger.
 3 Q Let me take them one at a time since I can't ---
 4 can you picture them in your head right now?
 5 A I'm trying to remember what their uniform colors
 6 were for you. That might tell you where they're
 7 from. I want to say they were in brown.
 8 Q Wearing brown uniforms?
 9 A Yeah, is that --- Is that a color here?
 10 Q The first one, the first officer, take it that way,
 11 was he young, old, 20s, 30s, 40s; how would you
 12 characterize him?
 13 A Oh, it's very vivid. They're probably 30s.
 14 Q And was he white or black?
 15 A White.
 16 Q Brown hair, black hair, blonde?
 17 A Brown.
 18 Q And did they come and see you in the room?
 19 A Hallway.
 20 Q The hallway?
 21 A Yeah.
 22 Q Let me back up and go to the second officer. How
 23 would you describe him in age?
 24 A Him, I don't really remember at all. I remember
 25 the main guy who was talking which is who I

Page 188

1 described to you earlier.
 2 Q The second guy, was he white or black?
 3 A They were both white.
 4 Q Brown hair, blonde hair, black hair?
 5 A I can't recall.
 6 Q And you said they talked to you in the hallway?
 7 A Yes.
 8 Q Did you stop them or did they stop you?
 9 A We were asked to step out.
 10 Q By the police officers?
 11 A By a nurse.
 12 Q And were they waiting outside for you?
 13 A Yes.
 14 Q And this was before he ever got to Levine that day
 15 or the next day?
 16 A Yes.
 17 Q And did they initiate the conversation when you
 18 stepped out or did you?
 19 A They did.
 20 Q Was Michael with you when you stepped out?
 21 A Yes.
 22 Q So it was both of you?
 23 A Correct.
 24 Q And who was in the room with Owen at the time?
 25 A Probably my mother ---

1 Q Okay.

2 A --- because I don't believe Owen was ever without

3 somebody.

4 Q And did your mother ever speak to these police

5 officers at Piedmont?

6 A Not to my knowledge.

7 Q So you stepped out with Michael to talk them. What

8 did they say to you or what did they ask you?

9 A They asked us to go over the events of the day.

10 And if any of us had any concerns of Owen's well-

11 being like his health-wise, ---

12 Q Okay.

13 A --- If he was sick or something, and we said no.

14 And we just described to them what had happened.

15 Michael gave them what he said happened and that

16 was about it.

17 Q Okay. So did you tell them --- I know you've

18 been through with us today what happened that day

19 of that first incident, okay, did you say ---

20 give them a similar story when you saw them in the

21 hall, these two police officers?

22 A Yes.

23 Q And did Michael describe to them similar fact

24 patterns you've told us today also?

25 A Yes.

1 Q How long did you talk to the police officers for?

2 A Maybe ten minutes.

3 Q Do you know why the police officers were there?

4 A No, just, again, procedure.

5 Q Did they tell you who called them to be there, if

6 anyone?

7 A No.

8 Q And this was all at the Piedmont Medical Center?

9 A Yes.

10 Q And later that day Owen went to Levine?

11 A Yes.

12 Q And how did he get there, by ambulance?

13 A Yes.

14 Q And did you ever see or talk with any law

15 enforcement or police officers while at Levine?

16 A Not that I remember.

17 Q And this is any of those days in December where he

18 was up in Charlotte.

19 A Yes, not that I remember.

20 Q Between the December and January incident, did any

21 police officers or law enforcement come to your

22 house?

23 A No.

24 Q Did any police officers or law enforcement make

25 contact with you at all following after you left

1 Q Did Michael at that point in time ever indicate

2 that he had done anything that first December

3 incident to harm Owen?

4 A No.

5 Q When you spoke with the police officers, did you or

6 Michael say anything that should have triggered to

7 the police officers that Owen was in some kind of

8 trouble or danger?

9 A No.

10 Q In your own opinion did you get anything out of

11 that conversation that Owen was in danger of harm?

12 A I did not.

13 Q Did you get out of that conversation that Owen had

14 been already harmed by somebody?

15 A No.

16 Q Did the police officers take any notes?

17 A Yes.

18 Q Did they give you a card identifying who they were?

19 A Yes.

20 Q Do you know where that card is?

21 A No.

22 Q Would you have thrown it out?

23 A No. It's probably with all my other records.

24 Q Can you look for that for us?

25 A I can. Yes.

1 Piedmont Medical Center?

2 A No.

3 Q right. Other than I know in the January incident

4 you met Detective Amanda Carter, correct?

5 A Correct.

6 Q And what was the date of that, January the 11th,

7 around?

8 A Yes.

9 Q So between December 6 and January 11 did you talk

10 to any law enforcement at all about Owen?

11 A No.

12 Q And was Detective Carter wearing a uniform?

13 A I think so, yes.

14 Q Do you remember what her uniform was?

15 A It's casual looking. I think it was navy.

16 Q Okay.

17 A It was like a shirt with a badge on it.

18 Q It wasn't the full blown police officer like you'd

19 see standing in a traffic intersection?

20 A Not that I remember that, no.

21 Q Not the uniform. All right. Between December and

22 January 11, did you ever call the law enforcement?

23 A No.

24 Q Did you ever have any reason to call law

25 enforcement ---

Page 193

1 A No.

2 Q --- in your mind?

3 A I did not.

4 Q If you had felt Owen was in danger would you have

5 called law enforcement?

6 A Absolutely.

7 Q If you felt someone was harming your child would

8 you have called law enforcement?

9 A Yes.

10 Q If you had felt someone was unintentionally harming

11 your child, would you have put a stop to it?

12 A Yes.

13 Q Between December 6 and January 11, at any point did

14 you feel that anyone was harming Owen whether

15 intentionally or unintentionally?

16 A No.

17 Q Between December 6 and January 11, was your mother

18 --- did she see Owen either every day or every

19 other day?

20 A Yes.

21 Q Did she ever tell you between December 6 and

22 January 11 that Owen was being harmed by somebody?

23 A She didn't say that. She was alarmed by the second

24 bruise.

25 Q And when was the second bruise?

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1 A January 9th.

2 Q Two days before?

3 A Yes.

4 Q And was that a Saturday?

5 A Yes.

6 Q And did anybody call law enforcement on January

7 9th?

8 A No.

9 Q Did she notice that bruise when you had Owen at her

10 house?

11 A Yes.

12 Q Did she ever try to keep you or Michael from taking

13 Owen away from her house that day?

14 A Not to my knowledge.

15 Q Did she ever say hey, I need to take care of this

16 child at this time?

17 A No.

18 Q Okay. Almost done. Let me make sure I got

19 everything. Let me ask you about January 11th.

20 You talked to Detective Carter, correct?

21 A Yes.

22 Q And following the discussion, did she tell you that

23 she had some suspicions about Michael Carduff?

24 A After --- the only time she ever said that was

25 when --- before she took him downtown.

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1 Q And that was January 11th?

2 A It was --- yeah, I believe that was the same day.

3 It was dark at that point, nighttime.

4 Q And did they take Michael directly to be

5 polygraphed in York?

6 A Yes.

7 Q Okay.

8 A We --- he --- he --- not by a cop or

9 anything, we took him, me and his mother.

10 Q So the three of you drove to the sheriff's

11 department on your own?

12 A And his friend was in the back, yes.

13 Q And were you present when Michael was polygraphed?

14 A No, I was in the waiting room.

15 Q Were you polygraphed the same night or later?

16 A Later, a while later.

17 Q But that night they came out and told you that

18 Michael had admitted to shaking Owen?

19 A Yes.

20 Q And did they arrest him that night?

21 A Yes.

22 Q So he didn't drive back with you?

23 A No.

24 Q And all that happened on January 11th, correct?

25 A Yes.

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1 Q And did the police follow up and get statements

2 from you and your parents?

3 A Yes.

4 Q And they followed up and took a polygraph from you?

5 A It wasn't very --- It wasn't recent. I cannot

6 remember when I did the polygraph. It was a couple

7 --- I want to say like a month or so ---

8 Q Okay.

9 A --- before I ever did a polygraph.

10 Q But you took one some time within two months after

11 this incident, you took a polygraph; ---

12 A Correct.

13 Q --- would that be a correct statement?

14 A Yes.

15 Q And did you pass?

16 A I did.

17 Q Before Michael took the polygraph, did you tell the

18 police that you did not --- or the law

19 enforcement that you did not believe Michael would

20 harm Owen?

21 A Yes.

22 Q And was that your sincere belief at the time?

23 A It was.

24 Q And you were there, you saw them every day,

25 correct?

1 A Correct, yeah.

2 Q Except for when you were at work, correct?

3 A Right. Yes.

4 Q I got a few questions where Owen's lawyers punted
5 on my discovery requests and told me to ask you so
6 I'm going to ask you right now.

7 A Okay.

8 Q All right. Just to be clear, in December of 2009
9 the only time law enforcement spoke to you was at
10 Piedmont Medical Center, correct?

11 A Correct.

12 Q And you don't know if that's the sheriff's
13 department or the Rock Hill Police Department,
14 correct?

15 A Correct.

16 Q Do you have any knowledge about communications
17 between DSS and the sheriff's department following
18 the December Incident?

19 A I do not.

20 Q Do you know when the sheriff's department was first
21 contacted by DSS?

22 A I do not.

23 Q Do you know what was discussed between - - - or
24 what information was provided by DSS to the
25 sheriff's department?

1 told me all about being a victim of a crime and
2 paying for a funeral and all that. I'm not - - -

3 Q Victim's assistance?

4 A Yes.

5 Q Okay.

6 A I'm not sure if that was with the sheriff's or not.

7 Q Did you ever meet or talk to a Lieutenant Miller?

8 A I don't - - - the name's not familiar to me.

9 Mr. Settana - I want to make sure I've got
10 everything but I think that's it. Thank you.

11 A You're welcome.

12 Mr. Todd - Can I have some follow-up? I'll be
13 brief.

14 Mr. Hood - Absolutely. I'm going to ask - - -
15 do you want me to ask - - - I've got like five
16 questions, two minutes - - -

17 Mr. Todd - Go ahead.

18 Mr. Hood - and it may spur questions - - -

19 Mr. Todd - Okay. Go ahead.

20 Mr. Hood - Okay.

21 EXAMINATION - (By Mr. Hood)

22 Q You've had three people ask you questions today,
23 and through these three people asking you
24 questions, they - - - and I want to basically just
25 talk about the December hospitalization. You've

1 A No.

2 Q Did Michael Carduff, do you know if he ever
3 finished high school or got a GED?

4 A He did not finish high school. I don't know if he
5 got his GED, no.

6 Q Was Michael Carduff, to your knowledge, ever
7 treated for alcohol or drug abuse?

8 A He was never - - - used.

9 Q Did he ever have any kind of mental health
10 treatment?

11 A No.

12 Q Prior to the January incident, where did you get
13 Owen's prescriptions filled, at your Walgreens?

14 A Yes.

15 Q Down in Aiken where do you get them filled?

16 A My pharmacy, TLC Medical.

17 Q Say again.

18 A TLC Medical Center where I work.

19 Q Do you take any regular medications yourself?

20 A No.

21 Q Other than Detective Carter, do you know the names
22 of any other York County Sheriff's Department
23 employees who were involved in this investigation?

24 A I'm not sure if they were with the county. In the
25 second incident, I had grievance ladies come. They

1 had them ask you questions about who you spoke to.

2 Do you recall them asking those questions?

3 A Yes.

4 Q When they asked you questions, did you speak to a
5 lot of people during that hospitalization?

6 A Yes.

7 Q Did a lot of people speak to you?

8 A Yes.

9 Q Did you hear the term non-accidental trauma?

10 A Yes.

11 Q Did you know what it meant in December of 2009?

12 A No.

13 Q Do you know what it means today?

14 A Yes.

15 Q And what is your understanding of what it means
16 today?

17 A Purposeful abuse.

18 Q Okay. Now, do you remember when you were asked
19 about, I think it was Mr. Todd asked you about
20 criticisms. Knowing what you know today what that
21 term means, do you think that somebody at the
22 hospital should have done something differently in
23 December of 2009?

24 A I do.

25 Mr. Todd - Objection.

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1 Q What do you think somebody should have done in
 2 December of 2009 at the hospital?
 3 A I think they should have been more extensive as how
 4 they were the second time. I was questioned a lot
 5 more the second time, and I had a lot more
 6 involvement with everybody.
 7 Whereupon - A discussion was held off the
 8 record.
 9 FURTHER EXAMINATION - (By Mr. Todd)
 10 Q You said that your uncle is a doctor?
 11 A Yes.
 12 Q Now, is that your mother's brother?
 13 A Yes.
 14 Q What's his name?
 15 A Pierre Lavadan.
 16 Q And where does he practice?
 17 A He's in Omaha, Nebraska.
 18 Q Do you know what kind of doctor he is?
 19 A He's a Hospice care.
 20 Q Hospice?
 21 A Yes.
 22 Q Is he family practice, internal medicine; do you
 23 know anything other than Hospice care?
 24 A He has not always been in Hospice. He used to be
 25 in pediatrics I believe. That's as far as I am

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1 aware.
 2 Q Did he come to Charlotte?
 3 A No.
 4 Q So he never came to Charlotte. Has he ever seen
 5 Owen?
 6 A No. We're very distant with my mother's family.
 7 Q Did he ever provide any care to Owen?
 8 A No.
 9 Q But, was somehow providing some advice during
 10 January of 2010?
 11 A Yes.
 12 Q Now, you said you were going to look at all your -
 13 -- you've got a set of records.
 14 A Yes.
 15 Q What do those records consist of?
 16 A They consist of the safety plans and the court
 17 hearing things, the papers they send you when
 18 you're about to go to court, mostly it's all those.
 19 Q What we'd like to do, we can send you a subpoena.
 20 We'd like to get a copy of all of those records.
 21 A Right.
 22 Q Would you agree to preserve them and either get
 23 them to Mr. Hood to get them to us?
 24 A Yes, if I can find them. I believe I know where
 25 they are though.

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1 Q And that will have the card of the policeman or law
 2 enforcement officer who questioned you at Piedmont
 3 in December of 2009?
 4 A It might have the card. It's a card though. I
 5 could have lost it.
 6 Q When you were at Piedmont, was there any discussion
 7 about non-accidental trauma?
 8 A No.
 9 Q You said at Levine's you heard the term non-
 10 accidental trauma?
 11 A Yes.
 12 Q You don't know who you heard it from?
 13 A No.
 14 Q Do you know if you heard it from somebody at
 15 Levine's or did you hear it from somebody with DSS?
 16 A I know it was on the discharge papers.
 17 Q So you read it?
 18 A Yes.
 19 Q Did you ask anybody any questions about that?
 20 A No.
 21 Q Well, you said that you wish somebody would have
 22 asked you more questions. What questions do you
 23 wish they would have asked you?
 24 A I just wish they would have been more aggressive as
 25 they were the second time.

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1 Q In asking you questions?
 2 A Yes, as -- as drilling me and Michael
 3 separately, not just together.
 4 Q Well, if you would have been questioned, would you
 5 have -- I think you told me that you had no
 6 suspicions that Michael had harmed your child in
 7 December.
 8 A I did not. And I did not the second time either,
 9 and they still figured it out so I believe that if
 10 it would have been as extensive something would
 11 have slipped from him.
 12 Q But it wouldn't have been any different from you?
 13 A Right.
 14 Q You wouldn't have said anything because you had no
 15 suspicions?
 16 A Right.
 17 Q So whether or not what Michael would have said is
 18 just speculation on your part?
 19 A Correct.
 20 Q And you were aware that when Owen was admitted the
 21 second time he had different symptoms, a different
 22 presentation?
 23 A Yes.
 24 Q And you were aware that there was a definitive
 25 diagnosis was made the second time of non-

1 accidental trauma?
 2 A Yes.
 3 Q Were you aware of that?
 4 A I was.
 5 Q They didn't have to have Michael to confess to know
 6 that it was non-accidental trauma. You were aware
 7 of that then weren't you?
 8 A The second time?
 9 Q Yes.
 10 A Rephrase that question.
 11 Q I'll go on to the next one.
 12 A Okay.
 13 Q As far as you're aware, Michael has never said that
 14 he did anything in November or December to cause
 15 that December hospitalization.
 16 A Correct.
 17 Q And he confessed to the incident in January but he
 18 did not admit to anything, to doing anything to
 19 Owen in November or December, correct?
 20 A Correct.
 21 Q And are you aware even today whether or not he has
 22 said whether or not he did anything to cause harm
 23 to Owen in November or December of 2009?
 24 A Right. He still has not said anything.
 25 Q Now, when you were questioned by law enforcement at

1 Blackwelder. What's the last name on that?
 2 A Blackwelder.
 3 Q Blackwelder, B-l-a-c-k-w-e-l-d-e-r?
 4 A Yes.
 5 Q And what was her position?
 6 A She's a cop.
 7 Q She's a former police officer?
 8 A Yes.
 9 Q And you think she may have been with York County
 10 Sheriff's Department or it may have been Rock Hill
 11 Police Department, you're just not sure?
 12 A Right.
 13 Q Okay. The gastro doctor, Dr. --- It's pronounced
 14 Winn. Is that a Vietnamese name where it's N-g-u-
 15 y-n, something like that?
 16 A Yes.
 17 Q Okay.
 18 A I think my mother knows the correct spelling.
 19 Q Is the doctor Oriental?
 20 A Yes.
 21 Q You mentioned all the other records and Mr. Todd
 22 has covered that. On the polygraph, Michael was
 23 polygraphed that very day, January 11, correct?
 24 A Yes.
 25 Q And your polygraph was January 28 about three weeks

1 Piedmont, did they ask you anything about child
 2 abuse or trauma?
 3 A No.
 4 Q What did they ask you about?
 5 A They just asked me to say what happened.
 6 Q And you thought that was standard procedure for the
 7 police to show up?
 8 A Correct. I mean, ---
 9 Q Did they show up when you were in the hospital for
 10 the birth of Owen?
 11 A No, but it was --- that was normal. That was a
 12 normal thing to do, give birth. It's not something
 13 that is scary.
 14 Q You don't think taking your child to the ER, you
 15 don't think that that's --- you think that's
 16 abnormal, people taking their child to the ER?
 17 A Yes, it's abnormal. That's why I found it normal
 18 for the cops to be there.
 19 Mr. Todd - No more questions.
 20 FURTHER EXAMINATION - (By Mr. Frawley)
 21 Q He's covered a couple of mine so my list is going
 22 to be a little shorter, although it wasn't a long
 23 list anyway. I was going to ask about your
 24 mother's brother but you've responded to that. You
 25 mentioned the name Charlene Blackwell or

1 or so later, correct?
 2 A I'm not sure of the date.
 3 Q But it wasn't that day. It was ---
 4 A Right.
 5 Q --- a couple weeks, maybe three weeks later. All
 6 right. In your polygraph you were given several
 7 set-up questions and essentially asked two relevant
 8 questions. And those two questions were: did you
 9 do anything to cause Owen's injury. That was one
 10 of the questions wasn't it?
 11 A Yes.
 12 Q And you passed that, right?
 13 A Right.
 14 Q And your response was no, I didn't, correct?
 15 A Right.
 16 Q And the other one was: did you do anything to cause
 17 Owen's injuries while he was in your care. That
 18 was the second question, correct?
 19 A Yes.
 20 Q And you answered no, you didn't, correct?
 21 A Right.
 22 Q And that was a correct response, right?
 23 A Yes.
 24 Q They didn't ask you anything about did you suspect
 25 Michael of having injured your son before January

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1 11. They didn't ask anything like that on the
2 polygraph did they?
3 A Right.
4 Q Right they did or right they didn't?
5 A They did not.
6 Q And, in fact, your testimony is that you had no
7 reason to suspect Michael of having injured your
8 son before the 11th, correct - - -
9 A Correct.
10 Q - - - before he admitted that he'd done it?
11 A Right.
12 Q Now, even when he admitted that he'd done it, did
13 he say that he intentionally acted with the intent
14 of injuring your son or that he had shook him and
15 as a result of what he'd done your son had been
16 injured? Do you understand the distinction there?
17 A Yes, I do.
18 Q I mean, was it your understanding that he did
19 something with the intent of injuring his son and
20 your son?
21 A I'm not positive.
22 Q So as far as you know he got frustrated or
23 impatient with the boy crying or interrupting his
24 game on TV or something, and he may have shaken the
25 boy and that may have been how he was injured?

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1 A Correct.
2 Q And there's a possibility that while the act was an
3 intentional act, that the result was not
4 necessarily intended, in other words, there was not
5 an intention to injure, correct?
6 A Right. Correct.
7 Q Now, as far as you know DSS was called into this
8 case on December 6th and that's when Shaundra Tyler
9 met with you up at the hospital, correct?
10 A Yes.
11 Q Michael never admitted having injured your son in
12 that December 4 first injury, correct?
13 A Yes. Right.
14 Q Never has to this day as far as you know?
15 A Right.
16 Q As far as you know to this day, nobody knows how
17 the boy was injured that day, correct?
18 A Correct.
19 Q Owen was not injured between December 6 and
20 December 16th was he?
21 A No.
22 Q In fact, Owen was not injured between December 16th
23 and January 9th was he?
24 A No.
25 Q This term non-accidental trauma that Mr. Hood asked

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1 you about, your understanding is that's an
2 indication of purposeful abuse, correct?
3 A It's my understanding now.
4 Q Now, your understanding now is that the hospital
5 went through a battery of tests for Owen to
6 determine if there was indication of non-accidental
7 trauma in December, early December, for that first
8 injury; is that your understanding?
9 A Yes.
10 Q Okay. I mean, they were looking for it, and they
11 tested him for it didn't they?
12 A Yes.
13 Q And your understanding is that they did not come up
14 with anything conclusive about whether there was or
15 was not non-accidental trauma based on that battery
16 of tests that they ran in early December, correct?
17 A I - - - I guess not.
18 Q All right. Is that something you know or you don't
19 know? You may not know.
20 A I - - - I don't really know.
21 Q Okay.
22 A Yeah.
23 Q So while you may know what non-accidental trauma
24 means, and you may know that the hospital ran a
25 battery of tests to determine if there was

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1 indication of non-accidental trauma, you don't know
2 what the results of those tests were do you?
3 A No, I do not.
4 Q And you don't know what they passed on to the South
5 Carolina Department of Social Services do you?
6 A No, I do not.
7 Q Now, you mentioned with regard to the hospital what
8 they could have done, what they should have done,
9 is they could have questioned a lot more the second
10 time than they did the first time, correct?
11 A Right.
12 Q But when they questioned you the first time, your
13 responses were uniformly that you don't know what
14 happened and there was no reason to suspect you or
15 Michael of having injured your son, correct?
16 A Right.
17 Q The fact that you periodically thought that Michael
18 may have handled your son a little more roughly
19 than he could have and would have bounced him when
20 he was playing with him, while that caused you some
21 concern as a mama, you never passed those concerns
22 on to the hospital or to DSS in early December did
23 you?
24 A No, because I did not find them to be a threat of
25 harm, - - -

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1 Q Right.

2 A --- just carelessness.

3 Q Right. But you concede that there's a possibility

4 if you're bouncing a child and the child's neck,

5 which is a tenuous base for his head, if that

6 somehow gets bounced the wrong way, that that could

7 cause a child an injury?

8 A Yes.

9 Q All right. You would concede that your mother

10 rocking the boy two months after that and the

11 rocking chair going over, that could have injured

12 the son, the boy?

13 A It could have.

14 Q I mean, as far as we know it didn't but ---

15 A Right. Right.

16 Q --- It could have. So something as innocuous as

17 a grandmama rocking her grandchild could have

18 caused injury?

19 A Yes.

20 Q So while it didn't occur to you in early December

21 that your concerns about Michael possibly being too

22 rough with the boy unintentionally, that didn't

23 rise to the level of your thinking it was important

24 enough to tell them. Had you told them that, maybe

25 that would have changed their investigation in

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1 December; would you agree with that statement?

2 A I do.

3 Q And at no time in early December did you pass on to

4 the hospital, to law enforcement, or to DSS that

5 you had on occasion some concerns with Michael in

6 the way he handled your son; you never passed that

7 on to anybody did you?

8 A No, not until the second time.

9 Q And the second time we had a far more serious

10 injury than the first time?

11 A Yes. And the second time I didn't bring it to

12 their attention, they asked me, so.

13 Q Right. Because they've got a kid in there

14 basically on life support then at that point,

15 right?

16 A Yes.

17 Q So there it wasn't just whether there's indicia out

18 there of a potential problem, it's a child on life

19 support fixing to die ---

20 A Yes.

21 Q --- that got their attention, correct?

22 A Yes.

23 Q When earlier had you brought these concerns up,

24 maybe they could have done something earlier,

25 correct?

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1 A Correct. That's what my statement meant, if they

2 would have gone in depth with their questions.

3 Q Or if you would have on your own as a mama voicing

4 concerns, if you'd brought that to their attention,

5 maybe they would have looked a little harder,

6 correct?

7 A Yes.

8 Mr. Frawley - Thank you, ma'am.

9 FURTHER EXAMINATION - (By Mr. Settana)

10 Q Just a few. Getting back to the police officers

11 you saw at Piedmont, ---

12 A Yes.

13 Q --- I know you said they had on brown uniforms.

14 Were the shirts dark or were they light? I'm

15 trying to identify who this might be.

16 A I know. I want to say the colors were brown, like

17 a brownish and a yellowish, maybe like a tan

18 uniform with beige.

19 Q Okay.

20 A I know I'm not help there. I'm sorry.

21 Q That's all right. You can look for the card

22 though, correct?

23 A I can look for it.

24 Q Okay. All right. And you said these officers

25 interviewed you in December?

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1 A Correct.

2 Q And you didn't feel there was anything that ---

3 anybody intentional or unintentionally was causing

4 Owen harm at that time, correct?

5 A Right.

6 Q And to this day you don't know if that December

7 incident was the result of Michael causing any harm

8 to Owen do you?

9 A I do not.

10 Mr. Settana - That's all I have.

11 Whereupon - Deposition was concluded at

12 2:05 P.M.

Page 217 Signing of Transcript Shirley Dallas-Gerrald, CVR-CM Notary Public/Court Reporter of Deposition By Witness Reserved (Recorded deposition tapes retained fifteen days from date of certification or until transcript has been signed in cases when signature is not waived.) Deposition of Kayla Lythgoe	Page 218 CERTIFICATE OF REPORTER State of South Carolina) County of York) I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings. I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause. In witness my hand and official seal this the 20th day of August, 2012, in the City of Rock Hill, County of York, State of South Carolina. Shirley Dallas-Gerrald, CVR-CM Court Reporter/Notary Public My Commission Expires: 8-18-2021 Deposition of Kayla Lythgoe
Page 217 SUBSCRIPTION OF DEPONENT State of _____) County of _____) I, Kayla Lythgoe, do hereby certify that I have this day read the foregoing deposition and do hereby declare that the same is a true and accurate transcript of the proceedings had at the time and place herein designated (except for the notations as indicated on the attached errata sheet, if any). Dated: _____ Kayla Lythgoe Sworn to and subscribed before me this ____ day of _____, 2012. _____ Notary Public My Commission Expires: _____ Deposition of Kayla Lythgoe	

Page 1	Page 3
1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS 2 COUNTY OF YORK SIXTEENTH JUDICIAL CIRCUIT 3 Civil Action No: 11-CP-46-04508 4 ELIZABETH HOPE RAINY, as the 5 APPOINTED GUARDIAN ad LITEM 6 to OWEN C. [REDACTED] a minor, 7 Plaintiff, VIDEOTAPED 8 DEPOSITION 9 OF 10 LAURA NEWMARK, MSW 11 vs. 12 CHARLOTTE-MECKLENBURG HOSPITAL 13 AUTHORITY d/b/a CAROLINAS 14 MEDICAL CENTER, SOUTH CAROLINA 15 DEPARTMENT OF SOCIAL SERVICES, 16 BRUCE BRYANT as the CONSTITUTIONAL 17 OFFICER OF YORK COUNTY, 18 Defendants. 19 20 21 22 23 24 25 TRANSCRIPT of the deposition in the above-entitled matter by and before KAREN ANN KOCISIS, a Certified Court Reporter and Notary Public of the State of South Carolina, held at the CAROLINAS MEDICAL CENTER, 1000 Blythe Boulevard, Dining Room #4, Charlotte, North Carolina on Thursday, September 27, 2012 commencing at 10:23 a.m.	1 A P P E A R A N C E S: (Cont'd) 2 ATTORNEYS FOR DEFENDANT 3 BRUCE BRYANT AS THE CONSTITUTIONAL 4 OFFICER OF YORK COUNTY 5 McCAY, CAUTHEN, SETTANA & STUBLEY, PA 6 BY: JANET BROOKS HOLMES, ESQUIRE 7 1303 Blanding Street 8 Columbia, South Carolina 29201 9 janetholmes1@mac.com 10 803.256.4645 11 ALSO PRESENT: Videographer, Brooks Oswald 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 A P P E A R A N C E S: 2 ATTORNEYS FOR PLAINTIFF 3 MCGOWAN, HOOD & FELDER, LLC 4 BY: S. RANDALL HOOD, ESQUIRE and 5 DEBORAH CASEY, ESQUIRE 6 1539 Health Care Drive 7 Rock Hill, South Carolina 29732 8 rhood@mcgowanhood.com 9 dcasey@mcgowanhood.com 10 803.327.7800 11 SHAW LAW FIRM 12 BY: DUANE M. SHAW, ESQUIRE 13 1169 Ebenezer Road 14 Rock Hill, South Carolina 29732 15 shaw@shawlawfirm.net 16 803.329.4200 17 ATTORNEYS FOR DEFENDANTS 18 CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY 19 d/b/a CAROLINAS MEDICAL CENTER 20 SOWELL GRAY STEPP & LAFFITTE, LLC 21 BY: MONTEITH P. TODD, ESQUIRE 22 1310 Gadsden Street 23 Columbia, South Carolina 29211 24 mtodd@sowellgray.com 25 803.231.7837 26 ATTORNEYS FOR DEFENDANT 27 SOUTH CAROLINA DEPARTMENT 28 OF SOCIAL SERVICES 29 DAVIS, FRAWLEY, ANDERSON, MCCAULEY, 30 AYER, FISHER & SMITH, LLC 31 BY: PATRICK J. FRAWLEY, ESQUIRE 32 140 East Main Street 33 Lexington, South Carolina 29072 34 pat@oldcourthouse.com 35 803.359.2512	1 EXAMINATION INDEX PAGE 2 BY MR. HOOD 5 3 Witness waives reading and signing 163 4 PLAINTIFF'S EXHIBITS PAGE 5 1 Patient Care 5 6 2 Child Abuse and Neglect Algorithm 12 7 3 Kayla Lythgoe, Case Review 15 8 4 Case transfer and/or Case Staffing 15 9 5 Child Maltreatment Clinical Practice 33 10 Guidelines 11 6 Admit Diagnosis 42 12 7 Admit Order 59 13 8 Certificate of Necessity 59 14 for Retention of Custody 15 9 Examining Physicians Certificate 59 16 10 Carolinas Healthcare System Policy 95 17 11 Suspected Child Abuse and Neglect form 99 18 12 Answers to Interrogatories 109 19 20 21 22 23 24 25

Page 5

1 (Patient Care Discharge Planning Process
2 marked as Plf's Exh 1 for identification.)
3 (Videographer's opening statement.)
4 MS. BROOKS HOLMES: One thing I wanted --
5 I don't know if this should be on the record or
6 not, but there's York County Sheriff's
7 Department as an entity -- it's not an
8 entity --
9 MR. HOOD: It's not an entity?
10 MS. BROOKS HOLMES: -- that is not part
11 of the caption.
12 MR. HOOD: That is not part of the caption?
13 MS. BROOKS HOLMES: Right, so...
14 MR. HOOD: Of course we can make it part
15 of the case.
16 MS. BROOKS HOLMES: No, no, no, you can't
17 change your mind.
18 L A U R A N E W M A R K, MSW,
19 having been duly sworn according to law by the
20 Officer, testified as follows:
21 EXAMINATION
22 BY MR. HOOD:
23 Q Miss Newmark, my name is Randy Hood. I'm
24 -- I represent the -- Owen Carduff through some
25 representatives, and I'm going to be asking you some

Page 6

1 questions today, okay?
2 A Okay.
3 Q It's -- I expect it to take two, three
4 hours, somewhere in that time frame, a little more
5 or little less, but somewhere in that time frame.
6 A Okay.
7 Q Because of that, it's not a memory test,
8 and there is a bunch of paper in this room by a
9 bunch of different people, and if I ask you a
10 question, you feel like you need to look at something
11 or to -- to see a document to refresh your
12 recollection, all you got to do is ask, and between
13 somebody here, we'll find that piece of paper.
14 A All right.
15 Q Okay? So -- and -- and another thing, if
16 I ask you a question and you don't understand it,
17 will you let me know?
18 A Uh-huh.
19 Q And that brings me to the third. You got
20 to give me a verbal response.
21 A Yes.
22 Q A "yes" or a "no" or "maybe," whatever you
23 want to give me.
24 A Right.
25 Q It's just got to be verbal, okay?

Page 7

1 A Okay.
2 Q And if you give me a verbal response to a
3 question I ask you, it is fair for me to assume that
4 you understood the question and gave me your best
5 answer?
6 A Yes.
7 Q Okay. If you need to take a break for any
8 reason, all you need to do is just let me know.
9 A Okay.
10 Q I'm a nice guy.
11 A Okay, great.
12 Q Okay. Can you please tell us your full
13 name.
14 A Laura Holman Newmark.
15 Q Where did you work in December of 2009,
16 Miss Newmark?
17 A CMC, Levine Children's Hospital.
18 Q Okay. And that's Carolinas Medical
19 Center?
20 A Yes.
21 Q And that's located in Charlotte, North
22 Carolina.
23 A Yes.
24 Q And you work at CMC main?
25 A Yes. And assigned primarily to Levine

Page 8

1 Children's Hospital.
2 Q Okay. And CMC Main is the hospital that's
3 on Blythe Boulevard near Center Charlotte, right?
4 A Yes.
5 Q And then there is a -- there's a hospital within
6 a hospital which is a children's hospital within CMC
7 main, right?
8 A Yes. Levine Children's Hospital is a
9 standalone as part of Carolinas Hospital system.
10 Q Okay.
11 A But they're separate.
12 Q Okay. But you primarily do work with
13 Levine Children's Hospital?
14 A At that time, yes.
15 Q "At that time," okay.
16 And at that time in December of 2009,
17 a baby by the name of Owen Carduff came under the
18 care of Levine Children's Hospital.
19 A Yes.
20 Q And at the time of admission to Levine
21 Children's Hospital, there was a workup for this
22 child for non-accidental trauma, right?
23 A Yes.
24 Q And another name for non-accidental trauma
25 is child abuse, right?

Page 9

1 A Sure.

2 Q Okay. And after being admitted to -- I'm

3 going to call it L -- LCH.

4 A That's fine, yes.

5 Q Levine Children's Hospital. If I use the

6 term "LCH" or "Levine Children's Hospital" or

7 "Levine," I'm talking all about the same entity.

8 A Right.

9 Q Okay. So after being admitted to LCH, the

10 child was eventually discharged back to his parents;

11 right?

12 A Yes.

13 Q And you're aware that approximately 30

14 days after that, the child came back to Levine

15 Children's Hospital and was catastrophically brain

16 injured?

17 A Yes.

18 Q And if he had never been put back with his

19 parents, back to the abuser, the child -- it would

20 have never happened, would it?

21 MS. BROOKS HOLMES: Objection.

22 MR. FRAWLEY: Object to form.

23 THE WITNESS: I can't answer that.

24 BY MR. HOOD:

25 Q Why can't you answer it?

Page 10

1 A Because I don't know what would have

2 happened.

3 Q Okay. Let's -- let's -- let's break it

4 down a little bit for you.

5 He doesn't go back to his parents on

6 December the 8th, he goes into foster care, right?

7 MR. TODD: Objection.

8 BY MR. HOOD:

9 Q Or with another relative?

10 MR. TODD: Objection.

11 MR. FRAWLEY: Same objection.

12 MS. BROOKS HOLMES: Same objection.

13 BY MR. HOOD:

14 Q You can answer.

15 A I don't have any say as to where he goes

16 upon discharge, as a hospital employee.

17 Q You work hand-in-hand with a state agency,

18 you-all were retained to determine what happens with

19 a child where there is suspected child abuse

20 involved.

21 A I --

22 MR. TODD: Objection.

23 BY MR. HOOD:

24 Q You can answer.

25 A I am a liaison between the medical team

Page 11

1 and DSS.

2 Q Okay. As a liaison, you are the person

3 that helps get whatever the medical discharge is

4 going to be, right?

5 MR. TODD: Objection.

6 THE WITNESS: No.

7 BY MR. HOOD:

8 Q Okay. As the liaison, you work as a

9 person between the state agency and the medical

10 doctors?

11 A Yes.

12 Q And then you help those two people come

13 together to determine what's in the best interest of

14 the child?

15 MR. TODD: Objection.

16 THE WITNESS: No. I share information on

17 the clinical status and what's going on with

18 the patient with DSS, who has the ultimate

19 discharge plan put in place.

20 BY MR. HOOD:

21 Q Okay. But I thought that you, according

22 to your own algorithm, that you-all had to do it

23 together?

24 A I give them information. I don't control

25 the final decision.

Page 12

1 Q Who controls the final decision?

2 A DSS.

3 Q Okay. Let me look at your algorithm.

4 (Child Abuse and Neglect Algorithm marked

5 as Plf's Exh 2 for identification.)

6 THE WITNESS: Could I get to look at it?

7 BY MR. HOOD:

8 Q You're now looking at Plaintiff's Exhibit

9 1, which are some -- looks like typewritten or some

10 electronic-type of documentation about this baby and

11 then -- that's Exhibit 1, and then Exhibit 2 is a

12 Child Abuse and Neglect Algorithm from Levine

13 Children's Hospital, right?

14 A Are you asking me? Yes.

15 Q Yes.

16 A Yes.

17 Q Okay. Now, I'm going to go through 2, and then

18 we'll go to 1, okay?

19 A Okay.

20 Q Number 2, it says, "Medical team

21 identifies child in whom abuse or neglect is

22 suspected."

23 Do you see that?

24 A Yes.

25 Q And in this case they identified a child

Page 13

1 whom abuse or neglect is suspected, right?

2 MS. BROOKS HOLMES: Objection.

3 THE WITNESS: Yes.

4 BY MR. HOOD:

5 Q Then it says, "Consult CHS clinical care

6 management social worker to assist with assessment

7 process." Do you see that?

8 A Yes.

9 Q And you were part of that CHS clinical

10 care of management social worker team, weren't you?

11 A Yes.

12 Q And then it says, "Is the suspicion of

13 abuse or neglect confirmed?" Do you see that?

14 A Yes.

15 Q And then there's a -- there's a fork in

16 the road, under "no" it says what to do and under

17 "yes" it give some other things, right?

18 A Yes.

19 Q And under "yes," could you read what it

20 says under "Report case to"?

21 A "Report case to county DSS in which child

22 resides, law enforcement agency where the incident

23 occurred if implicated."

24 Q Okay. And DSS was notified, weren't they?

25 A Yes.

Page 14

1 Q And so suspicion of abuse or neglect was

2 confirmed, right?

3 A I wouldn't disagree with that. I know the

4 algorithm says something, but -- the suspicion was

5 not confirmed, there had not been a full workup yet.

6 Q Okay. Why did you report it to DSS?

7 A Any concerning injury that validates a

8 workup gets reported to DSS.

9 Q Where is that in the algorithm?

10 A I don't know. I did not write this

11 algorithm.

12 Q Okay. This is written for the safety of

13 children, right?

14 A That would be my assumption.

15 Q And it was written by Levine Children's

16 Hospital or somebody there, right?

17 A I don't know who wrote it.

18 Q Let's go over the other stuff that doesn't

19 -- doesn't really come within the algorithm that was

20 done in this case.

21 Was there a complete scan form

22 including diagrams done?

23 A I don't know.

24 Q Okay. Are any of these things done?

25 A During the admission?

Page 15

1 Q For -- for the child in December of 2009.

2 A I don't know, off the top of my head. I

3 would either have to go through the chart or --

4 Q I'll represent to you, and I'll show it to

5 you, that -- that a lady by the name of Myers, who

6 was the child maltreatment coordinator for this

7 hospital was involved in the care of this case.

8 A She is the nurse, yes.

9 Q And you're not going to have somebody

10 involved in that if you didn't suspect child

11 maltreatment, right?

12 A If there is a workup because they're

13 concerned about abuse, she would be involved.

14 Q Let me show you something from DSS.

15 (Discussion off the record)

16 (Case review marked as Plf's Exh 3 for

17 identification.)

18 BY MR. HOOD:

19 Q I'll represent to you that this is what was

20 given to us by DSS. These were documents produced

21 to us by DSS, okay?

22 A Mm-hmm.

23 MR. HOOD: And then let's mark as 4

24 something else from DSS.

25 (Case Transfer and/or Case Staffing marked

Page 16

1 as Plf's Exh 4 for identification.)

2 MR. HOOD: Look at the second page of

3 this.

4 MR. TODD: Which one?

5 MR. HOOD: Exhibit 4.

6 BY MR. HOOD:

7 Q This is something that was provided to us by

8 DSS. It says, "Owen has two subdural hematomas, one

9 would indicate non-accidental trauma, parents

10 appropriate." Do you see that?

11 A Yes.

12 Q And then that, the one below it gives some

13 history. It says, "Parents took baby to PNC. PNC

14 sent child to Levine's. She has concerns because CT

15 scans shows non-accidental trauma, no" -- and I

16 think that's "no problem in saying it is

17 non-accidental." I don't know what --

18 A I think that says "no doctor."

19 Q "No doctor is saying it's non-accidental."

20 Now, I know you're not a medical

21 person. This is a social worker from DSS.

22 A Sure.

23 Q As a social worker from DSS, is there a

24 standard when you have two subdural hematomas that

25 it is consistent with non-accidental trauma?

Page 17

1 MR. TODD: Objection.
 2 THE WITNESS: I'm not a social worker with
 3 DSS.
 4 MR. HOOD: You can --
 5 MR. TODD: You said, "as a social worker
 6 from DSS," but she answered it.
 7 MR. HOOD: I'm sorry.
 8 MR. TODD: You misspoke, but she corrected
 9 you, I think.
 10 MR. HOOD: Okay.
 11 THE WITNESS: No.
 12 BY MR. HOOD:
 13 Q As a social worker from Levine, do you
 14 know what a subdural hematoma is?
 15 A Yes.
 16 Q And in fact, you've seen children that
 17 come through Levine that have a subdural hematoma;
 18 right?
 19 A Yes.
 20 Q And this child had a subdural hematoma.
 21 A Yes.
 22 Q And you're aware of some of the literature
 23 concerning babies under six months who have a
 24 subdural hematoma?
 25 A Yes.

Page 18

1 Q Now they call it abusive head trauma.
 2 MR. TODD: Objection.
 3 MR. HOOD: Right?
 4 MR. FRAWLEY: Objection.
 5 THE WITNESS: There is a term in the
 6 literature, "abusive head trauma." I don't
 7 know who "they" is or what the common term is.
 8 BY MR. HOOD:
 9 Q Sure. Just talking about the social
 10 worker community.
 11 A That would be more medical literature that
 12 would discuss abusive head trauma. Not a lot of
 13 social worker literature, probably.
 14 Q Okay. Now, but as a social worker, you
 15 have to be aware of this terminology?
 16 A Yes.
 17 Q And abusive head trauma is something that
 18 is -- in the past was referred to as "shaken baby
 19 syndrome" and the nomenclature has now been changed
 20 to "abusive head trauma"?
 21 MR. TODD: Objection.
 22 Go ahead and answer.
 23 MS. HOLMES: Objection.
 24 MR. FRAWLEY: Objection.
 25 THE WITNESS: I think that's -- yeah.

Page 19

1 BY MR. HOOD:
 2 Q And just so you know, you can answer
 3 anytime he makes an objection. You don't have to
 4 wait for him to tell you. You can answer anything
 5 unless he tells you not to answer.
 6 A Okay.
 7 Q Okay? And if you got a question, you've
 8 got to direct it to me instead of to him; okay?
 9 A Okay.
 10 Q Now, in this particular case -- can we go
 11 to the third page?
 12 MR. FRAWLEY: Which exhibit?
 13 THE WITNESS: The same.
 14 MR. HOOD: This is Exhibit 4.
 15 BY MR. HOOD:
 16 Q Now, this is part of something that was
 17 signed off on 12/7/09, obviously by DSS in South
 18 Carolina.
 19 A Right.
 20 Q But they, in part of this it says that
 21 "parent said they noticed a bruise in baby's head in
 22 November." Do you see that?
 23 A Yes.
 24 Q And you're aware that that is also
 25 documented in some of the medical records of Levine

Page 20

1 Children's Hospital; right?
 2 A I don't -- if you say so. I don't --
 3 Q I'll represent to you that it is, and we'll
 4 get to that.
 5 A Okay.
 6 Q And then under that it says, "Nurse said
 7 it is non-accidental." Do you see that?
 8 A I do.
 9 Q Now, I want you to assume for me that a
 10 nurse said it was non-accidental and the baby had a
 11 bruise in November and the baby had a subdural
 12 hematoma.
 13 Under a hypothetical like that, what
 14 is your role as a social worker at Levine Children's
 15 Hospital?
 16 MR. TODD: Objection.
 17 THE WITNESS: Well, my role would be to
 18 work off my physician team, their
 19 recommendations, the specialists and their
 20 progress notes. This isn't something that I
 21 see.
 22 BY MR. HOOD:
 23 Q I understand that.
 24 A So I can't -- I can't answer what my role
 25 would be if this is a DSS piece of paper.

Page 21

1 Q Sure. Well, let's assume that the nurse
2 told you that it was non-accidental and let's assume
3 that you were aware that the baby had had a bruise
4 before it came and you were aware that the baby had
5 a subdural hematoma, what is your role?
6 MR. TODD: Objection.
7 THE WITNESS: My role is to talk to the
8 physicians and discuss with them what their
9 impression is, what the studies show, and
10 what's happening with this particular child at
11 the time of admission.
12 BY MR. HOOD:
13 Q Okay. And then what do you do when you
14 get the information that they give you?
15 A When I get the information from the
16 physician, what do I do?
17 Q Yes.
18 A Well, it depends on what's going on with
19 the patient at the time as of day of admission, has
20 a report been made? Do they need me to make a
21 report?
22 I can't answer that without knowing
23 at what point we're talking about during the
24 admission.
25 Q Sure. Now, let's go to Number 1; okay?

Page 22

1 A Okay. Sorry.
2 Q Okay. These -- it was done in a way that
3 1, the very first page, goes to the last.
4 A Right.
5 Q It's not in order, and I apologize for
6 that.
7 MR. TODD: Probably not. That's how they
8 came to us, so we just ...
9 MR. HOOD: Right. They are trying to
10 confuse us.
11 (Laughter.)
12 MR. HOOD: But we figured it out.
13 BY MR. HOOD:
14 Q Anyway, this looks like the very first
15 page, and please correct me -- if I'm wrong on
16 anything or if you see something where I'm wrong,
17 please correct me, because I need to know then, if
18 possible. So if I do something or say something
19 that's wrong, please correct me.
20 A Okay.
21 Q This appears to be the first page, appears
22 to be a note that was done by the social worker team
23 at Levine Children's Hospital in regard to Owen
24 Carduff on Sunday, December 6, 2009, at
25 approximately 5:30 p.m.; right?

Page 23

1 A It's part of a note.
2 Q It's part of a note.
3 Okay. At 1500 at the top where it
4 says "12/6/2009, 1500," that's military time, right?
5 A Yes.
6 Q And 1500 would be 3:00 p.m.?
7 A Yes.
8 Q Okay. It says, "MSW received page about
9 rule out NAT, workup is negative for NAT, but
10 patient does have a small subdural hematoma."
11 Do you see that?
12 A I do.
13 Q What workup was negative for NAT?
14 A I don't know.
15 Q Who would know?
16 A I don't know. This is not my note.
17 Q Okay. This continues, and I think it's
18 the fourth over -- excuse me, fourth page -- excuse
19 me, last page, second to last page.
20 It says, "MSW note continued, dad
21 noted the patient was sleeping more than usual, woke
22 up crying."
23 Do you see that?
24 A Yes.
25 Q It then says, "Parents denied any trauma

Page 24

1 that anyone dropped the baby. Patient's birth was
2 normal, full term."
3 Do you see that?
4 A Yes.
5 Q Okay. And then at the bottom it says, "MSW
6 note continued."
7 Do you see that?
8 A Yes.
9 Q If you go to the next -- the page before
10 that.
11 A Right.
12 MR. TODD: What Bates number are you on?
13 MR. HOOD: Okay. It's 96.
14 MR. TODD: Okay.
15 BY MR. HOOD:
16 Q Before it talked about a lady named
17 Shandra Tyler who is a DSS worker from South
18 Carolina." It says, "After she staffs the case with
19 her supervisor, baby is not for discharge today,
20 possibly will be discharged tomorrow."
21 Do you see that?
22 A Yes.
23 Q Then it says, "RN Sara did report that
24 MGM."
25 A That's maternal grandmother.

Page 25

1 Q "Maternal grandmother did -- did say that
2 she noticed baby had a bump on his head. She asked
3 dad and uncle about this, and dad and uncle stated
4 that they had no idea why this happened. MSW will
5 leave note for weekday MWS."
6 Do you see that?
7 A Yes.
8 Q Now, you're the weekday MSW, or you were
9 at that time.
10 A Yes.
11 Q Right? And so this would have been the
12 note that was left for you.
13 A Yes.
14 Q Then if we go to the second page, which is
15 Bates stamped 0093 it says, "MSW" -- that is you?
16 A Yes.
17 Q -- "spoke with worker Christa Hinnant at
18 803.684.8514," which is South Carolina DSS; right?
19 A Yes.
20 Q -- "about patient condition NAT workup."
21 A Yes.
22 Q And that was you; right?
23 A Yes.
24 Q And you had that conversation with Christa
25 Hinnant?

Page 26

1 A I did.
2 Q And then if we go to -- remember that --
3 okay, I'm going to Page 3, which is this exhibit,
4 Number 3, and it has "Defense produced 00165 at the
5 bottom."
6 A Yes.
7 Q Okay. And it says, "Christa" --
8 A Yes.
9 Q -- in the midway, and it says 11:50 a.m.;
10 right?
11 A Yes.
12 Q And then this note was done, it appears at
13 the top, at about 12:07 p.m.
14 A That's when it was printed.
15 Q That's when it was printed.
16 A Yes.
17 Q So you would have had to have done
18 something, spoke with her, and then you would have
19 had to have typed it up; right?
20 A If I -- yeah, we are supposed to do the
21 date and time. So 12:00 o'clock is about when I did
22 the note.
23 Q Okay. So that would have been after you
24 had actually talked with Christa; right?
25 A Yes.

Page 27

1 Q Okay. Well, here's this, this is on this
2 third page, it says, "Christa 11:50 a.m." It says,
3 "received a phone call from Laura Newmark." That
4 would be you; right?
5 A Yes.
6 Q "She talked with pediatric staff at this
7 time. The hospital cannot determine whether the
8 injuries are non -- are accidental or non-accidental."
9 Do you see that?
10 A Yes.
11 Q Is that the truth?
12 A Yes.
13 Q And Owen's eye exam and skeletal survey
14 were negative; right?
15 A Yes.
16 Q "Going to repeat CT scan today because
17 Owen's head appears to be swollen." You see that?
18 A I do.
19 Q You don't know of anywhere she would have
20 gotten that information other than you; right?
21 A I -- I don't know.
22 Q Okay. "Family has no clear history of
23 trauma." Right?
24 A Yes.
25 Q "However, hospital cannot rule out

Page 28

1 trauma."
2 A Yes.
3 Q So you're a social worker; right?
4 A Yes.
5 Q You got a master's of social work; right?
6 A Yes.
7 Q So you've had some extended education with
8 regard to social work; right?
9 A Yes.
10 Q And you've been employed as a social
11 worker at this hospital for a long time, haven't
12 you?
13 A For a while.
14 Q And you've seen children that were abused
15 before, haven't you?
16 A Yes.
17 Q And you're aware that the most vulnerable
18 people in society are babies under the age of six
19 months?
20 A I wouldn't say "the most vulnerable people
21 in society are babies under the age of six months."
22 Q Tell this jury, then, who is more
23 vulnerable than a baby under the age of six months?
24 A I'm not saying they are not vulnerable.
25 I'm just --

Page 29

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

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

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

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

10 MR. HOOD: Okay.

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

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

14 BY MR. HOOD:

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

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

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

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

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

25 MR. TODD: Anyway, you can go ahead,

Page 30

1 answer if you want to waste our time.

2 MR. HOOD: Please answer.

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

7 BY MR. HOOD:

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

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

16 Q Okay. And is a baby under six months,
17 which Owen C. [REDACTED] was --

18 A Yes.

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

21 A Right.

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

24 MR. FRAWLEY: Objection to form.

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

Page 31

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

4 BY MR. HOOD:

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

7 A Yes.

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

10 A Mm-hmm.

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

13 MR. TODD: Objection.

14 MR. FRAWLEY: Objection to form.

15 THE WITNESS: The safest way to ensure
16 that --

17 BY MR. HOOD:

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

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

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

Page 32

1 believe that was Exhibit 2, at the bottom.

2 A Yes.

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

5 A I do.

6 Q Okay. And what is "medical clearance?"

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

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

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

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

17 A Medically stable.

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

20 A Yes.

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

24 A Right.

25 Q Okay. And when they are medically stable

Page 33

1 for the reason they came into the hospital, "do not
2 discharge until disposition has been determined by
3 medical social worker and DSS."
4 That's what that says, right?
5 A I see that.
6 Q You have a joint responsibility, don't
7 you?
8 MR. TODD: Objection.
9 THE WITNESS: My responsibility as the
10 medical social worker is to communicate
11 information to DSS from the team and back to
12 the medical team from DSS.
13 BY MR. HOOD:
14 Q Okay. And where is that on the algorithm?
15 A I don't know.
16 Q Okay. Let's look at the policy, then.
17 Let's look at your Child Maltreatment Guidelines,
18 maybe we can find something there.
19 MR. HOOD: Can I have this marked as 5?
20 THE REPORTER: Here you go.
21 THE WITNESS: Thank you.
22 (Child Maltreatment Clinical Practice
23 Guidelines received and marked as Plf's Exh 5
24 for identification.)
25 BY MR. HOOD:

Page 34

1 Q Have you ever seen this before?
2 A Probably. I can't say exactly when and
3 where I would have.
4 Q Okay. At the top it says, "Child
5 Maltreatment Clinical Practice Guidelines, Clinical
6 Practice Guidelines, CHS inpatient units in
7 emergency department, evaluation and management of
8 the suspected child abuse or neglect."
9 Do you see that?
10 A Yes.
11 Q And do you see under the big Roman numeral
12 I, it says, "Child physical abuse"?
13 A Yes.
14 Q And then under A it says "Identification."
15 Do you see that?
16 A Yes.
17 Q And then it says, "Injuries, bruises,
18 burns, fractures; This list is not inclusive (that
19 should be considered suspicious for physical
20 abuse:)" Do you see that?
21 A Yes.
22 Q "Number 1, age zero to six months: Any
23 injury." You see that, right?
24 A Yes.
25 Q This child was about three and a half

Page 35

1 months old at the time he came in, right?
2 A If you say so.
3 Q I'll represent --
4 A It says two months on my note.
5 Q He was born in September.
6 A Okay.
7 Q I think it's like the middle of September,
8 and then he came in the 1st of December. So he was
9 between two or three months, something like that.
10 A Okay.
11 Q That would be between zero and six months
12 though, right?
13 A Yes.
14 Q And then B, "Essential aspects caretaker
15 history." Do you see that?
16 A Yes.
17 Q It says, "Does the parent, guardian or
18 child give a logical explanation that is consistent
19 with the age, pattern and severity of the injury."
20 Do you see that?
21 A Yes.
22 Q "This should be assessed by clinician
23 familiar with normal pediatric development."
24 Do you see that?
25 A Yes.

Page 36

1 Q Now, as part of the social worker team at
2 Levine Children's Hospital, did you have interaction
3 with the parents in this particular case?
4 A Yes.
5 Q Okay. And did you attempt to assess or
6 determine what was the cause of this subdural
7 hematoma?
8 A I would have taken a history from the
9 parents on had there been any recent trauma.
10 Q Okay. And in this case, the parents said
11 they don't know how it occurred, right?
12 A They didn't have any history of a
13 traumatic event.
14 Q So there would have been no explanation, a
15 logical explanation, that was considered --
16 consistent with the age, pattern or severity of the
17 injury, did they?
18 A They didn't have a history of trauma that
19 would have explained an injury.
20 Q Okay. And according to your note, this --
21 this -- this one that we had looked at earlier, this
22 Exhibit -- Exhibit 1.
23 Before you would have done your note
24 on 12/7, you would have looked at the other person's
25 note on 12/6, right?

Page 37

1 A Yes.

2 Q And so you would have been aware that the

3 child had had a bump on his head before this

4 particular hospitalization, right?

5 A I would have read the note, yes.

6 Q You would have read the note. And you

7 would have been aware that the parents didn't have

8 an explanation for either the bruise or the subdural

9 hematoma, right?

10 A Sure.

11 Q Okay. And so as a social worker for

12 Levine Children's Hospital, when you're aware of

13 that information, and you're working with DSS --

14 A Mm-hmm.

15 Q -- in regard to the Owen Carduff case --

16 A Mm-hmm.

17 Q -- and you would have done interaction

18 with the medical doctors --

19 A Right.

20 Q -- what is your role upon knowing that

21 information?

22 A My role would be to make sure that

23 information that's in the chart about this admission

24 with Owen be communicated back to DSS and then any

25 information that DSS shared with me about

Page 38

1 disposition and discharge be shared back with the

2 medical team.

3 Q Okay. And so did Christa Hinnant or

4 anyone you spoke to at South Carolina DSS, what did

5 they tell you about this particular case?

6 A I don't remember specifics.

7 Q Okay. Now, I'm going back to your note;

8 okay?

9 A Umm-hmm.

10 Q And it says -- and this is 0093 at the

11 bottom --

12 A Right.

13 Q It says, "MWS spoke with attending

14 Dr. Courtlandt --

15 A Right.

16 Q -- about likely inability to confirm NAT

17 due to limited findings."

18 A Yes.

19 Q "Would like to have ongoing DSS

20 involvement with investigation, home visit,

21 parenting education, follow-up NAT series in two

22 weeks as outpatient."

23 Do you see that?

24 A Yes.

25 Q And that was you that -- that made what

Page 39

1 you would like to see, right?

2 MR. TODD: Objection.

3 BY MR. HOOD:

4 Q Or -- or on behalf of the medical team in

5 Levine Children's Hospital?

6 A Right. In reading my note, I don't

7 remember the conversation, but I would have spoken

8 with Dr. Courtlandt about the team not being able to

9 say for sure this is non-accidental trauma because

10 of the small subdural and no other positive findings

11 on the workup. But we had already made the report

12 to DSS and I thought it would be helpful to have

13 them continue to investigate follow-up, do their

14 home investigation, do their DSS piece that we can't

15 do here in the hospital.

16 Q Sure. Like you meet them in the home and

17 that kind of stuff?

18 A Right. Follow-up, supervision, we talked

19 about parenting classes because they were young.

20 Q Okay. What happens if you put them into

21 the -- if you put a child back into an abusive

22 situation, they could do all of that and the child

23 still be abused, right?

24 MR. TODD: Objection. Go ahead and

25 answer.

Page 40

1 MR. FRAWLEY: Objection to form.

2 THE WITNESS: I can't say what would or

3 wouldn't happen in the home, I'm not there.

4 BY MR. HOOD:

5 Q I know you can't say what would or

6 wouldn't. Isn't it foreseeable that a child could

7 be abused if he had been abused before?

8 MR. FRAWLEY: Objection to form.

9 MS. BROOKS HOLMES: Objection.

10 THE WITNESS: I can't predict the future.

11 BY MR. HOOD:

12 Q I understand you can't predict the future,

13 but you-all have policies where the hospital has

14 forms that medical doctors can say, we're keeping

15 this child because there's suspicion of abuse;

16 right?

17 A There can be an emergency custody for a

18 very limited amount of time.

19 Q Up to 12 hours --

20 A Right.

21 Q -- to determine whether someone needs to

22 go with foster care or not.

23 A No. That's not really my understanding of

24 the emergency custody.

25 Q Okay. What is your understanding of the

Page 11

1 emergency custody?

2 A That if there were a concern about that

3 eminent discharge, that they would take emergent

4 custody for those 12 hours and work with whatever

5 local agency to determine the disposition.

6 Q Okay. And so I guess my question is, who

7 is supposed to protect this child? If the parents

8 aren't, who is supposed to protect this child?

9 MR. TODD: Objection.

10 MR. FRAWLEY: Objection to the form.

11 THE WITNESS: I don't have an answer to

12 that question. I think --

13 BY MR. HOOD:

14 Q You say it's not the hospital; right?

15 MS. BROOKS HOLMES: Objection.

16 MR. TODD: Objection.

17 THE WITNESS: I don't -- I understand what

18 you're asking. I don't think I'm going to

19 have an -- I really don't understand your

20 question and how that relates to the workup and

21 the things that we did with Owen here to make

22 sure that he was taken care of and stabilized.

23 BY MR. HOOD:

24 Q Sure. You-all actually keep a registry of

25 children that you discharged back to the home and

Page 42

1 children you discharge to foster care and children

2 you discharge to relatives, don't you?

3 A I think there is an informal one. I don't

4 have access to it.

5 Q Well, let me show it to you.

6 A Okay.

7 MR. TODD: This is 5 or 6 rather?

8 MR. HOOD: Six. I took off the first

9 page.

10 MR. TODD: That's just my cover letter?

11 MR. HOOD: Yes.

12 (Admit Diagnosis marked as Plf's Exh 6 for

13 identification.)

14 BY MR. HOOD:

15 Q I'll represent to you that this is

16 something that was produced to us by the hospital,

17 that it was not a hospital document, but is Ms. Lynn

18 Myers own personal list of cases of which she had

19 some knowledge.

20 A Okay.

21 Q Okay. And it says -- and it just has a

22 lot of different stuff about an admitting diagnosis,

23 doesn't tell us who it is, what their age is,

24 doesn't give us a lot of critical information, just

25 gives us some very basic information about children

Page 43

1 that may have been potentially at risk.

2 A Mm-hmm.

3 Q Okay. Now, Lynn Myers is the child

4 maltreatment coordinator at Levine Children's

5 Hospital, or was at that time; right?

6 A Yes.

7 Q And she was a nurse?

8 A Yes.

9 Q And it appears that on Page -- at the

10 bottom it has a number here, it'd be 2664.

11 A Yes.

12 Q And it has 9/9/09, which I guess is the

13 date of birth, and then the name, which is Owen

14 Carduff, and the MR number, and then 12/4/09 ALTE,

15 and it has CHIPS A, and that's just the CHIPS

16 A-Team; right?

17 A Right, that's the attending team that

18 rotates through.

19 Q Okay. Then where it says "ALTE," that's

20 "apparent life-threatening injury"; right?

21 A "Event."

22 Q "Event," I'm sorry, you're right,

23 "apparent life-threatening event;" right?

24 A Yes.

25 Q In this case, it was a subdural hematoma.

Page 44

1 A No. The admitting diagnosis, when it says

2 an "apparent life-threatening event," usually means

3 the child, came in, whoever it was, not -- as an

4 apnea, stopped breathing, something else is going

5 on.

6 So that would have been the working

7 diagnosis that came from either the outside hospital

8 or a reporting physician.

9 Q Okay. And then when they did the CT, they

10 would have the subdural hematoma.

11 A Yes.

12 Q Okay. And then if you go to, three pages

13 after that at 266.

14 A Yes.

15 Q It has NAT seizures. Do you see that?

16 A I do.

17 Q Okay. And at the end -- at the end over

18 there it says, "foster, findings foster." Do you

19 see that?

20 A I do.

21 Q That means it was discharged to foster

22 care; right?

23 A Yes, I guess.

24 Q And then if you go to the first one, the

25 first page, not the first page, but the one -- the

Page 45

1 first about Owen Carduff on 12/4/09.
 2 A Okay.
 3 Q It has "D-C home," that's discharge home;
 4 right?
 5 A Yes.
 6 Q Okay. So my question is, there appears to
 7 be some type of -- someone who is tracking what's
 8 happening with those at-risk children in regard to
 9 their -- what's happening when they leave; right?
 10 A It looks like Lynn has kept a database,
 11 yes.
 12 Q Okay. And that some of these at-risk
 13 children are discharged home; right?
 14 A Some of the kids that have had a workup or
 15 had DSS involvement, yes, they're discharged home.
 16 Q And then some are discharged to a
 17 relative.
 18 A Yes.
 19 Q And then some may be discharged to a
 20 foster care situation.
 21 A Yes.
 22 Q And all of that is dependant upon the
 23 decisions by the hospital and the county social work
 24 state agency?
 25 MR. TODD: Objection.

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1 MR. FRAWLEY: Same objection.
 2 THE WITNESS: I -- no.
 3 BY MR. HOOD:
 4 Q Okay. And whose decision is it where the
 5 child goes?
 6 A The county DSS agency.
 7 THE REPORTER: I'm sorry?
 8 THE WITNESS: The county DSS agency.
 9 BY MR. HOOD:
 10 Q Okay. And if -- so is it your -- and I'm
 11 not saying it is -- is it your testimony, that the
 12 hospital has no responsibility as far as the child
 13 being able to leave if they can't rule in or rule
 14 out non-accidental trauma?
 15 MR. TODD: Objection.
 16 THE WITNESS: That the hospital -- say
 17 that again.
 18 BY MR. HOOD:
 19 Q Sure, sure. And I apologize, it may have
 20 been inartful.
 21 Do you have an opinion --
 22 A Okay.
 23 Q -- about whether the hospital has a
 24 responsibility to Owen C. to ensure his
 25 discharge back to a safe environment?

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1 MR. TODD: Objection.
 2 MR. FRAWLEY: Objection to form.
 3 THE WITNESS: In my opinion?
 4 BY MR. HOOD:
 5 Q Yes.
 6 A I think that the medical team has a
 7 responsibility to do a workup on a child that comes
 8 in with an unexplained injury and part of that is
 9 calling DSS, working with them, making sure they
 10 have all the right information, doing everything we
 11 can to do a complete workup, as a way to help
 12 protect him. I --
 13 Q Okay, okay. And so the medical workup in
 14 conjunction with the work of the state child welfare
 15 agency --
 16 A Um-hmm.
 17 Q -- would then determine his most likely
 18 placement?
 19 A I would hope that a medical workup, being
 20 communicated well with the local DSS agency, would
 21 help in assuring a safe discharge.
 22 Q Okay, okay, okay. And you would agree
 23 that a safe discharge would be appropriate for a
 24 vulnerable child?
 25 MR. TODD: Objection.

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1 You go ahead and answer.
 2 THE WITNESS: You know, I think certainly
 3 we hope that whatever happens would be
 4 medically safe and stable for the child.
 5
 6 BY MR. HOOD:
 7 Q Okay. Now, you've been working in a
 8 hospital environment for -- for how long have you
 9 been at --
 10 A I started in January of '03.
 11 Q Okay. So at the time that this occurred,
 12 about six years; right?
 13 A Part time.
 14 Q Part time. And before that, had you ever
 15 worked for a county agency?
 16 A Not a DSS, but a county mental health,
 17 yes, in the school system, yes.
 18 Q So you had worked with children before you
 19 actually came to Levine?
 20 A Yes.
 21 Q Okay. And you had received training in
 22 regard to being able to spot child abuse; right?
 23 A Yeah -- yes.
 24 Q Okay. And you are aware that an
 25 unexplained subdural hematoma is not normal for a

Page 49	Page 51
1 three-month-old child? 2 A Yes, it wouldn't be normal. 3 Q Okay. And that in order for there -- in 4 order for there to be a safe discharge, you have to 5 know the etiology of that subdural hematoma to know 6 whether it's non-accidental trauma or some type of 7 medical condition? 8 MR. TODD: Objection. 9 MR. FRAWLEY: Objection to form. 10 THE WITNESS: No, I don't -- I don't think 11 an etiology is always able to be found. 12 BY MR. HOOD: 13 Q Okay. If a child comes in and it is a 14 bleeding disorder as opposed to child abuse, when 15 the child is discharged, they need to know there's a 16 bleeding disorder to be able to treat it in case it 17 crops up again, right? 18 A Yes. 19 Q And so if you are aware of the cause of 20 the subdural hematoma, you could help ensure a safe 21 discharge? 22 A Yes. 23 Q And if the subdural hematoma is caused by 24 child abuse and you put it back -- you put the child 25 back with the abuser, it's likely to happen again,	1 right. Well, now they call it the FBS or something. 2 And where did you get your master's 3 at? 4 A University of Georgia. 5 Q Oh, we're South Carolina fans. 6 A Sorry. 7 Q Be that as it may. 8 So you got your bachelor's from 9 William and Mary and you got your master's from 10 Georgia. 11 A Yes. 12 Q And when did you finish your master's? 13 A '95. 14 Q Okay. And then from '95 to 2002, you 15 worked either at a school or with a mental 16 hospital -- or a mental health facility, right? 17 A I had other jobs as well. 18 Q There's other jobs. But -- but some of that 19 time was spent with children -- 20 A Mm-hmm. 21 Q -- right? 22 A Yes. 23 Q And then you came to work in 2003 with 24 Levine Children's Hospital, or CHS? 25 A Yes.
Page 50	Page 52
1 isn't it? 2 MR. TODD: Objection. 3 MR. FRAWLEY: Form. 4 THE WITNESS: I don't know. 5 6 BY MR. HOOD: 7 Q Okay. Do you read literature? 8 A On occasion. 9 Q And you've been through four years and got 10 your bachelor's degree? 11 A Yes. 12 Q And you got your master's degree? 13 A Yes. 14 Q And you received your education over -- at 15 least you got a six-year degree, right? 16 A Mm-hmm. 17 Q Where did you get your bachelor's at? 18 A College of William and Mary. 19 Q Okay. Up in Virginia? 20 A Yes. 21 Q Very good college, right? 22 A I like to think so. 23 Q Division II football, but, you know ... 24 A No, no. 1-AA. 25 Q 1-AA. You're right, you're right, you're	1 Q Right. And part of that time was with 2 Levine Children's Hospital? 3 A Yes. 4 Q And that was working with children while 5 you were with Levine, right? 6 A Yes. 7 Q And so with all of that education and 8 training and experience and reading literature, 9 you've heard the term "recidivism" before, haven't 10 you? 11 A Yes. 12 Q And "recidivism" just means if it happened 13 once, it will probably happen again, right? 14 A Yes. 15 Q Now, my question to you is, haven't you 16 also seen literature that if someone abuses a child 17 and you put the child back into that home or back 18 into that situation, it's likely that the recidivism 19 will occur? 20 A I think there would be a concern about the 21 same environment, yes. 22 Q Okay. And in this particular situation, 23 this child was discharged back into the same 24 environment, wasn't he? 25 A He was discharged home, yes.

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1 Q Back into the same environment, right?

2 A I don't know who's present before, during,

3 after, but he was discharged home, yes.

4 Q Okay. With his mother and father?

5 A Yes.

6 Q The same people that had no explanation

7 for the bruise or the subdural hematoma, right?

8 A Mm-hmm.

9 MR. TODD: Okay. You need to answer --

10 We've I think everybody is getting your answer,

11 but the court reporter likes a verbal response.

12 THE WITNESS: Sorry, I'm sorry.

13 MR. TODD: And the videographer likes a -- to

14 be able to pick it up on the microphone.

15 THE WITNESS: Okay.

16 MR. TODD: I think we all understood your

17 answer.

18 MR. HOOD: And what we may do, if you-all

19 want to, I don't know what we're going to do

20 from a housekeeping perspective, but if you

21 want to take a break like every hour or so, and

22 I don't care. I'm perfectly fine to keep

23 going.

24 MR. FRANLEY: How much time we've been

25 going?

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1 THE VIDEOGRAPHER: 85 minutes.

2 MR. HOOD: We've been going 85?

3 THE VIDEOGRAPHER: No, that's how long the

4 tapes are.

5 MR. HOOD: Okay. How long --

6 MR. TODD: You need a break?

7 THE WITNESS: Yeah, a break would be nice.

8 (Brief recess.)

9 EXAMINATION

10 BY MR. HOOD:

11 Q I want to go back to what your role is, if

12 that's okay.

13 A Okay, sure.

14 Q And I know you've got a master's and --

15 and I believe -- and correct me if I'm wrong, please

16 correct me if I'm wrong.

17 A Mm-hmm.

18 Q It's my understanding that you're a

19 liaison between the medical team providing care for

20 Owen in the hospital and the DSS workers from South

21 Carolina.

22 A Yes.

23 Q Okay. Now, is it your testimony -- and

24 I'm not saying you've testified this way, I'm just

25 trying to find out.

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1 A Right, sure.

2 Q Is it your testimony that you have no

3 decision-making ability in that regard?

4 MR. TODD: Objection.

5 THE WITNESS: Decision-making ability in

6 what regard?

7 BY MR. HOOD:

8 Q If anything, all you are is just a

9 messenger back and forth between the two of them.

10 A No, I can give my opinion to the doctors

11 or -- and say that if there's anything in

12 particular.

13 Q Okay. Well, in this particular case, what

14 insight did you give to the doctors?

15 A I don't recall, off the top of my head,

16 the conversation, I mean...

17 Q Let's look at this. The only thing that I

18 can see that really has your stuff on there is

19 this -- where you -- you had your notes.

20 A This one?

21 Q Yes. And I think that was Exhibit 1.

22 A Um-hmm.

23 Q And that actually has Laura Newmark at the

24 bottom of it, right?

25 A Right. Yes, that's my signature.

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1 Q Right.

2 A '93 or '94?

3 Q Yes. '93.

4 A Okay.

5 Q And we'll get to the other.

6 But it says, "DSS to staff determine

7 likely to allow discharge home with parents, child

8 maltreatment coordinator has seen child as well,

9 nursing following updated RN Tracy will follow."

10 A That's "neurosurg," not "nursing."

11 Q Okay, I'm sorry, neurosurgery.

12 And neurosurgery, in this case that

13 was Dr. Scott McClanahan then, right?

14 A I think I saw his name, I don't remember.

15 Q Okay. Now, would you have spoken to

16 neurosurgery?

17 A Not typically, no.

18 Q Is -- is -- and this is where I'm trying

19 to get an understanding. What is the CHIPS team at

20 LCH?

21 A That is the children's hospital inpatient

22 services.

23 Q Okay.

24 A So it's the staff physicians, the staff

25 pediatricians and the residents that are rotating

Page 57	Page 59
1 through that week or month. 2 Q Okay. And when you say "staff 3 pediatricians," are they basically pediatric 4 hospitalists? 5 A No, they're not hospitalists. They're 6 inpatient physicians. There are also hospitalists 7 that are different. They are like another team. 8 Q But the CHIPS team, that would be 9 pediatricians. 10 A Yes. 11 Q Okay. 12 A The attendings. There might be some 13 family practice residents. 14 Q Okay. 15 A At times. 16 Q Because I've seen a Mr. Nugent, but I 17 think he was a resident. 18 A Whitney? It's a she. 19 Q A Whitney? 20 A I think she was a resident at the time. I 21 don't know if she's here anymore. 22 Q And then I've seen Dr. Courtlandt and then -- 23 A She would have been the attending. 24 Q Right. Then there was a -- it looks like 25 Sheldon Edelman or something.	1 A I don't believe that I've never seen that 2 used in my time here. 3 Q Okay. And let me -- let me -- 4 A But that's only for those -- that short period 5 of time. 6 Q Sure. 7 MR. HOOD: Okay. Let's have the 8 Administrative Order -- let's have that marked 9 as Exhibit 7, I believe. 10 THE WITNESS: Thank you. 11 (Administrative Order marked as Plf's Exh 12 7 for identification.) 13 MR. HOOD: And then Exhibit 8 is the 14 Certification for Re -- Retention of Custody, 15 that's number 8. 16 (Certification for Retention of Custody 17 marked as Plf's Exh 8 for identification.) 18 MR. HOOD: Let's have Number 9 -- the Examining 19 Physician's Certification. 20 (Examining Physician's Certification 21 marked as Plf's Exh 9 for identification.) 22 BY MR. HOOD: 23 Q Okay. Now, this is an administrative 24 order from the County of Mecklenburg, and it is -- 25 it was an attachment to the Policy of Juvenile
Page 58	Page 60
1 A I don't know. 2 Q But they were all from the CHIPS team. 3 A Okay. 4 Q And it's your testimony that most of the 5 CHIPS team, it was either residents who could be 6 pediatricians or family practice residents. 7 A Right. 8 Q Or pediatricians who were employees of the 9 hospital. 10 A Yes. 11 Q Okay. And as far as a -- if -- if -- if a 12 -- if you're the liaison and you're talking to DSS 13 and they are like, okay, we are going to discharge 14 home, and then you've got the CHIPS saying, you 15 can't discharge them home. 16 A Right. 17 Q You can actually override DSS. 18 A No. 19 Q So it's your testimony under oath that 20 you-all have nothing available to you to -- to keep 21 them from being discharged home if DSS has to 22 discharge them home? 23 A There is that 12-hour emergent custody 24 order that can be used. 25 Q Sure.	1 Suspected of Being Abused or Neglected. And it 2 says, "Administrative order, retention of custody of 3 juvenile suspected to be abused pursuant North 4 Carolina General Statute Section 7B-308." 5 Do you see that? 6 A I do. 7 Q It says, "Pursuant to this statute, it is 8 hereby ordered that Carolinas Medical Center, 9 Presbyterian Hospital, Mercy Hospital, Mercy 10 Hospital South, University Hospital, and 11 Presbyterian Matthews Hospital are authorized to 12 retain custody of a juvenile, anyone under the age 13 of 18 when the examining physician certifies in 14 writing that the juvenile suspected of being abused 15 and that the juvenile should remain in for medical 16 treatment, or that according to the juvenile's 17 medical evaluation, it is unsafe for the juvenile to 18 return to the parent, guardian, custodian or 19 caretaker." 20 Do you see that? 21 A I do. 22 Q So under this administrative order, if the 23 CHIPS teams or someone on the CHIPS team doesn't 24 think that is it safe for the child to be put back 25 into the custody of the parents, they can invoke

Page 61

1 this, can't they?

2 A I --

3 MR. TODD: Objection.

4 THE WITNESS: I guess so.

5 MR. HOOD: Okay.

6 MR. TODD: When you say "invoke this," you

7 mean invoke this procedure?

8 MR. HOOD: Sure.

9 MR. TODD: The question is, it's just they

10 can't answer the order.

11 MR. HOOD: Right, right, right. I'm

12 sorry. I apologize.

13 Invoke the procedure, I apologize; okay?

14 THE WITNESS: Sure.

15 BY MR. HOOD:

16 Q And this is I think what you're talking

17 about, "Custody assumed by this authority may not

18 exceed 12 hours from the time of day contained in

19 the examining physicians certification without an

20 additional court order."

21 Do you see that?

22 A I do.

23 Q And you had said earlier that you thought

24 there was a short period of time.

25 A Right.

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1 Q This appears to say that it should be 12

2 hours.

3 A Yes.

4 Q Is that what you were talking about?

5 A Yes.

6 Q Okay. And it says "without an additional

7 court order"; right?

8 A Yes.

9 Q You can get additional court orders, can't

10 you?

11 MR. TODD: Objection.

12 THE WITNESS: I don't -- I don't know. I

13 guess so.

14 BY MR. HOOD:

15 Q Two paragraphs later it says, "The purpose

16 of this order is to allow for the legal retention of

17 custody in emergency cases long enough for the

18 Department of Social Services to investigate the

19 case and, if appropriate, seek a court order for

20 custody in accordance with North Carolina law."

21 Do you see that?

22 A I do.

23 Q So, this was a South Carolina case;

24 right?

25 A Yes.

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1 MR. TODD: Owen C. [REDACTED] was a South

2 Carolina case.

3 MR. HOOD: I'm sorry, I'm sorry. I

4 apologize.

5 MR. TODD: I think you --

6 MR. HOOD: I'm just trying to straight --

7 you're right, though.

8 BY MR. HOOD:

9 Q Owen C. [REDACTED] was a South Carolina

10 resident; right?

11 A Yes.

12 Q You were working with South Carolina DSS?

13 A Yes.

14 Q Did the fact that he was a resident of

15 South Carolina and you were working with South

16 Carolina DSS play any part in the administrative

17 order not being used?

18 A No.

19 Q So you could have used it -- or someone

20 could have used the things that are contained in the

21 administrative order, even though he was a resident

22 of South Carolina and you were dealing with South

23 Carolina DSS?

24 MR. TODD: Objection.

25 THE WITNESS: I -- I guess so.

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1 BY MR. HOOD:

2 Q Okay. Is it -- would it be a more

3 appropriate answer, you're not sure one way or the

4 other?

5 A Yes.

6 Q Okay. And who would be the person that

7 would know?

8 A I would assume if a physician wanted to

9 get this procedure and invoke it, they would

10 probably talk to somebody in the legal department,

11 but I don't ...

12 Q Okay.

13 A But it's not my ...

14 Q Okay. Underneath that it says, "Examining

15 physician should utilize the examination physician's

16 certification form on the reverse side of this page

17 whenever a juvenile is retained under the authority

18 of this order; right?"

19 I mean, that's what it says.

20 A Sure.

21 Q And then it says, "A copy of the examining

22 physician's certification must be given to the

23 juvenile's parent, guardian, custodian or caretaker,

24 the Department of Social Services, and the chief

25 district judge for placement in the juvenile's

Page 65

1 judicial record."
 2 Do you see that?
 3 A I do.
 4 Q Now, if you go to Exhibit 9, there's also
 5 an Exhibit 8, but if you look at Exhibit 9, it says,
 6 "examining physician's certification."
 7 A Right.
 8 Q And it has on there the name of the
 9 juvenile address, and then it has, "The undersigned
 10 examining physician hereby certifies that there's
 11 good cause to suspect that the juvenile was abused
 12 and either should remain for medical treatment for
 13 it's unsafe for the juvenile to return to his
 14 parent, guardian, custodian or caretaker."
 15 Do you see that?
 16 A I see that.
 17 Q Now, is it fair to say that you work with
 18 the medical team to determine whether it's unsafe
 19 for a juvenile to return to his parent, guardian,
 20 custodian or caretaker?
 21 A I -- yeah, probably.
 22 Q And so you have input because you speak to
 23 the parents; right?
 24 A Mm-hmm.
 25 Q And you ask them whether -- I mean, you

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1 knew that there was this bump on his head for which
 2 there was no explanation; right?
 3 MS. BROOKS HOLMES: Objection.
 4 THE WITNESS: That was in the note. I
 5 didn't see one. I wouldn't have necessarily
 6 asked about it or had a discussion about it --
 7 MR. HOOD: Well --
 8 THE WITNESS: -- because it was not on his
 9 head at the time of admission.
 10 BY MR. HOOD:
 11 Q Sure. Children who are abused, the first
 12 time it may not be caught, but maybe the second
 13 time; right?
 14 MS. BROOKS HOLMES: Objection.
 15 THE WITNESS: I think you could find it --
 16 yeah, I don't ...
 17 BY MR. HOOD:
 18 Q Okay. And so if you have an unexplained
 19 bump on the head and a week later an unexplained
 20 subdural hematoma, that was something that you would
 21 have known about before this child was discharged;
 22 right?
 23 MR. TODD: Objection.
 24 THE WITNESS: No, it didn't -- there was
 25 no week ahead of time, there was no

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1 visualization, it was a comment about a bump.
 2 It sounds like the report was made about the
 3 bump.
 4 BY MR. HOOD:
 5 Q You had read Katie Harrison's note from
 6 Sunday when you came on to work when you were
 7 staffing patients on Monday; right?
 8 A I would have read the note; yes.
 9 Q And so you would have been aware that the
 10 maternal grandmother had reported she had picked
 11 baby up from dad and uncle and dad said they had no
 12 idea why the child had a bump on his head; right?
 13 A It would have been in the note, yes. I --
 14 Q Which you would have read?
 15 A Probably.
 16 Q And that you would have been aware that
 17 the child had a subdural hematoma.
 18 A Um-hmm.
 19 Q And you would have been aware that there
 20 was not an explanation for the bump or the subdural
 21 hematoma?
 22 A I would have been aware that they couldn't
 23 determine the cause of the subdural and I would have
 24 read the note about the bump.
 25 Q Okay. But when you have those two things

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1 and then you're working with the medical team, you
 2 would have had input into whether it was unsafe for
 3 the juvenile to return to his parent, guardian,
 4 custodian or caretaker; right?
 5 A I would have had the information and the
 6 team would have had the information.
 7 Q Okay. And -- and -- as you said, you got
 8 a master's in social worker, you're not just a bump
 9 on the log, you're a valuable member of the team,
 10 aren't you?
 11 A I am part of the team, yes.
 12 Q And the team helps determine whether it's
 13 safe for the juvenile to return to his parent,
 14 guardian, custodian or caretaker; right?
 15 A I think --
 16 (Intercom interruption.)
 17 THE WITNESS: I think we do the medical
 18 workup, share the information with DSS, and
 19 work with them if we have grave concerns about
 20 safety, yes, I suppose so.
 21 BY MR. HOOD:
 22 Q Okay. So what's the difference between
 23 "grave concerns" and the fact that you don't know
 24 whether it was child abuse or not?
 25 MR. TODD: Objection.

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1 MR. FRAWLEY: Objection to form.
 2 THE WITNESS: I -- I don't know.
 3 BY MR. HOOD:
 4 Q Okay. And so if you don't know, once
 5 again, why not err on the side of caution and make
 6 sure this child is put into the safest environment
 7 possible?
 8 MR. TODD: Objection.
 9 MR. FRAWLEY: Form..
 10 THE WITNESS: I think in completing the
 11 workup and sharing information with DSS
 12 (Interroom interruption:)
 13 THE WITNESS: -- that will happen a couple
 14 more times.
 15 MR. HOOD: Okay.
 16 THE REPORTER: I think in completing the
 17 workup and --
 18 THE WITNESS: And sharing the information with
 19 DSS, is what I think is what I said.
 20 That we would have to trust and work with
 21 DSS to complete the investigation and the home
 22 assessment that we can't do because we're not
 23 there.
 24 BY MR. HOOD:
 25 Q Right. And then the medical -- the team

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1 at LCH works in conjunction with DSS to ensure that
 2 there is a safe discharge for the juvenile to return
 3 to his parent, guardian, custodian or caretaker?
 4 A I think it's fair to say we look to them
 5 for ultimate discharge and disposition when the
 6 child is medically stable to leave the hospital.
 7 Q - And if you look to them for the ultimate,
 8 if you don't agree with them, you can invoke the
 9 administrative order?
 10 A I suppose so.
 11 Q Okay. I'm looking at the next note, which
 12 is CMC0094 at the bottom.
 13 A Okay.
 14 Q I think before we begin this one, it
 15 appears that it says "Laura Newmark, MSW" at the
 16 bottom.
 17 Do you see that?
 18 A I do.
 19 Q And it says, "Met with parents at bedside
 20 to confirm DSS visit, met with worker from York
 21 County 12/6 and signed safety plan, anticipate
 22 discharge hopefully this date."
 23 Do you see that?
 24 A I do.
 25 Q And that's on Monday, December 7th, 2009?

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1 A Yes.
 2 Q Now, I believe you said earlier that --
 3 that Miss Harrison was a weekend worker.
 4 Did you also come in on 12/6 in
 5 addition to 12/7?
 6 A No, I wouldn't have been here on a Sunday.
 7 Q Okay. Well, then who met with the worker
 8 from York County on 12/6 and signed the safety plan?
 9 A The parents. My note, it says, "Met with
 10 parents at bedside to confirm DSS visit. Met with
 11 worker from York County 12/6 and signed safety
 12 plan."
 13 That's me reporting that they met
 14 with DSS and signed the safety plan.
 15 Q Okay.
 16 A It's just not as clear as it could be.
 17 Q Sure.
 18 A We have not a lot of room to write all of
 19 our notes.
 20 Q Sure. Absolutely. So I'm assuming that
 21 the hospital would then, to ensure that it was done
 22 and to ensure that the parents were accurate
 23 historians, they would that obtained that safety
 24 plan, right?
 25 A We normally don't get a copy of the safety

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1 plan.
 2 Q Why not?
 3 A Some counties don't share them with us.
 4 Sometimes we just want to make sure the parents plan
 5 that they show us a copy. But some counties say
 6 it's their stuff and their property, so they don't
 7 allow the hospital to have copies. Every county
 8 seems to be a little different.
 9 Q You've heard the term "leaving the fox in
 10 charge of the henhouse" before, haven't you?
 11 A Yes, I have.
 12 Q So if an abuser is the person that you're
 13 going to find out whether things are done --
 14 A Um-hmm.
 15 Q -- how do you know that it's accurate or
 16 not?
 17 MR. TODD: Objection to form.
 18 MR. FRAWLEY: Form..
 19 THE WITNESS: In a typical case, I don't
 20 remember off the top of my head, I either have
 21 the family show it to us --
 22 BY MR. HOOD:
 23 Q Okay.
 24 A -- so we actually see it, or when I follow
 25 up with DSS the next morning and find out whoever

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1 the assigned worker is, they're very clear with me
 2 that they've signed a safety plan. And I also think
 3 that --
 4 Q Sure.
 5 A -- they came the day before and there is a
 6 social worker note that somebody else accompanied
 7 them upstairs.
 8 Q Okay, and we'll go through all of it.
 9 A Okay.
 10 Q And please point that out when we get
 11 there.
 12 A I guess I'm just saying, fox and henhouse,
 13 I would have confirmed it with DSS.
 14 Q Because you-all do confirm it one way or
 15 the other --
 16 A Sure.
 17 Q -- to make sure that there's an
 18 independent verification that it was done?
 19 A Sure.
 20 Q Okay. It says, "Owen lives with parents,
 21 no other children. Does have Medicaid, WIC,
 22 transportation, frequent babysitting with maternal
 23 grandmother. Both parents employed. Father
 24 finished tenth grade. MSW discussed safe sleeping.
 25 Other parenting education available for parents

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1 prior to discharge. Parents with questions about
 2 DSS investigation." And it says, "MSW explained."
 3 That's you, right?
 4 A That's me.
 5 Q You explained that DSS will complete home
 6 visits upon discharge, will assist with medical
 7 follow-up if needed, no other questions will follow
 8 for safe discharge plan.
 9 A Yes.
 10 Q Okay. When you say "no other questions,"
 11 then it says "will follow for safe discharge plan."
 12 A Um-hmm.
 13 Q What is "safe discharge plan?"
 14 A That's generally --
 15 THE WITNESS: Excuse me, I just kicked
 16 someone.
 17 That would be me working with DSS to
 18 ensure that DSS has approved a discharge plan
 19 for this child.
 20 BY MR. HOOD:
 21 Q Okay. Then it says, "updated RN, MD."
 22 Do you see that?
 23 A Yes.
 24 Q And so you would have then spoken to a
 25 nurse, then would you have spoken to a medical

Page 75

1 doctor?
 2 A Yes.
 3 Q And would the medical doctor have been
 4 somebody on the CHIPS team?
 5 A Probably so, yes.
 6 Q Okay.
 7 A Since they are the attending team.
 8 Q Okay. If we go to the next sheet, this is
 9 -- this at the top says, "Sunday, December 6, 2009,
 10 6:44 p.m."
 11 A Right.
 12 Q This is once again Katie Harrison and I
 13 believe this was on the Sunday before you came in on
 14 a Monday, right?
 15 A Yes.
 16 Q And it says, "1830 MSW received phone call
 17 from the Shandra Tyler, DSS York County."
 18 Do you see that?
 19 A Yes.
 20 Q "Miss Tyler will be coming to the hospital
 21 to do an assessment." Do you see that?
 22 A Yes.
 23 Q "MSW will notify Sherry Deedrick, MSW,
 24 BDSW."
 25 A Right.

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1 Q Sherry, does she work for LCH?
 2 A Sherry?
 3 Q Yeah.
 4 A She works in the emergency department here
 5 at CMC.
 6 Q Okay. "MSW discussed with Sara, RN, who
 7 has the patient. Sara does not feel parents are a
 8 flight risk and will let parents know that the DSS
 9 worker is coming out to meet with the parents. MSW
 10 will follow as needed. For any questions this
 11 evening, please contact Sherry Deedrick."
 12 Do you see that?
 13 A I do.
 14 Q Is there anything about a safety plan
 15 being done there or reference to a safety plan?
 16 A No.
 17 Q Okay.
 18 A It just says that DSS is coming.
 19 Q Sure.
 20 Then we go to the one at the bottom,
 21 it says 98 at the bottom.
 22 A Okay.
 23 Q Because we have not gone over this one.
 24 A Okay.
 25 Q And this is December 6th at 5:30 p.m.

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1 MR. TODD: I think that's when it was
2 printed.
3 THE WITNESS: That's when it was printed.
4 MR. HOOD: That's when it was printed?
5 You're right, it's 12/6/2009 at 1500.
6 THE WITNESS: Right.
7 BY MR. HOOD:
8 Q And I think this one, it may even be a
9 copy of another one, but my thing is you had talked
10 earlier about this safety plan --
11 A Um-hmm.
12 Q -- that was done by DSS -- and you would
13 have done -- or somebody would have done an
14 independent verification that it was done.
15 A I -- I would think so, yeah.
16 Q Okay.
17 A I don't recall having the exact
18 conversation but it's pretty standard.
19 Q Where's the independent verification that
20 the safety plan is done?
21 A I don't have it written down about the
22 safety plan, but I did work with Christa who would
23 have been the assigned worker, whoever I talked with
24 Monday morning.
25 Q Okay. I'm looking at Exhibit 3 again.

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1 A Okay.
2 Q Okay? I'm just going -- it's 12/7/09. It
3 would be on the second page. This is what we got
4 from DSS.
5 A Okay.
6 Q It says, "Face-to-face with child client
7 attempted, Dirvondra Hill outside talking, informed
8 family, not home, knocked at mobile home, no sound
9 from inside, called phone number, voice mail of
10 Charlotte Williams left message to call case
11 manager."
12 Do you see that?
13 A I do.
14 Q 12/7/09, "Staffing with supervisor Christa
15 Hinnant, CDSS 3062 case staff with legal."
16 Do you see that?
17 A I do.
18 Q Then 12/7/09, "Staffing with supervisor;
19 Krista Hinnant. Current situation, owen has two
20 subdural hematomas. One would indicate
21 non-accidental trauma, social worker has concern CT
22 shows non-accidental trauma, no doctor is saying
23 injuries are non-accidental, hospital has sitter."
24 Do you see that?
25 A I do.

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1 Q Now, the hospital has a sitter for a
2 reason; right?
3 A It's -- yes.
4 Q In cases of potential or suspected child
5 abuse, they have a sitter in the room with the baby;
6 right?
7 A When they are getting a non-accidental
8 trauma workup, yes, we generally have a sitter in
9 the room.
10 Q The sitter was there the whole time that
11 Owen was there; right?
12 A I -- I don't know the specifics, but generally
13 we would have a sitter in the room.
14 Q Okay. It says, "Parent contact supervise,
15 nurse said it is non-accidental." Do you see that?
16 A I do.
17 Q You don't know what nurse she was speaking
18 to that said it was non-accidental?
19 A No.
20 Q "Grandmother saw a bump on baby's head a
21 few days ago, baby with uncle and dad, Owen is ready
22 for discharge. Recommendations: Get medical
23 record, records to refer to the law enforcement, law
24 enforcement incident, public index, follow up with
25 doctor, meet with grandmother, go to home and assess

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1 home, talk to grandmother separately, any concerns
2 talk to Laura McDowell, does doctor think trauma is
3 non-accidental."
4 Do you see that?
5 A Yes.
6 Q Now, who is Laura McDowell?
7 A Laura McDowell was another social worker
8 that used to be here.
9 Q "Laura McDowell, social worker over at
10 Levine, Krista informed Laura that DSS would need to
11 speak with doctor or hospital social worker could
12 speak with doctor to determine if Owen's hematomas
13 were accidental or not, Laura will follow up with
14 doctor."
15 Do you see that?
16 A I do.
17 Q At 11:50 she documents, "Received a phone
18 call from Laura Newmark." That's you; right?
19 A Yes.
20 Q "She talked with pediatric staff at this
21 time, the hospital cannot determine whether injuries
22 are accidental or non-accidental." Do you see that?
23 A Yes. I do.
24 Q Now, do you recall having those
25 conversations and them saying "we don't know if it's

Page 81

1 accidental or non-accidental?"

2 A I don't recall specifics of the

3 conversation.

4 Q What about the generalities of the

5 conversation?

6 A I don't have any clear recollection.

7 Q In going through the medical records and

8 looking at this and thinking back, do you have a

9 general idea about what you would have determined

10 whether it was accidental or non-accidental?

11 A I'm sorry, I didn't follow you.

12 Q Sure. In this particular case, I believe

13 you testified earlier that you would have had some

14 conversation with a doctor, right?

15 A Yes.

16 Q Krista Hinnant says -- she documents that

17 she has spoken to you.

18 A Okay.

19 Q Now, I'm not saying you did or you didn't,

20 but she's documented that?

21 A Sure.

22 Q And then I think you've documented that

23 you did speak to Krista Hinnant, right?

24 A Right, sure.

25 Q And then in hers it says, "The hospital

Page 82

1 cannot determine whether injuries are accidental or

2 non-accidental."

3 A Okay.

4 Q It appears that that information is coming

5 from you, right?

6 A Right.

7 Q My question is, do you -- how did you get

8 that information that they couldn't determine one

9 way or the other?

10 A I would have reviewed his progress notes,

11 the notes from the doctors --

12 Q Okay.

13 A -- specialists, subspecialists, and talked

14 with the physician.

15 Q And when you talked to the physician,

16 you're talking about somebody that is a member of

17 the CHIPS team?

18 A Yes.

19 Q Okay. After that it says, "Owen's eye

20 exam and skeletal survey were negative."

21 Do you see that?

22 A Yes, I do.

23 Q And now, you probably don't know this, but

24 I'm going to ask, do you know if he was seen by a

25 pediatric ophthalmologist?

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1 A I don't know. I know there are pediatric

2 ophthalmologists on staff.

3 Q Okay.

4 A I don't know specifically who saw him.

5 Q Do you know if they did a direct eye exam

6 or indirect eye exam?

7 A I wouldn't know.

8 Q Do you know if they used fluoroscopy or

9 not?

10 A I would not know.

11 Q Okay. Says, "Going to repeat CT today,

12 because Owen's head appears to be swollen. Family

13 has no clear history of trauma; however, hospital

14 cannot rule out trauma."

15 Do you see that?

16 A I do.

17 Q Now, if you can't rule out trauma, how can

18 a child be medically discharged back to his parents?

19 MR. TODD: Objection.

20 THE WITNESS: I -- he was medically ready

21 for discharge.

22 BY MR. HOOD:

23 Q "Medically ready" does not mean safe for

24 the juvenile to the return to his parent, guardian,

25 custodian or caretaker, though, does it?

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1 MR. TODD: Objection.

2 THE WITNESS: They're two different

3 things, yes.

4 BY MR. HOOD:

5 Q Okay. And I understand "medically

6 stable," that's like if he came in with a subdural

7 hematoma, they could have some kind of sequelae or

8 something -- a physical manifestation or some kind

9 of something that caused a medical condition and

10 they've got to treat that, right?

11 A Right.

12 Q And -- and he then becomes stable, his vitals

13 were okay, subdural -- the repeat CT shows the

14 subdural is being absorbed, and -- and he is, by all

15 intents and purposes, okay to discharge from a

16 medical standpoint.

17 A Yes.

18 Q Now, but as you said, it's different than

19 safe to discharge to return to parent, guardian,

20 custodian or caretaker, though, right?

21 A I don't think we can predict the future on

22 what is or isn't going to happen in working with

23 DSS.

24 Q And I agree, you don't have a crystal

25 ball.

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1 A Right.
 2 Q There is no way to say something is going
 3 to happen tomorrow or 30 days from now or six months
 4 from now; right?
 5 A Um-hmm.
 6 Q You just got to look at things that --
 7 that are going to be safest for the child; right?
 8 MR. TODD: Objection.
 9 MR. FRAWLEY: Object to the form.
 10 MS. BROOKS HOLMES: Objection.
 11 THE WITNESS: I think we do our best.
 12 BY MR. HOOD:
 13 Q And I know you do your best, and your best
 14 is doing your best to ensure the safety of the
 15 child; right?
 16 MR. TODD: Objection.
 17 THE WITNESS: I think we work with DSS and
 18 the resources and the communities that we have
 19 available for that child.
 20 BY MR. HOOD:
 21 Q To safely discharge the child?
 22 A As -- I -- we hope so.
 23 Q Okay. But in this case didn't happen, did
 24 it?
 25 MR. TODD: Objection.

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1 MR. FRAWLEY: Object to form.
 2 MS. BROOKS HOLMES: Objection.
 3 THE WITNESS: I don't know.
 4 BY MR. HOOD:
 5 Q The child came back 30 days later and is
 6 now blind and catastrophically brain-injured; right?
 7 MS. BROOKS HOLMES: Objection.
 8 THE WITNESS: I don't know how Owen is
 9 today.
 10 MR. HOOD: I'll represent to you that he's
 11 blind and catastrophically brain-injured.
 12 MR. FRAWLEY: Is that a question?
 13 MR. HOOD: I will represent to her that --
 14 that -- that he is -- and you can obviously
 15 object --
 16 MR. TODD: No, I mean, we're not
 17 contesting that Owen is in bad shape today. My
 18 objection is it's an argumentative question.
 19 I mean, we'll stipulate that he came back
 20 in January, but -- I mean -- what is -- if that's
 21 your question, you know, then there's no question
 22 about that.
 23 MR. HOOD: And I was just going to
 24 represent to her that that's what happened.
 25 MR. TODD: Yeah.

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1 MR. HOOD: And I didn't want it to be
 2 something that I was saying that it was going
 3 to be something that was some kind of a lie or
 4 that she thought I was making something up. I
 5 wanted to make sure that she understood and I
 6 would represent to her as an officer of the
 7 court that that is the way that it is.
 8 MR. TODD: Yeah.
 9 MR. HOOD: And then I was going to ask her
 10 questions based -- and this is my question, and
 11 feel free to say what you're going to say.
 12 BY MR. HOOD:
 13 Q Based on the fact that he did come back in
 14 this shape and his father has pled guilty to doing
 15 that from shaking him 30 days later, wouldn't you
 16 agree that it wasn't safe to discharge him home to
 17 his parents in December 2009?
 18 MR. TODD: Object to the question.
 19 MR. HOOD: Okay.
 20 MS. BROOKS HOLMES: Objection.
 21 MS. HOLMES: Objection.
 22 MR. TODD: All right. We'll stipulate all
 23 those things we said, but the question --
 24 MR. HOOD: Sure.
 25 MR. TODD: -- is still objectionable for

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1 other reasons.
 2 MR. HOOD: Sure.
 3 THE WITNESS: Right.
 4 MR. TODD: Okay.
 5 THE WITNESS: You know, in hindsight, but
 6 at the time of discharge in December, we were
 7 working with DSS and the community resources
 8 and the workup as best we could.
 9 BY MR. HOOD:
 10 Q Okay. And so is it your testimony that the
 11 best that you could is not ruling out child abuse?
 12 MR. TODD: Objection.
 13 MS. BROOKS HOLMES: Objection.
 14 THE WITNESS: I think part of the medical
 15 workup is to rule out or rule in, and the
 16 findings were limited, then non-accidental
 17 trauma couldn't be proven one way or the other.
 18 BY MR. HOOD:
 19 Q Okay. And if it isn't proven one way or
 20 the other, how do you work with DSS to ensure a safe
 21 discharge back to the home?
 22 MR. TODD: Objection.
 23 THE WITNESS: We --
 24 MR. TODD: You go ahead and answer.
 25 THE WITNESS: We share with them the

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1 information that we have on his medical
2 condition.
3 BY MR. HOOD:
4 Q And what you would have shared is that we
5 can't rule it in one way or the other, so discharge
6 him, it's our opinion -- medical opinion you can
7 safely discharge him?
8 A No.
9 MR. FRAWLEY: Objection to form.
10 THE WITNESS: What we would have said was
11 we can't rule it out one way or the other, the
12 report was made, we would like to see you-all
13 continue your investigation and do the home
14 assessment.
15 MR. HOOD: Okay. As you said before,
16 there is no crystal ball here; right?
17 MS. BROOKS HOLMES: Objection.
18 MR. TODD: No, we agree with that one.
19 We -- we -- we agree with that question one
20 hundred percent.
21 THE WITNESS: I don't know that a "crystal
22 ball" was my words, but ...
23 MR. HOOD: You would agree that there's --
24 THE WITNESS: I would agree that we can't
25 accurately predict the future.

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1 BY MR. HOOD:
2 Q Right. And what you have to do is, you
3 have to look at a lot of different factors,
4 including history, statistics, literature, training,
5 and your experience in the hospital; right?
6 A Me personally?
7 Q And the team.
8 A I think we would do the full workup, yeah,
9 experience, history for this admission, those
10 things.
11 Q And because you can't always predict
12 what's going to happen, you don't know whether the
13 child could have been abused 30 minutes after
14 discharge, 30 days after discharge, or never being
15 abused?
16 MR. TODD: Objection.
17 THE WITNESS: I'm sorry ...
18 MR. HOOD: Sure.
19 THE WITNESS: I didn't follow you.
20 MR. HOOD: It's my fault, I'm thick, and I
21 apologize for that.
22 BY MR. HOOD:
23 Q You don't know whether the child -- we've
24 stipulated or I think we've all agreed that the
25 child came back within about 30 days, somewhere in

Page 91

1 that time frame.
2 A Okay.
3 Q But whether it was 30 days or 30 minutes,
4 three months or three years, there is no predicting
5 if someone is going to be abused again; right?
6 MR. TODD: Objection.
7 MS. BROOKS HOLMES: Objection.
8 MR. FRAWLEY: Object to the form.
9 THE WITNESS: I do not believe we could
10 accurately predict that, no.
11 BY MR. HOOD:
12 Q And so what you have to do is then you
13 have to -- you as a social worker are aware of --
14 I'm going to use the nomenclature again, or
15 terminology, the best interests of the child --
16 MR. TODD: Objection.
17 BY MR. HOOD:
18 Q -- you've heard that before; right?
19 A I have heard "in the best interests of the
20 child."
21 Q Okay. And you would agree that when you
22 discharged this child, that in the opinion of the
23 team, including you and the medical doctors, that it
24 was safe for the juvenile to return to his parent,
25 guardian, custodian or caretaker?

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1 MR. TODD: Objection.
2 You can go ahead and answer.
3 THE WITNESS: I think we believed that he
4 was medically stable and able to go home with
5 DSS follow-up to complete the investigation,
6 yes.
7
8 BY MR. HOOD:
9 Q And -- and because you knew that this DSS
10 follow-up was going to take some time, the child was
11 going to be in the custody of his parents for some
12 length of time before this investigation could be
13 completed; right?
14 A DSS has certain time limits, yes, on
15 completing an investigation.
16 Q And because there is no crystal ba- -- or
17 there is no way to predict or foreshadow what's
18 going to occur, you don't know whether the child
19 could be abused immediately or never again; right?
20 MR. FRAWLEY: Object to the form.
21 THE WITNESS: Right.
22 BY MR. HOOD:
23 Q And so if knowing that information,
24 you've got to assume that it is safe for the
25 juvenile to return since you don't know whether he

Page 93

1 could be abused immediately or not?

2 MR. TODD: Objection.

3 MR. FRAWLEY: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. HOOD:

6 Q Okay, okay. Good. Thank you.

7 Owen was to return for follow-up, I

8 think, for the skeletal survey.

9 A Mm-hmm.

10 Q Who would have been the person from Levine

11 who would have followed up?

12 A We -- I don't know. Generally, if DSS is

13 involved, we ask to make sure that the child gets

14 the medical follow-up he's supposed to.

15 Q Okay.

16 A I don't know of any particular point

17 person who would have verified that.

18 Q Okay. I've -- I've gotten this, which

19 appears to be some documentation from the social

20 worker department or the --

21 A Yes.

22 Q -- but I haven't seen it after like 12/6,

23 12/7, that kind of thing, and I don't know if there

24 was any follow-up in the month of December that

25 would have been documented.

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1 A We are in-patient social workers.

2 Q Okay.

3 A So once a child is discharged, we don't

4 generally have any contact with the family or

5 patient.

6 MR. FRAWLEY: "This" you're referring to,

7 for the record, is Exhibit 1?

8 MR. HOOD: Yes. Exhibit 1, I apologize.

9 And just for the record, Exhibit 1 is -- I

10 think it's Bates stamp our numbers, CMC92

11 through 97.

12 BY MR. HOOD:

13 Q So do you-all have -- you've heard the

14 term "continuum of care"?

15 A Um-hmm.

16 Q Do you have someone in the social worker

17 department with Levine that will ensure continuum of

18 care post-discharge?

19 A We are -- clinical care management social

20 workers in-patient social workers only.

21 Q Okay. And so is it fair to say you don't

22 know whether there is somebody that does outpatient

23 social work to follow someone that's discharged?

24 A There are outpatient social workers in

25 clinics, if the particular patient goes to one of

Page 95

1 the CMC clinics. I don't know about places in South

2 Carolina, I don't -- but there are other social workers --

3 outpatient social workers.

4 Q Okay, okay.

5 (Pause.)

6 MR. HOOD: Let's have this marked as --

7 what exhibit are we up to, 10?

8 THE REPORTER: 10.

9 MR. HOOD: Let's have this marked as 10.

10 (Discussion off the record.)

11 (Carolina Healthcare System Policy

12 Statement marked as Plf's Exh 10 for

13 identification.)

14 BY MR. HOOD:

15 Q I'll represent to you that there was some

16 stuff that we looked at earlier and it talked about

17 some kind of a policy, 110.03. This is Page 1

18 through 4 of it. There were other attachments to

19 it, but I was going to ask you about this specific,

20 because there's a lot of attachments didn't apply

21 because it was about sex abuse and stuff.

22 A Sure.

23 Q And I just wanted to ask you about this

24 particular policy.

25 A Okay.

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1 Q At the top it says, "Juvenile suspected of

2 being abused or neglected." Okay, do you see the

3 summary statement?

4 A Yes.

5 Q Could you read that summary statement for

6 me out loud.

7 A "This policy statement relates to the

8 issue of awareness, detections and management of

9 children at risk for abuse or neglect in the

10 in-patient physician office and urgent care

11 settings. It provides guidance on the procedure

12 that should be followed in cases of suspected abuse

13 or neglect."

14 Q Okay. So this policy would actually

15 provide guidance on the procedure that should be

16 followed in the cases of suspected abuse or neglect

17 at Levine Children's Hospital; right?

18 A Yes.

19 Q Okay. And it has definitions, right?

20 A Yes.

21 Q Under "juvenile" it says, "Any person

22 under 18 years of age who is not emancipated by

23 marriage or court order or a member of the armed

24 services."

25 Do you see that?

Page 97

1 A Yes.

2 Q And that would include Owen Carduff;

3 right?

4 A Yes.

5 Q "Abused juvenile: A juvenile whose

6 parent, guardian, custodian or caretaker inflicts or

7 allows to be inflicted serious physical injury which

8 causes or creates a substantial risk of injury,

9 death, disfigurement, impairment of physical health"

10 loss -- "or loss or impairment of a function of any

11 bodily organ." You see that; right?

12 A Yes.

13 Q And it's your testimony -- or at least

14 it's my understanding your testimony is, you-all

15 weren't able to say one way the other whether he was

16 a victim of child abuse?

17 A Yes.

18 Q Okay. And if we go to the next page, it

19 says, "caretaker;" okay?

20 A Um-hmm.

21 Q And it says, "Any person other than a

22 parent, guardian or custodian or adult member of the

23 juvenile's home who has care of a juvenile,

24 including any blood relative, stepparent, foster

25 parent or houseparent, cottage parent or any person

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1 supervising a juvenile in a resident child care

2 facility."

3 You see that definition of a

4 caretaker; right?

5 A Yes.

6 Q Now, if we go down to procedure under A,

7 if you could read number one for me.

8 A "Clinical team identifies child in whom

9 abuse or neglect is suspected and initiates

10 suspected child maltreatment inpatient order set

11 followed by discharged order set, if applicable."

12 Q Okay. Do you agree with that?

13 A Yes.

14 Q Okay. And it says "Clinical team

15 identifies child in whom abuse or neglect is

16 suspected"; right?

17 A Yes.

18 Q When this child came in and you-all saw

19 the subdural hematoma, you at least suspected child

20 abuse --

21 MS. BROOKS HOLMES: Objection.

22 BY MR. HOOD:

23 Q -- right?

24 A There was a -- it was concerning with no

25 history.

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1 Q And, in fact, you-all then put the

2 procedure in place; right?

3 A I -- it -- it was done. I don't know who

4 initiated the order set.

5 Q Okay. If you could read 2 for us.

6 A "Consult CHS clinical care management

7 social worker to aid in DSS assessment process."

8 Q Okay. And the CHS clinical care

9 management social worker, and that was you and Katie

10 Harrison, did aid in the assessment process; right?

11 A Yes.

12 Q Okay. Could you read 3 for us.

13 A "Complete CHS suspected child abuse and

14 neglect scan form available on Carolinas. Use scan

15 admission and discharge order forms for admission to

16 LCH."

17 Q Okay. Do you know if a scan form was used

18 in this particular case?

19 A I do not know for sure.

20 Q Okay.

21 (Pause.)

22 MR. HOOD: Let's have this as 11.

23 (Suspected Child Abuse and Neglect form

24 marked as Plf's Exh 11 for identification.)

25 BY MR. HOOD:

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1 Q Okay. It says "Complete CHS Suspected

2 Child Abuse and Neglect form available on Carolinas

3 Scan Admission and Discharge Order forms for

4 admission to LCH."

5 Do you see that?

6 A I do.

7 Q Okay. Now, I've handed you Exhibit 11;

8 right?

9 A Yes.

10 Q Would you read what that document says at

11 the top.

12 A "Suspected child abuse and neglect form."

13 Q And does that coincide with this juvenile

14 suspected of being abused or neglected policy?

15 A It's the form and not the orders, yeah.

16 Q Okay. It's the form?

17 A It's The form. They are different.

18 Q Okay. And do you know if there were also

19 orders under scan?

20 A I don't know.

21 Q Okay.

22 A I'd have to look at the chart.

23 Q It says, "Then document on positive exam

24 findings on scan form including the completion of

25 diagrams and other things."

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1 Do you see that?

2 A I do.

3 Q And under Number 5 --

4 A Yes.

5 Q -- it says, "All cases of suspected abuse

6 or neglect should be reported to the Department of

7 Social Services in the county where the child

8 resides."

9 Do you see that?

10 A Yes.

11 Q It says, "The call to DSS may be initiated

12 by the staff member identifying the abuse/neglect,

13 the medical social worker or any other member of the

14 healthcare team involved in the case. Have readily

15 available as much of the following information as

16 possible."

17 And then it gives certain bullet

18 points. Do you see that?

19 A Yes.

20 Q Now, that was done in this case, right?

21 A Number 5?

22 Q Yes.

23 A Yes.

24 Q Number 6. "If the parent or guardian,

25 custodian or caretaker refuses to authorize

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1 necessary medical treatment for the juvenile, refer

2 to administrative policy consent for treatment."

3 You see that, right?

4 A Yes.

5 Q But there wasn't any problem with the

6 parents consenting to treatment, was there?

7 A Not that I -- I am aware of.

8 Q Okay. It says, 7, "Consider consult to

9 CMC Pediatric for assistance with medical

10 management." Do you see that?

11 A I do.

12 Q And then in the paren it says "CHIPS team

13 Children's Hospital inpatient service."

14 Do you see that?

15 A Yes.

16 Q In fact, this child was -- the attending

17 physician became the CHIPS team, didn't it?

18 A I -- I think it was the whole time, yes.

19 Q Okay. Right, "Refer to child maltreatment

20 practice guidelines to assist with medical

21 management."

22 Do you see that?

23 A I do.

24 Q And then under 9, it says, "When medically

25 cleared, do not discharge child until disposition

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1 has been determined by the medical social worker and

2 DSS and the safety plan has been placed on the chart

3 in writing, if applicable."

4 Do you see that?

5 A I do.

6 Q It says, "Until disposition has been

7 determined by the medical social worker and DSS."

8 Do you see that, right?

9 A I do.

10 Q You are the medical social worker?

11 A Yes.

12 Q And so when did you determine the

13 disposition between you and DSS and where was safety

14 plan -- plan placed on the chart in writing?

15 MR. TODD: Objection.

16 THE WITNESS: I -- when I talked with DSS,

17 I have in my notes, they would have told me

18 whether they were taking custody or not, where

19 the child would be discharged to.

20 BY MR. HOOD:

21 Q Okay.

22 A And the safety plan was not on the chart,

23 and like I said before, some counties don't provide

24 it, not all counties do. I didn't write this

25 policy.

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1 Q Sure. Did you ask someone from DSS for

2 the safety plan?

3 A I don't remember whether I would have

4 asked. I knew somebody had come the night before,

5 and standard practice for DSS is in their initial

6 contact with families that they would have the

7 family sign a safety plan.

8 Q How often have you worked with South

9 Carolina DSS before this particular case?

10 A I can't quantify that.

11 Q You would have worked with them before

12 this case, though?

13 A Yes.

14 Q And you would have known at least what

15 their piccadilloes or peculiarity's or

16 idiosyncrasies are about their safety plans,

17 wouldn't you?

18 A I don't know --

19 MR. FRAWLEY: I'm not sure if I want to --

20 THE WITNESS: Yeah. I don't --

21 BY MR. HOOD:

22 Q The particulars of --

23 MR. TODD: I was going to object to it,

24 but you pronounced those strange words so well,

25 I thought well, you know...

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1 MR. HOOD: I was channeling -- what's our
2 guy? -- Judge Ralph -- whatever.
3 MR. FRAWLEY: Caines.
4 MR. HOOD: Ralph Caines.
5 THE WITNESS: I -- I don't have every
6 county memorized in what they do or don't do.
7 There are dozens of counties that might have
8 children come here.
9 BY MR. HOOD:
10 Q But -- but according to this, the safety
11 plan is supposed to be placed on the chart in
12 writing, "if applicable."
13 A That's what it says, yes.
14 Q When is it applicable?
15 A If it is shared by DSS in writing with the
16 hospital.
17 Q Okay. And you would have to ask for that
18 to be shared in writing with the hospital for it to
19 be shared, right?
20 A I guess I would have to specifically ask
21 for it, yes.
22 Q That didn't happen, did it?
23 A I don't recall the specific conversation.
24 Q Okay. If you don't recall the specific
25 conversation, then would you defer to Krista Rinnant

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1 about the specific conversation?
2 MR. TODD: Objection.
3 THE WITNESS: No. I have my notes and she
4 has hers. I didn't ...
5 BY MR. HOOD:
6 Q Okay. Well, where does your notes talk
7 about putting the safety plan or having any
8 indication of the safety plan?
9 A I think my note says, I confirmed the
10 visit, that DSS had come the night before, and that
11 they had planned a safety plan.
12 I don't recall the specific
13 conversation with Krista about that.
14 Q But when you did that -- and let's go
15 back, cause I really want to make sure we got this
16 right.
17 I believe, we went over this -- I
18 thought I remembered this.
19 You, I believe, and it's 0094, said,
20 "Met with parents at bedside to confirm DSS visit."
21 A Yes.
22 Q And then when it said, "Met with worker
23 from York County 6/12 and signed safety plan
24 anticipate discharge home hopefully this date" --
25 A Yes.

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1 Q -- that would have been from the parents?
2 A They -- they would have confirmed that a
3 worker came out. I would have absolutely confirmed
4 that with DSS, and that they had accepted the
5 investigation and who the assigned worker was.
6 Q And you put "and signed safety plan" and
7 that was from the parents, right?
8 A That's what my note looks like, yes.
9 Q And you remember about an hour ago we
10 talked about this chicken-in-the-henhouse thing and
11 you said, "Yes, I would have independently verified
12 from the parents the safety plan was signed"?
13 A My normal practice, I don't recall the
14 specifics, it was a long time ago, but my normal
15 practice would either be to have them show me a copy
16 or talk to DSS.
17 But in all of my dealings with DSS, I
18 don't recall ever having a case be accepted,
19 initiated and assigned, without the safety plan
20 being done at the first meeting.
21 Q If it did not get independently verified,
22 would that be a violation?
23 A Of what?
24 Q Of what you're supposed to do by
25 independent verification.

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1 MR. TODD: Objection.
2 THE WITNESS: I don't -- I don't
3 understand what you're asking.
4 BY MR. HOOD:
5 Q Sure. You said that you would always
6 independently verify, right?
7 A My general practice was, I would.
8 Q That would be a violation of your general
9 practice, then, if you did not independently verify
10 this, right?
11 A It would be unusual.
12 MS. BROOKS HOLMES: Objection.
13 BY MR. HOOD:
14 Q And, in fact, would have been outside the
15 norm of your general practice?
16 A It would have been unusual.
17 Q Okay. And when you use the term
18 "unusual," what is your definition of "unusual" in
19 the terms of not doing an independent verification?
20 A I guess -- I don't recall not doing it.
21 In general, I would have done it.
22 Q And if you didn't, you said that would be
23 unusual?
24 A Right. I -- like I said, in all of my
25 years with DSS and practice, once they respond and

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1 have initiated their investigation, it's my
 2 understanding that DSS has to initiate that safety
 3 plan at their first contact with the family.
 4 Q Okay.
 5 A So I would have trusted that it had been
 6 done by the worker that I know came to visit.
 7 Q Okay.
 8 MR. TODD: Can we go off the record for
 9 about a minute?
 10 MR. HOOD: Yes.
 11 (Videographer closing video.)
 12 (Brief recess.)
 13 (Answers to Interrogatories marked
 14 as Plf's Exh 12 for identification.)
 15 EXAMINATION
 16 BY MR. HOOD:
 17 Q I think we left, and I was looking at a
 18 document, it was marked as Exhibit 10. I wanted to
 19 go back and I wanted to read it in conjunction with
 20 this Exhibit 3, this is that DSS stuff.
 21 A Okay.
 22 MR. TODD: Exhibit 3 is the DSS stuff?
 23 MR. HOOD: Yeah.
 24 BY MR. HOOD:
 25 Q On that -- and on that, on 12/6/09, it

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1 does talk about a safety plan, it's on the second
 2 page.
 3 A Okay.
 4 Q It says, "12/6/09," it has "safety
 5 plan" --
 6 A Yes.
 7 Q -- which is what we were talking about.
 8 A Right.
 9 Q And it says, "Safety plan, follow medical
 10 advice of hospital and doctor recommendations" --
 11 A Right.
 12 Q -- "not to remove child from hospital
 13 until medical discharge."
 14 Do you see that?
 15 A I do.
 16 Q Now, even though you're not a clinician,
 17 pediatrician or a medical doctor, you're aware of
 18 the term "subdural hematoma"?
 19 A Yes.
 20 Q You're aware that a subdural hematoma in a
 21 three-month-old child can be caused by things other
 22 than child abuse?
 23 A Yes.
 24 Q But they it can be caused by child
 25 abuse --

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1 A Excuse me. Yes.
 2 Q -- right?
 3 And so in order to ensure that the
 4 child is stable and to ensure that the child --
 5 "that it is safe for the juvenile to return to the
 6 parent, guardian, custodian or caretaker, the child
 7 has to be medically discharged."
 8 A I think I understand what you're asking.
 9 The child has to be medically stable and ready for
 10 discharge and then be discharged by a physician, is
 11 that you're asking?
 12 Q Right. Because I was looking at this
 13 examining physician certification.
 14 A Right, right.
 15 Q And we had talked about there are two
 16 things: One is medically stable, and then the other
 17 is it's safe to return to the parent, guardian,
 18 custodian or caretaker.
 19 A Well, that's if they are invoking the
 20 custody.
 21 Q Sure. But the doctor is the one -- you're
 22 a social worker, right?
 23 A Yes.
 24 Q DSS is a social worker?
 25 A Yes.

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1 MR. TODD: Not DSS.
 2 BY MR. HOOD:
 3 Q I'm sorry. Excuse me. DSS employees are
 4 social workers, some of them?
 5 A Some of them, yes.
 6 Q And you-all rely on a doctor to say
 7 whether something is caused by child abuse or not.
 8 MR. TODD: Objection.
 9 THE WITNESS: We -- the social worker like
 10 me?
 11 BY MR. HOOD:
 12 Q Right.
 13 A I would work with the medical team and the
 14 specialist on what their findings are about
 15 accidental or non-accidental trauma, yes.
 16 Q Right. And -- so -- and when you say
 17 "accidental or non-accidental trauma,"
 18 non-accidental trauma is also called child abuse?
 19 A It can be, yes.
 20 Q And if a doctor thinks that a subdural
 21 hematoma is caused by child abuse, that's important
 22 information, right?
 23 A Yeah.
 24 Q That would be important to you as the
 25 medical social worker?

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1 A Yes. 2 Q That would be important to someone from 3 DSS? 4 A Yes. 5 Q And if the safety plan was to follow the 6 medical advice of the hospital and doctor 7 recommendations not to remove child from hospital 8 until medical discharge, if that was the safety 9 plan, that they are not going to remove them from 10 the hospital until the doctor says it's okay, is 11 that okay with you? 12 MR. TODD: Objection. 13 MR. FRANLEY: Objection to the form. 14 THE WITNESS: So I -- 15 BY MR. HOOD: 16 Q Let me ask you a different question. 17 A Yeah, I don't understand. 18 Q Terrible question. 19 You see safety plan where it says 20 "Follow medical advice of hospital and doctor 21 recommendations" -- 22 A Right. 23 Q -- "not to remove child from hospital 24 until medical discharge." You see that, right? 25 A Yes. I read those as two different	1 medically stable and ready for discharge. 2 BY MR. HOOD: 3 Q Sure. 4 A I think we would continue to work with 5 community resources and make sure that there was 6 going to be appropriate follow-up, if we were 7 concerned that the follow-up wasn't going to happen. 8 Q Okay. And appropriate follow-up could be 9 discharge home, discharge to relative, or discharge 10 to foster care. 11 A Yes, disposition and discharge would be at 12 the DSS discretion. 13 Q Okay. So it's your testimony under oath 14 that the disposition or the discharge of the child 15 from the hospital back into the parents' care is 16 completely dependent upon DSS? 17 A In my experience, yes. DSS tells us, when 18 there is an open investigation, where the child is 19 going to be discharged to. 20 Q Okay. And it is your testimony under oath 21 that as far as a hospital's role, it is simply to 22 treat the child and make sure that they are 23 medically stable to be able to be discharged. 24 A I -- we treat the child, if we have 25 concerning findings, we have a duty to call DSS or
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1 things. 2 Q Okay. How do you read those? 3 A I read that as "Follow medical advice of 4 the hospital and doctor recommendations," which is 5 pretty typical, whatever follow-up, medicines, 6 appointments that the family has to comply with 7 treatment herein before they leave. 8 Q Sure. 9 A And then I read "not to remove child from 10 hospital until medical discharge" as what the 11 parents -- the parents can't take the child out of 12 the hospital until the doctor has said that the 13 child is medically stable for discharge. 14 Q Now, is it -- and I see -- I -- I 15 understand what you're saying, sure. 16 A Okay. 17 Q And I'm not -- I won't put words in your 18 mouth. I want to know what you think. 19 A Right. 20 Q Now, we talked a little bit about that -- 21 that there are -- a child can be medically stable, 22 but it still may not be safe to discharge a child 23 home if there are positive findings of child abuse? 24 MR. TODD: Objection. 25 THE WITNESS: I -- the child can be	1 other agencies, if we need to, and work with them 2 and they tell us discharge disposition. 3 Q Okay. And you said that the disposition 4 is the social -- is the state agency's 5 responsibility? 6 A It is what -- yeah, it's DSS. 7 Q Okay. 8 A If they're going to take custody or not or 9 where the child is going to be discharged to. 10 Q Okay. And if we look back at Exhibit 10. 11 A Which one is 10? 12 Q This is that one -- well, 10 is the policy 13 on juveniles suspected of being abused or neglected. 14 A Okay, okay. Right. 15 Q Could you read number 9 for us? 16 A "When medically cleared, do not discharge 17 child until disposition has been determined by 18 medical social worker and DSS and a safety plan has 19 been placed on the chart in writing, if applicable." 20 Q Okay. Where it does it say it is 21 determined by the social worker -- by DSS only? 22 A Disposition has been determined by medical 23 social worker and DSS -- the way that I could read 24 that, back to me being a liaison, that I'm making 25 sure that the team knows that DSS is involved in

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1 what they recommended. 2 Q Okay. So even though this says what it 3 says, it's your testimony that it's DSS's 4 responsibility and not the hospital's, the 5 disposition? 6 A To determine place of discharge, yeah. 7 Q Okay, okay, okay. 8 If we go to 8. 9 A Yeah. 10 MR. TODD: Are we still on 10? 11 MR. HOOD: Yes. 12 BY MR. HOOD: 13 Q It says, "When a physician determines that 14 a juvenile should remain in the hospital for medical 15 reason." 16 Do you see that? 17 A I do. 18 Q And that's about stability, right? 19 A Right. 20 Q "Or that it is unsafe for the juvenile to 21 return to his or her parent, guardian or caretaker." 22 Do you see that? 23 A When a physician determines that it is 24 unsafe, yes. 25 Q So they have two things they have to	1 that's what that paragraph is. 2 Q And why would they do the pursuit of the 3 12-hour physical custody? 4 (Intercom interruption.) 5 THE WITNESS: All right. Sorry. When -- 6 when would -- I'm sorry, ask me again. 7 8 BY MR. HOOD: 9 Q Sure. And it may be we read the whole 10 thing and it may be -- 11 A Okay. 12 Q -- you answered the question, and that's 13 my fault. 14 A Okay, okay. 15 Q Okay. It says, "When a physician determines 16 that a juvenile should remain in the hospital for 17 medical reasons or that it is unsafe for the 18 juvenile to return to his or her parent, guardian or 19 caretaker, the physician or administrator should 20 first contact the Director of Department of Social 21 Services to determine if DSS will take emergency 22 custody and authorize the hospital to retain 23 physical custody of the juvenile." 24 A Okay. 25 Q "In the event DSS is unwilling to take
Page 118	Page 120
1 determine: One, the child is medically stable; and 2 two, that it's safe to discharge him back to the 3 parent or caretaker; right? 4 A The -- the physician has to -- so the 5 physician has to determine that the child is 6 medically stable. 7 Q Right. 8 A Yes. And then know what the discharge 9 plan is for a child that is involved with DSS. Is 10 that what you're asking? 11 Q I'm just reading the policy, "Or that it 12 is unsafe for the juvenile to return to his or her 13 parent, guardian or caretaker." 14 A Well -- okay. It seems like an "or." 15 When a physician determines that they should remain 16 in a hospital for medical reasons or that it is 17 unsafe. 18 Q Right, one of the two. 19 A So they have to determine one of the two 20 if they want to pursue the 12-hour custody. 21 Q Right. But -- but -- but let's say that 22 in order for them to determine one of the two, 23 they've got to consider both, though, right? 24 A If -- if they are pursuing the -- excuse 25 me, the 12-hour emergent physical custody. I think	1 custody or cannot be contacted, the local district 2 court has authorized the physician or administrator 3 to retain physical custody of the juvenile whenever 4 the physician determines that the juvenile should 5 remain for medical treatment or, according to his or 6 her medical evaluation, it is unsafe for the 7 juvenile to return to the parent, guardian, 8 custodian or caretaker." 9 Do you see that? 10 A I do. 11 Q Now, that second paragraph says, "If DSS 12 is unwilling to take custody or cannot be 13 contacted." 14 A Yes. 15 Q Before it puts that 12-hour administrative 16 order in and talks about that other stuff, about 17 "the juvenile should remain for medical treatment or 18 according to his or her medical evaluation, it's 19 unsafe for a juvenile to return to his parent"; 20 right? 21 A Yes. 22 Q Okay. Now, my question to you is, okay, 23 in order for them to determine that, whether a child 24 is medically stab- -- you've agreed they've 25 determined that the child was medically stable?

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1 A Right.
 2 Q Okay. It appears that the child has
 3 got -- vital signs are okay and the child is
 4 medically stable to go home?
 5 A Right.
 6 Q Okay. And what this really comes down to,
 7 at least according to me, is whether the child
 8 should have been sent home back to his parents or
 9 whether he should have been placed somewhere else.
 10 A Okay.
 11 Q My question: Does a physician possess the
 12 knowledge to determine whether the type of injury
 13 that put this child in the hospital for suspected
 14 child abuse, do they have superior knowledge to
 15 determine whether it's safe to return this child to
 16 the parent or guardian?
 17 MR. TODD: Objection.
 18 MR. FRAWLEY: Object to form.
 19 THE WITNESS: Yeah, I can't answer for the
 20 physician and their knowledge.
 21 BY MR. HOOD:
 22 Q Sure, sure. Okay, that's fair.
 23 You would agree that you are the
 24 liaison to the physician and DSS?
 25 A I do help facilitate communication, yes.

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1 Q And you would agree, at least according to
 2 the communication from DSS, and I know you weren't
 3 there, but just according to their documentation,
 4 that their safety plan was that they followed the
 5 doctor's recommendations?
 6 A Right.
 7 Q And that they are not to --
 8 MR. TODD: "They" being the parents?
 9 MR. HOOD: No, DSS.
 10 BY MR. HOOD:
 11 Q That DSS and the parents are not to remove
 12 the child from hospital until medical discharge?
 13 MR. TODD: Objection.
 14 You can go ahead and answer.
 15 THE WITNESS: Are we back on the safety
 16 plan?
 17 BY MR. HOOD:
 18 Q Yes.
 19 A The safety plan was for the parents to
 20 follow medical advice of hospital and doctor
 21 recommendation and also not to remove the child from
 22 hospital until medical discharge.
 23 Q Okay.
 24 A That's the way I read that.
 25 Q Okay. And the medical discharge that

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1 you're -- is talked about here, you said it was your
 2 understanding or -- it -- it was your thought
 3 process that that was talking about just the medical
 4 stability of the child?
 5 A Yes.
 6 Q And that did not have anything to do with
 7 whether the child should go back into the home of
 8 the parent because he had come to the hospital four
 9 days before with a subdural hematoma?
 10 MR. TODD: Objection.
 11 THE WITNESS: The physician determines
 12 that the child is medically stable from
 13 whatever brought the child in.
 14 BY MR. HOOD:
 15 Q Right.
 16 A And then if DSS is involved, the physician
 17 and the team takes guidance from DSS on discharge
 18 and where the child goes. So the child stays here
 19 in the hospital until DSS says where the child is
 20 going to go cleared for discharge from the DSS side.
 21 Q And you would agree that the physicians
 22 are the ones that determine the most likely cause of
 23 the subdural hematoma?
 24 A I would -- I would agree that the
 25 physicians treat the child and try to determine an

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1 etiology.
 2 Q Okay. And from a social worker and your
 3 experience working with Levine Children's Hospital
 4 and having other children that have subdural
 5 hematoma and children who have had abusive head
 6 trauma, would you agree with me that if a doctor
 7 determines there is abusive head trauma, that is
 8 certainly something that plays into whether to have
 9 the child medically discharged back to his family --
 10 back home or not?
 11 A I think when there is a determination of
 12 abusive head trauma and DSS is involved, yes, I
 13 would think that the physician would help DSS
 14 determine their discharge plan.
 15 Q Okay, okay. You would agree that the --
 16 the first priority of your job as a medical social
 17 worker is to try to ensure the safety of a patient?
 18 MR. TODD: Objection.
 19 THE WITNESS: "Try," yes.
 20 BY MR. HOOD:
 21 Q A hospital shouldn't discharge a baby back
 22 to abusive parents, should they?
 23 MR. TODD: Objection.
 24 MS. BROOKS HOLMES: Objection.
 25 THE WITNESS: One would hope that any

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1 discharge of any child would not be back into
2 an abusive situation.
3 BY MR. HOOD:
4 Q And a hospital should make sure a baby is
5 diag- -- diagnosed with a cause of a head injury
6 before discharging back to parents?
7 MR. TODD: Objection.
8 MS. BROOKS HOLMES: Objection.
9 THE WITNESS: No, I wouldn't agree with
10 that, because you can't always say.
11 BY MR. HOOD:
12 Q If you can't say what was the cause of a
13 head injury, you should err on the side of caution
14 before discharging a three-month-old baby back to
15 parents that had been suspected of child abuse?
16 MR. TODD: Objection.
17 MR. FRAWLEY: Objection.
18 MS. BROOKS HOLMES: Objection.
19 THE WITNESS: I don't agree that the
20 parents were suspected. A report was made, and
21 in terms of erring on the side of caution, we'd
22 rather make the report to DSS than not and hope
23 that DSS can do a complete follow-up that we
24 can't do here in the hospital.
25 BY MR. HOOD:

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1 Q Okay. Doctors in hospitals should err on
2 the side of caution in cases of suspected child
3 abuse?
4 MR. TODD: Objection.
5 MR. FRAWLEY: Is that a question?
6 MR. HOOD: Sure.
7 MR. FRAWLEY: Objection.
8 MS. BROOKS HOLMES: What was the question?
9 BY MR. HOOD:
10 Q Doctors in hospitals should err on the
11 side of caution in cases of suspected child abuse;
12 correct?
13 A Yes.
14 Q And doctors and hospital personnel should
15 follow policies and procedures, right?
16 A Yes.
17 Q Okay. There was mention during this stuff
18 that I read about the child maltreatment team, and I
19 think it was a Miss Myers or something.
20 A Right.
21 Q Is the child maltreatment -- is it a team
22 or is it just one person that's a coordinator?
23 A There is a nurse coordinator and a
24 physician consultant that she works with, and then
25 they might talk -- excuse me, they might talk to the

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1 social worker who is involved or the team.
2 It's a coordinator role with a
3 physician consult piece to it.
4 Q Do you know who back in 2009 was the
5 physician coordinator?
6 A In 2009 specifically? Dr. Morgan was
7 here, Dr. Mackens might have been.
8 Q Okay.
9 A Maybe Dr. Rogers. I don't remember
10 specifically.
11 Q You've heard of a Dr. Courtlandt?
12 A Yes.
13 Q You know Dr. Courtlandt?
14 A Yes.
15 Q Have you ever heard of -- I can't remember
16 his name -- does a "Sheldon" ring a name?
17 A No.
18 Q I don't know what his name is.
19 A No, it doesn't.
20 Q It's somewhere in there. We'll figure it
21 out in the next deposition.
22 MR. TODD: Maybe.
23 MR. HOOD: Hopefully. It's written
24 somewhere, I just can't read it.
25 MR. TODD: Yeah, if you can give me the

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1 page number, not today, but later, I'll tell
2 you who it is.
3 MR. HOOD: Hold on a second. I might even
4 have it right here.
5 BY MR. HOOD:
6 Q Maybe Stephen Renfrow.
7 A I know Dr. Renfrow.
8 Q Yeah.
9 A But I think he would have been a resident
10 then.
11 Q Okay.
12 A Is there an "R"?
13 Q It's just in the -- the interrogatories.
14 A Oh, okay. Sorry.
15 THE REPORTER: How do you spell his name?
16 THE WITNESS: R-e-n-f-r-o-w, I think it
17 is.
18 BY MR. HOOD:
19 Q Stephen Renfrow, yes.
20 A "R"?
21 Q It has "MD/R."
22 A That means he was a resident at the time.
23 Q Okay.
24 BY MR. HOOD:
25 Q Okay, okay. And the CHIPS team, I think

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1 you already said, is just the pediatricians.
 2 A The in-patient team, the staff
 3 pediatricians.
 4 Q The staff pediatricians.
 5 A And their residents.
 6 Q And would you describe the interaction
 7 between CHIPS and the maltreatment team?
 8 A That would -- every case is unique.
 9 Q Okay.
 10 A It's a physician-to-physician consult. I
 11 don't -- I don't know how the physicians interact
 12 necessarily.
 13 Q Sure, sure.
 14 When you have a child who comes in
 15 with a subdural -- and I'm not talking about Owen
 16 Carduff -- just generally a kid comes in, a baby,
 17 three-months old, a subdural hematoma, don't know
 18 where came from, how it happened, there's no
 19 explanation for how it happened, and a CHIPS team is
 20 involved, the maltreatment team is involved, how
 21 does everybody work together in a cohesive unit to
 22 determine what's going to be in the best interest of
 23 the child?
 24 A Well, the physician team rounds, the
 25 social worker would -- if not round with the

Page 130

1 physicians, would be available for consultation, and
 2 then there is the chart, everybody -- you have
 3 progress notes in the chart, so you would see other
 4 physicians who maybe weren't primary.
 5 Q Okay. You would agree that it would be
 6 important to consult with the chart?
 7 A Yes.
 8 Q To be able to determine the people before
 9 you, what they may have done or not done in regard
 10 to the treatment of the child?
 11 A Yes.
 12 Q Okay.
 13 MR. HOOD: Are we up to 11 now?
 14 THE WITNESS: 12.
 15 (Discussion off the record.)
 16 BY MR. HOOD:
 17 Q I'm just going to ask you just a few questions
 18 about this.
 19 A Okay.
 20 Q Dr. Cheryl Courtlandt, she was actually a
 21 staff pediatrician at this time, right?
 22 A Yes, she would have been the attending.
 23 Q And Dr. Renfrow more likely, I mean may
 24 have been a resident, right?
 25 A If it said "R" on the note, then he would

Page 131

1 have been a resident, yes.
 2 Q Okay. And then Dr. McClanahan, he was
 3 just a neurosurgeon in town, he was a consulting
 4 physician, right?
 5 A Yes.
 6 Q Dr. Dwyer, he was a neurosurgeon?
 7 A Yes.
 8 Q And I don't see -- that you would have
 9 been one of the social workers involved and Katie
 10 Harrison would have been involved.
 11 A Right.
 12 Q It's going to be hard, I think -- Monte
 13 told us, it's going to be hard to depose her. She's
 14 in Venezuela.
 15 MR. TODD: No, I think, Brazil.
 16 THE WITNESS: I think she's in Brazil.
 17 MR. HOOD: Or Brazil. Okay.
 18 MR. TODD: I found out it's Brazil. I
 19 narrowed it down.
 20 MR. HOOD: Hey. If it's Rio, let's just go
 21 down during Carnivale, you know. Twist my arm.
 22 (Background noise.)
 23 BY MR. HOOD:
 24 Q I'm going to go to Page 7.
 25 THE WITNESS: Oh, I'm sorry. Was that the

Page 132

1 mic?
 2 BY MR. HOOD:
 3 Q These are -- these are answers that --
 4 that Monte worked with somebody on the hospital.
 5 This may not be yours. I'm just asking whether you
 6 have opinions about something or not.
 7 A Sure.
 8 Q And I'm not saying you are or you don't or
 9 whatever. Just asking the question.
 10 A Okay.
 11 Q I -- I had said -- I had asked him, who do
 12 you hold responsible -- or please identify the
 13 person to whom you allege contributed to an injury
 14 or damage to Owen Carduff.
 15 And he said, the defendant
 16 understands that Owen Carduff's father, Michael
 17 Carduff has pled guilty to causing the injuries in
 18 January 2010 to Owen.
 19 A Right.
 20 Q I believe you testified before that you
 21 don't know what really happened after the child was
 22 discharged, right?
 23 A Right.
 24 Q Okay. And do you hold any person at fault
 25 in this case other than his father?

Page 133

1 A For which --
 2 Q For the --
 3 A -- admission?
 4 Q For the injuries to --to Owen Carduff?
 5 A That brought him in the second time?
 6 Q Yes.
 7 A No, I would agree with what that says.
 8 Q Okay. You've heard of, like, if, what
 9 about if he had not been discharged back into the
 10 care of Michael Carduff?
 11 A I --
 12 MS. BROOKS HOLMES: Objection.
 13 THE WITNESS: I can't answer that. I
 14 don't know.
 15 BY MR. HOOD:
 16 Q Okay. You don't know, okay.
 17 Going to Page 11. I said, identify
 18 what you can -- this was not to you, when I say "you,"
 19 I'm talking about Carolinas Hospital System.
 20 A Okay. Sure.
 21 Q Okay. It says, "Identify what you contend
 22 the specific policy and procedure on statute which
 23 was used by the employer defendant to discharge Owen
 24 Carduff back in the hands of his parents in December
 25 2009 after a finding non-accidental trauma."

Page 134

1 Said, "The defendant notified the
 2 South Carolina Department Social Services pursuant
 3 to South Carolina Code 637310 or NC Code 7B301 in
 4 complying with the directions of the South Carolina
 5 Department of Social Services regarding the
 6 discharge of Owen Carduff."
 7 Do you see that?
 8 A I do.
 9 Q Do you agree with that?
 10 A Yes. We made the DSS report.
 11 Q Okay. And then on 19, I said, "Describe
 12 the steps that the social worker and any employee of
 13 the defendant undertook in December 2009 to attempt
 14 to ensure that Owen Carduff was discharged in the
 15 hands of persons who would not abuse him again."
 16 It says, "The South Carolina
 17 Department of Social Services responded, conducted
 18 an investigation of the matter and directed Levine
 19 Children's Hospital to discharge Owen Carduff to his
 20 parents and that DSS would follow up with a home
 21 assessment and a safety plan." And it gives
 22 statutory provisions.
 23 You see that, right?
 24 A I do.
 25 Q Now, this is the South Carolina Department

Page 135

1 of Social Services responded, conducted an
 2 investigation of the matter, and directed Levine
 3 Children's Hospital to discharge him back to his
 4 parents.
 5 You see that, right?
 6 A I do.
 7 Q But you don't know when they conducted an
 8 investigation of the matter; do you?
 9 A I know they began the investigation before
 10 he was discharged.
 11 Q Okay. But you don't know when it was
 12 completed, do you?
 13 A No.
 14 Q And who directed -- who from DSS directed
 15 Levine Children's Hospital to discharge Owen to his
 16 parents? Was it Krista Hinnant?
 17 A I mean, in looking at my notes, it said
 18 that Krista was who I talked to. Said, "Would
 19 likely allow discharge home with parents."
 20 Q Okay. Said, "Would likely allow discharge
 21 home."
 22 Does that mean that she directed you?
 23 A Yes. She would have approved him being
 24 discharged home with his parents, yes.
 25 Q Okay. And do you consider that to be

Page 136

1 directing you to do that?
 2 A I would interpret that as her giving
 3 permission for the hospital, that while DSS is doing
 4 their investigation that he could be discharged to
 5 his parents, yes.
 6 Q Okay, okay. And you agree that if people
 7 at Levine did not feel that was appropriate, they
 8 could have taken other steps?
 9 A I think if people at the hospital don't
 10 feel it's appropriate or don't agree with the
 11 recommendation, you can have ongoing conversations
 12 about that.
 13 Q Okay. But that was not done?
 14 A Not to my knowledge.
 15 Q Okay. Under 20 it says, "Describe the
 16 specific person responsible for ensuring -- ensuring
 17 that Owen Carduff was being discharged back in the
 18 custody of a responsible adult or a state agency and
 19 the social worker who was actually responsible for
 20 approving the discharge of Owen Carduff back to his
 21 parents."
 22 And it says, "The defendant states
 23 that the social workers at Levine Children's
 24 Hospital" --
 25 That would be you and Katie Harrison;

Page 137

1 right?

2 A Right. And I think he was discharged the

3 next day when I wasn't working on a Tuesday.

4 Q Okay.

5 -- "notified the South Carolina

6 Department of Social Services of the potential of

7 non-accidental trauma to Owen Carduff."

8 You agree with that?

9 A Potential, yes.

10 Q And that "The South Carolina Department of

11 Social Services responded, conducted its own

12 investigation in the matter, and determined that

13 Owen Carduff could be discharged back into the

14 custody of his parents."

15 Do you see that?

16 A I do.

17 Q But you said you don't know when they

18 finished their investigation, right?

19 A I know they started it and they have a

20 certain period of time to finish it.

21 Q And you don't know if they actually

22 determined that he should be discharged back into

23 the custody of this parents, do you?

24 A No. They gave us permission to discharge

25 him to his parents.

Page 138

1 Q Because you-all medically discharged him,

2 right?

3 A He was medically ready for discharge, and

4 then we would need to work with DSS to make sure

5 that they knew that he was medically ready, and then

6 we would look to them for where he would actually be

7 discharged to.

8 Q Medically ready would be medically stable

9 and safe to discharge back into the home of his

10 parents?

11 A Medically ready would be stable and then

12 to look to DSS for the disposition.

13 Q Okay. It says 24, I'm sorry, Page 13. It

14 says, "With the finding of non-accidental trauma in

15 December of 2009, describe whether or not the

16 hospital had a duty or responsibility to discharge

17 the child into the hands of a person or entity who was

18 not suspected of perpetrating abuse or trauma to the --

19 on the child."

20 And then response was, "The defendant

21 CMC's duty was to notify the appropriate state

22 agency of the potential of non-accidental trauma,

23 which it did."

24 You-all did?

25 A Yes.

Page 139

1 Q "Carolinas Medical Center complied with

2 that duty of notifying the South Carolina DSS of the

3 potential of non-accidental trauma with Owen

4 Carduff."

5 Do you see that?

6 A Yes.

7 Q And so, it is -- do you have -- do you have an

8 opinion about whether the hospital had a duty, other

9 than notifying South Carolina DSS of the potential

10 of non-accidental trauma, in regard to the

11 disposition of the discharge?

12 MR. TODD: Objection.

13 MR. FRANGLEY: I'll object as well.

14 THE WITNESS: Did the hospital have a duty

15 to contact DSS?

16 BY MR. HOOD:

17 Q No, no, no. Did the hospital have a duty

18 other than contacting DSS in regards to the

19 disposition of the discharge of the child?

20 A No. I think the hospital fulfilled its

21 duty in making the report to DSS and providing them

22 with up-to-date information.

23 Q Okay. And it is your testimony that that

24 is the responsibility of the hospital --

25 A I think --

Page 140

1 Q -- and that was their responsibility?

2 A I -- yes.

3 Q And the responsibility of whether it was

4 safe to discharge him back into the home with his

5 parents or not was not the responsibility of

6 Carolinas Medical Center or Levine Children's

7 Hospital or the team?

8 MR. TODD: Objection.

9 THE WITNESS: I --

10 MR. TODD: Go ahead and answer.

11 THE WITNESS: I think the responsibility

12 was to do an appropriate medical workup with

13 all the specialties and sub-specialties, make

14 the initial report to DSS, and make sure they

15 had all the current, up-to-date information

16 about Owen so that they could direct the

17 hospital on discharge.

18 BY MR. HOOD:

19 Q Okay, okay. Have you ever had your

20 deposition taken before?

21 A A deposition, no.

22 Q Prior to this deposition, had you had an

23 opportunity to review any of the medical records or

24 policies?

25 A I had met with Mr. Todd, yes.

Page 141

1 Q Okay. Did you read any depositions?

2 A Did I read any depositions?

3 Q Yes.

4 A No.

5 Q Okay. Have you discussed the case with

6 anybody other than Mr. Todd?

7 A No.

8 MR. TODD: Since the lawsuit has been

9 filed --

10 MR. HOOD: Yes.

11 MR. TODD: -- or at any time?

12 BY MR. HOOD:

13 Q Any time -- and I'm not talking about the

14 stuff we talked about today --

15 A Right.

16 Q -- but I mean, have you talked about the

17 child being injured or what may have been done or

18 what could have been done with somebody other than

19 Mr. Todd?

20 A No. You mean since the -- since we met

21 the first time?

22 Q Since you became aware that the child

23 became injured.

24 A I talked about it during his admission.

25 Q Sure.

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1 A And I talked about it during the second

2 admission. But since I met with Mr. Todd, no.

3 Q During the second admission, do you recall

4 anything specifically about the case after the

5 second admission?

6 A After the second admission?

7 Q Yes.

8 A No, nothing specific.

9 Q Okay. Do you recall if you had any

10 thoughts about this child as being admitted for the

11 second time in 30 days and this time the child is

12 badly injured?

13 MR. TODD: Objection.

14 THE WITNESS: Do I remember that I had

15 thoughts about that?

16 BY MR. HOOD:

17 Q Yes.

18 A I remember being involved, yes.

19 Q Okay. Did you ever have thoughts about

20 what could have been done to prevent this from

21 occurring?

22 A No.

23 Q Okay. What is your date and place of

24 birth?

25 A 5/29/71. Atlanta, Georgia.

Page 143

1 Q Okay. And I'm going to ask you some

2 questions, and it's really not trying to get into

3 your business, but we have juries that we have to

4 pick --

5 A Sure.

6 Q -- and so we have to get information about

7 people so we can find out.

8 A Sure.

9 Q Are you currently married?

10 A Yes.

11 Q And what is your husband's name?

12 A Steve Newmark.

13 Q And do either of you-all live -- or do you

14 have relatives that live in York County, South

15 Carolina?

16 A No.

17 Q Do you-all have children?

18 A Yes.

19 Q How old are your children?

20 A Eight and 12.

21 Q Do they have any kind of schooling or

22 belong to any social activities, baseball, Scouts,

23 or anything that involve people in York County,

24 South Carolina?

25 A No.

Page 144

1 Q Can you briefly just tell me, I believe

2 you said you went that William and Mary and then you

3 went to Georgia and you got your master's.

4 A Yes.

5 Q And then you went to work. When did you

6 graduate from Georgia?

7 A '95.

8 Q Okay. And after you graduated from

9 Georgia, where did you go to work?

10 A I worked at a Children's Emergency Shelter

11 in Marionette, Georgia.

12 Q And how long did you do that?

13 A Just under a year probably.

14 Q And at the Children's Emergency Shelter,

15 what do you?

16 A I was an intake social worker.

17 Q As an intake social worker, what did you

18 do?

19 A I would help get the kids settled into the

20 emergency, it was like a 72-hour up to a two-week

21 shelter.

22 Q Okay. Was it children that were either

23 abused or at risk for abuse?

24 A Yes.

25 Q Okay. And after a year there, what did

Page 145

1 you do?

2 A I got married and moved to Raleigh and

3 started working up there.

4 Q Okay. And where did you work in Raleigh?

5 A I worked at Holly Hills Psychiatric

6 Hospital for about six months.

7 Q Okay. And what did you do at Holly Hills

8 Psychiatric Hospital?

9 A I ran a latency unit for children under 13

10 that were hospitalized inpatient in the psych

11 hospital.

12 Q Okay. Were those children -- were some of

13 those victims of abuse?

14 A I don't recall.

15 Q Okay. And then what did you do after that?

16 A I worked at Orange-Person-Chatham County

17 Mental Health.

18 Q Okay. And how long did you work there?

19 A Eighteen months, I think.

20 Q Okay. And what was your job there?

21 A I was an intensive case manager for

22 chronologically mentally-ill children.

23 Q Okay. And then after that, what did you

24 do?

25 A I moved to Charlotte, and then I worked in

Page 146

1 an alternative high school as a drug and alcohol

2 prevention social worker.

3 Q Okay.

4 A School social worker.

5 Q And how long did you do that?

6 A I'm trying to think. Year, year and a half.

7 Q Okay.

8 A And then I was on disability for about six

9 months and then quit, so technically held the job

10 but didn't practice.

11 Q And why were you on disability?

12 A I was pregnant, had a complicated

13 pregnancy.

14 Q Okay. And then after that, did you go to work

15 for Levine's?

16 A Not until my son was two-and-a-half. I

17 stayed home for two-and-half years.

18 Q Okay.

19 A And then I came to Levine -- or CMC first.

20 Q And then when you came to CMC, was that

21 about 2003?

22 A January of 2003, yes.

23 Q And in January of 2003, what did you --

24 where did you begin or what department did you

25 begin?

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1 A I was in clinical care management as one

2 of the pediatric social workers.

3 Q Okay. And what does a pediatric social

4 worker do?

5 A Lots of things. We do financial

6 counseling, we help with resources, community

7 things, crisis management, money. We do child abuse

8 and neglect reports and assessments and liaison with

9 DSS, grief counseling. It kind of runs the gamut.

10 Q Jack-of-all-trades when it talks about

11 pediatric social work.

12 A We do a lot of inpatient work with the

13 families and the children, yes.

14 Q Okay. And is that sometimes like --

15 people -- children on the cancer ward and stuff like

16 that?

17 A The cancer patients have their own social

18 workers, actually.

19 Q Okay.

20 A Cancer, renal, HIV, maybe one other. They

21 have their own, they see them outpatient and

22 inpatient.

23 Q Right.

24 A So inpatient gets everything else.

25 Q Okay.

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1 A We get all the catch-all.

2 Q Okay. And then how long did you do that?

3 A I worked part time up until 2010, March of

4 2010.

5 Q Okay.

6 A And then went PRN, as needed.

7 Q Okay.

8 A So I'm still technically in the

9 department.

10 Q Okay. Now, when you were working in this

11 case, were you a -- in that job that you started in

12 2003?

13 A Yes.

14 Q So that job, this jack-of-all-trades, it

15 -- it encompassed dealing with a situation similar

16 to Owen Carduff?

17 A I'm sorry?

18 Q Or it dealt with Owen Carduff?

19 A Right. Owen would have been one of my

20 patients and I would have had other patients as well.

21 Q Did you get assigned -- like how did --

22 how many people were in the social work department?

23 A In our department?

24 Q Yes.

25 A There is like 70. There's 30-some social

Page 149

1 workers.

2 Q Okay. A lot?

3 A Yeah. Well, there's only two for

4 pediatrics.

5 Q Okay.

6 A So --

7 Q And was that you and Miss Harrison?

8 A No. That was me and Laura McDowell.

9 Katie Harrison was a weekender.

10 Q So you and Laura McDowell were the

11 pediatric social workers?

12 A Yes.

13 Q And you-all would have been the ones that

14 would have been dealing with all the cases of child

15 abuse -- or suspected child abuse or potential child

16 abuse?

17 A Not the only ones, but we would have been

18 the primary weekday people, yes.

19 Q Okay. And then the primary weekend, would

20 that have been Miss Harrison?

21 A If Katie was on. There were different

22 social workers.

23 Q Okay.

24 A She was on that weekend. I don't know

25 what the scheduling would have been.

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1 Q I know you said that you were not on the

2 next day, like December the 8th, right?

3 A Right. I think I was on a Monday,

4 Wednesday, Friday schedule at that time.

5 Q And so would -- the other lady was --

6 A Laura McDowell.

7 Q -- Laura McDowell.

8 A Yes.

9 Q Would that have been the person that would

10 have been on that day?

11 A Probably, but I don't know.

12 Q Okay. What is the volume of -- I mean,

13 when you say there were only two of you, what would

14 be the -- like on a weekly basis, I mean the volume

15 of cases you have that dealt with a situation like

16 Owen Carduff?

17 A Of -- of rule out a non-accidental trauma

18 case?

19 Q Yes.

20 A I would have to look. Head traumas, I

21 can't quantify.

22 Q Sure.

23 A We also would have kids with fractures or

24 other injuries.

25 Q I mean, would you -- would you carry a

Page 151

1 case load of five to ten, ten to 15?

2 A Oh. Just like an abusive head trauma or

3 everything else?

4 Q Anything that is child-abuse oriented.

5 A I would say like per social worker, maybe

6 two or three a month. Not just head traumas, other

7 fractures.

8 Q Sure.

9 A But I mean, it's hard.

10 Q It could be a burn, a kid that had gotten

11 beat bad, it could be a lot of different stuff.

12 A Sometimes there is a lot and sometimes

13 there aren't any. It just really depends.

14 Q Okay. Have you ever been part of a

15 situation where a kid had a subdural hematoma and

16 they did not discharge the kid back home?

17 A Yes.

18 Q Why would that have happened?

19 A If DSS took custody or the family agreed

20 to an out-of-home placement.

21 Q Okay.

22 A Depending on the finding if there was an

23 accidental trauma or not.

24 Q Okay. Have you ever seen that 12-hour

25 thing? I believe you said before you've never seen

Page 152

1 that actually activated.

2 A Not to my recollection. I have seen the

3 forms before, but I don't think I've ever seen it

4 done.

5 Q Okay. Are you licensed?

6 A No, I do not have my license.

7 Q Okay. And can you become a licensed

8 social worker?

9 A Yes.

10 Q Why do you not have a license?

11 A A variety of reasons. Usually it's

12 helpful for private practice, independent third

13 party billing, which I don't have any interest in

14 doing, but also there's supervision group and

15 individual and things like that, and I've never

16 really been supervised by a LCSW in some of my

17 previous jobs, and so here it's not required.

18 Q Is a -- is a -- is a LCSW usually somebody

19 that a lot of times they provide counseling to

20 people and --

21 A A lot of times they'll do -- they're

22 able to do third party billing and they can do more

23 private practice.

24 Q Okay. Do you have any board

25 certifications?

Page 153

1 A No.

2 Q Do you belong to any social work

3 organizations?

4 A Yes. I think I'm an NASW member.

5 Q An ASW member, what is that?

6 A National Association of Social Workers.

7 And I'm also a member of the Social

8 Workers for Hospice and Palliative Care Network.

9 Q Okay. Do you belong to any type of -- or

10 -- or are you associated with any group that helps

11 abused children?

12 A Outside of the hospital, you mean?

13 Q Yes.

14 A Not any formal group, no.

15 Q Are you aware of any magazines or

16 treatises or periodicals that the hospital gets or

17 has access to in regard to child abuse?

18 A Yes. We could get articles and things

19 through our library.

20 Q Okay. And do you know what periodicals

21 they would come in, like is there a magazine or

22 something?

23 A There's so many that would come to the

24 hospital. If there was something specific, you

25 would work the library. I don't know what specific

Page 154

1 titles the hospital has in its disposal.

2 Q Sure. Is it usually through like AAP,

3 American Association of Pediatrics, or something

4 like that?

5 A That would be a medical journal.

6 Q Okay. And so you're talking about

7 something that -- are there social worker journals

8 that you're aware of?

9 A Yes.

10 Q And do some of those deal with child abuse

11 situations involving a hospital?

12 A Probably. I can't think of any off the

13 top.

14 Q Do you recall reading any, or is there

15 anything that you've seen that would indicate the

16 proper steps you're supposed to take in a situation

17 like Owen Carduff?

18 A I'm sure there are recommendations and

19 algorithms out there.

20 Q Okay.

21 A I don't, again, know any specific ones

22 specifically.

23 Q Okay. What type of training were you

24 required to undertake after you were employed?

25 A We have yearly ACE modules. We have

Page 155

1 computer-training modules. We have other activities

2 at our disposal. Conferences. We get educational

3 reimbursement, things that would apply to our --

4 Q Do you -- do you -- is it like

5 continuing -- we have CLEs, continuing legal

6 education.

7 A Right. There are no -- there is no

8 requirements that I have to fulfill in terms of CLEs

9 and things like that.

10 Q Okay.

11 A CUs -- CEUs -- CEUs. Sorry, I'm tired.

12 Q Do you still go to CEUs at times?

13 A Yes.

14 Q Okay. And have you ever gone to CEUs for

15 situations concerning child abuse?

16 A Yes.

17 Q Okay. And do you recall them or do you

18 have certificates or do you have materials from

19 those?

20 A Yes.

21 Q Okay. I'm going to ask you -- I'm going

22 to write a letter to Mr. Todd, of course, but I'm

23 going to ask that you provide that material to

24 Mr. Todd so he could get it to me.

25 A Okay. I'll see what I have.

Page 156

1 Q The policies that we've gone over today,

2 we went over an algorithm and one or two policies,

3 are there any other policies you're aware of that

4 you have to follow or abide by in regard to a

5 situation like Owen Carduff?

6 A I have a general social work job

7 description that talks about my job responsibilities

8 and then in acting in an ethical -- acting in an ethical

9 manner.

10 Q Okay. You've heard the term "peer review"

11 before, right?

12 A Yes.

13 Q Do you know if there was ever a peer

14 review conducted on this specific case?

15 A Not to my knowledge, but --

16 Q Okay.

17 A -- I wouldn't.

18 Q Okay. Have you ever had any professional

19 honors, like been honored as the Social Worker of

20 the Year for the hospital or anything --

21 A I've gotten some action awards and other

22 things like that.

23 Q Okay, okay. Do you carry your own

24 professional insurance?

25 A No.

Page 157

1 Q I apologize for the next couple questions.

2 Do you have any felony or misdemeanor

3 convictions other than a traffic ticket?

4 A No.

5 Q Have you been in any drug or alcohol

6 rehabilitation?

7 A No.

8 Q Are you under any psychiatric care?

9 A No.

10 Q Have you ever been sued before?

11 A No.

12 Q Do you plan to testify live at trial in

13 this case if it goes to court?

14 A If I'm subpoenaed.

15 Q Okay. Well, we are in North Carolina, so

16 it's a weird thing but --

17 A Okay.

18 MR. HOOD: I'm --

19 MR. TODD: I'm planning for her to.

20 MR. HOOD: Okay. That's what I -- that's what

21 I was trying to --

22 MR. TODD: Well, she probably hadn't -- she's

23 probably hoping not to.

24 MR. HOOD: Okay.

25 THE WITNESS: I was hoping this might be

Page 158

1 it.

2 BY MR. HOOD:

3 Q Would you agree that the testimony you've

4 given us today is as accurate as you know and that

5 it will probably -- similar -- be similar to what

6 you would testify to at trial?

7 A Yes.

8 Q Okay.

9 MR. HOOD: Give me about one minute.

10 MR. TODD: It's your deposition.

11 MR. HOOD: I know.

12 MR. TODD: If I could -- if I could -- you

13 know, stop you at 30, I would, but, you know,

14 that's not within my power.

15 MR. HOOD: It ain't going to do any good.

16 Give me --

17 (Videographer going off record.)

18 (Brief recess.)

19 THE VIDEOGRAPHER: Back on the record at

20 1:42 p.m.

21 EXAMINATION

22 BY MR. HOOD:

23 Q I know you said you've never testi- --

24 never given a deposition before. Have you ever

25 testified in court?

Page 159

1 A In family court, yes.

2 Q And when you testified in family court,

3 have you given sworn testimony in child abuse cases?

4 A Yes.

5 Q And do you know how many times you've done

6 that?

7 A Over my career?

8 Q Just since you've been at Levine.

9 A Since at Levine, maybe three or four.

10 Q Okay. And when you gave that, what kind

11 of --

12 A Two or three.

13 Q What kind of -- why would you have been

14 giving testimony in court?

15 A Usually if I'm called into court, it's the

16 sixth-month custody review that DSS has taken

17 custody. And so they have their six-month review

18 about continuing custody or placement for the child.

19 Q Do you ever give opinions about what may

20 be best for the child?

21 A No. Usually if I'm testifying, it's about

22 the medical record and what happens with the child.

23 Q Okay. And do you recall any of the cases

24 where you have -- the name of the case where you may

25 have testified?

Page 160

1 A No.

2 Q Okay.

3 A If I racked my brain, I might, but not as

4 I sit here.

5 Q Okay. Now, your badge says "palliative

6 care."

7 A Yes.

8 Q When did you leave pediatrics?

9 A Well, I didn't.

10 Q Oh.

11 A That's my extra badge. I'm still part of

12 the clinical care management department --

13 Q Right.

14 A -- as a PRN social worker --

15 Q Right.

16 A -- for Levine's, but I'm also working PRN

17 for the adult palliative care.

18 Q Is -- is that somebody like in hospice or

19 something?

20 A It's -- palliative care is pre-hospice, so

21 we -- quality of life, relieving suffering, things

22 like that. So that's primarily an adult population

23 that I'm working with.

24 Q Okay.

25 A But I'm still in my regular department.

Page 161

1 Q God bless you for that, that's tough.
 2 Do you know why you recommended
 3 parenting classes or why they recommended the
 4 parenting classes?
 5 A I think it was primarily because of their
 6 young age.
 7 Q Okay. Are you aware of any literature
 8 that the very young are at risk for being child
 9 abusers?
 10 A I think -- not a specific literature site
 11 off the top of my head, no.
 12 Q Sure. But you're aware, that there are --
 13 because of what you do and because of your education
 14 and because of your experience, that there are
 15 certain risk factors for populations that are more
 16 subject to being abusers than not.
 17 A Right.
 18 Q I mean, it can be -- I've read statistics
 19 where it said people who were not married were more
 20 likely to abuse rather than married parents.
 21 A Right.
 22 Q People under a poverty level of like
 23 \$15,000 a year.
 24 A Right.
 25 Q Young parents under the age of 21.

Page 162

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

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

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1 (Deposition concluded at 1:47 p.m.)
 2 (* This transcript may contain quoted material. Such
 3 material is reproduced as read or quoted by the
 4 speaker.)
 5 (** Certificate accompanies sealed
 6 original only.)
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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

ELIZABETH HOPE RAINEY,
AS THE APPOINTED GUARDIAN
AD LITEM TO OWEN C. [REDACTED],
A MINOR,

PLAINTIFF,

-VS-

CA NO. 2011-CP-86-04508

CHARLOTTE MECKLENBURG
HOSPITAL AUTHORITY D/B/A
CAROLINAS MEDICAL CENTER,
SOUTH CAROLINA DEPARTMENT
OF SOCIAL SERVICES,
BRUCE BRYANT AS THE
CONSTITUTIONAL OFFICER OF
THE SHERIFF OF YORK
COUNTY, THE YORK COUNTY
SHERIFF'S DEPARTMENT AND
YORK COUNTY,

DEFENDANTS.

 COPY

DEPOSITION OF CHARLOTTE WILLIAMS

ROCK HILL, SOUTH CAROLINA

JULY 20, 2012

REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM

DALLAS REPORTING
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

STATE OF SOUTH CAROLINA)) IN THE COURT OF COMMON PLEAS COUNTY OF YORK) ELIZABETH HOPE RAINEY,) AS THE APPOINTED GUARDIAN) AD LITEM TO OWEN CARDUFF,)) A MINOR,) PLAINTIFF,) -VS-) CA NO. 2011-CP-86-04508 CHARLOTTE MECKLENBURG) HOSPITAL AUTHORITY D/B/A) CAROLINAS MEDICAL CENTER,)) SOUTH CAROLINA DEPARTMENT) OF SOCIAL SERVICES,)) BRUCE BRYANT AS THE) CONSTITUTIONAL OFFICER OF) THE SHERIFF OF YORK) COUNTY, THE YORK COUNTY) SHERIFF'S DEPARTMENT AND) YORK COUNTY,)) DEFENDANTS.) DEPOSITION OF CHARLOTTE WILLIAMS ROCK HILL, SOUTH CAROLINA JULY 20, 2012 REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM DALLAS REPORTING SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS ROCK HILL, SOUTH CAROLINA 803-328-9640/TOLL FREE 1-877-871-6363	Page 3 INDEX Examination by Mr. Todd Page 4 Examination by Mr. Frawley Page 102 Examination by Mr. Settana Page 137 Examination by Mr. Hood Page 151
Page 2 Appearances: For the Plaintiff - S. Randall Hood, Esq. McGowan Hood and Felder 1539 Health Care Drive Rock Hill, South Carolina 29732 Duane M. Shaw, Esquire Shaw Law Firm 1169 Ebenezer Rd. Rock Hill, South Carolina 29732 For the Defendant, Charlotte Mecklenburg Hospital Authority - Monteith P. Todd, Esquire Sowell Gray P. O. Box 11449 Columbia, South Carolina 29211 For the Defendant, Bruce Bryant, Office of the Sheriff and York County - Daniel R. Settana, Jr., Esq. McKay, Cauthen, Settana & Stubbley P. O. Drawer 7217 Columbia, South Carolina For the Defendant, South Carolina Department of Social Services - Patrick J. Frawley, Esquire Davis, Frawley, Anderson, McCauley, Ayer, Fisher and Smith P. O. Box 489 Lexington, South Carolina 29071-0489	Page 4 1 Deposition of Charlotte Williams taken before me, 2 Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the 3 State of South Carolina, in the law offices of McGowan, 4 Hood and Felder, Rock Hill, South Carolina, commencing 5 at 2:30 p.m. on July 20, 2012, in accordance with the 6 South Carolina Rules of Civil Procedure. 7 It was stipulated by and between Counsel for the 8 Plaintiff(s) and Counsel for the Defendant(s) that this 9 deposition is taken for any purpose allowed under the 10 South Carolina Rules of Civil Procedure. 11 That the signing of the transcript of deposition 12 by the witness is reserved. 13 * * * * * 14 Charlotte Williams, first being duly sworn, deposes and 15 says as follows: 16 EXAMINATION - (By Mr. Todd) 17 Q Your name, please? 18 A Charlotte Williams. 19 Q Ms. Williams, my name's Monty Todd and we met about 20 a minute ago, and I represent Charlotte Mecklenburg 21 Hospital Authority. It's Carolinas Medical Center, 22 Levine's Children's Hospital. And this is my 23 opportunity today to ask you some questions about a 24 case that's been brought on behalf of Owen C. [REDACTED] 25 A Yes, sir.

Page 5

1 Q Have you ever given a deposition before?

2 A No, sir.

3 Q Well, let me tell you what's going to happen is I'm

4 going to ask you some questions about yourself,

5 about your daughter, and about your grandchild, and

6 about the issues raised in this lawsuit. You've

7 been sworn to tell the truth by the court reporter

8 so you're under oath just as you would be before a

9 judge and a jury; do you understand that?

10 A Yes, sir.

11 Q Now, we're across the table and if you shake your

12 head up and down I'll understand you but the court

13 reporters do not like to interpret so we need you

14 to answer with words.

15 A Okay.

16 Q If you need to take a break for any reason, you let

17 me know. You're entitled to take a break.

18 A Okay.

19 Q If I ask you a question, you don't understand it,

20 you didn't hear it, for any reason you're not sure

21 about the question, you have to let me know, and I

22 will try to ask it in a way that it is

23 understandable.

24 A Okay.

25 Q If I ask you a question you don't know the answer,

Page 6

1 you don't remember, then the truthful answer is you

2 don't know or you don't remember.

3 A Correct.

4 Q If you're giving me an answer that's an

5 approximation or an estimate, if you'd let me know

6 so the record will reflect it's an approximation or

7 an estimate.

8 A Okay.

9 Q Your birthday?

10 A March 1st, 1969.

11 Q Where were you born?

12 A Yonkers, New York.

13 Q Where did you grow up?

14 A Houston, Texas.

15 Q What's your education?

16 A I made it to eleventh grade, and I got a GED later.

17 Q Where were you when you dropped out of high school?

18 A Houston, Texas.

19 Q Why did you drop out?

20 A I just wasn't getting it. I just wasn't a good

21 student.

22 Q Did you not go back to the twelfth grade or at some

23 time during the eleventh grade you said I'm tired

24 of this, I'm out of here?

25 A I kind of just left school.

Page 7

1 Q What, fall? Spring?

2 A Probably the middle of the year, the middle of the

3 school year.

4 Q Now, when did you get your GED?

5 A When I was 30.

6 Q Where did you get that?

7 A In Alabama.

8 Q Any education since you dropped out of high school,

9 meaning and I should say, any formal education?

10 A Correct. No, sir.

11 Q Have you ever been convicted of a crime?

12 A Yes, sir.

13 Q And what crimes have you been convicted of?

14 A I had a CDV charge four years ago approximately. I

15 think if a DUI is a conviction, I've had one DUI,

16 also four years ago.

17 Q One DUI?

18 A Yes, sir.

19 Q And the CDV, is that criminal domestic violence?

20 A Yes, sir.

21 Q When was that?

22 A Approximately 2008.

23 Q And where was that?

24 A In Rock Hill, Rock Hill, South Carolina.

25 Q And where was the DUI?

Page 8

1 A Also in Rock Hill.

2 Q Any other criminal convictions?

3 A No, sir.

4 Q Any other arrests?

5 A No, sir.

6 Q What were the circumstances of the criminal

7 domestic violence?

8 A It was, I guess you could say, the last day of my

9 second marriage, just it didn't end well.

10 Q I assume there was some type of a assault against

11 somebody else?

12 A Yes, sir. We had an argument. It resulted into a

13 physical fight and when the police arrived they

14 took me in.

15 Q Was your husband charged, - - -

16 A No, sir.

17 Q - - - or I should say ex-husband?

18 A Correct. No, sir.

19 Q Have you ever filed any lawsuits?

20 A No, sir.

21 Q Have you retained an attorney in this case?

22 A Yes, sir.

23 Q And who have you retained?

24 A Well, for Owen, correct?

25 Q With this case.

Page 9

1 A For this case, Mr. Hood and Mr. Shaw.
 2 **Q I'm going to ask you this because it makes a**
 3 **difference in what I can ask you or it may.**
 4 A Okay.
 5 **Q Do you consider Mr. Hood or Mr. Shaw to be your**
 6 **attorneys?**
 7 A Yes, or --- I mean --- I understand ---
 8 Mr. Hood - She's on retainer with us.
 9 A Yes.
 10 **Q Okay.**
 11 A I'm sorry, I didn't understand if it's ---
 12 they're representing Owen so I didn't know if
 13 they're technically his lawyer, but we've retained
 14 them. I retained them.
 15 **Q Who is Elizabeth Hope Rainey?**
 16 A Well, I think now she's the Guardian ad Litem for
 17 Owen. I know she's an attorney.
 18 **Q Do you know her?**
 19 A Yes, sir.
 20 **Q How do you know her?**
 21 A Coincidentally, she did my divorce to my second
 22 husband and my husband's divorce, my current
 23 husband, to his first wife.
 24 **Q Have you had any discussions with her about this**
 25 **case?**

Page 10

1 A No, sir.
 2 **Q Do you know how it was that she became the guardian**
 3 **for Owen?**
 4 A I do not know that.
 5 **Q Did you have any input into the decision to have**
 6 **her named guardian?**
 7 A No, sir.
 8 **Q Do you know who made the decision to have her named**
 9 **guardian?**
 10 A No, I don't.
 11 **Q Do you know whether she has any knowledge, first-**
 12 **hand knowledge, about this case?**
 13 A I do not know what she knows.
 14 **Q What's your maiden name?**
 15 A Charlotte Lythgoe Lavedan.
 16 **Q You might have to spell that for them, the last one**
 17 **for me.**
 18 A The last one is French, L-a-v-e-d-a-n.
 19 **Q What other names have you gone by?**
 20 A My first husband, my children's father, is
 21 Omohundro which is O-m-o-h-u-n-d-r-o, and I later
 22 dropped that name and took on just Charlotte
 23 Lythgoe. And my second husband's name was Thomas
 24 Jaeggi, J-a-e-g-g-i.
 25 **Q Where's Mr. Jaeggi - - - how do you pronounce it,**

Page 11

1 - - -
 2 A Jaeggi.
 3 **Q - - - Jaeggi live?**
 4 A Yes, Rock Hill.
 5 **Q Does he still live here?**
 6 A I have no idea.
 7 **Q How long were you married to Mr. Jaeggi?**
 8 A Two years.
 9 **Q What about to Mr. - - - You were married to Mr.**
 10 **Omohundro?**
 11 A Yes, sir.
 12 **Q And how long were you married to him?**
 13 A Approximately 11 years.
 14 **Q And what was the reason for that divorce?**
 15 A He was abusive.
 16 **Q Physically?**
 17 A Yes, sir.
 18 **Q Where was that divorce granted?**
 19 A Texas, probably Austin.
 20 **Q And the grounds was that he physically abused you?**
 21 A Yes, sir.
 22 **Q Any other grounds?**
 23 A He, at the time, was incarcerated for check fraud,
 24 I think, so he wasn't there anyway.
 25 **Q Did he go to jail for abusing you?**

Page 12

1 A No, sir.
 2 **Q Did you ever have any criminal charges brought**
 3 **against him?**
 4 A No, sir.
 5 **Q What about Mr. Jaeggi, what was the basis for that**
 6 **divorce?**
 7 A Irreconcilable differences.
 8 **Q Was there any charge made against you for physical**
 9 **abuse? Although you told me about you were**
 10 **arrested and convicted.**
 11 A Just that. It wasn't a physical marriage - - -
 12 abusive marriage.
 13 **Q Now, did you actually hit him; is that what the**
 14 **criminal domestic violence charge was?**
 15 A As I was told by the police, he made the call, Mr.
 16 Jaeggi made the call, so I was - - - I was the - - -
 17 - he was the victim.
 18 **Q Did you plead guilty?**
 19 A Yes, sir.
 20 **Q And you pled guilty to criminal domestic violence**
 21 **in Rock Hill or York?**
 22 A Yes, York.
 23 **Q And what kind of sentence did you get for that?**
 24 A I was told to take criminal domestic violence
 25 classes, but I had no means to get to those classes

Page 13

1 at that time, and I later had to go back in front
 2 of a judge and I served 15 days in jail.
 3 **Q Did that satisfy the sentence?**
 4 A Yes, sir.
 5 **Q Do you know what judge it was?**
 6 A No, sir.
 7 **Q Do you have brothers and sisters?**
 8 A I have a brother.
 9 **Q A brother?**
 10 A Yes, sir.
 11 **Q And his name?**
 12 A Pierre Lavedan.
 13 **Q Is he a physician?**
 14 A He is.
 15 **Q He lives in Omaha?**
 16 A He does.
 17 **Q Does he have any specialty as a physician?**
 18 A He was family practice for several years, and I
 19 believe internal medicine, and he now works either
 20 for or with Hospice.
 21 **Q Did he come to South Carolina in 2009/2010?**
 22 A He came to my wedding in 2007 to Tom Jaeggli.
 23 **Q Is that the last time you've seen him?**
 24 A Yes, sir.
 25 **Q So I think that answers my question. And really**

Page 14

1 what I was getting at, has he ever seen Owen?
 2 A No, sir.
 3 **Q Did he come to the hospital? And then I think I**
 4 **can figure that out myself. He didn't come**
 5 **Levine's Children's Hospital in 2009/2010?**
 6 A No, sir.
 7 **Q Any other siblings?**
 8 A No, sir.
 9 **Q Are your parents still alive?**
 10 A My father and my step-mother are alive.
 11 **Q Where do they live?**
 12 A Idaho, Pocatello.
 13 **Q When's the last time you've seen them?**
 14 A They came to visit me with my current husband in
 15 Rock Hill, but Owen was in foster care.
 16 **Q To your knowledge, have they ever seen Owen?**
 17 A They have not.
 18 **Q They don't have any knowledge about any of the**
 19 **issues in this lawsuit, if they did it'd be**
 20 **secondhand?**
 21 A Correct.
 22 **Q Do you have children? I know you have one because**
 23 **she was with us earlier today.**
 24 A I have two children. Yes. I have Kayla Lythgoe,
 25 and my son is Aaron Lythgoe.

Page 15

1 **Q And your current husband - - -**
 2 A He has four children.
 3 **Q Now, Aaron's how old? Aaron is a - - -**
 4 A Fourteen.
 5 **Q - - - man - - - boy?**
 6 A Yes. I'm sorry. A man/boy he is.
 7 **Q He's 14?**
 8 A Yes, sir.
 9 **Q And he's at boarding school now?**
 10 A Yes, sir.
 11 **Q Why is he in boarding school?**
 12 A He got lazy in seventh grade and eventually was
 13 expelled for minor things like tardies and
 14 detentions. Once you're expelled in Aiken County,
 15 you can't go back to that county for - - - until
 16 the following year, so we found a boarding school
 17 that would catch him up to the current year he
 18 belongs in.
 19 **Q What boarding school is that?**
 20 A Thornwell.
 21 **Q Oh, in Clinton?**
 22 A (Indicating yes)
 23 **Q And what school was he going to that he got**
 24 **expelled from?**
 25 A Kennedy Middle School.

Page 16

1 **Q Is that a public school in Aiken?**
 2 A Yes, sir.
 3 **Q Will he start Thornwell in August?**
 4 A Yes - - - Where are we? He went last Tuesday.
 5 **Q And that was his first day was last week?**
 6 A Yes, sir.
 7 **Q Do they have school there now?**
 8 A No. They advised that he would be able to settle
 9 in there and get used to their routine and
 10 structure. And they start tutoring next week and
 11 so they tutor them before school starts to catch
 12 them up.
 13 **Q Would DSS have any involvement in him going? So**
 14 **it's - - -**
 15 A No, sir.
 16 **Q When did you marry Mr. Williams - - -**
 17 A September 26, 2008.
 18 **Q When did you meet Mr. Williams?**
 19 A - - - I'm sorry, 2009.
 20 **Q Wait, more important for him to get it right than**
 21 **you is my experience.**
 22 A Yes. 2009.
 23 **Q When did you meet Mr. Williams?**
 24 A August 2008.
 25 **Q How did you meet him?**

Page 17

1 A We met through mutual friends. Through mutual
2 friends.

3 Q Who are your friends or friend?

4 A I was staying with a family and their neighbors
5 next door to them, their son was killed. And my
6 husband's a pastor and he was doing - - - he was
7 friends of that family. And he was coming and
8 going a lot and that family knew the family I was
9 living with, and we met sort of over the fence
10 talking and continued to talk.

11 Q Where was he, he being your current husband, Mr.
12 Williams, where was - - - did he have a church?

13 A Yes, sir.

14 Q And what was the name of his church?

15 A Faith Family Christian Center.

16 Q And where is that located?

17 A I can't think of the street name. It's just behind
18 the - - - where am I, Rock Hill airport.

19 Q Do you know long he had been the pastor there?

20 A I believe about 16 years.

21 Q Was it a church he founded himself?

22 A Yes.

23 Q Were there like any associate pastors or - - -

24 A No.

25 Q Do you know why he left that church to go to Alken?

Page 18

1 A Yes, better opportunities.

2 Q Is the Faith Family Christian Center still an on-
3 going church?

4 A Yes, sir.

5 Q Tell me about your employment history. Is that
6 going to take us a while to go through your
7 employment history?

8 A Well, since my first job?

9 Q Yes, I've just got to get an idea of - - -

10 A I've had several jobs since I was 16. When I got a
11 car, I got a job. And as an adult I got into
12 advertising with The Herald in Rock Hill.

13 Q Well, let me just back up. You dropped out of high
14 school in the eleventh grade. When you dropped
15 out, did you have a job when you dropped out?

16 A I've been through a lot of fast-food jobs and
17 receptionists jobs, customer service.

18 Q So you were living in Texas until you were how old?

19 A Thirty.

20 Q And those jobs were fast food, cashier type jobs?

21 A Well, as I got older I got office, secretarial,
22 jobs.

23 Q And when you left Texas, you moved to Alabama?

24 A Yes, sir.

25 Q And your parents were in Alabama?

Page 19

1 A Yes, sir, my mom and step-dad.

2 Q And did you have jobs in Alabama?

3 A I worked a seasonal job at a racetrack. I don't
4 recall working in Alabama because I wasn't there
5 very long. My parents passed away.

6 Q You worked Talladega?

7 A (Indicating yes)

8 Q That's a yes?

9 A Yes. I'm sorry.

10 Q You would work, I guess, in preparation and for the
11 race?

12 A I sold tickets.

13 Q Any other jobs while you were in Alabama?

14 A Yes, I worked for a clothing store in human
15 resources.

16 Q And that was in Anniston?

17 A Yes, sir.

18 Q Then you moved to Tennessee?

19 A Yes, sir.

20 Q Any jobs in Tennessee?

21 A Yes. I worked at a knife company. I can't
22 remember the name, and I ended up at that company
23 in customer service.

24 Q Like a company that manufactured knives?

25 A Knives, yes. I was in shipping at first, and they

Page 20

1 moved me into the office.

2 Q Why did you move from Alabama to Tennessee?

3 A I didn't want to be in Alabama.

4 Q And you moved to Kingsport?

5 A Yes, sir.

6 Q Why did you pick Kingsport?

7 A I had a friend that lived there.

8 Q And then from Kingsport you came to Rock Hill?

9 A Correct.

10 Q How did you end up in Rock Hill?

11 A I met my second husband online, and he lived in
12 Rock Hill.

13 Q Did he work?

14 A Yes, sir.

15 Q What was his job?

16 A He does maintenance at - - - the name escapes me.
17 Atotech?

18 Q That sounds like you're not sure about that.

19 A No.

20 Q We'll put that down as a guess or is that - - -

21 A No, it's Atotech.

22 Q It's Atotech?

23 A Yes, sir, in Rock Hill.

24 Q And have you had any contact with him in the last
25 two or three years?

Page 21

1 A No, sir.

2 Q So you don't know whether he's still around or not?

3 A No, sir.

4 Q Did he have any children that lived in your home?

5 A He had a son, Patrick, who was a teenager.

6 Q Did Patrick live in the home?

7 A He lived with us for a little while.

8 Q And who was living in the home, you, Kayla, Aaron and Patrick?

9 A Yes.

11 Q What about Patrick, do you have any contact with Patrick?

12 A I have no contact with any of that family.

14 Q Now, Owen was born September the 9th, 2009?

15 A That's correct.

16 Q That's your first grandchild?

17 A Yes, it is.

18 Q I'm assuming it was.

19 A Yes, it is.

20 Q Were you there for the birth?

21 A Absolutely.

22 Q And the birth was at Piedmont?

23 A Yes, sir.

24 Q Were you there when Owen was discharged?

25 A Yes, sir.

Page 22

1 Q Because I've also reached the elevated status of being a grandparent and when my daughter was in the hospital, the hospital came and had a discussion about don't shake your baby.

2 A Okay.

6 Q And I was wondering was there any similar thing that happened at Piedmont about somebody comes and has a discussion about ---

7 A No, they should.

10 Q Even without somebody coming and having that conversation, you were aware that that's not something you should do to a baby?

11 A Correct.

14 Q Did you have any discussions with either Michael or Kayla about parenting and ---

15 A No, sir.

17 Q Did you ever tell them, you know, you shouldn't shake Owen?

18 A I don't believe it came out. No.

20 Q Were you ever concerned that prior to January of 2010 that something like that might have been taking place?

21 A No, sir.

24 Q I guess if you had, then you would have had the conversation?

Page 23

1 A Yes, sir.

2 Q Now, when Owen was born, say, the first from --- This is a broad question, you give a broad answer.

3 But from September, October, November, how was he physically and to the extent you can tell with an infant mentally?

4 A He was what I would call perfect. He had no problems, no disabilities, nothing.

5 Q Did you have any concerns about Kayla's parenting skills?

6 A No, sir.

12 Q Did you have any concerns about Michael Carduff's parenting skills?

13 A No, sir.

15 Q When Kayla would take Owen to the pediatrician, would you go with them?

16 A Yes, sir.

18 Q Do you know how many visits there were between September 9th and December 4th, 2009 to the pediatrician?

19 A I mean, I don't know how many. I know that we did all of the normal baby checkups and immunizations and things like that. Prior to December, we went maybe three or four times to the pediatrician. We were concerned about excessive crying.

Page 24

1 Q And how old was Owen when you were concerned about the excessive crying?

2 A Three months.

4 Q And I may get to that. But what about September or October, were your any concerns about excessive crying?

5 A No.

8 Q Prior to Thanksgiving, any concerns about excessive crying?

9 A No, sir.

11 Q Who was the pediatrician that you went to?

12 A Sunshine Pediatrics, I want to say Dr. Patel.

13 Q Did you see the same doctor every time?

14 A Yes, sir.

15 Q So it was Dr. Patel that you saw each time?

16 A I believe so.

17 Q Well, you live in Aiken now.

18 A Yes, sir.

19 Q When you were living in Rock Hill back in 2009 and early 2010, where were you living? What was the address?

20 A Shuman Road, just off of Museum Road. I don't recall the street number, the house number.

24 Q Now, how close or how far was that from where your daughter was living?

Page 25

1 A Approximately two blocks.

2 Q Would you drive down to their house, or walk, or

3 some of both?

4 A I drove. I drove. It would take two minutes

5 depending on the light.

6 Q So there was a light?

7 A There was a light.

8 Q Okay.

9 A It was around the corner.

10 Q So if you caught it, and it was green it was two

11 minutes?

12 A Yes.

13 Q And I guess if it was red, it was three?

14 A Three to four. It was a long light.

15 Q So I think it'd be fair to say you lived close by?

16 A Very close.

17 Q Now, were they living in a trailer park?

18 A Yes, sir.

19 Q What about you, was yours a stand-alone house or -

20 --

21 A It was a brick house.

22 Q What part of Rock Hill? Was there like a section

23 of Rock Hill that that would considered?

24 A Mount Gallant area is just --- It was also just

25 In the same neighborhood as the airport because we

Page 26

1 were close to the church.

2 Q In October and November, how often you would have

3 interaction with Owen.

4 A I tried every day. He was my joy ---

5 Q So would there ---

6 A --- and is.

7 Q I'm sorry. If I interrupt you ---

8 A No, you're fine. I'm sorry.

9 Q I'm starting to think about my next question.

10 A Okay.

11 Q It's not my intent to interrupt you but if I do,

12 let me know. When you would visit, would you ---

13 I guess, you spent a lot of time with Owen?

14 A Yes.

15 Q And so you had the opportunity to observe Owen and

16 you had an opportunity to observe Michael and Kayla

17 interacting with Owen?

18 A Yes.

19 Q Would there be times when you would keep Owen just

20 yourself?

21 A Yes.

22 Q How often was that?

23 A Quite often. Kayla and Michael both worked for a

24 little while and, you know, I would keep him when

25 they would work. If Michael wasn't working, he

Page 27

1 would keep them --- him or vice versa, if Kayla

2 was working.

3 Q Do you have a good relationship with Kayla?

4 A Very good.

5 Q Kayla dropped out of school in the eleventh grade

6 as well?

7 A Yes, sir.

8 Q Did you have discussions with her and encourage her

9 not to?

10 A I did.

11 Q And what caused her to drop out of school in the

12 eleventh grade?

13 A I mean, she would have to answer that.

14 Q She has.

15 A Correct.

16 Q But you as a mother may have a different

17 perspective.

18 A In my assumption, she --- She too didn't ---

19 She was a very smart student, a straight-A honor

20 role for a long time. She got into the eleventh

21 grade and took some college-type courses, sociology

22 or psychology, and it blew her out of the water.

23 She didn't understand it and that's where she

24 started to decline and just quit.

25 Q When she quit, did she continue to live with you?

Page 28

1 A Shortly after that she met Michael in October,

2 maybe September, and eventually she asked if she

3 could go live with him and his parents.

4 Q When Kayla dropped out in the eleventh grade, where

5 were you living? Or really what I want to ask you,

6 who were you living with then? Were you by ---

7 A Mr. Jaeggli.

8 Q Did that have anything to do with her dropping out,

9 the relationship with Mr. Jaeggli?

10 A I mean, again, you'd have to ask her that. I think

11 she was more in having a --- relationship was

12 starting.

13 Q The relationship with Michael?

14 A With Michael.

15 Q Did Kayla have any trouble with drugs or alcohol?

16 A None.

17 Q Did you ever see anything to make you think that

18 Michael had issues with drugs or alcohol?

19 A No.

20 Q I'm going back to October/November 2009, you would

21 keep Owen several days a week?

22 A Yes.

23 Q And then you'd be visiting just about every day?

24 A Yes.

25 Q For two or three or four hours?

Page 29

1 A No, not always. I would definitely check in all
 2 the time, not checking for anything, just to be
 3 with him.
 4 Q Was there anything during those visits or when you
 5 were keeping Owen by yourself that made you
 6 suspicious that there was some harm coming to Owen,
 7 either intentionally or unintentionally?
 8 A No.
 9 Q Kayla and Owen moved into the house on Gauden
 10 Park?
 11 A Yes.
 12 Q When did they move into that house?
 13 A Well, we can count back nine months from September.
 14 She found out she was pregnant, she was living in
 15 Concord, and she moved to Rock Hill approximately
 16 maybe two months after that.
 17 Q It sounds like March 2009, give or take a month?
 18 A Yes, sir.
 19 Q Were you or your husband providing any kind of
 20 financial support to them?
 21 A Not that I remember, no. Kayla never lost a job.
 22 She worked at Walgreens in Concord and was
 23 transferred to Walgreens in Rock Hill.
 24 Q How was the relationship between Kayla and Michael?
 25 A It seemed fine.

Page 30

1 Q Was there any discussion about the two of them - -
 2 - were they having discussions about getting
 3 married? They were living together and had a
 4 child.
 5 A No.
 6 Q Did you ever have any discussions with Kayla about
 7 whether she should marry Michael or not marry
 8 Michael?
 9 A No.
 10 Q Other than you and Kayla and Michael, was anybody
 11 else involved in caring for Owen during the 2009?
 12 A No.
 13 Q What about Brian, Michael's brother, did you ever
 14 observe him in the house?
 15 A He was there sometimes. He definitely wouldn't be
 16 considered someone that cared for Owen.
 17 Q Right. Did you - - -
 18 A I mean, take care of him.
 19 Q Did you have any concerns about Brian being around
 20 Owen?
 21 A No, not - - - no.
 22 Q Now, Owen was taken to Piedmont Medical Center
 23 December the 4th of 2009.
 24 A Yes, sir.
 25 Q What I want to back up is, had Owen had any

Page 31

1 problems the ten days prior to that visit?
 2 A Well, as I said earlier, we had - - - He seemed to
 3 be crying more than usual and not eating properly
 4 is what Kayla - - - how Kayla sort of described it,
 5 and so we took him to the pediatrician I think two
 6 or three times.
 7 Q Thanksgiving, did your families get together for
 8 Thanksgiving?
 9 A Yes.
 10 Q Was Owen having any troubles Thanksgiving?
 11 A No.
 12 Q There was a time you took - - - Kayla took Owen to
 13 Sunshine Pediatrics.
 14 A Yes.
 15 Q And that was because there was concerns - - - As I
 16 understand he had a runny nose and a red nose, and
 17 his appetite wasn't as good?
 18 A Yes.
 19 Q Did you go on that visit to Sunshine Pediatrics?
 20 A Yes.
 21 Q Do you remember who the doctor you saw there was?
 22 A Dr. Patel.
 23 Q And do you remember what Dr. Patel's impression was
 24 of what was going on with Owen?
 25 A If I remember correctly, the first time we went he

Page 32

1 mentioned possibly allergies, which was kind of
 2 vague, but that would - - - that made sense because
 3 of the runny nose. And the second or third time we
 4 went, he mentioned a throat infection.
 5 Q I want to try to keep it in order. So you went to
 6 Sunshine Pediatrics and you saw Dr. Patel. Do you
 7 remember what his instructions were or
 8 recommendations?
 9 A I don't remember.
 10 Q But you were there with Kayla?
 11 A Yes.
 12 Q Do you know if Michael was there?
 13 A He was not.
 14 Q And then as I understand it, some time, a day or
 15 two or three after that, Kayla took Owen to, I
 16 can't remember, Riverview?
 17 A Riverview or Riverchase, something like that.
 18 Q I called it Riverside but River something.
 19 A Yes, an emergency clinic.
 20 Q Did you go on that visit?
 21 A No.
 22 Q Do you know why Kayla took Owen to Riverview or
 23 side or chase?
 24 A I believe she told me it was the same symptoms. He
 25 was crying and not eating.

Page 33

1 Q Do you know whether or not they came up with any
2 kind of diagnosis or - - -

3 A I don't know what their diagnosis was.

4 Q And then there was another visit back to Sonshine
5 Pediatrics.

6 A Yes.

7 Q Did you go to that second visit?

8 A Yes.

9 Q Was Michael with you?

10 A No.

11 Q Tell me what was going on with him in that, it'd be
12 the second visit to Sunshine, but - - -

13 A The same symptoms, crying and not eating well.

14 Q Now, during any of these three visits, did you see
15 any kind of bruises or marks on him?

16 A No.

17 Q So what was unusual was he had a runny nose, and he
18 was crying more than usual, and his appetite wasn't
19 as good?

20 A Correct.

21 Q Anything else?

22 A No, sir.

23 Q No marks, no scratches, nothing else?

24 A No, sir.

25 Q Do you remember what the - - - I say the third

Page 34

1 visit to the doctor, what recommendations or
2 treatments were given?

3 A I really don't know the details, but I do know that
4 that's when he said he had a throat infection.

5 Q Was it Dr. Patel again?

6 A Yes. It's possible he gave him an antibiotic, but
7 I really don't remember.

8 Q And we'll go back, and I've got my calendar here.
9 December 4th, 2009, according to my calendar that
10 was a Friday.

11 A Correct.

12 Q Did you have any contact with Owen that Friday,
13 December the 4th, 2009?

14 A I want to say no because it was my son's birthday,
15 and we were putting up Christmas lights all day so
16 I don't believe that day I had seen him yet, that
17 morning.

18 Q But you don't remember seeing him any time that
19 day? Did you see him at the hospital?

20 A I was called when they were - - - Kayla and Michael
21 were driving to the hospital, she called me and I
22 dropped the lights and got in my car.

23 Q Do you remember seeing him any time that day before
24 you got to the hospital?

25 A No, sir.

Page 35

1 Q Had you seen Owen the day before, which would have
2 been Thursday the 3rd?

3 A Probably.

4 Q Do you remember anything about how Owen was doing
5 on the 3rd?

6 A I remember he was fine. I remember he was fine.

7 Q Had he gotten over his fussiness or his crying and
8 his - - -

9 A Maybe it didn't seem alarming from what I recall.

10 Q Do you remember whether he was getting better, or
11 do you remember?

12 A I think that he had given him some sort of
13 antibiotic, and so I would have to say he was
14 appearing to be better, getting better.

15 Q Some times you're giving me answers and I hear in
16 your voice you're not sure.

17 A Correct.

18 Q So I don't want you to guess.

19 A Okay.

20 Q So what I want to do is, is do you remember seeing
21 Owen on Thursday, December the 3rd; do you have any
22 recollection of seeing him and knowing how he was
23 doing?

24 A I don't remember.

25 Q Now, when you got the call on December 4th, you

Page 36

1 hadn't see him that day, but were you surprised
2 that they were going to the hospital?

3 A Yes, I was shocked.

4 Q And why were you shocked?

5 A Well, I was - - - I was scared for Owen. I didn't
6 know what was happening.

7 Q And I guess that was a very poor question. What
8 I'm trying to find out is, did you have any
9 indication that he might be having some kind of
10 problems that would require him to go to the
11 hospital?

12 A No, sir.

13 Q When you last saw him, did you have any concerns
14 that he was getting worse?

15 A No, sir.

16 Q Do you remember if the last time you saw him you
17 had any concerns at all about his health?

18 A No, sir.

19 Q Now, when you got to the hospital, were Michael and
20 Kayla already there with Owen?

21 A Yes, sir.

22 Q And where was Owen?

23 A He was - - - he was back in the ER in one of the
24 trauma rooms.

25 Q Were you allowed to go back and see him?

Page 37

1 A I didn't ask, I just went.

2

3 **Q I guess the question is, I shouldn't asked you if**

4 **you were allowed, but - - -**

5 A I went back there, yes.

6 **Q So you saw him?**

7 A I saw Michael in the waiting room with the car

8 seat, and I went to him first and the car seat was

9 empty, and I said where are they. And he just

10 pointed back to the doors and so I went through the

11 doors and found Kayla and Owen.

12 **Q Owen was with Kayla?**

13 A Yes.

14 **Q How was Owen?**

15 A When I got there, Owen was crying and the doctor

16 was examining him.

17 **Q Did you notice any bruises?**

18 A I did not notice any bruises.

19 **Q Did you look for bruises?**

20 A I didn't consciously look for bruises.

21 **Q Were you looking at Owen to see if, you know, as a**

22 **mother, you could notice whether if he was red or**

23 **warm or - - - I say a mother, as a grandmother - -**

24 **-**

25 A Right. Right. I was looking at him with concern.

Page 38

1 I - - - bruises weren't in my mind. I wasn't

2 looking for anything weird. I was just seeing - -

3 - I was just looking at him.

4 **Q Did you see anything unusual about him? He was**

5 **crying, which I think you said, I understand, he**

6 **was normally - - -**

7 A Correct.

8 **Q - - - not a fussy baby. But other than crying,**

9 **anything out of the ordinary?**

10 A No, sir.

11 **Q How long was he at Piedmont?**

12 A That December 4th he was - - -

13 **Q December 4th. Yeah, - - -**

14 A - - - he was fine.

15 **Q My questions are December the 4th, 2009.**

16 A He was in the emergency room approximately three to

17 four hours maybe, maybe less.

18 **Q Did he get better while he was in there?**

19 A No, sir.

20 **Q Did he get worse?**

21 A Yes, sir.

22 **Q How did he get worse?**

23 A As I recall, they were examining him. According to

24 what Michael and Kayla told me, how he was when

25 Kayla got home from work and the transport to the

Page 39

1 hospital, I didn't see any of that. By the time I

2 got to the hospital, Owen just seemed like he was

3 irritated and they were examining him. And if I

4 recall correctly, they were going to eventually

5 discharge him. And I remember mentioning to the

6 doctor that he was born with - - - When he was born

7 Kayla had staph or a strep infection that is

8 normal, and they were treated when he was born with

9 antibiotics and there was no side effects to that.

10 But as soon as I mentioned that, the ER doctor sort

11 of freaked out and said oh, my gosh, I wish you

12 would have told me that sooner, and they ordered a

13 spinal tap.

14 **Q And the spinal tap - - -**

15 A It showed blood in his spine.

16 **Q And did the blood in the spine lead to the transfer**

17 **to Levine's Children's Hospital?**

18 A Yes, sir.

19 **Q Do you know who made the decision for Owen to go to**

20 **Levine's?**

21 A The ER doctor. I do not know.

22 **Q It wasn't anything that you or Michael or Kayla had**

23 **any input into?**

24 A About him being transferred?

25 **Q About him going, yes.**

Page 40

1 A No, they just said he was - - - they ordered an

2 ambulance.

3 **Q Do you know whether you or Kayla or Michael said we**

4 **want him to go to Levine's?**

5 A No, sir.

6 **Q Okay.**

7 A I didn't know Levine.

8 **Q You didn't know anything about it?**

9 A No, sir.

10 **Q Had you even heard about it?**

11 A No, sir.

12 **Q Never seen anything about it?**

13 A No, sir.

14 **Q So that decision was made by somebody at Piedmont**

15 **Medical Center?**

16 A Correct.

17 **Q Did you go to Levine's that night?**

18 A Yes, sir.

19 **Q How did you get there?**

20 A In my car.

21 **Q Owen was taken in an ambulance?**

22 A Correct.

23 **Q And did Michael and Kayla ride in the ambulance or**

24 **did they go in their car?**

25 A I don't know. I think they followed the ambulance.

Page 41

1 Kayla might have gone in the ambulance. I don't
2 know.

3 **Q Do you know what time Owen arrived at Levine's?**
4 A No, sir.

5 **Q Would it have been like after midnight on Friday?**
6 A No, sir. I recall it was in the afternoon, maybe
7 in the evening.

8 **Q So he got there some time late on Friday night the
9 4th?**
10 A Okay. Kayla got off work that day at 4:00 and then
11 we ended up at the --- at the Piedmont. So after
12 all the work-up at Piedmont, it could have been
13 late in the evening.

14 **Q So it could have been Saturday morning if it was
15 after midnight? It could have been after midnight
16 when you got to Levine's?**
17 A I don't recall it being that late, but it was in
18 the night.

19 **Q The records from Piedmont would show when he left
20 and I guess from Levine's would show when he got
21 there?**
22 A Yes. I don't remember it was --- I was ---

23 **Q You wouldn't disagree with the times on those?**
24 A No. No. No. I just don't remember.

25 **Q Do you remember the police coming to Piedmont**

Page 42

1 **Medical Center during December the 4th visit?**
2 A I do not remember them being there. No.

3 **Q Because your daughter testified that the police
4 came and questioned her during that December 4th
5 visit to Piedmont.**
6 A That's possible. They didn't question me. I don't
7 remember seeing them. I was in the emergency room
8 the whole time.

9 **Q When you were at Piedmont December the 4th, did
10 anybody say anything about non-accidental trauma or
11 a concern that there had been some kind of trauma
12 to Owen?**
13 A No, sir.

14 **Q What happened when you got to Levine's?**
15 A By the time I got to Levine, I believe Owen was
16 already in ICU. I don't really recall events step
17 by step.

18 **Q When Owen left Piedmont, did you go back home
19 before you went to Levine's?**
20 A No.

21 **Q You went straight to Levine's?**
22 A Yes.

23 **Q And do you remember whether or not there had been
24 any diagnoses made about what was going on with
25 Owen?**

Page 43

1 A Not at --- not that day, no.

2 **Q Do you remember there was a diagnosis made of
3 subdural hematoma?**
4 A Yes.

5 **Q Do you know what a subdural hematoma is?**
6 A I know hematoma means blood of some sort. That's
7 ---

8 **Q Did you ask when ---**
9 A I asked questions and they explained it. He had
10 cranial bleeding.

11 **Q Do you remember any of the doctors or nurses or
12 social workers you talked with at Levine's during
13 that December hospitalization?**
14 A I remember Dr. Bailey.

15 **Q What's his first name?**
16 A I do not know.

17 **Q And his specialty?**
18 A Neuro surgical --- pediatric neurosurgeon
19 perhaps.

20 **Q She's going to put that down as a guess, okay?**
21 A Okay. Well, I know he's in neurology ---

22 **Q Okay.**
23 A --- and I know he's in pediatrics.

24 **Q So you think he's a pediatric neurologist ---**
25 A I'm guessing, yes.

Page 44

1 **Q --- or could be a pediatric neurosurgeon?**
2 A I believe he's a neurosurgeon.

3 **Q What do you remember about that discussion?**
4 A I don't remember what day it took place. I do
5 remember there was a day that my husband and I
6 questioned Dr. Bailey in the corner of the room up
7 by the front door and asked him what happened, how
8 did this happen, how does this happen. And I
9 remember clearly at that time Dr. Bailey told us it
10 can be only a couple of things that could cause
11 cranial bleeding. And he explained at that time it
12 could be trauma at birth or it could be shaken
13 baby, and he shook his hands physically to show
14 that.

15 **Q And that was in December?**
16 A Yes, sir.

17 **Q Anything else? Any other discussions you remember
18 with anybody at ---**
19 A I remember we talked a lot about his eye ---
20 Owen's eyes.

21 **Q Who is we?**
22 A Well, I remember I talked a lot with doctors
23 concerned about Owen's eyes because they kept
24 saying he had blood behind his eyes.

25 **Q Now, was that in the December hospitalization?**

Page 45

1 A Yes.

2 Q Now, when did you first learn that Owen had the

3 subdural hematoma?

4 A When we were told - - -

5 Q That was my question. When were you told is what I

6 guess I was trying to ask?

7 A Again, it was just a really emotional time, but I'm

8 guessing the second day, maybe December 5th or

9 possibly - - - It had to be December 5th.

10 Q So if he got there early in the morning - - - so

11 some time that first day you learned?

12 A Correct.

13 Q Now, when you got there, was there a sitter in

14 Owen's room when you first got there?

15 A I don't think so. No.

16 Q Do you remember there being a sitter in Owen's room

17 when he was at Levine's in December of 2009?

18 A Not in December.

19 Q There was no sitter there in December to your

20 recollection?

21 A I don't remember then.

22 Q Do you remember any discussion about non-accidental

23 trauma during December of 2009?

24 A Yes.

25 Q Tell me about that, what you remember about that.

Page 46

1 A To be honest, I remember I only heard of it in

2 paper - - - or read it. I don't remember it ever

3 being verbally told to me as a diagnosis. It was

4 - - - it didn't come up, that phrase.

5 Q And what phrase came up?

6 A Well, when we talked to Dr. Bailey about what it

7 could have been, and he said it could have been one

8 of two things. But I don't believe we were ever

9 told verbally that that's what it was. I think

10 that I read it first on the discharge papers.

11 Q Did you have any involvement with DSS during that

12 December hospitalization?

13 A They spoke to me briefly.

14 Q Now, did you stay at the hospital during - - -

15 A Every day and every night.

16 Q - - - December? You were there the whole time?

17 A Yes.

18 Q Did you sleep on the couch?

19 A Yes.

20 Q How about your daughter?

21 A She stayed as well.

22 Q How about Michael?

23 A He stayed as well.

24 Q So the three of you stayed the entire time?

25 A And my husband came and went.

Page 47

1 Q How many times did DSS come to the hospital in

2 December of 2009?

3 A Possibly twice.

4 Q Possibly twice?

5 A Yes, sir.

6 Q Did you know why DSS came to the hospital?

7 A At that time I did not know.

8 Q Did you think it was unusual that DSS was coming to

9 the hospital?

10 A I remember thinking because it's an infant, I think

11 it's procedure. I've never been involved with DSS

12 or anything to this magnitude that we went through.

13 Q So you thought it was usual for DSS to come to the

14 hospital when an infant's in the hospital?

15 A I thought it was procedure.

16 Q What kind of procedure?

17 A When you have an infant who's bleeding from the

18 brain.

19 Q Was it the same person or a different person that

20 came from DSS?

21 A I don't remember that.

22 Q Did you give any information to that person from

23 DSS?

24 A There was a day that a lady from DSS, I don't

25 remember her name, she sat on the couch with me and

Page 48

1 asked me if I would be willing to take Owen into my

2 custody and I said yes, of course, if need be. She

3 said if need be. And I remember I signed a piece

4 of paper.

5 Q That was in December?

6 A Yes.

7 Q Were you curious as to why they were asking you

8 about taking custody of Owen?

9 A Again, I didn't know what all was happening. We

10 were still sort of in - - - We were in the hospital

11 in shock. But at that point I was - - - I figured

12 - - - When they asked me to take Owen, if I would

13 - - - if I would take Owen, I knew something wasn't

14 right somewhere.

15 Q And did you ask them why they were making that

16 inquiry?

17 A I don't recall.

18 Q And when you said you knew something wasn't right,

19 what did you think wasn't right?

20 A Well, I knew that if they were asking me if I would

21 be willing to take Owen home from that hospital

22 stay, that they were - - - they must have been

23 thinking something.

24 Q And what was it you thought they were thinking?

25 A Honestly, at that time I didn't think this through

Page 49

1 like I can now.

2 **Q In December of 2009, did you have any concern that**

3 **Michael might be harming Owen?**

4 **A I did not.**

5 **Q Did you have any concern that Kayla might be**

6 **harming Owen?**

7 **A I did not.**

8 **Q Did you have any concern that anybody might be**

9 **harming Owen, either intentionally or**

10 **unintentionally?**

11 **A No.**

12 **Q Now, when Owen was in Levine's, how was he?**

13 **A When he was where?**

14 **Q When he was in Levine's Children's Hospital, how**

15 **was he?**

16 **A In December?**

17 **Q Yes, ma'am. I'm sorry. Thank you for clarifying.**

18 **A Well, he seemed to recover quickly the four or five**

19 **days he was there. I remember he was sort of back**

20 **to himself.**

21 **Q How soon did he get back to his normal self?**

22 **A Maybe two days, three days later.**

23 **Q When he was discharged, was he having any kind of**

24 **physical or mental problem that you could see?**

25 **A None.**

Page 50

1 **Q Do you know what kind of work-ups, do you know what**

2 **kind of scans, do you know anything about what kind**

3 **of treatments and diagnostics were done at**

4 **Levine's?**

5 **A No, sir.**

6 **Q Did you call your brother and ask him?**

7 **A Not in December.**

8 **Q Did you call Dr. Patel?**

9 **A No, sir. I was informed that the hospital was**

10 **going to contact his pediatrician.**

11 **Q Well, when you said there was some concerns when**

12 **you got the inquiry from - - - somebody from DSS**

13 **said will you take custody. Did you contact Dr.**

14 **Patel to ask him about anything that he might have**

15 **seen or heard or observed?**

16 **A No, sir.**

17 **Q Did you ever make any efforts before January of**

18 **2010 to get permanent custody or full custody of**

19 **Owen?**

20 **A I did not make any attempts to do that. I was with**

21 **him every day.**

22 **Q And then I think you told me, you didn't have**

23 **concerns about leaving Owen with Michael?**

24 **A I didn't have any reason to. I never saw anything**

25 **out of the ordinary.**

Page 51

1 **Q Did you ever encourage Michael or Kayla to go to**

2 **some kind of parenting class before December 2009?**

3 **A Before December?**

4 **Q Yes, ma'am.**

5 **A No, sir.**

6 **Q Were you giving them any - - - as a grandmother to**

7 **mother, were you providing any assistance,**

8 **instructions?**

9 **A Of course. I mean, as a regular - - - I was very**

10 **overprotective and Michael was very overprotective.**

11 **Q Michael was overprotective as well?**

12 **A Of Owen, yes.**

13 **Q How as that?**

14 **A We sort of - - - I always wanted to hold Owen, and**

15 **he always wanted to hold Owen. But I gave regular**

16 **grandmother tips: hold his head, you know, when you**

17 **pick him up. He seemed fine with him.**

18 **Q Do you think Michael loved Owen?**

19 **A You'd have to ask Michael that.**

20 **Q What did you think? You saw him.**

21 **A I think he was learning to love him. I think**

22 **Michael was young.**

23 **Q Did Kayla love Michael?**

24 **A Michael? Yes.**

25 **Q Did Kayla love Michael? That's a - - -**

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1 **A Yes.**

2 **Q What about you, what were your feelings about**

3 **Michael?**

4 **A He didn't give me reason to hate him but he was my**

5 **daughter's boyfriend. I don't know how many**

6 **mothers like any of their daughter's boyfriends,**

7 **but he seemed okay to me.**

8 **Q I guess you might have been a little concerned**

9 **because he didn't have a job and wasn't looking for**

10 **a job.**

11 **A That was concerning, yes.**

12 **Q Any other concerns that you had?**

13 **A No.**

14 **Q Do you think he loved your daughter?**

15 **A I do.**

16 **Q Do you think he would have done anything to hurt**

17 **your daughter; did you ever have those concerns?**

18 **A I don't. No, sir.**

19 **Q And I guess until January of 2010 you had no**

20 **concerns that he'd do anything to hurt your**

21 **grandchild.**

22 **A I never would have thought it.**

23 **Q You never saw anything that made you think that he**

24 **would hurt your grandchild either intentionally or**

25 **unintentionally?**

Page 53

1 A Not to harm him, no.

2 Q And you don't have any recollection of a sitter

3 being in Owen's room at Levine's in December of

4 2009?

5 A I don't.

6 Q Now, did anybody with DSS question you about

7 whether or not they thought that there had been --

8 - somebody might have harmed Owen intentionally or

9 unintentionally?

10 A They did not.

11 Q If you had been asked that question, what would you

12 have answered?

13 A I wouldn't have known who could have hurt him.

14 Q That answer was no?

15 A No.

16 Q When's the last time you had any contact with

17 Michael?

18 A January 11th.

19 Q Were you present when he pled guilty?

20 A In the courtroom.

21 Q Did you ask for ---

22 A Yes, I was there but, I mean, you said contact with

23 him.

24 Q No. No. No. I think you answered my --- You

25 hadn't had any discussions with him since he pled

Page 54

1 guilty or you learned that he confessed?

2 A Correct.

3 Q You were present when he confessed?

4 A No.

5 Q You were not?

6 A No.

7 Mr. Hood - Pled guilty.

8 Q I'm sorry. You answered my question, but I didn't

9 ask it right.

10 A I know what you're ---

11 Q You weren't present when he was sentenced?

12 A I was.

13 Q Wait a minute.

14 A I was present when he was sentenced.

15 Mr. Hood - Take your time. Take your time.

16 A I was not ---

17 Q Yes, that's what I was trying --- you were there?

18 A Yes, sir.

19 Q Did you make any kind of statement to the judge?

20 A Yes, sir.

21 Q Did you ask for leniency or did you ask for the

22 maximum or what did you ask for?

23 A Somehow I felt he was going to get probation

24 because it was his first offense and he was young,

25 and so I felt if I didn't speak up, that could

Page 55

1 happen. And I asked for a sentence, something that

2 would teach him what he did was wrong.

3 Q And what was the sentence?

4 A He got eight years, I believe.

5 Q Where is he doing his time?

6 A He's been moved around. I want to say McCormick

7 right now. I could be wrong. They moved him.

8 Q How about his parents, do you have any contact with

9 his parents?

10 A Not since he was sentenced.

11 Q Do they have any involvement with Owen?

12 A Not since he was sentenced.

13 Q So they haven't seen Owen since January of 2010 to

14 your knowledge?

15 A Correct. Well, they were in the hospital January

16 11th.

17 Q Have they had any contact with Owen since you moved

18 to Alken?

19 A Yes.

20 Q Oh, they have?

21 A Yes.

22 Q What contact was that?

23 A I apologize. They asked for a visit and we said

24 --- They came to our home, and they basically

25 held Owen for hours and sat in the living room and

Page 56

1 then we --- Do you need who we all are? My

2 family, my husband, Kayla, and Michael's parents

3 and Owen went out to eat and then they left, and we

4 haven't seen them since.

5 Q Were any tears shed in that?

6 A No.

7 Q No tears?

8 A (Indicating no) Not on their part.

9 Q Did you ever contact anyone with law enforcement

10 about any concerns with Michael or Kayla?

11 A No.

12 Q Did you ever contact anyone with DSS about any

13 concerns that somebody might harm Owen prior to

14 December 2010?

15 A No.

16 Q Did you ever try to reach out to DSS, you knew DSS

17 was involved in the case, to talk with them about

18 what was going on?

19 A No, sir.

20 Q And I think you said you had no concerns that

21 anybody was either intentionally or unintentionally

22 harming Owen?

23 A Correct.

24 Q So you certainly had no reason to reach out to law

25 enforcement or DSS?

Page 57

1 A Correct.

2 Q And if you'd been questioned you would have told

3 them you didn't think anybody would do anything to

4 harm Owen?

5 A Correct.

6 Q Now, I know Michael has confessed to what happened

7 in 2010. Has he ever confessed to harming Owen in

8 December or November of 2009?

9 A No, sir.

10 Q Do you have any idea what happened? Do you know

11 whether anything happened to Owen during that time?

12 A I don't think we'll ever know.

13 Q Did you see anything other than, you know, the

14 runny nose and the loss of appetite that caused you

15 to be concerned?

16 A No.

17 Q So you don't know what happened that caused the

18 bleeding in the brain?

19 A I do not know.

20 Q And I don't want you to be offended by this. I've

21 asked some questions that are pretty personal but

22 this one is --- because I know with my children

23 there were times when I dropped them. When you had

24 your two children, did you ever drop them?

25 A No.

Page 58

1 Q Well, good for you. When you had Owen did you --

2 -

3 A I've never dropped a baby.

4 Q You never dropped a baby?

5 A No, sir.

6 Q I guess I'm just a bad daddy.

7 A It happens.

8 Q I haven't dropped my grandchild. I'll tell you

9 that. I'm better with them. Did you ever bump

10 into anything when you were holding him or ---

11 A No, sir.

12 Q Do you know the names of the people who were

13 involved with Owen with DSS in December?

14 A No.

15 Q Were you present at Kayla's house when DSS came and

16 did a home visit?

17 A No.

18 Q Do you remember what the conditions were on Owen's

19 discharge from Levine in December of 2009?

20 A What the conditions were.

21 Q Yes, ma'am. Do you remember what the conditions

22 were?

23 A I believe I read that the conditions were that

24 Kayla keep an eye on Owen's --- make sure he

25 doesn't get nauseous or fatigued or any signs of

Page 59

1 discomfort.

2 Q Do you remember her having to sign a safety plan

3 with DSS?

4 A I believe, yes.

5 Q Did you ever look at that safety plan?

6 A I have seen it since.

7 Q When you say since, was that like once this lawsuit

8 was filed?

9 A No. I saw it --- I mean, I --- I probably --

10 - I probably read it at that time.

11 Q At that time being December?

12 A Yes, sir.

13 Q Do you remember what was in that safety plan?

14 A What I just mentioned. To the best of my

15 knowledge, it was simple orders for Kayla to watch

16 Owen's demeanor.

17 Q Do you remember anything about the discharge was

18 that DSS was going to continue to stay involved in

19 ---

20 A I remember that.

21 Q --- with Owen?

22 A Yes.

23 Q And do you remember how DSS was going to continue

24 to stay involved?

25 A I believe they told Kayla in the hospital that they

Page 60

1 were going to follow up with several visits and,

2 you know, discuss whatever they were going to

3 discuss. And that they were going to have them

4 take parenting classes.

5 Q And do you remember that they were required to have

6 another scan of Owen either at Levine's or at

7 Piedmont ---

8 A Yes, sir.

9 Q --- you remember that?

10 A Yes, and they did that.

11 Q Did you go with Owen when he had that repeat scan?

12 A Yes.

13 Q Where was it done?

14 A At Levine.

15 Q And was it a full body, or a head, or do you

16 remember?

17 A I do not remember.

18 Q Do you remember it was normal?

19 A Yes. I remember it showed blood clots meaning it

20 was drying up and healing up.

21 Q And when you realized that DSS was going to stay

22 involved in the care, did that raise any suspicions

23 with you about what was going on?

24 A Again, I sound naive but I think it --- I'd

25 thought it was still procedure because it was a

Page 61

1 child involved.

2 **Q So it didn't raise any concerns?**

3 A At that time, there was nothing going through my

4 mind of abuse.

5 **Q Now, do you have any relatives who live in York**

6 **County?**

7 A No.

8 **Q Does your husband?**

9 A Yes.

10 **Q Does he have a sister who's in law enforcement?**

11 A Yes, he does.

12 **Q And what's her name?**

13 A Charlene Blackwelder.

14 **Q And what is her role? What does she do as a law**

15 **enforcement officer?**

16 A I know she's a police officer in Tega Cay.

17 **Q How long has she been in Tega Cay?**

18 A She just went to Tega Cay. I want to say maybe a

19 year ago approximately. She was in Rock Hill for

20 20-something years.

21 **Q She was with the Rock Hill Police Department?**

22 A Yes, sir.

23 **Q Was she a detective, was she a - - -**

24 A She was a detective at one time.

25 **Q Homicide? Narcotics?**

Page 62

1 A I do not know.

2 **Q Do you know?**

3 A I don't know.

4 **Q Have you ever talked with her about what happened**

5 **to Owen?**

6 A Yes.

7 **Q When did you talk with her?**

8 A I don't recall talking to her until after January

9 11th incident. That's when all the pieces of the

10 puzzle came together.

11 **Q So I guess if you'd had some concerns that some**

12 **harm might come to Owen either intentionally or**

13 **unintentionally that was somebody you could**

14 **contact?**

15 A Absolutely.

16 **Q But there was nothing that made you think there was**

17 **any reason to call her?**

18 A Correct.

19 **Q Do you know whether or not she ever observed Owen**

20 **in November or December of 2009?**

21 A No.

22 **Q Did you see her at Christmas or Thanksgiving? I**

23 **don't know what the family dynamics are like, but**

24 **did y'all get together Thanksgiving and Christmas**

25 **and - - -**

Page 63

1 A We do. We did not that year. I remember we had

2 Thanksgiving and Christmas at my house.

3 **Q I'm just wondering if during December of 2009 you**

4 **just happened to run into her for some family**

5 **gathering.**

6 A I don't recall.

7 **Q Would you have any kind of regular contact with**

8 **her?**

9 A Not - - - not so much. No.

10 **Q What about your husband?**

11 A They'd talk a lot. They're close.

12 **Q And when Owen was discharged from Levine's, he was**

13 **in good health and back to his normal self?**

14 A Yes.

15 **Q Did you observe anything the rest of December that**

16 **caused you to have any concern at all for Owen?**

17 A No, sir.

18 **Q Did you see anything in that December that caused**

19 **you to have any concern about Michael being around**

20 **Owen?**

21 A No, sir.

22 **Q Did you observe Michael on a regular basis, you**

23 **know, treating Owen very carefully, I think to use**

24 **your words?**

25 A Yes.

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1 **Q And Kayla, I'm assuming Kayla was a good mother?**

2 A Yes.

3 **Q And if Kayla had had any kind of suspicions that**

4 **anybody was going to do any harm intentionally or**

5 **unintentionally to Owen, would she have contacted**

6 **you? Do y'all have that kind of relationship?**

7 A I would be the first.

8 **Q And then you would have contacted - - -**

9 A I would have done what I - - -

10 **Q You would have done something?**

11 A - - - something. Yes. We had no concerns yet at

12 that point.

13 **Q Now, Dr. Bailey told you that the blood clots were**

14 **either the baby being shaken or trauma at birth.**

15 **Did that cause you any concerns?**

16 A Yes.

17 **Q And what did you do about those concerns?**

18 A We couldn't do anything. We were basically letting

19 the hospital - - - the doctors do their work.

20 **Q Did you ask if there had been trauma at birth?**

21 A I asked - - - Well, I mean, I knew there was no

22 trauma at birth because I was at the birth.

23 **Q Was it a vaginal delivery?**

24 A Yes.

25 **Q Well, there's some women who'll say that's**

Page 65

1 **traumatic. I couldn't say. I've never been**
 2 **through it.**
 3 A Right. It was a normal birth.
 4 Q Okay.
 5 A Yes.
 6 Q **Did you ask Dr. Bailey about what he meant by**
 7 **trauma at birth?**
 8 A I did not ask for a specific explanation of that,
 9 no.
 10 Q **I've been told that getting a baby out of a small**
 11 **birth canal is traumatic. And do you know whether**
 12 **or not - - -**
 13 A I think I took it as trauma at birth meant
 14 something medically harmful happened, something
 15 went wrong.
 16 Q Okay.
 17 A What I witnessed at the birth of my grandson, there
 18 was nothing wrong with the delivery.
 19 Q **But did you follow up with Dr. Bailey about what do**
 20 **you think it is, which is it? Did you ask him**
 21 **that?**
 22 A Again, what I remember is when we - - - my husband
 23 and I asked him what could have caused this, how
 24 does a baby get bleeding in the brain, and when he
 25 - - - Dr. Bailey said it could be possibly one of

Page 66

1 two things: trauma at birth or shaking. And at
 2 that point I possibly went into shock mode. I
 3 don't - - - I don't recall. But that was what we
 4 were told by Dr. Bailey.
 5 Q **What day of the hospitalization was that, 5th, 6th,**
 6 **7th?**
 7 A Earlier on like 2nd or 3rd.
 8 Q **Let me back up. As I understand the**
 9 **hospitalization on the 4th, as I understand, he got**
 10 **to Levine's either like just before or some time**
 11 **th**
 12 **after midnight on either the 4th or the 5 and was**
 13 **discharged on the 8th. So what I'm trying to find**
 14 **out is you have this conversation. I'm assuming it**
 15 **would be December 5th, 6th, 7th or 8th. That's**
 16 **what I'm trying - - - which of those days - - -**
 17 A I don't recall the date.
 18 Q **So you couldn't say whether it was just before**
 19 **discharge or early in the admission?**
 20 A It was in the middle, more in the middle.
 21 Q **All right, so 6th or 7th?**
 22 A Yes.
 23 Q **Did you ask any other doctors about what could have**
 24 **caused it?**
 25 A No, sir.
 26 Q **Do you remember any of the doctors involved other**

Page 67

1 **than Dr. Bailey in Owen's care?**
 2 A I do not recall other than the - - - the eye
 3 doctor. I don't know his specialty, and I don't
 4 know his name.
 5 Q **Were they looking for some kind of retinal changes**
 6 **in that December hospitalization? Do you remember**
 7 **- - -**
 8 A I think they were looking - - - I believe they were
 9 looking for bleeding which I learned you see
 10 through the eyes.
 11 Q **And there was no bleeding in the retinas; is that**
 12 **- - - in the first hospital - - -**
 13 A Correct. There was no damage to the retinas.
 14 Q **Do you remember that they did a full body scan?**
 15 A I don't recall what they did, everything.
 16 Q **When Owen was in there in December, did he have any**
 17 **bruises?**
 18 A No.
 19 Q **Had you seen him have any bruises prior to him**
 20 **going to Levine's in December of 2009?**
 21 A I do recall a small bruise on his forehead some
 22 time in November I think.
 23 Q **Was that before Thanksgiving?**
 24 A Probably.
 25 Q **And when you saw the bruise, what size was it?**

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1 A A teeny, tiny. I mean, I can't - - - I don't know
 2 how - - -
 3 Q **Your daughter said it was the size of a dime.**
 4 **Would you agree or disagree? Bigger, smaller than**
 5 **a dime.**
 6 A It was I'd say a dime.
 7 Q **A dime?**
 8 A Yeah.
 9 Q **And it was on his forehead?**
 10 A On his forehead.
 11 Q **Side? Middle?**
 12 A Off to the side.
 13 Q **And I guess, right side?**
 14 A I think left side. I don't remember.
 15 Q **You don't remember?**
 16 A No.
 17 Q **And when you saw it, how was Owen?**
 18 A He was perfectly fine.
 19 Q **And had the bruise resolved by the time Owen**
 20 **started becoming - - - getting, you say fussy?**
 21 A Yes.
 22 Q **So you didn't make any connection between the**
 23 **bruise and that - - -**
 24 A No.
 25 Q **And when you were taking him to the hospital and**

Page 69

1 the doctors, you didn't observe any bruises?

2 A Correct.

3 Q Now, there was a time when I understand your

4 daughter asked and Michael left the house.

5 A Yes.

6 Q And that was New Year's Eve?

7 A I believe so.

8 Q Did you witness anything that caused your daughter

9 to ask him to leave?

10 A Just her complaining that he wouldn't look for a

11 job.

12 Q And did he leave?

13 A Yes.

14 Q Did he come back?

15 A Yes.

16 Q When did he come back?

17 A He was probably gone five or six days. I don't --

18 --

19 Q So if he left on New Year's Eve the 31st, he was

20 back around the 5th or 6th of January?

21 A Yes.

22 Q And where did Owen stay? Did he stay with his

23 mother?

24 A Yes.

25 Q And if Kayla went to work you would keep Owen?

Page 70

1 A Yes.

2 Q How was he during those days? How was Owen?

3 A He was fine. He seemed fine.

4 Q Do you know whether or not your daughter and

5 Michael had been to the parenting classes?

6 A I know Kayla had mentioned that she hadn't received

7 anything yet. Apparently DSS told her they would

8 mail her the information she needed to sign up.

9 Q When Michael came back, did he have a job or do you

10 know whether he'd gotten a job?

11 A He did not have a job.

12 Q When he came back it was like --- I don't want to

13 hold you to it, around the 5th or 6th of January?

14 A (Indicating yes)

15 Q And that's a yes?

16 A Yes.

17 Q Were you still seeing Owen on a daily basis?

18 A Yes.

19 Q And I pulled my calendar up. Owen went back to

20 Piedmont on Monday, January 11th. I'm just

21 looking. If you want to look at my calendar to --

22 --

23 A Yes.

24 Q --- help you with the days of the week.

25 A Yes.

Page 71

1 Q Did you see Owen on the 9th or the 10th of January,

2 2010?

3 A Yes.

4 Q When did you see him?

5 A I saw him on the 9th and the 10th.

6 Q How was he on the 9th?

7 A Well, he was fine.

8 Q No bruises?

9 A There was a small bruise.

10 Q There was a bruise?

11 A Yes.

12 Q Where was the bruise?

13 A On the top of his forehead.

14 Q Right in the middle?

15 A Pretty much.

16 Q Underneath the hairline?

17 A Yes, sir.

18 Q And, I don't know, did he have hair?

19 A Yes, he had hair.

20 Q What size bruise?

21 A It was a very faint bruise but it was slightly

22 larger than a dime.

23 Q Quarter? Size of a quarter?

24 A A nickel.

25 Q A nickel. Okay.

Page 72

1 A Yeah.

2 Q Size of a nickel. Did it seem to be causing Owen

3 any discomfort?

4 A No.

5 Q Owen's his normal, happy self?

6 A Yes.

7 Q And did you see Owen on Sunday?

8 A Yes.

9 Q Did you see him at church?

10 A Yes.

11 Q Did Owen go to like a Sunday School?

12 A No.

13 Q At that age you go to nursery?

14 A Right, but he never went to nursery.

15 Q He didn't go?

16 A (Indicating no)

17 Q He had the pastor's wife and daughter there to take

18 care of him?

19 A The whole front pew took care of him.

20 Q And how was he doing that Sunday morning?

21 A He was fine.

22 Q Did you see him any after church?

23 A (No response)

24 Q That's a no?

25 A No.

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1 Q You got a call some time Sunday night, Monday that
 2 they were going back to the hospital?
 3 A Monday morning.
 4 Q Monday morning? What time?
 5 A Approximately 10:00 a.m. I really --- I don't
 6 recall.
 7 Q Who called you?
 8 A Michael called my husband's phone.
 9 Q And what did he say?
 10 A He was screaming it's Owen, it's Owen.
 11 Q Did you get any more information?
 12 A They were going to the hospital.
 13 Q Did you go to Piedmont?
 14 A We were in our car. My husband and I were going to
 15 a funeral of his sister-in-law. And I was driving
 16 because my husband was going to go over his notes
 17 for the funeral, and I did a u-turn in the middle
 18 of the road and went back to the house and got my
 19 own car.
 20 Q Your husband was going to preside over the funeral?
 21 A He had to.
 22 Q I'm thinking that he's got an obligation. He's got
 23 to ---
 24 A Correct.
 25 Q So did you go to Piedmont or did you go to

Page 74

1 Levine's?
 2 A Piedmont.
 3 Q And Owen's still there?
 4 A He was there.
 5 Q How long did he stay there?
 6 A Not too long from what I recall. He was not in
 7 good shape.
 8 Q Was he having seizures?
 9 A Yes.
 10 Q Did he have bruises?
 11 A Yes.
 12 Q Where were the bruises?
 13 A The first one I noticed was a very large bruise on
 14 his left chest, and I noticed another one on his
 15 leg. There were more that I didn't see until
 16 later.
 17 Q Had those bruises been there on Saturday?
 18 A No.
 19 Q If they had been you would have seen them?
 20 A I looked at him Saturday night.
 21 Q And then, I was going to say, Sunday, I don't know
 22 what he was wearing or whether or not ---
 23 A He was fine in church.
 24 Q Okay.
 25 A He was ---

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1 Q Now, if he had bruises Sunday morning would you
 2 have seen them?
 3 A Yes.
 4 Q So there were no bruises Sunday morning?
 5 A Correct.
 6 Q Do you know who had Owen that Sunday afternoon?
 7 A Michael.
 8 Q Was anybody else around him?
 9 A Not that I'm aware of.
 10 Q When you were in Piedmont did you learn what had
 11 happened to Owen?
 12 A Ironically, another --- a nurse, the ER nurse,
 13 also did the shaking motion with her hands.
 14 Q So if somebody at Piedmont told you that ---
 15 A They'd --- nobody told me. I just remember the
 16 nurse making the shaking motion.
 17 Q Is that in response to a question or ---
 18 A No.
 19 Q Just something you saw?
 20 A I think she saw concern in my face and she just
 21 showed me that. I don't know why.
 22 Q Did you talk with any doctors at Piedmont?
 23 A The ER doctor.
 24 Q What did he say?
 25 A Well, I mean, actually I may not have talked to ---

Page 76

1 - I remember it was chaos so I may not have talked
 2 to him. I remember I was in there and they were
 3 working on Owen.
 4 Q At some point did the doctor say Owen has been a
 5 victim of some non-accidental trauma?
 6 A No, sir.
 7 Q What about when you got to Levine's? January now.
 8 A Yes. I mean, not when we first arrived but it was
 9 shortly thereafter when he was in ICU Dr. Bailey
 10 made it clear he was not --- I never heard the
 11 word abuse until later.
 12 Q And you say later. I mean, later is a relative
 13 term. Was it within two or three hours, or two to
 14 three days or ---
 15 A No, because the same day he was --- Owen was
 16 admitted in ICU. It was a very long day. And
 17 eventually in the afternoon or evening Amanda
 18 Carter from York County came and questioned all of
 19 us separately.
 20 Q Did you give a written statement to Amanda Carter?
 21 A I didn't write anything.
 22 Q Did she write something down and have you sign it?
 23 A She might have written down what I was saying. I
 24 don't recall.
 25 Q The sheriff's department from Rock Hill, I say

Page 77

1 **sheriff's, the York County Sheriff's Department**
 2 **showed up on January the 11th at Levine's?**
 3 A I believe it was the same day.
 4 Q **So you believe it was that Monday, January 11th?**
 5 A Yes, sir.
 6 Q **Now, when they showed up, were you aware by the**
 7 **time they showed up that Owen had probably been the**
 8 **victim of non-accidental trauma or what was your**
 9 **understanding?**
 10 A I think at that point it was becoming clearer.
 11 Q **And that was based on what the doctors had told you**
 12 **at Levine?**
 13 A I was never told he was abused by doctors.
 14 Q **Well, what was it that made it clear?**
 15 A Just the events taking place.
 16 Q **What events?**
 17 A Being in ICU and Owen being hooked up and --- I
 18 just --- I guess that's --- I start getting bad
 19 feelings about what happened.
 20 Q **Do you remember what you told Amanda Carter?**
 21 A No.
 22 Q **Before January had you ever seen Michael being**
 23 **rough with Owen?**
 24 A No.
 25 Q **You had no suspicion whatsoever that Michael would**

Page 78

1 **ever harm Owen?**
 2 A I wasn't thinking in those terms. No.
 3 Q **You didn't have any suspicions?**
 4 A No.
 5 Q **Did your daughter ever express any concern about**
 6 **Michael?**
 7 A No.
 8 Q **When did you learn that Michael confessed to**
 9 **shaking or harming Owen?**
 10 A I assume it was that night January 11th. Kayla
 11 called me on her ride home --- her ride back to
 12 the hospital.
 13 Q **Were you allowed to be in the room with Owen**
 14 **unsupervised in that January visit?**
 15 A I know that we had sitters. I don't know what day
 16 that started.
 17 Q **Do you remember sitters in January?**
 18 A Yes.
 19 Q **But you don't remember sitters in December?**
 20 A I do not remember sitters in December.
 21 Q **How long were the sitters?**
 22 A How long were they there?
 23 Q **How long did they stay there? Were they there the**
 24 **entire time ---**
 25 A In January, yes.

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1 Q **--- In the January hospitalization?**
 2 A Yes.
 3 Q **Now, Kayla was interviewed and you were**
 4 **interviewed.**
 5 A Yes.
 6 Q **Michael was interviewed.**
 7 A Yes.
 8 Q **Was anybody else interviewed?**
 9 A Not that I recall. I know my husband was not
 10 there. He hadn't come back from Columbia yet. I
 11 don't know if they interviewed Michael's parents.
 12 I don't remember.
 13 Q **And I know at some point there was a time where**
 14 **they didn't expect Owen to live, and you were sent**
 15 **to Hospice.**
 16 A Correct.
 17 Q **Actually and he was unhooked and he did better than**
 18 **anybody expected.**
 19 A Correct.
 20 Q **And so a decision had to be made about a feeding**
 21 **tube?**
 22 A Correct.
 23 Q **Were you involved in the decision to either have or**
 24 **not have a feeding tube?**
 25 A Yes.

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1 Q **And how were you involved?**
 2 A I think as a family, the three of us, myself, my
 3 husband and Kayla, talked about it, what we should
 4 do. I vaguely remember the chaplain at Levine
 5 coming in and talking to us about it. And I
 6 remember being pressured by the doctors at Levine
 7 to do that, to put in a feeding tube.
 8 Q **And you and Kayla and your husband elected not to**
 9 **have a feeding tube placed?**
 10 A We elected to do the feeding tube after the doctors
 11 kept telling us he has to have it. And I believe
 12 Kayla signed to have it. I later called my brother
 13 in Nebraska and told him what was going on. He
 14 advised me not to have a feeding tube put in if
 15 possible because most people, patients, with
 16 feeding tubes get infection which is how most of
 17 them die is results from a feeding tube problem.
 18 So when he told me that, I went back to Kayla and
 19 said we shouldn't do this because we didn't want to
 20 do it to begin with. And that was mainly our
 21 spiritual beliefs that if God didn't want Owen to
 22 survive on his own, then we didn't --- we didn't
 23 want him to survive artificially in any way. Most
 24 families have that right to make that decision. We
 25 weren't given that right. So when we went back and

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1 changed the orders to stop the feeding tube
 2 procedure, they cancelled the order in the morning
 3 to do the feeding tube and that day me and Kayla
 4 left to take a break. My husband stayed. And he
 5 called me an hour later and said you need to come
 6 back. They're kicking us out. And I went back to
 7 Levine, and I yelled at the police, and we were
 8 escorted out and DSS decided to put a feeding tube
 9 in Owen against our wishes.

10 **Q Did they go to court and get a court proceeding or**
 11 **do you know?**

12 A I guess so. Yeah, they must have.

13 **Q Did Kayla still have custody, parental rights, of**
 14 **Owen?**

15 A Apparently not. I thought she did which is why
 16 they asked her to begin with but ultimately DSS had
 17 the last say.

18 **Q Did DSS have to go to court and get a judge to --**
 19 **-**

20 A I don't know the details. I have to assume they
 21 did. I don't know how that took place.

22 **Q Do you know whether or not Owen would have survived**
 23 **without a feeding tube or not?**

24 A I believe he would have, but I don't know medically
 25 speaking.

Page 82

1 **Q You don't. Do you still have a feeding tube today?**
 2 A Yes.

3 **Q Would he be able to survive without a feeding tube**
 4 **today?**

5 A No, not today.

6 **Q There was another incident that I've read about in**
 7 **some DSS records about an incident with a rocking**
 8 **chair?**

9 A Yes.

10 **Q Tell me what happened there.**

11 A Well, as you probably read, I was in the rocking
 12 chair. I don't know the date at all. I was
 13 rocking Owen and --- very gently. Kayla was
 14 asleep on the couch. I was burping him sort of up
 15 on my shoulder and as I was rocking back I pushed
 16 him up, and it just tipped backwards. It was very
 17 slow motion. It was very --- I didn't fall out.
 18 I didn't let go of Owen. He did bump his forehead
 19 on the wall behind me when the chair hit the floor.
 20 And immediately Kayla jumped up, said oh, my God
 21 are you okay, and helped me up. And I said go get
 22 a nurse. The nurse had just left. I read the
 23 record. She said 15 to 20 minutes. It was like
 24 three minutes she had just left the room. Kayla
 25 went and got the nurse. She came back in. I was

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1 holding Owen. I don't even remember seeing someone
 2 remove the chair from the room. And I explained
 3 what happened and I ordered --- or I asked if
 4 they could order a CT scan to make sure he was
 5 okay. And he was.

6 **Q Was this after Owen had been to Hospice and had the**
 7 **feeding tube or was this before?**

8 A I really can't remember. I can't remember.

9 **Q Now, you said you read the records. What have you**
 10 **done to prepare for the deposition today?**

11 Mr. Hood - Objection to the form on the basis
 12 of anything that I've told you to do. I don't
 13 want you to tell him anything you and I've
 14 discussed or anything I've asked you to do.
 15 You can ask anything that doesn't have
 16 anything to do with that.

17 **Q I'm assuming you met with your attorneys and they**
 18 **gave you ---**

19 A I've had records from DSS, you know, prior to all
 20 of this.

21 **Q Did you review records outside the presence of your**
 22 **attorney to prepare for this deposition?**

23 Mr. Hood - And if it's been outside my
 24 presence, but I advised you to do it, I don't
 25 want you to tell him. I'm going to object,

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1 and I'm going to advise you not to answer that
 2 question. If it's something that you have
 3 looked at that I've not asked you to look at,
 4 that has not been directed by me, or that you
 5 have not discussed with me, and you talked
 6 about some DSS records, please feel free to
 7 answer his question.

8 A I have read records prior to ever meeting Mr. Hood.

9 **Q Did you review any records to refresh your memory**
 10 **for this deposition?**

11 Mr. Hood - Objection to the form on the basis
 12 of anything I've asked you to look at or
 13 anything that we have talked about. And I
 14 would advise you not to answer that question
 15 if it falls within those particular
 16 parameters.

17 **Q Do you want me to repeat it?**

18 A You can repeat it.

19 **Q Did you review any records to refresh your**
 20 **recollection for this deposition?**

21 Mr. Hood - Same objection.

22 A Like I said, I've read --- Since December and
 23 January everything Owen's gone through, I've read
 24 everything.

25 **Q Okay. Tell me what you've read.**

Page 85

1 A Can you repeat the question prior to this question?

2 Q **The question that was objected to, did you review**

3 **any records - - -**

4 A No.

5 Q **- - - to refresh your recollection to prepare for**

6 **this deposition? That was the question that got an**

7 **objection.**

8 A I'm sorry. The question I was asking about would

9 you repeat was about the - - - the bump on - - - or

10 when I tipped over in the rocking chair. I read

11 records from DSS about that back when it happened.

12 Q Okay.

13 A That's what I was referring to. I apologize.

14 Q **And then I think you said I read records - - - I've**

15 **read all the records about this. And what I was**

16 **trying to find out, what are all the records? Are**

17 **you talking about - - -**

18 A I am not talking about anything that has to do with

19 this case.

20 Q Okay.

21 A I'm talking about when Owen was hospitalized, I

22 tried to do my best to read everything I was given.

23 Q **When you said all the records, were you talking**

24 **about all the records for the rocking chair**

25 **incident?**

Page 86

1 A Yes.

2 Q **Have you reviewed any hospital records?**

3 A Not other than what I was given in the hospital.

4 Q **Discharge documents?**

5 A I read - - - yes. Correct.

6 Q **Did you read the safety plan - - -**

7 A Correct.

8 Q **- - - from DSS that your daughter was given?**

9 A Yes.

10 Q **Do you know how many safety plans she was given?**

11 A I do not know.

12 Q **Do you have like a set of records that you gathered**

13 **for this matter?**

14 A No, sir. The rocking chair incident went to court.

15 I have records from that, and it was dismissed as

16 an accident.

17 Q **Who filed charges?**

18 A DSS.

19 Q **What were the charges?**

20 A Neglect or I don't know the formal term. Possible

21 harm to a child.

22 Q **Was it family court, criminal court?**

23 A Family court.

24 Q **What kind of court proceeding? What were they**

25 **trying to do, DSS, through this court proceeding?**

Page 87

1 A I think they were trying to imply that I was

2 neglectful.

3 Q **Do you have any medical training?**

4 A No.

5 Q **Have you reviewed any of the records from Piedmont**

6 **for the December visit to Piedmont?**

7 A Just what we were given in the hospital.

8 Q **Okay. That would be - - -**

9 A Regular papers.

10 Q **You haven't gone and gotten the hospital chart from**

11 **Piedmont to read?**

12 A No, sir.

13 Q **Have you tried to get the hospital chart from**

14 **Levine's for December and read it?**

15 A No, sir.

16 Q **Now, have you gotten records from DSS to read the**

17 **DSS file?**

18 A No, sir.

19 Q **Now, do you keep a diary or a calendar of where you**

20 **are from day to day and what you - - -**

21 A I wish I did now but, no.

22 Q **Now, I understand there's some videos of - - - Did**

23 **you take any videos of Owen back in 2009 or**

24 **pictures?**

25 A Oh, sure. Yes.

Page 88

1 Q **Going back to the January hospitalization, do you**

2 **remember talking with any of the doctors at**

3 **Levine's Children's Hospital about what had**

4 **happened to Owen?**

5 A Just Dr. Bailey.

6 Q **And we've talked about that?**

7 A Yes.

8 Q **Do you remember talking with any social workers?**

9 A Not in December.

10 Q **And you talked to Amanda Carter?**

11 A Yes, in January.

12 Q **I understand. That's what I meant to say. I**

13 **didn't make my question clear. But January 11th**

14 **she came to the hospital and interviewed you that**

15 **day or night?**

16 A Yes.

17 Q **Any other law enforcement officers that have**

18 **interviewed you?**

19 A No.

20 Q **Well, when this was going on, did your husband's**

21 **sister, who's in law enforcement, have any**

22 **involvement?**

23 A No. The day we were escorted out of the hospital,

24 we called her just to ask if this is legal. And

25 she said if they have a court warrant to do so,

Page 89

1 then yes.

2 **Q Have you gone back and looked at the records from**

3 **Levine's for December or January other than what**

4 **you were given?**

5 A No, sir.

6 **Q Now, currently you have custody of Owen pursuant to**

7 **a family court order?**

8 A Yes, sir.

9 **Q York County Family Court?**

10 A Yes.

11 **Q How long have you had custody?**

12 A Well, a year, maybe longer.

13 **Q I'll put that down as an estimate.**

14 A Yes.

15 **Q You now live in Aiken?**

16 A Yes.

17 **Q And your husband took a different church?**

18 A Yes.

19 **Q Did he found a church or did he go to an existing**

20 **church?**

21 A He went to an existing church.

22 **Q It's Pentecostal?**

23 A Yes.

24 **Q They're not like Methodist. They used to make a**

25 **move about every four or five years.**

Page 90

1 A No.

2 **Q But he's not like after - - -**

3 A No, they stay put if they can.

4 **Q How is Kayla doing currently?**

5 A How is Kayla doing now?

6 **Q Yes, has she - - -**

7 A Very well.

8 **Q - - - got a job?**

9 A She's never lost a job.

10 **Q Does she take care of Owen?**

11 A Yes, we share duties.

12 **Q So the two of you are the primary caregivers?**

13 A Yes.

14 **Q Now, Owen, I understand, has some limitations.**

15 A Yes.

16 **Q How is Owen doing?**

17 A Well, I mean, other than his disabilities which

18 are, he's blind, has a feeding tube, can't sit up,

19 can't roll over, can't talk, other than all that,

20 he's perfect.

21 **Q Kayla said that he's happy.**

22 A Yes.

23 **Q Is he happy?**

24 A He's always happy.

25 **Q Is he able to laugh or - - -**

Page 91

1 A That's all he does is laugh.

2 **Q Does he have any use of his arms, purposeful use?**

3 A None.

4 **Q Does he move them at all?**

5 A Yes.

6 **Q But no control?**

7 A Correct.

8 **Q What about his legs?**

9 A The same.

10 **Q Does he crawl; can he crawl?**

11 A No.

12 **Q Can't sit up?**

13 A No.

14 **Q Is he having any seizures - - - had any seizures?**

15 A He's been on seizure medicine since he was in the

16 hospital so I say no, he hasn't had seizures but I

17 think it's because he's on medicine. If he weren't

18 on that medicine, yes, he would have seizures.

19 **Q What medicines is he on?**

20 A He's blessed. He's only on one seizure medicine,

21 Keppra and Prilosec.

22 **Q What's Prilosec for?**

23 A For indigestion. Whatever because the feeding tube

24 causes problems.

25 **Q Has his feeding tube been in since it was placed in**

Page 92

1 the hospital?

2 A Yes.

3 **Q Looking back, are you glad that a feeding tube was**

4 **placed in the hospital?**

5 A I mean, I'm glad Owen's still with us today. I

6 don't - - - I don't know that that has anything to

7 do with the feeding tube. I'm - - - I'm still

8 pretty disappointed that we weren't allowed as a

9 family to make that decision.

10 **Q Who's decision now is it to whether or not to keep**

11 **the feeding tube in place?**

12 A Mine.

13 **Q Have you made any efforts to have the feeding tube**

14 **withdrawn?**

15 A It can't be withdrawn now to sustain life. He's

16 lost his ability to eat.

17 **Q When he was in Levine's in January did he have the**

18 **ability to eat?**

19 A Yes, he started eating in Hospice.

20 **Q Does he take anything by mouth now?**

21 A He can therapeutically. We can feed him baby food

22 but no more than probably three to five bites.

23 **Q So he has difficulty swallowing?**

24 A Yes.

25 **Q Would he be able to take enough by mouth to**

Page 93

1 survive?

2 A No.

3 Q So he has to have the feeding tube to survive?

4 A Yes.

5 Q What's the address you live at now?

6 A 2799 Whiskey Road.

7 Q Is that a house - - -

8 A Yes.

9 Q Who's the current minister at your husband's former church?

10

11 A Craig Ray.

12 Q You say that like you're not quite sure.

13 A It's Craig Ray.

14 Q What doctors does Owen see now?

15 A Dr. Strickland, Susan Strickland is a neurologist.

16 Dr. Nyungen which is like Chinese.

17 Q A Vietnamese Dr. Nyungen?

18 A N-y-u-n-g-e-n, something. That is his gastro.

19 That's primarily who - - - and then Dr. Kinsey is

20 his pediatrician.

21 Q Kinsey's - - - Dr. Kinsey's in Aiken?

22 A Yes.

23 Q The other two are in Augusta?

24 A Specialists in Augusta.

25 Q And he's seeing therapists?

Page 94

1 A Yes. He goes to Hitchcock Therapy once a week.

2 Q And I think I asked you this. He's on seizure

3 medication but have you seen Owen have any seizures

4 since you've moved to Aiken?

5 A No.

6 Q Has he had EEGs to look for seizure activity?

7 A Yes. He went in to get a test because they want

8 - - - the doctors wanted us to recognize a seizure

9 if he had one. Because it was explained to us a

10 lot of times they - - - you know, people can have

11 silent seizures or even a major seizure that we

12 wouldn't recognize so he had testing done but they

13 didn't - - - there were no major seizures.

14 Q What about has any of these doctors given you any

15 prognosis as to how they expect Owen to do in the

16 future?

17 A Most of the specialists, the prognosis is always

18 the term not good.

19 Q I understand. I understand what not good means.

20 But does that mean he's not going to get better,

21 they don't expect him to have - - - to live very

22 long, or do you know what that means?

23 A I don't know technically what they mean. I know it

24 means, you know, - - - I don't know his life span.

25 I know his quality of life was taken from him.

Page 95

1 Q So when they say not good you hadn't asked for any

2 kind of what do you mean?

3 A I can figure that one out. I didn't ask. It's

4 either good or it's not good.

5 Q In the last year, has he gotten better, worse,

6 stayed the same?

7 A Well, I mean, he's growing. He's huge for his age

8 so he's stronger. But we have seen no improvement

9 in vision or, you know, sitting up. He had a goal

10 to sit up at three-years-old, and he's not going to

11 reach that goal.

12 Q So you see no improvement in the last year - - -

13 A No.

14 Q - - - other than he's growing?

15 A Correct.

16 Q Have you seen any regression; has anything gotten

17 worse?

18 A No.

19 Q Has your daughter made any efforts to regain

20 custody?

21 A Not at this time, no.

22 Q Is there anything in the plans for her to

23 eventually take custody?

24 A She would like to, yes.

25 Q Is that something that you encouraged or resisting

Page 96

1 or - - -

2 A I'm open to it. It's just we've gotten back to

3 life as usual.

4 Q Do you get any kind of assistance for having

5 custody of Owen?

6 A I get his disability checks.

7 Q What is that?

8 A 672 approximately. I could be off. It's the

9 maximum, I was told, allowance for disability.

10 Q Is that a month?

11 A Yes, sir.

12 Q What about his medical expenses, who pays for his

13 medical expenses?

14 A Medicaid.

15 Q Are you getting any kind of assistance from March

16 of Dimes or any kind of program like that?

17 A No, sir.

18 Q Anything like from the Commission of the Blind or

19 any kind of private or governmental assistance

20 other than the disability check and Medicaid?

21 A Correct.

22 Q So Medicaid and disability is all there is?

23 A Yes.

24 Q Do you expect to get anything yourself out of this

25 lawsuit?

Page 97

1 A I'm just looking for justice so this doesn't happen
 2 to another baby. And, obviously, I don't know how
 3 we're going to care for Owen.
 4 **Q Well, are you looking to get anything momentarily**
 5 **out of this lawsuit?**
 6 A Yes.
 7 **Q What are you looking for momentarily?**
 8 A I don't know.
 9 **Q Have you been harmed momentarily?**
 10 A Have I been harmed momentarily?
 11 **Q Yes.**
 12 A Can you put that in another way?
 13 **Q Have you had any financial loss?**
 14 A Yes.
 15 **Q What is your financial loss?**
 16 A I'm not sure I understand the question other than I
 17 can't work because I ---
 18 **Q Can't work.**
 19 A --- take care of Owen.
 20 **Q When's the last time you worked?**
 21 A In Rock Hill ---
 22 **Q Anywhere.**
 23 A The last time, three years ago.
 24 **Q Where were you working three years ago?**
 25 A At SDL Atlas.

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1 **Q And what was your job with them?**
 2 A Billing/collections.
 3 **Q And when did you leave them?**
 4 A I want to say March of ---
 5 **Q Of what year?**
 6 A --- '09.
 7 **Q Before Owen was born?**
 8 A Yes.
 9 **Q Why did you leave them?**
 10 A The people there were not people I choose to
 11 associate with.
 12 **Q Were you fired or did you ---**
 13 A I quit.
 14 **Q Did you quit because you were going to get fired or**
 15 **did you just quit?**
 16 A I quit because the people there lived a lifestyle I
 17 didn't agree with.
 18 **Q Tell me about that.**
 19 A I didn't approve of the language I was hearing
 20 every day and a Christmas party that everybody
 21 drank. I just wasn't comfortable there.
 22 **Q And tell me the name of that company again.**
 23 A SDL Atlas.
 24 **Q What do they do?**
 25 A It was a warehouse for --- they tested material

Page 99

1 for things --- companies like Tide and Ford Motor
 2 Company for --- for fabrics.
 3 **Q They tested materials for fabric that goes in cars?**
 4 A And other products, yes.
 5 **Q How long did you work there?**
 6 A Not long. I don't recall. Possibly six months.
 7 **Q And before that job, where had you worked?**
 8 A I worked at The Herald for a year.
 9 **Q When did you work at The Herald?**
 10 A I want to say just a year in between '07 and '08.
 11 **Q Did you leave The Herald to go straight to --- is**
 12 **it SBL?**
 13 A D like dog.
 14 **Q Oh, SDL?**
 15 A Yes, sir.
 16 **Q Did you leave The Herald and go straight to SDL**
 17 **Atlas?**
 18 A No, sir. I didn't work between The Herald and SDL.
 19 I didn't work for about a year.
 20 **Q So you worked for about a year, were off a year,**
 21 **worked for about six months, and then the last time**
 22 **you worked was March of 2009?**
 23 A Yes.
 24 **Q How much money were you making at SDL Atlas?**
 25 A \$9.00 an hour.

Page 100

1 **Q How many hours a week were you working?**
 2 A Forty.
 3 **Q Forty?**
 4 A Yes, sir.
 5 **Q And at The Herald you were selling ads?**
 6 A Classified ads.
 7 **Q And I guess you get paid on what you sell?**
 8 A No, I think I was 8.50 an hour.
 9 **Q You got paid an hour?**
 10 A Yes, sir.
 11 **Q Hourly?**
 12 A Yes.
 13 **Q And how many hours a week were you working?**
 14 A Forty.
 15 **Q Did you leave The Herald voluntarily or ---**
 16 A Yes.
 17 **Q Any other monetary or financial loss you're**
 18 **claiming?**
 19 A No.
 20 **Q Now you told me, is it your mother or father still**
 21 **alive?**
 22 A My father's still alive.
 23 **Q Does he have any contact at all with Owen?**
 24 A No.
 25 **Q Where does he live?**

Page 101

1 A Idaho.

2 Q You told me that. Who have you discussed this case

3 with other than your attorneys?

4 A My husband and Kayla.

5 Q Anybody else?

6 A No.

7 Q Other than Dr. Bailey, do you remember having any

8 discussions with anybody at Levine's Children's

9 Hospital in either December or January of 2009 and

10 2010 that you can talk about the specifics of the

11 conversation?

12 A No.

13 Q Do you believe your daughter has any responsibility

14 for what happened to Owen?

15 A For physically inflicting harm upon him?

16 Q Do you think your daughter has any responsibility

17 for what happened to Owen?

18 A No.

19 Q You think Michael's the one responsible?

20 A Yes.

21 Mr. Todd - I don't have any more questions at

22 this time.

23 Mr. Frawley - Can we take a brief break?

24 Whereupon - A recess was taken.

25 FURTHER EXAMINATION - (By Mr. Todd)

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1 Q Do you feel like you have any responsibility for

2 what happened to Owen?

3 A No.

4 Mr. Todd - That's all I have.

5 EXAMINATION - (By Mr. Frawley)

6 Q Ms. Williams, I'm going to talk fast so we can get

7 everybody out of here, and Mr. Settana will go

8 after I do and Mr. Hood may have some questions.

9 My name's Pat Frawley. I'm an attorney with the

10 Davis Law Firm in Lexington, and I have the South

11 Carolina Department of Social Services in this

12 case. Much of what I would have asked, Mr. Todd's

13 already asked so I'll try to truncate this as best

14 I can. I may be crossing some of these questions

15 out as I get to them. Mr. Todd's gone through your

16 employment history in York County which I was going

17 to ask. One of the things I'll ask now also is

18 what churches or what church had you attended

19 regularly in York County. And I understand your

20 husband's a pastor.

21 A (Indicating yes)

22 Q What church did he have in York County?

23 A Faith Family Christian Center.

24 Q And that's the one that's behind the airport?

25 A Yes.

Page 103

1 Q Prior to the time that you and your husband were

2 married, did you attend church at any other church?

3 A In York County?

4 Q In York County.

5 A No, sir.

6 Q Now, the Jaeggi family, and I may be butchering

7 that name. I've got it as J-a-e-g-g-l, something

8 like that?

9 A Yes.

10 Q And it's pronounced Jaeggi?

11 A Yes, sir.

12 Q When you and Mr. Jaeggi were married, did y'all

13 reside in York County?

14 A Yes.

15 Q Are there any people to whom you are related by

16 blood or by marriage when you were married to Mr.

17 Jaeggi that are York County residents?

18 A No.

19 Q Was he originally from somewhere other than York

20 County?

21 A I believe he was from New York.

22 Q Jaeggi's not a name I'm familiar with in South

23 Carolina.

24 A Well, his parents were German.

25 Q German?

Page 104

1 A Yes.

2 Q How about social organizations in York County, when

3 you lived here were you a member of any kind of

4 social organizations?

5 A At what time?

6 Q At any time that you lived in York County.

7 A I mean that --- the answer would be no unless the

8 YMCA counts.

9 Q It counts to me.

10 A I've been a member of the YMCA now for just

11 recently.

12 Q So just recently?

13 A Yes, sir.

14 Q But when you lived in York County, were you a

15 member of the YMCA here?

16 A Oh, no.

17 Q You're a member in Alken County?

18 A Yes.

19 Q Okay.

20 A Sorry.

21 Q And do you have any --- I guess Mr. Williams has

22 family members who are York County residents. But

23 other than your connection with Mr. Williams, do

24 you on your side of the family have any relatives

25 in York County who are over the age of 18 to whom

Page 105

1 you're related by blood or by marriage?

2 A No.

3 Q Now, I understand Mr. Williams does and we'll get

4 that with Mr. Williams.

5 A Okay.

6 Q Had you had a chance to see Michael care for Owen

7 before December 4th, 2009, before that first

8 injury?

9 A Yes.

10 Q Tell me your impressions of Michael as a father.

11 A My impressions were fairly normal. He was a good

12 father. He was there when he was supposed to be

13 there other than financially.

14 Q Financially he's not working - - -

15 A Correct.

16 Q - - - well and not supporting financially.

17 A Correct.

18 Q I think Mr. Todd asked you did it appear that

19 Michael loved him, and I think you said he was

20 learning to love him.

21 A Correct.

22 Q Him would be Owen. As far as when he cared for

23 Owen, did it appear to you that he was interested

24 in caring for his child?

25 A I think that he cared for him when he had to.

Page 106

1 Q I think Kayla mentioned he wasn't real big on

2 changing diapers initially - - -

3 A Right.

4 Q - - - but, I mean, if diapers needed to be changed

5 he could do that?

6 A Yes.

7 Q Did you have any concerns with how roughly he may

8 have handled him? In other words, when the child

9 was small, did you have concerns with Michael in

10 the manner in which he would pick up Owen, maybe

11 not hold his head properly when the head's not as

12 strong as it might be?

13 A I remember telling him a couple of times remember

14 to pick up his head, you know, because he's an

15 infant.

16 Q Do you remember hearing Kayla correcting him on

17 that sometimes?

18 A Yes.

19 Q Did you ever have to correct Kayla on that?

20 A Not that I recall.

21 Q Now, I think it was mentioned that you saw a bruise

22 on Owen in November of 2009?

23 A Yes, sir.

24 Q And that was the dime-sized bruise? I think your

25 best recollection was that it was on the left side

Page 107

1 of his head?

2 A Yes, sir.

3 Q Did you ask Kayla and Michael about that bruise?

4 A I asked Michael because he was with him that day.

5 Q Okay.

6 A Kayla was at work. And he explained that he had

7 dropped the X-Box remote on - - - he dropped it out

8 of his hands. Owen was apparently in the baby seat

9 next to him.

10 Q And I think Mr. Todd asked you, you know, how is

11 Owen otherwise, you know, the fact that he's got a

12 bruise there that you saw and had concern about.

13 Owen was acting appropriately at that point?

14 A Yes, sir.

15 Q Did you have any concern about the fact that Owen

16 had a bruise on his head that was apparently

17 inflicted when Michael was there? Did you have

18 concern about Owen's safety when Michael cared for

19 him because of that?

20 A No.

21 Q Were you concerned about Owen's safety before the

22 first injury, December 4th of 2009?

23 A No.

24 Q While both of his parents may have been young and

25 may have been in the process of learning

Page 108

1 parenthood, you felt, before December 4th, 2009,

2 that Owen was well cared for with the caveat that

3 these were young parents?

4 A Correct.

5 Q Now, after the December 4th, 2009 injury and Mr.

6 Todd went into and I think you answered how you

7 found out about it and what your experience was

8 with it. You understand that DSS was called into

9 the case December 6th?

10 A Yes.

11 Q I mean, do you have an independent recollection of

12 the date other than me suggesting it to you?

13 A No, sir.

14 Q But you know that some time after December 4th

15 while Owen was still in the hospital DSS was called

16 into the case, correct?

17 A Yes, sir.

18 Q How did you find out that DSS was called into the

19 case? What was the first thing you found that DSS

20 was involved?

21 A They came into the room.

22 Q At the hospital?

23 A Yes.

24 Q Do you remember the young lady who did that?

25 A I don't remember.

Page 109

1 Q Does the name Shaundra Tyler sound familiar?

2 A Yes.

3 Q A young black lady maybe in her early 30s?

4 A Yes.

5 Q Did she speak with you that day?

6 A I believe, yes.

7 Q Did she speak with several other people in the room

8 including Kayla and Michael?

9 A Yes.

10 Q Did you see her speak with any medical care

11 professionals?

12 A I don't recall.

13 Q When she came in that day, was it your

14 understanding that DSS would be investigating a

15 report that called them into the case?

16 A Yes.

17 Q Now, is that the day - - - you mentioned that the

18 DSS caseworker sat down on a couch with you and

19 asked, you know, would you be willing to take

20 custody?

21 A I believe so.

22 Q Have you ever been involved in a DSS child

23 protective services case before this one?

24 A No, sir.

25 Q And I assumed that answer when I asked the question

Page 110

1 but I wanted to ask the question. Do you know that

2 it's standard practice for DSS to get involved in a

3 case when there's a child protective services claim

4 that initially one of the things they're supposed

5 to look for is relative placement in the event they

6 have to remove that child; do you know that?

7 A Yes.

8 Q That's a good idea isn't it to try and place the

9 child if it has to be removed with relatives,

10 correct?

11 A Yes.

12 Q You'd agree with me on that?

13 A Yes.

14 Q I mean, isn't that why she was asking you would you

15 be willing to take custody of this child?

16 A I assumed so, yes.

17 Q Do you recognize the name Dlrundra Hill?

18 A Yes.

19 Q Now, Shaundra Tyler, this was the first lady you

20 met. You never saw her again after that first day

21 did you?

22 A I don't recall.

23 Q Do you recall meeting with Dlrundra Hill, a second

24 young black lady in her late 20s, early 30s?

25 A I don't know when I first met with her. I do know

Page 111

1 that she was involved.

2 Q Did you have a face-to-face with Ms. Hill at some

3 point?

4 A I could be wrong, but I think I met her, Ms. Hill,

5 after the January incident.

6 Q After the second injury?

7 A Yes.

8 Q Because I know you did have some period where DSS

9 was involved long after the second injury.

10 A Correct.

11 Q But the time period I'm mostly looking at is

12 between the December 4th first injury and the

13 January 11th second injury.

14 A I don't remember. I don't recall meeting her.

15 Q You remember meeting her and it may have been in

16 that period, but you don't have a specific

17 recollection of it, correct?

18 A I remember Ms. Hill is the lady that dealt with my

19 case with the rocking chair - - -

20 Q Okay.

21 A - - - so that would have been later.

22 Q Do you recall getting any phone messages from Ms.

23 Hill between the first injury and the second injury

24 where she was attempting to get in contact with you

25 for purposes of talking with you and interviewing

Page 112

1 you?

2 A I don't recall that.

3 Q Do you recall that it didn't happen or do you not

4 recall that it did or didn't happen?

5 A I don't think it happened.

6 Q Did you tell DSS, either Ms. Tyler or Ms. Hill or

7 anybody else from DSS, between the December 4th

8 first injury and the January 11th second injury

9 that you had concerns about Owen's well-being while

10 he was in either Michael's care or Kayla's care?

11 A I don't recall.

12 Q It's possible you did?

13 A To DSS?

14 Q Yes.

15 A No. I didn't have any - - - never mind.

16 Q You didn't have any concerns that you could have

17 passed on to DSS?

18 A No, I didn't have any communication with DSS the

19 way they were - - - DSS was talking to Kayla and

20 Michael.

21 Q Well, did you have concerns about Owen's well-being

22 while he was with Michael or with Kayla following

23 the December 4th first injury?

24 A I wasn't shown any signs to be concerned after that

25 point.

Page 113

1 Q You weren't shown any signs but did you have
2 concerns?
3 A No.
4 Q You didn't have any gut feelings as a grandmother
5 that the child was in peril?
6 A At that time I can't say I did. I know now ---
7 now, everything I know ---
8 Q Right.
9 A --- It's harder to answer that but at that time,
10 no,
11 Q Now you've got a different prism that you look at
12 those things now, ---
13 A Exactly.
14 Q --- that hindsight's 20/20 but ---
15 A Exactly.
16 Q --- but if the question is what you knew and when
17 you knew it, as of the December 4th injury and
18 before the January 11th injury, you had no reason
19 to question that Owen was in good care with his
20 parents, correct?
21 A Correct.
22 Q So you never relayed to DSS that you had any
23 reservations about it, correct?
24 A Correct.
25 Q You do remember talking to Detective Amanda Carter

Page 114

1 after the second injury; in fact, it was the same
2 day as the second injury, correct?
3 A Yes, sir.
4 Q And you were truthful with Detective Carter when
5 you spoke with her, correct?
6 A Yes, sir.
7 Q Let's talk about stressors in Kayla's home at that
8 time. Michael was not working after about October
9 or November of 2009, correct?
10 A Yes.
11 Q And that was beginning to get to a point of stress
12 for Kayla wasn't it?
13 A Yes.
14 Q Now, and you were very gracious with it, but you
15 had reservations about Michael being your
16 daughter's mate didn't you?
17 A Yes.
18 Q You thought that Kayla could do better than him,
19 correct?
20 A Yes.
21 Q He played video games 24/7, and he wasn't working?
22 A Correct.
23 Q He was not a good provider?
24 A Correct.
25 Q So you had understandable reservations about that.

Page 115

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

Page 116

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

Page 117

1 A Yes.

2 Q Did he appear to be fully recovered from the

3 December 4th injury as far as you could tell?

4 A Yes.

5 Q Did you see anything out of the ordinary in the

6 times that you kept him after December 8th but

7 before January 10th?

8 A No.

9 Q This NAT or non-accidental trauma, did you

10 understand that Levine's ran a battery of tests to

11 check for non-accidental trauma when Owen was in

12 the hospital between December 4th and December 8th?

13 A I didn't know what --- I didn't know what they

14 did medically.

15 Q Okay.

16 A I mean, I didn't --- I don't know what they did.

17 Q But do you know that they --- I think you'd heard

18 the term or you've since heard the term, but do you

19 know that they were checking to see if --- what

20 put him in the hospital was non-accidental trauma?

21 Do you know if they were specifically looking for

22 that?

23 A I don't know if they were.

24 Q Okay.

25 A They didn't ask me.

Page 118

1 Q So you don't if they were, you don't know if they

2 weren't?

3 A Correct. I didn't see much in the --- in the

4 sense of asking people to find out what happened.

5 Q As far as asking people versus doing CAT scans and

6 tests on the boy, do you know if they were doing

7 the tests on the boy to see if what he had had

8 indicia of non-accidental trauma; do you know that?

9 A I did not know that at that time.

10 Q Do you know it now?

11 A Yes.

12 Q Have you reviewed records?

13 A No. I just know from what the doctors told us the

14 second incident.

15 Q And do you know that when they did those battery of

16 tests between December 4th and December 8th that

17 they did not conclusively find non-accidental

18 trauma; do you know that?

19 A No, I thought --- It was my understanding that

20 that was the diagnosis.

21 Q And where do you get that understanding?

22 A On his discharge papers.

23 Q Have you read the Levine's records with regard to

24 the results of the tests for non-accidental trauma

25 from the hospital records?

Page 119

1 A I read the papers that were given with Owen at

2 discharge.

3 Q And your recollection of having reviewed the

4 medical records is that there was a conclusion by

5 Levine's that it was non-accidental trauma?

6 A Yes.

7 Q Now, Owen was hospitalized for an unexplained

8 injury December 4th through the 8th and DSS was

9 called in December 6th as far as you know, correct?

10 A Yes.

11 Q Owen was discharged December 8th and you had him at

12 some point, and you saw nothing out of the ordinary

13 about him after his discharge, correct?

14 A Correct.

15 Q Owen was not injured as far as you know between

16 December 8th and December 16th was he?

17 A December 8th and December 16th.

18 Q And December 16th.

19 A Not that I --- correct.

20 Q In the first week he was out of the hospital.

21 A I'm sorry. Yes.

22 Q Did you see him some time after December 16th?

23 A Yes.

24 Q And when you saw him after December 16th, he was

25 fine, right?

Page 120

1 A Yes.

2 Q He was not injured between December 16th and

3 January 9th was he?

4 A January 9th I saw that bruise on his head.

5 Q Well, January 9th you saw the bruise on his head?

6 A Yes.

7 Q And there was some discussion about the Sunday

8 before he was hospitalized, which would have been

9 January 10th. Y'all attended church January 10th,

10 correct?

11 A Yes.

12 Q And I think you'd said that he was fine in church.

13 I've read somewhere where he had vomited in church

14 and his clothes had to be changed and that was

15 probably the last time that Kayla would have seen

16 him with his clothes off before he was injured. Do

17 you have any independent recollection today about

18 him having vomited in church and his clothes have

19 to be changed?

20 A No.

21 Q But you never saw any bruises, the big bruise to

22 the upper left chest area, you never saw that

23 before January 11 did you?

24 A No.

25 Q On January 9th you would have seen a kind of a

Page 121

1 small head bruise. I think you said it was about
 2 nickel-sized?
 3 A Yes.
 4 Q But when you saw that bruise, was he still behaving
 5 in his normal manner?
 6 A Yes.
 7 Q You said at one point that Michael was
 8 overprotective with the boy?
 9 A In a funny kind of way with me.
 10 Q Okay.
 11 A He knew I was wanting the baby all the time.
 12 Q So he would kind of - - -
 13 A Sort of silly, like.
 14 Q Instead of the term - - -
 15 A Right.
 16 Q - - - bogarting that joint, he's bogarting the baby
 17 from the grandma?
 18 A Yes, we were both baby bogarts.
 19 Q Would you agree with me that it's possible to harm
 20 a child without intending to harm the child?
 21 A Yes.
 22 Q I mean, we've kind of joked around about dropping
 23 babies and so forth. In fact, you had a situation
 24 where that rocking chair went over, and you had
 25 absolutely no intention of harming your grandchild

Page 122

1 at that point, correct?
 2 A Absolutely.
 3 Q But given what happened, he did hit his head and it
 4 is possible that things going bad when he hit his
 5 forehead on the wall, that could have been much
 6 worse than it was, you agree with that?
 7 A Yes.
 8 Q And I think the statement you gave at the
 9 sentencing, that was your, I guess, victim impact
 10 statement. You're able to tell the judge we're
 11 victims because this child is a victim and here's
 12 what we want in regard to the sentencing?
 13 A Yes.
 14 Q And the judge listened you on that, correct?
 15 A Yes.
 16 Q And you and Mr. Williams have custody at this
 17 point, correct?
 18 A I have custody.
 19 Q You have custody?
 20 A Yes.
 21 Q Have Michael's parental rights to the child been
 22 terminated? Has there been a TPR for Michael?
 23 A No.
 24 Q Was that considered or discussed at the family
 25 court hearing?

Page 123

1 A No.
 2 Q I think you said the Carduffs came and visited
 3 basically one time, had a pretty long visit.
 4 A Yes.
 5 Q They had called you and asked if they could do it,
 6 and you allowed them to do that, correct?
 7 A Yes.
 8 Q But they've not come back to do it again?
 9 A No.
 10 Q In the complaint starting this action, there is, I
 11 believe, it's a fourth cause of action. And in
 12 there the plaintiff, Ms. Rainey, asks for
 13 necessities for the custodians of the child, which
 14 I guess would be you. Do you understand what the
 15 term necessities is?
 16 A No, sir.
 17 Q The costs, the necessary costs and expenses of
 18 raising any child, and then, of course, if you've
 19 got a child that has impairments where there may be
 20 additional costs involved. When Mr. Todd asked if
 21 you had been financially damaged or injured in this
 22 case, and you went back and forth with a couple of
 23 responses and a couple other questions, with regard
 24 to necessities, what kind of necessities do you
 25 incur on a monthly basis for the care and upkeep of

Page 124

1 Owen?
 2 A The typical - - - you know, the basic, diapers and
 3 wiples and clothes and baby food for his therapy.
 4 Q Okay.
 5 A The bigger items are becoming - - - you know,
 6 additional car seats, we're having to figure out
 7 now how to expand that because they only go up to a
 8 certain, you know, limit for a regular child.
 9 Q And when you say expand, he's a fairly big child
 10 for a three-year-old, right?
 11 A Yes.
 12 Q And he's a couple months away from being three-
 13 years-old yet?
 14 A Yes.
 15 Q So you're talking about upgrading as far as size
 16 for things like that. Of course, he's at three
 17 now, when he's 10 or 12 or 15, other issues will
 18 come in, correct?
 19 A We have upgraded one car already from a luxury
 20 sedan to a SUV and that was for his purposes.
 21 Q All right. And he can't crawl, can't walk.
 22 A No.
 23 Q So when he gets to a certain size you'll have to
 24 have a wheelchair?
 25 A Yes.

Page 125

1 Q Have you consulted with a life-care plan
2 specialist?

3 A Yes.

4 Q And who is the name of that life-care plan
5 specialist?

6 A Right now he's still with Baby Net until he's three
7 and then that transfers over. We haven't gotten
8 there yet. There's a lot of back and forth right
9 now.

10 Q Have they given you any kind of estimate as to what
11 it's going to cost on an annual basis for the
12 necessities for this child?

13 A No.

14 Q Do you plan on getting that from them?

15 A Yes.

16 Q So you're with Baby Net now and at some point
17 that's got to be transferred to somebody who's got
18 a plan ---

19 A Long care --- long term care.

20 Q --- for caring for someone other than babies?

21 All right. Do you have that successor life-care
22 plan specialist picked out yet?

23 A No, sir.

24 Q I think Mr. Todd's already asked you are you
25 getting disability payments, and I think you've

Page 126

1 given your best estimate on that.

2 A Yes.

3 Q Mr. Todd asked a question about DSS staying
4 involved in the care. Was it your understanding
5 that after December 6th --- Well, after December
6 8th when Owen was discharged that DSS was still
7 investigating the case?

8 A It was my understanding that they were supposed to,
9 yes.

10 Q Do you understand that from the time an intake
11 comes in that under the statutes and regulations,
12 DSS has 45 days to complete an investigation?

13 A Yes.

14 Q And that they can request an additional 15 days if
15 they need more time?

16 A Yes.

17 Q And all of this occurred within the 45 days? The
18 first injury and second injury occurred within 45
19 days of each other?

20 A Yes. But it was my understanding that DSS was
21 going to follow up on Michael and Kayla ---

22 Q Like parenting classes?

23 A --- with parenting classes, and I was hoping
24 questions.

25 Q Did you know that when DSS gets involved in a case

Page 127

1 they first have assessment, then they have
2 treatment? Assessment is determining if there was
3 or was not abuse and neglect; do you understand
4 that?

5 A Yes.

6 Q And once they do that then they get in to treatment
7 which can include parenting classes and other
8 services that are provided; did you know that?

9 A I understand that now, yes.

10 Q I mean, you've never been involved with DSS before
11 ---

12 A No.

13 Q --- this have you? Okay. As far as parenting
14 classes, was there a time frame when those
15 parenting classes were going to be provided? That
16 was never put in a --- bad question. I've got
17 two questions there. Let me back that up a minute.
18 As far as when the parenting classes were going to
19 be provided, was there a date that was put in there
20 or some time frame within which the parenting
21 classes were going to be provided for Kayla and
22 Michael?

23 A No, they said they would notify --- DSS told
24 Kayla they would notify her by mail.

25 Q Okay.

Page 128

1 A However, it's also my understanding that if DSS is
2 called because of a possible injury to a child,
3 within that 45-day period the child should be
4 removed from the home while that investigation
5 takes place.

6 Q Where do you get that?

7 A Completely after all of this, after the fact.

8 Q From what source?

9 A Just reading information.

10 Q Do you know what a safety plan is?

11 A Yes, I do.

12 Q I mean, we've heard the term ---

13 A Yes.

14 Q --- that safety plans were signed. Are you aware
15 that when Shaundra Tyler first got to the hospital
16 she gave brochures and written material to Kayla
17 and to Michael letting them know what their rights
18 were as parents with regard to a DSS investigation?
19 Did you know that they were given those brochures?

20 A I did not know.

21 Q Did you know that when they were presented with a
22 safety plan, if they chose not to sign that safety
23 plan, for whatever reason, that DSS would have had
24 to get law enforcement to remove that child or
25 would have had to go and get a court order in order

Page 129

1 for that child to be removed; did you know that?

2 A No.

3 Q Did you know that by signing a safety plan, that

4 the parents are saying okay, we'll go with what DSS

5 is proposing at this time and then they don't have

6 to go with to the route of a contested hearing; did

7 you know that?

8 A No.

9 Q And there's no reason for you to have known that

10 because you'd had no experience with DSS before,

11 correct?

12 A Correct.

13 Q If DSS had come to you after the December 4th

14 injury, after they got called in on December 6th

15 and before the child was discharged December 8th,

16 even up to January 9th, and asked you, Ms.

17 Williams, we want to talk to you about the fitness

18 of your daughter and her mate in caring for this

19 child, you'd have told them that you have no

20 reservations about their parenting skills; Isn't

21 that correct?

22 A Yes.

23 Q In fact, nobody who was close to Michael and knew

24 Michael, would have been able to tell any nuances

25 in Michael's personality, was able to forecast that

Page 130

1 he was going to injure his son before Michael

2 confessed on January 11th; Isn't that right?

3 A We were trusting DSS to figure that out.

4 Q And why would DSS be able to figure that out if the

5 people who were closest to him would have told DSS

6 we don't think our grandson's in jeopardy with

7 Michael?

8 A I think we were basing it on the diagnosis of non-

9 accidental trauma in the hospital.

10 Q The diagnosis which you are now thinking was

11 diagnosed as non-accidental trauma. If it was not

12 diagnosed conclusively as non-diagnostic trauma,

13 would you change that response you just made?

14 A If it was --- If they had, in the hospital, given

15 it a different diagnosis, yes.

16 Q And I'll defer to the hospital records, whatever

17 the hospital records say. But part of your opinion

18 or what you're saying right now is based on your

19 assumption that the hospital diagnosed Owen's

20 injury as non-accidental trauma; would you agree

21 with that?

22 Mr. Hood - Objection to the form.

23 Q You can still answer the question.

24 A (No response.)

25 Q Part of your feeling the way you do about this is

Page 131

1 your assumption that the hospital diagnosed non-

2 accidental trauma for the December 4th injury,

3 correct?

4 A I read the paperwork that stated non-accident

5 trauma.

6 Q And I've read paperwork too, but isn't it true that

7 part of the reason you feel the way you do and you

8 have the impressions you do right now is your

9 assumption, your understanding of having read those

10 documents, that it was diagnosed as non-accidental

11 trauma, correct?

12 Mr. Hood - Objection to the form, asked and

13 answered.

14 Q You can still answer the question.

15 A I don't understand the question.

16 Q Don't you believe, in responding to my question,

17 that the hospital diagnosed non-accidental trauma

18 conclusively?

19 A Yes.

20 Q And if you're wrong about that, if they didn't

21 conclusively diagnose non-accidental trauma and

22 didn't take a definitive position with regard to

23 whether it was non-accidental or accidental, then

24 your assumption would be different; Isn't that

25 correct?

Page 132

1 Mr. Hood - Objection to the form.

2 Q Still answer the question.

3 A I don't understand the question.

4 Q Isn't it possible you're mistaken in your own

5 interpretation of having read those hospital

6 records?

7 A No.

8 Q So are you all going to, and again, this is an

9 attorney issue so this is going to probably elicit

10 an objection, but are you going to get a medical

11 expert who's going to read those documents and say

12 this is what Levine's diagnose with regard to

13 accidental or non-accidental trauma, or are you

14 going to go into court and rely on your having read

15 those documents?

16 Mr. Hood - I would only object to anything

17 that we've discussed or that we have had

18 conversations about.

19 Mr. Frawley - Okay. And I don't mean to infer

20 that I'm even looking for that.

21 Mr. Hood - Sure.

22 A Can you repeat the question?

23 Q Right. Are you going to go into court in this case

24 and offer your own opinion as to what those Levine

25 medical records mean?

Page 133

1 A No.

2 Q You're going to get somebody who's qualified to do

3 that, correct? And I'm not going into what your

4 attorneys told you. But are you going to get

5 someone with a little more spurs medically than you

6 to interpret those records?

7 A I would do that if --- yes.

8 Q That would be a reasonable thing to do, correct?

9 A Yes.

10 Q And at that point, you would defer to that expert's

11 opinion as to what Levine's was saying, correct?

12 A Yes.

13 Q Dr. Bailey told you that there were only two ways

14 you could have a situation like this. One was

15 trauma at birth and the other was the shaken baby.

16 And he's actually giving you a gesture ---

17 A Yes.

18 Q --- for shaken baby. Did he define for you what

19 trauma at birth he was talking about?

20 A He did not.

21 Q Did he tell you that with a child, a newborn's, the

22 malleableness of the head and the fact that

23 sometimes they come out with cone heads for the

24 first few hours, that a normal vaginal delivery

25 could have a traumatic impact on a child's head,

Page 134

1 that that could take a couple of months to resolve?

2 A He did not tell me that.

3 Q Okay. I mean, I'm not sure that's the case but is

4 that a possibility based on what he told you?

5 A Based on what he told me, I was reading into what

6 he was implying.

7 Q And based on what he told you and the fact that

8 you've got a child who is about three months old

9 then and is three months removed from that normal

10 vaginal delivery, you were pretty much discounting

11 the possibility of trauma at birth and you were

12 considering more a shaken baby syndrome issue at

13 that point, correct?

14 A Because of what Dr. Bailey told us, yes.

15 Q He didn't tell you trauma at birth was being

16 excluded did he?

17 A He did not.

18 Q Have you spoken with anyone from SC DSS about this

19 case other than Shaundra Tyler, that first night,

20 and Ms. Hill?

21 A We have spoken to several more people because of

22 the prior when we went to civil court for Kayla.

23 Q For Kayla. Tell me about that.

24 A Well, maybe I have my dates mixed up. Can you

25 repeat the question?

Page 135

1 Q Sure. With regard to the December 4th first injury

2 up to the January 11 second injury, when these two

3 injuries were bracketed, have you spoken with

4 anybody from DSS other than Shaundra Tyler and

5 Divandra Hill?

6 A No.

7 Q Now, I understand you had some other connection

8 with DSS thereafter, one ---

9 A After that.

10 Q --- was the rocking chair thing ---

11 A Right.

12 Q --- and maybe the custody issue later on.

13 A Right.

14 Q But have you spoken with anybody from DSS with

15 regard to what they should or should not have done

16 in the time period between December 6th when they

17 were called in and the January 11, 2010, second

18 injury?

19 A No, sir.

20 Q Do you know if Mr. Williams has?

21 A I don't believe he has.

22 Q And I'll be asking Mr. Williams that same question.

23 But you all are husband and wife in a situation

24 involving your grandson ---

25 A Right.

Page 136

1 Q --- and would it be expected from you that had he

2 spoken with somebody from DSS he would have told

3 you that he'd done that?

4 A Yes.

5 Q And he's not told you that he's done that?

6 A Correct.

7 Q Mr. Todd asked you a question. I think he led with

8 do you have videos of Owen, I guess, from his birth

9 up through the first injury. And my recollection,

10 and I don't mean to mischaracterize, is that you

11 looked a little confused and then he threw in

12 pictures and you said oh, yes, we have that. Now,

13 there could be two things there. It could be

14 videos and there could be pictures or there could

15 be both. Do you have videos of Owen from his birth

16 up through that second injury?

17 A Yes.

18 Q And are these videos that you would have taken or

19 these the videos that Kayla had made mention of

20 when we took her deposition? She indicated there

21 may be some videos. Are the videos you're speaking

22 of your own videos or are those the ones that she

23 would maybe talking about?

24 A They were Kayla and Michael's videos.

25 Q So if we were to send a request to produce those

Page 137

1 videos, you'd be able to get those - - -

2 A Yes.

3 Q - - - to your attorney? Okay.

4 Mr. Hood - In fact, I'll do that because - - -

5 Mr. Frawley - Okay.

6 Mr. Hood - you're probably going to want them

7 anyway.

8 Mr. Frawley - Okay. Ms. Williams, that's all

9 I've got. I'm sorry to meet you under these

10 circumstances, but I appreciate your patience.

11 A Thank you.

12 EXAMINATION - (By Mr. Settana)

13 Q Ms. Williams, my name is Dan Settana. I represent

14 the York County Sheriff and also York County in

15 this case.

16 A Yes, sir.

17 Q I'm going to try not to ask - we've been here a

18 long time - the same stuff. If I do, I apologize.

19 A That's okay.

20 Q Or if I mischaracterize any of your testimony from

21 earlier, correct me, okay?

22 A Okay.

23 Q Let me go back to before the December incident.

24 Before December 4, had you ever called any law

25 enforcement about Owen C. [REDACTED]

Page 138

1 A No.

2 Q During the three or four days of the December

3 incident when he was up in Charlotte, at any point

4 in time there did you speak to any law enforcement?

5 A At the December 4th incident?

6 Q Yes.

7 A No.

8 Q Following the December 4th incident, between

9 December 4 and January 10th, any point in time

10 there did you speak to any law enforcement?

11 A No.

12 Q Okay. January 11th - - -

13 A Yes.

14 Q - - - did you speak to law enforcement that day?

15 A Yes.

16 Q And I'm going to come back to that. And then I

17 assume after January 11th you probably spoke to law

18 enforcement a couple of times; would that be

19 correct?

20 A Yes.

21 Q And the word couple I'm using loosely. You might

22 have spoke to them five or six times. We'll get

23 back to that, okay?

24 A Okay.

25 Q So before December 4 you had no reason to call law

Page 139

1 enforcement did you?

2 A No, sir.

3 Q At one point in November did you see any bruises on

4 Owen?

5 A Yes.

6 Q Did you call law enforcement then?

7 A No.

8 Q Let me ask you a quick question. Your sister-in-

9 law, she's in law enforcement in this area,

10 correct?

11 A Yes.

12 Q At the time of this incident, was she at Rock Hill

13 or Tega Cay?

14 A I think Rock Hill.

15 Q Rock Hill Police Department.

16 A I'm not positive.

17 Q And did you spend that Thanksgiving in part with

18 Ms. Blackwell? Is that her name?

19 A Blackwelder?

20 Q Blackwelder?

21 A We did not.

22 Q Did you spend any of Thanksgiving with Ms.

23 Blackwelder?

24 A No.

25 Q And did you spend any of Christmas with Ms.

Page 140

1 Blackwelder?

2 A No.

3 Q Did you speak to her all during the month of

4 December?

5 A I don't think so. No.

6 Q Were you and your husband, were you getting along

7 with his sister?

8 A Yes.

9 Q So there was no family squabbles or anything that

10 sometimes happen - - -

11 A No.

12 Q - - - to keep you from calling her?

13 A I don't talk to her as often as they talk to each

14 other.

15 Q But you get along well?

16 A Yes, very well.

17 Q And you were getting along at the time?

18 A Yes.

19 Q In the December 4 incident, was there anything that

20 made you want to call the police during the

21 December 4 incident?

22 A No, to my - - - no.

23 Q Let me back up a little bit. During that December

24 4 incident, did you go to Piedmont Medical Center

25 before - - - this is before Owen ended up in

Page 141

1 Charlotte, did you go to the Piedmont Medical
 2 Center?
 3 A Yes.
 4 Q Did you speak to any police officers at the
 5 Piedmont Medical Center?
 6 A No.
 7 Q Did you see Michael or Kayla speak to any police
 8 officers at the Piedmont Medical Center?
 9 A Yes.
 10 Q Were you present where you could hear their
 11 conversation?
 12 A No.
 13 Q Tell me about that. What happened, in your words,
 14 how were the police involved there at the Piedmont
 15 Medical Center?
 16 A The best of --- that I can recall, there were
 17 two, I believe two, officers there. And I was over
 18 with Owen and they were in the hall, Kayla and
 19 Michael.
 20 Q Who else was with you in the room with Owen,
 21 anybody?
 22 A I mean, other than the doctors, I don't think so.
 23 Q Okay.
 24 A And I just remember Kayla later telling me that the
 25 police officers only asked their basic information:

Page 142

1 where do you live and your phone numbers and that
 2 sort of thing.
 3 Q Did the police officers ask them what happened that
 4 day?
 5 A I don't recall.
 6 Q Did the police officers ask them what happened to
 7 Owen that day?
 8 A I don't know.
 9 Q Do you know who called the police officers to be
 10 there at the hospital?
 11 A I don't know who called them.
 12 Q Do you know if those were York County Sheriff
 13 deputies or Rock Hill police officers?
 14 A I don't know the difference. No, sir.
 15 Q Did you actually see them?
 16 A Yes, sir.
 17 Q Can you describe them for me?
 18 A I really can't.
 19 Q Can you describe the uniforms?
 20 A Like I said, I was more focused on Owen. They
 21 didn't come to me. The police officers didn't
 22 address me. I really just saw them out in the hall
 23 so I don't remember.
 24 Q All right. And if you don't remember, that's fine,
 25 but I still need to ask. Were the uniforms blue,

Page 143

1 or grey, or brown, or tan, or green?
 2 A I don't remember.
 3 Q Okay.
 4 A I'm sorry.
 5 Q At any point in time while they were there did you
 6 feel the need to go up and tell them you had a fear
 7 for Owen's safety?
 8 A No, sir.
 9 Q Were you afraid for Owen's safety at that point in
 10 time?
 11 A No, sir.
 12 Q Owen then went from Piedmont up to Levine, correct?
 13 A Yes.
 14 Q And did you go up there at that time yourself?
 15 A Yes.
 16 Q Did you call any law enforcement yourself when he
 17 was at Levine?
 18 A No.
 19 Q Did you ask anyone to call any law enforcement - -
 20 -
 21 A No.
 22 Q --- while he was at Levine?
 23 A No.
 24 Q Did you ask your husband to call his sister with
 25 any questions about Owen's injuries or any safety

Page 144

1 to Owen?
 2 A No.
 3 Q It was at Levine that you spoke to Dr. Bailey,
 4 correct?
 5 A Yes.
 6 Q And you said that Dr. Bailey told you basically it
 7 was one of two things. It was either something
 8 from birth or shaken baby, correct?
 9 A Correct.
 10 Q Now, if you rule out the injury from birth, the
 11 shaken baby means somebody shook your grandson,
 12 correct?
 13 A That is what they implied.
 14 Q And did you call law enforcement at that point in
 15 time?
 16 A No.
 17 Q Did you call anybody at that point in time?
 18 A No, I was concerned with Owen.
 19 Q Did you call your sister-in-law, the police
 20 officer, at that point in time?
 21 A No.
 22 Q Do you know if your husband called his sister about
 23 that?
 24 A I don't know.
 25 Q And DSS showed up at the hospital, correct?

Page 145

1 A What date are you referring to?

2 Q In December and I'm not sure whether it was the

3 5th, the 6th.

4 A Okay.

5 Q I think it was the 6th. But do you know what day

6 it was?

7 A I don't recall seeing any police involved in the

8 first incident at Levine.

9 Q You might of - - - it's been a long day.

10 A Yes.

11 Q I actually asked about DSS.

12 A Oh, I'm sorry.

13 Q DSS showed up, I think, on December 6th; would that

14 be correct?

15 A Yes.

16 Q Were you there when they came?

17 A Yes.

18 Q Did you ask them to notify law enforcement?

19 A I did not ask them to. No.

20 Q Did you ask anybody in the hospital to notify law

21 enforcement?

22 A No.

23 Q Did you tell anyone, law enforcement, DSS or

24 whatever, this baby can't go home with my daughter

25 and/or her boyfriend?

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1 A I didn't tell anyone that. I thought that's what

2 was going to - - - I thought that was what was

3 going to happen. After I was approached by a DSS

4 worker to sign the paper that I would take him

5 home, I thought that's what was going to take

6 place.

7 Q And when that didn't take place, when they allowed

8 Owen to go home, did you say this is a mistake?

9 A No, we just wanted to leave. We just went home.

10 Q Now, your grandson's safety, even then, forget

11 hindsight, even then your grandson's safety was

12 most important to you I bet?

13 A Yes.

14 Q And probably a long day longer than even we're

15 having here today, but if you felt he was unsafe

16 going home, you would have said something to

17 somebody wouldn't you?

18 A Yes.

19 Q During that month between the two incidents, once

20 again, you never called law enforcement you said,

21 correct?

22 A Correct.

23 Q You never called your sister-in-law, correct?

24 A Correct.

25 Q You had an opportunity to speak to DSS, correct?

Page 147

1 A Correct.

2 Q When the second incident occurred, who was at the

3 hospital at Levine that same day? Was there - - -

4 Let me rephrase that. On January 11th did

5 Detective Carter appear at the hospital?

6 A Yes.

7 Q And did she immediately start questioning every

8 member of the family?

9 A Yes.

10 Q And did they take Michael Carduff that day or ask

11 him to come down to York to take a polygraph exam?

12 A Yes.

13 Q And did you have a problem with the police giving

14 Michael a polygraph exam?

15 A No.

16 Q Did they give your daughter a polygraph exam?

17 A Not that day.

18 Q Some time later?

19 A Yes.

20 Q Within a month or two?

21 A Yes.

22 Q Did you have a problem with them giving your

23 daughter, Kayla, a polygraph exam?

24 A No.

25 Q Do you know any members of the York County

Page 148

1 Sheriff's Department?

2 A No.

3 Q I mean, socially from just living in this area.

4 A No.

5 Q Have you spoken with any members of the York County

6 Sheriff's Department about what happened?

7 A No.

8 Q Have you spoken with any members of the York County

9 Sheriff's Department about any investigation into

10 this matter?

11 A No.

12 Q And we're kind of overlooking York County itself.

13 Have you spoken with anyone from York County about

14 this incident?

15 A No.

16 Q Have you spoken with anyone from York County about

17 Owen or the injuries he sustained?

18 A No.

19 Q Do you have any family or friends who work for York

20 County?

21 A Besides my sister-in-law?

22 Q Yes.

23 A No.

24 Q Does your husband have any other siblings?

25 A Yes.

Page 149

1 Q And what are their names and where do they live? I
2 don't need street addresses, just - - -
3 A He has six brothers and sisters - - - five brothers
4 and sisters.
5 Q Okay.
6 A You want all the names?
7 Q Yes.
8 A Charlene Blackwelder.
9 Q Okay.
10 A Billy Williams, Carl Williams. Did you say in York
11 County?
12 Q No. Do those three live in York County?
13 A Yes.
14 Q Okay. Who are the others and - - -
15 A Elbert Williams lives in Columbia and Regina. I
16 don't know her last name, I've never met her, lives
17 in Aiken.
18 Q You said Carl lives in York?
19 A Yes.
20 Q You have two children, biological children?
21 A Yes.
22 Q Did either one of them have to ever go to the ER
23 while they were growing up?
24 A Yes.
25 Q And when you took them to the ER, did the police

Page 150

1 question you?
2 A No.
3 Q And which ERs, if you remember, did you take them
4 to? Just tell me the towns or the cities.
5 A It would have been - - - I've only taken my son
6 once and that was in Tennessee.
7 Q Okay.
8 A And I took Kayla once when she drank hot chocolate
9 and that was in Texas.
10 Q You told, or you testified earlier, or maybe I read
11 into it, that when this happened you took the time
12 to look at the medical records, correct? You
13 wanted to see what happened to Owen?
14 A Yes.
15 Q Did you look at any DSS records?
16 A I have seen some.
17 Q Have you looked at any records from the York County
18 Sheriff's Department?
19 A No.
20 Q I might not have asked this, did you speak to
21 Detective Carter?
22 A Yes.
23 Q Besides Detective Carter, who else from the York
24 County Sheriff's Department have you spoken with?
25 A None.

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1 Q She was your only point of contact during this
2 episode?
3 A Yes.
4 Q Did you give a statement to her?
5 A Yes.
6 Q Where did that occur?
7 A At Levine.
8 Q Is that the only time you spoke to her?
9 A No, but formally.
10 Q At Levine the day of January 11th?
11 A Yes.
12 Q In the days after that, did they ever have you come
13 down to the sheriff's department in York? No?
14 A Not - - - no, not for questioning of any kind.
15 Q Did you go down there for any reason?
16 A I went with Kayla when she did her polygraph.
17 Q Were you questioned at that time?
18 A No.
19 Mr. Settana - That's all I have.
20 Mr. Hood - I've got a few.
21 EXAMINATION - (By Mr. Hood)
22 Q Okay, Charlotte, in regard to Mr. Todd, he asked
23 you some questions, and you used a doctor, you
24 referred to a doctor as Dr. Patel. Was it Dr.
25 Patel or Dr. Paxton with Sunshine Pediatrics?

Page 152

1 A I don't remember the name. It could be Dr. Paxton.
2 I meant to verify that. I don't recall.
3 Q Okay.
4 A I know it's a P.
5 Q Now, they've all asked you about who you spoke to
6 on January 11th. Do you recall those questions?
7 A Yes.
8 Q And I believe in regard to each of them you said
9 you spoke to Amanda Carter?
10 A Yes.
11 Q And they asked you questions about what you may
12 have said to Amanda Carter?
13 A Yes.
14 Q Do you recall today specifically what you said to
15 Amanda Carter?
16 A No.
17 Q I want to show you the interview report that you
18 had with Amanda Carter.
19 A Okay.
20 Q And I want you to read the whole thing and then I'm
21 going to ask you about these and then some of the
22 questions that they asked you.
23 A (Witness complies)
24 Q Have you had an opportunity to read that?
25 A Yes.

Page 153

1 Q Does that help now refresh your recollection about
 2 what you may have discussed with Ms. Carter?
 3 Mr. Frawley - Object to the form. Answer it
 4 if you can.
 5 Q What does this help you do?
 6 A It helps me understand more what happened or what I
 7 thought happened.
 8 Q Now, they had each asked you about whether you had
 9 concerns at that time about whether Michael had
 10 hurt this child or you had suspicions about it and
 11 all this other stuff and you gave answers to them.
 12 And then you've also discussed that with Amanda
 13 Carter, right?
 14 A Yes.
 15 Q Now, how do you explain any type of concerns or
 16 suspicions that you had back in --- Let me ask it
 17 a different way. I'm just looking at the top of
 18 this and it says the date of the interview was 1-
 19 11-10, right?
 20 A Correct.
 21 Q And on 1-11-10 he had come to the hospital, and he
 22 had seizures and was in bad shape, right?
 23 A Correct.
 24 Q And when he was in that kind of shape, what was
 25 your emotional state like at that particular time?

Page 154

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

Page 155

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

Page 156

1 harming this child and you said yes, right; you
 2 recall that?
 3 A I do.
 4 Q Now, who were the professionals in this particular
 5 case?
 6 A Meaning DSS and the hospital? Who do you mean?
 7 Q Who were the people that are supposed to know that
 8 a child has been abused?
 9 Mr. Todd - Objection.
 10 Mr. Frawley - Object to the form. Answer the
 11 question.
 12 Mr. Settana - Object to the form.
 13 A It was my understanding that the doctors at Levine
 14 were indicating that there was possible abuse.
 15 They're the professionals. I'm just the
 16 grandmother. I know that I did not have concerns
 17 of anyone possibly abusing Owen during that time.
 18 Q And then who were the people that were doing
 19 investigations, not CMC, but was it DSS and York
 20 County Sheriff's Department?
 21 A My understanding, when we were released from the
 22 hospital December 8th, was DSS was going to follow
 23 up, meaning investigate, find out what happened to
 24 my grandson.
 25 Q And if CMC and DSS and the York County Sheriff's

Page 157

1 Department had erred on the side of caution, it
 2 would have prevented this wouldn't it?
 3 Mr. Todd - Objection.
 4 Mr. Settana - Object to the form.
 5 Mr. Frawley - Same objection.
 6 Q What do you think would have happened if Carolinas
 7 Medical Center had done what they were supposed to
 8 do?
 9 Mr. Todd - Objection.
 10 Mr. Frawley - Object to the form of the
 11 question. Answer the question.
 12 Mr. Settana - Object to the form.
 13 Q Tell them.
 14 A Am I allowed to answer?
 15 Q Yes, you can answer. Tell them who's responsible.
 16 Mr. Todd - That's only because we don't have a
 17 judge to object to you answering it.
 18 Q Tell them who's responsible.
 19 A I'll tell a judge too my opinion, and it's just my
 20 opinion.
 21 Mr. Todd - Yes, you can answer. There's no
 22 judge here.
 23 A I feel in my opinion with three organizations that
 24 were involved, my grandson should not have gone to
 25 the hospital twice. The first time, nothing was

Page 158

1 done. The second time, so much was done by all of
 2 your organizations, the second time when he was
 3 critical, when he was almost dead. The first time
 4 with cranial bleeding, nothing was done. I do take
 5 responsibility for not seeing things that I should
 6 have seen, but I didn't see them. I'm not trained
 7 to see them. I'm not trying to put the blame on
 8 any one organization, but when you have three,
 9 someone's not communicating with someone. The
 10 doctor didn't communicate to DSS what he'd thought,
 11 possible non-accidental trauma. I didn't know that
 12 then. I know that now. We're almost three years
 13 past. I know a lot of things now.
 14 Mr. Hood - I have nothing further.
 15 Mr. Todd - I have no more questions.
 16 Mr. Frawley - I appreciate your patience.
 17 Whereupon - Deposition was concluded at
 18 5:43 P.M.

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Signing of Transcript Shirley Dallas-Gerrald, CVR-CM
 Notary Public/Court Reporter
 of Deposition By
 Witness Reserved
 (Recorded deposition tapes retained fifteen days from
 date of certification or until transcript has been
 signed in cases when signature is not waived.)
 Deposition of Charlotte Williams

Page 159

SUBSCRIPTION OF DEPONENT

State of _____
 County of _____

I, Charlotte Williams, do hereby certify that
 I have this day read the foregoing deposition and do
 hereby declare that the same is a true and accurate
 transcript of the proceedings had at the time and place
 herein designated (except for the notations as
 indicated on the attached errata sheet, if any).

Dated: _____
 Charlotte Williams

Sworn to and subscribed before me
 this ____ day of _____, 2012.

 Notary Public
 My Commission Expires: _____

Deposition of Charlotte Williams

CERTIFICATE OF REPORTER

State of South Carolina)

County of York)

I, Shirley Dallas-Gerrald, CVR-CM, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 20th day of August, 2012, in the City of Rock Hill, County of York, State of South Carolina.

Shirley Dallas-Gerrald, CVR-CM
Court Reporter/Notary Public

My Commission Expires:
8-18-2021

Deposition of Charlotte Williams

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
Owen C., a minor Appellant

v.

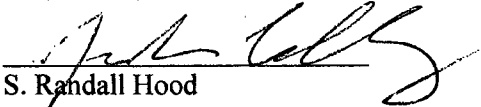
Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Medical
Center; South Carolina Department of
Social Services and Bruce Bryant, as
the Constitutional Office of the Sheriff
of York County, the York County
Sheriff's Department, and York County ... Respondents.

[AMENDED] NOTICE OF APPEAL

Appellant Elizabeth Hope Rainey, as the Appointed Guardian ad Litem to Owen C., a minor, appeals from an order of the Honorable S. Jackson Kimball granting Respondent Charlotte-Mecklenburg Hospital Authority d/b/a/ Carolinas Medical Center summary judgment on May 13, 2013. Appellant filed a timely motion to alter or amend judgment on May 22, 2013. Appellant also appeals Judge Kimball's order denying the motion to alter or amend judgment that Appellant received written notice of on August 14, 2013.

[Signature Page to Follow]

Respectfully submitted,



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Sheriff's Department, and York County*

October 28, 2013
Rock Hill, SC

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-46-4508

RECEIVED
SEP 13 2013
SC Court of Appeals

Elizabeth Hope Rainey, as GAL for Owen C. [REDACTED]

The Charlotte-Mecklenburg Hospital Authority

PLAINTIFF(S)

d/b/a Carolinas Medical Center, et al.
DEFENDANT(S)

Submitted by: Monteith P. Todd

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Ends case as to The Charlotte Mecklenburg Hospital Authority

d/b/a Carolinas Medical Center Only

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

[Signature]
Circuit Court Judge

3063
Judge Code

5/18/13
Date

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of May 20 13 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of May 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

S. Randall Hood
1539 Health Care Dr
Rock Hill, SC 29732
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Clerk of Court
CLERK OF COURT

Court Reporter:

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

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

Motion for Summary Judgment on behalf of The Charlotte-Mecklenburg Hospital Authority d/b/a

Carolinas Medical Center, heard on April 18, 2013 in York County, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Elizabeth Hope Rainey, as the)
Appointed Guardian ad Litem to)
Owen C [REDACTED] a minor)

Case No.: 2011-CP-46-4508

Plaintiff,)

v.)

ORDER FOR SUMMARY JUDGMENT

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

Defendants.)

FILED-RECEIVED
2013 MAY 15 PM 2:29
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, S.C.

This matter came before me on April 18, 2013, upon the Motion for Summary Judgment of Defendant Charlotte-Mecklenburg Hospital Authority ("CMHA"). Representing Plaintiff was S. Randall Hood, and representing CMHA was Monteith P. Todd. Based on the record presented, I make the following findings and conclusions.

FACTUAL BACKGROUND

This case arises out of physical abuse of a minor child, Owen C [REDACTED] ("Owen"), by his father, Michael Carduff. The essential facts of the case are undisputed, and the critical issue presented is whether there was a duty of care imposed on CMHA to refuse to release the child back to his parents after a thorough medical examination was inconclusive of child abuse, and after reporting its findings to the South Carolina Department of Social Services ("DSS"), as required by statute.

On December 4, 2009, Owen's parents brought him to Piedmont Medical Center ("PMC") in Rock Hill for medical attention. On December 5, 2009, the physicians at PMC transferred Owen to Levine Children's Hospital ("Levine") at CMHA in Charlotte for further care. The following day, a CT scan by CMHA staff revealed a subdural hematoma, which raised a suspicion of a non-accidental injury to Owen. At that time, Levine notified DSS of its

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suspicion that Owen may have been a victim of a non-accidental trauma.

Upon notification of this suspicion, DSS began an investigation into Owen and his injuries. While DSS conducted its investigation, the physicians at Levine performed additional tests and studies on Owen. The results of these tests were essentially normal. Levine advised DSS that it could neither rule in, nor rule out non-accidental trauma as the cause of Owen's injury. They also advised DSS that Owen was medically stable, and otherwise ready for discharge. DSS advised Levine that Owen should be discharged to his parents, that DSS had entered into a safety plan with Owen's parents, and that DSS would conduct a home investigation. Pursuant to those instructions, Levine discharged Owen to his parents on December 8, 2009, having maintained control over Owen's care for four days.

On January 11, 2010, five weeks after discharge, Owen was returned to Levine with severe, permanent brain injury caused by abuse by his father. Michael Carduff subsequently pled guilty to abusing Owen and causing his catastrophic injuries.

PLEADINGS AND DISCOVERY

Plaintiff commenced this action on December 1, 2011, naming CMHA, DSS and the York County Sheriff's Department as Defendants. Plaintiff alleges that CMHA owed Owen a duty not to place him back into an abusive and dangerous environment, and that it breached that duty by discharging Owen back to the custody of his parents. Plaintiff further alleges that Owen suffered catastrophic injuries as a result of CMHA's negligence. CMHA has denied the allegations of Plaintiff's claims, and asserted certain affirmative defenses, including immunity under S.C. Code Ann. § 63-7-390 (1976, as amended).

The parties subsequently engaged in discovery. By motion dated March 19, 2013, CMHA moved for summary judgment. The basis the motion is twofold: (1) that CMHA did not have, and that Plaintiff could not demonstrate, that CMHA owed Owen a duty of care that would prevent the harm complained of, and, (2) that it is granted immunity from liability under S.C. Code Ann. § 63-7-390 (1976, as amended). CMHA and Plaintiff submitted memoranda of law and exhibits in support of their position. After full consideration of the entire record presented, I make the following findings and conclusions.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston*



County, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997).

In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial, and I have done so. See *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994).

Within this framework, summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law. It is not, however, sufficient that the nonmoving party seeks to create an inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary judgment. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991).

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); see, also, *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment "mirrors" standard for directed verdict).

"[I]nterpretation of a statute is a question of law for the court." *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); *Bostic v. American Home Mortgage Servicing, Inc.*, 375 S.C. 143, 147, 650 S.E.2d 479, 481 (Ct.App. 2007). Thus, where there are no issues of fact to be dealt with, summary judgment is the appropriate disposition of the issue.

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011). "If a statute's language is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another


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meaning." *Id.*, quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000). When interpreting a statute, the court "must read the language 'in a sense that harmonizes with its subject matter and accords with its general purpose.'" *Ranucci v. Crain*, 397 S.C. 168, 172, 723 S.E.2d 242, 244 (Ct. App. 2012), quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

It is a question of law for the court to determine the existence of a duty of care, and the scope of that duty. *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011); *Madison ex rel. Bryant v. Babcock Center, Inc.*, 370 S.C. 42, 634 S.E.2d 275 (2006); *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (Ct.App. 1997).

DISCUSSION

1. Duty of care.

CMHA moved for summary judgment on the basis that it did not owe a duty to Owen to refuse or prevent his discharge back to the custody of his parents. CMHA asserts that once DSS has been notified of the possibility of abuse, and after DSS had ordered the child released to the care of his parents, it had fulfilled its legal responsibility. I agree.

In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999). If there is no duty, then the defendant in a negligence action is entitled to a directed verdict. *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007), citing *Steinke*, 336 S.C. at 387, 520 S.E.2d at 149.

"A legal duty can be created by statute, a contractual relationship, status, property interest, or some other special circumstance." *Madison ex rel Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 656-57 (2006) (citations omitted.). The determination of the existence of a duty is one of law for the court. See *Doe ex rel Doe v. Wal-mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011) (a "court must determine, as a matter of law, whether the law recognizes a particular duty"). In this state, "... there is no general duty to control the conduct of another or to warn a third person or potential victim of danger ..." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).

The crux of the plaintiff's claim against Charlotte-Mecklenburg Hospital Authority is that

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Levine had a legal duty not to discharge Owen to his parents on December 8, 2009, or a duty to prevent Owen from being discharged into the custody of his parents, despite being medically cleared for discharge. Plaintiff asserts that, despite DSS's instruction to discharge Owen to his parents, CMHA had a duty to refuse to do so, while CMHA conducted a separate investigation of its own into the possibility of abuse. Plaintiff asserts that if CMHA had done such an investigation, it could have concluded that Owen was abused, resulting in Owen not being discharged into the custody of his parents. Plaintiff asserts that this would have prevented the catastrophic injury that occurred five weeks later on January 11, 2010.

South Carolina has enacted a comprehensive statutory scheme designed to deal with children suspected child abuse or neglect. Under South Carolina law, DSS, with the assistance of law enforcement and the family court system, is charged with investigating, prosecuting, and adjudicating issues related to the safety of children in their homes, removal from the custody of parents, placement in foster homes, and the ultimate issue of retention of custody for a child's welfare. See S.C. Code Ann. § 63-7-10 *et seq.* (1976, as amended). Other than in connection with obvious criminal acts, no other agency of the State has the duty, obligation, or authority to investigate child abuse or neglect cases. Moreover, DSS is the agency given the authority deny or deprive a parent of custody of a child.

Thus, CMHA had no legal right, and no legal duty, to withhold custody of Owen from his parents. It fulfilled its statutory duty by properly reporting its findings to DSS.

By statute, certain persons are required to report suspected child abuse or neglect. Physicians, nurses, healthcare professionals, and other designated people are required to report suspected child abuse or neglect to the county DSS, or to a law enforcement agency in the county where the child resides. See S.C. Code Ann. § 63-7-310. This section states, in relevant part:

A physician, nurse, . . . or any other . . . health professional . . . must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found. (Emphasis added.)

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It is uncontested that Levine complied with this statutory requirement by reporting to DSS that Owen may have been a victim of non-accidental trauma. Once this report was made, the DSS became responsible for implementing the child welfare process for Owen's protection, including any decision to withhold custody from the parents. See S.C. Code Ann. § 63-7-660 (DSS may remove a child from his or her home and has legal custody of the child thereafter if there is probable cause to believe abuse or neglect has occurred); see also *South Carolina Dept. of Social Services v. Randy S.*, 390 S.C. 100, 700 S.E.2d 250 (Ct. App. 2010) (noting that Section 63-7-1660(A) grants to DSS alone the authority to petition the family court to remove a child from custody of a parent if DSS "determines by a preponderance of evidence that the child is an abused or neglected child"); *South Carolina Department of Social Services v. Pritchard*, 329 S.C. 242, 495 S.E.2d 242, 244 (Ct. App. 1997) (same); *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (same).

There is no statutory or common law authority in South Carolina that would grant CMHA the authority to remove a child from the custody of his parents, or to refuse discharge of a child to his parents when the child is medically ready for discharge. The reporting statute does not enhance the duty of a reporting entity to require it to prevent a child from being returned to its parents after DSS has instructed that the child should be returned. In *Doe v. Marion, supra*, the Supreme Court held that even the failure to report under the statute does not create a private right of action. On the other hand, had CMA attempted to retain this child in its custody absent a court order or directive from DSS, it would have been potentially liable for false imprisonment or kidnapping.

Plaintiff also argues that Levine had a statutory duty and right to refuse to discharge Owen to his parents under S.C. Code Ann. § 63-7-750, which reads as follows:

§ 63-7-750. Doctor or hospital may detain child; civil immunity.

(A) A physician or hospital to which a child has been brought for treatment may detain the child for up to twenty-four hours without the consent of the person responsible for the child's welfare if the physician or hospital:

(1) has reason to believe that the child has been abused or neglected;

(2) has made a report to a law enforcement agency and the department pursuant to Section 63-7-310, stating the time the physician notified the agency or department that the child was being detained until a law enforcement officer could arrive to determine whether the officer should take emergency physical

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custody of the child pursuant to Subarticle 3; and

(3) has reason to believe that release of the child to the child's parent, guardian, custodian, or caretaker presents an imminent danger to the child's life, health, or physical safety. A hospital must designate a qualified person or persons within the hospital who shall have sole authority to detain a child on behalf of the hospital.

(B) A physician or hospital that detains a child in good faith as provided in this section is immune from civil or criminal liability for detaining the child. (Emphasis added.)

I disagree with Plaintiff's construction. I find and conclude that the ability to retain a child under this section is limited to a twenty-four hour period to afford the hospital opportunity to contact law enforcement or DSS in order that such agency may investigate the hospital's concern. This was accomplished, and DSS had already directed that Owen be discharged to his parents. In any event, CMHA retained Owen well beyond the authorized twenty-four hours in the course of its own further investigation of its concern of child abuse. Further, and in any event, the right to retain the child is permissive and not mandatory. See § 63-7-750(A).

In summary, I find and conclude that the entity obligated to retain custody over a child in derogation of a parent's rights is DSS, or temporarily, a law enforcement agency, and then only if these entities meet the statutory requirements to do so. In this case, Owen remained in Levine from December 5 until December 8, 2009. Levine notified DSS of the possibility of abuse on December 6, 2009, and DSS began investigating the matter that same day. Under the statute, any authority the hospital had to retain the child for up to twenty-four expired, and the decision as to whom Owen would be discharged belonged to DSS, not CMHA.

Notwithstanding these findings and conclusions, Plaintiff attempts to create a duty by expanding the scope of CMHA's duty through the submission of an expert's affidavit which asserts that Levine "abrogated a duty or responsibility to Owen." The expert's opinions are based on this expert's interpretation of hospital accreditation standards and internal hospital policies. I find and conclude that these expert opinions do not create a duty at law, or expand the statutory scheme promulgated by the legislature.

The existence of a duty is a legal question for determination by the court. Because the determination of the existence of a duty is a legal question, the plaintiff cannot create a duty through expert testimony or internal policies and procedures, where the duty does not otherwise exist at law. *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 480, 377 S.E.2d 343, 351

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(1988) (opinion testimony cannot create a duty that does not exist at law); *see also, Citizens and Southern National Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994)

Further, Plaintiff's effort to create a common law duty, or a duty that reaches beyond the plain language of the statutes at issue, ignores basic rules of statutory construction. The court "... must presume that the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2003) (citing *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)). If a common law duty to report and prevent child abuse existed without the need for §§ 63-7-310 and 63-7-750, the action of the General Assembly in promulgating these statutes would have been unnecessary. These statutes create a duty where there was none at common law, and the duty created is more narrow than that asserted by Plaintiff.

I find and conclude that there is no duty or obligation for a hospital to refuse to discharge a child, who is medically stable, when DSS has directed that the child be discharged to the parents. The applicable statutes in this case provide only a limited right to retain the child in derogation of a parents' custodial rights. This limited right permits such retention for only twenty-four hours, and only in order that law enforcement or DSS can be contacted and conduct an investigation.

Thus, I find and conclude that CMHA had neither the right, nor the duty to refuse discharge of Owen to his parents under the circumstances. CMHA met its duties in this case by reporting its suspicion of a non-accidental trauma to DSS. Further, it fulfilled its legal duty in returning Owen to the custody of his parents upon being advised by DSS to do so. The decision as to whether Owen should be discharged to his parents was a decision for DSS, not for CMHA.

2. Immunity regarding reporting of abuse.

CMHA also argued statutory immunity from liability pursuant to S.C. Code Ann. § 63-7-390, which provides:

A person required or permitted to report pursuant to Section 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this action extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or



welfare had been or might be adversely affected by abuse or neglect.

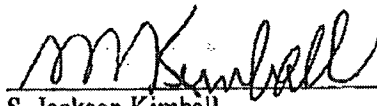
Plaintiff's claim in this case is not premised on the fact that CMHA reported its suspicion of abuse. No issue is raised concerning the fact that Levine reported Owen's condition to DSS, as required by 63-7-310. Rather, Plaintiff's claim is premised on the assertion of a further duty to retain custody of Owen, and to refuse to return him to his parents' custody. Thus, § 63-7-390 has no application to the facts of this case, and I so find and conclude.

CONCLUSION

Therefore, based on the discussion herein, the motion for summary judgment of the Defendant Charlotte-Mecklenburg Hospital Authority is granted.

AND IT IS SO ORDERED.

May 13, 2013



S. Jackson Kimball
Special Circuit Court Judge
York County

#9

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4604508

Elizabeth Hope Rainey	Owen C. [REDACTED]	Charlotte Mecklenburg Hospital Authority Department of Social Services South Carolina York County Sheriffs Department	Carolinas Medical Center Bruce Bryant York County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on August 14, 2013, upon Plaintiff's motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed May 15, 2013. Representing the parties were: Deborah Casey for Plaintiff, Monteith Todd for Defendant Charlotte-Mecklenberg Hospital Authority, and Patrick Frawley for Defendant S.C. Dept. of Social Services.

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order. Plaintiff's case is tragic, but Plaintiff's position asks the court to make inferences, suppositions, and conclusions that are not supported by the extensive discovery in this case, and, in my judgment, go beyond the scope of existing precedent on the issues presented.

Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRPC, be denied.

AND IT IS SO ORDERED.

[Signature]
B1

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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


Special Circuit Court Judge

3063

Judge Code

8/14/2013

Date

For Clerk of Court Office Use Only

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

S. Randall Hood and Deborah Casey 1539 Health Care Dr.
Rock Hill, SC 29732
Duane Michael Shaw PO Box 36250 Rock Hill, SC 29732

Patrick John Frawley PO Box 489 Lexington, SC
290710489
Monteith Powell Todd PO Box 11449 Columbia, SC 29211
Janet Brooks Holmes PO Box 7217 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

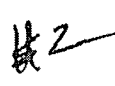
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Susan Wyatt

David Hamilton - Clerk of Court

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

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



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-4508

Elizabeth Hope Rainey, as the
Appointed Guardian ad Litem to
Owen C., a minor

Appellant

v.

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

Of whom

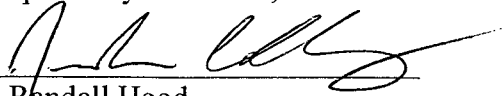
Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Medical
Center is the

Respondent.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210, SCACR, counsel hereby certifies that the Record on Appeal
contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



S. Randall Hood
Deborah G. Casey

RECEIVED

JAN 24 2014

SC Court of Appeals

Lara Pettiss Harrill
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Attorneys for Appellant Elizabeth Hope
Rainey, as the Appointed Guardian ad Litem
to Owen C.

January 8, 2014
Rock Hill, South Carolina