

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

---

Case No. 2017-CP-07-02636  
Appellate Case No. 2018-001092

---

**RECEIVED**  
DEC 13 2018  
SC Court of Appeals

Joseph Holmes, as Personal Representative of the  
Estate of David Holmes, .....Respondent,

v.

Bayview Manor, LLC, d/b/a Bayview Manor,  
Epic Group, LP, and Epic General, LLC, ..... Appellants.

---

**RECORD ON APPEAL**  
**VOLUME II**

---

W. McElhaney White  
Joshua T. Thompson  
Holcombe Bomar, P.A.  
P.O. Drawer 1897  
Spartanburg, SC 29304  
(864) 594-5300  
mwhite@holcombebomar.com  
jthompson@holcombebomar.com

Attorneys for Appellants

Stefan B. Feidler (SC #101918)  
Eric M. Poulin (SC #100209)  
Roy T. Willey, IV (SC #101010)  
Anastopoulo Law Firm, LLC  
32 Ann Street  
Charleston, SC 29403  
Phone (843) 614-8888  
Facsimile (843) 494-5536

Attorneys for Respondent

## INDEX

### Orders

|                            |   |
|----------------------------|---|
| Order of May 15, 2018..... | 2 |
| Order of June 8, 2018..... | 9 |

### Pleadings and Motions

|  |     |
|--|-----|
| Respondent's Complaint of December 15, 2017 .....  | 17  |
| Appellants' Answer of January 12, 2018.....  | 50  |
| Appellants' Notice of and Motion for Nonjury Trial, including Exhibits A and B thereto, of March 27, 2018 .....          | 70  |
| Appellants' Memorandum in Support of Motion for Nonjury Trial, including Exhibits A – H thereto, of April 23, 2018 ..... | 94  |
| Appellants' Notice of and Motion to Alter or Amend, including Exhibit A thereto, of May 23, 2018 .....                   | 183 |

### Transcripts

|   |     |
|---|-----|
| Hearing Transcript of April 25, 2018 .....  | 198 |
| Deposition Transcript of Dorothy Olenja, including Exhibits 1 – 10 thereto, of March 2, 2018 .....  | 224 |
| Deposition Transcript of Margaret Holmes, including Exhibits 1 – 10 thereto, of March 2, 2018 ..... | 496 |

### Other Materials or Documents

|  |     |
|--|-----|
| Email Exchange Between the Trial Court and Counsel of Record of May 24, 2018 ..... | 671 |
| Certificate of Counsel .....   | 673 |



APPEARANCES

FOR THE PLAINTIFF  
STEFAN B. FEIDLER, ESQUIRE  
ANASTAPOULO LAW FIRM, LLC  
32 ANN STREET  
CHARLESTON, SOUTH CAROLINA 29403  
stefan@akimlawfirm.com

FOR THE DEFENDANT  
W. MCELHANEY "MAC" WHITE, ESQUIRE  
HOLCOMBE BOMAR, P.A.  
POST OFFICE BOX 1897  
SPARTANBURG, SOUTH CAROLINA 29304  
mwhite@holcombebomar.com

REPORTED BY  
JILL BISHOP EDWARDS, CVR-CM  
BISHOP REPORTING SERVICES, LLC  
POST OFFICE 1207  
GREENVILLE, SOUTH CAROLINA 29602  
864-640-1634  
Jill@BishopReporting.com

INDEX

STIPULATIONS.....5  
EXAMINATION BY MR. WHITE.....5  
EXAMINATION BY MR. FEIDLER.....129  
FURTHER EXAMINATION BY MR. WHITE.....131  
CERTIFICATE.....132

EXHIBITS

DEFENDANT'S EXHIBIT NUMBER 1, MARKED  
MEDICAL RECORD, ATTACHED.....43  
DEFENDANT'S EXHIBIT NUMBER 2, MARKED  
MEDICAL RECORD, ATTACHED.....48  
DEFENDANT'S EXHIBIT NUMBER 3, MARKED  
MEDICAL RECORD, ATTACHED.....48  
DEFENDANT'S EXHIBIT NUMBER 4, MARKED  
HEALTH CARE POWER OF ATTORNEY, ATTACHED.....52  
DEFENDANT'S EXHIBIT NUMBER 5, MARKED  
DISCHARGE SUMMARY, ATTACHED.....79  
DEFENDANT'S EXHIBIT NUMBER 6, MARKED  
ADMISSIONS AGREEMENT, ATTACHED.....89  
DEFENDANT'S EXHIBIT NUMBER 7, MARKED  
ARBITRATION AGREEMENT, ATTACHED.....95  
DEFENDANT'S EXHIBIT NUMBER 8, MARKED  
PHOTOGRAPH, ATTACHED.....104  
DEFENDANT'S EXHIBIT NUMBER 9, MARKED  
PHOTOGRAPH, ATTACHED.....104  
DEFENDANT'S EXHIBIT NUMBER 10, MARKED  
PHOTOGRAPH, ATTACHED.....104  
DEFENDANT'S EXHIBIT NUMBER 11, MARKED

PHOTOGRAPH, ATTACHED.....104

DEFENDANT'S EXHIBIT NUMBER 12, MARKED  
PHOTOGRAPH, ATTACHED.....104

DEFENDANT'S EXHIBIT NUMBER 13, MARKED  
PHOTOGRAPH, ATTACHED.....104

DEFENDANT'S EXHIBIT NUMBER 14, MARKED  
PHOTOGRAPH, ATTACHED.....104

DEFENDANT'S EXHIBIT NUMBER 15, MARKED  
DISCHARGE SUMMARY, ATTACHED.....116

DEFENDANT'S EXHIBIT NUMBER 16, MARKED  
MEDICAL RECORD, ATTACHED.....125

\*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS FROM DATE OF CERTIFICATION.

STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE QUESTION.

THIS DEPOSITION IS BEING TAKEN PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

- - - - -

THE READING AND SIGNING OF THIS DEPOSITION IS WAIVED BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE PARTIES.

WHEREUPON, MARGARET HOLMES, BEING DULY SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS FOLLOWS:

EXAMINATION

BY MR. WHITE:

Q Ms. Holmes ---

A Yes.

Q Thank you for being here this morning. I know we met a week or so ago at your sister's deposition.

A Yes.

Q But just to remind you, my name is Mac White. I'm from Spartanburg, and I represent the facility and a couple other companies in this case.

1 A Uh-huh.

2 Q I realize that you're not the plaintiff -- I think your  
3 brother is -- for the Estate of David Holmes, your  
4 brother. But you've been identified as a person who  
5 might testify, which is no surprise. Family members  
6 normally do.

7 A Uh-huh.

8 Q So I'm going to take your deposition today. I am going  
9 to try and ask clear and concise questions, but if at  
10 any time I confuse you or you just don't really  
11 understand what I'm asking or your mind wanders for a  
12 minute, ask me to repeat or rephrase the question, and  
13 I will. I want to make sure you understand what you're  
14 answering.

15 A Okay.

16 Q I can tell you're a little soft-spoken, which is  
17 perfectly fine. I don't feel like you're going to yell  
18 at me.

19 A I'll speak up.

20 Q But, yeah, just speak up a little bit, because we've  
21 got all these fancy microphones ---

22 A Yes, I will.

23 Q And Ms. Bishop needs to take down what you're saying.  
24 So I want to make sure that's clear.

25 If you need to take a break at any time -- and

1 that goes for anybody else in the room -- you just  
2 raise your hand and let me know, and we'll take a  
3 break.

4 A Sure.

5 Q My hope is, is that we can go through this stuff before  
6 we have to take a lunch break, but if it goes long and  
7 your stomach starts rumbling or you get low blood sugar  
8 or whatever, you tell me and we'll stop.

9 A I will.

10 Q All right. And last instruction, if you have any  
11 questions about the procedure or what's happening in  
12 the deposition, just ask whichever lawyer's asking you  
13 the questions, and we'll clarify it for you. This is  
14 really a pretty simple process. It's just my  
15 opportunity to ask you questions about your brother,  
16 about his medical history, about your experience at  
17 Bayview Manor, and all the sorts of things you might  
18 testify to at trial. Okay?

19 A Yes.

20 Q So feel free to tell me anything and everything you  
21 want to today, subject, of course, to anything you've  
22 talked with your attorney about. That's off limits,  
23 okay?

24 A Yes.

25 Q So you won't talk to me about that.

1                   Okay. Do you understand all that?

2    A            Yes, I do.

3    Q            Okay, great. What I want to do is just start off with  
4                   some easy questions. I want to get a little bit about  
5                   your background, so tell me where you're from  
6                   originally.

7    A            I am from Beaufort. This is my home.

8    Q            Were you born here?

9    A            I was born here.

10   Q           And have you ever lived anywhere else?

11   A            Nowhere else.

12   Q            All right. What have you done, in terms of a  
13                  profession?

14   A            I am now retired, but I taught for 33 years here on the  
15                  island.

16   Q            Where did you teach?

17   A            St. Helena Elementary, early childhood teacher.

18   Q            And is that a particular grade, or how do you do that?

19   A            Actually it's from birth to third grade.

20   Q            Okay. And you did that for 33 years. Well,  
21                  congratulations.

22   A            Yes, I did.

23   Q            When did you retire?

24   A            Two years ago. 2016.

25   Q            What are you doing with yourself now, now that you're

1           retired?

2    A       Enjoying life.

3    Q       Okay.

4    A       I enjoy that too. I go back to the school every now  
5           and then to be with the children.

6    Q       Well, good. Good for you. You've probably seen a lot  
7           of kids grow up and move on out of Beaufort.

8    A       I have.

9    Q       And some stay, I'm sure.

10   A       Yes.

11   Q       Tell me a little bit about your -- I want to talk a  
12           little bit about your upbringing and, specifically,  
13           with regard to David. Now, when I deposed your sister  
14           -- and let me just see if I can get this right.

15   A       Okay.

16   Q       The oldest brother was Frank Holmes, Jr. Then John R.  
17           Holmes. Then David Holmes. Then Dorothy Olenja. Then  
18           Joseph Holmes. Then Alexander Holmes. And then you.

19   A       Yes.

20   Q       Do I have those in the right order?

21   A       You do.

22   Q       All right. Well, let me go back, then. So you went to  
23           high school here in Beaufort?

24   A       Battery Creek High.

25   Q       And when did you finish there?

1 A 1978.

2 Q Did you go to school after that?

3 A Yes, I did.

4 Q Where did you go?

5 A I went to USB -- USCB here and also in Columbia.

6 Q Where did you graduate?

7 A I graduated from Columbia.

8 Q USC in Columbia?

9 A Yeah. USC in Columbia.

10 Q What did you do? Did you go for a couple years to

11 Beaufort and then go to Carolina?

12 A Yes. I was here for three and a half years, actually,

13 and one semester in Columbia.

14 Q Okay. And what was your major?

15 A Early childhood education.

16 Q After you finished your studies in Columbia, did you

17 come back to Beaufort?

18 A Yes, I did.

19 Q Is that when you began teaching?

20 A Yes, I did.

21 Q And you maintained that teaching role for the 33 years

22 until a couple years ago?

23 A Same school.

24 Q Oh, wow. Okay. Did they give you any sort of award

25 when you left?

1 A I was teacher of the year.

2 Q Well, good for you. Good for you. Tell me about your  
3 family. Now, are you married?

4 A No, I'm not.

5 Q Have you ever been married?

6 A No, I have not.

7 Q Okay. No children?

8 A No children.

9 Q And how about your involvement in the community? Tell  
10 me the sorts of things you're involved in in the  
11 community, whether it be a church, civic organizations,  
12 things like that.

13 A Well, I am a part of a church. I am -- I've been a  
14 youth secretary. I've -- right now, I am an  
15 evangelist.

16 Q Oh, wow. Okay. Great.

17 A We do mission work in the area, you know, different  
18 things for the elderly. Sing on the mass choir. That  
19 sort of thing.

20 Q Did you tell me the name of your church?

21 A No.

22 Q What was that?

23 A Beaufort New Church of Christ.

24 Q Okay. What is -- is that affiliated with a particular  
25 denomination?

1 A Yes. Beaufort New Church of Christ Holiness Unto the  
2 Lord Apostolic Faith.

3 Q Okay. And how long have you been a member there?

4 A About 44 years.

5 Q Wow. Okay. Now, one of the things we always ask, and  
6 kind of in this same vein here, is asking you about  
7 your community organizations. We always ask about  
8 family in the county, and the reason we do that is  
9 because if this case goes to trial, it will go to trial  
10 here in Beaufort County, and we need to know who  
11 relatives are. Now, when I asked your sister about  
12 that, she gave me a whole lot of last names of various  
13 relatives. So, and I'll tell you the names she gave  
14 me, and as I give these to you, let me know if you can  
15 think of any other relatives with different last names  
16 other than what I list here, okay?

17 A Sure.

18 Q Holmes, Ferguson, Simmons. I think she said Goethe.

19 A Goethe.

20 Q Goethe. Grant, Goss and Brown.

21 A Yes.

22 Q Does that cover them all?

23 A Yes.

24 Q Now, other than yourself, are there any other siblings  
25 that reside here in Beaufort County?

1 A No.

2 Q Everybody else has moved out?

3 A Yes.

4 Q So these members of family that I've just described,  
5 those are more extended?

6 A Yes.

7 Q And do they all hail from one particular area of  
8 Beaufort County, or are they all across the county?

9 A Across the county.

10 Q I think she told me -- she mentioned most of them were  
11 in the Burton area.

12 A Burton, yes.

13 Q Is that right?

14 A Yes.

15 Q And I'm just not familiar with that. Is that here  
16 downtown, or where is that?

17 A It's actually about -- when you're coming into  
18 Beaufort, you come through the Burton area to come into  
19 Beaufort. It's not that far, about eight miles.

20 Q Okay. So, as I'm coming in from I-95 ---

21 A From I-95, you're coming down Trask Parkway? Is that  
22 how you came in?

23 Q Uh-huh. Yes, ma'am.

24 A It's in the area where Walmart, that sort of area.

25 Q Is it before the military base?

1 A Before.

2 Q Okay. I know where you're talking about. All right.  
3 Have you reviewed anything -- and, again, I'm not  
4 talking about anything you might have discussed with  
5 your attorney, but have you reviewed any sort of  
6 documents, photographs or anything else, in preparing  
7 for your deposition today?

8 A No.

9 Q All right. Let's talk a little bit about David's  
10 background. I know a fair amount from his medical  
11 records and also, of course, having deposed your  
12 sister. But I want it kind of from your viewpoint.

13 So, as I understand it, let's see. I think I've  
14 got the dates here. David was born in '49 and you were  
15 born in '60. Is that right? So he was 11 years older  
16 than you?

17 A Yes.

18 Q What do you recall -- what are your first memories of  
19 David? How old would he have been or where would he  
20 have been in school?

21 A My first memory of David -- of course, I was very  
22 young. I remember him -- well, he was -- by the time I  
23 was seven, he had already graduated. So it's very  
24 early memories. Going on walks, taking me on walks,  
25 because we lived out in the country near the water. So

1 taking me on walks, that sort of thing. The first  
2 movie I went to, he took me to see Winnie the Pooh. I  
3 never forgot that.

4 Q That's great.

5 A See Winnie the Pooh. I can remember when my brothers  
6 had assignments for school, David would be the one to  
7 seem to know, even when it came to -- Joseph was the  
8 one that had to -- they were studying something in  
9 prehistoric men, cavemen. And so he had to make these  
10 figures. So David took him to get the clay. He molded  
11 all the heads. He was just very smart, very skillful.  
12 That, I remember of him. But yet compassionate, you  
13 know. But I hear stories. I hear stories of, you  
14 know, how smart, you know, he was in school. I do know  
15 that he went to school for pharmacy. Didn't complete  
16 that, but seemed like whatever he set his hand to do,  
17 he was good at it. That, I remember.

18 Q So it sounds like probably your first memories are when  
19 he was probably in high school, given the age  
20 difference.

21 A Yes, high school. Yeah.

22 Q Around that age.

23 A That sort of thing.

24 Q Okay.

25 A Eighteen.

1 Q Do you recall him having any troubles with emotions or  
2 the schizophrenia or anything when he was in high  
3 school?

4 A No.

5 Q All right. When he finished high school, it's my  
6 understanding, if I recall correctly, he went to  
7 University of South Carolina?

8 A Uh-huh.

9 Q Is that right?

10 A He did.

11 Q And how long was -- I think your sister told me maybe  
12 the spring break of his freshman year is when he did  
13 not come back to school after that. Is that your  
14 recollection?

15 A Well, really, I'm not certain of all that information,  
16 being that age a lot -- no.

17 Q Okay. Well, let me ask you this. Do you know how long  
18 he went to Carolina?

19 A I am not certain. I'm not certain as to how long he  
20 went.

21 Q All right. Do you remember there being an instance  
22 where he left on spring break and then decided not to  
23 come back to school?

24 A Of myself, no, but I -- you know, hearing the talk,  
25 that sort of thing. But not really being involved in

1 it but involved in it, if you know what I mean.

2 Q I do, and that's fine. And, listen, by the way,  
3 you're, of course, free to tell me what other people  
4 have told you in the deposition. The rules at trial  
5 are a little different, but you can certainly tell me  
6 what other people have told you. But it is important  
7 for me to know what you actually know versus what you  
8 heard from somebody else.

9 A Right.

10 Q And by the way, if I ask you any questions today that  
11 you just simply don't know the answer, "I don't know"  
12 is a perfectly acceptable answer. Okay?

13 A Uh-huh.

14 Q All right. So what do you -- tell me, in general --  
15 and you don't have to go through what each specific  
16 person told you, but tell me, in general, what you  
17 understood about the situation where David left  
18 Carolina, whether he went on spring break or whatever,  
19 and then didn't return, and how things kind of  
20 developed from there.

21 A Only that he went on spring break -- I think Florida or  
22 wherever it might have been, and he did not come back.  
23 But when he did, things were different with him. As to  
24 what took place, I do not know.

25 Q Do you remember personally what sort of change there

1 was about him when he came back?

2 A No. When he came back, not really. As I grew older,  
3 certain things took place.

4 Q Okay. Well, let's talk about that, then. Just from  
5 when you can remember, when did you first start  
6 realizing and what age were you when you noticed that  
7 David perhaps wasn't the same fellow that he was in  
8 high school, that you remembered from your earliest  
9 memories?

10 A Okay. Perhaps I was about 12, and it's the time when  
11 my mother and I -- or my mother had to deal with issues  
12 with him. When it came to his just -- his whole mental  
13 capacity changed. And many times he had to be placed  
14 in the hospital. Sometimes it was, you know, at  
15 Beaufort Memorial at the hospital, or he -- all of a  
16 sudden, he would get an urge to just leave, to go  
17 walking. It could be in the middle of the night. It  
18 could be a full day in the morning and he'd just say,  
19 "I've got to go." And so my mother would ask him,  
20 "Where are you going?" You know, and he just leaves  
21 and sometimes we wouldn't hear from him. We wouldn't  
22 know where he is until he would end up coming back.  
23 And he'd say, well, he was to this state, that state,  
24 wherever. We just never knew where he went. And so  
25 many times, if he left, my mother would try to notify

1 the authority, because we didn't want him to be hurt,  
2 you know. Anybody could do anything to him and we'd  
3 never know because we never knew where he was. And so  
4 that was very traumatic for a number of years. And so  
5 they would, you know, if he's not at Beaufort Memorial,  
6 sometimes they took him to Columbia. Sometimes they  
7 took him to the veteran's hospital in Charleston. But  
8 you know, we tried to keep him at home, but he would  
9 not listen. You know, he was kind of strong-willed,  
10 you know, and when he made up his mind, there was no  
11 keeping him. But we knew that was a dangerous  
12 situation.

13 Q The hospitals that you mentioned, you've mentioned  
14 Beaufort Memorial, the veteran's hospital in Charleston  
15 and then Columbia. I know that there was -- on Bull  
16 Street there in Columbia, there was the mental health  
17 facility.

18 A Yes.

19 Q Was he there at times?

20 A Yes.

21 Q When he would go in these hospitalizations, would he  
22 typically be placed in a psychiatric ward?

23 A Yes.

24 Q And when he was in the psychiatric ward, were y'all  
25 allowed to visit him there?

1 A Sometimes.

2 Q Okay.

3 A Sometimes. But sometimes my mom would go, you know.

4 I'd be at home, but my mom would, you know, go,

5 depending on the condition.

6 Q Was Beaufort always home base for him?

7 A As far as living here?

8 Q Yes, ma'am. Let me explain what I mean by that. The  
9 way you've described it, and this is the same way your  
10 sister described it. He would leave home at times and  
11 he would travel to different states, and sometimes it  
12 would be for a long time and sometimes a short term,  
13 time. But in terms of where he would ultimately  
14 gravitate back to, would that typically be Beaufort, or  
15 were there other areas in the country where he would go  
16 and stay for long periods of time?

17 A He would come back to Beaufort.

18 Q Okay. And when he would go on -- you know, when he  
19 would leave the house and he would go to these other  
20 states, would it sometimes be just weeks? Could it be  
21 months? I mean, how long would it be before you'd see  
22 him again?

23 A Could be months. We just never knew.

24 Q Now, your father, how long did he live? How old were  
25 you when he died?

1 A I was -- let's see. He died -- let's see. He died in  
2 1974. I'm sorry. Not 1974. He died in 1993.

3 Q Okay.

4 A So I was 33. I think 33 years old.

5 Q You were 33?

6 A Uh-huh.

7 Q Okay. So 1993.

8 A Uh-huh.

9 Q And your mom, when did she pass?

10 A '95.

11 Q Okay. How did they -- how did they handle this? Were  
12 they married all the way up until their deaths?

13 A No, they were not.

14 Q When did they get divorced?

15 A I believe it was '72.

16 Q Okay. Where did your dad live after they got divorced?

17 A In the same area.

18 Q Okay. So he stayed local?

19 A Yes, local.

20 Q In terms of as David would come back home to Beaufort,  
21 would he typically come and stay with you and your mom,  
22 or would he stay with his dad?

23 A My mother and I.

24 Q Now, when he was back in Beaufort, who was primarily  
25 taking care of his medical needs, in terms of making

1           sure he was either going to the hospital or going to a  
2           doctor or trying to keep him on his medication ---

3    A       My mother.

4    Q       Your mom did?

5    A       Would try to do that.

6    Q       How about you? Were you ever personally involved in  
7           that?

8    A       Well, because mostly -- it was mostly my mom taking  
9           care of that issue. I was at work or whatever the case  
10          is, but mostly my mom would tend to his medical needs.

11   Q       How about when your mom died?

12   A       When my mom died, David was in the hospital at the same  
13          time.

14   Q       In the same hospital where she died?

15   A       No, no, no. Was in -- I think it was the veteran.

16   Q       Okay.

17   A       I think it was the veteran hospital at the time.

18   Q       Did he ever get out of a hospital from that point for  
19          any extended period of time, or was he always kind of  
20          committed?

21   A       He would get out and we would try to see if it will  
22          work this time.

23   Q       Uh-huh.

24   A       But it wouldn't. There were areas in the -- in  
25          Beaufort that we tried to -- they would sometimes send

1 him to a place, a facility in Beaufort. And he would  
2 be there for a while, but then we would get a call  
3 that, you know, he's not staying or he's not  
4 cooperating and we can't keep him. Several different  
5 areas that were -- we thought to be nice places for  
6 him. But it just didn't work.

7 Q Okay. And as long as you can remember except on the  
8 occasions where he went to other states, was he  
9 typically always going basically from one facility to  
10 another, in terms of trying to get health care?

11 A Yes.

12 Q And when he would come out, what was his -- I assume  
13 when he was in these facilities, they kind of required  
14 him to be on his medications?

15 A Right.

16 Q And when he was on his medications, did he appear to  
17 function a little more normally?

18 MR. FEIDLER: Objection. You can answer.

19 BY MR. WHITE:

20 Q Well, and let me clarify that. Did -- was his  
21 condition -- in terms of your interaction with him,  
22 was his condition seem to be improved when he was in  
23 the hospital versus -- or any facility versus when he  
24 was out either traveling or staying at home with y'all?

25 A When he would come home, he would be on medication.

1 He'd be on medication. When he refused to take the  
2 medication, it's a different story.

3 Q Okay. Tell me about his -- I recall your sister  
4 telling me a little bit about his military service. He  
5 went into the Air Force for a short period of time. Is  
6 that right?

7 A Yes.

8 Q Do you know how long he was in there?

9 A I don't recollect.

10 Q David never married, did he?

11 A No.

12 Q Did he ever have children?

13 A No.

14 Q Did he ever, from the time -- or do you ever recall him  
15 being gainfully employed?

16 A I remember him being in Boston at one point, and I  
17 believe he had a job there.

18 Q Do you know what he was doing?

19 A I'm not sure what that was.

20 Q Do you know how long he worked?

21 A No, I don't.

22 Q Okay. Other than whatever that was in Boston, do you  
23 recall him ever holding employment anywhere else?

24 A I don't.

25 Q Where was he living while he was up there? Was he with

1 your sister?

2 A I'm not sure.

3 Q From -- other than -- and you've told me a little bit  
4 about your relationship with him in high school. As he  
5 was -- once things changed for him after or during  
6 college, and you noticed this change in his  
7 personality, what was your relationship with him like?

8 A Well, he wasn't like mean to me or anything like that.  
9 You know, I knew that he was incoherent a lot, so a lot  
10 of the medications would, you know, kind of distort  
11 things for him.

12 Q Well, and I guess let's do it this way. In comparison  
13 to, say, your relationship with your sister, what was  
14 the relationship like with David? I mean, were you  
15 able to have a meaningful relationship with him? I  
16 know you loved him. I'm not asking that question.

17 A Yeah, yeah.

18 Q I know you loved your brother. But in terms of having  
19 any sort of ongoing dialogue or relationship with him,  
20 were you able to do that?

21 A Well, we could talk. We could talk. Some things would  
22 be incoherent, but ---

23 Q Let me turn to the Bowles Community Care Center. Do  
24 you recall that facility?

25 A Yes.

1 Q Did you ever visit him while he was at Bowles?

2 A I did.

3 Q Do you know how long he was there?

4 A David was there for about, what? Nine years or so.

5 Q And is that -- that's in McClellanville. Is that  
6 right?

7 A Clintonville, something like that.

8 Q All right. In Charleston County?

9 A Yes.

10 Q How often would you visit with him there?

11 A Can't put a number on it. I visited him several times.  
12 One thing is I know that when I went, he'd want to come  
13 back with me, and that was not an easy thing. But I  
14 would call him and sometimes -- I forgot her name now  
15 that worked there, would allow him to call me.

16 Q Is that Virginia?

17 A Yes, Ms. Virginia. And I would call him, talk to him,  
18 see how he's doing. And sometimes he wasn't all  
19 coherent, but ---

20 Q Okay. And I know what you're saying in terms of going  
21 up there and he wants to come home with you. I mean,  
22 it's probably not unlike visiting someone in a nursing  
23 home and Mom or whoever doesn't want to be there and  
24 they want to come home with you. So I understand that.  
25 And I understand you don't recall the exact number, and

1 that's fine, times you visited. Can you give me an  
2 idea? I mean, would it be a typical time of year you  
3 would go see him, like at a holiday or birthday or  
4 anything?

5 A Just -- I would just call Ms. Virginia and say, you  
6 know, I'm just going to come up. I've taken him down  
7 the street; there was like a restaurant. I'd say, "Do  
8 you think I can take him there so we can just sit and  
9 eat?" So sometimes that would happen, but it was  
10 right, you know -- and then he'd agree to go back,  
11 because I didn't want -- I'm like, okay, I don't want  
12 him to say, "I'm out here now. Catch me if you can."  
13 I didn't want that. But he would go back.

14 Q What -- on average, how many times do you think you  
15 went to see him a year?

16 A Maybe once.

17 Q Okay. What -- and I've never been to Bowles, so I  
18 don't know how they operate. Is it a locked facility?

19 A Well, there were some standing outside. Some folks are  
20 outside. When I would go, they'll go get him.  
21 Sometimes he was in the room, so they would go get him  
22 out and we'd just sit in the area. There were several  
23 people around.

24 Q Yeah, so I guess what I'm trying to get at here is it  
25 sounds like, or at least your sister told me when he

1 was at other hospitals or facilities that weren't  
2 locked, he would often just kind of check out himself.  
3 He would decide to leave.

4 A Yeah, those weren't locked.

5 Q And so would that happen at Bowles, or did they have  
6 something in place to stop him from doing that?

7 A I don't know.

8 Q Oh, you don't know?

9 A I don't know.

10 Q Okay. Was he on his medication at Bowles?

11 MR. FEIDLER: Objection.

12 BY MR. WHITE:

13 Q Do you know if he was taking medication at Bowles?

14 A I was told that.

15 Q Okay. Do you know what he was on?

16 A No, I do not.

17 Q What was his quality of life like at Bowles, just from  
18 your perspective?

19 A When I went, like I said, I'd always see Ms. Virginia.  
20 She would be the one that would be there. As far as  
21 Mr. Bowles, I don't remember seeing him, but I would  
22 see her. It was -- I'm trying to think of what the  
23 word is. It was a pretty good facility. I don't know  
24 what all they had as far as -- well, Ms. Virginia would  
25 say that, you know, on occasion they would take them

1 out, different things, bring them back. As for how  
2 often, I'm not sure.

3 Q Uh-huh.

4 A But as far as any other type of activity, I didn't see  
5 that. But I saw a lot of -- I guess they're patients  
6 or whatever, sitting around.

7 Q Could you tell whether David was happy there?

8 A Well, he always said he wanted to come home, which, of  
9 course, you would. But I couldn't keep him.

10 Q And this was after your mom, obviously, had already  
11 passed?

12 A Yeah. Yes.

13 Q Do you know what level of service or care they provided  
14 there in terms of nursing or any other care?

15 A I'm not sure.

16 Q Okay. Do you know who his primary doctor was while he  
17 was at Bowles?

18 A No, I don't know. I know he had a case worker.

19 Q Do you know if -- well, let me ask this first. Would  
20 you ever talk with the case worker to talk about his  
21 condition?

22 A I did not. Dorothy -- yeah, they basically handled ---

23 Q Dorothy handled that?

24 A Yeah.

25 Q Let me ask you this. Once David was in Bowles, was

1 Dorothy the primary family member who was keeping up  
2 with communications either with the doctor or with a  
3 case manager?  
4 A Well, Joseph would also keep up with him.  
5 Q And Joseph was living in Boston at that time?  
6 A Yes.  
7 Q So he would do it by telephone, primarily?  
8 A Yes. And when he would come home, he would.  
9 Q So Joseph and -- let me make sure I have the names  
10 right. Joseph and Alexander ---  
11 A Uh-huh.  
12 Q Right?  
13 A Yes.  
14 Q That's the four of you who are still alive.  
15 A Yes.  
16 Q And, Alexander, was he living up in Boston at this time  
17 as well?  
18 A Yes.  
19 Q How often would Joseph and Alexander come home to  
20 Beaufort?  
21 A They would actually try to come at least two or three  
22 times.  
23 Q Per year?  
24 A Yeah.  
25 Q How would they come? Would they fly or drive?

1 A Drive.

2 Q And how often would they go see their brother up at  
3 Bowles?

4 A They would go and see how he was doing.

5 Q Every time?

6 A No, not every time, but most of the times they did.

7 Q Okay. So maybe once or twice a year?

8 A Something like that.

9 Q Do you recall when your brother David had the choking  
10 incident at Bowles?

11 A Yes.

12 Q Tell me how that was communicated to you, please.

13 A My sister called me.

14 Q What did she say to you?

15 A Don't remember the exact words, but that something had  
16 happened to David, a choking issue, and that he was in  
17 the hospital.

18 Q And as I recall, he was in St. Francis, the Mt.  
19 Pleasant hospital in Mt. Pleasant.

20 A Yes.

21 Q Did you go up and see him?

22 A Yes, I went.

23 Q Do you know how many days he was there before you went  
24 to see him or did you go up immediately?

25 A Immediately.

1 Q What was his condition like the first time you saw him?

2 A They had him -- if I'm recalling correctly, I was able  
3 to go into the room to see him, and they had him, you  
4 know, hooked up, you know.

5 Q Hooked up to machines?

6 A Yeah.

7 Q Who was there with you at that time?

8 A I was there.

9 Q You were the first one?

10 A Yes..

11 Q Did you -- after the choking incident, did you ever  
12 have any direct communications with anybody at Bowles?

13 A No.

14 Q So they never gave you any firsthand explanation of  
15 what happened?

16 A No.

17 Q Have you learned through anyone else, whether your  
18 sister or anyone else, what happened?

19 A Just my sister told me, you know, that he was eating  
20 something of sorts and choked on something.

21 Q Okay. And do you know whether he was being -- do you  
22 know what he choked on, whether that was on his plate  
23 or someone else's plate?

24 A I am not certain of that, but ---

25 Q Okay. Are you aware that a lawsuit has been filed

1           against Bowles Community Center for that particular  
2           incident?

3    A       Yes.

4    Q       Are you in any way involved in that, other than as just  
5           a family member?

6    A       Family member. Yeah, that was Joseph ---

7    Q       All right. In other words, the case wasn't brought in  
8           your name?

9    A       No.

10   Q       It was brought in Joseph's?

11   A       Yes.

12   Q       And do you have any opinions as to whether Bowles is  
13           responsible for your brother's choking incident?

14   A       The only opinion I have is that things should be in  
15           place for a certain -- if certain -- depending on the  
16           facility, certain things should be in place to ---

17   Q       Right. Were there things that you felt should have  
18           been in place at Bowles that were not?

19   A       I felt like, for such an incident, someone should have  
20           been there that was able to do -- to deal with a  
21           choking person or some medical person or somebody for  
22           such a facility.

23   Q       Okay. So, in other words, as I have kind of read  
24           through the records -- and let me know if this is your  
25           understanding -- that after the choking incident, it

1 was not until EMS arrived that they were able to  
2 extract the chicken from his throat?

3 A That is what I was told, yes.

4 Q Okay. So, if I'm reading you right, your concern is  
5 that Bowles did not have a person there to, in some  
6 way, either do a Heimlich maneuver or something to try  
7 and get this out before EMS got there?

8 A Yes.

9 Q Do you place blame -- just from your perspective, do  
10 you place blame on Bowles for your brother's death?

11 MR. FEIDLER: Objection. You can answer.

12 THE WITNESS: I'm sorry?

13 MR. FEIDLER: You can answer. I'm sorry.

14 THE WITNESS: Again, I feel that someone should  
15 have been there to assist in the matter and the results  
16 could have been different.

17 BY MR. WHITE:

18 Q Has your deposition been taken in that case, in the  
19 Bowles case?

20 A No.

21 Q You haven't done this in that case?

22 A Uh-uh.

23 Q All right. All right. So I want to go back for a  
24 minute to -- let's go back to Mt. Pleasant hospital.

25 So, when you arrived there, he was in a room and,

1 as I understand it, he would have had -- been hooked up  
2 to a respirator.

3 A Uh-huh.

4 Q Right? Breathing for him?

5 A Uh-huh.

6 Q And if you'll just answer out loud for me.

7 A Yes. I'm sorry.

8 Q That's fine. I forgot to remind you of that. You've  
9 been doing so well so far.

10 So he was there. Who was the first medical  
11 professional you spoke with?

12 A I believe it was -- I believe it was a doctor, if I'm  
13 recalling correctly.

14 Q Okay. You don't happen to remember his name, do you?

15 A No, I do not.

16 Q What did the doctor tell you, as best you can recall?

17 A That he choked and that he had been a while without  
18 oxygen to the brain, and so that was the result of that  
19 lack of oxygen. Also, that he had two cardiac...

20 MR. FEIDLER: Can we take a little break?

21 MR. WHITE: Yeah, absolutely. Absolutely.

22 (OFF THE RECORD)

23 BY MR. WHITE:

24 Q So doctor told you he had two cardiac ---

25 A On the way, and they revived him each time.

1 Q Were these cardiac arrests?

2 A Uh-huh.

3 Q Okay. Do you remember anything else the doctor told  
4 you at that point?

5 A No.

6 Q Did you go into the room and spend some time with  
7 David?

8 A Yes, they allowed me to stay.

9 Q Okay. And I'm sorry. What's the last thing you said?

10 A They allowed me to stay in the room.

11 Q Oh, allowed you to stay in the room. I see. And I'm  
12 assuming he was in ICU?

13 A Yes.

14 Q I know that he was there for probably about a month  
15 before he went to Bayview Manor. How often were you  
16 with him during that period?

17 A Someone was there every day.

18 Q So one of your family members?

19 A Dorothy.

20 Q Oh, Dorothy. Okay. I came -- I went -- I came at  
21 night and left there and went to work and came back  
22 each night.

23 Q You spent the night there each night?

24 A Yes.

25 Q Okay. So you and Dorothy?

1 A Yes.

2 Q What did the -- well, let me ask you first just about  
3 his condition. When you first saw him that day, could  
4 he interact with you in any way?

5 A No.

6 Q Were his eyes open or closed?

7 A Open.

8 Q Could he track you? Like, if you walked up to him,  
9 would his eyes move to you? Did you ever see that?

10 A No.

11 Q Did his -- did that aspect of his condition, did it  
12 change at all during his time at Mt. Pleasant hospital?  
13 Did you see any improvement?

14 A Well, we were standing near the bed and Dorothy was  
15 kind of holding his hands, and she would say to me,  
16 "You know what, he's squeezing my hand." But the  
17 doctor -- one doctor said, "You never know whether  
18 they, you know, can hear you. So talk to him." He  
19 would say, "You all talk to him." You know, I'd play  
20 music in the room for him. That sort of thing.  
21 Because he said they may not be able to communicate one  
22 way, but it doesn't mean they can't hear you.

23 Q Any other way -- did you see any other improvement in  
24 the sense of did he ever -- I'm assuming he never  
25 talked to you?

1 A No.

2 Q He was never able to get up and move on his own?

3 A No.

4 Q Ever show any facial expressions that you felt like he  
5 recognized you? Did he ever smile or frown or cry or  
6 anything like that?

7 A Sometimes we saw tears. So, you know...

8 Q Okay. After -- and I'm just going to take this  
9 basically through the end of his life.

10 A Uh-huh.

11 Q From the time you saw him at Mt. Pleasant Manor --  
12 excuse me, Mt. Pleasant hospital until he died -- and I  
13 think it was May of the next year ---

14 A Uh-huh.

15 Q Did you ever see any improvement in his condition, in  
16 his ability to communicate or anything like that?

17 A Well, when we were at the hospital, they checked all of  
18 his organs and vitals, that sort of thing. They would  
19 say his organs and everything's fine. And they would  
20 do the tests, you know, to see what brainwaves, but  
21 they never came up with the result that he was  
22 braindead. There were always some sort of brain  
23 activity going on with David. But as far as heart and  
24 all of that...

25 Q Okay. So his organs were okay.

1 A Yeah, but it was just the lack of oxygen that he had  
2 had.

3 Q All right. And so, beyond what you just told me, did  
4 you ever see his level of consciousness improve at any  
5 time before he died?

6 A No.

7 Q Did you -- were you ever involved in any conversations  
8 with either doctors, nurses or social workers at Mt.  
9 Pleasant hospital about the idea of either putting him  
10 on comfort care or hospice care?

11 A Well, basically, my sister handled the situations that  
12 came up with the doctor because, during the day or  
13 whatever, I would not be there. I would be at work in  
14 Beaufort. So she was there. So they would have  
15 conversations with her.

16 Q So Dorothy was the family member primarily having these  
17 communications with the doctors?

18 A Yes.

19 Q Did the doctors ever tell you what your brother's  
20 prognosis was?

21 A Only the fact about the lack of oxygen and what was  
22 happening to him and what that caused, as far as his  
23 brain was concerned.

24 Q Did the doctors ever say anything that gave you hope  
25 that he might be able to pull out of this, from a

1 consciousness level?

2 A They said we didn't ever know what could happen.

3 Q Did you -- while he was at Mt. Pleasant hospital, did  
4 you ever see any reaction from him that indicated to  
5 you that he was in any pain?

6 A I really don't know if it was when we saw tears, was  
7 that the only way he was communicating to us, or if  
8 they came in and they were -- because they did therapy  
9 with him every day. They would come in and do his  
10 arms, legs, whatever. They did therapy with him, and I  
11 think they could tell, you know. They would be talking  
12 to him and they could tell -- you know, "I know this is  
13 not feeling good, but we've got to do this." That sort  
14 of thing.

15 Q But in terms of -- and other than the tears you  
16 mentioned, would he have those tears as they were  
17 manipulating him in therapy, or was that just while he  
18 was lying there?

19 A It could be sometimes just, you know...

20 Q Okay.

21 A So I don't know if that was a moment of -- I don't  
22 know.

23 Q After he left Mt. Pleasant, again, just kind of through  
24 the end of his life, both in Bayview Manor and at  
25 Beaufort Memorial Hospital, did you ever see anything

1 that indicated to you that David was experiencing pain?

2 A Well, when he left from -- like I said, when he --  
3 you're asking me when he left the hospital?

4 Q Right. So, in other words, we've talked about the part  
5 where he was at Mt. Pleasant.

6 A Yeah.

7 Q And I'm just kind of looking for, you know, just  
8 through the end of his life, whether he ever did or  
9 said -- well, he obviously didn't say anything, but  
10 ever did anything or reacted in a way that you  
11 attributed to some pain that he was experiencing?

12 A Well, if they were trying to turn him, it was like he  
13 would, you know, kind of draw up.

14 Q So how would -- let me just - help me with that. If  
15 the staff was trying to turn him on his side, you're  
16 saying his limbs would draw up?

17 A Yeah, and then to -- especially when he had, you know,  
18 the sores or whatever.

19 Q What did you notice about that, in terms of -- is there  
20 something specific about the sores that you attribute  
21 to pain or was it just the turning ---

22 A Well, like, the doctor had said you never know what  
23 he's feeling or whatever the case is, but just seeing  
24 the, you know, the gash or whatever the case is, and  
25 them having to change it or pack it or whatever.

1 Q Okay. Would he -- when there was wound care being  
2 done, which I think is what you're describing there ---

3 A Yeah, wound care.

4 Q When wound care was done, did you see him react in a  
5 certain way?

6 A Well, he would just move.

7 Q Okay.

8 A You know, he would just move.

9 Q And would that be the same sort of movement he would  
10 have when they turned him, as well? Or is that  
11 different?

12 A What I would say it's probably like the same, somewhat.  
13 Maybe a little bit more withdrawn.

14 Q All right. Let me go to a couple records and see what,  
15 if anything, you know about these. What I'm going to  
16 do, I did this in your sister's deposition and it just  
17 made it go quicker.

18 A Uh-huh.

19 Q I'm just going to highlight the first words of the  
20 sentences I want to ask you about, okay? Because these  
21 are -- it's kind of small. It's a little bit even hard  
22 for me to read.

23 MR. WHITE: Stefan, I'll do the same for you.

24 MR. FEIDLER: Thank you.

25 MR. WHITE: I'm going to mark as Exhibit 1 to your

1 deposition a medical record from Mt. Pleasant hospital.

2 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
3 NUMBER 1, MEDICAL RECORD, ATTACHED.)

4 BY MR. WHITE:

5 Q And this was done on a consultation on October 16,  
6 2014, by Tiffany Richter. Do you recall that name  
7 offhand?

8 A No.

9 Q All right. You'll see in the assessment portion of  
10 this, I've highlighted the word "very." And I'm just  
11 going to start at the beginning of that sentence. It  
12 says, "He is now with hypoxic ischemia, encephalopathy,  
13 with a very grim prognosis for any meaningful  
14 recovery." So this is what the doctor's writing. Did  
15 the doctors ever describe it to you in that way?

16 A No, not to me.

17 Q You had mentioned a moment ago that you thought the  
18 doctors had said something like you never know what  
19 might happen on the prognosis. Did they ever say it  
20 that way directly to you, or was that something a  
21 family member communicated to you?

22 A That's what they said.

23 Q To you?

24 A Yeah.

25 Q And then the next paragraph is where I want to focus.

1 It says, "Interdisciplinary family meeting was had  
2 with his sisters, Margaret and Dorothy, today. Myself  
3 was present, also palliative care social worker Laurie  
4 Lybrand, and Blank, nurse practitioner student. We  
5 discussed their understanding of his current illness.  
6 His information was reviewed and all of their questions  
7 were answered. His sisters are very focused on his  
8 pre-hospital care and the events leading up to his  
9 arrest."

10 So let me just stop there. First of all, do you  
11 recall having this meeting?

12 A I'm not sure about this. And who was this supposed to  
13 have been?

14 Q Well, it's an intradisciplinary family meeting, which  
15 means it's not only -- they're saying not only were you  
16 and Dorothy there, but there were a few people from the  
17 hospital there, including the doctor and the social  
18 worker and a nurse practitioner student. So they're  
19 saying essentially there were three of them who sat  
20 down with y'all to talk about his care and what was to  
21 be expected. And I can read on. I can read on and see  
22 if it rings a bell.

23 A Yeah. Yeah.

24 Q Okay. It says, "We discussed the patient's quality of  
25 life on prolonged ventilation with a very grim

1 prognosis for any meaningful recovery, and if this is  
2 what the patient would want for the remainder of his  
3 life. They explained that they do believe that this is  
4 what the patient would want, that he would not want to  
5 be removed from life support and allowed to die  
6 naturally."

7 So let me stop there. Does that ring a bell now?

8 A Yes.

9 Q Tell me what you recall about that meeting.

10 A Just what you're saying now, but also what they were  
11 saying about the ventilation. And David was on life  
12 support. He didn't stay on life support. He was able  
13 to breathe on his own without that. So we felt like he  
14 should be given a chance. If there was a chance to be  
15 given, he should be given that chance.

16 Q Okay. Then it goes on and says, "They explained that  
17 they are a very religious family and they believe that  
18 he could recover even if we believed he could not. We  
19 discussed the benefits and burdens of a tracheostomy  
20 and peg tube, and also the risks of prolonged  
21 ventilation with a trach, including infection and skin  
22 breakdown and discomfort."

23 So let me focus on that for a moment. Do you  
24 recall anything specifically about the issue of  
25 infection and skin breakdown and discomfort being

1 discussed in that meeting?

2 A I don't recall it. I don't recall it, but I do know  
3 that when they were saying about the -- it would be  
4 burdensome, that sort of thing, we looked for  
5 facilities that would be able to accommodate him, that  
6 would be closer, that would be able to accommodate with  
7 the trach. Several places said, you know, they would  
8 not be able to -- they would take a patient, but they  
9 weren't prepared for the trach. So, but we were in the  
10 process of looking for a place.

11 Q Was your -- were you looking primarily in the Beaufort  
12 area, or were you looking everywhere?

13 A We were looking -- we looked in Georgia, so we were  
14 just trying to find somewhere that would be -- and then  
15 there's one place, I believe, that Dorothy came across  
16 that was so far away in Georgia.

17 Q Did the physicians or the nurses ever counsel against  
18 sending your brother to Bayview Manor?

19 A Not as I recall.

20 Q All right. Let me go on, then. It says, "They have  
21 agreed that they would want to go forward with these  
22 procedures and have him placed on long-term facility.  
23 We also discussed cardiopulmonary resuscitation and  
24 defibrillation at the time of cardiac arrest, and they  
25 had not considered this and will discuss it further

1 with their siblings."

2 So, as to that point, do you recall the doctor  
3 explaining the impact of that sort of care had on  
4 David? In other words, the cardiopulmonary  
5 resuscitation?

6 A No, I don't.

7 Q Do you recall them discussing how that might impact his  
8 outcome?

9 A Actually, sitting here, I don't recall the entire  
10 conversation with that.

11 Q And I understand, and that seems reasonable to me. Let  
12 me ask you this. The things that they're saying here  
13 that y'all have talked about, you're not denying that  
14 they were discussed; you're just saying that today you  
15 can't recall whether they were discussed or not.

16 A I don't recall.

17 Q All right. Then, if you flip over to the next page,  
18 under recommendations, it says, "Family wishes to go  
19 forward with trach and peg and long-term placement.  
20 Discussed this with case management and will work on  
21 placement. Family is considering a do not resuscitate  
22 order. We will continue to follow."

23 So do you recall while he was at Mt. Pleasant  
24 hospital placing him on do not resuscitate?

25 A No.

1 Q Do you know what that is?

2 A Yes.

3 Q All right. That's all for that document. You can turn  
4 that over.

5 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
6 NUMBER 2, MEDICAL RECORD, ATTACHED.)

7 BY MR. WHITE:

8 Q All right. The next one is Number 2. And all I want  
9 to ask you about is that top note, dated October 17,  
10 2014. So this is a day after the note we just looked  
11 at. And it says, "Patient's family met with palliative  
12 care team and would like to proceed with aggressive  
13 care." And so my question for you is, after this  
14 meeting with the doctor and the nurse and the social  
15 worker, do you recall having a separate meeting with a  
16 palliative care team about the plans for David?

17 A No. I don't.

18 Q Okay.

19 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
20 NUMBER 3, MEDICAL RECORD, ATTACHED.)

21 BY MR. WHITE:

22 Q All right. The next one I'm going to hand you is  
23 Number 3, and I'm just going to run through Number 3,  
24 the whole thing, and just ask you questions as they  
25 arise.

1 A Yeah.

2 Q So, this is from October 24th, a few days after the  
3 note we looked at a moment ago. And it says, "Family  
4 conference was held today at approximately 1300. Those  
5 present were Tara Buck, CNO; Mary Bonney, Case  
6 Management; Gretchen Ring, Risk Management; Dorothy  
7 Olenja, sister; and Margaret, sister. I, Tara,  
8 discussed the purpose of the power of attorney with the  
9 family. I explained that, according to the power of  
10 attorney, Mr. Bowles is the point person for all  
11 decisions. I also explained to the family that they  
12 can contest the power of attorney and gave them a  
13 print-out of resources they could contact should they  
14 decide to proceed."

15 So let's stop there. Do you recall this meeting?

16 A Yes.

17 Q All right. And is it the case that -- and we're going  
18 to look at the power of attorney in a moment -- that  
19 your brother David signed a health care power of  
20 attorney in favor of Mr. Bowles. Is that right?

21 A That's what we were told.

22 Q All right. Did they provide you with a copy of the  
23 power of attorney?

24 A No.

25 Q Was the purpose of this meeting to discuss whether Mr.

1 Bowles would have healthcare decision rights with  
2 regard to your brother versus you two?

3 A Yes.

4 Q All right. Let me go on. It says, "I further gave  
5 them a deadline of 5:00 p.m. on Monday, October 27,  
6 2014, to produce a legal document for the court stating  
7 they were going to contest. If they did not provide  
8 this documentation, we would honor Mr. Holmes' power of  
9 attorney and discontinue items he does want as  
10 documented in the power of attorney."

11 Okay. So what did y'all do in response to that?

12 A Well, we set out trying to find those -- get those  
13 legal documents in place. This was Friday when they  
14 told us, and Monday was supposed to be the deadline.  
15 And so we set out, trying to find a lawyer, trying to  
16 set things in place. So we were able to make it  
17 happen.

18 Q All right. Then it says, "I provided the family the  
19 opportunity to ask questions, at which time Dorothy  
20 asked if we were competent healthcare providers to  
21 realize he had a mental illness. I did not answer this  
22 and reassured them we are providing the most  
23 appropriate care for their brother."

24 Do you remember your sister asking that question?

25 A I don't remember her asking it.

1 Q Did you have any concerns with whether the hospital was  
2 competent to take care of your brother?

3 A Well, our thing was the fact that, if David was there,  
4 not for physical reasons at that facility but for  
5 mental reasons, who's to say he actually, you know, his  
6 mental capacity, at that point, when this was signed or  
7 whatever the case was. And so we wanted, you know --  
8 we felt like that wasn't David's wishes and we should  
9 ---

10 Q I know that the healthcare power of attorney was  
11 challenged and, as I recall, your sister was actually  
12 appointed as the guardian.

13 A All right. Yes.

14 Q Okay. Was it your and your sister's contention that  
15 when David signed the healthcare power of attorney he  
16 was not competent to do so?

17 A We don't believe that he was, being that he was there  
18 for a mental situation.

19 Q All right. Then it says -- she says, "At this point, I  
20 provided them with a copy of the power of attorney and  
21 a list of legal resources. I also stated that they  
22 could not restrict Mr. Bowles from seeing their  
23 brother. At that point, they thanked us and the  
24 meeting ended. Dr." -- something -- "has been updated  
25 on this conversation and is in agreement."

1           So, at the end of this meeting, it sounds like  
2           they gave you a copy of the power of attorney and some  
3           legal resources, and then y'all took that and y'all  
4           went and found an attorney.

5    A    Yes.

6    Q    To challenge it.

7    A    Yes.

8                       (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
9                       NUMBER 4, HEALTH CARE POWER OF ATTORNEY, ATTACHED.)

10   BY MR. WHITE:

11   Q    All right. I'm going to hand you next Exhibit Number  
12       4, which is that health care power of attorney that  
13       we've been discussing. Have you ever read this  
14       document?

15   A    No.

16   Q    Do you know what the purpose of this document is?

17   A    Giving someone the power of attorney to make decisions.

18   Q    Right. If you flip over to page -- it looks like it's  
19       the third page in. A number 7, do you see that?

20   A    Uh-huh.

21   Q    It says, "Statement of Desires Concerning Life-  
22       Sustaining Treatment." Then, beneath that, it says,  
23       "With respect to any life-sustaining treatment, I  
24       direct the following." And in Number 2, David's  
25       initialed and it says, "Directed to withhold or

1 withdraw treatment. I do not want my life to be  
2 prolonged and I do not want life-sustaining treatment."  
3 And the first one says, "If I have a condition that is  
4 incurable or irreversible and without the  
5 administration of life-sustaining procedures, expected  
6 to result in death within a relatively short period of  
7 time." Or, B, "If I am in a state of permanent  
8 unconsciousness."

9 So, in light of this, back at the time that this  
10 power of attorney was being challenged, did you look at  
11 this to see what -- which paragraphs David had  
12 initialed?

13 A No, I didn't see it. My sister took a look at this. I  
14 didn't see this.

15 Q Okay. And then, on the next page, a number 8, it says,  
16 "Statement of Desires Regarding Tube Feeding," and he  
17 was on tube feeding; correct?

18 A Yes.

19 Q All right. It says, "With respect to nutrition and  
20 hydration provided by means of a nasogastric tube or  
21 tube into the stomach" -- and he had a tube into his  
22 stomach. Is that right?

23 A Yes.

24 Q "Intestines or veins. I wish to make clear that, in  
25 situations where life-sustaining treatment is being

1 withheld or withdrawn pursuant to item 7" -- and it  
2 says, "Initial only one of the following paragraphs."  
3 And he initialed the one that said, "Directed to  
4 withhold or withdraw the tube feeding. I do not want  
5 my life prolonged by tube feeding."

6 Again, did you or was it your sister who looked at  
7 this at the time it was challenged?

8 A My sister looked at it.

9 Q Does the fact that -- does the fact that David signed  
10 this and initialed these portions saying he didn't want  
11 life-sustaining treatment, didn't want tube feeding,  
12 does that -- now that you're looking at it today, does  
13 that change in any way your view of this document?

14 MR. FEIDLER: Objection. You can answer.

15 BY MR. WHITE:

16 Q He said you can answer.

17 A Oh, I'm sorry.

18 Q That's okay.

19 MR. FEIDLER: And I'm sorry. Can I butt in for a  
20 second?

21 MR. WHITE: Sure.

22 MR. FEIDLER: Just procedurally, I will object and  
23 then direct you to answer. That's just something that  
24 I need to do to preserve the record.

25 THE WITNESS: Okay.

1 MR. FEIDLER: Thank you.

2 MR. WHITE: Sure.

3 THE WITNESS: I still believe that this was not  
4 something that David would have wanted. I think he  
5 would want to fight for life.

6 BY MR. WHITE:

7 Q Had you ever had any conversations with David about any  
8 of these issues, about life-sustaining treatment?

9 A No, I did not.

10 Q What was it about -- and I know both you and your  
11 sister had concerns with this healthcare power of  
12 attorney, but sitting here today, do you know whether  
13 David wanted to have life-sustaining treatment or not?

14 A We didn't discuss it, but I know David was a person  
15 that wouldn't give up. Not a person that, you know, it  
16 just seemed like, from what I know of him, that he was  
17 just a fighter.

18 Q Okay. But that's based on your experience with him, in  
19 general, not specifically with regard to life-  
20 sustaining treatment?

21 A Well, we didn't discuss that.

22 Q And I'm asking you more, sitting here today, is there  
23 anything -- did you ever have any sort of discussion or  
24 any sort of communication with David at all about what  
25 his wishes would be if he were in the state that he

1           wound up in?

2    A       No, I did not.

3    Q       Did Dorothy or your brothers ever tell you that they  
4           had those conversations?

5    A       I don't know that they did.

6    Q       Were you ever appointed by the court in any official  
7           capacity?

8    A       No.

9    Q       Just your sister?

10   A       Yes.

11   Q       Did you have any objections to your sister being  
12          appointed?

13   A       No.

14   Q       Did you feel like she was in the best position of your  
15          siblings to serve in that role?

16   A       Yes.

17   Q       Did either of your brothers ever try and become  
18          appointed?

19   A       No.

20   Q       Okay. Let's move to -- let's leave Mt. Pleasant  
21          hospital and go to Bayview Manor. And I did this with  
22          your sister, and I thought it was a little bit helpful,  
23          so I'm going to do it with you too. I'm just going to  
24          make a note for you of the date of his times, because  
25          he went back and forth from Bayview Manor to Beaufort,

1 and I'm just going to give you those dates. That way,  
2 if we're talking about specific periods of time, we'll  
3 know the dates we're talking about.

4 Okay. I'll just hand you this note, and my note  
5 indicates that BVM is Bayview Manor. BMH is Beaufort  
6 Memorial Hospital. You see he came and went those  
7 dates.

8 A Okay.

9 Q And these are the dates that it covered.

10 MR. WHITE: And, Stefan, you can have this when  
11 we're done. I'm not going to mark it.

12 MR. FEIDLER: Thank you.

13 BY MR. WHITE:

14 Q So I want to start with Bayview Manor. Did you go on  
15 his first admission to Bayview Manor, which was on  
16 December 2, 2014? I know your sister went and signed  
17 him in. Is that correct?

18 A Uh-huh.

19 Q If you'll just say it out loud.

20 A She did. I'm sorry.

21 Q That's okay. That's okay. Did you go with her?

22 A We went together to finalize the fact that he would be  
23 coming to speak with someone. Yeah.

24 Q Did you sit with her through the admissions process?

25 A No, Dorothy did that.

1 Q Were you in the facility while she was doing that?

2 A No, I believe I was at work.

3 Q Okay. What did you -- had you known anything about  
4 Bayview Manor before he was placed there?

5 A No.

6 Q I mean, I know it's a local facility and probably over  
7 30 or 40 years, it's changed hands sometimes.

8 A Right. But as far as personally ---

9 Q Yes, ma'am.

10 A No.

11 Q You had never had any experience with having another  
12 family member or friend there?

13 A They have had a service there for the residents.

14 Q Okay. Church service?

15 A Yeah.

16 Q Is that something you only did once, or was that  
17 multiple times?

18 A That was with another group of people, so it was just  
19 ---

20 Q Gotcha. All right. Did you -- and, again, we're just  
21 talking about this first admission, okay?

22 A Okay.

23 Q Did you, at any time during that first admission, have  
24 any discussions directly with the administrator?

25 A No.

- 1 Q How about with the director of nursing?
- 2 A I did not.
- 3 Q All right. Did you know anyone who worked there?
- 4 A No. Not as I recall.
- 5 Q Okay. There are a couple other defendants in this  
6 case, and I don't expect you to know anything about  
7 them, but let me just ask. There's an Epic Group  
8 Limited Partnership, and an Epic Group Limited  
9 Liability Company that are also defendants in this case  
10 with Bayview. Do you know anything about either of  
11 those companies?
- 12 A I do not.
- 13 Q How was this staff? What was your experience with this  
14 staff while you were there during this first admission?
- 15 A Well, they seemed to be, you know, kind.
- 16 Q Ever have any problems with them in terms of any cross  
17 words or arguments or anything like that?
- 18 A I never had any cross words, no.
- 19 Q During that first admission, his December 2nd  
20 admission, do you recall any concerns you had that came  
21 up during that admission about his care?
- 22 A I believe my sister discussed with someone about would  
23 they be able to handle David's care being that he had a  
24 trach, and that was a concern.
- 25 Q Do you know who she talked with about that?

1 A I am not certain. I'm not sure who that was that she  
2 discussed with. It might have been the nurse or  
3 whoever, would they be able to handle.

4 Q And but you weren't personally there for that?

5 A No.

6 Q Did she tell you anything in detail about that  
7 conversation, or are you just remembering in general  
8 she had that conversation?

9 A She had the conversation. I remember her saying that  
10 she was told that they would be able to handle David's  
11 care and that they were going to put him near the desk,  
12 near the nurses' station or whatever.

13 Q Other than that issue, the discussion about whether  
14 Bayview Manor could take care of him or not in his  
15 condition, do you recall any other -- anything that  
16 could be categorized as a concern about his care coming  
17 up during that first admission?

18 A No.

19 Q Do you remember anything about -- how often were you  
20 going to see him over there?

21 A After work I would come stop to see him, or we had a  
22 friend that would come during the day and sit with him  
23 that would come, or it would be Dorothy.

24 Q Was ---

25 A But it would be -- I'm sorry.

1 Q No, I cut you off. Go ahead. I didn't mean to.

2 A Yeah. It was just a friend that would come and sit  
3 with him.

4 Q Was there somebody with him pretty much all the time,  
5 in terms of family members or friends?

6 A Well, if Dorothy wasn't there, and I was still working,  
7 so if Dorothy was here or if she had to go back home  
8 for something and then come back, sometimes there would  
9 be someone there and sometimes not.

10 Q And you would see him, I assume, mainly at night and on  
11 the weekends?

12 A Yes, because they had a certain time that you had to  
13 leave.

14 Q Right.

15 A You couldn't stay.

16 Q Right. How far was the facility from your house,  
17 driving-wise?

18 A Maybe about seven, six or seven miles, I guess.

19 Q Do you remember therapy working with him? Were you  
20 ever there when therapy worked with him?

21 A I don't remember seeing them then at that time. Well,  
22 yeah. Someone would come in and having to turn him or  
23 whatever. And I don't know if that's what you're  
24 talking about, but they would have to turn him. But as  
25 far as someone coming in and moving his arms and that

1 sort of thing, I don't -- I'm not sure about that one.

2 Q Well, that's fine.

3 A Might have been.

4 Q And, you know, the therapy records will reflect what  
5 they did.

6 A Yeah.

7 Q And, you know, my understanding is typically they'll do  
8 therapy during the day, so you may not have been there.

9 A Yes.

10 Q But you don't have any personal recollection of seeing  
11 therapy there.

12 A No.

13 Q You just remember people coming in and turning him.

14 A Yeah.

15 MR. FEIDLER: Object to the form.

16 BY MR. WHITE:

17 Q When they would turn him ---

18 THE WITNESS: Answer?

19 MR. FEIDLER: Yes, ma'am. I'm sorry.

20 THE WITNESS: I'm sorry.

21 MR. WHITE: The answer to that was "yes." Is that  
22 right?

23 THE WITNESS: Yes.

24 BY MR. WHITE:

25 Q Okay. When they would turn him, would they turn him on

1 his side, one side or his back or the other side? Or  
2 how did that work?

3 MR. FEIDLER: Objection. You can answer.

4 THE WITNESS: Sometimes on his back, sometimes on  
5 his side.

6 BY MR. WHITE:

7 Q Did you understand at that time the importance of him  
8 being turned?

9 A Yes.

10 Q Is that something your sister understood as well?

11 A Yes.

12 Q Do you recall ever having to approach the staff and  
13 say, "Hey, David hasn't been turned," within a certain  
14 period of time?

15 MR. FEIDLER: Objection. You can answer.

16 THE WITNESS: Well, if I go there and I would just  
17 ask questions, you know, has he been turned or has he  
18 been changed today, because of the way his gown might  
19 have looked, that sort of thing. That sort of thing.  
20 So I would inquire.

21 BY MR. WHITE:

22 Q Okay. When you would ask whether he had been turned,  
23 what would the response be?

24 A Sometimes it would be, "Well, I just came on, so I'm  
25 not sure." And you know, sometimes it would be yes.

1 Q When you would come in -- and let's say you came in and  
2 you saw him on his side. Did he -- could he remain  
3 either on his right or his left side if placed in that  
4 position?

5 A Well, if place in that position, but for a certain  
6 period of time ---

7 Q Right.

8 A They're supposed to come and turn him, no matter what.  
9 I guess, and it would depend on if he had a sore or  
10 whatever on that side, then they would, you know, do  
11 according ---

12 Q They would do what?

13 A They would turn him, but they wouldn't turn him on the  
14 side of the -- whatever that sore is.

15 Q I see. So, if he got a sore on one hip, they would try  
16 not to turn him on that.

17 A Yes.

18 Q But and the reason I ask is I've had experiences where  
19 residents, if you turn them on their side, they'll  
20 immediately turn back over on their back. With him,  
21 when they would turn him on his side, would he stay on  
22 his side?

23 A He'd remain -- he'd remain however they placed him.  
24 That's how he would remain.

25 Q Do you recall ever having to specifically instruct a

1 CNA or a nurse or anyone else to come in and turn him?

2 A Yes. I would ask the question and, if they weren't  
3 sure, then, you know, I would -- wanted them to find  
4 out if that was the case. If not, he'd need to be. Or  
5 if I had a question about other things, then I would  
6 ask them, you know, whether they had ---

7 Q When they said they didn't know, was that -- and a  
8 moment ago you mentioned when nurses or CNAs were  
9 coming on shift, is that who you were referring to?

10 A Right.

11 Q Okay. And was there any time that you asked for them  
12 to do something and they refused?

13 A No.

14 Q Okay. Do you recall your sister Dorothy ever having  
15 any specific complaints or criticisms about how often  
16 he was being turned?

17 A If she had a concern she would question to ask, you  
18 know, what's being done or how it was being handled.  
19 She would ask the question.

20 Q Do you recall her ever having a specific concern about  
21 the turning issue?

22 A No, I don't recall.

23 Q In other words, she never expressed that to you?

24 A No, she just, you know, just expressed that she was  
25 going to make sure that was happening.

1 Q Did you get to know -- in that first admission, did you  
2 get to know any of the health care providers on a --  
3 you know, if somebody's in somewhere long enough, you  
4 see the same people. You tend to see the same people  
5 time and time again. Did you get to know any of the  
6 staff there personally?

7 A No, not -- no. Uh-uh.

8 Q When you would come in at night after work -- and  
9 that's typically when you would come during the week.

10 A In the evening, yeah.

11 Q Would you see the same folks providing the care?

12 A Not always the same person, no.

13 Q But sometimes?

14 A Sometimes, but not always the same.

15 Q How about on the weekends? Did you see kind of a  
16 consistent group there on the weekends, or did that  
17 change too?

18 A That would change, I guess, depending on when their  
19 schedule was.

20 Q Did you ever, at any time, during either admission to  
21 Bayview Manor, did you ever contact or have any contact  
22 with either DHEC or the state ombudsman or any other  
23 investigative group?

24 A No.

25 Q Did you ever file any sorts of complaints with any of

1           those groups?

2    A       No.

3    Q       Do you recall being present for any care plan meetings  
4           at the facility?

5    A       No. Basically, Dorothy handled that.

6    Q       Was Dorothy the primary contact ---

7    A       She was.

8    Q       --- for the facility?

9            Okay. And when I refer to the facility today, I'm  
10           talking about Bayview Manor.

11   A       Yes.

12   Q       I'll call the hospital, the hospital.

13   A       Yes.

14   Q       All right. Did you ever notice whether he was --  
15           whether any of his limbs were contracted?

16   A       Yes.

17   Q       Which ones?

18   A       Seems like his legs were.

19   Q       And how would you describe that? How did they look?

20   A       Like they would be drawn, drawn up to him.

21   Q       Okay. And during that -- again, just dealing with the  
22           first time at Bayview Manor, that December admission,  
23           do you recall -- let me ask you about the wounds  
24           themselves. What do you recall, if anything, about  
25           wounds during that first three-week period?

1 A He didn't have any when he came. He had no kind of --  
2 nothing was wrong with his skin at all when he came  
3 from Mt. Pleasant. The only concern was the trach.

4 Q Okay. And what -- do you recall any wounds being  
5 identified while he was at Bayview Manor that first  
6 time?

7 A In that first week or three weeks or whatever ---

8 Q Three weeks, yes, ma'am.

9 A No.

10 Q Do you recall seeing any sort of bandages or anything  
11 like that on the wounds?

12 A No.

13 Q Did Dorothy ever mention anything to you about wounds  
14 during that first admission?

15 A I don't recall her mentioning it to me.

16 Q Was his condition during that first stay at Bayview  
17 essentially the same as it had been while he was at Mt.  
18 Pleasant hospital?

19 A Yes. One day they had him sitting up in a chair.

20 Q In, like, a ---

21 A Wheelchair type thing.

22 Q Yeah. Was it a padded chair?

23 A I only saw that -- yeah, that was only once that I saw  
24 that, though.

25 Q Did I cut you off?

1 A No, you didn't.

2 Q Okay. Again, during the first stay at Bayview, do you  
3 recall ever talking with your sister or coming to your  
4 own conclusion that y'all wanted to move him to a  
5 different facility?

6 A My sister never really stopped looking. We were glad  
7 that he was closer to us now, but you never really stop  
8 looking for a facility.

9 Q Did she ever find one that would take him?

10 A No, we did not.

11 Q And he was receiving the tube feeding during his time  
12 at Bayview Manor?

13 A He was.

14 Q Did you ever notice any problems with that?

15 A The problem was we felt that they weren't really giving  
16 him enough because he was losing weight. And so we  
17 were concerned about that.

18 Q Do you know how much he weighed when he went to Mt.  
19 Pleasant Manor after the choking incident?

20 A I do not know exactly.

21 Q Do you have any guess? I mean, ballpark?

22 A David was six feet something. A hundred and -- I don't  
23 know if it was 160 something, maybe.

24 Q Okay. And I'm not going to hold you to that. I'm just  
25 trying to get an idea.

1 A Yeah. I don't know.

2 Q Do you know how much weight, if any, he lost from his  
3 -- during his month at Mt. Pleasant hospital?

4 A I don't.

5 Q Do you know how much he weighed when he came to Mt.  
6 Pleasant -- or excuse me, to ---

7 A Bayview.

8 Q --- Bayview Manor?

9 A No, I don't.

10 Q Do you know how much he weighed when he left and went  
11 to Beaufort Memorial Hospital?

12 A No, I don't. He just appeared to be getting smaller,  
13 so we just were concerned about that.

14 Q Did y'all talk with the nursing staff or anybody in the  
15 dietary department about that?

16 A My sister.

17 Q Your sister did?

18 A Yes.

19 Q Okay.

20 A I did not.

21 Q Were you present for those discussions?

22 A No, I was not.

23 Q Did she tell you what she discussed?

24 A She discussed that she felt like he should be given  
25 more because he shouldn't be losing weight.

1 Q Do you know what -- do you know how the -- do you know  
2 -- I guess, first of all, do you know who she was  
3 talking with?

4 A I don't recall.

5 Q And do you know what this person said in response to  
6 your sister?

7 A No, but I do believe it was upped a little bit from  
8 what he was getting. They did change.

9 Q So they increased his level?

10 A Yes.

11 Q Okay. Any other concerns with his nutrition, other  
12 than what you've just told me?

13 A No.

14 Q Do you know what aspiration is?

15 A I believe so.

16 Q Okay. Tell me what your understanding of that is.

17 A It has to do with, if I'm correct, breathing as a way  
18 of digesting, breathing.

19 Q I'm sorry. Say that again.

20 A Breathing his, you know, digestion, the way, you  
21 know...

22 Q Right. And that's my understanding, too, that one of  
23 the problems that your brother had was with tube  
24 feedings, he would, at times, aspirate or breathe in  
25 some of the tube feedings, and that would lead to

1 infection. Do you recall having any discussions with  
2 any doctors or nurses anywhere, whether at Bayview  
3 Manor or whether at the hospital, about that condition?

4 A Well, I do remember them saying that if his trach was  
5 not kept clean, it could cause infection and cause a  
6 backup into his lungs or whatever, and that it had to  
7 be kept clean, even though it was uncomfortable for  
8 him. It was something that had to be done on a regular  
9 basis.

10 Q And where were you told that?

11 A We were told that at Mt. Pleasant, and so, because when  
12 they would be doing it, it would appear like it was  
13 really uncomfortable for him, but they said it had to  
14 be done. If not, pneumonia and all that stuff could  
15 set in if it wasn't kept like it should.

16 Q Okay. And were you present for that discussion?

17 A Yes.

18 Q Do you recall who was discussing that with you? Was  
19 that a nurse?

20 A The person -- yeah, the person that came in to do it.

21 Q Okay. Now, are you aware that he, in fact, suffered a  
22 couple times from aspiration pneumonia?

23 A That -- he had pneumonia a couple times.

24 Q Okay. Did any doctor ever identify for you the source  
25 of whatever it was that got into his lungs?

1 A I don't recall.

2 Q Okay. Let's move to his stay at Beaufort Memorial  
3 Hospital, starting on December 24, 2014. Do you know  
4 why he was sent to Beaufort Memorial Hospital?

5 A I believe it was for pneumonia.

6 Q Yeah. That's my understanding, too, aspiration  
7 pneumonia. When did you -- how were you notified that  
8 he was going to the hospital?

9 A My sister told me that, you know, they would be taking  
10 him.

11 Q And did you go right over there to the hospital?

12 A I believe I might have been on the job at the time,  
13 but, you know, went there to see him, yes.

14 Q Right. Did you have any conversations when you went to  
15 the hospital, just I'm talking about initially, with  
16 the doctors about what his condition was?

17 A Well, Dorothy was there, so she just informed me that,  
18 you know, he had a case of pneumonia and that they were  
19 working on clearing that up.

20 Q Did you ever -- I guess, again, just kind of those  
21 initial couple days, did you ever talk directly with  
22 the doctors, or was Dorothy doing that and then  
23 communicating it to you?

24 A She was communicating it.

25 Q He was there until February 17th, so a little over a

1 month and a half. When is the first time that it came  
2 to your attention that he had wounds?

3 A Well, actually, when the nurses, they would say, well,  
4 you know, he came with XYZ. Well, see, we didn't know.  
5 We -- there was some things we didn't know. And so,  
6 you know -- and I don't know who the nurse was, but she  
7 was saying, you know, every time they come from here,  
8 they seem to have -- they come like this. And so, you  
9 know, they would do the wounds and they would be  
10 counting and say, "Well, this is getting ready to be  
11 this and this is getting ready to be that." So that's  
12 what was related to me.

13 Q So this nurse that said this about coming from Bayview,  
14 you don't recall her identity?

15 A No, I don't.

16 Q Did anyone sit down with you guys and show you the  
17 wounds on his body?

18 A Like I said, Dorothy was there during the day, so, you  
19 know, I believe that's what they did, where she was  
20 concerned, would show where, you know, he was about to  
21 have one on his leg or he was about to have one on his  
22 foot, you know, that sort of thing. And so, she would  
23 just relay to me, you know, that he's been getting to  
24 have this or that. We didn't check him when he was at  
25 Bayview. We didn't pull back the covers to know all

1 the signs of it.

2 Q Right. Did you, while you were at -- I guess going  
3 back to my original question, while he was at Beaufort  
4 Memorial Hospital for that admission, the December 24th  
5 admission, did you ever personally go with a nurse or a  
6 wound care person where she turned him and showed you  
7 the actual wounds?

8 A No, no.

9 Q Do you know if they ever did that with Dorothy?

10 A I'm not sure. I think they might have, but I'm not  
11 sure.

12 Q Now, did the term "deep tissue injury", was that  
13 something that was discussed?

14 A I would hear that term -- sounds familiar to me, yes.

15 Q Do you know what that means?

16 A The fact that the wounds went deep into -- the one like  
17 David had, like, was almost to his -- the bone.

18 Q The idea of a deep tissue injury, or the way that deep  
19 tissue injuries present themselves is normally as a  
20 bruise-color thing first.

21 A Uh-huh. On top, yeah.

22 Q And then, some of them can open up into an open wound.  
23 Some of them don't.

24 A Uh-huh.

25 Q Do you recall -- and I gather that's what you were

1 talking about, because you were saying Dorothy told you  
2 this might open up to this. Is that what she was  
3 talking about, these bruises might turn into wounds?

4 MR. FEIDLER: Objection. You can answer.

5 THE WITNESS: Uh-huh. Yeah.

6 BY MR. WHITE:

7 Q Okay.

8 A That the -- uh-huh.

9 Q Do you know if some of those bruises resolved without  
10 opening into wounds?

11 A I am not certain. I don't recall.

12 Q Was he being turned and repositioned at the hospital?

13 A Yes.

14 Q Did you see them doing that?

15 A Yes.

16 Q Was he being put in the same position that he was being  
17 put in while at Bayview?

18 A I just know they were turning him. As the exact  
19 position, I'm not sure, but they were turning him, came  
20 in at certain times.

21 Q And would he rotate between being on one side or his  
22 back or the other side?

23 A Yes.

24 Q Did you ever talk with any of the medical care  
25 professionals there about what caused his wounds?

1 A Yeah. What they were saying were, you know, if he's  
2 not turned like he should be at the appropriate time or  
3 a time that's in between turning, that could be one  
4 thing that could cause it.

5 Q Did they give you any other potential causes of wounds?

6 A He'd have to be -- if my memory serves me correct, he  
7 has to be changed at a certain time, you know.

8 Q Was he incontinent?

9 A I don't believe so.

10 Q Well, let me ask it this way. You know, obviously,  
11 he's in a state where he can't get up or communicate  
12 his needs.

13 A Yeah, he can't ---

14 Q So he was wearing a brief.

15 A Yeah.

16 Q And whether he would urinate or defecate, it would be  
17 in the brief.

18 A Right.

19 Q Okay. While he was at Beaufort -- excuse me, Bayview  
20 Manor, in that first admission those first three weeks,  
21 do you recall there being instances where y'all had to  
22 complain where he wasn't being changed enough?

23 A Well, yes. If it was soaked, that sort of thing, or if  
24 his gown was wet and that -- yeah.

25 Q Okay. And when y'all would ask, would the staff come

1 in there and do it?

2 A Yes.

3 Q And I assume that some of the things you came there, it  
4 wasn't dirty or he wasn't wet. Is that fair?

5 A Yeah, sometimes. Yes.

6 Q Anything else that the folks at Beaufort Memorial  
7 Hospital told you could be the cause of the wounds?

8 A I don't recall anything.

9 Q Do you know if the amount of food that he was receiving  
10 in his peg tube was the same at Beaufort Memorial  
11 Hospital was the same that he had had at Bayview?

12 A Not sure of that.

13 Q Do you recall what the doctors told you about his  
14 prognosis and about his condition?

15 A At Beaufort Memorial or ---

16 Q Yes, ma'am.

17 A Well, basically, as far as brainwave, David was --  
18 still had brainwaves. He was never braindead.

19 Q Did any medical professional there tell you what to  
20 expect in terms of whether he would ever come out of  
21 this state of unconsciousness?

22 A Again, they couldn't -- you couldn't say a hundred  
23 percent that this would never happen.

24 Q Did they give you any -- did they ever give you any  
25 sort of percentages or tell you that, you know, look,

1 in all likelihood, he's not going to come out of this,  
2 or, in all likelihood, he will come out of it?

3 A I think that, more or less, they were more of -- more  
4 of there's a good chance he might not.

5 Q All right. I'm going to hand you -- let me see.

6 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
7 NUMBER 5, DISCHARGE SUMMARY, ATTACHED.)

8 BY MR. WHITE:

9 Q All right. Let me hand you Exhibit Number 5.

10 A Okay.

11 Q And this is the discharge summary from Beaufort  
12 Memorial Hospital. So we talked about that admission  
13 where he came in on December 23rd and he left on  
14 February 17th. So this is the doctor's note about his  
15 course of treatment. So what I want to do is, the very  
16 bottom paragraph on that first page, I want to read  
17 that and then ask you about it. It says, "We have been  
18 discussing with the family and had ethics committee  
19 regarding whether continuation of care should be  
20 provided. Family has had many conversations with  
21 different physicians regarding our recommendations and,  
22 at this point, they do not want to back off. They  
23 would like to continue with aggressive care. However,  
24 reportedly, they will consider making him a DNR prior  
25 to admission to Bayview."

1           So what were the -- I know that you said that the  
2           doctors could not say that, you know, he could never  
3           come out of this, but what were the doctors  
4           recommending in terms of whether aggressive care should  
5           be continued or whether comfort care should be enacted?

6    A       Well, in reference to the food, they, I guess, wanted  
7           it to be more of, you know, let us just, if we withhold  
8           food or, you know, just let whatever happens happens.  
9           But we just couldn't see starving him situation because  
10          to say, well, if we don't give him food, we just cut  
11          everything off, that's like starving. And we just  
12          couldn't see that. If he -- yeah.

13   Q       No, I didn't mean to cut you off. Go ahead.

14   A       No, that's it.

15   Q       So let me ask you about that. I'm assuming -- now, you  
16          correct me, but I'm assuming the doctors did not  
17          present this in a way where they said we can  
18          essentially starve him.

19   A       No.

20   Q       How did they explain that process?

21   A       More or less, it's like, you know, just stop -- if you  
22          say stop with everything, basically, not using those  
23          words, but we know what that would mean. Because if  
24          it's hospice or whatever it is, we know what that  
25          means. And so, you know, if he were to just pass away

1 -- if he's eating and he still passed away, you know,  
2 then that's just nature taking its course. But I can't  
3 even see myself not having something for a certain  
4 period of time and feeling good. I mean, again, we  
5 weren't absolutely sure he wasn't feeling anything, so  
6 if that is the case, you know when you're starving or  
7 just, you know, whatever. And he wasn't on life  
8 support. He wasn't on life support, so he was  
9 breathing, you know.

10 Q Had you ever had any experience with hospice before  
11 this?

12 A Not really, to really know what all that meant.

13 Q Right. Did the doctors try and convince you that he  
14 would not feel pain through the process?

15 MR. FEIDLER: Objection. You can answer.

16 THE WITNESS: Yeah. More or less, you know,  
17 because they were saying, you know, that he's just  
18 there. So, you know, he's not going to really know  
19 XYZ. But again, you couldn't tell me a hundred percent  
20 that he wouldn't.

21 BY MR. WHITE:

22 Q Did the doctors tell you, as a part of hospice or  
23 comfort care, that medications are provided to address  
24 any pain or any anxiety?

25 A I don't recall it. I don't recall it.

1 Q Well, and do you remember how many different doctors  
2 talked to you all about this?

3 A No. Well, now, again, there might have been some that  
4 spoke to my sister that I never even saw, so I'm not  
5 sure.

6 Q How many doctors talked to you about it?

7 A They didn't directly so much talk to me. Might have  
8 been one or whatever, but she saw the bulk of them,  
9 whoever they might have been.

10 Q Dorothy did?

11 A Yeah, she did. So she spoke to them.

12 Q If you'll flip to the fourth page in this, please, and  
13 at the very bottom -- well, actually, the next to the  
14 bottom paragraph, it says, "CC" -- and I think that  
15 stands for care coordinator. This, again, is a  
16 hospital note from that same hospitalization. "Called  
17 patient's sister POA Dorothy Olenja to alert her to  
18 above. She was happy to hear that Bayview may take  
19 patient back. However, she is out of town and won't be  
20 able to be at the hospital tomorrow, so she asked CC to  
21 call her other sister, Margaret Holmes, to let her know  
22 when Karen would be coming to see patient."

23 So Karen -- I assume that Karen, and I don't know  
24 this to be a fact, but Karen Singleton was the director  
25 of nursing for Bayview at that time. Do you remember

1           being contacted and being told that Karen was going to  
2           come see him at the hospital?

3    A       I believe I -- I believe I -- yeah, I recall this.

4    Q       Did you go there with her and meet with her?

5    A       No, I didn't see her.

6    Q       Were y'all okay -- given what you experienced with the  
7           wounds, were y'all okay with him going back to Bayview  
8           Manor?

9    A       Yes, in that there was no -- we were unable to find  
10           anywhere else for him.

11   Q       Did you ever talk with them about keeping him in the  
12           hospital?

13   A       That was something they could not do.

14   Q       Okay. Did y'all ever consider sending him to like that  
15           Georgia facility that y'all found that -- I know it was  
16           farther away, but something like that?

17   A       Well, she was still seeing if there were other  
18           available facilities before that was the, you know, the  
19           result.

20   Q       Did she ever find another one?

21   A       No, still searching.

22   Q       What did y'all -- did y'all reapproach or did she  
23           reapproach that Georgia facility that said they would  
24           take him?

25   A       I'm not sure whether she did or not.

1 Q All right. Flip with me over to the next page, please,  
2 and this is called an Ethics Committee Consult. In  
3 that first main paragraph, it says, "The patient is a  
4 65-year-old black male who was referred by Dr. Johnson,  
5 hospitalist, due to family disagreement with the  
6 medical recommendations for DNR and palliative or  
7 hospice care. The family wants patient to be a full  
8 code and under all active treatments possible. Family  
9 continues to exhibit a lack of understanding and/or  
10 acceptance of patient's current status and prognosis,  
11 mentioning such things as the patient needs to eat more  
12 to regain his strength."

13 And then, so let me stop there. You know, the  
14 doctor's clearly writing here, or whoever, I guess  
15 maybe a social worker is writing this.

16 A Uh-huh.

17 Q Yeah, Peggy Hitchcox, a social worker, is writing this.  
18 And she's essentially saying here that family -- or  
19 that the doctors are having communications,  
20 recommending that he be placed on hospice and you guys  
21 are resisting that. Is that essentially what you were  
22 talking to me about a moment ago?

23 A Yeah.

24 Q All right. A couple sentences down, it says, "It does  
25 not appear that any family member has visited patient

1           during the hospitalization except at initial  
2           admission." Is that true?

3    A       No.

4    Q       Okay. I know Dorothy told me she was there with him  
5           the whole time.

6    A       And I would come.

7    Q       All right. Fair enough. It says, "Family is not  
8           opposed to continuing nursing home placement but do not  
9           want him" -- or excuse me. I misread that. "But do  
10          want him in the Lowcountry area rather than the  
11          Upstate." Now, at that point, Dorothy was living in  
12          Greenville in the Upstate; is that right?

13   A       Uh-huh. Uh-huh.

14   Q       If you'll just say for the record ---

15   A       Yes. I'm sorry.

16   Q       Thank you. Did she -- do you know whether Dorothy had  
17          found any place in the Upstate that would take him?

18   A       No, I do not.

19   Q       Okay. Flip over to the next page for me, and the first  
20          main paragraph that starts with "Further discussion."  
21          I want to take you to the last sentence of that  
22          paragraph. It says, "However, the family continues to  
23          refuse the medical recommendations made in the  
24          patient's best interest. Legal advice can be sought to  
25          have the family's decision-making ability set aside and

1 another guardian appointed by the court will receive  
2 the information and make an independent decision."

3 Do you recall there being any discussion about  
4 removing Dorothy as a guardian and having the hospital  
5 replace someone?

6 A No, I don't.

7 Q Does that surprise you, having read that?

8 A Yes.

9 Q Okay. Did anyone at Beaufort Memorial Hospital, during  
10 that hospitalization, blame Bayview Manor for the  
11 status of or the existence of his wounds?

12 A Yes.

13 Q Okay. Tell me about that.

14 A The only thing that, like I said, they said before was  
15 the fact that, you know what, we're just always getting  
16 patients with these sores coming from there always.  
17 They come from there and this is what we see. You  
18 know, that was the statement that was said.

19 Q All right. And that's what you told me about earlier.

20 A That's what I was talking about earlier.

21 Q Do you know who that person was? Was it a doctor or  
22 nurse or an assistant?

23 A It was someone that was tending to him. I'm not sure  
24 whether it was the nurse's assistant or -- it wasn't a  
25 doctor.

1 Q Okay.

2 A It wasn't a doctor. That much I know.

3 Q Any other statements about any sort of blame on Bayview  
4 Manor?

5 A That is what I recall here.

6 Q Okay. What sort of discussions did you have with the  
7 hospital about his aspiration and whether he was going  
8 to continue aspirating?

9 A Basically, like I said, when I would get there, it  
10 would be in the evenings, so Dorothy would have -- she  
11 would tell me what was being said.

12 Q What did she tell you?

13 A Only that, you know, they're working on the wounds,  
14 that sort of thing, or working on basically just  
15 monitoring what he was -- his intake.

16 Q Did she say anything specifically about aspiration?

17 A No, I don't recall her saying ---

18 Q So, in terms of his hospitalization, in December of  
19 2014 and into February of 2015 at Beaufort Memorial  
20 Hospital, you don't recall there being any specific  
21 discussions with you, either from a medical care  
22 professional or from Dorothy, where his risk for  
23 continued aspiration pneumonia was discussed?

24 A I know they would discuss the feeding tube situation  
25 and we would inquire as to how much his intake was, or

1           whether or not he was -- he wasn't gaining, whatever  
2           the case is. But, basically, that is what I recall.

3    Q       Do you recall having a discussion where the medical  
4           care professionals were concerned with or were playing  
5           a balancing act between giving him enough food to  
6           sustain him but not too much because that could lead to  
7           aspiration? Do you remember those sorts of  
8           conversations?

9    A       I remember Dorothy telling me that she discussed the  
10           feeding situation, but yeah. And making sure that he  
11           is being -- given enough to sustain and not feeling, if  
12           feeling was in it, feeling hungry or starving of that  
13           nature.

14   Q       All right. Did she talk with you about the other side  
15           of the equation, and that is, not giving him too much  
16           because that could lead to aspiration?

17   A       Right.

18   Q       She talked to you about that too?

19   A       Yes.

20   Q       So you understood at that time that the nutritionist  
21           and the hospitalist, essentially, was -- I call it a  
22           balancing act. In other words, you're wanting to get  
23           enough nutrition in him so that he doesn't starve or  
24           doesn't become malnourished.

25   A       Uh-huh.

1 Q But at the same time, if you give him too much, that  
2 runs the risk of tube feeding getting up around his  
3 trachea and him aspirating. At that time, you  
4 understood that that was an issue.

5 A Right.

6 Q During this time that the doctors were talking with you  
7 and Dorothy about palliative care, hospice care, were  
8 y'all keeping your brother informed about that as well?

9 A Yes. Uh-huh.

10 Q What was their feeling?

11 A It was the same.

12 Q All right. Let's turn now to his return to Bayview  
13 Manor. So this is when he came back on February 17,  
14 2015. What was his condition like at that point? Was  
15 it essentially the same as it had been the whole time,  
16 in terms of his level of consciousness?

17 A Yes.

18 Q Do you know whether he gained or lost weight while at  
19 Beaufort Memorial Hospital?

20 A I'm not certain.

21 Q Okay. Let me show you -- let me mark these.

22 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
23 NUMBER 6, ADMISSIONS AGREEMENT, ATTACHED.)

24 BY MR. WHITE:

25 Q All right. I'm going to first hand you Exhibit Number

1           6, which is an admissions agreement, and this document  
2           is dated February 17, 2015.

3    A       Uh-huh.

4    Q       The first thing I want you to do is just go through and  
5           just confirm for me -- you'll see your initials at the  
6           bottom of each page. I just want to confirm that those  
7           are your initials and that you signed on the last page.

8    A       Yes.

9    Q       All right. A person by the name of -- it looks like  
10           Rebecca Jensen was the person from the facility who sat  
11           through the admissions process with you. Do you  
12           remember Rebecca?

13   A       Yes.

14   Q       Walk me through how the admissions process worked. I  
15           know Dorothy did it the first time, but you did it the  
16           second time. So how does this -- how does the whole --  
17           because I know that there are a lot of other admission  
18           documents than what we have here, but tell me how that  
19           process worked.

20   A       Just went into the office and she told me about the  
21           process of what was before with Dorothy, and we just  
22           went through it. That was basically just explaining it  
23           and signing it. That's it.

24   Q       How long did the admissions process take?

25   A       It didn't take that long.

1 Q Thirty minutes?

2 A Maybe an hour, maybe 30 minutes to an hour.

3 Q And this admissions agreement specifically, how much of  
4 this did you read before you initialed and signed it?

5 MR. FEIDLER: Objection. You can answer.

6 THE WITNESS: Just kind of skimmed through it.

7 BY MR. WHITE:

8 Q Did Ms. Jensen explain anything about it or did she  
9 hand it to you and just have you look at it?

10 A Basically, she had me to look at it, explaining some  
11 things and just had me to look at it.

12 Q Did she call out any particular provisions in specific  
13 ---

14 A Actually, I don't recall her calling them out to me.

15 Q Okay. Did you feel rushed through the process?

16 A No. We just know we needed David to -- we couldn't  
17 take him home. We couldn't bring him home with us  
18 because we actually didn't have a facility to do it, to  
19 care for him. And we knew that this was a place at the  
20 time that would do it for us.

21 Q Yes, ma'am. And, really, what I'm asking is when you  
22 sat down with Ms. Jensen to go through the paperwork,  
23 was she rushing you?

24 A No.

25 Q Okay. So you may not have taken it, but you had an

1 opportunity to review, to read this admissions  
2 agreement? Even if you skimmed it, you had the  
3 opportunity to read it.

4 A Yes.

5 Q Is that right?

6 MR. FEIDLER: Objection. You can answer.

7 THE WITNESS: Yes.

8 BY MR. WHITE:

9 Q All right. So let me ask you about the last page of  
10 it, the signature page. Now, there's something there  
11 called an optional arbitration clause. And I'll let  
12 you look at that. And I just want to ask you if you  
13 recall seeing that, because you've got an X and an  
14 initial there.

15 A (Reviewing) Uh-huh.

16 Q Okay. Have you had a chance to read that?

17 A Yes.

18 Q All right. There is an X and an initial right at the  
19 end of that clause. Do you see that?

20 A Yes.

21 Q What was your intention there when you did that?

22 A Well, this clause is saying that any action is being  
23 claimed or controversy of any kind ---

24 Q Essentially that clause is -- and I'll tell you my  
25 reading of it.

1 A Okay.

2 Q The clause is one that, if it's agreed to or it's not  
3 stricken, it means that any dispute that might arise  
4 has to be arbitrated. Now, you -- first of all, the X  
5 -- first of all, are those your initials in that little  
6 line?

7 A Yes.

8 Q And that X next to it, do you know who did that? Did  
9 you do that?

10 A No. I don't recall.

11 Q Okay. What I'm trying to figure out here is, because  
12 it's -- you know, it says I have X'd this clause --  
13 well, it says optional. If that parties do not agree  
14 to this arbitration clause, please mark with an X to  
15 void this clause only. I have X'd this clause. And  
16 then there's an X and your initial. So what I'm trying  
17 to figure out is were you -- was it your intention that  
18 you were not agreeing to arbitration, or was it your  
19 intention that you were agreeing to arbitration?

20 MR. FEIDLER: Objection. You can answer.

21 THE WITNESS: Actually, this must have been where  
22 she was telling me where to sign. And that, "This is  
23 where you sign."

24 BY MR. WHITE:

25 Q Okay.

1 A If my recollection is correct, she was telling me where  
2 to put my initial right here.

3 Q Now, would -- and, again, I don't care what the answer  
4 is. I just want to make sure that I understand what  
5 your intention was.

6 A Yeah.

7 Q At the time that you were signing this, had you ever  
8 heard of arbitration?

9 A No.

10 Q Ma'am?

11 A No.

12 Q Did she explain to you what arbitration was? I mean,  
13 did you ask her what it was and did she explain it?

14 MR. FEIDLER: Objection. You can answer.

15 THE WITNESS: She probably did explain it. I  
16 don't recall what said at this time.

17 BY MR. WHITE:

18 Q Okay. Do you know whether at that time you were  
19 against arbitration or for arbitration?

20 A I am not certain at this time. I am not certain.

21 Q Well, let me ask you this way. Sitting here today, do  
22 you know what arbitration is?

23 A If I believe I know, I believe it means if something  
24 transpires or something happens, that you won't do this  
25 or that or the other.

1 Q Right. So arbitration is basically, instead of going  
2 to a court and having a trial, you have an independent  
3 person sit in a room like this and listen to the case.

4 A And make -- uh-huh.

5 Q Okay. So, well, let me show you one other document.  
6 It might help. Again, I don't care what the answer is.  
7 I'm just trying to get to the bottom of what your  
8 intention was.

9 A Yeah.

10 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
11 NUMBER 7, ARBITRATION AGREEMENT, ATTACHED.)

12 BY MR. WHITE:

13 Q Let me hand you what I've marked as Exhibit Number 7,  
14 and this is something called a resident and facility  
15 binding arbitration agreement. Okay? And this would  
16 have been something that would have been presented to  
17 you at the same time as this other document. And the  
18 second page just has a big X through it. Do you see  
19 that?

20 A Uh-huh.

21 Q So, obviously, you didn't sign this.

22 A No.

23 Q Do you recall seeing this?

24 A I don't.

25 Q Okay. Does that help at all on the arbitration

1 agreement to determine whether you were agreeing or  
2 disagreeing to arbitration?

3 MR. FEIDLER: Objection. You can answer.

4 THE WITNESS: If I read through it, it probably  
5 will.

6 BY MR. WHITE:

7 Q Well, the Exhibit 7 that you've got is just an  
8 agreement -- it's kind of similar. It essentially says  
9 if there's any dispute between the parties, it will go  
10 to arbitration. And on the second page, you've got a  
11 big X on it.

12 A Uh-huh.

13 Q So, obviously, that agreement was not signed. And I  
14 don't know who put the X on there, but it wasn't  
15 signed.

16 A Uh-huh.

17 Q So there's nothing I can do with this document. I'm  
18 just trying to figure out if, when you had this  
19 discussion with Ms. Jensen about arbitration, whether  
20 it was your intent to waive the right to a trial and go  
21 to arbitration, or whether you wanted to -- you wanted  
22 to have the opportunity to go to court. That's what  
23 I'm trying to figure out.

24 A Actually, no, it would not have been my intent not to  
25 go if needed. So I'm ---

1 Q All right. You used a couple of double negatives  
2 there, which I know, as a teacher, you know better.

3 A Oh, I'm sorry.

4 Q Tell me what you mean by that.

5 A Actually, what I mean is I don't -- I would not have  
6 waived the right, if necessary, to go to court.

7 Q Okay. So it's your belief that what you were doing in  
8 the admissions agreement was saying you were not  
9 agreeing to the arbitration clause?

10 MR. FEIDLER: Objection. Asked and answered.

11 THE WITNESS: It was not agreed to it.

12 MR. FEIDLER: Can I ask you a question off the  
13 record?

14 MR. WHITE: Sure. Let's go off the record.

15 (OFF THE RECORD)

16 BY MR. WHITE:

17 Q Okay. All right. Back to the Bayview Manor second  
18 admission, February 17, 2015, how was the staff during  
19 that admission? Were they nice, responsive?

20 A Yes.

21 Q Was there anything, any particular concerns you recall  
22 raising about that admission?

23 A Only that sometimes when I would come, it didn't appear  
24 like he was changed yet or that sort of thing. And I  
25 know I would come after work and I'm like what was his

1 -- was he changed? Did he have his bath yet or  
2 whatever? It didn't look like he did. Or sometimes  
3 I'd -- there was a time I walked in the room and he had  
4 a catheter, but the tubes were on the floor. And I  
5 said, "Well, did the person -- anybody clean the room  
6 yet?" I knew he couldn't move or he couldn't say  
7 anything, but still, he should have a clean room, that  
8 sort of thing. Or his tube looked like it hadn't been  
9 cleaned because it had -- it was hardened, the stuff  
10 was hardened on it.

11 Q You're talking about his trach tube?

12 A The trach. The stuff was hardened on it, and if it was  
13 being cleaned every so often, that should not have  
14 been, you know. Or it would be coming out and it would  
15 be all over him. So, if someone had been coming in and  
16 checking, it shouldn't be on his chest or on his gown  
17 like that. And so I would, you know, speak to someone  
18 and they would come and do it. They would do it.

19 Q Okay. When you would come in and you would see these  
20 things -- let's just take the first one. If his brief  
21 was soiled and you asked somebody to come in there and  
22 fix it, they would do that?

23 A They would do it.

24 Q Do you know how long he would -- on any particular  
25 occasion, how long he would have been in that

1 condition?

2 A No.

3 Q Is it possible that it could have happened just before  
4 you came in?

5 A Not if it's soaked like that. Not if it's soaked like  
6 that. It was very, very soaked, no, that couldn't  
7 happen. Now, at a given point, they weren't using the  
8 brief because of the sores.

9 Q And, again, sometimes you would come in and he would  
10 not have a soiled brief; right?

11 A Right. Sometimes, yes..

12 Q Now, in terms of the -- you mentioned that he had a  
13 catheter at one point.

14 A Yeah.

15 Q And I don't remember -- I don't think I remember seeing  
16 that in the records, and I'm not disputing you, but ---

17 A Well, it might have been the -- it was a tube ---

18 Q Could it have been the feeding tube?

19 A He had -- you know how you use the urine bag or  
20 whatever, urine or whatever.

21 Q Uh-huh.

22 A But he had -- I can't recall it, but it seemed like for  
23 a brief period there, there was something happening  
24 like that. But the tube was on the floor, but, again,  
25 if we asked somebody to do it, they would come and take

1 care of the matter.

2 Q Was there anything draining out of the tube onto the  
3 floor?

4 A I don't recall whether anything was draining from it or  
5 not, but I just saw that the room -- you know, it  
6 looked as if, if someone was in there doing whatever or  
7 even if they were suctioning him or whatever they were  
8 doing, they didn't clean up. It was just still -- they  
9 just left everything as is. So I would just ask, "Is  
10 someone coming in to clean up today?" Or "Could  
11 somebody come in and do the floor? Could somebody come  
12 and sweep?" That sort of thing.

13 Q And they were doing that once a day, weren't they?

14 A I'm not sure how often they did it.

15 Q The tube that you saw on the ground, because I remember  
16 Dorothy talking with me about that as well, did you see  
17 what it was connected to on his end, on the body?

18 A No, I just saw it on the floor.

19 Q Okay.

20 A On the -- yeah.

21 Q Okay. So, all right. But nothing -- you didn't see  
22 anything coming out of it?

23 A No, I didn't see ---

24 Q Do you know what it was supposed to be hooked to?

25 A I'm not certain what it was supposed to be hooked to,

1 but I'm saying that the tubes and all of this that's on  
2 the floor, somebody needs to come.

3 Q How many times did you find tubes on the floor?

4 A It was just that time, that I recall.

5 Q Okay. The crust and stuff that was on his trach tube,  
6 did you ever see that get completely covered so that he  
7 couldn't breathe?

8 A No, there was just stuff coming out, coming out of it.

9 Q Kind of flowing out onto his gown?

10 A Yeah.

11 Q Okay.

12 A And so, and, again, because if you don't clean it, it  
13 could also cause a problem for him, because that means  
14 he needs to be suctioned and he's not, and if he's not  
15 coughing, he's not coughing it out. So all of it is  
16 still in his chest.

17 Q Could he cough?

18 A They -- no. He couldn't do it. That's why they needed  
19 them to clean, to make sure that they...

20 Q What do you remember about his wound care while he was  
21 there that second time at Bayview Manor? Were you ever  
22 involved in either talking with a wound care person or  
23 a nurse about his wounds?

24 A No.

25 Q Did Dorothy ever tell you that she had talked with

1 someone there about his wounds and this is what they  
2 said?

3 A She talked about the fact that she discussed his wound  
4 care, talked about to make sure that, you know, it was  
5 being taken care of. I looked at it, but I did not  
6 speak to someone directly. Well, there was someone --  
7 there was a time I did go in and there was someone  
8 there. And they were changing it. They didn't allow  
9 me to stay in there while they did it, but they were  
10 changing it, changing it because, you know ---

11 Q Changing the dressings?

12 A The dressing.

13 Q All right. Did you ever raise -- did you talk with the  
14 administrator or the DON?

15 A I did not. Dorothy might have, but I did not.

16 Q Okay. And, again, never complaints to DHEC or the  
17 ombudsman or any of that?

18 A I did not.

19 Q How often were you going to see him during this  
20 admission?

21 A I would see him because I work over here on the island;  
22 I, you know, came across and I would stop by and I  
23 would just sit with him. During the week, maybe three  
24 times a week or whatever. I didn't always see the same  
25 staff people, but I would just, you know, go and walk

1 into the room and just sit with him.

2 Q Would you go in on weekends as well?

3 A Yes.

4 Q Do you remember having any discussions with anyone  
5 during that admission, the February 17, 2015, admission  
6 to Bayview about his nutritional status?

7 A I don't remember.

8 Q Was his level of consciousness, had it changed at all?

9 A No. It was the same.

10 Q How about his weight? Could you tell what his weight  
11 was doing during that Bayview admission?

12 A It was up and down. There were times when his face  
13 just looked so skinny. Like, you know, skin and bones  
14 with like, you know, just losing too much too fast.

15 Q And then you said the weight, at times, would go up as  
16 well?

17 A Yeah. Well, it just appeared as if he were just losing  
18 too much too fast.

19 Q Did you ever -- do you know what his weights were at  
20 Bayview?

21 A No, I don't know, offhand.

22 Q How about let me talk about the turning during this  
23 admission to Bayview. Was it essentially the same as  
24 you saw before, or did you notice any difference in  
25 terms of frequency?

1 A Well, I'm not sure of the frequency because, you know,  
2 I wasn't there during the day or whatever the case is.

3 Q You had taken some photographs, which I'm going to mark  
4 to the deposition, and just get you to explain to me  
5 what these show. Now, I understand that you took --  
6 gosh, some of these are hard to see. I think I have --  
7 I think I have clearer pictures on my computer. Did  
8 you bring your phone with you today that has these  
9 photographs?

10 A I did.

11 Q All right. Good. You can probably identify them from  
12 that. I'm just going to mark these individually.

13 MR. FEIDLER: Do you mind if we take a little  
14 break?

15 MR. WHITE: No, go right ahead. I know I've been  
16 going a long time.

17 (OFF THE RECORD)

18 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
19 NUMBERS 8 THROUGH 14, PHOTOGRAPHS, ATTACHED.)

20 BY MR. WHITE:

21 Q I'm going to hand you these pictures one at a time, and  
22 like I mentioned off the record, it looks like some of  
23 them are a little bit difficult to see, although we  
24 probably have clearer pictures on my computer at the  
25 office.

1 A Okay.

2 Q Let me hand you Exhibit Number 8, and just tell me what  
3 that shows, please.

4 A That's a tube that they had over his - that's his  
5 trach. That's the cleaning process or whatever, and  
6 they would have that over here, and it would - when  
7 they suctioned, they would stick the tube or whatever  
8 they had down through this and through the tube that he  
9 had. But that was the - they had a gauze where his  
10 tube was. And so this happened to be the day that -  
11 one of the days I came in and I'm like this needs to be  
12 changed because, I mean, it looks hard and so you know  
13 that this has been here. And so this needs to be  
14 changed. You know, it's all over him. When was the  
15 last - and his bedroom, this is the nurses' station  
16 here. His door is here (indicating).

17 Q Right next to it?

18 A Right there (indicating). They placed him there  
19 because they knew the care he needed. So he's that  
20 close. And so, you know, I was just ---

21 Q So what ---

22 A Let me see this now.

23 Q What angle is this being taken from? I'm just trying  
24 to orient myself.

25 A I'm standing - he's laying - this - his head is up

1 here. I'm to his left.

2 Q Okay.

3 A I'm sorry. I'm to his right.

4 Q Well, let me orient us for the record. So, if you're  
5 looking, the way I've got the exhibit sticker on there,  
6 if you look at the bottom of the photograph, that's  
7 actually where his head would be?

8 A Yeah.

9 Q Okay.

10 A That would be his head.

11 Q So it's kind of like I am right now.

12 A Yeah.

13 Q If I held this to me on my chest, that's the area.

14 A Yeah.

15 Q So you would have been standing to his left?

16 A Yeah. Close, yeah.

17 Q All right. And you're telling me that this tube that  
18 is going over the trach is placed there when a smaller  
19 tube is running to the trach to do the suction?

20 A Yeah. Well, actually, they had a little - I'm trying  
21 to think of how it was. They had a little portable - I  
22 don't know if this was when they had the little  
23 portable machine or whatever they had, that they had  
24 this tube over his trach. And so I wanted them to just  
25 come in and clean it, just to, you know, clean it

1 because it looked like it hadn't been attended to.

2 Q What is the - I mean, is that tube that we're looking  
3 at there, is that something that would stay on him, or  
4 would it only be on there during some sort of  
5 treatment?

6 A It wasn't something that remained on him all the time.

7 Q Okay. All right. Let me hand you next Exhibit Number  
8 9. Can you tell me what 9 shows, please.

9 A 9 is the entrance of the - of this (indicating).  
10 Because these were taken the same day.

11 Q Okay. So 8 and 9 the same day?

12 A Yeah.

13 Q Okay.

14 A The same day, where I removed that and saw that it was  
15 hard, like it had not, you know, been cleaned recently.  
16 Now, it might have been earlier that day or whatever  
17 the case was, but when I came in, it was hardened.

18 Q And what - can you tell me what this area is? Is that  
19 gauze?

20 A That's the - yeah.

21 Q Okay. And this is part of the tube that goes down?

22 A No, I think that's the - this top part of this thing  
23 here (indicating). It's not the tube that goes down.

24 Q Okay.

25 A It's something else that they had. I don't know

1 exactly what it was called.

2 Q And just so the record's clear, in terms of the hard  
3 stuff you're talking about, that's the stuff that's  
4 right here at the lip of the trach tube?

5 A Right.

6 Q Okay. Not the gauze that's below it and not this kind  
7 of yellow fabric looking thing next to it?

8 A Uh-uh. Yeah, all that was coming out of ---

9 Q Well, you say "all that" ---

10 A Dripping - I mean, the yellow stuff that you see was  
11 coming out of this.

12 Q Right.

13 A Uh-huh.

14 Q So the yellow stuff that we see directly on the trach  
15 tube is what you're talking about is the drainage?

16 A Uh-huh. The drainage.

17 Q All right. Let's look at Exhibit Number 10. And this  
18 is obviously his head.

19 A Yeah.

20 Q What are you showing there?

21 A This, on his head, where this wound came from, because  
22 he didn't have it. And so I wanted to know how did his  
23 head get the bruise, because he can't move from the bed  
24 and his head is on the pillow, how did he get the  
25 bruise on his head.

1 Q Uh-huh.

2 A And so I'm like what is that? What happened to him to  
3 cause that?

4 Q Did you ever - did you ask the staff that?

5 A I asked how did he get that, and it wasn't a clear  
6 answer as to how that bruise got there.

7 Q Is it a bruise, or is it -- I mean, is it a wound from  
8 lying on the side of his head?

9 A No.

10 Q It wasn't?

11 A It's not.

12 Q Okay. You don't believe that there was any sort of  
13 intentional misuse of him, do you?

14 A I don't know. I was asking to find out how did that  
15 happen or who - I mean, nobody told me. If you go in  
16 there and you see such and such a thing, this is what  
17 happened. Nobody said anything to me. So, when I -  
18 I'm like - when I noticed it, I said, "Where did he get  
19 this?"

20 Q Is it possible they didn't know what caused it?

21 A Oh, they would - I don't - I asked them do they know,  
22 because I know they're in his care. So I don't know  
23 what they know. All I wanted to know is what  
24 transpired.

25 Q All right. Well, let me ask it a little more directly.

1 Do you plan to allege any sort of abuse?

2 MR. FEIDLER: Objection. You can answer.

3 THE WITNESS: I'll say this. As to how he got  
4 this, because he didn't have a - where he had his head,  
5 he just had a headboard. And then he had the bed with  
6 a pillow. So my question is what was there for him to  
7 even hit his head on. Do you see what I'm saying? I  
8 wanted to know did he fall? Did you accidentally hit  
9 him with something? I didn't get a clear answer as to  
10 what happened or maybe they had a shift change. I  
11 couldn't tell you, whether it was during doing his  
12 changing, whether it happened whatever. I just know  
13 that that wasn't there when I had seen him, so now it  
14 was. And I wanted to know why and how did he get this  
15 on his head.

16 BY MR. WHITE:

17 Q Right. And they told you they didn't know?

18 A I didn't get a clear answer as to ---

19 Q Well, what did they tell you then?

20 A The person that said they weren't sure and, you know,  
21 because maybe they came in on another shift, or why  
22 they weren't, but I just didn't get a clear answer as  
23 to say, you know, what happened. I don't remember  
24 getting any clear answer to that.

25 Q All right. Well, let me see if we can drill down on

1 this a little bit. When you say you didn't get a clear  
2 answer, that means -- are you saying you didn't get an  
3 answer as to how it happened?

4 A Yeah. I didn't get an answer as to how that -- my  
5 phone is not letting me look at this, but ---

6 Q That's okay. Just focus on me right now.

7 A Yeah, yeah.

8 Q You asked what happened.

9 A Yes.

10 Q Whoever you talked to said, "I don't know."

11 A They were not sure, the person that came into the room.  
12 Yeah.

13 Q Okay. So you weren't sure. They said they weren't  
14 sure. I'm asking you, based on that, is it your  
15 intention to come into court and testify that it is  
16 your belief that someone intentionally caused this  
17 bruise on his head, or would you just say, "I don't  
18 know how it got there. When I asked, they didn't know  
19 either."

20 MR. FEIDLER: Objection. You can answer.

21 THE WITNESS: I would say something took place  
22 that caused a bruise on his head, and he's unable to  
23 say what happened. Something took place to cause a  
24 bruise on his head, and someone should have taken care  
25 of him better than that.

1 BY MR. WHITE:

2 Q All right. Is Exhibit Number 11, is that just a close-  
3 up picture of that?

4 A That's just a close-up.

5 Q Did the bruise, was it just a bruise, or was it ever  
6 open?

7 A I didn't see it open.

8 Q Oka. Exhibit Number 12 is another photograph.

9 A Yeah. And that was just -- it just appeared like he  
10 was losing so much weight, that it was just looking  
11 like he was going to bones.

12 Q Were all these pictures taken on the same date?

13 A No.

14 Q Do you have something there that tells us what date  
15 they were taken?

16 A Well, this -- this was taken on March the 26th.

17 Q All right. Let me do this. Let's go to the picture  
18 that shows Exhibit 8. Tell me the date of that  
19 picture, please.

20 A Let me find it. Let me find it. These pictures were  
21 taken February 22nd.

22 Q Okay. So ---

23 A The ones with the -- yeah.

24 Q So Exhibits 8 and 9 were taken February 22, 2015.

25 A February the 22nd, yes.

1 Q All right. How about ---  
2 A Those were taken on March 26th.  
3 Q All right.  
4 A This one was the 27th.  
5 Q All right. Hold on one second and let me get these ---  
6 A I'm sorry.  
7 Q That's okay. That's okay. So Exhibits 10 and 11 were  
8 taken on March -- what day?  
9 A 26th.  
10 Q Okay. And Exhibit 12 was taken on what day?  
11 A Exhibit 12 was taken on March 27th.  
12 Q All right. How about 13? Can you tell what 13 shows?  
13 A That was the wound that he acquired.  
14 Q Is that a dressing over the wound?  
15 A A dressing over the wound. I didn't ---  
16 Q Do you know where that wound was on his body?  
17 A His hip.  
18 Q Okay. Right or left?  
19 A The side of his hip. On the left.  
20 Q And what date was that taken?  
21 A This was taken April 4th.  
22 Q So that was April 4th. That's when he would have been  
23 a few days back at Beaufort Memorial Hospital.  
24 A Uh-huh.  
25 Q How about Number 14? Exhibit 14?

1 A Let's see what that is. That would be the -- let's  
2 see. That would be the February 22nd.

3 Q And what is that a picture of? I know it's kind of  
4 hard to tell from that one.

5 A I'm trying to see which that is. It was just taking a  
6 picture of the gauze and all that that was about his  
7 neck.

8 Q Okay. Other than the photographs we've just looked at,  
9 did you take any other photographs of Mr. Holmes?

10 A No, I did not.

11 Q All right. Let's go to the last stage here, and that  
12 is his time at Beaufort Memorial Hospital from March 2,  
13 2015, to May 29, 2015. Do you recall what -- why he  
14 was taken to the hospital then? What changed about his  
15 condition?

16 A I remember going in to see him, and I walked in and his  
17 breathing wasn't right. I said, "He's not breathing  
18 right. Does he need suction or whatever the case is?"  
19 And so I went to the desk and told them that, you know,  
20 David's not breathing right and I think something --  
21 you need to come check him or whatever the case is. I  
22 can't remember who came in to check him, but they -- I  
23 believe that's when they did suction or whatever, but  
24 his breathing was still not right. And as a matter of  
25 fact, they transported him to the hospital. Don't

1 remember the date, but I know they transported him to  
2 the hospital.

3 Q So it was a breathing issue again and they took him?

4 A Yeah. He sounded as though it was like rattling or  
5 something in his chest or whatever.

6 Q Did you go with him over ---

7 A I went there.

8 Q And what was -- in terms of the initial diagnosis, what  
9 did the doctors tell you was wrong with him?

10 A I believe, if my memory serves me correct, it was  
11 pneumonia.

12 Q Aspiration pneumonia again? Is that right?

13 A I'm not certain. I just know it was pneumonia.

14 Q Okay. And what did they tell you about how they  
15 intended to treat him?

16 A Antibiotics, you know, that sort of thing.

17 Q Did they tell you anything about his prognosis at that  
18 point?

19 A No.

20 Q Were the same medical team that had treated him at the  
21 prior Beaufort Memorial Hospital admission, were they  
22 working with him again?

23 A I'm not certain whether that was the same.

24 Q And did anyone at Bayview -- excuse me, at Beaufort  
25 Memorial Hospital in that admission say anything that

1 criticized Bayview Manor?

2 A I don't recall that.

3 Q Was he being turned and repositioned at the hospital?

4 A They were.

5 Q How often were you going to see him there?

6 A When I would come from work.

7 Q So ---

8 A It wasn't every day, but I came to see him.

9 Q So, in the late afternoon or night after work?

10 A Yeah. It was not every day, also.

11 Q Do you recall talking at all with the doctors about his  
12 level of nutrition while at the hospital?

13 A I don't recall talking to him. I believe it was my  
14 sister, Dorothy. She could more answer that.

15 Q Do you recall the issue of kind of continued aspiration  
16 pneumonia coming up while at the hospital? That being  
17 something discussed with the doctors?

18 A Yeah, the issue, just making sure that -- I just  
19 remember my sister saying they were making sure that he  
20 was cleaned, his tube was, you know, as it should be or  
21 whatever. But pneumonia was an issue.

22 Q All right.

23 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
24 NUMBER 15, DISCHARGE SUMMARY, ATTACHED.)

25 BY MR. WHITE:

1 Q Let me hand you Exhibit Number 15, and this is a  
2 hospital discharge summary from Beaufort Memorial  
3 Hospital. This is -- this shows the date of admission,  
4 March 29, 2015. They've got a discharge date of June  
5 2, 2015, but I think he actually died a couple days  
6 before that. So I just want to go through and ask you  
7 a few questions about this. I tell you what. Hand  
8 that back to me, if you don't mind, and I'm going to  
9 highlight just a couple words here that will help us.

10 A Okay.

11 Q All right. So, back to Exhibit 15, and what this is,  
12 Ms. Holmes, just to kind of help set the stage, this is  
13 kind of a running synopsis of various periods of this  
14 last hospital admission. So you'll see, like, at the  
15 bottom of that first page, it says, "Hospital course,  
16 April 9th to April 15th."

17 A Uh-huh.

18 Q And then you'll see the same thing, like, on the next  
19 page. There's one near the bottom that says April 27th  
20 to May 1st. So that's what the doctor is doing. He's  
21 going through and just kind of capsulizing the  
22 admission.

23 So, if we start on the first page, where I begin  
24 the highlighting at the bottom of that paragraph, it  
25 says, "I have recommended to family comfort measures on

1 multiple occasions. However, they are not interested  
2 in this at this time."

3 So I know we've already talked about the  
4 discussions you had in the first admission to Beaufort  
5 Memorial Hospital, but in the second admission, did the  
6 doctors continue recommending comfort care for Mr.  
7 Holmes?

8 A I believe they did, but our response was the same.

9 Q Okay. Flip over to the second page. Actually, the  
10 third page, let's go to that. In the first paragraph,  
11 a couple lines down, it says, "Patient is also having  
12 residuals and tube feed and subsequently aspirated and  
13 tube feeds were held. Due to the aspiration and  
14 relative hypotension, he was transferred to the  
15 intensive care unit." So there the doctor is saying  
16 that, you know, he's getting this tube feeding, but the  
17 residuals, which is basically the stuff going up his  
18 throat, that he's aspirating that. Do you recall  
19 having a discussion with the doctors about that?

20 A We may have had it with my sister.

21 Q Okay. In the next paragraph, the very last sentence  
22 says, or the last two sentences say, "There is still no  
23 consideration of any comfort measures, even though this  
24 has been recommended on multiple occasions. He remains  
25 very high risk for continued aspiration, respiratory

1           compromise and clinical deterioration." So do you  
2           recall in this hospitalization the doctor's main  
3           concern that was expressed to you guys was, if we keep  
4           this up, he's going to continue aspirating?

5    A    I believe my sister mentioned that to me, and my  
6           thought was when you're saying any comfort measures,  
7           does that mean stopping the food and everything else?  
8           And if that's what you mean, we couldn't see that.

9    Q    Do you think that -- did you have any discussions with  
10           the doctor or maybe with your sister as to whether Mr.  
11           Holmes would be less comfortable continuing to aspirate  
12           and get pneumonia or ---

13   A    Starving.

14   Q    Or you know, you say starving; comfort measures,  
15           whatever.

16   A    Starving. I don't feel like he would want to starve.

17   Q    Right. So, in essence, did you see and did your sister  
18           see the idea of comfort care being really the cruelest  
19           end for Mr. Holmes?

20   A    Yes.

21   Q    Okay. As compared to everything else, any level of  
22           treatment?

23   A    Yes.

24   Q    So, if they needed to basically perform any type of  
25           medical procedure, you were willing for them to do that

1           rather than the comfort care?

2    A       If necessary.

3    Q       All right. On the next page, about halfway down on the  
4           right, it says, "Family continued to want full support,  
5           including dialysis."

6    A       Uh-huh.

7    Q       Do you recall why dialysis became an issue?

8    A       Yes. He was in Beaufort Memorial, and my sister was in  
9           the room at the time. And someone that had come in to  
10          do something with the trach or whatever, I don't  
11          remember what it was. They did a procedure, but  
12          something happened in the process that caused them to  
13          puncture something. And there was a bleeding, and I  
14          wasn't there, but she told me what transpired. And  
15          they didn't get a physician to come check him until the  
16          next day. But he was bleeding and they did not get a  
17          physician. He was home. Well, I don't know -- I can't  
18          recall the reason why she said no one came, but no one  
19          came until the next day, which caused a kidney  
20          situation to happen.

21   Q       What sort of discussion did y'all have with the doctor  
22           about that?

23   A       My sister discussed with him what she saw. I believe  
24           she did, and what transpired. And we did ask about the  
25           dialysis situation.

1 Q Did the doctor, did he offer any sort of thought on  
2 what the nurse had done the day before?  
3 A I don't recall.  
4 Q Did y'all ever follow up with any sort of complaint?  
5 A I believe she did.  
6 Q Who? Dorothy did?  
7 A Yeah.  
8 Q Do you know if that was a written complaint?  
9 A No.  
10 Q No, it wasn't, or you don't know?  
11 A I don't know.  
12 Q Do you know if any sort of claim was made for that?  
13 A No, not -- none that I know.  
14 Q None that you know of?  
15 A None that I know of.  
16 Q Okay. Now, on that same page, I highlighted a part  
17 that says, "Family updated daily. There was a request  
18 from their lawyer not to discuss code status and  
19 comfort care." Do you know who that lawyer was?  
20 A Smalls. Veronica Smalls, I believe her name was.  
21 Q I'm sorry. What?  
22 A I believe it was Veronica Smalls.  
23 Q Okay.  
24 A I believe so.  
25 Q Was she -- yeah, okay. So Veronica Small was the

1 person who represented your sister in getting the  
2 guardianship?

3 A Yes.

4 Q She was the one that did that?

5 A I believe it was.

6 Q Do you know why she contacted the hospital and said not  
7 to discuss code status or comfort care?

8 A I don't recall that, but my sister could probably give  
9 you more information on that.

10 Q Okay. All right. The last part I want to ask you  
11 about on this document is the paragraph that begins,  
12 "Multiple attempts." Do you see that?

13 A Uh-huh.

14 Q All right. So it says, "Multiple attempts were made to  
15 have open discussions with the patient's power of  
16 attorney, sister Dorothy, about his deteriorating  
17 condition. During these conversations, she remained  
18 fixated on the fact that Mr. Holmes was not being fed  
19 or given any IV fluids, and we were thus starving him  
20 and dehydrating him. And she demanded that we feed and  
21 hydrate him. I attempted multiple times through  
22 multiple explanations to explain to her that he could  
23 not be fed through the NG tube because his bowel is not  
24 functioning from edema, and he also had a  
25 gastrointestinal bleed. He is also at extreme risk for

1 aspiration, which another insult to his lungs would  
2 certainly cause further deterioration. All these  
3 things being said, attempting to feed him was  
4 completely inappropriate. As for providing him with  
5 hydration, as stated above, the patient was suffering  
6 from severe fluid overload, with fluid literally  
7 weeping from his face and gurgling in his lungs.  
8 Adding exogenous fluid to his already overloaded body  
9 was completely inappropriate as well. Dorothy could  
10 not accept this answer and continued to demand that we  
11 feed him."

12 Okay. Were you involved in any of those  
13 discussions?

14 A No.

15 Q If you had been and if you were told that the doctor  
16 felt that these sorts of -- this continued fluid and  
17 food was inappropriate care, that it was causing him  
18 more harm than good, would you have continued to insist  
19 that they do so?

20 MR. FEIDLER: Objection. You can answer.

21 THE WITNESS: I would insist on them doing  
22 whatever necessary to keep David alive.

23 BY MR. WHITE:

24 Q What was more important to you: keeping him alive or  
25 keeping him comfortable?

1 A Well, it was important to me the route they wanted to  
2 take to do -- when they said comfort, the route they  
3 wanted to take was important to me.

4 Q Was there any other sort of route in terms of comfort  
5 care that was discussed with you other than the  
6 withdrawal of food?

7 A Not with me. No discussions with me.

8 Q Okay. If a doctor had told you that Mr. Holmes is  
9 going to be more uncomfortable if we continue with this  
10 course of treatment than if we do comfort care, would  
11 you have believed the doctor?

12 A I would simply say do what you have to do to do -- to  
13 give David the best treatment possible without going  
14 the route that they were suggesting.

15 Q Okay. Let me go back to my question. I appreciate  
16 that. If the doctor had said that he is going to be --  
17 and, of course, we don't know what his level of  
18 cognitive ability to experience pain or discomfort, but  
19 if the doctor had told you that, to the extent he can  
20 experience any of those things, he would experience  
21 less discomfort by being allowed to die through comfort  
22 care than continued aggressive treatments, what would  
23 your response have been?

24 A Well, they said that, you know, he was retaining the  
25 fluid and he was whatever. So we did suggest, well,

1 will dialysis work to relieve the fluid from him. They  
2 were reluctant to do it. They brought the machines in  
3 the room, but they were reluctant. They didn't want to  
4 give him dialysis or see if that would assist in his  
5 improvement. It was a possibility, but that didn't  
6 happen.

7 Q Okay. Let me go back to my question, okay? If the  
8 doctor told you that David would be more comfortable,  
9 assured you from a medical standpoint that he would be  
10 more comfortable being allowed to die through comfort  
11 care than continued aggressive measures to feed him and  
12 to provide fluids and all that, what would your  
13 response have been?

14 MR. FEIDLER: Objection. Asked and answered.

15 MR. WHITE: Well, she hasn't answered. That's the  
16 thing.

17 THE WITNESS: Yeah. Well, I -- put it this way.  
18 I couldn't say what would be more comfortable for him  
19 because we didn't know his -- or you could say from a  
20 medical standpoint, but I would still say I would not  
21 want you to take that avenue.

22 BY MR. WHITE:

23 Q Okay. Thank you. Okay.

24 (MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT  
25 NUMBER 16, MEDICAL RECORD, ATTACHED.)

1 BY MR. WHITE:

2 Q Let me give you Number 16. I think this is going to be  
3 the last exhibit. And this one, what I want to ask you  
4 about is the note near the bottom that's dated May 1,  
5 2015. And it says, "Nurse reports that family is not  
6 opposed to patient returning to Bayview Manor skilled  
7 nursing facility and they will accept him." So, at  
8 this point -- so this is, I guess, a little less than a  
9 month before he died. The family was still okay with  
10 him going back to Bayview?

11 A There was either -- there's one of two choices. He  
12 couldn't stay at the hospital. We didn't have the  
13 facility at home to take care of him, so we couldn't  
14 say bring him home. So Bayview was our alternative  
15 because, again, she was still in the process of trying  
16 to find a place for him. So that is why. Yeah.

17 Q Let me ask this. Were y'all appreciative of the fact  
18 that Bayview Manor would take him?

19 A We were, very.

20 Q All right. Let me move on to a couple of other things.  
21 Has anyone ever discussed with you the cause of his  
22 death? What actually caused him to die?

23 A Not with me.

24 Q Have any of your family members told you that they  
25 talked with the doctor and this is what the doctor told

1           them caused him to die?

2    A       No.

3    Q       Did you ever talk with -- okay.  So Dr. McNeil, Ed  
4           McNeil is a doctor in Beaufort.

5    A       Uh-huh.

6    Q       And he treats a number of patients within Bayview  
7           Manor.

8    A       Uh-huh.

9    Q       One of them was your brother.  So he would have been  
10          the doctor for him while he was in the facility.  Did  
11          you ever talk with him?

12   A       No.

13   Q       Did you ever see him?

14   A       No.  I don't remember having any conversation with him.

15   Q       Okay.  I've asked you a few times today about any  
16          complaints or criticisms you had about the care he  
17          received at Bayview Manor.  Is there anything else you  
18          haven't told me that -- or have we discussed those  
19          issues?

20   A       Nothing, but you did ask me a question did I know  
21          anybody there at Bayview.

22   Q       Yes, ma'am.

23   A       As a patient.  After David passed, I did have a cousin,  
24          Charlesetta, she was a patient there.  So we would see  
25          her every now and then.  And so my sister would go in,

1 if she saw something not quite right, she'd mention it.

2 But I did -- yeah, I did have a relative there.

3 Q Well, I appreciate that. Were there any particular  
4 concerns y'all had with her care at Bayview?

5 A Just wanted to make sure that, you know, she was --  
6 that everything was kept clean.

7 Q Uh-huh.

8 A Around her, and that sort of thing.

9 Q Is she still alive?

10 A She died.

11 Q When did she die?

12 A Oh, she died not long after David.

13 Q Was there any sort of claim made against Bayview for  
14 her care?

15 A Not as I -- I don't know.

16 Q Okay. Did anyone from Bayview Manor, whether it be a  
17 nurse, an administrator or a CNA, any of those people  
18 ever admit to you that they did something wrong with  
19 regard to David's care?

20 A No.

21 Q Are you aware of -- let me just run through these. Are  
22 you aware of any false charting at the facility? In  
23 other words, have you looked at any medical records  
24 from the facility and said, "Hey, that's not right"?

25 A No, I have not.

1 Q Okay. Do you know anything about the level of staff,  
2 the number of people they had there?

3 A No, I do not.

4 Q Did you keep any sort of running diary?

5 A I did not.

6 Q I know, of course, you gave your counsel the  
7 photographs. Other than the photographs, did you have  
8 any other sort of documents or photographs regarding  
9 his care?

10 A No, I do not.

11 Q Tell me how David's passing has affected you  
12 personally.

13 A Well, of course, he's a part of our family. He's ---

14 Q Take your time.

15 A Of course, we love him, miss him. It's just a given.

16 MR. WHITE: Okay. Those are all the questions I  
17 had, Ms. Holmes. Thank you.

18 THE WITNESS: Thank you.

19 EXAMINATION

20 BY MR. FEIDLER:

21 Q Ms. Holmes, I have a couple of follow-ups. Do you want  
22 me to wait a second?

23 A I'm okay.

24 Q You sure?

25 A Uh-huh.

1 Q And I just want to go back to Exhibit 4. If you don't  
2 mind, I will find it for you. And looking at Exhibit  
3 4, this is a South Carolina Health Care Power of  
4 Attorney. Do you know for a fact that David, for  
5 instance, looking at page three, do you know for a fact  
6 that David had initialed this document?

7 A No. That just somehow doesn't look like how David  
8 would write a D.

9 Q Okay. And so, sitting here today, you don't know for  
10 certain whether or not David ---

11 A No, I do not.

12 Q Okay. Thank you. And then, going to the second from  
13 the last page, on the very bottom, it appears to be  
14 David's signature and also David printed his name. do  
15 you know for a fact, sitting here today, that David  
16 signed his name?

17 A I do not.

18 Q And, again, do you know for a fact, sitting here today,  
19 that David printed his name on that page?

20 A No, I do not.

21 Q Okay.

22 MR. FEIDLER: I believe that's the only follow-ups  
23 I had.

24 MR. WHITE: Okay. I'll be very brief, just on  
25 that point.

1 FURTHER EXAMINATION

2 BY MR. WHITE:

3 Q Did you see much of David's handwriting growing up?

4 A Yeah, he would write. Yeah, I saw it. At home if he  
5 signs or sends a card, or that sort of thing. I see it  
6 that way. But you - yeah.

7 Q But you're not ---

8 A That way.

9 Q But you're not going to express an opinion one way or  
10 another whether this was actually his initials or  
11 signature, are you?

12 MR. FEIDLER: Objection. You can answer.

13 THE WITNESS: It does not, to me, appear -- I'm  
14 not sure whether he did this.

15 MR. WHITE: Okay. All right. That's all I have.  
16 Thank you.

17 MR. FEIDLER: Thank you.

18 (WHEREUPON, THE DEPOSITION CONCLUDED AT 1:07 P.M.)

19

20

21

22

23

24

25

CERTIFICATE

This is to certify that the foregoing deposition of MARGARET HOLMES, consisting of 131 pages, is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of Stenomask with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 4th day of April, 2018.

\_\_\_\_\_  
Jill Bishop Edwards, CVR-CM  
Certified Verbatim Reporter

Notary in and for the State of South Carolina  
My Commission Expires: July 14, 2020

Mt Pleasant Hospital  
Consultation  
10/16/2014

HOLMES, DAVID  
1428601201  
Tiffany E Richter DO  
Page 1

Patient DOB: 01/18/1949

REFERRING PHYSICIAN: Dr. Jason Euet.

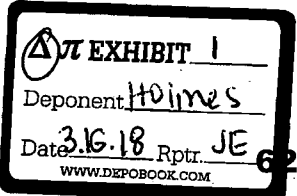
REASON FOR CONSULTATION: Complex decision making and options for medical treatment. The patient's capacity to make healthcare decisions today is fully dependent. He is not expected to regain capacity. The patient's healthcare surrogate is his sister, Margaret and Dorothy. He also has 2 brothers that live in Boston, who are in close communication with Margaret and Dorothy and also assist with decision making.

LIVING WILL PRIOR TO ADMISSION: No.

CURRENT CODE STATUS: Remains full code.

ASSESSMENT: This is a 65-year-old African-American male. He is status post out of hospital arrest after a choking incident. He is now with hypoxic ischemic encephalopathy with a very grim prognosis for any meaningful recovery. He is dependent on the ventilator. There is a question regarding prolonged ventilation versus compassionate withdrawal and also code status.

[Interdisciplinary family meeting was had with his sisters Margaret and Dorothy today, myself was present, also the palliative care social worker Laurie Lybrand and \_\_\_\_\_ nurse practitioner student.] We discussed their understanding of his current illness, his information was reviewed and all of their questions were answered. His sisters are very focused on his prehospital care and the events leading up to his arrest. [We discussed the patient's quality of life on prolonged ventilation with a very grim prognosis for any meaningful recovery and if this is what the patient would want for the remainder of his life.] They explained that they do believe that this was what the patient would want that he would not want to be removed from life support and allowed to die naturally. They explained that they are very religious family and that they believe that he could recover even if we believe that he could not. [We discussed the benefits and burden of tracheostomy and PEG tube and also the risks of prolonged ventilation with a trachea including infection and skin breakdown and discomfort.] They have agreed that they would want to go forward with these procedures and have him placed on long-term facility. We also discussed cardiopulmonary resuscitation and defibrillation at the time of cardiac arrest and they had not considered this and will discuss it further with their siblings.



Mt Pleasant Hospital  
Consultation  
10/16/2014

HOLMES, DAVID  
1428601201  
Tiffany E Richter DO  
Page 2

Patient DOB: 01/18/1949

**RECOMMENDATIONS:**

1. Family wishes to go forward with a trache and PEG and long-term placement discussed today with case management who will work on placement.
2. Family is considering a do not resuscitate order. We will continue to follow.

**HISTORY OF PRESENT ILLNESS:** This is a 65-year-old African-American male with history of bipolar disorder, schizophrenia and chronic tobacco abuse who presented today after EMS brought him in for cardiopulmonary arrest. He apparently lives in an assisted facility in McClellanville, South Carolina. He was in his normal state of health on several psychotropic drugs for his bipolar and schizophrenic diagnosis being treated by a psychiatrist. Apparently he had an episode of choking and during lunch, was unable to breathe. He had respiratory arrest. EMS was called. When they got there, he was unresponsive, apneic and in PEA. They cleared his airway of food bolus. CPR was started and he was intubated upon arrival. He regained spontaneous rhythm and has been in the intensive care unit since. According to critical care doctor, he still has cranial nerve reflexes, however, he has significant swelling on his EEG. He does not respond to any commands or withdraw to any stimuli.

**REVIEW OF SYSTEMS:** Unable to be obtained, patient is unresponsive on the ventilator.

**PAST MEDICAL HISTORY:** Bipolar disorder, schizophrenia, tobacco abuse.

**PAST SURGICAL HISTORY:** Unknown.

**ALLERGIES:** THEORASINE, HALDOL AND LITHIUM.

**HOME MEDICATIONS:** Clonazepam, clozapine, benztropine and Depakote.

**FAMILY HISTORY:** Unknown.

**SOCIAL HISTORY:** He is a smoker, 1-2 packs a day for most of his adult life. No drug use reported. He is a veteran, lives in assisted living facility in McClellanville, no recent travel.

**PHYSICAL EXAMINATION:** The patient is a thin male. He does appear to be chronically ill. He is unresponsive on the ventilator. HEENT: His eyes are

Mt Pleasant Hospital  
Consultation  
10/16/2014

HOLMES, DAVID  
1428601201  
Tiffany E Richter DO  
Page 3

Patient DOB: 01/18/1949

rolled back. They are anicteric. He does not follow any commands. He has an ET tube. NBCK: Supple. HEART: Regular rate and rhythm. LUNGS: Clear to auscultation. ABDOMEN: Soft, nontender, nondistended, normal bowel sounds. NEUROLOGIC: He has no response to noxious or physical stimuli. I do not notice any myoclonus or seizure activity.

CONCLUSION: Plan of care regarding his condition and preferences were discussed with his nurse, case management, family and his attending physician.

Total time spent on this visit 60 minutes. Total face-to-face time spent 45 minutes, greater than 50% of this time was spent on counseling and coordination of care.

Thank you for allowing our team to be involved in the care of this patient and his family.

Tiffany E Richter, DO  
TR: sn DD: 10/16/2014 15:22 TD: 10/16/2014 15:44 Job#: 330886  
DOC#: 433695

Authenticated by RICHTER-DO, TIFFANY E On 10/21/2014 08:25:54 PM

SIDE TWO  
(2)

[Patient Identifier]

MR#: 000106618 DOB: 01/18/49  
HOLMES, DAVID  
Mr Pleasant IPD 2108-01  
PHYS: HUET-MD, JASON DAN  
ACCT#: 14286-01201 10/13/14

Date  
Time

10/17/14

Delim/LL

10:15

pt's family met with Palliative Care team and would like to proceed with aggressive care

Te-95 57 17 96/63 100% PRVC 15/400/5 135%  
FIO<sub>2</sub> 1.2/1.2 Uap: 350, 470, 450

Intubated, RASS -4

148/109/118 97  
3.6 28/10

Medi  
Revised

& commensurate, never all 4 extra to them

CV's intact, & myocardial ischemia  
mitral, Peric

R.R. 8 ambly

CTI (B)

abd soft, NT, +MS&

g/c/c. Proc of/d/i

11  
10 188

Bx - (P)

Tcx - 11/6

(AP) 1. HIE - stable, with add liquefactive. CXR - RT/LL/Pric  
and Chemogram for myocardial ischemia in place, see above ASD  
ischemia

2. Cushing absent - & further episodes

3. Auto resp failure - due to resp arrest; Touch today

4. AKI - resolved

5. Constipation - Mivolan

6. Urination 11/6 PMA - A Abr. to Pericardium

7. Peph - hepatitis, SCS& 11/17/300

8. ECG - TPE @ 60ml/hr; PW; Prostat

9. 600 full circle

Spent ~ 35 min of C.C. time

10/17/14

Procedure Note

(2/0)

#6 trache placed percutaneous

& bronchogram assistance per

Dr Huett 5 complications

*[Handwritten signature]*  
J. Huett

(DO NOT WRITE BELOW THIS LINE)

Brown

PROGRESS RECORD

EXHIBIT 2  
Deponent Holmes  
Date 3.16.18 Rptr JR  
WWW.DEPOBOOK.COM

[Patient Identifier]

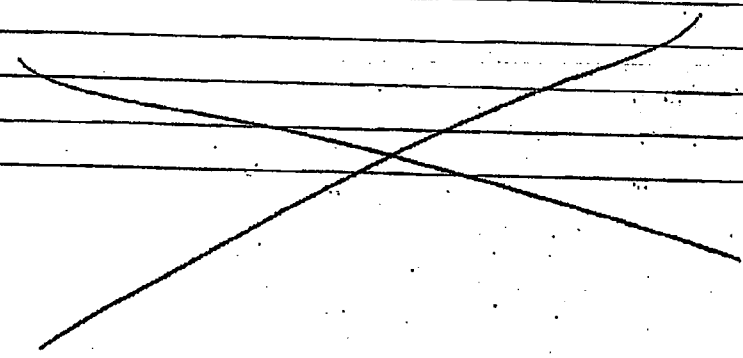
**PROGRESS RECORD**

MR#: 000106618 DOB: 01/18/49  
HOLMES, DAVID  
Mt Pleasant IPD 2106-01  
PHYS: HUET-MD, JASON DANIEL  
ACCT#: 14286-01201 10/13/14

Date/ Time 10/24/14 13:25

Family Conference was held today at approximately 13:00. Those present were: Taina Buck, CNO, Mary Dunay Case Management, Gretchen King, Risk Management, Dorothy Olenja Sister, and Margaret - sister. I, Taina discussed the purpose of the Power of Attorney with the family. I explained that according to the POA Mr. Bolas is the point person for all decisions. I also explained to the family that they can contest the POA and gave them a print out of resources they could contact should they decide to proceed. I further gave them a deadline of 5pm on Monday Oct. 27, 2014 to produce a legal document from the court stating they were going to contest. If they did not produce this documentation, we would honor Mr. Holmes POA and discontinue items he did not want as documented in the POA. I provided the family the opportunity to ask questions at which time Dorothy asked if we were competent health care providers to realize he had a mental illness. I did not answer this and reassured them we were providing the most appropriate care for their brother. At this point I provided them with a copy of the POA and the list of legal resources. At this point I also stressed that they could not restrict Mr. Bolas from seeing their brother. At this point they thanked us and the meeting ended. Dr. Huot has been updated on this conversation and is in agreement.

Taina Buck, CNO



08/06



EXHIBIT 3  
Deponent Holmes  
Date 3.16.18 Rptr JE  
WWW.DEPOBOOK.COM

# SOUTH CAROLINA HEALTH CARE POWER OF ATTORNEY

## 1. DESIGNATION OF HEALTH CARE AGENT

I, David Holmes Hereby appoint:

(Principal)

(Agent's Name) Benjamin Bowles, Caregiver

(Agent's Address) 9270 Hwy 17 N McClellanville, SC 29458

Telephone: home: \_\_\_\_\_ work: 843-887-4180 mobile: 843-~~887~~693-1514

as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

a. First Alternate Agent: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: home: \_\_\_\_\_ work: \_\_\_\_\_ mobile: \_\_\_\_\_

b. Second Alternate Agent: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: home: \_\_\_\_\_ work: \_\_\_\_\_ mobile: \_\_\_\_\_

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

## 2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.



### 3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Information Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

### 4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may   ; may not    consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

(1) \_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2)    DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) \_\_\_ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Item 7, (INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS):

(a)      GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(b) OH DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(c)      DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN ITEM 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on

this 17 day of March, 20 11. My current home address is:  
9270 Hwy 17 N McClellanville, SC

Principal's Signature: David Holmes

Print Name of Principal: David Holmes

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: LaSherrald Jamison Date: 3/17/2011  
Print Name: LaSherrald Jamison Telephone: 843/724-2965  
Address: 316 Calhoun St - Chas., SC 29401

Witness No. 2

Signature: Virginia A Drayton Date: 3/17/2011  
Print Name: Virginia A Drayton Telephone: 843-359-5781  
Address: 2800 Church St. Apt F4  
Georgetown, SC 29440

*(This portion of the document is optional and is not required to create a valid health care power of attorney.)*

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

The foregoing instrument was acknowledged before me by Principal on March 17, 20 11

Notary Public for South Carolina LaSherrald K Jamison

My Commission Expires: 2/10/2020



Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

### Discharge Summary

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 12/23/14  
Attending Doctor: Linh Dastous, MD

Account Number: H02434124  
Unit Number: D047280  
Discharge Date:

DATE OF ADMISSION: 12/23/2014

DATE OF ANTICIPATED DISCHARGE: 02/17/2015

#### DISCHARGE DIAGNOSES:

1. Anoxic brain injury with chronic vegetative state.
2. Pneumonia, status post treatment, possible aspiration.
3. Atelectasis.
4. UTI, Citrobacter, status post treatment.
5. Upper extremity DVT.
6. Severe protein calorie malnutrition.
7. Multiple decubitus ulcers that were present on admission.
8. History of nonsustained SVT.

CONSULTATIONS: Dr. Stock, with Infectious Disease. Cardiology, with Dr. Schultz.  
Pulmonology, Dr. Manos.

PROCEDURES PERFORMED: None.

HOSPITAL COURSE: Patient was originally admitted on 12/23, please refer to admission notes for full details. Initially, he was admitted and started on antibiotics. Patient does have a history of a severe anoxic brain injury, secondary to asphyxiation, and had been treated at a hospital in Charleston. The patient subsequently had a trach placed and patient did have a history of MRSA and Serratia tracheobronchitis while there. The patient was admitted and noted to have a culture positive for MRSA and was started on antibiotics. Patient was eventually transitioned to room air via the trach; however, patient has had a somewhat prolonged course due to significant medical conditions. Patient was also noted to have a right upper extremity DVT and has been started on Coumadin. Patient was also noted to have over 23 decubitus ulcers that were being treated aggressively by nursing and wound care. These were confirmed to be present on admission. Patient also received broad-spectrum antibiotics for pneumonia and a urinary tract infection. Patient did complete an appropriate course for his UTI with citrobacter, and was also treated for yeast in the urine. Patient continued to have some low-grade fevers while here, and patient has been continually followed by Infectious Disease. They had recommended monitor off antibiotics after he had completed appropriate courses of antibiotics for his PNA and UTI. ID has continued to follow the patient. There was no clear evidence of a pneumonia; however, they feel that the fevers likely represent atelectasis and/or chronic aspiration. Patient, due to his mental status, cannot participate with aggressive pulmonary toilet, but patient is on aspiration precautions. Infectious Disease did not feel the recent low-grade fever warranted any treatment.

We have been discussing with the family and had ethics committee regarding whether continuation of care should be provided. Family has had many conversations with different physicians regarding our recommendations, and at this point they do not want to back off. They would like to continue with aggressive care; however, reportedly, they will consider making him a DNR prior to admission to Bay View. In

|                                      |
|--------------------------------------|
| EXHIBIT 5                            |
| Deponent: <u>Holmes</u>              |
| Date: <u>3.16.15</u> Rptr: <u>JE</u> |
| WWW.DEPOBOOK.COM                     |

CC: Christopher Walker, MD

1 of 3

638

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

**Discharge Summary**

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 12/23/14  
Attending Doctor: Linh Dastous, MD

Account Number: H02434124  
Unit Number: D047280  
Discharge Date:

regards to his decubitus ulcers, he has been treated with aggressive local wound care. Will need to continue with nutrition and frequent turning.

In regards to his upper extremity DVT, he is currently on Coumadin. His INR is 1.66 today. We will increase his Coumadin dosing to 7 mg and continue to monitor his INR. This can be further monitored at Bay View upon arrival. Patient will continue with tube feeds. He does have significant protein calorie malnutrition, and will need to continue with this while there. Patient was also noted to have nonsustained ventricular tachycardia while here and was seen by Cardiology, and is currently being treated with beta blocker. Current dosing 25 mg p.o. q.6.

Patient has also been seen by Physical Therapy due to his significant contractures. They have recommended passive ROM exercises and there were demonstrated to the family as well.

CONDITION: Stable.

FOLLOWUP PLANS: Follow with primary care physician at Bay View Nursing Home. Will need repeat INR to be obtained within 1 to 2 days and have his Coumadin levels adjusted. Currently he is on 7 mg daily.

DISCHARGE MEDICATIONS: Please see med rec, but should include:

1. Tylenol 650 p.o. q.6 p.r.n. pain or fever.
2. Albuterol inhaler every 2 hours p.r.n. shortness of breath.
3. Artificial Tears b.i.d. in both eyes.
4. Calcium carbonate 500 mg p.o. b.i.d. with meals.
5. Klonopin 0.5 mg 2 b.i.d.
6. Pepcid 20 mg 2 b.i.d.
7. Gentamicin 2 drops in the right eye every 6 hours.
8. Guaifenesin 600 mg 2 b.i.d.
9. Hydrogen peroxide 240 mL topically p.r.n. to clean the trach.
10. Bacid 1 cap 2 b.i.d.
11. Lopressor 25 mg tube q.6.
12. Scopolamine patch topically every 72 hours.
13. Depakene 250 mg 2 b.i.d.
14. Coumadin 7 mg 2 b.i.d.

This overall discharge process took greater than 45 minutes.

Dictated By: Christopher Walker, MD  
Dictated Date and Time: 02/16/15 1728  
Dictating Provider E-Sign: <Electronically signed by Christopher Walker, MD>  
Dictating Provider E-Sign Date and Time: 02/17/15 0825

Transcriptionist Initials: MHS  
Transcription Date and Time: 02/16/15 2235

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

**Discharge Summary**

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 12/23/14  
Attending Doctor: Linh Dastous, MD

Account Number: H02434124  
Unit Number: D047280  
Discharge Date:

Report Number: 0216-0404

This Document has been reviewed  
Co-Sign Physician E-Sign:  
Cos-Sign Date and Time:

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, SC 29902

Z Care Coordination Archive

Page: 1  
Date: 03/19/15 02:02

**HOLMES, DAVID**

Fac: Beaufort Memorial Hospital  
66 M 01/18/1949

Loc: 3RD Floor (Medical)

Med Rec Num: D047280

Bed: 328-1

Visit: H02434124

Attending: Chris L Walker MD

Reg Date: 12/23/14

Reason: FAST HEART RATE, PNA

**Care Coordinator Notes**

02/17/15 13:26 Care Coordination Note by Turbeville, Ashley N RN/CC

CC Note:

Patient discharged to Bay View Manor. CC faxed all discharge paperwork to Rebecca at Bay View Manor. Patient transported via personal care. RN called report prior to transfer. CC spoke with patient sister Dorothy Olenja 864-395-1930 to notify of discharge. No further needs at this time.

Initialized on 02/17/15 13:26 - END OF NOTE

02/12/15 14:07 Care Coordination Note by Turbeville, Ashley N RN/CC

Addendum entered by Turbeville, Ashley N, RN 02/13/15 15:06:

Jeanne from Bay View Manor in to assess patient for possible admission. Karen Singleton will contact Carrie Confare, CC Director, with admission decision on Monday 2/16/15.

Original Note:

CC Note:

Karen Singleton from Bay View Manor is coming to BMH to evaluate patient in am for possible admission. CC will follow up once evaluation complete.

Initialized on 02/12/15 14:07 - END OF NOTE

02/11/15 15:19 Care Coordination Note by Confare, Carrie J SS/CC

Addendum entered by Turbeville, Ashley N, RN 02/13/15 15:15:

CC left VM for patient sister Dorothy informing her that Bay View can to evaluate patient for possible admission.

Original Note:

DISCHARGE PLANNING NOTE 2/11/15

Care Coordination Director received email from Teddie, Administrator at Bayview Nursing home, who states that her DON, Karen will be over tomorrow to evaluate patient for possible placement at Bayview. Teddie and Karen are at a conference out of town and will return to work tomorrow so Karen will call then to let CC know when she will be over to see patient. If she needs to speak to other disciplines that have been involved in patient's case, CC will make those arrangements.

CC called patient's sister/POA, Dorothy Olenja, to alert her to above, she was happy to hear that Bayview may take patient back however she is out of town and won't be able to be at the hospital tomorrow so she asked CC to call her other sister, Margaret Holmes, to let her know when Karen would be coming to see patient.

CC will follow up with Bayview staff and assist with placement efforts.

**HOLMES, DAVID**Fac: Beaufort Memorial Hospital  
66 M 01/18/1949

Loc: 3RD Floor (Medical)

Med Rec Num: D047280

Bed: 328-1

Visit: H02434124

Care Coordinator Notes - Continued

**NHC Facilities do not accept Medicaid**  
**Ridgeland Nursing Center--No Medicaid Beds, No Trach's**  
**Uni-Health Post Acute Care Oakwood--No Medicaid Bed, No Trach's**  
**Veterans Victory House--VA Only**

CC will follow up and continue to look for placement.

Initialized on 01/26/15 13:57 - END OF NOTE

01/16/15 13:01 Care Coordination Note by Hitchcox, Peggy B SS/CC

Addendum entered by Hitchcox, Peggy B, SS/CC 01/16/15 14:46:

Please note that Carrie Confare, LBSW, Dir of Care Coordination also attended. And that pt's siter Margaret Holmes has visited pt in the evenings. If she cannot make a day-time appt to meet with us, we will arrange an evening or weekend appointment to make it convenient for her schedule. -MBH

Original Note:

#### ETHICS COMMITTEE CONSULT

Members Present: M. B. "Peggy" Hitchcox, LMSW, Facilitator; Dr. Kurt Gambla, DO, CMO; Rita Brown, LISW, Sr Pt Representative; Diane Razo, RN, ICU/PCU Dept Dir; Daniel Mock, Sr Dir Cardiopulmonary & Imaging

This pt is a 65 yo black male who was referred by Dr. Johnston, Hospitalist, due to family disagreement with the medical recommendations for DNR and palliative or hospice care. The family want pt to be a full code and under all active Tx possible. Family can't to exhibit a lack of understanding &/or acceptance of pt's current status & Px, mentioning such things as the pt needs to eat more to regain his strength, etc. His sister Dorothy Olenja is his POA, lives in Greenville & works in Atlanta, and another sister Margaret Holmes is also listed as a contact person. Facilitator was unable to speak w/ either sister prior to this mtg; today, Ms. Olenja's VM remains full, and a message was left on Ms. Holmes' VM. However, the CC's and physicians have been able to speak w/ them by phone. It does not appear that any family member has visited pt during this hospitalization except at initial admission. Family is not opposed to continuing nursing home placement, but do want him in the Low Country area rather than Upstate. Care Coordination has diligently sought placement in the entire surrounding area to no avail, no facility will accept this pt. BV refused to take pt back when he was medically discharged from acute care, although he had returned to his baseline status.

This pt was admitted to BMH late 12/23/14 from Bay View Manor due to respiratory distress. Currently is in a persistent vegetative state with trach (no longer vent dependent), PEG tube-feedings, and multiple decubiti/wounds. Prior to this hospitalization, there are remote records at BMH for 2003 4. Pt came to BV from a hospital in Charleston, where he had been treated for asphyxiation w/ resultant hypoxic brain injury. He also carries a Dx of schizophrenia and bipolar disorder.

Pt's current Hospitalist Dr. Dingus spoke w/ this Facilitator and also made written recommendations for his care: consult Infectious Ds to see if there is any possibility of addressing in a curative fashion pt's infection(s) which have not thus far responded to Tx. An 8-14 day course of IV ABx has been recommended by ID Dr. Stock. Pulmonology Dr. Manos has also been consulted.

The Committee discussed pt's Hx and current status as per above. All were in agreement w/ the recommendations of the various physician's for DNR and palliative care or hospice; as an inpt if placement cannot be found. At the conclusion of this discussion, Dr. Gambla attempted to reach pt's POA Ms. Olenja by his personal cell phone and was successful. Dr. Gambla reviewed the pt's current status & Px, discussed what constitutes palliative care and DNR, reassured sister/POA that neither DNR nor palliative care means that stop taking care of the pt or caring about him as a person. POA advised Dr. Gambla that she could make no decisions w/out consulting the rest of his family, the other sister and also a niece in Boston who has just graduated from Physician's Assistant school. Dr. Gambla requested that when the family have had a chance to talk, that

**HOLMES, DAVID**

Fac: Beaufort Memorial Hospital  
66 M 01/18/1949

Loc: 3RD Floor (Medical)  
Med Rec Num: D047280

Bed: 328-1  
Visit: H02434124

## Care Coordinator Notes - Continued

they make arrangements to come here to discuss matters face-to-face and assured POA that we would work w/ them to be available at a time convenient for them when they come.

Further discussion was held among the Committee when Dr. Gambia reported the content of his conversation w/ the POA. CMS rules do not require the pt/family to accept a bed further than a 50 mi radius of the hospital. However, if a placement were to be found w/in that radius and the family refuse it, pt's care would no longer be covered by Medicare/Medicaid. We also want to be doubly sure whether the POA incl healthcare decision-making as well as financial authority. However, even if not, under the SC Adult Healthcare Consent Act, the family may still make healthcare decisions for an incapacitated pt. While a pt can be made DNR w/out the family's consent and also futile care is not required to be provided, few to no facilities &/or physicians will institute DNR or discontinuation of care over the family's objections, unless the pt himself left clear instructions in a format recognized by law. However, if the family can't to refuse the medical recommendations made in the pt's best interest, legal advice can be sought to have the family's decision-making ability set aside and another guardian appointed by the Court who will receive the information and make an independent decision.

While the Committee concurs fully w/ the medical recommendations of pt's physicians, we want to make every effort to engage the family and have them come to an agreement about what is in the pt's best interests. Therefore, we will await the family to discuss this matter among themselves, get back w/ us, and come here to meet face-to-face to come to a decision. If not, we will pass the case along to the BMH Risk Manager for consideration of other actions as outlined above.

M. B. "Peggy" Hitchcox, LMSW, ACSW, CASWSC  
Ethics Committee Facilitator

Initialized on 01/16/15 13:01 - END OF NOTE

01/14/15 14:07 Care Coordination Note by Turbeville, Ashley N RN/CC

## CC Note:

CC spoke with patient sister Dorothy re: placement options. CC notified Dorothy that the places in Savannah both did not offer patient a bed because they were unable to handle the amount of care that he required. Dorothy wanted to talk to her sister and decide on other options. CC also spoke with her about home placement and she wanted info about care givers. CC left caregiver list at bedside for her sister Margaret. CC will follow up with her about other placement options. No further needs at this time.

Initialized on 01/14/15 14:07 - END OF NOTE

01/13/15 13:54 Care Coordination Note by Turbeville, Ashley N RN/CC

Addendum entered by Turbeville, Ashley N, RN 01/14/15 10:20:

CC spoke with Monique at PruittHealth Savannah and they are unable to make a bed offer at this time. No further needs at this time.

## Original Note:

## CC Note:

CC spoke with Lucinda at Pruitt Health In Savannah and they requested add'l information. CC faxed the requested info. CC will follow up.

Initialized on 01/13/15 13:54 - END OF NOTE

01/12/15 14:59 Care Coordination Note by Turbeville, Ashley N RN/CC

## CC Note:

CONFIDENTIAL: HIPAA PROTECTED INFORMATION

### ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident) and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be. (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

**Admission and Consent to Treat:** The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

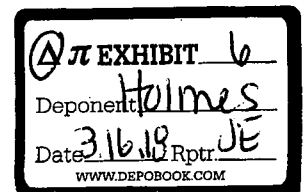
**Non-Discrimination Statement:** This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

**Physician's Care:** The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

**Hospital Transfers:** If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

*MT* Initial



Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

**Hospitalization:** If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

**Hospital Services:** The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.

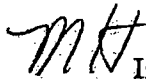
(See Authorizations and Acknowledgements to enter selection)

**Refuse Treatment:** The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

**Room Transfers:** The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

**Discharge Arrangements:** If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

**Right to Leave Facility/Duration of Agreement:** The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

 Initial

Resident agrees to pay accrued charges up to and including the day of discharge. Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.

**Refunds:** If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds\* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

**Personal Needs Account:** The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

**Basic Charges:** The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of \$ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

- a. Room and board
- b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
- c. Linens bedding
- d. Social Service consultations by the Facility Social Service Department
- e. Oxygen on an emergency basis
- f. Facility based Personal Needs Account for personal funds (if authorized)
- g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
- h. Dietitian consultation and services
- i. Therapeutic recreational activities
- j. Pastoral care
- k. Routine personal care Items

 Initial

This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10<sup>th</sup> of every month):

- a. All resource monies as specified by the Department of Social Services
- b. Adjustment as specified by the State
- c. Previous balances prior to Medicaid approval
- d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

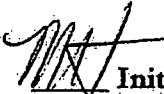
**Supplemental Charges:** Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

**\*Diagnostic Consultant and Therapeutic Services:** The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

**\*Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitters:** The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

**\*Ambulance and Transportation Services:** The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

**\*Medical Supplies:** The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other than transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

 Initial

**\*Pharmacy Services:** Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

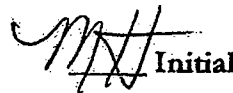
**Personal Items and Services:** The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

**Payment:** The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28<sup>th</sup> of the month for the upcoming month and payment is due on the 10<sup>th</sup> of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

**Interest and Attorney's Fees:** The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

**Assignment of Benefits:** The Resident authorizes the facility to receive benefit payments directly from Medicare, Medicaid, or other party insurance company.  
(Signature required on Authorization for Assignments of Benefits)

**Failure of Others to Pay:** If any Resident charges are not paid for by insurance, anyone or any agency, the Resident agrees to pay them.

 Initial

**Discontinuance of Medicaid:** If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid:** If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.


**Failure to Pay the Facility's Bill:** The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1<sup>st</sup> of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills:** The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone:** Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

**Valuables:** The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see that misplaced belongings are recovered, the Facility is not responsible for replacing lost or stolen cell phones, computerized person assistance devices, iPods, radio, hearing aids, eyeglasses or dentures/partials (including, but not limited to the fore mentioned).

**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall

 Initial

notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information:** The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification:** The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs/ Video Technology:** The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification:** The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.

The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.

The Resident shall defend, indemnify and hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person

 Initial

or the property of any person or entity (including the Facility).

The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

**Liability:** The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

**Compliance with Facility Rules and Regulations:** The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

**Advanced Directives:** The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

**Liability Insurance:** This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

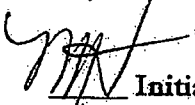
**Notice:** Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

**Facility:**  
11 Todd Drive  
Beaufort SC 29902

**Resident:**

**Governing Law:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina

**Venue:** In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

 Initial

**Waiver of Jury Trial: (Please read carefully)**

Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

**Attorney's Fees: (Please read carefully)**

In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

**Capacity:** This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

**Severability:** The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

**Assignability: (Please read carefully)**

This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

**Withdrawal Period:**

Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

 Initial

**Guarantee:** By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in\* Beaufort County, South Carolina

**Acknowledgement:** By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.

That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits .

**Entire Agreement:** This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter. Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

 Initial

David Holmes

Admit Date 02/17/2015

**Agreement Modifications/Changes:** From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

**Immoral/ Illegal review:** As dictated by state and/or federal law a review for specific activity may be conducted (I.e. sexual predator). I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL:** If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause initial.

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By:

*Rebecca Jensen*

2/17/15

Signature of Facility Representative

Date

**David Holmes**

Signature of Patient/Resident

Date

Witness

Date

Witness

Date

Responsible Party

Date

*Maya Holmes*

2/17/15

Signature of Responsible Party

Date

Responsible Party is acting as:

- \_\_\_\_\_ Conservator
- \_\_\_\_\_ Power of Attorney
- \_\_\_\_\_ Relative (state relationship)
- \_\_\_\_\_ Other: \_\_\_\_\_

Billing Address:

*If the Resident signs with an "x" there must be two (2) witnesses.*

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT  
(READ CAREFULLY)**

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by BAYVIEW MANOR LLC (the "Facility") and David Holmes (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

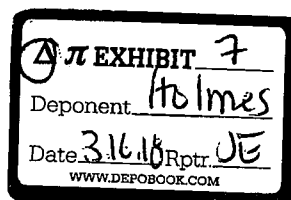
The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, ~~violations of any right granted to the Resident by law or by the Resident Admission Agreement~~, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

Any notice required pursuant to this Arbitration Agreement shall be deemed given (i) upon hand delivery; or (ii) three (3) days after deposit in U.S. mail via certified mail, return receipt requested.



This Arbitration Agreement is effective as of the date of admission of the Resident to the Facility. \_\_\_\_\_ (resident's initials).

The Resident understands that (1) he/she has the right to seek legal counsel concerning this Arbitration Agreement, (2) the execution of this Arbitration Agreement is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice given to the Facility by the Resident within thirty (30) days of signature. If not rescinded within thirty (30) days, this Arbitration Agreement shall remain in effect for all care and services rendered at the Facility, even if such care and services are rendered following the Resident's discharge and readmission to the Facility.

**THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND A JURY.**

\_\_\_\_\_  
Resident/Representative Signature / Date

\_\_\_\_\_  
Facility's Authority Agent / Date

\_\_\_\_\_  
Resident/Representative Printed Name

\_\_\_\_\_  
Facility's Authorized Agent Printed Name

BTCM/237892v1



EXHIBIT 8  
Deponent Holmes  
Date 3.16.18 Rpt JE  
WWW.DEPBOOK.COM



Ⓐ EXHIBIT 9  
Deponent Holmes  
Date 3-16-18 Rpt 658  
WWW.DEPONBOX.COM





Ⓐ J. EXHIBIT 10  
Deponent Holmes  
Date 3.16.18 JE  
659  
WWW.DEPOBOX.COM

EXHIBIT 10  
Deponent: Holmes  
Date: 3/6/18 Rptr: JRG  
WWW.DEPONCOOL.COM



AT EXHIBIT 12  
Deponent: Holmes  
Date: 3.16.18  
Page: 661  
WWW.DEPONIX.COM

 **EXHIBIT 13**  
Deponent **D. Mes**  
Date **3.16.08** Rpt. **602**  
[WWW.DEPORBOOK.COM](http://WWW.DEPORBOOK.COM)

 EXHIBIT 14  
Deponent *HD/MS*  
Date *3/16/13* Rpt *663*  
WWW.DEPOBOOK.COM



Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

**Hospitalist Discharge Summary**

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 03/29/15  
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449  
Unit Number: D047280  
Discharge Date: 05/29/15

was on IV Zosyn which was discontinued on April 11, 2015 after finishing a 14 day course. He has a chest tube in place and is being followed by pulmonary service. He remained severely hypoalbuminemic although there was some response with increase in serum albumin from <0.1 to 1.1 and prealbumin from 5.4 to 7.3. He is on maximal protein supplementation. Over the last 48 hours he has had on and off fevers. Blood cultures have been negative. He remains with pulmonary infiltrates on CXR and extensive decubitus ulcers. His sister/MPOA Dorothy was kept updated of his condition and is aware of his extremely poor prognosis.

**Hospital course: 04/16-04/26 (Dr. Hawes)**

The patient was followed by Dr. Botse then Dr. Rodriguez. He has remained on the floor. He continues on cefepime and vanc for pulmonary infiltrates. His CXR was looking worse and BNP was elevated so some superimposed volume overload was suspected. Echo shows good EF but he is hypoalbuminemic and was receiving IVF for hypernatremia. His fluids were stopped and he was given several doses of lasix which did decrease his FIO2 requirement somewhat. But sodium began to rise again despite increasing free water flushes so he will get 500cc of hypotonic fluid and will increase free water flushes again.

It was thought he might have some autonomic dysfunction so he was started on midodrine which has helped. He did have an ACTH stim test but at the time he was on a trial of hydrocortisone. He is now off that and BP is stable. He could now have an ACTH stim test so will order for the morning.

Wound care has been diligent and as of last Monday's wound care nurse evaluation, all wounds were stable with no deterioration. Prealbumin has increased somewhat. He continues on tube feeds with maximum protein intake.

Family rescinded DNR so he is now full code. Sister Margaret updated today.

**Hospital course: 4/27/15-5/1/15 (Dr. Zeccola)**

Patient had his chest tube successfully removed and completed his course of IV antibiotics and had been doing relatively well for several days. However over the past few days the patient has started to deteriorate somewhat. He remains hypotensive and has started to spike fevers and tachycardia. Some purulent drainage was noted around his subclavian central line. This was removed and the tip was cultured and is so far grown nothing. He has been restarted on IV vancomycin and cefepime. Blood and urine cultures were repeated and found to be negative. His sputum culture is showing heavy growth of gram-negative rods. His chest x-ray actually shows some improvement of the infiltrates. His respirations have become very shallow and tachypneic. His prognosis remains very poor. He remains a full code so he may require transfer at some point to PCU or Intensive Care Unit depending on his clinical course.

I have updated the patient's sister/power of attorney Dorothy today about his decline. She reiterates that she wants everything done.

CC: James Zeccola, MD

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

### Hospitalist Discharge Summary

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 03/29/15  
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449  
Unit Number: D047280  
Discharge Date: 05/29/15

#### Hospital course: 5/2/15 - 5/8/15 (Dr. Walker)

Patient remained in continuous state. He was transferred to the PCU and sputum culture was growing acinetobacter and his antibiotics were adjusted to ceftaz and inhale tobramycin. Patient actually was in stabilizing and we are considering transfer back to the floor however he became more tachypneic and repeat chest x-ray revealed fluid overload. He was given a dose of Lasix and albumin with some improvement and volume overload. Patient is also having residuals and tube feed and subsequently aspirated and tube feeds were held. Due to the aspiration and relative hypotension he was transferred to the Intensive Care Unit. PICC line was going to be placed however this could not be done because of contractures. I have asked anesthesia to attempt a central line today and have received consent from Dorothy, the power of attorney. She met with the physician last night with concerns about him being on Klonopin and Depakote. Apparently he was on this previously for bipolar disorder and review records indicate this was on his MAR from outside facility when he was admitted in December of last year. This was stopped last night at her request. She has been thoroughly updated today. Overall prognosis still remains very poor but family wants everything to be done. Will need to give Lasix albumin combination again today. Have discussed with critical care as well.

#### Hospital Course: 5/9/15 - 5/15/15 (Dr. Zeccola)

His respiratory status started to improve somewhat and he was stabilized off the ventilator and subsequently transferred back to the floor. Since then he has remained in his debilitated state with severe bilateral lung infiltrates. He is maintaining adequate saturations however today he is starting to have some tachypnea. His wounds are not necessarily getting worse but are certainly not getting any better. He had been tolerating his feeds without any residuals however today there seems to have been an issue and he may have aspirated again. Repeat chest x-ray today shows the terrible bilateral infiltrates again without much significant change. However a close eye should be kept on his respiratory and overall status. He remains a full code at this point. I have talked to the patient's power of attorney Dorothy today and updated her. There is still no consideration of any comfort measures even though this has been recommended on multiple occasions. He remains very high risk for continued aspiration, respiratory compromise and clinical deterioration.

#### Hospital Course: 5/17-5/24/15 (Dr. Hawes)

Sunday morning the 17th I was contacted by the PCU for tracheal bleeding that began during the night after tracheal suctioning. The patient's blood pressure was on the low side and blood gas showed some CO2 retention. Hemoglobin was 7.8. He was transferred to the ICU and given one unit of blood plus IVF. Dr. Manos and Dr. Christian were consulted and both came to see the patient that morning. His anticoagulation for DVT prophylaxis was discontinued. Both Dr. Manos and Dr. Christian felt the bleeding would stop spontaneously which it did. The patient was placed on the ventilator to treat his CO2 retention and he has remained on the ventilator since then. His CXR showed worsening consolidation consistent with worsening pneumonia. His BP was low despite IVF and one unit of blood so he was started on levophed. His WBC was elevated so sepsis was suspected and he was started on Merrem. His creatinine on the 15th was 1.0 which was slightly elevated for him. His urine output also started to fall off on the 16th. By the 17th his creat was 1.6 which was definitely elevated for him.

CC: James Zeccola, MD

3 of 6

Beaufort Memorial Hospital  
955 Ribaut Road.  
Beaufort, South Carolina 29902

**Hospitalist Discharge Summary**

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 03/29/15  
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449  
Unit Number: D047280  
Discharge Date: 05/29/15

His vancomycin was discontinued as it can be nephrotoxic. Urine eosinophils were negative (he had been on cefepime). Imaging did not show obstruction of the kidneys. Nephrology was consulted for acute oliguric renal failure. He has remained oliguric despite high dose bumex and subsequently lasix drip. The most likely diagnosis is ATN secondary to poor renal perfusion from sepsis. He was pancultured. The sources are likely the hip decubitus that is nonhealing and growing two new GNR's sensitive to Merrem. He is also growing Moraxella in sputum and CXR continues to worsen every day. He required second pressor (phenylephrine) and is now on maximum doses of both pressors. He has continued to decline despite maximum support. Dr. Adari did not want to initiate dialysis because of two pressors and hypotension. There was no acute indication such as hyperkalemia or acidosis. His volume did become a problem as he remained oliguric and did not respond to lasix drip. On the 22nd Dr. Hasaan covering for nephrology recommended an arterial line since BP's were in the 50's and she wanted to know if these readings were valid. An arterial line was placed by Dr. Spearman and did verify BP in the 50's. The main indication for dialysis at that time was volume removal. Family continued to want full support including dialysis. They were aware that dialysis might cause death but they knew that death was certain without it. Therefore Dr. Mansker was consulted for dialysis access placement. The patient had developed coagulopathy along with sepsis so before line placement he received vitamin K and two units of FFP. Line placement was unsuccessful and Dr. Mansker did not feel it was safe or in patient's best interest to attempt placement in another location. The patient did lose blood during the procedure. Therefore the patient has not received dialysis. The family knows that death is certain but the patient is still a full code per their request. He remains on two pressors, antibiotics, lasix drip. Fentanyl patch was added for pain. He has tremendous anasarca and evidence for fluid overload. He is off clinimex as he cannot tolerate the added volume. He is off tube feeds as he developed coffee ground emesis so had NG placed to LIS. He was started on protonix at that time.

His pulmonary status has deteriorated. Mid week Dr. Manos did a thoracentesis on the right for a pleural effusion that was exudative but not empyema. He did this to attempt to improve pulmonary status but it did not make much difference. His pulmonary consolidation continued to worsen despite aggressive pulmonary toilet and antibiotics. He was not acidotic until the 22nd when he developed a significant respiratory acidosis that has not been able to be corrected despite Dr. Manos' best efforts with ventilator adjustment.

It is not expected that the patient will survive for much longer. His pressure remains in the 50's and his heart rate is starting to decline. Pulmonary and renal failure continue to worsen. Family updated daily. There was a request from their lawyer not to discuss code status and comfort care.

**Hospital Course: 5/25/15 - 5/29/15 (Dr. Zeccola)**

The patient's status continued to deteriorate over the next 5 days. He was remarkably edematous from head to toe. His renal function was deteriorating and he was completely oliguric. His blood pressure remained in the 40s despite being on 2 pressor agents. His respiratory status deteriorated due to fluid overload and overwhelming pneumonia. This fluid overload did not respond to Lasix drip. He was coagulopathic with elevated INR and had coffee ground material suctioning from his NG tube. He had frothy bloody material from his mouth and ET tube. He became hypothermic with

CC: James Zeccola, MD

4 of 6

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

**Hospitalist Discharge Summary**

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 03/29/15  
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449  
Unit Number: D047280  
Discharge Date: 05/29/15

temperatures in the low 90s Fahrenheit. He was clearly suffering from overwhelming severe sepsis with shock and multiorgan failure with no response to aggressive therapy.

Multiple attempts were made to have open discussions with the patient's power of attorney/sister Dorothy about his deteriorating condition. During these conversations she remained fixated on the fact that Mr. Holmes was not being fed or given any IV fluids and we were thus "starving him and dehydrating him" and she demanded that we feed and hydrate him. I attempted multiple times through multiple explanations to explain to her that he could not be fed through the NG tube because his bowel is not functioning from edema and he also has a gastrointestinal bleed. He is also at extreme risk for aspiration which another insult to his lungs would certainly cause further deterioration. All those things being said, attempting to feed him was completely inappropriate. As for providing him with hydration as stated above the patient was suffering from severe fluid overload with fluid literally weeping from his face and gurgling in his lungs. Adding exogenous fluid to his already overloaded body was completely inappropriate as well. Dorothy could not accept this answer and continued to demand that we feed him. Dr. Gambla was actively involved in the case and spoke with her multiple times as well to little avail.

On May 29, 2015 his condition deteriorated to the point that his heart rate started to drop and a pulse became undetectable. A CODE BLUE was called and he was found to be in PEA and the appropriate protocols were followed and he returned to spontaneous circulation within about 15 minutes. The family including power of attorney Dorothy was kept up-to-date on what was going on.

Throughout that evening he proceeded to have 3 additional code blues with appropriate resuscitation measures taken and he finally expired at 22:48 after an unsuccessful resuscitation effort. The family was contacted at that time. Appropriate postmortem measures were taken.

**Assessment and Plan:**

1. Severe sepsis with shock and multiorgan failure
2. Acute renal failure: oliguric, secondary to ATN
3. Acute on chronic respiratory failure with severe CO2 retention and acidosis
4. Severe volume overload with diffuse edema and pleural effusions
5. Hematologic failure: Anemia, thrombocytopenia
6. Recurrent aspiration pneumonia
7. Extensive decubiti ulcers
8. Gastrointestinal failure
9. Neurologic deterioration
10. Hypothermia
11. Severe protein-calorie malnutrition
12. Severe anoxic encephalopathy
13. Cardiac arrest, status post for resuscitation attempts

CC: James Zeccola, MD

5 of 6

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, South Carolina 29902

**Hospitalist Discharge Summary**

Patient Name: HOLMES, DAVID  
Date of Birth: 01/18/1949  
Admit Date: 03/29/15  
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449  
Unit Number: D047280  
Discharge Date: 05/29/15

**Plan:**

-Postmortem care appropriately performed

**Discharge Medications:**

**Condition at Discharge:** Expired

**Discharge Instructions:**

None, patient expired

**Preliminary Cause of Death:** severe sepsis with shock and multiorgan failure, acute renal failure

**Time Spent:** 45 minutes

Dictated By: James Zeccola, MD

Dictated Date and Time: 06/02/15 1717

Dictating Provider E-Sign: <Electronically signed by James Zeccola, MD>

Dictating Provider E-Sign Date and Time: 06/02/15 1751

Transcribed Electronically: Physician Documentation

Transcribed Electronically Date and Time: 06/02/15 1717

Report Number: 0602-0290

Co-Sign Physician E-Sign:

Co-Sign Date and Time:

Beaufort Memorial Hospital  
955 Ribaut Road  
Beaufort, SC 29902

2 Care Coordination Archive

Page: 1  
Date: 06/03/15 00:55

HOLMES, DAVID

Fac: Beaufort Memorial Hospital  
66 M 01/18/1949

Loc: Intensive Care Unit

Med Rec Num: D047280

Bed: ICU-1

Visit: H02481449

Reg Date: 03/29/15

Attending: MARY L HAWES

Reason: SEPSIS

**Care Coordinator Notes**

05/27/15 10:08 Care Coordination Note by Confare, Carrie J SS/CC  
CARE COORDINATION NOTE 5/27/15

Care Coordination Director received email from CC Casey Stroncheck that BMH Nursing Supervisor, Janice Bristow, received a phone call from Union County DSS, Lori Sanders (864-424-0227 ext. 135) stating that she wanted a return call -- no additional details given.

CC Director called and left Ms. Sanders a voicemail 5/26 @ 1338 and again 5/27 @ 0856 asking her to call CC back either on office phone # or cell phone # - will wait to hear from her to ascertain what is needed, will follow.

Initialized on 05/27/15 10:08 - END OF NOTE

05/13/15 11:11 Care Coordination Note by Turbeville, Ashley N RN/CC

CC Note:

CC spoke with Lucy at Bay View Manor. Lucy told CC that there is a possibility that Bay View Manor will not accept patient back when ready for discharge. CC faxed update progress notes and nurses notes as requested. CC will continue to follow as needed.

Initialized on 05/13/15 11:11 - END OF NOTE

05/05/15 13:19 Care Coordination Note by Stroncheck, Casey R SS/CC

CC progress note: CC faxed updated information to Lucy at Bay View. Patient is not ready for return to Bay View but CC will alert when patient is stable for discharge.

Initialized on 05/05/15 13:19 - END OF NOTE

05/01/15 07:30 Care Coordination Note by Boyne, Frances R SS/CC

Re: return to Bayview Manor SNF:

Nurse reports that family is not opposed to patient returning to Bayview Manor SNF, and they will accept him.

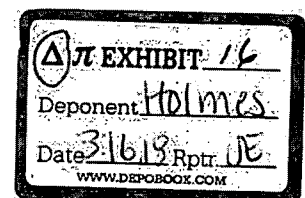
Initialized on 05/01/15 07:30 - END OF NOTE

04/30/15 14:49 Care Coordination Note by Boyne, Frances R SS/CC

Re: Bayview Manor return:

CC confirmed today with Lucy that this patient could return there under Medicare.

Initialized on 04/30/15 14:49 - END OF NOTE



CONFIDENTIAL: HIPAA PROTECTED INFORMATION

**From:** Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org>  
**Sent:** Thursday, May 24, 2018 8:47 AM  
**To:** Lori Copeland  
**Cc:** Stefan Feidler (stefan@akimlawfirm.com); Stefan Feidler (teamfeidler@googlegroups.com); Mac White  
**Subject:** RE: Holmes v. Bayview (2017-CP-07-02636)

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good Morning,

Please submit proposed Orders in regards only to the Motion to Reconsider within ten (10) days of today, May 24, 2018. Please note the record is closed. Please let me know if there are any questions or concerns.

Sincerely,

David A. Nasrollahi

---

**From:** Lori Copeland [mailto:LCopeland@holcombebomar.com]  
**Sent:** Wednesday, May 23, 2018 4:32 PM  
**To:** Buckner, Perry M. <pbucknerj@sccourts.org>; Buckner, Perry M. Law Clerk (David A. Nasrollahi) <PBucknerLC@sccourts.org>  
**Cc:** Stefan Feidler (stefan@akimlawfirm.com) <stefan@akimlawfirm.com>; Stefan Feidler (teamfeidler@googlegroups.com) <teamfeidler@googlegroups.com>; Mac White <MWhite@holcombebomar.com>  
**Subject:** Holmes v. Bayview (2017-CP-07-02636)

Judge Buckner:

Please see attached correspondence and filed Motion from Mr. White in above referenced matter.

Thank you,  
Lori Copeland



## Holcombe Bomar, P.A.

Lori Copeland, Paralegal for W. McElhaney White  
Holcombe Bomar, P.A.  
P.O. Drawer 1897 (29304)  
101 W. St. John Street, Suite 200  
Spartanburg, SC 29306  
Direct Dial: (864) 594-5311  
Fax: (864) 585-3844

LCopeland@holcombebomar.com

**CONFIDENTIALITY NOTICE:** *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

**IRS CIRCULAR 230 NOTICE:** *Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.*

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

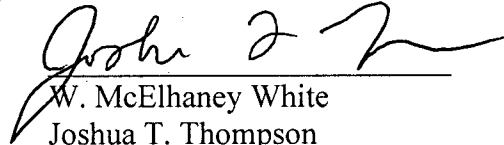
---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

November 27, 2018



W. McElhaney White  
Joshua T. Thompson  
HOLCOMBE BOMAR, P.A.  
P.O. Drawer 1897  
Spartanburg, SC 29304  
(864) 594-5300  
mwhite@holcombebomar.com  
jthompson@holcombebomar.com

Attorneys for Appellants

**RECEIVED**  
DEC 13 2018  
SC Court of Appeals