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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Administrative Law Court

Shirley C. Robinson, Administrative Law Judge

Case No. 15-ALJ-07-0148-CC

South Carolina Department of
Health and Environmental
Control,

Respondent.

v.

Blessed Births, Inc. d/b/a
Blessed Births Family
Wellness and Birth Center,

Appellant.

RECORD ON APPEAL

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellant

Other Counsel of Record:
Vito M. Wicevic
2600 Bull St.
Columbia, SC 29201
803-898-3353
Attorney for Respondent

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 15-ALJ-07-0248-CC

SCDHEC,

Petitioners,

v.

Blessed Births, Inc.,
d/b/a Blessed Births Family
Wellness and Birth Center,

Respondent.

ADMINISTRATIVE HEARING

Wednesday, October 21, 2015
10:24 a.m. - 4:52 p.m.

The hearing before the Honorable Shirley Canty Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 21st day of October, 2015 before Amy G. Byrd, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

Vito M. Wicevic, Esquire
 SCDHEC
 Office of General Counsel
 2600 Bull Street
 Columbia, South Carolina 29201
 Attorney for SCDHEC

Randall S. Hiller, Esquire
 Randall S. Hiller Attorney at Law
 850-B Wade Hampton Boulevard
 Greenville, South Carolina 29609
 Attorney for Blessed Births, Inc.

Also Present:
 Michell Hatcher
 Gwendolyn C. Thompson
 Dr. Keith Stafford
 Amy Leland

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EXHIBITS

Petitioner's Exhibit Number One	5
(Administrative Order)	
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(July 16, 2014 Report of Visit)	
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(Blessed Births Policy and Procedure Manual)	
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(Blessed Births Birth Record for Patient KD)	
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(Blessed Births Prescription Request for Patient KD - Not Dated)	
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(Blessed Births Prescription Request for Patient KD Dated March 4, 2014)	
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(Blessed Births Prescription Request for Patient IM Dated June 17, 2014)	
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(NOT ADMITTED)	
Petitioner's Exhibit Number Ten	5
(Blessed Births Letter to DHEC Dated August 8, 2014)	
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(DHEC Letter to Blessed Births Dated September 26, 2014)	
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(Blessed Births Letter to DHEC Dated October 14, 2014)	
Petitioner's Exhibit Number Thirteen	5
(Blessed Births Letter to DHEC Dated July 8, 2014)	
Petitioner's Exhibit Number Fourteen	5
(Report of Visit Dated July 11, 2014)	
Petitioner's Exhibit Number Fifteen	5
(Administrative Search Warrant)	
Petitioner's Exhibit Number Sixteen	5
(NOT ADMITTED)	

Petitioner's Exhibit Number Seventeen	5
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Respondent's Exhibit Number One	135
(Letter to Blessed Births from DHEC Dated October 3, 2013)	
Respondent's Exhibit Number Two	145
(Email Between DHEC and Dr. Picklesimer Dated June 13, 2014)	
Respondent's Exhibit Number Three	145
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(The original exhibits were retained by
Judge Robinson.)

STIPULATIONS

It is stipulated and agreed that this hearing
is being taken pursuant to the rules of the
Administrative Law Judge Division and the South
Carolina Rules of Civil Procedure.

1 (Petitioner's Exhibit Numbers One through Seventeen
2 were marked for identification purposes before the
3 start of the hearing.)

4 THE COURT: Good morning. You may be seated.

5 MR. WICEVIC: Good morning, Your Honor.

6 MR. HILLER: Good morning.

7 THE COURT: Okay. Are we ready to begin?

8 MR. WICEVIC: I think we are.

9 THE COURT: Mr. Hiller?

10 MR. HILLER: Yes, ma'am.

11 THE COURT: Mr. Wicevic?

12 MR. WICEVIC: Yes, ma'am.

13 THE COURT: This is the case of South Carolina
14 Department of Health and Enviornmental Control
15 versus -- is the Petitioner versus Blessed
16 Births, Incorporated, doing business as Bless-
17 -- Blessed Births Family Wellness and Birth
18 Center as the Respondent. The Petitioner is
19 represented by Mr. Wicevic?

20 MR. WICEVIC: Yes, Your Honor.

21 THE COURT: Okay. I'm getting better.

22 MR. WICEVIC: Yes, ma'am.

23 THE COURT: And the Respondent is represented by Mr.
24 Randall Hiller.

25 MR. HILLER: That is correct, Your Honor.

1 THE COURT: Okay. This is the -- the Respondent has
2 actually filed for the contested hearing. They
3 are contesting the Administrative Order that
4 was issued by the Department of Health and
5 Environmental Control, which found that they
6 had violated certain sections of the
7 departments regulations. And the order posed
8 a fine on the Respondents. And if the parties
9 are ready, we can begin -- begin with brief
10 opening statements and we will begin with the
11 Petitioner.

12 MR. WICEVIC: Thank you, Your Honor.

13 OPENING STATEMENT - MR. WICEVIC:

14 MR. WICEVIC: May it please the Court?

15 THE COURT: Yes.

16 MR. WICEVIC: Thank you, Your Honor. My name is
17 Vito Wicevic and I represent the Department of
18 Health and Environmental Control. Today I have
19 here with me, Ms. Michell Hatcher, she is the
20 Perinatal Nurse Administrator for the
21 Department of Health Facility Licensing. We
22 also have the Bureau of Facility Licensing
23 representatives, one of them that will be
24 testifying is Ms. Gwendolyn Thompson. She is
25 the Chief of the Bureau. And, Your Honor, as

1 you mentioned, this -- this case is by the --
2 by a licensed birthing center. The department
3 has the authority to -- to license and regulate
4 these birthing centers pursuant to the State's
5 CON and license reg. Specifically South
6 Carolina Code Section 44-7-260(A)(14). Also
7 the birthing center license reg, which is South
8 Carolina Code Section 44-89-10. In this case
9 concerning Blessed Births Family Wellness and
10 Birthing Center, it's a licensed birth center
11 from the Upstate. And they are contesting the
12 departments decision to impose a \$2,200
13 monitory penalty for certain violations of 61-
14 102 standards for licensing birthing centers
15 for de- -- for deliveries by midwives. And I
16 think a theme for this case and I think it
17 generally boils down to the deflecting and
18 denying of responsibility. Growing up, I was
19 always taught that the best way to escape a
20 problem is to solve it. Blessed Births has not
21 tried to solve the problems, they've tried to
22 escape the problems. And they're seeking their
23 void of responsibility. The department on the
24 -- on the other hand is seeking to solve these
25 issues, get them in compliance and move on.

1 And I -- I think certain instances portray this
2 -- this deflecting, this denying of
3 responsibility. Mainly, at least two -- two
4 events where Blessed Births has gone -- has
5 gone to the extent of denying access to the
6 facility to -- to conduct these duly authorized
7 inspections and investigations. In response to
8 this the department has -- has had to expand
9 resources and applying for and obtaining
10 Administrative Search Warrants from local
11 county Magistrates. Additionally, when the
12 department decided that this does rise to a
13 level of enforcement they invited Blessed
14 Births in to conduct an enforcement conference
15 and ---

16 **MR. HILLER:** Your Honor, I would object to any --
17 that -- that would effectively mean discussing
18 whether we participated in a settlement or
19 negotiations. I just don't think that's
20 appropriate to -- to even talk about, let alone
21 argue about in any -- in any proceeding.

22 **THE COURT:** I agree with you, it's not relevant. So
23 let's stay away from any discussion of the
24 settlement.

25 **MR. WICEVIC:** Okay. Just moving on. You know, this

1 isn't a case where there's a mass quantity of
2 violations. We had a case a few months ago
3 with Judge Durden where 90 something violations
4 were found. In this case there's only six
5 alleged violations of 61-102. However, I
6 think -- I think that, I guess, the general
7 demeanor, and their counsel may object to this,
8 but it makes this a particular case from the
9 departments standpoint. Moving on to the
10 violations. The first alleged violation is
11 Regulation 61-102 section C.(3), section C.(3)
12 requires an individual to be appointed to act
13 in the absence of the administrator. The
14 administration was kin to the general manage of
15 the facility. The department sited Blessed
16 Births for violating this provision because
17 it's policy and procedure manual had a blank
18 where the individual appointed in the absence
19 of the administrator was supposed to be listed
20 and it was left blank. Additionally, the
21 discussion -- the discussion with the
22 administrative facility about who was that
23 individual and she refused to provide the
24 department with the name of that individual.
25 Second violation was section D.(3)(b), which

1 requires a birthing centers to have policies
2 addressing the receiving, transcribing and
3 implementing of orders of administration of
4 drugs after review of the policy and procedure
5 manual the department determined that the
6 manual didn't address its receipt,
7 transcription and implementation of orders for
8 administration of drugs. The department asked
9 Blessed Births where the procedure -- the
10 manual is this section addressed, Blessed
11 Births refused to comply with any kind of
12 direction of where that section is. The third
13 alleged violation is section D.(3)(c), it
14 requires the birthing center to have written
15 prescriptions or orders signed by a
16 practitioner legally authorized to prescribe in
17 South Carolina for all drugs administered to
18 the mother and infant withing the birthing
19 center. The departments review of the
20 particular patient of birthing -- of Blessed
21 Births medical record and determined which
22 medications were administered. Review of the
23 prescriptions and orders that Blessed Births
24 had available at that time and the only
25 prescription request form that they had on file

1 during the inspection was -- had never been
2 signed by a physician or practitioner.
3 Subsequent prescriptions provided by Blessed
4 Births did not correspond to the administration
5 -- or the drugs that were actually administered
6 to the -- to the mother. Forth violation,
7 section D.(3)(f), that requires drugs and
8 medications to be stored and secured
9 specifically -- in specifically designated
10 cabinets, closets, drawers or storerooms and
11 made accessible to -- only to authorized
12 persons. During the departments inspection
13 they observed certain medications that were
14 stored unsecure- -- unsecuredly and they were
15 accessible to -- to other individuals present
16 in Blessed Births. The fifth violation,
17 section D.(6)(d), this one -- this provision
18 requires two members of the clinical staff --
19 or member of the clinical staff and a
20 registered nurse be present during a mother's
21 delivery at the birthing center. By chance the
22 departments inspection at the facility there
23 was an ongoing delivery of a child. And based
24 upon the departments observations during that
25 visit it determined that the two person

1 requirement during delivery was not met.
2 Blessed Births does not dispute that. I think
3 they're -- I think they're willing to say that
4 the department unreasonably interfered with the
5 inspection. The departments position is, no,
6 they didn't -- we didn't. We provided that --
7 the birthing center with adequate time to
8 obtain that second person. Did not interview
9 -- interfere with any care of that resident.
10 The six violation -- the sixth and final
11 violation is section F.(5)(a), and that
12 provision requires that the birthing center be
13 kept neat, clean and free from odors. It also
14 requires that accumulated waste material be
15 removed daily or more often if necessary.
16 During the departments inspection of the
17 facility it was determined that the facility
18 was not kept clean and free of odors.
19 Specifically there was a putrid odor coming
20 from a hall bathroom at the facility. The odor
21 was from several urine cups that were utilized
22 in testing urine of -- of patients of the
23 facility. And I just want to reiterate the
24 department it was established by the General
25 Assembly to protect and promote health and

1 welfare of residence of the state. The Bureau
2 of Health Facilities Licensing does this by
3 administering and enforcing the regulations.
4 The department has not asked Blessed Births to
5 do anything above or beyond those regulations
6 and other laws. They're only asking that
7 Blessed Births attain and maintain compliance
8 with the regulations so that their patients
9 that -- do in fact receive appropriate care.
10 It's our position that Blessed Births has
11 failed to do this. I am confident that through
12 testimony and evidence that is presented today,
13 and perhaps tomorrow, you will see this general
14 disregard for compliance with regulation 61-102
15 and -- and being regulated. And based upon
16 that, Your Honor, we request that you uphold
17 the departments decision to impose the \$2,200
18 monetary penalty. Thank you.

19 **THE COURT:** Thank you. Mr. Hiller?

20 **OPENING STATEMENT - MR. HILLER:**

21 **MR. HILLER:** Yes, ma'am. May it please the court.
22 Your Honor, I -- what's important to remember
23 throughout the testimony is this particular
24 situation is that this legislation and
25 regulations regarding birth -- birth centers

1 provide women, future mothers, with an
2 opportunity to have their child in a less
3 institutionalized environment in a natural way,
4 in a natural environment and at a much lower
5 cost than in a hospital setting. And that --
6 that's the whole purpose of the statute.
7 However, apparently the department takes the --
8 wants to treat these birth centers as if they
9 were a hospital or -- or even a physicians
10 office. By law they can only assist women who
11 are having uncompleted pregnancy. They are
12 prohibited from inducing labor or -- or having
13 -- obviously, they can't do C-sections. And so
14 -- and so when -- when we hear from them that
15 there's a -- that we -- we don't have nine to
16 five hours, that's just not the way these
17 things operate. It -- you know, when a woman
18 who is a patient at these birth centers goes
19 into labor, that's when you're open. If it's
20 8:00 in the morning, great. If it's 2:00 in
21 the morning, you've got to do it then too. And
22 -- and so these facilities operate on a -- an
23 appointment basis. I mean, they -- they have
24 appointments when they see prenatal -- prenatal
25 care for the mother's and then when the

1 mother's go into labor that's essentially an
2 appointment too because the facility has to
3 open and the child has to be -- or the mother
4 has to be cared for. So there is no avoidance
5 of anything other than the norm -- I mean,
6 other than the reality that in this particular
7 type of business the care that my client
8 provides to these prospective mothers is
9 totally subject to nature -- to -- to when that
10 person goes into labor and then the staff has
11 to come in and that's when they do their work.
12 Ms. Hatcher knows that but -- but she insists
13 on treating it as if they're a store front
14 doctors office that has regular seven to five
15 hour -- hours and if you don't get there
16 between seven and five they're neglective. On
17 -- on the issue and this -- and this is a very
18 important when they say that we don't cooperate
19 with regards to their claims of violation of
20 regulations. I -- I think you will hear during
21 the course of the testimony that in Oct- -- in
22 September/October of last year -- or of 2013,
23 the Department of Health and Environmental
24 Control decided to change its interpretation of
25 the regulations from what it had been for the

1 last 26 years. And by changing that
2 interpretation of the regulation they sent a
3 letter to my client and say you're out of
4 compliance. You will no longer -- or you're in
5 violation of the -- of the statute. And, of
6 course, we responded to that. And -- and
7 subsequent to that the department went out and
8 solicited complaints against my clients so that
9 -- and then they started bringing these
10 constant inspections. Not enforcing what they
11 claimed in September but trying to do these
12 additional inspections. So that is certainly
13 relevant to our position or our refusal to just
14 pay a little money and keep going or send them
15 some kind of response when we didn't do
16 anything wrong because they are creating these
17 wrongs in order to try to do what they couldn't
18 do from their September/October change of
19 interpretations. With regards to the specific
20 violations, Your Honor, we -- we deny any such
21 violations. And -- and, you know, obviously
22 the fine is contingent upon the -- the
23 violations and we -- we -- we don't believe we
24 owe the fine but we don't believe we owe the
25 fine because we didn't do a violation. And

1 I'll go to the six items -- the six items that
2 are listed that -- that we had notice of and
3 are part of the Administrative Order. Once
4 again, number one reflects the nature of this
5 particular type of business, but this is not a
6 situation where you've got 30 employees, three
7 assistant managers and that type of thing.
8 There are going to be times during the
9 operation of a very small business that provide
10 services to a limited number of people for a
11 very specific thing, that is assisting them in
12 giving birth in a natural way to the child, and
13 that somebody is going to quit. That your
14 employee is going to say I'm no longer going to
15 work here and -- and there's not an automatic
16 person that you can insert in that place. If
17 they walkout and they don't give you notice or
18 even if they give you notice then you have to
19 have some time to interview and try to replace
20 that person. They're going to be lapses where
21 you don't have full staff and that's just the
22 reality of doing business. The policies and
23 procedure, item number two, with regards to
24 prescribing medication. My client has operated
25 this birthing center for approximately 16 years

1 in the same location. She submitted policies
2 and procedures in order to get licensed. She's
3 probably -- she's been inspected a minimum of
4 16 times and, of course, since this issue with
5 the department arose, probably three times a
6 year for the last three years. Each and every
7 time she's been inspected she has had the exact
8 same policies and procedures with regards to
9 transcribing, implementing of orders for the
10 administration of drugs. Those were the ones
11 that she got licensed with. Those are the ones
12 that she's always been inspected with. And
13 only -- only in July of 2014 were they deemed
14 to be out of compliance. And they were deemed
15 to be out of compliance without any type of,
16 hey, you need to fix this or, you know, we
17 really want a more thorough thing here. No --
18 no pre-warning, no saying well -- well we've
19 approved it for 16 years, but it's time to
20 change it. Nothing of that nature. Just a
21 violation. Number three, written prescriptions
22 or orders signed by a practitioner. We -- we
23 believe the evidence will show that all the
24 drugs that were in the facility and utilized
25 for the patients care not only have written

1 prescriptions but were mandated to be in the
2 facility and available for use by the
3 regulations in those -- in the statute. Now
4 the Petitioner takes the position that it was
5 good fortune that they happened to be there
6 conducting an inspection while, in this
7 particular case the midwife, was actually
8 participating in assisting a woman who was in
9 hard labor and having a baby. Despite the fact
10 that she was aware of that the minute she came
11 to the facility that there was a woman who was
12 screaming in the other room in labor, she
13 continued to preform her inspection. And not
14 only did she preform -- well she was allegedly
15 there because she wanted to pick up five files,
16 but then she went ahead and conducted a full,
17 normal, routine inspection, and insisted on
18 standing beside and walking the birth -- I
19 mean, the midwife the entire time. And during
20 that time she claims that she saw medication
21 out and available. Well the medication was out
22 and available because there was a woman in
23 labor that was going -- that the medication was
24 going to be used for. Now, number five, I'm a
25 little bit concerned about what -- what was

1 said by the Petitioner with regards to number
2 five, and I will ask you to look at that with
3 me because it says that the allegation of the
4 violation is according to the review of a
5 medical record for a delivery on 6/7/2014 there
6 was only one staff member present. That is the
7 issue. That they issued the Administrative
8 Order on and that is the only issue. There is
9 nothing there and we are -- we would strongly
10 object to any type of testimony, evidence or
11 otherwise about any other date than June 7th of
12 2014 because that is what the order says and
13 that is what we're prepared to address. And we
14 are prepared to show that that was in fact not
15 the case. There were two staff members present
16 during that visit -- or during that birth. And
17 then the hall bathroom, I think you will find
18 that -- or you will hear that once again the
19 facility has to be open when it has to be open
20 and it's not open when it isn't open. And that
21 urine samples are required to be taken and
22 tested. There were urine samples in there.
23 They were to be tested that morning but a
24 mother went into labor and it had to be
25 delayed. And it had to be delayed only long

1 enough for her to complete her labor and then
2 it would have been tested and removed. It's
3 our position, Your Honor, that there is no
4 violation of any of the regulations related to
5 the operation of a birthing center and we
6 believe that the evidence presented to you will
7 reflect that.

8 **THE COURT:** All right. Thank you. Okay. We're
9 ready for your first witness.

10 **MR. WICEVIC:** Yes, Your Honor, the department would
11 call Dr. Keith Stafford.

12 **THE COURT:** Okay.

13 **MR. WICEVIC:** Have a seat right there, please.

14 **DR. STAFFORD:** Okay.

15 **THE COURT:** Dr. Stafford, before you take your seat,
16 would face the Court Reporter and raise your
17 right hand and let her swear you in.

18 **DR. STAFFORD:** Yes, ma'am.

19 **DR. KEITH STAFFORD,** having been duly sworn, deposes
20 and testifies as follows:

21 **DR. STAFFORD - DIRECT EXAMINATION BY MR. WICEVIC:**

22 **MR. WICEVIC:** All right. Your Honor, may I approach
23 the bench?

24 **THE COURT:** Yes.

25 **MR. WICEVIC:** Thank you. I've got an exhibit packet

1 for Your Honor. And I will give the witness
2 one as well.

3 **MR. HILLER:** Your Honor, I have been provided that
4 but I haven't -- I don't stipulate that they're
5 all admissible at this point, obviously.

6 **THE COURT:** Okay.

7 **Q:** Good morning, Mr -- Dr. Stafford. How are you
8 doing?

9 **A:** Good.

10 **Q:** Would you please state your full name for the
11 record?

12 **A:** Doctor Warren Keith Stafford.

13 **Q:** Okay. And Dr. Stafford, what kind of doctor
14 are you?

15 **A:** I'm a family physician and have had an
16 obstetrics department practice for many years.

17 **Q:** Okay. And where did you go to med school?

18 **A:** The University of Florida.

19 **Q:** Okay. When did you graduate?

20 **A:** 1986.

21 **Q:** All right. Can you give the Court a
22 description of your -- your work experience
23 since graduation, mostly?

24 **A:** I did my residency in Flemington, New Jersey.
25 I established my own practice in New Jersey,

1 was there for 14 years and then I sold my
2 practice and moved to South Carolina where I've
3 been since 2003. And have my own general
4 practice here and practice -- currently
5 practice in Greer.

6 Q: And let's -- and let me talk about your current
7 -- your current practice. What's the name of
8 your current practice?

9 A: Cornerstone Family Medicine.

10 Q: Okay. And what's your position at Cornerstone?

11 A: I am the owner and the -- the main physician.

12 Q: All right. What's your affiliation with -- or
13 perhaps Cornerstones affiliation with Blessed
14 Births Family Wellness and Birth Center?

15 A: We provide their consultative services.

16 Q: Okay. Is there any kind of agreement that --
17 that y'all have?

18 A: We -- well ---

19 Q: Do you have a written agreement?

20 A: Just our agreement that we'll -- that we would
21 provide consultative services to them. We
22 don't have any kind of business arrangement.

23 Q: What kind of consultative services do you
24 provide?

25 A: We see her clients, they're required to have

1 physician visits during the course of the
2 pregnancy so we see them. I don't know that we
3 see all of them, but we see a majority of their
4 clients for those two visits. And then if she
5 has concerns at any point during the pregnancy
6 or the birth then she will contact me and we'll
7 discuss the case.

8 Q: Do you -- do you issue written prescriptions or
9 orders for medications for ---

10 A: I do.

11 Q: --- those purposes?

12 A: Yes.

13 Q: Are you -- are you in anyway compensated by
14 Blessed Births?

15 A: She provides me \$500 a month. She doesn't have
16 to but she does it because she feels like I
17 provide a service to her and she pays \$500 a
18 month for my consultative services.

19 Q: Can you explain the process by which you -- you
20 issue these written prescriptions or written
21 orders for medications in the Blessed Births
22 context?

23 A: The patient comes in, we do a standard prenatal
24 visit with the patient. She -- I do this for
25 a couple of different midwives, and in this

1 case she has a sheet that is -- that is
2 basically a standing order sheet with -- that
3 has the same meds on it all the time, but I
4 reveiw them over, make sure they're appropriate
5 for the birth and sign it and then we fax it to
6 -- she gets all her -- her clients all fill
7 their prescriptions at Greenville Hospital
8 Systems pharmacy, so we fax them directly from
9 the office and I give the copy back to the
10 patient to carry to -- to be put in their -- in
11 their chart.

12 Q: Are there certain medications that are
13 prescribed for every birth?

14 A: Pretty much, yeah.

15 Q: All right. What's the purpose of it -- are
16 they precautionary, perhaps?

17 A: Well there's two -- well there's basically four
18 standard prescription medicines that are given.
19 One is Vitamin K for the baby, one is
20 Erythromycin eye drops. And then two are given
21 for -- incase the mother should bleed to
22 prevent complications from that so that's
23 usually Pitocin. And they used to Ephrogen but
24 that became unavialble so had to switch to what
25 was available.

1 Q: This might be a simple question, but when you
2 prescribe medication do you -- do you order the
3 dosage or amount of the medication?

4 A: Yes.

5 Q: Let's -- let me back up a little bit. Do you
6 recall caring for a patient KD, using their
7 initials. I have a -- I can tell you the name
8 of the patient off the record, but I would
9 prefer to keep her name confidential.

10 A: I remember this because this is the one that I
11 was told about earlier.

12 Q: All right.

13 A: I mean, I remember, vaguely. Nothing special
14 about it though.

15 Q: Okay. Do you recall issuing prescriptions for
16 this particular patient?

17 A: I issue prescriptions for all of them at 36
18 weeks. So I can't remember that specific --
19 that specific one.

20 Q: Okay. I placed an exhibit packet up there.

21 A: Yes.

22 Q: Can we please turn to Exhibit Six, it's pages
23 32 and 33.

24 A: Okay.

25 Q: Dr. Stafford, can you identify this document?

- 1 A: It's an -- it's an order sheet that has a check
2 mark for Rhogam.
- 3 Q: Okay. And who is order for?
- 4 A: Patient KD.
- 5 Q: Okay. Is it signed by you?
- 6 A: No.
- 7 Q: Do you recall receiving this?
- 8 A: I mean, I see documents like this all the time.
- 9 Q: Okay. And what is prescribed?
- 10 A: Rhogam.
- 11 Q: To explain to the Court what Rhogam is?
- 12 A: It's a medicine that's given to women who are
13 RH Negative to try to prevent the development
14 of RH antibodies that would potentially injure
15 the baby or the next pregnancy for the mom.
- 16 Q: Dr. Stafford do you -- when you complete these
17 prescription request forms, do you sign off on
18 the prescription request form?
- 19 A: Yeah. I sign them down there at the bottom.
- 20 Q: Okay. Now Dr. -- Dr. Stafford, that's Rhogam
21 Full Dose, can you explain what full dose
22 means?
- 23 A: Well it comes in different measurements
24 although we almost pretty much only use one
25 standard does, which is a 300 microgram dose.

1 Q: Okay. All right. Let's move on to page 74,
2 please. That's Exhibit Twelve, page 74.

3 A: Okay.

4 Q: Dr. Stafford, can you identify this document?

5 A: It's the same order sheet. This is more of the
6 list of the meds that we would give in
7 preparation for birth.

8 Q: All right. And when is it dated?

9 A: 6/12/14.

10 Q: And who is the prescription for?

11 A: KD.

12 Q: And what was prescribed?

13 A: Pitocin, Methergine, Erythromycin, some
14 syringes to be able to administer the
15 Erythromycin. Motrin, Vitamin K.

16 Q: All right. And I notice the first two
17 medications that are prescribed there is the
18 term Amps. Does that refer to ampules?

19 A: Yeah.

20 Q: Can you explain to the Court what that an
21 ampule is?

22 A: It's a little glass vile that has usually the
23 standard quantity of medicine that you use in
24 a dose that you -- you open it and you it to
25 the -- the full dose usually with that.

- 1 Q: Is there a difference between the ampule and
2 the vile?
- 3 A: It's a -- one has a stop -- a rubber stopper on
4 it usually and the other one's got a glass top
5 that you have to break.
- 6 Q: And did -- did you complete and sign this?
- 7 A: I did.
- 8 Q: Okay. Dr. Stafford, it appears that this was
9 faxed. Do you see the fax number on the top of
10 the -- top of page 74?
- 11 A: You mean the 455-8403?
- 12 Q: No, sir. The very top of page 74.
- 13 A: Oh, the 1880 one? Okay. I didn't see that.
14 Yes, that's our office number -- fax number.
- 15 Q: Let's turn to Exhibit Seven, please. Page 34.
- 16 A: Okay.
- 17 Q: We you able to find this document?
- 18 A: Yes. I've already looked at this but this is
19 the -- the Rhogam order.
- 20 Q: This is -- this is different from what -- page
21 32 or 33 that we previously ---
- 22 A: Oh, okay.
- 23 Q: --- looked at.
- 24 A: It's a Rhogam order.
- 25 Q: Okay. And did you complete this?

1 A: Yeah.

2 Q: All right. When did you complete this Rhogam
3 order for Patient KD?

4 A: This is dated 5/4 but I probably signed it a
5 different date, I don't know.

6 Q: Okay. So sometimes the date up -- indicated on
7 the form doesn't actually indicate the date
8 that you signed off?

9 A: It may, yes. I sign these orders when they're
10 in the office for the visit.

11 Q: Okay. Dr. Stafford, is it -- is it unusual for
12 a patient of Blessed Births to have multiple
13 prescriptions?

14 A: Well for something like Rhogam it would be
15 different because you don't use Rhogam on every
16 patient.

17 Q: Okay. Are some prescriptions for medications
18 that are administrated maybe prenatal as
19 opposed to during the actual ---

20 A: Right. A patient typically -- well most of the
21 ones that we give prescriptions for are getting
22 during the labor. But Rhogam in particular
23 there's two doses. One is given prenatally at
24 26 or 28 weeks and then one is given afterwards
25 when you find out what the blood type of the

1 baby is.

2 Q: Okay. All right. Just a few more questions.
3 Do you recall writing, preparing or prescribing
4 medications for a patient IM? Again, we can go
5 off the record.

6 A: I don't know.

7 Q: If you'd turn to page 37, please. That's
8 Exhibit Eight.

9 A: Okay.

10 Q: Can you identify that document, please?

11 A: It's an order sheet for the medications that
12 are prescribed in labor.

13 Q: Okay. Did you issue this prescription?

14 A: Yeah.

15 Q: When did you issue it?

16 A: I don't know the date it was issued.

17 Q: Okay. When is it dated?

18 A: 6/17/14.

19 Q: Okay. And I understand I said that -- that was
20 my final question. But Dr. Stafford, I noticed
21 looking through these prescription request
22 forms that you signed off on, that sometimes
23 you sign your name differently. Do you perhaps
24 use a stamp or ---

25 A: This one looks like it was stamped. I'm not

1 sure why instead of my ---

2 Q: Okay.

3 A: Why I didn't sign it.

4 Q: Okay.

5 MR. WICEVIC: I beg the Court's indulgence.

6 THE COURT: Yes.

7 Q: Okay. Thank you, Dr. Stafford.

8 A: Yes, sir.

9 Q: Please answer any questions Mr. Hiller has for
10 you.

11 A: Okay.

12 DR. STAFFORD - CROSS EXAMINATION BY MR. HILLER:

13 Q: Dr. Stafford, would you turn back to tab 12 for
14 me?

15 A: Okay.

16 Q: These aren't the best copies are they?

17 A: Tab 12?

18 Q: Yes.

19 A: Page 74?

20 Q: The page with the prescription order form.

21 A: Yes.

22 Q: All right. Is that form filled out by Blessed
23 Births and then sent to your office?

24 A: The check marks are put in by Blessed Births
25 and then the patient brings it to my office.

1 Q: Okay. The patient brings it to your office and
2 if you agree with it you'll sign it and then
3 fax it to the pharmacy?

4 A: Right.

5 Q: And then either the patient or Blessed Births
6 will pick it up?

7 A: (Nods head affirmatively.)

8 Q: You testified that was dated 6/12. Is it
9 possible that it's 5/12?

10 A: It could be, yes.

11 Q: If you look at it more carefully?

12 A: Yeah. It could be a five.

13 Q: Okay. What is Pitocin used for?

14 A: To make the uterus contract so it stops
15 bleeding.

16 Q: That's all the questions I have. Thank you,
17 Doctor.

18 MR. WICEVIC: The department has no further
19 questions. Thank you.

20 THE COURT: Thank you, Dr. Stafford.

21 MR. WICEVIC: Your Honor, may Dr. Stafford be
22 excused?

23 MR. HILLER: No objection.

24 THE COURT: You have none. Okay. Thank you for
25 coming Dr. Stafford.

1 DR. STAFFORD: Thank you.

2 THE COURT: You are excused.

3 MR. WICEVIC: Your Honor, the department calls
4 Michell Hatcher.

5 THE COURT: Okay.

6 MICHELL HATCHER, having been duly sworn, deposes and
7 testifies as follows:

8 MS. HATCHER - DIRECT EXAMINATION BY MR. WICEVIC:

9 Q: Good morning, Ms. Hatcher.

10 A: Good morning.

11 Q: Can you state your full name for the record,
12 please?

13 A: Michell Leigh Hatcher.

14 Q: Okay. And Ms. Hatcher, where do you work?

15 A: At the South Carolina Department of Health and
16 Environmental Control, specifically, the Bureau
17 of Health Facilities Licensing.

18 Q: Okay. And how long have you worked for DHEC?

19 A: For six years.

20 Q: What's your position at the department?

21 A: I'm a Perinatal Nurse Administrator.

22 Q: Ms. Hatcher, can you tell us some more about
23 your education as it's relevant to your
24 position as a Perinatal Nurse Administrator?

25 A: Yes. I graduated from Piedmont Technical

1 College with my associate degree in nursing in
2 1989. And then I went back to the Medical
3 University of South Carolina and obtained my
4 bachelors in nursing in 2003.

5 Q: Can you tell us about your experience that's
6 relevant -- job experience that is relevant to
7 your position at DHEC?

8 A: Yes. I worked in perinatal care, meaning
9 newborn nursery and in the neonatal intensive
10 care unit from 1989 until 2000 -- April of
11 2009, taking care of sick and premature babies,
12 attending high risk deliveries and providing
13 care for those patients.

14 Q: Okay. Can you tell us about your job duties as
15 the Perinatal Nurse Administrator at DHEC?

16 A: Yes. As a Perinatal Nurse Administrator it is
17 my duty to enforce the regulations for
18 hospitals that provide perinatal care and those
19 are labor and delivery, postpartum, newborn
20 nursery and neonatal intensive care nursery and
21 special nurseries. As well as to enforce the
22 regulations for midwives, midwife apprentices
23 and birthing centers.

24 Q: Okay. Do you also inspect and regulate
25 abortion clinics?

1 A: Yes. And they -- oh. I also do abortion
2 clinics and provide inspections for home health
3 and hospice and assist with complaints that
4 require a nurse to be involved.

5 Q: Ms. Hatcher, you mentioned inspections and
6 investigations at birthing centers. Can you
7 explain the different types of inspections
8 conducted at birthing centers?

9 A: Yes. There are three types -- three different
10 types of inspections that can occur at a
11 birthing center. The first is initial. So
12 this is when a birthing center is first
13 opening. They went through the construction
14 process, we get a notice of completion from
15 that construction from DHEC and then we will go
16 and do our initial licensing inspection. And
17 that is done for the requirements and
18 regulation. We just make sure that all the --
19 everything at the birthing center, equipment,
20 documents, et cetera, meet the requirements and
21 regulation.

22 Q: Okay. What are the other type of inspections?

23 A: The other ones are the routine inspections,
24 those are done annually by statute. So when we
25 go in there annually we essentially look at

1 everything that is required for the birthing
2 center to maintain and run its everyday
3 practice. We look at documents. We give them
4 a list of documents when we first get there
5 that we'll need. We give them a list of
6 patient -- employee names or either tell them
7 employee names of -- that we either want
8 personnel files for as well as medical records.
9 Sometimes I don't have specific medical records
10 in mind and I ask for a listing or a get for --
11 get for them to give me names of the patients
12 within the last previous year and I choose from
13 that listing. And I review the documents that
14 I've asked for. I review the personnel files.
15 I will review the medical records and all those
16 are reviewed pertinent to the regulations. Now
17 the other type of inspection or investigation
18 that I do is a complaint investigation. This
19 is only based on a complaint that has been --
20 that has come in to DEHC from an outside source
21 or it could be from an accident -- an incident
22 report that we've received. When I do a
23 complaint investigation those complaint
24 investigations are more specific, more focused
25 inspection and specifically to that medical

1 record of the patient that was involved. That
2 would include the mother and the newborn of
3 that medical record. If the patient was
4 transferred to another facility I also go to
5 that other facility the patient was transferred
6 to and get the medical record from that
7 facility to see what might have been the
8 condition of the patient upon arrival. I
9 always -- I also look at policy and procedures
10 that are pertinent to the complaint itself. So
11 whereas during a normal routine inspection we
12 do review policies to make sure they're in
13 place. If we have a complaint specific to a --
14 a violation -- that we believe is a violation,
15 then we look more specifically into that policy
16 relating to that violation.

17 Q: Okay. Ms. Hatcher, are these inspections, the
18 three of them; initials, routines and
19 complaints, are they conducted unannounced or
20 are they scheduled?

21 A: The initial con- -- the initial inspection is
22 an announced inspection because we are working
23 with that facility to get open and we want to
24 make sure that they're there during that time
25 frame to provide us with all the documentation.

1 They're always informed of the documentation
2 that we required. There -- for an initial
3 inspection there is a good bit of communication
4 on the forefront, you know, this is what I
5 need. And I go specifically by the regulation,
6 tell people exactly what I need and then I make
7 an appointment. I go and do the initial
8 inspection. At the time the inspection, the
9 initial inspection, a report is left or either
10 -- with the facility or either we will send a
11 report the first Monday back to the office
12 giving them permission to open.

13 Q: Okay. What about the others?

14 A: Routine inspections and complaint
15 investigations are always unannounced. Our
16 application for birthing centers and other
17 facilities has operating -- there's a place on
18 there for operating hours and I communicated
19 that I require -- need operating hours so I
20 would know what days the birthing centers are
21 open and other facilities that I inspect are
22 open so I will know what days that I might go
23 to do an inspection.

24 Q: Ms. Hatcher, I think I might have mentioned
25 this, but with regards to announced or

1 unannounced; where do complaint investigations
2 fall -- fall in there?

3 A: Complaint investigations are unannounced as
4 well as routine are unannounced.

5 Q: Is there a reason why y'all do those
6 unannounced?

7 A: Well when we do a complaint investigation we
8 don't give any facilities heads up that we're
9 having to do a complaint investigation. We
10 like to go in and to find that the facility and
11 the medical records exactly as they are in
12 their original form, you know, we don't give
13 any opportunity for any thing to be enhanced or
14 changed for any type of facility that we do.

15 Q: Okay. You mentioned obtaining the normal
16 operating hours of birthing centers. Do you
17 ever conduct inspections during what might be
18 an unreasonable hour, maybe ten at night or
19 five in the morning?

20 A: No.

21 Q: Okay. We talked about the various inspections
22 and what they consist of. At the conclusion of
23 the visit, whether it's routine type
24 investigation, what do you do?

25 A: After the inspection has been completed I come

1 back to the office and -- excuse me. I come
2 back to the office and fill out a Report of
3 Visit. And a Report of Visit has on there the
4 facility that we went to, the address of the
5 facility, a contact person for the facility, a
6 contact email, the time of our inspection, when
7 we arrived, and the findings within our
8 inspection and exactly what we did while we
9 were there during our inspection.

10 Q: Okay.

11 A: And then that is sent to the facility. If a
12 plan of correction is necessary, there will
13 either -- either be a specified time frame on
14 there when the plan of correction is due or
15 that the plan of correction is due upon 15 days
16 receipt of the Report of Visit. And that's
17 either emailed or mailed to the facility.

18 Q: What if a facility disagrees with the citation,
19 what -- what may they do?

20 A: If the facility disagrees with the citations,
21 we have a request for reconsideration form on
22 our website and they might fill that out and
23 ask for that violation or that specific
24 citation to be reconsidered by DHEC and then
25 they can send that in or sometimes facilities

1 send their disagreement in the form of a letter
2 that they disagree with specific citations and
3 then that's forwarded to the assurance quality
4 department of DHEC. That -- those forms are.

5 Q: Okay. Well what -- what happens then with
6 regards to those request for reconsideration or
7 other correspondences disputing violations?

8 A: Anything disputing a violation, either a
9 request for reconsideration or letter, it would
10 forwarded to the quality assurance department
11 of DHEC and they review the violations and they
12 might contact the inspector and say do you have
13 any more documentation on this, can you tell me
14 more about why you cited this, why -- what
15 makes me believe that that was a violation.
16 And then they decided if the violation is
17 removed or rescinded or if the violation
18 stands. And the -- and then a written document
19 will be sent back to the facility letting them
20 know that the violation was either removed or
21 the violation was not removed.

22 Q: Okay.

23 A: Or the citation I should say. The citation was
24 removed or not removed.

25 Q: All right. Ms. Hatcher, have you visited

1 Blessed Births with the purpose of conducting
2 regulatory inspections or investigations?

3 A: Yes.

4 Q: Let's take your testimony, I suppose, in
5 chronological order focusing on individual
6 sites. Ms. Hatcher, I have the exhibit packet
7 up there in front of you. Let's turn to
8 Exhibit Fourteen, which is pages 76 through 78.
9 Ms. Hatcher, can you ---

10 MR. HILLER: Which exhibit again? I'm sorry.

11 MR. WICEVIC: Exhibit Fourteen, pages 76 - 78.

12 MR. HILLER: Okay. Thank you.

13 Q: You there Ms. Hatcher?

14 A: Yes.

15 Q: Okay. Can you identify this, Exhibit Fourteen?

16 A: Yes. This is the -- a Report of Visit that was
17 issued for a visit that was conducted on July
18 the 11th of 2014 for the purpose of complaint
19 and routine inspections and we were not allowed
20 access to this facility.

21 Q: And well get to that.

22 A: Okay.

23 Q: Let's focus on the ---

24 A: Okay.

25 Q: --- Report of Visit. Who completed this?

1 A: Me. I did, Michell Hatcher.

2 Q: When was it completed?

3 A: After the -- after the inspection that occurred
4 on June the 11th -- July the 11th. Back --
5 back in the office. It probably would've been
6 the following week.

7 Q: Okay. What does it contain?

8 A: It contains information such as the facility,
9 the address, phone number and email, contact
10 name, representative or person who was there
11 and that it was a -- for a -- the type of
12 inspection that was to be done, who was there
13 during the inspection and the violations that
14 were cited for the inspection. And a -- this
15 one just notes that a plan of correction will
16 be determined.

17 Q: The due date?

18 A: The due date -- a due date for a plan of
19 correction meeting will be determined.

20 Q: Okay. Is a Report of Visit a report of
21 conditions or events that you observed?

22 A: Yes.

23 Q: Was the Report of Visit made up from your time
24 with a personal knowledge of such conditions or
25 events?

1 A: Yes.

2 Q: Are reports of visit kept in the course of
3 DHEC's normal business activity?

4 A: Yes.

5 Q: Is it the regular practice of DHEC to complete
6 the Report of Visit concluding an inspection or
7 investigation?

8 A: Yes.

9 MR. WICEVIC: The department would like to admit
10 Exhibit Fourteen, which is 76 - 78, into
11 evidence.

12 MR. HILLER: No objection.

13 THE COURT: Very good. So moved.

14 (Respondent's Exhibit Number Fourteen was introduced
15 into the record at this time.)

16 Q: All right. Michell -- or Ms. Hatcher, let's
17 focus on the contents of this Report of Visit.
18 Did you visit Blessed Births on July 11th,
19 2014?

20 A: Yes, I did.

21 Q: When did you arrive at Blessed Births?

22 A: I believe it was around 1:30 or so.

23 Q: Ms. Hatcher ---

24 A: I can't -- or it might have been a little later
25 than that. I can't -- I can't recall.

1 Q: Ms. Hatcher, do you take notes during your
2 inspec- ---

3 A: Yes, I do.

4 Q: --- inspections?

5 A: Yes.

6 MR. WICEVIC: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes.

9 Q: Ms. Hatcher, can you identify this document?

10 A: Yes, these are notes that I took during the
11 inspection -- or during the attempted
12 inspection. When I tried to ---

13 Q: Did you write these notes?

14 A: Yes, I did.

15 Q: All right. When?

16 A: At the time of the inspection.

17 Q: Were the observations noted in this -- in this
18 document fresh in your mind when you wrote the
19 notes?

20 A: Yes.

21 Q: All right. Does this indicate when you
22 conducted the inspection?

23 A: Yes. I arrived at 3:15.

24 Q: Okay. Looking back to the date of the 14th,
25 who accompanied you on this inspection?

- 1 A: James Harmon.
- 2 Q: Who is James Harmon?
- 3 A: James Harmon was the Field Manager for Health
4 Facility Oversight Division at that time.
- 5 Q: All right. What was the purpose of your visit?
- 6 A: For a routine -- a routine inspection and an
7 investigation.
- 8 Q: Were you able to conduct an inspection?
- 9 A: No.
- 10 Q: All right. What prevented you from conducting
11 the inspection?
- 12 A: When I arrived at the birthing center no one
13 was there. The doors -- I went to the door and
14 the door was locked. So there was no one
15 there.
- 16 Q: All right. Did you attempt to contact the
17 administrator or the representative of the
18 facility?
- 19 A: Yes. And at that time on the -- there was a
20 phone number on the business sign in the
21 parking lot so I called that phone number on
22 the business sign and that led me to a voice
23 message that said if you need a midwife to call
24 another phone number. So then I called that
25 other phone number and when I called that

1 second phone number, Ms. Leland answered the
2 phone. I informed her I was there to do an
3 inspection investigation and she said, well I
4 can't come and I said okay. And I said when
5 can you be here. And she said she can't be
6 there, she's doing a home visit.

7 Q: Okay. Since you were unable to conduct the
8 inspection on that day, what did you do?

9 A: Well I asked her when she could be available to
10 come to the birthing center, she said she could
11 not come that day. She wanted to make an
12 appointment for that following Wednesday, I
13 reiterated to her again that the department
14 does not make appointments for routine or
15 investigations. And I asked her to send me --
16 to email me her operating hours to my DHEC
17 email address by the following Monday.

18 Q: Okay. Based upon your observations on this
19 visit, did you cite Blessed Births for any type
20 of regulatory violations?

21 A: Yes. I cited her for violation ---

22 MR. HILLER: Your Honor, I object to that unless
23 it's one of the violations that is in this
24 Administrative Order and it isn't.

25 THE COURT: Is it one of the violations that's in

1 the order?

2 **MR. WICEVIC:** No, Your Honor. But I think it goes
3 towards the -- your consideration of what kind
4 of monitory penalty or any kind of other
5 penalties to impose. And will add that this
6 was a de novo hearing, you know, the record is
7 open. Although this wasn't included in the
8 Administrative Order I certainly feel like it's
9 relevant to this case.

10 **MR. HILLER:** How could a -- how could any thing that
11 they didn't follow up with or follow through
12 with is claiming -- and the we have a --
13 haven't had an opportunity -- well, we
14 contested everything, you know. And this is
15 the only time we've ever been down here. So,
16 you know, I don't think any of those priors --
17 prior alleged violations have any relevance as
18 to wether these five, six violations occurred.

19 **THE COURT:** Mr. Hiller, I'm going to allow her to
20 testify about her visit and the result of the
21 visit. I will determine what weight I give it.
22 And if it's appropriate ---

23 **MR. HILLER:** And I'm going to obviously have to
24 object. But ---

25 **THE COURT:** Well your objection ---

1 MR. HILLER: --- I understand.

2 THE COURT: --- is noted.

3 MR. HILLER: I mean, I do a lot of non-jury trials.

4 THE COURT: Okay.

5 MR. HILLER: But, I'm -- you know, for the record I
6 obviously I object to any testimony of any
7 alleged violations that have never been
8 adjudicated even at the administrative level as
9 a violation.

10 THE COURT: Okay. Thank you. And your objection is
11 on the record.

12 MR. HILLER: Okay. Thank you, Your Honor.

13 Q: Ms. Hatcher, did you cite Blessed Births with
14 any violations?

15 A: Yes.

16 Q: And what was that?

17 A: The violation for not being allowed entry into
18 the facility as required by the regulation, all
19 facilities to which these requirements shall
20 permit entrance to all properties and access to
21 every area, object and records and reports by
22 the representative of the department.

23 Q: Ms. Hatcher, were reading from statute
24 A. (2) (g)?

25 A: Yes.

1 Q: Okay.

2 MR. WICEVIC: Your Honor, may I approach the bench?

3 THE COURT: Yes, sir.

4 MR. WICEVIC: Thank you. I have copies of the
5 regulations if you need it.

6 MR. HILLER: Are they all highlighted?

7 MR. WICEVIC: The one's that are relevant to the
8 provisions.

9 MR. HILLER: All right. That's fine but I think
10 that it's up to the Judge to make the decision
11 on what's relevant or not.

12 MR. WICEVIC: I think she can handle it.

13 MR. HILLER: All right. Well I didn't bring my
14 highlighter but I might have some highlighted
15 stuff.

16 MR. WICEVIC: All right.

17 Q: Now, Ms. Hatcher, to assure you gained access
18 to the facility on your next visit to Blessed
19 Births, what did you do?

20 A: When I came back to the department I explained
21 to management that I could not gain access and
22 since the -- you know, I needed to do the
23 routine inspection and investigation I filled
24 out an affidavit for a search warrant for the
25 next time that I went.

1 Q: Okay. Let's turn to Exhibit Fifteen, please.

2 A: Okay.

3 Q: And it's pages 79 through 89. Ms. Hatcher, can
4 you identify this document?

5 A: Yes. This is a search warrant that I obtained
6 on July 16th, 2014.

7 Q: Okay. Under what circumstances do you -- was
8 the department supplied to obtain a search
9 warrant?

10 A: If we need to gain access into a facility that
11 we either license or that may be an unlicensed
12 facility we obtain a search warrant to insure
13 that we gain access into those areas and into
14 all areas of the facility and all records of
15 the facility.

16 Q: How long have you been at the Department?

17 A: Six years.

18 Q: Over six years how many times have you had to
19 ---

20 MR. HILLER: I -- I object to that issue. It's
21 irrelevant.

22 MR. WICEVIC: I think it's relevant. Like I -- like
23 I said, these are all considerations you have
24 in making your determination as to appropriate
25 sanctions.

1 **THE COURT:** Thank you. The objection is sustained.

2 **Q:** And -- and Ms. Hatcher, how does the Department
3 obtain a search warrant?

4 **A:** We fill out the affidavit at DHEC and then we
5 speak with and arrange a Judge to go to and
6 have the search warrant signed and issued by
7 the Judge.

8 **Q:** Okay.

9 **A:** In that -- in the jurisdiction of where the
10 facility is located.

11 **Q:** How do you execute a search warrant?

12 **A:** Once the Judge has signed the search warrant I
13 am directed to an area, either city or county
14 law enforcement, and I take it to them and then
15 an officer will accompany me with the search
16 warrant. And that -- then when I arrive to the
17 facility the search warrant is presented to the
18 administrator of the facility.

19 **Q:** Okay. Upon completing your investigation, what
20 do you do as far as the search warrant?

21 **A:** I have to fill the return out of any items that
22 were seized or collected during the inspection
23 and that has to be taken back to the Judge,
24 signed by him, signed by me at that time, and
25 then a copy of that provided to the facility.

1 Q: And did you ---

2 A: Within ten days.

3 Q: Did you execute the administrative search
4 warrant on July 16th?

5 A: Yes, I did.

6 Q: What types of inspections did you conduct on
7 July 16th that's -- that's pertinent to this
8 enforcement?

9 A: A routine inspection and a complaint
10 investigation.

11 Q: Who accompanied you on this visit to Blessed
12 Births?

13 A: James Harmon once again.

14 Q: Okay. Anybody else?

15 A: And Officer Andrew Sturman with the Greenville
16 City Police Department, an officer.

17 Q: Ms. Hatcher, when did you arrive at Blessed
18 Births center on July 16th?

19 A: 3:15.

20 Q: Okay.

21 A: No, 11:15.

22 Q: Okay.

23 A: I don't -- let me -- according to my notes,
24 11:40 was the time of arrival.

25 Q: All right. When did you depart Blessed Births?

1 A: 3:40.

2 Q: Okay. Other than those accompanying you from
3 the Department and law enforcement, who was
4 present at the facility?

5 A: Obviously, the mother was present, who Ms.
6 Leland said was in labor. And there was at
7 least two other people, an elderly lady and one
8 young girl there.

9 Q: Okay. Any kind of information on what was
10 occurring at the facility?

11 A: A lady was in labor.

12 Q: Okay. Do you recall the mother -- the name of
13 the mother who was in labor ---

14 A: It was ---

15 Q: --- just using their initials, please?

16 A: Patient IM.

17 Q: Okay. Was this the first time you had
18 conducted an inspection while there was a
19 patient in labor?

20 A: Yes.

21 Q: All right. How did you ensure that you did not
22 interfere with the patient's care while
23 conducting this inspection?

24 A: I remained in the office while Ms. Leland
25 collected documents or either was right with

1 her in her front administrative area. And if
2 she -- when she need to go attend to her
3 patient I went and stood in the hallway and
4 give -- giving her opportunities to care for
5 her patient.

6 Q: All right. Ms. Hatcher, what did your
7 inspection consist of?

8 A: The routine inspection consisted of asking for
9 the documents that I -- that I always ask for,
10 the administrative documents. I ask for
11 personnel files and I did not review medical
12 records for this particular routine inspection
13 due to the fact that medical records were
14 reviewed for the complaint investigations.

15 Q: Did you -- let's focus on the routine
16 investigation. We'll get to the complaint
17 investigation shortly.

18 A: Uh-huh (affirmative response).

19 Q: As a result of the routine inspection did you
20 determine that Blessed Births violated
21 regulation 61-102?

22 A: Yes.

23 Q: Okay. Let's turn to Exhibit Two, please. This
24 is pages 11 through 14.

25 A: Okay.

- 1 Q: Ms. Hatcher, can you identify Exhibit Two?
- 2 A: Yes, this is the -- the Report of Visit for the
- 3 routine inspection conducted on July 16th,
- 4 2014.
- 5 Q: Okay. And who completed this document?
- 6 A: It was completed by me, Michell Hatcher.
- 7 Q: All right. When was the Report of Visit
- 8 mailed?
- 9 A: It was -- I think it was mailed July 25th.
- 10 Q: Let me direct you to where it's at. Does that
- 11 confirm that?
- 12 A: Yes.
- 13 Q: Okay. And ---
- 14 A: It was July 25th.
- 15 Q: All right.
- 16 A: It was emailed and also mailed ---
- 17 Q: And where ---
- 18 A: --- yes.
- 19 Q: And where was it mailed to?
- 20 A: Amy Leland, which is the administrator of
- 21 Blessed Births.
- 22 Q: Okay. And what does -- what does this Exhibit
- 23 Two Report of Visit contain?
- 24 A: It contains the address, the phone number, the
- 25 email, the contact name, the inspection

1 information, the fact that a plan of correction
2 is due and will be a determined due date. Who
3 attend and was accompanying me on the
4 inspection and the citations that were made
5 during the inspection and the names of patient
6 records that were obtained during the
7 inspection or were related to the violations
8 within the inspection.

9 Q: All right. Is this Report of Visit a report of
10 conditions or events that you observed?

11 A: Yes.

12 Q: Was your Report of Visit made at or near the
13 time by the person who had knowledge of such
14 conditions or events?

15 A: Yes, near the time.

16 Q: Okay. Are the Reports of Visit kept in the
17 course of DHEC's normal business activity?

18 A: Yes.

19 Q: Is it the regular practice of DHEC to use
20 Reports of Visit on concluding an inspection or
21 investigation?

22 A: Yes.

23 Q: Okay.

24 MR. WICEVIC: The Department would like to admit
25 Exhibit Two, it's pages 11 through 14.

1 THE COURT: Mr. Hiller?

2 MR. HILLER: I have no objection to it being
3 admitted as a business record, obviously.
4 Whether it's all true or not, you know.

5 THE COURT: Thank you. It's admitted.

6 MR. WICEVIC: Thank you.

7 (Respondent's Exhibit Number Two was introduced into
8 the record at this time.)

9 Q: Ms. Hatcher, did -- as part of your routine
10 inspection on July 16th, did you cite Blessed
11 Births for violating regulation 61-102 section
12 C.(3)?

13 A: Yes.

14 Q: Okay. What does section C.(3) require?

15 A: Section C.(3) requires the facility to have a
16 -- an individual appointed to act in the
17 absence of the administrator.

18 Q: Okay. What is a birthing center administrator?

19 A: I can refer to the regulation, the definitions.
20 An administrator means a person who is
21 delegated to be responsible for interpreting,
22 implementing and applying policies and
23 procedures established by the governing
24 authority. The delegated responsibility of the
25 establishment for safe and effective

1 administrative management, and the control and
2 operation of the services provided.

3 Q: Okay. And why did you cite Blessed Births for
4 violating this section of C.(3)?

5 A: Well every time I've ever been there when I've
6 asked for the person who is to act and the name
7 in the absence of the administrator Ms. Leland
8 has pointed me to the policy and procedures
9 manual. So when she gave me that that was the
10 first place I looked for this -- for this
11 inspection as well and it was -- there was a
12 place whited out there with no name. So then
13 I asked Ms. Leland, you know, who is the person
14 to act in the absence of you as administrator
15 and she replied to me, I can't tell you that,
16 I'll have to speak to my attorney.

17 Q: Okay. Because this matter involved a lot of
18 correspondence back and forth between the
19 parties, back up and only speak -- first speak
20 about what you observed on the inspection. Now
21 Ms. Hatcher, did you review the policies and
22 procedure manual at the time of the inspection?

23 A: Yes, I did.

24 Q: Okay. Let's turn to Exhibit Four, please.

25 A: Okay.

1 Q: For the record, Exhibit Four is pages 20
2 through 28. Ms. Hatcher, can you identify
3 Exhibit Four?

4 A: Yes. This is the policy and procedure manual
5 -- or as it relates to patient care that I
6 reviewed and made copies of during the
7 inspection.

8 Q: Okay. So this is the manual that present on
9 July 16th?

10 A: Yes. Present during my inspection.

11 Q: Okay.

12 MR. WICEVIC: The Department would like to admit
13 Exhibit Four into evidence, it's pages 20
14 through 28.

15 THE COURT: Mr. Hiller, have you reviewed the
16 document.

17 MR. HILLER: This is just a portion?

18 A: This is -- this is exactly what I reviewed and
19 what I copied and brought back from the
20 inspection.

21 MR. HILLER: Okay. No objection.

22 THE COURT: Okay. It is entered.

23 (Petitioner's Exhibit Number Four was introduced into
24 the record at this time.)

25 Q: Okay. Ms. Hatcher, how is the policy and

1 procedure manual relevant to your inspection
2 for your citation of section C.(3)?

3 A: Well on page 23 on number -- in section 3 is
4 where I was speaking of that Ms. Leland has
5 written in the absence of chief administrator,
6 and there's a blank space. Previously during
7 my inspections that is where the administrator
8 has been -- that person to act in the
9 administrators absence has been written and
10 that's obviously the page I turn to during this
11 inspection and then when it was whited out I
12 asked Ms. Leland and she couldn't give me an
13 answer.

14 Q: Okay. Ms. Hatcher, getting back to Exhibit
15 Two. When was the plan of correction for
16 these cited violations due?

17 A: The plan of correction was due on August the
18 9th, 2014.

19 Q: Okay. Did you provide Blessed Births with an
20 extension to submit their plan of correction?

21 A: Yes.

22 Q: And so when was the extension through for?

23 A: Until August the 16th.

24 Q: Okay. Did Blessed Births ever submit a
25 response to this set of violations?

1 A: When Blessed Births submitted a response from
2 Mr. Hiller on behalf of Blessed Births in a
3 letter dated August the 18th.

4 Q: Okay. Let's turn to Exhibit Ten please.

5 A: Okay.

6 Q: Exhibit Ten is pages 49 through 61. Ms.
7 Hatcher, can you identify this document?

8 A: Yes, this is a letter received by DHEC from Mr.
9 Hiller on behalf of Blessed Births in response
10 to the violations cited on July the 16th, 2014.

11 Q: Okay. And when is the letter dated?

12 A: The letter is dated August the 18th, 2014.

13 Q: Okay. Just for clarification, this is Exhibit
14 Ten, the response complaint -- or excuse me,
15 contains the response to unrelated midwife
16 violations or alleged midwife violations?

17 A: Yes, it does.

18 Q: All right. Okay. I want to talk about those.

19 MR. WICEVIC: The Department would like to enter
20 Exhibit Ten into evidence.

21 MR. HILLER: No objection.

22 THE COURT: So admitted.

23 (Plaintiff's Exhibit Number Ten was entered into the
24 record at this time.)

25 MR. WICEVIC: Thank you.

1 Q: Ms. Hatcher, is the August 18th letter relevant
2 to the C.(3) citation?

3 A: In the letter Mr. Hiller, his response, he --
4 explains that the previous individual appointed
5 to act was no longer employed by the facility
6 and the new individual had not been inserted
7 into the policy and procedure manual and that
8 this had been corrected.

9 Q: I'm sorry, are you reading from page 50?

10 A: Yes.

11 Q: Was the policy and procedure manual attached to
12 this August 18th letter?

13 A: Yes. There was an attachment of the policy and
14 procedure manual sent with the letter by Mr.
15 Hiller.

16 Q: Was the blank -- or the individual named to act
17 in the absence of the administrator completed?

18 A: No. In the copy it remains blank. And that's
19 on page 57.

20 Q: Okay. Did the August 18th letter indicate who
21 the was to contact when the administrator was?

22 A: No.

23 Q: Did the Department issue a written reply to
24 this letter?

25 A: Yes.

1 Q: Okay. Let's turn to Exhibit Eleven, please.
2 Exhibit Eleven is pages 62 through 71. Ms.
3 Hatcher, can you identify this exhibit?

4 A: Yes, this is a letter written September the
5 26th and signed by Ms. Thompson that we had
6 received Mr. Hiller's response dated Oct- --
7 August the 18th and we asked for clarification
8 of some items in his response.

9 Q: Okay. Who is Ms. Thompson?

10 A: Ms. Thompson is Gwen Thompson, the Bureau Chief
11 of Health Facilities and Licensing.

12 Q: Okay. And you mentioned that this letter
13 responds to the citations -- or rather Mr.
14 Hiller's comments regarding the citations, does
15 it address anything else?

16 A: It address our -- that I -- that we requested
17 some information and other documents to be sent
18 and we also gave -- this is the letter where we
19 gave the -- the facility an opportunity to come
20 in for an enforcement conference and that was
21 -- was never ---

22 MR. HILLER: Your Honor, we've already objected to
23 that and you sustained it.

24 MR. WICEVIC: Okay. We'll move on.

25 THE COURT: Thank you.

1 Q: All right. Ms. Hatcher, is it the regular
2 practice of the Department to respond in
3 writing to a request for reconsideration?

4 A: Yes.

5 Q: Are these written responses kept in the course
6 of DHEC's normal business activity?

7 A: Yes.

8 Q: Okay.

9 MR. WICEVIC: The Department would like to admit
10 Exhibit Eleven.

11 MR. HILLER: I have no objection.

12 THE COURT: So admitted.

13 (Petitioner's Exhibit Number Eleven was introduced
14 into the record at this time.)

15 Q: All right. Ms. Hatcher, with regards to
16 section C.(3) citation, how did the Department
17 propose to solve this issue further?

18 A: In the letter we say that they noted that they
19 had an individual -- a new individual to act in
20 the absence of the administrator but it had not
21 been inserted into the policy and procedure
22 manuals and that this was corrected. And we
23 asked them to provide the Department with the
24 name of the new individual appointed to act in
25 the absence of the administrator.

1 Q: Are you reading from paragraph one on page 63?

2 A: Yes.

3 Q: Okay. Was the Department supplied the name of
4 the new individual appointed to act in the
5 absence of the administrator?

6 A: Yes.

7 Q: Okay. Would you turn to Exhibit Twelve,
8 please.

9 A: Okay.

10 Q: Exhibit Twelve is pages 72 through 74. Ms.
11 Hatcher, can you identify this document?

12 A: Well this is a letter sent by Mr. Hiller on
13 behalf of Blessed Births in response to DHEC's
14 September 26th letter.

15 Q: Okay. When did -- when did the Department
16 receive this letter?

17 A: October the 14th, 2014.

18 Q: Okay.

19 A: Well we received it on October the 16th, 2014.

20 Q: And who is it addressed to?

21 A: Gwen Thompson.

22 Q: And who was it sent by?

23 A: Randall Hiller.

24 Q: Okay. Did Blessed Births identify their
25 administrator in this August -- or excuse me,

1 October 14th letter?

2 A: Yes.

3 Q: Who did they identify?

4 A: Ashley Behlke.

5 Q: Okay. All right. Let's move on to the next
6 citation. Ms. Hatcher, did you cite Blessed
7 Births with violating section D.(3)(f) of
8 regulation 61-102?

9 A: Yes.

10 Q: Okay. What does section D.(3)(f) require?

11 A: The drugs, medication and chemicals be stored
12 and secured in specifically designated
13 cabinets, closets, drawers or store rooms and
14 made accessible only to authorized persons.

15 Q: Okay. Do you need to refer back to Exhibit
16 Two? Why did you cite Blessed Births with
17 violating section D.(3)(f)?

18 A: During the walkthrough in the routine
19 investigation -- routine inspection on that
20 day, Pitocin -- three vials of Pitocin and one
21 vial -- or tube of Erythromycin ointment was
22 observed on the table in the birthing -- in the
23 hall birthing room along with HeSpan IV fluids.

24 Q: All right. We talked about this a little bit
25 before. Were other individuals in -- present

1 in the facility?

2 A: Yes.

3 Q: Who?

4 A: An elderly lady and at least one other young
5 girl that were there with the family.

6 Q: Okay.

7 A: And the officer with me and James Harmon.

8 Q: Okay. Again, like the other citation that we
9 discussed, let's first talk about your
10 observations during the inspection.

11 A: Okay.

12 Q: What did your walkthrough consist of?

13 A: The walkthrough consist of -- I'd gone to the
14 rooms that were available for inspection so the
15 hall birthing room was the only room available.
16 I went in there. Went into the bathroom.
17 Looked and observed for the requirements in the
18 regulation and these medications were in a
19 table outside -- I mean, in that room.

20 Q: Ms. Hatcher, can you explain for the Court the
21 fiscal setup for Blessed Births?

22 A: Yes. When you first go in the door there is a
23 little administrative area to the left, a lobby
24 to the right. Then you come and go through
25 that little foyer, Ms. Leland's office is on

1 the left. On down that hallway I believe -- or
2 -- is a birthing room and then there's another
3 room to the right that connects to the other
4 side of the hallway. But that hall birthing
5 room on the left is where the medications were
6 found at. If you proceed on through the
7 birthing room onto another hallway through the
8 second door there is like a lab area and the
9 area where the washing machine and dryer is and
10 some supplies are stored and medication storage
11 and refrigerator is also located in that area.
12 And then across the very back of the facility
13 is another birthing room where -- which is
14 where the patient was in labor. And at the
15 other side of the hallway -- the other side of
16 the facility going back up is a prenatal room
17 and her kitchen area and it circles back around
18 to the front lobby and foyer areas.

19 Q: All right. Thank you, Ms. Hatcher. In your
20 experience at the facility is there a
21 particular room where the medications are
22 usually stored?

23 A: She has a cabinet that she keeps prescriptions
24 in that parents have already filled and then
25 she has a refrigerator for other certain

1 medications are required to be kept in.

2 Q: How many birthing rooms?

3 A: Two.

4 Q: Where are they in relation to the facility?

5 A: One is at the back of the facility and one is
6 at the -- on the left side of the facility if
7 you're standing at the front.

8 Q: Okay. And you mentioned you saw these
9 medications in the hall birthing room. Where
10 was the table that these medications were
11 placed?

12 A: The table is on the -- the enter wall of that
13 birthing room just as you're going out of the
14 door that -- the back door of that room to go
15 back into that hallway.

16 Q: Okay. How did you gain access to this room?

17 A: I just walked from the lobby down the hallway
18 into the birthing room.

19 Q: Okay. Did it require any kind of unlocking?

20 A: No. The door was not locked or shut.

21 Q: Okay. All right. Now let's talk about the
22 medications that you -- that you observed.
23 What were they?

24 A: Pitocin, Erythromycin and HeSpan.

25 Q: Okay. Was there an amount of Pitocin that you

1 observed?

2 A: Yes, there were three unopened vials.

3 Q: Okay. What about the Erythromycin?

4 A: There was one tube that you could tell had been
5 squeezed and -- hold on.

6 Q: Okay. What do you mean you could tell it had
7 been squeezed, what would that indicate?

8 A: Well these little Erythromycin vials are single
9 use vials for newborns the eye -- the treatment
10 of eye prophylaxis, so they're single use. And
11 once you squeeze in between your fingers, I
12 mean, they've definitely been squeezed and you
13 definitely can tell that.

14 Q: Okay. When is -- when is Erythromycin
15 administered?

16 A: After birth of the newborn, within the first
17 hour of birth.

18 Q: Okay. And to whom is it administered?

19 A: To the newborn.

20 Q: Okay. Can you reuse Erythromycin?

21 A: No.

22 Q: Okay.

23 A: It's single use vials -- I mean tubes.

24 Q: Okay. What's the danger in reusing ---

25 MR. HILLER: Hold -- hold on a minute. I object.

1 Is this -- I object to all of this because it
2 is not what we're charged with.

3 MR. WICEVIC: We're not alleging it, it's a separate
4 violation.

5 MR. HILLER: Well, then why are we talking about it?

6 MR. WICEVIC: Because you said that these were -- in
7 other documents she said that these medications
8 were for the patient being there for delivery.
9 And those were ---

10 MR. HILLER: As I understand the charge we are
11 charged with not having them locked up and in
12 storage. And that's the only issue.

13 THE COURT: The objection is sustained.

14 MR. HILLER: Thank you.

15 Q: Okay. What about the HeSpan? How much of that
16 was observed?

17 A: A 500 ml bag, milliliters bag.

18 Q: Okay. Ms. Hatcher, why would a birthing center
19 have HeSpan?

20 A: I'm not sure.

21 Q: Are midwives authorized to administer HeSpan?

22 A: No.

23 MR. HILLER: He -- he -- Your Honor, he's saying --
24 this is not relevant. That's she's ---

25 MR. WICEVIC: Well, Your Honor, in opening statement

1 he said that these drugs they were out and
2 available and contemplated for use by the
3 birthing center for the patient in labor. I
4 think it -- I think it is relevant. We're not
5 alleging a separate regulatory violation, it's
6 just attacks the credibility of their
7 arguments.

8 **MR. HILLER:** I would be willing to say that the
9 standards in which she's qualified to give an
10 opinion on HeSpan is is -- I don't think that
11 she's -- that that has been established.

12 **THE COURT:** Okay. Now Ms. Hatcher the purpose of
13 her testimony is to establish that she
14 inspected the facility based on her
15 observations and those observations indicated a
16 violation of the regulation.

17 **MR. WICEVIC:** Right.

18 **THE COURT:** Okay. So why are we getting into
19 testimony about what this was used for and
20 other type testimony?

21 **MR. WICEVIC:** Well, Your Honor ---

22 **THE COURT:** What does that have to do with her
23 observations?

24 **MR. WICEVIC:** Because it has to do with the
25 Departments determination which is the

1 enforcement in this action. And in subsequent
2 correspondence from Blessed Births they
3 indicate that these medications were being
4 used, Your Honor, during the patient who was
5 present at the facility during that patients
6 delivery. This -- this contradicts that.
7 HeSpan shouldn't be used or wouldn't be used
8 for this resident, that's is what we're seeking
9 to prove. Open Erythromycin should not have
10 been used. It was already open. It was
11 observed before the delivery of the child.
12 Erythromycin is used for the newborn so this --
13 this contradicts the position of Blessed
14 Births.

15 **MR. HILLER:** Your Honor, they had my correspondence
16 prior to filling this Administrative Order. If
17 they wanted to claim or put me on notice that
18 I was going to come down here and litigate
19 whether a tube of Erythromycin was open or not
20 then that was their prerogative. But it has
21 noting to do with what my client was ultimately
22 determined to have violated under the
23 Administrative Order and that's what we're
24 prepared to address. That's the only thing
25 we're prepared to discuss and that's the only

1 thing that should be relevant from the
2 testimony as you pointed out, she just -- she's
3 supposed to testify to what she observed and
4 then the decision is whether that's a violation
5 of the regulation. That's it.

6 **MR. WICEVIC:** And, Your Honor, like I said, I
7 believe this is relevant because it -- as I
8 said, and you'll find out, Blessed Births has
9 taken the position that these medications were
10 for the patient in labor and the fact that
11 midwives cannot administer this shows that, no,
12 this wasn't a medication that was used for that
13 patient in labor. Same thing with the
14 Erythromycin. It makes not sense to have an
15 opened Erythromycin when the newborn has -- has
16 not even been born. Michell Hatcher testified
17 that Erythromycin is used for the newborn.
18 She's been involved in perinatal care for quite
19 some time. I think is -- this is certainly
20 relevant to this case.

21 **THE COURT:** Okay. Here's what we're going to do.
22 Ms. Hatcher, once the Respondent presents their
23 case I'm going to allow you an opportunity to
24 rebut whatever evidence, whatever testimony
25 there is and Ms. Hatcher can be called back to

1 testify. But I don't know that this is going
2 to be their defense. Let's see what their
3 defense is before we test- -- hear testimony
4 relative to it.

5 **MR. WICEVIC:** Yes, Your Honor, I -- I just want to
6 add that, you know, some of the correspondences
7 from Blessed Births whether or not it's their
8 defense is -- they're already in evidence.

9 **MR. HILLER:** Okay. We didn't outline our defense
10 prior to their -- I mean, any -- any issues we
11 raised with them was prior to the signing and
12 the issuing of the Administrative Order. If
13 they didn't like what I said they had an
14 opportunity to add additional violations. But,
15 you know, I -- it's very, very difficult for me
16 to address issues that aren't raised by the
17 Administrative Order. And I believe the
18 Petitioner is bound by these allegations and we
19 need to stay within -- within the scope of
20 those allegations.

21 **MR. WICEVIC:** And I just want to say that the
22 administrative record includes this
23 correspondence. So we don't include every
24 little detail of our findings in the
25 Administrative Order. Our Administrative Order

1 outlines basic facts that constitute our
2 violations that we're proceeding on, however,
3 there's more -- there's more than just that.
4 The inspectors observations, there's other
5 records that we used in making these citations.
6 So I'm not sure what Mr. Hiller's argument is
7 about and, you know, how it is a valid
8 argument. The fact that it's not included in
9 the Administrative Order that it's now not
10 proper testimony.

11 **THE COURT:** My problem is that your asking this
12 witness to testify about things that you
13 anticipate the Respondent will be raising as a
14 defense.

15 **MR. WICEVIC:** I understand. Well we'll wait until
16 they have an opportunity to present their case
17 and if necessary we'll have Ms. Hatcher testify
18 about that, what the Department's response is.

19 **Q:** All right. Ms. Hatcher, when did you make
20 these observations regarding the unsecured and
21 accessible medications?

22 **A:** The observations were made during the
23 walkthrough, which was approximately the middle
24 part of my visit.

25 **Q:** Okay. Was this -- do you recall the timing of

1 the delivery of the patient or the patient's
2 child?

3 A: The child delivered very shortly, like within
4 probably 30 minutes or so of the time I left
5 the facility and my departure time was 3:40.

6 Q: All right. Did you make this observation
7 before or after?

8 A: Prior to that.

9 Q: Prior to what?

10 A: Prior to the delivery of the child, yes, the
11 observations were made.

12 Q: Okay. Did you ask Ms. Leland about these
13 medications?

14 A: Yes, as we were in the room and Ms. Leland was
15 with me for my entire walkthrough. As we were
16 in the room I asked her about the medications
17 out on the table and Ms. Leland responded to
18 me, oh, those were from the delivery from
19 yesterday. I haven't had a chance to get them
20 cleaned up.

21 Q: Okay. Did Blessed Births issue a written
22 response to the Department's citation of
23 section D.(3)(f)?

24 A: Yes.

25 Q: Okay. Let's turn to Exhibit Ten, please. Ms.

1 Hatcher, can you identify this document,
2 please?

3 A: Yes, this is the letter dated August the 18th,
4 sent by Mr. Hiller. And their response to
5 DHEC's letter.

6 MR. HILLER: I'm sorry, what exhibit are you on?

7 MR. WICEVIC: Exhibit Ten, pages 49 through 61.

8 A: And in response to DHEC's August the 6th
9 letter.

10 Q: Okay. And what was Blessed Births response to
11 the section D.(3)(f) violation?

12 A: Blessed Births said in this that all drugs,
13 medications and chemicals are stored and
14 secured in specifically designated cabinets,
15 closets, drawers or store rooms except when
16 they are being actively used, being
17 administered to a patient or their imminent use
18 as contemplated. The items listed were out in
19 the birthing room because at the time of
20 inspection the midwife was actively involved in
21 the delivery of a child. Despite the midwife
22 having a patient in labor the Department
23 inspector insisted on continuing her inspection
24 which necessity required the indicated drugs to
25 be out and available for use by the midwife.

1 Q: Okay. Based upon your observations were these
2 medications actively being used?

3 A: No.

4 Q: If the medications were being used or at least
5 contemplated for use should the birthing center
6 have a prescription for such medications?

7 A: Yes.

8 Q: Okay. Who was the patient actively involved in
9 delivery on July 16th?

10 A: Patient IM.

11 Q: Okay. Let's turn to Exhibit Eight, please.

12 A: Eight. Okay.

13 Q: Okay. Ms. Hatcher, can you identify this
14 document, please?

15 A: Yes. This is a prescription order signed by
16 Dr. Keith Stafford for patient IM.

17 MR. WICEVIC: And, Your Honor, or y'all, interrupt
18 if you feel like ---

19 MR. HILLER: Well you are. And, you know, Your
20 Honor, we're doing the exact same thing that
21 you just said we shouldn't do.

22 MR. WICEVIC: And, again, I just want to point out
23 that I feel obligated to touch upon this
24 because it's the position he's taken on record
25 with the Department. The evidence is -- a

1 letter is in evidence at this point and -- and
2 the fact that they take a position in the
3 letter prior to the Department issuing the
4 Administrative Order, this is certainly
5 something he had considered in taking
6 enforcement. All part of these request for
7 reconsideration is to see if -- see whether,
8 you know, there's valid grounds for issuing the
9 citation.

10 **MR. HILLER:** Well the letter is in evidence. What -
11 - what more do we need?

12 **THE COURT:** Mr. Hiller, if it's something that they
13 considered prior to issuing the Administrative
14 Order, I'm going to let her testify to that.
15 So your objection is overruled in this
16 instance.

17 **MR. HILLER:** Okay.

18 **Q:** Okay. Ms. Hatcher, let me back up a little
19 bit. Exhibit Eight, can you identify it?

20 **A:** Yes, this is the order form for patient IM, a
21 standing order form, signed from Dr. Keith
22 Stafford.

23 **Q:** Okay. What medications was patient IM
24 prescribed?

25 **A:** She was prescribed two ampuls of Pitocin, two

1 ampuls of Methergine, 8 Methergine tablets, one
2 Ophthalmic Erythromycin, 4 syringes 3cc, 21
3 gage, one-inch. Two syringes 1cc, 27 gage, 5/8
4 inch. Twenty Motrin 800 milligram tablets and
5 one Vitamin K.

6 Q: Okay.

7 MR. WICEVIC: Now the Department would like to admit
8 Exhibit Eight, page 37 into evidence.

9 THE COURT: Mr. Hiller?

10 MR. HILLER: What? I'm sorry. What did I miss?

11 THE COURT: Exhibit Eight.

12 MR. HILLER: Oh, I don't have any objection.

13 THE COURT: No objection. Okay. It's admitted.

14 Q: Okay. Ms. Hatcher, again, we might need to
15 refer to your report of visit. How many vials
16 or ampuls of Pitocin did you observe on the
17 table during your visit?

18 A: Three un-opened vials.

19 Q: Okay. How many ampuls was patient IM
20 prescribed?

21 A: Two ampuls.

22 Q: Was HeSpan ordered for patient IM?

23 A: No.

24 Q: Was HeSpan present during your inspection?

25 A: Yes. HeSpan was observed on the table.

1 Q: Again, did you observe the opened Erythromycin
2 before or after the birth of the patient's
3 child?

4 A: Prior to the delivery that occurred during my
5 inspection.

6 Q: Okay. Let's move on to the next citation,
7 please. Ms. Hatcher, did you cite Blessed
8 Births for violating regulation 61-102 section
9 D.(6)(d)?

10 A: Yes.

11 Q: Okay.

12 MR. HILLER: Your Honor, I -- I'd object to that,
13 Your Honor, because that was not a violation
14 that was included in the -- the Administrative
15 Order.

16 MR. WICEVIC: It was. Mr. Hiller, if you turn to
17 page six.

18 MR. HILLER: Page six. Page six. Okay. Which one?

19 MR. WICEVIC: D.(6)(d).

20 MR. HILLER: Yes. What's cited is according to a
21 review of a medical record for delivery on June
22 7th of 2014.

23 MR. WICEVIC: Okay. Well ---

24 MR. HILLER: That's -- that's what was cited.

25 MR. WICEVIC: Well if you continue reading, what

1 does it say? And this was something that I
2 intended to have Ms. Hatcher testify to so I
3 can address that first if you'd like.

4 **MR. HILLER:** I don't what there is to testify to,
5 that's what it says.

6 **MR. WICEVIC:** Your Honor, the -- to brief this,
7 there was -- with the Administrative Order
8 there are two basis for the D.(6)(d) violation.
9 We have since backed off the first one, the
10 statement that Mr. Hiller read. However, we
11 still maintain that the second part of this
12 citation is valid and constitutes the grounds
13 for this citation. So I was going to have Ms.
14 Hatcher testify regarding that. I'll will be
15 happy to have her testify about that if you'd
16 like to have her clarify things for Mr. Hiller.

17 **MR. HILLER:** Well, Your Honor, this is not the time
18 to clarify, you know. It seems to be a
19 misunderstanding, at least from my view of due
20 process. This says that there was a violation
21 as of 6/7/2014. That's what I came here to
22 deal with and I -- he's saying that they
23 decided to back off and do something else
24 doesn't give -- doesn't afford me any
25 opportunity to adequately represent my client.

1 Isn't that what it says, Your Honor, 6/7/2014?
2 That's the only way I -- I've read it.

3 **MR. WICEVIC:** And again, Your Honor ---

4 **MR. HILLER:** Doesn't it -- I mean, it doesn't say
5 multiple violations or other days.

6 **MR. WICEVIC:** Your Honor, I just want to add one
7 thing ---

8 **THE COURT:** Just one second. Mr. Hiller, here's
9 what I'm -- what my take away from reading what
10 the Department has in its Administrative Order,
11 it's that the top paragraph, that first
12 sentence; according to review the 6/7/2014
13 sentence, that's based upon a review of medical
14 records. And that the sentence below that is
15 based upon the actual inspection and
16 observations. That's what I'm -- that's my
17 take away from reading that particular
18 paragraph.

19 **MR. WICEVIC:** And that's correct. That's correct,
20 Your Honor. And I think it's disingenuous
21 because we talked about this same subject
22 during the deposition of Ms. Hatcher and if you
23 look at the reports of visits, Exhibit Two and
24 Exhibit Three, they talk about the citation and
25 ---

1 **THE COURT:** Well based upon my interpretation of the
2 Administrative Order I'm overruling the
3 objection and I'm allowing you to go forward.

4 **MR. HILLER:** Okay.

5 **MR. WICEVIC:** Thank you, Your Honor.

6 **Q:** Okay. Ms. Hatcher, and again, we're only
7 focusing upon your observations ---

8 **A:** Uh-huh.

9 **Q:** --- on that visit. Okay. Ms. Hatcher, what
10 does section D.(6)(d) require?

11 **A:** D.(6)(d) requires that at least one member of
12 the clinical staff are to -- or a member of the
13 clinical staff and a registered nurse be in the
14 facility when the patient is present and up to
15 one hour after the delivery. It also requires
16 that two members of the clinical staff or one
17 member of the clinical staff and a registered
18 nurse shall be present during the mother's
19 delivery.

20 **Q:** All right. Ms. Hatcher, with the delivery of
21 children be unpredictable as of time, how do
22 birthing centers typically handle ---

23 **MR. HILLER:** I object to what -- what -- that she's
24 qualified to answer that or that that would be
25 relevant with what they typically do.

1 MR. WICEVIC: Well -- okay. I could say how do
2 birthing centers meet this requirement?

3 MR. HILLER: I -- that -- that is not the standard.

4 MR. WICEVIC: I'm just looking for examples. I'm
5 not saying how Blessed Births must do this.
6 I'm just asking based upon her knowledge on
7 being an inspector in the industry, if she has
8 any knowledge, she can no she doesn't, but how
9 do they meet this requirement.

10 MR. HILLER: What does that have to with whether we
11 complied with the regulation?

12 THE COURT: Mr. Hiller, I'm going to allow him to
13 ask the question. And your objection is
14 overruled.

15 Q: Okay. Ms. Hatcher, based upon your experience
16 in the field, how do birthing centers handle
17 this two person requirement for deliveries?

18 A: The variety of birthing centers that we have in
19 the field handle it some different ways, but
20 they all have some sort of call schedule.
21 Either they have two midwives and both the
22 midwives know that they're going to be at the
23 birthing center or they have a midwife and a
24 nurse and they have nurses on call and they
25 call that nurse that's on call and say I have

1 a patient that's come in in labor, or either
2 the midwives -- the midwives themselves just
3 take the call all the time. Like I say, we
4 have birthing centers that have nurse midwives,
5 we have birthing centers that have midwives and
6 even the ones that have nurse midwives they
7 have two midwives on call at all times or
8 either a midwife and a nurse.

9 Q: Ms. Hatcher, you mentioned nurse midwives, what
10 is a nurse midwife?

11 A: A nurse midwife is a nurse who has an advance
12 practice nursing license in South Carolina and
13 she's also been certified as a midwife.

14 Q: Okay. What does clinical staff mean?

15 A: Clinical staff means a physician, certified
16 nurse midwives and lay midwives appointed by
17 the governing authority to practice within the
18 birthing center and governed by rules approved
19 by the governing body.

20 Q: Okay. Before we move to the substance of your
21 section D.(6)(d) citation, let's turn to
22 Exhibit Four, please. And Ms. Hatcher, this
23 the policy and procedure manual. Does this
24 manual address the two person delivery
25 requirement?

1 A: Yes. It does.

2 Q: Okay. What page?

3 A: I'm not -- I believe it's on page 27 in section
4 6C and 6D. An adequate number of license and
5 ancillary midwifery personnel shall be on duty
6 to meet the total midwifery needs a patients.
7 Midwifery personnel shall be assigned the
8 duties consistent with training. And also
9 section D, at least one member of the clinical
10 staff or a registered nurse shall be in the
11 facility when a patient is present and at least
12 one -- up to one hour after each mother's
13 delivery. Two members of the clinical staff or
14 one member of the clinical staff and a
15 registered nurse shall be present during the
16 mother's delivery.

17 Q: Okay. So is that just simply a recitation of
18 the regulations?

19 A: Yes, it is.

20 Q: Okay. Ms. Hatcher, why did you cite Blessed
21 Births for violating section D.(6)(d)?

22 A: During my inspection on July the 16th when the
23 lady was there in labor Ms. Leland was the only
24 person of the clinical staff or either -- or
25 the only person of the clinical staff who was

1 present and there was no registered nurse
2 present either.

3 Q: Okay. What time did you arrive at the
4 facility?

5 A: 11:40 a.m.

6 Q: And when did you depart the facility?

7 A: 3:40 p.m.

8 Q: All right. I think you mention this already
9 but what time did the -- the whereabouts as far
10 as time did the mother deliver her child?

11 A: Sometime after 3:00 not belong before I left
12 the facility though. Within the time frame of
13 3:00 to the time I left the facility.

14 Q: Okay. How did you determine the mother
15 delivery at this time?

16 A: I heard the child crying and prior to my
17 departure of the facility Ms. Leland brought
18 the baby out and weighed it.

19 Q: Okay. And are you aware of the Blessed Births
20 attempting to obtain the second person for
21 delivery?

22 A: Ms. Leland did call someone shortly after my
23 arrival to the facility and I heard her on the
24 phone say that she did have a patient in hard
25 labor.

1 Q: Okay. Did that person arrive?

2 A: No.

3 Q: Okay. Did Blessed Births provide a response to
4 your citation of section D.(6)(d)?

5 A: Yes.

6 Q: Okay. Let's turn to Exhibit Ten, please.

7 A: Okay.

8 Q: Okay. What was Blessed Births response on this
9 August the 18th letter regarding this Section
10 D.(6)(d) citation?

11 A: Blessed Births responded that the entire
12 delivery on July 16th was affected and
13 interfered with by the insistence of the
14 inspector to conduct and continue the
15 inspection despite the fact the midwife was
16 actively involved in the delivery of a child.
17 The additional staff member, a registered
18 nurse, is not required until second stage and
19 although a call was made to the nurse the
20 ability to assess the patient adequately and
21 follow up with nurse's progress in arriving to
22 the facility was continuously interrupted by
23 the insistence of the inspector that the
24 midwife split her time between the patient and
25 the inspection. This combined with the fact

1 that the second stage was uncommonly brief for
2 a first time mother, resulted in the nurse not
3 arriving prior to delivery.

4 Q: Okay. Did Blessed Births admit to not having
5 a second staff member present in any other
6 documents?

7 MR. HILLER: Yes, we did. We filed an answer to
8 request for admission where we admitted not
9 having another staff member present on July 16,
10 2015 -- 14.

11 A: Yes.

12 MR. WICEVIC: Okay.

13 A: Yes.

14 Q: Let's turn to Exhibit Thirteen, please. Can
15 you identify this?

16 A: Yes. This is a response that Mr. Hiller on
17 behalf of Blessed Births responded to our
18 request for admissions of the case.

19 Q: All right.

20 MR. WICEVIC: The Department would like to enter
21 Exhibit Thirteen into evidence.

22 MR. HILLER: No objections.

23 THE COURT: Admitted.

24 (Petitioner's Exhibit Number Thirteen was introduced
25 into the record at this time.)

1 MR. WICEVIC: Judge Robinson, this is the point
2 where I had planned to clarify that -- that
3 first mention in the Administrative Order that
4 was talking about review of a medical record
5 was -- is not being used as the Department's
6 basis for the citation, but I think we have
7 already discussed that so I'll just move on --
8 onto the next citation.

9 THE COURT: Okay.

10 Q: All right. Ms. Hatcher, did you cite Blessed
11 Births for violating regulation 61-102 section
12 F.(5)(a)?

13 A: Yes.

14 Q: Okay. And what does section F.(5)(a) require?

15 A: What exhibit was that?

16 Q: What does F.(5)(a) require? It's on page ten
17 of the regulation.

18 A: Okay. I got it now. The facility should be
19 kept neat -- neat and clean and free from
20 odors. Accumulated waste must be removed daily
21 or more often if necessary. Frequent cleaning
22 of the floors, walls, ceilings, wood works and
23 windows. The premises must be kept free from
24 rodent and insect infestations. And the bath
25 and toilet facilities must be maintained in a

1 clean and sanitary condition at all times.

2 Q: Okay. And why did you cite Blessed Births for
3 violating section F.(5)(a)?

4 A: During the inspection -- the walkthrough part
5 of the inspection, urine cups -- cups filled
6 with urine were observed in the medicine
7 cabinet and sitting on top of the medicine
8 cabinet in the hall bathroom as well as a
9 putrid odor of urine.

10 Q: Okay. All right. Before we -- we're going to
11 focus on your observations during inspection.

12 A: Yes.

13 Q: Why might a birthing center have urine samples
14 on its premises?

15 A: For each mother during her prenatal visits the
16 midwife is required to do a gross uranalysis
17 dipstick for protein and sugar presence in the
18 urine.

19 Q: Okay. Can you explain how one administers this
20 uranalysis test?

21 A: This is on a little stick and the stick -- the
22 stick is dipped into the urine and tested and
23 then it's pulled out and compared to the
24 pictures on the outside of the bottle the test
25 strip to determine if glucose or protein is

1 present in the urine.

2 Q: Okay. And what -- based upon your experience,
3 what's the purpose of this test?

4 A: The purpose of this is to determine if sugar
5 and protein is in the urine during the mother's
6 prenatal visits. So if during the prenatal
7 visit that you -- if you would observe that
8 there was either protein or sugar in the mom's
9 urine that she can consult the physician as
10 appropriately.

11 Q: Okay. Well what would the presence of sugar or
12 protein mean?

13 A: It could mean that the mom has -- the spillage
14 of sugar in the urine can mean the mom has
15 spilled -- sugar means that she may have
16 gestational diabetes and may put her child at
17 risk -- unborn child at risk. And this
18 spillage of protein in the urine is probably
19 more serious, it can signal that that patient
20 may be going into what we call preeclampsia
21 which is a problem with the body is not
22 removing the toxins and the mom can be ver sick
23 and that can also as well transfer to fetus
24 inside.

25 Q: All right. And moving on to your observations

1 -- what did you smell?

2 A: A very putrid smell of old urine.

3 Q: Okay. And what did you see?

4 A: Styrofoam cups filled with urine inside the

5 cabinet and on top of the cabinet. Some of

6 them had dates on them, some of them had names

7 on them. Some of have times on them.

8 Q: Okay. Do you recall how they were labeled?

9 A: Yes. Two of the cups were labeled with an

10 individual patient name dated 7/15 and had

11 times noted.

12 Q: Do you recall the patient names or, excuse me,

13 it's initials?

14 A: What were the patient names?

15 Q: Yeah. Ms. Hatcher, are you referring to your

16 notes?

17 A: Yes. And I'll refer to my notes page four --

18 page five of my notes. Let's -- excuse me,

19 page six. The cups on top of the cabinet were

20 initials VB, dated ---

21 Q: Ms. Hatcher, can you hold on one second.

22 A: Oh, I'm sorry.

23 Q: You said page six?

24 A: Yes. Let me make sure that's right. One, two,

25 three ---

- 1 Q: Do they have Bates numbers on the bottom?
- 2 A: --- four, five ---
- 3 Q: Do you see the Bates numbers on the bottom?
- 4 A: The what?
- 5 Q: Do you see the Bates numbers on the bottom of
- 6 your notes?
- 7 A: I don't have a Bates number.
- 8 Q: You don't?
- 9 A: On the notes?
- 10 Q: At the very bottom. I think I can see them.
- 11 **MR. WICEVIC:** Your Honor, may I approach the bench.
- 12 **THE COURT:** Yes.
- 13 Q: See these numbers. It starts at the first page
- 14 of the -- of the July 15th notes.
- 15 A: Oh, I'm sorry. It says DHEC 00022.
- 16 Q: Okay. That's the page you're referring to?
- 17 A: Yes.
- 18 Q: Okay. And how would those two cups labeled
- 19 with individual patient names and dated 7/15
- 20 and had times noted. Could you explain how
- 21 they were labeled?
- 22 A: Yes. One was labeled VB, dated 7/15 at 3:30
- 23 and the other was labeled MT, dated 7/5 at 11
- 24 -- I mean, 7/15 at 11:45 or 43.
- 25 Q: Okay. And what about the cups that were

1 present?

2 A: One cup was labeled IM, dated 7/15 with no
3 time. One date was labeled CH, dated 7/15 with
4 no time. Another was labeled -- labeled P,
5 timed at 2:30 with no date. And those were all
6 on top of the medicine cabinet. And inside the
7 medicine cabinet there was a cup dated -- no
8 with no date and no time labeled SC and another
9 one labeled LT with a time of 9:30 and no date.

10 Q: Ms. Hatcher, just to clarify the discrepancy
11 this -- do your notes correspond in what was
12 included in your ROV?

13 A: I think there was a discrepancy in the ROV
14 where it says the other cup was labeled with a
15 patient name and time that should have said no
16 time.

17 Q: Okay. Do you want to point that out? It's I
18 believe on page 14. For some reason the Bates
19 page was page 14 ---

20 A: I think it was patient ---

21 Q: Can you explain to us where that discrepancy is
22 and explain to us what's correct?

23 A: The discrepancy is on -- midway down the page
24 where it says in addition to white styrofoam
25 cups were observed in the bathroom cabinet and

1 were labeled as follows: one of the cup was
2 labeled with a patient name and time. That is
3 correct. And the other entry should say the
4 other cup was labeled with a patient name and
5 no time -- no date and time.

6 Q: Okay. Ms. Hatcher, did these cups have covers?

7 A: No.

8 Q: When did you make these observations regarding
9 the cups?

10 A: During the walk through which would have been
11 midday -- middle of my inspection.

12 Q: Okay. Based upon the labels were some of the
13 urine samples out for over 24 hours?

14 A: Yes.

15 Q: From your experience in the health care
16 industry what's the proper way to ---

17 MR. HILLER: I -- I object. I don't know how I can
18 respond. I mean ---

19 MR. WICEVIC: Okay. We'll move on from that.

20 Q: Ms. Hatcher, did you ask Ms. Leland about the
21 cups?

22 A: Yes. I asked her why the urine cups were in
23 the bathroom and Ms. Leland responded to me
24 that they were left over from yesterday and she
25 had not had a chance to clean them up yet.

1 Q: Okay. Did Blessed Births submit a written
2 response to your citation of section F.(5)(a)?

3 A: Yes.

4 Q: Let's turn to Exhibit Ten, page 51. Did they
5 respond to your citation of F.(5)(a)?

6 A: Yes. The response was the clinic is impeccable
7 clean and has never had a prior violation or
8 written warning for sanitary violations. As
9 indicated previously the clinic was scheduled
10 to be closed that day and had been closed from
11 the afternoon before until that morning when
12 the patient unexpectedly went into labor and
13 the inspector even more unexpectedly arrived
14 with a police officer to conduct an inspection
15 when the labor was in progress. There had been
16 a question as to the validity of the strips
17 utilized the day before and the urine samples
18 were held over to be tested the following
19 morning with new strips. That testing was
20 necessarily deferred so the patient's could be
21 addressed -- patient's needs could be
22 addressed. The bathroom in which was located
23 was not in use because she was initially
24 considered to put in the front delivery room,
25 and why her meds were in the room, she was

1 moved back to the delivery -- to the back
2 delivery room.

3 Q: Okay. Ms. Hatcher, do you recall who the
4 patient was delivering at the time of the visit
5 was?

6 A: Patient IM.

7 Q: Did you observe a urine cup for patient IM?

8 A: Yes.

9 Q: Okay. Does that mean they were deferring
10 testing according to this letter?

11 A: According to this response that patient's
12 testing had been deferred. It was not
13 completed.

14 Q: Okay.

15 MR. WICEVIC: Your Honor, I'm not sure if you want
16 to take a break now. I'm moving on to a
17 different ROV. I can keep going. I know it's
18 12:30.

19 THE COURT: How much longer do you expect your
20 direct to be?

21 MR. WICEVIC: Probably -- I've got two more
22 citations and then another visit at the
23 facility and that's -- so maybe an hour.

24 THE COURT: An hour.

25 MR. WICEVIC: Maybe longer.

1 THE COURT: Okay. Let's take a break. It's now
2 12:30. And in fact, let's take a lunch break.

3 MR. WICEVIC: Okay.

4 THE COURT: We can reconvene at 1:30.

5 MR. WICEVIC: Sure. Thank you.

6 MR. HILLER: Thank you, Your Honor.

7 (Off the Record from 12:30 p.m. until 1:35 p.m.)

8 THE COURT: All right. Are we ready to begin.

9 MR. WICEVIC: Yes, Your Honor.

10 THE COURT: Okay.

11 Q: All right. Now, Ms. Hatcher, before lunch we
12 had finished with your description of the
13 Department's basis for citing section F.(5)(a)
14 of the regulation 61-102. Let's move on to the
15 complaint -- complaint visit. Can we turn to
16 Exhibit Three, please? That's pages 15 through
17 19 of the exhibit packet. Ms. Hatcher, can you
18 identify Exhibit Three, please?

19 A: Yes. Exhibit Three contains the letter -- the
20 cover letter that went with the ROV that was
21 mailed and behind that is a reported visit,
22 referred to as ROV, for the investigation on
23 Blessed Births with the address, phone number,
24 email, contact name, inspect- -- inspection
25 information, violations cited, complaint

- 1 allegations and details of the investigation.
- 2 Q: Okay. And who completed this reported visit?
- 3 A: Myself, Michell Hatcher.
- 4 Q: Okay. When was it mailed?
- 5 A: It was mailed on July 25th, 2014.
- 6 Q: Okay. And it was mailed to whom?
- 7 A: To Amy Leland at Blessed Births.
- 8 Q: Is a report of visit your report of conditions
- 9 or events that you observed?
- 10 A: Yes.
- 11 Q: So the report of visit was made on or near the
- 12 time by personal knowledge of such conditions
- 13 or events?
- 14 A: Yes.
- 15 Q: Are reports of visits kept in the course of
- 16 DHEC's normal business activity?
- 17 A: Yes.
- 18 Q: Were reports of visits -- excuse me ---
- 19 MR. HILLER: I have no objections to him admitting
- 20 this.
- 21 MR. WICEVIC: Okay. The Department wishes to admit
- 22 Exhibit ---
- 23 MR. HILLER: Just trying move things along.
- 24 THE COURT: Okay.
- 25 MR. WICEVIC: Okay.

1 THE COURT: It's admitted.

2 (Petitioner's Exhibit Number Three was introduced
3 into the record at this time.)

4 Q: All right. Ms. Hatcher, you cited Blessed
5 Births for violating regulation 61-102 section
6 D.(3)(b)?

7 A: Yes.

8 Q: Okay. And what does section D.(3)(b) require?

9 A: There should be policies and procedures that
10 address the receiving, transcribing and
11 implementing of orders for administration of
12 drugs.

13 Q: Okay. And why did you cite Blessed Births for
14 violation section D.(3)(b).

15 A: Because after a review of the policy and
16 procedures manual that was provided to me the
17 Department did not observe a policy and
18 procedure addressing specifically the
19 receiving, transcribing, and implementing of
20 orders for administration of drugs at Blessed
21 Births.

22 Q: Okay. Turn to Exhibit Four, please. It's
23 pages 20 through 28. Ms. Hatcher, you've
24 already testified that this was the policy and
25 procedure manual that you observed and copied

1 on your July 16th visit, correct?

2 A: Yes.

3 Q: Okay. Let's look on -- excuse me -- on the
4 bottom -- it's page 21 through 22. I notice at
5 the bottom of that page, page 21, there is a
6 section on the use of IVs, Tubes, Fluids,
7 Analgesia, Anesthesia, Antihemorrhagics,
8 Antibiotics, Episiotomies and Positions for
9 Delivery. Why is that deficient regarding the
10 requirements of section D.(3)(d)?

11 A: Well in this section -- Section 9 does not
12 address the actual prescribing and transcribing
13 of the orders and whose -- how they should get
14 them or who they should get them from. Who
15 receives the order and how the order will be
16 carried out for the patient and documented in
17 the medical record.

18 Q: Okay. Let's turn to page 26, please. Ms.
19 Hatcher, there's a section titled
20 Pharmaceutical Services in the upper -- at the
21 top of page 26. Why is that deficient?

22 A: For the same reason. It does not address who
23 will obtain the prescription and/or the orders
24 and how they will be transcribed into the
25 medical record and documented in the medical

1 record as -- by the person receiving them and
2 who administers them.

3 Q: What about -- moving on to the next page --
4 it's page 27. It's the section on Medical
5 Records. Why is that deficient as far as the
6 section D.(7)(a) -- or excuse me, D.(3)(b).

7 A: Well in section 7 it really is just talking
8 about what has to be in the medical records.
9 And even though it mentions in section 7(A),
10 number 3, the orders of a physician or
11 certified practitioner it doesn't say who shall
12 be receiving those. Who should transcribe them
13 and who should administer them in the medical
14 record.

15 Q: Okay. It's said medical records section --
16 actually it's a recitation of the Reg?

17 A: Yes. A recitation of the part of the
18 regulation of what is required in the medical
19 record.

20 Q: Okay. Going back to Exhibit Three. When did
21 you mail the report of visit?

22 A: On July the 25th, 2014.

23 Q: Okay. Was the plan of correction due -- I
24 understand there was an extension to it?

25 A: Right. The original date was due on August

1 the 9th with an extension of seven days making
2 it become due on August 16th, 2014.

3 Q: Okay. Did Blessed Births submit any written
4 response to cited violation of section
5 D.(3)(b)?

6 A: Yes.

7 Q: Okay. Let's turn to Exhibit Ten, please. What
8 was Blessed Births response to citation in
9 section D.(3)(b)?

10 A: Blessed Births response was the policies and
11 procedures are contained within the policy and
12 procedure manual on pages three through ten
13 attached and have remained unchanged during the
14 entire 14 years the facility has been licensed.

15 Q: Okay. Did the August 18th letter contain a
16 copy of the policy and procedure manual?

17 A: Yes, it did contain a copy of the policy and
18 procedure manual.

19 Q: Did that policy and procedure manual address
20 the subject required by D.(3)(b)?

21 A: No. There were no changes made to the policy
22 and procedure manual that was attached to the
23 August 18th letter.

24 Q: Okay. In the August 18th letter does Blessed
25 Births explain where in the manual this

1 requirement part is met?

2 A: No.

3 Q: Okay. Did the Department reply to Blessed
4 Births August 18th letter?

5 A: Yes.

6 Q: Let's turn to Exhibit Eleven, please.

7 A: Yes.

8 Q: Can you identify those documents, please?

9 A: Yes. This is the letter written -- dated
10 September 26th and signed by Gwen Thompson as
11 a response that -- where DHEC responded to
12 their August 18th letter.

13 Q: Okay. How did the Department respond to the
14 section D.(3)(b) comments in Mr. Hiller's
15 August the 18th letter?

16 A: The Department makes reference that they --
17 they note that the policies and procedures are
18 addressed in the receiving, transcribing and
19 the implement of orders and administration of
20 drugs are contained within the attached policy
21 and procedure manual. And then DHEC explains
22 that while there are provisions in such manner
23 regarding IV fluids, anesthesia, analgesia,
24 antihemorrhagics, antibiotics, episiotomies,
25 and pharmaceutical services, the Department

1 staff could not locate policies and procedures
2 regarding their receipt, transcription and
3 implementation of orders for administration of
4 drugs. And we are -- we asked them to direct
5 the Department to the applicable provisions,
6 evidence, and compliance or either to please
7 amend or supplement the policies and procedures
8 manual to address the receiving, transcribing,
9 and implementation of orders for administration
10 of drugs and provide the Department with the
11 documentation of such -- of such amendments
12 and/or supplements.

13 Q: All right. Did Blessed Births followup --
14 direct the Department to medical provisions
15 evidencing compliance with section D.(3)(b)?

16 A: No.

17 Q: Okay. As far as you know did Blessed Births
18 otherwise amend or supplement their policy and
19 procedure manual to address the receiving,
20 transcribing, and implementing of orders for
21 administration of medication?

22 A: No.

23 Q: All right. Let's move on to the sixth and
24 final citation. Ms. Hatcher, did you cite
25 Blessed Births for violating regulation 61-102

1 section D.(3)(c)?

2 A: Yes.

3 Q: All right. Now what does section D.(3)(c)
4 require?

5 A: D.(3)(c) requires that there should be written
6 prescriptions or orders signed by a
7 practitioner legally authorized to prescribe in
8 South Carolina for all drugs administered to
9 the mother and infant within the birthing
10 center.

11 Q: All right. Now why did you cite Blessed Births
12 for violating section D.(3)(c)?

13 A: Well the medical record for this patient that
14 was reviewed there was documentation that
15 Pitocin was given for a total of three doses.
16 Methergine was given and sodium chloride was
17 given. And the orders for this patient that
18 were supplied to DHEC only had orders for two
19 doses of Pitocin and did not have any order for
20 sodium chloride at all.

21 Q: All right. Let's back up a little bit. Just
22 like the other citation let's start with what
23 you observed on the inspection.

24 A: So I observed in the medical record where there
25 was documentation that Pitocin was given three

1 times, Methergine given one time and sodium
2 chloride given one time.

3 Q: Okay. Let's take it easy. Let's go to Exhibit
4 Five, please. Before we get to this exhibit,
5 Ms. Hatcher, how did you determine which
6 medications were administered to patient KD?

7 A: Well after reviewing the medical record that
8 was provided to me by Ms. Leland, I made copies
9 of that, brought that to the office, reviewed
10 that and it was noted within the birthing
11 record in the right hand column and also in the
12 labor and delivery notes of the medications
13 administered.

14 Q: All right. So can you identify this Exhibit
15 Five, pages 29 through 31?

16 A: Yes. This is the record for patient KD and her
17 newborn.

18 Q: What record?

19 A: The birthing record and then the second page is
20 labor and delivery notes and the third page is
21 labor and delivery notes.

22 Q: Okay. Who completed this?

23 A: Blessed Births.

24 Q: When was it completed?

25 A: The date on it is 6/7/2014.

1 Q: Okay. And did you obtain this document during
2 your visit to the facility on July 16th?

3 A: Yes.

4 Q: The Department would like to admit Exhibit Five
5 -- pages 29 through 31 into evidence.

6 MR. HILLER: No objections.

7 THE COURT: Admitted.

8 (Petitioner's Exhibit Number Five was introduced into
9 the record at this time.)

10 Q: All right, Ms. Hatcher, let's take a look at
11 this document. On page 29 can you explain the
12 contents of this page?

13 A: Okay. Up at the -- on the top all the way
14 across it has information pertaining to the
15 date and time of birth. The due date. The
16 patient's name, baby's name. The midwife who
17 was pres- -- present for the delivery. The
18 site of delivery. Number of pregnancies.
19 Previous births. Age. And in the left hand
20 column it has information related to the baby's
21 assessment. In the right hand column it has
22 information related to the mother's labor and
23 delivery and immediate time after the delivery.
24 Then starting at the bottom it has labor and
25 delivery notes which these are notes that are

1 taken during the labor process and delivery and
2 that continues to the next two pages.

3 Q: Okay. Where in this exhibit does it indicate
4 which medications were administered?

5 A: On that first page in the block under mother
6 about midway down the page it has a place for
7 meds and it says one ml Pitocin IM at 9:35 a.m.
8 Then it says one ml Pitocin at 9:50 a.m. And
9 then it says one ml Methergine at 10:00. One
10 ml Pitocin IM at 10:20 a.m. And that's where
11 the medications are listed.

12 Q: Okay. Is there anything in the labor -- the
13 labor and delivery notes regarding the
14 administration of medications?

15 A: Yes. One page 30 towards the bottom under time
16 entry for 9:30 a.m. it talks about the baby's
17 Erythromycin and Vitamin K was administered.
18 At 9:35 a.m. one ml Pitocin IM given to mom.
19 At 9:58 one ml Pitocin IM given to mom. And
20 then at 10:00 a one ml Methergine IM given to
21 mom. Then following on the next page at 10:05
22 a.m. 500 ml, which is milliliters, NaCL, and
23 that's sodium chloride IV given to mom. And
24 then 10:20 one ml Pitocin IM given to mom.

25 Q: Okay. Moving along to comply with section

1 D.(3)(c) what would Blessed Births need to
2 have regarding these medications that were
3 administered?

4 A: There would need to be an order written and/or
5 prescription for ever medication administered
6 to the mother and/or child.

7 Q: All right. On the day of your inspection did
8 Blessed Births have the written prescription or
9 order from a practitioner authorized to
10 prescribe medications?

11 A: Not for this patient KD.

12 Q: Okay. Let's turn to Exhibit Six, please.

13 A: Okay.

14 Q: And Ms. Hatcher, can you identify this
15 document, please?

16 A: Yes. This is a copy of the standing order that
17 I made from the medical record of KD on the day
18 of inspection.

19 Q: Okay. So this was present?

20 A: This particular page was present.

21 Q: What about the following page?

22 A: The following page was also present.

23 Q: And why is this prescription request form
24 deficient?

25 A: This prescription request is not signed by a

1 physician or another authorized health care
2 provider.

3 Q: Okay. On the day of your inspection were there
4 any other prescription request forms or other
5 orders from a physician authorized to prescribe
6 medication?

7 A: Not in patient KD's medical record.

8 Q: All right.

9 MR. WICEVIC: The Department would like to admit
10 Exhibit Six into evidence, please.

11 MR. HILLER: No objection.

12 THE COURT: Admitted.

13 (Petitioner's Exhibit Number Six was introduced into
14 the record at this time.)

15 Q: Now, Ms. Hatcher, did the Department receive
16 some kind of written response from Blessed
17 Births regarding the Department's citation
18 violates section D.(3)(c)?

19 A: Yes.

20 Q: All right. Let's turn to Exhibit Ten, please.

21 A: Ten. Okay.

22 Q: Ms. Hatcher, this is the August 18, 2014 letter
23 from Mr. Hiller to you -- the Department. How
24 did Blessed Births respond to this citation?

25 A: In the response dated August 18, 2014, Mr.

1 Hiller responds, the drugs were administered by
2 -- no, excuse me. Written prescriptions were
3 in the facility and available for inspection
4 for each of the medications provided to the
5 patient that was in labor while the inspection
6 was occurring but not -- but were not requested
7 or reviewed by the inspector. There is no
8 requirement that they be in the chart.

9 Q: Ms. Hatcher, was there a misunderstanding with
10 the patient in question?

11 A: Yes. It appears to have been.

12 Q: Okay. It appears Blessed Births was cited
13 regarding patient that was provided that was
14 delivering at the time of the visit. Was the
15 citation regarding that particular patient?

16 A: No. The patient -- the violation and citation
17 is regarding patient KD.

18 Q: Okay.

19 A: It was noted on the report of visit.

20 Q: Okay. Let's turn back to the report of visit.
21 Let's turn to Exhibit Three. Where does the
22 reported visit indicate the identity of this
23 particular patient?

24 A: It's on the very last page of the report of
25 visit which is page 19. And the Exhibit under

1 it says protected information -- is this
2 information is confidential and we write the
3 patients name there. And on this particular --
4 or the original ROV prior to being redacted it
5 had the patient's full name and her estimated
6 due date.

7 Q: Okay. Moving back to Exhibit Ten, page 50.
8 The last sentence in the response to Section
9 D.(3)(c). It says there is no requirement
10 that they be in the chart stating they, and
11 they're referring to the prescription request
12 or orders -- written orders. Is there any
13 requirement that written orders of prescription
14 admin- -- administered or medications be in the
15 medical record?

16 A: Yes. A written prescription -- order of
17 prescriptions is required to be in the medical
18 record.

19 Q: Okay. Do you know what provision in 61-102
20 requires that?

21 A: I think it's D.(3)(c). It should be written
22 prescriptions or orders signed by practitioner
23 legally authorized to prescribe in South
24 Carolina for all drugs administered to mother
25 and infant within the birthing center.

- 1 Q: Okay. Let's look at Section D.7. It's talking
2 about contents of the medical record. It's on
3 page 8 of the packet of the regulation that I
4 handed you.
- 5 A: So that's section D.7.
- 6 Q: Okay. And what does it require it?
- 7 A: D.7 requires an accurate complete medical
8 record shall be maintained for each patient.
9 A legible medical record in ink shall include
10 at least the following; and number three is
11 orders of the physician or certified
12 practitioner.
- 13 Q: Okay. Did the Department reply to Blessed
14 Births August 18th letter?
- 15 A: Yes.
- 16 Q: Let's turn to Exhibit Eleven, please.
- 17 A: Okay.
- 18 Q: Ms. Hatcher, this document is already in
19 evidence. It's the September 26th, 2014 letter
20 from DHEC to Blessed Births. How does the
21 Department first reply to Blessed Births August
22 18th letter concerning this section D.(3)(c)
23 citation?
- 24 A: The Department writes that for the section
25 D.(3)(d) violation; you wrote the drugs were

1 administered by -- no, excuse me. For the
2 section D.(3)(c) violation you state written
3 prescriptions were in the facility and
4 available for inspections but were not
5 requested or reviewed by the inspector. It was
6 noted in the report of visit the Department
7 staff requested and received copies of the
8 medical records. Regulation 102 requires a
9 birthing center to maintain an accurate medical
10 record for each patient which includes among
11 other things orders of physicians of certified
12 practitioners. Regulation 102 -- 61-102
13 D.7(83) please provide the Department with
14 copies of the written prescriptions for patient
15 KD as noted in the reported visit or the
16 medications referred to in the July 16, 2014
17 report of visit.

18 Q: All right. Did Blessed Births followup to the
19 September 26th letter and provide the
20 Department with copies of the written
21 prescriptions for patient KD?

22 A: Yes.

23 Q: All right. Let's turn to Exhibit Twelve,
24 please. All right. Ms. Hatcher, what is this
25 document?

1 A: This is a response to our September 26th letter
2 where we ask for -- for different things and he
3 sent them -- his response back.

4 Q: Who's he?

5 A: Mr. Hiller.

6 Q: All right. And when is it dated?

7 A: It's dated October 14, 2014.

8 Q: All right. And how did they respond to the
9 D.3(c) citation?

10 A: They sent a prescription form back for patient
11 KD.

12 Q: All right. Let's turn to page 74. Is that the
13 prescription request form for patient KD?

14 A: Yes.

15 Q: Okay. All right. What does this prescription
16 request form prescribe for patient KD?

17 A: The prescription request form prescribes two
18 Amps of Pitocin, two Amps of Methergine, eight
19 Methergine tablets, one Ophthalmic
20 Erythromycin, four syringes three CC 21 gauge
21 one and a half inch, two syringes, one CC 27
22 gauge five eighth inch -- one Rhogam full dose.
23 Twenty Motrin 800 milligram and one Vitamin K.

24 Q: All right. When is this prescription request
25 form dated?

- 1 A: 5/12/2014.
- 2 Q: When is the fax dated?
- 3 A: 7/30/2014.
- 4 Q: And when was the birth -- the delivery of
5 patient KD's child?
- 6 A: 6/7/2014.
- 7 Q: All right. Now according to the birthing
8 record how much Pitocin was prescribed -- or,
9 excuse me, administered to patient KD?
- 10 A: Three mls on -- one ml on three separate
11 occasions.
- 12 Q: All right. And according to the prescription
13 request form attached to Blessed Births October
14 14th letter; how much Pitocin was prescribed to
15 patient KD?
- 16 A: Two Amps.
- 17 Q: All right. According to the medical record or
18 rather the birthing record did Blessed Births
19 administer NaCl, sodium chloride?
- 20 A: Yes. The birthing records reveals 500 mls of
21 sodium chloride was administered by IV to the
22 patient.
- 23 Q: All right. Now according to this prescription
24 request form attached to the October 14th
25 letter, was patient KD prescribed NaCl?

1 A: No.

2 Q: All right.

3 **MR. WICEVIC:** The Department would like to admit --
4 I think I got this is -- Exhibit Twelve into
5 evidence.

6 **MR. HILLER:** No objection.

7 **THE COURT:** Admitted.

8 Q: All right. Now, Ms. Hatcher, did the
9 Department receive any other prescription
10 request forms from Blessed Births for patient
11 KD?

12 A: Yes.

13 Q: Let's turn to Exhibit Seven, please. Can you
14 identify this document?

15 A: Yes. This is a document prescribing Rhogam
16 full dose for patient KD signed by Dr.
17 Stafford.

18 Q: Okay. And was this present at the time of your
19 visit?

20 A: No.

21 Q: Was the a previous prescription we discussed,
22 the one dated 5/12 present during the
23 inspection?

24 A: No.

25 Q: Okay. Ms. Hatcher, I'm sorry. I'm kind of

1 jumbling things. Let's go back to Exhibit
2 Seven. Do you know when the Department
3 received this particular prescription request
4 form?

5 A: I believe this was received when we requested
6 them to send any additional information.

7 Q: Okay. Are you speaking about during the
8 discovery phase for this?

9 A: Yes. This is the response to request for
10 production information.

11 Q: All right. And what does the Exhibit Seven
12 prescribe for patient KD?

13 A: Rhogam.

14 Q: And when is this dated? Exhibit Seven?

15 A: 5/4/14.

16 Q: Could that be three four?

17 A: It could be a three four.

18 Q: Okay. All right.

19 MR. WICEVIC: The Department would like to admit
20 Exhibit Seven.

21 MR. HILLER: I object to it's relevance, Your Honor.
22 It has nothing to do with the violation.

23 MR. WICEVIC: I -- I mean, it's one of several
24 prescription request forms that we received and
25 it doesn't correspond to the -- to the

1 medications that were administered to this
2 patient. I just want to get everything we had
3 in for the record.

4 **THE COURT:** Okay. It's admitted.

5 (Petitioner's Exhibit Number Seven was entered into
6 the record at this time.)

7 **MR. WICEVIC:** Thank you, Your Honor.

8 **Q:** All right. Ms. Hatcher, since your July 2014
9 visit did you do any other inspections or
10 investigations at Blessed Births?

11 **A:** Yes.

12 **MR. HILLER:** Your Honor, anything subsequent to July
13 of '14 is irrelevant and inadmissible.

14 **MR. WICEVIC:** This is just like the July 11th. I
15 just wanted to show -- I think this -- that
16 this testimony that she's going to provide is
17 relevant to your decision on what type of
18 sanction you'd like to provide. If you look to
19 the regulation there's a number of factors that
20 the Department considers in taking enforcement
21 on this history of compliance and efforts to
22 make -- to correct violations. And I believe
23 what, Ms. Hatcher, is going to testify about on
24 is relevant to those considerations.

25 **MR. HILLER:** Your Honor, the history -- history --

1 history is in the past. It's always in the
2 past. It couldn't have possibly been
3 considered or -- or taken into account during
4 the issuance of this Administrative Order.

5 **MR. WICEVIC:** That's certainly true but this is de
6 novo hearing before Judge Robinson ---

7 **MR. HILLER:** I -- I have yield -- they didn't. I
8 mean, I don't think you have the right or they
9 -- they didn't ask you to increase the
10 penalties. I asked you to find that there
11 weren't violations and eliminate them but --
12 but -- but, you know, I could think of a
13 multitude of reasons why, you know, any
14 activity that occurs in the future has nothing
15 to do with activities that occurred in the
16 past. But also from the standpoint of
17 discovery request there ongoing and if there
18 was new evidence that they wish to present they
19 should have given it to me.

20 **MR. WICEVIC:** And we did.

21 **MR. HILLER:** Not -- you gave me one packet of
22 evidence of your documents well before this
23 case was continued. Nothing -- I received
24 nothing other than what I simply asked for,
25 which was two complaint forms and a protocol

1 subsequent to our pretrial teleconference from
2 you.

3 **MR. WICEVIC:** We ---

4 **MR. HILLER:** But -- but in any event, you know, it
5 would -- would -- it's like, would I be allowed
6 to put up evidence about all the remedial
7 nature or whatever we've done or -- with --
8 what is subsequent to the alleged violations as
9 to whether they occurred? I don't think so.
10 Why would -- how would the petitioner be
11 allowed to present any evidence about anything
12 that occurred subsequent that hasn't been
13 subject to the Administrative Order? It isn't
14 contested or litigated or -- or bound of
15 conclusion. I mean, it just has no relevance
16 on whether these six events occurred on or
17 before July 2014.

18 **THE COURT:** Okay. Mr. Hiller, I'm going to allow
19 him to proceed with his questioning of the
20 witness. And actually, you know, any remedial
21 efforts that she would make, really, I define
22 the relevance and it would be relevant in my
23 making some determination. If I find that
24 there are violations and by determining what
25 type penalty should be imposed they would be

1 very relevant. Perhaps not to proving the
2 violations but they would go toward the
3 penalty.

4 **MR. HILLER:** But you do understand the difficulty
5 that I'm placed in when something that I'm not
6 aware of is brought up in the midst of the
7 hearing and -- and -- and I'm expected to -- I
8 assume -- cross examine or respond or present
9 testimony or perhaps even have documents that
10 would be relevant that I don't have with me,
11 and I didn't prepare for it, and I don't have
12 -- didn't have any reason to prepare for it.
13 And so, you know, I don't know what they're
14 going to say but I -- but obviously it wasn't
15 something that I was on notice that was going
16 to be presented and I've had no opportunity and
17 have no opportunity -- and will have no
18 opportunity to respond.

19 **MR. WICEVIC:** I just want to point, all -- all the
20 documents -- there's only a little bit of
21 material that, Ms. Hatcher, is going to testify
22 about but it was previous presented to Mr.
23 Hiller. So I don't think anything unexpected
24 will come up for you.

25 **MR. HILLER:** We'll see.

1 **THE COURT:** Okay. You can proceed.

2 **MR. WICEVIC:** Thank you.

3 **Q:** Ms. Hatcher, did you visit Blessed Births in
4 March of 2015?

5 **A:** Yes, I did.

6 **Q:** Okay. Let's turn to Exhibit Sixteen, please.

7 **A:** Okay.

8 **Q:** Ms. Hatcher, can you identify Exhibit Sixteen?
9 It's pages 90 through 93 in the exhibit packet?

10 **A:** Yes. This is the report of visit that was
11 issued for a visit that I attempted to make on
12 March the 25th of 2015.

13 **Q:** Okay. And who completed this report of visit?

14 **A:** It was completed by me -- Michell Hatcher.

15 **Q:** And when was it completed?

16 **A:** It was completed on -- somewhere -- somewhere
17 within that week of the inspection.

18 **Q:** Okay.

19 **THE COURT:** I'm looking at Exhibit Sixteen, we're
20 not going there.

21 **MR. WICEVIC:** Okay. All right. I beg the Court's
22 indulgence.

23 **THE COURT:** Yes.

24 **Q:** All right. Ms. Hatcher, that's all the
25 questions I have for you. Please answer any

1 questions Mr. Hiller has for you.

2 A: Okay.

3 MS. HATCHER - EXAMINATION BY MR. HILLER:

4 Q: Ms. Hatcher, how many times have you done an
5 inspection or visited the facility of Blessed
6 Births?

7 A: I'm not sure of the exact number but I've been
8 working here since 2006 -- I mean, 2009. So
9 most likely an annual visit and several
10 complaints.

11 Q: So three or four times a year, 18 times?

12 A: I didn't say that.

13 Q: Is it less than 20?

14 A: Less than 20.

15 Q: More than 10?

16 A: I cannot -- I'm not sure of the number.

17 Q: All right. Well we know that you would have at
18 least inspected it six times.

19 A: Yes.

20 Q: Well the law requires you to do an annual
21 inspection, right?.

22 A: I prefer not to answer the question if it's
23 giving a specific number when I'm not sure at
24 this moment from my memory without all the
25 reports in front of me.

1 Q: Okay. So you don't have any idea?

2 A: I do -- I do the inspections as I -- as I'm
3 assigned them. If one went more than 12 months
4 I'm not aware -- I cannot recall that at this
5 time. I cannot give a specific number.

6 Q: Okay. You told me in your deposition that
7 every time you do an annual inspection you
8 review the policies and procedure manual; is
9 that correct?

10 A: I review the policies and procedure manual to
11 make there's one in place.

12 Q: All right. And -- and -- so you just make sure
13 there's one there. You don't read them?

14 A: I do not read word for word for a routine
15 inspection the policy and procedure manual for
16 every facility that I go to. That is correct.

17 Q: But you would agree with me that prior to July
18 16, 2014, there was a policy and procedure
19 manual in place at Blessed Births for every
20 inspection you went on?

21 A: For every routine inspection I verify there was
22 a policy and procedure manual in place

23 Q: And at no time ---

24 A: --- during my visit.

25 Q: During any of ---

1 THE COURT: Let her finish her answer ---

2 MR. HILLER: I'm sorry. I thought she had, Your
3 Honor. Go ahead.

4 A: I finished.

5 Q: At no time prior to July 16, 2015, did you ever
6 claim that there was a violation of the -- of
7 the (3)(b)?

8 A: I could not answer that 100 percent. I do not
9 have my reports in front of me for every time
10 I've been there to visit. And without those
11 reports in front of me I could not verify if I
12 made a violation or citation about that
13 previously.

14 Q: Okay. Well you would need to know that in
15 order to assign a -- you know, your office
16 would need to know that in order to assign
17 value to that violation; would it not?

18 A: My office would need to know that for the
19 previous two years. But I can say for the
20 previous two years I am certain that there was
21 no violations of that -- that regulation
22 requirement made.

23 Q: Right. And it's true, is it not, that in
24 October of 2013 the Department wrote a letter
25 to Ms. Leland telling her that they were

1 changing their interpretation of the statute
2 that she was non-complaint?

3 **MR. WICEVIC:** I'm going to object. This is ---

4 **A:** I can ---

5 **MR. WICEVIC:** --- irrelevant. There was a previous
6 matter where the Department was considering
7 enforcement against the number of birthing
8 centers. Your Honor, on a totally different
9 provision -- compliance with a totally
10 different provision at the time. Blessed
11 Births provided sufficient evidence compliance
12 with that and I believe that's what Mr. Hiller
13 is referring to.

14 **MR. HILLER:** Your Honor. Obviously this is cross
15 examination and this witness and -- and, of
16 course, it's part of our contingency as you
17 will see from the correspondence in there that
18 there is an effort to find a violation or
19 create a violation. In fact, Ms. Hatcher,
20 testified in her deposition it that -- well
21 when I asked her what her job was when she went
22 there and it was to find a violation. And I --
23 so I think it's relevant as to -- especially to
24 the nature of these alleged violations that
25 that there was an effort to close down the

1 business.

2 **THE COURT:** Your objection is overruled.

3 **MR. HILLER:** True?

4 **A:** Repeat the question?

5 **Q:** That in October of 2013, Ms. Thompson sent a
6 letter to my client saying she -- they were
7 revoking her right to continue to operate her
8 business and revoking the specific exception
9 they had granted her to operate the business.
10 Is that true?

11 **A:** I'm unsure of the dates of the letter that you
12 say that is not before me at this time. I
13 could not answer to that. I have not seen that
14 document in relation to this case.

15 **Q:** Okay.

16 **MR. HILLER:** Your Honor, if I could?

17 **THE COURT:** Yes.

18 **Q:** Have you seen that letter?

19 **MR. WICEVIC:** Mr. Hiller, do you have copies?

20 **MR. HILLER:** I think I handed you all of my copies.

21 **A:** I believe there is ---

22 **MR. HILLER:** Multiple. I'm sorry.

23 **MR. WICEVIC:** Thank you.

24 **Q:** You were copied with it.

25 **A:** Yes. I have seen the letter.

1 MR. HILLER: Your Honor, I would offer that as
2 Respondent's Exhibit One.

3 MR. WICEVIC: No objection.

4 THE COURT: Admitted.

5 (Respondent's Exhibit Number One was marked for
6 identification purposes.)

7 MR. WICEVIC: Your Honor, sorry. Again, I just want
8 to tell you I don't think it's relevant to this
9 case. It's concerning a whole separate matter.
10 I mean, first of all, Ms. Thompson, can testify
11 because she's the one that wrote it. But even
12 -- like I said this isn't relevant to this
13 contested case. It's barely in compliance with
14 the rules. A separate provision 61-102 the
15 Department is no longer alleging non-compliance
16 with this Section. I don't -- I don't
17 understand -- I never said the Department is
18 trying to close down birthing centers but I
19 don't know where he's getting that from and I
20 don't see the relevance with this kind of
21 questioning.

22 MR. HILLER: If I'm allowed to proceed, Your Honor,
23 you will see that during the next six months my
24 client was inspected multiple times and that,
25 in fact, I have emails from the Department or

1 from a physician who claims that the Department
2 specifically asked them to file complaints
3 against my client.

4 **THE COURT:** Okay. The document is in evidence ---

5 **MR. HILLER:** Oh, thank you.

6 **THE COURT:** --- and I'm assuming that your attempt
7 is to withdraw your consent?

8 **MR. WICEVIC:** That's correct.

9 **THE COURT:** Okay.

10 **Q:** Subsequent to the issuance of that letter did
11 you conduct in the inspection on December the
12 9th of 2013 at Blessed Births?

13 **A:** Your Honor, once again without the documents in
14 front of me I do not know the dates of my
15 inspections.

16 **Q:** I'm going to show you a letter dated December
17 17, 2013, from me to you with a copy of your
18 inspection attached. Do you recognize that?

19 **A:** Yeah. Your Honor, one of these is not related
20 to the birthing center at all. The papers that
21 he gave me. It's a midwife that's not related
22 to this case at all. If I could say that.

23 **Q:** So this doesn't have anything to do with
24 Blessed Births? Is that what you're saying?

25 **A:** The first -- the one that -- one is a midwife

1 citation that -- which, Your Honor, there are
2 two separate licensees. Amy Leland is licensed
3 as a licensed midwife and ---

4 Q: But, Ms. Hatcher, I'm going to let you explain
5 your answers but you need to address your --
6 any concerns about my question to me, okay. Do
7 you understand that? If you don't think I've
8 asked a correct questions, you ask me -- ask me
9 to explain. All right? Do you understand
10 that?

11 A: Yes, I do. But ---

12 Q: Okay. Now my question was, does this not have
13 anything to do with Blessed Births wellness
14 center?

15 A: The very back -- the -- the front letter does
16 and the back piece does -- the middle piece
17 does not.

18 Q: Okay. And the middle piece only applies to
19 licensee of the midwife which happens to be the
20 midwife that operates that birthing center ---

21 MR. WICEVIC: Mr. Hiller, I don't mean to interrupt
22 but part of these that I have --- I just want
23 to make sure we have the same copy. The ROVs
24 I have are for midwives.

25 MR. HILLER: Yeah.

1 MR. WICEVIC: Not for ---

2 MR. HILLER: Well, I mean, if you don't mind let me
3 ask her questions. I'll accept her answers.
4 I just want answers. All right. If I ask her
5 a question she's the one that's testifying ---

6 MR. WICEVIC: Okay.

7 MR. HILLER: Let her testify.

8 MR. WICEVIC: I didn't see any kind of birthing
9 center ---

10 MR. HILLER: That's what I'm asking.

11 A: Yeah. Actually he's correct. There's no --
12 none -- none of them have anything to do with
13 the birthing center.

14 Q: So your answer is now that they don't have
15 anything to do with the birthing center? Is
16 that correct?

17 A: Yes.

18 Q: All right. I'll take that back. When did you
19 conduct your next inspection?

20 A: I cannot recall.

21 Q: Did you conduct an inspection in March of 2014?

22 A: I cannot recall without my inspection reports
23 in front of me.

24 Q: Okay. Now when you went there on July the 11th
25 had you received a complaint from Dr.

1 Picklesimer?

2 A: Yes.

3 Q: And you had communicated with her via email
4 prior to the complaint being submitted?

5 A: Dr. Picklesimer emailed me that if she had some
6 concerns of a patient and how could she go
7 about getting that -- getting that into a
8 complaint and I emailed her how she could go
9 about getting that into a complaint.

10 Q: Did she not in fact email you and ask -- and
11 tell you that the director had requested her to
12 -- any physician to file a complaint?

13 A: I cannot recall that.

14 Q: You don't recall that? Do you know what the OB
15 task force is?

16 A: Yes, I do.

17 Q: Okay. Is this a copy of an email chain between
18 you and Dr. Picklesheimer?

19 A: Yes.

20 Q: And do you know who Director Templeton?

21 A: Yes, I do.

22 Q: Is that an employee of DHEC?

23 A: Catherine Templeton was the prior director of
24 DHEC.

25 Q: Okay. And that said Director Templeton

1 specifically invited us to submit examples in
2 which transfers have been done inappropriately
3 and that's why she sent you this email. Is
4 that correct? Is that not what Dr.
5 Picklesheimer says?

6 A: Yes.

7 Q: And later you received an email from her
8 stating that she wanted you to review it to see
9 whether it was actually a violation? Is that
10 correct?

11 A: I believe she sent an email asking if this was
12 something as a -- what she needed to submit.

13 Q: Is this a copy of that email?

14 A: It says attached to this email please find two
15 complaints against Amy Leland and Blessed
16 Births Wellness and Birthing center in
17 Greenville respectfully submitted on behalf of
18 Ken Stafford who would be happy to supply
19 additional information regarding these
20 complaints including transcripts and phone
21 conversations if necessary.

22 Q: Okay. Ms. Hatcher, I'm going to put these into
23 evidence. Unless I ask you to read it, there's
24 no need to -- you can just answer my question.

25 A: Okay.

1 Q: And I'll going ---

2 A: I'm going to grab my -- can I grab my glasses?

3 Q: Sure.

4 MR. HILLER: I offer both of these into evidence,
5 please.

6 MR. WICEVIC: Your Honor, I'm going to object based
7 upon relevancy. Again, I don't think these
8 have any bearing on the findings on the
9 violations. They were submitted and there were
10 -- they did prompt the Department's
11 investigation but they don't serve on any
12 grounds in which the Department relied on in --
13 in making these violations.

14 MR. HILLER: I understand it -- but ---

15 MR. WICEVIC: So I don't know how this ---

16 MR. HILLER: --- whatever -- what the visit was
17 based on.

18 MR. WICEVIC: --- is relevant.

19 MR. HILLER: And, of course, I do, you know, use the
20 same relevance argument I did before and I have
21 additional followup information, Your Honor.

22 MR. WICEVIC: Your Honor, we talked about this when
23 we were considering his motion to expand
24 discovery and the same issue discussed. I mean
25 these -- Dr. Picklesheimer's complaint, like I

1 said it -- initiated these invest- -- or one of
2 the investigations. Probably did an interview
3 and used any kind of editing she had as basis
4 for this violation. I -- it doesn't have any
5 bearing on this case.

6 **MR. HILLER:** Your Honor, obviously it is our
7 position that none of these violations or
8 alleged violations would, you know, have -- at
9 least half of them they have been part of the
10 record for my client for 14 years and they've
11 never been considered a violation. Certainly
12 not a violation that would result in an
13 Administrative Order. And never even brought
14 to my client's attention for 14 years and then
15 all of a sudden in October we get a letter
16 saying we're going to shut you down you're out
17 of compliance and then -- and then they go out
18 and solicit alleged complaints so they can do
19 a visit and they do a visit and then they find
20 these violations. And I think that's relevant.
21 And there's a -- I have additional emails where
22 and, you know, if you'll let me go forward with
23 it, there's some internal discussions that DHEC
24 -- between people that are not -- shouldn't be
25 involved in this about this situation that that

1 refused the position of the Petitioner the day
2 we were given up on the out of compliance
3 issue. So I think they bear very strongly on
4 the credibility of these violations and I think
5 I should be allowed to cross examine them about
6 them. And -- and -- and you have had a fairly
7 liberal policy about ---

8 **THE COURT:** I have. Mr. Hiller, let me just say
9 this that, you know, whether or not the
10 Department had ulterior motives for
11 strengthening their enforcement of the
12 regulations where birthing centers are
13 concerned -- I mean, what you are saying in
14 essence is they didn't enforce their
15 regulations in the past and if they decided
16 that we're going to change our practice and
17 we're going to start enforcing them more
18 stringently now then the non compliance -- any
19 type of non compliance by your client would not
20 be -- shouldn't be ---

21 **MR. HILLER:** Well shouldn't that bear on the penalty
22 if you finding that there is a violation?

23 **THE COURT:** I'm sorry?

24 **MR. HILLER:** Shouldn't that bear on the penalty if
25 you find there was a violation? It is as if --

1

-

2

THE COURT: The ulterior motive of the Department?

3

MR. HILLER: No. Your -- you're saying that -- that

4

they weren't enforcing particular areas of the

5

regulations and they did that for 14 years and

6

then they come and fine you for a violation

7

because they changed their policy shouldn't

8

that bear on ---

9

THE COURT: That's correct. But I find ---

10

MR. HILLER: You think I've got enough of that in

11

here that I don't need to talk about it anymore

12

because I'll be happy to stop.

13

THE COURT: I would be happy if you would stick to

14

the violations ---

15

MR. HILLER: All right.

16

THE COURT: --- and ---

17

MR. HILLER: I'll -- I'll do that.

18

THE COURT: --- whether or not -- because you're

19

saying there aren't any violations.

20

MR. HILLER: Right. Yes, ma'am.

21

THE COURT: Okay. Well let's stick to the

22

violations.

23

MR. HILLER: Okay. Now, I will say that all -- I

24

think that all of my objections during the

25

Petitioner's presentation we're trying to keep

1 them to do that as well.

2 **THE COURT:** I'm sorry. Did you -- offer the emails
3 as -- to be placed in the record?

4 **MR. HILLER:** The -- a -- I have some in the record
5 already but I had more and you didn't ...

6 **THE COURT:** Okay. One second.

7 **(Brief Off the Record Discussion)**

8 **MR. HILLER:** --- and you're saying I can't. You
9 ruled that they're inadmissible.

10 **THE COURT:** Okay.

11 **MR. HILLER:** No. I'm asking.

12 **THE COURT:** Okay. You objected to the emails based
13 on the relevancy?

14 **MR. WICEVIC:** Correct, Your Honor.

15 **THE COURT:** Okay. I'm going to go ahead and allow
16 them to be placed into evidence, you know,
17 since it's only me and I will decide what
18 weight they will be given as I decide the case.

19 **(Respondent's Exhibit Number Two was marked for**
20 **identification purposes.)**

21 **(Respondent's Exhibit Number Three was marked for**
22 **identification purposes.)**

23 **MR. WICEVIC:** Okay. Thank you.

24 **MR. HILLER:** Thank you, Your Honor.

25 **Q:** Ms. Hatcher, who is Stephanie Corbett?

1 A: Stephanie Corbett was the director of health
2 regulations previously.

3 Q: Okay. And if -- and if you had gotten notice
4 from someone that there was a violation or
5 complaint against Blessed Births why would you
6 notify her?

7 A: I could have done director's direction about
8 the complaints that she gave to the OB task
9 force at that same time the director's
10 assistant sent word by Stephanie Corbett that
11 if there were any complaints against birthing
12 centers that she -- Stephanie Corbett wanted to
13 know so she could update the director and keep
14 them updated.

15 Q: Okay. And do you know why she might ask
16 whether the facility was complaint or non
17 complaint when she responded to your email?

18 A: What do you mean specifically?

19 Q: I'm just ---

20 MR. WICEVIC: Mr. Hiller, are you speaking towards a
21 different email?

22 MR. HILLER: I'm talking about an email dated July
23 10, 2014 from Stephanie Corbett to you asking
24 you is this center one that was determined to
25 still be out of compliance.

1 A: I can't assume why she asked the question other
2 than she wanted to know -- I can't say yes or
3 no.

4 Q: Okay. But when we're talking about compliance
5 is she talking about the October 3rd letter?

6 A: I can't say that 100 percent. I'm not her. I
7 don't know what she was thinking.

8 Q: Well she wrote the email to you.

9 A: And I'm assuming that's what she meant. I can
10 -- I mean -- whether she wrote the email I
11 don't know 100 percent. I can't answer for her
12 she's not here.

13 Q: And that was the day before your visit?

14 A: Yes.

15 Q: All right. And then when you arrived on July
16 11th your note says that there was nobody at
17 the office. It was closed and the door was
18 locked.

19 A: When I -- that's correct.

20 Q: And when you contacted Ms. Leland by cell phone
21 she told you she was in Duncan. Do you know
22 where Duncan is?

23 A: I don't know where Duncan is.

24 Q: All right. Would it surprise you to learn it's
25 in Spartanburg County? You don't know?

1 A: I don't know where the county -- where it is.

2 Q: Okay. And she told you she was with a -- an
3 expectant mother doing a patient visit. Is
4 that what she told you?

5 A: Yes.

6 Q: And you -- and you said that you arrived there
7 sometime around 3:15; is that correct?

8 A: Yes.

9 Q: It's about an hour and forty five minutes
10 before most offices close; is that correct?

11 A: Yes.

12 Q: All right. And you wanted her to leave her
13 patient, drive back to Greenville to let you
14 in.

15 A: I didn't want her to do that. I asked her when
16 she could be back to the birthing center.

17 Q: Okay. And she told you she couldn't be back
18 there in time, right?

19 A: That's what she told me. That's when she told
20 me where she was with a patient.

21 Q: And then she told you she would meet you the
22 next Wednesday.

23 A: She wanted to make an appointment to meet me
24 and I explained to her we do not make
25 appointments for routine inspections.

1 Q: All right. And -- and then that was your basis
2 -- that conversation -- those events was your
3 basis to come in here now and testify and put
4 in a affidavit that you were denied access to
5 the facility on July the 11th. Is that
6 correct?

7 A: That is correct.

8 Q: All right. And that -- and based on that
9 denial of access you went and got a police
10 officer and a warrant and you came to the
11 facility the next Wednesday, the day she told
12 you she'd meet you there?

13 A: Yes, I did because that's when it worked out.

14 Q: Okay. But she had told you she would be there
15 that Wednesday and immediately if you wanted
16 her to, right?

17 A: She tried to make an appointment. I said we
18 don't make appointments so because I didn't
19 make an appointment I didn't know she was going
20 to be there.

21 Q: So when you arrived on the 16th ultimately in
22 the claims of violations number one, two, four,
23 the second part of five, and six were the
24 results of that inspection; is that correct?

25 A: What document are you looking at? I have a lot

1 of documents.

2 Q: The Administrative Order. In the block there
3 was a description of violations and each of
4 them is numbered one, two, three, four, five
5 and six. Do you not have a copy of the
6 Administrative Order?

7 A: I do. You just didn't make it clear what
8 you're looking at.

9 Q: I'm sorry. I'm trying to get to the
10 violations.

11 A: Ask the question again.

12 Q: I said one, two, four, the second half of five
13 and six are based on your personal observations
14 on July 16th of 2014?

15 A: Yes.

16 Q: All right. Typically number one -- well I'll
17 skip over that one. Number two, well we've got
18 to talk about that. What -- what -- what's
19 supposed to be in there? Where in the
20 regulations does it say that what's supposed to
21 be in there?

22 A: D.(3)(b).

23 Q: D.(3)(b). D.(3)(b). So these regulations say
24 there shall be policies and procedures
25 addressing the receiving, transcribing, and

1 implementing orders for administration of
2 drugs. Is that correct?

3 A: Yes.

4 Q: All right. And that's the language that the
5 licensee have the obligation to interrupt and
6 apply. That's all the guidance they give,
7 correct?

8 A: Yes. They could ask for additional information
9 if they don't understand something.

10 Q: Well, I mean, had you ever pointed it out to
11 her in the past that there was a problem?

12 A: I have never specifically looked this deeply
13 into this. The only reason why I did this time
14 is because that was part of the complaint was
15 -- was about medications that were give to the
16 patient.

17 Q: And when you were testifying you kept talking
18 about medical records. Can you show me where
19 D.(3)(b) refers to the medical record? It says
20 that there -- there has to be something in the
21 medical record.

22 A: During my testimony that was in response to
23 when Vito asked me in the policy under the
24 medical records part where it's talking about
25 there has to be a prescription for the policy

1 -- your policy or your client's policy talks
2 about medical record that's what he was
3 referring to.

4 Q: Well all that the licensees have to go by is
5 these regulations, correct?

6 A: And if they have any additional questions they
7 could ask DHEC for interpretations.

8 Q: And -- and -- but if nobody's ever pointed it
9 out I guess they wouldn't have any questions,
10 would they?

11 A: I guess not if they think they understand it.

12 Q: Okay. And -- and you would agree with me would
13 you not that D.7 sets forth each and every item
14 that's required to be kept in the medical
15 records?

16 A: D.7 says what shall be included in the medical
17 -- at least the following.

18 Q: Okay. So if a licensee has at least the
19 following in then they're in compliance with
20 regulations, right?

21 A: Yes.

22 Q: Is there anything in there about the
23 administration of medications or the policy or
24 procedure for administering medications?

25 A: Not in what has to be included in the medical

1 record.

2 Q: Okay. Now with regards to number four, you
3 claim that that's a violation of D.(3)(f); is
4 that correct?

5 A: Yes.

6 Q: And that specifically says that drugs,
7 medications and chemicals shall be stored and
8 secured in specifically designated cabinets,
9 closets or store rooms and made accessible only
10 to authorized persons. Is that correct?

11 A: Yes.

12 Q: Okay. All right. You would agree with me that
13 they have to be stored until there needed,
14 right?

15 A: Until at such a time as when they're needed,
16 yes.

17 Q: All right. I mean, they -- they're just not
18 permanently locked up. They're there for a
19 reason, correct?

20 A: Yes.

21 Q: And the reason is is they might be needed and
22 or likely be needed when somebody's giving
23 birth. That's why they're ordered and put in
24 there, correct?

25 A: After birth.

1 Q: Okay. Well so is there any guidance in these
2 rules and regulations as to how soon before
3 somebody gives birth that you're supposed to
4 get them out of the storage room?

5 A: No.

6 Q: All right. And you had told me, have you not,
7 or you told this -- this Court that this is the
8 first time you ever did an inspection while
9 somebody was in labor?

10 A: Yes.

11 Q: And -- and you were told that they were out
12 because she was in labor?

13 A: No, I was not told that.

14 Q: You weren't told that? You made several
15 statements about what she said but none of
16 those statements are written in your notes.
17 Why wouldn't you have written those in your
18 notes?

19 A: Well I don't know but -- but she told me and --
20 that she put the medicine in there from the day
21 before.

22 Q: That's what she told you.

23 A: And your response was that they were there for
24 that patient in labor.

25 Q: All right. Do you still have your July 16th

1 notes up there?

2 A: Yes, I do.

3 Q: Okay. What's marked on my copy is DHEC 00023
4 -- page 00023 at the very bottom.

5 A: Yes.

6 Q: In the middle of that page you put -- I can't
7 read it -- hall room observed fluids and
8 startup kit for EMS. Is that what you wrote
9 there?

10 A: Yes.

11 Q: And below it you wrote Pitocin, HeSpan and
12 Erythromycin.

13 A: Well ---

14 Q: Is that what you wrote there?

15 A: The very first comment ---

16 Q: Ma'am. Ma'am. Answer my question and then
17 explain it, okay. It that what it says?

18 THE COURT: Mr. Hiller.

19 MR. HILLER: Yes, ma'am.

20 THE COURT: I will instruct the ---

21 MR. HILLER: I'm sorry.

22 THE COURT: Okay. But, Ms. Hatcher, you do need to
23 answer his questions and you can explain after
24 you finish answering.

25 A: Yes, I wrote that on the note.

1 Q: And you wrote a comment, did you not, that Amy
2 made?

3 A: Yes, I did.

4 Q: Right between the IV and the Pitocin. And what
5 comment did you make?

6 A: That -- I would like to explain the first part.
7 If you wouldn't allow me ---

8 MR. HILLER: Your Honor, I would ask ---

9 THE COURT: Answer the question -- the last question
10 that was asked?

11 A: Okay. Yes. The comment -- between when Amy
12 said hall room and the hall birth room.

13 Q: What did she say? You wrote it down.

14 A: For emergency since have possible delivery.

15 Q: Okay. So you are also I'm sure familiar with
16 section ---

17 A: When can I explain the comment?

18 Q: Oh, you can explain it right now.

19 A: Okay.

20 Q: Go ahead. In fact it's what you wrote.

21 A: The very first one that says prenatal hall room
22 that -- those medications were in a different
23 location. Those medications were in the
24 prenatal hall room were over there and that
25 actually says perinatal -- it should say

1 perinatal hall room where an IV fluids setup
2 with an IV tubing and when I asked her why that
3 IV fluids that was attached to the IV tubing
4 she told me that that was for EMS because I
5 said, you know, you can't give that. She said
6 that's for EMS its set out for emergencies
7 since I have a possible delivery. That made
8 sense to me and I said nothing. I didn't cite
9 that. The next thing says hall birth room, it
10 has an arrow down to that square where there
11 are three Pitocin, ten units per mls -- one
12 sixth percent Hestarch and zero point five
13 percent sodium chloride, which is otherwise
14 known as HeSpan, written on the bag and then
15 one Erythromycin ointment zero point five
16 percent opened and tube squeezed. This was in
17 a totally different room on the opposite of the
18 facility and in what I noted as a hall birth
19 room.

20 Q: Okay. Go to section -- which one is it? The
21 section in the regulations. Do you see that in
22 the regulations?

23 A: Reference center equipment and supplies?

24 Q: Yes, ma'am.

25 A: Yes, I do.

1 Q: All right. And does that require certain
2 minimum things be available during the
3 operation of the facility?

4 A: Yes, it does.

5 Q: Okay. And what does -- would you read for me
6 subparagraph F.

7 A: Emergency medications, intravenous fluids and
8 related supplies and equipment for both mother
9 an newborn.

10 Q: All right. Is there anything that was on that
11 table that would not qualify as an emergency
12 medication, intravenous fluid or related
13 supplies and equipment for both mother and
14 newborn?

15 A: No.

16 Q: Okay. So everything out there was required to
17 be maintained in the facility?

18 A: Yes.

19 Q: And that would include extra doses of Pitocin
20 if that was necessary because it was an
21 emergency?

22 A: No.

23 Q: No. How do you get an extra dose of required
24 medications for an emergency to keep as a part
25 of your supply?

1 A: I'm not sure how she would get an extra dose
2 because she could only give what the physician
3 orders and she only had orders for two units.

4 Q: Okay. So these emergency medications serve no
5 purpose whatsoever?

6 A: They do but they -- she's supposed to have
7 those based on the fact the patient brings in
8 her prescription of her two ampules of Pitocin.

9' Q: No, this is in addition to that. You -- you're
10 taking the position that this is not an
11 addition. This is not something that has to be
12 there. That the only thing that she has to
13 have. You already testified, did you not, that
14 she's not allowed to administer IV fluid.

15 A: She's not, no.

16 Q: Okay. And so how could she get a prescription
17 for IV fluids to administer?

18 A: She can't administer them but if she has a
19 nurse in her facility and they call a physician
20 and the doctor says that they can IV fluids
21 then she can get IV fluids.

22 Q: But -- but -- but -- but this is emergency
23 supplies. How does she keep IV fluid in her
24 business if she has to get a prescription for
25 each patient?

1 A: I'm not sure about that.

2 Q: Okay.

3 A: I'm not sure how she orders ---

4 Q: You're not sure about it and -- and so she's
5 required to have it but if she has it she's in
6 violation, that's your position.

7 A: I didn't say she was in violation of having the
8 IV fluids.

9 Q: Okay. You say she gave an extra dose of
10 Pitocin to a patient.

11 A: She was cited for giving a medication without
12 a prescription. Giving a medication she did
13 not have an order for.

14 Q: But you got the order subsequently?

15 A: No, I did not.

16 Q: I didn't send you the order?

17 A: You sent the order for two ampules. She does
18 not have an -- there is not a prescription or
19 an order transcribed for the third dose of
20 Pitocin.

21 Q: So -- so -- so you -- the third dose of Pitocin
22 is what she was cited for? Is that what you're
23 telling me?

24 A: Yes.

25 Q: All right. And -- and -- but you've agreed

1 with me that Pitocin would be -- would qualify
2 as a emergency medication that she's required
3 to have on -- on hand, correct? You would
4 agree with that?

5 A: Not on hand freely, no.

6 Q: Well what good is it? If you don't have it to
7 give somebody that needs it?

8 A: She has a prescription the physician has given
9 the patient.

10 Q: Do you know what Pitocin is?

11 A: Yes, I do.

12 Q: Well what is it?

13 A: It's given for postpartum hemorrhage and to
14 make the uterus contract.

15 Q: What is it?

16 A: It's antihemorrhagics.

17 Q: Do -- do you -- are you not aware that it's a
18 synthesized female hormone?

19 A: Yes, I am.

20 Q: Okay. It's a synthesized female hormone that
21 naturally occurs in the body, correct?

22 A: Yes, it is.

23 Q: All right. So in the medical record that you
24 examined did you do a -- allege the additional
25 dose of Pitocin, which I believe was Exhibit

1 Five and now turn to page 31. You read the
2 notations that indicated time and why the
3 medications that were administered; is that
4 correct?

5 A: Yes, it is.

6 Q: All right. But you didn't read that at 10:07
7 a.m. the placenta was retained. At 10:10 a
8 call was made to 911 for EMS. At 10:15 there
9 was a blood loss and greater than two cups. And
10 at 10:20 was when the third dose of Pitocin was
11 administered. And at 10:25 the patient was
12 transmitted -- transferred to the hospital,
13 correct?

14 A: That's what the medical records say.

15 Q: That's what the medical record said. And --
16 and if there is an emergency then according to
17 the policies and procedures present at this
18 facility they're supposed to call 911 and have
19 EMS come out there, correct?

20 A: Correct.

21 Q: That's their obligation.

22 A: Correct.

23 Q: And so there was an emergency when that Pitocin
24 was administered, correct?

25 A: Correct.

1 Q: Do you have any -- any evidence whatsoever that
2 that was inappropriately administered?

3 A: No. I didn't say ---

4 Q: Do you have any evidence whatsoever that it was
5 not necessary and needed for the health and
6 safety of that mother?

7 A: No. But she's required -- needs to have a
8 doctor's order to give it.

9 Q: Then how does she comply with the provision
10 that says she has to maintain that in the
11 facility?

12 A: Well if she needs to give it she needs to call
13 the doctor and get an order or prescription to
14 give it.

15 Q: All right. So she needs to stop what she is
16 doing and go in there and make a phone call?

17 A: According to the regulations.

18 Q: Okay. I believe also in your notes for the
19 July 16 or -- withdraw that. You testified
20 earlier that you might have overheard -- or
21 overheard Ms. Leland on the day you were there
22 talking with somebody on her cell phone about
23 hard labor. Is that what you said?

24 A: That's what she said.

25 Q: Okay. And that you didn't know who she was

1 talking to or what it was about?

2 A: Yes.

3 Q: I want to refer you to DHEC 0001A of your notes
4 about little over half way down at 12 -- 12:00,
5 45 minutes after you arrived ---

6 A: Uh-huh (affirmative response).

7 Q: --- do you see that?

8 A: Yes, I do.

9 Q: You made a notation at 12?

10 A: Yes.

11 Q: Amy talked to another LM -- that's a licensed
12 midwife?

13 A: That's correct.

14 Q: Via phone from her desk in her office. Amy
15 asked me if she could have another midwife come
16 to care for the patient. That's what you wrote
17 down?

18 A: Yes, it is but I do not know who it was.

19 Q: All right. And then you said I asked her if
20 the LM was an employee of Blessed Births. Amy
21 said no but she has a birthing center. I said
22 not per the BC regulation if she is not an
23 employee of BC. So you told her. She was
24 trying to get another person to come not -- not
25 -- not just another member of the staff,

1 another birth mother because you were
2 inspecting while she was trying to assist
3 someone having -- giving birth -- another
4 midwife, I'm sorry. And you told her she
5 couldn't do it.

6 A: I said you can't do it per the regulations
7 because they're not an employee here. You
8 can't just get every -- anybody from anywhere
9 to come in.

10 Q: And that was much more important then the
11 health of the mother?

12 A: I did not say that. I'm enforcing the
13 regulations. I'm trying -- and trying to
14 explain to her how she could maintain and
15 enforce the regulations.

16 Q: Okay. And you are in fact an RN?

17 A: Yes, I am.

18 Q: And you were present when the baby was
19 delivered?

20 A: I was in the building.

21 Q: All right.

22 A: But I'm not oriented or trained and do not
23 count as any RN for delivery.

24 Q: What -- well what -- tell me where in the
25 regulations it says any-- anything about

1 special training for the RN?

2 A: It doesn't say anything about special training
3 but it says all employees must be -- have an
4 orientation et cetera.

5 Q: That -- but the regulations for being present
6 during the birth doesn't require an RN to be an
7 employee? It just says a member of the staff
8 or a registered nurse, does it not?

9 A: That's what it says.

10 Q: Okay. So all -- so only -- only a -- an RN has
11 to be there?

12 A: But the intent of the regulation is ---

13 Q: Ma'am. I don't want you to tell me what you
14 think the regulation says. That is what the
15 Judge's job is. The people that operate under
16 these regulations have, in my view, a right to
17 rely on what the regulations say. And -- and
18 -- and it doesn't require that an RN be an
19 employee or even known to anybody to be there.
20 Isn't that what the regulation says?

21 A: The regulations says two members of the
22 clinical staff or one member of the clinical
23 and a registered nurse must be present at the
24 delivery.

25 Q: Okay. And a registered nurse?

1 A: Or a registered nurse.

2 Q: Right. Okay. Now as I understood your
3 testimony, you said urine smells bad -- smells
4 putrid?

5 A: It can.

6 Q: Okay. And there were cups and every one of
7 them was dated except July 15th?

8 A: That's not what I said. Some ---

9 Q: Well you went through them one by one.

10 A: I did. Some of them did not have a date on
11 them.

12 Q: Okay. But all of them that had a date was
13 dated 7/15. Did you look at the bottom of the
14 cup?

15 A: Yes, I did.

16 Q: All of them?

17 A: Yes, I did.

18 Q: Okay. Even the ones where it was written on
19 the side?

20 A: Yes, I did.

21 Q: Did you put that in your notes?

22 A: No, I did not.

23 Q: How many were undated?

24 A: I'll have to go back to my notes to that. I
25 already testified to it.

- 1 Q: Okay.
- 2 A: One, two, three -- three of the cups were
3 undated.
- 4 Q: Did you pull the files of any of the people who
5 had their -- who had their names on those cups?
- 6 A: No, I did not. Well, yes, I did.
- 7 Q: Okay. Who?
- 8 A: No, I did not. No. Later we got a -- an order
9 for IM. I did not pull the file that day.
- 10 Q: Okay. Who all was present when you arrived at
11 the facility?
- 12 A: Amy Leland. James Harmon was with me. Officer
13 Sturman was with me. There was a mother. I
14 don't know her name but only what Amy told me.
15 And there was an elderly lady and a young girl
16 that I saw.
- 17 Q: You never saw the father?
- 18 A: I never the father.
- 19 Q: And where was the young girl when you were
20 doing your inspection?
- 21 A: She and the elderly grandma -- the elderly lady
22 were in the hallway at one point and then after
23 -- when the born was actually being born the
24 young girl was in the hallway beside me.
- 25 Q: Okay. Were they anywhere near the medications

1 that you saw?

2 A: I did not see them near the medications. I
3 don't know if they ever got near them.

4 Q: All right. Was there anybody else in the
5 waiting area or was the door locked when you
6 arrived?

7 A: I do not recall if the door was locked to the
8 facility. There was no one else in the waiting
9 area.

10 Q: Okay. All right. I think that's all the
11 questions I have. Thank you.

12 MS. HATCHER - RE-DIRECT EXAMINATION BY MR. WICEVIC:

13 Q: All right. Ms. Hatcher, I've just got a couple
14 questions.

15 A: Okay.

16 Q: When the Department receives a complaint,
17 regardless of who it's from, can you explain
18 the process by which the Department, or rather
19 the Bureau of Health and Facility Licensing,
20 evaluates the complaint?

21 A: Yes. We have a -- complaints can be submitted
22 online or ---

23 MR. HILLER: Your Honor, I --I'm going to object to
24 this as re-cross because he objected to me
25 putting those things into evidence and

1 eliciting any further testimony, Your Honor.
2 I understood you told me not to go further --
3 any further with it. So I don't understand why
4 he's re-crossing her on something that I was
5 allowed to go into.

6 **MR. WICEVIC:** I thought a certain information
7 pertinent was -- were admitted.

8 **MR. HILLER:** Yeah, the three emails but I was told
9 to move on from.

10 **MR. WICEVIC:** Okay. I can move on.

11 **Q:** Okay. All right. Ms. Hatcher, Mr. Hiller
12 asked you about your personal observations
13 regarding cited violations that are contained
14 within the Administrative Order. Do you have
15 personal observations regarding all these cited
16 violations?

17 **A:** Yes.

18 **Q:** All right. Well let's go to page -- let's look
19 specifically -- specifically Section D.(3)(f)
20 and the basis for that citation? Ms. Hatcher,
21 do you have your notes regarding your July 15th
22 visit?

23 **A:** I do.

24 **Q:** Okay. All right. Now D.(3)(f) requires that
25 drugs, medications, chemicals shall be stored

1 and secured in specifically designated cabinets
2 either in drawers and they are to be made
3 accessible only to authorized persons. Again,
4 where were these medications that you observed
5 at the facility ---

6 **MR. HILLER:** Your Honor, he already asked and
7 answered that -- got an answer for that on the
8 record. I -- I did ask her about it on cross
9 but -- but not to go back to through the entire
10 history. I did ask her when they were supposed
11 to be gotten out not whether they were out.
12 But, I mean, I don't think re-cross -- re-
13 direct is an opportunity to go back and just
14 rehash exact testimony that she gave during
15 direct.

16 **MR. WICEVIC:** Your Honor ---

17 **THE COURT:** And she did give testimony about the
18 location and I thought you were pretty thorough
19 on your direct.

20 **MR. WICEVIC:** Okay. Well let's turn to, I guess,
21 DHEC page 23 of your notes. Ms. Hatcher, which
22 drugs were allegedly unsecured?

23 **A:** Pitocin, HeSpan, and Erythromycin ointment.

24 **Q:** Okay. And so the reference to the prenatal
25 medications that were observed in the prenatal

1 -- in the perinatal hall room --

2 A: Uh-huh (affirmative response).

3 Q: --- that's completely irrelevant to the your
4 citation?

5 A: Yes. That's totally irrelevant because like I
6 say she said she had those pulled and ready in
7 case she had an emergency from that delivery
8 she was in. That made sense to me. I
9 understood that. And they were not cited for
10 any violations.

11 Q: And, Mr. Hiller, has some discussion about
12 D.(5). D.(5) goes into required birthing
13 center equipment supplies. And it talks about
14 the emergency medications. Again, you never
15 cited solely for violating D.(5), correct?

16 A: That is correct. I did not cite the birthing
17 center on July 14, -- July 16, 2014 for D.(5).

18 Q: Okay. Your violation was based upon
19 medications not being stored properly, correct?

20 A: Correct.

21 Q: Okay. Let's move to D.(3)(c). D.(3)(c) --
22 D.(3)(c) is a provision where all drugs
23 administered at the birthing center are required
24 -- there must be a written prescription or
25 order for those drugs. There's a violation

1 discussing a vial of Pitocin that was
2 administered, I guess it was the third dosage
3 of Pitocin, which it appears to be an
4 administered pursuant to some kind of
5 emergency. Emergency or not, does there --
6 does there need to be some kind of
7 prescription?

8 A: Yes. There -- according to the regulation for
9 all drugs that are administered to the mother
10 when in a birthing center needs to be a
11 prescription and there was no prescription
12 available for that. The sodium chloride IV
13 given or the third dose of Pitocin IM
14 administered.

15 Q: Okay. All right. D.(6)(d), Ms. Hatcher, there
16 were two individuals present during the
17 delivery.

18 A: Yes.

19 Q: Do you have a copy of the regulations in front
20 of you?

21 A: Yes, I do.

22 Q: Okay. You do?

23 A: Uh-huh (affirmative response).

24 Q: All right. Ms. Hatcher, let's go to the
25 definition section. How is personnel defined?

- 1 A: Personnel means individuals in training and/or
2 employed by the birthing center.
- 3 Q: Okay. And are you reading from section A from
4 the regulations? Did you just read from that
5 section?
- 6 A: Yes, I did. Yes.
- 7 Q: Now does the regulation contain certain
8 personnel requirements?
- 9 A: Yes.
- 10 Q: Turn to section C.(5), please.
- 11 A: Yes. Okay.
- 12 Q: Okay. All right. What kind of personnel
13 requirements are there?
- 14 A: It says qualified personnel should be employed
15 in sufficient numbers to carry out the
16 functions of the facility. The licensee shall
17 obtain written applications for employment from
18 all employees. Such applications shall contain
19 accurate information such as education,
20 training, experience, health and personal
21 background of each employee. All applications
22 for license shall contain a South Carolina
23 license or current renewal number if
24 applicable.
- 25 Q: Okay. So you -- you don't have to read ---

1 A: Okay.

2 Q: I mean, just what are some of the personnel
3 requirements?

4 A: All right. A TB skin test is required ---

5 MR. HILLER: Your Honor ---

6 A: --- a written job descriptions.

7 MR. HILLER: Your Honor, I don't know what I asked
8 her that would have raised to make this a
9 legitimate re-direct. I didn't ask about
10 personnel. I didn't ask about TB tests. I
11 didn't -- I didn't cross examine her on
12 anything.

13 MR. WICEVIC: I mean, you asked her -- you asked Ms.
14 Hatcher about her ---

15 MR. HILLER: I asked her about what it said about
16 the people who would be necessary to be present
17 during delivery and that's all I asked her
18 about.

19 MR. WICEVIC: You crossed her about asking Ms.
20 Leland whether or not when she was seeking out
21 an employee of the facility and Ms. Hatcher
22 said ---

23 MR. HILLER: And she said no. And -- but I mean I
24 didn't ---

25 MR. WICEVIC: Well in order to provide care within a

1 facility and being in compliance with the
2 regulation such personnel would be required to
3 comply with the regulatory requirements such as
4 a TB tests ---

5 MR. HILLER: This is a license for a midwife is what
6 she testified to.

7 MR. WICEVIC: Right. And personnel ---

8 MR. HILLER: Unless the midwife is licensed by the
9 Department of Health and Environmental Control
10 ---

11 MR. WICEVIC: That's correct.

12 MR. HILLER: --- she has to already complied with
13 all those requirements by law but I ---

14 MR. WICEVIC: But I ---

15 MR. HILLER: I just ---

16 MR. WICEVIC: Wouldn't there be a personnel record
17 for her. I mean, that's what I was getting
18 into.

19 MR. HILLER: I think the testimony was clear that
20 she's not an employee.

21 THE COURT: I think the testimony was it -- that's
22 this individual is not an employee. But I got
23 the regulation that's available to me and I can
24 read it and I can interpret it.

25 MR. HILLER: Okay.

1 **THE COURT:** Believe me that I will do that.

2 **MR. HILLER:** Okay. Your Honor. Understood.

3 **Q:** Okay. Ms. Hatcher, I think that's all I have
4 for you. Thank you, Ms. Hatcher.

5 **MS. HATCHER - EXAMINATION BY THE COURT:**

6 **Q:** Ms. Hatcher, I've got one question ---

7 **A:** Okay.

8 **Q:** --- and this is for clarification. Is it the
9 Department's -- and I -- I'm sorry, I have not
10 read every word in the regulation yet, but is
11 it's the Department's stance that birthing
12 centers have to --have to be open during
13 regular hours that they -- do they have to have
14 regular set hours?

15 **A:** We asked all birthing centers to send us their
16 operating hours and Ms. Leland had sent me
17 operating hours and Wednesday was one of her
18 operating hours that she was open for
19 administrative days.

20 **Q:** And is there any set number of employees that
21 these centers must employ?

22 **A:** There is not a set number. The regulation just
23 talks to having enough staff to staff the
24 facility to provide adequate care.

25 **Q:** Okay. Okay. Do these employees have to be

1 full time employees or can they be ---

2 A: They don't have to be full time but as their
3 personnel they require that training
4 orientation applications, license -- if they
5 have a license, their license number, et
6 cetera.

7 Q: All right. Thank you, Ms. Hatcher.

8 A: All right. Do I just leave this here?

9 Q: Yes, please.

10 A: Okay. Thank you.

11 **THE COURT:** We're going to take a ten minute break
12 before we move to your next witness.

13 **MR. WICEVIC:** Yes, Your Honor.

14 **MR. HILLER:** All right.

15 (Off the Record from 3:10 p.m. until 3:34 p.m.)

16 **THE COURT:** All right. We are back on the record.

17 Mr. Wicevic?

18 **MR. WICEVIC:** Thank you, Your Honor. All right.

19 The Department will call Gwen Thompson.

20 **THE COURT:** Okay.

21 **GWENDOLYN THOMPSON,** having been duly sworn, deposes
22 and testifies as follows:

23 **MS. THOMPSON - DIRECT EXAMINATION BY MR. WICEVIC:**

24 Q: Good afternoon Ms. Thompson, can you please
25 state your full name for the record?

1 A: Gwendolyn Cunningham Thompson.

2 Q: And, Ms. Thompson, where do you work?

3 A: I work with the South Carolina Department of
4 Health and Environmental Control the Bureau of
5 Health Facilities Licensing.

6 Q: How long have you worked at DHEC?

7 A: I've been with DHEC since 1990.

8 Q: Okay. Can you -- have you had multiple roles
9 at DHEC?

10 A: I've got multiple roles at DHEC.

11 Q: Can you explain your job history at DHEC?

12 A: I started initially in food protection and
13 doing inspections of basically food service in
14 Richland County. I stayed there almost four
15 years. I transferred over to what was called
16 health licensing. There I started as an
17 inspector doing primarily food inspections but
18 as we reorganized I've basically inspected
19 almost -- almost every type of licensed
20 facility. I've gone from Inspector III to
21 Senior Inspector to Field Manager to acting
22 Section Manager to Assistant Director to
23 Director and now Bureau Chief.

24 Q: Okay. And can you explain your role as Bureau
25 -- the Chief of the Bureau of Health Facilities

1 Licensing?

2 A: Yes. The Bureau of Health Facilities Licensing
3 is responsible for basically licensing all
4 health care facilities, activities, and
5 services in the state of South Carolina. We
6 basically enforce the what's called the state
7 regulations. We're also responsible for
8 revising, updating, writing regulations -- I
9 have basically several sections. I have three
10 separate divisions. We cover about --
11 somewhere around 20 plus types of license
12 facilities and activities. We do the licensing
13 piece. We also have a quality management team
14 that will deal with insurance, which it
15 basically deals with enforcement. They deal
16 with citation reconsideration forms. And
17 again, we go anywhere from a protective home to
18 a hospital.

19 Q: You explained the Bureau. What's your role
20 with regards to the Bureau?

21 A: I -- I basically oversee the entire program.

22 Q: Okay. With regards to the enforcement process
23 what is your role?

24 A: In the basis of the enforcement process what
25 happens is generally works its way to me. I'm

1 usually -- when I -- I'm usually like the next
2 to the last person, that's kind of sent for it.
3 I'll review -- generally what happens it starts
4 at basically an inspection -- the inspector,
5 the field managers, and division director make
6 a decision that they will like to move forward
7 with the enforcement. It is then sent to our
8 insurance department who basically goes through
9 all the violations to determine basically the
10 validity of the violations based on the
11 regulations. It also goes through -- through
12 the Office of General Counsel look at the
13 violations. By then there's a packet that's
14 put together and is sent to me and then I will
15 review that packet and determine if we wish to
16 move forward with that enforcement.

17 Q: Okay. So you don't have any observations --
18 personal observations of the violations?

19 A: No personal observations of violations.

20 Q: Okay. Did -- what was your role in this
21 particular enforcement involving of Blessed
22 Births?

23 A: Basically what happens is I'm kind of like the
24 -- the -- before it gets to what's called our
25 Deputy Director of Health Regulations I make

1 the decision whether to move forward with the
2 enforcement and basically determine what type
3 of enforcement we're going forward with.

4 Q: Okay. And what are the options with regards to
5 birthing centers when the decision is made to
6 take enforcement?

7 A: I am not sure because I've got so many
8 different regulations. We have the ability to
9 do monetary enforcement. We also have the
10 ability to do revocation of the license.

11 Q: Backing up a little bit ---

12 A: Uh-huh.

13 Q: Okay. After determination is made that -- with
14 the health licensing will take enforcement
15 what's the next step?

16 A: When you say take enforcement, as in we now
17 decided we're going forward and what type of
18 enforcement we're going to do?

19 Q: Correct.

20 A: Often times what we try to do initially is
21 basically a consent order and we try to have an
22 enforcement conference so that we can sit at a
23 table and decide whether to move forward with
24 that as a consent order.

25 Q: What's the purpose of an enforcement

1 conference?

2 A: We like to sit at a table and talk to the
3 facility, the licensee administrator, to
4 determine if they place -- put some things in
5 place that will determine that they're now in
6 compliance. It just gives us an opportunity to
7 hear from the facility. At that point in time
8 there's no set decision. We just kind of --
9 because we just sent out a letter saying that
10 we're considering an enforcement so we try to
11 do an enforcement conference where we can sit
12 down at the table and discuss -- here are the
13 violations we saw and what have you put in
14 place and so then from that point we could
15 determine possibly to consider how to handle
16 the order versus going forward with an
17 Administrative Order, initially.

18 Q: Okay. I know you talked about your -- you're
19 the head of the Health Licensing Bureau.
20 What's your kind of policy with regards to
21 enforcement? Is there purpose for it?

22 A: In all honesty several things will lead you to
23 enforcement. Sometimes it's the seriousness of
24 the violation, how egregious it is. Sometimes
25 it the number of violations. Compliance

1 history. Repeating a violation. Many things
2 lead to an actual enforcement. It is not our
3 first choice. What we try to do often times is
4 to -- is to get compliance before we get to
5 that point. That's why we try to do a
6 enforcement conference instead of an actual
7 Administrative Order. To see if we can get to
8 an agreement that we have some violations and
9 we'll sit at the table and figure out, you
10 know, have you put things in place that these
11 thing don't -- that these things -- that they
12 don't actually repeat again.

13 Q: Okay. Did the Department invite Blessed Births
14 to an enforcement conference?

15 A: We did.

16 Q: Okay. Let's turn to Exhibit Nine, please. I
17 think Exhibit Nine is pages 40 to 48.

18 A: Uh-huh (affirmative response).

19 Q: Ms. Thompson, can you identify those documents?

20 A: This was a letter that was mailed out on August
21 6, 2014. Basically what it states is that the
22 Department will -- will explain its role and
23 authority for enforcement. We will attempt to
24 establish a mutual agreement resolution. If we
25 can't come to it we will -- if we can we'll put

1 it in a consent order. If not, then the
2 Department will determine a final decision.

3 Q: Okay. And who drafted this letter?

4 A: This letter is initially drafted by -- I have
5 an assurance co-ordinator who will draft it and
6 then I basically review it and sign it.

7 Q: Okay. And who is this addressed to?

8 A: It was addressed to Amy Leland.

9 Okay. And is this enforcement conference
10 letter a record of facts based upon provisions
11 made by the Department representative who had
12 observed such conditions?

13 A: It is.

14 Q: Okay. Was this -- are these enforcement
15 conference letters ---

16 MR. HILLER: Your Honor, I'm going to object to all
17 of this. I believe you actually ruled earlier
18 we couldn't go into issues regarding this
19 presupposed resolution prior to the --
20 following the Administrative Order.

21 MR. WICEVIC: Your Honor, I think this goes towards
22 the full enforcement process. We're not
23 talking about terms or any kind of proposed
24 consent order which I understand is ---

25 THE COURT: Just the policy in general?

1 MR. WICEVIC: Yes, Your Honor.

2 THE COURT: Okay.

3 Q: Ms. Thompson are these enforcement kind of
4 letters kept in the course of DHEC's normal
5 business activity?

6 A: They are.

7 Q: Is it the regular practice of DHEC to complete
8 and send these letters upon initiating such
9 enforcement?

10 A: Yes.

11 Q: All right. The Department would like to admit
12 Exhibit Nine into evidence.

13 MR. HILLER: I object to it on the same grounds,
14 Your Honor.

15 MR. WICEVIC: And, again, I'm not talking about the
16 terms of the consent order or any kind of
17 proposed settlement. This is just to show that
18 the Department followed its normal process and
19 invited the facility to attend an enforcement
20 conference where ---

21 THE COURT: Okay. We don't need the document. Her
22 testimony is sufficient.

23 MR. WICEVIC: Okay. Thank you, Your Honor.

24 Q: Ms. Thompson, did Blessed Births attend an
25 enforcement conference?

1 A: They did not.

2 Q: Okay. All right. With regards to the various
3 enforcement options. I know you talked to us
4 about suspension, revocation and monetary
5 penalties. How does the Bureau of Health
6 Facilities Licensing decide which route to
7 pursue?

8 A: The decision is -- is generally initially
9 decided at the division level. Those are who
10 start to decide is -- it is the purpose
11 basically compliant -- are they egregious
12 enough that we need to revoke the license or is
13 it just a monetary and it was the
14 recommendation of that division that we do a
15 monetary penalty.

16 Q: Okay. And when you decide to take a purpose a
17 -- purposing a monetary penalty, how do you
18 decide the amount of the monetary penalty?

19 A: It is based on a chart that is actually listed
20 in the regulations. They'll be a graph that
21 basically under --- let me look at the
22 regulation.

23 Q: Ms. Thompson, do you have a copy of the
24 regulation?

25 A: I do.

1 Q: All right. I want you to turn to pages two to
2 three.

3 A: Okay. Is it ---

4 Q: And it gives some greater details about that
5 calculation of the amount of monetary penalty
6 referring to section 83?

7 A: Yes. If you're starting on page two if you see
8 when it tells about penalty, in regulation
9 violations of class, it had Class I, Class II
10 and Class III. Class I being the most serious
11 and it's been determined and that it was
12 immanent danger for the patients and/or the
13 occupants of the facility or substantial
14 probability that there was serious physical
15 harm that could result there from. Class II
16 basically says there's a direct and immediate
17 relationship to health safety or security of
18 the patients. And then Class III are not
19 classified as serious in these regulations. So
20 initially the monetary penalty would be based
21 on the class of the violation and those are
22 indicated in the regulation -- the actual class
23 is for that violation. And then if you go to
24 page three and this document I'm looking at is
25 a regulation. There's a table that talks about

1 Class I, Class II, and Class III if it's the
2 first offense, second offense, third, fourth or
3 fifth. And so the monetary penalty is based if
4 it's the first time a Class I we could do an
5 enforcement between the amount of two hundred
6 and one thousand. So it gives us a band
7 basically determine -- to determine.

8 Q: Okay. Did the Department utilize this schedule
9 in calculating the monetary penalty for Blessed
10 Births?

11 A: We did.

12 Q: All right. Let's turn to Exhibit One, please.
13 And Exhibit One is pages 1 through 10 in the
14 exhibit packet.

15 A: Uh-huh (affirmative response).

16 Q: Ms. Thompson, can you identify this document?

17 A: Beginning on page one, it is actually a letter
18 informing Ms. Leland basically that we're doing
19 an Administrative Order. That I found on the
20 staff determination that we do a certificate of
21 service. On page two -- three just tells you
22 how you can appeal and have the board review
23 the actual Administrative Order. And then page
24 five begins the actual legal documents for the
25 Administrative Order.

1 Q: Okay. At what point is an Administrative Order
2 directed and executed?

3 A: Generally, if we aren't able to do a consent
4 order then we would move forward with an
5 Administrative Order.

6 Q: All right.

7 MR. WICEVIC: The Department would like to admit
8 Exhibit One, pages 1 through 10, which is the
9 Administrative Order.

10 MR. HILLER: The evidence that the existence of
11 charges that brought us here today, you know,
12 obviously we don't consider this admissibility
13 -- to admit it to any of the factual
14 allegations.

15 THE COURT: That's understood.

16 (Petitioner's Exhibit Number One was introduced into
17 the record at this time.)

18 MR. WICEVIC: All right.

19 Q: Ms. Thompson, let's get to the calculation of
20 the monetary penalty. It might be helpful to
21 keep looking at the section of the reg 83(f)
22 and then turn to page eight in the exhibit
23 packet. I'm going to hand you a pen and pencil
24 and we're going to see what the monetary
25 penalty range is. I don't think it should be

1 to difficult, it's only six violations.

2 A: All right.

3 Q: Okay. Section C.(3), is what type of -- what
4 class of violation?

5 A: Violation section C.(3) is a Class II violation
6 and carries a penalty range of one hundred to
7 five hundred for the first occurrence.

8 Q: Okay. What about the Class -- or excuse me.
9 What about section D.(3)(b)?

10 A: Section D.3(b) is a Class I violation and
11 carries a penalty of two hundred to one
12 thousand dollars.

13 Q: Okay. What about Section D.(3)(c)?

14 A: D.(3)(c) is also a Class I violation and
15 carries a penalty range of two hundred to one
16 thousand dollars.

17 Q: D.(3)(f)?

18 A: D.3(f) is a Class I violation and carries a
19 penalty range of two hundred to one thousand
20 dollars.

21 Q: Okay. And Section D.(6)(d)?

22 A: D.(6)(d) is a Class I violation and carries a
23 penalty range of two hundred to one thousand
24 dollars.

25 Q: Finally, Section F.(5)(a)?

1 A: F.(5)(a) is a class two violation and carries
2 a penalty range of one hundred to five hundred.

3 Q: Let me ask you to add those ranges together and
4 what is the, I guess, sum range for ...

5 A: From the lowest to the highest?

6 Q: Yes, ma'am.

7 A: If I'm adding correctly the minimum could have
8 been one thousand and the maximum five
9 thousand.

10 Q: Okay. All right. Now let's talk about the
11 enforcement factors. Does the regulations have
12 considerations that they're supposed to look
13 at when determining what type of enforcement to
14 take?

15 A: It gives us guidance only in the sense when it
16 talks about the classes and the amount and
17 decisions have to be made based on repeating
18 violations and the classes of violations and
19 which are considered to most -- more egregious
20 than others.

21 Q: Let's look at the second sentence of Section
22 A.(3)(e).

23 A: A ---

24 Q: Three(e). It's also on page three of the ---

25 A: The regulation?

1 Q: Yes, ma'am.

2 A: Are you at the section where it says Department
3 may -- do not suspend or revoke?

4 Q: Yeah. The last sentence in that provision.

5 A: The Department will consider filing factors
6 specifically condition and their impact on
7 potential -- for potential impact of health,
8 safety or welfare and it says efforts by the
9 facility to correct overall conditions, history
10 of compliance, and any other pertinent
11 conditions.

12 Q: Okay. How do those factors play in to your
13 decision to take enforcement against Blessed
14 Births?

15 A: In this case when it says potential impact or
16 impact it would be the fact that there were
17 Class I violations. There would have been some
18 concerns and the efforts by the facility to
19 correct the violations. And then still some
20 concerns of history of compliance.

21 Q: All right. So considering those factors and
22 the range of -- of the monetary penalty, what
23 was the Department's decision as far as
24 monetary penalty for this matter?

25 A: The Department assessed a penalty of \$2,200.

1 Q: Okay. Thank you, Ms. Thompson. Please answer
2 any questions Mr. Hiller has for you.

3 A: Okay.

4 MS. THOMPSON - CROSS-EXAMINATION BY MR. HILLER:

5 Q: Ms. Thompson, did I understand you to say that
6 at the time of the enforcement conference you
7 expected a consent order to be signed or they
8 would go ahead and bring this action?

9 A: What I said is at an enforcement conference we
10 try to come to an agreement. We listen to both
11 sides and then a final decision will be made.
12 It could be an Administrative Order. There
13 have been times when we didn't enforce, so it
14 could -- truth be told, it could be anything.

15 Q: But in order to sign the consent order you have
16 to admit that you did something wrong, right?

17 A: Did -- you would be -- yes, you would be
18 alleged -- yes, you would be stating that --
19 that you're correcting some items that are in
20 the actual reports of visit, yes.

21 Q: Right. And with regards as to Exhibit One, the
22 Administrative Order ---

23 A: Uh-huh (affirmative response).

24 Q: --- that was not prepared by you, was it?

25 A: The actual Administrative Order is, again, is

1 prepared my assurance co-ordinator who in turn
2 sends it through legal for actual final review.

3 Q: And then it comes to you and if looks alright,
4 you sign it?

5 A: Correct.

6 Q: You don't have anything to do with it's actual
7 preparation?

8 A: I can't say not anything only because before it
9 gets to this stage, I mean, the packet has to
10 come to me and I actually see the reports of
11 visit, citation, review the monetary amount,
12 decide yes or no, and I look at it inside out,
13 so, yeah, I do still have some decision making.

14 Q: Okay. But -- but -- but when it comes to you
15 those decisions are basically made and you
16 either accept them or you reject them?

17 A: Or modify -- I have modified.

18 Q: All right. Did you in this case?

19 A: I don't remember. I can't say that for sure.
20 I will only say I don't recall if I modified or
21 not. Because a modification could be the
22 monetary amount. It could be -- so I can't --
23 and I'm sorry.

24 Q: Do you know or not?

25 A: Many things cross my desk.

1 Q: You don't know?

2 A: I don't know the answer to whether or not I
3 modified it.

4 Q: But you -- you don't know if -- if -- what was
5 considered with regards to previous enforcement
6 actions?

7 A: No, I can't say that because that -- what
8 happens even in the beginning -- in the
9 beginning phases where we're having a
10 discussion because before we go -- if we're
11 considering enforcement conference, I've had
12 conversations as to okay whether the violations
13 were our concerns -- tell me what were -- so
14 there's some -- there's always conversation
15 between me and the program if that's what
16 you're asking.

17 Q: Well I'm asking about this specific case?

18 A: Well in -- in this specific case the process is
19 always the same.

20 Q: Well you understand there was never any other
21 Administrative Order issued?

22 A: Not during my term as Bureau Chief, yes, I will
23 answer that.

24 Q: All right. And -- and so if you got any
25 information about prior -- prior violations it

1 would have been a different outcome?

2 A: When you say prior violations -- from other
3 inspection reports? Because prior violation is
4 not just this it could have been other
5 inspections.

6 Q: There was no -- well let me -- did your packet
7 share with you the information that I provided
8 with regards to the allegations and violations?

9 A: Do I have the letters you've written, yes, sir.
10 I have them. Yes.

11 Q: Okay. That's all the questions I have.

12 A: Okay.

13 MR. WICEVIC: The Department has no further
14 questions and that concludes the Department's
15 case.

16 THE COURT: Okay. Thank you, Ms. Thompson.

17 A: Yes, ma'am. Thank you.

18 MS. LELAND - DIRECT EXAMINATION BY MR. HILLER:

19 Q: State your name for the record, please.

20 A: Amy Beth Leland.

21 Q: Okay. And you are the owner of Blessed Births?

22 A: I am.

23 Q: All right. And you are licensed?

24 A: I am.

25 Q: And how long have you had that license?

1 A: Since ninety -- since January of '97.

2 Q: Okay. And how long have you operated -- owned
3 and operated Blessed Births?

4 A: I've been operating -- owned and operating
5 Blessed Births Birthing Center for 15 years,
6 since 2000.

7 Q: Is that continuously in the same location?

8 A: I've -- I opened my first facility and it was
9 at a different location and it was opened for
10 a few years and then I moved the location and
11 opened at the new facility.

12 Q: But you have -- you had to have -- you had to
13 have the location licensed, correct?

14 A: Correct. Both the -- both of those locations
15 were licensed.

16 Q: In order to obtain a license do you have to
17 provide certain material to the Department of
18 Health and Environmental Control?

19 A: Yes.

20 Q: And if you do not provide, what they consider
21 to be suitable documents and material, you
22 can't get a license?

23 A: Correct.

24 Q: Did you in fact provide all the documents
25 necessary to get a license?

1 A: Yes.

2 Q: And did that documentation include a policies
3 and procedures manual?

4 A: Yes.

5 MR. WICEVIC: Objection. Leading the witness.

6 THE COURT: I'm going to allow this so that we can
7 move on.

8 MR. HILLER: Your Honor, I think that would be
9 appropriate to continue. Thank you.

10 Q: Okay. So did you provide them a policy and
11 procedure manual?

12 A: Yes, I did.

13 Q: Okay. And -- and did that policy and procedure
14 manual has it -- has it changed over time?

15 A: It has remained exactly the same as I wrote it
16 in 2000 up until very, very recently when I
17 made an amendment after this.

18 Q: Specifically the provisions in your policy and
19 procedure manual relating to training --
20 receiving, transcribing and implamenting of the
21 administrating of drugs, has there been any
22 modification in the policy or procedures that
23 you submitted when you initially obtained the
24 license from July 16th, 2014 of that section?

25 A: No, it's the same as it was then.

1 Q: And have you -- you know Ms. Hatcher?

2 A: Yes, I do.

3 Q: She's conducted inspections at your facility?

4 A: All the time.

5 Q: And she's been doing it for at least -- for a
6 while or ---

7 A: For six years or something.

8 Q: And when she inducts these inspections does she
9 review your policies and procedures manual?

10 A: All the time.

11 Q: Has she ever, prior to June -- July the 16th of
12 2014, told you that it was deficient in the
13 area of receiving, transcribing and
14 implementing of orders for the administration
15 of drugs?

16 A: No.

17 Q: Okay. Subsequent to July 16th, did you in fact
18 modify it?

19 A: Yes.

20 Q: Okay. You added some additional language?

21 A: Yes.

22 Q: At whose request?

23 A: The Department's.

24 Q: The Department's. All right. Now at the time
25 of the inspection on July 16th, 2014 did you

- 1 currently have an alternate to act in your
2 absence as an administrator?
- 3 A: On July 16th?
- 4 Q: Yes.
- 5 A: I did not have an alternate at that point.
- 6 Q: Had you previously had an alternate?
- 7 A: Yes.
- 8 Q: And had that been contained in your policies
9 and procedures?
- 10 A: Yes.
- 11 Q: It -- what happened to that alternate?
- 12 A: She left her job position.
- 13 Q: Okay. All right. Did she give any notice that
14 she was leaving?
- 15 A: An extremely short notice.
- 16 Q: Okay. Had you been in the process or were you
17 in the process of interviewing to replace that
18 position?
- 19 A: Yes, I was.
- 20 Q: Is that a common or an uncommon occurrence?
- 21 A: It's definitely common.
- 22 Q: Okay. Can you replace them immediately?
- 23 A: No, I cannot.
- 24 Q: Okay. But you were in the process?
- 25 A: Yes, I was.

1 Q: Did you in fact replace her?

2 A: Yes, I did.

3 Q: And did we notify DHEC of that -- of the
4 replacement?

5 A: Yes.

6 Q: Okay. Are you familiar with the regulations
7 related to birth centers?

8 A: Yes, I am.

9 MR. HILLER: Was a -- was a copy put into evidence?

10 THE COURT: A copy of the regulations?

11 MR. WICEVIC: Just -- just this one, you can use
12 mine.

13 MR. HILLER: Okay.

14 Q: Ms. Leland, on July 16th, 2014 were there any
15 medications in your facility that you did not
16 have a prescription for?

17 A: No.

18 Q: All right. At the time that you initially
19 opened the clinic you were required -- what --
20 were you required to have any prescription
21 medications?

22 A: Yes.

23 Q: Did you in fact obtain the prescription
24 medications so that you could meet -- obtain
25 your license?

1 A: Yes.

2 Q: Did you have any patients at that time?

3 A: No.

4 Q: You couldn't have any patients because you
5 didn't have a license?

6 A: Correct.

7 Q: But you did obtain prescriptions though didn't
8 you and get medications?

9 A: Yes.

10 Q: What types of medications were you required to
11 have?

12 A: IV fluids, Pitocin, emergency medications
13 related to the mother and baby care at
14 delivery.

15 Q: Okay. And have you continuously kept a supply
16 of those medications in your facility?

17 A: Yes.

18 Q: And do you always have a doctor's prescription
19 allowing you to have those in your possession?

20 A: I have to -- I have all kinds of prescriptions.

21 Q: Well I -- my question is, those are required --
22 are they -- are the drugs that you described
23 required to have a physician prescription;
24 they're not over the counter?

25 A: No, they're not over the counter.

- 1 Q: All right. So you get a prescription?
- 2 A: Yes.
- 3 Q: From a physician?
- 4 A: Correct.
- 5 Q: And it's just for the drugs?
- 6 A: Correct.
- 7 Q: And not attached to a specific patient?
- 8 A: Not always.
- 9 Q: I'm talking about your emergency medicine.
- 10 A: Oh, my emergency -- no.
- 11 Q: It's never attached to a patient?
- 12 A: No.
- 13 Q: And you're required to maintain them?
- 14 A: Yes.
- 15 Q: Okay. Alleged violation number three is
- 16 D.(3)(6). Can you read that for me, D.(3)(6)?
- 17 A: D.(3)?
- 18 Q: Six. Excuse me, C, I'm sorry.
- 19 A: Okay. D.(3)(c) says there shall be written
- 20 prescriptions or orders signed by a
- 21 practitioner legally authorized to prescribe in
- 22 South Carolina for all drugs administered to
- 23 mother and infant within the birthing center.
- 24 Q: Okay. Now does it say any where in there or
- 25 require any where in there that that has to be

1 prescribed specifically to the mother?

2 A: No.

3 Q: Did you ever -- or with regards to the patient
4 that received the three ML's of Pitocin ---

5 A: Yes.

6 Q: --- was all of the Pitocin prescribed by a
7 physician?

8 A: Yes.

9 Q: And was it medically necessary to -- to dose
10 that patient with a third dose?

11 A: Absolutely necessary.

12 MR. HILLER: And you've seen that the Petitioner has
13 included a copy of her labor and delivery notes
14 as their Exhibit Five.

15 Q: And prior to your contacting 911, how many
16 doses of Pitocin had been administered?

17 A: Two.

18 Q: And how many had been prescribed specifically
19 for that patient?

20 A: Two.

21 Q: The third dose of Pitocin, where did that come
22 from?

23 A: From our emergency supplies.

24 Q: All right. Was it an emergency?

25 A: Yes, it was.

1 Q: Did you -- the ambulance was on its way?

2 A: Yes.

3 Q: And why did you dose the third ML of Pitocin?

4 A: I actually discussed it with the EMS and they
5 agreed that it would be a wise step because
6 they don't carry those medications and for
7 transport -- a safe transport an additional
8 unit of Pitocin was given to the mother five
9 minutes before she was on the road with EMS.

10 Q: Okay. Now the fourth violation states that you
11 violated D.(3)(f). Would you look at D.(3)(f)
12 on the regulations? Did I leave them there?
13 I thought I left them -- would you read that
14 for me?

15 A: Drugs, medications and chemicals shall be
16 stored and secured in specifically designated
17 cabinets, closets, drawer -- drawers or
18 storerooms and made accessible only to
19 authorized persons.

20 Q: Do you have any estimate of how many times that
21 Ms. Hatcher has inspected your facility?

22 A: Fifteen, 20.

23 Q: And do you have any estimate how many times
24 your facility has been inspected since it's
25 been licensed?

1 A: For annual inspections, well at least 15 of
2 them. The other times she's come are beyond
3 that.

4 Q: And -- and each of those inspections that
5 occurred prior to July 16th, 2014; were any of
6 those inspections conducted while you were in
7 the midst of assisting -- assisting a mother
8 giving birth?

9 A: In all of the 15 years or just ---

10 Q: Yes.

11 A: --- with Ms. Hatcher?

12 Q: In all those years?

13 A: One time.

14 Q: Okay. And with Ms. Hatcher, how many times?

15 A: None other than the 16th of July.

16 Q: Okay. And in any of Ms. Hatcher's prior visits
17 were there -- was there ever an issue about
18 your drugs not being stored in a cabinet?

19 A: No.

20 Q: No -- no -- never a complaint about that?

21 A: No.

22 Q: Okay. Why weren't they stored in the cabinet
23 on the day she came when you -- when you
24 actually had a mother in labor?

25 A: Because I had a mother in labor and if I need

1 them I don't need to be getting a key and
2 unlocking a cabinet when it is a time sensitive
3 medication use for those medications.

4 Q: Okay. The Pitocin is used to stop bleeding?

5 A: Correct.

6 Q: IV fluids are used to replace ---

7 A: Right.

8 Q: --- fluids?

9 A: Uh-huh (affirmative response).

10 Q: And -- and on that particular -- you heard Ms.
11 Hatcher testify that she also found some sodium
12 solution for an IV kit?

13 A: Uh-huh (affirmative response).

14 Q: And it was sitting out as well?

15 A: Correct.

16 Q: Is that a prescription?

17 A: Yes.

18 Q: Can you get that over the counter?

19 A: No.

20 Q: Okay. And you told her that that was incase of
21 an emergency and she said she was fine with it
22 being out?

23 A: Yes.

24 Q: Okay. So it wasn't locked up?

25 A: No.

1 Q: It was available to anybody who wanted to walk
2 in and handle it?

3 A: Yes.

4 Q: It was no different than the other supplies?

5 A: No.

6 Q: In fact, in a more accessible location?

7 A: Yes.

8 Q: But that is fine?

9 A: Correct.

10 Q: And -- and was it out for any other or
11 different reason than the other -- the Pitocin
12 and the HeSpan?

13 A: No.

14 Q: Only if needed?

15 A: Yes.

16 Q: Is that normal for you, to get that out of
17 storage when it's -- when you have a mother in
18 labor?

19 A: Every time.

20 Q: Okay. And -- and was the facility open to the
21 public that day?

22 A: No.

23 Q: All right. She asked you about -- or there was
24 a question about your operating hours. Did you
25 provide her with a -- with estimated operating

- 1 hours?
- 2 A: Yes.
- 3 Q: Did you specifically disclaim that those were
- 4 normal?
- 5 A: I said that they were subject to change
- 6 according to my patients delivery schedules.
- 7 Q: Okay. So there was no guarantee that anybody
- 8 would be there or would be available at any
- 9 particular time to put it ---
- 10 A: Correct.
- 11 Q: Other than the people who came with Ms.
- 12 Hatcher, who else was present that morning with
- 13 -- with you and this expected mother?
- 14 A: Her immediate family.
- 15 Q: Her immediate family being?
- 16 A: Her mother and her husband and her sister.
- 17 Q: Okay. And they -- they were all adults?
- 18 A: All adults.
- 19 Q: Were they back with the mother?
- 20 A: Yes.
- 21 Q: Providing comfort?
- 22 A: Yes.
- 23 Q: And in your setting are -- are mother's allowed
- 24 to move around?
- 25 A: Yes.

1 Q: Do you have options that mother's can utilize
2 in order to alleviate pain and discomfort of
3 child birth?

4 A: Yes.

5 Q: Do you have options for the after child birth
6 itself?

7 A: Yes.

8 Q: And would that include a tub?

9 A: Yes.

10 Q: Do you have multiple tubs that they can be in?

11

12 A: Yes.

13 Q: And they can be on different devices that -- do
14 you have a ball or something?

15 A: Yes.

16 Q: Okay. But -- but -- so and you expect the
17 family to be there?

18 A: Yes.

19 Q: Because that's what you do in a birthing
20 center?

21 A: Yes.

22 Q: And even though the family is there you still
23 have to have the drugs out?

24 A: Correct.

25 Q: While Ms. Hatcher was there did she take away

1 time from your patient?

2 A: Absolutely.

3 Q: Did she take away time from your ability to
4 care for that patient as you would want to ---

5 A: Absolutely.

6 Q: --- and expect to?

7 A: Yes, absolutely.

8 Q: Okay. Did you ask her not to conduct the
9 inspection at that particular time?

10 A: Yes, I did.

11 Q: Okay. Did you -- because she -- did she demand
12 to go ahead and go forward with the inspection?

13 A: Yes.

14 Q: As a result of that did you try to obtain some
15 assistance?

16 A: Yes, I did.

17 Q: Did you call another person?

18 A: I called a ---

19 Q: I'm sorry, did you call another midwife?

20 A: Yes.

21 Q: Or midwives?

22 A: Yes.

23 Q: I'm sorry. I'm not sure how to use it.

24 A: That's okay.

25 Q: I relate every one of those to a midwife.

1 A: Yes, I did.

2 Q: Was Ms. Hatcher present and around when you did
3 that?

4 A: She did -- she was sitting at my desk.

5 Q: Okay. And -- and did you tell her why you
6 wanted to get another midwife there?

7 A: Yes.

8 Q: What did you tell her?

9 MR. WICEVIC: Your Honor, I object. It seems like
10 he's leading quite a bit.

11 MR. HILLER: I just asked what did she ---

12 THE COURT: No, no, no. In general.

13 MR. HILLER: Well, Your Honor I'm just trying to ---

14 THE COURT: I know you're trying to speed it up but
15 if you could just refrain from -- let her
16 answer more for herself because I'm hearing
17 your answers more than I hear hers.

18 Q: What did you tell her; Ms. Hatcher?

19 A: That I was calling another licensed midwife to
20 assist me in the situation because she was
21 demanding to continue to conduct the inspection
22 and in spite of the fact that I had a very
23 active labor on my hands, and ---

24 MR. WICEVIC: Your Honor ---

25 A: --- I needed assistance.

1 THE COURT: Wait a minute. I'm sorry.

2 MR. WICEVIC: I think this is just hearsay, she's
3 talking about what she told Ms. Hatcher.

4 MR. HILLER: How would that be hearsay?

5 MR. WICEVIC: It's not a court -- it's not a court
6 statement and I offer it's relevance.

7 MR. HILLER: Ms. Hatcher is sitting right there.

8 MR. WICEVIC: She's not talking about what Ms.
9 Hatcher said.

10 MR. HILLER: Yes, she is. She's talking about what
11 she told Ms. Hatcher. Didn't Ms. Hatcher tell
12 -- say what she said the whole time?

13 THE COURT: You are asking -- she is repeating what
14 she told Ms. Hatcher?

15 MR. HILLER: She's just saying what she told Ms.
16 Hatcher.

17 THE COURT: Okay. Okay. The objection is
18 overruled.

19 Q: All right.

20 THE COURT: You can go ahead and answer.

21 A: Ms. Hatcher was insisting on doing the
22 inspection so I called another licensed midwife
23 who owns a birth center and has a complete
24 staff file, which is why I called her
25 specifically, because I knew that she would be

1 qualified to walk into my facility and was a
2 qualified person to take my position over
3 because I was being required by Ms. Hatcher.

4 Q: Okay.

5 A: Ms. Hatcher said that I was not allowed to have
6 that person come into my facility because she
7 was not an employee.

8 Q: All right. So as a result of that, did that
9 person come over to the facility?

10 A: No, because Ms. Hatcher wouldn't let her.

11 Q: You used the call -- the call method? Do you
12 have one of those? Do you have a call system?

13 A: I do.

14 Q: Okay. And did you try to use that?

15 A: Yes, I did.

16 Q: Okay. Were you -- were you impeded in anyway
17 in doing that because Ms. Hatcher was present?

18 A: Yes.

19 Q: Okay. And how was that?

20 A: She kept insisting that I walk around with her
21 and pull files for her and she included
22 snapping her fingers at me and saying, come on,
23 hurry up. And just made me march around the
24 clinic when I -- when I needed to be with my
25 patient.

1 Q: Did you she require you to make copies of
2 anything?

3 A: Yes.

4 Q: Okay. So you were at the copy machine?

5 A: Yes.

6 Q: All right. Were you aware that Ms. Hatcher was
7 a registered nurse?

8 A: Yes.

9 Q: Did Ms. Hatcher actually go into the room where
10 the expected mother was at anytime during the
11 course of her visit?

12 A: She stood in the doorway.

13 Q: Did she get a picture made of her in there with
14 the baby?

15 A: Yes.

16 Q: Okay. So she was there the -- when the mother
17 delivered?

18 A: Yes.

19 Q: Ms. Hatcher was in the building?

20 A: She was.

21 Q: In the birthing center?

22 A: Yes.

23 Q: A registered nurse?

24 A: Yes.

25 Q: Okay. The bathroom, where is the hall

1 bathroom?

2 A: It's just adjacent to the delivery -- the front
3 delivery room.

4 Q: Do you -- so there is a different ---

5 A: Well it's ---

6 Q: --- bathroom available to the mother and the
7 family that were there to deliver?

8 A: Yes.

9 Q: Other than the hall bathroom?

10 A: Yes.

11 Q: Okay. So they didn't need to access the hall
12 bathroom?

13 A: No.

14 Q: Were -- were there urine samples in there?

15 A: Yes.

16 Q: Are you required to take those urine samples?

17 A: Yes.

18 Q: Okay. They aren't waste, they're urine samples
19 aren't they?

20 A: Correct.

21 Q: All right. Did you test those urine samples?

22 A: Eventually, yes.

23 Q: Okay. Had you intended to test them before
24 this lady went into labor?

25 A: Yes.

1 Q: Was there any reason other than her going into
2 labor that had prevented you from testing the
3 samples from the day before?

4 A: My urine strips from the day before did not
5 appear to be functioning as they should so my
6 intention was to obtain a fresh bottle and test
7 my urine samples in a fashion that I felt was
8 competent and satisfactory.

9 Q: Okay. That's all the questions I have at this
10 time. Thank you.

11 MS. LELAND - CROSS EXAMINATION BY MR. WICEVIC:

12 Q: All right. Ms. Leland, my name is Vito. I am
13 going to cross examine you. If you don't
14 understand any of the questions I ask you, just
15 ask me to rephrase them.

16 A: Okay.

17 Q: I'll try to be clear.

18 A: Okay.

19 Q: Speaking about the violations concerning the
20 individual to act in the absence of the
21 administrator. Did you -- did you inform Ms.
22 Hatcher or the Department that you had a person
23 or employee get up and leave on short notice?

24 A: No.

25 Q: When did you actually notify the Department

1 that this alternate administrator, the new one,
2 who is now Ms. Behlke?

3 A: After they requested such notification.

4 Q: Okay. Do you recall when that was?

5 A: I certainly don't know.

6 Q: Okay. I think that you said in your direct
7 examination that there were prescriptions for
8 medications within Blessed Births on July 16th?

9 A: Uh-huh (affirmative response).

10 Q: Did you provide those prescriptions to the
11 Department?

12 A: For all the medications in my building?

13 Q: For ---

14 A: Is that what you're asking?

15 Q: Yes.

16 A: I wasn't asked for prescriptions related to all
17 the medications in my building so therefore my
18 answer is no.

19 Q: Okay. All right. I have a question about the
20 Pitocin, you spoke about a third milliliter
21 being out for an emergency dosage, is that
22 correct?

23 A: Yes.

24 Q: I noticed in several of the prescription
25 request forms that the doctor, Dr. Stafford

1 prescribed Pitocin. Is there a reason why the
2 prescribed -- is there like a standard amount
3 of Pitocin that the doctor prescribes? Is that
4 a standard medication prescribed for delivering
5 a birth at a birthing center?

6 A: Pitocin is a standard medication prescribed for
7 delivery of births at birthing centers.

8 Q: Okay. And Ms. Leland, EMS asked you for you to
9 administer that Pitocin; is that fair?

10 A: We agreed that that would be a wise step to do
11 a third amp for their -- for their transfer
12 time between my facility and the hospital.

13 Q: All right. Am I correct in that EMS cannot
14 prescribe medications?

15 A: They did not prescribe it. We discussed
16 patient care and all agreed that that would be
17 the safest step for the patient.

18 Q: Okay. Moving on to the storage of medications.

19 A: Well -- go ahead.

20 Q: Do you have something else to add?

21 A: I just -- I just -- it's profound to me that
22 it's even in question that I take a life saving
23 step for my patient and that it's found some
24 how to be wrong when I'm required to carry such
25 medications in my building for that very

1 purpose.

2 Q: All right.

3 A: Because standard is to have to amps of Pitocin
4 for delivery ---

5 Q: Right. But you understand that the regulation
6 requires that you have prescriptions or written
7 prescriptions for all those ---

8 A: Which I have.

9 Q: --- medications.

10 A: Which I have.

11 Q: And the Department never received those and
12 they're not in evidence; is that correct?

13 A: And am I supposed to -- am I expected to pick
14 up the phone and call my consulting physician
15 before I give that third amp of Pitocin that's
16 going to save my patient's life? That just
17 doesn't make sense to me. I was doing my job.
18 And I did it well.

19 Q: Okay. Moving on to the storage of medications.
20 It's noted that these medications were out and
21 were intended to be utilized for the patient
22 IM; is that correct?

23 A: Say that again, please.

24 Q: I'm sorry. You noted that the medications that
25 Michell observed were out an available and that

1 they were unsecured ---

2 A: Uh-huh (affirmative response).

3 Q: --- because they were contemplated for use for
4 this patient that was undergoing labor?

5 A: Correct.

6 Q: Okay. Am I correct that if they were
7 contemplated for use why would they not be in
8 the birthing room where the mother was
9 delivering?

10 A: My patients have full use of the whole
11 facility. Typically, when there isn't an
12 inspection going on, they walk the hallways, in
13 that patient expressed an interest in using the
14 larger tub in the front delivery room.

15 Q: And am I correct that there were no
16 prescriptions issued to patient IM for those
17 medications that were out and ---

18 A: There were ---

19 Q: --- ready for use?

20 A: You're incorrect. You're incorrect.

21 Q: Okay. All right. Ms. Leland, let's turn to
22 page 13 of the exhibit packet.

23 A: Sure.

24 Q: Excuse me, page 13. Now Ms. Hatcher indicated
25 that ---

- 1 A: Page 13 or tab 13?
- 2 Q: Page 13, I'm sorry. It's part of Exhibit Two.
- 3 A: Okay.
- 4 Q: Let me know ---
- 5 A: Okay. I've got it.
- 6 Q: Okay. At the very bottom of the page the
- 7 medications that were allegedly unsecured and
- 8 accessible to the individuals at the facility
- 9 were three vials, three unopened vials of
- 10 Pitocin, an open tube of Erythromycin and an
- 11 unopened bag of HeSpan. And am I correct that
- 12 patient IM -- was patient IM in delivery?
- 13 A: Correct.
- 14 Q: Okay. Let's turn to page 37, please?
- 15 A: Okay.
- 16 Q: Exhibit Eight.
- 17 A: All right.
- 18 Q: Okay. So it appears that there's two amps it
- 19 appears of Pitocin that was prescribed. Am I
- 20 correct in that you are now saying that the
- 21 third ampul was emergency?
- 22 A: There were two ampuls prescribed to my patient
- 23 on this form.
- 24 Q: Okay. So there was another prescription for
- 25 that third ampul?

1 A: There was no other way for me to obtain it.

2 Q: Did you provide that prescription to the
3 Department?

4 A: The Department did not ask for that.

5 Q: Okay.

6 A: The Department asked for what was prescribed to
7 my patient IM.

8 Q: Well ---

9 A: The Department did not ask for all the -- all
10 the medications in my building.

11 Q: Well the Department did ask for all documents
12 that were used as a defense in this -- in this
13 case during discovery and there was not -- of
14 these prescriptions we're speaking was never
15 produced to the Department. So then what about
16 the HeSpan? Is that another medication that
17 was an emergency prescription that was not
18 specifically prescribed for patient IM?

19 A: That is kept in emergency supply for any
20 patient that might need it.

21 Q: Okay.

22 A: My patients are not each prescribed IV fluids
23 for delivery, that would be unreasonable.

24 Q: But you understand that there has to be
25 prescriptions for each medication administered

1 within your ---

2 A: And -- and there are. There's no other way for
3 me to obtain those medications. I can't just
4 go buy them. A doctor has to write a
5 prescription for them in order for me to obtain
6 them.

7 Q: Okay.

8 A: I also have to keep them in my building.

9 Q: All right. Ms. Leland, so I understand you
10 contacted another midwife to come and assist
11 with the delivery; is that correct?

12 A: Correct.

13 Q: And you said you had an obstacle that Ms.
14 Hatcher said that she needed to be an employee;
15 is that correct?

16 A: Yes.

17 Q: Do you understand that the regulation requires
18 certain measures and assessments to be taken in
19 order for one to employed by a birthing center?

20 A: And those were not unsurmountable measures that
21 day for a seasoned midwife that also owns a
22 birthing center that could have walked right in
23 with her staff file, who could have -- she
24 could have walked in with her own instruments
25 and her own -- own home birth kit and attended

1 my patient in that room. We are all prepared
2 at any time to assist any patient in any
3 setting. So her staff file automatically
4 because she's an employee of a birthing center
5 that follows the same regulations qualified her
6 to walk in with her staff file and I could
7 orient her in a matter of minutes to my
8 facility and she could have taken over and
9 cared for my patient. But I was not allowed
10 that and my patient was not allowed that.
11 Instead I had to walk around with Ms. Hatcher
12 and not take care of my patient.

13 **MR. WICEVIC:** I beg the Court's indulgence?

14 **THE COURT:** Yes.

15 **Q:** All right. One more question Ms. Leland.
16 Excuse me, I know I'm backing up a little bit.
17

18 **A:** Okay.

19 **Q:** We've talked about this as a -- D.(3)(c)
20 requires that there be prescriptions or orders
21 by a practitioner legally authorized to
22 prescribe medications in South Carolina for all
23 drugs administered to mother and infant within
24 the birthing center. Now this citation was
25 based in part for not having a prescription for

1 sodium chloride; is this a -- am I correct that
2 this is was another one of those emergency
3 orders or emergency medications where there was
4 no prescription specific to a patient?

5 A: We have stock IV fluids and sodium chloride is
6 a stock IV fluid.

7 Q: Okay.

8 A: Just like the ones that Michell Hatcher decided
9 she shouldn't write me up on.

10 Q: But there were no prescriptions provided to the
11 Department?

12 A: We weren't asked for prescriptions for all the
13 medications in my building. We were asked for
14 prescriptions related to patient IM and KD.

15 Q: And you were actually cited for not providing
16 prescriptions for the medications ultimately
17 administered to either one of those ---

18 A: We have standing orders from a medically suited
19 physician regarding IV fluid therapy.

20 Q: Okay. All right. That's all the questions the
21 Department has. Thank you Ms. Leland.

22 A: Okay.

23 MS. LELAND - RE-DIRECT EXAMINATION BY MR. HILLER:

24 Q: Ms. Leland, I don't want to beat a dead horse
25 too many times, but -- but according to the

1 emergency -- I mean the emergency medication,
2 were the drugs that were on that tray or in the
3 hallway as stated, are those -- are those
4 intravenous fluids?

5 A: Yes.

6 Q: Okay. They would qualify as something that you
7 had in place because the regulations require
8 you to have them?

9 A: Yes.

10 Q: Thank you.

11 MR. HILLER: That's all.

12 MR. WICEVIC: Nothing further, Your Honor.

13 MS. LELAND - EXAMINATION BY THE COURT:

14 Q: Ms. Leland let me ask you, what medications do
15 you normally keep in stock for emergency
16 purposes?

17 A: IV fluids, Pitocin, Methergine and related
18 supplies to administer IV's.

19 Q: Okay. Does Dr. Stafford provide -- he
20 prescribes those medications?

21 A: Yes. And when they expire, because they do
22 because I rarely use them, we get fresh ones
23 with his assistance.

24 MR. HILLER: Because they do expire.

25 A: And, you know, IV fluids expire and we just --

1 we just have to keep them in stock all the
2 time.

3 Q: Okay. Why would you not make the Department
4 aware of these in stock items ---

5 A: My ---

6 Q: --- that might have been used with the patient
7 that was there on July 16th?

8 A: They weren't used on that patient. I provided
9 them with the prescriptions related to her
10 specific care and that was my only
11 understanding as far as what I was supposed to
12 provide to the Department because they wanted
13 evidence of prescriptions related to her care
14 that day and that's all that was related to her
15 care specifically.

16 Q: Okay. But wasn't there some Pitocin that was
17 administered to her that was not reflected?

18 A: No. I didn't administer Pitocin that day.

19 Q: Okay.

20 MR. HILLER: Your Honor, may I follow up?

21 THE COURT: Sure.

22 MS. LELAND - RE-DIRECT EXAMINATION BY MR. HILLER:

23 Q: Ms. Leland, in a non-complicated delivery -- in
24 an uncomplicated delivery is Pitocin always
25 required?

- 1 A: Do you mean do I give it to a patient?
- 2 Q: Yes.
- 3 A: No.
- 4 Q: And -- and if there's minor complications or
5 minor bleeding is that why you request or need
6 Pitocin available?
- 7 A: Yes.
- 8 Q: Okay. And do you have a -- based upon your
9 experience, do you have a number of amps of
10 Pitocin that you like to consider to have
11 available for a normal delivery that you may
12 have some minor excessive bleeding?
- 13 A: Yes.
- 14 Q: And how much is that?
- 15 A: Two amps.
- 16 Q: All right. So is that what you request when
17 you request a prescription so you have that
18 available when -- when a mother is anticipating
19 going into labor?
- 20 A: Yes.
- 21 Q: Is that pretty much all the time?
- 22 A: Yes.
- 23 Q: But -- but if that's -- if it's a -- if it
24 turns out to be a child birth that requires
25 hospitalization or transport to the hospital;

1 is that what you keep the extra Pitocin for?

2 A: If there is a hemorrhage that is uncommonly
3 heavy I keep extra Pitocin so that I can -- so
4 I can adequately treat and insure the safety of
5 that patient.

6 Q: But that is not -- I mean, obviously, in your
7 business that would be a rare occurrence?

8 A: Extremely rare, yes.

9 Q: Okay. But -- so with regards to these
10 particular allegations, even though you had
11 three vials of Pitocin out, you didn't use any
12 with regards to patient IM; is that correct?

13 A: Correct.

14 Q: All right. And -- and -- but if you needed to
15 use three you would have?

16 A: Absolutely.

17 Q: All right. But that would have required an
18 emergency situation?

19 A: Correct.

20 Q: And at any time -- the allegation in the order
21 about the three milligrams of Pitocin, that was
22 for a patient that had delivered earlier and
23 that's the one whose medical record is not IM?

24 A: Right.

25 Q: Okay.

1 THE COURT: Mr. Hiller, I'm sorry. I -- I got it.
2 I misunderstood.

3 MR. HILLER: Okay. I was just trying to ---

4 THE COURT: Yes.

5 MR. HILLER: But if you figured it out I'm going to
6 sit down.

7 THE COURT: Yes, I did. Thank you.

8 MR. HILLER: And that's our case, Your Honor.

9 THE COURT: All right.

10 MR. WICEVIC: Your Honor, may I ask just one more
11 question, Your Honor?

12 THE COURT: Yes, go ahead.

13 MR. WICEVIC: Thank you.

14 MS. LELAND RE-CROSS EXAMINATION BY MR. WICEVIC:

15 Q: All right. Ms. Leland after you -- after you
16 administered these emergency medications, do
17 you follow up with a physician to -- to let
18 them know that you administered this medication
19 to a patient?

20 A: Are you referring to KD?

21 Q: I'm just talking generally.

22 A: Yes.

23 Q: Okay. Do you request them to issue some kind
24 of order or a prescription for the
25 administration of that medication?

1 A: I don't think I'm following you.

2 Q: I'm not sure if that question made sense.

3 A: Yeah.

4 Q: I'm sorry.

5 MR. WICEVIC: Okay. Your Honor, nothing further.

6 THE COURT: Thank you Mr. Wicevic. Mr. Hiller, your
7 next witness?

8 MR. HILLER: That's all.

9 THE COURT: That's it?

10 MR. HILLER: Yes, ma'am.

11 THE COURT: Okay. All right.

12 MR. HILLER: I am determined to finish today.

13 THE COURT: All right. I see that you are. Mr.
14 Wicevic, do you have anything in response?

15 MR. WICEVIC: No, Your Honor.

16 THE COURT: Okay. In that case we're ready for
17 closings.

18 MR. WICEVIC: May it please the Court?

19 THE COURT: Yes, please.

20 CLOSING STATEMENT - MR. WICEVIC:

21 MR. WICEVIC: All right. Thank you, Your Honor. As
22 for the testimony that has been presented here
23 today it seems that Blessed Births has not
24 shown the responsibility to present a
25 preponderance of the evidence towards the

1 Departments set of violations and based upon
2 the review the Department's basis for these six
3 violations in section C.(3), regarding
4 appointment of an individual to act in the
5 absence of an administrator, first in the
6 policy and procedures manual that was reviewed
7 and it didn't have anyone listed to act in the
8 absence of the administrator. Secondly, the
9 Department inspector, Ms. Hatcher, asked Ms.
10 Leland for the name of who this individual was
11 and Ms. Leland could not provide the name of
12 that individual and I think that she's admitted
13 through her own testimony that they were unable
14 to define who the individual was to act as an
15 alternate for quite some period. I will also
16 state that the Department didn't even have a
17 name of that alternate individual until it was
18 received in the October 14th letter. This is
19 roughly three months after -- four months after
20 the actual inspection. The second citation,
21 section D.(3)(f), drugs and medications need to
22 be stored in specifically designated cabinets
23 and accessible only to authorized persons, this
24 basis we have Ms. Hatcher's observations. She
25 observed medications in the birthing room that

1 was not being utilized and weren't in any kind
2 of storage compartment. They were accessed --
3 accessible to the family members who were
4 present in the facility and we also have Ms.
5 Leland telling Ms. Hatcher that the medications
6 were from a delivery the day before. And we
7 have a change of position in subsequent
8 correspondence, Blessed Births maintains that
9 these medications were being used -- utilized
10 for the birth that was in progress. During
11 discovery we determined that these medications
12 were not prescribe to that patient who was
13 undergoing delivery during the visit. The
14 third violation, section D.(6)(d), this is the
15 requirement by having two staff members present
16 during mother's delivery. First we have Ms.
17 Hatcher's observations and -- and -- during her
18 visit to the facility on the 16th there was not
19 another -- another individual associated with
20 Blessed Births present during the delivery.
21 And Ms. Hatcher -- Blessed Births points to the
22 Department's interference which we whole
23 heartedly disagree with as a justification for
24 not having a second member present. I think
25 birthing centers should have some kind of

1 protocol so that -- so that this doesn't come
2 to that and have a backup plan -- and have a
3 backup plan. And it doesn't seem like Blessed
4 Births had that. The fourth violation, section
5 F.(5)(a), it says that the facility should be
6 kept clean and free of odors, accumulated waste
7 must be removed daily or more often if
8 necessary. Again, the basis for the violations
9 was Ms. Hatcher's observations of the urine
10 cups in the bathroom and the urine cups were
11 stocked uncovered and they were a day old. And
12 I find it somewhat troubling that the urine
13 cups were left overnight when -- in order to
14 take -- properly take the test they needed to
15 take -- take them ---

16 **MR. HILLER:** Your Honor, I'm going to object to his
17 opinion. I don't -- I don't think there was
18 any testimony by anybody as to the length of
19 time that the efficacy of these test would
20 occur after -- after a urine sample.

21 **THE COURT:** It wasn't.

22 **MR. WICEVIC:** All right. Okay.

23 **MR. HILLER:** I mean, there was ample opportunity to
24 visit it but it wasn't.

25 **MR. WICEVIC:** All right. The fifth violation,

1 section D.(3)(b), policies and procedures need
2 to be -- need to address the receiving,
3 transcribing and implementing of or orders for
4 the administration of drugs. I think this is,
5 you know, is the most simple one out of them
6 all. The policy and procedure manual does not
7 address the subject. There's some provisions
8 that have some kind of tangible relationship to
9 drugs but there's nothing addressing the
10 receipt of prescription or implementation of
11 orders for the administration of drugs. The
12 fact that the policy and procedure manual has
13 remained unchanged for some time doesn't mean
14 that it's not a violation today. The sixth and
15 final violation, section D.(3)(c), there shall
16 be written prescriptions with orders signed by
17 a practitioner legally authorized to prescribe
18 in South Carolina for all drugs administered
19 within the birthing center. Again, Ms. Hatcher
20 reviewed the birthing record to determine which
21 drugs were administered and the subsequent
22 prescriptions that were available to the
23 Department did not cor- -- correspond with this
24 drugs listed as administered in the birthing
25 record. Now moving on to the Department's

1 determination to take enforcement. I think the
2 Department followed the guidance of the
3 regulation in determining the appropriate
4 enforcement and the utilized penalty schedule
5 in section A.(3)(f). And the Department -- Ms.
6 Thompson testified regarding the factors
7 considered in taking enforcement and based upon
8 the testimony in evidence I presented today,
9 the Department request that you uphold this
10 decision to issue this Administrative Order
11 imposing the \$2200 monetary penalty. Thank
12 you.

13 MR. HILLER: May it please the Court?

14 THE COURT: Yes.

15 CLOSING STATEMENT - MR. HILLER:

16 MR. HILLER: Your Honor, obviously it became readily
17 apparent early on that we are of the opinion
18 that there is a -- either a personal vendetta
19 or an alterative motive for the policy or the
20 language of the regulations in an effort to
21 create written violations and ultimately a --
22 an Administrative Order. And it's important
23 obviously to look at any regulation from the
24 standpoint of those that are regulated. What
25 we have here is a grand total of 24 pages --

1 I'm sorry, 14 pages that lays out what my
2 client has to read and rely upon in order to
3 operate their business in accordance there
4 with. They -- they -- they're regulated and
5 they're not mind readers. And the regulators
6 cannot add interpretations or change their --
7 what they think it should be written and start
8 applying it in order to create a violation.
9 And -- and throughout, you know, they take the
10 position of well we weren't -- we weren't
11 responsive. Yes, we were responsive. I sent
12 letters back every time they requested one. I
13 called to answer their questions every time
14 they had one. But they always -- always
15 approached it as this is what it says when that
16 wasn't what it says. And -- and, you know, the
17 prescription is just one of the examples. If
18 you are looking to violate somebody then, you
19 know, I'm guessing you can find some way,
20 somewhere, some how that you can interpret
21 something that you've never interpreted before
22 some way so that you can write them up. And
23 that's exactly what happened here. But -- but,
24 you know, it's just -- this is what my -- if
25 this were a criminal statute it would be

1 unconstitutionally vague in the way that
2 they're applying it. There shall be written
3 prescriptions or orders signed by a
4 practitioner legally authorized to prescribed
5 in South Carolina for all drugs administered to
6 mothers and infants within the birthing center.
7 They wrote that regulation. If they -- if they
8 wanted to say in there that it will be a
9 prescription to the patient then they could
10 have said that. That it had to be, this is
11 prescribed for this particular patient. All it
12 says is that you have to have a doctors
13 prescription for any drugs administered to the
14 mother or the newborn. You couldn't prescribe
15 something to a newborn because he -- he doesn't
16 exist at the time the prescription is given.
17 This contemplates -- I'm just saying that --
18 that -- and whether you think that I'm not
19 reading it rationally, you -- it has to be a
20 reasonable person to read it rationally and it
21 has to be based on the realities of the
22 situation. It -- if you were going to hold
23 somebody responsible for this language and
24 interpret it to say that that prescription has
25 to be specifically for that person then there

1 would be absolutely -- well number one, you put
2 it in there, and number two, there would have
3 to be no reason to have the section that I keep
4 harping on, section B or F -- Your Honor, I'm
5 sorry. The emergency medication provision.
6 There would be absolutely no reason for that to
7 be in there. Why would you have a -- a
8 specific requirement that says you must have
9 these prescription medications available in the
10 event of an emergency when you couldn't even
11 administer them because they couldn't have
12 possibly be written for that person. So, you
13 know, there is a difference in interpretation
14 but it certainly doesn't -- I don't even think
15 that you have to fine them, that my position.
16 Is particularly correct on any of these issues,
17 but they certainly were reasonable. At least
18 as reasonable as DHEC's position is. They
19 don't justify a violation or a fine. They
20 should have said, well, you know, this is the
21 way we think it's read, why don't we do it this
22 way in the future or -- or here's why we think
23 that that emergency provision doesn't apply to
24 this. And -- or in -- or in the particular
25 case of the medication language that they seem

1 to have inserted into the policies and
2 procedures, I think it's incredibly relevant
3 that the very documents that were submitted in
4 order to obtain a license was deemed
5 acceptable, 14 years of inspections it was
6 deemed acceptable, and now it's not. Just like
7 that. And -- and certainly that doesn't rise
8 to the level of something that was a violation
9 that requires any kind of monetary penalty or
10 even a finding of a violation. And -- and
11 although they want to talk about, well they did
12 this, they did this. I have responded every
13 time to every thing they've said and they are
14 the one's that if -- you know, could have,
15 would have, should have, if they had wanted
16 other explanations or other -- or even really
17 wanted to discuss anything rationally, they
18 could have asked for it but they didn't. And
19 you have all of that correspondence. They took
20 their position, they were going to find her
21 guilty and there was no stopping it from our
22 standpoint. And -- and, you know, the same
23 applies to this -- this accumulated waste
24 material. I have my opinion on that, they have
25 -- they're interpreting it to mean anything and

1 that's not what it says. I don't believe that
2 a -- that a sample that's used for testing, in
3 this particular case, it has to be urine.
4 That's what -- that's what it is. It's a urine
5 test. That's not waste until it's tested. And
6 there's nothing about this 24 hour rule that
7 applies to anything like that in the
8 regulations. If you go in and you want to
9 enforce -- and you want to create a violation,
10 I guess you can find one. But -- but of course
11 it's a little surprising. And you heard the
12 testimony from them that she'd never been
13 written up for any of these things before. Not
14 once. Not one single time. And now, all of a
15 sudden, out of the blue, they pluck things out
16 of the air, they twist the words and they call
17 it a violation. And I submit to you that they
18 are not violations, number one. And number
19 two, even if you accept their interpretation,
20 my client was equally reasonable at the time
21 that they allege that these violations
22 occurred. Thank you.

23 **THE COURT:** Thank you, Mr. Hiller. All right. I
24 will not make a ruling today but I'm going to
25 take the matter under consideration and I will

1 issue an order at some time -- within the next
2 30 days I will issue an order in this matter.
3 That being said the hearing is adjourned.
4 Thank you all for coming.

5 **MR. WICEVIC:** Thank you, Your Honor.

6 **MR. HILLER:** Thank you.

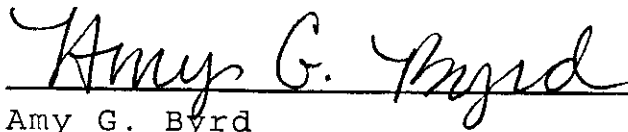
7 (There being no further questions, the hearing
8 concluded at 4:52 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of Two Hundred Forty-Four (244) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 3, 2016.



Amy G. Byrd
Court Reporter

Notary Public for South Carolina
My Commission Expires: 4/10/2023



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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

South Carolina Department of Health and Environmental Control,)
)

Petitioner,)
)

vs.)
)

Blessed Births, Inc., d/b/a Blessed Births Family Wellness and Birth Center,)
)

Respondent.)
)

Docket No.: 15-ALJ-07-0148-CC

FINAL DECISION AND ORDER

RECEIVED

FEB 03 2016

SC Court of Appeals

APPEARANCES: For the Petitioner: Vito M. Wicevic, Esquire
For the Respondent: Randall S. Hiller, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") for a final decision and order following a contested case hearing requested by Blessed Births, Inc., d/b/a Blessed Births Family Wellness and Birth Center ("Respondent"). On February 12, 2015, the South Carolina Department of Health and Environmental Control ("the Department") issued an Administrative Order imposing a monetary penalty against Respondent for failure to comply with the Birthing Center Licensure Act pursuant to sections 44-89-10 et seq. of the South Carolina Code (2002 and Supp. 2014), and the Standards for Licensing Birthing Centers for Deliveries by Midwives, S.C. Code Ann. Reg. 61-102 (2012). Respondent was assessed a monetary penalty of two thousand two hundred dollars (\$2,200.00), pursuant to section 44-89-80(A)(3) of the South Carolina Code (2002) and regulation 61-102 A.(3)(e) of the South Carolina Code of Regulations (2012), for the alleged violations. On February 23, 2015, Respondent requested a Final Review Conference with the South Carolina Board of Health and Environmental Control ("the Board"). The Board denied Respondent's request for final review in a letter issued on March 18, 2015. On March 25, 2015, Respondent filed a Request for a Contested Case Hearing with the ALC.

Following notice to the parties, a hearing on the matter was held on October 21, 2015, at the South Carolina Administrative Law Court in Columbia, South Carolina.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following findings of fact by a preponderance of the evidence:

1. Blessed Births, Inc., d/b/a Blessed Births Family Wellness and Birth Center ("the birthing center") is licensed by the Department to operate as a birthing center in Greenville County, South Carolina. The birthing center is owned and operated by Amy Beth Leland, who became a licensed midwife in 1997. Ms. Leland testified that the birthing center provides prenatal and birthing services to women who have been medically determined to have normal pregnancies and who are expected to have routine labor and deliveries.

2. On July 16, 2014, Michelle Hatcher, who is employed in the Department's Bureau of Health Facility Licensing, along with another Department employee, conducted an unannounced inspection of the birthing center. The Department initiated the inspection in response to a complaint filed against the Respondent. This was a second attempt to inspect Respondent's facility in response to the complaint, the Department was unable to gain access to the facility in its first attempt. Ms. Leland was present at the birthing center for the inspection, however, she was caring for a patient who was in active labor. The patient is referred to in Department records as "Patient I.M." Members of Patient I.M.'s family were also present.

3. Ms. Hatcher testified that she found several violations during the July 16, 2014 inspection. According to Ms. Hatcher, her review of the birthing center's Policy and Procedures Manual ("the manual") revealed that the manual failed to list the name of an individual who would act in the absence of the birthing center's administrator. When she asked Ms. Leland for the name of the person who would act in her absence, Ms. Leland could not provide a name for her at that time. Ms. Hatcher also stated that the manual failed to address how the birthing center would receive, transcribe and implement physicians' orders for the administration of prescription drugs. More specifically, the manual did not specify who would obtain prescriptions, who was responsible for documenting prescriptions in patient records, and who was responsible for administering prescribed medications.

4. In addition, as part of the inspection, Ms. Hatcher requested Ms. Leland provide a randomly selected patient file to be reviewed. The medical record for Patient K.D. was selected. Ms. Hatcher testified she reviewed Patient K.D.'s record and charts and found that Patient K.D.

was administered more medication than had been prescribed to her. Specifically, Patient K.D.'s chart showed she was prescribed 2 mL Pitocin, however, on May 28, 2014, Patient K.D. was given 3 mL Pitocin. Ms. Hatcher stated the record and charts show Patient K.D. was also given sodium chloride for which no prescription was found.

5. Also, during the inspection, Ms. Hatcher stated that the door to an unoccupied birthing room was not locked or closed and she observed medications lying on a table, unsecured and easily accessible. The medications included three (3) unopened vials of Pitocin, one (1) opened tube of Erythromycin, and one (1) unopened 500 mL bag of HeSpan. Ms. Hatcher stated that when she questioned Ms. Leland about the medications she explained that the medications were left out from a previous delivery.

6. In addition, Ms. Hatcher stated there was no other clinical staff member at the birthing center to assist Ms. Leland with Patient I.M.'s delivery. Ms. Hatcher acknowledged that Ms. Leland placed a call to someone, but the individual never showed up.

7. Finally, Ms. Hatcher testified that she detected a "putrid odor" coming from the facility's hall bathroom. When she entered the bathroom, Ms. Hatcher found several uncovered styrofoam cups containing urine samples. Three cups were labeled with patient names, dates and times. Ms. Hatcher stated that when asked about the cups, Ms. Leland explained that the urine samples were from the day before and that she had not had an opportunity to clean them up.

8. In her testimony, Ms. Leland stated that Ms. Hatcher inspected her birthing center multiple times over the last six (6) years, and during each visit, Ms. Hatcher reviewed the center's policy and procedures manual, and at no time did Ms. Hatcher ever identify a problem with the contents of the manual. Following the July 16, 2014 inspection, and after being made aware of deficiencies in the manual, Respondent added specific language to address the Department's concerns with respect to its prescription drugs policy. Ms. Leland also acknowledged that on the day of the inspection, the manual did not identify an individual who would act in the absence of the administrator. She explained that the employee previously identified quit unexpectedly, and she was in the process of locating a replacement at the time of the inspection. On October 14, 2014, Ashley Behlke, RN was identified as the alternate to the administrator.

9. Ms. Leland also addressed the medications that were administered to Patient K.D. She explained that while Patient K.D.'s medical record did not include a prescription for the third vial of Pitocin and sodium chloride, those medications were administered to Patient K.D. as a life-

saving measure in an emergency situation. According to Ms. Leland, Patient K.D. lost a significant amount of blood following her delivery. Emergency Medical Services ("EMS") was called to transport Patient K.D. to a hospital. After consulting with EMS workers, Ms. Leland administered Pitocin to Patient K.D. to help control bleeding during transport. Ms. Leland further explained that she has a prescription for every drug used in her facility, including certain medications that are maintained for use in the event of a medical emergency. The prescriptions for emergency medications are not attached to particular patients. In addition, Ms. Leland explained she has a standing order to administer intravenous fluids to patients on an as-needed basis.

10. With regards to the unsecured medications Ms. Hatcher observed in the hall birthing room, Ms. Leland explained that it is normal for these medications to be left out while a patient is in active labor. She also explained that the drugs were not put away and stored in case of an emergency situation. Ms. Leland asserts that the birthing center was closed during the inspection because a patient was in labor; therefore, the medications were not accessible to unauthorized individuals. In fact, the only other people in the birthing center at the time were Patient I.M. and her mother, husband and sister, who were all adults and in the same room as Patient I.M., comforting her.

11. Ms. Leland also admits that no other clinical staff member was in the facility with her during Patient I.M.'s delivery. She explained that she attempted to call another midwife to assist with the delivery but that Ms. Hatcher said the other midwife would not be allowed to assist because she was not an employee of the birthing center. Ms. Leland testified that she tried to use her "call system" to have someone come in to assist with Patient I.M.'s delivery but Ms. Hatcher interfered with her efforts and insisted on conducting the inspection. Patient I.M. delivered her baby before a second staff member could arrive.

12. Lastly, Ms. Leland testified that the birthing center has two bathrooms that are utilized by patients and their guests. One bathroom is within the larger birthing room in the back of the facility, where Patient I.M. was laboring. The second bathroom is off the main hall. Ms. Leland explained that urine samples from patients who were seen the day before were left in the hall bathroom overnight. She stated the samples were saved because her testing strips did not appear to be functioning properly, and she planned to retest the samples for accuracy. The retesting was delayed when Patient I.M. went into labor, and there was another bathroom available for the patient and her family to use. Ms. Leland stated she eventually retested the urine samples. Other

than the urine sample cups, the bathrooms and other parts of the facility were clean and sanitary at the time of the inspection.

13. Dr. Warren Keith Stafford, a medical practitioner in Greer, South Carolina, also testified during the hearing. Dr. Stafford is the owner and primary physician at Cornerstone Family Medicine, the medical consultant for Blessed Birth. As part of the consultative services, Dr. Stafford meets with each patient, evaluates the overall health of the mother and baby, and prescribes medications needed for the patient during the pregnancy and labor. Ms. Leland also contacts him when something unusual arises during a patient's pregnancy. According to Dr. Stafford, there are four standard prescription medicines that are given to every patient, vitamin K for the baby, Erythromycin eye drops which is applied to the baby immediately after birth, and two others that are given to the mother to prevent, or in case of, complications. Dr. Stafford described the process used to issue written prescriptions to Respondent's patients.

14. Gwendolyn Thompson, Chief of the Department's Bureau of Health Facility Licensing, explained how the Department determined the amount of the monetary penalty assessed against Respondent. According to Ms. Thompson, factors considered in determining the penalty include potential impact on health, safety or welfare, efforts by the facility to correct conditions, history of compliance and other pertinent conditions. In this instance, the Respondent was cited with violating six provisions of Regulation 61-102. Specifically, Respondent was cited for violating subsections C.(3) and E.5(a), both of which are categorized as Class II violations; and for four Class I violations under subsections D.(3)(b), D.(3)(c), D.(3)(f), and D.(6)(d). S.C. Code Ann. Reg. 61-102 (2012). Class I violations are the most severe. According to the monetary penalty guide shown in regulation 61-102's penalty provision, monetary penalties can range from \$200 to \$5000 for Class I violations, and from \$100 to \$5000 for Class II violations. In Respondent's case, the Department concluded that \$2,200 was an appropriate monetary penalty for the violations found during the July 16, 2014 inspection.

LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law:

Jurisdiction.

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to sections 1-23-310 et seq. of the South Carolina Code (2005 & Supp. 2014), section 1-

23-600(B) of the South Carolina Code (Supp. 2014), and section 44-89-90 of the South Carolina Code (2002).

The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990). The standard of proof in administrative proceedings is a preponderance of the evidence unless otherwise specified. Anonymous v. State Bd. of Med. Exam'rd, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988).

Administrator's Alternate.

Respondent was cited by the Department for violating subsection C.(3) of regulation 61-102. Subsection C.(3) provides, in pertinent part:

The chief administrative officer shall be selected by the governing authority and shall have charge of and be responsible for the management and administration of the facility in all its branches and departments and shall see that the bylaws and amendments thereto are complied with... *An individual shall be appointed to act in the absence of the administrator.*

S.C. Code Ann. Reg. 61-102 C.(3) (2012) (emphasis added).

Ms. Leland admits that the birthing center's Policy and Procedures Manual failed to identify the name of an individual who would act in the absence of the administrator. Respondent did provide the name of an individual who would serve as the administrator's alternate to the Department on October 14, 2014. Although Respondent remedied the problem following the inspection, the violation existed at the time of the inspection, and the Department was correct in citing Respondent with the violation.

Pharmaceutical Services.

The Department also cited Respondent for noncompliance with subsections D.(3)(b), D.(3)(c) and D.(3)(f) of regulation 61-102. These subsections each address pharmaceutical services provided by birthing centers. Subsection D.(3)(b) states "there shall be policies and procedures addressing the receiving, transcribing, and implementing of orders for administration of drugs." S.C. Code Ann. Reg. 61-102 D.(3)(b) (2012). Ms. Leland testified that the birthing center's policy manual has remained the same since Respondent originally applied for a birthing

center license with the Department fifteen years ago. Ms. Leland asserts that because the manual has not changed and the Department failed to identify a problem with the birthing center's medication policy during previous inspections it should be precluded from doing so now. The Court rejects this argument. Respondent also contends that the regulation does not specify what wording birthing centers are required to use in their policy manuals relative to the administration of drugs, and the topic was adequately addressed in its policy manual. After carefully reviewing the relevant section of Respondent's policy manual, this Court agrees with the Department that at the time of the inspection the Respondent's manual did not address the receiving, transcribing and implementing of orders for the administration of drugs. The Court notes that subsequent to being cited, Respondent amended its policy manual to include specific language addressing the administration of drugs.

Respondent was also cited for violating subsection D.(3)(c) which provides that "there shall be written prescriptions or orders signed by a practitioner legally authorized to prescribe in South Carolina for all drugs administered to mother and infant within the birthing center." S.C. Code Ann. Reg. 61-102 D.(3)(c) (2012). As part of the July 16, 2014 inspection, Ms. Hatcher reviewed Patient K.D.'s medical file. Following the review, Ms. Hatcher determined that the birthing center administered Patient K.D. more medication than had been prescribed for her. Specifically, the file reflected that Patient K.D. was administered 3 mL Pitocin IM on May 28, 2014 while Respondent had a prescription or order for 2 mL Pitocin IM. Ms. Leland testified that the birthing center maintains some medications which are not prescribed for specific patients but are kept at the facility for emergencies, however, these medications are prescribed by Dr. Stafford, the birthing center's consulting physician. In Patient K.D.'s case, according to Ms. Leland, 1 mL Pitocin IM was administered as a life-saving measure and she did not provide the prescription or order to the Department because it was not requested. The Court finds Ms. Leland's testimony to be credible.

The Department also determined that Respondent violated subsection D.(3)(f) of Regulation 61-102, which states that "drugs, medications, and chemicals shall be stored and secured in specifically designated cabinets, closets, drawers, or storerooms and made accessible only to authorized persons." S.C. Code Ann. Reg. 61-102 D.(3)(f) (2012). Ms. Hatcher testified that during the July 16, 2014 inspection, she observed medications exposed and lying on a table in the hall birthing room. The door to the room was not locked or closed and some of the medication

had been previously opened and used. Medications observed by Ms. Hatcher included three unopened vials of Pitocin, Hespan, and Erythromycin ointment. The Hespan and Erythromycin appeared to have been previously used. Respondent's attorney explained in correspondence to the Department that the medications were for the patient that was in labor at the time of the inspection. However, Ms. Hatcher stated that the opened Erythromycin ointment, which is used for newborns, was observed prior to the delivery, and no prescription or order for Hespan was in the patient's file. Based on this testimony, the D.(3)(f) violation is sustained.

Clinical Staff.

On the day of the inspection, Ms. Hatcher arrived at the birthing center and found Ms. Leland caring for a patient in active labor. Ms. Hatcher testified that she was at the birthing center up to the time of the patient's delivery, and that Ms. Leland was the only clinical staff member present during the delivery. Based upon her observations, Ms. Hatcher cited the birthing center for non-compliance with subsection D.(6)(d) of regulation 61-102 which states "at least one member of the clinical staff or a registered nurse shall be in the facility when a patient is present; and up to at least one hour after each mother's delivery. Two members of the clinical staff or one member of the clinical staff and a registered nurse shall be present during the mother's delivery." Ms. Leland admits that she was unable to secure a second clinical staff member during her patient's delivery. Therefore, the Department correctly cited Respondent for this violation.

Housekeeping.

Finally, the Department found that the birthing center violated subsection F.(5)(a) of regulation 61-102 by failing to maintain a clean and sanitary bathroom, free from odors and waste. Subsection F.(5)(a) reads:

A facility shall be kept neat, clean and free from odors. Accumulated waste material must be removed daily or more often if necessary. There must be frequent cleaning of floors, walls, ceilings, woodwork, and windows. The premises must be kept free from rodent and insect infestation. Bath and toilet facilities must be maintained in a clean and sanitary condition at all times.

S.C. Code Ann. Reg. 61-102 (2012). Non-compliance with this subsection is a Class II violation.

When Ms. Hatcher inspected the facility's hall bathroom she found styrofoam cups containing urine samples. Some of the cups were labeled with patient names, dates and times, and Ms. Hatcher testified the urine samples emitted a "putrid odor." The Department cited Respondent for violation of subsection F.(5)(a). Ms. Leland explained that the urine samples were left in the

bathroom from the previous day because she intended to retest them for accuracy and had not had the opportunity to do so. The Court notes that other than the odor from the cups containing the urine samples, Ms. Hatcher did not testify, or include in her report, other observations that the bathroom was otherwise unclean or unsanitary. Given Ms. Leland's explanation for leaving the urine samples in the bathroom, and the fact that another bathroom was available to be used by the patient and her family, I find no violation in this instance.

Violation Classification Schedule and Penalties.

Subsection A.(3) of regulation 61-102 distinguishes between Class I and Class II violations:

Class I violations are those which the Department determines present an imminent danger to the patients or other occupants of the facility or a substantial probability that death or serious physical harm could result therefrom... Class II violations are those, other than Class I violations, which the Department determines have a direct or immediate relationship to the health, safety or security of the facility's patients or other occupants.

S.C. Code Ann. Reg. 61-102 A.(3)(a) and (b) (2012).

This subsection also outlines the penalties associated with committing Class I and Class II violations. Specifically, "the Department may deny, suspend, or revoke licenses or assess a monetary penalty for violations of provisions of law or departmental regulations. The Department shall exercise discretion in arriving at its decision to take any of these actions." S.C. Code Ann. Reg. 61-102 A.(3)(e) (2012). In determining the penalty to apply, the Department considers: the specific conditions and their impact or potential impact on health, safety or welfare; efforts by the facility to correct; overall conditions; history of compliance; and any other pertinent conditions. Id.

A first offense Class I violation may be assessed a monetary penalty between two hundred dollars (\$200.00) and one thousand dollars (\$1,000.00), and a first offense Class II violation may be assessed a monetary penalty between one hundred dollars (\$100.00) and five hundred dollars (\$500.00). Respondent was cited by the Department for the commission of four (4) Class I violations and two (2) Class II violations, and assessed a monetary penalty totaling two thousand two hundred dollars (\$2,200.00).

VIOLATIONS

I find that the credible evidence and testimony in this case supports a finding that Respondent committed three Class I violations. Specifically, on the date of the inspection, Respondent's policy and procedures manual did not address the receiving, transcribing, and implementing of orders for the administration of drugs, a violation of section D.(3)(b); Respondent violated section D.(3)(f) by failing to ensure that drugs and medications were stored and secured; and Respondent violated section D.(6)(d) by failing to ensure that two members of the clinical staff or one member and a registered nurse were present during a mother's delivery.

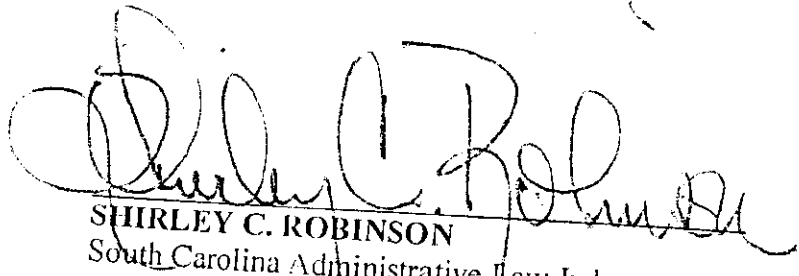
This Court also finds that Respondent committed one Class II violation. Specifically, Respondent violated section C.(3) by failing to have an individual appointed to act in the absence of the facility's administrator.

Because these are all first violations, and also considering the mitigating testimony, I find that a monetary penalty of \$200 for each of the three Class I violations is appropriate, and a monetary penalty of \$100 for the Class II violation is appropriate.

ORDER

Based upon the foregoing, it is hereby ordered that Respondent shall be assessed a monetary penalty of seven hundred dollars (\$700.00) for violating subsections C.(3), D.(3)(b) and (f), and D.(6)(d) of regulation 61-102 of the South Carolina Code of Regulations (2012). This penalty must be paid to the Department within thirty (30) days from the date of this order.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

January 7, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Administrative Law Court

Shirley C. Robinson, Administrative Law Judge

Case No. 15-ALJ-07-0148-CC

South Carolina Department of
Health and Environmental
Control,

Respondent,

v.

Blessed Births, Inc. d/b/a
Blessed Births Family
Wellness and Birth Center,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Record on Appeal complies with Rule 211(b),
SCACR.

May 26, 2016



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellant

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