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23856

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2017-001271
Case No.: 2015-CP-46-2454

RECEIVED
JAN 25 2018
SC Court of Appeals

Wayne H. Copeland as the PR of the Estate of
Dorothy H. Copeland, deceased.....Appellant,

-v-

Carolina Pulmonary Physicians, P.A.....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK DAVID HAMILTON
C.C.C.P. & GS
WAYNE H. COPELAND, as the Personal Representative of the Estate of Dorothy H. Copeland, deceased,)
Plaintiff,)
v.)
CAROLINA PULMONARY)
PHYSICIANS, P.A.,)
Defendant.)

CIVIL ACTION NO: 2015 CP 46 2454

COMPLAINT

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2015 AUG 14 1:51
CANCELLED
YORK COUNTY, SC

TO DEFENDANT CAROLINA PULMONARY PHYSICIANS, P.A.:

NOW COMES THE PLAINTIFF complaining of the Defendant herein, respectfully
showing unto this Court, upon information and belief, that:

GENERAL ALLEGATIONS

1. The Plaintiff, WAYNE H. COPELAND is a citizen and resident of York County, South Carolina and is the duly appointed Personal Representative of the Estate of Dorothy Copeland, deceased.

2. Defendant CAROLINA PULMONARY PHYSICIANS, P.A. (hereinafter sometimes referred to as "Defendant CPP"), which is a healthcare facility with offices in York County, North Carolina, and is licensed and/or authorize to practice medicine and/or operate healthcare facilities (or facilities including hospitals, medical clinics or similar health care provider facilities) and was, through its employees acting within the scope of their employment, in the position of providing health care services to the public, including Dorothy Copeland, the deceased mother of Plaintiff, Wayne H. Copeland.

8. Unfortunately, Mrs. Copeland never fully recovered from the injuries sustained in her fall. ~~Mrs. Copeland continued to suffer substantial pain and loss of enjoyment of life for two~~ years following the fall. Mrs. Copeland died on March 7, 2014 from conditions not related to the fall.

9. The fall on May 17, 2012 and subsequent physical injuries, pain and suffering and diminished quality of life suffered by Dorothy Copeland was due to the negligence of the staff employee at Defendant CPP in leaving her unattended on the weighing scale, for which Defendant CPP is responsible pursuant to the doctrines of respondeat superior and agency

10. ~~As a direct and proximate result of the breaches of the negligence of Defendant~~ CPP herein, as well as the staff employee of Defendant CPP, for which Defendant CPP is responsible pursuant to the doctrines of respondeat superior and agency, Dorothy Copeland suffered injuries, and Plaintiff is entitled to recover damages for medical expenses, the pain and suffering endured by Dorothy Copeland from the time of the fall on May 17, 2012 until her death.

11. Defendant CPP did undertake the duty to render medical care to Dorothy Copeland ~~in accordance with the prevailing and acceptable professional Standards of Care~~ ("SOC") for staff working in physician offices similar to Defendant CPP's offices.

12. It was the duty of the Defendant CPP to comply with the applicable SOC in providing medical care and treatment to Dorothy Copeland.

13. As set forth above, Defendant CPP was negligent, committed medical malpractice failed to comply with the applicable SOC in that:

a. The staff employee left a 90 year old frail woman unattended on a weighing scale;

- b. The staff employee failed to take proper fall precautions for a patient such as Dorothy Copeland;
- c. The staff employee failed to possess and exercise that degree of professional knowledge and skill which other members of their profession and specialty, with similar training and experience ordinarily possess and excise;
- d. The staff employee failed to exercise reasonable care and diligence in applying her purported knowledge and skill toward the treatment of Dorothy Copeland; and
- e. Otherwise failed to properly provide appropriate medical care under the circumstances.

~~14.~~ The direct and proximate result of the negligence and departure from the professional SOC by Defendant CPP caused or contributed to the injuries sustained by Dorothy Copeland. As a direct and proximate result of Defendants' negligence, Dorothy Copeland suffered from severe debilitating injuries that ultimately led to conscious pain and suffering, medical expenses, mental anguish, shock, and other general and special damages. Plaintiff has suffered:

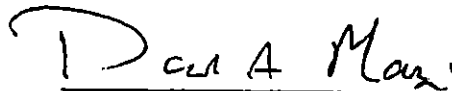
- a. personal injury;
- b. pain and suffering;
- c. medical expenses;
- d. diminished quality of life;

15. Plaintiff is entitled to a jury verdict for these and all other proved damages.

WHEREFORE, Plaintiff respectfully prays to the Court for relief as follows:

1. ~~That the Plaintiff have and recover of the Defendant an amount to be determined~~
at trial.;
2. Prejudgment interest from the date of the filing of this action;
3. That all issues of fact be tried by a jury;
4. That the Defendants be taxed with the costs of this action; and
5. For such other, further and different relief as the Court deems just and proper.

This is 6th day of AUGUST, 2015.



DAVID A. MANZI (SBN: 77222).
Attorney for the Plaintiff

Of Counsel:

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Wayne H. Copeland, as the Personal
Representative of the Estate of Dorothy
H. Copeland, deceased,

Plaintiff,

v.

Carolina Pulmonary Physicians, P.A.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 15-CP-46-2454

ANSWER ON BEHALF OF DEFENDANT
CAROLINA PULMONARY PHYSICIANS,
P.A.

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2015 SEP 28 PM 1:58
CLERK OF COURT
YORK COUNTY, SC

Now comes the Defendant, Carolina Pulmonary Physicians, P.A., answering the Complaint, herein alleges:

FOR A FIRST DEFENSE

1. That each and every allegation of the Complaint, which is not hereinafter specifically admitted, is expressly denied.

2. That the Defendant lacks specific information upon which to form a belief concerning the allegations of Paragraph 1 as to the residency and citizenship of Plaintiff, and therefore denies said allegations and demands strict proof thereof.

3. That only so much of Paragraph 2 is admitted as may be consistent with the qualification that Defendant Carolina Pulmonary Physicians, P.A. is a medical practice located in York County, South Carolina, and provides care to patients by and through its physicians and employees, in accordance with generally accepted standards of care. Defendant admits that Dorothy Copeland (hereinafter "Decedent") was a patient of Carolina Pulmonary Physicians, P.A.

4. That the allegations of Paragraphs 3 of the Complaint are admitted.

5. That only so much of Paragraphs 4 and 5 of the Complaint are admitted as are consistent with the office records of Carolina Pulmonary Physicians and/or the recollections of the employees and physicians of Carolina Pulmonary Physicians, P.A. All other allegations are

denied. By way of further answer to these paragraphs, at all times relevant to this case the care rendered by the employees of Carolina Pulmonary Physicians was in accordance with generally accepted standards of care.

6. That only so much of Paragraphs 6 and 7 of the Complaint are admitted as may be consistent with the Plaintiff's medical records and/or the recollections of the health care providers, and this Defendant craves reference to said medical records and/or recollections of the health care providers as the best evidence of Decedent's condition at the dates and times set forth therein. All other allegations set forth in these paragraphs are denied.

7. That only so much of Paragraph 8 is admitted as states that Decedent died on March 7, 2014 from conditions not related to the fall. All other allegations of Paragraphs 8, 9 and 10 are denied.

8. That only so much of Paragraphs 11 and 12 are admitted as allege or infer that Carolina Pulmonary Physicians, P.A. acts by and through its employees, and is responsible for providing patient care pursuant to generally accepted standards of care applicable to physician office practices rendering care to patients for the same or similar condition under the same or similar circumstances.

9. That the allegations of Paragraphs 13 and 14 (including all subparts) are denied. In addition, Defendants deny that Plaintiff is entitled to the relief stated in the unnumbered prayer.

FOR A SECOND DEFENSE

10. That the Defendant pleads lack of proximate cause as a complete bar to this action.

FOR A THIRD DEFENSE

11. That at all times relevant to the matters set forth in the Complaint, all health care providers employed by Carolina Pulmonary Physicians complied with generally accepted standards of care applicable to health care providers treating patients for the same or similar condition under the same or similar circumstances, and as a result thereof, this Defendant is in no way liable to the Plaintiff for the matters set forth in the Complaint.

FOR A FOURTH DEFENSE

12. That the injuries and damages alleged in the Complaint were due to and caused by Decedent's underlying medical problems, and were not due to or caused by any departure from generally accepted standards of care on the part of this Defendant, and as a result thereof this Defendant is in no way liable to the Plaintiff for the matters set forth in the Complaint.

FOR A FIFTH DEFENSE

13. That this Defendant exercised the ordinary skill and diligence and applied the means and methods ordinarily used by healthcare providers in the practice of their profession, and that any injury or damages sustained by the Decedent as a result of the matters alleged in the Complaint could not be avoided, and this Defendant pleads an unavoidable accident as a bar to this action.

FOR A SIXTH DEFENSE

14. That this action is governed by the terms and conditions of the South Carolina Noneconomic Damage Awards Act of 2005, South Carolina Code of Laws Annotated, Section 15-32-200 et. seq., and these Defendants plead any and all limits on non-economic damages and plead any and all other immunities provided by the Act.

FOR A SEVENTH DEFENSE

15. Without admitting any negligence or any liability whatsoever in any form and reserving any and all separately stated defenses, Defendant Carolina Pulmonary Physicians, P.A. alleges that even if this Defendant was negligent, careless, grossly negligent, reckless, willful or wanton, which this Defendant denies, the Plaintiff's negligent, careless, grossly negligent, reckless, willful and wanton conduct was in an amount greater than 50% of the alleged negligence of this Defendant, and this Defendant pleads comparative negligence and assumption of risk as a bar to this action.

16. That if it is determined that the Defendant was negligent as alleged in the Complaint, which is denied, then the negligence of the Plaintiff should be compared to that of the Defendant and any other's negligence, and any damages awarded to the Plaintiff, if any, should be apportioned by the amount of the Plaintiff's own fault and negligence in accordance with the Comparative Negligence Law of the State of South Carolina.

FOR AN EIGHTH DEFENSE

17. That any injuries or damages alleged by Plaintiff as a result of the matters alleged in the Complaint were caused by intervening negligence, carelessness and/or recklessness of third parties over which this Defendant had no control, thereby relieving Defendant from any liability herein.

FOR A NINTH DEFENSE

18. That any claim for punitive or exemplary damages against Defendant would violate this Defendant's constitutional rights under the due process clause in the Fifth and Fourteenth Amendments to the Constitution of the United States of America, Excessive Fines Clause in the Eighth Amendment to the Constitution of the United States of America, the Double Jeopardy

Clause in the Fifth Amendment to the Constitution of the United States of America, and similar provisions in the Constitution of the State of South Carolina and/or the common law and public policies of the State of South Carolina, and/or applicable statutes and court rules, and Defendant raises these defenses as a complete bar to the imposition of punitive or exemplary damage.

FOR A TENTH DEFENSE

19. Defendant reserves any additional and affirmative defenses as may be revealed or become available during the course of discovery in this case and consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having answered the Complaint herein, the Defendant, Carolina Pulmonary Physicians, P.A., demands that the Complaint be dismissed as to it, that the Plaintiff be taxed with the costs of this action, and for such other and further relief as this Court deems just and proper.

This the 25th day of September 2015, in Columbia, South Carolina.

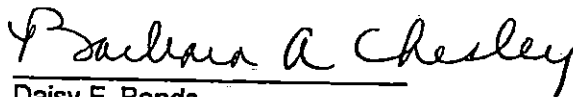


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CERTIFICATE OF SERVICE

I, the undersigned, an employee of RICHARDSON PLOWDEN & ROBINSON, P. A., attorneys for the Defendant, Carolina Pulmonary Physicians, P.A., do hereby certify that I have this date served the foregoing Answer on the below-listed individual by personally depositing a copy of same into the United States Mail, first-class, postage prepaid, addressed to:

David A. Manzi, Esquire
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1057 Red Ventures Drive, Suite 145
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Daisy F. Bonds
Legal Assistant to Barbara A. Chesley

Columbia, South Carolina
September 25, 2015

FILED-RECEIVED
2015 SEP 28 PM 1:50
U.S. DISTRICT COURT
C.C.P. & G.S.
YORK COUNTY, SC

State of South Carolina.,) In the Common Pleas
) Court of York
)
County of York.) Case No.: 2015-CP-46-02454

Wayne H. Copeland.,)
As Personal Representative)
of the Estate of Dorothy)
H. Copeland, deceased.)
)
-vs-)
) Partial Transcript of
Carolina Pulmonary.,) Record
Physicians., P.A.,)
)
Defendant.)
)

February 13,14,15,2017
York, South Carolina

B E F O R E:

The Honorable Brian M. Gibbons, judge, and a jury.

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Wanda S. Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

State of South Carolina.,) In the Common Pleas
) Court of York
)
County of York.) Case No.: 2015-CP-46-02454

Wayne H. Copeland.,)
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)
Defendant.)
)
)
)

February 13,14,15,2017
York, South Carolina

B E F O R E:

The Honorable Brian M. Gibbons, judge, and a jury.

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Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

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WITNESS

BY:

PAGE NO.

Susan Davies

Ms. Chesley P.269-278

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I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
Pl./Def.1	Dorothy Copeland's Medical Records from Carolina Orthopaedic Surgery Associates.		P.17
Pl./Def.1	Dorothy Copeland's Medical Records from American Transmed		P.17
Pl./Def.3	Dorothy Copeland's Medical Records from Kershaw Family Medical Associates.		P.17
Pl./Def.4	Dorothy Copeland's Medical Records from Palmetto Medical Group		P.17
Pl./Def.5	Dorothy Copeland's Medical Records from RH Radiology		P.17
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Pl./Def.7	Dorothy Copeland's Medical Records from Carolina Medical Consultants		P.17
Pl./Def.8	Dorothy Copeland's Medical Records from Health South Rehab Hospital		P.17

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
Pl./Def.9	Dorothy Copeland's Medical Records from Carolina Pulmonary Physicians, P.A.		P.17
Pl./Def.10	Dorothy Copeland's Medical Records from PMC		P.17
Pl./Def.11	Dorothy Copeland's Medical Records from Westminster Tower. .		P.17
Pl./Def.12	Affidavit of Deborah Copeland (2.16.2016)		P.17
Pl./Def.13	Handwritten statement by Joan Edge (5.30.2012).		P.17
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Pl./Def.15	Dr. Michael Heinig Depo.		P.213
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Reporter's Note: All Exhibits were filed with the York County Clerk of Court's Office.			

1 (COURT IN SESSION MONDAY, FEBRUARY 13, 2017 AT 10:40
2 AM.)

3 (WHEREUPON, PLAINTIFFS/DEFENDANT'S EXHIBITS ONE
4 THROUGH FOURTEEN REMARKED FOR IDENTIFICATION.)

5 (JURY ROLL CALL AT 10:45 AM.)

6 (JURY QUALIFIED AT 11:00 AM.)

7 (COURT IN RECESS AT 11:42 AM.)

8 (COURT BACK IN SESSION AT 12:04 PM.)

9 (JURY STRUCK AT 12:05 AM.)

10 (JURY EXITS COURTROOM ON LUNCH RECESS AT 12:10 PM.)

11 (COURT IN LUNCH RECESS AT 12:10 PM.)

12 (COURT BACK IN SESSION AT 01:20 PM.)

13 MR. MANZI: Your Honor?

14 THE COURT: Yes, sir?

15 MR. MANZI: A housekeeping matter.

16 THE COURT: All right, 15-CP-46-02454, for various
17 motions in limine, prior to bringing the jury in. Let's
18 hear from the plaintiffs first, as to y'all's motion in
19 limine.

20 Looking over everything, I believe y'all -- the
21 Defense agreed with what -- your request for ruling except
22 for number three; is that right, Ms Chesley?

23 MS. CHESLEY: Correct.

24 THE COURT: All right. Let me hear from you on number
25 three, Mr. Manzi.

1 MR. MANZI: Yes, your Honor. Again, this is just to
2 exclude evidence of the defendant claiming that they're
3 sorry for what happened to Dorothy Copeland at the scene
4 and I think it elicits -- only intended to elicit sympathy
5 from the -- from the jury, and take away from some of the
6 facts of the case and whether or not they're sorry or not
7 shouldn't be something that the jury should consider.

8 THE COURT: All right. Ms. Chesley?

9 MS. CHESLEY: Yes.

10 Your Honor, excluding the defendant for being able to
11 say they're sorry or apologize is seeking to exclude a
12 basic human emotion, and portray the defendant as cold and
13 unfeeling in this case.

14 THE COURT: Well, I will charge the jury they can't
15 base their verdict on improper sympathy, past or present,
16 for either party.

17 MS. CHESLEY: Yes, sir. But I think Carolina
18 Pulmonary and its employees, they all recognize that this
19 was an unfortunate event, and they had sympathy for her
20 condition, and even though they disagreed with the whole
21 issue of the lawsuit.

22 And I think if a gag order is put on the defendants,
23 it's going to put the defendants in the position of a jury
24 maybe thinking that, well, they are cold and unfeeling.
25 They've never said anything; that they felt badly that

1 she'd fall even though they don't think it's their fault,
2 they felt badly that she'd fall. I think this would be an
3 unjust double standard if the plaintiff and the family are
4 allowed to -- excuse me -- the family members are allowed
5 to testify on her physical and emotional pain. I think it
6 puts the defendant at odds.

7 I don't think there's any case law on this issue, the
8 proposition that a defendant may not express condolences or
9 sympathy for a condition and so, based on this, I would
10 move that Plaintiff's motion be denied.

11 THE COURT: I'm going to -- Yeah, I agree with you on
12 that. I'm going to let the -- I mean, I don't have any
13 problem with the defendants and their employees saying
14 they're sorry it happened, they wish it wouldn't have
15 happened; we feel sorry for the lady, we apologize. You
16 know, it is what it is. I mean it has nothing to do with
17 whether or not the standard of care was breached, so.

18 And I do charge them that they can't have an improper
19 sympathy, anyway. But I'm going to temper that ruling when
20 we get to your -- your request and your motion in limine,
21 as to the safety questions.

22 MS. CHESLEY: Okay.

23 THE COURT: Also known as the Reptile Theory.

24 MS. CHESLEY: Correct, sir.

25 THE COURT: Right. Familiar with that. I just found

1 out about that three weeks ago. Never heard of it. I've
2 been a trial judge for twelve years, and never heard of
3 that theory.

4 MS. CHESLEY: And, your Honor, I did not go into a lot
5 of detail. I do have a detailed memo, if -- if --

6 THE COURT: If you want to make it part of the record,
7 you can.

8 MS. CHESLEY: All right.

9 THE COURT: But why don't we go -- why don't we start,
10 then, at that motion ---

11 MS. CHESLEY: Sure.

12 THE COURT: --- so you can be heard on that issue.

13 MS. CHESLEY: Absolutely.

14 THE COURT: This is subsection three of your motion.

15 MS. CHESLEY: Yes, sir.

16 Again, in this case, and especially during the
17 deposition of Joan Edge, there were multiple questions
18 about the duty to ensure safety. And in this case, this is
19 a medical malpractice case, and the standard of care is not
20 to ensure safety, but to do what a reasonable and prudent
21 medical assistant in this case would do.

22 Again, I think if a jury is hearing that you must
23 ensure safety, you must do this, you must do that, it's
24 going to confuse them. It's going to make it appear that
25 that is the standard of care. And for that reason, and

1 again, in my Memorandum to the Court, or the motion to the
2 Court, I listed approximately ten different excerpts from
3 Joan Edge's deposition, talking about the whole issue of
4 ensuring safety.

5 I think that this testimony may make a jury believe
6 that a healthcare provider does have a duty to ensure
7 safety, and I think it will be confusing and for that
8 reason, I think we need to base it on, what is the standard
9 of care that the experts can put out? Mr. Manzi's expert
10 can put out what they believe the standard of care is, and
11 mine can do the same, without getting this broad safety
12 standard in the mix.

13 THE COURT: But doesn't that go to the credibility,
14 and the way that the evidence offered, rather than to its
15 admissibility? Can't you argue that to the jury?

16 And of course when I define what the law is, you're
17 absolutely correct. I'm going to define them as to what
18 the standard of care means and what a -- what negligence
19 is. I'm not going to talk about the violation of the
20 safety standard being negligence.

21 MS. CHESLEY: And I guess my concern is, there were,
22 again, multiple, multiple questions to Ms. Edge in her
23 deposition: Don't you have a duty to ensure safety; don't
24 you have a duty to do this. And I just think it is -- I
25 think it is going to be confusing to the jury ---

1 THE COURT: Okay.

2 MS. CHESLEY: --- in that position.

3 THE COURT: Mr. Manzi?

4 MR. MANZI: Okay, your Honor.

5 Well, first of all, I don't have the benefit, I've
6 never seen the Memorandum that Counsel was referring to so
7 I don't have the benefit of that.

8 But I think some of it is kind of -- a little hung up
9 in the -- it's a negatory when you use the word safety.
10 Our expert will establish what she believes the standard of
11 care should be. And when we talk about risk prevention,
12 fall prevention, it's hard to describe that without maybe
13 inadvertently or something using the word safety.

14 I'll point out, your Honor, I have a case here, and
15 this is *Dawkins versus Union Hospital District*, State of
16 South Carolina Supreme Court, Case Number 2012-211938.
17 It's -- it was filed April 9th of 2014. I'll just read a
18 quote from the Court here, which says, "however, at all
19 times" -- and they're talking about standard of care on
20 whether an expert is even needed in a medical malpractice
21 case such as this. And actually, the Court here concludes
22 that when it's minor ministerial medical treatment being
23 offered, you don't even need an expert in that -- in that
24 regard. And we're talking about a case here where all
25 they're doing is weighing the patient, because they're just

1 not, you know -- we would need a medical degree to be able
2 do that.

3 But that being said, the Court says, "however, at all
4 times the medical professional must exercise ordinary and
5 reasonable care to ensure that no unnecessary harm befalls
6 the patient." It goes right to the basically do no harm.

7 And I don't know how you can construct your questions
8 and ask that question without using the word safety. Okay.
9 It just makes it a little difficult. It's a common,
10 ordinary thing to do.

11 So, if I'm trying to describe that it's your duty in
12 the standard of care for a fall protection of a ninety-
13 year-old frail woman is that you're supposed to stand by
14 her, and have your arms here to make sure she doesn't fall,
15 what is that other than trying to protect her; and what is
16 protection other than trying to ensure that she doesn't
17 fall; or ensure her safety? Okay?

18 So, it's kind of just the semantic argument, and I
19 think it's going to be very easy to inadvertent to not to
20 use the word safety in this connotation.

21 If I ask Ms. Edge, isn't it incumbent upon you to make
22 sure there is no harm done to the patient while you're
23 weighing her, and make sure that she doesn't fall while
24 she's weighing you, basically all means that you're trying
25 to protect her safety.

1 THE COURT: Right. I understand what you're saying.

2 MR. MANZI: And our standard -- and our expert will
3 set that -- our expert will say that the risk prevention,
4 that's what it is. Risk prevention is to ensure the safety
5 of the patient, to make sure no harm befalls the patient.

6 THE COURT: Right. I'm not going to limit -- I'm
7 going to deny your motion in limine, Ms. Chesley. I'm not
8 going to limit the plaintiff, their examination of --
9 cross-examination of your witness.

10 I, you know, kind of what I did a couple a weeks ago
11 when I was trying another matter, I'm certainly going to
12 prevent the plaintiffs from going into professions other
13 than this particular case.

14 For example, in that case they were trying to ask a
15 question doesn't a firefighting -- A firefighter, when
16 he's driving a -- you understand, the whole reptile theory
17 and trying to bring in other things, which is outside the
18 providence of whatever this case is.

19 So, I'm not going to bootstrap the plaintiff's
20 attorneys in whatever cross-examination techniques they
21 want to use. You know, what I - Of course what I will do
22 is, when I charge the jury, if it gets to that, where I'm
23 charging the jury, I will certainly tell them about the
24 standard of care and negligence. And if you all want to
25 try to maybe have me charge something about what you say on

1 page five of your motion, is it decided along with the
2 State that the standard of care determines whether a
3 healthcare provider has or has not been negligent, not
4 whether or not it was safe or something on that line.

5 I may consider charging that. You know, I'm not
6 saying I will, but if you have something I now may consider
7 that. Okay. That deals with that motion.

8 MS. CHESLEY: And your Honor, may I hand up this
9 motion?

10 THE COURT: Yes.

11 MS. CHESLEY: This memorandum, please?

12 THE COURT: Yes.

13 MS. CHESLEY: Thank you.

14 THE COURT: Just hand that to my court reporter right
15 there, and -- there you go. We'll make that part of the
16 file.

17 MS. CHESLEY: Okay.

18 (DEFENDANT'S MEMORANDUM RECEIVED UP BY THE CLERK OF
19 COURT.)

20 THE COURT: Okay. The subsequent, remedial measures,
21 Mr. Manzi, is okay with that.

22 MR. MANZI: I'm not going to bring it up, your Honor.

23 THE COURT: Not going to bring anything up about that.

24 MR. MANZI: And actually, your Honor, if I may, I'm
25 okay with probably ninety-nine percent of the first motion

1 in limine, and maybe if I can address that it might be a
2 little easier.

3 THE COURT: Right.

4 MR. MANZI: I just have a question and concern.

5 In turning to her motion in limine related to fall --
6 post-fall assessment of care by the members of the
7 physician, or even the credibility of the witness, I agree
8 with Counsel. I have no problem with that.

9 My expert is not going to testify as to anything
10 related to the post-care given to Ms. Copeland after the
11 fall. She will not testify as to her own belief as to the
12 credibility of Ms. Edge.

13 The question I have, and again, I -- maybe it's the
14 semantic. When I see the word causation, I'm thinking in
15 terms of causation in terms did the fall cause injury; but
16 not in terms of that the failure to adhere to the standard
17 caused the fall. You see? And that's one of my concerns,
18 how broad she's using the word causation in this -- in this
19 regard.

20 As long as it only relates to the injuries she
21 received, I'm okay with it. But obviously the expert would
22 be able to testify that, because she didn't adhere to the
23 standards as the expert testifies, that's what caused Mrs.
24 Copeland to fall. And that's all I'm concerned about.

25 THE COURT: Okay. I understand.

1 MS. CHESLEY: And -- and that really was my intent.

2 MR. MANZI: Okay. And I just wanted to get that ---

3 THE COURT: Okay.

4 MR. MANZI: --- with that clarification, we're okay.

5 THE COURT: All right. Good. Then, so your expert's
6 not going to testify about the credibility of Ms. Edge? I
7 mean --

8 MR. MANZI: No. And to be honest with you, your
9 Honor, she only did that in deposition to a direct question
10 asked by Defense Counsel, and I won't be asking any
11 questions about that.

12 THE COURT: All right. Anything else you want to --

13 MS. CHESLEY: No, sir.

14 THE COURT: That deals with all the motions in limine.

15 MS. CHESLEY: Did we want to do anything about our
16 exhibits, being marked?

17 MR. MANZI: You want it on the record now, or?

18 MS. CHESLEY: Well, I just didn't know if you wanted
19 to get them all --

20 THE COURT: Have you already pre-marked all your
21 exhibits?

22 MADAM COURT REPORTER: Yes, yes.

23 MR. MANZI: We pre-marked all the exhibits and we are
24 stipulating to all the authenticity and the admissibility
25 of all the exhibits as we refer to them during the course

1 of the testimony.

2 THE COURT: Correct, Ms. Chesley?

3 MS. CHESLEY: Correct.

4 THE COURT: Wonderful. So, everything's already in
5 evidence, then?

6 MR. MANZI: Yes.

7 MS. CHESLEY: And all is marked??

8 THE COURT: Everything's already in evidence, and
9 everything's already ready to go? We don't have to -- you
10 all don't have to -- unless you all just want to do it for
11 theatrical purposes, move to move something in, it's in
12 evidence?

13 (WHEREUPON, PLAINTIFF'S/DEFENDANT'S EXHIBIT NUMBER ONE
14 THROUGH FOURTEEN PREVIOUSLY IDENTIFIED AND MARKED,
15 STIPULATED TO PARTIES; RECEIVED INTO EVIDENCE.)

16 MR. MANZI: Right. Thank you.

17 MS. CHESLEY: Thank you.

18 THE COURT: Okay. Anything else?

19 MR. MANZI: No.

20 MS. CHESLEY: No, sir.

21 THE COURT: Okay.

22 Well, let's go see -- it's right at one thirty. Let's
23 go see if they're ready to come down. Are they

24 Are they all here?

25 THE BAILIFF: They're ready. Yes, sir.

1 THE COURT: Bring them in.

2 Lynn, you want to swear the trial jury?

3 MADAM CLERK: Yes, sir.

4 (JURY RE-ENTERS COURTROOM AT 01:34 PM.)

5 THE COURT: All right. All members of the jury are
6 present. Good afternoon, ladies and gentlemen. I hope you
7 had a nice lunch.

8 At this time I will call on the Clerk to swear in the
9 trial jury, and then I'll talk to you briefly before we
10 start the trial.

11 Madam Clerk.

12 MADAM CLERK: If you'll please stand and raise your
13 right hand.

14 (JURY SWORN AT 01:34 PM.)

15 MADAM CLERK: Thank you. You may be seated.

16 COURT'S PRELIMINARY INSTRUCTION TO THE JURY:

17 THE COURT: All right. Thank you, Madam Clerk.

18 Ladies and gentlemen, let me speak to you briefly
19 before we hear opening statements from the attorneys, and
20 let you know kind of what you're going to expect.

21 As you know, we're about to begin the trial of the
22 case of Wayne H. Copeland as personal representative of the
23 Estate of Dorothy H. Copeland, deceased, Plaintiff, versus
24 Carolina Pulmonary Physicians, P.A., Defendant.

25 Now, before we begin the trial, let me talk to you

1 briefly about what you can expect. Many people don't have
2 the chance to actually attend court sessions, much less
3 participate in them, as you are doing, and think that what
4 they see in movies, on TV, or read about in books is the
5 way that trials always are.

6 Now, sometimes trials can be full of high drama,
7 intense action, and riveting circumstances, but usually
8 not, because trials, ladies and gentlemen, are not for
9 entertainment. Trials, or a trial is a fundamental part of
10 our democracy. A trial can be defined as a search for the
11 truth in an effort to make sure that justice is done
12 between the parties before the Court.

13 Searching for the truth and making sure that justice
14 is done can sometimes be a slow, deliberate, repetitive
15 process, the opposite of what you might be expecting just
16 from looking at media and stuff.

17 Ladies and gentlemen, this courtroom is a place of
18 honor dedicated to the protection and preservation of
19 citizens' rights through what many have called the greatest
20 justice system ever created. The attorneys who are
21 appearing before you are advocates for the parties they
22 represent.

23 But first and foremost, they are officers of this
24 court, sworn to uphold the integrity and fairness of our
25 judicial system, and to help you in your search for the

1 truth. You should expect them, therefore, to be
2 professional, competent, and ethical in the representation
3 of their clients' interests. And remember, you have just
4 taken an oath to try this case and reach a verdict, so you
5 are also expected to act that way. Thank you again for
6 accepting this important responsibility.

7 Let me tell you how we proceed in a civil case, how a
8 trial proceeds. The first thing that will occur is that
9 the attorney for the plaintiff, again the plaintiff is a
10 person who brings a lawsuit, the attorney will make a
11 opening statement to you, followed by a similar opening
12 statement by the attorney for the defendant.

13 Now, ladies and gentlemen, these opening statements
14 are not arguments to you, and they're not evidence, either.
15 They're simply the lawyers' way of giving you an outline of
16 the case as to what he or she thinks the evidence will
17 show.

18 Following the opening statements, each side will then
19 have the opportunity to present evidence to you, for you to
20 determine. Now, evidence consists of testimony coming from
21 the witness stand, along with whatever other evidence is
22 entered into the record in this case, such as medical
23 records, documents, whatever. That kind of stuff.

24 Please pay close attention to all the evidence,
25 because you, the jury, are the sole finders of fact in the

1 case. I'm the judge of the law, you're the judge of the
2 facts. Nobody else can weigh the facts, nobody else can
3 weight the evidence and render a verdict. After all the
4 evidence is done, that's when the lawyers will then make
5 closing arguments or statements to you.

6 Now, these are true arguments, and again I emphasize
7 are not evidence, but each side will emphasize certain
8 portions of the evidence to you, to try to persuade you to
9 agree with their version of facts.

10 Now, ladies and gentlemen, after all the arguments are
11 finished, that's when I will direct -- directly address
12 you, as I'm doing now, and give you the law of South
13 Carolina as it pertains to the issues which have arisen in
14 this case.

15 That's when you'll return to your jury room, finally,
16 after you've heard everything, seen all -- had a chance to
17 look at all the evidence, and heard the law, that's when
18 you will go to use all that information to render a
19 verdict. Okay?

20 Now, it's very important to remember that this is not
21 a criminal case. Okay? In a criminal case, the burden of
22 proof is always upon the State of South Carolina to prove
23 something beyond a reasonable doubt. That's not what this
24 case is. This is a civil case. The plaintiff, the one who
25 brings the lawsuit, still has the burden to prove, but that

1 burden of proof is different in a civil case.

2 The burden of proof is called a preponderance, or
3 simply, the greater weight of the evidence. Now, what I
4 mean by the greater weight or the preponderance of the
5 evidence can be imagined by, you know, if you go to a
6 farmer's market or something, and they have a traditional
7 set of scales, where you weight something. Okay? When the
8 case starts, the scales are even. After everything --
9 after all the evidence has been presented, if the scales
10 should remain even, or tip ever so slightly in the favor of
11 the defendant, then the plaintiff would not have met the
12 burden of proof, and your verdict would be for the
13 defendant.

14 However, if the scales should tip ever so slightly in
15 favor of the plaintiff, then he or she will have met her
16 burden of proof, or his burden of proof, and your verdict
17 would be for the plaintiff.

18 Let me tell you a few additional things before the
19 case begins. Although I'm the only person who can tell you
20 what the law is, you're the only ones who can determine
21 what the facts. I don't even -- I don't have the right to
22 indicate how I may feel about the evidence presented, and
23 throughout this trial my intention will be to act
24 impartially toward each party.

25 Now second, from time to time, an attorney may object.

1 You've heard about that. You've seen it on TV, or in the
2 movies, objection. Well, what that does is, just like in
3 sports and business and other activities, there are certain
4 rules conducting how you do those activities. Well, we
5 have certain rules of court which determines what evidence
6 can and can't come in. And the reason we have these rules
7 is because you, as the finders of fact, have to have the
8 best evidence possible. Okay? So, that's why we have
9 these rules. So, when a lawyer objects to something, that
10 means the lawyer thinks that the question that's being
11 asked may run afoul of the rules; or the thing that's being
12 offered into evidence may not comport with the rules. And
13 that's how they preserve that issue in the record, by
14 objecting.

15 So, if I sustain the objection, that means the
16 question can't be answered, or the thing can't come into
17 evidence. Okay? And if I do that, don't speculate about
18 what the answer would have been if the person would have
19 been allowed to answer it; or what the -- or what the thing
20 would have shown; because again, you can't consider
21 something that's not in evidence. Okay?

22 Likewise, if I overrule and objection, that means the
23 question can be answered, or the thing may come into
24 evidence. This is simply procedure used by all lawyers and
25 all courts and all judges, to make sure you get the best

1 evidence possible. And again, if lawyers object, don't
2 hold it against their clients. They're just doing -- the
3 lawyers are advocates for their parties, and they're doing
4 their job. Okay?

5 This is very important, because I try cases all the
6 time, all over the State of South Carolina and it's
7 amazing to me the questions I get from trial juries at the
8 end. Whereas, if they'd been listening carefully and
9 closely, they wouldn't have had that question. Okay? So,
10 please listen carefully, and pay close attention to all the
11 testimony and the evidence presented in this case.

12 You're not going to be allowed to take notes during
13 the trial. Okay? And it's very costly and time-consuming
14 to have my court reporter over there type up or try to find
15 a transcript of the testimony of a certain witness. I
16 mean, you're not going to have a transcript of the entire
17 trial back there. Okay? So, you're going to have to go by
18 your memory in determining the issues in this case.

19 You're going to have to determine the credibility or
20 believability of each witness who testifies. You can
21 believe everything a witness says, some of it, or none of
22 it. That's your job as a juror. You are participating in
23 the time tested system, and it is extremely important for
24 each one of you to listen carefully to everything
25 presented.

1 Ladies and gentlemen, I'm sure each of you will
2 perform your duties accordingly. Okay? We will now begin
3 the trial with opening statements.

4 MR. MANZI: Thank you, your Honor. May I approach the
5 jury?

6 THE COURT: Yes, sir.

7 OPENING STATEMENT BY MR. MANZI:

8 MR. MANZI: Good afternoon. I hope you all had a good
9 lunch. As I introduced myself a lot earlier, and again for
10 everybody, my name is David Manzi and I have the honor and
11 privilege of representing the estate of Dorothy Copeland in
12 this matter.

13 As the judge just said, my opportunity right now is to
14 kind of give you an overview of this case, where this case
15 is going, what kind of evidence you're going to hear in
16 this case and then, we'll get -- we'll get right into it.

17 Now, we went through this morning and introduced
18 everybody that was sitting here, to make sure you didn't
19 know anybody personally, and everybody, and everybody here
20 has a role to play in this particular case. But the most
21 important person to this case, and the person that I want
22 you to be thinking about most often during the course of
23 this case, is the one person who can't be with us today and
24 that's Dorothy Copeland.

25 (PHOTO DISPLAYED ON OVER HEAD.)

1 MR. MANZI: That's Dorothy Copeland and she died in
2 March of 2014. She was alive at the time that this claim
3 was originally initiated, and the facts that we're talking
4 about occurred all the way back in 2012, so, we're almost
5 five years after the fact. And unfortunately, Dorothy died
6 at the young age of ninety-two, and couldn't be with us to
7 see this case through. So, we have picked up
8 Dorothy's mantle, and are still working on her behalf. And
9 she's the person that I want you to think about most often
10 as we go through this case.

11 And I take you back to Dorothy, back to the year --
12 month and year of May of 2012, when she was at the ripe age
13 of only ninety. A very small, frail, and fragile woman.
14 And you'll see that described throughout medical records
15 and testimony that you're going to hear from those people
16 who knew her well.

17 There are two sons. Two surviving sons are here in
18 trial today. I'll introduce Wayne. Wayne is acting as the
19 personal representative of the estate. And the other son
20 Benny back there, are the only two surviving sons. And
21 they're here to represent their mother in this case,
22 because this truly is a case about Dorothy Copeland, and we
23 always want you to keep that in mind.

24 Now a certain way that the case is not all that
25 difficult to understand, and the evidence isn't going to be

1 all that complicated. In fact, we're going to start this
2 case off, I'm going to tell you a number of things that
3 neither us nor the defendants even dispute. The first fact
4 that's not in dispute in this case is that, on May 17th of
5 2012, Dorothy Copeland was taken to Carolina Pulmonary
6 Physicians, and I'll probably refer to them throughout the
7 trial sometimes as CPP, by her daughter-in-law, Deborah
8 Copeland, for a scheduled doctor's appointment. And
9 Deborah Copeland is the young lady who is sitting right
10 over there. And you're going to hear from Deborah herself.

11 Deborah was Dorothy Copeland's main care giver.
12 Dorothy thought of her more as a daughter, and Deborah
13 thought of her as a mother; and she took care of Dorothy.
14 Women her age couldn't get around, and she's the one that
15 took her to all of her doctor appointments.

16 This was a scheduled appointment that she had on May
17 17th of 2012. Now she was a long-time patient of CPP. She
18 had been going to Carolina Pulmonary Physicians since 2007.
19 And in fact, this is the eleventh time that she went there,
20 and I want to keep that in mind as we go through.

21 The other fact that is not in dispute in this case is
22 that Deb -- Dorothy and Deborah were escorted to the triage
23 room by CPP employee Joan Edge, a registered medical
24 assistant. Now, many of you might understand, I'm sure
25 that, in the course of your life, you've all gone to the

1 doctor at one point in time; and know that the usual
2 procedure when you go to a doctor is, they want to get your
3 vital signs first. Your weight, your blood pressure,
4 things of that nature, before the doctor actually sees you.
5 So, we all go through that little process, from the waiting
6 room to, sometimes, what we call the little room, and then
7 to the main examination room. The little room is most
8 commonly is referred to as the triage room. But usually,
9 it's somebody trained, as Joan Edge was trained as a
10 medical assistant, to do those -- take those simple vital
11 signs. Get your weight, get your temperature, get your
12 blood pressure, and so on, before the patient will go see
13 the doctor. I'm sure you're somewhat familiar with that.

14 And given Dorothy's age and mental status, it's not
15 unusual to be accompanied by the family member to the
16 triage room, or in the examination. You'll see that, in
17 most of these kinds of cases, it's the family member that
18 has to provide the medical history or family history to the
19 doctor or who's ever treating her; because the person
20 themselves, given age and mental status, may not be able to
21 do that.

22 And the last fact that is not in dispute, that while
23 in that triage room, Dorothy fell from a weighing scale,
24 suffering a wrist and pelvic fracture, all requiring
25 substantial medical care and treatment. And again, I want

1 you to remember that little picture you saw of Dorothy, and
2 keep that picture in your mind. She weighs about a hundred
3 pounds, frail, ninety-year-old woman. It doesn't take much
4 when a ninety-year-old woman falls to have some bones
5 break, or suffer severe injury. It doesn't take a
6 catastrophic fall of that nature. And it was a fall that
7 happened when she received those injuries.

8 So, that we can all agree on. So, why are we here?
9 Because there's some things we can't agree on. What's in
10 dispute? Why did she fall? We know she fell, and we know
11 she injured herself; but the main thing that we haven't
12 been able to agree on is why she fell. Who was at fault
13 for her to fall? Was somebody at fault? Who was at fault?

14 There are only two surviving witnesses to what
15 happened in that triage room on May 17th, 2012. That's
16 Dorothy Copeland, the daughter-in-law who accompanied her
17 to the triage room, and Joan Edge, the registered medical
18 assistant, who is there to take the vital signs.

19 And what you're going to find out is that, between
20 these two witnesses, there's conflicting testimony.
21 They're each going to tell a different story. And you
22 think about, we're in a court of law, and this is what this
23 courtroom has been built for, especially in a civil court.
24 You have a dispute, you have conflicting testimony. It has
25 to be resolved somewhere. And we don't want the parties to

1 resolve things themselves, so we have the courtroom here.
2 And it's for you now to be the people that are going to
3 resolve this dispute from listening to the evidence and
4 hearing the evidence that I'm gong to present to you, and
5 you will determine what is the most likely way this
6 happened, and answer those questions as to why she fell,
7 and who caused her to fall.

8 And I know the light in here isn't the greatest, but
9 you'll see some other pictures as we go along. But this is
10 the triage area that we're talking about, and we'll have
11 some closeups and things. But that little black thing you
12 see on the bottom here, this is actually the scale on the
13 floor there. It's a little two-by-two, sits about two
14 inches off the floor. Has that wire connected to it, so it
15 gives a digital readout of the -- of the weight of the
16 patient once they step on that.

17 Doesn't look like much, but keep in mind, keep the
18 picture in mind of Dorothy Copeland. Ninety-year-old,
19 small, frail woman to which this might as well be two feet
20 for someone in that condition, to have to stand on that and
21 keep themselves steady. So, we'll hear about what should
22 be done to make sure that she doesn't fall off of that.
23 And there's some chairs in there and stuff like that, and
24 you'll hear all about that.

25 To just kind of explain to you a little, in terms of

1 how civil cases are handled, and we have a burden of
2 proving things to you. The plaintiff has to prove certain
3 things to you beyond a preponderance or the weight. So,
4 what are our contentions in this case? What do we hope to
5 prove? We hope to prove to you that Joan Edge, as the
6 trained medical provider, failed to perform her duties in a
7 manner consistent with the applicable procedures to assure
8 the safety of her patient, Dorothy Copeland.

9 As the medical professional, they had a responsibility
10 to make sure that patients coming into their facility are
11 treated in such a manner as to -- so no harm befalls them.
12 The same as you might think in a lot of different
13 situations if somebody comes into your business entity,
14 you've got to make sure that things are done right. And in
15 the medical profession, there are what we call certain
16 standards of procedure. Medical people are trained in
17 these standards of procedure, and they need to do these
18 things in such a way as to ensure that no harm befalls a
19 patient.

20 The failure -- This failure left Dorothy Copeland, a
21 ninety-year-old, frail, unsteady woman, alone and
22 unsupported on the weighing scale, causing her to fall and
23 suffer the injury. So, in terms of the questions, our
24 contention is who caused her to fall, it was the medical --
25 the registered medical assistant in her failure to assure

1 that she wouldn't fall, and she did fall.

2 Now, what do you have to do in this case? We all have
3 a role to play here, your role being the most important. .
4 You have been empowered as the trier of fact in this case.
5 As the judge told you, you are going to listen to and
6 determine the facts in this case. Not the law, just the
7 facts. Hear the evidence, and determine the facts, and
8 only you can do that.

9 As a juror, I feel very -- this is probably the
10 second-most important civic duty that we have when we serve
11 on a jury. The first may be voting, and who our leaders
12 are going to be. And the second is that you, as a juror,
13 can come into a courtroom, listen to evidence, and make
14 determinations from your fellow citizens to resolve a
15 dispute. It's a tremendous amount of power that you have
16 in this case. We can't decide it, only you can. You can
17 listen to the evidence, and do what you think is right in
18 terms of the evidence that you're going to hear in this
19 case.

20 And the judge kind of mentioned in his talk a little
21 while ago, listening is the most important part of your job
22 here. Listen to the evidence, assess the evidence. That's
23 how you're going to determine what happened in this case.
24 You have to assess the credibility of witnesses. I told
25 you, we have a major dispute here. We have two witnesses

1 who say different things happened in that room. Only you
2 can determine which of those two stories sounds more
3 plausible, more credible. And you'll do that in the manner
4 consistent with the evidence and the law that the judge
5 gives you. But only you can assess the credibility of each
6 witness, as you may have done plenty of times in your own
7 everyday life, trying to determine who is telling you the
8 truth, who is not. You have that job to do here today.

9 Now use your own own common sense -- you don't leave
10 common sense at the door when you come here to be a juror.
11 The judge is going to read to you the law that needs to be
12 applied and all of that, but you're going to use your life
13 experience, your common sense, and apply that to the facts
14 of this case in determining what you think is the most
15 plausible thing that happened here. And apply the law as
16 the judge will give it to you at the end, and you're going
17 to determine who's at fault. You're finally going to
18 resolve this issue by the time this trial is over.

19 So, that's your job, and that's what you need to do.
20 And when you also do that, in terms of the end of the -- as
21 the judge explained to you, being that this is a civil
22 trial, you'll have to determine what the adequate
23 compensation for the plaintiffs would be in this particular
24 case. That's all -- that's all you have to do. Okay?

25 But what you learn by the evidence that we will

1 present to you in this case? Well, you will learn that
2 Dorothy Copeland was a ninety-year-old frail female with a
3 history of being unsteady on her feet, falls, and most
4 likely suffered from dementia, and her condition is well-
5 documented in her medical records, including those records
6 of Carolina Pulmonary Physicians. That's the first
7 important thing you're going to learn.

8 You're also going to learn that Deborah Copeland was
9 Dorothy's main care giver. Remember here, she had
10 accompanied her to all her doctor visits, and that's beyond
11 -- And judging her medical condition, you can probably
12 imagine, she had more than just a pulmonary problem. She
13 went to other doctors, as well, and Dorothy was the one
14 that took her to all these medical visits.

15 You'll learn that Dorothy Copeland was a longtime
16 patient of CPP, and had been there at least ten times prior
17 to May 17th of 2012, and it goes back to 2007. You'll
18 learn she suffered from COPD, a very chronic lung,
19 respiratory condition, that required follow-ups about every
20 three, six months I think and this one. You will learn
21 that, in every previous visit to Carolina Pulmonary
22 Physicians, it was the registered medical assistant that
23 assisted Dorothy onto the weighing scale, and stood by her
24 so she wouldn't fall off, so that no harm would come to
25 her, to steady her. That happened every time in all

1 previous ten visits in that same triage room.

2 You will also learn that it was not until almost two
3 weeks after the fall that Denise Taylor, the office manager
4 for Carolina Pulmonary Physicians, the one that manages the
5 place, if you will, asked Joan Edge to write down what
6 happened in that room; because you're going to see a
7 handwritten note by Joan Edge, and on her handwritten note
8 she's going to say that Dorothy Copeland fell because
9 Deborah Copeland went around the scale, and left her there
10 to fall. Put her on the scale, then walked away from her.

11 She directly is going to accuse Deborah Copeland, the
12 daughter-in-law, the care giver, the person who's spent
13 years dedicated the majority of her time to the well-being
14 of her mother-in-law. Joan Edge accuses her of being the
15 bad guy here. But it wasn't until two weeks after this
16 happened that the office manager told Joan to put it in
17 writing what happened, and we'll discuss that as the case
18 proceeds.

19 And more importantly, you will learn that Denise
20 Taylor never asked Deborah Copeland what happened in that
21 room after the fall. Never asked her. Never got the other
22 side of the story. Now, you are at a great benefit here
23 because you're going to sit in this trial, and you're going
24 to hear both sides of the story. You're going to hear our
25 side, and you're going to hear their side. And when in any

1 decision that you make in life regarding anything, don't
2 you always want to hear both sides of the story?

3 Well, Denise Taylor didn't think it was important to
4 hear both sides of the story. But you will hear Deborah's
5 side of the story here today, because we think it's
6 important that you hear both sides of the story. So, you
7 have to have all the information available to you in order
8 to make that ultimate decision.

9 Now, what's my job? I've got to have something to do
10 here, too, in terms of putting this case up. Well, I have
11 to present convincing evidence to you that Joan Edge was at
12 fault. I have to prove that to you beyond -- not beyond a
13 reasonable doubt, beyond a preponderance of the evidence.
14 More likely than not is really the standard that we look at
15 here, that Joan Edge was the person at fault, not Deborah
16 Copeland. I'm going to do that by showing you evidence
17 that will only lead to that one logical, reasonable
18 conclusion.

19 The negligence of Carolina Pulmonary's Associate
20 Physicians by and through its employee, Joan Edge, was the
21 sole and proximate cause of Dorothy Copeland's fall. And
22 again, there's no dispute in terms of the injuries she
23 received in the fall. And due to these injuries, she
24 required medical treatment and incurred expenses for that
25 treatment. You're going to learn that she was treated at

1 -- she required surgery for the injury to her wrist,
2 treated by Carolina Orthopedics. She was -- required a
3 hospital stay at Piedmont Medical Center. Diagnostic
4 equipment, X-rays and things like that. She was
5 transported by an ambulance from her home to the Piedmont
6 Medical Center. And following her discharge from Piedmont
7 Medical Center, they referred her to Health South
8 Rehabilitation in Rock Hill, where she had to go through a
9 period of rehab.

10 You'll hear that, prior to this, she was living in a
11 -- an independent living facility in Westminster Towers.
12 Some of you may or may not be familiar with that facility
13 here in Rock Hill. But after this, she could never return
14 to that independent living. She required assisted living,
15 and eventually a skilled nursing facility, until her
16 medical condition finally deteriorated, and she died.

17 And again, her death was not caused by the fall in any
18 sense of the word, but for a significant period of time,
19 from May 17th until at least she was discharged from Health
20 South Rehabilitation some time in June, she suffered more
21 pain and suffering than she should have, especially in her
22 delicate condition, and at her age. This should never have
23 happened to her, and you know, she didn't need this extra
24 added burden in her -- in her life.

25 And we talked about that, so there was some pain and

1 suffering far beyond what she should have been subjected
2 to, especially in this time of her life. And it did affect
3 her, but for a period of time. And we're not going to deny
4 she had a lot of other medical problems, and we're only
5 looking at this period of time, in terms of how you're
6 going to assess her damages.

7 Anyhow, this is the picture I want you to keep in your
8 mind. She's not here, but you have to think of her. Think
9 of Dorothy. That's why we're all here, is for Dorothy.
10 The ninety-year-old frail woman, just trying to get through
11 her life, the remaining years that she had, and she didn't
12 need this to happen to her. She didn't need to fall in
13 that office that day. And we'll show you through the
14 evidence that the only reason she fell, and the only reason
15 she incurred these injuries was due to the negligence of
16 Carolina Pulmonary Physicians, and for no other reason.

17 Thank you.

18 THE COURT: Thank you, Mr. Manzi.

19 Ms. Chesley.

20 OPENING STATEMENT BY MS. CHESLEY:

21 MS. CHESLEY: May it please the Court?

22 Good afternoon, ladies and gentlemen. On May 17,
23 2012, Dorothy Copeland went for a doctor's appointment at
24 the office of Carolina Pulmonary Physicians. She went to
25 see her physician, Doctor Creagh, who is now retired. He

1 had been her pulmonary doctor for the last -- since 2007.
2 Mrs. Copeland had a longstanding, severe form of lung
3 disease.

4 In attendance that day was also her daughter-in-law,
5 Deborah Copeland. And as you have heard, Deborah attended
6 most, if not all, of the doctor's office visited -- visits
7 with Mrs. Copeland. And you will also learn from the
8 evidence that Deborah Copeland was the person of the family
9 who knew more about Mrs. Dorothy Copeland's health history,
10 her health status, and her abilities than even her own
11 sons. She was the person in the family who spent lots of
12 time with her mother-in-law, and for that she is to be
13 commended.

14 Dorothy Copeland -- excuse me -- Deborah Copeland
15 drove Dorothy to her doctor's appointment that day. She
16 drove them under the covered driveway at Carolina
17 Pulmonary, got out of the car, took Mrs. Dorothy inside,
18 got her situated in the waiting room. Came back out,
19 parked the car, came back in, and waited for the
20 appointment to be called.

21 Joan Edge, who is a registered medical assistant at
22 Carolina Pulmonary, and had been there at that time eleven
23 years, had been a medical assistant for forty-three years,
24 came out to the waiting room and announced Mrs. Copeland,
25 we're ready for you. And at that point, Deborah Copeland,

1 as she always did, assisted her mother-in-law up out of the
2 chair, took her by the arm, walked across the waiting room,
3 and followed Joan down to the triage room.

4 The triage room is an area, as you know, where you go
5 to have your blood pressure checked, your weight taken, and
6 history obtained. The hallway, and you will see some
7 pictures of this later, but the hallway is fairly narrow,
8 and only two people can walk side-by-side. And Mrs.
9 Copeland and Deborah Copeland were walking. They were
10 following Ms. Edge. Ms. Edge walked into the triage room,
11 and they followed her in.

12 And this is where the question in this case occurs,
13 because within the next few seconds, Mrs. Dorothy Copeland
14 sustained a fall after stepping up on a weighing scale.
15 Okay. This happened suddenly. It happened unexpectedly,
16 and ladies and gentlemen, I will submit to you this was no
17 one's fault. This was an unanticipated accident. It was
18 not Joan Edge's fault, it was not Deborah Copeland's fault.
19 The fall occurred.

20 However, there is disagreement about that in this
21 case, and that's why we're here today. The family of Mrs.
22 Copeland has filed a lawsuit against Carolina Pulmonary
23 Physicians, who is the employer of Joan Edge. They have
24 alleged that Joan Edge was negligent in her care of the
25 patient and the resulting fall, and we disagree. We

1 disagree with that.

2 I would like to take this time -- My name is Barbara
3 Chesley. I introduced myself to the jury panel earlier.
4 It has really been my pleasure in this case to represent
5 Carolina Pulmonary Physicians. I know you all met them
6 earlier, but I'm going to introduce them again, because now
7 we're in a little bit smaller group.

8 I would like to introduce Doctor William Alleyne.
9 Doctor William Alleyne is the sole physician at Carolina
10 Pulmonary. Doctor Alleyne worked with Doctor Creagh for
11 many years. Doctor Creagh is now retired. He was Mrs.
12 Dorothy Copeland's doctor, and Doctor Creagh would have
13 been here this week, but he is not able to, due to a
14 medical condition.

15 Doctor Alleyne is the -- he is board-certified in
16 pulmonary medicine, critical care medicine, and intensive
17 care medicine. Internal medicine, I'm sorry. Okay. And
18 he is also the clinical supervisor of Joan Edge.

19 Joan, I want you to stand up.

20 (JOAN EDGE STANDS.)

21 MS. CHESLEY: Joan Edge is also an employee of
22 Carolina Pulmonary. As I told you before, Joan Edge is --
23 has been a medical assistant for forty-three years. She
24 started her practice when she was five. And she is here
25 today, and you will be hearing her testimony this week.

1 Denise Taylor.

2 (DENISE TAYLOR STANDS.)

3 MS. CHESLEY: Denise is the office manager for about
4 twenty years at Carolina Pulmonary. Denise is also -- even
5 though her professional role now is an office manager, she
6 has kept her certification as a medical assistant through
7 -- through the years. And so, you will be hearing from all
8 these folks in the course of the week.

9 I want to talk with you just a bit. Judge Gibbons
10 talked to you about at the end of the case you are the
11 trier of fact, and that's your job here. You're to listen
12 to all the testimony. You're to listen to the testimony
13 from the plaintiffs. You're to listen to the testimony
14 from the defendants. And you are to make the decisions on
15 the facts. And the judge will charge you at the end of the
16 case as to the law, what law you need to apply to the
17 facts. But I'm going to give you just a little road map
18 about a medical negligence, or medical malpractice case,
19 which this is.

20 The plaintiff has the burden of proof, and in a
21 medical negligence case, what the plaintiff has to show are
22 basically several things. Number one: They have to show
23 that the healthcare provider, and in this case the medical
24 assistant, had a duty to act in a certain way. Okay? The
25 medical assistant has the duty to act in a certain way.

1 And what we call that is the standard of care. The
2 standard of care is simply, what would a reasonable medical
3 assistant do in like or similar circumstances? Okay. What
4 would a reasonable medical assistant do?

5 The standard of care is not something in a medical
6 negligence case that is determined by common knowledge.
7 Okay. We have to have expert witnesses in the field of
8 nursing or medicine to tell us what the standard of care
9 is. And in this case, the plaintiff has a nurse that
10 you're going to hear testimony from, and the Defense has
11 witnesses that will tell you what the standard of care is.
12 Okay.

13 After that is done, the plaintiff must then prove that
14 that medical assistant breached the standard of care. In
15 other words, they deviated from it. They didn't do what a
16 reasonable medical assistant would do. So, two facets.
17 You have -- you have what the standard of care is, the
18 duty, and was it breached.

19 If that occurs, then you have to determine, did the
20 breach cause damage, did it cause harm. And so, those are
21 the elements that the judge will instruct you on in much
22 more detail at the end of this case.

23 I think it's very important, though, to know that if a
24 medical assistant's judgment was appropriate in a give
25 situation, in other words her decision, her standard of

1 care was appropriate, even if someone falls, even if
2 someone is hurt, as long as her decisions and her standard
3 of care was appropriate, and she didn't breach the standard
4 of care, there can be no verdict for the plaintiff.

5 Finally, the testimony and evidence that you are going
6 to hear in this case, you are going to hear that the
7 standard of care in this case in a doctor's office is that
8 medical assistants are allowed, they are allowed to allow
9 family members to participate in certain activities. It's
10 not that when you walk in the doctor's office you give up
11 everything that a family member may normally do.

12 The standard of care in this case will show from our
13 experts that a family member may assist a patient in and
14 out of a chair. They may assist them when walking down the
15 hall. They may assist them in the bathroom. They may
16 assist them in undressing. They may assist them not in
17 weighing the patient, but in the simple act of stepping up
18 on a scale, and we believe that the testimony in this case
19 will show that.

20 Joan Edge allowed Deborah Copeland to assist her mom
21 out of the chair. She allowed Deborah Copeland to assist
22 her down to the room. Joan Edge did not place Mrs.
23 Copeland on the scale, but it was not inappropriate to let
24 Deborah Copeland to do so. Again, I think in this case the
25 evidence will show that appropriate actions were taken.

1 As Mr. Manzi said, there were two people in the room
2 today that really know what happened in that room. And
3 this is something that happened within seconds. This
4 happened within seconds of them walking in the room, and we
5 have a very differing opinion and account.

6 I thank you for your attention and for listening
7 carefully to all the evidence before coming to a decision.

8 Thank you.

9 THE COURT: Thank you, Ms. Chesley.

10 All right. The plaintiff may call its first witness.

11 MR. MANZI: Yes, your Honor. We call Joan Edge to the
12 stand.

13 THE COURT: All right. Ma'am.

14 MADAM CLERK: Ms. Edge, if I could just have you step
15 here, to be sworn. Place your left hand on the Bible
16 and raise your right.

17 (WHEREUPON, JOAN EDGE, BEING
18 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 THE COURT: All right. Your witness.

20 MR. MANZI: Thank you.

21 DIRECT EXAMINATION

22 JOAN EDGE BY MR. MANZI:

23 Q. Good afternoon, Ms. Edge.

24 A. Good afternoon.

25 Q. It's been awhile since we've seen each other, correct?

1 A. Yes, it has.

2 Q. Okay. I'm going to get into some background
3 information before we get into the particulars of this
4 case, so the jury understands.

5 You are a certified medical assistant, or a registered
6 medical assistant?

7 A. Registered, yes, sir.

8 Q. Registered? And I understand that you received your
9 certification or registration back in 2001?

10 A. Correct.

11 Q. And that was through an online program that you went
12 through with the American Medical technologists; is that
13 correct?

14 A. Yes, sir. Correct.

15 Q. And do you prefer to go with registered medical
16 assistant, or certified?

17 A. Registered.

18 Q. Registered? And that's what you're referred to there
19 in South Carolina?

20 A. There are registered, and there are some that are
21 certified.

22 Q. Okay. Now, as part of your -- Forget that. You
23 worked at Carolina Pulmonary Physicians since 2001; is that
24 correct?

25 A. Correct.

1 Q. And you retired back in June of 2015?

2 A. Correct.

3 Q. And then, thereafter, you may go in there and work on
4 occasion, when needed?

5 A. Yes, sir.

6 Q. When was the last time you worked there?

7 A. It was probably a couple a months ago. I'm not --

8 Q. And how many times do you think you've worked there
9 since you retired back in June of 2015?

10 A. Approximately about four times.

11 Q. About four times?

12 A. Uh-huh.

13 Q. Okay. I want to go -- I'm going to show you a series
14 of pictures. I want to -- I want to -- I want to have the
15 jury have a good mental picture. They've seen one picture,
16 but I want to go through some pictures that I have of
17 Carolina Pulmonary Physicians' offices.

18 A. Okay.

19 Q. And have you verify that -- what these are. Okay?

20 A. Okay.

21 Q. Can you see that okay?

22 A. Yes. I can.

23 Q. Okay. And is that the reception area?

24 A. Yes, sir.

25 Q. And that's the area where patients would go and sit

1 down; is that correct?

2 A. Correct.

3 Q. And when you would have a particular patient that
4 needed to come into the triage room, you would go out and
5 call that patient from that area?

6 A. Correct.

7 Q. Thank you.

8 THE COURT: Let me interrupt. Is that better?

9 MR. MANZI: Okay.

10 THE COURT: Let me see the lawyers real quick.

11 Hang on one second. Mr. Manzi, Ms. Chesley?

12 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
13 THE JURY AT 02:19 PM.)

14 THE COURT: All right. Thank you.

15 We have a scheduling issue, ladies and gentlemen.

16 We're going to try to work out a schedule for this
17 afternoon.

18 MR. MANZI: Okay.

19 THE COURT: All right. Yes, sir, Mr. Manzi.

20 BY MR. MANZI:

21 Q. Now that's -- We set up that that's the reception
22 area, correct?

23 A. Correct.

24 Q. Okay. Let's just move along.

25 This is the inside of the triage room?

1 A. Yes, sir.

2 Q. And this was set up exactly the way it was back in May
3 of 2012?

4 A. Correct.

5 Q. And there are two chairs next to the scale, right?

6 A. Correct.

7 Q. And that's a digital scale, is it not?

8 A. It is.

9 Q. Okay. And we see that it's pushed back a little from
10 the wall; is that correct?

11 A. Yes, sir.

12 Q. Okay. And then, the wire that would be that read out
13 and that will -- would be where the weight would actually
14 be displayed?

15 A. Right.

16 Q. And the patient would just step upon that, okay?

17 A. Correct.

18 Q. And you notice in this picture, there's nothing --
19 there's no supports or anything for the patient to stand
20 on, to hold onto while they're on the scale; is that
21 correct?

22 A. Correct.

23 Q. Okay. And again, this is just looking at it from a
24 different view. And we can see the doorway there?

25 A. Right.

1 Q. And it's very close to the doorway, is it not?

2 A. Correct.

3 Q. And in fact, isn't it the -- is the weight the first
4 thing that you would get from the patient?

5 A. Yes, sir, it is.

6 Q. And this is looking from the doorway, and this gives
7 us an idea about the size of the room?

8 A. Yes, sir.

9 Q. And the other side of the room there, we see what
10 looks to be a blood pressure monitor?

11 A. The vital monitor.

12 Q. Okay.

13 A. And then, there's a chair by it.

14 Q. Okay. And there's a file -- there's like, a --

15 A. On the other side.

16 Q. -- shelves and everything in the room there as well,
17 right?

18 A. Right.

19 Q. And there's a little bit -- there's a roo -- there's a
20 chair there. And that's the chair the patient would sit on
21 while you're taking their blood pressure, right?

22 A. Right. After I would get their weight.

23 Q. Okay. And again, this is just looking back from that
24 area ---

25 A. Uh-huh.

1 Q. --- from the area where the -- where the chairs are,
2 and the -- and the weight machine?

3 A. Correct.

4 Q. And there's a little closeup of the weight machine.
5 Is that pretty much the same we had back in May of 2012?

6 A. Yes, sir, it is.

7 Q. And it's about two-by-two, would you --

8 A. Yeah.

9 Q. And then, --

10 A. About two inches off the ground.

11 Q. And about two inches off the ground. And the patient
12 just needs to step onto that, correct?

13 A. Right.

14 Q. And would you agree with me that when you have a
15 ninety-year-old frail woman, that you might need some
16 assistance to get up there?

17 A. Correct.

18 Q. Okay. And also, if you had a ninety-year-old frail
19 woman, and while she was on the scale, given her condition,
20 that someone would have to stand by her to support her, or
21 to at least make sure she doesn't fall one way or the
22 other.

23 A. Right.

24 Q. Correct?

25 A. Correct.

1 Q. You wouldn't want to hold onto her, but you would want
2 your arms there, just to catch her, in case she begins to
3 fall.

4 A. Right.

5 Q. And that would be standard procedure, would it not?

6 A. Yes, it would.

7 Q. Okay. And again, that's just a little closeup of the
8 area of the pad, right?

9 A. A lot of our patients will come in with walkers,
10 practically the majority of them, s, it's easy for them to,
11 you know, slide the walkers up around the scale and step on
12 it.

13 Q. Okay. Now, this is looking from the hallway, and
14 coming into the doorway; is that correct?

15 A. Correct.

16 Q. Okay. So, this would be the hallway coming down from
17 the waiting room --

18 A. Okay.

19 Q. -- into the triage room, correct?

20 A. Correct.

21 Q. Okay. Okay. So, hopefully we've given the jury a
22 little bit of an idea of what the -- of what the room
23 looked like there.

24 Now, back in May of 2012, you were working full-time
25 at CPP, right?

1 A. Yes, sir.

2 Q. Okay. And what would your normal hours be back then?

3 A. Eight thirty to five.

4 Q. Okay. About how many patients might you see in a day?

5 A. Anywhere up to twenty, twenty-five; sometimes thirty.

6 Q. Okay. And as the name implies, Carolina Pulmonary
7 Physicians, it's a specialty clinic, is it not?

8 A. Correct. For the lungs.

9 Q. People with pulmonary-type diseases and problems?

10 A. Right. People with lung problems we see.

11 Q. Would you say you would have a certain type of patient
12 population that you would see more than others?

13 A. A lot of our patients are elderly.

14 Q. And when you say --

15 A. Probably the majority of them are.

16 Q. And when you say elderly, what, over sixty years old?

17 A. Yes.

18 Q. You get a lot of patients in their nineties?

19 A. Yeah, we have quite a few lately.

20 Q. Okay. That's great.

21 A. Uh-huh.

22 Q. And would the main problem that most of these patients
23 have would be COPD?

24 A. Correct.

25 Q. Okay. That's the -- and that affects a lot of the way

1 these patients can move and breath, and things like that?

2 A. Right.

3 Q. Okay. Would you agree with me that it kind of
4 distracts -- it kind of takes away some of their strength
5 and ability, as well?

6 A. Correct.

7 Q. And taking that disease and putting it within a
8 ninety-year-old woman who weighs under a hundred pounds is
9 a lot added onto whether she can move pretty well. Would
10 you agree with that?

11 A. I agree.

12 Q. And would you agree that every patient that you see,
13 you have to treat as a -- as an individual?

14 A. Right.

15 Q. That each --

16 A. You have to observe them.

17 Q. And that each patient has their own particular needs
18 or wants?

19 A. Correct.

20 Q. And that some patients might be a little bit more
21 mobile than others, and some patients might need a little
22 more assistance than others?

23 A. Correct.

24 Q. And would you agree with me, as part of your training
25 as a medical assistant is to recognize that, which patients

1 needed a little more assistance, and which patients may not
2 need as much assistance?

3 A. Correct.

4 Q. And you would agree with me, as a medical assistant,
5 that it is your duty, one of your primary duties in that is
6 to ensure that the patients are well taken care of? I
7 mean, not you -- not medically treating them. I mean in
8 terms of their comfort level. In terms of making sure that
9 they can move around okay?

10 A. Correct.

11 Q. In terms of when you go to put them on the scale, or
12 take their blood pressure, that you treat them in a way
13 that there's no harm done to them?

14 A. Correct.

15 Q. Okay. And that's a major concern, because that's what
16 you've been trained to do, ---

17 A. Right.

18 Q. --- right? And part of your training does include
19 what we might call as a fall risk prevention.

20 A. Uh-huh.

21 Q. Do you know what that is?

22 A. No.

23 Q. You don't know what fall prevention is?

24 A. I mean, of the safety of a patient or anybody that,
25 you know, coming into the office. I guess.

1 Q. But if you had a particular patient who was at a risk
2 for fall. Do you understand you have some patients are
3 going to get classified as being fall risks?

4 A. Right.

5 Q. And if you had a particular patient that you knew was
6 a fall risk, that there are certain precautions you should
7 take with that patient?

8 A. We have wheelchairs in the waiting room, and so -- You
9 know we observe, you know, the patients come as they, you
10 know, are there. Whether they need a wheelchair, or if
11 somebody's with them, you know, to give them assistance,
12 too.

13 Q. But --

14 A. You have to observe.

15 Q. I understand that. But as your role, I'm talking
16 about your role ---

17 A. Uh-huh.

18 Q. --- as the medical assistant, does your training in
19 certain procedures as to ensure patients' safety when it
20 comes to fall prevention?

21 A. Well, I can't, you know, say, you know, be for sure
22 that I'm going -- you know, that -- for their safety. I
23 mean, I understand what you're saying. I want all the
24 patients, you know, to be safe when they come into the
25 office.

1 Q. Well, let me put it this way. You wouldn't leave --
2 if you had a ninety-year-old frail woman that you know had
3 a history of falls, you wouldn't leave her standing alone
4 in a room, would you?

5 A. No, I wouldn't.

6 Q. Okay. Because that wouldn't be the right thing to do?

7 A. Right.

8 Q. And you wouldn't put a ninety-year-old frail woman on
9 a scale and leave her there alone, either, would you?

10 A. Right. If somebody else wasn't assisting her.

11 Q. Okay. Well, let's talk a little bit about your
12 standard procedure, and then we'll get into the particulars
13 about what happened in May of ---

14 A. Okay.

15 Q. --- of 2012.

16 Patients come for their appointment, and then they
17 normally sit in the waiting room; is that correct?

18 A. Right, right.

19 Q. Okay. And your's is scheduled.

20 A. Right.

21 Q. And you would go to the front desk and get a patient's
22 chart when their turn came up; is that correct?

23 A. Correct.

24 Q. And then, you would go to the door of the waiting room
25 and call that patient's name?

1 A. Correct.

2 Q. And that patient would then get up, and whether they
3 were accompanied by somebody or not, would follow you in
4 the hallway thereafter?

5 A. Correct.

6 Q. Okay. And then, you would go down into the triage
7 room?

8 A. Correct.

9 Q. And the first thing you'd want to do is get their
10 weight?

11 A. Right.

12 Q. Okay. I'm talking in general terms now.

13 A. Okay.

14 Q. Do you -- Would you immediately take that patient as
15 soon as they walked into the room and put them on the
16 scales; or would you sit them down first, get them
17 comfortable, and then put them on the scale?

18 A. No. Well, most of our patients are pulmonary patients
19 with lung problems and, so that's why we have the scale
20 right there at the door, so that we can get their weight
21 first, instead of making them go and sit down, take their
22 vitals and then have them get back up, and then, you know,
23 take their weight. So, we usually take that, you know, the
24 weight first.

25 Q. Okay. Well now also there's --

1 A. As they come in --

2 Q. --- there's -- there's two chairs next to the scale
3 there.

4 A. And that's usually for family members --

5 Q. Your practice wouldn't have been to sit down the
6 patient in one of those ---

7 A. No.

8 Q. --- chairs first? You would ---

9 A. No.

10 Q. --- just immediately go and put them on the scale?

11 A. Usually yes.

12 Q. And then, you would read the -- the weight ---

13 A. The digital.

14 Q. --- and then you'd help them down off the scale?

15 A. Right. And walk them over to the chair that was
16 sitting by the treat -- the vital monitor.

17 Q. Okay. Take their blood pressure and everything?

18 A. Right.

19 Q. And then, once you finished all the vitals, you take
20 them into the examination room?

21 A. Correct.

22 Q. And that was your normal procedure you did that day in
23 and day out; is that correct?

24 A. Correct.

25 Q. Okay. Let's talk about -- And I know we're all

1 sitting here, and in a couple of months it's going to be
2 five years.

3 A. Yes.

4 Q. And even when I took your deposition a little while
5 ago, I think we're were over ---

6 A. Three ---

7 Q. --- three and a half years.

8 A. --- right. Correct.

9 Q. From the -- from that date. But even when I took your
10 deposition, and I asked you if you had a memory of Dorothy
11 Copeland, you told me you did. You reemember that?

12 A. I did.

13 Q. And as you sit here today, do you still have a vivid
14 memory of Dorothy Copeland?

15 A. I do.

16 Q. And you saw the picture that I put up before. Did
17 that represent the way you still picture Dorothy Copeland?

18 A. Well, she didn't have any oxygen on ---

19 Q. Right.

20 A. ---when she came into the office.

21 Q. Okay. But in terms --

22 A. But she was a small woman. And you know, an elderly
23 woman, I noticed right away.

24 Q. Was that the first time, in May of 2012, that you
25 actually assisted Dorothy Copeland?

1 A. Yes, sir, it was.

2 Q. You realize that she had been a patient there since
3 2007?

4 A. Right.

5 Q. And you understand that she had been there at least
6 ten times prior, correct?

7 A. Correct.

8 Q. So, is it your testimony that in all those previous
9 ten times, you were not the medical assistant that took her
10 into the triage room?

11 A. I believe I was once or twice, early on, when she
12 first started coming.

13 Q. But you don't remember that?

14 A. No, I don't.

15 Q. Do you -- do you remember if ever -- Well, strike
16 that. At the time you saw her on May 12th of 2012, she was
17 accompanied by Deborah Copeland; is that correct?

18 A. Correct.

19 Q. Is that the first time you ever met Deborah Copeland?

20 A. Yes, sir.

21 Q. So, even if you had treated her before, do you know
22 whether Deborah was ---

23 A. I didn't remember her.

24 Q. --- with her or not? What -- Who did you understand
25 Deborah to be?

1 A. Well, at first I didn't know. I just -- you know,
2 like I said, a lot of our patients come in with family
3 members or care givers. And I just assumed, you know,
4 maybe she was a family member.

5 Q. But you didn't know?

6 A. No, I didn't know.

7 Q. Did you ask her who she was?

8 A. No, I did not.

9 Q. So, did you know whether or not she had any medical
10 training?

11 A. No.

12 Q. And you didn't know whether she was a family member,
13 or ---

14 A. No.

15 Q. --- or a care giver?

16 A. Not when I saw her, I didn't, no.

17 Q. Okay. You didn't know if she could have been a Home
18 Health aid. You had no idea who she was?

19 A. No, I didn't.

20 Q. So, is it fair to say that you had no idea what her
21 level of training or understanding or anything might be, in
22 terms of how you should handle a ninety-year-old frail
23 woman with COPD, advanced mobility problems, and possible
24 dementia?

25 A. Well, we have a lot of elderly patients that come in

1 with family members. And as I called her back, I walked
2 over to her, and Deborah Copeland assisted Mrs. Copeland up
3 out of the chair, and so, I figured she was a family
4 member. And then, we turned around, you know, and walked
5 back to the triage room

6 Q. But even a family member, you have no knowledge
7 whatsoever of what her level of training or knowledge might
8 be in terms of ---

9 A. No, but a lot of the family members --

10 Q. --- patient safety -- Let me just asking my question,
11 please.

12 A. Okay.

13 Q. It helps the court reporter.

14 MADAM COURT REPORTER: Please.

15 A. I'm sorry. Okay.

16 Q. Okay. You had no idea whether she had any background
17 training, medical training, or fall prevention training, or
18 anything like that?

19 A. No, I didn't know.

20 Q. Okay. At that point in time, you wouldn't think that
21 it would have been wise to delegate any particular
22 procedures to Dorothy -- to Deborah Copeland, to take care
23 of Dorothy Copeland, would you?

24 A. Repeat the question.

25 Q. Well, you wouldn't want -- you wouldn't want Dorothy

1 to take her weight, and I think -- would you not?

2 A. No.

3 Q. And you wouldn't want her to take her blood pressure
4 or anything like that?

5 A. Absolutely not.

6 Q. And that's your job?

7 A. Correct.

8 Q. And that's your responsibility?

9 A. Correct.

10 Q. Okay. Now, when you get the chart of a patient, is it
11 your practice to look through the chart to get some
12 background information on the patient?

13 A. Not usually. I usually just look to see what they're
14 coming in for that, you know, particular day.

15 Q. Okay.

16 A. But when we sit down with a patient, I go over their
17 medications with them, and ask them if they're having any
18 problems at all.

19 Q. And that would have been part of the triage procedure?

20 A. Correct.

21 Q. We've never -- we never got to that part in this
22 particular ---

23 A. No, we never did.

24 Q. --- in this particular case. So, you didn't know of
25 any notations that were made in the -- in the records as to

1 Dorothy's condition at that time?

2 A. No, I did not.

3 Q. Did you know that in the previous records it was
4 documented that Dorothy had a history of falls?

5 A. No, I did not know at the time.

6 Q. Would you have liked to have known that?

7 A. Well, I don't -- you know, it would have been, I
8 guess, you know, nice to know. But if I would have known
9 that, and she was by herself, I probably would have put her
10 in a wheelchair and assisted her. But she had someone with
11 her that was helping her walk.

12 Q. And did you know that Doctor Creagh was concerned
13 about her decreased mobility?

14 A. No, I did not know that.

15 Q. And would you have liked to have known that?

16 A. I think that's something that the doctor, you know,
17 knew.

18 Q. At the time that Deborah was walking Dorothy back, did
19 it look like Dorothy needed assistance?

20 A. Yes. And that's why I walked over to them where they
21 were sitting in the chairs. And then, you know, as I
22 walked towards them, Mrs. Copeland got up and assisted ---

23 Q. Okay.

24 A. --- Mrs. Dorothy Copeland.

25 Q. Now, during your testimony, you got to the triage

1 room, you walked in first; is that correct?

2 A. Correct.

3 Q. And who was second?

4 A. Mrs. -- both Mrs. Copeland's.

5 Q. They walked in the room ---

6 A. Right behind me.

7 Q. --- together?

8 A. Right behind me. Yes, they were together.

9 Q. Okay. I'm just trying to picture it myself. We saw
10 what the door was; were walking side-by-side, one come in
11 before the other?

12 A. No, I was first.

13 Q. You were --

14 A. The hall is too small for more than three people.

15 Only two people can walk down the hall. So, they were --
16 they followed me.

17 Q. And what's the first thing you did when you walked
18 into the room?

19 A. As I walked into the room, I said to them that we need
20 to get her weight.

21 Q. Okay. When you say, we need to go, what did you mean
22 by that?

23 A. I said, I need to get her weight.

24 Q. You said, I need to get her weight?

25 A. Uh-huh.

1 Q. So, you needed to get her weight?

2 A. Right.

3 Q. And you talked about your normal procedure would be
4 that as soon as they came into the door, you would put her
5 on the scale?

6 A. Right.

7 Q. Okay. So, did you go to do that?

8 A. Well, I paused. I said, I need to get her weight, and
9 at that time, then, Mrs. Deborah Copeland was assisting her
10 onto the scale. She was stepping up.

11 Q. Where were you when you saw Deborah Copeland put her
12 on the scale?

13 A. As I was walking around the scales, she set her on the
14 scale. She was putting her on, and I walked over to the
15 desk to lay my chart down at that time. And then, when I
16 turned around, Mrs. Deborah Copeland was standing next to
17 the chair and in that second I turned and Mrs. Copeland was
18 falling.

19 Q. Okay.

20 A. I mean, it happened so quickly.

21 Q. Let's go back a little while.

22 A. Okay.

23 Q. Did Deborah Copeland have anything else in her hands
24 when she was escorting Dorothy Copeland down the hallway?

25 A. She had two pocketbooks.

1 Q. Two pocketbooks?

2 A. Uh-huh.

3 Q. Was she carrying anything else?

4 A. That's all that I saw, the pocketbooks.

5 Q. You don't know if she had an umbrella, as well?

6 A. I don't know.

7 Q. So, she had both pocketbooks on one arm?

8 A. She did.

9 Q. Okay. And was Dorothy Copeland holding onto her with
10 the other arm?

11 A. She -- Correct.

12 Q. Okay. And I'm just trying to picture it in my mind.

13 A. Right.

14 Q. Help the jury kind of picture this in my mind. We saw
15 the pictures.

16 A. Okay.

17 Q. You said you walked around the scale. The scale's
18 right there in the front ---

19 A. Right.

20 Q. --- and there's a chair right there.

21 A. Right.

22 Q. Okay.

23 A. So, as I came around, you know, is when I said, you
24 know, that I need to get her weight. And then, Mrs.
25 Copeland was right behind me. And then, you know she

1 started to proceed to put her on the scale.

2 Q. Okay. When you said, I need to get her on the scale,
3 why didn't you ---

4 A. I --

5 Q. --- at that point in time --

6 A. Well, I said, I need to get her weight.

7 Q. You need to get her weight.

8 A. That's what I said.

9 Q. Why didn't you, at that point in time, take Dorothy
10 and put her on the scale right away?

11 A. Well, she had her on her arm, I had the chart in my
12 hand and I wanted to set the chart down. And I knew that
13 she was -- Mrs. Copeland was being taken care of because
14 her daughter-in-law was holding her.

15 Q. Do you always have the chart in your hand when you
16 take any patient back at first?

17 A. Always.

18 Q. Okay. And you always put the chart down first before
19 you take the weight?

20 A. Usually I do, so I'll have both hands free.

21 Q. Okay. So, you don't really put them on the scale as
22 soon as you walk in the room, you do put your chart down?

23 A. Right.

24 Q. Okay. When you put your chart down, where we saw the
25 picture, on the other side of the room there?

1 A. No. That's where the -- right along those chairs,
2 there's a counter with a computer. And so, I laid my chart
3 right there by the computer.

4 Q. And when you -- you actually saw -- Your testimony is,
5 you actually saw Deborah put Dorothy on the scale?

6 A. Yes. She was stepping up on the scale.

7 Q. And then, you say you saw Deborah leave her on the
8 scale?

9 A. She went over to where the chairs were, apparently;
10 because when I was -- had my back and was laying the chart
11 down, and as I turned, she was at the chairs. Deborah was.
12 And when I looked and Mrs. Copeland was falling.

13 Q. So, you're saying that it -- Its your testimony that
14 Dorothy left her alone ---

15 A. Yes.

16 Q. --- on the scale. That's your testimony?

17 A. It is.

18 Q. And did Dorothy at that point have both her feet on
19 the scale?

20 A. Yes. She did.

21 Q. And she just left her there?

22 A. Yes. She was at the chair.

23 Q. She walked away, and she fell down?

24 A. Yes.

25 Q. And that's your testimony?

1 A. She had walked around to the chairs and left her on
2 the scale.

3 Q. What happened when Dorothy fell?

4 A. Well, I right away ran over there, and you know, I
5 asked her, you know, if she was okay. And she was
6 complaining about her wrist, her left wrist. And I could
7 tell that, you know, it was hurt, and I didn't want to move
8 her and so, I got Doctor Alleyne. I called Doctor Alleyne
9 right away. I left her there on the floor and stayed with
10 her. And Doctor Alleyne was in the next room, so I waited
11 for him to come out and then, as soon as he came out, I
12 called for him.

13 Q. And did he come right away?

14 A. Yes. Right away.

15 Q. And what was Dorothy doing in all this?

16 A. She was, you know --

17 Q. I mean, Deborah. What was Deborah doing while
18 Dorothy was --

19 A. She was sitting in the chair.

20 Q. She was just sitting in the chair?

21 A. She was just sitting in the chair.

22 Q. Didn't seem disinterested, or what?

23 A. Didn't get up, just sat there.

24 Q. Just sat there?

25 A. Correct.

1 Q. When the doctor came, did you tell the doctor what
2 happened?

3 A. I did.

4 Q. Did you tell him exactly what you told me just now?

5 A. That she had fallen, I did. No, not in detail. But I
6 told him that she had fallen off the scale.

7 Q. Okay. And did he ask any questions about how she
8 fell?

9 A. Not at the time. He was more concerned with Mrs.
10 Copeland. He wanted to examine her and check on her.

11 Q. And eventually, they got Dorothy in a wheelchair?

12 A. Correct.

13 Q. And did you --

14 A. After Doctor Alleyne examined her.

15 Q. Okay. Did at any point in time, did Denise Taylor
16 come down into the room?

17 A. She did.

18 Q. And how long after the fall did she come down?

19 A. Not long. Somebody -- One of the other girls called
20 and told Denise what had happened, the office manager, and
21 she came down very quickly.

22 Q. Did you tell Denise what happened?

23 A. I did.

24 Q. And you told her exactly what ---

25 A. Not in detail at that time.

1 Q. ---- you told me? Not in detail?

2 A. I just told her.

3 Q. So, just told her that she fell?

4 A. Correct.

5 Q. Did she ask you any questions?

6 A. No.

7 Q. Didn't ask you how she fell?

8 A. Well, I mean, I told her she had fallen off the scale.

9 Q. Okay. But she didn't ask you any questions about how
10 she -- where were you at the time that she fell off the
11 scales?

12 A. No. Not at that time.

13 Q. How she got on the scale?

14 A. Not at that time.

15 Q. Didn't ask any questions?

16 A. No. We were more concerned with Mrs. Copeland.

17 Q. Okay. Was anybody talking to Deborah?

18 A. No, I didn't. Now, I believe Denise did. She did.

19 Q. Did you ever say anything to Deborah?

20 A. No.

21 Q. You never said anything, well why did you leave her
22 there on the scale?

23 A. No, I didn't.

24 Q. You weren't concerned about that?

25 A. Well, that wasn't what I was concerned about. I was

1 more concerned about Mrs. Copeland being on the floor.

2 Q. And again, at this point in time since you had just
3 met Deborah for the first time you had no idea what her
4 relationship to Dorothy was; is that correct?

5 A. Correct.

6 Q. And you had no idea what she has ever done for Dorothy
7 up to this point in time?

8 A. No. I just observed that she was, you know, taking
9 care of her. Holding her and assisting her.

10 Q. Did you -- You didn't expect Dorothy to put her on the
11 scale, did you?

12 A. No. I did not.

13 Q. And you didn't ask Dorothy --

14 A. That's why I said, I need to get her weight.

15 Q. So, you didn't ask Deborah to put her on the scale?

16 A. No, I did not.

17 Q. So, it's your testimony that Deborah took it upon
18 herself to place Dorothy on the scale; is that correct?

19 A. Correct.

20 Q. I'm going to show you -- I'm going to show you what's
21 been marked as Plaintiff's and Defendant's Exhibit Number
22 Thirteen.

23 MR. MANZI: May I approach the witness, your Honor?

24 THE COURT: Yes.

25 BY MR. MANZI:

1 Q. And ask you if you recognize that.

2 A. I do.

3 Q. And what is that?

4 A. This is the paper that I had written about the
5 incident that happened on May 17th.

6 Q. Okay. This is your handwriting?

7 A. Correct.

8 Q. And it's your signature?

9 A. Correct.

10 Q. And what's the date on this?

11 A. May -- Oh, that I had written it?

12 Q. Yeah.

13 A. May 30th.

14 Q. May 30th?

15 A. Uh-huh.

16 Q. Now, this incident happened on May 17th; is that
17 correct?

18 A. Correct.

19 Q. Why did it take you until May 30th to write this?

20 A. Well, I -- the -- Denise, our office manager, asked me
21 to write it at that point and so, I did.

22 Q. She asked you to write it on May 30th?

23 A. Correct.

24 Q. No time between May 17th and May 30th did she ever ask
25 you to recite on written paper what happened?

1 A. No.

2 Q. Now, you had verbally told her what happened in
3 between that time though haven't you?

4 A. Correct.

5 Q. And exactly the way you wrote it down on this piece of
6 paper?

7 A. Yes.

8 Q. Okay. I'm going to have you read this for the -- for
9 the record and for the jury, exactly what you wrote.

10 A. Okay.

11 "On May 17th, 2012, Mrs. Dorothy had an appointment to
12 see Dr. Creagh at 2:15 pm. I called the patient back for
13 her appointment and took her to the triage room. She was
14 accompanied by another female, her daughter-in-law. I told
15 the patient I needed her on the scale so I could get her
16 weight. The female helped her up, and I went to set her
17 chart on the counter. When I turned around, the female had
18 left the patient, and was starting to sit down. As soon as
19 I walked to the scale, the patient had fallen off, and was
20 on the floor. She was complaining that her wrist was
21 hurting. I left the patient sitting on the floor, because
22 she was hurting, and I did not want to move her. I told
23 the female she probably should take her to the ER to get
24 her wrist X-rayed. She wanted to know if we could just X-
25 ray her here. She did not want to take her to the ER. Dr.

1 Alleyne came out of a room, and I called him, and he picked
2 her up, and we put her in a wheelchair. Denise came and
3 spoke to the daughter-in-law, and told her we would try to
4 get her in at the orthopedic, so she wouldn't have to take
5 her to the ER. Dr. Creagh checked over the patient, and we
6 got a bandage for her wrist, because it was bleeding."

7 Q. And signed Joan Edge?

8 A. And then, I signed it. Uh-huh.

9 Q. 5.30.12?

10 A. Correct.

11 Q. And you gave this statement to Denise?

12 A. Yes, after I wrote it.

13 Q. Did you know what Denise did with that statement after
14 that?

15 A. No, I don't.

16 Q. Did you ever have any input into the patient chart for
17 Dorothy Copeland, for this visit on May 17, 2012?

18 A. No.

19 Q. After that, did Doctor Creagh ever ask you exactly
20 what happened?

21 A. Well, I went -- After the incident, I went -- after --
22 when Denise came down, I went -- she said, go get Doctor.
23 Creagh, so, I went and got Doctor Creagh to tell him. And
24 at that time I told him what happened, that Mrs. Copeland
25 had fallen off the scale, and she was in the triage room

1 and he came to see her then.

2 Q. Okay. And again, the way you just described it is the
3 way it's in the chart, she had fallen off the scale.

4 A. Correct.

5 Q. Okay. But the chart doesn't reflect that Deborah had
6 put her on the scale?

7 A. No.

8 Q. And you didn't tell Doctor Creagh that, you just told
9 him she fell off the scale?

10 A. Right. That's all I said at the time.

11 Q. And that's what you -- okay. And that's what you said
12 on May 17, 2012?

13 A. Correct.

14 Q. And in fact, the only documentation we have of your
15 version of the -- of the facts is this handwritten note,
16 written two weeks later; is that correct?

17 A. Correct.

18 Q. There's no other note, there's no other diary of what
19 you say, other than what you wrote two weeks after the
20 fact?

21 A. Right.

22 Q. Did you feel at the time that it was okay for Deborah
23 to put her on the scale?

24 A. I did. We have a lot of patients that come in with
25 family members or care givers, and they assist the patients

1 in a lot of ways. A lot of times, the patients want the
2 family member to help them.

3 Q. Do you think it was okay for Deborah to leave her on
4 the scale unattended?

5 A. No. That, I don't.

6 Q. So, you don't know but you think it's okay for a
7 patient to -- for a family member to put them on the scale,
8 how do you know that they're going to stay with them once
9 they're up on the scale, to make sure they don't fall?

10 A. Well, usually I'm standing right there.

11 Q. But in this case, you weren't standing there.

12 A. No. I didn't know that she was going to put her on
13 the scale, because I -- when I went in, I said, I need to
14 get her weight. That's all I said.

15 Q. And when you saw her putting her on the scale, did you
16 say anything to her like, don't do that, I'll take care of
17 it?

18 A. Well, no, I didn't think she was going to leave her.
19 I wanted to put my chart down so I could turn around.

20 Q. Well, did you tell her don't leave her if you're
21 putting her on the scale?

22 A. No. I assumed since she was the care giver that she
23 wouldn't leave her.

24 Q. You're telling me before you didn't know she was a
25 care giver.

1 A. Well, she was assisting her. And I just assumed, just
2 by observation. I mean, I --

3 Q. Again, you had no idea what her level of training, her
4 background ---

5 A. No.

6 Q. --- or anything of that nature as to whether she knew,
7 if I put her on the scale I should stay with her, because
8 she might be unsteady on her feet and fall?

9 A. We have a lot of patients that come in, and I've been
10 doing this for a long time, and you have to observe the
11 patient, the family member that's with them, and -- and
12 that's how you determine.

13 Q. So, you determined at that time that Deborah Copeland
14 was capable of ---

15 A. I did.

16 Q. --- putting her on the scale?

17 A. She brought her into the office. She helped her up
18 out of the chair, and put her arm through Mrs. Copeland's.
19 I did feel like she was, you know, knew what she was doing,
20 and that she was assisting her.

21 Q. But then, by your own testimony it was wrong for her
22 to leave her alone on the scale, right?

23 A. Right.

24 Q. So, she didn't know what she was doing.

25 A. Well, it would've been wrong for anybody to just leave

1 her on the scale. I mean.

2 Q. So, your assessment that she was capable of doing that
3 was wrong, then, wasn't it?

4 A. I wouldn't have thought that she would have left her
5 on the scale. I mean --

6 Q. You thought -- you thought she was capable of putting
7 her on the scale, but you had no idea that she was
8 incapable of staying with her.

9 A. Well, my observation would have presumed that she
10 would have stayed there, stand there with her on the scale.

11 Q. But that's your observation. You're the medical
12 professional.

13 A. Right.

14 Q. You know not to leave her alone on the scale, right?

15 A. Right.

16 Q. You wouldn't have left her alone on the scale?

17 A. No. And you -- a family member would not have left an
18 elderly patient by their selves, you would think.

19 Q. You would think?

20 A. You would think.

21 Q. Well, you know that Deborah said that she didn't do
22 that, don't you?

23 A. Yeah.

24 Q. And in fact, the first time you learned that Deborah
25 had a different version of the facts was when I took your

1 deposition about a year or so ago; is that correct?

2 A. Correct.

3 Q. So, from between May 17th of 2012 until sometime in
4 2016, no one from CPP ever told you that Deborah Copeland
5 had a different version of the facts?

6 A. No.

7 Q. No one ever told you to get your side of the story, to
8 find out if there was some inconsistencies, or to let you
9 know this is what Deborah said happened. You were never
10 asked that, correct?

11 A. No.

12 Q. And in fact, you didn't even know that this lawsuit
13 had been filed; is that correct?

14 A. Not for some time, I didn't.

15 Q. No a --

16 A. I mean, it was probably the least thing in my mind
17 that that would happen.

18 Q. Okay. But if a lawsuit is filed, and the lawsuit's
19 accusing you of acting below the standard of care when
20 taking care of Dorothy Copeland, no one from CPC ever ---

21 A. Well, I believe, when ---

22 Q. --- talked with you at that time?

23 A. --- in -- They did say something about it. You know,
24 they did.

25 Q. Only when it was time for your deposition?

1 A. No, before.

2 Q. Before?

3 A. It was before. But remember, I had retired, too ---

4 Q. Okay.

5 A. --- in 2015.

6 Q. But you had --

7 A. Correct.

8 Q. And in fact, isn't it true that you were at your
9 deposition in -- excuse me -- I just want to be sure on the
10 dates.

11 Your deposition was taken on October 27, 2015. Three
12 years -- over three years after the fact, after this claim
13 had been made. And you said that when that handwritten
14 note was handed to you, were you not?

15 A. I'm not sure.

16 Q. Okay. Well you recall that that was the first time
17 that I ever saw that handwritten note?

18 A. Yes, I do. I remember you saying that.

19 Q. Okay. So, I had never seen that note before, either,
20 right?

21 A. I assume.

22 Q. Okay. And we're talking almost three years after the
23 fact, that that information was raised.

24 But again, but no one ever approached you and tried to
25 get your side of the story again, after you had learned

1 that Deborah was saying something different?

2 A. No.

3 Q. And it's your testimony here that, as far as you can
4 recall, you never reviewed any of Dorothy Copeland's
5 previous medical records prior to the time you saw her on
6 May 15?

7 A. No, not prior.

8 Q. And you would agree with me that, if you had put her
9 on the scale and left her alone, that would be wrong, would
10 it not?

11 A. I wouldn't have left her alone.

12 Q. All right. Because it would have been the wrong thing
13 to do.

14 A. Yes.

15 Q. Okay. You would have been -- you wouldn't do that,
16 because your training and everything tells you not to do
17 that?

18 A. I think for anybody would have not left her alone.

19 Q. All right.

20 A. Because she was so frail.

21 Q. Okay. But you -- you were the one that had the
22 medical responsibility for Dorothy at the time she entered
23 into the room; is that correct?

24 A. I -- I -- As far as calling the patient back, yes.

25 Q. You were responsible for all of the triage activities

1 that were going to take place ---

2 A. Right.

3 Q. --- in the room.

4 A. For the weight, getting the weight.

5 Q. You -- you have a major responsibility for that, not
6 -- not Deborah?

7 A. But we have a lot of patients, like I said, that come
8 in assisting the patients.

9 Q. Well --

10 A. And -- and putting them on the scale, and setting them
11 down; or taking them in a room and putting -- helping put a
12 gown on 'em.

13 Q. I understand. But let's -- Between the two of you,
14 between you and Deborah Copeland ---

15 A. Uh-huh.

16 Q. --- who had more medical training?

17 A. I did.

18 Q. Between the two of you, who had more responsibility to
19 make sure that while she was in the facility, in the triage
20 room, who had more responsibility to insure that no harm
21 befell Dorothy Copeland?

22 A. Well, I can't say that I have complete responsibility
23 of an individual. Personally, I would like every patient
24 -- or -- and any person that enters our building to be
25 safe. But I can't, you know, I don't have control of that.

1 I mean, accidents happen. Things happen.

2 Q. Well, you're not saying this was an accident, because
3 you -- according to your testimony, Deborah Copeland
4 deliberately put her on the scale.

5 A. No, I didn't say that.

6 Q. Well, part of your testimony you saw Deborah Copeland
7 put Dorothy on the scales?

8 A. Correct.

9 Q. Okay. And that was, from your testimony, it seemed
10 like an intentional act, for her to put her on the scale.

11 A. Correct.

12 Q. Okay. And I guess my question was, and I'm not -- I'm
13 not saying that you have to ensure absolute safety of any
14 kind, I'm just talking about the two of you, wWho had more
15 responsibility for --

16 A. Well, at the time, we hadn't even come into -- you
17 know, we had just come into the room, and she was assisting
18 her. So, I -- We hadn't even really gotten started yet, as
19 far as --

20 Q. Well, at what point in time do you think you had to
21 take control of the patient?

22 A. Probably when I would have put her on the scale. And
23 Mrs. Copeland ---

24 Q. But --

25 A. --- would have sat down.

1 Q. And you usually do that immediately, but in this case
2 you didn't.

3 A. I didn't.

4 MR. MANZI: I have no further questions at this time,
5 your Honor.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, let's go ahead and take a brief recess, refresh
8 yourselves, get something to drink, whatever.

9 Don't talk about the case. You've only heard from
10 half a witness. Okay? Y'all have a good break.

11 (JURY EXITS COURTROOM ON RECESS AT 02:58 PM.)

12 THE COURT: All right. Anything before we take a
13 break?

14 MR. MANZI: I'm fine.

15 THE COURT: All right. Thank you.

16 Thank you, ma'am. You may step down. Don't talk to
17 anybody about your testimony.

18 MS. EDGE: Okay.

19 COURT REPORTER: Let me have that exhibit, ma'am.
20 Thank you.

21 MS. EDGE: Okay. You're welcome.

22 THE COURT: All right, we're down

23 (COURT IN RECESS AT 03:00 PM.)

24 (COURT BACK IN SESSION AT 03:23 PM.)

25 THE COURT: All right. Thank you. Y'all can be

1 seated.

2 Anything before we bring the jury in?

3 MR. MANZI: No, your Honor.

4 THE COURT: All right. Bring 'em in.

5 MS. CHESLEY: Your Honor, is the position of that
6 board okay with you?

7 THE COURT: Yes.

8 MS. CHESLEY: Okay.

9 (JURY RE-ENTERS COURTROOM AT 3:23 PM.)

10 THE COURT: All right. All members of the jury are
11 present. Ms. Chesley, your witness.

12 MS. CHESLEY: Thank you, your Honor.

13 CROSS-EXAMINATION

14 JOAN EDGE BY MS. CHESLEY:

15 Q. Hello, Joan.

16 A. Hi.

17 Q. Joan, would you tell the jury where you live, and how
18 long you have been in the Rock Hill area?

19 A. I live in Rock Hill. I've been in this area for the
20 past twenty-seven years.

21 Q. And what is your profession?

22 A. Registered medical assistant.

23 Q. And how long have you been a medical assistant?

24 A. Forty-three years.

25 Q. Tell the jury about your education with medical

1 assistant.

2 A. In 1972, I took a course as a medical assistant. And
3 then, in 2001 I took another course to -- and -- to become
4 registered, as a registered medical assistant.

5 I also took a course in 2002, to learn pulmonary
6 function.

7 Q. And what is pulmonary function, Joan?

8 A. It's a breathing apparatus that we -- to check the
9 patient's lungs.

10 Q. Okay. Describe -- describe your work history. Kind
11 of give an overview to the jury of your work history ---

12 A. Okay.

13 Q. --- as a medical assistant.

14 A. I started and lived in Jacksonville, Florida, and
15 worked for fifteen years for a general practitioner. And
16 then, he retired, and the next five years I worked for a
17 general surgeon in Jacksonville. And then, we got
18 relocated to Charlotte, North Carolina, where I worked for
19 an internist for four years. And then, another internist
20 for another five years. And then, I went to work for a
21 gastroenterologist for three years, and then came down to
22 Carolina Pulmonary Physician for the past, almost fourteen
23 years.

24 Q. What is, if you had to describe the general role of
25 the medical assistant in the doctor's office practice, what

1 would that be?

2 A. Well, we assist the physician, and also, we do the
3 clinical and clerical procedures in a medical office.

4 Q. Describe some of the specific activities that you do
5 as a medical assistant at Carolina Pulmonary.

6 A. We assist the doctor. I take the vitals of the
7 patients, the blood pressure, their weight, their oxygen.
8 We do sporamotries in the office, draw blood, give
9 injections.

10 Q. What is a registered medical assistant? How is that
11 different from just a medical assistant?

12 A. Well, we're certified. We're -- You have to take, you
13 know, take a course and an exam when you become registered.

14 Q. Now, is that different from a registered nurse?

15 A. Yes.

16 Q. Okay. So, you are not a nurse?

17 A. No.

18 Q. Okay.

19 A. I'm a medical assistant.

20 Q. Okay. And your role is different from that of a
21 nurse; is that correct?

22 A. Correct.

23 Q. Are patients ever accompanied to the doctor's office
24 visits by a family member or care provider?

25 A. Almost all the time most of our patients are

1 accompanied, because they're -- a lot of our patients are
2 elderly.

3 Q. And that was going to be my next question. Is there a
4 specific subgroup of patients that you tend to see more
5 family or care giver involvement?

6 A. Yes.

7 Q. What would that be, the elderly?

8 A. Elderly patients, uh-huh.

9 Q. Okay. Are family members allowed to come back to the
10 triage and exam rooms with patients?

11 A. Absolutely.

12 Q. Okay. Why is that important?

13 A. Well, because a lot of times the family members will
14 help give us, you know, they'll assist the patient,
15 accompany them, and they'll give us information a lot of
16 times that the patients can't remember. So, it helps us
17 out to have a family member there, telling us things about
18 the patient:

19 Q. Do family members ever physically assist patients in
20 the office setting?

21 A. Oh, frequently, they do.

22 Q. Okay. Describe what kinds of activities family
23 members or care givers may -- may assist with.

24 A. Well, they'll assist the patient, walk with them to
25 the room, assist them getting on the scale, assist them if

1 they have to put a gown on, assist them going to the
2 restroom. A lot of times, a family member or care giver
3 will do that.

4 Q. What -- what if you have a patient that is alone and
5 needs assistance?

6 A. Then, I will assist them.

7 Q. What if you have a patient, and a family member
8 remains in the waiting room?

9 A. Then, I'll assist the patient.

10 Q. What if a family member appears hesitant in assisting?

11 A. Then, I will ask them, do you want me to, you know,
12 assist the patient; or if I feel like they need to get a
13 wheelchair, we have them in the waiting room. You know,
14 I'll get a wheelchair for the patient. But I'll ask the
15 family member if I see that they're hesitant.

16 Q. How do you determine -- How do you make that
17 determination, if a family member is able to assist?

18 A. You have to observe when you go out to the waiting
19 room, and you know, just observe the patient, and see what
20 the situation is.

21 Q. Do you have to ask the question, are you able to
22 assist?

23 A. Usually a family member will get up with the patient.

24 Q. Do you need to ask the question, can I take over for
25 you?

1 A. No. You don't have to do that.

2 Q. You mentioned one of your roles as the medical
3 assistant was to triage the patient. What does that mean
4 when we say the word triage? What does that include?

5 A. Well, I get the patient's weight. Then, I sit them
6 down and take their vitals. Their blood pressure, their
7 oxygen, their temperature, we take. And then, we go over
8 their medications, and ask them if they're having and
9 problems, and why they're here for the visit today.

10 Q. At Carolina Pulmonary is there a particular order that
11 you do the triage activities?

12 A. Usually, there is. We all have, you know -- there is.

13 Q. Tell me what that -- what that -- what would you do
14 first, second, and third?

15 A. Well, first we would get their weight.

16 Q. And why?

17 A. Because it's right there at the door. Most of our
18 patients have lung problems, breathing. And so, we don't
19 want to have them come and sit down, and then have to get
20 them back up, and -- you know, to take their weight, so,
21 you get their weight right away when they come in. And
22 then, we take them and have them sit down by the vital
23 machine, so I can get their blood pressure and their oxygen
24 and temperature.

25 Q. How is -- If you were going to tell the jury how you

1 obtain a patient weight, walk them through the steps.

2 A. Well, usually, you know, some of our patients can step
3 up on the scale on their own. And then, there's some that,
4 you know, you will help. You stand right there, so that
5 you can get the digital reading from the -- it's on the
6 wall. And then, I usually will write it down, will log it.

7 Q. And so, whose job is it to obtain the actual weight?

8 A. It's my job.

9 Q. Okay. Does a family member ever assist with the
10 process?

11 A. Not with getting the weight, the actual weight, but
12 they do assist with putting the patient on the scale.

13 Q. Is stepping up on the scale considered obtaining the
14 weight?

15 A. No.

16 Q. Okay. Joan, I want to switch gears and ask you about
17 the events of May 17th, 2012. And you have stated that you
18 remember those events, correct?

19 A. Correct.

20 Q. Why do you think you remember this patient almost five
21 years later?

22 A. Well, because she fell, and I had never in my forty-
23 three years had a patient fall, and so, I remember it.

24 Q. Tell me what your first recollection is of Mrs.
25 Copeland on May 17th.

1 A. Well, I went out to the waiting room to call her back,
2 and I noticed that she was an elderly woman, and I looked
3 in her chart and, you know, saw that she was ninety. And
4 she was very frail, real small, very thin.

5 Q. Okay. And was anyone with her?

6 A. Yes. There was a lady with her.

7 Q. Okay. And what did you observe when you went to the
8 waiting room?

9 A. Well, I got her chart, and then I called her name and
10 started to walk towards her. And as I did, Deborah
11 Copeland stood up to help Mrs. Copeland up.

12 Q. Okay. And then --

13 A. And I -- I just said hello,, and you know, that we
14 were going to go back to the triage room.

15 Q. And what happened next?

16 A. I turned around, and Mrs. Deborah Copeland had Mrs.
17 Dorothy Copeland, she had put her arm through her, and was
18 assisting her. And so, we walked down the hall to the
19 triage room. I was in front of them, and, you know, they
20 were walking behind me.

21 Q. And I think you mentioned before that she had two
22 pocketbooks?

23 A. Yes.

24 Q. How do you remember that?

25 A. I love pocketbooks. I'm a pocketbook fanatic ---

1 Q. Okay.

2 A. --- so, I notice women's pocketbooks.

3 Q. Okay. What I'd like to do it put up for the jury --
4 these have already been introduced into evidence.

5 Joan, if --

6 MS. CHESLEY: Your Honor, may I ask the witness to
7 come down?

8 THE COURT: Sure.

9 MS. EDGE: Okay.

10 THE COURT: Ma'am, if you need to step down, you can
11 step down.

12 BY MS. CHESLEY:

13 Q. Joan, what I'd like you to do ---

14 A. Uh-huh.

15 Q. --- is kind of walk the jury through, kind of the
16 journey ---

17 A. As we did --

18 Q. --- from the waiting room to the triage area.

19 A. And this is the door, right here, that we go to and
20 pick up the charts, right here on the counter, and the
21 patients are sitting here. And I believe that they were
22 sitting along against the wall, two of them, you know, when
23 I called them to.

24 And then, we went on --

25 Q. Joan, come -- come around this way.

1 A. This way? Okay.

2 Q. There you go.

3 A. Okay. And this was the door, and we started walking
4 down here, and they were following me. The hall is so
5 small that, really only two people can walk into the hall.

6 So, I -- I led the way, and they were right behind me.
7 Then, we turned the corner to the right, which is right
8 here, and then came on down this hall. And then, we have
9 to take a left, and then we're right here at the triage
10 room.

11 Q. Okay.

12 A. And this is where we went into.

13 Q. Okay. Let me switch our ---

14 A. Okay.

15 Q. --- posters. I'm not high-tech.

16 All right, Joan. Kind of -- and you may want to start
17 with the picture on the right.

18 A. Okay.

19 Q. Explain -- and tell the jury about the triage room.

20 A. Okay. This is our triage room. This is usually where
21 I sit. The computer is here on a long desk, right here.
22 And this is the vital monitor, and the patient sits here
23 and I take her vitals. This is the doorway where we came
24 in, and the scale was.

25 And as we came in, and I walked around here, as soon

1 as we walked in, you know, I said to Mrs. Copeland that,
2 you know, I need to get her weight. I kind of paused. And
3 then, she went ahead and stepped her up there, and I walked
4 over here to lay my chart down. And as I turned around, --
5 well, I'll show you here better. I came over here --

6 Q. Kind of move to the side, Joan, so they can see the
7 picture.

8 A. Okay. You know, came over here to lay my chart down
9 by the computer. And as I turned around, started to turn
10 around, Mrs. Copeland was already here, Deborah Copeland,
11 was at the chair, and Mrs. Dorothy Copeland then, had
12 fallen off the scale. I mean, it just happened like that,
13 very quickly.

14 Q. Describe while you're still down here, and then I'll
15 have you take your seat, if you would, the position that
16 Mrs. Copeland was in when she fell.

17 A. Her feet were towards the scale. She had fallen off,
18 and her head was over here.

19 Q. Okay. All right, thank you. Thank you, Joan.

20 (WITNESS RETURNS TO WITNESS STAND.)

21 Q. Now, tell me how long all of this -- What was the
22 time frame, from the time you literally walked in the door
23 until the fall occurred?

24 A. I mean, it happened so quickly. It was just really
25 fast.

1 Q. Okay. So, Mrs. Dorothy Copeland is on the floor.

2 Tell the jury what happened next.

3 A. Right away, I went to her, and you know, squatted down
4 and asked her if she was okay, and she was complaining of
5 her wrist. That's what she complained about. And I told
6 her, I want you to stay on the floor, I don't want you to
7 move. Because I knew Doctor Alleyne was in the next room,
8 and I wanted him to come in and check her. I didn't want
9 to move her. So, I stayed there with her, and it was maybe
10 just a few minutes -- not even minutes, seconds -- that
11 Doctor Alleyne came out, and I called for him, and he came
12 in right away.

13 Q. Did anyone else come to the room?

14 A. One of the girls had heard what had happened, and had
15 called up to Denise, our office manager, and she came down
16 then.

17 Q. Was anything brought to the room?

18 A. A wheelchair was brought to the room.

19 Q. Did you observe Doctor Alleyne checking the patient?

20 A. I did.

21 Q. Okay. And was she moved from the floor at any point?

22 A. After he examined her and, you know, to find out what
23 was going on, he then lifted her up and set her into the
24 wheelchair.

25 Q. Okay. Did you have any discussion -- was there any

1 discussion that you had with Deborah Copeland about the
2 emergency room?

3 A. I might have said we probably, you know, during all of
4 the excitement and stuff, that we probably needed to take
5 her to the emergency room to be X-rayed.

6 Q. All right.

7 A. And I do remember Mrs. Copeland saying, can't you do
8 the X-ray here, but we only do chest X-rays in our office.

9 Q. Did anyone else -- there was you, there was Doctor
10 Alleyne, at what point did other -- did anyone else come to
11 the room?

12 A. Well, when Denise came to the room, she told me to go
13 get Doctor Creagh, because Mrs. Copeland was Doctor
14 Creagh's patient, so, I went and got Doctor Creagh. I told
15 him what had happened, that she had fallen off the scale,
16 and he came then, to check her out.

17 Q. Did -- did you observe Doctor Creagh going into the
18 triage room?

19 A. I did.

20 Q. Okay. Did you observe him doing anything while he was
21 in the room?

22 A. He looked at her wrist, and her wrist was cut a little
23 bit from where, I guess, she had caught herself. And so,
24 he had told one of the other girls to go get a band-aid.

25 Q. Now, were you present the entire time that Doctor

1 Creagh was in the room with her?

2 A. No. After that, I went back into, then, the nurse's
3 station, so he could, you know, examine her.

4 Q. Okay. How were you feeling?

5 A. I mean, I was sad that she had fallen. I felt bad
6 about it.

7 Q. Did you have any more interaction with either Mrs.
8 Dorothy Copeland or Debbie Copeland that day?

9 A. No, I did not.

10 Q. Okay. Did you tell anyone what happened that day?
11 Did you tell anyone about what had occurred in the room?

12 A. Well, Doctor Alleyne, Doctor Creagh, and Denise.

13 Q. Did you at any point ask Deborah Copeland to put the
14 patient on the scale?

15 A. No, I did not.

16 Q. Did you have any concern when you saw her beginning to
17 assist her to step up on the scale?

18 A. No, I didn't, because a lot of our fam -- you know,
19 patients' family members do that. Assist, you know, hold
20 onto the patients. You know, it's real common. Family
21 members or care givers will help the patient onto the
22 scale.

23 Q. And again, is assisting to step on the scale
24 considered the weighing process?

25 A. No, it's not getting the weight. That's what I have

1 to do.

2 Q. Any other interactions that you had with Mrs. Dorothy
3 Copeland at any time?

4 A. After?

5 Q. Yes.

6 A. Okay. Well, she came back into the office a few
7 months later, and I looked at -- you know, looking at the
8 schedule, and I saw her name there. And so, when she had
9 come in, I went out to the waiting room, and I gave her a
10 hug. She was in a wheelchair then, and just checking to
11 see how she was doing, asking her. And that was all that,
12 you know. I didn't take her back that day.

13 MS. CHESLEY: Your Honor, may I have a moment's
14 indulgence?

15 THE COURT: Yes.

16 MS. CHESLEY: Thank you.

17 Your Honor, that's all I have.

18 THE COURT: All right. Any redirect?

19 MR. MANZI: Yes, your Honor.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION

22 JOAN EDGE BY MR. MANZI:

23 Q. First question, where this -- where this chart is.

24 A. Okay.

25 Q. You said you saw Deborah go into -- which chair was

1 she sitting in? This one, or that one?

2 A. She was standing, you know, when -- standing by the
3 chairs when I was turning around. Probably, she was
4 sitting on the end one.

5 Q. This one here?

6 A. No, the one on the left.

7 Q. The one on the left?

8 A. I believe. I'm not a hundred percent sure, because I
9 was then more concerned with MRs. Copeland. I wasn't
10 really engaged which chair she was sitting in. So, I can't
11 say a hundred percent.

12 Q. So, you -- she was sitting down in the chair?

13 A. But she was sitting down.

14 Q. So, she had gotten from where she had put her on the
15 scale, supposedly ---

16 A. Uh-huh.

17 Q. --- as you testified, walked all the way over there,
18 put her two pocketbooks down.

19 A. Uh-huh.

20 Q. Maybe an umbrella, and sat down. And then, Dorothy
21 Copeland had fallen?

22 A. She wasn't sitting down when I was turning around.

23 Q. Okay.

24 A. She was still standing by the chairs. And then, when
25 I turned, then Mrs. Copeland fell. So, I don't know when

1 she sat down, really, because I -- like I said, I wasn't
2 concerned with Mrs. -- well, Copeland. I was more
3 concerned with Dorothy.

4 Q. Well, let me -- was she sitting down while Dorothy
5 Copeland was falling?

6 A. No. She was standing by the chair.

7 Q. So, she was still standing up. But then after Dorothy
8 Copeland fell, it's your testimony ---

9 A. She sat down.

10 Q. --- that she sat down?

11 A. Uh-huh.

12 Q. That she saw her fall, and sat down. That's your
13 testimony?

14 A. Yes.

15 Q. Okay. I just want to make sure. And when you said
16 you put the chart down, did you put it down about in this
17 area here?

18 A. On the right side, right next to the computer.

19 Q. Next to the computer here?

20 A. Next to the computer.

21 Q. So, you were standing maybe about two or three feet
22 from --

23 A. A little bit further.

24 Q. A little further?

25 A. I mean, I walked over to the counter and laid it --

1 you know, set the -- set it down.

2 Q. Okay. Now, in terms of the scale, you saw her put her
3 on the scale?

4 A. She -- I saw her putting her up on the scale.

5 Q. Okay.

6 A. She started ---

7 Q. And --

8 A. --- putting her on the scale.

9 Q. And you testified that this all happened real fast.

10 A. It did.

11 Q. Real fast. Okay. Dorothy ---

12 A. Uh-huh.

13 Q. --- our ninety-year-old frail woman ---

14 A. Right.

15 Q. --- and I'll show you some other things from your
16 chart, did she hop on the scale?

17 A. No, she didn't hop.

18 Q. Okay. Did she put one foot on the scale?

19 A. Yes.

20 Q. And then, the other foot ---

21 A. And Ms. Copeland ---

22 Q. --- on the scale?

23 A. --- was hold -- helping her.

24 Q. Okay.

25 A. I don't --

1 THE COURT: Ma'am, stop.

2 MS. EDGE: Okay.

3 THE COURT: Let him finish.

4 MS. EDGE: Okay.

5 THE COURT: Let her finish.

6 MR. MANZI: Got you.

7 THE COURT: Again, the court reporter can't take down
8 stuff ---

9 MS. EDGE: Okay.

10 THE COURT: --- with people talking over each other.

11 All right. Ask your question.

12 BY MR. MANZI:

13 Q. Did she put one foot up on the scale?

14 A. Yes.

15 Q. And then, the other foot?

16 A. Yes.

17 Q. Okay. Did it take her a little while to do that?

18 A. No, it happened very quickly.

19 Q. So, Dorothy was able to get that foot up there and the
20 other foot pretty quick?

21 A. I had my back turned, and was putting the chart on the
22 counter. So, I -- All I saw was her starting to get on the
23 scale. When she fell, she fell off the scale with both
24 feet on the scale.

25 Q. I understand that. But you also testified that it

1 kind of happened real fast.

2 A. It did. But I mean, I was right there, too, and saw
3 it happen.

4 Q. But you can -- you tell us how long it took Dorothy to
5 get up on the scale?

6 A. I'd say just a couple of seconds:

7 Q. It should pop up in a second here.

8 Here we go. I don't know if you can see that okay. I
9 know it's a little difficult. Can you see it?

10 A. I can.

11 Q. This is an office note ---

12 A. Uh-huh.

13 Q. --- of Dorothy Copeland's, from 7.21.11. Which, by my
14 calculation, would be about ten months before the incident,
15 correct?

16 A. Uh-huh.

17 Q. Okay. We look -- this is Doctor Creagh's note.

18 A. Okay.

19 Q. Okay. And I'll read it to you and the jury, so they
20 can see it. If you'll look down about the middle of the
21 note, "*She has increasingly become less mobile over the*
22 *past several months; and has also noted inability to*
23 *ambulate without being unsteady on her feet, and having a*
24 *tendency to fall. Being supported by her daughter, who*
25 *walks with her, but is not able to do this continuously.*

1 *She is not able to use a cane or a walker at this time,*
2 *because she lacks the strength and the balance to use a*
3 *walker or a cane, and is not able to self-propel a manual*
4 *wheelchair, due to her severe COPD."*

5 You see that?

6 A. Uh-huh.

7 Q. That was Doctor Creagh's assessment of her ability,
8 was it not?

9 A. I assume.

10 Q. And if we look further down, his impression.

11 *"Inability to ambulate without the danger of falling."*

12 Now, as you see that description, that really
13 describes a woman that has difficulty getting around.

14 Would you agree?

15 A. I agree.

16 Q. And wouldn't you agree that probably even the woman
17 might have difficulty even stepping up?

18 A. Not with the assistance.

19 Q. All right. But she still would take a little time?

20 A. She had her arm through Mrs. Copeland, and was
21 assisting her up.

22 Q. I'm sure, but Mrs. Copeland in anyway she wouldn't
23 have lifted her foot, now, and put it on the scale, would
24 she?

25 A. No.

1 Q. Okay. So, Dorothy's the one who had to lift her foot
2 ---

3 A. She stepped up.

4 Q. --- and put it on the scales, and lift her other foot
5 and put it on the scale. And doing all of that without
6 falling, as she's described here; is that correct?

7 A. Yes.

8 Q. Let me show you another note. This is 10.13.11. Now,
9 we're only about seven months 'til the incident. And
10 again, I'll read for you, *"Failure and difficulty*
11 *ambulating, which puts her in the position of having the*
12 *danger of falling, as she is unstable on her feet."*

13 That's Doctor Creagh's assessment that's five months
14 before the fall. Now, does this describe a woman, to you,
15 that needs almost what I would say maximum assistance in
16 getting around and moving around and stuff?

17 A. Yes. But I also feel like that, if she was having
18 trouble, that Mrs. Deborah Copeland would have asked for a
19 wheelchair when I called her back. But apparently, she
20 felt -- She brought her into the office. She walked her
21 into the office, walked her down the hall.

22 Q. But this is Doctor's Creagh's assessment from his
23 observation ---

24 A. Right.

25 Q. --- of Dorothy Copeland. And you said you do your

1 assessment through observation ---

2 A. Uh-huh.

3 Q. --- as well; is that correct?

4 A. Correct.

5 Q. Would you expect -- Was the onus again on Dorothy then
6 to ask for a wheelchair, rather than for you to offer a
7 wheelchair?

8 A. I didn't read the notes.

9 Q. But this is an observation. She -- This is the way
10 she was.

11 A. Right.

12 Q. I mean, this is the way Doctor Creagh perceived her,
13 right?

14 A. But she -- That day, she apparently walked into the
15 office fine. Mrs. Copeland brought her into the office.
16 She was walking. She was not having any problems that day.

17 Q. Okay.

18 A. When she came in. Except that she was a very frail
19 woman.

20 Q. But --

21 A. But I feel like if she needed the wheelchair, Mrs.
22 Copeland would have asked.

23 Q. You notice at this point in time, he was talking about
24 -- where he was talking about getting her a mobile
25 wheelchair, you realize that they wanted to get her a

1 mobile -- a motorized wheelchair, but were not able to do
2 so; because they didn't even think she could handle the
3 controls of the wheelchair?

4 A. No, I didn't -- I wasn't aware of that.

5 Q. Okay. Would that surprise you, though?

6 A. No.

7 Q. No?

8 A. I mean.

9 Q. Well, this is his impression, again, five months
10 before. And if we look at his impression number five,
11 "unsteadiness on her feet." Suggested she need a cane or
12 walker, although she's not in need of security when using a
13 cane or walker.

14 So, again, Doctor Creagh's assessment of her just five
15 months before this incident is of a woman that really needs
16 -- kind of struggles getting around. Do you agree with
17 that?

18 A. I do. But I also would like to say that if Mrs.
19 Deborah Copeland felt like that she was so unsteady when
20 she came into the office, she should have said, I'm going
21 to need a wheelchair for my mom. And you know, we would
22 have gotten her one. But apparently, she felt that she was
23 doing fine at that time. And she was walking fine.

24 Q. And that's by your testimony here today?

25 A. My observation.

1 Q. Your observation?

2 A. Right.

3 Q. Which seems to be a little bit different than Doctor
4 Creagh's observation over five months sooner. In fact, if
5 you look through the course of Doctor Creagh's observation,
6 you -- Let me ask you this. You wouldn't expect this
7 ninety-year-old frail woman, going back to October, going
8 back to July, that she would be getting better? In fact,
9 her condition at her age would put her likely continue to
10 deteriorate over time.

11 A. No.

12 Q. Would you agree with that?

13 A. No, I don't agree with that.

14 Q. All right.

15 A. She could have. She didn't even come in the office
16 with her oxygen on.

17 Q. Okay. Well you remember one note that he said,
18 struggled with the oxygen. But Doctor Creagh never makes
19 any mention that she gets around pretty well. And he's the
20 medical professional here, right?

21 A. Correct.

22 Q. This looks like a note from the day of the fall.

23 Okay. And this is May 17th, '12. Now, you said you
24 had talked to Doctor Creagh and told him what happened,
25 correct?

1 A. Correct.

2 Q. And he puts a note in the record. Okay. And again
3 I'll read it for the benefit of everybody. The note just
4 says "*She stood up on the scales to be weighed, lost her
5 balance, fell, landed on her wrist, and looks to be
6 fractured.*"

7 That what the note says?

8 A. Correct.

9 Q. Doesn't make any mention that daughter put her on the
10 scale, does it?

11 A. No. I mean, it just -- that doesn't seem relevant, as
12 far as the office notes.

13 Q. Well, wouldn't an office note tend to want to document
14 everything that happened, and how it happened?

15 A. Well, with her con ---

16 Q. And be accurate?

17 A. --- condition. I mean, that wasn't the main reason
18 she came into the office. This was just a routine followup
19 visit.

20 Q. I know. But you took the time to put it in the note
21 that she fell.

22 A. Right.

23 Q. And at that time, I would assume that Doctor Creagh
24 put the information at hand ---

25 A. That --

1 Q. --- and that's what he used to write down.

2 A. He didn't get to examine her, though, as an office
3 visit. It was a different situation then.

4 Q. Well, he did -- he did actually examine her that day??

5 A. Correct.

6 Q. I mean, there's notes there. I would assume he was in
7 there.

8 A. Right.

9 Q. But he put in the note what he had been told, that she
10 fell off the scale?

11 A. Right.

12 Q. You know, but he didn't put in the note that this it
13 is not a full documentation in terms of the way you
14 describe it.

15 Again, and I go back to my original question that I
16 asked you before. Other than that handwritten note that
17 you wrote two weeks after the fact ---

18 A. Uh-huh.

19 Q. --- there is no documented piece of paper, memorandum,
20 memorializing what happened the way you described it?

21 A. Not that I know of.

22 MR. MANZI: I have no further questions, your Honor.

23 MS. CHESLEY: No questions.

24 THE COURT: All right. Thank you, ma'am.

25 You may step down.

1 (WITNESS LEAVES WITNESS STAND.)

2 THE COURT: Let me see the lawyers up here real quick.

3 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
4 THE JURY, AT 03:56 PM.)

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, I have a meeting down in Winnsboro this evening at
7 five forty-five, so, I have to -- I need to cut it short
8 today. So, if you're going to be mad at anybody, be mad at
9 me. Okay? Don't be mad at the lawyers. So, I'm calling
10 it quits today. Okay.

11 I want you back in your courtroom -- excuse me, back
12 in your jury room tomorrow morning at nine fifteen. We
13 should be ready to start at either nine fifteen or nine
14 thirty tomorrow morning. Okay.

15 Sir, in the tan shirt, what is your juror number, sir?

16 A. Mine?

17 THE COURT: Yes, sir.

18 A. One forty-eight.

19 THE COURT: All right. And you are Mr. Woods. That's
20 what I thought.

21 Mr. Woods, I'm appointing you foreman of the trial
22 jury. Thank you for volunteering. Appreciate that. As
23 foreman, you will be the presiding juror in the -- in the
24 jury room when you start your deliberations. You will also
25 be the only one that's authorized to write on the verdict

1 form. I'll explain that to you more in detail. You will
2 also be the jury spokesperson here in court. Okay. So,
3 we'll go over all of that as the case develops.

4 You all have a wonderful evening. Remember, don't do
5 any independent research on this case. Don't talk to
6 anybody about this case. If your significant other asks
7 you about it, you can just say, I'm sitting on a trial
8 jury; it's a civil case; judge told me I can't talk about
9 it.

10 Remember, you've taken an oath to try this case and
11 render a verdict based upon the evidence presented in this
12 courtroom, and this courtroom only. Okay. So, it's a
13 violation of your oath to do any independent research. I'm
14 not naive. I know you all do social media, or you get on
15 your laptops or your phones, and you type stuff -- it's
16 easy to type stuff into Google. Okay. Or -- Just don't do
17 it. Okay. If you do it, you violate your juror's oath.
18 Okay. Anyway, y'all have a great night. We'll see you
19 bright and early tomorrow morning, at nine fifteen.

20 Thank you very much.

21 (JURY EXITS COURTROOM ON EVENING RECESS AT 03:59 PM.)

22 THE COURT: Anything else for the good of the cause
23 today?

24 MR. MANZI: No, your Honor.

25 MS. CHESLEY: No, your Honor.

1 THE COURT: All right. See you all in the morning.
2 Thank you.

3 (COURT IN EVENING RECESS AT 04:00 PM.)

4 (COURT BACK IN SESSION TUESDAY, FEBRUARY 14, 2017 AT
5 09:36 AM.)

6 THE COURT: Good morning. You all can be seated.

7 MS. CHESLEY: Good morning.

8 THE COURT: Thank you. You ready, Mr. Bogel?

9 I don't think the AG's office is ready yet, right?

10 MR. BOGEL: She's still talking to her client right
11 now. The second guy is not here.

12 THE COURT: Okay. What we'll do is take a break when
13 we need to let the AG's office go forward on their stuff.

14 All right. Bring the jury in.

15 (JURY RE-ENTERS COURTROOM AT 09:38 AM.)

16 THE COURT: All right. All members of the jury are
17 present. Good morning, ladies and gentlemen. Hope you had
18 a nice evening. We will jump right into it this morning
19 with the plaintiff's next witness.

20 MR. MANZI: Thank you, your Honor. We call Denise
21 Taylor.

22 THE COURT: All right.

23 MADAM CLERK: Ms. Taylor, if I can have you step
24 forward to be sworn.

25 (WHEREUPON, DENISE TAYLOR,

1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 THE COURT: All right.

3 MR. MANZI: Thank you, your Honor.

4 DIRECT EXAMINATION

5 DENISE TAYLOR BY MR. MANZI:

6 Q. Good morning, Ms. Taylor.

7 A. Good morning.

8 Q. We have met before, correct?

9 A. Yes, we have.

10 Q. All right. I've taken your deposition before at one
11 time. You remember that?

12 A. Yes. Yes, I do.

13 Q. Okay. Let's give them some background. You are the
14 office manager for Carolina Pulmonary Physicians?

15 A. I am.

16 Q. And you've been the office manager there for the last
17 twenty years?

18 A. That's right.

19 Q. And as part of your duties as the -- as the office
20 manager, you handle all administrative affairs for the
21 office. Is that a fair thing to say?.

22 A. That is fair to say.

23 Q. And you supervise the staff?

24 A. I supervise them with administrative duties.

25 Q. And basically you handle anything that's probably of a

1 non-medical nature to do with the business?

2 A. Correct.

3 Q. And at the time of this incident, back in May 2012,
4 you didn't have any nurse working there; is that correct?

5 A. No.

6 Q. Okay. So, you had physicians and the certified
7 medical assistants. Is that -- and an X-ray technician, I
8 believe; is that --

9 A. That's right. Only support staff to the physician.
10 He gives all medical direction there.

11 Q. Okay. And also, by training, you also happen to be a
12 certified medical assistant; is that correct?

13 A. That is how I started yes, sir.

14 Q. And when did you get that certification?

15 A. 1986.

16 Q. 1986. Are you -- You haven't performed duties as a
17 medical assistant in some time, though. Is that a fair
18 statement?

19 A. No, because at times I may have to fill in, if I have
20 staff out.

21 Q. So, you're quite familiar with the duties of a medical
22 assistant; is that correct?

23 A. Yes, sir, I am.

24 Q. And in terms of medical assistants that were working
25 there at the time, would they ever directly report to you?

1 You basically would be their boss?

2 A. They do report to me oftentimes. But if it's a
3 patient matter, they will go straight to the physician.

4 Q. And at the time -- And as your role as office manager,
5 you are in charge of hiring new people?

6 A. I do. I do help with that. I fill the resumes and
7 screen them, and usually I will talk to them about their
8 experience and their education. And with a medical
9 assistant, though, there could be a second interview with
10 the physician that they'll be working with.

11 Q. Okay. And also, unfortunately your duties sometimes
12 also means that you have to fire people, too; is that
13 correct?

14 A. Yes, sir.

15 Q. And over the years, you have fired people?

16 A. Yes, sir.

17 Q. For non-performance issues, things of that nature?

18 A. Yes, sir.

19 Q. Or that they didn't do their job properly? You want
20 only the best people working at CPP. Is that a fair
21 statement?

22 A. You do want good support staff. It reflects, you
23 know, on your physicians.

24 Q. Okay. Excuse me, I'm having a hard time hearing. Can
25 you move that microphone a little closer?

1 THE COURT: The microphone won't move. Just try to
2 talk a little louder, ma'am.

3 MS. TAYLOR: Okay.

4 THE COURT: Thank you.

5 BY MR. MANZI: .

6 Q. Now, you have worked there for twenty years. You must
7 enjoy working there. Is that a fair statement?

8 A. I do. Yes.

9 Q. And is it a fair statement to say you're very proud of
10 Carolina Pulmonary Physicians as an organization?

11 A. I am. I work for very good doctors. And I've worked
12 in other offices, but they are -- they're not money-
13 motivated. They're really -- they very much care about the
14 patients, and they like the work that they do.

15 Q. But do you -- you're proud of the organization, and
16 proud of the facilities, too. Is that a fair statement?

17 A. Yes.

18 Q. And you'd like to have a facility that is comfortable
19 and pleasing for patients to come to?

20 A. Yes.

21 Q. And you also like to have a facility that provides a
22 safe environment for the patients. Is that a fair
23 statement?

24 A. We -- we -- we try to make sure that everything is in
25 working order, everything is maintained, and -- and our

1 patients are comfortable there. And yes, you do worry, and
2 you want them to be safe while they're there.

3 Q. And it is -- isn't it true, I mean, given the nature
4 of the practice, the pulmonary nature of the practice, you
5 have kind of a unique set of patients, in terms of their
6 individual needs and limitations. Is that a fair
7 statement?

8 A. It is a fair statement. We do.

9 Q. In fact, we heard when Ms. Edge testified yesterday,
10 most of these patients have CPOD -- COPD?

11 A. Yes, sir.

12 Q. All right. And that in and of itself is a chronic
13 respiratory condition that makes people be a little bit
14 weaker than normal. Is that a fair statement?

15 A. Yes.

16 Q. And probably a little less mobile?

17 A. Yes.

18 Q. And also, your patient population tends to be an older
19 patient population?

20 A. It is.

21 Q. Okay. And I think probably you do -- Is it a fair
22 statement to say your average age would be people in their
23 sixties and seventies?

24 A. That would be average. We do have younger people,
25 too.

1 Q. And even people when they get to their nineties,
2 that's a little above average, though; is that correct?

3 A. That's right.

4 Q. And would you agree with me when you reach in that --
5 that tender age of ninety, your needs become a little
6 heightened?

7 A. I think so. We have some that are -- are pretty
8 vital.

9 Q. Like --

10 A. It might surprise you sometimes.

11 Q. I believe that for somebody who's lived to be a
12 hundred and they're still alive at a hundred and eighteen,
13 so I understand that.

14 A. Uh-huh.

15 Q. But you understand that every patient has to be
16 treated as an individual for their individual needs?

17 A. Yes.

18 Q. And every patient is a little bit different, in terms
19 of what those needs are, what their comfort level is, and
20 what level of safety you may need to provide for that
21 particular patient. Is that a fair statement?

22 A. Yes.

23 Q. Now, obviously since you've been working there for
24 twenty years, so you were the office manager on May 17,
25 2012?

1 A. Yes, sir.

2 Q. And in terms of the facility itself, and I heard Ms.
3 Edge testify yesterday, your office is actually on the
4 second floor of the building?

5 A. It is.

6 Q. And we saw some pictures of the interior of the
7 building, and I won't go into all that. But all those
8 pictures that you saw yesterday, they reflect the inside of
9 the building?

10 A. They do.

11 Q. And it hasn't changed much since May of 2012; is that
12 correct?

13 A. No, sir.

14 Q. Okay. Same location?

15 A. Same location.

16 Q. Okay. And you also have -- We didn't take a picture
17 of the -- of the outside, but there is a portico on the
18 outside; is that correct? Where cars can drive underneath,
19 to drop patients off.

20 A. Yes, sir.

21 Q. In a nutshell in case it's raining or something like
22 that, the patient doesn't have to get wet going into the
23 office?

24 A. That's right. They pull up underneath that awning,
25 and then can come into the office. And then, usually

1 somebody's with them in that case.

2 Q. Now, you also told me previously that, as the office
3 manager, your being in charge of all the administrative
4 duties there in the office. But every once in awhile,
5 something unusual might happen, and I'm sure it's happened
6 in the last twenty years. And by unusual, there might be
7 an incident of something happens to a patient, or something
8 happens with an employee. And when those things happen,
9 it's your business and practice to do an incident report.
10 Do you remember telling me that?

11 A. Yes.

12 Q. And you personally do that incident report; is that
13 correct?

14 A. That's right. This is part of the business.

15 Q. Okay. It's part of the business, and you would do
16 that incident report usually on the same day that the
17 incident occurred.

18 A. You try to do things as timely as possible, but there
19 are a lot of things that are going on in the -- in the
20 office every single day. Just like in your jobs, there's
21 -- there's just tasks that I'm required to complete. At
22 the time of this incident, we were in a major software
23 upgrade, and that current week that the patient came in, we
24 were getting that software upgrade that weekend. That's
25 usually, in a medical office, when -- when those type

1 things happen, because as you imagine, we have patients to
2 see during the week. So, anything like that is done after
3 hours, and that was a major software upgrade. And prior to
4 that, they would have given me a software test phase that
5 you would put things in. They would take some of our
6 current data, put it in that testing base, and then I would
7 be required to go through and test all of that to make sure
8 it was in working order before they would actually put the
9 production in place. And then, once the production was in
10 place, that weekend I went in, and I have to test things
11 again, to make sure that it works for Monday. So, in case
12 there's something that's really wrong, then we can revert
13 back to our old software.

14 Q. Thank you for that. You probably got a little bit
15 ahead of me but I let you go on ---

16 A. I know.

17 Q. --- but that's okay. We'll get into the specifics
18 about the May 17th incident. But right now, I'm talking in
19 generally, when an incident happens in your business and
20 practice, do an incident report as close to the incident as
21 possible?

22 A. Yes.

23 Q. Okay. Now, you did tell me that you would consider
24 the fall that Dorothy Copeland had on May 17, 2012 worthy
25 of an incident report.

1 A. Yes.

2 Q. Was it not?

3 A. Uh-huh.

4 Q. And you told me that you would have done an incident
5 report for that.

6 A. Yes.

7 Q. And you would have done that personally, and you would
8 have written it down?

9 A. Well, it would involve, you know, because I wasn't in
10 the room --

11 MS. CHESLEY: Objection, your Honor. May we approach?

12 THE COURT: Yes.

13 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
14 THE JURY AT 09:49 AM.)

15 THE COURT: All right. Ladies and gentlemen, I have
16 some matters of law I need to take up with the lawyers.
17 So, what I'm going to do is I'm going to send you back to
18 your jury room at this time and deal with that.

19 I also have another matter pending that I have to deal
20 with involving the Attorney General's Office. And I
21 promise you, I'm not going to keep you locked up in a room
22 back there without something to do. Okay? I'm going to
23 make this go as quickly as possible, so just give me a
24 brief moment while I do all that, and I'll get you back out
25 here just as soon as I can. Okay? Thank you. Don't talk

1 about the case.

2 (JURY EXITS COURTROOM AT 09:53 AM.)

3 THE COURT: All right. Let's put on the record what
4 we were -- what we were talking about side bar.

5 Go ahead.

6 MS. CHESLEY: Your Honor, my objection to the request
7 related to the incident report, what was turned over to the
8 Mr. Manzi, and in fact, was done prior to him requesting
9 any discovery, when we were at the beginning of this
10 lawsuit, I produced the witness statement by Joan Edge,
11 where she documented the events, her recollection of the
12 events of the fall.

13 Mr. Manzi subsequently requested all documents
14 concerning any communication between you and your premises
15 liability insurer concerning the incident, including but
16 not limited to emails, memoranda, or history logs of phone
17 call.

18 I objected to this, as it sought information related
19 to information by the attorney/client privilege, attorney
20 work product, prepared in anticipation of litigation. And
21 with that, I filed a privilege log that identified that --
22 that information.

23 Mr. Manzi at no time filed a motion to compel, called
24 to discuss this, and so this is the first time this is
25 coming up and he is now wanting the actual report that

1 would have been submitted to the insurance company at that
2 time.

3 THE COURT: Right. Mr. Manzi, what's your position on
4 that?

5 MR. MANZI: Well, my position at that time, your
6 Honor, I had not taken the deposition of Denise Taylor, and
7 did not know the incident report existed. It was at her
8 deposition that she told me that she had prepared this
9 incident report, and I went into that. She did this as a
10 normal course of business. She does it for every incident
11 that happens within there. It's not just made up for the
12 purposes of litigation.

13 I told her at that time that I had never received that
14 incident report, and that I would like to see it; and off
15 the record, there was no objection made during the
16 deposition, when I asked to see it, and off the record, I
17 requested that the incident report be made.

18 THE COURT: How long ago was that?

19 MR. MANZI: This deposition was taken on April the 6th
20 of 2016.

21 THE COURT: Okay.

22 MR. MANZI: So, I mean, to be honest with you, your
23 Honor, I took the position that when it was never produced,
24 that it didn't exist. By telling me it exists now --

25 THE COURT: But now, she's -- and now, you have the

1 potential of opening up the door, which is why I think I
2 need to have an in camera review of certainly whether or
3 not I'm going to allow it in. Okay?

4 MS. CHESLEY: And we just need to locate it, your
5 Honor.

6 THE COURT: Okay. Got it. Well, let me look at it.
7 That was what I told the lawyers at the side bar. Let me
8 look at it, and determine whether or not it's unduly
9 prejudicial, or whatnot, or confuse the jury.

10 Mr. Bogel, what's your situation?

11 (SIDE BAR BETWEEN ATTORNEY GENERAL JIM BOGEL AND MS.
12 ANNA GOOD.)

13 THE COURT: All right. While we're doing that hearing
14 I can be looking at the document. Y'all ready on that one?

15 MS. GOOD: Yes.

16 MR. BOGEL: Yes, your Honor.

17 THE COURT: All right. Good

18 If y'all don't mind, give them a little room at the
19 counsel tables.

20 (MATTER OF STATE VERSUS EDWARD IVEY WITH ATTORNEY
21 GENERAL JIM BOGEL AND ATTORNEY ANNA GOOD AT 09:57 AM.)

22 (PAUSE AT 10:08 AM.)

23 THE COURT: All right. Wait on the jury for a second.

24 All right. This -- the written statement, you have
25 the written statement, correct, Mr. Manzi, ---

1 MR. MANZI: Yes, your Honor.

2 THE COURT: --- if Joan Edge? There's some notes
3 attached to this which are all -- I mean, dealing with
4 insurance and stuff, that you're obviously not admissible.
5 I don't -- I mean, I don't have any issue with that. And
6 part of the insurance document.

7 The actual incident report itself is basically just a
8 statement from Denise Taylor. The top part of the incident
9 report, where it says *insured*, with the policy number and
10 the claim number, the claim handler, the claim
11 investigator, the claimant, I mean all that deals with
12 liability insurance. So, that's clearly not admissible.

13 Okay. The issue is just the paragraph that Ms. Taylor
14 typed up as the office manager.

15 What's your position on that? Just that redacted
16 portion. And it's basically saying the same thing. I just
17 read it. It's the same thing that Ms. Edge said. It's the
18 same thing that I'm sure she's going to say.

19 MS. CHESLEY: And your Honor, I think we will agree
20 for that portion to be -- to be --

21 THE COURT: There you have it.

22 MR. MANZI: Will I have a --

23 THE COURT: I'm going to --

24 MR. MANZI: Is there a date on there, so I can say
25 what date that document was prepared?

1 THE COURT: Yeah, I'll tell you.. The date of the
2 incident was Thursday, May 17, 2012, correct?

3 MR. MANZI: Right.

4 THE COURT: The incident report -- Do you have any
5 problem with me letting him know the incident -- you
6 already said that it was two weeks after. This is May
7 30th, was the day it --

8 MR. MANZI: The statement was May 30th.

9 THE COURT: Yeah. The incident report ---

10 MR. MANZI: I want to know --

11 THE COURT: --- the incident report's dated May 30th.

12 MR. MANZI: The incident report's dated May 30th, as
13 well?

14 THE COURT: Yes. Yes.

15 MR. MANZI: I need -- Again, I need to have that
16 information.

17 THE COURT: Okay. So, I guess what we could do, if we
18 redact -- I'll -- you know, I guess what I'm saying, Ms.
19 Chesley, do you have a problem just redacting everything on
20 that document except what Ms. Taylor says, and the date?

21 MS. CHESLEY: Correct, your Honor.

22 THE COURT: Okay.

23 MS. CHESLEY: The date -- the date of the report, the
24 date -- you know, the -- and the report itself. I guess
25 the claimant, the date, the witness, and the report.

1 THE COURT: What -- so, I guess the question is how to
2 redact it. I can't --

3 MS. CHESLEY: Can you just put the date of the -- the
4 date of the report, the date of the incident, the witness,
5 and the report section?

6 THE COURT: Right. I guess we can just redact it with
7 a big black marker.

8 MS. CHESLEY: Yes.

9 THE COURT: I hate to do that, but that -- that's what
10 we'll have to do.

11 MR. MANZI: And there's one other thing I would ask,
12 your Honor, does the incident report, is the written
13 statement attached to the incident report that it's
14 referenced?

15 THE COURT: No.

16 MR. MANZI: Okay.

17 THE COURT: It's just a two-page document.

18 MR. MANZI: Okay. That's fine.

19 THE COURT: I mean, I'll show it to you.

20 MS. CHESLEY: But, your Honor, --

21 THE COURT: I'll print it out. I'll show it to you,
22 what I'm talking about.

23 MR. MANZI: Okay.

24 THE COURT: We're gonna go print this out right now.

25 MS. CHESLEY: And your Honor, the written statement is

1 attached.

2 THE COURT: The written statement is attached.

3 MR. MANZI: It's attached. But I'm saying, was it
4 attached, like it says written statement attached.

5 THE COURT: To the incident report?

6 MR. MANZI: Yeah.

7 THE COURT: Yes.

8 MR. MANZI: Okay. It says that?

9 THE COURT: Yes.

10 MR. MANZI: Okay. That's -- That part I want to have,
11 as well.

12 MS. CHESLEY: It's all part of it.

13 THE COURT: Right. It's all part of it, together.
14 Oh, is that the actual thing?

15 MS. CHESLEY: Is this -- is this the actual?

16 MS. TAYLOR: Yes. Yes, ma'am.

17 THE COURT: All right. Let me look at that. How did
18 you get it? I thought you said you left it on the coffee
19 table.

20 MS. TAYLOR: I did, my husband brought it.

21 THE COURT: Oh. I didn't see that happen.

22 All right. Mr. Manzi, come up here, and Ms. Chesley.

23 (BENCH CONFERENCE HAD OFF THE RECORD AT 10:18 AM.)

24 THE COURT: I will Sharpie out what's not coming in,
25 and then let you all look at it. Then, we're going to go

1 do this right now, before we bring the jury back in.

2 Go make a copy real quick, two copies.

3 (COURT AT EASE./BENCH CONFERENCE OFF THE RECORD.)

4 THE COURT: All right. Ms. Chesley, here is your
5 original.

6 Do you want to go ahead and mark this as an exhibit,
7 then?

8 MR. MANZI: Yes.

9 THE COURT: Okay. Whatever Plaintiff's next in order
10 is.

11 MADAM COURT REPORTER: Nineteen.

12 THE COURT: Okay.

13 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER NINETEEN,
14 IDENTIFIED AND MARKED/STIPULATED TO BY THE PARTIES/RECEIVED
15 INTO EVIDENCE.)

16 THE COURT: All right. Y'all ready for the jury?

17 MS. CHESLEY: We are, sir.

18 THE COURT: You got it? There it is, if you want to -
19 Ma'am, if you'll retake the witness stand, Ms. Taylor.

20 (WITNESS RETURNS TO THE WITNESS STAND.)

21 THE COURT: Thank you all again, everyone, for making
22 that go smoothly.

23 And let's go ahead and bring the jury back in.

24 (JURY RE-ENTERS COURTROOM AT 10:29 AM.)

25 THE COURT: All right. All members of the jury are

1 present. Ladies and gentlemen, thank you again for your
2 patience. We've got everything under control.

3 Yes, sir.

4 MR. MANZI: Thank you, your Honor.

5 DIRECT EXAMINATION CONTINUES

6 DENISE TAYLOR BY MR. MANZI:

7 Q. Ms. Taylor, when we stopped for a little while we
8 were talking about the incident report. Do you remember
9 that?

10 A. Yes, sir.

11 Q. You had told me that your normal course of business is
12 to prepare any incident reports when anything unusual
13 happens on the office?

14 A. Yes, sir.

15 Q. And a ninety-year-old frail lady falling in the
16 office would warrant an incident report being prepared,
17 correct?

18 A. Yes.

19 Q. And it is also your practice to do that incident
20 report usually the same day but at least as close as
21 possible to the date of the incident ---

22 A. You try to.

23 Q. --- is your practice; is that correct?

24 A. You try to, yes.

25 Q. MR. MANZI: Your Honor, may I approach?

1 THE COURT: Yes.

2 BY MR. MANZI:

3 Q. Ms. Taylor, I'm gonna show you what's been marked as
4 Plaintiff's Exhibit Nineteen. Can you describe that to me?

5 A. This is the Incident Report that I prepared.

6 Q. And what is the date on that Incident Report?

7 A. May the 30th, 2012.

8 Q. May 30th.

9 A. Uh-huh.

10 Q. That's about - That's exactly thirteen days after the
11 fall of Mrs. Copeland; is that correct?

12 A. That's right.

13 Q. So it took you thirteen days to prepare this Incident
14 Report?

15 A. Right. There were some weekends in there.

16 Q. I'm sorry.

17 A. There was a weekend in there.

18 Q. There was a weekend in there?

19 A. Yeah.

20 Q. Well you said before you might do incident reports
21 after hours.

22 A. Well I was doing computer work after hours.

23 Q. Okay. So, okay, so there's a weekend but there's
24 eleven days that weren't a weekend?

25 A. Well I guess I would say usually things in business

1 you count business days.

2 Q. Oh, okay. Well I'm curious because this report dated
3 May 30th just happens to be the same date that Ms. Edge
4 did her handwritten report that you ask her to do on May
5 30th; is that correct?

6 A. That's right. We did it the same day.

7 Q. And both at the same time? Which came first the
8 incident report or the handwritten report?

9 A. Well her's would have - I ask her to do hers and then
10 I did my report and I combined them.

11 Q. All on May 30th?

12 A. Right.

13 Q. And it's your testimony that you didn't have any
14 time to do that before May 30th?

15 A. I didn't.

16 Q. You didn't. Was that usual for most incidents that
17 happened you wait almost two weeks to do the report?

18 A. Well I'd have to go back through my incident reports
19 and, you know, track the time lines.

20 Q. Okay. But it wasn't anything that happened in
21 between May 17th and May 30th that prompted you to do this
22 incident report?

23 A No. Uh-huh. Not with this incident, no.

24 Q. Well did you become aware at any point in time that
25 the Copeland family was or Dorothy Copeland was still alive

1 at the time, was considering making a claim against
2 Carolina Pulmonary Physicians?

3 A. Nobody indicated anything like that to me.

4 Q. You were not a witness to the fall; itc

5 A. No.

6 Q. In fact you were upstairs in your office.

7 A. That's right.

8 Q. And you received a call that somebody had fallen and
9 for you to come down?

10 A. Right.

11 Q. Okay. And you came down right after and by the time
12 you got there was Dorothy still lying on the ground or was
13 she already been put in a wheelchair?

14 A. No, she was on the floor, Doctor Alleyne was beside
15 her; Joan was inside the room behind him. I couldn't get
16 in the room because the wheelchair was in the doorway.

17 Q. Now did you ask at any point in time - and I'm
18 talking about on May 17th, 2012 - did you ask Joan Edge
19 what happened?

20 A. Yes.

21 Q. And did she tell you what happened?

22 A. She told me briefly at the time. We had a lot of
23 patients in the office at that time and that one triage
24 room -- We have two triage rooms but because all of this
25 was going on in the one room we couldn't bring any other

1 patients that was -- that were supposed to be triaged in
2 that room. They couldn't come there. So we could only
3 have a brief conversation because we had to get Mrs.
4 Copeland taken care of. And also continue with the other
5 patients that were there.

6 Q. Okay. It was a busy patient day?

7 A. It was very busy.

8 Q. Okay. But you have nothing to do with patient care
9 yourself, correct?

10 A. No. I wasn't responsible for taking patients back
11 that day.

12 Q. Would you consider this to have been a serious
13 incident, this ninety-year-old frail woman falling on the
14 ground and obviously hurting herself?

15 A. Well it was of concern, yes.

16 Q. It wasn't something that doesn't happen every day,
17 right?

18 A. No.

19 Q. So you were not only concerned about what happened but
20 concerned about her particular safety and everything?

21 A. Yes.

22 Q. But as the office manager and in charge of the
23 facility you were also concerned about how it happened
24 weren't you?

25 A. Well I ask how it happened.

1 Q. You ask Joan Edge how it happened?

2 A. That's right.

3 Q. Did you ever ask Deborah Copeland how it happened?

4 A. Well we were more concerned with taking care of
5 Dorothy at the time and getting her squared away. I did
6 speak with Deborah.

7 Q. But you didn't ask her what happened?

8 A. She didn't - She didn't offer it. Usually if a family
9 is upset about the way something happened they're gonna
10 tell me.

11 Q. But that wasn't my question. Just answer the
12 question. You never ask her what happened?

13 A. I felt it was more appropriate to address Mrs.
14 Copeland in getting her taken care of.

15 Q. At that particular point in time?

16 A. That is right.

17 Q. Okay. At any time between May 17 and May 30th when
18 you wrote this incident report, and Joan Edge wrote her
19 written report, did you ask Deborah Copeland what happened?

20 A No.

21 Q. Did you feel that it was necessary to get Deborah
22 Copeland, the only other witness to the incident, other
23 than Dorothy, what happened before you wrote this incident
24 report?

25 A. No.

1 Q. Do you think it's important to have all the facts
2 about what happened before you write an incident report?

3 A. I - I'm responsible to write the incident report the
4 way, you know, my staff member told me what happened. I
5 didn't have any other reason to believe anything else
6 happened.

7 Q. Well because you didn't do an investigation, right?

8 A. Well I spoke with the family. Nobody ever said
9 anything to me about that they disagreed with - -

10 Q. You never ask Deborah Copeland what happened?

11 A. No and she never offered.

12 Q. I understand. But you never ask her about it?

13 MS. CHESLEY: Objection, ask and answered, your Honor.

14 THE COURT: All right.

15 BY MR. MANZI:

16 Q. You understand that a situation like this two people
17 in the room it's important to gather all the facts; get
18 both sides of what might have happened in that. Is that
19 important to you to understand both sides?

20 A. I had not reason to believe that there was a dispute.

21 Q. Well Deborah Copeland didn't know what Joan Edge had
22 to say did she?

23 A. Well, you know, when it was being discussed that the
24 patient had fallen off the scale she did not dispute that.

25 Q. You're saying that Deborah Copeland on May 17th, 2012

1 knew that Joan Edge told you that Deborah put her on that
2 scale, left her alone, sat down watched her mother in law
3 fall in pain and agony? You're saying that Deborah
4 Copeland knew that that's what Joan Edge told you?

5 A. The basic information is what I was given that the
6 patient had fallen off the scale.

7 Q. What you wrote in your incident report says patient's
8 daughter-in-law helped her on the scale. Is that what Joan
9 Edge told you, right?

10 A. That's right.

11 Q. That's what Joan Edge told you?

12 A. That's right.

13 Q. But you don't have any knowledge that Deborah Copeland
14 at that time knew what Joan Edge told you?

15 A. No.

16 Q. Okay. And in fact when we discussed yesterday when
17 Joan Edge was on the stand we never saw Joan Edge's
18 statement until October of 2015.

19 MS. CHESLEY: Objection, your Honor.

20 MR. MANZI: That was testimony from yesterday.

21 THE COURT: Repeat your objection.

22 Repeat the question.

23 MR. MANZI: We never saw that written statement from
24 Joan Edge until her deposition on October of 2015.

25 MS. CHESLEY: Relevancy, your Honor.

1 THE COURT: All right.

2 MS. CHESLEY: And I apologize but I think we need to
3 approach.

4 THE COURT: Okay. Y'all approach.

5 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
6 OF THE JURY AT 10:39 AM.)

7 THE COURT: All right, move on with this witness.

8 BY MR. MANZI:

9 Q. Just to kind of wrap this up. It's safe to say you
10 only knew what Joan Edge told you about how this incident
11 happened. Is that a fair statement?

12 A. That's right because I wasn't in the room when the
13 patient fell.

14 Q. And in fact until this claim was made you had no
15 idea that the Copeland family had a different version of
16 the facts?

17 A. Absolutely.

18 Q. Okay. And even at that time would you think it was
19 important to get Deborah Copeland's side of the facts?

20 A. Not when it happened because the patient was in the
21 floor and she needed care.

22 Q. I understand that but we have thirteen days between
23 that incident and when you did the incident report. You
24 had plenty of time. In fact you did call the Copeland
25 family that night, correct?

1 A. I did. I talked to the son.

2 Q. And that you --

3 A. I wanted to see how she was doing.

4 Q. And that was to see how Dorothy was doing; is that
5 correct?

6 A. That's right. Uh-huh.

7 Q. But at that time you didn't ask the son. It was Benny
8 you were talking to if you recall.

9 Q. I had both of their telephone numbers and Benny is the
10 one that's listed in her - in Mrs. Copeland's file so
11 that's who I called to talk to.

12 Q. Now did you tell Benny in that telephone call what
13 happened?

14 A. No. We were talking about how his mother was.

15 Q. Okay. And that's the major concern on May 17; that's
16 perfectly understandable.

17 A. That's right.

18 Q. But did you try to call back the next day and talk to
19 them?

20 A. I might have tried to call. I think I did.

21 Q. Did you talk to them?

22 A. I would have talked to Benny again because that's who
23 I talked to the day, that night.

24 Q. Okay. Did you make any attempt between May 13th and
25 May 30th to talk to Deborah Copeland about what happened?

1 A. No.

2 Q. I don't want to put words in your mouth but didn't you
3 think it was important to get Deborah Copeland's side of
4 the story?

5 A. No I did not.

6 Q. You did not. We're sitting in a court here right now
7 and this jury's sitting here and they're going to deciding
8 the facts in this case. Do you think it would be fair if I
9 just put Deborah Copeland on the stand and Joan Edge was
10 never able to testify to the jury? Do you think that would
11 be fair.

12 A. Well --

13 MS. CHESLEY: Objection, your Honor.

14 THE COURT: Sustain.

15 BY MR. MANZI:

16 Q. Let me just ask you this. Do you understand that it's
17 important for the jury to have both sides of the story for
18 them to make their decision?

19 A. Well I didn't know this was coming.

20 Q. I'm sorry, you didn't know what?

21 A. I didn't know that we would be sitting here today.

22 Q. That's not the ans - That's not my question. I'm just
23 going back. You made this incident report citing facts
24 that Joan Edge gave you.

25 A. Uh-huh.

1 Q. And only Joan Edge gave you.

2 A. Uh-huh.

3 Q. When there might have been a different version of
4 what happened. But you didn't make any effort to find
5 out what version was.

6 A. I had no reason to believe it was anything different
7 than that.

8 Q. Okay. You had no reason to believe that Joan Edge
9 would have told you something that wasn't true; is that
10 correct?

11 A. I had no to reason to believe that she would not
12 tell me the truth.

13 Q. Okay. Now Joan Edge was your employee. She worked
14 with you?

15 A. Yes.

16 Q. You didn't socialize with Joan Edge outside of work?

17 A. No. We had occasional work parties and things like
18 that.

19 Q. But you didn't really know her outside of work?

20 A. I think you always get to know your co-workers.

21 Q. But did you solicalize with her other than office
22 parties?

23 A. No, not usually.

24 Q. Would you consider her a friend more so than an
25 employee?

1 A. I think that we're like a family.

2 Q. At the office?

3 A. Yes.

4 Q. Were you ever over at her house?

5 A. I think I did go. She had some surgery one time and
6 so we had taken some food to her.

7 Q. Okay. But it's safe to say, I mean you wouldn't
8 consider her one of your social friends, close friends?

9 A. No usually not.

10 Q. Certainly she is not one of your confidants or
11 something like that?

12 A. No.

13 Q. You - did you know what Joan Edge did outside the
14 office for fun or recreation?

15 A. Only what she might tell me.

16 Q. But you don't really know what she did outside the
17 office?

18 A. No.

19 Q. Or what kind of person she was at home?

20 A. She -- I'd imagine she's the same type of person but
21 no, I wouldn't know.

22 Q. Is it that you're just assuming that an employee since
23 she's an employee of yours and she told you this is what
24 happened, that it had to be the truth?

25 MS. CHESLEY: Objection, your Honor.

1 THE COURT: Sustain.

2 BY MR. MAMZI:

3 Q. Now you were there after the - after the fall they
4 decided to take Dorothy to an orthopedic doctor, so you
5 remember that?

6 A. I do.

7 Q. And then actually you made the arrangements for that?

8 A. I did.

9 Q. Okay.

10 A. Beause they didnt want to go to the emergency room.

11 Q. They didn't want to go to the emergency room; is
12 that correct?

13 A. That's right.

14 Q. Did you understand why they didn't want to go to the
15 emergency room?

16 A. Well Deborah Copeland had told me that they'd have
17 to wait for ever and they didn't -- she didn't want to do
18 that.

19 Q. Now you had on May 30th after she prepared this
20 witness statement you kept this in your office, the - Joan
21 Edge's written statement you kept that in your office; is
22 that correct?

23 A. As part of a business file with this incident report.

24 Q. Okay. And you were also as part of your job duties,
25 I mean when something - when a claim is made like in this

1 case against the facility you're the person that kind of is
2 the liaison for that?

3 A. I'm the contact person, yes.

4 Q. Okay. So when you received notice that the Copeland
5 family was making a claim that came to you? You were aware
6 at some point in time the Copeland family was making a
7 claim?

8 A. Yes.

9 Q. Do you remember what day that was?

10 A. I don't remember but it was about three years after
11 the incident occurred.

12 Q. I'm not talking about the law suit itself. I'm
13 talking about just that they were making a claim against
14 Carolina Pulmonary Physicians.

15 A. Right. Yes.

16 Q. That was like closer to the incident wasn't it?

17 A. I don't remember the actual date.

18 Q. You don't remember. It may be right around May 30th?

19 A. No, I don't think so.

20 Q. Okay. You don't have any recollection of that?

21 A. No but I'm pretty sure. You know this was a business
22 report that was done. It didn't result of any kind of
23 notification.

24 Q. Okay. The records in this case will show that the
25 actual what we might call litigation portion of this case

1 actually started in April of 2015. Does that sound about
2 right? We're talking about three years after the incident.

3 A. Right. I think so.

4 Q. Okay. Now as part of that you were involved with
5 the litigation papers that were sent to your office in
6 terms of what we call discovery request.

7 A. Right.

8 Q. And we're looking for certain information.

9 A. Right. Any medical request and any information that's
10 requested would filter through me.

11 Q. And one of the things that was requested was
12 whether there were any statements by anybody about the
13 incident. Do you recall there was even a request for that?

14 A. When you say statements, what do you mean?

15 Q. Written statement. When Joan Edge's -- That's a
16 written statement, someone relating what happened.

17 A. Right. But, you know, I would have to see the
18 request that was made.

19 Q. Okay. Let me just -- Let me just -- Was it your
20 understanding that you were requested to produce any
21 statements about the incident?

22 A. When you get a request, you know, for medical records
23 or any kind of subpoena or anything like that, you send
24 what is, you know, you're legally bound to send.

25 Q. Okay. So if we requested any -- anybody who

1 witnessed the incident whether they prepared a written
2 statement do you think Joan Edge's statement falls into
3 that category?

4 A. If that's the way the request would have come. I
5 think you're disputing like my business record versus a
6 medical record and when request come if it's based -- if its
7 asking for medical records that's what we send because I
8 don't keep the medical record. I keep business records.

9 Q. I understand but this -- We're not talking about
10 medical records here.

11 A. Okay.

12 MS. CHESLEY: Your Honor, if we could have
13 clarification on what request Mr. Manzi is --

14 MR. MANZI: Well I'm sorry, if you'll give me a second
15 here I'll find the actual --

16 THE COURT: Okay.

17 BY MR. MUNZI:

18 Q. This comes from the standard interrogatories that
19 were served with the notice of intent on April the 9th,
20 2015. Its in the court file.

21 A. Okay.

22 Q. For each person known or to the parties or counsel to
23 be a witness concerning the facts of this case set forth
24 either a summary sufficient to inform the plaintiff of the
25 important facts to or observed by the witness or provide a

1 copy of a written or recorded statement taken from the
2 witness. Do you understand that request?

3 MS. CHESLEY: Your Honor, I'm sorry.

4 THE COURT: Sustain. Move on.

5 BY MR. MANZI:

6 Q. You know they testified yesterday that we never saw
7 Joan Edge's written statement to her deposition on October
8 2015, correct?

9 A. I heard you --

10 MS. CHESLEY: Again, objection, your Honor.

11 THE COURT: Sustained. Move on.

12 BY MR. MANZI:

13 Q. Now when you did become aware of the claim that the
14 Copeland family was making in this matter, did you ever
15 attempt to contact Ms. Edge and ask her about - Let me
16 just strike that.

17 Did you ever talk to Ms. Edge and inform her that the
18 Copeland family is making a claim about this and they're
19 saying something different than what you had told them?

20 A. I don't remember talking to her about it but I'm sure
21 we talked about -- I mean I'm sure I mentioned that there
22 was a -- that I had been notified of that.

23 Q. Joan Edge testified yesterday that there was never
24 any contact or conversation between the two of you as to
25 what Mrs. Copeland's claim was.

1 A. I couldn't tell you for sure, no.

2 Q. You couldn't tell me for sure whether you talked to
3 her about it or not?

4 A. No, because -- well -- you know that's -- I couldn't
5 tell you what was said if we said, when we -- I can't tell
6 you that.

7 Q. But if she said that she didn't talk, that you didn't
8 talk to her, would you take her word for that?

9 A. Sure.

10 Q. And did you think it would have been important after
11 the claim was made to go back to Joan Edge to find out,
12 hey, I'm hearing something different; let's go over this
13 again to see what happened?

14 A. No.

15 Q. You didn't think that was important?

16 A. We -- We handled things the way we were supposed to
17 handle them.

18 Q. Now you knew Dorothy Copeland was a long time patient
19 of CPP, right?

20 A. Right. I don't see every patient that comes in but
21 just by records.

22 Q. I understand that you're not involved with patient
23 care and I understand that but she's been going there since
24 20 - 2007.

25 A. Right.

1 Q. And you're not aware of any other particular incident
2 that even happened with Dorothy Copeland when she was on
3 the premises there are you?

4 A. No, I'm not.

5 Q. That if it was as the office manager you would have
6 been aware of that?

7 A. Right.

8 Q. So were the ten previous visits that she made nothing
9 unusual happened during those ten visits, correct?

10 A. Not to my knowledge, no.

11 Q. Not that you're aware of. Do you remember ever
12 seeing Dorothy Copeland prior to May 17th, 2012?

13 A. No I don't remember.

14 Q. The first time you saw her she was lying on the
15 ground?

16 A. Right.

17 Q. Okay. So you never had any opportunity to access her
18 mobility and things like that?

19 A. No.

20 Q. Correct?

21 A. No, sir.

22 Q. Okay.

23 MR. MANZI: I have no further questions at this time.

24 THE COURT: Cross.

25 MS. CHESLEY: Your Honor, the court's indulgence, I'm

1 gonna get the easel up.

2 THE COURT: Okay.

3 MS. CHESLEY: May it please the court.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 DENISE TAYLOR BY MS. CHESLEY:

7 Q. Denise, where do you live?

8 A. I live in Clover, South Carolina.

9 Q. And how long have you lived there?

10 A. All of my life.

11 Q. What is your profession?

12 A. I'm a medical office manager at Carolina Pulmonary.

13 Q. Tell the jury about your educational background.

14 A. It stated in 1985 and I went to Kings College in
15 Charlotte and took medical office assisting and I completed
16 that and I took a certification exam in 1986. From there as
17 part of that course for eight weeks you work in a physician
18 office where they place you so you can get the hands-on
19 experience. And the acting physician that signs your -- he
20 will evaluate you with your program directors.

21 And so I did that with an urgent care group. And I
22 worked - They actually gave me a job at the end of that
23 internship and I worked for them three to four years. And
24 then after that I took a job in an internal medicine office
25 in Charlotte and I did not like the commute and so I worked

1 maybe a year doing that. And then I ended up working at
2 a pediatricians office that was hiring in Rock Hill. I
3 went and worked there for about three years and I had my
4 son while I was there. He had early childhood asthma and
5 so I had to -- my husband and I had to decide that I
6 needed ot stay home with him for about three years. At
7 the end of that I wanted to go back to work. He was much
8 older and a lot better and so Doctor Creagh was hiring, I
9 interviewed with him and he hired me.

10 Q. And Doctor Creagh was with what practice?

11 A. Carolina Pulmonary, right.

12 Q. How long have you been at Carolina Pulmonary?

13 A. Twenty years.

14 Q. And you're job has been office manager?

15 A. Yes, ma'am.

16 Q. Okay. Tell the jury what your role entails as the
17 office manager at Carolina Pulmonary.

18 A. It's a lot of administrative duties. Giving, you
19 know, hiring employees, going through that process,
20 maintaining human resource task, payroll, accounts payable,
21 over looking accounts receivable, HIPA OSHA compliance, all
22 this computer, the new electronic health care that we've
23 incurred, you know there's a lot of management with that
24 software that goes on in the working to make sure that
25 we're complaint with Medicare. And working with all the

1 insurance carriers as well.

2 Q. Do you have any clinical role?

3 A. I have minimal clinical role other than just filling
4 in or just helping employees. You know Doctor Alleyne is
5 often times or the doctor is often times busy with patients
6 and giving that kind of direction. And I have a small role
7 in giving criminal direction.

8 Q. Are you currently certified as a certified medical
9 assistant?

10 A. Yes, ma'am.

11 Q. Okay. Who were the doctors at Carolina Pulmonary
12 back in May of 2012?

13 A. Doctor Creagh is the senior physician there. Doctor
14 Alleyne, William Alleyne, he was there and Doctor Arun
15 Adlakha.

16 Q. Okay. What is the role of the medical assistant at
17 Carolina Pulmonary?

18 A. She is an assistant to the physician. She is his
19 support staff. Collect data for him to help him with his
20 patient encounter and anything he gives her direction to
21 do.

22 Q. And I think you had mentioned previously that
23 sometimes you do act in the role of a medical assistant if
24 needed.

25 A. I do.

1 Q. Whose responsible for hiring the medical assistants
2 at Carolina Pulmonary?

3 A. That would fall under Human Resources so it is me.

4 Q. Okay. And who hired Joan Edge?

5 A. I did.

6 Q. Okay. And I think you had said that you are the
7 administrative supervisor and Doctor Alleyne is the
8 clinical supervisor?

9 A. That's right.

10 Q. Okay. What is triage as it applies to the role of
11 the medical assistant?

12 A. Triage is a room. It's a room and it's a process.
13 The patient's brought there; information, her information
14 is collected there, a patient's vital signs and part of
15 those vital signs is a weight. Blood pressure,
16 temperature, respiratory, their oxygen level. And then we
17 go over things like their current medications because as
18 patients, you know, they can go to another physician
19 between the time they've last seen us and then their
20 current visit with us so you want to know if there's any
21 changes in that medication. And then, you know, an
22 entrical history. Have you had any past surgery since you
23 were here; have you had any illnesses that we are not aware
24 of since you were here.

25 Q. Okay. Is the order in which triage is performed in

1 your pulmonary practicing important?

2 A. It is.

3 Q. Why so?

4 A. Our patients are respiratory patients and so they
5 suffer with shortness of breath and often times their
6 shortness of breath comes with exertion so when they walk
7 they become short of breath and so you want to take their
8 patient's weight immediately before they sit. So once they
9 travel from the waiting room to the triage area it's extra
10 effort on their part to have - if you have them sit and
11 then get back up and weight so we do weight first.

12 Q. How are medical assistants oriented as to performing
13 the triage process at Carolina Pulmonary?

14 A. I would orient them. I would be the one to meet them
15 their first day of employment. You know I would give them
16 a tour of the facility; introduce them to their coworkers
17 and physicians if they've not already met them. You know
18 we would go through some information prior to - They don't
19 just start taking patients back immediately. You know I
20 have to talk to them about making sure they're - they
21 understand the HIPAA compliance that we, you know, would be
22 associated with our office.

23 The type of patients that we have. We would see
24 patients that day together. I would start, I would take
25 the patient back, they would be with me. Even though you

1 get a seasoned medical assistant, you can't assume that
2 they -- you have to access their abilities. So you show
3 them first and then, you know, you get the comfort level
4 with them and then they move into the role of the medical
5 assistant.

6 Q. And was that done with Joan Edge?

7 A. Yes.

8 Q. How much experience had Joan Edge had when she came
9 to Carolina Pulmonary?

10 A. Well a lot. Twenty-five plus years experience.

11 Q. How are medical assistants oriented as to assisting
12 patients with ambulation or activities?

13 A. Observation. Again, I told you that I would have -
14 She would have worked with me first. Our patients, we do
15 talk about ambulation as part of that because a lot of our
16 patients come in with oxygen tanks. We're a pulmonary
17 practice. And they have respiratory diseases and so a lot
18 of our patients come; they may come with walkers, canes,
19 wheelchairs, and often, very often times with oxygen. So
20 you have to know how to assist those people.

21 Q. Does it make a difference if the patient is alone?

22 A. Certainly because you have to help them if they
23 need help.

24 Q. What is -- and I think we had talked about -- Strike
25 that. Are patients accompanied to their appointment to

1 Carolina Pulmonary by a family member or a care giver?

2 A. Many many times.

3 Q. Are family members allowed to come back to the triage
4 and exam rooms with a patient?

5 A. Yes, they are.

6 Q. Okay. And how often would you say that this occurs
7 that a family member with significant other accompanies the
8 patient back for the examination?

9 A. With an elderly patient seventy-five percent of the
10 time.

11 Q. Are family members allowed to assist with any
12 activities related to patient's once they come into the
13 office setting?

14 A. Yes, they are. They help them with ambulation, with
15 walking to the exam room with assistance out of the waiting
16 room to the triage area to the exam room area. They'll
17 assist them when we take the blood pressure if patient has
18 on coat, sweater, you know, they often times help them with
19 their clothing. And assist with helping them onto the
20 scale.

21 Q. How about going to the bathroom?

22 A. Yes.

23 Q. Okay. Does it depend on the situation?

24 A. Yes.

25 Q. Do you discuss with new employees when they come or

1 hired at Carolina Pulmonary, how to evaluate whether a
2 patient needs assistance?

3 A. You do. There's a lot of observation. Taking in a
4 lot of information when you just call that patient.

5 Q. And do you discuss during orientation with a new
6 employee what activities a family member may be allowed to
7 assist with?

8 A. Yes.

9 Q. Okay. How do you determine if a family member is
10 qualified to assist with things like walking or getting up
11 and down out of a chair?

12 A. Observation.

13 Q. Is stepping up - Is assistance with stepping up on a
14 scale considered obtaining a weight?

15 A. No.

16 Q. What's the difference?

17 A. The difference is that's just helping someone ambulate
18 and once again when you're taking somebody's weight they
19 can help them up on that scale but you have to make sure
20 that the patient's not holding to anything or anybody's
21 holding to them or you will not get an accurate weight.
22 And then you're the one's that is taking the digital
23 reading and you're the one recording that.

24 Q. Denise, I want to kind of switch gears here and go
25 back to the events of May 17th, 2012 and I think you have

1 made it clear, you did not witness the fall that was -
2 occurred with Mrs. Copeland, correct?

3 A. That's correct.

4 Q. All right. What's your first recollection of learning
5 about Mrs. Copeland's fall?

6 A. I'm working at my desk and one of my employees calls
7 me on the intercom which is really our telephone system.
8 They just dial my extension and reported that the patient
9 had fallen in our triage area.

10 Q. What did you do?

11 A. I came downstairs immediately.

12 Q. And what did you observe when you arrived at the
13 triage room?

14 A. I came down the hallway to the triage room they had
15 told me to come to and I couldn't get in the doorway
16 because there was -- Doctor Alleyne had sent another
17 employee to get a wheelchair and so that wheelchair was in
18 the doorway. Mrs. Copeland was on the ground. Doctor
19 Alleyne was, you know, talking to her and assessing her.
20 He was trying to figure out if he could move her at that
21 point. And Joan Edge was inside the room behind Doctor
22 Alleyne and there was a family member inside as well.

23 Q. Okay. Let me show the jury --

24 MS. CHESLEY: Your Honor, can Ms. Taylor step down?

25 THE COURT: Sure.

1 (WITNESS LEAVES WITNESS STAND.)

2 BY MS. CHESLEY:

3 Q. Denise, if you would and stand so that all the jurors
4 can see, but if you would kind of describe where the
5 patient was on the floor, what position she was in, and
6 where the members were positioned to identify.

7 A. Okay. This picture is mainly just of the nurses
8 computer area and this would have been - This is a scale
9 and that's where family members usually sat. This is the
10 actual doorway into that triage room and I was in this
11 doorway. There was a wheelchair here. Mrs. Copeland's
12 feet were here and her head were inside the room. Doctor
13 Alleyne was beside her. Joan was here. And her family
14 member was there.

15 Q. Okay. Thank you. You can take your seat.

16 A. Okay.

17 (WITNESS RETURNS TO WITNESS STAND.)

18 Q. Did you have any conversations with Mrs. Dorothy
19 Copeland?

20 A. I did.

21 Q. Okay. How about with Deborah Copeland?

22 A. I did.

23 Q. Okay. Tell me about -- Tell me about what happened
24 next. You went to the entrance to the room and you
25 observed this. Tell me what happened next.

1 A. Well once Doctor Alleyne finished his evaluation he
2 was - he got her into the wheelchair. I told - -

3 Q. Where was the wheelchair taken at that point?

4 A. It was still inside the triage room. We didn't move
5 her because I sent Joan to get Doctor Creagh cause the
6 patient was there to see Doctor Creagh that day and he -
7 that was his patient. And she was hurt and even though
8 Doctor Alleyne assessed her for that part of it, I wanted
9 Doctor Creagh to take care of her; anything she might need
10 that day prescription wise or anything to do with what he
11 would have seen her for that day.

12 Q. Was there any conversation related to calling an
13 ambulance?

14 A. Doctor Alleyne was talking to them about that.

15 Q. Okay. And did you have any conversation with either
16 Mrs. Dorothy Copeland or Deborah Copeland about going to
17 the emergency room?

18 A. We did. I talked to Deborah and - cause I had heard
19 Doctor Alleyne tell them that he thought we should call an
20 ambulance and send her to the emergency room. I understand
21 why people don't want to go to the emergency room. She
22 didn't want to wait. She knew they would be there for a
23 while. But the patient needed care and I just said to her
24 then does she have an orthopedic doctor and she --

25 Q. Let me -- Let me ask you this. Was she going to be

1 going to the ER by car or were you going to call an
2 ambulance?

3 A. I don't think they wanted an ambulance called. So
4 now we're just talking about how can we get the care
5 because the first thing that was discussed is can we do the
6 x-ray there and no we can't because we only do chest x-
7 rays.

8 Q. And I guess my question was the recommendation that
9 an ambulance be called?

10 A. Doctor Alleyne made the recommendation that an
11 ambulance be called.

12 Q. So what happened next?

13 A. Well the next thing is like is said just saying well
14 she's got to get her injury treated. And then I opened the
15 conversation about the orthopedic doctor. Did she have one
16 already and she had and I don't remember the doctor that
17 was mentioned but there's only one orthopedic practice in
18 Rock Hill and so I said I can call the manager there and
19 ask if they can work her in as an emergency and Mrs. Debbie
20 Copeland agreed to that.

21 Q. And did you do that?

22 A. I did.

23 Q. And what were you told?

24 A. I requested that their manager which was Mary Elkins
25 and Mary, you know, told me that certainly that they would

1 work her in as an emergency that day.

2 Q. And during this where was Mrs. Dorothy Copeland at
3 this time?

4 A. She was then in the wheelchair. I had sent for
5 Doctor Creagh and we were not in -- Debbie and I when we
6 were talking about the orthopedic doctor had stepped into
7 the hallway.

8 Q. Did you observe Doctor Creagh coming to the triage
9 room?

10 A. Yes.

11 Q. Did you observe him going in the triage room?

12 A. Yes.

13 Q. Were you in the triage room with him?

14 A. No.

15 Q. Okay. How about after Mrs. Copeland left the office,
16 did you have any further contact with the family that day?

17 A. I just called that evening.

18 Q. And what was the purpose of your call?

19 A. My call is to make sure the patient was okay, to ask
20 how she was doing.

21 Q. Were you told by Joan Edge what happened?

22 A. I was.

23 Q. That day?

24 A. Yes. We had a conversation.

25 Q. And what did she say?

1 A. She told me that the patient that they followed her
2 in the triage room and that the family member had helped
3 her up on the scale and when she put her chart down and she
4 turned that the patient had fallen off the scale.

5 Q. Did she tell you that that day?

6 A. Yes.

7 Q. Did you have any -- Did Deborah Copeland say
8 anything about what happened with the fall?

9 A. No because most of the conversation was just that the
10 patient had fallen off the scale and she was hurt and she
11 needed medical care.

12 Q. And what was your primary concern during all of this?

13 A. Getting Mrs. Copeland the care she needed.

14 MS. CHESLEY: That's all I have, your Honor.

15 THE COURT: All right. We need any redirect?

16 MR. MANZI: Yes, your Honor.

17 REDIRECT EXAMINATION

18 DENISE TAYLOR BY MR. MANZI:

19 Q. So you were concerned about Dorothy's health as you
20 just specified, is that correct?

21 A. Yes, sir.

22 Q. And you can be concerned about Dorothy's health not
23 only at that incident but over all make sure Dorothy is
24 healthy or getting good care ---

25 A. Yes.

1 Q. --- at home?

2 A. Uh-huh.

3 Q. Okay. If we were to take what Joan Edge said in her
4 statement what she told you that Deborah Copeland put her
5 mother-in-law, this ninety-year-old frail woman on the
6 scale and walked away and she fell, wouldn't that mean to
7 you that Deborah Copeland was incapable of being a good
8 care giver at that point in time?

9 A. I was not - I was not in the room. I didn't do the
10 observation.

11 Q. I'm not saying that. Just by the facts and I'm
12 telling you.

13 A. Uh-huh.

14 Q. You talked about before observation.

15 A. That's right.

16 Q. You observed whether a family member is capable of
17 assisting the patient.

18 A. That's right.

19 Q. That's what you testified?

20 A. Right. Uh-huh.

21 Q. So if you're told that a family member put their
22 relative on a scale and left them alone; if you had saw
23 something like that, would you make a decision that that
24 person is incapable of assisting a patient?

25 A. I think - - -

1 MS. CHESLEY: Misstatement of facts, your Honor.

2 MR. MANZI: I'm talking in general, your Honor. I'm
3 not even --

4 THE COURT: Sustain. Speculative.

5 MR. MANZI: Let me see if we can do it this way.

6 Q. You observed the -- You observed the family member in
7 general ---

8 A. Uh-huh.

9 Q. --- whether they can assist the patient and it looks
10 like they can then you have no problem with the family
11 member being of assistance to the patient and you wouldn't
12 worry about the patient's safety at that point. Fair
13 statement?

14 A. Right. Uh-huh.

15 Q. Okay. So if you observed a family member doing
16 something that was not consistent with the best interest of
17 the patient, you would determine that that particular
18 family member is not capable to provide the assistance
19 necessary. Is that a fair statement?

20 A. You know a lot of the times if you're trying to
21 assess them you don't think a family member is capable of
22 helping they're usually like equal in age, it's usually a
23 husband and wife, and I know what you're saying. I don't
24 think Mrs. Debbie Copeland wanted her mother-in-law to fall
25 either. I don't, you know, nobody wanted this lady to

1 fall that day.

2 Q. But you didn't think it was right for her to leave
3 her on the scale by herself, right?

4 A. That is --

5 MS. CHESLEY: A misstatement of facts. Speculation,
6 your Honor.

7 MR. MANZI: But by Joan's statement --

8 THE COURT: Whoa, whoa.

9 MR. MANZI: The statement from Joan Edge said that she
10 put her on the scale and walked away.

11 Q. That's not good family assistance is it?

12 A. I think she's just reporting what she saw.

13 Q. All right. If you -- Would you be concerned after
14 Dorothy Copeland left that day for her safety if she was
15 still gonna be under the care of Dorothy Copeland who
16 apparently didn't seem to be able to take care of her?

17 A. She often times brought her in and she brought her
18 from the assisted living. You know I don't think anybody
19 intended for this lady to fall that day nor do I think
20 Debbie Copeland intended for her to fall.

21 Q. I understand that. Did you feel it necessary - You
22 talked about the education and you do with the medical
23 assistant, do you think that at least you should have
24 talked to Deborah Copeland if you believed Joan Edge's
25 statement and talked to her and say hey, we understand that

1 you put your mother-in-law on the stand and left her alone,
2 you know, that's something you shouldn't do, if you want
3 we'll spend some time with you and show you a little bit
4 more and train you a little? You weren't concerned that
5 you were putting Dorothy Copeland back in the hands of
6 somebody who apparently didn't know the proper procedure
7 for putting her mother on a scale, her mother in law on a
8 scale?

9 A. I wouldn't tell a family member what they should or
10 shouldn't do.

11 Q. But you wouldn't be concerned about Dorothy's well
12 being in the hands of Dorothy Copeland?

13 A. We're always concerned about - I'm concerned about
14 that Mrs. Copeland fell.

15 Q. And again, but you never took the time to talk to
16 Deborah about what happened and get her side of the story
17 or at least to educate her on proper care giving?

18 MS. CHESLEY: Ask and answered.

19 THE COURT: Sustain.

20 MR. MANZI: Thank you. I have no further questions.

21 THE COURT: Thank you, ma'am. You can step down

22 Let's take about a seven minute recess.

23 Don't talk about the case.

24 You can step down, ma'am, you're done.

25 Just leave it right there.

1 (WITNESS LEAVES WITNESS STAND.)

2 (JURY EXITS COURTROOM AT 11:21 AM.)

3 (COURT IN RECESS AT 11:21 AM.)

4 (COURT BACK IN SESSION AT 11:28 AM.)

5 THE COURT: Y'all ready? Everybody ready to go?

6 Bring 'em in. We're gonna run until about twelve
7 fifteen or twelve thirty, somewhere around there and then
8 we'll try to get finished with this witness as best we can.

9 (JURY REENTERS COURTROOM AT 11:34 AM.)

10 THE COURT: All right, all members of the jury are
11 present. Thank you again, ladies and gentlemen, for your
12 patience. Just to kind of let you know what the schedule's
13 going to be this afternoon and I know you all are kind of
14 been wanting to know now, we plan to run until about twelve
15 fifteen, twelve thirty or so, and then we'll take our lunch
16 break, reconvene right at two and then, we'll go from
17 there.

18 Doctor Alleyne had an engagement or appointment he had
19 to go to, so that's why he's not sitting over there right
20 now. Of course, I think he'll be back this afternoon.

21 So, are you ready to call your next witness?

22 MR. MANZI: Yes, your Honor.

23 THE COURT: Call your witness.

24 MR. MANZI: Call Deborah Copeland.

25 THE COURT: All right. Mrs. Copeland?

1 (WHEREUPON, DEBORAH COPELAND,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 THE COURT: Okay, ma'am, just speak loud as best you
4 can at that mic. Okay?

5 DEBORAH COPELAND: Okay.

6 THE COURT: The mic won't move for you.

7 Yes, sir.

8 DIRECT EXAMINATION

9 DEBORAH COPELAND BY MR. MANZI:

10 Q. Good morning. You don't mind if I call you Deborah,
11 do you?

12 A. No.

13 Q. Okay.

14 MR. MANZI: Thank you, Judge.

15 Q. Deborah, I want to get right to the chase here because
16 I know you've been sitting here, and you've heard the
17 testimony that's taken place so far, and that you've been
18 very anxious to testify on your behalf here today.

19 So, my first question to you, did you place Dorothy
20 Copeland, your mother-in-law, on the scale at CPP on May
21 17, 2012?

22 A. No, I did not.

23 Q. Okay. And we're going to get into that in more detail
24 but I want to make sure everybody understands that.

25 Let's go into a little bit of your background. You

1 are the daughter-in-law Dorothy Copeland; is that correct?

2 A. Yes, I am.

3 Q. And you're married to one of her sons. Which son?

4 A. Benny.

5 Q. Benny. And he's sitting right there; is that correct?

6 A. Yes.

7 Q. And how long have you been married to Benny?

8 A. Forty-eight years.

9 Q. Forty-eight years. Where were you born?

10 A. I was born in Buchanan, West Virginia.

11 Q. And how long have you been living in South Carolina?

12 A. About thirty years.

13 Q. Now, you've lived in some other states along the way;
14 is that correct?

15 A. Yes.

16 Q. And is it true that Benny, at one time, was in the
17 Navy?

18 A. That's correct.

19 Q. And you traveled to different locations there; is that
20 correct?

21 A. Yes, we did.

22 Q. Tell me a little about your education.

23 A. I went to West Virginia University for three years,
24 and then I got married, and we were transferred to
25 Kingsville, Texas and I finished me degree in education in

1 Kingsville, Texas. And then, later on I went back to the
2 University of South Carolina and I got a master's degree in
3 elementary education.

4 Q. And did you work as a school teacher?

5 A. Yes, I did.

6 Q. For how long?

7 A. Nineteen years.

8 Q. When did you retire as a school teacher?

9 A. About 1990.

10 Q. And have you done any work since 1990?

11 A. No.

12 Q. You've been just, homemaker, stay-at-home mom?

13 A. Yes. Yes.

14 Q. How many children do you have?

15 A. I have two sons.

16 Q. And how old are they?

17 A. One is forty-five, and one is forty-seven.

18 Q. And where do they live?

19 A. One of my sons lives in Rock Hill, and my other son
20 lives in Bethune, South Carolina.

21 Q. Where did you and Benny first meet?

22 A. We met at Myrtle Beach.

23 Q. When did you first meet Dorothy Copeland.

24 A. I came to Bethune at Christmas after I met him that
25 summer, and he proposed, and that's when I met his parents.

1 Q. Were you married shortly thereafter?

2 A. Yes.

3 Q. So, how many years would you say that you known
4 Dorothy Copeland. knew Dorothy Copeland?

5 A. Forty-eight years.

6 Q. Okay. Now, when did you and Benny move to Rock Hill?

7 A. We moved in, let's see. Actually, I can't remember
8 the exact year.

9 Q. It's been awhile, though?

10 A. Yeah. It's -- we've lived in Rock Hill about twenty-
11 five years.

12 Q. Now, when you first moved to Rock Hill, where was
13 Dorothy Copeland living?

14 A. She was living in Bethune.

15 Q. And she was still living with her husband at the time?

16 A. That's correct.

17 Q. And the other members of the Copeland family, Benny
18 has a brother named Wayne?

19 A. Correct.

20 Q. Okay. Are there any other siblings?

21 A. No.

22 Q. Would you say that the Copeland family as a whole is a
23 very close-knit family?

24 A. Yes, we always have been.

25 Q. Do you get together at different times, and socialize

1 and everything?

2 A. We got together for birthdays and Thanksgiving and
3 Christmas and Easter. We did a lot of things together.

4 Q. And would you say you had a close relationship with
5 Dorothy Copeland?

6 A. Yes.

7 Q. How would you describe that relationship? Everybody
8 talks sometimes about, you know, son-in-laws, mother-in-
9 laws; mother's in law, daughter-in-laws, and all that kind
10 of stuff. But how would you describe your relationship
11 with Dorothy?

12 A. When I had -- when I had my first son, she came -- she
13 came to Jacksonville and helped with him, and stayed for
14 about two weeks. And we were always involved with each
15 other's lives, birthdays.

16 Q. You say you were very close.

17 A. Yes.

18 Q. Now, there came a time when Dorothy's husband died.

19 A. Yes.

20 Q. Do you remember what year that was?

21 A. I don't remember. I'm not good with dates.

22 Q. That's okay. I don't want you to guess at anything.
23 Just give me your best testimony here.

24 When Dorothy's husband died, did that make changes in
25 Dorothy's life?

1 A. Yes, it did.

2 Q. And how old was Dorothy at that time?

3 A. I don't know.

4 Q. Well, let me ask you this. After he died, was she
5 living in the house alone?

6 A. Yes, she was.

7 Q. And did the -- make arrangements that she was going to
8 leave that house to go someplace else?

9 A. Yes, after -- after Dad passed away, she was getting
10 depressed, and she didn't -- she stopped doing a lot of the
11 activities that she had been involved with.

12 We felt like it was better if she were closer to where
13 we live, because we live an hour and a half -- we lived
14 about an hour and a half away. And we finally convinced
15 her that it would be good for her to move to Rock Hill.

16 Q. Okay. And what was her health at that time?

17 A. Of course, she still had COPD, and her -- her walking
18 and stuff had declined. But she was still able to get
19 around, I'd say, fairly well.

20 The main thing, we wanted her to be close so that we
21 could have contact with her, and make sure that she had
22 companionship.

23 Q. And I'm sorry, but you might want to speak up just a
24 little louder if you can ---

25 A. I'm sorry.

1 Q. --- so everybody can hear. So, after her husband died
2 and you felt that it was important for her to live closer
3 to you and Benny; is that correct?

4 A. Yes.

5 Q. And she moved into Westminster Towers at that time?

6 A. Correct.

7 Q. And Westminster Towers, that has different sides to
8 it. Independent living, assisted living, skilled nursing;
9 is that correct?

10 A. Correct.

11 Q. And when she first went there, what part of the
12 facility did she live at?

13 A. She lived in the independent living part. She had her
14 own apartment.

15 Q. And at that time, was she using oxygen.

16 A. Not when she first moved in, she was not.

17 Q. Okay. But her COPD was a chronic condition that she
18 had for some years; is that correct?

19 A. Yes. Yes, it was.

20 Q. And was it important when she first moved to Rock Hill
21 for her to get some local physicians to follow her care?

22 A. Yes, it was.

23 Q. And is that why she ended up at Carolina Pulmonary
24 Physicians?

25 A. Correct.

1 Q. The records show that her first visit was around 2007.
2 Does that sound right to you?

3 A. Yes.

4 Q. Now, at this time, 2007, she's about eight-five,
5 eighty-six years old. She didn't drive, did she?

6 A. She drove prior to coming to Rick Hill.

7 Q. Prior to. Well the time she got to Rock Hill, she had
8 stopped driving?

9 A. We had her car in the parking lot, because she was
10 adamant about having a car. So, we put her car in the
11 parking lot, but we had the keys. But every day, lots of
12 times she would want to go out and see if her car was still
13 in the parking lot, which she checked on quite often. But
14 she did not physically drive the car.

15 Q. And that's something -- you and Benny did not want her
16 to drive? Is that a fair statement?

17 A. We did not want her to drive.

18 Q. Okay.

19 A. She didn't know Rock Hill, and Rock Hill is a little
20 bit difficult to get around in if you're not familiar with
21 it. And at her age, it was not appropriate for her to
22 start becoming familiar with it, we did not think.

23 Q. How about her physical stature from the time she moved
24 here in 2007? What -- her size, and things like weight.

25 A. Well, she was -- she was small and thin, and she

1 probably weighed -- I think about the most she ever weighed
2 was like, a hundred and six or a hundred and eight.

3 Q. Okay. In a second there, a picture is going to show
4 -- there it is. All right. Can we get the lights?

5 MS. CHESLEY: Your Honor, just for clarification, I
6 believe it was 2011.

7 THE COURT: Okay.

8 MR. MANZI: I'm sorry?

9 MS. CHESLEY: 2011.

10 MR. MANZI: 2011.

11 Q. Is that the -- That's the latest picture we have of
12 Dorothy. Is that pretty much about the way she was back in
13 2012?

14 A. No, she wasn't that bad.

15 Q. I'm sorry?

16 A. In 2012? Yeah, that's the way she looked in 2012,
17 yes.

18 Q. And this -- in this particular picture, she does have
19 oxygen on; is that correct?

20 A. Yes, she does.

21 Q. And is it safe to say that Dorothy was, for lack of a
22 better word, a little feisty?

23 A. Very feisty.

24 Q. And that she didn't really like having that oxygen on,
25 did she?

1 A. She did not like it at all. It was a constant battle.

2 Q. Okay. And that was even a battle with Doctor Creagh
3 when you used to go to see Doctor Creagh we talked about
4 that.

5 A. Yes, it was.

6 Q. She somewhat had a mind of her own at that time?

7 A. Yes, she did.

8 Q. For that anyway. So, there were times when she left,
9 when she wouldn't have her oxygen on?

10 A. Correct.

11 Q. And that wouldn't be that unusual?

12 A. No.

13 Q. Would you describe if she had difficulty breathing,
14 though, and exertion?

15 A. Yes, she did.

16 Q. Okay. And we saw the medical records yesterday. You
17 wouldn't have any reason to disagree with the way Doctor
18 Creagh had described her, as a frail ninety-year-old woman?

19 A. No.

20 Q. With a lack of mobility, subject to falls, things of
21 that nature. You wouldn't have any reason to disagree with
22 that, would you?

23 A. No.

24 Q. Okay. In terms of her doctor visits, she went to see
25 other doctors, other than just Carolina Pulmonary

1 Physicians; is that correct?

2 A. Correct.

3 Q. And did you take her to every one of those doctor
4 visits?

5 A. Yes.

6 Q. Would you classify yourself as the main care giver for
7 Dorothy?

8 A. Yes.

9 Q. What are some of the other things besides taking her
10 to the doctor, what are the other things you used to do for
11 Dorothy?

12 A. When she first moved in the apartment I took her to
13 get groceries and we shopped together and I would bring
14 them back and I would put them away for her and I did all
15 of her laundry, made sure that all of her clothing matched.
16 I put her outfits together and took care of the things in
17 her apartment to make sure everything was clean. They did
18 clean her apartment but I would always check and see that
19 they had done that. Anything that she needed I would see
20 that she had.it.

21 Q. Did you consider her at that time more like a
22 mother and daughter relationship?

23 A. Yes it was. I called her mom.

24 Q. You called her Mom. In fact, you mentioned a little
25 while ago, her husband you called Dad.

1 A. Yes.

2 Q. And then, she would think of you as a daughter, as
3 well; is that right?

4 A. Yes.

5 Q. Now, prior to May 17th of 2012, you had taken her to
6 Carolina Pulmonary Physicians a number of times; is that
7 correct?

8 A. Yes, that's correct.

9 Q. And I think we talked about the record would show
10 probably at least ten times you had taken her there?

11 A. Yes.

12 Q. And was the procedure the exact same every time you
13 took her there, in terms of going to the triage room before
14 any examination?

15 MS. CHESLEY: Objection, your Honor. Leading.

16 THE COURT: Overruled.

17 BY MR. MANZI:

18 Q. Did you answer my question?

19 A. Yes.

20 Q. Is it true that every time you went there that the
21 original -- let's put it this way. You would take Dorothy,
22 they would call you back, and you go into a triage room; is
23 that correct?

24 A. Correct.

25 Q. And that was the way it was every visit that you went

1 there?

2 A. Not every visit.

3 Q. No?

4 A. Well, with the difference being one -- a visit that I
5 can remember. And I don't know which visit that was, but I
6 think it was before -- well, I know it was before she fell.
7 We went in a different room, and there was -- we had a
8 young lady that took care of Mom. And I don't know if I
9 helped Mom in that day, but I -- I probably did, into the
10 room. And then this particular lady had her sit in a
11 chair, and she talked with her a little bit, and talked
12 with me. And then, she got my mother -- she got Mom up and
13 -- and then, took her over and put her on the scales.

14 Q. But I'm saying every visit that you had with her at
15 CPC, or even when you went to other doctors, it was normal
16 for the doctors to take the weight of Dorothy; is that
17 correct?

18 A. The -- yeah. the CNA.

19 Q. And in any visit that you took Dorothy to, whether it
20 be at CPP or any other doctor visits, did you ever assist
21 in putting her on the scale?

22 A. No.

23 Q. Do you -- did you think it was your job to put her on
24 a scale?

25 A. No.

1 Q. Were you ever asked to put her on a scale?

2 A. No.

3 Q. And let's go right to why we're all here today, and
4 that's May 17, 2012. You remember that day very well,
5 correct?

6 A. Yes, I do.

7 Q. She had a scheduled doctor's appointment at Carolina
8 Pulmonary Physicians?

9 A. Yes, she did.

10 Q. And her main doctor there was Doctor Creagh; ---

11 A. Yes.

12 Q. --- is that correct?

13 A. Yes.

14 Q. Okay. And I believe the records show the appointment
15 was probably sometime in the afternoon?

16 A. Yes. I usually scheduled them in the afternoon so she
17 could have lunch at one, and then I would have time to pick
18 her up and take her.

19 Q. Do you remember what the weather was that day?

20 A. It was rainy or -- rainy and overcast. I don't know
21 if it was raining, but it was -- I know I had taken an
22 umbrella with me, just in case.

23 Q. And describe -- You went to Westminster Towers to pick
24 her up?

25 A. I did, and I --

1 Q. And it was -- I'm sorry.

2 Tell me what happened. Just take us through what you
3 did. Let's do it step-by-step. When you first went to
4 Westminster Towers, what did you do?

5 A. Went into her -- went into her apartment and to see if
6 she was dressed properly. By that, I mean had on clean
7 clothes and they matched, and check her shoes. And I
8 usually did her hair. I usually curled her hair and fixed
9 it so that she would look pretty, and I put -- usually put
10 lipstick on, or helped her put lipstick on. And then, we
11 left and we went downstairs. And there was -- they had
12 some benches outside. You could either sit inside, in the
13 covered area, or you could sit, benches outside, where the
14 walk was.

15 And I usually sat her on the outside if it wasn't too
16 chilly. And so, then I went and got my car, and I brought
17 it right in the front, got out and went and got her off the
18 bench, and got her into the car. Then, we went to the
19 doctor's office, and I pulled under the covering.

20 Q. Let me just stop you there, and let's just kind of
21 take it piecemeal.

22 A. Okay.

23 Q. When you were taking her down, and you would walk, did
24 she hold onto you when she walked?

25 A. Sometimes we held hands.

1 Q. You held hands? Walk kind of slow?

2 A. Yes.

3 Q. Okay. Once you got her in the car and got to Carolina
4 Pulmonary Physicians, what happened then? This --
5 additionally?

6 A. I pulled under the -- I pulled the car under the
7 covering, and I got her out. And I took her inside, and I
8 found a chair, and I sat her in the chair. I told her to
9 wait, that I would be right back, and I went out and got in
10 the car, and took it back and parked in the parking lot.
11 And then, I came in, and sat down beside of her.

12 Q. Okay. Did you have anything in your hands when you
13 came back in?

14 A. She always liked to carry a purse, although I didn't
15 like her to carry a purse, so, I carried the purse. My
16 purse and her purse and the umbrella. And I had that -- I
17 carried that in. I took her out and took her in, and then
18 I came back and took -- brought that in at the end, after
19 she was already sitting inside.

20 Q. Can you just describe the purses that you have? Are
21 they large purses, or a tote bag? What kind of purse were
22 they?

23 A. I always carry -- well, I don't -- probably about like
24 that, because I have a lot of things.

25 Q. Was hers about the same size, or?

1 A. Hers was not as big as mine was. No.

2 Q. And they had handles on them?

3 A. Yes, yes.

4 Q. Okay. And you said you also carried your umbrella?

5 A. Yes.

6 Q. Was it raining at that time, or were you --

7 A. I can't remember if it was raining at that time, but I
8 remember I took it because it was cloudy, and it had been
9 raining, as well as I remember.

10 Q. Okay. Was this a full umbrella, or one of those ones
11 they collapse?

12 A. No, it's just a small umbrella.

13 Q. A small umbrella?

14 A. Uh-huh.

15 Q. Okay. And you're sitting in the waiting room and
16 eventually, someone who you know to be Joan Edge calls your
17 name to go back to the triage; is that correct?

18 A. Correct.

19 Q. And what happened next?

20 A. I helped Mom up out of the chair, and I was holding
21 her arm, and we walked back to -- down the hallway, to --
22 to the room, to the triage.

23 Q. Okay. Let me stop you right there. When you picked
24 her up and helped her, where did you have the two
25 pocketbooks at that time?

1 A. As well as I remember, I had that -- those on my left
2 arm, and I think I was holding her on my right arm.

3 Q. And -- okay. Where was the umbrella?

4 A. I had that on that same side. I had everything on the
5 left-hand side.

6 Q. Okay. And you said -- Were you holding the umbrella
7 like, under your arm?

8 A. I would imagine, yes.

9 Q. Okay. And you were guiding her and she was holding
10 onto your arm when you walked back?

11 A. Yes.

12 Q. And you went down to the triage room?

13 A. Correct.

14 Q. Okay.

15 MR. MANZI: Your Honor, I'm going to -- may I approach
16 the witness, and --

17 THE COURT: Yes, sir.

18 BY MR. MANZI:

19 Q. And you had been to this office a number of times.
20 You were familiar with the layout of the office; is that
21 ---

22 A. Correct.

23 Q. --- correct? And there -- we saw this picture before.
24 Would you go down a long hallway to get to the triage room?

25 A. Yes.

1 Q. And as you were walking down the -- the hallway, what
2 was the order, I mean, between you, your -- with Dorothy
3 and Joan Edge?

4 A. Joan was in front of us, and she walked in -- she
5 walked in the room first. And then, as well as I can
6 remember, since -- I think I was holding that umbrella and
7 the purses in this arm, and I think I had her on the right
8 arm. It would make sense that I would have walked in
9 first, and then guided her in. That's what I remember.

10 Q. Okay. At the time, was there any conversation going
11 on while you -- from the time you got up out of the waiting
12 room to while you were walking down the hallway?

13 A. I'm sure that we -- she probably chit-chatted with my
14 mom. I don't remember exactly what happened, what was
15 talked about.

16 Q. Well, did Joan Edge ever ask you if you needed some
17 assistance with Dorothy?

18 A. No. Not that I remember.

19 Q. Okay. And this is the doorway. Can you see that
20 okay?

21 A. Yes, I can see.

22 Q. And is that about the way it looked for you ---

23 A. As well as I remember.

24 Q. --- what the room was like?

25 A. Yes.

1 Q. And you had been in this room before at some point in
2 time, right?

3 A. I don't know. They all pretty much look the same to
4 me.

5 Q. They all look the same?

6 A. Uh-huh.

7 Q. And we notice that the -- the scale is right by the
8 doorway, though. Do you remember that?

9 A. Yes, I do.

10 Q. And if we look, and this is kind of this wall now, in
11 this picture, does that look like the setup that was in the
12 room?

13 A. Yes.

14 Q. Were they about the same? There were two chairs and
15 the scale?

16 A. Yes.

17 Q. And the digital readout and a little table like that?

18 A. Yes.

19 Q. Okay. Take us through, now, what happened when you
20 entered the room?

21 A. Joan said we have to get her on the scale. And so, we
22 came on into the door -- in through the door, and turned
23 toward -- toward the scale. And we walked -- we walked in
24 front of -- we walked in front of the scale. And when she
25 said, we have to get her on the scale, I wasn't quite sure

1 what that meant for me. But I did -- when I walked on
2 around, I saw the chairs there, which I had always had, you
3 know, had those chairs in there, in the other rooms, I
4 think. And I let go of her arm and walked toward the
5 chair, to put everything down, so I could be whatever, be
6 there.

7 And the next thing I knew, when I turned around, she
8 was laying in the floor, she had already fallen. She was
9 falling as I looked around, and there -- she was just --
10 she was there. Her -- she -- her legs were pointed in
11 toward that -- that chair over against that other wall, and
12 her head -- her head was sort of in the doorway.

13 Q. And so you -- Did she say anything? Was there a yell
14 or a scream when she fell or anything like that?

15 A. I didn't remember hearing anything, but she was in --
16 I did hear her in really a lot of pain after she was on the
17 floor.

18 Q. At the point in time that you said you let go of her
19 arm and were headed towards the chair, where was Joan Edge?

20 A. I don't know exactly where she was. I thought that
21 she was somewhere near. But when I -- when I did finally
22 see her, she was coming -- it looked like she had been back
23 where that blood pressure machine was. And it looked like
24 she was coming toward us, toward me at that time.

25 Q. So, when you -- when you had left -- when you had went

1 to put down your pocketbook and your umbrella and let go of
2 Dorothy, what did you expect was going to happen?

3 A. I expected her to be there.

4 Q. By her, who do you mean?

5 A. Joan.

6 Q. Is that the way it's always has been?

7 A. Yes.

8 Q. And again, you never placed Dorothy on that scale?

9 A. I did not.

10 Q. And even any of the previous times, you never placed
11 her on that scale?

12 A. I did not.

13 Q. You were never asked to place Dorothy on that scale?

14 A. No.

15 Q. And you assumed this visit would be like every other
16 visit?

17 A. Yes.

18 Q. And you assumed that Joan Edge would have taken
19 control of Dorothy at that time, and ---

20 A. I did.

21 Q. --- do what she needed to do?

22 A. I did.

23 Q. What did you do after you saw Dorothy fall?

24 A. I was pretty much in shock. I did not go over to her,
25 because I did not know what to do. I let Joan go over

1 toward her and I let -- and then Doctor Alleyne came in I
2 let them take care of her because I -- I was -- I didn't
3 know what to do. I was just in shock. That's all I can
4 say.

5 Q. What did you see Joan do?

6 A. She bent down and talked to her. That's basically all
7 I remember.

8 Q. Did it appear that Dorothy was in pain?

9 A. Yes. She was making noise. She was like, sort of
10 moaning.

11 Q. What -- She had fallen, was she on her side when she
12 fell?

13 A. As when -- as I remember her, she fell, and she was on
14 her back.

15 Q. Did you sit down at that point in time?

16 A. No, I never sat down.

17 Q. I say you were in shock. Did you say anything
18 specifically to Joan or Dorothy at that time?

19 A. No.

20 Q. Now, at one point in time where Joan had called the
21 doctor in; is that correct?

22 A. It wasn't very long that she called the doctor.

23 Q. And where were you when the doctor came in?

24 A. Standing there.

25 Q. Did the doctor talk to you and ask you what happened?

1 A. No. Not that I remember.

2 Q. Did Joan say anything to you about what happened?

3 A. No.

4 Q. What happened next? Take us through what happened
5 after that.

6 A. Somehow or other, somebody had mentioned about calling
7 the ambulance to take her to the emergency room. And from
8 some past -- all the past experiences, that usually took a
9 long time, and I -- she was in pain, and I wanted her to
10 get as immediate help as she could. And I was thinking of,
11 if we could go to the orthopedist, get the X-ray, because
12 they couldn't do the X-ray at CPP, that it would be quicker
13 for her. So, I was wanting her to get help as quickly as
14 she could, and that's why I didn't want to call the
15 ambulance and take her to the emergency room because I
16 didn't know how long it would take, for all that process to
17 take place.

18 Q. And so, you wanted to take her directly to an
19 orthopedic?

20 A. Yes.

21 Q. And at this time, did you see Denise Taylor?

22 A. Yes. And she made -- she called and made arrangements
23 for us to be seen, which I really, really appreciated. She
24 made arrangements for us to go over there immediately,
25 which we did.

1 Q. But she made arrangements to go see the orthopedist?

2 A. Yes, she did. And I really appreciated that.

3 Q. And as we heard at some point in time they got Dorothy
4 in a wheelchair?

5 A. Yes. And I don't know exactly when that happened,
6 because I was in the hallway talking with Denise after
7 that, after I left that room.

8 Q. And so, there was still at the point in time that
9 Doctor Creagh came and Doctor Creagh actually, I don't
10 know, looked at your -- looked at Dorothy; is that
11 correct?

12 A. I did not see him come into the triage room, but they
13 said he did, and I'm sure that he did. I did not see him
14 do that because I was in the hallway, and I was trying to
15 talk about what we were going to do, and if we could get
16 the appointment and everything. And I just -- I just
17 didn't -- wasn't in there at that time.

18 Q. Is it fair to say that you were still pretty
19 distraught?

20 A. Yes.

21 Q. About how long did it take before you actually then
22 left Carolina Pulmonary Physicians to go to the orthopedic?

23 A. If this would only be a guess, thirty minutes, forty
24 minutes. I don't really know.

25 Q. But then, you drove directly to Carolina Orthopedic?

1 A. That's when I walked out into the hall -- into the
2 reception area, Mom was out there, sitting in the
3 wheelchair. And so, I was getting ready to take her and
4 put her in the car, and then Doctor Creagh came out there,
5 and he talked to her, because they -- they just loved each
6 other. I mean he was so kind to her and she loved him.
7 They joked around, and he was, you know, doing that, and I
8 guess helping her feel better and everything. And when he
9 got finished with that, then I went and got the car, came
10 back and put her in the car, and then we went over to the
11 orthopedist.

12 Q. She still seem to be in pain at that time?

13 A. Yes.

14 Q. Was it apparent to you where her injuries were at that
15 time?

16 A. Yes. Her wrist, yes. I knew that was probably
17 broken.

18 Q. Now, had you contacted Benny by this time?

19 A. I did. I haven't -- my memory from that point is a
20 little bit fuzzy, because I had her. I was trying to get
21 her help. I know I did call him. I don't know exactly --
22 we can call him in our car. I assume I called him then.
23 But I did call him at some point, and actually he did come;
24 which I couldn't remember he had come, because I was asked
25 about that earlier. I couldn't even remember he was in the

1 room, but he was there with -- after we were there, he came
2 in the office with Doctor Heinig.

3 Q. He met you at the orthopedist office?

4 A. Yes, he did.

5 Q. How long did it take for you to get to the orthopedic
6 office?

7 A. Not very long, about ten minutes.

8 Q. It was pretty close by?

9 A. Yes, it's close by.

10 Q. And what happened when you got to the orthopedic
11 office?

12 A. I went in and got a wheelchair, and came and got her
13 from the car, and took her -- rolled her in, and they took
14 her back to see Doctor Heinig.

15 Q. And they take X-rays there?

16 A. Yes, they did.

17 Q. And what were you informed as to what kind of injury
18 Dorothy had?

19 A. She had a broken wrist, and she had a hematoma. She
20 had a fracture of the -- the pelvis.

21 Q. And what was the plan at that point in time?

22 A. The plan was for him to do surgery the next day.

23 Q. The next day. And did the doctor recommend taking her
24 to the hospital, or just take her back home before then?

25 What was that?

1 A. We wanted her to be put in the hospital, but he said
2 he didn't think that would be a -- that we needed to do
3 that, just to take her back to her apartment. But Benny
4 and I talked about it, and we said no, we didn't want to do
5 that, we didn't want to leave her by herself. So, we took
6 her back to our house, and took her in the sunroom and sat
7 her down in her -- an easy chair. Then, I went in the
8 kitchen and got -- started preparing supper.

9 Q. And what happened while she was at the house that
10 night?

11 A. Benny went in and got her -- went into the sunroom and
12 got her out of the chair, and he had taken her to sit her
13 at the table. Had her plate already fixed, and we had
14 already -- the plates were fixed, and we had sat down to
15 eat. And all of the sudden, her hands hit the plate,
16 knocked it off into her lap and in the floor. And she fell
17 out of the chair, onto the floor, and she passed out.

18 Q. And what did you do then?

19 A. We called 911. And they --

20 Q. And did an ambulance come to the house?

21 A. They did.

22 Q. And she was transported to Piedmont Medical Center?

23 A. Yes.

24 Q. And did you go to the hospital that night?

25 A. Yes.

1 Q. And Benny went to the hospital with her that night?

2 A. Yes.

3 Q. And she was admitted to the hospital that night?

4 A. Yes.

5 Q. Did she have surgery the next day?

6 A. Yes.

7 Q. And that was surgery to her wrist; is that correct?

8 A. Yes.

9 Q. And she had to stay in the hospital for a few days
10 after that?

11 A. Six days.

12 Q. Six days. And those six days that she was at the
13 hospital, how often were you at the hospital?

14 A. Every day. All -- she -- they stayed at night, and I
15 stayed in the daytime. We didn't leave her by herself.

16 Q. Okay. In fact, between you and Benny, it was twenty-
17 four seven ---

18 A. Yes.

19 Q. --- for the two of you staying with her?

20 A. Yes.

21 Q. Now, when she was ready to be discharged from the
22 hospital, what did they tell you where she had to go?

23 A. She had to go to a rehabilitation. She went to Health
24 South.

25 Q. And that was Health South Rehabilitation, in Rock

1 Hill?

2 A. Yes, it is.

3 Q. And how was she transferred to Health South
4 Rehabilitation?

5 A. She went by ambulance.

6 Q. So, an ambulance took her there to?

7 A. Yes.

8 Q. And while she was at Health South, do you remember how
9 long she was at Health South?

10 A. She was there for twelve days, I think.

11 Q. How often did you visit her at Health South?

12 A. Every day.

13 Q. I'm sure Health South wouldn't have allowed you to
14 stay overnight, though, correct?

15 A. No. But I went every day that -- I went to her rehab.
16 I had to -- I wanted to see what they were putting -- what
17 she was doing and how she was getting -- how she was
18 getting along. I went there every day for that.

19 Q. Again, we talked about prior to -- prior to this, she
20 had been living in the independent side of Westminster
21 Towers; is that correct?

22 A. Yes.

23 Q. When they were getting ready to discharge her from
24 Health South, what did they tell you?

25 A. They said she could not go back to her apartment, she

1 needed more rehabilitation. So, she went to Westminster
2 Rehab, which is in the same facility that the apartment --
3 in the same building that the apartment was in, but it was
4 in the rehab section and she went there and stayed for two
5 months.

6 Q. But she never returned to the independent living side,
7 though?

8 A. No. Well, she -- Yes, she did, because we had made
9 arrangements for her to go to assisted living. But they
10 didn't have a room ready at that time, so she had to go
11 back to her apartment for a few days while they were
12 putting new carpet in her apartment, in her -- not in her
13 apartment, in her assisted living room. It was just a room
14 that she had, not an apartment like she had before.

15 Q. And then, she went to the other side of Westminster?

16 A. Yes. She went into the assisted living.

17 Q. What kind of changes did you notice in Dorothy after
18 this incident from the way she was before?

19 A. The biggest thing that I can remember is that she was
20 very confused. In her apartment, she had -- you would come
21 into the -- come in the door and she had a little
22 kitchenette, then you would go a little bit farther --
23 further, and she would have her living room, and a little
24 beyond that she had sliding doors, and there was a balcony
25 where she could go out. And we had bought her a little

1 round table and chairs, and she could sit out there and
2 watch the birds and listen -- look at the trees. And she
3 had some flowers out there that she would take care of.

4 And then, when she went into the assisted living, it
5 was just one little room. And we did make it as
6 comfortable as we could, and we did take the same furniture
7 that she had, as much as we could get in that room. But
8 she didn't have the balcony, and she couldn't go outside
9 and see outside like she had been. And for some reason,
10 she thought somebody else was on the other side of the
11 wall. She thought she could hear people in there talking,
12 and she didn't understand. It was really hard for her.

13 Q. There was a change in her quality of her life at that
14 time?

15 A. Yes, it was.

16 Q. Now, she -- she -- she was still with us for about a
17 year and a half or so after the incident; ---

18 A. Yes.

19 Q. --- is that correct?

20 A. Yes.

21 Q. But she died in March of 2014; is that correct?

22 A. Correct.

23 Q. And prior to her death, she was under Hospice care, I
24 believe?

25 A. Yes.

1 Q. And she was how old when she died?

2 A. Ninety-two.

3 Q. How did this incident affect you?

4 A. It was very stressful, and -- But the main thing was
5 how it affected -- how it affected her. Being -- being
6 confused as to where she was, and having to adjust to a
7 totally new environment, because nothing was the same. The
8 side where the assisted living was, nothing was the same as
9 it was where she was in her apartment.

10 In fact, the only time she could go in the other part
11 of the facility was when she was leaving to go -- to go
12 outside, to go to get in the car to go someplace. Because
13 they had their own place where they met and played Bingo in
14 the assisted living. It was a different section, a
15 different place that they got together. So, that was
16 different for her, and at that age anything different is
17 hard to get used to.

18 Q. Now, in all the years that you took care of Dorothy as
19 her main care giver, you were well-aware of her
20 limitations; is that correct?

21 A. Yes.

22 Q. Her lack of mobility?

23 A. Yes.

24 Q. Did you see a decline in her mental status over these
25 years, as well?

1 A. Yes.

2 Q. She would sometimes get confused?

3 A. Yes.

4 Q. Sometimes forget people's names?

5 A. Yes.

6 Q. And in all that time, you were well-aware that you had
7 to take care of her own -- strike that.

8 That, at times, she was incapable of taking care of
9 herself?

10 A. Yes.

11 Q. And you're well-aware that you had to do everything to
12 ensure her utmost safety. Is that a fair statement?

13 A. Yes.

14 Q. And you did that?

15 A. I wanted to do that.

16 Q. And there were -- prior to this May 17, 2012 incident,
17 there was never any other incident of while she was in your
18 care, she fell down and broke her wrist or suffered serious
19 injury?

20 A. No.

21 Q. And I think I touched upon this, but even when you go
22 back to the -- all the doctors that you've seen, and just
23 so we're clear, you never assisted her on any weighing
24 scale at any doctor visits you ever went to?

25 A. No.

1 Q. You've heard the testimony of Joan Edge here in this
2 courtroom?

3 A. Yes.

4 Q. And Joan Edge says you put her on the scale; is that
5 correct?

6 A. Yes.

7 Q. That's what she testified to?

8 A. Yes.

9 Q. Did you put her on the scale?

10 A. No, I did not.

11 Q. Joan Edge testified that, after Dorothy fell, you just
12 sat there and looked kind of aggravated; is that correct?

13 MS. CHESLEY: Objection.

14 THE COURT: Overruled.

15 BY MR. MANZI:

16 Q. You can answer the question.

17 A. That she testified that I looked that way?

18 Q. Well, let's put it this way. She testified that you
19 sat down.

20 A. Yes. But I did not sit down.

21 Q. At any time on May 12th -- May 17th of 2012, did
22 anyone at CPP ask you what happened?

23 A. No.

24 Q. And at that point in time, you didn't volunteer to
25 anybody what happened. You didn't say anything to anybody

1 at that point in time; is that correct?

2 A. I didn't even think about doing that, because I was
3 trying to get her to the orthopedist to get help for her.
4 I didn't even think about saying anything. I didn't think
5 that was the time. And then, after that, I just didn't
6 have any contact.

7 Q. Your main concern was just Dorothy's well-being, ---

8 A. Correct.

9 Q. --- correct? At any time after May 17th of 2012, did
10 anybody from Carolina Pulmonary Physicians contact you to
11 get some further information about what happened in this
12 incident?

13 A. No.

14 Q. Now, you were aware that Denise Taylor called your
15 home that night; is that correct?

16 A. I did not remember that until -- until it was --

17 Q. Okay. You -- well, let me put it -- you didn't talk
18 to Denise Taylor?

19 A. No, I didn't. I didn't remember she called.

20 Q. All right. But at any rate, you never got a message
21 that Denise wanted to talk to you?

22 A. No.

23 Q. And you went there -- there was a subsequent visit in
24 June to Doctor Creagh's office; is that correct?

25 A. Yes.

1 Q. And you accompanied her in that visit on June, I
2 believe, 11th to Doctor Creagh's office?

3 A. I don't -- I did not re -- I did not go with her on
4 the next -- very next visit, and I don't know if that to be
5 the June that was the next visit, or not. But I didn't go
6 to the very next visit with her, my husband went.

7 Q. Okay. But she went to the doctor. She -- you were
8 with her at the doctor visit, the Doctor Creagh visit in
9 June?

10 A. I don't know if I went with her to that visit or not,
11 or whether Benny went with her.

12 Q. All right. But in any event, at any time afterwards,
13 no one ever talked to you about what happened, or asked you
14 any questions about what happened?

15 A. No.

16 Q. When you went into the doctor's visits, would you
17 consider yourself not only a major care giver, but you were
18 kind of like the medical historian. You would actually be
19 the person to give the information to the doctor while
20 Dorothy was being examined. Is that a fair statement?

21 A. I had to give her list of medications and pretty much
22 how much she -- how she had been doing; because she -- she
23 couldn't really give a good, full report of how she was
24 doing.

25 Q. You would be in the exam room with her at all times?

1 A. I always went with her.

2 Q. Do you remember one time Doctor Creagh wanted to try
3 to see to get her into a motorized wheelchair. You
4 remember that?

5 A. Yes. And when I had my deposition, I -- at the time,
6 I couldn't remember that, but I -- I knew that if he said
7 he did that he had. And then, later on, after I had
8 thought about it, I did remember that he had said that.
9 And I had told him at that time that she would not be able
10 to operate it, I did not think. And then, they came to her
11 -- they came and evaluated her, and she was not able to --
12 to operate the motorized wheelchair.

13 Q. So, -- So, she was unable to use that type of device?

14 A. So, she wasn't able to do that.

15 Q. And you saw some of the statements that we have from
16 the doctors, in terms of her being unsteady on her feet.
17 And you wouldn't disagree with any of that, would you?

18 A. No.

19 Q. And even Doctor Creagh's note where he didn't think
20 that she could use a cane very well, either.

21 A. No, I don't even think that was even mentioned.

22 Q. But you -- you -- Is it a fair statement to say she
23 was a ninety-year-old frail, weak woman, physically?

24 A. Yes.

25 MR. MANZI: I have no further questions at this time.

1 MS. CHESLEY: Do you want me to do cross now, your
2 Honor?

3 THE COURT: Well, let me see y'all.

4 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
5 THE JURY AT 12:18 PM.)

6 THE COURT: All right. We'll go ahead and break now
7 for lunch after talking a little bit with the lawyers.

8 Ladies and gentlemen, remember my cautionary
9 instruction I gave you about when you leave the courthouse
10 what to do.

11 It's about twenty after twelve now. Let's reconvene
12 at one forty-five. Okay? That give y'all enough time or
13 do y'all will need to, All right. One forty-five, be back
14 in your jury room for the balance of the afternoon. Okay?
15 Thank you very much.

16 (JURY EXITS COURTROOM ON LUNCH RECESS AT 12:19 PM.)

17 THE COURT: You can step down. Just don't discuss
18 your testimony with anybody. Okay?

19 All right. See y'all back at one forty-five.

20 (COURT IN LUNCH RECESS AT 12:19 PM.)

21 (COURT BACK IN SESSION AT 01:50 PM.)

22 THE COURT: All right. Thank you. Please be seated.
23 Everybody ready?

24 MR. MANZI: Yes, your Honor.

25 THE COURT: All right. Bring 'em in.

1 MADAM COURT REPORTER: Judge, are you going to get
2 your witness back on the stand?

3 THE COURT: Yeah. MRs. -- Madam Witness, can come on
4 back up here.

5 (WITNESS RETURNS TO THE WITNESS STAND.)

6 (JURY RE-ENTERS COURTROOM AT 1:51 PM.)

7 THE COURT: All right. All members of the jury
8 present. Yes, ma'am, your witness.

9 MS. CHESLEY: Thank you, your Honor.

10 CROSS-EXAMINATION

11 DEBORAH COPELAND BY MS. CHESLEY:

12 Q. Good afternoon, Mrs. Copeland.

13 A. Hello. How are you doing?

14 Q. I am good. Thank you. Mrs. Copeland, I just have a
15 few questions for you. You have testified that you were
16 assisting Mrs. Copeland down the hall to the triage room,
17 correct?

18 A. Correct.

19 Q. Okay. And this was pretty much your usual practice?

20 A. Correct.

21 Q. And you followed Joan Edge into the triage room?

22 A. Correct.

23 Q. Okay. And she was ahead of you?

24 A. Correct.

25 Q. Okay. I'm going to ask you a few questions about the

1 actual events of the fall. Do you remember doing an
2 affidavit back in February of 2016 in this case?

3 A. The deposition?

4 Q. The affidavit.

5 A. Oh, the affidavit, yes.

6 Q. Okay.

7 MS. CHESLEY: And your Honor, may I show Plaintiff's
8 Exhibit Twelve, please?

9 THE COURT: Yes.

10 BY MS. CHESLEY:

11 Q. Mrs. Copeland, take a look at that and tell me, is
12 that your affidavit, or a copy of your affidavit, that was
13 given on February the 16th of 2016?

14 A. Yes, it is.

15 Q. Okay. If you could -- if you could look for me on
16 paragraph two, about three lines from the bottom where it
17 starts out by, saw Dorothy fall off the scale. Do you see
18 that?

19 A. Yes, I do.

20 Q. Okay. And it says, and violently hit the floor. At
21 the time that Dorothy fell, Ms. Edge was on the other side
22 of the room. Did I read that correctly?

23 A. That's -- Yes, that's what it says.

24 Q. Okay. And was that your testimony for this affidavit
25 in February 16th of 2016?

1 A. Yes.

2 Q. Okay. I want to just get some clarification. Do you
3 remember when we did meet for your deposition on April 6th
4 of 2016?

5 A. Yes.

6 Q. Okay. And at that time, I asked you some questions
7 about your recollection of the events in the triage room.
8 Do you recall that?

9 A. Yes.

10 Q. Okay. And if you need your deposition testimony, I
11 will be very happy to provide that for you. So, what I
12 wanted to know is, do you recall telling me at that time
13 that you did not get Mrs. Dorothy Copeland on the scale?

14 A. Well, I guess I said that because I did not get her on
15 the scale.

16 Q. Okay. All right. And do you remember telling me
17 that you remember letting her arm go, putting your things
18 down, and then she had fallen?

19 A. Yes.

20 Q. Okay. Do you recall telling me that you did not
21 actually see Mrs. Copeland get up on the scale?

22 A. I did not see her get on the scale.

23 Q. Okay. And do you recall telling me that you did not
24 see Joan Edge put her on the scale?

25 A. I did not.

1 Q. You didn't see --

2 THE COURT: Ma'am, you're going to have to speak up,
3 please.

4 A. I did not see her.

5 THE COURT: Thank you.

6 BY MS. CHESLEY:

7 Q. Okay. And that -- Do you recall testifying that you
8 are really -- you were really not sure, when you left your
9 mother-in-law to put the purses down, you're not really
10 sure where Joan Edge was in the room?

11 A. No. I just assumed that she was somewhere near,
12 close.

13 Q. But you don't -- you don't know?

14 A. No.

15 Q. Okay. And I believe you testified that it all
16 happened so fast, it was like an instant.

17 A. It did happen very quickly.

18 Q. Okay.

19 A. As most falls do.

20 Q. So, sitting here today -- and I just wanted to be
21 sure, because in your affidavit, you had stated I saw
22 Dorothy fall off the scale. And so, I'm just trying to be
23 sure I understand what your testimony is today.

24 A. It is hard to -- When someone falls, I guess it's sort
25 of like when you see a car accident. Things -- the things

1 do happen so quickly and it's -- it's -- when you say
2 something, it's kind of hard to remember exactly how you
3 said that thing; because it's hard to remember exactly what
4 you saw and when you saw it and how you saw it.

5 Q. But is it fair to say that you do not have any
6 recollection or knowledge of Mrs. Copeland ever being on
7 the scale?

8 A. I did not see her on the scale.

9 Q. Okay. All right. I think you testified early -- Was
10 your testimony was that when Mrs. Dorothy Copeland fell,
11 her head was at the area of the doorway.

12 A. That's what I remember.

13 Q. Okay. And her feet would have been inside the room?

14 A. That's what I remember.

15 Q. Okay. So, that's your recollection of her head was at
16 the doorway?

17 A. Yes.

18 Q. Okay. And I'm correct that the pulmonary -- Carolina
19 Pulmonary staff wanted or encouraged you to allow them to
20 call an ambulance.

21 A. They asked me if wanted an ambulance called.

22 Q. As to the testimony related to Doctor Creagh, do you
23 recall in your deposition testimony back in April of 2016
24 that you told me that Doctor Creagh did not come into the
25 triage room?

1 A. I did, because I did not -- I did not see him and so,
2 therefore, I said he did not.

3 Q. Okay. And your testimony was that he did not examine
4 her?

5 A. Well I did not know that he had come in the triage
6 room.

7 Q. Okay. So, now, are you saying you believe he --

8 A. If they -- if he -- if they -- if the CPP said that he
9 came in, I'm sure he did.

10 Q. Let me ask you briefly, and I want to kind of go back
11 in time to when Mrs. Copeland moved from Bethune to Rock
12 Hill, and moved into Westminster -- the Westminster
13 facility. And I believe, am I correct, that was in March
14 of 2011?

15 A. Yes.

16 Q. Okay. And I believe you told me in your deposition
17 that, at the time of Mrs. Copeland's move to Westminster in
18 March of 2011, that she could walk by herself at a -- at a
19 pretty good gait. Do you recall that?

20 A. Yes.

21 Q. Okay. And that she did not use a cane or a walker,
22 correct?

23 A. Correct.

24 Q. She could make her own breakfast, a simple breakfast
25 of cereal?

1 A. She ate cereal, dry cereal.

2 Q. So, she could do that?

3 A. Yes.

4 Q. She could bathe herself?

5 A. Yes.

6 Q. She could dress herself?

7 A. Yes.

8 Q. Okay. She could be left alone?

9 A. Yes.

10 Q. Okay. She could go with you to the grocery store?

11 A. Yes.

12 Q. She could go out to dinner?

13 A. Yes.

14 Q. And is that your testimony today, that in March of
15 2011, which was more than a year prior to the events of
16 this fall, that that was her activity status at that time?

17 A. Yes.

18 Q. Okay.

19 MS. CHESLEY: I have no further questions.

20 MR. MANZI: Just briefly, Deborah.

21 REDIRECT EXAMINATION

22 DEBORAH COPELAND BY MR. MANZI:

23 Q. You would agree that after 2011 that Dorothy's
24 condition began to deteriorate, though?

25 A. Yes.

1 Q. And that we've seen that document by Doctor Creagh in
2 his own notes, about him worrying about how her condition
3 was deteriorating?

4 A. Yes.

5 Q. In terms of her mobility; ---

6 A. Yes.

7 Q. --- is that correct? And just -- just to be sure, you
8 have no formal medical training of any kind, do you?

9 A. No.

10 Q. Okay.

11 MR. MANZI: I have no further questions.

12 THE COURT: All right. Thank you, ma'am. You can
13 step down.

14 Call your next witness.

15 (WITNESS LEAVES WITNESS STAND.)

16 MR. MANZI: I'm sorry.

17 THE COURT: Yes, sir.

18 MR. MANZI: We call Wayne Copeland.

19 THE COURT: Sir.

20 MADAM CLERK: Mr. Copeland, I'll have you step up to
21 be sworn. Place your left hand on the Bible and raise you
22 right.

23 (WHEREUPON, WAYNE COPELAND,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 MADAM CLERK: Just watch your step up.

DIRECT EXAMINATION

WAYNE COPELAND BY MR. MANZI:

Q. Good afternoon, Wayne. How are you?

A. I'm well.

Q. You don't mind if I call you Wayne, right?

A. Right.

Q. Wayne, what I want to do for the jury through your testimony is just give a little bit of background, so they get to know your mother Dorothy a little better than what we've heard or seen so far, a little more of her personal -- her personal side.

You are the eldest son; is that correct?

A. Yes.

Q. And how old are you? I hate to ask, but.

A. I'm seventy-three.

Q. Okay. Where did you grow up.

A. In Bethune.

Q. In Bethune? And who lived in the house with you there?

A. Mom, Dad, and my brother.

Q. And your brother Benny?

A. Benny.

Q. And what was your father's name?

A. Harold. It was Wayne Harold Copeland, Senior. I'm -- I'm Wayne Harold Copeland, Junior.

1 Q. Okay. And where did your mother Dorothy and her
2 husband first meet?

3 A. In Kershaw. Mother grew up in -- was born and grew up
4 on Kershaw.

5 Q. And how long had they lived in the family home? Did
6 they remain in that family house for a long time?

7 A. Well, when my -- My father went overseas in World War
8 II, and my uncle was gone overseas, too. And so, Mama and
9 Aunt Francis lived with my grandmother, down in the old
10 home place.

11 Q. Very well. Well, what branch of service did your
12 father serve in?

13 A. U.S. Army.

14 Q. Okay. And you said he had action in Europe, I
15 suspect?

16 A. At the Pacific.

17 Q. Pacific. Okay. What -- How about your mother's
18 siblings? Did she have any sisters, brothers?

19 A. Mom was the seventh child in a family of seven, and so
20 was my father.

21 Q. Any of those siblings survive to today?

22 A. None of 'em are alive now.

23 Q. Okay. I just want to show you a couple of pictures.
24 Some we've already seen, some we haven't. Again, we've
25 seen this picture. This is a -- probably one of the last

1 pictures of your mother that was taken before her death; is
2 that correct?

3 A. Yes.

4 Q. Okay. And now this is probably an earlier picture,
5 isn't it?

6 A. That's Mom and me.

7 Q. That's little -- little baby Wayne, right?

8 A. Yes, sir.

9 Q. Okay. And this is a picture of your mother and your
10 father?

11 A. Yes, sir.

12 Q. Okay. And you don't remember when that picture was
13 taken, about?

14 A. I think it was taken around Easter time in -- in
15 Benny's yard.

16 Q. Do you remember what year?

17 A. No, sir.

18 Q. Okay. But in terms of stature, your mother -- I mean,
19 we see her -- her stature was -- physical stature was a lot
20 different back then, anyways, correct?

21 A. Yeah, she was almost five two.

22 Q. And then, this is the last one. This is a picture we
23 know was taken in 2008.

24 A. Yeah.

25 Q. And we see someone but this is with you and your

1 brother with your mother; right?

2 A. Yes.

3 Q. And do you remember that?

4 A. Yes, sir.

5 Q. Okay. And where do you live, Wayne?

6 A. I live in Columbia.

7 Q. And how long have you lived in Columbia?

8 A. Since 1964.

9 Q. And who do you live with?

10 A. My wife Annette.

11 Q. And that's Annette sitting right there?

12 A. Yes.

13 Q. And how long have you and Annette been married? I'm
14 sorry, tough question to ask.

15 A. Forty-seven. Forty-seven years.

16 Q. You have children?

17 A. Yes.

18 Q. Okay. How many -- And Dorothy had grandchildren?

19 A. Yes. We had three children, and we lost our son in
20 2010. But we have two daughters. Kimberly lives in Clover
21 with her husband, Rob Richards, and granddaughter Caroline.
22 And daughter Carrie lives in Columbia, alone.

23 Q. And how -- When your mother was still living in
24 Bethune, how far away were you, when you were down in
25 Columbia?

1 A. About sixty-five miles.

2 Q. Okay. And did you see your mother often then?

3 A. At least once a month.

4 Q. Okay. And back in 2011, when she moved up to Rock
5 Hill, did you still -- did you go see her once in awhile?

6 A. Yes, sir.

7 Q. And at that time, Benny was living in Rock Hill, and
8 she went to live closer to Benny; is that correct?

9 A. Yes, sir.

10 Q. Now, as the eldest son, you were appointed as the
11 personal representative of the estate of Dorothy Copeland;
12 is that correct?

13 A. That's correct.

14 Q. And the estate of Dorothy Copeland is still open
15 today; is that correct?

16 A. That's correct.

17 Q. And do you still handle all of the estate affairs?

18 A. Yes, sir.

19 Q. And there are still some estate affairs that need to
20 be handled?

21 A. Yes, sir.

22 Q. And that includes some bills that may have been
23 incurred during Dorothy's lifetime that have to be handled
24 by the estate?

25 A. Yes, sir.

1 Q. When did your mother work, if she worked?

2 A. She worked at -- I can't remember the name of it, but
3 it was a sewing plant in Bethune. And she was -- she was a
4 good seamstress, and she was later like a supervisor in the
5 sewing plant.

6 Q. How long did she work there?

7 A. I don't remember. A lot of times ---

8 Q. Okay.

9 A. --- she made mine and Benny's clothes, made suits for
10 me.

11 Q. And she eventually retired, and --

12 A. Yeah. Well, when my daddy got transferred up to
13 Rockingham, North Carolina, I think she just quit work and
14 moved up there with him.

15 Q. And what did your father do for a living?

16 A. He was a forest technician for an international paper
17 company.

18 Q. Okay. And how long did he work for them?

19 A. About twenty-five years.

20 Q. Okay. So, you began to see -- After your father died,
21 did you begin to see a change in your -- in your mother at
22 all, in terms of her physical attitude, mental attitude?

23 A. Yeah. She -- At first, it was hard to notice; but
24 later, she seemed to be depressed. And she had been, you
25 know, she had been active in the Eastern Star and church,

1 and she started slowing down in her activities.

2 Q. And she -- after her father died -- After your father
3 died, she lived alone; is that correct?

4 A. Yes, sir.

5 Q. And did there become a time when you didn't think it
6 was good for her to be living alone?

7 A. Yes, sir.

8 Q. And is that why she moved up to Rock Hill, to be
9 closer to Benny and to Westminster Towers?

10 A. Yes, sir.

11 Q. Okay. When did you learn of your mother's fall?

12 A. Benny called me that night and told me that he -- he
13 brought me up-to-date on what had happened, and that she
14 had been admitted to the hospital, and was going to have
15 surgery the next morning. So, we came up to Rock Hill to
16 be with her then.

17 Q. Okay. So, you saw her after the fall?

18 A. Yes, sir.

19 Q. Okay. And you understand that she was in the
20 hospital, and then went to rehab? Eventually got back to
21 Westminster Towers?

22 A. Yes, sir.

23 Q. And then, eventually, unfortunately, she passed away
24 in March of 2014?

25 A. Yes, sir.

1 Q. Okay.

2 MR. MANZI: I have no further questions.

3 THE COURT: Any questions?

4 MS. CHESLEY: Just a few, your Honor.

5 CROSS-EXAMINATION

6 WAYNE COPELAND BY MS. CHESLEY:

7 Q. Hello, Mr. Copeland.

8 A. Hello.

9 Q. Just verifying, Mr. Copeland, you were not present at
10 Carolina Pulmonary on May 17, 2012, when your mother fell,
11 correct?

12 A. That's correct.

13 Q. All right. And so, you have no firsthand or
14 independent knowledge of the fall events of May 17th, other
15 than what someone may have told you; is that correct?

16 A. Correct.

17 MS. CHESLEY: That's all I have, your Honor.

18 THE COURT: Thank you. You can step down.

19 (WITNESS LEAVES WITNESS STAND.)

20 THE COURT: You can call your next witness.

21 MR. MANZI: Your Honor, at this time we're going to
22 play the videotape deposition witness of Dr. Heinig.
23 Heinig.

24 THE COURT: All right. Thank you.

25 Ladies and gentlemen, at this time the lawyer is going

1 to prepare and play for you what's called a videotape
2 deposition. A deposition is a sworn statement made under
3 oath, made outside of a courtroom, where lawyers from both
4 parties are present, and can ask the witness questions,
5 just as if they were in court.

6 You are to consider this deposition testimony the same
7 as if the witness were actually appearing here, live, and
8 testifying, as well, and give it the weight and credibility
9 you believe it deserves. In malprac -- professional
10 malpractice cases, it's very common for both plaintiffs and
11 defendants to use videotaped deposition testimony, because
12 it costs a lot of money to take a doctor away from his
13 office to come up here and testify and spend half a day, as
14 you can imagine.

15 So, this is the most cost-effective way for both sides
16 to present doctors' testimony in cases like this. Okay?
17 So, that's why we do this, this way. So, please pay close
18 attention to the doctor's testimony.

19 You may publish the deposition.

20 MR. MANZI: Thank you, your Honor.

21 (WHEREUPON, PLAINTIFF/DEFENDANT EXHIBIT NUMBER
22 FIFTEEN, STIPULATED TO BY ALL PARTIES, RECEIVED INTO
23 EVIDENCE.)

24 (DOCTOR MICHAEL FORREST HEINIG VIDEO DEPOSITION
25 PUBLISHED TO THE JURY AT 02:11 PM.)

1 THE COURT: Pause just a second. Pause it for just a
2 second.

3 All right. Ladies and gentlemen, you may have heard
4 Mr. Manzi and his question and offer the doctor as an
5 expert, and there was no voir dire, am I correct?

6 MS. CHESLEY: That's correct.

7 THE COURT: All right. So, you stipulate he's an
8 expert in the field of orthopedic surgery?

9 MS. CHESLEY: Correct.

10 THE COURT: Let me explain to you all what that means.
11 That's the first time you all've dealt with this in this
12 trial.

13 An expert -- normally, when a witness testifies in
14 court, they can only testify about what they saw, heard, or
15 smelled, or something like that. However, there is an
16 exception for witnesses, which are called expert witnesses,
17 because of that witness's special training, knowledge, or
18 skill, they may testify in the form an opinion. Okay?

19 Now just because an expert offers an opinion doesn't
20 mean you have to accept the opinion. It's simply evidence
21 for you to use as you see fit, and you can -- and combined
22 with all the other evidence, give it the weight and the
23 credibility you deserve. So, bottom line, what you can
24 remember is, an expert witness can offer an opinion as to
25 something, where other witnesses can't.

1 Go ahead.

2 MR. MANZI: Thank you, your Honor.

3 THE COURT: All right.

4 (DEPOSITION CONTINUED TO BE PUBLISHED TO THE JURY/STOP
5 AT 02:31 PM.)

6 THE COURT: All right. You may call your next
7 witness.

8 MR. MANZI: I call Benny Copeland.

9 THE COURT: All right. Sir.

10 MADAM CLERK: Mr. Copeland, if I can have you step
11 forward to be sworn. Place your left hand on the Bible and
12 raise your right.

13 (WHEREUPON, BENNY COPELAND,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 MADAM CLERK: Thank you, sir. Just have a seat and
16 watch your step up.

17 DIRECT EXAMINATION

18 BENNY COPELAND BY MR. MANZI:

19 Q. Good afternoon, Benny.

20 A. Good afternoon.

21 Q. Is it okay if I call you Benny?

22 A. It's okay.

23 Q. Okay. Now you're heard a little bit from your brother
24 Wayne. We're going to get -- I'm going to get a little
25 more detail on some family background, and then go into

1 some -- some particulars.

2 First of all, let's learn a little bit about yourself.

3 You live here in Rock Hill?

4 A. I do.

5 Q. And how long have you lived in Rock Hill?

6 A. Since 1988.

7 Q. Where did you live prior to that?

8 A. Lived two years in Florida, and the balance of that I
9 lived in South Carolina, except for four years. Enlisted
10 in the Navy from '72 to -- from '68 to '72. And lived at
11 Clemson for a couple years while I finished my degree.

12 Back in Westville, South Carolina for six months. Then,
13 Bethune, South Carolina until 1986. And '86 to '88 I was
14 in Florida. From '88 to here I've been in Rock Hill.

15 Q. How about your education? Tell us a little bit about
16 your education.

17 A. I finished high school in Bethune, South Carolina,
18 attended Spartanburg Junior College, Spartanburg Methodist
19 now but it was Spartanburg Junior College later. And then,
20 during the Vietnam era I didn't do so well in school, so I
21 ended up in the Navy, and finished the Navy. And then,
22 after the Navy, I went back and graduated from Clemson.

23 Q. What -- what is, particularly -- what was your rank in
24 the Navy?

25 A. I was -- At that time, I was a Second-Class Petty

1 officer, but I went back in the Reserves later on, and
2 retired as a Chief Petty Officer.

3 Q. Okay. We had heard that your father fought in World
4 War II, in the Army; is that correct?

5 A. He did.

6 Q. And I'm sorry, I forgot to even ask Wayne. Was Wayne
7 in the Service, too?

8 A. Wayne was in the Army.

9 Q. Wayne was in the Army, too.

10 A. During the Vietnam era.

11 Q. Okay.

12 A. During the same time I was in, Wayne was in.

13 Q. Thank the Copeland family for their service.

14 Let's talk about your work history. After you got out
15 of the Navy what did you do?

16 A. After graduating from Clemson, I taught school until
17 1984. And then, I went to work for MetLife, and I worked
18 for MetLife until I retired. I'm getting my years mixed up
19 now. About three years -- about three years ago, I retired
20 from MetLife.

21 Q. Okay. Is that about all -- when you said you taught
22 school, what, specifically, did you teach??

23 A. I taught industrial -- industrial electricity in a
24 vocational school.

25 Q. Okay. And where are those schools?

1 A. In Camden, South Carolina.

2 Q. Okay. And then, you went to work for MetLife?

3 A. And then, I went to work for MetLife.

4 Q. And you retired from MetLife?

5 A. I retired from MetLife.

6 Q. And what year did you retire from MetLife?

7 A. I think it was 2015, but it could have been '14. I --
8 it's been two or three years. I've been having so much fun
9 in retirement, I forget my time.

10 Q. Okay. And we've heard already from -- from Deborah,
11 but you've been married to Deborah for how long?

12 A. Forty -- I knew that, for forty-eight years.

13 Q. Forty-eight years. And you have a couple sons?

14 A. I have two sons.

15 Q. And how many grandchildren?

16 A. Six.

17 Q. And how about your -- your community service here in
18 York County? What do you do?

19 A. I teach Sunday School at Eastview Baptist Church. I
20 attend there, and I'm elected to the Soil and Water -- York
21 County Soil and Water Conservation Commission, which I've
22 been -- I was on that in Kershaw County, and then here.
23 I've done that for twenty-five years.

24 Q. So, are you still doing any activity in veterans'
25 affairs?

1 A. Yes. I'm a member of VFW, American Legion, and
2 Rolling Thunder.

3 Q. And what is Rolling Thunder?

4 A. That's an organization that's -- helps to locate
5 missing POW's and MIA's, and help return them to their
6 homes.

7 Q. Okay.

8 A. And it's been very successful and very rewarding.

9 Q. Thank you. Okay, let's talk a little -- we now know
10 that, at some point in time after your -- your father died,
11 both you and Wayne were concerned about her living alone in
12 Bethune?

13 A. Yes.

14 Q. And the decision was made that she should move closer
15 to you; is that correct?

16 A. Yes.

17 Q. Is that something -- We've heard Deborah describe your
18 mother as sometimes being feisty. Would you agree with
19 that characterization?

20 A. Yes.

21 Q. And we heard a little bit about how she was even
22 reluctant to give up driving, even at her age; is that
23 correct?

24 A. Oh, yes.

25 Q. Okay. So, I guess, reluctantly she came to live up in

1 Rock Hill?

2 A. She did.

3 Q. Okay. And at that time --

4 A. Well, now, she wasn't reluctant. I mean she -- she
5 came. She was ready to come, I think.

6 Q. Where did she first live in Rock Hill when she came
7 here?

8 A. Well, she lived with us for a short period of time
9 until we could get her situated at Westminster.

10 Q. Okay. And at that time, she was in the independent
11 living side of Westminster. And how old was she when she
12 came to Rock Hill?

13 A. She was born in 1921, and that was somewhere in 2010
14 or 2011, so.

15 Q. Okay. So, at least eighty-nine, probably?

16 A. Eighty-nine, ninety. Yeah.

17 Q. Okay. And at the time she came to -- to live in Rock
18 Hill, Deborah had already been retired?

19 A. Yes.

20 Q. But Deborah wasn't working?

21 A. No.

22 Q. And did Deborah assume a lot of the care giving for
23 your mother?

24 A. Ninety-eight percent of it. She --

25 Q. And what did you observe, in terms of the things that

1 Deborah did for your mother?

2 A. Well, she -- not only did she visit her, she helped
3 her with her shopping, and helped her -- just visited with
4 her and brought her over to the house some, we fed her. I
5 mean, you know, Mom would come and eat with us. If she
6 needed to go somewhere, we usually -- Debbie usually took
7 her. Debbie was -- I was working, so Debbie was the
8 primary one to take her to doctor's appointments and so
9 forth.

10 Q. And how would you describe that relationship between
11 Deborah and your mother?

12 A. As much a mother and daughter as you could be, without
13 being blood relative.

14 Q. Now, did that include that you were aware that Deborah
15 was the one that took your mother to most of her if all of
16 her doctor's appointments; is that correct?

17 A. That is correct.

18 Q. Okay. Your mother didn't drive, and she had the
19 ability and time to do that ---

20 A. That is correct.

21 Q. --- for your mother? And how often would you see your
22 mother on a weekly basis?

23 A. Two or three times a week.

24 Q. Okay.

25 A. Or more. I mean.

1 Q. Would that be sometimes at Westminster, and sometimes
2 she would come to your house?

3 A. That is correct.

4 Q. Now, we know she did suffer from a chronic lung
5 disease.

6 A. That is correct.

7 Q. And did that have an effect on her life and her
8 ability, mobility, things like that?

9 A. Well, it diminished over the years. I could see a --
10 I could see her diminishing in capacity.

11 Q. Okay. And she was supposed to be on oxygen; is that
12 correct?

13 A. When they first put her on oxygen, they just told her
14 to use it at night, when she slept. And then, later on she
15 started using it -- had to use the portable oxygen most of
16 the time. But I don't know the time frames on that. I
17 don't know exactly.

18 Q. And we've heard at times, she didn't like being on the
19 oxygen. Is that a fair statement?

20 A. That's correct.

21 Q. Okay. Did you also notice over time the deterioration
22 in her mental status?

23 A. She was declining. She was getting some dementia.
24 She was -- she was still cognizant of most things that were
25 going on around her.

1 Q. Okay. Okay. Let's talk a little bit about --
2 Obviously you were not with Deborah or your mother on the
3 day of May 17th, 2012, correct?

4 A. Correct.

5 Q. At Doctor Creagh's office.

6 A. That is correct.

7 Q. When did you learn of the fall?

8 A. Debbie called me when she was either at or on her way
9 to orthopedic doctor.

10 Q. And where were you at the time?

11 A. I don't remember. I was either on an appointment or
12 in Charlotte, one or the other.

13 Q. Okay. Well, what was your plan to meet Deborah and
14 your mother at --

15 A. Oh, I -- I don't -- I didn't formulate a plan, I just
16 came straight to their office.

17 Q. Did you go straight to the orthopedics office, or to
18 Doctor Creagh's office?

19 A. Orthopedic office.

20 Q. Okay. And that's where you met them?

21 A. That's right..

22 Q. Okay. So you were with them -- we just heard the --

23 A. Doctor Heinig.

24 Q. We just heard Doctor Heinig testified that you were
25 there that first visit.

1 A. Well, I got there after they did. They -- they got
2 there before I did.

3 Q. Okay. You understood what had happened to your
4 mother, and what injuries she had received?

5 A. I did.

6 Q. Okay. And you concurred with the treatment plan that
7 Dr. Heinig wanted to do?

8 A. I did.

9 Q. Okay. And Dr. Heinig was going to do the surgery the
10 next day, as he testified; is that correct?

11 A. That is correct.

12 Q. And so, you took your mother home that night?

13 A. We did. He -- he said she could go back to her
14 apartment and come back, but Debbie and I said we would
15 just take her to the house, and we would keep her overnight
16 and bring her back the next morning, because she was
17 supposed to be back at the hospital early. I don't
18 remember what time frame. I don't know if it was eight
19 o'clock or nine o'clock, but we were just going to take her
20 home and let her stay with us, and bring her back in the
21 morning.

22 Q. Now, at that time, what was your understanding as to
23 what had happened to your mother?

24 A. I understood that she fell, and that was all I knew.
25 She fell and she broke her wrist, and after the X-rays,

1 Doctor Heinig -- she -- she had a pelvic fracture. And at
2 some point in time, they said she had a hematoma in her
3 pelvic area. A rather large hematoma, was the way it was
4 -- was the way it was described to me. Now, I didn't --
5 that was my recollection.

6 Q. Okay. What happened that night at your house?

7 A. We brought her in the house, and I took her in the
8 sunroom, sat her in a comfortable chair, stayed with her
9 and visited with her while Debbie fixed supper. Debbie let
10 us know supper was ready, and Debbie always fixed the
11 plates and she had them on the table, and I brought Mom in
12 to -- to the table, and set her at the table.

13 And Debbie hadn't even sat down. Just before Debbie
14 sat down, Mom just passed out. She knocked her plate in
15 her -- off, and she didn't -- and I helped her. I grabbed
16 her, and helped her, and I actually laid her in the floor.
17 She didn't -- she didn't actually fall in the floor, but
18 Debbie was -- she didn't know what to do, and I told her to
19 call 911. I said 'just call 911', and I laid her in the
20 floor and held her, and told Debbie to get a pillow for
21 her, and put a pillow under her head.

22 And then, she -- she kind of looked up at me and
23 little eyes -- she -- she had pretty little eyes -- she
24 just looked up at me, you know, just a pleasant look. And
25 -- and she didn't talk. We -- we -- I talked to her. I

1 thought I -- I was fixing to start CPR, because I didn't
2 know what else to do. And then, when she opened up and she
3 looked at me, I checked her and she was breathing. Her
4 heart was beating and so we just held her there until the
5 paramedics came. And then, they took her to the hospital.

6 Q. Now, the ambulance took her and they took her to
7 Piedmont Medical Center?

8 A. The ambulance took her to -- took her to Piedmont, and
9 we stayed in the emergency room for ---

10 Q. Okay. I just want to back up just ---

11 A. --- a long time.

12 Q. --- just a little from there. Prior to that happening
13 at your house, do you remember receiving a telephone call
14 from Denise Taylor.

15 A. I do not, but I'm not going to say it didn't happen.
16 I just don't remember. I'm -- I mean, she probably did,
17 because the office did, you know, send some flowers to
18 Mama's room, and you know, they did contact us, but I don't
19 remember that exact phone call. But I'm not going to say
20 it didn't happen, because you know I'm sure they did.

21 Q. Okay. Now when she went to the hospital, we heard
22 Deborah testify that she was in the hospital for six days,
23 and you and Deborah did round-the-clock shifts while she
24 was in the hospital?

25 A. We did. And Wayne and Annette also came up and

1 relieved us a couple a times. But we had myself, Debbie,
2 or Wayne or Annette were in the room with her twenty-four
3 hours a day for the whole time she was in the hospital.

4 Q. At any time, did your mother ever tell you what
5 happened to her?

6 A. No. No, not really.

7 MS. CHESLEY: Objection. Hearsay.

8 THE COURT: Sustained.

9 BY MR. MANZI:

10 Q. At any time, did anybody tell you exactly what
11 happened?

12 A. Not -- not during that time.

13 Q. Not that day?

14 A. No.

15 Q. Okay. Did there come a time where you learned what
16 Deborah has testified to?

17 A. Yes.

18 Q. And you know after the hospital, your mother went to
19 Health South Rehab.

20 A. Right.

21 Q. Spent some time there?

22 A. Yeah.

23 Q. And then, back and forth between various places at
24 Westminster Towers; is that correct?

25 A. Right.

1 Q. And that's where she stayed eventually, until her
2 unfortunate death in March of 2014?

3 A. That is correct.

4 Q. Okay. Now, you -- during all this time in which your
5 mother moved up to -- to Rock Hill, did you acquire the
6 power of attorney over your mother?

7 A. We had that prior to --

8 Q. In --

9 A. After my dad died, she redid her will, and she named
10 me as power of attorney, and Wayne as executor at that
11 time. That was right after my dad's death.

12 Q. And as power of attorney, you had control over all her
13 financial affairs?

14 A. Yes.

15 Q. And the medical decisions, as well ---

16 A. Yes.

17 Q. --- over that? So, you're aware of the treatments
18 that she's received and bills that she has -- has incurred,
19 and things of that nature?

20 A. Yes.

21 Q. And you understand, at least from the testimony that
22 we have, that for injuries that she received in this fall,
23 we know that she was treated by Doctor Heinig at Carolina
24 Ortho Surgery and Associates, correct?

25 A. Yes.

1 Q. She was treated at Piedmont Medical Center?

2 A. Yes.

3 Q. She was transported by the hospital to Piedmont
4 Medical Center?

5 A. Yes.

6 Q. And she was treated at Health South Rehab?

7 A. Yes.

8 Q. And as part of that, she also received some X-ray
9 treatment ---

10 A. Yes.

11 Q. --- as Doctor Heinig testified? And you're aware that
12 each one of those healthcare providers charge for their
13 services?

14 A. Yes.

15 Q. Okay. And we have already stipulated, all the medical
16 records and bills have been entered into evidence in this
17 case, and they're on that table there. And rather than go
18 through it all, I reveal to you that if we looked at all
19 those bills, and you heard Doctor Heinig testify as to his
20 Twenty-four hundred dollar bill, that all of those bills
21 come to around seventy-nine thousand dollars. Does that
22 sound about right to you?

23 A. I -- I -- I don't recog -- I don't -- I know it was a
24 lot.

25 Q. Okay. But yet, there were bills incurred from all of

1 that?

2 A. Yes.

3 Q. Now, at some point in time, did you feel that Carolina
4 Pulmonary Physicians were somewhat at fault for what
5 happened to your mother on May 17th, 2017?

6 A. Yes.

7 Q. And that's from the information that you have received
8 about how the fall occurred?

9 A. Yes.

10 Q. And did you want as power of attorney for your mother,
11 did you want to take some action regarding that?

12 A. Yes.

13 Q. And what -- I don't want to go into any detail about
14 anything you may have discussed with any particular
15 attorneys, but did you go see any attorney?

16 A. I did.

17 Q. And do you recall about what time you went to see that
18 attorney, to discuss those possible claims?

19 A. Close to the end of May. And I didn't -- I had never
20 been involved in anything like this, and I consulted with
21 an attorney friend who did -- who did some estate work --

22 Q. Okay. Don't say anything that anybody told you. I
23 was just trying to get a time frame as to when you might
24 have first contacted an attorney.

25 A. Well, I didn't know what to do. And I just went and

1 explained the situation, and that's when I -- it was
2 somewhere in the end of May.

3 Q. The end of May?

4 A. Yes.

5 Q. Okay. Thank you.

6 MR. MANZI: I have no further questions.

7 MS. CHESLEY: I have no questions.

8 THE COURT: Thank you, sir. You can step down.

9 (WITNESS LEAVES WITNESS STAND.)

10 THE COURT: Call your next witness.

11 MR. MANZI: May I approach?

12 THE COURT: Yes, sir.

13 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
14 THE JURY, AT 02:50 PM.)

15 THE COURT: Ladies and gentlemen, we -- we have one
16 more witness for the day. It's going to take about an
17 hour. It's another video deposition. So we're going to
18 take a break right now before then, and then we'll get you
19 back in here. We'll be done, after that witness, for the
20 day. Because of a scheduling conflict, some expert
21 witnesses can't come testify live until tomorrow morning.
22 Okay? So that's what -- we're going to finish kind of
23 early today, but we'll get you out of here. So go ahead
24 and take your break now, and we'll get you back in here
25 shortly. Don't talk about the case.

1 (JURY EXITS COURTROOM AT 02:51 PM.)

2 THE COURT: All right. We're down.

3 (COURT IN RECESS AT 2:52 PM.)

4 (COURT BACK IN SESSION AT 3:04 PM.)

5 THE COURT: Thank you. You all can be seated.

6 All right. Everybody ready?

7 MR. MANZI: Yeah.

8 THE COURT: Bring 'em in.

9 (JURY RE-ENTERS COURTROOM AT 3:06 PM.)

10 THE COURT: All right. Every-- All members of the
11 jury are present. You may call your next witness.

12 MR. MANZI: Thank you, your Honor.

13 We're going to play the videotaped deposition of
14 Doctor Amit Shah.

15 THE COURT: All right. Pay close attention, ladies
16 and gentlemen.

17 (WHEREUPON, PLAINTIFFS/DEFENDANTS EXHIBIT NUMBER
18 SIXTEEN, STIPULATED TO BY ALL PARTIES, RECEIVED INTO
19 EVIDENCE.)

20 (DOCTOR AMIT SHAH VIDEO DEPOSITION PUBLISHED TO THE
21 JURY AT 03:07/STOP AT 4:02 PM.)

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, we're going to go ahead and recess, then, for the
24 day. Remember my instructions given to you at the outset
25 of the case. Don't do any independent research on the

1 case. I want you back in the jury room tomorrow morning at
2 nine thirty. Okay? Have a wonderful evening, and we'll
3 see you tomorrow.

4 (JURY EXITS COURTROOM ON EVENING RECESS AT 04:03 PM.)

5 THE COURT: All right. Anything else for today?

6 MR. MANZI: Not from me, your Honor.

7 MS. CHESLEY: No, your Honor.

8 THE COURT: All right. We'll see you all in the
9 morning. Court's adjourned.

10 (COURT IN EVENING RECESS AT 04:03 PM.)

11 (COURT BACK IN SESSION WEDNESDAY, FEBRUARY 15, 2017 AT
12 09:30 AM.)

13 THE COURT: All right. Good morning, everybody.

14 Anything I need to know before we bring the jury in?

15 MR. MANZI: No, your Honor.

16 MS. CHESLEY: No, your Honor.

17 THE COURT: Okay. Bring 'em on.

18 (JURY RE-ENTERS COURTROOM AT 09:31 AM.)

19 THE COURT: All right. All members of the jury are
20 present. Good morning, ladies and gentlemen.

21 Plaintiff may call your next witness.

22 MR. MANZI: Your Honor, we call Susan Davies.

23 THE COURT: All right. Ma'am.

24 MADAM CLERK: Ms. Davies, if I can have you step
25 forward here and be sworn. I'll have you place your left

1 hand on the Bible and raise your right.

2 (WHEREUPON, SUSAN DAVIES,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS):

4 MADAM CLERK: You can have a seat there and just watch
5 your step up.

6 THE COURT: Okay. Ma'am, that microphone's not
7 adjustable, so please speak loud. Okay?

8 MS. DAVIES: Okay.

9 THE COURT: Thank you.

10 All right, sir.

11 DIRECT EXAMINATION

12 SUSAN DAVIES BY MR. MANZI:

13 Q. Good morning, Susan.

14 A. Good morning.

15 Q. Is it okay if I call you Susan?

16 A. Yes.

17 Q. Susan, what is your profession?

18 A. I'm a registered nurse.

19 Q. Okay. Susan, I'm going to go into a little bit of
20 your background and everything before we get into the
21 particulars of why you're here to testify today.

22 First of all, where do you live?

23 A. I live in Matthews, North Carolina.

24 Q. And how long have you lived in Matthews?

25 A. Twenty-five years. I'm a native Charlotteian.

1 Q. And you said you were a registered nurse?

2 A. Yes.

3 Q. Give us a little information about your educational
4 background.

5 A. I attended Mercy Hospital School of Nursing.
6 Graduated from there in 1974. I got my bachelor of arts
7 degree from Queens University. That was in 19 -- early
8 1990's, mid-1990's. You want me to speak on my work
9 experience, or just my education?

10 Q. Well, besides your -- you -- well, you have a degree?

11 A. Yes.

12 Q. Okay. And besides your degrees, do you hold any
13 special certificates?

14 A. Yes, yes. I have a chemotherapy certification,
15 because I have been a chemotherapy nurse for the past --
16 almost sixteen years. And I also hold an Oncology Nursing
17 Society certification at national level. That's a four-
18 year exam, and the chemotherapy certification is an every
19 two year exam that we have to renew.

20 Q. And let's talk a little bit about your -- your work
21 history. I know you've ---

22 A. Okay.

23 Q. --- been doing this for awhile, but going back,
24 describe for the jury all the different types of healthcare
25 facilities that you've worked at.

1 A. Okay. The first fifteen years, I worked for CMC,
2 Carolinas Medical Hospital, the first fifteen years of my
3 career; in acute care, neonatal intensive, pediatric
4 intensive. After fifteen years, I went into the outpatient
5 setting, and worked for -- the first year I worked for
6 National Medical Care, which was a pharmaceutical infusion
7 company. We provided infusion therapies of many kinds to
8 the Home Health, for patients who needed particular IV
9 therapy.

10 And then, after that I worked nine years for
11 infectious disease private practice. There were four
12 physicians there. And then, I've been working -- I worked
13 for Matthews Hematology Oncology for very close to fourteen
14 years. I was a nurse manager there, and a chemotherapy
15 infusion nurse. And I currently work for the LCI, Living
16 Cancer Institute of CHS, and I am still a chemotherapy
17 nurse part-time.

18 Q. And is it fair to say that the majority of your work
19 has been in healthcare clinical facilities?

20 A. Yes.

21 Q. And these are facilities where patients come in on an
22 outpatient basis; ---

23 A. Yes.

24 Q. --- is that correct?

25 A. Yes.

1 Q. Scheduled appointments, and doctor sees these
2 patients, and things of that nature?

3 A. Correct.

4 Q. And there's also -- in terms of -- some of your
5 background, in terms of some of the places you worked, that
6 you also had to deal with patients with -- with special
7 needs, and not just routine visits; is that correct?

8 A. No, this is more of the acute care of what I've always
9 done. These are very sick people I've -- I've always been
10 involved with.

11 Q. So you're very familiar with patients who might need a
12 little extra assistance when they come to the office, and
13 things of that nature?

14 A. Yes, sir.

15 Q. And in all these office environments that you worked
16 in, were there medical assistants that would assist the
17 practice?

18 A. There were, yes, some. One practice it was just RN's
19 for awhile, and then we eventually did get CNA's. But yes,
20 I have worked with medical assistants in those settings.

21 Q. And you've actually supervised medical assistants, as
22 well?

23 A. That's correct, yes.

24 Q. Okay. And is one of the major functions of the
25 medical assistant performs is the triage function?

1 A. The medical assistant, triage?

2 Q. As a registered medical assistant, or a certified
3 medical assistant?

4 A. Triage, like bringing patients back? Is that what
5 you're referring to?

6 Q. So they can get vital signs.

7 A. Yes. Yes, the nur -- the RN's did, too and so did the
8 medical office assistants, yes.

9 Q. And when we talk about getting vital -- we talk about
10 triage, they're getting vital signs is basic, routine
11 information that you get the patient's weight; is that
12 correct?

13 A. Weight, temp, pulse, respirations, blood pressure,
14 pulse, oxygen.

15 Q. And things like that?

16 A. Yes.

17 Q. And then, of course, the -- the medical assistant
18 would also just do the initial interview, to see if there's
19 anything new, or anything that has to be brought to the
20 attention of the doctor?

21 A. Correct.

22 Q. Things of that nature?

23 A. Correct.

24 Q. And in doing all this work and working at the MA's
25 that you have, are you familiar with the standards and

1 practice and the procedures that the MA should follow in
2 the office environment?

3 A. Yes.

4 Q. And is that through your own personal education and
5 training?

6 A. Yes.

7 Q. And then in your own work environment?

8 A. Yes.

9 Q. And do you feel comfortable in terms of testifying as
10 to what the standards of care for a registered medical
11 assistant would be in an office setting?

12 A. Yes.

13 MR. MANZI: Your Honor, at this time we would tender
14 Ms. Davies as an expert in medical assistant triage, for
15 lack of a better word.

16 THE COURT: Any further voir dire of the expert --
17 proposed expert?

18 MS. CHESLEY: No, your Honor.

19 THE COURT: All right. So qualified. Ladies and
20 gentlemen, you will recall yesterday, I told you what an
21 expert witness can do. When an expert is qualified as an
22 expert, based upon his or her academic training or
23 experience, or of the like, they can offer an opinion as to
24 any relevant matter.

25 Now, it's up to you as the fact finders to do whatever

1 you wish to with that opinion. You will give it the crate
2 -- excuse me -- the weight and credibility you believe it
3 deserves. Okay? Thank you.

4 You may proceed.

5 MR. MANZI: Thank you, your Honor.

6 Q. And just a little background so the jury understands.
7 Susan, this is actually the first time you've ever
8 testified in court; is that correct?

9 A. That's correct. I've never done this before.

10 Q. And being an expert witness here today is something
11 that you don't do, normally?

12 A. That's correct.

13 Q. In fact, in full disclosure, you served as an expert
14 witness for me in another case at one time. Do you recall
15 that?

16 A. Yes.

17 Q. And that's the only other time that ---

18 A. That's correct.

19 Q. --- that was really the first time we ever met?

20 A. That's correct.

21 Q. And even taking those two cases other than that you
22 really haven't done very much of this expert work; ---

23 A. I never have. No.

24 Q. --- is that correct? Okay. Now, do you remember what
25 you -- when I first contacted you about this case, what I

1 asked you to -- what I needed you to do for this case?

2 A. I think you asked me to review a case regarding a
3 patient's fall, and forming my personal and professional
4 opinion, was there any violation from standard of care that
5 took place at this time, at this visit when the patient
6 fell.

7 Q. And even at that -- at that time that I first told you
8 about the case, I didn't offer you any of my conclusions,
9 did I?

10 A. Oh, no.

11 Q. So I didn't offer you any of my opinions in this
12 matter?

13 A. No. You just asked me to read the deposition.

14 Q. And your review was done pure, without any
15 preconceived ideas as to what I wanted the testimony to be,
16 right?

17 A. That's correct. That's correct.

18 Q. Okay. And I gave you certain materials to review?

19 A. Yes.

20 Q. And do you recall what those were?

21 A. I got the deposition of Joan Edge. I got the
22 deposition of Deborah Copeland. I got the deposition of
23 Denise -- I'm drawing a blank on her last name. I'm sorry.

24 Q. Taylor?

25 A. Taylor, the office manager. And I got a handwritten

1 statement from Joan Edge about the incident. And I think
2 that's everything I received.

3 Q. Okay. You also recall, at one time I might have given
4 you an affidavit of Deborah Copeland?

5 A. That's correct. That was the first thing that I
6 actually got, I believe. Yes.

7 Q. Okay. Before we get into the particulars of your
8 opinion in this particular matter, would you agree that the
9 standard of care for a medical office in general is to
10 assure the safety and well-being of a patient when they
11 come into the facility?

12 A. Safety is the top priority of all patients --

13 MS. CHESLEY: Objection, your Honor. Could we
14 approach briefly?

15 THE COURT: Yes.

16 (BENCH CONFERENCE HAD OFF THE RECORD, OUT OF HEARING
17 OF THE JURY, AT 09:41 AM.)

18 THE COURT: All right.

19 MR. MANZI: Thank you.

20 Q. We were talking about when a patient comes there, and
21 especially in a clinical environment, these patients who
22 have special needs, and some of these patients need a
23 little extra assistance than others. Is that a fair
24 statement?

25 A. That's a fair statement, yes.

1 Q. And a lot of times, when patients come into the --
2 into these offices, they might be accompanied by family
3 members. That's not unusual; is that correct?

4 A. Correct.

5 Q. But you don't expect the family members to do anything
6 related to taking vital signs of the patient, do you?

7 A. Absolutely not.

8 Q. And did you feel that, most of the time a family
9 member is with a patient, that they need to provide the
10 medical history, that the patient may not be capable for a
11 number of reasons?

12 A. Yes.

13 Q. Especially if you have an elderly patient who is --

14 A. Yes.

15 Q. I'm sorry. Wait 'til I finish asking you.

16 A. I'm sorry.

17 Q. I know. You're not used to doing this.

18 A. I'm sorry.

19 Q. That some patients are not very good at giving their
20 medical patient history, and how they're feeling, and
21 things like that?

22 A. That's correct.

23 Q. And the family member is there for that purpose ---

24 A. Absolutely. Uh-huh.

25 Q. --- one of the main purposes? And the family member,

1 a lot of times are there for comfort?

2 A. Correct.

3 Q. Okay. And sometimes, the family member may assist a
4 little, in terms of the patient walking, and things of that
5 nature?

6 A. Yes.

7 Q. Okay. But would you agree that once the patient
8 crosses that threshold into the doctor's office, whether it
9 be a triage room or an exam room, that the obligations and
10 responsibilities of the medical professional take over?

11 A. Absolutely. One hundred percent.

12 Q. And is it at that point in time that it's the medical
13 professional who needs to assure that the patient is well
14 taken care of, and that no harm comes to that patient? Is
15 that a fair statement?

16 A. That is correct.

17 Q. And we're talking really just the basics. We're not
18 talking above and beyond treatment itself. We're not
19 talking about any specific treatment that's being
20 performed, just the manner in which you look at the patient
21 and take care of the patient.

22 A. Absolutely.

23 Q. And would you agree that, in terms of your education
24 and experience, and working with certified medical
25 assistants, sometimes -- or a registered medical

1 assistants, it's the same, that through their level of
2 training, that they understand that -- what their
3 responsibilities and role are in taking care of these
4 patients?

5 A. That's correct. No matter what level or position you
6 hold in the medical field, your first and foremost is
7 safety. That's ingrained to you in your education.

8 Q. And one of the things in there we know that are times
9 there are certain that we call protocols in medical
10 offices; is that correct?

11 A. Uh-huh. Yes.

12 Q. And would you agree that one of these protocols duties
13 falls under the gambit of what we call fall prevention?

14 A. Yes.

15 Q. And is that because, especially in a hospital setting
16 -- in a hospital setting or clinical setting -- I mean,
17 falls are sometimes one of the major concerns you might
18 have about a patient; is that correct?

19 MS. CHESLEY: Objection to leading.

20 THE COURT: Overruled.

21 BY MR. MANZI:

22 Q. Especially when you're dealing with patients who have
23 special needs, are some of these patients unsteady on their
24 feet?

25 A. Yes. Many of these patients are very ill and need

1 assistance.

2 Q. And could you describe, what would be a typical fall
3 prevention, or protocol in an office?

4 A. You would want to make sure that all hallways are
5 clear of obstacles, nothing in the way to trip or fall.

6 That the floors are dry and clean and not slippery.

7 Appropriate railing, like in bathrooms, or -- in the -- in
8 the patient area, that they might can hold onto. No cords
9 or anything out that someone could trip over.

10 Q. Okay.

11 MR. MANZI: Your Honor, may I approach? I just want
12 to get a --

13 THE COURT: Yes.

14 MR. MANZI: Just one of the photographs.

15 Q. Ms. Davies, I put up here the photographs of the
16 triage room that's in question here, where Dorothy Copeland
17 fell. I believe I've shown you these photographs sometime
18 before.

19 A. Uh-huh.

20 Q. And looking at this photograph, can you see the setup
21 that they had in the room? The two chairs and the scale
22 and the ---

23 A. Yes.

24 Q. --- the digital readout there?

25 A. Yes.

1 Q. When you talked about fall prevention and protocols,
2 obviously you have to get the patient up on that scale in
3 order to take their weight; is that correct?

4 A. Yes.

5 Q. And if we're talking about a ninety-year-old frail,
6 unsteady woman, what are the fall protocols that you would
7 take to get that patient on the scale?

8 A. I would hold the patient's -- one of her arms, and I
9 would have my other arm around her waist, or very close to
10 her back, and assist her up, with my support. She's
11 holding onto my arm, and her hand and my other hand would
12 be at her back. And if she became unsteady, I -- there are
13 no rails here, that would concern me -- so I could catch
14 her, should she lose her balance.

15 Q. Okay.. So, you do have to leave go of her, once she's
16 up on the scales; is that correct?

17 A. But my hands would stay in place so she could grab me,
18 should she become unsteady.

19 Q. And then, just so we're clear, the reason you would
20 take your -- You get a false weight if you kept your hands
21 on her; is that correct?

22 A. That is correct. You just have them there, and you --
23 you let the patient know that you're going to let go of
24 them for a second. And then, -- but you don't take your
25 hands down. That way, if they become unsteady, they can

1 reach out to you.

2 Q. And once -- and once you had the readout, then what
3 would you do in order to ensure a patient's safety getting
4 her down?

5 A. I would have the patient grab my hand, extend it in
6 the front of her, and then I would put my other hand to her
7 back, and have her step backwards, one foot at a time, and
8 make sure she was stable.

9 Q. And if you had a ninety-year-old frail woman, unsteady
10 and things like that, would you ever leave her unsupported,
11 alone?

12 A. I would never leave her.

13 Q. And we're talking -- and I know you're saying you, but
14 is that the standard that you were adhere to what a
15 registered medical assistant should do?

16 A. What any person taking care of that patient that day,
17 doing that triage that day, that would be their
18 responsibility.

19 Q. Okay. Based upon the documents that you reviewed in
20 this matter, do you have an opinion to whether or not Joan
21 Edge, as the registered medical assistant in that triage
22 room on May 17, 2012, adhered to the standard of care?

23 A. She did not adhere to the standard.

24 Q. Okay. And in what manner did she not adhere to the
25 standard of care?

1 A. Joan Edge was not at the patient's side. She was at
2 the nurse's station, putting down the chart. So she was
3 not at the patient's side to assist her up onto -- up on
4 the scale, and to help her come down, as well.

5 Q. And you say -- I'm sorry.

6 A. Excuse me. I'm sorry. And then, therefore, that
7 resulted in a fall. The patient lost her balance.

8 Q. What should she have done at the time that they
9 crossed that threshold, into the triage room?

10 A. Well, when I look at this picture on the right, with
11 the scale being right there at the door, I don't know when
12 Joan entered the room, before or after, but I would have
13 told the patient, we're going to stop right here; we're
14 going to get you up on the scale. And I would have
15 immediately assisted -- or she should have immediately
16 assisted the patient right there on the scale by holding
17 onto her, as I described, because it's -- it's right there
18 at the door. I would not have walked off and left the
19 patient there, and to go put the chart down. I could have
20 just put the chart under my arm, held it, and put my -- my
21 hand out, and assist the patient directly up with my
22 assistance.

23 Q. But you wouldn't have expected Deborah Copeland to put
24 Dorothy on the scale?

25 A. That's not Deborah's job, or the family's job.

1 Q. And it's your understanding, and you testified a
2 little to it, at this time, Dorothy, when she entered the
3 room, she's got these two pocketbooks and an umbrella in
4 her arm; is that correct?

5 A. That's -- that's correct. When she is bringing
6 Dorothy Copeland from the waiting room, she states she has
7 the two purses, the umbrella in one arm. And then, in the
8 other arm, she is assisting her mother-in-law, holding onto
9 her, to allow her to be steady in walking. So she's got
10 both hands occupied.

11 Q. And you understand that, from the review -- you did
12 review Deborah Copeland deposition transcript?

13 A. Yes.

14 Q. And you understand that she stated that she never put
15 her mother ---

16 A. Correct.

17 Q. --- in-law on the stand, correct? Well, let's --
18 let's -- let's assume, for the sake of argument that the
19 Defense is making, that Deborah did begin to put her mother
20 on the scale. Should Joan Edge have intervened?

21 A. Absolutely.

22 Q. And why --

23 A. And let me -- let me take care -- let me get the
24 weight. I will do that. That's what I need to do.

25 Q. And you notice, from Joan Edge's deposition, she

1 testified that she began to walk over here to put the chart
2 down.

3 A. Yes.

4 Q. Of course, none of us are in the room, there's no
5 cameras in the room.

6 A. Right.

7 Q. We only have two witnesses in the room. But just that
8 act, would you assume that she was walking forward?

9 A. Yes.

10 Q. So, if she was walking forward would you then assume
11 that she had her back ---

12 A. She did.

13 Q. --- to Dorothy Copeland?

14 A. She would have had her back, so she ---

15 Q. And she would have had her --

16 A. --- could not have seen --

17 Q. Okay. She would have had her back ---

18 A. Correct.

19 Q. --- to Deborah and Dorothy?

20 A. That is correct.

21 Q. Okay. So, with her back to them, it might have been
22 difficult for her to see whether Dorothy -- Deborah was
23 putting her on the scale?

24 A. That was the conclusion I drew myself.

25 Q. Now, did you have an opinion as to whether or not that

1 Joan Edge's failure to adhere to the standard of care was
2 the reason Dorothy fell off the scale?

3 A. Absolutely.

4 Q. And that's because Dorothy was left unsupported on the
5 scale?

6 A. Absolutely.

7 Q. And your opinion is based on what?

8 A. It's based on my education, my experience. I've
9 weighed many patients. I've seen many nurses and CNA's
10 weigh patients. It's your responsibility. You need to
11 make a full assessment. If you have a frail, ninety-year-
12 old frail patient, they need total attention. And that's
13 what I based my opinion on, that this patient was left
14 unassisted.

15 Q. Okay.

16 MR. MANZI: No further questions at this time, your
17 Honor.

18 THE COURT: All right. Yes, ma'am.

19 CROSS-EXAMINATION

20 SUSAN DAVIES BY MS. CHESLEY:

21 Q. Hello, Susan.

22 A. Hello. How are you?

23 Q. I'm good. I think the last time I saw you was in May
24 of 2006.

25 A. Yeah, a long time.

1 Q. Susan, as I recall from our deposition, when you were
2 first asked to review this case, the first thing you
3 reviewed and received by itself was the affidavit of
4 Deborah Copeland.

5 A. Yes, ma'am.

6 Q. Do you recall that?

7 A. Yes, ma'am.

8 Q. And at that -- at that particular time, you had not
9 reviewed any -- any depositions?

10 A. No, ma'am.

11 Q. You had not reviewed the statement of Joan Edge.

12 A. Uh-huh.

13 Q. Is that correct?

14 A. That's correct.

15 Q. Okay. And hadn't reviewed the deposition of Denise
16 Taylor?

17 A. No, ma'am.

18 Q. Okay. Hadn't seen any medical records?

19 A. No, ma'am.

20 Q. Okay. And based solely on that one-page affidavit,
21 you came to the conclusion that the medical assistant had
22 deviated from the standard of care, correct?

23 A. My initial opinion came from that affidavit, but after
24 I read the -- Dorothy's -- I mean, excuse me -- Deborah's
25 deposition, it didn't change. My opinion never changed.

1 Q. And you would agree that Deborah Copeland was, in
2 fact, the most knowledgeable person about her mother-in-
3 law's abilities and health status?

4 A. Yes, ma'am.

5 Q. Okay. She would pick her up for her doctor's
6 appointments; ---

7 A. Yes, ma'am.

8 Q. --- correct?

9 A. Correct.

10 Q. Assist her to the car?

11 A. Correct?

12 Q. Assist her out of the car?

13 A. Correct.

14 Q. Take her into the waiting room and get situated?

15 A. Correct?

16 Q. Okay. And walk back through?

17 A. Correct.

18 Q. Now, I believe you told me you did not have any
19 criticism of Joan assisting Mrs. Copeland with sitting down
20 and getting up from the chair in the waiting room; is that
21 right?

22 A. Correct.

23 Q. Okay. All right. But you had a problem with Deborah
24 Copeland holding her mother-in-law's arm to walk back to
25 the triage room, correct?

1 A. I had a problem with her having two pocketbooks, an
2 umbrella, and holding her mother's arm, and not being
3 offered assistance from the CNA.

4 Q. And in fact, you believe that sh -- that the CN --
5 excuse me -- the medical assistant should have taken over
6 at that point?

7 A. I think it would have shown an awareness and a
8 sensitivity to the situation, and recognize that this is a
9 frail patient. And the family member might need some
10 assistance with getting her back to the triage area.

11 Q. And I think you testified that you had a problem that
12 if -- if the family member was going to assist on walking,
13 that the medical assistant should either be walking beside
14 or behind them; is that correct?

15 A. I don't understand why she's walking in front. I
16 think it would be good if she could have been closer too on
17 the other side of the patient, to be available, had Mrs.
18 Copeland lost her balance.

19 Q. And if the hallway's not wide enough?

20 A. Then she could walk closely behind her.

21 Q. Am I correct that your opinions in this case are only
22 based on the standard of care related to weighing a patient
23 in an office setting? I asked you that question in your
24 deposition.

25 A. Uh-huh. Could you repeat that, please?

1 Q. Sure. Are your opinions in this case, they're
2 focused, they're based on the standard of care related to
3 weighing a patient in the office setting?

4 A. Yes.

5 Q. Okay. That's correct?

6 A. Yes.

7 Q. Do you remember, in our deposition, we talked about
8 there was a discrepancy between the affidavit of Deborah
9 Copeland and her deposition testimony.

10 A. A discrepancy with time?

11 Q. And I would be glad to show that -- that affidavit to
12 you, if that would help.

13 A. Okay.

14 MS. CHESLEY: Your Honor, may I approach?

15 THE COURT: Yes, ma'am.

16 BY MS. CHESLEY:

17 Q. Susan, this has been marked as Plaintiff and
18 Defendant's Exhibit Twelve. It's the affidavit of ---

19 A. Okay.

20 Q. --- of Deborah Copeland.

21 A. And the discrepancy is?

22 Q. If you look on paragraph two.

23 A. Okay.

24 Q. Where it says, after about -- I guess about five lines
25 down.

1 A. Yes.

2 Q. Do you see that?

3 A. Uh-huh.

4 Q. After putting the purses and umbrella down, I turned
5 toward Dorothy and the scale. I saw Dorothy fall off the
6 scale and violently hit the floor.

7 A. Uh-huh.

8 Q. Okay. And what is the date on that affidavit?

9 A. February 16, 2016.

10 Q. Correct. And I would represent to you, in her
11 deposition testimony, and again, I'll be glad to share it
12 with you ---

13 A. Okay

14 Q. --- and then in testimony yesterday, that Mrs.
15 Copeland stated that she didn't see.

16 A. Okay.

17 Q. She agreed that she did not see Dorothy Copeland get
18 on the scale.

19 A. That's correct.

20 Q. Okay.

21 A. I remember that from her deposition.

22 Q. And that she did not see Joan Edge put her on the
23 scale.

24 A. She did not see Joan Edge, but --

25 Q. Well, I mean, is that correct? That was her

1 testimony?

2 A. Oh. Correct.

3 Q. She did not see Joan Edge put her on the scale?

4 A. Yes.

5 Q. Okay. And when she was asked, "so you're really not
6 sure at that point, when you left your mother-in-law to go
7 put the umbrella down, you're not sure where Mrs. Edge
8 was?" And her response was, "I don't know."

9 A. That's correct.

10 Q. Okay.

11 A. But we know she wasn't beside the patient.

12 Q. Well, but the response was "I don't know"?

13 A. Uh-huh.

14 Q. Okay. And there was a question there was not a
15 handoff of assistance from you to Ms. Edge? And the
16 response was, "I don't remember that. I just remember
17 letting her arm go, putting the things down, and then she
18 had fallen." Do you recall that?

19 A. I do recall that, but I'm not sure where she was. Was
20 she to hand her off to Joan over at the nurse's station?

21 Q. So, is it fair to say -- is it fair to say that,
22 really Mrs. Copeland has no recall or memory of seeing Mrs.
23 Dorothy Copeland being put on the scale.

24 A. She does not recall seeing Joan Edge put her on the
25 scale, but she does recall that she did not, herself, ---

1 Q. Correct.

2 A. --- put the patient on the scale.

3 Q. Correct.

4 A. She assumed that the CNA would weigh the patient, as
5 all CNA's have previously done at all other visits.

6 Q. And I guess my question is, Mrs. -- Mrs. Deborah
7 Copeland has no knowledge or memory of Mrs. Dorothy
8 Copeland being put on the scale, or being on the scale at
9 any point in time?

10 A. We cannot say after she got on the scale, other than
11 Deborah Copeland says, I did not put my mother-in-law on
12 the scale.

13 Q. Correct.

14 A. So, the position is, where is Joan Edge, and why is
15 she not beside the patient, to help her onto the scale?

16 Q. And if you would like me to pull the testimony, I
17 would be happy to do that, and show it to you. My question
18 is, isn't it true that Deborah Copeland has no memory of
19 anyone seeing -- putting her on the scale; of seeing anyone
20 put her mother on the scale?

21 A. She does not have -- she did not see Joan Edge put her
22 mother-in-law on the scale. But position here is who
23 should have been assisting the patient on the scale, and
24 there was no one assisting her.

25 Q. And there's the testimony by Joan Edge that she did

1 not put her on the scale.

2 A. Correct.

3 Q. So we don't know if she was on the scale or not, do
4 we?

5 A. That's correct, but that's not the reason, I think,
6 that we're here. The reason we're here is, did the CNA do
7 her job? And the question is, was there a violation of
8 standard of practice, and there was.

9 Q. How so?

10 A. She was not attentive to the patient. She was more
11 attentive to putting the chart down. She said, we need to
12 get your weight; and then, she walks away from the patient.

13 Q. And I think you told me that you agree that family
14 members don't give up all responsibility for a loved one
15 when they enter a doctor's office.

16 A. And Deborah --

17 Q. Is that correct?

18 A. Deb -- That's correct, but Deborah Copeland did not
19 give up any responsibility in getting her mother-in-law to
20 the doctor's office. As a matter of fact, she was quite
21 attentive in getting her mother-in-law there.

22 Q. And I think we did agree, you agreed with me that
23 there is a difference, whether you agree whether it's right
24 or wrong, but there is a difference between someone
25 stepping up on the scale, and actually obtaining a weight?

1 A. Oh, absolutely. But it's still, on a standard of
2 practice, safety. And there was no safety being exhibited
3 by Ms. Edge for the patient.

4 Q. Thank you, Susan. That's all I have.

5 A. Thank you.

6 THE COURT: Any redirect?

7 MR. MANZI: Yes, your Honor.

8 REDIRECT EXAMINATION

9 SUSAN DAVIES BY MR. MANZI:

10 Q. Just to be clear, Susan, whether or not Deborah saw
11 Joan Edge put her on the scale or not, and admittedly there
12 is a discrepancy in her testimony, that doesn't change your
13 opinion at all, correct?

14 A. My opinion has not changed.

15 Q. Because the focus is not on what ---

16 A. Deborah.

17 Q. --- what Deborah did.

18 A. Correct.

19 Q. The focus is on what Joan Edge didn't do.

20 A. Didn't -- did not do.

21 Q. And between the two people that were in that room with
22 Dorothy Copeland, Deborah Copeland and Joan Edge, who had
23 the responsibility to ensure the patient's safety?

24 A. Joan Edge.

25 Q. And we know that Joan Edge has testified. Counsel has

1 made it seem like we don't know who was on it, but if we
2 were to believe Joan Edge's testimony ---

3 A. Uh-huh.

4 Q. --- she said Deborah put her on the scale.

5 A. Correct.

6 Q. Okay. But the one -- the facts that we do know,
7 there's no discrepancy that Dorothy Copeland fell.

8 A. That's correct.

9 Q. And even through Joan Edge's own testimony, she was
10 not near, whether she was on the scale or not ---

11 A. That's correct.

12 Q. --- she was not near Dorothy Copeland when she fell?

13 A. She was not.

14 Q. And is it your expert opinion that, given the standard
15 of care, she should never have left that ninety-year-old
16 frail woman alone in that room, unattended, from her,
17 correct?

18 A. That is absolutely correct.

19 Q. And she cannot delegate those responsibilities to the
20 family member that's in the room?

21 A. She cannot delegate.

22 Q. Thank you.

23 MR. MANZI: No further questions.

24 A. That is her responsibility. That's what she is
25 employed for.

1 Q. Thank you.

2 THE COURT: Any re-cross based upon that redirect?

3 MS. CHESLEY: No, sir.

4 THE COURT: All right. Thank you, ma'am. You may
5 step down.

6 (WITNESS LEAVES WITNESS STAND.)

7 THE COURT: All right. If the plaintiff will call
8 their next witness.

9 MR. MANZI: Your Honor, at this time the plaintiff
10 rests.

11 THE COURT: Plaintiff rests.

12 All right, ladies and gentlemen of the jury, I need
13 some matters -- I've got to take up some matters outside
14 your presence at this time, so I'm going to give you a
15 brief recess, get you back out here shortly. Okay?

16 Thank you very much. Don't talk about the case.

17 (JURY EXITS COURTROOM ON RECESS AT 10:07 AM.)

18 THE COURT: Yes, ma'am?

19 MS. CHESLEY: Your Honor, may I have a brief moment?

20 THE COURT: Sure.

21 MS. CHESLEY: Thank you very much.

22 (PAUSE.)

23 THE COURT: Where did Ms. Chesley go?

24 DOCTOR ALLEYNE: I believe, your Honor, she went to --
25 to get some documents.

1 THE COURT: Okay. I thought you were talking to
2 someone in the courtroom.

3 MS. CHESLEY: No, I was waiting -- I was waiting on
4 this.

5 THE COURT: Okay.

6 MS. CHESLEY: I apologize. May I approach?

7 THE COURT: Yes, ma'am.

8 (DOCUMENTS RECEIVED UP BY THE COURT.)

9 THE COURT: All right. Let me hear from you, then,
10 Ms. Chesley. Thank you for handing up your memorandum on a
11 directed verdict motion. I don't think I've ever had that
12 done before. I'll be glad to hear from you.

13 MS. CHESLEY: All right. Your Honor, in this case the
14 allegations in this case, pursuant to the complaint, are
15 that Ms. Edge put the patient on the scale, and allowed her
16 to fall. She turned to put her on the scale, turned her
17 back, walked away. That's the allegation of the plaintiff
18 in this case, and the patient fell on the floor and was
19 injured. Then they stated that --

20 THE COURT: All right. Assuming the facts in the
21 light most favorable to the plaintiff, then, let's assume
22 that's the case.

23 MS. CHESLEY: Okay. All right. The issue, your
24 Honor, is that, in this case, there really has been no
25 testimony from the plaintiff that Mrs. Dorothy Copeland was

1 ever on the scale. The testimony has changed. The
2 affidavit stated that she saw her fall from the scale.

3 But then, in deposition, she stated, well, she really
4 assumed that. Her deposition testimony was that she didn't
5 put her on the scale. She didn't see Joan Edge put her on
6 the scale. She doesn't know if she was on the scale. She
7 stated it all happened so fast that it was -- it was -- she
8 just does not know. And so, my -- my question, your Honor,
9 is, it seems like there is no -- there is no evidence at
10 this point from the plaintiff to move forward with their
11 allegation that we deviated from the standard of care by
12 putting the patient on the scale.

13 THE COURT: So, assuming the facts as alleged by the
14 plaintiff are true, in the light most favorable to them,
15 you don't believe the plaintiff has met its burden -- has
16 ---

17 MS. CHESLEY: That --

18 THE COURT: --- burden of proof of even proving the
19 standard of care?

20 MS. CHESLEY: Well, the standard of care as to safely
21 weighing the patient.

22 THE COURT: Okay.

23 MS. CHESLEY: And that is what their expert was
24 testifying to. Her testimony is how -- and she even stated
25 that her testimony was based on the standard of care when

1 weighing a patient.

2 Mrs. Copeland also said she only remembered letting
3 the decedent's arm go, walking to the chair, turning
4 around, and her mother-in-law was falling. And there's no
5 testimony from the plaintiff at this point, your Honor, and
6 their case has rested, that they have any indication that
7 Ms. Edge deviated from the standard of care by putting her
8 on the scale and walking away.

9 THE COURT: Okay. And that's what your written
10 memorandum's going through?

11 MS. CHESLEY: That's correct. Yes, sir.

12 THE COURT: All right. Anything else before I go to
13 the plaintiffs?

14 MS. CHESLEY: The only thing I would add, your Honor,
15 it doesn't seem there's anything in the recollect -- in the
16 record, apart from speculation, to demonstrate that the
17 decedent fell. That's what we're dealing with at this
18 point, because of any alleged action or inaction by the
19 defendant employee that she fell from the scale. And
20 that's what the allegation in this case is.

21 THE COURT: Okay. So, you almost couch it in the term
22 of res ipsa loquitur type situation. And just because an
23 accident happens doesn't mean there's liability.

24 MS. CHESLEY: Well, again, the allegation is that Joan
25 Edge put her on the scale and walked away, and there's been

1 no evidence produced to that effect.

2 THE COURT: Let me see the complaint.

3 All right. Paragraph nine of the complaint says, "the
4 fall on May 17, 2012 was due to the negligence of the
5 employee of CPP, in leaving her unattended on the weighing
6 scale." Okay. Yes, sir. Let me hear from you.

7 MR. MANZI: Yes, your Honor. Well, first I would
8 point out whether -- when the defense own testimony puts
9 her on the scale. If we were to believe Joan Edge's
10 testimony she was on the scale. But our expert said
11 there's -- There's no doubt in this case that Dorothy
12 Copeland fell, and suffered serious injury. And what our
13 expert just testified to is to the standard of care that
14 the RMA, from the point in time that she entered the triage
15 room, had the duty to ensure her safety at all times. She
16 should never have left her away from the scale. She turned
17 her back from her. She didn't stay with her.

18 Her testimony puts her on the scale. I mean, it's up
19 to -- it's all a factual issue. The jury can -- and it can
20 be argued to the jury one way or the other whether she was
21 on the scale or not. But there's no evidence that says
22 that she was never on the -- on the scale. Deborah
23 Copeland's memory may be a little shady on that, but she --
24 she also testified that she assumed at that time that Joan
25 Edge was taking over, and the first thing they were going

1 to do is take the weight. So, we have the scale.

2 I mean, we're getting hung up on the scale, but she
3 was in the vicinity of the scale at that time. But there's
4 -- there's no doubt that we have proved what the standard
5 of care is for the RMA. We've provided testimony, this is
6 the standard of care, what the RMA needed to take control
7 of Dorothy Copeland from the moment she crossed that
8 threshold into the triage room.

9 THE COURT: Whether she's on the scale or not?

10 MR. MANZI: Huh?

11 THE COURT: You're arguing, whether she's on the scale
12 or not ---

13 MR. MANZI: Whether she's on the scale or not --

14 THE COURT: --- the CM -- the --

15 MR. MANZI: --- she -- that's what -- that's what she
16 testified to. She had that duty of care, and she failed.
17 She walked away from her. She -- she turned her back on
18 her and she fell. They put her on the scale themselves.

19 You know, so, she may have been on the scale, she may
20 not. That's an argument, I think, a factual argument that
21 can be made to the jury which way. But there's no --
22 there's no argument that she fell. She fell. And there's
23 no argument that we prevented the standard of care would
24 have been that the RMA was not to have abandoned the
25 patient at that particular point in time.

1 It's -- it's not unusual for an RMA for sometimes the
2 evidence to -- will -- We'll say we can amend the complaint
3 to conform to the evidence as presented. I mean, I think
4 it's a -- it's a minor issue, at best. I think we've
5 proven the case that she was in their care. There was a
6 standard of care that wasn't adhered to, and the standard
7 of care is not dependent upon whether she was on the scales
8 or not. That she fell and suffered injury because the
9 standard of care was violated. I think we've more than
10 proven that threshold, and the case law in terms of
11 everything most favorable to the plaintiff, we have more
12 than a Scintilla of evidence to take this case to the jury.

13 THE COURT: Okay. Coming back to you.

14 MS. CHESLEY: Again, your Honor, first of all, there
15 is no evidence that Joan Edge put this patient on the
16 scale. That is just not accurate.

17 THE COURT: Would you agree -- I'm sure you won't --
18 would you agree with Mr. Manzi that there is some evidence
19 that Mrs. Dorothy Copeland was left unattended in the
20 triage room?

21 MS. CHESLEY: No, I would not.

22 THE COURT: Okay. All right.

23 MS. CHESLEY: And that doesn't surprise you.

24 THE COURT: I'm sure. All right. You all give me a
25 moment. Let me go read through your memorandum and make a

1 decision on your directed verdict motion.

2 While I'm doing that, I don't know what I'm going to
3 do yet. I'm going to go -- go through everything and look
4 at this. In the event I deny your directed verdict motion,
5 do you all have any requests? We'll go ahead and have our
6 charge conference to kind of see where that's going. I
7 think I have everything ready to roll on that, in the event
8 we get to that point. But if you all have any specific
9 requests to charge ---

10 MS. CHESLEY: Okay.

11 THE COURT: --- that are in writing, you can go ahead
12 and hand up to the bench and then we'll go ahead and deal
13 with that. Give me a moment. We're in recess.

14 (COURT IN RECESS AT 10:20 AM.)

15 (COURT BACK IN SESSION AT 10:25 AM.)

16 THE COURT: All right. Everybody's present.

17 All right. Based upon the Court's review of the
18 defendant's memorandum of law in support of the defendant's
19 motion for a directed verdict, and based upon the testimony
20 and evidence presented in arguments of Counsel given to the
21 Court, the Court agrees with the Defense, and therefore
22 grants a directed verdict in this case. Judgment for the
23 defendant. All right. This case has now ended.

24 All right. Anything further, Mr. Manzi?

25 MR. MANZI: Just take exception to the ruling, your

1 Honor.

2 THE COURT: All right. Noted, on the record.

3 Thank you very much.

4 Madam Clerk, if you'll prepare a Form IV for me for a
5 directed verdict granted. I'll bring the jury in --

6 If you'll get that, I'll bring the jury in.

7 (JURY RE-ENTERS COURTROOM AT 10:28 AM.)

8 THE COURT: All right. All members of the jury are
9 present. Ladies and gentlemen of the jury, I want to thank
10 you very much again for your service as the jurors in this
11 case. As you'll recall, at the outset of the case, I told
12 you that you are the judges of the fact, and I'm the -- I'm
13 the sole judge of the law. Well, based upon legal
14 arguments made to me by the attorneys outside of your
15 presence, I have determined, as a matter of law, that the
16 Defense is entitled to a verdict in this case.

17 So, therefore, this case is now ended, without any
18 further need for your service. Okay? So you are free to
19 leave at this time. Your jury service is complete for the
20 week. Thank you very much. The bailiff will tell you what
21 you need to do as you exit the courthouse. Okay?

22 Y'all have a great week, and a good day.

23 (JURY DISMISSED AT 10:29 AM.)

24 THE COURT: All right. Anything else, for the record,
25 for the trial of this case?

1 MS. CHESLEY: Not from the Defense.

2 THE COURT: From the Defense?

3 MS. CHESLEY: No, your Honor.

4 THE COURT: From the plaintiff?

5 MR. MANZI: No.

6 THE COURT: All right. That concludes the trial in
7 this case. Y'all have a great day. Court is adjourned for
8 the week. For the week, sine die.

9 (WHEREUPON, PLAINTIFFS/DEFENDANTS EXHIBIT NUMBERS
10 SEVENTEEN, EIGHTEEN, NINETEEN, STIPULATED TO BY ALL
11 PARTIES, PREVIOUSLY IDENTIFIED AND MARKED, RECEIVED INTO
12 EVIDENCE.)

13 (COURT ADJOURNED AT 10:30 AM.)
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18
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 13th and 14th, and 15th days of February, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 1 / 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	Civil Action No.: 15-CP-46-2454
Wayne H. Copeland, as the Personal	)	
Representative of the Estate of Dorothy	)	
H. Copeland, deceased,	)	
	)	DEFENDANT CAROLINA PULMONARY
	)	PHYSICIANS, P.A.'s MOTION FOR
Plaintiff,	)	DIRECTED VERDICT AND
	)	MEMORANDUM OF LAW IN SUPPORT
v.	)	
	)	
Carolina Pulmonary Physicians, P.A.,	)	
	)	
Defendant.	)	

Pursuant to Rule 50(a) of the South Carolina Rules of Civil Procedure, Defendant Carolina Pulmonary Physicians, P.A. ("Defendant" or "Carolina Pulmonary") hereby moves the Court for a directed verdict on the claims of Plaintiff Wayne H. Copeland, as the Personal Representative of the Estate of Dorothy H. Copeland, deceased, for medical malpractice. More specifically, Defendant shows the Court as follows:

FACTUAL BACKGROUND

On or about August 14, 2015, Plaintiff filed suit against Defendant arising out of the decedent's fall which occurred while visiting Defendant's office for a scheduled medical visit. According to the allegations of the complaint, the decedent was accompanied by her daughter-in-law, Deborah Copeland. Plaintiff alleges that the decedent and her daughter-in-law were led into an examination room by Joan Edge, an employee of Defendant. [Complaint, ¶ 4.] Plaintiff further alleges that "[d]uring the course of her examination, [the decedent] was assisted onto a weighing scale by Joan Edge. Once [the decedent] was on the scale, Ms. Edge turned her back to [the decedent] and walked away from her and the scale and went to the opposite side of the room." [Id.] Plaintiff contends that "[w]hile left alone on the scale, [the decedent] fell onto the floor and suffered severe injuries to her body." [Id. at ¶ 5.]

The Complaint specifically asserts Defendant breached the applicable standard of care by leaving the decedent unattended on the weighing scale. [*Id.* at ¶¶ 9, 13.] Deborah Copeland, however, has testified in her deposition and at trial that she did neither observed the decedent getting on the scale nor Ms. Edge putting the decedent on the scale. [Copeland Dep., pp. 44, ll. 10-12, 46, ll. 3-6, 48, ll. 14-16.] Ms. Copeland did not know if the decedent was even on the scale when she fell. [*Id.* at pp. 46, ll. 15-17, 50, ll. 12-14.] Ms. Copeland testified the fall "happened so fast; it was just like an instant. . . . The only thing I know is when I - - when I put my purse and my umbrella - - the two purses and the umbrella down, and I looked back around, [the decedent] was falling - - falling down and she had landed in the floor." [*Id.* at p. 46, ll. 9-22.] Ms. Copeland further testified that she never handed off the decedent to Ms. Edge. [*Id.* at p. 48, ll. 3 -- 9.]

LEGAL ARGUMENT

A plaintiff in a medical malpractice case must present (1) evidence of the generally recognized practices and procedures that would be exercised by competent practitioners in a defendant's field of medicine under the same or similar circumstances, (2) evidence that the defendant departed from the recognized and generally accepted standards, practices, and procedures in the manner alleged by the plaintiff, and (3) evidence that the defendant's departure from the generally accepted standards and practices was the proximate cause of the plaintiff's injuries and damages. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 546, 694 S.E.2d 1, 4-5 (2010).

In ruling on motions for directed verdict, "the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Parrish v. Allison, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). "The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind

of a reasonable juror." Id. "Yet, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id. at 319–20, 656 S.E.2d at 388.

The court must determine whether any evidence existed on each element of the cause of action. First State Sav. & Loan v. Phelps, 299 S.C. 441, 446, 385 S.E.2d 821, 824 (1989). "If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should be denied." Martasin v. Hilton Head Health Sys., 364 S.C. 430, 437, 613 S.E.2d 795, 799 (Ct. App. 2005). However, "[a] directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). A directed verdict is warranted "when there is no evidence on any one element of the alleged cause of action." Id.

The theory set forth in Plaintiff's Complaint is that Defendant departed from the recognized and generally accepted standards, practices, and procedures by leaving the decedent unattended on the weighing scale. [Complaint, ¶¶ 4-5, 9, 13.] Plaintiff, however, has offered no evidence that Defendant's employee left the decedent unattended on the scale. Instead, Ms. Copeland has testified that she never observed the decedent stepping onto the scale, never observed Ms. Edge placing the decedent on the scale, and did not even know if the decedent was on the scale when the decedent fell. Ms. Copeland further testified that there was no handoff of the decedent from her to Ms. Edge. According to Ms. Copeland, the fall occurred quickly and in an instant. Ms. Copeland only remembered letting the decedent's arm go, setting down her purses and umbrella, and then looking back and seeing that the decedent had fallen. [Copeland Dep., pp. 44-50.]

Plaintiff's Complaint is based on the alleged failure of Defendant's employee to adhere to the applicable standard of care by attending to the decedent while she was on the weighing scale. Yet there has been a complete failure by Plaintiff to present evidence that the decedent ever stepped on or was placed onto the scale. With no evidence that the decedent was on the weighing scale, Plaintiff cannot prove that Defendant's employee departed from the applicable

standard of care by leaving the decedent unattended on the scale. As such, because Plaintiff has presented no evidence on at least one element of the cause of action against Defendant, Defendant is entitled to a directed verdict as a matter of law. See Guffey, 364 S.C. at 163, 612 S.E.2d at 697.

Furthermore, there is nothing in the record besides sheer speculation to demonstrate that the decedent fell because of any alleged action or inaction by Defendant's employee. Decedent could have simply fallen when she let go of her daughter-in-law's hand. Speculative, theoretical, and hypothetical views may not be submitted to a jury, and a verdict may not be permitted to rest upon surmise, conjecture, or speculation. Small v. Pioneer Machinery, Inc.; 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997). Based upon the testimony presented during Plaintiff's case, how the decedent fell and whether Defendant departed from the applicable standard of care is left entirely to the jury's speculation. A defendant's liability cannot rest on such speculation, and for this additional reason, Defendant is also entitled to a directed verdict. See Fletcher v. Med. Univ. of South Carolina, 390 S.C. 458, 463-64, 702 S.E.2d 372, 374 (Ct. App. 2010) (prohibiting speculation that a patient's misfortune was the result of negligence in the absence of any evidence as to how the medical professional deviated from the standard of care).

CONCLUSION

For the reasons set forth herein, Defendant respectfully requests a directed verdict on the claims asserted in Plaintiff's Complaint as a matter of law.

This the ____ day of February, 2017, in Columbia, South Carolina.

Barbara A. Chesley, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
Attorneys for the Defendant, Carolina Pulmonary
Physicians, P.A.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of RICHARDSON PLOWDEN & ROBINSON, P. A., attorneys for the Defendant, Carolina Pulmonary Physicians, P.A., do hereby certify that I have this date served the foregoing Motion for Directed Verdict and Memorandum of Law in Support on the below-listed individual by personally depositing a copy of same into the United States Mail, first-class, postage prepaid, addressed to:

David A. Manzi, Esquire
Schiller & Hamilton
1057 Red Ventures Drive, Suite 145
Fort Mill, South Carolina 29707

Daisy F. Bonds
Legal Assistant to Barbara A. Chesley

Columbia, South Carolina
February __, 2017.

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

FILED-RECEIVED FORM 4
2017 FEB 15 PM 2:42
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4602454

Wayne H Copeland

Carolina Pulmonary
Physicians

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: AT THE CLOSE OF PLAINTIFF'S CASE, DEFENDANT'S MOTION FOR ~~VERDICT~~ DIRECTED VERDICT IS GRANTED. *For review set forth in Det's memorandum.*

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Brian M. Gibbons
Circuit Court Judge

2168

Judge Code

2/15/17
Date

For Clerk of Court Office Use Only

This judgment was entered on **February 15, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **February 15, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

David Andrew Manzi 10 Heron Point Okatie, SC 29909

Barbara A. Chesley 1900 Barnwell St. Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Wanda Nelson

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

~~This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.~~

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2015-CP-46-2454

WAYNE H. COPELAND, as the Personal
Representative of the Estate of Dorothy H.
Copeland, deceased,

Plaintiff,

v.

CAROLINA PULMONARY PHYSICIANS,
P.A.,

Defendant.

**PLAINTIFF'S MOTION FOR
RECONSIDERATION OF THE COURT'S
ORDER GRANTING DEFENDANT'S
DIRECTED VERDICT MOTION AND
MOTION FOR A NEW TRIAL
PURSUANT TO SCRPC RULE 59**

DAVID HAMILTON
C.C.P. # 155
YORK COUNTY, SC

2017 FEB 20 AM 10:06

FILED-RECEIVED

NOW COMES PLAINTIFF, through the undersigned counsel, respectfully moving the Court pursuant to SCRPC Rule 59 to reconsidered its Order granting Defendant's Motion for a Directed Verdict and further moving the Court to Order a new trial in this matter. In support of this Motion, Plaintiff present the following memorandum of law and facts.

TRIAL SUMMARY

This was a medical malpractice action, whereon, Plaintiff presented the following evidence:

- (1) That on May 17, 2012, Dorothy H. Copeland, 90 years old, went to Defendant's medical facilities located at 124 Glenwood Drive, Rock Hill, South Carolina for the purposes of medical treatment. At the time, Mrs. Copeland was accompanied by her daughter-in-law, Deborah Copeland.
- (2) That Dorothy and Deborah Copeland were escorted to the triage room of the facility by Defendant's employee, Joan Edge, RMA.
- (3) While in the triage room, Dorothy Copeland fell and suffered severe injuries, including a fractured wrist, pelvic fracture and large hematoma, all of which

required medical treatment and rehabilitation.

- (4) Plaintiff claimed that Defendant's employee, Joan Edge, RMA failed to adhere to the applicable standard of care, and that breach of care caused Mrs. Copeland to fall.

The evidence was presented through the testimony of the following witnesses and exhibits:

- (1) Joan Edge, RMA - Defendant's employee;
- (2) Denise Taylor - Defendant's employee;
- (3) Deborah Copeland;
- (4) Dr. Michael Heinig - Orthopedic Surgeon;
- (5) Dr. Amit G. Shah - Internist and rehabilitation specialist;
- (6) Wayne H. Copeland - Dorothy Copeland's son;
- (7) Bennie Copeland - Dorothy Copeland's son;
- (8) Susan Davies, RN - Plaintiff's Standard of Care expert;
- (9) Dorothy Copeland's relevant medical records and invoices for medical treatment related to her injuries incurred in the fall;
- (10) Hand-written statement written by Joan Edge, RMA on May 30, 2012;
- (11) Incident Report prepared by Denise Taylor on May 30, 2012; and
- (12) Various photographs of the Triage Room where the fall occurred.

Of note, Dorothy Copeland died in March, 2014 after her claim had been initiated against the Defendant.

This evidence resulted in the following facts for the jury's consideration:

- (1) At the time of the fall on May 17, 2012, Dorothy Copeland was a 90 year old frail female suffering from severe COPD, which greatly limited her mobility, stability

and mental status, and which required maximum assistance.

- (2) Dorothy Copeland was a long-time patient of the Defendants, having first been treated there in 2007.
- (3) From 2007 up to the date of the incident on May 17, 2012, Dorothy Copeland had been at Defendant's offices for an office visit at least 10 previous times and in each of those visits was accompanied by Deborah Copeland.
- (4) Deborah Copeland was Dorothy Copeland's main caregiver and had accompanied Dorothy on all her doctor visits and was most familiar with Dorothy Copeland's health status.
- (5) In all previous 10 visits to Defendant's facility, the Triage RMA had assumed control of Dorothy Copeland, especially in assisting Dorothy Copeland onto the weighing scale.
- (6) At the time they entered the Triage Room on May 17, 2012, Deborah Copeland had two pocketbooks on her arm and was holding an umbrella under the same arm, leaving only one arm free to assist Dorothy Copeland.
- (7) At no time did Joan Edge, RMA ever ask Deborah Copeland to assist Dorothy Copeland onto the weighing scale in the Triage Room.
- (8) Between Deborah Copeland and Joan Edge, RMA, only Joan Edge, RMA was medically trained, especially in the area of Fall Prevention Protocols.
- (9) Deborah Copeland testified that upon entering the Triage Room, Joan Edge, RMA stated that "we need to get her on the scale". Deborah Copeland further testified that she assumed this meant that Joan Edge, RMA was going to get Dorothy Copeland onto the weighing scale and at that point let go of Dorothy Copeland from her one free arm.

- (10) Joan Edge, RMA testified that she said "I need to get her on the scale" and then walked to the other side of the Triage Room to put down Dorothy Copeland's chart.
- (11) Joan Edge, RMA also testified that she saw Deborah Copeland assist Dorothy Copeland onto the weighing scale and then walk away leaving Dorothy Copeland unattended, and that in the process she saw Dorothy Copeland fall to the floor. This testimony was supported by a written statement prepared by Joan Edge, RMA on May 30, 2012 and a corresponding Incident Report prepared by Denise Taylor on May 30, 2012.
- (12) Deborah Copeland testified that she never assisted Dorothy Copeland onto the weighing scale.
- (13) Following the fall, Dorothy Copeland was eventually taken to an Orthopedic Surgeon, where she was diagnosed with a fractured wrist and pelvic fracture.
- (14) The injuries suffered by Dorothy Copeland required surgical intervention, a short hospital stay and a period of rehabilitation.
- (15) As a result of her injuries and subsequent treatment, Dorothy Copeland incurred medical expenses of \$79,015.34. Additionally Dorothy Copeland's daily living activities deteriorated and were compromised.

Expert opinion testimony was presented by Susan Davies, RN, who was admitted as an expert in Triage procedures, including but limited to, fall prevention procedures, for Registered Medical Assistants, such as Joan Edge, RMA, without objection. Ms. Davies testified to the following:

- (1) The Standard of Care (SOC) required that Joan Edge, RMA implement all appropriate precautions to prevent Dorothy Copeland from falling on May 17,

2012, especially given Dorothy Copeland's compromised medical condition.

- (2) The SOC responsibilities of Joan Edge, RMA began as soon as Dorothy Copeland crossed the threshold into the Triage Room.
- (3) Joan Edge, RMA failed to adhere to the SOC by taking control of Dorothy Copeland's physical well-being as soon as they entered into the Triage Room.
- (4) As a result of Joan Edge, RMA's failure to adhere to the SOC, Dorothy Copeland fell in the Triage Room and suffered injury.

At the end of Plaintiff's case, Defendant moved for a Directed Verdict based on its written Motion and Memorandum of Law. After a short oral argument on the Motion, the Court granted Defendant's Motion for a Directed Verdict and entered Judgment in favor of the Defendant. The Court granted this Motion based on the arguments presented in Defendant's Motion and Memorandum.

APPLICABLE LAW

STANDARD OF REVIEW

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. Parrish v. Allison, 656 S.E.2d 382, 388 (Ct. App. 2007). When considering directed verdict motions, the trial court does not have the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. Id.

ARGUMENT

I. Plaintiff adequately presented a prima facie case for a medical malpractice action and the court should grant Plaintiff a new trial.

South Carolina law defines medical malpractice as “doing that which the reasonably prudent or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances. S.C. Code Ann. § 15-79-110(6). In order to prove her case, Plaintiff must present evidence in the form of expert testimony that while providing medical services to a patient, the medical professional acts in her professional capacity and must meet the professional standard of care, as established by expert testimony. However, at all times, the medical professional must “exercise ordinary and reasonable care to insure that no unnecessary harm [befalls] the patient.” Dawkins v. Union Hosp. Dist., Appellate Case No.: 2012-211938, Opinion No. 27380, *citing Papa v. Brunswick Gen. Hosp.*, 517 N.Y.S.2d 782, 763-64 (App. Div. 1987).

In this matter, Plaintiff presented expert testimony through Susan Davies, RN that the Standard of Care (SOC) required Joan Edge, RMA to initiate fall prevention protocols given Dorothy Copeland’s medical condition as soon as Dorothy Copeland entered into the Triage Room. Ms. Davies further testified that Joan Edge, RMA failed to adhere to that SOC, and that failure was the cause of Dorothy Copeland’s fall. Furthermore, medical testimony from Dr. Heinig and Dr. Shah established that as result of the fall, Dorothy Copeland suffered a fracture wrist and fracture pelvis, all of which required medical treatment that was reasonable under the circumstances. The exact location of the fall (either from the weighing scale or standing next to the weighing scale) is not a element required to prove a claim for medical malpractice under the facts of this case. Plaintiff’s expert was clear that Joan Edge, RMA’s responsibility began as soon as they crossed the threshold into the Triage Room. At that point, Dorothy Copeland

should never have been unattended given her medical and physical condition. A logical inference for the jury to consider is that Dorothy Copeland fell solely by the fact she was left unattended. Accordingly, Plaintiff established all the elements of a medical malpractice claim and this issue should have gone to the jury for deliberation.

II. Whether Dorothy Copeland fell off the weighing scale or just fell in the Triage Room is a sufficient inference that the jury can deduce from the evidence and is not "speculative" as to negate Plaintiff's proof of malpractice in this matter.

Defendant's Memorandum of Law in support of its Motion for a Direct Verdict is apparently based on the assertion that the evidence in Plaintiff's case does not directly demonstrate that Dorothy Copeland was on the weighing scale when she fell or that Joan Edge, RMA assisted Dorothy Copeland on the scale. Whether or not Dorothy Copeland was definitively on the weighing scale or not was not required for the jury to make its own determination from the evidence as to how and why Dorothy Copeland fell. Admittedly, Plaintiff's initial allegation in his Complaint was that Joan Edge, RMA assisted Dorothy Copeland on the weighing scale and then left her alone. Deborah Copeland testified at trial, consistent with her deposition testimony, that she "couldn't remember" if Joan Edge, RMA assisted Dorothy onto the scale. The fact that she stated something different in her Affidavit only goes to her credibility. Deborah Copeland's credibility is a matter for the jury and not for the Court. More importantly, the expert testimony presented by Susan Davies, was not depended upon whether or not Joan Edge, RMA placed Dorothy Copeland on the weighing scale or even if Dorothy Copeland was on the scale when she fell. Ms. Davies, definitively stated the SOC required that Joan Edge, RMA take control of Dorothy Copeland from the moment she crossed the threshold into the Triage Room. Of note, Joan Edge's testimony and her written statement does state that Dorothy Copeland was on the weighing scale, albeit she did not assist her on the

scale. Joan Edge states that she saw Deborah Copeland assist Dorothy Copeland onto the scale and than leave her alone and actually saw Dorothy Copeland fall off the scale. Therefore, Defendant's own witness and employee figuratively places Dorothy Copeland on the scale. From its Motion, Defendant is seemly contradicting its own witness. Of most importance, Plaintiff's expert also testified that assuming Joan Edge, RMA's testimony was true and that Deborah Copeland assisted Dorothy Copeland onto the weighing scale, it was still a deviation from the SOC, since under the SOC, Joan Edge, RMA should have intervened and not allow Deborah Copeland to assist Dorothy onto the weighing scale.

All of this raises factual credibility issues for the jury, and they should not be the basis for a Directed Verdict. A Directed Verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability. Fletcher v. Medical University of South Carolina, Opinion No. 4732 *citing* Guffey v. Columbia/Colleton Reg'l Hosp., Inc. 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005), *emphasis added*. Here, there are more than sufficient issues raised that should have been submitted to the jury.

Of note, the Complaint in this matter was unverified. The purpose of a pleading is to give fair notice to the Defendant and the Court of the allegations. Rule 8 SCRC, mandates that a pleading contain "ultimate facts" rather than "evidentiary facts" to state a cause of action. Ultimate facts fall somewhere between the verbosity of 'evidentiary facts' and the sparsity of 'legal conclusions'. Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869 (2001). In this matter, the Complaint gave fair notice of Plaintiff's ultimate claim that Dorothy Copeland fell while in the Triage Room of Defendant's facility and that the fall was due to Defendant's employee's failure to adhere to the applicable Standard of Care. The allegations in the Complaint are not evidence and should not be controlling in this matter. Only the evidence presented in the course of Plaintiff's case at trial should be considered. The Complaint in this

matter should not be used to negate the evidence presented at trial simply because it refers to Dorothy Copeland being on the scale when she fell. The Complaint and discovery in this case provided sufficient information to the defendant as to the material allegations in the Complaint as to form a defense to Plaintiff's allegations. Pleadings are to be construed liberally and any conclusion of fact that may properly arise from a well pleaded fact is to be regarded as contained in the allegation. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). Its an elementary legal proposition now in this state (SC) that if a complaint in an action at law states a legal cause of action, and the plaintiff submits *any* evidence tending to establish the material allegations of his complaint, as a matter of law, it is the duty of the trial judge to submit the case to the jury for its determination. Huggins v. Commercial & Savings Bank, 140 S.E. 177, 188 (1927). The Complaint's material allegation is that Dorothy Copeland fell while on the Defendant's premises and that Defendant failed to adhere to the applicable SOC in assuring Dorothy Copeland's well-being.

From the evidence presented, the jury could reasonably infer any of the following:

- (1) Deborah Copeland assisted Dorothy Copeland onto the scale and then left her alone, which caused her to fall.
- (2) Deborah Copeland reasonably assumed that Joan Edge, RMA had taken control of Dorothy Copeland and was in the process of assisting her onto scale while she was putting down the pocketbooks and umbrella.
- (3) Dorothy Copeland fell before getting on the scale.
- (4) Dorothy Copeland fell off the scale.
- (5) Dorothy Copeland fell because she was left unattended in the Triage Room.
- (6) Both Deborah Copeland and Joan Edge, RMA were at fault in not protecting Dorothy Copeland.

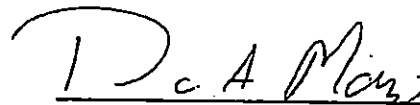
(6) No one was at fault for Dorothy Copeland's fall.

All of these are plausible inferences to be drawn from the evidence and are not based on speculation. It's the jury's sole province to determine which is the most plausible inference and to render a verdict accordingly.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court vacate its Order of Judgment in favor of Defendant and Order that a New Trial be had in this matter.

This is 30th day of Feb, 2017.



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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CIVIL ACTION NO.: 2015-CP-46-2454

WAYNE H. COPELAND, as the Personal)
Representative of the Estate of Dorothy H.)
Copeland, deceased,)

Plaintiff,)

v.)

CAROLINA PULMONARY)
PHYSICIANS, P.A.,)

Defendant.)

CERTIFICATE OF SERVICE

FILED-RECEIVED
2017 FEB 20 AM 10:06
DAVID HAMILTON
C.C. OBERGUS
YORK COUNTY, SC

The undersigned does hereby certify that he has served a copy of the foregoing **Plaintiff's Motion for Reconsideration of the Court's Order Granting Defendant's Directed Verdict Motion and Motion for a New Trial Pursuant to SCRPC Rule 59** upon all parties required to be served by this date, mailing same enclosed in a first class, postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service, to the parties' counsel whose name and address follows:

BARBARA A. CHESLEY
RICHARDSON PLOWDEN ROBINSON, P.A.
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Attorneys for Defendant Carolina Pulmonary Physicians, P.A.

This is 20th day of Feb., 2017.

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FILED:RECEIVED

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CLERK, C.P. & C.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK.

Wayne H. Copeland, as the Personal
Representative of the Estate of Dorothy
H. Copeland, deceased,

Plaintiff,

v.

Carolina Pulmonary Physicians, P.A.,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 15-CP-46-2454

**DEFENDANT CAROLINA PULMONARY
PHYSICIANS, P.A.'s RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR RECONSIDERATION OF THE
COURT'S ORDER GRANTING
DEFENDANT'S DIRECTED VERDICT
MOTION AND MOTION FOR A NEW
TRIAL PURSUANT TO SCRPC 59**

On February 13, 2017, the above-captioned case came to trial before this Court. Following the conclusion of Plaintiff's case, the Court directed a verdict in favor of Defendant Carolina Pulmonary Physicians, P.A. ("Carolina Pulmonary" or "Defendant"). Plaintiff, Wayne H. Copeland, as the Personal Representative of the Estate of Dorothy H. Copeland, deceased, has filed a Motion for Reconsideration of the Court's Order Granting Defendant's Directed Verdict Motion and Motion for a New Trial Pursuant to SCRPC 59. Defendant hereby files this Response in Opposition, showing the Court as follows:

PROCEDURAL AND FACTUAL BACKGROUND

On or about August 14, 2015, Plaintiff filed suit against Defendant arising out of the decedent's fall which occurred while visiting Defendant's office for a scheduled medical visit. According to the allegations of the Complaint, the decedent was accompanied by her daughter-in-law, Deborah Copeland. Plaintiff alleged that the decedent and her daughter-in-law were led into an examination room by Joan Edge, an employee of Defendant. [Complaint, ¶ 4.] Plaintiff further alleged that "[d]uring the course of her examination, [the decedent] was assisted onto a weighing scale by Joan Edge. Once [the decedent] was on the scale, Ms. Edge turned her back to [the decedent] and walked away from her and the scale and went to the opposite side of the room." [Id.] Plaintiff contends that "[w]hile left alone on the scale, [the decedent] fell onto the floor and suffered

severe injuries to her body." [Id. at ¶ 5.] Plaintiff specifically asserted in the Complaint that Defendant breached the applicable standard of care by leaving the decedent unattended on the weighing scale. [Id. at ¶¶ 9, 13.]

At trial, however, Deborah Copeland confirmed her deposition testimony that she neither observed the decedent getting on the scale nor Ms. Edge putting the decedent on the scale. [Copeland Dep., pp. 44, ll. 10-12, 46, ll. 3-6, 48, ll. 14-16.] Ms. Copeland did not know if the decedent was even on the scale when she fell. [Id. at pp. 46, ll. 15-17, 50, ll. 12-16.] She further acknowledged her deposition testimony that the fall "happened so fast; it was just like an instant. . . . The only thing I know is when I - - when I put my purse and my umbrella - - the two purses and the umbrella down, and I looked back around, [the decedent] was falling - - falling down and she had landed in the floor." [Id. at p. 46, ll. 9-22.] Ms. Copeland testified that she had let go of the decedent's arm to put down her belongings and the next thing she knew, the decedent had fallen.

Plaintiff's expert, Susan Davies, RN, rendered an opinion on the standard of care for weighing a patient in an office setting. During her cross-examination, Ms. Davies admitted that her opinion was narrow and limited to the standard of care for the protocols to be followed while weighing a patient, which included how a medical assistant should assist a patient onto the weighing scale, how a medical assistant should assist the patient while obtaining the weight, and how a medical assistant should assist a patient stepping off of the scale. Ms. Davies opined that Ms. Edge's failure to adhere to this standard of care was the reason the decedent fell off of the scale.

Following the conclusion of Plaintiff's case, Defendant moved for a directed verdict pursuant to Rule 50(a) of the South Carolina Rules of Civil Procedure. Defendant emphasized to the Court that Plaintiff's claim of medical malpractice in the Complaint was based on the allegation that Ms. Edge placed the decedent onto the weighing scale and then walked away, leaving the decedent unassisted on the scale. Plaintiff, however, presented no evidence during his case that Ms. Edge ever placed the decedent on the scale. The opinion on the standard of care rendered by

~~Plaintiff's expert was limited to the standard of care for weighing a patient. Where there was no testimony presented during Plaintiff's case that Ms. Edge ever began the process of weighing the patient, there was accordingly no evidence establishing that Ms. Edge violated the standard of care. This Court agreed and granted Defendant's motion for a directed verdict on the allegations raised by Plaintiff's Complaint. Plaintiff has now asked this Court to reconsider its order granting a directed verdict to Defendant. As shown further below, this Court's grant of a directed verdict should stand.~~

LEGAL ARGUMENT

A plaintiff in a medical malpractice case must present (1) evidence of the generally recognized and accepted practices and procedures that would be exercised by the average, competent practitioner in the defendant's field of medicine under the same or similar circumstances, (2) evidence that the defendant departed from the recognized and generally accepted standards, and (3) evidence that the defendant's departure from the generally accepted practices and procedures was the proximate cause of the plaintiff's injuries and damages. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 546, 694 S.E.2d 1, 4-5 (2010).

~~In ruling on motions for directed verdict, "the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Parrish v. Allison, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). "The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror." Id. "Yet, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id. at 319-20, 656 S.E.2d at 388.~~

The court must determine whether any evidence existed on each element of the cause of action. First State Sav. & Loan v. Phelps, 299 S.C. 441, 446, 385 S.E.2d 821, 824 (1989). "If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should be denied." Martasin v. Hilton Head Health Sys., 364 S.C. 430, 437, 613 S.E.2d 795, 799 (Ct. App. 2005). However, "[a] directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). A directed verdict is warranted "when there is no evidence on any one element of the alleged cause of action." Id.

The theory set forth in Plaintiff's Complaint was that Defendant and/or its employee departed from the recognized and generally accepted standards, practices, and procedures by placing the decedent on the weighing scale and then leaving her unattended. [Complaint, ¶¶ 4-5, 9, 13.] During trial, however, Plaintiff offered no evidence during his case that Defendant's employee placed and then left the decedent unattended on the scale. Instead, the daughter-in-law, Ms. Copeland, conceded at trial that she never observed the decedent stepping onto the scale, never observed Ms. Edge placing the decedent on the scale, and did not even know if the decedent was on the scale when the decedent fell. According to Ms. Copeland, the fall occurred quickly and in an instant. Ms. Copeland only remembered letting the decedent's arm go, setting down her purses and umbrella, and then looking back and seeing that the decedent had fallen. There was simply no testimony presented during Plaintiff's case that Ms. Edge had begun the process of weighing the decedent, including placing the decedent on the scale, when the decedent fell.

In addition, the opinion of Plaintiff's expert on the standard of care required of Ms. Edge was restricted to the standard of care for the protocols to be followed while weighing a patient, including the procedure for assisting the patient onto the weighing scale and attending to the patient while on the scale. Yet there was a complete failure by Plaintiff at trial to present evidence that Ms. Edge began the process of weighing the decedent or ever placed or assisted the

decendent onto the weighing scale. Therefore, because Plaintiff did not present any evidence during his case that Ms. Edge placed the decedent on the scale and subsequently left the decedent unattended, Plaintiff failed to establish a deviation from the standard of care by Ms. Edge. The entirety of Plaintiff's medical malpractice claim – that Ms. Edge departed from the required standard of care by placing the decedent onto the weighing scale and then walking away – failed for a complete lack of evidentiary proof at trial. As such, this Court properly directed a verdict in favor of Defendant as a matter of law. See Guffey, 364 S.C. at 163, 612 S.E.2d at 697.

In his post-trial motion, Plaintiff sets forth two primary arguments against the Court's grant of a directed verdict to Defendant. Plaintiff first contends that even though the Complaint specifically alleges that Ms. Edge assisted the decedent onto the weighing scale and then walked away, leaving the decedent alone on the scale which allegedly led to her fall, Plaintiff did not need to prove those precise allegations to prevail on the medical malpractice claim at trial. Plaintiff now claims that the exact location of the decedent's fall or how the decedent fell is not relevant to Plaintiff's medical malpractice claim. It is enough, Plaintiff argues, for the jury to consider that the decedent fell because she was perhaps left unattended somewhere by someone in the triage room.

There are two fallacies with this argument. First, by now arguing that it is open ended as to how and where the decedent fell and that Plaintiff is not restricted to the allegations set forth in the Complaint¹, Plaintiff is merely asking this Court to submit speculative scenarios to the jury. See Post-Trial Motion, pp. 9-10 (asking this Court to allow the jury to consider multiple theories of how the decedent fell, including that the decedent fell off the scale, fell before she got on the scale, fell because Ms. Copeland left her unattended, fell because Ms. Copeland erroneously thought Ms. Edge had taken control of the decedent, or fell because of some unspecified fault of Ms. Edge). Speculative, theoretical, and hypothetical views may not be submitted to a jury, and a verdict may not be permitted to rest upon surmise, conjecture, or speculation. Small v.

¹ Plaintiff never sought to amend the Complaint to raise different issues or theories.

~~Pioneer Machinery, Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997).~~ A defendant's liability cannot rest on such speculation, and thus, this Court correctly directed a verdict in favor of Defendant. See Fletcher v. Med. Univ. of South Carolina, 390 S.C. 458, 463-64, 702 S.E.2d 372, 374 (Ct. App. 2010) (prohibiting speculation that a patient's misfortune was the result of negligence in the absence of any evidence as to how the medical professional deviated from the standard of care).

Second, during trial Plaintiff only presented expert testimony as to the standard of care for weighing a patient. Despite Plaintiff's assertion in the post-trial motion that his expert opined that the medical assistant's responsibility began as soon as they entered the triage room, Plaintiff's expert acknowledged her opinion on the standard of care was narrow and limited to the standard of care for weighing a patient in an office setting. Plaintiff did not establish that this standard of care was violated by Ms. Edge because Plaintiff presented absolutely no evidence that the decedent fell while Ms. Edge was engaged in the process of weighing the decedent.

As a second argument, Plaintiff suggests in the post-trial motion that an issue of fact arises as to whether the decedent was on the weighing scale when she fell because Ms. Edge testified that Ms. Copeland, the daughter-in-law, placed the decedent onto the scale. Once more, this argument does not account for the limited standard of care opinion rendered by Plaintiff's expert at trial which only concerned the protocols for weighing a patient. Ms. Edge neither asked nor expected Ms. Copeland to place the decedent on the scale. Plaintiff's expert's opinion was restricted to the procedure for weighing a patient, which included how to assist a patient onto the scale. Ms. Edge's version of events does not create any disputed issue of fact with respect to the only standard of care offered at trial because it is clear under her testimony that she had not begun the weighing process for the decedent. Even if it can be inferred from Ms. Edge's testimony that the decedent was on the scale when she fell after being placed there by Ms. Copeland, Ms. Edge's testimony nevertheless provides no basis for how Ms. Edge violated the standard of care for weighing a patient. Therefore, the testimony of Ms.

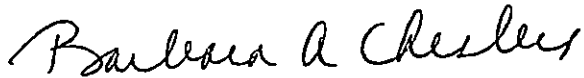
~~Edge raises no issue of fact with respect to whether Defendant and/or Ms. Edge violated the standard of care.~~

The Complaint sets forth only one theory of medical malpractice - that Defendant and/or its employee deviated from the standard of care for weighing a patient by placing the decedent on the weighing scale and walking away. ~~Plaintiff failed to offer any proof of this allegation during his case at trial. "A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). Accordingly, this Court properly directed a verdict in favor of Defendant.~~

CONCLUSION

For the reasons set forth herein, Defendant respectfully requests this Court to deny Plaintiff's motion for reconsideration and for a new trial and to affirm the grant of a directed verdict for Defendant.

This the 4th day of May, 2017, in Columbia, South Carolina.



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Attorneys for the Defendant, Carolina Pulmonary
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CERTIFICATE OF SERVICE

I, the undersigned, an employee of RICHARDSON PLOWDEN & ROBINSON, P. A., attorneys for the Defendant, Carolina Pulmonary Physicians, P.A., do hereby certify that I have this date served the foregoing Response in Opposition to Plaintiff's Motion for Reconsideration of the Court's Order Granting Defendant's Directed Verdict Motion and Motion for a New Trial Pursuant to SCRPC 59 on the below-listed individual via email addressed to:

David A. Manzi, Esquire
Schiller & Hamilton
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Daisy F. Bends
Legal Assistant to Barbara A. Chesley

Columbia, South Carolina
May 4, 2017.

FILED-RECEIVED
2017 MAY -5 AM 11:08
DAVID A. MANZI
C.C.O.P. & G.S.
YORK COUNTY, SC

1 STATE OF SOUTH CAROLINA

2 -----x

3 WAYNE H. COPELAND,

4 Plaintiff,

5 Case No.

6 -against-

2015-CP-46-2454

7 CAROLINA PULMONARY PHYSICIANS, P.A.

8 Defendants.

9 -----x

10 May 8, 2017

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE BRIAN M. GIBBONS

15

16 A P P E A R A N C E S:

17 DAVID A. MANZI, Esquire

18 Attorney for the Plaintiff

19

20 BARBARA A. CHESLEY, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1 THE COURT: I believe the first matter this
2 afternoon is Copeland versus Carolina Pulmonary
3 Physicians.

4 All right. I had an opportunity to read both the
5 motion and the underlying memoranda in support of, as
6 well as the Brief in opposition to. So I am familiar
7 with the issues before the Court and I do remember the
8 case. So I will just let you all argue your
9 respective positions.

10 Mr. Manzi.

11 MR. MANZI: Thank you, Your Honor. For the record
12 I am David Manzi representing the plaintiffs.

13 Your Honor, I believe the motion paper adequately
14 goes through and summarizes the testimony and as you
15 stated you are probably familiar with some of the
16 testimony so I will not bother going through a lot of
17 that other than to just summarize and hit the high
18 points.

19 To me I think the most important thing here is we
20 just don't see as a matter of law why this matter
21 should not have been submitted to the jury. If you
22 look at both -- if you look at the opposition paper
23 that was filed in this matter, most of it resolves
24 around factual issues. Factual disputes. Factual
25 differences in the case and that's where this case

1 really resides. There was admittedly contradictory
2 evidence as to what might have occurred but that's
3 what trials are all about. I mean most of the time we
4 don't even come into a courtroom if there wasn't a
5 dispute as to the facts in the case. And even if
6 there was a legal basis that usually gets resolved
7 during the summary judgement motion before we reach
8 trial.

9 In this particular trial there were no surprises at
10 trial. Everything that was testified to was knowingly
11 before trial through deposition testimony and
12 everybody knew what everybody was going to say and
13 there was basically a factual dispute as to what
14 happened. When I read the basis for the directed
15 verdict and even the opposition it seems like defense
16 counsel is relying on an issue of speculation in this
17 case, and speculation is not something that a jury has
18 to do or should do. And I understand that. But there
19 was no speculation in this case. I actually tried to
20 do so some research. Most of the case law regarding
21 speculation in civil trials resolves around damages,
22 future earnings, profits, physical medical treatment
23 and things like that, using that as to circumstantial
24 evidence as to what happened. We presented to the
25 jury the facts. The undisputed facts in this case is

1 that Dorothy Copeland fell while on the premises of
2 the defendant. The issue in this case is why did she
3 fall. And that was a factual dispute. We provided
4 some scenario as to why she fell and the defense
5 provided their's. There was no speculation involved.
6 There was a lot of circumstantial evidence of the
7 facts and the jury is charged that they can infer from
8 the circumstantial evidence presented to them their
9 version of what happened. And that's what they need
10 to do. Inference is a lot different then speculation.
11 An inference is taking the facts at hand and devising
12 what was the most reasonable outcome, and based on
13 that the facts presented to them the jury could have
14 resolved this case in a number of ways that did not
15 involve speculation.

16 We presented expert testimony. This was a medical
17 malpractice case. We satisfied all the elements of a
18 medical malpractice case. We had an expert witness in
19 the case. She was qualified without objection. Her
20 testimony was not contradicted in any way. Her
21 testimony was not equivocal in any way even through
22 cross examination. And our expert set forth the
23 standard of care that Joan Edge in the case, the
24 registered nurse assistant, needed to provide for Miss
25 Copeland when she entered the room.

1 There was a dispute in testimony between the only
2 two eye witnesses that are still alive; Rose Hudson
3 and Joan Edge. Rose Hudson testified one way. Joan
4 Edge put the onus on Rose -- I'm sorry, it's Copeland.
5 I am thinking of another case. But she put the onus
6 the case on her saying she placed her mother-in-law on
7 the scale. The jury heard that evidence. They can
8 take it for what it's worth. We presented evidence
9 through our expert that said the standard of care
10 required Joan Edge to immediately take control of the
11 patient from the time she crossed the threshold into
12 that triage room. And our expert established herself
13 as an expert in triage not just whether she's on the
14 scale.

15 Defense counsel seemed to put a lot of emphasis on
16 whether or not Miss Copeland was on the scale when she
17 fell because there was contradictory evidence to that.
18 But that's fine. There is nothing wrong with
19 contradictory evidence in the case for a trial. It's
20 for the jury to determine which witness they want to
21 listen to and what they are going to infer from the
22 evidence that's presented in the case. And our expert
23 testified that Joan Edge needed to be there for her
24 and she fell.

25 Now obviously how she fell, or why she fell is a

fact that's in dispute. We are not asking them to speculate on that. We're asking them based on the evidence you heard, based on the testimony that you heard from the witnesses you draw the inference as to what you surmise happened that day. They could have decided that the defendant was totally at fault. They could have decided that the defendant was totally not at fault. They could have decided that both parties were at fault. But that is all logical inferences to be derived from the evidence presented. I just don't see when we were asking the jury to speculate as to what happened. The fact is undisputed. Miss Copeland fell while she was on the premises of the defendant and we presented evidence as to why she fell. They presented alternative evidence as to why she fell. And that's what trials are all about. Two sets of facts. Two ways something could have happened. The jury takes those facts, makes their inferences from those facts and makes a determination as to what happened. And I believe we presented enough evidence in this case to get the matter to the jury on the merits of the case and that there is no real basis in the law by which we should take that right away from the jury. And just kind of an aside, the Copeland family, it took five years to get this case to come to

1 trial and directed verdicts are the worse kind of
2 closure you could have in the matter. Even given the
3 nature of this case if we went another afternoon the
4 case probably would have been totally resolved by a
5 jury verdict. And that's what the nature of these
6 cases are. That the citizens of this county decide
7 and we live by that. It's just harder to live by when
8 the case is taken out of the hands of the jury to what
9 we don't see an open really question of law in the
10 case. And if we can't retrial it then we would be
11 looking at another year, year and a half if we have to
12 take this to the Appellant Court.

13 So, that in closing, I think the evidence is clear.
14 We satisfied all the elements of a medical malpractice
15 case. The jury heard evidence through all the
16 witnesses as to alternative theories of what happened,
17 the circumstantial evidence from which they can draw a
18 strong inference as to what happened in the matter.
19 And just to kind of close on that issue, I will just
20 read a quote and this is for the record Shealy versus
21 Doe, Court of Appeals case, 634 S.E. 2d, 45, where
22 they stated circumstantial evidence means proof that
23 does not actually assert or represent the proposition
24 in question but that asserts or describes something
25 else from which the trier of fact may either

1 reasonably infer the truth of the proposition in which
2 case the evidence is not only relevant under rule 401
3 but is sufficient as well. At least reasonably infer
4 an increase in the probability that the proposition is
5 in fact true in which the case and the evidence is
6 relevant under Rule 401. Assuming that the
7 proposition is a consequence to the determination of
8 the action but may not be sufficient by itself to
9 create a question for the trier of fact.

10 Our proposition in this case was that Mrs. Copeland
11 fell due to the failure of the defendant to adhere to
12 standard of care. And the facts and the evidence we
13 presented, circumstantial evidence as it is was
14 reasonable enough for the jury to infer one way or the
15 other in this matter. And this case should have gone
16 to the jury for that final determination.

17 Thank you.

18 THE COURT: Thank you Mr. Manzi.

19 I may have questions for both of you all. I will
20 just ask them at the end of both arguments. All
21 right, Miss Chelsey.

22 Can you all hear me okay. I think it's better
23 without the microphone. That's without the
24 microphone, that's with the microphone.

25 MS. CHELSEY: It echoes.

1 THE COURT: Right. That's what I'm getting at.

2 MS. CHESLEY: Can you hear me okay? All right.

3 May it please the Court.

4 THE COURT: Yes.

5 MS. CHESLEY: Your Honor, in plaintiff's post trial
6 motion and in his arguments he has put forth two
7 primary arguments against the court granting a
8 directed verdict in this case.

9 First of all, he contends that even though the
10 Complaint specifically alleges that the office staff
11 member assisted the patient on to a weighing scale and
12 then walked away. That they did not need to prove
13 those precise allegations to prevail on a medical
14 malpractice claim at trial. They are now stating --
15 and Your Honor, this is exactly what was presented at
16 trial on the facts. The plaintiff is now trying to
17 say that the exact location of the fall and how the
18 patient fell is not relevant in this case. They argue
19 that it's enough for the jury to simply consider that
20 the patient may have been left unattended somewhere by
21 someone and fallen. And I think there's two fallacies
22 to this argument.

23 First, by arguing that it's an open ended
24 determination of the facts as to where the patient was
25 and how they fell and that the patient is not --

1 excuse me -- the plaintiff is not restricted to the
2 allegations of the Complaint and the testimony. That
3 the plaintiff is most certainly asking the Court to
4 submit speculative scenarios to the jury. And in fact
5 in his Brief plaintiff is asking the Court to allow
6 the jury to consider multiple scenarios that were not
7 stated at trial.

8 Number one, that either she fell off the scale; she
9 fell before she got on the scale; she fell because her
10 daughter-in-law left her unattended; she left because
11 her daughter-in-law erroneously thought the office
12 staff was going to take over, or she fell because of
13 some unspecified fault of the office staff. And Your
14 Honor, *res ipsa locuitur* does not apply in this state.
15 This is not a case where we can say just because the
16 patient fell in an office setting it has to be
17 someone's fault.

18 Speculative, theoretical and hypothetical views may
19 not be submitted to a jury and a verdict may not be
20 permitted to rest upon surmise, conjecture or
21 speculation. Citing the *Small v Pioneer Machinery*
22 case.

23 In addition, during trial plaintiff did present
24 expert testimony as to the standard of care for
25 weighing the patient. And I very specifically asked

1 that expert witness what her scope of testimony as to
2 standard of care involved. And she very specifically
3 stated that her testimony was narrow in scope and was
4 related to the standard of care for weighing a
5 patient. She did not go in to testimony about that as
6 soon as she entered the room there should have been
7 something differently done and that deviated from the
8 standard of care. That was not her testimony in this
9 case. And because of that we believe the plaintiff's
10 argument fails.

11 As a second argument --

12 THE COURT: What about his argument though that
13 there's inferences to be made by the circumstantial
14 evidence shown and that therefore his expert did show
15 a deviation from the standard of care if the jury were
16 to infer that she fell off the weighing scale.

17 I understand what you are arguing and I got the
18 Complaint up here and it's still earmarked to where I
19 was when we argued this back in March or February or
20 whenever it was. You know that, and Mr. Manzi I will
21 let you talk to me about that. This is what the
22 Complaint says page two, paragraph four, "Miss
23 Copeland was assisted on to a weighing scale by Joan
24 Edge. Once she was on the scale Miss Edge turned her
25 back to Miss Copeland and walked away from the scale

1 and went to the opposite side of the room and while
2 left alone on the scale she fell onto the floor
3 suffering severe injuries.

4 As I recall your main witness, the lady who
5 accompanied Miss Copeland there said I don't know how
6 she fell. I don't know whether she was being --

7 MS. CHESLEY: And your Honor --

8 THE COURT: -- weighed or not. Go ahead. I'm
9 listening. Sorry to interrupt.

10 MS. CHESLEY: And Your Honor, that's really my
11 point. We are going back to proving the facts, and
12 the facts are important here because this was the
13 Complaint and in fact Miss Debra Copeland -- and I'll
14 just refer to the patient as the patient and the Miss
15 Copeland as the daughter-in-law so as not to be
16 confusing.

17 At the beginning of the case there had been an
18 affidavit that had been done actually several years
19 after the fall. And Miss Debra Copeland had put that
20 -- I can't remember specifically, but in her affidavit
21 she had represented that the patient fell from the
22 scale. Okay. In her deposition when questioned as to
23 her affidavit she said, well, no, I really don't know
24 what happened. I really didn't see her get on the
25 scale. I didn't put her on the scale. I didn't see

1 anyone else put her on the scale. I didn't see her
2 fall from the scale. She testified and the testimony
3 was the same at trial. She was questioned at trial
4 regarding that specifically and she factually said I
5 just know I let go of her arm to put down the
6 belongings and turned around and she was falling. She
7 was on the floor. And it occurred in less than a
8 second. It occurred suddenly. So, here we have -- we
9 do not have any factual allegations that Miss Copeland
10 -- excuse me, the patient, fell from the scale.

11 THE COURT: So the factual allegation that was
12 established in the record doesn't match the expert
13 testimony which would create the standard of care
14 issue which would go to the jury?

15 MS. CHESLEY: Exactly Your Honor.

16 THE COURT: You don't think that the jury's
17 ability to infer the evidence they heard creates
18 enough of a fact pattern for them to get past going to
19 a jury.

20 MS. CHESLEY: Your Honor, I think if that was
21 going to be the case then that should have been laid
22 out clearly by plaintiff's counsel in his case and
23 that was not done. We're being told you deviated from
24 the standard of care because the office staff should
25 have assisted her on the scale and stayed with her.

1 We have facts of the case saying, didn't see her on
2 the scale. I didn't see anyone put her there. I
3 don't think we can make that leap. I think, you know
4 the plaintiff -- and very specifically, plaintiff's
5 expert was given the opportunity to say, well, you
6 know, I could also -- I'll give testimony that if this
7 had occurred she would have deviated from the standard
8 of care as well. That the moment she walked in the
9 office it was Miss Edge's responsibility to take over
10 the safety of this patient. That was not the
11 testimony in this case. And so because of that I
12 really -- I really think plaintiff's argument fails.

13 What I was going to say also, he mentioned Miss
14 Edge's testimony that when she walked in she saw the
15 patient's daughter-in-law begin to assist her on the
16 scale. This version of events doesn't create a
17 disputed issue of fact with respect to the standard of
18 care offered at trial because it's clear from her
19 testimony that Miss Edge had not initiated a weighing
20 process. Miss Copeland said herself I was holding on
21 to her arm. And so the weighing process had not even
22 begun. Even if it can be inferred from Miss Edge's
23 testimony that the patient was on the scale when she
24 fell -- let's say after being placed by Miss
25 Copeland's -- Miss Edge's testimony still doesn't

1 provide a basis for how Miss Edge violated the
2 standard of care for weighing the patient because
3 again, the standard of care that the expert relied on
4 is the staff member had to go through all these steps
5 and that is not what occurred, even from the the words
6 of Miss Copeland, the daughter-in-law, who said
7 herself I did not see Miss Edge put her on the scale.

8 So I think Your Honor, based on that plaintiff
9 has failed to offer any proof of this allegation
10 during this case at trial.

11 And Your Honor, I would tell you I think the
12 Copeland family is a very nice family. They're very
13 nice people, and I'm certainly sorry that their mother
14 experienced a fall and a fracture. However, Mr. Manzi
15 mentioned this five-year process. This has been a
16 five-year process for defense as well, for the medical
17 staff and the employees who are involved in this. So
18 I would respectfully request the Court to deny the
19 motion and affirm the granting of the directed verdict
20 on behalf of Carolina Pulmonary Physicians.

21 THE COURT: Thank you, very much. Mr. Manzi in
22 reply.

23 MR. MANZI: Yes. Just a few points, Your Honor.
24 One, I think it's well established in the law that
25 that the implied amendment to the Complaint to conform

1 to the evidence presented at trial and the only thing
2 that we should be considering here is the evidence in
3 the case we presented at trial. Things do change, but
4 like Miss Chesley said she knew what our client, Debra
5 Copeland, had changed her testimony from deposition to
6 affidavit. That goes to credibility and I remember
7 one of the first motions in limine we had in this case
8 we talked about credibility and she argued that
9 credibility is purely a matter for the jury and not a
10 matter for the expert witness, not a matter for the
11 judge to determine. We have jury instructions to
12 that. And even listening to the argument just now I
13 was basically listening to what I would consider a
14 closing argument because she is still arguing the
15 facts of the case and which fact do you want to
16 believe. Which facts have the most credibility. I am
17 not trying to win the case here or lose the case here.
18 All I'm saying those 12 people are the people who
19 should have decided the credibility of the witnesses
20 in this case. And in terms of our expert, one of the
21 last questions I asked our expert is that does the
22 standard of care require Miss Edge to take control
23 Dorothy Copeland when she crossed the threshold into
24 the triage room. She had the main responsibility at
25 that point in time. So anything that happened after

1 she went into the triage room is the responsibility.
2 That's what she testified to as the standard of care.
3 They could have had expert, and I am sure in their own
4 case in chief she might have had expert that might
5 have disputed that standard of care and that's fine.
6 But that's an argument to be made to the jury. She
7 wasn't speculating on that. We were taking the
8 evidence as it was presented. Whether or not Miss
9 Copeland was on the scale, their own witness again
10 Joan Edge said Miss Copeland was on the scale. So I
11 mean I could argue and I never got the chance in terms
12 of wrapping this whole up because I never got the
13 chance to give a closing argument and what we won't
14 know because I never got that chance as to what I
15 might have argued to the jury in terms to help them
16 based on the evidence you heard what you should infer
17 from that evidence as to who was the liable party
18 here. And I might even be willing to concede we might
19 even be looking at a case of comparative negligent in
20 this case. But again, that's for the jury to decide.
21 I still don't hear anything in our case in chief that
22 we presented that amounts to asking them to speculate.
23 We're only asking them this is the evidence. I would
24 have only argued these are the facts you heard. Was
25 she on the scale? She said she was on the scale.

1 Debra Copeland said she didn't help her on the scale.
2 Joan Edge said she helped her on the scale. She fell.
3 We know she fell. The only undisputed fact in the
4 this case. They're the ones that have to hear all
5 this evidence, take it all in and draw a reasonable
6 inference. That's why we have this system for those
7 12 people to decide and not for us to decide. We can
8 argue the case and I think that's what we have been
9 doing is basically presenting our closing arguments.

10 THE COURT: Is the fact that she fell, evidence in
11 the record. The fact that she fell when she was over
12 the threshold is that in and of itself malpractice?

13 MR. MANZI: Only -- I will be honest with Your
14 Honor -- only if they believe our expert witness that
15 said that she had control when she crossed threshold.
16 If their expert witness presented alternative opinion
17 on that and they wanted to believe their expert
18 witness then they might say no. That's what I'm
19 saying. I don't know what the jury might have
20 returned a verdict in this case. They could returned
21 no liability, total liability on behalf of the
22 defendant or comparative liability between parties.
23 But we never got the chance. I mean, I am not trying
24 to prove the case. All I am saying is that I
25 presented enough evidence for them to decide. They

1 could very easily decide this is an unfortunate
2 accident. We're very sorry it happened. Miss
3 Copeland was a 90-year old frail woman. Maybe she
4 just fell and it's nobody's fault. That's a logical
5 inference again they can make from the evidence
6 presented. But it's their call to make that decision.
7 I mean, counsel again cites no real basis in the law
8 to say this matter should not have gone to the jury
9 other than to say our evidence was speculative and it
10 wasn't.

11 Our expert only testified as to the facts presented
12 to her. She only testified as to what Dorothy
13 Copeland testified to and when Joan Edge testified to
14 and that's what she said she based her testimony on.
15 She wasn't speculating on anything. She didn't draw
16 anything on her own. She testified purely on the
17 evidence that we presented at trial. This was purely
18 a case of circumstantial evidence that the jury should
19 infer what happened, but it belongs to them. Your
20 Honor. They get to make the decision.

21 Thank you.

22 THE COURT: All right. Thank you Miss Chesley I
23 gave him another opportunity. Is there anything else?

24 MS. CHESLEY: Thank you, Your Honor. Just
25 briefly.

1 We have to talk about the facts here because there
2 has be no question of fact in order to get a directed
3 verdict in the case. That is a matter of law. But I
4 think the facts clearly lay out that the testimony was
5 was I didn't see her fall from the scale. The
6 testimony from the expert is, I am only going to give
7 testimony as to standard of care as to the weighing
8 process and what is appropriate. And I think based on
9 those things we -- you know, I would respectfully
10 request that the directed verdict motion stand.

11 THE COURT: All right.

12 I will tell you I have been a judge for 12 years.
13 I can count on one hand the number of times I granted
14 a directed verdict for what it's worth. Okay. You
15 know, I try to get it right. Usually, I guess the ego
16 in me thinks I always get it right but some times I
17 don't. Let me think about this some more. I will
18 read over your Briefs again. I certainly understand
19 your arguments and I am well aware of the province of
20 the jury and I'm the gatekeeper and that type of
21 thing. I will take it under advisement. I understand
22 both clients have been waiting a long time. I
23 understand that. So I will get a decision out within
24 the next week and I will let you know what it's going
25 to be and we will go from there.

1 Thank you, very much. You all have a good day.

2 MS. CHESLEY: Thank you, judge.

3 MR. MANZI: Thank you Your Honor.

4 (End of transcript)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 8th day of May, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 19, 2017

Aileen Butler

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

FILED-RECEIVED FORM 4
2017 MAY 12 PM 1:53

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4602454

Wayne H Copeland

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Carolina Pulmonary
Physicians

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: PLAINTIFF'S MOTION FOR NEW TRIAL AND FOR RECONSIDERATION IS DENIED.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Brian M. Gibbons
Circuit Court Judge

2168
Judge Code

5/12/17
Date

For Clerk of Court Office Use Only

This judgment was entered on May 12, 2017, and a copy mailed first class or placed in the appropriate attorney's box on May 12, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

David Andrew Manzi 10 Heron Point Okatie, SC 29909

Barbara A. Chesley 1900 Barnwell St. Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Aileen Butler

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK
2017 MAY 19 AM 11:19
2015-CP-46-2454

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC
WAYNE H. COPELAND, as the Personal Representative of the Estate of Dorothy H. Copeland, deceased,

Plaintiff,

v.

CAROLINA PULMONARY
PHYSICIANS, P.A.,

Defendant.

NOTICE OF APPEAL

Plaintiff hereby gives notice of appeal to the Court of Appeals of South Carolina from the Order and Judgment granting Defendant's Motion for a Directed Verdict that was entered on February 15, 2017, and from the Order denying Plaintiff's Motion for New Trial and for Reconsideration that was entered on May 12, 2017.

Respectfully submitted this the 19th day of May, 2017,



DAVID A. MANZI (SBN: 77222)
Attorney for the Plaintiff

Partner:

Schiller & Hamilton, LLC
1057 Red Ventures Drive, Suite 145
Fort Mill, SC 29707
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STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

Wayne H Copeland

FILED-RECEIVED FORM 4
2017 FEB 15 PM 2:42
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4602454

Carolina Pulmonary
Physicians

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: AT THE CLOSE OF PLAINTIFF'S CASE, DEFENDANT'S MOTION FOR ~~VERDICT~~ DIRECTED VERDICT IS GRANTED, IT IS SO ORDERED. *For review set forth in Det's memorandum.*

INFORMATION FOR THE JUDGMENT INDEX

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

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Brian M. Gibbons
Circuit Court Judge

2168
Judge Code

2/15/17
Date

For Clerk of Court Office Use Only

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Wanda Nelson

David Hamilton - Clerk of Court

Court Reporter:

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COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

Wayne H Copeland

FILED-RECEIVED FORM 4
2017 MAY 12 PM 1:53

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4602454

Carolina Pulmonary
Physicians

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Brian M. Gibbons
Circuit Court Judge

2168
Judge Code

5/12/17
Date

For Clerk of Court Office Use Only

This judgment was entered on May 12, 2017, and a copy mailed first class or placed in the appropriate attorney's box on May 12, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

David Andrew Manzi 10 Heron Point Okatie, SC 29909

Barbara A. Chesley 1900 Barnwell St. Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Aileen Butler

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
2017 MAY 19 AM 11:19

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2015-CP-46-2454

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

WAYNE H. COPELAND, as the Personal Representative of the Estate of Dorothy H. Copeland, deceased,

Plaintiff,

v.

CAROLINA PULMONARY
PHYSICIANS, P.A.,

Defendant.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has served a copy of the foregoing **Notice of Appeal** upon all parties required to be served by this date, mailing same enclosed in a first class, postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service, to the parties' counsel whose name and address follows:

BARBARA A. CHESLEY
RICHARDSON PLOWDEN ROBINSON, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29201
Attorneys for Defendant Carolina Pulmonary Physicians, P.A.

This is 19th day of MAY, 2017.

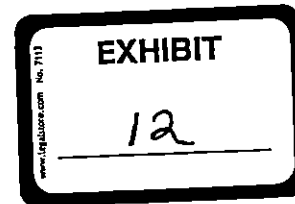
David Manzi
DAVID A. MANZI (SBN: 77222)
Attorney for Plaintiff

Partner:

Schiller & Hamilton, LLC
1057 Red Ventures Drive, Suite 145
Fort Mill, SC 29707
Direct Dial: 704-589-2180
Direct Fax: 877-241-2407
Email: dmanzi@schillerhamilton.com

COUNTY OF YORK

2015-CP-46-2454



WAYNE H. COPELAND, as the Personal)
 Representative of the Estate of Dorothy H.)
 Copeland, deceased,)

Plaintiff,)

v.)

CAROLINA PULMONARY)
 PHYSICIANS, P.A.)

Defendant.)

**AFFIDAVIT OF
 DEBORAH COPELAND**

I, **DEBORAH COPELAND**, declare that I am the daughter-in-law of Dorothy H. Copeland, deceased, have personal knowledge of the following and can competently testify to same if called upon.

1. On May 17, 2012, I took my mother-in-law, Dorothy H. Copeland, to a follow-up visit she had with her doctor at the offices of Carolina Pulmonary Physicians, P.A. ("CPP") located in Rock Hill, South Carolina. At the time, Dorothy was 90 years old, extremely fragile and required assisted in her mobility. It was raining that day, and when I escorted Dorothy into the office, I was carrying my purse, her purse and an umbrella.

2. After sitting in the outside waiting room, we were called into an examination room by a medical assistant. I have come to learn that the medical assistant's name was Joan Edge. Ms. Edge led us into one of the examination rooms. The examination room had a step-up scale near the door and some chairs next to the scale. Upon entering the room, I proceeded to place the purses and umbrella near one of the chairs in the exam room. After putting the purses and umbrella down, I turned towards Dorothy and the scale, I saw Dorothy fall off of the scale and violently hit the floor. At the time Dorothy fell, Ms. Edge was on the other side of the room. After Dorothy fell, Ms. Edge came over to tend to her.

3. After the fall, it was obvious that Dorothy had serious injuries. We eventually transported Dorothy to the emergency department at the Piedmont Medical Center, where she was diagnosed with a left wrist and left pubic fracture.

This is 16 day of February, 2016.

Deborah Copeland
 DEBORAH COPELAND

Sworn to and subscribed before me,
 a Notary Public, this the 16 day of
Feb., 2016.

Gennifer B
 NOTARY PUBLIC of SOUTH CAROLINA

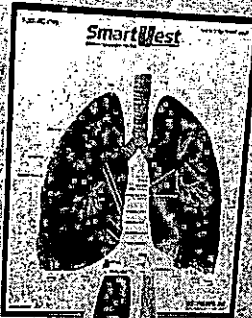
My commission expires : 01/20/26

On 5/17/12 Mrs. Dorothy Copeland had an appt. to see Dr. Creagh at 2:15 p.m. I called the patient back for her appt and took her to the Bridge room. She was accompanied by another female (her daughter-in-law) I told the pt. I needed her on the scale so I could get her weight. The female helped her up and I went to get her shirt on the counter, when I turned around the female had left the pt. and was starting to sit down. As soon as I walked to the scale the pt. had fallen off and was on the floor. She was complaining that her wrist was hurting. I ~~could~~ left the pt. sitting on the floor because she was hurting and I did not want to move her. I told the female she probably should take her to the ER to get her

wrist X-rayed. She wanted to know if we could just X-ray her here. She did not want to take her to the ER. Dr. Alleyne came out of a room and I called him and he picked her up and we put her in a wheel chair. Denise came and spoke to the daughter-in-law and told her we would try and get her in at the orthopedic so she wouldn't have to take her to the ER. Dr. Creagh checked over the pt. and we got a bandage for her wrist because it was bleeding.

Joan Edge
5/30/12

EXHIBIT
18



THE FOLLOWING IS A SUMMARY OF THE TESTS CONDUCTED ON THE SUBJECT DURING THE PAST SEVERAL MONTHS. THE RESULTS OF THE TESTS WERE AS FOLLOWS:

1. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS URINE. THE RESULTS WERE AS FOLLOWS:

2. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS BLOOD. THE RESULTS WERE AS FOLLOWS:

3. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS SPERM. THE RESULTS WERE AS FOLLOWS:

4. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS SALIVA. THE RESULTS WERE AS FOLLOWS:

5. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS TISSUES. THE RESULTS WERE AS FOLLOWS:

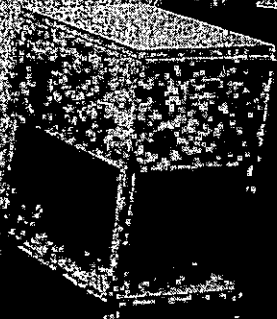
6. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS URINE. THE RESULTS WERE AS FOLLOWS:

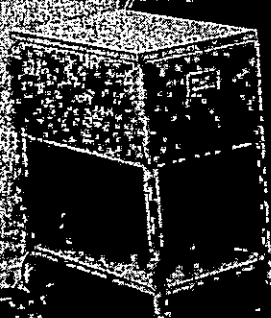
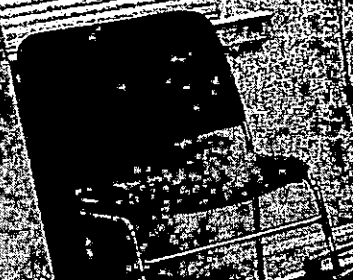
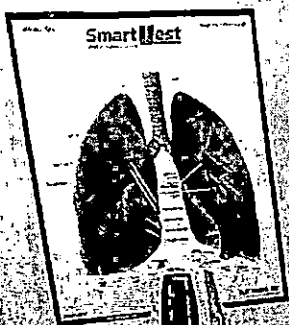
7. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS BLOOD. THE RESULTS WERE AS FOLLOWS:

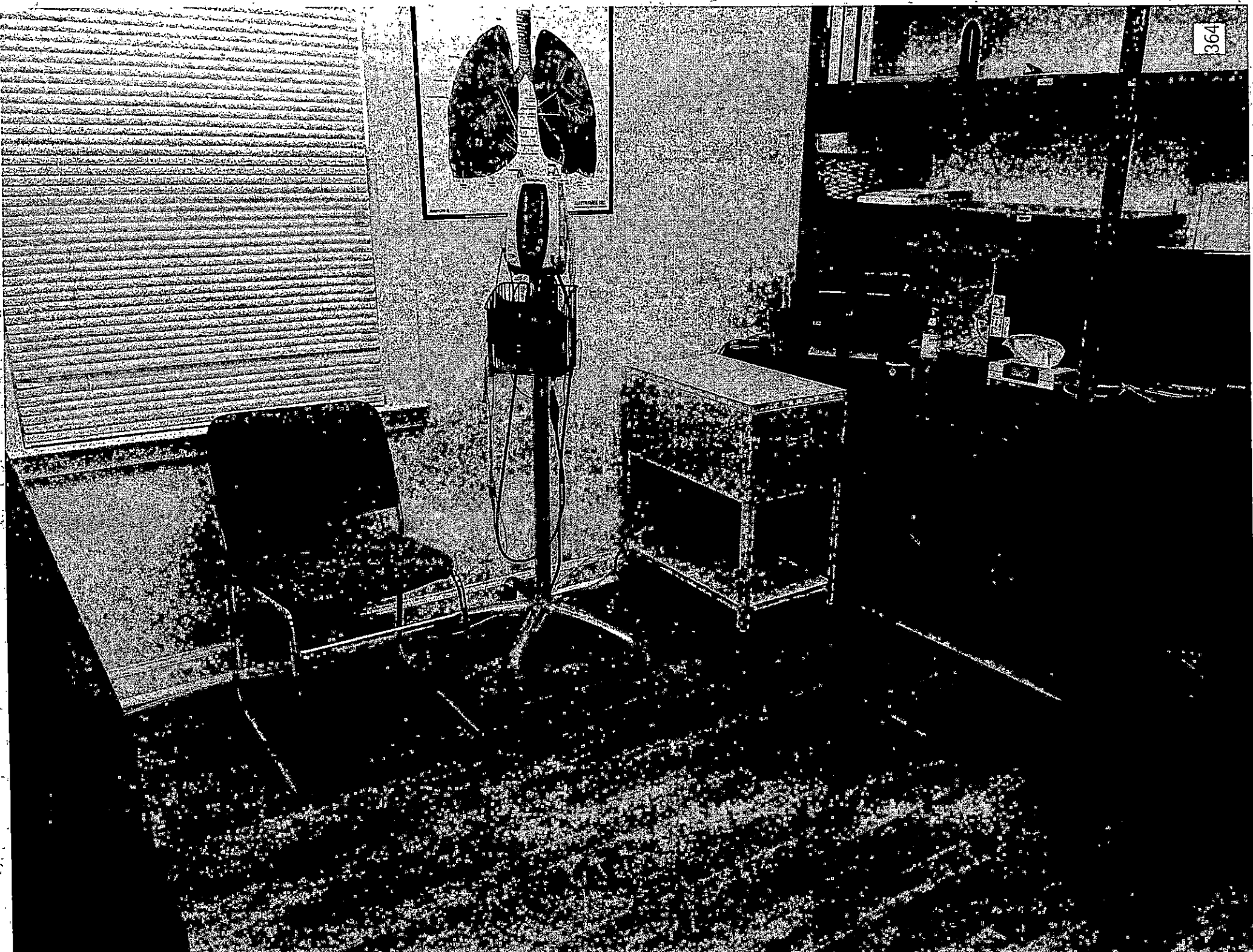
8. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS SPERM. THE RESULTS WERE AS FOLLOWS:

9. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS SALIVA. THE RESULTS WERE AS FOLLOWS:

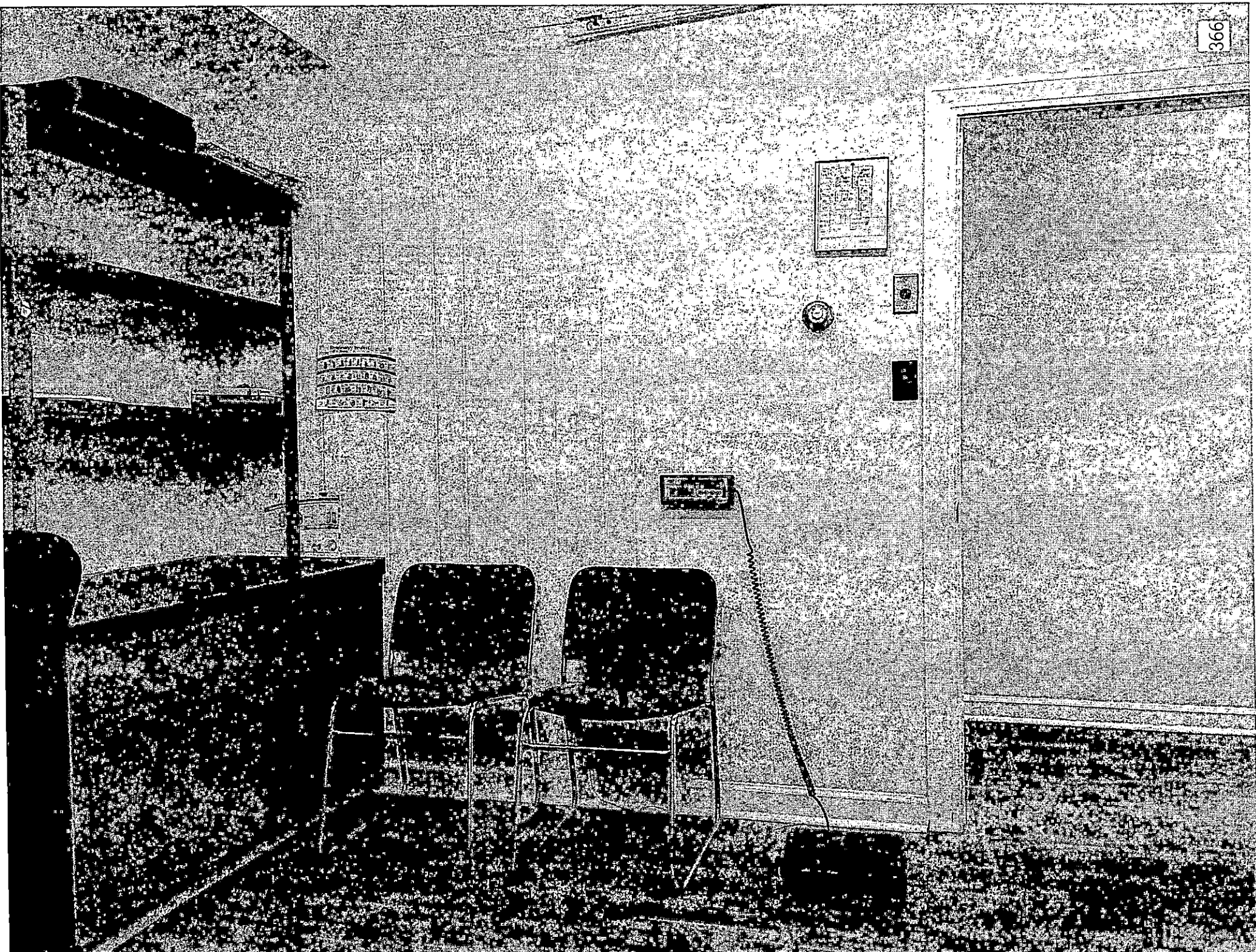
10. THE SUBJECT WAS TESTED FOR THE PRESENCE OF THE VIRUS IN HIS TISSUES. THE RESULTS WERE AS FOLLOWS:

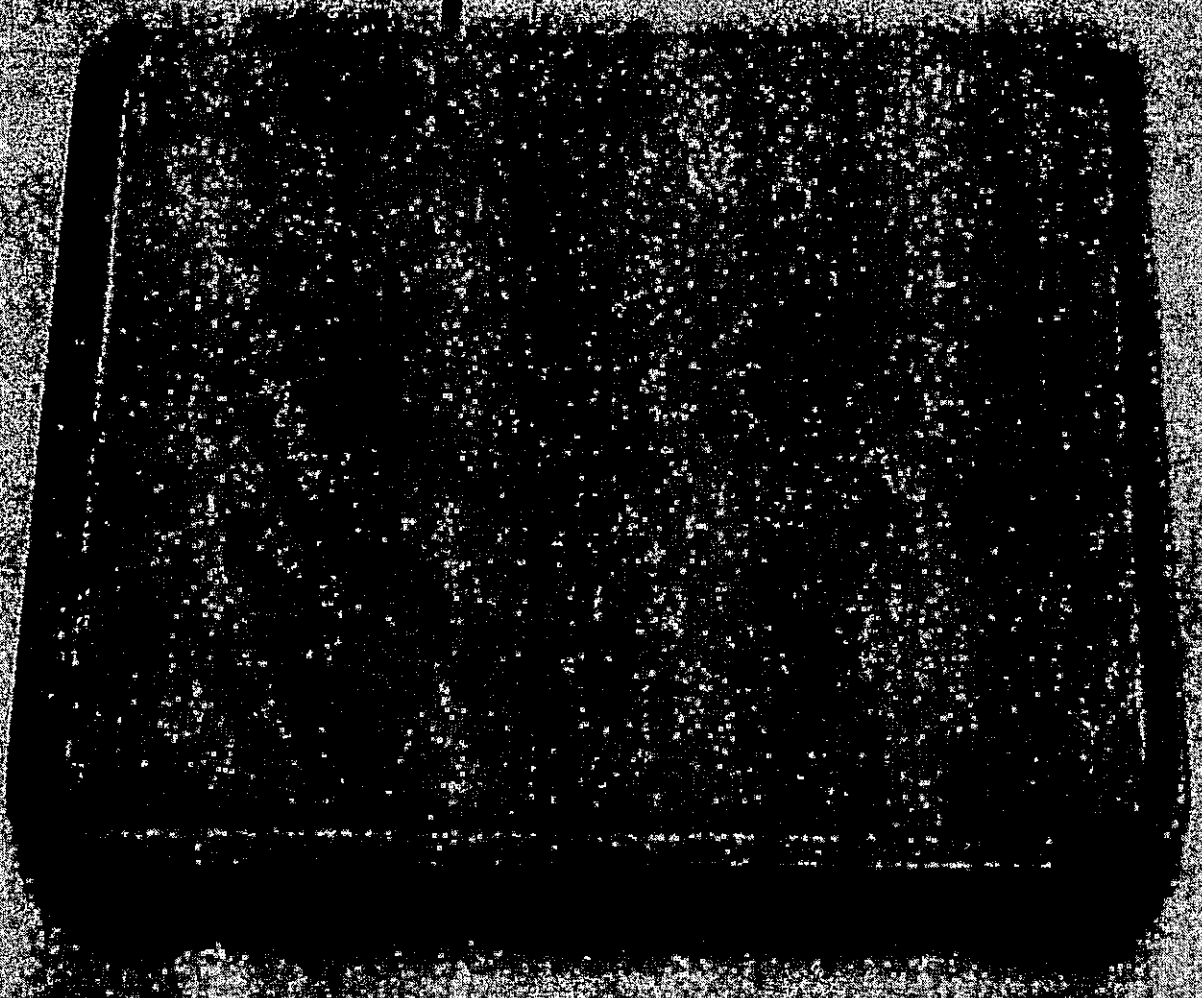


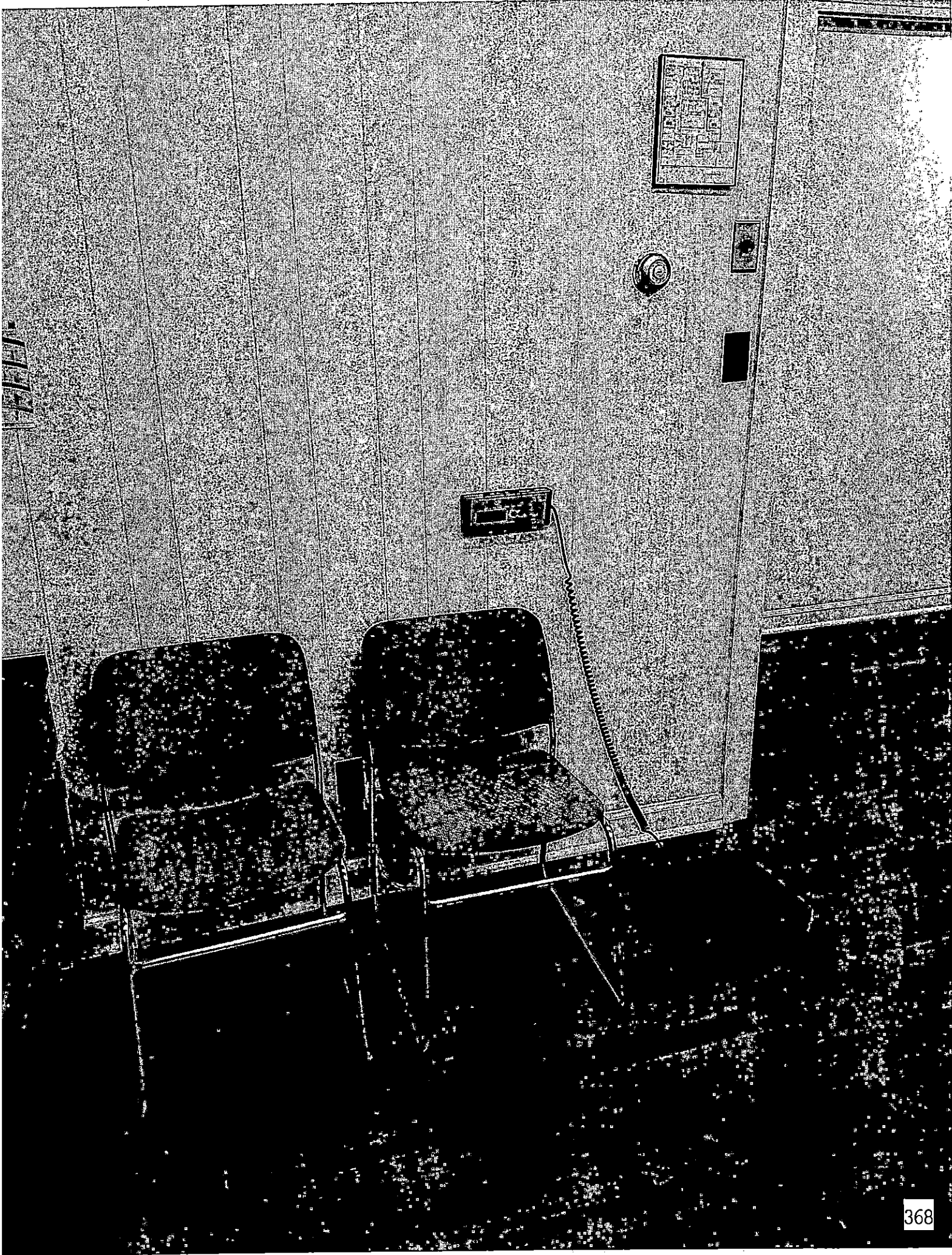






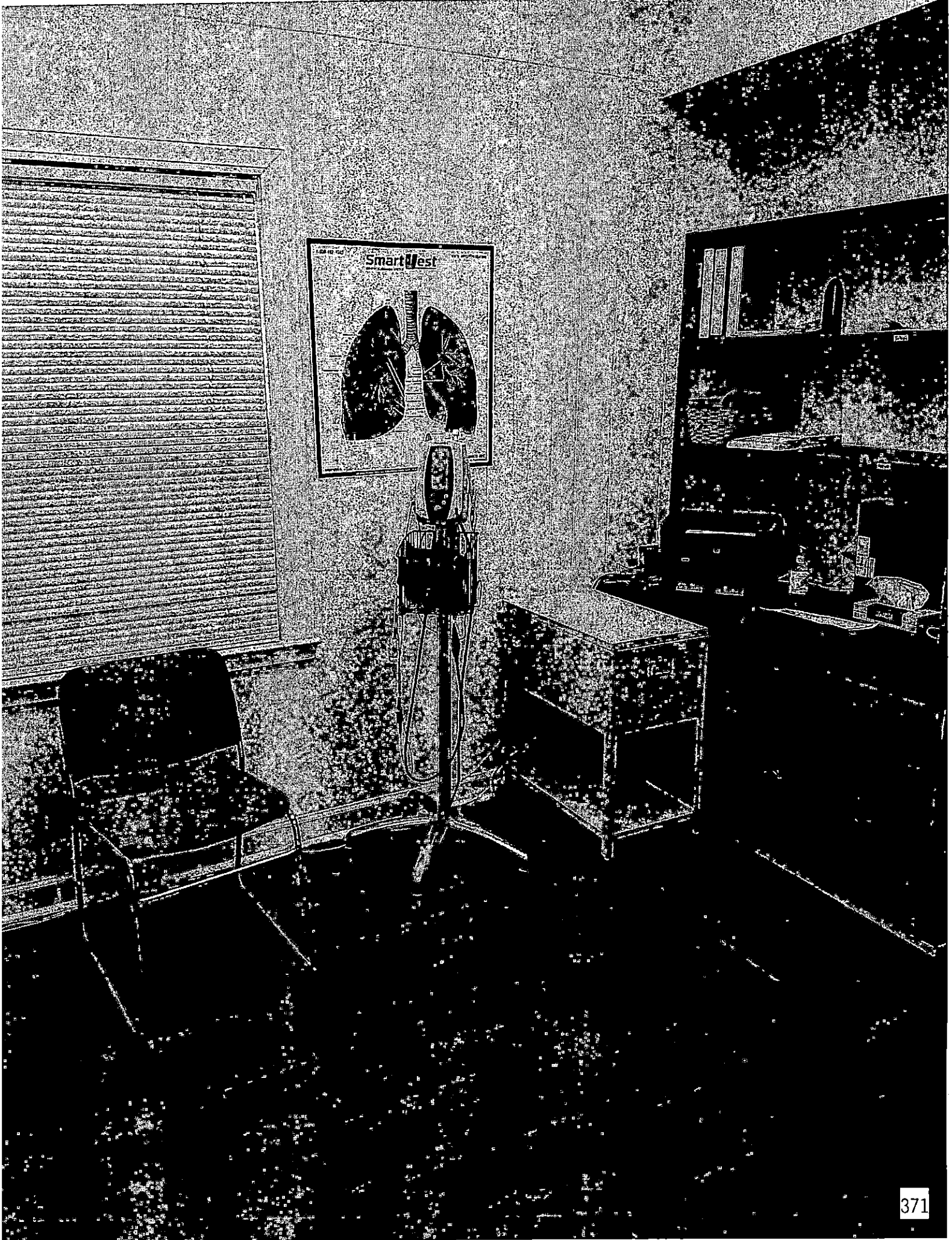


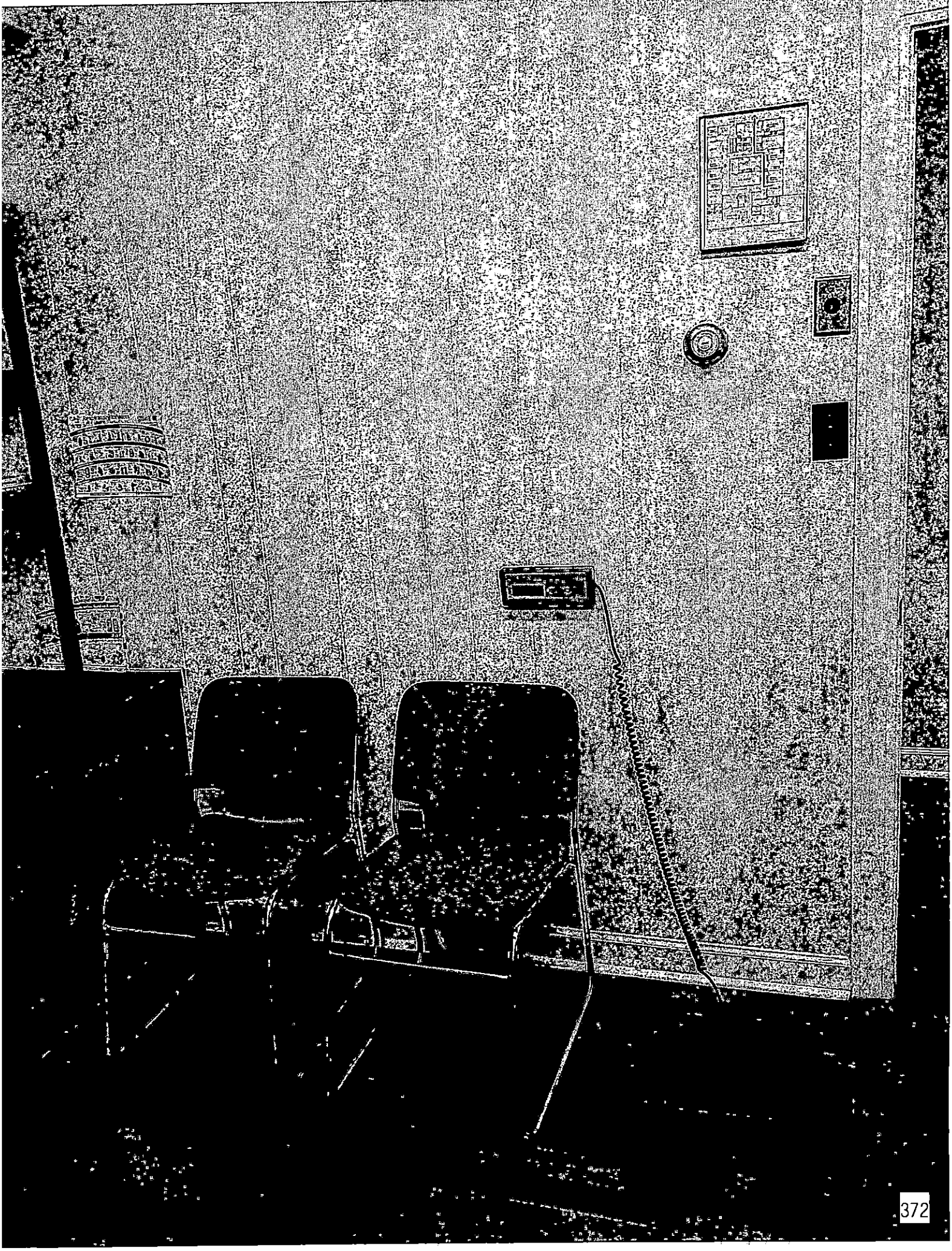


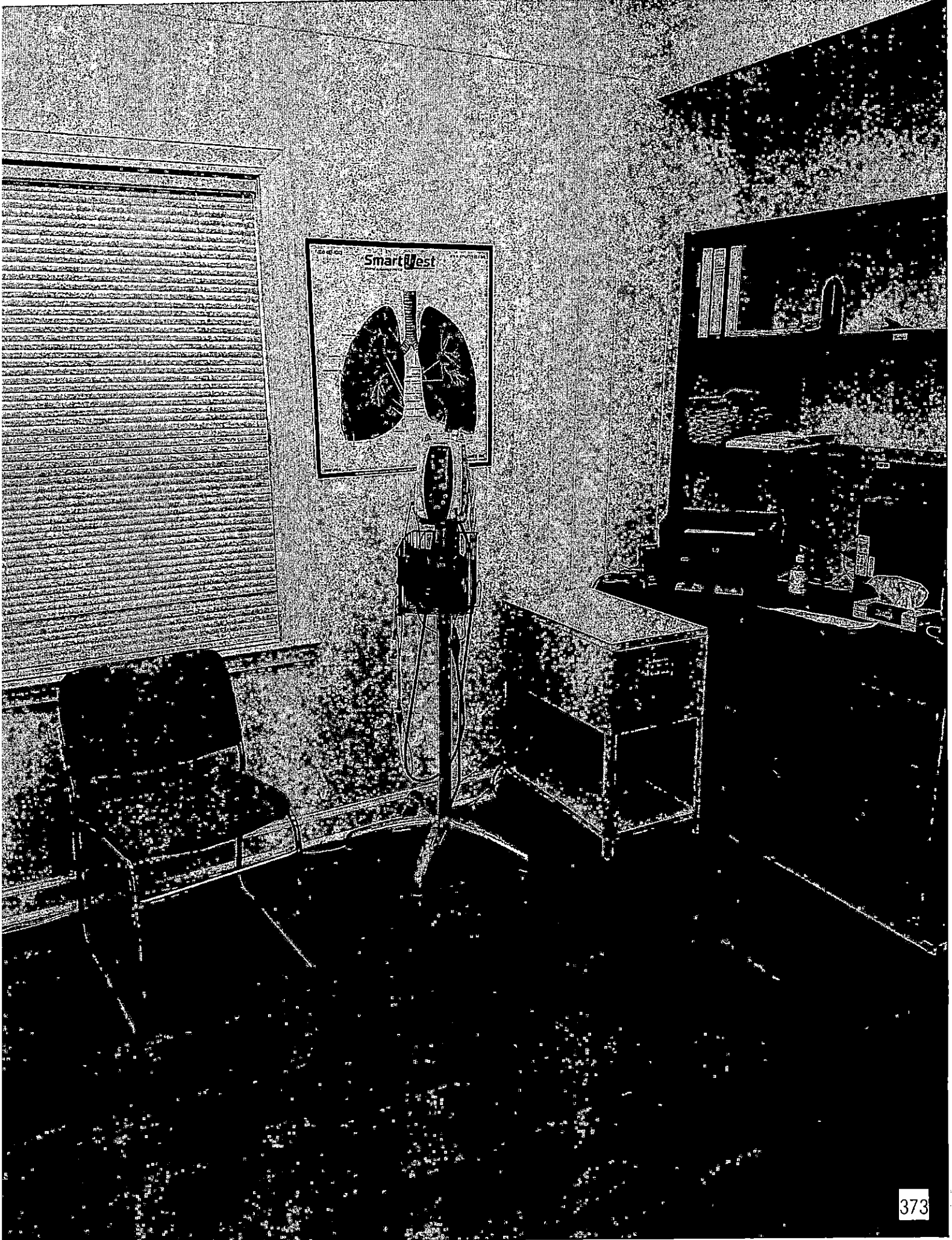














The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 11, 2018.

David A. Manzi

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Fort Mill, SC 29707
(704) 589-2180
dmanzi@schillerhamilton.com
Attorneys for Appellant Wayne H.
Copeland as the PR of the Estate of
Dorothy H. Copeland, deceased

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SC Court of Appeals